

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

American Atheists, Inc..

and

Mark W. Butler,

PLAINTIFFS,

v.

CASE NO.: 3:06-CV-00720-HLA-TEM

The City of Jacksonville, Florida, *et al.*

DEFENDANTS.

**ANSWER AND AFFIRMATIVE DEFENSES
ON BEHALF OF ALL DEFENDANTS TO THE
FIRST AMENDED COMPLAINT BY PLAINTIFFS**

Defendants, City of Jacksonville (“City”), Mayor John Peyton (individually and in his official capacity as Mayor) (“Mayor”), Sheriff John Rutherford (individually and in his official capacity as the Sheriff) (“Sheriff”), and Michael Corrigan (individually and in his official capacity as City Council President (“Council President”)) (collectively at times the “Defendants”) file this Answer and Affirmative Defenses as set forth below.

Jurisdictional Allegations

1. Admit that Plaintiffs are attempting to state a claim under the provisions alleged, deny that they have done so.
2. Admit, except as to 28 U.S.C. § 1367, as Plaintiffs do not appear to be invoking supplemental jurisdiction, and also except as to 28 U.S.C. § 2201, as Plaintiffs have not properly pleaded a declaratory judgment.

3. Without knowledge as to the allegations in paragraph 3 and therefore deny.
4. Without knowledge as to the allegations in paragraph 4 and therefore deny.
5. Admit.
6. Without knowledge and therefore deny; deny any violations of the Constitution of the State of Florida or the Constitution of the United States.

Response to Factual Allegations

7. Admit a function was held on August 12, 2006, admit the Mayor, Council President, and Sheriff were acting in their official capacities. To the extent that additional council members were present, each was there either in his or her official capacity, or as an individual in a non-governmental capacity. Defendants deny the remaining allegations.
8. Admit the Mayor and Sheriff were acting in their official capacities, admit various phrases exist in the documents, which are taken out of context in the allegations. Admit an expenditure of approximately \$100,000.00 for a public function. Admit to the authenticity of Exhibit 1, which speaks for itself. Deny the remaining allegations.
9. Deny.
10. Without knowledge as to the status of the Plaintiffs and therefore deny; deny the remaining allegations.
11. Deny.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief could be granted under Fed. R. Civ. P. 12 (b)(6).
2. There are insufficient allegations in the Complaint to support the existence of any custom, policy, practice, or procedure created or maintained by Defendants that deprived Plaintiffs of any civil or constitutional right or which was causally related to any unconstitutional conduct of Defendants or Defendants' employees or agents or that was a legal or proximate cause of damage.
3. The allegations against the Mayor, City Council President, and Sheriff in their official capacities are, as a matter of law, allegations against the City of Jacksonville, and should be dismissed with prejudice.
4. The Mayor was acting within the scope of his discretionary authority as a government officer, and at the time of the actions alleged he did not violate any clearly established federal statutory or constitutional rights, and is therefore entitled to qualified immunity.
5. The Sheriff was acting within the scope of his discretionary authority as a government officer, and at the time of the actions alleged he did not violate any clearly established federal statutory or constitutional rights, and is therefore entitled to qualified immunity.
6. The City Council President has complete legislative immunity, and, barring that, he was acting within the scope of his discretionary authority as a government officer, and at the time of the actions alleged he did not violate

any clearly established federal statutory or constitutional rights, and is therefore entitled to qualified immunity.

7. The City and the Defendants in their official capacities cannot be liable for punitive damages as a matter of law; thus all references to punitive damages relating to these Defendants should be stricken.
8. There are insufficient allegations in the Complaint to support a prayer for punitive damages against the Defendants in their individual capacities.

/s/ Philip R. Lammens
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 27, 2006, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: **Lisa A. Lovingood**, Esquire, 14865 Plumosa Drive, Jacksonville, Florida 32250. I further certify that I mailed the foregoing document and the notice of electronic filing by U.S. mail to the following non-CMF participant: **Edwin F. Kagin**, Esquire, Law Office of Edwin F. Kagin, 10742 Sedco Drive., Post Office Box 559, Union, KY 41091.

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