

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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EAST END ERUV ASSOCIATION,  
INC., et al.,

: CV 11-0213

Plaintiffs,

: United States Courthouse  
Central Islip, New York

-against-

THE VILLAGE OF WESTHAMPTON  
BEACH, et al.,

: June 29, 2011  
9:30 a.m.

Defendants.

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TRANSCRIPT OF HEARING  
THE HONORABLE LEONARD D. WEXLER  
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiffs:

WEIL GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, NY 10153  
By: ROBERT G. SUGARMAN, ESQ.  
JESSIE B. MISHKIN, ESQ.  
CHRISTOPHER LUISE, ESQ.  
JOSHUA SCHLENGER, ESQ.  
YEHUDAH L. BUCHWEITZ, ESQ.

For the Defendants:

DEVITT SPELLMAN BARRETT, LLP  
50 Route 111  
Smithtown, NY 11787  
By: THOMAS J. SPELLMAN, JR., ESQ.  
For Village of Quogue  
-and-  
MARC I HAMILTON, ESQ.  
Benjamin Cardozo School of Law  
  
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355 Post Avenue  
Westbury, NY 11590  
By: BRIAN S. SOKOLOFF, ESQ.  
LEO DORFMAN, ESQ.

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JASPAN SCHLESINGER, LLP  
300 Garden City Plaza  
Garden City, NY 11530  
By: MAUREEN LICCIONE, ESQ.  
ROBERT V. GUIDO, ESQ.

Court Reporter: OWEN WICKER, RPR  
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(631) 712-6102

Proceedings recorded by mechanical stenography;  
transcript produced by computer aided transcription

1 M O R N I N G S E S S I O N

2 THE COURT: Be seated.

3 Witness, take the stand.

4

5 M I C H A E L B A L D W I N,

6 having been previously sworn, resumed the stand

7 and testified further as follows:

8 THE COURT: You are still under oath, sir.

9 THE WITNESS: Michael Baldwin.

10 DIRECT EXAMINATION (Cont'd)

11 BY MS. LICCIONE:

12 Q Good morning, Mr. Baldwin.

13 A Good morning.

14 Q When we left here yesterday, you talked about a map  
15 you had developed based upon the maps provided by Verizon  
16 and KeySpan, LIPA, as well as Exhibit A to Exhibit 3,  
17 correct? The listing?

18 A Yes.

19 Q To follow up, I want to show you Southampton's V for  
20 identification and ask you to take a look at Southampton's  
21 V, which was provided by Verizon in a letter to me, and  
22 ask if you've reviewed that letter.

23 A Yes.

24 Q Is that correcting the list on Exhibit A to  
25 Exhibit 3?

1 A Yes.

2 Q Now --

3 THE COURT: Wait a while.

4 Exhibit A was corrected?

5 MS. LICCIONE: Yes, and I have a copy of a  
6 letter. I thought I had given it to Mr. Ausili yesterday  
7 evening, but perhaps not.

8 THE COURT: If you gave it to him in the  
9 evening, I haven't seen him.

10 MR. SOKOLOFF: Judge, for clarification for the  
11 record, it purports to be a correction of Exhibit A  
12 contained in Exhibit 3, the Verizon contract.

13 THE COURT: I understand that.

14 BY MS. LICCIONE:

15 Q Now I'd like you to take another look at  
16 Southampton T and ask you if those corrections are  
17 included on Southampton U, the map you created.

18 A Could you repeat the question?

19 You want me to identify the poles to see if they  
20 are on here?

21 THE COURT: She wants the corrections as to  
22 Exhibit A. Shows us where the corrections are, based upon  
23 the letter sent June 23, 2011.

24 MS. LICCIONE: Thank you.

25 THE WITNESS: The poles on the northeast corner

1 that are numbered are the ones identified run parallel.

2 MS. LICCIONE: The bottom of the three boxes of  
3 the second page of Southampton V. The correction is on  
4 the right-hand side?

5 THE WITNESS: The correction where it identifies  
6 poles 37340 and 42348 are the poles in the northeast  
7 corner not numbered, in The Village of Quogue.

8 And the poles identified in the same exhibit,  
9 representing Rogers Avenue, 1 and 2, are not on the map,  
10 but they are west of pole 1245 on Rogers Avenue and east  
11 of County Route 31. But they are not on the map.

12 THE COURT: Are they in The Village of Quogue?

13 THE WITNESS: Rogers Avenue is in The Village of  
14 Westhampton Beach.

15 The first ones I've identified are in The  
16 Village of Quogue, both.

17 BY MS. LICCIONE:

18 Q Can you mark on Southampton U where the Rogers Avenue  
19 extension, Rogers pole 1243 on the corrected version, is  
20 located? I'm talking about Southampton U.

21 A Right.

22 MS. LICCIONE: Let the record reflect that the  
23 witness placed an X to the left of the word "Rogers Avenue  
24 extension," E-X-T, between pole 18 and pole 1245 on  
25 Southampton U.

1 THE COURT: You better show me that so I can put  
2 it on mine.

3 MS. LICCIONE: May I approach?

4 THE COURT: Yes.

5 I don't even see his mark.

6 MR. SOKOLOFF: Judge, may I approach, also, to  
7 see?

8 THE COURT: Of course. So can you. Everybody  
9 can come forward.

10 You put a mark, and I don't even see the mark.

11 THE WITNESS: It's hard to see (indicating).

12 THE COURT: Does everybody see it?

13 MR. SOKOLOFF: Yes. Thank you.

14 BY MS. LICCIONE:

15 Q And there's one more correction on the top box,  
16 Westhampton Beach pole 1244.

17 Is that indicated anywhere on Southampton U?

18 A No.

19 Q And can you place that pole on Southampton U?

20 A Yes.

21 Q And could you do that for the Court, please?

22 A (Indicating.)

23 MS. LICCIONE: Let the record reflect that the  
24 witness placed an X right to the immediate right of the  
25 last X that we displayed to everyone just a moment ago,

1 between pole number 18 and pole number 1245, immediately  
2 to the left of the word "Rogers Avenue extension" on  
3 Southampton Exhibit U.

4 Your Honor?

5 THE COURT: I have that.

6 (Handing to witness.)

7 BY MS. LICCIONE:

8 Q Now, just to be clear for the record, the corrections  
9 in the bottom box on the second page of Southampton V,  
10 pole south of railroad between Old Country Road and Old  
11 Depot Road, that correction is now present on  
12 Southampton U; is that correct?

13 A Yes.

14 Q And the next one up, Westhampton Beach 1243, is now  
15 present on the map?

16 A Yes.

17 Q And to state the obvious, Westhampton Beach 1244 is  
18 now present on the map?

19 A Yes.

20 Q Now, Mr. Baldwin, going to where we were yesterday, I  
21 would like to ask you to compare Plaintiffs' Exhibit 1 to  
22 the map you prepared using Southampton T.

23 MS. MISHKIN: Objection.

24 THE COURT: What is the objection?

25 MS. MISHKIN: Comparing two different maps. I'm

1 not sure what she is comparing, one with the other.

2 THE COURT: Overruled.

3 She's trying to show the map you provided is  
4 incorrect on the poles.

5 Am I correct?

6 MS. LICCIONE: Yes, your Honor.

7 THE COURT: All right.

8 BY MS. LICCIONE:

9 Q Show the Court the difference between the red outline  
10 and the locations of the pole.

11 A This location, according to the map I prepared, runs  
12 right down Old Depot Road, and also, there's a change at  
13 Rogers Avenue.

14 THE COURT: What is the change at Rogers Avenue?

15 THE WITNESS: The poles they identify on Rogers  
16 Avenue -- this reflects the railroad tracks, and, also, I  
17 don't have any poles identified through here.

18 BY MS. LICCIONE:

19 Q Where are the poles identified in Quogue?

20 A They extend to Montauk Highway (indicating). And  
21 after that, I don't have any poles south of Montauk  
22 Highway except for Dune Road.

23 Q Now, Exhibit -- Plaintiffs' Exhibit 3 and the list of  
24 poles that Exhibit A included within Exhibit 3, does that  
25 list any poles on Quogue Riverhead Road?



1 A No.

2 Q Yet Exhibit 1 shows an eruv boundary on Quogue  
3 Riverhead Road; is that correct?

4 A Yes.

5 Q Where are the pole locations in relation to Quogue  
6 Riverhead Road?

7 A To the west.

8 Q Where?

9 A On Old Depot Road.

10 MS. LICCIONE: Thank you.

11 Q Mr. Baldwin, as the manager of the GIS department in  
12 the Town of Southampton, can you tell the Court how many  
13 miles of public road -- and when I say "public road," I  
14 mean exclusive of the incorporated villages and excluding  
15 private roads.

16 How many miles of private road are within the  
17 Town of Southampton?

18 A Approximately 593.

19 MS. LICCIONE: Thank you. I have nothing  
20 further.

21 MR. SOKOLOFF: I have a couple of questions.

22 CROSS-EXAMINATION

23 BY MR. SOKOLOFF:

24 Q One of the plaintiffs in this case testified that the  
25 northerly boundary of the eruv in the village that I

1 represent, the Village of Westhampton, was the railroad  
2 track and that no lechis were needed because the railroad  
3 track functioned as a boundary.

4 MR. BUCHWEITZ: Objection.

5 I'm sorry, finish the question.

6 Q Did the documents that you reviewed, Plaintiffs'  
7 Exhibit 3, the contract with Verizon, show the northerly  
8 boundary of my client to be railroad track --

9 MR. BUCHWEITZ: Objection. Mischaracterizing  
10 the testimony of the prior witness, who said --

11 THE COURT: Okay. Reword the question. Make it  
12 short. We get lost.

13 BY MR. SOKOLOFF:

14 Q If you tried to plot an eruv based upon the telephone  
15 poles that are listed in the Verizon agreement, is the  
16 northerly boundary in The Village of Westhampton Beach the  
17 Long Island Rail Road tracks?

18 MR. BUCHWEITZ: Objection.

19 THE COURT: If he knows.

20 A There wasn't enough information to decide or make  
21 that decision. Only Rogers Avenue I was able to make that  
22 decision.

23 BY MR. SOKOLOFF:

24 Q Do you know how many poles you plotted on Dune Road  
25 (indicating) in Westhampton Beach?

1 A Three.

2 Q And are those poles at the shore of this piece of  
3 land here (indicating)?

4 A They are on Dune Road.

5 Q Dune Road is how far from the water?

6 A It varies. There are houses in between Dune Road and  
7 the beach.

8 Q And if you consider the poles -- withdrawn.

9 Can you show us where the telephone poles that  
10 are listed in the Verizon agreement on Dune Road -- can  
11 you show us where those poles are located?

12 A Approximately.

13 Q Okay. Please.

14 A May I use the map?

15 Q Use Exhibit 1.

16 A Approximately -- there are two approximately right  
17 here (indicating).

18 Q Any others on Dune Road?

19 A And there's one -- actually not -- it is farther west  
20 than this map shows.

21 Q It's off Exhibit 1 entirely?

22 A Yes.

23 Q Are you familiar with Dune Road?

24 A Somewhat.

25 Q Do the houses -- withdrawn.

1 Do the front doors of the homes on the seaward  
2 side of Dune Road -- in other words, houses on Dune Road,  
3 on the southerly side of Dune Road, do the front doors of  
4 those homes open into yards, to your knowledge?

5 A As far as I know, yes.

6 Q And as far as you know, if somebody walks out of his  
7 or her front door in a house that is on the southerly side  
8 of Dune Road, does somebody walk directly and immediately  
9 out the front door into an eruv area that is -- that has  
10 as its perimeters telephone poles on Dune Road?

11 MR. BUCHWEITZ: Objection.

12 THE COURT: I'll allow it.

13 A Do they walk out of their front door into the eruv  
14 boundary, is what you are asking?

15 BY MR. SOKOLOFF:

16 Q Immediately. Without any uncovered area.

17 THE COURT: I don't understand the question.

18 Uncovered area? What are you talking about?

19 MR. SOKOLOFF: Let me try to rephrase this.

20 BY MR. SOKOLOFF:

21 Q If you assume that the eruv boundary, the southerly  
22 boundary, is not defined by the red line that is indicated  
23 on Plaintiffs' Exhibit 1 but by a string of telephone  
24 poles on Dune Road, if you assume that is the boundary of  
25 the eruv --

1 THE COURT: Let me stop you.

2 How many telephone poles are we talking about  
3 there?

4 THE WITNESS: There's a bunch of telephone poles  
5 on Dune Road. There is three in that exhibit.

6 THE COURT: Three over what area are you talking  
7 about?

8 THE WITNESS: The length of the beach. I'm not  
9 sure of the mileage, exactly.

10 THE COURT: How many miles would you estimate?

11 THE WITNESS: I'd estimate four miles.

12 THE COURT: So we have three poles over four  
13 miles.

14 Go ahead.

15 So when someone walks out of the front door of  
16 their house, they will not hit right into a pole?

17 THE WITNESS: The poles are in the right-of-way,  
18 so they would walk out of their house into private  
19 property.

20 THE COURT: So we understand each other, which  
21 is the front of the house in Westhampton Beach: the part  
22 facing the ocean or the part facing the road? Or does it  
23 vary from house to house?

24 THE WITNESS: I'm assuming it all faces the  
25 road.

1 THE COURT: Do you know?

2 THE WITNESS: I don't know for sure.

3 THE COURT: Okay.

4 MR. SOKOLOFF: I have no further questions.

5 Thank you.

6 CROSS-EXAMINATION

7 BY MS. MISHKIN:

8 Q Good morning, Mr. Baldwin.

9 A Good morning.

10 Q This morning you've identified certain poles on  
11 Southampton U that showed gaps between where the poles are  
12 and where the red line is on Plaintiffs' Exhibit A. Is  
13 that correct?

14 A Yes.

15 Q Do you have an understanding what constitutes an eruv  
16 under Jewish law?

17 A No, I do not.

18 Q So do you have an understanding whether the eruv  
19 boundaries are constituted of natural boundaries like  
20 fences or railroad tracks?

21 A No.

22 Q Do you have an understanding where there are gaps in  
23 natural boundaries that create an eruv, poles can be used  
24 with lechis to fill in those gaps?

25 A No.

1 Q And you don't have any understanding, do you, that an  
2 eruv, under Jewish law, can use poles that run internal  
3 from the outer boundary of the eruv?

4 MR. SOKOLOFF: Objection.

5 THE COURT: Overruled.

6 MS. LICCIONE: Objection. Facts not in  
7 evidence.

8 A No.

9 THE COURT: Not in evidence? Okay. Overruled.

10 This is cross-examination. It doesn't have to  
11 be in evidence.

12 BY MS. MISHKIN:

13 Q Mr. Baldwin, are you aware of whether, for an eruv  
14 under Jewish law, a pole that has a wire on the top does  
15 not need a lechi?

16 A No.

17 Q Let me just direct you to Southampton Exhibit U. If  
18 we could look up on the north boundary of where you added  
19 the two Xs to represent poles on the Rogers Avenue  
20 extension.

21 Can you do that?

22 A Yes.

23 Q Are you aware that in that area there is a Long  
24 Island Rail Road train station that does not have anything  
25 around it?

1 A I'm not aware of the Long Island Rail Road station in  
2 that area.

3 Q Do you have any reason to believe there's not a Long  
4 Island Rail Road station in that general area --

5 MR. SOKOLOFF: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: Can you repeat the question?

8 BY MS. MISHKIN:

9 Q Do you have any reason to believe in that general  
10 area there isn't a Long Island Rail Road train station  
11 that doesn't have fences?

12 A No.

13 Q And let me just direct your attention down to the two  
14 poles we just looked at on Dune Road.

15 Do you see that?

16 A Yes.

17 Q Do you have any understanding as to whether the two  
18 poles on Dune Road to the east side, do you have an  
19 understanding whether they are near a house that doesn't  
20 have a fence?

21 A No.

22 MS. MISHKIN: I don't have any further  
23 questions. Thank you.

24 THE COURT: Go ahead.

25 FURTHER CROSS-EXAMINATION



1 BY MR. SOKOLOFF:

2 Q Do you know whether the Long Island Rail Road station  
3 that Ms. Mishkin just asked you about, that she has  
4 alluded to in the question has no fencing, do you know if  
5 that Long Island Rail Road station is in The Village of  
6 Westhampton Beach?

7 A No.

8 MR. SOKOLOFF: Nothing further.

9 THE COURT: Do you know where that station is at  
10 all?

11 THE WITNESS: I've never been there. I've  
12 mapped it, but I don't know exactly where it is, so I do  
13 not.

14 THE COURT: Did you go to that area where you  
15 say the pole should have been?

16 THE WITNESS: No, I did not.

17 THE COURT: So you didn't even see the area?

18 THE WITNESS: I've been there in the past, but,  
19 no, not recently. Not for this case.

20 THE COURT: So you have no recollection?

21 THE WITNESS: Of the train station or the area?

22 THE COURT: Yes.

23 THE WITNESS: No.

24 THE COURT: How about the area? If you  
25 certainly can't remember the railroad station, you can't

1 remember the area.

2 Or do you remember the area without remembering  
3 there is a railroad station? That's pretty hard to  
4 forget.

5 THE WITNESS: I've driven through this whole  
6 entire area. I don't know exactly where the train station  
7 is, necessarily.

8 THE COURT: How far would you estimate that --  
9 where they claim the railroad station is to where you say  
10 the poles should have been?

11 MR. SOKOLOFF: Objection.

12 THE COURT: What's the objection?

13 MR. SOKOLOFF: They didn't identify where they  
14 say the train station is supposed to be. She just asked a  
15 question about a railroad station.

16 THE COURT: Okay. But you don't recall the  
17 railroad station?

18 THE WITNESS: No.

19 THE COURT: Do you know which town railroad  
20 station is in, or you don't know?

21 THE WITNESS: I'm pretty sure it is in  
22 Westhampton Beach. I'm right sure it is; I just don't  
23 know exactly where it is. I couldn't pinpoint the  
24 location; I could give an approximate area.

25 THE COURT: Let me ask you this: Before you

1 testified, on Exhibit A, I tried to count up the poles. I  
2 got lost somewhere around 55, because some of them didn't  
3 indicate how many poles there were.

4 Did you count up how many poles there were on  
5 Exhibit A?

6 THE WITNESS: I think it is 60, if I recall.

7 THE COURT: Okay.

8 Anybody else have any questions of him?

9 MS. LICCIONE: I don't have any questions, your  
10 Honor, but I think I need to correct the record. I think  
11 I misspoke.

12 I asked the witness how many -- I meant to ask  
13 the witness -- and he answered -- how many miles of public  
14 roads are there exclusive of the Incorporated Village  
15 of -- exclusive of private roads.

16 THE COURT: You did.

17 MS. LICCIONE: I just wanted to make sure I  
18 asked that question.

19 THE COURT: And I heard the answer. He said  
20 590 miles.

21 Right?

22 THE WITNESS: Yes.

23 THE COURT: See?

24 Most people think I'm not listening.

25 Go ahead.

1 FURTHER CROSS-EXAMINATION

2 BY MS. MISHKIN:

3 Q Referring to the Rogers Avenue extension, regardless  
4 where that Long Island Rail Road train station is, do you  
5 know if there is a need under Jewish law for an internal  
6 lechi in Westhampton Beach because there are more than  
7 600,000 people in that vicinity?

8 MR. SOKOLOFF: Objection.

9 THE COURT: Sustained. He's already testified  
10 he doesn't understand or know about Jewish law.

11 You may step down.

12 THE WITNESS: Thank you.

13 THE COURT: Anything else by either side?

14 MS. LICCIONE: Just one second, your Honor.

15 (Counsel confer.)

16 MS. LICCIONE: Your Honor, I have one more  
17 witness, and I promise we'll take less than three minutes,  
18 the Southampton Attorney Tiffany Scarlato.

19 THE COURT: All right.

20 MS. LICCIONE: Thank you.

21 THE COURT: So when I broke yesterday, it turned  
22 out I was correct. We have another witness. We have  
23 summations and motions and so forth.

24 MS. LICCIONE: Yes, your Honor.

25 THE COURT: Raise your right hand.

1 T-I-F-F-A-N-Y S-C-A-R-L-A-T-O,

2 called as a witness, having been first  
3 duly sworn, was examined and testified  
4 as follows:

5 THE WITNESS: Tiffany Scarlato, S-C-A-R-L-A-T-O.

6 THE COURT: Try it again.

7 THE WITNESS: S-C-A-R-L-A-T-O, Tiffany.

8

9 DIRECT EXAMINATION

10 BY MS. LICCIONE:

11 Q Ms. Scarlato, are you a member of the New York State  
12 Bar?

13 A Yes.

14 Q Since when?

15 A Since January of 1999.

16 Q And you are the Southampton Town Attorney?

17 A Yes.

18 Q Prior to being the Southampton Town Attorney, were  
19 you a deputy county attorney in another municipality?

20 A Yes, I was.

21 Q And could you tell that to the Court?

22 A I was a deputy town attorney in the Town of East  
23 Hampton for nine and a half years.

24 Q As the deputy town attorney, which board did you  
25 advise?

1 A I gave advice to the planning board, zoning board,  
2 town boards and various other individuals within the town.

3 Q In Southampton, which boards do you advise?

4 A I represent the town boards: planning board, zoning  
5 board, conservation board, architectural review board.

6 Q In your experience as a municipal attorney, can you  
7 explain to the Court your understanding of New York State  
8 law as to what a variance is?

9 MR. BUCHWEITZ: Objection.

10 Is she a fact witness or a lawyer making  
11 arguments?

12 THE COURT: I'm sorry?

13 MR. BUCHWEITZ: Is she a fact witness or is she  
14 a lawyer making arguments? I don't know what her  
15 interpretation of what some New York State laws are is  
16 relevant to.

17 MS. LICCIONE: She's not making arguments,  
18 that's for sure.

19 Your Honor, I may point out -- excuse me.

20 THE COURT: I'll reserve decision on that. If  
21 you are calling her as an expert, I'll exclude it. If you  
22 are calling her as a fact witness, I'll allow it.

23 MS. LICCIONE: Go ahead and answer the question.

24 A It is my understanding that variance procedure is  
25 such used by an applicant to obtain relief from any

1 provision of a town or municipal zoning code.

2 BY MS. LICCIONE:

3 Q Does that include a prohibition?

4 A Yes, it does.

5 Q One last question. When did the Town of Southampton  
6 learn that an eruv was contemplated to be located within  
7 the township, the unincorporated portion of the township?

8 THE COURT: When you say "the Town," what do you  
9 mean "the Town"? The whole board?

10 MS. LICCIONE: The town board.

11 THE COURT: Okay, the town board.

12 MS. LICCIONE: In the unincorporated portions of  
13 the town.

14 A When we received the motion for the preliminary  
15 injunction, there was an attachment listing the poles to  
16 be included within the eruv.

17 MS. LICCIONE: That's all I have.

18 THE COURT: I don't have to rule on a motion  
19 then. She was a fact witness. I thought she was going to  
20 be called as an expert and to give an opinion without  
21 providing an affidavit and so forth, but there's no issue  
22 there.

23 Go ahead.

24 CROSS-EXAMINATION

25 BY MR. BUCHWEITZ:

1 Q Good morning.

2 Are you aware that the Town of Southampton town  
3 supervisor sent a letter on November 16, 2010, to William  
4 Balcerski of Verizon?

5 A I am not aware of that letter, no.

6 Q When did you become town attorney?

7 THE COURT: One second --

8 MR. BUCHWEITZ: Exhibit 27, which is in  
9 evidence.

10 (Handing to witness.)

11 BY MR. BUCHWEITZ:

12 Q When did you become Town of Southampton town  
13 attorney?

14 A I was appointed town attorney sometime in February of  
15 2011 and took that seat on March 1st of 2011.

16 Q Who did you replace?

17 A Michael Sordi.

18 Q Did Michael Sordi sign this letter that is  
19 Plaintiffs' Exhibit 27?

20 A There is no signature on this letter.

21 Q Is this letter -- do you have any reason to believe  
22 that Exhibit 27 wasn't sent?

23 A No, I have no reason to believe that.

24 Q Did anyone show you Exhibit 27 before you came become  
25 the Southampton town attorney?



1 A No.

2 Q Did anyone show you Exhibit 27 -- when you became the  
3 Southampton town attorney, you were aware that the Town of  
4 Southampton, as of the time you became town attorney, was  
5 being sued by the East End Eruv Association and a number  
6 of individual plaintiffs, right?

7 A Yes.

8 Q And that lawsuit was -- and that lawsuit alleged,  
9 among other things, that the Town of Southampton prevented  
10 East End Eruv Association from establishing an eruv,  
11 right?

12 A That's what I understand, yes.

13 Q And you understand that Exhibit 27 was attached to  
14 the complaint?

15 A Yes.

16 Q And the motion for preliminary injunction didn't come  
17 for a couple months later; is that correct?

18 A That's correct.

19 Q So how is it that you first became aware of the  
20 allegations of the East End Eruv Association when the  
21 preliminary injunction wasn't made?

22 A I spoke to the locations with respect to the eruv.

23 Q The locations with respect to the eruv?

24 A The locations of the poles with respect to the actual  
25 eruv.

1 Q So your entire testimony is that you learned about  
2 the location of the poles when we made a preliminary  
3 injunction motion?

4 A That is correct.

5 MR. BUCHWEITZ: I have no further questions.

6

7 REDIRECT EXAMINATION

8 BY MS. LICCIONE:

9 Q Ms. Scarlato, take a look at Exhibit 27, please.

10 A Yes.

11 Q Did Mr. Sordi ask in that letter for Verizon to  
12 confirm whether or not the lechis are to be located within  
13 the Town of Southampton?

14 Take a look at the first page.

15 A (Perusing) He does ask for that information, I  
16 believe.

17 Q Did he say: I point out at the outset that the  
18 letter from the East End Eruv Association would imply that  
19 the, quote, the town, closed quote, have not submitted any  
20 opinion.

21 The Town of Southampton has thus far not  
22 entertained any position with regard to this matter up to  
23 this point.

24 The matter is not within our jurisdictional  
25 realm; that as is expressed above, we were under the

1 impression this matter was confined to the jurisdictional  
2 limits of the incorporated village.

3 As I understand it, now, following our telephone  
4 conversation --

5 THE COURT: Counsel, you are reading in an  
6 exhibit that is already in evidence that we didn't go  
7 into. It's already in evidence, the whole thing.

8 MS. LICCIONE: Okay. Thank you.

9 THE COURT: Do you want to read all the letters  
10 that came in?

11 MS. LICCIONE: No, your Honor.

12 I just have one and a half sentences to  
13 complete. If you prefer I do not do that, I won't.

14 THE COURT: It's in evidence.

15 BY MS. LICCIONE:

16 Q When you became town attorney, did you review some of  
17 Mr. Sordi's files?

18 A When I came to the town attorney's office, there were  
19 very few, if any, of Mr. Sordi's files remaining in the  
20 office.

21 Q Did you see any response from either Verizon or East  
22 End Eruv Association describing where -- whether it was  
23 confirmed that the eruv would be located within the  
24 unincorporated portions of the town?

25 A No, I did not.

1 Q To your knowledge, did the East End Eruv Association  
2 ever make an application to the town?

3 A Not to my knowledge.

4 MS. LICCIONE: That's all.

5 MR. BUCHWEITZ: Just one question.

6 RECCROSS-EXAMINATION

7 BY MR. BUCHWEITZ:

8 Q Are you aware on November 18, 2010, two days after  
9 Mr. Sordi's letter, the East End Eruv Association, through  
10 counsel, wrote a letter to -- counsel for the East End  
11 Eruv Association wrote a letter to the East End Eruv  
12 Association which was later forwarded to Verizon that  
13 indicates that there would be poles in Southampton?

14 A I'm not aware of that letter at all.

15 Q Are you aware in Exhibit 27 Mr. Sordi made a  
16 conclusion that lechis are a, quote/unquote, sign within  
17 the meaning of the statute?

18 A Yes, I'm aware of that.

19 Q And that fines would be imposed on Verizon if they  
20 allow lechis to be put up in the Town of Southampton?

21 A I believe that the letter -- and I can't speak for  
22 Mr. Sordi, but I believe my understanding of the content  
23 of that letter was that not that fines would be imposed  
24 but that the East End Eruv Association ran the risk of  
25 being fined should lechis be put up without appropriate

1 permission.

2 Q So there could be fines?

3 A There could be fines.

4 MR. BUCHWEITZ: Nothing further.

5 MS. LICCIONE: Counsel, were you referring to  
6 Exhibit 28? That's not the exhibit we have.

7 MR. BUCHWEITZ: Exhibit Z --

8 MS. LICCIONE: To the complaint.

9 FURTHER REDIRECT EXAMINATION

10 BY MS. LICCIONE:

11 Q I'd like you to look at Exhibit Z to the complaint, a  
12 letter from counsel to which he just referred.

13 I ask you if there is anything in that letter  
14 that confirms that the lechis or the eruv would be located  
15 in the unincorporated portions of the town.

16 A I'm just going to take a minute to review it.

17 MS. LICCIONE: Absolutely.

18 THE COURT: Is the letter in evidence?

19 MS. LICCIONE: I don't believe it is. Exhibit Z  
20 is the complaint.

21 THE COURT: Okay.

22 A It doesn't appear from my reading of this letter  
23 there is any confirmation that lechis would be placed on  
24 any poles within the Town of Southampton.

25 BY MS. LICCIONE:

1 Q Okay. Now, Ms. Scarlato, do you remember when you  
2 reviewed the complaint that the plaintiff confused the  
3 various unincorporated and incorporated areas within the  
4 Town of Southampton?

5 A Yes, I do.

6 MR. BUCHWEITZ: Objection.

7 THE COURT: Sustained. That answer will be  
8 stricken.

9 BY MS. LICCIONE:

10 Q I want to show you Exhibit Y to the complaint. It is  
11 a Santa and reindeer hanging from a pole.

12 Where is that location?

13 A That is within the Incorporated Village of  
14 Southampton.

15 Q And did the complaint allege --

16 THE COURT: Sustained. It has nothing to do  
17 with redirect or the direct testimony. You are going into  
18 other issues.

19 When lawyers say three minutes, they mean on one  
20 subject, not on the entire thing.

21 You are going into something that no one even  
22 brought -- that she didn't testify, that you didn't ask  
23 her about, that he didn't question her on.

24 Do you have anything else?

25 MS. LICCIONE: That's all I have.

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1 THE COURT: Thank you.

2 Anybody else have any questions?

3 We'll take a short recess.

4 So both sides rest.

5 Before you make your motions. You'll make your  
6 motions after.

7 Short recess.

8 You may step down. You are excused.

9 (Whereupon, a recess was taken.)

10 THE COURT: All right. We'll take arguments  
11 now.

12 Plaintiff, since it was your motion, you go  
13 first.

14 MR. BUCHWEITZ: Thank you, your Honor.

15 We prepared a short slide presentation to help  
16 move things along. If you would like, I'll hand out hard  
17 copies as well as on the screen.

18 THE COURT: Go ahead.

19 - - -

20 MR. BUCHWEITZ: Your Honor, the existing motion  
21 for a preliminary injunction filed on March 15, 2011,  
22 should be granted. You've now heard four days of  
23 testimony, 14 witnesses, 15 witnesses -- I don't know this  
24 morning about this additional witness -- 14 briefs and 15  
25 declarations.

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1           Everything I will describe to you in the next  
2 few minutes gives you everything you need to rule in favor  
3 of our motion.

4           There are four principal reasons why the motion  
5 should be granted.

6           First -- and we'll go through each of these one  
7 at a time -- plaintiffs have suffered irreparable harm.

8           Plaintiffs have shown a likelihood of success on  
9 the merits because no local ordinance --

10           THE COURT: You must go slower.

11           MR. BUCHWEITZ: Sorry, your Honor.

12           Plaintiffs have shown a likelihood of success on  
13 the merits because no local ordinance precludes  
14 attachments of the lechis.

15           Third. Plaintiffs have shown that defendants  
16 have wrongly prevented the establishment of the eruv.

17           Finally, defendants' other arguments, which  
18 we'll get into briefly are, irrelevant.

19           First, plaintiffs have suffered irreparable  
20 harm.

21           This case is about plaintiffs' right to free  
22 exercise of religion.

23           THE COURT: The Court is familiar with this  
24 theory, so go on to the next one.

25           Thank you, your Honor.



## Plaintiffs' Closing Argument

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1 THE COURT: Even though the defendants argue  
2 irreparable harm, the United States Supreme Court has  
3 ruled on that.

4 Go ahead. Go through the next reason.

5 MR. BUCHWEITZ: We'll skip ahead, your Honor.

6 THE COURT: Yes.

7 MR. BUCHWEITZ: So we don't need to get into the  
8 fact that in addition, we've established irreparable harm  
9 even besides the United States Supreme Court, which is  
10 clear from all the testimony we've seen by Mr. Tuchman.

11 THE COURT: He still has to take it down if  
12 you're mentioning it. You're running through it so  
13 quickly, blab, blab, blab -- you are running through it.  
14 We can't think to take it down.

15 Given your Honor's familiarity with the Supreme  
16 Court, you can very briefly look at the testimony -- well,  
17 not look at the testimony. Just throw on the screen --  
18 the testimony of witnesses that have testified in the  
19 hearing - Mr. Tuchman, Mr. Lean, Ms. Pollack -- all about  
20 how, in addition to the constitutional infringement on  
21 their rights that constitute irreparable harm, they  
22 additionally, as a matter of fact, have been irreparably  
23 harmed. It's all consistent with the Tenafly case as  
24 well.

25 Second. Plaintiffs have shown a likelihood of

Plaintiffs' Closing Argument

1 success on the merits because no local ordinance precludes  
2 attachment of the lechis.

3 The evidence is clear that as to each defendant  
4 group, no local ordinance applies to the lechis and,  
5 therefore, no permission was required.

6 First. Westhampton Beach.

7 Westhampton Beach has conceded in this case,  
8 through its mayor and counsel, that the village has taken  
9 the position in this case that a lechi is not a sign.

10 The mayor has said, I don't know of any laws,  
11 codes, in our village compiled that affect the eruv,  
12 nonapplication or an application. Therefore, there is no  
13 basis for Westhampton Beach -- no law under Westhampton  
14 Beach's position that precludes attachment to the lechis.

15 The only thing that they've said is that their  
16 permission is required, but they've submitted no evidence  
17 of any law or practice, even, that shows that their  
18 permission is required. And in fact, the testimony is to  
19 the contrary.

20 Mr. Laube testified --

21 THE COURT: One second.

22 Maybe we should go, not all like you did  
23 originally, and break it up to the village and to the town  
24 so we know which one you are talking about. And that will  
25 give them the right to answer on that particular subject

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1 rather than going through all of them, and they are all  
2 getting mixed up together.

3 MR. BUCHWEITZ: On this particular topic, this  
4 particular slide is Westhampton Beach.

5 THE COURT: Okay. When he finishes, I'll let  
6 them answer to that with respect to that particular issue.

7 MR. BUCHWEITZ: Whatever your Honor wants.

8 The testimony is to the contrary.

9 Mr. Laube testified that when he came to the  
10 Saint Patrick's Day banner hung on a Verizon or LIPA pole,  
11 village permission was not required. All that was  
12 required was permission from Verizon and LIPA.

13 I was going to move on to the Quogue --

14 THE COURT: All right. Let's hear from the  
15 Westhampton Beach representative concerning that issue.

16 MR. SOKOLOFF: Concerning what issue, your  
17 Honor?

18 THE COURT: Didn't you hear what we said?  
19 Do you see what is in front of you, what he  
20 said?

21 MR. SOKOLOFF: I see that he has put up on the  
22 screen --

23 THE COURT: Do you want to answer that issue;  
24 yes or no?

25 MR. SOKOLOFF: I'm not sure what issues he's

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1 talking about.

2 THE COURT: Go on. He's not sure.

3 MR. SOKOLOFF: Judge, I'll answer it, but --

4 THE COURT: Why do you make things so difficult?

5 We went through a whole discussion, he has it up on the  
6 board, and you say, what issue are we talking about?

7 MR. SOKOLOFF: The man just spoke for ten  
8 minutes, and now I'm supposed to answer something that he  
9 said, and I'm not exactly sure.

10 THE COURT: So don't answer it. You do it  
11 later.

12 Continue on with your way of doing things.

13 MR. SOKOLOFF: Thank you.

14 MR. BUCHWEITZ: Thank you, your Honor.

15 Next: Quogue.

16 Quogue has taken the position that chapter 158  
17 of this village code, which prohibits projections and  
18 encroachments, somehow prohibits the lechis. But there is  
19 no evidence in the case that the lechis are actually  
20 projections or encroachments.

21 To the contrary, when we had testimony about the  
22 purpose of this law, Mayor Sartorius said that when asked  
23 whether it be an adverse impact of the public safety in  
24 Quogue, he said, I don't know.

25 When he said that a pancake breakfast sign would

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1 have a public purpose and therefore be excluded from the  
2 encroachment and projection law, even though the pancake  
3 breakfast sign is even larger than any lechi -- this was  
4 the back and forth with your Honor:

5 Judge, part of the reason for the law is that we  
6 don't have a lot of things in the right-of-way that are  
7 potential distractions.

8 And then the Court says: So would this be a  
9 distraction?

10 Answer: It could be.

11 Question: Would you think this was a  
12 distraction, the pancake breakfast sign?

13 Answer: Yes, it could be a distraction, but it  
14 also has a public purpose.

15 The Court: What is the public purpose?

16 Answer: Well, it is a Quogue village fire  
17 department. The pancake breakfast is for the community to  
18 attend and also has a fund-raising function for the fire  
19 department.

20 Question: Isn't there a public purpose in  
21 allowing in an eruv in the Village of Quogue?

22 Answer: I don't have a view on that.

23 The lechi, which we've all gone over many times,  
24 there's no reasonable person who can say that little  
25 plastic strip is a projection or encroachment.

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1            Shall I go on to Southampton or shall I stop?

2            THE COURT: Go ahead.

3            MR. BUCHWEITZ: Southampton sign law.

4            We've heard a lot about these signs from  
5            Southampton, but the lechis aren't signs. Southampton  
6            brought in three different witnesses to try to say that  
7            these lechis are signs, but they just prove they are not.

8            The enforcement officer came with that box of  
9            signs over there, a whole box. Every single thing in that  
10           box have words, letters, pictures. There's nothing in  
11           there that is a plastic strip. There is nothing in there  
12           that is a plain piece of wood.

13           Lechis are not a sign.

14           They claim that anything that displays a message  
15           is a sign.

16           Well, Mr. Tuchman testified the lechi has no  
17           message. There is no writing, and the eruv itself doesn't  
18           send a message.

19           Mr. Benincasa was on the stand yesterday, and we  
20           don't have quotes, so we're doing our best. He said there  
21           are no messages on the lechis on the pole or otherwise.

22           Each of the signs that the lieutenant took down  
23           had letters and pictures. In ten years, he never took  
24           down a plain old plastic tube on a sign, even though we  
25           saw on a number of pictures they are stuck on the poles.

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1           As the Court stated, people know what a cross  
2 is, what a menorah and a crescent is. But the lechis  
3 themselves are not an emblem, outline or delineation,  
4 which are the catchall words which make everything in the  
5 world a sign, according to Southampton. We saw that  
6 today.

7           The question Mr. Sugarman asked was, in words,  
8 there are actual boundaries, in this case natural  
9 boundaries, existing structures and existing overhead  
10 wires.

11           So did the lechis delineate the eruv? No.

12           We saw the map from Southampton, little spots  
13 here and there. The eruv is much bigger, the lechis.

14           Southampton's own town supervisor was up here  
15 talking about the purpose of the sign law.

16           From the Court: Does it protect the public  
17 health? Yes or no.

18           He can't answer that. He can't answer that.

19           How about the safety and welfare of the citizens  
20 of the Town of Southampton, the purpose of the sign law.  
21 Can you answer that with a yes, no, or you can't answer?

22           I would categorize it as a quality of life. As  
23 we said in our brief, quality of life issues, aesthetics,  
24 do not defeat freedom of First Amendment rights.

25           Then you have Southampton's exhibits about

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1 variances and applications. They are all inapplicable.  
2 We went through them one at a time.

3 There are no article numbers for a lechi.  
4 Mr. Benincasa testified if they are not signs, then  
5 variance issues are not relevant.

6 Sign laws is so broad as to render the provision  
7 unenforceable. Mr. Benincasa testified the definition of  
8 a sign is so broad is it makes it unenforceable.

9 Next. Even if, under any of these theories,  
10 these sign laws or encroachment laws or nonlaws apply, the  
11 evidence is clear they've been selectively enforced.

12 Southampton conceded that it left the signs up  
13 on its poles for as long as six to nine months.

14 Mr. Viseckas testified that he removed signs  
15 after being informed about them in the context of this  
16 litigation.

17 Westhampton Beach allows signs to be hung  
18 without village permission.

19 And Mr. Laube testified that he hung Saint  
20 Patrick's Day banners with permission -- the banners with  
21 permission from Verizon and LIPA.

22 When asked whether he got permission from the  
23 village, he testified: No. In fact, I was told by then  
24 Village Clerk Kathy McGuinness that I did not have to.

25 Quogue allows signs and other objects. We saw



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1 the reflectors. We knew they took them down for part of  
2 this case. And Mayor Sartorius was aware that the pancake  
3 breakfast sign was up for a time. We know at least five  
4 days.

5 Let's take a quick look at some of these. This  
6 is Exhibit 33. It's the sign that says "Fall Cleanup,  
7 373-L-A-W-N. It was up for nine months. September,  
8 November, May.

9 Then this one -- selective enforcement. We  
10 know the bottom sign was up for five months. We learned  
11 it yesterday. We knew the top one was up for six months  
12 because it was up from November, and it was up again in  
13 May.

14 And the lieutenant told us he took down "winter  
15 is coming" when he went for a shooting, and he did it in  
16 April. We know that was up for five months also.

17 As your Honor noted, these are on Montauk  
18 Highway. We all know what that is.

19 Exhibit 40. This one came up a few times. This  
20 was the picture taken on May 10th concerning the tag sale  
21 from May 7th.

22 This has plastic tubing, wood strips, up and  
23 down, all over the pole. These things aren't signs under  
24 the Southampton sign law, but they are not excluded even  
25 though everything other than what is excluded is a sign.

## Plaintiffs' Closing Argument

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1           Here's your pancake breakfast sign, and here's  
2 your Saint Patrick's Day sign, just so you don't forget.

3           All of this selective enforcement violates the  
4 First Amendment for exactly the same reasons that the  
5 Third Circuit ruled in the Tenafly case, which you've  
6 heard about again and again in this hearing.

7           Third. Plaintiffs should prevail because the  
8 plaintiffs have shown that the defendants have wrongfully  
9 established the eruv.

10           Here's what plaintiffs are required for the  
11 eruv. They needed a contract with Verizon; they got them.  
12 They needed a contract with LIPA; got it. They had to get  
13 insurance; they had to negotiate with them. They had to  
14 get permission and they got it. They did what they had to  
15 do.

16           Verizon and LIPA have authority to permit the  
17 lechis. The New York Court of Appeals held that utility  
18 poles are personal property of the utilities. The local  
19 municipalities may not do what they want without the  
20 utility's permission.

21           Westhampton Beach, as you heard during Mayor  
22 Teller's testimony, has a right to license. Here's the  
23 contract with Westhampton Beach with the licensee, with  
24 Verizon. And what does it say in paragraph 28?

25           Nothing herein contained shall be construed as a

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1 grant of any exclusive license, right or privilege to  
2 licensee. Licensor shall have the right to grant, renew  
3 and extend rights and privileges to others not parties to  
4 this agreement by contract or otherwise, to use any poles  
5 and/or anchors covered by this agreement.

6 There is Mayor Teller's signature saying Verizon  
7 has the right to license.

8 Next. Utilities are ready to go.

9 Mr. Balcerski testified in the event the Court  
10 decides that the lechis may be installed on the poles,  
11 Verizon will allow the installation of the lechis. We are  
12 awaiting a decision from the Court as to whether or not we  
13 are permitted to allow the installation of the lechis.

14 Question: Verizon is prepared to do so with  
15 that decision?

16 Answer: If the Court rules that we are allowed,  
17 we will do so, yes.

18 Defendants prevented Verizon and LIPA from  
19 allowing the installation of the lechis. The only thing  
20 preventing us are the defendants' own actions.

21 Here's the testimony from --

22 THE COURT: How much longer will you be? I only  
23 give 20 minutes for a summation with a jury. It's  
24 nonjury.

25 You have five minutes left.

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1 MR. BUCHWEITZ: Five minutes is fine. Thank  
2 you.

3 THE COURT: The same will apply to defendants.

4 MR. BUCHWEITZ: Did Verizon issue any licenses  
5 pursuant to the earlier Verizon/East End Eruv Association  
6 agreement?

7 No.

8 Why was that?

9 There was opposition from a number of the towns  
10 to the installation of the lechis, as indicated in letters  
11 that I received and in numerous press articles that I had  
12 also read.

13 And what was the evidence that was presented in  
14 this matter where defendants were preventing the  
15 installation of the lechis?

16 First, Quogue. Plaintiffs' Exhibit 9. among  
17 others, threatened Verizon and LIPA with fines and other  
18 penalties if eruv established.

19 Southampton. Plaintiffs' 27. Threatened  
20 Verizon and LIPA with fines and other penalties if eruv  
21 established.

22 Westhampton Beach. Exhibit 10. Claimed village  
23 authorization was required to establish the eruv.

24 Village trustees came out against the eruv,  
25 including Mr. Tuchman saying, the eruv will never happen

1 on my watch.

2 There's just a example of the Quogue letter  
3 threatening fines of \$1,000 a day.

4 Last. Defendants' other arguments are without  
5 merit. And this is the last point. We'll go through this  
6 very quickly.

7 Number one. There is subject matter  
8 jurisdiction. The issue is ripe for judicial review.

9 Any application -- no application is required,  
10 and even if it was, it would be futile. The case law is  
11 clear. We don't need to do futile things.

12 Plaintiffs have standing. The East End Eruv  
13 Association has members who are residents of each of the  
14 three municipalities. All of the individual plaintiffs  
15 are residents of Westhampton Beach, and Mr. Tuchman  
16 testified that he will be left out of the eruv unless it  
17 runs through Quogue.

18 There's no establishment clause issued here.  
19 We're not asking any government entity to establish  
20 anything. We had contracts with Verizon and LIPA, and we  
21 intend to utilize their personal property.

22 In any event the case law is clear that an eruv  
23 does not violate the establishment clause.

24 There are three reported decisions; you see them  
25 there: Third Circuit District of New Jersey and Supreme

Defendant Village of Quogue Closing Argument

1 Court Queens County, affirmed by the Second Department,  
2 New York law.

3 Expansion of the eruv. This is the last thing.

4 They made a bunch of hay about the eruv being  
5 expanded, and it was done in coordination with Verizon and  
6 LIPA, and it was done to include more observant Jewish  
7 families in it.

8 Mr. Tuchman said, we were surprised to learn  
9 that Mr. Lean was about a block outside of the eruv;  
10 asking Mr. Greenbaum whether he was orthodox, trying to  
11 say that a line is --

12 THE COURT: You better come to a conclusion.

13 MR. BUCHWEITZ: It is not within the neutrality  
14 of particular beliefs or practices of faith. We believe a  
15 preliminary injunction should be granted, and there is  
16 sufficient evidence, and we ask that it be granted today.

17 THE COURT: The next defendant?

18 MR. SPELLMAN: Your Honor, I'm sorry, I didn't  
19 quite get the time limit.

20 THE COURT: Twenty minutes.

21 MR. SPELLMAN: I'll be less, Judge.

22 - - -

23 MR. SPELLMAN: Your Honor, on behalf of The  
24 Village of Quogue and the Quogue defendants, I submit that  
25 this Court should deny the application for a preliminary

1 injunction as it would affect The Village of Quogue.

2 The defendants, the three groups of the  
3 defendants, were separate from the municipal entities and  
4 do not speak on behalf of the other since they have quite  
5 competent counsel to do that, and I speak on The Village  
6 of Quogue.

7 Sir, the main argument of the village is that  
8 this Court does not have jurisdiction at this time for the  
9 reasons we outlined in our memorandum of law: There's no  
10 case in controversy; claims are not ripe for judicial  
11 review; likelihood of success on the merits; and  
12 plaintiffs cannot show irreparable harm.

13 We understand the complaint must show all of  
14 those in order to gain this preliminary injunction they  
15 seek.

16 It's quite clear that the applicants -- or that  
17 the plaintiffs, East End Eruv Association, Incorporated,  
18 or any of the individual plaintiffs ever made application  
19 to The Village of Quogue with reference to these lechis or  
20 the establishment of an eruv.

21 Quite simply, it comes down to the enforcement  
22 of the village code and the laws of the State of New York  
23 by The Village of Quogue. And we say that at this time  
24 the Court cannot decide this issue because The Village of  
25 Quogue has not had the application and has not had the

1 opportunity to review it.

2           You know, when we spoke earlier in this  
3 courtroom about signs and messages and communications,  
4 what communicates a message? Does it have to be a sign  
5 with blazing red lights or just a nice white background?

6           We all agree, I think I can say without  
7 exception, that if we see a cross, that communicates some  
8 message to the observer, and we know what a cross is. If  
9 we see the crescent, it communicates a message. The  
10 menorah, it communicates a message.

11           The truth of the matter is, the majority of the  
12 people in this room, certainly myself, I don't know what  
13 symbols a Hindu religion has. I don't know what the  
14 symbol of Buddhists or atheists or agnostics, what their  
15 symbols are.

16           The fact of the matter is, to an observant Jew,  
17 a lechi communicates a religious message. And that brings  
18 up the question of the establishment clause of the First  
19 Amendment. We're not there. This is too soon to argue  
20 about this.

21           The Village of Quogue has not had an opportunity  
22 in their deliberations, in their legislative  
23 deliberations, to consider an application, to consult with  
24 their counsel and to rule on the application. That having  
25 been said is really the bottom line. It just shouldn't be



1 in this Court at this time.

2 That's not to say, sir, that if the application  
3 were properly made and for some reason it was denied, and  
4 the applicants felt aggrieved by that decision, they  
5 should not go forward. They would have their choice.

6 It would seem to me they would have one choice:  
7 They have Article 78. Go to the state court, the state  
8 laws and local ordinances reviewed. If, after that, there  
9 is a problem, then they may come back to the Court to say  
10 it's a little too soon at this time.

11 As far as the presentation of the plaintiffs,  
12 not only does Quogue not have an application before it, we  
13 don't even know -- I don't think we know today exactly  
14 where this eruv is supposed to be or what it is all about.

15 We keep talking about rabbinical law, Judaic  
16 law. I understand. It's not for the Court to determine I  
17 prefer that sect's interpretation over that sect's  
18 interpretation. Nobody is making that argument.

19 But the fact remains that as an observer to  
20 this, I'm confused. Lechis have to be someplace if  
21 there's too much of a gap. And then if they are not in  
22 the place -- well, they are in a place that is not -- that  
23 supposedly defines and demarcates the eruv. Yet, the map  
24 given to us as Exhibit 1 does not include the area within  
25 the lechis.

**Defendant Village of Quogue Closing Argument**

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1           That is very unclear. And being unclear, I  
2 believe the Court can't rule on the subject.

3           With reference to the sign ordinance of The  
4 Village of Quogue, it is 158 of the code. It's up to the  
5 village. That's why people get together and form a  
6 village: They want more control over the area in which  
7 they live.

8           They have a sign law. It's their interpretation  
9 that a lechi would be a sign. It conveys a message;  
10 therefore, they have to take that into consideration when  
11 the application is made to them. So they want to make an  
12 exception to it.

13           The sign laws, I think we can understand, are  
14 rather strictly enforced in Quogue. I don't talk about  
15 anybody else except The Village of Quogue.

16           Plaintiffs brought in three examples of what  
17 they say are exemptions, and Quogue didn't enforce the  
18 law.

19           The first one was explained at the June 15th  
20 hearing with the mayor with reference to that firemen's --  
21 the pancake breakfast, the fire department being part of  
22 it or whatnot. The sign was up for a very short period of  
23 time.

24           The second exhibit, I believe it is 66, was the  
25 utility pole with nothing but utility equipment on it.

**Defendant Village of Quogue Closing Argument**

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1 The witness conceded that. As a matter of fact, he said  
2 he spoke with someone from Verizon, and they said that is  
3 a splice box or something.

4 Apparently the Verizon telephone men are not as  
5 concerned about aesthetics as some of the people in  
6 Quogue. I'll admit it is a crumby looking pole, but  
7 nothing that the village can do with it.

8 The last thing, the reflectors on the pole, as  
9 counsel for the plaintiff has said, apparently has been  
10 taken down once it was brought to the attention of the  
11 village. I don't think that anybody would be terribly  
12 offended by those reflectors, and I don't think the  
13 message they were giving, there's either a fire hydrant  
14 nearby or don't run into this pole.

15 Your Honor, I think that fairly well covers the  
16 argument. The Court has the memorandum of law that was  
17 submitted prior to this hearing. The contents of that is  
18 still in force.

19 And as I say, with the permission of the Court,  
20 you will secede the balance of my time to anyone who  
21 wants.

22 THE COURT: You can't transfer your time to  
23 anyone.

24 MR. SPELLMAN: I expected that.

25 THE COURT: But you tried.

Defendant Westhampton Beach Closing Argument

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1 One second.

2 Let's take a break. The criminal matter will be  
3 short.

4 (Recess taken.)

5 (An unrelated matter was taken by the Court.)

6 MR. SOKOLOFF: Your Honor, I represent the  
7 Westhampton Beach defendants.

8 - - -

9 MR. SOKOLOFF: This Court is obligated to look  
10 at the claims against my clients individually as though it  
11 were the only claim that the Court is to consider.

12 We stand in different shoes than the other two  
13 municipalities. Number one, our officials have taken the  
14 position, and it was testified to, that the Westhampton  
15 Beach sign ordinance, as interpreted by the building  
16 inspector, does not cover lechis. That doesn't mean that  
17 automatically the gates are open for this Court to grant a  
18 preliminary injunction --

19 THE COURT: Excuse me one second.

20 Okay, continue.

21 MR. SOKOLOFF: That does not mean that the gates  
22 are automatically open for the Court to grant the  
23 plaintiffs' relief.

24 Because in order for this Court to do anything  
25 against the Village of Westhampton, it first has to get

1 Article 3 power. It has to have a ripe case or  
2 controversy, and that is what is lacking at this stage of  
3 the game against my client.

4 Now, the one document that was put into evidence  
5 by the plaintiffs was a letter that four trustees of the  
6 village wrote to Mr. Balcerski of Verizon. And I listened  
7 very closely, and yet, again, the plaintiffs, in their  
8 high-tech presentation to you, said that by that letter  
9 the village took a position.

10 That's a gross distortion. It's Plaintiffs'  
11 Exhibit 10, and all you have to do is read it. And once  
12 you read it, you'll see that in that letter the village  
13 took no position, no position on what the village would do  
14 if anybody asked it to do anything, and no position on  
15 what Verizon is required to do. It says nothing at all  
16 about the village.

17 So what we have here, Judge, against my client,  
18 The Village of Westhampton Beach -- and let me go back to  
19 that if you are going to focus on Plaintiffs' Exhibit 10,  
20 if you will look at it. Let me remind you what  
21 Mr. Balcerski testified to about that letter.

22 Plaintiff didn't tell you about it when he  
23 summed up just before and talked about it. I asked them  
24 at page 198, line three:

25 Question: This letter says nothing about what

1 the position of The Village of Westhampton Beach is  
2 regarding a proposed eruv; isn't that true?

3 Answer: Yes.

4 And then he testified that he had never spoken,  
5 had never communicated, with anybody from the village.

6 You didn't hear, Judge -- you did hear, Judge,  
7 that in 2008 a different group, the synagogue, had the  
8 idea that it wanted to have an eruv and that there was a  
9 discussion about whether that matter should be put on a  
10 village agenda, and that it was not put on the village  
11 agenda. So -- and then it was withdrawn by the synagogue  
12 so that the public could be educated.

13 The next thing that happened between 2008, when  
14 the synagogue -- a different group told the village it was  
15 contemplating an eruv, your Honor, the next thing that  
16 happened in 2008 was my clients got served with a summons  
17 and complaint and a request for a preliminary injunction.

18 I said it in my papers and I said it once  
19 before, that what we have here is a client -- a plaintiff  
20 seeking free legal advice from a judge. It's the  
21 equivalent of my entering into a contract with my  
22 associate, Leo Dorfman, saying, we have a contract. I'll  
23 perform on it. Let's go to see Judge Wexler and see if he  
24 thinks it is legal. If Judge Wexler thinks it is legal,  
25 I'll perform.

**Defendant Westhampton Beach Closing Argument**

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1 But, Judge, that's not the way Article 3 works.

2 They haven't shown that Westhampton Beach has  
3 done anything.

4 And let's talk about the plaintiffs'  
5 presentation a little bit. He put up check marks. There  
6 has to be a contract with Verizon, check. There has to be  
7 a contract with LIPA, check.

8 First of all, Mr. Balcerski testified that that  
9 contract was not complete, that there has to be a pole  
10 walk and an inspection of the poles that are in the  
11 agreement. That was never done. The whole thing is  
12 premature.

13 I didn't see any agreement with LIPA. I didn't  
14 hear one word about what LIPA poles will be. That is just  
15 absent from this.

16 If you have a complete factual record, if you  
17 want a preliminary injunction, you've shown everything you  
18 need to do and then that the village has done something or  
19 is threatening to do something.

20 Now, yes, they put on the testimony of the  
21 mayor, and they put on the testimony of Hank Tucker, and  
22 they admitted that they had personal opinions about an  
23 eruv in the village. Their personal opinions, they said,  
24 of such a thing would be divisive.

25 So what? They have a First Amendment right to

**Defendant Westhampton Beach Closing Argument**

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1 their own personal opinion, and sometimes public officials  
2 have personal opinions. But when they get an application  
3 or they get a request by somebody else to do something,  
4 they sit down with counsel and they decide. But just  
5 because somebody spouts off a personal opinion about  
6 something, which that person has a First Amendment right  
7 to do, doesn't make this a ripe claim.

8 And by the way, the trustees, the village board  
9 in Westhampton Beach, is composed of five people.

10 You heard from the mayor; he's one vote. You  
11 heard from Hank Tucker; he's one vote. Whatever those  
12 votes may be, we have no idea. They haven't voted about  
13 anything.

14 You didn't hear anything about the other three  
15 people and what their view would be if this matter came  
16 before them.

17 This whole thing is not a concrete controversy.  
18 The whole point about putting up a guy that mapped the  
19 poles on the agreement was to show it doesn't have a  
20 relation to the map, Exhibit 1, that you heard about,  
21 where we were told under oath that is the boundary of the  
22 eruv, Exhibit 1. And it came out.

23 Do you remember they said there should be no  
24 lechis on the northern boundary because that is the  
25 railroad?



## Defendant Westhampton Beach Closing Argument

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1           There will be no boundaries, no lechis on the  
2 southern boundary, where they put it practically at the  
3 line of the ocean.

4           They don't explain, by the way, if there will be  
5 lechis on poles on Dune Road, how an orthodox Jew gets out  
6 of his or her house to get inside the eruv area.

7           I only bring that up to highlight the point  
8 there's got to be a ripe controversy. Maybe your Honor  
9 thinks there is a ripe controversy against Southampton or  
10 against Quogue. Maybe so. That's for your Honor.

11           They wrote a letter. They said it's covered  
12 under their sign ordinance. That has nothing to do with  
13 us. But a ripe claim against my client giving the Court  
14 power to impose a preliminary injunction on my client, a  
15 ripe claim is not created because of something that  
16 somebody else did or didn't do.

17           A couple of other points that you ought to bear  
18 in mind while you consider this.

19           Village law 6-603 says the streets are under the  
20 exclusive control and supervision of the board of trustees  
21 of a village. And by the way -- and I'm not going into  
22 it; I can't do it in 20 minutes -- there are First  
23 Amendment implications here. They don't touch on the  
24 Kiryas Joel case, where a school district was created  
25 based on lines.

**Defendant Westhampton Beach Closing Argument**

1           The Kiryas Joel school district and the Supreme  
2 Court said you can't do that. A municipality said you  
3 can't create boundaries based on religion.

4           I can't do this in 20 minutes, but it's  
5 something your Honor should consider.

6           In the case of 10 East Realty against the  
7 Village of Valley Stream, 17 A.D. 3rd 422, Second  
8 Department 2005, the Second Department said a village may  
9 not permit property held by or for public use to be  
10 diverted to a use exclusively private. And that's what an  
11 eruv is. It's a private use.

12           In New York State Telephone Company against Town  
13 of North Hempstead, 41 N.Y.2d 691, 1977, the New York  
14 Court of Appeals said that the placement and maintenance  
15 of telephone poles in a municipal street is a license or  
16 privilege and is not an interest in real property. So the  
17 Court of Appeals tell us it is a license from the  
18 municipality to the electric company or the phone company.

19           So then we have to look at by what operation of  
20 law does this licensee, the phone company or the electric  
21 company, what gives them the right to take their poles on  
22 public property and sell them for the use by a religious  
23 group?

24           Does this mean now that if another group comes  
25 along and says it is part of my religion to get up in the

**Defendant Westhampton Beach Closing Argument**

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1 morning and look and see crosses or crescents in the air,  
2 and I want the phone company and the electric company to  
3 allow me to put a cross, a Christian cross, up on every  
4 single pole, the phone company has a right to do that? We  
5 think not.

6           What if the phone company and LIPA decided, you  
7 know what, we can make a lot of money by taking our  
8 telephone poles and selling billboard advertisements on  
9 them. And if the phone company wants to put up a  
10 Budweiser beer sign on public property, on telephone  
11 poles, they have a right to do that?

12           We say they don't have a right to do that. They  
13 don't have the license to take -- they don't have a right  
14 to take a limited license and turn it over to private use.

15           So, Judge, that's what I can do in about 20  
16 minutes. At this point --

17           THE COURT: You have more time. Your 20 minutes  
18 isn't up.

19           Counsel, you can't tell time.

20           MR. SOKOLOFF: I haven't been looking at the  
21 clock. It seems like it has been an hour. Maybe --

22           THE COURT: It seems like that, but you still  
23 have more time.

24           Go ahead.

25           MR. SOKOLOFF: It begins and ends with the

**Defendant Westhampton Beach Closing Argument**

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1 initial foundation inquiry. Does this Court have subject  
2 matter jurisdiction to impose anything on the Westhampton  
3 Beach defendants? And the answer is clearly no. Maybe it  
4 will in a year, maybe not, but at this moment it doesn't.

5 Thank you.

6 THE COURT: You took less than 14 minutes.

7 Okay.

8 Are they ready on the criminal? And then we'll  
9 continue.

10 THE CLERK: Yes, Judge. I just have to get them  
11 out.

12 (Whereupon, an unrelated matter was taken by the  
13 Court.)

14 THE COURT: Wait a minute before starting.

15 Thank you.

16 MS. LICCIONE: I'll wait a minute.

17 Thank you.

18 THE COURT: Let me ask the attorney for the  
19 Village of Westhampton: You said there is no issue of  
20 controversy?

21 MR. SOKOLOFF: I didn't hear that.

22 THE COURT: There is no issue in controversy  
23 here?

24 MR. SOKOLOFF: As to my village, correct.

25 THE COURT: Also, as far as your village is

Defendant Westhampton Beach Closing Argument

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1 concerned, this is not a sign; is that correct?

2 MR. SOKOLOFF: Under our sign ordinance, that is  
3 correct.

4 THE COURT: Okay.

5 Does the village have any objection if they put  
6 the items up in accordance with their agreement with  
7 Verizon, with LIPA?

8 MR. SOKOLOFF: An official position at this  
9 point on that, I can't stand up here and say that we have  
10 an official position.

11 THE COURT: Well, if it's not against your  
12 zoning ordinance, what opposition do you have? They are  
13 free to do what they want.

14 MR. SOKOLOFF: Judge, you are asking me to  
15 engage in a hypothetical consideration of this.

16 THE COURT: So if I rule in your favor and I  
17 tell them to go ahead or there is no controversy, you are  
18 really not telling them to go ahead. You are saying you  
19 have to apply, even though it is not a sign.

20 MR. SOKOLOFF: I didn't say anything about you  
21 have to apply. I didn't say anything. I just said --

22 THE COURT: Do they have to apply.

23 MR. SOKOLOFF: What is that?

24 THE COURT: Do they have to apply.

25 MR. SOKOLOFF: There is no application

**Defendant Westhampton Beach Closing Argument**

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1 procedure. There is nothing in the village code that  
2 deals with this issue.

3 THE COURT: So it is moot. They can do what  
4 they want. If there is no rule or regulation preventing  
5 it, they have a right to do it then.

6 MR. SOKOLOFF: Judge, the only issue here is  
7 whether there should be a preliminary injunction issued by  
8 the Court.

9 THE COURT: Well, if they are allowed to do it,  
10 we don't even have to rule.

11 MR. SOKOLOFF: Well, that's up to the Court.

12 THE COURT: No, it's up to you. If you tell me  
13 there is no rule or regulation, it is not a sign, then you  
14 can't prevent it.

15 MR. SOKOLOFF: Well, I cited the authority on  
16 the issue.

17 THE COURT: What authority did you cite on the  
18 issue?

19 MR. SOKOLOFF: Village Law 6-608; the 10 East  
20 Realty, LLC, case; New York Telephone against the Town of  
21 North Hempstead; Greenwood Lake and Port Jervis Rail Road  
22 Company versus New York and Greenwood Lake Rail Road  
23 Company. That is 134 New York 435, 1892. That stands for  
24 the proposition that a license is a nonassignable  
25 privilege.

1 THE COURT: Fine.

2 Let me ask you this -- and this is about the  
3 fourth time, and I'll probably get the same answer the  
4 fourth time:

5 In your opinion as the attorney for the village,  
6 it is not a sign, number one, correct?

7 MR. SOKOLOFF: Well, it's not my opinion. There  
8 has been testimony --

9 THE COURT: I'm asking you now as the village  
10 attorney.

11 MR. SOKOLOFF: I have not studied the issue. I  
12 have not --

13 THE COURT: Is it a sign or not? You said  
14 before it is not a sign.

15 MR. SOKOLOFF: What I said before, the village  
16 building inspector said it is not a sign. I didn't study  
17 the issue. I didn't give the village my opinion.

18 The village told me: Our building inspector  
19 says it is not a sign.

20 THE COURT: Okay. The village said it is not a  
21 sign. Through their building inspector. They reply upon  
22 him.

23 Do you have any ordinance that says you can't do  
24 it, other than it is an agreement between the pole and the  
25 village, it's a privilege, a license? Other than that, is

**Defendant Southampton Closing Argument**

1 there any prohibition against putting their things up on  
2 the poles?

3 MR. SOKOLOFF: The village law that I cited says  
4 that the roadway is controlled by the board of trustees of  
5 the village.

6 THE COURT: Okay. Thank you.

7 You can go now.

8 Again, you have 20 minutes too. Even though  
9 it's individual cases, your claim is, it is a sign.

10 MS. LICCIONE: And a subfranchise.

11 THE COURT: And a what?

12 MS. LICCIONE: And a subfranchise, which is not  
13 permitted. But I'll get to that in a moment.

14 THE COURT: Go ahead.

15 - - -

16 MS. LICCIONE: Good afternoon. Good morning.

17 As you know, I represent the Town of  
18 Southampton.

19 In going through the testimony and the exhibits  
20 last night, I think it is clear that the plaintiffs' case  
21 is more significant for what it fails to prove than what  
22 it proves.

23 There's no jurisdiction, and the case is not  
24 ripe with respect to the Town of Southampton.

25 What has happened here?



**Defendant Southampton Closing Argument**

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1           The former town attorney sent a letter saying,  
2 could you please let us know, could you please confirm  
3 whether you are putting it in the unincorporated parts of  
4 the town. And while you are thinking of that, we have  
5 these penalties and the sign ordinances that we have to  
6 deal with.

7           Second, there are a couple of e-mails --

8           THE COURT: Wait a while. There's more than  
9 that in the letter.

10           That is a mischaracterization of the letter  
11 itself; isn't that so?

12           MS. LICCIONE: No, your Honor. The letter asks  
13 for a confirmation.

14           THE COURT: Would you read the letter, the  
15 portion -- and I'm not excluding your time based upon  
16 this. This is my question.

17           Let's see if I'm right or wrong. It's more than  
18 what you said.

19           What is the exhibit on that?

20           MR. BUCHWEITZ: 27.

21           THE COURT: 27. Let's see.

22           MR. BUCHWEITZ: It's 27, 28 and 29.

23           MS. LICCIONE: Thank you.

24           Well, the letter says: Following our telephone  
25 conversations, the proposed eruv would extend beyond the

**Defendant Southampton Closing Argument**

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1 boundaries of the village, thereby entering the town. If  
2 I am incorrect in this belief, I thank you to correct me.

3 So he's trying to clarify --

4 THE COURT: No, I want the next page, starting  
5 with: Based upon the definitions of our sign law, and  
6 based upon the specifications you provide to us in your  
7 letter, I am compelled to conclude that the lechis  
8 constitute a sign within the meaning of the intendment of  
9 our statute. Accordingly, the same are prohibited.

10 MS. LICCIONE: Correct.

11 THE COURT: Okay.

12 MS. LICCIONE: That is correct. Exactly what  
13 I'm referring to.

14 THE COURT: So there is no controversy.

15 MS. LICCIONE: Correct.

16 THE COURT: I was being facetious, by the way.

17 MS. LICCIONE: In order to establish a  
18 controversy and with all due respect, this is municipal  
19 law 101. And Mr. Benincasa testified to this --

20 THE COURT: Where is 101, the statute?

21 MS. LICCIONE: When someone questioned --

22 THE COURT: It's like evidence 101. You better  
23 define town law 101.

24 MS. LICCIONE: It's a simple precept of  
25 municipal law, Judge.

**Defendant Southamptn Closing Argument**

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1 THE COURT: What is the simple precept?

2 MS. LICCIONE: When someone disagrees with the  
3 town's interpretation of the decision, they go to the town  
4 zoning board for an interpretation. If something is  
5 prohibited under the town code, you come and ask for a  
6 variance.

7 Now, as a simple matter of municipal law and  
8 public policy, I'd ask the Court to consider this.  
9 Thousands of applications are brought in the municipality  
10 across Suffolk County every year for relief, for a  
11 variance or for an interpretation of the town code as it  
12 applies to the applicant.

13 If every time an applicant in Suffolk County  
14 thought -- or in Southamptn thought that the deck was set  
15 against them, that the zoning board was going to go along  
16 with the interpretation, said, I will not bother; it's a  
17 foregone conclusion; I'll run into federal court and get  
18 an interpretation from them instead of the ZBA, our courts  
19 would be flooded not only with Article 78 but the step  
20 before an Article 78, a proceeding that belongs rightfully  
21 before the ZBA.

22 So we have no application and no exhaustion of  
23 administrative remedy.

24 MR. SOKOLOFF: Judge, may I just ask, since  
25 we're not having a high-tech presentation, that we turn

1 the lights on?

2 MS. LICCIONE: I was going to ask that.

3 Thank you very much.

4 THE COURT: Now they're too bright.

5 Go ahead.

6 MS. LICCIONE: Second, as my colleague pointed  
7 out, the reason this is not ripe, the agreement with  
8 Verizon was not finalized. There is no agreement in  
9 evidence with LIPA.

10 There is an attachment to the complaint, but  
11 that is the former lechi agreement. It has no relevance  
12 to the new lechis.

13 And the exhibit in the complaint says no other  
14 form of lechi may be used.

15 The second reason: for the lack of ripeness.

16 Third -- and this overlaps with the failure to  
17 state a claim. There are claims against five individual  
18 board members in their personal capacities. The witnesses  
19 couldn't even name the town board member.

20 What do we have here? There's not an iota, not  
21 a word, in the complaint as to what any of the four of the  
22 five town board members did or have alleged to have done.

23 I submit this is vexatious and inappropriate.

24 The supervisor sends an e-mail. She says, it is  
25 my job to enforce the law as it has been explained to me

1 by the town attorney. That brings her into a lawsuit  
2 personally.

3 Again, the public policy concern. If public  
4 officials can be sued in their personal capacities for  
5 these kinds of things, we have a real public policy  
6 problem in getting people to run for office.

7 Second. There's no immediate or irreparable  
8 harm. Indeed, I would submit that there is no harm to any  
9 of the witnesses who testified here.

10 We heard from people who are perfectly capable,  
11 God willing, to walk to synagogue. What if their claim is  
12 they can't carry water bottles? My daughter can't wear  
13 high heels? Instead of, I can't take my prayer shawl.

14 We respect their religious beliefs to the  
15 utmost. There is nothing my client is doing to prohibit  
16 someone from practicing their religion. They are doing  
17 it. They've lived in their homes for close to 20 years  
18 without an eruv.

19 There is no immediate harm. There is no  
20 irreparable harm. There is no harm.

21 Which brings me to some of the case law that was  
22 cited. And it gave, I submit, your Honor, a very narrow  
23 view of the applicable case law.

24 And that's the Supreme Court case, the -- 1976  
25 was a long time ago; I just graduated from college -- that

**Defendant Southampton Closing Argument**

1 says when we talk about First Amendment freedom, even for  
2 minimal periods of time, that that constitutes irreparable  
3 injury.

4           What plaintiffs didn't point out was the Second  
5 Circuit's later and very recent interpretation in Bronx  
6 Household versus New York City Board of Education. The  
7 first cite is from 2003 in the Second Circuit, 331 F.3d  
8 342, where it says if the injury is only indirect, there's  
9 no irreparable harm in a First Amendment case. Not only  
10 is the injury indirect, there is none.

11           And, second -- and this will dovetail into  
12 something that I'll get to in a minute. Bronx Household  
13 was again before the Second Circuit the beginning of this  
14 month, and I'll just give the Court -- the date is June 2,  
15 2011. There may be an updated cite since this time, but  
16 the CV number is 07-5291. And the New York Law Journal  
17 cite -- and I'll do this slowly -- 1201496053907.

18           And what that case said, Bronx Household was  
19 about using a school not for worship services but to teach  
20 particular religious lifestyle choices students, family  
21 values, if you will.

22           And the Second Circuit just a few weeks ago said  
23 that if a board -- in that case it was the school board --  
24 desired to steer clear of violating the establishment  
25 clause, that that was a sufficiently compelling state

1 interest to justify its position.

2 What do we have here? We have the supervisor  
3 get on the stand and she said, you know, if an application  
4 does come before us, I have a concern, and I have a  
5 concern whether it is the government's proper role to get  
6 involved here.

7 That concern for not violating the establishment  
8 clause is something I submit to this Court is to take a  
9 very close look at. That is a compelling state interest.  
10 And again I point to the public policy consideration.

11 Where does it end?

12 The Town of Southampton runs food programs in  
13 the senior citizens center. Are we going to have to make  
14 sure there are meatless meals on the Friday before Lent?  
15 Do we have to make sure there are kosher meals? What  
16 about if a revivable group, fundamentalist Christian  
17 revival group wants to rent a hall like in the Bronx  
18 Household case? The implications here are significant and  
19 are compelling.

20 Now, just getting back to that irreparable harm  
21 for another second.

22 I want to remind the Court Mr. Greenbaum  
23 testified he doesn't need the use of an eruv.

24 Ms. Pollack and her husband are able to walk.  
25 And, by the way, they had babies during the time -- the

1 almost 20 years they've been in their house, and somehow  
2 they were able to push them in a stroller.

3 Mr. Lean has permission to drive, and the others  
4 can get that permission. And Mr. Tucker can walk.

5 Not a single witness who got on this stand, and  
6 not a single plaintiff we know of, is impacted. I believe  
7 that is significant.

8 No one has been prohibited from practicing their  
9 religion.

10 There's no likelihood of success, and I think  
11 plaintiff proved that. This is not the Tenafly case. All  
12 we need to do is to look at the first page of Tenafly,  
13 where there is a firestorm of anti-Semitic rhetoric.

14 The Borough of Tenafly board brushed off the  
15 code and said, look at this. We have a sign ordinance  
16 that prevents signs and other things from being put on  
17 poles. Maybe we can do this. Because in Tenafly, there  
18 were holiday decorations, churches, school board signs,  
19 house numbers. The code was never enforced in Tenafly.

20 By the way, in contrast to what counsel has told  
21 you (indicating), Tenafly never established the  
22 constitutionality of an eruv. No federal court has ever  
23 done that. What Tenafly says, you have a discriminatory  
24 enforcement and a lack of enforcement of the sign  
25 ordinance. That is so not what we have here.



## Defendant Southampton Closing Argument

569

1 First of all, we have a witness who lives in the  
2 area who went around for months looking for evidence for  
3 this case. Not a single wreath, not a single Christmas or  
4 other religious decoration.

5 There was some dilapidated bow they found  
6 in the middle of November where they tried to say that was  
7 a Christmas decoration. We know that has no credibility.

8 All those months and all that time -- he's  
9 actually been doing it since 2008-- what did they find?  
10 Six locations out of 500 miles of public road, almost  
11 500 miles of public roadway.

12 If you recall, two of those signs were way high  
13 up. And the town testified, the code enforcement  
14 officer -- excuse me -- the building inspector testified  
15 they don't have the equipment to go up there, so  
16 periodically they get the highway department to help them  
17 out with those.

18 In Southampton, we have what can only be  
19 described as beyond vigorous enforcement of the sign  
20 ordinance. The building department and the police  
21 department, together they take down probably hundreds and  
22 hundreds and hundreds of signs within a given year. They  
23 have others take them down.

24 There's no selective enforcement here. Charity  
25 fund-raisers have their signs taken down.

## Defendant Southampton Closing Argument

570

1 Now, let's get to the legal concept for a second  
2 of the sign ordinance.

3 I think counsel has very articulately told you,  
4 from the Town of Hempstead case, it's a very basic  
5 principle of municipal law. The right-of-way belongs to  
6 municipalities, subject to either a license or a franchise  
7 agreement.

8 There's no such thing in New York State law as a  
9 sublicense or a subfranchise. That's why Cablevision  
10 comes to town and wants to use the poles, they have to go  
11 to Verizon and LIPA. There is no such thing.

12 So what Southampton does to codify that, they  
13 define everything as a sign and say, you can't put it on  
14 the poles.

15 Now, I understand that counsel is a vigorous  
16 advocate, but you know he's not entitled to his own facts.  
17 And he comes up here and tells us that Mr. Tuchman  
18 testifies that an eruv, which requires lechis in this  
19 instance, is not a symbol.

20 That's not what he said in his declaration. A  
21 man with rabbinical training swore to this Court that an  
22 eruv is the erection of symbolic markers.

23 And they try to tell you that an eruv is not a  
24 delineation or demarcation, but the very cases on which  
25 they rely say otherwise.

**Defendant Southampton Closing Argument**

571

1           Tenafly, in the lower court decision, called it  
2 a delineation.

3           The Third Circuit called it a demarcation, which  
4 in our brief you see is synonymous.

5           The Smith case referred to from the Second  
6 Department? Guess what? They called an eruv a  
7 delineation.

8           Mr. Tuchman -- the complaint calls it a  
9 demarcation in paragraph 34.

10          Mr. Sugarman's letter to the Village of  
11 Westhampton Beach, quoting eruv under Jewish law, an  
12 unbroken delineation.

13          Because there are no subfranchises or  
14 sublicenses, the Town of Southampton calls those signs and  
15 prohibits them. And you know they are right. You can  
16 ensure they never permitted a eruv. There's never been an  
17 eruv in the Town of Southampton. There's never been a  
18 lechi, so how could he have taken it down?

19          All of the wires on the poles are utility uses,  
20 so they don't take them down. It's simple as that.

21          THE COURT: You have two more minutes left.

22          MS. LICCIONE: Excuse me?

23          THE COURT: You have two more minutes left.

24          MS. LICCIONE: I'll sum up by saying what the  
25 plaintiffs are really asking this Court to do is to make

## Plaintiffs' Rebuttal Argument

572

1 an exception for them, from the public franchise law and  
2 from the sign law. It runs afoul of all precepts of  
3 municipal law, and to create an exception to the neutral  
4 sign ordinance, which is neutrally enforced, violates the  
5 establishment clause, and this Court should not  
6 countenance a preliminary injunction.

7 Thank you.

8 THE COURT: Briefly, rebuttal.

9 MR. BUCHWEITZ: Very briefly. Just a couple  
10 points.

11 - - -

12 MR. BUCHWEITZ: First, I think at least two of  
13 the attorneys have said that the LIPA contract is not in  
14 evidence. That is not true. It is. It's Exhibit 5 in  
15 evidence, entered on page 22 of the transcript. It's that  
16 simple.

17 With respect to the New York Telephone case,  
18 they said I only talked about it. So do they. Your  
19 telephone case was the town trying to put up lights on  
20 poles from New York Telephone against their will, and they  
21 said, well, it's taken. We can take it.

22 You know what the Court said? The Court said,  
23 no, these are the personal property of New York Telephone,  
24 and you can't put them up, take them down. That's what it  
25 said.

## Plaintiffs' Rebuttal Argument

573

1           One of the more interesting things today that we  
2 talked about, which hasn't really come out much in this  
3 hearing, is the establishment clause. Apparently, now,  
4 the Eruv Association was required to ask the  
5 municipalities for permission to put up an eruv, but the  
6 municipalities were not permitted to allow an eruv.

7           It's absurd. There are eruvs all over Long  
8 Island, in Patchogue, Stony Brook, Huntington, throughout  
9 Nassau County, throughout the city, throughout the  
10 country. Their position is ridiculous.

11           The notion that nobody has been impacted by the  
12 eruv is, frankly, offensive. And we have testimony after  
13 testimony from the people that are -- that were here, and  
14 there's even more people.

15           Mr. Tuchman talked about his grandchildren.  
16 They can't be with him in Shabbos. Go back to Queens.

17           Mr. Lean says, I don't want to leave. I would  
18 be better observing the Sabbath if I wasn't. That's what  
19 I want to do.

20           And Ms. Pollack said again and again, they can't  
21 carry the water, the tissue. If it's hot out, they can't  
22 carry. If the newspaper is outside the boundary of their  
23 home, they cannot pick it up.

24           Mr. Tuchman talked about it as well.

25           We don't need to go over this again and again.

## Plaintiffs' Rebuttal Argument

574

1           One last point about the village law they keep  
2 mentioning. The village law just says that they have, you  
3 know, authority.

4           THE COURT: I'm sorry, what did you say?

5           MR. BUCHWEITZ: The village law --

6           THE COURT: Which village?

7           MR. BUCHWEITZ: The New York State Village  
8 Law --

9           THE COURT: Okay.

10          MR. BUCHWEITZ: -- says that the villages can  
11 have authority to act. They've acted. They've enacted  
12 the law.

13                 There's also additional authority we've cited in  
14 our briefs, the LIPA act, the public authorities law. New  
15 York Telephone case gives authority to the telephone  
16 utility. And, frankly, Westhampton Beach has admitted  
17 that in the exhibit I put up, that Verizon has a right to  
18 license these.

19                 And two last things from Mr. Balcerski's  
20 testimony, and I'll sit down.

21                 Mr. Sokoloff read a portion of Mr. Balcerski's  
22 testimony about this Exhibit 10. Mr. Balcerski, on page  
23 191, said, when asked about what his impression was when  
24 he read it. Yes, the impression I had from reading this  
25 letter is that the Village of Westhampton Beach needed to

Plaintiffs' Rebuttal Argument

575

1 approve the application of an eruv by the Eruv  
2 Association.

3 And Southampton, page 192. Mr. Balcerski  
4 testified about a conversation he had with Mr. Sordi which  
5 is in addition to all the letters. And he said, Mr. Sordi  
6 told me the Town of Southampton had to approve any  
7 attachment of the lechis to the utility poles. If Verizon  
8 would allow the attachments to be made, Verizon would be  
9 subject to the town.

10 Mr. Balcerski testified that what do the cable  
11 people do when they need to put something on the pole? He  
12 said, they come to the village to get permission to  
13 provide cable service, but I don't think they go to the  
14 village to get permission to attach to our poles. They  
15 come to Verizon in order to attach to our poles.

16 Unless your Honor has some questions, I have  
17 nothing further.

18 THE COURT: I said yesterday, no findings of  
19 facts and conclusions of law. Since there are three  
20 separate defendants here, I'm going to change the rule.  
21 I'm going to allow it.

22 What I will do is -- you'll get it by tomorrow.  
23 I'll give you two weeks to submit the findings of facts  
24 and conclusions of law. Both submit at the same time.

25 Then you will have seven days, both, to submit

1 at the same time your answers or objections to what has  
2 been filed.

3 There will be a limitation on the amount of  
4 pages, okay? Twenty-five pages. You can do them  
5 separately as to each defendant.

6 Do you want to pick a date when you will submit  
7 and then when you will answer?

8 MR. BUCHWEITZ: Well, we want to do it as  
9 quickly as possible. The summer is going by, your Honor.

10 THE COURT: Peter will work out the dates.

11 MR. BUCHWEITZ: Thank you.

12 THE COURT: Okay. Thank you.

13 I reserve decision, of course, on everything.

14 (Proceedings concluded.)  
15  
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