

County seeks high court rejection of mosque lawsuit appeal

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MURFREESBORO — The U.S. Supreme Court should reject hearing an appeal about Rutherford County's public notice before approval of a mosque, according to attorneys for the county.

"Defendants pray the Court deny the petitioners' petition for writ of certiorari," states a [document](#)

[sent](#) this week to the high court in Washington, D.C., from county lead defense attorney Josh McCreary and County Attorney Jim Cope.

The document is in response to plaintiffs led by Kevin Fisher, Henry Golczynski and Lisa Moore asking for the high court to hear their case. Their attorneys recently completed their request for an appeal for a case that initially started September 2010 in seeking to stop construction of the Islamic Center of Murfreesboro from being built on Veals Road off Bradyville Pike.

After eight days of testimony in fall 2010, Chancellor Robert Corlew III permitted construction of the ICM to continue but allowed the plaintiffs to pursue the open-meeting issue in a two-day trial May 2012.

Corlew then ruled the [government](#)

[failed](#) to provide adequate public notice before the county's Regional Planning Commission approved the congregation's site plans May 24, 2010, to construct 52,960 square feet on 15 acres.

The chancellor determined that the county's legal advertisement that mentioned the meeting time, date and location was buried in a free weekly Murfreesboro publication with a small distribution in the unincorporated areas that fall into the county's jurisdiction for land-use regulation. Corlew also questioned why the county waited until after the meeting in question to post the agenda on the government website.

Corlew suggested the county place the issue back on an agenda, provide proper public notice and vote on the ICM site plans again without discriminating against the congregation's religious land-use rights.

The planning commissioners decided to appeal Corlew's ruling by June 2012 based on the decision discriminating against the ICM.

By 2013, the Tennessee Court of Appeals overruled the chancellor, and the Tennessee Supreme Court declined to hear the case.

"The Tennessee Supreme Court made no decision because it denied the discretionary review requested by the plaintiffs," states the county's brief sent to the U.S. Supreme Court.

Prior to being overruled, Corlew's decision voided the approval of the ICM, and he ordered that the county could not issue an occupancy permit until the site plan was re-considered.

The congregation with the help of the U.S. Department of Justice then persuaded U.S. Court Judge Todd Campbell in Nashville by July 2012 to order the county to work with the congregation in obtaining the

occupancy permit to allow the ICM to use the [new](#)

[center](#) during the Muslim holy month of Ramadan.

The congregation of 250-plus families moved into the first 12,000 square feet by August 2012.

Plaintiffs' attorneys Joe Brandon Jr. of Murfreesboro and Tom Smith of Franklin contend that the nation's top court should hear the case because the lower federal court violated the top court's rule about lower federal courts staying out of cases until all state courts have reviewed them.

Brandon and Smith in August 2012 also convinced a different federal court in Nashville presided by U.S. Judge Kevin Sharp to reject dismissing their case and rule that the plaintiffs had standing to pursue their public-notice lawsuit.

The county attorneys contend that the high court rule about lower federal courts does not apply in this case. Their document tells the nation's top court to uphold the decision of the Tennessee Court of Appeals.

"The Tennessee Court of Appeals concluded that the notice at issue was appropriate and adequate under the Tennessee OMA (Open Meetings Act)," the county attorneys' brief sent to the U.S. Supreme Court states. "The Court of Appeals opinion relates exclusively to [application](#)

[of a Tennessee statute](#) and does not raise any federal question for review."

The county defense attorneys also refute the plaintiffs' contention that an agenda should have been published prior to the planning commissioners approving the ICM building plans.

"Tennessee case law is clear that the actual publication of an agenda is not a requirement for a regularly scheduled governmental meeting," the county attorneys' document sent to the U.S. Supreme Court states. "Similarly, there is no federal constitutional due-process standard that requires the publication of an agenda under the Tennessee (Open Meetings Act)."

The ICM started in 1982. Prior to moving into its new center, the congregation had been using a cramped space of 2,250 square feet on the back side of an [office](#)

[building](#) on Middle Tennessee Boulevard near South Church Street.

The current ICM uses a multipurpose room for worship, meals and other gatherings. The congregation has long-term plans to construct a formal mosque for worship, classrooms for weekend religious [school](#)

[, a gym and an indoor pool](#). The exterior grounds include a playground, two concrete slabs for future picnic pavilions by the playground, a concrete basketball court and a cemetery that is the subject of a different lawsuit. The congregation also plans to grade a sports field.

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