

13-1668-CV

United States Court of Appeals *for the* Second Circuit

AMERICAN ATHEISTS, INC., DENNIS HORVITZ,
KENNETH BRONSTEIN, JANE EVERHART,

Plaintiffs-Appellants,

MARK PANZARINO,

Plaintiff,

— v. —

PORT AUTHORITY OF NEW YORK AND NEW JERSEY, WORLD
TRADE CENTER MEMORIAL FOUNDATION/NATIONAL
SEPTEMBER 11 MEMORIAL AND MUSEUM,

Defendants-Appellees,

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR DEFENDANT-APPELLEE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

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STATE OF NEW JERSEY, GOVERNOR CHRIS CHRISTIE, SILVERSTEIN
PROPERTIES, INC., LOWER MANHATTAN DEVELOPMENT
CORPORATION, CHURCH OF THE HOLY NAME OF JESUS, BRIAN
JORDAN, WORLD TRADE CENTER PROPERTIES, LLC,

Defendants.

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PRELIMINARY STATEMENT

Plaintiffs seek to preclude the National September 11 Museum (the “Museum”) from displaying steel beams in the shape of a cross (the “Artifact” or “cross”) unless this Court directs “some contextual adjustment to the manner of displaying the [Artifact]” within the Museum. (*see* Plaintiff-Appellant’s Brief on Appeal filed on August 22, 2013 (“App. Br.”), 2). Essentially, plaintiffs are asking this Court to substitute its judgment for that of the Museum’s curators, in determining what should be displayed in a museum documenting the history of the events following September 11, 2001.

The cross the Museum intends to display was discovered in the debris near 6 World Trade Center shortly after September 11, 2001. It was uprighted and remained at the site until 2006 when it was moved due to construction at the site. (Appendix (“A”)-153; A-289). In 2011 the cross was donated to the Museum, along with a number of other artifacts, where the Museum will display it to help document and demonstrate what transpired both on September 11, 2001 and in its aftermath. (A-160).

Plaintiffs claim the display of the cross in the Museum violates the First and Fourteenth Amendments and the New York and New Jersey Constitutions, whose “constitutional protections mirror the federal standards.” (App. Br., 31). Plaintiffs ignore the decision of the District Court, which found that because the cross was going to be displayed for a secular purpose (*i.e.*, a subject of history) that did not

advance religion impermissibly, this did not result in excessive entanglement between state and religion or a violation of plaintiffs' equal rights, thus negating plaintiffs' claims (Supplemental Appendix ("SA")-30). Plaintiffs also fail to point to any factual issues that undermine the District Court's decision or warrant a trial.

STATEMENT OF ISSUE

Did the District Court properly determine that the cross is being displayed in the Museum for a secular, non-discriminatory purpose and thus, does not violate the First and Fourteenth Amendments of the United States Constitution, or New York and New Jersey Constitutions?

STATEMENT OF THE CASE

Plaintiff commenced this action on July 27, 2011 in the Supreme Court of the State of New York, County of New York alleging violations of the First and Fourteenth Amendments, the New York State Constitution, and the New York Civil Rights Act in connection of the intended display of the cross at the Museum. Plaintiffs filed an amended complaint on August 15, 2011, in which they added claims alleging violations of the New Jersey State Constitution and the New Jersey civil rights laws. (A-18). The Museum removed the case to the United States District Court for the Southern District of New York on August 26, 2011. (A-6). The Museum filed an answer to the amended complaint on October 31, 2011. (A-45). Plaintiffs served the amended complaint on the Port Authority on December 22, 2011 and the Port Authority filed its answer on January 24, 2012. (A-53).

The parties engaged in discovery, following which the Port Authority and the Museum moved for summary judgment on August 13, 2012. (A-12). The motion was fully briefed on September 24, 2012. (A-14).

The District Court granted both defendants' motions in an opinion dated March 28, 2013. (SA-3). The District Court found that plaintiffs' Establishment Clause claim failed because the decision to include the Artifact in the Museum's Historical Exhibit had a secular purpose (SA-24-25), defendants did not advance religion impermissibly (SA-25-30), and the Artifact did not create excessive entanglement between the state and religion. (SA-30-31; SA-35; SA-39).

The District Court also held that plaintiffs' Equal Protection claim failed because they failed to allege any form of intentional discrimination, such as discriminatory animus or unequal treatment based on their beliefs. Even if plaintiffs were treated adversely, the District Court recognized that the Museum had a rational basis for displaying the cross, which further negated plaintiffs' Equal Protection claims. (SA-32-33). Because New York and New Jersey follow the federal analysis in resolving equal protection claims brought under state statute, the District Court determined the state law claims failed for the same reason. (SA-36-38; SA-40-41). The District Court also recognized that the state civil rights statutes did not apply to the Port Authority, a bi-state entity. (SA-34).

Plaintiffs filed a notice of appeal on April 26, 2013. (A-368).

STATEMENT OF FACTS

The Port Authority is a bi-state government agency formed by Compact between the States of New York and New Jersey with the consent of the Congress of the United States. (A-158 (Port Authority of New York and New Jersey Local Rule 56.1 Statement (“56.1 St.”), ¶ 1)). The Port Authority built, owned and, until August 2001, operated the World Trade Center, which was destroyed on September 11, 2001. (A-158 (56.1 St., ¶ 2)).

During the rescue and recovery operation, construction workers at the site found steel beams in the shape of the cross in the debris near 6 World Trade Center. (A-180). The beams were uprighted and remained at the site until 2006 when construction of the World Trade Center Transportation Hub necessitated removal of the cross. (A-159 (56.1 St., ¶ 7)). The cross was delivered to the Museum in 2011 so it could be incorporated into the Museum’s collection of historic resources. (A-292). A 2006 agreement between the Museum and the Port Authority provides, in relevant part, that the Museum is responsible for the display of its artifacts. (A-158 (56.1 St., ¶ 14)).

SUMMARY OF THE ARGUMENT

Plaintiffs have failed to prove that the display of the cross, a recognized historic resource, in a museum created to tell the history of September 11th, including the rescue and recovery efforts, violates the Establishment Clause. First, plaintiffs concede that the cross is being displayed for a secular purpose. Second,

the display of the cross in the Museum's Historical Exhibit, accompanied by placards explaining its significance, does not advance or endorse religion. Third, plaintiffs have failed to show a relationship between the Port Authority and religious authorities which dictated how the cross will be displayed.

Plaintiffs also have failed to prove the display of the cross in the Museum violates the Equal Protection Clause because they did not come forth with evidence showing the Port Authority intentionally discriminated against them or treated them adversely based on their beliefs.

Inasmuch as plaintiffs concede that their equal protection claims asserted under the New York and New Jersey Constitutions mirror the federal standards and they failed to prove a violation of their rights under federal law, their state law claims were also properly dismissed.

STANDARD OF REVIEW

The standard of review on this appeal is a plenary, or *de novo*, standard because this is a review of an order granting summary judgment. *Global Network Communications Inc. v. City of New York*, 562 F.3d 145, 150 (2d Cir. 2009).

ARGUMENT

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); *see also*

Collins v. New York City Transit Authority, 305 F.3d 113 (2d Cir. 2002). A decision of the district court granting summary judgment should be upheld “if the evidence, viewed in the light most favorable to the party against whom it is entered, demonstrates that there are no genuine issues of material fact and that the judgment was warranted as a matter of law.” *Molinari v. Bloomberg*, 564 F.3d 587, 595 (2d Cir. 2009) (internal quotation marks omitted).

Although “the burden is upon the moving party to demonstrate that no genuine issue respecting any material fact exists,” *Gallo v. Prudential Residential Servs., Ltd. P’Ship*, 22 F.3d 1219, 1223 (2d Cir. 1994), the non-moving party nonetheless must “come forward with specific facts showing that there is a genuine issue of material fact for trial.” *Shannon v. N.Y.C. Transit Auth.*, 332 F.3d 95, 99 (2d Cir. 2003). To defeat summary judgment, “the non-moving party must offer enough evidence to enable a reasonable jury to return a verdict in its favor.” *Byrnie v. Cromwell Bd. of Ed.*, 243 F.3d 93, 101 (2d Cir. 2001). To meet this burden, the non-movant “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Rather, they must come forward with “specific facts showing that there is a genuine issue for trial.” *Id.* at 587. Conclusory statements, speculative assertions, unsubstantiated allegations, or merely colorable evidence will not defeat summary judgment. *See Weinstock v. Columbia Univ.*, 224 F.3d 33, 41 (2d Cir. 2000).

Here, plaintiffs concede that the cross “is an artifact of historic significance” (App. Br., 17), which is the reason it should be displayed in a museum dedicated to memorializing the events of September 11th, including the rescue and recovery efforts. Plaintiffs have failed to come forth with any facts to show the cross is being displayed for religious as opposed to the well-documented historic reasons put forth by the Museum. Given the absence of both a genuine issue for trial and the endorsement of religion by the Museum in displaying the cross, the decision of the District Court should be affirmed.

I. The Port Authority Did Not Violate The First Amendment

The First Amendment states that “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof....” U.S. CONST. amend. I. The dual mandate of these Establishment and Free Exercise Clauses extends to the state and local governments through the Fourteenth Amendment. *See* U.S. CONST. amend. XIV; *Wallace v. Jaffree*, 472 U.S. 38, 49-55 (1985). The purpose of the Establishment and Free Exercise Clauses is “to prevent, as far as possible, the intrusion of either [the church or the state] into the precincts of the other.” *Lemon v. Kurtzman*, 403 U.S. 602, 614 (1971). At the same time, the Court has recognized that “total separation is not possible in an absolute sense. Some relationship between government and religious organizations is inevitable.” *Id.*.

The Constitution does not oblige government to avoid any public acknowledgement of religion's role in society. *Salazar v. Buono*, 559 U.S.700 (2010) citing *Lee v. Weisman*, 505 U.S. 577, 598 (1992) (“A relentless and all-pervasive attempt to exclude religion from every aspect of public life could itself become inconsistent with the Constitution”). “Although the Court has never construed the religion clauses to require government ‘to purge from the public sphere all that in any way partakes of the religious,’ *Van Orden v. Perry*, 545 U.S. 677, 699 (2005)(Breyer, J., concurring in the judgment), its members have rarely agreed – in either analysis or outcome – in distinguishing the permissible from the impermissible public display of symbols having some religious significance.” *Skoros v. City of New York*, 437 F.3d 1, 13 (2d Cir. 2006).

In the action at hand, plaintiffs claim the Port Authority violated the Establishment Clause because allowing the cross to be installed at the Museum constitutes an unlawful attempt to promote a specific religion on governmental land. Yet, plaintiffs acknowledge the historic significance of the cross (App. Br., 17), which stands separate and apart from its religious significance. And it is the historic significance of the Artifact that justifies its inclusion in a museum being built to commemorate the history of September 11th and its aftermath.

In analyzing an Establishment Clause claim, the inquiry typically focuses on whether the challenged conduct has a secular purpose, whether its principal or primary effect is to advance or inhibit religion, and whether it creates an excessive

entanglement of government with religion. *Lemon*, 403 U.S. at 612-613. While it must be acknowledged that “five sitting Justices have questioned or decried the *Lemon*/endorsement test’s continued use,” it has not been overruled. *Utah Highway Patrol Ass’n v. American Atheists, Inc.*, 132 S.Ct. 12, 21 (2011) (citations omitted). The Second Circuit has instructed district courts to apply the *Lemon* test until it is reconsidered *en banc* or explicitly rejected by the Supreme Court. *Skoros*, 437 F.3d at 16; *see also Newdow v United States*, 13 CV 741 HB, 2013 WL 4804165 (S.D.N.Y. Sept. 9, 2013). In applying the *Lemon* test to the facts at hand, the District Court properly determined that the display of the cross clearly does not violate the Establishment Clause.

A. Secular Purpose

The secular purpose prong of *Lemon* requires the Court to determine whether the predominant purpose of the practice in question is secular. *Weisman*, 908 F.2d at 1094, *aff’d*, 505 U.S. 577 (1992). The eyes that look to purpose belong to an “objective observer” and require no “judicial psychoanalysis.” *See McCreary County, Ky. v. American Civil Liberties Union of Ky.*, 545 U.S. 844, 862 (2005); *see also Skoros*, 437 F.3d at 22-23. In analyzing the action under the purpose prong, courts should look to “the traditional external signs that show up in the text, legislative history, and implementation of the statute, or comparable official act.” *McCreary*, 545 U.S. at 862. The purpose test is “rarely ... determinative” in Establishment Clause challenges because “government does not

generally act unconstitutionally, with the predominant purpose of advancing religion.” *Id.* at 863 (internal quotation marks and citation omitted).

Plaintiffs cannot disprove the secular purpose for displaying the cross, to wit, the depiction of the rescue and recovery operations in the aftermath of the destruction of the World Trade Center. The cross played a role at the World Trade Center Site and is being incorporated into the Museum to convey the story. (A-292). Inasmuch as the actual purpose for including the cross in the Museum’s display is not to endorse or disapprove of religion, but to convey the story of September 11th and its impact on those who responded to the site to assist in the rescue and recovery operations, plaintiffs have failed to meet the first prong of the *Lemon* test. *See Lynch v. Donnelly*, 465 U.S. 668, 690 (1983).

In reliance on *Skoros*, plaintiffs seem to argue that displaying the cross, while excluding symbols of other faiths communicates official favoritism toward Christianity and thus violates the Establishment Clause. (App. Br., 24-25). Plaintiffs’ reliance on *Skoros* is misplaced. In *Skoros*, the Second Circuit unequivocally stated that “where defendants permissibly include a religious symbol in a holiday display that unquestionably serves the secular purpose of pluralism, the Establishment Clause does not necessarily demand that they employ a religious symbol for *every* holiday that has a religious as well as a secular component.” *Skoros*, 437 F.3d at 27. As such, just like the defendants in *Skoros*,

the Port Authority is not obligated to allow plaintiffs to display a symbol of their choice at the Museum to offset the display of the cross.

B. Principal or Primary Effect

The second prong of the *Lemon* is an “endorsement” test, which asks whether “an objective observer who knows all of the pertinent facts and circumstances surrounding the symbol and its placement” would perceive a message of governmental endorsement or sponsorship of religion. *Salazar*, 559 U.S. at 721 (citing *Capital Square Review and Advisory Board v. Pinette*, 515 U.S. 753, 780 (1995) (O’Connor, J., concurring in part and concurring in judgment)). Under the endorsement test, the “history and ubiquity” of the display is relevant because it provides part of the context in which a reasonable observer evaluates whether the challenged practice conveys a message of endorsement of religion. *County of Allegheny v. American Civil Liberties Union of Greater Pittsburgh Chapter*, 492 U.S. 573, 631 (1989) (O’Connor, J., concurring in part and concurring in the judgment). Thus, “the endorsement test necessarily focuses upon the perception of a reasonable, informed observer [who] must be deemed aware of the history and context of the community and forum in which the religious display appears.” *Elewski v. City of Syracuse*, 123 F.3d 51, 54 (2d Cir. 1997) (citations omitted).

Moreover, the endorsement test does not “focus on the actual perception of individual observers, who naturally have differing degrees of knowledge.” *Capital*

Square Review and Advisory Board, 515 U.S. at 779. Rather, “the endorsement test creates a more collective standard to gauge ‘the “objective” meaning of the [government’s] statement in the community.’” *Id.* (alteration in original) (*quoting Lynch*, 465 U.S. at 690). The applicable observer is “a personification of a community ideal of reasonable behavior determined by the collective social judgment.” *Id.* at 780 (alteration and internal quotation marks omitted). The focus of Justice O’Connor’s reasoning is to avoid a situation where a practice is struck down “simply because a particular viewer of a display might feel uncomfortable.” *Skoros*, 437 F.3d at 47 (Straub concurring in part, and dissenting in part).

Plaintiffs assert that the inclusion of the cross in the Museum is a *per se* violation of the endorsement prong under the *Lemon* test, irrespective of the exhibit that it may be displayed in. (*See App. Br.*, 7, 22; A-97 ¶¶ 1-23; A-98 ¶¶ 7-25; A-99 ¶¶ 2-24). However, this is the very type of assertion that Justice O’Connor sought to address in constructing her concurrence in *Allegheny*. Plaintiffs’ subjective beliefs ignore the historical and significant emotional relevance attached to the cross, as well as its overall value as a crucial narrative in the aftermath of the September 11, 2001 attacks. Therefore, plaintiffs’ objections to the display of the cross are a marked departure from the reasonable observer standard enumerated by the Supreme Court.

The cross is to be incorporated into a display depicting the rescue and recovery efforts in the aftermath of September 11th. The purpose of the display is

to convey to the viewer what those working at the site experienced. This particular Artifact played a role in that experience and is being included in the display not because of its religious symbolism, but because of its historic significance, which will be thoroughly documented in text panels incorporated in the display. (SA-9; A-73; A-292). The museum setting, though not neutralizing the religious nature of the Artifact, negates any message of endorsement of religion. *See Lynch*, 465 U.S. at 692.

Having reviewed the evidence presented, the District Court concluded that “[a] reasonable observer is not one who wears blinders and is frozen in a position focusing solely on the religious object. *Elewski*, 123 F.3d at 5. Because a reasonable observer would be aware of the history and context of the cross and the Museum -- especially given that the cross will be housed in the “Finding Meaning at Ground Zero” section, accompanied by placards explaining its meaning and the reason for its inclusion, and surrounded by secular artifacts—no reasonable observer would view the artifact as endorsing Christianity.” (SA-30). Accordingly, the District Court properly found that the display of the cross did not constitute an endorsement of religion under the *Lemon* test.

C. Entanglement

Lemon’s third prong requires that government conduct “avoid excessive government entanglement with religion.” *Ahlquist v. City of Cranston*, 840 F. Supp.2d 507, 521 (D.R.I. 2012) (internal quotation marks and citation omitted).

The First Amendment does not prohibit all interaction between church and state. The entanglement of the two becomes constitutionally “excessive” only when it has “the effect of advancing or inhibiting religion. *Agostini v. Felton*, 521 U.S. 203, 231 (1997). To “assess entanglement, [the United States Supreme Court] look[s] to the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and religious authority.” *Id.* at 232 (internal quotation marks and citation omitted). Courts also consider whether the conduct (i) requires “pervasive monitoring by public authorities” to protect against religious inculcation; (ii) requires “administrative cooperation” between the government and religious schools; and (iii) creates “political divisiveness.” *Id.* at 233 (internal quotation marks and citation omitted). The last two considerations, however, are insufficient by themselves to create excessive entanglement. *Id.* In the final analysis, excessive entanglement requires more than mere interaction between church and state. *Id.*

Here, there is no relationship between the Port Authority and a religious authority with respect to donating the Artifact at the Museum or displaying it. The Port Authority owned the cross and transferred it to the Museum for use in its collection. The Port Authority retained no rights to the cross, such as dictating how it could be displayed. Because plaintiffs cannot prove excessive entanglement by the Port Authority intruding into religious affairs or religious authorities

intruding into Port Authority affairs, the District Court held that they failed to satisfy the third prong of the *Lemon* test. (SA-31).

The District Court noted that “[c]ourts repeatedly have recognized that including a religious artifact in a museum will often times negate any endorsement.” (SA-25 *citing Allegheny*, 492 U.S. at 595 (“[A] typical museum setting, though not neutralizing the religious content of a religious painting, negates any message of endorsement of that content.”); *Lynch*, 465 U.S. at 693 (explaining a display of crèche, was “no more an advancement or endorsement of religion that . . . other religious paintings in governmentally supported museum.”); *O’Connor v. Washburn University*, 416 F.3d 1216, 1228 (10th Cir. 2005) (discussing art in a museum setting); *Brooklyn Institute of Arts & Science v. City of New York*, 64 F. Supp.2d 184, 201 (E.D.N.Y. 1999)(holding a museum displaying a work “which is viewed by some as sacrilegious” is no more endorsement of anti-religious views than showing” religiously reverential works constitutes same endorsement.”)).

Here, the display of the cross will portray how those at Ground Zero struggled to cope with the horrific situation they faced. To cope, some turned to religion, patriotism, or forging relationships with relatives of victims. In this section, the Foundation plans to include the cross. (SA-9). Surrounding the Artifact, the Museum plans to have text panels explaining its historical significance to the recovery effort. Other objects of historical significance will also be in the

section, including several pieces of “symbol steel,” which is steel that ironworkers at Ground Zero cut into religious and non-religious symbols, such as a Star of David, a Maltese cross, the Twin Towers, and the Manhattan skyline. *Id.* Given the unique and significant value of the cross and the manner in which it will be displayed, the District Court correctly determined that its inclusion in the Museum does not violate the First Amendment. (SA-26).

II. THE PORT AUTHORITY DID NOT VIOLATE THE EQUAL PROTECTION CLAUSE

Plaintiffs claim defendants have violated the Equal Protection Clause by displaying a 17-foot cross and denying plaintiffs the right to display “a symbol to represent the fallen and rescuer atheists.” (App. Br., 30). Plaintiffs are asking this Court to dictate what will be displayed at the Museum by affording them the opportunity to install a symbol having nothing to do with what transpired in the aftermath of September 11th. As the District Court found in dismissing plaintiff’s equal protection claims, there is a rational basis for displaying the cross, separate and apart from its religious symbolism - - the cross helps tell part of the history surrounding September 11th. (SA-34-35).

“In order for plaintiffs to state an equal protection claim, they must allege that they were intentionally discriminated against on the basis of a protected classification, in this case, religion.” *People United for Children, Inc. v. City of New York*, 108 F. Supp. 275, 298 (S.D.N.Y. 2000). Plaintiff must also show that the

government decisionmakers acted with discriminatory intent or purpose. *See Thomas v. City of N.Y.*, 143 F.3d 31, 37 (2d Cir. 1998).

A plaintiff may prove intentional discrimination by showing the government decisionmaker expressly classified on the basis of a suspect characteristic; applied a neutral program in an intentionally discriminatory manner; or promulgated a policy that was motivated by discriminatory animus that had an adverse effect. *See Lown v. Salvation Army, Inc.*, 393 F. Supp.2d 223, 235 (S.D.N.Y. 2005) (citations omitted). Absent a showing of intentional discrimination, the government action is subject to rational basis review. *Id.* at 237, *citing Locke v. Davey*, 540 U.S. 712, 720 n.3 (2004).

Plaintiffs argue the display of the cross, in and of itself, violates their fundamental rights and triggers the strict scrutiny test. (App. Br., 29-30). The District Court correctly rejected this argument and determined plaintiffs failed to allege any form of intentional discrimination, thus triggering rational basis review, which was easily met - - the cross is being displayed because it “helps tell part of [the September 11th] history. (SA-32-33).

Plaintiffs claim that their rights were violated because the Museum opted not to display a symbol of plaintiffs’ choice. (App. Br., 30). The District Court properly rejected this argument, recognizing that the Museum’s decision concerning its displays are “governmental speech” not subject to challenge under the Equal Protection Clause. (SA-32 n.19). Demands such as plaintiffs for

symbolic inclusion have been repeatedly rejected on similar grounds. *See Freedom From Religion Foundation, Inc. v. City of Warren, Michigan*, 707 F.3d 686, 694 (6th Cir. 2013), (The Establishment Clause does not convert seasonal displays into a public forum, requiring governments to add all comers to the mix); *Wells v. City & County of Denver*, 257 F.3d 1132, 1153 (10th Cir. 2001) (Holiday display was City's speech and plaintiffs had no First Amendment rights to dictate content of that speech, thus there was no evidence plaintiffs were intentionally treated differently).

In seeking a decision directing the Museum to install a symbol of plaintiffs' choice, plaintiffs are asking this Court to substitute plaintiffs' judgment for that of the Museum. Plaintiffs concede the cross should be in the Museum, thus acknowledging the rational basis finding of the District Court. But they cite to no case law upholding the relief they now seek. Clearly the Museum is justified in choosing what to display without being second guessed by plaintiffs. *See Pleasant Grove City, Utah v. Summun*, 555 U.S. 460, 479 (2009) ("If government entities must maintain viewpoint neutrality in their selection of donated monuments, they must either 'brace themselves for an influx of clutter' or face the pressure to remove longstanding and cherished monuments.") Accordingly, plaintiffs' requested relief should be denied because their equal protection claims are unsupported.

III. THE PORT AUTHORITY DID NOT VIOLATE PLAINTIFFS' STATE LAW RIGHTS

It is not clear what state law claims plaintiffs are pursuing on appeal and whether they are seeking relief under state law against the Port Authority. However, plaintiffs acknowledge that New York and New Jersey constitutional protections mirror the federal standards applicable to Equal Protection claims. (App. Br., 31). Inasmuch as plaintiffs have failed to establish violations of their rights under the First and Fourteenth Amendments, their rights under applicable state law are similarly flawed and were properly dismissed by the District Court.

To the extent plaintiffs are seeking to assert claims against the Port Authority arising under the New York Civil Rights Law §40 *et seq.*, and New Jersey Statute 10:1-3, these statutes do not apply to the Port Authority because it is a bi-state agency. *See Baron v. Port Authority of New York and New Jersey*, 968 F. Supp. 924, 929-30 (S.D.N.Y. 1997).

CONCLUSION

For the foregoing reasons, the Port Authority respectfully submits that the judgment of the District Court should be affirmed.

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