

**FILED**

JAN 10 2012

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION**

**DAVID CREWS, CLERK**  
BY  **Deputy**

OPULENT LIFE CHURCH; TELSA  
DEBERRY,

Plaintiffs,

v.

CITY OF HOLLY SPRINGS, MISSISSIPPI;  
BOARD OF ALDERMEN OF THE CITY OF  
HOLLY SPRINGS, MISSISSIPPI; CITY  
PLANNING COMMISSION OF THE CITY  
OF HOLLY SPRINGS, MISSISSIPPI,

Defendants.

CIVIL ACTION NO. 3:12cv004-M-A

TRIAL BY JURY REQUESTED

**COMPLAINT**

Plaintiffs, Opulent Life Church (“the Church”) and its pastor, Telsa DeBerry, by their undersigned attorneys, bring this civil action for monetary, declaratory, and injunctive relief, and allege as follows:

**I. INTRODUCTION**

1. Plaintiffs sought zoning approval to operate a church in the City of Holly Springs, Mississippi (“Holly Springs” or “the City”), in compliance with all ordinary zoning regulations of general applicability. Their request was denied, however, as a result of their failure to comply with Section 10.8 of the Holly Springs Zoning Ordinance (the “Zoning Ordinance”), which contains a list of burdensome regulations applicable to Plaintiffs *only* because they sought to operate a *religious* institution – specifically, a church – rather than any *nonreligious* institution.

2. Unequal governmental regulation of this sort, where churches are singled out and disfavored solely on the basis of their religious affiliation, is directly prohibited by the U.S.

Constitution, the Mississippi Constitution, and federal statutes. Specifically, the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc *et seq.*, renders invalid any imposition or implementation of 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).

3. In addition to mandating that cities regulate churches on an evenhanded 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). Here, there is *no* reason – much less a compelling one – to subject churches, but no other institutions, to a list of zoning requirements that is in many circumstances impracticable, if not impossible, to comply with. Most notably, the Zoning Ordinance compels churches to secure approval from a supermajority of neighboring landowners, a requirement that serves only to erect an artificial barrier to the City’s approval of a church’s zoning application.

4. In short, the Zoning Ordinance is a paradigmatic example of what Congress sought to prevent when it enacted RLUIPA. Senators Orrin Hatch and Ted Kennedy, in a joint statement as co-sponsors of the bill, explained that “Churches in general, and new, small, or unfamiliar churches in particular, are frequently discriminated against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation.” 146 Cong. Rec. S. 7774, 7774. That discrimination is blatantly present here on the face of the Zoning Ordinance.

5. Facial, blatant discrimination against religious institutions because of their religious nature or affiliation has long been recognized as unconstitutional. But invalidating the

Zoning Ordinance does not even require reliance on the U.S. Constitution, though it mandates the result Plaintiffs seek. RLUIPA was enacted to put an end to precisely the sort of discrimination Plaintiffs have suffered. As a result, this Court should declare Section 10.8 of the Zoning Ordinance invalid under RLUIPA and enjoin its further enforcement.

## **II. PARTIES**

6. Plaintiff Opulent Life Church is a Christian church located in Holly Springs, Mississippi. The Church is a nonprofit Mississippi corporation.

7. Plaintiff Telsa DeBerry is the pastor of the Church. Pastor DeBerry is an individual citizen of the State of Mississippi who resides in Marshall County, Mississippi.

8. Defendant Holly Springs is a city in Marshall County, Mississippi.

9. Defendant Board of Aldermen of the City of Holly Springs, Mississippi (“Board of Aldermen”) is a council composed of the elected Aldermen of Holly Springs. The Board of Aldermen, along with the Mayor of Holly Springs, is responsible for enacting, administering, and enforcing the zoning ordinances of Holly Springs.

10. Defendant City Planning Commission of the City of Holly Springs, Mississippi (“Planning Commission”) is a board composed of five members, responsible for administering and enforcing the zoning ordinances of Holly Springs.

## **III. SUBJECT MATTER JURISDICTION AND VENUE**

11. 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; and violations of Article 3 of the Mississippi Constitution. Plaintiffs also seek a declaration of their rights in this case of actual controversy pursuant to 28 U.S.C. § 2201.

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

13. 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 the City, located in Marshall County, Mississippi, and because all Defendants reside in the Northern District of Mississippi.

#### **IV. PERSONAL JURISDICTION**

14. This court has personal jurisdiction over Defendant Holly Springs because Holly Springs is located in Marshall County, Mississippi, which is within this district.

15. This court has personal jurisdiction over Defendant Board of Aldermen because the Board of Aldermen is located in Marshall County, Mississippi, which is within this district.

16. This court has personal jurisdiction over Defendant Planning Commission because the Planning Commission is located in Marshall County, Mississippi, which is within this district.

#### **V. FACTUAL BASIS FOR CLAIMS**

##### *Opulent Life Church's Need for a Larger Property to Further Its Religious Mission*

17. Opulent Life Church has operated in the City of Holly Springs, Marshall County, Mississippi since February 6, 2011. The Church has approximately 18 people who regularly attend worship services, all of whom live in or around the City of Holly Springs.

18. The Church was founded by Pastor DeBerry. It has adopted the following mission statement: "Opulent Life Church's mission is to engage all in our sphere of influence

with the Gospel of Jesus Christ that we may encounter the called and lead them to be in right standing with God and man.”

19. In furtherance of its religious mission, the Church holds weekly prayer sessions, worship sessions, Bible study classes, and Sunday school classes.

20. The Church also engages in community activities and outreach, including Vacation Bible School, Friends in the Park, and Movies in the Park.

21. The Church currently operates at the Marshall Baptist Center, 619 Hwy 7 South, Holly Springs, Mississippi.

22. The Church believes that the space it currently uses at the Marshall Baptist Center, which can comfortably accommodate only approximately twenty to twenty-five people during the course of customary religious activities, is too small to meet the religious needs of existing members. Moreover, the small space stifles potential growth.

23. On information and belief, additional individuals have attended programs at the church but have not returned again, despite interest in doing so, at least in part due to the fact that the Church does not operate in a facility large enough to accommodate them.

24. In order to continue advancing its religious mission and better serve its congregation, the Church arranged to lease a larger property in Holly Springs, located at 122 South Memphis Street, Holly Springs, Mississippi (the “Leased Property”) (Lease attached as Exhibit A).

*The Church’s Request for a Permit to Renovate the Leased Property*

25. On September 13, 2011, the Church applied for a permit to renovate the Leased Property and operate its religious activities on the Leased Property. In support thereof, the Church filed a comprehensive building plan with the Planning Commission.

26. The Church's application for approval to renovate the Leased Property and operate its religious activities on that property was governed by the Holly Springs Zoning Ordinance. The Zoning Ordinance was enacted in April 1970 and last amended in 2008 by the Mayor and the Board of Aldermen.

27. The Leased Property is located in zone B-3, the Central Business District, which the Zoning Ordinance indicates was designed to accommodate a wide variety of commercial uses (particularly those that are pedestrian oriented) that will result in the most intensive and attractive use of the city's central business district.

28. According to the Zoning Ordinance, Churches, Synagogues, Mosques, and Temples are permitted in B-3 "on appeal." Uses permitted on appeal are labeled by the Zoning Ordinance as special exceptions, for which permits will be issued only upon application and approval of the Planning Commission and subject to the requirements of the Zoning Ordinance and such conditions as may be required to preserve and protect the character of the district. Many other uses, including funeral homes, post offices, gas sales, movie theaters, and art galleries or museums, are permitted in B-3 upon application to the Administrative Official, a term the Zoning Ordinance does not define.

29. On September 16, 2011, the Planning Commission held a meeting at which the Church's request for a permit was considered (the "September 16 Meeting"). The Planning Commission denied the Church's request on the grounds that the Church did not meet the Zoning Ordinance's applicable requirements.

30. The Planning Commission's minutes for the September 16 Meeting reflect that "Mr. Deberry was referred to the Zoning Ordinance for the standards for churches." The Planning Commission voted to table the Church's request "until all standards for churches are

met.” The Planning Commission rejected Pastor DeBerry’s contention that the Zoning Ordinance’s imposition of burdensome additional requirements on churches was unfair.

31. Although the Planning Commission provided Pastor DeBerry with a copy of a chapter of the Zoning Ordinance that purported to govern “Churches” (attached as Exhibit B), the Planning Commission did not specifically indicate which provisions of the Zoning Ordinance the Church failed to meet.

*The City’s Reliance on a Discriminatory and Burdensome Section of the  
Zoning Ordinance to Justify Its Denial of Plaintiffs’ Request*

32. After the Planning Commission’s denial of Plaintiffs’ application, Pastor DeBerry requested a copy of the Zoning Ordinance in its entirety. The Mayor refused this request, informing Pastor DeBerry that the Zoning Ordinance governing Plaintiffs’ desired use of the property as a Church was a controlled document that he was unwilling to release.

33. Plaintiffs’ attorneys requested and obtained a copy of the Zoning Ordinance under Mississippi’s Public Records Act. Among other requirements, the relevant provisions of the Zoning Ordinance applicable to churches—and only churches—provides as follows:

10.8 Churches

Churches where permitted in the City of Holly Springs, shall conform to the following standards:

10.81 The amount of traffic generated and on site parking accommodations by the proposed facility must be located on a through street;

10.82 Ingress and egress to the property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;

10.83 Plans must show assurance that noise levels shall not disturb the neighborhood in which the facility is proposed to be located.

10.84 The proposed scale and context of the associated activities and facilities;

10.85 A site plan shall be submitted in conformance with the site plan standards of this ordinance;

10.86 Survey of the property owners within a 1300 foot radius with 60% approval;

10.87 Sign must be located on building only and have no lighting in residential districts;

10.88 Must be a minimum of 25,000 square feet in size in the B-4 zones;

10.89 Final Approval must be granted by the Mayor and Board of Aldermen.

Exhibit C (Holly Springs, Miss. Zoning Ordinance), § 10.8.

34. Although this section varies slightly in numbering and language from the version provided to Pastor DeBerry at the September 16 Meeting of the Planning Commission, the two versions are substantively identical. Because Exhibit C was provided to Plaintiffs as the official version of the Zoning Ordinance, Plaintiffs rely on its language herein.

35. Neither Section 10.8 nor any substantially similar provision applies to any other class of business or institution seeking zoning approval in Holly Springs. Only a handful of other nonreligious uses are subject to any additional restrictions, but those restrictions are clearly connected to the use of the property (*e.g.*, auto repair shops must conceal junk cars from surrounding property).

36. It would be extremely difficult, if it is even possible, for the Church to identify and obtain approval of 60 percent of the property owners within a 1300 foot radius, as required by Section 10.86. Pastor DeBerry attempted to identify all of the true owners of property located within that range, and concluded that the Church would need to contact over 100 individuals, several of whom are located out of town or even out of state.



37. The Church has also been denied the final approval of the Mayor and Board of Aldermen, as required by Section 10.89, and has been denied any specific information on what is required in order to obtain such approval.

38. As a result of the ambiguity of Section 10.8 and the Defendants' refusal to address the specific perceived flaws with the Church's proposal, Plaintiffs do not know whether the Planning Commission, the Board of Aldermen, or the Mayor consider the Church to be in compliance with the remainder of Section 10.8.

39. As a result of the Defendants' denial of a permit to the Church, the Church has been unable to proceed with its planned relocation and has been forced to continue to operate in a facility that is too small to adequately meet its needs. Because it has been unable to secure a regular meeting space that can permit its congregation to grow, the religious exercise of the Church and its members has been substantially burdened.

40. Upon Plaintiffs' complaint regarding this discriminatory and burdensome provision of the Zoning Ordinance, Plaintiffs were informed that they should seek a variance, which would likely be granted. However, obtaining a variance requires Plaintiffs to file a written application contending that special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and does not permit Plaintiffs to contend that the Zoning Ordinance is invalid in all applications.

41. On information and belief, at least one other church has decided not to locate or relocate in Holly Springs as a result of the Zoning Ordinance's church-specific requirements.

42. Defendants' discriminatory enactment and implementation of the Zoning Ordinance substantially affects interstate commerce by prohibiting, limiting, or burdening the ability of the Church 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.

43. On September 28, 2011, Counsel for the Church sent a letter to the Holly Springs Mayor and the Defendant Board of Aldermen, informing them that their decision to deny a permit to the Church based on the Zoning Ordinance was a violation of RLUIPA and requesting that they reconsider their earlier rejection of the Church's permit. None of the Defendants responded to the letter.

44. Plaintiffs have standing to challenge the validity of Section 10.8 pursuant to RLUIPA and 42 U.S.C. § 1983 both on its face and as-applied to Plaintiffs. Plaintiff have been and continue to be injured by the Defendants' violations of RLUIPA, the U.S. Constitution, and the Mississippi Constitution, because Section 10.8 substantially interferes with core activities of Plaintiffs' religious exercise and limits their ability to obtain additional members or conduct additional activities and outreach in furtherance of their religious mission. That injury would be remedied by a favorable decision from this Court.

**Count One – The Holly Springs Zoning Ordinance Violates the  
Equal Terms Clause of RLUIPA, 42 U.S.C. § 2000cc(b)(1)**

45. Plaintiffs reallege paragraphs 1-44 of the Complaint as if fully set forth herein.

46. Section 10.8 of the Zoning Ordinance imposes additional, burdensome requirements on churches that do not apply to similarly situated nonreligious institutions. Churches, and only churches, must comply with those requirements or seek a variance before obtaining approval to operate in the City.

47. By imposing additional requirements on churches, Section 10.8, and any other provision on which Defendants rely to impose additional requirements on churches, treat

religious assemblies and institutions on less than equal terms with nonreligious assemblies or institutions.

48. Accordingly, the Zoning Ordinance on its face violates the Equal Terms Clause of RLUIPA, 42 U.S.C. § 2000cc(b)(1).

49. The Zoning Ordinance also violates RLUIPA as applied to Plaintiffs in this case. Plaintiffs' application to operate the Church – which constitutes a religious assembly under the Equal Terms Clause – in the Leased Premises was denied on the basis of Section 10.8.

50. In order to obtain approval to operate the Church, Plaintiffs must either comply with the burdensome requirements of Section 10.8 or seek a variance. In contrast, nonreligious institutions or religious institutions that do not constitute “churches” under the meaning of Section 10.8 need not comply with these requirements or seek a variance.

51. Requiring churches, but not similarly situated non-religious institutions or religious institutions that do not constitute “churches,” to comply with additional requirements or seek a variance before they may obtain zoning approval violates the Equal Terms Clause. Moreover, the variance provision by its terms appears unavailable to the Church, as it is limited to circumstances where “special conditions and circumstances exist” that distinguish the land, structure, or building involved from others in the district.

52. Accordingly, Section 10.8 violates the Equal Terms Clause of RLUIPA as applied to Plaintiffs.

53. Plaintiffs have suffered damages as a result of the enforcement of this discriminatory ordinance and will suffer irreparable harm if enforcement of this discriminatory ordinance is not enjoined. Plaintiffs are entitled to recover such damages and to obtain a declaration that Section 10.8 violates RLUIPA's Equal Terms Clause, both on its face and as

applied to Plaintiffs, and preliminary and permanent injunctions against further enforcement of Section 10.8 or any comparable restrictions.

54. 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 Two – Holly Springs Zoning Ordinance § 10.8 Violates the Substantial Burden Clause of RLUIPA, 42 U.S.C. § 2000cc(a)(1)**

55. Plaintiffs reallege paragraphs 1-54 of the Complaint as if fully set forth herein.

56. Section 10.8 facially violates the Substantial Burden Clause of RLUIPA, 42 U.S.C. § 2000cc(a)(1), by imposing substantial burdens on the religious exercise of all churches subject to its restrictions. In particular, Section 10.86 – which conditions authorization to construct, renovate, or operate a church on obtaining supermajority approval of neighboring landowners – impermissibly and facially imposes a substantial burden on churches subject to its constraints and their members, including Plaintiffs, by requiring churches to conform their religious exercise to a standard that can secure supermajority approval.

57. The remainder of Section 10.8 also violates the Substantial Burden Clause by conditioning zoning approval on fulfillment of vague preconditions that make compliance impossible or impracticable.

58. Section 10.8 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.

59. Section 10.8 also violates the Substantial Burden Clause as applied to this case. Defendants based their denial of Plaintiffs' application to use the Leased Property as a church on Plaintiffs' inability to comply with all of the requirements of Section 10.8, including Section 10.86.

60. It would be difficult, if not impossible, for Plaintiffs to conduct a survey of all the property owners within a 1300 foot radius of the Property, as required by Section 10.86. Even simply identifying the true owners of all of the relevant properties would be burdensome. Moreover, conducting a survey of such size would be prohibitively expensive for a small, nonprofit religious institution such as the Church.

61. Application of Section 10.86 to Plaintiffs does not further any compelling governmental interest, let alone serve as the least restrictive means of furthering a compelling governmental interest.

62. Moreover, Plaintiffs are unable to discern whether, in Defendants' view, they have complied with the other requirements of Section 10.8, as Defendants have refused to indicate which requirements Plaintiffs have not met. Because, at a minimum, Sections 10.81, 10.82, and 10.84 are vague and ambiguous, Plaintiffs cannot determine whether their current application is in compliance with those sections or what, if any, further action would be necessary to bring it in compliance.

63. In addition, Section 10.85 requires that a church submit a site plan for the property. Site plans must include the information mandated by Section 10.1, but Section 10.1 provides no standard against which the site plan is to be measured.

64. Finally, Section 10.89 grants unfettered discretion to the Mayor and the Board of Aldermen to deny approval to any church for any reason or no reason at all, further obscuring the basis of the Planning Commission's denial of Plaintiffs' application and the steps that Plaintiffs need take to overcome it.

65. By requiring Plaintiffs' compliance with these vague and ambiguous provisions, Section 10.8 sets an unjustifiably difficult task for Plaintiffs, imposing a substantial burden and

making compliance virtually impossible. As a result, the core religious activities of the Church are substantially burdened. Moreover, Pastor DeBerry's religious exercise as an individual and as pastor of the Church is burdened.

66. Application of these ambiguous requirements to Plaintiffs does not serve a compelling governmental interest, let alone serve as the least restrictive means for serving such an interest.

67. Plaintiffs have suffered damages as a result of the enforcement of this discriminatory ordinance and will suffer irreparable harm if enforcement of this discriminatory ordinance is not enjoined. Plaintiffs are entitled to recover such damages and to obtain a declaration that Section 10.8 violates RLUIPA's Substantial Burden Clause, both on its face and as applied to Plaintiffs, and preliminary and permanent injunctions against further enforcement of Section 10.8.

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

69. Plaintiffs reallege paragraphs 1-68 of the Complaint as if fully set forth herein.

70. Section 10.8 of the Zoning Ordinance imposes additional, burdensome requirements on churches that do not apply to similarly situated nonreligious institutions. Churches, and only churches, must comply with those requirements or seek a variance before obtaining approval to operate.

71. By imposing additional requirements on churches, Section 10.8, and any other provision on which Defendants rely to impose comparable restrictions on churches, discriminates against churches on the basis of their religion or religious denomination. Accordingly, the

Zoning Ordinance on its face violates the Nondiscrimination Clause of RLUIPA, 42 U.S.C. § 2000cc(b)(2).

72. The Zoning Ordinance also violates the Nondiscrimination Clause as applied to Plaintiffs. Plaintiffs' application to operate the Church in the Leased Premises was denied on the basis of Section 10.8.

73. In order to obtain approval to operate the Church, Plaintiffs must either comply with the burdensome requirements of Section 10.8 or seek a variance. In contrast, nonreligious institutions or religious institutions that do not constitute "churches" under the meaning of Section 10.8 need not comply with these requirements or seek a variance.

74. Accordingly, Section 10.8, as applied to Plaintiffs, violates the Nondiscrimination Clause of RLUIPA.

75. Plaintiffs have suffered damages as a result of the enforcement of this discriminatory ordinance and will suffer irreparable harm if enforcement of this discriminatory ordinance is not enjoined. Plaintiffs are entitled to recover such damages and to a declaration that the Zoning Ordinance violates RLUIPA's Nondiscrimination Clause, both on its face and as applied to Plaintiffs, and preliminary and permanent injunctions against further enforcement of Section 10.8 or any comparable restrictions.

76. 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 Four – Holly Springs Zoning Ordinance § 10.8 Violates the Unreasonable Limitations Clause of RLUIPA, 42 U.S.C. § 2000cc(b)(3)**

77. Plaintiffs reallege paragraphs 1-76 of the Complaint as if fully set forth herein.

78. Section 10.8 imposes a burdensome list of requirements on churches which seek to operate within the jurisdiction of the City of Holly Springs.

79. By imposing such burdensome requirements, Section 10.8 substantially and unreasonably limits the ability of churches, including Plaintiff Opulent Life Church here, to operate within the City. Furthermore, it substantially and unreasonably limits Plaintiff Pastor DeBerry's ability to lead such a church.

80. These substantial limitations are unwarranted by any legitimate government interest and unreasonable. Accordingly, Section 10.8 violates the Unreasonable Limitations Clause of RLUIPA, 42 U.S.C. § 2000cc(b)(3).

81. Plaintiffs have suffered damages as a result of the enforcement of this discriminatory ordinance and will suffer irreparable harm if enforcement of this discriminatory ordinance is not enjoined. Plaintiffs are entitled to recover such damages and to obtain a declaration that Section 10.8 violates RLUIPA's Nondiscrimination Clause, both on its face and as applied to Plaintiffs, and an injunction against further enforcement of Section 10.8.

82. 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 Five – Holly Springs Zoning Ordinance § 10.8 Violates the  
Free Exercise Clause of the First Amendment of the U.S. Constitution  
and Article 3, § 18 of the Mississippi Constitution**

83. Plaintiffs reallege paragraphs 1-82 of the Complaint as if fully set forth herein.

84. Section 10.8 strictly limits zoning approval for churches within the City of Holly Springs, on grounds not applicable to similarly situated non-religious entities. It thereby burdens the religious practice of churches, but imposes no burden on similarly situated non-religious institutions or, potentially, religious institutions that do not constitute "[c]hurches." Accordingly, Section 10.8 is not neutral or of general applicability, but facially discriminates against churches on the basis of their religious affiliation or nature.



85. Section 10.8 does not serve any compelling governmental interest, and is not narrowly tailored to serve any legitimate governmental interest.

86. Accordingly, Section 10.8 violates the Free Exercise Clause of the First Amendment of the U.S. Constitution, made applicable to the States under the Fourteenth Amendment, and Article 3, Section 18 of the Mississippi Constitution.

87. Plaintiffs have suffered damages as a result of the enforcement of this discriminatory ordinance and will suffer irreparable harm if enforcement of this discriminatory ordinance is not enjoined. Pursuant to 42 U.S.C. § 1983, Plaintiffs are entitled to recover such damages and to obtain a declaration that Section 10.8 violates the Free Exercise Clause, and an injunction against further enforcement of Section 10.8. Plaintiffs are also entitled to declaratory and injunctive relief pursuant to Article 3, Section 18 of the Mississippi Constitution.

88. 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 Six – Holly Springs Zoning Ordinance § 10.8**  
**Deprives Churches, Including Plaintiffs, of Equal Protection of the Laws,**  
**in Violation of the Fourteenth Amendment of the U.S. Constitution and**  
**Article 3, § 14 of the Mississippi Constitution**

89. Plaintiffs reallege paragraphs 1-88 of the Complaint as if fully set forth herein.

90. The Zoning Ordinance distinguishes between “Churches” and similarly situated non-religious entities for purposes of zoning approval. In particular, Section 10.8 strictly limits zoning approval for churches within the City of Holly Springs, on grounds not applicable to similarly situated non-religious entities.

91. This distinction is based on the nature of churches as religious institutions. Alternatively, if the term “church” is meant to exclude other religious institutions such as

synagogues, mosques, and temples, this distinction is based on the denominational nature of churches as Christian religious institutions.

92. Section 10.8 does not serve any compelling governmental interest, and is not precisely tailored to serve any such interest.

93. Accordingly, Section 10.8 violates the Equal Protection Clause of the U.S. Constitution and Article 3, Section 14 of the Mississippi Constitution.

94. Plaintiffs have suffered damages as a result of the enforcement of this discriminatory ordinance and will suffer irreparable harm if enforcement of this discriminatory ordinance is not enjoined. Pursuant to 42 U.S.C. § 1983, Plaintiffs are entitled to recover such damages and to obtain a declaration that Section 10.8 violates the Equal Protection Clause of the Fourteenth Amendment, and an injunction against further enforcement of Section 10.8. Plaintiffs are also entitled to declaratory and injunctive relief pursuant to Article 3, Section 14 of the Mississippi Constitution.

95. 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 – Holly Springs Zoning Ordinance § 10.8**  
**Violates the Free Speech Clause of the First Amendment of the**  
**U.S. Constitution and Article 3, § 13 of the Mississippi Constitution**

96. Plaintiffs reallege paragraphs 1-95 of the Complaint as if fully set forth herein.

97. Section 10.8 limits Plaintiffs' ability to exercise their free speech rights by prohibiting or severely impeding them from operating the Leased Property as a Church. Moreover, Section 10.8 inhibits Plaintiffs from fully and effectively expressing their message to the Holly Springs community.

98. These limitations are imposed on the basis of the religious nature of the expression that Plaintiffs wish to undertake. Alternatively, if the term "church" is meant to

exclude other religious facilities such as synagogues, mosques, and temples, this distinction is based on the nature of churches as Christian religious institutions.

99. Section 10.8 does not serve any compelling governmental interest, and is not precisely tailored to serve any such interest.

100. Accordingly, Section 10.8 violates the Free Speech Clause of the First Amendment of the U.S. Constitution, made applicable to the States under the Fourteenth Amendment, and Article 3, Section 13 of the Mississippi Constitution.

101. Section 10.8 is also an unlawful prior restraint on speech, which grants discretion regarding whether to permit religious speech to the Mayor and Board of Aldermen without adequate standards to guide their decisions and render them subject to effective judicial review. This absence of appropriate and necessary procedural safeguards further violates the First Amendment of the U.S. Constitution.

102. Plaintiffs have suffered damages as a result of the enforcement of this discriminatory ordinance and will suffer irreparable harm if enforcement of this discriminatory ordinance is not enjoined. Pursuant to 42 U.S.C. § 1983, Plaintiffs are entitled to recover such damages and to obtain a declaration that Section 10.8 violates the Free Speech Clause of the First Amendment, and an injunction against further enforcement of Section 10.8. Plaintiffs are also entitled to declaratory and injunctive relief pursuant to Article 3, Section 13 of the Mississippi Constitution.

103. 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 – Holly Springs Zoning Ordinance § 10.8 Violates the  
Free Assembly Clause of the First Amendment of the U.S. Constitution  
and Article 3, § 11 of the Mississippi Constitution**

104. Plaintiffs reallege paragraphs 1-103 of the Complaint as if fully set forth herein.

105. Section 10.8 limits the space in which the members of the Church may assemble for purposes of religious activities, including worship, prayer, community outreach, or other activities of religious expression.

106. The Church's existing space is insufficient for all individuals interested in assembling to participate in the religious activities of the Church to do so. Accordingly, Section 10.8 substantially burdens the ability of Pastor DeBerry and the Church's growing congregation to associate in furtherance of the Church's mission.

107. The burden that Section 10.8 places on the ability of Plaintiffs and the Church's members to associate for religious purposes is not necessary to serve any compelling governmental interest.

108. Accordingly, Section 10.8 violates the Free Assembly Clause of the First Amendment of the U.S. Constitution, made applicable to the States under the Fourteenth Amendment, and Article 3, Section 11 of the Mississippi Constitution.

109. Plaintiffs have suffered damages as a result of the enforcement of this discriminatory ordinance and will suffer irreparable harm if enforcement of this discriminatory ordinance is not enjoined. Pursuant to 42 U.S.C. § 1983, Plaintiffs are entitled to recover such damages and to obtain a declaration that Section 10.8 violates the Free Assembly Clause of the First Amendment, and an injunction against further enforcement of Section 10.8. Plaintiffs are also entitled to declaratory and injunctive relief pursuant to Article 3, Section 11 of the Mississippi Constitution.

110. 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 – Holly Springs Zoning Ordinance § 10.8**  
**Violates the Due Process Clauses of the Fourteenth Amendment of the**  
**U.S. Constitution and of Article 3, § 14 of the Mississippi Constitution**

111. Plaintiffs reallege paragraphs 1-110 of the Complaint as if fully set forth herein.

112. Section 10.8 imposes requirements applicable only to churches that are vague and fail to provide churches with sufficient notice and warning as to what requirements must be met in order to obtain a permit. This ambiguity further affords the Mayor, the Board of Aldermen, and the Planning Commission unbridled and unlimited discretion in determining whether to grant or deny such a permit.

113. The ambiguity in Section 10.8 threatens to inhibit constitutionally protected rights, including Plaintiffs' rights to free exercise of religion, freedom of speech, and freedom of association, by making it difficult or impossible for Plaintiffs to comply with Section 10.8's requirements.

114. Section 10.8 accordingly violates the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution and Article 3, § 14 of the Mississippi Constitution.

115. Plaintiffs have suffered damages as a result of the enforcement of this discriminatory ordinance and will suffer irreparable harm if enforcement of this discriminatory ordinance is not enjoined. Pursuant to 42 U.S.C. § 1983, Plaintiffs are entitled to recover such damages and to a declaration that Section 10.8 violates the Due Process Clause of the Fourteenth Amendments, and an injunction against further enforcement of Section 10.8. Plaintiffs are also entitled to declaratory and injunctive relief pursuant to Article 3, Section 14 of the Mississippi Constitution.

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.

## **VI. JURY TRIAL DEMAND**

117. Plaintiff requests a jury trial on all issues that may be tried to a jury.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court enter judgment:

1) declaring that, on its face and as applied to Plaintiffs, Section 10.8 of the Zoning Ordinance violates RLUIPA;

2) declaring that, on its face and as applied to Plaintiffs, Section 10.8 of the Zoning Ordinance violates the First and Fourteenth Amendments of the U.S. Constitution and Article 3, Sections 11, 13, and 14 of the Mississippi Constitution;

3) preliminarily and permanently enjoining the Defendants from enforcing Section 10.8 of the Zoning Ordinance or implementing the remainder of the Zoning Ordinance to impose limitations on churches not applicable to other nonreligious entities;

4) awarding Plaintiffs their actual damages to be determined at trial;

5) awarding Plaintiffs their reasonable attorneys' fees and costs;

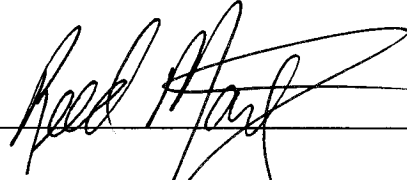
6) awarding pre-judgment and post-judgment interest; and

7) awarding all other appropriate relief as the Court deems just and proper, both in equity and at law.

DATE: January 10, 2012

Respectfully submitted,

By: /s/



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