

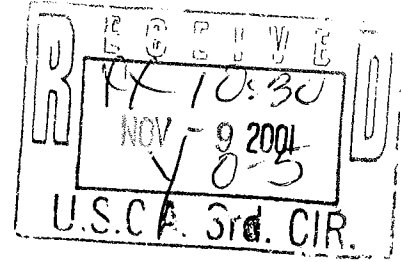
IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

TENAFLY ERUZ ASSOCIATION, INC.  
CHAIM BOOK, YOSIFA BOOK,  
STEPHANIE DARDIK GOTLIEB, 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.



Docket No. 01-3301 (cmh)

District Court No.: 00-6051 (WGB)

Sat Below: Hon. William G. Bassler, U.S.D.J.

**APPELLEES' MOTION TO STRIKE THE BRIEFS OF APPELLANTS AND STAY THE  
BRIEFING SCHEDULE FOR APPELLEES PENDING REILING OF APPELLANTS'  
CONSOLIDATED BRIEF OR, IN THE ALTERNATIVE, TO GRANT APPELLEES AN  
ENLARGEMENT OF TIME FOR FILING THEIR BRIEF AND GRANTING  
APPELLEES LEAVE TO FILE AN OVER-LENGTH BRIEF**

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Received and Filed

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Marcia M. Waldron,  
Clerk

MOTION TO STRIKE APPELLANTS' BRIEFS AND STAY THE BRIEFING SCHEDULE  
PENDING REILING OF APPELLANTS' CONSOLIDATED BRIEF OR, IN THE  
ALTERNATIVE, GRANTING AN ENLARGEMENT OF TIME FOR FILING OF  
APPELLEES' BRIEF AND LEAVE TO EXCEED THE PAGE LIMIT

Pursuant to Rules 3(b)(1) 27 and 28 of the Federal Rules of Appellate Procedure and LAR 3.2, Appellees Borough of Tenafly, Ann Moscovitz, Charles Lipson, Martha B. Kerge, Richard Wilson, Arthur Peck and John Sullivan hereby move to strike the two separate briefs filed by Appellants. This matter is one of first impression involving difficult and often ambiguous First Amendment jurisprudence. The Appellants (Tenafly Eruv Association, Inc. ("TEAI"), Chaim Book, Yosifa Book, Stephanie Dardik Gotlieb and Stephen Brenner) were all represented at the trial level by Weil Gotshal of New York City and Manges ("Weil") and Hellring Lindeman Goldstein & Siegal ("Hellring") of Roseland, N.J. as local counsel. All five Appellants filed a single Notice of Appeal on August 20, 2001 filed by the Weil and Hellring firms. See Entry 49 of the District Court Docket, Joint Appendix at A7.

Subsequently, appellants sought a stay of the District Court Order pending appeal. The Weil and Hellring firms filed a Motion representing TEAI, Stephanie Dardik Gotlieb and Stephen Brenner. The firm of Mintz Levin Cohn Ferris Glovsky and Popeo of Washington, D.C., ("Mintz") filed a similar Motion also representing Stephen Brenner, as well as Chaim and Yosifa Book.

On or about November 1 and 2, 2001, Appellees received two briefs from Appellants as part of the substantive appeal. This time, the Weil and Hellring firms represent only TEAI and Stephanie Dardik Gotlieb, while the Mintz firm again represents Stephen Brenner and Chaim and Yosifa Book. On behalf of their own clients and those of the Mintz firm, the Weil and Hellring firm consulted with Appellants and then filed a Joint Appendix; Appellants have no quarrel with the Appendix.

However, the two briefs, taken together, are a burdensome 96 pages of divergent and sometimes contradictory arguments for reversal of the District Court decision, well beyond the page limit imposed by this Court. In addition, most, if not all of the arguments, many theoretical, contained within in the Mintz firm brief were not raised below and will require additional research, whether or not the Court ultimately considers them.

Rule 3(1) of the Federal Rules of Appellant Procedure states that: “When two or more parties are entitled to appeal from a district-court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They then may proceed on appeal as a single appellant.” (emphasis added) Rule 28 specifically refers to “Appellant’s Brief,” not brief(s) and clearly describes the filing of a **single brief** by each appellant. LAR 3.2 states: “When parties have filed a joint notice of appeal, only one appeal will be docketed and only one docketing fee paid. **Parties filing a joint notice of appeal shall file a single consolidated brief and appendi.**” (emphasis added)

The rules cannot be any clearer; those appellants listed on the same notice of appeal should be considered a single appellant for purposes of briefing. Even if Rule 3 states that multiple parties filing a joint notice of appeal “may” proceed as a single appellant, rather than “shall,” and even if L.A.R. 3.2 did not exist, to interpret these rules so that multiple briefs may be filed based upon a single Notice of Appeal would inevitably result in significant uncertainty, as well as a significant burden, for both the Court and Appellees. It is possible that five separate briefs could then be filed without warning and without benefit of a clear demarcation line between the actual interests of the parties. Already there are shifting representations of at least one client from the motion made only one month ago. If Appellants intended to file separate briefs they should have filed separate Notices of Appeal. Filing of two briefs may be a

convenient way of avoiding page limits and the difficulties of editing a joint brief, but as it has been presented it is patently unfair.

Moreover, while the “Concise Summary of the Case” filed by the Weil and Hellring firms is basically an outline for their brief, appellee has not received the requisite form from the Mintz firm and none of the brief points listed therein reflect the brief filed by the Mintz firm.

For these reasons, Appellees respectfully request that the Court strike the briefs that have been filed and require Appellants to file a consolidated brief within the applicable page limitations (or require Appellants to file a motion to exceed the page limit). In the interim, Appellees request that the briefing schedule be stayed and the clock “stopped” for Appellees’ reply until a consolidated brief is served.

In the alternative, because of the additional research and writing involved in attempting to distill and respond to the varied and complex First Amendment arguments in the two briefs, Appellees request that they be given an additional 30 days to file their brief and that, in order to address the numerous arguments in the two briefs, Appellees be granted leave to file an over length brief.

**CONCLUSION**

For the foregoing reasons this Court should strike Appellant's briefs, require a consolidated brief to be filed in their place and stay Appellee's response until after service of the consolidated brief. In the alternative, the Court should grant Appellees an additional 30 days to respond, and grant leave to file an over length brief.

Dated: November 7, 2001

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that a true and complete copy of the foregoing Motion was served this 8<sup>th</sup> day of November 2001 upon the following by Federal Express:

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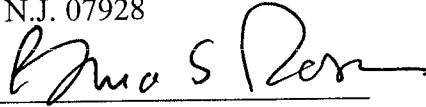
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November 8, 2001