

Case 17-2290, Document 7, 08/07/2017, 2095324, Page1 of 50
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
CIVIL APPEAL PRE-ARGUMENT STATEMENT (FORM C)

1. SEE NOTICE ON REVERSE

2. PLEASE TYPE OR PRINT

3. STAPLE ALL ADDITIONAL PAGES

Case Caption: Islamic Community Center for Mid Westchester et al. v. City of Yonkers Landmark Preservation Board et al.	District Court or Agency: S.D.N.Y.	Judge: Briccetti
	Date the Order or Judgment Appealed from was Entered on the Docket: 06-30-2017	District Court Docket No.: 7:16-cv-07364-VB
	Date the Notice of Appeal was Filed: 07-25-2017	Is this a Cross Appeal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Attorney(s) for Appellant(s): <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	Counsel's Name: Address: Telephone No.: Fax No.: E-mail: Omar T. Mohammedi Law Firm of Omar T. Mohammedi, LLC 233 Broadway, Suite 801, New York, NY 10279 Tel: 212-725-3846; Fax: 212-202-7621; E-mail: omohammedi@otmlaw.com
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Attorney(s) for Appellee(s): <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant	Counsel's Name: Address: Telephone No.: Fax No.: E-mail: Dennis E. A. Lynch Feerick Lynch MacCartney & Nugent, PLLC 96 South Broadway, South Nyack, NY 10960, Tel: 845-353-2000; Fax: 845-353-2789; E-mail: shannond@flmpllc.com
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Has Transcript Been Prepared? Not Applicable	Approx. Number of Transcript Pages: Not Applicable	Number of Exhibits Appended to Transcript: Not Applicable	Has this matter been before this Circuit previously? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, provide the following: Case Name: 2d Cir. Docket No.: Reporter Citation: (i.e., F.3d or Fed. App.)
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ADDENDUM "A": COUNSEL MUST ATTACH TO THIS FORM: (1) A BRIEF, BUT NOT PERFUNCTORY, DESCRIPTION OF THE NATURE OF THE ACTION; (2) THE RESULT BELOW; (3) A COPY OF THE NOTICE OF APPEAL AND A CURRENT COPY OF THE LOWER COURT DOCKET SHEET; AND (4) A COPY OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS APPEAL, INCLUDING TRANSCRIPTS OF ORDERS ISSUED FROM THE BENCH OR IN CHAMBERS.

ADDENDUM "B": COUNSEL MUST ATTACH TO THIS FORM A LIST OF THE ISSUES PROPOSED TO BE RAISED ON APPEAL, AS WELL AS THE APPLICABLE APPELLATE STANDARD OF REVIEW FOR EACH PROPOSED ISSUE.

PART A: JURISDICTION

<p style="text-align: center;"><u>1. Federal Jurisdiction</u></p> <input type="checkbox"/> U.S. a party <input type="checkbox"/> Diversity <input checked="" type="checkbox"/> Federal question (U.S. not a party) <input type="checkbox"/> Other (specify): _____	<p style="text-align: center;"><u>2. Appellate Jurisdiction</u></p> <input checked="" type="checkbox"/> Final Decision <input type="checkbox"/> Order Certified by District Judge (i.e., Fed. R. Civ. P. 54(b)) <input type="checkbox"/> Interlocutory Decision Appealable As of Right <input type="checkbox"/> Other (specify): _____
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IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.

PART B: DISTRICT COURT DISPOSITION (Check as many as apply)

<p><u>1. Stage of Proceedings</u></p> <input checked="" type="checkbox"/> Pre-trial <input type="checkbox"/> During trial <input type="checkbox"/> After trial	<p><u>2. Type of Judgment/Order Appealed</u></p> <table style="width:100%;"> <tr> <td style="width:33%;"> <input type="checkbox"/> Default judgment <input checked="" type="checkbox"/> Dismissal/FRCP 12(b)(1) lack of subject matter juris. <input checked="" type="checkbox"/> Dismissal/FRCP 12(b)(6) failure to state a claim <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) frivolous complaint <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) other dismissal </td> <td style="width:33%;"> <input type="checkbox"/> Dismissal/other jurisdiction <input type="checkbox"/> Dismissal/merit <input type="checkbox"/> Judgment / Decision of the Court <input type="checkbox"/> Summary judgment <input type="checkbox"/> Declaratory judgment <input type="checkbox"/> Jury verdict <input type="checkbox"/> Judgment NOV <input type="checkbox"/> Directed verdict <input type="checkbox"/> Other (specify): </td> <td style="width:33%;"></td> </tr> </table>	<input type="checkbox"/> Default judgment <input checked="" type="checkbox"/> Dismissal/FRCP 12(b)(1) lack of subject matter juris. <input checked="" type="checkbox"/> Dismissal/FRCP 12(b)(6) failure to state a claim <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) frivolous complaint <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) other dismissal	<input type="checkbox"/> Dismissal/other jurisdiction <input type="checkbox"/> Dismissal/merit <input type="checkbox"/> Judgment / Decision of the Court <input type="checkbox"/> Summary judgment <input type="checkbox"/> Declaratory judgment <input type="checkbox"/> Jury verdict <input type="checkbox"/> Judgment NOV <input type="checkbox"/> Directed verdict <input type="checkbox"/> Other (specify):		<p><u>3. Relief</u></p> <table style="width:100%;"> <tr> <td style="width:50%;"> <input checked="" type="checkbox"/> Damages: <input checked="" type="checkbox"/> Sought: \$ 25,000,000 <input type="checkbox"/> Granted: \$ _____ <input checked="" type="checkbox"/> Denied: \$ 25,000,000 </td> <td style="width:50%;"> <input checked="" type="checkbox"/> Injunctions: <input checked="" type="checkbox"/> Preliminary <input type="checkbox"/> Permanent <input checked="" type="checkbox"/> Denied </td> </tr> </table>	<input checked="" type="checkbox"/> Damages: <input checked="" type="checkbox"/> Sought: \$ 25,000,000 <input type="checkbox"/> Granted: \$ _____ <input checked="" type="checkbox"/> Denied: \$ 25,000,000	<input checked="" type="checkbox"/> Injunctions: <input checked="" type="checkbox"/> Preliminary <input type="checkbox"/> Permanent <input checked="" type="checkbox"/> Denied
<input type="checkbox"/> Default judgment <input checked="" type="checkbox"/> Dismissal/FRCP 12(b)(1) lack of subject matter juris. <input checked="" type="checkbox"/> Dismissal/FRCP 12(b)(6) failure to state a claim <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) frivolous complaint <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) other dismissal	<input type="checkbox"/> Dismissal/other jurisdiction <input type="checkbox"/> Dismissal/merit <input type="checkbox"/> Judgment / Decision of the Court <input type="checkbox"/> Summary judgment <input type="checkbox"/> Declaratory judgment <input type="checkbox"/> Jury verdict <input type="checkbox"/> Judgment NOV <input type="checkbox"/> Directed verdict <input type="checkbox"/> Other (specify):						
<input checked="" type="checkbox"/> Damages: <input checked="" type="checkbox"/> Sought: \$ 25,000,000 <input type="checkbox"/> Granted: \$ _____ <input checked="" type="checkbox"/> Denied: \$ 25,000,000	<input checked="" type="checkbox"/> Injunctions: <input checked="" type="checkbox"/> Preliminary <input type="checkbox"/> Permanent <input checked="" type="checkbox"/> Denied						

PART C: NATURE OF SUIT (Check as many as apply)

<p><u>1. Federal Statutes</u></p> <input type="checkbox"/> Antitrust <input type="checkbox"/> Bankruptcy <input type="checkbox"/> Banks/Banking <input checked="" type="checkbox"/> Civil Rights <input type="checkbox"/> Commerce <input type="checkbox"/> Energy <input type="checkbox"/> Commodities <input checked="" type="checkbox"/> Other (specify): RLUIPA	<p><u>2. Torts</u></p> <input type="checkbox"/> Admiralty/ Maritime <input type="checkbox"/> Assault / Defamation <input type="checkbox"/> FELA <input type="checkbox"/> Products Liability <input type="checkbox"/> Other (Specify):	<p><u>3. Contracts</u></p> <input type="checkbox"/> Admiralty/ Maritime <input type="checkbox"/> Arbitration <input type="checkbox"/> Commercial <input type="checkbox"/> Employment <input type="checkbox"/> Insurance <input type="checkbox"/> Negotiable Instruments <input type="checkbox"/> Other Specify	<p><u>4. Prisoner Petitions</u></p> <input type="checkbox"/> Civil Rights <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Mandamus <input type="checkbox"/> Parole <input type="checkbox"/> Vacate Sentence <input type="checkbox"/> Other
<p><u>5. Other</u></p> <input type="checkbox"/> Hague Int'l Child Custody Conv. <input type="checkbox"/> Forfeiture/Penalty <input type="checkbox"/> Real Property <input type="checkbox"/> Treaty (specify): _____ <input checked="" type="checkbox"/> Other (specify): N.Y. Const. art. 1, § 3 and § 11	<p><u>6. General</u></p> <input type="checkbox"/> Arbitration <input type="checkbox"/> Attorney Disqualification <input type="checkbox"/> Class Action <input type="checkbox"/> Counsel Fees <input type="checkbox"/> Shareholder Derivative <input type="checkbox"/> Transfer	<p><u>7. Will appeal raise constitutional issue(s)?</u> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Will appeal raise a matter of first impression? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No </p>	

1. Is any matter relative to this appeal still pending below? Yes, specify: _____ No

2. To your knowledge, is there any case presently pending or about to be brought before this Court or another court or administrative agency which:

(A) Arises from substantially the same case or controversy as this appeal? Yes No

(B) Involves an issue that is substantially similar or related to an issue in this appeal? Yes No

If yes, state whether "A," or "B," or both are applicable, and provide in the spaces below the following information on the *other* action(s):

Case Name:	Docket No.:	Citation:	Court or Agency:
Name of Appellant:			
Date: 08-07-2017	Signature of Counsel of Record:		

NOTICE TO COUNSEL

Once you have filed your Notice of Appeal with the District Court or the Tax Court, you have only 14 days in which to complete the following important steps:

1. Complete this Civil Appeal Pre-Argument Statement (Form C); serve it upon all parties, and file it with the Clerk of the Second Circuit in accordance with LR 25.1.
2. File the Court of Appeals Transcript Information/Civil Appeal Form (Form D) with the Clerk of the Second Circuit in accordance with LR 25.1.
3. Pay the \$505 docketing fee to the United States District Court or the \$500 docketing fee to the United States Tax Court unless you are authorized to prosecute the appeal without payment.

PLEASE NOTE: IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN 14 DAYS, YOUR APPEAL WILL BE DISMISSED. SEE LOCAL RULE 12.1.

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
CIVIL APPEAL PRE-ARGUMENT STATEMENT (FORM C)**

ADDENDUM "A"

Description of the Nature of the Action

In 2000, the United States Congress enacted the Religious Land Use and Institutionalized Persons Act (RLUIPA), codified as 42 U.S.C. § 2000cc. The United States Congress enacted RLUIPA to stop municipalities from discriminating against houses of worships through land use law. The co-sponsors of the bill found that houses of worship were frequently discriminated against on the face of zoning code and in highly individualized and discretionary process of land use regulation. RLUIPA prohibits state and local government infringement on religious exercise through land use regulations. What the City of Yonkers did to Plaintiffs herein is exactly what RLUIPA was enacted to prevent.

Plaintiffs filed an action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and (a)(4); 1367; 42 U.S.C. § 2000cc.; 42 U.S.C. § 1983; 28 U.S.C. §§ 2201 and 2202 against Defendants, City of Yonkers Landmark Preservation Board, City of Yonkers Planning Bureau/Planning Board, City of Yonkers, Mayor Michael Spano in his official capacity as the Mayor of the City of Yonkers, Liam J. McLaughlin in his official capacity as a member of the City of Yonkers City Council and Council President; Dennis Shepherd in his official capacity as a member of the City of Yonkers City Council, Mike Breen in his official capacity as a member of the City of Yonkers City Council, John Larkin in his official capacity as a member of the City of Yonkers City Council and the Council's Majority Leader. Plaintiffs sought judgment enjoining Defendants from enforcing or endeavoring to enforce the finalized discriminatory Landmark Resolution No. 64-2016, which was signed into law, by the Mayor of the City of Yonkers, on May 27, 2016, and

docketed with the Clerk of the City of Yonkers on June 1, 2016. The landmark resolution has targeted and burdened Plaintiffs with additional requirements in their use and enjoyment of their property as a house of worship.

Plaintiffs sought a declaratory judgment declaring Landmark Resolution No. 64-2016 void ab initio. Plaintiffs also sought a declaratory judgment against Defendants' arbitrary actions. Defendants' actions were final and unconstitutional. The discriminatory landmark designation violated Plaintiffs' federal and state constitutional rights, as well as Plaintiffs' statutory rights. Plaintiffs sought a mandatory injunction against any enforcement or effect of Resolution No. 64-2016. Plaintiffs also sought compensatory damages against Defendants, for the loss of Plaintiffs' free exercise of religion, deprivation of Plaintiffs' right to equal protection and due process under the laws, and expenses occurred by Plaintiffs and caused by Defendants' actions in an amount to be determined at trial, but in no event less than \$25,000,000. Plaintiffs sought an award of costs, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988, and such other and further relief as this Court deems just and proper.

The District Court's Holding / The Result Below

The District Court (1) denied Plaintiffs' motion for leave to file a supplemental complaint; (2) denied Plaintiffs' motion for a preliminary injunction; (3) denied Plaintiffs' motion to strike; and (4) granted Defendants' motion to dismiss.

The District Court failed to analyze or apply RLUIPA, the applicable statute in this case. The District Court dismissed Plaintiffs' complaint without giving any consideration to RLUIPA, which gives federal courts jurisdiction to protect religious institutions from municipalities' arbitrary and discriminatory actions against religious institutions. RLUIPA was the basis under

which Plaintiffs' bought their lawsuit before the federal court. The District Court, instead concluded that Plaintiffs' claims were not ripe for the Court's consideration, pursuant to the *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985), ripeness standards. The Williamson County ripeness standard is not applicable to RLUIPA claims. The District Court declined to consider a recent RLUIPA judicial holding from sister circuits (*Temple B'Nai Zion, Inc. v. City of Sunny Isles Beach*, 727 F.3d 1349 (11th Cir. 2013), which addressed facts similar to Plaintiffs' claims. There is no precedent in this Circuit addressing ripeness issue under RLUIPA, similar to Plaintiffs' claims in this lawsuit. In addition in arriving at its decision to dismiss Plaintiffs' complaint, the District Court declined to consider the allegations in Plaintiffs' complaint as true, and failed to view them in the light most favorable to Plaintiffs' the non-moving party. Finally the District Court erroneously refused to apply the central federal issue in addressing Plaintiffs' First Amendment retaliation claim and denied Plaintiffs request to supplement their complaint and add First Amendment unlawful retaliation claim against Defendants.

Notice of Appeal & District Court Docket Sheet

Plaintiffs provide the Notice of Appeal entered July 25, 2017 and the District Court's current docket sheet as Exhibits A & B, respectively.

Relevant Order

Plaintiffs provide the June 28, 2017 Opinion and Order of the United District Court Southern District of New York (Briccetti, J.), and the June 30, 2017 Judgment, which forms the

basis for this appeal, as Exhibit C. Plaintiffs also provide the July 28, 2017 Order correcting typographical error in the June 28, 2017 Opinion and Order and in the June 30, 2017 Judgment, attached herein as Exhibit D.

Exhibit A

**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.

16-CV-7364 (VB)

NOTICE OF APPEAL

Notice is hereby given that the following parties: 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, in the above-named case hereby appeal to the United States Court of Appeals for the

Second Circuit from each and every part of the Opinion and Order entered in this action by the United States District Court for the Southern District of New York, respectively dated June 30, 2017 and June 28, 2017 (ECF Nos. 68 and 67), copies of which are attached as Exhibits A-B, (a) denying Plaintiffs' motion for leave to file a supplemental complaint, (b) denying Plaintiffs' motion for a preliminary injunction, (c) denying Plaintiffs' motion to strike and (d) dismissing Plaintiffs' claims against Defendants.

Dated: July 25, 2017
New York, New York

Respectfully Submitted,

By: /s/ Omar T Mohammedi
Omar T. Mohammedi, Esq., (OTM7234)
LAW FIRM OF OMAR T. MOHAMMEDI, LLC
233 Broadway, Suite 801
Woolworth Building
New York, NY 10279
(212) 725-3846
Attorneys for Plaintiffs

Exhibit B

**U.S. District Court
Southern District of New York (White Plains)
CIVIL DOCKET FOR CASE #: 7:16-cv-07364-VB**

Islamic Community Center for Mid Westchester et al v. City of
Yonkers Landmark Preservation Board et al
Assigned to: Judge Vincent L. Briccetti
Demand: \$9,999,000
Cause: 42:1983 Civil Rights Act

Date Filed: 09/21/2016
Date Terminated: 06/30/2017
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: U.S. Government Defendant

Plaintiff

**Islamic Community Center for Mid
Westchester**

represented by **Omar T. Mohammedi**
Law Office of Omar T. Mohammedi
200 Madison Avenue
New York, NY 10016
212 725 3846
Fax: 212 725 9160
Email: omohammedi@otmlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Elizabeth Katumbi Kimundi
Brooklyn, NY 11218
(917)-856-6505
Fax: (917) 856-6505
Email: ekimundi@gmail.com
ATTORNEY TO BE NOTICED

Plaintiff

Mohammed Zubar Nakadar

represented by **Omar T. Mohammedi**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Elizabeth Katumbi Kimundi
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Omar Ockeh

represented by **Omar T. Mohammedi**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Elizabeth Katumbi Kimundi
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Syed Kamal

represented by **Omar T. Mohammedi**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Elizabeth Katumbi Kimundi
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Ali Nawazuddin

represented by

Omar T. Mohammedi
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Elizabeth Katumbi Kimundi
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Mohammed Sohail

represented by **Omar T. Mohammedi**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Elizabeth Katumbi Kimundi
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Ali El-Ousrouti

represented by **Omar T. Mohammedi**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Elizabeth Katumbi Kimundi
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Favzul Kabeer

represented by **Omar T. Mohammedi**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Elizabeth Katumbi Kimundi
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Mohammed Raheem

represented by **Omar T. Mohammedi**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Elizabeth Katumbi Kimundi
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Arshad Shariff

represented by **Elizabeth Katumbi Kimundi**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Omar T. Mohammedi
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Ismet Jashari

represented by **Elizabeth Katumbi Kimundi**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Omar T. Mohammedi
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

**City of Yonkers Landmark
Preservation Board**

represented by **Dennis E. A. Lynch**
Feerick Lynch MacCartney
96 South Broadway
South Nyack, NY 10960
845-353-2000
Fax: 845-353-2789
Email: shannond@flmpllc.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Mary Elizabeth Brady Marzolla
Feerick Lynch MacCartney
96 South Broadway
South Nyack, NY 10960
(845)353-2000
Fax: (845) 353-2789
Email: mmarzolla@flmpllc.com
ATTORNEY TO BE NOTICED

Patrick Andrew Knowles
Feerick Lynch MacCartney
96 South Broadway
South Nyack, NY 10960
(845)-353-2000
Email: pknowles@flmpllc.com
ATTORNEY TO BE NOTICED

Defendant

The City of Yonkers Planning Bureau
also known as
City of Yonkers Planning Board

represented by **Dennis E. A. Lynch**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Mary Elizabeth Brady Marzolla
(See above for address)
ATTORNEY TO BE NOTICED

Patrick Andrew Knowles
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

The City of Yonkers

represented by **Dennis E. A. Lynch**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Mary Elizabeth Brady Marzolla
(See above for address)

ATTORNEY TO BE NOTICED

Patrick Andrew Knowles
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Mayor Michael Spano
*in his official capacity as Mayor of the
City of Yonkers*

represented by **Dennis E. A. Lynch**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Mary Elizabeth Brady Marzolla
(See above for address)
ATTORNEY TO BE NOTICED

Patrick Andrew Knowles
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Liam J. McLaughlin
*in their official capacity as members of
the City of Yonkers City Council*

represented by **Dennis E. A. Lynch**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Mary Elizabeth Brady Marzolla
(See above for address)
ATTORNEY TO BE NOTICED

Patrick Andrew Knowles
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Dennis Shepherd
*in their official capacity as members of
the City of Yonkers City Council*

represented by **Dennis E. A. Lynch**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Mary Elizabeth Brady Marzolla
(See above for address)
ATTORNEY TO BE NOTICED

Patrick Andrew Knowles
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Mike Breen
*in their official capacity as members of
the City of Yonkers City Council*

represented by **Dennis E. A. Lynch**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Mary Elizabeth Brady Marzolla
(See above for address)
ATTORNEY TO BE NOTICED

Patrick Andrew Knowles
(See above for address)
ATTORNEY TO BE NOTICED

Defendant**John Larkin**

*in their official capacity as members of
the City of Yonkers City Council*

represented by **Dennis E. A. Lynch**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Mary Elizabeth Brady Marzolla

(See above for address)
ATTORNEY TO BE NOTICED

Patrick Andrew Knowles

(See above for address)
ATTORNEY TO BE NOTICED

Defendant**Gordon A. Burrows**

*in his official capacity as a District
County Legislator in the City of Yonkers*

Date Filed	#	Docket Text
09/21/2016	<u>1</u>	COMPLAINT against Mike Breen, Gordon A. Burrows, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau. (Filing Fee \$ 400.00, Receipt Number 465401162416)Document filed by Mohammed Sohail, Syed Kamal, Mohammed Raheem, Islamic Community Center for Mid Westchester, Ali El-Ousrouti, Mohammed Zubar Nakadar, Ali Naw Azuddin, Favzul Kabeer, Arshad Shariff, Ismet Jashari, Omar Ockeh.(pc) (rj). (Entered: 09/21/2016)
09/21/2016	<u>2</u>	CIVIL COVER SHEET filed. (pc) (rj). (Entered: 09/21/2016)
09/21/2016		SUMMONS ISSUED as to Mike Breen, Gordon A. Burrows, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau. (pc) (Entered: 09/21/2016)
09/21/2016		Magistrate Judge Kevin Nathaniel Fox is so designated. (pc) (Entered: 09/21/2016)
09/21/2016		Case Designated ECF. (pc) (Entered: 09/21/2016)
09/21/2016		Magistrate Judge Judith C. McCarthy is so designated. (ad) (Entered: 09/21/2016)
09/21/2016		NOTICE OF CASE REASSIGNMENT to Judge Vincent L. Briccetti. Judge Jesse M. Furman is no longer assigned to the case. (ad) (Entered: 09/21/2016)
09/21/2016		Minute Entry for proceedings held before Judge Jesse M. Furman: Show Cause Hearing re TRO & PI held on 9/21/2016. Elizabeth Kimundi present. Court reporter present. -- See transcript. (ab) (Entered: 09/21/2016)
09/22/2016	<u>3</u>	NOTICE OF APPEARANCE by Dennis E. A. Lynch on behalf of City of Yonkers Landmark Preservation Board. (Lynch, Dennis) (Entered: 09/22/2016)
09/22/2016	<u>4</u>	NOTICE OF APPEARANCE by Mary Elizabeth Brady Marzolla on behalf of City of Yonkers Landmark Preservation Board. (Brady Marzolla, Mary) (Entered: 09/22/2016)
09/22/2016	<u>5</u>	LETTER addressed to Judge Vincent L. Briccetti from Mary E. Brady Marzolla dated September 22, 2016 re: We respectfully submit this correspondence in opposition to the Plaintiff's Temporary Restraining Order and Preliminary Injunction application referenced on the Docket at the September 21, 2016 Minute Entry.. Document filed by City of Yonkers Landmark Preservation Board.(Brady Marzolla, Mary) (Entered: 09/22/2016)
09/23/2016	<u>6</u>	NOTICE OF APPEARANCE by Elizabeth Katumbi Kimundi on behalf of Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem,

		Mohammed Sohail. (Kimundi, Elizabeth) (Entered: 09/23/2016)
09/23/2016	<u>7</u>	LETTER addressed to Judge Vincent L. Briccetti from Omar T. Mohammedi dated September 23, 2016 re: Letter in Response to Defs' September 22, 2016, Letter. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail.(Mohammedi, Omar) (Entered: 09/23/2016)
09/26/2016	<u>8</u>	FILING ERROR – DEFICIENT DOCKET ENTRY (SEE DOCUMENT #21) – FIRST MOTION for Preliminary Injunction . Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. Return Date set for 10/11/2016 at 09:00 AM.(Mohammedi, Omar) Modified on 10/17/2016 (Idi). (Entered: 09/26/2016)
09/26/2016	<u>9</u>	FILING ERROR – DEFICIENT DOCKET ENTRY (SEE DOCUMENT #22) – MEMORANDUM OF LAW in Support re: <u>8</u> FIRST MOTION for Preliminary Injunction . . Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4)(Mohammedi, Omar) Modified on 10/17/2016 (Idi). (Entered: 09/26/2016)
09/26/2016	<u>10</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – AFFIDAVIT of Mohammad Zuber Nakadar in Support re: <u>8</u> FIRST MOTION for Preliminary Injunction .. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) Modified on 10/17/2016 (Idi). (Entered: 09/26/2016)
09/26/2016	<u>11</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – AFFIDAVIT of Omar Ockeh in Support re: <u>8</u> FIRST MOTION for Preliminary Injunction .. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) Modified on 10/17/2016 (Idi). (Entered: 09/26/2016)
09/26/2016	<u>12</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – AFFIDAVIT of Arshad Shariff in Support re: <u>8</u> FIRST MOTION for Preliminary Injunction .. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) Modified on 10/17/2016 (Idi). (Entered: 09/26/2016)
09/26/2016	<u>13</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – AFFIDAVIT of Ali Nawazuddin in Support re: <u>8</u> FIRST MOTION for Preliminary Injunction .. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) Modified on 10/17/2016 (Idi). (Entered: 09/26/2016)
09/26/2016	<u>14</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – AFFIDAVIT of Charles Chesnave in Support re: <u>8</u> FIRST MOTION for Preliminary Injunction .. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) Modified on 10/17/2016 (Idi). (Entered: 09/26/2016)
09/26/2016	<u>15</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – AFFIDAVIT of Zead Ramadan in Support re: <u>8</u> FIRST MOTION for Preliminary Injunction .. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) Modified on 10/17/2016 (Idi). (Entered: 09/26/2016)

09/28/2016	<u>16</u>	AFFIDAVIT OF SERVICE of Summons and Complaint,. All Defendants. Service was accepted by Jaclyn Smith. Document filed by Mohammed Sohail, Syed Kamal, Mohammed Raheem, Islamic Community Center for Mid Westchester, Ali El-Ousrouti, Mohammed Zubar Nakadar, Ali Naw Azuddin, Favzul Kabeer, Omar Ockeh. (Mohammedi, Omar) (Entered: 09/28/2016)
09/29/2016	<u>17</u>	ORDER: Accordingly, by October 6, 2016, plaintiffs shall either (i) submit a replacement memorandum of law no longer than 25 pages in length. or (ii) seek permission, by letter, to file a memorandum that exceeds the Court's page limitation. In the latter event, plaintiffs' letter must explain why such a long memorandum is necessary in this case. (Signed by Judge Vincent L. Briccetti on 9/29/2016) (rj) (Entered: 09/29/2016)
09/29/2016	<u>18</u>	LETTER addressed to Judge Vincent L. Briccetti from Mary E. Brady Marzolla dated September 29, 2016 re: In response to this Court's Order at Docket No. 17. Document filed by City of Yonkers Landmark Preservation Board.(Brady Marzolla, Mary) (Entered: 09/29/2016)
09/29/2016	<u>19</u>	LETTER addressed to Judge Vincent L. Briccetti from Omar T. Mohammedi dated September 29, 2016 re: In Response to the Court's September 29, 2016 Order. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail.(Mohammedi, Omar) (Entered: 09/29/2016)
09/30/2016	<u>20</u>	MEMO ENDORSEMENT on re: <u>19</u> Letter In Response to the Court's September 29, 2016 Order, filed by Syed Kamal, Islamic Community Center for Mid Westchester, Favzul Kabeer, Omar Ockeh, Ali El-Ousrouti, Mohammed Sohail, Ali Naw Azuddin, Mohammed Zubar Nakadar, Mohammed Raheem. ENDORSEMENT: Plaintiff's request for permission to file a memorandum of law in excess of 25 pages is GRANTED in part and DENIED in part. Having perused plaintiff's moving brief, the Court sees no compelling reason to permit such an overly-long brief. By October 14, 2016, plaintiffs may re-file a brief in support of their motion not to exceed 35 pages in length. By October 28, 2016, defendants may file an opposition brief not to exceed 35 pages in length. By November 11, 2016, plaintiffs may file a reply brief not to exceed 15 pages in length. (Signed by Judge Vincent L. Briccetti on 9/30/2016) (rj) (Entered: 10/03/2016)
10/14/2016	<u>21</u>	FIRST MOTION for Preliminary Injunction . Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. Return Date set for 10/28/2016 at 03:00 PM.(Mohammedi, Omar) (Entered: 10/14/2016)
10/14/2016	<u>22</u>	MEMORANDUM OF LAW in Support re: <u>21</u> FIRST MOTION for Preliminary Injunction . . Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4)(Mohammedi, Omar) (Entered: 10/14/2016)
10/14/2016	<u>23</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – AFFIDAVIT of Mohammad Zuber Nakadar in Support re: <u>21</u> FIRST MOTION for Preliminary Injunction .. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) Modified on 10/17/2016 (ldi). (Entered: 10/14/2016)
10/14/2016	<u>24</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – AFFIDAVIT of Omar Ockeh in Support re: <u>21</u> FIRST MOTION for Preliminary Injunction .. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) Modified on 10/17/2016 (ldi). (Entered: 10/14/2016)
10/14/2016	<u>25</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – AFFIDAVIT of Arshad Shariff in Support re: <u>21</u> FIRST MOTION for Preliminary Injunction .. Document

		filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) Modified on 10/17/2016 (Idi). (Entered: 10/14/2016)
10/14/2016	<u>26</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – AFFIDAVIT of Ali Nawazuddin in Support re: <u>21</u> FIRST MOTION for Preliminary Injunction .. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) Modified on 10/17/2016 (Idi). (Entered: 10/14/2016)
10/14/2016	<u>27</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – AFFIDAVIT of Charles Chesnavage in Support re: <u>21</u> FIRST MOTION for Preliminary Injunction .. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) Modified on 10/17/2016 (Idi). (Entered: 10/14/2016)
10/14/2016	<u>28</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – AFFIDAVIT of Zead Ramadan in Support re: <u>21</u> FIRST MOTION for Preliminary Injunction .. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) Modified on 10/17/2016 (Idi). (Entered: 10/14/2016)
10/17/2016		***NOTICE TO ATTORNEY TO RE-FILE DOCUMENT – DEFICIENT DOCKET ENTRY ERROR. Notice to Attorney Omar T. Mohammedi to RE-FILE Document <u>23</u> Affidavit in Support of Motion, <u>24</u> Affidavit in Support of Motion, <u>25</u> Affidavit in Support of Motion, <u>26</u> Affidavit in Support of Motion, <u>27</u> Affidavit in Support of Motion, <u>28</u> Affidavit in Support of Motion. ERROR(S): No case number indicated on documents. (Idi) (Entered: 10/17/2016)
10/17/2016	<u>29</u>	NOTICE OF APPEARANCE by Dennis E. A. Lynch on behalf of Mike Breen, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau. (Lynch, Dennis) (Entered: 10/17/2016)
10/17/2016	<u>30</u>	NOTICE OF APPEARANCE by Mary Elizabeth Brady Marzolla on behalf of Mike Breen, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau. (Brady Marzolla, Mary) (Entered: 10/17/2016)
10/17/2016	<u>31</u>	AFFIDAVIT of Mohammad Zuber Nakadar in Support re: <u>21</u> FIRST MOTION for Preliminary Injunction .. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) (Entered: 10/17/2016)
10/17/2016	<u>32</u>	NOTICE OF APPEARANCE by Patrick Andrew Knowles on behalf of Mike Breen, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau. (Knowles, Patrick) (Entered: 10/17/2016)
10/17/2016	<u>33</u>	AFFIDAVIT of Omar Ockeh in Support re: <u>21</u> FIRST MOTION for Preliminary Injunction .. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) (Entered: 10/17/2016)
10/17/2016	<u>34</u>	AFFIDAVIT of Arshad Shariff in Support re: <u>21</u> FIRST MOTION for Preliminary Injunction .. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) (Entered: 10/17/2016)

10/17/2016	<u>35</u>	AFFIDAVIT of Ali Nawazuddin in Support re: <u>21</u> FIRST MOTION for Preliminary Injunction .. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) (Entered: 10/17/2016)
10/17/2016	<u>36</u>	AFFIDAVIT of Charles Chesnavage in Support re: <u>21</u> FIRST MOTION for Preliminary Injunction .. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) (Entered: 10/17/2016)
10/17/2016	<u>37</u>	AFFIDAVIT of Zead Ramadan in Support re: <u>21</u> FIRST MOTION for Preliminary Injunction .. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) (Entered: 10/17/2016)
10/17/2016	<u>38</u>	MOTION to Dismiss . Document filed by Mike Breen, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau.(Lynch, Dennis) (Entered: 10/17/2016)
10/17/2016	<u>39</u>	DECLARATION of Dennis E. A. Lynch in Support re: <u>38</u> MOTION to Dismiss .. Document filed by Mike Breen, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M)(Lynch, Dennis) (Entered: 10/17/2016)
10/17/2016	<u>40</u>	MEMORANDUM OF LAW in Support re: <u>38</u> MOTION to Dismiss . . Document filed by Mike Breen, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau. (Lynch, Dennis) (Entered: 10/17/2016)
10/17/2016	<u>41</u>	CERTIFICATE OF SERVICE. Document filed by Mike Breen, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau. (Lynch, Dennis) (Entered: 10/17/2016)
10/18/2016	<u>42</u>	TRANSCRIPT of Proceedings re: MOTION held on 9/21/2016 before Judge Jesse M. Furman. Court Reporter/Transcriber: Jerry Harrison, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/14/2016. Redacted Transcript Deadline set for 11/21/2016. Release of Transcript Restriction set for 1/19/2017.(McGuirk, Kelly) (Entered: 10/18/2016)
10/18/2016	<u>43</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a MOTION proceeding held on 9/21/16 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...(McGuirk, Kelly) (Entered: 10/18/2016)
10/28/2016	<u>44</u>	DECLARATION of Dennis E. A. Lynch in Opposition re: <u>21</u> FIRST MOTION for Preliminary Injunction .. Document filed by Mike Breen, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O, # <u>16</u> Exhibit P, # <u>17</u> Exhibit Q- Part I, # <u>18</u> Exhibit Q-Part II, # <u>19</u> Exhibit Q-Part III, # <u>20</u> Exhibit Q-Part IV, # <u>21</u> Exhibit R, # <u>22</u> Exhibit S, # <u>23</u> Exhibit T, # <u>24</u> Exhibit U, # <u>25</u> Exhibit V, # <u>26</u> Exhibit W, # <u>27</u> Exhibit X, # <u>28</u> Exhibit Y, # <u>29</u> Supplement Z)(Lynch, Dennis) (Entered: 10/28/2016)

		10/28/2016)
10/28/2016	<u>45</u>	DECLARATION of Richard Halevy in Opposition re: <u>21</u> FIRST MOTION for Preliminary Injunction .. Document filed by Mike Breen, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau. (Lynch, Dennis) (Entered: 10/28/2016)
10/28/2016	<u>46</u>	MEMORANDUM OF LAW in Opposition re: <u>21</u> FIRST MOTION for Preliminary Injunction . . Document filed by Mike Breen, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau. (Lynch, Dennis) (Entered: 10/28/2016)
10/28/2016	<u>47</u>	CERTIFICATE OF SERVICE. Document filed by Mike Breen, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau. (Lynch, Dennis) (Entered: 10/28/2016)
10/31/2016	<u>48</u>	MEMORANDUM OF LAW in Opposition re: <u>38</u> MOTION to Dismiss . . Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) (Entered: 10/31/2016)
11/02/2016	<u>49</u>	FIRST LETTER MOTION for Extension of Time to File Response/Reply as to <u>46</u> Memorandum of Law in Opposition to Motion, <i>for Preliminary Injunction</i> addressed to Judge Vincent L. Briccetti from Omar T. Mohammedi dated November 2, 2016. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. Return Date set for 12/2/2016 at 05:00 PM.(Mohammedi, Omar) (Entered: 11/02/2016)
11/02/2016	<u>50</u>	ORDER granting <u>49</u> Letter Motion for Extension of Time to File Response/Reply: Plaintiff's deadline to submit a reply memorandum extended to 12/2/2016. (HEREBY ORDERED by Judge Vincent L. Briccetti)(Text Only Order) (Briccetti, Vincent) (Entered: 11/02/2016)
11/07/2016	<u>51</u>	REPLY AFFIRMATION of Dennis E. A. Lynch in Support re: <u>38</u> MOTION to Dismiss .. Document filed by Mike Breen, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau. (Attachments: # <u>1</u> Exhibit N, # <u>2</u> Exhibit O, # <u>3</u> Exhibit P, # <u>4</u> Exhibit Q-Part 1, # <u>5</u> Exhibit Q-Part 2, # <u>6</u> Exhibit R)(Lynch, Dennis) (Entered: 11/07/2016)
11/07/2016	<u>52</u>	REPLY MEMORANDUM OF LAW in Support re: <u>38</u> MOTION to Dismiss . . Document filed by Mike Breen, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau. (Lynch, Dennis) (Entered: 11/07/2016)
11/07/2016	<u>53</u>	CERTIFICATE OF SERVICE. Document filed by Mike Breen, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau. (Lynch, Dennis) (Entered: 11/07/2016)
11/16/2016	<u>54</u>	FIRST MOTION to Strike Document No. [51-1, 51-2, 51-3, 51-4, 51-5 and 51-6] . Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. Responses due by 11/30/2016 Return Date set for 12/7/2016 at 03:00 PM.(Mohammedi, Omar) (Entered: 11/16/2016)
11/16/2016	<u>55</u>	MEMORANDUM OF LAW in Support re: <u>54</u> FIRST MOTION to Strike Document No. [51-1, 51-2, 51-3, 51-4, 51-5 and 51-6] . . Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) (Entered: 11/16/2016)

11/30/2016	<u>56</u>	DECLARATION of Dennis E. A. Lynch in Opposition re: <u>54</u> FIRST MOTION to Strike Document No. [51-1, 51-2, 51-3, 51-4, 51-5 and 51-6] .. Document filed by Mike Breen, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit N, # <u>7</u> Exhibit O, # <u>8</u> Exhibit P, # <u>9</u> Exhibit Q-Part 1, # <u>10</u> Exhibit Q-Part 2, # <u>11</u> Exhibit R)(Lynch, Dennis) (Entered: 11/30/2016)
11/30/2016	<u>57</u>	MEMORANDUM OF LAW in Opposition re: <u>54</u> FIRST MOTION to Strike Document No. [51-1, 51-2, 51-3, 51-4, 51-5 and 51-6] . . Document filed by Mike Breen, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau. (Lynch, Dennis) (Entered: 11/30/2016)
11/30/2016	<u>58</u>	AFFIDAVIT OF SERVICE. Document filed by Mike Breen, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau. (Lynch, Dennis) (Entered: 11/30/2016)
12/02/2016	<u>59</u>	FILING ERROR – DEFICIENT DOCKET ENTRY (SEE <u>60</u> Reply Memorandum) – REPLY MEMORANDUM OF LAW in Support re: <u>21</u> FIRST MOTION for Preliminary Injunction . . Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) Modified on 12/5/2016 (db). (Entered: 12/02/2016)
12/02/2016	<u>60</u>	REPLY MEMORANDUM OF LAW in Support re: <u>21</u> FIRST MOTION for Preliminary Injunction . . Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) (Entered: 12/02/2016)
12/07/2016	<u>61</u>	REPLY MEMORANDUM OF LAW in Support re: <u>54</u> FIRST MOTION to Strike Document No. [51-1, 51-2, 51-3, 51-4, 51-5 and 51-6] . . Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Mohammedi, Omar) (Entered: 12/07/2016)
05/01/2017	<u>62</u>	FIRST MOTION for Leave to File Supplemental Complaint . Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail.(Mohammedi, Omar) (Entered: 05/01/2017)
05/01/2017	<u>63</u>	MEMORANDUM OF LAW in Support re: <u>62</u> FIRST MOTION for Leave to File Supplemental Complaint . . Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Mohammed Sohail. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9)(Mohammedi, Omar) (Entered: 05/01/2017)
05/15/2017	<u>64</u>	DECLARATION of Dennis E. A. Lynch in Opposition re: <u>62</u> FIRST MOTION for Leave to File Supplemental Complaint .. Document filed by Mike Breen, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F)(Lynch, Dennis) (Entered: 05/15/2017)
05/15/2017	<u>65</u>	MEMORANDUM OF LAW in Opposition re: <u>62</u> FIRST MOTION for Leave to File Supplemental Complaint . . Document filed by Mike Breen, City of Yonkers Landmark Preservation Board, Liam J.Mclaughlin, John Larkin, Dennis Shepherd, Michael Spano, The City of Yonkers, The City of Yonkers Planning Bureau. (Lynch, Dennis) (Entered: 05/15/2017)
05/22/2017	<u>66</u>	REPLY MEMORANDUM OF LAW in Support re: <u>62</u> FIRST MOTION for Leave to File Supplemental Complaint . . Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Ismet Jashari, Favzul

		Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Arshad Shariff, Mohammed Sohail. (Mohammedi, Omar) (Entered: 05/22/2017)
06/28/2017	<u>67</u>	OPINION AND ORDER re: <u>54</u> FIRST MOTION to Strike Document No. [51-1, 51-2, 51-3, 51-4, 51-5 and 51-6] . filed by Syed Kamal, Islamic Community Center for Mid Westchester, Favzul Kabeer, Omar Ockeh, Ali El-Ousrouti, Mohammed Sohail, Ali Naw Azuddin, Mohammed Zubar Nakadar, Mohammed Raheem, <u>38</u> MOTION to Dismiss . filed by The City of Yonkers, The City of Yonkers Planning Bureau, Mike Breen, John Larkin, Michael Spano, Dennis Shepherd, Liam J.Mclaughlin, City of Yonkers Landmark Preservation Board, <u>62</u> FIRST MOTION for Leave to File Supplemental Complaint . filed by Syed Kamal, Islamic Community Center for Mid Westchester, Favzul Kabeer, Omar Ockeh, Ali El-Ousrouti, Mohammed Sohail, Ali Naw Azuddin, Mohammed Zubar Nakadar, Mohammed Raheem, <u>21</u> FIRST MOTION for Preliminary Injunction . filed by Syed Kamal, Islamic Community Center for Mid Westchester, Favzul Kabeer, Omar Ockeh, Ali El-Ousrouti, Mohammed Sohail, Ali Naw Azuddin, Mohammed Zubar Nakadar, Mohammed Raheem. Plaintiffs' motion for leave to file a supplemental complaint is DENIED. (Doc. #62). Defendants' motion to dismiss is GRANTED. (Doc. #38). Plaintiffs' motion for a preliminary injunction is DENIED. (Doc. #21). Defendants' motion to strike is DENIED. (Doc. #54). The Clerk is instructed to terminate the motions (Docs. ##21, 38, 54, 62) and close this case. SO ORDERED. (Signed by Judge Vincent L. Briccetti on 6/28/17) (yv) (Entered: 06/28/2017)
06/28/2017		Transmission to Judgments and Orders Clerk. Transmitted re: <u>67</u> Memorandum & Opinion, to the Judgments and Orders Clerk. (yv) (Entered: 06/28/2017)
06/30/2017	<u>68</u>	CLERK'S JUDGMENT: That for the reasons stated in the Court's Opinion and Order dated June 28, 2017, Plaintiffs' motion for leave to file a supplemental complaint is denied; Defendants' motion to dismiss is granted; Plaintiffs' motion for a preliminary injunction is denied, and Defendants' motion to strike is denied; accordingly, this case is closed. (Signed by Clerk of Court Ruby Krajick on 06/30/2017) (Attachments: # <u>1</u> Notice of Right to Appeal, # <u>2</u> Notice of Right to Appeal)(dt) Modified on 7/10/2017 (dt). (Entered: 06/30/2017)
06/30/2017		Terminate Transcript Deadlines (dt) (Entered: 06/30/2017)
07/25/2017	<u>69</u>	NOTICE OF APPEAL from <u>68</u> Clerk's Judgment,, <u>67</u> Memorandum & Opinion,,,,,. Document filed by Ali Naw Azuddin, Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Ismet Jashari, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Omar Ockeh, Mohammed Raheem, Arshad Shariff, Mohammed Sohail. Filing fee \$ 505.00, receipt number 0208-13937682. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Mohammedi, Omar) (Entered: 07/25/2017)
07/25/2017		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <u>69</u> Notice of Appeal. (tp) (Entered: 07/25/2017)
07/25/2017		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <u>69</u> Notice of Appeal,, filed by Arshad Shariff, Syed Kamal, Islamic Community Center for Mid Westchester, Favzul Kabeer, Omar Ockeh, Ali El-Ousrouti, Ismet Jashari, Mohammed Sohail, Ali Naw Azuddin, Mohammed Zubar Nakadar, Mohammed Raheem were transmitted to the U.S. Court of Appeals. (tp) (Entered: 07/25/2017)
07/27/2017	<u>70</u>	MOTION to Amend/Correct <u>2</u> Civil Cover Sheet . Document filed by Ali El-Ousrouti, Islamic Community Center for Mid Westchester, Ismet Jashari, Favzul Kabeer, Syed Kamal, Mohammed Zubar Nakadar, Ali Nawazuddin, Omar Ockeh, Mohammed Raheem, Arshad Shariff, Mohammed Sohail. (Attachments: # <u>1</u> Appendix A, # <u>2</u> Appendix B)(Mohammedi, Omar) (Entered: 07/27/2017)
07/28/2017	71	ORDER granting <u>70</u> Motion to Amend/Correct: By separate Order, the Court will correct the typographical errors appearing in the Opinion and Order (Doc. #67) and Judgment (Doc. #68). In addition, although plaintiffs do not explain why they need to file an amended civil cover sheet, plaintiffs are granted permission to file an amended civil cover sheet. Plaintiffs' counsel shall separately docket the amended civil cover sheet bearing today's date. (HEREBY ORDERED by Judge Vincent L. Briccetti)(Text Only Order) (Briccetti, Vincent) (Entered: 07/28/2017)

07/28/2017	<u>72</u>	ORDER CORRECTING TYPOGRAPHICAL ERROR: The Court's Opinion and Order dated June 28, 2017 (Doe. #67), contains two typographical errors on page 18. Namely, the Opinion and Order refers to Doc. #54 as defendants' motion to strike in the Conclusion and in Part III of the Discussion. In fact, the Opinion and Order should refer to plaintiffs' motion to strike The Opinion and Order is deemed corrected. In addition, the Judgment (Doc. #68) contains the same error. The Judgment is also deemed corrected. (Signed by Judge Vincent L. Briccetti on 7/28/2017) (ap) (Entered: 07/28/2017)
07/28/2017	<u>73</u>	CIVIL COVER SHEET filed. (Mohammedi, Omar) (Entered: 07/28/2017)

Exhibit C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
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, :

v. :

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. :

-----X

OPINION AND ORDER

16 CV 7364 (VB)

Briccetti, J.:

Plaintiffs Islamic Community Center for Mid Westchester (“ICCMW”), Mohammad Zuber Nakadar, Omar Ockeh, Arshad Shariff, Syed Kamal, Ali Nawazuddin, Mohammed Zohail, Ali El-Ousrouti, Favzul Kabeer, Ismet Jashari, and Mohammed Raheem bring this action against defendants City of Yonkers Landmark Preservation Board (the “Landmark Preservation Board”); the City of Yonkers Planning Bureau, also known as the City of Yonkers Planning Board (the “Planning Bureau”); 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 capacities 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, claiming defendants violated their rights under the United States Constitution; the New York State Constitution; the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc; the New York Civil Rights Law § 40-c; and the New York Civil Practice Law and Rules, Article 78, N.Y. C.P.L.R. § 7801 et seq., by discriminating against plaintiffs on account of plaintiffs’ religious affiliation.

Before the Court are plaintiffs’ motion for a preliminary injunction (Doc. #21), motion to strike certain documents from the record (Doc. #54), and motion for leave to file a supplemental complaint (Doc. #62), and defendants’¹ motion to dismiss to complaint. (Doc. #38).

For the reasons set forth below, defendants’ motion to dismiss is GRANTED and plaintiffs’ motions for a preliminary injunction, to strike, and for leave to file a supplemental complaint are DENIED.

BACKGROUND

In deciding the pending motions, the Court accepts as true all well-pleaded allegations in the complaint and draws all reasonable inferences in plaintiffs’ favor. Except as otherwise noted, the following facts are drawn from the complaint.

ICCMW is a religious non-profit entity established in 2012 by a group of Muslims in Westchester County to provide religious services for their community. The remaining plaintiffs are Muslim individuals involved in ICCMW, including founding members and board members.

¹ Defendant Burrows appears not to have been served with the summons and complaint and has not appeared in this action. The motion to dismiss is made on behalf of all defendants except Burrows.

Defendant City of Yonkers is a City in New York State. The Landmark Preservation Board and the Planning Bureau are governmental agencies of the City of Yonkers. Defendant Spano is the Mayor of the City of Yonkers. Defendants McLaughlin, Shepherd, Breen, and Larkin are Republican members of the City of Yonkers City Council. Defendant Burrows is a Republican legislator and minority whip of the Westchester County Board of Legislators.

Part of ICCMW's mission is to establish a permanent Mosque and Islamic center to serve Muslims residing in the mid-Westchester area. In April 2013, ICCMW identified a property listed for sale at 20 Grandview Boulevard in Colonial Heights neighborhood of Yonkers, which contained a house (the "Property"). ICCMW purchased the Property in March 2015, after some discussion with the City of Yonkers regarding ICCMW's anticipated use of the Property as a Mosque. According to plaintiffs, a "Mosque, such as the one [plaintiffs] wish to build on the Property serves as the cornerstone of Muslim faith and community. It is a place of communal prayer." (Compl. ¶ 41). A Mosque is "a most critical institution through which Muslims educate themselves and their children in the tenets and practice of Islam. The Mosque serves as the focus for the community's social, education, and recreational activities." (Compl. ¶ 41).

On September 19, 2015, ICCMW held an open meeting with the Colonial Heights community and invited residents and area organizations, including the Colonial Heights Association of Tax Payers ("CHAT"). Yonkers officials had previously informed ICCMW that CHAT "had a history [of] opposing projects like ICCMW's." (Compl. ¶ 54). Some attendees expressed concern about establishing a Mosque on the Property.

According to plaintiffs, ICCMW and its members have experienced animosity and hostility from the public on various occasions. Examples of such occurrences include having the local police visit the property for undisclosed reasons, finding dog waste near the Property on

several occasions, “people looking at [ICCMW’s members] suspiciously as they walked by the property,” “people driving by the [P]roperty menacingly,” and having “derogatory curse words said to [an ICCMW member] by a stranger driving by the [P]roperty.” (Compl. ¶ 59).

Plaintiffs allege there became an effort to designate the Property as a landmark pursuant to the City of Yonkers’s Historic and Landmark Preservation Law (the “Landmark Law”), City of Yonkers, N.Y. City Code § 45, which was and “is a pretext used to prevent ICCMW, its members and its congregation from building a Mosque.” (Compl. ¶ 72).

Between June and October 2015, CHAT submitted three applications to the Landmark Preservation Board to have the Property designated as a landmark pursuant to the Landmark Law. CHAT submitted the third application on October 27, 2015, in the form of a supplement to the second application. The Landmark Preservation Board conducted hearings on November 11 and December 2, 2015, to consider CHAT’s application. At the December 2 hearing, ICCMW submitted a letter stating CHAT’s landmark application was deficient. The Landmark Preservation Board put ICCMW’s letter on the record, but did not permit ICCMW to present its position during the hearing. At the hearing, “[t]he Landmark Preservation Board approved CHAT’s application as complete and referred it to the Planning Board for an advisory recommendation and advice pursuant to” the Landmark Law. (Compl. ¶ 66). On January 13, 2016, the Planning Board recommended that the Property be designated as a landmark, which imposes burdens and restrictions on the Property. That recommendation included a finding that another house of worship was unnecessary given the presence of other religious institutions in the area.

On February 3, 2016, the Landmark Preservation Board held the first public hearing on designating the Property as a landmark, at which time members of the public expressed concern

about the Property being used as a Mosque. Counsel for ICCMW spoke at the hearing and argued that the Property failed to satisfy Section 45-2 of the Landmark Law, which defines a landmark as a building or parcel of land that “(1) Is 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 a work of master; [or] (4) Contains unique architectural, archaeological or artistic qualities.” ICCMW members spoke at the hearing about their organization and questioned the public’s “sudden interest in the [P]roperty, while for years prior to ICCMW’s purchase it was allowed to fall into disrepair.” (Compl. ¶ 71). CHAT supporters booed and interrupted ICCMW’s presentation, “trying to bully ICCMW.” (Compl. ¶ 71).

On April 6, 2016, the Landmark Preservation Board found the Property was “illustrative of growth and development of the city and had unique architectural qualities,” and recommended the designation of the Property as a landmark. (Compl. ¶ 74). According to plaintiffs, other homes near the Property exhibit similar characteristics illustrative of growth and development, but have not been designated as landmarks.

On May 17, 2016, the Real Estate Committee of the Yonkers City Council held a public hearing, and CHAT and ICCMW presented their positions regarding the designation of the Property as a landmark. Defendant Larkin, the chair of the committee, limited discussion to the Property and the landmark criteria and “did not allow any discussion or reference of the evident Islamophobia at play.” (Compl. ¶ 92). At the end of the hearing, the Real Estate Committee voted on the designation. By a three-to-two vote divided along party lines, with all Republicans in favor and all Democrats in opposition, the Real Estate Committee approved the designation and recommended the matter to the Rules Committee of the Yonkers City Council. Thereafter,

in a four-to-three vote, also divided along party lines, with all Republicans in favor and all Democrats in opposition, the Rules Committee recommended the landmark designation to the entire City Council for approval.

On May 24, 2016, the Yonkers City Council held a public hearing, at which the council members voted to approve the landmark designation, again along party lines, with all Republicans in favor and all Democrats against. On May 25, 2016, Mayor Spano held a meeting in which he heard from ICCMW and its supporters, who detailed the prior proceedings and the perceived anti-Muslim rhetoric that had been present. Letters were also submitted in opposition to designating the Property as a landmark. On May 27, 2016, Mayor Spano signed Resolution No. 64-2016 (the “Landmark Resolution”), which designated the Property as a landmark.

Plaintiffs allege “[t]he landmark designation arbitrarily targeted ICCMW.” (Compl. ¶ 103). Plaintiffs further allege the Property’s status as a landmark “establishes different standards for [p]laintiffs’ proposed and future renovations to the [P]roperty than those that have been applied, and will continue to be applied, to similar proposed land uses” of other property owners. (Compl. ¶ 127). Plaintiffs do not allege any proposed or future renovations, or the process that plaintiffs would have to undergo to allow for such renovations.

Plaintiffs commenced this action on September 21, 2016. Thereafter, plaintiffs moved for a preliminary injunction declaring the landmark designation void (Doc. #21), defendants moved to dismiss (Doc. #38), and plaintiffs moved to strike certain documents from the record. (Doc. #54).

On May 1, 2017, plaintiffs moved for leave to file a supplemental complaint, to add a claim of First Amendment retaliation under 42 U.S.C. § 1983, and to add the allegations that follow. (Doc. #62).

Sometime in 2015, ICCMW applied for and received a property tax exemption from the City of Yonkers based on its status as a non-profit religious organization and the Property's use for religious purposes. On November 19, 2016, ICCMW submitted a renewal application for the exemption for the 2017/2018 tax year. On December 5, 2016, ICCMW was granted the exemption. On January 3, 2017, however, the property tax exemption was revoked. On January 26, 2017, ICCMW appealed the revocation.

On March 27, 2017, plaintiffs attended a hearing before the Board of Assessment Review (the "BAR"), which allegedly "functions under the office of the Mayor of the City of Yonkers." (Suppl. Compl. ¶ 114). At that hearing, plaintiffs explained their basis for the tax exempt status and responded to all of the BAR's questions. The BAR indicated it had sufficient information. On April 6, the BAR requested supplemental responses from plaintiffs, and plaintiffs allege this was harassment to retaliate against them. On April 13, plaintiffs responded by "rehashing information already in the [BAR]'s possession and knowledge." (Suppl. Compl. ¶ 116). On April 18, plaintiffs received a letter from defense counsel, which "attempted to force [p]laintiffs to provide information already within [defendants'] possession and addressed by [p]laintiffs at [the] March 27, 2017 hearing." (Suppl. Compl. ¶ 117). On April 20, 2017, plaintiffs responded by informing defendants they had already provided all relevant information.

According to defendants' memorandum of law in opposition to plaintiffs' motion for leave to file a supplemental complaint, the BAR issued a final decision on May 11, 2017, sustaining plaintiffs' administrative complaint and upholding the renewal of the Property's tax exempt status.

DISCUSSION

I. Plaintiffs' Motion for Leave to File Supplemental Complaint

Defendants argue the Court should deny plaintiffs' motion for leave to file a supplemental complaint because supplementation would be futile. Because, as set forth below, the Court finds defendants' argument regarding the lack of subject matter jurisdiction to be dispositive, it need not address defendants' remaining arguments in opposition to plaintiffs' motion.

A. Legal Standards

Rule 15(d) provides that “[o]n motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.” The Court considers a Rule 15(d) motion for leave to file a supplemental complaint under the same framework as a Rule 15(a) motion for leave to amend a complaint. *See, e.g., Grace v. Rosenstock*, 228 F.3d 40, 53 (2d Cir. 2000) (affirming the district court’s denial of plaintiffs’ Rule 15(d) motion using law and analysis regarding Rule 15(a) motions). Although a district court should freely allow leave “on just terms,” it may, in its discretion, “deny leave for good reason, including futility, bad faith, undue delay, or undue prejudice to the opposing party.” *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 200–01 (2d Cir. 2007). Amendment is futile when the proposed supplement to the complaint could not withstand a motion to dismiss. *See Milanese v. Rust-Oleum Corp.*, 244 F.3d 104, 110 (2d Cir. 2001).

B. Subject Matter Jurisdiction

Defendants argue that granting leave to file a supplemental complaint would be futile because the Court does not have subject matter jurisdiction over plaintiffs' only supplemental cause of action, a First Amendment retaliation claim under Section 1983.

The Court agrees.

“It is a fundamental precept that federal courts are courts of limited jurisdiction’ and lack the power to disregard such limits as have been imposed by the Constitution or Congress.” Durant, Nichols, Houston, Hodgson, & Cortese-Costa, P.C. v. Dupont, 565 F.3d 56, 62 (2d Cir. 2009) (quoting Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 374 (1978)). “A ‘case is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it.’” Nike, Inc. v. Already, LLC, 663 F.3d 89, 94 (2d Cir. 2011) (quoting Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000)). The party invoking the Court’s jurisdiction bears the burden of establishing that jurisdiction exists. Conyers v. Rossides, 558 F.3d 137, 143 (2d Cir. 2009).

When deciding whether subject matter jurisdiction exists at the pleading stage, the Court “must accept as true all material facts alleged in the complaint and draw all reasonable inferences in the plaintiff’s favor.” Conyers v. Rossides, 558 F.3d at 143. However, argumentative inferences favorable to the party asserting jurisdiction should not be drawn.” Atl. Mut. Ins. Co. v. Balfour Maclaine Int’l Ltd., 968 F.2d 196, 198 (2d Cir. 1992) (citing Norton v. Larney, 266 U.S. 511, 515 (1925)). When a factual challenge to the Court’s jurisdiction has been raised, “the court may resolve [any] disputed jurisdictional fact issues by referring to evidence outside of the pleadings, such as affidavits.” Zappia Middle E. Constr. Co. v. Emirate of Abu Dhabi, 215 F.3d 247, 253 (2d Cir. 2000); accord, Makarova v. United States, 201 F.3d at 113 (“In resolving a

motion to dismiss for lack of subject matter jurisdiction . . . a district court . . . may refer to evidence outside the pleadings.”).

Although the general rule is that federal district courts have subject matter jurisdiction over Section 1983 claims, there is (at least) one exception.

The principle of comity and the Tax Injunction Act, 28 U.S.C. § 1341, bar the Court from entertaining a Section 1983 claim that plaintiffs’ First Amendment rights were violated through the imposition of state taxes. See, e.g., Fair Assessment in Real Estate Ass’n, Inc. v. McNary, 454 U.S. 100, 107–17 (1981); Long Island Lighting Co. v. Town of Brookhaven, 889 F.2d 428, 431 (2d Cir. 1989) (“While it is the Tax Injunction Act that prevents federal courts from giving injunctive relief or declaratory relief, as long as there is a plain, speedy and efficient remedy in state court, it is the principle of comity that prevents a taxpayer from seeking damages in a § 1983 action if a plain, adequate, and complete remedy may be had in state court.”² (citations omitted)).

Plaintiffs argue, in a single paragraph devoid of legal support or citation, that defendants’ arguments “are misplaced and irrelevant” because “[p]laintiffs have not alleged any tax law issue or violation, [or] challenged the applicability of a state tax law, [and] [p]laintiffs have not sought to supplement an action seeking damages related to the collection of state taxes.” (Doc. #66 at 10).

² Courts consistently hold and plaintiffs do not dispute that “the remedies available in the New York state courts are sufficient to protect plaintiffs’ rights regarding tax assessment challenges.” Henke v. City of Newburgh, 2012 WL 12883587, at *4 (S.D.N.Y. Apr. 30, 2012), aff’d, 519 F. App’x 55 (2d Cir. 2013) (summary order); see also Greenberg v. Town of Scarsdale, 2009 WL 7765836, at *4 (S.D.N.Y. Oct. 16, 2009) (“[I]t is well-settled that the remedies available in New York state courts are sufficient to protect a taxpayer’s rights.” (alteration and internal quotation marks omitted)) report and recommendation adopted, 2011 WL 1118709 (S.D.N.Y. Mar. 24, 2011), aff’d, 477 F. App’x 849 (2d Cir. 2012) (summary order).

The Court disagrees.

First, plaintiffs misunderstand the scope of the bar on a federal court's ability to entertain an action regarding a Section 1983 claim that defendants violated plaintiffs' rights through the imposition of state taxes. The Tax Injunction Act provides that "the district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. § 1341. Moreover, "[t]he Supreme Court has stated . . . that in a damage action pursuant [to Section] 1983 alleging that in administering a tax the state has violated a party's constitutional rights, principles of comity require the federal court to dismiss the claim." Moore v. Trippe, 743 F. Supp. 201, 209 (S.D.N.Y. 1990) (citing Fair Assessment in Real Estate Ass'n, Inc. v. McNary, 454 U.S. at 116)). Together, the Tax Injunction Act and comity bar plaintiff's proposed supplemental cause of action.

Second, to the extent plaintiffs argue their claim is not "related the collection of state taxes," but rather is based on the revocation of tax exempt status, the Court fails to see how this distinction matters.³ In either situation, the claim is that defendants administered the state tax system in a discriminatory way and therefore violated plaintiffs' constitutional rights. Comity and the Tax Injunction Act plainly bar the Court from adjudicating such a claim.

Third, plaintiffs' argument that they "have not alleged any tax law issue" is unpersuasive. For example, plaintiffs allege "the City of Yonkers retaliated by revoking [p]laintiffs' property tax exemption status," and therefore violated plaintiffs' First Amendment rights. (Suppl. Compl.

³ Moreover, this argument is disingenuous, as plaintiffs' allege the revocation "requires [p]laintiffs to pay thousands of dollars in taxes retroactively which they originally were exempt from" under New York law. (Suppl. Compl. ¶ 211). Thus, contrary to plaintiffs' position, their claim is one regarding the collection of state taxes.

¶ 208). The repeated allegations of retaliatory revocation of tax exempt status is unambiguously a tax law issue.

Accordingly, the Court does not have subject matter jurisdiction over plaintiffs' supplemental claim that defendants violated plaintiffs' First Amendment rights by revoking the property tax exemption in retaliation for filing the present action. Thus, granting plaintiffs' motion would be futile, and the motion is, therefore, denied.

II. Defendants' Motion to Dismiss

Defendants move to dismiss plaintiffs' complaint under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

A. Legal Standard⁴

In deciding a Rule 12(b)(6) motion, the Court evaluates the sufficiency of the complaint under the "two-pronged approach" articulated by the Supreme Court in Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). First, plaintiffs' legal conclusions and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are not entitled to the assumption of truth and are thus not sufficient to withstand a motion to dismiss. Id. at 678; Hayden v. Paterson, 594 F.3d 150, 161 (2d Cir. 2010). Second, "[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. at 679.

To survive a Rule 12(b)(6) motion, the allegations in the complaint must meet a standard of "plausibility." Ashcroft v. Iqbal, 556 U.S. at 678; Bell Atl. Corp. v. Twombly, 550 U.S. 544,

⁴ The Court has already provided the relevant legal standard on a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), which is applicable to defendants' motion to dismiss. (See supra pp. 9-10).

564 (2007). A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. at 678. “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” Id.

B. Ripeness

The Court must first address defendants’ argument that the Court does not have subject matter jurisdiction over this action because the dispute is not ripe. See, e.g., Murphy v. New Milford Zoning Comm’n, 402 F.3d 342, 347 (2d Cir. 2005) (“As we are obliged to do, we first consider the ripeness issue,” before turning to the merits.). Because ripeness is a jurisdictional issue, the Court “must presume that [it] cannot entertain the [plaintiffs’] claims ‘unless the contrary appears affirmatively from the record.’” Id. (quoting Hoehne v. Cty. of San Benito, 870 F.2d 529, 533 (9th Cir. 1989)).

The Court must determine whether plaintiffs’ claims are facial or as-applied challenges, because facial challenges are automatically ripe, whereas as-applied challenges are subject to the final-decision requirement, as explained in detail below. See, e.g., Charette v. Town of Oyster Bay, 159 F.3d 749, 757 (2d Cir. 1998).

Plaintiffs argue their claims assert facial challenges to the Landmark Resolution, and thus are ripe for adjudication.

The Court disagrees. Plaintiffs’ claims assert only as-applied challenges.

A “facial challenge” to a statute considers only the text of the statute itself, not its application to the particular circumstances of an individual. An “as-applied challenge,” on the other hand, requires an analysis of the facts of a particular case to determine whether the application of a statute, even one constitutional on its face, deprived the individual to whom it was applied of a protected right.

Field Day, LLC v. Cty. of Suffolk, 463 F.3d 167, 174–75 (2d Cir. 2006) (citation omitted).

Even a cursory review of the complaint and plaintiffs’ arguments reveals that plaintiffs are challenging the application of the Landmark Law to them. Such challenges are plainly as-applied challenges. Plaintiffs’ arguments to the contrary are belied by the fact that their complaint does not plead or explain how or why the Landmark Resolution is facially invalid; that is, unconstitutional or illegal on its face.⁵

Because plaintiffs assert only as-applied challenges, the Court must determine whether plaintiffs’ claims satisfy the final-decision requirement and are therefore ripe for adjudication.

“Determining whether a case is ripe generally requires [the Court] to ‘evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.’” Murphy v. New Milford Zoning Comm’n, 402 F.3d at 347 (quoting Abbott Labs. v. Gardner, 387 U.S. 136, 148 (1967) overruled on other grounds, Califano v. Sanders, 430 U.S. 99 (1977)). That being said, this general analytic framework does not apply to land use disputes. See, e.g., Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona, 915 F. Supp. 2d 574, 597 (S.D.N.Y. 2013). Instead, the Court must apply the first prong of the analysis the Supreme Court articulated in Williamson County Regional Planning Commission v. Hamilton Bank, 473 U.S. 172 (1985). See Murphy v. New Milford Zoning Comm’n, 402 F.3d at 347–49 (noting the second prong applies only to takings claims based on land use, as that prong addresses whether plaintiffs received just compensation). The first prong of the Williamson County analysis applies to land use challenges under RLUIPA, the United States Constitution,

⁵ For this reason, even if the Court were to accept plaintiffs’ argument that they are challenging the Landmark Resolution as facially invalid, their claims must still be dismissed for failure to state a claim because the complaint completely fails to allege how the Landmark Resolution is, on its face, illegal.

and state law. See, e.g., Sunrise Detox V, LLC v. City of White Plains, 769 F.3d 118, 122 (2d Cir. 2014); Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona, 915 F. Supp. 2d at 597–98 (collecting cases).

The first prong of the Williamson County analysis, also known as the final-decision requirement, “requires the [plaintiff] to obtain a final, definitive position as to the application of the relevant zoning law to the property from the municipal entity responsible for those laws.” Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona, 915 F. Supp. 2d at 597. That is to say, “plaintiff cannot seek federal court review of a zoning ordinance or provision until it has submitted at least one meaningful application for a variance” from the restrictions of the land-use laws. Id.

Here, plaintiffs have not yet received a final decision with respect to the landmarking of the Property. The Landmark Law provides processes by which the owners of a landmarked property can receive authorization to alter the property. First, Landmark Law Section 45-8 provides that owners may apply for a “certificate of appropriateness,” and if the certificate is denied, it also provides for appellate review. Second, Landmark Law Section 45-10 provides that, if the certificate of appropriateness is denied in any respect, the owner may apply for relief based on economic hardship.

Plaintiffs argue (i) the Court should apply the general ripeness analysis, rather than the specific ripeness analysis for land-use claims, (ii) they need not seek a certificate of appropriateness or apply for economic hardship, because such steps would be futile, (iii) the ripeness inquiry does not apply when the claim is that the land-use restriction was imposed out of discriminatory animus, and (iv) the matter is ripe because there is no justification for requiring

plaintiffs to seek a certificate of appropriateness or economic hardship, as such a requirement would subject ICCMW to additional delays, expenses, and uncertainty.

The Court rejects each of these arguments.

First, plaintiffs argue that “because the landmark designation is now final, this Court should apply the traditional ripeness standard to [p]laintiffs’ claims and enquire (1) whether the issues are fit for judicial decision and (2) hardship to the parties of withholding court consideration.” (Doc. #48 at 10).

As already explained, the Second Circuit has specifically held that the traditional approach is not applicable to land-use disputes, and instead ripeness is to be determined under the final-decision requirement set forth in Williamson County.

Second, plaintiffs argue that seeking a certificate of appropriateness would be futile because plaintiffs would either have to submit an extensive application to the Landmark Preservation Board that would be subject to public hearings before “[t]he public that already had made . . . clear they do not want a Mosque” (Doc. #48 at 11), or submit the application to the Planning Board, which “has already made its final position clear on this matter with its January 13th Recommendation” (*id.*), which would also be subject to public hearings.

Plaintiffs misunderstand the futility exception to the final-decision requirement. “The futility exception was created to ‘protect property owners from being required to submit multiple applications when the manner in which the first application was rejected makes it clear that no project will be approved.’” S&R Dev. Estates, LLC v. Bass, 588 F. Supp. 2d 452, 463–64 (S.D.N.Y. 2008) (quoting Kittay v. Giuliani, 112 F. Supp. 2d 342, 349–50 (S.D.N.Y. 2000), *aff’d*, 252 F.3d 645 (2d Cir. 2001)). Although a “plaintiff may avoid dismissal on ripeness grounds . . . by establishing the futility of pursuing administrative remedies, such as variances,

re-applications, or appeals to zoning boards[,] . . . the futility exception does not discharge . . . ‘an owner’s obligation to file one meaningful development proposal.’” Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona, 915 F. Supp. 2d at 602 (citations omitted and quoting S. Pac. Transp. Co. v. City of Los Angeles, 922 F.2d 498, 504 (9th Cir. 1990)). “Therefore, the exception requires that at least one meaningful application be made in order to consider a claim ripe for adjudication.” S&R Dev. Estates, LLC v. Bass, 588 F. Supp. 2d 452, 464 (S.D.N.Y. 2008). Plaintiffs have yet to apply for a certificate of appropriateness, appeal from an unfavorable ruling, or apply for economic hardship, and therefore the futility exception to the final-decision requirement is inapplicable.

Third, plaintiffs argue the ripeness inquiry does not apply when the claim is that the land-use restriction was imposed out of discriminatory animus, citing Temple B’Nai Zion, Inc. v. City of Sunny Isles Beach, 727 F.3d 1349 (11th Cir. 2013).

Temple B’Nai is not binding on this Court, and its reasoning is unpersuasive given the existence of contrary Second Circuit precedent. Temple B’Nai analyzed ripeness using the traditional ripeness inquiry, rather than using Williamson County’s final-decision requirement, which the Court has already explained is required in this circuit.

Finally, plaintiffs argue “the matter is ripe for this Court’s consideration [because] there is no justification for requiring ICCMW to go before the Landmark Preservation Board or the Planning Board to seek a certificate of appropriateness or economic hardship before this Court may rule on its claims.” (Doc. #48 at 12). But again, binding Second Circuit precedent requires plaintiffs to take such action. Any policy arguments against the Second Circuit’s precedent are properly asserted before that court, not in the district court.

Accordingly, the Court grants defendants' motion to dismiss the complaint without prejudice because the claims asserted therein are not ripe.

III. Remaining Motions

Because the Court denies plaintiffs' motion for leave to file a supplemental complaint and grants defendants' motion to dismiss, plaintiffs' motion for a preliminary injunction (Doc. #21) and defendants' motion to strike (Doc. #54) are moot and therefore must be denied.

CONCLUSION

Plaintiffs' motion for leave to file a supplemental complaint is DENIED. (Doc. #62).

Defendants' motion to dismiss is GRANTED. (Doc. #38).⁶

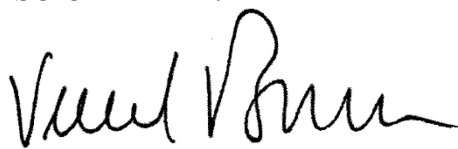
Plaintiffs' motion for a preliminary injunction is DENIED. (Doc. #21).

Defendants' motion to strike is DENIED. (Doc. #54).

The Clerk is instructed to terminate the motions (Docs. ##21, 38, 54, 62) and close this case.

Dated: June 28, 2017
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge

⁶ Although defendant Burrows was not served in this case and therefore did not join the motion to dismiss (see n.1 supra), because the Court lacks subject matter jurisdiction, the case is dismissed as to Burrows as well.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

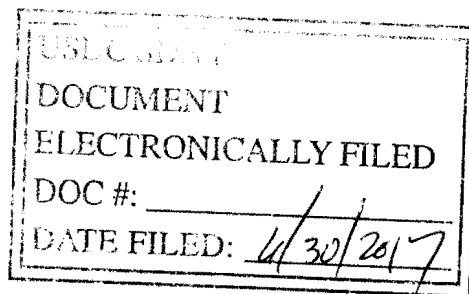
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ISLMIC COMMUNITY CENTER FOR MID
WESTCHESTER, MOHAMMAD ZUBER
NAKADAR, OMAR OCKEH, ARSHAD
SHARIFF, SYED KAMAL, ALI NAWAZUDDIN,
MOHAMMED SOHAIL, ALI EL-OUSROUTI,
FAVZUL KABEER, ISMET JASHARI, and
MOHAMMED RAHEEM,

Plaintiffs,

-against-

CITY OF YONKERS LANDMARK
PRESERVATION BOARD; THE CITY OF
YONKERS PLANNING BUREAU, a/k/a CITY
OF YONKERS PLANNING BOARD; THE CITY
OF YONKERS; MAYOR MICHEAL 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 Coty of Yonkers City Council; and GORDON
A. BURROWS, in his official capacity as a
District County Legislator in the City of Yonkers,

Defendants.
-----X



16 CIVIL 7364 (VB)

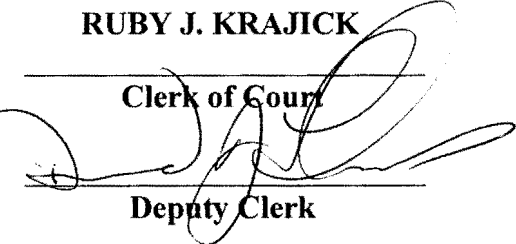
JUDGMENT

Before the Court as plaintiffs’ motion for a preliminary injunction (Doc. #21), motion to strike certain documents from the record (Doc. #54) and motion for leave to file a supplemental complaint (Doc. #62), and defendants’ motion to dismiss complaint, and the matter having come before the Honorable Vincent L. Briccetti, United States District Judge, and the Court, on June 28, 2017, having rendered its Opinion and Order denying Plaintiffs’ motion for leave to file a supplemental complaint, granting Defendants’ motion to dismiss, denying Plaintiffs’ motion for preliminary injunction, denying Defendants’ motion to strike, and directing the Clerk to close this case, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Opinion and Order dated June 28, 2017, Plaintiffs' motion for leave to file a supplemental complaint is denied; Defendants' motion to dismiss is granted; Plaintiffs' motion for a preliminary injunction is denied, and Defendants' motion to strike is denied; accordingly, this case is closed.

Dated: New York, New York
June 30, 2017

RUBY J. KRAJICK

Clerk of Court
BY: 

Deputy Clerk

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON 6/30/2017

Exhibit D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

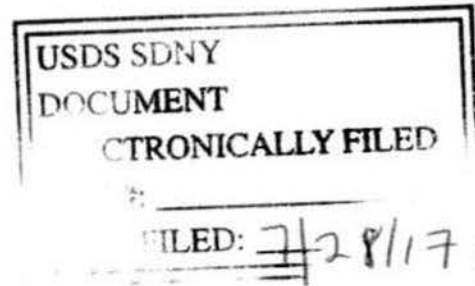
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ISLAMIC COMMUNITY CENTER FOR MID :
WESTCHESTER, MOHAMMAD ZUBER :
NAKADAR, OMAR OCKEH, ARSHAD :
SHARIFF, SYED KAMAL, ALI :
NAWAZUDDIN, MOHAMMED SOHAIL, :
ALI EL-OUSROUTI, FAVZUL KABEER, :
ISMET JASHARI, and MOHAMMED :
RAHEEM, :

Plaintiffs, :

v. :

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. :
-----X



ORDER CORRECTING
TYPOGRAPHICAL ERROR

16 CV 7364 (VB)

The Court's Opinion and Order dated June 28, 2017 (Doc. #67), contains two typographical errors on page 18. Namely, the Opinion and Order refers to Doc. #54 as defendants' motion to strike in the Conclusion and in Part III of the Discussion. In fact, the Opinion and Order should refer to plaintiffs' motion to strike. The Opinion and Order is deemed corrected.

In addition, the Judgment (Doc. #68) contains the same error. The Judgment is also deemed corrected.

Dated: July 28, 2017
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read "Vincent Briccetti". The signature is written in a cursive style with a long horizontal flourish at the end.

Vincent L. Briccetti
United States District Judge

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
CIVIL APPEAL PRE-ARGUMENT STATEMENT (FORM C)**

ADDENDUM “B”

List of Proposed Issues and Applicable Standard of Review

Issue 1: The District Court erred in its application of the Williamson County ripeness test. Plaintiffs’ RLUIPA claims are ripe for the court’s consideration.

Standard of Review: The Second Circuit reviews de novo District Court decisions granting motions to dismiss. *See e.g. Chase Grp. Alliance LLC v. City of N.Y. Dep’t of Fin.*, 620 F.3d 146, 150 (2d Cir.2010).

The Second Circuit reviews de novo a District Court’s determination that it lacks subject-matter jurisdiction on ripeness grounds. *See e.g. Nat’l Org. for Marriage, Inc. v. Walsh*, 714 F.3d 682, 687 (2d Cir. 2013).

Issue II: The District Court erred by overlooking Plaintiffs’ RLUIPA claims, which were central to Plaintiffs’ federal lawsuit.

Standard of Review: The Second Circuit reviews de novo District Court decisions granting motions to dismiss. *See e.g. Chase Grp. Alliance LLC v. City of N.Y. Dep’t of Fin.*, 620 F.3d 146, 150 (2d Cir.2010).

The Second Circuit reviews de novo a District Court's determination that it lacks subject-matter jurisdiction on ripeness grounds. *See e.g. Nat'l Org. for Marriage, Inc. v. Walsh*, 714 F.3d 682, 687 (2d Cir. 2013).

Issue III: The District Court erred in its refusal to analyze and interpret ripeness under RLUIPA.

Standard of Review: The Second Circuit reviews de novo District Court decisions granting motions to dismiss. *See e.g. Chase Grp. Alliance LLC v. City of N.Y. Dep't of Fin.*, 620 F.3d 146, 150 (2d Cir.2010).

The Second Circuit reviews de novo a District Court's determination that it lacks subject-matter jurisdiction on ripeness grounds. *See e.g. Nat'l Org. for Marriage, Inc. v. Walsh*, 714 F.3d 682, 687 (2d Cir. 2013).

Issue IV: The District Court erred in its refusal to consider sister circuit decisions on RLUIPA ripeness standard.

Standard of Review: The Second Circuit reviews de novo District Court decisions granting motions to dismiss. *See e.g. Chase Grp. Alliance LLC v. City of N.Y. Dep't of Fin.*, 620 F.3d 146, 150 (2d Cir.2010).

Issue V: The District Court shifted the federal rules of civil procedure 12 (b)(6) standards with its failure to consider the claims in Plaintiffs' complaint as true RLUIPA claims.

Standard of Review: The Second Circuit reviews de novo District Court decisions granting motions to dismiss. *See e.g. Chase Grp. Alliance LLC v. City of N.Y. Dep't of Fin.*, 620 F.3d 146, 150 (2d Cir.2010).

Issue VI: The District Court erred in its dismissal of Plaintiffs motion to strike extraneous material annexed to Defendants' reply memorandum of law in further support of the motion to dismiss without giving Plaintiffs the opportunity to respond/oppose Defendants' material. Plaintiffs' motion to strike was not moot. It should have been considered before the motion to dismiss was granted. The motion to strike addressed central and essential issues raised in Defendants' reply memorandum of law in further support of the motion to dismiss.

Standard of Review: The Second Circuit reviews de novo District Court decisions granting motions to dismiss. *See e.g. Chase Grp. Alliance LLC v. City of N.Y. Dep't of Fin.*, 620 F.3d 146, 150 (2d Cir.2010).

Issue VII: The District Court erred in denying Plaintiffs' motion to supplement their compliant and add First Amendment unlawful retaliation claim against Defendants.

Standard of Review: The Second Circuit reviews de novo District Court decision denying leave to amend/supplement complaint based on interpretation of the law. *See e.g. Dougherty v. Town of N. Hempstead Bd. of Zoning Appeals*, 282 F.3d 83, 92 (2d Cir. 2002).