

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**CIVIL ACTION
No. 1:21-cv-10102-AK**

**THE SATANIC TEMPLE, INC.,
Plaintiff**

v.

**CITY OF BOSTON
Defendant**

CITY OF BOSTON’S MOTION TO QUASH AND REQUEST FOR SANCTIONS

The Satanic Temple originally sought to depose Mayor Michelle Wu on November 2, 2021—mayoral election day in the City of Boston (“City”). Following an emergency motion to quash and motion for protective order filed by the City, this Court ordered the Satanic Temple to file a statement explaining why the deposition of Mayor Wu was scheduled for election day. In response, the Satanic Temple conceded that it was a publicity stunt designed to inconvenience Mayor Wu. See ECF 38 at p. 2. Counsel for the Satanic Temple, Matthew Kezhaya, went on to state that he “felt no remorse” for his actions because, in his view, it was his “sworn duty to do anything short of breaking the law to see to it that my client’s goals are recognized.” Id. This Court went on to issue a protective order that prohibited the Satanic Temple from taking the deposition of Mayor Wu.¹ See ECF No. 47 at p. 8. In its Order, the Court noted Mr. Kezhaya’s

¹ The City’s motion for protective order consisted of two parts—first, ensuring that the deposition of Michelle Wu did not take place on election day; and second, prohibiting the Satanic Temple from taking Michelle Wu’s deposition altogether. The Court issued an initial order precluding the Satanic Temple from taking Michelle Wu’s deposition on election day [ECF

“exceptionally bad faith” and stated its “hope” that he would “dispense with impermissible antics and abusive tactics” as discovery moved forward. See id. at p. 15.

The Court’s hope has not come to fruition. In direct contravention of the protective order in this case, the Satanic Temple has noticed Mayor Wu’s deposition for September 12, 2022.² See Deposition Notice, attached hereto as Exhibit 1. Upon receiving the deposition notice, undersigned counsel e-mailed Mr. Kezhaya, reminded him of the protective order, and stated that the City would not produce Mayor Wu for a deposition in accordance with that order.³ See email, attached hereto as Exhibit 2. In response, Mr. Kezhaya stated that he would “seek a bench warrant” for Mayor Wu if she does not appear for her deposition as noticed. See e-mail, attached hereto as Exhibit 3. When undersigned counsel responded that the City would need to move forward with a motion to quash in light of the Satanic Temple’s position, Mr. Kezhaya sent the following response⁴:

Speaking as a reasonable third-party observer, it feels an awful lot like public funds are being abused to inure to Wu’s private benefit. Something smells fishy. Please tell me, lawyer-to-lawyer, if there is any form of official corruption going on between the City of Boston and U.S.D.J. Kelley, D. Mass...Please also be honest, because when my curiosity is piqued I tend to start demanding evidence.

See e-mail, attached hereto as Exhibit 5. And then approximately 45 minutes later:

No. 40] and later issued a second order prohibiting the Satanic Temple from taking Michelle Wu’s deposition altogether. See ECF No. 47.

² Mr. Kezhaya e-mailed a copy of the deposition notice to undersigned counsel on September 1, 2022. To date, to the best of undersigned counsel’s knowledge, Mayor Wu has not been served with a deposition subpoena. Though undersigned counsel informed Mr. Kezhaya that she would accept service of any subpoena issued to Mayor Wu, Mr. Kezhaya has insisted upon serving Mayor Wu personally.

³ Additionally, undersigned counsel reminded Mr. Kezhaya that the City has agreed to produce a less high-ranking official to answer questions that pertain to Mayor Wu. See Exhibit 2. This proposal has been rejected by the Satanic Temple. See Exhibit 3.

⁴ Additionally, when undersigned counsel inquired as to whether the parties should set up a telephone conference to discuss the motion to quash in accordance with Local Rule 7.1, Mr. Kezhaya responded that undersigned counsel had “lost [her] phone privileges”. See e-mail, attached hereto as Exhibit 4.

Time's up, I take your failure to satisfy my curiosity to be an invitation to investigate.

See email, attached hereto as Exhibit 6. The City can only infer that these bizarre and unfounded accusations, coupled with the Satanic Temple's insistence on moving forward with Mayor Wu's deposition despite a protective order that explicitly prohibits them from doing so, are designed to harass, annoy, and cause undue burden to the City and Mayor Wu.

To that end, pursuant to Fed. R. Civ. P. 45(d)(3), the City respectfully moves this Court to quash the deposition of Mayor Wu that is scheduled for September 12, 2022. Additionally, because it has become clear that the Satanic Temple is using this litigation as a mechanism to harass, annoy, and cause undue burden to the City and its employees—rather than to seek the discovery it actually needs regarding its only remaining claim in this case⁵—the City requests that this action be dismissed as a sanction for the Satanic Temple's refusal to abide by a court order. Alternatively, the City seeks attorney's fees and costs for having to file the instant motion.

Respectfully submitted:

DEFENDANT CITY OF BOSTON

By its attorneys:

Adam N. Cederbaum
Corporation Counsel

/s/ Nicole M. O'Connor
Nicole M. O'Connor (BBO#675535)
Senior Assistant Corporation Counsel
City of Boston Law Department

⁵ Again, the City has offered alternative witnesses to provide the Satanic Temple with the discovery it allegedly seeks from Mayor Wu. The Satanic Temple has rejected these offers. See Exhibits 2 and 3.

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CERTIFICATE OF SERVICE

I, Nicole M. O'Connor, hereby certify that on September 2, 2022, a copy of this document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants.

/s/ Nicole M. O'Connor
Nicole M. O'Connor

7.1 CERTIFICATION

I, Nicole M. O'Connor, hereby certify that I attempted to confer with Plaintiff's counsel, Mr. Kezhaya, in a good faith effort to resolve the issues raised in this motion on September 1, 2022. First, I emailed Mr. Kezhaya and stated that Mayor Wu would not be appearing for a deposition in accordance with the protective order in this case. See e-mail, attached hereto as Exhibit 2. In that same e-mail, I explained that the Satanic Temple could obtain the discovery it seeks from Mayor Wu from a less high-ranking government official, which the City would agree to produce on either September 12 or 13. See id. When Mr. Kezhaya insisted on moving forward with the deposition of Mayor Wu, I suggested that we arrange a telephone conference to discuss the City's impending motion to quash. See Exhibit 4. In response, Mr. Kezhaya stated that I had "lost [my] phone privileges". See id. Accordingly, I was unable to confer further regarding the issues raised in this motion.

Dated: September 2, 2022

/s/ Nicole M. O'Connor
Nicole M. O'Connor