

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

KAMAL ANWIYA YOUKHANNA
JOSEPHINE SORO, Wafa CATCHO,
MAREY JABBO, DEBI RRASI,
JEFFREY NORRGROVE, MEGAN
McHUGH,

Plaintiffs,

v.

CITY OF STERLING HEIGHTS,
MICHAEL C. TAYLOR, individually and
in his official capacity as Mayor, City of
Sterling Heights, Michigan,

Defendants.

No.

COMPLAINT

[Civil Rights Action under
42 U.S.C. § 1983 &
Michigan State Law]

Plaintiffs KAMAL ANWIYA YOUKHANNA, JOSEPHINE SORO, Wafa CATCHO, MAREY JABBO, DEBI RRASI, JEFFREY NORRGROVE, and MEGAN McHUGH (hereinafter collectively referred to as “Plaintiffs”), by and through undersigned counsel, bring this Complaint against Defendants City of Sterling Heights (hereinafter the “City”) and Michael C. Taylor, the Mayor of the City (collectively referred to as “Defendants”), and in support thereof allege the following upon information and belief:

INTRODUCTION

1. A federal consent decree or settlement agreement, such as the Consent Judgment entered on March 10, 2017 in *American Islamic Community Center, Inc.*

v. City of Sterling Heights, No. 1:16-cv-12920 (E.D. Mich. filed Aug. 10, 2016) (ECF No. 20) (hereinafter “Consent Judgment”), cannot be a means for state officials to evade state law. Consequently, municipalities, such as the City, may not waive or consent to a violation of their zoning laws, which are enacted for the benefit of the public, by entering into such a decree or agreement, which is what the City has done here.

2. Pursuant to the Consent Judgment, the American Islamic Community Center, Inc. (hereinafter “AICC”) is able to build a large Mosque on 15 Mile Road in the City in violation of the Sterling Heights Zoning Ordinance (hereinafter “Zoning Ordinance”) and the Michigan Zoning Enabling Act.

3. Plaintiffs seek a declaration that the Consent Judgment is invalid and unenforceable and an order enjoining its enforcement.

4. Plaintiffs also seeks to protect and vindicate their fundamental rights protected by the First, Fourth, and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983 as set forth in this Complaint. These rights were violated by Defendants during the process by which the City approved the Consent Judgment.

JURISDICTION AND VENUE

5. This action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1331. This Court has

supplemental jurisdiction over Plaintiffs' claims arising under state law pursuant to 28 U.S.C. § 1367(a).

6. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

7. Plaintiffs' claims for damages are authorized under 42 U.S.C. § 1983, and by the general legal and equitable powers of this Court.

8. Plaintiffs' claim for an award of their reasonable costs of litigation, including attorneys' fees and expenses, is authorized by 42 U.S.C. § 1988, and other applicable law.

9. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

PARTIES

10. Plaintiff Kamal Anwiya Youkhanna is an adult citizen of the United States and a resident of Sterling Heights, Michigan. He is a Chaldean Christian, and he and his family are from Iraq, where Chaldean Christians have been subjected to violence and abuse from ISIS. Plaintiff Youkhanna opposes the construction of the AICC Mosque at its proposed location.

11. Plaintiff Josephine Soro is an adult citizen of the United States and a resident of Sterling Heights, Michigan. She is an Assyrian Christian, and she and

her family are from Syria, where Assyrian Christians have been subjected to violence and abuse from ISIS. Plaintiff Soro opposes the construction of the AICC Mosque at its proposed location.

12. Plaintiff Wafa Catcho is an adult citizen of the United States and a resident of Sterling Heights, Michigan. She is a Chaldean Christian, and she and her family are from Iraq, where Chaldean Christians have been subjected to violence and abuse from ISIS. Plaintiff Catcho resides on 15 Mile Road and directly across the street from the property where AICC's Mosque is to be built. Plaintiff Catcho opposes the construction of the AICC Mosque at its proposed location.

13. Plaintiff Marey Jabbo is an adult citizen of the United States and a resident of Sterling Heights, Michigan. She is a Chaldean Christian, and her family is from Iraq, where Chaldean Christians have been subjected to violence and abuse from ISIS. Plaintiff Jabbo resides on 15 Mile Road and directly across the street from the property where AICC's Mosque is to be built. Plaintiff Jabbo opposes the construction of the AICC Mosque at its proposed location.

14. Plaintiff Debi Rrasi is an adult citizen of the United States and a resident of Sterling Heights, Michigan. She resides on 15 Mile Road and directly across the street from the property where AICC's Mosque is to be built. Plaintiff Rrasi opposes the construction of the AICC Mosque at its proposed location.

15. Plaintiff Jeffrey Norgrove is an adult citizen of the United States and a resident of Sterling Heights, Michigan. Plaintiff Norgrove is a member of the City's Planning Commission. Plaintiff Norgrove opposes the Consent Judgment because it undermines the authority of the Planning Commission, its role as the final decision maker under the Zoning Ordinance, and the procedures by which applicants must comply with the Zoning Ordinance, which was enacted for the benefit of the public. Additionally, Plaintiff Norgrove travels along 15 Mile Road on a regular basis to visit his father, who lives in the vicinity of the property where the Mosque is to be built.

16. Plaintiff Megan McHugh is an adult citizen of the United States and a resident of Sterling Heights, Michigan. Plaintiff McHugh lives in the area where the proposed Mosque is to be built, and she travels along 15 Mile Road on a regular basis, including to visit a close acquaintance who lives across the street from the property where the Mosque is to be built. Plaintiff McHugh opposes the construction of the AICC Mosque at its proposed location.

17. Defendant City is a Michigan Municipal Corporation located in Macomb County, State of Michigan.

18. Defendant Michael C. Taylor is the Mayor of the City (hereinafter the "Mayor"), and he is responsible for enforcing the policies, practices, rules, regulations, and procedures of the City, including those that violated Plaintiffs'

rights as set forth in this Complaint. The Mayor is sued in his individual and official capacity.

STATEMENT OF FACTS

19. On August 10, 2016, AICC filed a lawsuit against the City, alleging violations, *inter alia*, of the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc. *American Islamic Community Center, Inc. v. City of Sterling Heights*, No. 1:16-cv-12920 (E.D. Mich. filed Aug. 10, 2016).

20. On August 30, 2016, the City filed its Answer, denying all wrongdoing.

21. In its Answer, the City admitted that “[a] public hearing is exactly that – a right for residents to exercise their First Amendment rights.”

22. On or about June 16, 2015, AICC submitted a Special Approval Land Use application to the City’s Planning Commission.

23. The City’s Planning Commission is the final decision maker for the City as to whether the application meets the standards set forth in the Zoning Ordinance.

24. AICC’s application was ultimately denied based upon AICC’s failure to address the concerns of the Planning Commission to satisfy the discretionary criteria applied to a Special Approval Land Use application. The decision of the Planning Commission was based upon criteria contained in the Zoning Ordinance and was not based upon religion or religious denomination.

25. AICC has an existing place of worship in Madison Heights, Michigan, and AICC has continued to exercise its religious beliefs throughout all relevant periods of time. Consequently, the denial of AICC's application has not substantially burdened its religious exercise.

26. The City, through its Planning Commission, did not violate RLUIPA.

27. If the City or its Planning Commission intended to approve a Special Approval Land Use application, it was required by the Michigan Zoning Enabling Act to provide notice "not less than 15 days before the date the application will be considered for approval," and this notice must be in "a newspaper of general circulation in the local unit of government" and mailed to property owners within the zone of interest. Mich. Zoning Enabling Act § 103.

28. The City did not comply with the notice provision of the Michigan Zoning Enabling Act when it effectively approved AICC's Special Approval Land Use application via the Consent Judgment.

29. An important element of the land-use hearing process is the notice of pending action. Notice provides advance warning to parties so that they can intelligently prepare for and participate in the hearing. The City failed to provide such notice or permit such participation.

30. On February 21, 2017, the City Council held a public hearing to consider the Consent Judgment and whether the City should enter into this agreement, which effectively approves AICC's application.

31. Per the Sterling Heights City Council Rules, "A copy of the agenda and supporting materials shall be prepared for Council Members, the City Manager, the City Attorney, and the press on or before 5:00 PM three working days before a regular Council meeting." (Rule 7, City Council Rules, available at <https://www.sterling-heights.net/DocumentCenter/Home/View/595>).

32. This Rule ensures that members of the public who might want to address the Council on an agenda item have at least a modicum of notice to do so.

33. Because February 20, 2017 was a federal holiday, notice was required to be provided by 5 p.m. on February 15, 2017. No such timely notice was provided.

34. As a result of the City's failure to provide adequate notice, the residents of Sterling Heights, including Plaintiffs, were essentially ambushed by the City's decision to approve AICC's application via the Consent Judgment.

35. Pursuant to the City Council Rules, each person desiring to address the Council on an agenda item, such as the Consent Judgment matter, "is allowed *six* minutes to address the Council, with not more than one additional minute to summarize and conclude. The Chair may reduce the allowable time to *three* minutes to ensure that all persons interested in addressing the Council on an agenda item or

under Communication from Citizens have an opportunity to speak.” (Rule 5.C, City Council Rules) (emphasis added).

36. Plaintiffs Youkhanna, Soro, Catcho, Jabbo, Rrasi, and McHugh attended the February 21, 2017 City Council meeting in order to express their opposition to the Consent Judgment. Plaintiff Norgrove was instructed by a City representative to stay home.

37. During the February 21, 2017 meeting, the City Council and the Mayor purposefully delayed the Consent Judgment agenda item knowing that there was a large number of residents, including the attending Plaintiffs, who opposed the City’s decision to enter into the Consent Judgment agreement and who wanted their voices to be heard that evening. As it turns out, the City’s decision to enter into the Consent Judgment was a *fait accompli*, and the City Council meeting was merely a sham.

38. A City Council meeting is a place where a private citizen has an opportunity to exercise his or her First Amendment rights. It is a public forum for the speech of private citizens, including Plaintiffs. In fact, it is a designated public forum for such speech.

39. The First Amendment is not simply a right to catharsis; it’s a right to meaningfully engage public officials in order to affect public policy. In this case, the First Amendment protects Plaintiffs’ right to convince the City Council that

entering into the Consent Judgment was a mistake and to try and influence the vote of the City Council members.

40. Defendants ensured that no such meaningful engagement occurred that evening. Instead, the City, through its Mayor: (1) adopted an *ad hoc* rule that limited speakers wanting to address the Consent Judgment agenda item to just 2 minutes, thereby severely limiting Plaintiffs' right to express their views at this public hearing, even though the Mayor allowed other speakers addressing less controversial matters that evening to speak at great length; (2) prohibited certain views based on their content and viewpoint (*i.e.*, no one was permitted to mention religion or even hint at it when discussing the Consent Judgment matter, and certainly no one was permitted to make any statement that might be deemed critical of Islam); (3) directed the City police to seize individuals and escort them out of the meeting if the Mayor opposed what they were saying about the Consent Judgment matter; and (4) ordered the citizens out of the public meeting when it came time to actually vote on the Consent Judgment.

41. Prior to clearing the public meeting during the actual vote on the Consent Judgment agenda item, on two prior occasions, the Mayor decided that *everyone* present was not complying with his rules so he and the other City Council members departed the room, leaving everyone to wonder what was to happen next. The Mayor's actions had their intended effect: they discouraged public participation

and chilled the speech of those present at the public meeting, including the speech of the attending Plaintiffs.

42. Defendants' speech restrictions operated to censor speech and had the intended effect of chilling speech.

43. Defendants' speech restrictions censored and chilled the speech of the attending Plaintiffs.

44. Defendants' speech restrictions operated as prior restraints on speech, including on the speech of the attending Plaintiffs.

45. The *ad hoc* "two minute" restriction truncated and thus restricted every speaker's message, including the messages of the attending Plaintiffs.

46. The restrictions on expressing a message with religious content or a religious viewpoint or a message that criticized Islam, whether directly or indirectly by implication, are content- and viewpoint-based restrictions that censored the speech of those attending the public meeting, including the speech of the attending Plaintiffs.

47. After emphatically restricting and then preventing speech based upon its content and viewpoint (*i.e.*, no mention of religion), the Mayor allowed Councilmember Skrzniarz to lecture all attendees: "This is the history of humanity. Religious war is the first war we ever had in society." Rather than admonish Councilmember Skrzniarz, the Mayor scolded the objecting audience members,

calling them all out of order. The Mayor then led the councilmembers out of the room, thereby imposing on the residents a lengthy recess, which was intended to chill speech and to delay the matter further to limit the opportunity for speakers to address the Consent Judgment agenda item.

48. Employing the City police to remove anyone that the Mayor deemed “out of order” because of the content or viewpoint of his or her message is a content- and viewpoint-based restriction of speech that chilled the speech of those attending the public meeting, including the attending Plaintiffs.

49. Declaring everyone “out of order” and ordering them out of the public hearing had the purpose and effect of chilling the exercise of the right to freedom of speech of those attending the public meeting, including the attending Plaintiffs.

50. Ordering everyone out of the public hearing during the actual vote on the Consent Judgment deprived those attending the public hearing of their rights protected by the First Amendment, including the rights of the attending Plaintiffs. This action also violated the Michigan Open Meetings Act. Mich. Comp. Laws § 15.263.

51. The video of this City Council meeting is available to the public at <https://shtv.viebit.com/player.php?hash=dL2MjbMD0UdY>.

52. Plaintiff Soro, an Assyrian whose English is not very good, was admonished and cut off by the Mayor at the City Council meeting for mentioning

the need to be “safe” during her public comments. The Mayor was concerned that Plaintiff Soro was preparing to say something that could be perceived as critical of Islam. Plaintiff Soro was frightened by the Mayor’s reaction to her and his reaction to others during this public hearing, including the Mayor’s use of the City police to remove people from the hearing, and these actions had a chilling effect on her speech.

53. Plaintiff Youkhanna complained during the Council Meeting that the *ad hoc* “2 minute” rule was inadequate, particularly since other people had a much greater opportunity that night to talk about other agenda items. He requested that the City Council delay its consideration of the Consent Judgment for another meeting where everyone would have enough time to discuss this “sensitive” case. The City Council rejected the request and moved forward.

54. Plaintiff Youkhanna had to speak very quickly during his “2 minute” time and was unable to convey his message. When he tried to come to the podium for a second time, he was prohibited by the Mayor. And when another person came to the podium and offered to give his “2 minutes” to Plaintiff Youkhanna, the Mayor denied that request as well.

55. At one point, just before the Mayor called a recess, Plaintiff Rrasi complained that Councilmember Skrzyniarz was the only one allowed to talk about

religion, and the Mayor directed the City police to seize Plaintiff Rrasi and remove her from the meeting room.

56. Plaintiffs Youkhanna, Soro, Catcho, Jabbo, Rrasi, and McHugh all spoke at various times during the City Council meeting, but Defendants' prior restraints and threats to employ the City Police if a speaker was "out of order" for violating any of these prior restraints, restricted and chilled their speech. Others at the meeting did not want to risk running afoul of these speech restrictions, and so they sat quiet. Nonetheless, on at least three occasions, the Mayor determined that the entire audience was "out of order," and he responded by halting the public meeting: the first time for 10 minutes, the second time for 7 minutes, and finally, the Mayor directed everyone to leave the room under threat of arrest by the City police.

57. The actions of the City, through its Mayor, directly censored speech or had a chilling effect on speech such that the First Amendment rights of the citizens present at the meeting, which include the attending Plaintiffs, were violated.

58. During the City Council meeting, the City approved the Consent Judgment, which grants AICC, a Muslim religious organization, special rights and privileges.

59. By approving the Consent Judgment, which grants AICC special rights and privileges, suppressing speech deemed critical of Islam during the City Council meeting, and displaying hostility to those who opposed the building of the AICC

Mosque at this meeting, Defendants conveyed a message of approval of adherents of Islam and disapproval of those who were not adherents of Islam.

60. Defendants' purpose for entering into the Consent Judgment and for the Mayor's actions at the City Council meeting was to favor those who want to build the AICC Mosque over those who oppose it. A reasonable observer would conclude that this favors the adherents of Islam over those who are not adherents of Islam.

61. Regardless of Defendants' purpose for entering into the Consent Judgment and for the Mayor's actions at the City Council meeting, the effect of such actions conveys a message of approval of Islam and its adherents and disapproval of those who are not adherents of Islam.

62. The Consent Judgment effectively approves AICC's application, which failed to meet the required findings of the Planning Commission in all respects other than nuisance. These findings are summarized as follows:

- The location and height of the proposed building interferes with and discourages the appropriate development and use of adjacent land and buildings, with the height exceeding that of other structures in the immediate areas by more than 30' at some points of the proposed building. Zoning Ordinance § 25.02 A & D.

A. The proposed special approval land use shall be of such location, size and character that it will be in harmony with the appropriate and orderly

development of the surrounding neighborhood and/or vicinity and applicable regulations of the zoning district (including but not limited to any applicable performance standards) in which it is to be located.

D. The proposed use shall be such that the proposed location and height of buildings or structures and location, nature and height of walls, fences and landscaping will not interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonably affect their value.

- The square footage of the proposed building in comparison to the size of the parcel is excessive and not compatible with the established long-term development patterns in this R-60 zoning district. Zoning Ordinance §§ 25.02 A & D (above).

- Given the approximately 20,500 square foot size of the proposed *main floor* of the building (not counting dedicated meeting space in the basement) and the allocation of floor space to ancillary uses, there is a likely shortage of off-street parking when the principal and ancillary uses of the building are combined, particularly during times of maximum capacity prayer hall usage. Zoning Ordinance §25.02 B.

B. The proposed use shall be of a nature that will make vehicular and pedestrian traffic no more hazardous than is normal for the district involved, taking into consideration vehicular turning movements in relations to routes of

traffic flow, proximity and relationship to intersections, adequacy of sight distances, location and access of off-street parking and provisions for pedestrian traffic, with particular attention to minimizing child-vehicle interfacing.

- The scale of the proposed building on the site is not harmonious with the scale of the existing buildings situated in this R-60 zoning district and neighboring areas. Zoning Ordinance §§ 25.02 A (above), E, F & G.

E. The proposed use shall relate harmoniously with the physical and economic aspects of adjacent land uses as regards prevailing shopping habits, convenience of access by prospective patrons, continuity of development and need for particular services and facilities in specific areas of the city.

F. The proposed use is so designed, located, planned and to be operated that the public health, safety and welfare will be protected.

G. The proposed use shall not be detrimental or injurious to the neighborhood within which it is to be located, nor shall such use operate as a deterrent to future land uses permitted within said zoning district and shall be in harmony with the general purpose and intent of the zoning ordinance.

63. The Planning Commission denied the AICC's application on September 10, 2015 according to state and City ordinances, specifically including the Zoning Ordinance, and incorporated guidance. When AICC returned after the one month postponement that was offered for the purpose of allowing AICC to

“provide additional information to the Planning Commission” and affording the Planning Commission time to address questions to “Mr. Mende (Planning Department) and the planning office,” AICC returned to the Planning Commission with no substantive revisions in the Mosque design. The submitted plan change was simply a 9’ reduction in the height of the spires and a 7’ *increase* in the height of the dome. These two adjustments provided little relative difference and did nothing to mitigate the overall height concerns.

64. Indeed, AICC’s changes did not resolve the concerns. Rather, the changes worsened the situation by increasing the volume of the structure. Consequently, it was evident that AICC had no interest in complying with the Planning Commission’s concerns and the Zoning Ordinance. AICC was more concerned with setting up the situation so it could file a federal lawsuit.

65. The Planning Commission, therefore, did not have an opportunity to pursue the remaining concerns, as discussed further below, that AICC was required to satisfy before the Planning Commission could have fulfilled its duty under the Zoning Ordinance.

66. AICC’s blueprints indicate 7,874 square feet of space in the basement that is not counted in the square footage for the main floor (20,500 square feet) addressed in the application for special use. This space will accommodate offices as well as a “women’s meeting area.” The main floor also indicates spaces for a

banquet hall, multi-purpose room, kitchen and meeting spaces that are separate from the prayer space that is traditionally dedicated to men.

67. AICC is currently worshipping at a Madison Heights location that advertises a broad range of activities beyond those included in the application. AICC's application for special use states that the scheduled events will only include daily prayer, Friday prayer service and some Ramadan services (these occur during the entire month of observance). But, in fact, AICC is looking for new space for the purpose of offering "educational activities, youth activities, and special events" that the existing space would not accommodate. The potential for concurrent or sequential use of the facility for different activities at the same time or in close proximity is contemplated by the Ancillary Parking provision for church and temple parking space requirements, which requires additional parking spaces "for ancillary facilities, such as social halls, schools, etc." Zoning Ordinance § 23.02 B.1.

68. The Staff Report upon which the August 13, 2015 Planning Commission deliberations and potential decision were based described the activities that were submitted for special use review by AICC as "individual prayer daily, typically in the afternoon, and group worship to be held on Friday afternoons. Additional services are held during special religious occasions such as Ramadan." Consequently, it is still not clear as to what activities will be occurring at the

proposed Mosque, and when that question was raised by the Planning Commission, it was met with resistance by AICC.

69. Moreover, no traffic study was ever completed for the proposed Mosque, despite the frequent and legitimate complaints of those living on 15 Mile Road that the increase in traffic will exacerbate the already serious congestion and safety issues in this residential neighborhood, particularly in light of the fact that a school is located in the neighborhood, thereby increasing “child-vehicle interfacing.”

70. In an effort to circumvent the Planning Commission and its findings which were based on the Zoning Ordinance, AICC filed its lawsuit, and the City has now agreed to a Consent Judgment that essentially approves AICC’s application contrary to the Zoning Ordinance and to the detriment of those living in the neighborhood, specifically including Plaintiffs Catcho, Jabbo, and Rrasi, who live across the street, and Youkhanna, Soro, Norgrove, and McHugh, who live in the neighborhood and who travel that area of 15 Mile Road on a regular basis.

71. In addition to approving an application that violates the Zoning Ordinance, the Consent Judgment is woefully vague and inadequate. It provides highly ambiguous standards, no concrete inspection criteria, and no structure to provide necessary enforcement mechanisms. In short, it leaves residents such as Plaintiffs at risk of future harm.

72. For example, in addition to lacking the necessary detail to protect the interests of the residents of the City, including the interests of Plaintiffs, the Consent Judgment includes the following vague and inadequate provisions and glaring omissions:

- There is no enforceable parking limitation condition. Where the Consent Judgment is based upon “anticipated” parking arrangements if more than 130 vehicles are expected, the AICC is excused from providing the mentioned shuttle service after “utiliz[ing] all reasonable efforts to obtain an alternative site in close proximity.” This falls far short of the reasonable condition that would require a “proof of parking” certification. In fact, the entire permit condition may be nullified if AICC protests that all “reasonable efforts” failed.

- Through the Consent Judgment, the City failed to provide any meaningful parking limitations. Rather, it put the burden on nearby residents, providing for “residential permit parking” in not one, but two areas (ostensibly for equal treatment considerations). Residents, including Plaintiffs, have not been consulted on this significant burden that the City intends to impose upon them in the event of AICC’s failure to control parking.

- As AICC spokespersons have admitted that the current “100 members” indicated in the August 13, 2015 staff report is *at least* 300 attendees if family members are counted, it is easy to see that the parking lot as approved for 130 spaces

would be filled at present for prayer services alone. This provides no consideration for concurrent meetings or activities.

- The AICC blueprints suggest an occupancy load of near 2,000 persons, potentially at one time. There are spaces that appear to be adaptable to several uses. The multi-purpose room could be used as a gym, and many spaces described as offices could be classrooms. There has been no consideration for limiting concurrent or consecutive events suggested by this multiplicity of varied use spaces for the purpose of critical parking and traffic controls.

- The Consent Judgment specifically did not authorize “the operation of a school” at the site, but by the explicit instruction that a school would require a separate permit, the City left open the possibility of operating a day care facility at the site, as discussed at the Planning Commission hearing.

- There is no provision for the cessation of activity time and assured “quiet use and enjoyment” for neighborhood residents. The City Planner’s claim that religious groups cannot be required to cease activities and darken lighting to conform to neighborhood quiet time norms due to RLUIPA is simply not true.

- There is no expressed setback requirement that would attempt to mitigate the 58 ½ foot dome and the 61 ½ foot height of the spires as required by the Zoning Ordinance.

- The Consent Judgment asks AICC to “monitor parking” to avoid overflow parking on “*adjacent* residential streets,” but the word “monitor” signals no intent to enforce and the use of the word “adjacent” leaves open many other residential street parking possibilities.
- Furthermore, there is no requirement for professional traffic control during heavy traffic hours as indicated by known commuter times and/or concurrent and closely consecutive events at the Mosque.
- The height of the structure is still far from compliant with the standards expressed in the Zoning Ordinance that limit buildings in R-60 to 30 feet.
- Restrictions on the concurrent use of large meeting spaces in the building should have been provided: 3,204 square feet are allocated to worship space; 4,043 square feet are shown as lecture space; 4,201 square feet are indicated for recreational use; and there is additional space dedicated to women’s prayer meeting.
- The Consent Judgment does not include a restriction against outdoor activities to preclude noisy youth and adult sport activities as instructed by the City Planning staff.
- The Consent Judgment does not include a provision that general meetings/services cannot begin or end within thirty minutes of the Hatherly

Education Center's (which shares a property boundary with the proposed Mosque) start and dismissal times.

- There is no provision for the easement promised by the City Planner at the August 13, 2015 Planning Commission meeting that would protect two homeowners' rights to travel over AICC's property in order to access their homes.

73. The touted benefits of settling the lawsuit and entering the Consent Judgment as described by the City's attorney at the February 21, 2017 City Council hearing were incorrect.

74. The attorney assured the assembled residents that a settlement of the lawsuit would afford AICC and the City to "determine the outcome themselves." This is not true. The settlement finalized all of the terms that harmed the residents, specifically including Plaintiffs. The final site plan review does little beyond establish existing code compliance details.

75. There were virtually no concessions made by AICC although the attorney asserted that AICC would "probably get more [if it prevailed in the lawsuit] than with this judgment."

76. Although the attorney cited, as significant concessions, the waivers of both the broadcast "call to prayer" and the ability to object to any nearby business obtaining a liquor license, AICC stated at the first Planning Commission hearing that it was not requesting permission for a broadcast "call to prayer" nor would AICC's

objection to an establishment that would sell alcohol be meaningful given its proximate location to a nearby school which would preclude licensure of such an establishment within 500 feet.

77. Section 25.01 of the Zoning Ordinance grants the City Council authority to approve special approval land use permits “[a]s a development pursuant to a consent judgment approved by the City Council.” Zoning Ordinance § 25.01. However, this section also provides that “[w]hen the City Council is the reviewing authority with respect to a special approval land use, it shall have the same reviewing authority and *shall consider the same standards as the Planning Commission under the special approval land use criteria applicable to such use in the particular zoning district and Article 25.*” *Id.* (emphasis added). Consequently, the City cannot rely on this provision of the Zoning Ordinance as a convenient way to use the Consent Judgment to circumvent the requirements of the Zoning Ordinance, which are in place to protect the public, specifically including Plaintiffs.

78. The district court validated the Consent Judgment on March 10, 2017, without making any findings that federal law was violated or would be violated, nor could it since there would be no basis for such findings. Consequently, the district court could not approve the Consent Judgment, which authorized the City to disregard its own Zoning Ordinance and the Michigan Zoning Enabling Act.

79. By placing its imprimatur on the Consent Judgment, the district court effectively authorized the City to disregard its Zoning Ordinance and state law. The district court had no authority to do so.

80. In the Consent Judgment, the court “retain[ed] continuing jurisdiction to assure enforcement and compliance with the terms of [the] Consent Judgment.”

FIRST CLAIM FOR RELIEF

(Declaratory Judgment Act—Unlawful Consent Judgment)

81. Plaintiffs hereby incorporate by reference all stated paragraphs.

82. The Declaratory Judgment Act provides that “in a case of actual controversy within its jurisdiction, . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201.

83. The Consent Judgment is invalid and unenforceable.

84. The City cannot enter into an agreement allowing it to act outside its legal authority, even if that agreement is styled as a “consent judgment” and approved by a court. The Consent Judgment is an agreement allowing the City to act outside its legal authority and is therefore invalid and unenforceable.

85. The Consent Judgment operates as a waiver or consent to a violation of the Zoning Ordinance and the Michigan Zoning Enabling Act and is therefore invalid and unenforceable.

86. This Court should declare the Consent Judgment invalid and unenforceable and enjoin its enforcement.

SECOND CLAIM FOR RELIEF

(Freedom of Speech—First Amendment)

87. Plaintiffs hereby incorporate by reference all stated paragraphs.

88. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiffs Youkhanna, Soro, Catcho, Jabbo, Rrasi, and McHugh of their right to freedom of speech in violation of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

89. The City Council meeting held on February 21, 2017, was a public forum for Plaintiffs' speech. In fact, it was a designated public forum.

90. The attending Plaintiffs' speech at the City Council meeting was germane to the meeting and discussed the subject matter of the Consent Judgment, which was an agenda item for the meeting.

91. At the City Council meeting held on February 21, 2017, the attending Plaintiffs were engaging in constitutionally protected speech activity. Defendants' actions, as set forth in this Complaint, injured the attending Plaintiffs in a way likely to chill a person of ordinary firmness from further participation in that activity.

Attending Plaintiffs' constitutionally protected activity motivated Defendants' adverse actions. Thus, Defendants acted with a retaliatory intent or motive.

92. By directing the unlawful seizure and removal of Plaintiff Rrasi from the City Council meeting based on the content of her speech, Defendants violated the First Amendment.

93. The speech restrictions imposed during the February 21, 2017 City Council meeting as set forth in this Complaint operated as prior restraints on speech, and these restraints, facially and as applied, are content- and viewpoint-based in violation of the First Amendment.

94. The City Council Rules, which permitted the Mayor to engage in content- and viewpoint-based speech restrictions as set forth in this Complaint, were the moving force behind the violation of the attending Plaintiffs' right to freedom of speech protected by the First Amendment.

95. The Mayor will seek to enforce the City Council Rules in a content- and viewpoint-based manner in the future.

96. As a direct and proximate result of Defendants' violation of the First Amendment, as set forth in this Complaint, the attending Plaintiffs have suffered irreparable harm, including the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief and nominal damages.

THIRD CLAIM FOR RELIEF

(Establishment Clause—First Amendment)

97. Plaintiffs hereby incorporate by reference all stated paragraphs.

98. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, Defendants violated the Establishment Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

99. The challenged actions of Defendants as set forth in this Complaint lack a valid secular purpose and have the primary effect of endorsing, promoting, or approving Islam in violation of the Establishment Clause.

100. The challenged actions of Defendants as set forth in this Complaint convey an impermissible, government-sponsored message of approval of Islam. As a result, these actions send a clear message to Plaintiffs that they are outsiders, not full members of the political community because they are not Muslims and an accompanying message that those who favor the religion of Islam are insiders, favored members of the political community in violation of the Establishment Clause.

101. As a direct and proximate result of Defendants' violation of the Establishment Clause, Plaintiffs have suffered irreparable harm, including the loss

of their fundamental constitutional rights, entitling them to declaratory and injunctive relief and nominal damages.

FOURTH CLAIM FOR RELIEF

(Unlawful Seizure—Fourth Amendment)

102. Plaintiffs hereby incorporate by reference all stated paragraphs.

103. By directing the seizure of Plaintiff Rrasi by the City police based on the content of her speech, as set forth in this Complaint, Defendants violated the Fourth Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

104. There was no probable cause to believe that Plaintiff Rrasi committed or was about to commit a criminal offense, including a breach of the peace.

105. The City Council Rules, which permitted the Mayor to direct the seizure of Plaintiff Rrasi, were the moving force behind the violation of her rights protected by the Fourth Amendment as set forth in this Complaint.

106. As a direct and proximate result of Defendants' violation of the Fourth Amendment, Plaintiff Rrasi has suffered irreparable harm, including the loss of her fundamental constitutional rights, entitling her to declaratory and injunctive relief and nominal damages.

FIFTH CLAIM FOR RELIEF

(Equal Protection—Fourteenth Amendment)

107. Plaintiff hereby incorporates by reference all stated paragraphs.

108. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiffs Youkhanna, Soro, Catcho, Jabbo, Rrasi, and McHugh of the equal protection of the law guaranteed under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

109. By restricting the attending Plaintiffs access to a public forum based on the content and viewpoint of their speech, Defendants deprived these Plaintiffs of the equal protection of the law.

110. The City Council Rules, which permitted the Mayor to engage in content- and viewpoint-based speech restrictions, were the moving force behind the violation of the attending Plaintiffs' rights protected by the Equal Protection Clause as set forth in this Complaint.

111. As a direct and proximate result of Defendants' violation of the Equal Protection Clause, attending Plaintiffs have suffered irreparable harm, including the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief and nominal damages.

SIXTH CLAIM FOR RELIEF

(Due Process—Fourteenth Amendment)

112. Plaintiffs hereby incorporate by reference all stated paragraphs.

113. By impermissibly circumventing procedural protections, including the failure to provide proper notice and an opportunity to be heard, Defendants deprived Plaintiffs of their right to due process guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

114. As a direct and proximate result of Defendants' violation of the Due Process Clause, Plaintiffs have suffered irreparable harm, including the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief and nominal damages.

SEVENTH CLAIM FOR RELIEF

(Michigan Open Meetings Act—Mich. Comp. Laws § 15.263)

115. Plaintiffs hereby incorporate by reference all stated paragraphs.

116. The Michigan Open Meetings Act requires all meetings to be opened to the public and thus it implicitly requires that all parts of the meeting (unless specifically excluded by the act) also be open to the public. Similarly, a secret ballot effectively closes part of a meeting to the public, since the balloting withdraws from public view an essential part of the meeting.

117. By closing the City Council meeting to the public during the time when the Council was to vote on whether to adopt the Consent Judgment, Defendants violated the Michigan Open Meetings Act. Mich. Comp. Laws § 15.263(1)-(3).

118. By seizing and removing Plaintiff Rrasi from the meeting based on the content of her speech, Defendants violated the Michigan Open Meetings Act. Mich. Comp. Laws § 15.263(6).

119. As a result of Defendants' violation of the Michigan Open Meetings Act, the Consent Judgment is invalid and unenforceable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

- A) to declare that Defendants violated Plaintiffs' fundamental constitutional rights as set forth in this Complaint;
- B) to declare the Consent Judgment invalid and unenforceable;
- C) to enjoin the enforcement of the Consent Judgment;
- D) to award Plaintiffs nominal damages against Defendants;
- E) to award Plaintiffs their reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988, and other applicable law;
- F) to grant such other and further relief as this Court should find just and proper.

Respectfully submitted,

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