

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

KRISH KARUNAKARAM
1514 Summerset Place
Herndon, Virginia 20170-3936

SUSAN M. POWELL
419 Madison Forest Drive
Herndon, Virginia 20170-3330

ELIZABETH H. ROBSON
751 Palmer Drive
Herndon, Virginia 20170

GEORGE A. TAPLIN
1402 Rainbow Court
Herndon, Virginia 20170-3900

KATHLEEN A. KAAKE
2136 Capstone Circle
Herndon, Virginia 20170

DENNIS D. CARTER
12321 Oak Creek Lane, Apt. 1724
Fairfax, Virginia 22033

ALAN J. TRUELOVE
3444 Surrey Lane
Falls Church, Virginia 22042

On Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

v.

Chancery No. CH 2005 4013

TOWN OF HERNDON,

and

COUNTY OF FAIRFAX, VIRGINIA

Defendants.

**SECOND AMENDED BILL OF COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

NATURE OF ACTION

1. Plaintiffs, taxpayers and residents of the Town of Herndon and the County of Fairfax (“Fairfax County” or “the County”), bring this action to enjoin the use of taxpayer funds and taxpayer-financed resources to establish a “Temporary Regulated Day Worker Assembly and Hiring Site” (“the Site”) in the Town of Herndon and for a judgment declaring establishment of the site to be unlawful.

PARTIES

2. Plaintiff Krish Karunakaram is a resident and taxpayer of the Town of Herndon and Fairfax County. Mr. Karunakaram has paid taxes to the Town of Herndon and Fairfax County and has been and will continue to be injured by the expenditure of taxpayer funds and/or use of taxpayer-financed resources in furtherance of the Site.

3. Plaintiff Susan M. Powell is a resident and taxpayer of the Town of Herndon and Fairfax County. Ms. Powell has paid taxes to the Town of Herndon and Fairfax County and has been and will continue to be injured by the expenditure of taxpayer funds and/or use of taxpayer-financed resources in furtherance of the Site.

4. Plaintiff Elizabeth H. Robson is a resident and taxpayer of the Town of Herndon and Fairfax County. Ms. Robson has paid taxes to the Town of Herndon and Fairfax County and has been and will continue to be injured by the expenditure of taxpayer funds and/or use of taxpayer-financed resources in furtherance of the Site.

5. Plaintiff George A. Taplin is a resident and taxpayer of the Town of Herndon and Fairfax County. Mr. Taplin has paid taxes to the Town of Herndon and Fairfax County and has

been and will continue to be injured by the expenditure of taxpayer funds and/or use of taxpayer-financed resources in furtherance of the Site.

6. Plaintiff Kathleen A. Kaake is a resident and taxpayer of Fairfax County. Ms. Kaake has paid taxes to Fairfax County and has been and will continue to be injured by the expenditure of taxpayer funds and/or use of taxpayer-financed resources in furtherance of the Site.

7. Plaintiff Dennis D. Carter is a resident and taxpayer of Fairfax County. Mr. Carter has paid taxes to Fairfax County and has been and will continue to be injured by the County's expenditure of taxpayer funds and/or use of taxpayer-financed resources in furtherance of the Site.

8. Plaintiff Alan J. Truelove is a resident and taxpayer of Fairfax County. Dr. Truelove has paid taxes to Fairfax County and has been and will continue to be injured by the County's expenditure of taxpayer funds and/or use of taxpayer-financed resources in furtherance of the Site.

9. Defendant Town of Herndon is a municipal corporation situated within Fairfax County, Virginia.

10. Defendant Fairfax County is a political subdivision within the Commonwealth of Virginia.

JURISDICTION, VENUE AND STANDING

11. This action is a civil case in chancery seeking a declaratory judgment and an injunction against Defendants' unlawful acts. This Court has jurisdiction over this action pursuant to Virginia Code §§ 8.01-184, 8.01-620, and 17.1-513.

12. Venue is preferred in this county as provided by Virginia Code § 8.01-261(15)(c), because Plaintiffs seek the award of an injunction against acts being done in this County.

Venue is permissible in this county as Defendants are located within this county and the cause of action arose within this county. Va. Code §§ 8.01-262(1) and (4).

13. Plaintiffs bring this taxpayer action on behalf of themselves and all other similarly situated taxpayers residing in the Town of Herndon and Fairfax County. Plaintiffs have standing to bring this action because, as the Supreme Court of Virginia has stated:

[A] citizen or taxpayer may challenge the legality of certain actions of a local government and its expenditures, because the interest of a citizen in matters of local government is direct and immediate, rather than remote and minute. . . . The direct and immediate interest of the citizen in the operation of local government, whether based on issues arising from a local election or a local government's exercise of its fiscal authority, permits these citizen or taxpayer challenges.

Goldman v. Landsidle, 262 Va. 364, 375, 552 S.E.2d 67, 72 (2001) (citations omitted).

STATEMENT OF FACTS

A. Approval of the Site Permit by the Town of Herndon

14. On August 17, 2005, the Town of Herndon, by and through its Town Council, approved an application for a conditional use permit (the "Permit") sought by an organization known as Project Hope & Harmony ("PH&H") of Reston, Virginia.

15. On information and belief, PH&H was created by and is controlled by Reston Interfaith, Inc., a nonprofit organization founded, supported, and directed by certain area organizations.

16. In approving the Permit, the Town of Herndon authorized the establishment and operation of the Site on Town property.

17. In approving the Permit, the Town of Herndon disregarded the recommendation of the Town's Planning Commission, which after two lengthy hearings on August 1, 2005 and August 3, 2005, recommended against approval of the Permit for the Site.

B. The Day Laborer Site in Herndon

18. The Site is situated on Town of Herndon property located at 1481 Sterling Road, Herndon, Virginia, identified on Fairfax County Tax Map 010-3-002 as Parcel 7D. By the Permit or otherwise, the Town of Herndon has purportedly given PH&H use and possession of said property for the purpose of operating the Site, and has done so in exchange for *de minimis* rent.

19. The Site commenced its operations in approximately December 2005 and has been in continuous operation thereafter.

20. The Site is operated by PH&H pursuant to the authority purportedly granted by the Town of Herndon in the Permit or otherwise.

21. Defendants have used taxpayer-financed resources having a substantial dollar value in furtherance of establishing and operating the Site, including, but not limited to, the use of public land as the location for the Site and the expenditure of taxpayer funds to support the operation of the Site.

22. PH&H is purportedly authorized to operate the Site on Town of Herndon property for a period of two years, commencing as of September 15, 2005, with up to three one-year extensions, if granted by the Town Council.

23. The purpose of the Site is to provide an assembly site where day laborers can congregate for the purpose of finding work, including, predominantly, those day laborers who

are illegal aliens ineligible to work in the United States.

24. Day laborers typically work in the trades of construction, landscaping, painting, and janitorial services. Prospective employers drive to the Site, pick up laborers, and transport them to a work site.

25. Pursuant to the authority purportedly granted by the Town of Herndon in the Permit and/or otherwise, and with the full knowledge and consent of Defendants, PH&H provides a variety of employment services to day laborers who use the Site, including matching laborers with employers according to the laborers' respective skill sets, and establishing and enforcing a code of conduct for laborers and employers.

26. Pursuant to the authority purportedly granted by the Town of Herndon in the Permit, and/or otherwise, and with the full knowledge and consent of Defendants, PH&H also provides a variety of other employment services to day laborers at the Site, including job training, language and literacy classes, job development, workers rights and immigration law assistance, and leadership development.

27. The purpose of providing such employment services to day laborers at the Site is to assist the day laborers in obtaining employment, including, predominantly, those day laborers who are illegal aliens ineligible to work in the United States.

C. The Fairfax County Survey

28. Upon information and belief, day laborers seeking employment at the Site predominantly include illegal aliens who are not eligible to work in the United States.

29. When the Town Council approved the Permit for the Site, it was aware of a Fairfax County survey, taken in the Fall of 2003 and published in June 2004, relating to day laborers at

day laborer sites in Fairfax County ("Fairfax County Survey"). The survey interviewed two hundred one (201) day laborers at four (4) "informal" day laborer sites in Fairfax County, including a site in Herndon. The findings of the survey showed that the overwhelming majority of day laborers interviewed -- some eighty-five percent (85%) -- preferred permanent employment to day labor. Of this eighty-five percent (85%), approximately eighty-five percent (85%) -- that is, 72.25 percent of the day laborers who were interviewed -- cited the lack of documentation as being a barrier to obtaining permanent employment. Thus, based upon the Fairfax County Survey, the Town Council knew when it approved the Permit for the Site, that in the Fall of 2003 more than 72 percent of the day laborers at day laborer sites in Fairfax County were undocumented workers.

30. The findings of the Fairfax County Survey demonstrate, among other things, that a substantial majority of day laborers likely to use the Site lack the documentation to work legally in the United States.

31. Significant use of the Fairfax County Survey was made by PH&H, the Town's Planning Commission and the Town Council during the Site application process.

32. Members of the Town Council who opposed approval of the Permit and authorization of the Site openly stated at the Town Council meeting, held on August 17, 2005, that use of taxpayer resources to establish and/or support the Site would amount to an endorsement of illegal immigration.

33. When it approved the Permit for the Site, the Town of Herndon knew or should have known that the day laborers using the Site would consist predominantly of illegal aliens

who are not eligible to work in the United States, and that the Site would be used predominantly to assist such illegal aliens.

D. Refusal to Screen Day Laborers at the Site

34. The Town of Herndon's approval of the Permit and authorization of and support for the Site is not conditioned upon any requirement that persons seeking employment at the Site be screened to determine whether, in fact, they are illegal aliens who are not eligible to work in the United States.

35. PH&H stated publicly that it would not screen persons seeking employment at the Site to determine whether, in fact, they are eligible to work in the United States.

36. Even though the Town of Herndon could have prevented the unlawful hiring of illegal aliens at the Site by simply requiring PH&H to screen the day laborers to exclude illegal aliens, the Town of Herndon chose not to require such prophylactic screening.

37. As a result, upon information and belief, illegal aliens who are not eligible to work in the United States have received, are receiving and will continue to receive at the Site, employment services and other assistance in obtaining unlawful employment.

38. The Town of Herndon is on notice that the Site is providing employment services to illegal aliens who are not eligible to work in the United States, for the purpose of helping such illegal aliens obtain employment.

39. Since the Site commenced operations in approximately December 2005 and continuing through the date of this Second Amended Bill of Complaint, the Town of Herndon knowingly has allowed the Site to provide employment services to illegal aliens who are not

eligible to work in the United States, and it has not taken action to prevent the Site from providing employment services to such illegal aliens.

40. Notwithstanding any provisions of the Permit and notwithstanding any statements or actions by the Town of Herndon, the decision to issue the Permit was made by the Town of Herndon for the purpose of facilitating the unlawful employment of illegal aliens.

41. The issuance of the Permit by the Town of Herndon has had, is having and will continue to have the effect of facilitating the unlawful employment of illegal aliens.

E. The County's Authorization of Taxpayer Funds to Support the Site

42. At a meeting held September 12, 2005, the Fairfax County Board of Supervisors ("Board of Supervisors") voted to provide a total of \$400,000 in funding for day laborer sites within Fairfax County, including the Site in Herndon.

43. Fairfax County awarded a contract to Reston Interfaith, Inc., the organization which created and controls PH&H, in the amount of \$175,000, for the purpose of funding the operation of the Site.

44. When it approved the use of taxpayer funds for the Site, the Board of Supervisors knew that the purpose of the Site was to provide an assembly site where day laborers could congregate for the purpose of finding work, including, predominantly, those day laborers who are illegal aliens ineligible to work in the United States.

45. When it approved the use of taxpayer funds for the Site, the Board of Supervisors knew that PH&H would provide employment services, as described above, to day laborers using the Site for the purpose of helping them obtain employment, including, predominantly, those day laborers who are illegal aliens ineligible to work in the United States.

46. When it approved the use of taxpayer funds for the Site, the Board of Supervisors was aware of the Fairfax County Survey.

47. When it approved the use of taxpayer funds for the Site, the Board of Supervisors knew and/or should have known that PH&H would not screen day laborers using the Site to determine whether or not they were illegal aliens who are not eligible to work in the United States.

48. Fairfax County's expenditure of taxpayer funds in support of the Site is not conditioned upon any requirement that PH&H screen persons seeking employment at the Site to determine whether, in fact, they are eligible to work in the United States.

49. Even though Fairfax County could have ensured that no unlawful hiring of illegal aliens would take place at the Site by requiring PH&H to screen the day laborers to exclude illegal aliens as a condition to receiving County taxpayer funds, Fairfax County chose not to require any such screening.

50. When it approved the use of taxpayer funds for the Site, the Board of Supervisors knew and/or should have known that the Site would be used predominantly to provide employment services to illegal aliens who are not eligible to work in the United States, and to assist such persons in obtaining unlawful employment.

51. Fairfax County's Board of Supervisors Chairman Gerry Connolly has stated publicly that some of the day laborers obtaining services at the Site are illegal aliens.

52. Notwithstanding any statements or actions by Fairfax County, the decision to provide funding for the Site was made by Fairfax County with the purpose of facilitating the unlawful employment of illegal aliens.

53. The actions by Fairfax County have had, are having and will continue to have the effect of facilitating the unlawful employment of illegal aliens

F. Defendants' Conduct Implicates Federal Law and Virginia Law

54. As alleged in more detail below, Defendants' use of taxpayer resources to establish and support the Site implicates the following Virginia statutes:

- a. Virginia Code § 1-248 (prohibiting localities from acting inconsistently with state or federal law);
- b. Virginia Code § 40.1-11.1 (prohibiting "employment of any alien who cannot provide documents indicating that he or she is legally eligible for employment in the United States.").
- c. Virginia Code § 63.2-503.1 (prohibiting public assistance to illegal aliens).

[NOTE: The parenthetical descriptions of statutes, here and elsewhere in this Second Amended Complaint, are included solely for the convenience of the reader in identifying the statutes cited and should not be construed as limiting the portions of the cited statutes to which this paragraph refers, or to which any other portion of the Second Amended Complaint refers.]

55. As alleged in more detail below, Defendants' use of taxpayer resources to establish and support the Site implicates the following federal statutes:

- a. 8 U.S.C. § 1324(a)(1)(A)(iv) (encouraging or inducing unlawful residence);
- b. 8 U.S.C. § 1324(a)(1)(A)(v)(II) (aiding and abetting the above);
- c. 8 U.S.C. § 1324a(a)(1)(A)(employment of illegal aliens);
- d. 8 U.S.C. § 1324a(a)(1)(B)(i)(employment documentation requirements);
- e. 18 U.S.C. § 2 (aiding and abetting);
- f. 18 U.S.C. § 371 (conspiracy statute); and

g. 8 U.S.C. § 1621 (making it unlawful to provide certain public benefits to illegal aliens).

[NOTE: The parenthetical descriptions of statutes, here and elsewhere in this Second Amended Complaint, are included solely for the convenience of the reader in identifying the statutes cited and should not be construed as limiting the portions of the cited statutes to which this paragraph refers, or to which any other portion of the Second Amended Complaint refers.]

56. 8 U.S.C. § 1324(a)(1)(A)(iv) makes it unlawful to “encourage[] or induce[] an alien to...reside in the United States, knowing or in reckless disregard of the fact that such...residence is...in violation of law.”

57. 8 U.S.C. § 1324(a)(1)(A)(v)(II) makes it unlawful for any person to aid or abet the commission of, among other things, any act that knowingly encourages or induces an illegal alien to reside in the United States.

58. 8 U.S.C. § 1324a(a)(1)(A) makes it unlawful for any person or entity “to hire, or to recruit for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to such employment.”

59. 8 U.S.C. § 1324a(a)(1)(B)(i) makes it unlawful “to hire for employment in the United States an individual without complying with the requirements of subsection (b) [employment verification requirements]”

60. 18 U.S.C. § 2 makes it unlawful to aid or abet another in the commission of a substantive offense, such as a violation of 8 U.S.C. § 1324a.

61. 18 U.S.C. § 371 provides, in pertinent part: If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such person do any act to effect the

object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

62. **8 U.S.C. § 1621** prohibits Defendants from providing certain state or local benefits to illegal aliens including any “unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual...by an agency of the State or local government or by appropriated funds of a State or local government.”

63. In enacting the present comprehensive scheme prohibiting the employment of illegal aliens, the U. S. Congress has stated that employment is the magnet that attracts illegal aliens to come to and reside in the United States.

COUNT I

FIRST CAUSE OF ACTION: DEFENDANTS' ACTIONS VIOLATE FEDERAL STATUTES

64. Plaintiffs incorporate paragraphs 1 to 63, and each of them, as if they were set forth fully herein.

65. Virginia law states that any action taken by a municipality or a county must be consistent with federal law and Virginia law:

The Constitution and the law of the United States and of the Commonwealth shall be supreme. Any ordinance, resolution, bylaw, rule, regulation, or order of any governing body or any corporation, board, or number of persons shall not be inconsistent with the Constitution and laws of the United States or of the Commonwealth.

Va. Code § 1-248. This provision prohibits localities from taking actions which violate federal law.

66. Defendants' conduct contravenes Virginia Code § 1-248 because it violates all (or, alternatively, one or more) of the provisions of federal law set forth in paragraphs 67 through 71 below.

67. Defendants' conduct violates 8 U.S.C. § 1324(a)(1)(A)(iv) (encouraging or inducing unlawful residence). Said violation is shown, *inter alia*, by the conduct previously alleged herein and/or by the following:

a. Defendants' conduct provides the means and/or financially assists illegal aliens in obtaining employment in violation of federal law as it enables the Site to provide employment services to such illegal aliens.

b. Employment gives illegal aliens both the incentive and the financial means to maintain their illegal residence in the United States. By providing illegal aliens with a means to obtain unlawful employment, Defendants "induce" illegal aliens to reside in the United States because Defendants' actions make it possible for them to receive employment services and help finding work, thus causing them to become more confident they can reside in the United States.

c. Defendants knew or acted in reckless disregard that unlawful hiring of illegal aliens would occur, and is now occurring, at the Site, and they intended to facilitate such unlawful hiring

68. Defendants' conduct violates 8 U.S.C. § 1324(a)(1)(A)(v)(II) (aiding and abetting violation of 8 U.S.C. § 1324(a)(1)(A)(iv)). Said violation is shown, *inter alia*, by the conduct previously alleged herein.

69. Defendants' conduct violates 18 U.S.C. § 2 (aiding and abetting violation of 8 U.S.C. § 1324a(a)(1)(A)(employment of illegal aliens) as well as aiding and abetting violation of

8 U.S.C. § 1324a(a)(1)(B)(i)(employment documentation requirements)). Said violation is shown, *inter alia*, by the conduct previously alleged herein and/or by the following:

a. Defendants' conduct facilitates the unlawful hiring of illegal aliens by employers and, thus, aids and abets the aforesaid violations of 8 U.S.C. § 1324a by such employers.

b. Defendants' conduct facilitates the unlawful hiring of illegal aliens by employers because: (i) it provides a venue on Town property for illegal aliens to congregate for the purpose of finding employment; (ii) it provides a venue on Town property for prospective employers to hire illegal aliens; and (iii) it enables PH&H to provide employment services to illegal aliens, thereby enabling illegal aliens to become employed.

c. Defendants' intent to allow illegal hiring to occur at the Site in violation of 8 U.S.C. § 1324a is evidenced by (i) their conduct, (ii) their knowledge that PH&H provides employment services to illegal aliens at the Site, (iii) their failure to take action to prevent the Site from providing employment services to illegal aliens using the Site, and (iv) their acquiescence to PH&H's refusal to screen the day laborers using the Site.

d. Defendants' aforesaid conduct constitutes participatory acts that enable and support the unlawful activities at the Site, associates Defendants with providing employment services to illegal aliens at the Site and the hiring of illegal aliens at the Site, and shows Defendants' intent to effectuate the purpose of the Site – *i.e.*, to assist illegal aliens in obtaining unlawful employment.

70. Defendants' conduct violates 18 U.S.C. § 371 (conspiracy statute) in that the Defendants have conspired with each other and/or with PH&H to violate 8 U.S.C. §

1324(a)(1)(A)(iv) (encouraging or inducing unlawful residence). Said violation is shown, *inter alia*, by the conduct previously alleged herein and/or by the following:

a. The object of the conspiracy is to assist the illegal aliens obtain unlawful employment, thereby encouraging and inducing such illegal aliens to come to and/or reside in the United States.

b. Defendants committed overt acts in furtherance of the conspiracy. The Town of Herndon approved the Permit and provided Town property for the establishment of the Site, with knowledge that PH&H would provide employment services to illegal aliens to assist them obtain unlawful employment, and it acquiesced in PH&H's refusal to screen day laborers using the Site to determine whether or not the day laborers were illegal aliens. The County authorized the expenditure of taxpayer funds to support the Site with knowledge that PH&H would provide employment services to illegal aliens to assist them obtain employment, and it acquiesced in PH&H's refusal to screen day laborers using the Site to determine whether or not the day laborers were illegal aliens.

71. Defendants' conduct violates 8 U.S.C. § 1621 (making it unlawful to provide certain public benefits to illegal aliens). Said violation is shown, *inter alia*, by the conduct previously alleged herein and/or by the following:

a. Providing illegal aliens with services to enable the illegal aliens to obtain employment in violation of federal law is contrary to the plain meaning of 8 U.S.C. § 1621.

b. Defendants provided such employment services to illegal aliens by the following acts: (i) approving the Permit for the Site; (ii) providing Town property as the location for the Site; (iii) providing taxpayer funds to support the operation of the Site; and (iv) refusing

to require PH&H to screen the day laborers using the Site to determine whether or not they were illegal aliens.

COUNT II

SECOND CAUSE OF ACTION: DEFENDANTS' ACTIONS UNDERMINE AND/OR FRUSTRATE FEDERAL AND STATE LAW

72. Plaintiffs incorporate paragraphs 1 to 71, and each of them, as if they were set forth fully herein.

73. Virginia law states that any action taken by a municipality or a county must be consistent with federal law and Virginia law:

The Constitution and the law of the United States and of the Commonwealth shall be supreme. Any ordinance, resolution, bylaw, rule, regulation, or order of any governing body or any corporation, board, or number of persons shall not be inconsistent with the Constitution and laws of the United States or of the Commonwealth.

Va. Code § 1-248. This provision prohibits Virginia localities, including Defendants, from taking actions that violate federal or state law. However, this provision also prohibits Virginia localities, including Defendants, from taking actions which – whether or not they are otherwise illegal – undermine or frustrate the full implementation of state or federal law

74. The U.S. Congress has established a complex scheme of laws prohibiting the employment of illegal aliens in the United States.

75. The Immigration Reform and Control Act of 1986 (“IRCA”), §101(a)(1), 100 Stat. 3360, 8 U.S.C. § 1324a, enacted by Congress, is a comprehensive federal scheme prohibiting the employment of illegal aliens in the United States.

76. 57. The IRCA clearly made combating the employment of illegal aliens central to the policy of federal immigration law.

77. Defendants' expenditure of taxpayer funds and/or use of taxpayer-financed resources to establish and/or support the operation of the Site has the purpose and/or effect of facilitating employment of illegal aliens, thereby undermining and frustrating the full implementation of federal policy prohibiting employment of illegal aliens.

78. Defendants' expenditure of taxpayer funds and/or use of taxpayer-financed resources to establish and/or support the operation of the Site are inconsistent with federal law in that they undermine and frustrate the full implementation of federal law including the following statutes:

- a. 8 U.S.C. § 1324(a)(1)(A)(iv) (encouraging or inducing unlawful residence);
- b. 8 U.S.C. § 1324(a)(1)(A)(v)(II) (aiding and abetting the above);
- c. 8 U.S.C. § 1324a(a)(1)(A)(employment of illegal aliens);
- d. 8 U.S.C. § 1324a(a)(1)(B)(i)(employment documentation requirements);
- e. 18 U.S.C. § 2 (aiding and abetting);
- f. 18 U.S.C. § 371 (conspiracy statute); and
- g. 8 U.S.C. § 1621 (making it unlawful to provide certain public benefits to illegal aliens).

79. Given the foregoing inconsistency with federal law, Defendants' actions violate Virginia Code § 1-248.

80. Defendants' expenditure of taxpayer funds and/or use of taxpayer-financed resources to establish and/or support the operation of the Site are inconsistent with Virginia law

in that they undermine and frustrate the full implementation of Virginia law, including the following statutes:

a. Virginia Code § 40.1-11.1 (prohibiting “employment of any alien who cannot provide documents indicating that he or she is legally eligible for employment in the United States.”);

b. Virginia Code § 63.2-503.1 (prohibiting public assistance to illegal aliens).

81. Given the foregoing inconsistency with Virginia law, Defendants’ actions violate Virginia Code § 1-248.

COUNT III

THIRD CAUSE OF ACTION VIOLATION OF VIRGINIA CODE § 63.2-503.1

82. Plaintiffs incorporate paragraphs 1 to 81, and each of them as if they were set forth fully herein.

83. Virginia Code § 63.2-503.1 prohibits public assistance to illegal aliens. This statute provides, in pertinent part, that “no person who is not a United States citizen or legally present in the United States shall receive state or local public assistance pursuant to this subtitle, except for state or local public assistance that is mandated by Federal Law pursuant to 8 U.S.C. § 1621.” *Id.* at § 63.2-503.1(A). In addition, the statute requires, in pertinent part, that any person seeking public assistance “provide affirmative proof that he is a U.S. citizen or is legally present in the United States.” *Id.* at § 63.2-503.1(B). “Public assistance,” as defined by Virginia Code § 63.2-100, includes “employment services.”

84. For purposes of Title 63.2 of the Virginia Code, the term “public assistance” is defined in Subtitle I of Virginia Code § 63.2 to mean: “Temporary Assistance for Needy Families (TANF); auxiliary grants to the aged, blind and disabled; medical assistance; energy assistance; food stamps; *employment services*; child care; and general relief.” (Emphasis added.) This definition of “public assistance” governs the meaning of the term “public assistance” as used in Virginia Code § 63.2-503.1.

85. The employment services which are provided to day laborers at the Site constitute “public assistance” and “employment services,” as defined by Virginia Code § 63.2-100.

86. Because these employment services are provided to day laborers who are illegal aliens, they are intended to benefit, and do benefit, persons not legally present in and not legally authorized to work in the United States.

87. Because employment services are provided to illegal aliens at the Site, Defendants’ expenditure of taxpayer funds and use of taxpayer-financed resources to establish and/or support the Site violates Virginia Code § 63.2-503.1(A).

88. In addition, because Defendants require no proof of citizenship or legal status by day laborers using the Site, Defendants’ expenditure of taxpayer-financed funds and use of taxpayer-financed resources to establish and support the operation of the Site also violates Va. Code § 63.2-503.1(B).

COUNT IV

FOURTH CAUSE OF ACTION: ULTRA VIRES ACT AND/OR UNREASONABLE IMPLEMENTATION

89. Plaintiffs incorporate paragraphs 1 to 88, and each of them as if they were set forth in full.

90. Under Virginia law, a local government has only those powers that are expressly granted by the state legislature, those powers fairly or necessarily implied from expressly granted powers, and those powers which are essential and indispensable. *Arlington County v. White*, 259 Va. 708, 712, 528 S.E.2d 706, 708 (2000). Furthermore, if the state legislature grants a local government the power to do something but does not specifically direct the method of implementing that power, the method selected by the local government must be reasonable. *Id.*

91. Defendants have no express authority under Virginia law to establish the Site and/or to facilitate employment services to persons not lawfully authorized to work in the United States.

92. Defendants have no implied authority under Virginia law to establish the Site and/or to facilitate employment services to persons not authorized to work in the United States.

93. The power to establish the Site and/or the power to provide employment services to persons not authorized to work in the United are not essential and indispensable powers of Defendants.

94. Even if the Defendants otherwise possessed the power to establish the Site and/or the power to provide employment services to persons not authorized to work in the United States, the establishment and support of the Site are not reasonable methods of implementing

those powers because they violate and/or undermine and frustrate the full implementation of federal law and/or state law, including, but not limited to the following:

- a. Virginia Code § 1-248 (prohibiting localities from acting inconsistently with state or federal law);
- b. Virginia Code § 40.1-11.1 (prohibiting “employment of any alien who cannot provide documents indicating that he or she is legally eligible for employment in the United States.”);
- c. Virginia Code § 63.2-503.1 (prohibiting public assistance to illegal aliens);
- d. 8 U.S.C. § 1324(a)(1)(A)(iv) (encouraging or inducing unlawful residence);
- e. 8 U.S.C. § 1324(a)(1)(A)(v)(II) (aiding and abetting the above);
- f. 8 U.S.C. § 1324a(a)(1)(A)(employment of illegal aliens);
- g. 8 U.S.C. § 1324a(a)(1)(B)(i)(employment documentation requirements);
- h. 18 U.S.C. § 2 (aiding and abetting);
- i. 18 U.S.C. § 371 (conspiracy statute); and
- j. 8 U.S.C. § 1621 (making it unlawful to provide certain public benefits to illegal aliens).

95. Defendants do not have any express, implied or other power to act in a manner that violates or is otherwise inconsistent with federal and/or state law.

96. Defendants’ expenditure of taxpayer funds and use of taxpayer-financed resources in furtherance of the Site are *ultra vires* acts and/or are not reasonable methods of implementing any powers that Defendants may possess.

97. Defendants' expenditure of taxpayer funds and use of taxpayer-financed resources in furtherance of the Site are unlawful and void.

COUNT V

FIFTH CAUSE OF ACTION FOR DECLARATION REGARDING ARBITRARY, CAPRICIOUS, AND UNREASONABLE NATURE OF ACT (AS TO DEFENDANT TOWN OF HERNDON ONLY)

98. Plaintiffs incorporate paragraphs 1 to 97, and each of them as if they were set forth fully herein.

99. The Town of Herndon's zoning ordinance § 78-107(11) requires that "[a]ll activities conducted on the site shall be carried out in a lawful manner, as determined by competent town, Virginia, or federal authorities."

100. When a municipality's decision to issue a conditional use permit is challenged, a court reviews the decision to determine whether the issuance of the Permit was arbitrary, capricious, and unreasonable. The party challenging the decision must establish that the decision was unreasonable:

If the presumptive reasonableness of zoning action is challenged by probative evidence of unreasonableness, the challenge must be met with evidence of reasonableness. If such evidence of reasonableness is sufficient to make the issue fairly debatable, the legislative action must be sustained; if not, the presumption is defeated by the evidence of unreasonableness and the legislative act cannot be sustained.

Concerned Taxpayers of Brunswick County v. County of Brunswick, 249 Va. 320, 327, 455 S.E.2d 712, 716 (1995).

101. The issuance of the Permit was arbitrary, capricious, and unreasonable because it violates and/or undermines and frustrates the full implementation of one or more federal and state statutes, as alleged in Counts I, II, and III and/or because it is an *ultra vires* act as alleged in Count IV.

102. The Town of Herndon also has violated zoning ordinance § 78-107(11), which requires that “[a]ll activities conducted on the site shall be carried out in a lawful manner, as determined by competent town, Virginia, or federal authorities.”

103. Virginia law and federal law cited herein prohibits hiring illegal aliens, assisting illegal aliens to obtain employment and providing public assistance in the form of employment services to illegal aliens to help them obtain employment.

104. Despite this requirement in zoning ordinance § 78-107(11), the Town of Herndon, having knowledge that illegal aliens likely would use the Site to obtain employment, has failed to enforce the requirement in zoning ordinance § 78-107(11) that all activities conducted on the site shall be carried out in a lawful manner, as determined by competent town, Virginia, or federal authorities by, among other things: (a) acquiescing in PH&H’s refusal to screen day laborers using the Site to determine whether they are illegal aliens; (b) choosing not to require PH&H to screen day laborers using the Site; (c) making no provision (and/or making patently inadequate provision) to prevent the violations of federal law and Virginia law that will take place on the Site or that will be facilitated by the existence of the Site; and (d) failing to take any action to prevent PH&H from providing employment services to illegal aliens using the Site or otherwise assist illegal aliens from obtaining employment at the Site.

105. As it is contrary to federal law, Virginia Code §§ 1-248, 40.1-11.1 and 63.2-503, and an *ultra vires* act, and as it is contrary to its own zoning ordinances, the Town of Herndon's approval of the Permit for the Site constitutes an arbitrary, capricious, and unreasonable act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court grant the following relief:

1. As to both Defendants, a declaration that the expenditure of taxpayer funds and taxpayer-financed resources in furtherance of the Site is unlawful and void under Virginia Code Section 1-248 in that it violates and/or is otherwise inconsistent with all (or, in the alternative, one or more) of the following state and federal statutes:

a. Virginia Code § 40.1-11.1 (prohibiting "employment of any alien who cannot provide documents indicating that he or she is legally eligible for employment in the United States.");

b. Virginia Code § 63.2-503.1 (prohibiting public assistance to illegal aliens);

c. 8 U.S.C. § 1324(a)(1)(A)(iv) (encouraging or inducing unlawful residence);

d. 8 U.S.C. § 1324(a)(1)(A)(v)(II) (aiding and abetting the above);

e. 8 U.S.C. § 1324a(a)(1)(A)(employment of illegal aliens);

f. 8 U.S.C. § 1324a(a)(1)(B)(i)(employment documentation requirements);

g. 18 U.S.C. § 2 (aiding and abetting);

h. 18 U.S.C. § 371 (conspiracy statute); and

i. 8 U.S.C. § 1621 (making it unlawful to provide certain public benefits to illegal aliens).

2. As to both Defendants, a declaration that the expenditure of taxpayer funds and

taxpayer-financed resources in furtherance of the Site is unlawful and void in that it directly violates Virginia Code § 63.2-503.1 (prohibiting public assistance to illegal aliens).

3. As to both Defendants, a declaration that the expenditure of taxpayer funds and taxpayer-financed resources in furtherance of the Site is unlawful and void in that such expenditures are *ultra vires* acts and/or are arbitrary and capricious, and unreasonable.

4. As to the Town of Herndon only, a declaration that the expenditure of taxpayer funds and taxpayer-financed resources in furtherance of the Site is unlawful and void in that it is in violation of the Town of Herndon's zoning ordinance § 78-107(11) and, for this additional reason, is an arbitrary and capricious, and unreasonable act.

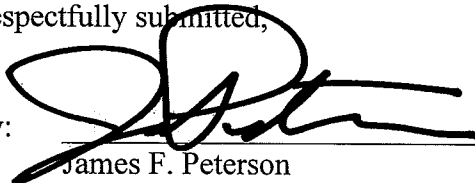
5. Permanent injunctive relief prohibiting Defendants from expending taxpayer funds and taxpayer-financed resources in furtherance of the Site;

6. An award to Plaintiffs and their attorneys of their costs and attorneys' fees;

7. Such other relief as to equity may seem just and the nature of the case may require.

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE.

Respectfully submitted,

By: 

James F. Peterson
Va. Bar No. 36211
JUDICIAL WATCH, INC.
501 School Street, S.W., Suite 500
Washington, DC 20024
Tel.: (202) 646-5172
Fax: (202) 646-5199

DATED: May 5, 2006

William H. Hurd
Va. Bar No. 16967
TROUTMAN SANDERS LLP
Troutman Sanders Building
1001 Haxall Point
Richmond, VA 23219
Tel.: (804) 697-1335
Fax.: (804) 698-6058


Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Plaintiffs' Second Amended Bill of Complaint for Declaratory and Injunctive Relief was sent by facsimile and first class mail, postage prepaid, on May 5, 2006 to the following persons:

William G. Broaddus
McGuireWoods LLP
One James Center
901 East Cary Street
Richmond, VA 23219-4030

Michael Long
Corinne N. Lockett
Office of the County Attorney
12000 Government Center Parkway
Suite 549
Fairfax, VA 22035-0064



James F. Peterson