

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
KEY WEST DIVISION**

CASE NO.: 4:17-cv-10092-JLK

CHABAD OF KEY WEST, INC., and
CHABAD OF THE SPACE COAST,
INC.,

Plaintiffs,

v.

FEDERAL EMERGENCY
MANAGEMENT AGENCY, WILLIAM
B. LONG, Administrator of the Federal
Emergency Management Agency,
FLORIDA DIVISION OF
EMERGENCY MANAGEMENT, WES
MAUL, Interim Director of the Florida
Division of Emergency Management,

Defendants.

**RULE 41(a)(1)(A)(ii) STIPULATION
OF DISMISSAL WITHOUT PREJUDICE**

Pursuant to Rule 41(a)(1)(A)(ii), Fed. R. Civ. P., the plaintiffs, Chabad of Key West and Chabad of the Space Coast (collectively, “the Synagogues”) hereby give notice that they voluntarily dismiss their claims against Defendants, Florida Division of Emergency Management and Wes Maul, (the “Florida Defendants”), without prejudice. The Florida Defendants stipulate to this dismissal.

The FEMA policy challenged in this lawsuit unlawfully discriminated against houses of worship. The Synagogues claimed, and the Florida Defendants agreed, that

the federal policy violated the Free Exercise Clause of the First Amendment to the U.S. Constitution, under *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), due to its discrimination on the basis of the religious status and conduct of houses of worship. In a parallel lawsuit, *Harvest Family Church v. FEMA*, No. 17A649 (application for injunction filed at the United States Supreme Court on Dec. 15, 2017), the plaintiffs, three churches in Texas devastated by Hurricane Harvey, sought emergency relief from the United States Supreme Court. On December 21, 2017, the Supreme Court requested that Federal Defendants respond to the application by January 10, 2018. *See Harvest Family Church v. FEMA*, No. 17A649 (S. Ct. Dec. 21, 2017), <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17a649.html>.

In response to the Supreme Court's request, Federal Defendants decided to change their policy. On January 2, 2018, they asked the Office of the Federal Register to publish a revised policy on an emergency basis so that it would be published before the Supreme Court's January 10 litigation deadline. On January 4, 2018, the Federal Register published the revised policy guide. *See Revisions to the Public Assistance Program & Policy Guide*, 83 Fed. Reg. 472 (Jan. 4, 2018).

The new guide revised FEMA's Public Assistance ("PA") grant policy to comport with *Trinity Lutheran* and ensure that "houses of worship will not be singled out for disfavored treatment" among "PA nonprofit applicants." 83 Fed. Reg. at 473. The revision recognized that, under *Trinity Lutheran*, "the Free Exercise Clause of

the First Amendment” does not permit the government to deny “an otherwise available public benefit” to a church “solely because it [is] a church.” *See* FEMA, FP-104-009-2, Public Assistance Program and Policy Guide at vii, Version 3 (January 2018), <http://bit.ly/2nPayVw>. FEMA’s new policy guide accordingly does not “exclude houses of worship from eligibility for FEMA aid on the basis of the religious character or primarily religious use of the facility.” *Id.*

Specifically, the new PA guide deleted the previous policy guide’s language that targeted religion for disfavor. *Id.* at vii-viii (deleting “religious” from the sentence “Facilities established or primarily used for . . . religious . . . activities are not eligible”; deleting language excluding “religious education,” “religious services,” and “religious activities” as ineligible services). The new policy guide instead recognizes as eligible services “[a]ctivities of community centers or houses of worship open to the general public, without regard to their secular or religious nature.” *Id.* at vii, 14.

After FEMA adopted its new policy, Congress decided to provide statutory protections against discrimination towards houses of worship. On February 9, 2018, Congress amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 *et seq.*, to provide that “A church, synagogue, mosque, temple, or other house of worship, educational facility, or any other private nonprofit facility, shall be eligible for contributions . . . without regard to the religious character of the facility or the primary religious use of the facility.” Bipartisan Budget Act of 2018, Pub. L. 115-123, § 20604(b) (amending 42 U.S.C. § 5172(a)(3)).

Accordingly, because under its new policy FEMA no longer discriminates against houses of worship, and is now by law prohibited from doing so, the Synagogues voluntarily dismiss the remaining claims in this case, without prejudice.

Respectfully submitted this 13th day of February, 2018.

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CERTIFICATE OF SERVICE

I hereby certify on this 13th day of February, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent a notification of such filing to the following:

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