No. 15-1005

In The
Supreme Court of the United States

CHABAD-LUBAVITCH OF MICHIGAN,

Petitioner,

v.

DR. DOV SCHUCHMAN, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Michigan

AMICUS CURIAE BRIEF OF THE NATIONAL JEWISH COMMISSION ON LAW AND PUBLIC AFFAIRS ("COLPA") FILED ON BEHALF OF ORTHODOX JEWISH ORGANIZATIONS AND RABBINICAL COURTS IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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INTERESTS OF THE *AMICI*[1]

The *Amici* are a group of organizations that represent the Orthodox Jewish community of the United States, its educational institutions, and its rabbinical courts (the "*Amici*"). The *Amici* strongly believe that the institution of the rabbinical court ("*Beth Din*") plays a vital socio-religious role in Orthodox Jewish communal life in America. They are therefore gravely concerned about the opinion of the Michigan Supreme Court below, which presents a serious and systemic threat to the ongoing viability of the *Beth Din* institution in the United States.

The *Amici* submit this brief to explain the rationale for their concern, and to demonstrate why – along with the reasons set forth in the petition for a writ of certiorari (the "Petition") – review by this Court is warranted, and certiorari should be granted.[2]

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[1] Pursuant to Supreme Court Rule 37.6, the *Amici* certify that no counsel for a party authored this brief in whole or in part. No person or party other than the *Amici* or their counsel has made a monetary contribution to this brief's preparation or submission. All parties have consented to the filing of this *amicus* brief. The parties' counsel of record received timely notice of the intent to file the brief.

[2] The *Amici* emphasize that they take no position regarding the merits of the claims asserted in this case and in the *Beth Din* proceedings that gave rise to it, and further emphasize that this brief should not be construed as advocating for or against any of the parties with respect to such claims. Rather, the *Amici* submit this brief in support of the Petition solely because they are concerned about the potentially disastrous implications that

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Section I of the brief describes the ancient origins of the *Beth Din* and its current manifestation in the United States, and also provides pertinent details about the process of *Beth Din* adjudication.

Section II discusses the mandatory nature of *Beth Din* adjudication and the scope of the obligation under Jewish law to seek recourse from rabbinic – rather than secular – courts.

Section III sets forth the benefits of having a functioning and viable *Beth Din* system in the United States, both for the country's Orthodox Jewish community and for the population at large.

Finally, Section IV explains why the Michigan Supreme Court's decision below threatens to undermine the country's *Beth Din* system, and explores the ramifications of permitting the decision to stand.

DESCRIPTION OF THE *AMICI*

The National Jewish Commission on Law and Public Affairs ("COLPA") is an organization of volunteer lawyers that advocates the position of the Orthodox Jewish community on legal issues affecting religious rights and liberties in the United States. COLPA has filed *amicus* briefs in the Supreme Court of the United States in 32 cases since 1968.

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the opinion of the Michigan Supreme Court below could have upon the *Beth Din* system in the United States.

Agudath Israel of America ("Agudath Israel"), founded in 1922, is a national grassroots Orthodox Jewish organization. Agudath Israel articulates and advances the position of the Orthodox Jewish community on a broad range of legal issues affecting religious rights and liberties in the United States.

The Rabbinical Alliance of America is an Orthodox Jewish rabbinical organization with more than 400 members that has, for many years, been involved in a variety of religious, social, and educational endeavors affecting Orthodox Jews. For several decades it has maintained a religious court for the adjudication and resolution of disputes brought to it by members of the Orthodox Jewish faith.

The Rabbinical Council of America ("RCA") is the largest Orthodox Jewish rabbinic membership organization in the United States, comprised of nearly one thousand rabbis throughout the United States and other countries. The RCA supports the work of its member rabbis and serves as a voice for rabbinic and Jewish interests in the larger community.

The Union of Orthodox Rabbis of the United States and Canada is the oldest Jewish Orthodox rabbinical organization in the United States. Its membership includes leading scholars and sages, and it is involved with educational, social and legal issues significant to the Jewish community.

Bais Din Maysharim is a rabbinical court located in Lakewood, New Jersey that serves the Jewish communities of New Jersey in adjudicating disputes in business matters, torts and damages, and family law.

Bais Din Tzedek U'Mishpat of New York is a rabbinical court that serves the Jewish communities of the New York area, hearing cases involving business, family and interpersonal disputes.

The Boston Rabbinical Court of Justice is a rabbinical court that serves the Jewish communities of Boston and the New England area in adjudicating religious laws and controversies, and has done so since its inception in 1930.

ARGUMENT[3]

I. THE ORIGINS AND PROCEDURES OF THE *BETH DIN*

The Jewish institution known as "*Beth Din*,"[4] or rabbinic court, dates back to the time of Moses, who established a system of courts to "judge the people" while leading them through the wilderness toward the Promised Land. Exodus 18:21. Since that time, the *Beth Din* has been a fixture of Jewish communities throughout history and around the world. The United States is no exception. *Batei Din* (the plural of *Beth Din*) are found in most of the country's major metropolitan centers,[5] as well as in many smaller

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[3] The Petition filed in this case cogently demonstrates that the opinion of the Michigan Supreme Court below conflicts with the precedent of this Court, as well as the precedents of many state courts of last resort (including that of Michigan). As such, and being mindful of the Court's scarce resources and the fact that this proceeding is only at the petition stage, the *Amici* have elected to adopt the Petition's arguments and legal analysis as their own, and instead utilize their submission to provide the Court with material information regarding the *Beth Din* system in the United States that has not otherwise been presented to the Court. Should the Court see fit to grant the Petition, the *Amici* will at that juncture submit a brief assaying the relevant case law, and setting forth their own independent view of the same.

[4] "*Beth Din*" is a Hebrew term meaning "House of Law" that is commonly used to refer to a rabbinical court or tribunal. It is alternately transliterated into English as "*Beit Din*," "*Beis Din*," or "*Bais Din*."

[5] See, e.g., *The Baltimore Bais Din*, http://www.baltimore baisdin.org/2.html (website of *Beth Din* located in Baltimore);

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towns and villages that boast substantial Orthodox Jewish populations.

A *Beth Din* applies *Halakha*, or Jewish law, to reach determinations on substantive matters. The procedural rules vary somewhat from panel to panel, much like the variation seen in the local rules of federal courts. However, in all instances parties who come before a *Beth Din* are afforded due process, as well as the opportunity to present argument and evidence to the panel.[6]

Rabbinical Council of New England, http://rcone.org/ (website of *Beth Din* located in Boston) (last visited February 29, 2016); *Beth Din*, Chicago Rabbinical Counsel, http://www.crcweb.org/BethDin.php (website of *Beth Din* located in Chicago) (last visited February 29, 2016); *Beth Din*, Magen David Congregation, http://www.magendaviddallas.org/beth-din.html (website of *Beth Din* located in Dallas) (last visited February 29, 2016); *West Coast Rabbinical Court*, http://www.beth-din.org/ (website of *Beth Din* located in Los Angeles) (last visited February 29, 2016); *Beis Din of South Florida*, http://www.beisdinofsouthflorida.com/ (website of *Beth Din* located in Miami) (last visited February 29, 2016); *Beth Din of America*, http://www.bethdin.org/ (website of *Beth Din* located in New York) (last visited February 29, 2016); *Beit Din (Jewish Court)*, Va'ad Harabanim of Greater Seattle, http://seattlevaad.org/vaad-services/ (website of *Beth Din* located in Seattle) (last visited February 29, 2016); *Beis Din – Rabbinical Court*, Rabbinical Council of Greater Washington, http://www.capitolk.org/beis-din.html (website of *Beth Din* located in Washington, D.C.) (last visited February 29, 2016).

[6] A good example of *Beth Din* rules can be seen in the Rules and Procedures of the *Beth Din* of America. See *Rules and Procedures*, *Beth Din* of America, http://s589827416.onlinehome.

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As is true for any judicial system, the amount of time necessary for a *Beth Din* to adjudicate a matter to finality is dependent upon a variety of factors, including the complexity of the legal issues, logistical hurdles relating to the parties, witnesses, or other evidence, and whether the initial determination is appealed. While most matters are disposed of within a year or two, there are some disputes that require far more time to resolve. In addition to the *Beth Din* adjudication that gave rise to this case, which began in 1995 and did not conclude until 2009,[7] another prominent example is the protracted succession dispute between the two heirs-apparent to the Bobover Hasidic dynasty. In that matter, *Beth Din* proceedings began in 2005 and did not conclude until 2014.[8]

II. THE MANDATORY NATURE OF *BETH DIN* PROCEEDINGS

It is hornbook Jewish law that all civil disputes between Jewish individuals and/or organizations must in the first instance be submitted to a *Beth*

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us/wp-content/uploads/2015/07/Rules.pdf (last visited March 4, 2016).

[7] See *Chabad-Lubavitch of Michigan v. Schuchman*, 853 N.W.2d 390, 393-96 (Mich. Ct. App. 2014).

[8] See Appendix A to Petition to Confirm Arbitration Award at 4, *Landau v. Rheinhold*, No. 15-cv-04811-VMS (E.D.N.Y. Aug. 17, 2015), ECF No. 1-3 (noting inception of *Beth Din* proceedings in 2005); Petition to Confirm Arbitration Award at 22, *Landau v. Rheinhold*, No. 15-cv-04811-VMS (E.D.N.Y. Aug. 17, 2015), ECF No. 1 (noting that *Beth Din* award was rendered in 2014).

Din for adjudication. This principle is derived from Exodus 21, wherein the Torah introduces a series of civil laws with the prefatory phrase "[a]nd these are the laws that you shall place before *them*." Exodus 21:1 (emphasis added). The Talmud interprets the word "them" in this verse as referring to rabbinic courts, and applies the canon of *expressio unius est exclusio alterius* to construe the verse as specifically excluding secular courts as an option for the resolution of intra-Jewish disputes. Babylonian Talmud, *Gittin* 88b. The obligation for Jews (and Jewish organizations) to seek adjudication from a *Beth Din*, and the concomitant prohibition against filing suit in secular court, has been thoroughly codified in the major codes of Jewish law. See Maimonides, Mishneh Torah, *Sanhedrin* 26:7; Shulchan Aruch, *Choshen Mishpat* 26.

The mandate that intra-Jewish disputes be heard by a *Beth Din* rather than a secular court remains in force even in instances where the law that would be applied by the secular court is substantively indistinguishable from the relevant Jewish law. This is so because the "legislative intent" behind the rule is not focused solely upon the results of the adjudication, but also upon the socio-religious implications of voluntarily opting to be bound by a legal system not derived from the Torah. Thus, Maimonides writes that "[w]hoever submits a suit for adjudication to [a secular court] . . . is a wicked man. It is as though he reviled, blasphemed, and rebelled against the Torah of Moses." Maimonides, *supra*, at 26:7. Apropos of the

communal nature of the obligation, the punishment for violating this rule is exclusion from the social and religious community – i.e., the same group that the violator implicitly shunned by engaging a judicial system outside of the faith.

If the parties to a dispute have fully exhausted the *Beth Din* process, and the prevailing party finds itself unable to collect its award due to the recalcitrance of the losing party, the prevailing party may at that juncture petition for rabbinic permission to file suit in secular court to vindicate its rights. Maimonides, *supra*, at 26:7. This is precisely what happened below. The dispute between Petitioner and Respondents was adjudicated by an escalating series of *Beth Din* panels, culminating with a determination in favor of Petitioner from the highest judicial body within the Chabad-Lubavitch *Beth Din* system. Following the conclusion of the appellate process and the issuance of a final judgment, Petitioner demanded satisfaction of the award and Respondents refused. At that point, having exhausted all available options within the *Beth Din* system, Petitioner was permitted under Jewish law to seek rabbinic permission to file suit in secular court. Petitioner did so, and permission was granted. This case followed.

III. THE BENEFITS OF A VIABLE *BETH DIN* SYSTEM IN THE UNITED STATES

The existence of a viable *Beth Din* system in the United States is beneficial not only to the country's

Orthodox Jewish population, but also to society as a whole.

First, from a pragmatic perspective, having a viable *Beth Din* system is of vital importance to Orthodox Jews because it provides a forum for the resolution of disputes that turn, in whole or in part, on issues of Judaic doctrine or faith. Whereas a state or federal court may well find itself unable to reach the merits of such a dispute due to constitutional entanglement concerns,[9] a *Beth Din* panel composed of learned rabbis is perfectly suited to such a task. The availability of a viable *Beth Din* system is therefore crucial to ensure that parties are not denied access to justice simply because one element of an otherwise-justiciable dispute happens to implicate an issue of Jewish law or faith.

Second, the *Beth Din* system serves a function for the Orthodox Jewish community beyond pure adjudication. In reaching a determination on a disputed matter, a *Beth Din* not only applies Jewish law, but also takes into account Jewish values and ethics, compliance with which is viewed as of equal or greater importance than compliance with the letter of the

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[9] See, e.g., *Klagsbrun v. Va'ad Harabonim of Greater Monsey*, 53 F. Supp. 2d 732, 737-41 (D.N.J. 1999) (dismissing defamation claim by Jewish plaintiffs against Jewish defendants due to lack of jurisdiction because the "issues raised are uniquely religious in tenor and content, the resolution of which goes to the very heart of ecclesiastical concern, including discipline, faith, and religious rule, custom, and law").

Halakha. In this way, the *Beth Din* is "not simply serving a judicial function[, but rather is] also serving a religious function, leveraging the shared religious worldview of the parties,"[10] to arrive at a resolution that is not only in accordance with the law, but is also in full harmony with all aspects of the parties' faith.

Third, the availability of a viable *Beth Din* system plays a role in alleviating the burden upon the nation's state and federal courts. Although definitive statistics are not readily available due to the absence of a centralized administrative body, anecdotal evidence indicates that *Batei Din* in the United States adjudicate thousands of matters annually, and also shows a strong upward trend in that number over recent years, portending continued growth in the future.[11] While not *every* dispute submitted to a *Beth Din* would have otherwise been filed in secular court, the proportion of matters that are diverted from secular court by virtue of the availability of a viable *Beth Din* system is undoubtedly significant enough to make a material difference to judicial caseloads –

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[10] Michael A. Helfand, *Arbitration's Counter-Narrative: The Religious Arbitration Paradigm*, 124 Yale L.J. 2994, 3026 (2015) (internal quotation marks omitted).

[11] See *id.* at 3016 (noting that the "number of commercial cases filed annually before the *Beth Din* of America – one of the most prominent rabbinical courts in America – has nearly doubled over the past ten years, providing a limited indication that the use of rabbinical arbitration is on the rise in the United States").

particularly in jurisdictions with high concentrations of Orthodox Jews.

IV. THE DECISION BY THE MICHIGAN SUREME COURT BELOW REPRESENTS A GRAVE SYSTEMIC THREAT TO THE VIAILITY OF *BATEI DIN* IN THE UNITED STATES

In Deuteronomy 16:18, the Torah commands: "Judges and officers shall you appoint for yourself in all of your towns. . . ." This verse is understood as mandating the establishment of not only a rabbinic court system, but also a police force to uphold the law as articulated by the rabbinic courts. Indeed, the former cannot meaningfully exist without the latter because "a Jewish law judge (operating within the framework of a [*Beth Din*]) cannot be effective unless there are 'police officers' capable of enforcing his decisions."[12] For the Orthodox Jewish community in America, which lacks the authority to establish a police force of its own to compel compliance with *Beth Din* rulings, "the secular courts in the United States serve the police function of the [*Beth Din*] by being the enforcement arm of the [*Beth Din*]'s decisions."[13]

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[12] Yona Reiss, *Jewish Law, Civil Procedure: A Comparative Study*, 1 J. *Beth Din* Am. 21 (2012) (citing Midrash Tanchuma, *Parshat Shoftim*, 3, s.v. "*shoftim v'shotrim*").

[13] *Id.*

This is precisely why the decision of the Michigan Supreme Court below could have disastrous consequences for America's *Beth Din* system. If that decision is permitted to stand, it will effectively rob the *Beth Din* system of its *de facto* enforcement mechanism. Any unscrupulous respondent in a *Beth Din* proceeding could simply engage in dilatory tactics to postpone the exhaustion of the adjudication process until after the relevant statute of limitations has run. Then, even if the petitioner ultimately prevails, the respondent can refuse to abide by the *Beth Din*'s decision and instead force the prevailing party to seek permission to proceed in secular court. By the time the prevailing party initiates suit in secular court, the statute of limitations will have long since run. Under the precedent established by the Michigan Supreme Court, the respondent could simply put forward an affirmative defense of untimeliness and have the lawsuit dismissed, thereby escaping the *Beth Din*'s judgment, and in the process undermining the entirety of the system.

Lest one dismiss this parade of horribles as improbable or unrealistic, it bears noting that an approximation of this very scenario played out in the *Beth Din* proceedings and litigation below. While there is no indication that Respondents in this case maliciously delayed the conclusion of the *Beth Din* proceedings, the fact is that Respondents – by willingly agreeing to engage in *Beth Din* adjudication, and then appealing the decision of the initial panel up through several intermediate panels and ultimately

to the highest ecclesiastic-adjudicative body of that *Beth Din* – were directly responsible for extending the proceedings past the expiration of the relevant statute of limitations. This, in turn, put Respondents in a position to assert the untimeliness defense that resulted in a dismissal of the action, and left Petitioner without any means to enforce a judgment against Respondent that was issued by an adjudicative body to whose jurisdiction Respondent willingly submitted. Given that "proof of concept," it is not a stretch to imagine a world in which respondents in American *Beth Din* proceedings routinely adopt a strategy of delay so as to proactively provide themselves with a means of evading a potentially unfavorable rabbinic judgment.

The negative ramifications of this scenario are significant. First, the defanging of the *Beth Din* system will inevitably have a deterrent effect, incentivizing parties involved in intra-Jewish disputes to ignore their religious obligation to seek rabbinic adjudication to instead file suit in state or federal court. Such a result is strongly in tension with First Amendment values that seek to promote, or at least protect – but in any event, not *hinder* – the free exercise of one's faith.

In addition to having the unfortunate and un-American consequence of chilling the free exercise of religion, an impotent *Beth Din* system will result in a needless increase of the burden upon the nationwide judiciary, and force judges to struggle with cases that implicate complex and potentially unconstitutional

entanglement issues. Even worse, Orthodox Jewish organizations such as Petitioner – whose by-laws require strict adherence to Jewish law – will have no choice but to seek justice in the *Beth Din* system, leaving them vulnerable to any respondent willing to take advantage of the loophole created by the Michigan Supreme Court's decision below.

The *Amici* do not mean to suggest that these concerns – serious and impactful though they are to both the country's Orthodox Jewish population and, to a lesser extent, the nation as a whole – alone merit review by this Court. However, given the gravity of the issues enumerated herein, and the fact that, as set forth in the Petition, the Michigan Supreme Court's opinion below appears to squarely conflict with the precedent of this Court and that of many state courts of last resort (including that of Michigan), the *Amici* respectfully submit that the scale tips decidedly in favor of granting the Petition.

CONCLUSION

For all of the foregoing reasons, as well as those articulated in the Petition, the Court should grant the petition for a writ of certiorari.

March 8, 2016

Respectfully submitted,

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