

Exhibit C

IN THE CHANCERY COURT FOR
RUTHERFORD COUNTY, TENNESSEE
AT MURFREESBORO

KEVIN FISHER, ET AL.)
)
Plaintiffs,)
)
vs.) No. 12-CV-853
)
RUTHERFORD COUNTY REGIONAL)
PLANNING COMMISSION, ET AL.,)
)
Defendants.)

TRANSCRIPT OF PROCEEDINGS
Wednesday, June 13, 2012

APPEARANCES:

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Reported By:
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<p style="text-align: right;">Page 2</p> <p>1 (The aforementioned cause came on to be 2 heard Wednesday, June 13, 2012, before the Honorable 3 Robert E. Corlew, Chancellor, beginning at 4 approximately 10:24 a.m., when the following 5 proceedings were had, to-wit:)</p> <p>6</p> <p>7 THE COURT: Counsel, good morning. 8 The matter before us today, then, is Chancery Docket 9 No. 12-CV-853. The parties are Kevin Fisher and others 10 versus Rutherford County Regional Planning Commission 11 and others.</p> <p>12 Counsel, initially, I had inquired of 13 counsel informally -- and, for the record, it's 10:25. 14 We have a number of matters, of course, that are set on 15 our morning docket this morning. We dealt with some 16 other issues. I asked counsel informally, because this 17 is a new case, a new matter, just to be certain that 18 all counsel were satisfied to continue the same 19 agreements that you had entered in the prior case 20 regarding the issues of media and their presence in the 21 courtroom.</p> <p>22 We're all aware of the fact that the 23 Supreme Court rule provides some restrictions on media, 24 unless there's agreement of the parties. And 25 previously the parties agreed those restrictions should</p>	<p style="text-align: right;">Page 4</p> <p>1 Commission of May 24, 2010, approving the site plan for 2 the ICM is hereby declared to be void ab initio, that 3 the decision having been made at a meeting which was 4 held in the violation of the Tennessee Open Meetings 5 Act.</p> <p>6 In any other case, and I truly mean 7 any other case, that would have been the end of it. No 8 one would have had to come back up here, because the 9 Government would have enforced the decision of the 10 Court. But in this particular case, we are back up 11 here.</p> <p>12 Now, the Court noted in Footnote 3 at 13 the bottom of page 3 of its order, that an injunction 14 is no longer within the scope. If you look at what we 15 asked for an injunction for, it was an injunction or 16 prohibition against the advocacy of Shariah law in 17 Rutherford County. The Court dismissed those actions 18 on due process grounds based upon the plaintiffs not 19 showing -- or what the Court found, that they did not 20 show there was particularized injury. The Government 21 argues we've already come in on that particular issue. 22 That's what I would say to that one.</p> <p>23 Second, the -- in your footnote, you 24 said the County can again reconsider this action, 25 basically, vote on it again. I think either in your</p>
<p style="text-align: right;">Page 3</p> <p>1 not be placed.</p> <p>2 Is that the continued agreement, then, 3 in this cause, Mr. Brandon and Mr. Smith?</p> <p>4 MR. BRANDON: Yes, sir.</p> <p>5 MR. SMITH: Yes, sir.</p> <p>6 THE COURT: Mr. McCreary?</p> <p>7 MR. MCCREARY: It is.</p> <p>8 THE COURT: Very well. Are there 9 further preliminary issues for either side? Are we 10 here today strictly on arguments of counsel?</p> <p>11 MR. BRANDON: Yes, sir.</p> <p>12 THE COURT: Very well. Mr. Brandon, 13 we're happy to hear you.</p> <p>14 MR. BRANDON: I suppose you really 15 didn't think that that was going to be the last time we 16 were here, back in May. So here we are again today. 17 And as the Court pointed out, we're here on a different 18 case number, although, we incorporated a lot of the 19 pleadings from Case No. 10-CV-1443.</p> <p>20 Chancellor, you issued a memorandum 21 opinion on May 29th, 2012. As a result, the plaintiff 22 submitted an order, the defense submitted an order, and 23 the Court went ahead and drafted its own order that was 24 entered on June the 1st, 2012. Specifically, in the 25 Court's order, you held the decision of the Planning</p>	<p style="text-align: right;">Page 5</p> <p>1 memorandum opinion or in your order, you said, of 2 course, there's not going to be a public hearing there. 3 It's just vote on it. But that was there.</p> <p>4 And, third, the Court said the 5 plaintiffs may seek an order to stop through a writ of 6 mandamus. Well, we attempted --</p> <p>7 THE COURT: I think we said mandamus 8 or such other actions that were appropriate.</p> <p>9 MR. BRANDON: Yes, sir.</p> <p>10 THE COURT: We didn't restrict you one 11 way or the other.</p> <p>12 MR. BRANDON: That's correct.</p> <p>13 We waited. We tried to allow the 14 Government to do what's right, to follow the law. The 15 Government has made it clear, through what they have 16 spoken publicly, that they intend to do nothing 17 regarding that.</p> <p>18 As late as yesterday, apparently, 19 there was another meeting held, and now they're saying 20 they're going to appeal. We already -- they have that 21 right. I'm glad we live in America where we have 22 rights to question things.</p> <p>23 But we went ahead and filed our writ 24 of mandamus, and that's what we're here for today. The 25 truth of the matter is the Government has continued to</p>

<p>1 allow the ICM to build.</p> <p>2 Now, Rutherford County Zoning</p> <p>3 Resolution 503 -- we reference this in our petition for</p> <p>4 writ of mandamus -- provides all development shall be</p> <p>5 required to file a site plan and shall not be entitled</p> <p>6 to a zoning certificate until and unless the site plan</p> <p>7 has been approved by the appropriate agency. Site plan</p> <p>8 review and approval by the Planning Commission shall be</p> <p>9 required for the following, and it has an A, B, C, D.</p> <p>10 Under D, it provide all churches and</p> <p>11 other religious structures in excess of 3,000 square</p> <p>12 feet, clearly, there is a requirement for a valid site</p> <p>13 plan. The Government does not have a valid site plan.</p> <p>14 Now, parenthetically, they want to</p> <p>15 argue, Hey, we did this like every other one. But that</p> <p>16 wasn't the proof put forth at trial. On all their</p> <p>17 others, thousands of other site plans reviews, they</p> <p>18 have noticed the date, the time, and the location.</p> <p>19 They had it on their website. This case was handled</p> <p>20 entirely different from day one, and the Court so</p> <p>21 found.</p> <p>22 Also, under Section 22 of the County</p> <p>23 Zoning Resolutions, under Article 22, Section 22, it</p> <p>24 provides any person, firm, or corporation violating any</p> <p>25 of the provisions of this resolution shall be deemed</p>	<p>Page 6</p> <p>1 the Planning Director engaging in secret meetings with</p> <p>2 the ICM -- that's just the truth. That's what the</p> <p>3 evidence showed in this particular case.</p> <p>4 And if they thought they didn't have</p> <p>5 to have a valid site plan, then they would have known</p> <p>6 that after these secret meetings with our government</p> <p>7 officials. The highest of our officials had meetings</p> <p>8 and said, This is what you've got to do to get it</p> <p>9 approved. Now the Court has declared that to be void.</p> <p>10 The Government argues that they have</p> <p>11 30 days to ignore this Court's order because the order</p> <p>12 is not final. Plaintiffs are not seeking an</p> <p>13 enforcement of the court order, although we submit</p> <p>14 we're entitled to that. We, rather, are seeking a</p> <p>15 mandamus action for ministerial duties to be performed.</p> <p>16 And, specifically, this Court said,</p> <p>17 This Court retains continuing jurisdiction over the</p> <p>18 parties and the subject matter of this lawsuit for a</p> <p>19 period of one year and further regarding the site plan</p> <p>20 for the Islamic Center of Murfreesboro.</p> <p>21 The defendants also allege that, Look</p> <p>22 if we do anything, we're going to violate RLUIPA and</p> <p>23 RFRA. Well, earlier on in this case you held that</p> <p>24 RLUIPA and RFRA did not apply to this particular case.</p> <p>25 What the Government is really saying</p>
<p>Page 7</p> <p>1 guilty of a misdemeanor, and upon conviction thereof</p> <p>2 fined not more than \$50. Each day's continuance of a</p> <p>3 violation shall be considered as a separate offense.</p> <p>4 And, quite frankly, that's where we are at the present</p> <p>5 time.</p> <p>6 Further, we referenced a TCA Section</p> <p>7 13-7-111, which basically tracks that particular</p> <p>8 government resolution. The plaintiffs have attached</p> <p>9 affidavits to their petition for writ of mandamus,</p> <p>10 according to the law, to show building is continuing.</p> <p>11 The defendants are intentionally refusing to do</p> <p>12 anything to stop construction, although it's within</p> <p>13 their power. That's referenced in the affidavits.</p> <p>14 This is nothing more than selective</p> <p>15 enforcement of the law, and that's unacceptable. There</p> <p>16 again, if this was any other entity, anybody else,</p> <p>17 there -- this issue wouldn't be here today. The</p> <p>18 Government would have issued a stop-work order. They</p> <p>19 would have said, Go back through the process, if they</p> <p>20 thought they could get passed a second time around, and</p> <p>21 that's what would be going on. There wouldn't be</p> <p>22 continued thumbing the nose to this particular Court in</p> <p>23 words and in actions.</p> <p>24 This case has been handled in a</p> <p>25 clandestine manner since day one, from the Mayor and</p>	<p>Page 9</p> <p>1 is that the ICM should be entitled to preferential</p> <p>2 status, requiring less notice than that required for</p> <p>3 ordinary tax-paying citizens. That's simply not the</p> <p>4 law. I agree that the law says you cannot impose a</p> <p>5 burden, but it doesn't say you make the door wider than</p> <p>6 you make it for any other tax-paying citizen.</p> <p>7 And, quite candidly, under this RLUIPA</p> <p>8 and RFRA claim that the Government's advancing, this</p> <p>9 opens the door for the plaintiffs to be able to show</p> <p>10 special injury, which goes back to the Shariah risk</p> <p>11 that the Court file is inundated with and sworn to. We</p> <p>12 submitted depositions. We submitted live testimony</p> <p>13 from Secretary of Defense Gaffney, from FBI Guandola,</p> <p>14 from Stephen Coughlin. It's all through the Court</p> <p>15 file.</p> <p>16 If the Government is going to continue</p> <p>17 to refuse to honor the orders of this Court, to</p> <p>18 continue to refuse to perform their ministerial</p> <p>19 actions, which are required under the law, it's not</p> <p>20 going to be res judicata, it's going to come in under</p> <p>21 showing special injury as a result of their refusal to</p> <p>22 follow the law.</p> <p>23 The Government, in their brief, talks</p> <p>24 about a mandamus under Section 3. And they're correct</p> <p>25 about what they say about the law, that there's three</p>

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<p style="text-align: right;">Page 10</p> <p>1 things -- three parts of it, that the plaintiff has a 2 clear right to the relief sought. We do. There's 3 zoning resolutions. The Court can take judicial notice 4 of that. The Court's heard all of this proof in this 5 case.</p> <p>6 Two, that the defendant has a plainly 7 defined and preemptory duty to do the acts in question. 8 That's provided in the zoning resolution. It's their 9 requirement to enforce the zoning regulations.</p> <p>10 And, three, that's no other remedy. I 11 mean, the other remedy is for some third party to take 12 some action and engage in civil disobedience. No. 13 That would be inappropriate and improper. That's the 14 reason we're back up here is to continue to follow the 15 law as we have since day one.</p> <p>16 We may not have agreed with all the 17 rulings, and the Court may not have agreed with 18 everything we've tried to put on. We've continued to 19 try to come in this courtroom and put on our case in a 20 succinct manner. Now we're asking this Court to force 21 the Government to do what they're supposed to do.</p> <p>22 Under the order of this Court, site 23 plan review is void; therefore, building permit is 24 void; therefore, they cannot issue any type of an 25 occupancy permit. There again, you're retaining</p>	<p style="text-align: right;">Page 12</p> <p>1 officials -- do they become intoxicated with power or 2 are they arrogant to begin with? I'm not sure I 3 understand the answer to that.</p> <p>4 The bottom line is the legislature has 5 given us laws, we all have to follow it, and the 6 Government needs to follow it at this point.</p> <p>7 Thank you.</p> <p>8 THE COURT: Thank you.</p> <p>9 Mr. McCreary?</p> <p>10 MR. MCCREARY: Good morning, Your 11 Honor.</p> <p>12 Let me say at the outset, of course, 13 the defendants are not snubbing their nose at the 14 Court's order and certainly will comply with whatever 15 this Court orders. However, there are a number of 16 issues and problems with the relief that's being 17 requested at this stage and in the manner it's being 18 requested. Certainly, that's an issue the Court needs 19 to address and the defendants are entitled to bring to 20 the Court's attention.</p> <p>21 The plaintiff suggests multiple times 22 this action now is not -- doesn't have anything to do 23 with the Court's previous order. Of course it does. 24 Everything that is being requested here is predicated 25 on the Court's order that was entered June 1, 2012.</p>
<p style="text-align: right;">Page 11</p> <p>1 jurisdiction over this case. That would appear to be 2 the next phase, a request for an occupancy request. 3 We're seeking enforcement of their duties under the 4 zoning resolution. Again, I say that, not under the 5 order of this Court.</p> <p>6 If the Court finds that the actions of 7 the Government are not ministerial, then an injunction 8 would be appropriate. Under Rule 65.01, injunction may 9 redirect or direct or mandatorily direct the doing of a 10 particular act.</p> <p>11 There again, if the Court finds it's 12 not ministerial, we would submit -- and we asked for 13 this in our petition -- for an injunction. It's 14 broader than a mandamus.</p> <p>15 And, basically, just to kind of paint 16 the picture, the Government's saying, We've been 17 through two years of litigation, now we're going to 18 appeal, but we're not going to do anything to enforce 19 this.</p> <p>20 What is the Tennessee Open Meetings 21 Law about? What are the consequences of it? If you 22 say, No, we can continue to allow people to build. We 23 understand they violated the law. We disagree with 24 that, but you can give us no consequences. We're above 25 the law. Which raises the issue again, are government</p>	<p style="text-align: right;">Page 13</p> <p>1 That is to say if the -- if it's not 2 predicated on the Court's order, then the site plan in 3 question is not in question. If the site plan in 4 question is not in question, then, of course, there 5 wouldn't be reason to stop construction.</p> <p>6 As to the legal issues, specifically, 7 Your Honor, the order entered on June 1 is simply not 8 an order capable of enforcement at this stage. That's 9 not to say it won't become an order capable of 10 enforcement. The action being requested is simply 11 premature.</p> <p>12 Our view is that Tennessee Rule of 13 Civil Procedure 62.01 and the associated case law 14 clearly says that until the expiration of 30 days, that 15 no party can enforce the order, meaning the defendants 16 can't enforce it, the plaintiffs can't enforce it. 17 It's just sort of in abeyance until the expiration of 18 that time period.</p> <p>19 The reason for that rule, I think, is 20 clear and practical. That is, both parties have an 21 opportunity during that time period, as the Court well 22 knows, to consider any sort of appropriate post-trial 23 motions, to consider appeal, and so forth. And until 24 those types of efforts can be discussed with the 25 parties themselves, and the clients, and appropriate</p>

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<p style="text-align: right;">Page 14</p> <p>1 actions taken, the order really just, for all practical 2 purposes, sits there.</p> <p>3 So to come into this Court now under a 4 separate case with a separate case number in an effort 5 to really enforce that order is simply not proper at 6 this stage. It goes beyond that. With all due respect 7 to the Court, it's really an issue of jurisdiction. 8 Because the case law spells out that in order for the 9 Court to have jurisdiction, you have to have a 10 justiciable issue, and it has to be ripe.</p> <p>11 Our posture at this point and 12 suggestion to the Court is that until that order is 13 final and the 30 days has expired, there's not a 14 justiciable issue here and the matter's not ripe. That 15 precludes the Court's jurisdiction at this point in 16 time.</p> <p>17 We do contend that actions taken at 18 this point very well may violate the various Religious 19 Freedom Restoration Acts that have been alleged 20 throughout. We have maintained that from the outset of 21 the other case, and we maintain that that is the case 22 under the present lawsuit as well. I don't believe, 23 contrary to what counsel stated, that the Court ever 24 concluded that those acts do not apply or have 25 implications in this case. Certainly, we've been up</p>	<p style="text-align: right;">Page 16</p> <p>1 same parties or their privies, and it's the same case, 2 or it could have been litigated in the previous case, 3 then the res judicata defense applies here. 4 Our position is that all of those 5 elements are met. These are the exact same parties, 6 with the only difference being the inclusion of David 7 Jones, who is the building codes director. But the 8 case law is clear it's the same parties or their 9 privies. And the term "privy" means as unity of 10 interest, and certainly that would apply between the 11 County and the County's codes enforcement officer. 12 So we have the same parties here. We 13 have an action here that could have been litigated in 14 the first case and, in fact, in this instance was 15 litigated in the first case. The very first thing that 16 happened in the first case was we came in and had an 17 eight-day trial on whether or not there should be an 18 injunction to stop the construction. 19 So we've already been down this road. 20 The Court has heard proof on these issues of whether or 21 not there's some type of irreparable harm and so forth. 22 And we -- the defendants are not obligated under law to 23 defend the same action twice. This lawsuit is 24 res judicata, and the requested relief now certainly is 25 not appropriate.</p>
<p style="text-align: right;">Page 15</p> <p>1 here a number of times, and the Court's made lots of 2 comments. I don't recall a holding or an order to that 3 effect.</p> <p>4 And if -- the issue is simple. Our 5 position is that if the County is required to take 6 action against this particular applicant, who is -- 7 that is there for religious use -- it is a mosque -- 8 that is distinct or different from actions taken 9 against other religious uses, then there is at least 10 the potential for violation of those federal and state 11 laws.</p> <p>12 The Court well knows at this point 13 that those statutes do not allow the County to treat 14 one religious organization differently than another, 15 and, frankly, to treat religious organizations 16 differently than nonreligious organizations. And so to 17 simply go out of turn here and pull a building permit 18 or issue a stop-work order would just fly in the face 19 of those requirements, at this stage anyway.</p> <p>20 We also contend that this case -- and 21 probably this would be an appropriate subject of a 22 motion to dismiss at the right time. But this case 23 really is res judicata as a result of the first case.</p> <p>24 As the Court knows, a res judicata 25 defense requires multiple elements. But if it is the</p>	<p style="text-align: right;">Page 17</p> <p>1 We also contend that the mandamus 2 remedy that's being requested is not an available 3 remedy. As a general rule, mandamus is not a favored 4 remedy against a governmental entity anyway. And where 5 it can be utilized against a governmental entity, the 6 circumstances are narrow and rare. And as the 7 plaintiff, I think, has correctly pointed out, there is 8 some law to suggest where it's nothing more than a 9 ministerial act, perhaps mandamus can issue. But I 10 would submit to the Court that is not the case here. 11 Case law says in order to determine 12 that it's ministerial and for mandamus to apply, the 13 plaintiff has to have a clear claim and right to the 14 relief sought, number one; and, number two, that the 15 defendant has a plainly defined duty to do the act in 16 question. Respectfully, neither of those things exist 17 here.</p> <p>18 The plaintiffs' right to relief 19 requested is predicated exclusively on the Court's 20 prior order. And not restating the prior order, we're 21 not in a position right now, before the expiration of 22 30 days, to enforce that order. And so there is no 23 clear right for the plaintiff to enforce anything or to 24 require any particular act. 25 Second, the defendant doesn't have a</p>

<p style="text-align: right;">Page 18</p> <p>1 plainly defined duty in this instance. That would mean 2 that the obligation is so clear that there's no 3 discretion involved in the action being requested. And 4 clearly there is.</p> <p>5 There's not been any evidence that in 6 every circumstance where there's a question about a 7 building permit that the codes director just goes and 8 issues a stop-work order or that he pulls a permit. 9 There may be a number of actions that he may take in 10 advance of that. He makes decisions about how to 11 proceed based on any particular circumstance, and those 12 are discretionary acts.</p> <p>13 And where there's discretion about 14 which steps to take, the Court is not to step in and 15 order any particular action, respectfully. The law 16 doesn't support that where there is discretionary act 17 in question. And here, there is.</p> <p>18 As a final matter, the plaintiff 19 suggests there's no other remedy. I'll submit to you 20 that there is another remedy, and that is this. 21 They've relied -- in their effort to try to suggest 22 they're not trying to enforce the Court order but are 23 relying somehow on a statute, they've cited this TCA 24 13-7-111. Two things are noteworthy about the statute. 25 The first thing is there's no</p>	<p style="text-align: right;">Page 20</p> <p>1 rely upon does not -- it does provide other avenues for 2 the plaintiffs outside the one they're pursuing. And 3 as a result of that, mandamus cannot lie, because the 4 elements for a mandamus order are not met.</p> <p>5 They ask for injunctive relief in the 6 alternative of mandamus. Again, respectfully, we've 7 been down that road once already. Clearly here, the 8 plaintiffs -- there is no threat. They have not showed 9 and they cannot show a threat of irreparable harm.</p> <p>10 The only information submitted to the 11 Court that has anything do with irreparable harm is one 12 sentence, the last paragraph on one of the two 13 affidavits submitted with the complaint. It simply 14 says, I'll suffer irreparable harm. But that, 15 obviously, is a conclusory statement. It's not 16 evidence, per se. It's just a conclusion. I'm going 17 to suffer irreparable harm. There's no showing of 18 irreparable harm in this instance.</p> <p>19 Moreover, any injury, I would assume, 20 that is argued to have occurred or is occurring, has 21 already occurred. This building is substantially 22 complete. We've already asked for an injunction two 23 years ago that was denied. Now the building is 24 substantially complete.</p> <p>25 If the plaintiffs believe that they</p>
<p style="text-align: right;">Page 19</p> <p>1 obligation under that statute for anybody to take any 2 particular action, even where there's construction that 3 may be arguably in violation of a zoning resolution. 4 If you read on down into the statute, it is simply a 5 grant of authority, or a right, if you will.</p> <p>6 And it says "may." These various 7 parties may take action to enforce it. And under the 8 statute, it's not only the County or the legislative 9 body that can take action. It specifically says the 10 Attorney General, the District Attorney, and it says an 11 adjacent property owner can take the action. But it's 12 not against the County. It's against the party who's 13 alleged to be in violation.</p> <p>14 Which brings us to, yet again, a point 15 that's been raised a number of times. That is the 16 ICM -- again, it's not a party to this litigation. 17 Respectfully, under Rule 19, that requires joinder of 18 certain parties, it is not possible for the plaintiffs 19 to get the relief that they're seeking without all of 20 the parties who will be affected present in the case. 21 That's what's happening here. They continue to pursue 22 the County, and the County is sort of incidentally 23 involved at this point, based on the relief they're 24 seeking.</p> <p>25 And, clearly, the statute that they</p>	<p style="text-align: right;">Page 21</p> <p>1 are injured or irreparably injured, that injury, 2 presumably, has occurred to this point. There's no 3 new, ongoing injury to occur. Certainly, none has been 4 shown by the pleadings.</p> <p>5 The Court, also in considering 6 injunctive relief, has to balance the harm between the 7 plaintiff and the defendant. And, certainly, while the 8 plaintiffs have no irreparable injury here and haven't 9 shown any, the defendants do have the possibility of 10 being harmed by entry of an order.</p> <p>11 Again, we have the threat, or at least 12 the possible threat, of being in violation of federal 13 and state religious acts. We also have another party 14 out there who's affected by the action taken, if the 15 plaintiffs succeed here, that aren't parties to this 16 case. That subjects the defendants to potential harm 17 in the form of other forms of legal action and so 18 forth.</p> <p>19 So in just weighing the equities of 20 injunctive relief, on the one hand, the plaintiffs 21 aren't suffering ongoing irreparable harm, and the 22 defendants may suffer harm as a result of an order that 23 could be entered.</p> <p>24 So with that, I will restate, Your 25 Honor, obviously the defendants will do whatever this</p>

<p style="text-align: right;">Page 22</p> <p>1 Court orders. We're here to comply with those court 2 orders. The idea that somehow the defendants are 3 trying to snub their nose at the Court and so forth is 4 simply incorrect.</p> <p>5 Just as a practical matter, there has 6 to be a time period for the parties to decide what 7 action they want to take in response to a final order. 8 And the law sets that out. And efforts to enforce the 9 order at this stage are premature. They can be 10 addressed at an appropriate time, depending on what 11 actions are taken by the parties in response to the 12 Court's order.</p> <p>13 THE COURT: Thank you, sir. 14 Mr. Brandon? 15 MR. BRANDON: Just briefly, Judge. 16 He -- it's kind of the tale of the tale about the last 17 six sentences from his last sentence. He said, We have 18 the threat of violating RFRA from the folks out there 19 building. That is Shariah law. Their law trumps our 20 laws. 21 Stated another way, Chancellor, don't 22 make us do what we're obligated to do, because the 23 folks at the ICM are threatening us. 24 We're asking this Court to follow the 25 law, make the Government follow the law, and grant us</p>	<p style="text-align: right;">Page 24</p> <p>1 transparency in government is probably becoming a buzz 2 word. And I won't go over the facts that were 3 presented in the former case. The Court found 4 substantial concerns, setting aside the newspaper 5 publication for a moment, the issues dealing with the 6 website and the proof that was presented there that 7 the -- while the advertisement in the paper suggested 8 that it was a meeting scheduled -- regular meeting 9 subject to change, and the proof then showed that the 10 website regularly and routinely showed the meetings and 11 generally the agenda. The proof here was the date, 12 even, of this meeting didn't come up on the website 13 before the meeting was held. 14 There were other facts that I won't 15 deal with in detail. We determined not that the 16 construction was improper or any of those other 17 factors, we simply determined that, in fact, the 18 meeting was not conducted in accordance with the 19 Tennessee Open Meetings Law. For substantial facts and 20 substantial reasons, I'll suggest to you that any other 21 decision in that regard takes a gigantic leap backward 22 in the duty of governments to be open and to allow 23 citizens to be informed as to the workings of their 24 government. That really is all we dealt with. 25 The Tennessee law says that when the</p>
<p style="text-align: right;">Page 23</p> <p>1 the relief we're seeking. 2 THE COURT: Thank you. 3 MR. MCCREARY: Your Honor, can I 4 briefly -- I need to briefly respond to that briefly. 5 I did not say we had been threatened. I said there is 6 a threat. That is a legal threat. There are laws out 7 there that apply in this situation. 8 THE COURT: Very well. 9 Mr. Brandon, anything further? 10 MR. BRANDON: No, sir. 11 THE COURT: Counsel, let me appreciate 12 the excellence of your presentations in this matter as 13 well. 14 I will recognize, and I think counsel 15 recognized, the issue with which the Court dealt in the 16 former case. The issue really, in our second phase, I 17 guess, of the former trial, the former hearing, really 18 dealt only tangentially, I'll suggest to you, with the 19 issue of the construction that was ongoing and so 20 forth. The issue, frankly, was the duty of the 21 Government, then, to make substantial efforts, then -- 22 or make some efforts to notify members of the public as 23 to what the issues were that were going to be 24 determined. 25 We live in a time, I think, where</p>	<p style="text-align: right;">Page 25</p> <p>1 meetings are not properly open, that any action that is 2 taken at that meeting is void. Our decision, of 3 course, dealt only with this one particular issue. 4 And, of course, again, we had to consider those facts 5 concerning the totality of the circumstances, which in 6 this case had to include the fact that this was a 7 matter which -- a matter in which the citizens had 8 tremendous interest. 9 Now, that having been the case, we did 10 enter our opinion. And as both counsel have 11 acknowledged, there was a difference of opinion as to 12 what properly should be contained within the order. 13 And maybe it was more stylistic than substantive. 14 Although, I'll suggest, perhaps, there were some 15 substantive differences in the order. 16 The Court considered both positions 17 for both counsel and recognizes, again, the -- again, 18 further the responsibility that counsel of both sides 19 showed. The first draft -- submitted draft of the 20 order submitted by the plaintiff was almost immediately 21 after the entry of the opinion. And although defense 22 has, under our rules, five days to respond, I think 23 defense responded, I think, almost immediately. And 24 the Court then, upon consideration of both of those 25 orders, entered, as you folks have suggested, our own</p>

<p style="text-align: right;">Page 26</p> <p>1 order. That was entered on, of course, June 1st. The 2 sides -- both sides differ as to the enforcement of the 3 court order, the time frame of when that order should 4 be enforced.</p> <p>5 I do recognize that there are some 6 orders that must be enforced immediately. For example, 7 orders dealing with criminal contempt, dealing with the 8 duty of the Court to maintain the peace and dignity in 9 the judicial proceedings, those must be enforced 10 immediately upon the oral statement of the Court. And 11 to find otherwise would, in fact, not allow court 12 proceedings to proceed in an orderly manner.</p> <p>13 There are other orders, of course, 14 involving particularly civil money judgments, I'll 15 suggest, that are generally issued by our Circuit 16 Courts. Those, almost without exception, are entered 17 and do not become final until 30 days have elapsed. 18 And there's new opportunity to execute on those 19 judgments until the lapse of 30 days, again, absent 20 unusual circumstances.</p> <p>21 And an equity court, of course, can 22 issue an attachment, then, as to the funds, if unusual 23 circumstances are shown. And that can occur in less 24 than 30 days after the judgment and, as a practical 25 matter, prior to the judgment being issued in some</p>	<p style="text-align: right;">Page 28</p> <p>1 that point in time.</p> <p>2 The issue -- I suppose I should 3 address just briefly the defense's assertion that, in 4 fact, there would be potential violation of the federal 5 and state Religious Freedom and Restoration Acts. And 6 the reading or wording of those acts in elementary, I 7 guess, and summary form essentially says that all of 8 these applications should be treated in a like manner. 9 And I would suggest to you that that means where site 10 plans are required, site plans must be approved at a 11 proper and appropriately advertised or noticed meeting, 12 which, obviously, is an issue here.</p> <p>13 The County also suggests to us that 14 these issues are res judicata. We understand the 15 County's argument to be because these matters were 16 presented on preliminary injunction or request for 17 preliminary injunction, the Court can't consider them 18 further and that those are closed and concluded. And, 19 respectfully, I don't understand that to be the law 20 when the Court makes preliminary rulings concerning 21 injunctive relief.</p> <p>22 Obviously, if we grant the injunctive 23 relief, we subsequently can enter an order which 24 affirms that preliminary ruling or which reverses it. 25 And, likewise, just because we find that the stringent</p>
<p style="text-align: right;">Page 27</p> <p>1 cases.</p> <p>2 The issue here, then, is whether there 3 is a circumstance, respectfully, that's -- that's so 4 pervasive we should enter the order in less than the 5 30-day time period. The defense suggests that perhaps 6 we, in essence, are without jurisdiction to enter such 7 an order. I would remind all counsel, of course, this 8 is a court of equity.</p> <p>9 On the other hand, I would question, 10 respectfully, whether there is the manifest 11 circumstance or need for the unusual step; admittedly, 12 that it is unusual to enter an order enforcing the 13 judgment in a time period less than 30 days. 14 Respectfully, I don't think I can find that.</p> <p>15 We'll deal with the injunction issue 16 in just a moment. Injunctive relief, obviously, is 17 different and comes under a different rule of 18 procedure.</p> <p>19 So I would suggest to you, 20 respectfully, we obviously will be here and available 21 the first week in July. The 30th judicial day, I 22 suppose, after June 1 is going to be Monday, July 2nd, 23 because of the rules concerning judicial days and when 24 the 30th day falls on a weekend. We'll be here the 25 first week in July if hearings are requested or set at</p>	<p style="text-align: right;">Page 29</p> <p>1 requirements for injunctive relief are not met doesn't 2 prevent us to from ultimately making a determination at 3 the conclusion that relief is appropriate to the 4 contrary.</p> <p>5 Whether mandamus action will lie, I 6 recognize both counsel are arguing in opposite 7 fashions. No one has suggested whether or not the 8 petition, as it affects the County, should be brought 9 or initiated or be joined in with the State Attorney 10 General. I raise that only because I trust that 11 between now and a subsequent hearing, if that is later 12 scheduled after the running of the 30 days, that that's 13 something counsel may want to address. And to the 14 extent we are able, it would certainly be our hope 15 that, to the extent we can, we deal with merits and not 16 technicalities. But, obviously, it's our duty to 17 enforce the law, even if it may be considered technical 18 in some fashions.</p> <p>19 The issue, then, that further remains 20 is that concerning the injunctive relief. We 21 recognize, obviously, that any decision that we make is 22 certainly subject to appeal. I suppose any Court, 23 other than United States Supreme Court, is subject to 24 having their decisions reviewed, and rightfully so. 25 We recognize that the decision we make</p>

<p style="text-align: right;">Page 30</p> <p>1 is subject to review by the intermediate Court of 2 Appeals, which certainly has jurisdiction superior to 3 ours and by whose decisions we are governed. And, 4 similarly, that Court, obviously, is subject to the 5 decisions of our State Supreme Court.</p> <p>6 And where the appropriate findings are 7 made, even our State Supreme Court are subject to the 8 decisions of the United States Supreme Court in such 9 actions where that Court chooses to accept the 10 opportunity, then, to deal with those cases. So we 11 recognize that there always is the opportunity for 12 appeal.</p> <p>13 And at this point, obviously, appeal 14 is certainly -- it's not discretionary with the 15 Appellate Court, it's at the subsequent levels. 16 Whether the Court hears those cases may be 17 discretionary. It's not from the Trial Court to the 18 Appellate Court.</p> <p>19 Nonetheless, we recognize again that 20 absent some further ruling, parties are bound by the 21 decisions of the Trial Court unless and until those 22 decisions are stayed or reversed, either through the 23 action of the Appellate Court or through some further 24 action of the Trial Court. But absent that ruling, we 25 contemplate, of course, that the decisions we make, of</p>	<p style="text-align: right;">Page 32</p> <p>1 considering the ruling that we have made, if, in fact, 2 the plaintiffs are seeking the order of the Court, 3 under Rule 65, to order that the County not issue 4 further process -- whatever those orders may be 5 called -- further process regarding the construction of 6 this facility, in light of the ruling that we have 7 made, that it would appear that the probability of the 8 success on the merits as to that issue is pretty 9 substantial.</p> <p>10 The County Planning Resolution has 11 been introduced to us previously. We've considered 12 those terms. And, perhaps, there's no dispute that in 13 this case there has to be an approved site plan before 14 there can be an occupancy permit -- if that's the term 15 the County uses -- that would be issued. So I think 16 the plaintiffs, then, would be entitled to that 17 injunctive relief at this point in time.</p> <p>18 The provisions of Rule 65 always 19 require that a bond be required anytime an injunction 20 is issued, unless, of course, there was some means or 21 some circumstance where the Court should waive that 22 bond. I don't see that before us here. And unless 23 there are further issues that the Court should 24 consider, it appears proper to us to require 25 25,000-dollar bond for the issuance of that injunction.</p>
<p style="text-align: right;">Page 31</p> <p>1 course, will become enforceable, then, after the 30-day 2 time period.</p> <p>3 I would hasten to suggest, as I have 4 done repeatedly in this case, that there is, 5 respectfully nothing in our ruling which in any way 6 prevents the defendants from properly noticing and 7 properly holding a further meeting and considering 8 these very same issues which were raised previously. 9 In fact, it may be considered, perhaps, that the group 10 of citizens -- which you folks have referenced as the 11 "ICM" -- but the group of citizens had a petition -- or 12 not a petition, but a request, whatever it may be 13 properly termed, before the defendant for approval of a 14 site plan at an appropriately noticed meeting.</p> <p>15 As we contemplate, that still hasn't 16 occurred. There's nothing in our ruling, nothing in 17 our decision that prevents the defendant from holding 18 that meeting under conditions which are appropriate and 19 in accordance with our memorandum of opinion and our 20 order. And, respectfully, whatever decision is made at 21 that point by that defendant body may, in fact, 22 significantly affect the decisions that we have before 23 us. There's nothing that we have ruled that would 24 prevent that subsequent meeting from being held.</p> <p>25 I will suggest that at this point,</p>	<p style="text-align: right;">Page 33</p> <p>1 I believe that fairly deals with the 2 issues that both sides have raised. I suppose it's 3 appropriate that we follow the same procedure that we 4 have followed previously.</p> <p>5 Mr. Brandon, we'll impose on you to 6 draw the first draft of the order from today's 7 proceeding.</p> <p>8 Mr. McCreary, contemplating that 9 perhaps there may be a difference of thought as to the 10 wording in that order, we certainly would welcome the 11 objection to that order and competing order. And the 12 Court, then, will either enter one of the orders or 13 will, in fact, draw our own order as we've done in the 14 past.</p> <p>15 Further matters?</p> <p>16 MR. MCCREARY: Yes, sir. You said the 17 defendant is enjoined from further process. I don't 18 know --</p> <p>19 THE COURT: Specifically dealing with 20 the occupancy permit, if that's the term you use.</p> <p>21 MR. MCCREARY: Okay. Is it limited to 22 that? It can't issue a certificate of occupancy?</p> <p>23 THE COURT: Yes, sir.</p> <p>24 MR. MCCREARY: Okay. Right. And 25 that's the limitation. I'm asking because I presume,</p>

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1 for example, if you have a building permit, someone
 2 goes and inspects the building periodically. Does that
 3 mean you can't do that? Does that mean -- I don't know
 4 what "processes" are. So if we're limiting it to the
 5 certificate of occupancy, I understand that.

6 THE COURT: That's the limitation of
 7 our injunction. We contemplate that the County, of
 8 course, as a law-abiding citizen, is going to recognize
 9 the needs regarding construction that's ongoing in the
 10 absence of a site plan. That's something that's going
 11 to address itself, I think, at this point, at least, to
 12 the County and to the decisions that they make.

13 MR. MCCREARY: Okay.

14 THE COURT: Further matters,

15 Mr. Brandon?

16 MR. BRANDON: No, sir.

17 THE COURT: Thank you, folks.

18 (Proceedings concluded at
 19 11:11 a.m.)

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1 REPORTER'S CERTIFICATE

2 STATE OF TENNESSEE }

3 COUNTY OF WILSON }

4 I, George Ryan Bertram, Licensed Court
 5 Reporter, and Notary Public for the State of Tennessee,
 6 with offices in Mt. Juliet, Tennessee, hereby certify
 7 that I reported the foregoing proceedings at the time
 8 and place set forth in the caption thereof; that the
 9 proceedings were stenographically reported by me; and
 10 that the foregoing proceedings constitute a true and
 11 correct transcript of said proceedings to the best of
 12 my ability.

13 I FURTHER CERTIFY that I am not
 14 related to any of the parties named herein, nor their
 15 counsel, and have no interest, financial or otherwise,
 16 in the outcome or events of this action.

17 IN WITNESS THEREOF, I have hereunto
 18 affixed my official signature and seal of office this
 19 2nd day of July, 2012.

20

21

22 GEORGE RYAN BERTRAM, LCR #391
 23 Court Reporter and Notary
 24 Public in and for the State
 25 of Tennessee

My Commission Expires:
 January 26, 2014

10 (Pages 34 to 35)

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