Weber Gallagher

20 Independence Blvd, Suite 201
Warren, NJ 07059

T(973) 242-1364
F(973) 242-1945

October 20, 2016

VIA LAWYERS SERVICE
Clerk, Supreme Court of New Jersey
Hughes Justice Complex
25 W. Market St.
P.O. Box 970
Trenton, NJ 08625-0970

Re: Welch v. Chai Center for Living Judaism, Inc.
Supreme Court of New Jersey No. 078269
Our File No. 0090942

Dear Sir or Madam:

This firm is Local Counsel on behalf of First Liberty Institute, for the proposed *Amicus Curiae* First Liberty Institute in the above-referenced matter. I am enclosing an original and nine copies of the following:

1. Notice of Motion for Leave to Appear as *Amicus Curiae* on Behalf of First Liberty Institute;

2. Certification of Richard S. Ranieri, Esquire;

3. Brief of *Amicus Curiae* First Liberty Institute; and,

4. Certification of Service.

Kindly file same and return a filed-stamped copy in the self-addressed stamped envelope provided. Also, enclosed is our firm's check in the amount of fifty dollars ($50.00), payable to the New Jersey State Treasurer, for payment of the filing fee.

Sincerely,

Richard S. Ranieri

RSR/lmw
Encls.
cc: Elliot D. Ostrove, Esq. (w/encls. – 2 copies) *Via Lawyers Service*
Fred Gruen, Esq. (w/encls. – 2 copies) *Via Lawyers Service*
Kevin J. Coakley, Esq. (w/encls. - 2 copies) *Via Lawyers Service*

SUPREME COURT OF NEW JERSEY
No. 078269

JAMES O. and VIRGINIA WELCH, THE ROBERT DWYER TRUST and S. ALEXANDER AND JESSICA HAVERSTICK, Plaintiffs/Respondents/ Cross-Petitioners v. CHAI CENTER FOR LIVING JUDAISM, INC. Defendant/Appellant/ Petitioner and HARRY GROSS, Defendant/Appellant/Non-Petitioner	ON PETITION FOR CERTIFICATION OF APPEAL FROM THE AUGUST 15, 2015, FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION APPELATE DIVISION DOCKET NO.: A-4088-13T1 A-4163-13T1 SAT BELOW: HON. MARIE E. LIHOTZ, J.A.D. HON. WILLIAM E. NUGENT, J.A.D. HON. CAROL E. HIGBEE, J.A.D.

NOTICE OF MOTION FOR LEAVE TO APPEAR AS *AMICUS CURIAE* ON BEHALF OF FIRST LIBERTY INSTITUTE

To: Elliot D. Ostrove, Esq.
EPSTEIN OSTROVE, LLC
200 Metroplex Drive, Suite 304
Edison, NJ 08817

Fred Gruen, Esq.
GRUEN & GOLDSTEIN
1150 West Chestnut St.
P.O. Box 1553
Union, NJ 07083

Attorneys for Defendant/Appellant/Petitioner

Kevin J. Coakley, Esq.
CONNELL FOLEY LLP
85 Livingston Ave.
Roseland, NK 07068

Attorney for Plaintiffs/Respondents/Cross-Petitioners

PLEASE TAKE NOTICE that First Liberty Institute hereby moves for leave to appear in the above-captioned case as *amicus curiae* and to file the enclosed brief.

In support of this motion, First Liberty Institute relies upon the attached Certification of Richard S. Ranieri, Esquire, dated October 20, 2016.

RICHARD S. RANIERI
Weber Gallagher
20 Independence Blvd., Ste. 201
Warren, NJ 07059
T: (973) 242-1364
F: (973) 242-1945

Dated: October 20, 2016

SUPREME COURT OF NEW JERSEY
No. 078269

JAMES O. and VIRGINIA WELCH, THE ROBERT DWYER TRUST and S. ALEXANDER AND JESSICA HAVERSTICK, Plaintiffs/Respondents/ Cross-Petitioners v. CHAI CENTER FOR LIVING JUDAISM, INC. Defendant/Appellant/ Petitioner and HARRY GROSS, Defendant/Appellant/Non-Petitioner	ON PETITION FOR CERTIFICATION OF APPEAL FROM THE AUGUST 15, 2015, FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION APPELATE DIVISION DOCKET NO.: A-4088-13T1 A-4163-13T1 SAT BELOW: HON. MARIE E. LIHOTZ, J.A.D. HON. WILLIAM E. NUGENT, J.A.D. HON. CAROL E. HIGBEE, J.A.D.

CERTIFICATION OF RICHARD S. RANIERI, ESQUIRE

I, Richard S. Ranieri, hereby certify the following:

1. I am an attorney with the firm of Weber Gallagher, and I am admitted to practice law in the State of New Jersey.

2. I make this certification in support of the motion of First Liberty Institute for leave to file a brief in the above-captioned matter as an *amicus curiae*.

3. First Liberty Institute ("First Liberty") is the largest public-interest law firm dedicated solely to restoring and preserving religious liberty in the United States. First Liberty, in partnership with volunteer law firms across the

Country, provides *pro bono* advice and representation to clients ranging from school districts that seek to understand how the First Amendment applies to their policies to veterans organizations that operate memorials to houses of worship that are subject to discriminatory land-use regulations to entire states that have sought First Liberty's advice with regard to religious displays.

4. The participation of *amicus curiae* is favored in cases with "broad implication," *Taxpayers Assoc. of Weymouth Twp., Inc. v. Weymouth Twp.*, 80 N.J. 6, 17 (1976), or in cases of "general public interest." *Casey v. Male*, 63 N.J. Super. 255; 164 A.2d 374 (Law Div. 1960). The above-styled matter is such a case.

5. As First Liberty has directly represented houses of worship—particularly Orthodox Jewish synagogues, which must be located within walking distance of its members' homes—First Liberty has seen a troubling rise in the use of restrictive covenants to attempt to force unwanted houses of worship out of communities. Many communities are so thoroughly subjected to restrictive covenants that there is little if any land available in the community for a house of worship. This case is important to First Liberty and to our clients because it will set an important precedent as to the extent to which restrictive covenants may be enforced against religious houses of worship in

ways that stop religious practice in a community or are potentially discriminatory against unwanted religious groups.

6. First Liberty Institute has substantial and particular expertise in this area of law, and First Liberty's participation as an *amicus curiae* will assist the Court in the resolution of significant issues of public importance implicated by this appeal.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

RICHARD S. RANIERI

Dated: October 20, 2016

SUPREME COURT OF NEW JERSEY
No. 078269

JAMES O. and VIRGINIA WELCH, THE ROBERT DWYER TRUST and S. ALEXANDER AND JESSICA HAVERSTICK, Plaintiffs/Respondents/ Cross-Petitioners v. CHAI CENTER FOR LIVING JUDAISM, INC. Defendant/Appellant/ Petitioner and HARRY GROSS, Defendant/Appellant/Non-Petitioner	ON PETITION FOR CERTIFICATION OF APPEAL FROM THE AUGUST 15, 2015, FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION APPELLATE DIVISION DOCKET NO.: A-4088-13T1 A-4163-13T1 SAT BELOW: HON. MARIE E. LIHOTZ, J.A.D. HON. WILLIAM E. NUGENT, J.A.D. HON. CAROL E. HIGBEE, J.A.D.

BRIEF OF *AMICUS CURIAE* FIRST LIBERTY INSTITUTE

Richard S. Ranieri
N.J. Bar No. 02572198
WEBER GALLAGHER
20 Independence Blvd., Ste. 201
Warren, NJ 07059
T: (973) 242-1364
F: (973) 242-1945

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

INTEREST OF *AMICUS CURIAE*

First Liberty Institute ("First Liberty") is the largest public-interest law firm dedicated solely to restoring and preserving religious liberty in the United States. First Liberty, in partnership with volunteer law firms across the Country, provides *pro bono* advice and representation to clients ranging from school districts that seek to understand how the First Amendment applies to their policies to veterans organizations that operate memorials to houses of worship that are subject to discriminatory land-use regulations to entire states that have sought First Liberty's advice with regard to religious displays.

As First Liberty has defended houses of worship—particularly Orthodox Jewish synagogues, which must be located within walking distance of its members' homes—First Liberty has seen a troubling rise in the use of restrictive covenants to attempt to force unwanted houses of worship out of communities. Many communities are so thoroughly subjected to restrictive covenants that there is little if any land available in the community for a house of worship. This case is important to First Liberty and to our clients because it will set an important precedent as to the extent to which restrictive covenants may be enforced against religious houses of worship in

ways that stop religious practice in a community or are potentially discriminatory against unwanted religious groups.

ARGUMENT

I. Interpreting the restrictive covenants at issue in this matter to prohibit the Chai Center for Living Judaism's religious activities is against the public interest as doing so would violate the Religious Land Use and Institutionalized Persons Act.

Defendant Chai Center for Living Judaism, Inc. ("Chai Center") argued that the restrictive covenants at issue in this litigation should not be enforced against the Chai Center because doing so would violate the public interest. *See Cmte. For a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n*, 192 N.J. 344, 370-71 (2007) (noting that deed restrictions are enforceable "providing that the nature of the restricted use is not contrary to the principles of public policy" and that restrictive covenants are not enforceable if they "interfere[] with the public interest" (quoting *Clarke v. Kurtz*, 123 N.J. Eq. 174, 178 (E. & A. 1938), and *Davidson Bros., Inc. v. D. Katz & Sons, Inc.*, 121 N.J. 196, 211-12 (1990))). The Appellate Division rejected this argument almost without consideration, as *Davidson Bros.* involved commercial property and the restrictive covenants at issue in that case were designed to restrain competition. App. Div. Op. at 17. Assuming, however, that a restrictive covenant must not be "contrary to the principles of public policy" to be enforceable, the enforcement of the

restrictive covenants in violation of Federal law is not in the public policy. *Twin Rivers*, 192 N.J. at 370 (quoting *Clarke*, 123 N.J. Eq. at 178).

The Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* ("RLUIPA"), "is the latest of long-running congressional efforts to accord religious exercise heightened protection from government-imposed burdens, consistent with [the Supreme] Court's precedents." *Cutter v. Wilkinson*, 544 U.S. 709, 714 (2005). Following the Supreme Court's refusal to apply the Federal Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* ("RFRA"), against the states, Congress enacted a more measured attempt to ensure that state and local governments protect the rights of religious institutions and adherents in two particular contexts where Congress concluded that constitutional rights were most threatened by rules of general applicability: land use regulation and religious exercise by institutionalized persons. *Cutter*, 544 U.S. at 715; 42 U.S.C. §§ 2000cc, 2000cc-1. As Congress recognized, land use regulations pose a particularly serious risk to religious freedom because "[t]he right to assemble for worship is at the very core of the free exercise of religion," and "[c]hurches and synagogues cannot function without a physical space adequate to their needs and consistent with their theological requirements." 146 Cong. Rec. 16698

(2000). Importantly, Congress specifically described "[t]he right to build, buy, or rent such a space [a]s an indispensable adjunct of the core First Amendment right to assemble for religious purposes." *Id.*

A. Restrictive covenants, though contractual in nature, are subject to RLUIPA.

Although restrictive covenants are contractual in nature and enforced through private litigation, judicial enforcement of restrictive covenants is state action sufficient to subject the restrictive covenants to protections targeting government actions, such as the Constitution and RLUIPA. The principle that judicial enforcement of restrictive covenants is state action subject to constitutional protections was first applied in *Shelley v. Kraemer*, 334 U.S. 1 (1943), in which the United States Supreme Court refused to enforce restrictive covenants that limited the use or occupancy of a building on the basis of race, because judicial action enforcing or imposing penalties under such restrictive covenants would be state action that would violate the Fourteenth Amendment to the United States Constitution. The Supreme Court noted that judicial enforcement had long been considered state action in other contexts as well. *Shelley*, 334 U.S. at 16-18 (*see, e.g., American Federation of Labor v. Swing*, 312 U.S. 321 (1941) (refusing to enforce a common-law policy that would restrain peaceful picketing because

judicial enforcement of the policy would offend the Constitution)); *see also, Gerber v. Long Boat Harbour*, 757 F. Supp. 1339 (M.D. Fla. 1991) ("[J]udicial enforcement of private agreements contained in a declaration of condominium constitutes state action and brings the heretofore private conduct within the scope of the Fourteenth Amendment, through which the First Amendment guarantee of free speech is made applicable to the state.").

Amicus Curiae is aware of only one case in which the applicability of RLUIPA to a restrictive covenant has been raised in a court. In *Schneider v. Congregation Toras Chaim, Inc.*, No. 429-04998-2013 (Tex. Dist., Feb. 12, 2015), a Texas district court held that RLUIPA (as well as a state version of RFRA) apply to the enforcement of restrictive covenants and granted summary judgment to an Orthodox Jewish synagogue that was being sued for a violation of its restrictive covenants by its neighbor and the local homeowners' association. Additionally, however, the Eleventh Circuit, *sua sponte*, raised the issue of RLUIPA's applicability to restrictive covenants. *Konikov v. Orange County*, 410 F.3d 1317, 1324 n.3 (11th Cir. 2005) ("Konikov claims that he was not permitted to apply for a special exception. Apparently, the title to Konikov's property contained restrictions and covenants originating from the Sand Lake Hills Homeowners' Association that forbids application for

special exceptions. Such a prohibition might constitute a constitutional violation and substantial burden in violation of RLUIPA. *See Shelley v. Kraemer*, 334 U.S. 1, 92 L. Ed. 1161, 68 S. Ct. 836 (1948). We need not address this hypothetical issue, however, because Konikov has never raised it.")

B. Enforcing the restrictive covenants against the Chai Center for Living Judaism would violate RLUIPA's substantial burden test and its equal treatment test.

In order to protect core First Amendment rights, RLUIPA imposes several limitations, divided into two categories, on land-use regulations relevant here. First, RLUIPA prohibits a land-use regulation from "substantially burdening" a person's religious exercise without a showing that the burden furthers a compelling governmental interest and that the burden is the least-restrictive means of furthering that interest. RLUIPA § 2000cc(a)(1). Second, RLUIPA provides that "No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." RLUIPA § 2000cc(b)(1). Congress specifically provided that RLUIPA "shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution." RLUIPA § 2000cc-3(g).

1. Enforcement of the restrictive covenants against the Chai Center would violate RLUIPA's Substantial Burden Clause.

RLUIPA's Substantial Burden Clause provides that "[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution – (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest." RLUIPA § 2000cc(a)(1).

There is no bright-line rule for what constitutes a "substantial burden." Instead, courts have held that it requires a "case-by-case, fact-specific inquiry." *Adkins v. Kaspar*, 393 F.3d 559, 570 (5th Cir. 2004). There are, however, guidelines as to what constitutes a "substantial burden." In *Schneider v. New Jersey*, 308 U.S. 147, 163 (1939), the U.S. Supreme Court observed that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." In *Islamic Ctr. of Miss., Inv. v. City of Starkville*, 840 F.2d 293, 299-300 (5th Cir. 1988), the Fifth Circuit stated, "By making a mosque relatively inaccessible within the city limits to Muslims who lack

automobile transportation, the City burdens their exercise of their religion."

The U.S. Supreme Court has interpreted RLUIPA's substantial burden test as applied to inmates—the "institutionalized persons" portion of RLUIPA—very broadly. That court held:

> RLUIPA's "substantial burden" inquiry asks whether the government has substantially burdened religious exercise . . ., not whether the RLUIPA claimant is able to engage in other forms of religious exercise.
>
> Second, the District Court committed a similar error in suggesting that the burden on petitioner's religious exercise was slight because, according to petitioner's testimony, his religion would "credit" him for attempting to follow his religious beliefs, even if that attempt proved to be unsuccessful. RLUIPA, however, applies to an exercise of religion regardless of whether it is "compelled."
>
> Finally, the District Court went astray when it relied on petitioner's testimony that not all Muslims believe that men must grow beards. Petitioner's belief is by no means idiosyncratic. But even if it were, the protection of RLUIPA, no less than the guarantee of the Free Exercise Clause, is not limited to beliefs which are shared by all the members of a religious sect.

Holt v. Hobbs, 135 S. Ct. 853, 862-63 (2015) (internal cites and quotes omitted).

In the present case, the Orthodox Jewish members of the Chai Center must meet within walking distance of their homes and presently have an appropriate site that meets the religious and practical requirements of the worshippers. Forcing the Chai Center to move from its residential location within walking distance of its members will require all Orthodox Jewish members

in the community who will no longer be within walking distance of the Chai Center to either move, violate their religious beliefs, or forego religious assembly. This exclusion of the Chai Center from this residential area is a substantial burden on the Center and its members.

Once Defendant establishes that the enforcement of the land-use regulation is a substantial burden to a person's religious exercise, the Plaintiffs bear the burden of showing that there is a "compelling interest" in enforcing the regulation.

The compelling interest test is a stringent test that cannot be satisfied by general interests like safety or noise prevention, but rather the Plaintiffs must demonstrate that they have a compelling interest in applying the ordinance to the particular claimant. *Holt*, 135 S. Ct. at 863 ("RLUIPA, like RFRA, contemplates a 'more focused' inquiry and 'requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law "to the person"—the particular claimant whose sincere exercise of religion is being substantially burdened.'" (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2779 (2014))). "It is not enough that the goals of the law be legitimate, or reasonable, or even praiseworthy. There must be some pressing public necessity, some essential value that has to be

preserved…." *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 680 (1994). The compelling interest test requires courts to "'scrutiniz[e] the asserted harm of granting specific exemptions to particular religious claimants' and 'to look to the marginal interest in enforcing' the challenged government action in that particular context." *Holt*, 135 S. Ct. at 863 (quoting *Hobby Lobby*, 134 S. Ct. at 2779) (alteration in original). In other words, Plaintiffs cannot maintain that they simply have a compelling interest in keeping a peaceful neighborhood. *See Holt*, 135 S. Ct. at 863 (rejecting "safety and security" in a prison as too general of an interest to satisfy the compelling interest test). Instead, they must demonstrate that they have a compelling interest in the application of the restrictive covenants to Defendant, considering the marginal difference between enforcement and non-enforcement. Furthermore, "a law cannot be regarded as protecting an interest of the highest order when it leaves appreciable damage to that supposedly vital interest unprohibited." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993) (internal citations omitted). In the present case, Plaintiffs are attempting to force Defendant's members to violate their sincerely held religious beliefs while permitting exceptions to the restrictive covenants for others—Plaintiffs cannot show a compelling interest in doing so.

2. Enforcement of the restrictive covenants against the Chai Center would violate RLUIPA's Equal Terms Clause.

RLUIPA's Equal Terms Clause prohibits the government from "impos[ing] or implement[ing] a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." RLUIPA § 2000cc(b)(1). The exceptions present under RLUIPA's Substantial Burden Clause do not exist under the Equal Terms Clause. As the U.S. Court of Appeals for the Third Circuit stated:

> We have construed the RLUIPA Equal Terms section to include neither a substantial burden nor a strict scrutiny requirement. What the Equal Terms section does require is that the [religious institution] show that it was treated less well than a nonreligious comparator that had an equivalent negative impact on the aims of the land-use regulation. In sum, a [religious institution] asserting a claim under the RLUIPA Equal Terms provision must show (1) it is a religious assembly or institution, (2) subject to a land use regulation, which regulation (3) treats the religious assembly on less than equal terms with (4) a nonreligious assembly or institution (5) that causes no lesser harm to the interests the regulation seeks to advance.

Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch, 510 F.3d 253, 270 (3d Cir. 2007). As the U.S. Court of Appeals for the Second Circuit described the Equal Terms Clause more simply, that clause is concerned with whether "secular and religious institutions are treated equally." *Third Church of*

Christ, Scientist v. City of New York, 626 F.3d 667, 671 (2d Cir. 2010).

As Defendant showed, Plaintiffs permitted a dentist's office—a non-residential use—to operate on the property for more than fifty years without objection. (*See* Petitioner's Brief in Support of its Petition for Certification ("Pet. Br.") at 16-18; Petitioner's Brief in Further Support of Defendant/Appellant/ Petitioner's Petition for Certification and in Opposition to Plaintiffs/Respondents/Cross-Petitioners' Cross-Petition for Certification ("Pet. Opp. Br.") at 11). Ongoing commercial activity is equally if not more harmful to the residential use restriction of the restrictive covenants than a religious use for the members of the neighborhood who must walk to their religious assemblies.

II. RLUIPA serves as a general statement of the public interest in the enforcement or non-enforcement of a restrictive covenant.

Even if this Court were not to find that enforcement of the restrictive covenants against the Chai Center goes against the public interest because doing so would violate RLUIPA, RLUIPA still serves as a general statement of the public interest, and the reasoning that went into RLUIPA should go into any analysis of whether the enforcement of a restrictive covenant is in the public interest.

Senator Orrin Hatch and Senator Ted Kennedy issued a joint statement on the purpose behind RLUIPA:

> The right to assemble for worship is at the very core of the free exercise of religion. Churches and synagogues cannot function without a physical space adequate to their needs and consistent with their theological requirements. The right to build, buy, or rent such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes.
>
> The hearing record compiled massive evidence that this right is frequently violated. Churches in general, and new, small, or unfamiliar churches in particular, are frequently discriminated against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation. Zoning codes frequently exclude churches in places where they permit theaters, meeting halls, and other places where large groups of people assemble for secular purposes. Or the codes permit churches only with individualized permission from the zoning board, and zoning boards use that authority in discriminatory ways.
>
> Sometimes, zoning board members or neighborhood residents explicitly offer race or religion as the reason to exclude a proposed church, especially in cases of black churches and Jewish shuls and synagogues. More often, discrimination lurks behind such vague and universally applicable reasons as traffic, aesthetics, or "not consistent with the city's land use plan." Churches have been excluded from residential zones because they generate too much traffic, and from commercial zones because they don't generate enough traffic. Churches have been denied the right to meet in rented storefronts, in abandoned schools, in converted funeral homes, theaters, and skating rinks—in all sorts of buildings that were permitted when they generated traffic for secular purposes.
>
> . . .
>
> This discrimination against religious uses is a nationwide problem. It does not occur in every jurisdiction with land use authority, but it occurs in many such jurisdictions throughout the nation. Where it occurs, it is often covert.

146 Cong. Rec. S7774 (daily ed. July 27, 2000) (Joint Statement of Senators Hatch and Kennedy) (describing purpose of and need for RLUIPA).

The Appellate Division's apparent assertion that the public interest test should only apply in interpreting the application of restrictive covenants against commercial properties should be reversed, and the same public interests that led Senators Hatch and Kennedy to pass RLUIPA should be considered in whether the restrictive covenants at issue in this litigation may be enforced against the Chai Center. This is the exact situation RLUIPA was designed to address.

CONCLUSION

For the foregoing reasons, this Court should grant Defendant/Appellant/Petitioner's Petition for Certification in this matter, deny Plaintiffs/Appellees/Cross-Petitioners' Cross-Petition for Certification, and reverse the decision of the Appellate Division.

Respectfully submitted,

Dated: October 20, 2016

RICHARD S. RANIERI
Weber Gallagher
20 Independence Blvd., Ste. 201
Warren, NJ 07059
T: (973) 242-1364
F: (973) 242-1945

SUPREME COURT OF NEW JERSEY
No. 078269

JAMES O. and VIRGINIA WELCH, THE ROBERT DWYER TRUST and S. ALEXANDER AND JESSICA HAVERSTICK, Plaintiffs/Respondents/ Cross-Petitioners v. CHAI CENTER FOR LIVING JUDAISM, INC. Defendant/Appellant/ Petitioner and HARRY GROSS, Defendant/Appellant/Non-Petitioner	ON PETITION FOR CERTIFICATION OF APPEAL FROM THE AUGUST 15, 2015, FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION APPELATE DIVISION DOCKET NO.: A-4088-13T1 A-4163-13T1 SAT BELOW: HON. MARIE E. LIHOTZ, J.A.D. HON. WILLIAM E. NUGENT, J.A.D. HON. CAROL E. HIGBEE, J.A.D.

CERTIFICATION OF SERVICE

I, Richard S. Ranieri, hereby certify the following:

I hereby certify that the original and required number of copies (eight) of the Motion and Brief were filed via Lawyers Service to the New Jersey Supreme Court; and further,

I caused the proposed *amicus curiae* First Liberty Institute's Motion for Leave to Appear as *Amicus Curiae* on Behalf of First Liberty Institute; Certification of Richard S. Ranieri, Esquire; and proposed Brief of *Amicus Curiae* First Liberty Institute to be delivered to the following attorneys:

Elliot D. Ostrove, Esq.
EPSTEIN OSTROVE, LLC
200 Metroplex Drive, Suite 304
Edison, NJ 08817

Fred Gruen, Esq.
GRUEN & GOLDSTEIN
1150 West Chestnut St.
P.O. Box 1553
Union, NJ 07083

Attorneys for Defendant/Appellant/Petitioner

Kevin J. Coakley, Esq.
CONNELL FOLEY LLP
85 Livingston Ave.
Roseland, NK 07068

Attorney for Plaintiffs/Respondents/Cross-Petitioners

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

RICHARD S. RANIERI

Dated: October 20, 2016