23-1269-cv

United States Court of Appeals

for the

Second Circuit

ISRAEL ACADEMY OF SCIENCES AND HUMANITIES,

Plaintiff-Appellant,

– v. –

AMERICAN FOUNDATION FOR BASIC RESEARCH IN ISRAEL, INC.,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR *AMICI CURIAE* PROFESSORS EMERITA ELLEN APRILL AND MIRIAM GALSTON, PROFESSOR JILL S. MANNY, AND SEAN DELANY

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INTEREST OF AMICI CURIAE[1]

Amicus Ellen Aprill is a well-known nonprofit law scholar and has decades of experience teaching and writing in the field. She is the John E. Anderson Professor Emerita at LMU Loyola Law School. Among her many notable accomplishments, Professor , was a member of the Board of Advisors of New York University National Center on Philanthropy and Law, an advisor on the American Law Institute Restatement of the Law of Charitable Nonprofit Organizations; and was recently awarded the Vanguard Award for lifetime achievement in nonprofit law from the Nonprofit Organizations Committee of the ABA's Business Law Section.

Amicus Sean Delany was the Assistant Attorney General in Charge of the Charities Bureau of the New York State Attorney General's Office from 1997-1999 and the President of the National Association of State Charities Officials from 1996-1997. He then served as the Executive Director of Lawyers Alliance for New York for two decades and has also been an Adjunct Professor, at New York University School of Law. He has been an advisor to the American Law Institute's Restatement of the Law of Charitable Nonprofit Organizations as well as a member

[1] This brief has not been authored in whole or in part by counsel for any party to the case; nor has a party's counsel, or any other person contributed money to the fund the preparation or submission of this brief.

of the Advisory Committee on Tax Exempt and Government Entities of the Internal Revenue Service.

Amicus Miriam Galston is Emeritus Associate Professor at The George Washington University Law School, where she taught nonprofit law and taxation. She has written widely on nonprofit organizations and was the co-chair of the subcommittee on Political and Lobbying Organizations and Activities of the Exempt Organization Committee of the Tax Section of the American Bar Association from 1993-2010. She was also a member of the Board of Advisors, New York University Law School Program on Philanthropy and the Law from 1992-1995 and served as its Chair in 1994.

Amicus Jill S. Manny is Professor at New York University School of Law where she teaches on the Law of Nonprofit Organizations, Tax-Exempt Organizations, Tax Aspects of Charitable Giving, and Private Foundations and Their Alternatives. She is also the Executive Director of the National Center on Philanthropy and the Law at New York University School of Law. Professor Manny is also a member of the American Law Institute (ALI) where she served as an adviser on the Restatement of the Law of Charitable Nonprofit Organizations. She has been a member of the Independent Sector Panel on the Nonprofit Sector which issued the Principles for Good Governance and Ethical Practice and a member of the American Bar Association Exempt Organizations Committee. In

2019, the Nonprofit Organizations Committee of the American Bar Association, Business Law Section, selected her for the Outstanding Lawyer Award in the Academic Category.

Amici have no personal interest in this case. Amici's interest in this case comes from concern with the expansion of New York law to bestow standing on foreign beneficiaries of a U.S. charity, which would usurp the authority of the State Attorney General, increase vexatious litigation, and eviscerate U.S. tax law in this area. Amici file this brief with the consent of all parties pursuant to Federal Rule of Appellate Procedure 29(a).

SUMMARY OF ARGUMENT

I. Appellant's Argument that *a foreign beneficiary* of a U.S. charity should have standing to sue to hold the U.S. charity accountable is backward and would upend U.S. federal tax law which requires *the U.S. charity* to exercise discretion and control over the grant and use of funds by the foreign beneficiary. To confer standing allowing the foreign beneficiary to sue because it did not receive or stopped receiving support from the U.S. charity, would render the discretion and control element meaningless and would open the floodgates — foreign beneficiaries would be able to bring suit against U.S. charities, which includes thousands of "Friends of" organizations. It would also usurp the statutory authority of the New York State Attorney General which is vested with the exclusive authority to enforce the rights of charitable beneficiaries.

II. To determine if New York's "special interest" exception to standing applies, New York courts look to the entity's chartering documents to discern the purpose and whether there is a class of intended beneficiaries that satisfies the exception. Here, the chartering documents make **no mention** of the Appellant. Appellant's argument to look elsewhere and beyond the chartering documents would expand New York law and respectfully, it is not the role of a federal court to do so.

ARGUMENT

I. Appellant's Argument Would Upend U.S Tax Law, Open the Floodgates and Usurp the Authority of the New York State Attorney General

Amicus William LaPiana correctly identifies Revenue Ruling 63-252, 1963-2 C.B. 101 (1963), and Revenue Ruling 66-79, 1966-1 C.B. 48 (1966), "as establishing the framework for obtaining an income tax deduction for contributions that ultimately benefit a foreign charity." Brief of Amicus Curiae Professor William P. Lapiana ("Amicus Br.") at p. 4.

In the United States, organizations that "rais[e] funds and merely transmit[] them as a 'conduit' to a foreign charity are not eligible to attract deductible contributions." B. Hopkins, The Law of Tax-Exempt Organizations, 10th ed. at pp. 879-80 (citing Rev. Rul. 63-252, 1963-2 C.B. 101). As the IRS's Revenue Ruling 63-252 makes clear, donations made to a domestic U.S. tax-exempt charity in the United States — such as the Foundation — which are then transmitted to a foreign not-for profit entity — such as the Academy — are tax deductible **only if** they are not "earmarked in any manner, and use of such contributions [is] subject to control by the domestic organization." (Rev. Rul. 63-252, 1963-2 C.B. 101).

The IRS further "amplified" and clarified this rule in Revenue Ruling 66-79, requiring that "the [domestic] organization has full control of the donated

funds, and discretion as to their use, so as to ensure that they will be used to carry out its functions and purposes." (Rev. Rul. 66-79, 1966-1 C.B. 48) (finding that contributions to a domestic charity under those circumstances, solicited for a specific project of a foreign charity, were deductible under Section 170(c)(2) of the Code); see also Rev. Rul. 75-65, 1975-1 C.B. 79 (finding that funds donated to domestic charity which made grants to foreign organizations, over which funds the domestic charity maintained control and responsibility, were tax deductible contributions). In essence, as Amicus LaPiana also explains, these authorities make clear that contributions will be ruled as tax deductible for income tax purposes as long as the domestic organization retains discretion and control. Amicus Br. at pp. 4-5.

However, in an attempt to "explain" why the Foundation's Certificate of Incorporation does not mention the Academy, Amicus LaPiana posits a theory that "the Foundation's charter and bylaws *could no*t name the Academy as a 'beneficiary' if the Foundation was to obtain an exemption from income tax under Internal Revenue Code section 501(c)(3)." Amicus Br. at p. 5 (emphasis added). And, therefore, Amicus Lapiana argues, it is the IRS Form 1023 which accurately describes the relationship between the Foundation and the Academy. Id.; see also Appellant's Br. at pp. 7 and 18.

However, Revenue Ruling 66-79, on which he apparently relies, in fact, involves an organization with a name that "suggests a purpose to assist a named foreign organization." See Rev. R. 66-79; see also Amicus Br. at p. 4 ("The name of the organization in that ruling however, suggested a purpose to assist a specific foreign organization"). An entity's charter *includes its name*, and thus the very revenue ruling, Amicus Lapiana relies on, contradicts his statement. Pursuant to Revenue Ruling 66-79, a domestic corporation ***can*** identify a foreign charity in its own name and receive deductible contributions as long as it maintains control and discretion as to the use of all contributions that it receives, including those it grants to the named foreign organization.

Indeed, it is common practice for a domestic corporation organized to support a particular foreign entity to include in its own name "Friends of" or "American Friends of" or a similar term along with a named foreign charity. Hundreds of such organizations exist. Many have been created to benefit Israeli charities. They include, to name just a few, American Friends of the Tel Aviv University, Inc., American Friends of Bar-Ilan University, American Committee for The Weizmann Institute of Science, Inc., American Society for Technion-Israel Institute of Technology, Inc., and the American Society of the University of Haifa.

The governing documents of these "American Friends of" organizations often include support of the particular named foreign organization

along with general IRC § 501(c)(3) purposes. For example, the Restated Articles of the American Friends of the Hebrew University, Inc., as filed with California Attorney General in 1995[2], name among its listed purposes: "To aid in the maintenance and development of The Hebrew University of Jerusalem in the State of Israel." Similarly, the Restated Certificate of Incorporation for the American Friends of the Tel Aviv University, Inc., filed with the New York State Department of State on January 30, 2022 [3], states, among its listed purposes, "To aid in the maintenance and development of Tel Aviv University in the State of Israel (the "University"), and for such purpose to create a University movement in the United States."

In sharp contrast, the Foundation's Certificate of Incorporation, beyond stating the general IRC § 501(c)(3) purposes, describes its purposes as supporting and encouraging the conduct "of basic scientific research in the State of Israel or elsewhere", a large charitable class. **There is no mention of the Academy**. The Foundation could have been organized with its governing

[2] Available at Filings & Correspondence of the American Friends of the Hebrew University, Inc.: Founding Documents, STATE OF CALIFORNIA, DEPARTMENT OF JUSTICE, OFFICE OF THE ATTORNEY GENERAL, https://rct.doj.ca.gov/verification/web/Details.aspx?result=559a0b3c-049b-406f-b5b0-fbff0676a4c8 (last visited Jan. 30, 2024)

[3] Available by request at the New York Department of State, Division of Corporations.

documents stating that its purposes was to support the Academy and it still would have been able to receive deductible contributions. It did not do so.

Despite no mention of the Academy in its Certificate of Incorporation, Amicus LaPiana nonetheless claims that the Foundation is an "American Friends of organization" ("AMFOO") and that such "AMFOOs, are the approved vehicle for allowing a deduction for contributions for charitable, scientific, and educational purposes that otherwise would be disallowed solely because the donee is not a United States organization." Amicus Br. at p. 5. However, while "American Friends of organizations" or AMFOOs may be an approved vehicle for allowing deductions for contributions, that is the case, **only if** the domestic corporation exercises discretion and control. As stated in Revenue Ruling 66-79, "[t]he test in each case is whether the [domestic] organization has full control of the donated funds, and discretion as to their use, so as to ensure that they will be used to carry out its functions and purposes."[4]

[4] Indeed, if that were not the case, the relationship between the Foundation and the Academy would be akin to the first scenario described in Rev Rul. 63-252 (which is what the Academy recounts as the parties' history) i.e., "[i]n pursuance of a plan to solicit funds in this country, a foreign organization caused a domestic organization to be formed. At the time of formation, it was proposed that the domestic organization would conduct a fund-raising campaign pay the administrative expenses from the collected fund and remit any balance to the foreign organization". And the IRS explicitly has ruled that in such a scenario, contributions to the domestic organization are **not** deductible. Id.

In other words, no foreign corporation has a legal "right" to funds donated to an "American Friends of organization" of the type that would give rise to a special interest standing. Indeed, were this Court to confer standing in such situation(s), it would lead to the unprecedented and contrary result of thousands of "Friends of" organizations now having standing to sue because they did not receive or stopped receiving support from the U.S. organization. The discretion and control element would thereby be rendered meaningless and U.S. tax law would be upended accordingly.

Amicus LaPiana' argues further that "[t]o deny standing to the non-United States organization that benefits from a AMFOO — here, the Academy — could prevent effective oversight of the AMFOO, because the United States persons have donated to the AMFOO (here, the Foundation), not to the ultimate object of their charitable intent." See Amicus Br. at p. 6. But this is totally ***backward***.

The requirement of discretion and control aspect is intended to ensure that the U.S. organization does not act as a conduit, but that it assesses whether or not the funds should be disbursed to the foreign entity. Effectively, it is a mechanism to oversee that *the foreign entity* (i.e., the Academy, which is not recognized as tax-exempt under U.S. law and not subject to oversight by the I.R.S. or U.S. state regulatory authorities) uses the funds to carry out the domestic U.S.

corporation's (i.e., the Foundation's) charitable purposes[5]. Oversight of the U.S. domestic corporation (i.e., the AMFOO) as Amicus Lapiana claims, is **not** what the foreign entity does (rather, the opposite is true). Nor should it. That, as the law provides, is the exclusive purview of the New York State Attorney General. See New York's Estates, Powers, and Trusts Law ("EPTL") § 8-1.1(f) (McKinney 2010); New York Not-For-Profit Corporation Law ("N-PCL") § 112 (McKinney 2010).

Specifically, EPTL § 8-1.1(f) provides that "The attorney general shall represent the beneficiaries of such dispositions for religious, charitable, educational or benevolent purposes and it shall be his duty to enforce the rights of such beneficiaries by appropriate proceedings in the courts." Alco Gravure, Inc. v. Knapp Found., 64 N.Y.2d 458, 465-66 (1985). The idea that "because the United States persons have donated to the AMFOO (here, the Foundation)", the foreign entity should have standing to provide "effective oversight of the AMFOO" (Amicus Br. at p. 5), is entirely novel (if not ludicrous) and would usurp the statutory authority of the New York State Attorney General.

[5] Indeed, if the foreign entity (here, the Academy) were to engage in non-charitable purposes and/or conduct activities (e.g., political campaign intervention or terrorist activities) that would jeopardize the U.S. entity's tax-exempt status (here, the Foundation), it is through exercising discretion and control, that the U.S. entity would be able not to fund the foreign entity anymore.

II. Appellant's Argument Would Lead to an Expansion of New York State Law: That is Not the Role of a Federal Court.

As noted above, New York law provides that the State Attorney General has the exclusive authority to represent the beneficiaries of a charitable corporation. See EPTL § 8-1.1(f). This provision codifies "New York's long standing rule that '[n]ormally standing to challenge actions by the trustees of a charitable trust or corporation is limited to the Attorney General." Rettek v. Ellis Hosp., No. 1:08-CV-844 (GLS/DRH), 2009 WL 87592, at *2 (N.D.N.Y. Jan. 12, 2009), aff'd, 362 F. App'x 201 (2d Cir 2010). There is a **narrow** exception to the general rule, where a particular group of people has a "special interest" in funds held for a charitable purpose where the class of potential beneficiaries is sharply defined and limited in number. Alco Gravure, 64 N.Y.2d at 465-66. "Because of the narrowness of the exception, however, courts have routinely rejected efforts by litigants to claim standing under it." Hadassah Acad. Coll.v. Hadassah, Women's Zionist Org. of Am. Inc., 18 Civ. 2446 (AT), 2018 WL 8139301, at *2 (S.D.N.Y. Nov. 1, 2018), aff'd, 795 F. App'x 1 (2d Cir. 2019) ("Hadassah I") (citing Matter of Rosenthal, 99 A.D.3d 573, 574 (1st Dep't 2012)) and Bd. of Educ. of Mamaroneck Free Sch. Dist. v. Att'y Gen. of N.Y., 25 A.D.3d 637, 638-39 (2d Dep't 2006). To determine whether the "special interest" exception applies, the District Court correctly held that courts "look[] to the trust's chartering documents to discern the

purpose of the trust, and whether there is a class of intended beneficiaries" that satisfies the exception. (A-151 (citing Sagtikos Manor Hist. Soc'y, Inc. v. Robert Lion Gardiner Found., Inc., 9 N.Y.S.3d 80, 82 (2d Dep't 2015)); see also American Law Institute, Restatement of the Law on Charitable Nonprofit Organizations, Chapter 6.05 (Definition of Private Party with a Special Interest for Purposes of Standing).

The Appellant argues, however, that the District Court erred because "Alco Gravure's progeny have looked beyond Formation Documents." (Appellant's Br. at p. 23). The Appellant misstates the law.

Citing Sagtikos Manor, the Appellant states that "the Sagtikos Court relied on the content of a will in deciding that the plaintiff had no special interest." Id. at p. 25. That is false. This ***very*** argument was considered and rejected in Hadassah Acad. Coll v. Hadassah, 18 Civ. 2446 (AT), 2019 WL 1897668, at *3 (S.D.N.Y. April 29, 2019) ("Hadassah II). The Sagtikos Manor Court "held no such thing" and, in fact, said nothing of the kind. The Sagtikos Manor Court merely "stated in passing that 'Gardiner's will did not mention the Historical Society'" and the Appellant, just like the plaintiff in Hadassah II, "incorrectly cites Sagtikos" and "makes much of this dicta sentence." Hadassah II, 2019 WL 1897668, at *3 (holding that "Sagtikos Manor, therefore, did not hold that a special interest 'can be found by looking at the documents which effectuate the gift in question' . . . Rather,

it held that a special interest 'is found by looking to the trust's chartering documents'").

The Appellant also cites to In re Trustco Bank, 929 N.Y.S.2d 707, 712-13 (Sur. Ct. 2011) and Swift v. New York Medical College, No. 10717-04, 2006 WL 6610700 (Sup. Ct. Westchester Cnty. Nov. 15, 2006) as cases where the court has looked beyond the formation documents and in support of its argument that the Academy has "special interest" standing. See Appellant Br. at pp. 23-25. Apart from the fact that both cases are inapposite, these are the **very same** arguments made by the plaintiff in the Second Circuit in Hadassah Acad. Coll. v. Hadassah, 795 F. App'x 1 (2d Cir. 2019) ("Hadassah") See Brief of Plaintiff - Appellant in Hadassah at pp.24-27 (arguing that Trustco "is an example of special interest that was not created by the charity's founding documents or governing documents" but because of "contractual relationships"); see also Plaintiff-Appellants Reply Brief in Hadassah at pp. 5-7 (arguing that the plaintiff in Swift had a 'tangible stake' and "[l]ike the intervenor in Trustco, it did not matter whether he was named in any governing documents"). And, the Second Circuit, *after oral argument*, affirmed the District Court's dismissal for lack of standing and held that it had "considered all of HAC's remaining arguments and conclude[d] that they [were]without merit." Hadassah, 795 F. App'x at *3.

The Appellant disregards this explicit history and again misstates the Second Circuit's decision, contorting it to claim that "[e]ven this Court – hearing an appeal from Hadassah I[6] – looked beyond Formation Documents." See Appellant Br. at p. 27. However, in the Hadassah case it was only because the "[p]laintiff poin[ed] to ***only*** gift instruments and wills" which gave the appellee discretion, to establish a qualifying preference, that the Hadassah Court referenced them. Id. (emphasis added). And the Hadassah Court held that "[t]his [was] not enough to satisfy to satisfy New York law's 'special interest' exception". The Hadassah Court did not expand New York law; rather, it relied on existing law, Alco Gravure, to hold that plaintiff "had failed to show it is 'entitled to a preference in the distribution of such funds." Hadassah, 795 F. App'x at *3.

The Appellant, however, argues once again, that the Alco Gravure Court did not limit itself to the Formation documents and weighed broader policy considerations and that the District Court got it wrong by not doing the same thing

[6] Appellants also cite to Hadassah I in support of their argument that the court "looked to something other than Formation Documents to decide whether the plaintiff had [a] special interest, because the Formation documents were not before the court." See Appellant Br. at p. 26. But that is simply not what happened. As the Hadassah I court stated, "[a] special interest is 'found by looking at the [corporation's] chartering documents" and it was because "HAC [did] not contend that it possesses a special interest, stating only that it brings this action 'to recover funds to which it is entitled'" that the court found HAC had no standing as it "failed to articulate a special interest in Hadassah's funds" which "belong entirely to Hadassah". Hadassah I, 2018 WL 8139301, at *2. The reference to the gift protocol agreement in a footnote in no way means that the Hadassah I court relied on the gift protocol agreement between the parties as the basis for its decision, as Appellant contends.

here. See Appellant Br. at pp. 23 and 33. But the argument that a court should look beyond the chartering documents was *explicitly considered and rejected in Hadassah* which expressly "considered and applied" Alco Gravure and Sagtikos Manor as "controlling law" on "'how a court determines the existence of a special interest.'" See Hadassah II, 2019 WL 1897668, at *3 (citations omitted) (holding that "HAC argues that the Court erred 'by considering only the chartering documents of Hadassah'" but "HAC's argument rests on a misreading of the case law, which holds that a special interest 'is found by looking at the trust's chartering documents to discern the purpose of the trust, and whether there is a class of intended beneficiaries that is entitled to a preference and is sharply defined and limited in number'") (citing to Sagtikos Manor, 9 N.Y.S.3d at 82). As the District Court here correctly noted, Appellant's invitation to look beyond the formation documents "is premised on the same misreading of Alco Gravure and Sagtikos Manor that the Hadassah court[7] already rejected").

[7] Appellant acknowledges that the court in Hadassah II stated that special interest is found by looking at the chartering documents. However, Appellant contends that the court still considered the gift instruments filed by plaintiffs but because of missing pages and signatures it was impossible for the court to ascertain the intent of the donor. It was, therefore, of limited value to the court. By contrast here, the intent of the endowment funds is ascertainable. See Appellant Br. at p. 26 (citing to Hadassah II, 2019 WL 1897668, at n.5). But the reference by the court in Hadassah II in a footnote to these gift instruments, which plaintiff sought to rely on for standing, was simply to note that they were incomplete. Nothing more. The court, in fact, held that "even if HAC was correct that wills and gift agreements constitute foundational documents, HAC would still not have standing to sue Hadassah for funds donated to Hadassah on HAC's behalf. Alco Gravure and its progeny make clear that whether a donor identified HAC as a beneficiary

Furthermore, Appellant's argument would render existing law meaningless. As Alco Gravure and Sagtikos Manor make clear, courts look to the formation documents to determine if a particular group of people has a special interest in the funds held for charitable purpose. In this case, the Formation Documents do not mention **the Academy**. The analysis ends there. Unlike Alco Gravure where the chartering document, in fact, did provide for a preference in the distribution of funds to employees of corporations in which Joseph P. Knapp was involved, here that is not the case. The District Court, therefore, did not need to address any policy considerations.

For the sake of argument, if, as Appellant argues, the District Court had considered policy considerations and determined that the policy reasons for limiting standing were not applicable in this case and, therefore, afforded standing, it would mean that that the Appellant would have standing based on policy considerations *even though* the law provided otherwise. That certainly is not what Alco Gravure stands for. The Alco Gravure Court in no way ever stated that policy considerations can be the sole basis for making the special interest determination. Indeed, the very notion of looking at policy considerations alone – an entirely open-ended and ambiguous concept – would provide no guidance on standards for

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or honoree in a charitable gift to Hadassah is immaterial, and insufficient to confer standing." Hadassah II, 2019 WL 1897668, at *6.

any court and invite virtually unlimited challenges by self-proclaimed beneficiaries. It is an absurd and dangerous outcome.

In any event, the policy considerations here clearly counsel otherwise. First of all, the legal purpose of the Foundation as set forth in its Certificate of Incorporation — which is what matters[8]— states that the Foundation's purpose is to "support and encourage the conducting of basic scientific ***research in Israel and elsewhere.***" (A-45) (emphasis added). As much as Appellant would like the Certificate of Incorporation not to say what it does, the fact remains, that the potential class of beneficiaries is, therefore, a very broad charitable class. Second, even if the potential class of beneficiaries were just "research institutions in Israel" as Appellants would like it to be (see Appellant Br. at p. 32), these are not "reasonably limited" or a "small easily identifiable group." As the Israeli Science

[8] "A court looks to a corporation's charter to determine the corporation's purpose. See Matter of Manhattan Eye, Ear & Throat Hosp. v. Spitzer, 186 Misc. 2d 126 (Sup. Ct. N.Y. Cnty. 1999) (disapproving sale transaction because it did not promote the purposes of the nonprofit corporation as set forth in its Certificate of incorporation; Tr. of Columbia Univ. in the City of N.Y. v. Encyclopedia Iranica Found., No. 19 Civ. 7465 (AT)(KNF), 2020 WL 5994986, at *2 (S.D.N.Y Oct. 8, 2020) (although defendant claimed that the nonprofit "was created to 'ensure the uninterrupted and permanent continuation of the [E]ncyclopedia'", finding that "the documentary evidence showed that it established as a fund-raising vehicle, where the "certificate of incorporation state[d] that its purpose is to provide 'an endowment fund for the Encyclopedia. See also Agudist Council of Greater N.Y. v. Imperial Sales Co., 158 A.D.2d 683 (2d Dep't 1990) (holding that "conveyance of property housing senior citizen center would be detrimental to corporate purpose . . . [where] certificate of incorporation expressly states that one of its corporate purposes is to conduct activities for senior citizens."); The August Aichhorn Ctr. for Adolescent Residential Care, Inc, Index No. 153147/2023, (N.Y. Sup. Ct. N.Y. Cnty. April 5, 2023) (finding that sale did not promote stated purpose as set forth in Certificate of Incorporation).

and Technology Directory shows, there are *numerous* research institutions in Israel[9]. To confer standing on these myriad institutions would in effect do exactly what the policy considerations counsel against, i.e., invite vexatious litigation. It is exactly for this reason that the Legislature limited standing to challenge the actions of the trustees of a charitable corporation to the New York State Attorney General, and New York courts have construed the exception to that general rule, narrowly. Nothing here warrants a different result which would lead to "expanded standing" under New York law and respectfully, "it is not the role of federal court to push state law down that slope." Rettek, 2009 WL 87592, at *5.

[9] Research Centers, ISRAEL SCIENCE AND TECHNOLOGY DIRECTORY, https://www.science.co.il/Research-centers.php (last visited Jan. 30, 2024).

DATED: February 1, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume requirements of Fed. R. of App. P. 29(a)(5), because this brief contains 4,555 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. 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 this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word in 14-point Times New Roman font.

/s/ Daniel L. Kurtz

Daniel L. Kurtz