

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. _____

CONGREGATION JESHUAT ISRAEL,

Applicant,

v.

CONGREGATION SHEARITH ISRAEL,

Respondent.

**APPLICATION TO THE HONORABLE STEPHEN G. BREYER
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT**

Pursuant to Supreme Court Rule 13.5, Congregation Jeshuat Israel respectfully requests a 47-day extension of time, to and including October 22, 2018, within which to file a petition for a writ of certiorari to the United States Court of Appeals for the First Circuit.¹

In support of this request, Applicant states as follows:

1. The Court of Appeals issued its opinion on August 2, 2017. (Exhibit 1). On June 7, 2018, the Court of Appeals denied Congregation Jeshuat Israel's timely petition for rehearing and rehearing en banc, with a dissent. (Exhibit 2). Without an extension, Congregation Jeshuat Israel's petition for a writ of certiorari would be due on September 5, 2018. Congregation Jeshuat Israel is filing this application at least ten days before that date. This Court has jurisdiction under 28 U.S.C. § 1254(1).

¹ An extension of 45 days would make the petition due Saturday, October 20, 2018. Consistent with Supreme Court Rule 30.1, Congregation Jeshuat Israel is requesting an extension to the next business day, which is Monday, October 22, 2018.

2. This case presents important issues concerning the Free Exercise Clause and the survival of Touro Synagogue in Newport, Rhode Island—the oldest synagogue in the United States and a beacon of religious liberty. Just this past term, this Court referenced George Washington’s famous letter to Touro Synagogue, in which he wrote that “happily the Government of the United States . . . gives to bigotry no sanction, to persecution no assistance [and] requires only that they who live under its protection should demean themselves as good citizens.” *Trump v. Hawaii*, 138 S. Ct. 2392, 2417-18 (2018). Congregation Jeshuat Israel, which is the only Jewish congregation in Newport, has worshiped in and maintained Touro Synagogue for well over a century.

3. After a nine-day bench trial and consideration of more than 800 exhibits and thousands of pages of testimony, the district court, sitting in diversity, issued a 105-page decision finding that Touro Synagogue is held in a charitable trust for the benefit of Congregation Jeshuat Israel; that respondent Congregation Shearith Israel should be removed as the charitable trustee for breaches of trust; and that Congregation Jeshuat Israel owns certain valuable bells and thus may sell them to endow Touro Synagogue as a place of public worship for future generations. The district court resolved the parties’ state law trust and property claims without relying on religious doctrine or practice.

4. On appeal, the Court of Appeals decided the case *de novo* and found that, “as between the parties in this case,” Congregation Shearith Israel owns Touro Synagogue and the bells absolutely and “free of any trust or other obligation” to Congregation Jeshuat Israel. To reach the opposite conclusion of the district court, the Court of Appeals fashioned an entanglement exclusionary rule by holding that the Establishment Clause requires limiting the record to “lodestones of adjudication” such as available “deeds, charters, [and] contracts.” The

Court of Appeals applied this rule to consider only four documents—to the exclusion of almost all of the voluminous trial record of secular evidence, which included a will, party admissions, conduct, minutes, and correspondence. The Court of Appeals did not apply or cite any state law in its decision, even though under applicable Rhode Island law the secular evidence the Court of Appeals excluded from consideration is legally cognizable in trust and property disputes.

5. This is an exceptionally important case. Sweeping aside the protections of the Free Exercise Clause, the Court of Appeals' entanglement exclusionary rule creates a two-tiered legal regime that discriminates against religious parties by denying them the court access and state substantive rights available to secular parties. If parties are secular, then state law applies as it would in any diversity action and all legally cognizable evidence is considered. But if the parties are religious, then under the Court of Appeals' approach courts must apply an entanglement rule that excludes from consideration almost all the secular evidence that otherwise is legally cognizable. Beyond being constitutionally unsound, the Court of Appeals' interpretation of the First Amendment fundamentally conflicts with decisions from this Court, other federal courts of appeal, and state supreme courts.

6. Because of the significance of the issues involved, Congregation Jeshuat Israel is in the process of consulting with Supreme Court practitioners and First Amendment experts in connection with the preparation of a certiorari petition in this case. Due to those practitioners and experts' scheduling conflicts and availability at this time of the year, Congregation Jeshuat Israel has not had an opportunity to complete those consultations.

7. In addition, counsel for Congregation Jeshuat Israel have had substantial competing obligations since the Court of Appeals denied rehearing in this case, including active litigation with filing deadlines this month and a time-sensitive internal investigation. These other pending matters, which are continuing, interfere with the ability of Congregation Jeshuat Israel to file the petition on or before September 5, 2018.

8. Applicant requests a 47-day extension so that it may complete its consultations with Supreme Court practitioners and First Amendment experts, fully research the complex legal issues presented in this case, and prepare a certiorari petition that is clear, concise, and frames the far-reaching issues raised by the decision below in a manner that will be most helpful to the Court.

9. Congregation Jeshuat Israel is requesting an extension of 47 days also because its leadership and several of its counsel are observant and thus will be unable to assist in the preparation of the petition during the Jewish holidays in September and early October.

For these reasons, Congregation Jeshuat Israel respectfully requests an extension of time to file a petition for a writ of certiorari up to and including October 22, 2018.

Respectfully submitted,



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CORPORATE DISCLOSURE STATEMENT

In accordance with Supreme Court Rule 29.6, Congregation Jeshuat Israel states that it is not a publicly-held corporation, does not issue stock, and does not have a parent corporation.



Gary P. Naftalis
Counsel for Applicant