

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

March 15, 2023

SENT VIA EMAIL & U.S. MAIL: Deanne.Criswell@fema.dhs.gov

Deanne Criswell
FEMA Administrator
Office of the Administrator
500 C St., SW
Washington, DC 20472

Re: Unconstitutional federal grant to build new church in Versailles, KY

Dear Administrator Criswell:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding serious constitutional concerns over the Federal Emergency Management Agency's decision to grant federal funds to construct a church in Versailles, Kentucky. FFRF is a national nonprofit organization with more than 40,000 members across the country. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

In February 2021, we wrote to FEMA to raise very serious concerns about its decision to build a church using federal funds. At that time, FEMA had tentatively approved a grant of approximately \$1.2 million in order to construct a new church building. The building and land were to be owned by the First Baptist Church, but the church would agree to public use of the building during an emergency.¹ The proposal submitted to FEMA specifically noted:

Day-to-day, the planned use for the space would be for the First Baptist Church to be able to utilize the space for worship services and church functions, and for MUST to utilize portions of the structure for service initiatives as well. As such, the plan is for a portion of the building to be set up as a large open space/great hall that First Baptist would utilize as a sanctuary for services.

On February 19, 2021, we received a response from Stuart Baker, who was regional counsel at that time. Mr. Baker informed us that FEMA was reviewing the matter and that it would take some time to respond to us regarding our concern. On September 13, 2021, we were informed that FEMA was still reviewing our concerns and that no decision had been made on the future of the church project. Since that time, we have continued to follow up with FEMA to ascertain whether it would be using federal funds to build a church.

¹ Jack Brammer, *This Kentucky city plans to build a church with public money. Objections raised.*, Lexington Herald Leader, <https://www.kentucky.com/news/local/counties/woodford-county/article249279410.html>

It was recently brought to our attention that FEMA has chosen to move forward with building the church. On February 7, 2023, Drew Chandler, Director of Emergency Management for Woodford County, spoke to Versailles' city council regarding the church building/tornado shelter project. Mr. Chandler said that the church that was proposed in 2020 is moving forward and that FEMA has awarded a phase 1 grant to design and engineer the building. It is our understanding based on Mr. Chandler's discussion with the council that FEMA has awarded a grant of more than \$300,000 for this project.

Based on this revelation, we requested records from the city regarding the project. Those records reveal that the project is moving forward. It is our understanding that FEMA will be providing approximately 75% of the funds for the church, the state of Kentucky will be providing 13%, and the congregation will contribute just 12% towards its federally funded church building. The records indicate that FEMA began moving forward with the project in February 2022. An email sent to Mayor Brian Traugott on February 3, 2022 explained:

To make a long story very short, FEMA is still under the microscope from back when we received the open records request...FEMA needs a new cost estimate within roughly 14 days...If we're able to secure an Estimate FEMA will award Phase I, the funds for all necessary planning and design, between now and March 6th...Do you have an existing relationship with a local engineer who would be willing to provide us with a "quick and dirty" cost estimate for the development?

Several other emails and records indicate the project was quickly rushed by the City and FEMA because of legal concerns surrounding its decision to build a church that would be primarily used for religious worship with only minimal use as a potential storm shelter.

We are writing to ask that the Federal Emergency Management Agency immediately revoke the grant to build a new church and cease its involvement in this scheme to use federal funds for the benefit of one particular religious congregation. While FEMA has at times given disaster relief funds to churches and other houses of worship for repairs, as far as we are aware, this is the first instance of FEMA, or any federal agency, funding the construction of a new church that will be primarily used for religious worship and owned by a religious congregation despite a majority of the funding coming from a government agency.

It is a fundamental principle of Establishment Clause jurisprudence that the government cannot favor religion. The Supreme Court has said, "The touchstone for our analysis is the principle that the 'First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.'" *McCreary Cnty v. ACLU*, 545 U.S. 844, 860 (2005), (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15-16 (1947); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985)). Requiring federal taxpayers, who all have their own varied religious and nonreligious practices, to support the building of Christian churches is not neutral.

It is unconstitutional for the Federal Emergency Management Agency to direct federal funds to be used to build a church that will be used for religious worship. The Establishment Clause of the First Amendment prohibits the government from funding religious worship. *See, e.g., Comm. For Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 778–79 (1973) (striking down government-subsidized maintenance and repair of nonpublic schools); *Tilton v. Richardson*, 403 U.S. 672, 689 (1971) (holding that a 20-year ban on religious use of a taxpayer-funded building did not go far enough to ensure the grant would not advance religion); *Wirtz v. City of S. Bend*, 813 F.Supp.2d 1051, 1068 (N.D. Ind., 2011) (holding that a grant to a private religious school was unconstitutional). FEMA may not use public resources to build a church that will be used for religious worship and the benefit of a religious congregation.

In *Wirtz*, a federal court struck down a city’s donation of land to a religious school in exchange for public use of athletic facilities that the school planned on building on the land. The court explained that “Governmental programs or actions that provide special benefits to specific religious entities are impermissible... For governmental aid to religious institutions to be seen, for constitutional purposes, as not advancing religion, either the state’s payments must reach religious institutions only indirectly through programs of purely private choice or religious institutions must be getting nothing more than [...] secular governmental services or supplies on the same terms and conditions as anyone else as part of a neutral program.” *Id.* at 1059 (internal citations omitted).

One of this country’s first religious freedom laws, the Virginia Statute for Religious Freedom, warned that taxing citizens to give their money to churches is “sinful and tyrannical.”² Written by Thomas Jefferson and shepherded through the Virginia legislature by James Madison, the statute is adamant: “no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever.” The right to be free from that compulsion is the bedrock of religious liberty. This is one of America’s founding principles. That law provided the intellectual and moral foundation for the First Amendment and our secular Constitution.

The federal government may not spend public money to build or maintain churches, to pay salaries for priests and preachers, or to fund religious ministries. Doing so is unconstitutional. Doing so forces all citizens, regardless of their religion or lack thereof, to support religions that are not their own.

James Madison, the primary drafter and architect of the U.S. Constitution and Bill of Rights, argued that if churches or religious seminaries receive even “threepence” from the public treasury, then the government is violating the religious liberty of citizens.³

The Federal Emergency Management Agency must revoke this unconstitutional grant and cease its funding of this church immediately. In addition to the apparent constitutional problems with

² “A Bill for Establishing Religious Freedom, 18 June 1779,” Founders Online, National Archives, <https://founders.archives.gov/documents/Jefferson/01-02-02-0132-0004-0082>. Original source: *The Papers of Thomas Jefferson*, vol. 2, 1777–18 June 1779, ed. Julian P. Boyd. Princeton: Princeton University Press, 1950, pp. 545–553.

³ James Madison, “Memorial and Remonstrance against Religious Assessments, [ca. 20 June] 1785,” Founders Online, National Archives, <https://founders.archives.gov/documents/Madison/01-08-02-0163>.

such a grant, we request that FEMA review the grant to ensure that the applicants have not misled the agency on the purpose of the grant. Please inform us in writing of the steps taken to correct this egregious constitutional violation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Line", with a long horizontal flourish extending to the right.

Christopher Line
Staff Attorney
Freedom From Religion Foundation

Cc: Alejandro Mayorkas, Secretary of the Department of Homeland Security, *via*
alejandro.mayorkas@dhs.gov