

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION**

<b>OPEN GATE WESTERN HERITAGE</b>	)	<b>Case No.</b>
<b>CHURCH, a Louisiana nonprofit corporation</b>	)	
	)	
<i>Plaintiff,</i>	)	
	)	
<b>v.</b>	)	<b>JUDGE:</b>
	)	
<b>CALCASIEU PARISH SCHOOL BOARD,</b>	)	
<b>and WAYNE SAVOY, Superintendent of the</b>	)	<b>MAGISTRATE:</b>
<b>Calcasieu Parish School Board,</b>	)	
<i>Defendants.</i>	)	

**VERIFIED COMPLAINT**

**Introduction**

This action seeks to protect the First and Fourteenth Amendment rights of the Plaintiff, a church which, until February 27, 2011, had been meeting at facilities owned and controlled by the Defendant Calcasieu Parish School Board (“the Board”) under a policy that allows “[c]ivic, religious, governmental, school organizations and Board approved groups” to use, for a fee and other consideration, school facilities during times that schools are not in session, such as Sundays. However, as of February 27, the Board began enforcing an unwritten and vague policy which has the effect of preventing the Plaintiff and other churches from availing themselves of school facilities on equal terms with other community groups. The actions of the Board constitute viewpoint discrimination in violation of the protections of the First Amendment and the Plaintiff has and continues to suffer irreparable harm to its First Amendment rights. Immediate relief must be granted to stop enforcement of the unwritten policy and allow churches to continue to exercise their fundamental rights of free expression, free exercise of religion and freedom of association on equal terms with other community groups.

### **Jurisdiction and Venue**

1. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343, as it is an action seeking redress under the laws and statutes of the United States for rights secured by the Constitution and laws of the United States. This Court has jurisdiction to enter a declaratory judgment in favor of the Plaintiff under 28 U.S.C. §§ 2201-2202.

2. This Court has jurisdiction over the Plaintiff's claims arising under the laws and Constitution of the State of Louisiana pursuant to 28 U.S.C. § 1367(a), as such claims are part of the same case or controversy giving rise to the claims over which this Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343.

3. Venue properly lies in the Western District of Louisiana under 28 U.S.C. § 1391(b), as the Defendants reside within this District, all Defendants reside within the State of Louisiana, and a substantial part of the events giving rise to this action occurred within this District.

### **Parties**

4. The Plaintiff, Open Gate Western Heritage Church, is a nonprofit, 501(c)(3) corporation incorporated under the laws of the State of Louisiana. The Plaintiff was formed for the purpose of operating a Christian church and to bring together persons in the Lake Charles, Louisiana, area who desire to come to know the gospel of Jesus Christ.

5. Defendant Calcasieu Parish School Board ("the Board") is a body corporate created and existing under the laws of the State of Louisiana, specifically La. Rev. Stat. § 17:51. The Board is charged with the establishment, management and control of public schools within the Calcasieu Parish, Louisiana, and with establishing rules, regulations and policies for the

operation of said schools. In all respects set forth herein, the Board acted under color of the law of the State of Louisiana.

6. Defendant Wayne Savoy is the duly-appointed and acting Superintendent of Calcasieu Parish School Board. Under the laws of the State of Louisiana, and Policies of the Board, Defendant Savoy is charged and delegated with the authority to administer the schools operated and controlled by the Board and with seeing that the policies adopted by the Board are carried out and enforced. In all respects set forth herein, Defendant Savoy acted or would act under color of the law of the State of Louisiana.

#### **Factual Allegations**

7. The Board has adopted and currently has in place a written policy entitled "USE OF SCHOOL FACILITIES" ("Policy KG"), a copy of which is attached as Exhibit A, and which provides that "the function of school buildings and grounds shall be to accommodate approved school programs for students and to assist in meeting community needs."

8. Policy KG provides that use of school buildings by the community is a secondary function "and shall be scheduled at times which do not interfere with regular school activities. Civic, religious, governmental, school organizations and Board approved groups may use school facilities."

9. Under Policy KG, groups may use school facilities based upon a properly documented application and a signed lease agreement between the group and the board that includes (a) a hold harmless statement, (b) the group's commitment to obtain liability insurance naming the Board as an additional insured, and (c) a statement by the group to assume responsibility for damages or maintenance expenses resulting from the use.

10. Under Policy KG, community groups also pay a fee, established by rules and regulations of the Superintendent for using school facilities.

11. Pursuant to Policy KG, the Plaintiff has since approximately 2008 used the cafeteria of Fairview Elementary School, a school under the control of and operated by the Board, on a regular basis for Sunday religious services. The Plaintiff executed a lease agreement in connection with the use and paid the Board \$40 per week.

12. These services involve the coming together of persons in accordance with the tenets of the Christian faith and engaging in prayer, the reading of scripture passages from the Bible, the singing of religious hymns and anthems, the exposition of Christian beliefs through a sermon or homily, and engaging in Christian rites such as baptism and the Lord's Supper (or Eucharist).

13. In December 2010, the Plaintiff's pastor, Dr. Mark D. Stagg, was contacted by a representative of the Board and given notice that after 60 days the Plaintiff could no longer use the Fairview Elementary cafeteria or any other school facility operated by the Board.

14. Dr. Stagg was informed that the problem perceived by the Board administration is that churches were using school facilities on a long-term basis and were getting a "free ride."

15. On or about December 7, 2010, at its regularly scheduled public meeting, the Board was presented with a proposal to change the policy and procedure for rental of building facilities. The minutes for this meeting are attached as Exhibit B.

16. According to the minutes of the meeting, "[s]taff recommended that the committee grant permission to authorize the school board's attorney to draft a revision of the current policy that gives principals more defined guidance as well as updating the fee schedule and prohibiting the use of schools for worship." (Exh. B, p. 3).

17. A motion was made and seconded to approve the staff's recommendation, and the motion carried (Exh. B, p. 3).

18. On February 22, 2011, Pastor Stagg was informed by Karl Bruchhaus, Chief Financial Officer for the school district, that the Plaintiff would not be allowed to use Fairview Elementary School for Sunday church services after February 27, 2011 and that the Board had adopted a policy excluding use of school buildings for "worship," which policy was now in effect.

19. On February 22, 2011, counsel for the Plaintiff contacted the Board's attorney by electronic mail to inquire why the Plaintiff was being forbidden from using school buildings for Sunday church services, pointing out that, to his knowledge, the Board had not taken any action on a revision to Policy KG.

20. On February 22, 2011, the Board's attorney sent counsel for the Plaintiff a reply e-mail message explaining that although no change to Policy KG has been drafted, Bruchhaus believed that the Board had approved a change to the policy and Bruchhaus had instructed school principals to give the Plaintiff and other religious organizations notice that they would not be allowed to use school buildings after 60 days.

21. On information and belief, the Plaintiff alleges that the Board has approved a policy or practice which would prohibit the Plaintiff from using school buildings for "worship" and has instructed or allowed Defendant Savoy and Bruchhaus to enforce such a policy or practice, although there was no written change to Policy KG and the exclusion of the Plaintiff from using school buildings is on the basis of a policy that has no certain or definite terms.

22. Based upon the unwritten policy and practice of the Board, the Plaintiff has been excluded from using school buildings and facilities and has been required to relocate its services

to the McNeese State University Baptist student center, where it pays \$200 per week for use of the facility.

23. The Plaintiff has and continues to suffer injury, both irreparable and otherwise, as a result of the unwritten policy and practice of the Board which excludes use of school facilities for “worship.” The Plaintiff’s ability to communicate its respective religious messages, to engage in religious practices, and to meet together as a church community to engage in this activity in accordance with the tenets of their respective faiths has been and continues to be severely burdened.

**First Cause of Action**  
**Violation of U.S. Const. Amend. 1 – 42 U.S.C. § 1983**

24. The Plaintiff realleges and incorporates by reference the allegations set forth in ¶¶ 1 through 23 above.

25. The Board, by adopting an unwritten amendment to Policy KG under which school facilities may not be used for “worship,” has engaged in viewpoint discrimination in violation of the First Amendment to the United States Constitution, thereby harming organizations including the Plaintiff, churches and other religious organizations.

26. The unwritten policy and/or practice of the Board is vague, indefinite and overbroad, without any guiding standards for officials applying or enforcing the policy and/or practice to determine what constitutes “worship,” and so violates the First Amendment to the United States Constitution.

27. The Plaintiff’s Sunday services constitute the expression and the exercise of religion, which are protected by the guarantees to freedom of speech and to free exercise of religion set forth in the First Amendment to the United States Constitution.

28. The Board's unwritten policy forbidding use of school facilities for "worship" activities violates the Establishment Clause of the First Amendment to the United States Constitution in that the policy does not serve a secular purpose and requires excessive entanglement between the Board and religion in application of the policy.

29. The application of the unwritten policy forbidding use of school facilities for "worship" activities by the Defendants and their officers, agents and employees has deprived the Plaintiff of its rights under the First Amendment and has substantially burdened the Plaintiff in the exercise of those rights.

30. In depriving the Plaintiff of its rights under the First Amendment, the Defendants have acted under color of law of the Louisiana.

31. The Plaintiff is entitled to relief under 42 U.S.C. § 1983 for the deprivation of rights caused by the Defendants.

**Second Cause of Action**  
**Violation of La. Const. Art. I, §§ 7 and 8**

32. The Plaintiff realleges and incorporates by reference the allegations set forth in ¶¶ 1 through 31 above.

33. The Board, by adopting an unwritten amendment to Policy KG under which school facilities may not be used for "worship" has engaged in viewpoint discrimination in violation of the La. Const. Art. I, § 7 thereby harming the Plaintiff, churches and other religious organizations.

34. The unwritten policy and/or practice of the Board is vague, indefinite and overbroad, without any guiding standards for officials applying or enforcing the policy and/or practice to determine what constitutes "worship," and so violates La. Const. Art. I, § 7.

35. The Plaintiff's Sunday services constitute expression and the exercise of religion that are protected by the guarantees to freedom of speech and to free exercise of religion set forth in La. Const. Art. I, §§ 7 and 8.

36. The application of the unwritten policy forbidding use of school facilities for "worship" activities by the Defendants and their officers, agents and employees constitutes an establishment of religion and has deprived the Plaintiff of its rights under La. Const. Art. I, §§ 7 and 8.

37. In depriving the Plaintiff of its rights under La. Const. Art. I, §§ 7 and 8, the Defendants have acted under color of law of the State of Louisiana.

38. The Plaintiff is entitled to relief for this deprivation and violation of its state and constitutional rights.

**Third Cause of Action**  
**Violation of U.S. Const. Amend. 14 – 42 U.S.C. § 1983**

39. The Plaintiff realleges and incorporates by reference the allegations set forth in ¶¶ 1 through 38 above.

40. The Plaintiff's Sunday services constitute expression and religious exercises that are protected by the guarantees to freedom of speech and to free exercise of religion set forth in the First Amendment to the United States Constitution.

41. The Defendants' decision not to allow the Plaintiff or other organizations to use public school facilities for "worship" activities constitutes intentional, invidious discrimination against the Plaintiff and other religious organizations on the basis of the exercise of First Amendment rights and deprives the Plaintiff and other religious organization of the equal protection of the law guaranteed by the Fourteenth Amendment to the United States Constitution.



42. The Defendants' decision not to allow the Plaintiff or other organizations to use public school facilities for "worship" activities is arbitrary, capricious and irrational discrimination and deprives the Plaintiff and the Plaintiff's members of equal protection of the law guaranteed by the Fourteenth Amendment to the United States Constitution.

43. In depriving the Plaintiff of its right to equal protection of the law under the Fourteenth Amendment to the United States Constitution, the Defendants have acted under color of law of the State of Louisiana.

44. The Plaintiff is entitled to relief under 42 U.S.C. § 1983 for the deprivation of rights caused by the Defendants.

**Fourth Cause of Action**  
**Violation of La. Const. Art. I, § 12**

45. The Plaintiff realleges and incorporates by reference the allegations set forth in ¶¶ 1 through 44 above.

46. The Plaintiff's Sunday services constitute expression and religious exercises that protected by the guarantees to freedom of speech and to free exercise of religion set forth in the First Amendment to the United States Constitution and La. Const. Art. I, §§ 7 and 8.

47. The Defendants' decision not to allow the Plaintiff or other organizations to use public school facilities for "worship" activities constitutes intentional, invidious discrimination against on the Plaintiff and other religious organizations on the basis of religion and thereby violates and deprives the Plaintiff and other religious organizations of their rights under La. Const. Art. I, § 12.

48. In depriving the Plaintiff of its right to be free from religious discrimination under La. Const. Art. I, § 12, the Defendants have acted under color of law of the State of Louisiana.

49. The Plaintiff is entitled to relief for the deprivation of its rights under the Louisiana Constitution.

**Fifth Cause of Action**  
**Declaratory Judgment Under 28 U.S.C. §§ 2201-2202**

50. The Plaintiff realleges and incorporates by reference the allegations set forth in ¶¶ 1 through 49 above.

51. There presently exists between the Plaintiff and the Defendants an actual, justiciable controversy over whether the Defendants have lawfully excluded the Plaintiff from using school district facilities pursuant to Policy KG or the unwritten amendment thereto.

52. The Court should declare the respective rights and liabilities of the Plaintiff and the Defendants regarding the Plaintiff's right to use School District facilities pursuant to Policy KG.

53. A judgment should be entered under 28 U.S.C. § 2201 declaring that the Defendants' decision not to allow "worship" activities under Policy KG violates the rights of the Plaintiff under the First and Fourteenth Amendments to the United States Constitution and La. Const. Art. I, §§ 7, 8 and 12;

WHEREFORE, Plaintiff prays for judgment against all Defendants as follows:

A) that a declaratory judgment be entered pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., declaring that the Defendants' refusal to allow the Plaintiff to use facilities of Calcasieu Parish School Board for Sunday church services violates the Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution and La. Const.. Art. I, §§ 7, 8 and 12;

B) that a preliminary injunction be entered forbidding the Defendants, and officers and agents under the control or direction of the Defendants, from applying or enforcing an exclusion from access to school facilities under School Board Policy KG based upon “worship” activities and to allow the Plaintiff the opportunity to use the Calcasieu Parish School Board facilities for Sunday Church services or other religious activities on equal terms with other community groups and organizations;

C) that an order be entered permanently enjoining the Defendants, their officers and their agents from denying the Plaintiff permission to use facilities of Calcasieu Parish School District for the Plaintiff’s worship services in accordance with Policy KG of the School District;

D) that this Court award Plaintiff nominal and compensatory damages in an amount to be determined at trial;

E) that this Court order Defendants to pay Plaintiff’s attorney fees pursuant to 42 U.S.C § 1988, together with costs of this litigation; and

F) such other and further relief as the Court may deem proper.

Dated: April 8, 2011

s/Robert J. Williams

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS DEFENDANTS
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorney's (Firm Name, Address, and Telephone Number)
County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT TORTS FORFEITURE/PENALTY LABOR IMMIGRATION BANKRUPTCY SOCIAL SECURITY FEDERAL TAX SUITS OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise
PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury
PERSONAL INJURY 362 Personal Injury - Med. Malpractice 365 Personal Injury - Product Liability 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability
610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC 881 630 Liquor Laws 640 R.R. & Truck 650 Airline Regs. 660 Occupational Safety/Health 690 Other
422 Appeal 28 USC 158 423 Withdrawal 28 USC 157
820 Copyrights 830 Patent 840 Trademark
861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g))
870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party 26 USC 7609
400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 810 Selective Service 850 Securities/Commodities/Exchange 875 Customer Challenge 12 USC 3410 890 Other Statutory Actions 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.