



Ad Hoc Committee for Religious Liberty

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Federal Disaster Assistance Nonprofit Fairness Act of 2017

The bipartisan Federal Disaster Assistance Nonprofit Fairness Act was introduced in the House of Representatives by Chris Smith (R-NJ) and Grace Meng (D-NY) on June 11, 2017 (H.R. 2405) and in the Senate by James Lankford (R-OK), Roy Blunt (R-MO), John Cornyn (R-TX), and Ted Cruz (R-TX) on September 19, 2017 (S.1823).

The Federal Disaster Assistance Nonprofit Fairness Act would ensure that churches, synagogues, mosques, and other houses of worship damaged in Hurricanes Harvey and Irma, as well as future disasters, will be eligible for federal financial aid to repair their damaged buildings on the same terms as other, similarly eligible nonprofits which receive aid from the Federal Emergency Management Agency (FEMA).

Under the Stafford Act and current FEMA policy, various types of “private nonprofit facilities” are eligible for federal aid to repair their disaster-damaged facilities. Eligible facilities include: museums, libraries, community centers, performing arts facilities, homeless shelters, senior centers, and others. The Stafford Act does not explicitly exclude or include houses of worship, yet FEMA’s policy does exclude them from full and equal eligibility to similarly situated nonprofit organizations. The proposed legislation will correct this unfair and discriminatory policy.

Are there precedents for Federal financial aid being given to religious facilities?

Yes, there are several precedents. These include:

- Disaster relief grants to churches damaged in the Oklahoma City federal building attack¹
- Awards under the Department of Homeland Security’s Nonprofit Security Grant Program²
- Awards under the Interior Department’s “Save America’s Treasures” program for the repair and maintenance of historically significant properties, including Boston’s Old

¹ See 141 Cong.Rec. H6607, H6621 (June 29, 1995).

² <http://www.fema.gov/preparedness-non-disaster-grants/urban-areas-security-initiative-nonprofit-security-grant-program>

North Church³ and Newport's Touro Synagogue; and California Missions Preservation Act grants for restoring colonial era missions, many of which are still used for religious worship⁴

Are there constitutional “separation of church and state” issues here?

In the *Trinity Lutheran Church* case decided in June 2017, the U.S. Supreme Court held that it is unconstitutional to discriminate against churches—in a generally available government grant program—just because they are churches. Current Supreme Court precedents also make clear that if a government program provides aid or services for a general, secular purpose and on the basis of criteria which are neutral toward religion, religious organizations that meet those criteria may participate and receive the aid.⁵ The Justice Department's Office of Legal Counsel has issued two legal opinions echoing these principles as well.⁶

Who Supports the Federal Disaster Assistance Nonprofit Fairness Act?

The Federal Disaster Assistance Nonprofit Fairness Act has received overwhelming bipartisan support. It was passed by the House of Representatives in 2013 by a 354-72 vote. However, the Senate failed to consider it.

Organizations supporting this legislation include:

- Union of Orthodox Jewish Congregations
- United States Conference of Catholic Bishops
- Council of Churches of the City of New York
- UJA – Federation of New York Rabbinical Assembly
- Jewish Federations of North America (Conservative Judaism)
- American Jewish Committee
- National Association of Evangelicals
- New York Board of Rabbis
- Becket Law

³ <http://home.nps.gov/applications/release/Detail.cfm?ID=395>

⁴ P.L. 108-420 (Nov. 30, 2004).

⁵ See *Trinity Lutheran Church v. Comer*, 582 U.S. ____ (2017); *Mitchell v. Helms*, 550 U.S. 793 (2000); see also *Am. Atheists v. City of Detroit*, 567 F. 3d 278 (2009).

⁶ See <http://www.justice.gov/olc/FEMAAssistance.htm> and <http://www.justice.gov/olc/OldNorthChurch.htm>