

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA**

ISLAMIC CENTER OF CULPEPER,

Plaintiff,

v.

COUNTY OF CULPEPER, VIRGINIA,

Defendant.

Civil Action No. 3:17CV00019

**COMPLAINT FOR DECLARATORY,
INJUNCTIVE, AND COMPENSATORY RELIEF**

The Islamic Center of Culpeper files this Complaint and alleges:

INTRODUCTION

1. The County of Culpeper (the “County” or “Defendant”) has denied the Islamic Center of Culpeper (“ICC”) essential religious freedoms and equal protection under the law by refusing a “pump and haul” permit to enable ICC to construct a mosque on its own property. This Nation is founded on the principle that there will be religious freedom for all, but the County’s actions in this case violate that tenet by treating ICC differently than other similarly-situated religious congregations. The County’s actions violate the federal Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc *et seq.*, the First and Fourteenth Amendments to the United States Constitution, and the Virginia Constitution.

2. The U.S. Department of Justice filed a similar complaint against the County that is pending in this Court. Complaint, *United States v. County of Culpeper*, Case No. 3:16-cv-83 (W.D. Va.) (Moon, J.) (alleging that the County’s denial of the permit to ICC violated RLUIPA). ICC brings this separate suit to challenge the County’s discriminatory denial of the pump and

haul permit that has barred ICC from building a house of worship on its own land, and to assert claims on its own behalf and constitutional causes of action that were not raised by the Department of Justice.

3. Islam and American Muslims have a long, rich history in America, which dates back over 250 years. The Virginia Statute of Religious Freedom, drafted by Thomas Jefferson, stated that “no man . . . shall otherwise suffer on account of his religious opinions or belief.” Jefferson further stated that religious freedom encompasses “the Jew and the Gentile, the Christian and Mahometan [*i.e.*, an archaic reference to a Muslim], the Hindoo, and infidel of every denomination.”

4. ICC, a small not-for-profit organization in Culpeper County, Virginia, seeks to avail itself of these bedrock freedoms. In January 2016, ICC contracted to purchase a plot of land to build a mosque to meet the local Muslim community’s needs by creating a fully functional space for members to worship. Because ICC does not have a functioning mosque, and because there is no mosque in Culpeper or the surrounding vicinity, ICC temporarily meets for worship in a small house next to a used car dealership.

5. The County’s zoning rules grant permission for places of worship “by right” on land such as the plot purchased by ICC.

6. When ICC sought the necessary permits to build a habitable structure, county officials directed ICC to submit a routine pump and haul permit application to remove waste until ICC’s mosque site could connect to local utilities. Since 1995, the County has granted 18 such pump and haul applications (denying only one on grounds that it was a residential application), and has approved every application previously submitted by churches. On

information and belief, an additional seven pump and haul applications were granted between 1992 and 1995, four of which were for churches, and all were approved.

7. Despite the County's past practice of routinely granting pump and haul applications, County officials first delayed, then conducted a contentious public hearing on, and ultimately denied ICC's request for a permit. Certain members from the Culpeper community actively lobbied against ICC's request for a permit before and during the hearing of the Culpeper County Board of Supervisors ("Board") on the matter.

8. When a board member stated that he could not support ICC's application, the public attendees loudly applauded. Culpeper Cty. Bd. of Supervisors April 5, 2016 Hearing, *available at* <https://goo.gl/RF1H8r>, at 12:55–13:30 ("Hr'g"); Exhibit A (Unofficial Transcript of Video of April 5, 2016 Hearing) at 7 ("Tr."). A board member who voted to approve ICC's application stated that the public resistance to ICC's application was based on religion, and not because ICC was seeking a pump and haul permit or for environmental reasons. Hr'g 13:30–16:20; Tr. 8–9. Another board member who voted in support of ICC invoked the Fourteenth Amendment's equal protection guarantee as a reason for his vote. Hr'g 21:30–22:00; Tr. 12. Nonetheless, these board members were outvoted, and the Board ultimately denied the permit in a 4-3 vote.

9. ICC now brings this civil action to assert its rights under RLUIPA and the United States and Virginia Constitutions based on Culpeper County's discriminatory denial of a pump and haul permit that has barred ICC from building a house of worship on its own land.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1367.

11. Venue is proper under 28 U.S.C. § 1391(b) because the events giving rise to this action occurred in the Western District of Virginia.

PARTIES

12. Plaintiff ICC is a not-for-profit Muslim organization incorporated and existing under Virginia law. ICC is a “religious assembly or institution” as defined by RLUIPA. 42 U.S.C. § 2000cc(b)(1).

13. The regular membership of ICC comprises about 15 to 20 residents of Culpeper County. ICC members live, work, attend school, and participate in civic organizations alongside other members of the Culpeper community. Some of ICC’s members have lived their entire lives in Culpeper County, while others have moved to the County, drawn by its serene rural environment, low cost of living, and proximity to the Washington, D.C. metropolitan area.

14. Defendant County of Culpeper is a county located in the Commonwealth of Virginia.

15. The County is governed by and acts through the Culpeper County Board of Supervisors, an elected seven-member board. At all relevant times, the Board was comprised of Chairwoman Alexa V. Fritz, Vice Chairman C. Jack Frazier, Brad C. Rosenberger, Sue D. Hansohn, Steven L. Walker, Gary M. Deal, and William C. Chase, Jr.

16. The County has the authority to regulate and restrict the use of land and structures within its borders, including by granting or denying requests for sewer approval.

17. For purposes of RLUIPA, the County constitutes a “government.” 42 U.S.C. §§ 2000cc-5(4)(A)(i), (ii).

18. The Board appoints the County Administrator, who holds the highest-level management position in County government. The County Administrator directs and supervises the day-to-day operations of all County departments and agencies, which are under the direct

control of the Board. John Egertson is the County Administrator. He has held this position since April 2016, before which he held the position of Planning Director for approximately 25 years.

BACKGROUND

The Islamic Center of Culpeper

19. The Islamic Center of Culpeper is a small, close-knit Muslim community. ICC's members include highly skilled professionals and owners of small businesses in Culpeper. They share a deep respect and regard for the County, and they seek to continue making positive and lasting contributions to the local economy and community in Culpeper.

20. Members of the Muslim community in Culpeper began to pray together at a private house in June 2010. They soon realized that the space was insufficient to suit their needs for their religious beliefs and practices. In 2011, this community formally registered as the "Islamic Center of Culpeper" or "ICC," in Virginia, as a 501(c)(3) not-for-profit religious organization.

21. According to ICC's religious beliefs and practices, its members must pray five times daily and attend a weekly Friday afternoon congregational prayer service, which includes a sermon. Before praying, ICC congregants perform ablution, or "wudu," a sacred ritual that requires washing the hands and feet.

22. Since its inception, ICC has been without a mosque. There is no mosque in the County. Indeed, the closest mosque is approximately forty-five minutes away by car, which is too far for most ICC members to drive five times each day for their daily prayers.

23. Without a mosque, ICC currently worships in a small house on the same plot as a used car dealership in Culpeper.

24. This house next to the car dealership where ICC currently worships lacks proper heating and air conditioning, and it does not adequately serve ICC's religious needs for a number of reasons, including that it:

(a) Has a single room, and is too small to host events that attract additional worshipers, such as the celebrations of the holidays of Eid al-Fitr and Eid-al-Adha;

(b) Does not contain a dedicated, separate space for Qur'anic or Arabic language studies and, as a result, these classes are often disrupted by other activities that take place in the house; and

(c) Does not have an adequate washing facility for members to perform ablution before prayer, as ICC members believe is required. As a result, most of ICC's congregants wash their hands and feet before arriving at the house for prayer.

25. ICC did not take out a mortgage to finance the purchase of land and construction of a mosque. This made the financing and acquisition of land for a new mosque a slow and deliberate process, requiring ICC to pool its members' contributions over a substantial period of time before ICC had sufficient funds upfront to pay for a parcel of property.

26. In 2011, ICC commenced a search to find a permanent facility to conduct its worship services. ICC had difficulty finding a property that was both affordable and centrally located in the County, so that ICC's members may regularly attend to perform any or all of their five daily prayers and other religious practices.

27. ICC's five-year search for property suitable for its members' religious needs concluded finally on January 19, 2016, when ICC entered into a purchase contract to buy one acre at 14434 Rixeyville Road (the "Property"), and paid a \$1,000 down-payment on the Property.

28. ICC completed the purchase of the Property on April 14, 2016. ICC acquired the Property for a total cost of \$15,000.

29. Since April 2016, ICC has demolished the dilapidated structure that previously stood on the Property. ICC intends to build a small mosque on the Property that can serve the religious needs for up to one hundred congregants over the next decade.

***County Staff Provides Direction to ICC
Regarding Permits Necessary for Mosque Construction***

30. The County's Zoning Ordinance provides that religious land use is permitted "by right" in the R-1 Residential zoning district.

31. The Property is located in an R-1 zoning district of the County.

32. In January 2016, before ICC purchased the Property, Mohammad Nawabe, ICC's Director, contacted the County's Planning and Zoning Department seeking information about what permits would be necessary for ICC to construct its envisioned mosque on the Property.

33. Mr. Nawabe spoke to Sam McLearen, who was the County's Zoning Administrator and Acting Planning Director at the time.

34. As a first step, Mr. McLearen recommended that Mr. Nawabe contact the local health department to learn more about the Property's soil conditions.

35. At Mr. McLearen's behest, Mr. Nawabe contacted the County's health department. The health department informed Mr. Nawabe that the Property's soil would not support a traditional septic tank and drain field, and that ICC would need to apply for a permanent pump and haul permit with the County. The health department provided Mr. Nawabe with two letters that evidenced the Property's poor soil conditions that supported the department's conclusion that a traditional septic tank would not be supported by the soil, and that a pump and haul permit was needed.

36. In addition, the health department provided Mr. Nawabe with a chart entitled “Pump & Haul Application Summary,” showing applications for pump and haul permits since 1995, whether such applications were approved, and providing a description of each such request. *See* Exhibit B. This chart demonstrated the following:

(a) Of the 19 applications for pump and haul permits submitted in the time period covered by the summary, the County had approved 18;

(b) In 1998, the County denied one pump and haul permit. The County staff recommended that the application be denied because it “was for a residential use and such situations had not previously been considered appropriate for pump and haul.” Ex. B, at 2. The Board of Supervisors followed the staff’s recommendation and denied the application;

(c) The County approved all pump and haul permits for churches, including: Christian Fellowship Church (1999); Reformation Lutheran Church (2001); Mount Zion Baptist Church (2002); Shiloh Baptist Church (2005); and First Baptist Church (2012);

(d) In 1993, the County approved a pump and haul permit, which it renewed in 2001, for the Reformation Lutheran Church. From 1993 through 2001, the Reformation Lutheran Church did not have a building on the approved site—it just “intended to serve a church on Route 29 . . . which had not yet been site planned or approved for construction.” Ex. B, at 1. ICC, like the Reformation Lutheran Church, sought a pump and haul application for a site on which the property was not yet site-planned or approved for construction.

Pump and Haul Permits in Culpeper County

37. Pump and haul permits are regulated by the Commonwealth of Virginia.

38. In Virginia, a pump and haul permit allows the permit holder to construct a tank that holds sewage on the site and contract for the sewage to be periodically pumped out and hauled

by truck to a treatment facility. Such permits are generally necessary where municipal sewers are unavailable and a property's soil is unable to handle a septic system.

39. Under the Virginia Administrative Code, the Commissioner for the Virginia Department of Health issues a special permit that is required for the operation of all pump and haul services. The operation of pump and haul services on a "permanent" basis, which refers to the use of a pump and haul operation for more than one year, must be done under the auspices and supervision of a government entity.

40. The County holds the only permanent pump and haul permit issued by the Virginia Department of Health in Culpeper County.

41. At the time of ICC's application in 2016, in order to conduct a pump and haul operation for a period of more than one year in the County, an individual or entity was required to receive approval from the Board to be added to the County's general pump and haul permit.

42. At the time of ICC's application in 2016, approval of permanent pump and haul services in the County was at the complete discretion of the Board.

43. In addition to Exhibit B, which showed pump and haul applications since 1995 and the County's approval of 18 of 19 applications, on information and belief, an additional seven applications were granted between 1992 and 1995, four of which were for churches, and all were approved. Moreover, on information and belief, six Baptist churches currently use a pump and haul permit in the County.

ICC Satisfies All Requirements for a Pump and Haul Permit

44. On or about February 8, 2016, after ICC contracted to purchase the Property but prior to closing on the purchase, Mr. Nawabe paid a \$250 processing fee and submitted a completed pump and haul application package to the County on behalf of ICC. The complete

application package included the application, a signed pump and haul agreement, ICC's contract to purchase the Property, and the two letters that the County health department provided, evidencing the Property's poor soil conditions and the department's conclusion that a pump and haul permit was needed.

45. On the application, ICC stated that the Property would be used for "praying and meetings" and that ICC was presented with a hardship because "the soil is bad and cannot support a traditional septic system."

46. The County scheduled the application to be considered at the Board's March 1, 2016 meeting.

***Prior to the County Board Meeting, ICC Encounters
Discriminatory Resistance to Its Pump and Haul Permit Application***

47. On February 28, 2016, Kurt Christensen, a well-known civic leader in the County, sent an email to County Administrator Egertson, some board members, and certain local news outlets voicing concern about ICC's application. The email read in relevant part: "I understand the Islamic Center of Culpeper wishes to rehabilitate the existing home and use it on a weekly basis as a place of prayer.Hmmmmmmmmm..." Mr. Christensen asked the Board to "please pull this item from the March meeting agenda and give citizens a detailed briefing pronto."

48. Upon reading the email the following morning, County Administrator Egertson sent the County Attorney an email stating: "[W]e should discuss this today. Thanks."

49. In response to Mr. Christensen's email, the County Attorney stated at the March 1, 2016 Board meeting that she needed time to review ICC's contract. As a result, the Board pulled the application from the March 1, 2016 meeting agenda. On information and belief, the County Attorney did not require such a review for previous applicants' pump and haul contracts.

50. After the March 1, 2016 meeting, Planning Director McLearen contacted Mr. Nawabe and asked that he meet him at his office to discuss ICC's pump and haul request.

51. Later that day, Mr. Nawabe met with Mr. McLearen, County Administrator Egertson, and Board Chairwoman Fritz. In the meeting, Mr. McLearen informed Mr. Nawabe that he had given Mr. Nawabe an outdated pump and haul agreement to complete and asked that Mr. Nawabe complete a newer form.

52. The two forms were substantially identical: the February 23, 2016 Pump and Haul Agreement cited to Part III Article 2 of the Virginia Sewage Handling and Disposal Regulations, whereas the March 3, 2016 Pump and Haul Agreement cited to Part IV, Article 4 of the same code. Mr. McLearen provided Mr. Nawabe with the updated form.

53. In this meeting, County Administrator Egertson and Chairwoman Fritz assured Mr. Nawabe that pump and haul applications were routine matters and that ICC's application would be approved.

54. On or about March 3, 2016, Mr. Nawabe resubmitted ICC's complete pump and haul application package, using the correct pump and haul agreement, to the County.

55. The County scheduled the application to be considered at the Board's April 5, 2016 meeting.

56. Between the March 1 and April 5, 2016 Board meetings, many constituents sent emails and made phone calls to County officials and board members, opposing ICC's pump and haul application. On information and belief, much of the opposition to ICC's application disparaged Muslims, and referenced terrorism and the September 11, 2001 terrorist attacks.

57. In the days leading up to the April 5 hearing, in Chairwoman Fritz's district, anti-mosque residents hung a banner stating "**No Islamic Center!**" in big black letters, listing the date of the hearing, and Chairwoman Fritz's name and contact information.

58. On April 2, 2016, Chairwoman Fritz emailed County Administrator Egertson about the barrage of emails and phone calls she had received concerning ICC's request for a pump and haul permit. Mr. Egertson responded: "It just keeps coming back to the same question – why is this request subject to more scrutiny and tighter interpretation of the policy than all the past requests?" He informed Chairwoman Fritz that he would be prepared to cover the questions raised by the community at the April 5 Board hearing.

59. In a subsequent email from Chairwoman Fritz to County Administrator Egertson on the same day, Ms. Fritz agreed that "the scrutiny is unfair," and that she hoped "that if all questions are answered prior to any board discussion it will keep the grandstanding to a minimum." She also warned Mr. Egertson that "board members are being drilled by these folks and taken to lunch I hear so these are the questions and/or comments [board members] will be making in order to answer to those folks."

***The Board Rejects ICC's Pump and Haul Permit
at Its April 2016 Meeting, Based upon Anti-Muslim Animus***

60. On April 5, 2016, the Board considered ICC's application for a pump and haul permit. Prior to the Board's discussion on the application, County Administrator Egertson read a prepared statement that noted the following:

(a) The County had reviewed ICC's application package and ICC was deemed an eligible applicant under applicable state law. *See* Hr'g 4:20–4:45; Tr. 1–2.

(b) "Pump and Haul permit applications are not by law subject to public hearing nor review by the Planning Commission." *See* Hr'g 6:45–7:00; Tr. 3.

(c) The Property is “within reasonable distance from public utilities, it has the potential that those utilities could become available over the next few years, if not in the immediate future.” *See* Hr’g 5:44–6:00; Tr. 2.

(d) The Board had the authority to approve requests for pump and haul permits “which are expected to be in use for periods longer than one year” and that pump and haul permits had been approved in the past that were considered “long term.” *See* Hr’g 7:35–7:55; Tr. 4.

(e) County staff researched pump and haul permits issued since 1995 and the Board had approved all but one application. *See* Hr’g 8:00–8:25; Tr. 4.

(f) The County’s practice has “generally required the applicant to show proof [from] the health department that no other viable alternatives exist” and that ICC provided letters from the health department “saying that the soil just wouldn’t support what they would consider a traditional type of drain field, and no other alternative was identified by the health department and the soil consultants that could work here.” *See* Hr’g 8:00–8:25, 10:25–11:05; Tr. 4, 6.

61. Supervisors Chase, Deal, and Frazier stated that they opposed the ICC’s pump and haul application because ICC did not show hardship. Supervisor Chase put forward a motion to deny ICC’s application. Immediately following Chase’s explanation why he could not support the pump and haul permit, the audience at the meeting erupted into applause and cheers. Hr’g 12:55–13:30; Tr. 7.

62. Supervisor Chase later stated that his vote to deny the permit had nothing to do with religion: “[I]f it was a Presbyterian church I’d still vote against it.” Hr’g 17:35–17:55; Tr. 10. Supervisor Hansohn responded to Chase that the Board in fact had previously approved a similar pump and haul permit for a church. Hr’g 13:50–14:10; Tr. 8.

63. Supervisor Deal explained, before he voted to deny the permit, that “[e]veryone that knows me knows I don’t have a discriminatory bone in my body.” His stated reason for the vote was that without a current “habitable structure” on the property, “any hardship suffered by the applicant would be self-inflicted.” Hr’g 16:25–17:35; Tr. 9–10.

64. Supervisor Frazier said his vote to deny the permit was because ICC had failed to explore and exhaust all alternative systems, even though County Administrator Egertson had explained that according to the Health Department’s analysis of the property, its soil conditions did not allow for any viable alternatives. *See* Hr’g 10:30–11:05; Tr. 6 (Administrator Egertson: “In terms of some of these mound and other sand systems, it is my understanding they are just not viable.”). Supervisor Frazier also expressed concern regarding whether ICC had an improper profit motive—“this person bought this property at a cheap price . . . [i]t’s a speculation thing where they are going to enhance themselves by doing this, you’ve gotta look at that . . . at the business side of things” Hr’g 19:10–19:30; Tr. 11.

65. Ultimately, Supervisors Chase, Deal, Frazier, and Walker, said they voted to deny ICC’s application because ICC did not experience any hardship, since it did not own the Property at the time of the application and there was no existing structure.

66. Speaking first among the board members voting in favor of ICC’s application, Supervisor Hansohn stated that she had received a number of calls requesting she deny ICC’s application on account of the applicant’s religion. Supervisor Hansohn stated that she “understood people who are so afraid because what has happened in Europe.” However, she explained that the Board could not deny the permit based on the applicant’s religion, and that any concerns about the pump and haul permit approval process could be addressed by the Board after granting ICC’s permit. Hr’g 13:30–16:20; Tr. 8–9.

67. Supervisor Rosenberger, in explaining his vote to grant ICC's permit, stated that his oath of office requires him to "faithfully and impartially discharge the duties of [his] office," and that "[y]ou need to look strongly whether it's germane or whether it's not to the Fourteenth Amendment of the Constitution which guarantees equal protection of the law." Hr'g 21:10–21:55; Tr. 12.

68. The Board had previously approved requests for pump and haul operations under similar, if not identical, circumstances, including when an applicant did not yet own the property, or when there was not an existing structure. Administrator Egertson even stated on the record that "it has been verified that the Code of Virginia and the attendant state regulations do permit a contract owner of the property to make this application," as ICC had done. Hr'g 04:15–04:45; Tr. 1–2. Supervisor Chase, who voted to deny ICC's application, has served continuously as a member of the Board since 1982, during which time Board approved the prior 26 pump and haul applications. In addition, on information and belief, currently a half-dozen Baptist churches in Culpeper operate pump and haul systems through the County's general permit.

69. Notwithstanding the Board's prior treatment of pump and haul applications and ICC's submission of a complete pump and haul application that fulfilled any and all state and County requirements, Supervisor Chase's motion to deny ICC's pump and haul permit passed 4 to 3. Voting with Supervisor Chase were Supervisors Deal, Frazier and Walker. Voting against the motion to deny the permit were Chairwoman Fritz and Supervisors Hansohn and Rosenberger.

70. Several anti-Muslim activist websites celebrated the audience members at the April 5, 2016 meeting who applauded the denial of ICC's permit. Indeed, one website recognized Supervisor Chase's stated reasons for voting against ICC's permit were pretextual, when he said he voted "'not because of religion, but because of use' . . . (*Wink Wink*)." (emphasis in original).

***ICC and Its Members Have Been Injured by the
Denial of Their Religious Freedom and Rights to Equal Protection***

71. Because the County did not approve ICC's pump and haul request, the County has unreasonably limited ICC's ability to build a mosque, and therefore its members cannot engage in their religious practices to the degree and in the way they believe they are compelled to do.

72. In denying ICC's application, the County has used its pump and haul application review process as a means for denying a religious land use to Muslim residents because of their religion.

73. The County's denial of ICC's pump and haul request, for purposes of RLUIPA, constitutes the "application" of a "land use regulation" 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).

74. ICC currently pays and has been paying property taxes to Culpeper County for this parcel of land it is unable to use.

75. The County attempted to further curb ICC's efforts to build a mosque by ordering consecutive 120-day moratoria on any new pump and haul applications in August and then again in November 2016, barring ICC from any attempts to re-apply. During this period if not earlier, the County stopped accepting pump and haul applications under its old policy.

76. In January 2017, the Rules Committee of the Board approved an onerous, new pump and haul policy which states that the County does not support pump and haul as a permanent sewer solution, "except in the rarest of circumstances and upon sufficient demonstration of extreme hardship conditions." The new policy also mandates that the Board must review permanent pump and haul permits requests on a case-to-case basis. Under the new policy economic considerations are not to be considered an extreme hardship unless it is

sufficiently demonstrated that any viable alternate sewage disposal method would exceed 50 percent of the total value of the property.

COUNT I

Violation of RLUIPA – Substantial Burden (42 U.S.C. § 2000cc(a)(1))

77. The allegations above are hereby incorporated by reference.

78. Defendant's actions have deprived and continue to deprive ICC of its right to the free exercise of religion embodied in the First and Fourteenth Amendments and actionable in a private right of action through RLUIPA. 42 U.S.C. § 2000cc(a)(1). Defendant has done so by imposing and implementing land use regulations, including (a) the denial of ICC's pump and haul permit; (b) thereafter enacting consecutive 120-day moratoria on any new permit applications; and (c) then promulgating a new and more burdensome pump and haul application regulation, in a manner that has imposed and continues to impose a substantial burden on ICC's religious exercise, all in violation of RLUIPA.

79. Defendant imposed this substantial burden on ICC's religious exercise, without any compelling interest, and without using the least restrictive means to further any compelling interest.

80. At all times before Defendant's unlawful denial of ICC's application, ICC held a reasonable expectation that it could build a mosque on the Property, complete with means for necessary sewage disposal through a pump and haul permit.

81. ICC is entitled to declaratory and injunctive relief.

82. ICC has suffered damages as a result of Defendant's unlawful actions in violation of RLUIPA.

83. Defendant is liable to ICC for damages in an amount to be determined at trial.

COUNT II

Violation of RLUIPA – Discrimination (42 U.S.C. § 2000cc(b)(2))

84. The allegations above are hereby incorporated by reference.

85. Section 2(b)(2) of RLUIPA prohibits any government from imposing or implementing land use regulations in a manner that discriminates against any assembly or institution on the basis of religion or religious denomination.

86. Defendant has violated RLUIPA by intentionally discriminating against ICC and treating it differently from other applicants on the basis of religion or religious denomination, including by (a) denying ICC's pump and haul permit; (b) thereafter enacting consecutive 120-day moratoria on any new permit applications; and (c) then promulgating a new and more burdensome pump and haul application regulation. Such disparate treatment violates the antidiscrimination provision of RLUIPA. 42 U.S.C. § 2000cc(b)(2).

87. The reasons advanced by those board members who voted to deny ICC's application for a pump and haul permit were pretextual. The County previously had considered at least 26 such applications and never before denied a pump and haul permit for a commercial or religious use before it denied ICC's application. In addition, on information and belief a half-dozen Baptist churches in the County currently operate pump and haul systems through the County's general permit.

88. ICC is entitled to declaratory and injunctive relief.

89. ICC has suffered damages as a result of Defendant's unlawful actions in violation of RLUIPA.

90. Defendant is liable to ICC for damages in an amount to be determined at trial.

COUNT III

Violation of RLUIPA – Unreasonable Limitations (42 U.S.C. § 2000cc(b)(3)(B))

91. The allegations above are hereby incorporated by reference.

92. Section 2(b)(3)(B) of RLUIPA prohibits any government from imposing or implementing land use regulations in a manner that unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

93. By imposing and implementing a land use regulation in a manner which constitutes an unreasonable limitation upon ICC, Defendant has violated this provision of RLUIPA by (a) denying ICC's pump and haul permit; (b) thereafter enacting consecutive 120-day moratoria on any new permit applications; and (c) then promulgating a new and more burdensome pump and haul application regulation.

94. ICC is entitled to declaratory and injunctive relief.

95. ICC has suffered damages as a result of the improper actions of the County in violation of RLUIPA.

96. Defendant is liable to ICC for damages in an amount to be determined at trial.

COUNT IV

Violation of the United States Constitution – First Amendment and Fourteenth Amendment (Free Exercise of Religion) (42 U.S.C. § 1983)

97. The allegations above are hereby incorporated by reference.

98. The First Amendment of the United States Constitution, as incorporated against the States through the Fourteenth Amendment, prohibits a state or any political subdivision thereof from abridging the free exercise of religion (the "Free Exercise Clause").

99. Section 1983 of Title 42 of the U.S. Code provides, in relevant part: “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress”

100. Defendant’s actions have violated and continue to violate ICC’s rights under the Free Exercise Clause by imposing a substantial burden upon ICC’s right to religious exercise, and by intentionally discriminating against ICC on the basis of religious belief. The substantial burden has been imposed by the discriminatory and arbitrary denial of ICC’s application for a pump and haul permit through the discretionary enforcement of a hardship standard which Defendant discriminatorily and arbitrarily applied.

101. Defendant discriminated against ICC by denying its application for a pump and haul permit, and by promulgating even more burdensome obstacles through a new pump and haul policy based on discriminatory animus towards ICC’s religion.

102. Defendant’s consecutive 120-day moratoria and new application policy was promulgated in reaction to ICC’s application. Recognizing the incongruity between the Board’s reasoning for denying ICC’s pump and haul application, and the reality of what the County has previously considered sufficient to grant a pump and haul permit, the Board now seeks to impose a higher degree of scrutiny on pump and haul applications, including any future application by ICC.

103. Defendant’s aforementioned actions were undertaken under color of law of the Commonwealth of Virginia, and county ordinance and procedures.

104. ICC has suffered constitutional and economic injuries as a result of Defendant's actions.

105. ICC is entitled to a declaratory judgment that the Defendant's conduct has violated its First and Fourteenth Amendment rights.

106. ICC is also entitled to, and is seeking, injunctive relief mandating that its pump and haul application be granted forthwith.

107. Defendant is liable to ICC for damages in an amount to be determined at trial.

COUNT V

Violation of the United States Constitution – Fourteenth Amendment (Equal Protection) (42 U.S.C. § 1983)

108. The allegations above are hereby incorporated by reference.

109. The Fourteenth Amendment of the United States Constitution provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws" (the "Equal Protection Clause").

110. Section 1983 of Title 42 of the U.S. Code provides, in relevant part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress"

111. The activities of the County have violated and continue to violate ICC's rights under the Equal Protection Clause by intentionally treating ICC differently from other entities on the basis of religious belief. The County implemented policies and procedures related to zoning, health and building codes, and pump and haul permit applications, in a manner that intentionally

discriminated against ICC on the basis of religion, and was different and substantially more burdensome than implementation of such codes, policies, and procedures as to other religious or secular organizations. The County engaged in such conduct by, among other things, (a) denying ICC's pump and haul permit; (b) thereafter enacting consecutive 120-day moratoria on any new permit applications; and (c) then promulgating a new and more burdensome pump and haul application regulation.

112. Defendant's aforementioned actions were undertaken under color of law of the Commonwealth of Virginia, and county ordinance and procedures.

113. ICC has suffered constitutional and economic injuries as a result of Defendant's actions.

114. ICC is entitled to a declaratory judgment that the Defendant's conduct has violated its First and Fourteenth Amendment rights.

115. ICC also is entitled to, and is seeking, injunctive relief mandating that ICC's pump and haul application be granted forthwith.

116. Defendant is liable to ICC for damages in an amount to be determined at trial.

COUNT VI

Violation of the Constitution of the Commonwealth of Virginia, Article 1, §16

117. The allegations above are hereby incorporated by reference.

118. The Virginia Constitution, Article 1, Section 16, states that "the General Assembly *shall not* prescribe any religious test whatever, or *confer any peculiar privileges or advantages on any sect or denomination*, or pass any law requiring or authorizing any religious society, or the people of any district within this Commonwealth, to levy on themselves or others, any tax for the erection or repair of any house of public worship, or for the support of any church

or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.” (Emphasis added.)

119. Defendant’s actions have violated and continue to violate ICC’s rights under the Virginia Constitution by intentionally discriminating against ICC on the basis of religious belief. In denying ICC’s application where it had previously granted similarly situated churches pump and haul permits, Defendant violated Article 1, Section 16 of the Virginia Constitution by conferring a peculiar privilege upon certain churches which were granted such permits, but not ICC.

120. Defendant has discriminated against ICC by denying its application for a pump and haul permit, imposing consecutive moratoria preventing re-application, and then imposing a new and more burdensome pump and haul policy, based on discriminatory animus towards ICC’s religion. ICC has been directly and proximately injured as a result of Defendant’s illegal actions.

121. ICC has suffered constitutional and economic injuries as a result of Defendant’s actions.

122. ICC is entitled to a declaratory judgment that the Defendant’s conduct has violated Article 1, Section 16 of the Virginia Constitution by conferring a peculiar privilege upon the churches which were granted such permits, but not ICC.

123. ICC also is entitled to, and is seeking, injunctive relief mandating that ICC’s pump and haul application be granted forthwith.

124. Defendant is liable to ICC for damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, ICC prays that this Court enter judgment in ICC's favor and enter an order:

1. Declaring that the Defendant's actions, as alleged herein, violated RLUIPA, the United States Constitution, and the Virginia Constitution;

2. Enjoining the Defendant, its officers, employees, agents, successors and all other persons in concert or participation with it, from unlawfully burdening the religious exercise of ICC and its members or discriminating against ICC and its members on the basis of religion or religious denomination;

3. Requiring the Defendant, its officers, employees, agents, successors, and all other persons in concert or participation with it to:

(a) Take such actions as may be necessary to restore, as nearly as practicable, ICC and its members to the position they would have been in but for the Defendant's unlawful conduct, including but not limited to granting such permits as are necessary to allow ICC to use the Property as a place of worship; and

(b) Take such actions as may be necessary to prevent the recurrence of such unlawful conduct in the future, including but not limited to, providing RLUIPA training to its personnel, establishing procedures to address complaints of RLUIPA violations, maintaining records and submitting reports relating to RLUIPA compliance; and establishing a public education program to inform the public about and to seek to minimize the dangers of religious prejudice;

4. Awarding compensatory damages in an amount to be determined at trial, together with ICC's costs and disbursements in this action;

5. Awarding reasonable attorney's fees under 42 U.S.C. § 1988, in an amount to be determined by the Court; and

6. Awarding such other further relief as the Court may deem just and appropriate.

Dated: March 9, 2017

Respectfully submitted,

Johnathan Smith*
Brenda Abdelall*
Madihha Ahussain*
MUSLIM ADVOCATES
P.O. Box 71080
Oakland, CA 94612
Tel: (415) 692-1484

s/ Robert A. DeRise

James W. Cooper*
David P. Gersch*
Murad Hussain*
Elliott C. Mogul*
Robert A. DeRise
Sina Mansouri*
ARNOLD & PORTER KAYE
SCHOLER, LLP
601 Massachusetts Ave., NW
Washington, DC 20001-3743
Tel: (202) 942-5000
robert.derise@apks.com

* Pro Hac Vice Pending

EXHIBIT A

**AUDIO TRANSCRIPT OF
CULPEPER COUNTY B.O.S
MEETING DENYING PERMIT
APRIL 5, 2016**

SPEAKER:

[Opens with Prayer, Pledge of Allegiance, and Board voting on prior meeting minutes; then starts discussion on agenda.]

[This is the discussion of Item C, beginning 2:55 minutes into the meeting.]

Madam Chair: We move on to 4.0, General County Business. The Board will consider a request from the Islamic Center of Culpeper for a Pump and Haul Permit on Tax Map Parcel No. 31-67, located on Route 229, 14434 Rixeyville Road.

John Egertson: Madam Chairman, Members of the Board, I'll get this introduced for us. This is a request from the Islamic Center of Culpeper for Board authorization to apply to the Virginia Department of Health for a Pump and Haul Permit. This case as you know was held over last month to do the Need to Insure that the Pump and Haul Application which was submitted was in order as to legal form. By Administrative error the Applicant had previously been provided some outdated application forms which contained some incorrect cites to the Code of Virginia and the Virginia Administrative Code and that circumstance drew some confusion from our County Attorney upon her initial review of the Application packet at the meeting last month. This was not her fault or the Applicant's fault but since last month, a proper Application packet has been completed. The proposed Agreement has been submitted for consideration by the Board. Further, it has been verified that the Code of Virginia and the attendant state regulations do permit a contract owner of the property to make

this Application and the Applicant in this particular case in fact does have a contract on the subject property, a copy of which was produced for the County Staff just prior to last month's meeting and has since been shared with our County Attorney for her review. It is my understanding that Closing on the Property has still not taken place at this time. The Staff and myself met with the Applicant after last month's meeting and he did provide that the intended use of the Property includes the demolition of the existing dilapidated structure and the construction of a prayer center. The estimated use of the facility according to the Applicant is approximately twice per week for a couple of hours with approximately 15 attendees. The estimated water and sewer usage is approximately 17 gallons per day on average, with bathroom facilities being the only and primary source generating water and sewer use. As far as the frequency of pumping this tank -- that's unknown at this point; frequency would of course be dependent upon the actual size of the tank and the actual usage. For example, a 500 gallon holding tank with the estimated usage provided by the Applicant in this case would probably result in pumping maybe once a month. The subject property is within a reasonable distance from public utilities; it has the potential that those utilities could become available over the next few years but not in the immediate future. At the present the overall process and steps involved in moving forward are generally as follows:

The Board is asked to authorize the Permit as the first step. If it were to be approved, the Applicant would have to have an engineer design the Pump and

Haul tank and have those plans submitted and approved by the Health Department.

After that step the Applicant would be required to submit a site plan to the Planning Department and that Plan would be subject to an Administrative Approval process in which the Plan would not come before the Planning Commission or the Board. But it would be subject to review by VDOT and other state agencies and may be subject to required entrance improvements, parking, landscaping, etc.

Only if a site plan were then approved would the Applicant be eligible to apply for a building permit. So that is kind of the process going forward.

To clarify just a couple of things: Pump and Haul permit applications are not by law subject to public hearing nor review by the Planning Commission, their consideration or matters of general business for the Board's determination. I would share with the Board and the folks in the audience that the County did have a mobile home use permit application years ago where the viability of that use of the mobile home was dependent upon the grant of a Pump and Haul permit and the mobile home use permit itself was subject to public hearing and Planning Commission review and I think that case may be the source of confusion for some but no Pump and Haul permit application has ever been the subject of a public hearing or referred to the Planning Commission up to this point.

The Board under state regulations can approve Pump and Haul permits which are expected to be in use for periods longer than one year; Pump and Haul permits have been approved in the past which have been long-term; generally our Pump and Haul policy indicates that they are intended to be temporary.

A permit as issued is specific to the Applicant Owner. It cannot simply be transferred for use by a different Owner or a proposed owner without further approval by the Board.

The Staff researched some of the past Pump and Haul permits from 1995 to present and found that the Board had considered 19 Pump and Haul permits, approving 18 of those. Our past practices have generally required the Applicant to show proof from the Health Department that no other viable alternative exists.

Lastly, Madam Chairman and Members of the Board, I would just say that if the Board has concern about the manner in which these permits have generally been processed in the past and how they should be processed in the future, I would recommend that in the near future the Pump and Haul policy be referred to the Rules Committee for review and potential amendment. I would certainly welcome the opportunity to work with the Rules Committee and the Board on such an update, but I am not suggesting that we undertake that policy review prior to action on this Application.

I think that is all the information that I can put in front of you. I would be

happy to answer any questions that I can. The Applicant is also present.

Sue Hansohn: All right. I just have one question, Madam Chair, for John. I did have one call from someone who lived really close to the property and her concern was “is there an odor and does it linger when it is being pumped?” because I guess her husband doesn’t leave the house and that was her only concern is the odor.

John Egertson: Mrs. Hansohn, I really am not an expert in this field but I would share with you that, you know, it’s no different than pumping out your septic tank.

Sue Hansohn: Which we are required to do.

John Egertson: You know, I’ve had that done at my own house; it is not a pleasant odor when you are standing right next to the guy with the big hose, but it is not something that I think would effect a neighboring property.

Sue Hansohn: So it won’t linger after the process?

John Egertson: No Ma’am.

Sue Hansohn: All right. Thank you. That was her concern.

Jack Frazier: Okay. I got one, John, I don’t know whether you can answer this question or not but alternative systems -- there’s a lot of alternative systems out there and I realize that, you know, it is limited here as far as how much property is there to be able to install one of these, but I didn’t see a whole lot as far as

possibility of installing that type of system -- an alternative system.

John Egertson: Mr. Frazier I would just say that, you know, we did get the letters that the prior property owner had obtained from the Health Department saying that the soils just wouldn't support what they would consider a traditional type drain field and then whether alternative system was identified by either the Health Department or the soil consultants that could work here; it's a fairly small property. I don't know if there is a discharge point to have a discharging system and in terms of some of these mound and other sand systems, it is my understanding they are just not viable.

Jack Frazier: Well there are so many new systems out there at the present time that a lot of the new systems don't even require discharge.

John Egertson: That's correct.

Jack Frazier: So, but anyway, just a point I want to bring up here before we get into .

William Chase: Dry streams out there; I've looked on that.

Jack Frazier: All right, say there are systems out now, Bill, that you where you don't even need that. But anyway, just a question.

William Chase: Well, and eventually sewerage will get out there.

Jack Frazier: That's right.

William Chase: But I am dead set against it, not because any religion or anything; in the Service I served with all nationalities; all religions and never had a problem with anybody. But it's because of the use that says that that is to be used basically in the generally on a temporary basis. That and for emergencies. Now the emergencies one I got were for oh, an office trailer that had one person in it. And they just couldn't get a parksite, and it is temporary until they hook into a system out there. But for that reason there is absolutely no reason to approve this because it just Pump and Haul -- who is going to monitor it? Who is going to check and see; there is a light system in and I know that they have used Tony Trotto as an example. Well, his warehouse, we approved it for a year or so ago, is 10 years old. And the only reason he wants it now is because, or wanted it a year ago, is because trucks store there and the truck drivers come in at 2:00 in the morning and he has a light system hooked up that if the Pump and Haul fills up, a light goes on. He said it hadn't gone on in a year because it hadn't filled up because there is only one driver comes in there every three or four weeks. So that's the kind of emergency that it's designed for. Not for a commercial or a church use or purpose like that. That's the reason I can't support it. *[applause]*

Madam Chair: *[gavel strikes]* There will be no clapping or hooting, hollering, nothing like that. This is a business meeting; we are keeping it civilized, please. Thank you. Do we have any other comments?

William Chase: I'm afraid to talk any more now.

Madam Chair: Well . . .

William Chase: No, But I will make a motion it be denied.

Steven Walker: Second.

Sue Hansohn: Well, I want to bring up some points that I think need to be said. And I understand that the majority of the calls and emails I had was because of the religion, not because it's a Pump and Haul or environmental reasons. And our Board, when we are elected, we are supposed to support the Rules and Regulations and the law, and this is the law, and we have in the past and maybe we should not have passed, some applications -- like there was a Church that got an application for a Pump and Haul that had not been built and then we even renewed it when it ran out. So that is one case. Then we had another situation where again there was no structure there but we approved that one. And my thing is, our policy doesn't give us the right to turn someone down because of religion, and it probably shouldn't, but if we need to change our policy, we need to send it back and we need to say what it's for. Is for just for failing drain fields for people who live in houses and businesses, than maybe that's what we need to do. But at this time I don't think we do it in mid-stream; we have to address what's here before us. Now people said well, it's not a hardship because he doesn't own the property. But if you are buying a piece of property and you have a contract with an owner to do that and you can't use the property because of a water situation, a sewer situation or something similar to that, that is a hardship. So why would you

buy a property if you can't use the property? Um, so going back to what we have done in the past *[talking in the audience]*

Madam Chair: PLEASE

Sue Hansohn: I think we need to really seriously look at this and I also understand that in the future there is someone doing a commercial venture at the corner of Ira Hoffman and 229 which is about 5- to-600 yards from this house, or this property. So if that comes, that has to have public sewer. And one condition of this is that they would have to hook on to the public sewer because of the issues environmental that would take care of the environmental issue. So my understanding and the way I've looked at this thing up and down and all around and I understand people who are so afraid because what has happened in Europe. I understand that totally. But I don't think in our Country we should turn down somebody because of religion reasons. We have never done that; that's what we are based on -- that religious freedom, freedom of speech, and freedom to have a business. So for those reasons I would have to support it with the condition that once public sewer becomes available the Applicant would have to connect. Thank you.

Madam Chair: Gary?

Gary Deal: I guess I just will give my opinion here. Um, and I think that everybody that knows me knows that I don't have a discriminatory bone in my body. So, um, and I deal a lot with engineering and land development and I've really

wrestled with this issue based on what I think the Code and the intent of the law is and I am new to the Board, so I don't have any past experience with what's been passed before, but I guess I want to read my opinion because I want to make sure I get it right after looking and wrestling with this for a while.

I understand that every situation can be different as it relates to hardship, but in my analysis of this case and in my opinion the key points are occupancy and structure. The Code in several places mentions structures and occupancy and in this case there are neither; no entity occupying a structure and no habitable structure at this time to occupy. So at this time in my opinion any hardship for the Applicant would be self-inflicted. So I can't support it. That's my opinion.

William Chase: I want to make one other thing clear; but there's enough smoke has been blowing around here. Nothing I have said or my vote has nothing to do with religion.

Madam Chair: Yeah, you have said that.

William Chase: I mean if it was a Presbyterian Church I'd still vote against it. So it has to do with mechanics of Pump and Haul. And do that's the reason and nothing else; it's the mechanics of it.

Jack Frazier: Madam Chairman. I am going to speak on this too. That the way I look at this is that you gotta look at past, you know, the past usages of Pump and

Haul. And basically it gets back to a hardship situation where you've got folks that's lived there on properties for years their drain field dialed; they don't have a repair area; they have no alternative. They would possibly have to move out of their house or lose their property if they didn't get the Pump and Haul permit. That, I don't have a problem with doing that. The situation here is pretty simple to me. You know, you gotta look at this and believe me I've gotten a lot of emails and a lot of calls on this and just about everybody I've talked to is that you know you gotta separate it out and I think I've done that; everybody that I've talked to I have separated out and something of it is, is there a hardship here? And, you know, every way I've looked at this is it is not hardship. The way I look at this is one thing: Is that this person has bought this property at a cheap price. It's a speculation thing where they are going to enhance themselves by doing this. I mean, you've got to look at that; that's one thing, always look at the business side of things unfortunately, but that's the way I look at this. But bottom line here, there is no hardship here. It is self-inflicted. This Applicant can walk away from this property right now if they want to and they can go anywhere in the county and do what they need to do.

Female voice: On another property.

Jack Frazier: So there is no hardship here. The hardship is self-inflicted. So I cannot support this. Now like I say if you've been there for, an Applicant had been there for years and years and years and their drain field failed, hey, I'd be

with you. But it's really not about who it is here, it's about what it is. I can't support this. Thank you.

Madam Chair: Okay.

Brad Rosenberger: Madam Chairman if I may. It's been a long time since I think this Board has struggled with a decision like they've struggled with this one. Certainly I know that I have. I think that the only good thing that will come out of this discussion here today, regardless of what happens with this permit, is that we are going to go to the ordinances and we are going to tweak them and we are going to get them where they need to be. That's good that is going to come out of this. I have to say I read every email; I have taken every call that has come to me on this issue. And I understand completely where people are coming from. I do have to say there's a lot of confusion between Pump and Haul permits and alternative waste disposal. And I have noticed that in several of the letters that I have read. When I've been struggling with this, I think the best thing to do is always go back to the basics. I've taken the oath of office nine times and in that oath of office I have sworn to uphold the United States Constitution, the Constitution of the Commonwealth of Virginia and to faithfully and impartially discharge the duties of this office. Now regardless of where you are on this issue, I hope you have an appreciation for that oath that I took. And then I think you need to look strongly whether it's germane or whether it's not, to the Fourteenth Amendment of the Constitution which guarantees equal protection of the laws. So regardless of where you

are on this I hope you have respect for every member sitting up here and the angst that they have been through on this Application. With that said, I will not be able to support the Motion. Thank you Madam Chairman.

Madam Chair: Thank you. Do you have any comments, Mr. Walker?

Steven Walker: No.

Madam Chair: No?

Steven Walker: I think they said it.

Madam Chair: All right. Well, we can go ahead and call for the vote?

Alexa Fritz: Yes.

Madam Chair: So we have a motion and a second, so all in favor?

Voices: Aye

Madam Chair: Raise your hands. And all opposed. All right. So, okay, the ayes have it.

Alexa Fritz: Did you vote?

Madam Chair: Oh, yeah. Sorry. All right, let's move on.

Sue Hansohn: Oh Madam Chairman I would like to suggest that we send the policy back to Rules Committee. . . .

Madam Chair: Definitely. . .

Sue Hansohn: For clarification so that we may have it very clear for the next time that we have this issue.

Madam Chair Yeah. I agree with that. I mean, can we, yeah we are going to have it go back to Rules because we can't have this issue come up this way. It's very difficult and that I need to also state myself, very difficult when you have to follow the law as Mr. Rosenberg said. We are here, we took an oath of office; we have to follow the law as it is written. We have to look at all the pieces of the cases and we have looked at all the previous cases and so I just wanted to say that is why I was not in support of it. But we'll move on from there, but I think we are gonna go ahead and take a five-minute break for those of you who don't want to be here present for the remainder of the business session. Thank you for coming.

* * * * *

Male voice 1: I looked at the law too.

Male voice 2: Hmm?

Male voice 1: I looked at the law and the Code too. I don't understand where they are coming from, you know. I mean the opinion is hardship and I don't see a hardship.

Male voice 2: That's right.

Male voice 1: I don't understand it.

[end of audio]

EXHIBIT B

PUMP & HAUL APPLICATION SUMMARY			
DATE	APPLICANT	DESCRIPTION	APPROVED?
2015	Joseph A. Treilo, Jr.	Intended to serve four existing and two future storage buildings	Yes
2012	Nellie and Philip Santinga	Intended to serve a commercially zoned parcel which included a small existing building. The property tied into an existing pump and haul tank on adjacent property (see First Baptist Church, below)	Yes
2011	First Baptist Church	Intended to serve an existing church with failing septic	Yes
2010	Alice Johnson	Intended to serve a mobile home which was in place but had no septic system. Mobile home permit had expired and went through a public hearing process for renewal. Public hearings were unrelated to the pump and haul request, although the fact that no traditional septic was available was a major concern in renewing the mobile home permit.	Yes
2010	Cedar Mountain Stone Corporation	Intended to replace portable toilets at the existing quarry operation.	Yes
2008	Culpeper Business Center	Intended as temporary situation. Drainfield was destroyed during construction, but construction included extension of public water and sewer.	Yes
2006	Knights of Columbus	Intended to replace a failing septic system at the former Pot & Kettle Club	Yes
2005	Andy Fitt / Capital Sheds	Proposed to serve an office trailer which had not yet been applied for or approved. As a new business proposal, and not an existing situation, staff recommended denial.	Yes
2005	Shiloh Baptist Church	Intended to serve an existing church that previously had no indoor plumbing.	Yes
2002	Mount Zion Baptist Church	Intended to serve an existing church that previously had no indoor plumbing.	Yes
2001	Reformation Lutheran Church	Renewal of permit originally issued in 1993. Intended to serve a church on Route 29 next to Lake Pe ham which had not yet been site planned or approved for construction.	Yes
2000	C. Alan Berry	Intended to serve an existing storage building in order to allow it to be converted into a commercial auto repair shop.	Yes
2000	Mitchells Post Office	Intended to serve a new post office building temporarily, until extension of public sewer lines.	Yes
1999	Christian Fellowship Church	Intended to serve an existing church which previously had no indoor plumbing.	Yes
1999	JHC Construction	Intended to allow use of an existing building for a new construction company office. The building was already on a pump and haul which had been previously approved in order to accommodate use of the building as an antique shop.	Yes

1998	Commonwealth Park	Intended to serve campers attending events at this existing horse park. Our records indicate this was the first pump and haul permit issued by the Board under a "General Permit" from the Health Department. Permits prior to this one were individually requested by the County on behalf of the applicant and individually considered by the Health Department.	Yes
1998	Brandy Station VFD	Intended to serve occasional use at Brandy Station carnival grounds.	Yes
1998	Robert Gregorio	Intended to serve a single family dwelling which had been inherited by the applicant. The dwelling had no indoor plumbing or septic. Staff recommended denial as this was for residential use and such situations had not previously been considered appropriate for pump and haul.	No
1995	Construction Services, Inc.	Intended to accommodate re-use of an existing building as a construction company office.	Yes

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Islamic Center of Culpeper

(b) County of Residence of First Listed Plaintiff County of Culpeper Virginia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Robert DeRise, Arnold & Porter Kaye Scholer LLP, 601 Massachusetts Avenue, NW Washington DC, 20001, (202) 942 6029.

DEFENDANTS

County of Culpeper, Virginia

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Bobbi Jo Alexis, Sharon E. Pandak, Office of the County Attorney 306 North Main Street Culpeper, VA 22701.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|---------------------------------------|---|---------------------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. §§ 2000cc(a)(1), (b)(2), (b)(3); 42 U.S.C. § 1983

Brief description of cause:

Unlawful denial of previously routinely granted permit on grounds of religion.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Norman K. Moon

DOCKET NUMBER 3:16-cv-00083

DATE

03/09/2017

SIGNATURE OF ATTORNEY OF RECORD

s/ Robert A. DeRise

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