

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

Ikram Ullah Khan, Shahid Hussain Rahu,  
Arshad Khan, Mohammad Masroor,  
Masoom Shaik, Arafath Mohammad,  
Suleman Waheed, Muhammad Mahmood,  
Muhammad Ajmal, Zafer Mohamed,  
Sarfaraz Khan, Abdul Azeez Mohammed,  
Shaik Abdul, Mannan, Aslam Shaik,

Plaintiffs,

v.

Mustapha Saoui, Jamal Zoubir, Farooq  
Hussain, Marlon Haniff, Izzeldin Shibeika,  
Mehdi Wajih, Ahmed Anakkar, Bouna  
Cisse, Khaalis Ansaar, Abdul Rahman Shuli  
(All in their Official Capacity as Members of  
the Shura Governing Body of the Islamic  
Community Center of South Charlotte),

Defendants.

IN THE COURT OF COMMON PLEAS

C/A No.: 2022-CP-29-01637

**DEFENDANTS' MOTION FOR TEMPORARY  
RESTRAINING ORDER (WITH NOTICE) AND  
PRELIMINARY INJUNCTION**

NOW COME the Defendants (hereinafter "Defendants"), by and through their undersigned counsel, and file this Motion for a Temporary Restraining Order ("TRO") and Preliminary Injunction pursuant to Rule 65, SCRCP, requesting that the Court enter a TRO and Preliminary Injunction to maintain the status quo in this action as described below.

Because the nature of the requested TRO and preliminary injunction concern matters that will likely occur on March 10, 2024, the Defendants request an emergency hearing with the Court on or before March 10, 2024.

Counsel for Plaintiffs are being contemporaneously served with this motion.

### **FACTUAL BACKGROUND OF THE CASE**

The Islamic Community Center of South Charlotte (“ICCSC”) is a mosque (or “Masjid”) located in the Fort Mill area of South Carolina.

This case began in December 2022 when a faction of the Masjid attempted to exclude other members from taking part in the leadership of the Masjid based on race. Specifically, the dispute concerns a small group of members – Plaintiffs – who would like to run affairs at the center. They are exclusively of “Desi” descent, referring primarily to persons of South Asian descent, such as Pakistanis, Indians, and Bangladeshis.

The Defendants include members of Desi and non-Desi descent and currently claim to be the true members of the “Shura,” which is the governing body of the Mosque. The Defendants are from a broad number of ethnicities, and have the support of the Mosque’s Imam, who is himself an ethnic Somali.

The immediate cause of the controversy was the Shura membership election scheduled for December 2022, for the term beginning on January 1, 2023 through December 31, 2025. In November 2022, after the Shura-appointed Elections Committee prepared a list of candidates, Plaintiffs began circulating a list of “preferred candidates” based on their “Desi” descent. When the Plaintiffs’ plan was discovered, a majority of the Shura voted to delay the election until the issue was resolved.

At a special meeting called by Plaintiff Ikram Khan on November 27, 2022, a majority of the Shura voted to revoke Ikram Khan’s membership in the ICCSC for “un-Islamic” behavior, including his participation in the circulation of the racist “preferred candidates” list. Nevertheless, after his ouster, Khan called another meeting on December 1, 2022, and without a quorum, nine

members voted to hold their own election on December 3-4, 2022. Consequently, the proper Shura revoked the ICCSC membership of the other Plaintiffs as well.

Defendants conducted a proper election on December 9-11, 2022, and are now serving as the Shura for the 2023-2025 term.

**FACTUAL BACKGROUND RELEVANT TO THE CURRENT MOTION FOR TEMPORARY  
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

The current matter before the Court concerns the Plaintiffs' attempts to change the status quo of the case in two important aspects.

- First, Plaintiffs seek to supplant the current Imam (the senior and authoritative religious leader of the Masjid) by hiring another Imam. In connection with this action, Plaintiffs also seek to supplant the majority of the members of the Masjid by seeking to replace the majority in its conduct of the Friday "Jummah" prayer and sermon, which must be held at a specific time under Islamic law.<sup>1</sup>
- Second, Plaintiffs seek to use their replacement leader to supplant the current Imam and the majority of the Masjid's members in leading the special 30-day Ramadan services ("Tarawih") that follow evening "Isha'a" prayers (which begin this year on March 10, 2024). Ramadan is the holiest month Islamic calendar.

Each of these provocations appear entirely designed to upset the status quo of the case and appear designed to intimidate and threaten the Defendants. In the expert opinion of Sheikh Muhammad Sayyid Adly, a respected Islamic scholar who has led the Islamic Center of Columbia for over 40 years, and author of over 70 books on Islam, the acts of Plaintiffs are "shocking,"

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<sup>1</sup> Currently, the Imam of the Masjid, or his appointee, conducts the midday services – including the Friday "Jummah" – at the time appointed by Islamic law. (*See Affidavit of Sheikh Muhammad S. Adly, attached as Exhibit "A,"* ¶¶ 14-18). Under the current status quo of the case, Imam Abdidahir Moalim, who has served the Masjid since 2012 as its Imam, conducts the Jummah on Friday, and the Plaintiffs convene their prayer afterwards. For example, Plaintiffs have circulated a notice indicating that its so-called "Shura" has "decided to initiate a 2<sup>nd</sup> Jummah prayer," which they attend at 3:00 p.m. (*Notice, attached as Exhibit "B"*). In a meeting with the Lancaster County Sheriff's Office in the Fall of 2023, the parties also agreed that the Imam Abdidahir Moalim and Defendants would pray first.

wholly contrary to the concept of “good Islamic Conduct,” present a potential threat to the safety of the members of the Masjid, and are likely to “disturb the peaceful atmosphere of the worship service.” (*See Affidavit of Sheikh Muhammad S. Adly, attached as Exhibit “A”*).

In this regard, the Defendants – acting in their official capacity as Members of the Shura of the ICCSC – respectfully request that the Court issue an Order declaring that the status quo in this case be maintained until such time as the Court issues its final ruling on the matters before it, specifically ordering that:

1. That Imam Abdidahir Moalim, who has served the Masjid since 2012 as its Imam, will conduct the first midday prayer at the ICCSC, including the Friday “Jummah” services, and that the Plaintiffs, if they wish, could continue to conduct a prayer service thereafter.
2. That Imam Abdidahir Moalim, who has served the Masjid since 2012 as its Imam, will conduct the special 30-day Ramadan services (“Tarawih”) that follow evening “Isha’a” prayers, and that the Plaintiffs, if they wish, could continue to conduct a prayer service thereafter.
3. That Plaintiffs cease from engaging in actions that present a potential danger to the safety of the members of the Masjid, or present a likelihood that their actions would disturb the peaceful atmosphere of the worship services and the other activities of the Masjid.

#### **LEGAL ARGUMENT**

The granting of a temporary restraining order and/or preliminary injunction is traditionally implemented to maintain the *status quo*. An injunction is a drastic remedy issued by a court in its discretion to prevent irreparable harm. Injunctive relief is an extreme remedy and should be

cautiously applied. *Scratch Golf Co. v. Dunes Residential Golf Props, Inc.*, 361 S.C. 117, 603 S.E.2d 905 (2004); *LeFurgy v. Long Cove Club Owners Assoc. Inc.*, 313 S.C. 555, 558, 443 S.E.2d 577, 578 (S.C. App. 1994).

Traditionally, the sole purpose of an injunction is to preserve the *status quo* and is, therefore, prohibitory. It generally arises in situations that are akin to an emergency and used to prohibit the opposing party from acting to change the *status quo*. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001); *Mailsorce, LLC v. M.A. Bailey & Assoc., Inc.*, 356 S.C. 363, 368, 588 S.E.2d 635, 638 (S.C. App. 2003). If, however, an injunction compels the performance of an affirmative act in order to undo an alleged wrong, it changes the *status quo* rather than preserving it. Such an injunction is a mandatory injunction, which is “an especially drastic remedy and is rarely granted.” *Johnson v. Phillips*, 315 S.C. 407, 417, 433 S.E.2d 895, 901 (S.C. App. 1993) (*rev’d in part on other grounds by Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995)), citing *Forest Land Co. v. Black*, 216 S.C. 255, 57 S.E.2d 420 (1950).

Here, the Defendants do not ask the Court to change the *status quo* of the case. Rather, it seeks to stop Plaintiffs from engaging in provocative actions in attempting to supplant the Shura, Imam, and the majority of the members of the Masjid from conducting the religious practices in accordance with Islamic law. Importantly, the Defendants make this request in order to maintain the *status quo* of the matter.

To be entitled to injunctive relief on a temporary basis, whether mandatory or prohibitory, to preserve legal rights pending the resolution of the litigation, the moving party must demonstrate (1) that it would suffer irreparable harm if the injunction is not granted; (2) that it will likely succeed on the merits of the underlying litigation; and, (3) that there is no other adequate remedy at law. *See Poynter Investments, Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586,

694 S.E.2d 15, 17 (2010); *Levine v. Spartanburg Reg'l Serv. Dist. Inc.*, 367 S.C. 458, 464, 626 S.E.2d 38, 41 (S.C. App. 2006); *County of Richland v. Simpkins*, 346 S.C. at 669, 560 S.E.2d at 904. Defendants can demonstrate each of these elements.

First, Plaintiffs' attempts to supplant the current Imam and disrupt the ICCSC's current schedule will result in "irreparable harm." Plaintiffs campaign to seek to oust the current Imam and deny the Defendants and the majority of the Masjid the opportunity to conduct services according the tenets of their religion is the quintessential example of "irreparable harm" that a preliminary injunction is designed to remedy. "[I]t is well established that '[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Legend Night Club v. Miller*, 637 F.3d 291, 302 (4th Cir. 2011) (quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 2690, 49 L.Ed.2d 547 (1976)); see also *Hebb v. City of Asheville, N. Carolina*, 655 F. Supp. 3d 388, 404–05 (W.D.N.C. 2023); *Miller v. Marshall*, 2023 WL 4606962, at \*21 (S.D.W. Va. July 18, 2023) (irreparable injury where plaintiff coerced to engage in religious exercise at odds with his own beliefs).

Second, Defendants are likely to succeed on the merits. As the expert opinion of Sheikh Adly establishes, if the Court is ultimately to rule on this matter, it will need to rule on matters of religious doctrine, which is not allowed under South Carolina law and the First Amendment of the U.S. Constitution. *Morris Street Baptist Church v. Dart*, 67 S.C. 338, 45 S.E.753, 754 (1903) (emphasis added) (cited with approval in *Pearson v. Church of God*, 325 S.C. 45, 478 S.E.2d 849 (1996)); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976). Even if the Court decides to intervene, the evidence clearly shows that the racist acts of the Plaintiffs were profoundly "un-Islamic," justifying their removal from the Shura under the governing documents of the Masjid.

Third, given that Plaintiffs' provocations threaten the *status quo* and seek to prevent Defendants from exercising their established First Amendment rights, Defendants have no adequate remedy at law. *Ramirez v. Collier*, 595 U.S. 411, 433, 142 S. Ct. 1264, 1282, 212 L. Ed. 2d 262 (2022) ("Compensation paid to his estate would not remedy this harm, which is spiritual rather than pecuniary.").

### **CONCLUSION**

For the reasons set forth above, the Defendants respectfully request that the Court grant its motion to preserve the status quo during the pendency of this action, and to grant the Defendants any other such relief as the Court deems just and proper.

Dated this the 1st day of March, 2024.

Respectfully submitted,

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