No. 18-530

In The
Supreme Court of the United States

CONGREGATION JESHUAT ISRAEL,

Petitioner,

v.

CONGREGATION SHEARITH ISRAEL,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

BRIEF OF RHODE ISLAND ATTORNEY GENERAL AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTRODUCTION[1]

Rhode Island proudly possesses a rich history of religious tolerance and freedom. This venerated history began with Roger Williams, the founder of the colony that later became the State of Rhode Island. Following his banishment from the Massachusetts Bay Colony for voicing his religious views, Roger Williams ventured to Rhode Island with a few followers and established Rhode Island on the principles of freedom of religion and expression. To this day, Rhode Island—and indeed the United States—continue to regard religious freedom as one of this nation's most cherished values.

In line with Rhode Island's history of religious tolerance, the Touro Synagogue, the oldest synagogue in the United States, was built in Newport, Rhode Island in 1763. In 1790, President George Washington wrote a historic letter to the Jewish congregation at the Touro Synagogue and penned the following profound words: "the Government of the United States * * * gives to bigotry no sanction, to persecution no assistance * * *."[2] This letter was written following a visit to the Synagogue by President Washington and future President Thomas Jefferson, and it reaffirmed

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[1] Pursuant to Supreme Court Rule 37.4, the Rhode Island Attorney General files this *amicus curiae* brief as a matter of right. Notice of the Attorney General's intention to file this *amicus curiae* brief was provided to counsel for the respondents more than ten days prior to filing. *See* Sup. Ct. R. 37.2.

[2] "Letter to the Jews of Newport," 18 August 1790, Washington Papers, 6:284-85.

America's dedication to religious liberty. To honor this piece of history, Congregation Jeshuat Israel ("CJI"), the Jewish congregation in Newport, hosts an annual reading of President Washington's letter at the Touro Synagogue. Speakers at this event, and visitors to the Synagogue, are among some of this country's most-respected citizens, including Presidents of the United States, Justices of this Court, and Members of Congress.

INTEREST OF THE *AMICUS CURIAE*

Rhode Island's Attorney General is the chief statewide law enforcement officer and is entrusted with representing the public interest in charitable trusts matters. *See* R.I. Gen. Laws § 18-9-5; *Israel v. Nat'l Bd. of Young Men's Christian Ass'n*, 369 A.2d 646, 649 (R.I. 1977) ("the Attorney General has the power and authority under the common law to enforce the provisions of charitable trusts affecting Rhode Island interests"). Mindful of this statutory and common law duty, the Rhode Island Attorney General participated as *amicus curiae* before the District Court, which concluded that "persuasive evidence [dating back to the mid-1700s exists] that the Synagogue was always the object of a charitable trust from the time it was built to the present," and that the purpose of this charitable trust was to ensure a place of public worship for the Jewish community of Newport in perpetuity. Pet. App. 80a. Later in its decision, the District Court determined that CJI

"is currently the holder of the equitable interest in the Touro charitable trust." Pet. App. 133a.

The Court of Appeals' decision dissolving this charitable trust that had existed for approximately 250 years "completely omitted any discussion of Rhode Island's extensive case law pertaining to charitable trusts." Pet. App. 153a (Thompson, J., dissenting). In doing so, the Court of Appeals contravened important principles of federalism and violated Rhode Island law. The Attorney General respectfully submits this *amicus curiae* brief and asks this Honorable Court to grant the petition for certiorari brought by CJI to preserve Rhode Island's law and history. Alternatively, the Attorney General respectfully submits that this Court should summarily reverse.

SUMMARY OF THE ARGUMENT

It is well recognized that absent a statutory or constitutional directive to the contrary, a federal court sitting in a diversity action must apply the substantive law of the forum state. *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). This doctrine advances "[a] policy so important to our federalism," *Guar. Tr. Co. of N.Y. v. York*, 326 U.S. 99, 110 (1945), and has been lauded as "one of the modern cornerstones of our federalism, expressing policies that profoundly touch the allocation of judicial power between the state and federal systems." *Hanna v. Plumer*, 380 U.S. 460, 474 (1965) (Harlan, J., concurring). And, this Court has expressed that federalism

principles reflect "a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *Younger v. Harris*, 401 U.S. 37, 44 (1971). This Court reiterated this principle last Term when it expressed that "[i]f the relevant state law is established by a decision of 'the State's highest court,' that decision is 'binding on the federal courts.'" *Animal Science Products, Inc. v. Hebei Welcome Pharmaceutical Co. Ltd.*, 138 S.Ct. 1865, 1874 (2018).

Here, the First Circuit Court of Appeals' panel decision, as well as its denial for an en banc hearing, failed to apply the principles elucidated in *Erie*. In reversing the District Court for the District of Rhode Island, the Court of Appeals held that Congregation Shearith Israel ("CSI"), located in New York, owned the historically-significant Touro Synagogue in Newport, Rhode Island, free of any trust obligations to CJI. Pet. App. 18a-19a. In doing so, as Judge Thompson noted in her dissent from the denial of hearing en banc, the panel omitted any discussion of Rhode Island law. *See generally* Pet. App. 1a-19a; *see also* Pet. App. 153a (Thompson, J., dissenting). By neither recognizing nor applying Rhode Island law, the First Circuit failed to apply the *Erie* doctrine, and as a result, contravened Rhode Island law and the federalism principles enunciated by this Court.

ARGUMENT

I. The First Circuit's Opinion Disregards Rhode Island Law and Contravenes the Court of Appeals' Well-Settled Standard of Review

Guided by Rhode Island's law on charitable trusts, the District Court conducted what the Court of Appeals later described as a "conscientious and exhaustive historical analysis." Pet. App. 7a. In doing so, the District Court held a nine-day bench trial, which generated a 1,850 page transcript and admitted into evidence approximately 900 exhibits spanning thousands of pages dating back to the mid-1700s. Pet. App. 24a. The detailed findings of fact recounted the history of the Jewish community in Newport, Rhode Island; the acquisition and ownership of the real property on which the Synagogue was built; the funding of the Synagogue's construction; the relationship and the acrimony between CJI and CSI; the transfer of ownership in the land and Synagogue; and various documents and agreements relevant to the dispute. *See generally* Pet. App. 29a-73a.

The District Court's thorough historical analysis traced the origin of the Synagogue back to the mid-18th century when the Jewish community in Newport was taxed to garner the necessary funds to purchase the land and construct the Synagogue. Pet. App. 35a-36a. It noted, at that time, Rhode Island law did not allow for the incorporation of religious institutions, therefore a religious establishment, like the Jewish community in Newport, could not purchase or hold real

estate in its own name. Pet. App. 36a-37a. To work around this legal quagmire, the members of the Jewish community listed the names of three respected leaders of its community—Jacob Rodrigues Rivera, Isaac Hart, and Moses Levy—to purchase the land and serve as trustees for the Synagogue's construction. Pet. App. 36a-37a. The District Court considered this legal landscape and found that it sufficiently explained why Rivera, Hart, and Levy were listed on the property's deed, rather than CJI. Pet. App. 77a-78a. "In light of this context[,]" the District Court concluded, "the lack of trust language on the face of the original deed is not indicative of the absence of a trust." Pet. App. 77a-78a.

Among the most pertinent documents considered by the District Court—and entirely omitted from the Court of Appeals' analysis—was the will of Rivera, a respected leader in the Newport Jewish community at the time and a founding member of the Synagogue. Pet. App. 78a-80a. Rivera's will explicitly stated:

> I have no exclusive Right, or Title, Of, in, or to the Jewish Public Synagogue, in Newport, on Account of the Deed thereof, being made to Myself, Moses Levy & Isaac Harte, which Isaac Harte, thereafter Conveyed his One third Part thereof to me, but that the same was so done, meant and intended, *in trust Only, to and for the sole Use, benefit and behoof of the Jewish Society, in Newport, to be for them reserved as a Place of Public Worship forever* * * *. Pet. App. 47a-48a (emphasis added).

Based on the aforementioned language, the District Court concluded that "Mr. Rivera's will [was] not a conveyance, but rather it is persuasive evidence that the Synagogue was always the object of a charitable trust from the time it was built to the present." Pet. App. 80a. Indeed, the District Court found Rivera's will to be "incontrovertible evidence that Touro Synagogue was owned in trust." Pet. App. 48a.

Though the will of Rivera was "incontrovertible evidence" to establish the requisite intent to create a charitable trust, the District Court referenced additional evidence to support its conclusion. Pet. App. 81a-85a. The trial judge noted several "Deeds of Trust" drafted in 1894 by CSI and signed by descendants of the Synagogue's original three trustees, which appeared to convey the descendants' interests in the Synagogue to CSI. Pet. App. 82a. The District Court considered that "several of these deeds explicitly stated that the Synagogue is subject to a trust" to be strong evidence because "even when Shearith Israel was drafting documents that purported to give it a legal stake in the Synagogue, it acknowledged the existence of a trust." Pet. App. 82a.

The trial judge also considered a lease agreement between CSI and CJI executed in 1903 and renewed in 1908, wherein CSI referred to itself as "Trustees" and agreed to lease to CJI the Synagogue for a nominal annual rate. Pet. App. 82a-83a. The District Court found the 1903 and 1908 leases further support the existence of a charitable trust because these documents "show Shearith Israel acting as trustee for Touro Synagogue."

Pet. App. 83a. Additional evidence of the charitable trust was Rhode Island legislation enacted in 1932, which specifically exempted the Synagogue from taxation because the property was "held in trust" and used by CJI "for religious and educational purposes." Pet. App. 83a. The District Court deemed this legislation to be "a public affirmation of the trust's existence and purpose." Pet. App. 83a.

The trial judge also noted an agreement executed in 1945 between CJI, CSI, and the United States Government regarding the maintenance of the Synagogue, which named "Shearith Israel Trustees" as "holders of fee simple title *upon certain trusts* in the Touro Synagogue." Pet. App. 83a (emphasis added by District Court). Through the inclusion of this language in the 1945 agreement, the District Court recognized that CSI "again acknowledged that its legal title to Touro Synagogue is subject to obligations under 'certain trusts.'" Pet. App. 83a. Moreover, the agreement provided that CSI would ensure "[t]hat the public shall be admitted to all parts of the said Touro Synagogue * * * so far as consistent with *the preservation of the Synagogue for the use, benefit and behoof of the Jewish Society in Newport as a place of public worship forever* * * *." Pet. App. 83a-84a (emphasis added by District Court). As the District Court observed, "the emphasized portion comes directly from Mr. Rivera's Will," and all of the above-mentioned evidence led the District Court to conclude that the 1945 agreement was "an admission by Shearith Israel that it is obligated by the terms of Mr. Rivera's Will." Pet. App. 84a. Even as

recently as 1996, the District Court noted, the then-vice president of CSI referred to CSI as "trustee of the building." Pet. App. 84a-85a. After considering the totality of the evidence referenced above and more, the District Court properly concluded that the Touro Synagogue "was built by the community to provide a permanent place for public Jewish worship in Newport, [] is held in trust for that purpose," Pet. App. 85a, and that "Congregation Jeshuat Israel is currently the holder of the equitable interest in the Touro charitable trust." Pet. App. 133a-134a.

In its review of the District Court's decision, the First Circuit initially commended the trial judge for his "extensive findings of fact," for engaging in "a conscientious and exhaustive historical analysis," and for "avoiding any overt reliance on doctrinal precepts * * *." Pet. App. 2a, 7a, 8a. Thereafter, however, the First Circuit disregarded these "extensive" factual findings and focused on only four documents, the earliest of which was the 1903 lease agreement. *See generally* Pet. App. 11a-18a. As a result, the First Circuit not only substituted its factual determination for the District Court's "extensive findings of fact," but the Court of Appeals also created and employed a new test to be used when adjudicating matters involving religious bodies, like the instant case. This approach disregarded Rhode Island charitable trust jurisprudence in violation of the *Erie* doctrine, prioritized consideration of certain secular documents to the exclusion of other secular documents, and disturbed

the well-established standard of review for a district court decision following a bench trial.

A. The First Circuit Ignored Rhode Island Law in Violation of the *Erie* Doctrine

The First Circuit rejected the District Court's reliance and application of Rhode Island's charitable trust jurisprudence, and instead created a new test to employ when adjudicating disputes between religious bodies: "when such provisions of deeds, charters, contracts, and the like are available and to the point, then, they should be the lodestones of adjudication in these cases." Pet. App. 11a. Equipped with this newly-created test, the First Circuit conducted its own evaluation of the evidence and rendered its own legal conclusions. In doing so, the First Circuit did not consider what Judge Thompson referred to in her dissent as the "mountain of secular evidence available," including but not limited to Rivera's 1787 will, which the District Court found to be "incontrovertible evidence that Touro Synagogue was owned in trust." Pet. App. 147a, 153a. Instead, the First Circuit considered only four pieces of evidence and gave, at best, untenable explanations for its rejection of the evidence considered by the District Court. *See generally* Pet. App. 11a-18a.

Judge Thompson's dissent makes this error apparent:

> The panel proceeds to emphasize secular documents such as deeds, charters, contracts, and the like as "the lodestones of adjudication" in

> cases such as this one where the court is tasked with resolving a property dispute while dodging improper entanglement in a religious controversy. Indeed, the trial judge's comprehensive and thorough decision highlights several such documents that are part of the voluminous record in this case. But the panel only picked four contracts to support its conclusion that "CSI owns * * * the real property free of any civilly cognizable trust obligations to CJI[.]" * * * While diving deep into these four contracts, the panel summarily dismisses a couple of documents the trial judge had relied on, including legislation passed in 1932 by the Rhode Island General Assembly and a series of deeds signed in 1894. And nowhere does it mention a 1787 will that the trial judge had found was "incontrovertible evidence that Touro Synagogue was owned in trust."
>
> An examination of some of the other secular documents upon which the trial judge relied confirms my belief that this case should be reheard by our entire court. Pet. App. 146a-147a (Thompson, J., dissenting).

The First Circuit's consideration of some secular evidence, such as "deeds, charters, contracts, and the like," but then outright dismissal of other secular evidence heavily relied upon by the District Court, such as Rivera's 1787 will, the 1932 Rhode Island legislation, and the 1894 deeds, established a new rule involving religious institutions and warrants this Court's review, or alternatively, summary reversal. *See* Pet.

App. 11a-18a. To be sure, the panel's statement regarding its denial of CJI's motion for a panel rehearing asserts that its decision does not "impose any categorical limitation on competent evidence in such cases," but the panel's complete absence and deference to evidence the District Court deemed "incontrovertible" reveals otherwise. Pet. App. 143a. Such a rule deeming certain secular evidence preferable to the exclusion of other secular evidence is without precedent.

Importantly, in arriving at its conclusion, the Court of Appeals completely disregarded Rhode Island law regarding charitable trusts as evidenced by the lack of any reference to Rhode Island statutory or case law. This *Erie* omission led Judge Thompson to recognize that her "colleagues haven't discussed long-standing Rhode Island law that could lead to different legal conclusions in the fact-intensive issues presented by this difficult case." Pet. App. 145a (Thompson, J., dissenting). Rather, the First Circuit "completely omitted any discussion of Rhode Island's extensive case law pertaining to charitable trusts," Pet. App. 153a (Thompson, J., dissenting), and this displacement of state law represents "an invasion of the authority of the state" and "a denial of [Rhode Island's] independence." *Erie*, 304 U.S. at 79.

Under Rhode Island law, "[t]he intention to create a trust is the essential thing; this intention must be expressed and must be clearly established by proof * * *." *Desnoyers v. Metropolitan Life Ins. Co.*, 272 A.2d 683, 688 (R.I. 1971) (quoting *Knagenhjelm v. Rhode Island Hosp. Tr. Co.*, 114 A. 5, 9 (R.I. 1921)). "While

technical words such as trust, trustee or charity are not always essential to the creation of a charitable trust, such a trust may be given effect if the testator's language makes clear his intent to make a gift in trust for a public charitable purpose." *MacDonald v. Manning*, 239 A.2d 640, 644 (R.I. 1968). Here, properly referencing Rhode Island law, the District Court held that "[t]aking all the evidence together, the 'proof of an intention' on the part of the Newport Jewish community 'to establish a trust' for public worship is 'clear and satisfactory.'" Pet. App. 85a (quoting *Blackstone Canal Nat. Bank v. Oast*, 121 A. 223, 225 (R.I. 1923)). The Court of Appeals completely disregarded the application of any Rhode Island law to this diversity action.

Even if the First Circuit had doubts regarding the establishment of a charitable trust, it was obligated to grant deference to the District Court's findings of fact and under *Erie*, it was required to give effect to the charitable trust recognized by the District Court because under Rhode Island law, equity favors charitable trusts. *See City of Providence v. Payne*, 134 A. 276, 280 (R.I. 1926) ("Equity is said to favor charitable trusts, and, though the terms of a gift of property may be somewhat uncertain, if it appears to have been the purpose of the donor to limit property to a benevolent public use, it will be held to be a gift to public charity."). Because the District Court found proof of intent to establish a trust and a charitable purpose after conducting a comprehensive review of the abundant evidence—in which the First Circuit found no error—the First Circuit should have relied upon Rhode Island

law and upheld the charitable trust. *See Payne*, 134 A. at 280 ("trusts which cannot be upheld in ordinary cases * * * will be established and carried into effect when created to support a gift to a charitable use") (quoting *Jackson v. Phillips*, 96 Mass. (14 Allen) 539, 550 (Mass. 1867)).

Perhaps most importantly, the First Circuit's holding had the practical effect of terminating the charitable trust and this conclusion violates Rhode Island law. *See Brice v. Trustees of All Saints Mem'l Chapel*, 76 A. 774, 781 (R.I. 1910) ("It is * * * well settled that such a trust, creating as it does a place of public worship for the benefit of an indefinite number of persons is a good and valid trust to a charitable use. *Such a charity once created is not permitted to fail either for nonuser or misuser*; but a court of equity in the exercise of its powers will see that it is carried on in some like form in order to carry out the general charitable intent of the donor.") (emphasis added); Bogert's Trusts and Trustees § 400 (June 2018) ("The trustee for charity has no power to terminate the trust unless authorized to do so by the trust instrument or by statute."); 14 C.J.S. Charities § 74, Karl Oakes, J.D. (September 2018 Update) ("The courts will readily attribute an intention to the donor that charitable gifts should be as permanent and perpetual as any human institution can be. The courts will not declare charitable gifts to be forfeited in doubtful cases."); Scott and Ascher on Trusts § 37.4.2.4 (2008) ("The principle that a trust will not be terminated, even if all of the beneficiaries wish to terminate

it, if termination would be contrary to the settlor's intent, applies as well to charitable trusts.").

In its order denying rehearing, the Court of Appeals rejected the argument that its decision violated Rhode Island law by dissolving a charitable trust that had existed for approximately 250 years, concluding that its holding did not foreclose "the possibility of a trust obligation to a non-CJI Newport 'Jewish society' as beneficiary." Pet. App. 143a-144a. Such reasoning that its decision did not run afoul of Rhode Island law by terminating a charitable trust because a charitable trust might "possib[ly]" exist through a non-CJI entity is completely illusory, without any basis in evidence, and contrary to even CSI's position. On this point, among the District Court's findings of fact—uncontradicted by the Court of Appeals—was that CJI is "currently the only established Jewish congregation in Newport, Rhode Island." Pet. App. 27a.

Judge Thompson's dissent was in accord:

> [I]f there is a real possibility that CSI owns the property but with trust obligations to some other entity, then, as a practical matter, to whom might CSI owe these obligations? Who would have standing to claim status as a bona fide beneficiary and not be precluded from litigating their claims? An individual Newport resident who worships at CJI but who is not a member of CJI? A congregation in a neighboring town to Newport who wants to use the sacred, historical site for religious or educational activity? I am concerned that

> any future litigants who are tied to worship at the Touro Synagogue could struggle to survive a res judicata challenge based on the identity of parties prong of such a defense. Pet. App. 152a (Thompson, J., dissenting).

In fact, in its appeal of the District Court's decision, CSI even conceded the existence of a trustee relationship with CJI. *See* Brief of Defendant-Appellant Congregation Shearith Israel at 21, Congregation Jeshuat Israel v. Congregation Shearith Israel, 866 F.3d 53 (1st Cir. Aug. 2, 2017) (No. 16-1756). And, in its Rule 28(j) statement responding to a question from a panel member concerning whether CSI was conceding charitable trust status "simply for purposes of this appeal or whether it is the independent position" of CSI, CSI wrote to the Court of Appeals that "Shearith Israel's concession is for purposes of appeal only." Rule 28(j) Letter, Congregation Jeshuat Israel v. Congregation Shearith Israel, 866 F.3d 53 (1st Cir. Aug. 2, 2017) (No. 16-1756). By concluding that a trust relationship did not exist between CSI and CJI—the only conceivable beneficiary of the charitable trust—the First Circuit reduced CSI's admission and Rhode Island charitable trust law to "possibilit[ies]" and terminated the only charitable trust that the District Court and both CJI and CSI recognized.

Just last Term, this Court reminded the lower courts that "[i]f the relevant state law is established by a decision of 'the State's highest court,' that decision is 'binding on the federal courts.'" *Animal Science Products*, 138 S.Ct. at 1874. And, in Rhode Island, it

has been law for over a century—as established by its highest court—that once recognized, a charitable trust "is not permitted to fail either for nonuser or misuser; but a court of equity in the exercise of its powers will see that it is carried on in some like form in order to carry out the general charitable intent of the donor." *Brice*, 76 A. at 781. The Court of Appeals' failure to recognize a trust relationship between CJI and CSI, and to award CSI ownership of Touro Synagogue "free of any trust or other obligation to CJI," Pet. App. 18a, paid no heed to state law, the Rhode Island Supreme Court's interpretation of state law, or the "respectful consideration" entrusted to the Attorney General to enforce Rhode Island charitable trust law. *See Animal Science Products, Inc.*, 138 S.Ct. at 1874. Rather, its decision supplanted state law with federal common law.

As the above jurisprudence demonstrates, unless the trust instrument expresses otherwise, Rhode Island law requires that a charitable trust generally last in perpetuity and shall not be terminated. Here, Rivera's 1787 will expressly provided that the Synagogue was held "in trust Only, to and for the sole Use, benefit and behoof of the Jewish Society, in Newport, to be for them reserved as a Place of Public Worship *forever* * * *." Pet. App. 47a-48a (emphasis added). The First Circuit's decision did not honor the intent of the charitable trust and wrongfully terminated it in violation of Rhode Island law.

B. The First Circuit Contravened the Well-Established Standard of Review

In disregarding the factual findings made by the District Court and rendering new findings based on its newly created test, the First Circuit employed the incorrect standard of review. When reviewing a district court's findings of fact, a court of appeals must review factual findings for clear error. *See* Fed. R. Civ. P. 52(a)(6) ("Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility."); *Sawyer Bros., Inc. v. Island Transporter, LLC*, 887 F.3d 23, 29 (1st Cir. 2018) ("Where a district court conducts a bench trial and serves as the fact-finder, we review its factual findings for clear error."). In her dissent, Judge Thompson seized upon this plain error and explained that the panel decision "thwarts our well-established standard of review for a district court's decision following a bench trial." Pet. App. 145a (Thompson, J., dissenting). Specifically, Judge Thompson stressed that "[the panel] engage[d] in a de novo review of the entire case without demonstrating any deference to [the trial judge's] findings of fact and without declaring, never mind demonstrating, that the trial judge's findings of fact are clearly wrong." Pet. App. 146a (Thompson, J., dissenting).

Judge Thompson accurately characterized the panel's decision. The First Circuit did not actually reject *any* of the factual findings rendered by the District Court as clearly erroneous. To the contrary, the First

Circuit praised the District Court for its "extensive findings of fact" and its "conscientious and exhaustive historical analysis," but then disregarded and contravened these "extensive" factual findings. Pet. App. 2a, 7a. For example, the panel rejected the District Court's finding that the 1894 deeds—several of which explicitly stated that the Synagogue was subject to a trust—supported its finding of a charitable trust. The panel held, "[l]ike the district court, * * * the deeds lack any significance for this case." Pet. App. 16a. Such a sentiment could not be further from the truth; the District Court did not find that the 1894 deeds "lack[ed] any significance * * *." Pet. App. 16a. Rather, the trial judge considered the 1894 deeds "telling" evidence wherein CSI "acknowledged the existence of a trust." Pet. App. 82a.

The panel again erred when it gave no deference to the weight that the District Court attributed to the 1932 Rhode Island legislation, which the District Court found to be "a public affirmation of the trust's existence and purpose." Pet. App. 83a. Relegated to a footnote, the First Circuit rejected the District Court's determination and concluded that "[t]he statute does not * * * reveal whether the trustees were those of CSI or CJI itself, let alone what difference it would make in this litigation." Pet. App. 17a n.4. But the trial judge concluded otherwise and the Court of Appeals' footnote is further evidence of its usurpation of the trial judge's fact-finding function.

The panel also dismissed the import of the tripartite agreement that named "Shearith Israel Trustees"

as "holders of fee simple title upon certain trusts in the Touro Synagogue." Pet. App. 83a. Despite the District Court having found this agreement to constitute "an admission by Shearith Israel that it is obligated by the terms of Mr. Rivera's Will," Pet. App. 83a-84a, the First Circuit dismissed this finding and instead held that "the trust reference in the tripartite agreement [has] no legal significance in determining ownership of or authority over * * * the Synagogue." Pet. App. 17a. Though the First Circuit may have viewed the evidence differently than the District Court, such is not grounds for reversal, as "the very premise of clear error review is that there are often 'two permissible' * * * views of the evidence." *Cooper v. Harris*, 137 S.Ct. 1455, 1468 (2017) (quoting *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 565 (1985)).

Lastly, in holding that no trust existed between CSI and CJI, the First Circuit granted to CSI greater relief than it sought. On appeal, CSI did not challenge the District Court's finding of a charitable trust in which Touro Synagogue is held. To the contrary, CSI conceded its status as trustee and maintained that it "[c]ontinues to [f]unction as [r]itual [o]verseer or 'trustee.'" Brief of Defendant-Appellant Congregation Shearith Israel at 21, Congregation Jeshuat Israel, 866 F.3d 53 (No. 16-1756). Indeed, in its appeal, CSI asked the First Circuit to "enter judgment that Shearith Israel, as charitable trustee, owns Touro Synagogue * * *." Brief of Defendant-Appellant Congregation Shearith Israel at 61, Congregation Jeshuat Israel, 866 F.3d 53 (No. 16-1756). The First Circuit even

acknowledged, albeit in a footnote, that CSI's prayer for relief sought a judgment that it owns the Synagogue "as charitable trustee." Pet. App. 18a-19a n.5. Despite CSI's concession to the District Court's finding that a charitable trust existed and its request to the Court of Appeals that it restore the charitable trustee relationship that it had with CJI, the First Circuit granted CSI greater relief than it sought by concluding that CSI owned Touro Synagogue "free of any trust or other obligation to CJI." Pet. App. 18a. *See generally Thomas R.W., By & Through Pamela R. v. Massachusetts Dep't of Educ.*, 130 F.3d 477 (1st Cir. 1997) (declining to grant appellant relief that was not originally sought).

CONCLUSION

In reversing the District Court, the First Circuit disregarded Rhode Island charitable trust law in violation of the *Erie* doctrine and failed to abide by the appropriate standard of review. Because of these errors, the Court of Appeals violated Rhode Island law by terminating a charitable trust that had existed for approximately 250 years. The Attorney General respectfully asks this Court to grant the petition for certiorari brought by CJI and reverse the decision of the First Circuit, or, alternatively, to summarily reverse.

Respectfully submitted,

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