

IN THE CHANCERY COURT FOR RUTHERFORD COUNTY
AT MURFREESBORO

James Estes, et al.,

PLAINTIFFS

v.

Rutherford County Regional Planning Commission, and the
Rutherford County Board of Commissioners, et al.,

DEFENDANTS.

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)
)
) Civil Action No.
) 10CV-1443
)
) CHANCELLOR ROBERT
) E. CORLEW,
)
)
)

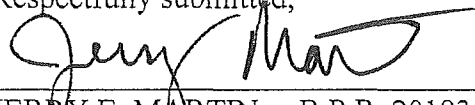
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JOHN A.W. BRAITHER
CLERK AND MASTER

MOTION FOR LEAVE FOR PERMISSION FOR THE UNITED STATES
OF AMERICA TO SUBMIT A BRIEF AS AMICUS CURIAE

The United States of America, through the Office of the United States Attorney's Office for the Middle District of Tennessee, respectfully requests permission to file a Brief as Amicus Curiae as to the United States' position on (1) whether Islam is a religion and (2) whether a mosque is entitled to treatment as a place of religious assembly for legal purposes. That brief has been filed contemporaneously with this Motion.

The United States wishes to submit this brief in order to assist the Court in resolving the controversy between the parties. As set forth fully in the brief, under the United States Constitution and other federal laws, Islam is plainly a religion, and a mosque is plainly a place of religious assembly.

Respectfully submitted,

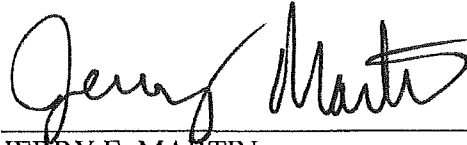


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NO ORAL ARGUMENT IS REQUESTED

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was furnished to the following by facsimile and U.S. Mail: J. Thomas Smith, 2020 Fieldstone Parkway, Suite 900-264, Franklin, TN 37069, facsimile number 800-506-8304; Joe M. Brandon, Jr., 313 Enon Springs Road, E., Smyrna, TN 37167, facsimile number 615-459-3216; and James C. Cope and Josh A. McCreary, 16 Public Square North, Murfreesboro, TN 37130, facsimile number 615-849-2135, this the 18th day of October, 2010.



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IN THE CHANCERY COURT FOR RUTHERFORD
COUNTY TENNESSEE AT MURFREESBORO

FILED
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JOHN A.W. BRATCHER
CLERK AND MASTER

James Estes, et al.,)
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Plaintiffs,)
)
v.)
)
Rutherford County Regional Planning)
Commission, and the Rutherford County)
Board of Commissioners, et al.)
)
Defendants.)

No. 10cv-1443

BRIEF FOR THE UNITED STATES OF AMERICA AS *AMICUS CURIAE*

The United States respectfully submits this brief as *amicus curiae*.

Plaintiffs have put into controversy whether Islam is a religion and whether a mosque is entitled to treatment as a place of religious assembly for legal purposes. The United States submits this brief to assist this court in resolving these issues. As set forth more fully below, under the United States Constitution and other federal laws, it is uncontroverted that Islam is a religion, and a mosque is a place of religious assembly.

I. INTRODUCTION

On September 16, 2010, a group of landowners in Rutherford County¹ (“the Plaintiffs”) filed suit against, among others, the Rutherford County Regional Planning Commission and the Rutherford County Board of Commissioners (“the County”), alleging that the County violated

1. The individual plaintiffs are James Estes, Kevin Fisher, Lisa Moore, and Henry Golczynski.

various provisions of Tennessee law, including the Tennessee Open Meetings Act, Tenn. Code. §§ 8-44-101, *et seq.*, when it approved a site plan authorizing the Islamic Center of Murfreesboro (“ICM”) to construct a mosque and Islamic center in Rutherford County, Tennessee.

On September 22, 2010, the Plaintiffs filed an amended complaint requesting damages and a temporary restraining order enjoining the construction of the mosque and Islamic center. In addition to alleging violations of Tennessee law, the amended complaint alleged that the County had violated the Plaintiffs’ rights under the Due Process Clause of the United States and Tennessee Constitutions when the County allegedly failed to determine whether the Islamic Center is entitled to protection under the First Amendment. See Amended Complaint 11 (Sept. 22, 2010). Consistent with this allegation, counsel for the Plaintiffs questioned a Rutherford County Commissioner, Robert Peay, about whether the ICM is a religious organization. The Plaintiffs also directly put at issue whether Islam is a religion entitled to First Amendment protection.²

II. INTEREST OF THE UNITED STATES

The United States has an interest in these proceedings because the pleadings and testimony implicate federal civil rights statutes by putting at issue whether Islam is a religion and whether operating a mosque is a religious use of property.

The United States Department of Justice (“DOJ”) is charged with enforcing the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. §§ 2000cc-2(f) (authorizing the Attorney General “to institute or intervene in any proceeding” to enforce compliance with RLUIPA). RLUIPA codified First Amendment protections for places of

2. See Trial Tr. Vol. 3, 77, Sept. 29, 2010 (“Q. Can you show me where the United States of America’s government has recognized Islam as a religion? . . . Q. I’m telling you it needs to be decided.”).

worship and other religious uses of real property with regard to local land use laws, and provided a mechanism for enforcement. 146 Cong. Rec. 16699 (2000) (Joint Statement of Senators Hatch and Kennedy) (noting that RLUIPA's land-use provisions are designed to "enforce the Free Exercise and Free Speech Clauses as interpreted by the Supreme Court."). RLUIPA provides, among other things, that a local government may not use land-use regulations to impose a substantial burden on religious exercise, unless that burden is the least restrictive means of furthering a compelling governmental interest. 42 U.S.C. § 2000cc(a). It also provides that a local government may not impose a land use regulation in a way that discriminates against a religious assembly or institution based on religion or religious denomination, or treats a religious assembly or institution on less than equal terms than a nonreligious one. *Id.* at § 2000cc (b)(1), (2). In enacting RLUIPA, Congress intended to provide religious institutions the maximum amount of free-exercise protection permitted by the Constitution. See *id.* at § 2000cc-3(g). See also *Cutter v. Wilkinson*, 544 U.S. 709, 714 (2005) ("RLUIPA is the latest of long-running congressional efforts to accord religious exercise heightened protection from government-imposed burdens, consistent with this Court's precedents.").

The DOJ also has authority to initiate criminal prosecutions under the Church Arson Prevention Act, 18 U.S.C. § 247. That Act makes it a crime to intentionally damage or destroy any religious real property "because of the religious character of that property," or to obstruct or attempt to obstruct "by force or threat of force, any person in the enjoyment of that person's free exercise of religious beliefs." *Id.* at § 247(a)(1), (2). For example, the United States recently obtained the convictions and sentencing of three men under the Church Arson Prevention Act for the 2008 arson of the Islamic Center of Columbia, Tennessee. See Judgment, *United States v. Baker, et al.*, No. 1:08-cr-00002 (M.D. Tenn. May 24, 2010).

A prerequisite to enforcement of both of these statutes is that the activity, real property, or “assembly or institution” be “religious.” In other words, whether an activity is religious or whether a system of beliefs constitutes a religion is a threshold question in determining whether the DOJ’s authority under either RLUIPA or the Church Arson Prevention Act is implicated. Accordingly, whether Islam is judicially determined to be a religion is a question that implicates the Department’s law enforcement responsibilities.³

III. BACKGROUND

Islam has long been recognized as one of the major world religions. Reputable scholars, the courts, and various branches of the United States’ Government recognize Islam as a major world religion and agree on its general contours.⁴ The United States, therefore, respectfully requests that the Court take judicial notice of the following facts and authorities.

The opening line of the introduction to *The Oxford History of Islam* describes Islam as one of “the major world religions, with 1.2 billion followers, [and] the second largest and fastest-growing religion in the world.” John L. Esposito, *Introduction to The Oxford History of Islam* IX (John J. Esposito, ed. 1999).⁵ *The Oxford English Dictionary* defines it as “[t]he religious

3. In addition to its general law enforcement interests in Tennessee and elsewhere under these statutes, the United States has a particular interest in the facts presented in this particular case: The Department’s Federal Bureau of Investigation and Bureau of Alcohol, Tobacco and Firearms are currently investigating allegations of arson at the construction site of the proposed ICM mosque in Rutherford County.

4. This Section of the United States’ brief is not, and is not intended to be, an exhaustive review of authorities recognizing Islam as a religion, or a comprehensive description of the contours of the Islamic faith. Rather, it is intended only to set forth the most basic generally accepted facts and authorities of which this Court may take judicial notice.

5. See also Bernard Lewis, *The Middle East* 51 (1995) (describing Islam as one of “the great religions of humanity”); Albert Hourani, *A History of the Arab Peoples* 59-79 (2002) (discussing the historical development of Islamic religious science and practice); Fred M. Donner, *The Oxford History of*

system of Muhammad.” *Oxford English Dictionary* (2d ed. 1989). This understanding is not new. Over two-hundred years ago, Thomas Jefferson, in commenting on the Virginia Statute of Religious Freedom—a bill he not only authored, but also counted as one of his greatest achievements—wrote that the law was understood “to comprehend, within the mantle of its protection, the Jew and the Gentile, the Christian and Mahometan,⁶ the Hindoo, and Infidel of every denomination.” *The Writings of Thomas Jefferson* vol. 1 at 45 (H.A. Washington ed., Taylor & Maury 1853). Jefferson thus understood Islam to be a significant religion of the world, alongside Christianity, Judaism, and Hinduism, to which our principles of religious freedom would naturally extend.

Consistent among all three branches of government, the United States has recognized Islam as a major world religion.

The Supreme Court has been clear on this point. The Court, for example, observed in *County of Allegheny v. ACLU*, 492 U.S. 573, 590 (1989), that “today [the religion clauses of the First Amendment] are recognized as guaranteeing religious liberty and equality to the ‘infidel, the atheist, or the adherent of a non-Christian faith such as Islam or Judaism.’” In Justice Scalia’s dissenting opinion in *McCreary County v. ACLU*, joined by Justices Rehnquist, Thomas, and Kennedy, he noted that Islam, along with Christianity and Judaism, is one of “[t]he three most popular religions in the United States,” and that these three monotheistic faiths account for “97.7% of all believers.” 545 U.S. 844, 894 (2005) (internal citation omitted). He added, “All of them, moreover (Islam included), believe that the Ten Commandments were given by God to

Islam: Muhammad and the Caliphate 1 (John. J. Esposito ed. 1999) (describing Islam as a “religious tradition and civilization of worldwide importance”).

6. “Mahometan” is a term occasionally used in the West in the past to describe followers of Mohammed, but has fallen into disuse.

Moses, and are divine prescriptions for a virtuous life. See 13 Encyclopedia of Religion 9074 (2d ed. 2005); The Qur'an 104 (M. Haleem transl. 2004).” *Id.* at 894. See also *Rosenberger v. Rectors and Visitors of the University of Virginia*, 515 U.S. 819, 850 (1995) (describing student journal that “promote[s] a better understanding of Islam to the University Community” as forwarding a religious viewpoint legally equivalent to an evangelical Christian student publication).

Similar statements about Islam and the role of mosques as places of worship have issued from the executive branch. In a January 2001 proclamation declaring Religious Freedom Day, President Clinton described Christianity, Judaism, and Islam as “faiths [] observed freely and in peace by millions of people across our country.” Proclamation No. 7391, 66 Fed. Reg. 7205 (Jan. 15, 2001). Likewise, in his Religious Freedom Day Proclamation in 2002, President George W. Bush stated: “George Washington forcefully expressed our collective constitutional promise to protect the rights of people of all faiths, in a historic letter he wrote to the Jewish community at Touro Synagogue in Newport, Rhode Island: ‘the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens’ Today, our cities are home to synagogues, churches, temples, mosques, and other houses of worship that peacefully welcome Americans of every belief.” 2002 Public Papers of the Presidents (January 22, 2002). See also National Day of Prayer Proclamation, April 27, 2001, *reprinted in* 2001 Public Papers of the Presidents (May 7, 2001) (“President Lincoln, who proclaimed a day of ‘humiliation, fasting, and prayer’ in 1863, once stated: ‘I have been driven many times to my knees by the overwhelming conviction that I had nowhere else to go. My own wisdom, and that of all about me, seemed insufficient for the day.’ Today, millions of Americans continue to hold

dear that conviction President Lincoln so eloquently expressed. Gathering in churches, synagogues, mosques, temples, and homes, we ask for strength, direction, and compassion for our neighbors and ourselves.”).

The United States Congress has also treated Islam as a religion, and identified mosques as centers for religious worship. The Church Arson Prevention Act, 18 U.S.C. § 247, specifically included mosques within the definition of covered “religious real property.” See 18 U.S.C. § 247(f) (“As used in this section, the term ‘religious real property’ means any church, synagogue, mosque, religious cemetery, or other religious real property . . .”). See also, *e.g.*, S. Res. 387, 110th Congr. (2007) (describing Christianity, Judaism, and Islam as the “world’s 3 great monotheistic faiths”).

Not only is there widespread agreement that Islam is a religion, but there is general consensus on its origins and contours. Islam originated in the Arabian Peninsula with the life and teachings of Muhammad ibn Abd Allah, who lived circa 570-632 A.D.⁷ It is a system of belief generally understood as within the Semitic, prophetic religious tradition that begins with the prophet Abraham and includes Judaism and Christianity.⁸ The teachings of Muhammad are believed by Muslims to include messages sent directly from God, conveyed through Muhammad as his messenger, and recorded in the Quran.⁹ The religion is monotheistic, and recognizes a

7. Fred M. Donner, *The Oxford History of Islam: Muhammad and the Caliphate* 1 (John. J. Esposito ed. 1999).

8. John L. Esposito, *Islam: the Straight Path* 3 (1988). See also *The Middle East* at 219.

9. “Orthodox Muslims have always believed that the Qur’an is the Word of God, revealed in the Arabic language through an angel to Muhammad . . .” Albert Hourani, *A History of the Arab Peoples* 20 (2002). See also Fred M. Donner, *The Oxford History of Islam: Muhammad and the Caliphate* 6-7 (John. J. Esposito ed. 1999). It should be noted that the Quran, although it occupies a position of unique importance, is not the only “religious” Islamic text. The *Sunna of the Prophet*, or the example of Muhammad’s life, preserved in *Hadith*, or narratives of Muhammad’s life, became a supplement to the

divine creator or “sustainer” of the physical world worthy of worship and receptive to petition.¹⁰ There are five principal facets of the Islamic religion, comprising what is widely known as the Five Pillars of Islam. Those are: (1) the proclamation of the belief that there is no god but Allah and that Muhammad is his messenger; (2) praying five times each day in the direction of Mecca; (3) paying alms for the support of the poor; (4) observing the month-long fast of Ramadan, the ninth month of the Islamic lunar calendar; and (5) making a pilgrimage to Mecca, at least once in the Muslim’s lifetime if possible.

IV. ARGUMENT

A. Islam is a Religion Entitled to First Amendment Protection

Every court addressing the question has treated Islam as a religion for purposes of the First Amendment and other federal laws. No court has held otherwise. Islam falls plainly within the understanding of a religion for constitutional and other federal legal purposes, and qualifies as a religion under the various tests courts have developed for analyzing claims that certain apparently secular activities merit protection as religious conduct.

Courts are to exercise caution before determining that a system of belief is not a religion. Indeed, “[f]ew tasks that confront a court require more circumspection than that of determining whether a particular set of ideas constitutes a religion within the meaning of the first amendment.” *Africa v. Commonwealth of Pa.*, 662 F.2d 1025, 1031 (3d Cir. 1981). See also *Wiggins v. Sargent*, 753 F.2d 663, 666 (8th Cir. 1985) (noting that determining whether a belief

Quran early in the Islamic tradition. *Islam: The Straight Path* 80-83. See also *A History of the Arab Peoples* at 66.

10. See *The Middle East* at 53. In the words of one scholar, Albert Hourani, an Emeritus Fellow of St Antony’s College, Oxford, “The God of the Qur’an is a transcendent one.” *A History of the Arab Peoples* at 62.

is religious is an “extremely delicate task which must be approached with caution,” and reversing a district court determination that a belief system was not a religion). See, e.g., *United States v. Seeger*, 380 U.S. 163, 165 (1965) (construing “religion,” as used in the Universal Military Training and Service Act, broadly so as to avoid a conflict with the mandate of the First Amendment). In addition, in examining whether a system of beliefs amounts to a religion entitled to First Amendment protection, courts are not to evaluate the reasonableness of, or the content of those beliefs. As the Supreme Court held in *Thomas v. Review Board*, 450 U.S. 707, 714 (1981), “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” See also *United States v. Ballard*, 322 U.S. 78, 85-88 (1944); *United States v. Meyers*, 906 F. Supp. 1494, 1499 (D. Wyo. 1995) (“The Court will not [] find that a particular set of beliefs is not religious because it disagrees with the beliefs.”).

Within the context of the mandate to define religion broadly, courts have applied various but substantively consistent criteria to determine whether a belief system is a religion for purposes of the First Amendment and other purposes under federal law. According to the Courts of Appeal for the Ninth and Third Circuits, whether a belief system constitutes a religion depends on three factors: (1) whether the belief system “addresses fundamental and ultimate questions having to do with deep and imponderable matters;” (2) whether the system “is comprehensive in nature;” and (3) whether it is recognizable “by the presence of certain formal and external signs.” *Alvarado v. City of San Jose*, 94 F.3d 1223, 1229 (9th Cir. 1996) (relying

in part on Judge Adam's seminal concurrence in *Malnak v. Yogi*, 592 F.2d 197 (3d Cir. 1979)).¹¹

See also *Africa*, 662 F.2d at 1032 (same).

The Court of Appeals for the Tenth Circuit, also relying on *Malnak*, provided a more detailed schematic for determining whether a system of belief is a religion, identifying five factors, with subparts. *United States v. Meyers*, 95 F.3d 1475, 1484 (10th Cir. 1996) (adopting the factors identified by the district court in *United States v. Meyers*, 906 F. Supp. 1494 (D. Wyo. 1995)). The Tenth Circuit analyzed the following:

- (1) *Ultimate ideas*: fundamental questions about life, purpose, and death;
- (2) *Metaphysical beliefs*: beliefs addressing a reality which transcends the physical and immediately apparent world;
- (3) *Moral or ethical system*: proscription of a particular manner of acting or a way of life that is moral or ethical;
- (4) *Comprehensiveness of beliefs*: an overarching array of beliefs that coalesce to provide the believer with answers to many of the problems and concerns that confront humans; and
- (5) *Accoutrements of religion*: the presence of various external signs of religion, including (a) a founder, prophet or teacher, (b) important writings, (c) gathering places, (d) keepers of knowledge, (e) ceremonies and rituals, (f) structure or organization, (g) holidays, (h) diet or fasting, (i) appearance and clothing, and (j) propagation.

Id. These factors are neither exclusive nor determinative; indeed, in applying them, a court should err on the side of concluding that a set of beliefs constitutes a religion. *Meyers*, 906 F. Supp. at 1501.

These legal tests are unnecessary when a court is presented with a major world religion such as Islam. Indeed, the *Meyers* court simply assumed that Islam, as well as other major world religions such as Judaism, Christianity, Hinduism, Buddhism, and Shintoism, Confucianism, and

11. According to Judge Adams's concurrence in *Malnak v. Yogi*, the definition of religion may even include belief systems that "do not teach what would generally be considered a belief in the existence of God," such as "Buddhism, [and] Taoism." 592 F.2d 197, 206 (3d Cir. 1979) (Adams, J., concurring) (citing *Washington Ethical Society v. District of Columbia*, 249 F.2d 127 (D.C. Cir. 1957) and extending the definition of "religion" to non-Theist organized groups).

Taoism, qualified as religions under the First Amendment. *Meyers*, 906 F. Supp. at 1503. Other courts have done the same. See, e.g., *Ford v. McGinnis*, 352 F.3d 582, 591 (2d Cir. 2003) (treating Islam as a religion for purposes of examining a prisoner's free exercise claim); *Ali v. Shabazz*, 8 F.3d 22 (5th Cir. 1993) (unpublished) (same). The issue, instead, has typically come up in cases where secular personal, political, or ideological beliefs have been couched in religious terms for some legal advantage, such as evading criminal laws regarding controlled substances.¹²

Even if these tests were relevant, Islam would plainly meet them. As explained in Section III above, Islam contains beliefs that are both ultimate and metaphysical and that include a comprehensive ethical and moral system. And Islam unmistakably bears the accoutrements of religion: sacred texts, prophets, prayers, rituals, holidays, places of religious assembly, professional clergy, and a body of theology. There is no question that Islam is a religion within the meaning of the Free Exercise Clause and related federal laws.

B. Rutherford County Would Risk Violating RLUIPA Were it not to Treat Islam as a Religion

As explained above, the plaintiffs in this case would have the Court conclude that Islam is a political system, or an ideology, not a system of belief that qualifies as a religion entitled to

12. The *Meyers* court, for example, concluded that the Church of Marijuana is not a religion. *Id.* at 1509. See also *United States v. Quaintance*, 471 F. Supp. 2d 1153, 1070 (D. N.M. 2006) ("Church of Cognizance," whose purpose was to teach adherents how to "live as long a life as possible," not a religion); *Mason v. General Brown Cent. Sch. Dist.*, 851 F.2d 47, 51-52 (2d Cir. 1988) (chiropractor's belief in "natural existence" not a religion); *Africa v. Commonwealth of Pa.*, 662 F.2d 1025, 1032 (3d Cir. 1981) (MOVE, "a 'revolutionary' organization 'opposed to all that is wrong'" is not a religion); *United States v. Kuch*, 288 F. Supp. 439, 444-45 (D.D.C. 1968) (the Neo-American Church, which required using LSD, not a religion).

the protection of federal law. See Amended Complaint at 8 (Sept. 22, 2010) (alleging that the County failed to investigate whether the ICM intended to promote the “political practice of ‘Jihad’” or “establish a caliphate”). However, if Rutherford County had adopted this approach, or were the County to adopt this approach in the future, the County would risk violating RLUIPA.

As noted above, RLUIPA prohibits local governments from using land-use regulations to discriminate against religious institutions, to treat them on less than equal terms than similarly situated secular land uses, or to substantially burden religious exercise. 42 U.S.C. §§ 2000cc, *et seq.* It was passed in response to Congressional findings showing that religious institutions in general, and minority faiths in particular, frequently faced overt and subtle discrimination in the application of land-use and zoning regulations. See H.R. Rep. No. 106-219, 18-24 (1999); 146 Cong. Rec. 16698 (2000) (Joint Statement of Senators Hatch and Kennedy). It was designed to codify First Amendment protections and provide a mechanism for enforcement. *Id.* at 16699 (noting that RLUIPA’s land-use provisions are designed to “enforce the Free Exercise and Free Speech Clauses as interpreted by the Supreme Court.”). It reflects Congress’s recognition that “places of assembly are needed to facilitate religious practice, as well as the possibility that local governments may use zoning regulations to prevent religious groups from using land for such purposes.” *Midrash Sephardi, Inc. v. Surfside*, 366 F.3d 1214, 1226 (11th Cir. 2004). RLUIPA also expressly provides that “religious exercise” includes “any exercise of religion, whether or not compelled by, or central to, a system of religious belief,” and extends to the “use, building, or conversion of real property for the purpose of religious exercise” 42 U.S.C. § 2000cc-5(7)(A), (B).

“Religious assembl[ies] or institution[s]” protected by RLUIPA include mosques or Islamic centers of the type that ICM proposes to construct in Rutherford County. See *Albanian Associated Fund v. Township of Wayne*, No. 06-cv-3217, 2007 WL 2904194 at *7-9 (D. N.J. Oct. 1, 2007) (applying RLUIPA to a claim brought by a mosque). See also *Moxley v. Town of Walkersville*, 601 F. Supp. 2d 648, 658-60 (D. Md. 2009) (addressing a RLUIPA action involving a mosque, and assuming, without deciding, that the mosque qualified as a religious assembly). Similarly, free exercise protected by the First Amendment includes the right of Muslims to assemble in a mosque. Thus, in *Islamic Center of Mississippi v. Starkville*, 840 F.2d 293, 302-03 (5th Cir. 1988), the Court of Appeals for the Fifth Circuit struck down as unconstitutional a city zoning ordinance that would have prohibited the establishment of a mosque in an area where churches were allowed. There is, therefore, no question that the ICM’s proposed Rutherford County Islamic center and mosque constitutes a religious assembly under RLUIPA. Failing to treat mosques as a category equally with churches as a category in application of its zoning laws would be a facial violation of Section 2(b)(2) of RLUIA.

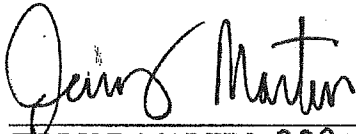
The Plaintiffs claim the County should have investigated the substantive beliefs of the ICM before approving its plans to construct an Islamic center and mosque. See Amended Complaint at 8, 11 (Sept. 22, 2010). They maintain that the failure to undertake such an investigation creates a risk that the ICM’s Islamic activities and beliefs will promote “Jihad and terrorism.” See *id.* There is no suggestion that the County has a practice of undertaking such investigations with respect to applications by other religious assemblies or institutions. The

County thus acted properly in affording ICM the same treatment that it would have given any religious assembly or institution.

V. CONCLUSION

For the foregoing reasons, the United States respectfully requests that this Court conclude (1) that Islam is a religion entitled to protection under the Free Exercise Clause of the First Amendment, and (2) that the ICM's proposed Islamic center and mosque is a place of religious assembly engaged in religious exercise within the meaning of RLUIPA.

Respectfully submitted this 18th day of October, 2010,



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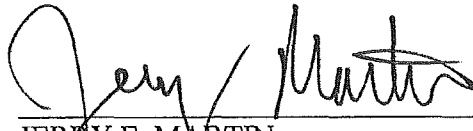
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was furnished to the following by facsimile and U.S. Mail: J. Thomas Smith, 2020 Fieldstone Parkway, Suite 900-264, Franklin, TN 37069, facsimile number 800-506-8304; Joe M. Brandon, Jr., 313 Enon Springs Road, E., Smyrna, TN 37167, facsimile number 615-459-3216; and James C. Cope and Josh A. McCreary, 16 Public Square North, Murfreesboro, TN 37130, facsimile number 615-849-2135, this the 18th day of October, 2010.



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