

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

THE ISLAMIC SOCIETY OF
BASKING RIDGE and
MOHAMMAD ALI CHAUDRY,

Plaintiffs,

v.

TOWNSHIP OF BERNARDS,
et al.,

Defendants.

No. 3:16-cv-01369-MAS-LHG
(Hon. Michael A. Shipp)

Motion Date: June 6, 2016

Reply Brief in Support of Motion of American Association of Jewish
Lawyers and Jurists, Baptist Joint Committee for Religious Liberty,
Becket Fund for Religious Liberty, Center for Islam and Religious
Freedom, Ethics and Religious Liberty Commission of the Southern
Baptist Convention, Interfaith Coalition on Mosques, International
Mission Board of the Southern Baptist Convention, International
Society for Krishna Consciousness, Muslim Bar Association of New
York, National Asian Pacific American Bar Association, National
Association of Evangelicals, New Jersey Muslim Lawyers Association,
Queens Federation of Churches, Sikh American Legal Defense and
Education Fund, Sikh Coalition, South Asian Bar Association of New
Jersey, South Asian Bar Association of New York, and Unitarian
Universalist Legislative Ministry of New Jersey to Appear as
Amici Curiae in Support of Plaintiffs

Of Counsel:

Hannah C. Smith
Luke W. Goodrich
THE BECKET FUND FOR
RELIGIOUS LIBERTY
1200 New Hampshire Ave. NW,
Suite 700
Washington, DC 20036
Tel: 202-955-0095
hsmith@becketfund.org

Christopher J. Paoletta
NJ Bar No. 00802-2000
REICH & PAOLELLA LLP
111 Broadway, Suite 2002
New York, NY 10006
Tel: 212-804-7090
Fax: 212-804-7095
cpaoletta@reichpaoletta.com

(cont'd on next page)

Of Counsel:

Asma T. Uddin
CENTER FOR ISLAM AND
RELIGIOUS FREEDOM
1875 Connecticut Ave. NW
10th Floor c/o WeWork
Washington, DC 20009

Counsel for Amici Curiae

In response to *Amici*'s five-page brief in support of their motion for leave to participate, defendants have filed a *20-page* opposition. But defendants' kitchen-sink submission isn't just prolix: it is wrong. It misapprehends *Amici*'s interests in this case, misstates the arguments presented in their proposed brief, and ignores controlling case law. In particular, defendants rely heavily on a purported four-factor *amicus* test without disclosing that the Third Circuit has disavowed two of the requirements that they contend *Amici* have failed to meet. *See Neonatology Assocs., P.A. v. C.I.R.*, 293 F.3d 128, 131-33 (3d Cir. 2002).

First, defendants argue that the filing of an *amicus* brief at the pre-trial stage is inappropriate because "[t]here are multiple factual issues." Opp. at 6. But the matter before the Court is a Rule 12(c) motion for partial judgment on the pleadings, which implicates questions of law, not fact. *See Hoff Supply Co. v. Allen-Bradley Co.*, 750 F. Supp. 176, 177 (M.D. Pa. 1990). Plaintiffs' motion—and the proposed *amicus* brief—rely solely on the admissions contained in defendants' answer. They do not ask the Court to resolve any factual disputes.

Moreover, because this motion may well dispose of the central RLUIPA issues in the case, it is appropriate for *Amici* to seek leave to

participate now. This Court has routinely allowed *amici* to participate during early stages of litigation. *See, e.g., Nat'l Union Fire Ins. Co. of Pittsburgh v. K. Hovnanian Enters., Inc.*, No. 3:10-CV-6258, 2011 WL 4915899, at *1 (D.N.J. Oct. 17, 2011) (motion to dismiss); *United States v. Alkaabi*, 223 F. Supp. 2d 583, 592 (D.N.J. 2002) (motion to dismiss).

Second, defendants contend that *Amici* have “no genuine ‘special interest’” in the outcome of this case. Opp. at 8. Not so. Far from being “so broad as to be meaningless,” *id.*, *Amici’s* interests in the protection of religious pluralism and the proper application of RLUIPA are concrete and compelling. Several of the *Amici* are religious denominations with houses of worship in New Jersey; they rely on RLUIPA to protect those houses of worship from improperly burdensome land-use regulation. Other *Amici* are legal and civil liberties organizations who regularly represent clients involved in RLUIPA litigation, both in New Jersey and across the nation.¹ Any decision by this Court construing RLUIPA will be cited by other

¹ For example, the Becket Fund for Religious Liberty has successfully represented both Muslim and Christian congregations in RLUIPA challenges to local land-use decisions before this Court. *See Albanian Associated Fund v. Twp. of Wayne*, No. 06-cv-3217, 2007 WL 2904194 (D.N.J. Oct. 1, 2007); *Living Faith Ministries v. Camden County Improvement Auth.*, Civ. No. 05-cv-877 (D.N.J. filed Feb. 15, 2005).

parties—including *Amici* and the municipalities they often litigate against—in similar cases involving challenges to land use regulations that burden religious exercise. The outcome of this case could directly affect *Amici's* own free exercise rights and those of their clients.

Third, defendants contend that *Amici's* participation is unnecessary because their interests are already “adequately represented” by plaintiffs’ counsel; indeed, they trumpet that “*Amici do not even address this requirement.*” Opp. at 8-10 (emphasis in original). But that is because the Third Circuit squarely *rejected* any such “requirement” over a decade ago. As then-Judge Alito explained:

Even when a party is very well represented, an amicus may provide important assistance to the court. “Some amicus briefs collect background or factual references that merit judicial notice. Some friends of the court are entities with particular expertise not possessed by any party to the case. Others argue points deemed too far-reaching for emphasis by a party intent on winning a particular case. Still others explain the impact a potential holding might have on an industry or other group.” Luther T. Munford, *When Does the Curiae Need An Amicus?*, 1 J. App. Prac. & Process 279 (1999). Accordingly, denying motions for leave to file an amicus brief whenever the party supported is adequately represented would in some instances deprive the court of valuable assistance.

Neonatology Assocs., 293 F.3d at 132 (emphasis added);² *accord Acra Turf Club, LLC v. Zanzuccki*, No. CIV.A. 12-2775, 2014 WL 5465870, at *5 (D.N.J. Oct. 28, 2014).³

² Judge Alito's single-judge opinion on the motion in *Neonatology Associates* was reported and delivered as the opinion of the Court. 293 F.3d at 129. Its analysis has been widely cited and followed by courts both within and outside the Third Circuit. *See, e.g., Tenaflly Eruv Ass'n, Inc. v. Borough of Tenaflly*, 195 F. Appx. 93 (3d Cir. 2006); *Alkaabi*, 223 F. Supp. 2d at 592; *Acra Turf Club*, 2014 WL 5465870, at *5-*6; *CSX Transp., Inc. v. City of Philadelphia*, No. 04-CV-5023, 2005 WL 1677975, at *6 (E.D. Pa. July 15, 2005); *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 137 (D.D.C. 2008); *Weininger v. Castro*, 418 F. Supp. 2d 553, 555 (S.D.N.Y. 2006); *Animal Prot. Inst. v. Martin*, No. CV-06-128-BW, 2007 WL 647567, at *3 (D. Me. Feb 23, 2007); *Triad Int'l Maint. Corp. v. Southern Air Transp., Inc.*, No. 2:04-CV-1200, 2005 WL 1917512, at *3 (S.D. Oh. Aug. 10, 2005).

³ Defendants' heavy reliance on *Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp.*, 149 F.R.D. 65 (D.N.J. 1993), is misplaced. That case was decided before the Third Circuit clarified the appropriate *amicus* standards in *Neonatology Associates*. Indeed, the *Neonatology Associates* decision expressly declined to adopt the strict standards set forth in *Liberty Lincoln Mercury*, characterizing the case as one of "a small body of judicial opinions that look with disfavor on motions for leave to file amicus briefs." 293 F.3d at 130. Similarly, the unreported district court opinion in *Profl Drug Co. Inc. v. Wyeth Inc.*, No. CIV.A. 11-5479, 2012 WL 4794587 (D.N.J. Oct. 3, 2012), is inapposite because it does not even discuss the standards set forth in *Neonatology Associates*. Rather, it cites cases like *Liberty Lincoln Mercury*, *supra*, and *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997), whose approaches were specifically rejected by the Third Circuit. *See* 293 F.3d at 132.

Fourth, defendants assert that *Amici's* “professed [sic] information” would not be useful to the Court. Opp. at 10. They argue that *Amici's* input is not needed because “courts have been interpreting the nuances of RLUIPA and its legislative history for years.” *Id.* at 11. This is a non sequitur. Of course there is a large and complex body of case law surrounding RLUIPA—and that is precisely why the expertise of *Amici*, who have extensive and unique experience both in assisting in the drafting of the statute and in litigating nationwide under the Act, would be helpful to the Court. *See* Opening Br. at 3-4.

Nor, contrary to defendants’ claim, is *Amici's* submission merely duplicative of plaintiffs’ brief. For example, *Amici* provide a detailed discussion of RLUIPA’s legislative history, with citations to the Congressional Record, that is not provided in plaintiffs’ brief. *Amicus* Br. at 3-4. They also provide analysis placing RLUIPA’s protections within the broader context of First Amendment free exercise jurisprudence—again, a topic not directly addressed by plaintiffs. *Id.* at 5-8. And they set forth relevant case law—including the decisions in *Islamic Ctr. of Miss., Inc. v. City of Starkville*, 840 F.2d 293 (5th Cir. 1988), and *Hollywood Cmty. Synagogue, Inc. v. City of Hollywood*, 430

F. Supp. 2d 1296 (S.D. Fla. 2006), each involving the discriminatory application of land-use laws against a single house of worship—that is not cited in plaintiffs’ brief. *Amicus* Br. at 8-10. This information is clearly relevant to the proper application of RLUIPA’s non-discrimination provision.

Finally, in an apparent about-face from their claim that *Amici* have no “special interest,” defendants argue that the proposed brief should be barred because *Amici* are “patently partial” to plaintiffs’ position. Opp. at 16. But defendants do not even attempt to allege that *Amici* have any pecuniary interest in the case’s outcome. And, in any case, the purported “requirement” of impartiality—like defendants’ supposed “requirement” of inadequate representation—was expressly rejected by the Third Circuit in *Neonatology Associates*.

Like defendants here, the appellants in *Neonatology* “quote[d] the comment that ‘[t]he term ‘amicus curiae’ means friend of the court, not friend of a party.’” 293 F.3d at 131 (citation omitted); *compare* Opp. at 18-19. In rejecting their position, the Third Circuit explained:

Rule 29 requires that an amicus have an “interest” in the case, and the appellants’ argument that an amicus must be “impartial” is difficult to square with this requirement. . . . The implication of this statement seems to be that a strong

advocate cannot truly be the court's friend. But this suggestion is contrary to the fundamental assumption of our adversary system that strong (but fair) advocacy on behalf of opposing views promotes sound decision making. Thus, an amicus who makes a strong but responsible presentation in support of a party can truly serve as the court's friend.

Id. (citations omitted); *see also Acra Turf Club*, 2014 WL 5465870, at *6; *Alkaabi*, 223 F. Supp. 2d at 592.

In short, it is “perfectly permissible” for an amicus to “take a legal position and present legal argument in support of it.” *Funbus Sys., Inc. v. State of Cal. Pub. Utils. Comm’n*, 801 F.2d 1120, 1125 (9th Cir. 1986). *Amici* have a definite interest in the proper application of RLUIPA and a particular viewpoint as to how that statute should be interpreted—a viewpoint that supports plaintiffs’ position in this case. Neither of these facts disqualify *Amici* from assisting the Court by sharing their expertise on the proper construction of RLUIPA.

* * * * *

Amici’s proposed brief is relevant, useful, and clearly complies with the requirements of Rule 29 as interpreted by the Third Circuit. And even if the question were close, the Third Circuit makes clear that “it is preferable to err on the side of granting leave.” *Neonatology Assocs.*, 293 F.3d at 133. For these reasons, *Amici* respectfully request

that the Court grant their Motion for Leave to Appear as *Amici Curiae*⁴ and accept the accompanying brief for filing.

Dated: May 26, 2016

Respectfully submitted,

Of Counsel:

Hannah C. Smith
Luke W. Goodrich
THE BECKET FUND FOR
RELIGIOUS LIBERTY
1200 New Hampshire Ave. NW,
Suite 700
Washington, DC 20036
Tel: 202-955-0095
hsmith@becketfund.org

/s/ Christopher J. Paolella

Christopher J. Paolella
NJ Bar No. 00802-2000
REICH & PAOLELLA LLP
111 Broadway, Suite 2002
New York, NY 10006
Tel: 212-804-7090
Fax: 212-804-7095
cpaolella@reichpaolella.com

Of Counsel:

Asma T. Uddin
CENTER FOR ISLAM AND
RELIGIOUS FREEDOM
1875 Connecticut Ave. NW
10th Floor c/o WeWork
Washington, DC 20009

Counsel for Amici Curiae

⁴ Despite defendants' apparent confusion, *Amici* are not seeking—and have never asked for—"global permission to weigh in during this litigation from this point forward." Opp. at 19-20. They seek only leave to participate as *amici* through the filing of their proposed brief. Should *Amici* wish to participate during a later stage of this proceeding, they would seek the Court's leave to do so.

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2016, a copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification to all counsel of record.

/s/ Christopher J. Paolella

Christopher J. Paolella