WASHINGTON, DC – Today, the House of Representatives considered and passed H.R. 592, the Federal Disaster Assistance Nonprofit Fairness Act of 2013. Congressman Robert C. "Bobby" Scott (D-VA) spoke on the House floor in opposition to the bill, delivering the following statement:

"Madame Speaker, I rise in opposition to H.R. 592, the Federal Disaster Assistance Nonprofit Fairness Act of 2013 which would add "houses of worship" to the list of eligible entities that can receive direct government assistance from FEMA. While the devastation caused to many communities after Hurricane Sandy is severe, and while I empathize with the desire to assist all who have suffered severe losses, direct government funding to houses of worship, whether for building or re-building, remains unconstitutional.

"The Establishment Clause in the First Amendment protects religious freedom by preventing the government from endorsing and funding any one religion – or all religions. While well intended, this bill would violate years of established legal precedent interpreting the Establishment Clause.

"In Committee for Public Education v. Nyquist, a 1973 case upholding the principles of Everson v. Board of Education, a 1947 case, the U.S. Supreme Court held that no taxpayer funds could be used for maintenance and repair of facilities in which religious activities take place, explaining that "[i]f the State may not erect buildings in which religious activities are to take place, it may not maintain such buildings or renovate them when they fall into disrepair." Accordingly, longstanding precedent specifically holds that taxpayer funds cannot go to construct, rebuild, or repair buildings used for religious activities. The types of buildings that this bill seeks to make eligible for direct government funding – houses of worship – are inherently used for religious activities and the bill would have the effect of unconstitutionally funneling taxpayer money for religious activities.

"Other court cases have also upheld the precedent established in Everson v. Board of Education and have further clarified the application of the Establishment Clause to cases of direct religious funding. In Tilton v. Richardson, the Supreme Court unanimously held that a government subsidy used to construct buildings at colleges and universities was constitutional, but only if the buildings were never used for religious activities.

"And in Hunt v. McNair (1973), the Supreme Court upheld a South Carolina law, which established an "Educational Facilities Authority" that issued bonds to finance the construction and renovation of facilities at educational institutions. This was upheld because it included a condition that government-financed buildings could never be used for religious worship or instruction.

"All of these cases firmly establish that it is constitutionally impermissible for the government to provide direct subsidization of religious institutions for the construction, repair, or maintenance

of any building that is, or even might be, used for religious purposes. Houses of worship clearly fall within this category of buildings and based on a long line of Supreme Court cases cannot be publically funded and cannot be recipients of direct grant funding.

"Now, there are constitutional ways to assist churches along with other community organizations. Loan programs, such as the government sponsored small business loan program available to any business in a community, could also be used by churches. Such loan programs have been upheld as constitutional so long as they are neutral both on their face and in their application, and so long as their purpose is not to aid religious institutions specifically. In Mitchell v. Helms (2000), the Supreme Court held that loan programs for religious institutions are allowable in some cases. However, such programs are distinguishable from grants, and are further distinguishable from the direct funding of church facilities that are, or may be used, for religious purposes. The opinion included that, "Of course, we have seen 'special Establishment Clause dangers,' when money is given to religious schools or entities directly rather than . . . indirectly." Justice O'Connor's controlling concurrence further noted the Court's "continued recognition of the special dangers associated with direct money grants to religious institutions." Therefore H.R. 592 clearly violates the principles prohibiting direct government grants to religious institutions. It also violates any possible exception that could be available under the theory of neutrality – the standards in this bill applicable to houses of worship are different from the standards for other entities.

"While I am in favor of constitutionally permissible ways to assist churches that have been damaged by natural disasters, this bill clearly does not do so in a constitutionally permissible way, and for this reason, I must oppose the bill and urge my colleagues to instead work together to ensure that all entities affected by Hurricane Sandy can be assisted in an expeditious and constitutionally permissible manner."

# # #