

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

UNITED STATES OF AMERICA, )  
)  
                                  Plaintiff, )  
)  
                                  v. )  
)  
COUNTY OF CULPEPER, VA, )  
)  
                                  Defendant. )  
\_\_\_\_\_)

Case No. 3:16cv00083

**BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION  
(ACLU) AND ACLU OF VIRGINIA IN SUPPORT OF PLAINTIFF**

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<i>Holt v. Hobbs</i> , 135 S. Ct. 853 (2015) .....	11
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<i>United States v. Bensalem Twp.</i> , 16-cv-3938, 2016 WL 6695511 (E.D. Pa. Nov. 14, 2016).....	19
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<i>Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.</i> , 429 U.S. 252 (1977) .....	18
---	----

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42 U.S.C. § 2000cc(a)(1).....	20, 21
42 U.S.C. § 2000cc(b)(2).....	17

**Other Authorities**

146 Cong. Rec. S7774-01 (2000), 2000 WL 1079346 .....	10
Alean Al-Krenawi, <i>The Role of the Mosque and Its Relevance to Social Work</i> , 59 Int'l Social Work 359 (2016) .....	7
Allison B. Champion, <i>Culpeper Mosque Controversy: “These Are Very Suspicious Circumstances,”</i> Culpeper Star Exponent, Aug. 11, 2016, <a href="http://bit.ly/2lplkOp">http://bit.ly/2lplkOp</a> .....	19
Ben Brumfield, <i>All Schools Shut Down in Augusta County, Virginia, over Islam Homework</i> , CNN, Dec. 19, 2015, <a href="http://cnn.it/1Jgg05w">http://cnn.it/1Jgg05w</a> .....	5
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Bill Status Report for S.2869—Religious Land Use and Institutionalized Persons Act of 2000 (106th Congress, 1999-2000), <a href="http://bit.ly/2kaoTuh">http://bit.ly/2kaoTuh</a> .....	11
<i>Confronting Fear: Islamophobia and its Impact in the United States</i> , Council on American-Islamic Relations & U.C. Berkeley Center for Race and Gender 36 (2016), <a href="http://bit.ly/28NRBsZ">http://bit.ly/28NRBsZ</a> .....	8, 9
<i>Controversies Over Mosques and Islamic Centers Across the U.S.</i> , Pew Research Center’s Forum on Religion & Public Life, Sept. 27, 2012, <a href="http://pewrsr.ch/2kMXTze">http://pewrsr.ch/2kMXTze</a> .....	15, 16
Corky Siemaszko, <i>Hate Attacks on Muslims in U.S. Spike After Recent Attacks of Terrorism</i> , NBC News, Dec. 20, 2015, <a href="http://nbcnews.to/1USkcm">http://nbcnews.to/1USkcm</a> .....	5
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Douglas Laycock, <i>State RFRA's and Land Use Regulation</i> , 32 U. Cal. Davis L. Rev. 755 (1999) .....	10
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Eric W. Treene, <i>Understanding the Impact of the Religious Land Use and Institutionalized Persons Act</i> , 23 Pub. Law. 3, 4 (2015) .....	7
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Hate Crime Statistics: Victims, Federal Bureau of Investigations (2015), <a href="http://bit.ly/2hC3aab">http://bit.ly/2hC3aab</a> .....	3
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Jeff Branscome, <i>Tension Escalates at Meeting on Proposed Mosque in Spotsylvania</i> , Free-Lance Star, Nov. 17, 2015, <a href="http://bit.ly/1PNTSVP">http://bit.ly/1PNTSVP</a> .....	8, 9
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<i>Justice Department and City of St. Anthony Village Resolve Lawsuit Over Denial of Permit for Islamic Center</i> , Department of Justice, Office of Public Affairs, Dec. 16, 2014, <a href="http://bit.ly/2k4IUjR">http://bit.ly/2k4IUjR</a> .....	14
<i>Justice Department Resolves Lawsuit Alleging Religious Discrimination [sic] by Henrico County, Va., Against Muslim Group</i> , Department of Justice, Office of Public Affairs, Sept. 6, 2011, <a href="http://bit.ly/2jwkYZX">http://bit.ly/2jwkYZX</a> .....	15
Kathleen O'Brien, <i>Islamic Society Wins 'Landmark Ruling' in Long Battle for New Mosque</i> , NJ.com, Jan. 1, 2017, <a href="http://bit.ly/2jFxyEO">http://bit.ly/2jFxyEO</a> .....	13

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Kim Severson, <i>Judge Allows Muslims to Use Tennessee Mosque</i> , N.Y. Times, July 18, 2012, <a href="http://nyti.ms/2k69Ekm">http://nyti.ms/2k69Ekm</a> .....	14, 15
Lindsey Cook, <i>Data Show Links Between Fear of Terrorist Attacks, Anti-Muslim Bias</i> , U.S. News & World Report, Nov. 20, 2015, <a href="http://bit.ly/2jzkH3q">http://bit.ly/2jzkH3q</a> .....	5
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<i>Nationwide Anti-Mosque Activity</i> , ACLU, <a href="http://bit.ly/2efH6VK">http://bit.ly/2efH6VK</a> .....	8
Omar Sacirbey, <i>Anti-Muslim Speakers Still Popular in Law Enforcement Training</i> , Wash. Post, Mar. 12, 2014, <a href="http://wapo.st/2kvTe6z">http://wapo.st/2kvTe6z</a> .....	2, 20
Rachel Weiner, <i>A Small Virginia County Put Brakes on Plans for a Mosque. Was It Discrimination?</i> , Wash. Post, Sept. 18, 2016, <a href="http://wapo.st/2lphQLQ">http://wapo.st/2lphQLQ</a> .....	2, 20
<i>Remarks by the President at Islamic Society of Baltimore</i> , The White House, Office of the Press Secretary, Feb. 3, 2016, <a href="http://bit.ly/2k1nzu6">http://bit.ly/2k1nzu6</a> .....	5, 6, 17
Rose French, <i>Islamic Center Plan Rejected</i> , Star Tribune, June 13, 2012, 2012 WLNR 12398269.....	14
Sarah M. Nir, <i>Finding Hate Crimes on the Rise, Leaders Condemn Vicious Acts</i> , N.Y. Times, Dec. 5, 2016, <a href="http://nyti.ms/2kmIh4L">http://nyti.ms/2kmIh4L</a> .....	4
Shannon Prather, <i>St. Anthony Mosque Plans Are Back on Track</i> , Star Tribune, Dec. 22, 2014, <a href="http://strib.mn/2kP5zUw">http://strib.mn/2kP5zUw</a> .....	14
<i>Targeting Mosques (January-September 15, 2016)</i> , Council on American-Islamic Relations (Sept. 2016), <a href="http://bit.ly/2jBtjtY">http://bit.ly/2jBtjtY</a> .....	8
<i>'Terrorist' Written on UVa Dorm Where 2 Muslim Students Live</i> , Daily Progress, Oct. 31, 2016, <a href="http://bit.ly/2eVqKyv">http://bit.ly/2eVqKyv</a> .....	4
<i>Update: 1,094 Bias-Related Incidents in the Month Following the Election</i> , Southern Poverty Law Center, Dec. 16, 2016, <a href="http://bit.ly/2gWK4zQ">http://bit.ly/2gWK4zQ</a> .....	4

*Update on the Justice Department’s Enforcement of the Religious Land Use and Institutionalized Persons Act: 2010 – 2016*, Department of Justice, July 2016, <http://bit.ly/2kHi1Gh> ..... 12, 13, 15

W. J. Clinton, Statement on Signing the Religious Land Use and Institutionalized Persons Act of 2000 (Sept. 22, 2000), <http://bit.ly/2karW5t>..... 11

William Walton, Letter to the Editor, *Permit Denial Consistent with the Law*, Culpeper Star Exponent, Apr. 16, 2016, <http://bit.ly/2kTYpOc>..... 20

## **INTERESTS OF *AMICI CURIAE***

The American Civil Liberties Union (“ACLU”) is a nationwide, nonprofit, nonpartisan organization with over one million members dedicated to defending the principles embodied in the U.S. Constitution and our nation’s civil rights laws. The ACLU of Virginia is a state affiliate of the national ACLU and has approximately 20,000 members. The ACLU and the ACLU of Virginia have a strong interest in the proper resolution of this controversy: For almost a century, the ACLU and its affiliates have been at the forefront of efforts to protect religious liberty for people of all faiths, including the fundamental right to worship without unlawful and capricious interference by the government. Drawing on this experience and its work nationwide to combat growing anti-Muslim bigotry and discrimination, the ACLU and the ACLU of Virginia submit this brief to provide vital context surrounding the experience of the Islamic Center of Culpeper.

## **INTRODUCTION**

Across the country, an unprecedented wave of discrimination and bigotry has targeted Muslims and Muslim organizations. Hate crimes have increased substantially and local communities repeatedly have pushed back against Muslim groups seeking to establish places of worship in their counties, cities, and towns. The County of Culpeper (“County”) has not been immune to this unfortunate trend: Even before the controversy arose with the proposed mosque at issue here, for example, the County sheriff publicized and hosted a seminar called “Jihadi Networks in America,” which featured a former pastor who claims that “mosques

lead to the destruction of Western culture.”<sup>1</sup> Viewed through this lens, Culpeper County’s refusal—after receiving anti-Muslim complaints from the public—to grant the Islamic Center of Culpeper (“ICC” or “Islamic Center”) a permit necessary to build and operate a mosque raises serious concerns.

When the Islamic Center revealed its plans to build a mosque on land it had purchased in the County—which was properly zoned for such religious uses as a matter of right—there was an outcry among residents who inundated officials with opposition calls and emails that “disparaged Muslims and made references to terrorism and the 9/11 attacks.” Compl. ¶ 47. The County subsequently denied the “pump and haul” permit that would be required to remove sewage from the site, even though it had approved every other pump and haul permit for commercial or religious use since 1992—25 in total, including nine for churches.

The freedom to assemble for worship is a fundamental right that reflects our constitutional and historical commitment to religious liberty for people of all faiths. The ability to build a house of worship is integral to that right, as Congress recognized in enacting the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”). Robust enforcement of RLUIPA’s protections is more important now than ever, especially with respect to Muslims who are facing growing and unfounded hostility to their faith. This Court should decide, on the merits, whether

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<sup>1</sup> Rachel Weiner, *A Small Virginia County Put Brakes on Plans for a Mosque. Was It Discrimination?*, Wash. Post, Sept. 18, 2016 (noting that the County’s decision “was celebrated on anti-Islam websites”), available at <http://wapo.st/2lphQLQ>; see also Omar Sacirbey, *Anti-Muslim Speakers Still Popular in Law Enforcement Training*, Wash. Post, Mar. 12, 2014, available at <http://wapo.st/2kvTe6z>.

the County's action violates RLUIPA and should accordingly deny the County's motion to dismiss.

## ARGUMENT

### I. **Dramatic Increases In Incidents Targeting Muslims And Mosques Have Imperiled Muslims' Religious Freedom.**

The County's decision to deny the Islamic Center's application for a pump and haul permit must be examined and understood in the broader context of a dramatic increase in incidents targeting Muslims and mosques around the United States. It is a perilous time, in which Muslims all too often experience discrimination, threats, and attacks as they go about their lives and pursue their right to worship.

#### A. **Anti-Muslim sentiment has fueled a rise in hate crimes and discrimination across the country.**

Muslims make up only one percent of the U.S. population.<sup>2</sup> In 2008, they experienced 7.5 percent of all hate crimes in the country<sup>3</sup>; by 2015, that figure had soared to nearly 22 percent.<sup>4</sup> Between 2014 and 2015, alone, "reports of assaults, attacks on mosques, and other hate crimes against Muslims" surged by 67 percent,<sup>5</sup> resulting in the greatest number of hate crimes against Muslims in any year since

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<sup>2</sup> See Besheer Mohamed, *A New Estimate of the U.S. Muslim Population*, Pew Research Center (Jan. 6, 2016), available at <http://pewrsr.ch/1RaJo5d>.

<sup>3</sup> See Hate Crime Statistics: Victims, Federal Bureau of Investigations (2008), available at <http://bit.ly/2litAE3>.

<sup>4</sup> See Hate Crime Statistics: Victims, Federal Bureau of Investigations (2015), available at <http://bit.ly/2hC3aab>.

<sup>5</sup> Eric Lichtblau, *U.S. Hate Crimes Surge 6%, Fueled by Attacks on Muslims*, N.Y. Times, Nov. 14, 2016, available at <http://nyti.ms/2lphSaU>.

2001.<sup>6</sup> There are no signs that the animus toward Muslims will subside anytime soon. Indeed, an alarming number of hate incidents against Muslims have been documented across the country in recent months, indicating that this trend is continuing. *See e.g., Update: 1,094 Bias-Related Incidents in the Month Following the Election*, Southern Poverty Law Center, Dec. 16, 2016, available at <http://bit.ly/2gWK4zQ>; Sarah M. Nir, *Finding Hate Crimes on the Rise, Leaders Condemn Vicious Acts*, N.Y. Times, Dec. 5, 2016, available at <http://nyti.ms/2kmIh4L>.

In December 2016, for example, a man threatened with his pit bull an off-duty New York City police officer who was wearing hijab, after accusing her and her son of belonging to the terrorist group ISIS and telling them to “go back to your country.” Nir, *supra*. In October, the University of Virginia reported that someone had written the word “terrorist” in graffiti and drawn an arrow pointing to the door of two Muslim students at a residential college. *‘Terrorist’ Written on UVa Dorm Where 2 Muslim Students Live*, Daily Progress, Oct. 31, 2016, available at <http://bit.ly/2eVqKyv>. In Minneapolis, in June, “a man shouting obscenities about Islam shot two Muslim men in traditional religious garb.” Eric Lichtblau, *Hate Crimes Against American Muslims Most Since Post-9/11 Era*, N.Y. Times, Sept. 17, 2016, available at <http://nyti.ms/2jQWWbj>. In November 2015, following the terrorist attacks in Paris, a former Marine wrote to a friend on Facebook, “I hate

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<sup>6</sup> *See generally* Hate Crime, FBI: UCR, available at <https://ucr.fbi.gov/hate-crime> (collecting data from 1995 to 2015).

ISLAM!”, and, “[h]ours later, ... fired a high-powered rifle four times into the mosque next door to his Connecticut home.” *Id.* The County of Augusta, Virginia, “closed every single county school” in December 2015, “[a]fter a teacher ... handed out a standard homework assignment on Islam” and “angry backlash flooded in” that raised security concerns. Ben Brumfield, *All Schools Shut Down in Augusta County, Virginia, over Islam Homework*, CNN, Dec. 19, 2015, available at <http://cnn.it/1Jgg05w>. And, in a recent survey in California, over half of Muslim students reported that they had been subjected to religion-based bullying, which is more than double the rate for their non-Muslim peers. See Jill Tucker, *Study Finds Majority of Muslims Have Faced Bullying at School*, S.F. Chronicle, Oct. 30, 2015, available at <http://bit.ly/1RpDkSO>.

Since 2001, incidents targeting Muslims have spiked even further following international and domestic terror attacks.<sup>7</sup> President Barack Obama acknowledged this trend in remarks to members of the Islamic Center of Baltimore last February, recognizing that, “[l]ike all Americans, [Muslim Americans are] worried about the threat of terrorism. But on top of that, as Muslim Americans, you also have another concern—and that is your entire community so often is targeted or blamed for the violent acts of the very few.” *Remarks by the President at Islamic Society of Baltimore*, The White House, Office of the Press Secretary, Feb. 3, 2016, available

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<sup>7</sup> See Corky Siemaszko, *Hate Attacks on Muslims in U.S. Spike After Recent Attacks of Terrorism*, NBC News, Dec. 20, 2015, available at <http://nbcnews.to/1USkeim>; Lindsey Cook, *Data Show Links Between Fear of Terrorist Attacks, Anti-Muslim Bias*, U.S. News & World Report, Nov. 20, 2015, available at <http://bit.ly/2jzkH3q>; Lichtblau, *Hate Crimes Against American Muslims Most Since Post-9/11 Era*.

at <http://bit.ly/2k1nzu6>. President Obama noted “that threats and harassment of Muslim Americans have surged. Here at this mosque, twice last year, threats were made against your children. Around the country, women wearing the hijab ... have been targeted. We’ve seen children bullied. We’ve seen mosques vandalized.” *Id.* As Imam Hilal Shah of the Islamic Center of Fredericksburg, Virginia, recently expressed, “[a]ny time an event takes place such as what happened in France, such as what happened in San Bernardino, such as in Orlando, we as a Muslim community feel scared.” Katie Shepherd, *A Muslim Community in Virginia Feels the Heat of Extremists’ Sins*, N.Y. Times, June 21, 2016, available at <http://nyti.ms/2kg6rRq>.

This troubling pattern of religious bigotry and intolerance aimed at Muslims highlights the importance of protecting religious freedom for people of all faiths. As President George W. Bush remarked at the Islamic Center of Washington, D.C., just days after September 11, 2001:

America counts millions of Muslims amongst our citizens, and Muslims make an incredibly valuable contribution to our country.... And they need to be treated with respect.... I’ve been told that some fear to leave; some don’t want to go shopping for their families; some don’t want to go about their ordinary daily routines because, by wearing cover, they’re afraid they’ll be intimidated. That should not and that will not stand in America.

*“Islam Is Peace” Says President*, The White House, Office of the Press Secretary, Sept. 17, 2001, available at <http://bit.ly/1tqVCN7>. Muslims are part of the pluralistic religious fabric of the United States. Religious freedom principles mean

nothing if they do not serve to protect minority religions and permit them to practice their faith without fear, intimidation, or discrimination.

**B. Mosques, in particular, have been targeted and excluded from communities, impairing Muslims' constitutionally protected right to practice their religion.**

As in many faiths, the house of worship plays a vital role in Muslim communities, providing “an extensive array of services, both religious and cultural.” Alean Al-Krenawi, *The Role of the Mosque and Its Relevance to Social Work*, 59 Int'l Social Work 359, 362 (2016). The mosque provides a space to congregate, pray, perform sacred religious rites, and hold celebrations and other gatherings. *See id.* It is a particularly important refuge when faith communities face discrimination and persecution in other spheres. *Id.* at 363 (noting that “the mosque elucidates common struggles for Muslims in mainstream society in America”). Anti-mosque incidents and bias thus not only pose a direct threat to Muslims' ability to exercise their right to worship; they strike at the heart of their ability to congregate and develop community.

Incidents targeting mosques have increased markedly in recent years, which the former Assistant Attorney General for the Civil Rights Division, Tom Perez, noted “reflects a regrettable increase in anti-Muslim sentiment.” Eric W. Treene, *Understanding the Impact of the Religious Land Use and Institutionalized Persons Act*, 23 Pub. Law. 3, 4 (2015). In 2015 alone, there were at least 78 anti-mosque

incidents in the country—a 500 percent increase from 2009.<sup>8</sup> There were at least 55 more anti-mosque incidents in the first nine months of 2016. *See Targeting Mosques (January-September 15, 2016)*, Council on American-Islamic Relations (Sept. 2016), available at <http://bit.ly/2jBtjtY>. Virginia has not proven immune from this spike in anti-mosque incidents, with five such reports in 2015, up from one in both 2013 and 2014. *Confronting Fear*, *supra* note 8, at 36. Indeed, in Virginia, mosques have been subject to intimidation and scare tactics, including bomb threats, threatening messages, and obscene and offensive graffiti. *See Nationwide Anti-Mosque Activity*, ACLU, available at <http://bit.ly/2efH6VK> (map and state-by-state details of anti-mosque incidents through December 2016); *Man Charged with Leaving Fake Bomb at Virginia Mosque*, CBS News, Nov. 23, 2015, available at <http://cbsn.ws/2jtbRJH>.

Not only have existing and proposed mosque sites across the country been targeted for vandalism and other criminal acts, but there has been a wave of efforts to block or deny necessary zoning permits for the construction and expansion of new mosques. *See, e.g., Nationwide Anti-Mosque Activity*, *supra*. For example, in Virginia, in November 2015, “[o]pponents of a proposed mosque circulated a flyer calling for ‘No Jihad in Fredericksburg’ and warning that there is ‘no way of knowing how many ISIS agents will be hiding’ among refugees.” *Id.* At a public presentation about building the mosque, the proponents were shouted down with

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<sup>8</sup> *See Confronting Fear: Islamophobia and its Impact in the United States*, Council on American-Islamic Relations & U.C. Berkeley Center for Race and Gender 36 (2016), available at <http://bit.ly/28NRBsZ>.

bigoted rants proclaiming that all Muslims are terrorists. Jeff Branscome, *Tension Escalates at Meeting on Proposed Mosque in Spotsylvania*, Free-Lance Star, Nov. 17, 2015, available at <http://bit.ly/1PNTSVP>. One attendee professed, “I will do everything in my power to make sure this does not happen because you are terrorists.... Every one of you are terrorists.” *Id.*

Similarly, in September 2013, in Virginia Beach, then-city councilman Bill DeSteph alleged during a council meeting that “a proposed mosque posed a threat to national security and [that] he had information linking the Muslim Brotherhood to the mosque,” though he did not provide a basis for that belief. *Confronting Fear*, *supra* note 8, at 37 (internal quotation marks omitted). Meeting attendees threatened to remove any councilmember who voted in support of the proposal, with one attendee claiming “[i]t is well known that mosques are the recruiting and training ground for radical Islamists and terrorists.” *Id.* The hostility, both overt and latent, to the presence of mosques is a disturbing trend that is wholly inconsistent with federal law and should not be countenanced by this Court.

## **II. RLUIPA Is Vital To Protecting Muslims’ Right To Worship.**

### **A. In enacting RLUIPA, Congress sought to protect the right of religious denominations—and in particular religious minorities—to construct and operate houses of worship.**

Congress passed RLUIPA in 2000, in response to widespread evidence of discriminatory practices by local authorities against religious organizations seeking to establish places of worship in their communities. Lawmakers were concerned that these intolerant actions—often occurring in the application of discretionary local land use regulations—prevented religious groups from fully exercising their

constitutional right to assemble and worship. RLUIPA was enacted to give heightened protection to these fundamental rights by prohibiting governments from discriminating against or placing a substantial burden on religious organizations when imposing or implementing local land use regulations. *See* 42 U.S.C. § 2000cc.

The enactment of RLUIPA was the culmination of a series of “long-running congressional efforts to accord religious exercise heightened protection from government-imposed burdens.” *Cutter v. Wilkinson*, 544 U.S. 709, 714 (2005). When the Senate took up consideration of the measure, its lead cosponsors, Senators Hatch and Kennedy, issued a joint statement underscoring that the “right to assemble for worship is at the very core of the free exercise of religion.” 146 Cong. Rec. S7774-01 (2000), 2000 WL 1079346. They affirmed that this fundamental right is impaired if religious groups are denied the right to build “a physical space adequate to their needs and consistent with their theological requirements.” *Id.*

The Senators summarized the “massive evidence” of violations of this core right, noting that “[c]hurches in general, and *new, small, or unfamiliar churches in particular*, are frequently discriminated against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation.” *Id.* (emphasis added). As one witness who testified before the Senate has explained, “[l]and use regulation has become the most widespread obstacle to the free exercise of religion.” Douglas Laycock, *State RFRA's and Land Use Regulation*, 32 U. Cal. Davis L. Rev. 755, 783 (1999) (incorporated by reference in 146 Cong. Rec. S7775).

Recognizing the overt discrimination that many religious groups had experienced when trying to build places of worship, both the House and the Senate passed RLUIPA by unanimous consent. *See* Bill Status Report for S.2869, Religious Land Use and Institutionalized Persons Act of 2000 (106th Congress, 1999-2000), *available at* <http://bit.ly/2kaoTuh>. The Act was subsequently signed into law by President Clinton on September 22, 2000. *See* W. J. Clinton, Statement on Signing the Religious Land Use and Institutionalized Persons Act of 2000 (Sept. 22, 2000), *available at* <http://bit.ly/2karW5t> (recognizing “[r]eligious liberty” as “a constitutional value of the highest order”).

**B. RLUIPA has played an important role in protecting minority-faith houses of worship, especially mosques and Islamic centers.**

As anti-Muslim sentiment has increased across the country, RLUIPA has played an increasingly important role in safeguarding Muslim communities’ basic right to worship. The number of RLUIPA investigations initiated by the Department of Justice has risen with the number of anti-mosque incidents, and litigation has proven to be a critical tool in anti-mosque cases.

Courts applying RLUIPA have consistently recognized its “expansive protection for religious liberty.” *Holt v. Hobbs*, 135 S. Ct. 853, 860 (2015).

RLUIPA’s protections are particularly important in safeguarding the rights of minority religious groups, because they push back at “the power and tendency of a majority to marginalize and discriminate against an unfamiliar or unpopular minority.” *Reaching Hearts Int’l, Inc. v. Prince George’s Cty.*, 584 F. Supp. 2d 766, 771 (D. Md. 2008), *aff’d*, 368 Fed. Appx. 370 (4th Cir. 2010). Minority-faith groups

are particularly vulnerable “to subtle forms of discrimination when, as in the case of the grant or denial of zoning variances, a state delegates essentially standardless discretion to nonprofessionals operating without procedural safeguards.” *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 900 (7th Cir. 2005). This is especially so when, as the Washington Post recently reported, surveys show that “one-third of all Americans think that you have to be a Christian to truly be an American.” Julie Zauzmer, *You Have to Be Christian to Truly Be American? Many People in the U.S. Say So.*, Wash. Post, Feb. 1, 2017, available at <http://wapo.st/2l0ioMc>. That biased view of non-Christians as being lesser Americans is rejected by RLUIPA, which grants all religions and sects the federal right to build their houses of worship unless those plans would frustrate a nondiscriminatory, compelling objective of the local government pursued through the least restrictive means.

Although minority groups generally “have faced a disproportionate level of discrimination in zoning matters,” the number of incidents implicating RLUIPA with respect to Muslim communities in recent years is especially concerning.<sup>9</sup> RLUIPA investigations involving mosques and Islamic schools have risen dramatically—now making up 38 percent of all Justice Department investigations, up from 15 percent in the period from 2000 to 2010. DOJ RLUIPA Report, *supra* note 9, at 4.

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<sup>9</sup> *Update on the Justice Department’s Enforcement of the Religious Land Use and Institutionalized Persons Act: 2010 – 2016*, Department of Justice, July 2016 (hereinafter DOJ RLUIPA Report), at 4, available at <http://bit.ly/2kHi1Gh>.

Litigation resulting from RLUIPA investigations has played a critical role in protecting the rights of Muslim communities, given the unwillingness of many localities to afford Muslims equal treatment absent a court order or the imminent threat of one. Whereas “84% of non-Muslim investigations opened by the Department [of Justice] resulted in a positive resolution without the United States or private parties filing suit, in mosque and Islamic school cases, only 20% have resulted in a positive resolution without the filing of an RLUIPA suit.” *Id.*

Several recent cases illustrate how RLUIPA has worked to vindicate the rights of Muslims, notwithstanding obstruction by county supervisors and bureaucrats and intense pressure from their constituents to oppose the presence of Muslim groups and mosques. In December 2015, a New Jersey township denied a Muslim community’s application to build a mosque, allegedly because of the excessive “parking needs of the applicant.” Kathleen O’Brien, *Islamic Society Wins ‘Landmark Ruling’ in Long Battle for New Mosque*, NJ.com, Jan. 1, 2017, available at <http://bit.ly/2jFxyEO> (quoting township attorney Howard Mankoff). A federal district court ruled on December 31, 2016, that the township’s proffered reason was pretext and its conduct evidence of “intent to discriminate on the basis of religion,” and entered partial judgment on the pleadings in the plaintiff’s favor. *Islamic Soc’y of Basking Ridge v. Twp. of Bernards*, No. 16-1369 (MAS) (LHG), 2016 WL 7496661, at \*25 (D.N.J. Dec. 31, 2016).

In another recent case, the City of St. Anthony Village in Minnesota denied a local Islamic center’s request to use space in the basement of an office building as a

place of worship, after residents opposed the proposal. Rose French, *Islamic Center Plan Rejected*, Star Tribune, June 13, 2012, 2012 WLNR 12398269. One resident commented at the hearing that “Islam is evil. There’s no other religion in the world that endorses violence.” *Id.* The Department of Justice filed a lawsuit in August 2014, which “alleged that denial of the permit imposed a substantial burden on [the center’s] exercise of religious worship.” *See Justice Department and City of St. Anthony Village Resolve Lawsuit Over Denial of Permit for Islamic Center*, Department of Justice, Office of Public Affairs, Dec. 16, 2014, available at <http://bit.ly/2k4lUjR>. The Department and the City of St. Anthony Village reached a settlement shortly thereafter that permitted the center to use the space as a place of worship and stipulated that the city will not treat “any ... religious groups in a discriminatory manner by application of its zoning laws.” *Id.*; *see also* Shannon Prather, *St. Anthony Mosque Plans Are Back on Track*, Star Tribune, Dec. 22, 2014, available at <http://strib.mn/2kP5zUw>.

In 2010, residents in Murfreesboro, Tennessee, protested a local Islamic center’s application for a certificate of occupancy to move into a mosque that the community had built. *See* Kim Severson, *Judge Allows Muslims to Use Tennessee Mosque*, N.Y. Times, July 18, 2012, available at <http://nyti.ms/2k69Ekm>. “At a heated public hearing ..., residents testified that Islam was not a religion and that the center was part of a plot to replace the Constitution with Shariah law, a legal code based on Islam.” *Id.* Moreover, “[v]andals ... spray-painted construction signs with the words ‘not welcome’ and ... set fire to construction equipment.” *Id.* Over

these protests, the county initially granted the certificate, but the opposing residents then obtained a state court order blocking its issuance. *Id.* The Muslim community was able to move into the mosque only after the Department of Justice filed suit under RLUIPA and obtained a temporary restraining order. *See* DOJ RLUIPA Report, *supra* note 9, at 8; *United States v. Rutherford County*, No. 3:12-0737, 2012 WL 2930076 (M.D. Tenn. July 18, 2012).

In Virginia, too, RLUIPA lawsuits have been instrumental in combatting anti-mosque discrimination. In 2008, the board of supervisors in Henrico County denied the Islamic Center of Henrico's application to rezone a plot of land and build a new mosque and community center. *See Controversies Over Mosques and Islamic Centers Across the U.S.*, Pew Research Center's Forum on Religion & Public Life, at 20, Sept. 27, 2012, *available at* <http://pewrsr.ch/2kMXTze>. Opponents of the mosque raised concerns about noise and traffic, even though such concerns had never been raised about Christian churches, and the county denied the application. *Id.*; *see also Justice Department Resolves Lawsuit Alleging Religious Discrimination [sic] by Henrico County, Va., Against Muslim Group*, Department of Justice, Office of Public Affairs, Sept. 6, 2011, <http://bit.ly/2jwkYZX> (alleging that Henrico County denied application "to appease members of the public who, because of religious bias, opposed the construction of a mosque"). After the center and the Department of Justice sued the county alleging religious discrimination, the parties settled out of court. *See Controversies Over Mosques and Islamic Centers Across the U.S.*, *supra*. The settlement "required the county to treat all religious groups, including the

Muslims seeking to build the mosque, equally.” *Id.* Shortly thereafter, the county voted unanimously to approve the center’s application. *Id.*

As these cases illustrate, enforcement of RLUIPA is serving a crucial role in carrying out the protections envisioned by Congress—safeguarding a religious minority’s right to pray at a house of worship, notwithstanding hostility (both overt and latent) in the application of local regulations. This Court should construe RLUIPA in that light, to ensure that the statute continues to serve these vital ends.

### **III. Plaintiff Properly Alleges That The County Violated RLUIPA.**

The County’s denial of the Islamic Center’s application for a pump and haul permit represents a quintessential case of discrimination in violation of RLUIPA. Like other anti-mosque actions in Virginia and around the country, the County exploited its discretionary authority and used pretextual justifications to impede the ability of ICC members to exercise their basic right to worship. Plaintiff’s allegations are more than sufficient to establish a RLUIPA claim, and this Court should deny the County’s motion to dismiss accordingly.<sup>10</sup>

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<sup>10</sup> *Amici* agree with plaintiff that the court has subject matter jurisdiction over this case. The County’s denial of the pump and haul permit is subject to review under RLUIPA, especially where the property at issue is located in a zoning district that permits places of worship as a matter of right, but the denial of the state pump and haul permit prevents ICC from using the site for that purpose. *See* United States Response Br. at 8-12. Moreover, the claim is ripe because the complaint alleges that ICC provided all the requisite information to the board to make a determination on its application, and there is no indication of what additional information it could provide that would alter the result. Therefore, the County’s decision is “final” for RLUIPA purposes. *See id.* at 12-15. Indeed, the County’s superficial demand for additional information only supports a finding of a RLUIPA violation, given that it had not required such information from other similarly situated applicants.

Plaintiff's key allegations—all of which must be credited when evaluating a motion to dismiss—are as follows: The County has considered 26 applications for pump and haul permits for commercial or religious use since 1992. Compl. ¶ 21. All of those applications—nine of which were submitted by churches—were granted, except for ICC's application. *Id.* ¶¶ 21, 52. This denial was issued despite the fact that the County administrator had reviewed ICC's application and found it to contain the requisite showing that there was no viable alternative to a pump and haul permit if the mosque were to be built. *See id.* ¶ 50. Nevertheless, four board members voted to deny the application, stating that ICC had not shown the requisite "hardship." *Id.* ¶¶ 53-54. This denial came only after supervisors had received numerous calls and emails from constituents opposing ICC's application, many of which "disparaged Muslims and made references to terrorism and the 9/11 attacks." *Id.* ¶¶ 47-48. As has happened in so many places around the country, Culpeper residents have "targeted or blamed [the Muslim community] for the violent acts of the very few." *Remarks by the President at Islamic Society of Baltimore, supra.*

**A. Plaintiff adequately alleges that the County discriminated against the Islamic Center on the basis of religion, violating RLUIPA, 42 U.S.C. § 2000cc(b)(2).**

Section 2000cc(b)(2) of RLUIPA provides that "[n]o government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination." 42 U.S.C. § 2000cc(b)(2). A determination of whether a government's actions constitute discrimination under RLUIPA "requires a 'sensitive inquiry into such

circumstantial and direct evidence of intent as may be available.” *Chabad Lubavitch of Litchfield Cty., Inc. v. Litchfield Historic District Comm’n.*, 768 F.3d 183, 199 (2d Cir. 2014) (quoting *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977)). In making this determination, courts should consider a number of factors including:

the series of events leading up to a land use decision, the context in which the decision was made, whether the decision or decisionmaking process departed from established norms, statements made by the decisionmaking body and community members, reports issued by the decisionmaking body, whether a discriminatory impact was foreseeable, and whether less discriminatory avenues were available.

*Id.* (citing *Bethel World Outreach Ministries v. Montgomery Cty. Council*, 706 F.3d 548, 559-60 (4th Cir. 2013); *Church of Scientology of Ga., Inc. v. City of Sandy Springs*, 843 F. Supp. 2d 1328, 1370-76 (N.D. Ga. 2012)); accord *Delk v. Younce*, No. 7:14-CV-00643, 2016 WL 1298389, at \*8 (W.D. Va. Mar. 31, 2016) (noting “complex burden-shifting framework of RLUIPA that requires a developed record”).

Here, the allegations in the complaint readily state a claim that the permit was denied on the basis of discriminatory animus. In addition to the allegations relayed above, plaintiff alleges that when the Islamic Center’s pump and haul permit application was initially set for hearing, the board received an email from a prominent civil leader stating, “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...,” and asking that the board “please pull this item from the March meeting agenda and give citizens a detailed briefing pronto.” Compl. ¶ 38. Then, at the meeting the County attorney insisted—for the first time ever—that she

needed to review the application prior to the board's consideration, *see id.* ¶¶ 40-41, prompting the board to postpone its decision, *id.* ¶ 40.

The County then asked ICC to complete a further application. Compl. ¶ 44. The County administrator and board chairwoman assured ICC's director at that time that pump and haul applications were "routine matters" and that his application would be approved. *Id.* ¶ 44. What transpired, however, was anything but routine. Before the second meeting on ICC's application, board members received numerous emails and phone calls "that disparaged Muslims and made references to terrorism and the 9/11 attacks." *Id.* ¶ 47. The board chairwoman and County administrator spoke openly to each other about how ICC's application was subject to greater scrutiny than all previous requests. *Id.* ¶ 48. And at that meeting, the vote to deny the application "received cheers from the audience." *Id.* ¶ 51. These allegations, taken as true and in their entirety, are sufficient to state a case of discrimination under RLUIPA and withstand a motion to dismiss. *Cf. United States v. Bensalem Twp.*, 16-cv-3938, 2016 WL 6695511, at \*5 (E.D. Pa. Nov. 14, 2016) (denying motion to dismiss claim under RLUIPA's nondiscrimination provision where plaintiff alleged Muslim organization was "subjected to a more burdensome variance application process than other groups").<sup>11</sup>

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<sup>11</sup> *Amici* submit that the facts alleged clearly state a claim under the RLUIPA discrimination prong. Should the Court believe additional factual allegations are required, however, plaintiff would plainly be able to allege them were leave to amend granted. *See, e.g.*, Donnie Johnston, *Culpeper Denies Permit for Islamic Center Mosque Site*, Free-Lance Star, Apr. 5, 2016 (quoting Supervisor Sue Hansohn as stating that "[m]ost of the calls and emails I have had [related to ICC] were about religion, not pump-and-haul"), available at <http://bit.ly/2jWeGz1>; Allison

**B. Plaintiff sufficiently alleges that the County’s denial of ICC’s application for a pump and haul permit poses a substantial burden on ICC’s religious exercise, violating RLUIPA, 42 U.S.C. § 2000cc(a)(1).**

Even though most anti-Muslim RLUIPA cases include allegations of intentional discrimination, such overt discrimination can be hard to prove because “it is easy to mask, and officials of course have strong incentive to mask it.” Douglas Laycock & Luke W. Goodrich, *RLUIPA: Necessary, Modest, and Under-Enforced*, 39 Fordham Urb. L.J. 1021, 1030 (2012). Often, zoning ordinances give broad discretion to local officials, resulting in denials of permits “based on unsubstantiated concerns about traffic, parking, noise, or property values.” *Id.* RLUIPA thus prohibits not only overt religious discrimination, but also land use and zoning actions that “impose[] a substantial burden on the religious exercise of a person” unless the imposition of that burden “is in furtherance of a compelling governmental interest” and “is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000cc(a)(1); *see also Sts.*

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B. Champion, *Culpeper Mosque Controversy: “These Are Very Suspicious Circumstances,”* Culpeper Star Exponent, Aug. 11, 2016 (reporting that in another district, “a resident posted a banner on their house before the April vote stating in big black letters, ‘No Islamic Center!’”), *available at* <http://bit.ly/2lplkOp>; William Walton, Letter to the Editor, *Permit Denial Consistent with the Law*, Culpeper Star Exponent, Apr. 16, 2016 (“In denying the request for a mosque to be built, Culpeper officials are acting consistently with Virginia’s explicit Christian heritage of showing deference to the one true God and creator of all.”), *available at* <http://bit.ly/2kTYpOc>; Rachel Weiner, *supra* note 1 (noting that the County’s decision “was celebrated on anti-Islam websites”). And this was not the first time representatives of the County exhibited anti-Muslim bias; the County sheriff previously publicized and hosted a seminar called “Jihadi Networks in America,” which featured a former pastor who claims that “mosques lead to the destruction of Western culture.” Weiner, *supra* note 1; *see also* Sacirbey, *supra* note 1.

*Constantine & Helen*, 396 F.3d at 900 (“[T]he ‘substantial burden’ provision backstops the [Act’s] explicit prohibition of religious discrimination,” because imposition of a substantial burden unsupported by any adequate explanation raises “the inference ... that hostility to religion ... influenced the decision.”).

“[A] critical function of RLUIPA’s substantial burden restriction is to protect [a person’s] reasonable expectation to use real property for religious purposes.” *Andon, LLC v. City of Newport News*, 813 F.3d 510, 515 (4th Cir. 2016) (citing *Bethel*, 706 F.3d at 556-57). Where a religious organization purchases land and “reasonably expects to build” a place of worship on that land, “governmental action impeding” the organization’s ability to carry out that project may constitute a substantial burden. *Bethel*, 706 F.3d at 557; *see also Calvary Christian Ctr. v. City of Fredericksburg*, 800 F. Supp. 2d 760, 774 (E.D. Va. 2011) (finding land use regulation constitutes substantial burden when it “render[s] religious exercise—including the use of real property for the purpose thereof within the regulated jurisdiction generally—effectively impracticable” (citations omitted)).

The allegations here plainly state a RLUIPA claim under the substantial burden provision as well. Plaintiff alleges that after a five-year search, ICC entered into a purchase contract for land in the County in January 2016, reasonably expecting that it could build a mosque there because religious use in the zoning district is permitted by right. *See* Compl. ¶¶ 14, 28-29.<sup>12</sup> And yet the County denied the pump and haul permit needed for ICC to be able to build a mosque on

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<sup>12</sup> The purchase was finalized on April 14, 2016. Compl. ¶ 30.

the land. There is currently no other land in the County that is available for purchase and suitably located for ICC's worship community that ICC can afford. *See id.* ¶ 56. Thus, the County's denial has effectively prevented ICC from constructing 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." *Id.* ¶ 55.

The allegations in this case resemble *Bethel World Outreach Ministries v. Montgomery County Council*, where the Fourth Circuit denied a county's summary judgment motion because the plaintiff had submitted evidence that would support a finding that the county had placed a substantial burden on its efforts to build a church on its property. *See* 706 F.3d at 559. There, the religious organization purchased land with the intent of building a church because, under the zoning laws in effect at that time, "a church was permitted a use" on the land. *Id.* at 553. The local government then engaged in a series of actions, including restricting the availability of permits to access its water and sewage plan, that "completely prevented Bethel from building any church on its property." *Id.* at 553-54, 558. The court found this evidence indicative of a RLUIPA violation, and allowed the case to proceed accordingly.

Here, like in *Bethel*, the County's discretionary actions "completely prevented" ICC from building a mosque on its property. *Id.* at 558. Without a pump and haul permit, ICC cannot construct a mosque. Compl. ¶ 55. Contrary to the County's contention that ICC could still pursue other options such as

alternative septic systems, the complaint alleges that “[t]he County holds the only permanent pump and haul permit issued by the Virginia Department of Health in Culpeper County,” *id.* ¶ 18, and that ICC has already received instruction from the health department that it “need[s] to apply for a permanent pump and haul permit with the County” if it wants to build, *id.* ¶ 34. The County cannot controvert these allegations by way of a motion to dismiss. Because the complaint alleges that the County imposed a substantial burden on ICC’s efforts to build a mosque without the requisite justification, plaintiff has adequately stated a claim under this RLUIPA.

### CONCLUSION

In the wake of dramatic increases in anti-Muslim and anti-mosque incidents around the country, courts play an integral role in protecting minorities from religious discrimination and safeguarding the fundamental right to worship. For the reasons stated in this brief, *amici curiae* the ACLU and the ACLU of Virginia respectfully request that the Court deny the motion to dismiss.

Dated: February 10, 2017

Respectfully submitted,

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