

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

CORNERSTONE CHURCH BY THE BAY;
HAMILTON MUSSER; LAGUNA MADRE
CHRISTIAN ACADEMY,

Plaintiffs,

v.

TOWN OF BAYVIEW, TEXAS; BOARD OF
ALDERMEN OF THE TOWN OF
BAYVIEW, TEXAS; TOM RODINO, in his
official capacity as Mayor of the Town of
Bayview, Texas; GARRY LOWDER, in his
official capacity as an Alderman of the Town
of Bayview, Texas; BILL HOOTON, in his
official capacity as an Alderman of the Town
of Bayview, Texas; SCOTT STACHOWIAK,
in his official capacity as an Alderman of the
Town of Bayview, Texas; LEON DEASON, in
his official capacity as an Alderman of the
Town of Bayview, Texas; MARK
MULLENDORE, in his official capacity as an
Alderman of the Town of Bayview, Texas,

Defendants.

CIVIL ACTION NO.

TRIAL BY JURY REQUESTED

COMPLAINT

Plaintiffs Cornerstone Church by the Bay (the “Church”); its pastor, Hamilton Musser; and Laguna Madre Christian Academy (the “School”), by their undersigned attorneys, bring this civil action for declaratory and injunctive relief, and allege as follows:

I. INTRODUCTION

1. Plaintiffs wish to operate a church and religious school on property they own in the Town of Bayview, Texas (“Bayview”), in compliance with all ordinary zoning regulations of general applicability. They are unable to do so, however, because the Bayview Zoning

Ordinance categorically prohibits churches and religious schools from operating on the property owned by Plaintiffs—despite allowing similarly situated nonreligious institutions to operate in that same area.

2. Unequal governmental regulation of this sort, where religious institutions are singled out and disfavored on the basis of their religious nature, is prohibited by the U.S. Constitution, the Texas Constitution, and federal and state statutes.

3. Specifically, the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc *et seq.*, prohibits governments from imposing a land use regulation “that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution,” 42 U.S.C. § 2000cc(b)(1), or “that discriminates against any assembly or institution on the basis of religion or religious denomination,” § 2000cc(b)(2). Where, as here, the differential treatment cannot be justified by any legitimate regulatory purpose or zoning criterion set forth in the ordinance, it is unlawful.

4. In addition to mandating that governments regulate churches on an even-handed basis, RLUIPA protects religious assemblies from suffering “a substantial burden on [their] religious exercise,” unless such a burden is narrowly tailored to serve a compelling governmental interest. § 2000cc(a)(1). The Texas Religious Freedom Restoration Act (“TRFRA”), Tex. Civ. Prac. & Rem. Code 110.001 *et seq.*, does the same under Texas law, prohibiting the government from “substantially burden[ing] a person’s free exercise of religion,” unless doing so “is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that interest.”

5. The Bayview Zoning Ordinance blatantly violates both RLUIPA and TRFRA by banning all religious institutions like Plaintiffs from the town’s only residential zone. This

blanket ban not only treats religious institutions like Plaintiffs unequally in comparison to similarly situated nonreligious institutions—which are permitted in the residential zone—but also substantially burdens their religious exercise.

6. Discrimination against religious institutions because of their religious nature has long been recognized as unconstitutional, as unnecessarily burdening religious exercise. But invalidating the Bayview Zoning Ordinance does not even require reliance on the U.S. Constitution. RLUIPA and TRFRA were enacted to put an end to precisely this type of conduct by local governments.

7. As a result, this Court should (1) declare that the Bayview Zoning Ordinance’s ban on operating a religious institution in Bayview’s residential zone violates RLUIPA, TRFRA, the U.S. Constitution, and the Texas Constitution; and (2) enjoin any further enforcement of the those illegal aspects of the Bayview Zoning Ordinance.

II. PARTIES

8. Plaintiff Cornerstone Church by the Bay is a Christian church located in Bayview, Texas. The Church is a nonprofit Texas corporation.

9. Plaintiff Hamilton Musser is the pastor of the Church. Pastor Musser is an individual citizen of the State of Texas who resides in Cameron County, Texas.

10. Plaintiff Laguna Madre Christian Academy is a religious school located in Laguna Vista, Texas. The school is a nonprofit Texas corporation.

11. Defendant Bayview is a town in Cameron County, Texas.

12. Defendant Board of Aldermen of the Town of Bayview, Texas (“Board of Aldermen”) is a council composed of the elected Aldermen of Bayview. The Board of

Aldermen, along with the Mayor of Bayview, is responsible for enacting, administering, and enforcing the zoning ordinances of Bayview.

13. Defendant Tom Rodino is the Mayor of Bayview and is accordingly responsible for enacting, administering, and enforcing the zoning ordinances of Bayview. Mr. Rodino is being sued in his official capacity as Mayor.

14. Defendant Garry Lowder is an Alderman of Bayview and is accordingly responsible for enacting, administering, and enforcing the zoning ordinances of Bayview. Mr. Lowder is being sued in his official capacity as an Alderman.

15. Defendant Bill Hooton is an Alderman of Bayview and is accordingly responsible for enacting, administering, and enforcing the zoning ordinances of Bayview. Mr. Hooton is being sued in his official capacity as an Alderman.

16. Defendant Scott Stachowiak is an Alderman of Bayview and is accordingly responsible for enacting, administering, and enforcing the zoning ordinances of Bayview. Mr. Stachowiak is being sued in his official capacity as an Alderman.

17. Defendant Leon Deason is an Alderman of Bayview and is accordingly responsible for enacting, administering, and enforcing the zoning ordinances of Bayview. Mr. Deason is being sued in his official capacity as an Alderman.

18. Defendant Mark Mullendore is an Alderman of Bayview and is accordingly responsible for enacting, administering, and enforcing the zoning ordinances of Bayview. Mr. Mullendore is being sued in his official capacity as an Alderman.

III. SUBJECT MATTER JURISDICTION AND VENUE

19. Plaintiffs bring this action alleging violations of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.*, pursuant to 42 U.S.C. § 2000cc-2(a);

violations of the First and Fourteenth Amendments of the U.S. Constitution, pursuant to 42 U.S.C. § 1983; violations of the Texas Religious Freedom Restoration Act, Tex. Civ. Prac. & Rem. Code § 110.001 *et seq.*, pursuant to Tex. Civ. Prac. & Rem. Code § 37.001 *et seq.*; and violations of the Texas Constitution, article 1, sections 3, 6, 8, and 27 pursuant to Tex. Civ. Prac. & Rem. Code § 37.001 *et seq.* Plaintiffs also seek a declaration of their rights in this case of actual controversy pursuant to 28 U.S.C. § 2201.

20. Because Plaintiffs' claims for relief under RLUIPA and the U.S. Constitution arise under federal law, this Court has federal question jurisdiction over Plaintiffs' suit pursuant to 28 U.S.C. § 1331. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a).

21. Venue is proper in this district and division pursuant to 28 U.S.C. § 1391, because a substantial part of the events giving rise to the claims occurred in Bayview, located in Cameron County, Texas, and because all Defendants reside in the Southern District of Texas.

IV. PERSONAL JURISDICTION

22. This Court has personal jurisdiction over Defendant Bayview because Bayview is located in Cameron County, Texas, which is within this district.

23. This Court has personal jurisdiction over Defendant Board of Aldermen because the Board of Aldermen is located in Cameron County, Texas, which is within this district.

24. This Court has personal jurisdiction over Defendant Tom Rodino because, on information and belief, Mr. Rodino is a resident of Cameron County, Texas, which is within this district.

25. This Court has personal jurisdiction over Defendant Garry Lowder because, on information and belief, Mr. Lowder is a resident of Cameron County, Texas, which is within this district.

26. This Court has personal jurisdiction over Defendant Bill Hooton because, on information and belief, Mr. Hooton is a resident of Cameron County, Texas, which is within this district.

27. This Court has personal jurisdiction over Defendant Scott Stachowiak because, on information and belief, Mr. Stachowiak is a resident of Cameron County, Texas, which is within this district.

28. This Court has personal jurisdiction over Defendant Leon Deason because, on information and belief, Mr. Deason is a resident of Cameron County, Texas, which is within this district.

29. This Court has personal jurisdiction over Defendant Mark Mullendore because, on information and belief, Mr. Mullendore is a resident of Cameron County, Texas, which is within this district.

V. FACTUAL BASIS FOR CLAIMS

A. Plaintiffs Exercise Their Religious Beliefs As a Church and Religious School

30. Plaintiff Cornerstone Church by the Bay, led by its minister Pastor Hamilton Musser, is a religious assembly that has operated as a Christian church since 2011. Since the Church's inception, it has held regular, weekly Sunday worship meetings. It also holds regular Bible study meetings, Sunday school classes, Tuesday and Thursday morning prayer meetings, Wednesday night worship and prayer services, youth group meetings, and many more religious and community outreach events.

31. Since 2012, the Church has also operated in conjunction with a religious school, the Laguna Madre Christian Academy. The school's mission is to serve as a religious assembly that educates children in an environment of academic excellence, Christ-like love, and Biblical truth. It currently has approximately 55 students, between grades K3 to 8.

32. All of these activities are in furtherance of Plaintiffs' religious exercise and religious mission.

33. Until recently, Plaintiffs paid to rent property in nearby Laguna Vista, Texas.

34. In May of 2013, Plaintiffs were grateful to be donated property of their own in Bayview (the "Property"), located at 106 Madelyn Rose Blvd., Bayview, TX 78566.

35. Unfortunately, Defendants have informed Plaintiffs that they are banned from using the Property as a church or religious school, due to the Bayview Zoning Ordinance.

B. The Bayview Zoning Ordinance Prohibits Plaintiffs From Operating As a Church and Religious School on the Property.

36. In May 21, 2009, the Town of Bayview, Texas, enacted a comprehensive zoning ordinance (the "Zoning Ordinance").

37. In its current form, the Zoning Ordinance establishes zones within the town, identifies permissible uses in those zones, imposes additional standards on certain types or uses of property, and addresses such topics as parking, trees, and signs. *See generally* Ex. A (Zoning Ordinance); Ex. B (Zoning Map).

38. The Zoning Ordinance classifies the Property as within Zone A, described in the Zoning Ordinance as the "Single Family Dwelling District Regulations."

39. Churches, religious schools, and other similar religious institutions are prohibited from operating in Zone A.

40. The reasoning for this ban on religious institutions is that Zone A is ostensibly for single-family dwellings only.

41. But despite this supposed limitation, the Zoning Ordinance also explicitly allows golf courses, farms, truck gardens, orchards, green houses and nurseries to operate in Zone A.

42. Additionally, prior to Plaintiffs' ownership, the Property was itself in use as the Madison Grove Community Center.

43. The Madison Grove Community Center, built in 2002, is not a single-family dwelling. It is a 12,000 square foot facility with a large gymnasium, a swimming pool, meeting facilities, office space, lounge areas, kitchen space, and other similar features. The Madison Grove Community Center was regularly used to host community gatherings, private parties, organized sporting and entertainment activities, and other similar events and activities.

44. Additionally, on information and belief, a property known as "Camp Bayview" is currently located in Zone A. The camp, owned by the Girl Scouts of Greater South Texas, is also not a single-family dwelling. It is a large complex with "a large dining hall with full kitchen amenities, recreation lodge, cabins and bungalows to accommodate 86 guests, two conference rooms, swimming pool and bathhouse, covered pavilion, outdoor amphitheater, and cooking pavilions," and "is used throughout the year for day and weekend outdoor programs, summer resident camps, and service unit and troop outdoor events." *See* Girl Scouts of Greater South Texas, *Camp Bayview*, at <http://www.gsgst.org/the-program/pathways/camps/camp-bayview.html> (last visited July 8, 2014).

45. The town also has three other zoning categories: Zones B, C, and D.

46. Zone B is the "Agricultural District," which is intended for uses permitted in Zone A, "Farm employees housing", and "Farm machinery sheds and repair garages (including farm

storage buildings, barns, and fuel storage facilities).” On information and belief, Plaintiffs would be prohibited from operating in Zone B.

47. Zone C is the “Dwelling and Local Retail and Business District,” “whose principal use is general business activities which provides basic and necessary goods and services for the community and its visitors.” According to the Defendants, churches and religious schools will be permitted to operate in this commercial zone.

48. As a practical matter, however, there are no alternatives in Zone C for Plaintiffs to operate in furtherance of their religious mission. As the Zoning Map demonstrates, it makes up a miniscule portion of the town, particularly in comparison to Zone A. *See* Ex. B (Zoning Map). On information and belief, the only existing structures in the entire zone are an irrigation district office, a recording studio, a home, and a portion of Camp Bayview. The commercial zone is practically unfeasible for Plaintiffs’ use as a church and religious school and is a less desirable a location than the residential Zone A, given Zone C’s commercial nature, its location in the town, the available land relative to the land available in Zone A, and the paucity of available structures. Moreover, operating in a commercial zone would limit the opportunities available for Plaintiffs to minister to the community and operate a religious school, essential aspects of Plaintiffs’ religious beliefs.

49. Finally, there is a Zone D, for “Newly Annexed Territory.” It is unclear what land, if any, is within Zone D. In any event, the ordinance provides that all Zone D newly annexed territory shall be classified as Zone A until it is permanently zoned—so Plaintiffs are also prohibited from operating in this Zone.

C. Plaintiffs Attempted to Freely Exercise Their Religious Beliefs in Bayview.

50. After they took ownership of the Property, Plaintiffs began to prepare the facility for use as a Church—and they have since begun to hold weekly worship services there.

51. Plaintiffs also sought to fix and improve the Property, so that they could fully engage in their desired religious exercise, both as a church and as a religious school.

52. Indeed, many of these improvements are legally and practically required before Plaintiffs can operate a religious school on the Property at all.

53. But Plaintiffs ran up against the Bayview Zoning Ordinance, which prohibits them from operating at their new location entirely, let alone obtaining a permit for necessary improvements.

54. Following several communications between Plaintiffs and Defendants concerning use of the Property as a church and religious school, on November 26, 2013, Plaintiffs retained counsel and sent Defendants a letter via certified mail, formally informing Defendants that the Zoning Ordinance violated RLUIPA and TRFRA, in addition to substantially burdening the Church's religious exercise by banning it from operating on the Property.

55. Defendants responded on December 31, 2013, denying any violation of Plaintiffs' constitutional and statutory rights. The letter also noted that Bayview had a formal process by which the Zoning Ordinance could be amended to allow Plaintiffs to operate on the Property as they fully desired, as a church and religious school.

56. In good faith, Plaintiffs chose to allow the town the opportunity to amend the Zoning Ordinance to remedy its continuing illegality before filing suit.

57. On January 19, 2014, Plaintiffs submitted an application to Defendants to amend the Zoning Ordinance to permit churches and schools as allowable uses in Zone A.

58. On February 20, 2014, Defendants held a public hearing on Plaintiffs' application to amend. No action on the amendment was taken at that time.

59. On April 17, 2014, another public hearing was held on Plaintiffs' application to amend. At the meeting, Plaintiffs further offered to assist Defendants in drafting a Zoning Ordinance that would comply with the law. Defendants accepted Plaintiffs' invitation.

60. Plaintiffs, after being informed by counsel for Defendants that the best course of action would be for them to simply submit a draft Zoning Ordinance, did precisely that on May 8, 2014.

61. On May 13, 2014, Plaintiffs also offered to discuss the draft Zoning Ordinance with Defendants prior to the upcoming town meeting on May 15, 2014.

62. On May 14, 2014, counsel for Defendants responded that no action will be taken on the application to amend the Zoning Ordinance at the May 15 meeting. He also informed Defendants that instead, within a week or so, he would submit revisions to the draft for Plaintiffs' review and comments. After receiving Plaintiffs' comments, Defendants would attempt to finalize the draft for review and possible action at the subsequent town meeting.

63. No such revisions were forthcoming.

64. Instead, at the next public town meeting on June 19, 2014, the Defendants rejected the proposed amendment to the Zoning Ordinance and instead retained Zone A's ban on religious institutions like Plaintiffs.

65. Upon information and belief, a motivating factor for retaining the building restrictions in Zone A was to exclude Plaintiffs in particular from Zone A, due primarily to their religious nature.

D. Plaintiffs Are Now Banned From Operating on Their Property in Bayview.

66. On June 26, 2014, Defendants sent a letter to Plaintiffs recounting their decision to reject a change to the Zoning Ordinance to allow churches and religious schools in Zone A. The letter informed Plaintiffs that they are not allowed to operate a church or religious school on the Property, because doing so is a violation of the Zoning Ordinance, and that Defendants will take legal action to enforce its Zoning Ordinance if Plaintiffs operate a church or religious school on the Property in violation of the Zoning Ordinance.

67. So Plaintiffs are currently at risk of enforcement actions against their use of the Property as a church, and for any attempts to improve the Property for use as a religious school.

68. On July 14, 2014, Plaintiffs sent Defendants another letter via certified mail informing Defendants that their actions were substantially burdening the religious exercise of Plaintiffs.

69. Accordingly, Plaintiffs have standing to challenge the Zoning Ordinance, both on its face and as-applied to Plaintiffs. Plaintiffs have been and continue to be injured by the Defendants' violations of RLUIPA, TRFRA, the U.S. Constitution, and the Texas Constitution, because the Zoning Ordinance substantially interferes with Plaintiffs' religious exercise and other constitutional and statutory rights. Those injuries would be remedied by a favorable decision from this Court.

70. Defendants' enactment and implementation of the Zoning Ordinance substantially affected interstate commerce by prohibiting, limiting, or burdening the ability of Plaintiffs and similarly situated religious institutions to construct, renovate, or operate a building for use as a religious assembly—activities which necessarily contribute to interstate commerce.

Count One – The Zoning Ordinance Violates the Equal Terms Clause of RLUIPA, 42 U.S.C. § 2000cc(b)(1), Both Facially and As Applied to Plaintiffs

71. Plaintiffs re-allege paragraphs 1 to 70 of this Complaint as if fully set forth herein.

72. The Zoning Ordinance treats religious institutions on less than equal terms to similarly situated nonreligious institutions. The Zoning Ordinance prohibits religious institutions like Plaintiffs from operating in Zone A, while allowing similarly situated nonreligious institutions to operate in Zone A.

73. This distinction between religious and nonreligious institutions applied by the Zoning Ordinance is not justified by any regulatory purpose or zoning criterion set forth in the Zoning Ordinance itself.

74. Accordingly, the Zoning Ordinance facially violates the Equal Terms Clause of RLUIPA, which provides that “[n]o 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.” 42 U.S.C. § 2000cc(b)(1).

75. The Zoning Ordinance also violates the Equal Terms Clause as applied to this case, because Plaintiffs are prohibited from operating on the Property as a result of the Zoning Ordinance, even though similarly situated nonreligious institutions are permitted.

76. Plaintiffs are entitled to a declaration that the Zoning Ordinance violates RLUIPA’s Equal Terms Clause, both on its face and as applied to Plaintiffs, and a permanent injunction enjoining enforcement of the illegal portions of the Zoning Ordinance.

77. Plaintiffs are also entitled to recover their reasonable attorneys’ fees and costs pursuant to 42 U.S.C. § 1988(b), in an amount to be proven at trial.

Count Two – The Zoning Ordinance Violates the Substantial Burden Clause of RLUIPA, 42 U.S.C. § 2000cc(a)(1), Both Facially and As Applied to Plaintiffs

78. Plaintiffs re-allege paragraphs 1 to 77 of this Complaint as if fully set forth herein.

79. The Zoning Ordinance substantially burdens the religious exercise of religious institutions like Plaintiffs, because it prohibits such institutions from operating in Zone A, the most desirable area of the town.

80. The prohibition on religious institutions in Zone A does not serve any legitimate governmental interest, much less a compelling governmental interest as required to satisfy RLUIPA. Moreover, it is not the least restrictive means of serving any potential governmental interest that Defendants may allege.

81. Accordingly, the Zoning Ordinance facially violates the Substantial Burden Clause of RLUIPA, which provides that “[n]o government shall impose or implement a land use regulation in a manner 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.” 42 U.S.C. § 2000cc(a)(1).

82. The Zoning Ordinance also violates the Substantial Burden Clause as applied to this case, because Plaintiffs are prohibited from operating on the Property as a result of the Zoning Ordinance, which is a substantial burden on Plaintiffs’ religious exercise that cannot be justified as the least restrictive means of furthering a compelling government interest.

83. Plaintiffs are entitled to a declaration that the Zoning Ordinance violates RLUIPA’s Substantial Burden Clause, both on its face and as applied to Plaintiffs, and a permanent injunction enjoining enforcement of the illegal portions of the Zoning Ordinance.

84. Plaintiffs are also entitled to recover their reasonable attorneys’ fees and costs pursuant to 42 U.S.C. § 1988(b), in an amount to be proven at trial.

**Count Three – The Zoning Ordinance Violates the
Nondiscrimination Clause of RLUIPA, 42 U.S.C. § 2000cc(b)(2)**

85. Plaintiffs re-allege paragraphs 1 to 84 of this Complaint as if fully set forth herein.

86. The Zoning Ordinance prohibits religious institutions from operating in Zone A, while allowing similarly situated nonreligious institutions to operate in Zone A, thus discriminating against religious institutions on the basis of their religious nature.

87. Accordingly, the Zoning Ordinance facially violates the Nondiscrimination Clause of RLUIPA, which provides that “[n]o government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.” 42 U.S.C. § 2000cc(b)(2).

88. The Zoning Ordinance also violates the Nondiscrimination Clause as applied to Plaintiffs, because Plaintiffs are prohibited from operating on the Property due to the Zoning Ordinance, even though similarly situated nonreligious institutions are permitted.

89. On information and belief, this aspect of the Zoning Ordinance was enacted in order to accomplish the Defendants’ goal of ensuring that religious institutions like Plaintiffs would be excluded from Zone A, based on a belief that religious institutions do not belong in that Zone. This purposeful discrimination against religious institutions further violates the Nondiscrimination Clause.

90. On information and belief, this aspect of the Zoning Ordinance was also enacted in order to accomplish the Defendants’ goal of ensuring that religious institutions like Plaintiffs would be excluded from Bayview completely, based on Defendants belief that religious institutions like Plaintiffs do not belong in Bayview. This purposeful discrimination against religious institutions like Plaintiffs even further violates the Nondiscrimination Clause.

91. Plaintiffs are entitled to a declaration that the Zoning Ordinance violates RLUIPA's Nondiscrimination Clause, both on its face and as applied to Plaintiffs, and a permanent injunction enjoining enforcement of the illegal portions of the Zoning Ordinance.

92. Plaintiffs are also entitled to recover their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b), in an amount to be proven at trial.

Count Four – The Zoning Ordinance Violates the Unreasonable Limitations Clause of RLUIPA, 42 U.S.C. § 2000cc(b)(3)

93. Plaintiffs re-allege paragraphs 1 to 92 of this Complaint as if fully set forth herein.

94. The Zoning Ordinance prohibits religious institutions like Plaintiffs from operating in Zone A.

95. This prohibition substantially and unreasonably limited the ability of religious institutions from operating within Bayview, and is both unwarranted by any legitimate government interest and unreasonable.

96. Accordingly, the Zoning Ordinance facially violates the Unreasonable Limitations Clause of RLUIPA, which provides that “[n]o government shall impose or implement a land use regulation that . . . unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.” 42 U.S.C. § 2000cc(b)(3)(B).

97. The Zoning Ordinance also violates the Unreasonable Limitations Clause as applied to Plaintiffs, because Plaintiffs are prohibited from operating on the Property due to the Zoning Ordinance's unreasonable prohibition on religious institutions in Zone A.

98. Plaintiffs are entitled to a declaration that the Zoning Ordinance violates RLUIPA's Unreasonable Limitations Clause, both on its face and as applied to Plaintiffs, and a permanent injunction enjoining enforcement of the illegal portions of the Zoning Ordinance.

99. Plaintiffs are also entitled to recover their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b), in an amount to be proven at trial.

Count Five – The Zoning Ordinance Violates the Texas Religious Freedom Restoration Act, Tex. Civ. Prac. & Rem. Code § 110.003

100. Plaintiffs re-allege paragraphs 1 to 99 of this Complaint as if fully set forth herein.

101. The Zoning Ordinance substantially burdens the religious exercise of religious institutions like Plaintiffs, because it prohibits such institutions from operating in Zone A, the most desirable area of the town.

102. The prohibition on religious institutions in Zone A does not serve any legitimate governmental interest, much less a compelling governmental interest as required to satisfy TRFRA. Moreover, it is not the least restrictive means of serving any potential governmental interest that Defendants may allege.

103. Accordingly, the Zoning Ordinance facially violates TRFRA, which provides that “a government agency may not substantially burden a person's free exercise of religion,” unless doing so “(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that interest.” Tex. Civ. Prac. & Rem. Code § 110.003.

104. The Zoning Ordinance also violates TRFRA as applied to this case, because Plaintiffs are prohibited from operating on the Property as a result of the Zoning Ordinance, which is a substantial burden on Plaintiffs' religious exercise that cannot be justified as the least restrictive means of furthering a compelling government interest.

105. Plaintiffs are entitled to a declaration that the Zoning Ordinance violates the TRFRA, both on its face and as applied to Plaintiffs, and a permanent injunction enjoining enforcement of the illegal portions of the Zoning Ordinance.

106. Plaintiffs are entitled to recover their reasonable attorneys' fees and costs pursuant to Tex. Civ. Prac. & Rem. Code 110.005, in an amount to be proven at trial.

107. TRFRA contains a general requirement that a person may usually not bring an action under TRFRA until 60 days have passed since they provided the government agency with notice "(1) that the person's free exercise of religion is substantially burdened by an exercise of the government agency's governmental authority; (2) of the particular act or refusal to act that is burdened; and (3) of the manner in which the exercise of governmental authority burdens the act or refusal to act." Tex. Civ. Prac. & Rem. Code § 110.006.

108. The 60-day period has already expired for the Church, as notice was sent on November 26, 2013. The 60-day notice would otherwise expire for the School and Pastor Musser on September 12, 2014, since a notice was sent on July 14, 2014.

109. But Plaintiffs may bring this action prior to waiting for the 60-day notice period in TRFRA to expire, because it is an action for declaratory and injunctive relief, as well as associated attorneys' fees, court costs, and other reasonable expenses,. As TRFRA provides, Plaintiffs may bring this declaratory and injunctive relief action on behalf of the School and Pastor Musser immediately, because (1) the exercise of government authority that threatens to substantially burden Plaintiffs' religious exercise is imminent—indeed, it is currently ongoing; and (2) Plaintiffs could not reasonably provide such notice prior to the exercise of government authority, since that government authority is already being exercised at this time. *See* Tex. Civ. Prac. & Rem. Code § 110.006(b).

Count Six – The Zoning Ordinance Violates the Free Exercise Clause of the First Amendment of the U.S. Constitution

110. Plaintiffs re-allege paragraphs 1 to 109 of this Complaint as if fully set forth herein.

111. The Zoning Ordinance prohibits religious institutions like Plaintiffs from operating in Zone A, while similarly situated nonreligious institutions are allowed to operate in Zone A. It thereby treats differently and burdens the religious practices of religious institutions like Plaintiffs, but imposes no such burden on similarly situated nonreligious institutions. Accordingly, the Zoning Ordinance is not neutral or of general applicability, but instead discriminates against religious institutions on the basis of their religious nature.

112. The Zoning Ordinance does not serve any compelling governmental interest, and is not narrowly tailored to serve any legitimate governmental interest.

113. Accordingly, the Zoning Ordinance facially violates the Free Exercise Clause of the First Amendment of the U.S. Constitution, made applicable to the States under the Fourteenth Amendment.

114. The Zoning Ordinance also violates the Free Exercise Clause as applied to this case, because it burdens Plaintiffs' religious exercise, but imposes no such burden on similarly situated religious institutions, without being narrowly tailored to further a compelling government interest.

115. Plaintiffs are entitled to a declaration that the Zoning Ordinance violates the Free Exercise Clause, both on its face and as applied to Plaintiffs, and a permanent injunction enjoining enforcement of the illegal portions of the Zoning Ordinance.

116. Plaintiffs are entitled to recover their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b), in an amount to be proven at trial.

Count Seven – The Zoning Ordinance Violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution

117. Plaintiffs re-allege paragraphs 1 to 116 of this Complaint as if fully set forth herein.

118. The Zoning Ordinance discriminates against religious institutions in favor of similarly situated nonreligious institutions, based on their religious nature, by banning the former from Zone A while permitting the latter.

119. This unequal treatment does not serve any compelling governmental interest, nor is it narrowly tailored to serve any such interest.

120. Accordingly, the Zoning Ordinance facially violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

121. The Zoning Ordinance also violates the Equal Protection Clause as applied to this case, because it bans Plaintiffs from Zone A while permitting similarly situated nonreligious institutions based on Plaintiffs' religious character, without being narrowly tailored to further a compelling government interest.

122. Plaintiffs are entitled to a declaration that the Zoning Ordinance violates the Equal Protection Clause, both on its face and as applied to Plaintiffs, and a permanent injunction enjoining enforcement of the illegal portions of the Zoning Ordinance.

123. Plaintiffs are entitled to recover their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b), in an amount to be proven at trial.

**Count Eight – The Zoning Ordinance Violates the Free
Speech Clause of the First Amendment of the U.S. Constitution**

124. Plaintiffs re-allege paragraphs 1 to 123 of this Complaint as if fully set forth herein.

125. The Zoning Ordinance limits the ability of religious institutions like Plaintiffs to exercise their free speech rights by prohibiting or severely impeding them from operating in Zone A as a church or religious school.

126. The Zoning Ordinance also inhibits religious institutions like Plaintiffs from fully and effectively expressing their message to the Bayview community.

127. Those limitations were imposed on the basis of the religious nature of the expression that religious institutions wished to undertake.

128. The Zoning Ordinance is not narrowly tailored to serve any compelling governmental interest.

129. Accordingly, the Zoning Ordinance violates the Free Speech Clause of the First Amendment of the U.S. Constitution, made applicable to the States under the Fourteenth Amendment, both facially and as applied to Plaintiffs.

130. Plaintiffs are entitled to a declaration that the Zoning Ordinance violates the Free Speech Clause, both facially and as applied to Plaintiffs, and a permanent injunction enjoining enforcement of the illegal portions of the Zoning Ordinance.

131. Plaintiffs are entitled to recover their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b), in an amount to be proven at trial.

**Count Nine – The Zoning Ordinance Violates the Free
Assembly Clause of the First Amendment of the U.S. Constitution**

132. Plaintiffs re-allege paragraphs 1 to 131 of this Complaint as if fully set forth herein.

133. The Zoning Ordinance limits the locations where the members of the Church and school can assemble to fully exercise their religious beliefs, including worship, prayer, community outreach, or other activities of religious expression.

134. The burden that the Zoning Ordinance places on the ability of Plaintiffs to associate for religious purposes is not necessary to serve any compelling governmental interest.

135. Accordingly, the Zoning Ordinance violates the Free Assembly Clause of the First Amendment of the U.S. Constitution, made applicable to the States under the Fourteenth Amendment, as applied to Plaintiffs.

136. Plaintiffs are entitled to a declaration that the Zoning Ordinance violates the Free Assembly Clause, as applied to Plaintiffs, and a permanent injunction enjoining enforcement of the illegal portions of the Zoning Ordinance.

137. Plaintiffs are entitled to recover their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b), in an amount to be proven at trial.

Count Ten – The Zoning Ordinance Violates the Free Exercise Clause of the Texas Constitution (Article 1, Section 6)

138. Plaintiffs re-allege paragraphs 1 to 137 of this Complaint as if fully set forth herein.

139. The Zoning Ordinance prohibits religious institutions like Plaintiffs from operating in Zone A, while similarly situated nonreligious institutions are allowed to operate in Zone A. It thereby treats differently and burdens the religious practices of religious institutions like Plaintiffs, but imposes no such burden on similarly situated nonreligious institutions. Accordingly, the Zoning Ordinance is not neutral or of general applicability, but instead discriminates against religious institutions on the basis of their religious nature.

140. The Zoning Ordinance does not serve any compelling governmental interest, and is not narrowly tailored to serve any legitimate governmental interest.

141. Accordingly, the Zoning Ordinance facially violates the Free Exercise Clause of the Texas Constitution, article 1, section 6.

142. The Zoning Ordinance also violates the Free Exercise Clause as applied to this case, because it burdens Plaintiffs' religious exercise, but imposes no such burden on similarly

situated religious institutions, without being narrowly tailored to further a compelling government interest.

143. Plaintiffs are entitled to a declaration that the Zoning Ordinance violates the Free Exercise Clause of the Texas Constitution, both on its face and as applied to Plaintiffs, and a permanent injunction enjoining enforcement of the illegal portions of the Zoning Ordinance.

Count Eleven – The Zoning Ordinance Violates the Equal Protection Clause of the Texas Constitution (Article 1, Section 3)

144. Plaintiffs re-allege paragraphs 1 to 143 of this Complaint as if fully set forth herein.

145. The Zoning Ordinance discriminates against religious institutions in favor of similarly situated nonreligious institutions, based on their religious nature, by banning the former from Zone A while permitting the latter.

146. This unequal treatment does not serve any compelling governmental interest, nor is it narrowly tailored to serve any such interest.

147. Accordingly, the Zoning Ordinance facially violates the Equal Protection Clause of the Texas Constitution, article 1, section 3.

148. The Zoning Ordinance also violates the Equal Protection Clause as applied to this case, because it bans Plaintiffs from Zone A while permitting similarly situated nonreligious institutions based on Plaintiffs' religious character, without being narrowly tailored to further a compelling government interest.

149. Plaintiffs are entitled to a declaration that the Zoning Ordinance violates the Equal Protection Clause of the Texas Constitution, both on its face and as applied to Plaintiffs, and a permanent injunction enjoining enforcement of the illegal portions of the Zoning Ordinance.

Count Twelve – The Zoning Ordinance Violates the Free Speech Clause of the Texas Constitution (Article 1, Section 8)

150. Plaintiffs re-allege paragraphs 1 to 149 of this Complaint as if fully set forth herein.

151. The Zoning Ordinance limits the ability of religious institutions like Plaintiffs to exercise their free speech rights by prohibiting or severely impeding them from operating in Zone A as a church or religious school.

152. The Zoning Ordinance also inhibits religious institutions like Plaintiffs from fully and effectively expressing their message to the Bayview community.

153. Those limitations were imposed on the basis of the religious nature of the expression that religious institutions wished to undertake.

154. The Zoning Ordinance is not narrowly tailored to serve any compelling governmental interest.

155. Accordingly, the Zoning Ordinance violates the Free Speech Clause of the Texas Constitution, article 1, section 8, both facially and as applied to Plaintiffs.

156. Plaintiffs are entitled to a declaration that the Zoning Ordinance violates the Free Speech Clause of the Texas Constitution, both on its face and as applied to Plaintiffs, and a permanent injunction enjoining enforcement of the illegal portions of the Zoning Ordinance.

Count Thirteen – The Zoning Ordinance Violates the Free Assembly Clause of the Texas Constitution (Article 1, Section 27)

157. Plaintiffs re-allege paragraphs 1 to 156 of this Complaint as if fully set forth herein.

158. The Zoning Ordinance limits the locations where the members of the Church and school can assemble to fully exercise their religious beliefs, including worship, prayer, community outreach, or other activities of religious expression.

159. The burden that the Zoning Ordinance places on the ability of Plaintiffs to associate for religious purposes is not necessary to serve any compelling governmental interest.

160. Accordingly, the Zoning Ordinance violates the Free Assembly Clause of the Texas Constitution, as applied to Plaintiffs.

161. Plaintiffs are entitled to a declaration that the Zoning Ordinance violates the Free Assembly Clause of the Texas Constitution, as applied to Plaintiffs, and a permanent injunction enjoining enforcement of the illegal portions of the Zoning Ordinance.

VI. JURY TRIAL DEMAND

162. Plaintiffs request a jury trial on all issues that may be tried to a jury.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment:

1. Declaring that, on its face and as applied to Plaintiffs, the Bayview Zoning Ordinance's prohibition of religious institutions like Plaintiffs in Zone A violates:

- a) the Religious Land Use and Institutionalized Persons Act;
- b) the Texas Religious Freedom Restoration Act;
- c) the First Amendment of the U.S. Constitution;
- d) the Fourteenth Amendment of the U.S. Constitution;
- e) Article 1, Section 3 of the Texas Constitution;
- f) Article 1, Section 6 of the Texas Constitution;
- g) Article 1, Section 8 of the Texas Constitution;
- h) Article 1, Section 27 of the Texas Constitution;

2. Preliminarily and permanently enjoining the Defendants from enforcing the prohibition against religious institutions like Plaintiffs in Zone A;

3. Awarding Plaintiffs their reasonable attorneys' fees and costs; and
4. Awarding all other appropriate relief as the Court deems just and proper, both in equity and at law.

DATE: July 22, 2014

Respectfully submitted,

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