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February 18, 2011

U.S. Justice Department Joins Jewish Group In Lawsuit Against Litchfield

February 17, 2011 | By RINKER BUCK, rbuck@courant.com, The Hartford Courant

The U.S. Department of Justice has decided to intervene on the side of a Jewish group that is suing the Borough of Litchfield after being denied a permit to build a synagogue on the town green.

Chabad Lubavich of Litchfield County, a conservative Hasidic group that has been active in Litchfield over the past decade, filed its suit in federal district court in Bridgeport in 2009, alleging that the town's denial of a building permit violated the terms of the federal Religious Land Use and Institutionalized Persons Act. The act prohibits local governments from imposing zoning regulations that restrict religious freedom.

The lawsuit followed contentious hearings before Litchfield's Historic District Commission during which commission members made derogatory remarks about Jewish symbols before denying the group's application to build the synagogue and community center.

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Last August, federal Judge Janet C. Hall found that statements made by commission members "may contain evidence of discrimination directed against Jewish people in general and the Chabad in particular," warranting a trial.

In January, lawyers for Litchfield filed a motion to dismiss on the grounds that the RLUIPA is unconstitutional.

Litigants claiming that a federal law is unconstitutional are required to file notice of their action with the Justice Department, which then must decide whether it will enter the case to defend the constitutionality of the law. The Justice Department filed papers with the court on Wednesday saying that it plans to defend the constitutionality of the RLUIPA law as soon as it receives approval from the federal Solicitor General.

National experts on the RLUIPA statute say Justice Department intervention in such cases, while frequent, usually indicates that federal attorneys consider the case to have merit.

"The federal courts have unanimously upheld the constitutionality of the RLUIPA law," said Roman Storzer, a Washington, D.C., lawyer who has represented dozens of religious groups on land-use disputes similar to the Chabad case. "The defendants' argument [made by the Borough of Litchfield] sounds like a desperate ploy to avoid the applicability of the law. This kind of argument has never been successful, and it helps to have the federal government involved."

Hartford lawyer Kenneth Slater, who represents Chabad, said, "It's significant that the U.S. Justice Department agrees with us that the act is constitutional."

Litchfield's attorney, James Stedronsky, said he is relying on the expertise of his expert co-counsel, Prof. Marci Hamilton of Yeshiva University's Cardozo School of Law, to help the borough prevail.

"The Borough of Litchfield has retained the country's foremost constitutional scholar on RLUIPA to assist it in challenging the constitutionality of the law and the inadequacies of the plaintiffs' other constitutional claims," Stedronsky said. "The thrust of our argument is that our First Amendment does not allow municipalities to grant special indulgences to religious entities."

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