

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

RECEIVED

MAY 25 2016

AT 8:30  
WILLIAM T. WALSH  
CLERK

I.S.B.R. et al.,

Plaintiffs,

v.

Civil Action No. 16-1369 (MAS)

Township of Bernards, et al.,

NOTICE OF MOTION

Defendants,

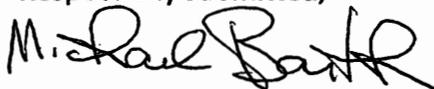
Please take NOTICE that the undersigned will move this Honorable Court on Friday May 27, 2016 or as soon after as may be heard seeking an ORDER Granting a Temporary Restraining Order immediately staying Plaintiffs' discovery and subpoena of the Public as Plaintiffs attempted intrusion into private religious beliefs is irreparable harm by United States Supreme Court standards.

Please also take FURTHER NOTICE that the undersigned will move this Honorable Court on June 6, 2016 (the Return date of Amicus) or as soon after as may be heard to Permanently Squash Plaintiffs' subpoena, Grant Protective Order, award costs and fees, Dismiss Plaintiffs' Complaint for Lack of Standing under RLUIPA, Deny Amicus' Motion for Leave to File Amicus Curiae Briefs in support of plaintiffs; alternatively grant Joinder of Claims, or Grant Leave to file an Amicus Curiae Brief and such other relief as the Court deems just.

PLEASE TAKE FURTHER NOTICE that the undersigned will rely on the accompanying Letter Memorandum and Appendix in support of the relief requested above.

PLEASE TAKE FURTHER NOTICE, that oral argument is respectfully requested if this motion is opposed.

Respectfully submitted,



Michael S. Barth  
May 24, 2016

Michael S. Barth  
P.O. Box 832  
Far Hills, New Jersey 07931  
(917) 628-6145

May 24, 2016

The Honorable Michael A. Shipp  
United States District Court  
District of New Jersey  
402 East State Street  
Trenton, New Jersey 07625

Re: I.S.B.R. et al v. Bernards et al (3:16-CV-01369)

Dear Judge Shipp,

I received one of Plaintiffs' "subpoenas" in the above-referenced matter (NP 1-8). According, please relax the Procedural Rules and accept this Letter Memorandum and Appendix in support of the undersigned Non-Party's Motion for a Temporary Restraining Order, to Squash Plaintiffs' subpoena or in the alternative for the following relief this Honorable Court deems just:

1. Find Plaintiffs and their agents liable for trespass as their process servers assaulted or battered residents; and Counsel for them ordered personal delivery when on Notice in Police presence they would be Trespassing if they returned to a private property when FRCP allowed alternate delivery.
2. Dismiss Plaintiffs' complaint for lack of standing under RLUIPA applying among others the holding in Muslim Community Association of Ann Arbor v. Pittsfield Charter (12-CV-10803).
3. Squash Plaintiffs' Subpoena, Grant Protective Order, and award costs and fees in applying Pittsfield as the subpoena was among others, not properly served, the information requested is irrelevant and unduly burdensome on First Amendment rights.
4. Grant Temporary Restraining Order immediately staying Plaintiffs discovery and subpoena of the Public as Plaintiffs attempted intrusion into private religious beliefs is irreparable harm by United States Supreme Court standards.
5. Find that ISBR selected the most unsuitable parcel of land to build an institutionalized use building as the real basis for the denial of their plans, and not the public input as even the US Department of Justice notes that RLUIPA is not a blanket exemption from zoning laws.
6. Find ISBR's Traffic Engineer honesty led to rejection of ISBR's parking plans, not the public.
7. Find Plaintiffs liable for Abuse of Process as I am only being "subpoenaed" in retaliation for pointing out that Dr. Chaudry's daughter was mouthing answers to him while he was testifying.
8. Find First Amendment Rights to place Lawn Sign on Private Property versus Plaintiffs' supporters placing placards "Build the Mosque" on utility poles in violation of N.J.S.A. 27:5-9, stealing of lawn signs off Private Property, and Dr. Chaudry defacing the American flag by placing an American flag on a utility pole without being lighted at night.

9. Find a Due Process Right of an individual to stand before a Planning Board Meeting versus Chaudry's practices of harassment, attempted witness intimidation and invasion of Privacy.
  10. Deny Amicus Curiae Motions for Plaintiffs as basically ill-informed and therefore NOT helpful but more likely to support Dismissing Plaintiffs' Complaint.
  11. Stay proceedings pending interlocutory appeal if a split within the 3<sup>rd</sup> and 6<sup>th</sup> Circuits.
  12. Grant Joinder of cross-appeal of aspects of the Bernards Planning Board decision below.
  13. Find ISBR lacked standing to file a Planning Board application and for Bernards to have approved the plans would have been an Establishment Clause violation
  14. Find ISBR's application was for a Community Center and therefore not a permitted use.
  15. Find "on-site" is to the Center of the Road and therefore traffic in front of Plaintiff's property on Church Street was within the jurisdiction of the Planning Board's review.
  16. Grant Joinder of Party and Claims
  17. Find Mohammed Chaudry a public figure and "state actor" and therefore liable for harassment, witness intimidation and violation of Civil rights
  18. Relax the Pleading Rules for the filing of this document and Appendix based on the shortened time frame to respond to an untimely and unnecessary subpoena
  19. Grant leave in the Interest of Justice to file a complaint within 30 days.
  20. Alternatively please accept this letter memorandum as a Friend of the Court – Amicus Curie
- 
1. Find Plaintiffs and their agents liable for trespass as their process servers assaulted or battered residents; and Counsel for them ordered personal delivery when on Notice in Police presence they would be Trespassing if they returned to a private property when FRCP allowed alternate delivery.

On Friday evening, May 13, 2016 I received "home delivery" of a copy of one of Plaintiffs' "subpoena" in the above referenced matter. (NP 1-8.) As the Court can observe, my name was on the cover letter but someone else's name on the attached "Form A0 88B" and "Schedule A". (Personal information redacted.) While the questions are highly offensive, it is not clear if all the questions were intended for me. As noted, I was not properly served because of the mistakes in Plaintiffs' paper-work.

In the Interest of Public Safety and under the Rules of Court, there is need to for me to be "re-served" with a "new subpoena" by "Due Process" or other agents of the Plaintiffs as it is my understanding that on that same night one of Plaintiffs' process servers assaulted or battered two local citizens during the process of serving an untold number of others. (Police Report omitted.) When the process server got to our house she admitted "having trouble" with the two "deliveries" prior to trespassing on my property that evening.

As the attached Police Report supports: "Due Process" was initially at my home on Tuesday May 4, 2016 at approximately 9 PM. (NP 9-11.) I was not home at that time but received a phone call that someone was looking to serve me papers on behalf of "The Mosque".

It was conveyed to Due Process they should leave a business card, mail the subpoena via certified mail, and get off the property. I heard through the phone that the process server

didn't have a business card and would come back or wait for me to come home. I reiterated the above but added that if they don't stay off the property I would call the police. The person indicated they would wait for the Police to arrive.

As the Police Report supports, "Due Process" was specifically told in front of the Police they would be trespassing if they returned to my property. As the Police Report notes, Due Process left that evening without leaving me a copy of a Subpoena.

At the suggestion of the Police, I placed a follow up call on May 12 to "Due Process" and spoke with their representation who confirmed they knew they were not allowed back onto my property but to send the subpoena to me via certified mail that is consistent with the FRCP. (FRCP 45(b) does not require personal in-hand service of a subpoena which only requires production of documents.)

Due Process stated they would talk to Plaintiffs' Counsel to consent to overnight the subpoena as they realized they were "ruffling feathers" throughout the town (in his words). One can only logically presume that as a result of Due Process's discussion with Plaintiffs and/or Plaintiffs' counsel and the reported assault or battery reports that Plaintiffs must have decided to "break a couple of feathers" on Friday, May 13, 2016, instead of just "ruffling them."

A failed subpoena service process on Friday May 13 comes as no surprise as Plaintiffs' "botched-up" service of process is similar to how Plaintiffs completely "botched-up" the Planning Board process that led to the denial of their application. Plaintiffs' were also apparently on notice that other citizens had received subpoenas with someone else's name on them and still could not "get it right."

It is widely held that process servers are not immune from their unlawful actions. (Citation omitted.) Accordingly, Plaintiffs, "Due Process", and their counsel Patterson Belknap Webb & Tyler is liable for trespass and other torts should this court permit joinder of party and claim against them as noted below.

FRCP 45(d) also allows for the Protection of Persons subject to a Subpoena. This supports the accompanying request for a TRO and ultimate Squash of the subpoena. However, there is no need to re-serve a subpoena as Plaintiffs' complaint should be dismissed for lack of standing under RLUIPA as noted below and an Injunction issued pending that dismissal.

2. Dismiss Plaintiffs' complaint for lack of standing under RLUIPA applying among others the holding in Muslim Community Association of Ann Arbor v. Pittsfield Charter (12-CV-10803).

Applying the statutory language of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and persuasive authority for example in the Federal Court's Eastern District of Michigan, Plaintiffs the Islamic Society of Basking Ridge (ISBR) and Dr. Mohammed Chaudry have no Standing under RLUIPA until their claim ripens. (See attached Muslim Community Association of Ann Arbor v. Pittsfield Charter 12-CV-10803). (NP 12- 48). Applying that theory,

plaintiffs have NO standing to file a complaint and therefore no standing to attempt to serve a subpoena on a member of the public.

The reasoning behind the decision in Pittsfield is on point to the instant matter. There Judge Duggan stated in summary: an insufficient interest in a subject property – one that does not satisfy the statute of fraud - must be dismissed under RLUIPA - until that interest is perfected.

The insufficient interest in the instant case relates to a 1” outside diameter “PVC” pipe connected to the existing dwelling at 124 Church Street for sewer use. That PVC pipe goes across a neighbor’s property and was part of ISBR’ application before both Bernards Township and the Somerset County Planning Board.

Mr. Raymar, counsel below for ISBR, admitted ISBR had no recorded interest in that line. Mr. Raymar stated he didn’t know “what it is”. (Reference omitted until transcripts provided.) Mr. Raymar also stated ISBR took no action to obtain a recorded interest for the PVC pipe. Plaintiff’s expert admitted the existing pipe would not be up to code for their intended use. Plaintiffs admitted 124 Church Street is outside the “sewer district”. Plaintiffs Expert further admitted they would need additional permission to repair, maintain or replace that PVC line and that they don’t have that permission.

Applying Mr. Raymar’s own statement, ISBR’s lacks an interest in the one-inch PVC sewer line and it is NOT one that provides a sufficient interest to file a land use application or a RLUIPA claim. Accordingly Plaintiffs’ complaints should be dismissed under RLUIPA for lack of standing until they perfect their interest in the subject property – similar to the decision in Pittsfield. (Property interest will suffice so long as the interest is legally cognizable – Id at 19 *citing* 42 U.S.C. 2000CC-5(5).)

In addition, Plaintiff’s have made no showing why Dr. Mohammed Chaudry as a Public Figure, a State Actor, one that admitted he was neither an Imam, one that admitted he was not an Expert Witness nor ever admitted as an expert, has any individual claims or standing whatsoever to bring a cause of action let alone attempt to serve a subpoena on the public. Accordingly please grant leave to respond should to Dr. Chaudry’s standing should Plaintiff make an appropriate showing.

3. Squash Plaintiffs’ Subpoena, Grant Protective Order, and award costs and fees in applying Pittsfield as the subpoena was among others not properly served, and information requested is irrelevant and unduly burdensome on First Amendment rights.

The reasoning behind the Federal District Court decision in Pittsfield is also on point as a basis to squash Plaintiffs’ subpoena, grant Protective Order, and award costs and fees. (NP 49-60.) The main distinguishing feature between Pittsfield and the instant action is that here Plaintiffs’ request is even more egregious, more offensive and more burdensome on the First Amendment than in Pittsfield.

In Pittsfield, parties had completed approximately two-years of discovery. Here, plaintiffs seemingly set off on some bizarre overly broad endeavor before even initiating responsible discovery. It is almost as if they are asking 40-50 people to OPRA the Township to see what was filed when they could file one OPRA request on Bernards. One OPRA request would be much more efficient than 50.

Plaintiffs' subpoena of the public is irrelevant. There is also no basis in fact or law to satisfy plaintiffs' request on the public. Not the least is that plaintiff's admitted on the record below that the religious subject matter of their subpoena was irrelevant to the proceedings below. Therefore Plaintiffs' subpoena request also fails on the insufficiency of the pleadings and the requests they have made:

It seems bizarre by the questions posed on Plaintiffs' subpoena whether they are now requesting a debate with the public of the veracity of Islam that was not before the Board below or within the Subject matter jurisdiction of this Honorable Court. As the record will reflect the plaintiffs were actually the "religious intolerant," not the public; but that was irrelevant below and presumably irrelevant here. The frivolous nature of Plaintiffs' question clearly supports squashing plaintiffs' subpoena and dismissing Plaintiffs' Complaint.

ISBR choosing to subpoena a private member of the public such as me is particularly ironic in that the Planning Board basically rejected every major point I attempted to make to the Board on this application. In reality I had no influence over the Board's decision when in actuality it was Plaintiffs' own total failure to articulate a land use case in chief that a Planning Board could logically review and approve. This included among others that they selected the most unsuitable parcel to build and the honesty of their expert witness led to the rejection of their parking plan. *See below.*

4. Grant Temporary Restraining Order immediately staying Plaintiffs discovery and subpoena of the Public as Plaintiffs attempted intrusion into private religious beliefs is irreparable harm by United States Supreme Court standards.

While this non-party seeks a Motion to Squash returnable later on June 6 when Plaintiffs' Motion for partial summary judgment is returnable, or as soon after as may be heard; a Temporary Restraining Order (TRO) should be issued immediately staying discovery and subpoena of the Public as Plaintiffs' attempted intrusion into private religious beliefs is irreparable harm by US Supreme Court standard. (Citation omitted.) Plaintiffs' subpoena indicates that responses are due on or before June 1, 2016. Those requests that Plaintiffs attempt to infringe on the Publics' Religious Freedoms and other Constitutional Rights include:

- i. All documents concerning Plaintiffs ISBR or Dr. Mohammad Ali Chaudry
- ii. All documents concerning the ISBR Application, the ISBR Proceeding, or Ordinance #2242
- iii. All documents reflecting communication between You and the Board, the Committee, or any Board Member or Committee Member. Documents responsive to this request include communication by You on behalf of any other person or entity, including the BTCRD.

- iv. All documents, including social media posts, concerning Muslims, Islam, mosques, the Quran (also known as the "Koran"), Muslim worship or prayer services, wudu, imams, burkas, hijabs, Sharia (also known as "Shari'ah"), jihad, or anything else associated with or related to Muslims or Islam.
- v. All documents concerning the "Preserve Liberty Corner" movement, any object inscribed with or containing the words "Preserve Liberty Corner," or anti-mosque signs, flyers, banners, email messages, or pamphlets, distributed or otherwise existing at any time within the Township.
- vi. Documents sufficient to show all Your email addresses and social media accounts.
- vii. Documents sufficient to show all the BTCRD's email addresses and social media accounts.
- viii. Documents sufficient to show the BTCRD's organization structure, leadership, and membership.
- ix. All documents concerning the BTRCR's financing, including all records of donations.

(Please note I am not and never was a Trustee of "BTCRD" whose names were placed on the record below. Presumably those demands were inadvertently directed at me. However, that does not weaken, but only strengthens the need for a TRO.)

There is no harm to Plaintiffs in granting a TRO as they have yet to complete discovery with Defendants. Moreover, Plaintiffs complaint should be dismissed for lack of standing under RLUIPA; however the undersigned Motion for such is returnable later in June on the 6<sup>th</sup> or as soon thereafter as may be heard. Accordingly a Temporary Restraining Order (TRO) should be issued immediately staying discovery and the subpoenaing of the Public.

5. Find that ISBR selected the most unsuitable parcel of land to build an institutionalized use building as the real basis for the denial of their plans, and not the public input as even the US Department of Justice notes that RLUIPA is not a blanket exemption from zoning laws.

The U.S. Department of Justice notes that RLUIPA is not a blanket exemption from zoning laws. (*See example* Statement of the Department of Justice on Land-Use Provisions RLUIPA, pages 1, & 3. NP 61-62.) As evident in the record below, ISBR picked one of the most unsuited pieces of property possible to build any type of "institutionalized" use. Plaintiffs need only look at themselves for their failure under land use principles, not the public. (Although not a matter for the Public, the law holds that a Township can amend a zoning ordinance so long as consistent with the MLUL. *See e.g., House of Fire Christian Church v. Zoning Board of Adjustment of Clinton*, 379 N.J. Super 526 (AD 2005)).

- A few examples of the unsuited nature of the ISBR's property include plaintiffs' admitted facts:
- A. Property split in half by 2 large interstate natural gas transmission pipelines,
  - B. Heavily encumbered with wetlands,
  - C. K0 impermeable soil,
  - D. Less than 3 acres of useable property,
  - E. Property outside the sewer district area,

- F. Dwelling attached to a 1" outside diameter PVC line run across a neighbor's property that ISBR themselves admitted they had no recorded interest ("they didn't know what it was") or that was sufficient to handle the capacity of their proposed change of use (A minimum of a 2" line was required per their Engineer.)
- G. Property lacking room for garbage disposal where ISBR suggested 2 garbage cans could handle all the solid waste they produced. Earlier Dr. Chaudry testified he was hauling ISBR trash in his "mosque mobile" as he called it – apparently in violation of a local ordinance and disrespect of the Pope.
- H. Property void of any ability to walk along sidewalks.

ISBR further complicated its own demise through an evidentiary nightmare:

- A. Late filings (a strategy ISBR touted)
- B. Insufficient number of copies of the late filings for the Board to review during the meetings
- C. Incorrect drawings, example plans showing trees growing out of an interstate gas pipeline
- D. Incorrect drawings, example a pipeline on the wrong place on the survey
- E. Incorrect drawings, example failure to properly place existing trees on the survey
- F. Zigzagging fence lines
- G. Lack of expert testimony and lay witnesses deemed incompetent as a matter of law,
- H. No expert religious testimony
- I. Designing a building layout that was admittedly inconsistent with intended "religious practices"
- J. Inefficient Expert Testimony (the purpose of Expert Testimony being for efficiency)
- K. Inconsistent testimony (perhaps because counsel was mouthing answers to a witness)
- L. Misleading expert testimony including admitted incorrect reference to "ITE" edition,
- M. Coaching of witness in public via mouthing answers to their witness from the counsel table
- N. Plaintiffs' Expert getting up from a chair to whisper into Dr. Chaudry's ear while he testified
- O. Obvious that plaintiffs' coached "lay witnesses" in preparation for the public portion in an attempt to plug gaps in their case in chief on religious practices when they had the opportunity to recall witnesses or call a new expert.
- P. Failed strategy of withholding transcripts of each meeting they produced that led to delays
- Q. Flawed attempts to draw parking parallels to other institutions constructed in the 1800s. (For example, presumably "parking" weren't problem in the 1800s, as for example at [GM.com/](http://GM.com/); it states there were only 2,000 cars in all of the United States by the 1900s.)
- R. Dr. Chaudry performing a balloon test expecting the Board to rely upon.
- S. Dr. Chaudry participating in lighting tests expecting the Board to rely upon.
- T. Confusing and mistaken testimony about run off from the property and whether or not it would increase flooding in a nearby flood plain
- U. Confusing testimony about "building occupancy" as compared to "room occupancy"
- V. Confusing testimony about what could take place inside a building at any given point in time when other Mosques or Centers they referred to in their case had multiple events taking place at once.
- W. Denying the fact that many other religious groups had development plans denied by the Bernards Township Planning Board.

X. Denying reality that many religious organizations now move into former commercial space, like King of Kings Church on Mt. Airy Road in Bernards, Stonecrest Church in Warren, and a multiple of other Islamic groups that their expert referenced in their direct testimony.

6. Find ISBR's Traffic Engineer honesty led to rejection of ISBR's parking plans, not the public.

As for ISBR's complaint about the parking requirements, it was ISBR's traffic engineer who was apparently being "too honest" by Plaintiffs' standard that provided the basis to reject ISBR's parking plan by admitting that in reality, only about one male per vehicle attends an Islamic function they were discussing. Unfortunately this conclusion was delayed and the Board's, the Public's and even the Plaintiffs' time was wasted because Plaintiffs failed to know that the text they were relying upon was outdated and had been updated. Plaintiffs' mistake caused measurable delay in the proceedings.

Unfortunately as their traffic expert was apparently too honest for their case in chief, Plaintiffs made a strategic mistake; they no longer wanted to call him back to testify. They did not obtain a new traffic expert but instead had an admitted non-traffic expert (one who also admitted he had not reviewed the traffic expert's prior testimony) attempt to mask his testimony as a traffic expert that the Planning Board rightfully rejected because he was not a qualified traffic expert.

To the extent ISBR admitted it was their burden to satisfy health and safety concerns, they completely failed. ISBR only further exacerbated their own demise by substituting counsel that was not familiar with local land use. Unfortunately substituted counsel could not compensate for his lack of land use knowledge by references to Alice in Wonderland and telling people to "shut up". ("Put up or shut up.")

As noted earlier, the major points I made before the Bernards Planning Board were rejected and therefore it is obvious I had no influence over the planning board decision. If remanded, please consider demanding the Board reconsider these points I made that the Board rejected. Alternatively, please consider the information below as Amicus Curiae.

- A. ISBR lacked standing to file an application before the Bernards Township planning board
- B. ISBR's application was for a community center by their evidence and therefore not a permitted use
- C. "On-site" is to the center of road in front and therefore traffic in front of the subject property to the Center line of Church Street was within the Planning Board's scope of review. (Even applicant admitted by testimony that they owned to the center of the road. Reference omitted.)

7. Find Plaintiffs liable for Abuse of Process as I am only being "subpoenaed" in retaliation for pointing out that Chaudry's daughter was mouthing answers to him while he was testifying.

As noted above, the Township rejected every major point I made before the Board. Perhaps the only point made of substance that was accepted by the board was the fact that Mohammed Chaudry's daughter, a member of the New York Bar, sitting at the counsel bench, was mouthing

answers to Dr. Chaudry during cross-examination, behind the back of the cross-examiner who was asking cross-examination questions of then testifying Mr. Chaudry. (It does not appear Dr. Chaudry's daughter is a Member of the New Jersey Bar. See example NP 63-64.)

This witness coaching was one of a number of examples that made it difficult for the Planning Board to review a conforming application when as a matter of law it was based on unreliable testimony (when witness is coached in an open forum). (Citation omitted.) Ms. Fran Florio, Secretary to the Board, indicated she observed the witness coaching by Dr. Chaudry's daughter.

Plaintiffs have made no showing whatsoever to support why they would serve me with a subpoena. To my knowledge, I am not referenced in any fashion in any portion or example of the ISBR complaint – although this Subpoena is defamatory by implication. The Subpoena almost reads like a bizarre College research assignment or an insulting question whether anyone has ever read the Newspaper. As to Islam, doesn't even the US Government publish information about Islam and Muslims, for example "The World Factbook" at the public portal of the Central Intelligence Agency? Clearly the questions in the subpoena are overly intrusive, overly burdensome and the Subpoena should be squashed.

The veracity of Islam was not debated below so it is not clear other than additional ill willed intentions on behalf of Plaintiffs why they seek to debate the veracity of Islam in this Honorable Court by the questions posed. With all due respect, if Plaintiffs are seeking to discover negative press about Islam or religious intolerance, they need not look any further than to themselves. The subpoena questions are so bizarre that the subpoena should also be squashed as irrelevant because the most negative things said about Islam, Muslims or religious intolerance has been from the Plaintiff's themselves (Examples omitted as Plaintiffs claims against the Public are irrelevant and thus there is no need to bring such examples before this Honorable Court).

Accordingly, the only logical conclusion is retaliation for pointing out that Dr. Chaudry's daughter, a member of the NY Bar, sitting at the counsel table was mouthing answers behind the back of the cross-examiner to the witness. To serve a subpoena merely in retaliation for pointing out witness coaching is clearly an Abuse of Process. Accordingly, Plaintiff's and their Counsel should be found liable for Abuse of the Legal Process and the Subpoena squashed.

8. Find First Amendment Rights to place Lawn Sign on Private Property versus Plaintiffs' supporters placing placards "Build the Mosque" on utility poles in violation of N.J.S.A. 27:5-9, stealing of lawn signs off Private Property, and Dr. Chaudry defacing the American flag by placing an American flag on a utility pole without being lighted at night.

It is also somewhat bizarre that Plaintiffs subpoena would request information about lawn signs legally placed on citizen's property, protected by the First Amendment, when it was their own supporters who illegally placed "Build the Mosque" signs on utility poles in violation of N.J.S.A. 27:5-9. (NP 65.) and stole lawn signs off Private Property. ISBR also currently has a flag placed on a utility pole in front of their property that is not lit up at night time. (Photo omitted.) Not

lighting a flag at night is considered defacing the American Flag, although the US Supreme Court suggests ISBR's defacing of the American Flag is protected speech. (Citation omitted.)

Perhaps an interesting parallel is Plaintiffs' reference in their complaint to the previous Millington Baptist land use application on Minebrook road. Objectors to those plans had "Lawn Signs" that read "Save Minebrook Road". I am not aware of anyone from Millington Baptist accusing people of being "phobic" for such having a lawn sign. Conversely, if I recall, members of Millington Baptist actually made light of the sign and turned it into a "positive" in their beliefs, because as they said, that is exactly what they wanted to do, "Save" the people of Minebrook Road through Jesus Christ's plan of "Salvation." So based on the subpoena questions, it appears the ISBR Community is the anti-Constitutional-rights-group, not the public on this application.

Similar to here, I asked questions of the planning board about the Millington Baptist land use application. Similar to here, three-main areas of my concern was whether there would be an increase of water run-off into the flood plain and whether that run-off was going to impact my property; increased traffic and whether the road was going to be widened and my property "taken" to facilitate that traffic; and the impact on sewer facilities as I have 2 extra sewer laterals running into my property for future development.

Ironic as if I recall the Leadership of Millington Baptist actually encouraged me to ask questions of the planning board as they said I had no power over the process but that the development could impact my property. To me this shows that the ISBR plaintiffs are the true religious intolerant in that no one from Millington Baptist Church or the public attempted to characterize me as a "Baptist Phobic" for asking questions of the Millington Baptist Plans before the Benards Township Planning Board.

Accordingly Plaintiffs' subpoena should be squashed as irrelevant, and overly burdensome.

9. Find a Due Process Right of an Individual to stand before a Planning Board meeting versus Dr. Chaudry's practices of harassment, attempted witness intimidation and invasion of Privacy.

Plaintiffs' admitted that the public had due process rights at a planning board meeting. (Reference omitted pending production of transcripts.) However, Plaintiffs' overreaching subpoena suggests the Public has no right to stand before a Planning Board meeting unless you support their cause.

Apparently with unlimited funds Plaintiffs subpoena "anyone" who even remotely looked like they questioned their application so "everyone" can incur large legal fees so that no one will consider contesting an Islamic related land use proposal in the future. However, nothing could be more offensive to the United States or New Jersey State Constitutions than Plaintiffs' strategy and the suggestion in their subpoena.

Mohammed Chaudry as a party to these proceedings and as noted below admitted he is not an Imam, not a religious expert, but rather by the claims in his complaint characterizes himself a State Actor and Public Figure. He introduces himself in Plaintiffs' Complaint as:

- I. Rutgers University Lecturer - Complaint at 21.
- II. Bernards Township Committee – Id. at 22
- III. Bernards Township Deputy Mayor – Id. at 22
- IV. Bernards Township Mayor – Id. at 22
- V. Commissioner on the NJ Commission on National and Community Service – Id. at 24
- VI. New Jersey Attorney General's Outreach Committee – Id. at 25
- VII. Trainer New Jersey State Police Academy – Id. at 25.
- VIII. New Jersey Department of Homeland Security and Preparedness – Id. at 25.

Dr. Chaudry was following people throughout buildings where there were related proceedings and was filming people "close up" in an effort to harass and intimidate witnesses. Success of intimidation or feelings of intimidation by targeted individual is not necessary to prevail on such claims (citation omitted).

For example, at the Somerset County Planning Board on June 11, 2015, Dr. Chaudry was filming me and another member of the public making a presentation before the Somerset County Planning Board that ISBR lacked standing to file an application. Dr. Chaudry then aggressively flipped over his filming device so as to film and track me walking back from the lectern to my seat in back of the room.

Dr. Chaudry made further attempts to harass and intimidate witnesses. He stood behind a door in the County building, trying not to be seen, filming me and others through a little peep hole view glass on the door between a conference room and foyer – while I was standing there expressing condolences to someone who had recently lost their mother.

Dr. Chaudry, in doing so as a State Actor and Public Figure by his own description, is liable for the violation of the civil rights statute, harassment, witness intimidation and Invasion of Privacy. The relevancy to this proceeding is Chaudry himself complains of reaction from other members of the public that appears Chaudry was intentionally initiating by his harassment and attempted intimidation of witnesses - including filming men and women going in and out of the restrooms.

10. Deny Amicus Curiae Motions for Plaintiffs as basically ill-informed and therefore NOT helpful but actually provide support for rejecting Plaintiff's complaint

From a Public perspective, the basis of the Amicus is offensive at best. Under the Federal Rule of Civil Procedure, Amicus Curiae are supposed to be helpful to a Court. An Amicus seemingly duplicating the facts of a New York Times article is clearly not helpful to the Court. Amicus providing some boiler plate language used from previous filings is also not helpful to the Court. Amicus taking plaintiffs' position against the public is offensive at best and their motions should be denied.

Amicus political rhetoric is also misplaced as RLUIPA received a unanimous vote from both the House and the Senate. Moreover, as Amicus should note, the Department of Justice has previously stated that RLUIPA is not a blanket exemption from zoning laws. It appears what Amicus failed to do and why their Motions should be rejected is that they failed to examine the record that might suggest they should retract their brief as the Plaintiffs' application obviously failed on its face.

Amicus makes no attempt to highlight or distinguish cases that would go against the Plaintiffs including Pittsfield. Accordingly the current Motion for Amicus Curiae in support of the Plaintiff should be denied as misinformed and unhelpful.

Perhaps it is ironic that Amicus briefs actually support rejecting Plaintiffs' contentions. Amicus provide a mix of references to Mosques and Islamic Centers. Plaintiffs' experts and Counsel also relied on other "Mosques" and "Community Centers" as underlying their application. In the instant application, an Islamic Center is not a permitted use at 124 Church Street

Although there is sufficient information to grant summary judgment against plaintiffs in this forum, if remanded, the Board should be ordered to remake a determination whether ISBR's application was for a Community Center as Amicus make reference to a number in their briefs. (Please see discussion of Community Center below).

11. Stay proceedings pending interlocutory appeal if a split within the 3<sup>rd</sup> and 6<sup>th</sup> Circuits.

If the subpoena is not squashed and a TRO not granted, alternatively please stay the proceedings pending interlocutory appeal of the matters. From a Private Citizen perspective, this case is clearly distinguishable from your Honor's discussion in Al Falah Center v. Township of Bridgewater 3:11-cv-02397 (MAS).

If this subpoena is not squashed, a District Court in the Third Circuit will basically be in conflict with a District Court in the Sixth Circuit. It seems likely the United States Supreme Court would reject Plaintiffs intrusion into Private Fundamental interests through their subpoena. Accordingly, if the Subpoena is not squashed, please stay the rejection of the TRO and the Motion to Squash pending an interlocutory appeal.

12. Grant Summary Judgment on a cross-appeal of aspects of the Bernards Planning Board decision

As noted above, this non-party had no influence over the Bernards Planning Board Decision to justify being served an overly intrusive subpoena as the three major points I made were rejected by the board. However, to the degree Plaintiffs bring these points up on their complaint and the Planning Board basically tolled the time to reconsider its decision by filing an amended resolution, the Court may want to consider them sua sponte as a basis to dismiss plaintiffs' complaint.

The Board's rejection of the points I made actually infringe on the due process rights of the public at a planning board meeting as they basically support the fact that ISBR's application should have been dismissed nearly "day-one" of the Planning Board proceedings and not after Plaintiffs' dragged out the process over 4 years. In the alternative please accept this information as Amicus Curiae. Any findings that Bernards was mistaken on these points will result in a dismissal of Plaintiffs' application below that further negates the need for Plaintiffs' offensive subpoena.

13. Find ISBR lacked standing to file a Planning Board application and for Bernards to have approved the plans would have been an Establishment Clause violation

For the same reasons plaintiffs' have no standing under RLUIPA they had no standing to file a land use application with Bernards or Somerset County. That is, they had an insufficient interest. They needed an easement or permission from the owner of the land where a 1" non-conforming sewer line that plaintiff admitted they had no permission to maintain. Both Bernards and Somerset County rejected my motions to dismiss ISBR's standing to file a land use application. Conversely, the Bernards Township planning application checklist requires an applicant to list all the easements associated with the plans. If Bernards would have approved ISBR's land use application they would basically be condemning private land for a "religious purpose" that would be in violation of the US Constitution First Amendment "Establishment Clause". Accordingly it should be found that plaintiffs' had no actual standing to file a land use application at the Township or County level until their rights in a sewer line were perfected.

14. Find ISBR's application was for a Community Center and therefore not a permitted use

The Planning Board also incorrectly rejected my motion that ISBR was for a Community Center and not a Mosque. Board Member Alper specifically stated in the Board's resolution there was not a "scintilla" of evidence ISBR's plans should not be considered a house of worship.

However, even Amicus makes multiple references to a number of Community Centers in their briefs in support of plaintiffs. ISBR witnesses also referenced to and compared themselves to a number of Community Centers and not Mosques in their direct case below as a basis for their application.

There is a myriad of evidence that ISBR's plans were for a community center at 124 Church Street. This included several ISBR documents that were available on the internet.

Unfortunately, the Board allowed Mr. Raymar to mischaracterize the record that resulted in the prohibition of additional witnesses and evidence showing ISBR's application was for a community center. The Board erred in allowing Mr. Raymar to "testify" that documents on the internet showing ISBR had plans to construct a community center had since been removed. (That was a factual question that required a factual witness as otherwise Mr. Raymar as counsel was "testifying.") Moreover, Mr. Raymar's statements were in error saying 2012 documents

showing plans for a community center were removed when even as late as 2014 Mr. Chaudry posted his own social media that ISBR was building a community organization at 124 Church Street.

The reality is that nationwide, groups file applications for a Community Center where a Mosque is not permitted; or they file an application for a Mosque where a Community Center is not permitted.

Moreover, New Jersey case law says to look at the religious qualification of the application when reviewing plans for a House of Worship (citation omitted). In this case, ISBR chose not to produce a religious expert or Imam but rather an activist and one who describes himself in Plaintiffs' complaint as a public figure and state actor.

Accordingly it should be found that ISBR's plans were for a Community Center where upon ISBR's application should be dismissed as a community center is not a permitted use at 124 Church Street.

**15. Find "on-site" is to the Center of the Road and traffic on Church within scope of the Planning Board**

The third major point I made below that was rejected by the planning board showing I had no influence on its decision is the definition of "on-site" and therefore whether traffic in front of the subject property was "on-site" and thus within the scope of the Board's review. However, since the Board rejected Plaintiffs on-site traffic circulation for other reasons, this point is unnecessary except to show how the Board's made its decision independent of my input.

The Plaintiffs and the Planning Board both agreed that "on-site" traffic was within the scope of the Planning Board review. Plaintiffs also admitted that their deed went to the center of Church Street. Case law suggests that to the center line of the road in front of the property subject to review is "on-site". See for example, Stauffer v. Weisenberg Township Board of Supervisors, 934 A.2d 783 (Commonwealth of PA 2007) suggests that on-site is on the property owner's side of the road. C.f., Property Group v. Planning and Zoning Commission of the Town of Tolland 226 Conn. 684 (1993).

Logically on-site to the center of the road appears to make sense as if traffic is backed up in front of your property, to the center line of the road, one's internal circulation fails and public safety fails. This appears to be a critical distinction as when it comes to negotiating a development as Townships like to claim as wide a right-of-way possible, even when there are no recorded "road-easements". They often negotiate that new right of way when they expect a developer to deed over a portion of the roadway to the township in exchange for development rights.

If remanded, the Planning Board should consider that to the center-line of the roadway in front of the subject property is "on-site" and therefore traffic on Church Street in front of the subject

property is within scope of the Planning Board's review. However, as noted, the Board found internal circulation unsafe on other grounds and therefore I had no influence on the Board's decision in this an all other areas.

**16. Grant Joinder of Parties and Claims**

Alternatively, should this Honorable Court not squash the subpoena or dismiss Plaintiffs' complaint for lack of standing, please grant leave to allow Joinder of Party of Claims that arises by sufficient sets of related facts. (Citation omitted.) This includes items noted above as well:

- A. Plaintiffs' are Liable for Abuse of Legal Process (for reasons noted above).
- B. Plaintiffs Process Server and counsel liable for trespass and other tort injury (for reasons noted above).
- C. Dr. Mohammed Chaudry is a "state actor" and "pubic figure" and as such is liable for violating due process and equal protection civil rights of the public,
- D. Dr. Mohammed Chaudry is liable for harassment, witness intimidation and invasion of Privacy,
- E. Other such relief as the Court deems just.

**17. Find Dr. Chaudry is a "public figure" and "state actor" and therefore he is liable for harassment, witness intimidation and violation of Civil rights.**

Mohammed Chaudry basically characterizes himself in the Complaint as a public figure and a "state actor" as noted above. Chaudry holds himself out as a "Public Figure" and State Actor. Accordingly any requests in the subpoena related to what individuals have stated about Chaudry are irrelevant and protected by the First Amendment and accordingly the subpoena should be squashed among other reason. Moreover, Mohammed Chaudry admitted himself that certain of his beliefs are illegal under US laws; therefore truth would be a defense to any of his claims – although his pleadings lack specificity as to recognizable claims. However, based on the facts above include those in "Item #9", Dr. Chaudry is liable for harassment, witness intimidation and violation of Civil rights.

**18. Relax the rules for the filing of this Document and attached appendix based on the shortened time frame to respond to an untimely and unnecessary subpoena.**

As noted above, the Subpoena should be squashed and Plaintiffs complaint dismissed for lack of Standing. Also as noted above, Plaintiffs, Plaintiffs' Counsel and Plaintiffs' process server basically did everything wrong possible. The public clearly should not be involved with this case and basically this entire document should have been unnecessary to write. However, to the degree it is required and does not conform fully to the Rules of Civil Procedure, please relax those rules and allow the filing for its intended purpose.

**19. Grant leave in the Interest of Justice to file a complaint within 30 days.**

Plaintiffs' subpoena comes somewhat as a surprise as they were aware of the Pittsfield case from below. However, this case has become truly complex by plaintiffs design. Unfortunately it seemed that Plaintiffs' were more anxious to get into Federal Court than to actually produce a workable plan at 124 Church Street, or any other location in town more suited. It is almost as if ISBR wanted to application to fail to bring attention to themselves.

The amount of money plaintiffs' suggest in the Newspapers they have spent in Legal fees does suggest the complexity of this case; although unfortunate the complexity is by Plaintiffs' design. Accordingly, if joinder of party is granted, please grant leave to file a complaint within 30 days of that Order.

20. Alternatively please accept this letter memorandum as a Friend of the Court – Amicus Curie

I will not attempt to reiterate the standards for Amicus as laid out in the Amicus with boiler plate language in support of Plaintiffs. However, one hopes this Court finds this letter Memorandum and Appendix helpful, and if so, please Grant Leave to file these papers as a Friend of the Court.

21. Conclusion

It is unfortunate but otherwise truly an honor to have the opportunity to file these pleadings before this Honorable Court. From a private citizen perspective, this case is clearly distinguishable from Bridgewater and is more akin to Pittsfield. It would even be of no surprise if found during the course of Discovery that certain Township officials actually wanted ISBR's application to be approved but unfortunately ISBR failed in its case-in-chief. The gist of what Plaintiffs have repeatedly said is that other applications should not have been approved, and yes ISBR's application should not have been approved, but approve ISBR's anyway. Plaintiffs' complaints with other applications being approved do not arise under RLUIPA but rather either their misapplication of the facts and law, incompetency or other forms. Accordingly Plaintiffs' claims are without sufficient merit to move forward and clearly do not support Plaintiffs' attempts to intrude into private affairs of members of the public protected by the United States Constitution.

Respectfully Submitted



Michael S. Barth

C: Adeel Mangi Esq., Counsel for ISBR and Mohammad Chaudry  
Hannah C. Smith Esq., Counsel for Amicus The Becket Fund for Religious Liberty  
Howard Mankoff Esq., Counsel for Bernards Township  
Ravinder S. Bhalla Esq., Counsel for Amicus

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

RECEIVED

MAY 25 2016

AT 8:30  
WILLIAM T. WALSH  
CLERK

I.S.B.R. et al.,

Plaintiffs,

v.

Civil Action No. 16-1369 (MAS)

Township of Bernards, et al.,

CERTIFICATION OF MAILING

Defendants,

The undersigned certifies on this day May 24, 2016 that the foregoing NOTICE OF MOTION, Accompanying Letter Memorandum and Appendix, and proposed Form of ORDER was sent overnight mail via USPS to:

Ms. Diana M. Conner, Esq.  
Patterson Belknap Webb & Tyler  
1133 Avenue of the Americas  
New York, New York 10036-6710

Ravinder S. Bhalla, Esq.  
Florio Perrucci Steinhardt & Fader  
217 Route 17 North, Suite 410  
Rochelle Park, New Jersey 07662

Mr. Howard B. Mankoff, Esq.  
Marshall Dennehey Warner Coleman & Goggin  
425 Eagle Rock Avenue, Suite 302  
Roseland, New Jersey 07068

Ms. Hannah C. Smith, Esq.  
The Becket Fund for Religious Liberty  
1200 New Hampshire Ave NW Suite 700  
Washington, DC 20036

Respectfully,



Michael S. Barth  
May 24, 2016