Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

REPORT ON LEGISLATION BY CIVIL RIGHTS COMMITTEE

H.R. 592 **Rep. Christopher Smith**

Federal Disaster Assistance Nonprofit Fairness Act

THIS BILL IS OPPOSED

The Civil Rights Committee of the New York City Bar Association opposes the Federal Disaster Assistance Nonprofit Fairness Act of 2013 (the "Act"), H.R. 592, which passed the House of Representatives on February 13, 2013, and is currently before the Senate Committee on Homeland Security and Governmental Affairs. Section 3 of the Act would amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5170 *et seq*., to authorize the Federal Emergency Management Agency to issue direct grants to fund the repair and reconstruction of houses of worship and other religious facilities. This measure violates both the Establishment Clause of the United States Constitution and existing Supreme Court precedent and should not be enacted into law.

As a New York City-based organization, many of our members were directly impacted by Hurricane Sandy and we know first-hand the devastation that natural disasters wreak on communities. Providing federal grants to houses of worship or other religious facilities, however, violates our constitutional commitment to separation of church and state and will almost certainly lead to litigation that could delay the distribution of funding to recipients who urgently require aid.

The Supreme Court has made clear that just as "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." *Committee for Public Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 777 (1973); *see also Tilton v. Richardson*, 403 U.S. 672, 683-84 (1971) (holding that a government subsidy for building construction at colleges and universities was constitutional only if the buildings could never be used for religious activities); *Rosenberger v. University of Virginia*, 515 U.S. 819, 842 (1995) (Court has "recognized special Establishment Clause dangers where the government makes direct money payments to sectarian institutions").

Providing federal grants to repair or rebuild houses of worship or other religious facilities thus violates the Establishment Clause because its "principal or primary effect" is to advance religion by authorizing the federal government to use public funds to pay the costs and associated expenses of exclusively religious organizations and facilities. *See Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971); *see also Roemer v. Board of Public Works*, 426 U.S. 736,

755 (1976) (instructing that "no state aid at all [may] go to institutions that are so 'pervasively sectarian' that secular activities cannot be separated from sectarian ones"). This is particularly so because the Act singles out houses of worship for grant eligibility while many other nonprofits remain ineligible. *See Agostini v. Felton*, 521 U.S. 203, 230-31 (1997) (explaining that aid criteria "might themselves have the effect of advancing religion by creating a financial incentive to undertake religious indoctrination"); *see also* 42 U.S.C. § 5122(10) (listing eligible facilities). Likewise, such grants would "foster an excessive government entanglement with religion" because purely religious institutions would be induced to turn to the federal government for aid for the maintenance of their religious activities in the wake of a natural disaster. *See Lemon*, 403 U.S. at 613-15.

The bar against providing federal grants to rebuild or repair houses of worship or other religious facilities is central to our constitutional system. In light of the constitutional infirmities discussed above, we respectfully urge you to vote against the Federal Disaster Assistance Nonprofit Fairness Act of 2013.

July 2013