

Supreme Court Ruling Could Contradict Pa. Law

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A recent U.S. Supreme Court decision could mean states now will have to allow public funds to be funneled to religious institutions.

In *Trinity Lutheran Church of Columbia, Inc. v. Comer*, the Court held that Missouri falsely denied public funds to a day care center run by the Trinity Lutheran Church in Columbia simply because it was a religious institution. The Court found that the state violated the Free Exercise Clause of the First Amendment.

Chief Justice John Roberts stated that "the exclusion of Trinity Lutheran from a public benefit, for which it is otherwise qualified, solely because it is a church, is odious to our Constitution and cannot stand." The Court held that Missouri was unconstitutionally suppressing the Church's free exercise of religion because, in awarding the grant funding, Trinity Lutheran was treated differently than other applicants expressly because it was a religious organization. For Justice Roberts, Missouri presented Trinity Lutheran with an unconstitutional choice—it could either remain a religious institution or it could receive a government benefit. If the church chose to remain a church, it came "at the cost of automatic and absolute exclusion from the benefits of the public program for which [it] is otherwise fully qualified."

The full extent of the impact of the decision is still somewhat unclear. Often referred to as "Blaine Amendments," 37 other states, including Pennsylvania, have constitutional bans prohibiting direct financial assistance to religious institutions. The Pennsylvania Supreme Court has held that this amendment would apply even where public funds reach the coffers of religious schools indirectly.

Mandating funding for religious institutions otherwise meeting a state's requirements appears to put *Trinity Lutheran's* ruling in direct conflict with the language of Blaine Amendments across the country, including Pennsylvania's. Specifically, the Court held that Missouri was required, not simply permitted, to treat Trinity Lutheran the same as any other nonprofit applicant for the grant funding. Future cases will need to shed more light on whether these laws can still be justified. While the *Trinity Lutheran* case did not expressly strike down Missouri's Blaine Amendment as unconstitutional, these laws are now on shaky ground and likely will face significant challenges based on this decision.

At a minimum, the decision provides strong support for private, religiously-affiliated schools and organizations seeking to participate in government-funded programs on equal footing with other private entities where the use of state funds will not directly support the institution's religious mission. The Court easily characterized resurfacing a playground as a public benefit promoting the health and safety of children. The obvious next question raised is whether a state still can prevent public funding from being used to directly advance a religious purpose.

The decision is also noteworthy in that it reveals where recently appointed Justice Neil Gorsuch may lean on similar church-state issues. Gorsuch authored a concurring opinion joined by Justice Clarence Thomas indicating that they

would have gone even further than the majority, requiring funding on an equal basis for religious and nonreligious applicants unless the government could offer a justification "of the highest order."

Anyone with any questions on this ruling or what it could mean for their organization should [contact me](#) or any of the attorneys in [Barley Snyder's Business Practice Group](#) or [Education Practice Group](#).

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