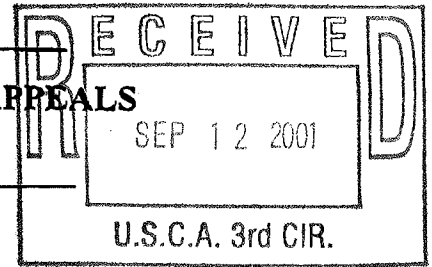


IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT



Appeal No. 01-3301 (cmh)

TENAFLY ERUV ASSOCIATION, INC., CHAIM BOOK, YOSIFA BOOK,
STEPHANIE DARDICK GOTTLIEB and STEPHEN BRENNER

Plaintiffs-Appellants,

v.

THE BOROUGH OF TENAFLY, ANN MOSCOVITZ, individually and in her official
capacity as Mayor of Borough of Tenafly, CHARLES LIPSON, MARTHA B. KERGE,
RICHARD WILSON, ARTHUR PECK, JOHN T. SULLIVAN, each individually and in
their official capacities as Council Members of the Borough of Tenafly

Defendants-Appellees.

REPLY MEMORANDUM IN SUPPORT OF MOTION FOR A STAY OR
INJUNCTION PENDING APPEAL

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Received and Filed

9-12-01 cmh
Marcia M. Waldron,
Clerk

Appellants Tenafly Eruv Association, Inc. ("TEAI") and Stephanie Dardick Gottlieb submit this Reply Memorandum in further support of their motion to stay the dissolution of the Temporary Restraining Order or for an injunction pending appeal.

TEAI and Gottlieb adopt the points made by Appellants, Book, Book and Brenner in their Reply Memorandum. With regard to the Establishment Clause argument, which now, apparently, forms the cornerstone of Appellees' position, at the public meeting at which the Borough Council voted, Mr. Book started to explain why allowing the eruv would not violate the Establishment Clause. The Borough Attorney cut him off and stated: ". . . I've discussed this with Council in closed session. I – they all read [ACLU versus Long Branch] . . . which is the law of this district saying that it is not a violation of church and state and that a council may, if it so chooses, allow an eruv to be put up. We've been over this, I guarantee you, several times, sir." In addition, at a pre-hearing conference after the ACLU filed an amicus brief in which it raised the Establishment Clause argument, counsel for plaintiffs, referring to the Borough Attorney's statement at the Borough Council meeting, stated that he did not believe that the Establishment Clause ought to be an issue in this case. The District Court responded: "I agree with you. I don't think it is an issue in this case." Tr. 4/25 at p. 28-29.

Appellees, and the District Court's, conception of the "status quo" is remarkable. Simply put, it is that the status quo is not what has existed for the last year but what would have existed had the Borough enforced an ordinance, which it never did. Indeed, the Borough did not even know that the ordinance applied until the lechis had been up for over three months. Maintenance of the status quo pending appeal requires that the lechis remain in place.

At the hearing before the District Court, appellees did not contest that appellants would be irreparably harmed absent a stay. Now, they claim there can be no irreparable harm because it is Orthodox Jewish law, not any action of the Borough, which puts them in the position in which they find themselves. Yet, it was the tenets of their religion, and not any action of the City of Newark, which required the plaintiffs in Fraternal Order of Police v. City of Newark, 170 F.3d 359 (3d Cir. 1999) to refrain from shaving off their beards. Nonetheless, this

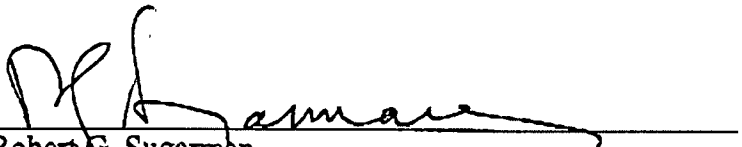
Court held that the City's discriminatory enforcement of a no-beard policy violated plaintiffs' constitutional rights.

Moreover, appellees misstate appellants argument. It is not only that they will be unable to carry prayer shawls and books to Synagogue on Yom Kippur. It is that some of them will not be able to go to Synagogue on Yom Kippur. Appellees also claim, inter alia, that there is no injury -- let the husband stay home from synagogue and watch the children. Whomever of the husband or wife has to stay home to watch the children would be unable fully and freely to practice his or her religion. This would be a violation of his or her constitutional rights which, even appellees concede, would constitute irreparable harm.

Finally, the appellees' "public interest" argument falls on the same basis as does its "status quo" argument. It is simply not in the public interest to require the enforcement of an ordinance which was consistently ignored while other groups and individuals did what the Borough now seeks to prevent appellants from doing.

Dated: September 12, 2001

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Reply Memorandum In Support of Motion for a Stay or Injunction Pending Appeal was served this 7th day of September, 2001, upon the following by facsimile and mail:

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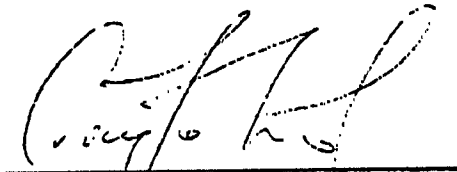
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