

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-3301

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.

On Appeal from the United States District Court
for the District of New Jersey

**RESPONSE OF CHAIM BOOK, YOSIFA BOOK AND
STEPHEN BRENNER TO APPELLEES' MOTION TO
STRIKE THE BRIEFS AND OTHER RELIEF**

Appellants Chaim Book, Yosifa Book and Stephen Brenner through
undersigned counsel hereby respond as follows to the Appellees' Motion to Strike:

Received and Filed

11-15-01 CMH

Marcia M. Waldron,
Clerk

1. Following the decision of the District Court in this case, appellants Chaim Book and Yosifa Book determined that they wished to be represented on appeal by undersigned counsel. Counsel agreed to represent Mr. and Mrs. Book.

2. This decision was made after the Notice of Appeal was filed. Since time was of the essence, a single Notice of Appeal had been promptly filed by trial counsel. Trial counsel -- who represented the other two named plaintiffs -- was advised shortly after the Notice of Appeal was filed that Chaim Book and Yosifa Book would be represented for purposes of the application for interim relief and for purposes of the appeal by undersigned counsel. At some point prior to the filing of the request for interim relief, Stephen Brenner also decided to be represented by undersigned counsel.

3. The appellees were aware of the division among plaintiffs with respect to representation. Separate applications for a stay and injunction were filed by trial counsel on behalf of three appellants (mistakenly including Mr. Brenner) and by undersigned counsel on behalf of the three appellants counsel presently represents. The appellees did not object to this separate representation or to the filing of separate motions by two groups of appellants.

4. The appellants' two briefs on the merits were prepared separately by trial counsel and by undersigned counsel. There is some minor duplication on one issue, but the arguments in the briefs emphasize different legal theories.

5. Undersigned counsel's brief was well below the 14,000-word limit prescribed by Federal Rule of Appellate Procedure 32(a)(7)(B)(i). The total number of words in undersigned counsel's brief is 7,893.

6. Appellants Chaim Book, Yosifa Book and Stephen Brenner have no objection to the filing of an oversized brief of any length by the appellees.

7. Appellants Chaim Book, Yosifa Book and Stephen Brenner have no objection to the extension of time requested by appellees for the filing of their brief.

8. This is an appeal that has generated significant *amicus* participation, and it raises important constitutional issues. Appellants' briefs should not be struck simply because the five appellants have a difference of opinion over the identity of counsel whom they wish to have represent them on appeal.

9. Appellees contend that because only one notice of appeal was filed, the filing of two briefs with a total of 21,806 words by the five appellants is a violation of Rule 37(a)(7)(B) of the Federal Rules of Appellate Procedure unless the Court authorizes the filing of an oversized brief. Appellants Chaim Book, Yosifa Book

and Stephen Brenner hereby apply, if such application is necessary, for leave to file briefs totaling 21,806 words on behalf of all appellants.

Respectfully submitted,



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November 14, 2001

*Attorneys for Plaintiffs-Appellants Chaim Book,
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WDC227773v1

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Response of Chaim Book, Yosifa Book and Stephen Brenner to Appellees' Motion to Strike the Briefs and Other Relief was served this 14th day of November, 2001, upon the following by Federal Express:

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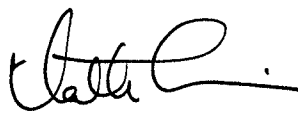
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November 14, 2001



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