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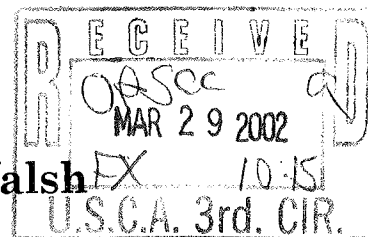
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March 28, 2002

Via Federal Express

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

Re: Tenafly Eruv Association, Inc. v. Borough of Tenafly, et al.
Case No. 01-3301(cmh)
Motion to Allow Filing of Post Argument Letter-Brief

Dear Ms. Waldron:

We represent Appellees Borough of Tenafly, et al. in the above-captioned matter. Kindly accept this letter-motion in lieu of a more formal submission. During oral argument, the Court alluded to numerous factual issues to which we were unable to respond or provide details during our allotted time.

Appellees therefore respectfully move that this Court allow the following Post Argument Letter brief to be filed. We enclose an original and five copies and a Certificate of Service. Please return one copy stamped "received" in the enclosed envelope.

cmh

There are three factual matters that we would like to clear up with the Court.

The first matter concerns the status of the eruv; the second matter concerns the status of objects that appellants allege remain on the utility poles, and the third matter concerns whether the lechis have a communicative dimension.

I. The Status of the Eruv.

There appeared to be some question at oral argument as to whether the eruv is actually in place and what relief appellants Tenaflly Eruv Association, Inc. and various individuals (collectively referred to as "appellants"), are actually seeking. There is no dispute that appellants constructed an eruv on defendant Borough of Tenaflly's right-of-way without obtaining municipal approval. The Borough initially acted to remove the eruv from its property by ordering Cablevision to take it down. Ultimately, there was an agreement between counsel not to disturb the eruv while appellants made application to the Borough Council for permission to keep the structure in place. When the Borough Council voted to deny the request in December 2000 and then prepared to dismantle the eruv, appellants alleged that the borough's actions *inter alia*, violated their rights under the Free Exercise Clause of the First Amendment, and obtained a Temporary Restraining Order preventing the *eruv's* removal. After holding hearings, Judge Bassler ordered the TRO dissolved and denied the application for a preliminary injunction. He stayed his order pending disposition of a motion to stay to be brought by appellants in this Court. This Court has extended the stay. The issue is, therefore, whether Tenaflly can and/or should be compelled to allow a permanent structure installed by a private religious group on government property without permission. The issue is not whether Tenaflly is seeking to remove a properly-erected *eruv*.

II. Whether the Alleged Offending Items Were Removed.

The Court questioned whether the Borough has attempted to remove various signs and materials affixed to the Borough's right-of-way. In his testimony before the District Court, Borough Administrator Joseph DiGiacomo specifically stated that The Borough does not allow the utility poles to be used for speech or signs and that it regulates the use of the public right of way (e.g. A 423 - 424) and that the Borough unsuccessfully sought to find some of the house numbers photographed on the utility poles. Police were ordered to the numbered poles to remove the numbers but were unable to find such poles, indicating that the numbers had been removed. E.g. A 454 - 456. Of course, as Mr. Feldman said during oral argument, it is possible the Borough Police missed a sign or house number during their patrols or searches, and while that is unfortunate, it is also not to say that the Borough does not enforce its ordinance. Additionally, while the Borough has warned several churches that they must remove informational signs that may contain a denominational logo (located not on the utility poles but in the Borough's right-of-way), that issue is still being resolved.

III. Whether the Lechis Possess a Communicative Dimension

The court inquired several times as to whether the lechis possessed a communicative dimension under Jewish law. The question is best answered simply. In Jewish

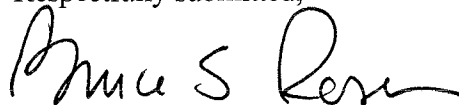
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law, the lechis are analogous to the walls of a house. If one is inside a house on Sabbath, one may carry or push objects. That does not give the walls a communicative dimension. Checking the eruv to see that it is intact is just like checking the walls of the house to see if one is indoors, where one may carry and push, or out of doors, where one may not.

The court also inquired as to the religious significance of the eruv. The eruv is not obligatory under Jewish law, nor has any party suggested that it is. It "enhances" religious observance, by allowing pushing and carrying, which themselves are not religious actions.

We thank the Court for any consideration it may provide in allowing consideration of the foregoing points.

Respectfully submitted,



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