*In The*

# United States Court of Appeals

*for the*

# Third Circuit

Case No. 13-4267

AL FALAH CENTER, ET AL.,
*PLAINTIFFS-APPELLEES,*

v.

TOWNSHIP OF BRIDGEWATER, TOWNSHIP OF BRIDGEWATER PLANNING BOARD, TOWNSHIP COUNCIL OF BRIDGEWATER, ET AL.,
*DEFENDANTS-APPELLANTS.*

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT*
*FOR THE DISTRICT OF NEW JERSEY*
*CIVIL ACTION NO. 11-CV-2397 (HONORABLE MICHAEL A. SHIPP)*

## BRIEF OF AMICUS CURIAE INTERFAITH COALITION ON MOSQUES IN SUPPORT OF PLAINTIFFS-APPELLEES AND THE AFFIRMANCE OF THE SEPTEMBER 30, 2013 ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

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## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 & 29(c)(1), amicus curiae Interfaith Coalition on Mosques ("ICOM") has no parent corporation. No publicly held corporation owns 10% or more of ICOM.

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## INTEREST OF THE AMICUS CURIAE

ICOM is an unincorporated association of interfaith, national religious leaders[1] united to protect the religious rights of Muslims. ICOM consists of members of many faiths: Catholic, Protestant, Muslim and Jewish. Its primary goal is to stop discrimination against the establishment of mosques in America. *See* ICOM's Statement of Purpose, attached as Exhibit A.

Across the country, ugly rhetoric and public animus has too often replaced civil dialogue at local planning meetings when Muslim communities seek to establish or expand a mosque. Working under the sponsorship of the Anti-Defamation League, ICOM monitors incidents of mosque discrimination, gathers facts and analyzes the information. When necessary, ICOM seeks to intervene in

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[1] ICOM's charter members include Ambassador Akbar Ahmed (the Chair of Islamic Studies at American University), Dr. Saud Anwar (the founder and co-chair of the American Muslim Peace Initiative (AMPI)), Rabbi Elliot Cosgrove (Senior Rabbi of the Park Avenue Synagogue), Abraham H. Foxman (the National Director of the Anti-Defamation League), Rev. Dr. C. Welton Gaddy (President of the Interfaith Alliance); Rabbi Yitz Greenberg (founder of Center for Leadership and Learning (CLAL) and the former chairman of the U.S. Holocaust Memorial Museum), Rev. Dr. Katharine Henderson (Executive Vice President of the Auburn Theological Seminary), Bishop Paul Peter Jesep (American Representative for the Ukrainian Autocephalous Orthodox Church), Dr. Joel C. Hunter (Senior Pastor of Northland, A Church Distributed), Msgr. Guy A. Massie (Vicar for Ecumenical and Inter-Religious Affairs, Monsignor, Diocese of Brooklyn), Dr. Eboo Patel (founder and director of the Interfaith Youth Core and member of the Advisory Council of the White House Office of Faith-Based and Neighborhood Partnerships), and Father Robert Robbins (Director, Commission for Ecumenical and Interreligious Affairs, Archdiocese of New York).

legal proceedings to ensure that courts are properly informed about the legislative history, interpretation and application of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc ("RLUIPA"). RLUIPA prohibits "substantial burdens" on religious exercise and the discriminatory application of land use regulations. ICOM has filed amicus briefs in matters involving RLUIPA across the United States. Courts have previously welcomed and accepted ICOM's amicus filings.

ICOM submits this amicus brief because, in the context of land use regulations, the Third Circuit has not yet defined the term "substantial burden" under RLUIPA. ICOM has an important interest in ensuring that the Court has been fully informed about RLUIPA, including its legislative history, before the Court interprets and defines this critical standard.[2] ICOM also has an overriding interest in ensuring that the Court vigilantly protects the constitutional and statutory rights of Muslims in the United States so they may establish their houses of worship without undue burden, discrimination or oppression from local governments.

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[2] ICOM submits this brief pursuant to the Court's Order granting leave to file. Pursuant to Federal Rule of Appellate Procedure 29(c)(5), ICOM certifies that no party or their counsel authored this brief, either in whole or in part, or contributed money that was intended to fund the preparation or submission of this brief. No person other than the amicus curiae, its members and counsel contributed money that was intended to fund the preparation or submission of this brief.

## SUMMARY OF ARGUMENT[3]

RLUIPA prohibits land use regulations that substantially burden the right to establish or expand a house of worship unless the regulation is the least restrictive means for promoting a compelling government interest. 42 U.S.C. § 2000cc-1(a), 5(7)(A)-(B). The Court should affirm the District Court's September 30, 2013 Order because Defendants-Appellants ("Bridgewater") violated RLUIPA by enacting a broad, sweeping ordinance to preclude Plaintiffs-Appellees ("Al Falah")[4] from establishing a mosque in Bridgewater Township.

The record demonstrates that Al Falah spent ten years and considerable time and money identifying a proper location for a permanent mosque. D. Ct. Op. at 2; Pl. App. Br. at 8.[5] Al Falah ultimately purchased the Redwood Inn, a former banquet hall in Bridgewater Township, New Jersey, as the

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[3] ICOM confines its argument to an explanation of the legislative history of RLUIPA, RLUIPA's substantial burden standard, and why this Court should affirm the District Court's conclusion that Ordinance 11-03 substantially burdens Appellees' right to religious exercise.

[4] Depending upon the circumstances, "Al Falah" may refer to an individual Appellee in its sole capacity or to all Appellees in the aggregate. Likewise, the "Bridgewater" may refer to an individual Appellant in its sole capacity or to all Appellants in the aggregate.

[5] ICOM's recitation of facts is based upon the District Court's September 30, 2013 Opinion and Al Falah's Principal Brief. For purposes of this Brief, the District Court's Opinion is cited as "D. Ct. Op." and Al Falah's Principal Brief as "Pl. App. Br."

location for their mosque. D. Ct. Op. at 2-3; Pl. App. Br. at 8. At the time, the property was in a residential zone where Al Falah could convert it into a mosque so long as it met certain conditions. D. Ct. Op. at 2; Pl. App. Br. at 9. The property met the necessary conditions and Al Falah filed the appropriate application. D. Ct. Op. at 2-3; Pl. App. Br. at 9, 12. In response, Bridgewater hastily enacted Ordinance 11-03, which restricted houses of worship to residential zones serviced by specified public roads. D. Ct. Op. at 2-3, 5-6; Pl. App. Br. at 2, 6-7. The Redwood Inn, however, is not located on any of those roads. D. Ct. Op. at 2, n.3; App. Br. at 6-7. Although Al Falah could file for a zoning variance, the application would be futile because Bridgewater passed Ordinance 11-03 specifically to prevent Al Falah from establishing a mosque at the Redwood Inn. D. Ct. Op. at 43, n10; Pl. App. Br. at 2-4, 40. Ordinance 11-03 therefore imposes a substantial burden on Al Falah because it prevents Al Falah from establishing a mosque on its property. D. Ct. Op. at 40, 42-43; Pl. App. Br. at 3-4, 39.

Because Ordinance 11-03 imposes a substantial burden on Al Falah's right of religious exercise, Bridgewater bears the heavy burden of demonstrating that the ordinance is the least restrictive means of accomplishing a compelling governmental interest. Bridgewater has not and cannot meet this heavy burden. For these reasons, and those set forth in Al Falah's Principal Brief and the District

Court's Opinion, the Court should affirm the District Court's September 30, 2013 Order granting Al Falah injunctive relief.

## ARGUMENT

### I. Congress Enacted RLUIPA to Prevent Religious Discrimination Through the Application of Land Use Regulations

Congress enacted RLUIPA in 2000 in response to the Supreme Court's decisions in *Employment Division, Department of Human Resources of Oregon v. Smith,* 494 U.S. 872 (1990) and *City of Boerne v. Flores,* 521 U.S. 507 (1997). *See Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 261 (3d Cir. 2007). In *Smith*, the Supreme Court held that the strict scrutiny standard of judicial review does not apply to neutral laws of general applicability, even if they incidentally burden the exercise of religious belief. *Smith*, 494 U.S. at 886-67; *see also Combs v. Homer-Center Sch. Dist.*, 540 F.3d 231 (3d Cir. 2008). "The Court [in *Smith*] recognized, however, that the political branches could shield religious exercise through legislative accommodation" and could provide greater protections than those afforded by the First Amendment. *Cutter v. Wilkinson,* 544 U.S. 709, 714 (2005).

In response to *Smith*, Congress enacted the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb ("RFRA"). *Cutter*, 544 U.S. at 714; *see also Lighthouse*, 510 F.3d at 261. RFRA provides greater religious freedom protections by prohibiting any legislation that imposes a "substantial burden" on religious

exercise unless it is "the least restrictive means of furthering a compelling state interest." *Cutter*, 544 U.S. at 714-15.

However, the Supreme Court in *City of Boerne v. Flores*, 521 U.S. 507 (1997), declared RFRA unconstitutional as applied to the States because Congress exceeded its legislative authority under Section 5 of the Fourteenth Amendment. *See also Cutter*, 544 U.S. at 715. The *Boerne* Court further criticized RFRA because its legislative record lacked sufficient evidence of religious discrimination. *City of Boerne*, 521 U.S. at 530-531.

Congress responded to *City of Boerne* by enacting RLUIPA. *See Lighthouse*, 510 F.3d at 261. RLUIPA, "carried over ... the compelling governmental interest/least restrictive means standard," *Cutter*, 544 U.S. at 717, and it invalidates any local or state land use regulation that substantially burdens religious exercise unless the government proves that the regulation is the least restrictive method to further a compelling interest. 42 U.S.C. § 2000cc-(1)(a).

Because of the Supreme Court's criticism of RFRA's insufficient legislative record in *City of Boerne*, Congress also held hearings over a three-year period before enacting RLUIPA. *Cutter*, 544 U.S. 717. In doing so, Congress "compiled massive evidence that th[e] right [of religious communities to assemble was] frequently violated[.]" 146 CONG. REC. S7774 (July 27, 2000). It found that the "evidence [wa]s cumulative and mutually reinforcing; it [wa]s greater than the

sum of its parts. It demonstrate[d] that land use regulation [wa]s a substantial burden on religious liberty." SENATE HRG., Sept. 9, 1999, at 83. The substantial legislative record evidenced that the discriminatory application of zoning and land use regulations was "very widespread." 146 CONG. REC. S7774-75.

RLUIPA was cosponsored by Senators Orrin Hatch (R-Utah) and Edward Kennedy (D-Mass.), who prepared a Joint Statement for inclusion in the Congressional Record. *Id*. at S7774. In their Joint Statement, Senators Hatch and Kennedy summarized the findings of the legislative hearings, which concluded that zoning "discrimination against religious uses is a nation[wide] problem" that impinged upon "the right to assemble for worship [which is] at the very core of the free exercise of religion." *Id*. The Senators explained that:

> The right to assemble for worship is at the very core of the free exercise of religion. *Churches and synagogues cannot function without a physical space adequate to their needs and consistent with their theological requirements. The right to build ... such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes … Churches in general, and new small or unfamiliar churches in particular, are frequently discriminated against ... in the highly individualized and discriminatory process of land use regulation*. Zoning codes frequently exclude churches in places where they permit theaters, meeting halls and other places where large groups of people assemble for secular purposes. *Or the codes permit churches only with individualized permission from the zoning board, and the zoning boards use that authority in discriminatory ways.*

> ...
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> More often, discrimination lurks behind such vague and universally applicable reasons as traffic, aesthetics or "not consistent with the city's land use plan."
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> ...
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> The hearings record contains much evidence that these forms of discrimination are very widespread.

*Id.* at S7774-75 (emphasis added).

The aftermath of 9/11 underscores why Congress mandated strict scrutiny of land use restrictions that impact religious exercise. The misdirected animus towards Islam resulting from those horrific terrorist attacks has rendered Muslims in the United States especially vulnerable to religious prejudice. Muslims are now more than ever likely to suffer "subtle forms of discrimination when, as in the case of the grant or denial of zoning variances, a state delegates essentially standardless discretion" to local politicians and other "non-professionals operating without procedural safeguards." *Saints Constantine & Helen Greek Orthodox Church, Inc.* v. *City of New Berlin,* 396 F.3d 895, 900 (7th Cir. 2005).

## II. Bridgewater Violated Section 1(a) of RLUIPA by Enacting Ordinance 11-03, Which Imposes a Substantial Burden on Al Falah's Right to Religious Exercise

### A. RLUIPA Prohibits Land Use Regulations that Substantially Burden Religious Exercise

RLUIPA's compelling interest standard is the "most demanding test known to constitutional law." *City of Boerne,* 521 U.S. at 534. It prohibits

governments from enacting any land use restriction that "imposes a *substantial burden* on … *religious exercise*[6] … unless the *government demonstrates*[7] that the imposition of the burden ... (A) is in furtherance of a *compelling governmental interest*; and (B) *is the least restrictive means* of furthering that interest." 42 U.S.C. § 2000cc-(1)(a) (emphasis added). RLUIPA must "be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of [RLUIPA] and the Constitution." 42 U.S.C. § 2000cc-(3)(g).

### B. A Land Use Regulation Imposes a Substantial Burden When It Pressures a Plaintiff to Modify, Violate or Forego a Religious Belief or Right, When It Causes Undue Delay, Uncertainty, and Expense, or When It Leaves a Plaintiff with No Financially Feasible Alternative to Fulfill Its Religious Needs

RLUIPA does not define "substantial burden," and the Third Circuit has not defined this term with respect to land use regulations.[8] In the context of

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[6] RLUIPA broadly defines "religious exercise" as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A). *"The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose*." 42 U.S.C. § 2000cc-5(7)(B) (emphasis added).

[7] Once a party demonstrates a substantial burden on the exercise of its religious beliefs, RLUIPA shifts the burden to the government to show that the challenged action is the least restrictive means to further a compelling interest. 42 U.S.C. § 2000cc-(2)(b).

[8] The Third Circuit has rendered one non-precedential decision involving RLUIPA's substantial burden test in the context of land use regulations. *See Lighthouse Institute for Evangelism Inc. v. City of Long Branch*, 100 F. App'x 70

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inmates, however, the Third Circuit has found that a "substantial burden exists where: 1) a follower is forced to choose between following the precepts of his religion and forfeiting benefits otherwise generally available to other inmates versus abandoning one of the precepts of his religion in order to receive a benefit; [or] 2) the government puts substantial pressure on an adherent to substantially modify his behavior and to violate his beliefs." *Washington v. Klem*, 497 F.3d 272, 280 (3d Cir. 2007). The *Washington* standard does not translate to land use regulations, however.[9]

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(3d Cir. 2004). The decision is not published in the Federal Reporter, and the Court did not "undertake in th[at] opinion to clarify the state of the law in this area." *Id*. at 73, 77 n.5; *see also* 3d Cir. I.O.P. 5.7 ("The court by tradition does not cite to its not precedential opinions as authority. Such opinions are not regarded as precedents that bind the court because they do not circulate to the full court before filing."); *Albanian Associated Fund v. Twp. of Wayne*, No. 06-cv-3217, 2007 U.S. Dist. LEXIS 73176, at *26 (D.N.J. Oct. 1, 2007) (referring to *Lighthouse* as a "non-precedential Third Circuit view").

[9] In *Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338 (2d Cir. 2007), the Second Circuit discussed the differences between applying RLUIPA in the land use and institutional contexts:

> [I]n the context of land use, a religious institution is not ordinarily faced with the same dilemma of choosing between religious precepts and government benefits. When a municipality denies a religious institution the right to expand its facilities, it is more difficult to speak of substantial pressure to change religious behavior, because in light of the denial the renovation simply cannot proceed. Accordingly, when there has been a

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Presumably recognizing that the Third Circuit has not yet defined the "substantial burden" standard in the context of land use regulations, the District Court adopted the reasoning of *Washington* and that of *Cottonwood Christian Ctr. v. Cypress Redevelopment Agency*, 218 F. Supp.2d 1203 (C.D. Cal. 2002). Based on these cases, the District Court determined that *Cottonwood's* definition of substantial burden was substantively equivalent to that of *Washington, i.e.*, a government action imposes a substantial burden on religious exercise where it "prevent[s] [an individual] from engaging in conduct or having a religious experience which the faith mandates." *Cottonwood*, 218 F. Supp.2d at 1227.

Other Circuits have directly addressed and defined RLUIPA's substantial burden standard in the context of land use regulations. In *Midrash*

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> denial of a religious institution's building application, courts appropriately speak of government action that directly coerces the religious institution to change its behavior, rather than government action that forces the religious entity to choose between religious precepts and government benefits.

*Id*. at 348-49; *see also Albanian Associated Fund*, 2007 U.S. Dist. LEXIS 73176, at *26 ("The standard adopted by the *Washington* court was in the context of the 'Institutionalized Person' provision of RLUIPA; although the court appears to adopt this standard '[f]or the purposes of RLUIPA,' and thus would apply the standard even to the Land Use provision, the standard enunciated in the opinion specifically mentions inmates, which makes it unclear as to whether this same standard actually does apply to the rest of the RLUIPA sections.")

*Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004), the Eleventh Circuit found that it should "give the term [substantial burden] its ordinary and natural meaning." *Id.* at 1226. The Court concluded that "a 'substantial burden' must place more than an inconvenience on religious exercise; a 'substantial burden' is akin to significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly." *Id*. at 1227. "Thus, a substantial burden can result from pressure that tends to force adherents to forego religious precepts or from pressure that mandates religious conduct." *Id*; s*ee also Smith v. Allen*, 502 F.3d. 1255, 1277 (11th Cir. 2007), *abrogated on other grounds*, *Sossamon v. Texas*, 131 S. Ct. 1651 (2011) ("To constitute a substantial burden under RLUIPA, the governmental action must *significantly hamper* one's religious practice") (emphasis added). Accordingly, under *Midrash*[10] and *Smith*, a land use regulation imposes a "substantial burden" if it has more than an incidental effect or significantly hampers the ability to exercise religion, which includes the

[10] In *Midrash*, two synagogues challenged a zoning ordinance that excluded churches and synagogues from locations that permitted private clubs and lodges. *Midrash*, 366 F.3d at 1218-19. The *Midrash* court found that the relevant zoning ordinance violated the equal terms provision of section (b) of RLUIPA. *Id*. at 1231-35, 1243. Nonetheless, in *dicta*, the court opined that plaintiff's burden ("walking a few extra blocks") was not "'substantial' as the term is used in RLUIPA." *Id*. at 1228.

establishment of a house of worship such as a mosque. 42 U.S.C. § 2000cc-(5)(7)(A)-(B).

In *Saints Constantine & Helen Greek Orthodox Church, Inc.* v. *City of New Berlin*, 396 F.3d 895 (7th Cir. 2005), the City of New Berlin denied the application of a Greek Orthodox congregation to rezone 14 acres so that the congregation could build a new $12 million church. *Id*. at 898. The City contended that the denial of rezoning did not impose a "substantial burden" on the congregation because it could "apply for a conditional use permit, which would allow the building of the church without altering the zoning of the land." *Id*. at 899. The court, however, ruled that this option was unrealistic and found that "the burden … was substantial. *The Church could have searched around for other parcels of land ... or it could have continued filing applications with the City, but in either case there would have been delay, uncertainty and expense*" that established a substantial burden. *Id.* at 901 (emphasis added).

In *Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338 (2d Cir. 2007), the Village of Mamaroneck denied a Jewish day school ("WDS") a permit to undertake a $12 million renovation of buildings that were so deficient that they hampered the school's ability to "provid[e] the education Orthodox Judaism mandates[.]" *Id.* at 345. The Second Circuit found that interference with the right to use or convert real property "for the purpose of religious exercise," 42

U.S.C. § 2000cc-5(7)(B), can be "substantial" even though the land use regulation does not impose an absolute prohibition on religious exercise. *Id.* at 349. Further, a plaintiff suffers a substantial burden "[w]hen [a plaintiff] has no ready alternatives, or where the alternatives require substantial 'delay, uncertainty, and expense[.]'" *Id.*; *see also Saints Constantine and Helen,* 396 F.3d at 901 (7th Cir. 2005) ("That the burden would not be insuperable would not make it insubstantial.").

The Second Circuit also stressed two factors in determining whether the government action imposed a "substantial burden" on the school's rights of religious exercise: "(1) whether there are quick, reliable and financially feasible alternatives … to meet its religious needs; and (2) whether the denial was conditional." *Westchester Day School*, 504 F.3d at 352. The court explained that "[t]hese two considerations matter ... [because] when an institution has a ready alternative – be it an entirely different plan to meet the same [religious] needs or the opportunity to try again in line with a zoning board's recommendations – its religious exercise has not been substantially burdened." *Id.* Applying these standards, the Court found that the Village imposed a substantial burden on WDS's right to religious exercise by denying its application to expand its facilities:

> Here, the school could not have met its needs simply by reallocating space within its existing buildings ... because not enough space remained ... to accommodate the school's expanding needs ... [T]he planned location ...

> was the only site that would accommodate the new building ... [T]here were not only no quick, reliable, or economically feasible alternatives, there were no alternatives at all.

*Id.*

Courts have also consistently found that houses of worship are fundamental to religious exercise. *See Albanian Associated Fund*, 2007 U.S. Dist. LEXIS 73176, at *28-29 ("Churches and synagogues cannot function without physical space adequate to their needs and consistent with their theological requirements. The right to build, buy, or rent such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes.") (*quoting* 146 CONG. REC. S7774-5 (July 27, 2000)); *Cottonwood*, 218 F. Supp.2d at 1226 ("Preventing a church from building a worship site fundamentally inhibits its ability to practice its religion. Churches are central to the religious exercise of most religions. If Cottonwood could not build a church, it could not exist."). The option to rent substitute facilities, however, "does not, *per se*, render any burdens [on religious exercise] insubstantial." *Albanian Associated Fund*, 2007 U.S. Dist. LEXIS 73176, at *29 ("The fact that the plaintiffs continue to utilize its inadequate facility (*i.e.*, no room for religious education; female members of the Mosque are unable to attend prayer sessions because of space limitations; female members cannot see the Imam, which is the proper method for Muslim prayer; female members cannot perform 'abdest' ritual washing before prayers because of lack of

facilities), does not, *per se*, render any burdens placed upon plaintiffs by defendants insubstantial."); *Washington*, 497 F.3d at 282-83 (finding that a government action can substantially burden the right to practice religion despite the existence of a "palatable alternative" to a religious requirement").

Taken together, these cases stand for the following propositions. First, the government imposes a substantial burden upon religious exercise when it exerts "significant" pressure on a plaintiff to "modify," "violate" or "forego" a religious belief or right of religious exercise, which includes the right to construct a house of worship. *See e.g.*, *Washington*, 497 F.3d at 280; *Midrash*, 366 F.3d at 1227; *Westchester Day School*, 504 F.3d at 348-49; 42 U.S.C. § 2000cc-5(7)(B). Second, although a burden must "place[] more than an inconvenience on religious exercise," *Midrash*, 366 F.3d at 1227, it certainly need not be "insuperable." *Westchester Day School*, 504 F.3d at 349; *Saints Constantine and Helen*, 396 F.3d at 901. Third, land use regulations may impose a substantial burden where a plaintiff must " search[] around for other parcels of land … or … continue[] filing [land use] applications," thereby incurring "delay, uncertainty, and expense," *Saints Constantine and Helen Greek Orthodox Church Inc.*, 396 F.3d at 901, or where "there are no quick, reliable and financially feasible alternatives … to meet its religious needs." *Westchester Day School*, 504 F.3d at 352.

### C. Bridgewater Violated Section 1(a) of RLUIPA by Enacting Ordinance 11-03 to Prevent Al Falah from Establishing a Mosque on Its Property

Ordinance 11-03 is a textbook violation of section 1(a) of RLUIPA. Al Falah is a religious community that has been seeking a permanent place of worship for over a decade. D. Ct. Op. at 2; Pl. App. Br. at 8. When it finally found the Redwood Inn, a former banquet hall in Bridgewater, Al Falah members recognized that they could easily convert the property for its religious purposes. D. Ct. Op. at 2; Pl. App. Br. at 8. Under then-current zoning laws,[11] Al Falah could use it as a mosque without the burden of seeking a zoning variance. D. Ct. Op. at 2; Pl. App. Br. at 8.

Al Falah prepared a Preliminary Site Plan Application (the "Application") that complied fully with all relevant conditions and demonstrated that its mosque would have an insignificant impact on existing traffic patterns. D. Ct. Op. at 2-3, 17; Pl. App. Br. at 9-10. The Township of Bridgewater's consultant agreed with Al Falah's traffic analysis. D. Ct. Op. at 3, 17. In fact, four months prior to Al Falah's Application, Bridgewater had prepared a reexamination report that also failed to identify any concerns over traffic generated by houses of worship. D. Ct. Op. at 17.

[11] The existing zoning ordinance permitted houses of worship on all roads in Bridgewater residential zones for 75 years, unconditionally for the first 39 years and conditionally for the last 35. Pl. App. Br. at 1, 17.

On January 6, 2011, Al Falah filed its Application with the Planning Board. D. Ct. Op. at 3; Pl. App. Br. at 9. The Planning Board found that Al Falah's Application met all necessary conditions and that Al Falah did not have to seek a variance. Pl. App. Br. at 12.

After the Planning Board announced a public hearing on the Al Falah Application, there were expressions of anti-Muslim sentiment in the community. D. Ct. Op. at 3-5, 14, 19; Pl. App. Br. at 10-11. Realizing that Al Falah's Application met all then-existing conditional use criteria, and that the Planning Board would therefore have to approve the Application, Bridgewater changed the zoning law so that Al Falah's Application would fail. D. Ct. Op. at 3-6; Pl. App. Br. at 11-24.

Bridgewater officials drafted and enacted an ordinance that prohibited houses of worship on properties, such as the Redwood Inn, which did not have principal access to certain specified roadways. D. Ct. Op. at 2-6, n.3; Pl. App. Br. at 1-2, 6-7, 11-24. Bridgewater approved the new ordinance at an extraordinary and unprecedented pace. D. Ct. Op. at 19; Pl. App. Br. at 17-24.

Al Falah has no option to relocate the mosque within Bridgewater. D. Ct. Op. at 25, 42; Pl. App. Br. at 37-38. Al Falah has spent $1,685,000 in acquisition costs to acquire the Redwood Inn. D. Ct. Op. at 2, 25; Pl. App. Br. at 37. Bridgewater has identified only seven alternative sites in Bridgewater that may

be converted into a mosque under Ordinance 11-03. Pl. App. Br. at 37. Only two of the properties are on the market, and neither has facilities that can be converted into a mosque. D. Ct. Op. at 42; Pl. App. Br. at 37. The cost of these two locations also make them economically infeasible, as one was listed for $2,850,000 and the other for $21,000,000. D. Ct. Op. at 25; Pl. App. Br. at 38. Likewise, the facilities that Al Falah has rented for its religious services are insufficient for its religious needs. D. Ct. Op. at 8, 22, 42; Pl. App. Br. at 35-36. The facilities are too small to accommodate its congregation, or are inappropriate, requiring women to be placed in closets or next to bathrooms during prayers. D. Ct. Op. at 8, 22, 42; Pl. App. Br. at 36.

Al Falah cannot properly practice Islam or expand its congregation without an established mosque. D. Ct. Op. at 22, 40, 42; Pl. App. Br. at 34-37. Muslims gather in a mosque to pray multiple times daily and to educate themselves in their religion. Pl. App. Br. at 34-35. The mosque houses charitable and social activities. Pl. App. Br. at 34. It is used for religious celebrations and funeral services. Pl. App. Br. at 34. It is too difficult for Al Falah's members to commute to the other nearest mosques. D. Ct. Op. at 22; Pl. App. Br. at 35. Al Falah also cannot retain a permanent Imam without a permanent mosque. D. Ct. Op. at 22, 40; Pl. App. Br. at 35.

The record illustrates that Ordinance 11-03 imposes a substantial burden on Al Falah's right to religious exercise. First, by enacting Ordinance 11-03, Bridgewater intentionally "coerced," "pressured" and effectively prevented Al Falah from establishing a mosque at the Redwood Inn. *See e.g.*, *Washington*, 497 F.3d 272 at 280; *Midrash*, 366 F.3d at 1227; *Westchester Day School*, 504 F.3d at 348-49. Ordinance 11-03 was the death knell for Al Falah's Application, and it would be futile for Al Falah to seek a zoning variance, as Bridgewater enacted Ordinance 11-03 specifically to preclude Al Falah from establishing a mosque on its property. D. Ct. Op. at 42, n.10; Pl. App. Br. at 2-4, 40.

Second, Ordinance 11-03 imposes far "more than an inconvenience on [Al Falah's] religious exercise," because it "prevent[s] [Al Falah] from … having … religious experience[s] which the faith mandates[.]" *Midrash*, 366 F.3d at 1227; *Cottonwood*, 218 F. Supp.2d at 1227. Without a mosque, Al Falah members cannot properly congregate for daily and weekly prayers and services, cannot properly celebrate religious holidays, cannot gather to educate themselves in the religion of Islam, and cannot conduct appropriate funeral services. Pl. App. Br. at 34-37. Al Falah cannot grow or raise funds for its religious and secular programs. Pl. App. Br. at 34. Without a mosque, Al Falah cannot retain a permanent Imam. D. Ct. Op. at 22, 40; Pl. App. Br. at 35. Ordinance 11-03 effectively prevents Al Falah from conducting religious services.

Third, and like the plaintiffs in *Saints Constantine and Helen*, Al Falah "must search for other parcels of land ... or continue to file [for a zoning variance], thereby incurring delay, uncertainty and expense[.]" *Saints Constantine and Helen*, 396 F.3d at 901. Al Falah has already incurred $1,685,000 in acquisition costs and, like the plaintiffs in *Westchester Day School*, 504 F.3d at 352, it has no "quick, reliable and financially feasible alternatives … to meet [its] religious needs." Available rental facilities are inadequate and there are no other economically viable locations for a mosque in Bridgewater. *Id*. at 352; *see also Albanian Associated Fund*, 2007 U.S. Dist. LEXIS 73176, at *28-29.

Ordinance 11-03 prevented Al Falah from establishing a mosque on its property and practicing the Muslim faith in a proper facility. This is the definition of a substantial burden on religious exercise.

## III. Conclusion

Ordinance 11-03 substantially burdens Al Falah's right to religious exercise without promoting a compelling government interest in the least restrictive way possible.[12] For these reasons, and those set forth above, ICOM

[12] For the reasons set forth in the District Court's Opinion, and those in Al Falah's Principal Brief, the District Court correctly concluded that Bridgewater failed to prove that Ordinance 11-03 was the least restrictive means of promoting a compelling government interest. ICOM will not address those conclusions further in this Brief.

respectfully requests the Court affirm the District Court's September 30, 2013 Order granting Al Falah injunctive relief.[13]

## REQUEST FOR ORAL ARGUMENT

ICOM respectfully requests that the Court grant it permission to participate in oral argument.

Dated: February 27, 2014 By: /s/ Jeremy D. Frey

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[13] ICOM takes no position on whether the District Court properly dismissed Count XI of Al Falah's Complaint.

## CERTIFICATION OF BAR MEMBERSHIP

I hereby certify that I, Jeremy D. Frey, am admitted as an attorney and counselor of the United States Court of Appeals for the Third Circuit.

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**CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(a) AND LOCAL RULE 31.1**

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify the following:

This brief complies with the type-volume limitation of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because this brief contains 5,271 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii) of the Federal Rules of Appellate Procedure.

This brief complies with the typeface requirements of Rule 32(a)(5) of the Federal Rules of Appellate Procedure and the type style requirements of Rule 32(a)(6) of the Federal Rules of Appellate Procedure because this brief has been prepared in a proportionally spaced typeface using the 2008 version of Microsoft Word in 14 point Times New Roman font.

This brief complies with the electronic filing requirements of Local Rule 31.1(c) because the text of this electronic brief is identical to the text of the paper copies, and the Vipre Virus Protection, version 3.1 has been run on the file containing the electronic version of this brief and no viruses have been detected.

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# EXHIBIT A

**Interfaith Coalition on Mosques**

*Interfaith Coalition on Mosques (ICOM)*
*Statement of Purpose*

In recent weeks we have seen reports about a disturbing rise in discrimination against Muslims trying to legally build or expand their houses of worship, or mosques, across the United States.

From Florida to California, ugly rhetoric has replaced civil dialogue at local government planning meetings and community debates over proposals by Muslims citizens to exercise the rights guaranteed to everyone in America.

In Tennessee, plans for three new Islamic centers provoked hateful reactions from opponents, including vandalism against a mosque with the spray-painted message, "Muslims go home."

In Sheboygan, Wisconsin, some Christian ministers loudly opposed a Muslim group seeking local government approvals to open a mosque in a former health food store owned by a Muslim doctor.

In California, members of a local Tea Party group took dogs and picket signs to Friday prayers at a mosque in Temecula looking to build a new worship center at a nearby vacant lot.

Mosque opponents are misrepresenting the Koran and taking passages out of context and seeking to use the statements of a few extremists to claim that all American Muslims secretly want to impose Islamic Shariah law in the United States.

The level of hostility, fear mongering and hate speech is unacceptable and un-American.

We believe the best way to uphold America's democratic values is to ensure that Muslims can exercise the same religious freedom enjoyed by everyone in America. They deserve nothing less than to have a place of worship like everyone else.

We also believe that public figures, particularly religious figures, have a special responsibility to demonstrate sensitivity and respect.

Therefore, we have come together, individuals and organizations from different faith traditions, to announce that we will stand together to fight for the rights of our Muslim neighbors when they are being violated.

Working as the national Interfaith Coalition On Mosques (ICOM) under the sponsorship of the Anti-Defamation League, our purpose is to assist Muslim communities who are being denied permission to build mosques in their neighborhoods.

While we are extremely concerned about discrimination against mosque building in America, we will also recognize that local governments have legitimate concerns about zoning and other planning issues within the framework of current federal, state and local laws.

Therefore, ICOM will carefully monitor incidents of mosque discrimination around the country. We will gather facts and analyze the information. We will raise our voices when appropriate to help Muslim communities who are encountering prejudice. We will not take political sides. We will not make decisions based on ideology.

Charter Members of ICOM:

- Ambassador Akbar Ahmed, Chair of Islamic Studies, American University
- Dr. Saud Anwar, founder and co-chair of American Muslim Peace Initiative (AMPI)
- Rabbi Elliot Cosgrove, Senior Rabbi, Park Avenue Synagogue
- Abraham H. Foxman, National Director, Anti-Defamation League
- Rev. Dr. C. Welton Gaddy, President of the Interfaith Alliance
- Rabbi Yitz Greenberg, founder of Center for Leadership and Learning (CLAL), former chairman, the U.S. Holocaust Memorial Museum
- Rev. Dr. Katharine Henderson, Executive Vice President, Auburn Theological Seminary
- Dr. Joel C. Hunter, senior pastor of Northland, A Church Distributed
- Bishop Paul Peter Jesep, American Representative for the Ukrainian Autocephalous Orthodox Church
- Msgr. Guy A. Massie, Vicar for Ecumenical and Inter-Religious Affairs, Monsignor, Diocese of Brooklyn
- Dr. Eboo Patel, founder and director, Interfaith Youth Core; member of Advisory Council of the White House Office of Faith-Based and Neighborhood Partnerships
- Father Robert Robbins, Director, Commission for Ecumenical and Interreligious Affairs, Archdiocese of New York

## CERTIFICATE OF FILING AND SERVICE

I, Robyn Cocho, hereby certify pursuant to Fed. R. App. P. 25(d) that, on February 27, 2014 the foregoing Brief of Amicus Curiae Interfaith Coalition on Mosques in Support of Plaintiffs-Appellees and the Affirmance of the September 30, 2013 Order of the United States District Court for the District of New Jersey was filed through the CM/ECF system and served electronically on the individuals listed below:

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In addition, one courtesy copy will be sent to all parties via express mail.

/s/ Robyn Cocho
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