

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

---

AMERICAN CIVIL LIBERTIES  
UNION OF MINNESOTA,

Civil File No. \_\_\_\_\_

Plaintiff,

v.

**COMPLAINT**

TAREK IBN ZIYAD ACADEMY;  
ISLAMIC RELIEF USA; ALICE  
SEAGREN, individually and in her  
capacity as MINNESOTA  
COMMISSIONER OF  
EDUCATION; and THE  
MINNESOTA DEPARTMENT OF  
EDUCATION; and ASAD ZAMAN;  
ASIF RAHMAN; MAHROUS  
KANDIL; MONA ELNAHRAWY;  
MOIRA FAHEY; AND MOHAMED  
FARID, individually and in their  
capacities as Directors of Tarek ibn  
Ziyad Academy.

Defendants.

---

Plaintiff American Civil Liberties Union of Minnesota, for its Complaint against  
Defendants, states and alleges as follows:

**INTRODUCTION**

1. This is an action to obtain declaratory and injunctive relief establishing:  
that the operation and public funding of the Tarek ibn Ziyad Academy (“TIZA”) is  
unconstitutional as a violation of the Establishment Clause of the First Amendment to the  
U.S. Constitution; and of Article 1, Sec. 16 and of Article 13, Sec. 2 of the Minnesota

Constitution; and that the leasing of space by Muslim organizations to TIZA and the resulting transfer of state funds intended for the support of charter schools to such Muslim organizations through excessive lease payments also violates the Establishment clauses and Minnesota Stat. §124D.10. The American Civil Liberties Union of Minnesota supports and promotes the free exercise of religion, including exercise expressed through schools founded upon Muslim or other religious practices. This Complaint is based upon the use of public funds to support such practices.

**PARTIES, JURISDICTION, AND VENUE**

2. This action arises under the Constitution of the United States and 42 U.S.C. §§1983 and 1988. Jurisdiction is conferred on this Court by 28 U.S.C. §§1331, 1343, and 2201. This Court also has supplemental jurisdiction over related state law claims pursuant to 28 U.S.C. §1367 in that they are so related to the federal claims that they form part of the same case or controversy under Article III of the United States Constitution.

3. Venue is proper in the District of Minnesota, where Plaintiff and all Defendants reside.

4. Plaintiff American Civil Liberties Union of Minnesota is a not-for-profit, non-partisan, membership-supported organization dedicated to the protection of civil liberties. It is a statewide affiliate of the American Civil Liberties Union and has more than 8,000 members in the state of Minnesota. Its purpose is to protect the rights and liberties guaranteed to all Minnesotans by the state and federal constitutions and other

state and federal laws, including the right to be free from government establishment of religion and from the expenditure of taxpayer funds to endorse or promote religion.

5. Plaintiff's members pay income taxes to the United States, and pay income and sales taxes to the state of Minnesota. Such taxes are used to support the governmental Defendants and the charter school that is the subject of this action.

6. Defendant TIZA is a charter school organized under Minnesota law as a not-for-profit corporation with campuses in Inver Grove Heights and Blaine, Minnesota. TIZA is supported by tax funds from both the state of Minnesota and the United States.

7. Defendant Islamic Relief USA ("Islamic Relief") is a California not-for-profit organization and the sponsor of TIZA. As sponsor, Islamic Relief is required by Minn. Stat. §124D.10 to provide oversight of TIZA. As sponsor, Islamic Relief functions as a state actor.

8. Defendant Alice Seagren (the "Commissioner"), an individual residing in the state of Minnesota, is the Minnesota Commissioner of Education. The Commissioner is charged with approval and oversight of charter schools and with certification of schools' entitlement to state funding. The Commissioner has certified funds for TIZA despite its constitutional infirmities.

9. Defendant Minnesota Department of Education ("the Department") is a state agency charged with carrying out the Minnesota Charter School Law, Minn. Stat. §124D.10, and dispersing state funds. The Department is also responsible for conducting audits of charter schools and reviewing evaluations of charter schools.

10. Defendant Asad Zaman, an individual residing in the state of Minnesota, is Executive Director, trustee, Board Secretary, and Treasurer of TIZA. He is the principal at the TIZA Inver Grove Heights campus.

11. Defendant Asif Rahman, an individual residing in the state of Minnesota, is a trustee of TIZA. He is designated as the TIZA “disbursement authorizer.”

12. Defendant Mahrous Kandil, an individual residing in the state of Minnesota, is a trustee of TIZA and a member of TIZA’s Board of Directors. He is principal of the TIZA Blaine campus.

13. Defendant Mohamed Farid, an individual residing in the state of Minnesota, is a trustee of TIZA and a member of TIZA’s Board of Directors.

14. Defendant Moira Fahey, an individual residing in the state of Minnesota, is a trustee of TIZA and a member of TIZA’s Board of Directors.

15. Defendant Mona Elnahrawy, an individual residing in the state of Minnesota, is a member of TIZA’s Board of Directors.

### **BACKGROUND**

16. TIZA was established in 2003 after its founders’ efforts to establish a private school at the Inver Grove Heights site did not materialize.

17. TIZA was named after Tarek ibn Ziyad, a Muslim military leader who conquered portions of what is now Spain and Portugal during the eighth century, by some accounts after burning the ships that had carried his troops across the Mediterranean Sea.

18. TIZA now offers instruction to children in grades kindergarten through eighth grade at its Inver Grove Heights campus and began offering instruction in grades

kindergarten through fourth grade at its Blaine campus, with plans to add a grade each year.

19. TIZA has close ties with the Muslim American Society of Minnesota (“MAS-MN”). MAS-MN is a Minnesota not-for-profit corporation that functions as a local affiliate of the national Muslim American Society. It states that its “principle [sic] goal . . . shall be to attain the pleasure of Allah (God)” and identifies its mission as “to present the message of Islam to Muslims and non-Muslims.”

20. TIZA has promulgated handbooks for its staff, board, and administration. Among other conditions on employment set out in its Staff Handbook is the requirement that information about the operations of TIZA be withheld from the public. The Staff Handbook instructs staff members “to always represent us to the public in a positive light” and not to “circulate . . . statements or allegations to students, parents, prospective parents [and] the media.” TIZA threatens personnel with disciplinary and legal action if they provide information about TIZA to the public:

Throughout the performance of job responsibilities, staff members are also exposed to confidential information related to the operation of Tarek ibn Ziyad Academy. Confidential information includes, but is not limited to, all information related to Academy business, finances, operations, office procedures and the like. The obligation to maintain the confidentiality of the Academy’s confidential information exists throughout a staff member’s employment and following the termination of employment.

Unauthorized release of confidential information is grounds for disciplinary action up to and including immediate termination of employment and may be grounds for legal action after termination.

21. Such compelled restrictions on speech are not consistent with TIZA's status as a public school.

22. During each year of its operation, TIZA has received funding from the state of Minnesota. During the 2008 to 2009 academic year, TIZA is expected to receive approximately \$3.8 million in funding from the state of Minnesota.

23. In the most recent round of statewide achievement tests, the 2008 Minnesota Comprehensive Assessments, TIZA reported striking results. Its Blaine and Inver Grove Heights campuses reported 53 per cent and 87 per cent, respectively, of their students living in poverty. TIZA's Blaine campus nonetheless reported that 100 per cent of its students scored at or above grade level in both math and reading, a result not claimed by any Minnesota public school, any other Minnesota charter school, or any Minnesota private school reporting even a single student living in poverty. TIZA's Inver Grove Heights campus reported results substantially exceeding the results of any other Minnesota school, public, private, or charter, that reported similar or greater numbers of students living in poverty.

#### **TIZA'S Lease of Real Estate from Sectarian Organizations**

24. Minnesota law limits and regulates the circumstances under which charter schools may lease school space from sectarian entities, including requirements that the leased space must have been constructed as a school facility and that the Department must have approved the lease.

25. TIZA leases both of its campuses from sectarian entities.

26. The owner of TIZA's Inver Grove Heights campus is MAS Minnesota Property Holding Corp. MAS Minnesota Property Holding Corp. is a Minnesota not-for-profit corporation that describes itself on tax returns variously as a religious organization and as a holding company for MAS-MN.

27. The owner of TIZA's Blaine campus is Minnesota Education Trust, a Minnesota not-for-profit corporation. Minnesota Education Trust's Articles of Incorporation list among its goals the promotion of Islam. Through its filings with the Minnesota Attorney General, Minnesota Education Trust identifies itself as a religious organization and the parent of the MAS Minnesota Property Holding Corp.

28. The Blaine campus is leased by TIZA from the Minnesota Education Trust through the Blaine Property Holding Corporation. The Blaine campus was not constructed as a school facility.

29. The MAS Minnesota Property Holding Corp. donates rent that it receives to MAS-MN, thus effectively transferring government funds intended by the State of Minnesota for charter schools to a sectarian organization devoted to the advancement of Islam.

30. In addition to such lease payments, persons associated with the operation of TIZA have been paid substantial sums of money. Although TIZA's bylaws state that the Executive Director shall act as the CEO and that Directors of the Board "as such shall not receive stated salaries for their services," as of the most recent period for which tax filing information is available, the CEO and Board Chair of TIZA is indicated as being

compensated more than \$100,000 per year, with the Executive Director being compensated at least an additional \$90,000 per year.

**Entanglements Among TIZA, MAS-MN, MAS Minnesota Property Holding Corp., and Minnesota Education Trust**

31. TIZA, the Muslim American Society of Minnesota, MAS Minnesota Property Holding Corp., Minnesota Education Trust, and Blaine Property Holding Corporation are linked by a complex interconnecting set of personal, corporate, and operational relationships.

32. Minnesota Education Trust is the parent corporation of the MAS Minnesota Property Holding Corp. Blaine Holding Corporation appears to function merely as an intermediary for receiving lease funds from TIZA for the benefit of Minnesota Education Trust.

33. From the time of their creation, the leadership and operations of TIZA and MAS-MN have overlapped, such connections including the following facts:

- a. TIZA and MAS-MN were incorporated on the same day by the same person, Khalida Shaheen.
- b. The founders of TIZA were Muslim imams and leaders of MAS-MN.
- c. MAS-MN officials function in prominent leadership positions at TIZA.
- d. TIZA's Inver Grove Heights campus is located in the same building and at the same address as the MAS-MN mosque and headquarters.

- e. The two main entrances at TIZA are shared by MAS-MN.
- f. The Blaine chapter of MAS-MN has used the telephone number of the TIZA Blaine campus to conduct its own business, and MAS-MN and TIZA list the same fax number.
- g. MAS-MN offers an after-school Muslim studies program at the Inver Grove Heights campus and has conducted prayer sessions at TIZA during school hours.
- h. MAS-MN describes TIZA's Inver Grove Heights campus as its "Al Aman Islamic Center."
- i. MAS-MN has solicited donations through invocation of observance of Ramadan for an expansion of school grade level offerings.
- j. MAS-MN has advertised an "at risk youth tutoring project" at TIZA's Inver Grove Heights campus.
- k. MAS-MN has featured performances by students of TIZA at its annual convention.

34. Defendant Zaman, in addition to being Executive Director, trustee, Board Secretary, Treasurer, and principal of TIZA, is an imam and member of the board of directors of a mosque in Bloomington, Minnesota. He is the Vice President and spokesperson for MAS-Minnesota and has been identified as its Executive Director as well. He controls the books of MAS-MN Property Holding Company. He is thus subject to conflicts of interest resulting from his roles on behalf of both lessors and lessees with

respect to the charter school. He has been quoted as stating that “Islam makes no distinction between public and private life.”

35. Defendant Rahman, in addition to being trustee and “disbursement authorizer” for TIZA, has served as President of the MAS Minnesota Property Holding Corp. He was an incorporator of Minnesota Education Trust. He is the president of the Minnesota Education Trust and the Blaine Property Holding Corporation. He is thus subject to conflicts of interest resulting from his roles on behalf of both lessors and lessees with respect to the charter school.

36. Defendant Kandil, in addition to being a trustee and member of the Board of Directors for TIZA and principal of the TIZA Blaine campus, serves as the President of MAS-MN and has been a member of the Board of Directors of MAS-MN. He was an incorporator of Minnesota Education Trust. He is thus subject to conflicts of interest resulting from his roles on behalf of both lessors and lessees with respect to the charter school.

37. Until his death, Hesham Hussein was both the Board Chair of TIZA and the President of MAS-MN.

### **TIZA’s Entanglements With the Muslim Religion**

38. In numerous ways, TIZA advances, endorses, and prefers the Muslim religion over other religions or nonsectarian approaches in connection with school activities and fosters entanglement between government and religion.

39. TIZA advances, endorses, and prefers Muslim religious practices through its decision to locate its campuses in facilities owned by religious institutions affiliated

with MAS-MN without demonstrating that locating its campuses in such locations has been necessary; to share space and other operations with MAS-MN; and to permit consequent improper exposure of public school students to religious iconography.

40. TIZA has advanced, endorsed, and preferred Muslim prayer in at least the following ways:

a. TIZA has permitted a prayer to be posted prominently in the school's entryway.

b. TIZA has permitted Muslim prayer sessions to be held during school hours.

c. TIZA has permitted teacher-sanctioned religious material to be posted on classroom bulletin boards.

d. On Fridays, the Muslim holy day, students, and teachers who wish to pray have gathered in a large school room during school hours for 30 minutes of parent-led or volunteer-led prayer. Students who indicate that they do not want to participate are to engage in "quiet-time" or "study hall" activities. The 30 minutes of lost instruction time each Friday are not made up. On occasion, the Friday prayer sessions have been described as "parent-led."

e. Teachers regularly participate in the prayer activities by leading students to the restroom for the Islamic washing ritual prior to the prayer and then leading them to the prayer location. Until recently, some teachers have participated in the Friday prayer with students.

f. MAS-MN and/or TIZA have used their websites to post requests for parent volunteers to help with Friday prayers.

g. Although in response to concerns raised by the Department, TIZA assured the Department in September 2008 that it would shorten the time of Friday prayers, that teachers would no longer pray with students, and that the prayers would be student led, TIZA's proposed changes do not adequately remove the imprimatur of the state on Friday prayers at TIZA. On information and belief, TIZA still permits parents and other adults access to the school to participate in Friday prayers with students.

h. On Monday through Thursday, students gather to pray during short periods of "quiet time." Teachers announce to students that it is time for students to pray or engage in some other quiet activity such as reading.

i. A large space in the school is covered by a prayer rug that apparently is used primarily for religious purposes.

41. TIZA advances, endorses, and prefers Muslim clothing rules in at least the following ways:

a. TIZA prohibits girls, but not boys, from wearing short sleeves.

b. TIZA requires girls in grades kindergarten through second grade to wear skirts that extend below the knees or trousers; girls in grades three through five to wear ankle-length skirts or trousers; and girls in grades six through eight to wear a skirt or jumper with pants underneath or a "full-length dress (jilbaab)."

c. TIZA requires female teachers to be covered from neck to wrist and ankle.

42. TIZA advances, endorses, and prefers Muslim dietary practices by serving only food permissible under Muslim dietary laws.

43. TIZA advances, endorses, and prefers Muslim religious practices through its provision of school transportation. Although school ends at 3:30 p.m., buses do not depart the Inver Grove Heights campus until 4:30 p.m. MAS-MN offers a Muslim studies program at the Inver Grove Heights campus every day from 3:30 to 4:30. A majority of TIZA's students are enrolled in the Muslim studies program.

44. TIZA organizes its school calendar around Muslim holidays.

45. TIZA encourages school personnel and students to refer to teachers and other employees by such religious-based titles as "Brother" and "Sister."

46. TIZA's history of entanglement of Muslim religious practices with ostensibly secular educational offerings has imposed excessive monitoring burdens upon the government.

**COUNT I**  
**Violation of the Federal Establishment Clause**  
**(Against All Defendants)**

47. Plaintiff restates and incorporates by reference the allegations contained in paragraphs 1 through 46 of this Complaint.

48. Minnesota charter schools are public schools and must be nonsectarian. They are required to have a sponsor.

49. TIZA sponsor Islamic Relief improperly authorized a charter school that is affiliated with religious institutions, including MAS-MN and Minnesota Education Trust, and that promotes a particular religion.

50. The public funding and operation of TIZA, and TIZA's use of public funds violate the Establishment Clause of the First Amendment to the U.S. Constitution because: they have the primary purpose and effect of advancing religion; result in indoctrination of religious belief; constitute an impermissible endorsement or appearance of endorsement or favoritism toward a religious organization; excessively entangle the affairs of government and religion; constitute a preference given by law to a religious establishment or mode of worship; and authorize the expenditure of public money for the support of a school in which the distinctive doctrines, creeds or tenets of a religious sect are promulgated.

51. TIZA, its Board of Directors, and its sponsor Islamic Relief have set school policies that endorse and promote a single religion, Islam. They have used tax funds to sponsor and establish a school that is pervasively sectarian.

52. The Commissioner and the Department have certified and disbursed taxpayer funds for the school despite its unconstitutional promotion and endorsement of religion.

53. Plaintiff has no adequate remedy at law.

**COUNT II**  
**Violation of the Minnesota Establishment Clause**  
**(Against All Defendants)**

54. Plaintiff restates and incorporates by reference the allegations contained in paragraphs 1 through 53 of this Complaint.

55. Article 1, Sec. 16 of the Minnesota Constitution states that no “preference [shall] be given by law to any religious establishment or mode of worship...nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries.”

56. Article 13, Sec. 2 of the Minnesota Constitution states that “[i]n no case shall any public money or property be appropriated or used for the support of schools wherein the distinctive doctrines, creeds or tenets of any particular Christian or other religious sect are promulgated or taught.”

57. The public funding and operation of TIZA and TIZA’s use of public funds violate Article 1, Sec. 16 and Article 13, Sec. 2 of the Minnesota Constitution because: they have the primary purpose and effect of advancing religion; result in indoctrination of religious belief; constitute an impermissible endorsement or appearance of endorsement or favoritism toward a religious organization; excessively entangle the affairs of government and religion; constitute a preference given by law to a religious establishment or mode of worship; and authorize the expenditure of public money for the support of a school in which the distinctive doctrines, creeds or tenets of a religious sect are promulgated.

58. Plaintiff has no adequate remedy at law.

**COUNT III**  
**Violations of the Minnesota Charter School Law, Minn. Stat. §124D.10**  
**(Against All Defendants)**

59. Plaintiff restates and incorporates by reference the allegations contained in paragraphs 1 through 58 of this Complaint.

60. In a number of respects, TIZA, its Board of Directors, and its sponsor Islamic Relief have failed to comply with the requirements of Minnesota law, including these:

a. Although Minn. Stat. §124D.10, Subd. 3 requires charter school sponsors to register with the Minnesota Attorney General, Islamic Relief has not been so registered for several years.

b. Although Minn. Stat. §124D.10, Subds. 3, 6, and 8 require charter school sponsors to provide oversight of the school and not to authorize a charter school or program that is affiliated with a religious institution, Islamic Relief authorized a charter school that is affiliated with religious institutions, including MAS-MN and Minnesota Education Trust, and failed to ensure that the school did not promote a particular religion.

c. Although Minn. Stat. § 124D.10, Subd. 11 requires a charter school's board of directors to "decide matters related to the operation of the school, including budgeting, curriculum and operating procedures," TIZA's board of directors have failed to do so consistent with constitutional and statutory requirements.

d. Although Minn. Stat. §124D.10, Subd. 17 permits charter schools to lease space from a sectarian organization only if the leased space is constructed as

a school facility, TIZA's Blaine campus is owned by a sectarian organization but was not constructed as a school facility.

e. Although Minn. Stat. §124D.10, Subd. 17 permits charter schools to lease space from a sectarian organization only if the school is unable to lease appropriate space from public or private nonsectarian organizations, there is no evidence that TIZA made reasonable efforts to locate such public or nonsectarian space.

f. Although Minn. Stat. §124D.10, Subd. 17 permits charter schools to lease space from a sectarian organization only if the Department approves the lease in consultation with the Department of Administration, available records do not indicate that the Department and TIZA followed the approval requirements of Minn. Stat. §124D.10 or generated documentation establishing that TIZA's lease rates are reasonable.

61. The Commissioner and the Department have not terminated the sponsorial relationship, have certified funds for the school, and have disbursed funds to the school despite repeated violations of Minn. Stat. §124D.10.

62. Plaintiff has no adequate remedy at law.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests the following relief, consistent with the constraints imposed by Minn. Stat. §124D.10 Subd. 25(c):

(a) Declaratory judgment establishing:

(i) that the operation of the TIZA by the Defendants violates the Establishment Clause of the First Amendment to the Constitution of the United States, Article 1, Sec. 16 and Article 13, Sec. 2 of the Minnesota Constitution, and Minnesota Statutes §124D.10; and

(ii) that the public funding of TIZA violates the Establishment Clause of the First Amendment to the Constitution of the United States, Article 1, Sec. 16 and Article 13, Sec. 2 of the Minnesota Constitution, and Minnesota Statutes §124D.10; and

(iii) that the agreement between defendant Islamic Relief and defendant TIZA is null and void as a violation of the Establishment Clause of the First Amendment to the Constitution of the United States, Article 1, Sec. 16 and Article 13, Sec. 2 of the Minnesota Constitution, and Minnesota Statutes §124D.10; and

(b) Preliminary and permanent injunctive relief requiring Defendants to correct and eliminate establishments of religion by TIZA and to refund to the state of Minnesota the pro rata portion of student aid TIZA has received for its students;

(c) Plaintiff's attorneys' fees and costs of suit pursuant to 42 U.S.C. §1988, against the governmental Defendants; and

(d) Such other and further relief as the Court deems just and equitable.

DORSEY & WHITNEY, LLP

Dated: January\_\_\_\_, 2009.

By \_\_\_\_\_  
Peter Lancaster, # 159840  
Megan McKenzie # 0388081  
Chris Amundsen # 0388981  
Suite 1500, 50 South Sixth Street  
Minneapolis, MN 55402-1498  
Telephone: (612) 340-2600

***Attorneys For Plaintiff***

Teresa Nelson #  
ACLU of Minnesota  
450 North Syndicate Street, Suite 325  
Saint Paul, MN 55104  
Telephone: (651) 645-4097

***Of Counsel to Plaintiff***