UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ISLAMIC COMMUNITY CENTER FOR MID WESTCHESTER, MOHAMMAD ZUBER NAKADAR, OMAR OCKEH, ARSHAD SHARIFF, SYED KAMAL, ALI NAWAZUDDIN, MOHAMMED SOHAIL, ALI EL-OUSROUTI, FAVZUL KABEER, ISMET JASHARI, and MOHAMMED RAHEEM **Plaintiffs,** **Against** **CITY OF YONKERS LANDMARK PRESERVATION BOARD; THE CITY OF YONKERS PLANNING BUREAU, aka CITY OF YONKERS PLANNING BOARD; THE CITY OF YONKERS; MAYOR MICHAEL SPANO in his official capacity as Mayor of the City of Yonkers; LIAM J.MCLAUGHLIN, DENNIS SHEPHERD, MIKE BREEN, and JOHN LARKIN in their official capacity as members of the City of Yonkers City Council; and GORDON A. BURROWS, in his official capacity as a District County Legislator in the City of Yonkers.** **Defendants.**	**MOTION FOR PRELIMINARY INJUNCTION** **16-CV-7364 (VB)**

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION

FOR A PRELIMINARY INJUNCTION

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PRELIMINARY STATEMENT

The Islamic Community Center for Mid Westchester (hereinafter referred to as "ICCMW") is a Religious Non-Profit organization in Westchester County, New York. In July – August 2015, ICCMW hired architects and land use attorneys to represent them in their zoning application with the City of Yonkers. ICCMW submitted an application for a permit to undertake renovations on their property located in a residential zone, - for use as a house of worship. The proposed renovations would make the house a functional Mosque. Under City of Yonkers zoning ordinance ICCMW's proposed use of the property as a house of worship is permitted under the sites S- 100 zoning.

After ICCMW made their intended use of the property known, the Colonial Heights Association of Tax Payers, a local group which claims to represent the tax payers of Colonial Heights (hereinafter referred to as "CHAT") submitted an application to the City of Yonkers Landmark Preservation Board (hereinafter interchangeably referred to as "the Landmark Preservation Board" or "the Board") to get ICCMW's property designated as a landmark, attempting to prevent ICCMW from using their property as a Mosque. The landmark Preservation Board succumbed to CHAT's pressure. On April 6, 2016 the Board unanimously voted and recommended that ICCMW's property be designated a landmark without any legal basis, effectively preventing ICCMW from building a mosque with pertinent religious characteristics. The designation of the property was the result of a hearing mired in anti-Muslim prejudice. The Landmark Preservation Board's Recommendation was then forwarded to the City of Yonkers City Council. The City Council held two public hearings on the designation. The hearings were mired with anti-Muslim prejudice from CHAT and its supporters as were the

hearings before the Landmark Preservation Board. On May 24, 2016, the City of Yonkers City Council voted along political party lines to designate ICCMW's property as a landmark. On May 27, 2016, the Mayor of the City of Yonkers approved the designation.

The landmark designation was used as a pretext to discriminate against plaintiffs because of their religion. The landmark designation imposes an undue burden on the free exercise of plaintiffs' religion and the establishment of their religious institution. Plaintiffs seek a preliminary injunction declaring the landmark designation discriminatory and void. The federal Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc *et seq*. and the First Amendment, as well as analogous state statutory and constitutional provisions, were enacted to protect against these kinds of discrimination and burden. If the unfounded designation remains in effect, it will cause irreparable harm to ICCMW and its congregation due to the substantial burden it will impose on their freedom to build a religious institution, in violation of 42 U.S.C. § 2000cc–(a) (RLUIPA), and will be a violation of plaintiffs' equal protection right.

Plaintiffs seek preliminary injunctive relief on an expedited basis. ICCMW has owned the property for over two years, yet it has not been able to use the property for its intended purpose; a Mosque. The landmark designation restricts ICCMW's free will to construct and have a house of worship bearing all characteristics of a Mosque of their choice, either presently or in the future. It curtails their ability to renovate the property. The Muslim population in Colonial Heights has grown, and they have no house of worship nearby, hence the demand for a Mosque in Colonial Heights is ripe. Plaintiffs seek an expedited ruling to prevent the irreparable harm against the Mosque and its congregation.

STATEMENT OF FACTS

I. ACQUISITION OF 20 AKA 2 GRANDVIEW BOULEVARD PROPERTY FOR RELIGIOUS USE

Plaintiff ICCMW is a Religious Non-Profit organization in Westchester County, New York. It was established in March 2012 to serve the Muslim community in the Mid-Westchester area. Its members have been praying at alternative Mosques in Mount Vernon several miles out of Colonial Heights for several years. Nakadar Aff. ¶ 5; Nawazuddin Aff. ¶ 4. They have been seeking a suitable location to establish a permanent Mosque and Islamic Community Center. Okech Aff. ¶ 5; Nakadar Aff. ¶ 6; Shariff Aff. ¶ 5; Nawazuddin Aff. ¶ 5.

In April 2013, ICCMW identified a property listed for sale at 20 Grandview Boulevard, Colonial Heights, City of Yonkers, New York 10710-3002 and made an initial offer. In October 2013, upon hearing back from the seller, representatives of ICCMW visited the property, with an interest to purchase it. Okech Aff. ¶¶ 6 & 7; Nakadar Aff. ¶¶ 7 & 8; Nawazuddin Aff. ¶¶ 6 & 7. ICCMW intend to use the property as a house of worship, however, it required repairs, refurbishing and upgrading, Okech Aff. ¶ 16; Nawazuddin Aff. ¶ 7.

II. PRE-PURCHASE MEETING WITH GOVERNMENT OFFICIALS AND CONDITION OF THE HOUSE

On October 22, 2013, ICCMW board member Omar Ockeh, and attorney Camille Singh met with the Commissioner for the Department of Housing and Buildings for the City of Yonkers, William Schneider and the Director of the City of Yonkers Planning Bureau, Lee Ellman. Okech Aff. ¶¶ 8 & 9; Nakadar Aff. ¶ 9 & 11; Shariff Aff. ¶ 6; Nawazuddin Aff. ¶ 9. ICCMW was told by the Commissioner Schneider and Director Ellman that they could use the property as a house of worship without any limitation, but for a few zoning variances needed by

the City. Okech Aff. ¶ 10. Commissioner Schneider and Director Ellman also suggested that ICCMW meet with the CHAT, as they have a history of opposing religious projects like ICCMW's. Okech Aff. ¶ 10; Nawazuddin Aff. ¶ 9. When ICCMW contacted CHAT, Terry Lucadamo told ICCMW, that they will face opposition from neighbors if they go ahead with the purchase and plans to establish a Mosque. She asked ICCMW to look for properties in other areas instead. Nawazuddin Aff. ¶ 10.

Due to the inhabitable condition of the house ICCMW struggled getting financing to purchase the house. See letter dated September 12, 2014, from UIF, (attached herein as Exhibit 1) withdrawing its previous commitment letter because, upon inspection of the house it found that the house "might not be livable in its current condition." However, ICCMW was able to raise funds through it members and on March 27, 2015, ICCMW purchased the property. Nawazuddin Aff. ¶¶ 8 & 11.

III. RENOVATIONS, MEET AND GREET, AND NOTICE OF LANDMARK APPLICATION

In April 2015 plaintiff ICCMW began the process of getting relevant permits to commence the renovations needed to make their property a fully functional house of worship. They identified and retained architects and land use attorneys. Okech Aff. ¶ 13; Nakadar Aff. ¶¶ 13-14; Shariff Aff. ¶¶ 7-9; Nawazuddin Aff. ¶¶ 12-13. To introduce themselves to the community, on September 19, 2015, ICCMW held a meet and greet at St. John's Episcopal Church with the neighbors. CHAT was among the invitees to the meet and greet. The meet and greet was attended by approximately forty people. Nakadar Aff. ¶ 17; Shariff Aff. ¶ 14; Nawazuddin Aff. ¶ 16. At the meet and greet, the neighbors asked very problematic questions,

showing prejudice towards a Mosque in their neighborhood. For instance, they wanted to know if ICCMW would be putting up minarets on the house or will use loud speakers to call for prayers. Nakadar Aff. ¶ 18; Shariff Aff. ¶ 15; Nawazuddin Aff. ¶ 16. More troubling, the neighbors accused ICCMW of not telling people that they would use the property as a Mosque when they were purchasing it, inferring that ICCMW had no right to purchase a property to use as or build a house of worship therein. Nakadar Aff. ¶ 18; Shariff Aff. ¶ 15; Nawazuddin Aff. ¶ 16. Others out rightly said they had a problem with the property being used as a Mosque. Shariff Aff. ¶ 17. They expressed displeasure that ICCMW, a tax exempt organization will decrease Colonial Heights tax revenue and diminish property values. Nakadar Aff. ¶ 18; Shariff Aff. ¶ 15.

ICCMW first became aware of application to landmark their property on October 5, 2015, when they received a phone call from a journalist at the Journal New, inquiring about the landmarks application submitted by CHAT. Nawazuddin Aff. ¶ 17; Nakadar Aff. ¶ 22; Shariff Aff. ¶ 19. CHAT did not want a Muslim Organization in Colonial Heights. It was determined to sabotage ICCMW at any cost. For instance CHAT initially falsely alleged that ICCMW intended to convert the property into a prisoner's rehab. Nawazuddin Aff. ¶ 16; Okech Aff. ¶ 28. CHAT spread pictures of a Mosque with minarets to the public and falsely claimed that they were ICCMW's future building plans. Nawazuddin Aff. ¶ 16. CHAT then tried to intimidate ICCMW members by calling the police on them and by having its members drive past the property in a menacing manner. Nawazuddin Aff. ¶¶ 24-25. They even falsely reported ICCMW to the Department of Building for an alleged unauthorized use of the property. Shariff Aff. ¶¶ 10-11.

IV. APPLICATIONS TO LANDMARK ICCMW'S PROPERTY

A. CHAT's Numerous Applications to the Landmarks Preservation Board

CHAT made multiple ever changing applications to the Landmark Preservation Board[1] attempting to show that the house at 20 Grandview Boulevard meets not just one, but all requirements justifying landmark designation[2]. CHAT's first application was made in June 2015. It was found to be insufficient and supplemented on September 22, 2015. In a desperate attempt to link the house to a historic figure (one of the four required characteristics for landmark designation), the September application stated that "the building may be the work of William Winthrop Kent." Notably, the same application specifically stated that "there are no known historic events or historic persons associated with the house." See CHAT September 2015 Application, at pages one and two, attached herein as Exhibit 2. While submitting Chat's second application to the Landmark Preservation Board, CHAT's Co-chair Neil Breen, said the reason CHAT decided to put in the application was because CHAT became aware that ICCMW intended to change the use and occupancy to a house of worship which will change the character of the neighborhood.

On October 27, 2015, CHAT in its persistent attempt to prevent ICCMW and its congregation from building its religious institution filed additional information amending the

[1] The City of Yonkers Landmark Preservation Board consists of eleven Yonkers Residents appointed by the Mayor with the approval of the City Council. The Board includes one member associated with the Yonkers Historical Society, two members who are licensed architects, two who are archeologists, city planners, historians, or preservationists, and a member who is a licensed realtor. Members serve with no compensation. See http://www.yonkersny.gov/work/department-of-planning-development/boards-agencies/landmarks-preservation-board. Last visited September 20, 2016.

[2] Pursuant to § 45-2 of the Ordinance, the required characteristics are, that the property: (1)Is associated with persons or events of historic significance to the city, region, state or nation; (2) Is illustrative of historic growth and development of the city, region, state or nation; (3) Embodies distinctive characteristics of a type, period or method of construction or represents the work of a master; (4) Contains unique architectural, archaeological or artistic qualities.

September application. The October application, then argued that prior owners and occupants of the house (property) were significant persons. See CHAT October 2015 Application, at pages 1 and 5, attached herein as Exhibit 3.

B. Landmark Preservation Board's First Hearing

The October 27, 2015 application, was first considered at the November 4, 2015, Landmark Preservation Board hearing. In attendance at the November 4th hearing were three Yonkers Republican legislators at the behest of CHAT. They were Westchester County Minority Whip - Gordon Burrows, City Council Majority Leader – Councilman John Larkin, and Councilman Michael Breen. Minority Whip Burrow spoke in favor of designating the property as a landmark based on beauty of the house. He also mentioned how his office worked with CHAT representatives on their application.[3] Nakadar Aff. ¶ 25; Shariff Aff. ¶ 22; Nawazuddin Aff. ¶ 22. The matter was adjourned to the December Board hearing.

C. Landmark Preservation Board's Second Hearing and Planning Board's Review

On December 2, 2015, Landmark Preservation Board conducted another hearing. ICCMW, through its land use attorney, submitted a letter which demonstrated the insufficiencies

[3] MR. BURROWS: Can I just make a comment to the Board, since you will pass this to the next month and I'm not sure I'll be able "to be here. But as a former councilman in that area for 10 years, as a county legislator in that area for the last 11 years, I have been representing the community for 21 years. More importantly, I have lived there all my life. And like Mr. Cacace, I can tell you I used to live on Grandview Boulevard. If you haven't been on the property, I will urge you to drive right off Central Avenue, Underhill, and Grandview at the top of Colonial Heights. It really is the gateway to Colonial Heights. It's probably the most significant, beautiful home, stone, beautiful property. I will urge you to look at it. Because I don't think we've ever made any property, and Kevin, you can with help me, a historical piece of property in Colonial Heights, and this would be just, I think, a continuation of what you're exactly trying to do in preserving and memorializing certain spots, at least in Yonkers. And as a person who's been there for 57 years, I hate to say and admit I'm that old, this is the most significant piece. And I believe after hearing Mr. Ellman reading the requirements and the qualifications for what is considered a landmark, it falls within all of those aspects. And I know Carol from my office did a lot of research with Terry. If you need more information, we can try to recover it. I will urge you just to see this property. It's really that magnificent. (Nov. 4, 2015 Board Hrg Tr. 38:8-39:16).

of CHAT's application. However, the Board while it deemed the letter it received from ICCMW attorney important determined it was not generic to the hearing and simply put it on the record without giving an opportunity to ICCMW to present its position during the hearing.[4] The Landmark Preservation Board approved the application as complete and referred it to the Planning Board for an advisory Recommendation pursuant to § 45-5D of the Yonkers City Code. (Dec 2, 2015 Board Hrg. Tr. 7:25-8:11, and 10:9-23).

In a discriminatory fashion and in violation of ICCMW right to build its house of worship, the Planning Board, in its January 13, 2016, Recommendation and advice saw no need for a Mosque in the area because there were already three other places of worship. See City of Yonkers Planning Board January 13, 2016, Recommendation attached herein as Exhibit 4. First, none of those other places of worship is a Mosque. Second, the discriminatory nature of the Recommendation is serious and it seemed to justify the landmark application was based on the sufficiency of the existence of other houses of worship. Further, the Recommendation makes it evident that the landmark designation would not have been recommended had ICCMW's intended use had been anything else other than religious.

D. Landmark Preservation Board First Public Hearing on Designation of ICCMW's Property

On February 3, 2016, the Board held a public hearing. Representatives from CHAT expressed varying sentimental attachments to the property. However, none of CHAT's

[4] "Okay. Before we take a vote, for the record, I will note that we have received a letter from the property owner's attorney. In fact, Mr. Accinelli is here tonight. The letter references a great deal of information which might possibly be appropriate for discussion about the actual landmarking itself, but I don't think it's generic to this conversation tonight. So I'm simply going to note for the record and include in the record that we have received this letter from the property owner's attorney." (Dec 2, 2015 Board Hrg Tr. 7:6-16)

arguments satisfy the four characteristic requirements for landmark designation, as required by § 45-2 of the Ordinance. CHAT's main arguments were about the beauty of the house and the personal wealth and professional connections of the man who built the house. (Feb 3, 2016 Board Hrg. Tr. 4:12-6:16). CHAT claimed that at one point Dr. Cantwell, an AIDS virus denier and David Halberstam, a Pulitzer Prize winner, lived at the house. (Feb 3, 2016 Board Hrg. Tr. 6:18-7:4). CHAT's attempt at claiming "unique architectural, archaeological or artistic qualities."(§ 45-2(4)) exists in the house, hence meriting landmark designation, were insufficient and should not have been considered. All CHAT could argue to support their architectural or artistic quality argument was the breathtaking stained glass windows and turrets to the garage, which was originally a barn. See Exhibit 3, at page 7.

E. ICCMW's Opposition to CHAT's Flawed Application

Land use counsel for ICCMW argued at the February 3, 2016, hearing that while the beauty of the house could be appreciated, the property, however, failed to possess or satisfy the required statutory requirements for landmark designation pursuant § 45-2 of the Ordinance, ("(1) associated with persons or events of historic significance; (2) Is illustrative of historic growth and development; (3) Embodies distinctive characteristics of a type, period or method of construction or represents the work of a master; (4) Contains unique architectural, archaeological or artistic qualities.")

Counsel countered CHAT's attempt to link the house to a historic figure, and argued that "there are no known historic events or historic persons associated with the house." (Feb 3, 2016 Board Hrg. Tr. 13:6-23). On the professional connections of the man who allegedly built the house, Counsel, argued that it was irrelevant and did not qualify to make him a historic person under the statute. (Feb 3, 2016 Board Hrg. Tr. 14:11-19). On Dr. Alan Cantwell and David

Halberstam, counsel argued that they were both irrelevant in regards to landmark designation, as neither had risen to the level of historical significance required by the City's ordinance. (Feb 3, 2016 Board Hrg. Tr. 14:20-24). To CHAT's contention that Dr. Cantwell made significance contributions to AIDS research, counsel said that Dr. Cantwell's research merely consisted of conspiracy theories about AIDS and the gay community. (Feb 3, 2016 Board Hrg. Tr. 14:25-15:1-5). On David Halberstam wining a Pulitzer Prize, counsel argued that the Pulitzer Prize, while no doubt a prestigious award, can hardly be the sole basis for considering someone to be a historic figure, nor does it qualify as sufficient basis to be considered a historic figure as required by the ordinance.[5] (Feb 3, 2016 Board Hrg. Tr. 15:6-9; 15:14-16)

ICCMW counsel argued that ICCMW's property might be beautiful, but contains no unique architectural, archaeological or artistic qualities to merit landmark designation. He adequately demonstrated how CHAT's application for landmark designation failed to fulfill its burden and satisfy the requirements of the statute. He argued that ICCMW's property should not receive landmark designation. (Feb 3, 2016 Board Hrg. Tr. 15:17-21)

F. The Need for a Mosque in Colonial Heights for Muslims to Exercise Their First Amendment Right and Discriminatory Bias against a Mosque

ICCMW members addressed the Landmark Preservation Board. They gave an overview of who ICCMW is and how they ended up acquiring the property. They gave statistics on the growth and expansion of the Muslim population in Yonkers, and how the Muslim population had no place of worship in which to exercise their First Amendment right. (Feb 3, 2016 Board Hrg. Tr. 16:12-21). See Shariff Aff. ¶¶ 24-25; Nakadar Aff. ¶¶ 28 & 32; Nawazuddin Aff. ¶ 27.

[5] Counsel further informed the hearing that the Pulitzer Prize for international reporting, which Mr. Halberstam won, has been given out 81 times since 1948, and that there are countless number of Pulitzer prizes given out in other categories. (Feb 3, 2016 Board Hrg. Tr. 15:9-14).

ICCMW members also criticized CHAT's application as discriminatory and argued that it was filed with the intent to prevent them from building a Mosque. See Okech Aff. ¶¶ 22-23; Shariff Aff. ¶¶ 26- 27; Nawazuddin Aff. ¶ 27.

ICCMW members questioned why all of a sudden there was such an interest in the property, while for years prior to their purchase it was allowed to fall in to disrepair. It was clear that the Landmark designation became relevant when the neighbors expressed dismay with ICCMW leaders during the meet and greet. Since then, there was a calculated campaign against ICCMW to build its Mosque. During the February 3, 2016, hearing ICCMW members also noted how dramatically the selling price on the house dropped from $1.25 million to $750,000, (Feb 3, 2016 Board Hrg. Tr. 40:19-25) all because no one cared for the property. See Okech Aff. ¶ 22; Nakadar Aff. ¶ 29. However, once ICCMW planned to use it as a Mosque, there was an uproar about the house, enough to merit consideration for landmarking. See Nakadar Aff. ¶ 29.

The environment at the hearing was filled with anti-Muslim animus. Nawazuddin Aff. ¶ 26. Members of the public openly booed and interrupted ICCMW members and their land use attorney while they spoke. Nawazuddin Aff. ¶ 28.

Members of the public also addressed the Landmark Preservation Board. From the comments made by the non-Muslim population, it was evident that they did not want a Muslim house of worship in their neighborhood and the City permitted their agenda to persist. A CHAT representative said "[w]e don't want another house of worship" (referring to ICCMW intent to convert the house into a Mosque). "We want it to stay a single-family home". (Feb 3, 2016 Board Hrg. Tr. 44:22-45:10). CHAT had gone around asking non-Muslim neighbors whether they wanted a Mosque in their neighborhood, and had allegedly shown them a false picture of

the upcoming Mosque. Okech Aff. ¶ 25; Nakadar Aff. ¶¶ 26, & 33-34; Shariff Aff. ¶ 28; Nawazuddin Aff. ¶ 26.

The Landmark Preservation Board simply succumbed to the neighbors and CHAT's pressure to prevent ICCMW from building a Mosque bearing relevant religious characteristics. Since, a house of worship is a permitted use in that section of Colonial Heights pursuant to the local zoning ordinance S- 100, the only justification the City of Yonkers had to prevent a Mosque from being established was to designate the ICCMW's property as Landmark.

G. Landmark Preservation Board Second Public Hearing and Recommendation to The City Council to Designate ICCMW's Property as A Landmark

The matter was then heard again on April 6, 2016. Members of the Landmark Preservation Board while they acknowledged that there are other homes which are illustrative of growth and development of the city[6] and are not landmarked, found ICCMW's property to be illustrative of growth and development of the city and should be landmarked. This begs the question, why those other homes were not landmarked? Why would the house subject to this litigation be different? Which then turns on the obvious fact that to be illustrative of historic growth and development of the city, the criteria has to be more than merely the possibility that the house was the first built. A possibility, which the City could not prove. It has to be truly "illustrative" meaning others were built following its design or plan.

The Landmark Preservation Board had an obligation to apply the provisions of § 45-2 of the Landmark Preservation Ordinance when recommending a property to be designated as a landmark. The statute does not provide for landmark designation on the grounds of beauty, or a

[6] Statement by Board member Angie Piwinski – "I mean Homefield is another one." (April, 7, 2016 Board Hrg. Tr. 11:13)

communities relationship with a property. The Landmark Ordinance was not complied with but rather was used as a pretext to discriminate and create undue hardship on ICCMW and prevent it from building a Mosque with religious characteristics. The City of Yonkers Landmark Preservation Board violated the Ordinance when the Board member, Taylor Pierce commented:

> the house (ICCMW's property) is quite beloved, that – that was one of the things that stuck with him from hearing people saying when they enter when approaching, Colonial Heights, the house is a signifier, they have actually arrived at Colonial Heights. He said he believes that this intrinsic and sustained relationship between the house and the neighborhood should be recognized through landmarking. (April, 7, 2016, Board Hrg. Tr. 13:11-23).[7]

In spite of the insufficient evidence, the Landmark Preservation Board in an unprecedented unanimous vote targeted ICCMW, a religious institution, by recommending the designation as a local landmark all of Block: 4600; Lot: 114 of the property known as 20 AKA 2 Grandview Boulevard (ICCMW's property). (April, 7, 2016 Hrg. Tr.18:17-27:2)

V. ICCMW MEETING WITH CITY OF YONKERS COUNCIL MEMBERS AND THE MAYOR

In an effort to inform the City of Yonkers Council Members and the Mayor of the bias and discriminatory intent behind CHAT's landmark designation, ICCMW held various meetings with government officials. Okech Aff. ¶¶ 30, 34, 38 &52; Nakadar Aff ¶¶ 36, 38, 41, 46 &59; Shariff Aff. ¶¶ 30, 33 & 36; Nawazuddin Aff ¶ 36; Ramadan Aff ¶¶ 4 &16; Chesnavage Aff ¶¶ 9, 10, 13, 14, 18, 19, 22 & 23. ICCMW met with all three Democratic Council Members and

[7] Comments by Board member Taylor Pierce.

one out of the four Republican Council Members. ICCMW members expressed their frustration with the Landmark Preservation Board, particularly how the Board recommended their property for designation on flawed and unverified evidence from CHAT. Okech Aff. ¶¶ 30, & 35; Nakadar Aff ¶ 43; Shariff Aff. ¶ 30; Ramadan Aff ¶¶ 8, & 10-11; Chesnavage Aff ¶ 11. ICCMW informed both the Mayor and the Council Members that CHAT was going around asking non-Muslim neighbors questions such as: "Do you want a Mosque in your neighborhood?" Okech Aff. ¶ 40; Shariff Aff ¶ 40; Chesnavage Aff ¶¶ 15 & 16.

The Democratic Council Members expressed their surprise at the Landmark Preservation Board's unanimous vote, and attributed it to political pressure. Okech Aff. ¶ 31; Nakadar Aff ¶ 36; Shariff Aff. ¶ 31; Chesnavage Aff ¶ 11. The Republicans simply paid lip service to ICCMW, Okech Aff. ¶¶ 40-41; Nakadar Aff ¶¶ 44-45; Shariff Aff ¶ 41. The Mayor on his part could not explain the merits of landmarking ICCMW's property. Ramadan Aff ¶¶ 13, 14-15; Chesnavage Aff ¶ 17.

However, all ICCMW efforts to bring to the City Council and Mayor's attention, the bias of the Landmark Preservation Board, and flawed submission by CHAT were ignored. At the end, the City of Yonkers condoned the bias and discrimination by approving the landmark designation.

VI. HEARING BEFORE THE CITY OF YONKERS CITY COUNCIL – REAL ESTATE COMMITTEE AND RULES COMMITTEE

Upon recommendation from the Landmark Preservation Board, the designation was placed before the Real Estate Committee[8] of the Yonkers City Council for discussion. A public

[8] The Real Estate Committee is made up of five Council Members, three Republicans and two Democrats.

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hearing was held on May 17, 2016. At the hearing both CHAT and ICCMW made their presentation and arguments before the Real Estate Committee. When ICCMW members started making their presentations some CHAT members started shouting that ICCMW presenters should provide their physical address. Nawazuddin Aff. ¶ 30. The Chair of the hearing, Republican Councilman John Larkin, refused to accept any comments about the apparent Islamophobia at play. Chesnavage Aff. ¶ 20. The Real Estate Committee did not review any of the material submitted, nor discuss the merits of the landmark before it.[9] Instead, at the conclusion of the hearing, the Real Estate Committee took a vote on the designation. The Vote was divided along political party lines.[10] The Real Estate Committee approved the designation by a 3/2 vote, and recommended the matter to the Rules Committee of the Yonkers City Council.

The Rules Committee,[11] without researching further on the issue presented before it and without reviewing the submitted material on the merits, immediately rushed to vote on the designation. The Committee recommended the landmark designation to the entire City Council

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[9] The proceedings had gone into the night, and the City Council requested an adjournment. ICCMW, argued that they had presented all the evidence they had, and so had CHAT. They saw no need for an adjournment for more presentations as all relevant evidence had been submitted to the Real Estate Committee of the City Council. However, their refusal to consent to the adjournment request was limited to a second hearing for presentation of evidence, it was not a refusal to give the Real Estate Committee additional time to consider the material presented to it. Nor was it a refusal to give the Real Estate Committee additional time to further deliberate the matter. Knowing the anti-Muslim atmosphere towards them, ICCMW was worried that the Real Estate Committee's decision would be based on political pressure and not the merit. ICCMW's fear ultimately became a reality.

[10] Republicans are the majority on the Real Estate Committee of the Yonkers City Council.

[11] The Rules Committee is comprised of all Seven Council Members, four Republicans and three Democrats.

for final approval. The Rules Committee vote was also divided along political party lines[12] and the designation was approved by a 4/3 vote.

VII. HEARING BEFORE THE CITY OF YONKERS FULL CITY COUNCIL

Upon recommendation from the Rules Committee of the Yonkers City Council, the matter was next heard at another public hearing before the full City Council on May 24, 2016. Before the conclusion of the hearing Democratic Council Member Christopher Johnson gave a speech warning about Islamophobia, and how it should not be the guide to the City Council's decision. Okech Aff. ¶ 50; Nakadar Aff. ¶ 56; Shariff Aff. ¶ 48; Nawazuddin Aff. ¶ 34. Nonetheless, the Council Members voted to approve the designation again without any merit. Once more the vote was divided along party lines, making it political rather than complying with the City of Yonkers Landmark Ordinance.[13]

VIII. APPROVAL OF DESIGNATION BY THE MAYOR

The landmark designation was presented to the Mayor for the final approval or veto. Before voting on it, the Mayor reached out to ICCMW requesting an urgent meeting. Okech Aff. ¶¶ 52-56; Nakadar Aff ¶¶ 53-55, & 60- 63; Shariff Aff ¶ 49; Chesnavage Aff ¶¶ 22-25. The meeting with the Mayor had no purpose. The Mayor had already made his decision before the meeting Okech Aff. ¶ 57; Nakadar Aff ¶ 64; Shariff Aff ¶¶ 50- 52; Chesnavage Aff ¶ 26.

From the two meetings with ICCMW, the Mayor of Yonkers had sufficient knowledge that landmark designation deliberately targeted the Mosque. The Mayor, like other officials in

[12] Republicans are the majority on the Rules Estate Committee of the Yonkers City Council.

[13] Republicans are the current majority on the City of Yonkers City Council.

the City of Yonkers ratified the bias against ICCMW and its members when he approved the landmark designation on May 27, 2016. In further perpetuation of the bias against ICCMW a statement from the Mayor's office said:

> "I have reviewed the decision of the Landmarks Preservation Board to approve landmark status for 20 Grandview Boulevard, as well as the City Council's vote to approve the decision of the Landmarks Preservation Board," "My review was carried out with the intent to determine whether there was anything in the record of these two decisions that would indicate errors of judgment, procedure, or consideration of the facts as presented. Absent such a finding, there is no justification for a veto that would negate the decision of the Landmarks Preservation Board or subsequent approval by the City Council."

The Mayor perpetrated the discriminatory attitude towards ICCMW by approving the landmark designation without legal basis, relying only on the Planning Boards' January 13, 2016, Recommendation, that states - there are enough religious institutions and the designation would not burden ICCMW. The Mayor, who is also a resident of Colonial Heights, perpetuated the discrimination against ICCMW, because he too did not want a Mosque with its religious characteristic in his neighborhood.

The designation has and will cause an unnecessary, and substantial burden on ICCMW and its members by not allowing them to build their Mosque with the relevant religious characteristics in violation of 42 U.S.C. § 2000cc–(a), and (b)(3) (RLUIPA). Further, the landmark designation imposes a land use regulation upon ICCMW that treats ICCMW and its members on less than equal terms with other homes in the area in violation of 42 U.S.C. § 2000cc–(b)(1)(2).

ARGUMENTS

I. A PRELIMINARY INJUNCTION IS WARRANTED

It is well-settled law in this jurisdiction that in "most cases, a party seeking a preliminary injunction must demonstrate (1) that it will be irreparably harmed in the absence of an injunction, and (2) either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits of the case that make them fair ground for litigation, and a balance of hardships tipping decidedly in its favor". *Forest City Daily Housing, Inc. v. Town of North Hempstead*, 175 F.3d 144, 149 (2d Cir. 1999).

"In assessing a request for preliminary injunctive relief, courts will weigh the relative hardships faced by each of the parties. In doing so, the court may balance the injury faced by the applicant for an injunction against the injury that would be sustained by the defendant if relief were granted. If the hardship experienced by the movant if the injunction were denied would outweigh the hardship experienced by the non-movant if the injunction were granted, preliminary relief may be granted." Moore's Federal Practice 3d sec. 65.22 [1] [e]. This Court should also consider the effect an injunction would have on the public interest. *Id*. at 65.22[3].

Further, courts have stated "[w]e have noted more than once that '[p]erhaps the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered.'" *Bell & Howell: Mamiya Co. v. Masel Supply Co*., 719 F.2d 42, 45 (2d Cir.1983) (quoting 11 C. Wright & A. Miller, *Federal Practice and Procedure* § 2948, at 431 (1973) (footnote omitted)). An applicant for a preliminary injunction "must show that it is likely

to suffer irreparable harm if equitable relief is denied." *JSG Trading Corp. v. Tray–Wrap, Inc.,* 917 F.2d 75, 79 (2d Cir.1990) (emphasis in original). Thus, a mere possibility of irreparable harm is insufficient to justify the drastic remedy of a preliminary injunction." *Borey v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pennsylvania,* 934 F.2d 30, 34 (2d Cir. 1991)

Monetary loss alone will generally not amount to irreparable harm. "A monetary loss will not suffice unless the movant provides evidence of damage that cannot be rectified by financial compensation." *Tucker Anthony Realty Corp. v. Schlesinger*, 888 F.2d 969, 975 (2d Cir.1989). See also *Borey*, at 34.

In summary a plaintiff seeking permanent injunction must demonstrate: "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *World Wide Polymers, Inc. v. Shinkong Synthetic Fibers Corp*., 694 F.3d 155, 160-161 (2d Cir. 2012).

Prohibitory preliminary injunctions, such as that sought in the case at bar, "are permitted 'only when the moving party has demonstrated that (1) absent injunctive relief, he will suffer "irreparable injury", and (2) there is a "likelihood that he will succeed on the merits of his claim."' *Field Day, LLC v. County of Suffolk*, 463 F.3d 167, 181 (2d Cir. 2006).

II. ICCMW WILL PREVAIL ON THE MERITS

At the heart of this case is whether the City of Yonkers violated ICCMW's rights of religious exercise as guaranteed under the First Amendment of the United States Constitution, the Bill of Rights of the Constitution of the State of New York (N.Y. Const. art. 1, § 3 US Constitution) and as protected RLUPA, 42 U.S.C. § 2000cc *et seq*, by its arbitrary and capricious designation of ICCMW's property as a landmark. At issue is whether the City of Yonkers resolution to designate ICCMW's property as a landmark is discriminatory. Further, at issue is also whether the requirements of § 45-2 of the Ordinance were met or the Ordinance was used as a pretext.

A. The Ordinance Requirements for a Landmark

Landmark designation in City of Yonkers, Westchester County, New York is subject to the Landmark Ordinance law, passed and adopted by the City Council of the City of Yonkers on August 27, 1991, as Chapter 45: Historic and Landmark Preservation. As provided by § 45-2 of the Ordinance, a landmark "possesses one or more of the following characteristics:

> (1) Is associated with persons or events of historic significance to the city, region, state or nation;
>
> (2) Is illustrative of historic growth and development of the city, region, state or nation;
>
> (3) Embodies distinctive characteristics of a type, period or method of construction or represents the work of a master;
>
> (4) Contains unique architectural, archaeological or artistic qualities."

The Landmark Preservation Board's inappropriate recommendation of April 7, 2016, found that CHAT's application satisfied two of the above four requirements. Without sufficient

evidence, they found that ICCMW's property was (a) illustrative of historic growth and development of Yonkers (§ 45-2 (2)), and (b) architectural qualities of the house were unique (§ 45-2 (4)). The Landmark Preservation Board never requested proof from CHAT or conducted a diligent research that ICCMW's house was truly illustrative of historic growth. The Landmark Preservation Board chose the easier option and recommended designation of the property as a landmark because of the pressure it received from CHAT and its supporters. At trial ICCMW can challenge CHAT's application as it did at the Landmark Preservation Board hearing and before the City Council hearing by submitting evidence to counter CHAT's claims of historic growth and development and prove that the motivation behind the landmarking of their property was animus towards Muslims and as a result of a campaign against the establishment of ICCMW's Mosque.

Similarly the Landmark Preservation Board did not request CHAT to submit sufficient evidence demonstrating that no other homes in Colonial Heights have the same architectural or artistic quality. In fact, Landmark Preservation Board members, acknowledged the existence of houses with the same characteristic. *Supr*a page 12, statement by Board member Angie Piwinski – "I mean Homefield is another one." (April, 7, 2016 Board Hrg. Tr. 11:13). They took CHAT's application at face value. They relied on the biased Recommendation from the Planning Board, that there were already enough other places of worship, therefore the landmarking of one such place would have no impact on the community religious practices. See Exhibit 4. This is exactly what RUILPA was enacted to prevent. (RLUIPA bars land use regulation "that discriminates against any assembly or institution on the basis of religion or religious denomination." 42 U.S.C. § 2000cc (b)(2).)

RLUIPA also bars governments from implementing a land use regulation that treats a religious institution on less than equal terms with a nonreligious institution (42 U.S.C. § 2000cc (b)(1). Based on the Planning Board's January 13th letter (Exhibit 4) the neighborhood where ICCMW's property is located has a mixed characteristic of residential and places of worship. The landmark designation has the effect of treating ICCMW's property less than equal terms to the other properties, both the houses of worship and the residential properties.

B. The Landmark Preservation Board, The City Council and The Mayors Decisions were all Arbitrary, Capricious, Unreasonable and in Violation of Due Process Clause

ICCMW is likely to succeed on their claims that the City of Yonkers speedy and rushed process to designate their property as a landmark violates the Due Process clause. "At a minimum, due process requires that government officials refrain from acting in an irrational, arbitrary or capricious manner." *Mayer v. Wing,* 922 F. Supp. 902, 911(S.D.N.Y. 1996) (quoting *Pollnow v. Glennon*, 757 F.2d 456, 501(2d Cir. 1985)).

The anti-Muslim sentiment surrounding the entire designation process from the beginning to the end is undeniable. From the initial interaction with CHAT, where they told ICCMW to go search for a property at a different location, to CHAT submitting the landmark application because ICCMW wanted to use the property as a Mosque, (Nawazuddin Aff. ¶¶ 10 & 19), to the false reporting to government officials and the police, to menacing conduct and comments towards ICCMW (Shariff Aff ¶¶ 10, 11 & 18; Nawazuddin Aff. ¶¶ 24-25). Statements made at the Landmark Preservation Board hearings are also evidence of anti-Muslim animus, such as statements that because ICCMW wants to use the property as a Mosque, those against it are now

"gung ho" to landmark the property (Okech Aff. ¶ 25; Nakadar Aff. ¶ 33; Arshad Aff. ¶ 28), and statements that they do not want another house of worship (Okech Aff. ¶ 25; Nakadar Aff. ¶ 33; Arshad Aff. ¶ 28). Equally undeniable is the political undercurrent at play from the Republicans. From the very beginning at the Landmark Preservation Board hearings, CHAT representatives made it clear; they did not want a Mosque in the neighborhood, they even went to the extent of circulating a false picture of the upcoming Mosque (Nawazuddin Aff ¶¶ 10 & 16; Nakadar Aff ¶¶ 58 & 62; Okech Aff ¶¶ 49 & 53). Republican government officials did not hide their prejudice either. Republican legislators were out right against ICCMW's intent to have a Mosque (Chesnavage Aff. ¶ 7), along with Republican Councilman attended the Landmark Preservation Board hearing and pressured the Board members to vote for the designation. They made no secret of the fact that they had assisted CHAT in its third application, (Nov. 4, 2015 Board Hrg Tr. 38:8-39:16 & Nakadar Aff ¶ 25; Shariff Aff. ¶ 22; Nawazuddin Aff ¶ 22) which the Landmark Preservation Board ratified. The January 13, 2016, Recommendation from the Planning Board is a clear violation of the protections guaranteed under 42 U.S.C. § 2000cc (b). Undeniable too is the fact that the Landmark Preservation Board failed to address ICCMW and its counsel's valid legal arguments against landmark designation made at the February 3, 2016, board hearing and targeted the Mosque in its blind acceptance of CHAT's flawed and discriminatory application. § 45-2 of the Landmark Preservation Ordinance lists four distinct characteristics[14] for a landmark, and beauty is not one of them, a statement clearly made by ICCMW's land use attorney at the February 3, 2016 hearing, when he said "while we can

[14] "(1) associated with persons or events of historic significance; (2) Is illustrative of historic growth and development; (3) Embodies distinctive characteristics of a type, period or method of construction or represents the work of a master; (4) Contains unique architectural, archaeological or artistic qualities." § 45-2 Landmark Preservation Ordinance.

appreciate the beauty of the house, we respectfully submit that the subject property fails to possess or satisfy the required statutory requirements". (Feb 3, 2016 Board Hrg. Tr. 11:6-9). It is this discrimination against Muslims that Democratic Councilman Sabatino was attempting to prevent, when he urged ICCMW to have the Muslim community in Colonial Heights to write to their representative, Republican Councilman Breen and urge him to protect their constitutional rights (Nakadar Aff ¶ 37; Shariff Aff. ¶ 32; Chesnavage Aff ¶ 12). Further, this is the discrimination Democratic Council Member Johnson warned his colleagues, against at the May 24, 2016, City Council hearing, when he cautioned them against making a decision that had no legal or factual basis, but rather was driven by anti-Muslim sentiments.

The Landmark Preservation Board, the Republican Council Members and the Mayor all made arbitrary, capricious and willful decisions to violate the ICCMW's right to build a Mosque with Islamic characteristics. They imposed an unnecessary burden on the institution and its congregation for the sole purpose of preventing the construction of a Mosque at the location. The Board did not comply with the Landmark ordinance and made a decision that unreasonably and willfully perpetuated a discriminatory intent against Muslims having a functional house of worship. The City of Yonkers made decisions that left ICCMW and the Muslim population of Colonial Heights with no functional Mosque and encumbered from renovating their property in a manner and style of their liking to make it a functional Mosque. The decision affects both current and future renovations to ICCMW's property.

C. The Designation Violates the Religious Land Use and Institutionalized Persons Act

The Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. § 2000cc *et seq.*, prohibits state and local government infringement on religious exercise through land-use regulation. The law is to be "construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." 42 U.S.C. § 2000cc–3(g). The law's co-sponsors, Senators Kennedy and Hatch, described the problem it addressed as follows:

> 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, buy, or rent such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes.
>
> The hearing record compiled massive evidence that this right is frequently violated. Churches in general, and new, small, or unfamiliar churches in particular, are frequently discriminated against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation. 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 zoning boards use that authority in discriminatory ways.
>
> Sometimes, zoning board members or neighborhood residents explicitly offer race or religion as the reason to exclude a proposed church, especially in cases of black churches and Jewish shuls and synagogues. More often, discrimination lurks behind such vague and universally applicable reasons as traffic, aesthetics, or "not consistent with the city's land use plan." …
>
> The hearing record contains much evidence that these forms of discrimination are very widespread. Some of this evidence is statistical—from national surveys of cases, churches, zoning codes, and public attitudes.

146 Cong. Rec. S7774-01 (Jul. 27, 2000) (Ex. 1, Joint Statement of Sen. Hatch and Sen. Kennedy).

This case provides a textbook illustration of the type of majoritarian overreach that RLUIPA is designed to end. Islam is not a "new, small or unfamiliar" religion worldwide. In the United States it is a minority religion, unfamiliar to many people, and the object of unfair popular prejudice because some Americans conflate Islam with the acts of terrorists who purport to speak in its name. ICCMW sought a building in which to practice Islam. They purchased an existing house, to be their Mosque, a use that was permissible under existing zoning law. In the course of finalizing the purchase and preparing to make renovations to the house, among other things to make it ADA compliant, there was this sudden interest by CHAT to designate the property as a landmark, an interest which is obviously the product of anti-Muslim animus, based on CHAT's statements against the Mosque. Seeing that opposition, to having a Mosque in Colonial Heights, some of the government officials cooperated with and assisted CHAT in its application to have the property landmarked. Republican government officials ignored all pleas brought to their attention by ICCMW, informing the officials of the discrimination towards ICCMW. The purported sentimental attachment to the property which led to the landmark designation is a pretext to conceal the fact that CHAT and some of the City of Yonkers government officials discriminate against Muslims.

ICCMW's right to assemble for worship in a physical space adequate to their needs and consistent with their theological requirements are two very important rights the co-sponsors of RLUIPA sought to guarantee under the statute. The bills co-sponsors also sought to prevent and/or remedy what CHAT and the City of Yonkers have done to ICCMW, when they said

"Sometimes, zoning board members or neighborhood residents explicitly offer race or religion as the reason to exclude a proposed church." 146 Cong. Rec. S7774-01 (Jul. 27, 2000) (Ex. 1, Joint Statement of Sen. Hatch and Sen. Kennedy). The discrimination towards ICCMW's Mosque is what the RLUIPA is designed to protect against. The law's co-sponsors noted this when they said "[m]ore often, discrimination lurks behind such vague and universally applicable reasons as traffic, aesthetics…" *Id*. . In the case at bar, the January 13, 2016 Recommendation, from the Planning Board violates the two prongs of RLUIPA (Equal Terms and Nondiscrimination). The Recommendation treats ICCMW's property (a religious assembly or institution) on less than equal terms with other properties (nonreligious assembly or institution) in the community. (42 U.S.C. § 2000cc– (b)(1)). The Recommendation discriminates against ICCMW's property (based on religious denomination - Islam) as against the other places on worship in the community. (42 U.S.C. § 2000cc– (b)(2)). City of Yonkers has used the sudden sentimental attachment to the aesthetics of the property as a pretext to designate the property as a landmark

In short what has happened to ICCMW is the paradigmatic case Congress sought to reach when it enacted RLUIPA. In recent years cities and townships in the tri-state have used various pretexts to prevent Muslim communities from building houses of worship. See for instance *Al Falah Center et al., v. the Township of Bridgewater, et al*., 3:11-cv-02397-MAS-LHG, where the Bridgewater Township amended its zoning law in a matter of weeks to render a permitted religious use into a non-permitted application. In *Al Falah,* the Court granted plaintiffs' preliminary injunction holding Al Falah center's allegations (Bridgewater Township accelerated timeline enacting an amendment to its zoning law to preclude the existence of a Mosque at the property is strong circumstantial evidence of the townships intent to discriminate) "fall squarely

within the harm congress sought to address in enacting RLUIPA." *Al Falah Center et al., v. the Township of Bridgewater, et al*., 3:11-cv-02397-MAS-LHG Docket No. 95, at 2, and 45. See generally *Fortress Bible Church v. Feiner*, 734 F. Supp. 2d 409, 414 (S.D.N.Y. 2010), aff'd, 694 F.3d 208 (2d Cir. 2012)

City of Yonkers designation of ICCMW's property as a landmark is subject to RLUIPA because it "limits or restricts a claimant's use or development of land (including a structure affixed to land)" in which the claimant (ICCMW) has a property interest. 42 U.S.C. § 2000cc-5(5).

D. RLUIPA Distinct Grounds to Invalidate the Landmark Designation

RLUIPA provides the following distinct grounds to invalidate the designation.

(1) Discrimination

RLUIPA bars land use regulation "that discriminates against any assembly or institution on the basis of religion or religious denomination." *Id*. § 2000cc(b)(2). To establish a § 2000cc(b)(2) violation, Plaintiff must show that (1) ICCMW is an "assembly or institution" (as it indisputably is), (2) subject to a "land use regulation" (also indisputable), (3) that has been imposed or implemented "in a manner that discriminates against [ICCMW] on the basis of religion or religious denomination." *Id*. The discriminatory character of the designation may be shown by inference; it is rare for a municipality to be so lacking in subtlety as to enact explicitly discriminatory legislation. *See Albanian Associated Fund v. Twp. of Wayne*, 2007 WL 2904194, at *10-11 (D.N.J.) (Sheridan, J.) (Inference of discrimination against Muslim group could be drawn from town's more favorable actions on comparable applications toward other religious and non-religious landowners). In this respect RLUIPA jurisprudence is no different from that

under the Free Exercise Clause, where discriminatory intent also may be inferred from circumstantial evidence. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540 (1993); *Tenafly Eruv Ass'n*, 309 F.3d at 165-66.

The timing, the speedy designation as well as the Recommendation from Planning Board about the existence of other religious institutions (see Exhibit 4) demonstrate the discriminatory nature of the designation. See *Al Falah Center et al., v. the Township of Bridgewater, et al*., 3:11-cv-02397-MAS-LHG Docket No. 95, at 2, and 45. It was not until the property was purchased by Muslims to be used as a Mosque, that suddenly 20 Grandview Boulevard became the subject to landmark designation because of its alleged architectural style – which was based on nothing more than personal assessments and sentimental attachments in violation of 42 U.S.C. § 2000cc(a)(1). See generally *Fortress Bible Church v. Feiner,* 694 F.3d 208, 220 (2d Cir. 2012). When ICCMW sought to use the house as a Mosque, it became viable for landmark designation. See *Cottonwood Christian Ctr. v. Cypress Redev. Agency*, 218 F. Supp. 2d 1203, 1225 (C.D. Cal. 2002) (the court found discriminatory intent where the property at issue "sat vacant" for "nearly a decade," but once the disfavored religious group purchased it "the City became a bundle of activity" looking for alternative development options).

The series of events from CHAT's opposition to religious institutions, to statements made by City officials, assistance given to CHAT with their application against ICCMW by government officials, to the Planning Board Recommendation that there were already enough religious institutions, to the party line decision leading to the designation, offers enough inference of the City of Yonkers repeated arbitrary decisions targeting ICCMW and leading to landmark designation, once ICCMW expressed its intent to build a Mosque.

Further circumstantial evidence of discriminatory intent can be found in the extraordinary atmosphere at the Landmark Preservation Board, City Council hearings, neighbors and CHAT campaigns as described herein-above. It is clear that many of the actions were motivated by anti-Muslim animus rather than any concern about any landmark worthy characteristics of the house (Okech Aff. ¶¶ 20-26 &43-51; Nakadar Aff. ¶¶ 18, 25, 28-33 & 47-58; Shariff Aff. ¶¶ 14-18, 22, 24-29 & 42-48; Nawazuddin Aff ¶¶ 10, 19, 21-22, 24-28, 30-35, 37 & 38; Chesnavage Aff. ¶¶ 20-21). See e.g. *Congregation Kol Ami v. Abington Twp.*, 309 F.3d 120, 143 (3d Cir. 2002) (noting that religious animus is arbitrary and irrational); see also *Al Falah Center et al., v. the Township of Bridgewater, et al*., 3:11-cv-02397-MAS-LHG Docket No. 95, at 2, and 45. The Planning Board's January 13, 2016 Recommendation gave carte blanch to the discriminatory landmark ICCMW property, because other houses of worship already exist in the community. See *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 350 (2d Cir. 2007) ("The arbitrary application of laws [by decision makers] to religious organizations may reflect bias or discrimination against religion."). See also *Sts. Constantine and Helen Greek Orthodox Church*, 396 F.3d at 900 (where decision maker cannot justify a land-use decision burdening religious exercise, "the inference arises that hostility to religion, or more likely to a particular sect, influenced the decision"); *Westchester Day Sch., at* 350-51 (2d Cir. 2006) (following *Sts. Constantine and Helen Greek Orthodox Church*).

(2) Substantial burden on religious exercise

RLUIPA's "general rule" requires a strict-scrutiny analysis of land-use regulations that substantially burden religious exercise:

> No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution,

> unless the government demonstrates that imposition of the burden on that person, assembly or institution (A) is in furtherance of a compelling government interest; and (B) is the least restrictive means of further that compelling government interest. 42 U.S.C. § 2000cc(a)(1).

This rule applies under three alternative specified conditions, one of which is met here. The landmark designation has been imposed as part of a system of land-use regulations under which a government makes "individualized assessments of the proposed uses for the property involved." 42 U.S.C. § 2000cc(a)(2)(C). Decisions to designate landmarks are such "individualized assessments." See generally *Fortress Bible Church* 694 F.3d, at 220. Here, the City of Yonkers purpose in designating 20 Grandview Boulevard as a landmark was the result of individualized assessment without evidence, due diligence and research. As argued throughout this motion, the sudden individualized assessment and the emotional attachment to ICCMW's property due to aesthetics led to landmark designation. Such conduct was capricious, arbitrary and discriminatory. The intent was to preclude and burden ICCMW from using its property as a house of worship.

The landmark designation imposes the "substantial burden" that triggers RLUIPA's "general rule" requiring strict scrutiny. The facts demonstrating "substantial burden" are clear: a religious organization purchased a specific property for a religious use. When it entered into the purchase contract, a house of worship was a permitted use of that property; and a house of worship is still a permitted use of that property. The property had changed owners numerous times and only now when Muslims bought it, and wanted to use it as Mosque, did the house become a suddenly appropriate for landmark designation. In *Saints Constantine and Helen*, the Seventh Circuit concluded that a substantial burden was demonstrated in circumstances where

the "decision maker cannot justify" the challenged ruling and where "repeated legal errors by the City's officials casts doubt on their good faith." *Westchester Day Sch*., 504 F.3d, at 350-51.

As argued in this brief, the landmark designation substantially limits ICCMW ability to renovate the property and install Islamic characteristics of their choice. It, by default, limits their use of the property for its intended purpose. ICCMW acquired the property, so that the Muslim population of Yonkers can have a permanent house of worship, with Islamic characteristics. The landmark designation curtails ICCMW's free will and adds additional hurdles for ICCMW to undertake renovations in the future, because once a property is designated as a landmark, "any alteration or repair which causes any material change in appearance of any feature of a building, structure, site or object in a designated historic district or of a designated landmark" cannot be commenced without the issuance of a certificate of appropriateness. § 45-8 (A)(1) of the Landmark Preservation Ordinance. This certificate of appropriateness is in addition to any building, sign or other permit required by the state or local regulations. Ordinance § 45-8(B). To receive this certificate, ICCMW has to submit an extensive application to the Landmark Preservation Board (§ 45-8 C)., which is subject to public hearings (§ 45-8 E). The same public that already had made it clear they do not want a Mosque in Colonial Heights. Alternatively, ICCMW can submit its application to the Planning Board (§ 45-8 O). However, the Planning Board has already made its position clear on this matter with its January 13th letter. (Exhibit 4.) Such a substantial burden was not necessary and was established without any legal basis. The burden has been established to target ICCMW's application to build a Muslim house of worship.

The land mark designation imposes land use regulations that unreasonably limits ICCMW's religious structures in violation of 42 U.S.C. § 2000cc(b)(3)(B)[15].

RLUIPA recognizes this concern by specifically defining the use[,] building or conversion of real property for the purpose of religious exercise as the type of religious exercise that cannot be substantially burdened absent a compelling interest." *Cottonwood Christian Ctr. v. Cypress Redev. Agency*, 218 F. Supp. 2d 1203, 1226 (C.D. Cal. 2002). The *Cottonwood* court defined substantial burden as government action "prevent[ing] [an individual] from engaging in conduct or having a religious experience which the faith mandates." *Id*. at 1227. Here the City of Yonkers has prevented ICCMW from freely renovating their property to make it a fully functional Mosque, with all the "theological requirements" and Islamic characteristics, in violation of 42 U.S.C. § 2000cc(b)(3)(B). The designation burdens ICCMW members' religious exercise in violation of 42 U.S.C. § 2000cc(a)(1).

This Court should find that the City of Yonkers landmark designation of ICCMW's property violated the *Cottonwood* court holding. *Id* at 1226. The landmark designation has a discriminatory effect and treats ICCMW's property differently from non-Muslim religious buildings. Further the designation imposes burden on ICCMW.

(3) There is No Compelling State Interest to Designate ICCMW's Property as a Landmark

Under RLUIPA, once a religious institution has demonstrated that its religious exercise has been substantially burdened, the burden of proof shifts to the municipality to prove that it

[15] § 2000cc(b)(3)(B) provides "No government shall impose or implement a land use regulation that - (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction."

acted in furtherance of a compelling governmental interest and that its action is the least restrictive means of furthering that interest. § 2000cc–2(b); *Westchester*, 504 F.3d at 353 (internal citation omitted). RLUIPA invokes the most demanding test known to constitutional law. *Wisconsin v. Yoder,* 406 U.S. 205, 215 (1972). Not only must the government identify a valid compelling interest, it must also show that its need is compelling with respect to "the particular claimant whose religious exercise is being burdened." *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418, 430-3 (2006) (analyzing a parallel section of the Religious Freedom Restoration Act).

To qualify as a compelling state interest, the alleged interest must be among "interests of the highest order." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546, 113 S. Ct. 2217, 2233, 124 L. Ed. 2d 472 (1993). Once substantial burden on religious exercise is shown, the government can defend its action only by proving that the substantial burden furthers a "compelling governmental interest" and "is the least restrictive means of achieving that interest." 42 U.S.C. § 2000cc(a)(1).

The City of Yonkers cannot show that the landmark designation of ICCMW's property was in furtherance of a compelling government interest, unless that government interest is to perpetuate hate and discrimination against Muslims. The City of Yonkers cannot overcome the hurdle that the City's own Landmark Preservation Ordinance was not complied with in this designation. Instead the decision was based on political alliance, conflict of interest by some of the Council Members who assisted CHAT with the discriminatory application and the bias attitude during the landmark designation process to justify it with the existence of enough religious institutions. The City cannot overcome the evident bias and animus displayed towards

ICCMW and Muslims in general. In the context of the RLUIPA claims, Defendants cannot demonstrate that the landmark designation is narrowly tailored to serve a compelling government interest. 42 U.S.C. § 2000cc(b)(3)(A)-(B), explicitly prohibits the total exclusion of certain religious land uses in violation of the First Amendment law. The landmark designation, which was driven by political party affiliation in effect perpetuates a discriminatory intent targeting the Mosque and intent on keeping Muslims out of Colonial Heights.

(4) The Landmark Designation Violates Plaintiff's Constitutional Rights

ICCMW members assert claims for deprivation of federal constitutional rights under 42 U.S.C. § 1983. To establish a prima facie case under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) the action occurred "under color of law" and (2) the action is a deprivation of a constitutional right or a federal statutory right. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981).

i. The Landmark Designation Occurred Under Color of Law

Here, each of the defendants are a unit of local government that can be sued directly under § 1983 pursuant to *Monell v. Dep't of Soc. Servs. of New York*, 436 U.S. 658, 690 (1978). Defendants, by designating ICCMW's property as a landmark, have deprived it and its members of their first amendment right to free exercise of religion in a house that bears the renovations of their choosing. Their decision only targets Muslims, their religious institution and creates a substantial burden on ICCMW and its congregation, See *Westchester Day Sch*., 504 F.3d, at 350-51.

ii. The Landmark Designation Deprives ICCMW and Its Members of Their First Amendment Right

ICCMW members' right to free exercise of religion is guaranteed by both the First Amendment of the United States Constitution and Bill of Rights of the Constitution of the State of New York. N.Y. Const. art. 1, § 3 (Freedom of worship; religious liberty).

The landmark designation contravenes the Free Exercise Clause of the First Amendment. *See* U.S. Const. amend. I; see also 42 U.S.C. § 1983. The First Amendment prohibits government actions that "substantially burden the exercise of sincerely held religious beliefs unless those actions are narrowly tailored to advance a compelling government interest." *Fortress Bible Church v.* 694 F.3d, at 220 (2d Cir. 2012).

A claim under the Free Exercise Clause requires a showing that the challenged law discriminates against religiously motivated conduct (i.e., it is not "neutral") or proscribes particular conduct only or primarily when the conduct is religiously motivated (i.e., the law is not of general applicability). *Church of the Lukumi Babalu Aye,* 508 U.S. at 542. If either showing is made, then the law must be scrutinized strictly; it cannot be upheld unless it is narrowly tailored to advance a compelling government interest.

Even if the text of a law appears to be neutral, it is not if its object is to restrict religious practices. *Church of the Lukumi Babalu Aye*, 508 U.S. at 535. To determine the object of a law, courts may consider circumstantial evidence, including the events leading to its enactment, its legislative history and its effects. *Id.* at 540. As argued *supra* page 32 circumstantial evidence of discriminatory intent can be found in the extraordinary atmosphere at the Landmark Preservation Board, the City Council hearings, the Mayors approval and the Landmark

Resolution were all motivated by anti-Muslim animus rather than any concern about any landmark worthy characteristics of the house.

The resolution designating ICCMW's property as a landmark restricts ICCMW's members' religious practice. *Lukumi,* at 535*,* lastly the timing and manner and the recommendations under which Defendants passed landmark designation against ICCMW's property strongly suggests that it was passed and approved to accommodate anti-Muslim animus and to prevent the existence of a Mosque at 20 Grandview Boulevard, with its religious characteristics.

The City of Yonkers by designating ICCMW's property as a landmark has both violated RLUIPA, and deprives ICCMW and its members their first amendment right because it prevents ICCMW from renovating the property to make it a Mosque with relevant Islamic characteristics.

iii. The Landmark Designation Deprives ICCMW and Its Members of Their Fourteenth Amendment Right

The Fourteenth Amendment provides that "No state . . . shall deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. This Court's analysis of plaintiffs equal protection claim under the federal constitution should be governed by "the well-established principle that, in the federal Constitutional universe, federal courts accord substantial deference to local government in setting land use policy . . . ." *Congregation of Kol Ami v. Abington Twp*., 309 F.3d 120, 125 (3d Cir. 2002). This deference, however, is not boundless. Where the government creates distinctions between similarly situated uses that are not rationally related to a legitimate state goal, then the Court is free to "upset" the land use policy. *Id.* By way of example, "bare animus towards a group or 'fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding'" may constitute sufficient

evidence for a zoning ordinance to fail under an equal protection challenge. *Id.* at 135. (quoting *City of Cleburne, Texas v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985). See also *Al Falah Center at 16.*

In the case at bar, the animus towards ICCMW is palpable. As argued extensively in this brief, the animus is not only from the members of the public but from the City of Yonkers too. The City of Yonkers has created a "distinction between similarly situated uses that are not rationally related to a legitimate state goal (*Congregation of Kol Ami* at 125), by (1) the Planning board's January 13th Recommendation that since the area already has three other places of worship, landmarking ICCMW's property will have no impact on the community (Exhibit 4) and (2) the City then ultimately landmarking the property. None of the other three places of worship in Colonial Heights' were Mosques; ICCMW would have been the first one. The Planning Board's Recommendation that the landmark designation will "have no impact on the community," begs the question, which community is it referring to, because the designation does have an impact on the Muslim community. The Muslim community is being denied its equal protection right under the law. It's being denied the right to have a house of worship that bears the relevant Islamic characteristics, and theological requirements guaranteed under RLUIPA. Based on the January 13, 2016 Recommendation ICCMW's property is also being treated differently from other nonreligious establishments/properties in the same area in violation of RLUIPA§ 2000cc–2(b)(1);, simply because the property will be used as a Mosque.

Further, the landmark designation also violates plaintiffs' constitutional guarantee of equal protection under the Fourteenth Amendment, for essentially the same reasons that make it an unlawful discrimination in violation of RLUIPA. As argued extensively in this brief the landmark designation intends to curtail ICCMW's free will to renovate the property now or in

the future and add exterior characteristics to accommodate the religious practices of its congregation. Any alteration or repair will be subject to approval and issuance of certificate appropriateness from the Landmark Preservation Board, or the Planning Board which will burden ICCMW and burden the religious practices of its congregation. These two entities of the City of Yonkers have already perpetuated the bias and discrimination towards ICCMW by designating the property as a landmark. The burden has been established to target ICCMW's intention to build a Muslim house of worship. The landmark designation is not neutral, its object is to restrict religious practices of Muslims in the City of Yonkers.

III. ICCMW WILL SUFFER IRREPARABLE INJURY IF PRELIMINARY INJUNCTIVE RELIEF IS DENIED

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Bums*, 427 U.S. 347, 373 (1976), See, *Latino Officers Ass'n. Of City of New York*, 196 F.3d 458,462 (2d Cir. 1999) ("Violations of First Amendment rights 'are commonly considered irreparable injuries for the purposes of a preliminary injunction' "), *Bery v. City of New York*, 97 F.3d 689, 693-94 (2d Cir. 1996) ("when an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary").

To qualify as irreparable, Plaintiffs' injury must be "of a peculiar nature" and not compensable by money damages. See *Republic of Panama v. Republic Nat. Bank of New York*, 681 F. Supp. 1066, 1070 (S.D.N.Y. 1988) (quoting *A.O. Smith Corp. v. F.T.C.,* 530 F.2d 515, 525 (3d Cir.1976)).

There are two grounds for finding irreparable injury here. First, ICCMW members' have lost their First Amendment freedom, as provided in *Elrod*, at 373 (1976). Further, if the landmark designation is allowed to stay Plaintiffs' will be deprived of their right to exercise their religion freely by building a Mosque according to the religious architecture.

Plaintiffs have deprived ICCMW and its members their constitutional rights. They will not be able to make their property into a fully functional Mosque and be free from landmark restrictions should they in the future want to renovate or remodel the exterior portions of the property. Each time ICCMW wants to make any modifications to the exterior of the house, they will have to submit a detailed application to the Landmark Preservation Board for a certificate of appropriateness. (§ 45-8 (C) of the Ordinance). Thereafter the Board shall hold public meetings to determine the appropriateness of the proposed changes. ((§ 45-8 (E) of the Ordinance).

As argued throughout this motion, the City of Yonkers has already taken away and burdened Plaintiffs' rights to use of its property for religion purposes, a permissible use under sites S- 100 zoning. CHAT and the public fought the idea of having a Mosque in Yonkers and the City has succumbed to their demands. As a result, ICCMW will have to incur monetary expenses before the zoning and the landmark board only to be faced with the same discrimination and animus already experienced, at public hearing. Further, because of the existing animus against Muslims in Colonial Heights, the chances that any application for a certificate of appropriateness from ICCMW will be denied is extremely high. The landmark designation intends to prevent ICCMW and its congregation from expressing its First Amendment rights and practice its religion freely. ICCMW will suffer irreparable harm if the landmark designation is not reversed.

Second, money damages are not considered sufficient compensation for denial of property rights. The courts realize that every piece of real property is unique, and therefore money cannot make an aggrieved owner whole. *Cottonwood Christian Ctr.*, 218 F. Supp. 2d at 1230. No monetary compensation could satisfy "an interest in real property, which by its very nature is considered unique." *Bean v. Independent American Savings Association*, 838 F.2d 739, 743 (5th Cir. 1988); see also *Pelfresne v. Vill. of Williams Bay*, 865 F.2d 877, 883 (7th Cir. 1989) ("As a general rule, interference with the enjoyment or possession of land is considered 'irreparable' since land is viewed as a unique commodity for which monetary compensation is an inadequate substitute.").

When an injunction is sought to protect First Amendment rights, likelihood of success on the merits and irreparable harm merge into a single threshold requirement. *Brooklyn Institute of Arts and Sciences v. City of New York*, 64 F. Supp.2d 184, 197 (E.D.N.Y. 1999). ICCMW seeks this injunction to protect its right to use its property as a religious institution, complete with all relevant religious characteristics and aesthetics. ICCMW congregation deserves to practice its religion without the City's interference. If the landmark designation is allowed to stay, ICCMW will be prevented from putting their property to its intended use, which is the only use they have for the property. ICCMW is entitled to the requested injunction

IV. BOTH THE BALANCE OF HARDSHIPS AND THE PUBLIC INTEREST FAVOR GRANTING PRELIMINARY INJUNCTIVE RELIEF

If preliminary injunctive relief is not granted, the harm to Plaintiffs will, as noted above, include immediate irreparable harm to their free exercise rights that is not compensable in

money. Moreover, as argued *supra* page 27, 29 and 30, Congress by enacting RLUIPA identified a strong public interest in prohibiting local governments from frustrating religious land uses. That interest is best served by prompt relief.

V. FEDERAL COURTS HAVE BROAD EQUITABLE POWERS TO PREVENT A WIDESPREAD AND LONGSTANDING PRACTICE OF UNCONSTITUTIONAL CONDUCT BY A GOVERNMENT ENTITY

This Court's equitable powers are broad: "breadth and flexibility are inherent in equitable remedies." *Brown v. Plata*, 563 U.S. 493, 538, 131 S. Ct. 1910, 1944, (2011). See *also* *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971) ("Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.").

In addition, principles of federalism do not preclude a federal court from ordering changes to a municipality's practices when those practices cause pervasive deprivations of constitutional rights. See *Todaro v. Ward*, 565 F.2d 48, 53 (2d Cir. 1977) ("[A] policy of judicial restraint cannot encompass any failure to take cognizance of valid constitutional claims whether arising in a federal or state institution.") (citations and internal quotation marks omitted). Federal courts hold a "wide range of discretion in framing an injunction in terms it deems reasonable to prevent wrongful conduct," *Forschner Grp., Inc. v. Arrow Trading Co., Inc.,* 124 F.3d 402, 406 (2d Cir. 1997), and therefore may "exert [] equitable power to prevent repetition of the violation . . . by commanding measures that safeguard against recurrence." *Ruiz v. Estelle*, 679 F.2d 1115, 1155-56 (5th Cir. 1982) (amended in part, vacated in part in *Ruiz v. Estelle*, 688 F.2d 266 (5th Cir. 1982) – but not on the dicta).

CONCLUSION

Plaintiff's motion should be granted. The Court should enter a preliminary injunction declaring (1) the landmark designation void and enjoining the City of Yonkers from enforcing it, and (2) directing the local government to consider any applications submitted by ICCMW for permits or variance without consideration of the invalid landmark designation. Plaintiffs request attorney fees and cost related to this application pursuant to 42 U.S.C. § 1988.

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Respectfully submitted,

/s/ Omar T. Mohammedi

Omar T. Mohammedi, (OTM7234)
LAW FIRM OF OMAR T. MOHAMMEDI, LLC
233 Broadway, Suite 801
New York, NY 10279
(212) 725-3846

Attorneys for Plaintiffs