

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IMAM MAHMOOD AHMAD,)	
Plaintiff,)	
)	
v.)	C.A. No. 24-0741-GBW
)	
KATHLEEN JENNINGS, et al.,)	
Defendants.)	

PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS

This case is about whether Defendants can properly use Delaware’s laws and regulations to prevent an Imam—the plaintiff himself—from performing the traditional role of Muslim clergy in Muslim funeral rites and Islamic burials. Plaintiff challenges the set of Delaware laws and regulations that currently are being enforced to prevent his access to Muslim decedents’ remains and to threaten him with prosecution for the unlicensed practice of “funeral directing” when he performs his traditional role as Muslim clergy. The relief he seeks is clearly stated (Complaint, ¶223) and includes (a) enjoining his exclusion from Delaware’s online “DeLVERS” platform for obtaining the “burial/transit permits” required to lawfully transport and bury—and to obtain custody of—the remains of deceased Muslims and (b) barring his prosecution for unlicensed practice of “funeral directing” for performing his religious funeral and burial-related duties.

Defendants move to dismiss, but their motion falls wide of the mark. This is because they have failed to grapple with the case that Plaintiff has actually pleaded. Instead, they have erected a straw man, claiming that Plaintiff seeks removal of the embalming requirements attendant to the internship phase of Delaware’s funeral director licensure process. The centerpiece of their motion is the argument that Plaintiff lacks Article III standing because his injury would not be redressed by a judicial order removing the internship embalming requirement, because Plaintiff does not

currently meet the education requirements for funeral director licensure. MTD at pp. 4-10.¹ But this is irrelevant, because the Plaintiff does not seek a judicial order removing the impediments to his licensure as a fully-credentialed commercial funeral director.

The Third Circuit recently rejected a nearly identical Article III defense in a Second Amendment case. In *Lara v. Comm'r Pa. State Police*, 91 F.4th 122 (3d Cir. 2024), *vac'd on other grounds*, *Paris v. Lara*, 2024 U.S. LEXIS 4283 (U.S., Oct. 15, 2024), plaintiffs challenged “statutes [that] effectively ban[ned] 18-to-20 year olds from carrying firearms outside their homes during a state of emergency.” *Lara*, 91 F.4th at 126. The defendant, Commissioner of the Pennsylvania State Police, argued that “he [was] powerless to issue [firearms] licenses,” and therefore plaintiffs lacked Article III standing because they could not show the requisite causation and redressability of their injury in fact. The Third Circuit panel rejected the defense:

The Appellants have a ready and effective response. They say they are “agnostic” as to whether they get licenses to carry concealed weapons under §§ 6106 and 6109, or whether, despite § 6107, they can carry openly without a license during an emergency. (Reply Br. at 3-4.) In other words, the existence of a license is not what they are fighting about; it is the right to openly carry a gun regardless of a state of emergency. And they contend that enjoining the Commissioner from arresting 18-to-20-year-olds who openly carry firearms would in fact redress their constitutional injuries. We agree that a bar on arrests would be a form of relief. Accordingly, ... Article III [does not] bar[] the Appellants’ claim.

Lara, 91 F.4th at 139-140 (footnote omitted). Here too, the Delaware funeral director licensing scheme is not the subject of Plaintiff’s claims for relief and he has not sought a judicial order addressing it. To be sure, the embalming requirements for licensing as a Delaware funeral director are offensive to Islam, and the educational embalming practicum requirement prevented the

¹ Ironically, those education requirements also carry an embedded embalming practicum requirement, for which Defendants appear to disclaim Delaware’s responsibility (MTD at 8), thus setting up an asserted “Catch 22” from which there can be no escape (or so they suggest). The issue is, however, irrelevant to the claims for relief that Plaintiff has actually pleaded, as explained in this Opposition.

completion of Plaintiff's pre-licensure degree when he attempted a non-adversarial path prior to asserting his constitutional rights in this action. *See infra*, Statement of Facts ("SOF"), at 7.

But a full-blown funeral director's license is unnecessary to the simple and swift Islamic funeral rites and burials Plaintiff must perform. The limited judicial relief sought here—an injunction granting Plaintiff access to Delaware's online platform for obtaining burial/transit permits and declaratory/injunctive relief barring his prosecution for alleged unlicensed "funeral directing"—would redress his injury. *See Gulden v. Exxon Mobil Corp.*, 2024 U.S. App. LEXIS 25833 at *10-11 (3d Cir. October 15, 2024) (appellants satisfied Article III redressability because their injury "was capable and likely of being resolved through the exercise of a traditional judicial function."); *Lara*, 91 F.4th at 139-140 (plaintiffs satisfied Article III redressability by seeking order barring enforcement of allegedly unconstitutional licensure requirements through arrests). As demonstrated here and *infra*, Defendants' Article III defense is without merit.

Aside from their Article III challenge, Defendants' Motion offers nothing of substance. Defendants' challenge to plaintiff's Equal Protection claim (Count III) fails under application of the Rule 12(b)(6) standard. Their challenge to Plaintiff's conspiracy claim (Count IV) depends on their Article III argument, and fails along with that defense; their intra-entity conspiracy argument fails under well-established law, and Plaintiff's detailed pleading of events provides ample circumstances from which to infer conspiracy. Defendants' 11th Amendment arguments regarding official versus capacity claims fail under the guiding precedents. Although Plaintiff consents to dismissal without prejudice of his claim under the Delaware Constitution, these claims are meritorious.

I. FACTS

The Plaintiff is Imam Mahmood Ahmad, an American citizen born in Pakistan and raised in Queens, New York. He is lead Imam at Masjid Isa Ibne Maryam, a mosque in Newark, Delaware (the “Mosque”).² Prior to coming to Delaware in 2020, he studied for fifteen years in Saudi Arabia, earning degrees in Islamic studies and Arabic language from Umm Al-Qura University, in Mecca. (Compl. ¶¶ 19-20.)

As part of his ministry, the Imam leads the traditional Muslim funeral rituals, rites and burials for deceased members of his religious community. (*Id.*) Islam mandates specific funeral rites as a matter of religious obligation, beginning with *ghusl*, a ritual ablution that involves washing the body with pure water. (*Id.* at ¶¶ 35, 37). The body is then prepared for burial in inexpensive cotton kafans unadorned with any decoration; men are traditionally covered with three pieces, women with five. The decedent is then transferred to the mosque for the burial prayer, *salat al-janazah*. Finally, the decedent’s body is transported to the cemetery and interred perpendicular to the direction of Mecca. (*Id.*) The body is neither embalmed nor cremated, as either would constitute haram, impermissible desecration. (*Id.* at ¶ 35).

The process is entirely safe. (*Id.* at ¶¶ 9, 19, 72.). In particular, because of the mandated swiftness of the process, the Delaware laws and regulations that require that human remains kept for more than 24 hours before burial be either embalmed or refrigerated, ostensibly to protect the public health, ***are not even applicable***. In keeping Islamic precepts requiring a prompt burial, Plaintiff never takes custody of the decedent’s remains unless he is prepared to proceed, within a matter of hours, to complete the service and burial that same day. (*Id.* at ¶¶ 9, 11, 35.136, 169).

² The mosque holds daily and congregational prayers, provides youth education, offers courses on the Quran and engages in a number of community services projects. It also provides the spiritual guidance for the Tarbiyah School, a K-12 full-time school registered with the Delaware Department of Education that over 100 children attend on a daily basis. A more complete overview of the mosque can be found at <https://masjidisa.org>, and of the school at <https://tarbiyahschool.org>.

The economic cost of these Muslim religious funeral rites and Islamic burials is very modest. The Imam's services are donated, and transportation of the decedent's remains is handled by the Imam and volunteers using a vehicle owned by the Mosque. Monetary contributions toward costs by the family of the decedent and the Muslim community are encouraged and accepted, but never required. (*Id.* at ¶ 39.) The single greatest cost is the involvement of a Delaware funeral director. (*Id.*)

When he began his ministry, the Imam learned that despite being required to do nothing other than filing the death certificate and obtaining the legally required burial/transit permit at a cost of \$25, Delaware funeral parlors were demanding \$3,000-\$8,000 for what they called "a non-declinable basic services fee." (*Id.* at ¶¶ 5, 33, 58). Families of modest means, often facing financial troubles due to the loss of their loved ones, were forced to turn to the congregation for help. (*Id.*) Because there is no reason a traditional Islamic funeral and burial should cost anyone thousands of dollars, the Imam sought alternatives. It was his religious duty--proper burial "is one of the five cardinal duties of brotherhood in Islam." (*Id.* at ¶ 35).

His plan included seeking funeral parlor prices more consistent with the costs of the "permit only" services required, and a more ambitious longer-term component—he would himself become a licensed funeral director, effectively letting him bypass the commercial middlemen. (*Id.* at ¶ 58.). This would mean any Muslim could be buried in keeping with the religious laws by which they lived. To this end, the Imam enrolled in a mortuary sciences program at Mercer County Community College ("MCCC") in Trenton, New Jersey. (*Id.* at ¶ 47).

The Imam sought a funeral parlor that would work with him on a "permit only" basis. (*Id.* at ¶ 42). After many fruitless inquiries to Delaware establishments, the Imam devised a plan to build upon a previous relationship of the Mosque with the Faries funeral parlor of Smyrna

(“Faries”), and owner Robert Timlin. (*Id.* at ¶ 45). The Imam proposed he would act as an associate of Faries while pursuing his pre-licensure studies, and serve his internship at Faries. Timlin agreed to secure the death and transportation paperwork – a \$25 cost – for \$175 per decedent. (*Id.*)

From time to time, Timlin expressed dissatisfaction with the fees Faries was receiving, especially after it became clear that there would be a steady flow of funerals from Imam Mahmood’s ministry. (*Id.* at ¶ 49). Timlin’s view was that being charged six times the cost of obtaining a burial transit permit meant that the Imam’s congregants were “getting away with ... free burial[s].” (*Id.*) Recognizing the arrangement was not going to last, the Imam sought out alternative providers.

Meanwhile, the Imam’s plan to become a Delaware licensed funeral director encountered an impassable barrier. When the time came to begin MCCC’s embalming practicum, which involved performing actual human embalmings, the Imam found he was unable to continue because of his religious conviction that the act of embalming was sacrilege. He discontinued his studies because he would be unable to meet Delaware’s requirements for licensure. (*Id.* at ¶¶ 51-53).

In May of 2022, Imam Mahmood contacted the Office of Vital Statistics to apply for DelVERS access in his capacity as Imam of the Mosque. (*Id.* at ¶ 61). He communicated with Management Analyst Nicholas Cruz, explaining who he was and that he sought access in order to perform Islamic funeral rites and burials, explaining that Pennsylvania’s corresponding online system had provided him with such access in his role as Imam. (*Id.* at ¶ 61).

On June 23, 2022, Mr. Cruz informed him his application was denied. Mr. Cruz (incorrectly) explained: “The statute, 16 Del. C. 3123, states that only funeral directors may file death certificates. You are not licensed as a funeral director and *are not acting as such.*”

Accordingly, you are not able to electronically file a death certification as a result.” (emphasis added). On July 25, 2022, Mr. Cruz’s supervisor, Mardelle Dizon, emailed the Imam, stating: “Per our legal counsel, you are not a licensed funeral director, a prerequisite for access to DeIVERS. Because you do not meet the basic prerequisite for access, it will not be granted to you by the Division of Public Health. If you have additional questions, please contact the Division of Professional Regulation Board of Funeral Directors.” (*Id.* at ¶¶ 62, 63). Neither Mr. Cruz nor Ms. Dizon informed him that the Director of the Division of Public Health had the authority to grant exemptions and had enacted regulations contemplating religious exemptions. (*Id.* at ¶ 64).

The Imam retained counsel shortly thereafter for assistance in achieving his religious and charitable mission. (*Id.* at ¶ 65). At this point, still seeking a non-adversarial, conciliatory path forward, the Imam and the Mosque elected to explore the potential for a legislative solution. (*Id.*). Representatives of the Mosque persuaded Delaware Senate Majority Leader, Senator Bryan Townsend, to introduce a bill in early 2023 taking the lightest possible touch in modifying Delaware’s public health laws by creating an exemption to permit the “person in charge of interment” in connection with a religious funeral ceremony to file death certificates and to receive, retain and present a burial-transit permit. (*Id.* at ¶¶ 67-77). Compared to current law, enactment of the bill would, effectively, mandate clergy applicants be deemed a “person acting as such.”

At its March 21, 2023 meeting, the Delaware Board of Funeral Services, an industry-captive regulatory board whose members are Defendants in this action, discussed the proposal for a legislative exemption for “religious leaders,” as the Board minutes put it. (*Id.* at ¶78). Those Board minutes make clear that the Board was aware of the bill’s genesis in Delaware’s Muslim community, if not of the Imam’s involvement. Board President Andrew Parsell raised the concern (ironically, to put the matter politely) that “an exemption would eliminate all power of the board,

and this leaves consumers unprotected.” (*Id.* at ¶¶ 78-79) (emphasis added). Legislative maneuvers by the bill’s opponents killed it before it ever reached the Senate floor. (*Id.* at ¶ 80).

Meanwhile, Imam Mahmood’s deteriorating relationship with Faries had ended in October 2022 with threats from owner Timlin to call in the Delaware regulatory authorities after he became enraged to the point of profanity by the Imam’s suggestion that charging \$1,100 for paperwork services really worth \$25 was unreasonable. Timlin wrote: “the State is watching you and how you ‘conduct business.’” (*Id.* at ¶60). However the connection was made, it is clear that by the time of the March 21, 2023 Board meeting, the Imam was on the Board Defendants’ radar screen. Within days after that meeting, the Board took action designed to shut him down. On March 30, 2023, the Division of Professional Regulation wrote to DMFH, the non-profit entity through which the Imam and the Mosque conducted their funereal activities, to inform it that a complaint alleging DMFH is “[p]racticing without a funeral establishment permit and a licensed funeral director” had been received. (*Id.* at ¶81). The letter, signed by Megan Miller, Investigative Supervisor, attached a redacted copy of the complaint, in which the name of the complainant was hidden. The Board’s involvement in the genesis of the complaint is readily inferable from that fact that when Ms. Miller attended the Board’s subsequent meeting on July 25, 2023, Board Defendant Nicholas Picollelli asked Ms. Miller about the complaint process “and how would he know the outcome of the complaint filed.” (*Id.* at ¶82).

Then-counsel for the Imam responded to the complaint by letter dated April 18, 2023. The letter explained that DMFH had no intention of being a funeral establishment, as it was simply the vehicle through which the Mosques’ religious funereal activities were conducted, recounted Imam Mahmood’s denial of access to DelVERS, and requested the opportunity to discuss a religious

exemption for access to DelVERS without a funeral director’s license, which the Imam could not obtain due to the embalming requirements. (*Id.* at ¶85).³

Meanwhile, the Imam had found an alternative to the Faries arrangement—Ernest “Trippi” Congo of Congo Funeral Home of Wilmington. Recognizing the charitable nature of Plaintiff’s mission and the limited nature of the services actually needed, Mr. Congo charged \$150 per funeral. (*Id.* at ¶90). By the time the Congo arrangement deteriorated and died in early 2024, the Board Defendants’ campaign to prevent Plaintiff’s free exercise of his religion was in full swing. The Board had called local hospitals urging that they be on the lookout a Muslim clergyman fitting the Imam’s description, instructing them not to release Muslims’ remains to him because he was attempting to practice funeral directing without a license by conducting Islamic burials, for which he was under investigation (leveraging the bogus complaint they had improperly instigated). (*Id.* at ¶¶ 12, 92-96.). The Complaint recounts an April 2024 example of Christiana Care’s response, which contributed to Congo’s decision to discontinue its assistance. (*Id.* at ¶¶ 92-96).

As the Congo arrangement faltered, the Imam tried once more to find a funeral parlor that would aid his religious mission. He affiliated with Distinguished Memorial Chapels in Philadelphia, whose owner Christopher Coleman, was a friend. Mr. Coleman held a Delaware Funeral Director “Limited” license. (*Id.* at ¶ 97). DMC agreed to provide Plaintiff with “permit only” service, if he agreed to become an administrator of DMC for this purpose. As an

³ In view of counsel’s letter, which is fully described in the Complaint, Defendants’ assertion (MTD p. 11) that Imam Mahmood never requested a religious exemption for DelVERS access is puzzling and contrary to the Complaint’s express allegations. He certainly did request such an exemption, first when he originally applied for DelVERS access in June 2022, explaining to Office of Vital Statistics administrator Cruz who he was and what he was hoping to achieve and offering him the example of the Pennsylvania system’s grant of access, and second through the explicit request in counsel’s April 2023 letter. The Board was obviously happy instead to leave the threat of prosecution hanging over Plaintiff’s head—no response to counsel’s April 2023 letter was ever received, and no investigative steps were ever taken. (*Id.* at ¶¶ 86, 158).

establishment operated by a funeral director holding a “limited license,” DMC is authorized to access DeIVERS. (*Id.* at ¶¶ 97-98).

Acting as a DMC administrator, the Imam submitted DeIVERS applications for DMC’s limited licensee, Mr. Coleman, and also for several non-licensed DMC administrators (including himself), in accordance with standard practice. (*Id.* at ¶ 101). Instead of granting all of these applications as a matter of course, as normally occurs, by emails dated June 12, 2024, the DeIVERS administrators granted all of the applications except for the Imam’s. (*Id.*) DeIVERS administrator Tanya Lyons explained that the Imam’s application was denied because his “email address and phone number are associated with . . . Islamic Burials.” (*Id.*) Strangely, Ms. Lyons’s email also asserted that the Imam “is not an administrator for [Distinguished Memorial Chapels],” although the application plainly stated that he was, in fact, an administrator for DMC. (*Id.*)

II. ARGUMENT

Recognizing that the Imam has, in fact, suffered a violation of his constitutional rights, the Defendants have evasively declined to attack Counts I or II of the Complaint for failure to state a claim under Rule 12(b)(6). Instead, they have elected to limit their challenge to these Counts to an objection to the Imam’s Article III standing under Rule 12(b)(1). Further, they have elected to sidestep the substance of Counts I and II by constructing a straw man theory of relief, instead of confronting the relief Plaintiff explicitly seeks.

A. The Standards.

Defendants’ argument begins by stating the wrong standard. MTD p. 4. Defendants correctly argue that their challenge to Plaintiff’s standing properly invokes Rule 12(b)(1), citing *Const. Party of PA v. Aichele*, 757 F.3d 347, 357 (3d Cir. 2014), but they invite error by asserting that the Court “may properly go beyond the pleadings and consider relevant facts without

converting the motion into one for summary judgment.” MTD 4. Rule 12(b)(1) requires the District Court to determine “whether [the] motion presents a ‘facial’ attack or a ‘factual’ attack . . . , because that distinction determines how the pleading must be reviewed.” *Id.* *Constitution Party* reversed the district court’s dismissal because it improperly applied the non-deferential “factual attack” standard, which is proper only after plaintiff’s “allegations have been controverted by a defendant’s answer or its presentation of competing facts.” *Id.*, 757 F.3d at 358-359. The proper “facial attack” standard is the same as for Rule 12(b)(6), requiring the Court to accept the plaintiff’s allegations and draw all reasonable inferences in his favor. *See Estate of Roman v. City of Newark*, 914 F.3d 789, 795 (3d Cir. 2019). *Constitution Party* held that the district court had erroneously failed to apply this standard when it rejected plaintiff’s allegations as “‘conjectural or hypothetical’ and declared that it was ‘not persuaded’ by certain allegations.” 757 F.3d at 358-359. The deferential “facial attack” standard applies to Defendants’ Article III challenge to Plaintiff’s Free Exercise claims. The Defendants’ remaining arguments invoke Rule 12(b)(6), and therefore must be decided through application of the same deferential standard. *Estate of Roman, supra*.

B. Plaintiff Has Article III Standing Because His Pled Injury Meets the Requirement of Redressability

As prefaced above, Defendants strategically have elected to focus their Article III subject matter jurisdiction argument on a claim Plaintiff did not plead. There is no room to question that Defendants are fully aware that Plaintiff challenges the combination of laws that burden his religious practice—his free exercise of religion—by denying his access to the online system used by the Delaware Division of Public Health to dispense burial/transit permits, and by threatening him with prosecution if he continues to perform his duties as Imam by leading traditional Islamic funeral rites and burials. Defendants describe Plaintiff’s claims at pages 2 to 3 of their Motion,

noting that in Count I his Free Exercise claim alleges that these laws are not neutral with respect to religion, and in Count II that they are not generally applicable.

A review of these Counts demonstrates that the reason Plaintiff challenges the neutrality and general applicability of these laws is to demonstrate that they are subject to strict constitutional scrutiny. *See* Complaint ¶¶ 182 (“A law that incidentally burdens religion is subject to strict constitutional scrutiny.”) and 190 (“A law that burdens religious exercise must satisfy strict scrutiny if it permits individualized, discretionary exemptions because such a regime creates the opportunity for a facially neutral and generally applicable standard to be applied in practice in a way that discriminates against religiously motivated conduct.”). *See Fulton v. Philadelphia*, 593 U.S. 522, 533 (2021) (applying strict scrutiny to strike down enforcement of law that incidentally burdened plaintiff’s free exercise of religion because it failed the test of general applicability); *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U. S. 520, 531-532 (1993) (“Neutrality and general applicability are interrelated, and, . . . failure to satisfy one requirement is a likely indication that the other has not been satisfied. A law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest.”).

Nor is there any question regarding the relief Plaintiff seeks in this action, which is spelled out in his prayer for relief, *see* Complaint ¶ 223 (under the heading “Remedies”), and which includes “an interim and permanent injunction requiring Defendants to grant Plaintiff access to DeLVERS for the purpose of filing death certificates and obtaining the burial-transit permits required for him to lawfully attend to the funeral rites and burials for Muslims,” a declaratory judgment that “enforcement of the Delaware Funeral Director Law ... against Plaintiff [is] unconstitutional ... in violation of the ... Free Exercise Clause of the First Amendment [and] the

Equal Protection Clause of the Fourteenth Amendment,” and “to enjoin further investigative/enforcement activity directed at Plaintiff’s funerary practices for purported unlicensed activity under the Delaware FDL and related provisions addressing funeral establishments.” *Id.* This is the same type of relief that was sought and obtained in *Fulton* (barring exclusion of the plaintiff from a government administered program) and in *Lara*, 91 F.4th 122 (3d Cir. 2024) (injunction against criminal enforcement, through arrests, of an unconstitutional licensing law). Nowhere in Plaintiff’s Complaint does he request that the embalming requirements of Delaware’s funeral director licensure statute be addressed by relief from the Court. Defendants could not reasonably believe otherwise.

Yet, they elected to base the entirety of their Article III standing defense on the argument that such relief—relief Plaintiff does not seek—could not remedy Plaintiff’s constitutional injury. Article III standing “contains three elements,” but Defendants concede the first two (injury in fact and causation), challenging only the third: “[I]t must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). For an injury to be redressable, a plaintiff must show that he “personally would benefit in a tangible way from the court’s intervention.” *Warth v. Seldin*, 422 U.S. 490, 508 (1975); *Freedom from Religion Found. Inc. v. New Kensington Arnold Sch. Dist.*, 832 F.3d 469, 482 (3d Cir. 2016)(Smith, J., concurring); *Richard Roe W.M. v. Devereux Found.*, 650 F. Supp. 3d 319, 334 (E.D. Pa. 2023).

As the Court of Appeals recently explained in *Lara*, “[t]o satisfy the Article III standing requirements of causation and redressability, a plaintiff must establish that his injury is causally connected to the government-defendant’s challenged conduct, and that enjoining that conduct is likely to redress the plaintiff’s injury.” 91 F.4th at 139 n. 26. “[W]here Plaintiffs sue the

government seeking relief from one of its regulations, redressability is easy to establish.” *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380-381 (2024). Plaintiff’s request for a judicial order granting him access to DeIVERS to file death certificates and obtain burial transit permits will authorize him to obtain custody of Muslim decedents’ remains to transport them to the Mosque for the funeral rites, and to the cemetery to complete his duties with the burials. This is relief the Court can and does traditionally grant—a mandatory injunction. *See Gulden*, 2024 U.S. App. LEXIS 25833 at *10-11. His request for declaratory and injunctive relief barring enforcement of the Delaware funeral director licensure regime against him is also relief the Court can and does traditionally grant. *See Lara*, 91 F.4th at 139 (redressability did not require licensure, which plaintiff did not need so long as criminal enforcement of the licensure requirement was barred). When applied to the claims for relief actually before the Court, as contained within the Complaint, redressability is easily established.

The Defendants’ reliance on *Witzke v. Seitz*, 2022 U.S. Dist. LEXIS 204799 (D. Del. November 10, 2022) and *Doherty v. Rutgers School of Law-Newark*, 651 F.2d 893, 899–900 (3d Cir. 1981) is therefore misplaced. In those cases, the plaintiffs were seeking bar licensure (*Witzke*) and law school admission (*Doherty*). As explained, here the Imam does not seek funeral director licensure. *Wizke* and *Doherty* are thus inapposite. Instead, *Lara* governs here, because in *Lara*, plaintiffs did not seek licensure from the statute, but instead to bar enforcement of an allegedly unconstitutional licensure statute against them for engaging in constitutionally protected activity.

Defendants further claim in their Rule 12(b)(1) motion that Plaintiff cannot challenge one other specified component of the set of laws and regulations that burden his religious exercise—namely, the education requirements for funeral director licensure, see MTD at page 8—because they are religiously neutral, citing *Emp. Div., Dep’t of Hum. Res. of Oregon v. Smith*, 494 U.S. 872

(1990). Again, the Defendants artificially circumscribe their argument to avoid addressing the injury that the Imam has alleged. It is the entire set of regulations identified in the complaint, including the embalming education requirements, and their manner of application by the Defendants, that are causing the Imam's injury in fact, burdening his religious exercise.

While the Defendants might argue that these laws are religiously neutral because they apply to both religious and secular activity, that argument misconstrues the concept of religious neutrality under *Smith* and its progeny. "Facial neutrality is not determinative," because "[t]he Free Exercise Clause... forbids subtle departures from neutrality, and covert suppression of particular religious beliefs, [and] protects against governmental hostility which is masked as well as overt." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993) (internal quotations and citations omitted). See also *Al Falah Ctr. v. Twp. of Bridgewater*, 2013 U.S. Dist. LEXIS 190076 (D. N.J. September 30, 2013) (denying summary judgment on Free Exercise claim brought by Muslim plaintiffs who sought to build a Mosque where record contained disputed evidence that township's facially neutral enactments preventing construction lacked neutrality). Further, while Defendants, in their Rule 12(b)(1) motion, made this single, narrowly circumscribed, unbriefed and unexplained *ipse dixit* assertion of religious neutrality of the education requirements for licensure, nowhere have they attempted to argue that the set of laws challenged by Plaintiff satisfies the requirement of general applicability. See *Fulton*, 593 U.S. at 533 (where record contained evidence that neutrality standard was not satisfied, Court applied strict scrutiny to a system of individualized exemptions). See also *Spivack v. City of Philadelphia*, 109 F.4th 158, 171 (3d Cir. 2024) ("Even if a government policy is neutral, it must also be generally applicable to avoid strict scrutiny"). Here, the Complaint amply pleads numerous provisions under which the challenged laws and regulations invite individualized, discretionary

exemptions. *See* Complaint ¶¶ 127-143 (discussing provisions under Title 16 that call for the Division of Public Health’s determination of whether a person not holding a funeral director license is “acting as such”); ¶¶ 144-162 (discussing numerous provisions under Title 24 relating to funeral directors and funeral establishments that provide for and call for various individualized exemptions); ¶¶ 172-180 (further discussing numerous provisions of the relevant laws and regulations providing for, implicating or otherwise inviting individualized exemptions).

Because their Article III argument fails, and they have raised no other challenge to Counts I and II, Plaintiff respectfully submits he is entitled to discover and present evidence on his First Amendment Free Exercise claims.

C. Claims Under the 14th Amendment.

Unlike their limited challenge to Counts I and II, Defendants move to dismiss Count III, Plaintiff’s Equal Protection claim, under Rule 12(b)(6). To defeat this defense, Plaintiff must allege facts which, together with the plaintiff-favoring reasonable inferences therefrom, show that Defendants “intentionally discriminate[] against a reasonably identifiable group,” here, Plaintiff’s Muslim religious affiliation, and that such affiliation was a “substantial factor” in the differing, discriminatory treatment Defendants applied to him. *Hassan v. City of New York*, 804 F.3d 277, 294 (3d Cir. 2015) (reversing dismissal of Equal Protection claims under Rules 12(b)(1) and 12(b)(6)). Plaintiff need not allege that the policy Defendants are applying is facially discriminatory—he can instead prevail by showing Defendants intentionally applied it more “severely” or onerously due to his Muslim religious affiliation, *id.*, 804 F.3d at 294-295, or intended to “inhibit the exercise of [his] constitutional rights.” *Martin v. Diguglielmo*, 644 F. Supp. 2d 612, 622 (W.D. Pa. 2008) (as quoted by Defendants at MTD p. 10). The Complaint must also allege

facts showing a “discriminatory effect,” *i.e.*, Defendants applied the policy in a manner that treated him differently than non-Muslims. *Pitts v. State*, 646 F.3d 151, 157 (3d Cir. 2011).

Plaintiff’s detailed allegations recounting Plaintiff’s efforts to gain access to DeIVERS satisfy these requirements. Defendants denied his DeIVERS application in June 2022 because he is a Muslim seeking to facilitate his ability to act as Imam in performing Muslim funeral rites and Islamic burials. The DeIVERS administrators were aware Plaintiff was seeking a religious exemption from the funeral director license requirement for access, but failed to either consider the request themselves or inform Plaintiff that the Division had authority to grant such an exemption and had adopted regulations explicitly providing for religious exemptions. (Complaint ¶ 138).

Setting aside Defendants’ argument that the regulation cited in the Complaint is not applicable,⁴ the statutes governing filing death certificates and issuing burial/transit permits grant flexibility to determine that a person, other than a licensed funeral director, is “acting as such,” and therefore may be permitted access. Complaint ¶¶ 127-135 (discussing 16 Del. C. §§ 3123, 3151-3152). Yet, in denying Plaintiff’s application, Mr. Cruz simply stated that Plaintiff would be denied access because he was not a licensed funeral director *and* was not “acting as such.” A week later, Mr. Cruz’s supervisor, Mardelle Dizon, walked Mr. Cruz’s “person acting as such” ruling back, stating that the only reason Plaintiff was being denied access was his lack of a license, claiming that she had been so advised by counsel. (Complaint ¶¶ 62-63).

⁴ Defendants argue that 16 Del. Admin. Code § 4204-6.0.10.3, only applies to the remains of decedents who died of specified contagious diseases. MTD at 11. This argument makes no sense—why would an exemption only apply in the case of higher risk to public health, and be withheld from Plaintiff’s Islamic burials, which pose no risk whatsoever to the public health? *See* Complaint ¶ 169.

That claim, however, lacks credibility because it is inconsistent with the statutory text allowing non-licensees to be considered “acting as such.” *See, e.g.*, 16 Del. C. §§ 3123, 3151-3152). Ms. Dizon’s next statement, however, reveals the real source of her incorrect legal assertion—the Board Defendants. She wrote that if Plaintiff wanted access, he should contact the Board. (Complaint ¶63). From this series of communications, it is reasonably inferable that more was going on here than the DeIVERS administrators were willing to write down in an email denying a Muslim clergyman access to facilitate Islamic burials—burials that Defendants had come to resent because they believed Muslims were trying to get away with “free burials,” a sentiment it is reasonable to infer they share with their industry friend, Mr. Timlin. (*Cf.* SOF at 8).

Subsequent events confirm these inferences. Although Defendants claim in their Motion that Plaintiff never asked for a religious exemption, (MTD at p. 11), they ignore not only the June 2022 denial of DeIVERS access, but also counsel’s explicit April 2023 request for a religious exemption for access to facilitate the Imam’s free exercise of religion. (Complaint ¶85). The fact that instead of considering that request, Investigative Supervisor Miller—a frequent Board meeting attendee (*see. e.g. id.* ¶ 82 (June 25, 2023 Board meeting), —ignored it, never responding (*id.*, ¶ 86), only adds to the evidence implicating the Board Defendants’ determination to block Plaintiff’s free exercise of his religion. *See Martin*, 644 F. Supp. 2d at 622 (discriminatory purpose may be shown by allegations that Defendant sought to inhibit exercise of constitutional rights).

Finally, the June 2024 denial of Plaintiffs’ DeIVERS application as an administrator of DMC demonstrates the DeIVERS administrators’ intentional denial of Plaintiff’s right to equal protection of the laws based on Plaintiff’s Muslim religion. (*Id.*, ¶¶ 99--102). As in June 2022, DeIVERS supervisor Mardelle Dizon was involved. (*Id.*, ¶ 101). Recognizing that the Imam had found a licensed funeral director willing to facilitate his Islamic burials, the DeIVERS

administrators acted to prevent it. They denied Plaintiff access to DeIVERS as a non-licensee employee of license holder Mr. Coleman, telling Plaintiff explicitly the denial was because they knew he was associated with Islamic burials, while at the same time granting the applications of DMC's other, non-Muslim, non-licensed employees.

D. Plaintiff's § 1985 Claim is Viable Because it Rests Atop Viable § 1983 Claims, and the Board Defendants Acted for their Personal Self-Interests, and in Concert with an Anonymous Third Person

The Defendants object to the Imam's claims under § 1985, stating, "If Plaintiff does not possess standing to assert a constitutional violation pursuant to 42 U.S.C. § 1983, then his claim under § 1985 must fail." To the extent this argument is correct (purely as a logical syllogism), it is irrelevant because, as demonstrated above, the Imam has standing to press his claims.

Defendants also argue that Plaintiff's conspiracy claim must fail because the state and its officials are a single entity that cannot conspire with itself. This argument overlooks Plaintiff's allegations that the Board Defendants conspired with an unknown third person to improperly initiate a complaint against Plaintiff for unlicensed practice of funeral directing that the Board lacked authority to initiate itself, that the Board Defendants exceeded the scope of their authority, and that they are industry participants, who as a matter of reasonable inference acted for personal self-interest. (Complaint ¶¶ 4, 7-8, 24-30, 74, 78-79, 82-83, 113-114, 120, 151-152, 212); *Robison v. Canterbury Village, Inc.*, 848 F.2d 424, 431 (3d Cir. 1988) (intra-entity conspiracy doctrine inapplicable when "officer is acting in a personal, as opposed to official, capacity, or if independent third parties are alleged to have joined the conspiracy"). Further, the Third Circuit has rejected the intra-entity conspiracy doctrine in the context of Section 1985. *See Novotny v. Great American Federal Savings & Loan Ass'n*, 584 F.2d 1235 (3d Cir. 1978), *vacated on other grounds*, 442 U.S. 366 (1979); *United States v. Basroon*, 38 Fed. Appx. 772 at *781 (3d Cir. May 30, 2002) (noting

rejection of the doctrine under Section 1985). Finally, the detailed story told by the Complaint provides an ample basis to infer Defendants' conspiracy. *See In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 337, 361-362 (3d Cir. 2010) (reversing dismissal where facts alleged permitted inference and reasonable expectation discovery would yield evidence probative of conspiracy). Accordingly, Defendants' challenge to the conspiracy claim should be rejected.

E. Claims Under Delaware's Constitution.

Plaintiff consents to the dismissal of his claim under the Delaware Constitution without prejudice.

F. The Claims Fully Comport With the 11th Amendment.

Defendants' 11th Amendment arguments regarding official capacity versus individual capacity claims are without merit. The Eleventh Amendment does not bar suits for declaratory and injunctive relief against state officials in their official capacities where plaintiff challenges the constitutionality of their actions, nor suits against such officials in their individual capacity for monetary damages. *Evans v. DOC Comm'r Claire Dematteis*, 2024 U.S. Dist. LEXIS 78439 at *16 (D. Del. April 30, 2024). *See also Hafer v. Melo*, 502 U.S. 21, 30-31 (1991). Plaintiff's claims fall squarely within the permitted categories. *See* Complaint, Caption and ¶¶ 15, 223.

III. CONCLUSION

For the reasons stated herein, the motion to dismiss should be denied. To the extent that the Court determines otherwise, the Imam requests that such dismissal be without prejudice and with leave to re-plead.

[signature page follows]

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Dated: January 3, 2025

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IMAM MAHMOOD AHMAD,)	
Plaintiff,)	
)	
v.)	C.A. No. 24-0741-GBW
)	
)	
KATHLEEN JENNINGS, et al.,)	
Defendants.)	

**CERTIFICATE OF SERVICE: PLAINTIFF’S OPPOSITION TO DEFENDANTS’
MOTION TO DISMISS**

A copy of the aforesaid document has been filed via PACER and served electronically and via U.S Post Mail on:

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