

Tired of religious discrimination?

New U.S. Supreme Court Justice Neil Gorsuch hit the ground running in April, taking part in oral arguments on what I see as this year's most important case.

At issue is a Missouri program for safer playgrounds for children. Helped by a tax on new automobile tires, Missouri recycled old tires into rubber surfacing to cover hard playground surfaces. Nonprofit institutions could apply for grants for the resurfacing - except religious institutions.

Trinity Lutheran Church in Columbia, Missouri, filed suit, claiming the policy is unconstitutional discrimination against religious schools. Dismissed by a federal appeals court, the suit has made its way to our highest court.

At oral argument, Missouri's stance was sharply questioned by "liberal" as well as "conservative" justices. When the state's advocate said its policy doesn't forbid police and fire protection for churches, for example, Justice Stephen Breyer asked why it forbids protecting children from getting broken arms on their property.

The Supreme Court has long held that under the First Amendment, government generally cannot withhold public benefits from individuals or organizations merely because they are (or are not) religious. So Trinity Lutheran should prevail.

All believers should worry about policies that treat them as second-class citizens. For two reasons, Catholics should take a special interest.

First, Missouri's law is a state constitutional provision forbidding public support for "any church, sect or denomination of religion." Similar provisions in more than 30 states are known as "Blaine amendments," after a failed amendment to the U.S. Constitution offered in the 1870s by Rep. James Blaine.

Blaine's effort to forbid public support for "sectarian" schools arose from fear of the growing population of Catholic immigrants. Public schools at the time taught a generic form of Protestantism, and "sectarian" was a code word for "Catholic." So

Justice Samuel Alito asked during oral argument whether Missouri wants the court to uphold policies arising from “anti-Catholic bigotry.”

Second, in many ways Catholic institutions provide more help for the poor and needy than other religious groups – often more than nonprofit groups of any kind. One-sixth of hospital patients in the U.S. are cared for in Catholic health facilities; in 2015, Catholic Charities provided over 9 million food services, supported 350,000 seniors and helped almost half a million people find housing.

These services are offered to people of any faith and no faith, because Catholics see all people without exception as children of God. Trinity Lutheran, as well, opens its playground to all local children outside of school hours. When people of faith are allowed to participate in programs for the public good, they serve all their fellow citizens and remove a burden from the government.

This argument is lost on organizations like the American Civil Liberties Union, which for years has claimed that allowing Catholic institutions to participate in public programs is an unconstitutional “establishment of religion.”

Under such pressure – or because it agreed with the ACLU – the Obama administration in 2011 ended the leading role of the Catholic bishops’ Migration and Refugee Services agency in serving victims of human trafficking. The government’s chief contract went instead to two secular groups that could not help these vulnerable people as effectively.

The immediate issue was that the Catholic agency would not refer victims needing health care solely to doctors providing abortions – though the anti-trafficking legislation, sponsored by pro-life leader Rep. Chris Smith (R-New Jersey), was never intended to promote abortion.

So the Catholic Church has much to lose or gain from this case. So do the millions of people helped every year by faith-based organizations. It would not be unconstitutional to pray for wisdom on the part of our judges.

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