

FREEDOM FROM RELIGION *foundation*

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SENT VIA EMAIL & U.S. MAIL: david.crowley@milwaukeecountywi.gov

The Honorable David Crowley
Milwaukee County Executive
901 N. 9th Street
Milwaukee, WI 53233

Re: Unnecessary and hazardous erubin

Dear Executive Crowley and County Board members:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding concerns over the unnecessary and hazardous erubin allowed in Milwaukee County. FFRF is a national nonprofit organization with 40,000 members across the country, including more than 1,700 members and its headquarters in Wisconsin. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

On September 18, a Milwaukee County resident was riding his bike down a hill on Lincoln Memorial Drive near the Linnwood Water Treatment Plant at around 25 MPH when a wire snagged around his neck.¹ When he ran into it, the entire roughly 60 feet of wire skated across his neck leaving marks on the front, side and back of his neck. If the wire had caught around his neck at any point, he may have been killed.

The resident didn't learn until days later that the wire is part of an erubin installed by an Orthodox Jewish group with the support of the county. It is our understanding that the wire is part of the "East Side Erubin," which was completed in 2023 and encompasses 5 square miles of Milwaukee County. We understand that this is the third time one of these wires has fallen in just the past few years, and that the wires are quickly repaired if they break, not to protect the safety of county residents, but to ensure that orthodox residents don't violate their self-imposed religious rules.

Even before this unnerving incident, there was no reason for Milwaukee County to grant one religious sect special privileges to hang wires on public property in order to help them avoid their self-imposed religious obligations. Now that it's apparent that the wires also pose a danger to citizens, and potential liability for the county and its taxpayers, any erubin in Milwaukee County encompassing public property should be removed.

¹ <https://ffrf.us/4eEWR2D>

The Jewish Encyclopedia notes the rationale for designating these religious areas: “According to the traditional interpretation of Exodus 16:29,² it is forbidden to remove on the Sabbath things from an enclosed space which is private property to an open space which is public property. Likewise it is prohibited to transport objects a distance of more than four cubits within an open space. The only space in which it is allowed to remove things freely is an enclosed space which is the property of an individual.”³ Eruvin extend the “property of an individual” to the eruv boundaries, thus enabling Orthodox Jews to break the rule laid out in Exodus 16:29 without fear of divine retribution. In other words, eruv are designated specifically so that a certain religious sect can avoid adhering to their own onerous rules. Eruvin do not seek to alleviate a government-imposed burden; they seek to alleviate a self-imposed religious burden. It is *their* religious belief. If they do not wish to follow the rules of their religion, they need not. If they wish to follow these rules, they are perfectly free to do so by remaining on their own property. The government need not assist them in extending the supposed boundaries of that property.

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)). Risking the health and safety of County residents, while also taking on unnecessary legal liability that puts taxpayer dollars at risk, to support a religious concept known only to a minority of believers of a single faith, is not neutral.

The only federal appeals court to address eruv held that while it was discriminatory to remove eruv markers from utility poles while letting other illegally-affixed items remain, the ordinance prohibiting such postings was “neutral and generally applicable on its face,” so “if the Borough had enforced it uniformly...the plaintiffs’ claim [that the Free Exercise Clause required the Borough to let them put up the *eruv*] would accordingly fail.” *Tenaflly Eruv Ass’n, Inc. v. Borough of Tenaflly*, 309 F.3d 144, 167 (3d Cir. 2002). Much as selectively removing eruv markers showed bias against Orthodox Jews in *Tenaflly*, selectively permitting markers to be erected on public property shows preferential treatment of Orthodox Jews.

Allowing Orthodox Jews to permanently demarcate large areas of public property as a private Jewish household that is “property” of the Orthodox Jewish community forces those of other faiths and no faith to live within an Orthodox Jewish religious enclosure, including members of other Jewish denominations who are offended by the Orthodox Jewish elevation of legalistic constructs over what they believe to be the true spiritual values of Judaism. *See E. End Eruv Ass’n, Inc. v. Vill. of Westhampton Beach*, 828 F. Supp. 2d 526, 542 n.1 (E.D.N.Y. 2011) (association of non-Orthodox Jews sought to intervene as defendant in case in which Orthodox Jews challenged removal of eruv markers); *Central Conference of Am. Rabbis Responsa – 178, Eruv* (1983) (“Certainly we, as Reform Jews, who are interested in the spirit of the law, would

² “See! The Lord has given you the sabbath, therefore on the sixth day he gives you food for two days; each of you stay where you are; do not leave your place on the seventh day.” This occurs during the manna from heaven story.

³ <https://www.jewishencyclopedia.com/articles/5841-erub>.

reject this kind of legal fiction for the observance of the *shabbat*.”), available at <https://ccarnet.org/responsa/carr-268-269/>. This is precisely the kind of divisive religious argument in which our government cannot take sides.

Allowing an eruv demonstrates governmental support for designating the enclosed area, in this case parts of Milwaukee’s Upper East Side neighborhood, Shorewood and part of Whitefish Bay, as affiliated with Orthodox Judaism. The East Side Eruv extends Orthodox Jewish private property to government-owned land and land owned by other private citizens, at least according to their faith. The government has no business allowing its property to be designated as private property at the behest of a particular religious sect. This imposes Orthodox Judaism on members of the public by surrounding their community with the physical indicia of a religion they do not practice. “[T]he preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2000) (quoting *Lee v. Weisman*, 505 U.S. 577, 589 (1992)).

Furthermore, by allowing these wires to be hung on and across county property, Milwaukee County and its taxpayers are liable for any injuries or damage caused by these wires, despite not being in charge of maintaining or overseeing the wires. This is a major liability for county taxpayers that can be alleviated by ending county participation in Orthodox Jews’ scheme to outsmart their god and their self-imposed religious obligations.

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 Milwaukee community, we ask that Milwaukee County cease permitting eruvin on public land. There is no need for an eruv on public property surrounding parts of Milwaukee County. Thank you in advance for your time and attention to this matter.

Sincerely,



Christopher Line
Staff Attorney
Freedom From Religion Foundation

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