

No. 17-11820

IN THE
United States Court of Appeals
FOR THE ELEVENTH CIRCUIT

GERALD GAGLIARDI, KATHLEEN MACDOUGALL,

Plaintiffs-Appellants,

v.

CITY OF BOCA RATON FLORIDA,
a Florida Municipal Corporation,

Defendant-Appellee,

and

CHABAD OF EAST BOCA, INC., TJCVC LAND TRUST,

Defendants-Intervenors-Appellee.

*On Appeal from the United States District Court
for the Southern District of Florida
Case No. 9:16-cv-80195-KAM (Honorable Kenneth A. Marra)*

**MOTION OF BOCA RATON RELIGIOUS, CIVIC,
AND BUSINESS LEADERS, AND FORMER CITY
OFFICIALS SEEKING LEAVE TO FILE AS
AMICUS CURIAE SUPPORTING APPELLEES
AND IN FAVOR OF AFFIRMANCE**

Michael S. Lazaroff
GREENBERG TRAURIG, LLP
Attorneys for Amicus Curiae
The MetLife Building
200 Park Avenue
New York, New York 10166
212-801-9200

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1 and 11th Cir. R. 26.1-1 through 26.1-3, *amici* hereby disclose that they sign as individuals and do not have any parent corporation or any publicly held corporation that owns 10% or more of its stock. *Amici* hereby certify that the following is a complete list of the trial judge and all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this particular case on appeal:

1. Abbott, Daniel Lawrence, Weiss Serota Helfman Cole Bierman & Popok
2. Abrams, Steven
3. Ahnell, Leif, City of Boca Raton
4. Ahdout, Zimra Payvand, Kirkland & Ellis LLP
5. Baronoff, Peter
6. Blomberg, Daniel Howard, Becket Fund for Religious Liberty
7. Chabad of East Boca, Inc.
8. City of Boca Raton
9. Cole, Jamie A., Weiss Serota Helfman Bierman, PL
10. Ellison, Steven, Broad and Cassel, LLP
11. Estate of Irving Litwak

12. Friedman, David K., Weiss, Handler & Cornwell, PA
13. Friedman, Devin (Velvel), Boies, Schiller & Flexner, LLP
14. Gagliardi, Gerald
15. Goldberg, Rabbi Efrem
16. Koski, Arthur C., Law Office of Arthur C. Koski, PA
17. Hamilton, Marci A.
18. Handler, Henry B., Weiss Handler & Cornwell, PA
19. Harvey Schatmeier, Elliot C., Kirkland & Ellis, LLP
20. Hasner, Adam
21. Lazaroff, Michael S., Greenberg Traurig, LLP
22. Lefkowitz, Jay P., Kirkland & Ellis LLP
23. Levin, Matthew
24. MacDougall, Kathleen A.
25. Marra, Honorable Kenneth A.
26. Marshall, Lawrence C., Kirkland & Ellis, LLP
27. New, Rabbi Rubi
28. Raymond, Mark F., Broad and Cassel, LLP
29. Representative of TJCVC Land Trust
30. Schwartzbaum, Adam A., Weiss Serota Helfman Cole & Bierman, PL
31. Sherman, Reverend Andrew

32. TJC Land Trust
33. Windham, Lori Halstead, Becket Fund for Religious Liberty

As *amicus curiae*, Steven Abrams, Peter Baronoff, Rabbi Efrem Goldberg, Adam Hasner, Matthew Levin, and Reverend Andrew Sherman (“*Amici*” or “Boca Raton Religious, Civic, and Business Leaders, and Former City Officials”) move for leave of Court to file the accompanying brief in support of Appellees The City of Boca Raton, Chabad of East Boca, Inc. (“Chabad”), and TJVC Land Trust. Appellees have consented to the filing of this brief. Appellants Gerald Gagliardi and Kathleen MacDougal have not consented.

The *amici* are six individuals who serve or have served in religious, civic, business, and governmental leadership positions in the Boca Raton area.

Specifically:

Steven Abrams is a former five-term city councilmember in Boca Raton, Florida and a three-time elected mayor of Boca Raton. He was named mayor emeritus of Boca Raton in 2008. Since 2009 he has served as a Palm Beach County Commissioner representing Boca Raton and in 2013, served as the first mayor of Palm Beach County. Mr. Abrams sits on the boards of Florida Atlantic University College of Engineering Advisory Board, Metropolitan Planning Organization, National Association of Counties Transportation Policy Steering Committee, and the Kravis Center for the Performing Arts.

Peter Baronoff is the Chairman and Chief Executive Officer of Promise Healthcare, Inc., a leading long-term acute care hospital in the United States. He

was twice elected city councilmember in Boca Raton and was appointed deputy mayor by his fellow councilmembers in his second term. Mr. Baronoff was named a “Pillar” of the Boca Raton community by the League for Educational Awareness of the Holocaust, was selected as the Boy Scouts of America – Gulfstream Council’s “Distinguished Citizen” honoree and was inducted into the Boy Scouts Court of Honor.

Rabbi Efrem Goldberg is the Senior Rabbi of the Boca Raton Synagogue, a rapidly-growing congregation of over seven hundred families in Boca Raton, Florida. Rabbi Goldberg is deeply involved in the greater South Florida community and was recognized as one of South Florida’s Most Influential Jewish Leaders in 2010.

Adam Hasner is a former-four term State Representative in the Florida House of Representatives, representing Boca Raton and served as House Majority Leader from 2007-2010. Currently, Mr. Hasner is the Executive Vice President of the GEO Group, a government services provider based in Boca Raton.

Matthew Levin is the President and CEO of the Jewish Federation of South Palm Beach County. Among Mr. Levin’s accomplishments at the Federation include the construction and opening of Sinai Residences of Boca Raton, a Continuing Care Retirement Community located on the Federation’s campus. This project is expected to generate significant revenue for additional

community initiatives while also providing much-needed senior housing.

Reverend Andrew Sherman is the rector of St. Gregory's Episcopal Church in Boca Raton, Florida. He serves as a co-convener of the Boca Raton Interfaith Clergy Association. He is a founding board member of Family Promise of South Beach County, an interfaith ministry to homeless families with children. Reverend Sherman also serves or has served on the boards of Episcopal Charities of Southeast Florida, the South Florida Haiti Project, and St. Andrew's School in Boca Raton and previously served on the Board of Boca Helping Hands.

The *amici* have a substantial interest in this case because it pertains to preserving the religious rights of individuals in their community and ensuring that these rights are not suppressed or unlawfully denied by the government. The *amici* firmly support the notion that religious people and institutions are entitled to participate in public life on an equal basis with everyone else and should not be excluded for professing their faith. Furthermore, as leaders in the Boca Raton community, the *amici* affirm that the Chabad has long been a welcome part of Boca Raton and that the new synagogue would be equally welcome. The *amici* each personally supported Chabad throughout the approval process before the City.

The brief of the *amici* will bring a unique perspective to this case. As prominent community leaders, the *amici* will show the support the proposed Chabad synagogue has received from a broad and diverse cross-section of the local

Boca Raton community. The brief will attest to the important role Chabad has played in Boca Raton for over a decade by fostering an environment of diversity and vibrancy within the community and to the fact that the proposed synagogue will be a natural and welcome addition to its surrounding neighborhood.

For the foregoing reasons, the motion for leave to file the attached *amicus* brief should be granted.

Respectfully submitted, this 4th day of August 2017, by counsel for *amicus curiae*.

Dated: New York, New York
August 4, 2017

GREENBERG TRAURIG, LLP

By: /s/ Michael S. Lazaroff
Michael S. Lazaroff

The MetLife Building
200 Park Avenue
New York, New York 10166
Telephone: (212) 801-9200
Facsimile: (212) 801-6400
lazaroffm@gtlaw.com

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the Court's CM/ECF system, and that counsel for all parties to the case are registered CM/ECF users and will be served by the Court's CM/ECF system.

Dated: New York, New York
August 4, 2017

GREENBERG TRAURIG, LLP

By: /s/ Michael S. Lazaroff
Michael S. Lazaroff

The MetLife Building
200 Park Avenue
New York, New York 10166
Telephone: (212) 801-9200
Facsimile: (212) 801-6400
lazaroffm@gtlaw.com

Counsel for Amicus Curiae

ANNEXED TO MOTION

No. 17-11820

IN THE
United States Court of Appeals
FOR THE ELEVENTH CIRCUIT

GERALD GAGLIARDI, KATHLEEN MACDOUGALL,

Plaintiffs-Appellants,

v.

CITY OF BOCA RATON FLORIDA,
a Florida Municipal Corporation,

Defendant-Appellee,

and

CHABAD OF EAST BOCA, INC., TJCVC LAND TRUST,

Defendants-Intervenors-Appellee.

*On Appeal from the United States District Court
for the Southern District of Florida
Case No. 9:16-cv-80195-KAM (Honorable Kenneth A. Marra)*

**BRIEF FOR BOCA RATON RELIGIOUS, CIVIC, AND
BUSINESS LEADERS, AND FORMER
CITY OFFICIALS AS *AMICUS CURIAE* SUPPORTING
APPELLEES AND IN FAVOR OF AFFIRMANCE**

Michael S. Lazaroff
GREENBERG TRAURIG, LLP
Attorneys for Amicus Curiae
The MetLife Building
200 Park Avenue
New York, New York 10166
212-801-9200

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1 and 11th Cir. R. 26.1-1 through 26.1-3, *amici* hereby disclose that they sign as individuals and do not have any parent corporation or any publicly held corporation that owns 10% or more of its stock. *Amici* hereby certify that the following is a complete list of the trial judge and all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this particular case on appeal:

1. Abbott, Daniel Lawrence, Weiss Serota Helfman Cole Bierman & Popok
2. Abrams, Steven
3. Ahnell, Leif, City of Boca Raton
4. Ahdout, Zimra Payvand, Kirkland & Ellis LLP
5. Baronoff, Peter
6. Blomberg, Daniel Howard, Becket Fund for Religious Liberty
7. Chabad of East Boca, Inc.
8. City of Boca Raton
9. Cole, Jamie A., Weiss Serota Helfman Bierman, PL
10. Ellison, Steven, Broad and Cassel, LLP
11. Estate of Irving Litwak

12. Friedman, David K., Weiss, Handler & Cornwell, PA
13. Friedman, Devin (Velvel), Boies, Schiller & Flexner, LLP
14. Gagliardi, Gerald
15. Goldberg, Rabbi Efrem
16. Koski, Arthur C., Law Office of Arthur C. Koski, PA
17. Hamilton, Marci A.
18. Handler, Henry B., Weiss Handler & Cornwell, PA
19. Harvey Schatmeier, Elliot C., Kirkland & Ellis, LLP
20. Hasner, Adam
21. Lazaroff, Michael S., Greenberg Traurig, LLP
22. Lefkowitz, Jay P., Kirkland & Ellis LLP
23. Levin, Matthew
24. MacDougall, Kathleen A.
25. Marra, Honorable Kenneth A.
26. Marshall, Lawrence C., Kirkland & Ellis, LLP
27. New, Rabbi Rubi
28. Raymond, Mark F., Broad and Cassel, LLP
29. Representative of TJCVC Land Trust
30. Schwartzbaum, Adam A., Weiss Serota Helfman Cole & Bierman, PL
31. Sherman, Reverend Andrew

32. TJC Land Trust
33. Windham, Lori Halstead, Becket Fund for Religious Liberty

STATEMENT OF COMPLIANCE WITH RULE 29

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), Steven Abrams, Peter Baronoff, Rabbi Efreim Goldberg, Adam Hasner, Matthew Levin, and Reverend Andrew Sherman state that no party or party's counsel authored any part of this brief or paid any costs associated with its preparation or submission, and no person other than *amicus curiae* or its counsel contributed money that was intended to fund preparing or submitting the brief.

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENTi

STATEMENT OF COMPLIANCE WITH RULE 29.....iv

TABLE OF AUTHORITIES vii

INTEREST OF THE *AMICUS CURIAE*.....1

STATEMENT OF THE CASE.....3

ARGUMENT6

 I. The Boca Raton Community Overwhelmingly Supports Chabad.....6

CONCLUSION.....8

CERTIFICATE OF COMPLIANCE

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

Cases

Chabad-Lubavitch of Georgia v. Miller,
5 F.3d 1383 (11th Cir. 1993)3

Midrash Sephardi, Inc. v. Town of Surfside,
366 F.3d 1214 (11th Cir. 2004)7

INTEREST OF THE *AMICUS CURIAE*

Steven Abrams, Peter Baronoff, Rabbi Efrem Goldberg, Adam Hasner, Matthew Levin, and Reverend Andrew Sherman (“*Amici*” or “Religious, Civic, and Business Leaders, and Former City Officials”) are all long-standing residents and public figures in Boca Raton. They all have supported and continue to support the building of the synagogue at issue in this appeal and believe that the district court decision should be affirmed.¹ *Amici* have an interest in preserving the religious rights of individuals in their community and ensuring that these rights are not suppressed or unlawfully denied by the government. *Amici* firmly support the notion that religious people and institutions are entitled to participate in public life on an equal basis with everyone else and should not be excluded for professing their faith. Furthermore, as leaders in the Boca Raton community, *amici* affirm that Chabad has long been a welcome part of Boca Raton and that the new synagogue would be equally welcome. The claims at issue here present issues of vital concern to *amici*.

Steven Abrams is a former five-term city councilmember in Boca Raton, Florida and a three-time elected mayor of Boca Raton. He was named mayor emeritus of Boca Raton in 2008. Since 2009 he has served as a Palm Beach

¹ Counsel gratefully acknowledges the able help from summer associates Charlie Berk and Catherine Morgan.

County Commissioner representing Boca Raton and in 2013, served as the first mayor of Palm Beach County. Mr. Abrams sits on the boards of Florida Atlantic University College of Engineering Advisory Board, Metropolitan Planning Organization, National Association of Counties Transportation Policy Steering Committee, and the Kravis Center for the Performing Arts.

Peter Baronoff is the Chairman and Chief Executive Officer of Promise Healthcare, Inc., a leading long-term acute care hospital in the United States. He was twice elected city councilmember in Boca Raton and was appointed deputy mayor by his fellow councilmembers in his second term. Mr. Baronoff was named a “Pillar” of the Boca Raton community by the League for Educational Awareness of the Holocaust, was selected as the Boy Scouts of America – Gulfstream Council’s “Distinguished Citizen” honoree and was inducted into the Boy Scouts Court of Honor.

Rabbi Efrem Goldberg is the Senior Rabbi of the Boca Raton Synagogue, a rapidly-growing congregation of over seven hundred families in Boca Raton, Florida. Rabbi Goldberg is deeply involved in the greater South Florida community and was recognized as one of South Florida’s Most Influential Jewish Leaders in 2010.

Adam Hasner is a former-four term State Representative in the Florida House of Representatives, representing Boca Raton and served as House Majority

Leader from 2007-2010. Currently, Mr. Hasner is the Executive Vice President of the GEO Group, a government services provider based in Boca Raton.

Matthew Levin is the President and CEO of the Jewish Federation of South Palm Beach County. Among Mr. Levin's accomplishments at the Federation include the construction and opening of Sinai Residences of Boca Raton, a Continuing Care Retirement Community located on the Federation's campus. This project is expected to generate significant revenue for additional community initiatives while also providing much-needed senior housing.

Reverend Andrew Sherman is the rector of St. Gregory's Episcopal Church in Boca Raton, Florida. He serves as a co-convener of the Boca Raton Interfaith Clergy Association. He is a founding board member of Family Promise of South Beach County, an interfaith ministry to homeless families with children. Reverend Sherman also serves or has served on the boards of Episcopal Charities of Southeast Florida, the South Florida Haiti Project, and St. Andrew's School in Boca Raton and previously served on the Board of Boca Helping Hands.

STATEMENT OF THE CASE

Chabad of East Boca, Inc. ("Chabad") is associated with Chabad-Lubavitch, a religious group that aids and supports Jewish communities in the United States and throughout the world. *See Chabad-Lubavitch of Georgia v. Miller*, 5 F.3d 1383, 1385 (11th Cir. 1993). In 2007, Chabad sought to purchase land in the

“Golden Triangle” area of Boca Raton (“the City”) in order to build a synagogue. ECF 46 at ¶¶ 15-16. Following public hearings and the passage of a new ordinance in 2008, Chabad decided to build the synagogue instead at 770 Palmetto Park Road. *Id.* at ¶¶ 18, 47-48.

Ordinance No. 5040, which was adopted in 2008, allowed Chabad’s construction of the synagogue. *Id.* at ¶ 48. Chabad applied to the City to receive permission to build at 770 Palmetto Park Road. *Id.* Chabad requested permission to build a two story religious center to a height that required approval from the Planning and Zoning Board, and also requested a technical deviation with regard to the proposed parking facilities to accommodate the traffic to the new synagogue. *Id.* at ¶¶ 52, 55. After conducting a public hearing, the Planning and Zoning Board approved the application. *Id.* at ¶¶ 57, 58. Appellants and some other residents appealed the decision to the Boca Raton City Council. The City Council unanimously affirmed the decision of the Planning and Zoning Board. *Id.* at ¶ 58. Appellants then filed this suit in February 2016. Dkt. 1. Appellants argue that the City’s passage of Ordinance No. 5040 and its approval of Chabad’s construction application constitute violations of the United States Constitution’s First Amendment Establishment Clause, the Fourteenth Amendment Equal Protection and Due Process Clauses, as well as the Florida Constitution’s No-Aid Clause. ECF 46 at ¶¶ 63-100. Chabad intervened in the action. Dkts. 13, 14. The City and

Chabad each moved to dismiss Appellants' complaint. Dkts. 21, 23. These motions were granted. Dkt. 43. Appellants then filed an amended complaint. The City and Chabad again moved to dismiss. Dkts. 48-49. The District Court granted these motions dismissing the amended complaint. Dkt. 76.

ARGUMENT

I. The Boca Raton Community Overwhelmingly Supports Chabad

Chabad has been a well-received and valuable organization in the Boca Raton community for over fifteen years. Since it opened in 1999, Chabad has added to the vibrancy and diversity of its community and provided important services to the members of the community. Among other services, the organization provides adult education classes, community-wide holiday celebrations, Jewish singles' events, widely distributed publications, the Jewish Women's Rosh Chodesh Society, hospital visitation, counseling and crisis intervention, a Bat Mitzvah club, and other youth programs.

Just as Chabad has been well-received in the Boca Raton community, Chabad's proposed synagogue would be an equally welcome addition to the community. In addition to enhancing the beauty of Boca Raton through its elegant design, the new building will ensure that Chabad continues to prosper and contribute to the City by providing even more high-quality, diverse religious programming and services. For these reasons, the community as well as this diverse group of *amici* widely supported Chabad before the City during zoning considerations. Consequently, the City itself unanimously approved Chabad's building proposal.

Chabad's mission to serve and cater to the public makes the location of the

proposed synagogue ideal, particularly when considering the site's neighboring structures. The area is surrounded by high-rise condos, banks, hotels, real-estate offices, retail storefronts, and other buildings which are intended for public assembly. Chabad's purposes are fully consistent with those of the neighboring buildings.

Not only would the new synagogue further amplify Chabad's positive impact on the Boca Raton community, the synagogue would also serve as a potent symbol of religious equality. "[T]o deny equal treatment to a church or synagogue on the grounds that it conveys religious ideas is to penalize it for being religious. Such unequal treatment is impermissible based on the precepts of the Free Exercise, Establishment and Equal Protection Clauses." *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1239 (11th Cir. 2004). Affirming the district court's decision would send a clear message that religious people and institutions enjoy equal protection under the law and may practice their faith freely, without government coercion or restraint.

CONCLUSION

For the reasons recited above and in the appellees' briefs, *amicus curiae* Steven Abrams, Peter Baronoff, Rabbi Efrem Goldberg, Adam Hasner, Matthew Levin, and Reverend Andrew Sherman urge that the district court decision be affirmed.

Dated: New York, New York
August 4, 2017

GREENBERG TRAURIG, LLP

By: /s/ Michael S. Lazaroff
Michael S. Lazaroff

The MetLife Building
200 Park Avenue
New York, New York 10166
Telephone: (212) 801-9200
Facsimile: (212) 801-6400
lazaroffm@gtlaw.com

Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE

I hereby certify that his brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 1,345 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

I also certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font, in text and footnotes.

Dated: New York, New York
August 4, 2017

GREENBERG TRAURIG, LLP

By: /s/ Michael S. Lazaroff
Michael S. Lazaroff

The MetLife Building
200 Park Avenue
New York, New York 10166
Telephone: (212) 801-9200
Facsimile: (212) 801-6400
lazaroffm@gtlaw.com

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the Court's CM/ECF system, and that counsel for all parties to the case are registered CM/ECF users and will be served by the Court's CM/ECF system.

Dated: New York, New York
August 4, 2017

GREENBERG TRAURIG, LLP

By: /s/ Michael S. Lazaroff
Michael S. Lazaroff

The MetLife Building
200 Park Avenue
New York, New York 10166
Telephone: (212) 801-9200
Facsimile: (212) 801-6400
lazaroffm@gtlaw.com

Counsel for Amicus Curiae