FREEDOM FROM RELIGION *foundation*

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

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SENT VIA EMAIL & U.S. MAIL: robert.fenton@fema.dhs.gov

Robert J. Fenton, Jr.
Senior Official Performing the Duties of FEMA Administrator
Office of the Administrator
500 C St., SW
Washington, DC 20472

Re: Unconstitutional federal grant to church

Dear Mr. Fenton:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding constitutional concerns over the Federal Emergency Management Agency's reported decision to approve a grant of $1,973,993 to Hiland Park United Pentecostal Church in Panama City, Florida. FFRF is a national nonprofit organization with more than 33,500 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.

It is our understanding that FEMA has approved a grant of $1,973,993 to Hiland Park United Pentecostal Church in Panama City, Florida to reimburse recovery expenses for damage resulting from Hurricane Michael. We understand that this grant includes funds to repair the church's sanctuary, fellowship hall, cafeteria, classrooms and other facilities.[1]

We have submitted a Freedom of Information Act request regarding this matter, but it appears that the funding will be used to advance religion by repairing buildings used explicitly for religious worship. If this is the case, the grant should be revoked immediately. It is a violation of the U.S. Constitution to award discretionary funds to repair houses of worship actively being used for church services.

As you know, 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); *Lemon v. Kurtzman*, 403 U.S. 602, 625 (1971) (holding that government aid to nonpublic education impermissibly entangled the government with religion, even when limited to secular subjects); *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 repair a church building that will be used for religious worship. 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

[1] https://www.fema.gov/press-release/20210416/fema-approves-162-million-hurricane-michael-recovery

impermissible… For governmental aid to religious institutions to be seen, for constitutional purposes, as not 'endorsing' 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).

Awarding millions of taxpayer dollars to repair churches constitutes government endorsement of religion. The First Amendment prohibits "sponsorship, *financial support*, and active involvement of the sovereign in religious activity." *Walz v. NY Tax Comm'n*, 397 U.S. 664, 668 (1970) (emphasis added); *see also Mitchell v. Helms*, 530 U.S. 793, 819 (2000); *Bowen v. Kendrick*, 487 U.S. 589, 621 (1988); *Roemer v. Bd. of Pub. Works*, 426 U.S. 736, 754–55 (1976). This means that FEMA may not use public money to facilitate religious exercise, proselytization, or instruction. *See, e.g., Levitt v. Comm. for Pub. Educ. & Religious Liberty*, 412 U.S. 472, 480 (1973) ("[T]he State is constitutionally compelled to assure that the state-supported activity is not being used for religious indoctrination.")

It is important to note that denial of grants to churches would not violate their Free Exercise rights. In *Trinity Lutheran Church of Columbia v. Comer*, the Court made clear that disqualification of a church from receiving an otherwise publicly available benefit "solely because of [its] religious character . . . imposes a penalty on the free exercise of religion that triggers the most exacting scrutiny." 137 S. Ct. 2012, 2021 (2017). But the Court carefully explained that *Trinity Lutheran*, in which a Missouri church was denied participation in a state program to resurface its school playground, hinged on the fact that funding was not going to an "essentially religious endeavor." *Id.* at 17 (citing *Locke v. Davey*, 540 U.S. 712, 721 (2004)). Here, a grant used to repair and renovate substantial portions of a church's buildings, including the sanctuary, promises to do exactly that—it will fund essentially religious endeavors, including worship and proselytizing. Accordingly, awarding these funds violates the Establishment Clause of the First Amendment, while denying them does no harm to the church's Free Exercise rights.

The Federal Emergency Management Agency cannot advance religion by repairing buildings used explicitly for religious worship and should revoke this unconstitutional grant immediately. Please inform us in writing of the steps taken to correct this constitutional violation.

Sincerely,

Christopher Line
Staff Attorney
Freedom From Religion Foundation

Cc: Gracia B. Szczech, Regional Administrator, *via* **gracia.szczech@fema.dhs.gov**
Stuart Baker, Regional Counsel *via* **stuart.baker@fema.dhs.gov**