

Public Funds May Not Be Withheld Solely on the Basis of the Potential Grantee's Religious Identity

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Governments generally may not withhold public grant funds from nonprofit organizations solely because they have a religious identity. The Free Exercise Clause of the federal constitution forbids laws or government policies that prohibit the free exercise of religion. Laws or policies that impose an undue burden on the free exercise of religion must be justified by a compelling state interest. The United States Supreme Court's decision last week in *Trinity Lutheran Church of Columbia v. Comer* makes clear that laws or policies that deny public funds to organizations on the basis of their religious identity (as opposed to planned religious use of funds) impose an undue burden on the free exercise of religion, and must be justified by a compelling state interest.

The Court in *Trinity Lutheran* struck down a Missouri state policy that disqualified religious organizations from receiving grants for the resurfacing of playgrounds. Under the policy, religious institutions were disqualified from receiving grant funds regardless of whether the funds would be used for religious purposes. The Court found that this policy forced the plaintiff church to choose between receiving grant funds and maintaining its status as a church, thereby imposing an undue burden on religious exercise. Missouri's policy, the Court held, was not justified by a compelling state interest.

The *Trinity Lutheran* opinion clarifies that laws or policies which discriminate on the basis of religious identity are likely to be invalidated, whereas those that forbid religious uses of public funds are more likely to be upheld. However, a concurring opinion in the case rejected the distinction drawn between identity-based and use-based discrimination, suggesting that laws forbidding the use of public funds for religious purposes may also be susceptible to legal challenge in the future.

For further information about this decision or any other concerns regarding the distribution of public funds to religious institutions, please contact Terence R. Boga or Lee A. Kaplan.