

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Islamic Center of Nashville,)
)
)
 Plaintiff,) CASE NO: _____
 vs.) CIVIL ACTION
)
)
 State of Tennessee, Charlie Caldwell,)
 and the Tennessee State Board)
 of Equalization,)
 _____ Defendants _____)

**PLAINTIFF’S ORIGINAL COMPLAINT AND
REQUEST FOR DECLARATORY JUDGMENT**

Plaintiff Islamic Center of Nashville (“Plaintiff” or “ICN”) files this its Original Complaint and Request for Declaratory Judgment, against Defendants State of Tennessee, Charlie Caldwell, and the Tennessee State Board of Equalization, and in support thereof shows the following:

I. Jurisdiction and Venue

1.1 This is a civil action authorized by the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), the Religious Freedom Reformation Act (“RFRA”), and the Elementary and Secondary Education Act of 1965 as well as the Establishment Clause of the First Amendment, and is therefore appropriately brought in this Court under 28 U.S.C. 1331.

1.2 This Court has ancillary jurisdiction over Plaintiff’s claims under Tenn. Code Ann. 4-1-407 (2009) under 28 U.S.C. 1367.

1.3 The Middle District of Tennessee, Nashville Division, is an appropriate venue under 28 U.S.C. 1391(b)(2) because it is where the events giving rise to the claim occurred.

II. Plaintiff

2.1 Plaintiff is an entity operating in Nashville, Tennessee.

III. Defendants

3.1 Defendant State of Tennessee is a governmental entity operating within the Middle District of Tennessee.

3.2 Defendant Charlie Caldwell, Metropolitan Trustee in Nashville, Tennessee, is a named representative for a governmental entity operating within the Middle District of Tennessee, and is sued in his official capacity.

3.3 Defendant Tennessee State Board of Equalization is a governmental entity operating within the Middle District of Tennessee.

IV. Facts

4.1 The Islamic Center of Nashville (“ICN”), through its related entity Nashville International Academy, has continuously run a religious school in Nashville, called the Nashville International Academy, since 1995.

4.2 ICN operates educational facilities, teaching pre-kindergarten through eighth grade, on its facilities. ICN leases its property to its related entity, Nashville International Academy.

4.3 Both ICN and Nashville International Academy (“NIA”) are independently operating yet overlapping 501(c)(3) organizations.

4.4 The Tennessee State Board of Equalization granted limited land use exemptions to ICN, as a religious entity, in 1996. The statute granting this exemption states that “[t]here shall be exempt from property taxation the real and personal property, or any part of the real and personal property, owned by any religious, charitable, scientific or nonprofit educational institution that is occupied

and actually used by the institution or its officers purely and exclusively for carrying out one (1) or more of the exempt purposes for which the institution was created or exists.” Tenn. Code Ann. 67-5-212.

4.5 In August 2008, ICN began construction on a new building, which opened in December 2008. This building has at all times been used by ICN and NIA as a school for educational purposes.

4.6 To fund the new building and remain in accordance with the tenets of the Islamic faith, ICN entered into an *Ijara* agreement with a subsidiary of Devon Bank, created just for that purpose.

4.7 An *Ijara* agreement is an Islamically compliant vehicle used to borrow money without running afoul of the Islamic prohibition on the payment of interest. In fact, the letter between Devon Bank and ICN setting forth the terms of the Agreement (“Term Sheet”) specifically defines “Purpose of Transaction” as “[t]he transaction is intended to finance the acquisition of properties by persons who abide by religious limitations against borrowing money at interest.” The Term Sheet further states that “[p]ayments under the Purchase Agreement are ‘on account’ payments and the equivalent of principal payments on a loan.” (Exhibit A.)

4.8 Under this *Ijara* agreement, an entity controlled by Devon Bank received legal transfer of title until the payments were complete. The *Ijara* Agreement states directly that no ownership other than by ICN is anticipated at the conclusion of the term of the *Ijara* Agreement, and the Terms specify that no ownership is anticipated by any other than ICN. (*Id.*)

4.9 The *Ijara* agreement continued to operate through October 2013. During the time of its operation, from 2008 until October 2013, ICN, with NIA, continued to operate the property with no input, oversight, or interference whatsoever from Devon Bank or its related entities.

4.10 From 2008 through October 2013, Devon Bank and its related entities never paid taxes regarding this property, nor ever took any depreciation of the property for tax purposes.

4.11. The payments were complete in October 2013, and ICN regained the unencumbered title to the property at issue at that time. (Exhibit B.)

4.12 ICN applied for a property tax exemption regarding this building on February 26, 2014, seeking retroactive application as is contemplated under the statute. The Tennessee statute specifically provides for continuity of exempt status for religious institutions, even in the event that a lender forecloses, so that the religious exemption may be uninterrupted:

The purpose of this subdivision is to provide continuity of exempt status for property transferred from one exempt religious institution to another in the specified circumstances. For purposes of this subdivision, property transferred by a lender following foreclosure shall be deemed to have been transferred by the foreclosed debtor, whether or not the property was assessed in the name of the lender during the lender's possession.

Tenn. Code Ann. 67-5-212(b)(3)(B). The example of foreclosure is listed as just that: an example, not an exhaustive list of all foreseeable circumstances allowing for continuity.

4.13 Despite this clear intent, ICN was denied the exemption for the time period prior to October 2013, but granted it for the time from October 25, 2013 forward.

4.14 ICN timely appealed that decision.

4.15 In January 2015, the Administrative Law Judge (“ALJ”) first heard ICN’s appeal of the decision against it. The ALJ specifically recognized that ICN produced the *Ijara* agreement because “[d]ue to sincere religious doctrinal concerns regarding interest bearing loans, the taxpayer opted not to pursue conventional financing for the school construction project.” (Exhibit C.)

4.16 The ALJ recognized that “the administrative judge is neither insensitive to the taxpayer’s predicament nor unmindful of the Tennessee courts’ policy of liberally construing exemption statutes in favor of exempt institutions.” (Ex. C, ALJ Decision at 5.)

4.17 Counsel for the tax assessor argued that because title had been transferred and because Devon Bank’s related entity made a profit on the transaction, the *Ijara* agreement could not be considered a trust or akin to a standard mortgage, and ICN should therefore be denied its exemption.

4.18 There is no dispute that during the time in question, ICN (with NIA) continued to operate its school, which continued to be for legitimate religious and educational purposes.

4.19 Nonetheless, the ALJ held that “[t]he administrative judge regards this outcome particularly unfortunate in light of the facts that the property has been continuously occupied by an exempt institution and physically used solely for exempt religious educational purposes throughout the relevant time period. Regrettably, the administrative judge ‘cannot disregard or rewrite the conditions for property tax exemption imposed by law to accommodate even the worthiest of causes.’” (Ex. C, ALJ Decision at 7.)

4.20 The ALJ, despite this expressed discomfort with the result of his ruling, believed that Tennessee law allowed no option for accommodating the admittedly recognized sincerely held religious belief against paying interest on loans.

4.21. Thereafter, ICN again timely appealed, to the Tennessee Assessment Appeals Commission.

4.22 The Assessment Appeals Commission held that “[w]hile the Commission sympathizes with the taxpayer’s sincere desire to comply with religious principles, we are unable to ignore the legal transfer of title.” (Exhibit D.)

4.23 The Assessment Appeals Commission further stated in its ruling that “[t]he Commission suggests that the proper avenue for addressing this issue is through legislative action.”

4.24 The Assessment Appeals Commission applied the law of the State of Tennessee and found against ICN, ruling it was not entitled to the exemption, solely due to the *Ijara* agreement.

4.25 The decision of the Assessment Appeals Commission became final June 16, 2016.

4.26 ICN timely seeks redress for the disparate impact of the application of the tax laws of the State of Tennessee, which caused it to suffer harm as a direct result of compliance with the terms of its indisputably sincerely held religious beliefs.

4.27 There is further no dispute that ICN has at all times relevant to this matter used the property and building at issue for its religious purposes, in accordance with the laws of the State of Tennessee.

4.28 In fact, this is one of the rare cases where very little to no factual disputes exist, and the dispute is instead over the validity and application of the law.

4.29 The administrative rulings below demonstrate, in the words of the adjudicators for those proceedings themselves, that there is no question as to the sincere religious belief leading to the use of the *Ijara* agreement. There is also no dispute that the ongoing and sole use of the land in question for all relevant times has been for the purposes of a religious and educational school run by Nashville International Academy.

4.30 The adjudicators below are also uniform in holding that despite their sympathies, and recognition of the conflict between the tenets of Islamic religious beliefs and this application of Tennessee law, the law does not allow room for equal application of the tax exempt provisions to those who also adhere to the religious restrictions of Islam against payment of interest on loans.

4.31 The refusal to pay interest, which is in accordance with Islamic tenets, is the sole reason for the punitive loss of tax exempt status for ICN (and Nashville International Academy as operator of the school itself).

4.32 As a result of this loss, ICN and its affiliate NIA are now suffering harm in the form of having to reduce or remove additional programs for children's educational services due to funds being diverted to pay the charges which have accrued as a result of the loss of ICN's tax exempt status. (Exhibit E.) This harm restricts ICN's ability to develop its land, as well as other educational services, as it would do if it were not harmed by the loss of its tax-exempt status for the duration of the *Ijara* agreement.

4.33 This harm has not been imposed on entities which are religions other than Islamic or which do not adhere to the religious tenets of the Islamic religion.

V. Causes of Action

Religious Freedom and Restoration Act ("RFRA") and its Tennessee Counterpart

5.1 Plaintiff hereby alleges and incorporates herein by reference all paragraphs in Section I – IV above.

5.2 Government shall not "substantially burden a person's exercise of religion even if the burden results from a rule of general applicability." Religious Freedom and Restoration Act ("RFRA"), 42 U.S.C.A. § 2000bb-1(a). "Congress enacted RFRA in 1993 in order to provide very

broad protection for religious liberty.”¹ The Tennessee counterpart uses nearly identical language. Tenn. Code Ann. 4-1-407 (2009) (“no government entity shall substantially burden a person’s free exercise of religion” and “nothing in this section shall be construed to authorize any government entity to burden any religious belief”).

5.3 The actions of Defendants, under the color of authority of the State of Tennessee, have unlawfully burdened Plaintiff’s exercise of its undisputedly sincere religious beliefs. By imposing the additional financial burden caused by the revocation of the tax exempt status due solely to adherence to religious tenets, Defendants have caused undue substantial financial burdens on ICN, and the school operated on its premises, which are not imposed on other religions or other schools.

5.4 By focusing erroneously on the distinction that Devon Bank made a profit off the *Ijara* agreement, not unlike a bank would profit off a standard interest-bearing mortgage, the State of Tennessee and its actors violated the precedent set in *Hobby Lobby* and the RFRA.

Religious Land Use and Institutionalized Persons Act (“RLUIPA”)

5.5 Plaintiff hereby alleges and incorporates herein by reference all paragraphs in Section I-IV above.

5.6 No government shall impose a substantial burden on the religious exercise of a person or entity. By penalizing Plaintiff’s adherence to the indisputably sincere tenets of its religion, Defendants violated Plaintiff’s rights of religions expression and belief, chilled any potential for Plaintiff to engage in similar adherence in the future, and further failed to accommodate the

¹ *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2760 (2014).

religious exercise of Plaintiff's religion as required under the Religious Land Use and Institutionalized Persons Act (RLUIPA). 42 U.S.C.A. § 2000cc(a)-(b).

5.7 RLUIPA prohibits government action which places a substantial burden on religious exercise or that which regulates land use in a way that discriminates against a religious organization compared to a non-religious organization.

5.8 Here, ICN was ironically denied the religious exemption from property taxes by Defendant specifically because of its adherence to its religious tenets. The result is that ICN is unable to make necessary repairs and renovations to its facilities, as it utilized funds earmarked for that purpose to pay the prorated 2013 tax assessment, of \$22,878.20. It has had to do additional fundraising, harming its intended fundraising campaign, to raise funds to pay the full 2012 tax bill, of \$65,129.39. Programs directly impacted by ICN's need to make these tax payments include Security (a necessity for any mosque in the current social climate) and the Youth Program.

5.9 The denial of the financial benefit and classification of a religious entity entitled to relief from property taxes is a violation of RLUIPA, in that the application of the Tennessee statute both favors non-Islamic religions and favors non-religious organizations. This therefore imposes a heightened burden on Plaintiff, which substantially burdens Plaintiff's free exercise of religion, without a valid compelling governmental interest to justify it.

Elementary and Secondary Education Act of 1965

5.10 Plaintiff hereby alleges and incorporates all paragraphs in Sections I-IV above, by reference herein.

5.11 Defendants have further violated Plaintiff's rights as protected by the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 *et. seq.*, and its subsequent related statutes,

and as articulated by the Supreme Court in *Flast v. Cohen*² and *Hibbs v. Winn*,³ in that the tax assessment as written and applied by Defendants unfairly benefits certain religions over others.

5.12 Unlike schools owned by religious entities with no objection to the payment of interest, ICN, through NIA, has suffered in that it has been taxed more than other religious entities solely due to its sincere religious beliefs. As set forth in detail above, this is a violation of the rights of Plaintiff ICN and unduly burdens its exercise of educational programs, a burden not suffered by schools run by entities of other religions. Specifically, ICN is unable to make necessary repairs and renovations to its facilities, as it utilized funds earmarked for that purpose to pay the prorated 2013 tax assessment, of \$22,878.20. It has had to do additional fundraising, harming its intended fundraising campaign, in order to raise funds to pay the full 2012 tax bill, of \$65,129.39. Programs directly impacted by ICN's need to make these payments include Security (a necessity for any mosque due to the recent social and political climate) and the Youth Program.

Establishment Clause of the First Amendment

5.13 Plaintiff hereby alleges and incorporates all paragraphs in Sections I – IV, above, by reference herein.

5.14 Protections of religious freedom under the Establishment and Free Exercise clauses of the First Amendment of the United States Constitution are in place because “the basic purposes of these provisions” are “to insure that no religion be sponsored or favored, none commanded, and none inhibited.”⁴ In order to be valid, statutes regulating tax exemptions such as these must favor “neither the advancement nor the inhibition of religion; it is neither sponsorship nor

² 392 U.S. 83 (1968).

³ 542 U.S. 88 (2004).

⁴ *Walz v. Tax Comm. of New York*, 397 U.S. 664, 669 (1970).

hostility” toward any one religion. *Id.* at 672.

5.15 As set forth more fully above, the Defendant imposed a financial burden in the form of a land use tax on Plaintiff, as a direct result of Plaintiff’s adherence to its religious tenets by use of the *Ijara* agreement instead of a traditional mortgage which imposes interest.

5.16 These actions are a violation of the Establishment clause of the First Amendment and unlawfully infringe upon Plaintiff’s right to observe the tenets of its religious practice and restrictions.

5.17 The facts as set forth above and incorporated herein by reference make clear that the laws of the State of Tennessee as applied to ICN violate the Establishment clause as set forth above.

5.18 Plaintiff has suffered in that it has incurred additional expense as a direct result of its adherence to its religious practices.

5.19 Other religious entities are granted religious land exemptions if they have different tenets of their religion, and the law therefore improperly affects Plaintiff as a direct result of its religious beliefs.

The Tennessee Statute is Unconstitutional

5.20 A statute is unconstitutional and shall be declared invalid if it deprives a benefit without affording the procedural safeguards guaranteed by the Constitution of the United States of America. This is true both if the statute is discriminatory on its face or places an undue burden on a particular group. See *Whole Woman’s Health v. Hellerstadt*, 579 U.S. ___ (June 27, 2016); *Lynch v. Donnelly*, 465 U.S. 668, 670 (1984); *Sherbert v. Verner*, 374 U.S. 398 (1963).

5.21 The property statute of the State of Tennessee, located at Tenn. Code Ann. § 67-5-212, violates the guaranteed rights of the Constitution in that it fails to accommodate all religions equally.

Declaratory Judgment

5.22 Plaintiff further seeks a Declaratory Judgment against Defendants that it is in accordance with the law as a religious institution by practicing the tenets of its religious faith. This Action is brought under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202 (2000).

5.23 The Administrative Procedure Act (APA) provides a right to judicial review to any “person suffering legal wrong because of agency action.” 5 U.S.C. § 702. The APA defines agency action to “include[] the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C. §§ 551(13), 701(b)(2).

5.24 The APA provides that a court shall compel an agency action that is “unlawfully withheld or unreasonably delayed,” and shall hold unlawful and set aside agency actions found to be “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.” 5 U.S.C. § 706(1) & (2)(A).

5.25 Defendant the State of Tennessee is in violation of the APA in that it withheld or failed to act to grant Plaintiff its full rights under the law to practice its religious faith without penalty.

VI. Prayer for Relief

WHEREFORE, Plaintiff prays for judgment of liability against the Defendants herein as follows:

- 6.1 For judgment against Defendants for damages in amounts to be proven at trial;
- 6.2 For judgment against Defendants for statutory penalties;
- 6.3 For punitive damages in an amount to be proven at trial;
- 6.4 For all costs and expenses herein;
- 6.5 For attorney's fees and costs, including reasonable attorneys' fees and costs as provided by any applicable provision of the law;
- 6.6 For preliminary and permanent injunctive and declaratory relief that Plaintiff be allowed to act as a religious entity and exercise the full expression of its sincerely held religious beliefs;
- 6.7 Any additional relief this court deems just, proper, and equitable.

Respectfully submitted this 19th day of September, 2016.

Respectfully submitted,

/s/ Charles D. Swift
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this foregoing was electronically filed with this court.

DATED this 19th day of September, 2016.

/s/ Garrett E. Asher
Garrett E. Asher