

STATE OF WISCONSIN

CIRCUIT COURT

BROWN COUNTY

FILED
02-22-2018
Clerk of Circuit Court
Brown County, WI
2018CV000209
Honorable Kendall M.
Kelley
Branch 4

Hope Lutheran Church
700 South Superior St.
De Pere, WI 54115;

Crosspoint Church
1880 Southbridge Rd.
De Pere, WI 54115;

Case No. _____

Destiny Church
418 Destiny Dr.
De Pere, WI 54115;

St. Mark Lutheran Church
2066 Lawrence Dr.
De Pere, WI 54115;

Christ the Rock Church
556 Main Ave.
De Pere, WI 54115;

and

Lakeshore Communications, Inc. (Q90fm)
1253 Sheuring Rd., Ste. B
De Pere, WI 54115

Plaintiffs,

v.

City of De Pere
335 South Broadway
De Pere, WI 54115

Defendant.

SUMMONS

THE STATE OF WISCONSIN, to the said defendant (and each of them):

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an answer that does not follow the requirements of the Statutes. The answer must be sent or delivered to the court, whose address is: 100 South Jefferson Street,

Green Bay, WI 54305, and HNM Law, LLC, plaintiff's attorney, whose address is: PO Box 26273, Wauwatosa, WI 53226. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 21st day of February, 2018.

HNM Law, LLC

s/ Heidi N. Miller

Heidi N. Miller

State Bar No. 1087676

PO Box 26273

Wauwatosa, WI 53226

(414) 306-7000

E: heidi@hnm-law.com

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CIRCUIT BRANCH

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Case No. _____

Case Type:

Declaratory Judgment

Case Code:

30701

COMPLAINT FOR DECLARATORY JUDGMENT

INTRODUCTION

COMES NOW plaintiffs who bring this Complaint for Declaratory judgment through a pre-enforcement challenge to portions of Chapter 9 of the City of De Pere Municipal Code entitled *Non-Discrimination in Housing, Public Accommodation and Employment* and numbered as Ordinance 17-20, and allege and shows to the Court as follows:

1. Just before Thanksgiving, the City of De Pere enacted a non-discrimination ordinance that addresses issues of current national debate such as gender identity and sexual orientation. Unlike many of its counterparts in other state, local and federal law, the De Pere ordinance does not clearly exempt religious organizations. Nor has the City been willing to assure religious institutions that they will not be subjected to the ordinance when it takes effect March 1, 2018. As a result, the ordinance is likely to be imposed on churches and other religious organizations in a manner that would mandate government orthodoxy in core religious functions, communication, and conduct. Five churches and a religious broadcaster located in De Pere therefore bring this challenge seeking a construction of the ordinance that will protect their state and federal constitutional freedoms. In the alternative, if the ordinance cannot be interpreted in a manner that exempts religious entities, the plaintiffs seek a declaration that it is unconstitutional.

2. Plaintiffs comprise five churches, along with their auxiliary ministries, and a Christian radio station. All six plaintiffs are not-for-profit religious organizations.

3. The Plaintiffs first seek a declaration that (1) they do not fall within the scope of the definition of “discrimination” or its cognates found within Section 9-1(b); (2) they are not subject to Section 9-1(d) of the De Pere Municipal Code relating to employment discrimination; and as religious institutions, (3) they are not public accommodations as per Section 9-1(e).

4. In the alternative, if the Court interprets the Ordinance such that the Plaintiffs fall under Sections 9-1(b)-(e), then a judgment is sought declaring that these provisions are unconstitutional absent an exemption for religious institutions.

PLAINTIFFS

5. Hope Lutheran Church is a nonprofit religious corporation located within the jurisdictional boundaries of the City of De Pere.

6. Crosspoint Church is a nonprofit religious corporation located within the jurisdictional boundaries of the City of De Pere.

7. Destiny Church is a nonprofit religious corporation located within the jurisdictional boundaries of the City of De Pere.

8. St. Mark Lutheran Church is a nonprofit religious corporation located within the jurisdictional boundaries of the City of De Pere.

9. Christ the Rock Church is a nonprofit religious corporation located within the jurisdictional boundaries of the City of De Pere.

10. Lakeshore Communications, Inc. is a nonprofit religious corporation located within the jurisdictional boundaries of the City of De Pere.

DEFENDANT

11. The City of De Pere is a municipal corporation authorized under Wisconsin law to sue and be sued and to enact and enforce the ordinance challenged in the above-captioned case, i.e., Ordinance 17-20.

STATEMENT OF FACTS

12. On November 21, 2017, the Common Council of the City of De Pere added the *Non-Discrimination in Housing, Public Accommodation and Employment* ordinance to the De

Pere Municipal Code or Ordinance 17-20. A true and correct copy of the Ordinance accompanies this Complaint and is marked as Exhibit 1.

13. Ordinance 17-20 is set to go into effect on March 1, 2018.

Hope Lutheran Church

14. Hope Lutheran Church belongs to the Missouri Synod. As such, Hope Lutheran is bound by the doctrine and theological positions of the Missouri Synod.

15. Based on its view on the authority of Scripture, the Missouri Synod has taken positions on gender identity, marriage, and homosexual behavior. In 2014 the Commission on Theology and Church Relations of the Missouri Synod published a position paper which provides, “Because Christianity takes our created bodies seriously, it is compelled to view it as a *disorder* of creation if a man or woman feels discomfort with his or her body and desires either to dress and act in the manner of the opposite sex or to ‘change’ his or her sex by means of hormones or surgery.” *Gender Identity Disorder or Gender Dysphoria in Perspective*.

16. Concerning marriage, in 2004 the Missouri Synod in convention adopted a resolution that “[h]omosexual behavior is prohibited in the Old and New Testaments (Lev. 18:22, 24; 20:13; 1 Cor. 6:9-20; 1 Tim. 1:10) as contrary to the Creator’s design...; Resolved that the Synod urge its members to give a public witness from Scripture against the social acceptance and legal recognition of homosexual ‘marriage’... .” LCMS Res. 3-05A (2004).

17. As to homosexual behavior, at its 1973 convention the Synod adopted a resolution which recognized “homophile behavior as intrinsically sinful.” LCMS Res. 2-04 (1973).

18. The pastor of Hope Lutheran, Matt Baye, has preached and taught on the issues of marriage and sexual ethics. Pastor Baye’s sermons, along with church events, are noticed, promoted and published through the Church’s website. His preaching and teaching are

consistent with the theological principles of the Missouri Synod. Should he teach something in conflict with those principles, he would be defrocked. Further, if he were to open the Church for a same-sex wedding he would suffer the same fate from his denomination.

19. The Missouri Synod only ordains men, even if a woman is a member in good standing with the denomination and has the education and experience to otherwise qualify as a minister.

20. Hope Lutheran has four employees. As the Church grows and expands its congregation and ministries, it expects to add more employees. Employees need not be members of Hope Lutheran but must attend a church of like faith. The employees speak on behalf of the ministry.

21. Hope Lutheran's campus consists of a sanctuary, an education wing, fellowship hall, conference room and basement. The Church provides activities for children, youth and adults which include singing, stories, studies and limited recreation. Office hours are from Monday to Friday, 8:00 a.m. to noon. In addition, Hope Lutheran provides housing for its pastor.

22. Hope Lutheran allows outside groups to use the facilities only at the Church's discretion. Church facilities will not be made available for an activity which is at odds with the teachings of the Church. Use of the facilities include a missionary organization, an organization assisting foreign exchange students, and collection of groceries for underprivileged people distributed through De Pere Christian Outreach. In addition, Hope Lutheran allows use of its parking lot for parents dropping off and picking up their children from Foxview Intermediate School. About once a month during the school year the Church provides an afternoon snack/treat of some sort to the students who are walking over to be picked up.

23. Angels of Hope Preschool enrolls children, ages 3 and 4. The preschool is an auxiliary of Hope Lutheran Church. Parents and guardians of children enrolled in the preschool are not required to be Lutherans or generally adhere to the Christian faith. However, there is full disclosure that the children will be exposed to a Christian worldview. This includes singing Christian songs, learning Christian principles, and attending chapel services.

24. Hope Lutheran has membership. Applicants for membership must agree with the teachings of the Lutheran Church – Missouri Synod, and conduct themselves in a way that is consistent with that faith. Those who fall into heresy or engage in sinful conduct are approached by a fellow believer with the goal of restoration and repentance. Pastoral counseling may be involved as well. If a member denies the charges or is otherwise unrepentant, Church Elders will review the matter and have the authority to exercise church discipline. This can include any number of things but includes withholding Holy Communion and excommunication.

25. Those employed by Hope Lutheran may be members of the Church. Spiritual discipline can include adverse employment action. Because employees who are not members of Hope Lutheran are required to attend a church of like faith, in the event of unrepentant sin, such would be referred to their respective churches.

Crosspoint Church

26. Crosspoint Church is a charter church of Grace International and belongs to the Midwest District. Crosspoint is bound by Grace International's Statement of Faith.

27. Although Crosspoint has a congregation of approximately 120 people, it does not have members. Nonetheless, those attending Crosspoint who confess themselves to be Christians are under the spiritual authority of the Church.

28. Crosspoint has five employees. All employees are hired from within the Church. Employees are required to abide by the faith and standards of conduct of Crosspoint. Failure to live in accordance with faith and conduct, whether at work or in private, would result in adverse employment action.

29. Grace International's Statement of Faith addresses marriage as follows: "We believe that marriage and family are institutions ordained by the Lord God Himself from the very beginning of human history and these are sacred institutions. Marriage is between one man and one woman. Any other definition of marriage is contrary to the clear teachings of the Holy Bible and hence against the expressed will of God. Genesis 1:27 - 28; 2:20b - 24; I Corinthians 7:2; Hebrews 13:4."

30. Additionally, Grace International's Statement of Faith addresses human sexuality and reads, "We believe that God created men and women as sexual beings. Sexuality is an integral and beautiful part of creation. The Bible clearly teaches that any sexual act outside of marriage whether in thought, word, or deed is sin. Genesis 1:27-28; Matthew 5:27-28; Proverbs 6:25-26; I Corinthians 6:9-10, 18; I Thessalonians 4:3-8."

31. The pastor of Crosspoint, Jerry Lewin, teaches and preaches on marriage and sexual ethics. His sermons, and church events, are noticed, promoted and published on the Church's website. This teaching and preaching is consistent with the theological position of Grace International. If Pastor Lewin were to communicate a position regarding sex and marriage inconsistent with the teaching of Grace International, he would be defrocked. He would likewise lose his ordination as a minister if he conducted or allowed a same-sex wedding on the Church's property.

32. Crosspoint has business hours from 9 a.m. to 5 p.m. on Tuesday, Wednesday and Friday.

33. The Church provides activities for children, youth and adults which include singing, stories, studies and limited recreation.

34. Crosspoint opens up its building for a variety of groups and individuals. These include renting the church for weddings and funerals. A homeschooling co-op group called Classical Conversations meets at the Church on Wednesdays. From time to time Crosspoint transports and feeds the homeless.

Destiny Church

35. Destiny Church is affiliated with the Assemblies of God and has adopted, and is constrained by, that denomination's Tenets of Faith and Official Statement of Fundamental Truths. Thus, as an affiliated church with the Assemblies of God, Destiny and its licensed, ordained and certified ministers are subordinate to the General Council of the Assemblies of God on matters of doctrine and conduct. Moreover, the Church has bound itself to spiritual unity and cooperative fellowship with the Wisconsin/Northern Michigan District of the Assemblies of God.

36. Based on its doctrine and theological precepts, the Assemblies of God has produced position papers on a variety topics. One such paper speaks to sexual ethics and provides, "The consistent ideal for sexual experience in the Bible is chastity for those outside a monogamous heterosexual marriage and fidelity for those inside such a marriage... We believe, in light of biblical revelation, that the growing cultural acceptance of homosexual identity and behavior (male and female), same-sex marriage, and efforts to change one's biological sexual identity are all symptomatic of a broader spiritual disorder

that threatens the family, the government, and the church.” *Homosexuality, Marriage and Sexual Identity*, Official Statement by the General Presbytery of the Assemblies of God (Session Aug. 4-5, 2014).

37. Destiny has members who must agree with the teaching of the Assemblies of God and conduct themselves in a manner consistent with those teachings.

38. Destiny has five employees. The Church’s employee handbook states that “Destiny Church bases its teachings and guidelines for living and working on the Bible. We expect each employee’s conduct, on the job as well as off the job, to be in line with the moral, spiritual, and ethical teachings of the Bible as well as our Statement of Faith and Statement on Marriage and Sexuality.”

39. The office hours for Destiny are 8:30 a.m. to 3:30 p.m. Monday through Thursday.

40. The Church provides activities for children, youth and adults which include singing, stories, studies and limited recreation.

41. Destiny rents out or, at times provides for free, its facility to the community. In the past this has included weddings and funerals, the Boy Scouts, the De Pere Fire Department, and Celebrate Recovery. Although Destiny believes that its church facility is for the community, it will decline access to its campus to any individual or group that proposes an activity which is inconsistent with Christian beliefs or standards. In particular, the Church’s Statement on Marriage and Sexuality authorizes Destiny “to restrict the use of Church facilities and property to uses consistent with the Bible, with its Statement of Faith and Statement on Marriage and Sexuality, as solely determined by Destiny Church.”

42. The lead pastor, Sheldon Miles, has at times preached and taught on marriage and human sexuality. All such teaching and preaching is consistent with the theological principles of the Assemblies of God. His sermons, and church events, are noticed, promoted and posted on the Destiny website.

43. On the issues of sex and marriage, if he were to communicate a position in conflict with the Assemblies of God his ordination papers would be revoked by the Wisconsin/Northern Michigan District of the Assemblies of God. Likewise, if he officiated, or otherwise allowed the church facilities to be used for a same-sex wedding, he would be defrocked.

St. Mark's Lutheran Church

44. St. Mark's Lutheran Church belongs to the Wisconsin Evangelical Lutheran Synod.

45. Concerning marriage, the Wisconsin Synod statement on marriage reads, "The Bible and Lutherans teach that marriage is the union of one man and one woman. It is a partnership in which the man is the loving head. Marriage is established by God. It is a holy relationship not to be broken. A married person sins if he or she divorces without a biblical reason. Before God, no divorce is valid except in cases of fornication or desertion. The tendency to consider marriage as unimportant results in great harm to the family, the church, and the nation."

46. On its website, St. Mark's provides its position on marriage which reads, in part, as follows: "We believe natural law testifies to heterosexual marriages as the norm since they serve procreation and ensure the continuation of the species... Even if our society is willing (although this grieves us) to legalize and protect same-sex 'unions' of some sort, to call same-sex

relationships ‘marriages’ is a misnomer, because marriage necessarily involves the uniting of two members of the opposite sex.”

47. In like manner, the Wisconsin Synod states on its website, “our pastors will not officiate in any marriage ceremony or celebration and our church sanctuary may not be used for any activities related to a marriage ceremony or celebration that is inconsistent with these beliefs.” *Statement on Marriage and Marriage Policies for WELS Congregations*

48. As to homosexuality, St. Mark’s holds the view that “homosexuality is contrary to natural law as well as revealed law in the Bible.”

49. Regarding sexual relations, the Wisconsin Synod adheres to the position that “[t]o engage in premarital or extramarital sex, before or outside of marriage, is to sin in God’s sight.” WELS Q&A, *Bible and Premarital Sex* (May 22, 2015).

50. St. Mark’s has members. Members must adhere to the Church’s faith and standards of conduct. Failure to do so may result in the Church’s leadership exercising spiritual discipline.

51. St. Mark’s has 58 employees. For those employees who have duties involving ministry, they must be members of the Church.

52. St. Mark’s has three campuses. Office hours are from 9 a.m. to 3:00 p.m. Monday through Thursday and 9 a.m. to noon on Friday. Campuses have hosted blood drives through the Red Cross and served as polling stations.

53. The Church provides activities for children, youth and adults which include singing, stories, studies and limited recreation.

54. The pastor of the Church, John Parlow, has taught, preached and written on marriage and human sexuality. Pastor Parlow’s sermons, and church events, are noticed,

promoted and posted on the Church's website. The positions that he takes are entirely consistent with the teachings of St. Mark's and the Wisconsin Synod. Should he communicate a contrary view he is subject to being defrocked.

Christ the Rock Church

55. Christ the Rock Church is a nondenominational church with approximately one-hundred persons in attendance on any given Sunday. The Church holds to the biblical definition of marriage which is the covenantal lifetime union of a man and a woman. Further, sexual relations are confined to that relationship.

56. Christ the Rock employs two persons who must be members of the Church. As the congregation grows and ministries expand, the Church will add employees that can exceed five in number. Members must attend a membership class and sign a covenant statement. In sum, members must agree to the Church's tenets and act in accordance with them. Employees can experience adverse employment actions if they live in a manner that is inconsistent with faith and conduct.

57. The Church provides activities for children, youth and adults which include singing, stories, studies and limited recreation.

58. Christ the Rock maintains a very active presence in the community and as such opens its doors for numerous activities. These include serving water at the Noodleini Half Marathon and 5K Run/Walk, a Memorial Day open house and bake sale where a free lunch is served to veterans, hosting medical screenings, holding the Art of Marriage conference, holding a Grief Share class, and hosting weddings. When members of the public attend these events, and come through the building of the Church, they frequently use the restrooms. The Church posts signs for male and female restrooms and requires the public to use the facility in accordance with

his or her biological sex. The exception to this is a single use restroom with a locking door in which an individual of either sex can use.

59. Christ the Rock engages in limited renting of its campus. For example, it rents to a neighboring business for storage and will rent its parking lot during the weekdays. In addition, the Church has a food pantry to provide groceries to the needy in the congregation and the people of De Pere.

60. Due to Christ the Rock's teaching on biblical marriage, the senior pastor (Matt Kadlec) will not officiate a same-sex wedding. Further, the leadership of the Church will not allow the sanctuary to be used for a same-sex wedding.

61. Pastor Kadlec has taught and preached on the issues of marriage and human sexuality. All such communications remain consistent with Christ the Rock Church's theologically conservative precepts.

62. Christ the Rock Church notices, promotes and published its events and posts sermons on the Church's website.

Q90fm

63. Q90fm is a Christian radio station which broadcasts music and religious teaching programs.

64. The station has a Statement of Faith which is theologically conservative.

65. The station has nine employees who are required to be in good standing as a "member of a bible-believing Christian Church." Further an employee must "agree with, and make every attempt to live by, [the station's] Statement of Faith. Within [the] statement is the biblical definitions of sexuality, gender and marriage. Every employee is expected to be guided solely by the Bible's teachings on these issues." Employees are expected to support the

Statement of Faith in any personal discussions or through social media. If an employee “is deemed to have violated [the station’s] Statement of Faith through words or actions corrective action will be taken.”

66. As a religious nonprofit, under the Federal Communications Commission rules Q90fm advertises in the form of recognizing and thanking business sponsors, minus a call to action.

67. Moreover, under FCC rules Q90fm allows the public a chance to promote an event. However, the station has discretion to refuse a request. Q90fm has exercised its discretion and declined to publicize an event if the persons involved, or the event itself, promotes a lifestyle or belief that is inconsistent with the faith of the station. For example, the station would decline to allow its broadcasts to promote events related to marriage, sexual activities or sexual orientation that contradict its Faith Statement.

68. Q90fm sells time to individuals or groups that are religious ministries. Those wanting to buy time must have like faith and conduct consistent with Christian lifestyle and character. At times the station has declined to sell time due to issues relating to faith, conduct or character.

69. Q90fm partners with other ministries and churches to promote Christian concerts. The same faith, conduct and character criteria for sale of time is used for the promotion of concerts. The station has had occasion to decline, or back out of, promotion ventures. On more than one occasion artists have come out in support of same-sex marriage. This led to Qfm90 backing out of supporting the concerts.

70. Q90fm will decline to play music of artists who have faith, conduct or character issues that are inconsistent with the Christian faith.

71. The station owns its building. Business hours are from 8:00 a.m. to 4:00 p.m. The lower unit of the building is rented out. In addition, free space has been provided to third party ministries.

CLAIM FOR DECLARATORY RELIEF

72. Plaintiffs reallege each allegation in the foregoing paragraphs.

73. This Complaint seeks a declaratory judgment pursuant to Wisconsin Statute § 806.04.

74. A controversy has arisen between the Plaintiffs and the Defendant as to whether the City of De Pere's *Non-Discrimination in Housing, Public Accommodation and Employment* ordinance applies to nonprofit religious institutions.

Discrimination

75. A controversy has arisen between the Plaintiffs and the Defendant as to whether the ministries of religious institutions fall under the meaning of *discrimination* found in Section 9-1(b).

76. Under the ordinance, *discriminate* and its cognates means “any intentional act, policy, advertisement or practice which has the effect of subjecting any person to differential treatment as a result of that person’s actual or perceived... gender identity and/or gender expression, marital status...sex, [and] sexual orientation... .” Sec. 9-1(b).

77. The presence of *discrimination* is a condition precedent to trigger the remedial provisions of the ordinance relating to employment Sec. 9-1(d) and public accommodations. Sec. 9-1(e).

78. The Plaintiffs hold views relative to family and marital status, religion, sex, gender identity and sexual orientation for which they make employment and facilities-use

decisions. Additionally, each of the religious institutions notices, promotes, publishes and otherwise disseminates their views relating to these topics on certain communication-platforms including their websites and for some, blogs, and the radio.

79. The Plaintiffs require a declaration as to whether the ordinance's definition of *discrimination* reaches religious institutions.

Employment Provision

80. A controversy has arisen between the Plaintiffs and the Defendant as to whether the ministries of religious institutions are subject to the employment provision found in Section 9-1(d).

81. Section 9-1(d) reads in relevant part:

“With regard to employment, it shall be unlawful for any employers..., to engage in any of the following acts, wholly or partially for a discriminatory reason:

(1) To discriminate against any individual, with respect to failure to hire, refusal to hire, discharge, compensation, terms, conditions, or privileges of employment, including promotion...

(2) To limit, segregate, or classify employees in any way which would deprive or tend to deprive any employee of employment opportunities, or which would otherwise tend to adversely effect his or her status as an employee; or

(3) To fail or refuse to refer for employment, or to give negative information to a potential employer of any individual, in such a manner that would deprive or limit an individual's employment opportunities or that would otherwise adversely affect an individual's status as an applicant or prospective employee.”

82. As religious institutions, plaintiffs set various prerequisites and continual requirements for employment relative to hiring, discharge, terms, and conditions of employment based on religious beliefs and practice. Such can include rules related to sexual orientation, sex, family and marital status, gender identity or expression, and religious beliefs.

83. Concerning hiring practices, the ordinance provides for a religious or denominational institution exemption stating, “[n]othing contained in this ordinance shall be deemed to prohibit selection or rejection...based upon a preference for applicants of the same religion.” Sec. 9-1(h)(3).

84. The Plaintiffs religious exercise as it relates to employees includes not only a preference at the initial hire, but also requires adherence to faith and conduct throughout employment, both on and off the job.

85. The Plaintiffs require a declaration as to whether their ministries fall within the employment provisions of Sec. 9-1(d).

Public Accommodation

86. A controversy has arisen between the Plaintiffs and the Defendant as to whether religious institutions are subject to the public accommodation provision found in Section 9-1(e) which reads, “[i]t shall be unlawful for a business establishment or place of public accommodation to deny, directly or indirectly, any person the full enjoyment of the goods, services, facilities, privileges, advantages, and accommodations wholly or partially for a discriminatory reason.”

87. The ministries of Plaintiffs, even though such involve things such as goods and services, have limitations if those who seek such would use them in a manner that is inconsistent with the beliefs and religious practices of these religious institutions.

88. The ordinance defines a *place of public accommodation* as “all establishments within the City of De Pere which offers goods, services, accommodations and entertainment to the public. A place of public accommodation does not include any institution or club which by its nature is distinctly private.” Sec. 9-1(b).

89. The Plaintiffs require a declaration as to whether their ministries fall within the meaning of “offers goods, services, accommodations and entertainment to the public.” Sec. 9-1(b).

90. Additionally, the Plaintiffs require a declaration as to whether, under Sec. 9-1(b), their ministries fall within the meaning of an “institution which by its nature is distinctly private” or whether religious institutions are deemed *places of public accommodation* under the ordinance.

ALTERNATIVE CONSTITUTIONAL CLAIMS

91. Plaintiffs reallege each allegation in the foregoing paragraphs.

92. In the event that religious institutions fall within the language of the De Pere’s *Non-Discrimination in Housing, Public Accommodation and Employment* ordinance, in the alternative the Plaintiffs seek a declaration that the ordinance is unconstitutional as applied to religious institutions. Stated otherwise, are religious exemptions strictly a matter of legislative grace or do the religion clauses in the state and federal constitutions preordain such exemptions.

Right to Religious Conscience

93. Section 18 of Article 1 of the Wisconsin Constitution states, “The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed;...nor shall any control of, or interference with, the rights of conscience be permitted...
.”

94. The religious institutions hold sincerely held religious beliefs as described herein.

95. The De Pere ordinance substantially burdens the exercise of these Plaintiffs.

96. The City of De Pere does not have an interest sufficiently compelling to override Section 18 of Article 1 of the Wisconsin Constitution in order to impose the discrimination, employment and public accommodation provisions of the Ordinance on religious institutions.

Ministerial Exemption

97. The employment provision of the ordinance does not have a ministerial exemption.

98. Although the ordinance allows religious institutions to hire from their own religion, that provision does not give a church the discretion to set other employment conditions that the City would deem discriminatory under the ordinance. Moreover, the ordinance does not purport to allow a church to discharge a minister at its discretion without being subject to City review and the potential imposition of penalties.

99. Section 9-1(g)(1) allows “[a]ny person who claims to be aggrieved” under the ordinance to file a complaint with the City Administrator. The City Administrator can engage in dispute resolution (Sec. 9-1(g)(3) or, that failing, can refer the matter to the City Attorney for ordinance enforcement. Section 9-1(g)(4).

100. There is a controversy between the religious institutions and the City. The Plaintiffs contend that under the religion clauses of the First Amendment neither a municipality nor the courts possess jurisdiction to resolve employment disputes between a church and its clergy.

Freedom of Press

101. Section 3 of Article 1 of the Wisconsin Constitution provides, “Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech or of the press.”

102. Likewise, the First Amendment provides that “Congress shall make no law...abridging the freedom...of the press....”

103. The five church-plaintiffs have and will continue to notice and promote events and sermons by publishing same on their respective websites. The radio station-plaintiff has and will continue to broadcast advertisements.

104. The ordinance defines *discrimination* such that it includes advertisements “which have the effect of subjecting any person to differential treatment as a result of belonging to a protected class.”

105. If the Court finds that this provision applies to the Plaintiffs’ publications, then the Plaintiffs seek a declaration that this part of the ordinance violates freedom of the press.

106. As to the radio-station-plaintiff, continued refusal to accept advertisement or programming places Q90fm in a position of noncompliance with the public accommodation provision. Sec. 9-1(e). Such refusal is deemed a denial of the “full enjoyment of the goods and services, facilities, privileges, advantages, and accommodations...for a discriminatory reason.” The ordinance compels speech, thus infringing on the rights to freedom of the press under the First Amendment and Wisconsin Constitution.

Freedom of Speech

107. Section 3 of Article 1 of the Wisconsin Constitution provides, “Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech or of the press.”

108. Likewise, the First Amendment provides that “Congress shall make no law...abridging the freedom of speech....”

109. The five church-plaintiffs have and will continue to notice, promote, publish and broadcast their events, sermons and programming websites, or in the case of the radio station-plaintiff, on air.

110. The ordinance defines *discrimination* such that it includes advertisements “which have the effect of subjecting any person to differential treatment as a result of belonging to a protected class.”

111. If the Court finds that this provision applies to the Plaintiffs’ publications, then the Plaintiffs seek a declaration that this part of the ordinance violates freedom of speech.

112. As to the radio-station-plaintiff, continued refusal to accept advertisement or programming places Q90fm in a position of noncompliance with the public accommodation provision. Sec. 9-1(e). Such refusal is deemed a denial of the “full enjoyment of the goods and services, facilities, privileges, advantages, and accommodations...for a discriminatory reason.” The ordinance compels speech, thus infringing on the rights to freedom of speech under the First Amendment and Wisconsin Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Hope Lutheran Church, Crosspoint Church, Destiny Church, St. Mark Lutheran Church, Christ the Rock Church and Lakeshore Communications request that this Court provide relief as follows:

1. Issue a declaratory judgment pursuant to Wis. Stat. § 806.04(1) and (2) providing a construction of Chapter 9 of the City of De Pere Municipal Code entitled *Non-Discrimination in Housing, Public Accommodation and Employment* and

numbered as Ordinance 17-20 as to whether the definition of “discrimination” under Section 9-1(b) applies to Hope Lutheran Church, Crosspoint Church, Destiny Church, St. Mark Lutheran Church, Christ the Rock Church and Lakeshore Communications;

2. Issue a declaratory judgment pursuant to Wis. Stat. § 806.04(1) and (2) providing a construction of Chapter 9 of the City of De Pere Municipal Code entitled *Non-Discrimination in Housing, Public Accommodation and Employment* and numbered as Ordinance 17-20 as to whether the employment provision found in Section 9-1(d) applies to Hope Lutheran Church, Crosspoint Church, Destiny Church, St. Mark Lutheran Church, Christ the Rock Church and Lakeshore Communications;
3. Issue a declaratory judgment pursuant to Wis. Stat. § 806.04(1) and (2) providing a construction of Chapter 9 of the City of De Pere Municipal Code entitled *Non-Discrimination in Housing, Public Accommodation and Employment* and numbered as Ordinance 17-20 as to whether the public accommodation provision found in Section 9-1(e) applies to Hope Lutheran Church, Crosspoint Church, Destiny Church, St. Mark Lutheran Church, Christ the Rock Church and Lakeshore Communications;
4. In the alternative, if the Court determines that Chapter 9 of the City of De Pere Municipal Code applies to Hope Lutheran Church, Crosspoint Church, Destiny Church, St. Mark Lutheran Church, Christ the Rock Church and Lakeshore Communications, the Plaintiffs request a declaration that the Ordinance violates the right to religious conscience under Wisconsin Constitution Article 1 § 18;

5. In the alternative, if the Court determines that Chapter 9 of the City of De Pere Municipal Code applies to Hope Lutheran Church, Crosspoint Church, Destiny Church, St. Mark Lutheran Church, Christ the Rock Church and Lakeshore Communications, the Plaintiffs request a declaration that the Ordinance violates the religion clauses of the First Amendment to the United States Constitution for failure to provide a ministerial exception;
6. In the alternative, if the Court determines that Chapter 9 of the City of De Pere Municipal Code applies to Hope Lutheran Church, Crosspoint Church, Destiny Church, St. Mark Lutheran Church, Christ the Rock Church and Lakeshore Communications, the Plaintiffs request a declaration that the Ordinance violates the right to freedom of the press under the First Amendment to the United States Constitution and under Wisconsin Constitution Article 1 § 3;
7. In the alternative, if the Court determines that Chapter 9 of the City of De Pere Municipal Code applies to Hope Lutheran Church, Crosspoint Church, Destiny Church, St. Mark Lutheran Church, Christ the Rock Church and Lakeshore Communications, the Plaintiffs request a declaration that the Ordinance violates the right to freedom speech under the First Amendment to the United States Constitution and under Wisconsin Constitution Article 1 § 3;
8. For costs;
9. Reasonable attorneys' fees; and,
10. Any other further relief as this Court deems just and proper.

Respectfully submitted this 21st day of February 2018.

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ORDINANCE #17-20

CREATING CHAPTER 9 DE PERE MUNICIPAL CODE
REGARDING NON-DISCRIMINATION IN HOUSING,
PUBLIC ACCOMMODATION AND EMPLOYMENT

THE COMMON COUNCIL OF THE CITY OF DE PERE, WISCONSIN, DO ORDAIN

AS FOLLOWS:

SECTION 1: Section 9-1, *Non-Discrimination in Housing, Public Accommodation and*

Employment, is hereby created to read as follows:

Sec. 9-1.

(a) Policy and Intent.

A vibrant, productive and economically successful city is made possible by the talents, contributions and well-being of its diverse residents. It is the policy of the City of De Pere that equal rights and equal opportunity within the context of the larger commercial and social fabric of the De Pere community are promoted.

Provision for adequate safeguards against discrimination is a proper and necessary function of city government. To protect the health, safety and general welfare of all inhabitants of the city, and all persons employed and living within the city, it is declared to be the public policy of this city to foster and enforce to the fullest extent of the law equal opportunity employment, housing and public accommodations without regard to actual or perceived age, color, family status, gender identity and/or gender expression, marital status, national origin/ancestry, race, religion, military service or veteran status, person with disability, sex, sexual orientation, source of lawful income or victims of domestic violence, sexual assault or stalking.

Where applicable, this chapter shall be interpreted and applied consistently with the provisions of Title VII of the Civil Rights Act of 1968, 42 U.S.C. sections 2000a, et seq., 42 U.S.C. sections 3601, et seq., 24 C.F.R. sections 100, et seq., and ss. 66.1011, 106.50, 106.52 and 111.31, Wis. Stats., and any successor provisions of state and federal law.

(b) Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Age means being age 40 or older.

Ancestry means the country, nation, tribe or other identifiable group from which one descends.

Color means color of skin.

Committee means the City Finance/Personnel Licensing Committee.

Disability means, with respect to a person, any of the following:

- (1) A physical or mental impairment which substantially limits one or more of the person's major life activity.
- (2) A record of having impairment.
- (3) Being perceived as having impairment.
- (4) This term does not include current, illegal use of or addiction to a controlled substance. The behavioral manifestations of a mental disability may be taken into consideration in determining whether or not the applicant is qualified.

Discriminate, discrimination or discriminatory shall mean any intentional act, policy, advertisement or practice which has the effect of subjecting any person to differential treatment as a result of that person's actual or perceived age, color, family status, gender identity and/or gender expression, marital status, national origin/ancestry, military service or veteran status, race, religion, color, persons with disability, sex, sexual orientation, source of lawful income or victims of domestic violence, sexual assault or stalking.

Dwelling means any building, structure or portion thereof which is occupied as or designed or intended for occupancy as a residence by one (1) or more families, and vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

Employee shall mean any individual employed or seeking employment from an employer.

Employer shall mean any person who, for compensation, regularly employs five or more individuals, not including the employer's parents, spouse or children. For purposes of [this ordinance] an "employer" is also any person acting on behalf of an employer, directly or indirectly, or any employment agency.

Gender identity and/or gender expression means a person's gender-related self-identity, appearance, expression or behavior, regardless of the person's assigned sex at birth.

Family includes one or more natural person.

Family status means any of the following conditions that apply to a person seeking to rent or purchase housing or to a member or prospective member of the person's household regardless of the person's marital status:

- (1) A person is pregnant.
- (2) A person is in the process of securing sole or joint legal custody, periods of physical placement or visitation rights of a minor child.

- (3) A person's household includes one (1) or more minor or adult relatives.
- (4) A person's household includes one (1) or more adults or minor children in his or her legal custody or physical placement or with whom he or she has visitation rights.
- (5) A person's household includes one (1) or more adults or minor children placed in his or her care under a court order, under guardianship or with the written permission of a parent or other person having legal custody of the adult or minor child, or adopted person.

Marital Status means the status of being married, single, divorced, separated or widowed.

Military Service or Veteran Status means current or former service in the U.S. armed forces, the state defense force, the national guard of any state, or any other reserve component of the U.S. armed forces.

National origin means generally a member of a nation by origin, birth or naturalization or having common origins.

Person shall mean one or more individuals, firms, corporations, partnerships or other organizations, associations or groups of persons however arranged, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

Place of public accommodation shall mean all establishments within the City of De Pere which offers goods, services, accommodations and entertainment to the public. A place of public accommodation does not include any institution or club which by its nature is distinctly private.

Protected classes are defined as:

- (1) **Age.** Persons 40 years of age or older.
- (2) **Color.** A person's skin color.
- (3) **Disability/Handicap.** A physical or mental impairment that substantially limits one or more major life activities.
- (4) **Domestic Abuse, Sexual Assault and Stalking Victims.** Persons who have been or are victims of domestic abuse, sexual assault or stalking.
- (5) **Family Status.** Household composition, including the presence of children.
- (6) **Gender Identity and/or Gender Expression.** A person's gender-related self-identity, appearance, expression or behavior, regardless of the person's assigned sex at birth.
- (7) **Lawful Source of Income.** A person's legal means of income, including such subsidized forms as Social Security, food stamps, unemployment compensation, etc.
- (8) **Marital Status.** Married, unmarried, single, divorced, widowed or separated.
- (9) **Military Service or Veteran Status.** Active or former military service, including retirement or honorable discharge therefrom.

- (10) **National Origin/Ancestry.** The country of one's birth and/or the nationality of one's ancestors.
- (11) **Race.** A person's race or the race of persons with whom one associates.
- (12) **Religion.** A person's religious beliefs or denominational affiliation.
- (13) **Sex.** A person's sex, including sexual harassment or intimidation.
- (14) **Sexual Orientation.** Individuals identified as heterosexual, gay, lesbian, bisexual or any sexual orientation identity.

Race means generally a member of a group united or classified together on the basis of common history, nationality or geography.

Religion or creed means a system of religious beliefs including moral or ethical beliefs about right and wrong that are sincerely held with the strength of traditional religious views.

Sex/gender means being female or male.

Sexual Orientation means a person's actual or perceived heterosexuality, homosexuality, asexuality, or bisexuality.

To rent includes to lease, to sublease, to let and to otherwise grant for consideration the right to occupy premises not owned by the occupant.

(c) Discrimination in Housing Prohibited.

(1) Subject to other provisions of this article, no person may discriminate in the rental of housing, procurement of property owner's insurance or commit any sale or discriminatory housing practice against a person on the basis of actual or perceived: age, color, family status, gender identity and/or gender expression, marital status, national origin/ancestry, race, religion, color, military service or veteran status, person with disability, sex, sexual orientation, source of lawful income or victims of domestic violence, sexual assault or stalking.

(2) **Discriminatory housing practice** means:

- (A) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of any basis listed in this chapter.
- (B) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of any basis listed in this chapter.
- (C) To make, print or publish or cause to be made, printed or published any notice, statement or advertisement with respect to the sale, financing or rental of a dwelling that indicates any preference, limitation or discrimination because of any basis listed in this chapter or an intention to make such preference, limitation or discrimination.
- (D) To represent to any person because of any basis listed in this chapter that any dwelling is not available for inspection, sale or rental when such dwelling is, in fact, so available.

(E) To induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of persons of a particular economic status or a member of a protected class as set forth in this chapter or by representations to the effect that such present or prospective entry will or may result in any of the following:

- i. The lowering of real estate values in the area concerned.
- ii. A deterioration in the character of the area concerned.
- iii. An increase in criminal or antisocial behavior in the area concerned.
- iv. A decline in the quality of the schools or other public service facilities in the area.

(F) For any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part of the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling, or to discriminate against such person in the fixing of the amount, interest, rate, duration or other terms or conditions of such loan or other financial assistance, because of any basis listed in this chapter applicable to such person or to any associated person in connection with such loan or financial assistance, or of the present or prospective owners, lessees, tenants or occupants of the dwelling in relation to which such loan or other financial assistance is given.

(G) By advertising in a manner that indicates discrimination by a preference or limitation based upon the classes of persons protected by this chapter.

(H) For a person in the business of insuring against hazards, by refusing to enter into, or to do so by exacting terms, conditions or privileges with respect to a contract of insurance against hazards to a dwelling based upon the classifications of persons protected by this chapter.

(3) ***Discrimination against victims of domestic abuse prohibited.*** A person may not evict a tenant or refuse to rent or lease residential property based on the fact that a tenant or prospective tenant or a member of the tenant's or prospective tenant's household has been or may be the victim of domestic abuse, as defined in §813.12(1)(a), Wis. Stats., or has been a victim of a crime prohibited by Chapter 948, Wis. Stats.

(4) ***Discrimination against persons with disabilities prohibited.*** For the purposes of this section, "discrimination" includes but is not limited to:

(A) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

- (B) A refusal to make reasonable accommodation in rules, policies, practices or services, when the accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling.
- (C) In connection with the design and construction of covered multi-family dwellings for first occupancy after March 31, 1991, a failure to design and construct the dwelling in a manner that the public use and common use areas of the dwelling are easily accessible to and useable by disabled persons; or, a failure to comply with the appropriate requirements providing accessibility and usability for physically disabled people as set forth within, or adopted by, this code including the American National Standard for buildings and facilities requirements.

(5) *Animals assisting persons with disabilities.*

- (A) If an individual's vision, hearing or mobility is impaired, it is discrimination for a person to refuse to rent or sell housing to the individual, cause the eviction of the individual from housing, require extra compensation from an individual as a condition of continued residence in housing or engage in the harassment of the individual because he or she keeps an animal that is specially trained to lead or assist the individual with impaired vision, hearing or mobility if all of the following apply:
 - i. Upon request, the individual shows to the lessor, seller or representative of the condominium association credentials issued by a school recognized by the department as accredited to train animals for individuals with impaired vision, hearing or mobility.
 - ii. The individual accepts liability for sanitation with respect to, and damage to the premises caused by, the animal.
- (B) Subdivision (A) does not apply in the case of the rental of owner-occupied housing if the owner or a member of his or her immediate family occupying the housing possesses and, upon request, presents to the individual a certificate signed by a physician which states that the owner or family member is allergic to the type of animal the individual possesses.

(d) Discrimination in Employment Prohibited

With regard to employment, it shall be unlawful for any employers or labor organizations, to engage in any of the following acts, wholly or partially for a discriminatory reason:

- (1) To discriminate against any individual, with respect to failure to hire, refusal to hire, discharge, compensation, terms, conditions, or privileges of employment, including promotion; however nothing in this subsection shall be construed to require any employer to provide benefits, such as insurance, to individuals not employed by the employer;
- (2) To limit, segregate, or classify employees in any way which would deprive or tend to deprive any employee of employment opportunities, or which would otherwise tend to adversely affect his or her status as an employee; or

- (3) To fail or refuse to refer for employment, or to give negative information to a potential employer of any individual, in such a manner that would deprive or limit an individual's employment opportunities or that would otherwise adversely affect an individual's status as an applicant or prospective employee.

(e) Discrimination in Public Accommodations Prohibited

It shall be unlawful for a business establishment or place of public accommodation to deny, directly or indirectly, any person the full enjoyment of the goods, services, facilities, privileges, advantages, and accommodations wholly or partially for a discriminatory reason.

(f) Exceptions.

- (1) Nothing in this chapter shall prohibit:

- (A) A religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons.
- (B) A private club, not in fact open to the public, which as incident to its primary purpose provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.
- (C) Discrimination on the basis of age or persons with disability in relation to housing designed to meet the needs of the elderly or persons with disabilities.

- (2) With the exception of prohibitions against discriminatory advertising and statements, this chapter shall not apply to:

- (A) An owner-occupied building containing no more than four units when the units are being sold or rented without the assistance of a real-estate broker, agent or such facilities or services in the business of selling or renting dwellings.
- (B) A single-family residence if it is rented or sold by an owner who does not own more than three such single-family residences at any one time and; provided that in the case of the sale of any such single-family residence by a private individual owner not residing in the house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within a twenty-four (24) month period and; provided any such single-family residence is being sold or rented without the assistance of a real-estate broker, agent or such facilities or services in the business of selling or renting dwelling.

(g) Enforcement.

- (1) Any person who claims to have been aggrieved or injured under this ordinance may file a written complaint with the City Administrator (or authorized designee), setting forth therein the details, including location of property, names, dates, witnesses, and other factual matters. All such complaints shall be signed by the complainant. Such complaints shall be filed within 300 days after the alleged violation of this ordinance.
- (2) The City Administrator shall provide a copy of a timely-filed complaint to the City Attorney for review and jurisdictional determination.
- (3) The City Administrator may receive and provide resolution to complaints on a voluntary, informal dispute resolution basis, may adopt rules, policies and regulations, and involve City staff as deemed appropriate and consistent with this ordinance and the laws of this state to carry out the policy and provisions of this ordinance and the powers and duties of the City Administrator.
- (4) Any complaint not voluntarily resolved through an informal dispute resolution process shall be forwarded to the City Attorney's Office for an ordinance enforcement determination.

(h) Jurisdiction.

- (1) The City shall not exercise jurisdiction over any complaint that sets forth or states any facts or allegations that are subject matter within the jurisdiction of any state or federal agency, including but not limited to the U.S. Equal Employment Opportunity Commission or the State of Wisconsin, Department of Workforce Development, regardless of whether the complainant has chosen to file with that said agency or not. If it appears that the City does not have jurisdiction over a filed complaint, the complainant shall be referred to the appropriate state or federal enforcement agency.
- (2) It shall not be an unlawful discriminatory practice for an employer to observe the conditions of a bona fide seniority system or a bona fide employee benefit system based on age such as a retirement, pension or insurance plan which is not a subterfuge or pretext to evade the purposes of this ordinance.
- (3) Nothing contained in this ordinance shall be deemed to prohibit selection or rejection based solely upon a bona fide occupational qualification, a bona fide physical requirement, or, as to a religious or denominational institution, based upon a preference for applicants of the same religion or denomination.

(i) Penalty for violation of Chapter.

Penalty for violation of chapter. Any person who violates any provision of this chapter shall be subject to a municipal ordinance forfeiture in such amount as determined by resolution of the common council. Each such violation shall constitute a separate offense.

SECTION 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: It is hereby declared to be the intention of the City Council that the several provisions of this ordinance are separable. If any court of competent jurisdiction shall adjudge any provision of this ordinance to be invalid, such judgment shall not affect any other provisions of this ordinance not specifically included in said judgment.

SECTION 4: This ordinance shall take effect on March 1, 2018.

Adopted by the Common Council of the City of De Pere, Wisconsin, this 21st day of November, 2017.

APPROVED:

Michael J. Walsh, Mayor

ATTEST:

Shana D. Ledvina, Clerk-Treasurer

Ayes: 5

Nays: 4

Publication Date: November 28, 2017

Effective Date: 03/01/2018