

June 25, 2013

The Hon. Al Franken
Chairman
Subcommittee on Energy
Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

The Hon. James E. Risch
Ranking Member
Subcommittee on Energy
Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Franken and Ranking Member Risch:

We, the undersigned organizations, write to express our concerns about S. 717, “the Nonprofit Energy Efficiency Act,” as it is currently written. Although we do not object to the creation of a program that awards grants to nonprofit organizations for the purpose of retrofitting nonprofit buildings with energy-efficiency improvements—indeed some of us would actively support such a program—we do object to providing those grants to “houses of worship.” All programs funded by Congress must adhere to the Establishment Clause of the U.S. Constitution, which has been the foundation of religious liberty in our country for over two hundred years. S. 717, in its current form, however, cannot meet that demand.

Longstanding Supreme Court precedent¹ firmly establishes that “the State may not erect buildings in which religious activities are to take place” and “it may not maintain such buildings or *renovate* them.”² This bedrock constitutional principle remains controlling law. The Supreme Court has long maintained that direct money grants create “special Establishment Clause dangers.”³

For nearly four decades, Congress has also consistently recognized this constitutional principle. Statutory prohibitions on using taxpayer funds to construct, renovate, or improve sanctuaries and buildings used primarily for religious purposes exist throughout the U.S. Code.⁴ And, most recently, Congress recognized the applicability of this precedent when it limited green construction funding in the Recovery Act to buildings in which secular activities take place.⁵

¹ *Tilton v. Richardson*, 403 U.S. 672 (1971) (holding unanimously that a government subsidy used to construct buildings at colleges and universities was constitutional only if the buildings could never be used for religious activities); *Hunt v. McNair*, 413 U.S. 734 (1973) (upholding issuance of revenue bonds to finance the construction and renovation of facilities because the law included a condition barring government-financed buildings from being used for religious worship or instruction); *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973).

² *Nyquist*, 413 U.S. at 777 (emphasis added).

³ *Mitchell v. Helms*, 530 U.S. 793, 819 (1999) (quoting *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 842 (1995)) (Thomas, J., plurality opinion); see also *id.* at 856 (O’Connor, J., controlling and concurring opinion) (describing *Tilton* as striking down the grant statute because it lacked a “secular content requirement”).

⁴ See, e.g., 20 U.S.C. § 1066c; 20 U.S.C. § 1062; 20 U.S.C. § 1103e; 25 U.S.C. § 1813; 20 U.S.C. § 1068e; 25 U.S.C. § 3306; 20 U.S.C. § 1011k; & 29 U.S.C. § 2938.

⁵ Section 14004(c)(3) of the Americans Recovery and Reinvestment Act of 2009 prohibited renovation of buildings used for religious worship or instruction.

Religious liberty is one of our nation's most cherished values and it is best protected when the institutions of religion and government are kept separate. The core constitutional rule prohibiting taxpayer funds from being used to construct or renovate houses of worship is not hostile to religion, but rather is a fundamental protection for religious liberty.

Houses of worship are fundamentally religious, and as such, may and sometimes must receive certain rights and protections that are different from other nonprofits. When it comes to taxpayer funds, for instance, there are certain limitations that serve to protect their autonomy and independence from the government—the strings that come attached to government funding ultimately weaken religion. Treating houses of worship just like other nonprofits undermines the very foundation underlying many of their special rights and protections.

Moreover, funding houses of worship would defy the fundamental principle that no taxpayer should be forced to fund a religion with which he or she disagrees and would open the door to government favoring, or creating the perception that it favors, certain religions over others.

Encouraging energy efficiency is a worthy goal, but cannot be done in a way that jeopardizes the religious freedom for which our country stands. We request that the bill be amended to reflect the constitutional prohibition on providing direct government funds to houses of worship and align with existing statutes.

Sincerely,

American Civil Liberties Union
Americans United for Separation of Church and State
Baptist Joint Committee for Religious Liberty
Hindu American Foundation
Interfaith Alliance
Union for Reform Judaism