UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | CIVIL NO: |
| | ) | JUDGE |
| RUTHERFORD COUNTY, TENNESSEE, | ) | |
| | ) | |
| Defendant. | ) | |

**MEMORANDUM IN SUPPORT OF UNITED STATES' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

## TABLE OF CONTENTS

I. INTRODUCTION ..... 1

II. STATEMENT OF FACTS ..... 1

III. ARGUMENT ..... 9

A. The United States is Likely to Succeed on the Merits of its Claim that the County's Refusal to Consider the Islamic Center's Certificate of Occupancy Application Violates RLUIPA ..... 10

B. The Islamic Center of Murfreesboro and its Congregants will Suffer Irreparable Harm without an Immediate Court Order ..... 16

C. The Balance of Harms Tips Sharply in Favor of an Injunction ..... 18

D. A TRO and/or Preliminary Injunction would be in the Public Interest ..... 19

IV. CONCLUSION ..... 22

## TABLE OF EXHIBITS[1]

Complaint, *Estes, et al.* v. *Rutherford Cnty., et al.*, No. 10-cv-1443 (Chancery Court, Sept. 16, 2010). ..... Exhibit 1

Transcript of September 27-29, 2010 Proceedings in *Estes, et al.* v. *Rutherford Cnty., et al.* ..... Exhibit 2

Declaration of Ossama Mohamed Bahloul. ..... Exhibit 3a

Declaration of Essam M. Fathy. ..... Exhibit 3b

Declaration of Dr. Saleh M. Sbenaty. ..... Exhibit 3c

Rutherford County Regional Planning Commission Zoning Resolution. ..... Exhibit 4

Brief for the United States as *Amicus Curiae*, *Estes, et al.* v. *Rutherford Cnty., et al.*, No. 10-cv-1443 (Chancery Court, Oct. 18, 2010). ..... Exhibit 5

Order Denying Preliminary Injunction, *Fisher, et al.* v. *Rutherford Cnty., et al.*, No. 10-cv-1443 (Chancery Court, Nov. 23, 2010). ..... Exhibit 6

Memorandum Opinion Granting, in Part, Motion to Dismiss, *Fisher, et al.* v. *Rutherford Cnty., et al.*, No. 10-cv-1443 (Chancery Court, May 17, 2011). ..... Exhibit 7

Memorandum Opinion Voiding Site Plan Approval, *Fisher, et al.* v. *Rutherford Cnty., et al.*, No. 10-cv-1443 (Chancery Court, May 29, 2012). ..... Exhibit 8

Order, *Fisher, et al.* v. *Rutherford Cnty., et al.*, No. 12-cv-1443 (Chancery Court, June 1, 2012). ..... Exhibit 9

Verified Petition for Writ of Mandamus or, in the Alternative, Injunctive Relief, *Fisher, et al.* v. *Rutherford Cnty., et al.*, No. 12-cv-853 (Chancery Court, June 6, 2012). ..... Exhibit 10

Transcript of June 13, 2012 Hearing in *Fisher, et al.* v. *Rutherford Cnty., et al.* ... Exhibit 11

Transcript of July 2, 2012 Hearing in *Fisher, et al.* v. *Rutherford Cnty., et al.* ..... Exhibit 12

Rutherford County Building Codes Department Letter of Denial. ..... Exhibit 13

[1] The Table of Exhibits refers to exhibits attached to the Declaration of Matthew M. Curley filed herewith.

## TABLE OF AUTHORITIES

**Cases**

*Am. Civil Liberties Union of Kentucky* v. *McCreary Cnty.*,
354 F.3d 438 (6th Cir. 2003). ..... 9

*Am. Motors Sales Corp.* v. *Runke*,
708 F.2d 202 (6th Cir. 1983). ..... 20

*Bannum, Inc.* v. *City of Louisville*,
958 F.2d 1354 (6th Cir. 1992). ..... 15

*Bays* v. *City of Fairborn*,
668 F.3d 814 (6th Cir. 2012). ..... 16

*Bush* v. *Orleans Parish Sch. Bd.*,
187 F. Supp. 42 (E.D. La. 1960). ..... 19

*Cleburne* v. *Cleburne Living Ctr.*,
473 U.S. 432 (1985). ..... 15

*Cottonwood Christian Ctr.* v. *Cypress Redevelopment Agency*,
218 F. Supp. 2d 1203 (C.D. Cal. 2002). ..... 16, 18

*DiLaura* v. *Ann Arbor Charter Twp.*,
112 Fed. Appx. 445 (6th Cir. 2004). ..... 11-12, 14

*Elrod* v. *Burns*,
427 U.S. 347 (1976). ..... 15-16

*Freedom Baptist Church of Delaware Cnty.* v. *Twp. of Middleton*,
204 F. Supp. 2d 857 (E.D. Pa. 2002). ..... 16

*Grace United Methodist Church* v. *City of Cheyenne*,
451 F.3d 643 (10th Cir. 2006). ..... 13

*Great Earth Cos., Inc.* v. *Simons*,
288 F.3d 878 (6th Cir. 2002). ..... 19

*Guru Nanak Sikh Soc. of Yuba City* v. *Cnty. of Sutter*,
456 F.3d 978 (9th Cir. 2006). ..... 13

*Hamad* v. *Woodcrest Condo. Ass'n*,
328 F.3d 224 (6th Cir. 2003). ..... 9

*In re Columbia/HCA Healthcare Corp. Billing Practices Litigation*,
93 F. Supp. 2d 876 (M.D. Tenn. 2000). ..... 19

*Int'l Church of Foursquare Gospel* v. *City of San Leandro*,
673 F.3d 1059 (9th Cir. 2011). ..... 13

*Islamic Ctr. of Mississippi* v. *City of Starkville*,
840 F.2d 293 (5th Cir. 1988). ..... 15

*Layman Lessons, Inc.* v. *City of Millersville*,
636 F. Supp. 2d 620 (M.D. Tenn. 2008). ..... 11

*Leiter Minerals* v. *United States*,
352 U.S. 220 (1957). ..... 19

*Lighthouse Cmty. Church* v. *City of Southfield*,
2007 WL 30280 (E.D. Mich. Jan. 3, 2007). ..... 15

*Living Water Church of God* v. *Charter Twp. of Meridian*,
258 Fed. Appx. 729 (6th Cir. 2007). ..... 11-14

*Mize* v. *Sator*,
2012 WL 642743 (M.D. Tenn. Feb. 27, 2012). ..... 9-10

*Nat'l Fed'n of Indep. Bus.* v. *Sebelius*,
No. 11–393, slip op., at 17-18 (U.S. June 24, 2010). ..... 12

*NLRB* v. *Nash-Finch Co.*,
404 U.S. 138 (1971). ..... 19

*Prater* v. *City of Burnside*,
289 F.3d 417 (6th Cir. 2002). ..... 11

*Reaching Hearts Int'l* v. *Prince George's Cnty.*,
584 F. Supp. 2d. 766 (D. Md. 2008), aff'd, 368 F. Appx 370 (4th Cir. 2010). ..... 11

*R.R. Comm'n of Tex.* v. *Pullman Co.*,
312 U.S. 496 (1941). ..... 20

*Traughber* v. *Beauchane*,
760 F.2d 673 (6th Cir. 1985). ..... 20

*United States* v. *Ohio*,

614 F.2d 101 (6th Cir. 1979). ..... 20

*United States* v. *Washington*,
459 F. Supp. 1020 (W.D. Wash. 1978) ..... 19

*Vietnamese Buddhism Study Temple In Am.* v. *City of Garden Grove*,
460 F. Supp. 2d 1165 (C.D. Cal. 2006). ..... 16-18

*Westchester Day Sch.* v. *Vill. of Mamaroneck*,
504 F.3d 338 (2d Cir. 2007). ..... 11, 13, 15

*World Outreach Conference Ctr.* v. *City of Chicago*,
591 F.3d 531 (7th Cir. 2009). ..... 11, 16

Younger v. Harris,
401 U.S. 307 (1971). ..... 20

**Federal Statutes and Legislative Materials**

146 Cong. Rec. S7774 (daily ed. July 27, 2000) (joint statement of Sen. Hatch and Sen. Kennedy). ..... 10

Anti-Injunction Act, 28 U.S.C. 2283 (2006). ..... 19

H.R. Rep. No. 106-219 (1999). ..... 10

Religious Land Use and Institutionalized Persons Act,
42 U.S.C. §§ 2000cc–2000cc-5 (2000). ..... 9-12, 14

**Local Statutes**

Rutherford County Bd. of Comm'rs, Zoning Resolution
(adopted 1984, amended through 2011). ..... 2-3

Tennessee Open Meetings Act, Tennessee Code. Ann. §§ 8-44-101 to -111. ..... 2-3

**Secondary Sources**

Roman Storzer and Anthony Picarello, *The Religious Land Use and Institutionalized Persons Act of 2000: A Constitutional Response to Unconstitutional Zoning Practices*, 9 Geo. Mason L. Rev. 929 (2001). ..... 16

## I. INTRODUCTION

The United States respectfully requests that this Court, pursuant to Federal Rule of Civil Procedure 65, issue a temporary restraining order and preliminary injunction against the Defendant, Rutherford County, requiring it to process the application for a certificate of occupancy of the Islamic Center of Murfreesboro for a recently constructed mosque on Veals Road in Rutherford County, Tennessee. The Defendant is currently barred from doing so by a state Chancery Court order. A proposed order is attached to this memorandum.

## II. STATEMENT OF FACTS

On June 13, 2012, the Chancery Court for Rutherford County, Tennessee, enjoined Rutherford County from issuing a certificate of occupancy that would allow the Islamic Center of Murfreesboro ("the Islamic Center" or "the Center") to occupy and use for religious services a recently constructed mosque on Veals Road outside the town of Murfreesboro. As explained in more detail below, that injunction was issued in connection with litigation brought by Rutherford County residents, litigation in which the plaintiffs challenged whether Islam is a religion and made unfounded allegations accusing the Islamic Center of being connected to a terrorist organization. See Transcript of Proceedings at 8:4-8 *Estes, et al.* v. *Rutherford Cnty., et al.* (Chancery Court, Sept. 27, 2010) (attached as Exhibit 2) (plaintiffs' opening statement accusing Essam M. Fathy, chairman of the board of the Islamic Center, and the Islamic Center, of being connected to Hamas); *id.* at 21:8-11 (arguing that the evidence will show Islam is not a religion). On July 13, 2012, the mosque requested an inspection of the mosque in order to obtain a certificate of occupancy. On July 16, the County informed the mosque that it could not process the certificate of occupancy application because it was barred from doing so by the state Chancery Court.

The Islamic Center is a Muslim religious organization that has been operating in Rutherford County since approximately 1982. See Declaration of Ossama Mohamed Bahloul ¶ 2 (July 17, 2012) (attached as Exhibit 3a); Declaration of Essam M. Fathy ¶ 2 (July 17, 2012) (attached as Exhibit 3b); Declaration of Saleh M. Sbenaty ¶ 2 (July 17, 2012) (attached as Exhibit 3c). The Center's purpose, among other things, is to hold religious worship services, provide religious education, and participate in community service. Bahloul Decl. ¶ 3. Its members are adherents of Islam and currently participate in worship services held in a small mosque of approximately 2,100 square-feet located in Rutherford County. Bahloul Decl. ¶ 5; Fathy Decl. ¶ 2; Sbenaty Decl. ¶ 4. The current facility cannot serve the needs of the congregation; it is overcrowded and cannot accommodate the entire congregation, it provides inferior accommodations for female congregants, and it has inadequate facilities for holiday services and funeral rituals. Bahloul Decl. ¶ 5; Fathy Decl. ¶¶ 3-4; Sbenaty Decl. ¶ 4. In the fall of 2009, the Islamic Center began the process of looking for a new mosque. Bahloul Decl. ¶ 6; Fathy Decl. ¶ 5; Sbenaty Decl. ¶ 5. It chose to construct a new facility, and purchased land for that purpose on Veals Road, in a residential district in an unincorporated area of Rutherford County, Tennessee. *Id.* Because of the Veals Road property's zoning designation and location, its use is governed by the Rutherford County Zoning Resolution (hereinafter the "Zoning Resolution") (attached as Exhibit 4).

The Zoning Resolution provides that churches and religious assemblies are to be treated as uses-by-right within residential districts. See Zoning Resolution § 1.04. However, structures of certain sizes, including the Center's proposed mosque, though permitted by right, still require site-plan approval by the County Planning Commission. *Id.* at § 5.03. Once a site plan is

approved, the applicant is then free to seek any other required permits, including a building permit, from the County Building Commissioner. *Id.* at §§ 5.07, 22.02.

In December of 2009, the Islamic Center formed a planning committee to oversee plans to construct a facility, including a new mosque, on its Veals Road property. Bahloul Decl. ¶ 8. The Islamic Center subsequently, in compliance with the Zoning Resolution, applied to Rutherford County for site-plan approval for the construction of a religious center, phase one of which is a 12,000 square-foot mosque on its Veals Road property. Bahloul Decl. ¶ 10.

On or about May 24, 2010, the County Regional Planning Commission held a regularly scheduled meeting and reviewed, among other things, a site plan submitted by the Islamic Center. Bahloul Decl. ¶ 11. Prior to holding that meeting, the Planning Commission advertised it in the form of a notice that appeared in both the print and online versions of the Murfreesboro Post, a newspaper of general circulation in Rutherford County. *Id.* See also Memorandum Opinion Voiding Site Plan Approval at 3, *Fisher, et al.* v. *Rutherford Cnty., et al.*, No. 10-cv-1443 (Chancery Court, May 29, 2012) (attached as Exhibit 8). At the May 24, 2010 meeting, the Planning Commission approved the Islamic Center's Veals Road site plan by a vote of 10 to 0. Bahloul Decl. ¶ 12. County Planning Director Doug Demosi later testified that the County treated the Islamic Center's application as it has treated every other site plan application it has received, religious or secular. See Proceedings Tr. at 85:23-25 *Estes, et al.* v. *Rutherford Cnty., et al.*, (Chancery Court, Sept. 28, 2010), (attached as Exhibit 2) ("I believe I've handled this site plan consistent with any site plan that we've received, be it religious institution or secular.").[2] Following the Planning Commission vote, the Islamic Center sought and obtained a building

[2] See also, *id.* at 220-21:4 ("Q: Have you dealt with other site plans that deal with religious uses? A: Yes sir. Q. And in comparing how the [Islamic Center] site plan was dealt with compared to those, was the ICM site plan dealt with in any material respect differently? A: No, sir, it was not.").

permit from Rutherford County authorizing the construction of a mosque on the Veals Road property. Bahloul Decl. ¶ 13.

Once the Islamic Center announced plans to construct a new mosque, and throughout the time it was applying for and obtaining appropriate land-use permits from Rutherford County, opposition to the mosque was growing in the community. After the Islamic Center purchased the Veals Road property in November of 2009, it placed a sign on the property that said, "Future Site of the Islamic Center of Murfreesboro." Bahloul Decl. ¶ 7. In January of 2010, that sign was vandalized, and the words "Not Welcome" painted across it. Bahloul Decl. ¶ 9. The sign was replaced, only to be vandalized a second time. Bahloul Decl. ¶ 14.

Opposition grew after the Center obtained site plan approval for its new mosque. On July 14, 2010, several hundred opponents of the Islamic Center's new mosque held a rally in the public square in Murfreesboro. Bahloul Decl. ¶ 15. The opposition intensified again when construction of the mosque began in August of 2010. Bahloul Decl. ¶ 16. On August 28, 2010, after construction had started, and during the Muslim holy month of Ramadan, a large construction vehicle at the Veals Road construction site was intentionally set afire. Bahloul Decl. ¶ 17. The Center also began receiving offensive telephone messages. One telephone message said, "You need to leave American soil. You are not wanted here." Bahloul Decl. ¶ 20. Another said, "Your 'religion' is a sham . . . . My God says you will be crushed in the end . . . ." *Id.* Yet another one said, "The beginning of the end of Islam in America has begun." *Id.* Then, on September 5, 2011, the Center received a bomb threat. Bahloul Decl. ¶ 21.

Opposition to the Islamic Center's new mosque also took the form of legal action. On September 16, 2010, Rutherford County residents sued the County in state Chancery Court in an effort to stop construction of the Center's new mosque. See Complaint, *Estes, et al.* v.

*Rutherford Cnty., et al.*, No. 10-cv-1443 (Chancery Court, Sept. 16, 2010) (attached as Exhibit 1). The residents brought a number of claims. They alleged, among other things, (1) that the May 24, 2010 meeting at which the County approved the Center's site plan violated the Tennessee Open Meetings Act, Tennessee Code. Ann. § 8-44-101 *et seq.*; (2) that the County had inflicted emotional distress on the plaintiffs because it failed "to provide a hearing to examine the multiple uses of the ICM site and the risk of actions promoting Jihad and terrorism;" and (3) that there was evidence that the Center supported or was affiliated with "Hamas – an entity designated by the United States as terrorist organizations [sic]." *Id.* at ¶¶ 12, 17, 27, 28. The plaintiffs asked for a temporary restraining order prohibiting the County from "taking any further steps to advance approval" of the Veals Road mosque, *id.*, Prayer for Relief at ¶ 3, and an order declaring the site-plan approval for the mosque void, *id.* at ¶ 4.

The Chancery Court held an evidentiary hearing on the plaintiffs' motion beginning on September 27, 2010. From the outset, the hearing was dominated by the plaintiffs' efforts to introduce anti-Muslim evidence. At the beginning of the proceedings, plaintiffs' counsel claimed that there is "a direct connection to the Islamic Center of Murfreesboro and the Muslim Brotherhood." See Proceedings Tr. at 18:16-19 *Estes, et al.* v. *Rutherford Cnty., et al.*, (Chancery Court, Sept. 27, 2010) (attached as Exhibit 2). He also described a mosque as a place that "frequently becomes a weapons compound, a constitution-free zone, a place for the imposition of Sharia law." *Id.* at 12:20-23. Indeed, the Plaintiffs went so far as to question whether "Islam is even a religion," see *id.* at 21:8-11, a position that ultimately prompted the United States to file a brief as *amicus curiae*, pointing out to the Chancery Court that "[c]onsistent among all three branches of government, the United States has recognized Islam as

a major world religion." See Brief for the United States' as *Amicus Curiae* at 5, *Estes, et al.* v. *Rutherford Cnty., et al.*, No. 10-cv-1443 (Chancery Court, Oct. 18, 2010) (attached as Exhibit 5).

On November 23, 2010, the Chancery Court denied the plaintiff's motion for preliminary injunctive relief. See Order Denying Preliminary Injunction, *Fisher, et al.* v. *Rutherford Cty., et al.*, No. 10-cv-1443 (Chancery Court, Nov. 23, 2010) (attached as Exhibit 6). That order was then followed by another issued on May 17, 2011, granting, in part, the County's motion to dismiss the plaintiffs' claims. See Memorandum Opinion Granting, in Part, Motion to Dismiss, *Fisher, et al.* v. *Rutherford Cnty, et al.*, No. 10-cv-1443 (Chancery Court, May 17, 2011) (attached as Exhibit 7). With the exception of the plaintiffs' claim based on the Tennessee Open Meetings Act, the Chancery Court dismissed all of the plaintiffs' claims on the basis that they lacked standing. *Id.* at 4-5.

In April 2012, the Chancery Court conducted another hearing on the plaintiffs' claim under the Tennessee Open Meetings Act and, on May 29, 2012, ruled in favor of the plaintiffs. See Memorandum Opinion Voiding Site Plan Approval, *Fisher, et al.* v. *Rutherford Cnty., et al.*, No. 10-cv-1443 (Chancery Court, May 29, 2012) (attached as Exhibit 8).[3] The Chancery Court held that the notice given in advance of the Planning Commission's May 24, 2010 meeting approving the Center's site plan was inadequate under Tennessee law, and that the Center's site-plan approval was, therefore, void. *Id.* at 7 ("[W]e today determine that there was insufficient notice for the public meeting held on May 24, 2010, and under the terms of the law, then, the decisions reached at that meeting are void *ab initio*.").

[3] The Chancery Court incorporated its Memorandum into an Order dated June 1, 2012. In that Order, the Chancery Court denied Plaintiffs' request to enter an injunction against the County directing County officials and third parties to cease construction at the Veals Road location. The Court explained that such a request should be in "the nature of a mandamus action or further injunctive relief." As explained further herein, the plaintiffs heeded the Chancery Court's advice and immediately filed a new action seeking such relief.

Of particular note in the May 29, 2012 Memorandum Opinion is the Chancery Court's statement adopting the views of the plaintiffs with respect to the controversial nature of the mosque: "The Plaintiffs argue persuasively that the issue before us was in fact a matter of great public importance and a matter of tremendous public interest." Memorandum Opinion Voiding Site Plan Approval at 3, *Fisher, et al.* v. *Rutherford Cnty., et al.*, No. 10-cv-1443 (Chancery Court, May 29, 2012) (attached as Exhibit 8). The Court then discussed the need for additional notice requirements where "significant business is discussed at an otherwise routine public meeting." *Id.* at 5. First, the Chancery Court held that whether proper notice is provided under the Tennessee Open Meetings Act depends on "the totality of the circumstances." *Id.* at 6. The Court then held that "[w]here only routine matters are discussed at a regularly scheduled meeting, comparative little notice may be necessary. By contrast, when a major issue of importance to all citizens is being discussed at a specially called meeting, the greatest notice available may be required." *Id.* It then specifically found that "the [May 24, 2010] meeting at issue was a regularly scheduled meeting, but a meeting where an issue of *major importance* to citizens was being discussed. Thus, some reasonable means of notice, not only of the meeting, but also of the particular issue before the body, was reasonably required." *Id.* (emphasis added).

Following the Chancery Court's May 29, 2012 Memorandum Opinion (attached as Exhibit 8) and June 1, 2012 Order (attached as Exhibit 9), a group of Rutherford County residents, including some of the plaintiffs named in the original September 16, 2010 suit against the County, filed a new action in Chancery Court and moved for a writ of mandamus directing the County to stop all actions that would allow the Islamic Center to further construction on, or occupy, its Veals Road mosque. See Verified Petition for Writ of Mandamus or, in the Alternative, Injunctive Relief at 6, *Fisher, et al.* v. *Rutherford Cnty., et al.*, No. 12-cv-853

(Chancery Court, June 6, 2012) (attached as Exhibit 10). After holding a hearing on the motion for writ of mandamus requested in the second lawsuit, the Chancery Court ruled from the bench on June 13 that Rutherford County was enjoined from issuing a certificate of occupancy for the Islamic Center's Veals Road mosque or issuing "further process." See Proceedings Tr. at 32:3-4, 34:2-7, *Fisher, et al.* v. *Rutherford Cnty., et al.*, No. 12-cv-853 (Chancery Court, June 13, 2012) (attached as Exhibit 11).

On June 21, Rutherford County filed a Notice of Appeal and a Motion for Stay Pending Appeal with respect to the first law suit and the Chancery Court's May 29, 2012 Memorandum Opinion (attached as Exhibit 8) and June 1, 2012 Order (attached as Exhibit 9). On July 2, the Chancery Court denied Rutherford County's motion for a stay, stating, "[it is] the duty of this Court, then, to direct the County to recognize the void[ed] nature of the matters, then, that were addressed concerning this issue at that meeting." Proceedings Tr. at 17:17-21, *Fisher, et al.* v. *Rutherford Cnty., et al.*, No. 12-cv-853 (Chancery Court, July 2, 2012) (attached as Exhibit 12).

Construction of the Islamic Center's new facility and mosque is now complete. See Bahloul Decl. ¶ 25. The Islamic Center sought an inspection in order to obtain a certificate of occupancy on July 13. *Id.* On July 16, the County informed the Islamic Center's attorney that it would not process the request because it was barred from doing so by the Chancery Court order. *Id.* On July 17, the Islamic Center's builder received a letter from the County Building Director stating that: "Normally, we would be happy to perform the final building inspection and, assuming compliance, issue the Certificate of Occupancy. However, the Chancery Court has recently issued orders forbidding Rutherford County and its Officials from issuing the Certificate of Occupancy. We have no choice but to abide by those orders." (Attached as Exhibit 13).

The Islamic Center's goal has been, for some time, to have construction completed so that the mosque could be used for religious services by July 20, 2012, the beginning of the Muslim holy month of Ramadan. Bahloul Decl. ¶ 23; Fathy Decl. ¶ 6; Sbenaty Decl. ¶ 8. Without a certificate of occupancy, however, that goal is impossible, and the Islamic Center will not be able to use its property for religious services. Bahloul Decl. ¶ 25. In the meantime, the Center's members continue to worship in a building too small to accommodate all of the worshipers and lacking in facilities to meet the religious needs of the community. Bahloul Decl. ¶ 26.

## III. ARGUMENT

Rutherford County's refusal to process the Islamic Center's request for a certificate of occupancy that would permit it to use its Veals Road mosque for religious services violates the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. § 2000cc. et seq. This Court, should, therefore, issue a temporary restraining order and preliminary injunction directing Rutherford County to process the Islamic Center's application for a certificate of occupancy, and, if the inspection shows that the request for a certificate of occupancy meets the standard criteria, to grant the application notwithstanding the Chancery Court's June 1, 2012 Order voiding the building permit and site plan and its June 13, 2012 Order from the bench barring issuance of a certificate of occupancy.

A district court's determination of whether to issue a preliminary injunction rests on balancing four factors: (1) the likelihood of success on the merits of the underlying claims; (2) the existence of irreparable harm to the plaintiff in the absence of the injunction; (3) any substantial harm to the defendants or other parties were the injunction to be granted; and (4) the public interest in the issuance of the injunction. *Am. Civil Liberties Union of Kentucky* v.

*McCreary Cnty.*, 354 F.3d 438, 445 (6th Cir. 2003); *Hamad* v. *Woodcrest Condo. Ass'n*, 328 F.3d 224, 230 (6th Cir. 2003). Two factors typically predominate the preliminary-injunction inquiry, the likelihood of success and the question of irreparable harm. *Mize* v. *Sator*, 2012 WL 642743 at *2 (M.D. Tenn. Feb. 27, 2012).

## A. The United States is Likely to Succeed on the Merits of its Claim that the County's Refusal to Consider the Islamic Center's Certificate of Occupancy Application Violates RLUIPA

By refusing to consider the Islamic Center's application for a Certificate of Occupancy, and treating the building permit previously issued and site plan approval as void, actions required by the Chancery Court's orders, Rutherford County[4] has violated the RLUIPA by imposing a substantial burden on the religious exercise of the Islamic Center and its members without a compelling justification.[5]

RLUIPA was enacted in 2000 based on, as the Senate sponsors described it, "massive evidence" of a pattern of religious discrimination in local land-use decisions. 146 Cong. Rec. S7774 (daily ed. July 27, 2000) (joint statement of Sen. Hatch and Sen. Kennedy). See also H.R. Rep. No. 106-219, at 18 (noting the "substantial record of evidence indicating a widespread pattern of religious discrimination in land use regulation."). In particular, Congress heard evidence that places of worship of minority religious groups were disproportionately the target of such discrimination. See 146 Cong. Rec. S7774; H.R. Rep. No. 106-219 at 21.

RLUIPA applies to any imposition or implementation of a "land use regulation." The term is defined the same for all of the various sections of RLUIPA as "a zoning or landmarking

[4] The United States does not allege that the County has intentionally discriminated on the basis of religion. The County has consistently treated the mosque as it would a church or other place of worship, as a government body should under our laws and Constitution. The actions of the County challenged here are those that they are required to do pursuant to the orders of the Chancery Court.

[5] The United States is authorized to bring suit to enforce RLUIPA. 42 U.S.C. § 2000cc-2(f).

law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land) . . . ." 42 U.S.C. § 2000cc–5 (5). This definition encompasses a wide range of regulatory action by local governments. For example, the Sixth Circuit has applied RLUIPA in cases involving the denial of a special use permit, *Living Water Church of God* v. *Charter Twp. of Meridian*, 258 Fed. Appx. 729 (6th Cir. 2007), and the imposition of bed and breakfast regulations on a religious retreat, *DiLaura* v. *Ann Arbor Charter Twp.*, 112 Fed. Appx. 445 (6th Cir. 2004). See also, *e.g.*, *World Outreach Conference Ctr.* v. *City of Chicago*, 591 F.3d 531 (7th Cir. 2009) (denial of a single-room occupancy license); *Westchester Day Sch.* v. *Vill. of Mamaroneck*, 504 F.3d 338 (2d Cir. 2007) (denial of expansion permits); *Reaching Hearts Int'l* v. *Prince George's Cnty.*, 584 F. Supp. 2d. 766 (D. Md. 2008), aff'd, 368 F. Appx. 370 (4th Cir. 2010) (denial of a change in water and sewer classification).

This definition plainly encompasses a certificate of occupancy application process, and the site plan and building permit approval process at issue here. See *Layman Lessons, Inc.* v. *City of Millersville*, 636 F. Supp.2d 620, 646 (M.D. Tenn. 2008) (holding that city official informing church that that its certificate of occupancy application would be denied because of a proposed ordinance then before the City Commission was a "land use regulation" under RLUIPA).[6]

Section 2(a) of RLUIPA provides that:

> No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a

[6] This does not mean that any action by a government touching on land issues triggers RLUIPA. For example, the Sixth Circuit held in *Prater* v. *City of Burnside*, 289 F.3d 417 (6th Cir. 2002), that a city that exercised its property interest to develop a strip of land could not be sued under RLUIPA by a church that would have preferred the city to use its land in a different way. But, as the Sixth Circuit and the other courts cited have recognized, RLUIPA applies to the many variations of regulatory processes and decisions that "limit or restrict [the] use or development of land." 42 U.S.C. § 2000cc–5 (5).

> religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—
>
> (A) is in furtherance of a compelling governmental interest; and
>
> (B) is the least restrictive means of furthering that compelling governmental interest. 42 U.S.C. S 2000CC(a).

For the reasons set forth below, the County is violating this provision by following the Chancery Court's orders. [7]

The Sixth Circuit held that it would be a substantial burden under Section 2(a) of RLUIPA to impose bed and breakfast regulations on a religious retreat and thereby bar it from serving lunch and dinner, bar it from serving wine for communion, and require it to charge visitors, since this "would have effectively barred the plaintiffs from using the property in the exercise of their religion." *DiLaura* v. *Ann Arbor Charter Twp.*,112 Fed. Appx. 445, 446 (6th Cir. 2004) (unpublished). In *Living Water Church of God* v. *Charter Twp. of Meridian*, 258 Fed. Appx. 729 (6th Cir. 2007) (unpublished), the Sixth Circuit considered a claim by a church that a township's limiting its church and school to 25,000 square feet rather than the 35,000 square foot facility it requested. The court "decline[d] to set a bright line test" for substantial burden, but rather "look[ed] for a framework to apply to the facts before [it]." *Id.* at 737. To that end, the court noted, "we find the following consideration helpful: though the government action may

---

[7] The jurisdictional basis for Section 2(a) is met here, because this large construction project impacts interstate commerce. See, *e.g.*, *DiLaura* v. *Ann Arbor Charter Twp.*, 30 Fed. Appx 501 (6th Cir. 2002) (retreat house where visitors would travel to sleep had sufficient effect on interstate commerce to support RLUIPA jurisdiction). See also *Nat'l Fed'n of Indep. Bus.* v. *Sebelius*, No. 11–393, slip op., at 17-18 (U.S. June 24, 2010) (noting that the commerce power is "not confined to the regulation of commerce among the states but extends to activities that have a substantial effect on interstate commerce," quoting *United States* v. *Darby*, 312 U. S. 100, 118-119 (1941) (internal quotations omitted), and also "extends to activities that do so only when aggregated with similar activities with others," citing *Wickard* v. *Filburn* 317 U.S. 111, 127-28 (1942)).

make religious exercise more expensive or difficult, does the government action place substantial pressure on a religious institution to violate its religious beliefs or effectively bar a religious institution from using its property in the exercise of religion." *Id.* The court found that while the permitted church building was not as large "as the scale it desires," the church had failed to demonstrate that "it cannot carry out its church missions and ministries" without the permit to build the larger building. *Id.* at 741.

The Sixth Circuit's approach of focusing on interference with a church's religious exercise is consistent with that of other Courts of Appeals. See, *e.g.*, *Int'l Church of Foursquare Gospel* v. *City of San Leandro*, 673 F.3d 1059, 1070 (9th Cir. 2011) (holding that district court "erred in determining that the denial of space adequate to house all of the Church's operations was not a substantial burden."); *Guru Nanak Sikh Soc. of Yuba City* v. *Cnty. of Sutter*, 456 F.3d 978, 988 (9th Cir. 2006) (zoning denial that imposes "more than an inconvenience on religious exercise" but in fact creates "a significantly great restriction or onus upon [religious] exercise," is a substantial burden); *Grace United Methodist Church* v. *City of Cheyenne*, 451 F.3d 643, 660 n.4 (10th Cir. 2006) ("A government regulation 'substantially burdens' the exercise of religion if the regulation: (1) significantly inhibits or constrains conduct or expression that manifests some tenet of the institution[']s belief; (2) meaningfully curtails an institution's ability to express adherence to its faith; or (3) denies an institution reasonable opportunities to engage in those activities that are [important] to the institution's religion"); *Westchester Day Sch.* v. *Vill. of Mamaroneck*, 504 F.3d 338, 352 (2d Cir. 2007) (holding that denial of Jewish school's application to expand its facilities to provide sufficient space for religious education and practice was substantial burden because the school did not have "quick, reliable, and financially feasible alternatives" to meet its religious needs).

The County's refusal to process an application for a certificate of occupancy, and its treatment of the building permit and site use plan as void, create a substantial burden on the Islamic Center's religious exercise under both *DiLaura* and *Living Water*. The Islamic Center has outgrown its current facilities. Congregants currently have to stand in the parking lot for services. And, some families have stopped attending services because the current mosque is too small. Indeed, the worship space in the newly constructed mosque is over five times larger than in the Islamic Center's current mosque. It needs the new building to carry out its religious mission and its ministries. The denial of the certificate of occupancy "effectively bars" the Islamic Center from using the property for its religious exercise. It thus is a substantial burden under RLUIPA.[8]

Since the Islamic Center's religious exercise in being substantially burdened, under RLUIPA the burden shifts to the County to demonstrate that it has a compelling interest for doing so, and is acting through the means that are least restrictive on the Islamic Center's religious exercise. See 42 U.S.C. § 2000cc–2(b). No such compelling interest can be proven here. The only interest is compliance with the Chancery Court's order. Enforcing the order, however, is far from compelling. Indeed, nothing in the order goes to whether the Islamic Center's site plan complies with the Zoning Resolution. Instead, the Chancery Court imposed a heightened notice requirement on the mosque because its application was "controversial." But the Islamic Center is not controversial because of its size (which is modest for a place of

[8] It is irrelevant to the substantial burden inquiry that there is a possibility that at some time in the future the Tennessee state courts will rule that the notice originally given for the May 24, 2010 Planning Commission meeting was adequate. The Sixth Circuit made clear in *Living Water*, a court "cannot and will not speculate as to what may happen in the future," but must look at the burdens that exist today. 258 Fed. Appx. at 742. The burden on the Islamic Center that exists today is plain; in being denied completely the use of its new mosque, the Islamic Center currently faces a substantial burden on its religious exercise.

worship), its location (in a zone that permits places of worship as of right), or any other neutral factor. As is evident from the facts in this case, it is controversial simply because it is a mosque. Requiring heightened notice for mosques because they are mosques raises serious constitutional concerns. See, *e.g.*, *Cleburne* v. *Cleburne Living Ctr.*, 473 U.S. 432 (1985) (neighbors' fear of residents of home for mentally retarded invalid ground for city to treat home differently); *Bannum, Inc.* v. *City of Louisville*, 958 F.2d 1354, 1360 (6th Cir. 1992) (applying *Cleburne* to uphold district court's invalidation of city zoning regulations that "impose[d] differing requirements" on group homes for former inmates compared to other group homes); *Lighthouse Cmty. Church* v. *City of Southfield*, 2007 WL 30280 at *12 (E.D. Mich. Jan. 3, 2007) (denying summary judgment on Equal Protection claim where church presented evidence that it was treated differently than two other churches and that it was treated differently from entities that "did not need to go through the same administrative procedures as Plaintiff in order to receive a certificate of occupancy or site plan approval."); *Islamic Ctr. of Mississippi* v. *City of Starkville*, 840 F.2d 293, 302 (5th Cir. 1988) (relying on *Cleburne* to hold, under the Free Exercise Clause, that "neighbors' negative attitudes or fears, unsubstantiated by factors properly cognizable in a zoning proceeding" were improper grounds to deny approval to mosque). See also *Westchester Day School*, 504 F.3d at 353 (upholding district court's finding that Jewish school's "application was denied not because of a compelling governmental interest that would adversely impact public health, safety, or welfare, but was denied because of undue deference to the opposition of a small group of neighbors.").

## B. The Islamic Center of Murfreesboro and its Congregants will Suffer Irreparable Harm without an Immediate Court Order

Absent immediate relief from this Court, the Islamic Center will suffer irreparable harm. The Supreme Court has long held that injuries involving the deprivation of First Amendment rights are *per se* irreparable. See *Elrod* v. *Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). See also *Bays* v. *City of Fairborn*, 668 F.3d 814, 825 (6th Cir. 2012) (finding a preliminary injunction warranted based on presumptive irreparable harm arising from the denial of free exercise of religion). Denial of religious practice to an entire congregation is a denial of "the First Amendment rights of freedom of speech, freedom of association, and free exercise of religion." *Vietnamese Buddhism Study Temple In Am.* v. *City of Garden Grove*, 460 F. Supp. 2d 1165, 1172 (C.D. Cal. 2006) (finding a city's denial of permits to a Buddhist temple creates irreparable harm and warrants issuance of a preliminary injunction). See also *Cottonwood Christian Ctr.* v. *Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203 (C.D. Cal. 2002) (finding that use of eminent domain to take land from a church causes irreparable harm and warrants preliminary injunction).

RLUIPA was enacted specifically to protect the First Amendment rights of Free Exercise of Religion and non-Establishment, as well as Equal Protection. See *World Outreach Conference Ctr.* v. *City of Chicago*, 591 F.3d 531, 534-35 (7th Cir. 2009); *Freedom Baptist Church of Delaware Cty.* v. *Twp. of Middleton*, 204 F. Supp.2d 857, 870 (E.D. Pa. 2002). See also 146 Cong. Rec. S7775-76 (daily ed July 27, 2000); Roman Storzer and Anthony Picarello, *The Religious Land Use and Institutionalized Persons Act of 2000: A Constitutional Response to Unconstitutional Zoning Practices*, 9 GEO. MASON L. REV. 929, 982 (2001). Thus, the presumption of irreparable harm that flows from the First Amendment attaches to violations of

RLUIPA. *Vietnamese Buddhism Study Temple*, 460 F. Supp. 2d at 1172-73. In other words, where, as here, there is a violation of RLUIPA, the Court may presume irreparable harm. *See id.* The facts of *Vietnamese Buddhism Study Temple* are particularly instructive. In that case, the plaintiff was a Buddhist temple serving a small religious minority. The temple attempted to construct a house of worship that would accommodate the needs of its congregants, but the city denied the temple a permit to build. *Id.* at 1170. City officials then enforced regulations forbidding religious services from taking place on the property. *Id.* at 1170–71. This caused the elimination of meditation or prayer services, holiday celebrations, and weddings and funerals. *Id.* Members of the temple were discouraged from attending any services, in part due to fear of possible criminal liability. *Id.* The court found that the city's actions constituted a denial of freedom of speech, association, and free exercise of religion, and that the status quo would continue to cause irreparable harm to the plaintiffs. *Id.* at 1172–73 ("[S]imply put, the congregation has been completely denied their right to practice their faith in the manner of their choosing.").

Here, Rutherford County has refused, under the order of the Chancery Court, to process an application for a certificate of occupancy. Without it, the Islamic Center is completely barred from using the mosque. The Center built the facility specifically to serve the needs of the growing Muslim community in Murfreesboro, who are being inadequately served at the facility they currently occupy. Specifically, the space cannot accommodate the number of worshipers, especially during the Islamic holy month of Ramadan when observance is at its peak, causing people to pray in the parking lot where they cannot hear or see the Imam; several hundred men are forced to squeeze into a 1200 square-foot room with poor ventilation and air conditioning; women use an inferior space for prayer where they have no direct view of the Imam; children are

forced to play in the parking lot due to the lack of space; access to bathrooms is often blocked due to overcrowding; and no facilities exist for funerals or holiday celebrations. Bahloul Decl. ¶¶ 5, 24, 26; Fathy Decl. ¶¶ 3,4,11; Sbenaty Decl. ¶¶ 4,8, 9-10. The new building, which stands ready to serve the community, eliminates these problems, providing ample space for prayer, holiday celebrations, meetings, and children's play, and providing facilities for ritual washing before prayer and facilities for funerals. Bahloul Decl. ¶ 24; Sbenaty Decl. ¶ 7. The Center anticipates that the new mosque will likely attract members who are unwilling or unable to worship in the overcrowded and inadequate existing facility. Bahloul Decl. ¶¶ 5, 24; Fathy Decl. ¶ 3; Sbenaty Decl. ¶¶ 4, 9.

Thus, immediate federal court intervention is essential to protect the Islamic Center of Murfreesboro and its congregants from irreparable harm.

### C. The Balance of Harms Tips Sharply in Favor of an Injunction

As described above, the Islamic Center of Murfreesboro faces the threat of irreparable harm absent a preliminary injunction. On the other hand, Rutherford County faces no harm: if this Court orders it to accept the application for a certificate of occupancy, it still may grant it or deny a certificate of occupancy based on legitimate non-discriminatory criteria. Cf. *Vietnamese Buddhism Study Temple In Am.*, 460 F. Supp. 2d 1165, 1173 (C.D. Cal. 2006) (finding that a preliminary injunction involving one parcel of land has little harm to a city). In light of the serious harm to the Islamic Center should it be unable to use its new mosque, and the absence of, or minimal harm to the County that would arise from an injunction in this case, the balance of harms clearly tips in favor of enjoining the County.

**D. A TRO and/or Preliminary Injunction would be in the Public Interest**

Finally, an injunction protecting the Islamic Center's free-exercise and RLUIPA rights is in the public interest. Enforcement of RLUIPA is plainly in the public interest. See *Cottonwood Christian Ctr.*, 218 F. Supp. 2d at 1230-31 (C.D. Cal. 2002). Congress unanimously passed RLUIPA in 2000 in order to protect religious land use from local interference. *Id.* Here, an injunction enforcing RLUIPA will vindicate congressional intent and the freedoms that RLUIPA and the Constitution guarantee.

An injunction from this Court should require the County to evaluate the application for a certificate of occupancy in the manner it normally would absent the Chancery Court order.

Such an injunction is appropriate here. The Anti-Injunction Act, 28 U.S.C. 2283, which prohibits federal courts from issuing injunctions against State court proceedings, does not apply to suits brought by the United States. *Leiter Minerals* v. *United States*, 352 U.S. 220, 225-26 (1957); see also *NLRB* v. *Nash-Finch Co.,* 404 U.S. 138, 144 (1971). An injunction against the State court in order to preserve the civil rights of the mosque is appropriate here. See, *e.g.*, *United States* v. *Washington*, 459 F. Supp. 1020, 1031 (W.D. Wash. 1978) (in case involving treaty rights of Native Americans, holding that "this court is not only satisfied that it has jurisdiction to enjoin the state court proceedings referred to, within the express exceptions to the anti-injunction statute, but also believes it has an urgent duty to take such action to the extent shown necessary in order to effectuate its judgment and protect the federal treaty rights declared therein."); *Bush* v. *Orleans Parish Sch. Bd.,* 187 F. Supp. 42, 43 (E.D. La. 1960) (enjoining state court injunction where "state court injunction, and [challenged] statutes, directly or indirectly, require or promote segregation . . . in violation of the equal protection and due process provisions of the Fourteenth Amendment"); see also *Great Earth Companies, Inc.* v. *Simons*, 288 F.3d 878 (6th Cir. 2002) (upholding district court's enjoining of defendants from pursuing state

court action where case fell within exception to the Anti-Injunction Act); *In re Columbia/HCA Healthcare Corp. Billing Practices Litigation*, 93 F. Supp. 2d 876 (M.D. Tenn. 2000) (granting injunction against state court barring it from ruling on motion to compel under exception to Act allowing federal court to preserve orderly resolution of federal proceedings.).

While federal courts sometimes abstain from taking action when state law is uncertain and a state court's clarification of the law might make a federal court's ruling on the federal issue unnecessary, see *R.R. Comm'n of Tex.* v. *Pullman Co.*, 312 U.S. 496 (1941), such abstention is inappropriate here. The Sixth Circuit has held *Pullman* abstention to be inappropriate where state proceedings would not "remove the federal issue by making unnecessary a constitutional decision." *Traughber* v. *Beauchane*, 760 F.2d 673, 682 (6th Cir. 1985). Here, even if the Tennessee State courts at some future date were to rule that the notice the County gave was proper, this would do nothing to undo the violation of federal civil rights under RLUIPA, and more specifically the irreparable harm that has been recounted above, that the Islamic Center would suffer from today up until that date. See also *United States* v. *Ohio,* 614 F.2d 101, 105 (6th Cir. 1979) (holding that irreparable harm is relevant to whether a court should refrain from abstention). *Pullman* Abstention is likewise inappropriate where a plaintiff does not have adequate opportunities to challenge the state statute in dispute. *American Motors Sales Corp.* v. *Runke*, 708 F.2d 202, 209 (6th Cir. 1983). The United States could not be a party to the Chancery Court decision or its appeal. Thus abstention is inappropriate here.

Likewise abstention under *Younger* v. *Harris*, 401 U.S. 307 (1971), applicable to interference with state criminal cases, and occasionally civil cases in "extraordinary circumstances," *Traughber*, 760 F.2d at 680, would be inappropriate here. As the Sixth Circuit stated in *Traughber*, "Unless 'vital state interests' are at stake, federal district courts are not

proscribed from interfering with ongoing state civil proceedings when necessary to vindicate federally protected civil rights." 760 F.2d at 681 (quoting *Miofsky v. Superior Court of the State of California*, 703 F.2d 332, 337-38 (9th Cir. 1983). Here, there can be no question about the weight of the federally protected rights at issue; the Islamic Center will be irreparably harmed if the County effectuates the Chancery Court's order. The members of the Islamic Center will be forced to remain in an inadequate facility that cannot accommodate the number of worshipers during Ramadan, when attendance is at its highest. Abstention would, therefore, result in the denial of federally protected civil rights.

## IV. CONCLUSION

For the foregoing reasons, this Court should grant the United States' request for a temporary restraining order and preliminary injunction and enter the attached, proposed order.

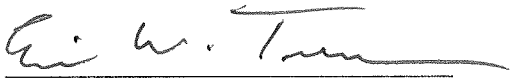
Respectfully submitted this 18th day of July, 2012,

ERIC H. HOLDER, Jr.
Attorney General

JERRY E. MARTIN
United States Attorney
Middle District of Tennessee

MATTHEW M. CURLEY
Civil Chief
United States Attorney's Office
110 9th Ave., South, Suite A9
Nashville, TN 37203
Tel. (615) 736-5151
matthew.curley@usdoj.gov

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division



STEVEN H. ROSENBAUM
Chief
MICHAEL S. MAURER
Deputy Chief
ERIC W. TREENE
Special Counsel
SEAN R. KEVENEY
MAZEN BASWARI
Trial Attorneys
Housing and Civil Enforcement Section
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530
Tel. (202) 514-4838
eric.treene@usdoj.gov