

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE RIGHT REVEREND JOHN  
BRYSON CHANE  
3713 Woodley Road, N.W.  
Washington, D.C. 20016

REVEREND JOSEPH M. PALACIOS  
4124 Ames Street, N.E.,  
Washington, D.C. 20019

ROY CRABTREE  
2210 Adams Place, N.E.  
Washington, D.C. 20018

ERIC SHEPTOCK  
925 13th Street NW  
Washington, D.C. 20005

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1514 Swann Street, N.W.  
Washington, D.C. 20009

FRANKLIN F. CHOW  
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Washington, D.C. 20009

DAVID SCHWARTZMAN  
1634 Montague Street, N.W.  
Washington, D.C. 20011

EDWARD LEVIN  
3201 Porter St. NW  
Washington, D.C. 20008

Plaintiffs,

v.

THE DISTRICT OF COLUMBIA  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Defendant.

No. 1:08-cv-\_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF  
(Unconstitutional Establishment of Religion)**

This lawsuit seeks judgment declaring that the imminent gift of more than \$12 million in property (the Gales School) and cash from the government of the District of Columbia to a gospel mission to assist it in carrying out its religious ministry violates the Establishment Clause of the First Amendment and D.C. Code § 44-715, and seeks an injunction prohibiting the District of Columbia from making that gift.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) and § 1343 (civil rights). Plaintiffs bring this action under 42 U.S.C. § 1983 and also seek relief authorized by the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

2. D.C. Code § 44-715 was enacted by Congress. If deemed to be a law of the District of Columbia, this Court has supplemental jurisdiction over the claim brought under that statute pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), as all relevant actions have occurred or will occur in this district and the property at issue is located in this district.

**PARTIES**

4. Plaintiff The Right Reverend John Bryson Chane is the Bishop of the Episcopal Diocese of Washington. As Bishop of Washington, he serves 93 congregations and 45,000 members in the District of Columbia area. He also serves as the President and CEO of the Protestant Episcopal Cathedral Foundation, which governs Saint Alban's School for Boys, The National Cathedral School for Girls, Beauvoir Primary School, the Cathedral College, and the National Cathedral. He is a resident of the District of Columbia, and pays real

property and income taxes to the District. He supports the separation of church and state and believes that our country's Founders intended, through the First Amendment of our Constitution, to prohibit the use of public funds to support the propagation of any religious faith. He believes that public funds should not be used to support social service programs that proselytize or evangelize to their clients, coerce their clients to attend or participate in religious activities, immerse their clients in a religious environment, or otherwise tie the provision of benefits to participation in or exposure to religious activity. He believes that the District's planned gift of valuable property and tax funds to the Central Union Mission (the "Transaction") will constitute unlawful use of public funds and property, without his consent, to support the propagation of a religion and the coercion of homeless persons to take part in religious activity.

5. Plaintiff Rev. Dr. Joseph M. Palacios is a Roman Catholic priest who teaches and performs pastoral work at Georgetown University. He served as a chaplain at the Washington, D.C. Jail from 2002 to 2005. He is a resident of the District of Columbia, and pays property and income taxes to the District. Dr. Palacios objects to the Transaction. He opposes the use of public funds to support the provision of social services that are infused with religion or are conditioned on participation in religious activity because such funding leads to overt or subtle coercion of vulnerable populations to take part in religious activity. As a Roman Catholic, he does not subscribe to the aggressive proselytizing that takes place at the Central Union Mission and does not support such coercive efforts at conversion. He believes that the Transaction will constitute an unlawful use of public funds and property, without his consent, to support religious activity and religious coercion.

6. Plaintiff Roy Crabtree is a resident of the District of Columbia who has been homeless since late 2006. He stayed at the Central Union Mission for a period of about three months, where he was required to participate in religious services each evening as a condition of receiving shelter. When he stopped attending services because he had to lie down to treat his phlebitis, he was forced out of the Mission. Plaintiff Crabtree now stays at another shelter; he would go back to the Mission if he were not required to participate in religious services every day and were not pressured to join the Mission's Spiritual Transformation Program.

7. Plaintiff Eric Sheptock has been a homeless resident of the District of Columbia since 2005. For the last two years, he has been an activist and an advocate on behalf of the homeless. He is a Christian and a man of faith who sings in two church choirs and regularly attends one or two church services on Sundays. He does not wish to attend church services every night, however, as he would be required to do if he stayed at Central Union Mission. Because of the limited shelter options available to homeless people in the District, and the fact that the shelter where he currently resides is scheduled to be closed, he faces the prospect of being forced to use the new Central Union Mission shelter at the Gales School and to go to chapel service there every night. He also objects to the Transaction because it will be financed by public property and public money from a fund designated to benefit all homeless persons, including himself, yet the Transaction will unlawfully condition the benefits from that property and those funds on participation in religious activity. He further objects to the Transaction because it will substantially decrease the total number of beds available for the homeless in the District.

8. Plaintiff Eliza Patterson is an adult resident and property and income tax payer of the District of Columbia, and an attorney. She is a financial supporter of the Central Union Mission and believes it does good work, but she objects to the District of Columbia using tax money to subsidize the Mission's activities, as a violation of the First Amendment.

9. Plaintiff Franklin Chow is an adult resident and property and income tax payer of the District of Columbia. He served in the United States Air Force as a Chaplain's Assistant, and is now retired from employment with the federal Equal Employment Opportunity Commission and the United States Commission on Civil Rights. He is an active member of a Christian church in the District of Columbia, and he has attended chapel services at the Central Union Mission and has been impressed by the religious fervor that was evident there. But he is a strong believer in the separation of church and state, and objects to the use of D.C. tax money to subsidize the acquisition and rehabilitation of a building in which the Central Union Mission will carry out its religious activities.

10. Plaintiff David Schwartzman is an adult resident and property and income tax payer of the District of Columbia. He has been on the faculty at Howard University since 1973 and is currently the D.C. Statehood Green Party's candidate for an At-Large seat on the D.C. Council, as well as the Party's Tax & Budget and Legislative Agenda Coordinator. He is also the Coordinator of Fair Taxes for DC, and an active member of the D.C. Fair Budget Coalition. When he learned that the D.C. Council had authorized a gift of approximately \$12 million to the Central Union Mission, he was dismayed at yet another example of how our tax dollars are doled out to private interests, especially as this deal will actually result in a cut in services to the homeless. He was also offended that the District of

Columbia is going to use tax money to further the religious activities of the Central Union Mission, which are inseparable from its social services. He does not want public funds used to construct an enterprise whose goal is to impose religious beliefs on vulnerable people who need food and shelter.

11. Plaintiff Edward Levin is an adult resident and property and income tax payer of the District of Columbia. He worked in the federal government for approximately thirty years, retiring as Chief Counsel of the Economic Development Administration. Plaintiff Levin objects to the District's planned gift to Central Union Mission, because he opposes the use of public funds to support religious activity or instruction, believing that such public funding corrupts government and degrades religion. He believes that the Transaction will constitute an unlawful use of public funds and property to support the religious activity of a faith to which he does not subscribe.

12. As a legal matter, none of the plaintiffs takes issue with Central Union Mission's religious activities so long as the Mission operates without government support. If the Mission purchased the Gales School at fair market value (properly determined) and renovated it with private funds, or if the Mission leased the Gales School at a fair market rate (properly determined), plaintiffs would assert no claim. If the Mission entered into an enforceable agreement to operate at the Gales School in an entirely secular manner, plaintiffs would assert no claim.

13. Defendant District of Columbia is a municipal corporation established by the Congress of the United States.

## FACTS

### Central Union Mission

14. Central Union Mission (the “Mission”) was established in 1884 to provide a Christian “outreach to wayward men . . . on the streets of Washington.”

15. The Certificate of Incorporation of the Central Union Mission provides: “The business and objects of the Society are establishing, operating, and maintaining Gospel Missions of an undenominational or interdenominational character for the purpose of reaching the nonchurchgoing portion of the community in and near the District of Columbia, and auxiliary activities deemed necessary in furnishing emergency aid to persons and families.”

16. The Mission Statement of the Central Union Mission states: “Our mission is to glorify God through proclaiming and teaching the gospel, leading people to Christ, developing disciples, and serving the needs of hurting people throughout the Washington Metropolitan Area.”

17. The Mission’s “Vision” states: “Central Union Mission will transform the lives of the people we serve into Godly, productive members of society by meeting their physical, spiritual, and emotional needs.”

18. The Mission’s newsletter has stated, “To those who are burdened by the brokenness of sin and the struggles of poverty, the Mission brings the message of hope and renewal through Christ Jesus.”

19. The Mission’s informational tax return (Form 990) for the fiscal year ended June 30, 2007, reports that 78% of its program service expenses were devoted to “preaching the gospel and assisting the needy with food, clothes and shelter.”

20. A significant portion of the Mission's building is occupied by a chapel, in which Christian services are held daily.

21. The Mission provides both overnight accommodation, and religious indoctrination, to homeless men through two programs, the "Overnight Guest Ministry" and the "Men's Ministry—Spiritual Transformation Program." Both programs are conducted at the Mission's downtown building, located at 1350 R Street, N.W., Washington, D.C.

***The Overnight Guest Ministry***

22. The Mission's document entitled "Services Provided at Central Union Mission" states: "Through our overnight shelter, we provide food, showers, a medical clinic, clothing and God's Word for 82 men off the streets of Washington every night. Additionally, area churches provide nightly evening services."

23. The Mission's website describes the Overnight Guest Ministry as follows: "A hot supper, warm showers, fresh clean clothing, safe shelter at night, and a sizzling breakfast in the morning all wrapped with the gospel message of hope."

24. The following announcement is made every evening to homeless men seeking shelter at the Mission: "Because we are a Christian ministry, and not just a homeless shelter, we conduct an evening chapel service and all overnight guests must attend in order to stay with us overnight."

25. Chapel services conducted at the Mission are explicitly Christian. On information and belief, chapel services are generally fundamentalist and evangelical in nature.



26. Six days a week, overnight guests must depart early in the morning, after breakfast. On Sundays, guests may remain in the Mission and receive lunch, but only if they first attend Sunday morning chapel.

27. According to the Mission's newsletter, the Overnight Guest Ministry also provides Bible studies and "Biblical counseling" to "spread God's Word."

28. The Mission's website states: "Praise and worship, counseling and clinical care is provided when ever the mission doors are open." According to the Mission's newsletter, the social work provided to guests is "Christ-centered Social Work."

29. According to the Mission's website, "Over a hundred men enter the mission every night empty. They leave full of God's mercy and grace."

30. "Most importantly," states the Mission's newsletter, participants in the Overnight Guest Ministry "receive the Word of God and the chance to accept Jesus Christ as their personal Savior."

31. The Mission's website states that overnight guests are given a "nightly invitation to receive the Lord as Savior," so that "spiritual transformation begins."

32. Overnight guests at the Mission are regularly – sometimes several times per week – invited by Mission staff to join the Spiritual Transformation Program.

***The Men's Ministry–Spiritual Transformation Program***

33. As described in the Mission's brochure, the Men's Ministry–Spiritual Transformation Program is a "12-18 month residential rehabilitation program for men who seek restoration through a relationship with Jesus Christ."

34. The Spiritual Transformation Program accommodates approximately 50 men, who live at the Mission.

35. The Mission's website states that the Spiritual Transformation Program is "all about changed lives. Not just on the outside, but deep inside." The program's "[g]oals are achieved by involving the men in systematic Bible Study, biblical counseling, regular drug testing, and work therapy in and around the Mission." "Changes happen when the men are encouraged and taught to cultivate an intimate and active relationship with Christ."

36. According to the Mission's newsletter, the program is "intended to free men from addiction to drugs and a lifestyle of poverty by establishing a relationship with Jesus Christ through Christian Discipleship."

37. Mission Director David Treadwell has described the program as "strictly biblical."

38. Religion is a required component of the Spiritual Transformation Program, and the men in the program receive spiritual training every day.

39. In addition to attending evening chapel service, program participants take afternoon classes in such subjects as prayer, discipleship, and spiritual rebirth.

40. The program also provides "Christian counseling."

41. According to the Mission's newsletter, program participants are required "to be grounded in a church and have a relationship with [its] Pastor."

42. According to the Mission's newsletter, the "core intent" of the Spiritual Transformation Program is "to create disciples," and through the program, participants "discover who they are in Christ."

43. The Mission's Executive Director, David Treadwell, has stated in the Mission's newsletter, "For most of the Mission's 123 years, learning God's Word and how to live it has been the core curriculum of all Mission training."

44. More than one third of the Mission's approximately 130 beds are devoted to the Spiritual Transformation Program. Those beds are not available to homeless men who do not agree to participate in the Spiritual Transformation Program.

45. The Mission provides strong incentives to join this religious program, and discriminates against those who decline to join. Men in the program receive reserved beds, while men who are not in the program do not, and must get in line on the street every afternoon to seek a bed. Men who are in the program get three meals a day at the Mission, while men who are not in the program must leave the shelter after breakfast six days a week and cannot return until the daily intake in late afternoon.

***Additional Ministries at the Mission***

46. The Mission maintains a Food Service Ministry that serves thousands of hungry people every year. The Mission's website states that "[a]t every meal," the hungry "hear about the love of Christ."

47. The Food Service Ministry also provides a "Food Depot" where, according to the Mission's website, needy people can "fill their shopping carts with wholesome items after they enjoy some good Gospel singing and an encouraging Word from the Bible."

48. Before they receive their groceries at the Food Depot, needy people also hear a spiritual message from a chaplain.

49. The Mission maintains a Children's Ministry. As part of this Ministry, the Mission invites children to a "Back Pack Giveaway Party" in August and a "Christmas Bag Party" in December at the Mission. At these parties, children receive school supplies and Christmas presents. According to the Mission's website, children at these parties also "hear of God's love and salvation through faith in Jesus Christ."

50. As part of its Community Outreach Ministry, the Mission hosts a monthly “Senior Luncheon” which is described in the Mission’s newsletter as “a hot meal and a joyful service replete with singing and praising.”

51. The Mission also hosts an “Easter Senior Luncheon,” where, according to the Mission’s website, “[s]enior neighbors gather in the Mission Chapel to celebrate our risen Savior!”

***The Mandatory Nature and Discriminatory Impact  
of the Mission’s Religious Activities***

52. All the social services provided at the Mission – including overnight shelter, meals, groceries, and counseling – require participation in religious activity.

53. The Mission’s religious work of “proclaiming and teaching the gospel [and] leading people to Christ” is integral to, and inseparable from, the social services it provides.

54. The Mission’s Executive Director, David Treadwell, has explained the basis for the Mission’s mandatory religious activities as follows: “We really are in the business of making disciples. We believe that the answer for these people is Christ. So we don’t know any other way to meet their needs without sharing the Gospel with them.”

55. Mr. Treadwell has also stated, “[W]e are in the business of converting people to Christ. That’s what we do. We believe that’s the ultimate answer to their needs.”

56. The Mission employs only Christians. Persons who wish to volunteer at the Mission must fill out an application that requires them to provide their “Church Affiliation.”

57. Director Treadwell stated to the D.C. Council that the Mission employs only Christians, “[b]ecause of the nature of the work that we’re doing . . . we do want the whole team to be of the Christian faith.”

58. Offering food and shelter to hungry and homeless people provides the Mission with an audience for its message that Jesus Christ is the answer to their problems.

59. Director Treadwell wrote in the Mission's newsletter: "It is well documented that people who are hungry, without homes, or battling addictions are not usually seeking Christ as the immediate solution to their problem. However, when followers of Christ step in to address immediate problems, they open the door for Christ and the solution to our greatest needs."

60. Many people have in fact been converted to Christ through the Mission.

61. In substance, Central Union Mission is a nondenominational Christian church that provides social services as part of its missionary work of saving people's souls through Jesus Christ.

62. The Mission offers its facilities and services to individuals regardless of their religious beliefs or non-beliefs. From the Mission's perspective, any non-Christian is a lost soul that can be saved.

63. However, because of the Mission's mandatory religious activities, omnipresent Christian atmosphere, and frequent efforts to recruit overnight guests to the Spiritual Transformation Program, the Mission is not open in a non-discriminatory manner to persons of minority religious faiths, or persons of no faith, or other persons who do not wish to participate in the Mission's brand of Christian religiosity. Such persons must choose between participating in religious activities that do not reflect or are contrary to their beliefs – which for some individuals would mean compromising or violating their own religious beliefs – and forgoing the shelter and food the Mission provides.

### **The Mission's Search for a New Home**

64. Since 1983, the Mission has been located at 1350 R Street N.W., in the District's Shaw neighborhood.

65. In 2006, the Mission sold the R Street building for \$7 million to a developer, who plans to build an office building on the site.

66. In 2006, the Mission purchased several contiguous properties on Georgia Avenue in the Petworth neighborhood, north of Howard University.

67. The Mission planned to move its operations to the Georgia Avenue properties, and planned to build a new, state-of-the-art facility there.

68. The Mission estimated that it would spend approximately \$15 million, all in private funds, to construct its new facility at the Georgia Avenue location.

69. Strong opposition to the Mission's plan developed in the local community and was supported by the community's D.C. Council representative, Jim Graham. Concerns were expressed about diminished property values, about the activities of Mission guests outside the Mission, and about the negative impact that the Mission would have on efforts to develop and revitalize the neighborhood.

70. At the time the Mission purchased the Georgia Avenue properties, it needed no zoning approval to build its new facility there,

71. In December 2006, the D.C. Zoning Commission enacted a "zoning overlay" in the area that includes the Mission's Georgia Avenue properties. The zoning overlay requires developers constructing buildings larger than 12,000 square feet to get a special exception from the D.C. Board of Zoning Adjustment, which grants such exceptions only

after a public comment period that includes a public hearing. The Mission's new facility would have occupied approximately 60,000 square feet.

72. In a press release, Councilmember Graham praised this "zoning overlay" as something that would help local residents have more say in whether the Mission would relocate to their neighborhood.

73. On or about August 21, 2007, the Mission filed an application with the Board of Zoning Adjustment for a special exception that would allow the Mission to build its new facility on the Georgia Avenue properties.

74. At the Mission's request, the hearing concerning its application for a special exception was postponed from February 2008 to Fall 2008. The hearing has not yet been held. On information and belief, the Mission's application remains pending.

75. Because the Mission is obligated to vacate its current premises in October 2009, it needs to find new quarters in which to carry on its mission. It also needs to find a buyer for its Georgia Avenue properties, if it does not relocate there.

### **The Gales School**

76. The property known as the Gales School is located at 65 Massachusetts Avenue, N.W., and is owned by the District of Columbia. The Gales School was built in 1881 and was designed by Edward Clark, the architect of the Capitol. It was named after Joseph Gales, Jr., the eighth Mayor of Washington and the publisher of the National Intelligencer newspaper.

77. The Gales School was last used as a public school in 1944. Since then, it has been used for a variety of purposes, including temporary housing for soldiers returning from World War II and office space for District of Columbia agencies. From 2000 through

2004, the Gales School was used as a homeless shelter, accommodating more than 175 people. At the present time, the Gales School is no longer in usable condition, although its exterior is protected as a historic structure.

78. As part of the District of Columbia's comprehensive plan to address homelessness, the District government planned to renovate the Gales School and operate it as a shelter for 150 homeless women. The government has initiated restoration activities, but they have not progressed very far.

#### **The Negotiation of the Gales School Transaction**

79. Aware of community opposition in Petworth, and because it preferred a downtown location, the Mission began negotiating with the District in the fall of 2007 to acquire the Gales School.

80. On April 1, 2008, the District and the Mission reached a nonbinding agreement, memorialized in a "term sheet" containing the outlines of the Transaction, whereby the Mission would obtain ownership of the Gales School in exchange for the much less valuable Georgia Avenue properties, and would receive District funds to renovate the Gales School.

81. The terms contained in the term sheet were reached through private and exclusive negotiations between the District and the Mission.

82. The District did not negotiate with, and did not attempt to negotiate with, any other organization that could have operated the Gales School as a homeless shelter.

83. The District did not issue a Request for Proposals regarding renovation and operation of the Gales School as a homeless shelter.



84. The District did not seek competitive bids for the renovation and operation of the Gales School as a homeless shelter.

85. The District did not place the Gales School for sale on the open market before reaching agreement with the Mission on the Transaction.

### **The Emergency Legislation**

86. On June 30, 2008, the Transaction was first presented by the Mayor to the D.C. Council for approval, in the form of a proposed emergency resolution. On July 10, two Council committees held a joint “Roundtable” on the proposed resolution. On July 15, the Council considered, but did not act on, a proposed emergency resolution approving the Transaction.

87. On July 16, 2008, D.C. Council Chairman Vincent Gray introduced at the request of the Mayor a new proposed emergency resolution entitled the “Gales School Disposition Emergency Approval Resolution of 2008.” The new resolution was circulated to the Council on July 17, 2008, was passed by voice vote on the same day, and took effect immediately. As enacted, it was numbered Resolution 17-758 (the “Resolution”).

88. In the Resolution, the Council determined that the Gales School property is no longer required for public purposes.

89. The Resolution also “approve[d], on an emergency basis, the negotiated sale of the [Gales School] Property to Central Union Mission . . . for the specific purpose of operating a homeless shelter and pursuant to such terms and conditions as the Mayor deems necessary and appropriate.”

90. In documents accompanying the proposed resolution, Mayor Fenty outlined the terms of the Transaction: the Mission will convey to the District of Columbia its Georgia

Avenue properties, which are assessed by the District at \$3.79 million, and in exchange the District of Columbia will convey to the Mission the Gales School property, which is assessed by the District at \$8.93 million, plus approximately \$7 million in cash, for a total value of approximately \$15.93 million. The Mission will complete the renovation of the Gales School, and will covenant to use the Gales School as a homeless shelter, with at least 150 beds and other rehabilitative services, for a period of at least 40 years.

91. The Transaction would represent a net financial gain to the Mission of approximately \$12.14 million.

92. If the Gales School property is no longer required for public purposes, as determined by the D.C. Council, it could be sold on the open market for approximately \$9 million, or more.

93. The approximately \$7 million in cash that is to be paid to the Mission as part of the Transaction will come from the District's Shelter and Transitional Housing Pool, which is designated for use to renovate or construct District homeless shelters, and is financed by local District of Columbia tax revenues.

94. The Mission recognizes that it is receiving government funding through the Transaction. The following exchange took place at the July 17, 2008, meeting of the D.C. Council:

Councilmember Gray: So in point of fact this is receiving government funding, because the value of the property of Georgia Avenue versus the value of the property on Massachusetts Avenue, that redounds to your benefit. Is that right?

Mission Director Treadwell: That is correct.

95. A resolution proposing to provide the Mission with more than \$200,000 in real property tax forgiveness on its Georgia Avenue properties was introduced in the D.C.

Council on July 14, 2008. On information and belief, the Council is likely to approve that tax relief in connection with the Transaction.

**The Mission Will Continue its Religious Ministry at the Gales School**

96. Nothing in the Resolution or in the terms of the Transaction places any limits or restrictions on the Mission's ability to continue carrying out its Christian ministry at the Gales School.

97. The Mission intends to continue carrying out its Christian ministry at the Gales School.

98. On information and belief, the Mission intends to conduct its Spiritual Transformation Program at the Gales School, and the Mission's promise to provide at least 150 beds at the Gales School includes approximately 50 beds in the long-term Spiritual Transformation Program. The beds reserved for men in the Spiritual Transformation Program will not be available for transient homeless men.

99. On information and belief, the Mission's promise to provide rehabilitative services at the Gales School refers to services that it plans to provide through its Spiritual Transformation Program, and services such as the "Christ-centered Social Work" that it currently provides at its R Street location.

100. On information and belief, a substantial portion of the Gales School, when renovated and occupied by the Mission, will consist of a chapel.

101. On information and belief, the Mission intends to conduct Christian chapel services daily at the Gales School.

102. On information and belief, the Mission intends to require homeless men seeking overnight shelter at the Gales School to participate in the chapel services, as it does

now at its current location.

103. On information and belief, the Mission intends to invite and encourage homeless men staying at the Gales School to enter the Spiritual Transformation Program, as it does now at its current location.

104. On information and belief, the Mission intends to continue providing social services such as hot meals and a Food Depot, children's Back Pack Giveaways and Christmas Bag Parties, and Senior Luncheons, from its new location at the Gales School, and intends to continue making religious activities an integral and mandatory part of those social services, as they are now at the Mission's current location.

105. On information and belief, the Gales School will not be open in a non-discriminatory manner to persons of minority religious faiths, or persons of no faith, or other persons who do not wish to participate in the Mission's brand of Christian religiosity. Such persons will have to choose between participating in religious activities that do not reflect or are contrary to their beliefs and forgoing the shelter and food the Mission will provide.

#### **Impact on the Homeless**

106. The Mission planned to house approximately 170 men as "overnight guests" at its Georgia Avenue location, and the District planned to house 150 homeless women at the Gales School, for a total of approximately 320 emergency shelter beds at the two facilities. Unless the Transaction is enjoined, the supply of emergency shelter beds for homeless people in the District of Columbia will be reduced by more than 200 – the difference between 320 and the approximately 100 beds for "overnight guests" that the Mission is likely to provide at the Gales School.

107. There is a chronic shortage of emergency shelter beds in the District of Columbia, especially in the downtown area, where many homeless people remain because of the availability of other services.

108. The Mayor has been in the process of closing the Franklin School shelter, which has housed approximately 400 homeless men in the downtown area. On September 16, 2008, the D.C. Council passed emergency legislation temporarily halting that closure. It remains the Mayor's intention to close the Franklin School shelter.

109. Unless the Transaction is enjoined, many homeless men will likely be faced with a choice between sleeping on the street and staying at the Mission.

110. If the Transaction is implemented, some homeless men who are not Christian or otherwise do not wish to attend or participate in religious activities will, as a practical matter, be coerced to use the Mission as a shelter and to participate in chapel services or Bible study there.

**Irreparable Injury, the Balance of Harms, and the Public Interest**

111. Unless enjoined, the District of Columbia will implement the Transaction along the lines outlined by the Mayor and authorized by the Resolution. The Gales School property will be transferred to the Mission in fee simple, and approximately \$7 million in District of Columbia funds will be given to the Mission to renovate the property in accordance with the needs of its religious programs.

112. Unless the Transaction is enjoined, the Gales School property and the District's funds will be used to advance the religious mission and support the religious activities of the Mission, and to impose the Mission's religious practices upon the men who will seek shelter at the Mission and upon others who will seek social services there.

113. On information and belief, unless the Transaction is enjoined, a substantial portion of the Gales School will become a chapel, and a substantial amount of governmental funds will be used to renovate that portion of the building.

114. On information and belief, unless the Transaction is enjoined, a substantial portion of the Gales School will be used for the Mission's inherently religious Spiritual Transformation Program, and a substantial amount of governmental funds will be used to renovate the portion of the building used for that program.

115. Unless the Transaction is enjoined, District property and funds will be used in a manner that discriminates based on religion, for the property and funds will benefit only homeless persons who are Christian or are willing to be indoctrinated in Christian beliefs.

116. If the Transaction authorized by the Resolution is completed, the Mission will own the Gales School property in fee simple, and after 40 years will be free to use it for any lawful nonprofit purpose, including religious uses that do not serve any secular purposes, such as a church or a theological seminary.

117. Unless the Transaction is enjoined, the Mission will be free, after 40 years, to sell the Gales School at market price and use the proceeds for any lawful nonprofit purpose, within or outside the District of Columbia, including religious uses that do not serve any secular purpose, such as building a church or a theological seminary, or funding Christian missions abroad.

118. The Resolution authorizing the transfer of the Gales School property and as much as \$7 million to the Mission is not part of any neutral, generally available government program. It is a legislative measure exclusively designating specified property and funds to a specific gospel mission for use in carrying out its Christian ministries.

119. The Mission's informational tax return for the fiscal year ended June 30, 2007, reports that the Mission had nearly \$4 million in cash, investments and receivables as of that date. The Mission planned to spend \$15 million of its own money to renovate its Georgia Avenue properties for use as a homeless shelter. On information and belief, the Mission is financially able to purchase the Gales School property at fair market value and to renovate it without the use of District of Columbia funds.

120. On information and belief, the Mission would be financially able to operate the Gales School as a shelter by leasing it from the District of Columbia at fair market value, so that the property would remain public property at the end of the Mission's obligation to operate it as a shelter.

121. Before being offered a partial gift of the Gales School, the Mission intended to continue providing shelter for homeless men, and other social services, in the District of Columbia at its own expense. On information and belief, it is not necessary for the District of Columbia to provide the Mission with a gift of public property and public funds in order to induce the Mission to continue to provide emergency shelter and other social services in the District of Columbia.

122. District property and funds will therefore supplant private funds instead of supplementing them.

123. The Transaction will not be neutral with respect to religion, but will instead constitute a special governmental act providing an exclusive benefit to a religious organization.

124. The Transaction will convey a message of governmental endorsement of religion in general and of the Christian religion in particular.

125. The Transaction will constitute a governmental preference for religion in general and for the Christian religion in particular.

126. The violations of the Establishment Clause of the First Amendment, and of D.C. Code § 44-715, made out by the facts set forth above could not be undone, or adequately remedied by money damages.

127. The public interest is not served by spending \$12 million in public property and public funds to assist the Mission in continuing to require homeless men who need emergency shelter, and other needy residents of the District of Columbia who need food and social services, to participate in the Mission's religious activities.

128. The public interest is not served by spending \$12 million in public property and public funds to subsidize the Mission in carrying out its religious mission, when the Mission would continue providing shelter to homeless men without such a subsidy, and the District's resources could be used to provide additional shelter, or for other important public purposes.

129. Plaintiffs believe that the Transaction has not yet been consummated. On information and belief, it will be consummated in the near future unless enjoined.

130. On August 12, 2008, one of plaintiffs' counsel sent a letter to Mayor Fenty putting him on notice that the Transaction would violate the United States Constitution and the D.C. Code, and urging him to abandon it. If property or funds have already been conveyed to the Mission, both the defendant and the Mission knew, or should have known, that such conveyance was unlawful, and any reliance on the purported legality of the conveyance was unreasonable.



## **CLAIMS FOR RELIEF**

### **I. Establishment Clause**

131. The Transaction, which will be consummated shortly unless enjoined by this Court, would violate the Establishment Clause of the First Amendment to the United States Constitution.

### **II. D.C. Code § 44-715**

132. The Central Union Mission is a church, or an institution or society which is under sectarian or ecclesiastical control, within the meaning of D.C. Code § 44-715.

133. The Transaction, which will be consummated shortly unless enjoined by this Court, would violate D.C. Code § 44-715, which provides that “no money appropriated for charitable purposes in the District of Columbia shall be paid to any church or religious denomination, or to any institution or society which is under sectarian or ecclesiastical control.”

## **REQUEST FOR RELIEF**

WHEREFORE, plaintiffs request that this Court:

A. Issue a declaratory judgment declaring that the Transaction, if consummated, would violate the Establishment Clause of the First Amendment to the Constitution of the United States;

B. Issue a declaratory judgment declaring that the Transaction, if consummated, would violate D.C. Code § 44-715;

C. Enjoin the defendant from consummating the Transaction;

D. Enjoin the defendant from conveying the Gales School property to the Mission except in exchange for its fair market value, or unless the Mission enters into an

enforceable agreement with the District of Columbia prohibiting the Mission from engaging in religious activity at the Gales School property;

E. In the alternative, if any property or funds have already been conveyed by the defendant to the Mission, order the defendant to recover such property or funds;

F. Award to plaintiffs their costs and reasonable attorney's fees in this action; and

G. Grant plaintiffs such other and further relief as the Court may deem just and proper.

Respectfully submitted,

*/s/ Arthur B. Spitzer*

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