

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HARVEST FAMILY CHURCH,
HI-WAY TABERNACLE, and ROCKPORT
FIRST ASSEMBLY OF GOD,

Plaintiffs,

v.

FEDERAL EMERGENCY
MANAGEMENT AGENCY, WILLIAM B.
LONG, Administrator of the Federal
Emergency Management Agency,

Defendants.

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CIVIL ACTION NO. 4:17-cv-2662

**BRIEF OF *AMICUS CURIAE* THE ARCHDIOCESE OF GALVESTON-HOUSTON
IN SUPPORT OF PLAINTIFFS' EMERGENCY RENEWED
MOTION FOR PRELIMINARY INJUNCTION**

Michael B. Bennett
State Bar No. 00796196
SDTX Bar No. 21828
BAKER BOTTS L.L.P.
910 Louisiana Street
Houston, Texas 77002
Telephone: 713.229.1209
Facsimile: 713.229.2709
E-mail: michael.bennett@bakerbotts.com

ATTORNEY-IN-CHARGE FOR *AMICUS CURIAE*
THE ARCHDIOCESE OF GALVESTON-HOUSTON

OF COUNSEL:
BAKER BOTTS L.L.P.

Richard A. Hussein
State Bar No. 10326100
SDTX Bar No. 19832
910 Louisiana Street
Houston, Texas 77002
Telephone: 713.229.1678
Facsimile: 713.229.2778
E-mail: richard.hussein@bakerbotts.com

NATURE AND STAGE OF PROCEEDINGS

Plaintiffs have moved on an emergency basis for a preliminary injunction enjoining Defendants from enforcing an internal policy of FEMA that denies disaster-relief grants under its Public Assistance Program to “Facilities established or primarily used for . . . religious . . . activities” on the grounds that Plaintiffs are likely to prevail on their claim that this policy violates the First Amendment of the United States Constitution and that they will suffer imminent and irreparable harm if application of this policy is not immediately enjoined. (Pls.’ Mem. in Support of Renewed Emergency Mot. for Prelim. Inj. 13-24, Dkt. # 12-5.) Plaintiffs’ brief contains a more detailed statement of the issues to be ruled upon by the Court and the standard of review. (*Id.* 13.)

SUMMARY OF ARGUMENT

The Archdiocese of Galveston-Houston (“Archdiocese”) submits this brief to support Plaintiffs’ position that FEMA’s continued application of this policy related to houses of worship is not compelled by the law or the Constitution. FEMA’s policy is especially unfair in view of the fact that houses of worship are so often at the very forefront of providing immediate aid to persons in need, regardless of faith, in the aftermath of serious tropical storms and other natural disasters, thereby facilitating and, indeed, reducing the ultimate burden on the government and FEMA to provide such relief.

INTEREST OF *AMICI*

The Archdiocese, led by Cardinal Daniel DiNardo and more than 400 other bishops and priests, serves 1.7 million Catholics in 147 parishes and in general is engaged in continual efforts of outreach and support to the community at large through organizations and programs like the Special Youth Services (programs include the promotion and coordination of restorative services to at-risk youth and their families), Aging Ministry (helping senior adults)

and the Office of Justice and Peace (focus includes housing, crime, education and the economic issues in local communities).¹ The Archdiocese's parishes are spread over 8,800 square miles in ten Texas counties, eight of which, based on the President's Major Disaster Declaration in connection with Hurricane Harvey, are in the area that qualifies for every category of grants under FEMA's Public Assistance grant program. The Archdiocese, as well as its parishes, priests, and parishioners, have been integrally involved in trying to meet the needs of those impacted by Hurricane Harvey,² consistent with their general mission to feed the hungry, care for orphans and elders, shelter the homeless, and welcome immigrants. Parish churches in the Archdiocese and their parishioners have also been among those directly affected by the recent storm and severe tropical storms of the past. For these reasons, the Archdiocese has a compelling interest in the claims asserted by Plaintiffs in this case, as well as an important voice as the representative of such a large community of people of religious faith.

ARGUMENT

Firefighters don't refuse to put out a fire because the fire is at a synagogue. The police don't refuse to investigate a break-in because burglars targeted a church. And FEMA should not refuse houses of worship the same aid that it offers other non-profits.³

It is all the more so misguided and unfair that FEMA continues to apply a policy denying disaster-relief grants to houses of worship when these same houses of worship are often at the very forefront of providing immediate relief in the wake of severe storms and natural disasters. By way of specific example, many if not most Americans have now heard the story of

¹ See <https://www.archgh.org> (last visited Oct. 2, 2017)

² See, e.g., <https://www.archgh.org/harveyrelief> (last visited Oct. 2, 2017).

³ Daniel DiNardo, Barry Gelman, Thomas Wenski and Efram Goldberg, Opinion, *Religious Americans lead hurricane response, so why does FEMA discriminate?*, USA TODAY (Sept. 27, 2017, 7:02 PM), <https://www.usatoday.com/story/opinion/2017/09/27/worship-hurricanes-federal-aid-daniel-dinardo-barry-gelman-thomas-wenski-efram-goldberg-column/703908001/>.

Sister Margaret Ann, who was caught on tape by the Miami-Dade Police wielding a chainsaw in her habit and clearing debris after Hurricane Irma struck Florida.⁴ When police told her that others would come clear the trees, Sister Margaret Ann, who serves as the principal of Archbishop Coleman F. Carroll High School in the Miami area, responded that the trees were dangerous and couldn't wait to be cleared.⁵ “We teach our students: Do what you can to help other people, don't think about yourselves. That's what I wanted to do,” she told reporters.⁶

In the Houston area, local parishes of the Archdiocese have mobilized to distribute in-kind relief and financial assistance to those in need across the Gulf Coast area. For example, St. Laurence Catholic Church in Sugar Land, Texas organized volunteer relief efforts that have resulted in collection and distribution of over \$60,000 in gift card and monetary donations, over 20,000 donations of needed items, delivery of more than 12 SUV/truck loads of supplies to families in Wharton, Clute, Rosharon, Richmond, Port Arthur, and Kingwood, and delivery of remaining supplies and donations for later distribution to Catholic Charities and Helping Hands locations in downtown Houston and Richmond.⁷ These efforts are indicative of relief provided by many other parishes and other churches as well.

Of course, such relief efforts are not limited to Catholics or Christians generally. In the wake of Hurricane Harvey, staff and congregants of the United Orthodox Synagogues of Houston rescued dozens of people—regardless of any religious affiliation—from their homes

⁴ Jason Kurtz, *Chainsaw-wielding nun clears debris from Irma*, CNN (Sept. 13, 2017), <http://www.cnn.com/2017/09/12/us/cnn-nun-chainsaw-irma-miami-erin-burnett-outfront-cnntv/index.html>

⁵ *Id.*

⁶ *Id.*

⁷ See September 26, 2017 Bulletin of St. Laurence Catholic Church (accessible at <https://stlaurence.org/bulletins/20170924.pdf>)

and brought them to non-flooded homes and shelters.⁸ Tragically, during this same time, their own house of worship, the United Orthodox Synagogue itself, sustained severe flood damage and was mostly unusable for the High Holiday services that concluded last week.⁹

In a somewhat astonishing example of FEMA's willingness to take the support of churches but not offer churches FEMA's support, FEMA itself has relied extensively upon houses of worship to contribute locations for FEMA to set up its disaster recovery centers for providing relief to individuals and businesses. Among other locations, FEMA Disaster Recovery Centers for Hurricane Harvey have been set up at North Shore Community Fellowship of Faith, St. John Vianney Catholic Church, and the Church Without Walls in Houston, and Simonton Community Church in Simonton.¹⁰

These examples are not merely colorful or inspiring anecdotes. In this case, they are reflective of the role—repeated over and over again by like-minded individuals inspired by faith—that houses of worship and religious communities play in helping our communities clean

⁸ Ben Sales, *How Houston's synagogues are handling the High Holidays after Harvey*, JEWISH TELEGRAPHIC AGENCY (Sept. 18, 2017, 4:13 PM), <https://www.jta.org/2017/09/18/news-opinion/united-states/how-houstons-synagogues-are-handling-the-high-holidays-after-harvey>.

⁹ *Id.*; see also Karen Zurawski, *Katy church helps Hurricane Harvey victims*, HOUSTON CHRONICLE (Aug. 29, 2017, 5:43 PM), <http://www.chron.com/neighborhood/katy/news/article/Katy-church-helps-Hurricane-Harvey-victims-12159595.php#photo-14016998>; Tara Isabella Burton, *Muslim groups in Houston are on the front lines of Harvey relief efforts*, VOX.COM (Sept. 1, 2017, 9:30 AM), <https://www.vox.com/identities/2017/9/1/16235172/muslim-groups-houston-harvey-relief-osteen-mosque>; Gary Nguyen, *Religious Groups Respond to Hurricane Harvey*, WORLD RELIGION NEWS (Aug. 30, 2017), <http://www.worldreligionnews.com/issues/religious-groups-responding-hurricane-harvey>.

¹⁰ See <https://www.fema.gov/news-release/2017/09/21/disaster-recovery-centers-open-polk-brazoria-and-harris-counties>; <https://www.fema.gov/news-release/2017/09/19/disaster-recovery-centers-open-two-counties>; <https://www.fema.gov/news-release/2017/09/18/disaster-recovery-centers-open-four-counties>; <https://www.fema.gov/news-release/2017/09/08/disaster-recovery-center-opens-fort-bend-county-0>.

up and rebuild after natural disasters. Such organizations and communities don't wait for the government. They dig in and get to work as soon as the needs are visible. The CEO of the National Voluntary Organizations Active in Disaster ("NOVAD") recently estimated that "80% of all recovery happens because of non-profits, and the majority of them are faith-based."¹¹ In fact, news reports have noted that FEMA administrator Brock Long repeatedly asked citizens in public comments during Hurricane Harvey to make donations to NOVAD to facilitate storm relief.¹² And Rev. Jamie Johnson, Director of the Center for Faith-Based & Neighborhood Partnerships of the Department of Homeland Security stated that "FEMA cannot do what it does so well without the cooperation of faith-based organizations and churches."¹³

It is indeed ironic then that when these houses of worship find themselves in need after a disaster, the federal government denies them relief, solely because of their religious character. Through FEMA's Public Assistance Program, non-profit organizations such as museums, zoos, community centers, libraries, homeless shelters, senior citizen centers, and rehabilitation facilities that are open to the public and provide certain health and safety services are eligible to apply for grants to rebuild structural damage. (FEMA, Public Assistance Program and Policy Guide, FP 104-009-2, April 2017, 11-12) (hereinafter, "FEMA Policy Guide")¹⁴; 44 C.F.R. § 206.221(e)(7). FEMA's policies, however, preclude FEMA from administering grants to organizations, even though they are similarly open to the public and provide many of the same

¹¹ Paul Singer, *Faith groups provide the bulk of disaster recovery, in coordination with FEMA*, USA TODAY (Sept. 10, 2017, 3:10 PM), <https://www.usatoday.com/story/news/politics/2017/09/10/hurricane-irma-faith-groups-provide-bulk-disaster-recovery-coordination-fema/651007001>

¹² *Id.*

¹³ *Id.*

¹⁴ Accessible at [https://www.fema.gov/media-library-data/1496435662672-d79ba9e1edbl6e60b51634af00f490ae/2017_PAPPG_2.0_508_FINAL\(2\).pdf](https://www.fema.gov/media-library-data/1496435662672-d79ba9e1edbl6e60b51634af00f490ae/2017_PAPPG_2.0_508_FINAL(2).pdf)

services to the community, if the primary use of their facility is religious activities as defined by FEMA. (FEMA Policy Guide 12.)

As noted in Plaintiffs' complaint, "community centers" have been defined by FEMA to include "art services" encompassing "arts administration, art classes, [and] management of public arts festivals," "educational enrichment activities" consisting of "car care, ceramics, gardening, personal financial and tax planning, sewing, stamp and coin collecting," and "social activities" such as "community board meetings, neighborhood barbecues, [and] various social functions of community groups." (FEMA Policy Guide 14.) While these types of centers provide meaningful benefits to their communities, few of them have the organization, staff, capacity, or know how to meet the fundamental needs of people in desperate need of food, water, or shelter in the aftermath of a storm or natural disaster. Such works, on the other hand, are part of the general mission of most houses of worship. Not only is it then unfair to deny houses of worship grant relief on an equal footing with non-religious non-profit organizations, FEMA may in fact be doing a disservice to both itself and the victims it is purposed to aid by preventing these houses of worship from restoring themselves to a condition in which they may resume providing various forms of charitable services to those impacted by storms and other natural disasters.

Examples of this paradox abound. For instance, St. Peter the Fisherman Church in Big Pine Key, Fla. sustained such significant damage in Hurricane Irma that no one is currently allowed in the church.¹⁵ St. Peter was the center of recovery efforts after Hurricane

¹⁵ *St. Peter Parish in Big Pine Key begins recovery process - Church was the hardest hit by Hurricane Irma*, Archdiocese of Miami, (Sept. 20, 2017) http://www.miamiarch.org/CatholicDiocese.php?op=Article_150593352923925 (last visited Oct. 2, 2017).

Georges—a Category 4 hurricane that inflicted nearly \$10 billion in damages in 1998.¹⁶ Among its many ministries, the parish runs a food bank that serves an average of 500 men, women and children each month, regardless of their religious affiliation.¹⁷ St. Peter members must now figure out how to rebuild themselves, even as they continue to serve others in need.

There is no federal law that requires FEMA to take this position. On the contrary, in 2013 the House of Representatives passed a bill to allow churches to apply for FEMA grants.¹⁸ Similarly, in a widely publicized act, the President recently tweeted his belief that churches in Texas should be allowed to apply for FEMA relief.¹⁹ Nevertheless, it seems that the left hand does not know what the right hand is doing, as FEMA continues to enforce its discriminatory policy.

FEMA's refusal to help churches like St. Peter equally along with other non-profits isn't just unfair, it is also religious discrimination, plain and simple, as is made clear by Plaintiffs' brief in support of their motion for preliminary injunction. And, as noted above, by refusing aid to the very entities that are so engaged in helping others, FEMA's policy by extension also hurts the broader community. "FEMA's mission is to support our citizens and first responders to ensure that as a nation we work together to build, sustain and improve our capability to prepare for, protect against, respond to, recover from and mitigate all hazards."²⁰

¹⁶ Andrea Torres, *Hurricane Irma damages Catholic church in Big Pine Key - Storm damages areas of St. Peter the Fisherman Church, a community icon*, WPLG LOCAL 10 NEWS (Sept. 16, 2017, 2:02 PM), <https://www.local10.com/weather/hurricane-irma/hurricane-irma-damages-catholic-church-in-big-pine-key>

¹⁷ <http://stpeterbpk.org/ministries/parishsocialministry.html> (last visited Oct. 2, 2017).

¹⁸ Pete Kasperowicz, *House approves bill forcing FEMA to allow churches to apply for aid*, THE HILL (Feb. 13, 2013, 6:38 PM), <http://thehill.com/blogs/floor-action/house/282879-house-votes-to-let-federal-disaster-aid-flow-to-churches-mosques-other-houses-of-worship>

¹⁹ @realDonaldTrump, Twitter (Sept. 8, 2017, 8:56 PM), <https://twitter.com/realDonaldTrump/status/906320446882271232>

²⁰ <https://www.fema.gov/about-agency> (last visited Oct. 2, 2017).

Yet, FEMA chooses to prohibit any assistance to the houses of worship that exemplify FEMA's mission. By having this discriminatory policy in place FEMA is acting contrary to its stated mission.

Individuals, families, and communities nationwide are reeling from the combined blows of Hurricane Harvey, Hurricane Irma, and Hurricane Maria. Houses of worship across the impacted areas are among the recovering. They are also among those who are trying to help others recover. If a religious institution meets all the criteria for aid but for its status as a house of religious worship, it should be eligible to receive that aid on par with everyone else.

CONCLUSION

For all these reasons, and in the interest of all houses of worship in dire need of aid, the Archdiocese prays that this Court will grant Plaintiffs' motion for preliminary injunction and end application of FEMA's patently unfair policy.

Respectfully submitted,

/s/ Michael B. Bennett

Michael B. Bennett
State Bar No. 00796196
SDTX Bar No. 21828
BAKER BOTTS L.L.P.
910 Louisiana Street
Houston, Texas 77002
Telephone: 713.229.1209
Facsimile: 713.229.2709
E-mail: michael.bennett@bakerbotts.com

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OF COUNSEL:
BAKER BOTTS L.L.P.

Richard A. Hussein
State Bar No. 10326100
SDTX Bar No. 19832
910 Louisiana Street
Houston, Texas 77002
Telephone: 713.229.1678
Facsimile: 713.229.2778
E-mail: richard.hussein@bakerbotts.com

CERTIFICATE OF SERVICE

This certifies that on October 2, 2017, I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Southern District of Texas, using the electronic case files system of the court. The electronic case files system sent a “Notice of Electronic Filing” to individuals who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Michael B. Bennett

Michael B. Bennett