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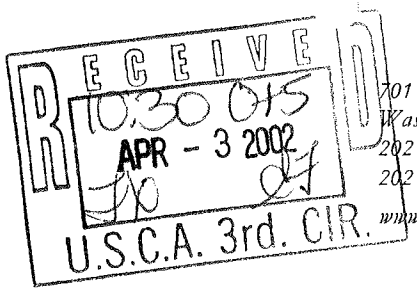

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April 2, 2002

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., et al. v. Borough of Tenafly, et al.
No. 01-3301

Dear Ms. Waldron:

In view of the Passover holiday on March 28 and 29, undersigned counsel, who represents appellants Chaim Book, Yosifa Book and Stephen Brenner, was unable to review appellees' counsel's letter of March 28, 2002, until after the weekend. We submit this response to object to the Court's acceptance of the letter and to respond on the merits.

1. The Procedure

The Federal Rules of Appellate Procedure do not authorize the submission of letters following oral argument on the asserted ground that counsel has been "unable to respond or provide details during our allotted time" -- the only reason specified by the appellees. Moreover, the appellees' letter is dated one full week after oral argument. If it is accepted, it means that there is no finality to the process of briefing and argument. Counsel can always think of something that he or she was unable to "respond" to or to "provide details" at the time of oral argument.

Federal Rule of Appellate Procedure 28(j) specifies the only situation in which a post-argument letter is permitted -- *i.e.*, if "pertinent and significant authorities come to a party's attention after the party's brief has been filed -- or after oral argument but before decision." In that circumstance, a post-argument letter may be submitted to provide citations, but the Rule specifically declares that the letter should "state *without argument* the reasons for the supplemental citations" (emphasis added). It would be anomalous if a letter such as appellees have provided that does not rest on "supplemental authorities" but nonetheless contains argument on matters of fact were permitted, while the kind of letter specifically authorized by the Federal Rule may not contain argument.

2. The Merits

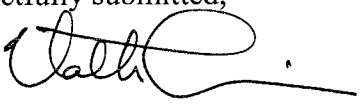
We disagree with the appellees' attempts to portray the eruv as having been constructed in an unlawful manner and to define the issue as whether Tenafly can be "compelled to allow a permanent structure installed . . . without permission." The District Court found that appellant Chaim Book believed in good faith "that approval of the Tenafly Borough Council was not necessary to use the utility poles and that approval of Bell Atlantic Telephone Company (subsequently renamed and referred to hereinafter as "Verizon"), the owner of the poles, would suffice" (District Court Opinion, p.23). The Court concluded that on the basis of "independent legal research" Verizon was also "[a]pparently satisfied that all legal requirements had been met." *Id.*, p. 24.

It is, therefore, at least misleading to describe the issue in this case in the terms used by appellees in their letter -- *i.e.*, "whether Tenafly can and/or should be compelled to allow a permanent structure installed by a private religious group on government property without permission." We submit that the issue is, rather, "whether Tenafly may order the removal of plastic strips that were installed by Cablevision at the request of a private religious group in the good-faith belief that no municipal permission was required."

With regard to the asserted removal of signs and materials affixed to utility poles, we submit that the past uses of the utility poles for signs, decorations, and protest ribbons refute Tenafly's claim that, before installation of the eruv, it enforced a ban on expressive materials attached to the utility poles.

Finally, the appellees' attempt to analogize lechis on utility poles to the walls of a house (or to the new moon, as they did during oral argument) is patently flawed. The walls of a house and the new moon exist independently of the conduct of a religious group installing an eruv. Lechis are affixed by religious groups for the purpose of creating an eruv, and their presence on the publicly visible utility poles communicates to the Orthodox Jewish residents of Tenafly much more particularly than walls or a new moon that an eruv has been installed and that they may, therefore, carry prayer-books and wheel strollers to the synagogue on the Sabbath. A form of expression that is no less relevant, albeit far less commendable, is the communication to residents of Tenafly who do not want Orthodox Jews as neighbors that there is an active observant Orthodox Jewish community within the municipality.

Respectfully submitted,



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