FREEDOM FROM RELIGION *foundation*

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April 9, 2020

SENT VIA EMAIL ONLY

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The Honorable James Clyburn
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Re: Funding churches under the CARES Act is unconstitutional

Dear Representatives:

We are writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to constitutional problems with churches receiving CARES Act funding. FFRF is a national nonprofit organization with more than 31,000 members across the country whom we represent, including members in each of your states. FFRF works to protect the constitutional separation between state and church and educates about nontheism.

We were dismayed to see a joint letter, signed by each of you, informing federal agencies that COVID-19 relief funding under the CARES Act was intended to go to houses of worship. There is perhaps no clearer constitutional command than that Congress may not force taxpayers to pay the wages of religious leaders. As such, we ask that you consider our further explanation below and clarify with the Small Business Administration that taxpayers cannot legally be forced to support houses of worship in this way and will not be forced to do so in any further pieces of legislation.

As you know, the CARES Act allows businesses and nonprofits to request forgivable loans from the federal government to cover operating costs and salaries. The Small Business Administration, which is in charge of this program, has announced that it will allow churches and other houses of worship to receive this funding, even though this religious funding violates SBA regulations.

These SBA regulations are rooted in the foundational American concept of protecting religious freedom through a secular government. They were agreed on following centuries of working out the proper relationship between religion and government, after careful consideration of this fraught history and after vetting the regulations' consequences. To blithely cast aside these long-standing principles—and simultaneously give tacit support to SBA's assertion that it intends to remove these regulatory safeguards altogether—is to sacrifice religious freedom in a moment of panic.

Even in a pandemic, Americans must not be forced to fund churches. When the government awards taxpayer dollars to pay for religious worship, a church's bills, or a minister's salary, it forces taxpayers to fund that church's religious mission.

The government's taxing power should not be wielded to oblige Muslims to bankroll temples, or to coerce Jews to subsidize Christian and Catholic churches, or to force Christians to fund mosques, or to compel the nonreligious to support any of the above. One of this country's first religious freedom laws warned that taxing citizens and giving the money to churches is "sinful and tyrannical." The right to be free from that compulsion *is* the bedrock of religious liberty.

The principle embodied in SBA regulations limiting the religious use of taxpayer funds is that the government should not tax citizens to benefit a religion. Religious worship, religious education, and maintaining places of worship should be the result of free and voluntary support given by the faithful. James Madison, the Father of the Bill of Rights and the Constitution, explained this purpose well in his condemnation of a three-penny tax to support Christian preachers and churches: "The Religion then of every man must be left to the conviction and conscience of every man," not the taxing power of the state.[1]

Madison's conclusion is based on history that seems distant today, but which was the result of centuries—millennia—of oppression from religion blended with government. Thanks to the separation of state and church, Americans do not have that oppressive experience. We are, in some sense, victims of our own success in the great American experiment of separating government and religion —we tend to overlook how the principle of prohibiting compulsory church funding *protects* religious freedom. But that these principles have succeeded so well is a reason to continue to abide by them, not set them aside.

The U.S. Supreme Court discussed this foundational principle at length when it first applied the Establishment Clause to the states. In *Everson*, the Court said:

[1] Madison, Memorial and Remonstrance, ¶ 1.

> The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religion, or prefer one religion over another. . . . *No tax in any amount large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt* to teach or practice religion. . . .[2]

The Supreme Court later reiterated a strong commitment to the religious liberty principles articulated in *Everson*, including the prohibition on giving public aid to religion. *See Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 21617 (1963) (discussing the majority and dissenting opinions in *Everson*), *Torcaso v. Watkins*, 367 U.S. 488, 493 (1961) (recalling that, in the *McCollum* case, the Court was "urged to repudiate" the *Everson* principles and noting it "declined to do this, but instead strongly reaffirmed what had been said in *Everson*. . . ."). The Court's lengthy discussions of the meaning and purposes of the First Amendment's religion clauses in these cases focused on the separation of religion and government—to the benefit of both. The Court never hinted that the religion clauses actually *require* taxpayers to fund religion.

Our nation, our Founders, and our Supreme Court have always understood that religious liberty flourishes when the government does not tax citizens to aid religion. It is no surprise that the state constitutions clarified the protection for the religious liberty of citizens. Consistent with this fundamental truth, federal agencies including the SBA adopted regulations to protect the religious liberty of taxpayers by prohibiting religious funding. It is unhelpful and contrary to the U.S. Constitution and American history for members of Congress to write to agency heads to tell them to disregard those regulations.

Please ensure that the SBA understands that CARES Act, or any future legislation, cannot constitutionally fund inherently religious activities. Thank you for your time and consideration.

Very truly,

Annie Laurie Gaylor Dan Barker

Annie Laurie Gaylor & Dan Barker
Co-presidents
ALG/DB:rdj

[2] Everson v. Bd. of Educ. of Ewing Twp., 330 U.S. 1, 15–16 (1947) (emphasis added).