

# FREEDOM FROM RELIGION *foundation*

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February 15, 2023

**SENT VIA EMAIL & U.S. MAIL: DanGelber@miamibeachfl.gov,  
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DavidRichardson@miamibeachfl.gov, RickyArriola@miamibeachfl.gov**

The Honorable Dan Gelber  
Mayor, City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139

Re: Unconstitutional funding of houses of worship

Dear Mayor Gelber and members of the Miami City Commission:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding serious constitutional concerns over another resolution proposing to expend taxpayer funds to advance and support religion in the City of Miami Beach. As you will recall, we wrote to you January 31, 2023 regarding a resolution that the commission was considering that would have expended taxpayer funds to support sectarian religious practices.

While it appears based on the commission's agenda for its upcoming February 22, 2023 meeting that it is no longer considering the resolution granting \$72,000 to the Miami Beach Eruv Council for maintenance and repairs related to an eruv line located in Miami Beach, it is our understanding that the commission will vote on a resolution to give \$25,000 to a Jewish temple. Resolution C7W is a resolution "allocating a one-time grant in the total amount of \$25,000 to Temple Moses, provided that the funds be strictly used towards secular programming and services." Please see a copy attached. The Commission voted to approve a similar resolution at its last meeting, granting \$25,000 to the Capt. Hyman P. Galbut Jewish Learning Center Chabad. There is a clear pattern of utilizing taxpayer funds to support and advance one religion within the City of Miami Beach.

As we explained in our previous letter, the government cannot subsidize certain religions or dispense special financial benefits to religious organizations or houses of worship. When reflecting upon the historical practices that led the United States' Founders to pass the federal Establishment Clause, the Supreme Court has noted that "financial support" of a church or religious activity is one of "the three main evils against which the Establishment Clause was intended to afford protection." *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971). For this reason, government funding specifically targeted solely to aid a religious institution violates the U.S. Constitution. The government "cannot consistently with the 'establishment of religion' clause of the First Amendment contribute tax-raised funds to the support of an institution which teaches

the tenets and faith of any church.” *Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 16 (1947). The U.S. Supreme Court addressed a similar issue in *Texas Monthly Inc. v. Bullock*, 489 U.S. 1 (1989), when it ruled that an exemption from sales tax solely for religious publications violated the Establishment Clause. Using taxpayer funds for the benefit one religious group “sends the ancillary message to . . . nonadherents ‘that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.’” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309–310 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)). When a city uses its public funds for the support of Jewish temples, it is impermissibly forcing taxpayers to support religion.

It is a fundamental principle of Establishment Clause jurisprudence that the government cannot favor religion. The Supreme Court has said, “The touchstone for our analysis is the principle that the ‘First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.’” *McCreary Cnty v. ACLU*, 545 U.S. 844, 860 (2005), (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15–16 (1947); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985)). Requiring the taxpayers of Miami Beach, who all have their own varied religious and nonreligious practices, to support houses of worship from a single faith, is not neutral.

The First Amendment prohibits “sponsorship, *financial support*, and active involvement of the sovereign in religious activity.” *Walz v. NY Tax Comm’n*, 397 U.S. 664, 668 (1970) (emphasis added); see also *Mitchell v. Helms*, 530 U.S. 793, 819 (2000); *Bowen v. Kendrick*, 487 U.S. 589, 621 (1988); *Roemer v. Bd. of Pub. Works*, 426 U.S. 736, 754–55 (1976). This means that the City of Miami Beach may not use public money to facilitate religious exercise, proselytization, or instruction. See, e.g., *Levitt v. Comm. for Pub. Educ. & Religious Liberty*, 412 U.S. 472, 480 (1973) (“[T]he State is constitutionally compelled to assure that the state-supported activity is not being used for religious indoctrination.”). While the resolutions include the disclaimer, “provided that the funds be strictly used towards secular programming and services,” there is no indication that the commission can or would exercise any power over the funds once they have been handed over to these houses of worship. The language does not protect the commission from legal liability for expending taxpayer funds to support religion.

While in recent years government funding to religious groups for secular purposes through neutral grant programs has been upheld, these are not funds through neutral grant programs, but specific subsidies for the benefit of houses of worship. In *Wirtz v. City of S. Bend*, a federal court struck down a city’s donation of land to a religious school in exchange for public use of athletic facilities that the school planned to build on the land. 813 F.Supp.2d 1051 (N.D. Ind., 2011). The court explained that “[g]overnmental programs or actions that provide special benefits to specific religious entities are impermissible. . . . [E]ither the state’s payments must reach religious institutions only indirectly through programs of purely private choice or religious institutions must be getting nothing more than [. . .] secular governmental services or supplies on the same terms and conditions as anyone else as part of a neutral program.” *Id.* at 1059 (internal citations omitted). Here, the City of Miami Beach intends to provide a special benefit to Jewish temples directly supporting their religious missions.

In *Trinity Lutheran Church of Columbia v. Comer*, the Court made clear that disqualification of a church from receiving an otherwise publicly available benefit “solely because of [its] religious character . . . imposes a penalty on the free exercise of religion that triggers the most exacting scrutiny.” 137 S. Ct. 2012, 2021 (2017). But the Court carefully explained that *Trinity Lutheran*, in which a Missouri church was denied participation in a state program to resurface its school playground, hinged on the fact that funding was not going to an “essentially religious endeavor.” *Id.* at 17 (citing *Locke v. Davey*, 540 U.S. 712, 721 (2004)). Here, rather than providing funds through a neutral city program, the City continues to provide special grants made solely for Jewish temples that advance the Jewish faith.

In order to show your support for the principle of separation between state and church and to protect the rights of *all* members of the Miami Beach community, we ask that you reject this resolution, and cease expending taxpayer dollars to support houses of worship, including Jewish temples and chabads. Thank you in advance for your time and attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Chris Line". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Christopher Line  
Staff Attorney  
Freedom From Religion Foundation

Enclosure

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission  
FROM: Commissioner Ricky Arriola  
DATE: February 22, 2023

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ALLOCATING A ONE-TIME GRANT IN THE TOTAL AMOUNT OF \$25,000 TO TEMPLE MOSES, PROVIDED THAT THE FUNDS BE STRICTLY USED TOWARDS SECULAR PROGRAMMING AND SERVICES.

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### **ANALYSIS**

Pursuant to the request of Commissioner Ricky Arriola, the above-referenced Resolution is submitted for consideration by the Mayor and City Commission at the February 22, 2023 Commission meeting.

Resolution to be submitted in supplemental.

### **SUPPORTING SURVEY DATA**

N/A

### **FINANCIAL INFORMATION**

The fiscal impact of this measure is \$25,000 annually.

### **Applicable Area**

North Beach

**Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?**

Yes

**Does this item utilize G.O. Bond Funds?**

No

### **Strategic Connection**

Non-Applicable

### **Legislative Tracking**

Commissioner Ricky Arriola