



February 5, 2009

Dear Senator:

Re: ACLU Urges Opposition to DeMint Senate Amendment 189 to H.R. 1, the American Recovery and Reinvestment Act of 2009

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with over a half million activists, members and 53 affiliates nationwide, we write to urge you to oppose Senate Amendment 189, offered by Senator DeMint. The DeMint Amendment would remove a provision that reinforces constitutional protections by prohibiting the government from providing “green-building” federal funds for the construction or repair of buildings used for worship and other religious purposes.

The language found in section 803(d)(2)(c) of H.R. 1 (which the DeMint Amendment would strike) does nothing to harm the free exercise of religion of students, faculty, staff, or anyone else at an institution of higher education. Rather, this language simply complies with the Establishment Clause of the First Amendment to the U.S. Constitution.

The DeMint Amendment is at stark odds with our Constitution and Supreme Court precedent. Three Supreme Court decisions make clear that it is unconstitutional to allow federal grants for capital improvements of structures devoted to worship or religious instruction, and all three decisions remain binding on all government entities. See Tilton v. Richardson, 403 U.S. 672 (1971), Hunt v. McNair, 413 U.S. 734 (1973), Committee for Public Education v. Nyquist, 413 U.S. 756 (1973).

Nearly 37 years ago, in an opinion written by Chief Justice Warren Burger, the Supreme Court established a bright-line test on whether and how the government may finance “brick-and-mortar” construction for real property owned by religious institutions. In that seminal decision, the Supreme Court held that public funds could be used by religious institutions for capital improvements only when the structures are wholly and permanently dedicated to a secular use.¹ The Court held that a public subsidy to construct buildings at sectarian academic institutions was constitutional only if the buildings were subject to a permanent prohibition on religious use.² The Court struck down a twenty-year limitation on this prohibition, holding that the public funds would otherwise have the effect, at the end of the twenty-year period, of advancing religion.

¹ *Tilton v. Richardson*, 403 U.S. 672 (1971)

² *Id.* at 683

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With the constitutional requirements clearly established, the religious liberty protections contained in 803(d)(2)(c) are necessary and should remain intact. The DeMint Amendment should be rejected and we urge a strong “NO” vote on Senate Amendment 189.

Sincerely,

A handwritten signature in black ink, appearing to read 'Caroline Fredrickson', with a long horizontal flourish extending to the right.

Caroline Fredrickson
Director, Washington Legislative Office

A handwritten signature in black ink, appearing to read 'Christopher Anders', with a long horizontal flourish extending to the right.

Christopher Anders
Senior Legislative Counsel