

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

ALL SOULS CHURCH OF GOD IN )  
IN CHRIST, INC., and CURTIS )  
CONNALLY, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
COWETA COUNTY, GEORGIA )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No.

**JURY DEMANDED**

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

COME NOW the Plaintiffs, by counsel, and for their causes of action against the Defendant COWETA COUNTY, GEORGIA (“County”), allege and state the following:

**I. INTRODUCTION**

1. Defendant denied the Church’s request for a conditional use permit (“CUP”) to build a place of worship on property it purchased in Coweta County.

2. The County denied the CUP despite a recommendation by the Coweta County Planner that it be approved.

3. The application was denied even though all of the factors considered by the County when evaluating CUP applications weighed in favor of granting it.

4. Other churches and assemblies have routinely been granted CUPs by the County in identical or similar zoning districts.

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

6. To redress irreparable harm to their rights, Plaintiffs seek declaratory and injunctive relief for violation of their constitutional and statutory rights, and seek compensatory and nominal damages to redress past legal injuries.

## **II. JURISDICTION AND VENUE**

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

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

9. This Court is vested with authority to grant the requested

declaratory judgment by operation of 28 U.S.C. §§ 2201, *et seq.*

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

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

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

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

13. Plaintiff All Souls Church of God in Christ, Inc. (“Church”) is a religious organization incorporated under the laws of Georgia that currently leases space at 688 Highway 29 North, Newnan, Georgia.

12. The Church is a predominantly African-American Christian church.

13. It has between 40 and 50 members.

14. Plaintiff Curtis Connally is the Pastor of the Church and resides in Newnan, Georgia.

15. Defendant County is a municipal corporation located in the State

of Georgia, existing under the Constitution and laws of the State of Georgia, and is a corporate entity capable of suing and being sued.

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

16. In or around June, 2008, the Church purchased a 5.0 acre rural tract of land in Coweta County located at 401 Buddy West Road, Newnan, Georgia (“Property”). A map of the Property is attached as Exhibit A.

17. The tract is zoned Rural Conservation (RC).

18. Churches or other places of worship may locate in the RC District as a conditional use. Zoning and Development Ordinance of Coweta County, Georgia, Art. 7 § 75 (“Zoning Code”).<sup>1</sup>

19. The Church wants to use the Property for holding worship services, including reading the Bible, singing religious songs, praying, and sharing biblical insight.

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

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

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<sup>1</sup> The Zoning Code is a public document and can be accessed at [http://library2.municode.com/default-test/home.htm?infobase=14179&doc\\_action=whatsnew](http://library2.municode.com/default-test/home.htm?infobase=14179&doc_action=whatsnew). All references herein to “Art. \_\_\_ § \_\_\_” refer to the Zoning Code, which is incorporated by reference, and can be accessed by following this link, and then clicking on “Appendix A Zoning Development.”

biblical insight.

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

22. Individual and communal prayer is a central tenet of Christianity and Plaintiffs' religious beliefs.

23. Plaintiffs believe that they are to regularly assemble with others to pray, study the Bible, sing religious songs, and share biblical insight on moral, cultural, and civic issues through education and training as an act of worship.

### **The Church's Application for a CUP**

24. In or around October, 2009, the Church commissioned architectural plans for a new church building on the Property.

25. The Church spent \$3,610.00 on these plans, engineering studies, and application fees.

26. The plans include an 8,400 sq. ft. church facility with a sanctuary with a maximum capacity of 295 people, an adjoining fellowship hall with classrooms, and a parking lot with approximately 75 parking spaces. A copy the plans are attached as Exhibit B.

27. On or about November 30, 2009, Pastor Curtis Connally, on behalf of the Church, applied for a CUP with the Coweta County Board of Zoning and Appeals (“BZA”). A copy of the Application is attached as Exhibit C.

28. The BZA acts as a review board on all variances and conditional use applications and makes a final recommendation to the Coweta County Board of Commissioners. Art. 28 § 284.

29. The BZA is required to receive and carefully consider the recommendations of the Coweta County Planner on all matters presented to the board. Art. 28 § 285.

30. On or about December 18, 2009, the Coweta County Planner submitted a recommendation to the BZA that the Church’s application for a CUP be approved. A copy of the recommendation is attached as Exhibit D.

31. The Planner’s recommendation concluded, *inter alia*, that “the proposal should not have any adverse affect on aesthetic values of the surrounding area..., [and] the proposed use is compatible with land use goals for the area....”

### **The BZA Hearing on the CUP**

32. The BZA held a public hearing on the Church’s CUP application

on January 5, 2010.

33. Members of the Church attended this hearing.

34. Approximately nine individuals who own property near the Church's Property attended this hearing.

35. All of these individuals owning neighboring property are Caucasians.

36. After the hearing, the BZA made a recommendation to the Coweta County Board of Commissioners that the Church's application for a CUP be denied, despite the recommendation of the County Planner.

#### **The Board of Commissioners Hearing on the CUP**

37. On January 19, 2010, the Board of Commissioners held a hearing on the Church's application for a CUP.

38. The Board of Commissioners considers the following factors when ruling on a conditional use or variance:

- 1) Whether the variance or conditional use will permit a use that is suitable in view of the use and development of adjacent and nearby property;
- (2) Whether the variance or conditional use will adversely affect the existing use or usability of adjacent or nearby property;

- (3) Whether or not the special circumstances contribute [sic] to the request are peculiar to the particular property involved;
- (4) Whether the variance or conditional use will result in a use, which will or could cause an excessive, or burdensome use of existing streets, transportation facilities, utilities, or schools;
- (5) Whether there are other existing or changing conditions affecting the use and development of the property, which gives supportive grounds for either approval, or disapproval of the variance or conditional use;
- (6) Whether or not the situation for which the request is being made poses an unnecessary hardship for the applicant; and
- (7) Whether or not the request is due to an intentional action of the applicant to violate the requirements of this ordinance.

Art. 28 § 284.1.

39. The Board of Commissioners also considers the following additional factors when ruling on a conditional use:

- 1) The available existing street system is adequate to efficiently and safely accommodate the traffic, which will be generated by the proposed use or development;

- (2) The existing public utilities, facilities and services are adequate to accommodate the proposed use or development;
- (3) The use or development does not generate or cause conditions such as noise, light, glare, odor, or similar objectionable features which would reduce the value, use or enjoyment of surrounding properties;
- (4) The proposed building(s) are not out of character with the surrounding area and zoning district in terms of building construction and general aesthetic appearance to the extent that the proposed building will have a detrimental impact on the value of nearby homes, businesses, or other properties.

Art. 28 § 284.1.

40. The County Planner's recommendation considered all of these factors and determined that they either weighed in favor of granting the CUP, or were not applicable. *See Exhibit D.*

41. The County Planner's recommendation also included some proposed conditions the Church would have to meet if the CUP were granted.

42. Pastor Connally testified at the January 19, 2010 hearing and said that the Church was willing to meet those conditions.

43. He also said that, before following through with the purchase of the property, he was told by County staff that the property could be used for a church.

44. In addition to Pastor Connally, six other people spoke in favor of granting the Church's application for a CUP at the January 19, 2010 hearing.

45. Nine people spoke in opposition to granting the CUP.

46. On a motion from Commissioner Randy Collins, the Board of Commissioners voted to deny the Church's application for a CUP, three to two.

47. The Board of Commissioners did not state its reason for the denial on the record.

#### **CUPs Granted to Other Assemblies**

48. Upon information and belief, eight churches have been granted a CUP by the Board of Commissioners in the RC district over the past four years. *See Exhibit E.*

49. Upon information and belief an additional five churches have been granted a CUP by the Board of Commissioners in either the RC or another zoning district in the past four years. *See Exhibit E.*

50. Upon information and belief, the Mary Ray Memorial School

Trustees, Inc. was granted a CUP in the RC district to use a building for a club and community center by the Board of Commissioners on April 20, 2010. See Minutes of the Coweta County Board of Commissioners April 20, 2010 meeting attached as Exhibit F.

#### **V. ALLEGATIONS OF LAW**

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

52. Plaintiffs have no adequate or speedy remedy at law to correct or redress the deprivations of their federal and state rights by Defendant.

53. Unless and until enforcement of the Defendant's Zoning Code and its application of the Zoning Code to discriminate against the Plaintiffs is enjoined, the Plaintiffs will suffer and continue to suffer irreparable injury to their federal rights.

#### **COUNT 1 – VIOLATION OF RLUIPA**

54. Plaintiffs reallege all matters set forth above.

55. Defendant's Zoning Code violates Plaintiffs' free exercise of religion as guaranteed by RLUIPA, 42 U.S.C. §2000cc, *et seq.*

56. Plaintiffs' religious beliefs are sincerely and deeply held.

57. Defendant's Zoning Code, on its face and as applied, imposes a substantial burden on Plaintiffs' religious exercise.

58. Defendant's Zoning Code is not in furtherance of a compelling governmental purpose.

59. Defendant's Zoning Code is not the least restrictive means of furthering any governmental interest.

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

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

62. Defendant's Zoning Code permits it to make individualized assessments of the proposed uses of property within the County, including the Property at issue in this case.

63. Defendant's application of its Zoning Code treats Plaintiffs on less than equal terms with non-religious organizations, institutions, and assemblies.

64. Defendants' application of its Zoning Code discriminates against

Plaintiffs on the basis of religion as compared to other religious assemblies.

65. Defendant's application of its Zoning Code unreasonably limits Plaintiffs within the zoning jurisdiction of the Property.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

**COUNT 2 - VIOLATION OF THE FREE EXERCISE CLAUSE  
OF THE FIRST AMENDMENT**

66. Plaintiffs reallege all matters set forth above.

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

68. Plaintiffs' religious beliefs are sincerely and deeply held.

69. Defendant's Zoning Code substantially burdens Plaintiffs' sincerely held religious beliefs.

70. Defendant's Zoning Code is neither a neutral nor general law of applicability.

71. Defendant's Zoning Code, as applied to Plaintiffs, specifically and discriminatorily targets religion and religious worship.

72. Defendant's Zoning Code contains a system of individualized exemptions such that it is not neutral and generally applicable.

73. There is no compelling government interest sufficient to justify Defendant's Zoning Code and its application to Plaintiffs.

74. Defendant's Zoning Code is not the least restrictive means to accomplish any permissible government purpose sought to be served by the Zoning Code.

75. Defendant's Zoning Code is not narrowly tailored, as required for restrictions on Plaintiffs' free exercise of religion.

76. Defendant has failed or refused to accommodate Plaintiffs' sincerely held religious beliefs.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

**COUNT 3 - VIOLATION OF THE EQUAL PROTECTION  
CLAUSE OF THE FOURTEENTH AMENDMENT**

77. Plaintiffs reallege all matters set forth above.

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

79. Defendant applies its Zoning Code in a way that is an unconstitutional abridgement of Plaintiffs' affirmative right to equal protection of the laws.

80. Defendant has granted numerous other religious organizations' application for a CUP in the RC zoning district.

81. Upon information and belief, most of these other religious organizations are predominantly White.

82. Defendant treats other religious organizations, assemblies and institutions more favorably than it treats the Church based on religion, race, and speech.

83. Defendant has granted nonreligious organizations' application for a CUP in the RC zoning district.

84. Defendant treats similarly-situated nonreligious organizations, assemblies and institutions more favorably than it treats the Church.

85. Defendant's Zoning Code is an unconstitutional abridgement of Plaintiffs' right to equal protection of the law because Defendant treats Plaintiffs less favorably than other similarly situated organizations and businesses on the basis of Plaintiffs' religious beliefs, race, and the content and viewpoint of their expression.

86. Defendant's Zoning Code is not supported by a compelling governmental interest sufficient to justify its enactment or enforcement against Plaintiffs.

87. Defendant's Zoning Code is not the least restrictive means to accomplish any permissible government purpose sought to be served by the Zoning Code.

88. Defendant's Zoning Code does not serve a significant government interest.

89. Defendant's Zoning Code does not leave open ample alternative channels of communication.

90. Defendant's actions are irrational and unreasonable, and impose irrational and unjustifiable restrictions on constitutionally protected speech.

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

WHEREFORE, Plaintiffs respectfully pray that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

**COUNT 4 - VIOLATION OF FREE SPEECH UNDER  
THE FIRST AMENDMENT OF THE UNITED STATES  
CONSTITUTION**

92. Plaintiffs reallege all matters set forth above.

93. Defendant's Zoning Code, on its face and as applied, violates the Free Speech Clause of the First Amendment to the United States

Constitution as incorporated and applied to the states through the Fourteenth Amendment.

94. To determine whether a proposed use is a “Church or other place of worship,” under the Zoning Code, the County must analyze the content and viewpoint of speech and other expressive activity.

95. Defendant’s Zoning Code, facially and as applied, restricts Plaintiffs’ speech based on religious viewpoint and content.

96. Defendant’s Zoning Code is underinclusive as it does not place similar restrictions on nonreligious assemblies, institutions or organizations which do not incorporate religious speech and viewpoints.

97. Defendant’s Zoning Code is overbroad because it sweeps within its ambit protected First Amendment speech, thus violating the rights of Plaintiffs and third parties not before the Court.

98. Defendant’s CUP process operates as a prior restraint on speech because Plaintiffs and other organizations must obtain permission before engaging in religious speech, such as prayer, Bible reading and discussion, or singing religious songs with others in a place of worship in the RC zoning district (as well as many other districts in the County).

99. The factors used by Defendants in evaluating a CUP application

are not objective and specific, and allow for unbridled discretion.

100. Defendant's Zoning Code does not leave open ample alternative channels of communication.

101. Defendant does not have a compelling interest for the Zoning Code.

102. Defendant's Zoning Code is not narrowly tailored to achieve a compelling interest.

103. Defendant's Zoning Code is not the least restrictive means of achieving a compelling interest.

104. Defendant's Zoning Code thus constitutes a violation of Plaintiffs' rights under the Free Speech Clause of the First Amendment to the United States Constitution as incorporated and applied to state action under the Fourteenth Amendment.

WHEREFORE, Plaintiffs respectfully pray that this Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

**COUNT 5 - VIOLATION OF THE RIGHT TO PEACEABLE  
ASSEMBLY UNDER THE FIRST AMENDMENT**

105. Plaintiffs reallege all matters set forth above.

106. Plaintiffs believe that they must regularly associate to express their devotion to God through communal prayer and worship, discussion

regarding religion, and other religious speech.

107. The Defendant's Zoning Code prohibits Plaintiffs from assembling for religious speech and other religious purposes in certain districts, and specifically within the RC zoning district without prior permission.

108. The County has no compelling interest in limiting the peaceable assembly of Plaintiffs.

109. The Defendant's Zoning Code thus constitutes a violation of Plaintiffs' right of peaceable assembly under First Amendment to the United States Constitution, as incorporated and applied to state action under the Fourteenth Amendment.

WHEREFORE, Plaintiffs respectfully pray that this Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

**COUNT 6 - VIOLATION OF THE DUE PROCESS CLAUSE OF  
THE FOURTEENTH AMENDMENT**

110. Plaintiffs reallege all matters set forth above.

111. The Zoning Code does not define "Church or other place of worship," and therefore does not adequately explain in which districts these uses are permitted or prohibited.

112. The factors the County uses to determine whether a CUP should

be granted are not precise and objective, but are vague and allow for unbridled discretion and discrimination.

113. There are no guidelines to assist County officials in determining whether a use is a Church or other place of worship.

114. There are no guidelines to assist County officials in applying the facts for determining whether an applicant is entitled to a CUP.

115. The Zoning Code does not give reasonable notice of where Churches or other places of worship are permitted or prohibited.

116. The vagueness of the Zoning Code does not give County officials adequate guidance to enforce it, allowing for unbridled discretion which could lead to viewpoint discrimination.

117. The Zoning Code chills First Amendment rights and constitutes a violation of Plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

118. The Church was denied substantive due process when the County ignored the recommendation of the County Planner and rejected the Church's application for a CUP.

119. The County's decision to reject the Church's application for a CUP was arbitrary, capricious and unreasonable because it bore no

substantial relation to issues of public health, safety, welfare, or morals.

120. The Church has a property interest in the CUP being granted because it expended money in good faith reliance on the County following its written procedures, and representations by County officials that the Property could be used for a Church.

121. The County deprived the Plaintiffs of their federally protected fundamental interest in not being discriminated against because of religion, speech content, or race.

122. This deprivation is a result of an abuse of governmental power.

123. This deprivation was undertaken for an improper motive of discriminating based on religion, speech, and race, by means that were pretextual, arbitrary and capricious, and without any rational basis.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

**COUNT 7 - VIOLATION OF THE ESTABLISHMENT CLAUSE OF  
THE FIRST AMENDMENT**

124. Plaintiffs reallege all matters set forth above.

125. The First Amendment's Establishment Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits the establishment of any religion and/or

excessive government entanglement with religion.

126. To determine whether a gathering of persons is a “Church or other place of worship,” the County must analyze the content of speech and other expressive activity.

127. Obtaining sufficient information for the County to analyze the content of speech and other expressive activity of the Plaintiffs requires ongoing, comprehensive government surveillance that impermissibly entangles the County with religion and thus violates the Establishment Clause of the First Amendment to the United States Constitution as incorporated and applied to state action under the Fourteenth Amendment.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

**PRAYER FOR RELIEF**

Plaintiffs pray for judgment as follows:

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

enforcing the challenged provisions of its Zoning Code against Plaintiffs so as to prohibit them from constructing a building for meeting with others on the Property for communal prayer, Bible reading, discussion of biblical concepts, singing religious songs, or from otherwise conducting church services on the Property;

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

d. That this Court grant to Plaintiffs compensatory and nominal damages;

e. That this Court grant to Plaintiffs an award of their costs of litigation, including reasonable attorneys' fees and expenses;

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

Respectfully submitted this 11th day of February, 2011.

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

s/ Kevin H. Theriot

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\*Motion *pro hac vice* to be submitted