APL-2020-90
New York County Clerk's Index No. 659926/13

Court of Appeals of the State of New York

* * *

Estate of Margaret Kainer &c, et al.,
Plaintiffs-*Appellants*
v.

UBS Global Asset Management (Americas), Inc.,
Norbert Stiftung f/k/a/ Norbert Levy Stiftung,
and Edgar Kircher,
Defendants-Respondents

* * *

Proposed Brief Amicus Curiae of the Raoul Wallenberg Centre for Human Rights, the Simon Wiesenthal Center, Omer Bartov, Michael Bazyler, Michael Berenbaum, Donald Burris, Hector Feliciano, Eugene Fisher, Irving Greenberg, Marcia Sachs Littell, Carrie Menkel-Meadow, John Pawlikowski, Carol Rittner, John Roth, Stephen Smith, Alan Steinweis, and Jonathan Zatlin, in Support of *Plaintiff-Appellants*

* * *

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Dated: December 30, 2020

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Disclosure of Corporate Status

Two of the *Amici Curiae* are corporations, but neither is a "business entity" in the commercial sense intended by 500.1 (f) of the Court of Appeals Rules of Practice.

The Raoul Wallenberg Centre for Human Rights is located in Montreal, in the Province of Quebec, in Canada. It is organized under federal law as a not-for-profit organization, pursuing interests articulated in Appendix A to this Brief *Amicus Curiae*, and has no commercial parents, subsidiaries or affiliates.

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Defendants-Respondents.

Index No. 659926/2013

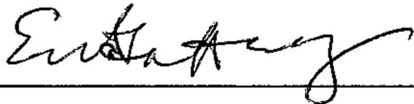
Appeal No. 2020-90

NOTICE OF MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

PLEASE TAKE NOTICE that upon the annexed affirmation of Edward McGlynn Gaffney, Jr., Esq., dated December 4, 2020, including a copy of the proposed brief of *Amicus Curiae*, the undersigned will move, before a Justice of this Court, at a session to be held at the Courthouse at 20 Eagle Street, Albany, New York, for an Order granting leave to Edward McGlynn Gaffney, Jr., Esq., to file with this Court a Brief as *Amicus Curiae* in support of Plaintiffs-*Appellants* in the action captioned above.

Dated: Los Angeles, California
December 30, 2020

Respectfully submitted,



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* * *

Motion for Leave to File Brief Amicus Curiae
And Affirmation of Edward McGlynn Gaffney

* * *

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Dated: December 30, 2020

Counsel of Record for Amici Curiae

Printed on recycled paper

Subject to the penalties of perjury under the laws of New York, I affirm:

1. I submit this Motion and Brief *Amicus Curiae* (attached as Exhibit A) on behalf of two international human rights organizations: The Raoul Wallenberg Centre for Human Rights, located in Montreal, Quebec, and The Simon Wiesenthal Center, located in Los Angeles, California. Neither of these not-for-profit organizations is a commercial business entity (see Disclosure of Corporate Status attached to proposed Brief *Amicus Curiae*).

2. Some of the *Amici Curiae* are renowned scholars of the history of Modern Europe, and more particularly of the planning and execution of massive offenses against human dignity and international law, including illegal confiscation of property and looting of art and other property of European Jews in the events from 1933 to 1945 known collectively as The Holocaust or The Shoah (Hebrew for catastrophe or disaster): Donald Burris, Hector Feliciano, Carrie Menkel-Meadow, John Roth, Alan Steinweis, and Jonathan Zatlin.

3. Other *Amici Curiae* are distinguished scholars in inter-religious studies and in preservation of the memory of the Shoah through museum building, recording of survivor testimony, and film-making: Michael Berenbaum, Eugene Fisher, Irving Greenberg, Marcia Sachs Littell, John Pawlikowski, Carol Rittner, and Stephen Smith.

4. The particular interests of these *Amici Curiae* in this case are described more fully in Appendix A of the proposed Brief attached to this Motion.
5. This case is a case of great public interest, as it relates to the provenance and ownership Nazi-looted art and of the ethical behavior of a major bank in the administration of its fiduciary obligations to Margaret Kainer, a survivor of the Shoah whose estate is the subject of this appeal. The proposed Brief *Amicus Curiae* attached to this Motion sets this particular theft—actually two thefts, one by the Nazis, and the other alleged to have been perpetrated by the Swiss bank defending this appeal—within the much larger context of the most massive heist in history, the enormity of which is often overlooked or woefully understated.
6. I filed my first Brief *Amicus Curiae* addressing Nazi-looted art in the first case of this sort decided by the Supreme Court of the United States in 2004, *Republic of Austria v. Altmann*, 541 U.S. 677 (2004) dealing with retroactivity of the Foreign Sovereign Immunity Act. That case was a breakthrough at the national level, and was at that time an omen that imperfect justice might begin to occur for Holocaust victims who had for decades after the war never seen any glimmer of hope of regaining their family's possessions robbed during the war. The proposed Brief offers a realistic description of a general failure

to redress this grievance for the half century between the end of the war and the *Altmann* case.

7. With Professor Jennifer A. Kreder, I have formed an ad hoc group of leading historians of modern Europe and, more particularly of the Shoah and the planned destruction of the entire Jewish community of Europe. This group has repeatedly performed a pro bono service to judges in an effort to enable better understanding of realities that remain highly relevant to the even-handed and fair disposition of restitution claims. The proposed brief discusses cases that shut off avenues of recovery of stolen art and that led ultimately to the enactment of the Holocaust Expropriated Art Recovery Act of 2016. The brief offers the Court a way of maintaining the distinct character of New York Law as an intrument of protecting both the rights of Jewish victims of massive theft and the central importance of New York's interest in the integrity of art transactions in the new art capital of the world.

8. My J.D. and M.A. in History are from the Catholic University of America. I also studied at Harvard Law School, where I received the LL.M. degree in 1976. In academic year 1973-1974 I studied International Law in London, focusing on international protection of human rights, and this led to my interest in Holocaust and Genocide Studies, which I taught for several years at several law schools, including Notre Dame Law School, Loyola Law

School (LA), Pepperdine University, and Valparaiso University, where I served as Dean for seven years and formed a program in Comparative and International Law in Cambridge (UK).

9. As a theology major in Rome in the 1960s, I served as a translator (Latin-English) during the sessions of the Second Vatican Council that dealt with three major issues creating recurrent problems for Jews: (1) Christian teaching of contempt for Jews for centuries, which was finally repudiated in 1965, (2) ignorance of the Shoah, which led in my case to become a central concern of my scholarly and ethical commitments as a student and professor of both law and history, and (3) Catholic denial of religious freedom or perhaps better stated as a half-hearted commitment, loving religious freedom for ourselves while opposing it for others, particularly Jews.

10. This course of studies led me to become engaged as a law professor in many dimensions of the enormous event of the Shoah, of which this appeal reflects one small example. The scholars associated with the attached brief have no ideological commitment that seeks to evade the difficult task of adjudicating claims on the merits. On the contrary, we are joined in this ongoing effort to encourage reasonable decisions based precisely on merit rather than on adventitious claims on technical grounds that are sometimes shocking when they appear in published judgments of a court of law.

11. The proposed Brief *Amicus Curiae* treats with great respect decisions of this Court that discussed this subject with far greater care and prudence than more recent cases in several federal courts, many of which overlook or disregard the important contribution of New York jurisprudence stated with clarity as long ago as 1964. Professor Kreder and I are working on a volume on the conjunction of art and warfare that will assess many of the issues outlined briefly above. The proposed Brief *Amicus Curiae* is offered with great respect for this Court, which we will hope will use this case as a vehicle to assist other Courts and other Judges to recognize a holdup when they see one. *See Republic of Austria v. Altmann*, 541 U.S. 677, 682-683 (2004) (Stevens, J., concurring).

12. Because the issues presented in this appeal are of great significance not only in our own country, but also throughout the world, I hereby respectfully request that this Court grant this Motion for leave to file the attached Brief *Amicus Curiae* in this case.

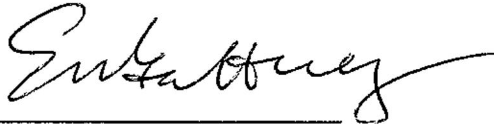
13. I have served a copy of this Motion for Leave to File a Brief *Amicus Curiae* with the counsel of record for all the parties in this case. If the Court grants this motion, in addition to the submission in digital format required by Court of Appeals Rules pf Practice subsection 500.12(h), I will file nine copies of

the brief, with proof of service of three copies on each party, within the time set by the Court's order, Rules of Practice, subsection 500.23(a)(4)(iii).

Dated: Los Angeles, California

December 30, 2020

Respectfully submitted,



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PROOF OF SERVICE

I hereby certify that on December 30, 2020, I served a copy of a Corrected Motion for Leave to File a Brief Amicus Curiae, including the proposed Brief Amicus Curiae on the parties by sending a copy of this entire document by US Mail, First Class Postage prepaid to the lead counsel in each of these five firms:

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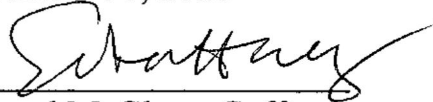

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Brief Amicus Curiae of the Raoul Wallenberg Centre for Human Rights, the Simon Wiesenthal Center, et al.

Introduction: The Shoah is So Devastating in its Effects and So Profound in Its Consequences for Humanity that We Must Reevaluate Everything that Follows in its Wake.

Amici are civil rights organizations, scholars and practitioners of international law, and historians with particular interests in the history of modern Europe and the Shoah and its aftermath. Their scholarship and particular interests in this matter are described in **Appendix A** of this brief. None of the Amici has any financial or economic interest in the outcome of this appeal.

In the common law tradition, situating legal cases within the broader context of the historical matrix within which they occur has long been an important tool of legal interpretation. This central methodological commitment is all the more imperative when the background facts of a case are as intimately connected to history as this case is. This brief seeks to assist the Court by adding contextual information that we trust may assist reflection that must precede the judgment that judges must make.

Casting a dark shadow over this case, the period from 1933 to 1945 in German history is designated as the era of Nazi Oppression. Amici Curiae call attention to official federal policies adopted by the United States and its Allies during the prosecution of World War II that are relevant to the disposition of claims pressed in

this case. For example, the Allies expressly warned the Axis Powers in the 1943 Declaration of London that it would prosecute the crime of looting that had occurred on a massive scale in World War II, and Justice Robert Jackson prosecuted these crimes in the chief case at the International Military Tribunal at Nuremberg.

The ultimate crime of the Nazis was, of course, the mass murder of two-thirds of Europe's Jews, all of whom were unarmed civilians. On January 30, 1939, the sixth anniversary of Hitler's accession to power, the Führer threatened in the Reichstag that if war broke out (as it did on September 3 of that year), the result would be "the annihilation (*Vernichtung*) of the Jewish race in Europe." When the "Final Solution" was carried out by the Einsatzgruppen and the operation of major killing centers in German-occupied Poland, the total number of murdered Jews was about six million, of whom 1.5 million were children. This led one of the Amici, Rabbi Irving Greenberg, to write: "No statement, theological or otherwise, should be made that would not be credible in the presence of burning children." Greenberg, "Judaism, Christianity, and Partnership after the Twentieth Century," in Peter Ochs, ed., *Christianity in Jewish Terms* 27 (2000).

I. The HEAR Act Mandates Greater Coherence between State Law Governing Property Rights and Long-Standing Federal Policy Condemning War-Time Looting, Including Nazi Expropriation.

A. The Need for the HEAR Act

One of the saddest aspects of Fascist law and order is that rules the Nazis wrote as administrators of both massive looting and mass murders met next to no resistance from the German judiciary, which sustained Nazi rule-making in a highly formalistic way. Ingo Müller, *Hitler's Justice: The Courts of the Third Reich* (1992). Judicial deference to unbridled executive authority was shown specifically to Nazi looting of art, which was an important part of a larger complex of laws, all of which designed to impoverish and denigrate the Jews; Martin Dean, *Robbing the Jews: The Confiscation of Jewish Property in the Holocaust 1933-1945* (2008).

One specific way in which Nazis victimized Jews was embedded in many fiscal policies that robbed Jews of almost every form of their assets. The grand larceny should not be overlooked merely because mass murder was the foulest crime perpetrated by the Nazi conspirators. Or vice versa. Recovery of the art is an important part of preserving Jewish history and culture, which Hitler sought to wipe from the face of the earth. We must view legal and factual questions presented in this appeal through the stark historical and moral prism of a specific criminal conspiracy to annihilate the Jews of Europe. *See* Peter Hayes, *Confiscation of Jewish Property in Europe, 1933–1945*, 147 (2003) (law established, defined and normalized Aryanization project or seizure of Jewish assets, removing any question of the morality or legitimacy of the process).

Many judges in this State have for decades exhibited an empathetic understanding of the historical circumstances of the Shoah. Sadly, this generous spirit was absent in *Bakalar* (a federal case in the Southern District of New York discussed below) and in numerous cases in the 1990s and the early part of this century in other jurisdictions dismissing claims for restitution brought by heirs of victims of Nazi persecution. Inattentiveness to the historical circumstances surrounding these cases led to a dismal judicial record in this nation crying out for change. Understanding even a few of the egregious cases that led to the HEAR Act's adoption will help the Court understand this analysis. Indeed, the frequent failure to allow fair—that is to say, attentive, fact-based, diligent, careful, intelligent, reasonable, and responsible—resolution of these claims on the merits was a principal reason impelling congressional action. *See, e.g.,* Statement of Rep. Goodlatte, House Rep., at H7331. Amici highlight two purposes of this important legislation:

> (1) To ensure that laws governing claims to Nazi-confiscated art and other property further United States policy as set forth in the Washington Conference Principles on Nazi-Confiscated Art [. . .] and the Terezín Declaration.
>
> (2) To ensure that claims to artwork and other property stolen or misappropriated by the Nazis are not unfairly barred by statutes of limitations but are resolved in a just and fair manner.

The HEAR Act reflects a bipartisan—indeed a unanimous—congressional consensus followed by immediate presidential approval that we must find a better

way of dealing with one of the last remaining clusters of messy and unfinished business from World War II.

Indifference or lack of care about problems associated with Nazi-looted art and other property must now yield to greater attentiveness, understanding, reasonableness, and responsibility among us before we dare close the books on the gnarly questions of Nazi confiscation and on those among us in this republic who curiously seek to remain beneficiaries of the Nazi heist by selling, profiting from, or retaining looted art. *See, e.g.*, Götz Aly, *Hitler's Beneficiaries: Plunder, Racial War, and the Nazi Welfare State* (2007).

As this Court well knows, New York does not allow a "finder's keepers" approach to lawful possession of stolen property. This means that its courts may and must provide a full and fair hearing on the merits to determine property rights in the curious circumstances of this case, involving apparent fraud by a major Swiss bank.

This case, moreover, has important implications both for sellers and purchasers of looted art and for museums. For example, before accepting donations of beautiful art, museums must research its provenance. Since representatives of many museums helped draft the Washington Principles, it is reasonable to require these museums to adhere to these principles as a matter of ethical obligation, rather than trample on them by suing survivors' heirs to defeat their claims on technical grounds. *See* Jennifer A. Kreder, *The New Battleground of Museum Ethics and*

Holocaust-Era Claims: Technicalities Trumping Justice or Responsible Stewardship for the Public Trust?, 88 *Or. L. Rev.* 37 (2009).

In the last two decades, some federal judges created a cluster of decisions that eventually proved to be unsustainable. Amici offer three reasons for the gap that emerged between the promise of the Washington Principles on the one hand and the judicial decisions dismissing claims without a decision on the merits. First, these judicial decisions exalted form (adherence to technical defenses such as statutes of limitation and laches) over substance (returning stolen property to heirs, typically family members of victims of the Shoah). Second, they overlooked the tradition of judicial deference to executive power in determining foreign policy. Third, in the exercise of diversity jurisdiction, some federal judges overlooked or curiously declined to follow the determination of state law issues by state judges.

In the face of all such complexities, a unanimous Congress dared in the HEAR Act to hope for greater adherence to federal policy against looting in judicial disposition of cases involving restitution of Nazi-looted art. The time had come to "get on the right side of history." In one of its central findings of fact Congress underscored the magnitude of the theft: "hundreds of thousands of works . . . greatest displacement of art in human history." HEAR Act § 2. Former director of the Cleveland Museum of Art Robert P. Bergman agreed: "We're talking about hundreds of thousands of objects. I believe that for the rest of my professional career, this issue

will face the museums of the world." *Id.* In his book on the many recovery efforts he led diplomatically at the end of the past century, including the signing of the 1998 Washington Principles, Stuart Eizenstat calls the perpetrators of the Nazi art crimes "Barbarians of Culture." Eizenstat, *Imperfect Justice* 187-205 (2003). In 1998, Congress enacted the Holocaust Victims Redress Act, 112 Stat. 15, favoring "good faith efforts to facilitate the return of . . . works of art to the rightful owners in cases where assets were confiscated from the claimant during the period of Nazi rule. . . ."

In 2009, the United States again attempted to commit itself to proper resolution of claims arising from the Shoah at the Holocaust Era Assets Conference in Prague. With 45 other nations, the United States endorsed the Terezín Declaration to "facilitate just and fair solutions with regard to Nazi-confiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the *facts and merits* of the claims and all the relevant documents submitted by all parties . . ."

The sixth finding of fact in Section 2 of the HEAR Act correctly summarized the problem:

> Victims of Nazi persecution and their heirs have taken legal action in the United States to recover Nazi-confiscated art. These lawsuits face significant procedural obstacles partly due to State statutes of limitations. . . . In some cases, this means that claims expired before World War II even ended. The unique and horrific circumstances of World War II and the Holocaust make statutes of limitations especially burdensome to the victims and their heirs. Those seeking recovery of

> Nazi-confiscated art must painstakingly piece together their cases from a fragmentary historical record ravaged by persecution, war, and genocide. This costly process often cannot be done within the time constraints imposed by existing law.

The central example of moving away from the formalism of the 1990s and the first 15 years of this millennium is that a six-year statute of limitations is triggered only when a victim has *actual knowledge* of (a) the identity and location of the artwork, and (b) his possessory interest in it. Section 5 of the HEAR Act also imposes a uniform period of *six years* before which no claim for restitution of Nazi-looted art may be extinguished because of a failure to comply with the new federal statute of limitations. This rule is unavailable to litigants outside the United States where statutes of limitations can present insurmountable barriers.

B. Other Facts Relevant to a Respectful Reading of the HEAR Act

Amici note, moreover, that Congress made other statutory findings of several other indisputable facts—often taken from the reports of this Court—that confirm that the HEAR Act reflects both (a) a paradigm shift in current understanding of the need to require fair and reasonable means of resolving claims for restitution of Nazi-looted art on the merits, and (b) a correction of relatively recent aberrations that were disjunctive with foreign policy determinations by Presidents Theodore Roosevelt, Franklin D. Roosevelt, Bill Clinton and Barack Obama. We offer a summary of pertinent decisions taken by the executive branch that require judicial deference.

1. The United States is a High Contracting Party to the Hague Convention on Laws and Customs of War on Land (Hague IV), Art. 47 of which clearly condemns pillage as a crime of war.

2. American diplomats led efforts to warn other countries against looting in the famous London Declaration of January 5, 1943, 8 Dept. St. Bull. 984-85 (1952), which "declare[d] invalid any [coerced] transfers of, or dealings with, property . . . whether such transfers or dealings have taken the form of open looting or plunder, or of transactions apparently legal in form, even when they purport to be voluntarily effected." *See generally* Avraham Barkai, "Arisierung," 1 *Encyclopedia of the Holocaust* 84-87 (Israel Gutman, ed., 1990).

3. On June 23, 1943, President Franklin D. Roosevelt established the American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas. Chaired by Supreme Court Justice Owen J. Roberts, the commission helped U.S. Army and Armed Forces to protect cultural works in Allied occupied areas. Its officers cooperated with the U.S. Army in protecting cultural treasures, gathered information about war damage to such treasures, compiled data on cultural property appropriated by the Axis Powers, and encouraged its restitution. The commission also prepared and distributed lists and handbooks to the military's Monuments, Fine Arts and Archives (MFA&A) officers in the field to assist them with preparation of official lists of sites and monuments to protect. Before

completing the work of the Roberts Commission in June of 1946, Roberts wrote to museum directors and curators urging them to be diligent in checking provenance of new works of art, to be certain that no American museum was purchasing looted art. As described more thoroughly below, during World War II the United States established a unit called the Monuments, Fine Arts, and Archives Section of the Allied Armies. The purposes of this unit were to retrieve and return cultural artifacts and materials found during and after the war. *See* Robert Edsel and Bret Witter, *The Monuments Men: Allied Heroes, Nazi Thieves, and the Greatest Treasure Hunt in History* (2010); Robert Edsel, *Saving Italy: The Race to Rescue a Nation's Treasures from the Nazis* (2014).

4. Immediately after the war, the International Military Tribunal at Nuremberg evaluated detailed evidence of *coerced sales*. The plunder of art was declared a war crime and is so recognized today. Who did what and to whom was perfectly clear to Justice Robert Jackson, Chief Prosecutor of the principal case against the Nazi leaders and their collaborators. The factfinders found strong evidence of a criminal conspiracy on the looting charges and convicted most of the perpetrators. *See* Michael Marrus, ed., *The Nuremberg War Crimes Trial, 1945-46: A Documentary History* (2014).

5. In the normal course of judicial administration touching on foreign policy, federal judges typically defer to determinations of policy matters by the executive

branch. For example, in 1949 the Second Circuit ruled inadmissible the statements of a Jewish victim of Nazi persecution describing his brutal imprisonment by the Nazis that led him to "transfer" major assets under duress, on the ground that to do so would denigrate a foreign country (post-war West Germany). *Bernstein v. N. V. Nederlansche-Amerikaansche Stoomvaart-Maatschappij*, 173 F.2d 71 (2d Cir. 1949). In 1952, however, Jack B. Tate, Acting Legal Adviser in the Department of State, clarified:

> [The U.S.] Government's opposition to forcible acts of dispossession of a discriminatory and confiscatory nature practiced by the Germans on the countries or peoples subject to their controls . . . [and] the policy of the Executive, with respect to claims asserted in the United States for restitution of such property, is to relieve American courts from any restraint upon the exercise of their jurisdiction to pass upon the validity of the acts of Nazi officials. 26 Dept. St. Bull. 984-85 (1952).

Once the Circuit Court was fully informed of the government's views of coerced "transactions" during the Nazi era in Germany, it acted sua sponte to reverse its previous ruling in the same case. *Bernstein v. N.V. Nederlansche-Amerikaansche Stoomvaart-Maatschappij*, 210 F.2d 375, 376 (2d Cir. 1954).

6. After the war had ended in Europe, American diplomats succeeded in persuading leaders of Austria's Second Republic to repudiate officially all transactions involving the property of Nazi victims, declaring all such "deals" null and void. The Austrian authorities did so in the Nullity Act of May 15, 1946. Soon

thereafter, on July 26, 1946 and February 6, 1947, Austria enacted three statutes apparently designed to accomplish restitution of Nazi-looted property. In 1955 when Austria sought to rejoin the family of nations as an independent nation, it pledged to repudiate *all* spurious "transactions" of the Nazi era (1938-1945), including art "deals" that were really seizures, and to restitute all unreturned Nazi-looted property. 1955 State Treaty, Art. 26, ¶ 1, TIAS 3298, 6 U.S.T. 2369 (May 15, 1955).

As Maria Altmann was to learn when she tried to reclaim Klimt paintings that she knew from early childhood—including a famous one of her aunt Adele Bloch-Bauer now in the permanent collection of the Neue Gallerie in Manhattan—a law appearing on its face to be as clear as day could, in actual application, be as obscure as night and as dense as fog. In practice, Austria required such hefty fees for getting one's own property back that these taxes, in effect, nullified the nullity laws. *See, e.g., Republic of Austria v. Altmann,* 541 U.S. 677, 682-683 (2004). For reliable accounts of antisemitism in Austria, *see, e.g.,* Bruce Pauley, *Hitler and the Forgotten Nazis* (1981); Pauley, *From Prejudice to Persecution* (1998); George Clare, *Last Waltz in Vienna:* (1982); Ilana Fritz Offenberger, *The Jews of Nazi Vienna, 1938-1945* (2017); Ivar Oxaal, Michael Pollak, and Gerhard Botz, eds., *Jews, Antisemitism and Culture in Vienna* (1988); Doron Rabinovici, *Eichmann's Jews* (2011); Thomas Weyr, *The Setting of the Pearl* (2005); and George E. Berkley, *Vienna and Its Jews* (1988).

7. The first Holocaust-era art case in the United States was heard before this Court in 1966. Justice Arthur G. Klein was attentive to the factual circumstances surrounding the "relinquishment" of the artwork at issue: "The relinquishment here by the Menzels in order to flee for their lives was no more voluntary than the relinquishment of property during a holdup." *Menzel v. List*, 267 N.Y.S.2d 804, 810 (Sup. Ct. 1966), *modified*, 279 N.Y.S.2d 608 (App. Div. 1967); *rev'd on other grounds*, 246 N.E.2d 742 (N.Y. 1969). This Court reinforced this truth for all cases to come:

> Throughout the course of human history, the perpetration of evil has inevitably resulted in the suffering of the innocent, and those who act in good faith. And the principle has been basic in the law that a thief conveys no title as against the true owner. . . .. Provisions of law for the protection of purchasers in good faith which would defeat restitution [of Nazi confiscations] shall be disregarded. 246 N.E.2d 742, 819 (N.Y. 1969).

From that decision by the Court of Appeals in 1969 to its most recent decision on this matter, *In the Matter of Flamenbaum*, 978 N.Y.S.2d 708 (2013), the law of New York has always been sensitive to protecting the axiomatic Anglo-Saxon principle that "a thief conveys no title as against the true owner."

8. Several recent volumes document the massive scale of German-Austrian-Russian plundering of art during World War II and the intrigue surrounding efforts to conceal it. *See, e.g.*, Lynn H. Nicholas, *The Rape of Europa: The Fate of Europe's Treasures in the Third Reich and the Second World War* (1995); Jonathan

Petropoulos, *Art As Politics in the Third Reich* (1996); Hector Feliciano, *The Lost Museum: The Nazi Conspiracy to Steal the World's Greatest Works of Art* (1998); Jonathan Petropoulos, *The Faustian Bargain: The Art World in Nazi Germany* (2000) (questioning the ethics of European art dealer networks following World War II).

9. The same is true of historical scholars, who have conducted meticulous archival investigation of various ways in which the Nazis plundered the Jewish population not only in Germany and then Austria, but also in almost all the lands they subsequently occupied. For example, on March 22, 2001, the Center for Advanced Holocaust Studies at the United States Holocaust Memorial Museum sponsored a symposium with papers by ten prominent Holocaust scholars from around the world. In 2003 the USHMM published all the papers on its website. *See* Peter Hayes, ed., *Confiscation of Jewish Property in Europe, 1933–1945*, (2003), https://www.ushmm.org/m/pdfs/,Publicaiotn_OP_2001-01.pdf.

Seven years after this conference, Martin Dean contributed a powerful overview of the grand Nazi project of confiscation. *See* Dean, *Robbing the Jews: The Confiscation of Jewish Property in the Holocaust, 1933-1945,* 11 (2008). In the first phase (1933-1941) the Nazis persecuted Jews by seizing their property, freezing their bank accounts, charging discriminatory tax rates, even ordering a "Special Tax" paid by Jews to clean up the mess after official violence planned and executed by

the SS in every political region (or *Land*) in the November pogrom, *See, e.g.,* Alan Steinweis, *Kristnallnacht 1938* (2009).

The Nazis exploited those who sought to escape by extorting a forfeiture of their property—sometimes virtually everything of economic value they owned—in "exchange" for an exit visa. *Id.* at 17-172. As demonstrated by Martin Dean in *Robbing the Jews,* sometimes the extortion was practiced by officials of the Reich; sometimes it extended to a network of nefarious art dealers.

In the second phase of the Nazi terror (1941-1945), the "final solution" came to the fore. Dean fully appreciates the task of the historian's duty to be precise and lays out meticulously the thoroughness of the Nazi program of dispossession of even meager possessions of Jews, but obviously objects of art of great value. *Id.*, 173-398. Close attention to the context of the 1940s requires the conclusion that the primary goal was a crime that did not yet have a name, genocide. Even so, when the murder of millions was swiftly being carried out by the *Einsatzgruppen* and by the creation of the monstrous camps that manufactured death by assembly line, even in the thick and thin of all that blood, calls attention to the Nazi insistence on the necessity of further robbery.

The current generation of scholars focused on Nazi-looted art build on the work of the Monuments Men who searched all over for the looted art, often at risk to their lives, and who after the war took jobs in museums to ensure that these special

spaces for objects of beauty would never yield to the temptation to put blood on their walls.

Although these recent volumes on this subject are very well researched and written, several leaders in the art world misunderstood these books as a "breakthrough" or an "amazing discovery." This view is utterly false. We offer three reasons to reject it. First, *during* the war the Allies warned the Axis in the London Declaration that they knew of the looting and promised to punish it, and they made strenuous efforts (e.g., Monuments Men) to stop or interrupt the looting.

Second, the legislative history of the HEAR Act rebuts this utterly false claim of a "recent discovery" of the massive crime being perpetrated throughout the entire Nazi era. For example, Ronald S. Lauder, former U.S. Ambassador to Austria, former Chairman (current Board member) of MoMA, founder of the Commission for Art Recovery and co-founder of the *Neue Galerie* focused on Austrian artists like Gustav Klimt and Egon Schiele, perhaps stated it best while testifying to Congress in support of the HEAR Act on June 7, 2016:

> What makes this particular crime even more despicable is that this art theft, probably the greatest in history, was continued by governments, museums and many knowing collectors in the decades following the war. This was the dirty secret of the post-war art world, and people who should have known better, were part of it.

Lauder also explained the broad scope of the massive theft:

> The term "by the Nazis" includes the Nazis, their allies and any unscrupulous individuals regardless of their location, who took advantage of the dire state of the persecutees, and the term "confiscation" includes any taking, seizure, theft, forced sale, sale under duress, flight assets, or any other loss of an artwork that would not have occurred absent persecution during the Nazi era.

This Court should take judicial notice that all these issues were openly discussed immediately after World War II in leading American journals familiar to every member of this Court. For example, in October of 1946, James Plaut—a former OSS officer and member of the Art Looting Investigation Unit—broke the story called "Hitler's Capital: Loot from the Master Race," *The Atlantic* (Oct. 1946) 75-80. Within a few months, the next major piece appeared in *The New Yorker*, in its section that is justly famous for in-depth reporting on criminal matters called "Annals of Crime." In February of 1947 Janet Flanner began a three-part essay on the Great Nazi Art Heist called "The Beautiful Spoils." Her lengthy essay ran in three consecutive issues of *The New Yorker*. Ten years later Harper & Row published Flanner's volume, *Men and Monuments* (1957). *See also* "Restitution of Identifiable Property to Victims of Nazi Oppression," in 44 *Am. J. Int. Law* 39 (1950).

Major figures in the Allies' restitution effort discussed these issues in their memoirs. *See* Thomas Carr Howe, *Salt Mines and Castles: The Discovery and Restitution of Looted European Art* (1946), and James Rorimer, *Survival: The*

Salvage and Protection of Art in War (1950). Howe became the director of the San Francisco Legion of Honor and Rorimer later headed the Metropolitan Museum of Art in New York. This increased the impact of their books, which recounted both the Nazis' plundering operations and the challenges of restitution work. Dozens of Americans who had served as Monuments Officers assumed leading positions in U.S. museums in the postwar period, including the Metropolitan Museum of Art, MoMA, National Gallery of Art, Cleveland Museum of Art and Toledo Museum of Art. *See* http://www.monumentsmenfoundation.org/the-eroes/the-monuments-men; *see also* Robert Edsel, *Saving Italy: The Race to Rescue a Nation's Treasures from the Nazis* (2014). Others helped found the National Endowment for the Humanities and the National Endowment for the Arts.

The New York Times also published important pieces on this immensely significant story. For example, the *Times* informed its readers:

> From Greece to California, hundreds of art scholars, museum directors, private galleries, and police organizations, including Interpol, the international police organization, are watching for the reappearance of works stolen from museums, churches, libraries, galleries and private collections.

Milton Esterow, "Europe is Still Hunting Its Plundered Art," *New York Times*, Nov. 6, 1964.

Third, the incorrect notion of a "recent discovery" comes from biased sources: current possessors of stolen art who could claim they could not have known of an

artwork's sordid history. Amici distrust self-serving reports that awareness of both the facts of the massive plunder and the corresponding moral obligation of returning stolen goods to their rightful owners was due to recent publications noted above. These facts and these duties were available to anyone with ears to hear or eyes to see back in the late 1940s. Reliable factual data and ethical seriousness about what to do with this information were shared with the general public in newspapers and magazines across the nation.

In is no accident that the HEAR Act resists the vestiges of the Shoah by laying upon all courts in the United States, state and federal, an obligation to restate and renew the noblest purposes of our republic—procedural fairness and equal protection of the laws—in the adjudication of claims to restitution of objects of art, things of beauty stolen by the Nazis as part and parcel of a deeper desire and a thicker conspiracy to rob Jews of their very lives. For this reason the HEAR Act reflected progress, not decline, when it linked the trigger of the statute of limitations with two necessary predicates: actual knowledge of the theft of property and a possessory interest by a plaintiff in that stolen property.

II. This Court Should Mandate Review of All Claims for Restitution of Nazi-Looted Art by this State's Courts in the Light of the Major Shift of Understanding Commended by the HEAR Act, Establishing a General Principle Favoring Decisions on the Merits of Such Claims.

Part I of this brief commented on the first purpose of the HEAR Act: "to ensure that laws governing claims to Nazi-confiscated art and other property further United States policy as set forth in the Washington Conference Principles . . . and the Terezín Declaration." This Part comments on the second purpose of the Act: "To ensure that claims to artwork and other property stolen or misappropriated by the Nazis are not unfairly barred by statutes of limitations but are *resolved in a just and fair manner*" (emphasis added).

A. Guidance from the Legislative History of the HEAR Act

On June 7, 2016, the Subcommittee on the Constitution of the Senate Committee on the Judiciary held hearings on the bill that became the HEAR Act. Two brief samples of testimony are relevant to this Court's reading of this landmark legislation. First, Dr. Agnes Peresztegi, President of the Commission for Art Recovery, testified as follows on June 7, 2016:

> The Committee should consider that the HEAR Act would not achieve its purpose of enabling claimants to come forward if it *eliminates one type of procedural obstacle in order to replace it with another*. To cite some concerns: narrowing the definition of looted art, shifting the burden of proof unnecessarily in some instances to the claimant; and generally adding or confirming other procedural obstacles. Cases related to Holocaust looted art should only be adjudicated on the merits.
>
> As demonstrated by this case, forum non conveniens can be one such obstacle.

Second, Ronald S. Lauder, former Chairman of the Museum of Modern Art, founder of the Commission for Art Recovery and President of the World Jewish Congress, testified as follows:

> Our adherence to this commitment requires that *resolution of such cases be based on the merits of each case and not on procedural technicalities or the capacity of one party to outspend, or outwait, the other.*

Perhaps the most significant part of the HEAR Act is its insistence that the claimant have "actual discovery" of the facts necessary to start the running of the limitations period. Pub. L. 114-308, § 5(a). Section 4(1) defines the term "actual discovery" to mean "knowledge"; and Section 4(4) defines the term "knowledge" to mean "having *actual knowledge* of a fact or circumstance or sufficient information with regard to a relevant fact or circumstance to amount to *actual knowledge* thereof." *Id.* §§ 4(1), 4(4). Crucially, actual knowledge is not the same thing as constructive knowledge, imputed knowledge or conjecture about when a claimant might have been able to unearth evidence of a family's war-era claim.

B. This Court's Protection of New York's Interest in the Integrity of Art Transactions Supports A Broad Reading of the HEAR Act.

Federal judges exercising diversity jurisdiction are required to reflect the interpretation of state law articulated by the highest appellate tribunal of that state. *Guaranty Trust Co. v. York*, 326 U.S. 99 (1945) (state limitations period should be the same in federal court). Occasionally, however, federal judges have strayed far

from the clear teaching of state courts on state law matters. *See, e.g., Detroit Inst. of Arts v. Ullin,* No. 06-10333, 2007 WL 1016996 (E.D. Mich. Mar. 31, 2007) (holding that Holocaust victim's claim expired in 1941 as if the purchase of stolen property were a routine commercial transaction). The HEAR Act was meant to remove doubt about such fanciful interpretation of state law matters by federal judges, at least when they construe state procedural requirements in a manner that impedes the restitution of art stolen by Nazis.

It is axiomatic that a state judge need not follow the opinion of a federal judge on a non-federal question. *See, e.g., Marsich v. Eastman Kodak Co.*, 244 App. Div. 295, 296 (2d Dep't 1936); *see also Conergics Corp. v. Dearborn Mid-W. Conveyor Co.*, 144 A.D.3d 516, 526 n.9, 43 N.Y.S.3d 6, 8 n.9 (1st Dep't Nov.17, 2016); *Merrill Lynch, Pierce, Fenner & Smith v. McLeod,* 208 A.D. 2d 81, 83, 622 N.Y.S.2d 954 (1st Dep't 1995).

New York's jurisprudence protecting its art market from stolen art is strong. A cornerstone of New York law is that the burden is on a good faith purchaser of artwork to establish the superiority of its title, either on the merits or because a defense precludes the claim. *See Solomon R. Guggenheim Found. v. Lubell,* 77 N.Y.2d 311, 567 N.Y.S.2d 623, 626 (1991); *Menzel v. List*, 49 Misc.2d 300, 305, 267 N.Y.S.2d 804 (1966), *modified as to damages*, 28 A.D.2d 516, 279 N.Y.S.2d 608 (1st Dep't 1967), *rev'd as to modification*, 24 N.Y.2d 91, 298 N.Y.2d 91, 298

N.Y.2d 91, 298 N.Y.S.2d 979, 246 N.E.2d 742 (1969). This Court recognized that the "onerous" burden on the purchaser "well serves to give effect to the principle that persons deal with the property in chattels or exercise acts of ownership over them at their peril." *Solomon R. Guggenheim Found. v. Lubell,* 153 A.D.2d 143, 153, 550 N.Y.S.2d 618 (1st Dep't 1990). The Court of Appeals in *Lubell* declined to "impose the additional duty of diligence before the true owner has reason to know where its missing chattel is to be found." 77 N.Y.2d at 320, 567 N.Y.S.2d 623, 569 N.E.2d 426. In contrast, New Jersey is the only state in the union that imposes a due diligence obligation on an art theft victim. *O'Keefe v. Snyder,* 83 N.J. 476, 416 A.2d 862 (N.J. 1980).

When the New York Court of Appeals decided *Lubell,* it corrected a federal court's mistaken interpretation of New York policy as to stolen art litigation in *DeWeerth v. Baldinger,* 836 F.2d 103 (2d Cir.), *cert. denied,* (1987). In *Lubell,* this Court also expressly coupled the laches defense with New York's unique demand-and-refusal rule. The Court stated:

> [W]e think it plain that the relative possessory rights of the parties cannot depend upon the mere lapse of time, no matter how long. Indeed, rather than harming defendant, delay alone could be viewed as having benefited her, in that it gave her that much more time to enjoy what she otherwise would not have had.

In January of 1998 Manhattan District Attorney Robert M. Morgenthau seized Egon Schiele's *Portrait of Wally*; *see* Judith Dobrzynski, "District Attorney Enters Dispute Over Artworks," *New York Times,* Jan. 8, 1998); see also Dobrzynski, "Strategy Questioned in Schiele Case," *New York Times*, Oct. 12, 1999; and Karen Orenstein, "Risking Criminal Liability in Cultural Property Transactions," 45 *N. Carolina J. Int. L.* 527 (2020). Morgenthau forced us to confront the truth about the dim chances of success Jews like Lea Bondi had when seeking restitution in post-war Austria.

One heir to a collection in Poland described this problem as follows:

> Many direct victims of Nazi looting tried to reclaim their property in the late 1940s and early 1950s. But they came up against a wall of dishonesty and contempt on the part of collectors, auction houses, museum curators and dealers, who ducked and delayed in the hope that the problem would go away.

Adam Zamoyski, "Restitution Will Benefit the Public More Than the Heirs," *The Independent,* Jan. 9, 2009, at 10; *see also* Jennifer A. Kreder, *The New Battleground of Museum Ethics and Holocaust-Era Claims: Technicalities Trumping Justice or Responsible Stewardship for the Public Trust?*, 88 *Or. L. Rev.* 37, 42-43 (2009) (discussing obstacles and criticisms heirs faced).

In this case the Swiss Bank and its chummy "foundation" (composed of bank employees), naturally, invite this Court to decline to assert jurisdiction over this matter. Fear not, they urge, the heirs can receive from some Swiss court full and fair

hearing before a neutral, unbiased Swiss magistrate. Amici realize that is possible, but our combined experience in assessing cases of this sort suggests that this scenario is highly unlikely. In any event, the heirs have persuaded us that the claim that the Appellate Division has misapprehended the law pertaining to forum non conveniens and failed to take into account the strong policy that victims of Nazi looting be awarded justice on the merits. On the other hand, if this Court forecloses a fair hearing on this matter in New York and the parties get a day in court in Switzerland, Swiss Courts will probably apply to this case the law of Switzerland on statute of limitations, not the HEAR Act.

At this late date seventy-five years after World War II, this Court should be fully aware of what may be now be learned from published accounts of various practices of Swiss banks during World War II with Nazi Germany as a client, and with numerous Jews who deposited their assets with many of these banks while they were still alive. See, e.g., Stuart Eizenstat, *Imperfect Justice* 187-205 (2003) (discussing requirements that an heir of a bank client who had been murdered in the death camps produce decedent's bank books, or in one case, authenticated death certificate of decedent). The class action in the Eastern District of New York against many Swiss Banks settled swiftly when the story of the requirement of a death certificate emerged in a hearing before a Senate Committee chaired by Senator D'Amato (R-NY). As it assesses the strength of the forum non conveniens point

its property if the burden is not met would . . . encourage illicit trafficking in art."

In the Matter of Flamenbaum, 22 N.Y.3d 962, 966 (2013).

See Jennifer A. Kreder, *Reconciling Individual and Group Justice with the Need for Repose in Nazi-looted Art Disputes*, 73 Brook. L. Rev. 155, 204 (2007) (discussing how authorizing a tribunal to "make a decision on the facts, instead of formalistic interpretations of vague legal principles such as bona fide purchaser status, *jurisdiction*, choice of law, and statute of limitations, would decrease the legal uncertainty surrounding claims").

This case affords this Court an opportunity to clarify New York rules in restitution cases without slamming the laws of this State in the face of victims of art sold in New York, and other rules to guide all future disputes involving claims to restitution of stolen property in New York, whether stolen by the Nazis *tout court*, or as in this case, alleged to be stolen a second time by a fiduciary agent that should know better, or a museum betraying its own best instincts, or a private art collector who doesn't mind clinging to stolen property. Neither this Court with its proud history of guarding the integrity of transactions in the new art capital of the world and of maintaining deep respect for victims of the Shoah should countenance such adventitious behavior.

Conclusion

Whatever you decide in this appeal, Amici urge you to stop the travesty of restitution claims dragging on for over a decade without a court ever reaching the merits. This case has already been pending for seven years—time devoted solely to defendants' efforts to dismiss the claim on procedural grounds. Compare the results in two Holocaust expropriated art cases that made it to trial—*Bakalar and Menzel. Bakalar* resulted in a highly speculative retelling of a tale of what might have occurred without listening to any background history proffered to assist the understanding of actual conditions in German-occupied Vienna in 1938. In sharp contrast, *Menzel* resulted in a well-informed, this-worldly judgment on the merits about Nazi-era looting Justice Klein's worldview is practical and realistic.

It is now urgent to reaffirm this sort of clarity to replace the murky treatment of Nazi dispossession of Jews playing out in courts this country and in opinions written by judges unaware of the analysis of this Court in *Menzel.* Justice Klein enabled Justice John Paul Stevens to knew a "holdup" when he saw one, and Stevens restated the point on coercion thoughtfully in *Republic of Austria v. Altmann*, 541 U.S. 677, 682-683 (2004). We need more examples of other courts following the lead provided by Justice Klein and the other members of this Court about New York law. Help us all knew a "holdup" when we see one.

Fortified by the HEAR Act, New York judges can confidently render justice in Holocaust expropriated art cases on the merits—to finally award justice far too long denied.

Respectfully submitted,

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Appendix A: Specific Interests of Amici Curiae

The *Raoul Wallenberg Center for Human Rights* is a unique international consortium of parliamentarians, scholars, jurists, human rights defenders, NGOs, and students united in the pursuit of justice, inspired by and anchored in Raoul Wallenberg's humanitarian legacy—how one person with the compassion to care and the courage to act can confront evil, prevail, and transform history.

The *Simon Wiesenthal Center* is a Jewish global human rights organization researching the Holocaust and hate in a historic and contemporary context. The Center confronts anti-Semitism, hate and terrorism, promotes human rights and dignity, stands with Israel, defends the safety of Jews worldwide, and teaches the lessons of the Holocaust for future generations.

Omer Bartov is John P. Birkelund Distinguished Professor of European History and Professor of History and Professor of German Studies at Brown University. He is the author of many books, including *The Eastern Front, 1941–1945: German Troops and the Barbarization of Warfare*, 2001; *Hitler's Army: Soldiers, Nazis, and War in the Third Reich*, 1992; *Murder in Our Midst: The Holocaust, Industrial Killing, and Representation*, 1996; *Mirrors of Destruction: War, Genocide, and Modern Identity*, 2002.

Michael Bazyler is professor of law and The 1939 Law Scholar in Holocaust and Human Rights Studies at Chapman University. Bazyler is the author of *Holocaust Justice: The Battle for Restitution in America's Courts* (2003), the coeditor with Roger Alford of *Holocaust Restitution: Perspectives on the Litigation and Its Legacy* (2006), and co-author of *Forgotten Trials of the Holocaust* (2014).

Michael Berenbaum is Professor of Jewish Studies at the American Jewish University, Los Angeles. He served as Project Director of the United States Holocaust Memorial Museum, and is familiar with the needs of museums for pieces of art, artefacts, and other visual means of communicating themes central to exhibitions. See, e.g., Michael Berenbaum, *The World Must Know: The History of the Holocaust as Told in United States Holocaust Memorial Museum* (2d ed. 2008). He is well aware of the ethical obligation of museum directors to refrain from theft of intellectual property or from acts that would promote a market in stolen goods.

Hector Feliciano is the author of *The Lost Museum: The Nazi Conspiracy to Steal the World's Greatest Works of Art* (1998).

Eugene J. Fisher directed Catholic-Jewish relations for the U.S. Conference of Catholic Bishops from 1977 until his retirement in 2007. He has published over 20 books and 300 articles in the field of Christian-Jewish relations and a member of the Catholic Historical Association.

Rabbi Irving Greenberg is the past President of Jewish Life Network–Steinhardt Foundation and the former Chairman of the United States Holocaust Memorial Council. He is a prolific author.

Dr. Marcia Sachs Littell is Professor of Holocaust and Genocide Studies and Director of the Master of Arts Program in Holocaust and Genocide Studies at Stockton University, Galloway, New Jersey. She is a prolific author on the Holocaust and genocide.

Carrie Menkel-Meadow is Chancellor's Professor of Law at the UC Irvine School of Law author of *Dispute Resolution: Beyond the Adversarial Model* (2nd ed. 2011); *Negotiation: Processes for Problem Solving* (2nd.ed 2014); *Mediation: Theory, Policy & Practice* (2nd ed. 2013); *Dispute Processing & Conflict Resolution* (2003), and over 150 articles.

John T. Pawlikowski, OSM, Ph.D. is Professor of Social Ethics Emeritus at the Catholic Theological Union in Chicago, and served for decades as Director of the school's Catholic-Jewish Studies Program. He has published numerous on inter-religious dialogue and on the Holocaust.

Sister Carol Rittner, RSM, is Distinguished Professor of Holocaust and Genocide Studies at Stockton University, Galloway, New Jersey. She is a prolific author and editor of books relating to the Holocaust and genocide. She is also the producer-director of the Oscar award-winning documentary film, "Courage to Care," and the editor of an accompanying volume, *Courage to Care: Non-Jews Who Rescued Jews During the Holocaust* (1986).

Dr. John K. Roth is the Edward J. Sexton Professor Emeritus of Philosophy and founding Director of the Center for the Study of the Holocaust, Genocide, and Human Rights at Claremont McKenna College. He is a prolific author and editor of books relating to the Holocaust and genocide, and he edits the Holocaust and Genocide Studies Series published by Paragon House.

Stephen Smith PhD, is Executive Director of USC Shoah Foundation, UNESCO Chair on Genocide Education, Adjunct Professor of Religion. He founded

the U.K. Holocaust Center, is Patron of the South Africa Holocaust and Genocide Foundation, and is a member of the International Holocaust Remembrance Alliance. His publications include: *Never Again, Yet Again: A Personal Struggle With Holocaust and Genocide*, 2009.

Alan Steinweis is Professor of History and Miller Distinguished Professor of Holocaust Studies at the University of Vermont. He is the author of *Art, Ideology, and Economics in Nazi Germany 1993; and Kristnallnacht 1938*, 2009; *Studying the Jew: Scholarly Antisemitism in Nazi Germany*, 2006.

Jonathan Zatlin is Associate Professor of History at Boston University He is the author of *Jews and Money: Economic Change and Cultural Anxiety in Germany, 1870-1990*. This monograph argues that anti-Semitism was based on a peculiarly European confusion of money with the market and Jews with money. This double confusion provided psychological relief and economic compensation for the widespread anxiety, triggered by Germany's rapid industrialization, that market-oriented practices were reducing spiritual to financial values, and contributed to racialized understandings of economic activity and citizenship.

CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR PART 500.1(j) that the foregoing brief p was prepared on a computer using Microsoft Word.

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Dated: Los Angeles, California
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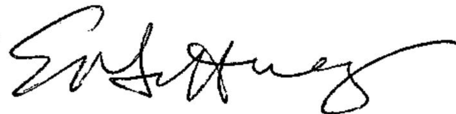

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PROOF OF SERVICE

I hereby certify that on December 30, 2020, I served a copy of a Corrected Motion for Leave to File a Brief Amicus Curiae, including the proposed Brief Amicus Curiae on the parties by sending a copy of this entire document by US Mail, First Class Postage prepaid to the lead counsel in each of these five firms:

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