

After *Trinity Lutheran*, a state court case looks at public funds being given to churches

The U.S. Supreme Court ruling in a Missouri case may affect a court in New Jersey looking at similar questions of church-state separation.

by [Bob Allen](#) in the [August 16, 2017](#) issue

A friend-of-the-court brief filed July 17 in New Jersey says the U.S. Supreme Court decision upholding a Missouri Lutheran church's right to participate in a taxpayer-funded playground safety program "has significant implications" for other states with constitutions that bar the use of public funds to support religious groups.

The Becket Fund, which describes itself as a nonprofit, public-interest law firm defending religious liberty, says a case headed toward the New Jersey Supreme Court, *Freedom from Religion Foundation v. Morris County Board of Freeholders*, presents one of the first opportunities for a state supreme court to interpret the U.S. Supreme Court's June 26 decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*.

In the latter case, [justices decided by a 7-2 margin that a religious congregation could not be excluded from a program open to other nonprofits](#), despite a clause in the Missouri constitution barring the use of public money "in aid of any church, sect, or denomination of religion."

The Becket Fund often takes on religious liberty cases on behalf of plaintiffs associated with conservative causes. It provided counsel to Hobby Lobby in its successful attempt in 2014 to be exempted from the provision in the Affordable Care Act that requires employers to provide no-cost birth control through their insurance plans.

In its most recent brief, Becket says churches in New Jersey have the same right to receive historic preservation grants, notwithstanding a guarantee in the Garden State's constitution that no person shall "be obliged to pay tithes, taxes, or other

rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right.”

“Historic buildings are an important part of our country’s fabric, from Boston’s Old North Church where Paul Revere hung two lanterns to the Ebenezer Baptist Church where Martin Luther King Jr. was pastor,” said Hannah Smith, senior counsel at Becket, in a press release announcing the filing of an amicus brief on behalf of a group of New Jersey churches granted public funds by the Morris County Historic Preservation Trust Fund Review Board.

The Wisconsin-based Freedom From Religion Foundation filed the lawsuit in 2015 on behalf of a county resident objecting to about \$40 of his tax payments since 2012 being used to support a public restoration trust fund that gives away more than half of its money to churches. The taxpayer “strongly believes that his taxes should not be used for repairing or maintaining any church, place of worship, or ministry,” according to the original complaint filed in district court.

At least two of the grant-receiving churches, the FFRF lawsuit claimed, said they need the money in order to keep their doors open for worship.

According to the FFRF complaint, more than 55 percent of total trust fund assets during a three-year period were given to churches, at a taxpayer price tag of more than \$5.5 million. Despite the pending litigation, last week the same board approved \$2.9 million in new grants to help preserve 25 historic sites, including seven churches.

“Although preserving historic Morris County buildings is an appropriate use of taxpayer funds, the New Jersey Constitution must trump any other considerations regarding the distribution of public funds to churches, places of worship, or ministries,” according to the FFRF lawsuit.

A superior court ruled against the secularist group, declaring historic preservation “an essential governmental function of the state” and finding that New Jersey’s historic preservation programs “provide no basis for excluding a historic structure because it is a church.”

“Morris County desires to sustain historic landmarks, not just historic churches,” superior court judge Margaret Goodzeit said in a decision handed down in January.

“Just because the religious groups have put Morris County on notice that they intend to use their churches for worship does not mean that Morris County is somehow inextricably entangled with religion.”

The New Jersey Supreme Court agreed June 2 to take the case on direct appeal.

Becket’s lawyers say New Jersey’s high court should follow the U.S. Supreme Court’s lead last month in deciding whether to uphold or reverse the lower court’s ruling in *FFRF v. Morris County Board of Freeholders*.

“Just three weeks ago, the United States Supreme Court held that excluding an otherwise eligible religious organization from a public benefits program solely because of its religious status ‘is odious to our Constitution,’” says the amicus brief. “The implications of *Trinity Lutheran* for this case . . . are clear: government cannot exclude religious organizations from neutral grant programs without surviving strict scrutiny under the Free Exercise Clause of the United States Constitution.”

Religious liberty watchdog organizations were divided over the constitutional issues involved in *Trinity Lutheran*. The Baptist Joint Committee for Religious Liberty, for example, filed a brief arguing that state prohibitions on government aid to churches are an important part of the hard-won legacy of Baptists and other dissenters in colonial America who opposed tax support for churches and ministers as an affront to both religious liberty and the voluntary nature of religion.

A commission of the Missouri Baptist Convention, meanwhile, recently honored Michael and Jonathan Whitehead, who worked alongside Alliance Defending Freedom representing Trinity Lutheran before the Supreme Court, for “defending and promoting religious liberty in our state and our nation.” —Baptist News Global

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