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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING

GRACE UNITED METHODIST )  
CHURCH, )

Plaintiff, )

v. )

Case No. \_\_\_\_\_

CITY OF CHEYENNE; CITY OF )  
CHEYENNE BOARD OF ADJUSTMENT; )

DOROTHY WILSON, City of Cheyenne )

Development Director; and )

CHEYENNE CITY COUNCIL, )

Defendants. )

**COMPLAINT**

Plaintiff Grace United Methodist Church, by and through its attorneys, Rothgerber Johnson & Lyons LLP, for its cause of action against the Defendants, states and alleges:

1) This Court has subject matter jurisdiction over the federal claims pursuant to 28 U.S.C. § 1331. Venue is proper in this action pursuant to 28 U.S.C. § 1391. The actions described herein were committed within the State of Wyoming.

2) Defendant City of Cheyenne is a municipality within the State of Wyoming.

3) Defendant Dorothy Wilson is the Development Director for the city of Cheyenne. She is sued in her official capacity only.

4) Defendant City of Cheyenne Board of Adjustment is the body that is delegated the power to hear and decide appeals from zoning determinations, and to hear and decide special exceptions and variances from zoning ordinances.

5) Plaintiff Grace United Methodist Church is a non-profit religious corporation, affiliated with the United Methodist Church. The United Methodist Church is a worldwide Christian religious organization, based primarily on holy scriptures, and secondarily on the teachings of Rev. John Wesley (1703-1791). A special emphasis of Rev. Wesley's teaching and ministry was the need to educate the people, and in particular children, in the Christian faith. The United Methodist Church continues that emphasis.

6) In order to better fulfill its religious mission, Grace United Methodist Church plans to operate a religious school for children at its property, located within the City of Cheyenne. The Church will provide religious education to the children, in addition to providing care for the children while at the property. It is of central importance in the United Methodist faith that children be provided religious education and instruction by the Church, particularly

when the children do not have a parent at home to provide instruction in the faith. Further, Grace United Methodist Church seeks to use religious instruction as a crucial outreach mission, bringing young people and families to Christianity, the United Methodist Church, and Grace United Methodist Church through the religious education program.

7) Grace United Methodist Church also sought a day care license, to provide assurance to parents that the Church would meet the requirements for licensed day care.

8) The zoning of the City of Cheyenne prohibits operation of a day care at a church in almost all areas of the City. Although day care centers are allowed in most commercial areas of the City, churches are excluded from these. Churches are instead allowed in light density residential, medium density residential, and high density residential, but day care centers are excluded from these. The only areas in which the zoning code allows both churches and day care centers are those zoned: central business district, suburban residential, rural residential, and agricultural. Areas so zoned do not exist through the vast majority of the City of Cheyenne.

9) Defendant City of Cheyenne, through Defendant Wilson, prohibited Grace United Methodist Church from operating a religious school or day care on its property, based on a position that such activities would violate the zoning applicable to the property.

10) Defendant City of Cheyenne and Defendant Wilson also precluded Grace United Methodist Church from obtaining a day care license or building permit, also based on the position that these could not be obtained because the zoning for Grace United Methodist Church did not permit a religious school or day care.

11) Plaintiff Grace United Methodist Church sought relief from the decision from Defendant City of Cheyenne Board of Adjustment. By written decision dated May 22, 2001, the City of Cheyenne Board of Adjustment refused the Church's request to operate a religious school. Although Grace United Methodist Church's proposed use qualifies as a "primary or secondary school" under the zoning code (which defines "school building" as "[a]ny facility or part thereof used for education or instruction"), the City of Cheyenne Board of Adjustment determined that religious instruction by Grace United Methodist Church would not be allowed as a "school." This determination was based on a conclusion that Grace United Methodist Church would not be permitted to provide childhood education to non-members of the United Methodist Church, and would not be permitted to provide childhood religious education that was non-denominational. Accordingly, the City of Cheyenne denied Grace United Methodist Church's use of its property because the religious instruction "would be non-denominational and not specifically Methodist in nature."

12) This restriction on permissible religious education is arbitrary and capricious, and also violates the religious, speech, assembly, and associational rights of Grace United Methodist Church, which seeks to establish communion with other Christian denominations, and which endeavors to reach out to those of other denominations and to non-Christians.

13) Although Defendant City of Cheyenne Board of Adjustment ostensibly also based its decision on a concern of increased traffic, no evidence of detrimental traffic levels was shown, and similar uses on nearby property and on other days of the week are permitted.

14) As a result of Defendants' actions, Grace United Methodist Church cannot operate a religious school on its property. This prohibition results in a serious and substantial deprivation of religious liberty, freedom of speech, freedom of association, and freedom of assembly to Grace United Methodist Church. Without the ability to operate a religious school, Grace United Methodist Church is unable to expand its ministry by providing religious education to children. Because it cannot care for and educate children at its property, Grace United Methodist Church is forced to allow children it could otherwise reach to be educated by secular schools and day care, and those of other religious organizations, and is thereby seriously frustrated in its religious exercise and its effort to communicate its message.

FIRST CLAIM FOR RELIEF  
RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT ("RLUIPA")

15) Grace United Methodist Church incorporates herein the previous allegations.

16) Defendants have imposed and implemented a land use regulation in a manner that imposes a substantial burden on the religious exercise of Grace United Methodist Church, and specifically burden's Grace United Methodist Church's use, building or conversion of real property for the purpose of religious exercise.

17) Defendants' land use regulation on Grace United Methodist Church limits and restricts Grace United Methodist Church's use or development of land, including a structure affixed to the land, in which Grace United Methodist Church has an ownership, leasehold, easement, servitude, or other property interest, or a contract or option to acquire such an interest.

18) Defendants have not demonstrated that imposition of the burden on Grace United Methodist Church is the least restrictive means of furthering that compelling governmental interest, and cannot do so.

19) The substantial burden imposed by Defendants on Grace United Methodist Church affects interstate commerce, and removal of that substantial burden would affect interstate commerce.

20) The substantial burden imposed by Defendants on Grace United Methodist Church is imposed in the implementation of a land use regulation or system of land use regulations, under which Defendants make, or have in place formal or informal procedures or practices that permit them to make, individualized assessments of the proposed uses for the property involved.

21) Defendants have imposed and implemented a land use regulation against Grace United Methodist Church in a manner that treats it on less than equal terms with nonreligious assemblies or institutions.

22) Defendants have imposed and implemented a land use regulation against Grace United Methodist Church that unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

SECOND CLAIM FOR RELIEF  
FIRST AMENDMENT AND 42 U.S.C. § 1983

23) Grace United Methodist Church incorporates herein the previous allegations.

24) Defendants, acting under color of law, have deprived and continue to deprive Grace United Methodist Church of its rights under the First Amendment, applied to Defendants through the Fourteenth Amendment, to free exercise of religion, freedom of speech, freedom of assembly, and freedom of association.

25) Grace United Methodist Church has been damaged as a result of Defendants' actions.

THIRD CLAIM FOR RELIEF  
FOURTEENTH AMENDMENT AND 42 U.S.C. § 1983

26) Grace United Methodist Church incorporates herein the previous allegations.

27) Defendants' decision to deny Grace United Methodist Church's use of its property was based on arbitrary and capricious criteria, including the following:

a) an invented distinction between "day care" and "schools," with no meaningful difference between the two other than the fact that uses Defendants wished to preclude would be classified as "day care,"

b) a conclusion that religious education would not be permitted if it were offered to persons of other denominations,

c) a conclusion that religious education would not be permitted if it is "non denominational," or provided by persons of other denominations, and

d) a conclusion that use of the property would be denied due to increased traffic, when no evidence of detrimental traffic levels is shown, and when similar uses on nearby property and on other days of the week are permitted.

28) Defendants' actions violated and continue to violate the equal protection rights of Grace United Methodist Church, through discrimination against religious organizations, or Grace United Methodist Church in particular.

29) Defendants' actions violated and continue to violate the due process rights of Grace United Methodist Church, by denying Grace United Methodist Church use of its property based on irrational and discriminatory motivations.

30) Grace United Methodist Church has been damaged as a result of Defendants' actions.

WHEREFORE Plaintiff Grace United Methodist Church respectfully requests that this Court enter judgment in its favor and against Defendants, granting:

- (a) preliminary and permanent injunctive relief restraining Defendants from prohibiting Grace United Methodist Church's use of its property as a religious school and day care, and Grace United Methodist Church's expansion of its facilities and licensing in order to accomplish that goal;
- (b) a declaration that the City of Cheyenne zoning ordinance, and the application of the zoning ordinance to Grace United Methodist Church is void and in violation of the law;

- (c) compensatory damages;
- (d) an award of Grace United Methodist Church's costs and attorneys' fees;  
and
- (e) such other relief as the Court may deem available under the law.

**JURY DEMAND**

Grace United Methodist Church demands a trial by jury for all issues so triable.

Respectfully submitted this \_\_\_\_ day of February, 2002.

ROTHGERBER JOHNSON & LYONS LLP

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