

3. Through such free access, the District opens up its facilities for use by organizations for a broad array of topics and activities, including cultural, civic, community, charitable, recreational, and education-related uses.

4. Yet, the Church remains an outsider, charged a fee by the District to access the same forum other organizations can access for free, despite the fact that the Church seeks to use the facilities for its AWANA meetings that promote the same or similar issues.

5. The Church does not seek a special privilege through this suit; it merely seeks to use District facilities on the same terms as other nonprofit organizations.

6. The Church accordingly challenges both the application of the District's policies that discriminate against it, and the facial validity of the policies as applied to its religious speech.

II. JURISDICTION

7. This action arises under the United States Constitution, specifically the First and Fourteenth Amendments, and under federal law, particularly 28 U.S.C. § 2201 and 42 U.S.C. §§ 1983 and 1988.

8. This Court has jurisdiction over Plaintiff's claims under of 28 U.S.C. §§ 1331 and 1343.

9. This Court is authorized to grant Plaintiff's requested declaratory relief under 28 U.S.C. §§ 2201 and 2202, and under Rule 57 of the Federal Rules of Civil Procedure.

10. This Court is authorized to grant Plaintiff's requested injunctive relief under 42 U.S.C. § 1983 and under Rule 65 of the Federal Rules of Civil Procedure.

11. This Court is authorized to award Plaintiff's requested damages under 28 U.S.C. § 1343(3).

12. This Court is authorized to award attorneys' fees under 42 U.S.C. § 1988.

III. VENUE

13. Venue is proper in the United States District Court for the Western District of Wisconsin under 28 U.S.C. § 1391, because the events giving rise to Plaintiff's claims occurred within the District and because all parties reside within the District.

IV. IDENTIFICATION OF THE PLAINTIFF

14. Plaintiff Open Door Church of Sun Prairie is a nonprofit corporation organized under the laws of the State of Wisconsin.

15. Through its various ministries and activities, and in accordance with its sincerely held religious beliefs, the Church strives to provide services to people living in Sun Prairie and surrounding areas and to add to the cultural, civic, recreational, and educational opportunities available to children and the community.

16. Consistent with and in an effort to practice its sincerely held religious beliefs, the Church desires to conduct weekly after-school AWANA meetings in the District's Westside Elementary School.

17. The Church's AWANA meetings educate children in Biblical teachings regarding key life skills and values, including, among others, leadership; responsibility; self-discipline; building character; treating others with respect and kindness; serving others within the community; living a life of honesty and integrity; and cooperating with others.

18. The AWANA meetings are open to children in the community ages kindergarten through sixth grade, and parents are welcome to attend the meetings with their children.

19. Through its AWANA meetings, the Church aims to provide friendly outreach and support to children in the community, including those to whom no one is reaching with the good news of the Gospel of Jesus Christ.

V. IDENTIFICATION OF THE DEFENDANTS

20. Defendant Sun Prairie Area School District (“District”) is established, organized, and authorized under the laws of Wisconsin.

21. The District has the authority to sue and be sued.

22. The District is charged with, and responsible for, the enactment and enforcement of all District policies, including Policy KG and Policy KG-R, challenged in this suit.

VI. STATEMENT OF FACTS

The Challenged District Policies

Policy KG

23. The District adopted and maintains Policy KG “Public Use of School Facilities.” A true and correct copy of Policy KG is attached as Exhibit 1, with relevant portions underlined for ease of reference.

24. According to the Policy, the District “encourages municipal recreational departments, civic organizations and service groups operating as nonprofit organizations within the school district to use the facilities . . . for activities consistent with Board policies and the general welfare of children and the community.” *See* Policy KG, § 1.a.

25. Under this standard, the Church’s AWANA program fits squarely within the category of activities encouraged under the Policy to use District facilities.

26. Also according to Policy KG, the District “encourages the use of school facilities to provide forums for the discussion of issues” *Id.* at § 1.b.

27. The Church’s AWANA use likewise satisfies this section of Policy KG, as AWANA meetings involve discussion of various cultural, civic, community, charitable, recreational, and educational issues.

28. The Policy additionally provides that “Rental fees may be charged for the use of school facilities under certain circumstances Some organizations may be exempt from paying rental fees on the basis of the activities they provide for the general welfare of children and the community.” *Id.* at § 4.

29. Under this standard, the Church’s AWANA use qualifies for a rental fee exemption.

30. Despite meeting the Policy’s rental fee exemption requirements, the Church is being charged a rental fee by the District for its AWANA meetings due to the regulations accompanying the Policy. *See* KG-R below.

31. Policy KG does not define “general welfare” or state what “certain circumstances” may require imposition of rental fees for use of school facilities.

32. Policy KG does not specify a time frame in which the decision maker must decide whether to grant or deny a permit.

33. Policy KG also lacks practical guidelines to assist the decision maker in its application and enforcement.

Policy KG-R

34. The District also adopted and maintains Procedure KG-R “Use of School Facilities.” A true and correct copy of Policy KG-R is attached as Exhibit 2, with relevant portions underlined for ease of reference.

35. Section B.2.a.1 of Policy KG-R provides that nonprofit organizations “with or without religious affiliations may be allowed to use school facilities” free of charge upon satisfaction of four criteria:

- (1) The organization is located within the school district;
- (2) Its main purpose is non-religious;

- (3) Its purpose is to provide recreational or educational opportunities for children and the community; and
- (4) The organization does not discriminate in membership based on religious affiliation or other prohibited criteria.

36. But for the unconstitutional restrictions contained in items 2 and 4 above, the Church satisfies each of the requirements necessary for free access to District facilities.

37. Policy KG-R proceeds to set forth specific examples of nonprofit groups exempt from rental fees. *See* § B.2.a.1. These examples include:

- (1) Sun Prairie City Recreational Department;
- (2) Parent/Teacher Organizations;
- (3) 4-H Clubs;
- (4) Future Farmers of America;
- (5) Athletic and recreational activities by bona fide established nonprofit organizations within the school district;
- (6) Athletic, recreational or civic activities by responsible residents or organizations of the school district organized for community service or the public welfare; and
- (7) Service organizations engaged in community service activities or activities which promote the general welfare of children or the community.

Id.

38. The Church and its AWANA meetings qualify for a fee exemption under items 6 and 7 above.

39. Policy KG-R, under the heading “Religious Activities” singles out religious nonprofit organizations that seek equal access to District facilities. *Id.* at § B.2.b

40. The Policy states that “In order to comply with [the District’s] constitutional obligations, including the establishment clause of the United States Constitution . . . some

restrictions on the use of school facilities by religious groups . . . are deemed necessary.” *Id.* at § B.2.b.1.

41. The Policy states that facilities “may be made available for religious activities during non-school hours” subject to enumerated limitations.

42. One such limitation is that the “arrangement will be for a limited, specified time not to exceed one school semester in length under each [permit] application.” *Id.* at § B.2.b.1.(2)(a). Nonprofit organizations can submit additional permits to the Supervisor of Buildings and Grounds, which may be approved as “he or she determines is fair and reasonable considering other competing uses.” *Id.*

43. Nonprofit organizations that are religious in nature, like the Church, are limited in their use of District facilities to a temporary basis under the Policy, but other similarly situated groups are not subject to the Policy’s temporary basis limitation.

44. Policy KG-R also states that a “reasonable rental charge will be made for the use of the facility based on current approved rental rates established by the school district.” *Id.* at § B.2.b.1(2)(d).

45. Policy KG-R states that applications by nonprofit groups for use permits may be denied if the purpose of the proposed use is “clearly contrary to Board policies or the welfare of the children” in the “reasonable discretion” of the Supervisor of Buildings and Grounds (subject to review by the Deputy District Administrator). *Id.* at § C.3.

46. The Policy does not define “welfare of the children” or provide any guidelines to assist the decision maker purportedly exercising “reasonable discretion” in denying a permit application.

47. The Policy does not set forth a specific time from in which a permit application must

be submitted, providing only that an applicant “give sufficient lead time” for the school to process the permit application. *See* § C.1.

48. The Policy does not define “sufficient lead time.”

49. The Policy also fails to provide an established time frame in which the decision maker must approve or deny a permit application.

The District’s Forum

50. Through its Policies and practice, the District consistently allows community groups access to District facilities free of charge.

51. The District permits free facility access to the following organizations, among others: 4-H; FFA; Girl Scouts; Brownies; Cub Scouts; Trout Unlimited; Sun Prairie City Recreational Department; YMCA; Sun Prairie Youth Softball; American Cancer Society; ESCO; ROSCO; and VFW.

52. These organizations promote issues related to leadership; teamwork; citizenship; smart decision-making; civic responsibility; critical thinking; making healthy lifestyle choices; building character; developing strong values; and building self confidence, to name a few.

53. By practice, the District has intentionally opened its facilities for indiscriminate community use by the above named organizations and others.

54. The Church’s AWANA meetings seek to address the same or similar issues promoted by other nonprofit organizations given free access to District facilities.

55. These issues include, but are not limited to, leadership; responsibility; self-discipline; building character; treating others with respect and kindness; serving others within the community; living a life of honesty and integrity; and cooperating with others.

The Church's Request to Use School Facilities and the District's Unlawful Response

56. On March 26, 2008, the Church's pastor, Ken Brummel spoke with the District's Director of Building and Grounds, Tom Brooks, about the Church's desire to hold its AWANA meetings on Wednesday evenings at Westside Elementary School during the upcoming 2008-09 school year.

57. As the Pastor of the Church, Mr. Brummel is authorized to speak and act on behalf of the Church.

58. During his conversation with Pastor Brummel, Mr. Brooks informed him that pursuant to District Policies, the District would start charging the Church for its Wednesday night AWANA meetings at Westside Elementary School.

59. For approximately two years prior, the Church had conducted its after-school AWANA meetings at that location, and the District had not charged the Church a rental fee for the AWANA use.

60. When Mr. Brummel stated to Mr. Brooks that it was not right for the District to charge the Church for its use, while not charging other similar nonprofit groups, Mr. Brooks stated that "religious groups were different than Boy Scouts, Girl Scouts, FFA, etc."

61. In late April, 2008, Pastor Brummel again met with Mr. Brooks at the District's offices.

62. During this meeting, Mr. Brooks reiterated to Pastor Brummel that pursuant to the District's Policies, the Church would have to pay a rental fee for its AWANA use for the 2008-09 school year.

63. When Pastor Brummel asked why other groups were not going to be charged a rental fee, Mr. Brooks replied that such groups did not have a "primary religious purpose" like the Church.

64. When Pastor Brummel stated that it was not right for the District to charge the Church for its use and not charge other nonprofit groups, Mr. Brooks reiterated that the District's Policies required this result.

65. On June 26, 2008, the Church submitted its written facility use permit application for its desired AWANA use at Westside Elementary School during the 2008-09 school year. A true and accurate copy of the Church's application is attached as Exhibit 3.

66. On August 21, 2008, Mr. Brooks informed Mr. Brummel that the Church would be required to pay a rental fee of \$271.50 for each AWANA meeting.

67. Pastor Brummel again asked whether other nonprofit organizations, such as the Boy Scouts, were going to have to pay rental fees for the 2008-09 school year.

68. Mr. Brooks stated that other community groups, including the Boy Scouts, would not be charged a rental fee, but that the Church would be charged pursuant to Policies KG and KG-R, and in accordance with the fee schedule set forth in Policy KG-E. Mr. Brooks then showed Pastor Brummel a copy of these Policies.

69. The Church subsequently decided to reduce the number of requested classrooms by two for AWANA meetings and to shorten the length of the AWANA meetings to two and a half hours, instead of three.

70. The Church will now be forced to pay a rental fee of \$191.25 each time it conducts an AWANA meeting at Westside Elementary School due to the District's denial of equal access.

71. The \$191.25 rental fee is comprised of rental rates established by Policy KG-E for two and a half hours of use of a multipurpose room (\$16.00 per hour), a cafeteria/gym (\$11.50 per hour), and seven classrooms (\$7.00 per classroom, per hour). A true and accurate copy of Policy KG-E is attached as Exhibit 4.

72. The Church desires to hold 32 weekly AWANA meetings during the 2008-09 school year which, at the \$191.25 per meeting charge, will amount to \$6,120 in rental fees for the year.

73. The Church would not have incurred this expense at the District's facility if it was not a religious organization.

74. The Church has a continuing desire to use the District's facilities for its AWANA meetings free of charge.

75. The Church does not have funds in its budget to pay the District's rental fee for AWANA.

76. In order to pay the AWANA rental fee, the Church must take funds away from its other ministries.

77. The Church will experience irreparable injury to its constitutional rights if it is forced to forego any of its ministry activities in order to pay the rental fee to the District.

VII. ALLEGATIONS OF LAW

78. All acts of the District, its officers, agents, servants, employees, or persons acting at its behest or direction, were done and continue to be done under the color and pretense of the policies, statutes, ordinances, regulations, customs, and usages of the State of Wisconsin.

79. The United States Constitution fully protects the Church's speech and religious expression.

80. Unequal access to a public forum to engage in protected religious speech is a violation of the First Amendment and Fourteenth Amendment to the United States Constitution.

81. The decision to charge the Church a fee for use of District facilities is a direct result of policies, practices, customs, and usages officially adopted and promulgated by the District.

82. The Church lacks an adequate or speedy remedy at law to correct or redress the deprivations of its federal rights by the District.

83. The Church is suffering irreparable harm due to the District's conduct.

84. Unless the conduct of the District is enjoined, the Church will continue to suffer irreparable injury.

**FIRST CAUSE OF ACTION: VIOLATION OF THE RIGHTS OF SPEECH AND ASSOCIATION
GUARANTEED BY THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION**

85. The Church re-alleges all matters set forth in Paragraphs 1 through 84 and incorporates them here.

86. Through its Policies and practice, the District has intentionally created a designated public forum by opening up its facilities, free of charge, to a wide range of civic, recreational, educational, cultural, and community service uses.

87. The District permits free facility access to the following organizations, among others: 4-H; FFA; Girl Scouts; Brownies; Cub Scouts; Trout Unlimited; Sun Prairie City Recreational Department; YMCA; Sun Prairie Youth Softball; American Cancer Society; ESCO; ROSCO; and VFW.

88. These organizations promote leadership; teamwork; citizenship; smart decision-making; civic responsibility; critical thinking; making healthy lifestyle choices; building character; developing strong values; and building self confidence; to name a few.

89. While the District opens its forum to religious groups, it requires fees from such groups for no other reason than their religious speech.

90. Indeed, the Church's AWANA meetings seek to address the same or similar issues promoted by other nonprofit organizations given free access to District facilities.

91. These issues include, but are not limited to, leadership; responsibility; self-discipline; building character; treating others with respect and kindness; serving others within the community; living a life of honesty and integrity; and cooperating with others.

92. Yet, the Church is charged a rental fee for facility access while similarly situated groups are not.

93. The District grants free access to the forum for nonprofit community groups, while charging a fee to the Church, for no other reason than the religious content and viewpoint of the Church's religious AWANA meetings and activities.

94. Further, Policy KG-R refuses to extend the rental fee exemption to nonprofit organizations whose "main purpose is religious" and who "do not discriminate in membership based on religious affiliation or other prohibited criteria," thereby singling out religious organizations, like the Church, for discrimination on the basis of their religious content and viewpoint.

95. In addition, Policy KG-R requires that religious organizations, like the Church, receive access only on a temporary basis.

96. This temporary basis limitation does not apply to similarly situated nonreligious nonprofit organizations.

97. The District also imposes the temporary basis limitation on the Church, and not other similarly situated nonreligious activities, for no other reason than the religious content and viewpoint of the Church's religious AWANA meetings and activities.

98. This unequal treatment of the Church premised on its religious speech or activities is a content-based restriction in an otherwise open forum.

99. The District's Policies are also content-based because whether a permit applicant will be charged a rental fee is tied to the content of the applicant's speech, and the Policies lack adequate

procedural safeguards.

100. The District's denial of the Church's religious speech while allowing other secular speech constitutes viewpoint discrimination.

101. Viewpoint discrimination is unlawful regardless of the type of forum in existence.

102. The District lacks a compelling government interest to justify these exclusions.

103. The Free Speech Clause also recognizes and protects the right to association.

104. The Church is an expressive association that desires to advocate its Christian message and viewpoints through its weekly AWANA meetings for children in the District's open forum.

105. The Districts violates the Church's right to association by denying them equal access to the forum, based solely on the Church's intended religious speech, ideologies, philosophies, and beliefs.

106. The District's Policies additionally impose an unconstitutional prior restraint because they vest District officials with the unbridled discretion to permit or refuse protected speech free access to the forum.

107. The District's Policies foster unbridled discretion in deciding what activities are consistent with the "general welfare" of children and the community (Policy KG, §§ 1.a; 4; Policy KG-R, §§ B.2.a.1; C.3); whether or not any rental fees will be charged and what "certain circumstances" would require imposition of a fee (Policy KG, § 4); and what is "fair and reasonable" in deciding whether to approve a group's application for an additional rental period (Policy KG-R, § B.2.b(2)(a)).

108. The District's Policies also foster unbridled discretion in that the decision maker "may" charge a rental fee and "may" exempt some organizations from paying a fee, without having concrete guidelines to assist him or her in deciding. *See* Policy KG, § 4.

109. The District's Policies also require the Church to seek equal access to the forum at an unspecified time in advance and fail to provide a time frame in which a decision maker must decide whether to grant or deny a permit.

110. The District's Policies are also overbroad because they sweep within their ambit protected First Amendment rights in the form of religious expression.

111. The overbreadth of the District's Policies and practice chill protected speech by discouraging individuals and groups from seeking access to the forum for the purpose of engaging in certain protected speech based on the affordability of access.

112. The District's Policies and practice chill, deter, and restrict the Church from accessing the forum on an equal basis with other groups to discuss issues or hold meetings that are religious in nature.

113. Religious groups, like the Church, are either prohibited from accessing District facilities due to lack of funds, or are penalized by being required to pay for such access merely because they engage in religious speech.

114. The District's Policies, both on their face and as interpreted by the District to prohibit equal access to the forum as requested by the Church, are not the least restrictive means necessary to serve any compelling interest.

115. Accordingly, the District's Policies and practice, both facially and as-applied, violate the Church's rights to Free Speech and Free Association as guaranteed by the First Amendment to the United States Constitution and incorporated and applied to state action under the Fourteenth Amendment.

WHEREFORE, the Church respectfully asks that the Court grant the declaratory and injunctive relief set forth in the Prayer for Relief.

**SECOND CAUSE OF ACTION: VIOLATION OF THE EQUAL PROTECTION CLAUSE
OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION**

116. The Church re-alleges all matters set forth in Paragraphs 1 through 84 and incorporates them here.

117. The Equal Protection Clause of the Fourteenth Amendment requires that the government treat similarly situated persons equally.

118. In accordance with their Policies and practice, the District mandates that religious groups pay a fee for facility access, but permit similarly situated groups and individuals to access facilities for free.

119. For instance, the District permits groups like 4-H; FFA; Girl Scouts; Brownies; Cub Scouts; Trout Unlimited; Sun Prairie City Recreational Department; YMCA; Sun Prairie Youth Softball; American Cancer Society; ESCO; ROSCO; VFW, and others to use District facilities free of charge.

120. These organizations promote issues related to leadership; teamwork; citizenship; smart decision-making; civic responsibility; critical thinking; making healthy lifestyle choices; building character; developing strong values; and building self confidence, to name a few.

121. The Church's AWANA meetings seek to address the same or similar issues promoted by other nonprofit organizations given free access to District facilities. These issues include, but are not limited to, leadership; responsibility; self-discipline; building character; treating others with respect and kindness; serving others within the community; living a life of honesty and integrity; and cooperating with others.

122. Yet, the District treats the Church's AWANA use disparately when compared to these and other similarly situated groups by charging it a fee for facility usage.

123. By discriminating against the content and viewpoint of the Church's religious speech, the District treats the Church differently than other similar situated nonprofit organizations on the basis of the religious content and viewpoint of its speech.

124. The District's Policies and practice violate the Church's fundamental rights, including its rights of free speech and free exercise of religion.

125. When government regulations, like the District's Policies and practice, infringe on fundamental rights, discriminatory intent is presumed.

126. The District's Policies and practice have also in fact, and in practice, been applied to intentionally discriminate against the Church's rights of free speech and free exercise of religion.

127. The District lacks a rational or compelling state interest for such disparate treatment.

128. Accordingly, the District's Policies and practice, both facially and as-applied, violate the Church's right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, the Church respectfully asks that the Court grant the declaratory and injunctive relief set forth in the Prayer for Relief.

**THIRD CAUSE OF ACTION: VIOLATION OF THE FREE EXERCISE CLAUSE
OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION**

129. The Church re-alleges all matters set forth in Paragraphs 1 through 84 and incorporates them here.

130. The Church holds religious beliefs that it must reach out to the young people of today and offer Biblical guidance on how to face contemporary issues.

131. The Church also holds sincere religious beliefs that it should make its Christian-based activities and events regarding cultural, civic, recreational, and educational opportunities available to as many people as possible, including children, who are the future leaders of the community.

132. The Church's desire to conduct its weekly after-school AWANA meetings in the District's Westside Elementary School, is based on these sincerely held religious beliefs.

133. The District's Policies and practice penalize the exercise of religion by subjecting it to a fee, and other limitations, that do not apply to other nonprofit activities.

134. The District's Policies expressly discriminate against religion.

135. The District's Policies impose a substantial burden on religious exercise that is not generally applicable.

136. The District interprets and applies their Policies to disqualify the Church from free access to the opened facilities under their control solely because of the religious nature of the Church's activities and the religious content and viewpoint of the Church's speech.

137. The District's interpretation and application of its Policies imposes a substantial burden on the Church's right to the free exercise of religion.

138. The District's Policies and practice substantially burden the Church's free exercise of religion by conditioning receipt of government benefits, such as equal access to the public forum, on foregoing its protected free exercise rights.

139. The District's Policies and practice substantially burden the Church's free exercise of religion by forcing it to select between engaging in religious speech and foregoing the government benefit of equal access to the public forum, or foregoing the free exercise of religion so as to receive equal access.

140. The District's Policies violate various constitutional rights held by the Church, including freedoms of speech, association, and assembly, and free exercise.

141. The District lacks a compelling government interest to justify its interpretation and application of its Policies to bar the Church's request for equal treatment in the use of District facilities.

142. The District's Policies prohibiting free use of facilities by the Church are not the least restrictive means necessary to serve any legitimate interests of the District.

143. The District's interpretation and application of its Policies chills the Church's freedom of religious discussion and exercise – both of which are fundamental rights guaranteed to the Church by the First Amendment.

144. The District's Policies, on their face and as-applied, violate the Church's rights under the Free Exercise Clause of the First Amendment to the United States Constitution as incorporated and applied to state action under the Fourteenth Amendment.

WHEREFORE, the Church respectfully asks that the Court grant the declaratory and injunctive relief set forth in the Prayer for Relief.

**FOURTH CAUSE OF ACTION: VIOLATION OF THE DUE PROCESS CLAUSE
OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION**

145. The Church re-alleges all matters set forth in Paragraphs 1 through 84 and incorporates them here.

146. The Due Process Clause of the Fourteenth Amendment prohibits government attempts to limit access to a particular forum pursuant to vague or overbroad standards that grant unbridled discretion.

147. The determination by the District as to what is and is not religious speech for purposes of granting or denying equal access to the forum violates this norm.

148. The District's Policies and practice are vague and allow for unbridled discretion in determining which nonprofit organizations do and do not qualify for a rental fee exemption.

149. The District's Policies state that rental fees may be charged for the use of school facilities under "certain circumstances."

150. Yet, the District's Policies lack any definitions or guidelines as to how to determine what "certain circumstances" may require imposition of rental fees for use of school facilities.

151. The District's Policies also state that some organizations may be exempt from paying rental fees on the basis of the activities they provide for the "general welfare" of children and the community.

152. However, the District's Policies do not define or expound upon "general welfare."

153. Despite the absence of any standards or definitions to guide District officials' determination, the District is charging the Church for facility use.

154. The District's Policies, both facially and as-applied, are unconstitutionally vague and violate the Church's rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, the Church respectfully asks that the Court grant the declaratory and injunctive relief set forth in the Prayer for Relief.

**FIFTH CAUSE OF ACTION: VIOLATION OF THE ESTABLISHMENT CLAUSE
OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION**

155. The Church re-alleges all matters set forth in Paragraphs 1 through 84 and incorporates them here.

156. The District's Policies require that nonprofit organizations that engage in religious speech or activities be charged a fee for using the open forum.

157. Also, the District's Policies require that religious users, like the Church, may only receive access on a temporary basis.

158. No other similarly situated nonprofit use is required to abide by these limitations.

159. This treatment for only religious speech, when other similar secular speech is allowed without these limitations, evidences hostility toward religion in violation of the Establishment Clause.

160. Further, to determine whether an event is a religious activity, or whether religious speech is at issue, the District must analyze the religious content and significance of a user's activity to determine whether religious activity or speech is occurring.

161. Obtaining sufficient information for the District to analyze the religious significance of the user's activity requires ongoing, comprehensive government surveillance that impermissibly entangles the District with religion.

162. The District's Policies, facially and as-applied, therefore violate the Establishment Clause of the First Amendment to the United States Constitution as incorporated and applied to state action under the Fourteenth Amendment.

WHEREFORE, the Church respectfully asks that the Court grant the declaratory and injunctive relief set forth in the Prayer for Relief.

PRAYER FOR RELIEF

The Plaintiff respectfully requests judgment as follows:

A. That this Court issue a declaratory judgment declaring the following District Policies invalid – both facially and as-applied to the Church – under the United States Constitution :

- District Policy KG: § 1.a; § 1.b; and § 4;
- District Policy KG-R: § B.2.a.1; § B.2.b.1; § B.2.b(2)(a); § B.2.b(2)(d); § C.1; and § C.3;

- B. That this Court issue a preliminary and permanent injunction restraining the District from enforcing the challenged Policies in all respects;
- C. That this Court retain jurisdiction of this case for the purpose of enforcing the Court's order.
- D. That this Court award the Church's costs and expenses incurred in bringing this action, including a reasonable attorney's fees award, in accordance with 42 U.S.C. § 1988 and other applicable law;
- E. That this Court award nominal and compensatory damages in an amount to be determined, plus interest at the legal rate until paid;
- F. That this Court adjudge, decree, and declare the rights and other legal relations of the parties, in order that such declarations have the force and effect of final judgment;
- G. That this Court issue the requested injunctive relief without a condition of bond or other security being required of the Church; and
- H. That this Court grant such other and further relief as the Court deems equitable, just, and proper.

Respectfully submitted this 10th day of September, 2008.

BENJAMIN W. BULL*
Arizona Bar No.009940
JEREMY D. TEDESCO*
Arizona Bar No. 0234847
ALLIANCE DEFENSE FUND
15100 N. 90th Street
Scottsdale, AZ 85260
Telephone: (480) 388-8051
Facsimile: (480) 444-0028
jtedesco@telladf.org

KRYSTAL R. WILLIAMS-OBY
Wisconsin Bar No. 01019584
KINGDOM LEGAL SERVICES
10 East Doty Street, Suite 800
Madison, WI 53703
Telephone: (608) 204-5896
Facsimile: (608) 441-5707
kingdomlegal@sbcglobal.net

By: s/ David A. Cortman
DAVID A. CORTMAN
Lead Counsel
Georgia Bar No. 188810
JOSHUA B. BOLINGER*
Georgia Bar No. 316403
ALLIANCE DEFENSE FUND
1000 Hurricane Shoals Road, NE
Building D, Suite 600
Lawrenceville, GA 30043
Telephone: (770) 339-0774
Facsimile: (770) 339-6744
dcortman@telladf.org
jbolinger@telladf.org

Attorneys for Plaintiff Open Door Church

*Motion for admission *pro hac vice* forthcoming after assignment of Judge

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, the undersigned, declare under penalty of perjury that:

1. I am a citizen of the United States and a resident of Wisconsin;
2. I am the pastor of Open Door Church of Sun Prairie, Wisconsin, the Plaintiff in this action, and am authorized to speak on behalf of that organization; and
3. I have read the foregoing Verified Complaint and the facts as alleged are true and correct.

Executed this 8th day of September, 2008 in Sun Prairie, Wisconsin.



Kenneth Brummel, on behalf of
Open Door Church of Sun Prairie, Wisconsin