

July 21, 2020

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, D.C. 20510

The Honorable Charles Schumer  
Minority Leader  
United States Senate  
Washington, D.C. 20510

The Honorable Nancy Pelosi  
Speaker of the House  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Kevin McCarthy  
Minority Leader  
United States House of Representatives  
Washington, D.C. 20515

**Re: Please Use the COVID-19 Relief Bill to Reinforce Basic Constitutional Protections in the Paycheck Protection Program**

Dear Majority Leader McConnell, Minority Leader Schumer, Speaker Pelosi, and Minority Leader McCarthy:

The undersigned organizations write to express our concern regarding the administration of the Paycheck Protection Program (PPP) by the Small Business Administration (SBA) and to request that Congress clarify its intent for the program to comply with basic constitutional requirements, in the COVID-19 relief bills currently under consideration. Specifically, we request inclusion of explicit language to ensure that taxpayer funds are not improperly used to support inherently religious activity in violation of the constitutional separation of religion and government, a fundamental element of our religious liberty as Americans.

To be very clear, our goal is not to prevent essential loans meant to help businesses and nonprofits retain workers from going to businesses or nonprofits merely because they are religious. **Instead, Congress should make clear that loan forgiveness is not available for such funds that are used to support inherently religious activity.** This simple restriction would recognize that religious organizations can receive loan assistance, including potentially forgivable loans for their secular activities, while maintaining critical protections for the separation of religion and government.

Although not explicitly authorized by Congress, SBA has interpreted the CARES Act to allow loan recipients to receive loan forgiveness for PPP funds used to support religious activities, including funds used for clergy salaries as well as rent and utility payments for houses of worship. Guidance issued by SBA makes clear that funding provided by PPP “can be used to pay the salaries of ministers and other staff engaged in the religious mission of institutions,” and this funding will be provided “without regard to whether nonprofit entities provide secular social services.”<sup>1</sup>

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<sup>1</sup> Small Business Administration, Frequently Asked Questions Regarding Participation of Faith-Based Organizations in the Paycheck Protection Program (PPP) and the Economic Injury Disaster Loan Program (EIDL) (April 3, 2020), available at <https://www.sba.gov/sites/default/files/2020-04/SBA%20Faith-Based%20FAQ%20Final.pdf>.

This problem is compounded by the fact that SBA provided a special exemption to affiliation rules to religious organizations,<sup>2</sup> allowing smaller subunits of large religious organizations to seek and receive a significantly larger portion of PPP funding than other nonprofits or businesses.<sup>3</sup>

And that is exactly what we have seen. SBA reports that at least \$7.3 billion in PPP loans was provided to religious organizations, dwarfing those provided to civil and social organizations (\$1.6 billion) and other non-profit organizations (\$4.6 billion).<sup>4</sup> Moreover, because of the limited transparency provided by SBA, at least 77,730 of the 88,411 religious organizations granted PPP funding cannot be identified.<sup>5</sup>

It has been a challenging year for the constitutional separation of religion and government. This essential principle of our democracy, indeed the very basis of the religious freedom we enjoy, has been under assault by both the Administration<sup>6</sup> and by the U.S. Supreme Court.<sup>7</sup> The Founders recognized that the coercive taxing power of the government cannot legitimately be used to force citizens to support a religion that is not their own.<sup>8</sup>

**Now, only Congress can preserve this legacy of religious freedom by averting this massive and unprecedented giveaway of taxpayer funding to support inherently religious activity.** Only Congress can clarify the rules of PPP to ensure that funding used for religious activities is not forgivable. And time is running out – several major PPP lenders are indicating that they will take applications for loan forgiveness beginning in August.<sup>9</sup>

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<sup>2</sup> Small Business Administration, Interim Final Rule, Business Loan Program Temporary Changes; Paycheck Protection Program, 85 Fed. Reg. 20817 (RIN 3245-AH35, Docket No. SBA-2020-0019) (published Apr. 15, 2020), available at <https://www.federalregister.gov/documents/2020/04/15/2020-07673/business-loan-program-temporary-changes-paycheck-protection-program>.

<sup>3</sup> See, e.g., Dunklin R. & Rezende M., “U.S. Catholic Church Received Billions in Taxpayer Funds From Paycheck Protection Program,” Time, July 10, 2020, available at <https://time.com/5865746/catholic-church-billion-ppp-loans/>.

<sup>4</sup> Small Business Administration, Paycheck Protection Program (PPP) Report, Approvals through 06/30/2020, available at <https://www.sba.gov/sites/default/files/2020-07/PPP%20Results%20-%20Sunday%20FINAL.pdf>.

<sup>5</sup> Note also that many religious organizations filed as schools or education services, and so they are not included in these numbers.

<sup>6</sup> Feinberg, A., “Trump’s new aid rules will boost religious organisations at expense of secular counterparts,” Independent, Jan. 16, 2020, available at <https://www.independent.co.uk/news/world/americas/us-politics/trump-aid-rules-grants-religious-secular-obama-a9286751.html>.

<sup>7</sup> See, e.g., *Espinoza v. Montana Department of Revenue*, No. 18-119, slip op. (2020), available at [https://www.supremecourt.gov/opinions/19pdf/18-1195\\_g314.pdf](https://www.supremecourt.gov/opinions/19pdf/18-1195_g314.pdf); *Our Lady of Guadalupe School v. Morrissey-Berru*, No. 19-267, slip op. (2020), available at [https://www.supremecourt.gov/opinions/19pdf/19-267\\_1an2.pdf](https://www.supremecourt.gov/opinions/19pdf/19-267_1an2.pdf).

<sup>8</sup> As Thomas Jefferson wrote in the Virginia Statute on Religious Freedom, “to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical....” A Bill for Establishing Religious Freedom, 18 June 1779, *The Papers of Thomas Jefferson*, 2:545-53 (Julian P. Boyd, ed., Princeton University Press, 1950).

<sup>9</sup> See, e.g., Chase for Business, Additional Information on Paycheck Protection Program Loan Forgiveness, July 10, 2020, available at <https://recovery.chase.com/cares1/forgiveness-information>.

Even during this pandemic, we must not set aside core constitutional principles such as the separation of religion and government. We ask you, not to exclude religious organizations from PPP, but to ensure that taxpayer funds are spent in accordance with basic constitutional requirements.

Sincerely,

Advocates for Youth  
American Atheists  
American Humanist Association  
Center for Inquiry  
Equality North Carolina  
Family Equality  
Freedom From Religion Foundation  
Secular Coalition for America