

EXHIBIT Q

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May 24, 2012

Brian S. Sokoloff, Esq.
Sokoloff Stern LLP
355 Post Avenue, Suite 201
Westbury, New York 11590

East End Eruv Association


Dear Mr. Sokoloff:

I write in follow up to my letter to you dated April 5, 2012.

As I mentioned in my prior letter, Verizon planned to issue licenses to the East End Eruv Association (the "EEEE") for the attachment of lechis to Verizon's utility poles in the Village of Westhampton Beach, but was willing to defer the issuance of the licenses if Westhampton Beach had legal objections and wished to submit those objections to Judge Wexler for resolution. I asked you to notify me of the Village's position by April 13, 2012, but I received no response.

This is to advise you that the EEEA and Verizon have finalized the list of poles to which lechis will be attached and Verizon will issue the requested licenses on May 31, 2012.

Very truly yours,



Michael E. Wiles

EXHIBIT R

DEBEVOISE & PLIMPTON LLP

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June 1, 2012

Brian S. Sokoloff, Esq.
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355 Post Avenue, Suite 201
Westbury, New York 11590

East End Eruv Association

Dear Mr. Sokoloff:

Upon review of our files, it was determined that two additional poles in the proposed Westhampton Beach eruv are of Verizon ownership and were inadvertently omitted from the list that we sent you on May 30, 2012. Attached please find a revised list of the poles on which Verizon intends to issue licenses for the attachment of lechis. As we noted in today's letter to Southampton, a review of the GIS maps of the utility poles in Westhampton Beach indicates that these poles are within the boundaries of Westhampton Beach.

Very truly yours,



Erica S. Weisgerber

cc: All counsel of record

Pole #	Street name / location	Hamlet / Town	Attachment	Grid #	location of attachment(s)	GIS Map #	Detailed Location
30	Oneck Lane (at front of 163 Oneck Lane)	Westhampton Beach	Lechi Stave	091620200	2 Stave - East/West	Map 09162 (30-35-P)	This pole is in the top left quadrant of the map and is located along Oneck Lane.
31	Oneck Lane (at front of 163 Oneck Lane)	Westhampton Beach	Lechi Stave	091620114	1 Staves - East	Map 09162 (31-35-P)	This pole is in the top left quadrant of the map and is located along Oneck Lane.
32	Oneck Lane (at front of 163 Oneck Lane)	Westhampton Beach	Lechi Stave	091620029	1 Staves - East	Map 09162 (32-40-P)	This pole is in the top left quadrant of the map and is located along Oneck Lane.
40	Oneck Lane s/o South Rd	Westhampton Beach	Lechi Stave	091611513	1 Staves - West	Map 09161 (40-35-P)	This pole is in the bottom left quadrant of the map and is directly south of the intersection of South Road and Oneck Lane.
29	Mill Road & Liberty N/W Corner	Westhampton Beach	Lechi Stave	091614043	2 Stave North/South	Map 09161 (29-40-P)	This pole is in the top center of the map and is located at the west corner where Mill Road and Liberty Street intersect.
30	Mill Road & Lilac Rd (S/E Corner)	Westhampton Beach	Lechi Stave	091614065	2 Stave North/West	Map 09161 (30-40-P)	This pole is in the top center of the map and is located just south of the intersection of Lilac Road and Mill Road.
1	Lilac Road n/o Mill road	Westhampton Beach	Lechi Stave	091614070	2 Staves East/West	Map 09161 (1-40-P)	This pole is in the top center of the map and is located just north of the intersection of Lilac Road and Mill Road.
4	Lilac Road n/o Mill road	Westhampton Beach	Lechi Stave	094605801	2 Staves East/West	Map 09160 (4-35-P)	This pole is in the bottom center of the map and is located on the west side of Lilac Road.
5	Lilac Road n/o Mill road	Westhampton Beach	Lechi Stave	091605717	2 Staves East/West	Map 09160 (5-40-P)	This pole is in the bottom center of the map and is located on the west side of Lilac Road.
6	Lilac Road n/o Mill road	Westhampton Beach	Lechi Stave	091605712	2 Staves East/West	Map 09160 (6-35-P)	This pole is in the bottom center of the map and is located on the west side of Lilac Road.
1400	S/e corner of Lilac Rd. and Montauk Hwy. 1 pole east o/ 1399	Westhampton Beach	Lechi Stave	091606008	2 Staves North/South	Map 09160 (1400-40-P)	This pole is in the top center of the map and is located at the corner of Montauk Highway and Lilac Road.
109	Dune Road (at front of 495 Dune Rd)	Westhampton Beach	Lechi Stave	092422373	2 Staves - North/East	Map 09242 (109-35-P)	This pole is in the top left quadrant of the map and is located along Dune Road.
234	Rogers Beach/Dune Road e/o Beach Lane bridge	Westhampton Beach	Lechi Stave	098157710	2 Staves - East/West	Map 09815 (234-35-P)	This pole is in the bottom right quadrant of the map and is located along Dune Road.
235	Rogers Beach/Dune Road e/o Beach Lane bridge	Westhampton Beach	Lechi Stave	098157667	2 Staves - East/West	Map 09815 (235-40-P)	This pole is in the bottom right quadrant of the map and is located along Dune Road.
29S	Rogers Ave Ext n/w/c Hazelwood Road	Westhampton Beach	Lechi Stave	091587875	2 Staves - East/West	Map 09158 (29S-30-P)	This pole is in the bottom right quadrant of the map and is located at the corner of Hazelwood Road and Rogers Avenue Extension.
1422	S/s of Montauk Hwy	Westhampton Beach	Lechi Stave	098043262	2 Stave - North/South	Map 09804 (1422-35-P)	This pole is in the top left quadrant of the map and is located along Montauk Highway, west of the corner of Aspatuck and Montauk Highway)
1424	S/s of Montauk Hwy (S/w corner of Aspatuk & Montauk)	Westhampton Beach	Lechi Stave	098044223	2 Stave - North/West	Map 09804 (1424-40-P)	This pole is in the top left quadrant of the map and is located along Montauk Highway, near the corner of Aspatuck and Montauk Highway)
2176	Montauk Hwy pole w/o Hazelwood Avenue (opposite True Value)	Westhampton Beach	Lechi Stave	091607079	2 Stave East/West	Map 09160 (2176-45-P)	This pole is in the top right quadrant of the map and is located at the corner of Old Riverhead Road and Montauk Highway.
53	N/s of South Rd. (east of Oneck)	Westhampton Beach	Lechi Stave	091612501	2 Staves North/South	Map 09161 (53-40-P)	This pole is in the bottom left quadrant of the map and is located east of the intersection of South Road and Oneck Lane.

EXHIBIT S

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October 19, 2008

Mayor Conrad Teller
Ms. Toni-Jo Birk, Trustee
Mr. James Kametler, Trustee
Ms. Joan Levan, Trustee
Mr. Hank Tucker, Trustee
c/o Hermon J. Bishop, Esq.
Village Attorney
Village of Westhampton Beach
110 Mill Road
Westhampton, NY 11978

Re: Westhampton Beach Eruv

Dear Honorable Mayor and Trustees:

This letter is respectfully submitted in response to the letter dated October 6, 2008, submitted by lawyers for the Alliance for the Separation of Church and State for the Greater Westhampton Area (the "Alliance") and to provide the Trustees with a correct analysis of the constitutional issues relevant to the proposed eruv.

At the outset, we note, with dismay, that the lawyers for the Alliance devote a significant portion of their letter to what appears to be a transparent appeal to fear and prejudice.¹

¹ The supposed "proven effect" of the establishment of an eruv (Alliance's Letter, p. 6) did not take place in Tenafly, New Jersey, where similar sentiments were expressed when the Tenafly Borough Council was considering the issue in 1999. The Mayor of Tenafly has recently stated that the presence of the eruv has not at all changed the nature or character of the Borough.

WEIL, GOTSHAL & MANGES LLP

Honorable Mayor and Trustees
October 19, 2008
Page 2

rather than address the important constitutional issue at stake, namely, whether the issuance of a ceremonial proclamation which is necessary in order that the eruv be valid is a violation of the Establishment Clause of the First Amendment to the Constitution. As fully explained below, it is crystal clear that it is not. Moreover, the Trustees' denial of a petition to issue the proclamation would violate the rights of members of the Hampton Synagogue under the Free Exercise Clause of the First Amendment and the Civil Rights laws of the United States.

THE ERUV

Under Jewish law, an eruv is an unbroken delineation of an area. The designation of an eruv allows observant Jews to carry and push objects from place to place within the delineated area on the Sabbath and Yom Kippur. Thus, an eruv allows men and women with small children to push a baby carriage or wheelchair from their homes to the synagogue, to the homes of friends or to the park. In the litigation between the Tenafly Eruv Association and the Borough of Tenafly, the Association submitted the affirmation of Rabbi Hershel Schachter, a copy of which is attached as Exhibit A. Rabbi Schachter is the Rosh Yeshiva and Nathan and Vivian Fink Distinguished Professor of Talmud at the Rabbi Isaac Elchanan Theological Seminary of Yeshiva University, the principal rabbinical school for the ordination of Orthodox rabbis in the United States, and has been consulted regarding more than 30 eruvs in the New York, New Jersey and Connecticut area. In his affirmation, Rabbi Schachter states:

The institution of the eruv has been practiced by the Jewish people for over 2,000 years. It is based on principles derived from the Bible which are developed in the Talmud and codified in the Codes of Jewish Law. Indeed, there is an entire tractate of the Talmud which deals with this subject.

The primary benefit of the eruv is to enable couples with younger children (who cannot walk on their own) and disabled and elderly persons confined to wheelchairs to attend synagogue services on the Sabbath and Yom Kippur, and thereby participate in communal prayer services and the Torah reading. In fact, certain portions of the prayer service, including the weekly Torah reading, can only be done in a group and not alone in private prayer. The ability to participate in communal prayer in the synagogue on the Sabbath and Yom Kippur is, therefore, a meaningful and significant enhancement of Jewish observance. The eruv also enables Jews to enhance their observance of the Sabbath by permitting them to mingle more freely with their neighbors, thereby bringing about more friendship and camaraderie.

WEIL, GOTSHAL & MANGES LLP

Honorable Mayor and Trustees

October 19, 2008

Page 3

There are two requirements under Jewish law in order for an eruv to be valid. First, there must be a proclamation delineating and "renting" the area for use as an eruv from a public official whose jurisdiction includes the area in which the eruv is to be constructed. The public official could be, among others, the mayor of the municipality in which the eruv is to be located, the county executive of the county in which the municipality is located or the governor of the state. Second, the physical construction of the eruv must comply with the requirements of Jewish law. If either of these requirements is not met, the eruv would not be valid.

Eruvs presently exist in hundreds, if not thousands, of communities across the United States including Philadelphia, Pennsylvania; Baltimore, Maryland; Cincinnati, Ohio; Jacksonville, Florida; Tenafly, New Jersey; and Washington, D.C. Copies of the proclamations authorizing these eruvs are attached as Exhibit B. When the eruv in Washington, D.C. was inaugurated, then President George H.W. Bush wrote a letter to Congregation Keshet Israel, located in Georgetown, in which he said:

Now, you have built this eruv in Washington, and the territory it covers includes the Capitol, the White House, the Supreme Court, and many other Federal buildings. By permitting Jewish families to spend more time together on the Sabbath, it will enable them to enjoy the Sabbath more and promote traditional family values, and it will lead to a fuller and better life for the entire Jewish community in Washington. I look upon this work as a favorable endeavor. God bless you.

A copy of President Bush's letter is attached as Exhibit C.

THE ESTABLISHMENT CLAUSE

It is our understanding that the Westhampton Beach eruv will consist of existing overhead utility wires and rubber or plastic strips—*lechis*—which will be placed on certain of the utility poles. Based on our research and what we have been told, there are no local, county or state ordinances or laws which would preclude affixing the *lechis* to the utility poles. Thus, the only involvement of this body or any government official, for that matter, would be to issue the ceremonial proclamation.

Three cases have specifically considered whether government action in authorizing an eruv violates the Establishment Clause—*American Civil Liberties Union of New Jersey v. City of Long Branch*, 670 F. Supp. 1293 (D. N.J. 1987); *Smith v. Community Board No. 14*, 491 N.Y.S.2d 584 (N.Y. Sup. Ct. 1985); and *Tenafly Eruv Association v. Borough of Tenafly*, 309 F.3d 144 (3d Cir. 2002). The courts in each of these cases held that the

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Honorable Mayor and Trustees
October 19, 2008
Page 4

action of the municipal authority was not a violation of the Establishment Clause. The lawyers for the Alliance dismiss the relevance of these cases in one paragraph (Alliance letter, p. 11) claiming that the court in *Tenaflly* “simply did not address this constitutional defect”—referring to the issuance of the Proclamation—“because the argument was never raised,” and that the courts in *Smith* and *Long Branch* “found government approval of the physical construction of an eruv to be a legitimate accommodation of religion, but did not address the role government was being asked to take pursuant to Jewish law.” Yet, as pointed out above, the physical construction of the eruv is governed by Jewish law every bit as much as is the proclamation. Thus, the decisions of the courts in *Tenaflly*, *Smith* and *Long Branch* are fully applicable to the application before the Trustees. Further, the two most recent decisions of the United States Supreme Court eliminate any doubt that the issuance of the Proclamation would violate the Establishment Clause.

In *Smith* and *Long Branch*, the municipal authorities granted the applications to construct an eruv. In both cases, the plaintiffs alleged that such actions violated the Establishment Clause. The courts rejected the plaintiffs’ contentions, applying the three part test set out by the U.S. Supreme Court in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). The *Smith* court summarized the test as follows: “whether the conduct has a secular purpose even if that secular purpose is not primary, whether its principal effect either advances or inhibits religion, and whether there is excessive government entanglement with religion.” *Smith*, 491 N.Y.S.2d at 586. As to the first prong, the *Smith* court found that “the policy of New York City to allow equal access to public lands for religious or non religious purposes is an acceptable secular purpose.” *Id.* at 587 (citing *Lynch v. Donnelly*, 466 U.S. 994 (1984); *Widmar v. Vincent*, 454 U.S. 263 (1981); and *McCreary v. Stone*, 739 F.2d 716 (2d Cir. 1984)). In finding that the authorization of the eruv neither advanced nor inhibited religion, the court found that “the City accommodated a religious custom of Orthodox Jews...in substantially the same manner as it has accommodated the religious beliefs of other New Yorkers...” and observed: “Plaintiffs’ argument that the eruv ‘enclosed’ and ‘separated’ the area and that the eruv is a ‘wall’ is simply not true. The eruv is a virtually invisible boundary line indistinguishable from the utility poles and telephone wires in the area.” *Id.* In finding that the approval of the eruv would not create excessive entanglement, the court observed that “the role of the City was to permit cord or wire to be strung from lamp poles and to permit certain sea fences to be raised” and that “construction of the eruv was financed totally by private funds with no financial assistance by the City and the eruv will be maintained in the future totally by private funds.” *Id.*

The *Long Branch* court first observed that “[c]ertain accommodations by the state will always be necessary in order to insure that people of all religions are accorded the rights given to them by the free exercise clause of the First Amendment.” *Long Branch*, 670

WEIL, GOTSHAL & MANGES LLP

Honorable Mayor and Trustees
October 19, 2008
Page 5

F.Supp. at 1295 (citing *Lynch v. Donnelley*, 465 U.S. 668 (1984)). In holding that there was a secular purpose, the court stated:

The City's actions appear to be limited to granting the Congregation the right to erect two additional utility poles, extend a fence and lengthen a fence pole in order to create an eruv in which observant Jews may engage in secular activities on the Sabbath, such as carrying a book or pushing a baby carriage to the park... The eruv which the city has allowed the Congregation to create is not a religious symbol. Neither the boundary markers of the eruv nor the eruv itself have any religious significance. They are not objects of worship nor do they play any theological role in the observance of the Sabbath. Under Jewish law, the eruv does not alter the religious observance of the Sabbath, it merely allows observant Jews to engage in secular activities on the Sabbath.

Id. The court also held that the City's resolution does not advance any particular religion: "As noted above, the existence of the eruv does not impose the Jewish religion on other residents of Long Branch, it merely accommodates the religious practices of those residents who are observant Jews." *Id.* at 1296. Further:

the eruv sends no religious message to the rest of the community. Its existence could not be discerned by anyone who has not been shown the boundaries. An eruv does not in any way force other residents to confront daily images and symbols of another religion... As long as there is no evidence that Long Branch has refused to accommodate other religious groups and since the city will spend no money on the eruv, permitting the eruv is an acceptable accommodation and does not improperly advance religion.

Id. In holding that the approval of the eruv would not foster excessive entanglement, the Court observed that the aid provided by the government is de minimus:

the city is expending no funds on the project. It has provided no aid other than the passage of a resolution permitting the boundary of the eruv to be delineated and... the Congregation has no power to make decisions on matters that are within the governmental domain. Unlike in *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116 (1982), in the instant case, there is no indication that an improper assignment of governmental authority to a religious group has been made.

Id. at 1297.

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Honorable Mayor and Trustees

October 19, 2008

Page 6

In *Tenaflly*, while there was no challenge to the issuance of the proclamation, one of the principal arguments raised by the Borough in defending its refusal to grant the Petition of the Eruv Association to maintain the eruv was that “leaving the eruv in place would constitute an actual Establishment Clause violation, and that the need to avoid such a violation justifies discriminating against the plaintiffs’ religiously motivated conduct.” *Tenaflly*, 309 F.3d at 174. In analyzing the issue, the Third Circuit did not employ the *Lemon* test, observing that “[r]ecent Supreme Court decisions, however, have not applied the *Lemon* test,” and instead applied “the endorsement test developed by Justice O’Connor, which dispenses with the ‘entanglement’ prong of the *Lemon* test and collapses its ‘purpose’ and ‘effect’ prongs into a single inquiry: would a reasonable, informed observer, i.e., one familiar with the history and context of private individuals’ access to the public money or property at issue, perceive the challenged government action as endorsing religion?” *Id.* The court then listed the Supreme Court cases which applied the endorsement test and described the conduct which the Court found did *not* constitute violations of the Establishment Clause: *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002) (upholding a school voucher program); *Good News Club v. Milford Central School*, 533 U.S. 98 (2001) (allowing the use by an evangelical student group of public school facilities accessed by other groups); *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753 (1995) (allowing erection of a cross on the statehouse grounds); and, *Lamb’s Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993) (allowing an evangelical church group to use school facilities to show a film series on Christian family values). In concluding that a reasonable observer would not view the approval of the Borough of Tenaflly of the eruv as an endorsement of one religion, the Court pointed to the “vital difference between purely private religiously motivated conduct and conduct initiated and sponsored by the government. No reasonable, informed observer would perceive the decision of the [Eruv Association] to affix *lechis* to utility poles owned by Verizon and to do so with Cablevision’s assistance as ‘a choice attributable to the State.’” *Tenaflly*, 309 F.3d at 177 (citations omitted). Finally, the Court observed: “even if there is some risk that a reasonable, informed observer might ‘misperceive the endorsement of religion,’ there is a much greater risk that the observer would perceive hostility toward Orthodox Jews if the Borough removed the *lechis*.” *Id.*

Whether judged under the *Lemon* test or the endorsement test, the Trustees’ issuance of the proclamation would not violate the Establishment Clause. Just as in *Smith and Long Branch*, there is a secular purpose—allowing observant Jews to carry and push baby carriages and wheelchairs to the park or to the homes of friends. It does not advance any particular religion since it would not impose the Jewish religion on any other residents and, as more fully explained below, the Village has taken action to accommodate the religious beliefs of other Village residents. Finally, there will be no entanglement since

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Honorable Mayor and Trustees
October 19, 2008
Page 7

no further government approvals are necessary and the eruv will be constructed and maintained with no expenditure of public funds.

Similarly, under the endorsement test applied in *Tenafly*, there is no Establishment Clause violation since no reasonable observer would conclude that by issuing the proclamation, the Trustees are endorsing the practices of Orthodox Jews. First, the language of the Proclamation, as did the *Tenafly* proclamation, would make clear that the “rental” of the area for the purposes of constructing the eruv would not create any rights, duties or obligations enforceable in a court of law and would not diminish, increase or affect any other rights granted under state or local law. Further, the reasonable, informed observer would also be aware that the Village has allowed a crèche, a Christmas Tree and Menorah lighting ceremony and an Easter Egg and Scavenger hunt on Village property, a St. Patrick’s Day Parade on Village streets and Christmas decorations, which the Department of Highways helped erect, and would view the Proclamation as simply another accommodation of the religious beliefs of Village residents.

As mentioned above, under the latest decisions of the Supreme Court of the United States, there can be no doubt that the issuance of the proclamation would not violate the Establishment Clause. In *Good News Club v. Milford Central School*, 533 U.S. 98 (2001), the Court held that there would be no violation of the Establishment Clause if a school district permitted a private Christian organization for children ages 6-12 to hold its weekly meetings after school in an elementary school building. And, in *Van Orden v. Perry*, 545 U.S. 677 (2005), the Court held that the placement of a Ten Commandments monument on the Texas State Capitol grounds did not violate the Establishment Clause. If the placement of a Ten Commandments monument, which, as Justice Breyer pointed out in his concurring opinion, “undeniably has a religious message, invoking, indeed emphasizing, the Deity,” *Van Orden*, 545 U.S. at 700, is not an Establishment Clause violation, surely, the issuance of a proclamation allowing the placement of *lechis*, which have no religious significance and cannot even be identified as part of an eruv, on certain telephone poles, would not be.

The Alliance’s lawyers rely on two cases in support of their argument—*Larkin v. Grendel’s Den*, 459 U.S. 116 (1982), and *Board of Education of Kiryas Joel Village School District v. Grumet*, 512 U.S. 687 (1994). In *Larkin*, the Supreme Court invalidated a Massachusetts law which gave religious institutions the power to prevent bars, restaurants, and other establishments located near their congregations from obtaining liquor licenses. The issuance of the proclamation would not give the Hampton Synagogue the power to do anything which would have any impact on residents of or businesses in the Village. It certainly would not give the Synagogue the power to do anything which the Village is empowered to do. Indeed, the language of the proclamation would make this clear. In *Kiryas Joel*, the Supreme Court invalidated a

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Honorable Mayor and Trustees
October 19, 2008
Page 8

New York State statute which created a school district which followed the boundaries of the village which was a religious enclave of a sect of religious Jews, thereby excluding all others. The basis of the Court's decision was that the statute was "tantamount to an allocation of political power on a religious criterion and neither presupposes nor requires governmental impartiality toward religion..." *Kiryas Joel*, 512 U.S. at 690. The issuance of a proclamation validating the eruv would not exclude or affect the rights of any other residents of the Village or allocate any political power to the Hampton Synagogue.

The Alliance's lawyers also talk about the Village's "sign" law. That law is quite specific in defining a "sign," and the *lechis* simply do not fit within that definition. Indeed, the Village Building Inspector has said as much. And, the Alliance's lawyers claim that "[o]rdinarily, religious accommodation involves (1) a burden on religious conduct imposed by secular law on religious conduct and (2) governmental action that removes (or decreases) that burden through the creation of an exemption from secular law for religious actors." (Alliance letter, p. 12). That is simply not accurate. None of the eruv cases or the two U. S. Supreme Court cases cited above fits this "ordinary" pattern.

**REFUSING TO GRANT A PETITION TO ISSUE THE PROCLAMATION
WOULD BE A VIOLATION OF THE FREE EXERCISE AND CIVIL RIGHTS
OF THE MEMBERS OF THE HAMPTON SYNAGOGUE.**

In *Tenaflly*, the Third Circuit Court of Appeals held that the action of the Borough Council in not permitting the maintenance of the eruv violated the rights of the members of the Tenaflly Eruv Association under the Free Exercise Clause of the First Amendment and the U. S. civil rights laws. The Free Exercise Clause provides that "Congress shall make no law... prohibiting the free exercise [of religion]." *U.S. Const. amend. I*. Ordinance 691 of the Borough of Tenaflly prohibited the placement of anything on the poles located in the right of way of the Borough. The Council relied on that Ordinance to order the *lechis* to be taken off the poles. The Court found, however, that the Borough had never before enforced the ordinance and had permitted the Chamber of Commerce to put holiday decorations, a corporation to put radio transmitters and opponents of a high school regionalization plan to put orange ribbons on the poles. Relying on one Supreme Court case, *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993), and one of the Circuit's earlier cases, *Fraternal Order of Police v. City of Newark*, 170 F.3d 359 (3d Cir. 1999), the court held that:

...the Borough's selective discretionary application of Ordinance 691 against the *lechis* violates the neutrality principle of *Lukumi* and *Fraternal Order of Police* because it 'devalues' Orthodox Jewish reasons for posting items on utility poles by 'judging them to be of lesser import than

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Honorable Mayor and Trustees
October 19, 2008
Page 9

nonreligious reasons,' and thus, 'single[s] out' the plaintiffs' religiously motivated conduct for discriminatory treatment.

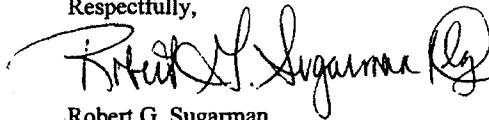
Tenafly, 309 F.3d at 168 (citing *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993); and *Fraternal Order of Police v. City of Newark*, 170 F.3d 359 (3d Cir. 1999)). The Court directed that a preliminary injunction be issued barring the Borough from removing the eruv. The case was subsequently settled. The settlement permanently permitted the maintenance and expansion of the eruv and required the Borough to pay \$320,000 for reimbursement of a portion of the Eruv Association's legal fees and costs.

If the Village were to deny a petition to issue a proclamation, it would be acting in the same way the Tenafly Borough Council acted. The Village has authorized different religious groups to use Village property for their own religious purposes. Thus, the Village has permitted: the placement of a crèche, a Christmas Tree and Menorah lighting ceremony, an Easter Egg and Scavenger Hunt on the Village Green, and a St. Patrick's Day parade on local streets. The Village has also permitted the placement of Christmas decorations on the streets of the Village with the assistance of the Highway Department. In doing so, the Village has accommodated the religious observances and practices of different religions. If the Village were to deny a petition to issue the proclamation, it would be selectively exercising its authority in violation of the neutrality principle of *Lukumi*, just as the Borough of Tenafly did, because it would be devaluing Orthodox Jewish reasons for seeking the proclamation by judging them to be of lesser importance than the other religiously motivated conduct it has sanctioned. The result would not only subject the Village to a ruling that it violated the constitutional rights of the members of the Hampton Synagogue, it would subject the Village to liability to reimburse the Hampton Synagogue for its legal fees and costs in protecting those constitutional rights.

CONCLUSION

The appeals to fear and prejudice have no place in the consideration of the important constitutional issues facing the Trustees. As to those issues, it is very clear that the issuance of the proclamation would not violate the Establishment Clause and that the Trustees' denial of a petition to issue the proclamation would be a violation of the Free Exercise and Civil Rights of the members of the Hampton Synagogue.

Respectfully,



Robert G. Sugarman

EXHIBIT T

For Opinion See 155 F.Supp.2d 142

United States District Court, D. New Jersey.
TENAFLY ERUV ASSOCIATION, INC., Chaim
Book, Yosifa Book, Stefanie Dardik Gotlieb and
Stephen Brenner, Plaintiffs,

v.

THE BOROUGH OF TENAFLY, Ann Moscovitz,
individually and in her official capacity as Mayor
of the Borough of Tenafly, Charles Lipson, Martha
Kerge, Richard Wilson, Arnold Peck, John T. Sulli-
van, each individually and in their official capacities
as Council Members of the Borough of Tenafly,
Defendants.

No. 00 CV 6051 (WGB).

April 4, 2001.

Affirmation of Rabbi Hershel Schachter

Case Type: Civil Rights & Constitutional Law >>
Americans With Disabilities Act

Jurisdiction: D.N.J.

Name of Expert: Rabbi Hershel Schachter

Area of Expertise: Social Science >> Linguist

Representing: Unknown

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HERSHEL SCHACHTER hereby affirms, under
penalty of perjury:

I. I am an ordained Orthodox rabbi and the Rosh Yeshiva. and Nathan and Vivian Fink Distinguished Professor of Talmud at the Rabbi Isaac Elchanan Theological Seminary (RIETS) affiliated with Yeshiva University. I am a graduate of Yeshiva College and have been teaching at RIETS for over 30 years. RIETS is the principal rabbinical school for the ordination of orthodox rabbis in the United States.

2. I have an expertise both in the laws of eruv, as well as in the practical aspects of setting up an eruv. For the past several years I have been giving a six-week seminar to the fourth year students studying for ordination at RIETS. I personally was consulted at one point to check out one specific issue concerning the Tenafly eruv, on a pro bono basis, as I have been consulted regarding more than 30 eruvs in the New York, New Jersey, and Connecticut areas.

3. The institution of the eruv has been practiced by the Jewish people for over 2,000 years. It is based on principles derived from the Bible which are developed in the Talmud and codified in the Codes of Jewish Law. Indeed, there is an entire tractate of the Talmud which deals with the subject

4. The primary benefit of the eruv is to enable couples with younger children (who cannot walk on their own) and disabled and elderly persons confined to wheelchairs to attend synagogue services on the Sabbath and Yom Kippur, and thereby participate in communal prayer services and the Torah reading. In fact, certain portions of the prayer service, including the weekly Torah reading, can only be done in a group and not alone in private prayer. The ability to participate in communal prayer in the synagogue on the Sabbath and Yom Kippur is, therefore, a meaningful and significant enhancement of Jewish observance. The eruv also enables Jews to enhance their observance of the Sabbath by permitting them to mingle more freely with their neighbors, thereby bringing about more friendship

and camaraderie.

Dated: New York, New York April 4, 2001

HERSHEL SCHACHTER

BIOGRAPHICAL SKETCH

Rabbi Hershel Schachter

Rosh Kollel, Marcos and Adina Katz Kollel

(Institute for Advanced Research in Rabbinics)

Nathan and Vivian Fink Distinguished Professor of Talmud

Rabbi Hershel Schachter, a noted Talmudic scholar, has had a distinguished career with the Yeshiva University affiliated Rabbi Isaac Theological Seminary (RIETS) for more than 30 years. He joined the faculty in 1967 and, at the age of 26, was then the youngest rosh yeshiva (professor of Talmud) at RIETS.

He directs RIETS' Marcos and Adina Katz Kollel (Institute for Advanced Research in Rabbinics) and also holds the institution's Nathan and Vivian Fink Distinguished Professorial Chair in Talmud. He has been rosh kollel there since 1974.

In addition to his teaching duties, Rabbi Schachter lectures, writes, and serves as a decisor of Jewish law. He is a frequent participant in synagogue retreats and conferences in communities throughout North America, including those of the Union of Orthodox Jewish Congregations of America.

A prolific author, he has published three Hebrew books, *Eretz Hatzevi*, *B "eikvie Hatzohn*, and *Nefesh Harav*, the latter about his rebbe, Rabbi Joseph B. Soloveitchik. He has also published many articles, both in Hebrew and English, for such scholarly publications as *HaPardes*, *Hadarom*, *Beer Yitzchak*, and *Or Hamizrach*. He has also contributed to Yeshiva University affiliated publications, among them the *Journal of Jewish Music and Liturgy*, published by the Cantorial Council of

America, an entity of RIETS' Philip and Sarah Belz School of Jewish Music, and a student-edited *Haggada*, which includes articles by leading scholars.

Rabbi Schachter is also actively involved with the Orthodox Union Kashrus Halachic Commission as consultant on kashrus matters.

Born in Scranton, Pa., in 1941, Rabbi Schachter is the son of Dr. Melech Schachter, a Yeshiva University alumnus and nationally recognized scholar. He graduated from the Yeshiva University High School for Boys in 1958, earned his bachelor's degree at Yeshiva College in 1962, and his M.H.L. degree from the Bernard Revel Graduate School in 1967. He was ordained at RIETS that same year.

When he was 22 years old, Rabbi Schachter was appointed assistant to the renowned Rabbi Joseph B. Soloveitchik, Leib Merkin Distinguished Professor of Talmud and Jewish Philosophy at RIETS.

He resides in the Washington Heights section of Manhattan with his wife, the former Shoshana Shapiro, and their nine children, of whom five are married.

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