

legal impediments designed to defeat Second Baptist's efforts to purchase and use

property in West Mifflin, belonging to Grace Christian Ministries, Inc., for the expansion and furtherance of its own church activities and religious mission.

3. As a result of the legal impediments imposed by Defendants, namely their refusal to grant a necessary occupancy permit to Second Baptist, Second Baptist's efforts to conduct and spread its gospel in West Mifflin are being thwarted.

4. The efforts of the individual Plaintiffs to participate in and reap spiritual benefits from church activities in West Mifflin have been similarly thwarted as a result of the aforementioned legal impediments erected by Defendants.

5. Grace Christian Ministries, Inc., a congregation with a predominately White membership that was issued an occupancy permit by Defendants in 1998 for use of its property in West Mifflin as a church, has entered into a contract for the sale of its property to Second Baptist.

6. The sale of Grace Christian Ministries, Inc.'s church property in West Mifflin to Second Baptist cannot be effectuated due to Defendants' refusal, without legal basis, to grant Second Baptist an occupancy permit for the property.

7. Defendants' actions, policies, procedures and practices, which are more fully detailed in the body of this Complaint, violate Plaintiffs' civil rights, as protected by the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc, et seq. (hereinafter referred to as RLUIPA), the free exercise and right to assemble clauses of the First Amendment, the equal protection clause of the Fourteenth Amendment, the Civil Rights Act of 1871, 42 U.S.C. §1983, and the equal protection

component of Article 1, §26 of the Constitution of the Commonwealth of Pennsylvania.

8. Through this action, Plaintiffs' seeks an award of declaratory and injunctive relief, monetary damages and such other relief as is necessary to ensure and effectuate their right to purchase, occupy and use church property in the Borough of West Mifflin.

II. JURISDICTION

9. The jurisdiction of this court to adjudicate Plaintiffs' federal claims is premised upon 28 U.S.C. §§1331 and 1343, which give federal district courts jurisdiction to adjudicate federal questions, as well as authority to award appropriate relief from the violation, under color of state law, of any constitutional right or federal statute providing for the protection of civil rights. Additionally, the court has jurisdiction to declare the rights of the parties to this action pursuant to 28 U.S.C. §§2201 and 2202.

10. This court is also vested with jurisdiction to adjudicate Second Baptist's RLUIPA claim by virtue of 42 U.S.C. §2000cc-2.

11. The court has pendent jurisdiction to adjudicate Plaintiffs' state constitutional claim pursuant to 28 U.S.C. §1367 (a).

III. PARTIES

12. Plaintiff The Second Baptist Church of Homestead, Inc. is a charitable, nonprofit Pennsylvania corporation. Second Baptist functions as a recognized Baptist church. It provides

worship and other church related services to its congregation and the community at large. Second Baptist's administrative offices are currently located at 108 W. 12th Street, Homestead, Pennsylvania.

13. Plaintiff Donald P. Turner is an adult resident of Homestead, Pennsylvania. His mailing address is 351 W. 12th Street, Homestead, Pennsylvania 15120.

14. Plaintiff Russell M. Freeman is an adult resident of Homestead, Pennsylvania. His mailing address is 4339 Armorhill Avenue, Homestead, Pennsylvania 15120.

15. Plaintiff Aldine Coleman is an adult resident of Allegheny County, Pennsylvania. Her mailing address is 3003 Gilmore Avenue, Pittsburgh, Pennsylvania 15235.

16. Defendant Borough of West Mifflin is a political subdivision of the Commonwealth of Pennsylvania existing and operating pursuant to the laws of the Commonwealth. The central administrative offices of the Borough of West Mifflin are located at 3000 Lebanon Church Road, West Mifflin, Pennsylvania.

17. Defendant Dennis Butler is the Borough of West Mifflin's Building Inspector/Zoning Officer/Planning Director. Defendant Butler is being sued in his individual and official capacities. His business address is 3000 Lebanon Church Road, West Mifflin, Pennsylvania.

IV. FACTS

18. Plaintiff Second Baptist Church is an established church with approximately 300 - 350 congregants. It is affiliated with both the Pennsylvania State Baptist Convention and the National Baptist Convention of the U.S.A., Inc.

19. Second Baptist has recently celebrated its 98th anniversary of operation in Homestead, a

municipality located in Allegheny County, Pennsylvania.

20. Second Baptist has operated from its current location, 108 W. 12th Street, Homestead, Pennsylvania, for more than fifty (50) years.

21. The vast majority of Second Baptist congregants are African-Americans.

22. Plaintiff Donald P. Turner has been an active member of Second Baptist for thirty-two (32) years. He also serves as Second Baptist's pastor.

23. Plaintiff Russell M. Freeman has been an active member of Second Baptist for fifty (50) years. He holds the position of Deacon for the Second Baptist congregation.

24. Plaintiff Aldine Coleman has been a member of Second Baptist for more than twenty (20) years. She serves as the secretary of the J.D. Morton Missionary Society, Second Baptists' missionary arm.

25. Over the past few years, Second Baptist has out grown its current home. It is unable to expand its ministry and/or fully serve the religious needs of its members in its existing facilities.

26. Due to the inadequacy of its current facilities, Second Baptist has had to restrict the religious practices of its members to those activities that can be accommodated in its Homestead church.

27. Members, family and friends are sometimes unable to attend and or participate in core religious functions, such as wedding and funeral receptions, due to space limitations at Second Baptist's Homestead property. Furthermore, it is unable to expand its Bible study program and it has

had to curtail plans for the development of a teen ministry program due to the inadequacies of the Homestead church

28. Second Baptist was aware that Grace Christian Ministries, Inc. (hereinafter referred to as “Grace Christian”), a church located at 612 Coal Road in nearby West Mifflin, was experiencing serious difficulties.

29. William Michael Altman, Grace Christian’s minister, was found guilty in the Court of Common Pleas of Allegheny County, Pennsylvania, of violating the criminal laws of the Commonwealth.

30. Upon information and belief, Second Baptist alleges that numerous people lost large sums of money as a result of Mr. Altman’s criminal conduct.

31. In connection with Mr. Altman’s prosecution, Judge Raymond A. Novak of the Criminal Division of the Allegheny County Court of Common Pleas granted a Commonwealth Petition and entered an Order, on or about November 22, 2000, designed to preserve the assets of Grace Christian and to protect the interests of Mr. Altman’s victims.

32. The above-referenced Order appointed the law firm of Strassburger, McKenna, Gutnick & Potter (hereinafter referred to as “SMGP”) to serve as trustees of the Grace Christian property and the Noah’s Ark Child Care (hereinafter referred to as “Noah’s Ark”).

33. Noah’s Ark provides child care services in a Christian-based religious environment. It was approved by West Mifflin for operation in a portion of Grace Christian’s church building as a permitted accessory church use. It continues to provide child care services at the Grace Christian property to this day.

34. A number of the people who suffered losses at Mr. Altman’s hands filed a civil suit for

damages in the Court of Common Pleas of Allegheny County, Pennsylvania. This case is docketed at GD 00-004055.

35. According to the terms of a settlement agreement entered into by the parties to the civil suit at GD 00-004055, Grace Christian's property is to be sold in order to satisfy a judgment of \$462,440.11 agreed to by Defendants.

36. During the time period in which Second Baptist was considering how best to address its need for expanded facilities so that it could fulfill its religious mission, it learned that the Grace Christian property in West Mifflin was available for sale.

37. Some of Second Baptist's members are residents of West Mifflin.

38. West Mifflin and Homestead, Second Baptist's current home, are contiguous municipalities.

39. Acquisition of the Grace Christian property would provide Second Baptist with a large existing church building within which to conduct church business and church-related activities.

40. In addition to the church building, acquisition of the Grace Christian property in West Mifflin would provide Second Baptist with approximately six acres of surrounding land, which could be used for future expansion.

41. Plaintiffs would like to acquire Grace Christian's property in West Mifflin for use in the exercise of their religion.

42. On August 23, 2001, Second Baptist and Grace Christian entered into an agreement of sale for the Grace Christian property located at 612 Coal Road, West Mifflin.

43. The agreed upon price for Grace Christian's property was \$950,000, well in excess of the amount needed to satisfy the judgment entered in the civil damage action.

44. A petition for approval of the proposed sale of the Grace Christian property to Second Baptist was presented to Judge Novak in connection with the state court criminal proceedings.

45. By Order dated October 12, 2001, Judge Novak approved the sale of Grace Christian's real property to Second Baptist.

46. Following execution of the sale's agreement for the Grace Christian real property, Second Baptist agreed to lease space in the Grace Christian church building to Noah's Ark. 47. The rental agreement with Noah's Ark is in furtherance of Second Baptist's ministry and it would permit Noah's Ark to continue providing its religious-oriented child care services at its current location.

48. Second Baptist applied for and received the necessary financing to effectuate its purchase of the Grace Christian church property.

49. Although Defendants had previously issued an occupancy permit to Grace Christian, a predominantly White congregation, for use of its West Mifflin property "for religious purposes," Second Baptist, an African-American congregation, was notified by Defendant Butler and Defendant West Mifflin's solicitor that it must obtain its own certificate of occupancy.

50. Second Baptist submitted an application to Defendants on July 22, 2002 seeking the issuance of an occupancy permit authorizing it to occupy the Grace Christian church property for a "church use."

51. Individual assessments regarding applications for occupancy permits are made for Defendant Borough of West Mifflin by Defendant Butler, West Mifflin's Building Inspector/Zoning

Officer/Planning Director.

52. According to §118.4 of the BOCA National Building Code, which has been adopted by the Borough of West Mifflin, decisions regarding applications for occupancy permits must be issued within ten (10) days of the submission of written applications.

53. State law requires that denials of occupancy permit applications be accompanied by “a brief explanation setting forth the reasons for said disapproval” 53 P.S. §4104 (a).

54. On September 3, 2002, Second Baptist received an envelope post-marked August 26, 2002, which contained an August 16 letter signed by Defendant Butler informing Second Baptist that its occupancy permit application had been denied.

55. The letter received by Second Baptist from Defendant Butler on September 3, 2002, did not provide any basis for the denial, as required by state law, of its application to occupy and use an existing church property for church purposes. The letter, which is attached to this Verified Complaint as Exhibit 1, merely states:

Your application for Occupancy for church use is denied. You have the right to appeal this decision to the Borough of West Mifflin Zoning Hearing Board within thirty (30) days of receiving this Notice. Enclosed is an application for appeal.

56. Although Defendant Butler’s letter indicated that the necessary forms for the filing of an appeal from the denial of Second Baptist’s occupancy permit application were enclosed, no such forms were actually enclosed with the letter.

57. In issuing his letter denying Second Baptist’s occupancy permit application, Defendant Butler was acting in his capacity as Borough of West Mifflin Building Inspector/Zoning Officer/Planning

Director.

58. Defendant Butler's letter was issued on behalf of Defendant Borough of West Mifflin.

59. Defendant Butler's letter denying Second Baptist's occupancy permit application was issued in furtherance of and pursuant to the established practices and procedures of Defendant

Borough of West Mifflin and represented the official policy of said Defendant with respect to the occupancy of Grace Christian's property by Second Baptist.

60. In that Defendants had approved of the use of 612 Coal Road as a church by Grace Christian, a predominantly White church, and denied, without explanation, use of the property for a similar purpose by Second Baptist, a predominantly African-American church, Plaintiffs believe, and therefore aver, that the application for an occupancy permit was impermissibly denied on the basis of either race and/or religious denomination.

61. In denying Second Baptist's application for an occupancy permit, Defendant Butler acted intentionally, willfully, outrageously and with intentional disregard for Plaintiffs' clearly established civil rights.

62. Second Baptist has been unable to conclude its purchase of the Grace Christian church due to its inability to obtain an occupancy permit for the property.

63. On August 29, 2002, Second Baptist filed a Complaint In Mandamus in the Allegheny County Court of Common Pleas and sought a peremptory judgment directing Defendants to issue the

requested occupancy permit.

64. The only issue raised in Second Baptist's state court pleadings is Defendants' failure to issue a decision regarding its occupancy permit application within the ten (10) days provided for by the BOCA Code.

65. Although one and one-half months have passed since Second Baptist filed its state court Mandamus action, no decision has been rendered and no proceedings have been scheduled in the state tribunal.

66. Additionally, Second Baptist filed an appeal from the denial of its occupancy permit application with Defendants' Zoning Hearing Board on September 13, 2002.

67. The Allegheny County Court of Common Pleas has stayed all proceedings before the Zoning Hearing Board pending its disposition of Second Baptist's Complaint In Mandamus.

68. Noah's Ark submitted an application for an occupancy permit to Defendants prior to the initiation of any proceeding involving Second Baptist. Through its application, Noah's Ark sought leave to continue operation of its religiously-oriented day care center at the Grace Christian property.

69. On or about March 20, 2002, Defendant Butler, in his capacity as Borough of West Mifflin Building Inspector/Zoning Officer/Planning Director, denied the occupancy permit application submitted by Noah's Ark.

70. On appeal, Defendant Borough of West Mifflin's Zoning Hearing Board affirmed the denial of an occupancy permit to Noah's Ark.

71. Noah's Ark appealed the denial of its occupancy permit application to the Allegheny County Court of Common Pleas.

72. By Opinion and Order dated October 10, 2002, Judge Joseph M. James of the Allegheny County Court of Common Pleas held that: “[The property sought to be purchased by Second Baptist] is to be used for church purposes. The day-care activity is an accessory use and is permitted as a matter of right.” Judge James reversed the decision of the Zoning Hearing Board and sustained Noah’s Ark’s appeal

73. Following the entry of Judge James' Order in the Noah's Ark appeal, Second Baptist's lawyer contacted Defendants' solicitor and inquired as to whether Second Baptist would be issued an occupancy permit in light of the state court's ruling.

74. Defendants' solicitor informed Second Baptist's lawyer that Second Baptist would not be issued an occupancy permit and that an appeal would be filed from Judge James' Order.

75. Judge James' Order sustaining Noah's Ark's appeal from the denial of an occupancy permit has, itself, been appealed by the Borough of West Mifflin and or the West Mifflin Zoning Hearing Board.

76. Second Baptist has no information regarding when its state court mandamus action will be addressed by the state trial court.

77. Defendants' refusal to issue Second Baptist an occupancy permit has prevented Second Baptist from occupying existing church property in the Borough of West Mifflin.

78. The lack of an occupancy permit substantially impedes and limits Second Baptist's ability to pursue its religious mission and to minister to the community at large.

79. By preventing Second Baptist from occupying the Grace Christian church, Defendants have restricted the members of Second Baptist to those religious practices and activities that can be accommodated by Second Baptists' inadequate facilities in Homestead.

80. Second Baptist is unable to meet the spiritual needs of its members and the community through an expanded Bible study program and a teen ministry due to Defendants' refusal to allow it to use the Grace Christian property.

81. The individual Plaintiffs desire to have facilities in West Mifflin within and from which they can worship, engage in church business and spread the gospel to potential new members.

82. Many of the church activities that Plaintiffs would conduct at the West Mifflin site are central to Second Baptist's religious mission.

83. Defendants' actions, policies, practices and procedures also serve to deprive West Mifflin's residents of worship and other religious opportunities that would be provided in the community by Second Baptist.

84. Since the property at issue has already been approved for use by a church and was, in fact, used as such, there would be no additional burden to Defendants from use of the property as a church by Second Baptist.

85. Defendants have acted under color of state law at all times relevant to the matters set forth in this Complaint.

86. Second Baptist believes, and therefore avers, that Defendant Borough of West Mifflin is the recipient of federal financial assistance.

87. Plaintiffs have suffered irreparable injury as a direct and proximate result of Defendants' conduct, policies, practices and procedures, as described above.

88. As a direct and proximate result of Defendants' above-described conduct, policies, practices and procedures, Plaintiffs have been compelled to divert resources, energy, manpower and funds from the pursuit of their religious calling to efforts to enforce their right to purchase church property in and extend their religious activities to the Borough of West Mifflin.

89. Plaintiffs will continue to incur the injuries described in the previous paragraphs until such time as their rights are vindicated.

90. Furthermore, Second Baptist is being charged and is paying interest on the loan it has secured for the purpose of purchasing Grace Christian's property in West Mifflin.

91. Defendants' conduct, policies, practices and procedures, as described above, have caused, and continue to cause Plaintiffs and its Second Baptist congregation, generally, to suffer from anxiety, distress, uncertainty and discomfort.

92. As the sale of the Grace Christian property is required in order to compensate the victims of Mr. Altman's criminal conduct, Defendants' refusal to issue an occupancy permit to Second Baptist also serves to prevent numerous crime victims from recovering their losses.

93. There is no adequate remedy at law through which Plaintiffs can expeditiously establish and enforce Second Baptists' right to occupy the property in West Mifflin it has contracted to purchase and their right to freely exercise their religion in West Mifflin.

V. LEGAL CLAIMS

COUNT I - RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (*SECOND BAPTIST v. BOROUGH OF WEST MIFFLIN*)

94. In general terms, the Religious Land Use and Institutionalized Persons Act prohibits governmental entities from imposing or implementing land use regulations in a manner that substantially burdens the exercise of religion unless the regulations are the least restrictive means of advancing a compelling governmental interest. 42 U.S.C. §2000cc (a)(1).

95. Additionally, RLUIPA makes it unlawful for governmental entities to enforce land use regulations in such a way as to discriminate “against any assembly or institution on the basis of religion or religious denomination.” 42 U.S.C. §2000cc (b)(2).

96. Second Baptist has been aggrieved by the conduct, policies, practices and procedures described above.

97. Defendants’ above-described conduct, policies, practices and procedures violate Second Baptist’s rights, as secured by RLUIPA, in that said conduct, policies, practices and procedures have prevented Second Baptist from locating and conducting protected religious activities in the Borough of West Mifflin.

COUNT 2 - 42 U.S.C. §1983 (FREE EXERCISE)
(ALL PLAINTIFFS v. ALL DEFENDANTS)

98. Defendants’ above-described conduct, policies, practices and procedures substantially burden and interfere with Plaintiffs’ right to freely exercise their religion, in violation of the free exercise clause of the First Amendment to the United States Constitution.

COUNT 3 - 42 U.S.C. §1983 (RIGHT TO ASSEMBLE)
(ALL PLAINTIFFS v. ALL DEFENDANTS)

99. Defendants’ above-described conduct, policies, practices and procedures substantially burden and interfere with Plaintiffs’ right to peaceably assemble for the purpose of engaging in protected religious activity, in violation of the right to assemble clause of the First Amendment to the United States Constitution.

COUNT 4 - 42 U.S.C. §1983 (EQUAL PROTECTION)
(ALL PLAINTIFFS v. ALL DEFENDANTS)

100. Defendants’ above-described conduct, policies, practices and procedures amount to

unlawful discrimination in that they serve to restrict the availability of property and prevent

Plaintiffs from occupying property in the Borough of West Mifflin on account of the race and/or religious affiliation of Plaintiffs and the members of Second Baptist, generally, in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

**COUNT 5 - ARTICLE 1, §26 OF THE CONSTITUTION
OF THE COMMONWEALTH OF PENNSYLVANIA (EQUAL PROTECTION)
(ALL PLAINTIFF v. ALL DEFENDANTS)**

101. Article 1, §26 of the Pennsylvania Constitution provides as follows:

Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

102. Defendants' above-described conduct, policies, practices and procedures amount to unlawful discrimination in that they serve to restrict the availability of property and prevent Second Baptist from occupying property in the Borough of West Mifflin on account of the race and/or religious affiliation of Plaintiffs and the members of Second Baptist, generally, in violation of the equal protection component of the Constitution of the Commonwealth of Pennsylvania.

VI. PRAYER FOR RELIEF

Wherefore, Plaintiffs request that the court:

1. Exercise jurisdiction over this action;
2. Issue an appropriate declaratory judgment to the effect that Defendants have violated the Religious Land Use and Institutionalized Persons Act, the free exercise and right to assemble clauses of

the First Amendment, the equal protection clause of the Fourteenth Amendment and Article 1, §26 of the Pennsylvania Constitution;

3. Enter preliminary and permanent injunctive orders directing Defendants to issue Second Baptist an occupancy permit to use the property at 612 Coal Road, West Mifflin, for all reasonable and ordinary church purposes, forthwith, and prohibiting Defendants from otherwise interfering with the civil rights of Plaintiffs and Second Baptist's members;

4. Award appropriate compensatory damages in favor of Plaintiffs and against Defendants;

5. Award punitive damages in favor of Second Baptist and against Defendant Butler;

6. Direct Defendants to pay all of Plaintiffs' attorneys' fees and costs associated with the preparation and prosecution of this action; and

7. Grant such other relief as the court deems to be just and equitable.

Jon Pushinsky
Pa. I.D. #30434
1808 Law & Finance Building
Pittsburgh, PA 15219
(412) 281-6800

Witold J. Walczak
PA ID #: 62976
American Civil Liberties Foundation of Pennsylvania
313 Atwood Street
Pittsburgh, PA 15213
(412) 681-7864

Attorneys for Plaintiffs