

# APPEALS COURT UPHOLDS DISMISSAL OF LAWSUIT BROUGHT BY THE ISLAMIC COMMUNITY CENTER CLAIMING RELIGIOUS DISCRIMINATION

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Although most of the initial headlines involving a lawsuit brought by a Westchester County Islamic Community Center focused on religious freedom and discrimination, the case ultimately turned on an entirely different issue: jurisdiction.

Indeed, the failure to establish jurisdiction was ultimately at the heart of the recent decision in *Islamic Community Center for Mid Westchester v. City of Yonkers Landmark Preservation Board*, 2018 WL 3323639. The Islamic Community Center for Mid Westchester (“ICCMW”) desired to purchase a parcel of land in Yonkers, New York for use as a mosque. Because the property had fallen into a state of disrepair, it took the ICCMW almost two years to close on the site. During that time period, city officials confirmed to the ICCMW that the property site was zoned for use as either a residence or a house of worship.

Unbeknownst to the ICCMW, a local citizens group had, a few months after the ICCMW closed on the property site, initiated and pursued a request to have the property designated as a landmark. Critics suggested that the true purpose of establishing this designation was discriminatory, to make it more difficult for ICCMW to utilize the site as a center.[1] After complying with all the requisite procedural requirements, the Mayor of Yonkers signed the resolution to classify the site as a landmark.

## *Lawsuit initiated by the ICCMW*

Shortly after the resolution was signed designating the mosque site as a landmark, the ICCMW filed a lawsuit to challenge the landmark designation. Several grounds were set forth, including allegations that the landmark designation violated the ICCMW’s right to the free exercise of religion under the First Amendment and claims under the Religious Land Use and Institutionalized Persons Act of 2000. ICCMW believed that the landmark designation was a pretext used in order to exclude the Mosque from that neighborhood.

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### *Dismissal due to lack of subject matter jurisdiction*

As it turns out, the court never addressed the First Amendment issue of freedom of religion. Instead, it focused on whether the case was ripe for adjudication, which requires analysis of a two prong inquiry. That inquiry focuses on “the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.”

In particular, the court had to determine whether ICCMW had received a “final decision” from the City.

Because the ICCMW had not complied with the “final decision requirement,” the case was not ripe for adjudication. Dismissal occurred at the district court level and that dismissal was affirmed here by the Second Circuit of the U.S. Court of Appeals. Under the “final decision requirement” landowners who can point to “a final definitive position from a local authority to assess precisely how they can use their property” will satisfy jurisdictional requirements.

The Second Circuit explained the rationale behind the final decision rule, which is “designed to aid courts in understanding exactly how a litigant is being harmed by a land use regulation, and to prevent litigants from rushing into federal courts when the harm could be avoided through a local process.”

This case was not ripe for adjudication because the ICCMW did not apply for a “certificate of appropriateness” which, if approved, would allow it to engage in construction projects, *despite* the designation as a landmark.

In reaching its decision, the Court applied a takings case, *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 105 S. Ct. 3108, 87 L.Ed.2d 126 (1985) to First Amendment and RLUIPA cases.

### *Harsh words for ICCMW*

The Second Circuit noted that at no point did the ICCMW clarify “how the landmark designation impacted its ability to use the property, let alone how the designation substantially burdened its ability to practice its religious faith.”

The Court used particularly strong language, seemingly placing responsibility upon the ICCMW for the dismissal of its case. It held: “ICCMW’s failure to attain a final decision on its application by failing to avail itself of the local procedure that could remedy its alleged harm – whatever that may be, since none has yet been articulated – bars it from litigating this claim in court.”

In affirming the district court’s dismissal, the appellate court expressed concern “with the presentation of the factual and legal arguments in ICCMW’s briefing,” which it found to be “concerningly misleading.”

### *Impact of the decision*

Notably, this case was decided in the context of a summary order. Court rulings on summary orders do not have precedential effect. Still, the case presents a current interpretation of jurisdictional law and provides practice pointers to attorneys seeking to file such lawsuits. Even though the district court dismissed the complaint without prejudice, it did deny motions made by the ICCMW for leave to file an amended complaint and a preliminary injunction. Lack of jurisdiction terminates a lawsuit and the fact that the Court of Appeals denied leave to file an amended complaint points to the impact of a dismissal on this ground.

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Further, from a First Amendment standpoint, the case serves as a reminder that, in order to file such a lawsuit, the plaintiff must initially demonstrate that the harm alleged arose from a final determination, thereby creating a dispute that is ripe for review.

[1] See Islamic Community Group Sues City Alleging House Made Landmark to Stop Mosque, NBC News, Sept. 23, 2016, available at <https://www.nbcnews.com/news/asian-america/islamic-community-group-sues-city-alleging-house-made-landmark-stop-n653256>.