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Liberties Union**

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October 25, 2005

Robert Tetens
Washtenaw County Parks and Recreation Director
2230 Platt Road
P.O. Box 8645
Ann Arbor, MI 48107-8645

Re: Muslim Women and Rolling Hills Water Park

Dear Mr. Tetens,

I am writing in regards to an incident that occurred at Rolling Hills Water Park on June 14, 2005. Jumanah Saadeh, a seventh-grade student at Ann Arbor Open School, visited Rolling Hills on a class trip and was denied swimming privileges because she was wearing clothing covering her body in accordance with her Islamic religious beliefs. As a Muslim, Jumanah's beliefs allow her to only expose her hands and face. Jumanah had been swimming in nylon pants, a light cotton t-shirt, and a head covering ("hijab") for thirty minutes when she was addressed sternly by the park's supervisor, Steve Wyatt, who said, "Hey you! Come here! You can't swim in that." Mr. Wyatt cited health regulation violations as the reason why Jumanah was not allowed to swim.

When contacted regarding the health regulation that was being violated by Jumanah's clothing, you specifically cited a Department of Environmental Quality regulation, R325.2192, section 6, which bars street clothes as acceptable attire in the pool area. There are no further definitions of what constitutes "street clothes" or a traditional "bathing suit." Jumanah was not wearing her swimming clothes on the street; she changed into them once she was about to enter the pool. Also, the clothes were made of the same synthetic material as traditional bathing suits and would not constitute a health or safety hazard. (For more facts, see the attached Ann Arbor News column).

Jumanah says she felt hurt that everyone was swimming without a problem and she was essentially forced to choose between her religious obligations and joining her friends. She is also hurt and confused because she fully participated in a previous field trip to Rolling Hills a year ago and has also swam in various Ann Arbor area pools in similar clothing without incident.

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The actions of Mr. Wyatt and Rolling Hills Water Park raise serious constitutional and civil liberties issues. The Michigan Constitution requires government agencies to accommodate the free exercise of one's religion unless the government regulation at issue advances a compelling state interest and there are no less restrictive or obstructive means of advancing the state interest other than the regulation. 1963 Const, art I, § 4; *McCready v Hoffius*, 459 Mich 131, 143; 586 NW2d 723 (1998), *vacated in part and remanded*, 459 Mich 1235; 593 NW2d 545 (1999); *Reid v Kenowa Hills Public Schools*, 261 Mich App 17, 25; 680 NW2d 62, 68 (2004); *Porth v Roman Catholic Diocese of Kalamazoo*, 209 Mich App 630, 635; 532 NW2d 195, 198 (1995). As the Court of Appeals stated in *Porth*, "Because religious liberty is a fundamental freedom, our courts have a firmly rooted tradition of applying a compelling governmental interest test to its regulation." *Id.* at 198.

An observant Muslim female who follows the tenets of her religion by dressing modestly should be able to avail herself of the park's offerings. Jumanah should not have to choose between violating her religious beliefs and using the park's public facilities for which she paid. There is no reason why Muslim women should be excluded from the pool based on their religious beliefs. Washtenaw County has a history of accepting people of diverse religious and cultural backgrounds, and the actions taken against Jumanah at Rolling Hills threaten that long-standing tolerant environment.

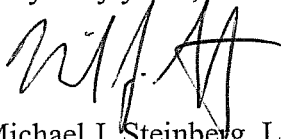
Although the ACLU recognizes the importance of the health regulation, we feel that it is possible to reach a solution that is sensitive to the concerns of Muslim women while still providing for the safety and health of the park's patrons. We would like to arrange a meeting where we can develop a mutually agreeable solution. We envision that participants in the meeting would include Jumanah and her mother, representatives of the Washtenaw County Branch of the ACLU, a representative of CAIR-Michigan (Council for American Islamic Relations of Michigan), a leader of the Muslim Community Association of Ann Arbor, you, Washtenaw County Commissioner Conan Smith and whoever else you think would be appropriate.

Assuming that we can reach an agreement on a policy where Muslim women will not face the humiliation faced by Jumanah, she and her family are willing to waive any claim to damages arising from this incident.

I have spoken about this incident with Conan Smith who is not only my county commissioner but also a member of the Washtenaw County Parks Commission. Mr. Smith has generously agreed to help coordinate this meeting. Gayle Rosen, the co-chair of the Washtenaw County ACLU Lawyers Committee, will be the cooperating attorney and point person for the ACLU of Michigan in this matter. We would like to meet after the end of Ramadan, so if you could provide us with some possible meeting dates in early or mid-November, we would greatly appreciate it.

Thank you in advance for your cooperation and we look forward to the meeting.

Very truly yours,



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cc: Jumanah and Sahar Saadeh
Nazih Hassan, Muslim Community Association
Conan Smith, County Commissioner
Robert Guenzel, County Administrator
Dawoud Walid, CAIR-Michigan



Everything Michigan

Modesty gets a dousing at water park

Tuesday, June 28, 2005

If you go to Rolling Hills Water Park this summer, you're likely to see:

- A man with a big beer gut in form-fitting Speedos.
- A 60-something woman with multiple tattoos in a low-cut gold lame number.
- Lots of females running around in as little as they can and still be legal.

And here's who you won't see in the pool at Rolling Hills:

- An observant Muslim girl wearing modest attire.

That's just not acceptable.

On one of the last days of school, Jumanah Saadeh, 13, accompanied her schoolmates from Ann Arbor Open to the water park, where she changed into her ensemble: long gym pants and a long-sleeved collared shirt for swimming. When she got in the water, however, Park Superintendent Steve Wyatt told her she'd have to get out because it was against the health code for her to swim in "street clothes."

Teacher Mary Wigton debated the issue with Wyatt, asking how else a Muslim woman would be able to swim without compromising her religious beliefs. Wyatt insisted he couldn't break the rule when he has had to refuse others who tried to swim in street clothes.

"We tried to ask, 'What would you have her do?' They wouldn't get off their line, which is basically that it's street clothes. That was what was frustrating. How can you say those were street clothes? She brought them in separately. They were clean. ... Historically, and currently, these are not precise definitions."

Allan Loeb, a school counselor and vice president of the Ann Arbor Education Association, also talked with the officials, who cited a state Department of Environmental Quality regulation barring street clothes in the pool.

Loeb argued that the clothes were fresh and clean and would not present a health hazard; that they were made of the same synthetic fabrics as traditional bathing suits (not a sodden, heavy garment that might drag beneath the surface of the water) and would not cause a safety hazard.

They didn't budge.

Jumanah, a sensitive girl who doesn't like to upset anyone, especially adults, said it was fine; that

she had brought some books along in case this happened and she would sit on the side and read.

Wigton told Jumanah she would accept responsibility for her behavior and encouraged her to swim, anyhow. Jumanah got a few inches in the water, but didn't feel right about it.

Many Muslim women avoid public pools because of these issues, said Jumanah's mother, Sahar Saadeh.

"We don't feel comfortable being there," she said. "It's just a feeling."

In 2003, a Florida judge turned down a Muslim woman's request to allow her face to be covered by a veil on her driver's license.

That makes sense. Police need to be able to identify a potential criminal from the picture on her license.

But this is a young girl who simply wanted to change into clean, modest attire and splash around in the pool with her friends.

As for street clothes, where's the line? In any pool, you'll see guys wearing shorts they wear to the mall, and children wearing T-shirts and hats for sun protection. We're all supposed to take soapy showers before we get in the pool, but that doesn't always happen, either.

Should we single out a girl who simply wants to maintain her modesty? Are we that by-the-book inflexible?

Wyatt says the problem has been trying to find a swimming garment that would be suitable for the conservative Muslim woman that is easily distinguishable from street clothes. In fact, he's found a couple of full-body swimsuits from an aquatic supply catalog that he's eager to show to the Muslim community.

He told me this is an issue that comes up time after time, and it's been bothering him for years.

"It happens everywhere," he said. "We're not the only community struggling with this."

But at Ypsilanti's Rutherford Municipal Pool, observant Muslim women are allowed in the water if they wear a swimming suit under their clothes.

"As long as it's not your street clothes you walked here in that may be dirty," said pool manager Eric Rudolph. "The state health code says clean swimming attire. So it's harder with little boys running around in their shorts, because you know they've probably been playing kickball in them before they came here. But the way it's worded, yes. Clean swimming attire."

And Jumanah would have been admitted to any of Ann Arbor's public pools, said Nancy Burghardt, recreation facilities unit supervisor for the city.

"We don't want to get to the point where we can't make an exception where it's reasonable and not causing hardship to anyone," she said, noting that clothing issues more commonly involve matters of exposure such as wet T-shirts and thong bikinis.

AAPS spokeswoman Liz Margolis says the district is working closely with the county to come up

with an acceptable clothing option plan for Muslim students, and that field trips to Rolling Hills will be halted until that happens. She said part of the problem is that the state could not help the county clarify the definition of "street clothing."

Although Sahar Saadeh has met with the ACLU, she doesn't want to sue. And she understands that there are rules meant to keep everyone safe and healthy.

"But there should be some accommodations," she said. "We would like to come to an agreement. I would like my daughter to be able to go to any pool the way she feels comfortable. Not the way others feel comfortable."

The Rolling Hills Water Park is one of the best places in the county to spend a hot summer day. Let's hope this glitch gets straightened out so that our Muslim neighbors can feel welcome.

Reporter Jo Mathis can be reached at jmathis@annarbornews.com or (734) 994-6849.

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