No. 06-14343-DD

HOLLYWOOD COMMUNITY SYNAGOGUE, INC.,
UNITED STATES OF AMERICA,

Plaintiffs,-Appellees

v.

CITY OF HOLLYWOOD, FLORIDA
SAL OLIVERI

Defendants-Appellees

v.

LISA SELF, HEIDI O'SHEEHAN, RICHARD JOHNSON, et. al
Proposed Intervenors-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

BRIEF FOR THE UNITED STATES AS APPELLEE

WAN J. KIM
Assistant Attorney General

JESSICA DUNSAY SILVER
LISA J. STARK
Attorneys
Department of Justice
Civil Rights Division, Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, DC 20044-4403
(202) 514-4491

United States v. *Hollywood*
No. 06-14343-DD

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Counsel for United States of America hereby certifies, in accordance with Fed. R. App. P. 26.1 and 11th Cir. R.26.1-1, that the following persons may have an interest in the outcome of this case and were not included in the appellants' certificate of interested persons and corporate disclosure statement:

1. Joan A. Lenard, United States District Court Judge;
2. Wan J. Kim, Assistant Attorney General, Civil Rights Division, United States Department of Justice;
3. Jessica Dunsay Silver, Civil Rights Division, United States Department of Justice, appellate counsel for the United States; and
4. Lisa J. Stark, Civil Rights Division, United States Department of Justice, appellate counsel for the United States.

LISA J. STARK

STATEMENT REGARDING ORAL ARGUMENT

The United States has no objection to oral argument.

TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS (continued): **PAGE**

TABLE OF CITATIONS

CASES: **PAGE**

CASES (continued): **PAGE**

CASES (continued): **PAGE**

CONSTITUTION AND STATUTES:

RULES: **PAGE**

MISCELLANEOUS:

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 06-14343-DD

HOLLYWOOD COMMUNITY SYNAGOGUE, INC.,
UNITED STATES OF AMERICA,

Plaintiffs,-Appellees

v.

CITY OF HOLLYWOOD, FLORIDA
SAL OLIVERI

Defendants-Appellees

v.

LISA SELF, HEIDI O'SHEEHAN, RICHARD JOHNSON, et. al
Proposed Intervenors-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

BRIEF FOR THE UNITED STATES AS APPELLEE

SUBJECT MATTER AND APPELLATE JURISDICTION

The district court had subject matter jurisdiction pursuant to 28 U.S.C. 1331, 1343, and 1345, and 42 U.S.C. 2000cc-2. On July 6, 2006, the district court issued an order denying appellants' motion to intervene as a matter of right. On

August 4, 2006, appellants filed a timely notice of appeal. R. 388.[1] This Court has jurisdiction because the district court's order denying intervention "is a 'final decision' under 28 U.S.C. 1291." *Meek* v. *Metro. Dade County, Fla.*, 985 F.2d 1471, 1476 (11th Cir. 1993).

STATEMENT OF THE ISSUES

1. Whether the district court erred in denying appellants' motion to intervene as of right filed nearly 22 months after the instant action was initiated and only a day before the court approved the parties' final consent decree.

2. Whether appellants can challenge the district court's entry of the consent decree on the ground that it should first have held a hearing.

STATEMENT OF THE CASE

1. Prior Proceedings

On September 15, 2004, plaintiff, the Hollywood Community Synagogue, Inc. ("the Synagogue"),[2] a small Orthodox congregation of Hasidic Jews, filed a complaint against defendants, the City of Hollywood ("the City") and Sal Oliveri

---

[1] "R.__" refers to the record number of the entry on the district court docket sheet. "Br. __" refers to the page number of appellants' brief filed with this Court. "App. __" refers to the page number of the Supplemental Appendix filed by the United States under separate cover along with its brief.

[2] In the court below, the Synagogue was also referred to as "HCS" and "Chabad."

("Oliveri"), a City Commissioner, alleging that they violated its rights protected by the Constitution, various federal statutes, including the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. 2000cc *et seq.* ("RLUIPA"), and Florida law, by burdening, interfering, and limiting its use of its property. The complaint sought monetary, declaratory, and injunctive relief, including, *inter alia*, an order allowing the Synagogue to permanently use its property, located on the edge of a single-family residential neighborhood in Hollywood Hills, as a house of worship. On January 10, 2005, the district court entered an order referring the case to mediation. R. 38.

On April 26, 2005, the United States initiated a separate lawsuit alleging that the City violated Sections 2(b)(1) and 2(b)(2) of RLUIPA, respectively, by treating the Synagogue on less than equal terms with non-religious institutions and assemblies and by discriminating against the Synagogue on the basis of religion. The complaint charged that the City wrongfully denied the Synagogue's request for a permanent special exception to use its property as a house of worship since it permits other religious and nonreligious assemblies to operate in residential districts without a special exception and/or harassment and has never previously applied its zoning laws to limit the operation of a house of worship in a residential neighborhood. App. 1-7.

On June 16, 2005, the district court consolidated the actions filed by the Synagogue and the United States. R. 75. On November 30, 2005, the Synagogue filed a 19-count amended complaint alleging, *inter alia*, that defendants violated its rights to free exercise of religion and freedom of association protected by the First and Fourteenth Amendments, various provisions of RLUIPA, the Florida Religious Freedom Restoration Act of 1998, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment. The amended complaint also charged that Article V, Sections 5.7 and 5.8 of the City's Zoning and Land Development Regulations ("ZLDR" or "zoning code") are unconstitutional on their face and as applied because they are impermissibly vague and were selectively used to discriminate against and restrict the Synagogue's use of its property as a house of worship. R. 125, pp. 36-38.

On December 6, 2005, the mediator filed a report informing the district court that "[t]he initial session was productive" and that he would "continu[e] * * * caucusing with the parties" "pending further discovery and the exchange of information." R. 130. On January 3, 2006, the mediator scheduled a second settlement conference for "the entire day of Monday, February 27, 2006." R. 142, p. 1. During the final week of January 2006, appellants Heidi O'Sheehan and Eva Petrillo were deposed. App. 10, 63.

On March 10, 2006, the Synagogue filed a motion under seal requesting sanctions for the City's having "made public comment[s] to the Sun-Sentinel concerning the positions allegedly taken by [the parties] during the mediation." R. 182, p. 2. On March 28, 2006, the mediator filed a report informing the district court that "no agreement" had been reached by the parties. R. 201.

On March 21, 2006, the Synagogue filed a Motion For Partial Summary Judgment. R. 190. It argued that Article V, Sections 5.3 and 5.7 of the ZLDR are unconstitutional on their face and as applied because they provide the City with "'unbridled' and 'unfettered' discretion in [its] review of [s]pecial [e]xemption applications" and constitute a prior restraint on activities protected by the First Amendment. R. 190, p. 2-3. On April 20, 2006, the City filed a response. It maintained that the challenged provisions are not impermissibly vague because they require officials to make specific findings when exercising their discretion and do not operate as a prior restraint on First Amendment activities since they are reasonable content-neutral time, place, and manner regulations. R. 243, pp. 2, 8, 15-16, 18.

On May 24, 2006, the district court heard argument on the Synagogue's motion. The Synagogue contended that the unconstitutional zoning regulations entitled it to an order allowing it to permanently use its property as a house of

worship since without them the City does not have a mechanism to restrict its activities. See R. 319, pp. 2, 6-8. The City disagreed and maintained that even if the challenged provisions were flawed, the Synagogue does not have a right to operate a house of worship in a neighborhood zoned for single-family homes. R. 301, pp. 2-3. Towards the end of the month, the district court orally notified the parties that it intended to grant the Synagogue's motion and hold the challenged regulations unconstitutional. App. 166.

On June 26, 2006, the day the case was scheduled for trial, the parties informed the district court that, as a result of its holding the zoning regulations unconstitutional, they had decided to settle the case. App. 110-111, 118. Counsel for the United States detailed the specific terms of the parties' agreement, which included, *inter alia*, allowing the Synagogue to permanently use its property as a house of worship. App. 110-112. Counsel for the United States also explained that the agreement amounted to "only [a] slight modification" of a proposed consent decree the Department of Justice had submitted to the City in November, 2005, and was contingent on the parties executing a mutually acceptable decree and the City Commission's approving it at a public meeting. App. 116-119. Counsel for the City explained that even though the Commission had met and approved the consent decree in an executive session, Florida law required that it be

adopted at a public meeting for which appropriate notice is given. App. 118. The district court agreed to postpone the trial until July 6, 2006, to allow the parties time to reach a final settlement. App. 127.

On the afternoon of June 26, 2006, the district court issued its written decision granting the Synagogue's Motion for Partial Summary Judgment. R. 370. The district court ruled that Section 5.3.G of the ZLDR, entitled "Special exceptions," "is unconstitutionally vague on its face" as it relates to places of worship. R. 370, p. 26. The court explained, "Section 5.3.G.1 constitutes an unconstitutional prior restraint because it lacks narrow, objective, and definite standards * * * and thus provides City officials unbridled discretion in their consideration of [such] applications." R. 370, p. 26. The district court therefore "order[ed] the Synagogue * * * be granted the [p]ermanent [s]pecial [e]xemption it was awarded * * * in March 2003, subject only to [the] conditions that [it] * * * build[] a six-foot soundproofing wall at the rear property line and provid[e] a three-sided dumpster as approved by the City's Public Works [D]epartment." R. 370, p. 29. It also directed the City to "promptly enact new [s]pecial [e]xception ordinance(s) for places of worship, one(s) that contain 'narrow, objective and definite standards' guiding City officials in their review." R. 370, p. 29.

On June 28 and 29, 2006, the City Commission held a public meeting to

consider whether to adopt the consent decree. Br. 13. See City of Hollywood website, http://www.hollywoodfl.org/city_clerks/prev.com.htm. Appellants Eva Petrillo, Lisa Self, and Richard Johnson spoke and expressed their disapproval of the agreement. Attorneys for the Synagogue and City publicly debated and negotiated the specific terms of the consent decree. Afterwards, the Commission adopted Resolution R-2006-208, which approved of the consent decree with designated modifications. R. 381, Exh. 1.

On July 5, 2006, the parties filed a Joint Motion requesting the district court to approve the Consent Decree and Consent Order. R. 381. On July 6, 2005, appellants, all of whom live within 100 yards of the Synagogue, filed a Motion To Intervene. R. 382. Appellants sought intervention "to oppose [the] proposed Consent Decree[] * * * and the Court's Order [granting Partial] Summary Judgment to the extent that it allows the [Synagogue] a special exception * * * to permanently offer religious services at [its] residences" and "expand its facilities by buying additional property and building a parking lot." R. 382, p. 2. Appellants argued that "intervention at this late juncture" was warranted because "[u]ntil recently, [their] interests [had been] represented by [the] City * * * [and] [t]he proposed consent decrees signal[ed] a deviation by the City from the[ir] interests." R. 382, p. 3. Appellants supported their motion with a February, 2003

order of the Broward County Circuit Court. The order granted Edward O'Sheehan, appellant Heidi O'Sheehan's husband, permission to intervene to challenge a 2002 decision of the City zoning board granting the Synagogue a special six-month temporary exception to use its property as a house of worship. R. 382, p. 3; R. 382, Exh. B.

On July 7, 2006, the district court issued three orders. It denied the appellants' Motion to Intervene, granted the parties' Joint Motion to approve the consent decree, and dismissed the instant action with prejudice.

2. Facts

Since 1994, the City's zoning code has required houses of worship to obtain a special exception in order to operate in areas zoned for single-family occupancy. R. 275, p. 4. The zoning code states that houses of worship are "generally suitable" for single-family districts. ZLDR § 5.3(G). Prior to September 2001, when the Commission granted the Synagogue a time-limited special exception, the City had never denied or imposed any time restriction on a religious institution's request for a special exception. See R. 275, pp. 2, 5. Currently, there are approximately 19 houses of worship located in the area of Hollywood Hills zoned for single and multi-family homes. R. 272, pp. 7-8.

In 1999, Yosef Elul, then-President of the Synagogue, purchased two

residences located next to one another in Hollywood Hills at 2215 and 2221 N. 46th Avenue, which are zoned for single-family residential use. R. 272, p. 3. The houses are separated from a commercial district by one single-family residence. R. 275, pp. 1, 5-6. In February 2001, the Synagogue, at the prompting of the City, applied for a special exception to use its property as a house of worship. R. 275, p. 1. In May 2001, the City's Board of Adjustment and Appeals ("BAA") found that the Synagogue satisfied the applicable criteria and granted it a special exception. R. 275, p. 2.

Defendant Oliveri, a City Commissioner, appealed the BAA's decision to the full City Commission. R. 275, p. 2; R. 381, Attached Consent Order p. 3. On September 13, 2001, after a continuous meeting that lasted through the night, the City Commission reversed the BAA's decision by a 4-3 vote and granted the Synagogue a limited temporary exception that required, *inter alia*, the Synagogue to vacate its property within one year. R. 275, p. 2; App. 4.

Immediately following the Commission meeting, City police were directed to visit and/or observe the Synagogue on a daily basis to find and enforce zoning code violations. See R. 228, p. 3. As a result, during an eleven-month period, the police conducted 102 self-initiated visits to the property. See R. 228, p. 3.

In August 2002, the Synagogue applied to renew its special exception. R.

275, p. 2. At a public hearing in September, 2002, the City's Development and Review Board ("DRB"), the successor body to the BAA, found that the Synagogue "was compatible with the existing natural environment and other properties within the vicinity" and granted it a six-month temporary exception subject to certain enumerated conditions. R. 272, p. 5.[3]

Defendant Oliveri again appealed to the City Commission. R. 272, p. 5; App. 5. In October, 2002, the Commission rejected Oliveri's request for review and allowed the six-month temporary special exception to stand. R. 272, p. 5. Edward O'Sheehan, husband of appellant Heidi O'Sheehan, joined by appellants Self, Carolyn and Richard Johnson, and Eva and Patrick Petrillo, petitioned the Broward County Circuit Court for review. App. 208-210. In February, 2003, the Broward County Circuit Court, over the City's objection, granted appellant/petitioners permission to challenge the DRB's decision to grant the Synagogue a special six-month temporary exception. R. 382, Exh. B.

In early 2003, the Synagogue applied for a third special exception. R. 275,

---

[3] The conditions prohibited parking of any type in the alley located behind the Synagogue and required the Synagogue to enter into a lease agreement for off-site parking, obtain appropriate garbage dumpsters, contract with a property maintenance provider to ensure that its premises maintain an appearance in accordance with the City's code, and create an appropriate buffer along the rear of its property. R. 58, p. 4 at n.1.

p. 5. In March, 2003, the DRB granted the Synagogue's request for a permanent special exception, subject to the Synagogue's meeting certain enumerated conditions relating to parking and construction within 180 days. R. 272, p. 6.

Once again, defendant Oliveri appealed. R. 272, p. 6. On June 5, 2003, the Commission reversed the DRB's decision and denied the Synagogue a special exception because the matter was "too controversial." R. 272, p. 6. On October 16, 2003, the City sent the Synagogue a letter notifying the congregation that it "must desist holding services and other related activities" on its properties as of October 20, 2003. R. 275, p. 2.

On July 7, 2004, defendant Oliveri introduced a motion to order the eviction of the Synagogue. R. 272, p. 7. The Commission voted in favor of Oliveri's request. R. 272, p. 7. On July 16, 2004, counsel for the City, at the direction of the Commission, filed an action in Broward County Circuit Court (Case No. 04-11444) seeking a permanent injunction barring the Synagogue from using its property in Hollywood Hills as a house of worship. R. 272, p. 7. In December 2005, the City filed a Notice of Voluntary Dismissal Without Prejudice in this action due to the pendency of the instant action. App. 207.

3. The District Court's Decision Denying Appellants' Motion To Intervene

On July 7, 2006, the same day the district court accepted the parties' consent

decree and dismissed the instant case with prejudice, it issued an order denying appellants' Motion to Intervene. R. 384. Applying the requirements of Fed. R. Civ. P. 24(a), the district court rejected appellants' request on the grounds that appellants do not have a "direct and substantial" interest in the "subject matter of the present litigation" and because their motion was untimely. R. 384, pp. 7-9, 13-15.

The district court found that appellants' interest "in the present litigation is extremely tenuous." R. 384, p. 9. It explained that, because "the instant case centers on alleged discrimination by the City of Hollywood against the Synagogue pursuant to the City's [s]pecial [e]xception zoning ordinances for places of worship, * * * [and] involves the treatment of [the Synagogue] by [d]efendant City, not the actions of the Synagogue or its impact on surrounding properties," would-be intervenors' interest in the quiet use and enjoyment of their properties "cannot be said to be the subject matter of the present litigation." R. 384, p. 9.

"[A]ssuming *arguendo*, that [i]ntervenors possess the requisite interest to intervene as of right," the district court concluded that their request was untimely. R. 384, p. 10. The district court found that "intervenors' delay[]" in requesting to participate for "nearly twenty-two months since the filing of the * * * [c]omplaint [during which] they should have known of their interest in this litigation" was not

justified. R. 384, p. 10. The district court referred to the February 2003 order of the Broward County Circuit Court granting Edward O'Sheehan, and appellants Self, Eva and Patrick Petrillo, and Richard and Carolyn Johnson permission, over the City's objection, to challenge the synagogue's temporary six-month special exception. Relying on that order, the district court found that "[i]ntervenors reasonably should have known of * * * the inadequate representation by existing [p]arties at least as early as February of 2003." R. 384, pp. 13-14. It also found that allowing appellants to intervene "at this late date * * * would be highly prejudic[ial]" to the existing parties. R. 384, p. 14. The district court explained, because "[t]he parties expended substantial time, effort and resources in * * * negotiating [a consent decree], * * * [f]orcing the [p]arties to return to square one, destroy their settlement agreement, and relitigate numerous aspects of the case would be unfair, unjust and unnecessary." R. 384, pp. 14-15. The district court also found "that significant court action has been taken in this case and * * * intervention would substantially delay the proceedings." R. 384, p. 15.

In addition, the district court concluded that "any prejudice to [i]ntervenors as a result of [its] den[ying] their [m]otion, * * * [was] minor, [since] [it] ha[d] [already] ruled that [the] City's [s]pecial [e]xception zoning ordinances as they relate to places of worship are facially unconstitutional." R. 384, p. 15. Finally,

the district court noted that since appellants "have made no showing that they are precluded from other avenues of relief [n]or demonstrated unusual circumstances that would militate in [their] favor, * * * [their] [m]otion is untimely." R. 384, p. 15.

SUMMARY OF ARGUMENT

This Court should affirm the decision below because appellants' motion to intervene was filed nearly 22 months after the instant action was initiated and only a day before the district court approved the parties' final consent decree was untimely. Appellants concede that they "knew of their interest in th[is] matter *prior* to the initiation of [the instant] litigation." Br. 31 (emphasis added). Appellants' attempt to justify their delay is unavailing. Overwhelming evidence establishes that long before appellants moved to intervene, they knew that negotiations between the parties were ongoing and that their interests had not always been squarely aligned with the City's. The district court also correctly found that intervention would have prejudiced the parties and far outweighed any possible prejudice to appellants. Because timeliness is a threshold requirement for intervention, this Court may affirm without addressing the other requirements for intervention.

Appellants are also not entitled to intervene because they do not have a

legally protectable interest in this lawsuit. This is an action to enforce a federal statute barring discrimination against religious institutions. Appellants do not have a right to object to the Commission's decision to resolve this suit by allowing the Synagogue to use its property as a house of worship. Any claims appellants may have relating to the quiet enjoyment of their property are not the subject of this litigation. Consequently, the district court correctly rejected appellants' motion because they have no interest that entitles them to intervention.

Finally, appellants cannot claim that Florida law required the district court to hold a hearing prior to entry of the consent decree. Because the district court properly denied appellants' motion to intervene and appellants never raised their claim below, this issue is not properly before this Court. In any event, since state law cannot dictate the procedures a federal court must follow in entering a consent decree, appellants are not entitled to relief.

ARGUMENT

I

THE DISTRICT COURT DID NOT ERR IN DENYING APPELLANTS' MOTION TO INTERVENE

A district court's decision to deny a motion to intervene as of right is reviewed *de novo*, except for "subsidiary factual findings subject to review for clear error" and the timeliness determination that is evaluated "under the abuse of discretion standard." *Meek* v. *Metro. Dade County, Fla.*, 985 F.2d 1471, 1477 (11th Cir. 1993). See *Mt. Hawley Ins. Co.* v. *Sandy Lake Properties, Inc.*, 425 F.3d 1308, 1311 n.4 (11th Cir. 2005). In determining whether to grant an application for intervention as of right pursuant to Fed. R. Civ. P. 24(a)(2), a court considers whether: (l) the application for intervention is timely; (2) the applicant has an interest in the property or transaction which is the subject matter of the pending litigation; (3) the applicant's ability to protect his interest would be impaired unless intervention were allowed; and (4) the applicant's interest is inadequately represented by the existing parties. See *Stone* v. *First Union Corp.*, 371 F.3d 1305, 1308-1309 (11th Cir. 2004); *Loyd* v. *Alaska Dep't of Corrections*, 176 F.3d 1336, 1339-1340 (11th Cir. 1999); *Purcell* v. *BankAtlantic Financial Corp.*, 85 F.3d 1508, 1512 (11th Cir. 1996).

A. The District Court Did Not Abuse Its Discretion In Concluding That Appellants' Motion To Intervene Was Untimely

Timeliness is a threshold requirement under Rule 24 which authorizes the grant of intervention only "upon timely application." See *NAACP* v. *New York*, 413 U.S. 345, 365, 93 S. Ct. 2591, 2603 (1973) ("[i]f [the motion] is untimely, intervention must be denied"). Thus, if a motion to participate in the proceedings is untimely, "there is no need for [a] court to address the other factors that enter into an intervention analysis." *Assoc. Builders and Contractors, Inc.* v. *Herman*, 166 F.3d 1248, 1257 (D.C. Cir. 1999). See, *e.g.*, *Campbell* v. *Hall-Mark Elec. Corp.*, 808 F.2d 775, 777 (11th Cir. 1987) (explaining that "[t]he sole issue before this [C]ourt on appeal is whether the district court was correct in determining that the * * * motion for leave to intervene was untimely").

In determining whether a motion to intervene is timely, a court in this Circuit considers "all the circumstances" and focuses on four factors: "(1) the length of time during which the proposed intervenor knew or reasonably should have known of the interest in the case before moving to intervene; (2) the extent of prejudice to the existing parties as a result of the proposed intervenor's failure to move for intervention as soon as it knew or reasonably should have known of its interest; (3) the extent of prejudice to the proposed intervenor if the motion is

denied; and (4) the existence of unusual circumstances militating either for or against a determination that their [sic] motion was timely." *Georgia* v. *United States Army Corps of Eng'rs*, 302 F.3d 1242, 1259 (11th Cir. 2002). See *Campbell*, 808 F.2d at 777.

1. Overwhelming Evidence Supports The District Court's Finding That Appellants' Delay In Seeking To Intervene Was Unjustified

The first factor of the timeliness test considers an applicant's delay in seeking intervention once he "knew or reasonably should have known" of his interest in the litigation. *Campbell*, 808 F.2d at 777. Once a would-be intervenor is aware of his interest in the litigation, he must file "an immediate motion to intervene." *NAACP*, 413 U.S. at 367, 93 S. Ct. at 2604. See *United States* v. *Tennessee*, 260 F.3d 587, 594 (6th Cir. 2001) ("an entity * * * is obligated to seek intervention *as soon as it is reasonably apparent* that it is entitled to intervene") (emphasis added); *League of United Latin American Citizens* v. *Wilson*, 131 F.3d 1297, 1304 (9th Cir. 1997) ("[C]ourts generally have been reluctant to allow intervention when the applicant appears to have been aware of the litigation but has delayed unduly seeking to intervene") (quoting Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, 7c *Federal Practice and Procedure: Civil 2d* § 1916); *Banco Popular de Puerto Rico* v. *Greenblatt*, 964 F.2d 1227, 1231 (1st Cir. 1992) ("the law contemplates that a party must move to protect its interest no later than

when it gains some actual knowledge that a measurable risk exists"). See, *e.g.*, *NAACP*, 413 U.S. at 367, 93 S. Ct. at 2603-2604 (motion untimely filed four months after action was commenced and 17 days after applicant was first informed of the pendency of the action).

It is well established by the decisions of this Court that a prospective intervenor who is aware of his interest in an action is not "entitled to assume that [the existing parties] [are] protect[ing] [his] interests." *United States* v. *Jefferson County*, 720 F.2d 1511, 1516 (11th Cir. 1983). See *Campbell*, 808 F.2d at 778. For example, in *Jefferson Country*, 720 F.2d at 1516, would-be intervenors argued that their motion, filed the day after a hearing for approval of a consent decree, was timely because the City had adequately represented their interests up to that point and they moved to intervene "just as soon as they discovered that they might be adversely affected" by the settlement. Emphasizing that would-be intervenors "knew at an early stage in the proceedings that their rights could be adversely affected," this Court explained:

> [T]he mere fact that the * * * City made a settlement allegedly adverse to the interests of [would-be intervenors] does not mean that [it] 'changed [its] position and became adverse' as [would-be intervenors] allege[]. Rather, it underscores the variance in interest that existed when the litigation commenced. [Would-be intervenors], having made an apparently ill-advised decision to rely on others to advance

> their interests, knowing they could be adversely affected, cannot now be heard to complain.

Id. at 1516-1517.

Accordingly, a would-be intervenor, who "[knows] or reasonably should have known of [his] interest in the case[,] * * * [cannot] bury his head in the sand and later claim that he was unaware of the potential [for] adverse" action by the existing parties. *Campbell*, 808 F.2d 777. See, *e.g.*, *id.* at 777, 779 (motion untimely because applicant knew of his interest "long before the day of the district court hearing on approval of the settlement" and "should not be allowed to ride on the coattails of the [existing parties] and then to pull on those coattails in an effort to delay resolution of their case"); *Meek*, 985 F.2d at 1478 n.2 (emphasizing that this Court was not "hold[ing] that one who has an interest in ongoing litigation in which a public body is adequately representing that interest may simply wait until judgment is entered and intervene simply because the public body decides not to appeal"). Other courts of appeals agree. See, *e.g.*, *Tennessee*, 260 F.3d at 592-594 (motion untimely when applicant "knew of * * * [its] interest in the outcome of the litigation[,] * * * believed that the existing parties [were] adequately represent[ing] its interest," and waited to intervene until district court "had conditionally approved the initial settlement * * * and * * * motion for [its] final approval was

already pending"); *Empire Blue Cross and Blue Shield* v. *Janet Greeson's A Place For Us, Inc.*, 62 F.3d 1217, 1219-1220 (9th Cir. 1995) (motion filed "three days before the district court made the parties' agreement official" untimely in part because applicant "knew of the litigation since its inception almost two years earlier," "delay[ed] in attempting to intervene[,] [and] end[ed] up doing so only after the original parties * * * reached an acceptable settlement"); *United States* v. *Yonkers Bd. of Ed.*, 801 F.2d 593, 597 (2d Cir. 1986) ("*Yonkers I*") (homeowners' motion filed 13 days after entry of an order proposing two potential public housing sites on land zoned for single-family housing untimely in part because homeowners should have recognized that their rights may not be "adequately protected by * * * parties" and they "had a basis for concern distinct from other [City] residents prior to entry of the order").

Applying precedent, it is obvious that the district court did not err in finding appellants' motion untimely. On September 15, 2004, the Synagogue filed its original complaint seeking to permanently use its property in Hollywood Hills as a house of worship. Appellants did not move to intervene until July 6, 2006, nearly 22 months later and only a day before the district court entered the consent decree. Because appellants concede that they "knew of their interest in th[is] matter *prior to* the initiation of [the instant] litigation[,]" their decision not to intervene until the

eleventh hour cannot be justified. Br. 31 (emphasis added).

Appellants nonetheless argue (Br. 16, 21-22) that they were entitled to delay 22 months because "the City's * * * decision to enter settlement negotiations just prior to trial" was "unforesee[able]" and their "interests were one-hundred percent aligned with the City[']s" up to that point. Because overwhelming evidence contradicts both these claims, the district court clearly did not err finding that appellants' lengthy delay in seeking to intervene weighs heavily against granting their motion.

Appellants followed the progress of the litigation closely.[4] Newspaper articles, court records, and appellants' frequent contact with defendants and their counsel establish that appellants knew of ongoing settlement negotiations long before they filed their motion to intervene. See, *e.g.*, *Campbell*, 808 F.2d at 777-778 (relying on contact with existing parties and involvement in litigation to conclude that applicant knew about settlement negotiations); *Walters* v. *City of Atlanta*, 803 F.2d 1135, 1151 n.16 (11th Cir. 1986) (noting that district court was

---

[4] Appellants concede that since 2001, when the Synagogue first filed for a special exception, they have been actively involved in activities to prevent the Synagogue from using its property as a house of worship, including monitoring, photographing and video taping activities at the Synagogue, circulating petitions, communicating with defendant Oliveri and other zoning commissioners and city officials, and testifying at zoning commission meetings. App. 11-26, 28-43, 46-62, 64-66, 70-101, 104, 106-107

entitled to conclude that prospective intervenor was "aware" that outcome of litigation could affect his interest since he "attended a conference held by the City's attorneys"); *Reeves* v. *Wilkes*, 754 F.2d 965, 969-970 (11th Cir. 1985) (relying on newspaper articles to determine what would-be intervenors knew or should have known about their interests); *Jefferson County*, 720 F.2d at 1516 (relying on contact with the City to conclude that would-be intervenors knew of their interest in the lawsuit); *Yonkers I*, 801 F.2d at 595-597 (relying on court pleadings and two articles published in local newspaper to conclude that "any interest [h]omeowners ha[d] in this action began to gestate when it became generally known that the[] sites had been proposed").

Appellants concede (Br. 12) that they were in contact with counsel for the City and defendant Oliveri "[t]hroughout the litigation" and knew they "would be called as witnesses" at trial, which was rescheduled because discovery and settlement negotiations were ongoing. R. 384, p. 5, 14. See R. 88, 130, 139, 142, 371. On January 10, 2005, the district court entered an order referring the case to mediation. R. 38. Consequently, because appellants were in frequent contact with defense counsel and trial witnesses in a case that was rescheduled in part because mediation was ongoing, they knew at an early stage of the proceedings that the parties were involved in settlement negotiations.

Moreover, once the United States filed its complaint in April 2005, the record reflects that appellants were not only aware, but knew details about the parties' settlement discussions. Beginning in April 2005, the Miami Herald ("Herald") and South Florida Sun-Sentinel ("Sentinel") published close to 50 articles about the lawsuit, 28 of which discussed the possibility of and progress of settlement negotiations. App. 138-206. A newspaper article in the Herald on April 21, 2005, demonstrates that appellant Richard Johnson was aware that settlement had been proposed by the United States. App. 142. The article reported that the Department of Justice had sent a letter to the City offering a settlement and stating that it "would sue *unless the city agreed to settle*" the case. App. 142 (emphasis added); App. 8-9. The article quoted Johnson's comments on the City's decision to reject the offer "[a]fter a closed-door session with commissioners." App. 142.[5]

During April, 2005, the Herald and Sentinel each ran editorials urging the

---

[5] Richard Johnson is not the only appellant who was quoted in the newspaper. A Sentinel article published on November 23, 2005, discussed the deposition testimony of Jackie Gonzalez, the City's former code enforcement chief, that the City's scrutiny of the Synagogue was "excessive" and documentation offered by a Department of Justice attorney that "showed that [defendant] Oliveri pushed city employees to use every tool at their disposal against the [Synagogue, including] * * * police patrols at the site every two or three days." App. 158. The article quoted appellant O'Sheehan's views regarding whether the City had harassed the Synagogue.

City to settle the case. App. 141, 144.[6] On May 3, 2005, the Sentinel also reported that three of the City's seven commissioners believed that the City should "settle the dispute." App. 149.

On December 6, 2005, more than seven months before appellants sought to intervene, the mediator filed a report detailing the progress of settlement negotiations. R. 130. That report stated that "[t]he initial [settlement] session was productive" and that he would "continu[e] * * * caucusing with the parties" "pending further discovery and the exchange of information." R. 130.

On January 24, 2006, more than five months before appellants moved to intervene, appellant O'Sheehan was deposed and testified that she "*kn*[*e*]*w*" and was "*concern*[*ed*] * * * that mediation * * * [is] going on." App. 27 (emphasis added). A week later, at her second deposition session, O'Sheehan related that she had spoken the day before to her neighbor Isabel Para, who owned the property next to and immediately south of the Synagogue. According to O'Sheehan, Para stated that "sometime last week[,]" George Albo from the Synagogue had visited, offered to purchase her property, and said "that the [C]ity and [the Synagogue] *had come to some type of agreement* and that if [the Synagogue] could purchase her

[6] On March 12, and June 13, 2006, the Sentinel again published editorials urging the City to settle. App. 163, 172.

home by the end of January, the [C]ity was going to allow them to tear down all three properties and build a synagogue and a parking lot." App. 45 (emphasis added). O'Sheehan also testified that she had spoken to appellant Eva Petrillo, who related that she too had spoken to Para about the settlement offer. App. 45.[7]

By the beginning of June, 2006, press coverage reflected that settlement was imminent. On June 1 and 2, 2006, respectively, the Sentinel and Herald reported that the district court had informed the parties that it intended to rule in favor of the Synagogue and hold the City's zoning laws unconstitutional. App. 166, 168. The Herald article also pointed out that "[b]oth sides * * * think the official ruling, which should come as early as next week, could put a swift end to [the federal lawsuit] against the city, scheduled to start in three weeks." June 2, 2006, App. 168. In addition, Sentinel articles from June 2, 2006 through June 24, 2006, two days before the scheduled trial date, reported, *inter alia*, that: (1) "the [Synagogue] is seeking $5 million from the city in damages" and the city's insurer "warned that under Florida law Hollywood would not be covered if the court determines there

---

[7] On January 26, 2006, Petrillo was deposed in the presence of retained counsel, who declared that Petrillo was "not a party" to the lawsuit and that she represented her with regard to "anything in connection with the case." App. 67-69. During the deposition, Petrillo was not asked about her conversation with Para. She did, however, testify that since the federal government had filed its lawsuit in April 2005, she had twice telephoned the attorney at the Department of Justice handling the case to find out "what was going on." App. 102-105.

was intentional discrimination" (June 2, 2006), App. 167; (2) "Commissioner Keith Wasserstrom * * * is urging his colleagues to settle a discrimination lawsuit filed by Hollywood Community Synagogue" (Digest dated June 10, 2006), App. 169; (3) "Commissioner Keith Wasserstrom sent an e-mail Tuesday calling for a special meeting to discuss settling the case with the Hollywood Community Synagogue" (June 10, 2006), App. 171; (4) "City Attorney Dan Abbott scheduled a special 'executive session' meeting for today with commissioners[;]" "Oliveri's attorney told city officials he would like to discuss legal strategy as well as a settlement proposal[;]" "Attorneys spent much of Thursday in settlement negotiations" (June 23, 2006), App. 174; (5) "[a]ll sides will be in a Miami federal courtroom on Monday to announce the terms of a likely agreement" (June 24, 2006), App. 176.

In light of these circumstances, appellants' claim (Br. 22) that "the City's * * * decision to enter settlement negotiations just prior to trial" was "unforeseen" is totally without foundation.[8]

In addition, appellants cannot support their contention (Br. 31) that their interests were "perfectly aligned" with the City's until the parties reached a final

---

[8] Appellants offer no explanation for their 10 day delay until July 6, 2006, in seeking to intervene once the parties announced to the district court on June 26, 2006, that they had reached a settlement agreement.

settlement at the end of June, 2006. As the district court found, appellants had been "adverse parties" to the City when the Broward County Circuit Court allowed them, over the City's objection, to challenge the zoning board's 2002 decision to grant the Synagogue a six-month temporary special exception. R. 384, p. 13; R. 382, Exh. B. Accordingly, the district court correctly ruled that appellants "reasonably should have known * * * at least as early as February 2003" that the City might not adequately represent their interests in this matter. R. 384, pp. 13-14.

Nor is the 2003 Broward County case the only circumstance in which the appellants' interests have not been aligned with the City's. The City's record hardly reflects consistent, unanimous, unqualified opposition to the Synagogue's use of its properties as a house of worship. For example, in September, 2001, the Commission reversed the BAA's decision to grant a six-month special exception to the Synagogue, but nonetheless allowed the congregation to continue to operate for an additional year. R. 275, p. 2. A year later, in October, 2002, the Commission rejected defendant Oliveri's request to review the DRB's decision granting the Synagogue a six-month special exception. R. 272, p. 5. In March, 2003, the DRB granted the Synagogue's request for a special exception allowing the congregation to permanently use its property as a house of worship only to be reversed 53 days

later by the Commission. R. 272, p. 6. Finally, in December 2005, after filing a lawsuit in Broward County seeking a permanent injunction prohibiting the Synagogue from operating a house of worship, the City voluntarily dismissed the action, guaranteeing that the congregation would remain during the pendency of the instant action. R. 272, p. 6; App. 207. Thus, appellants cannot support their claim (Br. 16) that "[u]ntil the announcement of the settlement at the first day of trial, [their] interests were one-hundred percent aligned with the City * * * in its opposition to the continued use by [the Synagogue] of the residences as a hosting place for religious services."

Accordingly, because appellants knew of their interest in the instant litigation even before the Synagogue filed its complaint, were aware of ongoing settlement negotiations long before they moved to intervene, and had previously opposed the City in litigation regarding the Synagogue's use of its property, there is more than ample evidence to support the district court's finding that appellants' delay in seeking to intervene was unjustified.

2. The District Court's Findings On The Three Remaining Factors Establish That It Did Not Abuse Its Discretion In Denying Appellants' Motion As Untimely

A. A district court does not abuse its discretion in denying a motion to intervene as untimely when would-be intervenors' participation would prejudice

the existing parties by jeopardizing a settlement agreement. See, *e.g.*, *Campbell*, 808 F.2d at 779 (prejudice because applicant's intervention would have "jeopardize[d] a legitimately negotiated, accepted, and approved settlement"); *Reeves*, 754 F.2d at 971 (prejudice as a result of "time and effort expended [by the parties] in formulating the settlement"); *Jefferson County*, 720 F.2d at 1517 (prejudice in part because would-be intervenors' participation would have "nullified * * * negotiations"); *In re Holocaust Victim Assets Litigation*, 225 F.3d 191, 199 (2d Cir. 2000) (prejudice because participation by prospective intervenor would have "destroy[ed] * * * settlement and sen[t] [parties] back to the drawing board").

In the instant case, the prejudice to the existing parties from appellants' intervention is obvious. Appellants sought to intervene "to oppose the proposed consent decree" and "challenge the district "[c]ourt's [o]rder, granting [the Synagogue's Motion For Partial] Summary Judgment." R. 383, p. 2. As the district court correctly found, intervention would have unfairly "forc[ed] the parties to return to square one, destroy[ed] their settlement agreement, [required] numerous aspects of the case" to be relitigated, and wasted "substantial time, effort and resources" expended "in negotiating the terms of the settlement." R. 384, p. 14-15. In addition, since appellants sought to intervene to inject into the litigation

for the first time issues as to their rights to the "quiet enjoyment of their property," the district court correctly ruled that intervention would "substantially delay the proceedings." R. 382, p. 2 ; R. 384, p. 15.

Appellants nonetheless argue (Br. 33) that "[t]he [d]istrict [c]ourt's finding of prejudice to the [existing] parties" is "clearly erroneous" because it "stemmed primarily from the amount of time and resources the parties * * * put towards negotiating a settlement," and is based on the wrongful assumption that their intervention "would bring the litigation back to square one."

The district court, as previously noted, enumerated a variety of factors and did not rely on any single one to find that appellants' intervention would prejudice the existing parties. The district court also did not overstate the effect that appellants' intervention would have on resolution of the lawsuit. Appellants seek to prevent the Synagogue from using its Hollywood Hills property as a house of worship. The Synagogue's use of that property is the subject of this litigation and the fundamental issue addressed by the court's decision and the parties' consent decree. The fact that appellants do not seek to challenge collateral aspects of the decree, including the award of monetary damages and the requirement that the City provide sensitivity training to its employees, is immaterial. It is well-established that a would-be intervenor need not undo all aspects of litigation or a settlement

agreement in order for the existing parties to be prejudiced. See, *e.g.*, *B.H. by Pierce* v. *Murphy*, 984 F.2d 196, 200 n.4 (7th Cir. 1993) (finding prejudice when existing "parties have agreed upon a mechanism which could well result in * * * settlement"). Similarly, the fact that the decree provides relief beyond the district court's order granting the Synagogue's motion for partial summary judgment does not, contrary to appellants' claim (Br. 35-37), alter the fact that their motion to challenge the Synagogue's use of its property as a house of worship is untimely and amounts to a wholesale attack on the final disposition of the case. R. 382, p. 2.[9]

B. The district court also correctly concluded that "any prejudice to [i]ntervenors as a result of [its] den[ying] their [m]otion [was] minor" since it had already announced its ruling that the Synagogue could permanently use its property as a house of worship. R. 384, p. 15. It is well established that a would-be intervenor cannot participate in proceedings in order to relitigate issues that have already been decided. See *FTC* v. *Am. Legal Distributors, Inc.*, 890 F.2d 363, 365

---

[9] Appellants, citing *Meek*, 985 F.2d at 1479, offer no support for their claim (Br. 33) that the district court found prejudice based on "mere delay in determining the rights of existing parties" rather than "prejudice to the existing parties * * * caused by [appellants] failure to act promptly" in seeking to intervene. The district court correctly stated and applied that standard since the prejudice it found was the direct result of appellants' delay in seeking to participate in the proceedings.

(11th. Cir. 1989) (affirming decision denying motion to intervene as to issues that have already been litigated since there is "no purpose [in] allow[ing] intervention as to matters resolved before appellants' motion to intervene was filed"). See, *e.g.*, *United States* v. *Yonkers Bd. of Ed*., 902 F.2d 213, 219 (2d Cir. 1990) ("*Yonkers II*") (proposed intervenors did not suffer prejudice to the extent they sought to challenge site that had already been selected). See also *Banco Popular de Puerto Rico*, 964 F.2d at 1232 (no evidence of prejudice since "we see little chance that [the prospective intervenor] could have succeeded in obtaining a broad modification of the protective order").

Contrary to appellants' contention (Br. 35-36), the fact that a "portion of the consent decree" is "prospective in nature [and] allow[s] for future expansion, [including] * * * the construction of a parking lot on property which the [Synagogue] ha[s] yet to even purchase[,]" does not dictate a different conclusion. Appellants knew as early as January, 2006, more than five months before they moved to intervene, that a settlement might include such relief. At her deposition, appellant O'Sheehan testified that she was "concern[ed]" about ongoing settlement negotiations because she and appellant Eva Petrillo had learned "sometime last week" the City had "come to some type of agreement" with the Synagogue whereby the latter would be allowed to purchase the lot adjacent to its two

properties, tear down the three existing residences, and build a house of worship and parking facility. App. 27, 45. Thus, any prejudice suffered by appellants is not a function of the district court's denying their motion. Rather, it is the direct result of their decision not to intervene earlier. See *Yonkers I*, 801 F.2d at 595 (ruling that "any prejudice to the [h]omeowners resulting from the denial of intervention [is] attribut[able] to their own failure to seek intervention when they first had reason to become aware" of their interests).

To the extent that appellants claim (Br. 36) that the district court's denial of their motion to intervene prevented consideration of their objections to the consent decree, the record establishes otherwise. On June 28 and 29, 2006, the City held a public meeting, at which appellants Self, Petrillo, and Johnson expressed their disagreement with the settlement and the attorneys for the City and Synagogue debated various provisions of the decree. Br. 13. See City of Hollywood website, http://www.hollywoodfl.org/city_clerks/prev.com.htm. The City Commission heard appellants' objections but simply made a political decision to reject them. See *City of Bloomington, Ind.* v. *Westinghouse Elec. Corp.*, 824 F.2d 531, 537 (7th Cir. 1987) (refusing to find prejudice to public interest group denied intervention since it had an opportunity to express its objections to parties before final consent decree was accepted).

C. Finally, for the first time on appeal, appellants argue (Br. 34-36) that the district court abused its discretion because it failed to recognize their status as "home owners in a working class community" to be an "unusual circumstance[] * * * militat[ing]" in favor of their motion. Because appellants failed to allege the existence of any "unusual circumstances" in the court below, this Court should not consider whether appellants' belated contention constitutes a valid explanation for their delay. See, *e.g.*, *United States* v. *Alisal Water Corp.*, 370 F.3d 915, 923 (9th Cir. 2004) (district court correctly found "no adequate explanation" for delay in seeking to intervene since applicant never alleged below that the expense of litigating was the reason for failing to act promptly).

Accordingly, the district court did not abuse its discretion in rejecting appellants' motion to intervene.

B. The District Court Correctly Ruled That Appellants Do Not Have An Interest In The Instant Litigation Sufficient To Warrant Intervention

To determine whether a movant possesses the requisite interest for intervention, this Court "look[s] to the subject matter of the litigation." *Georgia*, 302 F.3d at 1251. In order to qualify for intervention as of right, an applicant must have "a significantly protectable interest" in the property or transaction that is the subject of the underlying litigation. *Donaldson* v. *United States*, 400 U.S. 517, 531, 91 S. Ct. 534, 542 (1971). Thus, a prospective intervenor "must be 'at least a

real party in interest in the transaction which is the subject of the proceeding'" or have "a direct, substantial, legally protectable interest" in the proceedings "which the *substantive* law recognizes as belonging to or being owned by the applicant." *Loyd*, 176 F.3d at 1340 (quoting *Worlds* v. *Dep't of Health & Rehab. Servs.*, 929 F.2d 591, 594 (11th Cir. 1991); *Mt. Hawley Ins. Co.*, 425 F.3d at 1311 (quoting *United States* v. *South Fla. Water Mgmt. Dist.*, 922 F.2d 704, 710 (11th Cir. 1991)). See *Purcell*, 85 F.3d at 1512.

Appellants have no interest that is "legally protectable" in federal court. In Florida, zoning decisions are local matters decided by locally elected officials. Appellants have not cited any authority that suggests that they may complain to a federal court when they disagree with local officials' determination about the use of neighborhood property. See *United States* v. *Georgia*, 19 F.3d 1388, 1394 (11th Cir. 1994) (would-be intervenors have "no legally protectable interest" in policy decision of school board); *United States* v. *Franklin Parish Sch. Bd.*, 47 F.3d 755, 757 (5th Cir. 1995) (refusing to allow association of parents, residents, and taxpayers to intervene to object to school board's consolidation plan since "[t]heir remedy, * * * if any, is embodied in their right to select new representatives"); *United States* v. *Perry County Bd. of Ed.*, 567 F.2d 277, 280 (5th Cir. 1978) (rejecting parents' motion to intervene to challenge implementation of school

desegregation orders since issues are "matters of policy * * * to be determined by the Board of Education").

Moreover, this is a lawsuit to enforce a federal statute barring discrimination against religious institutions. As the district court explained, the instant action "involves the treatment of [the Synagogue] by [d]efendant City, not the actions of the Synagogue or its impact on surrounding properties." R. 384, p. 9. Accordingly, the district court correctly concluded that appellants have no legally protectable interest in the instant litigation that entitles them to intervene. R. 384, p. 9. See *Williams Island Synagogue* v. *City of Ventura*, 222 F.R.D. 554, 556 (S.D. Fla. 2004) (denying condominium association intervention in Synagogue's RLUIPA lawsuit against the City since "narrow issue raised by [p]laintiff's complaint is whether [d]efendant's decision-making process violated requirements imposed by [that statute,]" not whether Synagogue's operation "will otherwise complicate ingress and egress from [would-be intervenor's] property"), aff'd by *2600 Island Blvd. Condo* v. *City of Aventura, Fl.*, 138 Fed. Appx. 299 (11th Cir. 2005). See also *Perry County Bd. of Ed.*, 567 F.2d at 280, 280 n.3 (explaining that parents have no interest entitling them to intervene in school desegregation case since their objection to school consolidation plan relates exclusively to "the safety and welfare of school children" and not its "impact on desegregation"); *United*

States v. *Mississippi*, 958 F.2d 112, 115 (5th Cir. 1992) (explaining *Perry*).[10]

II

APPELLANTS CANNOT CHALLENGE THE ENTRY OF THE CONSENT DECREE ON THE GROUND THAT THE DISTRICT COURT SHOULD FIRST HAVE HELD A HEARING

Appellants contend for the first time on appeal (Br. 23-26) that Florida law required the district court to hold a hearing prior to adoption of the consent decree. First, appellants lack standing to challenge the merits of, or the procedures utilized in entering the consent decree because the district court correctly denied their motion to intervene. See *Reynolds* v. *Butts*, 312 F.3d 1247 (11th Cir. 2002); *In re Southeast Banking Corp., Sec. Litigation*, 51 F.3d 1003 (11th Cir. 1995); *United States* v. *Georgia*, 19 F.3d 1388, 1393 (11th Cir. 1994)

In any event, appellants cannot present their claim to this Court since they

---

[10] Since appellants concede (Br. 32) that the City "adequately represented the[ir] interests" up "until the proposed settlement was announced," or through the time when the district court granted the Synagogue's Motion for Partial Summary Judgment, they are also unable to meet the third requirement for intervention, inadequate representation, at least as to any challenge regarding the Synagogue's use of its current properties as a house of worship. Cf. *Arrow* v. *Gambler's Supply, Inc.*, 55 F.3d 407, 410 (8th Cir. 1995) (refusing to recognize prejudice to applicant for intervention when he admits he has no objection to manner in which the issue was litigated).

never raised this argument below. See *Bridge Capital Investors, II* v. *Susquehanna Radio Corp*., 458 F.3d 1212, 1217 n.3 (11th Cir. 2006); *Tanner Advertising Group, L.L.C.* v. *Fayette County, Ga.*, 451 F.3d 777, 787 (11th Cir. 2006).

Finally, appellants have not cited any authority that suggests that the district court was required to hold a hearing prior to entry of the consent decree. Even if they had, state law cannot dictate the procedures a federal court must follow in resolving a federal lawsuit. Consequently, appellants are not entitled to relief.

CONCLUSION

For the reasons stated, this Court should affirm the decision below.

Respectfully submitted,

WAN J. KIM
Assistant Attorney General

_____

JESSICA DUNSAY SILVER
LISA J. STARK
Attorneys
Department of Justice
Civil Rights Division, Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 514-4491

CERTIFICATE OF COMPLIANCE

I hereby certify that pursuant to Fed. R. App. P. 32(a)(7)(C), the attached Brief For The United States As Appellee is proportionally spaced, has a typeface of 14 points, and contains 8,911 words.

Date: October 25, 2006

LISA J. STARK
Attorney

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2006, two copies of the foregoing Brief For The United States As Appellee and one copy of the Government's Supplemental Appendix were served by overnight mail, postage prepaid, on the following counsels of record:

Vincent F. Vaccarella, Esq.
18851 NE 29th Ave., Suite 304
Aventura, FL 33180

Franklin L. Zemel
Broad & Cassell, P.A.
200 E. Las Olas Blvd. Ste 1700
Ft. Lauderdale, FL 33301-3404

A. Hinda Klein
Conroy Simberg Ganon et. al, LLP
3440 Hollywood Blvd Ste 200
Hollywood, FL 33021-6923

Joseph A. Garcia, W. Todd Boyd, Carlos E. Mustelier, Jr.
Boyd Mustelier Smith & Parker, P.L.
100 S.E. 2nd St. Fl. 36
Miami, FL 33131-2134

LISA J. STARK
Attorney