

2. Transformation Church of God in Christ (“Transformation Church” or “Church”) and its pastor, Pastor Lloyd Powell, have been renting the Redan Recreation Center since April 2012.

3. The Redan Recreation Center (“Center”) is one of approximately thirteen recreational facilities owned and operated by the County.

4. The County has opened its recreational facilities to the public to rent for general usage.

5. However, Pastor Powell was informed by a County employee in May 2012 that the County’s policy had been changed to prohibit churches from renting its recreational facilities, and that the County would no longer rent to him after September, 2012.

6. Although Pastor Powell repeatedly requested a copy of this new policy, he never received one.

7. On July 24, 2012, Pastor Powell, through his attorneys, sent two public records requests to the County to acquire this new policy: one request was issued to the Chief Executive Officer, and a second request was issued to the Director of the Department of Recreation, Parks and Cultural Affairs.

8. The Office of the Chief Executive Officer stated that it did not have the policy.

9. The County Department of Recreation, Parks and Cultural Affairs, although obligated by law to respond to the request within three days, never responded.

10. Pastor Powell continued to apply to rent the Redan Recreation Center each month because he received no confirmation of the policy change.

11. The County continued to accept his rental payments each month.

12. On September 30, 2012, Pastor Powell was informed that his October rental application had been denied; the County would no longer rent its facilities to Transformation Church because it was a church.

13. The County's new policy targets religious uses of its facilities and is unconstitutional.

14. Unless this Court intervenes, Pastor Powell and Transformation Church's last Sunday at the Redan Recreation Center will be October 7, 2012. The Church will be irreparably harmed as it does not have another location where it can hold its services.

II. JURISDICTION AND VENUE

15. This is a civil rights action under 42 U.S.C. § 1983 raising federal claims under the First and Fourteenth Amendments to the United States Constitution.

16. This Court has original jurisdiction over the federal claims by

operation of 28 U.S.C. §§ 1331, as this claim arises under the First and Fourteenth Amendments to the United States Constitution.

17. This Court has authority to grant the requested declaratory judgment by operation of 28 U.S.C. §§ 2201(a).

18. This Court has authority to issue the requested preliminary and injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

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

20. Venue is proper in United States District Court for the Northern District of Georgia under 28 U.S.C. § 1391(b) because 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 PARTIES

21. Plaintiff Lloyd Powell is an adult male resident of Lithonia, Georgia, citizen of the United States, and senior pastor of Transformation Church of God in Christ.

22. Plaintiff Transformation Church of God in Christ is a church incorporated under the laws of Georgia.

23. Defendant DeKalb County, Georgia, 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

24. Pastor Lloyd Powell, senior pastor of Transformation Church, has been renting the Redan Recreation Center, located 1839 Phillips Road, Lithonia, Georgia, on a monthly basis since April 2012.

25. Transformation Church and its members' sincere religious beliefs require them to gather together to worship, read the Bible, sing religious songs, pray, and share biblical teachings.

26. 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.

27. The Redan Recreation Center is one of approximately thirteen recreational facilities owned and operated by the County.

28. The County has opened its recreational facilities to the public for rent.

29. The County's Recreation Center Agreement states:

The Department of Recreation, Parks and Cultural Affairs (DRPCA) operates several facilities that are available to the public for events ... [t]he the facilities are provided for general usage, such as meetings, socials, birthday parties and civic events.

See Recreation Center Agreement, attached as Exhibit A.

30. On or about May 6, 2012, Pastor Powell was verbally informed by the County Department of Recreation, Parks and Cultural Affairs Director, Torrence Brown, that due to a policy change, County recreational facilities would no longer be rented to churches.

31. Pastor Powell was told that he had until September to find another facility for the Church to rent.

32. The DeKalb County Recreation Center Rental Application does not, on its face, prohibit churches from renting DeKalb County recreational facilities.

33. Neither does the DeKalb County Recreation Center Agreement, on its face, prohibit churches from renting DeKalb County recreational facilities.

34. Pastor Powell repeatedly requested, but never received, a written copy of the new rental policy that prohibits renting County recreational facilities to churches.

35. On July 24, 2012, Alliance Defending Freedom issued a Georgia public records request to Mr. W. Burrell Ellis, Jr., Chief Executive Officer of DeKalb County. *See Letter to Mr. W. Burrell Ellis, Jr., attached as Exhibit B.*

36. Confirmation of receipt of this public records request to Mr. Burrell Ellis was signed August 9, 2012 by Dominic Rodriguez. *See* U.S. Postal Service Certified Mail Receipt, attached as Exhibit C.

37. Also on July 24, 2012, Alliance Defending Freedom issued a Georgia public records request to Mr. Roy E. Wilson, Director of the DeKalb County Department of Recreation, Parks and Cultural Affairs. *See* Letter to Roy E. Wilson, attached as Exhibit D.

38. Confirmation of receipt of this public records request to Mr. Roy Wilson was signed August 9, 2012 by Dominic Rodriguez. *See* U.S. Postal Service Certified Mail Receipt, attached as Exhibit E.

39. On August 14, 2012, the Office of the Chief Executive, Mr. Burrell Ellis, responded that it was not the custodian of the documents requested. *See* Letter from the Office of the Chief Executive, attached as Exhibit F.

40. The letter from Mr. Burrell Ellis also stated:

It is possible that the information can be found by contacting: Mr. Roy Wilson, Director, DeKalb County Recreation, Parks and Cultural Affairs, 1300 Commerce Drive, Decatur, GA 30030. As a courtesy, we will send a copy of your request to Mr. Wilson.

See id.

41. Alliance Defending Freedom never received a response from Mr. Roy Wilson.

42. Pastor Powell continued to apply each month to use the Redan Recreation Center for Church worship services.

43. The County continued to accept Pastor Powell's rental application and rental payments.

44. When Pastor Powell submitted his October rental application, it was verbally rejected on September 30, 2012 by Reneda, a County employee.

45. Reneda told Pastor Powell that Department Director Torrence Brown instructed her not to accept any further rent from the Church.

46. When pressed for an explanation, Commissioner Larry Johnson's Chief of Staff remarked that DeKalb County had decided to get all churches out of County parks and recreation facilities because of the separation of church and state and to avoid dealing with complaints about churches meeting in government facilities.

47. Upon information and belief, the Redan Recreation Center is rented by secular groups for many purposes, such as family reunions, basketball tournaments, baby showers, Girl Scout events, and private parties.

48. Upon information and belief, the Redan Recreation Center continues to remain available to be rented by secular groups for many purposes.

49. Unless this Court intervenes, the Church's last Sunday in the Redan Recreation Center will be October 7, 2012.

V. ALLEGATIONS OF LAW

50. All acts of the Defendant, its officers, agents, servants, employees, or persons acting at its behest or direction, were done and are continuing to be done under the color and pretense of state law.

51. Defendant has enforced the challenged policy against the Plaintiffs pursuant to its policies and practices.

52. The decisions to deny Plaintiffs access to a designated public forum based on the content and viewpoint of the speech and the identity of the speaker are a direct result of the policies, practices, customs, and usages adopted and promulgated by the County.

53. Plaintiffs' speech and religious expression are fully protected by the First Amendment and Fourteenth Amendment to the United States Constitution.

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

55. Unless and until enforcement of the Defendant's policy to exclude churches from a designated public forum is enjoined, as specified below, the Plaintiffs will suffer and continue to suffer irreparable injury to their federal rights.

COUNT I: Violation of the Free Speech Clause of the First Amendment to the United States Constitution

56. The allegations contained in paragraphs 1-55 are incorporated herein by reference.

57. Redan Recreation Center is public property and a designated public forum.

58. The Defendant has intentionally made Redan Recreation Center generally available to the public for a broad range of private expression and activities.

59. Plaintiffs used the Center, and want to continue using the Center, for religious expression and activities such as worshipping, reading the Bible, singing religious songs, praying, and sharing biblical insight.

60. Religious expression, including worshipping, reading the Bible, singing religious songs, praying, and sharing biblical insight, is protected First Amendment activity.

61. Defendant has silenced Plaintiffs' speech and activities and

prohibited their use of the Center based on the speaker's religious identity and viewpoint.

62. Defendant's enforcement of its policy:

- a. Singles out religious expression for discriminatory and unfavorable treatment;
- b. Conditions access to a generally-available designated public forum based upon the identity of the speaker or the content or viewpoint of his speech;
- c. Restrains constitutionally-protected speech in advance of its expression;
- d. Chills the Plaintiffs' speech and that of other individuals and organizations attempting to use County facilities;
- e. Burdens religious expression like that of Plaintiffs.

63. The Defendant has no compelling reason that would justify the outright exclusion of Plaintiffs from a designated public forum based solely on their identity or the content or viewpoint of their speech.

64. Defendant's exclusion of Plaintiffs from a designated public forum is not the least restrictive means available to advance any legitimate governmental interest.

65. Accordingly, the enforcement of the policy against Plaintiffs

violates Plaintiffs' right to the freedom of speech guaranteed by the First Amendment to the United States Constitution, as applicable to the states 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.

COUNT II: Violation of the Free Exercise Clause of the First Amendment to the United States Constitution.

66. The allegations contained in paragraphs 1-55 are incorporated herein by reference.

67. Plaintiffs desire to continue renting the Redan Recreation Center for their worship services.

68. Plaintiffs' desire is motivated by their sincerely-held religious belief that they are to regularly assemble with others to worship, pray, study the Bible, sing religious songs, and share biblical insight on moral, cultural, and civic issues.

69. Defendant's new policy prohibiting churches from renting the County's recreational facilities specifically and discriminatorily targets religion.

70. Defendant's new policy is neither neutral nor a general law of applicability because other secular assemblies and institutions are not

prohibited from renting the designated public forum.

71. Defendant's new policy selectively burdens Plaintiff's religious exercise by restricting their access to a designated public forum based solely on the religious nature of their speech and conduct.

72. Defendant has no compelling reason that justifies denying Plaintiffs equal access to a generally-available designated public forum solely because of the religious nature of their speech and conduct.

73. Defendant's enforcement of its new policy is not the least restrictive means of furthering any governmental interest.

74. Accordingly, the enforcement of the policy against the Plaintiffs violates their right to the free exercise of religion guaranteed by the First Amendment to the United States Constitution, as applicable to the states 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.

COUNT III: Violation of the Establishment Clause of the First Amendment to the United States Constitution.

75. The allegations contained in paragraphs 1-55 are incorporated herein by reference.

76. Defendant's enforcement of the policy in prohibiting churches

from renting County recreational facilities, including the Redan Recreation Center, is hostile towards religion and favors irreligion over religion.

77. Defendant's enforcement of the policy treats Plaintiffs as second-class citizens of the community because it denies them access to a designated public forum based solely upon their religious expression, belief, and conduct.

78. Defendant's enforcement of the new policy is specifically targeted to burden religious expression and religious exercise.

79. The new policy lacks a secular purpose and has the primary effect of demonstrating hostility to religion.

80. The new policy requires that the Defendant scrutinize the private speech and conduct to determine whether it is done for religious purposes, thus impermissibly and excessively entangling government with religion.

81. Accordingly, Defendant's enforcement of the new policy against Plaintiffs violates the Establishment Clause of the First Amendment to the United States Constitution, as applicable to the states 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.

COUNT IV: Violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

82. The allegations contained in paragraphs 1-55 are incorporated herein by reference.

83. Defendant's enforcement of the new policy prohibits "churches" or religious organizations from renting County recreational facilities,

84. This prohibition does not appear in writing in the County's rental application or Recreation Center Agreement.

85. Defendant's enforcement of the new policy is vague because it is unclear what uses of County recreational facilities are allowed and what uses are prohibited.

86. The policy also lacks sufficient objective standards to restrain the discretion of the Defendant, allowing the policy to be enforced in an *ad hoc* and discriminatory manner.

87. The Defendant has no compelling reason that would justify the prohibition of churches from renting recreational facilities that have been made generally available for public rent, solely on the basis of the applicant's religious identity, speech, or conduct.

88. Defendant's enforcement of the policy against Plaintiffs therefore violates the Due Process Clause of the Fourteenth Amendment to the United

States Constitution.

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

COUNT V: Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

89. The allegations contained in paragraphs 1-55 are incorporated herein by reference.

90. The Equal Protection Clause requires the government to treat similarly-situated entities equally.

91. Defendant's enforcement of the policy gives similarly-situated secular organizations access to the County's recreational facilities, but denies Plaintiffs the opportunity to rent the facilities on equal terms solely on the basis of their religious nature, speech, and conduct.

92. Defendant has no compelling reason that would justify preventing only churches from renting the County's recreational facilities.

93. Accordingly, Defendant's enforcement of the policy against Plaintiffs violates their right to the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

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

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

A. That this Court preliminarily and permanently enjoin the Defendant, its officers, agents, servants, employees, officials, and any other persons acting on its behalf, from enforcing the policy to the extent that it violates Plaintiff's constitutional rights, including an injunction permitting churches to rent DeKalb County recreational facilities on the same terms as secular organizations;

B. Declare that the challenged provisions of Defendant's policy are unconstitutional as applied to Plaintiffs, violating their rights guaranteed by the First and Fourteenth Amendments to the United States Constitution;

C. Award damages to Plaintiffs against the Defendant;

D. Award the costs and expenses of this action to Plaintiffs, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988 and other applicable law;

E. Grant any other relief that the Court deems equitable, just, and proper;

F. Adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such determination shall have the force and effect of final judgment; and

G. Retain jurisdiction of this matter as necessary to enforce the Court's orders.

Respectfully submitted this 5th day of October, 2012.

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

s/ David A. Cortman
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**Pro Hac Vice* Motion to be submitted

VERIFICATION OF COMPLAINT

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have read the foregoing Verified Complaint and the factual allegations thereof and that to the best of my knowledge the facts alleged therein are true and correct.

Executed this 5th day of October, 2012.

s/ Lloyd Powell _____
Lloyd Powell, Pastor
Transformation Church of God in Christ