



a breakfast at the Church site and demanding that the Church file for and receive approval for a rezoning of the Church site as a Planned Institutional District – Housing and Supporting Services (PID-HSS).

The April 19, 2017 Cease and Desist Order (ORDER) was unauthorized under City Code and unconstitutional on its face and as applied, pursuant to the Iowa Constitution and the United States Constitution. The ORDER violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). Neither Defendant Davenport nor Flynn have ever rescinded the Order against the Church since its issuance. Plaintiffs Pastor Swope and Pastor Cantwell also bring a defamation of character action against Defendant Raymond A. Ambrose for calling them a “Liar” and “Deceptive”.

The Church seeks a declaration that the Church is protected from the ORDER pursuant to the Iowa Constitution, United States Constitution and Federal RLUIPA law. The Church seeks a preliminary injunction from this Court and requests a jury trial on damages caused to the Church by Defendants closure order and reasonable attorney fees pursuant to statute.

### ***PARTIES***

1. Plaintiff **COMPASSION CHURCH, INC. (CHURCH)** is an actively registered 501(c)(3) non-profit religious organization who legally owns and operates a church as well as a ministry to their church, Timothy’s House of Hope, at 1602 Washington Street, Davenport, Iowa located in the fourth ward of Davenport (the Site).

2. Plaintiff **PASTOR JAMES SWOPE (PASTOR SWOPE)** is a resident of Davenport, Iowa, is the founder of the Church, is a Pastor at the Church and has been licensed as an ordained minister of God since 1974.

3. Plaintiff **PASTOR NICHOLAS CANTWELL (PASTOR CANTWELL)** is a resident of Davenport, Iowa, is a Pastor at the Church, is the registered agent of the Church and has been licensed as an ordained minister of God since 2007.

4. Defendant **CITY OF DAVENPORT, IOWA (DAVENPORT)** is a duly formed Iowa municipal corporation organized and existing under the laws of the State of Iowa with its principal place of business at 226 West 4<sup>th</sup> Street, Davenport, Iowa.

5. Defendant **RAYMOND A. AMBROSE (AMBROSE)** is a resident of Davenport, Iowa and is the elected fourth Ward Alderman of Davenport and was the fourth Ward Alderman at all times relevant to this Complaint.

6. Defendant **MATTHEW G. FLYNN (FLYNN)** is a resident of Davenport, an employee of Davenport whose job title is “Senior Planning Manager” and is Davenport’s Zoning Administrator.

7. Defendant **MARIA DICKMANN (DICKMANN)** is a Davenport resident and is the elected second Ward Alderman of Davenport and was the second Ward Alderman at all times relevant to this Complaint.

### ***JURISDICTION***

8. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, this being a civil action arising under the Constitution and the laws of the United States. Jurisdiction is also conferred upon this Court by (i) 28 U.S.C. §§ 1343(a)(3) and (4) to redress deprivations under color of state law any right, privilege, or immunity secured by the Constitution; (ii) for violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA) 42 U.S.C. § 2000cc-2(f); (iii) 42 U.S.C. § 1983 for damages resulting from constitutional rights violations; and, (iv) 42 U.S.C. § 1988 for reasonable attorney fees and costs for this action to redress deprivations under color

of law of the rights, privileges and immunities secured by the Constitution of the United States. Concurrent jurisdiction is conferred upon this Court by Article 3, Section 1 of the Iowa Constitution and the Iowa Bill of Rights.

***VENUE***

9. Venue is proper in the Southern District of Iowa, Eastern Division, since Defendants reside in this District, 28 U.S.C. § 1391(b)(1), because Plaintiffs and Defendants reside there and since substantial events, including the laws, actions and policies giving rise to this complaint occurred in Davenport, Iowa, 28 U.S.C. § 1391(b)(2).

**FACTS GIVING RISE TO PLAINTIFFS' CLAIMS OF FEDERAL AND STATE CONSTITUTIONAL CIVIL RIGHTS VIOLATIONS, FEDERAL RELIGIOUS LAND USE ACT (RLUIPA) STATUTORY VIOLATIONS AND 42 U.S.C. § 1983 CIVIL RIGHTS VIOLATIONS.**

**A. BACKGROUND**

**1. Compassion Church 501(c)(3) Religious History**

10. The Church and its ministry is an Iowa 501(c)(3) not for profit religious organization continuously registered with the Iowa Secretary of State since 1984, a period of 33 years.

11. The Church is a religious organization that conducts religious services, Bible readings, evangelism, and has a pastoral ministry that serves breakfast to its congregation.

12. Pastor Jim Swope has dedicated his life to Church ministry pastoral work since his son Timothy passed at the age of 22 in 2006.

13. The Church has operated as a religious non-profit institution at 3414 Rockingham Road, Davenport, Iowa since 2005.

14. During the past 8 years, the Church has served a breakfast to members of its congregation, including the poor, the needy and the homeless, in conjunction with its church religious services.

15. Timothy's House of Hope, the church religious ministry, named after Pastor Jim Swope's late son, Timothy, operated in a "C-2" General Commercial District at 1407 West 4th Street, Davenport, Iowa from 2009 through 2017 without any interference, prohibitions or Cease and Desist Orders from Davenport.

**2. The Compassion Church Purchase of a Building at 1602 Washington Street, Davenport, Iowa in 2017 as a Church Site and Operation of the Timothy's House of Hope Ministry.**

16. In 2016 the Church began looking for another site for operation of their Church and Timothy's House of Hope.

17. Pastor Swope and Pastor Cantwell hired realtor Dan Ryan (Ryan) of Remax Realty and found a suitable church site, the Mohassan Grotto (Grotto) building, located at 1602 Washington Street, Davenport, Iowa that has off-street parking.

18. In January of 2017 Ryan contacted Davenport and was told that a Church was a permitted use in a "C-2" zoned district and could operate lawfully at the Grotto site.

19. The Church purchased the Grotto building from the Mohassan Grotto located at 1602 Washington Street for sixty-five thousand dollars (\$65,000.00 ) in 2017.

20. The real estate closing at 1602 Washington Street, Davenport, Iowa occurred on February 17, 2017. *See attached Closing Statement for 1602 Washington Street, Davenport, Iowa, Ex. A.*

21. The one-hundred and fifty (150) year-old Grotto building purchased by the Church was placed in the National Register of Historic places and designated as a historic landmark by the National Park Service in 1979 under the name of "Northwest Davenport Turner Society Hall."

22. After the purchase of the Grotto building on February 17, 2017, Pastor Swope and Pastor Cantwell painted the following words: “Timothy’s House of Hope – Helping the hungry, hurting, and homeless, one need at a time” over a preexisting Grotto sign attached to the existing fence of the property.

23. Timothy’s House of Hope is a ministry of Compassion Church that serves the congregation, including the poor, the infirm, and the needy.

24. The real property and building located at 1602 Washington Street is zoned as a “C-2” general commercial property by Davenport and located on a lot size of 0.87 acres and is surrounded by commercial and residential uses. *See attached Davenport “C-2” General Commercial District, Ex. B.*

25. A “C-2” general commercial district allows a church to operate as a legal use without any special use permit pursuant to the Davenport Zoning Ordinance.<sup>1</sup>

26. The Grotto building previously housed a bingo parlor, operated a kitchen, which served meals and contained two bars selling beer and alcohol to large gatherings of individuals.

27. Pastor Swope and Pastor Cantwell used the building’s existing kitchen to begin serving a breakfast to small groups of men, women and children on April 10, 2017 from 1602 Washington Street, Davenport, Iowa while conducting religious services at the site.

28. The Church’s breakfast service is of a smaller scale and serves fewer people than the Grotto’s pervious service of food at the same premises.

29. Service of a breakfast is a typical activity for a Church.

30. The Church does not sell or serve beer or alcohol at the Church site, while the Grotto did.

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<sup>1</sup> A “C-2” district allows a wide variety of commercial and residential uses, including restaurants and bars, as well as a Church, as a matter of right without any special use permit.

31. Pastor Swope and Pastor Cantwell began to serve a breakfast while saying prayers and orally reading from the Holy Bible on April 10, 2017 at the Church site.

## **B. 2017 ACTS TAKEN AGAINST THE CHURCH BY DEFENDANTS**

### **1. Washington Street Business Owners Complaints to Ambrose about the Church and Ambrose's April 8, 2017 and April 15, 2017 Statements to Pastor Swope Regarding the Church's Operation at the Site.**

32. Ambrose received complaints from certain ward business owners located on Washington Street, including Rick Piatt (Piatt), owner of Rick's Wreck Repair and the President of the Historic Washington Street District Association (Association), who believed that because the Church was serving a breakfast to the poor and homeless, crime would increase in the neighborhood and the Church would be a "nuisance" in the neighborhood.

33. Ambrose listened to Piatt and the Association and determined that he did not want the Church serving a breakfast in Davenport's fourth ward because he thought it would attract the poor and the homeless and increase crime. Ambrose orally and by E-mail communicated that sentiment to Flynn and other individuals at Davenport City Hall.

34. Ambrose communicated via telephone with Pastor Swope on April 8, 2017 to express his dissatisfaction with the pending operation of the Church at the site and Ambrose declared that the Church would bring in homeless people to the fourth ward.

35. On or about April 8, 2017 Ambrose orally stated to Pastor Swope: "We don't want bums up here."

36. On or about April 8, 2017 Ambrose orally stated to Pastor Swope: "Save your preaching for your congregation."

37. On or about April 8, 2017 Ambrose orally stated to Pastor Swope: "You can start by taking your sign down and come to our monthly Business Association meeting."

38. On or about April 8, 2017 Ambrose orally stated to Pastor Swope: “We don’t want your sign on Washington Street.”

39. On April 11, 2017 Pastor Swope met with the Washington Street Business Association at their regular meeting and spoke to the Association and answered questions from the Association about the Church’s operation.

40. On or about April 15, 2017 Ambrose and Pastor Swope again talked via telephone regarding Swope’s operation of the Church at the site.

41. On or about April 15, 2017 Ambrose orally stated to Pastor Swope: “As long as you had the bums (the homeless) downtown you were alright.”

42. On or about April 15, 2017 Ambrose orally stated to Pastor Swope: “Now you brought them (the homeless) up on top of the hill.”

43. On or about April 15, 2017 Ambrose orally stated to Pastor Swope: “We don’t want them (the homeless) up here.”

44. On or about April 15, 2017 Ambrose orally stated to Pastor Swope: “I’ve worked too hard. I will stand behind the business owners instead of the homeless.”

45. On or about April 15, 2017 Ambrose orally stated to Pastor Swope: “You lied. You should have done your homework. You should have come up here two months before you bought the building and talked to the business owners.”

46. On or about April 15, 2017 Ambrose orally stated to Pastor Swope: “We don’t want them (the homeless) hanging around.”

47. On or about April 15, 2017 Ambrose orally stated to Pastor Swope: “We don’t want them (the homeless) sleeping on porches of buildings.”

48. On or about April 20, 2017 Piatt publicly stated: “We don’t want that (homeless people) in our neighborhood, we’re trying to get rid of that stigma.”

49. On May 20, 2017 Piatt publicly stated: “We are standing up for our neighborhood”.

**2. Ambrose’s Public Statements Made to the Media: Television Station KWQC, Channel 6, Television Station WQAD, Channel 8, and the Quad City Times Newspaper.**

50. On or about April 15, 2017 Ambrose publicly called people eating breakfast at the Church ministry, Timothy’s House of Hope, “bums”.

51. Ambrose agreed to an on camera publicized interview with a news reporter, Tatyana Fykes (Fykes) of KWQC, Channel 6 Television of Davenport, Iowa regarding the Church operating at the Church site and serving a breakfast.

52. On April 19, 2017 Ambrose publicly stated that Pastor Swope had lied to him regarding the operation of the Church to news reporter Fykes, KWQC, Channel 6 Television of Davenport, Iowa.

53. On April 19, 2017 KWQC, Channel 6 Television, Davenport, Iowa published a news story to the public stating that Ambrose declared that the Church and Swope had lied to him about their plans and Ambrose was upset that the Church was in his ward. *See attached April 19, 2017 KWQC Channel 6 news article, Ex. C.*

54. On or about April 19, 2017 Ambrose publicly declared in the Quad City Times: “It’s a huge issue with me and I’ll fight it to the very end. I don’t have a warm and fuzzy feeling for the homeless as other people do.”

55. On or about April 19, 2017 Ambrose was publicly quoted by KWQC, Channel 6 Television, Davenport, Iowa declaring that he is angry that the Grotto “to be turned over to some homeless organization.”

56. On April 19, 2017 Ambrose was publicly quoted by KWQC, Channel 6 Television, stating “This is my neighborhood. This is historic Davenport. It’s (the Church) not gonna happen.”

57. On or about April 21, 2017 Ambrose publicly stated to WQAD, Channel 8 Television, “Jesus, he died on the cross to save all of us and he helped the homeless, I’m there.” However when Ambrose was asked by the news reporter: “Just not in your neighborhood?”, Ambrose replied, “Well, not if they’re gonna be wandering around, sleeping in the park benches, having a negative impact.”

58. In April of 2017 Ambrose publicly declared that he “will protect the neighborhood” and that “the Church is a problem.”

59. On or about May 10, 2017 Ambrose publicly declared in the Quad City Times: “I told the City Council that I was going to fight this thing (Compassion Church) to the end.”

**3. Ambrose’s Actions to Deny the Church’s Religious Exercise at 1602 Washington Street, Davenport, Iowa.**

60. Ambrose took actions individually and officially as fourth Ward Alderman, under color of law, to close down the operation of the Church and Timothy’s House of Hope.

61. Ambrose used his alderman authority to orchestrate Davenport’s closing of a non-profit church that conducts religious services, ministers to and provides a breakfast to individuals, including the poor and needy.

62. Ambrose sought to close the Church through the use of Davenport city staff, including Flynn and the Davenport Zoning Department, to achieve the issuance of a government Cease and Desist Order prohibiting the Church from ever serving a breakfast unless the Church first rezoned the site to a planned institutional use zoning classification (PID-HSS).

63. Ambrose requested that city staff, including Flynn, take action against the Church to prevent it from serving breakfast to the poor and needy.

**4. Flynn, Dickmann, and Davenport's Actions to Deny the Church's Religious Exercise Rights at 1602 Washington Street, Davenport, Iowa.**

64. On April 18, 2017 Flynn and three other Davenport city officials, including the City Attorney, the Fire Marshal and the City Building Inspector, met with Pastor Swope and Pastor Cantwell at the Davenport Public Works Building concerning the operation of the Church and service of a breakfast at the site.

65. Pastor Swope and Pastor Cantwell were told by Flynn at the April 18, 2017 meeting that the Church could not serve a breakfast at the site and the Church was required to rezone the property to a PID-HSS zoning district before the Church could lawfully serve a breakfast at the site.

66. On April 19, 2017 Davenport's Zoning Administrator Flynn issued a City of Davenport CEASE AND DESIST ORDER addressed to Pastor Cantwell and the Church at 1602 Washington Street, Davenport, Iowa - with a subject: Timothy's House of Hope - that was mailed by certified mail and was posted on the front door of the Church. *See attached April 19, 2017 Cease and Desist Order mailed to Pastor Cantwell and Compassion Church from Matthew G. Flynn, city zoning official, Ex. D-1 and Davenport's Cease and Desist Order posted on the Church's front door, Ex. D-2.*

67. Davenport's ORDER, signed by Flynn, stated "I have determined the activity of serving the homeless and other support services must cease immediately." (underlining added) *April 19, 2017 Cease and Desist Order to Pastor Cantwell and Compassion Church, par. 3, second sentence.*

68. Davenport's ORDER stated:

Until the property is rezoned to PID-HSS, and all other necessary improvements dictated by the City of Davenport and other regulatory agencies are fulfilled, serving of meals to the homeless and other support services must not continue. In addition, the Timothy's House of Hope Sign placed upon the fence north of the building must be immediately removed. (underlining added)

69. The ORDER mandated that the Timothy's House of Hope sign painted over an existing fence sign at the Church site be immediately removed.

70. The ORDER immediately prohibited the Church from offering a breakfast to its congregation, including the homeless, and offering other support services until the Church real property was rezoned by vote of the Davenport City Council to a new zoning district, "PID-HSS".

71. The ORDER was in direct conflict with and violated the statutory lawful uses allowed by Davenport's zoning code for churches in a "C-2" General Commercial District.

72. Ambrose used his elected government position as a Ward Alderman to instigate the issuance of the Cease and Desist Order which prohibited and stopped the Church from serving breakfast and immediately closed the Church and its ministry.

73. Flynn used his official government position as Zoning Administrator to prohibit and close the Church and its ministry by stopping the Church from serving a breakfast.

74. Neither Davenport, Ambrose or Flynn had any lawful authority to issue the ORDER to the Church on April 19, 2017.

75. The ORDER punished a small Church because of the nature of its congregation and diminished its ministry.

76. The purpose of Davenport's PID-HSS District is to rezone property for large institutional campus type uses.

77. The Church was forced to comply with Davenport's ORDER and stopped holding Bible readings and other prayer services and stopped serving a breakfast at the Church site on April 19, 2017.

78. On April 26, 2017 Plaintiffs' legal counsel publicly addressed the Davenport Mayor and City Council at the Davenport City Council meeting and advised them that Davenport's Cease and Desist Order violated RLUIPA and violated Plaintiffs' religious rights pursuant to the First Amendment to the United States Constitution and Article I, Section 3 of the Iowa Constitution.

79. The Church was forced to stop holding Bible readings and stop serving a breakfast at the Church from April 19, 2017 until May 15, 2017, a period of twenty-seven (27) days because of Davenport's ORDER.

80. Davenport's ORDER, signed by Flynn, violated the religious rights of the Church by denying the Church its religious right to serve a breakfast and to fully conduct religious services at the Church site.

81. There are six or more businesses located on Washington Street, within 3 blocks of the Church that sell merchandise, food, beer and/or liquor for profit.

82. The ORDER denies a lawful use - cooking and serving food, lawfully allowed in the "C-2" zoning district - to the Church solely on account of its religious identity and the economic standing of the congregation it served.

83. Davenport has not issued a Cease and Desist Order to any other "C-2" zoned business serving food in the fourth Ward of the City of Davenport in the past 20 years.

84. Davenport has not issued a Cease and Desist Order to any other Church in the City of Davenport to stop serving a breakfast in the past 20 years.

85. Flynn was well aware of numerous other churches who serve food, including breakfast, in Davenport on April 19, 2017, including St. Anthony's Catholic Church located at 417 North Main Street, one block from Davenport City Hall.

86. Davenport was well aware of many other churches who serve food at their Church site, including a breakfast, in Davenport on April 19, 2017.

87. Ambrose was well aware of other churches who serve food at their Church site, including a breakfast, in Davenport on April 19, 2017.

88. Dickmann was well aware of other churches who serve food at their Church site, including a breakfast, in Davenport on April 19, 2017.

89. On May 17, 2017 Dickmann had a telephone conversation with Pastor Cantwell and threatened to fully enforce the ORDER against the Church unless the Church moved from the Church site to a different Church site outside of the fourth ward.

90. On May 17, 2017 Dickmann had a second telephone conversation and threatened Pastor Cantwell by stating to him that if Pastor Cantwell did not move the Church to a new location at 306 Cedar Street in Davenport, Dickmann would direct Davenport to continue to enforce the ORDER, stating to Pastor Cantwell, "I'm going to see that they (Davenport) put it (Cease and Desist Order) back on you." Dickmann stated to Pastor Cantwell that if the Church did not move to a new location Davenport would issue another Cease and Desist Order to the Church.

91. On June 12, 2017 another church, Cedar Memorial Christian Church, began serving breakfast at 306 Cedar Street, Davenport, Iowa, located in a "C-2" zoned district, without interference from Davenport or any issuance of a Cease and Desist Order by Davenport prohibiting the serving of a breakfast at 306 Cedar Street, Davenport, Iowa.

92. Cedar Memorial Christian Church posted a sign on their Church door at 306 Cedar Street, Davenport, Iowa which states: “Come. Be welcomed. Eat and be filled. All are invited to the Welcome Table.”

93. Since June 12, 2017 Davenport has not issued a Cease and Desist Order to Cedar Memorial Christian Church to prevent them from serving a breakfast or have ordered them to remove their Church sign.

94. On July 8, 2017 the Quad City Times printed an article on the breakfast service by Cedar Memorial Christian Church and quoted Alderman Dickmann: “They’re just doing a ministry offering food. They’re not specifically a meal site, and that’s OK.”

95. The Church’s service of a breakfast was the same or similar to Cedar Memorial Christian Church’s service of a breakfast.

96. On or about May 10, 2017 Davenport and Flynn orally advised the Church that they may not enforce the ORDER pending a proposed amendment in Davenport’s Zoning Ordinance.

97. Davenport has not filed any proposed amendment to the Davenport Zoning Ordinance regarding the Church operation as Davenport claimed they would.

98. Davenport has never rescinded the ORDER to the Church.

99. On July 10, 2017 Dickmann posted on her Facebook page: “Ray Ambrose’s attendance at council meetings is sub-prime, he’s spent 20 years complaining or taking credit for other people’s hard work.”

100. On or about August 18, 2017 Dickmann publicly accused Ambrose of having racist views in a news story published in the Quad City Times newspaper.

101. Neither the Church, Pastor Swope, nor Pastor Cantwell have been notified by Defendants that the Church will not be subject to another Cease and Desist Order in the future.

102. As of August 25, 2017 Davenport, Flynn, Dickmann or Ambrose have not notified the Church by written letter that the ORDER will no longer be enforced.

103. As of August 25, 2017 Davenport has not issued a written letter to the Church regarding its right to lawfully operate at the site, including service of a lawful breakfast.

104. The Church is under threat of closure by Davenport at any time because the interpretation by Flynn of the Davenport Zoning Ordinance.

105. Davenport has publicly stated that the Church is in violation of Davenport zoning law.

106. Ambrose, Dickmann and Flynn are sued in both their individual capacity and in their official capacity for their actions taken to close the Church.

**COUNT I – DAVENPORT, AMBROSE, DICKMANN AND FLYNN’S VIOLATIONS OF PASTOR SWOPE, PASTOR CANTWELL AND THE CHURCH’S RELIGIOUS AND FREE SPEECH RIGHTS PURSUANT TO THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION.**

1.-106. Plaintiffs realleges and repleads paragraphs 1 through 106 of this Petition as paragraphs 1 through 106 of Count I of this Petition.

107. The Free Exercise Clause of the First Amendment to the United States Constitution prohibits the government from outlawing or restricting the exercise of a religious practice.

108. The Free Exercise Clause of the First Amendment to the United States Constitution protects against indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.

109. The Church has sought to conduct the following ministries and religious exercises at the site, all of which are compelled by the sincerely held religious beliefs of the Church and its members:

- a) Bible readings and studies,

- b) Preaching, included speech relating to personal morality, God and social issues,
- c) Pastoral ministry for the disturbed, lonely and needy,
- d) Evangelism – sharing the Christian message and encouraging others to believe in Jesus; and
- e) Serving a breakfast to parishioners.

110. A government order infringing on the religious Free Exercise Clause of the First Amendment of the United States Constitution triggers the strictest of scrutiny from the Court.

111. The Church's free exercise of religious rights was severely burdened and penalized by Davenport, Ambrose and Flynn's acts to prohibit the Church from serving breakfast at the Church site and Dickmann's acts to move the Church to a different Church site located outside of the fourth ward.

112. Davenport, Ambrose and Flynn expressly discriminated against the Church by issuance of the ORDER to shut down a religious-based breakfast service at the Church site.

113. The ORDER was an unconstitutional restriction on the Church's religious activities pursuant to the Free Exercise Clause of the First Amendment of the United States Constitution.

114. Davenport and Flynn's ORDER violated the religious rights of the Church, the religious rights of Pastor Swope, the religious rights of Pastor Cantwell, and the religious rights of its Church members by denying the Church and its members their right to exercise religious practices pursuant to the First Amendment of the United States Constitution.

115. Davenport and Flynn's ORDER infringes upon the rights of free exercise of religion by the Church, Pastor Swope, and Pastor Cantwell.

116. The ORDER infringes upon the right of freedom of assembly by the Church, Pastor Swope, and Pastor Cantwell.

117. The ORDER infringes upon the right of freedom of association by the Church, Pastor Swope, and Pastor Cantwell.

118. The ORDER infringes upon the right of freedom of speech by the Church, Pastor Swope, and Pastor Cantwell.

119. The Church, Pastor Swope, and Pastor Cantwell have suffered economic injury and public embarrassment as a direct result of the ORDER and the closing of the Church for twenty-seven (27) days and attempts to force the Church from the site.

120. The Church, Pastor Swope, and Pastor Cantwell have incurred monetary damages as a direct result of the ORDER.

121. The Church, Pastor Swope, and Pastor Cantwell were forced to hire an attorney and have incurred reasonable attorney fees to defend their constitutional and statutory religious rights as a direct result of the ORDER.

122. The Church was forced to spend time and money to defend itself from the ORDER and to fight the ORDER in order to remain open.

123. Davenport is vicariously liable for the unlawful acts of Flynn in his official capacity.

124. Davenport is vicariously liable for the unlawful acts of Ambrose in his official capacity.

125. Davenport is vicariously liable for the unlawful acts of Dickmann in her official capacity.

126. The Church, Pastor Swope and Pastor Cantwell are entitled to reasonable attorney fees incurred for the violation of their First Amendment Religious Freedom rights and to prosecute this lawsuit. *42 U.S.C. § 1988(b)*.

127. The Church, Pastor Swope and Pastor Cantwell are entitled to recover punitive damages from Defendants Ambrose, Dickmann and Flynn for their intentional and malicious acts taken against the Church in violation of the Church's fundamental religious rights.

**WHEREFORE**, Plaintiffs respectfully pray that the Court GRANT the relief set forth in the Common Prayer for Relief.

**COUNT II - DAVENPORT, AMBROSE, DICKMANN AND FLYNN'S VIOLATIONS OF PASTOR SWOPE, PASTOR CANTWELL AND THE CHURCH'S RELIGIOUS RIGHTS PURSUANT TO ARTICLE 1, SECTION 3 OF THE IOWA CONSTITUTION BILL OF RIGHTS.**

1.- 127. Plaintiffs reallege and replead paragraphs 1 through 127 of this Petition as paragraphs 1 through 127 of Count II of this Petition.

128. The Free Exercise Clause of the Iowa Constitution prohibits the government from outlawing or restricting the free exercise of a religious practice. *IOWA CONST. art. 1, § 3.*

129. Davenport's April 19, 2017 Cease and Desist Order violated the religious rights of the Church, the free religious rights of Pastor Swope, the religious rights of Pastor Cantwell and the religious rights of Church members by denying them their its right to exercise religious practices, including but not limited to service of a breakfast, pursuant to *IOWA CONST. art. 1, § 3.*

130. Ambrose violated the religious rights of the Church, Pastor Swope and Pastor Cantwell by requesting that Davenport issue the ORDER.

131. Flynn violated the religious rights of the Church, Pastor Swope and Pastor Cantwell by signing and issuing the ORDER.

132. Dickmann violated the religious rights of the Church, by telling Pastor Cantwell he needed to move from the Church site if the Church wished to continue serving a breakfast.

**WHEREFORE**, Plaintiffs respectfully pray that the Court GRANT the relief set forth in the Common Prayer for Relief.

**COUNT III – DAVENPORT, AMBROSE, DICKMANN AND FLYNN’S VIOLATIONS OF THE CHURCH’S RIGHTS PURSUANT TO THE FEDERAL RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (RLUIPA), 42 U.S.C. § 2000cc – 2000cc5 et. seq.**

1.- 132. Plaintiffs reallege and replead paragraphs 1 through 132 of this Petition as paragraphs 1 through 132 of Count III of this Petition.

133. RLUIPA bars Davenport from placing restrictions that place a substantial burden on the religious exercise of a person or institution unless Davenport can show a compelling interest for imposing the restriction.

134. The Church is a religious assembly or institution as defined by RLUIPA, 42 U.S.C. § 2000cc(2)(b)(i).

135. Religious institutions must be treated at least as well as non-religious assemblies and institutions pursuant to RLUIPA.

136. Davenport cannot infringe upon a minority religion’s rights under the guise of zoning.

137. For purposes of RLUIPA, Davenport constitutes a “government”. 42 U.S.C. § 2000cc-5(4)(A)(i),(ii).

138. Davenport is responsible for the acts or omissions of employee Flynn, official Ambrose and official Dickmann.

139. Davenport violated RLUIPA by infringing upon the Church, Pastor Swope and Pastor Cantwell’s free exercise of religious rights.

140. Ambrose violated RLUIPA by infringing upon the Church, Pastor Swope and Pastor Cantwell’s free exercise of religious rights.

141. Dickmann violated RLUIPA by infringing upon the Church, Pastor Swope and Pastor Cantwell's free exercise of religious rights.

142. Flynn violated RLUIPA by infringing upon the Church, Pastor Swope and Pastor Cantwell's free exercise of religious rights.

143. Defendants violated, deprived, and will continue to deprive the Church of its right to the free exercise of religion by imposing land use regulations on their face and as applied in a manner that places a substantial burden on the Church's religious exercise without a compelling governmental interest. *42 U.S.C. § 2000cc(a)*

144. Defendants violated, deprived, and will continue to deprive the Church of its right to the free exercise of religion by imposing land use regulations on their face and as applied in a manner that places a substantial burden on the Church's religious exercise without a compelling governmental interest. *42 U.S.C. § 2000cc(b)(1)*.

145. Defendants violated, deprived, and will continue to deprive the Church of its right to the free exercise of religion by imposing land use regulations on their face and as applied in a manner that treats the Church differently from other similar uses on the basis of religion or religious denomination. *42 U.S.C. § 2000cc(b)(2)*.

146. Davenport had no compelling reason to issue the April 19, 2017 Cease and Desist Order to the Church and Pastor Cantwell.

147. Dickmann had no compelling reason to demand the Church move to another site or face the reimplemention of the ORDER.

148. The Church, Pastor Swope and Pastor Cantwell have suffered irreparable injury, economic harm, public ridicule, public embarrassment to its mission and monetary costs and fees as a direct result of the ORDER.

149. Defendants have actively attempted to undermine the United States Congress's goals in the passage of RLUIPA by their arbitrary and capricious acts, including the ORDER.

150. The Church, Pastor Swope and Pastor Cantwell have incurred monetary damages as a direct result of the April 19, 2017 Cease and Desist Order.

151. The Church, Pastor Swope and Pastor Cantwell were forced to hire an attorney and have incurred substantial attorney fees as a direct result of the ORDER.

152. The Church, Pastor Swope and Pastor Cantwell are entitled to recover reasonable attorney fees pursuant to RLUIPA for Defendants' unlawful acts. *42 U.S.C. §1988(b)*.

153. The Church, Pastor Swope and Pastor Cantwell are entitled to recover punitive damages from Ambrose, Dickmann and Flynn for their malicious acts.

154. On or about December 15, 2016 Ambrose, Dickmann, Flynn, and other Davenport officials received a letter from the United States Department of Justice (DOJ) explaining their duties pursuant to RLUIPA. *December 15, 2016 DOJ Letter, Ex. E*.

155. Ambrose, Dickmann and Flynn failed to abide by and comply with the December 15, 2016 DOJ letter regarding their duties pursuant to RLUIPA.

**WHEREFORE**, Plaintiffs respectfully pray that the Court GRANT the relief set forth in the Common Prayer for Relief.

**COUNT IV – DAVENPORT, AMBROSE, DICKMANN AND FLYNN'S VIOLATIONS OF PASTOR CANTWELL, PASTOR SWOPE AND THE CHURCH'S RELIGIOUS RIGHTS PURSUANT TO THE FEDERAL CIVIL RIGHTS ACT, 42 U.S.C. § 1983.**

1.- 155. Plaintiffs reallege and replead paragraphs 1 through 155 of this Petition as paragraphs 1 through 155 of Count IV of this Petition.

156. Defendants Davenport, Ambrose, Dickmann and Flynn, acting under color of state statute, have deprived the Plaintiffs of rights, privileges and immunities granted by the federal civil rights law, 42 U.S.C. § 1983.

157. Defendant Ambrose, under color of law, used his official government position of Ward Alderman to unlawfully shut down the Church's breakfast and prayer service.

158. Defendant Davenport and Flynn, under color of law, used state statutes as a pretext to unlawfully issue the ORDER to the Church.

159. Defendant Dickmann, under color of law, threatened to reissue and enforce the ORDER if the Church failed to move away from the Church site.

160. Ambrose, Dickmann, and Flynn acted with malice and are being sued in both their individual capacities and their official capacities for their acts.

161. Dickmann, under color of law, used her official position to coerce and threaten the Church to move from the Church site or face continuing enforcement of the ORDER and closure of the Church.

162. Davenport, Ambrose, Flynn and Dickmann sought to deprive Pastor Swope, Pastor Cantwell and the congregation of Compassion Church of their rights, privileges and immunities pursuant to 42 U.S.C. § 1983.

163. The Church had lost members of their congregation because of the ORDER and the actions taken against the Church by Davenport, Ambrose, Flynn and Dickmann.

164. The Church, Pastor Swope and Pastor Cantwell have sustained compensatory damages and have sustained a loss of congregation members, as a direct result of Defendants violating Pastor Swope, Pastor Cantwell and the congregation of the Church's civil rights.

165. The Church, Pastor Swope and Pastor Cantwell are entitled to reasonable attorney fees pursuant to 42 U.S.C. § 1988 as a result of the deprivation of their federal civil rights.

166. The Church, Pastor Swope and Pastor Cantwell are entitled to recover punitive damages from Ambrose, Dickmann and Flynn for their malicious acts.

**WHEREFORE**, Plaintiffs respectfully pray that the Court GRANT the relief set forth in the Common Prayer for Relief.

**COUNT V –DAVENPORT, FLYNN, AMBROSE AND DICKMANN’S VIOLATIONS OF THE CHURCH’S EQUAL PROTECTION RIGHTS PURSUANT TO THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.**

1.- 166. Plaintiffs reallege and replead paragraphs 1 through 166 of this Petition as paragraphs 1 through 166 of Count V of this Petition.

167. Defendants have deprived and continue to deprive the Church, Pastor Swope and Pastor Cantwell of their right to equal protection of law as secured by the Fourteenth Amendment to the United States Constitution by imposing and implementing land use regulations that discriminate against the Church to an extent incompatible with the United States Constitution.

168. Defendants targeted and singled out the Church for closure because of its status as a minority religion serving the poor and disadvantaged.

169. Davenport has not targeted and singled out a church from a mainstream religion to prohibit the serving of a breakfast.

**WHEREFORE**, Plaintiffs respectfully pray that the Court GRANT the relief set forth in the Common Prayer for Relief.

**COUNT VI – DAVENPORT, FLYNN, AMBROSE AND DICKMANN’S VIOLATIONS OF THE CHURCH’S DUE PROCESS RIGHTS PURSUANT TO THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.**

1.- 169. Plaintiffs reallege and replead paragraphs 1 through 169 of this Petition as paragraphs 1 through 169 of Count V of this Petition.

170. Defendants have deprived and continue to deprive the Church, Pastor Swope and Pastor Cantwell of their right to due process right of law as secured by the Fourteenth Amendment to the United States Constitution by imposing and implementing land use regulations on their face and as applied that discriminate against the Church to an extent incompatible with the United States Constitution.

171. Davenport sought to prohibit a common Church activity of serving food without any lawful basis to do so.

172. Davenport failed to accord the Church its constitutional due process rights pursuant to the Fourteenth Amendment to the United States Constitution by issuance of the ORDER.

**WHEREFORE**, Plaintiffs respectfully pray that the Court GRANT the relief set forth in the Common Prayer for Relief.

**COUNT VII – DAVENPORT, FLYNN, AMBROSE AND DICKMANN’S VIOLATIONS OF THE CHURCH’S RELIGIOUS RIGHTS PURSUANT TO THE BILL OF RIGHTS OF THE IOWA CONSTITUTION.**

1.- 172. Plaintiffs reallege and replead paragraphs 1 through 172 of this Petition as paragraphs 1 through 172 of Count VII of this Petition.

173. Defendants have deprived and continue to deprive the Church, Pastor Swope and Pastor Cantwell of their free exercise of religious right as secured by the Iowa Constitution by imposing and implementing land use regulations on their face and as applied that discriminate against the Church to an extent incompatible with the Iowa Constitution. *IOWA CONST. art. 1, § 3.*

174. Defendants targeted and singled out the Church for closure because of its status as a minority religion serving the poor and disadvantaged.

175. Davenport has never targeted and singled out a church from a mainstream religion for closure.

**WHEREFORE**, Plaintiffs respectfully pray that the Court GRANT the relief set forth in the Common Prayer for Relief.

**COUNT VIII – DAVENPORT, FLYNN, AMBROSE AND DICKMANN’S VIOLATIONS OF THE CHURCH’S DUE PROCESS RIGHTS PURSUANT TO THE IOWA CONSTITUTION.**

1.- 175. Plaintiffs reallege and replead paragraphs 1 through 175 of this Petition as paragraphs 1 through 175 of Count VIII of this Petition.

176. Defendants have deprived and continue to deprive the Church, Pastor Swope, and Pastor Cantwell of their right to due process right of law as secured by imposing and implementing land use regulations on their face and as applied that discriminate against the Church to an extent incompatible with the Iowa Constitution.

177. Davenport sought to prohibit a common Church activity of serving a breakfast without any lawful basis to do so.

178. Davenport failed to accord the Church its constitutional due process of law pursuant to the Iowa Constitution. *IOWA CONST. art. 1, § 9.*

**WHEREFORE**, Plaintiffs respectfully pray that the Court GRANT the relief set forth in the Common Prayer for Relief.

**COUNT IX – PASTOR SWOPE AND PASTOR CANTWELL’S DEFAMATION OF CHARACTER ACTION AGAINST AMBROSE FOR PUBLICLY CALLING PASTOR SWOPE AND PASTOR CANTWELL “A LIAR” AND “DECEPTIVE”.**

1.- 178. Plaintiffs reallege and replead paragraphs 1 through 178 of this Petition as paragraphs 1 through 178 of Count IX of this Petition.

179. Ambrose is a public figure at all times relevant to this matter.

180. Pastor Swope is a private figure at all times relevant to this matter.

181. Pastor Cantwell is a private figure at all times relevant to this matter.

182. Ambrose has made public statements to the television and print media in 2017 which are defamatory to the Church, Pastor Swope and Pastor Cantwell.

183. Ambrose made false public statements on or about April 19, 2017 that the Church “Lied”.

184. Pastor Swope and Pastor Cantwell have been publicly ridiculed and embarrassed by Ambrose’s public statements calling them and the Church a “Liar” to a news reporter Fykes, KWQC, Channel 6 Television, of Davenport, Iowa on or about April 19, 2017.

185. KWQC, Channel 6 Television, publicized Ambrose’s statement that called Swope and the Church a “Liar”.

186. These defamatory statements are on the KWQC, Channel 6 Television website.

187. Pastor Cantwell has been publicly ridiculed and embarrassed by Ambrose’s public statements calling him and the Church a “Liar”.

188. Ambrose’s public statements that the Church lied imputes the statement to Pastor Swope.

189. Ambrose’s public statements that the Church lied imputes the statement to Pastor Cantwell.

190. The publication by Ambrose of false, libelous and slanderous statements was a proximate cause of injury and damage to Pastor Swope and Pastor Cantwell.

191. Falsely calling a person a “Liar” is per se defamation of character.

192. In April of 2017 Ambrose publicly stated that Pastor Swope and Pastor Cantwell are “Deceptive”. *Ambrose’s two page public statement issued from the Office of the Davenport City Council, Ex. F.*

193. Ambrose’s public statement that Pastor Swope and Pastor Cantwell are “Deceptive” is false.

194. Ambrose’s public statement that Pastor Swope and Pastor Cantwell are “Deceptive” is per se defamation of character.

195. Pastor Cantwell and Pastor Swope are each entitled to monetary damages for per se defamation of their characters.

196. In April or May of 2017 Ambrose has publicly called the Church and its members “outsiders who willfully and recklessly frighten and destroy the good people who live, work and pray” in his neighborhood. Ambrose’s statement constitutes libel by implication or false light.

197. Ambrose’s statements made to the public regarding the Church, Pastor Swope and Pastor Cantwell constitute libel and slander.

198. Ambrose’s defamatory statements against the Church, Pastor Swope and Pastor Cantwell are not privileged.

199. Pastor Cantwell and Pastor Swope have been defamed by the public statements made by Ambrose.

200. Ambrose’s public statements defaming Pastor Swope and Pastor Cantwell were made with a reckless disregard for their truth and veracity.

201. Pastor Cantwell and Pastor Swope have each suffered damage to their good name and reputation in the community, emotional distress and damage to Pastor Swope's good health.

202. Damages can be awarded to Pastor Swope and Pastor Cantwell without proof of specific damages because publicly calling Pastor Swope and Pastor Cantwell a "Liar" is libelous per se.

203. Damages can be awarded to Pastor Swope and Pastor Cantwell without proof of specific damages because publicly calling Pastor Swope and Pastor Cantwell "Deceptive" is libelous per se.

204. Ambrose's conduct in publishing false and libelous statements was done with malice and knowledge of the falsity of these statements.

205. Ambrose knew these statements were false and acted with reckless disregard for the truth or falsity of these statements.

206. On April 28, 2017 Pastor Swope and Pastor Cantwell personally served a letter upon Ambrose, requesting he immediately retract all defamatory statements regarding the Church, Pastor Swope, Pastor Cantwell and Timothy's House of Hope. *See April 28, 2017 Letter from the Church legal counsel to Alderman Ambrose, Ex. G.*

207. Ambrose did not issue a retraction of his defamatory statements to Pastor Swope and Pastor Cantwell.

208. Pastor Cantwell is entitled to an assessment of punitive damages against Ambrose for defamation of character.

209. Pastor Swope is entitled to an assessment of punitive damages against Ambrose for defamation of character.

**WHEREFORE**, Plaintiffs respectfully pray that the Court GRANT the relief set forth in the Common Prayer for Relief.

**COUNT X – PRELIMINARY INJUNCTION AGAINST DEFENDANTS FROM FUTURE ENFORCEMENT OF THE CEASE AND DESIST ORDER OR THREATENING THE CHURCH WITH FUTURE ENFORCEMENT IF THEY FAIL TO MOVE TO A NEW SITE.**

1.- 209. Plaintiffs reallege and replead paragraphs 1 through 209 of this Petition as paragraphs 1 through 209 of Count X of this Petition.

210. Plaintiffs are under a cloud of uncertainty that Defendants will again attempt to enforce an Order against the Church for operating its breakfast service.

211. Defendants have not withdrawn or nullified the ORDER.

212. Plaintiffs are presently under a threat of imminent harm from Defendants.

213. Plaintiffs are entitled to a preliminary injunction against Defendants from any future enforcement of the ORDER.

214. The Court should issue a preliminary injunction pursuant to Federal Rule 65 against Defendants and enjoin Defendants from stopping the Church from serving a breakfast.

**WHEREFORE**, Plaintiffs respectfully pray that the Court GRANT a preliminary injunction prohibiting Defendants from future enforcement of the Cease and Desist Order or threatening the Church move to a different Church site.

**JURY TRIAL DEMAND.**

Plaintiffs demand trial by jury pursuant to Rule 38(b) on all issues so triable.

**COMMON PRAYER FOR RELIEF TO COUNTS I THROUGH X.**

**WHEREFORE** Plaintiffs request the following relief from the Federal Court on Counts I through X:

a) Enter a preliminary injunction enjoining Davenport, Ambrose, Dickmann and Flynn from interfering with the operation of the Church and the Church service of a breakfast;

b) Enter a preliminary injunction enjoining Davenport, Ambrose, Dickmann and Flynn from infringing on the Church's religious right to serve a breakfast and hold prayer gatherings and Bible readings by prohibiting future Cease and Desist Orders from Davenport, Ambrose, Dickmann and Flynn;

c) Declare that Defendants actions have violated RLUIPA;

d) Require Defendants, their employees, officials and all other persons in concert with them take actions necessary to restore and maintain, as nearly as practicable, to the Church and its members the right to serve a breakfast on site;

e) Enter an Order finding Davenport, Ambrose, Dickmann and Flynn violated the Church's Free Exercise Clause pursuant to the First Amendment to the United States Constitution;

f) Enter an Order finding Davenport, Ambrose, Dickmann and Flynn violated the Church's Free Exercise Clause pursuant to Article I, Section 3 of the Iowa Constitution;

g) Enter an Order finding Davenport, Ambrose, Dickmann and Flynn unlawfully issued a Cease and Desist Order pursuant to Article 1, Section 3 of the Iowa Constitution;

h) Enter an Order finding Davenport, Ambrose, Dickmann and Flynn unlawfully issued a Cease and Desist Order pursuant to the Free Exercise Clause pursuant to the First Amendment of the United States Constitution;

i) Award monetary damages to the Church, Pastor Swope and Pastor Cantwell for Defendants' twenty-seven (27) day closure of their breakfast service;

- j) Award Plaintiffs costs and reasonable attorney fees pursuant to the First Amendment to the United States Constitution;
- k) Award Plaintiffs costs and reasonable attorney fees pursuant to 42 U.S.C. § 1988 and other applicable law;
- l) Award Plaintiffs costs and reasonable attorney fees pursuant to the Religious Freedom Act (RLUIPA) and other applicable law;
- m) Award Plaintiffs Pastor Swope and Pastor Cantwell special damages for libel, slander and defamation of character;
- n) Award Plaintiffs Pastor Swope and Pastor Cantwell punitive damages against Defendants Ambrose, Dickmann, and Flynn;
- o) Award Plaintiffs pre and post-judgment interest costs and expenses;
- p) Grant other such additional relief which is just, proper and equitable in this case.

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