

CLIENT NEWS BRIEF

Supreme Court Strikes Down Denial of Government Grant to Church

The United States Supreme Court struck down as unconstitutional a state policy excluding churches from participating in a government benefit program solely based on their religious status. This is a reminder that public agencies cannot deny religious institutions participation in government programs designed to promote a public benefit solely because of the institution's religious character. (*Trinity Lutheran Church of Columbia, Inc. v. Carol S. Comer* (2017) 582 U.S. ___.)

Trinity Lutheran Church sought to replace its gravel playground for its preschool and daycare center with a rubber surface. The Missouri Department of Natural Resources offered reimbursements to qualifying nonprofit organizations that installed playground surfaces made from recycled tires. Although Trinity ranked fifth among the 44 grant applicants, it was deemed categorically ineligible under the department's view that it could not provide financial assistance directly to a church.

Trinity sued in federal court, alleging the department's failure to approve its application violated the Free Exercise Clause of the First Amendment. The federal district court and Eighth Circuit Court of Appeals ruled in the department's favor, but the Supreme Court reversed, finding that the department's policy violated the Free Exercise Clause. The Supreme Court held that what constituted discrimination by the department was not the denial of the grant to Trinity, but rather the refusal to allow Trinity to compete with secular organizations for a grant solely because it is a church.

In reaching this conclusion, the court disagreed with the department's reliance on *Locke v. Davey*, a prior Supreme Court opinion in which the Court held that the Free Exercise Clause was not violated when the State of Washington denied a scholarship to a recipient planning to pursue a theology degree. The *Trinity* court found the scholarship recipient in *Locke* was not denied a scholarship because of who he *was*; he was denied a scholarship because of what he proposed to *do with it* (i.e., use it to pay for a religious education), as opposed to Trinity, which was denied a grant simply because of what it is – a church. The *Trinity* court confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion.

The decision has potential impacts with regard to school vouchers. Many voucher supporters are viewing *Trinity* as a victory. Voucher opponents do not interpret *Trinity* as opening the door for states to expand school vouchers based upon a footnote which states that the decision does not address religious uses of funding or other forms of discrimination.

Nevertheless, the Supreme Court has already sent two cases back to their state supreme courts for reconsideration due to the *Trinity* opinion. One is a 2015 judgment from the Colorado Supreme Court striking down a school voucher program held to have violated the state's constitution, which prohibits public funding of religious schools. The second is a 2015 New Mexico case which upheld a state-funded textbook lending program that excluded religious and

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private schools based on the New Mexico state constitution. As such, while the opinion in *Trinity* focuses on a grant applicant's religious identity, the issue of unlawful discrimination based upon religion in the context of government vouchers for religious schools is likely the next fight in this legal arena.

For more information on the *Trinity* opinion or issues of religion and public agencies, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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