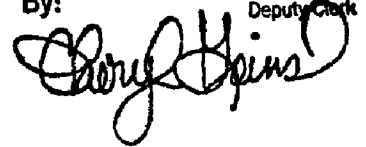


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JUL 23 2010

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

JAMES N. HATTEN, CLERK
By: Deputy Clerk



CHRIST LIBERTY FAMILY)
LIFE CENTER)

Plaintiff,)

v.)

CITY OF AVONDALE ESTATES,)
GEORGIA,)

Defendant.)

CASE NO. **10-CV-2326**

JURY TRIAL DEMANDED

CAP

COMPLAINT FOR INJUNCTIVE RELIEF,
DECLARATORY JUDGMENT, AND DAMAGES

Plaintiff Christ Liberty Family Life Center (“**Christ Liberty**” or “**the Church**”), complains against the Defendant City of Avondale Estates, Georgia (“**City**”) as follows:

I. INTRODUCTION

1. In October 2009, Apostle Rose Ann Thomas, founder and overseer of Christ Liberty, felt the call of God to minister to the youth, the poor, and those in need in the Avondale Estates community through Christ Liberty.

2. Christ Liberty is a small congregation that began worshipping in December of 2009 at its leased property at 137 Maple Street, Avondale Estates, until it was stopped by the City in April of 2010 because the Church was located on less than three acres—a requirement that does not apply to non-religious assemblies.

3. The City's zoning ordinance also excludes churches in every district of the City unless they receive discretionary permission in the form of a "conditional use permit," but freely allows other similar non-religious assembly uses like "art galleries, museums, libraries and other similar uses" in four of its districts, including the district where 137 Maple Street is located.

4. Through these zoning ordinance provisions, the City discriminates against Christ Liberty and is causing immediate irreparable harm to its constitutional and statutory rights.

5. The City's actions have forced Christ Liberty to use ill-suited, temporary meeting space that changes weekly and has resulted in a slump in average parishioner attendance by 75 percent.

6. Indeed, due to the Defendant's unlawful zoning restrictions and enforcement action during the previous three months, Christ Liberty's

average weekly church attendance has quickly plummeted to approximately 15 people—a 75% drop from its prior average of 60 parishioners.

7. During this time, Christ Liberty has also lost the opportunity to add new members due to Defendant’s prohibition of the Church from locating at its desired location, a place that affords much needed additional space and easier access for attendees.

8. Christ Liberty has also cancelled its children’s ministry, nursery, youth ministry, intercessory prayer ministry, tutoring classes, singing and musical performances, outreach functions, and social gatherings of the congregation due to insufficient space at the temporary locations where it now meets.

9. The City’s continued enforcement of its zoning ordinance threatens the continued existence of Christ Liberty, interfering with the Church’s religious mission and growth and putting a major financial strain on the Church. Avondale Estates has closed the doors to Christ Liberty and its ministries may soon be fully destroyed.

10. Christ Liberty accordingly challenges, both facially and as-applied to its religious speech and exercise, certain zoning provisions found in the City of Avondale Estates, Georgia Zoning Ordinance of 2009 (collectively, “**Ordinance**”), attached as Exhibit 1.

II. JURISDICTION AND VENUE

11. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments; and under federal law, particularly 28 U.S.C. §§ 2201, 2202; 42 U.S.C. §§ 1983, 1988; and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc et seq. (“**RLUIPA**”).

12. This Court has original jurisdiction over Plaintiff’s federal claims by operation of 28 U.S.C. §§ 1331 and 1343.

13. This Court has authority to issue the requested declaratory relief under 28 U.S.C. § 2201.

14. This Court has authority to issue the requested injunctive relief under Fed. R. Civ. P. 65 and 28 U.S.C. § 1343(3).

15. This Court has authority to issue the requested damages under 28 U.S.C. § 1343(3).

16. This Court is also authorized to award attorneys’ fees under 42 U.S.C. § 1988.

17. This Court is authorized to grant the “appropriate relief” that Christ Liberty requests under RLUIPA, 42 U.S.C. § 2000cc-2.

18. Venue is proper under 28 U.S.C. § 1391 in the Northern District because this claim arose there, because Defendant is situated within the

District, because the material events occurred there, and because the law alleged to be facially illegal is being enforced in Avondale Estates, Georgia.

III. IDENTIFICATION OF THE PARTIES

19. Plaintiff Christ Liberty is a Georgia nonprofit organization under the laws of Georgia which operates as a church.

20. The founder, overseer and pastor for Christ Liberty is Apostle Rose Ann Thomas. She has the authority to speak and act on behalf of Christ Liberty.

21. Defendant City of Avondale Estates is a municipal corporation organized and existing under the statutes and constitution of the State of Georgia that may sue and be sued.

22. The City, through its Mayor and Board of Commissioners, is responsible for the enactment and enforcement of the zoning ordinance challenged herein, including its enforcement against Christ Liberty.

IV. FURTHER STATEMENT OF FACTS

23. On December 16, 2009, on behalf of Christ Liberty, Apostle Thomas signed a one-year lease for property at 137 Maple Street, Avondale Estates, Georgia (the “**Maple Street Property**”), intending to use it as a church. The monthly rent is \$850.00.

24. The Maple Street Property is a 1.19-acre parcel located at the end of a dead-end street in the far northwest corner of Avondale Estates. See Ex. 2, satellite image of property.

AVONDALE ESTATES ZONING ORDINANCE

25. Christ Liberty's Maple Street Property is located in the Central Business District (CBD), Area 3.

26. Churches are excluded from Area 3 unless they obtain a "conditional use permit." Ex. 1, Ordinance Sec. 818; and see Ex. 3, Table of Permitted and Conditional Uses by District, pg. 47.

27. A "conditional use permit" is obtained through discretionary special review and approval from the Board of Mayor and Commissioners regarding the use of property, subject to limitations, requirements and conditions as imposed by the Board. See Ex. 1 Ordinance, Sec. 1401.

28. "Cultural facilities" such as "art galleries, museums, libraries, and other similar uses" are permitted uses in Area 3. Ex. 1, Ordinance Sec. 811(2); and see Ex. 3, Table of Permitted and Conditional Uses by District, pg. 46.

29. In other words, in order to locate in Avondale Estates' Central Business District, Area 3, these "cultural facility" uses do not have to go through the highly discretionary and extensive "conditional use permit"

process as churches are required to do. Ex. 1, Ordinance Sec. 818; Sec. 811(2); and see Ex. 3, Table of Permitted and Conditional Uses by District, pg. 46 – the “Discriminatory Permit Provisions”.

30. Defendant’s Ordinance also requires “religious facilities” to be located on at least three acres and have at least 100 feet of public street frontage (see Ex. 1, Ordinance, Sec. 818(1)(A) – the “Discriminatory Property Size Provision”), but does not place this three acre/100 foot requirement on *any* non-religious assembly uses.

31. Defendant’s Ordinance also excludes all “religious facilities” from *every* zoning district in the City unless they get special permission from the City in the form of a “conditional use permit.” See Ex. 3, Table of Permitted and Conditional Uses by District, pg. 46 & 47 – the “Exclusionary Provision”.

THE CHURCH ON MAPLE STREET

32. The Church leased the Maple Street Property with the understanding and expectation that the landlord would renew the lease after the first year.

33. In fact, the landlord has expressed excitement about the Church and ministry and has acknowledged that the Avondale Estates community needs it.

34. Christ Liberty redecorated the Maple Street Property by stripping and painting the walls and ceiling, replacing broken light fixtures, water leaks, roof, removing water damaged carpet, mold and mildew.

35. At a cost of over \$2,500, the Church purchased paint, light fixtures, furniture, sound and music equipment, office furniture and equipment, and a pulpit.

36. None of the redecorating work required a building permit.

37. Christ Liberty plans to conduct the following ministries at the Maple Street Property, which are essential religious beliefs and exercises of the Church and of its members:

- a. weekly assembly of the congregation to worship (Hebrews 10:25);
- b. weekly preaching, including speech relating to personal morality, God, social, cultural, and political issues (2 Timothy 4:2);
- c. pastoral counseling for the sick, disturbed, lonely, and bereaved;
- d. prayer meetings (Acts 1:13-14);
- e. singing and musical performances (Psalms 81:1-2);

- f. baptisms, confirmations, weddings, funerals, and communion
(Matthew 28:19; Luke 22:19);
- g. Bible studies;
- h. nurseries or crib rooms for infants and toddlers;
- i. youth activities, including religious instruction, games, and
sports;
- j. social gatherings such as church dinners;
- k. service projects for members of the congregation, the poor, and
the general community, such as gatherings for Boys and
Girls Clubs of Atlanta, ex-offender re-socialization groups,
and senior groups (James 1:27);
- l. expression of their faith through the architecture of the house
of worship. signs, crosses, paintings, windows, banners, or
decorations;
- m. evangelism-sharing the Christian message and encouraging
others to believe in Jesus the Messiah, particularly those
who visit their church meetings; and
- n. financial giving and fundraising events to support salaries,
building costs, the poor, and ministries for members of the
congregation.

THE CHURCH'S DEALINGS WITH AVONDALE ESTATES

38. On March 31, 2010, Caryl Albarran, Code Enforcement Officer for Avondale Estates, left a notice on the Maple Street property door to contact her regarding a "Code Violation Religious Facilities Section 818 not permitted." See Ex. 4, Notice.

39. On April 5, 2010, Angela Hawkins, assistant director and secretary of the Church, called Caryl Albarran to inquire about the violation.

40. Ms. Albarran said that the Church was in violation of the zoning code by operating at the Maple Street location.

41. On April 7, Apostle Thomas and Angela Hawkins met with Caryl Albarran.

42. Ms. Albarran told Apostle Thomas to complete a conditional use application and talk to Clai Brown, city manager for the City of Avondale Estates.

43. Ms. Albarran told Apostle Thomas and Ms. Hawkins that Christ Liberty had 15 days to move out of the Maple Street Property.

44. On April 14, 2010, Angela Hawkins hand-delivered the Conditional Use application along with the \$50 fee to the Avondale Estates Public Works Department.

45. However, neither Caryl Albarran nor Bryan Armsted, Director of Public Works, would accept the application and fee.

46. Apostle Thomas called Clai Brown to ask why the City would not accept the application and Brown referred Apostle Thomas to Bryan Armstead who was not in the office.

47. On April 15, 2010, on behalf of Christ Liberty, Dr. Emma Byrd, mentor and overseer to Apostle Thomas, called Clai Brown to speak to him about the Church and asked if she could meet with him regarding the Church.

48. On April 19, 2010, on behalf of Christ Liberty, Dr. Byrd submitted the conditional use application to Clai Brown.

49. No action has been taken on that application.

50. On April 22, 2010, Dr. Byrd and Pastor Willie Hawkins, a pastor of Christ Liberty, met with Clai Brown about the Church meeting at the Maple Street Property.

51. Brown told Dr. Byrd and Pastor Hawkins that outreach programs could continue but not religious worship services.

52. Dr. Byrd told him that the Church's religious worship services and outreach to the community were all the same related activities of the Church.

53. Brown said that he would let the Church know of the City's decision in a few days.

54. On April 25, 2010, the congregation of Christ Liberty held worship services for the last time at the Maple Street Property.

55. Christ Liberty is now forced to meet in temporary locations that change every Sunday.

56. On April 28, 2010, the leaders of Christ Liberty met with a reporter from Channel 5 News on the sidewalk outside of the building, took pictures, and prayed inside.

57. On April 29, 2010, Christ Liberty received a letter from Clai Brown (see Ex. 5) stating that worship service activities at the Maple Street property is in direct violation of Avondale Estates' Zoning Ordinance, Section 818 (1) (A), which requires religious facilities to be located on a site containing at least three acres of land and having a least 100 feet of frontage on a public street. Ex. 1, Ordinance, Sec. 818(1)(A).

IRREPARABLE HARM TO CHRIST LIBERTY

58. By not being able to use its Maple Street Property, Christ Liberty's average weekly church attendance has fallen to approximately 15 people—a loss of about 45 parishioners—and Christ Liberty continues to lose additional new weekly parishioners.

59. Because Christ Liberty cannot meet at its Maple Street Property, Christ Liberty is subjected to meeting at temporary locations that change weekly, which significantly impairs church operation.

60. By having to meet in the temporary space, the Church experiences the following hindrances or disruptions of its religious ministries:

- a. Christ Liberty can only have a limited Sunday worship service from 11:30 a.m. 2:00 p.m. If the Church could use the Maple Street property, its normal Sunday morning worship would be from 9:00 a.m. to 3:00 p.m., which includes Sunday School, Morning Worship, and socializing after the service.
- b. The Church cannot hold any evening worship services.
- c. The Maple Street property can seat up to 125 comfortably. The temporary locations change weekly, so there is no assurance of the amount of seats that will be available.
- d. The changing temporary locations have made church attendance difficult for some people, like Mary Johnson, one of the members of the Board of Mothers for the Church. She could easily get to the Maple Street property but now has difficulty finding transportation to the constantly-changing temporary locations.

- e. Christ Liberty cannot conduct its Sunday service in the same manner as it would at the Maple Street property.
- f. Christ Liberty cannot have after-hours or before-hours prayer or Sunday school because of no permanent location.
- g. The availability of face-to-face pastoral counseling is limited at the temporary locations because of privacy and time constraints. Apostle Thomas now has to do counseling over the telephone.
- h. Special prayer meetings, singing and musical performances, outreach functions, and social gatherings of the congregation have been cancelled because Christ Liberty cannot meet at the Maple Street property anymore. In order to conduct these functions Christ Liberty would have to rent other space, which is too costly for the Church.
- i. Christ Liberty has cancelled its nursery and children's ministry because of the size of the changing temporary locations. In the Maple Street location, the Church was in the process of setting up special rooms for the children. This would allow the parents to get ministered to without having to have the distraction of the children, and the children to have their

Bible study in a child-friendly atmosphere. In the temporary locations, the children must be in the church service along with the adults, resulting in numerous interruptions and distractions.

- j. The youth and children ministry available at the Maple Street property is what motivated many of Christ Liberty families to join the Church. Now Christ Liberty is faced with losing those families because of this lack of service at the temporary locations.
- k. Christ Liberty is unable to have band or choir rehearsals at the temporary locations.
- l. Christ Liberty is unable to use expressions of faith through decoration because it cannot place items on the walls at the temporary locations.
- m. Christ Liberty has had to cancel funerals, weddings, and baptisms due to the lack of access at the temporary locations.
- n. Christ Liberty has had to cancel guest speakers for events at the Maple Street property that would have served as significant fundraisers for the Church.

- o. Christ Liberty lost an opportunity to have its planned kick-off fundraiser at the Maple Street property.
- p. Christ Liberty had to cancel its tutoring classes for the upcoming school year because of lack of space caused by not being able to meet at the Maple Street Property.

61. Many of these specific ministry opportunities, particularly counseling and outreach to the youth and the poor in the community, are being lost forever every day Christ Liberty is not able to operate as a church at the Maple Street Property.

62. Christ Liberty lost its momentum in ministering to the citizens of Avondale Estates at the Maple Street property after being shut down by the City.

63. The reputation of both the Church and Apostle Thomas, in the eyes of some of its members, their families, other Christian churches, and other Georgians, has been harmed as a result of the actions of Avondale Estates shutting down Christ Liberty.

64. Although Christ Liberty's members cannot worship or occupy the Maple Street Property, the Church is obligated under the lease to pay approximately \$850 per month for lease payments, utility bills, and storage.

65. All of this has put a significant financial drain on the Church, is devastating the Church's religious mission and growth, and threatens the continued existence of the church.

66. Christ Liberty's income averaged about \$1,200 per week when it was meeting at the Maple Street Property; now it has decreased to approximately \$375.

67. Christ Liberty requests a jury trial.

V. ALLEGATIONS OF LAW

68. The Defendant has enforced the challenged Ordinance against Christ Liberty.

69. All actions of Defendant alleged herein were undertaken under color of state law.

70. Christ Liberty's religious activities as described in paragraph 37 above are protected by the First and Fourteenth Amendments to the United States Constitution.

71. Concomitantly, the use of a zoning ordinance to deny Christ Liberty access to its property to engage in activities as described in paragraph 37 above infringes upon and burdens the freedom of the congregation under the First Amendment and the Fourteenth Amendment to the United States Constitution, and RLUIPA.

72. The decision to prevent Christ Liberty from using its Maple Street Property as a church is a direct result of laws, policies, practices, customs, and usages officially adopted and promulgated by Defendant.

73. Defendant's policy and practice and the substantial burden of Christ Liberty affect commerce with foreign nations, among the several states, and/or with Indian tribes.

74. Defendant's Ordinance permits its officials, in deciding whether or not to grant a "conditional use permit" to a particular church (including Christ Liberty) at a particular location (including 137 Maple Street), to make "individualized governmental assessments" of the proposed use and uses, as that phrase is used in *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 884 (1990); and *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 537 (1993).

75. Unless and until the Defendant's interference of Christ Liberty's ministries is enjoined, Christ Liberty will suffer and continue to suffer irreparable harm to its constitutional liberties and statutory rights, and damages.

76. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

77. Christ Liberty has no adequate or speedy remedy at law to correct or redress the deprivations to their constitutional liberties and statutory rights.

78. The Defendant will suffer no harm if the injunctive relief is granted to Christ Liberty.

79. The harm to Christ Liberty in the absence of injunctive relief far outweighs any actual or theoretical harm to the Defendant in the event of an injunction. The public interest is benefited when constitutional liberties and civil rights are protected.

VI. FIRST CAUSE OF ACTION – VIOLATIONS OF RLUIPA EQUAL TERMS PROVISION

80. The allegations contained in all preceding paragraphs are incorporated here by reference.

81. Section 2(b)(1) of RLUIPA prohibits Defendant from treating a religious assembly use less favorably than a non-religious assembly use:

(1) Equal Terms

No government shall impose or implement a land use regulation in a manner that treats a *religious assembly or institution* on less than *equal terms* with a *nonreligious assembly or institution*. (italics added)

82. In *Midrash Sephardi, Inc., et al v. Town of Surfside*, 366 F.3d 1214, 1231 (11th Cir. 2004), the court concluded that “private clubs [nonreligious assembly uses], churches and synagogues [religious assembly

uses] fall under the umbrella of ‘assembly or institution’ as those terms are used in RLUIPA, [and] differential treatment constitutes a violation of § (b)(1) of RLUIPA.”

83. According to the court in *Midrash*, 366 F.3d at 1231, the following uses are among the “nonreligious assembly uses” within the meaning of RLUIPA:

- a. private clubs;
- b. lodges;
- c. social clubs;
- d. educational clubs; and
- e. recreational clubs.

84. Defendant’s Discriminatory Permit Provisions (see ¶ 29) requires churches to get a “conditional use permit” in the Area 3 district, but not “art galleries, museums, libraries, and other similar uses.”

85. Defendant’s Discriminatory Property Size Provision (see ¶ 30) requires churches to locate on property of three acres or more and with 100 feet or more of street frontage, but does not require this for *any* nonreligious assembly use, such as “assembly halls, including conference halls, business meetings, civic halls, meeting places for civil service, garden, neighborhood, and private clubs and activities of a similar nature.”

86. Defendant's Exclusionary Provision (see ¶ 31) excludes churches from *every* zoning district in the City unless they receive special permission in the form of a "conditional use permit", but requires no such permit for "art galleries, museums, libraries, and other similar uses."

87. Defendant has imposed and implemented land use regulations treating Christ Liberty on less than equal terms with non-religious assemblies, and in doing so Defendant violated RLUIPA § 2(b)(1).

WHEREFORE, Christ Liberty respectfully prays that the Court grant the relief set forth in the prayer for relief.

**VII. SECOND CAUSE OF ACTION – VIOLATIONS OF
THE EQUAL PROTECTION CLAUSE OF
THE FOURTEENTH AMENDMENT**

88. The allegations contained in all preceding paragraphs are incorporated here by reference.

89. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution requires that the government treat similarly situated assembly uses equally.

90. Defendant's Discriminatory Permit Provisions, Discriminatory Property Size Provision, and Exclusionary Provision treat Christ Liberty differently than non-religious assembly uses.

91. For purposes of land use regulation, a wide variety of non-religious assembly uses are similarly situated and not distinguishable from religious assembly uses.

92. Members of non-religious organizations assemble for group activities that are similar or identical to the activities of a religious congregation (e.g., singing, socializing, recreation, education, dining).

93. The only reason Christ Liberty's group activities are being treated differently is the religious content of its expression.

94. There is no compelling governmental interest for the Discriminatory Permit Provisions of the Ordinance to permit non-religious assembly uses in the Area 3 district but forbid religious assembly uses without special permission from the Board.

95. There is no compelling governmental interest for the Discriminatory Property Size Provision of the Ordinance to require religious assembly uses to be located on three acres or more and have more than 100 feet of street frontage but not require the same for non-religious assembly uses.

96. There is no compelling governmental interest for the Exclusionary Provision of the Ordinance to freely allow some non-religious

assembly uses in its zoning districts, but forbid religious assembly uses from locating in all districts without special permission from the Board.

97. The Defendant's Ordinance, facially and as applied to Christ Liberty, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Christ Liberty respectfully prays that the Court grant the relief set forth in the prayer for relief.

**VIII. THIRD CAUSE OF ACTION – VIOLATIONS OF
THE RIGHT TO FREE EXERCISE OF RELIGION
UNDER THE UNITED STATES CONSTITUTION AND
ARTICLE I OF THE GEORGIA CONSTITUTION**

98. The allegations contained in all preceding paragraphs are incorporated here by reference.

99. In the Free Exercise cases *Smith*, 494 U.S. at 881, 882, 884, and *Lukumi*, 508 U.S. at 537, the Supreme Court concluded that neutral laws of general applicability over religious activities do not require strict scrutiny except:

- a. where the government is allowed to make individualized assessments;
- b. where religion is directly regulated, or

- c. where a “hybrid situation” exists and the free exercise claim is connected with other constitutional protections, such as free speech.

100. Defendant’s enforcement of the Ordinance against Christ Liberty infringes on Christ Liberty’s religious activities because it has forced Christ Liberty to completely forego conducting religious exercises and practices at its desired church location.

101. The Defendant’s Discriminatory Permit Provisions, Discriminatory Property Size Provision, and Exclusionary Provision allow the City to make individualized assessments of Christ Liberty’s religious assembly use activities.

102. The Defendant’s Discriminatory Property Size Provision requires the City to directly regulate religious assembly uses.

103. The Defendant’s Ordinance and enforcement of it against Christ Liberty involves the “hybrid situation” contemplated by *Smith* because the violations of Christ Liberty’s free exercise rights are connected to the violations of its rights under free speech, free assembly, and free association.

104. Defendant lacks a compelling reason that would justify their refusal to allow Christ Liberty to use its Maple Street Property as a church.

105. Defendant will be unable to demonstrate that preventing the use of Christ Liberty's Maple Street Property as a church will be the most narrow alternative to achieve a compelling governmental interest.

106. Defendant's Ordinance therefore violates the Free Exercise Clause of the First Amendment to the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment and Article 1, §1, ¶¶ III and IV of the Georgia Constitution.

WHEREFORE, Christ Liberty respectfully prays that the Court grant the relief set forth in the prayer for relief.

**IX. FOURTH CAUSE OF ACTION – VIOLATIONS OF RLUIPA
SUBSTANTIAL BURDEN PROVISION**

107. The allegations contained in all preceding paragraphs are incorporated here by reference.

108. Section 2000cc (a)(1) of RLUIPA provides:

(1) General rule.

No government shall impose or implement a land use regulation that imposes a *substantial burden* on the *religious exercise* of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

- (A) is in furtherance of a compelling governmental interest; and
- (B) is the least restrictive means of furthering that compelling governmental interest. (italics added)

109. Defendant's Ordinance requiring religious assembly uses to comply with the three acre/100 foot requirement, and the City's lack of any district where churches are permitted uses, imposes a substantial burden on Christ Liberty resulting in the inability to conduct its ministries as described in ¶ 37 above.

110. Defendant lacks a compelling reason that would justify preventing Christ Liberty from using its Maple Street Property as a church.

111. Defendant will be unable to demonstrate that preventing the use of Christ Liberty's Maple Street Property as a church will be the least restrictive means to achieving any compelling governmental interest.

112. Defendant's Ordinance therefore violates the substantial burden provision of RLUIPA as applied to Christ Liberty.

WHEREFORE, Christ Liberty respectfully prays that the Court grant the relief set forth in the prayer for relief.

X. FIFTH CAUSE OF ACTION – VIOLATIONS OF RLUIPA EXCLUSIONS AND LIMITS PROVISION

113. The allegations contained in all preceding paragraphs are incorporated here by reference.

114. Section 2000cc (b)(3) of RLUIPA provides:

(3) Exclusions and limits.

No government shall impose or implement a land use regulation that--

(A) *totally excludes* religious assemblies from a jurisdiction; or
(B) *unreasonably limits* religious assemblies, institutions, or structures within a jurisdiction. (italics added)

115. Defendant's Ordinance doesn't allow churches as of right in *any* of its zoning districts and therefore violates RLUIPA section (b)(3)(A).

116. In the alternative, Defendant's Ordinance places an unreasonable limitation on Christ Liberty by not allowing churches as of right in *any* of its zoning districts.

117. Defendant's Ordinance requiring churches to locate on three acres or more and have 100 feet or more of street frontage unreasonably limits Christ Liberty.

118. Defendant lacks a compelling reason that would justify preventing Christ Liberty to use its Maple Street Property as a church.

119. Defendant will be unable to demonstrate that preventing the use of Christ Liberty's Maple Street Property as a church will be the most narrow alternative to achieving a compelling governmental interest.

120. Defendant's Ordinance therefore violates the exclusions and limits provision of RLUIPA.

WHEREFORE, Christ Liberty respectfully prays that the Court grant the relief set forth in the prayer for relief.

**XI. SIXTH CAUSE OF ACTION – VIOLATIONS OF THE RIGHT TO
FREEDOM OF SPEECH UNDER
THE UNITED STATES CONSTITUTION**

121. The allegations contained in all preceding paragraphs are incorporated here by reference.

122. To determine whether a gathering of persons is a “religious facility” under Defendant’s Ordinance, the City must analyze the content and viewpoint of speech and other expressive activity.

123. The Discriminatory Permit Provisions, Discriminatory Property Size Provision, and Exclusionary Provision, facially and as applied, restrict Christ Liberty’s speech based on religious viewpoint and content.

124. The Discriminatory Permit Provisions, Discriminatory Property Size Provision, and Exclusionary Provision are underinclusive as they do not place similar restrictions on meetings which do not incorporate religious speech and viewpoints.

125. The Ordinance is overbroad because it sweeps within its ambit protected First Amendment speech, thus violating the rights of Christ Liberty and third parties not before the Court.

126. The Ordinance operates as a prior restraint on speech because Christ Liberty 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 City.

127. The Ordinance does not leave open ample alternative channels of communication.

128. The City does not have a compelling interest for the Ordinance.

129. The Ordinance is not narrowly tailored to achieve a compelling interest.

130. The Ordinance is not the least restrictive means of achieving a compelling interest.

131. Defendant's Ordinance therefore 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

WHEREFORE, Christ Liberty respectfully prays that the Court grant the relief set forth in the prayer for relief.

XII. PRAYER FOR RELIEF

WHEREFORE, Christ Liberty respectfully requests relief as follows:

- A. That this Court issue a preliminary and permanent injunction requiring the Defendant to immediately permit Christ Liberty to use its property at 137 Maple Street, Avondale Estates, Georgia, as a church;

- B. That this Court issue a preliminary and permanent injunction, enjoining the Defendant, its officers, agents, employees, attorneys and all other persons acting in active concert with it, from enforcing its Ordinance, both facially and as applied to Christ Liberty, and from preventing or attempting to prevent Christ Liberty from using its property at 137 Maple Street, Avondale Estates, Georgia, as a church;
- C. That this Court enter a Declaratory Judgment declaring that Defendant's requirement that churches obtain a conditional use permit in the Central Business District, Area 3, is void and unconstitutional both on its face and as applied to Christ Liberty;
- D. That the Court enter a Declaratory Judgment declaring that Defendant's requirement that religious facilities locate on three acres or more and with 100 feet of street frontage or more is void and unconstitutional both on its face and as applied to Christ Liberty.
- E. That this Court award damages for violation of Christ Liberty's constitutional and statutory rights;
- F. That this Court award Christ Liberty compensatory damages for Christ Liberty's economic losses caused by the delay in being able to use its Maple Street Property for church purposes;

- G. That this Court award Christ Liberty compensatory damages in an amount to be determined for Defendant's violation of Christ Liberty's constitutional liberties and statutory rights;
- H. That this Court award Christ Liberty its costs and expenses of this action, including reasonable attorney's fees, pursuant to 42 U.S.C. 1988, and other applicable law;
- I. That this Court retain jurisdiction of this matter as necessary to enforce the Court's orders; and
- J. Grant such other relief as this Court deems appropriate.

Respectfully submitted this 21st day of July, 2010.



JOHN W. MAUCK*
IL BAR NO. 1797328
J. LEE MCCOY, JR.
IL BAR NO. 6291795
MS BAR NO. 100343
MAUCK & BAKER, LLC
ONE NORTH LASALLE
STREET
SUITE 600
CHICAGO, IL 60602
TELEPHONE: (312) 726-1243
FACSIMILE: (312) 726-1039
jmauck@mauckbaker.com
lmccoy@mauckbaker.com

KEVIN THERIOT
GA BAR NO. 373095
ALLIANCE DEFENSE FUND
15192 ROSEWOOD STREET
OVERLAND PARK, KS 66224
TELEPHONE: (913) 685-8000
FACSIMILE: (913) 685-8001
ATTORNEYS FOR PLAINTIFF
ktheriot@telladf.org

*PETITION FOR ADMISSION
PRO HAC VICE TO BE
SUBMITTED

EXHIBIT

1

TO

COMPLAINT

Feb 3 2009

ARTICLE 6. ZONING DISTRICTS

In order to regulate, restrict and segregate the use of land, buildings and structures; to regulate and restrict the height and bulk of buildings and the area of yards and other open spaces surrounding buildings; to regulate and restrict density of population and to implement the intent of this Ordinance, the incorporated area of the City of Avondale Estates, DeKalb County, Georgia, is hereby divided into the following zoning districts:

District	General Definition
R-24 Very Low Density Single Family Detached Residential	A single family residential district having a minimum lot size of 24,000 square feet intended for establishment of one (1) detached dwelling.
R-12 Low Density Single Family Detached Residential	A single family residential district having a minimum lot size of 12,000 square feet intended for establishment of one (1) detached dwelling.
MFR Multifamily Residential	A multifamily residential district that allows up to eight (8) dwelling units per net acre.
PD Planned Development	A mixed use district that allows for the combination of any single family residential uses, neighborhood shopping use or office and institutional use as provided for herein in accordance with a specific development plan and subject to approval by the Board of Mayor and Commissioners.
O-I Office – Institutional	A district for office, institutional and limited commercial uses not involving the sale or processing of merchandise unless otherwise permitted herein.
NS Neighborhood Shopping	A district for planned shopping centers and limited retail activities conducted in a unified development designed to serve the surrounding neighborhood and community with convenience goods, retail services and personal services.
GC General Commercial	A district for general business and independent uses designed to serve a community or area with convenience goods, retail sales and personal services.
LI Light Industrial	A district primarily planned for limited manufacturing, industrial uses, warehousing and related activities.
OS-R Open Space & Recreation	A district in which land is reserved for wildlife sanctuaries, dedicated open space, lakes and recreational facilities for the use of City of Avondale Estates residents.
X CBD Central Business District	A mixed use district that allows for the combination of office – institutional, neighborhood shopping, residential and general commercial uses as provided herein.

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Sec. 810. Communication Facilities

1. Radio and television stations.
2. Point-to-point communication agencies.
3. Telephone business office.
4. Cellular phone tower or other communication tower.

Communication facilities are permitted only with conditional use approval pursuant to Section 1401. Every communication facility use must comply with the terms of Chapter 14, Article 11, of the City of Avondale Estates Code of Ordinances.

 Sec. 811. Private Community Facilities

1. Assembly halls, including conference halls, business meetings, civic halls, meeting places for civil service, garden, neighborhood and private clubs and activities of a similar nature. This use may include office space where incidental to the principal use.
2. Cultural facilities. Art galleries, museums, libraries and other similar uses.
3. Golf courses and clubhouses, private.
 - A. The golf course shall be a full 9-hole or 18-hole golf course.
 - B. Any building or structure established in connection with this use shall be set back not less than 100 feet from any property line except where this property line is a street right-of-way line. In this case, the front yard setback established for the district shall apply. When a property line is on a natural waterway, a property line setback shall not be required.
 - C. Lighting shall be established in such a way that no direct light is cast upon adjacent properties and roadways.
4. Exhibitions, private. This use shall be limited to planetariums, aquariums, botanical gardens and other nature exhibitions, provided that no structure is located closer than 100 feet to any property used or intended to be used for residential purposes.
5. Community Swimming Pool, Private.
 - A. The swimming pool shall be set back 100 feet from any property line.
 - B. The swimming pool shall be surrounded by a fence having a minimum height of four (4) feet and a maximum height of six (6) feet which shall be secured when the facility is closed and not patrolled by a lifeguard.

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- A. Business colleges.
- B. Commercial vocational schools.
- C. Computer and Management training facilities.
- D. Non-degree schools such as dancing schools and other performing arts schools.

Sec. 816. Lodging

- 1. Hotel, 15 guest rooms or more.
- 2. Hotel, 14 guest rooms or less.
- 3. Motel.
- 4. Bed & Breakfast as a conditional use in any district pursuant to Section 1401, provided that:
 - A. One (1) off-street parking space per guest room is provided; such spaces shall be in addition to the parking requirements otherwise applicable to the district. The number of vehicles stored on the premises shall be limited to the above ratio.
 - B. Screening in the form of fencing, walls or landscaping sufficient to protect adjacent residential uses is provided.

Sec. 817. Printing Facilities

- 1. Bookbinding and related work.
- 2. Photoengraving, typesetting, electrotyping and stereotyping.
- 3. Publishing and printing establishments.



Sec. 818. Religious Facilities

- 1. Churches, synagogues and other places of worship and accessory facilities.
 - A. The site must contain at least three (3) acres and have frontage on a public street of at least 100 feet.
- 2. Religious meetings, temporary for a period not to exceed 7 consecutive days or more than fifty (50) days in any calendar year.

Sec. 819. Retail Trade Facilities

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Sec. 1111. Reserved

Sec. 1112. Reserved

Sec. 1113. ~~Central Business District~~


The following regulations shall apply to all property within the Central Business District (CBD) Zoning District. Whenever the following regulations conflict with any other zoning regulations, the following regulations shall control.

Sec. 1113.01. Policy and Intent of District.

The policy and intent of the CBD district is to promote the development of downtown Avondale Estates in a manner that is consistent with the Downtown Master Plan, dated October 7, 2004 and as amended, and the City of Avondale Estates Comprehensive Plan. Among other goals for the central business district set forth in the Master Plan, all development within the CBD shall:

- a) Be compatible with the development and use of surrounding properties, including architectural style, scale and siting of buildings,
- b) Have a compatible relationship with the General Purposes of this ordinance found in Article 3, and
- c) Promote a pedestrian "destination" environment.

Sec. 1113.02. Boundaries of District and Areas Established.

 The Central Business District is divided into four (4) areas that are designated as follows and depicted on the CBD Zoning Map (10-24-2005):

- 1. Tudor Village Area,
- 2. Northern Gateway Area,
- 3. Ingleside Area, and
- 4. North Avondale Area.

Sec. 1113.03. Additional Use Limitations.

The following regulations shall apply to the following uses within the CBD as indicated:

- a. Residential uses.
 - i. Total residential units for the entire Central Business District shall not exceed two hundred and fifty (250) individual units including all residential structures existing as of the date of adoption of this ordinance

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ARTICLE 14. ADMINISTRATION, APPEAL, COMPLAINTS AND REMEDIES**Sec. 1401. Conditional Uses**

Conditional uses, as listed both in Article 9 and throughout this Ordinance, are declared to possess characteristics that require certain controls in order to insure compatibility with other uses in the District within which they are proposed for location. No conditional use shall be constructed, erected, enlarged, performed, or otherwise undertaken without first obtaining a conditional use permit.

The Board of Mayor and Commissioners shall hear applications for conditional use permits. The Board of Mayor and Commissioners may choose to require applicants to submit conceptual review packages to the Historic Preservation Commission or the Architectural Review Board, as appropriate, for the purpose of soliciting conceptual review comments for consideration by the BOMC prior to their rendering a decision. The Board of Mayor and Commissioners shall issue a conditional use permit to an applicant upon a finding that the proposed conditional use would generally be in the public interest.

1. In considering whether a proposed conditional use is in the public interest, the Board of Mayor and Commissioners may consider the following, among other relevant factors:

- a. Whether the conditional use would be injurious to the use and enjoyment of the environment or of other property in the immediate vicinity or diminish and impair property values within the surrounding neighborhood;
 - b. Whether the proposed conditional use would increase local or state expenditures in relation to cost of servicing or maintaining neighboring properties;
 - c. Whether the establishment of the conditional use would impede the normal and orderly development of surrounding property for uses predominant in the area; and
 - d. Whether the location and character of the proposed conditional use would be consistent with a desirable pattern of development for the locality in general.
2. Conditional Use Administration and Duration. Application for permission to build, erect or locate a conditional use shall be submitted and processed in accordance with the regulations set forth in this section, prior to the issuance of any permits.
3. Temporary Uses. The Building Official is authorized to issue a Temporary Certificate of Zoning Compliance for temporary uses, as follows:
- a. Religious meeting in a tent or other temporary structure in OI and GC districts, for a period not to exceed seven (7) days;
 - b. Open lot sale of Christmas trees, fruit and vegetables, and other harvested products in the NS, GC, CBD zones for a period not to exceed twenty-five (25) days;

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TO

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137 Maple St, Avondale Estates, GA 30030

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Image U.S. Geological Survey

Google

Imagery Date: Mar 31, 2008

33°46'34.97" N

84°16'34.80" W

elev 0 ft

Eye alt

713 ft



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ARTICLE 9. TABLE OF PERMITTED AND CONDITIONAL USES BY DISTRICT

REGULATED USES	R-24	R-12	MFR	PD	O-I	NS	GC	OS -R	LI	CBD			
										Area 1	Area 2	Area 3	Area 4
Accessory Dwellings (Sec. 801)	P	P											
Accessory Uses & Structures (Sec. 801)	P	P	C	C	C					C	C	C	C
Animal Hospitals & Veterinary Clinics (Sec. 806)						P	P		P	C	C	C	C
Apartment Development			P							C	C	C	C
Automotive Sales and Service, excluding Motor Vehicle Parking lots & Parking Garages (Sec. 807)							P		P				
Bars & Taverns (Sec. 814)				C		C				P	P	P	P
Building Material Stores, excluding Lumber, Hardware & Electrical Supply Stores (Sec. 808)							P		P			C	
Child Care Facilities, Residential (Sec. 815)	P	P		C	P	P	P		P	P	P	P	P
Commercial Recreation & Entertainment Facilities (Sec. 809)					C	P	P	C	P	C	C		
Communication Facilities (Sec. 810)					C		C		C	C	C	C	C
Community Facilities, Private, excluding Cultural Facilities (Sec. 811)					C			C		C	C	C	C
Condominiums (Sec. 813)			P	C						P	P	P	P
Construction Trailers (Sec. 803)	C	C	C	C	C	C	C		C	C	C	C	C
Cultural Facilities (Sec. 811)					C	C				P	P	C	P
Day Care Facilities (Sec. 815)				C	P	P	P		P	P	P	P	P
Dog Grooming Shops (Sec. 806)						P	P		P	C	C	C	C
Drive-in Restaurants (Sec. 814)							P		P	C	C	C	C
Electrical Supply Stores (Sec. 808)						P	P		P	C	C	C	C
Grocery Stores and Bakeries (Sec. 819)				C	C	P	P		P	C	P	P	C
Hardware Stores (Sec. 808)						P	P		P	P	P	P	P
Home Occupations (Sec. 805)	P	P	C	C						P	P	P	P
Institutions of Higher Learning (Sec. 815)				C	P	C	C		C	C	C	C	C
Live/Work Units (Sec. 813)										P	P	P	P
Lodging: Hotels, 15 or more guest rooms (Sec. 816)							C						
Lodging: Hotels, 14 or less guest rooms (Sec. 816)							C			C	C	C	C
Lodging: Motels, excluding Hotels & Boarding Houses (Sec. 816)							C						
Permitted Uses	P												
Conditional Uses, Granted Pursuant to Sec. 1401	C												
Unmarked Box indicates a Prohibited Use													

REGULATED USES	R-24	R-12	MFR	PD	O-I	NS	GC	OS-R	LI	CBD			
										Area 1	Area 2	Area 3	Area 4
Lodging: Bed & Breakfasts (Sec. 816)	C	C		C	C	C	C		C	C	C	C	C
Lumber Yards (Sec. 808)							P		P				
Medical & Health Services, Office and Retail Health Uses (Sec. 822(1))				C	C	C	P		P	C	C	C	C
Medical & Health Services, Intensive (Sec. 822(2))				C	C	C	C		C	C	C	C	C
Multifamily Dwellings, including Duplexes, Triplexes (Sec. 813)			P	C						C	C	C	C
Office and Professional Services (Sec. 824)				C	P	P	P		P	P	P	P	P
Outdoor Special Events (Sec. 809)								C		C	C	C	C
Family Personal Care Homes (Sec. 822(2))					P	P	C			P	P	P	P
Group Personal Care Homes (Sec. 822(2))				C	P	P	P			P	P	P	P
Congregate Personal Care Homes (Sec. 822(2))				C	P	P	P			P	P	P	P
Personal Services (Sec. 820)					C	P	P		P	C	C	C	C
Printing Facilities (Sec. 817)					P	P	P		P	C	C	C	C
Public Facilities (Sec. 812)	C	C	C	C	C	C	C	C	C	C	C	C	C
Religious Facilities (Sec. 818)	C	C		C	C	C	C		C	C	C	C	C
Repair Services (Sec. 821)						P	P		P	C	C	C	C
Restaurants (Sec. 814)					C	P	P		P	P	P	P	P
Retail Trade, excluding Grocery Stores (Sec. 819)				C	C	P	P		P	P	P	P	P
Schools, Primary & Secondary Education (Sec. 815)				C	P	C	C		C	C	C	C	C
Single Family Dwelling Detached (Sec. 813)	P	P	P	C						P	P	P	P
Single Family Dwelling Attached (Sec. 813)			P	C						P	C	P	C
Specialized Schools (Sec. 815)				C	C	C	C		C	C	C	C	C
Temporary Storage Containers (Sec. 803)	C	C	C	C	C	C	C		C	C	C	C	C
Transportation and Storage Facilities (Sec. 825)							P		P				
Transportation and Warehouse Facilities (Sec. 826)						C	C		C				
Upstairs Accessory Residential Use (Sec. 813)				C		C				P	P	P	P
Wholesale Sales Offices (Sec. 826)					C		P		P			C	
Wholesale Trade & Dist. Establishments (Sec. 826)									P				
Permitted Uses	P												
Conditional Uses, Granted Pursuant to Sec. 1401	C												
Unmarked Box indicates a Prohibited Use													

NOTE: The individual zoning districts are more fully described in Article 6.

EXHIBIT

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TO

COMPLAINT

**CITY OF AVONDALE ESTATES
PUBLIC WORKS/ZONING
21 NORTH AVONDALE PLAZA
AVONDALE ESTATES, GA 30002**

Caryl Albanan

has attempted to contact

137A Maple St.
Name

at 9:15 3-31-10
Time

Please contact our office regarding:

- Code Violation
- Solid Waste Pick Up
- Arrange for Special Pick Up
- Other

Religious Facilities Sec 810
not permitted

Telephone: ~~704-294-6400~~ or

(404) 392-3134

EXHIBIT

5

TO

COMPLAINT

BOARD OF MAYOR
AND COMMISSIONERS
By Order
Mayor
David A. McCreary
Mayor Pro Tem
Terry Givens
Commissioner
Casey Lee
Commissioner
Melissa D. Payne
Commissioner



D. Clay Brown
City Manager
Jonathan Sims Jones
City Clerk
Richard E. Wessles
City Attorney
Stephen W. Strickland
City Judge

April 29, 2010

Mr. Joe Gargiulo
P.O. Box 33623
Decatur, GA 30033-0623

Pastor Rose Thomas
Christ Liberty Temple of Deliverance
27 East Lake Dr N.E.
Atlanta, GA 30317

Re:

Dear Mr. Gargiulo and Pastor Thomas:

It has come to my attention that Christ Liberty Temple of Deliverance ("CLTD") continues to hold worship services at the property owned by Mr. Gargiulo located at 137 Maple Street in the City of Avondale Estates. This activity is in direct violation of Avondale Estates' Zoning Ordinance, Section 818(1)(A), which requires a place of worship to be located on a site containing at least three (3) acres of land and having at least 100 feet of frontage on a public street.

The location at 137 Maple Street does not meet either of these requirements and therefore the use of the property for worship services is in violation of the City Zoning Ordinance as you were previously informed by letter dated April 8, 2010. A copy of this letter is enclosed herewith for your review. As you can see from the previous letter, you were given a deadline of April 26, 2010 to come into compliance with the City Code. The City allowed for this grace period as a courtesy to you, but you have now continued to violate the Ordinance beyond the deadline. If worship services continue at 137 Maple Street in violation of the City Code then both of you, as landlord and tenant, will be issued citations by City Code Enforcement.

The City of Avondale Estates welcomes all religious groups, including CLTD, but the Zoning Ordinance must be complied with by all residents and property owners within the City. I encourage CLTD to find another location that complies with the Zoning Ordinance requirements for a religious facility where it could continue to operate with the City's support. In the alternative, Mr. Gargiulo, as the property owner, may apply to the Board of Mayor and Commissioners for a text amendment to modify Section 818 of the Zoning Ordinance. The rules and requirements for requesting a text amendment to the Zoning Ordinance are set forth in Article 17 of the Zoning Ordinance.

I look forward to your coming into compliance with the Zoning Ordinance so that the City is not forced to issue any citations.

Sincerely,



Clai Brown, City Manager

Enclosure