So instead of doing targeted cuts and getting rid of programs that we don't need anymore, that don't work anymore, and looking at reasonable revenues, we're going to cut everything 10 percent. It's going to have a real impact.

I was told yesterday by the Office of Management and Budget the first measurable impact is in my district, a 10 percent sequestration of payments to counties in my State from the Interior Department, which means in Douglas County, Oregon, the last 10 road deputies are gone. In another county, which is down to one road deputy, the last road deputy is gone. We're talking about counties the size of States here with no rural law enforcement. That's because of the stupid sequestration.

□ 1220

SEQUESTER IS NOT THE ANSWER

(Ms. JACKSON LEE asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JACKSON LEE. Madam Speaker, I join with my colleagues to say that sequester is not the answer. When I begin to look at my district and I see high school students and middle school students and elementary school students, I say sequester is not the answer.

Yes, we can look reasonably at how we improve reducing the debt, but not on the backs of seniors, not eliminating the social network.

And then, with respect to our children, do we tell them we close the doors on summer jobs, we close the doors on the best teachers, innovative teaching, science labs? Absolutely not.

So I join with the President to say that it's an inflicted wound we gave. Let's be better. Let's be adults.

And, finally, Madam Speaker, let's do our job on gun safety. Let's ensure universal background checks. Let's have registration of those guns that are owned by gun owners like we register a car. And let's make sure that, as my legislation introduced, that we secure the guns in our homes so that children or those who are disturbed cannot access your guns because you left them around.

I am not interested in coming into your home and taking your guns, but you have a responsibility to be able to secure them. That law was passed in the State of Texas, a State that prizes its guns.

Let's be a group, a Congress that can work together. We can do this.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on the motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote incurs objection under clause 6 of rule XX.

Any record vote on the postponed question will be taken later.

FEDERAL DISASTER ASSISTANCE NONPROFIT FAIRNESS ACT OF 2013

Mr. BARLETTA. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 592) to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to clarify that houses of worship are eligible for certain disaster relief and emergency assistance on terms equal to other eligible private nonprofit facilities, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 592

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Disaster Assistance Nonprofit Fairness Act of 2013''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Hurricane Sandy inflicted catastrophic damage in the Northeastern United States.

(2) Houses of worship across the Northeast's many faiths and denominations were among the private nonprofit facilities that sustained damage.

(3) Churches, synagogues, mosques, temples, and other houses of worship throughout communities in New York, New Jersey, Connecticut, and elsewhere play an essential role in the daily lives of the communities.

(4) The Federal Emergency Management Agency's (FEMA) public assistance program provides financial grants for the repair of various types of private nonprofit facilities.

(5) Among the types of nonprofits to which FEMA provides such grants are those in which citizens gather and engage in a variety of educational, enrichment, and social activities. These activities are essential to community building and occur in houses of worship.

(6) Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), FEMA's disaster relief program is a general government program under which assistance is provided in the wake of a natural disaster using criteria that are neutral with regard to religion.

(7) Congress has previously enacted legislation providing financial assistance to religious nonprofit institutions, including houses of worship, on terms equal to other eligible nonprofit institutions.

(8) Such legislation is consistent with recent precedents of the Supreme Court of the United States and legal opinions issued by the Office of Legal Counsel of the Department of Justice.

SEC. 3. INCLUSION OF HOUSES OF WORSHIP AS PRIVATE NONPROFIT FACILITIES ELIGIBLE FOR DISASTER RELIEF.

(a) DEFINITION OF PRIVATE NONPROFIT FACILITY.—Section 102(10)(B) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(10)(B)) is amended to read as follows:

''(B) ADDITIONAL FACILITIES.—In addition to the facilities described in subparagraph (A), the term 'private nonprofit facility' includes any private nonprofit facility that provides essential services of a governmental nature to the general public (including museums, zoos, performing arts facilities, community arts centers, community centers, including houses of worship exempt from taxation under section 501(c) of the Internal Revenue Code of 1986, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops, and facilities that provide health and safety services of a governmental nature), as defined by the President.''.

(b) REPAIR, RESTORATION, AND REPLACEMENT OF DAMAGED FACILITIES.—Section 406(a)(3) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172(a)(3)) is amended by adding at the end the following:

''(C) HOUSES OF WORSHIP.—A church, synagogue, mosque, temple, or other house of worship, and a private nonprofit facility operated by a religious organization, shall be eligible for contributions under paragraph (1)(B), without regard to the religious character of the facility or the primary religious use of the facility.''.

(c) APPLICABILITY.—This section and the amendments made by this section shall apply to the provision of assistance in response to a major disaster or emergency declared on or after October 28, 2012.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Pennsylvania (Mr. BARLETTA) and the gentleman from West Virginia (Mr. RAHALL) each will control 20 minutes.

The Chair recognizes the gentleman from Pennsylvania.

GENERAL LEAVE

Mr. BARLETTA. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on H.R. 592.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. BARLETTA. Madam Speaker, I yield myself such time as I may consume.

First, I want to acknowledge the work of the gentleman from New Jersey (Mr. SMITH) for his leadership on this bipartisan legislation.

Currently, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, also known as the Stafford Act, provides for assistance to nonprofit organizations to rebuild damaged facilities following a declared disaster.

Like other nonprofit organizations, religious-based organizations have seen significant damage to their facilities from disasters. Just last year, for example, we saw facilities owned by both religious and nonreligious organizations alike damaged or destroyed by Hurricane Sandy.

The administration is interpreting current law to allow some religious nonprofits to receive reconstruction assistance, while others do not. For example, parochial schools and religious hospitals receive funds, while a soup kitchen or a shelter may not, depending on how often it is used for purely religious purposes.

H.R. 592 clarifies that facilities owned by religious-based organizations qualify for certain types of disaster assistance.

Again, let me thank the gentleman from New Jersey for his efforts on behalf of his constituents to rebuild the storm-ravaged areas of his State.

I reserve the balance of my time.

Mr. RAHALL. Madam Speaker, I yield myself such time as I may consume.

I rise in support of H.R. 592, the Federal Disaster Assistance Nonprofit Fairness Act of 2013. This bill designates houses of worship as eligible private nonprofit organizations to receive Federal Emergency Management Agency funds to repair or rebuild after a disaster strikes.

When most people think of disaster damage, they think of the physical damage that is often shown on television, that is, of downed trees, flooded streets and homes, snow piled high, et cetera.

But for disaster survivors, the impact is often also emotionally traumatic. In some cases, survivors have lost loved ones or all of their worldly possessions. In these trying times, survivors often look to houses of worship for spiritual instruction, guidance, and counseling. The services provided by houses of worship are critical to survivors' full healing and recovery after a disaster.

During and after disasters, houses of worship are there at a time when the emotional toll inflicted by a disaster is at its worst. While some may have concerns about providing any type of Federal assistance to houses of worship, some types of Federal assistance should be, and are, provided on a neutral basis.

Funding provided to a broad class of entities for secular purposes such as government-funded and -sponsored police and firefighting assistance and protection and recovery from terrorist activities are such examples.

Likewise, disaster assistance has been provided to religious institutions in the past. In 1995, after the Oklahoma City bombing, Congress approved funds for the U.S. Department of Housing and Urban Development that specifically allowed for the repair and reconstruction of houses of worship damaged by the bombing.

In addition, under FEMA's current policy, funds are provided to repair or rebuild religiously affiliated private nonprofit organizations such as schools, nursing homes, food shelters, and daycare centers.

Assisting with recovery from a disaster does not promote or establish religion. There is no intrinsically religious purpose in providing disaster assistance. This provision simply recognizes that houses of worship are one aspect of community recovery.

This bill helps ensure that our communities fully recover physically, emotionally, and mentally after a disaster. I urge my colleagues to join in supporting this bill.

I reserve the balance of my time.

Mr. BARLETTA. Madam Speaker, I wish to yield 7 minutes to the gentleman from New Jersey (Mr. SMITH), who is the sponsor of this bill.

Mr. SMITH of New Jersey. I thank my good friend, the chair, for yielding. I thank him for his support and for Mr. RAHALL. And I want to thank Gracie Meng for her cosponsorship and leadership on this important bill, and all the cosponsors, and to ERIC CANTOR and the leadership for scheduling it for a vote today. This is extremely important and very timely.

Madam Speaker, Superstorm Sandy inflicted unprecedented damage on communities in the Northeast, including my district in New Jersey. Congress and the President have responded by providing $60 billion in emergency and recovery aid.

Today's debate and vote, however, isn't at all about whether or how much funding Congress appropriates to mitigate the impact of Sandy. We've had that vote.

Rather, it's about those who are being unfairly left out and left behind. It's about those who help feed, comfort, clothe, and shelter tens of thousands of victims now being told they are ineligible for a FEMA grant.

It's unconscionable that foundational pillars of our communities damaged by Sandy—synagogues, churches, mosques, temples and other houses of worship—have been categorically denied access to these otherwise generally available relief funds.

Current FEMA policy is patently unfair, unjustified, and discriminatory and may even suggest hostility to religion. FEMA has a policy in place to aid nonprofit facilities damaged in the storm, but the agency has excluded houses of worship from their support. That is wrong, and it's time Congress ensures fundamental fairness for these essential private nonprofits.

The bipartisan Federal Disaster Assistance Nonprofit Fairness Act will ensure that houses of worship are eligible for Federal funds administered by FEMA.

Madam Speaker, it's worth noting here that FEMA's discriminatory policy of exclusion is not prescribed by any law. Nothing in the Stafford Act or any other law, including the Hurricane Sandy Disaster Relief Appropriations Act, precludes funds to repair and to replace and to restore houses of worship.

Indeed, the congressional precedent favors enacting H.R. 592, as there are several pertinent examples of public funding being allocated to houses of worship. For example, FEMA grants were explicitly authorized by Congress back in 1995 and provided to the churches damaged by the Oklahoma City terrorist attack, as my friend from West Virginia pointed out.

□ 1230

The Homeland Security Department and UASI provides funding to houses of worship for security upgrades. The Interior Department provides funding to grants for historically significant properties, including active churches and active synagogues. And the SBA provides low interest loans—no hint at all by anyone that there's an Establishment Clause issue.

It's important to note that a controlling Justice Department Office of Legal Counsel memorandum explains in detail the legal principles that make H.R. 592 constitutional. In a 2002 written opinion, the Office of Legal Counsel concluded it was constitutional for Congress to provide disaster relief and reconstruction funds to a religious Jewish school, along with all sorts of other organizations, following a devastating earthquake. The same principles apply to protect religious organizations following a devastating hurricane.

As the Office of Legal Counsel memo concluded:

> Provisions of disaster assistance to religious organizations cannot be materially distinguished from aid programs that are constitutional under longstanding Supreme Court precedent, establishing that religious institutions are fully entitled to receive generally available government benefits and services, such as fire and police protection.

The Supreme Court handed down its first modern Establishment Clause decision in the Everson v. Board of Education decision, which involved a program in my own home State of New Jersey. In that case, the Court held that religious institutions are entitled to receive ''general government services'' made available on the basis of neutral criteria. The Court held that the Establishment Clause does not bar, in that case, students attending religious schools from receiving generally available school busing services provided by the government.

As Nathan Diament, Executive Director of Public Policy for the Union of Orthodox Jewish Organizations of America, notes in his excellent legal analysis, which I will include in the RECORD:

> Disaster relief is analogous to aid that qualifies as general government services approved by the Court in Everson.

Madam Speaker, the bill before us today simply makes clear and clarifies that Federal disaster relief includes religious entities, along with every other sort of entity.

As the Court later stated in Widmar v. Vincent:

> The provision of benefits to so broad a spectrum of groups is an important index of secular, that is, constitutional effect.

As it stated more recently in Texas Monthly v. Bullock:

> Insofar as that subsidy is conferred upon a wide array of nonsectarian groups as well as religious group organizations in pursuit of some legitimate secular end, the fact that religious groups benefit incidentally does not deprive the subsidy of the secular purpose and primary effect mandated by the Establishment Clause.

Significantly, Madam Speaker, when three churches in Detroit received taxpayer-funded grants to repair and spruce up their buildings prior to the 2006 Super Bowl, American Atheists sued the City of Detroit and lost.

In a sweeping decision offered by Judge Sutton, the U.S. Court of Appeals for the Sixth Circuit, unanimously held that the direct assistance to the churches did not violate the Establishment Clause. Judge Sutton said, and I quote, in pertinent part:

> Detroit sought to fix up its downtown, not to establish a religion. And as will generally be the case when a governmental program allocates generally available benefits on a neutral basis and without a hidden agenda, this program does not have the impermissible effect of advancing religion in general or any one faith in particular. By endorsing all qualifying applicants, the program has endorsed none of them, the Court went on to say, and accordingly it has not run afoul of the Federal and State religious clauses . . . In the Establishment Clause context, that means evenhanded neutral laws generally, though not invariably, will be upheld. So long as the government benefit is neutral and generally applicable on its face, it presumptively will satisfy the Establishment Clause.

H.R. 592 exhibits no government preference for or against religion, or any particular religion, since it merely permits houses of worship to receive the same type of generally available assistance.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. BARLETTA. I yield the gentleman an additional minute.

Mr. SMITH of New Jersey. Again, this legislation permits houses of worship to receive the same type of generally available assistance in picking up the pieces after stunning devastation that many other similarly situated nonprofits receive. Thus, the bill not only passes the test of constitutionality, it passes the test of basic decency.

Indeed, to do otherwise would be to single out churches for adverse treatment, which is in itself constitutionally suspect.

The Supreme Court held, Madam Speaker, in Lukumi Babalu Aye v. City of Hialeah, that ''at a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs.''

And in Employment Division v. Smith, the Court held that under the Free Exercise Clause, the State may not ''impose special disabilities on the basis of religious views or religious status.''

To continue to single houses of worship out for discrimination does not express government neutrality; it expresses government hostility. And there's no place for government hostility toward religion under our Constitution.

I thank the gentleman for yielding.

Mr. RAHALL. Madam Speaker, how much time do I have remaining?

The SPEAKER pro tempore. The gentleman from West Virginia has 17½ minutes remaining.

Mr. RAHALL. Thank you.

I yield 4 minutes to the gentleman from New York (Mr. NADLER).

(Mr. NADLER asked and was given permission to revise and extend his remarks.)

Mr. NADLER. Madam Speaker, I reluctantly rise in opposition to this bill. The purpose of this bill is laudable. Unfortunately, there are real constitutional problems.

This bill would provide direct cash grants to rebuild houses of worship. Direct government funding of churches, synagogues, and mosques has always been held to be unconstitutional, and the decisions of the Supreme Court establishing that principle remain good law to this day. While some recent decisions have raised questions of these prior decisions' validity, they remain binding precedent. Most legal authorities would hold this bill to be constitutional, although some would disagree.

At the very least, given the serious constitutional questions raised by this legislation, I am deeply troubled that it has received no committee consideration and is being rushed to the floor just a few days after being introduced under a procedure that allows only 40 minutes of debate and no amendments. One would think that we were naming a post office rather than passing legislation with significant constitutional implications that could alter the relationship between government and religion.

While I have serious reservations about this bill and the way it is being considered, I wanted to commend the sponsors, the gentleman from New Jersey (Mr. SMITH) and my colleagues from New York, Ms. MENG and Mr. KING, who have been outstanding champions of the people hard hit by Hurricane Sandy.

So what is the concern?

Let's start with the basics. This bill would direct Federal taxpayer dollars to the reconstruction of houses of worship. The idea that taxpayer money can be used to build a religious sanctuary or an altar has consistently been held unconstitutional.

This is entirely different from government working with religious institutions to deliver social services. FEMA money, under the law this bill would amend, is already available to those institutions.

FEMA Disaster Assistance Policy 9521.1 states:

> Just because a community center is operated by a religious institution does not automatically make it ineligible. In addition to worship services, many religious institutions conduct a variety of activities that benefit the community. Many of these activities are similar or identical to those performed by secular institutions and local governments.

The law now permits funding to religious institutions that provide those services to the general public, on an equal basis with secular institutions doing the same work. Although the title of this bill suggests otherwise, there is no unequal treatment of religious institutions.

So what we are really talking about is whether we should be in the business of using taxpayer money to build and rebuild houses of worship and rebuild sanctuaries and altars that are not available for use to the general public.

I think, at the very least, we need to exercise caution. I know that people have been circulating letters making extravagant claims about the current state of the law, but what is clear is that the Supreme Court has never overruled its prior decisions specifically prohibiting this kind of use of public money.

□ 1240

In Tilton v. Richardson, the Court held that a 20-year ban on using publicly financed college facilities for religious or other purposes was not sufficient. The Court made the ban permanent, saying:

> If, at the end of 20 years, the building is, for example, converted into a chapel or otherwise used to promote religious interests, the original Federal grant will in part have the effect of advancing religion.

And that, of course, is not permissible.

Similarly, in Committee for Public Education v. Nyquist, the Court struck down a State program of ''maintenance and repair grants'' for the upkeep of religious elementary and secondary schools. The Court said:

> If the State may not erect buildings in which religious activities are to take place, it may not maintain such buildings or renovate them when they fall into disrepair.

Some proponents have pointed to the Court's ruling in Mitchell v. Helms. The question in that case was whether publicly financed educational materials could be lent to religious schools. The controlling opinion, written by Justice O'Connor, made it clear that it was not sufficient that the publicly furnished materials be provided on a nondiscriminatory basis; they must never be diverted to religious activities. That is clearly not the case here.

The majority has made a big issue of respecting the Constitution. We read the Constitution at the beginning of each Congress, and we are required to provide a statement of constitutional authority when we introduce a bill.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. RAHALL. I yield the gentleman an additional minute.

Mr. NADLER. But all of that means very little if, when faced with a genuinely significant constitutional question, the House gives it the bum's rush. This bill should be subject to hearings in the Judiciary Committee, with input from constitutional scholars, and due consideration of these significant constitutional issues, before we take such a radical step.

At the very least, for those who support this bill, I would think that they would want to get it right, to ensure that it is not done in a way that would make it susceptible to successful legal challenge. I urge my colleagues to put the brakes on this legislation until we can review it with the care it deserves.

Because I believe this bill to be unconstitutional, and because the constitutional issues have not been properly considered, I must reluctantly vote ''no.''

I thank the gentleman for yielding.

Mr. BARLETTA. Madam Speaker, I wish to yield 3 minutes to the gentleman from Virginia (Mr. GOODLATTE), chairman of Judiciary.

Mr. GOODLATTE. I thank the gentleman from Pennsylvania, the chairman of the subcommittee, for his hard work on this legislation and the gentleman from New Jersey (Mr. SMITH) for introducing it and leading this bipartisan effort to address what I think is a serious problem.

I rise today in support of the Federal Disaster Assistance Nonprofit Fairness Act of 2013.

Churches, synagogues, and also houses of worship are essential to the fabric of communities throughout this great Nation. In times of need, it seems that faith and the charitable acts that faith inspire are essential to rebuilding and healing our communities. When disasters occur, like Hurricane Sandy in the Northeast, it's often houses of worship whose faith calls them to spring into action to help their fellow man, to feed the hungry and house the homeless. Faith inspires hope that communities can become whole again.

Every Member of Congress has seen the good works and deeds that houses of worship and nonprofit organizations do in our communities. There is no reason that the Federal Government should treat churches, synagogues, and houses of worship differently than other nonprofits in times of disaster.

I want to note that the so-called ''pervasively sectarian doctrine,'' which absolutely prohibited any aid to pervasively sectarian organizations such as churches, is no longer supported by Supreme Court precedent. While that doctrine was a central part of Supreme Court jurisprudence during the 1970s when the Supreme Court handed down decisions cited by opponents of this bill, including Tilton v. Richardson in 1971, Hunt v. McNair in 1973, and Committee for Public Education v. Nyquist, also 1973, it is no longer controlling, as the pervasively sectarian doctrine was subsequently rejected by a majority of the Supreme Court in the 1999 case of Mitchell v. Helms. Indeed, as the Congressional Research Service concluded in its December 27, 2000, report to Congress:

In its most recent decisions, the Supreme Court appears to have abandoned the presumption that some religious institutions are so pervasively sectarian that they are constitutionally ineligible to participate in direct public aid programs. It also seems clear that the question of whether a recipient institution is pervasively sectarian is no longer a constitutionally determinative factor.

Today's legislation is important because it will ensure that houses of worship are treated equitably to other private nonprofit facilities, and that they are eligible for Federal Emergency Management Agency disaster relief and emergency assistance. I am glad that we are acting today to clarify that FEMA should treat churches, synagogues, and all houses of worship the same as other nonprofit organizations that are working to rebuild affected communities.

I thank Congressman SMITH for introducing this legislation, and I urge all Members to join with me to support this important clarification of existing law.

Mr. RAHALL. Madam Speaker, I'm very honored to yield 3 minutes to a cosponsor of the pending legislation, the gentlelady from New York (Ms. MENG).

Ms. MENG. Madam Speaker, I rise today to strongly urge my colleagues to support H.R. 592, the Federal Disaster Assistance Nonprofit Fairness Act of 2013. I want to also thank my colleague, Congressman CHRIS SMITH of New Jersey, for his wonderful leadership on this issue.

On October 29 of last year, Hurricane Sandy tore through New York City and its surrounding areas and left an unprecedented amount of damage in its wake. Homes burned to the ground, our communities were devastated, properties flooded, and over 120 lives were lost. Rightfully so, one of the 113th Congress' first actions was ensuring that adequate funding was made available to begin repairing the damage, and I was happy to be part of that effort.

The $60 billion in aid that Congress made available was a great start to rebuilding our communities and making them whole, but it was only a start. If we as Members of Congress want our affected communities to recover in the aftermath of any natural disaster, we must ensure that FEMA public assistance grants are available to help rebuild all institutions that are vital to a community's way of life.

H.R. 592 is a bipartisan bill. It would allow houses of worship, such as churches, synagogues, temples, or mosques, to receive the fair treatment they deserve. The bill places these vital community institutions on the same playing field as other private nonprofits that are already eligible for FEMA disaster relief. This bill provides no new funds. It sets forth no difference, no favoritism, no promotion of religion; it simply provides for the community and its well-being.

Facilities that already are able to apply for funding include zoos, museums, community centers, and homeless shelters, and it is important that houses of worship not be discriminated against when they need our help. These houses are vital community centers that serve so many of our constituents. The centers' existence, safety, and ability to serve should not be infringed upon, especially because the funds are available under our broadly available program without regard to the religious nature of these facilities. Indeed, to deny FEMA relief to these important institutions would be to discriminate against them because they are religious institutions, in violation of the First Amendment to our Constitution.

Not every facility, home, or place that engages in religious activity will be made available for FEMA assistance because this bill uses a predefined, accepted definition for what these facilities are under section 501(c) of the Internal Revenue Code of 1986. This is how the IRS currently recognizes and provides tax benefits to houses of worship, and this definition will help prevent erroneous claims.

The concerns about promotion of religion are unfounded. Alan Derschowitz, a widely respected expert on these issues, supports this bill on its constitutional grounds. He wrote that:

Under precedents of the U.S. Supreme Court, religious institutions may receive government aid if it is in the context of a broadly available program with criteria that are neutral toward religion and pose no risks of religious favoritism. This is certainly the case in the context of FEMA disbursing aid to repair buildings in the wake of a natural disaster.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mr. RAHALL. I yield the gentlelady an additional minute.

Ms. MENG. Many of the groups opposing this bill also oppose Nonprofit Security Grant funding, historic preservation grants, and parochial school funding after Katrina. They oppose Federal assistance that helped rebuild the Trinity Parish Episcopal Church in Seattle after an earthquake; aid made available after the tragic Oklahoma City bombing in which money was made available to the First United Methodist Church, First Baptist Church, St. Paul's Episcopal Cathedral, and St. Joseph's Catholic Church. This is not precedential; this is taking care of our constituents and their needs, our most important task in Congress.

Congress erred by not including an important part of our communities in these rebuilding efforts, and I hope we can correct that today.

DIOCESE OF ROCKVILLE CENTRE,
Rockville Centre, NY, February 11, 2013.

Hon. CHRIS SMITH,
House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE SMITH: A few weeks ago I wrote to your office to call your attention to the sad situation of houses of worship that were severely damaged by Hurricane Sandy. At that time I could cite Catholic churches and Jewish synagogues who had been told that FEMA would not offer them grants to re-build their place of worship but only loans.

Today I learned that you plan to offer in Congress a bill that would offer houses of worship the same access to disaster relief as other community centers.

I write to thank you for doing this as well as to add my voice of support for just such a correction of a previous position that surely does not reflect either our traditions or our current realities. Houses of worship have been one of the first centers of response across Long Island. The Sunday after Sandy I visited the four parishes most damaged by the storm where I witnessed in parish halls without heat or electricity two signs of hope: faithful people worshipping and the same faithful people reaching out to one another to share food, clothing and other necessities even when their own homes had been destroyed.

To discriminate against houses of worship would be a mark of sectarianism that denies

the generosity of the people who helped one another and narrows the American spirit to an arbitrary sectarianism. Please know that my parishioners, my priests and all the volunteers in our various outreach centers are one with me in support of your bill.

WILLIAM MURPHY,
Bishop of Rockville Centre.

AMERICAN JEWISH COMMITTEE,
Washington, DC, February 12, 2013.

Re H.R. 592.

DEAR REPRESENTATIVE: We write on behalf of AJC (American Jewish Committee) to endorse the necessity and constitutionality of legislation to ensure that FEMA provides disaster-relief assistance to houses of worship and other facilities on an equal footing with analogous not-for-profit organizations.

We do not support such legislation lightly, since AJC usually opposes direct government aid to pervasively religious institutions, such as houses of worship. AJC has a long record of opposing aid to pervasively religious institutions as an ingredient of the separation of church and state that is an essential component in the protection of our religious liberties. Nevertheless, we believe disaster relief is constitutionally different.

First, disaster relief, such as the ongoing efforts following Hurricane Sandy, presents special circumstances that do not amount to a transfer of the costs of operating a place of worship from the collection plates to the taxpayer, a core concern of the Framers when they authored the First Amendment's prohibition on government establishment of religion. It is instead a form of social insurance in which society shares the burden of recovering from extraordinary disasters. There is a strong societal interest in aiding those who have suffered damage from such a broad-sweeping event, even institutions that for compelling constitutional and policy reasons would not otherwise be eligible for government assistance.

Second, houses of worship are not uniquely beneficiaries of the aid—a wide variety of not-for-profit institutions are eligible for aid under the existing statutory framework, including zoos and museums. These latter are undeniably important social institutions, but it is clearly the case that houses of worship play at least as important a role in providing essential response services to people in need. Disaster relief is thus available under religiously neutral criteria, which leave no room for discretionary or discriminatory judgments of the sort that generate Establishment Clause concerns.

For these reasons, we support in principle the goal to which H.R. 592 is directed.

We do wish to note how we read the proposed language in Section 3(b), lines 15–16, that makes eligible for aid a ''house of worship and a private nonprofit facility operated by a religious organization . . . without regard to the religious character of the facility or the primary use of the facility.'' (emphasis supplied) We read this section, as we believe it is intended; as meaning that an otherwise qualified institution is not disqualified from aid merely because it is religious, and that in its implementation, FEMA must apportion aid between secular and religious functions.

Thank you for your consideration of our views.

Respectfully,

MARC D. STERN,
Director of Legal Advocacy.

RICHARD T. FOLTIN,
Director of National and Legislative Affairs.

UJA FEDERATION OF NEW YORK,
New York, NY.

MEMORANDUM OF SUPPORT FOR H.R. 592

EQUAL TREATMENT OF HOUSES OF WORSHIP

Houses of worship for all faiths are a crucial part of the New York region's fabric and while they have always been beacons of support, comfort and community resources, since Hurricane Sandy New Yorkers have needed these institutions more than ever. These organizations are an essential part of neighborhoods and enable rites of passage, community gatherings, charitable activities and are sources of comfort and prayer. In the face of lost homes and distressed property, disruption of employment opportunities and dislocated families, houses of worship have helped many find stability and fulfillment in an uncertain time. In the aftermath of Sandy, as with so many other natural disasters, churches, synagogues and other houses of worship have been places offering essential response services to people in need—even while the church, mosque or synagogue itself is damaged.

Toward that end, UJA-Federation is proud to have funded close to $1 million to 76 synagogues to help these institutions support their communities through respite and relief and enlisted dozens of volunteers to help rebuild damaged buildings. Our efforts have made a significant impact at synagogues including West End Temple in Belle Harbor, Queens, Congregation Khal Yeraim in Sea Gate, Brooklyn and The Jewish Russian Learning Center in Staten Island and these houses of worship have helped the Jewish and broader communities in the neighborhoods they are serving.

Each of these synagogues serves as vital hubs of community providing physical, spiritual and emotional shelter for community members. That said, during Hurricane Sandy, many of the synagogues suffered severe damage and lack the resources to rebuild. UJA-Federation while helping houses of worship serve individuals in need does not have the resources to support capital needs.

Many houses of worship function similar to other non-profits by providing day care programming, schooling for children and youth, senior centers and resource centers for immigrants. These services are the lifeblood for communities. Houses of worship have worked closely with elected officials and government on city, state and federal levels to coordinate disaster relief efforts to the benefit of the entire community.

The Stafford Act provides that private nonprofit entities—such as schools, hospitals and community centers—damaged in a natural disaster may receive financial grants from FEMA to repair their buildings. The Act does not list houses of worship among its list of examples of nonprofits so eligible; neither does the Act exclude houses of worship in any way. To the extent that FEMA has provided aid to eligible programs run by houses of worship, the aid has not been provided on the same terms as the aid provided to other eligible nonprofits. It is, therefore, entirely appropriate for FEMA's aid program for private nonprofits to assist houses of worship with their rebuilding needs.

Current Supreme Court jurisprudence makes clear that religious institutions may receive government financial aid in the context of a broad program administered on the basis of religion neutral criteria. This is why houses of worship and other religious nonprofits can, and do, currently receive grants from the Department of Homeland Security to improve their security and the Interior Department for historic preservation.

Numerous houses of worship have suffered financially from this crisis and federal funding would significantly alleviate the effects of building damage and their contents.

Accordingly, UJA-Federation supports passage of H.R. 592.

UNIVERSITY OF VIRGINIA
SCHOOL OF LAW,
Charlottesville, VA, February 12, 2013.

Re H.R. 592.

Hon. CHRIS SMITH,
Hon. GRACE MENG,
House of Representatives,
Washington, DC.

DEAR REP. SMITH AND REP. MENG: I write to support your efforts to include places of worship in federal relief efforts in response to Hurricane Sandy. As Professor Dershowitz has already explained, there is no constitutional obstacle to including places of worship in this measure, which is entirely neutral and very broadly applicable.

The Supreme Court has permitted government funds to flow without discrimination to broad categories of schools, including religious schools (Zelman v. Simmons-Harris). And when a university undertook to subsidize publications, the Court has actually required government funds to flow without discrimination to a broad category that included religious publications (Rosenberger v. University of Virginia).

Charitable contributions to places of worship are tax deductible, without significant controversy, even though the tax benefits to the donor are like a matching grant from the government. These deductions have been uncontroversial because they are included without discrimination in the much broader category of all not-for-profit organizations devoted to charitable, educational, religious, or scientific purposes.

The neutral category here is equally broad. To include places of worship in disaster relief is neutral; to exclude them would be affirmatively hostile. There is no constitutional obstacle to including them.

Very truly yours,

DOUGLAS LAYCOCK.

CAMBRIDGE, MA.

Hon. CHRIS SMITH,
Hon. GRACE MENG,
House of Representatives,
Washington, DC.

DEAR REPRESENTATIVES SMITH AND MENG: I write to express my support for your legislation (H.R. 592) which will ensure that churches, synagogues, mosques and other houses of worship damaged in Hurricane Sandy will be eligible to receive federal disaster relief funds to repair their facilities on the same terms as other, similarly situated, private nonprofit organizations.

While the Establishment Clause of the First Amendment properly restricts government funds flowing to religious institutions, this restriction is not absolute. Under precedents of the U.S. Supreme Court, religious institutions may receive government aid if it is in the context of a broadly available program with criteria that are neutral toward religion and pose no risks of religious favoritism. This is certainly the case in the context of FEMA disbursing aid to repair buildings in the wake of a natural disaster.

Once FEMA has the policy in place to aid various nonprofit organizations with their building repairs, houses of worship should not be excluded from receiving this aid on the same terms. This is all the more appropriate given the neutral role we have witnessed houses of worship play, without regard to the religion of those affected, in the wake of Sandy and countless previous disasters. Federal disaster relief aid is a form of social insurance and a means of helping battered communities get back on their feet. Churches, synagogues, mosques and other houses of worship are an essential part of the recovery process.

I hope Congress will move quickly to enact your legislation.

Sincerely,

ALAN DERSHOWITZ,
Felix Frankfurter Professor of Law, Harvard Law School.

AGUDATH ISRAEL OF AMERICA,
Washington, DC, February 12, 2013.

Re FEMA Aid and Religious Institutions.

Hon. CHRISTOPHER H. SMITH,
House of Representatives, Washington, DC.

DEAR REPRESENTATIVE SMITH: On behalf of Agudath Israel of America, a national Orthodox Jewish organization, I write to congratulate you on sponsoring H.R. 592, the Federal Disaster Assistance Nonprofit Fairness Act of 2013, which is intended to make clear that houses of worship and other religious institutions are eligible to receive FEMA disaster relief on an equal footing with other eligible nonprofits. A vote on the measure is scheduled for this week.

Over the years—most recently, during Hurricane Sandy—Agudath Israel has been engaged in helping to ensure that religious institutions obtain a full measure of FEMA aid for the repair and restoration of their disaster-damaged facilities. Unfortunately, due to unnecessary and unfair limitations placed on how and when disaster assistance may be provided specifically to religious entities—including houses of worship and religious schools—this has been an ongoing challenge. Without the much needed aid, they often face staggering costs that make rebuilding prohibitive.

There is no reason to treat religious entities in this manner. Supreme Court decisions, as well as executive action, in recent years that have allowed federal aid to go to religious institutions when the assistance is made broadly available and is distributed on a religion-neutral basis—as the FEMA program does.

Religious institutions are an integral part of American communities and play an important role in assisting devastated neighborhoods revitalize and rebuild. After natural disasters, they provide both material and nonmaterial help to those in need. They should be treated like other vital nonprofits and receive federal assistance without prejudice or discrimination.

Sincerely yours,

RABBI ABBA COHEN.

THE COUNCIL OF THE CITY OF NEW YORK
New York, NY, February 12, 2013.

Hon. GRACE MENG,
Congress Member, House of Representatives, Washington, DC.

Hon. CHRIS SMITH,
Congress Member, House of Representatives, Washington, DC.

DEAR CONGRESS MEMBERS MENG AND SMITH: We are writing in support of H.R. 592, the Federal Disaster Assistance Nonprofit Fairness Act of 2013. This important legislation will ensure that houses of worship affected by Hurricane Sandy will be eligible to receive assistance from FEMA to rebuild their damaged properties. At stake are the interests of New Yorkers in the many neighborhoods that were hit hard by Sandy.

Churches, synagogues and mosques serve as a bedrock for our citizens and our communities. They not only provide places for people to worship but operate after-school programs, food pantries, and other critical services. Many of the churches, synagogues and mosques that were damaged by the hurricane are now facing great difficulty reopening their doors.

Although we understand that some oppose this change due to the constitutional requirement of separation of church and state, in this case we don't agree. Recovery from a natural disaster like Hurricane Sandy isn't a matter of state sponsoring religion. It's a matter of helping those in need after one of the worst natural disasters our country has ever seen.

Under such extraordinary and painful circumstances, houses of worship should be eligible to receive aid on the same basis as all other non-profits damaged by the hurricane. We applaud you for your leadership on this matter and are happy to lend our support to your bill.

Sincerely,

CHRISTINE C. QUINN,
Speaker.
PETER F. VALLONE, JR.,
Chair, Public Safety Committee.
FERNANDO CABRERA,
Council Member.

Mr. BARLETTA. Madam Speaker, how much time do I have remaining?

The SPEAKER pro tempore. The gentleman from Pennsylvania has 7½ minutes remaining.

Mr. BARLETTA. Madam Speaker, I wish to yield 1½ minutes to the gentleman from Pennsylvania (Mr. PITTS).

□ 1250

Mr. PITTS. Madam Speaker, I'm pleased to speak on behalf of my friend Mr. SMITH's sensible legislation to help rebuild communities destroyed by Hurricane Sandy.

Federal assistance is intended to make communities whole; and if we leave behind ruined houses of worship, we're taking the soul out of those places. Churches, synagogues, and other houses of worship are an essential piece of any community. They provide shelter in storms, assistance to the needy, and support for families. And they provide essential services and support to people of all faiths.

In previous disasters, including Katrina, the Seattle earthquake and the Oklahoma City bombing, the Federal Government has extended assistance to places of worship. Areas affected by Sandy should be no different.

I'm a strong supporter of the First Amendment, and I believe that this assistance is completely compatible with our Constitution. Assistance will be distributed without prejudice against any particular religion. Government cannot endorse religion, but that does not mean we should discriminate against those of faith during a time of disaster. Recovery cannot be considered successful if sacred places of our community are left empty.

FAMILY RESEARCH COUNCIL,
Washington, DC, February 12, 2013.

U.S. REPRESENTATIVE,
Washington, DC.

DEAR REPRESENTATIVE: On behalf of the Family Research Council (FRC) and the families we represent, I am writing today in strong support of H.R. 592, the ''Federal Disaster Assistance Nonprofit Fairness Act of 2013'' by Reps. Chris Smith (R–NJ) and Grace Meng (D–NY). H.R. 592 would ensure that houses of worship would not be denied the same relief offered to other entities following a major storm or disaster.

Following every disaster, natural and man made that has hit the United States, our houses of worship have been there to help. Following the terrorist attacks of September 11, 2001, churches, relief organizations and Christian organizations went into emergency response mode sending help in the form of money, food, supplies and volunteers. When Katrina struck Louisiana, it was religious entities that helped the victims and refugees despite being affected by the storm as well. This is just as true with the recent Hurricane Sandy that struck our Eastern seaboard.

Houses of worship across the Northeast including many faiths and denominations were among the private nonprofit facilities that sustained damage. However, it was the churches, synagogues, mosques, temples, and other houses of worship throughout communities in New York, New Jersey, Connecticut, and elsewhere that provided relief to many individuals while the federal government seemingly did little.

The Federal Emergency Management Agency's (FEMA) own policies allow for grants to nonprofit organizations where citizens are known to gather and engage in a variety of educational, enrichment, and social activities. However, it is internal FEMA policy that does not believe houses of worship are worthy of the same type of relief.

H.R. 592 is consistent with recent precedents of the Supreme Court of the United States and legal opinions issued by the Office of Legal Counsel of the Department of Justice. We strongly urge your vote for this necessary legislation.

Sincerely,

TOM MCCLUSKY,
Senior Vice President.

Mr. RAHALL. How much time do I have remaining, please, Madam Speaker?

The SPEAKER pro tempore. The gentleman from West Virginia has 8½ minutes remaining.

Mr. RAHALL. I yield 5 minutes to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Madam Speaker, I thank the gentleman for yielding.

I rise in opposition to H.R. 592, the Federal Disaster Assistance Nonprofit Fairness Act of 2013, which would add ''houses of worship'' to the list of eligible entities that can receive direct government assistance from FEMA. While the devastation caused to many communities after Hurricane Sandy is severe, and while I empathize with the desire to assist all who have suffered severe losses, direct government funding for houses of worship, whether for building or rebuilding, remains unconstitutional.

The establishment clause in the First Amendment protects religious freedom by preventing the government from endorsing and funding any one religion—or all religions. And while well intended, this bill would violate years of precedents interpreting the establishment clause.

In Committee for Public Education v. Nyquist, a 1973 case which upheld the principles of Everson v. Board of Education, from 1947, the U.S. Supreme Court held that no taxpayer funds could be used for maintenance and repair of facilities in which religious activities take place, explaining:

If the State may not erect buildings in which religious activities are to take place,

it may not maintain such buildings or renovate them when they fall into disrepair.

Accordingly, longstanding precedent specifically holds that taxpayer funds cannot go to construct, rebuild or repair buildings used for religious activities. The type of buildings that this bill seeks to make eligible for direct government funding—houses of worship—are inherently used for religious activities and the bill would have the effect of unconstitutionally funneling taxpayer money for religious activities.

Other cases have also upheld the precedent established in Everson v. Board of Education and have further clarified the application of the establishment clause to cases of direct religious funding. In Tilton v. Richardson, the Supreme Court unanimously held that a government subsidy used to construct buildings at colleges and universities was constitutional but only if the buildings were never used for religious activities.

In Hunt v. McNair, 1973, the Supreme Court upheld a South Carolina law which established an ''educational facilities authority'' that issued bonds to finance construction and renovation of facilities at educational institutions was upheld because it included a condition that government-financed buildings could never be used for religious worship or instruction.

All of these cases firmly establish that it is constitutionally impermissible for the government to provide direct subsidization of religious institutions for the construction, repair or maintenance of any building that is, or even might be, used for religious purposes. Houses of worship clearly fall within this category of buildings and based on a long line of Supreme Court cases cannot be publicly funded and cannot be recipients of direct grant funding.

Now, there are constitutional ways to assist churches along with other community organizations. Loan programs, such as the government-sponsored small business loan programs available to any business in a community, could also be used by churches. Such loan programs have been upheld as constitutional so long as they are both neutral on their face and in their application and so long as their purpose is not to aid religious institutions specifically.

In Mitchell v. Helms, 2000, the Supreme Court held that loan programs for religious institutions are allowable in some cases. However, such programs are distinguishable from grants and are further distinguishable from the direct funding of church facilities that are, or may be, used for religious purposes. The opinion included that:

> Of course, we have seen special establishment clause dangers when money is given to religious schools or entities rather than indirectly.

Justice O'Connor noted the Court's ''continued recognition of the special dangers associated with direct money grants to religious institutions.'' Now, therefore, H.R. 592 clearly violates the principles prohibiting direct government grants to religious institutions. It also violates any possible exemption that could be available under the theory of neutrality—the standards in this bill applicable to houses of worship are different from the standards for other entities.

While I'm in favor of constitutionally permissible ways to assist churches that have been damaged by natural disasters, this bill clearly does not do so in a constitutionally permissible way; and for this reason, I must oppose the bill and urge my colleagues to instead work together to ensure that all entities affected by Hurricane Sandy can be assisted in an expeditious and constitutionally permissible manner.

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, 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.'' 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. 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,'' 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.

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.

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, serve the entire community (not just congregants), and are used for a range of different activities 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 precedent 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 if you have questions or comments about our concerns.

Sincerely,

LAURA W. MURPHY,
Director, Washington Legislative Office.
DENA SHER,
Legislative Counsel.

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE,
Washington, DC, February 12, 2013.

Re Oppose H.R. 592, the Federal Disaster Assistance Nonprofit Fairness Act of 2013.

DEAR REPRESENTATIVE: Americans United writes to express our strong opposition to H.R. 592, the Federal Disaster Assistance Nonprofit Fairness Act of 2013, which will be debated on the House floor tomorrow, Wednesday, February 13. The sole purpose of the bill is to authorize the Federal Emergency Management Agency (FEMA) to issue direct grants to fund the rebuilding of houses of worship. We oppose this bill because such funding would violate the Constitution and represent a significant shift in longstanding federal policy. Indeed, the George W. Bush

Administration followed the policies of the Reagan, George H.W. Bush, and Clinton Administrations when it disallowed FEMA grants for the rebuilding of ''houses of worship'' after Hurricane Katrina.

As someone who was born and raised at the Jersey shore and whose parents are still making repairs to their home and cleaning up after the storm, I certainly appreciate the needs the community faces. But, I also recognize that the Constitution places certain limits on the government's ability to fund houses of worship. The Tilton/Nyquist line of Supreme Court cases firmly establish that it is constitutionally impermissible for the government to provide aid for the construction and repair of houses of worship. In accordance with these cases, ''the State may not erect buildings in which religious activities are to take place'' and ''it may not maintain such buildings or renovate them when they fall into disrepair.''

The rule set down by the Supreme Court in these cases remains controlling law as neither they, nor the principle behind them, have ever been overruled in any subsequent Supreme Court decision. To the contrary, in its more recent cases examining the constitutionality of government aid to religious institutions, the Supreme Court has maintained that direct money grants create ''special Establishment Clause dangers.'' Congress too just recently recognized the applicability of this precedent when it limited green construction funding in the Recovery Act to buildings in which secular activities take place.

Furthermore, proponents' claims that Tilton and Nyquist are inapplicable and that Congress should instead look to free speech forum and in-kind aid cases must be rejected. The Supreme Court has squarely held that free speech forum cases are inapposite to federal aid cases and that money grants are distinct from in-kind funds.

It is also important to note that houses of worship, like most non-profit organizations and businesses, are eligible for government loans—just not direct grants—to rebuild. In addition, houses of worship are not the only nonprofits that are ineligible for direct grants for reconstruction. To the contrary, only nonprofits with facilities that are used for emergency, essential, and government-like activities are eligible. And, eligible facilities, such as community centers, must also be open to the general public. To say that houses of worship are singled out among all other non-profits, therefore, is untrue. It is similarly inaccurate to claim that FEMA grants should be extended to houses of worship because the grants are akin to ''general government services,'' such as police or fire. FEMA grants—unlike general government services—are not available to every business, nonprofit, private residence, or other building.

Although it may not seem easy in times of tragedy to tell those seeking aid that they are ineligible for government grants, the bar on the government rebuilding of houses of worship is an important limitation that exists to protect religious freedom for all. It upholds the fundamental principle that no taxpayer should be forced to fund a religion with whom he or she disagrees and that the government should never support building (''establishing'' religion in its most basic form) religious sanctuaries. And, it protects against the government favoring, or creating the perception of favoritism for, certain religions over others.

Houses of worship are special in our country and our constitution. They are both the place where worship takes place, and, adorned with religious symbols and iconography, are themselves expressions of worship. Accordingly, they are accorded special protections—exemptions, accommodations, and tax deductions. Restrictions on government funding of religion is also a special protection—they protect the conscience of the individual taxpayer, safeguard the autonomy of the religious institution, and ensure an equal playing field for all religions by prohibiting the government from playing favorites.

For the reasons listed above, we urge you to oppose H.R. 592.

Sincerely,

MAGGIE GARRETT,
Legislative Director.

HINDU AMERICAN FEDERATION,
Washington, DC, February 12, 2013.

Re Please Oppose H.R. 592, the Federal Disaster Assistance Nonprofit Fairness Act of 2013.

DEAR REPRESENTATIVE, We at the Hindu American Foundation (HAF), a 501(c)(3) advocacy organization, write to express our deep concern about H.R. 592, the Federal Disaster Assistance Nonprofit Fairness Act of 2013, sponsored by Congressman Chris Smith (R–NJ). The act provides for direct grants to fund the rebuilding of ''houses of worship.'' We believe such funding violates the Constitution and represents a significant shift in longstanding federal policy. As such, HAF opposes H.R. 592.

We believe constitutionally problematic because the Supreme Court has long held that taxpayer funds cannot go to construct, rebuild, or repair buildings used for religious activities, including houses of worship without invoking ''special Establishment Clause dangers.'' In fact, the controlling law proscribing such funding was set down by the Supreme Court in three major cases—Tilton v. Richardson, Hunt v. McNair, and Committee for Public Education v. Nyquist. Even Congress has recognized the applicability of this precedent when green construction funding in the Recovery Act was limited to buildings in which secular activities take place. Past administrations, from George W. Bush to Ronald Reagan, have also all recognized that direct financial support to build and reconstruct houses of worship raises serious Establishment Clause concerns.

There are some government grant programs that benefit other non-profit facilities, such as the Stafford Act. But these grants are limited to only ''educational, utility, irrigation, emergency, medical, rehabilitation, and temporary or permanent custodial'' facilities,'' and ''any private nonprofit facility that provides essential services of a governmental nature to the general public.'' Even among potentially eligible facilities, there are prohibitions on funding structures used for religious purposes. That houses of worship are amongst non-profit facilities which sustain damage and destruction wrought by natural disasters, is a sad reality. However, providing direct funding for rebuilding, as Sec 3 of H.R. 592 seeks to do, would be unprecedented, would unnecessarily entwine government with religion, and ultimately would threaten the autonomy of religion.

This is not to suggest that houses of worship are not deserving or in need of assistance after a natural disaster; only that direct federal funding should not be granted for such uses. There are many government loans, which houses of worship could apply for should they choose. The SBA Disaster Loan Program, for example, provides loans of up to $2 million to cover losses that are not fully covered by insurance, and they can be used to reconstruct or repair property damaged after a disaster.

Since its inception, the Hindu American Foundation (HAF) has made legal advocacy one of its main areas of focus. From issues of religious accommodation and religious discrimination to defending fundamental constitutional rights of free exercise and the separation of church and state, HAF has educated Americans at large about various aspects of Hindu belief and practice in the context of religious liberty, either as a party to the case or an amicus curiae. These have included a successful suit against the State of South Carolina over a special Christian license plate mandated by the state's legislature, and amicus briefs filed before the U.S. Supreme Court in cases involving the public display of the Ten Commandments and legislative prayer in which the county allowed only those prayers which invoked a Judeo-Christian deity.

HAF seeks to be a resource for your office with regards to matters involving the Establishment Clause. Please feel free to reach out us should you need further clarification to the facts presented in this letter.

Respectfully,

SUHAG A. SHUKLA, ESQ.,
Executive Director/Legal Counsel.

BAPTIST JOINT COMMITTEE
FOR RELIGIOUS LIBERTY,
Washington, DC, February 12, 2013.

Re Oppose H.R. 592, the Federal Disaster Assistance Nonprofit Fairness Act of 2013.

DEAR REPRESENTATIVE: On behalf of the Baptist Joint Committee for Religious Liberty (BJC), a 76-year-old agency dedicated to defending and extending religious freedom for all, I am writing to express our opposition to H.R. 592, to be considered on the floor tomorrow, Wednesday, February 13. The BJC, supported by fifteen national Baptist bodies and hundreds of congregations and individual supporters, believes religion is best served when it is neither advanced nor inhibited by government. H.R. 592, which would authorize FEMA to provide houses of worship with direct grants of taxpayer funds, would flout well-established constitutional principles and harm religious liberty.

The First Amendment's Establishment Clause prohibits government from providing outright grants or similar financial support to churches and other houses of worship. Supreme Court jurisprudence has been clear on this point, having repeatedly reaffirmed the principle that direct monetary contributions of taxpayer dollars to religious institutions create ''special Establishment Clause dangers.'' Simply put, we do not allow taxpayer dollars to build churches; we likewise should not allow taxpayer dollars to be used to rebuild churches.

The damage wrought upon the Northeast by Hurricane Sandy is an instance in which our moral and humanitarian instincts may seem at odds with the constitutional requirement of no-establishment. Happily, we have ways to empathize with and provide aid to churches and other religious organizations damaged by the terrible storm. Repairs may be financed by denominational efforts, private foundation grants and contributions of the faithful. Additionally, insurance proceeds are available for rebuilding efforts, and churches and houses of worship may be eligible to obtain low-interest, long-term loans under the Small Business Administration disaster loan program for damages not covered by insurance.

Natural disasters and other times of crisis serve as a call to action for citizens of faith. When we answer that call using voluntary, private donations, we reflect the very best of America's longstanding commitment to religious liberty for all. Public funding of houses of worship threatens to undermine religious autonomy and impermissibly involve government in the private affairs of religious bodies. It is simply not a good idea—however

our heartstrings are tugged—to give churches access to the public till. H.R. 592 would do just that, and we therefore urge you to oppose it.

Sincerely,

NAN FUTRELL,
BJC Staff Counsel.

Mr. RAHALL. Madam Speaker, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON LEE).

Ms. JACKSON LEE. Madam Speaker, I absolutely agree with my colleagues of the necessity of an absolute firewall around the protection of the First Amendment. And I do believe that Members understand the sacred aspect of freedom of religion and the separation of church and state.

But I rise today to support H.R. 592, and I support it so that it can be considered by the Senate and that we can reinforce the distinctive separation between church and state. But coming from Hurricane, if you will, Valley, coming from the gulf, living through Hurricane Rita and Hurricane Katrina, the pain I saw that places of worship, of any kind, were devastated, the members are taxpayers. And for all that we could do, we could never get those places to be restored.

The small business loan program does not work because many of our churches are just that, they give their money to the poor. They are not rich institutions. That is the bulk of places of worship no matter what your faith may happen to be.

And as the Federal Emergency Management Agency does, in fact, support nonprofits, I would argue to the authors of this bill whether or not they would be open to ensure that the funding is specifically for the devastation that occurred on that specific natural disaster, that there was a time limit, that there were specific items of which the church—or the place of worship, let me be general—could utilize it for.

I come to the floor because I have lived the pain of pastors, I have lived the pain of rabbis, imams and priests who have suffered the devastation of their faith. It is not a fault of their own.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mr. RAHALL. Madam Speaker, the gentlewoman is making such a persuasive case, I yield her all the balance of my time.

The SPEAKER pro tempore. The gentlewoman is recognized for 1½ minutes.

Ms. JACKSON LEE. I thank the distinguished gentleman for his kindness. Let me thank the ranking member very much.

I think we can make this work. And I also want to just mention an anecdotal story: when we had Hurricanes Katrina and Rita, the places of worship opened their doors to the surviving members out of Louisiana or survivors out of Louisiana and just opened their doors.

□ 1300

They had leaking roofs. They were damaged. But in Texas, they opened their doors. We took a quarter of a million, and they opened their doors. They put cots up, and they fed them. All of those items could not be reimbursed.

We saw places of worship—no matter what their faith—literally shut down. They just could not survive because they had given their all with their leaking roof, their non-resources to give food in a place that these people could stay.

So in this instance, having walked through a number of disasters, from the tragedy of 9/11, a heinous manmade disaster, to every hurricane that we've had, including the tsunami way across the ocean, to see what a natural disaster can do and to preclude these places who can legitimately document—I would even suggest that it be on a reimbursement form. But we can work together so that we can document that what these dollars are used for will be used for the restoration of the physical plant that houses or allows those who are Americans, who pay taxes, and are contributing to this Nation.

I ask my colleagues to consider H.R. 592 and how we can make it better so that it can go forward and help the places of worship.

Mr. BARLETTA. Madam Speaker, I yield 4 minutes to the gentleman from New Jersey (Mr. SMITH).

Mr. SMITH of New Jersey. I thank my good friend for yielding, and I thank the gentlelady from Texas for her very strong and passionate remarks.

I especially again want to thank Congresswoman MENG for her excellent statement and her support and cosponsorship of this important bill.

Let me just say a couple of points to my colleagues. First of all, I will be submitting for the RECORD a very fine analysis by the Becket Fund for Religious Liberty, an outstanding public interest law firm that has done yeoman's work throughout the country on religious liberty.

It's a statement to us as Members of Congress by its leaders. It points out first not only does the Establishment Clause provide no support for FEMA's practice of discriminating against houses of worship, that practice itself runs afoul of the First Amendment by discriminating against religious institutions.

Second, the bill you have proposed will not lead to Establishment Clause violations because no act of Congress can purport to repeal the First Amendment. Arguments to the contrary are constitutional scaremongering.

Eric Rassbach and Daniel Blomberg have authored again a very important contribution to this debate.

Madam Speaker—and Ms. MENG mentioned this earlier and it bears repeating—in letters of support for H.R. 592, Harvard Professor Alan Dershowitz concludes:

> Religious institutions may receive government aid if it is in the context of a broadly available program with criteria that are neutral toward religion and pose no risk of religious favoritism.

He states further:

> Once FEMA has a policy in place to aid various nonprofit organizations with their building repairs, houses of worship should not be excluded from receiving this aid on the same terms.

This is all the more appropriate given the neutral role that we have witnessed houses of worship play without regard to religion to those afflicted in the wake of Sandy and countless previous disasters.

Federal disaster relief aid in the form of social insurance and other means of helping battered communities get them back on their feet. Churches, synagogues, mosques, and other houses of worship are an essential part of the recovery process.

Madam Speaker, religious liberty scholar Professor Douglas Laycock of the University of Virginia School of Law wrote a letter endorsing H.R. 592 and said in part:

> Charitable contributions to places of worship are tax deductible without significant controversy, though the tax benefits to the donor are like a matching grant from the government. These deductions have been uncontroversial because they're included without discrimination in a much broader category of all not-for-profit organizations devoted to charitable, educational, religious, or scientific purposes. The neutral category here is equally broad; to include places of worship in disaster relief is neutral. To exclude them would be affirmatively hostile. There is no constitutional obstacle to including them.

That is according to Professor Laycock of the University of Virginia School of Law, a preeminent expert on these matters.

Madam Speaker, houses of worship are an integral, irreplaceable part of the contour and fabric of our communities. Like any other private nonprofit organization, their recovery is essential to the recovery of neighborhoods, towns, and States. They should not be excluded from Federal programs that ensure community recovery, especially since they so selflessly provide assistance to all in need.

In conclusion, Madam Speaker, this legislation has been backed by a number of important organizations, including the Union of Orthodox Jewish Congregations of America, the United States Conference of Catholic Bishops, the National Association of Evangelicals.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. BARLETTA. I yield the gentleman an additional 30 seconds.

Mr. SMITH of New Jersey. Just to underscore for my colleagues the broad support that this has, the American Jewish Committee has also supported it, the Family Research Council. As I said earlier, the Becket Fund and so many others have written very extensive remarks in favor of it.

I do hope there will be very strong support for this important legislation. It's a matter of inclusion to stop current-day, present-day exclusion.

MEMORANDUM

To: Interested Parties

From: Nathan J. Diament, Exec. Director of Public Policy

Date: February 6, 2013

Re Legal Analysis Supporting Including Houses of Worship, Among Private Nonprofit Facilities, Eligible for Federal Disaster Relief Funds Administered by FEMA Under the Stafford Act.

Conclusion: The Establishment Clause does not bar the award of federal grants to houses of worship for the repair of facilities damaged in a natural disaster, in the context of the Stafford Act's ''private nonprofit facility'' aid program.

I.

A. BACKGROUND

The Robert T. Stafford Disaster Relief and Emergency Assistance Act provides that the Federal Emergency Management Agency (FEMA) may provide funding, through its Public Assistance program, to restore facilities of certain private nonprofit organizations which were damaged in a natural disaster. 42 U.S.C. 5122, 5172.

The private nonprofit organizations eligible for such aid include those which provide ''critical services'' (ie: utilities, hospitals and schools) and those which provide ''essential services'' (ie: museums, community centers, libraries, day care centers and more). The Stafford Act does not explicitly include or exclude houses of worship from eligibility for public assistance. In its regulations and policies, FEMA has imposed restrictions on eligibility for aid to houses of worship. FEMA excludes facilities whose ''primary use'' is religious from eligibility.

It is worth noting an illustrative example of FEMA's unequal policy. One eligible category of nonprofit providing ''essential services'' is community centers. FEMA policy defines these entities as ''a gathering place for a variety of social, educational . . . and community service activities.'' FEMA policy describes a broad array of activities that fit this definition—but excludes a facility that hosts the very same activities if that facility and those activities are in a house or worship in a religious context.

FEMA's exclusion of houses of worship from eligibility cannot be exclusively on constitutional grounds because, as noted, FEMA awards aid to religious entities that operate what it deems to be eligible nonprofits. FEMA's exclusion is also not on statutory grounds as the statute does not explicitly exclude houses of worship.

FEMA's policy is unfair, discriminatory and not required by constitutional jurisprudence.

B. POSSIBLE CONSTITUTIONAL CONCERNS

Those who would contend that providing government funds for the repair of houses of worship is barred by the Constitution would argue that a two-part rule governs direct financial support of religious institutions. First, that direct aid may be given to ''nonpervasively sectarian'' religious institutions, provided the aid is not used to fund specifically religious activity and is channeled exclusively to secular functions. Second, that there are institutions—''pervasively sectarian'' institutions—in which ''religion is so pervasive that a substantial portion of [their] functions are subsumed in the religious mission.'' (*Hunt* v. *McNair*, 413 U.S. 734, 743 (1973)). The opponents would further contend that, because houses of worship would qualify as ''pervasively sectarian'' institutions, in which the ''secular and religious functions'' are ''inextricably intertwined,'' the government may not provide direct aid to them ''with or without restrictions,'' because the aid will inevitably end up advancing religion. (*Tilton* v. *Richardson,* 403 U.S. 672 (1971), and *Committee for Public Educ.* v. *Nyquist,* 413 U.S. 756 (1973)).

In addition, the opponents of fair inclusion of houses of worship would contend that to the extent that it is possible to distinguish between the religious and secular, any governmental effort to separate out the facilities and functions that engage in exclusively religious activities could well involve the kind of monitoring of a religious entity otherwise prohibited by the Establishment Clause. Opponents would again cite *Tilton* and *Nyquist*, which imposed certain restrictions on the government's provision of construction, maintenance, and repair aid to properties used by religious educational institutions.

As the following discussion will demonstrate however, in the context of disaster response and relief, these contentions are inconsistent with current constitutional jurisprudence.

II

A. GENERAL CONSTITUTIONAL PERSPECTIVE

A proper reading of Supreme Court decisions and jurisprudence developed in the decades since *Tilton* and *Nyquist* clearly lead to the conclusion that providing federal grants to houses of worship, among many types of nonprofits, as part of a broad disaster relief program, is constitutionally acceptable. Most notably, the Supreme Court's ruling in *Mitchell* v. *Helms*, 550 U.S. 793 (2000), explicitly undermined the continued application of *Tilton* and *Nyquist*.

First, Congress may legitimately conclude that the federal government has a secular interest in aiding a community's recovery from a natural disaster, that repairing damaged private nonprofit facilities is an essential component of that recovery and that houses of worship are among those nonprofit facilities which should be aided.

Second, the public assistance grants are not an isolated initiative designed to aid religion—it is but one part of a much larger legislative effort to assist a disaster stricken region with its recovery. In this critical way, it is quite distinguishable from the targeted aid programs considered in the *Tilton* and *Nyquist* cases.

Third, the aid to houses of worship is within the context of the Stafford Act's broader provision of aid to nonprofit entities. In this respect, inclusion of houses of worship is consistent with many existing and past examples of inclusion of religious institutions in broader infrastructure improvement and federal aid programs. Notable examples of such programs include:

i) the Interior Department's ''Save America's Treasures'' program provides grants for the repair and maintenance of historically significant properties, which have included the Boston's Old North Church and Newport's Touro Synagogue;

ii) FEMA awards disaster relief grants to repair facilities under the Stafford Act, 42 U.S.C. 5121–5206, damaged in natural disasters to religious institutions including, for example, a Seattle parochial school;

iii) following the Oklahoma City bombing, Congress authorized FEMA and other federal agencies to provide disaster relief funds to houses of worship on the same basis as all other nonprofit facilities;

iv) the California Missions Preservation Act, P.L. 108–420 (Nov. 30, 2004), authorizes federal grants for restoring colonial era missions in California, many of which are still used for religious worship;

v) Congress has overwhelmingly authorized grants for security upgrades for nonprofits, including houses of worship, under the Department of Homeland Security's UASI program;

and many other examples abound.

Therefore, a federal disaster relief program which includes houses of worship among its eligible grantees cannot be materially distinguished from other aid programs that are constitutional under longstanding precedents establishing that religious institutions are fully entitled to receive widely available government benefits and services.

B. DISASTER RELIEF AND REPAIR GRANTS ARE ''GENERAL GOV'T SERVICES''

It is highly significant that eligibility for FEMA's public assistance grants extends to a broad class of beneficiaries, defined without reference to religion and including both public and private institutions. Ever since 1947, the year of its decision in *Everson*, the Supreme Court has indicated that religious institutions are entitled to receive ''general government services'' made available on the basis of neutral criteria. 330 U.S. at 17. *Everson* held that the Establishment Clause does not bar students attending religious schools from receiving generally available school busing services provided by the government. In reaching its decision, the Court explained that even if the evenhanded provision of busing services increased the likelihood that some parents would send their children to religious schools, the same could be said of other ''general state law benefits'' that were even more clearly constitutional because they were equally available to all citizens and far removed from the religious function of the school. *Id*. at 16. As examples, the Court cited ''such general government services as ordinary police and fire protection, connections for sewage disposal, public highways and sidewalks,'' concluding:

''cutting off church schools from these services, so separate and so indisputably marked off from the religious function, would make it far more difficult for the schools to operate. But such is obviously not the purpose of the First Amendment. That Amendment requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions, than it is to favor them.''

Id. at 17–18. *See also id*. at 16 (''[The state] cannot exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, *because of their faith, or lack of it,* from receiving the benefits of public welfare legislation. . . . [W]e must be careful, in protecting the citizens of New Jersey against state-established churches, to be sure that we do not inadvertently prohibit New Jersey from extending its general state law benefits to all its citizens without regard to their religious belief.'').

Federal disaster aid is analogous to aid that qualifies as ''general government services'' approved by the Court in *Everson*.

As the Supreme Court explained in *Widmar* v. *Vincent*, 454 U.S. 263, 274 (1981), ''[t]he provision of benefits to so broad a spectrum of groups is an important index of secular effect.'' *Accord Zobrest* v. *Catalina Foothills Sch. Dist.,* 509 U.S. 1, 8 (1993) (''we have consistently held that government programs that neutrally provide benefits to a broad class of citizens defined without reference to religion are not readily subject to an Establishment Clause challenge''); *Board of Educ. of Kiryas Joel Village Sch. Dist.* v. *Grumet*, 512 U.S. 687, 704 (1994) (''we have frequently relied explicitly on the general availability of any benefit provided religious groups or individuals in turning aside Establishment Clause challenges''). Thus, the aid here is closely analogous to the provision of ''general'' government aid like that sanctioned by the Court in *Everson*. *See also* Church Arson Prevention Act of 1996, Pub. L. No. 104–155, 110 Stat. 1392

(creating a program that provides low-income reconstruction loans to nonprofit organizations, including churches, destroyed by arson motivated by racial or religious animus). As Justice Brennan expressed the point in *Texas Monthly:* ''Insofar as [a] subsidy is conferred upon a wide array of nonsectarian groups as well as religious organizations in pursuit of some legitimate secular end, the fact that religious groups benefit incidentally does not deprive the subsidy of the secular purpose and primary effect mandated by the Establishment Clause.'' 489 U.S. at 14–15 (plurality opinion) (footnote omitted).

When viewed in the context of disaster response, *Walz* v. *Tax Commission*, 397 U.S. 664 (1970), strongly supports this conclusion. There the Court rejected an Establishment Clause challenge to a property tax exemption made available not only to churches, but to several other classes of nonprofit institutions, such as ''hospitals, libraries, playgrounds, scientific, professional, historical, and patriotic groups.'' *Id*. at 673; *see also id*. at 667 n.1. In upholding the tax exemption, the Court relied in part upon its breadth: the exemption did ''not single[] out one particular church or religious group or even churches as such,'' but rather was available to ''a broad class of property owned by nonprofit, quasi-public corporations.'' *Id*. at 673. As the Court stated in reference to *Everson,* if ''buses can be provided to carry and policemen to protect church school pupils, we fail to see how a broader range of police and fire protection given equally to all churches, along with nonprofit hospitals, art galleries, and libraries receiving the same tax exemption, is different for purposes of the Religion Clauses.'' *Id*. at 671. Thus, just as a broad category of beneficiary institutions was sufficient to sustain the inclusion of religious institutions in the tax benefit in *Walz*—which, after all, substantially benefitted churches' *property*—the breadth of programs funded in the Stafford Act weighs heavily in favor of the constitutionality of including houses of worship.

C. NO RISK OF PERCEIVED ENDORSEMENT OF RELIGION

No reasonable observer would perceive an endorsement of religion in the government's evenhanded provision of funds to repair a house of worship damaged in a natural disaster such as Hurricane Sandy. *See Mitchell,* 530 U.S. at 842–44 (O'Connor, J., concurring in judgment). While it is true that in a narrower direct aid program one could argue that if a school ''uses the aid to inculcate religion in its students, it is reasonable to say that the government has communicated a message of endorsement,'' *Id*. at 843, that is not the case in the context of this broader disaster relief effort. A presumption of governmental endorsement is not present where the aid is provided to a wide array of public and private entities for the sake of recovery from a disaster and where the government is indifferent to the religious or secular orientation of the facility's function. Moreover, we think a reasonable observer—one informed about the purpose, history, and breadth of the program, *see Zelman,* 536 U.S. at 655—would understand that the federal government is not paying for religious activity; it is paying to help devastated communities recover. That is not an endorsement of religion.

D. DISTINCT FROM TILTON AND NYQUIST

Opponents will contend that the Supreme Court's decisions in *Tilton* and *Nyquist,* which involved construction and maintenance aid to religious schools, should be read to support the conclusion that FEMA aid to houses of worship violates the Establishment Clause. We disagree.

In *Tilton,* the Court sustained the provision of federal construction grants to religious colleges insofar as the program at issue barred aid to facilities ''used for sectarian instruction or as a place for religious worship,'' but invalidated such grants insofar as the program permitted funding the construction of buildings that might someday be used for such activities. *See* 403 U.S. at 675, 683 (plurality opinion) (citations omitted). The Court concluded that a 20–year limitation on the statutory prohibition on the use of buildings for religious activities was insufficient because ''[i]f, at the end of 20 years, the building is, for example, converted into a chapel or otherwise used to promote religious interests, the original federal grant will in part have the effect of advancing religion.'' *Id*. The Court therefore held that the religious use restriction had to run indefinitely. *Id*.

Similarly, *Nyquist* involved a program that provided maintenance and repair grants to religious elementary and secondary schools. The grants at issue were limited to 50 percent of the amount spent for comparable expenses in the public schools, but the Court invalidated the program. ''No attempt [was] made to restrict payments to those expenditures related to the upkeep of facilities used exclusively for secular purposes,'' the Court stated, and the 50 percent restriction would not necessarily prevent rehabilitation of entire religious schools. 413 U.S. at 774. The Court thus concluded that such aid would have the effect of advancing religion, in violation of *Lemon*'s second prong. *Id*.

These holdings have been severely undermined and limited. See Mitchell v. Helms, 530 U.S. 793, 856–57 (2000) (O'Connor, J., concurring in judgment).

A broad reading and application of *Tilton* and *Nyquist* does not apply here for several reasons. First, *Tilton* and *Nyquist* are in considerable tension with a more recent line of cases holding that the Free Speech Clause does not permit the government to deny religious groups equal access to *the government's own property,* even where such groups seek to use the property ''for purposes of religious worship or religious teaching.'' *Widmar* v. *Vincent,* 454 U.S. 263, 265 (1981). *See Lamb's Chapel* v. *Center Moriches Sch. Dist.,* 508 U.S. 384, 394 (1993); *Capital Square Rev. & Advisory Bd.* v. *Pinette,* 515 U.S. 753 (1995); *Good News Club* v. *Milford Central Sch.,* 533 U.S. 98 (2001); *see also Westside Community Bd. of Educ.* v. *Metgens,* 496 U.S. 226 (1990). Providing religious groups with access to property is a form of direct aid, and allowing such groups to conduct worship services plainly ''advances'' their religious mission. The Court, however, has consistently refused to *permit* (let alone require) state officials to deny churches equal access to public school property on the basis of these officials' argument ''that to permit its property to be used for religious purposes would be an establishment of religion.'' *Lamb's Chapel*, 508 U.S. at 394.

The Supreme Court's Establishment Clause jurisprudence has greatly evolved since the Court's decisions in *Tilton* and *Nyquist* were rendered, and many of the legal principles that supported those decisions have been discarded. In 1985, for example, the Court struck down programs under which the government provided religious and other schools with teachers who offered remedial instruction to disadvantaged children. *See Aguilar* v. *Felton,* 473 U.S. 402 (1985); *School Dist. of Grand Rapids* v. *Ball*, 473 U.S. 373 (1985). The Court reasoned that teachers in the program might ''become involved in intentionally or inadvertently inculcating particular religious tenets or beliefs.'' *Ball*, 473 U.S. at 385. In *Agostini* v. *Felton*, 521 U.S. 203, 223 (1997), however, the Court overruled *Aguilar* and substantial portions of *Ball*, explaining that the Court had abandoned the presumption that placing public employees in religious schools ''inevitably results in the impermissible effect of state-sponsored indoctrination or constitutes a symbolic union between government and religion.'' Similarly, in the 1970s the Court held that the state could not provide any ''substantial aid to the educational function of [religious] schools'' reasoning that such aid ''necessarily results in aid to the sectarian school enterprise as a whole.'' *Meek* v. *Pittenger*, 421 U.S. 349, 366 (1975); *accord Wolman* v. *Walter*, 433 U.S. 229, 250 (1977). In *Agostini* and *Mitchell*, however, the Court expressly abandoned that view, overruling *Meek* and *Wolman*. *See Agostini*, 521 U.S. at 225; *Mitchell*, 530 U.S. at 808, 835–36 (plurality opinion); id. at 837, 851 (O'Connor, J., concurring in judgment). In addition, other portions of *Nyquist* have been substantially narrowed or overruled. As the Court stated in *Zelman*, ''[t]o the extent the scope of *Nyquist* has remained an open question in light of these later decisions, we now hold that *Nyquist* does not govern neutral educational assistance programs that, like the program here, offer aid directly to a broad class of individual recipients defined without regard to religion.'' 536 U.S. at 662.

Perhaps more important, recent Supreme Court decisions have brought the demise of the ''pervasively sectarian'' doctrine that comprised the basis for numerous decisions from the 1970s, such as *Tilton* and *Nyquist*. As noted above, that doctrine held that there are certain religious institutions in which religion is so pervasive that *no* government aid may be provided to them, because their performance of even ''secular'' tasks will be infused with religious purpose. That doctrine, however, no longer enjoys the support of a majority of the Court. Four Justices expressly abandoned it in *Mitchell*, *see* 530 U.S. at 825–29 (plurality opinion), and Justice O'Connor's opinion in that case set forth reasoning that is inconsistent with its underlying premises, *see id*. at 857–58 (O'Connor, J., concurring in judgment, joined by Breyer, J.) (requiring proof of *actual* diversion of public support to religious uses to invalidate direct aid to schools and explaining that ''presumptions of religious indoctrination are normally inappropriate when evaluating neutral school-aid programs under the Establishment Clause''). *See also Columbia Union College* v. *Oliver*, 254 F.3d 496, 502–04 (4th Cir. 2001) (explaining that the pervasively sectarian test is no longer valid in light of the holdings of six Justices in *Mitchell*). Justice O'Connor rejected the view that aid provided to religious primary and secondary schools will invariably advance the schools' religious purposes, and that view is the foundation of the pervasively sectarian doctrine.

Such was the reasoning and conclusion reached by a federal district court in a current case highly analogous to the FEMA aid program—*American Atheists Inc.* v. *City of Detroit* DDA, 503 F.Supp.2d 845 (2007). There, plaintiffs challenged Detroit's ''Façade Improvement Plan'' under which the city provided funds to buildings in a particular section of downtown in order to improve their appearance for the Superbowl which was to be held in the city. Three churches received such grants and this was challenged in the lawsuit. The federal court concluded that the program was available to a broad array of buildings and its grant criteria were religion neutral and the FIP was thus constitutional.

For all of these reasons, *Tilton* and *Nyquist* do not control the question at issue in the case of FEMA's public assistance aid to private nonprofit facilities, including houses of worship.

E. SINGLING OUT FAITH-RELATED ENTITIES FOR EXCLUSION RUNS COUNTER TO A PROPER APPLICATION OF THE ESTABLISHMENT CLAUSE

In recent years, Justice Breyer has insightfully invoked the balanced and practical approach to the Establishment Clause previously championed by Justices Goldberg and Harlan. In *Van Orden* v. *Perry*, 545 U.S. 677 (2005), Justice Breyer wrote that ''the Court has found no single mechanical formula that can accurately draw the constitutional line in every case. See *School Dist. of Abington Township* v. *Schempp*, 374 U.S., at 306 (1963) (concurring opinion). Where the Establishment Clause is at issue, tests designed to measure ''neutrality'' alone are insufficient, both because it is sometimes difficult to determine when a legal rule is ''neutral,'' and because ''untutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious.'' Ibid. In proceeding to rule that a display of the Ten Commandments on the grounds of the State of Texas' capitol was acceptable, Justice Breyer argued that, in so many of these cases, context matters. Thus, ''to reach a contrary conclusion here [and declare the display to violate the Establishment Clause], based primarily upon on the religious nature of the tablets' text would, I fear, lead the law to exhibit a hostility toward religion that has no place in our Establishment Clause traditions.''

If we apply Justice Breyer's principled pragmatism to the issue at hand, if Congress and the President decide to appropriate billions of dollars to help private nonprofits rebuild after a natural disaster, but also determine to deliberately exclude houses of worship when they otherwise meet the relevant criteria, such a decision would be the very exhibition of hostility toward religion that the Justices have inveighed against pursuing in the name of the Establishment Clause.

In the wake of Hurricane Sandy and every major disaster within recent memory—churches, synagogues and other houses of worship have been essential in a community's recovery and response effort. Even while the church may have its HVAC system destroyed it will welcome the homeless. Even while the synagogue may have been flooded, it will feed the hungry.

Basic fairness and principles of nondiscrimination, let alone compassion, should compel Congress and the Executive Branch to change policy and declare houses of worship eligible for disaster relief assistance administered by FEMA.

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, AD HOC COMMITTEE FOR RELIGIOUS LIBERTY,
Washington, DC, February 11, 2013.

Hon. CHRIS SMITH,
House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR REPRESENTATIVE SMITH: As the House of Representatives prepares to consider H.R. 592, the Federal Disaster Assistance Act, we write in support of the legislation, which would ensure the fair and equal treatment for houses of worship damaged in a natural disaster.

Your legislation is consistent with Supreme Court jurisprudence, which recognizes the right of religious institutions to receive public financial aid in the context of a broad program administered on the basis of religion-neutral criteria. The bill is not asking for special treatment, just equal treatment that conforms to constitutional protections.

It should be noted that in the aftermath of a natural disaster houses of worship often play an irreplaceable role in the recovery of a community. Discrimination that treats houses of worship as ineligible for federal assistance in the wake of a natural disaster, beyond being a legal violation, hurts the very communities most affected by the indiscriminate force of nature.

The best approach to address questions of eligibility for houses of worship is a permanent clarification of federal law. For this reason we support your bill and ask that it be adopted by Congress.

Sincerely,

MOST REVEREND WILLIAM E. LORI,
Archibishop of Baltimore, Chairman, USCCB Ad Hoc Committee for Religious Liberty.

MOST REVEREND DENIS J. MADDEN,
Auxiliary Bishop of Baltimore, Chairman, USCCB Committee for Ecumenical and Interreligious Affairs.

UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA, INSTITUTE FOR PUBLIC AFFAIRS,

DEAR REPRESENTATIVES SMITH AND MENG: We write to express our strong support for the Federal Disaster Assistance Nonprofit Fairness Act of 2013. Your legislation will ensure the fair and equal treatment for houses of worship damaged in Hurricane Sandy and future natural disasters.

The Stafford Act provides that private nonprofit entities—such as schools, hospitals, museums and community centers—damaged in a natural disaster may receive financial grants from FEMA to repair their buildings. The Act does not list houses of worship among its list of examples of nonprofits so eligible; neither does the Act exclude houses of worship in any way.

In the aftermath of Sandy, as with so many other natural disasters, churches, synagogues and other houses of worship have been places offering essential response services to people in need—even while the church or synagogue itself is damaged.

It is, therefore, entirely appropriate for FEMA's aid program for private nonprofits to assist houses of worship with their rebuilding needs. Moreover, if houses of warship are excluded from this otherwise religion neutral program—that unfair treatment would be improper anti-religious discrimination.

Current Supreme Court jurisprudence makes clear that religious institutions may receive government financial aid in the context of a broad program administered on the basis of religion neutral criteria. This is why houses of worship and other religious nonprofits can, for example, currently receive grants from DHS to improve their security and the Interior Department for historic preservation.

Your legislation clarifying the Stafford Act is consistent with these precedents and policies and we urge the House of Representatives to pass this measure as soon as possible.

Thank you,

YEHUDA NEUBERGER.
NATHAN DIAMENT.

NJ STATE ASSOCIATION OF JEWISH FEDERATIONS,
February 11, 2013.

Hon. CHRISTOPHER H. SMITH,
House of Representatives, Washington, DC.

DEAR CONGRESSMAN SMITH: The N.J. State Association of Jewish Federations and its eleven constituent federations and their network of affiliated and beneficiary agencies are pleased to acknowledge your leadership in introducing H.R. 592, the Federal Disaster Assistance Nonprofit Fairness Act. We support the legislation which would authorize those houses of worship impacted and devastated by Hurricane Sandy to receive assistance through the recently enacted Sandy relief funding.

Our houses of worship, as with other faith based institutions, play a crucial role every day providing stability, comfort and serving as a community resource. With the hurricane's impact still very much in evidence for our state, we have needed houses of worship more than ever to ease the path of recovery for community and each of their individual members. Even though the church, mosque, temple or synagogue may have been physically damaged, houses of worship continue to provide essential response services to people in need.

Jewish Federations in those areas that suffered most from Sandy's might assisted their synagogues and congregants to overcome the immediate crisis through financial aid, respite and relief while securing dozens of volunteers to help rebuild damaged buildings in the greater local community. The Jewish Federation of Monmouth County, as one of the communities hardest hit by the hurricane, the relief funding provided by it and its partner Federations in the state have enabled Monmouth to meet a wide array of human service needs in the county. Their approach has been strategic, identifying both short-term and long-term needs and dislocations following the storm, empowering our partners in their efforts to respond, and connecting those who could most benefit to these resources. Most importantly, the Federation has been proactive in spreading word throughout Monmouth County that the Jewish community is here to help in storm recovery efforts.

Jewish Family and Children Service organizations replaced lost clothing, provided gift cards for food, counseled Sandy victims easing their anxiety and emotional pain and made available flexible repayment loans to help families and businesses recover. The Jewish Federation of Greater Metro West has provided $50,000 to JFS agencies to assist with the medium and long term needs. Chabad of Hoboken received $5,000 for counseling assistance, while federation is also developing a partnership with Union Beach, a community outside their catchment area and will provide $10,000 toward relief efforts there.

Many of our synagogues suffered severe damage and lack the resources to rebuild. Jewish Federations, while helping houses of worship serve individuals in need, do not have the resources to support capital needs. Assistance from the Jewish Federation of Monmouth County helped ''Chabad of the Shore'' roof and carpet repaid, as well as providing plywood to cover vulnerable windows. Temple Shalom in Aberdeen had roof damage which was repaired through Federation assistance. There were a number of other similar actions of relief provided by the Monmouth federation.

This is not only the Jewish community experience, but one shared with houses of worship of all religions. It is entirely appropriate for FEMA's aid program for private nonprofits to assist houses of worship with

their rebuilding and community outreach needs.

For all the reasons stated, herein, the passage of H.R. 592 will bring equity in a time of crisis and will recognize the unselfish sacrifices made by our houses of worship in response to an event that left devastation in its wake and tragic consequences for its victims. Accordingly, the NJ State Association of Jewish Federations is pleased to support the enactment of the Federal Disaster Assistance Nonprofit Fairness Act.

Sincerely,

RUTH COLE,
President.
JACOB TOPOREK,
Executive Director.

DIOCESE OF TRENTON,
Trenton, NJ, February 11, 2013.

Hon. CHRIS SMITH,
Rayburn House Office Building, House of Representatives, Washington, DC.

DEAR CONGRESSMAN SMITH: I understand that you will soon be presenting a bill to Congress which would provide federal funding in the form of grants to houses of worship which were devastated by the hurricane last October.

I applaud your efforts and offer my full support for this bill. Volunteers from the Catholic churches as well as other denominations were on the front line with food, clothing, shelter and other basic necessities as soon as the storm passed. They were surely the first responders and just as surely will be there as long as they are needed. To exclude houses of worship from which these volunteers have come is a grave injustice.

On behalf of the clergy, religious and lay people who live and work within the Diocese of Trenton, I thank you for being our advocate and for taking the initiative to introduce this bill on behalf of all faith communities.

Sincerely,

MOST REVEREND DAVID M.
O'CONNELL, C.M.,
Bishop of Trenton.

CONGREGATION SONS OF ISRAEL,
Lakewood, NJ, February 12, 2013.

Hon. CHRISTOPHER H. SMITH,
Rayburn House Office Building, House of Representatives, Washington, DC.

DEAR CONGRESSMAN SMITH: As the House of Representatives prepares to consider H.R. 592, the Federal Disaster Assistance Nonprofit Fairness Act, we write in support of the important legislation that you have introduced. Thank you for your effort to ensure the fair and equal treatment for houses of worship in the aftermath of this devastating natural disaster.

It is universally acknowledged that houses of worship play a central role in the recovery of a community in the aftermath of any natural disaster. Faith-based volunteers are the first responders providing aid and comfort to those who have lost so much, and they persevere with their efforts as long as help is needed. To exclude the houses of worship from where these volunteers have come from government assistance would be a grave injustice.

Discrimination that treats houses of worship as ineligible for federal assistance in the wake of a natural disaster, beyond being a legal violation, hurts the very communities most affected by the devastating storm.

We strongly feel that you have identified the best approach to address recurring questions of eligibility for houses of worship by proposing a permanent clarification of federal law. We therefore strongly support your bill and ask that it be adopted by Congress.

With much appreciation for your efforts,

RABBI SAMUEL TENDLER,
Congregation Sons of Israel.

NATIONAL ASSOCIATION
OF EVANGELICALS,
February 12, 2013.

Hon. CHRIS SMITH,
Hon. GRACE MENG,
House of Representatives, Washington, DC.

DEAR REPRESENTATIVES SMITH AND MENG: Thank you for your efforts to correct a misguided policy of the Federal Emergency Management Agency (FEMA) that currently bars houses of worship from receiving federal disaster assistance for rebuilding damaged structures. Your work to insure that government assists private nonprofit entities, including houses of worship, in an evenhanded way is very much appreciated.

In any major natural disaster, churches, synagogues and other houses of worship play indispensable roles in providing comfort and relief to those who have experienced loss. They bring food, water, clothing and other essential supplies to those who are stranded or displaced. They care for the wounded and comfort the bereaved. Our communities are stronger because they are there.

When the houses of worship themselves have been damaged, the effects are often felt far beyond the membership. When an important part of the community infrastructure is damaged, the entire community suffers. Many times, churches continue serving their communities even after their own buildings have been destroyed.

FEMA does not violate the establishment clause when it administers a religion-neutral program of support for the rebuilding of community infrastructure. In fact, if religious organizations are specifically excluded when comparable secular organizations are included, the government's practice would be discriminatory. This is the clear conclusion of Supreme Court jurisprudence, and is consistent with current federal practice in the Department of Homeland Security and the Interior Department.

Thank you for your leadership in working to restore fairness to FEMA disaster assistance.

Sincerely,

GALEN CAREY,
Vice President, Government Relations.

BAIS KAILA TORAH PREPARATORY
HIGH SCHOOL FOR GIRLS,
Lakewood, NJ, February 12, 2013.

Hon. CHRISTOPHER H. SMITH,
Rayburn House Office Building, House of Representatives, Washington, DC.

DEAR CONGRESSMAN SMITH: I hope that all is well with you and your family. With your introduction of H.R. 592, the Federal Disaster Assistance Nonprofit Fairness Act, we see that you are again taking the initiative to do what is right, especially considering that houses of worship are always at the forefront of the recovery process when communities are hit with natural disasters. It is therefore very appropriate that they be able to participate on an equal footing with other nonprofits in receiving federal aid, as a means of helping damaged communities get back on their feet.

As I understand it, the Federal Emergency Management Agency is charged with ensuring that communities are prepared for natural disasters, and then responding to facilitate recovery in the wake of such disasters. FEMA has historically provided disaster-related aide to parochial schools damaged by earthquakes. Other examples of federal aid to houses of worship, includes grants for security improvements from the U.S. Department of Homeland Security and historic preservation grants from the U.S. Department of the Interior. Your legislation, H.R. 592, would simply ensure that the Stafford Act is consistent with these policies.

In conclusion, once again we thank you for your leadership and advocacy and we look forward to seeing the passage of H.R. 592.

Sincerely yours,

RABBI YISROEL SCHENKOLEWSKI,
Dean.

THE JEWISH FEDERATIONS
OF NORTH AMERICA,
Washington, DC, February 11, 2013.

Hon. JOHN A. BOEHNER,
Speaker of the House of Representatives, Capitol Building, Washington, DC.
Hon. NANCY PELOSI,
House Democratic Leader, House of Representatives, Capitol Building, Washington, DC.

DEAR SPEAKER BOEHNER AND LEADER PELOSI: The Jewish Federations of North America (JFNA) is writing to express our support for H.R. 592, the Federal Disaster Assistance Nonprofit Fairness Act. This bill, scheduled to be on the suspension calendar this coming Wednesday, February 13, 2013 and co-sponsored by Representatives Chris Smith (R–NJ) and Grace Meng (D–NY), will ensure the fair and equal treatment for houses of worship damaged in Hurricane Sandy.

JFNA is the national organization that represents and serves 154 Jewish Federations and 300 independent Jewish communities across North America. In their communities, Jewish Federations and volunteers in the central address for fundraising and an extensive network of Jewish health, education and social services. In response to Hurricane Sandy Jewish Federations have raised almost $7 million in direct Sandy-related relief and allocated almost $11 million to Sandy victims in Connecticut, New Jersey and New York.

The Stafford Act provides that private nonprofit entities—such as schools, hospitals and community centers—damaged in a natural disaster may receive financial grants from FEMA to repair their buildings. The Act does not list houses of worship among its list of examples of nonprofits so eligible; neither does the Act exclude houses of worship. To the extent that FEMA has provided aid to eligible programs run by houses of worship, the aid has not been provided on the same terms as the aid provided to other eligible nonprofits.

In the aftermath of Sandy, as with so many other natural disasters, churches, synagogues and other houses of worship are locations where essential response services have been provided to people in need—even while the church or synagogue itself has suffered extensive damage. It is, therefore, entirely appropriate for FEMA's aid program for private nonprofits to assist houses of worship with their rebuilding needs. Moreover, if houses of worship are excluded from this otherwise religion neutral program—that unfair treatment would be improper anti-religious discrimination. Additionally, for almost 30 years, it has been FEMA's mission to lead America to prepare for, prevent, respond to, and recover from domestic disasters. This has led to FEMA's provision of disaster-related aide to parochial schools damaged by earthquakes.

Current Supreme Court jurisprudence makes clear that religious in receive government financial aid in the context of a broad program administered on the basis of religion neutral criteria. This is why houses of worship and other religious nonprofits can, and do, currently receive grants from DHS to improve their security and the Interior Department for historic preservation.

H.R. 592, the Federal Disaster Assistance Nonprofit Fairness Act, would ensure that the Stafford Act is consistent with these

policies, and we ask that you vote in favor of this legislation.

Sincerely yours,

WILLIAM C. DAROFF,
Vice President for Public Policy & Director of the Washington office.

THE BECKET FUND
FOR RELIGIOUS LIBERTY.

Hon. CHRISTOPHER SMITH,
House of Representatives, 2373 Rayburn House Office Building, Washington, DC.

Re FEMA's discriminatory treatment of houses of worship.

DEAR CONGRESSMAN SMITH: You and others have asked us to examine the application of the Establishment Clause of the United States Constitution to the disbursement of federal disaster relief funds to houses of worship damaged in severe weather events such as Superstorm Sandy. In particular, you would like us to examine (1) whether the Federal Emergency Management Agency's practice of not funding repairs to houses of worship is justified by the Establishment Clause grounds, and (2) whether your proposed act preventing FEMA's practice would give rise to Establishment Clause problems.

The answer to both questions is no. First, not only does the Establishment Clause provide no support for FEMA's practice of discriminating against houses of worship; that practice itself runs afoul of the First Amendment by discriminating against religious institutions. Second, the bill you have proposed will not lead to Establishment Clause violations because no Act of Congress can purport to repeal the First Amendment. Arguments to the contrary are constitutional scaremongering.

BACKGROUND

Superstorm Sandy devastated many of the Northeast's coastal cities. The federal government is expected to spend about $60 billion to help restore these hard-hit communities. Yet FEMA has categorically denied foundational elements of those communities—synagogues, churches, mosques, and other houses of worship—access to this otherwise generally-available relief funding. A broad range of nonprofit organizations, including zoos and museums, qualify for disaster-relief grants administered by FEMA. But when religious organizations asked FEMA for the same assistance it provides many other nonprofits, FEMA told them that it considered them ineligible for the grants. This leaves houses of worship like All Saints Church of Bay Head, New Jersey, which was built by shipbuilders in 1889 and now has a sinkhole for a sanctuary, without access to the help that is available to the neighborhood zoo.

Despite acknowledging that religious facilities can meet the threshold aid requirement that the facility be ''used for a variety of community activities,'' FEMA considers ''churches, synagogues, temples, mosques, and other centers of religious worship'' categorically ineligible simply because of their religious use. Nor is this a recent problem: the George W. Bush Administration took the same stance after Hurricane Katrina, based on a federal regulation promulgated in 1990 by the George H.W. Bush Administration. (As noted below, though, the federal government has often departed from this stance to assist houses of worship through neutral and generally available funding programs.)

ANALYSIS

FEMA's discriminatory policy. To justify its discrimination against houses of worship, FEMA has cited arguments asserting that the Establishment Clause of the United States Constitution prevents houses of worship from having equal access to FEMA disaster assistance grants. Others make the same claim. For instance, Barry Lynn of Americans United for Separation of Church and State has stated that, ''even after the devastation of [Superstorm] Sandy,'' the federal government cannot provide relief to destroyed synagogues, churches, and mosques.

But this argument is simply not true. When Lynn recently made a similar argument in an amicus brief to the U.S. Court of Appeals for the Sixth Circuit, the court—in an opinion authored by Judge Sutton—flatly and unanimously rejected the argument. The court noted that long-standing Supreme Court precedent allowed ''churches, synagogues, and mosques'' to receive ''generally available benefits'' like ''police and fire-protection services'' and access to ''sewers and sidewalks.'' The court reasoned that ''[i]f a city may save the exterior of a church from a fire,'' it could certainly provide equal access to government funds that ''help that same church with peeling paint.''

That conclusion is all the more true here, where the problem the government seeks to remedy is not peeling paint but complete devastation. Notably, the Sixth Circuit supported its conclusion by explicitly noting the widespread legal acceptance ''of government programs designed to provide one-time emergency assistance through FEMA . . . to churches devastated by natural disasters.''

Indeed, the federal government—including FEMA—has repeatedly given disaster relief to religious groups in the past. For instance, after Seattle Hebrew Academy was damaged by a major earthquake in 2002, FEMA awarded a disaster relief grant for repair. Before it did so, FEMA asked the Department of Justice's Office of Legal Counsel whether that was constitutionally permissible. OLC's detailed response concluded that ''a FEMA disaster grant is analogous to the sort of aid that qualifies as 'general government services' approved by the [Supreme] Court'' for provision to houses of worship. The OLC letter pointed out that, far from banning equal access to government funding, the First Amendment bans the government from ''deny[ing] religious groups equal access to the government's own property,'' and ''require[s] equal funding'' of religious expression. The letter ended by noting that an argument could be made that ''excluding religious organizations from disaster assistance made available to similarly situated secular institutions would violate the Free Exercise Clause and the Free Speech Clause.''

OLC has likewise approved, and the federal government has permitted, the participation of houses of worship in the Save America's Treasures program, which authorizes matching grants for preservation of properties with historical significance. For instance, the OLC approved a National Park Service grant to restore Boston's Old North Church—a church which is currently used by an active Episcopal congregation and was once used to warn Paul Revere of British military plans. Similar grants have been provided for Atlanta's Ebenezer Baptist Church, where Martin Luther King, Jr., preached, the historic Franciscan missions in California, and Touro Synagogue in Rhode Island. All of those houses of worship needed repairs for damage caused by the ravages of time—why would damage caused by the ravages of Sandy be any different?

Several other federal statutes permit federal funding or support for houses of worship that have been damaged or destroyed. Indeed, after the Oklahoma City bombing, Congress specifically authorized FEMA and other agencies to provide disaster relief to damaged churches on the same basis that any other private nonprofit facilities may receive such aid.

Finally, FEMA's policy of discriminating against houses of worship is itself problematic under the Establishment Clause because it denies religious institutions access to a generally available benefit, solely because they are religious. The Supreme Court has repeatedly held that ''[t]he First Amendment mandates governmental neutrality between religion and nonreligion.'' Singling out religious institutions for special disfavor is not neutral. Similarly, FEMA's approach also creates a potential conflict with federal civil rights law, specifically the Religious Freedom Restoration Act, which forbids government imposition of substantial burdens on religious exercise. As courts have frequently held, denial of a generally available benefit to religious persons because they are religious constitutes a substantial burden on the exercise of religion.

In short, FEMA is wrong to claim that the Establishment Clause—which combats discrimination—justifies its decision to discriminate. It is instead FEMA's discrimination policy that is more likely to trigger scrutiny under the First Amendment and related civil rights laws.

The proposed bill. For the same reasons, it is our opinion that your proposed bill will not raise Establishment Clause problems. Instead, it will alleviate them by offering a way to stop discrimination against houses of worship in federal disaster relief funding.

On the night before your bill was set for a vote, FEMA issued a statement in opposition to the bill. As an initial matter, much of FEMA's three-page statement does nothing more than lay out existing law and reiterate what we've established above: Congress has made similar regulatory fixes before and the OLC has provided legal opinions supporting religious organizations' equal access to generally available government funds.

FEMA really makes only two complaints against the proposed bill. First, it warns that entities like the ACLU have threatened to sue unless it keeps discriminating against religious organizations. But, as explained above, such threats are meritless and will be met in court by the Becket Fund and other organizations that are happy to defend equal access for houses of worship that have been devastated by natural disasters. Further, it is imprudent to allow such threats to take federal legislation hostage, as giving in to them will only encourage future threats. Finally, concerns about litigation might make some sense if FEMA were run by a tiny village government with a small budget that might be intimidated by the prospect of litigating against the ACLU. But given the resources of the Department of Justice, this argument from fear of litigation makes no sense.

FEMA's second complaint is that the bill could require them to choose whether to fund ''arks of the covenant [and] prayer books.'' But, as a factual matter, it appears FEMA is trying to manufacture this particular controversy in order to scare legislators. As Rabbi David Bauman of Temple Israel in Long Beach—which was flooded by up to 14 feet of storm-surge saltwater—explained, no one is asking the government to restore prayer books; they need help with basic structural repairs, just like other buildings in the neighborhood. More importantly, the bill cannot repeal the Establishment Clause: FEMA will remain bound by the Constitution. Thus to the extent a religious organization requests funds that would result in a constitutional violation, FEMA will still be bound to turn them down. What the bill actually does is get rid of the artificial and discriminatory standard created by FEMA and replace it with the standard of neutrality required under the First Amendment.

In addition, to the extent that there is any problem it is one of FEMA's own making. As

it admits in its statement of opposition, it is FEMA's own regulatory interpretations that would require it to pay for prayer books or other similar items. But neither of the regulations that FEMA cites as forcing it to make the apparently unpalatable choice appear to require any such decision. And FEMA can always exercise its interpretive power to avoid a constitutional violation.

Again, no one is asking the government to buy prayer books or Torahs. Instead, synagogues, churches, and mosques are simply asking that they receive the same disaster relief as many other private nonprofits. Doing anything less would not live up to the neutrality required by the Establishment Clause—it would express a blatant hostility to religion that the Establishment Clause rejects.

In conclusion, it is our opinion that FEMA cannot rely on the Establishment Clause to categorically ban houses of worship from competing for disaster relief funds on the same terms as other eligible nonprofits. Your proposed bill will not violate the Constitution but will instead protect it.

Very truly yours,

ERIC C. RASSBACH,
DANIEL BLOMBERG,
The Becket Fund for Religious Liberty.

Mr. BARTLETT. Madam Chair, I yield myself such time as I may consume.

I know all too well and firsthand what happens when disaster strikes at home. My constituents were affected by Hurricane Irene and Tropical Storm Lee.

So I would like to commend the gentleman from New Jersey for his hard work for the constituents back home. It's times like this that we need to come together in a bipartisan fashion to help Americans who need that help.

With that, Madam Speaker, I yield back the balance of my time.

Mr. LEVIN. Madam Speaker, in the wake of the devastation caused by Superstorm Sandy, Congress must be an active partner in the effort to rebuild, so I will vote in favor of the bill before the House today, which extends FEMA disaster relief assistance to houses of worship on an equal footing with other not-for-profit organizations affected by the storm.

I wish, however, that the House had taken the time to hold hearings on this legislation before bringing it to the House Floor so that we could have more fully explored the constitutional issues involved with this matter. Clearly, the federal government can and does provide federal resources to houses of worship for a variety of purposes, including homeland security grants and small business loans, but we must tread carefully in this area to ensure that the assistance extended passes muster with the basic provisions of the Constitution. It would have been better to thoroughly vet the language of this bill, among ourselves in the House and with constitutional scholars before bringing it up for a vote. As this legislation must pass the Senate in order to become law, I hope there will be in their proceedings a careful review of these issues before they act, including making any needed changes, which would bring the bill back to the House for final enactment.

Mr. FRANKS of Arizona. Madam Speaker, we often come to this floor to advocate any number of controversial issues—issues that often produce strong disagreement from the given Speaker's opposing party. But I stand here today stating what I'm confident an overwhelming majority of Americans would deem simple common sense: if the government responds to a disaster—like Hurricane Sandy, which caused devastating damage and losses in the tens of billions of dollars—it should strive to help the entire community recover, not pick and choose some to receive help and others to go it alone.

But, stunningly, that's not the way it currently works, Madam Speaker. As it stands, many of the strongest, most necessary pillars in our society—churches and other places of worship—are being excluded from even being considered for the recovery aid provided by FEMA in the wake of Sandy.

Since the policy has come to light, some have attempted to defend it, invoking that all–too–commonly abused notion of the separation of church and state. But, Madam Speaker, even if we accept the most radical definition of this phrase, there would still be no reasonably legal explanation for this inexcusable oversight.

The Supreme Court responded to a similar issue when it decided Everson v. Board of Education. In that decision, the court criticized the ''imposition of taxes to pay ministers' salaries and to build and maintain churches and church property.'' But in the very same decision, the court makes clear the obvious exception to this policy, stating that the state has the duty to maintain neutral relations with places of worship, and that they should be granted access to the same basic government services as the rest of the community—''such general government services as ordinary police and fire protection, connections for sewage disposal, public highways and sidewalks.''

Who can, with any modicum of intellectual honesty, suggest that disaster relief does not fit the definition of a basic government service? The government is not maintaining neutral relations with houses of worship in this sphere. It is actively and specifically excluding them from a basic government service enjoyed by every other member of the community.

Of course, perhaps the cruelest irony of this entire situation is the fact that it is so often the churches who step in to help in the immediate aftermath of such disasters. They are the ones sending their congregations to feed, clothe, and house a desperate community. They are the ones taking up donations en masse to help the most afflicted. And they are the ones selflessly emptying their food closets to sustain, for just a little while longer, families anxiously awaiting government aid—the same government aid for which they will inexplicably not even be considered.

Madam Speaker, this unconstitutional, un-American, unreasonable discrimination against these essential, compassionate members of our society simply must not continue. Churches and other places of worship must be held to the same criteria as other members of the community in these decisions. I urge my colleagues to strongly support H.R. 592.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. BARLETTA) that the House suspend the rules and pass the bill, H.R. 592.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. BARLETTA. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on motions to suspend the rules previously postponed.

Votes will be taken in the following order:

H.R. 592, by the yeas and nays;

H.R. 267, by the yeas and nays.

The first electronic vote will be conducted as a 15-minute vote. The remaining electronic vote will be conducted as a 5-minute vote.

FEDERAL DISASTER ASSISTANCE NONPROFIT FAIRNESS ACT OF 2013

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and pass the bill (H.R. 592) to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to clarify that houses of worship are eligible for certain disaster relief and emergency assistance on terms equal to other eligible private nonprofit facilities, and for other purposes, on which the yeas and nays were ordered.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. BARLETTA) that the House suspend the rules and pass the bill.

The vote was taken by electronic device, and there were—yeas 354, nays 72, not voting 5, as follows:

[Roll No. 39]

YEAS—354

Aderholt	Bishop (UT)	Bucshon
Alexander	Black	Burgess
Amodei	Blackburn	Bustos
Bachmann	Blumenauer	Butterfield
Bachus	Bonner	Calvert
Barletta	Boustany	Camp
Barr	Brady (PA)	Campbell
Barrow (GA)	Brady (TX)	Cantor
Barton	Braley (IA)	Capito
Beatty	Bridenstine	Capps
Benishek	Brooks (AL)	Cárdenas
Bentivolio	Brooks (IN)	Carney
Bera (CA)	Broun (GA)	Carter
Bilirakis	Brown (FL)	Cartwright
Bishop (GA)	Brownley (CA)	Cassidy
Bishop (NY)	Buchanan	Castor (FL)