

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**SOCIETY OF AMERICAN BOSNIANS AND
HERZEGOVINIANS, and UNITED STATES OF
AMERICA,**

Plaintiffs,

v.

CITY OF DES PLAINES, et al.,

Defendants.

Consolidated Cases:

No. 13 CV 6594

No. 15 CV 8628

(Hon. Matthew F. Kennelly)

**MOTION OF THE BECKET FUND FOR RELIGIOUS LIBERTY
FOR LEAVE TO APPEAR AND TO FILE *INSTANTER* A BRIEF AS *AMICUS CURIAE***

The Becket Fund for Religious Liberty (“Becket”), a non-partisan, non-profit, public-interest legal and educational institute that protects the free expression of all religious traditions, through its counsel Charles G. Wentworth of The Law Office of Lofgren & Wentworth, P.C., respectfully submits this Motion for Leave to Appear and to File *Instanter* a Brief as *Amicus Curiae* in support of Plaintiffs’ motion for summary judgment in this consolidated matter. For the reasons set forth below, the Becket respectfully requests that this Court grant the motion and permit the appearance and the filing of the *amicus* brief attached hereto as Exhibit A.

THE INTEREST OF THE *AMICUS CURIAE*

1. Becket is the nation’s foremost defender of religious liberty for people of all faiths. Founded in 1994, the Becket has represented Buddhists, Christians, Hindus, Jews, Muslims, Native Americans, Santeros, Sikhs, and Zoroastrians, among others, in lawsuits across the country and around the world. Becket has been at the forefront of religious land-use litigation since the enactment of the Religious Land Use and Institutionalized Persons Act (“RLUIPA”). In

fact, Becket represented the plaintiffs in the first case resolved under the Act. *See Haven Shores Cmty. v. Grand Haven, City of, et al.*, No. 1:00-cv-00175 (W.D. Mich. Mar. 13, 2000). Since then, Becket has litigated lawsuits under RLUIPA across the country. With its unique perspective representing houses of worship from diverse faith traditions, Becket is especially concerned that RLUIPA be accurately interpreted and fully enforced.

2. Becket and many of its current and future clients will be affected by the outcome of this litigation. RLUIPA land use litigation comprises a significant portion of Becket's litigation practice. *See, e.g., Elijah Grp., Inc. v. City of Leon Valley, Tex.*, 643 F.3d 419 (5th Cir. 2011); *Rocky Mountain Christian Church v. Bd. of Cty. Comm'rs*, 613 F.3d 1229 (10th Cir. 2010); *Redwood Christian Schs. v. Cty. of Alameda*, No. C-01-4282, 2007 WL 214317 (N.D. Cal. Jan. 26, 2007); *Congregation Kol Ami v. Abington Twp.*, No. Civ.A. 01-1919, 2004 WL 1837037 (E.D. Pa. Aug. 17, 2004); *Castle Hills First Baptist Church v. City of Castle Hills*, No. 01-CA-1149, 2004 WL 546792 (W.D. Tex. Mar. 17, 2004); *United States v. Maui Cty.*, 298 F. Supp. 2d 1010 (D. Haw. 2003); *Cottonwood Christian Ctr. v. Cypress Redev. Agency*, 218 F. Supp. 2d 1203 (C.D. Cal. 2002). Becket's representation has included multiple Muslim communities involved in land-use disputes such as at issue here. *See Albanian Associated Fund v. Twp. of Wayne, N.J.*, No. 06-cv-3217, 2007 WL 4232966 (D.N.J. Nov. 29, 2007); *United States v. Rutherford Cty., Tenn.*, No. 12-cv-737, 2012 WL 2930076 (M.D. Tenn. July 18, 2012). Most recently it has requested leave to file an *amicus* brief in support of another Muslim community in a RLUIPA case in New Jersey. *See Brief of Amici Curiae, Islamic Soc'y of Basking Ridge v. Twp. of Bernards* (D.N.J. 2016) (No. 16-1369). Thus, ensuring that this Court accurately interprets and fully enforces RLUIPA to protect the free and open expression of all religious traditions is critically important to Becket and to its clients.

**BECKET’S BRIEF WILL AID THIS COURT’S
CONSIDERATION OF THE RLUIPA ISSUES**

3. *Amici* are “welcome and helpful” in the Northern District of Illinois whenever they “contribute[] to the clarity of the issues.” *United States v. Bd. of Educ. of City of Chicago*, 663 F. Supp. 2d 649, 661 (N.D. Ill. 2009).¹ “Relevant factors in determining whether to allow an entity the privilege of being heard as an amicus include whether the proffered information is timely, useful, or otherwise.” *United States v. Board of Educ. Of the City of Chicago*, No. 80-5124, 1993 WL 408356, at *3 (N.D. Ill. Oct. 12, 1993) (citations and quotation marks omitted).

4. In recent years, this Court has granted numerous *amici* leave to file briefs. *See, e.g., Anheuser-Busch, Inc. v. Schnorf*, 738 F. Supp. 2d 793, 800-02 (N.D. Ill. 2010); *Ctr. for Individual Freedom v. Madigan*, 735 F. Supp. 2d 994, 996 n.4 (N.D. Ill. 2010); *United States v. Bd. of Educ. of City of Chicago*, 663 F. Supp. 2d 649, 661 (N.D. Ill. 2009) (recognizing that *amici* “participation was welcome and helpful and contributed to the clarity of the issues”); *Sherman v. Twp. High Sch. Dist. 214*, 540 F. Supp. 2d 985, 991-92 (N.D. Ill. 2008); *Chi. Lawyers’ Comm. for Civ. Rights Under the Law, Inc. v. Craigslist, Inc.*, 461 F. Supp. 2d 681, 683-84 (N.D. Ill. 2006); *Chamberlain Grp., Inc. v. Interlogix, Inc.*, No. 01 c 6157, 2004 WL 1197258, at *1 (N.D. Ill. May 28, 2004); *A.R.D.C. v. Harris*, 595 F. Supp. 107, 109 n.2 (N.D. Ill.

¹ At least one judge of this Court espouses Judge Posner’s view that amicus curiae briefs should be allowed only in “a case in which a party is inadequately represented; or in which the would-be amicus has a direct interest in another case that may be materially affected by a decision in th[e] case [at issue]; or in which the amicus has a unique perspective or specific information that can assist the court beyond what the parties can provide.” *Jones Day v. Blockshopper LLC*, No. 08-4572, 2008 U.S. Dist. LEXIS 94442, at *18 (N.D. Ill. Nov. 13, 2008) (quoting *Voices for Choices v. Illinois Bell Telephone Co.*, 339 F. 3d 542, 545 (7th Cir. 2003) (Posner, J.)). But Judge Posner’s view has not been consistently followed by this Court and has not garnered support from other courts around the country. *See, e.g., Neonatology Assocs., PA v. Comm’r of Internal Revenue*, 293 F.3d 128, 129-33 (3d Cir. 2002) (Alito, J.) (discussing the “small body of judicial opinions that look with disfavor on motions for leave to file amicus briefs,” but concluding that “the predominant practice” is that courts should “err on the side of granting leave” where the *amicus* has “a sufficient ‘interest’ in the case” and the brief will be helpful and relevant to the court).

1984) (granting leave to file *amicus* brief to organization that sought to give historical context and current information regarding an entity in the case); *United States v. Bd. of Educ. of the City of Chicago*, No. 80-5124, 1993 WL 408356, at *3 (N.D. Ill. Oct. 12, 1993) (granting organizations leave to file where they “represent interests that will be significantly affected by the resolution of th[e] matter” and where they “may have relevant data that will be instrumental to a resolution of [the] matter”); *United States v. Bd. of Educ.*, 1993 U.S. Dist. LEXIS 14307 (N.D. Ill. Oct. 8, 1993).

5. Becket satisfies these criteria. First, as detailed above, it has a strong interest in ensuring that RLUIPA’s provisions are accurately interpreted and fully enforced. In particular, Becket has an interest in ensuring that RLUIPA is effectively addresses and remedies the burdens that local governments commonly impose on religious activity through discretionary land-use laws.

6. Second, Becket’s participation in this case would assist this Court by providing relevant context regarding RLUIPA’s purpose of addressing discrimination against minority religious communities in the area of discretionary land-use regulation. As discussed above, Becket actively participates in land-use litigation on behalf of religious institutions under the statute. Given Becket’s experience with the statute, it has particular expertise in addressing the meaning and purpose of RLUIPA’s provisions and how they should be applied. *See Neonatology Assocs.*, 293 F.3d at 132 (“Some friends of the court are entities with particular expertise not possessed by any party to the case.”) (quoting Luther T. Munford, *When Does the Curiae Need an Amicus?*, 1 J. App. Prac. & Process 279 (1999)). Becket’s *amicus* brief would contribute to the “clarity of the issues” involving the statutory framework in which the parties’ arguments are made.

7. Finally, the Becket Fund’s brief is timely, being submitted the same day as Plaintiffs’ motions for summary judgment.

MOTION SCHEDULING AND OPPOSITION BY PARTIES

8. Local Rule 5.3 requires that motions not be presented more than 14 days beyond filing. This motion is being scheduled for presentment on October 11, 2016—15 days beyond filing. Due both to scheduling conflicts for the parties' counsel and the Court's schedule the week of October 3, October 11 is the earliest the motion can be presented, and Becket requests leave to present the motion on that date notwithstanding Local Rule 5.3.

9. And for the Court's information, counsel for the United States has indicated that it will not oppose this motion. Counsel for defendant City of Des Plaines has indicated that it will oppose the motion. Counsel for Society of American Bosnians and Herzegovinians did not respond to an email inquiry regarding the motion.

CONCLUSION

For these reasons, the Becket Fund for Religious Liberty respectfully requests that the Court grant this Motion for Leave to Appear and to File *Instantly* a Brief as *Amicus Curiae*.

Dated: September 26, 2016

Respectfully submitted,

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