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## Revisiting the American Church-State Relationship: The Trinity Lutheran Church Case

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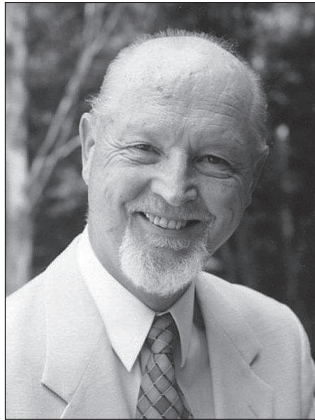
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# Revisiting the American Church-State Relationship: The *Trinity Lutheran Church* Case

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by Jack R. Van Der Slik

After a successful revolutionary war against the British monarchy and some clumsy governance under Articles of Confederation, in 1787 the American leaders pulled together a combination of conventional and novel ideas about government into the Constitution of the United States. Relatively brief, the document addressed mostly elections, law-making, the executive branch, and the judiciary. Provisions were included about future constitutional amendments. Following a curious process of approving the Constitution by separate actions

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in the American states, a responsive congressional membership took action on a series of amendments suggested by the states in their ratification processes. The result was a series of ten, remembered as the “Bill of Rights,” ratified in 1791. The first 16 words of the First Amendment still frame the national debate about the relation between church and state: “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof....” The reach of the First Amendment was extended after the Civil War when the Fourteenth Amendment broadened the power of national government to protect the people from impositions on citizen rights by the states. In 1940 the Supreme Court held that religious freedom was part of the “liberty” provided in the Fourteenth Amendment.<sup>1</sup> In 1947 the Supreme Court said that the “due process” clause in the Fourteenth Amendment made the establishment language in the First Amendment applicable to the states. Parsing the meaning and governing consequences of that First Amendment, enlarged by the Fourteenth, continues to challenge our governments at the local, state, and national levels. Here I will focus attention upon what has been called the *Trinity Lutheran Church* case.<sup>2</sup>

Considered on its merits, the *Trinity Lutheran Church* case is a small-stakes matter. Many issues that come before the Supreme Court have multi-million dollar consequences and/or affect many wage earners, stockholders, and taxpayers. Not

this case. Trinity's issue arose in 2012 when a local Lutheran church applied to the state of Missouri for funds that the state offered to nonprofit organizations. In a program funded by a levy on the sale of new tires, Missouri's Department of Natural Resources (DNR) would pay nonprofit groups to use rubber playground surfaces made from the recycled tires. The policy had two purposes. It would reduce the quantity of worn tires in landfills while improving the safety for youngsters playing in otherwise graveled parks and play areas.

Missouri's DNR received 44 applications for awards, ranked Trinity's as fourth most worthy, and then funded 14 of the 44. However, it denied an award to Trinity on grounds that the Missouri state constitution prohibited state funds from "directly or indirectly" aiding a church, sect, or denomination of religion. Trinity chose to take the issue to a federal court, arguing that it suffered unconstitutional discrimination against a religious entity.

Why not sue in a Missouri state court? Missouri's state constitution is one of many state constitutions containing the substance of what is historically remembered as the "Blaine amendment." Blaine was a member of Congress in 1875. He proposed to amend the US Constitution's 1st Amendment. His proposed language would add, "No money raised by taxation in any State for the support of public schools...shall ever be under the control of any religious sect." Passed in the House of Representatives, the proposed amendment failed in the Senate and the First Amendment remained unaltered.<sup>3</sup>

Despite the death of the proposed Blaine amendment at the federal level, its essential idea became widely accepted in the states. It was regarded as a way to head off funding for a growing movement supporting Roman Catholic schools. Its substance was adopted in numerous states, including in Missouri. Typically, these state constitutions prohibited public funding for religiously affiliated schools. The Missouri constitution's Bill of Rights

includes the following in its Section 7:

**Section 7. Public aid for religious purposes—preferences and discriminations on religious grounds.**—That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship.<sup>4</sup>

In a program funded by a levy on the sale of new tires, Missouri's Department of Natural Resources (DNR) would pay nonprofit groups to use rubber playground surfaces made from recycled tires.

That language remains in the Missouri constitution and has since its first adoption in 1875. Due to its constitutional presence, Trinity Lutheran Church took its complaint to the federal courts.

In the federal district court, Trinity petitioned that its rights under the free exercise clause of the First Amendment of the US Constitution were violated by Missouri's denial of its meritorious request for state funding. Also Trinity was denied equal protection under the law as provided in the Constitution's Fourteenth Amendment. To be brief, Trinity Lutheran Church lost at the district court level and, after an appeal to the federal appeals court, lost again. Taking its case to the US Supreme Court, Trinity Lutheran Church's advocates asked for consideration that a "historical aversion to funding religious training or clergy" not be used as "a sweeping license to deny generally available public benefits to religious groups solely on the basis of their religious affiliation."<sup>5</sup>

The petitioners were successful. On January 15, 2016, the Supreme Court accepted the case for adjudication. In the normal course of things, the case would have been heard that spring or perhaps pushed back to the fall of the year. However, Justice Antonin Scalia died in February, creating a vacancy on the court. It was a presidential election year. Republicans refused to confirm President Barack Obama's nominee, Merrick Garland, to fill the vacancy. With speculation at the time that an eight-member Supreme Court might be equally divided

in this case, the court held the *Trinity Lutheran Church* case over for later consideration. The election of Donald Trump to the presidency resulted in the nomination of Neil Gorsuch to the Supreme Court vacancy. The Republican-dominated Senate agreed to the nomination, and Gorsuch was sworn into office on April 10, 2017. Oral arguments on the *Trinity Lutheran Church* case took place on April 19, 2017.

The Supreme Court accepts informative arguments from interested parties, referred to as “friends of the court” (Latinized as *amicus curiae*), regarding the cases that it considers. Such documents are referred to as *amicus curiae* briefs. This is the judicially approved procedure by which interest groups properly lobby the members of the court to favor the groups’ preferred application of law to the case at hand. According to the Scotus Blog,<sup>6</sup> seven such briefs were filed before the Supreme Court accepted the case for adjudication. Another 35 were filed for consideration before the court heard oral arguments on the case. These “briefs” frequently are not very brief. The Association of Christian Schools International brief noted above is 42 pages online, including 32 pages of argument in text. Most of the friends of the court favored the Trinity petitioners including, for example, World Vision, Inc., the Union of Orthodox Jewish Congregations of America, the Conference of Catholic Bishops, the Ethics and Religious Liberty Commission, and the Council of Christian Colleges and Universities. Opposing briefs came from several groups, including the American Civil Liberties Union, the Baptist Joint Committee for Religious Liberty, and the National Education Association.

Oral arguments on the case were presented to the Supreme Court on April 19, 2017. According to the *New York Times* account, there was a lively discussion of the case.<sup>7</sup> Seven justices offered oral questions or comments. Reporter Adam Liptak noted that Justice Gorsuch, the court’s freshman member, observed that the Missouri program amounted to “discrimination on the basis of status of religion,” implying that the state was wrong. Justice Sonia Sotomayor was, according to Liptak, “the most consistent voice on the other side, though she seemed to be in the minority.”

Liptak’s account of the oral arguments included

“a last minute wrinkle in the case.” The justices took note that the recently elected Republican governor of Missouri, Eric Greitens, had just announced a policy change relevant to the case: “The state would no longer discriminate against religious groups in evaluating grant applications for programs like the one at issue in the case.” The justices paused to consider whether the state’s policy change rendered the matter “moot,” no longer of practical consequence, and therefore irrelevant for any court decision. On this change, the opposing lawyers for the two sides agreed that the matter was not moot because a future governor might reverse the policy.

Monday, June 26, 2017, the day of the week the Supreme Court regularly uses as “decision day,” was additionally the last day of the court’s 2016-17 sitting. Just as college professors celebrate the day when students graduate, the justices were ready to end the court’s term and take time off for their seasonal vacation until October. The full complement of nine justices had rendered a decision. Chief Justice Roberts delivered the decision of the court.<sup>8</sup> By a vote of seven-to-two, the Supreme Court reversed and remanded the judgment of the lower courts. In a relatively brief written opinion (15 pages), Roberts said that the Missouri policy regarding Trinity was unconstitutional because it discriminated against the church by barring funding to a meritorious organization simply because it was a church. The state had no compelling reason to deny the program benefits to the church. The key sentence was cited in the *New York Times*: “... 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 all the same, and cannot stand.”<sup>9</sup>

Curiously, Roberts accompanied his opinion<sup>10</sup> with a limiting footnote. Presumably not wishing to open the floodgates guarding governments from expanded spending requests from religious organizations, Roberts appended footnote 3 near the end of his opinion: “This case involves express discrimination based on religious identity with respect to playground surfacing. We do not address religious uses of funding or other forms of discrimination.” In short, Roberts seemed to say that this court decision should be narrowly understood and not necessarily considered a precedent inviting wider govern-

ment spending for religious causes.

Justice Neil Gorsuch, joined by Justice Clarence Thomas, concurred with the majority decision but went on to indicate his view that footnote 3 was too limiting and that the general principles of the decision “do not permit discrimination against religious exercise – whether on the playground or anywhere else.” The *anywhere else* articulated by Gorsuch seems to portend wider appreciation of the rights of churches under the free exercise clause of the First Amendment. Justice Stephen Breyer, concurring in the majority decision, added that he was not in favor of going further under the free exercise clause: “Public benefits come in many shapes and sizes. I would leave the application of the free exercise clause to other kinds of benefits for another day.”

Justice Sonia Sotomayor, joined by Justice Ginsburg, wrote a lengthy (27- page), complicated, and, in some places, bitter dissent. She insisted that there is and ought to be a bright line separating church and state. She cited cases settled in 1971. She explained her opposition to the majority’s decision:

The Church seeks state funds to improve the Learning Center’s facilities, which, by the Church’s own avowed description, are used to assist the spiritual growth of the children of its members and to spread the Church’s faith to the children of nonmembers. The Church’s playground surface—like a Sunday School room’s walls or the sanctuary’s pews—are integrated with and integral to its religious mission. The conclusion that the funding the Church seeks would impermissibly advance religion is inescapable.

Moreover, Sotomayor objected to the majority for disrespecting the Blaine amendment in the Missouri constitution:

On top of all of this, the Court’s application of its new rule here is mistaken. In concluding that Missouri’s Article I, §7, cannot withstand strict scrutiny, the Court describes Missouri’s interest as a mere “policy preference for skating as far as possible from religious establishment concerns.” *Ante*, at 14. The constitutional provisions of thirty-nine States—all but invalidated today—the weighty interests they protect, and the history they draw on deserve more than this judicial brush aside.

Sotomayor went on to conclude her argument as follows:

The Court today dismantles a core protection for religious freedom provided in these Clauses. It holds not just that a government may support houses of worship with taxpayer funds, but that—at least in this case and perhaps in others, see *ante* at 14, n. 3—it must do so whenever it decides to create a funding program. History shows that the Religion Clauses separate the public treasury from religious coffers as one measure to secure the kind of freedom of conscience that benefits both religion and government. If this separation means anything, it means that the government cannot, or at the very least need not, tax its citizens and turn that money over to houses of worship. The Court today blinds itself to the outcome this history requires and leads us instead to a place where separation of church and state is a constitutional slogan, not a constitutional commitment. I dissent.

To no one’s surprise, the various interest groups and spokespersons that took sides in anticipation of the Supreme Court’s decision were prompt to “point with pride” or “view with alarm.”

Let me record snippets from larger statements, which are footnoted to enable those who wish to read further from the Scotus blog:

Hillary Burns for the U.S. Conference of Catholic Bishops:

Yesterday the Supreme Court correctly found that Missouri’s exclusion of Trinity Lutheran from the grant process constituted unconstitutional discrimination on the basis of religion....[She said that the decision] “shows that faith-based institutions cannot be excluded from public programs solely because they are religious or are affiliated with a church in some way....[Missouri’s Blaine amendment] did not justify the “clear infringement on free exercise before [the Court].”<sup>11</sup>

Fred Yarger, solicitor general for the state of Colorado:

[Yarger viewed the decision as] a significant victory for religious liberty.... But only on the answer to a narrow question: can an organization be excluded from a generally available public benefit program solely because of its religious character?

...[The Supreme Court said no in *Trinity*.] “Had it seen fit, then, the court could have said that a government’s reliance on Blaine amendments is categorically impermissible. The court did not go that far, however.... [Yarger concluded.] For now, *Trinity Lutheran* reaffirmed a basic constitutional principle: Governments cannot single out people or groups just because they are religious. Seven justices can agree on that. Whether they can agree that the principle extends to other contexts – some perhaps more controversial than a scrap-tire program – is anything but clear.<sup>12</sup>

**Nathan J. Diament, Executive Director for Public Policy of the Union of Orthodox Jewish Congregations of America:**

Today’s explicit endorsement by the court of the neutrality principle in government aid programs will enable those of us who advocate for new initiatives to aid the nonprofit sector in general – and religious nonprofits in particular – additional strength and a proven foundation for doing so....

The free exercise and establishment clauses of the First Amendment were wisely crafted to ensure maximal religious freedom in the United States of America. Interpretations that functionally infringe upon religious exercise run counter to this foundational principle. Today’s ruling by the Supreme Court in *Trinity Lutheran v. Comer* affirms the founding principle in a commonsensical way – and charts a path toward appropriate state support for religious institutions by their advocates.<sup>13</sup>

**Perspectives from those who viewed *Trinity* with alarm are not to be overlooked:**

**Leslie C. Griffin is William S. Boyd Professor of Law at the UNLV Boyd School of Law:**

The seven justices oversimplified the case. Chief Justice John Roberts’ opinion for the court stated quite straightforwardly that to deny funding simply because an institution is a church violates free exercise and is “odious to our Constitution.” The state’s rule was simple, he wrote, “No churches need apply.” And that rule was unconstitutional....

Sotomayor and Ginsburg, bemoaning the “lopsided outcome,” urged their colleagues to remember why and how the establishment clause protects religious liberty. The government should

not fund religion. Period. Unfortunately, not even Kagan understood that funding religion can pay for religious discrimination, violation of human rights and lack of equality. Sotomayor and Ginsburg’s footnote 14 worried about what the decision ‘might enable tomorrow.’ We have to wonder if Thomas and Gorsuch will ever get the complete victory for religion that their hearts desire....

Seven justices gave a victory to TLC. The last pages of the dissent are full of concerns about how the court has undermined secular government; dismantled, not strengthened, religious freedom; and led “to a place where separation of church and state is a constitutional slogan, not a constitutional commitment.”

If a majority of the court ignores these lessons, who knows what the court might do next.<sup>14</sup>

**Alice O’Brien, commenting on behalf of the National Education Association:**

Fully three-quarters of all state constitutions contain “no-aid” provisions like Article I, Section 7, of the Missouri Constitution, on which that state relied in declining to fund the Trinity Lutheran Church’s playground. And many other states have constitutional provisions prohibiting the ‘compelled support’ of religious institutions – including involuntary support through the payment of taxes....

Unsurprisingly, those who seek to divert public-education funds to private-school vouchers, most of which fund pervasively sectarian schools, have long sought to nullify these state constitutional barriers by arguing that the federal free exercise clause – and perhaps the equal protection clause as well – prohibits states from enforcing their state constitutional guarantees of religious liberty to the extent they impose more rigorous restrictions on public funding of religion than does the federal Constitution....

One other point bears noting. As they have done for years, voucher proponents in the *Trinity Lutheran* case sought to undermine the fundamental legitimacy of the no-aid clauses found in the vast majority of state constitutions by asserting that these “Blaine amendments” – so called, pejoratively, after a failed federal constitutional amendment of 1876 – were simply the product of anti-Catholic bigotry. This campaign rests on historical analysis that is at best shoddy and at worst tendentious....

By declining the invitation of school-voucher proponents to use *Trinity Lutheran* to remove a constitutional barrier to the diversion of funding from our public schools to vouchers, the court left the debate over voucher programs where it should be – namely, with the states, to be resolved based on their state constitutional provisions.<sup>15</sup>

Erwin Chemerinsky, Dean and Raymond Pryke  
Professor of First Amendment Law at University of  
California, Irvine School of Law:

As Justice Sonia Sotomayor powerfully observed in her dissent, the Supreme Court’s decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer* is unprecedented in American history: Never before had the Supreme Court held that the government is required to provide assistance to religious institutions. Despite a footnote that attempts to limit the scope of this holding, the decision is going to engender a great deal of litigation as religious institutions now will claim a constitutional right to a wide array of benefits provided by the government to non-religious institutions. The noble and essential idea of a wall separating church and state is left in disarray, if not shambles....

The actual holding of the case, that the state of Missouri has to provide aid to religious schools for the resurfacing of playgrounds, is fairly inconsequential. In fact, Missouri already had changed its policy to do this. It is the larger principle that is so important. Soon before she left the court, Justice Sandra Day O’Connor spoke eloquently of the need for the separation of church and state when she wrote, “Those who would renegotiate the boundaries between church and state must therefore answer a difficult question: ‘Why would we trade a system that has served us so well for one that has served others so poorly?’ Why indeed? But that is exactly what the court did in *Trinity Lutheran* in taking a significant step towards dismantling the wall that separates church and state.”<sup>16</sup>

ACSI weighed in on its website, congratulating Trinity Lutheran Church, and then widened its comments as follows:

What does the ruling mean for Christian schools generally? This victory means that the government cannot discriminate against religious or-

ganizations and exclude them from receiving a generally available public benefit simply because they are religious. It calls into question state Blaine amendments which have been used to exclude faith-based institutions from public programs of general application. Experts will debate the full impact of the ruling. In the coming days, ACSI’s Legal Legislative Department will be providing a full analysis of this case for member institutions.<sup>17</sup>

Additional views were reported in the press. Sarah Pulliam Bailey, a religion reporter for the *Washington Post*, wrote a wide-ranging piece describing how the Supreme Court sided with Trinity Lutheran Church.<sup>18</sup> She observed that “the decision, ...involving a church in Missouri was seen as a victory for many advocates and a blow to those who wanted to see a high wall of separation between church and state.” She cited a variety of authorities. Charles Haynes, director of the Religious Freedom Center at the Newseum, she said, “expects religious groups to apply for and receive government funding a wide range of purposes, even in the 30-plus states that have Blaine Amendments that prohibit state funding of religious organizations, including schools.” Daniel Hammel, a professor at the University of Chicago law school, said that the Supreme Court ruling “could give some people a new argument for including religious institutions in subsidy programs and invalidate subsidy programs that were written before this case.” Melissa Rogers, senior fellow at the Brookings Institution, predicted “further litigation” regarding benefits to religious institutions, adding, “But these entities still must compete for the aid in such cases, and many issues in this area are not resolved by this case....”

In her article, Bailey offered an acute observation about the importance of chief justice Roberts’ footnote 3 and the notion of the limited applicability of the case as a precedent. Bailey noted that only four justices agreed to the opinion including footnote 3. Therefore, she suggested that it may not be binding because it was not supported by a majority of the justices. Bailey went on to say, “Experts believe that the footnote in the case will be used in future church-state litigation. Does the decision limit the application of the ruling by focusing on

‘playground resurfacing’ in this footnote? Or does the decision open the door to religious groups receiving government funds for a wide variety of purposes. Haynes of the Newseum believes the decision opens the door to funding.”

In early July, Linda Greenhouse weighed in about Justice Neil Gorsuch, “the aw-shucks humble servant of the law... [who] turns out to be a hard-right conservative.”<sup>19</sup> Greenhouse is the Joseph Goldstein lecturer in law and Knight distinguished journalist in residence at Yale Law School. She covered the Supreme Court for the *New York Times* between 1978 and 2008 and continues to write a biweekly column on the law. In a mocking tone, Greenhouse took a critical view of Gorsuch’s comment on Chief Justice Roberts’ footnote 3:

There’s little doubt that the Chief Justice inserted that footnote late in the decisional process to satisfy a demand by one or more members of his majority, most likely Justice Kagan, maybe Justice Kennedy. Assuming Justice Gorsuch realizes that compromises of this sort are the stuff of life on a multimember court, did he really need to call the chief justice out on it with his patronizing public reminder about how the Supreme Court articulates “general principles”? Did he think the chief justice didn’t know that already? Or perhaps he just wanted to underscore the strong suggestion in his separate opinion that he interprets the First Amendment’s Free Exercise clause as the Supreme Court never has, to entitle churches to public money on the same basis as secular institutions, even if the money will be put directly to religious uses (read, parochial school support).

Two notable politicians also weighed in on the *Trinity Christian School* case. Eric Greitens, Missouri’s governor, praised the Supreme Court in these terms:

People of faith won an important victory today. Earlier this year, I reversed Missouri’s policies that discriminated against religious organizations. The ACLU and others attacked. We did not back down, and we will continue to fight for people of faith. Like our administration, the Supreme Court decided that people of faith should not be discriminated against. Missouri is home to many excellent religious organizations that serve older kids, our families, and our communities. We will continue to

work together with these organizations to help the people of Missouri.<sup>20</sup>

Betsy DeVos, Secretary of the U.S. Department of Education, (BA, Calvin College, 1979) is lightly described in her biography posted at the U.S. Department of Education’s website “as an advocate for children and voice for parents.”<sup>21</sup> DeVos is quoted in a department issued statement concerning *Trinity Lutheran Church*: “Today, the Supreme Court of the United States announced its ruling in *Trinity Lutheran Church of Columbia vs. Comer*, holding that the government may not deny a generally available benefit on account of religious identity.”

After the ruling, U.S. Secretary of Education Betsy DeVos released the following statement:

This decision marks a great day for the Constitution and sends a clear message that religious discrimination in any form cannot be tolerated in a society that values the First Amendment. We should all celebrate the fact that programs designed to help students will no longer be discriminated against by the government based solely on religious affiliation.<sup>22</sup>

While the relationship between church and state was not a settled matter in the United States in 1791, the *Trinity Lutheran Church* decision has not settled the matter either. Like cases before it, the opinions and votes of the justices invite further possibilities. The law, its applications, and adjudications continue to evolve. Consideration of the case reveals the continuing tension between church and state in our democracy, but I make bold to suggest that it has been and continues to be a creative tension. The citizen life is part of the Christian life, and that fact behooves Christians to be concerned about whether, where, and with what consequences the church and/or state is encroaching upon and/or nurturing the well-being of institutions on both sides of the line. I would remind the readers of some wisdom expressed in the *Contemporary Testimony* of the Christian Reformed Church, Paragraph 53:

We call on all governments to do public justice and to protect the rights and freedoms of individuals, groups, and institutions so that each may do their tasks. We urge governments and pledge ourselves



to safeguard children and the elderly from abuse and exploitation, to bring justice to the poor and oppressed, and to promote the freedom to speak, work, worship, and associate.<sup>23</sup>

In the narration about the *Trinity Lutheran Church* case, I passed over the fact that getting the case considered was promoted by the Association of Christian Schools International.<sup>24</sup> It was the ACSI, joined with the Lutheran Church-Missouri Synod, that petitioned the Supreme Court in favor of granting a “writ of certiorari.” The always busy Supreme Court chooses its cases by considering such writs. By rule, three or more justices must affirm that a particular case poses a federal matter significant enough to the public interest to receive a full hearing and decision. Many more appeals are rejected than the number accepted. After the court agreed to hear *Trinity Lutheran Church*, ACSI and the Lutheran Church-Missouri Synod again sponsored another friend of the court brief in support of Trinity Lutheran Church, the petitioner.<sup>25</sup>

These arcane legal details merit a little more discussion. Going to court, more particularly going to the U.S. Supreme Court for a remedy, in even a relatively small case, is not a task for amateurs. The arguments for *Trinity Lutheran Church* were made by the attorneys of the Alliance Defending Freedom. This not-for-profit legal entity calls itself “an alliance-building legal organization that advocates for the right of people to freely live out their faith. We specifically focus on cases involving religious liberty issues, the sanctity of human life, and marriage and family.”<sup>26</sup>

To play a supporting role in the *Trinity Christian Church* case, the ACSI and the Lutheran Church-Missouri Synod employed a noted Washington, D. C., law firm: Gibson, Dunn & Crutcher LLP. That firm describes itself as an international one, “shared in by more than 1200 lawyers worldwide.”<sup>27</sup> Its website makes no mention of its participation in the *Trinity Christian Church* case. Gibson Dunn is ranked fifth by *The American Lawyer*, a prestigious

evaluation of firms based upon the diversity of their attorneys, their pro bono work, their revenue per lawyer, and the satisfaction on the part of their associates. I am not privy to knowledge about who paid Gibson Dunn or how much for the briefs filed in behalf of the ASCI and the Missouri Lutheran Church.

Perhaps it is suitable to conclude by underlining the fact that calling upon governments to do public justice necessitates serious sacrifice and effort.

Perhaps it is suitable to conclude by underlining the fact that calling upon governments to do public justice necessitates serious sacrifice and effort.

I lack data to estimate either the dollar cost or the amount of effort expended in behalf of *Trinity Lutheran Church* and its supporters in the pursuit of public justice for its preschool. But it was much more than the market price for a load of chipped rubber from recycled tires

to improve the school playground in Columbia, Missouri. Thoughtful readers will recognize that there is need for more, a great deal more, justice in the American civil society. Interest groups founded upon a Christian faith perspective and engaged in the halls of government are doing good works in behalf of Christian agencies. They deserve a significant place in our kingdom stewardship.

## Endnotes

1. *Cantwell v. Connecticut*, 310 U.S. 296 (1940).
2. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. \_\_\_\_ (2017). The missing page number for the Supreme Court volume 582 will become part of the case citation upon the Court’s publication of that volume. However, the so called “slip opinion” provides all the needed documentation. It is my source for quotations below and can be accessed at <http://www.scotusblog.com/case-files/cases/trinity-lutheran-church-of-columbia-inc-v-pauley/>.
3. Access at [https://ballotpedia.org/Blaine Amendment](https://ballotpedia.org/Blaine_Amendment).
4. See the Missouri state constitution at <http://www.moga.mo.gov/mostatutes/ConstArticleIndexes/T01.html>
5. Amici curiae brief from the Association of Christian Schools International, and Lutheran Church - Missouri Synod filed. Access at <http://www.scotusblog.com/case-files/cases/trinity-lutheran-church-of-columbia-inc-v-pauley/>

6. See at <http://www.scotusblog.com/case-files/cases/trinity-lutheran-church-of-columbia-inc-v-pauley/>
7. Adam Liptak. “Supreme Court Weighs State Aid to Church Programs.” *New York Times*, April 19, 2017.
8. From ScotusBlog, cited in note 2. The summary of the Supreme Court’s action follows:
 

“**Holding:** The Missouri Department of Natural Resources’ express policy of denying grants to any applicant owned or controlled by a church, sect or other religious entity violated the rights of Trinity Lutheran Church of Columbia, Inc., under the free exercise clause of the First Amendment by denying the church an otherwise available public benefit on account of its religious status.

**Judgment:** *Reversed and remanded*, 7-2, in an opinion by Chief Justice Roberts on June 26, 2017. Chief Justice Roberts delivered the opinion of the Supreme Court, except as to Footnote 3. Justices Kennedy, Alito and Kagan joined that opinion in full, and Justices Thomas and Gorsuch joined except as to Footnote 3. Justice Thomas filed an opinion concurring in part, in which Justice Gorsuch joined. Justice Gorsuch filed an opinion concurring in part, in which Justice Thomas joined. Justice Breyer filed an opinion concurring in the judgment. Justice Sotomayor filed a dissenting opinion, in which Justice Ginsburg joined.”
9. Adam Liptak. “State Must Aid Some Church Programs. Justices Rule.” *New York Times*, June 26, 2017.
10. Here and for all the quotations from justices following see ScotusBlog, cited in note 2 above.
11. Hillary Byrnes, *Symposium: The Constitution provides a level playing field for people of faith*, ScotusBlog (Jun. 27, 2017, 10:56 AM), <http://www.scotusblog.com/2017/06/symposium-constitution-provides-level-playing-field-people-faith/>
12. Fred Yarger, *Symposium: The justices reach broad agreement, but on a narrow question*, ScotusBlog (Jun. 27, 2017, 11:13 AM), <http://www.scotusblog.com/2017/06/symposium-justices-reach-broad-agreement-narrow-question/>
13. Nathan Diament, *Symposium: Court ruling bolsters religious liberty... beyond the playground*, ScotusBlog (Jun. 26, 2017, 6:13 PM), <http://www.scotusblog.com/2017/06/symposium-court-ruling-bolsters-religious-liberty-beyond-playground/>
14. Leslie Griffin, *Symposium: Bad news from Trinity Lutheran – Only two justices support the establishment clause*, ScotusBlog (Jun. 26, 2017, 5:44 PM), <http://www.scotusblog.com/2017/06/symposium-bad-news-trinity-lutheran-two-justices-support-establishment-clause/>
15. Alice O’Brien, *Symposium: Playground resurfacing case provides soft landing for state “no aid” provisions*, ScotusBlog (Jun. 28, 2017, 12:41 PM), <http://www.scotusblog.com/2017/06/symposium-playground-resurfacing-case-provides-soft-landing-state-no-aid-provisions/>
16. Erwin Chemerinsky, *Symposium: The crumbling wall separating church and state*, ScotusBlog (Jun. 27, 2017, 10:18 AM), <http://www.scotusblog.com/2017/06/symposium-crumbling-wall-separating-church-state/>
17. “ACSI Hails Supreme Court 7–2 Ruling in Religious Liberty Case.” [www.acsi.org/legal-legislative-and-advocacy/trinity-lutheran-preschool-case](http://www.acsi.org/legal-legislative-and-advocacy/trinity-lutheran-preschool-case)
18. Sarah Pulliam Bailey. “The Supreme Court sided with Trinity Lutheran Church. Here’s why that matters.” *Washington Post*, June 26, 2017. Linda Greenhouse. “Trump’s Life-Tenured Judicial Avatar.” *New York Times*, July 6, 2017.
19. “Gov. Greitens Praises Supreme Court Decision in the Trinity Lutheran Case.” <https://governor.mo.gov/news/archive/gov-greitens-praises-supreme-court-decision-trinity-lutheran-case>
20. Betsy DeVos, Secretary of Education—Biography. <https://www2.ed.gov/news/staff/bios/devos.html?src=hp>
21. “DeVos: Supreme Court Sends Clear Message that Religious Discrimination Cannot Be Tolerated.” <https://www.ed.gov/news/press-releases/devos-supreme-court-sends-clear-message-religious-discrimination-cannot-be-tolerated>
22. *Contemporary Testimony*. See <https://www.crcna.org/welcome/beliefs/contemporary-testimony/our-world-belongs-god>
23. The Association of Christian Schools International is an evangelical Christian organization committed to:
  - “actively promote Christ-centered education for children who are socially and economically disadvantaged and are victimized by racial and cultural discrimination;
  - enable and encourage Christian schools worldwide to effectively educate and bring the love of Christ to those children who represent ‘the least of these;’
  - demonstrate a strong commitment to gender and racial diversity by actively recruiting and hiring staff reflecting such on all levels throughout ACSI; and
  - reflect the ethnic diversity of God’s kingdom and ACSI schools worldwide through the as-

sociation's publications, products, services, and programs.”

See its employment and diversity statement at: <https://www.acsi.org/membership/work-at-acsi>

24. Amici Curiae brief by ASCI and the Lutheran Church—Missouri Synod, April 21, 2017. Access at:

<http://www.scotusblog.com/case-files/cases/trinity-lutheran-church-of-columbia-inc-v-pauley/>

25. <https://www.adflegal.org/request-legal-help>. For much more detail, examine the content of the website.

26. <http://www.gibsondunn.com/about/pages/ourstory.aspx>