

DISTRICT COURT, PUEBLO COUNTY,
COLORADO
501 N. Elizabeth Street
Pueblo, Colorado 81003

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REVEREND PAUL ELDER, an individual, and
THE CHRISTIAN GROWTH CENTER INC., a
Colorado Nonprofit Corporation,
Plaintiffs,

▲ COURT USE ONLY ▲

v.

THE CITY OF PUEBLO, COLORADO, a
municipality,
Defendant.

Case No.:
Div.

*Attorney for Plaintiffs Reverend Paul Elder and The
Christian Growth Center*

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COMPLAINT AND JURY DEMAND

Plaintiffs Reverend Paul Elder and The Christian Growth Center Inc. (the “Church”) file this complaint and jury demand against Defendants the City of Pueblo and City Attorney Dan Kogovsek for review under Colorado Rule of Civil Procedure 106(a)(4) as well for injunctive relief, attorneys’ fees, and damages pursuant to the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc et seq., and 42 U.S.C. § 1983.

Introduction

“Go ye therefore, and teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Ghost: Teaching them to observe all things whatsoever I have commanded you.” *Matthew* 28:18-20

“Be not forgetful to entertain strangers: for thereby some have entertained angels unawares.” *Hebrews* 13:2.

“His salary (support, as it was called) was usually less than a hundred dollars a year. He had no retirement plan, no retirement age. . . . He had to make his back fit anyone’s bed, find his rest and relaxation on horseback, and ride a circuit 300 miles or longer.” Elmer F. Suderman, *The Circuit Rider*, *Studies in Popular Culture* (Spring 1981).

1. The Christian Growth Center (the “Church”) is a small Pentecostal congregation of Christians in East Pueblo. Reverend Paul Elder has been the pastor of the Church for more than thirty years. The Church and Reverend Elder are a light to their community.

2. Hospitality and evangelism are central to the Church’s living faith. The Church practices hospitality by feeding, clothing, and housing the homeless of Pueblo, as well as helping folks who’ve fallen on hard times in Colorado and throughout the world. The Church practices evangelism by preaching the Good News of the Gospel at regular worship services, revivals, youth education, and by welcoming missionaries and traveling evangelists to Pueblo.

3. One aspect of the Church’s hospitality ministry is at issue in this suit. For more than three decades, the Church has without incident—and in fact, with formal City approval—provided a single set of RV connections for traveling evangelists who come to the Church to preach revivals. The Church also offers its RV hook-ups on a temporary basis to folks connected to the Church who are destitute and have no money for an RV park and no safe place to park their homes. The Church calls this aspect of its hospitality ministry, which is common to Pentecostal congregations like the Church, its “RV Evangelist Ministry.”

4. The RV Evangelist Ministry has deep roots in American Christianity. It follows in the venerable tradition of churches who welcomed circuit-riding preachers of the first and second Great Awakenings like John Wesley and the Finley brothers. Welcoming today’s traveling evangelists, who’ve traded horseback and deer paths for RV’s and interstates, is a core and longstanding religious exercise of the Church.

5. Last spring, the City of Pueblo began criminal-enforcement proceedings against the Church and Reverend Elder to ban the Church’s RV Evangelist Ministry as a violation of the City’s zoning code. The Church appealed the City’s decision to Pueblo’s Zoning Board of Appeals. The Church

argued to the Board, as it had done in negotiations with the City, that the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) and the First Amendment protect the Church’s RV Evangelist Ministry from otherwise applicable municipal ordinances. The Church introduced testimony that the RV Evangelist Ministry is core religious exercise of the Church, that banning the Ministry would substantially burden that exercise, and that the City had numerous alternative means to ensure the Ministry is safe, clean, and sightly.

6. For its part, the City introduced no evidence before the Board. It did not cross examine the Church’s witnesses, and it did not introduce testimony of its own. Despite the absence of evidence to support the City’s decision—a record which the City is stuck with in this C.R.C.P. 106(a)(4) action—the five-member Board denied the Church’s appeal four to one. In a decision drafted by the City Attorney, the Board explained that in its opinion banning the Ministry did not substantially burden the Church’s religious exercise, and that it lacked power to comply with federal law and the Constitution to exempt the RV Evangelist Ministry.

7. The City’s attempt to ban the Church’s RV Evangelist Ministry violates RLUIPA and the First Amendment. In addition, the Board’s decision, which is based on a record with no evidence supporting the City’s ban, is an abuse of discretion and exceeded the Board’s jurisdiction in violation of C.R.C.P. 106(a)(4).

Parties, Jurisdiction, and Venue

8. Reverend Paul Elder is the pastor of the Christian Growth Center, a chaplain for the Pueblo Police Department, a father and husband, and a 30-year resident of Pueblo, Colorado. His career has been dedicated to the material and spiritual well-being of the people of Pueblo.

9. The Christian Growth Center (the “Church”) is a bible-based Pentecostal church congregation located at 1906 N. Hudson Avenue, Pueblo, Colorado, and incorporated as a non-profit corporation under Colorado law. Founded by Reverend Elder, the Church is a community of Christians dedicated to loving God and others. The Church helps people live holy lives inwardly and outwardly, joyful in the worship of God.

10. The Church owns the property located at 1906 N. Hudson Avenue, Pueblo, Colorado.

11. Defendant City of Pueblo is a home-rule city and Colorado municipal corporation (the “City”), which exercises the powers granted to home rule cities under Article XX of the Constitution of Colorado, including exercising the power, pursuant to the provisions of C.R.S. §§ 31-23-101 *et seq.*, to enact land use regulations and to adopt policies and procedures to carry out and enforce its land-use regulations.

12. The Court has jurisdiction over this case under Colo. Const., Art. VI, §§ 1, 9(1); C.R.C.P. 106(a)(4); 42 U.S.C. § 2000cc(2)(b); and 42 U.S.C. § 1983. In particular, the Church's RV Evangelist Ministry constitutes an exercise of religion, specifically the dynamic and active use of religious structures, that affects interstate commerce. In addition, and as fully set forth below, the City has implemented a land-use regulation against the Church under which the City has a system of making individualized assessments of the proposed property use.

13. Venue lies in this Court under C.R.C.P. 98(b)(2). All actions giving rise to this complaint occurred in Pueblo.

The Church's RV Evangelist Ministry

14. One core aspect of the Church's Christian faith is its hospitality ministry. The Church believes hospitality is central to living out their Christian faith as commanded by the Gospel.

15. As part of its hospitality ministry, the Church feeds, houses, and clothes the homeless of Pueblo.

16. The Church also helps folks who've fallen on hard times, spiritually and materially, by welcoming them to worship services, and assisting with mortgage payments, utilities, and grocery bills, among other things.

17. The Church also sends food and clothing to a sister Christian community in Vietnam under persecution by the local government.

18. And Reverend Elder lives out his biblical call to hospitality by serving as a volunteer police chaplain for the Pueblo Police Department.

19. The Church has memorialized its call to hospitality by adopting a formal policy on hospitality.

20. The subject of this suit is the City's attempt to ban one part of the Church's hospitality ministry: the RV Evangelist Ministry. The RV Evangelist Ministry entails providing a single set of clean, safe, and sightly RV connections to traveling evangelists who come to the Church to preach revivals.

21. The City has formally approved the Church's RV connections as compliant with the City's Building Code.

22. The Church also offers its RV Evangelist Ministry to help evangelists and missionaries who stop through Pueblo on their way to a revival or mission in other states and cities.

23. The Church also offers the RV Evangelist Ministry to folks who are in need of help, cannot afford Pueblo's RV Parks, and have no safe place to park their homes.

24. The Church's formal policy on hospitality states that the Church reserves "the biblical right to supply hospitality, housing, meals, and honorariums to members of the clergy," which "may take the form of providing rooms, RV hook-ups, and any other option available."

25. The RV Evangelist Ministry is common to Pentecostal congregations like the Church. At the hearing before the Zoning Board, Reverend Elder and one of the members of the Church, Sister Carol Lee, testified that of the approximately 400 Pentecostal congregations associated with the Church, fully 95% of them have RV Evangelist Ministries.

26. Sister Lee and Reverend Elder, both of whom spent decades on the road as traveling evangelists, relied on such ministries to preach and spread the Gospel.

27. Welcoming evangelists to use the RV Evangelist Ministry and holding revivals with traveling evangelists are core religious practices for the Church.

28. Without the RV Evangelist Ministry, traveling evangelists would be far less likely to visit and preach at the Church.

29. The Church hosts ten to fifteen traveling evangelists per year to preach revivals at the Church, most of whom live full time in their RV's and rely on the RV Evangelist Ministry when they visit the Church.

30. The Church's collections, which it uses to serve the poor of Pueblo, increase significantly when traveling evangelists preach revivals.

31. Prevailing rates at Pueblo RV Parks average \$85 per night plus gas and electricity.

32. Traveling evangelists live simple lives. As Sister Lee testified to the Zoning Board of Appeals, her husband made about \$100 per service, four services a week when he was a traveling evangelist. An RV is often a traveling evangelist's only home. The RV Evangelist Ministry is thus crucial for traveling evangelists to continue their religious mission.

33. Many people have used the RV Evangelist Ministry over the years.

34. Revivals preached by evangelists who have relied on the Ministry have changed numerous people's lives who were mired in addiction, abuse, and illness.

35. The Church has maintained its RV Evangelist Ministry for more than thirty years without incident or complaint, first at the O'Neal Avenue location and now at the North Hudson location.

The City's RV Ordinance and the Attempt to Ban the RV Evangelist Ministry

36. Section 17-4-27 of the Pueblo Municipal Code prohibits recreational vehicles, RV's, being used for their intended purpose—as dwellings—“in any location not approved” for their use:

For purposes of these regulations, **major recreational equipment** is defined as including boats and boat trailers, travel trailers, pick-up campers or coaches (designed to be mounted on automotive vehicles), **motorized dwellings**, tent trailers and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not. . . . **No such equipment shall be used for living, sleeping or housekeeping purposes when parked or stored on a residential lot, or in any location not approved for such use.**

(Emphasis added).

37. In practical terms, Section 17-4-27 (the “RV Ordinance”) prohibits using an RV as a dwelling in Pueblo except in City-sanctioned RV parks that charge substantial nightly rates.

38. Officer Karen Willson, the City's code enforcement manager, noticed a violation of the RV Ordinance to the Church on May 18, 2021.

39. On July 29, 2021, the Church through its counsel, responded by letter to Officer Willson and the City, explaining that the RV Evangelist Ministry constitutes core religious exercise for the Church, that banning it is a substantial burden on the Church's religious exercise, and thus the RV Ordinance, as applied to the RV Evangelist Ministry, violates RLUIPA and the First Amendment.

40. On August 11, 2021, assistant city attorney Trevor Gloss under the direction of Mr. Kogovsek, responded by letter to the Church explaining that the City had tentatively concluded that the RV Ordinance as applied to the RV Evangelist Ministry violated neither RLUIPA nor the Constitution. Mr. Gloss, however, invited further negotiations with the Church before making a final decision.

41. After their exchange of letters, the Church and Mr. Gloss had phone-conference negotiations concerning the RV Evangelist Ministry and the City's attempt to ban the Ministry in August and September 2021.

42. Despite the parties' agreement to continue negotiating in good faith, the City, without first informing the Church or its counsel, on September 13, 2021, filed a criminal-enforcement action in Pueblo Municipal Court against the Church's RV Evangelist Ministry for violation of the RV Ordinance. The Municipal Court action is currently stayed.

43. Reverend Elder and the Church face penalties of one-year in prison per day of violation and/or a \$1,000 fine per day of violation for violation of the RV Ordinance.

44. On September 24, 2021, Mr. Gloss informed the Church of the City's final decision that it would not comply with federal law, which requires non-enforcement of the RV Ordinance against the RV Evangelist Ministry.

45. The City has procedures and practices that allow it to make individualized assessments whether to enforce the RV Ordinance against a property owner.

46. The City regularly does not enforce the RV Ordinance against individuals, businesses, and other religious organizations.

47. There are many non-compliant, lived-in RV's within a small radius of the Church and elsewhere throughout the City.

48. The enforcement of the RV Ordinance is based on citizen complaints.

49. The City exercises individualized discretion whether to pursue a complaint and enforce the RV Ordinance.

50. The City considers individual reasons before enforcing the RV Ordinance.

51. The City's Mayor, Nick Gradisar, has expressed animus toward the Church's RV Evangelist Ministry.

52. In a conversation with Reverend Elder regarding the Church's federal rights, Mayor Gradisar mocked the Church and compared the RV Evangelist Ministry to a meat-packing plant.

53. Mayor Gradisar impugned the Church's sincerely held religious beliefs, suggesting the RV Evangelist Ministry was neither sincere, nor a religious belief, but instead a story concocted to run a for-profit business.

54. The RV Evangelist Ministry is, however, an exercise of sincere religious beliefs for the Church and Reverend Elder.

Appeal to the Zoning Board of Appeals

55. The Church filed its appeal of the City Attorney's final determination regarding the City's rights under the Constitution and RLUIPA to Pueblo's Zoning Board of Appeals, sitting in a quasi-judicial capacity, on September 30, 2021. A copy of the Church's appeal papers are attached as **Exhibit 1**.

56. The Zoning Board of Appeals held a hearing on the Church's appeal on November 23, 2021.

57. At the hearing, the Church introduced legal argument and testimony from its counsel, and fact testimony from Reverend Elder, Pastor Paul Hicks, and Sister Carol Lee.

58. Counsel for the Church explained to the Board how the City's attempt to ban the RV Evangelist Ministry violated RLUIPA and the First Amendment.

59. Counsel also explained that the Supremacy Clause of the Constitution requires the City and the Board to comply with federal law when an otherwise applicable ordinance conflicts with federal law.

60. The Zoning Board improperly refused to make a record of Counsel's testimony.

61. Reverend Elder testified that the RV Evangelist Ministry is core religious exercise of the Church and that banning the Ministry would substantially burden that exercise.

62. Reverend Elder also testified that the Church had conducted the RV Evangelist Ministry for thirty years without incident or notice of enforcement.

63. Reverend Elder further testified that the Church welcomed City inspection of the Ministry to ensure any concerns the City might have regarding safety of the Ministry were addressed.

64. Pastor Hicks testified that the RV Evangelist Ministry is core religious exercise of the Church and that banning the Ministry would substantially burden that exercise.

65. Pastor Hicks further testified that, in the past, the City has granted exemptions to various Church ministries from otherwise applicable municipal ordinances.

66. Sister Carol Lee also testified that the RV Evangelist Ministry was core religious exercise of the Church and that banning the Ministry would substantially burden that exercise.

67. Sister Lee likewise testified about the immense work of grace, hospitality, and Christian charity the RV Evangelist Ministry had been in her and her late husband's life.

68. The City did not cross examine any of the witnesses for the Church.

69. The City did not introduce any evidence in support of its position that RLUIPA did not apply or that banning the RV Evangelist Ministry is narrowly tailored to achieve a compelling governmental interest.

70. And the City did not make any legal argument about the applicability of RLUIPA or the Board's and the City's duty to comply with federal law.

71. Instead, the City Attorney, Mr. Kogovsek, urged the Board to go into executive session so he could tell them in a private, closed-to-the-public session about how to rule on the Church's appeal.

72. The Board then explained that it would follow Mr. Kogovsek instructions and issue a written opinion on the Church's appeal at the next Board meeting. The Board then went into executive session, adjourned the meeting, and met privately with Mr. Kogovsek to hear the City's position. The Church has no knowledge of what was said in this session.

73. The Board's *ex parte* communication with Mr. Kogovsek violates the most basic requirements of due process that a judicial proceeding be conducted at an open hearing where the parties are permitted to hear and respond to arguments and evidence of the other.

74. Indeed, the decision under appeal was that of Mr. Kogovsek's office as the administrative official tasked with interpretation of the zoning code. This, too, was a violation of due process, as the official whose decision was being challenged was the same official telling the Board how to rule on the challenge.

75. On December 28, 2021, the Board denied the Church's appeal, which is attached here as **Exhibit 2**.

76. The Board first ruled it "heard nothing at the November 23, 2021 hearing" that would establish that banning the RV Evangelist Ministry would substantially burden a religious exercise of the Church.

77. The Board ruled in the alternative that, even if it had, it has no power to comply with federal law to allow the RV Evangelist Ministry to continue.

78. A local government body, including the Board, always has the power, and indeed has the duty, to comply with federal law and the Constitution of the United States. U.S. Const. art. VI, § 2.

Conditions Precedent

79. The Church and Reverend Elder have complied with all conditions precedent. Among other things, and even though they were not legally required to do so, they've exhausted all administrative remedies available to them.

Count One

Administrative Review Under C.R.C.P. 106(a)(4)

80. The Church and Reverend Elder incorporate and reallege all preceding paragraphs.

81. The City and the Board have exercised quasi-judicial functions in denying the Church's appeal.

82. The Board's decision was contrary to law. Specifically, a ban on the RV Evangelist Ministry violates the First Amendment and RLUIPA. The City and its Zoning Board are dutybound to comply with federal law.

83. The Board's decision constitutes an abuse of discretion, is unsupported by substantial evidence, and is clearly erroneous. The City admitted, by not rebutting or otherwise disputing the Church's testimony, that banning the RV Evangelist Ministry imposes a substantial burden on its religious exercise. The City, moreover, offered no evidence that it had a compelling interest in banning the RV Evangelist Ministry. Nor did the City introduce evidence that a ban was the least-restrictive means of accomplishing any compelling interest. Just the opposite—the City did not rebut that the Church has been offering the RV Evangelist Ministry for thirty years without incident and that the Church welcomed re-inspection of its Ministry to ensure health and safety.

84. The Board also abused its discretion by *i*) refusing to make a record of the testimony of the Church's counsel, *ii*) engaging in improper *ex parte* communications with Mr. Kogovsek, and *iii*) relying on the advice of a conflicted City official.

85. The Church and Reverend Elder are directly and adversely affected by the Board's and the City's actions, and the Church and Reverend Elder have no other plain, speedy, or adequate remedy otherwise provided by law.

86. The Church and Reverend Elder seek judicial review of the City's decision and actions under C.R.C.P. 106(a)(4).

87. The Board exceeded its jurisdiction and abused its discretion when it denied the Church's appeal.

88. Pursuant to C.R.C.P. 106(a)(4), the Church and Reverend Elder are entitled to a ruling of this Court that the Board exceeded its jurisdiction and abused its discretion in denying Church's appeal.

Count Two
RLUIPA - Substantial Burden on Religious Exercise

89. The Church and Reverend Elder incorporate and reallege all preceding paragraphs.

90. The City is a municipality created under the authority of the Colorado Constitution and thus is a "Government" within the meaning of 42 U.S.C. § 2000cc-5 (4)(a)(i).

91. The RV Ordinance is a zoning law that restricts the Church and Reverend Elder's use of their property. The Ordinance is thus a "land use regulation" within the meaning of 42 U.S.C.A. § 2000cc-5(5).

92. The RV Evangelist Ministry is core to the Church and Reverend Elder's Christian faith and is thus religious exercise within the meaning of 42 U.S.C. § 2000cc-5(7)(a).

93. The City's attempt to ban the RV Evangelist Ministry is an imposition or implementation of a land-use regulation that imposes a substantial burden on the religious exercise of the Church and Reverend Elder in violation of 42 U.S.C. § 2000cc(a).

94. The City's ban of the RV Evangelist Ministry affects interstate commerce. The Ministry is religious land use that encompasses a full range of religious activities that affect interstate commerce.

95. Upon information and belief, the City has in place a system of formal or informal procedures that permit it to make case-by-case evaluations whether it will enforce its RV Ordinance. Among other things, enforcement of the RV Ordinance is based on citizen complaints, the enforcing officers retain discretion whether to formally notice a violation of the RV Ordinance, and the City's Zoning Code permits the administrative official tasked with enforcing the RV Ordinance to interpret it and determine its applicability.

96. The City has no compelling interest in banning the RV Evangelist Ministry. The Church has offered the Ministry for thirty years without incident or notice of violation from the City.

97. A ban is not the least restrictive means to achieve any interest of the City. The Church has offered many alternatives to the City.

98. The Church and Reverend Elder have incurred damages as a result of the City's attempt to ban its RV Evangelist Ministry, including reduced offerings and expenses to house people who otherwise would have used the RV Evangelist Ministry.

99. The Church and Reverend Elder have incurred attorneys' fees as a result of the City's ban of the RV Evangelist Ministry, to which they are entitled under 42 U.S.C. § 1988.

100. Although not required to, the Church has exhausted its administrative remedies.

Count Three
RLUIPA - Discriminatory Enforcement

101. The Church and Reverend Elder incorporate and reallege all preceding paragraphs.

102. The City treats similarly situated landowners differently than the Church with regards to enforcement of the RV Ordinance. For example, as of September 2021, there were numerous property owners violating the RV Ordinance within a small radius of the Church. Moreover, the City in its discretion has chosen not to enforce the RV Ordinance against similarly situated landowners in the past. Indeed, upon information and belief other churches in Pueblo offer RV Ministries, yet the City has not enforced its RV Ordinance against those Ministries.

103. The City has thus violated 42 U.S.C. § 2000cc(b).

104. The Church and Reverend Elder have incurred damages as a result of the City's discriminatory treatment, including reduced offerings and expenses to house people who otherwise would have used the RV Evangelist Ministry.

105. The Church and Reverend Elder have incurred attorneys' fees as a result of the City's unequal treatment, to which they are entitled under 42 U.S.C. § 1988.

Count Four
§ 1983 - Free Exercise of Religion / Religious Animus

106. The Church and Reverend Elder incorporate and reallege all preceding paragraphs.

107. The RV Evangelist Ministry is a sincerely held religious belief of the Church and Reverend Elder.

108. The City's attempt to ban the RV Evangelist Ministry burdens the Church and Reverend Elder's religious beliefs.

109. “[A] law targeting religious beliefs as such is never permissible.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2024 n.4 (2017) (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993)).

110. The City has targeted the Church’s religious beliefs. Among other things, Mayor Gradisar mocked the RV Evangelist Ministry as insincere, falsely intimating that the Church concocted the Ministry to circumvent the City’s zoning code.

111. In enforcing its RV Ordinance against the RV Evangelist Ministry, the City has acted under color of state law and pursuant to an official municipal policy.

112. The City has violated the Church and Reverend Elder’s right to free exercise of religion.

113. As a result, the Church and Reverend Elder have incurred damages, including reduced offerings and expenses to house people who otherwise would have used the RV Evangelist Ministry.

114. The Church and Reverend Elder have incurred attorneys’ fees as a result of the City’s violation of the First Amendment, to which they are entitled under 42 U.S.C. § 1988.

Count Five

§ 1983 – Free Exercise of Religion / System of Individualized Exemptions

115. The Church and Reverend Elder incorporate and reallege all preceding paragraphs.

116. “A law is not generally applicable if it invites the government to consider the particular reasons for a person’s conduct by providing a mechanism for individualized exemptions.” *Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868, 1877 (2021) (cleaned up).

117. The City has a mechanism for providing individualized exemptions to enforcement of its RV Ministry. Zoning code enforcement officers regularly decide not to enforce the RV Ordinance. And the City has authority to interpret the zoning code as not requiring enforcement of the RV Ordinance in individual circumstances.

118. In enforcing its RV Ordinance against the RV Evangelist Ministry, the City has acted under color of state law and pursuant to an official municipal policy.

119. The City has violated the Church and Reverend Elder’s right to free exercise of religion by refusing to exempt the RV Evangelist Ministry from the RV Ordinance.

120. As a result, the Church and Reverend Elder have incurred damages as a result of the City's discriminatory treatment, including reduced offerings and expenses to house people who otherwise would have used the RV Evangelist Ministry.

121. The Church and Reverend Elder have incurred attorneys' fees as a result of the City's violation of the First Amendment, to which they are entitled under 42 U.S.C. § 1988.

Count Six
§ 1983 - Procedural Due Process

122. The Church and Reverend Elder incorporate and reallege all preceding paragraphs.

123. Freely practicing their faith, including through the RV Evangelist Ministry, is a liberty interest of the Church and Reverend Elder protected by the Fourteenth Amendment.

124. The City's ban on the RV Evangelist Ministry and the Zoning Board's refusal to exempt the RV Evangelist Ministry from the RV Ordinance deprives the Church and Reverend elder of their liberty protected by the Fourteenth Amendment.

125. The City, its Zoning Board, and its City Attorney, Mr. Kogovsek, have failed to provide adequate process before depriving the Church and Reverend Elder of their right to free exercise of religion. Specifically, the Board and Mr. Kogovsek engaged in *ex parte* communication regarding the Church's appeal. The Church and Reverend Elder thus lacked the opportunity to hear and respond to the City's arguments in a public hearing. Mr. Kogovsek was, moreover, conflicted in this matter from providing unbiased legal advice because his interpretation of the RV Ordinance was the core issue in the Church's appeal.

126. The process provided by the City before depriving the Church of its liberty was insufficient under the Fourteenth Amendment.

127. Mr. Kogovsek and the Zoning Board of Appeals were the final decisionmakers for purposes of the Church's appeal and were thus acting pursuant to official municipal policy.

128. The Church and Reverend Elder have incurred damages as a result of the City's denial of due process, including reduced collections and expenses to house people who otherwise would have used the RV Evangelist Ministry.

129. The Church and Reverend Elder have incurred attorneys' fees as a result of the City's denial of due process, to which they are entitled under 42 U.S.C. § 1988.

Prayer for Relief

Wherefore, the Church and Reverend Elder requests that the Court, after a jury trial, enter judgment in their favor and against the City as follows:

- A. A determination, pursuant to C.R.C.P. 106(a)(4), that the Board and the City exceeded their jurisdiction and/or abused their discretion in denying the Church's Appeal;
- B. For an order, judgment, or decree reversing the decision of the Zoning Board of Appeals;
- C. For an injunction prohibiting the City from banning or otherwise substantially burdening the Church's RV Evangelist Ministry;
- D. For the Church and Reverend Elder's attorneys' fees and costs;
- E. For the Church and Reverend Elder's damages; and
- F. For such further relief as the Court deems just and proper.

Respectfully submitted January 27, 2022,

NUSSBAUM SPEIR GLEASON PLLC

/s/ Andrew Nussbaum

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