

September 12, 2013

Hon. Members of the United States Senate  
Washington, DC

Dear Senator:

The organizations listed at the end of this letter strongly support a bipartisan amendment (#1856) sponsored by Senators Klobuchar and Hoeven to the Energy Savings and Industrial Competitiveness Act ((S.1392) sponsored by Senators Shaheen and Portman). Amendment 1856 will create a pilot grants program in the Department of Energy to award limited, but impactful, matching grants to nonprofit organizations to make their buildings more energy efficient.

The amendment is based upon a standalone bill (S.717) which had several additional bipartisan sponsors, was considered in a hearing by the Senate Energy & Natural Resources Subcommittee on Energy,<sup>1</sup> and – just yesterday – received the express support of Chairman Wyden, Ranking Member Murkowski, Senators Shaheen and Portman and several other senators in the course of Senate floor consideration of S.1392.<sup>2</sup>

As was stated by the Senators, the Klobuchar-Hoeven amendment is a common sense proposal to assist nonprofits – including churches and synagogues, YMCAs, museums and other types of nonprofits – overcome the steep, up-front costs of energy efficiency building retrofits. This proposal thus serves important – and “secular” – public policy goals of increasing energy efficiency, creating jobs, and reducing pollution.

Earlier this week, another coalition of organizations wrote to your office stating their objection to this bipartisan amendment. While they support such a proposal to aid secular nonprofits, they insist that churches, synagogues and other houses of worship be excluded from eligibility on the grounds that, in their view, it violates the Establishment Clause of the First Amendment and threatens the religious liberty of houses of worship.

In fact, the Klobuchar-Hoeven amendment is consistent with current court precedents and analogous to other federal programs authorized and funded by Congress over the years.

It is consistent with the most recent court rulings because the amendment does not propose a special aid program exclusively for religious entities, but would create a program to broadly assist all nonprofits in achieving a secular public policy goal. The Establishment Clause does *not* require the affirmative exclusion (some might say discrimination against) religious institutions – it requires government neutrality toward religious institutions. As stated by Supreme Court Justice William Brennan: “Insofar as [a] 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

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<sup>1</sup> <http://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=f942a35f-17e7-47c6-8444-807342994ff0>

<sup>2</sup> See Congressional Record - Senate, September 11, 2013, S6363-6365.

primary effect mandated by the Establishment Clause.”<sup>3</sup> The Klobuchar-Hoeven amendment is consistent with this principle.

The Klobuchar-Hoeven amendment is consistent with court rulings that embrace the “neutrality principle.” Courts have recently applied this approach to Establishment Clause lawsuits,<sup>4</sup> and have done so on the basis of longstanding precedents.<sup>5</sup>

Moreover, the Klobuchar-Hoeven amendment is consistent with other federal programs enacted by Congress. Notable examples of such programs include:

- i) the Interior Department’s “Save America’s Treasures” program provides grants for the repair and maintenance of historically significant properties, which have included the Boston’s Old North Church<sup>6</sup> and Newport’s Touro Synagogue;
- ii) Congress has overwhelmingly authorized grants for security upgrades for nonprofits, including houses of worship, under the Department of Homeland Security’s Nonprofit Security Grant Program;<sup>7</sup>
- iii) FEMA awards disaster relief grants to repair facilities under the Stafford Act, 42 U.S.C. 5121-5206, damaged in natural disasters to religious institutions including parochial schools;<sup>8</sup>
- iv) the California Missions Preservation Act, P.L. 108-420 (Nov. 30, 2004), authorized federal grants for restoring colonial era missions in California, many of which are still used for religious worship;
- v) and many other examples abound.<sup>9</sup>

Some critics of the amendment assert that if houses of worship are eligible for the programs, and indeed receive federal funds for energy efficiency building retrofits, their religious liberty and autonomy will be compromised or imperiled. Were this indeed the case, the organizations listed below would be the last to be supporting such a proposal. But the experience of the various programs listed above and this parade of horrors has not come to pass. These facts and experience are more worthy of recognition than conjecture.

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<sup>3</sup> *Texas Monthly v. Bullock*, 489 U.S. at 14-15 (1989) (plurality opinion) (footnote omitted).

<sup>4</sup> See *American Atheists Inc. v. City of Detroit DDA*, 503 F.Supp.2d 845 (2007) and *Mitchell v. Helms*, 530 U.S. 793, 856-57 (2000) (O’Connor, J., concurring in judgment).

<sup>5</sup> See *Everson v. Bd. Of Educ.*, 330 U.S. 1 at 16-17 (1947).

<sup>6</sup> <http://home.nps.gov/applications/release/Detail.cfm?ID=395>

<sup>7</sup> Most recently, see Consolidated and Further Continuing Appropriations Act, P.L.113-6, Dept. of Homeland Security, Title III.

<sup>8</sup> [http://seattlepi.nwsourc.com/local/99810\\_disaster13.shtml](http://seattlepi.nwsourc.com/local/99810_disaster13.shtml)

<sup>9</sup> These include: *Elementary and Secondary Education Act* (1965) (Title V-A authorizes federal assistance for the acquisition of library resources, instructional materials, and educational equipment; Title II-D provides assistance for acquiring and using educational technology; and Title II-A provides assistance for teacher training and professional development); *National Energy Conservation Policy Act* (1978)(Established energy conservation grants to schools to make them more energy efficient); *Aviation Safety and Noise Abatement Act of 1979* (Provides grants for noise abatement improvements, including religious schools); *Asbestos School Hazard Abatement Act* (1984)(Directed the EPA to provide financial assistance to schools for asbestos abatement projects); *Telecommunications Act* (1996)(Provides discount “E-rates” on advanced telecommunications services for schools, including high-speed Internet service, routers, hubs, and network file servers). See additional programs listed below in re: disaster relief, historic preservation and homeland security grants.

Because the Klobuchar-Hoeven amendment #1856 is a sound proposal which will serve common sense public policy goals in a manner consistent with constitutional principles – the organizations listed below have endorsed the amendment’s addition to the Shaheen-Portman bill and its enactment into law.

Organizations Supporting Klobuchar – Hoeven Amendment #1856 to S.1392

Association of Art Museum Directors  
The Baha’is of the United States  
Evangelical Lutheran Church in America  
Friends Committee on National Legislation (Quakers)  
General Conference of Seventh Day Adventists  
National Council of Churches  
Sojourners  
Union of Orthodox Jewish Congregations of America  
U.S. Conference of Catholic Bishops  
YMCA of the U.S.A.