

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION

ISLAMIC CENTER OF CULPEPER,

Plaintiff,

v.

COUNTY OF CULPEPER, VIRGINIA,

Defendant.

Civil Action No. 3:17-cv-00019-NKM

**ISLAMIC CENTER OF CULPEPER’S MOTION TO CONSOLIDATE ACTION  
WITH CASE NO. 3:16-cv-00083-NKM FOR DISCOVERY PURPOSES**

Plaintiff Islamic Center of Culpeper (“ICC”) moves this Court to consolidate this case with another related case pending in this District for the purposes of discovery, pursuant to Fed. R. Civ. P. 42(a). For the reasons set forth in its accompanying Memorandum of Law, ICC respectfully requests this Court consolidate this action and the related case, *United States v. County of Culpeper*, No. 3:16-cv-00083 (W.D. Va.) (Moon, J.), for purposes of discovery.

Dated: March 17, 2017

Respectfully submitted,

/s/ Robert A. DeRise

---

James W. Cooper\*  
David P. Gersch  
Murad Hussain\*  
Elliott C. Mogul\*  
Robert A. DeRise (VA Bar # 78431)  
Sina Mansouri\*  
ARNOLD & PORTER  
KAYE SCHOLER LLP  
601 Massachusetts Ave., NW  
Washington, DC 20001-3743  
Tel: (202) 942-5000  
robert.derise@apks.com

Johnathan Smith  
Madihha Ahussain\*  
MUSLIM ADVOCATES  
P.O. Box 71080  
Oakland, CA 94612  
Tel: (415) 692-1484

*Counsel for Islamic Center of Culpeper*

\* Pro Hac Vice Pending

## CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2017, I caused the foregoing document to be electronically filed with the United States District Court for the Western District of Virginia by using the Court's CM/ECF system. I further certify that on this date, counsel for the County of Culpeper was served electronically with this document using the Court's CM/ECF system.

Dated: March 17, 2017

/s/ Robert A. DeRise  
Robert A. DeRise

*Counsel for Islamic Center of Culpeper*

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION**

ISLAMIC CENTER OF CULPEPER,

Plaintiff,

v.

COUNTY OF CULPEPER, VIRGINIA,

Defendant.

Civil Action No. 3:17-cv-00019-NKM

**ISLAMIC CENTER OF CULPEPER’S MEMORANDUM OF LAW  
IN SUPPORT OF MOTION TO CONSOLIDATE ACTION WITH  
CASE NO. 3:16-cv-00083-NKM FOR DISCOVERY PURPOSES**

Plaintiff Islamic Center of Culpeper (“ICC”) seeks to consolidate this case with another related case pending in this District for the purposes of discovery pursuant to Federal Rule of Civil Procedure 42(a). This action and the related case, *United States v. County of Culpeper*, No. 3:16-cv-00083 (W.D. Va.) (Moon, J.) (“United States Action”), concern the same nucleus of facts and share several overlapping claims presenting the same legal questions. Accordingly, there is considerable overlap in the discovery that the parties would seek in each case and consolidation would promote both judicial efficiency, and reduce costs and inconvenience to the parties and third parties from whom discovery might be sought. In particular, consolidation will avoid duplicative depositions and minimize potential discovery disputes.

Consolidation would not prejudice or delay any party in either case. Each is in an early litigation stage: this action was very recently filed; discovery is in its earliest stages in the United States Action; and no substantive legal issue has been adjudicated in either action. The ICC will consent to the discovery schedule set out by the Court for the United States Action,

subject to any adjustments that the parties to this Action and the Court may determine as discovery goes forward. The United States of America consents to the relief requested in this motion. Culpeper County takes the position that the whole of the two matters should be consolidated, including through trial, and that consolidation should not be limited to discovery only.

### ARGUMENT

When related cases share common issues of law and fact, a district court has broad discretion to order consolidation under Federal Rule of Civil Procedure 42(a). *See A/S J. Ludwig Mowinckles Rederi v. Tidewater Constr. Corp.*, 559 F.2d 928, 933 (4th Cir. 1977). This Court has consolidated cases when they “ar[is]e from a common set of facts,” “[t]he legal issues presented overlap almost completely,” and “there is little likelihood of prejudice to any party.” *Henderson v. United States*, No. 6:07-cv-00009, 2008 WL 1711404, at \*5 (W.D. Va. Apr. 11, 2008). This Court has noted that “judicial economy favors consolidation because it saves time and expenses and avoids the risk of inconsistent judgments.” *Diment v. Supreme Court of Virginia*, No. 3:07-cv-00033, 2007 WL 4302867, at \*1 n.1 (W.D. Va. Dec. 6, 2007).

“Consolidation is not barred simply because the plaintiffs may be relying on different legal theories or because there are some questions that are not common to all the actions; the critical consideration . . . is whether there is at least one common question of law or fact to justify bringing the actions together.” 9A Wright & Miller, *Federal Practice and Procedure*, § 2381 (3d ed.).

“Included within th[e Court’s] discretion is consolidation for discovery and pre-trial purposes.” *Rishell v. Comp. Sciences Corp.*, No. 13-cv-931, 2014 WL 11515835, at \*1 (E.D. Va. Apr. 4, 2014) (citation omitted). It is not uncommon for a court to order consolidation for

discovery purposes, reserving for a later date the decision whether cases should be consolidated for trial. *See, e.g., Adams v. Alliant Techsystems, Inc.*, No. 7:99-cv-0813, 2002 WL 220934, at \*3–4 (W.D. Va. Feb. 13, 2002).

This standard is more than satisfied here. Both this action and the United States Action arise from the same events: the ICC’s application for a pump and haul permit from the County of Culpeper in 2016, and the subsequent denial of that permit at an April 2016 County Board of Supervisors Meeting. There is also a significant overlap in the legal issues in each action. Both the United States and the ICC raise claims under the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. §§ 2000cc–2000cc-5. Compl. ¶¶ 78–95 (ECF No. 1); Complaint, *U.S. v. Cty. of Culpeper*, No. 3:16-cv-83, ¶¶ 59–61 (W.D. Va.) (Moon, J.) (ECF No. 1) (“DOJ Compl.”). Both actions assert those claims under the theory that the County’s permit denial imposed a substantial burden on the ICC’s religious exercise and was an action based in religious discrimination. Compl. ¶¶ 80; DOJ Compl., ¶¶ 1, 60. Each plaintiff also seeks some of the same relief, including a declaration that the County’s actions violated RLUIPA and an injunction preventing the County from further actions against the ICC in violation of that statute. Compl. at Prayer for Relief ¶¶ 1–6; DOJ Compl., at Prayer for Relief ¶¶ 1–4. Given these similarities, there is likely to be significant overlap in the type of discovery the parties will seek to take in each case in order to support their respective claims and defenses.

Consolidating the instant case with the United States Action for discovery is the most efficient way to manage these cases as it will enable each witness to be deposed just once and likely will reduce duplication of document discovery. Similarly, consolidation avoids the risk of inconsistent discovery rulings. By contrast, if the cases are not consolidated, there will be unnecessary duplication of effort and expense.

Any differences between the two related actions, such as the additional claims that ICC asserts that are not part of the United States Action, do not negate the benefits and efficiencies of consolidation. ICC's additional claim under RLUIPA alleges that the County's actions have imposed unreasonable limitations on religious institutions. Compl. ¶¶ 95–97. ICC also asserts claims alleging a violation of its right to free exercise of religion under the First and Fourteenth Amendments of the U.S. Constitution and the Virginia Constitution and a violation of the right to equal protection under the U.S. Constitution. Compl. ¶¶ 98–125. These claims arise out of constitutional and statutory rights that are specific to ICC. But these claims concern at least some of the same underlying facts and raise similar dispositive legal issues as those pertinent to the claims shared between the two related actions.

Consolidation would cause no prejudice. Only the most initial discovery has occurred in the United States Action, and ICC consents to abide by the discovery schedule already set forth in the United States Action. *See* Attachment (Amended Pretrial Order, United States Action). While there is a motion to dismiss pending in the United States Action, should that motion be denied, the cases would be in essentially the same procedural posture. Thus, upon consolidation, there would be no delay in the resolution of either case against the County. All parties—the County included—would reap the benefits of responding to discovery requests and making witnesses available for deposition only once.

Finally, the request the ICC makes here—to consolidate these cases for discovery only—does not prejudice any party's decision to take different approaches to dispositive motions or trial in each case once discovery concludes. If the related cases proceed together for discovery, the Court and the parties will have the option of trying the cases separately or together, as seems best at that time.

**CONCLUSION**

Consolidating this case with the United States Action already pending before this Court satisfies the requirements of Rule 42(a) and will further the interests of judicial economy and preservation of the parties' resources. Accordingly, the ICC respectfully requests that the Court consolidate this case with the United States Action for purposes of discovery.

Dated: March 17, 2017

Respectfully submitted,

/s/ Robert A. DeRise

James W. Cooper\*  
David P. Gersch  
Murad Hussain\*  
Elliott C. Mogul\*  
Robert A. DeRise (VA Bar # 78431)  
Sina Mansouri\*  
ARNOLD & PORTER  
KAYE SCHOLER LLP  
601 Massachusetts Ave., NW  
Washington, DC 20001-3743  
Tel: (202) 942-5000  
robert.derise@apks.com

Johnathan Smith  
Madihha Ahussain\*  
MUSLIM ADVOCATES  
P.O. Box 71080  
Oakland, CA 94612  
Tel: (415) 692-1484

\* Pro Hac Vice Pending

## CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2017, I caused the foregoing document to be electronically filed with the United States District Court for the Western District of Virginia by using the Court's CM/ECF system. I further certify that on this date, counsel for the County of Culpeper was served electronically with this document using the Court's CM/ECF system.

Dated: March 17, 2017

/s/ Robert A. DeRise  
Robert A. DeRise

*Counsel for Islamic Center of Culpeper*