WEIL, GOTSHAL & MANGES LLP
767 FIFTH AVENUE · NEW YORK, NY 10153-0119
(212) 310-8000
FAX: (212) 310-8007

DALLAS
HOUSTON
MENLO PARK
(SILICON VALLEY)
MIAMI
WASHINGTON, D.C.

BRUSSELS
BUDAPEST
LONDON
PRAGUE
WARSAW

ROBERT G. SUGARMAN
DIRECT LINE (212) 310-8184
E-MAIL: robert.sugarman@weil.com

March 15, 2002

BY FEDERAL EXPRESS

Marcia M. Waldron
Office of the Clerk
United States Court of Appeals for the Third Circuit
21400 United States Courthouse
601 Market Street
Philadelphia, PA 19106-1790

Re: Tenafly Eruv Association, Inc., et al., Appellants v. The Borough of Tenafly, et al. No. 01-3301 LISTED: Thursday, March 21, 2002

Dear Ms. Waldron:

We are counsel for Appellants Tenafly Eruv Association, Inc. and Stefanie Dardick Gotlieb ("TEAI Appellants"). I am writing in response to the Letter Brief of March 14, 2002 filed by the Appellees in response to the Court's request for "comment on whether the District Court properly classified the lechis as symbolic speech under the First Amendment," as set forth in your letter of March 8, 2002. Although the Court requested comment only on this precise issue, Appellees' Letter Brief goes much further by offering extended legal analysis on issues unrelated to the question posed and, in fact, making arguments that previously were not made by Appellees to either this Court or to the District Court below.

In particular, TEAI Appellants respectfully request this Court to ignore Point III of Appellees' Brief in its entirety, as it is not in any way responsive to the question asked by the Court. Point III is, in fact, nothing more than an additional memorandum of law on the Free Exercise of Religion issues involved in this case.

Furthermore, TEAI Appellants respectfully request that the Court ignore Appellees' argument that Appellants' free speech claim should be removed from the case because Appellants did not meet their burden of proving that the lechis are protected speech. This argument, too, does not respond to the Court's very specific inquiry.

Finally, it ill behooves Appellees to suggest that Appellants are estopped from making, or have waived, a free speech claim when at no time during this case have Appellees themselves taken the position, or even suggested, that the lechis were not speech. The Appellees have never challenged, either at this level or at the level below, the assertion that the placement of lechis on Tenafly's utility poles constituted speech. Instead of disputing whether the Free Speech clause was even implicated in this case, Appellees have always limited their defense to the position that their refusal to allow the eruv be maintained on Tenafly's utility poles did not constitute viewpoint discrimination.

Respectfully submitted,

Robert G. Sugarman

cc: Richard D. Shapiro, Esq. (all via Fed Ex)
Nathan Lewin, Esq.
Bruce S. Rosen, Esq.
Walter A. Lesnevich, Esq.
Noah R Feldman, Esq.
Kevin J. Hasson, Esq.
John C. Salyer, Esq.
Ronald K. Chen, Esq.
Nathan J. Diament, Esq.
Mordechai Biser, Esq.