

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, MUNICIPAL DIVISION, 2nd DISTRICT**

CITY OF DES PLAINES,

Plaintiff/Counterdefendant,

MICHAEL G. BARTHOLOMEW, in his personal and official capacity as the City Manager for the City of Des Plaines; MICHAEL MCMAHON, in his personal and official capacity as the former Director of Community & Economic Development for the City of Des Plaines; JON DUDDLES, in his personal and official capacity as the Assistant Director of Public Works and Engineering for the City of Des Plaines;,

Counterdefendants

v.

CHICAGO DISTRICT CAMP GROUND INC.,  
et al.,

Defendants/Counterclaimant.

2021 M2 001319

JURY TRIAL REQUESTED

**DEFENDANT'S SECOND AMENDED COUNTERCLAIMS**

NOW comes Counterclaimant, CHICAGO DISTRICT CAMP GROUND ASSOCIATION, by and through its attorneys, complains of the City of Des Plaines as follows:

## INTRODUCTION

1. For over 160 years, the Chicago District Camp Ground Association (the “Campground”) has stood as a beacon of hope and religious renewal to not only the city of Chicago and its surrounding communities, but also the entire Midwest.

2. The Campground has owned the property situated in Cook County, Illinois, with an original property identification number 09-21-106-009 (herein after “the Property”) since it acquired the Property pursuant to a charter granted to it by the Illinois legislature in 1867. A legal description of the Property is attached hereto as Exhibit 1.

3. Over its rich history, the Campground has enjoyed hosting Christian revivals and frequently housed events for some of the most prominent Christian evangelists in American history, often attracting over 10,000 people.

4. Unfortunately, because of the actions of the city of Des Plaines (the “City” or “Des Plaines”), the Campground’s ministry now faces the risk of permanent extinguishment.

5. Over the past 15 years, the Campground has suffered repeated flooding events, the intensity, duration, and frequency of which far exceed anything the Campground previously encountered in its long tenure nestled on the banks of the Des Plaines River.

6. Unbeknownst to the Campground, these floods were no act of God, but, instead, the result of novel flooding infrastructure owned and operated by the City.

7. These floods have caused substantial damage to the Campground’s historic structures, many of which are over 100 years old, and have hindered the Campground’s ability to fully realize its religious ministry.

8. Even worse, the City now seeks to demolish the overwhelming majority of the Campground's structures and impose the costs of those demolitions and related fines onto the Campground for damage the City caused through its own flood control operations.

9. Prior to the Summer of 2020, the Campground and the City enjoyed a working relationship in which the Campground acted as a good neighbor, working with the City to find an amicable path forward to address the damage suffered by the Campground's structures.

10. Unfortunately, the Campground's relationship with the City soured after the Campground, consistent with the mission recognized in its state charter, exercised its right to freely exercise its religion and hosted a 10-day religious tent revival in July and August of 2020.

11. City officials invoked the COVID-19 pandemic and repeatedly pressured the Campground to cancel or end its religious exercise, but the Campground stood firm—refusing to suppress prayer and worship on the Property.

12. The Campground's decision to invoke its First Amendment rights deeply angered City officials, who also saw an opportunity to take this valuable property for itself. The City crafted a plan to retaliate against the Campground with the goal of shutting it down permanently through the façade of an enforcement action based on flood damage to the Campground's structures—damage that the City itself had caused. City officials openly referred to the Campground's First Amendment rights as “bullshit” that could be disregarded.

13. Under the guise of its flood and building regulations, the City initiated this proceeding in order to bankrupt the Campground and take its Property, and permanently extinguish the Campground's ability ever to reengage in the kind of religious exercise that City officials found so repugnant in 2020. Sadly, the City is no stranger to wielding regulations to target religious

organizations, as it has targeted an Islamic organization in the past and was forced to settle with the U.S. Department of Justice.

14. To expose the City's blatant religious animus, protect its rights under the U.S. Constitution, federal law, and the laws of the state of Illinois, the Campground asserts these Counterclaims.

### **FACTS**

#### **The Campground is a historic site with a religious history dating back to 1860.**

15. In 1860, a group of Methodist ministers and businessmen, including the future war hero and Illinois Governor John L. Beveridge, began gathering annually on the scenic land of Squire Socrates Rand along the Des Plaines River to engage in religious worship and fellowship.

16. Chosen for its proximity to Chicago, Squire Rand's property bordered both a train line and a popular road that served travelers from the college town of Evanston, Illinois, home to Northwestern University, making it an ideal location to bring Midwesterners together to express their Christian faith in the serenity of the outdoors.

17. Each summer in the Campground's early years, devout Methodists staked out the groves to create a tent city, complete with boardwalks and signposts. A large clearing served as the main sanctuary where a platform speaker's stand served as stage for the ministers and choirs. Upwards of 10,000 people filled the groves for the large meetings. Indeed, a train depot was eventually built to add a stop to the train lines from Chicago, saving pilgrims from the mile-long walk from downtown Des Plaines.

18. In the aftermath of the Civil War, the Campground's congregants gathered donations and made the decision to make the Property housing the Campground a permanent site for their religious gatherings and purchased the Property from Squire Rand.

19. The State of Illinois granted the Campground a religious charter in 1867. A true and correct copy of the Campground's charter is attached hereto as Exhibit 2.

20. The Campground's Charter is the last remaining religious charter in the State of Illinois.

21. The Charter provides specific powers to the Campground Association, including, but not limited to:

- a. The power to sue and be sued, plead and be impleaded to acquire and hold such property real and personal as shall be necessary for carrying into successful effect of the objects of said association;
- b. The power to purchase and acquire land;
- c. The power to fix and adorn its land for use at its discretion;
- d. The power to create bylaws and control the rules and regulations for its grounds;
- e. Police powers to both create and enforce breaches of the peace and violations of its bylaws;
- f. Arrest and take offenders before court in Cook County for prosecution of breaches of the peace;
- g. The power to prohibit the consumption of alcohol and impose a fine for violation of such rules.

Ex. 2.

22. Around the same time as the purchase of the Property and the granting of the Campground's Charter, congregants began building cottages to replace the tents that had previously adorned the Property in the summer. Thus, between 1870 and 1930, the Campground's congregants constructed over 100 cottages in a uniform late Victorian architecture style reminiscent of Martha's Vineyard.

23. The congregants also constructed several meeting structures in the decades following the creation of the Campground's Charter, including 14 public buildings, a 30-room hotel, and three tabernacles.

24. In 1903, a meeting structure originally known as the American Tabernacle was built based on the architectural principles of the Eiffel Tower, devoid of support pillars that might obstruct a view of the stage. Later named the Waldorf Tabernacle (after Bishop Ernest Lynn Waldorf), its circular shape mimics the original tents and other similar tabernacles built for similar Chautauqua meetings throughout the United States. Cottages built around the circle are among the oldest surviving buildings on the property. All cottages are built on paths that lead to at least one of the many tabernacles located on the Property.

25. Throughout its existence, the Campground has a long history of hosting Christian revivals and has frequently housed events for some of the most prominent Christian evangelists in American history, including D.L. Moody, Frances E. Willard, Billy Sunday, Mahalia Jackson, and Billy Graham.

26. Based on this rich history, the United States National Park Service added the Campground to its National Register of Historic Places in 2005. A true and correct copy of the Campground's National Register of Historic Places Certificate is attached hereto as Exhibit 3.

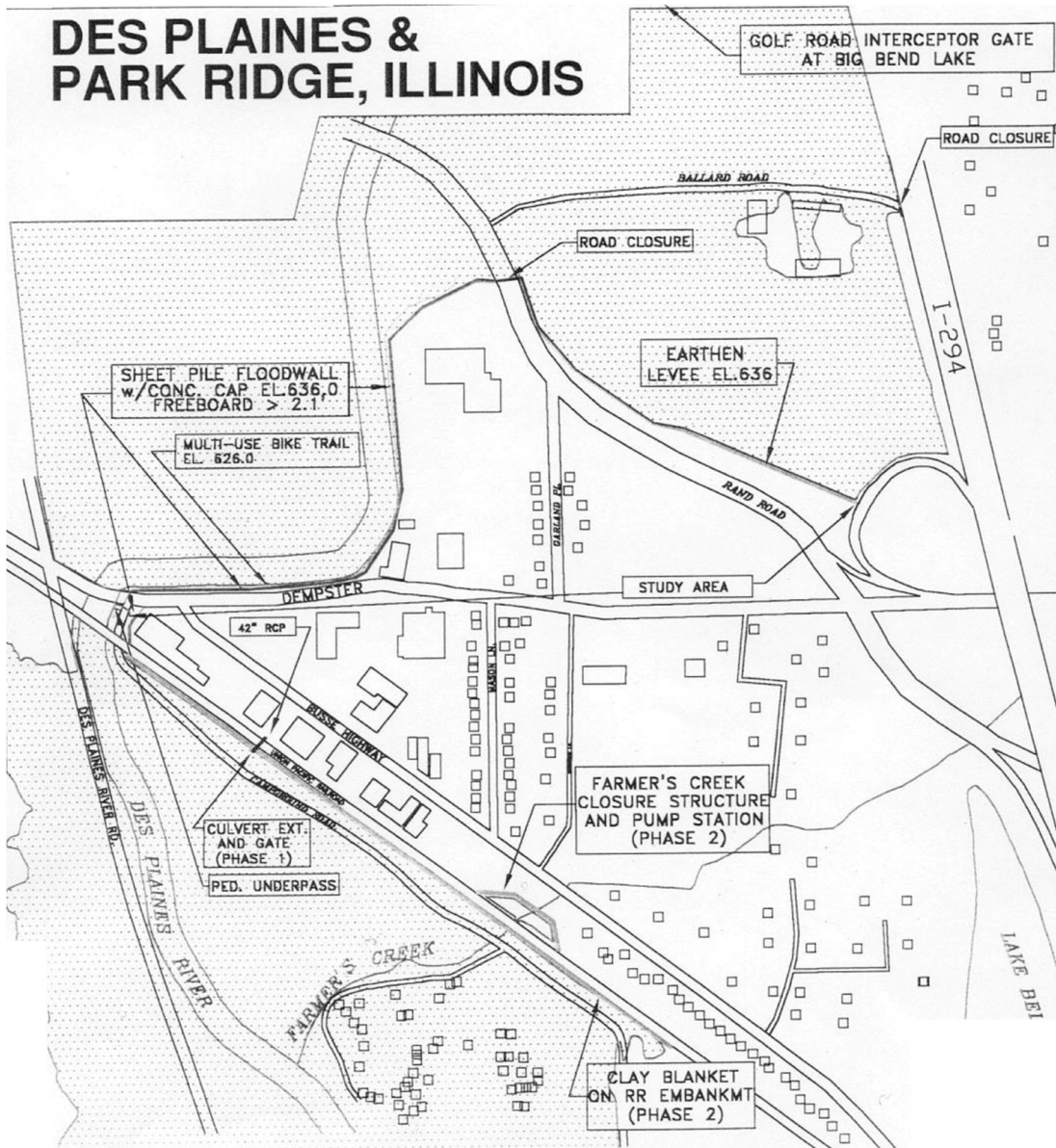
27. Today, the Campground continues to serve as a place for people to gather for worship, Bible studies, and religious revivals. Indeed, its cottages are still actively used by people living at the Campground who wish to live together in a religious community that is set apart from the surrounding urban area. Some of the families utilizing the cottages have done so for multiple generations.

**The City constructs a pumping station that damages the Campground.**

28. On or around 1997, a consortium of government entities comprised of the cities of Des Plaines and Park Ridge, the Illinois Department of Natural Resources (“IDNR”), and the Illinois Department of Transportation, jointly proposed a multi-jurisdiction flood control project.

29. The project relied upon a report that proposed building a levee around the Campground, leaving the Campground unprotected while benefiting other properties. A true and correct copy of the US Army Corp of Engineers’ 1999 Upper Des Plaines River Flood Damage Reduction Feasibility Study (“Phase I Study”) is attached hereto as Exhibit 4.

30. The project, later designated as the Rand Park Flood Control and Multi-Use Trail Project or the “Levee 50 Project,” consisted of a multi-phase installation of infrastructure around the Campground that included floodwalls and a pumping station located across the street from the Campground with a drainage pipe facing directly towards the Campground, as demonstrated in the image below. A true and correct copy of a presentation from the City regarding the Levee 50 Project is attached hereto as Exhibit 5.



*Id.* at 22.

31. Hydraulic and hydrologic analysis performed as part of the Phase I Study considered whether the operation of Levee 50 would adversely affect the Campground. That analysis affirmatively concluded that the Campground was at risk of flooding if two or more of Levee 50's pumps were operated simultaneously. Nevertheless, assuming that Levee 50's controls would only allow for one pump to be operated at a time, the analysis stated that the Campground



would not become inundated with water from Levee 50's operation. A true and correct copy of excerpts of Levee 50's Hydraulic and Hydrologic Analysis is attached hereto as Exhibit 6.

32. Construction on the Levee 50 Project began in September 2002 and was completed in June 2008.

33. As the state sponsor for the Corps' federal project, the Illinois Department of Natural Resources/Office of Water Resources ("IDNR/OWR") designed and constructed the project. The City serves as the local sponsor for the project and as such, owns, operates, and maintains control of Levee 50. *See* Des Plaines Illinois, <https://www.desplaines.org/access-your-government/city-departments/public-works-and-engineering/roads-and-infrastructure/projects-and-improvements/stormwater-management> (last visited Sept. 18, 2023).

34. As a result of the Levee 50 Project, the Federal Emergency Management Agency ("FEMA") revised its Flood Insurance Rate Map to designate the Campground as being located in a "regulatory floodway" on August 19, 2008. A true and correct copy of FEMA's Flood Insurance Rate Map is attached hereto as Exhibit 7.

35. In recognition of the threat of flooding to the Campground posed by the Levee 50 Project, a Hazard Mitigation Plan adopted by Des Plaines in January 2007 stated the City's preferred property protection measure was to mitigate the risks of flood damage to the Campground and to require the manual elevation of all structures at the Campground.

36. Indeed, the City applied to FEMA for grant funds in 2008 to assist with elevating 14 structures on the Campground. The City represented that the elevation of these 14 structures was part of a multi-phase effort to reduce flood risk at the Campground. Its application also noted the Campground's desire to elevate its structures and protect the historic nature of the Campground.

37. While the City represented to FEMA an intent to assist with elevating all structures at the Campground, in reality, it refused to do more than provide funds from the FEMA grant to the original 14 structures designated in the City's application. Indeed, the Campground paid the City thousands of dollars in reliance on its promises to provide grant money to elevate the Campground's cottages, but no such grant was ever issued by the City.

38. Since the construction of Levee 50, Des Plaines has not made any additional infrastructure improvements to redirect flood water away from the Campground, despite making improvements to benefit properties to the north and east of Levee 50, which are not used for religious purposes. Nor did Des Plaines inform the Campground of the increased potential for flooding should the City operate more than one of Levee 50's pumps simultaneously.

39. Unfortunately, since the completion of the Levee 50 Project, the Campground has experienced multiple and substantial flooding events that damaged its property, including major flooding events on April 19, 2013, July 12, 2017, and May 18, 2020. These repeated flooding events not only resulted in significant damage to various structures located on the Campground, but also negatively impacted the Campground's ability to operate its religious ministries.

40. Upon information and belief, the flooding events that have occurred since the completion of Levee 50 are greater in frequency, duration, and intensity than the floods previously encountered by the Campground in its 160-year history.

41. Upon information and belief, the City operated Levee 50 in a manner that caused the Campground to suffer flood damage, including but not limited to operating more than one pump of Levee 50 simultaneously.

42. While the Campground suffered from the City's operation of Levee 50, the City substantially benefitted. Upon information and belief, the City's operation of Levee 50 has

resulted in annual flood reduction benefits worth \$1.245 million. The City has not passed on any of its savings to the Campground to compensate it for the City's conversion of its property into floodwater storage.

43. The consequent flood damage has significantly hindered the Campground's ability to operate its religious ministry and use its structures for religious purposes.

**The City begins enforcing flood regulations against the Campground for damage caused by flooding.**

44. In the aftermath of the July 2017 flood, City officials began corresponding with the Campground regarding the flood damage to the Campground's structures. Wishing to be a good neighbor to the City and unaware of the City's role in flooding the Campground, the Campground engaged in discussions with the City in good faith. Campground officials met with their City counterparts on February 16, 2018, to discuss how the City might partner with the Campground to address any structural issues with the Campground's buildings.

45. One week later, the Campground received a letter from the City enclosing an enforcement and compliance letter for the Campground's structures. A true and correct copy of a February 23, 2018 Letter from the City is attached hereto as Exhibit 8.

46. The Campground continued its good faith discussions with the City throughout 2018 and even voluntarily granted City officials access to its property on or about July 2018 in order for the officials to inspect the Campground's structures.

47. According to a Memorandum from the City's Public Works and Engineering Department dated November 29, 2018, the City determined that 52 Campground structures were substantially damaged and needed to be either elevated or demolished. The Memorandum went on to emphasize the City's intent to give the Campground a reasonable amount of time to respond

to the City's demands. A true and correct copy of the City's November 29, 2018 Memorandum is attached hereto as Exhibit 9.

48. In the months that followed, the Campground worked diligently with the City to resolve all issues related to flood damage while balancing its desire to save as many of the historic structures on its property as possible. True and correct copies of letters exchanged between the City and the Campground between December 2018 and August 2019 along with a Memorandum regarding a March 29, 2019 meeting between the City and the Campground are attached hereto as Exhibit 10.

49. Discussions continued with the City throughout 2019 and early 2020, resulting in the demolition of 19 cottages along with the elevation of five cottages.

50. Indeed, Jon Duddles, the City's Assistant Director of Public Works and Engineering, recognized the Campground's progress in an email to FEMA in April 2020, stating the City's intention to continue working with the Campground on all structural issues. The email went on to state the City's intention to continue "working with [the Campground] . . . on structures that they listed as elevation candidates." A true and correct copy of Mr. Duddles' email is attached hereto as Exhibit 11.

51. In light of the working relationship, the Campground remained hopeful that it could continue to work with the City to restore the Campground, allowing it to serve and benefit its community through its religious ministry.

**The City retaliates against the Campground after it hosts a religious revival in July 2020.**

52. Unfortunately, the Campground's working relationship with the City dramatically changed in the aftermath of a 10-day tent revival hosted by the Campground.

53. Keeping with its longstanding tradition of hosting traveling evangelists, the Campground partnered with Torben Søndergaard of The Last Reformation, Inc. to host outdoor Gospel Revival meetings under a large tent every evening on the Campground's property from July 24, 2020, through August 2, 2020.

54. Seeing the pain and distress its community was experiencing because of the COVID-19 pandemic, the Campground hoped its revival would serve as a source of hope and encouragement to its community during challenging times.

55. City officials first became aware of the Campground's intention to host a revival on or about July 22, 2020, when Michael McMahon, the City's former Director of Community & Economic Development, discovered an online post advertising the revival. A true and correct copy of an email from Mr. McMahon relaying his discovery is attached hereto as Exhibit 12.

56. Immediately, City officials expressed hostility toward the event in an email, calling it a "scam" and taking the position that the Campground would need to obtain a permit with 2-weeks' notice before hosting its religious event. A true and correct copy of this email is attached hereto as Exhibit 13.

57. Upon information and belief, the City did not require the Campground to previously obtain a tent permit or an event permit to host similar tent revivals in the past.

58. City officials immediately contacted Jonathan Speckman, the Campground's president, to raise objections regarding the revival, including demanding that the Campground obtain permits for any tents to be used at the revival and a temporary event license.

59. During one of these conversations, Mr. McMahon pressured Mr. Speckman to cancel the revival, threatening that it was "not going to end well" for him if the Campground proceeded with its religious gathering.

60. Undeterred by the City's pressure, Mr. Speckman continued moving forward with plans for the revival. He emailed the City explaining the importance of the tent revival to the Campground's religious mission as well as his understanding that no event permit was required since the revival was on private property and no such permit had previously been required by the City. A true and correct copy of Mr. Speckman's email is attached hereto as Exhibit 14.

61. One day later, and impelled by neighborly impulse, the Campground submitted a tent application for a large tent the Campground planned on raising to protect any elderly persons attending the revival from the heat of the sun. A true and correct copy of the tent permit and the email enclosing it is attached hereto as Exhibit 15.

62. Nevertheless, when pressed by City officials to apply for a temporary event license, Mr. Speckman declined, noting that the City had never required church services to obtain such a license and that the Campground submitted the tent permit application in good faith even though such a permit was never required in the past. A true and correct copy of correspondence between Mr. McMahon and Mr. Speckman is attached hereto as Exhibit 16.

63. While the Campground was acting in good faith with Des Plaines, City officials hatched plans to prevent, limit, and prosecute the Campground for hosting the revival.

64. On July 23, 2020, Michael Bartholomew, the City Manager, sent an email to the Mayor and City Council informing them of the event and his proposed plan of action. Mr. Bartholomew recommended that the City require permits, limit the outdoor event to no more than 50 people, and ticket the Campground if it moved forward with the revival in defiance of the City. A true and correct of Mr. Bartholomew's email is attached hereto as Exhibit 17.

65. In response to Mr. Bartholomew's email, Andrew Goczkowski, a City Council member for the City's 8<sup>th</sup> Ward, expressed his desire to "break up" the event using additional

manpower from the county and state. A true and correct copy of Mr. Goczkowski's email is attached hereto as Exhibit 18.

66. Nevertheless, on July 24, 2020 the City, having no choice because all legal requirements were satisfied, approved the Campground's application for a tent permit. A true and correct copy of an email enclosing the approved permit is attached hereto as Exhibit 19.

67. However, the City again reiterated its objections to the revival by including an excerpt from Governor Pritzker's Executive Order No. 2020-043 regarding guidelines for religious gatherings with its approval of the tent application even though the Order had no bearing on the application. A true and correct copy of the email enclosing this excerpt is attached hereto as Exhibit 20.

68. The excerpt sent by the City intentionally excluded the portion of the Executive Order stating that the Order "does not limit the free exercise of religion." A true and correct copy of Executive Order No. 2020-043 is attached hereto as Exhibit 21 at 6.

69. Having obtained the tent permit, the Campground proceeded to hold its tent revival, which was attended by at least 150 people each night. The entire event was held outdoors, with plenty of space available for anyone wishing to social distance. Further, masks were available for anyone wishing to wear one.

70. A few days into the revival, members of the Des Plaines community took notice of the revival and began petitioning the City to shut it down.

71. Many objections were raised based on the size of the gathering and the fact that many in attendance were not wearing masks or engaging in what some believed to be proper social distancing. A true and correct copy of these objections is attached hereto as Exhibit 22.

72. The City responded to such concerns by implying that the Campground was acting “under the guise” of holding a religious event, emphasizing that it did not issue the Campground an event permit, and stating the City was coordinating with other state agencies to determine its next move. The City did not explain what the purpose of the revival would be, if it were not a religious event. A true and correct copy of an email from the City’s Chief of Police reflecting these sentiments is attached hereto as Exhibit 23.

73. As the revival continued meeting every night, additional members of the community lodged complaints and expressed hostility to the religious gathering, with some accusing the Campground of being a “cult” and others stating the Campground was creating a public health emergency. *See* Ex. 22. Either way, the Campground’s neighbors made clear their position: the City needed to kill the revival.

74. One citizen went as far as to suggest that the Campground “should be knocked down.” *See* Ex. 22 at 10.

75. With community pressure mounting, City officials redoubled their efforts to plot a multi-faceted response to the Campground.

76. Starting with public relations, the City officials exchanged emails discussing the following talking points: (1) the City “DID NOT” approve the event; (2) the City only issued a tent permit for the event because it had no choice; (3) police were monitoring the event “24/7”; (4) the City begrudgingly could not shut down the event because religious gatherings were exempted by the Governor’s Orders; (5) the City was considering issuing tickets to event organizers; and (6) the City Council intended to meet in the near-future regarding the Campground. A true and correct copy of an email from Mr. Bartholomew conveying this talking points is attached hereto as Exhibit 24.



77. Not all City officials agreed with this approach. Instead, some, like Councilmember Goczkowski, demanded a confrontation with the Campground, refusing to believe that “some bullshit” like the First Amendment or Governor’s Orders could stop the City from doing more to stop the revival. True and correct copies of Mr. Goczkowski’s emails are attached hereto as Exhibit 25.

78. Another Councilmember sent emails to constituents explaining the situation and accusing the Campground’s leaders of being “irresponsible property managers” that “foolishly gave permission” for the revival to occur on the Campground’s property. A true and correct copy of one such email is attached hereto as Exhibit 26.

79. This same Councilmember raised internal concerns regarding public statements made by City officials regarding the revival based on the City’s “DOJ history.” A true and correct copy of this correspondence is attached hereto as Exhibit 27.

80. The City’s “DOJ history” includes a 2015 federal lawsuit filed against the City by the United States Department of Justice for using its zoning ordinances to discriminate against an Islamic group after it purchased property in the City for religious use in 2013. *See Soc’y of Am. Bosnians & Herzegovinians v. City of Des Plaines*, No. 13 C 6594, 2017 WL 748528 (N.D. Ill. Feb. 26, 2017). The City ultimately settled the DOJ’s lawsuit months after a federal district court made multiple factual findings against the City. *See id.* A true and correct copy of the Settlement Agreement is attached hereto as Exhibit 28.

81. The City’s Settlement Agreement with the DOJ expired on June 6, 2020, a little over a month before the City began its discriminatory actions against the Campground. *See Ex. 28 at 13.*

82. Having learned nothing and in line with this history of religious hostility, City officials considered how to hijack the City’s ongoing, multi-year discussions regarding the Campground’s structures to retaliate against the Campground for holding the revival.

83. On July 27, 2020, just minutes after forwarding an email referring to the Campground as a “cult” to City officials, Mr. McMahon sent an additional email asking about “the status of the # of Demos and the # [of structures] that have been elevated recently” at the Campground. A true and correct copy of these emails is attached hereto as Exhibit 29 at 3.

84. Later that day, Councilmember Goczkowski created a post on his Facebook page relaying the City’s talking points and stating the City Council was scheduled to meet on August 3, 2020 to discuss “the operation and condition” of the Campground. *See* Mayor Andrew Goczkowski, FACEBOOK (July 27, 2020), <https://www.facebook.com/AndrewGoczkowski/posts/628652621360575>.

85. On July 28, 2020, the City issued a letter to its citizens reiterating those same talking points. The letter bemoaned the Campground’s “unwise decision” to host the revival and that the City was continuing to evaluate its options regarding the Campground’s gathering. A true and correct copy of this letter is attached hereto as Exhibit 30.

86. That same day, Mr. McMahon contacted Cynthia L. Nielsen—an employee for an organization called Shift2Green, who had previously provided services related to the Campground’s efforts to revitalize its property—to discuss her work with the Campground. A true and correct copy of an email from Ms. Nielsen discussing this conversation is attached hereto as Exhibit 31.

87. Upon information and belief, this meeting was part of an effort by City officials to obtain information regarding the Campground’s condition and operation to be used against the

Campground in its subsequent enforcement action, which was in retaliation for the exercise of the Campground's First Amendment rights.

88. At 6 p.m. on July 28, 2020, the City Council held an emergency closed session regarding "Security Procedures / Response to Public Health Danger." True and correct copies of an email discussing the session and an announcement of the session are attached hereto as Exhibit 32.

89. Upon information and belief, the City Council and other City officials in attendance at the July 28 emergency session set in motion a plan designed to retaliate against the Campground for hosting the revival with the goals of: (1) shutting down the tent revival; (2) preventing any future tent revivals at the Campground; and (3) shutting down the Campground permanently through an enforcement action based on flood damage to the Campground's structures.

90. The next day, Mayor Matthew Bogusz issued a Supplemental Order requiring all individuals sharing a space either indoors or outdoors to engage in social distancing and wear a facemask. The Supplemental Order also limited all gatherings to 50 people or less. A true and correct copy of the Supplemental Order is attached hereto as Exhibit 33 at 3.

91. The City served the Campground with the Supplemental Order the same day. Additionally, the City posted two large traffic signs outside of the Campground stating that face masks and social distancing were required at all public gatherings. True and correct copies of police records reflecting these events are attached hereto as Exhibit 34.



92. Upon information and belief, the City only posted such signs outside of the Campground.

93. The City hoped its Supplemental Order would shut down the tent revival, but the Campground did not back down. Instead, the Campground continued hosting its revival in the face of increasing pressure from the City to shut down. The confrontation between the Campground and the City continued gaining publicity, even attracting the attention of national media outlets.<sup>1</sup>

94. Around the same time, City officials received an email from Marilyn Sucoe, the NE Floodplain Program Coordinator for IDNR requesting an update on the progress related to the Campground's structures. A true and correct copy of Ms. Sucoe's email is attached hereto as Exhibit 35.

95. Upon information and belief, City officials contacted Ms. Sucoe in response to her email to discuss their plan for aggressive enforcement against the Campground as retaliation for the Campground's decision to host a religious revival. The City's animus is reflected in an email sent by Ms. Sucoe in October 2020 to another government official stating the Campground's structures were going to be demolished because the Campground has "lost the goodwill of the people of Des Plaines" after hosting "this summer's revival, which brought hundreds of people into the community during the pandemic." A true and correct copy of this email is attached hereto as Exhibit 36 at 2.

96. On August 2, 2020, the Campground's revival ended without a single known case of COVID-19 being traced back to the revival.

97. However, one day later, law enforcement for the City met with Mr. Speckman and issued 10 tickets against him personally, each of which sought to impose a fine of \$750 for every

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<sup>1</sup> See Caleb Parke, *Evangelist says 'revival' meetings targeted in Chicago: 'You can riot ... but worshipping God is dangerous'*, Fox News (July 31, 2020), <https://www.foxnews.com/us/illinois-coronavirus-pastor-chicago-order>.

alleged violation. *See* Ex. 34. The Cook County Circuit Court ultimately dismissed all of the tickets that the City issued to Mr. Speckman.

98. Moving forward with the next phase of the City’s planned retaliation against the Campground, the City Council convened on August 3, 2020. At that meeting, Mr. McMahon presented a Memorandum dated July 31, 2020 proposing Ordinance M-10-20, an ordinance designed to prevent future revivals by the Campground. A true and correct copy of the Minutes from the August 3, 2020 meeting is attached hereto as Exhibit 37. A true and correct copy of the Amended Agenda for the August 3, 2020 meeting and the July 31, 2020 Memorandum presented to the City Council is attached hereto as Exhibit 38.

99. Ordinance M-10-20 revised the Des Plaines Municipal Code so that a religious activity like the revival would constitute a “Temporary Event” requiring a license. It also forbade any temporary event constituting a nuisance, violating an order from the Mayor, or creating a risk of the spread of an infectious disease. It also amended the City’s Nuisance Ordinance to declare that any activity promoting the spread of an infectious disease constituted a nuisance. Finally, the Ordinance amended the Municipal Code so that property owners would be jointly liable for violations constituting a nuisance on their property. *See* Ex. 38 at 4, 8, 14.

100. The City Council passed Ordinance M-10-20 unanimously at the August 3 meeting. *See* Ex. 37 at 8.

101. Immediately after passing Ordinance M-10-20, the City Council went into a closed session to discuss “Probable or Imminent Litigation.” *See* Exs. 37 at 8, 38 at 3.

102. Upon information and belief, the “Probable or Imminent Litigation” discussed by City officials during the August 3, 2020 closed session was litigation related to the Campground’s structures.

103. Two days later, City officials—including Mr. McMahon, Alexander Franco, a Building Official for the City, and Mr. Duddles—gathered for a meeting entitled “Campground Demolition Status.” True and correct copies of Calendar invite acceptances from Mr. Duddles and Mr. Franco for the “Campground Demolition Status” meeting are attached hereto as Exhibit 39.

104. Upon information and belief, City officials met on August 5 to expand the list of violations the City planned to assert against the Campground related to its structures, including adding new demands to demolish buildings.

105. The City’s decision to expand its list of alleged violations against the Campground was not based on any new developments related to the conditions of the Campground’s structures. Instead, the City expanded its list to carry out the City’s planned retaliation against the Campground for its religious exercise just a few days earlier.

106. Unaware of the City’s planned retaliation, the Campground continued making progress on repairing and elevating its structures, including submitting new drawings for elevating one of its structures on August 21, 2020. A true and correct copy of the email submitting these new drawings is attached hereto as Exhibit 40.

107. While the Campground was acting in good faith, the City was planning its next move against the Campground, including gathering files on the Campground from Ms. Nielsen, drafting a Notice of Inspection for the Campground, and scheduling an inspection of the Campground for September 2, 2020.

108. On August 26, 2020, the City delivered a Notice of Inspection to the Campground demanding to enter the Campground’s property just one week later on September 2, 2020 for an expansive and intrusive inspection of all structures at the Property. A true and correct copy of the Notice of Inspection is attached hereto as Exhibit 41.

109. The Notice purported to be based in part on a recent flood event from May 2020, but upon information and belief, this basis was a mere pretext to enter the Campground's property and expand the City's list of alleged violations as City officials had already agreed to do in previous meetings after the revival. *See* Ex. 41 at 3.

110. Indeed, during a subsequent conversation between Mr. Speckman and Mr. McMahon regarding the Notice, Mr. McMahon asserted that one of the reasons for the Notice was the Campground's decision to freely exercise its religion. A true and correct copy of email correspondence between Mr. Speckman and City officials is attached hereto as Exhibit 42.

111. Despite the absence of any new basis for the invasive inspection contemplated by the City's Notice of Inspection, the Campground sought to cooperate with the City. It therefore requested the inspection be delayed two weeks to provide Mr. Speckman sufficient time to defend the 10 tickets issued by the City related to the revival. A true and correct copy of email correspondence among City officials on this topic is attached hereto as Exhibit 43.

112. On September 11, 2020, Mr. Speckman emailed Mr. McMahon expressing a desire to continue cooperating with the City regarding the Campground's structures and requesting that the City resolve certain outstanding items related to work completed by the Campground, including returning a \$10,000 bond required for a demolition permit and issuing permits and certificates of occupancy for a few of the Campground's structures, before proceeding with a new inspection. *See* Ex. 42 at 7–9.

113. In stark contrast to the amicable correspondence pre-dating the revival, Mr. McMahon responded to Mr. Speckman's email by threat of litigation if the Campground did not allow the inspection to move forward on September 14. *See id.* at 6–7.



114. After considering Mr. McMahon's aggressive demand, the Campground declined to allow the City onto its property to perform an inspection until the Campground's outstanding issues were resolved. The Campground also requested an in-person meeting with the Mayor and City officials to discuss all issues related to the Campground. *See id.* at 5–6.

115. The City ignored the Campground's request for an in-person meeting, and after issuing the requested refund, permits, and certificates, the City demanded to perform an inspection on October 14, 2020. *See id.* at 4–5.

116. The Campground again requested an in-person meeting with City officials, but City officials refused to engage with the Campground, instead opting to repeat threats of litigation if the Campground did not permit an inspection of its Property at a date and time of the City's choosing. *See id.* at 4.

117. As the Campground continued to act in good faith, hoping to be a good neighbor and continue its years-long working relationship with the City, the City continued acting in bad faith with the goal of using a lawsuit based on alleged ordinance violations to bankrupt the Campground and ultimately seize the Property from the Campground.

118. Indeed, at the same time that the Campground was requesting to meet with Des Plaines and scheduling a time for the City to inspect the Campground's Property, Mr. Duddles called Ms. Sucoe with IDNR to explain the City's plan of filing a lawsuit against the Campground, even though the inspection that would serve as predicate to the lawsuit had not even occurred. *See Ex. 36.*

119. On or about November 2, 2020, City officials conducted an inspection of the Campground's structures.

120. Upon information and belief, the City's inspection of the Campground's structures was cursory given the number of structures at issue and designed not to determine the objective structural integrity of each, but rather to allow the City to reach a pre-determined outcome that would ultimately lead to litigation against the Campground.

121. Four months later, on March 8, 2021, the City served its new inspection report on the Campground by fastening the report to signs posted at the Campground's entrances, even though it possessed the contact information for numerous Campground officials and could have easily mailed or emailed the report to the Campground. The City served this new inspection report as an attachment to a letter from its attorneys that cc'd Mr. McMahon, Mr. Duddles, and Mr. Bartholomew. A true and correct copy of an email regarding the posting of the report is attached hereto as Exhibit 44. A true and correct copy of the letter containing the report is attached hereto as Exhibit 45.

122. According to the inspection report, the City determined that 74 of the Campground's remaining structures needed to be demolished and that virtually all other structures needed to be renovated or elevated. The report provided no detailed basis for its findings as to each building beyond a spreadsheet stating that structural damage existed along with a few photographs of each structure. *See* Ex. 45 at 9, 14.

123. Quite unlike its previous inspection report from December 2018, which provided several months for the Campground to work with the City to create a compliance plan for the City's alleged violations for far fewer alleged violations, the City's new report gave the Campground a mere 15 days to obtain demolition permits and threatened to immediately file a lawsuit against the Campground if it failed to comply. *Id.* at 1.

124. The Campground responded to the City's notice with a letter dated March 19, 2021, reiterating its desire to continue working with the City to restore the Campground's structures. The letter included a detailed plan to demolish 24 structures over the course of two phases while the Campground also worked to save all other structures listed in the City's report. It also detailed initial steps being taken by the Campground to demolish 10 structures listed in the City's report and proposed barricading off structures that required immediate action until the Campground could take actions to address the City's concerns. Finally, the letter requested a 90-day extension of any threatened legal action to provide the Campground an opportunity to meet with City officials to fashion a way for the parties to amicably work together. A true and correct copies of an email attaching Mr. Speckman's March 19, 2021 letter and the attached letter are attached hereto as Exhibit 46 at 7-8.

125. The City refused to meet with the Campground or grant it additional time to craft a plan-of-action as it has previously done, opting instead to file this action with this Court on April 9, 2021. In addition to seeking the demolition of all 74 structures listed in the City's March 2021 report and recouping those costs from the Campground, the City also seeks daily fines for all alleged violations dating back to March 8, 2021. True and correct copies of the Complaint and Amended Complaint filed by the City are attached hereto as Exhibits 47 and 48 respectively.

126. Upon information and belief, the City has never taken this kind of aggressive enforcement action against any other similarly situated person within its jurisdiction based on alleged flood damage since the completion of Levee 50.

127. Upon information and belief, the actions taken by the City since the Campground's tent revival have been part of a coordinated effort that began in late July 2020 to retaliate against the Campground for defying the City and hosting a religious revival over the City's objections.

The City ultimately seeks to use these legal proceedings as a means to financially ruin the Campground and deprive it of the Property it has owned and operated since the 1860's.

128. Additionally, since filing this lawsuit, the City has an additional reason for seeking to demolish the Campground's structures: to increase its ranking in FEMA's Community Rating System ("CRS").

129. CRS is a voluntary incentive program administered by FEMA that encourages community floodplain management activities that exceed the minimum requirements of the National Flood Insurance Program's (NFIP). Upon completion of a CRS application, a city is eligible to receive a rating that typically results in a discount in flood insurance premium rates for residents with NFIP insurance policies.

130. Since filing this lawsuit, City officials have engaged in multiple discussions regarding how demolishing the Campground's structures would affect the City's CRS rating. True and correct copies of internal emails among City officials on this topic are attached hereto as Exhibit 49.

131. Indeed, the City is already exploring the costs and benefits of demolishing *all* Campground structures. A true and correct copy of an Excel sheet containing the cost of demolishing all Campground structures, among other things, is attached hereto as Exhibit 50.

132. Thus, in addition to demolishing the Campground's structures as retaliation for the Campground's religious exercise in 2020, the City is also seeking to demolish the structures so that it may impose substantial liens upon the Campground's Property and then acquire that Property without having to go through its usual eminent domain proceedings so that the City may then use the Campground's property for storage of floodwaters—something the City has already been doing since the construction of Levee 50.

133. In sum, the current legal proceedings are not about the City’s purported need to enforce floodway or building code ordinances, but rather are about retaliating against the Campground for its religious activities during the COVID-19 pandemic. The City is using damage to the Campground’s structures, which were caused by the City’s own flood control mechanisms, as a pretext to regulate the Campground out of existence, extinguish its religious ministry, and seize the Campground’s Property for the City’s own use as flood control.

134. To prevent these blatant abuses of power and unlawful actions, the Campground asserts the following counterclaims and affirmative defenses.

**CLAIMS FOR RELIEF<sup>2</sup>**

**FIRST CAUSE OF ACTION**

**First and Fourteenth Amendments — Free Exercise Clause  
(42 U.S.C. § 1983)**

135. The Campground incorporates and adopts by reference the allegations set forth above as if fully set forth herein.

136. The Free Exercise Clause of the First Amendment, made applicable to the states through the Fourteenth Amendment, prohibits any state action abridging the free exercise of religion.

137. State actions that discriminate on the basis of religion are subject to strict scrutiny and must be enjoined unless they are “justified by a compelling interest and [are] narrowly tailored to advance that interest.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993).

138. State action that is not generally applicable or neutral to religious exercise also receive strict scrutiny. *See Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021).

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<sup>2</sup> The Campground has previously asserted counterclaims that were originally listed as Counts I through IV in this action that were dismissed by this Court with prejudice. Thus, to preserve any right to appeal the Court’s holding on those claims, the Campground hereby incorporates by reference Counts I through IV of its First Amended Counterclaims.

139. Animus towards the free exercise of religion violates the Free Exercise Clause. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2422 n.1 (2022) (“A plaintiff may also prove a free exercise violation by showing that ‘official expressions of hostility’ to religion accompany laws or policies burdening religious exercise; in cases like that we have ‘set aside’ such policies without further inquiry.”); *Lukumi*, 508 U.S. at 534 (“The Free Exercise Clause protects against governmental hostility which is masked as well as overt. The Court must survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders.” (internal quotation marks and citation omitted)).

140. The Campground’s free exercise rights are violated in at least two ways by the City’s enforcement action.

141. *First*, the City’s enforcement action against the Campground constitutes pretextual state action motivated by hostility to the Campground’s 10-day tent revival that occurred in July and August of 2020.

142. The First Amendment forbids the government from enforcing its laws in a manner that is “hostile to the religious beliefs of affected citizens” or “passes judgment upon or presupposes the illegitimacy of religious beliefs and practices.” *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm’n*, 138 S. Ct. 1719, 1731 (2018).

143. “Factors relevant to the assessment of governmental neutrality include ‘the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body.’” *Id.* (quoting *Lukumi*, 508 U.S. at 534).

144. Here, the historical backdrop of the City’s enforcement action is a multi-year relationship in which the City and the Campground worked amicably to resolve issues related to structural damage to the Campground’s structures from flooding.

145. However, all of that changed once the Campground decided to host a 10-day religious tent revival in July and August of 2020.

146. Once the City learned of the Campground's revival, it took all of the following adverse actions in response to the Campground's religious exercise: (1) insisted that the Campground obtain a tent permit along with a temporary events license before hosting the revival; (2) issued a letter to its citizens calling the tent revival unwise and stating the City did not approve of the Campground's actions; (3) convened an emergency City Council meeting during the revival to discuss actions to be taken against the Campground for hosting the revival; (4) promulgated an emergency Supplemental Order from the Mayor requiring masking, social distancing, and limiting all gatherings to 50 or less people, knowing that over 50 people were gathered at the Campground, (5) posted two construction signs outside of the Campground displaying the Mayor's emergency order; (6) issued 10 citations to Mr. Speckman seeking to impose fines for the Campground's religious gathering; (7) passed Ordinance M-10-20 to prevent future revivals by the Campground; (8) requiring the Campground to demolish dozens more buildings after conducting a pretextual inspection in November 2020; and (9) initiating this enforcement action against the Campground.

147. Additionally, City officials displayed animus about the Campground's religious exercise, including calling it a "scam," suggesting the Campground was acting "under the guise" of religion, and calling the Campground "irresponsible property managers" that "foolishly gave permission" for the revival to occur on its Property.

148. Members of the community made additional disparaging remarks regarding the Campground's religious exercise, including accusing the Campground of being a "cult," stating the Campground was creating a public health emergency that needed to be shut down.

149. The City has never disclaimed or disavowed any of the animus demonstrated by its officials or citizens.

150. Against this backdrop, the City instigated its current enforcement action against the Campground.

151. During the midst of the Campground's revival and the controversy surrounding it, City officials discussed the number of demolitions and elevations of structures on the Campground's Property.

152. Additionally, in multiple closed sessions on July 28, 2020 and August 3, 2020, City officials discussed the operation and condition of the Campground, including how the City could expand the number of structures it sought to demolish at the Campground.

153. Mere days after the August 3 meeting, City officials met to discuss the “Campground Demolition Status.”

154. Within a month of the revival, City officials delivered a new Notice of Inspection to the Campground as a means of expanding its list of alleged violations against the Campground. Subsequent conversations with City officials reveal that this Notice was motivated in part by the Campground’s violation of the Mayor’s Supplemental Order.

155. Moreover, instead of continuing the multi-year working relationship that previously existed between the Campground and Des Plaines, the City began stonewalling all meeting requests from the Campground and used increasingly aggressive tactics against the Campground.

156. As stated by Ms. Sucoe from the IDNR, the City took the position that the Campground has “lost the goodwill of the people of Des Plaines” after hosting the revival, which “brought hundreds of people into the community during the pandemic.”

157. The U.S. Supreme Court has held that any state action that creates “even slight suspicion that proposals for state intervention stem from animosity to religion or distrust of its practices” must be set aside. *Lukumi*, 508 U.S. at 547.

158. Here, much more than a slight suspicion exists that the City’s enforcement proceeding is a pretextual state action motivated by the City’s animosity towards the Campground for hosting a religious revival during the COVID-19 pandemic. It must therefore be “set aside . . . without further inquiry.” *Kennedy*, 142 S. Ct. at 2422 n.1.

159. *Second*, the City’s enforcement action against the Campground substantially burdens the Campground’s religious exercise in a manner that is neither neutral nor generally applicable and that fails strict scrutiny.

160. The Campground uses its Property for religious purposes, including religious worship, Bible studies, and revivals. The Campground is also home to many who wish to live in



a religious community and engage in the Campground's religious activities together. The Campground wishes to use the structures on its Property to further these religious exercises.

161. By seeking to demolish over 75% of the Campground's structures, the City's enforcement proceeding substantially burdens the Campground's religious exercise. Further, by seeking to impose the costs of demolition and daily fines dating back to March 8, 2021, the City seeks to financially ruin the Campground and take its Property, thereby decimating the Campground's ability to engage in religious exercise.

162. The City's enforcement proceeding is not neutral because it is motivated by religious animosity.

163. Further, the City has not taken similar aggressive enforcement actions against similarly situated secular entities.

164. The City's enforcement action is not generally applicable because it is based upon an individualized assessment of the Campground's Property.

165. The City's purported interests in regulating unsafe structures are pretextual and therefore do not constitute a compelling interest.

166. Furthermore, even assuming the City's purported interests were compelling, the City's desired relief of demolishing 74 of the Campground's structures is not the least restrictive means of achieving that interest.

167. As a direct and proximate result of the City's conduct, the Campground has suffered and will continue to suffer irreparable harm, including the loss of its constitutional rights, entitling it to declaratory and injunctive relief.

**SECOND CAUSE OF ACTION**  
**Religious Land Use and Institutionalized Persons Act — Discrimination**  
**(42 U.S.C. § 2000cc(b))**

168. The Campground incorporates and adopts by reference the allegations set forth above as if fully set forth herein.

169. Under RLUIPA, the government may not “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).

170. The City’s enforcement action against the Campground constitutes the application of a land use regulation under RLUIPA. *Vill. of W. Dundee v. First United Methodist Church of W. Dundee*, 74 N.E.3d 144, 151 (Ill. App. Ct. (2d) 2017).

171. The City’s enforcement action against the Campground violates RLUIPA because it discriminates against the Campground on the basis of its religion and religious exercise.

172. Specifically, as detailed above, the City’s enforcement proceeding is a pretextual state action motivated by the City’s animosity towards the Campground for hosting a religious revival during the COVID-19 pandemic.

173. As a direct and proximate result of the City’s conduct, the Campground has suffered and will continue to suffer irreparable harm, including the loss of its constitutional rights, entitling it to declaratory and injunctive relief.

**THIRD CAUSE OF ACTION**  
**Religious Land Use and Institutionalized Persons Act — Substantial Burden**  
**(42 U.S.C. § 2000cc(a))**

174. The Campground incorporates and adopts by reference the allegations set forth above as if fully set forth herein.

175. Under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the government may not “impose or implement a land use regulation in a manner that imposes a substantial burden” on religious exercise — unless it shows that imposing that burden is the “least restrictive means” of furthering a “compelling” interest. 42 U.S.C. § 2000cc(a)(1).

176. For purposes of RLUIPA, the City burdened the Campground’s religious exercise by imposing or implementing a “land use regulation” that involved “individualized assessments of the proposed uses for the property involved.” 42 U.S.C. § 2000cc(a)(2)(C). In deciding to take

the Campground's Property by eminent domain, the City made individualized assessments about how the Property may be used.

177. The City's enforcement action substantially burdens the Campground's religious exercise by seeking to tear down over 75% percent of the structures located on the Property, thereby preventing the Campground from using the Property for religious worship, religious gatherings, and other activities central to its religious mission.

178. Further, the City seeks to use its enforcement action against the Campground as a means to financially cripple the Campground and use liens placed upon the property as a result of the enforcement action and fines as a means of depriving the Campground of ownership of the Property, thereby regulating the Campground out of existence.

179. The City's enforcement action fails strict scrutiny. The City's purported interest in regulating unsafe structures is a pretext masking its true motive of retaliating against the Campground for engaging in religious exercise by hosting a revival in July and August 2020.

180. Further, even assuming the City's purported interest constitutes a compelling interest, the City's demand that the Campground demolish 74 structures on the Property without allowing the Campground the opportunity to repair any alleged defects in the structures does not constitute the least restrictive means of achieving that interest.

181. As a direct and proximate result of the City's conduct, the Campground has suffered and will continue to suffer irreparable harm, including the loss of its constitutional rights, entitling it to declaratory and injunctive relief.

**FOURTH CAUSE OF ACTION**  
**Fifth and Fourteenth Amendments — Takings Clause**  
**(42 U.S.C. § 1983)**

182. The Campground incorporates and adopts by reference the allegations set forth above as if fully set forth herein.

183. The Takings Clause of the Fifth Amendment, made applicable to the states through the Fourteenth Amendment, bars the government from depriving private persons of property without a legitimate public use.

184. Further, The Takings Clause is “designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

185. The City’s enforcement proceeding constitutes a taking because the City is depriving the Campground of the use and enjoyment of its Property, including preventing the Campground from repairing and using its structures for religious exercise. *Vill. of W. Dundee*, 74 N.E.3d at 152–53.

186. Indeed, the City’s enforcement action seeks to use these legal proceedings as a means of financially ruining the Campground and depriving it of the Property it has owned and operated since the 1860’s.

187. The City has violated the Campground’s rights under the Takings Clause because its purported public purpose for demolishing 74 of the Campground’s structures is pretextual. Its true purpose is to retaliate against the Campground for hosting a religious revival during the COVID-19 pandemic.

188. Further, the City’s taking is without just compensation because far from offering any compensation for its taking, the City is seeking to impose liens and fines upon the Campground.

189. Additionally, the City’s operation of Levee 50 in a manner to cause the flooding of the Campground, damage to its structures, and interference with its religious use of its Property constitutes a taking. *Arkansas Game & Fish Comm’n v. United States*, 568 U.S. 23, 33–34 (2012).

190. Factors to consider when determining whether an invasion of water is a taking include: (1) the time and duration of the flooding, (2) whether the invasion of the property was intentional or whether it was a foreseeable result of an authorized government action, and (3) the character of the land and the owner's reasonable investment-backed expectations regarding the land's use. *Id.* at 38-39.

191. Here, Levee 50 began operating in the late 2000's. Since that time, the Campground has been repeatedly subjected to flooding, including major flooding events in 2013, 2017, and 2020.

192. The duration, intensity, and frequency of the floods experienced by the Campground have increased exponentially since Levee 50 began pumping water onto the Campground's Property.

193. This invasion of the Campground's Property with floodwaters was intentional and foreseeable, as demonstrated by FEMA's decision to redesignate the Campground's location as a regulatory floodway after the completion of Levee 50.

194. Further, a flood control report from the US Army Corp of Engineers indicates that operating more than one pump simultaneously at Levee 50 would result in the Campground being flooded, and upon information and belief, this is how the City operated the pump station. Thus, flooding of the Campground was foreseeable and intentional.

195. The City's operation of Levee 50 has changed the character of the Campground's Property, which it has owned and operated since the 1860's.

196. The floodwaters have substantially damaged many of the Campground's structures, many of which have existed for over 100 years, such that they may no longer be used for religious purposes by the Campground.

197. While the damage to the Campground was foreseeable to the City, the potential for damage to the Campground was unknown to the Campground and concealed from it by the City.

198. Further, the City's operation of Levee 50 has resulted in annual flood reduction benefits worth \$1.245 million to the City.

199. Despite the enormous benefit to the City and the substantial interference with the Campground's use and enjoyment of its Property, the Campground has not received any compensation from the City.

200. As a direct and proximate result of the City's conduct, the Campground has suffered and will continue to suffer irreparable harm, including the loss of its constitutional rights, entitling it to declaratory and injunctive relief.

201. Additionally, the Campground is entitled to just compensation in an amount to be determined at trial. Upon information and belief, that amount exceeds \$100,000.

**FIFTH CAUSE OF ACTION**  
**U.S. Constitution, Article I, Section 10 — Contracts Clause**  
**(42 U.S.C. § 1983)**

202. The Campground incorporates and adopts by reference the allegations set forth above as if fully set forth herein.

203. The State of Illinois granted the Campground Association a religious charter in 1867.

204. This charter formed a valid contract within the protection of the Contracts Clause. *See Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. 518, 651 (1819); *Davis v. Gray*, 83 U.S. 203, 232 (1872).

205. The Campground's charter grants it the power to, among other things, fix and adorn its land for use at its discretion.

206. The City's enforcement action substantially impairs the Campground's discretion regarding how to fix up the structures on its Property.

207. Specifically, the City is mandating that the Campground demolish 74 structures on the Property without providing it the option to elevate and repair the structures that can be repaired.

208. A central undertaking of the Campground's charter was the State of Illinois' granting of discretion to the Campground over all decisions related to the improvements on the Campground's property.

209. Further, the City's current enforcement proceeding was not foreseeable at the time of the charter's creation because the regulations the City seeks to impose were not in existence. Indeed, the Campground's land charter predates the creation of the City.

210. The City's enforcement proceeding does not advance a significant and legitimate public purpose because the City's purported purpose is pretextual. Its true purpose is to retaliate against the Campground for hosting a religious revival during the COVID-19 pandemic.

211. Even assuming the City's enforcement proceeding is advancing a significant and legitimate public purpose, it is not applying its ordinances in an appropriate or reasonable way.

212. Rather than allowing the Campground the option to elevate and repair its structures, the City seeks to demolish 74 structures even though many of those structures are salvageable.

213. Further, the demolition of 74 of the Campground's structures is not clearly necessary because the majority of these structures can be elevated and repaired.

214. As a direct and proximate result of the City's conduct, the Campground has suffered and will continue to suffer irreparable harm, including the loss of its constitutional rights, entitling it to declaratory and injunctive relief.

**SIXTH CAUSE OF ACTION**  
**Illinois Religious Freedom Restoration Act**  
**(775 Ill. Comp. Stat. 35/15)**

215. The Campground incorporates and adopts by reference the allegations set forth above as if fully set forth herein.

216. Under the Illinois Religious Freedom Restoration Act, the City "may not substantially burden [the Campground's] exercise of religion . . . unless it demonstrates that application of the burden to the [Campground] (i) is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of furthering that compelling governmental interest." 775 Ill. Comp. Stat. Ann. 35/15.

217. The City's enforcement action substantially burdens the Campground's religious exercise by seeking to tear down over 75% percent of the structures located on the Property,

thereby preventing the Campground from using the Property for religious worship, religious gatherings, and other activities central to its religious mission.

218. Further, the City seeks to use its enforcement action against the Campground as a means to financially cripple the Campground and use liens placed upon the property as a result of the enforcement action and fines as a means of depriving the Campground of ownership of the Property, thereby regulating the Campground out of existence.

219. The City's enforcement action fails strict scrutiny. The City's purported interest in regulating unsafe structures is a pretext masking its true motive of retaliating against the Campground for engaging in religious exercise by hosting a revival in July and August 2020.

220. Further, even assuming the City's purported interest constitutes a compelling interest, the City's demand that the Campground demolish 74 structures on the Property without allowing the Campground the opportunity to repair any alleged defects in the structures does not constitute the least restrictive means of achieving that interest.

221. As a direct and proximate result of the City's conduct, the Campground has suffered and will continue to suffer irreparable harm, including the loss of its constitutional rights, entitling it to declaratory and injunctive relief.

**SEVENTH CAUSE OF ACTION**  
**Illinois Constitution, Article I, Section 3 – Free Exercise Clause**  
**(Ill. Const. art. I, § 3)**

222. The Campground incorporates and adopts by reference the allegations set forth above as if fully set forth herein.

223. Article I, Section 3 of the Illinois Constitution states that “[t]he free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed, and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions . . . nor shall any preference be given by law to any religious denomination or mode of worship.” Ill. Const. art. I, § 3.



224. Illinois courts construe the protections in article I, section 3 of the Illinois Constitution as being coextensive with those in the First Amendment. *Rehfield v. Diocese of Joliet*, 182 N.E.3d 123, 134 (Ill. 2021).

225. The Campground’s free exercise rights are violated in at least two ways by the City’s enforcement action.

226. *First*, the City’s enforcement action against the Campground constitutes pretextual state action motivated by hostility to the Campground’s 10-day tent revival that occurred in July and August of 2020.

227. The First Amendment, and therefore the Illinois Constitution, forbids the government from enforcing its laws in a manner that is “hostile to the religious beliefs of affected citizens” or “passes judgment upon or presupposes the illegitimacy of religious beliefs and practices.” *See Masterpiece Cakeshop*, 138 S. Ct. at 1731.

228. “Factors relevant to the assessment of governmental neutrality include ‘the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body.’” *See id.* (quoting *Lukumi*, 508 U.S. at 547).

229. Here, the historical backdrop of the City’s enforcement action is a multi-year relationship in which the City and the Campground worked amicably to resolve issues related to structural damage to the Campground’s structures from flooding.

230. However, all of that changed once the Campground decided to host a 10-day religious tent revival in July and August of 2020.

231. Once the City learned of the Campground’s revival, it took all of the following adverse actions in response to the Campground’s religious exercise: (1) insisted that the Campground obtain a tent permit along with a temporary events license before hosting the revival; (2) issued a letter to its citizens calling the tent revival unwise and stating the City did not approve of the Campground’s actions; (3) convened an emergency City Council meeting during the revival

to discuss actions to be taken against the Campground for hosting the revival; (4) promulgated an emergency Supplemental Order from the Mayor requiring masking, social distancing, and limiting all gatherings to 50 or less people, knowing that over 50 people were gathered at the Campground, (5) posted two construction signs outside of the Campground displaying the Mayor's emergency order; (6) issued 10 citations to Mr. Speckman seeking to impose fines for the Campground's religious gathering; (7) passed Ordinance M-10-20 to prevent future revivals by the Campground; (8) requiring the Campground to demolish dozens more buildings after conducting a pretextual inspection in November 2020; and (9) initiating this enforcement action against the Campground.

232. Additionally, City officials displayed animus about the Campground's religious exercise, including calling it a "scam," suggesting the Campground was acting "under the guise" of religion, and calling the Campground "irresponsible property managers" that "foolishly gave permission" for the revival to occur on its Property.

233. Members of the community made additional disparaging remarks regarding the Campground's religious exercise, including accusing the Campground of being a "cult," stating the Campground was creating a public health emergency that needed to be shut down.

234. The City has never disclaimed or disavowed any of the animus demonstrated by its officials or citizens.

235. Against this backdrop, the City instigated its current enforcement action against the Campground.

236. During the midst of the Campground's revival and the controversy surrounding it, City officials discussed the number of demolitions and elevations of structures on the Campground's Property.

237. Additionally, in multiple closed sessions on July 28, 2020 and August 3, 2020, City officials discussed the operation and condition of the Campground, including how the City could expand the number of structures it sought to demolish at the Campground.

238. Mere days after the August 3 meeting, City officials met to discuss the "Campground Demolition Status."

239. Within a month of the revival, City officials delivered a new Notice of Inspection to the Campground as a means of expanding its list of alleged violations against the Campground. Subsequent conversations with City officials reveal that this Notice was motivated in part by the Campground's violation of the Mayor's Supplemental Order.

240. Moreover, instead of continuing the multi-year working relationship that previously existed between the Campground and Des Plaines, the City began stonewalling all meeting requests from the Campground and used increasingly aggressive tactics against the Campground.

241. As stated by Ms. Sucoe from the IDNR, the City took the position that the Campground has "lost the goodwill of the people of Des Plaines" after hosting the revival, which "brought hundreds of people into the community during the pandemic."

242. Any state action that creates "even slight suspicion that proposals for state intervention stem from animosity to religion or distrust of its practices" must be set aside. *See Lukumi*, 508 U.S. at 547.

243. Here, much more than a slight suspicion exists that the City's enforcement proceeding is a pretextual state action motivated by the City's animosity towards the Campground for hosting a religious revival during the COVID-19 pandemic. It must therefore be "set aside . . . without further inquiry." *See Kennedy*, 142 S. Ct. at 2422 n.1.

244. *Second*, the City's enforcement action against the Campground substantially burdens the Campground's religious exercise in a manner that is neither neutral nor generally applicable and that fails strict scrutiny.

245. The Campground uses its Property for religious purposes, including religious worship, Bible studies, and revivals. The Campground is also home to many who wish to live in a religious community and engage in the Campground's religious activities together. The Campground wishes to use the structures on its Property to further these religious exercises.

246. By seeking to demolish over 75% of the Campground's structures, the City's enforcement proceeding substantially burdens the Campground's religious exercise. Further, by seeking to impose the costs of demolition and daily fines dating back to March 8, 2021, the City

seeks to financially ruin the Campground and take its Property, thereby decimating the Campground's ability to engage in religious exercise.

247. The City's enforcement proceeding is not neutral because it is motivated by religious animosity.

248. The City's enforcement action is not generally applicable because it is based upon an individualized assessment of the Campground's Property.

249. The City's purported interests in regulating unsafe structures are pretextual and therefore do not constitute a compelling interest.

250. Furthermore, even assuming the City's purported interests were compelling, the City's desired relief of demolishing 74 of the Campground's structures is not the least restrictive means of achieving that interest.

251. As a direct and proximate result of the City's conduct, the Campground has suffered and will continue to suffer irreparable harm, including the loss of its constitutional rights, entitling it to declaratory and injunctive relief.

**EIGHTH CAUSE OF ACTION**  
**Illinois Constitution, Article I, Section 15 – Takings Clause**  
**(Ill. Const. art. I, § 15)**

252. The Campground incorporates and adopts by reference the allegations set forth above as if fully set forth herein.

253. Under Article I, Section 15 of the Illinois Constitution, “[p]rivate property shall not be taken or damaged for public use without just compensation.” Ill. Const. art. I, § 15.

254. The City's enforcement proceeding constitutes a taking because the City is depriving the Campground of the use and enjoyment of its Property, including preventing the Campground from repairing and using its structures for religious exercise. *Vill. of W. Dundee*, 74 N.E.3d at 152–53.

255. Indeed, the City's enforcement action seeks to use these legal proceedings as a means of financially ruining the Campground and depriving it of the Property it has owned and operated since the 1860's.

256. The City has violated the Campground's rights under the Takings Clause because its purported public purpose for demolishing 74 of the Campground's structures is pretextual. Its true purpose is to retaliate against the Campground for hosting a religious revival during the COVID-19 pandemic.

257. Further, the City's taking is without just compensation because far from offering any compensation for its taking, the City is seeking to impose liens and fines upon the Campground.

258. Additionally, the City's operation of Levee 50 in a manner to cause the flooding of the Campground, damage to its structures, and interference with its religious use of its Property constitutes a taking. *Hampton v. Metro. Water Reclamation Dist. of Greater Chi.*, 57 N.E.3d 1229, 1238 (Ill. 2016).

259. Factors to consider when determining whether an invasion of water is a taking include: (1) the time and duration of the flooding, (2) whether the invasion of the property was intentional or whether it was a foreseeable result of an authorized government action, and (3) the character of the land and the owner's reasonable investment-backed expectations regarding the land's use. *Id.* at 1239.

260. Here, Levee 50 began operating in the late 2000's. Since that time, the Campground has been repeatedly subjected to flooding, including major flooding events in 2013, 2017, and 2020.

261. The duration, intensity, and frequency of the floods experienced by the Campground have increased exponentially since Levee 50 began pumping water onto the Campground's Property.

262. This invasion of the Campground's Property with floodwaters was intentional and foreseeable, as demonstrated by FEMA's decision to redesignate the Campground's location as a regulatory floodway after the completion of Levee 50.

263. Further, a flood control report from the US Army Corp of Engineers indicates that operating more than one pump simultaneously at Levee 50 would result in the Campground being flooded, and upon information and belief, this is how the City operated the Campground. Thus, flooding of the Campground was foreseeable and intentional.

264. The City's operation of Levee 50 has changed the character of the Campground's Property, which it has owned and operated since the 1860's.

265. The floodwaters have substantially damaged many of the Campground's structures, many of which have existed for over 100 years, such that they may no longer be used for religious purposes by the Campground.

266. While the damage to the Campground was foreseeable to the City, the potential for damage to the Campground was unknown to the Campground and concealed from it by the City.

267. Further, the City's operation of Levee 50 has resulted in annual flood reduction benefits worth \$1.245 million to the City.

268. Despite the enormous benefit to the City and the substantial interference with the Campground's use and enjoyment of its Property, the Campground has not received any compensation from the City.

269. As a direct and proximate result of the City's conduct, the Campground has suffered and will continue to suffer irreparable harm, including the loss of its constitutional rights, entitling it to declaratory and injunctive relief.

270. Additionally, the Campground is entitled to just compensation in an amount to be determined at trial. Upon information and belief, that amount exceeds \$100,000.

**PRAYER FOR RELIEF**

The Campground respectfully asks the Court to:

1. Declare that the City’s enforcement action violates the Campground’s rights under the First, Fifth, and Fourteenth Amendments and Article I, Section 10 of U.S. Constitution, under RLUIPA, under Illinois RFRA, and under the Article I, Sections 3 and 15 of the Illinois Constitution;
2. Enjoin the City from taking any further steps to carry out its enforcement action against the Campground;
3. Award nominal damages to the Campground;
4. Award actual damages to the Campground;
5. Award the Campground attorney’s fees and costs under 42 U.S.C. § 1988 and 775 Ill. Comp. Stat. 35/20;
6. Award such other relief as the Court may deem just and proper.

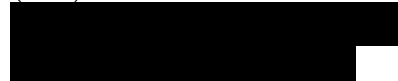
**JURY TRIAL DEMANDED**

The Campground demands a trial by jury of all issues so triable.

Dated: September 19, 2023

Respectfully Submitted,

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