



February 12, 2013

RE: Oppose H.R. 592, the so-called Federal Disaster Assistance Nonprofit Fairness Act of 2013

Dear Representative:

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of individual liberty and justice embodied in the U.S. Constitution, we are writing to urge you to vote “NO” on H.R. 592 when the measure comes up on the suspension calendar on Wednesday. This bill, which would authorize FEMA to provide houses of worship with direct grants of taxpayer funds, would flout longstanding constitutional law and harm religious liberty.

The Supreme Court has recognized that the First Amendment was devised to prohibit “[t]he imposition of taxes to . . . build and maintain churches and church property,” because such funding is an affront to “individual religious liberty.”¹ Accordingly, longstanding Court precedent specifically holds that taxpayer funds cannot go to construct, rebuild, or repair buildings used for religious activities — which clearly includes houses of worship.² The Court has never retreated from this bedrock Establishment Clause principle. In fact, the Supreme Court continues to recognize “special Establishment Clause dangers where the government makes direct money payments to sectarian institutions,”³ which is exactly the use of taxpayer funds at issue here. And in a variety of bills over the past several decades, Congress has prohibited the use of funds to construct buildings used for religious purposes. Indeed, in the American Recovery and Reinvestment Act, Congress again recognized this prohibition and limited green construction funding to buildings in which secular activities take place.⁴

Under current policy, houses of worship may obtain government loans — just not direct grants — to rebuild. All for-profit businesses and non-profit organizations — including houses of worship — are eligible to participate in the SBA Disaster Loan Program. Houses of worship, therefore, are not without government help to rebuild. Moreover, houses of worship are not the only non-profit facilities that would otherwise be ineligible for direct grants for reconstruction. Only non-profits with facilities used for emergency, essential, and government-like activities are eligible for grants. Thus, FEMA grants are not the same as “general government services,” like police or fire, which are available to every business, nonprofit, private residence, and house of worship. **To say that the policy is unfair or that houses of worship are treated unequally — singled out among all other non-profits — therefore, is untrue.**

¹ *Everson v. Bd. of Educ.*, 330 U.S. 1, 11 (1947).

² *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973); *Hunt v. McNair*, 413 U.S. 734 (1973); *Tilton v. Richardson*, 403 U.S. 672 (1971).

³ *Id.* at 844 (O’Connor, J., controlling and concurring opinion) (quoting *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 842 (1995)); *see also id.* at 818-20 (Thomas, J., plurality opinion) (“special Establishment Clause dangers” when “money is given to religious . . . entities directly”).

⁴ § 14004(c)(3) of the American Recovery and Reinvestment Act of 2009 prohibited renovation of buildings used for religious worship or instruction.

AMERICAN CIVIL
LIBERTIES UNION
WASHINGTON
LEGISLATIVE OFFICE
915 15th STREET, NW, 6TH FL
WASHINGTON, DC 20005
T/202.544.1681
F/202.546.0738
WWW.ACLU.ORG

LAURA W. MURPHY
DIRECTOR

NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROBERT REMAR
TREASURER

Although houses of worship may serve a central role in the lives of their congregants, it is impossible to see how the prayer and worship conducted in these sacred buildings is equivalent to the essential, government-like activities in facilities that would be eligible for government grants. It would be a dangerous precedent to equate religious worship with the vital services government provides. And while houses of worship may host educational and social activities, only community centers that are open to the general public on a nondiscriminatory basis,⁵ serve the *entire* community (not just congregants), and are used for a range of different activities⁶ are eligible for a FEMA grant.

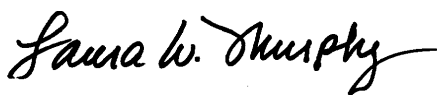
In the aftermath of Hurricane Katrina, the Bush administration directed that houses of worship would remain ineligible for FEMA funds. The Bush administration respected longstanding Supreme Court precedent⁷ and continued to adhere to this constitutional requirement. Churches, synagogues, mosques, and temples were damaged in Katrina just as they were in Sandy. As an organization whose offices were closed for weeks as a result, we very much understand the serious difficulties faced by people who were impacted by superstorm Sandy — so many of our friends and colleagues in New York and New Jersey continue to deal with its aftermath. But, the harm would be compounded if this misfortune were used as a reason to erode fundamental religious liberty protections enshrined in the First Amendment.

Religious liberty is one of our nation's most fundamental values and it starts from the principle that religion thrives when both religion and government are safeguarded from the undue influences of the other. Barring federal funds for the rebuilding of houses of worship is not discriminatory or hostile to religion — it is one of the most fundamental ways we have to protect and defend religious liberty for all. Indeed, the Establishment Clause protects religious freedom by preventing the government from endorsing and funding any one religion — or all religions.

Because H.R. 592 would flout longstanding constitutional law and harm religious liberty, we urge you to oppose the measure and vote “NO” when the measure comes up on the suspension calendar on Wednesday.

Please contact Legislative Counsel Dena Sher at (202) 715-0829 or dsher@dcaclu.org if you have questions or comments about our concerns.

Sincerely,



Laura W. Murphy
Director, Washington Legislative Office



Dena Sher
Legislative Counsel

⁵ Disaster Assistance Policy 9521.1 — Community Center Eligibility, <http://www.fema.gov/9500-series-policy-publications/95211-community-center-eligibility>. Many categories of community centers are ineligible for FEMA grants: “Facilities established or primarily used for political, athletic, religious, recreational, vocational or academic training, conferences, or similar activities are **not** eligible PNP community centers.” *Id.*

⁶ *Id.*

⁷ Alan Cooperman, “Parochial Schools to Get U.S. Funds for Rebuilding,” *Wash. Post*, Oct. 19, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/18/AR2005101801622.html>.