

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

THE ISLAMIC SOCIETY OF BASKING
RIDGE and MOHAMMAD ALI CHAUDRY,

Plaintiffs,

v.

TOWNSHIP OF BERNARDS, BERNARDS
TOWNSHIP PLANNING BOARD,
BERNARDS TOWNSHIP COMMITTEE,
BARBARA KLEINERT, in her official capacity,
JEFFREY PLAZA, in his official capacity, JODI
ALPER, in her official capacity, JOHN
MALAY, in his official capacity, KATHLEEN
"KIPPY" PIEDICI, in her official capacity,
LEON HARRIS, in his official capacity, PAULA
AXT, in her official capacity, RANDY
SANTORO, in his official capacity, RICH
MOSCHELLO, in his official capacity, SCOTT
ROSS, in his official capacity, CAROL
BIANCHI, in her official capacity, CAROLYN
GAZIANO, in her official capacity, THOMAS S.
RUSSO, JR., in his official capacity, and JOHN
CARPENTER, in his official capacity,

Defendants.

Civil Action

Docket #: 16-cv-01369(MAS)(LHG)

**BRIEF OF AMICUS PARTIES IN SUPPORT OF PLAINTIFF'S MOTION FOR
PARTIAL JUDGMENT ON THE PLEADINGS**

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INTEREST OF AMICI CURIAE

Amici curiae, faith, civil liberties, and civic advocacy groups that work to serve members of religious communities and bridge interfaith understanding, have an interest in supporting American Muslims and other faith groups to exercise their religious beliefs freely—without unlawful and capricious interference from governmental institutions. In particular, *amici* seek to ensure that the *Religious Land Use and Institutionalized Persons Act* (“RLUIPA”), 42 U.S.C. § 2000cc, *et seq.* and constitutional rights are properly enforced. *Amici* draw on their expertise and years of experience grappling with religious discrimination to contextualize the experiences of the Islamic Society of Basking Ridge (“ISBR”) in the Township of Bernards, New Jersey, within the larger framework of anti-Muslim animus and recent mosque opposition in New Jersey and around the country.

Amici curiae include Muslim Advocates, American Civil Liberties Union, ACLU of New Jersey, Asian Americans Advancing Justice | AAJC, ColorOfChange, Asian American Legal Defense & Education Fund, Arab American Institute, Interfaith Center of New York, T’ruah: The Rabbinic Call for Human Rights, National Religious Campaign Against Torture, South Asian Americans Leading Together, American-Arab Anti-Discrimination Committee, Islamic Society of New Jersey, Center for New Community, National Council of Jewish Women, Union for Reform Judaism, Central Conference of American Rabbis, Women for Reform Judaism, and The National Sikh Campaign. Individual *amici* are described in the Appendix.

SUMMARY OF ARGUMENT

Amici adopt and incorporate the arguments advanced by Plaintiffs in their pending motion for partial judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. *Amici* urge the Court to consider the actions of Bernards Township in denying Plaintiff’s mosque application in their proper context: as part of an increasing trend of attacks on

America's small Muslim community and, in particular, mosque zoning permit denials in New Jersey and elsewhere.

The actions of Bernards Township threaten one of the most fundamental rights guaranteed by the Constitution—the right of *all* Americans, regardless of faith, to exercise their religious beliefs. Defendants here freely admit that they held the ISBR to a different standard than other religious groups and claimed unlimited discretion to more than double the number of parking spots required for houses of worship per the applicable local ordinance.¹ Defendants' parking determination was then used to leverage more pretextual bases to deny ISBR's site plan application. As Plaintiffs and other amici have set forth, this violates both the non-discrimination provisions of RLUIPA and the requirements of constitutional due process.²

Defendants' admissions warrant swift adverse judgment by the Court without awaiting further proceedings. All across the United States, local governments continue to abuse their authority in order to prevent Muslim communities from establishing or expanding houses of worship, often relying on pretextual bases for denial comparable to those advanced by Bernards Township. *Amici* believe that the Court's ruling on this motion at this stage of proceedings could materially affect this national trend.

¹ Defendant's Answer ¶ 127, see also ¶¶ 244, 249-250, 257-258, 269-270, No. 3:16-cv-01369-MAS-LHG (D. N.J. April 1, 2016).

² Plaintiff's Memorandum for Partial Judgment on the Pleadings, No. 3:16-cv-01369-MAS-LHG (D. N.J. May 5, 2016).

ARGUMENT³

I. OVER THE PAST 15 YEARS, ANTI-MUSLIM SENTIMENT AND HATE CRIMES HAVE RISEN ACROSS THE UNITED STATES

Over the last 15 years, American Muslims have been the target of hateful rhetoric by public officials, employment discrimination,⁴ violent hate crimes, and, as with ISBR in Bernards Township, mosque application denials by local zoning and planning boards. These various manifestations of anti-Muslim animus lead to real-life consequences, and chip away at the right of American Muslims and—ultimately, all religious adherents—to freely practice their faith.

A. Rapid Increase in Anti-Muslim Sentiment and Opposition to Mosque Construction

In 2010, then-U.S. Attorney General Eric Holder described anti-Muslim hate as “the civil rights issue of our time.”⁵ According to a survey on American values conducted by the Public Religion Research Institute in 2010, 45% of Americans believe the values of Islam are at odds with the American way of life.⁶ Some 43% of Americans openly admit to feeling “a little” prejudice toward Muslims, which is more than twice the percentage of people who say the same

³ *Amicus curiae* serve to benefit the court “in cases of general public interest by making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision.” *NAACP v. Town of Harrison*, 940 F.2d 792, 808 (3d Cir. 1991). Furthermore, *amici* in this case demonstrate a “sufficient interest” in the case, discuss “matters that are relevant to the disposition of the case.” *Neonatology Assocs., P.A. v. C.I.R.*, 293 F.3d 128, 129 (3d Cir. 2002) (quoting Fed. R. App. P. 29(b)).

⁴ Indeed, there have been a significant number of employment discrimination cases involving anti-Muslim bias over the past 15 years. Notably, in 2015, the U.S. Supreme Court ruled 8-1 against the retailer Abercrombie & Fitch for the company’s failure to accommodate a Muslim American job applicant who wore a headscarf. The Court reasoned that the retailer could not prohibit employees from wearing head coverings, despite its “look policy,” as such an accommodation did not meet the “undue hardship” exception to the “reasonable accommodation” rule of Title VII of the 1964 Civil Rights Act. *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. ____ (2015)

⁵ *Protecting the Civil Rights of American Muslims: Hearing Before the U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights*, 112th Cong. 8 (2011) (statement of Farhana Khera, Executive Director, Muslim Advocates).

⁶ PUBLIC RELIGION RESEARCH INSTITUTE, *Old Alignment, Emerging Fault Lines: Religion in the 2010 Election and Beyond* 17 (2010), available at <http://publicreligion.org/site/wp-content/uploads/2011/06/2010-Post-election-American-Values-Survey-Report.pdf>.

about Christians, Jews, or Buddhists.⁷ Recent research also suggests that 58% of Americans have an unfavorable opinion of Islam.⁸

Anti-Muslim animus as a societal trend is bolstered by the dramatic rise in hateful rhetoric and bigotry by public officials.⁹ For example, U.S. Representative Peter King (R-NY), then-chair of the House Homeland Security Committee, launched a series of hearings in 2011 on the “radicalization” of the American Muslim community, refusing to broaden the hearings to cover various forms of extremist violence.¹⁰ By holding these hearings, Representative King suggested that Muslims are uniquely prone to violence.¹¹ Legislators continue to stoke fear of Muslims by making bigoted statements. For example, former U.S. Representative Michele Bachmann (R-MN) made statements that the Muslim Brotherhood “infiltrated the U.S. Government”, citing “serious concerns” about what she referred to as “deep penetration in the halls of our United States Government.”¹² Also, Senator Ted Cruz (R-TX) recently called for increased surveillance of “Muslim neighborhood,” stating. “We need to empower law enforcement to patrol and secure Muslim neighborhoods before they become radicalized.”¹³

⁷ See MUSLIM ADVOCATES, *Losing Liberty: The State of Freedom Ten years after the Patriot Act* 21 (2011), available at http://d3n8a8pro7vhm.cloudfront.net/muslimadvocates/pages/47/attachments/original/Losing_Liberty_The_State_of_Freedom_10_Years_After_the_PATRIOT_Act.pdf?1330650785

⁸ Peter Moore, *Most Americans Dislike Islam*, YOUNGOV, Dec. 9, 2015, available at <https://today.yougov.com/news/2015/12/09/most-americans-dislike-islam/>.

⁹ See generally *Losing Liberty*, supra note 7, at 24-25.

¹⁰ *Non-Muslims Carried Out More than 90% of All Terrorist Attacks on U.S. Soil*, WASHINGTON POST BLOG, May 1, 2013, available at <http://www.washingtonsblog.com/2013/05/muslims-only-carried-out-2-5-percent-of-terrorist-attacks-on-u-s-soil-between-1970-and-2012.html>.

¹¹ Jordy Yager, *Lawmaker Announces Second Hearing into Muslim-American Radicalization*, THE HILL, June 9, 2011, available at <http://thehill.com/homenews/house/165697-lawmaker-announces-second-muslim-radicalization-hearing->.

¹² *Rep. Michele Bachmann's Muslim Brotherhood claims draw fierce fire*, WASHINGTON POST, July 19, 2012 available at https://www.washingtonpost.com/national/on-faith/rep-michele-bachmanns-muslim-brotherhood-claims-draw-fierce-fire/2012/07/18/gJQABN9KuW_story.html.

¹³ *We Need a Coherent Campaign to Utterly Destroy ISIS*, PRESS RELEASE OF SENATOR TED CRUZ, March 22, 2016, available at http://www.cruz.senate.gov/?p=press_release&id=2617.

Public officials have also weighed in specifically on mosque construction and development. Anti-Muslim sentiment came to a head in the summer of 2010, as media outlets provided daily coverage of the growing opposition to Park51, the proposed multi-use Muslim community center in Lower Manhattan.¹⁴ At the height of the public outcry against the community center, former Speaker of the House of Representatives Newt Gingrich (R-GA) opined that locating such a facility two blocks from the site of the September 11, 2001 attacks would symbolize Muslim “triumphalism” and was akin to “putting a Nazi sign next to the Holocaust Museum . . . It’s profoundly and terribly wrong.”¹⁵

Thus, with anti-Muslim views permeating society from our nation’s leaders, it comes as no surprise when local zoning boards and community members express opposition to mosques and Muslims generally.

B. The Disturbing Rise of Anti-Muslim Hate Crimes and Attacks on Mosques

With the rise of anti-Muslim sentiment in the United States, the number of violent hate crimes against American Muslims has increased dramatically. In 2014, of the Federal Bureau of Investigations (FBI) reported hate crimes motivated by religious bias, 16.3 percent were against Muslims,¹⁶ compared to 2.1 percent in 2000.¹⁷ Between 2001 and 2009, the FBI reports that there were 1,552 incidents of hate crimes based on “anti-Islamic” bias, resulting in 1,785 separate offenses.¹⁸ The number of reported anti-Muslim hate crimes continues to remain high

¹⁴ See generally *Anti-Park51 Protest Featuring Right-Wing Media Loaded with Anti-Muslim Hate*, MEDIA MATTERS FOR AMERICA, Sept. 13, 2010, available at <http://mediamatters.org/research/2010/09/13/anti-park51-protest-featuring-right-wing-media/170549>.

¹⁵ Edward Wyatt, *Three Republicans Criticize Obama’s Endorsement of Mosque*, N. Y. TIMES, Aug. 14, 2010, available at <http://www.nytimes.com/2010/08/15/us/politics/15reaction.html>.

¹⁶ FEDERAL BUREAU OF INVESTIGATION, HATE CRIME STATISTICS (2014), available at https://www.fbi.gov/about-us/cjis/ucr/hate-crime/2014/topic-pages/incidentsandoffenses_final.

¹⁷ FEDERAL BUREAU OF INVESTIGATION, HATE CRIME STATISTICS 7 (2000), available at <https://www.fbi.gov/about-us/cjis/ucr/hate-crime/2000>

¹⁸ *Losing Liberty*, *supra* note 7.

today, making American Muslims the second-most targeted religious group.¹⁹ For example, in the four months following the November 2015 attacks in Paris, advocacy groups tracked more than 80 potential hate crimes, many of which involved houses of worship.²⁰

In 2012, the same year that ISBR filed its application, numerous houses of worship across the country were vandalized, burned, and congregants were murdered. For example, the Islamic Society of Joplin, Missouri, was burned to the ground in an arson attack²¹ just one day after a white supremacist opened fire on worshipers at a Sikh gurdwara in Oak Creek, Wisconsin, killing six people and injuring four others.²² Also in 2012, then-U.S. Representative Joe Walsh of Illinois expressed concern about a “radical strain of Islam in this country.”²³ Some days after, in Morton Grove, Illinois, a man fired shots at a mosque in the community.²⁴ Just days later, an assailant threw an improvised explosive device at an Islamic school in Lombard, Illinois, a city in then-Representative Walsh’s district.²⁵ From coast to coast, there has been widespread violence, vandalism, and restrictive zoning decisions directed at mosques.²⁶

¹⁹ *Supra* n.16.

²⁰ *Recent Incidents of Anti-Muslim Hate Crimes*, MUSLIM ADVOCATES (2016) available at <https://www.muslimadvocates.org/map-anti-muslim-hate-crimes/>.

²¹ Yasmin Amer & Moni Basu, *Attacks Against U.S. Muslims Spike During Ramadan*, CNN, Aug. 18, 2012, available at <http://religion.blogs.cnn.com/2012/08/18/attacks-against-u-s-muslims-spike-during-ramadan/>.

²² CNN Wire Staff, *Police Identify Army Veteran as Wisconsin Temple Shooting Gunman*, CNN, Aug. 12, 2012, available at <http://www.cnn.com/2012/08/06/us/wisconsin-temple-shooting/>.

²³ Rebecca Leber, *GOP Rep. Joe Walsh: Muslims Are ‘Trying To Kill Americans Every Week,’* THINKPROGRESS, Aug. 13, 2012, available at <http://thinkprogress.org/justice/2012/08/13/679561/gop-rep-joe-walsh-muslims-are-trying-to-kill-americans-every-week/#>.

²⁴ *David Conrad Charged With Firing Shots At Chicago-Area Mosque*, HUFFINGTON POST, Aug. 12, 2012, available at http://www.huffingtonpost.com/2012/08/12/david-conrad-charged-with_n_1770314.html.

²⁵ Edward McLelland, *Quinn Calls Walsh “Worst Congressman in America,”* NBC CHICAGO, Aug. 15, 2012, available at <http://www.nbcchicago.com/blogs/ward-room/Quinn-Calls-Walsh-Worst-Congressman-in-America-166282386.html>.

²⁶ See ACLU, *Nationwide Anti-Mosque Activity*, available at <https://www.aclu.org/map/nationwide-anti-mosque-activity>.

Similarly, in this case, ISBR was a target of anti-Muslim hate crimes, as community members voiced strong opposition to their proposed Islamic center. In 2010, an unknown individual knocked over and damaged ISBR's mailbox.²⁷ In 2014, ISBR's mailbox was again vandalized—this time defaced with stickers used to change its acronym from “ISBR” to “ISIS.”²⁸

II. ANTI-MUSLIM SENTIMENT IN THE UNITED STATES AFFECTS MOSQUE ZONING CASES

This climate of anti-Muslim animus affects the constitutional rights of American Muslims to practice their faith. While Muslims make up about 1% of the U.S. population,²⁹ of the fifty-one RLUIPA land use investigations initiated by the U.S. Department of Justice (“DOJ”) in the first decade since the statute passed in 2000, 14% involved mosques or other Islamic structures.³⁰

Over the past several years, litigation across the United States demonstrates that the number of anti-Muslim RLUIPA cases continues to rise at an alarming rate.³¹ This number has grown dramatically since 2010. Writing in 2012, Eric Treene, Special Counsel for the Justice Department's Civil Rights Division, stated that the DOJ “has opened twenty-seven RLUIPA

²⁷ Plaintiff's Complaint and Demand for Jury Trial ¶ 68, No. 3:16-cv-01369-MAS-LHG (D. N.J. March 10, 2016).

²⁸ Chris Fuchs, *Islamic Group Files Lawsuit Over Denied Mosque After Years-Long Planning Battle, Vandalism*, NBC NEWS, March 21, 2016, available at <http://www.nbcnews.com/news/asian-america/islamic-group-files-lawsuit-over-denied-mosque-after-years-long-n542546>.

²⁹ Besheer Mohamed, *A New Estimate of the U.S. Muslim Population*, PEW RESEARCH CENTER, Jan. 6, 2016, available at <http://www.pewresearch.org/fact-tank/2016/01/06/a-new-estimate-of-the-u-s-muslim-population/>.

³⁰ U.S. DEP'T OF JUSTICE, *Report on the Tenth Anniversary of the Religious Land Use and Institutionalized Persons Act 6* (2010), available at http://www.justice.gov/crt/publications/post911/post911summit_report_2012-04.pdf.

³¹ Eric Treene, *RLUIPA and Mosques: Enforcing a Fundamental Right in Challenging Times*, 10 FIRST AMENDMENT L. REV. 330, 332.

matters involving mosques and Muslim schools since RLUIPA passed. Of these, *seventeen have been opened since May of 2010.*³²

In many instances, organized groups of local citizens fuel the disturbing rise of anti-Muslim sentiment, seeking to undermine the spirit of RLUIPA by vocally expressing their desire to keep mosques out of their communities. In other RLUIPA cases involving Islamic centers, the animus is often expressed through pretextual bases such as suspect traffic or parking studies or arbitrary requirements applied only to prevent the building or expansion of Islamic centers.

A. Recent RLUIPA Litigation Highlights Anti-Muslim Animus

Over the past five years, community members and city officials alike have openly displayed hostility toward Muslims at local zoning hearings, leading to numerous RLUIPA cases. In *United States v. City of Lilburn, Ga.*,³³ which was settled by consent decree in 2011,³⁴ the plaintiffs alleged that “[c]ity officials . . . made hostile remarks about Muslims and members of the Islamic center.”³⁵ Furthermore, “City residents . . . communicated their hostility to the Islamic center’s plans for the mosque by making discriminatory comments to city officials, by sending letters and other communications to city officials expressing hostility to the Islamic center, and by taking other actions displaying their hostility to the Islamic center.”³⁶ Ultimately, due in large part to pressure from the DOJ, the Lilburn City Council approved the Islamic center’s plans to expand.³⁷

³² *Id.* (emphasis added).

³³ No. 1:11-cv-02871-JOF (N.D. Ga. Aug. 26, 2011).

³⁴ Consent Order, *id.*

³⁵ Complaint, *supra* note 33.

³⁶ *Id.*

³⁷ Joel Anderson, *Mosque Dispute Divides Lilburn*, AJC.COM, Oct. 5, 2011, available at <http://www.ajc.com/news/news/local/mosque-dispute-divides-lilburn/nQMK9/>.

United States v. Henrico,³⁸ which was also resolved by consent decree in 2011,³⁹ included similar allegations: “County residents communicated . . . their hostility to the Mosque’s plan to obtain rezoning by making comments and sending communications to County officials expressing hostility to the Mosque”⁴⁰ County officials, in turn, made “derogatory and discriminatory statements” about the proposed mosque in Henrico, Virginia.⁴¹ The DOJ reached a settlement with Henrico County, and the Islamic center reapplied and was ultimately granted its rezoning permit.⁴²

One of the most egregious examples of anti-Muslim animus in the context of zoning occurred in Murfreesboro, Tennessee in 2010. Staunchly opposed to a proposal for the development of a mosque, a group of residents brought suit seeking to enjoin its construction,⁴³ arguing, among other things, that Islam may not be a First Amendment protected religious belief.⁴⁴ As DOJ Special Counsel Treene documented, the proposed mosque was “met with vociferous community opposition, including the spray-painting of ‘not welcome’ on a construction sign, the destruction of a second sign, a firebombing of construction equipment at the site, and . . . a bomb threat.”⁴⁵ The Tennessee Lieutenant Governor Ron Ramsey noted at the

³⁸ No 3:11-cv-583-HEH (E.D. Va. Sept. 6, 2011).

³⁹ Consent Decree, *id.*

⁴⁰ Complaint at 4, *supra* note 38.

⁴¹ *Id.* at 4-5.

⁴² U.S. DEP’T OF JUSTICE, *Justice Department Resolves Lawsuit Alleging Religious Discrimination by Henrico, Va., Against Muslim Group*, Sep. 6, 2011 available at <https://www.justice.gov/opa/pr/justice-department-resolves-lawsuit-alleging-religious-discriminaton-henrico-county-va>; see also Bill McKelway, *Mosque Approval in Henrico Followed Federal Intervention*, RICHMOND TIMES DISPATCH, Sep. 7, 2011, available at http://www.richmond.com/news/article_5a63e921-eafd-537c-8ea2-6f68e53209ce.html.

⁴³ *Estes v. Rutherford County Reg’l Planning Comm’n*, No. 10CV-1443 (Ch. Ct. for Rutherford County Oct 18, 2010).

⁴⁴ Brief for the United States as Amicus Curiae, *id.*, (“DOJ Amicus Brief in *Estes*”), at 2, available at http://www.justice.gov/crt/spec_topics/religiousdiscrimination/rutherford_amicus_brief.pdf.

⁴⁵ Treene, *supra* note 31 at 350.

time that he was unsure if Islam is really a religion, suggesting Islam could be a cult.⁴⁶ After four long years, and DOJ intervention,⁴⁷ the Islamic Center of Murfreesboro was finally granted an occupancy permit.

Of course not all cases involving mosque opposition involve overt anti-Muslim animus; many of these cases involve pretextual zoning arguments. For example, in *United States v. City of Lomita*,⁴⁸ which was settled by agreed order⁴⁹ in 2013, the DOJ brought a lawsuit against a California city that denied a permit application from the Islamic Center of South Bay (“ICSB”). As detailed in a separate lawsuit by ICSB itself, the city discriminated against the group on pretextual grounds, after the neighbors asserted that the proposed design would increase traffic.⁵⁰ The city’s own Public Safety Traffic Commission determined the proposed design would *improve*, not exacerbate, traffic and parking conditions.⁵¹ After DOJ brought an RLUIPA suit against the City of Lomita, a federal district court order ultimately led to the approval for the mosque.⁵²

In another case, *Moxley v. Walkersville*,⁵³ a landowner sought to sell his agricultural property to a small Maryland Muslim community contingent on the community being able to obtain a special use permit to construct a mosque. The town ordinance contained an exception

⁴⁶ Brian Montopoli, *Tennessee Lt. Gov. Ron Ramsey Questions Whether Islam is a Religion*, CBS NEWS, July 26, 2010, available at <http://www.cbsnews.com/news/tennessee-lt-gov-ron-ramsey-questions-whether-islam-is-a-religion/>.

⁴⁷ U.S. DEP’T OF JUSTICE, *Justice Department Files Lawsuit Requiring Rutherford County, Tenn., to Allow Mosque to Open in City of Murfreesboro*, July 18, 2012, available at <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-requiring-rutherford-county-tenn-allow-mosque-open-city>.

⁴⁸ No. 2:13-cv-00708-MMM-CW (C.D. Cal. Mar. 8, 2013).

⁴⁹ Agreed Order, *id.*

⁵⁰ See Ruben Vives, *Complaint Filed over Lomita’s Denial of Bid for New Mosque*, LOS ANGELES TIMES, Mar. 21, 2012, available at <http://articles.latimes.com/2012/mar/22/local/la-me-lomita-mosque-20120322> (discussing ICSB’s lawsuit).

⁵¹ Complaint, *supra* note 48, at 6.

⁵² *Supra* note 49.

⁵³ 601 F. Supp. 2d 648 (D. Md. 2009).

allowing for houses of worship to do so.⁵⁴ Ultimately, the town denied the group's application, with the Board of Appeals citing concerns about traffic flow, water usage, strained sewer facilities, and the impact on fire and rescue services.⁵⁵ All of these reasons, however, appear to be pretextual grounds for denying the Muslim group's special exception permit.⁵⁶ Ultimately, the case was settled between the landowner and the city.⁵⁷ However, this forced the Muslim community to seek another property to construct its mosque.⁵⁸

The underlying facts in *Walkersville* also demonstrate open animus against the community: There were allegations that town commissioners plotted in secret with residents to bar the group from developing the property,⁵⁹ and media coverage detailed anti-Muslim sentiments from town officials, including remarks falsely charging the community with having ties to the September 11th attacks.⁶⁰

The cases highlighted above are a mere sample of the many anti-Muslim mosque zoning disputes. Recently resolved or currently pending matters from Georgia⁶¹ to Minnesota⁶² to Michigan⁶³ further illustrate the prevalence of anti-Muslim RLUIPA cases.

⁵⁴ *Id.* at 653.

⁵⁵ *Id.* at 656.

⁵⁶ *Id.* at 655.

⁵⁷ *Supra* note 53.

⁵⁸ Alison Knezevich, Pikesville mosque to open at Slade Mansion on Park Heights Avenue, *The Baltimore Sun* (May 30, 2012) available at <http://www.baltimoresun.com/news/maryland/baltimore-county/bs-md-co-pikesville-mosque-20120530-story.html>.

⁵⁹ *Walkersville*, *supra* note 53, at 654, 663.

⁶⁰ *Id.* at 655 (“Muslims are a whole different culture from us, The situation with the Muslims is a touchy worldwide situation, so people are antsy over that”; “But for the most part people, I don't know if they're dramatically upset, but they are definitely concerned, I—like me, I am concerned myself, . . . I understand the world climate, I understand what's going on. I do remember . . . 9/11 very vividly so it's only that thing sticks in your mind . . .”).

⁶¹ See *Islamic Center of North Fulton v. City of Alpharetta Georgia*, 1:2010cv01922 (N.D. Ga 2010).

⁶² See *Abu-Huraira Islamic Center et al v. City of St. Anthony*, 0:14-cv-03280 (D. Minn. 2015).

⁶³ See *United States v. Pittsfield Charter Township*, 2:15-cv-13779-DPH-DRG (E.D. Mich. 2015).

B. Recent RLUIPA Litigation Highlights Anti-Muslim Animus In New Jersey Specifically

Religious land-use matters are particularly relevant in New Jersey—not only in light of recent examples of RLUIPA litigation and mosque opposition, but also because of the state’s extremely diverse population. New Jersey is the most densely populated state in the country,⁶⁴ as well as one of the most racially, ethnically,⁶⁵ and religiously diverse states.⁶⁶ At one point, New Jersey had the fourth-largest Muslim population in the country.⁶⁷

In New Jersey, a number of Islamic centers have faced vehement opposition on the basis of anti-Muslim animus. In 2007, in *Albanian Associated Fund v. Township of Wayne*,⁶⁸ a New Jersey township delayed a proposed mosque’s application for a zoning permit for over three years before eventually trying to seize the property at issue through an exercise of eminent domain.⁶⁹ According to the Justice Department’s *amicus* brief, a group of neighbors “attended every Planning Board hearing relating to the Mosque’s application and made known its hostility to the Mosque and to Moslem [sic] prayer rituals and religious practices.”⁷⁰ The Mayor, who sat on the Planning Board, admitted that he came up with the idea to take the mosque’s property.⁷¹ Furthermore, the DOJ argued that there were genuine questions as to whether the Township’s

⁶⁴ U.S. CENSUS BUREAU, U.S. DEPT’ OF COMMERCE, 2000 CENSUS OF POPULATION AND HOUSING, POPULATION AND HOUSING UNIT COUNTS, UNITED STATES SUMMARY, at 29 tbl.17 (2004) (excluding the District of Columbia).

⁶⁵ Adam M. Englander, *God and Land in the Garden State: The Impact of the Religious Land Use and Institutionalized Persons Act in New Jersey*, 61 Rutgers L. Rev. 753 (2009).

⁶⁶ *Id.*

⁶⁷ Fareed H. Numan, *The Muslim Population in the United States: A Brief Statement*, Dec. 1992, <http://www.islam101.com/history/population2-usa.html>; see also Sakina Al-Amin, *5 Most Muslim Populated US Cities*, EXAMINER.COM, June 5, 2013, available at <http://www.examiner.com/list/5-most-muslim-populated-us-cities?>.

⁶⁸ No. 06-CV-3217 (PGS), 2007 WL 2904194 (D.N.J. Oct. 1, 2007).

⁶⁹ *Id.* at *3; DOJ RLUIPA Anniversary Report, *supra* note 30, at 9.

⁷⁰ Brief for the United States as *Amicus Curiae* in Opposition to Defendants’ Motion for Summary Judgment, *Albanian Associated Fund*, *supra* note 39, at 22, available at http://www.justice.gov/crt/about/hce/documents/albanian_brief.pdf.

⁷¹ *Id.*

reasons for pursuing eminent domain were pretextual, and in fact a mask for anti-Muslim animus.⁷² The judge's opinion states, "it cannot be said, as a matter of law, that the Mosque was not being singled out for discriminatory treatment."⁷³ After four years, the case was settled and the Albanian community ultimately moved its location to Riverdale in 2015.

In another case previously before this Court, within weeks of filing a preliminary site plan for an Islamic center, the township officials in Bridgewater, New Jersey, changed the ordinance, thus preventing the center from moving forward with plans to renovate an existing building. In 2011, in *Al Falah Center v. Township of Bridgewater*, the sheer number of vociferous community members expressing strident opposition to the mosque and anti-Muslim animus often caused delays and adjournments in zoning hearings.⁷⁴ Instead of rescheduling the initial public hearing, the Mayor ordered the township planner to put together a "Re-examination of the Master Plan" affecting houses of worship.⁷⁵ The Township of Bridgewater then swiftly amended the zoning ordinance, which would have otherwise permitted the Al Falah center to operate under a conditional use permit. After three years of court battles, the Al Falah center ultimately reached a settlement with the Township of Bridgewater, which included a \$5 million payment to Al Falah for alleged damages and attorney fees, and allowed Al Falah to move forward with its plans to build a mosque and community center.⁷⁶

Unfortunately, additional RLUIPA litigation may be on the horizon in New Jersey. In Bayonne, New Jersey, in response to an application for a proposed Islamic Center, residents gathered to vehemently denounce the proposal, with signs reading, "If the mosque comes, the

⁷² *Id.*

⁷³ *Supra* note 68.

⁷⁴ *Al Falah et. al. v. Township of Bridgewater et. al.*, No. 3:11-CV-02397 (D. N.J. 2011).

⁷⁵ *Id.*

⁷⁶ *Id.*

mayor goes.”⁷⁷ One resident went so far as to declare “It’s a known fact a lot of these mosques are funded by oil money and terrorists. I’m concerned about safety and the quality of life here in Bayonne,” while another resident stated, “We feel we have to give up our neighborhood, because once they move in, they really take over. They make us feel uncomfortable.”⁷⁸ After several delayed votes and with no new date, the Bayonne mosque application remains under consideration by the city zoning board.⁷⁹

CONCLUSION

For more than a decade, American Muslims have experienced a disturbing growth of anti-Muslim animus, evident through increasing hate crimes, vandalism, and overtly bigoted statements and actions by public officials. Typically quiet zoning board meetings are now staging grounds for protests and anti-Muslim rhetoric. Even when American Muslim communities are not subject to blatant displays of bias and hostility in the course of the zoning process, their applications are often denied on the basis of suspect studies and standards that are applied to no other applicants. These zoning denials frequently are a mask for anti-Muslim discrimination; they prevent the American Muslim community from exercising their constitutionally protected right to exercise their religion. ISBR’s permit denial is the latest in a long line of animus-based zoning denial cases, and *amici* urge the Court to remedy this injustice.

⁷⁷ Jonathan Lin, *Bayonne residents opposed to Islamic center to protest at City Hall*, March 9, 2016, available at

http://www.nj.com/hudson/index.ssf/2016/01/bayonne_residents_against_planned_islamic_center_t.html.

⁷⁸ Larry Kaplan and Ruth McCambridge, *Proposed Muslim Center in Bayonne, NJ Generates Ugly Controversy*, Sept. 14, 2015, available at <https://nonprofitquarterly.org/2015/09/14/proposed-muslim-center-in-bayonne-nj-generates-controversy/>.

⁷⁹ Jonathan Lin, *Bayonne zoning board meeting about Islamic center postponed*, NJ.COM, March 9, 2016 available at

http://www.nj.com/hudson/index.ssf/2016/03/bayonne_zoning_board_meeting_about_islamic_center.html.

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Dated: May 12, 2016

APPENDIX

STATEMENTS OF INTEREST OF AMICI CURIAE

Muslim Advocates, a national legal advocacy and educational organization formed in 2005, works on the frontlines of civil rights to guarantee freedom and justice for Americans of all faiths. Muslim Advocates advances these objectives through litigation and other legal advocacy, policy engagement, and civic education, and by serving as a legal resource for the American Muslim community, promoting the full and meaningful participation of Muslims in American public life. The issues at stake in this case directly relate to Muslim Advocates' work fighting institutional discrimination against the American Muslim community.

American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with over 500,000 members dedicated to defending the principles embodied in the U.S. Constitution and our nation's civil rights laws. The ACLU of New Jersey is a state affiliate of the national ACLU, with tens of thousands of supporters across the state. As organizations that have long been dedicated to preserving religious liberty and equality, the ACLU and ACLU-NJ have a strong interest in the proper resolution of this case.

Asian Americans Advancing Justice | AAJC (AAJC) is a nonprofit, nonpartisan organization that seeks to promote a fair and equitable society for all by working for civil and human rights and empowering Asian American, Native Hawaiian, and Pacific Islander communities. The AAJC has a longstanding history of serving the interests of AANHPIs, and is very concerned with issues of discrimination that might face them. Any hint of an action that raises the specter of possible selective enforcement of the law against AANHPIs is of grave concern to the AAJC and its ongoing efforts to promote greater civil rights, protections, justice, and equality.

ColorofChange is an organization that since 2005 has advocated for the interests of minority and low-income persons in the United States and has called for an end to discriminatory practices by our government and corporations that disproportionately harm Black communities. ColorOfChange has over 1,000,000 members nationally, including over 78,000 members in the state of New Jersey. As such, ColorOfChange joins this brief in order to advocate for the dignity, safety and religious rights of US Muslim communities, many of whom- as many as 40% according to some reports-identify as Black.

Asian American Legal Defense and Education Fund (AALDEF), founded in 1974, is a national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all. A part of AALDEF's mission is the protection of the rights of Muslims. AALDEF has supported the efforts of mosques in the face of discrimination including representing plaintiffs in *Al Falah Center v. Township of Bridgewater* (D. NJ).

Arab American Institute (AAI) is a national leadership organization established in 1985 to encourage the direct participation of Arab Americans in political and civic life in the United States. Through our work, AAI represents the community interests of Arab Americans throughout the U.S. In the years following the terrorist attacks of September 11th, 2001, AAI has worked to combat the anti-Arab and anti-Muslim sentiment that has emerged in the forms of inflammatory rhetoric, increased hate crimes, discriminatory government policies, and a denial of the ability to exercise fundamental constitutional rights including the First Amendment guaranteed right to practice one's own religion. Zoning ordinances prohibiting communities from constructing mosques is one form of how this discrimination has materialized. The issues at

stake in this case directly relate to AAI's work to ensure civil rights of Arab Americans and American Muslims are upheld.

Interfaith Center of New York (ICNY) is a nationally-recognized, non-profit organization founded in 1997 that catalyzes civic collaborations among hundreds of grassroots and immigrant religious leaders and civic officials to address New York's most pressing social problems. For almost two decades we have engaged in coalition-building and advocacy with Muslim, Sikh, and South Asian partners in the area of religious freedom, illegal surveillance against Muslims, and NYPD reform. ICNY works to overcome religious prejudice, violence, and misunderstanding by activating the power of the city's grassroots religious and civic leaders to fight for social justice. The issues presented in this case relate directly to ICNY's work. Respect for religious diversity, the importance of liberty, as well as free exercise are indeed central to not only ICNY values but to American Constitutional values as well. It is what drives our mission and also, we believe, what makes our country great.

T'ruah: The Rabbinic Call for Human Rights brings together rabbis and cantors from all streams of Judaism with all members of the Jewish community, to act on the Jewish imperative to respect and advance the human rights of all people. Grounded in Torah and our Jewish historical experience and guided by the Universal Declaration of Human Rights, T'ruah's campaigns seek to imagine a world infused with the values of Micah 6:8--justice, love, and humility--and to work to bring that world about. T'ruah works to build a world where everyone can exercise their religions and be proud of their identities without fear. In this work we have stood as allies with Muslims in working to end police surveillance of Muslim communities in New York City and have responded to hateful anti-Muslim public advertisements with our own messages of solidarity and support. Consistent with our mission, T'ruah joins this brief.

National Religious Campaign Against Torture (NRCAT) is an interfaith coalition of 320 faith organizations ranging from local churches, mosques, synagogues and temples to large national denominations and faith-based organizations. NRCAT works to exert a moral imperative to reduce the incidence of torture by the U.S. and governments around the world, and we understand quite clearly that exclusion and otherization of religious groups fuels discrimination, dislocation, hate crimes, torture and even worse. In our work in the United States to counter bigotry aimed against religious minorities, including Muslims, we have always stood firm in protecting the rights of all faith communities to express their faith through their own practices and institutions. The issues in this case show the need to root out bigotry and exclusion wherever it is found in our nation, and the importance of adopting common good values and ethics that lead to extending a welcoming hand to all.

South Asian Americans Leading Together (SAALT), a national, non-partisan, non-profit organization established in 2001 in response to the violent backlash directed toward South Asian, Muslim, Sikh, Hindu, Middle Eastern, and Arab communities in the United States, continues today to address issues of immigration, racial profiling, and hate violence. SAALT elevates the voices and perspectives of South Asian individuals and organizations to build a more just and inclusive society in the United States by conducting rigorous public policy analysis and advocacy; building partnerships with local South Asian organizations and national allies; mobilizing communities to take action; and developing leadership. SAALT has documented the rising incidents of hate violence and hateful rhetoric, directed disproportionately to Muslims and those perceived to be Muslim in recent times at both the individual and institutional levels. We seek to ensure that protections such as the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) are properly enforced.

American-Arab Anti-Discrimination Committee (ADC) is a civil rights organization committed to defending the rights of people of Arab descent and promoting their rich cultural heritage. ADC was founded by former U.S. Senator James Abourezk in 1980. Today, ADC is the largest Arab American grassroots organization in the U.S. ADC supports the human and civil rights of all people and opposes racism and bigotry in any form. The issues at stake in this case directly relate to the ADC mission statement of protecting and defending the rights of Arab Americans, including those who follow the Muslim faith.

Islamic Society of Central Jersey (ISCJ) is an organization of Muslim Americans that was formed in 1975 that provides religious, educational and social services to its members, as well as to the community at large. The ISCJ established a place of worship in South Brunswick, NJ in the early 1980s. The ISCJ aspires to be the anchor of a model community of practicing Muslims of diverse backgrounds, democratically governed, efficiently served, relating to one another with inclusiveness and tolerance, and interacting with neighbors and the community at large in an Islamic exemplary fashion. The ISCJ is very concerned about the issues raised in this matter as they relate to how a neighboring township is treating a fellow mosque attempting to establish a place of worship.

Center for New Community (CNC) is a national research and advocacy organization dedicated to building a just society that values the inherent dignity of all people. CNC was founded in 1995 and tracks organized bigotry and equips communities to mobilize a powerful force for justice, fairness, and opportunity. The issues at stake in this case directly relate to CNC's work to raise awareness about and challenge the undue influence of discriminatory practices on religious freedom and racial justice.

National Council of Jewish Women (NCJW) is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Resolutions state that NCJW resolves to work for "The enactment, enforcement, and preservation of laws and regulations that protect civil rights and individual liberties for all." Consistent with our Principles and Resolutions, NCJW joins this brief.

Union for Reform Judaism, Central Conference of American Rabbis, and Women of Reform Judaism. The Union for Reform Judaism, whose 900 North American congregations include 1.5 million Reform Jews, the Central Conference of American Rabbis (CCAR), including more than 2000 Reform rabbis, and Women of Reform Judaism, which represents more than 65,000 women in 500 women's groups, are committed to the principle of religious freedom. The First Amendment is the bulwark of religious liberty and interfaith amity. The separation of church and state has lifted up American religious minorities, providing more protections, rights and opportunities than have been known anywhere else throughout history. The experiences of our own synagogues and communal institutions, which have been the targets of discrimination, make us particularly sensitive to the importance of ensuring no faith community ever experiences the same.

National Sikh Campaign is a 501(c)(3) nonprofit organization that is helping to build the image of Sikhism in America and highlight the impact Sikh Americans have made. The aim of this campaign is to create an environment of mutual acceptance in which Sikhs don't have to hide their articles of faith and lay the foundation for more Sikh Americans to become leaders.

The issue at stake is integral to a related focus of the National Sikh Campaign which is to ensure that people of all faiths have environments of acceptance in their communities.