



September 20, 2017

Donald J. Trump
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

When Hurricane Harvey slammed into Texas, wreaking devastation over a huge swath of the Texas Gulf Coast, scores of churches and houses of worship jumped into action to serve thousands of Americans in their time of need. Regrettably, due to a FEMA policy whose terms predate your administration, the same churches that are playing an instrumental role in the recovery effort cannot receive disaster relief funding to rebuild their own buildings. You recently stated that “[c]hurches in Texas should be entitled to reimbursement from FEMA Relief Funds for helping victims of Hurricane Harvey (just like others).”¹ We couldn’t agree more, and we write to propose that your view is consistent with federal law and constitutional standards.

Many churches and other houses of worship have served as evacuee shelters, storage depots, and relief and supply distribution centers in the wake of Hurricane Harvey. Churches and other faith-based groups are vital to the response and recovery effort, and it has been reported that approximately “80% of all recovery happens because of non-profits, and the majority of them are faith-based.”² And many of these churches—like thousands of other facilities in the area—have suffered damage from the hurricane.

FEMA’s Public Assistance Program and Policy Guide offers assistance to private nonprofit organizations, including zoos, performing arts centers, and museums, but it excludes facilities “established or primarily used” for “religious” activities.³ Churches have opened their doors to feed, shelter, comfort, and rebuild their communities—even hosting FEMA operations in the process—but this policy has made those very same churches ineligible for assistance because their primary use is, by nature, religious. That should change.

Fortunately, federal law authorizes you to ensure that churches and other religious organizations are treated equally with other nonprofits and not excluded from FEMA funding. FEMA’s Policy

¹ Donald J. Trump (@realDonaldTrump), Twitter (Sept. 8, 2017, 7:56 PM).

² Paul Singer, *Faith groups provide the bulk of disaster recovery, in coordination with FEMA*, USA TODAY (Sept. 10, 2017) (quoting Greg Forrester, CEO of the National Voluntary Organizations Active in Disaster (NVOAD)), <https://perma.cc/8R2S-Z6AF>.

³ FEMA Policy Guide at 12, 14.

Guide and its underlying regulations are based on the Stafford Act,⁴ which authorizes you to provide Federal assistance in disasters, including to private nonprofits. The Act defines “private nonprofit facility” to include

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, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops, broadcasting facilities, and facilities that provide health and safety services of a governmental nature), *as defined by the President.*⁵

Congress thus delegated to you authority to define what should be classified as a “private nonprofit facility.”

If zoos, performing arts centers, and museums qualify for FEMA disaster relief, churches and other houses of worship that perform disaster relief should certainly be included in the definition of “private nonprofit facility” because they undoubtedly have provided and continue to provide “essential services of a governmental nature to the general public” as they help their communities in the wake of Hurricane Harvey.⁶

Defining “private nonprofit facility” to include churches and other houses of worship would allow them access to FEMA recovery funds like other nonprofits helping with the recovery effort, consistent with the non-discrimination provision of the Stafford Act, which requires “that the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, *religion*, nationality, sex, age, disability, English proficiency, or economic status.”⁷ The policy of denying relief funds for churches discriminates “on the grounds of . . . religion” and is nothing more than the relic of an administration that preferred rewriting laws to faithfully executing them.

Including churches and other houses of worship in the definition of “private nonprofit facility” would also ensure compliance with the Constitution. Just last term, in *Trinity Lutheran Church of Columbia v. Comer*, the United States Supreme Court declared unlawful a Missouri policy that prohibited a church’s preschool from accessing grants to purchase scrap tire playground surfaces.⁸

⁴ 42 U.S.C. § 5121 et seq.

⁵ 42 U.S.C. § 5122(11)(B) (emphasis added).

⁶ See, e.g., Emma Green, *Will Trump Direct FEMA to Fund Churches Hit by Hurricanes?*, THE ATLANTIC (Sept. 11, 2017) (“Faith-based organizations, including churches, synagogues, and mosques, provide an extraordinary amount of support during natural disasters.”), <https://perma.cc/HC4U-JMCW>.

⁷ 42 U.S.C. § 5151(a) (emphasis added).

⁸ 137 S. Ct. 2012 (2017).

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The Court held that excluding the church from the grant program violated the Free Exercise Clause of the First Amendment, and reaffirmed the long-standing rule that disqualifying a church from a public benefit “solely because of their religious character” “imposes a penalty on the free exercise of religion that triggers the most exacting scrutiny.”⁹ In fact, it puts a house of worship to a choice: “It may participate in an otherwise available benefit program or remain a religious institution.”¹⁰ When the government “conditions a benefit in this way,” it has “punished the free exercise of religion” in an impermissible way.¹¹

Trinity Lutheran stands on a firm foundation of Supreme Court precedent declaring that the government does not violate the Establishment Clause when it provides religious organizations equal access to government programs, including funding.¹² “If the Establishment Clause barred the extension of general benefits to religious groups, a church could not be protected by the police and fire departments, or have its public sidewalk kept in repair.”¹³ Thus, when the government provides funding to a wide variety of groups on secular terms, there exists no Establishment Clause barrier to houses of worship accessing the funds.

Excluding churches and other houses of worship from FEMA disaster relief not only makes for bad policy, as you acknowledge, but also risks the federal government violating the constitutional rights of those who are playing an instrumental role in getting Texans back on their feet after Hurricane Harvey. In light of this, we urge you, Mr. President, to move with alacrity and define “private nonprofit facility” under the Stafford Act to include churches and other houses of worship, and direct FEMA to provide them with disaster relief funding on equal terms with other nonprofits.

Thank you for your leadership on this issue.

Very truly yours,



Greg Abbott
GOVERNOR OF TEXAS



Ken Paxton
ATTORNEY GENERAL OF TEXAS

cc: Hon. William B. Long, FEMA Administrator

⁹ *Id.* at 2021.

¹⁰ *Id.* at 2021–22.

¹¹ *Id.* at 2022.

¹² *Id.* at 2024; see also *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819 (1995); *Witters v. Wash. Dep’t of Servs. for the Blind*, 474 U.S. 481 (1986); *Widmar v. Vincent*, 454 U.S. 263 (1981).

¹³ *Widmar*, 454 U.S. at 274–75 (internal quotation marks and citations omitted).