

## Citations

### Case Cited: *Trinity Lutheran Church v. Comer*

Trinity Lutheran Church of Columbia, Inc. (Trinity) operates a licensed preschool and daycare called The Learning Center that was initially opened as a non-profit corporation but merged with Trinity in 1985. The Learning Center has an open admissions policy and incorporates daily religious instruction into its programs. The Missouri Department of Natural Resources (DNR) offers Playground Scrap Tire Surface Material Grants that provide funds for qualifying organizations to purchase recycled tires to resurface playgrounds. Trinity applied for such a grant but was denied because Article I, Section 7 of the Missouri Constitution states, “no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, section or denomination of religion.” Trinity sued and argued that the denial of its application violated the Equal Protection Clause of the Fourteenth Amendment as well as the First Amendment’s protections of freedom of religion and speech. The district court granted Missouri DNR Director Pauley’s motion to dismiss for failure to state a claim, and Trinity moved for reconsideration and to amend its complaint to include allegations that such grants had previously been given to religious organizations. The district court denied the motions, and the U.S. Court of Appeals for the Eighth Circuit affirmed the dismissal and the denial of the motions to reconsider and amend the complaint.

### Question

Does the exclusion of churches from an otherwise neutral and secular aid program violate the First Amendment’s guarantee of free exercise of religion and the Fourteenth Amendment’s Equal Protection Clause?

### Conclusion

**7-2 DECISION FOR TRINITY LUTHERAN CHURCH OF COLUMBIA, INC.**

**MAJORITY OPINION BY JOHN G. ROBERTS, JR.**

The exclusion of churches from an otherwise neutral and secular aid program violates the First Amendment’s guarantee of free exercise of religion.

The exclusion of churches from an otherwise neutral and secular aid program violates the First Amendment's guarantee of free exercise of religion. Chief Justice John G. Roberts, Jr. delivered the opinion of the 7-2 majority. The Court held that the Free Exercise Clause of the First Amendment protected the freedom to practice religion and subjects laws that burden religious practice to strict scrutiny. First Amendment precedent had established that laws that deny an otherwise generally available benefit because of religious status are unconstitutional, though laws that are neutral and generally applicable may be upheld even if they hamper religion. The distinction was whether the law in question discriminates against some or all religious beliefs. In this case, the Missouri Department of Natural Resources' policy of denying religious organizations from its Playground Scrap Tire Surface Material Grants violated the First Amendment's Free Exercise Clause because it discriminated against otherwise eligible organizations based solely on their religious character. The law did not need to prevent the religious organization from practicing its religion; it was sufficient that the law denied a religious organization the same opportunity to compete for a benefit that is otherwise available to all secular organizations. Because the state's interest in using this policy was simply to draw a wide berth around religious establishment concerns, it was not a sufficiently compelling interest.

### ***Case Cited: Locke v. Davey***

#### **Facts of the case**

The Washington State Promise Scholarship, created by the state legislature in 1999, gives college scholarship money to talented students. However, this money cannot be used to obtain a degree in theology if the program is taught to cause belief. Washington's constitution prohibits funding religious instruction. The 1969 state code applied this ban to college financial aid.

Joshua Davey forfeited his Promise Scholarship money in order to major in pastoral ministries at a private Christian college. Davey filed suit in U.S. district court, claiming the state constitution's ban on funding religious instruction violated his First Amendment right to free exercise of religion (in the U.S. Constitution). The district court rejected Davey's claim. The Ninth Circuit Court of Appeals reversed, concluding Davey's free exercise rights were violated.

## Question

If a state provides college scholarships for secular instruction, does the First Amendment's free exercise clause require a state to fund religious instruction?

## Conclusion

**7-2 DECISION FOR GARY LOCKE, GOVERNOR OF WASHINGTON, ET AL.  
MAJORITY OPINION BY WILLIAM H. REHNQUIST**

In a 7-2 opinion delivered by Chief Justice William Rehnquist, the Court ruled that a state does not violate the First Amendment's free exercise clause when it funds secular college majors but excludes devotional theology majors. The Court rejected Davey's argument that the state scholarship program is unconstitutional because it is not neutral toward religion. "The State has merely chosen not to fund a distinct category of instruction," the Court wrote. Similarly the Washington Constitution - which explicitly prohibits state money from going to religious instruction - does not violate the free exercise clause. Unlike laws and programs the Court has struck down under the free exercise clause, nothing in either the scholarship program or the state constitution "suggests animus towards religion." States have a "historic and substantial interest" in excluding religious activity from public funding.

## Related Citation: The Blaine Amendment

The **Blaine Amendment** was a failed amendment to the U.S. Constitution that would have prohibited direct government aid to educational institutions that have a religious affiliation. Thirty-eight of the fifty states later adopted provisions of Blaine in their state constitutions. The measures were designed to deny government aid to parochial schools, especially those operated by the Catholic Church in locations with large immigrant populations. The Blaine Amendment emerged from a growing consensus among 19th-century American Protestants that public education must be free from "sectarian" or "denominational" control, while it also reflected nativist tendencies hostile to immigrants. The amendments

are generally seen as explicitly anti-catholic because when they were enacted public schools typically included Protestant prayer, and taught from Protestant bibles. Thus, at the time of the Blaine amendments, public schools were not non-sectarian or non-denominational in the modern sense.