

1 BENJAMIN W. BULL
AZ Bar No. 009940
2 JEREMY D. TEDESCO
AZ Bar No. 023497
3 ALLIANCE DEFENSE FUND
15333 N. Pima Road, Ste 165
4 Scottsdale, AZ 85260
(480) 444-0020; (480) 444-0028 facsimile
5 jtedesco@telladf.org

6 DAVID A. CORTMAN*
GA Bar No. 188810
7 ALLIANCE DEFENSE FUND
1000 Hurricane Shoals Rd., Ste D-600
8 Lawrenceville, GA 30043
(770)339-0774; (770)339-6744 facsimile
9 dcortman@telladf.org

10 Attorneys for Plaintiffs

11
12 **UNITED STATES DISTRICT COURT**
DISTRICT OF ARIZONA
13 **PHOENIX DIVISION**

14 Pastor Clyde Reed; and Good News
Presbyterian Church,)
15 Plaintiffs,)
16 v.)
17 Town of Gilbert, Arizona; and Adam
Adams in his official capacity as)
18 Code Compliance Manager,)
19 Defendants.)
_____)

CASE NO. _____

VERIFIED COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF

20 **I. INTRODUCTION**

21 1. The Town of Gilbert has decided that ideological signs (however that is
22 defined) and political signs deserve more protection than religious assembly signs.
23 According to the Town Code, religious assembly signs must be smaller in size, less
24 in number, and displayed for much less time than comparable signs. Such content-
25 based discrimination is clearly unconstitutional. The Code, along with Defendants'
26 enforcement, violate Plaintiffs' civil rights.
27
28

1 **II. JURISDICTION**

2 2. This action arises under the United States Constitution, particularly the
3 First and Fourteenth Amendments, under federal law, particularly 28 U.S.C. § 2201
4 and 42 U.S.C. §§ 1983 and 1988, and under state law, particularly Ariz. Rev. Stat.
5 §41-1493.

6 3. This Court is vested with original jurisdiction over these federal claims
7 by operation of 28 U.S.C. §§ 1331 and 1343; and over the supplemental state law
8 claims under §1367.

9 4. This Court is vested with authority to grant the requested declaratory
10 judgment by operation of 28 U.S.C. §§ 2201, *et seq.*

11 5. This Court is authorized to issue the requested injunctive relief pursuant
12 to 42 U.S.C. §1983 and Rule 65 of the Federal Rules of Civil Procedure.

13 6. This Court is authorized to award any damages pursuant to 28 U.S.C. §
14 1343(4).

15 7. This Court is authorized to award attorneys' fees pursuant to 42 U.S.C.
16 § 1988 and pursuant to Ariz. Rev. Stat. §41-1493.01(D).

17 **III. VENUE**

18 8. Venue is proper in the United States District Court for the District of
19 Arizona under 28 U.S.C. § 1391(b), in that the events giving rise to the claim
20 occurred within the district.

21 **IV. IDENTIFICATION OF PLAINTIFFS**

22 9. Plaintiff Clyde Reed is the Pastor of Good News Presbyterian Church
23 and is a citizen and resident of the District.

24 10. Good News Presbyterian Church ("the Church") is an unincorporated
25 association and is also located in the District.

26 11. Pastor Reed is charged with the responsibility of representing the Church
27 in its day to day activities, including through preaching of the Word of God and
28 meeting together for worship and fellowship on Sundays and on other days of the

1 week.

2 **V. IDENTIFICATION OF DEFENDANTS**

3 12. The Town of Gilbert is a body politic which is able to sue and be sued
4 in its corporate name.

5 13. The Town has adopted the challenged Town of Gilbert Land
6 Development Code (“Code”) sections that discriminate against religious signage.

7 14. The Town, through its Code Compliance Department, has enforced the
8 challenged Code sections against the Plaintiffs.

9 15. Defendant Adam Adams is the Code Compliance Manager of the Town’s
10 Code Compliance Department and is sued in his official capacity.

11 16. Defendant Adams enforced the Code against the Plaintiffs recently when
12 he informed the Church that it would be cited if it violated the terms of the Code
13 regarding religious assembly signs.

14 17. The Town acquiesces in, sanctions, and supports the actions of
15 Defendant Adams in the enforcement of the Code against Plaintiffs.

16 **VI. STATEMENT OF FACTS**

17 18. Defendants have enacted a Town Code that discriminates against certain
18 signage based on the content of the sign.

19 19. Ideological signs (which is not defined) are allowed without a permit,
20 may be placed in all zoning districts, may be up to 20 square feet in area and 6 feet
21 in height, and have no time or other limitation. *See* Code, Chap. I, Article 4.402J

22 20. Similarly, political signs (which is also not defined) are allowed without
23 a permit, may be placed on property zoned for residential use, non-residential use,
24 undeveloped Town property, and Town rights-of-way, may be up to 32 square feet
25 in area and 6 feet in height, and only require that they be removed 10 days following
26 an election, with no time constraint of when they can be posted prior to an election.
27 *See id.* at 4.402I.

28 21. Religious Assembly Temporary Directional Signs, on the other hand, are

1 not permitted in the public right-of-way, may not exceed 6 square feet in area nor 3
2 feet in height, no more than 4 signs may be placed on any property, a permit is
3 required, and they shall not be displayed earlier than 2 hours before and 1 hour after
4 the religious service. *See id.* at 4.402P.

5 22. All such permitted signs may contain a non-commercial message. *See*
6 *id.* at 4.402V.

7 23. The Code also permits Weekend Directional Residential Signs. A total
8 of 15 signs are permitted for each recorded subdivision plat, they may be placed on
9 Town rights-of-way and each sign may be placed beginning 6 p.m. on Friday and
10 ending at 8 a.m. on the following Monday. *See id.* at 4.405B(2).

11 24. Lastly, the Code permits Homeowners Association Facilities Temporary
12 Signs for 30 days prior to each event and which must be removed within 48 hours of
13 completion of the event. *See id.* at 4.406C(3).

14 25. This action is brought to challenge the validity of the denial of equal
15 treatment for religious assembly signs and the Town's Code upon which the denial
16 rests.

17 **The Church's Religious Beliefs**

18 26. Plaintiffs are Christians who hold sincere religious beliefs that they must
19 meet together with like-minded individuals, teach and preach the Gospel, sing
20 religious songs, pray for their community, and encourage others whenever possible.

21 27. Plaintiffs believe in what is commonly referred to as the Great
22 Commission.

23 28. The Bible commands believers in Matthew 28:19-20 to "go and make
24 disciples of all nations, baptizing them in the name of the Father and of the Son and
25 of the Holy Spirit, and teaching them to obey everything I have commanded you."

26 29. Plaintiffs believe that they should carry out this command by reaching
27 out to the community to meet together on a regular basis.

28 30. Plaintiffs follow this Biblical directive by displaying signs announcing

1 their services as an invitation for those in the community to attend.

2 31. Plaintiffs' services are open to the public and Plaintiffs seek to
3 encourage new people from the community to attend.

4 32. One way in which the community may learn about Plaintiffs' services
5 is through the signs that are placed announcing the time and location of the services.

6 33. The more signs that are permitted to be displayed, the more people will
7 receive the invitation.

8 **The Enforcement of the Code against the Church**

9 34. The Church currently has about 40 attendees.

10 35. Due to their small size, the church is limited financially in what they can
11 afford to do to invite others to their meetings.

12 36. One effective, yet inexpensive means of reaching others is to display
13 signs letting the community know where and when they are meeting.

14 37. The Church has been meeting at Coronado Elementary School for the
15 past 4 years.

16 38. For a time, the Church was placing about 17 signs in the areas
17 surrounding the Church.

18 39. These signs were placed early in the day each Saturday and removed
19 following the services on Sunday mid-day.

20 40. On September 17, 2005, however, the Church was cited by the Code
21 Compliance Department for exceeding the time limitation of 2 hours before and 1
22 hour after the service (with a notation on the citation that the date of service was
23 missing from the sign).

24 41. The penalties for violating the Code range from a notice of violation to
25 substantial fines and time in jail.

26 42. Since receiving that citation, the Church has reduced the number of signs
27 and the amount of time in which they have placed the signs.

28 43. More visitors attended the services when all signs were being placed and

1 when they were being placed earlier on Saturdays.

2 44. Because the initial citation was received about 17 months ago, the
3 Church recently contacted the Code Compliance Department to inquire as to whether
4 the limitations found in the Code will presently be enforced against the Church if
5 violated.

6 45. The Church was told by the Code Compliance Manager that there is no
7 leniency under the Code, and that the Church will be cited if it has been found to
8 violate any of the applicable provisions in the Code.

9 46. The Code Compliance Manager told the Church that it will be cited for
10 a violation of the Code if it puts up signs displaying the time and place of its meetings
11 more than 2 hours before those meetings.

12 47. The Code Compliance Manager told the Church that the Code forbids
13 it to put up more than 4 signs displaying the time and place of its meetings.

14 48. The Church has been limiting its speech through signage since receiving
15 the citation fearing that it will again be cited for violating the Code.

16 49. The Church has a continuing desire to reach out to the community
17 through additional signs that may be placed for longer periods of time than currently
18 permitted under the Code.

19 **VII. ALLEGATIONS OF LAW**

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

23 51. Plaintiffs have no adequate or speedy remedy at law to correct or redress
24 the deprivations of their federal and state rights by Defendants.

25 52. Unless and until the enforcement of the Code is enjoined, the Plaintiffs
26 will suffer and continue to suffer irreparable injury to their rights.

27
28

1 **1. First Cause of Action: Violation of the Free Speech Clause of the**
2 **First Amendment**

3 53. Plaintiffs reallege all matters set forth in the preceding paragraphs and
4 incorporate them herein.

5 54. Plaintiffs' signs are speech that is protected by the First Amendment.

6 55. Defendants' Code impermissibly regulates and restricts speech in the
7 form of signs based on the content of that speech.

8 56. Signs that are "ideological" or "political" are permitted to a much greater
9 extent than are signs for religious assemblies.

10 57. Also, residential weekend directional signs are permitted to a much
11 greater extent than similar religious assembly signs.

12 58. Because such discrimination is based on the content of the signs, it is
13 subject to strict scrutiny: it must further a compelling government interest and be
14 narrowly tailored.

15 59. Defendants can proffer no interest, let alone one that is compelling, that
16 justifies discriminating against religious assembly signs.

17 60. Whatever interests Defendants cite, they apply equally to signs that are
18 permitted to a greater extent than religious assembly signs.

19 61. Further, limiting religious assembly signs in the manner authorized by
20 the Code is not narrowly tailored to justify whatever interest Defendants may create.

21 62. Moreover, Defendants' Code treats commercial speech more favorably
22 than noncommercial speech.

23 63. The Code allows weekend residential signs for the purposes of home
24 sales for a longer period of time than religious assembly signs.

25 64. The Code imposes an unconstitutional prior restraint because it vests
26 Town officials with the unbridled discretion to permit or refuse protected speech
27 without any guidelines or criteria.

28 65. The Code is overbroad because it sweeps within its ambit protected First

1 Amendment speech.

2 66. The overbreadth of the Code chills protected speech by discouraging
3 individuals and groups from placing signs for the purpose of engaging in protected
4 speech based on the religious nature of the sign.

5 67. Defendants' Code on its face and as applied violates Plaintiffs' rights of
6 Free Speech as guaranteed by the First Amendment to the United States Constitution
7 as incorporated and applied to state action under the Fourteenth Amendment.

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

10 **2. Second Cause of Action: Violation of the Equal Protection Clause**
11 **of the Fourteenth Amendment.**

12 68. Plaintiffs reallege all matters set forth in the preceding paragraphs and
13 incorporate them herein.

14 69. The Code allows groups and individuals similarly situated to religious
15 assemblies, like Plaintiff, greater access to Town property.

16 70. The Code allows groups and individuals similarly situated to religious
17 assemblies, like Plaintiff, to display signs for greater time periods.

18 71. The Code allows groups and individuals similarly situated to religious
19 assemblies, like Plaintiff, to display larger signs.

20 72. The Code allows groups and individuals similarly situated to religious
21 assemblies, like Plaintiff, to display a greater number of signs

22 73. The Code does not extend those same rights to religious assemblies, like
23 Plaintiff.

24 74. Defendants can offer no compelling interest to justify their
25 discriminatory treatment of certain religious speech and activities while allowing
26 similar secular speech and activities.

27 75. The Code facially and as applied violate Plaintiffs' rights under the
28 Equal Protection Clause of the Fourteenth Amendment to the United States

1 Constitution

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

4 **3. Third Cause of Action: Violation of the Free Exercise Clause of the**
5 **First Amendment**

6 76. Plaintiffs reallege all matters set forth in the preceding paragraphs and
7 incorporate them herein.

8 77. Plaintiffs hold religious beliefs that they must reach out to the
9 community and invite them to their religious services where they offer Biblical
10 guidance on how to face contemporary issues.

11 78. Plaintiffs also communicate their faith to others in public places through
12 invitations to gather together with like-minded individuals for fellowship and
13 receiving religious instruction as an exercise of their sincerely-held religious beliefs.

14 79. The Code penalizes the exercise of religion by subjecting it to greater
15 restrictions that are not applicable to any other activities.

16 80. The Code expressly discriminates against religion.

17 81. The Code imposes an excessive burden on religious exercise that is not
18 generally applicable.

19 82. The Code burdens religious exercise to a greater extent than non-
20 religious exercise.

21 83. Defendants have interpreted and applied their Code to disqualify
22 Plaintiffs from equal treatment solely because of the religious nature of Plaintiffs'
23 activities and the religious content and viewpoint of Plaintiffs' speech.

24 84. Defendants' interpretation and application of the Code impose an
25 excessive burden on Plaintiffs' rights to the free exercise of religion.

26 85. Both the Code and Defendants' enforcement against Plaintiffs violate
27 several constitutional rights of Plaintiffs, including freedom of speech, free exercise,
28 and equal protection, and therefore give rise to a hybrid claim.

1 86. No compelling government interest exists which could justify the Code
2 or Defendants' discriminatory enforcement against Plaintiffs.

3 87. The Code and its enforcement prohibiting equal use requested by the
4 Plaintiffs are not the least restrictive means necessary to serve any legitimate interest
5 which Defendants seek thereby to secure.

6 88. Defendants' interpretation and enforcement of the Code chill Plaintiffs'
7 freedom of religious discussion and exercise, which are fundamental rights
8 guaranteed Plaintiffs by the First Amendment.

9 89. The Code facially and as applied thus violate Plaintiffs' rights under the
10 Free Exercise Clause of the First Amendment to the United States Constitution as
11 incorporated and applied to state action under the Fourteenth Amendment.

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

14 **4. Fourth Cause of Action: Violation of the Arizona Religious Freedom**
15 **Amendment**

16 90. Plaintiffs reallege all matters set forth in the preceding paragraphs and
17 incorporate them herein.

18 91. The Arizona Religious Freedom Amendment, Ariz. Rev. Stat. §41-1493,
19 states that government shall not substantially burden a person's exercise of religion
20 unless it demonstrates a compelling government interest that is furthered by the least
21 restrictive means.

22 92. Plaintiffs hold religious beliefs that they must reach out to the
23 community and invite them to services offering Biblical guidance on how to face
24 contemporary issues.

25 93. Plaintiffs also communicate their faith to others in public places by
26 inviting them to gather together with like-minded individuals for fellowship and
27 receiving religious instruction as an exercise of their sincerely-held religious beliefs.

28 94. The Code penalizes the exercise of religion by subjecting it to greater

1 restrictions that are not applicable to any other activities.

2 95. The Code expressly discriminates against religion.

3 96. The Code imposes an excessive burden on religious exercise that is not
4 generally applicable.

5 97. Plaintiffs are severely limited in the exercise of their religion, including
6 reaching out to others, based on the terms of Defendants' Code.

7 98. Defendants have interpreted and applied their Code to disqualify
8 Plaintiffs from equal treatment solely because of the religious nature of Plaintiffs'
9 activities and the religious content and viewpoint of Plaintiffs' speech.

10 99. Defendants' interpretation and application of the Code impose an
11 excessive burden on Plaintiffs' rights to the free exercise of religion.

12 100. No compelling government interest exists which could justify the Code
13 or Defendants' discriminatory enforcement against Plaintiffs.

14 101. The Code and its enforcement prohibiting equal use requested by the
15 Plaintiffs are not the least restrictive means necessary to serve any legitimate interest
16 which Defendants seek thereby to secure.

17 102. Whatever interest Defendants seek to further by limiting religious
18 assembly signs, all other signage impacts those same interests in the same manner.

19 103. Defendants' interpretation and enforcement of the Code chill Plaintiffs'
20 freedom of religious discussion and exercise, which are fundamental rights
21 guaranteed Plaintiffs by Arizona Law.

22 104. The Code facially and as applied thus violate Plaintiffs' rights under the
23 Arizona Religious Freedom Amendment.

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

26 **5. Fifth Cause of Action: Violation of the Due Process Clause of the**
27 **Fourteenth Amendment**

28 105. Plaintiffs reallege all matters set forth in the preceding paragraphs and

1 incorporate them herein.

2 106. The Code allows greater display of “ideological” signs.

3 107. The Code does not define or state what speech activities are considered
4 “ideological.”

5 108. The Code allows for unbridled discretion in determining what does and
6 does not qualify as “ideological.”

7 109. Men of common intelligence must guess and will differ upon what is
8 considered speech that is ideological.

9 110. There is no warning or notice as to what signs will be deemed to fall in
10 this category or what signs will not.

11 111. A sign encouraging people to attend a church service easily falls into the
12 category of an ideological sign.

13 112. Despite the absence of any standards or definitions to guide the Town
14 officials’ determination, Defendants did not afford Plaintiffs’ sign such a meaning.

15 113. The Code allows greater display of “political” signs.

16 114. The Code does not define or state what speech activities are considered
17 “political.”

18 115. The Code allows for unbridled discretion in determining what does and
19 does not qualify as “political.”

20 116. Men of common intelligence must guess and will differ upon what is
21 considered speech that is “political.”

22 117. It is not clear whether this category includes only signs supporting or
23 opposing a candidate; or whether it includes a ballot issue; or any statement
24 addressing issues such as abortion, marriage or religious rights (such as those that are
25 addressed in Plaintiffs’ services); or whether it includes all of the above.

26 118. There is no warning or notice as to what signs will be deemed to fall in
27 this category or what signs will not.

28 119. The Code facially and as applied violate Plaintiffs’ rights under the Due

1 Process Clause of the Fourteenth Amendment to the United States Constitution

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

4 **VIII. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs respectfully pray for judgment as follows:

6 a. That this Court render a Declaratory Judgment declaring that Code
7 §4.402P is invalid facially and as applied under the Constitution of the United States
8 and under the Arizona Religious Freedom Amendment;

9 b. That this Court issue an Injunction restraining enforcement of the Code
10 § 4.402P in all respects as challenged herein;

11 c. That this Court retain jurisdiction of this matter for the purpose of
12 enforcing the Court’s Order;

13 d. That this Court award Plaintiffs’ costs and expenses of this action,
14 including a reasonable attorneys’ fees award, in accordance with 42 U.S.C. § 1988,
15 the Arizona Religious Freedom Amendment, and other applicable law;

16 e. That this Court award nominal and compensatory damages in an amount
17 to be determined by the finder of fact in accordance with the proof, plus interest at the
18 legal rate until paid;

19 f. That this Court adjudge, decree and declare the rights and other legal
20 relations of the parties to the subject matter here in controversy, in order that such
21 declarations shall have the force and effect of final judgment; and

22 g. That this Court grant such other and further relief as the Court deems
23 equitable, just, and proper.

24
25
26
27
28

1 Respectfully submitted this 8th day of March, 2007.

2 **THE ALLIANCE DEFENSE FUND**

THE ALLIANCE DEFENSE FUND

3

4 s/Jeremy D. Tedesco
Benjamin W. Bull
AZ Bar No. 009940
5 Jeremy D. Tedesco
AZ Bar No. 023497
6 15333 N. Pima Rd. Ste 165
Scottsdale, AZ
7 (480) 444-0020
(480) 444-0028 facsimile
8 jtedesco@telladf.org

David A. Cortman*
GA Bar No. 188810
1000 Hurricane Shoals Rd., Ste D-600
Lawrenceville, GA 30043
(770) 339-0774
(770) 339-6744 facsimile
dcortman@telladf.org

9 *Application for admission pro hac vice will be submitted once case is assigned a
number and Judge.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION

I, Clyde Reed, verify under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 7th day of March, 2007, in Apache Junction Arizona.

Clyde Reed
Clyde Reed