No. 12-832

IN THE

SUPREME COURT OF THE UNITED STATES

January Term, 2014

THE GEORGE HOUSTON SOCIETY,

Petitioner,

v.

FEDERAL EMERGENCY MANAGEMENT AGENCY, *et. al.*,
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

BRIEF FOR RESPONDENT

Amanda Butler-Jones
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QUESTIONS PRESENTED

1. Does the Free Speech Clause of the First Amendment or Due Process Clause of the Fifth Amendment require FEMA to treat The George Houston Society on terms equal to houses of worship under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended by the Federal Disaster Assistance Nonprofit Fairness Act of 2011?
2. Does the Federal Disaster Assistance Nonprofit Fairness Act of 2011 violate the Establishment Clause?

OPINIONS BELOW

The unpublished opinion of the Court of Appeals for the Fourteenth Circuit can be found at *George Houston Soc'y v. FEMA*, No. 14-067854 (14th Cir. July 29, 2013). The unpublished order of the District Court for Old Jersey can be found at *George Houston Soc'y v. FEMA*, No. 10-142010 (O. Jersey Nov. 19, 2012) (granting summary judgment).

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on July 29, 2013. This Court granted Petitioner's timely petition for writ of certiorari on November 21, 2013. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment states, in relevant part, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech." U.S. CONST. amend. I. The Due Process Clause states, in relevant part, that no person shall be "deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V.

The 1988 Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. § 5121 states, in relevant part, the Stafford Act provides "Federal assistance programs for both public and private losses sustained in disasters" in order to "provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage" resulting from disasters. 42 U.S.C. § 5121 (1988) (amended 2011). The Federal Disaster Assistance Nonprofit Fairness Act of 2011

(Nonprofit Fairness Act) amends the Stafford Act "to clarify that houses of worship are eligible for certain disaster relief and emergency assistance on terms equal to other eligible private nonprofit facilities, and for other purposes." App. at 2; Nonprofit Fairness Act.

STATEMENT OF THE FACTS

A. Hurricane Greg and the Federal Disaster Assistance Nonprofit Fairness Act of 2011

On July 15, 2011, Hurricane Greg, a class three hurricane, hit the state of Old Jersey causing over $10 billion in damages in just three days. *George Houston Soc'y v. FEMA*, No. 14-067854, slip op. at 4 (14th Cir. July 29, 2013). The coastal town of Burlington, Old Jersey, was especially hit hard – leaving hundreds of businesses, homes, and other facilities severely damaged or destroyed completely. *Id.* at 5. Soon after, President Barack Obama declared a state of emergency for the coastal counties of Old Jersey, which made the State and the affected local areas, such as Burlington, eligible for federal disaster assistance. *Id.*; *see* 42 U.S.C. § 5170(a). On August 15, 2011, Congress passed and President Obama signed the Hurricane Greg Relief Act of 2011, which not only appropriated funds for relief for the disaster, but also incorporated the Federal Disaster Assistance Nonprofit Fairness Act of 2011. The Nonprofit Fairness Act amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121HA *et. seq.*, to include houses of worship to the list of private nonprofit facilities eligible for disaster relief grants. *George Houston Soc'y,* No. 14-067854, slip op. at 4-5. In the town of Burlington, Old Jersey, thirty-nine applications from private nonprofits were approved for a total of $2,751,395 in disaster relief grants. App. at 1. Of the thirty-nine recipients, six recipients were houses of worship – Burlington Hebrew Congregation, Christ United Faith in God, Our Holy Messiah, Islamic Center of Burlington, Old Jersey Methodists, and Mount Ararat Church – receiving $193,761 in grants: approximately 7% of the total funds distributed to Burlington private nonprofits. *Id.* The largest grant to a house of worship in Burlington was given to the Islamic Center of Burlington for a total of $44,090 and the largest grant to an eligible private nonprofit that is not a house of worship was given to the Valley Water District in the amount of $544,246. *Id.*

B. The George Houston Society

Petitioner, The George Houston Society, is a non-religious, private nonprofit organization with § 501(c)(3) tax exempt status, that is based out of the George Houston Freethinkers' Hall (Hall) in downtown Burlington, Old Jersey – one of the many facilities struck by Hurricane George. *George Houston Soc'y,* No. 14-067854, slip op. at 2; *see* 26 U.S.C. § 501(c) (2012). The Hall houses large and small group meeting spaces, a kitchen and a library. *George Houston Soc'y,* No. 14-067854, slip op. at 2.

Organized and incorporated in 1897 as a society of "Freethinkers," Petitioner is committed to "the search for knowledge gained through the scientific method," "freeing the world from irrational attachment to beliefs based only on the dictate of authority, whether of religion, government, or culture," "the rejection of traditional religious belief as inconsistent with scientific truth," "the separation of government from religion and all forms of superstition-based authority, and the protection of fundamental rights." *Id.* Petitioner intentionally and specifically views itself as a non-religious organization. *Id.*

The total estimated cost of repairs to Freethinkers' Hall and the library is more than $100,000, which includes structural and interior damage due to the flooding, as well as a loss of $25,000 in rare books. *Id.* at 5. City inspectors have revoked the building's occupancy permit until the damage is repaired. *Id.* The Hall is not located in an area that was prone to flooding, therefore, Petitioner, like the neighboring Mount Ararat Christian Church, did not have flood insurance to cover the loss. *Id.* at 6. Similarly, both Petitioner and the Mount Ararat Christian Church applied for disaster loans from the Small Business Administration (SBA) and were denied. *Id.*

Jill Kendall, Program Coordinator of The George Houston Society, after learning from Rev. Neil Smith, Pastor of Mount Ararat Christian Church, that the Church had been approved for a disaster relief grant by FEMA, submitted an application on behalf of the Petitioner. *Id.* However, Petitioner was denied because The George Houston Society does not meet the criteria for any of the categories of eligible private nonprofit facilities. *Id.* Petitioner twice appealed FEMA's decision through internal administrative procedures and was twice denied because "[a]pplicant did not qualify as a house of worship, community center, or any other eligible private nonprofit facility." *Id.* at 7. Petitioner then filed suit in the United States District Court for the District of Old Jersey claiming

its constitutional right to equal funding as the houses of worship, or alternatively, that no houses of worship should be eligible for the disaster relief grants because it is a violation of the Establishment Clause of the Constitution. *Id.* at 1.

C. Procedural Background

The George Houston Society brought this claim against FEMA; Deborah Ingram, Assistant Administrator, Recovery Directorate, FEMA; and Natalie Coughlin, Regional Director, Region XX, FEMA (collectively, the "Government") in the United States District Court for the District of Old Jersey. Petitioner sought an injunction ordering FEMA to consider its application for a disaster relief grant under 42 U.S.C. § 5172HA(a)(1)(B) on equal terms as applicants from houses of worship. Petitioner alleged that the Nonprofit Fairness Act violates its rights of equal protection and free speech under the First and Fifth Amendments to the United States Constitution, and the Administrative Procedures Act, 5 U.S.C. § 702. *George Houston Soc'y*, No. 14-067854, slip op. at 1, 7. Alternatively, Petitioner alleged that the Nonprofit Fairness Act violates the Establishment Clause of the Constitution. *Id.* Both Petitioner and the Government filed cross-motions for summary judgment. *Id.* The district court rejected both of Petitioner's claim to equal eligibility for funding and the Establishment Clause violation, and granted summary judgment for the Government on November 19, 2012. *Id.* The United States Court of Appeals for the Fourteenth Circuit then affirmed the decision of the district court on July 29, 2013. *Id.* at 1, 7, 20. This Court granted The George Houston Society's petition for writ of certiorari on November 21, 2013. *George Houston Soc'y v. FEMA*, No. 12-832 (Nov. 21, 2013) (order granting petition for writ of certiorari).

SUMMARY OF ARGUMENT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended by the Federal Disaster Assistance Nonprofit Fairness Act of 2011, does not violate the First or Fifth Amendment because FEMA disaster relief is not a forum for speech and Congress had a rational basis for distinguishing between houses of worship and facilities of expressive organizations. Furthermore, the Act does not violate the Establishment Clause because it is a neutral government program that has a legitimate secular purpose and does not advance religion.

IA. Under the protection of the First Amendment, the Government is prohibited from proscribing speech simply because of disagreement of the view or content expressed. The Court has determined the types of speech forums and their corresponding standards, but if there is no forum for viewpoint or content-based discrimination, as is the case here, a First Amendment analysis is not applicable. As such, a claim premised on Freedom of Speech cannot survive.

IB. Additionally, Petitioners do not have a constitutional right to demand funding under the Fifth Amendment´s implicit equal protection terms. A government action may not target a suspect class or interfere with fundamental rights. However, when neither is at issue, the government action is constitutionally valid so long as it bears a rational relation to some legitimate end. The Stafford Act serves to rebuild communities and the inclusion of houses of worship to the broad array of eligible disaster relief grant recipients is rationally related to the Act's purpose, and does not impermissibly discriminate.

IIA. Widening the spectrum of potential recipients of federal disaster relief grants under the Stafford Act as amended by the Nonprofit Fairness Act to include houses of worship does not violate the Establishment Clause. Aware of the possibility of entanglement between the government and religion – as well as the room for play in the joints – Congress carefully crafted the statute to avoid Establishment Clause issues.

IIB. The amended Stafford Act passes the *Lemon/Agostini* two-prong test of secular purpose and primary effect. The neutral government program has the legitimate and broad secular purpose of aiding the rebuilding of communities devastated by disaster and destruction, and further, recognizes that houses of worship "play an essential role in the daily lives of communities." Nonprofit Fairness Act § 2(3).

IIC. Furthermore, the amended Stafford Act a does not have the primary effect of advancing religion because it does not result in governmental indoctrination of religion, it does not define its recipients by reference to religion, or create an excessive governmental entanglement with religion. Accordingly, the Nonprofit Fairness Act is not in violation of the Establishment Clause of the United States Constitution.

For these reasons, the Nonprofit Fairness Act does not violate the Free Speech or Establishment Clauses of the First Amendment or the Due Process Clause of the Fifth Amendment.

ARGUMENT

I. THE STAFFORD ACT, AS AMENDED BY THE NONPROFIT FAIRNESS ACT, DOES NOT VIOLATE THE FIRST AMENDMENT BECAUSE FEMA DISASTER RELIEF IS NOT A FORUM FOR SPEECH AND CONGRESS HAD A RATIONAL BASIS FOR DISTINGUISHING BETWEEN HOUSES OF WORSHIP AND FACILITIES OF EXPRESSIVE ORGANIZATIONS.

A. FEMA disaster relief is not a forum for speech and thus not subject to Freedom of Speech protection.

The Freedom of Speech Clause states, "Congress shall make no law . . . abridging the freedom of speech." U.S. CONST. amend. I. Under the protection of the First Amendment, the Government is prohibited from proscribing speech because of disapproval of the ideas expressed. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992). The right to use public property for speech and expression, however, is not absolute and the Government may place certain limitations on access to public property. *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788 (1985). The character type of the property at issue is critical to determine both the existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 44 (1983).

The Court has outlined three types of public forums and their corresponding standards. *Id.* The first category, "quintessential public forums," consists of the type of places that "long tradition or government fiat have devoted to assembly and debate," such as streets and parks. *Id.* at 45. The second category is comprised of limited public forums, which consist of "public property the state has opened for use by the public as a place for expressive activity." *Id.* The final category represents closed public forums consisting of public property that is not traditionally or by designation a forum for public communication. *Id.* at 46. For the first and second category, "reasonable time, place and manner regulations are permissible, and a content-based prohibition must be narrowly drawn to effectuate a compelling state interest. *Id.* Regulation of speech falling in the third category is permitted, "as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view." *Id.*

The Court has recognized that a public forum need not be a physical place. *Rosenberger v. Rector*, 515 U.S. 819, 835 (1995) (recognizing a publication fund to be a forum in a metaphysical rather than spatial or geographic sense). In the context of government funding, a metaphysical activity, the Court has looked to the purpose of the funding to determine whether any of the aforementioned types of forums have been created. *Locke v. Davey*, 540 U.S. 712, 720 n.3 (2004). In *Locke*, the petitioner argued that a scholarship program prohibiting use of funds for a degree in theology was an unconstitutional viewpoint restriction on speech. *Id.* The Court found, however, that because the purpose of the scholarship program was not to "encourage a diversity of views from private speakers," a forum of speech was not created. *Id.* The Court expressly distinguished the type of program in *Locke* from quintessential and limited forums because the Government merely chose "not to fund a distinct category of instruction." *Id.* at 713.

In the present case, the Government has not proscribed speech within any of the forums of speech. The FEMA disaster relief fund is not a quintessential forum, like a street or park because there is no long tradition of using government funding for assembly and debate. The fund also does not qualify as a limited forum because the Government has not "opened for use by the public" a physical or metaphysical place "for expressive activity" as the Court described in *Perry* and *Rosenberger*. *Perry*, 460 U.S. at 44; *Rosenberger*, 515 U.S. at 835. To the contrary, the purpose of the FEMA public assistance program is to "provide financial grants for the repair of various types of private nonprofit facilities." Nonprofit Fairness Act § 2(4). The purpose of repairing nonprofit facilities is unrelated to a message or particular religious viewpoint, but instead focused on rebuilding facilities that contribute to the community. This distinction in purpose, as the Court in *Locke* indicated, is an important one and fatal to the Petitioner's argument.

The Petitioner relies on *Rosenberger* for the proposition that funding houses of worship but not the expressive facility of The George Houston Society is viewpoint discrimination. However, the nature and purpose of the university printing program in *Rosenberger* and the FEMA public assistance program at issue in this case are distinguishable. In *Rosenberger*, the university program was created to pay printing costs for student groups and publications, a mechanism that not only enables but also encourages a forum for a diversity of views from private speakers. *Rosenberger*, 515 U.S. at 822. The FEMA public assistance program, on the other hand, is used to provide funds for physical repairs to facilities

within a community in response to the damage and devastation caused by a hurricane.

Additionally, the Petitioner does not have a constitutional right to demand funding. It is a long held principle that Congress may refuse to fund a constitutional activity out of public money. *Regan v. Taxation with Representation of Wash.*, 461 U.S. 540, 545 (1983). It is correct that the government "may not deny a benefit to a person because he exercises a constitutional right." *Id.* The Court, however, has not held that the government must grant a benefit to a person because she wishes to exercise a constitutional right. *Regan,* 461 U.S. at 545. In *Regan*, the Court expressly rejected the "notion that First Amendment rights are somehow not fully realized unless they are subsidized by the State." *Id.* at 546 (quoting *Cammarano v. United States*, 358 U.S. 498 (1959)).

Even where the government subsidizes some speech but not other types of speech, the Court has held that selective funding may be constitutional. *Id.* at 546. In *Regan*, the Court rejected the notion that strict scrutiny applies whenever Congress subsidizes some speech, but not all speech because "this is not the law" noting that "[w]e have held in several contexts that a legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right, and thus is not subject to strict scrutiny." *Id.* at 546. The law, reaffirmed by the *Rosenberger* Court, simply prohibits the Government from discriminating based on the viewpoint of private persons whose speech it facilitates. 515 U.S. at 835. Content-based regulations are also presumptively invalid. *Id.*; *R.A.V.*, 505 U.S. at 382. Where there is no forum for viewpoint or content-based discrimination, as is the case here, a First Amendment analysis is wholly inapplicable. *Locke*, 540 U.S. at 719 n.3.

B. The Stafford Act, as amended by the Nonprofit Fairness Act, does not violate the Due Process Clause of the Fifth Amendment because Congress had a rational basis for distinguishing between houses of worship and facilities of expressive organizations.

The Stafford Act, as amended by the Nonprofit Fairness Act, does not violate the Fifth Amendment because repairing non-profit facilities, including houses of worship, that contribute to daily life in communities is rationally related to the legitimate government interest of providing post-disaster relief. The equal protection requirement of the Due Process Clause is not an obligation to provide the best governance possible. *Schweiker v. Wilson,* 450 U.S.

221, 230 (1981). Instead the constitutional inquiry requires "a relatively relaxed standard" because drawing lines that create distinctions is "peculiarly an unavoidable legislative task and perfection in making the necessary classifications is neither possible nor necessary." *Id.* at 234. Therefore, where there is no fundamental right burdened or suspect class targeted, as is the case here, the government must only have a legitimate purpose. *Id.*

1. Rational basis review applies where no fundamental right or suspect class is involved.

The Fifth Amendment provides that no person shall be "deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V. Discriminatory action may be "so unjustifiable as to be violative of due process." *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954). As such the Court has implied an equal protection element to the Due Process Clause of the Fifth Amendment. *Id.* at 499-500. The purpose of equal protection is to guard against government action involving arbitrary classifications, while providing equal treatment for similarly situated persons. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985).

If the government action at issue does not target a suspect class or interfere with fundamental rights, the government action is constitutional "so long as it bears a rational relation to some legitimate end." *Romer v. Evans*, 517 U.S. 620, 632 (1996). "Courts only apply strict scrutiny when distinctions are made on the basis of a suspect class, like religion." *Ass'n of Christian Sch. Int'l v. Stearns*, 362 F. App'x 640, 646 (9th Cir. 2010) (citing *City of Cleburne*, 473 U.S. at 440). Heightened scrutiny is applicable to a regulation that applies selectively to religious activity only where "the basis for the distinction was religious and not secular in nature." *Olsen v. Comm'r*, 709 F.2d 278, 283 (4th Cir. 1983). A mere classification itself, however, does not deprive a group of equal protection of the law. *Carrington v. Rash*, 380 U.S. 89, 91 (1965).

Greater scrutiny is afforded to particular classes, such as religion, where the classification is "more likely than others to reflect deep-seated prejudice rather than legislative rationality in pursuit of some legitimate objective." *Plyler v. Doe*, 457 U.S. 202, 216 n.14 (1982). No single factor for determining elevated scrutiny is dispositive, but the Court considers the history of invidious discrimination against the class burdened by the legislation. *United States v. Virginia*, 518 U.S. 515, 531 (1996) (concluding heightened scrutiny applied where official action denied rights or opportunities

based on sex in response to "volumes of history"); *Cleburne Living Ctr.,* 473 U.S. at 443 (concluding mentally retarded people are not victims of "continuing antipathy or prejudice"). The Court has also considered whether the distinguishing characteristic is "immutable" or beyond the class members' control. *Id.* at 442 (mentally retarded people are different from other classes of people, "immutably so, in relevant respects").

While the Court has recognized religion to be a suspect class, the Petitioner does not qualify as a religion or any other suspect class. In fact, the Petitioner contends quite the opposite. They argue that their "secular" beliefs have subjected them to unequal treatment. The Petitioner is a self-described, non-religious organization based in part on the "the rejection of traditional religious belief" and "the separation of government from religion." *George Houston Soc'y,* No. 14-067854, slip op. at 2. Secular organizations, however, are not a suspect class nor would it be appropriate to consider them as such given they have not typically been the object of antipathy or prejudice, like race, religion, and sex. Moreover, to recognize secular organizations as a suspect class would contravene the Court's rationale in affording heightened scrutiny to religious organizations as a suspect class.

Even where a suspect class is not the target of unequal treatment, a law that is invidious in nature or has discriminatory intent is presumptively unconstitutional. *Washington v. Davis*, 426 U.S. 229, 239 (1976). Discriminatory purpose is not, however, established solely because one group of speakers has been excluded from expressing its ideas while another group has not been so excluded. *Id.* at 293 (holding that a law is not unconstitutional solely because it has a disproportionate impact regardless of whether it reflects a discriminatory purpose). There must be discriminatory intent. *Id.*

Here, the government action at issue does not purposely target non-religious organizations for exclusion of FEMA funding. Many nonreligious organizations are not only eligible for funding, but have received such funding. App. at 1. Of the thirty-nine recipients only six were houses of worship, representing approximately just 7% of the total funds distributed to private nonprofits. *Id.* The largest grant to a house of worship was more than half a million dollars less than the largest grant to an eligible private nonprofit that is not a house of worship. *Id.* The Nonprofit Fairness Act simply permits the inclusion of houses of worship for purposes of rehabilitating devastated communities.

Without a discriminatory impetus, the statute must impinge on a fundamental right for a higher level of scrutiny to apply. *Schweiker*, 450 U.S. at 230. Instead the Petitioner asserts that FEMA's denial of equal eligibility for funding represents discrimination based on "secular content" and the Constitution compels equal treatment of religion and non-religion. *George Houston Soc'y v. FEMA*, No. 12-067854, slip op. at 9-10 (2011). Yet no authority supports this. First, since there is no forum in the present case, the right to freedom of speech is not applicable. Second, this Court has held that where there is a claim on the basis of equal treatment between religion and non-religion the proper inquiry is whether Congress has chosen rational classification to further a legitimate end. *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 339 (1987); *see also Heller v. Doe*, 509 U.S. 312, 319 (1993) ("a classification neither involving fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity").

The *Amos* Court rejected the Equal Protection challenge to a provision that exempted religious organizations from an antidiscrimination principle of Title VII when they discriminate on the basis of religion in employment. *Amos*, 483 U.S. at 339. Challengers argued that strict scrutiny applied because the statute at issue offended equal protection principles by giving less protection to the employees of religious employers than to the employees of secular employers, and therefore impermissibly drew distinctions on religious grounds. *Id.* The Court rejected this argument. *Id.* at 338. Moreover, the Court noted that in light of its precedent and past decisions it has never indicated "statutes that give special consideration to religious groups are per se invalid." *Id.*

Similar to the challengers in *Amos*, the Petitioner argues here, that the FEMA funding affords unequal treatment to a religious and nonreligious entity and must be strictly scrutinized. *Id.* at 338-39. The Court, however, explicitly distinguished this situation from those where "laws discriminate *among* religions" and are thus subject to strict scrutiny. *Id.* (emphasis added).

Furthermore, this Court's jurisprudence does not support the proposition that equal treatment is required. As the appellate court properly recognized, "the Constitution does not compel the government to ignore the distinctive role [of] religion and "apart from decisions involving speech fora, the Supreme Court has never held that the Constitution requires equal treatment of non-religion and religion." *George Houston Soc'y*, No. 14-067854, slip op. at 14 (2011). Here, there is no intentional discrimination, nor any ani-

mus in the government's inclusion of houses of worship, nor any adverse or unequal treatment on the basis of religious beliefs. As such, rational basis is the appropriate standard and their equal protection claim must fail because a rational basis for the inclusion of houses of worship under FEMA disaster relief exists.

The cases that Petitioner primarily relies on are wholly inapplicable as they involve discriminatory intent and objective. *McCreary Cnty. v. ACLU* 545 U.S. 844, 875-76 (2005); *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961). In *McCreary County*, the government had a "manifest objective" of favoring a religious message over a nonreligious message. 545 U.S. at 850-53. In *Torcaso*, the government's exclusion was based on non-religion. 367 U.S. at 489-90. The situation at issue here is markedly different because no intent to discriminate against secular or religious organizations is present. In fact, both religious and nonreligious nonprofits may receive funding. Furthermore, the Petitioner was not excluded because of non-religion, but because they did not qualify as an organization under any of the statutes provisions, including those applicable to secular organizations.

The Stafford Act, as amended by the Nonprofit Fairness Act does not target a suspect class or interfere with fundamental rights. The George Houston Society is not religious and as a secular organization, does not share the history of discrimination like other suspect classifications. Moreover, religious and non-religious organizations qualify for FEMA funding, thus no discriminatory intent or purpose can be demonstrated. Therefore, so long as funding non-profit facilities, including houses of worship, bears a rational relation to some legitimate end, there is no constitutional violation.

2. FEMA's denial of funding to certain non-profits furthers a legitimate end.

A classification neither involving fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity. *Heller*, 509 U.S. at 319. In areas of social and economic policy, these classifications "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *FCC v. Beach Commc'n, Inc.,* 508 U.S. 307, 314 (1993). The government is not required to show a "callous indifference to religious groups." *Amos*, 483 U.S. at 327. Moreover, a law is not unconstitutional simply because it allows churches to advance religion, which is

their very purpose. *Id.* The classification must, however, further a legitimate end. *Id.* at 339.

There can be no question that the government may legitimately "aid" non-profit organizations – even houses of worship. In fact, it has done so on numerous occasions. In *Hosanna-Tabor*, the Court held a ministerial exception protecting religious institutions operated as an affirmative defense. *Hosanna-Tabor Evangelical Lutheran Church v. Equal Emp't Opportunity Comm'n*, 132 S. Ct. 694, 705-06 (2012). The Court has also enforced the Religious Freedom Restoration Act, which prohibits burdening the exercise of certain religious practices. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 423-24 (2006). The Religious Land Use and Institutionalized Persons Act, which increased the level of protection of prisoners' and other incarcerated persons' religious rights, was also upheld by the Court. *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). In 1995, a law was enacted making houses of worship eligible for rebuilding assistance after the bombing of the Murrah federal building in Oklahoma City. Okla. Stat. Murrah Crime Victims Compensation Fund 21, § 142.32 (1995).

The Stafford Act was established ¨to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters." 42 U.S.C. § 5121. The amendment to the Stafford Act includes houses of worship and clarifies their eligibility for certain disaster relief and emergency assistance "on terms equal to other eligible private nonprofit facilities, and for other purposes." Nonprofit Fairness Act § 2. The clarification and amendment of the Act to include houses of worship does not alter its core purpose and represents a legitimate government action to rebuild communities following natural disasters.

Beyond the overall purpose of the Act and Amendment, Congress included houses of worship because it further recognized that ¨churches, synagogues, mosques, temples, and other houses of worship throughout communities in New York, New Jersey, Connecticut, and elsewhere play an essential role in the daily lives of the communities." Nonprofit Fairness Act § 1. This recognition does not support the Petitioner's claim that the Amendment impermissibly favors religion over non-religion. If the Amendment is to be taken to favor any entity, it is one that contributes to the community in an essential manner, including houses of worship. The Amendment broadens the reach of FEMA funding so that

houses of worship may be accorded the same statutory relief as other community nonprofits.

The rational basis standard of review is a highly deferential one. *City of Dallas v. Stanglin*, 490 U.S. 19, 26 (1989) (stating that rational basis review is "the most relaxed and tolerant form of judicial scrutiny under the Equal Protection Clause."). Under a rational basis equal protection analysis the Court considers any "conceivable basis" for the challenged law. *Windsor v. United States*, 699 F.3d 169, 196 (2d Cir. 2012). The Court is not limited to the bases "articulated by or even consistent with the rationales offered by the legislature." *Id.* In *Beach Communications*, the Court upheld a challenged law using its own postulated reason even though had previously been rejected by Congress. *Beach Commc'ns, Inc.*, 508 U.S. at 318. In *Amos*, the Court disposed of the equal protection argument finding a statute that expanded an exemption to religious employers was rationally related to the legitimate purpose of alleviating significant governmental interference with the ability of religious organizations to define and carry out their religious missions. *Amos,* 483 U.S. at 339.

Under rational basis review, a law will be upheld unless the government's action is "clearly wrong, a display of arbitrary power, not an exercise of judgment." *Mathews v. DeCastro*, 429 U.S. 181, 185 (1976). Even where the law is over inclusive, the Court has held the statute is constitutional. *N.Y.C. Transit Auth. v. Beazer*, 440 U.S. 568, 593 (1979) (upholding an over inclusive law excluding methadone users from employment even where no safety risk existed).

Here, the Petitioner alleges that FEMA´s refusal is unconstitutional because it denies them funding without treating its grant application on equal terms with the applications of houses of worship. This argument ignores that government benefit requests do not have to be equally considered for every secular nonprofit organization, just as they do not have to be equally considered for every religious nonprofit organization where its purpose is not motivated by religious or secular content. The fact that some houses of worship may not make essential contributions to the community does not make the statute, as amended, unconstitutional.

In *Locke*, the Court reaffirmed that "there is room for play in the joints between" the Free Exercise and Establishment Clauses, allowing the government to accommodate religion beyond free exercise requirements, without offense to the Establishment Clause. *Locke*, 540 U.S. at 718. The Amendment to the Stafford Act is such an example. Because there is no speech forum, suspect class, or

fundamental right targeted, the Petitioner´s claim necessarily fails. The Government´s purpose of providing relief to disaster victims and repairing damaged communities is not only a legitimate end, but vital.

II. THE NONPROFIT FAIRNESS ACT DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE BY INCLUDING HOUSES OF WORSHIP BECAUSE IT IS A NEUTRAL GOVERNMENT PROGRAM THAT HAS A LEGITIMATE SECULAR PURPOSE AND DOES NOT ADVANCE RELIGION.

The First Amendment to the United States Constitution states "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. CONST. amend. I. This Court has construed the Religion Clauses as commanding the government to be "neutral" in its relationship with the religious and the non-religious, not as a complete barrier to *any* relationship between government and places of worship. *See Lemon v. Kurtzman*, 403 U.S. 612, 614 (1971) ("Some relationship between government and religious organizations is inevitable."); *Tilton v. Richardson*, 403 U.S. 672, 679 (1971) ("The simplistic argument that every form of financial aid to church-sponsored activity violates the Religion Clauses was rejected long ago."); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 18 (1947) ("State power is no more to be used so as to handicap religions, than it is to favor them."). Thus, to pass muster as a valid exercise of government action under the Establishment Clause, the law must be neutral as to religion, have a legitimate secular purpose (in other words, not have the purpose of advancing religion), and not have the primary effect of advancing nor inhibiting religion. *See Mitchell v. Helms*, 530 U.S. 793, 838-39 (2000) (O'Connor, J., concurring); *Agostini v. Felton*, 521 U.S. 203, 234 (1997); *see also Lemon,* 403 U.S. at 612.

The Nonprofit Fairness Act, as part of the broader Stafford Act, is a neutral government program that is: (1) broadly available to eligible applicants that are essential to the daily lives of the residents of the Burlington communities; (2) has the legitimate secular purpose of providing disaster relief and emergency assistance to repair private nonprofit facilities in order to facilitate essential community building; and (3) does not have the primary effect of advancing religion. Rather, the Nonprofit Fairness Act amendment ensures that the Stafford Act does not have the effect of inhibiting the free exercise of religion to those individuals who reside

in communities struck by disaster. Thus, it does not violate the Establishment Clause.

A. The Nonprofit Fairness Act is a neutral government program available to a broad array of private nonprofit facilities that are eligible for federal disaster relief.

A significant factor in upholding government aid programs facing Establishment Clause challenges is its neutrality towards religion. *Rosenberger v. Rector*, 515 U.S. 819, 839 (1995); *Mitchell*, 530 U.S. at 809-13 (plurality opinion). Government aid that is allocated to recipients based on distinctions among "religious, nonreligious and areligious" recipients are generally considered invalid. *See Am. Atheists, Inc. v. City Of Detroit Downtown Dev. Auth., 567 F.3d 278, 282 (6th Cir. 2009)*; *Larson v. Valente*, 456 U.S. 228, 246-47, n.23 (1982) (invalidating state law exemption for certain "well-established churches" from various registration and reporting requirements).

Government programs that allocate benefits to a broad array of recipients without regard to their religious beliefs, however, are not required to *exclude* religious organizations in order to satisfy the Establishment Clause. *See Mitchell*, 530 U.S. at 809-14; *Agostini*, 521 U.S. at 230-31; *Rosenberger*, 515 U.S. at 840. When the government, following neutral criteria, "extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse," then neutrality towards religion is satisfied. *See Bd. of Educ. of Kiryas Koel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 704 (1994).

This Court has even cautioned itself to "be sure that we do not inadvertently prohibit [the government] from extending its general [government] benefits to all its citizens without regard to their religious belief." *Everson*, 330 U.S. at 16. This is so because "[w]ithholding access [from religious organizations] would leave an impermissible perception that religious activities are disfavored." *Rosenberger*, 515 U.S. at 846 (O'Connor, J., concurring).

In *Rosenberger*, the University of Virginia, "an instrumentality of the Commonwealth," authorized the payment of private contractors for the printing costs of a variety of student publications but excluded the benefit to petitioner, a religious student publication. *Id.* at 822-26. This Court held that because there was "no suggestion that the University created [the governmental program that paid for printing costs for a variety of student publications] to advance religion or adopted some ingenious device with the purpose

of aiding a religious cause," there was no need to deny eligibility to religious student publications in order to obey the Establishment Clause. *Id.* at 840-46.

Conversely, in *Texas Monthly, Inc.*, a state sales-tax exemption for "periodicals published or distributed by a religious faith and consisting wholly of writings promulgating the teaching of the faith" was struck down on the grounds that the exemption was confined exclusively to religious publications. 489 U.S. at 14-15. Yet, this Court was careful to note, "Insofar as that subsidy is conferred upon a wide array of nonsectarian groups as well as religious organizations in pursuit of some legitimate secular end, the fact that religious groups benefit incidentally does not deprive the subsidy of the secular purpose and primary effect mandated by the Establishment Clause." *Id.*

In this case, unlike the tax exemption directed solely at religious publications in *Texas Monthly*, the Stafford Act provides disaster relief and emergency assistance to a broad array of public and private nonprofit applicants. An organization, such as the Petitioner – that self-identifies as a nonreligious nonprofit – is eligible for a Stafford Act grant if it is a private nonprofit facility that is an "educational, utility, irrigation, emergency, medical, rehabilitational, [] temporary or permanent custodial care facilit[y]," or if it "provides essential services of a governmental nature to the general public . . . ." Stafford Act, 42 U.S.C. § 5122HA(11)(A) - (B). Eight types of private nonprofit facilities are listed in § 5122HA(11)(A), and eleven more types of facilities are listed in the Act under § 5122HA(11)(B), including houses of worship. *Id.* Thus, Petitioner is not denied funding solely on the basis that it is not a house of worship. As FEMA stated in the Second Appeal Letter to Petitioner, The George Houston Society was denied a grant because "[it] did not qualify as a house of worship, community center, or any other eligible private nonprofit facility." App. at 7. (internal quotations omitted). Petitioner does not dispute FEMA's ruling that it does not qualify as a house of worship, community center, or any other eligible private nonprofit facility. Instead, Petitioner argues that houses of worship should not be eligible for federal disaster relief. However, as the Court has long held, financial aid to religious organizations is permissible under the Religion Clauses of the Constitution.

Here, the government aid is available to a wide spectrum of potential recipients of both public facilities and nonprofit facilities based on the neutral criteria of "providing essential services." The inclusion of houses of worship into the definition of private non-

profit facilities does not favor religion – only recognizes that "house[s] of worship throughout communities in Old Jersey and elsewhere play an essential role in the daily lives of the communities." Nonprofit Fairness Act § 2(3). By expanding the definition of "private nonprofit facility that provides essential services" to include houses of worship, the Government program satisfies the neutrality requirement by "extend[ing] benefits to recipients whose ideologies, including religious ones, are broad and diverse" and are essential to community building. *Rosenberger*, 515 U.S. at 839. Furthermore, to exclude houses of worship as potential beneficiaries of the federal disaster relief assistance would be prohibiting the government from extending benefits that are generally available to other facilities because of its religious nature. And, similar to *Rosenberger*, there is no suggestion that the Stafford Act was adopted to advance religion, therefore, there is no need to deny eligibility to houses of worship when they have equally suffered damage and destruction as many other private nonprofit facilities at the hand of Hurricane George. Hence, by amending the Stafford Act to include houses of worship, the Nonprofit Fairness Act only serves to expand the array of eligible applicants for the neutral government program. The Nonprofit Fairness Act allocates funds to a broad array of applicants on the basis of criteria that neither favors nor disfavors religion, and is therefore, a neutral public welfare program that does not violate the Establishment Clause.

C. The Nonprofit Fairness Act includes houses of worship in order to serve the legitimate secular purpose of aiding the rebuilding of communities struck by disaster.

A law facing Establishment Clause challenges is constitutional if it is "motivated primarily, if not entirely, by a legitimate secular purpose." *Bowen v. Kendrick*, 487 U.S. 589, 602 (1988); *Everson*, 330 U.S. at 6; *Tilton*, 403 U.S. at 672. The government action has a legitimate secular purpose when the law "offers aid on the same terms, without regard to religion, to all who adequately further that purpose." *Mitchell*, 530 U.S. at 810.

This Court has found a legitimate secular purpose in government funding to religious activities when the money intended is to be utilized in a broad social welfare scheme. *Everson*, 330 U.S. at 6. For example in *Everson*, this Court upheld the reimbursement of bus fares to parents of all school children who use public transportation, despite the fact that some of the children attended Catholic parochial schools. *Id.* at 17. In upholding the program,

the Court noted that the State program could have legitimately been drawn to aid only public school children, however, "we must be careful . . . to be sure that we do not inadvertently prohibit [the state] from extending its general State law befits to all its citizens without regard to their religious belief." *Id.* at 16.

Similarly in *Bowen*, federal funding to religious organizations was not "unconstitutional on its face." 487 U.S. at 593. The purpose of the Adolescent Family Life Act (AFLA), which amended Title VI to include religious organizations, was to eliminate or reduce social and economic problems caused by teen pregnancy and parenthood. *Id.* (citing 42 U.S.C. § 300z (2012)). Respondents were a group of federal taxpayers, clergymen, and the American Jewish Congress that challenged the constitutionality of the AFLA, under the Religion Clauses of the First Amendment. *Id.* at 593-601. This Court, however, found that Congress' decision to amend the statute reflected "the entire appropriate aim of increasing broad-based community involvement," and that Congress' express intent to expand the services already authorized by Title VI were all legitimate secular goals "that are furthered by the AFLA's additions to Title VI, including the challenged provisions that refer to religious organizations." *Id.* at 604. Furthermore, this Court noted that, "there is no evidence that Congress' 'actual purpose' in passing the AFLA was one of 'endorsing religion.'" *Id.* (internal citations omitted).

Likewise in *Tilton*, the purpose of the governmental action taken had a legitimate secular goal, and this Court found that the funding of religiously affiliated colleges and institutions was permissible. 403 U.S. at 678-79. This Court considered the stated legislative purpose of assuring "ample opportunity for the fullest development of [future generations of American youth's] intellectual capacities" as an objective "entirely appropriate for [the] governmental action" of granting funds to church-related colleges and universities to construct facilities for secular purposes only. *Id.* at 672-79. The only portion that this Court did invalidate was the provision that provided a twenty-year limitation on the religious use of the facilities constructed with federal funds because the limit naturally opens the facility to use for any purpose after twenty years. *Id.* at 683.

Here, in order to analyze the purpose of the Nonprofit Fairness Act, a look at the Stafford Act is necessary because the Nonprofit Fairness Act only serves to amend the broader Stafford Act and does not stand on its own. The stated purpose of the Stafford Act is to provide governmental assistance in rebuilding communities,

"because disasters often cause loss of life, human suffering, loss of income, and property loss and damage." Stafford Act, 42 U.S.C. 5141 § 101(a)(1). Thus, it follows that the Nonprofit Fairness Act includes houses of worship into the broad array of eligible private nonprofit grantees, because it was based on Congress' findings that houses of worship "play an essential role in the daily lives of the communities," and because citizens "gather [in houses of worship] and engage in a variety of educational, enrichment and social activities . . . [which] are essential to community building." Nonprofit Fairness Act § 2(3), (5).

Similar to the broad purpose of the governmental programs in *Everson* and *Tilton* that included aid to children attending religious schools or the religious institutions itself, the broad purpose of the Stafford Act – to aid facilities essential to rebuilding communities that have been struck by disaster – includes houses of worship among the many nonprofit facilities eligible for government aid. And, similar to *Bowen*, Congress' decision to amend the Stafford Act to include houses of worship reflects the "appropriate aim of increasing broad-based community involvement," or building, as in the case at hand, because the Burlington community is not only made up of the people or the residents of the town, but also the facilities (such as houses of worship) that house communities of people as well. And although in *Tilton*, the Court struck down the twenty-year limitation provision on the grounds that it opens the facility after twenty years for non-secular purposes, the case at hand allocates funds to eligible facilities only for "repair, restoration, and replacement of damaged facilities," not the construction of entirely new, previously non-existing facilities. 42 U.S.C. § 5172HA (a)(3); *Tilton*, 403 U.S. at 689. Thus, the houses of worship in the instant case fall into the purview of the Stafford Act via the legitimate purpose of being an essential part of community building. The Nonprofit Act only authorizes the government to officially acknowledge the role that houses of worship play within communities all over the United States, and therefore serves as a logical expansion of the eligibility requirements for private nonprofit facilities in federal disaster relief grants.

C. The Nonprofit Fairness Act does not have the primary effect of advancing religion; rather, it ensures that the Stafford Act does not have the effect of inhibiting religion.

A government aid program, such as the Stafford Act, does not have the primary effect of advancing or inhibiting religion if it

does not result in governmental indoctrination of religion, does not define its recipients by reference to religion, or does not create an excessive governmental entanglement with religion. *See Mitchell*, 530 U.S. at 808 (citing *Agostini* 521 U.S. at 234).

This Court has distinguished between "indoctrination that is attributable to the State and indoctrination that is not" by turning to the principle of neutrality. *Mitchell*, 530 U.S. at 809 ("If the religious, irreligious, and areligious are all alike eligible for governmental aid, no one would conclude that any indoctrination that any particular recipient conducts has been done at the behest of the government."). Thus, neutral criteria for selection to be eligible for a government program will generally foreclose any claim that a program was implemented with the purpose of advancing religion. *See Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 114 (2001). For example, a state may extend police and fire-protection services, sewers and sidewalks, and property-tax exemptions to churches, synagogues and mosques without the risk of governmental indoctrination of religion. *See Everson*, 330 U.S. at 17-18; *Walz v. Tax Comm'n of N.Y.*, 397 U.S. 664, 680 (1970).

This Court has stated that to determine whether a government aid program defines its recipients by reference to religion, it "looks to the same set of facts as does [the Court's] focus, under the first criterion [of governmental indoctrination]." *Mitchell*, 530 U.S. at 813. However, it "uses those facts to answer a somewhat different question—whether the criteria for allocating the aid 'creat[e] a financial incentive to undertake religious indoctrination.'" *Id.* (quoting *Agostini*, 521 U.S. at 231); *compare Witters v. Wash. Servs. for the Blind*, 474 U.S. 481, 488 (holding that the neutral government program was permissible because it did not create a financial incentive for students to undertake sectarian education); *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 10 (1993) (upholding a neutrally available government aid program because it did not create a financial incentive for parents to choose a sectarian school); *with Comm. for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 774-84 (1973) (invalidating the government aid program because it created a financial incentive for parents to choose a Catholic school).

Excessive government entanglement is determined by looking to "the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and religious authority." *Agostini*, 521 U.S. at 232. However, not all entanglements between the government and religion have the effect of advancing or inhib-

iting religion – the entanglement must be "excessive" to violate the Establishment Clause. *See Lemon*, 403 U.S. at 614 (invalidating Rhode Island's 1969 Salary Supplement Act for teachers in non-public schools because the sole beneficiaries of the Act were teachers at Roman Catholic affiliated schools). An "excessive and enduring entanglement" between the government and religion may occur when "a comprehensive, discriminating, and continuing state surveillance" of the recipients of the aid is required to ensure that any restrictions dependent upon the receipt of the aid is obeyed. *See id.* at 619; *Mueller v. Allen*, 463 U.S. 388, 403 (1982).

For example, in *Mueller*, a Minnesota statute allowed parents of children attending an elementary or secondary school to deduct expenses for "tuition, textbooks, and transportation" from their state income tax returns. 463 U.S. at 391. Noting that the only possibility of "excessive entanglement" would "lie in the fact that state officials must determine whether particular textbooks qualify for a deduction," this Court concluded "with no difficulty" that the statute "does not excessively entangle the state in religion." *Id.* at 403. The Court reasoned that making such decisions regarding the textbook was not substantially different from the types of decisions that this Court previous approved such as, a textbook loan program to both public and sectarian schools that required state officials to determine whether particular books fit the secular criteria. *Id.* (citing *Bd. of Educ. v. Allen*, 392 U.S. 236, 88 (1968)).

In the instant case, none of the factors are present to render the Nonprofit Fairness Act as having the primary effect of advancing religion. There is no governmental indoctrination because a facility's eligibility for governmental aid is dependent on neutral criteria such as it being a private nonprofit facility that provides essential services for the community, or any one of the many listed facilities in the Stafford Act itself, as previously mentioned. The aid that is available to private nonprofit facilities is offered without regard to their religion because the Nonprofit Fairness Act only makes religious organizations *eligible* to apply for the federal disaster relief grant, not necessary to receive the grant. Being considered a house of worship is only one way of many to be considered for eligibility. Thus, in this case, Petitioner applied for a federal grant under the Stafford Act but not did qualify for eligibility because it did not meet the criteria necessary to be considered for any one of the many private nonpublic facilities eligible for the grant. Qualifying as a 'community center' is likely the closest description for Petitioner. However FEMA rejected the application on the grounds that George Houston Freethinkers' Hall does not

"serve a sufficiently broad segment of the community to be eligible" and Petitioner does not challenge this ruling at this stage. App. at 7. Additionally, the governmental aid is provided to private nonprofit facilities only to repair, restore or replace the preexisting facilities. *See* 42 U.S.C. § 5172HA(a)(3). Most of the approved facilities are likely not eligible for a loan, and are located in an area struck by natural disaster that has over $10 billion dollars in damages. *George Houston Soc'y*, No. 14-067854, slip op. at 4. This type of aid is more along the lines of police and fire-protection services – aid that is extended to communities so that they may function and prosper.

Likewise, there is no financial incentive created by the Stafford Act disaster relief grants to private nonprofit facilities to undertake religious indoctrination. A nonreligious organization, such as the Petitioner, is not going to suddenly become a house of worship in order to qualify for a grant. In fact, the basis of the present litigation is that Petitioner is not and never will be a religious organization, and has no financial incentive to undergo religious indoctrination in order to be eligible for the one-time grant as a house of worship. *Id.* at 2. And, although the Nonprofit Fairness Act does mention houses of worship in the act itself, it does not define its recipients by reference to religion. FEMA has the authority to determine who the recipients of the federal disaster aid are, not the Nonprofit Fairness Act. App. at 5-8. The Act only expresses what private nonprofit facilities are eligible to apply for the grant – and houses of worship are only one type of a widely varied list of community facilities eligible for government aid under the Stafford Act.

Finally, there is no 'excessive entanglement' between the government and the houses of worship that are eligible for disaster relief grants. As the lower court stated, "Congress recognized that effective disaster recovery efforts must include a wide range of groups within any community." *George Houston Soc'y*, No. 14-067854, slip op. at 13. While each individual facility, including those that are houses of worship, is a beneficiary of the grant, the entire community benefits from the repair, restoration and replacement of damaged facilities that are essential to community building. Second, the nature of the aid available under the Stafford Act as amended by the Nonprofit Fairness Act is an incentive toward the rebuilding of a devastated community, not aid towards religious indoctrination, or the government advancing religion.

Furthermore, Congress intentionally structured the Nonprofit Fairness Act so that it would avoid the entanglement danger.

Nonprofit Fairness Act § 2(5). As the appellate court reasoned, "Beyond the stage of determining applicants' eligibility, [the] Stafford Act grants pose [sic] little risk of entanglement." *George Houston Soc'y*, No. 14-067854, slip op. at 18. The government distributes a one-time grant to the recipient. The recipient is responsible for using the funds to repair and restore their facilities and FEMA is only involved in the process if the funds are diverted an impermissible purpose. *Id.* Limited oversight of the government interaction with the religious organization is a far cry from the "comprehensive, discriminating, and continuing state surveillance" that this Court warned would constitute an excessive entanglement in *Lemon*. 403 U.S. at 602.

Finally, unlike *Lemon*, where 95% of the private school students attended Roman Catholic schools, and 250 teachers at Roman Catholic schools were the sole beneficiary of the government aid, here, only six of the thirty-nine recipients (15%) of the Stafford Act federal relief grants are houses of worship. *Id.*; App. at 1. Furthermore, although 15% of the recipients or beneficiaries are houses of the worship, they only received 7% of the total aid that was granted to Burlington private nonprofit facilities. *Id.*

Thus, the Stafford Act as amended by the Nonprofit Fairness Act does not result in having a primary effect of advancing religion because it does not result in governmental indoctrination, it does not define its recipients to religion, or create an excessive governmental entanglement with religion. Accordingly, the Nonprofit Fairness Act is not in violation of the Establishment Clause of the United States Constitution.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the Court of Appeals for the Fourteenth Circuit.