



Milwaukee Jewish Council for Community Relations

Testimony of Eliot Bernstein

Special Zoning, Neighborhoods & Development Committee

City of Milwaukee Common Council

July 23, 1996

My name is Eliot M. Bernstein. I am a resident of the City of Milwaukee and a constituent of Alderman D'Amato's. I am a Past President of the Milwaukee Jewish Council for Community Relations and continue to serve as a member of its Board of Directors.

On behalf of the Jewish Council, I'm here tonight to express our concerns about the effect this ordinance might have on religious institutions. We realize that it also covers other institutions, such as private schools, public schools, and universities. We are not in a position to comment substantively on that aspect of the proposal.

Based on the US Constitution, the legal status of religion in society is different. Three years ago Congress enacted the Religious Freedom Restoration Act (RFRA). That federal law, which affects local governments as well, declares that government can interfere in the activities of religious institutions only if it can demonstrate a "compelling interest" to justify its action. This is an extremely strict legal criteria, deliberately calibrated to prevent government actions which restrict the free exercise of religion except in extremely limited and important circumstances.

The Jewish Council is concerned that this proposal could have the effect of imposing new restrictions on the ability of religious institutions to locate and function in typical urban neighborhoods, namely those of single family, two-family and multi-family homes. It is unclear what the compelling interest for this change is.

The fact that the ordinance is written to encompass non-religious institutions as well, does not automatically mean that it is legally permissible. There can be a seemingly neutral criterion regulating both religious and non-religious institutions but which, in effect, creates a real obstruction to the free exercise of religion. Also, ordinances in so-called technical areas of zoning and land use are subject to the same "compelling interest" test as government actions that affect religion more directly.

Before this committee and the entire Council acts, there is a need

to demonstrate the "compelling interest" for such a new requirement to be imposed on religious institutions. What is the justification for such a change? Why is it needed? What is the problem? Why is this new policy the correct response to the problem? Could its goals be accomplished in a way that interferes less with the free exercise of religion? Etc. If the City's compelling interest cannot be documented, then the ordinance would probably be struck down and should not be adopted in the first place.

Finally, the push to adopt this ordinance now and quickly has the appearance of deliberately creating new hurdles regarding the expansion plans of the Wisconsin Institute for Torah Studies (WITS). To the extent that this perception is accurate, then the Common Council should decline to be used for such purposes.

This would be akin to the losing party in a conflict being given the opportunity to keep creating new, additional rules of the game until it is finally successful in changing the outcome. Many of us remember vividly the final seconds of the basketball game between the US and Soviet Union during the 1972 Olympics to determine who would get the gold medal. The officials moved the clock back to give the Soviet team additional time until it finally scored the winning point. Remember how unfair we all felt that was?

This religious school, a fine one by all educational standards, has followed all the existing requirements for approval of its expansion plans. In fact, significant changes in location, size and cost of the expansion have been imposed on it by city government, partly due to concerns expressed by neighbors. Surely, WITS has played by the current rules of the game and deserves some finality to the process.

Thank you.

-- end --