

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

SCOTT F. FETTEROLF AND THERESA)
E. FETTEROLF,)
)
Plaintiffs,)
)
v.)
BOROUGH OF SEWICKLEY HEIGHTS,)
)
Defendant.)
_____)

Case No. _____

**VERIFIED COMPLAINT FOR DECLARATORY RELIEF,
INJUNCTIVE RELIEF, AND DAMAGES**

Plaintiffs, Scott F. Fetterolf and Theresa E. Fetterolf, by their counsel, the Independence Law Center, alleges the following causes of action against Defendant, Borough of Sewickley Heights:

INTRODUCTION

1. Scott F. Fetterolf and Theresa E. Fetterolf (the “Fetterolfs”) own and reside on property located in the Borough of Sewickley Heights (“Sewickley Heights”), Pennsylvania.

2. This property, previously owned by Nancy Chalfant, has been used for many decades to host religious activities such as seminary picnics, seminary board meetings, Pittsburgh Institute for Youth Ministry, Bible studies, fundraisers for pastors and churches, Billy Graham Foundation meetings, and many more religious activities.

3. Theresa Fetterolf met Chalfant at church. She became a mentor and like a family member to Theresa.

4. Theresa Fetterolf attended many of the religious events on the property while Chalfant owned the property, and even attended youth events with her now husband, Scott, on the property while dating.

5. The Fetterolfs purchased the property in 2003 to carry on the traditions started by Chalfant.

6. On October 5, 2017, the Borough served a “Notice of Violation/Cease and Desist Order” on the Fetterolfs claiming violations of its zoning ordinance No. 294. *See* Notice of Violation/Cease and Desist Order, attached as Exhibit A.

7. Activities that Sewickley Heights identified as prohibited include:

- A Bible study;
- “Sewickley Valley Worship Night;”
- A fall retreat that including “solid teaching” and “deep worship;” and
- “Feed my Lambs,” a fundraiser for Kenya Christian Education Partnership.

8. The Notice of Violation/Cease and Desist Order characterized the Bible study as a “Special or Studio School,” in order to forbid it in the zone on which the property is located unless they would first get a conditional use approval and pay a fee of \$20-\$40 per Bible study.

9. The Notice of Violation/Cease and Desist Order characterized the later three activities as a “Place of Worship” or “Place of Assembly” in order to altogether forbid those activities in the zone on which the property is located.

10. Sewickley Heights is threatening the Fetterolfs with fines of \$500 per day, plus court costs including the Borough’s attorney’s fees, for having Bible studies at their home, having meetings where religious songs are sung, conducting any religious retreats for church leaders or seminary students for prayer or for camaraderie-building/fellowship time, and

conducting any religious fundraisers.

11. The Borough permits secular gatherings such as groups of people coming together to have a book club, but has banned groups of people coming together to study the Bible together on the Fetterrolfs' property.

12. The Borough permits secular fundraisers for politicians, but has banned the Fetterrolfs from hosting religious fundraisers.

13. The Borough permits gatherings to watch the Pittsburgh Steelers play football or gather around a bonfire, but will not permit seminary students to come for a retreat and pray together on the Fetterrolfs' property.

14. The Borough permits graduation parties that include music or a live band, provided all applicable noise ordinances are followed, but banned any gatherings to sing worship songs on the Fetterrolfs' property, even though all applicable noise ordinances are followed and there have been no allegations that noise ordinances were ever violated.

15. There is no compelling interest in prohibiting Bible studies, meetings where religious songs are sung, religious retreats/fellowship, and religious fundraisers when secular counterparts of these activities are permitted. For instance, book clubs, bonfires, child health fund raisers, Harry Potter parties, Royal wedding parties, farm-to-table events, Heart Association fundraisers, political fundraisers, birthday parties, equestrian club meetings, baby showers, garden club meetings, football game parties, graduation parties, and more are occurring at other properties that are similarly zoned.

16. Prohibiting these events is also not the least restrictive means of furthering any compelling governmental interest, since interests in noise or other matters can be accomplished without entirely prohibiting these religious practices.

17. Sewickley Heights has treated the Fetterolfs' religious activities less favorably than similarly-situated secular activities hosted by other landowners, substantially burdened the Fetterolfs' religious exercise, infringed on the Fetterolfs' speech and assembly, and subjected them to restrictions that are void for vagueness.

JURISDICTION AND VENUE

18. This action arises under the United States Constitution and federal law, particularly 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc, *et seq.*

19. This Court is vested with original jurisdiction over these claims by operation of 28 U.S.C. §§ 1331 and 1343.

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

21. This Court is authorized to issue the requested injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

22. This Court is authorized to award attorneys' fees pursuant to 42 U.S.C. § 1988.

23. Venue is proper in United States District Court for the Western District of Pennsylvania under 28 U.S.C. § 1391(b), because Defendant resides in the Western District of Pennsylvania, the events giving rise to the claim occurred within the Western District of Pennsylvania, and the subject property is located in the Western District of Pennsylvania.

PARTIES

24. Plaintiffs, the Fetterrolfs, own thirty-five (35) acres of property located off of Scaife Rd., Sewickley, PA 15143 (“the property”).

25. The Fetterrolfs reside in a house on the property. The property also contains a barn, well house, a five-bay garage, corn crib, brooder, hen house, a cabin/guest house for pastors or battered women to stay in, other out-buildings, a riding ring which can be used for large gatherings or large tents, hoop houses, beehives, and other farm-like structures.

26. The primary use of the property is to farm.

27. Defendant, Sewickley Heights, located at 238 Country Club Road, Sewickley, PA 15143, is a public body corporate and politically established, organized, and authorized under and pursuant to the laws of the Commonwealth of Pennsylvania, with the authority to sue and be sued, and was at all times relevant herein, operating within the course and scope of its authority and under color of state law.

STATEMENT OF FACTS

The Fetterrolfs and their Religious Mission

28. The Fetterrolfs bought the property in 2003, in part to continue to use it for the religious purposes of Mrs. Chalfant.

29. Up until the Cease and Desist Order, the Fetterrolfs still held many of the same events that Chalfant had been hosting for decades.

30. They have a sincerely-held religious belief that they are to meet with others to study the Bible, to gather with others to worship (i.e. sing religious songs), to share in religious

fellowship and refreshment and provide for others to do so, and to help the religious works of others through raising funds.

31. They have used various locations on their property for this purpose up until receiving the Notice of Violation/Cease and Desist Order from the Borough on October 5, 2017.

32. None of these activities are the principal use of this property. Instead, their farming operation and residence are the primary uses.

33. The Bible studies, retreats, and other religious events are ancillary uses since many property owners use properties for the secular counterparts of these activities: book clubs, garden clubs, entertaining, parties, and fundraisers.

Sewickley Heights' Amended Zoning Code

34. Zoning in the Borough is regulated by "Amended and Restated Zoning Ordinance No. 294" ("Ordinance 294").

35. Sewickley Heights has categorized the Fetterrolfs' property as a "A-Historical-Rural Residential" property. *See Exhibit A.*

36. Sewickley Heights' Notice of Violation/Cease and Desist Order asserted that worship events (i.e. singing), retreats, and fundraisers constitute a "Place of Worship" or "Place of Assembly," which are entirely prohibited as a principal use in the zone. *See Exhibit A.*

37. Ordinance 294 defines "Place of Worship/Assembly" as "a building, structure, and/or lot where people regularly observe, practice, or participate in religious or spiritual services, meetings and/or activities or that is designed (or adapted) for the assembly or collection of persons for civic, political, religious, educational, social, recreational, and amusement

purposes. A place of assembly does not include a private club or recreation facility.” *See* Ordinance 294, § 2.02, attached as Exhibit B.

38. A church, synagogue, or mosque would be the prototypical “Place of Worship,” explaining why a “Place of Worship” is not even listed on the table of what are considered accessory uses within any of the zones within the Borough, *see* Ordinance 294, Table 2, attached as Exhibit C, since they would not by nature be anything but a primary use.

39. However, book studies, gathering for music and singing, and other gatherings like parties and fundraisers are the kinds of activities that would occur on residential or agricultural properties even without being listed as accessory.

40. These are also the kinds of gatherings that would be permitted in a park, and parks are permitted as of right in this district. *See* Exhibit C.

41. Sewickley Heights’ Notice of Violation/Cease and Desist Order asserted that Bible studies constitute a “studio school” within the zone, requiring conditional use approval and a fee for each “class.” *See* Exhibit A.

42. Special or studio schools are “small scale facilit[ies], typically accommodating one group of students at a time, in no more than one instructional space offering specialized instruction, including for purposes of example but not limitation, individual and group instruction in the arts, production rehearsals, musical recitals, martial arts training, and yoga and aerobics instruction.” *See* Ordinance 294, § 2.02, attached as Exhibit D.

43. Showing that a school rather than a book club is in view, the ordinance states that “[c]lasses shall primarily be taught by the owner,” *see* Ordinance 294, § 12.35(B), attached as Exhibit E, and that there needs to be access for “discharging and picking up students,” *id.* at § 12.35(E).

44. As a conditional use, the Borough maintains broad discretion to deny a Bible study. *See* Ordinance 294, §§ 12.01, 12.02, 12.04, attached as Exhibit F.

45. The Borough permits secular gatherings such as groups of people coming together to have a book club, but has banned groups of people coming together to study the Bible together on the Fetterolfs' property.

46. The Borough permits secular fundraisers for politicians, but has banned the Fetterolfs from hosting religious fundraisers.

47. The Borough permits gatherings to watch the Pittsburgh Steelers play football or gather around a bonfire, but will not permit seminary students to come for a retreat and pray together on the Fetterolfs' property.

48. The Borough permits graduation parties that include music or a live band, provided all applicable noise ordinances are followed, but has banned the Fetterolfs from hosting any gatherings to sing worship songs, even though all applicable noise ordinances are followed and there have been no allegations that noise ordinances were ever violated.

ALLEGATIONS OF LAW

49. Ordinance 294 constitutes a land use regulation or a system of land use regulations.

50. All acts of the Defendant, its officers, agents, servants, employees, or persons acting at their behest or direction, were done and are continuing to be done under the color and pretense of state law, including the ordinances, regulations, customs, policies and usages of the Borough of Sewickley Heights.

51. Unless Defendant is enjoined from continuing to enforce Ordinance 294 against Bible studies, gathering for worship (i.e. singing), retreats, and fundraisers, the Fetterolfs will continue to suffer irreparable injury to their constitutional and statutory rights.

52. The Fetterolfs have no adequate remedy at law to correct the continuing deprivations of their most cherished liberties.

53. As a direct and proximate result of the Defendant's ongoing violations of the Fetterolfs' rights, the Fetterolfs suffer and will continue to suffer the costs associated with defending the use of their property.

Sewickley Heights Proceedings

54. The Notice of Violation/Cease and Desist Order imposed by Sewickley Heights threatens a \$500 fine plus costs, including the Borough's attorney's fees, for holding Bible studies, religious retreats, times of singing religious songs, or religious fundraisers occurring after October 13, 2017. *See Exhibit A.*

55. Accordingly, the Fetterolfs have cancelled all religious activities on their property since October 5, 2017, a span of time exceeding nine months and counting.

56. The Fetterolfs appealed the Notice of Violation/Cease and Desist Order on November 1, 2017.

57. The Borough scheduled a series of short hearings, which began on January 23, 2018 and proceeded on February 21, 2018, March 14, 2018, April 10, 2018, and July 17, 2018 and are again scheduled to continue on August 7, 2018.

58. Additional hearings will be scheduled and could reasonably last until the end of the year.

59. The Fetterolfs wish to begin religious activities again, including Bible studies, prayer meetings for a small number of guests, a church youth group twice in the summer (40 guests), a youth leader brunch (10-12 guests), a labor day picnic for the seminary (100 guests), and a fundraiser for the Billy Graham Library in September (250 guests).

60. In order to proceed with their religious activities and to avoid the fines and costs of enforcement, the Fetterolfs sought agreement from the Borough to stay enforcement against these activities (as well as a staff retreat for a church they were not permitted to host).

61. The Fetterolfs also requested a stay from the Zoning Hearing Board, but the Zoning Hearing Board concluded that it had no power to grant such relief.

62. The Borough, which is enforcing the Cease and Desist Order, then concluded that it also had no authority to agree to stay enforcement of the Cease and Desist Order that it imposed on the Fetterolfs either.

COUNT I
VIOLATION OF RLUIPA'S "SUBSTANTIAL BURDENS" PROVISION
42 U.S.C. §2000cc(a)

63. The Fetterolfs incorporate the allegations in the preceding paragraphs.

64. The Fetterolfs believe that Christians are to meet with others to study the Bible, to sing religious songs, to share in religious retreats and fellowship, and to raise money for religious causes.

65. The Fetterolfs have historically and wish to continue to use their property for these purposes, but the Borough's Notice of Violation/Cease and Desist Order prohibited the Fetterolfs from doing so.

66. The Fetterolfs' religious beliefs are sincerely and deeply held.

67. The Fetterrolfs' intended use of the property constitutes "religious exercise" under 42 U.S.C. § 2000cc-5(7)(A)-(B).

68. Ordinance 294 permits Defendant to make individualized assessments of the proposed uses of property within the Borough, including the Fetterrolfs' property.

69. Ordinance 294, as applied, imposes a substantial burden on the Fetterrolfs' religious exercise by completely prohibiting them from meeting with others on their property to study the Bible, to sing religious songs, to share in religious retreats and fellowship, and to raise money for religious causes.

70. Further, the Borough substantially burdens the Fetterrolfs' future religious exercise through its Notice of Violation/Cease and Desist Order, which threatens the Fetterrolfs with fines of \$500 per "violation" plus court costs including the Borough's attorney's fees.

71. As a result, the Fetterrolfs have been forced to stop using their property to meet with others in these ways since October 5, 2017.

72. Book clubs, bonfires, child health fund raisers, Harry Potter parties, Royal wedding parties, Farm-to-Table events, Heart Association fundraisers, political fundraisers, birthday parties, equestrian club meetings, baby showers, garden club meetings, football game parties, graduation parties, and more are occurring at other properties that are similarly zoned.

73. There is no compelling interest in prohibiting Bible studies, meetings where religious songs are sung, religious retreats/fellowship, and religious fundraisers, especially when secular counterparts of these activities are permitted.

74. Prohibiting these events is not the least restrictive means of furthering any compelling governmental interest, since interests in noise or other matters can be accomplished without entirely prohibiting these events.

75. Ordinance 294, as applied, violates the Fetterrolfs' free exercise of religion as guaranteed by RLUIPA, 42 U.S.C. § 2000cc(a)(1).

WHEREFORE, the Fetterrolfs respectfully request that the Court grant the equitable and legal relief and damages set forth in the prayer for relief.

COUNT II
VIOLATION OF RLUIPA'S "EQUAL TERMS" PROVISION
42 U.S.C. § 2000cc(b)(1)

76. The Fetterrolfs incorporate the allegations in the preceding paragraphs.

77. The Bible studies, meeting together to sing religious songs, gathering for retreats and fellowship, and religious fundraisers are religious assemblies for purposes of 42 U.S.C. § 2000cc(b)(1).

78. An "assembly," for RLUIPA purposes, is defined as "a group of persons organized and united for some common purpose." *Lighthouse Inst. for Evangelism v. City of Long Branch*, 510 F.3d 253, n.29 (3d. Cir. 2007).

79. Defendant does not enforce the same restrictions on non-religious assemblies on properties that are similarly zoned such as bonfires, Child Health Association meetings, Harry Potter parties, Royal wedding parties, Farm to Table events, Heart Association fundraisers, political fundraisers, birthday parties, equestrian club meetings, book club meetings, baby showers, garden club meetings, football game parties, and graduation parties.

80. Ordinance 294, as applied, violates the equal terms provision of RLUIPA, 42 U.S.C. § 2000cc(b)(1).

WHEREFORE, the Fetterrolfs respectfully request that the Court grant the equitable and legal relief and damages set forth in the prayer for relief.

COUNT III
VIOLATION OF THE RIGHT TO FREE EXERCISE OF RELIGION UNDER THE
UNITED STATES CONSTITUTION

81. The Fetterrolfs incorporate the allegations in the preceding paragraphs.

82. The Fetterrolfs believe that Christians are to meet with others to study the Bible, to sing religious songs, to share in religious retreats and fellowship, and to raise money for religious causes.

83. The Fetterrolfs have historically and wish to continue to use their property for these purposes, but the Borough's Notice of Violation/Cease and Desist Order prohibited the Fetterrolfs from doing so.

84. The Fetterrolfs' religious beliefs are sincerely and deeply held.

85. The Fetterrolfs' intended use of the property constitutes the exercise of religion protected by the First Amendment.

86. Ordinance 294, as applied, imposes a substantial burden on the Fetterrolfs' religious exercise by completely prohibiting them from meeting with others on their property to study the Bible, to sing religious songs, to share in religious retreats and fellowship, and to raise money for religious causes.

87. Further, the Borough substantially burdens the Fetterrolfs' future religious exercise through its Notice of Violation/Cease and Desist Order, which threatens the Fetterrolfs with fines of \$500 per "violation" plus court costs including the Borough's attorney's fees.

88. As a result, the Fetterrolfs have been forced to stop using their property to meet with others in these ways since receiving the Notice of Violation/Cease and Desist Order on October 5, 2017.

89. The Fetterolfs are entitled to strict scrutiny for their free exercise claim because hybrid rights are involved, religious liberty along with speech and assembly.

90. The Fetterolfs are also entitled to strict scrutiny because the *application* of Ordinance 294 is not a neutral law of general applicability. It is not neutral because religious activities are singled out for adverse treatment. It is not generally applicable because the application of Ordinance 294 is not grounded in its text, but instead gives broad discretion to the Borough to allow all kinds of exceptions through individualized assessments but to deny similarly situated religious activities.

91. There is no compelling interest in prohibiting Bible studies, meetings where religious songs are sung, religious retreats/fellowship, and religious fundraisers, especially when secular counterparts of these activities are permitted. For instance, book clubs, bonfires, child health fund raisers, Harry Potter parties, Royal wedding parties, Farm-to-Table events, Heart Association fundraisers, political fundraisers, birthday parties, equestrian club meetings, baby showers, garden club meetings, football game parties, graduation parties, and more are occurring at other properties that are similarly zoned.

92. Prohibiting these events is also not the least restrictive means of furthering any compelling governmental interest, since interests in noise or other matters can be accomplished without entirely prohibiting these events.

93. Ordinance 294, as applied, violates the Fetterolfs' right to free exercise of religion, as guaranteed by the First Amendment to the United States Constitution.

WHEREFORE, the Fetterolfs respectfully request that the Court grant the equitable and legal relief and damages set forth in the prayer for relief.

COUNT IV
VIOLATION OF THE RIGHT TO FREE SPEECH UNDER
THE UNITED STATES CONSTITUTION

94. The Fetterrolfs incorporate the allegations in the preceding paragraphs.

95. Defendant's application of Ordinance 294, requiring a conditional use approval before holding a Bible study serves as a prior restraint on religious speech.

96. The conditional use approval process unconstitutionally vests the Borough with unbridled discretion to deny the Bible study.

97. Defendant also applies Ordinance 294 as a content-based restriction on speech because the Borough bans Bible studies, worship, retreats/fellowships, and religious fundraisers while similar secular counterparts are not treated the same, namely book clubs, bonfires, child health fund raisers, Harry Potter parties, Royal wedding parties, Farm-to-Table events, Heart Association fundraisers, political fundraisers, birthday parties, equestrian club meetings, baby showers, garden club meetings, football game parties, and graduation parties.

98. As a content-based restriction on speech, Ordinance 294 is subject to strict scrutiny and is presumptively unconstitutional.

99. Defendant's underinclusive application of Ordinance 294 to not cover similarly situated activities shows that the application of Ordinance 294 serves no compelling governmental interest.

100. Defendant's application of Ordinance 294 is not narrowly tailored to even a significant governmental interest, because it unnecessarily sweeps within its ambit protected First Amendment speech, thus violating the rights of the Fetterrolfs and third parties not before the Court.

101. Interests in noise or other matters can be accomplished without entirely prohibiting these events.

102. By entirely prohibiting these activities, Defendant's application of Ordinance 294 does not leave open ample alternative channels of communication.

103. Ordinance 294, as applied, violates the Free Speech Clause of the First Amendment to the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

WHEREFORE, the Fetterolfs respectfully request that the Court grant the equitable and legal relief and damages set forth in the prayer for relief.

COUNT V
VIOLATION OF THE RIGHT TO ASSEMBLY AND ASSOCIATION UNDER
THE UNITED STATES CONSTITUTION

104. The Fetterolfs incorporate the allegations in the preceding paragraphs.

105. The Fetterolfs bought their property to meet with others to study the Bible, to sing religious songs, to share in religious retreats and fellowship, and to raise money for religious causes.

106. Defendant uses Ordinance 294 to prohibit the Fetterolfs from assembling and associating with others for religious speech and other religious purposes.

107. The Borough has no compelling interest in limiting peaceable assembly on the Fetterolfs' own property, particularly when other similarly situated secular activities are permitted.

108. Ordinance 294, as applied, is not narrowly tailored to any compelling interest because any interest can be achieved in less burdensome ways.

109. Ordinance 294, as applied, violates the Fetterolfs' right of peaceable assembly and association under the First Amendment to the United States Constitution, as incorporated and applied to state action, under the Fourteenth Amendment.

WHEREFORE, the Fetterolfs respectfully request that the Court grant the equitable and legal relief set forth in the prayer for relief.

**COUNT VI
VIOLATION OF EQUAL PROTECTION CLAUSE OF
THE UNITED STATES CONSTITUTION**

110. The Fetterolfs incorporate the allegations in the preceding paragraphs.

111. Ordinance 294, as applied, treats religious activities less favorably than their secular counterparts.

112. This application of Ordinance 294 is not supported by a compelling governmental interest sufficient to justify its enforcement against the Fetterolfs' religiously motivated speech and assembly.

113. This application of Ordinance 294 is not the least restrictive means to accomplish any permissible government interest sought to be served by the regulations.

114. Defendant's application of Ordinance 294 violates the Equal Protection Clause.

WHEREFORE, the Fetterolfs respectfully request that the Court grant the equitable and legal relief and damages set forth in the prayer for relief.

COUNT VII
ORDINANCE 294 IS UNCONSTITUTIONALLY VAGUE

115. The Fetterolfs incorporate the allegations in the preceding paragraphs.

116. Sewickley Heights' Notice of Violation/Cease and Desist Order asserted that worship events (i.e. singing), retreats, and fundraisers constitute a "Place of Worship" or "Place of Assembly," which are entirely prohibited in the zone. *See* Exhibit A.

117. Ordinance 294 defines "Place of Worship/Assembly" as "a building, structure, and/or lot where people regularly observe, practice, or participate in religious or spiritual services, meetings and/or activities or that is designed (or adapted) for the assembly or collection of persons for civic, political, religious, educational, social, recreational, and amusement purposes. A place of assembly does not include a private club or recreation facility." *See* Ordinance 294, § 2.02, attached as Exhibit B.

118. While a church, synagogue, or mosque would be a "Place of Worship," or a meeting hall a "Place of Assembly," worship events (i.e. singing), retreats, and fundraisers hardly fall within this combined definition.

119. Additionally, a "Place of Worship/Assembly" is only contemplated as a "principal use" and is absent from the accessory use table. Tables 1-2, Exhibit C.

120. Worship events, retreats and fundraisers are not principal uses of the Fetterolfs' property, as the principal uses are farming and their residency.

121. Since Defendant applies Ordinance 294, to treat worship events (i.e. singing), retreats, and fundraisers as falling within the definition of "Place of Worship/Assembly," but all kinds of secular counterparts of these activities are permitted, it is entirely unclear what guides the Borough's understanding of what constitutes a violation.

122. Assuming, arguendo, that worship events, religious retreats, and religious fundraisers are properly categorized as a “place of worship/assembly,” the lack of guidance in Table 2 with regard to a “Place of Worship/Assembly” fails to give the Borough’s residents fair warning of whether such events are permitted as an accessory use.

123. Sewickley Heights’ Notice of Violation/Cease and Desist Order asserted that Bible studies constitute a “studio school” within the zone, requiring conditional use approval and a fee for each “class.” *See* Exhibit A.

124. Special or studio schools are “small scale facilit[ies], typically accommodating one group of students at a time, in no more than one instructional space offering specialized instruction, including for purposes of example but not limitation, individual and group instruction in the arts, production rehearsals, musical recitals, martial arts training, and yoga and aerobics instruction.” *See* Ordinance 294, § 2.02, attached as Exhibit D.

125. Showing that a school rather than a book club is in view, the ordinance states that “[c]lasses shall primarily be taught by the owner,” *see* Ordinance 294, § 12.35(B), attached as Exhibit E, and that there needs to be access for “discharging and picking up students,” *id.* at § 12.35(E).

126. A Bible study hardly falls within the definition of a special or studio school.

127. Since Defendant applies Ordinance 294 to treat Bible studies as schools, but book clubs are permitted, it is entirely unclear what guides the Borough’s understanding of what constitutes a violation.

128. When the Fetterolfs sought clarification as to what was covered, they were told by the Borough that no clarification could be given.

129. Ordinance 294, both facially and as applied, is so vague as to render it impossible for the Fetterolfs to determine what uses are permitted and what uses are not permitted.

130. Ordinance 294 fails to give fair warning as to what is prohibited conduct.

131. Ordinance 294 allows for arbitrary and discriminatory enforcement because of the absence of adequate defined standards.

132. Such vagueness has caused the Fetterolfs to avoid holding any events on their property out of fear that such events would be labeled as prohibited conduct that subjects them to fines and court costs including attorney's fees.

133. Accordingly, Ordinance 294 is unconstitutionally vague and violates the Fourteenth Amendment.

WHEREFORE, the Fetterolfs respectfully request that the Court grant the equitable and legal relief and damages set forth in the prayer for relief.

PRAYER FOR RELIEF

The Fetterrolfs pray for judgment as follows:

A. That this Court issue a Preliminary and Permanent Injunction to enjoin the Defendant, its officers, agents, and employees, and all other persons acting in concert with them from enforcing Ordinance 294 to prohibit Bible studies, religious worship (meetings where someone speaks or religious songs are sung), religious retreats and fellowship, and meeting to raise funds for religious causes.

B. That this Court render a Declaratory Judgment declaring Ordinance 294, as applied, to be a violation of RLUIPA, the free exercise of religion, the freedom of speech, and the freedom of assembly and association, and, on its face and as applied, to be void for vagueness.

C. Grant the Fetterrolfs nominal and compensable damages;

D. Grant the Fetterrolfs an award of its costs of litigation, including reasonable attorneys' fees and costs; and

E. Grant such other and further relief as this Court deems just and proper.

Dated this 18th day of July, 2018.

Respectfully submitted,

By: 

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Counsel for Plaintiffs

VERIFICATION OF COMPLAINT

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have read the foregoing Verified Complaint and the factual allegations thereof and that to the best of my knowledge the facts alleged therein are true and correct.

On the Bth day of July, 2018.


Theresa Fetterolf and Scott Fetterolf