

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

NEW GENERATION CHRISTIAN )  
CHURCH, )

Plaintiff, )

v. )

ROCKDALE COUNTY, GEORGIA, )

Defendant. )  
\_\_\_\_\_)

Case No. \_\_\_\_\_

**JURY DEMANDED**

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT,  
INJUNCTIVE RELIEF, AND DAMAGES**

COMES NOW the Plaintiff, by counsel, and for its causes of action against Defendant ROCKDALE COUNTY, GEORGIA (“County”), alleges and states the following:

**I. INTRODUCTION**

1. New Generation Christian Church is a small church that has attempted to hold worship services on several different properties in

Rockdale County, Georgia, (“County”), but its efforts have been repeatedly thwarted by the County and its Code of Ordinances (“Zoning Code”).<sup>1</sup>

2. New Generation Christian Church challenges the constitutionality of three provisions of County’s Zoning Code, on their face and as applied.

3. The County’s Zoning Code unconstitutionally restricts churches from meeting on property of less than three acres (“three acre limit”) in any zoning district, but does not similarly restrict other secular assemblies. Art. III § 218-13(ccc).

4. The County’s Zoning Code unconstitutionally requires churches to obtain special use permits (“special permit provision”) not required of other secular assemblies in the Mixed-Use Development District (“MxD”). Art. I § 218-1, Table of Permitted Uses.

5. The County’s Zoning Code prohibits churches (“M-1 prohibition”) from locating in the Limited Industrial District (“M-1”) even though churches are currently located within the M-1 District and other secular assemblies and institutions, such as sports teams, are permitted within that District. Art. I § 218-1, Table of Permitted Uses.

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<sup>1</sup> The Zoning Code is a public document and can be accessed at <http://library.municode.com/index.aspx?clientId=11481>. All references herein to “Art. \_\_ § \_\_” refer to Chapter 218 of the Zoning Code, which is incorporated by reference, and can be accessed by following this link.

6. Defendant's actions and Zoning Code violate Plaintiff's rights under the United States Constitution, and the Religious Land Use and Institutionalized Person's Act ("RLUIPA"), 42 U.S.C. § 2000cc-1, *et seq.*, as specified herein.

7. To redress irreparable harm to its rights, Plaintiff seeks declaratory and injunctive relief for violation of its constitutional and statutory rights, and seeks compensatory and nominal damages to redress past legal injuries.

## II. JURISDICTION AND VENUE

8. This action arises under the United States Constitution, federal law, particularly 42 U.S.C. §§ 1983 and 1988, and RLUIPA, 42 U.S.C. § 2000cc-1, *et seq.*

9. This Court is vested with original jurisdiction over the federal claims by operation of 28 U.S.C. §§ 1331, 1343 and 1367.

10. This Court is vested with authority to grant the requested declaratory judgment by operation of 28 U.S.C. §§ 2201, *et seq.*

11. This Court is authorized to issue the requested injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

12. This Court is authorized to award attorneys fees pursuant to 42 U.S.C. § 1988.

13. Venue is proper in United States District Court for the Northern District of Georgia under 28 U.S.C. § 1391(b), in that the Defendant resides in this district, the events giving rise to the claim occurred within the district, and the subject properties are located in this district.

### **III. IDENTIFICATION OF PARTIES**

14. Plaintiff New Generation Christian Church (“New Generation” or “Church”) is a church incorporated under the laws of Georgia that currently leases space at 2111 Black Shoals Road NE, Conyers, Georgia.

15. Defendant County of Rockdale is a municipal corporation located in the State of Georgia, existing under the Constitution and laws of the State of Georgia, and is a corporate entity capable of suing and being sued.

### **IV. STATEMENT OF FACTS**

16. New Generation is a small congregation of between 60 and 70 members.

17. The Church cannot presently afford to build its own worship facility.

#### **The Church’s Religious Beliefs**

18. The Church and its members have a sincere religious belief to gather together to worship, read the Bible, sing religious songs, pray, and to share biblical insight.

19. One of the purposes of the Church is to educate, inform, and train people regarding biblical truth, including teaching a biblical worldview of moral, cultural, and civic issues.

20. Individual and communal prayer is a central tenet of Christianity and Plaintiff's religious beliefs.

21. Plaintiff believes that its members are to regularly assemble with others to pray, study the Bible, sing religious songs, and share biblical insight on moral, cultural, and civic issues through education and training as an act of worship.

#### **Church's First Attempt to Lease Edwards Property**

22. On or around February 10, 2011, New Generation signed a lease to rent a small facility in Rockdale County located at 3020 NW Edwards Drive, Conyers, Georgia ("Edwards Property").

23. The Edwards Property is zoned Mixed-Use Development District (MxD).

24. Churches or other places of worship may locate in the MxD District as a conditional use. Art. I § 218-1, Table of Permitted Uses.

25. A conditional use requires a special use permit. Art. I § 218-1(a).

26. Other civic and social organizations and public assemblies are permissible uses and are permitted as of right in the MxD District, including

day care facilities, educational institutions, recreational centers, performing arts centers, civic and social organizations, and places of public assembly. Art. I § 218-1, Table of Permitted Uses.

27. The Church wanted to use the Edwards Property for holding worship services, including reading the Bible, singing religious songs, praying, and sharing Biblical insight.

28. The Church applied to the County for a meter to heat the building.

29. On or about February 15, 2011, the County denied the Church's request, citing the Zoning Code's three-acre limit on churches: "A place of worship shall be located on a minimum of three acres dedicated solely for the place of worship or on its own recorded lot of at least three acres in size . . . ."

Art. III § 218.-12(ccc)(2).

30. Other secular institutions and assemblies which are not subject to this three acre limit include sports centers, day cares, libraries, performing arts centers, recreational clubs, and educational institutions. *See* Art. III § 218-13.

31. The County told New Generation that it was not allowed to even meet at the Edwards property because of the three-acre limit in County's Zoning Code.

32. New Generation cannot afford to either lease or purchase a property of three acres for its church.

33. Because of the application of the three-acre limit on churches, New Generation was forced to find another location to meet.

### **Church's Lease of Dogwood Property**

34. On or about March 1, 2011, New Generation began meeting in a rented facility at 1545 Dogwood Drive, Conyers, Georgia ("Dogwood Property").

35. The Dogwood Property is zoned Limited Industrial District (M-1).

36. The Church made significant improvements to the Dogwood Property, including building a stage, installing carpet, building a sound booth, remodeling bathrooms, and painting both interior and exterior portions of the building.

37. The Church applied to the County for a meter to heat the Dogwood Property, but the County denied the application.

38. The Church lost members due to the lack of heat in the building.

39. On or about February 29, 2012, the County issued a notice of zoning code violation to the Church. *See* Notice of Violation attached as Exhibit "A".

40. The notice of zoning code violation stated that, ” a place of worship is not a permitted use in the M-1 zoning district. Information has been received that a place of worship currently, and illegally, occupies space on the property.” *See Exhibit “A”*.

41. The notice of zoning code violation gave the property owner thirty days to mitigate the violation. *See Exhibit “A”*.

42. Other secular assemblies or institutions are permitted uses in the M-1 District, including nursing and residential care facilities, amusement and theme parks, and sports teams and clubs. Art. I § 218-1, Table of Permitted Uses.

43. The Church was not previously aware of the M-1 prohibition.

44. Because of the notice of zoning code violation, the Church vacated the Dogwood Property on or about March 4, 2012.

45. Upon information and belief, another church meets in the M-1 District in an adjacent building less than 50 feet away from the Dogwood Property, and continues to do so without interference from the County.

### **Church’s Temporary Sharing of Salem Property**

46. On or about April 24, 2012, New Generation began sharing a facility with another congregation located at 2140 Salem Road SE, Conyers, Georgia 30013 (“Salem Property”).

47. The time restrictions associated with sharing a facility forced the Church to cut back on its ministries.

48. New Generation was only permitted to use the building for one and a half hours on Sundays, and was forced to reschedule its weekly Bible class for a different evening.

49. New Generation was forced to suspend many of its Saturday outreach activities, including a food pantry for the needy and youth events.

50. As a result of the constraints on church ministry and outreach, New Generation lost several members.

51. New Generation found it imperative to seek another temporary location because it cannot presently afford to build and did not want to continue to lose members.

### **Church's Second Attempt to Rent Edwards Property**

52. The Edwards Property is vacant and for rent.

53. New Generation desires to rent the Edwards property for its church services and outreach ministries.

54. The landlord is willing to rent the Edwards property to New Generation.

55. On or about May 11, 2012, the Church again requested permission from the County to rent the Edwards Property.

56. The County again denied New Generation's request, citing the three-acre limit on churches.

57. New Generation is unable to locate in the Edwards property solely because of the three-acre limit and the special permit provision in the MxD district.

### **Church's Present Location at Black Shoals Property**

58. Urgently needing to find a new location to meet, New Generation signed a lease to rent the basement suite of Fieldstone Jewelry at 2111 Black Shoals Road NE, Conyers, Georgia.

59. This property is smaller and less-visible than what Church needs long-term to grow and to have a thriving community outreach.

60. The Black Shoals Property is not "a minimum of three acres dedicated solely for the place of worship" nor is the property the Church's "own recorded lot of at least three acres in size . . . ." Art. III § 218.-12(ccc)(2).

61. New Generation fears that it will once again be forced to move from the Black Shoals property due to the three-acre limit.

62. The Black Shoals Property is inadequate for the Church's worship and ministry needs.

63. The Church is unable to adequately minister to its congregation at the Black Shoals property.

64. The Church is unable to grow as it desires to add new members to its congregation at the Black Shoals property.

## V. ALLEGATIONS OF LAW

65. All acts of the Defendant, its officers, agents, servants, employees, or persons acting at its behest or direction, were done and are continuing to be done under the color and pretense of state law, including the ordinances, codes, regulations, customs, policies and usages of the County.

66. Plaintiff has no adequate or speedy remedy at law to correct or redress the deprivations of its federal and state rights by Defendant.

67. Unless and until enforcement of the Defendant's Zoning Code, as specified below, and its application of the Zoning Code to discriminate against the Plaintiff is enjoined, the Plaintiff will suffer and continue to suffer irreparable injury to its federal rights.

### **COUNT I - Violation of RLUIPA's "Equal Terms" Provision, 42 U.S.C. §2000cc(b)**

62. Plaintiff realleges all matters set forth above in ¶¶1-67.

63. Plaintiff is a religious assembly or institution.

64. The Zoning Code, both on its face and as applied, violates the equal terms provision of RLUIPA, 42 U.S.C. §2000cc(b)(1), *et seq.*

65. The Zoning Code's three acre limit, on its face and as applied,

treats Plaintiff on less than equal terms with nonreligious assemblies and institutions because secular institutions are not restricted to property of at least three acres.

66. Other secular institutions and assemblies which are not subject to this three acre limit include sports centers, day cares, libraries, performing arts centers, recreational clubs, and educational institutions. *See* Art. III § 218-13.

67. The Zoning Code's special permit provision in the MxD District, on its face and as applied, treats Plaintiff on less than equal terms with non-religious assemblies or institutions because other secular assemblies or institutions are permitted uses in the MxD District while churches are a conditional use and required to apply for a special use permit.

69. Secular assemblies or institutions which are permitted in the MxD District as of right include day care facilities, educational institutions, recreational centers, performing arts centers, civic and social organizations, and places of public assembly. Art. I § 218-1, Table of Permitted Uses.

70. The Zoning Code's M-1 prohibition, on its face and as applied, treats Plaintiff on less than equal terms with non-religious assemblies or institutions because other secular assemblies or institutions are permitted uses in the M-1 District but churches are prohibited from locating within the

District.

72. Other secular assemblies or institutions are permitted uses in the M-1 District, including nursing and residential care facilities, amusement and theme parks, and sports teams and clubs. Art. I § 218-1, Table of Permitted Uses.

71. WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief and damages set forth hereinafter in the prayer for relief and that the Court award attorney's fees and costs pursuant to 42 U.S.C. §1988.

**COUNT II – Violation of RLUIPA's "Substantial Burden" provision, 42 U.S.C. §2000cc(a)(1)**

72. Plaintiff realleges all matters set forth above in ¶¶1-67.

73. The Zoning Code, both on its face and as applied, violates Plaintiff's free exercise of religion as guaranteed by RLUIPA, 42 U.S.C. §2000cc(a)(1), *et seq.*

74. Plaintiff believes its members are to regularly assemble with others to pray, study the Bible, sing religious songs, and share biblical insight on moral, cultural, and civic issues through education and training as an act of worship.

75. Plaintiff's religious beliefs are sincerely and deeply held.

76. The Zoning Code's three acre limit, on its face and as applied, imposes a substantial burden on religious exercise by completely prohibiting Plaintiff from having its church in Rockdale County and by forcing Plaintiff to expend substantial resources to obtain three acres of property before meeting to worship.

77. The three acre limit, on its face and as applied, is not in furtherance of a compelling governmental purpose because it is not imposed on other secular assemblies such as sports centers, day cares, libraries, performing arts centers, recreational clubs, and educational institutions.

78. The three acre limit is not the least restrictive means of furthering any governmental interest.

79. The Zoning Code's special permit provision in the MxD District, on its face and as applied, imposes a substantial burden on the religious exercise of the Church by requiring Plaintiff to obtain a special use permit before using property in the MxD District for worship services.

80. The special permit provision, on its face and as applied, is not in furtherance of a compelling governmental purpose because it is not required of other similar secular assemblies such as day care facilities, educational institutions, recreational centers, performing arts centers, civic and social organizations, and places of public assembly

81. The special permit provision in the MxD District it is not the least restrictive means of furthering any governmental interest.

82. The Zoning Code's M-1 prohibition imposes a substantial burden on Plaintiff's religious exercise by preventing it from holding worship services in the District but permitting another secular assembly and even another church to locate in the District.

83. The M-1 prohibition has not been equally applied in the M-1 District.

84. The M-1 prohibition, on its face and as applied, is not in furtherance of a compelling governmental purpose because it has not been equally applied and because other secular assemblies or institutions such as sports teams are allowed as permitted uses in the M-1 District.

85. The M-1 prohibition is not the least restrictive means of furthering any governmental interest.

86. Upon information and belief, Defendant receives federal financial assistance.

87. Upon information and belief, Defendant's Zoning Code affects commerce with foreign nations, among the several states, or with Indian tribes.

88. Defendant's Zoning Code is a land use regulation or a system of

land use regulations.

89. Defendant's Zoning Code has in place formal or informal procedures or practices that permit the Defendant to make individualized assessments of the proposed uses of property.

90. WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief and damages set forth hereinafter in the prayer for relief and that the Court award attorney's fees and costs pursuant to 42 U.S.C. §1988.

**COUNT III – Violation of the Equal Protection Clause  
Of the Fourteenth Amendment**

91. Plaintiff realleges all matters set forth above in ¶¶1-67.

92. Plaintiff's right to equal protection under the laws is protected by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

93. The Zoning Code, on its face and as applied, unconstitutionally abridges Plaintiff's affirmative right to equal protection of the laws.

94. The Zoning Code's three acre limit, on its face and as applied, treats Plaintiff less favorably than it treats other similarly-situated entities because Plaintiff is limited to property of at least three acres on the basis of Plaintiff's religious beliefs and the content and viewpoint of its expression,

and other secular assemblies and institutions are not similarly limited.

95. Sports centers, day cares, libraries, performing arts centers, recreational clubs, and educational institutions are not subject to the three acre limit.

96. The Zoning Code's special permit provision, on its face and as applied, treats Plaintiff less favorably than it treats other similarly-situated entities on the basis of Plaintiff's religious beliefs and the content and viewpoint of its expression because churches are required to obtain a special use permit to locate within the MxD District and other secular assemblies and institutions may locate in the District as of right.

97. Day care facilities, educational institutions, recreational centers, performing arts centers, civic and social organizations, and places of public assembly may locate in the MxD District as of right and are not required to apply for a special use permit.

98. The Zoning Code's M-1 prohibition, on its face and as applied, treats Plaintiff less favorably than it treats other similarly-situated entities on the basis of Plaintiff's religious beliefs and the content and viewpoint of its expression because amusement and theme parks, and sports teams and clubs may locate within the M-1 District as of right.

99. The M-1 prohibition, as applied, treats Plaintiff less favorably

than it treats other churches because another church is currently located within the M-1 Zoning District

100. This less-favorable treatment is not supported by a compelling governmental interest sufficient to justify its enactment or enforcement against Plaintiff.

101. This less-favorable treatment is not the least restrictive means to accomplish any permissible government purpose sought to be served by the Zoning Code.

102. This less-favorable treatment does not serve a significant government interest.

103. This less-favorable treatment does not leave open ample alternative channels of communication.

104. This less-favorable treatment is irrational and unreasonable, and imposes irrational and unjustifiable restrictions on constitutionally-protected speech.

105. Defendant, in violation of the Equal Protection Clause, has caused, and will continue to cause, Plaintiff to suffer undue and actual hardship and irreparable injury.

106. WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief and damages set forth hereinafter in the prayer

for relief and that the Court award attorney's fees and costs pursuant to 42 U.S.C. §1988.

**COUNT IV – Violation of Free Speech**  
**Of the First Amendment**

107. Plaintiff realleges all matters set forth above in ¶¶1-67.

108. The Zoning Code, on its face and as applied, violates the Free Speech Clause of the First Amendment to the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

109. The special permit provision operates as a prior restraint on speech because Plaintiff and other organizations must obtain permission before engaging in religious speech, such as prayer, Bible reading and discussion, or singing religious songs with others in a place of worship in the MxD District.

110. The special permit provision is a content-based restriction on speech because it requires the Defendant to review the content of speech of a user to determine whether they are subject to the special permit provision.

111. Defendant does not have a compelling interest in requiring churches to obtain a special use permit while permitting other secular assemblies and institutions to locate within that District as permitted uses.

112. The special permit provision, on its face and as applied, is not

narrowly tailored to achieve a compelling state interest nor is it the least restrictive means of achieving a compelling interest.

113. The special permit provision, on its face and as applied, does not leave open ample alternative channels of communication.

114. The Defendant does not have a significant interest in requiring churches to obtain a special use permit while permitting other secular assemblies and institutions to locate within that District as permitted uses.

115. WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief and damages set forth hereinafter in the prayer for relief and that the Court award attorney's fees and costs pursuant to 42 U.S.C. §1988.

**COUNT V – Violation of the Free Exercise Clause  
Of the First Amendment**

116. Plaintiff realleges all matters set forth above in ¶¶1-67.

117. The Zoning Code, on its face and as applied, violates Plaintiff's right to free exercise of religion, as guaranteed by the First Amendment to the United States Constitution.

118. Plaintiff and its members believe that they are to regularly assemble with others to worship, pray, study the Bible, sing religious songs,

and share biblical insight on moral, cultural, and civic issues through education and training as an act of worship.

119. Plaintiff's religious beliefs are sincerely and deeply held.

120. The Zoning Code's three acre limit, on its face and as applied, is neither a neutral nor general law of applicability because other secular assemblies and institutions are not restricted to property of at least three acres.

121. The three acre limit, on its face and as applied, specifically and discriminatorily targets religion and religious worship.

122. There is no compelling government interest sufficient to justify the three acre limit.

123. The three acre limit is not the least restrictive means to accomplish any permissible government purpose sought to be served by the Zoning Code.

124. The three acre limit is not narrowly tailored as required for restrictions on Plaintiff's free exercise of religion.

125. The Zoning Code's special permit provision, on its face and as applied, is neither a neutral nor general law of applicability because other secular assemblies and institutions are not required to apply for a permit before locating within the MxD District.

126. The special permit provision, on its face and as applied, specifically and discriminatorily targets religion and religious worship.

127. There is no compelling government interest sufficient to justify the special permit provision.

128. The special permit provision is not the least restrictive means to accomplish any permissible government purpose sought to be served by the Zoning Code.

129. The special permit provision is not narrowly tailored as required for restrictions on Plaintiff's free exercise of religion.

130. Zoning Code's M-1 prohibition, on its face and as applied, is neither a neutral nor general law of applicability because other secular assemblies and institutions are permitted to locate within the M-1 District and another church is presently located in the M-1 District.

131. The M-1 prohibition, on its face and as applied, specifically and discriminatorily targets religion and religious worship.

132. There is no compelling government interest sufficient to justify the church prohibition.

133. The church prohibition is not the least restrictive means to accomplish any permissible government purpose sought to be served by the Zoning Code.

134. The church prohibition is not narrowly tailored as required for restrictions on Plaintiff's free exercise of religion.

135. Defendant has failed or refused to accommodate Plaintiff's sincerely held religious beliefs.

136. WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief and damages set forth hereinafter in the prayer for relief and that the Court award attorney's fees and costs pursuant to 42 U.S.C. §1988.

**COUNT VI – Violation of the Establishment Clause  
Of the First Amendment**

137. Plaintiff realleges all matters set forth above in ¶¶1-67.

138. The First Amendment's Establishment Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits government hostility towards religion.

139. The Zoning Code's three-acre limit, on its face and as applied, is hostile towards religion because it targets churches for unfavorable treatment by preventing them from locating on property of less than three acres.

140. WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief and damages set forth hereinafter in the prayer

for relief and that the Court award attorney's fees and costs pursuant to 42 U.S.C. §1988.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests the following relief:

A. That this Court preliminarily and permanently enjoin the conduct of Defendant, its officers, agents, servants, and employees which violates the rights of Plaintiff and other parties not before the Court as protected by the First and Fourteenth Amendments to the United States Constitution, and RLUIPA;

B. That this Court preliminarily and permanently enjoin the Defendant from enforcing the challenged provisions of its Zoning Code against Plaintiff so as to prohibit it from meeting with others for communal prayer, Bible reading, discussion of biblical concepts, singing religious songs, or from otherwise conducting church services on its property;

C. That this Court render a Declaratory Judgment declaring the challenged provisions of Defendant's Zoning Code and actions as alleged herein to be invalid and unconstitutional in all respects under the First and Fourteenth Amendments to the United States Constitution, and RLUIPA;

D. That this Court grant to Plaintiff compensatory and nominal damages;

E. That this Court grant to Plaintiff an award of its costs of litigation, including reasonable attorneys' fees and expenses;

F. That this Court grant such other and further relief as this Court deems just and proper.

Respectfully submitted this 21st day of June, 2012.

By my signature below, I certify that this document was prepared in 13 point Century School Book font.

s/ Erik W. Stanley \_\_\_\_\_  
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\*Motion for *pro hac vice* admission pending

## VERIFICATION OF COMPLAINT

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have read the foregoing Verified Complaint and the factual allegations thereof and that to the best of my knowledge the facts alleged therein are true and correct.

Executed this 20th day of June, 2011.

s/ Michael Lewis  
Michael Lewis, Pastor  
New Generation Christian Church