

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

**GRACEPOINTE CHURCH, a South Carolina )  
unincorporated association, )**

*Plaintiff,* )

v. )

**DR. KENNETH JENKINS, REV. LEON )  
ADDISON, TONY FOLK, DR. JAMES )  
L. HODGES, CHERYL MUSHRUSH, )  
members of the Board of Trustees for )  
Dorchester School District Four, and )  
RENEE MATHEWS, Superintendent of )  
Dorchester School District Four, )**

*Defendants.* )

**Case No.**

**COMPLAINT**

**Introduction**

This action seeks to protect the First and Fourteenth Amendment rights of the Plaintiff, Gracepointe Church, from action by the Board of Trustees of Dorchester School District Four that threatens to prevent the Plaintiff from conducting religious services. The action of the Board of Trustees denying the Plaintiff access to and use of school facilities, which the Plaintiff has used without incident since August 2005 and for which the Plaintiff has paid the School District compensation, constitutes invidious viewpoint discrimination against the Plaintiff in violation of the fundamental rights of the Plaintiff. Immediate action and relief are necessary to prevent the Plaintiff from suffering irreparable harm at the hands of the Board of Trustees.

### **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 South Carolina 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 District of South Carolina under 28 U.S.C. § 1391(b), as the Defendants reside within this District, all Defendants reside within the State of South Carolina, and a substantial part of the events giving rise to this action occurred within this District. Venue is proper in this division pursuant to Loc. Civ. R. 3.01DSC

### **Parties**

4. The Plaintiff, Gracepointe Church, is an unincorporated association. Gracepointe Church was formed and exists for the purpose of engaging in collective Christian worship and fellowship and for meeting the spiritual needs of church members and of persons residing in and around Dorchester County, South Carolina.

5. Defendants Dr. Kenneth Jenkins, Rev. Leon Addison, Tony Folk, Dr. James L. Hodges, and Cheryl Mushrush are the members of the Board of Trustees for Dorchester School District Four (hereafter collectively referred to as "the Board of Trustees"). The Board of

Trustees is empowered and charged by the laws of the State of South Carolina, S.C. Code § 59-19-10, with the management of Dorchester School District Four, a body politic and corporate created and existing under the laws of the State of South Carolina, S.C. Code § 59-17-10. The Board of Trustees members are sued in this action in both their individual and official capacities. In all respects hereafter mentioned, the Board of Trustees members acted under color of the law of the State of South Carolina.

6. Defendant Renee Mathews is the duly-appointed and acting Superintendent of Dorchester School District Four. Under the laws of the State of South Carolina, Defendant Mathews is charged with administering the business of Dorchester School District Four and performing such other duties as assigned and prescribed by the Board of Trustees of Dorchester School District Four. S.C. Code § 59-13-60. Defendant Mathews is sued in her official capacity in order to obtain complete relief for the Plaintiffs. In all respects hereafter mentioned, Defendant Mathews acted under color of the law of the State of South Carolina.

### **Factual Allegations**

7. Dorchester School District Four (hereafter “the School District”) presently has in existence a “Community Use of School Facilities” policy, denominated “Policy KF” by the District, a true and correct copy of which is attached as Exhibit A. Upon information and belief, Policy KF was issued by the District in August 2000.

8. Policy KF provides that “[a]s a service to the community, the board will allow responsible and properly organized community groups to use school facilities in keeping with the following general policies.” Among the stated policies are that “[t]he board restricts the use of facilities to recognized nonprofit community organizations.” Policies also include that the

community organization use not interfere with school programs, the use not be for money-raising events, and that the community organization be responsible for the conduct of persons attending the event and restoring the property to its condition prior to use.

9. Policy KF requires the administration to establish a schedule of fees to be paid for facility use, requires a school employee be present during the use by the community organization, and for the organization to pay for the employee's services. Policy KF forbids any use by groups that advocate unconstitutional or illegal acts, or if their activities are contrary to the best interests of the public schools or educational welfare of its students.

10. Gracepointe Church was formed and organized in February 2005. Because Gracepointe Church had no land or building in which it could hold worship services, it made a request pursuant to Policy KF with the Board of Trustees to use school facilities for worship services on Sundays. At the August 16, 2005 public meeting, the application was submitted on behalf of Gracepointe Church by Pastor Craig Crosby to the Board of Trustees. The Board of Trustees approved the request and granted Gracepointe Church permission to use Woodland High School's gymnasium for a three-month period. Gracepointe Church paid the School District \$250 per week for the use of the high school and \$15 per hour for the services of a custodian who was present at the high school as required by Policy KF.

11. In November 2005, Pastor Crosby of Gracepointe Church appeared before the Board of Trustees and requested that the Church be allowed to use Woodland High School for an additional three months, which the Board of Trustees granted. In January 2006, Pastor Crosby made a request of the Board of Trustees for additional time to use Woodland High School. At the time of the January 2006 submission, Gracepointe Church had other potential locations for holding Sunday church services and needed additional time to finalize those arrangements. The

Board of Trustees granted Gracepointe Church's request for an additional three-month use of Woodland High School.

12. Thereafter, Gracepointe Church was not able to secure the use of the other prospective locations to conduct its Sunday worship services that it had in mind when it requested to use school facilities in January 2006. On Friday, March 31, 2006, a representative of the School District contacted Gracepointe Church and informed it that April 2, 2006 would be the final time Gracepointe Church would be allowed to use Woodland High School for Sunday worship services.

13. Facing the prospect of having no place to hold Sunday worship services after April 2, 2006, Gracepointe Church made a request to appear before a session of the Board of Trustees on April 3, 2006, to request permission to continue using School District facilities. Mike Roberts, a member of Gracepointe Church, appeared at the April 3 meeting on behalf of Gracepointe Church for the Church to use school facilities for its Sunday worship services and made the request, explaining that Gracepointe Church did not yet have an alternative facility to hold its Sunday worship services.

14. In a conversation with Defendant Cheryl Mushrush prior to the April 3 meeting, Defendant Mushrush stated to Pastor Crosby that the Board did not want to set a precedent by allowing Gracepointe to use school facilities for an extended period because then other "undesirable" groups would want to use the facilities. She stated that if Gracepointe Church were allowed to continue using school facilities, then other religious groups such as Muslims or groups with which the Board did not agree would want to use school facilities.

15. The Defendant Board Members thereafter decided to allow Gracepointe Church to use Woodland High School only for an additional eight weeks. The Board of Trustees

informed Gracepointe Church of this decision by a letter dated April 4, 2006. Under the Board of Trustees' decision, the last day Gracepointe Church will be allowed to use Woodland High School for Sunday worship services is May 28, 2006.

16. By its terms, Policy KF does not limit the number of times or duration which a community group may use School District facilities. On information and belief, the Board of Trustees and School District has not previously applied Policy KF to allow only occasional use of School District facilities.

17. No other community group has requested to use Woodland High School on Sundays during times when Gracepointe Church has used Woodland High School for its worship services. Gracepointe Church's use of Woodland High School facilities since August 2005 has not prevented any other qualifying community group from using Woodland High School or any other facility owned and controlled by the School District.

18. The decision of the Defendants to refuse to allow Gracepointe Church to use School District facilities extends not only to use of Woodland High School, but to any and all available School District facilities.

19. Gracepointe Church's use of Woodland High School has at all times been in accordance with Policy KF and has not caused any damage, injury, or harm to Woodland High School or the School District.

20. Any continuing use of Woodland High School or other School District facilities by Gracepointe Church for its Sunday worship services would not cause any damage, harm, or injury to the School District. To the contrary, the School District would be benefited by allowing Gracepointe Church to use School District facilities because the School District would receive payments for the use of the facilities it would not otherwise receive.

21. Gracepointe Church will suffer injury, both irreparable and otherwise, if it is not allowed to use Woodland High School or other School District facilities after May 28, 2006. Gracepointe Church's ability to communicate its religious message and to engage in religious practices and fellowship will be prevented or severely burdened if it is required to find alternative sites to conduct its Sunday worship services. Gracepointe Church also will be required to make payments for the use of other facilities that exceed the charges for use of School District facilities pursuant to Policy KF.

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

22. The Plaintiff realleges and incorporates by reference the allegations set forth in ¶¶ 1 through 21 above.

23. The School District, by adopting Policy KF and making school facilities available for use by community organizations, created a forum for expression protected by the First Amendment to the United States Constitution in those school facilities generally and in Woodland High School in particular.

24. The Plaintiff's Sunday worship 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.

25. The Plaintiff's Sunday worship services constitute expression and activities that are consistent with the purposes for which the forum for expression was created by the School District by adopting Policy KF.

26. The Defendants' decision not to allow the Plaintiff to use Woodland High School or any other facility of the School District for expressive and religious purposes after May 28,

2006 constitutes intentional viewpoint discrimination against the Plaintiff and deprives the Plaintiff and the Plaintiff's members of rights secured by the First Amendment to the United States Constitution.

27. The Defendants' decision not to allow the Plaintiff to use Woodland High School or any other facility of the School District for expressive and religious purposes after May 28, 2006 is arbitrary, capricious, and made without any guiding standards and/or on the basis of an unduly vague ad hoc policy in violation of the First Amendment to the United States Constitution.

28 In causing or threatening the Plaintiff with deprivations of the constitutional rights of the Plaintiff and the Plaintiff's members, the Defendants have acted under color of law of the State of South Carolina.

29. 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 S.C. Const. Art. I, § 2**

30. The Plaintiff realleges and incorporates by reference the allegations set forth in ¶¶ 1 through 29 above.

31. The School District, by adopting Policy KF and making school facilities available for use by community organizations, created a forum for expression protected by S.C. Const. Art. I, § 2 in those school facilities generally and in Woodland High School in particular.

32. The Plaintiff's Sunday worship 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 S.C. Const. Art. I, § 2.



33. The Plaintiff's Sunday worship services constitute expression and activities that are consistent with the purposes for which the forum for expression was created by the School District by adopting Policy KF.

34. The Defendants' decision not to allow the Plaintiff to use Woodland High School or any other facility of the School District for expressive and religious purposes after May 28, 2006 constitutes intentional viewpoint discrimination against the Plaintiff and deprives the Plaintiff and the Plaintiff's members of rights secured by S.C. Const. Art. I, § 2

35. The Defendants' decision not to allow the Plaintiff to use Woodland High School or any other facility of the School District for expressive and religious purposes after May 28, 2006 is arbitrary, capricious, and made without any guiding standards and/or on the basis of an unduly vague ad hoc policy in violation of S.C. Const. Art. I, § 2.

36. In causing or threatening the Plaintiff with deprivations of the constitutional rights of the Plaintiff and the Plaintiff's members, the Defendants have acted under color of law of the State of South Carolina.

37. The Plaintiff is entitled to relief for the deprivation of rights caused by the Defendants.

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

38. The Plaintiff realleges and incorporates by reference the allegations set forth in ¶¶ 1 through 37 above.

39. The Plaintiff's Sunday worship 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.

40. The Defendants' decision not to allow the Plaintiff to use Woodland High School or any other facility of the School District for expressive and religious purposes after May 28, 2006 constitutes intentional, invidious discrimination against the Plaintiff because of the Plaintiff's exercise of First Amendment rights 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.

41. The Defendants' decision not to allow the Plaintiff to use Woodland High School or any other facility of the School District for expressive and religious purposes after May 28, 2006 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.

42. In causing or threatening the Plaintiff with deprivations of the constitutional rights of the Plaintiff and the Plaintiff's members, the Defendants have acted under color of law of the State of South Carolina.

43. 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 S.C. Const. Art. I, § 3**

44. The Plaintiff realleges and incorporates by reference the allegations set forth in ¶¶ 1 through 43 above.

45. The Plaintiff's Sunday worship 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 and S.C. Const. Art. I, § 2.

46. The Defendants' decision not to allow the Plaintiff to use Woodland High School or any other facility of the School District for expressive and religious purposes after May 28, 2006 constitutes intentional, invidious discrimination against the Plaintiff because of the Plaintiff's exercise of the rights to expression and religious exercise protected by the United States and South Carolina Constitutions and deprives the Plaintiff and the Plaintiff's members of equal protection of the law guaranteed by S.C. Const. Art. I, § 3.

47. The Defendants' decision not to allow the Plaintiff to use Woodland High School or any other facility of the School District for expressive and religious purposes after May 28, 2006 is arbitrary, capricious, and irrational discrimination and deprives the Plaintiff and the Plaintiff's members of equal protection of the law guaranteed by S.C. Const. Art. I, § 3.

48. In causing or threatening the Plaintiff with deprivations of the constitutional rights of the Plaintiff and the Plaintiff's members, the Defendants have acted under color of law of the State of South Carolina.

49. The Plaintiff is entitled to relief for the deprivation of rights caused by the Defendants.

**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 KF.

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 KF.

53. A judgment should be entered under 28 U.S.C. § 2201 declaring that the Defendants' decision under Policy KF not to allow the Plaintiff to use facilities of Dorchester School District 4 after May 28, 2006 violates the Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution and S.C. Const. Art. I, §§ 2 and 3;

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 Dorchester School District 4 violates the Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution and S.C. Const. Art. I, §§ 2 and 3;

B) that a preliminary injunction be entered requiring the Defendants, and officers and agents of Dorchester School District 4 under the control of the Defendants, to allow the Plaintiff to use Woodland High School for Sunday worship services on the same terms and conditions as existed from August 16, 2005 until the filing of this Complaint;

C) that an order be entered permanently enjoining the Defendants, their officers, and their agents from denying the Plaintiff permission to use facilities of Dorchester School District 4 for the Plaintiff's worship services in accordance with Policy KF 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: May 12, 2006

RATCHFORD & HAMILTON, LLP

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