Analyzing the Fiscal Relationship Between the Church and State

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Abstract

The relationship between the government and the church is frequently debated in the United States. One main concern is the legality of the government granting funding to churches, religious schools, and Christian organizations. Religious institutions are separated from the government; thus, they can be tax-exempt and able to discriminate on a religious basis. The Supreme Court has analyzed the Free Exercise and Establishment Clauses in several cases to determine when the government may grant funds to religious institutions. In the past decade, administrative code and judicial case law have both expanded religious institutions' ability to receive governmental funds. Inevitably, controversy surrounds each decision and the evolving relationship between the church and state.[1]

[1]This paper focuses primarily on churches and Christian organizations; however, the principles established can be applied to other religious institutions.

Analyzing the Fiscal Relationship Between the Church and State

In a famous letter, Thomas Jefferson wrote of the American people's desire that "their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between Church and State."[2] Since then, his words have been used by many to describe the ideal relationship between the government and religion. Yet, a total isolation of church and state is impossible in practice, and controversy surrounds the issue. In the past decade, a prominent question has risen: should churches and religious organizations legally be permitted to receive federal funds?[3] In general, religious institutions possess several benefits aimed to separate them from the government, including tax exemptions and the freedom to discriminate in employment on the basis of religion. Typically, under the Establishment Clause, these religious institutions cannot directly receive public funds. However, the Supreme Court seems to have qualified and amended this interpretation of the Clause in recent case law. Moreover, many churches have been deemed eligible for governmental relief funds. Ultimately, the contention over the fiscal relationship between the church and state is likely to continue for many years to come.

Free Exercise and Establishment Clauses

The Constitution has two vital religious provisions: the Free Exercise and Establishment Clauses. These are found within the First Amendment, "Congress shall make no law respecting

[2]Letter from Thomas Jefferson to the Danbury Baptist Association (Jan. 1, 1802) (on file with the Library of Congress).
[3]*See* Garrett Epps, *A Major Church-State Ruling That Shouldn't Have Happened*, ATLANTIC ONLINE (June 27, 2017), https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:5NWR-RY61-JCG7-V4D8-00000-00&context=1516831; Emily Shugerman, *Supreme Court Sides with Church in Landmark Decision on State Funding for Religious Organizations*, THE INDEPENDENT (June 26, 2017), https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:5NWR-RY61-JCG7-V4D8-00000-00&context=1516831.

an *establishment of religion* or prohibiting the *free exercise* thereof."[4] The Supreme Court's interpretation and application of these clauses has adapted over the years. However, when analyzing Establishment Clause cases concerning governmental funds to religious organizations, the Supreme Court often uses the *Lemon* test, as established in *Lemon v. Kurtzman*.[5] This test has three parts: "purpose, effect, and entanglement."[6]

Establishment Clause: *Lemon* Test

In 1968 and 1969, Pennsylvania and Rhode Island passed statutes to fund a portion of private school teachers' salaries.[7] Lemon, whose child was enrolled in a Pennsylvania public school, sued along with other taxpayers, claiming the statute violated the Establishment Clause.[8] In an overwhelming decision, the Supreme Court held the statutes were unconstitutional and established the three-part *Lemon* test to determine if a law violated the Establishment Clause.[9]

The first prong of this test requires the court to ensure the government has a secular purpose in granting the aid.[10] In general, a governmental program satisfies this prong when it applies broad benefits for a large group that may include religious institutions, without singling them out.[11] For example, a state's aim to enable low-income students to receive post-secondary education may be a legitimate, secular interest, even if some students may use the funds to attend a religious college.[12]

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[4]U.S. CONST. AMEND. I (emphasis added).
[5]Valerie C. Brannon, *Evaluating Federal Financial Assistance Under the Constitution's Religion Clauses*, CONGRESSIONAL RESEARCH SERVICE, (Sept. 9, 2020), https://fas.org/sgp/crs/misc/R46517.pdf.
[6]*Id.*
[7]*Lemon v. Kurtzman*, 403 U.S. 602 (1971).
[8]*Id.* at 606-607.
[9]*Id.* at 612-613.
[10]*Id.* at 611.
[11]*Walz v. Tax Comm'n*, 397 U.S. 664, 672-74 (1970).
[12]*Locke v. Davey*, 540 U.S. 712 (2004).

For the second prong of the *Lemon* test, the court must verify that the primary effect of the aid does not inhibit nor advance religion.[13] In many cases, the Supreme Court has suggested that an indirect aid program that neutrally benefits both secular and religious groups does not violate this prong.[14] For example, a state may grant aid in the form of educational materials to both public and religious schools. However, *direct* aid programs will fail this prong if the government lacks an effective means of ensuring the funds are used for nonreligious purposes; restrictions are often required to verify a religious institution uses the funds appropriately.[15] Yet, religious institutions cannot be automatically disqualified for aid on the assumption that they will use the funds for primarily religious purposes.[16]

The final prong of the *Lemon* test ensures the program does not promote excessive governmental entanglement with religion.[17] This prong is not clearly defined, but most often excludes programs that involve continued governmental monitoring of a religious institution.[18] With several cases, the Supreme Court has made it clear that a continuing intimate relationship between the government and a religious entity would unconstitutionally blur the line between the church and state.[19]

However, while the *Lemon* test is the predominant tool used for Establishment Clause cases, courts have applied it inconsistently.[20] In some cases, the Supreme Court has interpreted and applied the test in varying ways, while in others the Court has abandoned—but not

[13]*Lemon*, 403 U.S. at 612.
[14]*Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).
[15]Brannon, *supra* note 5, at 10.
[16]*Bowen v. Kendrick*, 487 U.S. 589, 612 (1988).
[17]Brannon, *supra* note 5, at 15.
[18]*See Agostini v. Felton*, 521, U.S. 203, 234 (1997).
[19]*Lemon*, 403 U.S. at 621.
[20]Brannon, *supra* note 5, at 4.

overruled—the *Lemon* test entirely.[21] Moreover, the Justices of the Supreme Court have had many different interpretations of the test and contrasting opinions on when and how it should be applied. Justice Alito argued in one case that the *Lemon* test should not be used in assessing longstanding practices or symbols, like prayer before governmental sessions.[22] Instead, he argued that these practices "should…be considered constitutional so long as they 'follow in' a historical 'tradition' of religious accommodation."[23] Occasionally, the Supreme Court uses a test proposed by Justice O'Connor in which the court evaluates "whether a 'reasonable observer' would think the government is endorsing religion."[24] Nevertheless, since the *Lemon* test has not yet been overruled, it is likely to remain in use, particularly in the lower courts.

Free Exercise Clause

While the Establishment Clause aims to prevent the government from the endorsement of or excessive involvement with religions, the Free Exercise Clause aims to protect the practice of religion.[25] Laws that target religion or infringe on religious practices are generally held to strict scrutiny; they are only valid when "justified by a compelling interest and [they are] narrowly tailored to advance that interest."[26] When an aid program exempts religious institutions, it may violate the Free Exercise Clause by indirectly penalizing the institutions for their religious nature.[27] One of the most prominent cases exemplifying this is *Trinity Lutheran Church of Columbia, Inc. v. Comer*.

[21]*See Van Orden v. Perry*, 545 U.S. 677 (2005).
[22]*See Town of Greece v. Galloway*, 572 U.S. 565, 577 (2014).
[23]Brannon, *supra* note 5, at 6; *quoting Am. Legion v. Am. Humanist Ass'n* 139 S. Ct. 2067, 2089 (2019) (plurality opinion).
[24]Brannon, *supra* note 5, at 5.
[25]*Id.* at 16.
[26]*Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993); Brannon, *supra* note 4, at 16.
[27]Brannon, *supra* note 5, at 16-17.

Trinity Lutheran Church

In 2017, the Supreme Court ruled on a controversial case involving church and state fiscal relations.[28] The plaintiff, Trinity Lutheran Church Child Learning Center, was a daycare and preschool.[29] It was formerly part of a nonprofit organization, yet it had merged with Trinity Lutheran Church and operated on their property.[30] The center applied for a Missouri grant—funded through a fee on the sale of new tires throughout Missouri—that would replace their playground's coarse gravel with a rubber surface.[31] The state awarded fourteen grants; though the church ranked fifth out of the applicants, it was denied because the Missouri constitution prohibited the state from giving funds to churches.[32] Trinity Lutheran sued with the claim that Missouri's denial of its application violated the Free Exercise Clause.[33] The case was initially dismissed at the District and Circuit Courts, which held the Free Exercise Clause did not compel Missouri to grant funds to the center.[34] However, the Supreme Court granted certiorari and held that Missouri's denial violated the Free Exercise Clause by their unequal treatment of the center on the basis of religion.[35]

Since the church otherwise would have qualified for the public benefit but was disqualified only due to its religious nature, the Supreme Court held the policy was unconstitutional.[36] Chief Justice Roberts wrote in the majority opinion, "The State in this case expressly requires Trinity Lutheran to renounce its religious character in order to participate in

[28]*Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017).
[29]*Id.* at 2014.
[30]*Id.*
[31]*Id.* at 2017.
[32]*Id.* at 2014; MO. CONST. art I, § 7.
[33]*Trinity Lutheran Church of Columbia, Inc.*, 137 S. Ct. at 2014.
[34]*Id.* at 2015.
[35]*Id.*
[36]*Id.* at 2019.

an otherwise generally available public benefit program, for which it is fully qualified."[37] While Missouri's refusal to extend the grant did not prevent Trinity Lutheran from practicing their religion, it automatically excluded them from benefitting from a public program if they chose to remain a church.[38] To uphold the Free Exercise Clause, courts must "subject to strict scrutiny laws that target the religious for 'special disabilities' based on their 'religious status.'"[39] According to this strict scrutiny standard, Missouri's exclusion directly punished the church's right to exercise its religion.[40] Hence, the Court held that denying a public benefit to the church merely because it is a church violates the Free Exercise Clause and is thus unconstitutional.

This decision is not without opponents. In the dissenting opinion, Justice Sotomayor argued this case weakens the separation of church and state.[41] She contended that the center is clearly integrated with the church, serving even as a ministry for the church's mission.[42] In Sotomayor's opinion, she wrote that the Establishment Clause prevents Missouri from granting the center funds because it is used as part of Trinity Lutheran Church's religious mission.[43] She agreed that strictly excluding religious entities from general public benefits would be a violation of the Free Exercise Clause, but she contended that did not occur in this case.[44] Unlike fire or police protection, Missouri's program was not a general public benefit; it was a selective one with few recipients.[45] Therefore, Sotomayor dissented with the majority and believed that Missouri's program did not violate the First Amendment.

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[37]*Trinity Lutheran Church of Columbia, Inc.*, 137 S. Ct. at 2024.
[38]*Id.* at 2021-2022.
[39]*Id.* at 2019 (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 533, 542 (1993)).
[40]*Trinity Lutheran Church of Columbia, Inc.*, 137 S. Ct. at 2022.
[41]*See Trinity Lutheran Church of Columbia, Inc.*, 137 S. Ct. at 2027 (2017) (Sotomayor, J., dissenting).
[42]*Id.*
[43]*Id.* at 2028.
[44]*Id.*
[45]*Id.*

State Constitutions

Thirty-eight states have prohibitions in their constitutions, similar to Missouri's, that prevent granting public money to churches.[46] For example, Georgia's Constitution contains a clause that states "All persons shall have the free exercise of religion, without being obliged to contribute to the support of any religious profession but their own."[47] Pennsylvania has an analogous clause, "no man ought or of right can be compelled to attend any religious worship or erect or support any place of worship, or maintain any ministry, contrary to, or against, his free will and consent."[48] The policy behind these amendments is to prevent favoritism of select religions. However, by prohibiting religious institutions from receiving aid, some argue that the government shows favoritism to nonreligious entities.[49] This discriminates against these religious institutions and incidentally creates an incentive for a religious institution to become nonreligious. Many states permit religious nonprofit organizations to receive similar grants, as long as these institutions are not directly connected with a church.[50] The problem arises when the state's funds would flow into a church's finances, to be controlled and spent by the church executives. This is considered direct funding of a church, which is strictly prohibited according to most state constitutions.

Relief Funds to Christian Organizations

COVID-19 Relief

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[46]*Locke v. Davey*, 540 U.S. 712 (2004); *see also* N.J. CONST., art. XVIII (1776); DEL. CONST., art. I § 1 (1792); KY. CONST., art. XII, § 3 (1792); VT. CONST., Ch. I, art. 3 (1793); TENN. CONST. art. XI § 3 (1796); OHIO CONST., art. VIII, § 3 (1802).
[47]GA. CONST., art. IV § 5 (1789).
[48]PA. CONST., art. II (1776).
[49]David G. Savage, *Justices may rule for Religious Schools; The Supreme Court's Conservatives See Bias when Church Schools are Denied State Funds*, LOS ANGELES TIMES, (January 23, 2020), https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:5Y1Y-RKR1-DXXV-31XB-00000-00&context=1516831.
[50]Epps, *supra* note 3.

In March 2020, as the coronavirus was well underway in the United States, Congress enacted the CARES Act to provide relief for the economy.[51] As a part of this legislation, $350 billion were allocated for small businesses struggling financially due to the pandemic.[52] Churches were included in this *business* category.[53] The Small Business Administration, or the SBA, stated that, "…faith-based organizations are eligible to receive SBA loans regardless of whether they provide secular social services. That is, no otherwise eligible organization will be disqualified from receiving a loan because of the religious nature…of the organization."[54] This decision has sparked significant debate, as some contend it "could challenge the Constitution's prohibition of any law 'respecting an establishment of religion.'"[55] As per the SBA limitations on the loans, 75% of these funds are to be devoted to payroll costs; this requirement is the same for all recipients of the loans, not churches exclusively. Therefore, religious institutions can use these funds to pay pastors, ministers, and other religious staff, in addition to using the funds for rent and utilities.[56]

Opponents to this element of the Act argue that the direct funding of religious activities is a blatant violation of the Establishment Clause of the First Amendment.[57] This clause prevents the government from designating any official religion and from acting in favor of any one religion. These critics also note that churches do not have the same requirements as other small

[51]CARES Act, S. 3548, 116th Cong. (2020).
[52]Tom Gjelten, *Another Break from the Past: Government Will Help Churches Pay Pastor Salaries*, NATIONAL PUBLIC RADIO (Apr. 6, 2020), https://www.npr.org/sections/coronavirus-live-updates/2020/04/06/828462517/another-break-from-the-past-government-will-help-churches-pay-pastor-salaries.
[53]*Id.*
[54]U.S. SMALL BUSINESS ADMINISTRATION, FREQUENTLY ASKED QUESTIONS REGARDING PARTICIPATION OF FATH-BASED ORGANIZATIONS IN THE PAYCHECK PROTECTION PROGRAM (PPP) AND THE ECONOMIC INJURY DISASTER LOAN PROGRAM (EIDL) 1 (2020).
[55]Gjelten, *supra* note 52.
[56]U.S. SMALL BUSINESS ADMINISTRATION, *supra* note 54, at 2.
[57]*Government to Pay Pastor Salaries in $350 Billion Small Business Aid Package*, AMERICAN ATHEISTS (Apr. 7, 2020), https://www.atheists.org/2020/04/churches-preference-small-business-aid-package/.

businesses receiving funds under the Act. For example, churches do not file tax returns like other businesses, which reduces government oversight of the churches' use of these funds.[58] They also point out that some parts of the loans are forgivable, meaning the churches may not be required to pay back the full loan, as long as they retain their staff.[59]

However, others argue that this component of the CARES Act does not violate the Establishment Clause, and that its application is misunderstood. They state that religious workers are just as deserving of "economic protection [as] every other American worker."[60] Churches in particular suffered from the crisis, as many rely on weekly offerings. Therefore, when the government produced a plan to offer loans to those in need, many argue it would be religious discrimination to deny churches the same aid.[61] This contention is built on the ruling in *Trinity Lutheran Church,* which declared that denying a church a governmental benefit purely because of its religious nature is discrimination and unconstitutional.[62]

Moreover, proponents of element of the CARES Act insist the CARES funding functions like a bank loan, rather than mere stimulus money.[63] They point out that the funds run through banks and function as loans for organizations suffering significantly from the pandemic, and that the loans function the same way—and with the same purpose—for churches as they do for other small businesses.[64]

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[58]*Government to Pay Pastor Salaries in $350 Billion Small Business Aid Package*, *supra* note 57.
[59]*Id.*
[60]Michelle Boorstein, *The Stimulus Package Will Cover Clergy Salaries. Some say the Government has Gone too Far*, THE WASHINGTON POST (Apr. 10, 2020), https://www.washingtonpost.com/religion/2020/04/10/cares-act-paycheck-protection-churches-salaries-coronavirus/.
[61]*Id.*
[62]*Trinity Lutheran Church of Columbia, Inc.*, 137 S. Ct. at 2021.
[63]Boorstein, *supra* note 60.
[64]*Id.* (quoting Russell Moore).

In addition, some argue that the Act leads to non-discriminatory loans; formerly, the SBA refused to give money to any religiously oriented business.[65] In answering questions on the faith-based CARES relief, the SBA noted that some of their regulations "impermissibly exclude some religious entities. Because those regulations bar the participation of a class of potential recipients based solely on their religious status, SBA will decline to enforce these subsections and will propose amendments to conform those regulations to the Constitution."[66] This follows the current governmental trend of allowing public funds to flow to religious entities just as they flow to non-religious ones.[67]

Yet, some churches are concerned that receiving governmental funds may bring additional obligations. The SBA firmly states that receiving an SBA loan does not limit the freedom of religious organizations, does not constitute a waiver of any federal rights, and that the faith-based organizations receiving the loans will retain their independence and autonomy.[68] However, they also note that receiving a loan carries temporary nondiscrimination legal obligations.[69] Recipients must not discriminate in the services or accommodations they offer to the public; nevertheless, faith-based entities remain unrestricted in regards to employment and membership in connection with their religion.[70] Hence, a faith-based restaurant that is open to the public must not discriminate in its services while receiving this loan. Yet, a faith-based organization is still permitted to limit their distribution of food to its own members and may still

[65]U.S. SMALL BUSINESS ADMINISTRATION, *supra* note 54, at 1.
[66]*Id.*
[67]Gjelten, *supra* note 52.
[68]U.S. SMALL BUSINESS ADMINISTRATION, *supra* note 54, at 2.
[69]*Id.*
[70]*Id.*

require employees to share the entity's religion.[71] These obligations are waived once the loan is paid or forgiven.

FEMA Aid for Houses of Worship

In 2017, Hurricane Harvey tore through Texas and damaged many churches in the process. While most nonprofits could apply to the Federal Emergency Management Agency (FEMA) for disaster-relief grants, churches and other houses of worship were ineligible, due to their religious focus—any organization that devoted 50% or more of its space for religious purposes was barred from receiving the grants.[72] Three Texas churches sued FEMA, claiming its policy of excluding faith-based organizations from relief was unconstitutional.[73] These churches highlighted the decision in *Trinity Lutheran Church*, which ruled that excluding a religious institution from receiving a grant, purely because it is religious, is a violation of the First Amendment.[74] The churches further emphasized that centers focused on gardening, sewing, ceramics, and coin collecting were eligible for FEMA funds, while the churches that provided shelter to those displaced by disasters were barred from the grant.[75] Hi-Way Tabernacle, the lead plaintiff in the lawsuit, even served as a staging center for FEMA, distributing emergency meals after the hurricane.[76]

A few months later, the judge denied the churches' injunction request, distinguishing this case from *Trinity Lutheran Church* because the Texas churches sought aid to repair sanctuaries

[71]U.S. SMALL BUSINESS ADMINISTRATION, *supra* note 54, at 3.
[72]Cameron Langford & Britain Eakin, *FEMA Does About-Face on Disaster Aid for Churches*, COURTHOUSE NEWS SERVICE (Jan. 3, 2018), https://www.courthousenews.com/fema-does-about-face-on-disaster-aid-for-churches/.
[73]*Church v. Fed. Emergency Mgmt. Agency*, 2017 U.S. Dist. LEXIS 201244 (S.D. Tex. 2017).
[74]*Id.* at 201250.
[75]Langford & Eakin, *supra* note 72.
[76]*Church v. Fed. Emergency Mgmt. Agency*, 2017 U.S. Dist. LEXIS at 201250.

with a religious purpose, instead of a playground.[77] However, in 2018, FEMA announced it would amend its policy to permit public funds to be used to rebuild churches that suffered damage from a disaster.[78] Under the new policy, churches are considered community centers, which enables them to receive grants on the condition that "their facilities aren't primarily used for 'political, athletic, recreational, vocational, or academic training' purposes."[79]

This announcement ignited further controversy on the fiscal relationship between the church and state. Some believe this act is a further violation of the Establishment Clause, as it grants taxpayer money to religious institutions to use for facilities with a primarily religious purpose.[80] Critics fear the additional interpretation and application of the *Trinity Lutheran Church* ruling; thus, as constitutional law professor Erwin Chemerinsky of Berkeley Law explains, a question exists of exactly what the *Trinity Lutheran Church* decision requires.[81] According to Chemerinsky, FEMA could have extended disaster relief to churches even before the *Trinity Lutheran Church* ruling, analogous to the way the government already affords them fire and police protection.[82] Hence, he believes the policy revision is constitutional. However, his main point of distinction is whether the *Trinity Lutheran Church* decision *requires* FEMA to extend aid to houses of worship. In the Texas churches' lawsuit, a Texas District Court ruled that *Trinity Lutheran Church* does not mandate this extension, because *Trinity Lutheran Church* involved the use of funds for a secular purpose while the Texas churches sought funds for a

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[77]*Church v. Fed. Emergency Mgmt. Agency*, 2017 U.S. Dist. LEXIS at 201250; *see* Langford & Eakin, *supra* note 72.
[78]*FEMA Changes Policy to Give Disaster Aid to Houses of Worship*, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE (Feb. 2018), http://ezproxy.liberty.edu/login?qurl=https%3A%2F%2Fwww.proquest.com%2Fmagazines%2Ffema-changes-policy-give-disaster-aid-houses%2Fdocview%2F2099896159%2Fse-2%3Faccountid%3D12085.
[79]*Id.*
[80]Langford & Eakin, *supra* note 72.
[81]*Id.*
[82]*Id.*

religious facility.[83] Yet, when FEMA updated its policy, it explained the change was prompted by the decision in *Trinity Lutheran Church*.[84] Therefore, it remains unclear exactly how far the *Trinity Lutheran Church* decision extends and what it requires of governmental organizations like FEMA.

Churches and Taxes

For the purposes of tax law, churches are deemed public charities, because the advancement of religion is considered a charitable activity under current tax law. [85] This exempts churches and other houses of worship from federal, state, and local property and income taxes.[86] Churches are automatically considered tax exempt under Section 501(c)(3) as long as they meet the five basic requirements detailed by the IRS.[87] Churches are not required to apply for tax-exemption status, though many do for the assurance that the church qualifies for the associated benefits, like tax-deductible contributions. To maintain tax-exempt status, churches must not violate the following five requirements. First, their earnings cannot inure to a private individual or shareholder.[88] Second, they must not substantially benefit private interests.[89] Third, a substantial part of their activities must not involve attempting to influence legislation.[90] Fourth, the church cannot participate or intervene in political campaigns.[91] Finally, their purposes and

[83]*Church v. Fed. Emergency Mgmt. Agency*, 2017 U.S. Dist. LEXIS 201244 (S.D. Tex. 2017).
[84]Langford & Eakin, *supra* note 72.
[85]Stephen Fishman, *Are Churches Always Exempt?* NOLO (Aug. 2013), https://www.nolo.com/legal-encyclopedia/are-churches-always-exempt.html#:~:text=For%20purposes%20of%20U.S.%20tax,have%20to%20pay%20these%20taxes.
[86]*Id.*
[87]INTERNAL REVENUE SERVICE, TAX GUIDE FOR CHURCHES & RELIGIOUS ORGANIZATIONS (2015).
[88]*Id.* at 2.
[89]*Id.*
[90]*Id.*
[91]*Id.*

activities must be legal and follow fundamental public policy.[92] If a church violates these conditions, it may be subjected to taxes on its income.

Some contend that churches' tax-exemption is simply a burden on the American public. They argue that churches enjoy the benefits of the government, like police and fire protection, without sharing the financial burden.[93] Towns with financial struggles sometimes attempt to use zoning laws to prevent the development of new churches—this fails when the federal government enforces religious land-use laws.[94] Others believe churches' tax-exemption is necessary to protect their religious freedom and to maintain the separation between church and state.[95] However, some religious advocates believe the conditions on tax-exemption, particularly those against political engagement and lobbying, inhibit a church's ability to protect and proclaim its interests.[96]

In 2000, the D.C. Circuit Court of Appeals heard a definitive case concerning the revocation of a church's tax-exemption status on the grounds it had engaged in political campaigning.[97] Shortly before the 1992 presidential election, tax-exempt church Branch Ministries placed advertisements in two newspapers, urging Christians not to vote for Bill Clinton due to his standing on several moral issues.[98] For the first time, the IRS revoked a church's tax-exemption status due to its engagement in politics.[99] Branch Ministries claimed that such a revocation violated their right to free exercise of religion, as protected under the First

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[92]INTERNAL REVENUE SERVICE, *supra* note 87, at 2.
[93]Dan Hugger, *Churches, Tax Exemption, and the Common Good*, STATES NEWS SERVICE (Jan. 28, 2020), https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:5Y37-JRP1-DYTH-G17P-00000-00&context=1516831.
[94]*Id.*
[95]*Id.*
[96]*Id.*
[97]*Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000).
[98]*Id.* at 140.
[99]*Id.* at 139.

Amendment.[100] They further argued that the loss of tax-exempt status, and the corresponding inability for contributors to deduct their donations from their taxes, would force the church to close.[101] The Court held that a church cannot use tax-free dollars to fund political campaign activity.[102] It declared that if a church wishes to lobby, it may create a separate organization, or form a political action committee to promote its political perspectives.[103] Hence, the Court ruled that the revocation of the church's tax-exempt status was constitutional, but the Court also noted that the church may reapply for tax-exemption status if it renounced all future participation in political campaigns.[104]

While churches are considered tax-exempt, they are still generally required to withhold and pay income and Federal Insurance Contributions Act taxes for their employees. However, when "wages are paid for services performed by a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry," a church is not required to withhold income tax on the compensation paid to this minister for his or her services.[105] Furthermore, churches are permitted to provide such a minister a *parsonage allowance,* or a housing allowance to aid them in finding residence in the community.[106]

In 2016, this component of church's tax exemption was challenged. The Freedom from Religion Foundation, sued the IRS with the call for the termination of the parsonage allowance, advocating for the implementation of approximately one billion dollars annually in new taxes on

[100]*Branch Ministries*, 211 F.3d at 142.
[101]*Id.*
[102]*Id.*
[103]*Id.* at 143.
[104]*Id.*
[105]INTERNAL REVENUE SERVICE, *supra* note 87, at 22.
[106]*Id.* at 23.

churches across the nation.[107] In 2019, the Seventh Circuit ruled against the proposal. It held that the parsonage allowance would remain available for ministers, just as it was available for "soldiers, diplomats, peace corps workers, prison wardens, non-profit presidents, oil executives…" among many others.[108]

Religious Discrimination in Employment

Under the First Amendment, churches and other religious organizations are permitted to discriminate in hiring and firing their employees on the basis of religion.[109] Under the law, these religious organizations are for-profit institutions operating with a primarily religious purpose on a daily basis.[110] This clause protects their autonomy; if a church could not practice religious discrimination, it could be forced to accept pastors who do not share the church's religion.[111] As for religious organizations, "protecting the autonomy of [faith-based organizations] was done to enable them to succeed at what they do so well, namely help the poor and needy, and to get [them] to participate in government programs, something [they] are far less likely to do if they face compromising regulation."[112] However, while they may discriminate in employment on the

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[107]*Becket Fund for Religious Liberty: Atheists Give up $1B Church Tax Lawsuit Churches Successfully Protect Longstanding Tax Exemption for Ministers*, TARGETED NEWS SERVICE (June 14, 2019), https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:5WBN-1SN1-DYG2-R3X6-00000-00&context=1516831.

[108]*Id.*

[109]Thomas Berg, *Religious Organizational Freedom and Conditions on Government Benefits*, 7 GEO. J.L. & PUB. POL'Y 165 (2009).

[110]Sarah Tipton, *Religious Organization's Right to Discriminate*, LEGALMATCH (June 24, 2018), https://www.legalmatch.com/law-library/article/religious-organizations-right-to-discriminate.html#:~:text=Title%20VII%20of%20the%20Civil,the%20basis%20of%20their%20religion.

[111]*Pedreira v. Ky. Baptist Homes for Children, Inc.*, 579 F.3d 722 (6th Cir. 2009).

[112]*Can a Religious Group that Receives Funds to Administer a Homeless Shelter Discriminate in Hiring on the Basis of Religion or Adherence to Religious Doctrines?* FREEDOM FORUM INSTITUTE (2021), https://www.freedomforuminstitute.org/about/faq/can-a-religious-group-that-receives-funds-to-administer-a-homeless-shelter-discriminate-in-hiring-on-the-basis-of-religion-or-adherence-to-religious-doctrines/#:~:text=to%20religious%20doctrines%3F-,Can%20a%20religious%20group%20that%20receives%20funds%20to%20administer%20a,in%20employment%20based%20on%20religion.

basis of religion, religious organizations and churches still cannot discriminate on other factors like race or sex.[113] Moreover, some state and local laws prohibit organizations that receive governmental funds from discriminating on the basis of religion.[114]

In 2009, the Sixth Circuit Court heard a case concerning a religious organization's ability to discriminate based on religion.[115] Kentucky Baptist Homes for Children, Inc. (KBHC) is a religious organization that received state funds as part of a program to provide care for abused children.[116] Alicia Pedreira worked at a KBHC facility, but she was fired when the organization discovered she was homosexual.[117] Karen Vance, a social worker in the area, claimed she would have applied for a job at KBHC, but as she was also homosexual, it seemed futile.[118] The two sued KBHC, claiming the organization violated the Kentucky Civil Rights Act by discriminating on the basis of religion.[119] The Court dismissed Vance's claim as purely speculative, holding that she had no standing to file against KBHC because she never actually applied for a job at the facility.[120] However, the Court considered Pedreira's claim that she was fired because she did not share KBHC's religious belief that homosexuality is a sin.[121] The parties agreed Pedreira was fired due to her homosexuality, yet in Kentucky, the Civil Rights Act had no provision preventing termination on the basis of sexual orientation.[122] Thus, Pedreira needed to prove that

[113]Tipton, *supra* note 110.
[114]*Id.*
[115]*Pedreira*, 579 F.3d at 734.
[116]*Id.* at 725
[117]*Id.*
[118]*Id.*
[119]*Id.* at 734.
[120]*Pedreira*, 579 F.3d at 727.
[121]*Id.* at 727-728.
[122]*Id.* at 727.

her termination was religious discrimination; according to the Court, she failed to prove this claim because there was no *religious* aspect of her conduct that resulted in her termination.[123]

In another case, two teachers, Agness Morrissey-Berru and Kristen Biel, sued two different Catholic schools where they were terminated for similar reasons.[124] Both signed agreements upon employment that explained their performances would be evaluated on religious bases.[125] Morrissey-Berru contended that her school violated the Age Discrimination in Employment Act of 1967 by demoting her and failing to renew her contract in order to hire a younger teacher.[126] Kristen Biel claimed she was fired because she requested a leave of absence for chemotherapy treatment, and thus sued her school under the Americans With Disabilities Act.[127] The two schools maintained the decisions were based on the teachers' poor classroom performance.[128] Moreover, they claimed that the First Amendment's Free Exercise Clause protects their right to terminate their employees under the *ministerial exception* established in case precedent.[129] In December of 2019, the Supreme Court granted certiorari and consolidated Biel's and Morrissey-Berru's cases.[130]

The Court recognized the importance of balancing churches' rights with individuals' rights under law. It acknowledged that the Free Exercise and Establishment Clauses "protect the right of churches and other religious institutions to decide matters 'of faith and doctrine' without

[123]*Pedreira*, 579 F.3d at 728.
[124]*Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020).
[125]*Id.* at 2053.
[126]*Id.*
[127]*Id.*
[128]*Id.* at 2058.
[129]*See Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. at 2053-2054; *see also Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012).
[130]*Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2060.

government intrusion."[131] These clauses do not imply that religious organizations possess immunity from secular law, yet they protect the essential internal decisions of a religious institution.[132] This created the ministerial exception, which bars courts from entering employment disputes about those holding certain positions—originally described as ministers—within religious institutions.[133] To determine whether Morrissey-Berru and Biel qualified for the ministerial exception, as the schools claimed, the Court examined their roles at the schools.[134] Both taught the Catholic faith and were expected to guide students in their faith, praying with them and preparing them for religious activities like Mass.[135] Based on these factors, the Court held that the teachers qualified for the ministerial exception even though they did not possess a title like *minister*.[136] Therefore, the Court determined that the government could not interfere with the schools' decisions to fire these employees, and the Court thus remanded the case.[137]

The Equality Act

In 2019, the House of Representatives proposed the Equality Act, which would add gender identity and sexual orientation to the Civil Rights Act as a protected class.[138] Thus, discrimination on the basis of sexual orientation would be banned for any organization receiving

[131]*Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2060; *see Hosanna-Tabor*, 565 U.S. at 186 (quoting *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94 (1952)).
[132]*Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2060.
[133]*Id.* at 2060; *see Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012); *McClure v. Salvation Army*, 460 F.2d 533, 558-559 (5th Cir. 1972).
[134]*Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2065-2066.
[135]*Id.* at 2066.
[136]*Id.* at 2066-2069.
[137]*Id.* at 2069.
[138]John Litzler, *The Equality Act and How it Could Affect Churches, Religious Organizations*, BAPTIST STANDARD (Feb. 15, 2021), https://www.baptiststandard.com/opinion/other-opinions/commentary-the-equality-act-and-how-it-could-affect-churches-religious-organizations/.

federal funds.[139] The bill passed in the House in 2021, but it has not yet passed the Senate. Despite a Democratic majority in both houses, the act would require ten Republican votes to override a Senate filibuster.[140]

Presently, twenty-nine states do not have anti-discrimination protections for sexual orientation; in other words, in these states, LGBTQ individuals could be denied service based on their sexual orientation.[141] If the Equality Act is passed, discrimination on the basis of sexual orientation would be prohibited, and any organization discriminating on this basis would be denied federal funding.[142]

Supporters of the bill argue it is necessary to ensure equal treatment for all. They compare discrimination on the basis of sexual orientation with racial discrimination, declaring they are both violations of human rights.[143] Opponents contend the Act infringes on vital religious freedoms.[144] They fear that churches and other Christian organizations would be required to accommodate activities that violate their religious beliefs.[145] For example, churches that believe in strictly heterosexual marriage may be forced to offer their buildings for homosexual marriages.[146] Students may no longer be permitted to use federal student loans at

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[139]Sarah Kramer, *Think the "Equality Act" Will Spare Churches and Religious Schools? Think Again.*, ALLIANCE DEFENDING FREEDOM (Feb. 10, 2021), https://adflegal.org/blog/think-equality-act-will-spare-churches-and-religious-schools-think-again.
[140]Yonat Shimron, *What's in Store for the Equality Act, and Why do Some Religions Want a Revision?* RELIGION NEWS SERVICE (Feb. 26, 2021), https://religionnews.com/2021/02/26/whats-in-store-for-the-equality-act-and-why-do-some-religions-want-a-revision/.
[141]*Id.*
[142]*Id.*
[143]Michelle Boorstein & Samantha Schmidt, *Equality Act is Creating a Historic Face-Off Between Religious Exemptions and LGBTQ Rights*, THE WASHINGTON POST (Mar. 16, 2021), https://www.washingtonpost.com/religion/2021/03/16/equality-act-fairness-for-all-religious-liberty-lgbtq-lgbt-biden/.
[144]Shimron, *supra* note 140.
[145]*Id.*
[146]*Id.*

Christian colleges that do not accept homosexuality.[147] Hence, many argue that the Act punishes Christian organizations and churches' religious beliefs.[148]

As an alternative to the Equality Act, some support the Fairness for All bill, which also protects LGBTQ individuals, but includes exclusionary provisions to protect religious freedoms.[149] However, it is highly unlikely that this bill will pass, due to the Democratic majority in Congress.[150] Yet, for the Equality Act to pass the Senate, it will most likely require modification; thus, a compromise may form as a hybrid of these two bills.[151]

Christian Schools and Universities

For decades, the federal and state governments have been reluctant to grant funds to religious schools. This general policy aims to maintain the separation of church and state and to uphold the Establishment Clause.[152] However, the government has allowed public funds to go to religious schools for non-religious use.[153] In recent years, the Supreme Court has issued several rulings that allow an increase of public funds for religious schools, as a part of eliminating discrimination between religious and non-religious schools.

Historically, in determining whether it is constitutional to grant public funds to a religious school, the courts have analyzed the purpose—or intended use—of the money. The case of

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[147]Tom Gjelten, *Some Faith Leaders Call Equality Act Devastating; For Others, It's God's Will*, NATIONAL PUBLIC RADIO (Mar. 10, 2021), https://www.npr.org/2021/03/10/974672313/some-faith-leaders-call-equality-act-devastating-for-others-its-gods-will.
[148]Boorstein & Schmidt, *supra* note 143.
[149]Shimron, *supra* note 140.
[150]*Id.*
[151]*Id.*
[152]*What are the Rules on Funding Religious Activity with Federal Money?* U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES (Aug. 2014), https://www.hhs.gov/answers/grants-and-contracts/what-are-the-rules-on-funding-religious-activity-with-federal-money/index.html.
[153]*See* Rob Boston, *Government Aid and Religious Schools*, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE (Nov. 2001), https://www.au.org/church-state/november-2001-church-state/featured/government-aid-and-religious-schools.

Cochran v. Louisiana State Board of Education established the "child benefit theory," which declares funds that directly benefit the students, instead of the religious school itself, to be constitutional.[154] In this case, a Louisiana statute utilized public funds to pay for every student's textbooks. The appellants argued that this statute unconstitutionally aided private and religious schools by paying for those students' textbooks with taxpayer money. The Supreme Court acknowledged that the government had little control over private schools, and that using public funds for aiding private organizations like religious schools would not be permissible.[155] However, it clarified that the funds were not benefiting the private schools, but instead were used for the public purpose of educating children—without discriminating on which school the child attended.[156] This distinction has been upheld in several Supreme Court cases, including ones concerning the state provision of transport and state-financed testing for religious schools.[157]

Yet, in several cases, the Supreme Court has ruled against the granting of funds to religious schools. In one case, a Pennsylvania statute reimbursed private schools, including religious ones, for the cost of teachers' salaries and educational material for particular secular subjects.[158] The Supreme Court held this statute was unconstitutional, because to ensure the funds were proceeding to exclusively secular education, the state had to examine each school's records and monitor the flow of funds.[159] This, the Court ruled, was excessive entanglement between the church and state, violating the Establishment and Free Exercise Clauses.[160]

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[154]*Cochran v. Louisiana State Bd. of Education*, 281 U.S. 370 (1930).
[155]*Id.* at 376.
[156]*Id.* at 381-383.
[157]*See Mitchell v. Helms*, 530 U.S. 793 (2000); *Zobrest v. Catalina Foothills School District*, 509 U.S. 1 (1993); *Wolman v. Walter*, 433 U.S. 229 (1977); *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947).
[158]*Lemon v. Kurtzman*, 403 U.S. 602 (1971).
[159]*Id.* at 614.
[160]*Id.* at 621-625.

Moreover, in another case, a New York law provided aid to religious schools in several forms. For example, it established grants that funded maintenance and repairs for private schools, it formed a tuition reimbursement plan for low-income families with children enrolled in private schools, and it created a tax deduction for the low-income families who did not receive a tuition reimbursement.[161] The Court held that all three components were a direct violation of the Establishment Clause, as they inevitably advanced the religious mission of these schools.[162]

Espinoza v. Montana Department of Revenue

However, in 2020, the Supreme Court ruled on a prominent case to allow funds to aid students in attending religious schools. In 2015, Montana created a program that gave tax credits to anyone who donated to organizations that awarded scholarships for tuition at a private school.[163] However, the Montana Constitution includes a clause, known as a "Blaine Amendment," prohibiting government aid for a school controlled by a church or denomination.[164] Hence, Montana's Department of Revenue determined that families could not use these scholarships at religious schools.[165] Three families sued, claiming they were discriminated against because they could not send their children to religious schools with the funds, while others could still send their children to secular private schools.[166] The Montana Supreme Court held that a "middle ground" could not be reached, so they canceled the program entirely.[167] The families appealed to the Supreme Court, citing the *Trinity Lutheran Church*

[161]*Comm. For Public Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756 (1973).
[162]*Id.* at 798.
[163]*Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246 (2020).
[164]MONT. CONST., art. X § 6 (Nexis, LexisNexis through Nov. 3, 2020 election).
[165]*Espinoza*, 140 S. Ct. at 2252.
[166]Jessica Levinson, *Supreme Court's Montana Decision Blurs Line Between Church and State*, THINK, (July 1, 2020), https://www.nbcnews.com/think/opinion/supreme-court-s-montana-decision-blurs-line-between-church-state-ncna1232726.
[167]*Espinoza*, 140 S. Ct. at 2253.

ruling in support of their position.[168] Conversely, the state argued that its Blaine Amendment served the legitimate aim of preventing public funds from being used for religious purposes.[169]

In a 5-4 decision, the Supreme Court held that the program violated the Free Exercise Clause by discriminating against religious schools.[170] In his opinion, Chief Justice Roberts explained that "We have repeatedly held that the Establishment Clause is not offended when religious observers and organizations benefit from neutral government programs."[171] Because Montana's no-aid provision bars aid to religious schools purely because of their religious nature, it is unconstitutional.[172] Roberts further clarified that the case is not focused on the *use* of the funds, as the state contends, but the *status* of the organization receiving the funds. Because the scholarships could not be used at a religious school purely because that school was religious—and not whether that school would be using the funds for a religious purpose—the prohibition falls under the *Trinity Lutheran Church* ruling; thus, it is unconstitutional.[173] While Chief Justice Roberts established this distinction, the Court did not rule on whether a law prohibiting the usage of funds for religious purposes would also violate the Free Exercise Clause.[174]

While some applaud this decision for enabling parents to select a school that better suits their children's needs, others argue that the ruling harms the public school system. They claim that diverting public funds to private, religious schools slights the quality of the state's public

[168]Pete Williams, *Supreme Court Takes up Church-State Separation in Christian Schools Case*, NBC NEWS, (Jan. 21, 2020), https://www.nbcnews.com/politics/supreme-court/supreme-court-takes-church-state-separation-christian-schools-case-n1117006.
[169]*Espinoza*, 140 S. Ct. at 2253.
[170]*Id.* at 2256.
[171]*Id.* at 2254.
[172]*Id.* at 2255.
[173]*Id.* at 2256.
[174]*Id.*

education.[175] Some are concerned of the impact this decision might have on other states—many states possess Blaine Amendments in their constitutions that may be challenged in the future.[176]

Locke v. Davey

In 2004, the Supreme Court held that a Washington program assisting students with postsecondary education costs was constitutional, even though it excluded students pursuing a degree in theology from receiving aid.[177] A student eligible for this program, Davey, elected to attend a church-affiliated college and pursue a double-major in pastoral ministries and business management. However, while the scholarship program permitted use of the funds at a religious school, it prohibited the funds to be used in pursuit of a theology degree to comply with the Washington Constitution's bar on aiding the advancement of religion.[178] When he was informed that he could not use the scholarship for this degree, he sued with the claim that the prohibition violated the Free Exercise and Establishment Clauses.[179]

The Court noted that the Washington program did "not require students to choose between their religious beliefs and receiving a government benefit."[180] Instead, the program permitted attendance at a religious college—it even allowed students to take religious courses. Moreover, the Court found that the state had a legitimate interest in not funding the pursuit of

[175]Mark Sherman, *Supreme Court Rules Public Funds can go Toward Religious Schools*, THE CHRISTIAN SCIENCE MONITOR (June 30, 2020), https://www.csmonitor.com/USA/Justice/2020/0630/Supreme-Court-rules-public-funds-can-go-toward-religious-schools.
[176]Andrew Chung & Lawrence Hurley, *U.S. Supreme Court Endorses Taxpayer Funds for Religious Schools*, REUTERS (June 30, 2020), https://www.reuters.com/article/us-usa-court-religion/u-s-supreme-court-endorses-taxpayer-funds-for-religious-schools-idUSKBN2412FX.
[177]*Locke v. Davey*, 540 U.S. 712 (2004).
[178]*Id.* at 717.
[179]*Id.* at 718.
[180]*Id.* at 720-721.

theology, to uphold a form of the Free Exercise Clause within its constitution.[181] Therefore, it held the program's exclusion was constitutional in a 7-2 decision.

A New Test: The Historical Approach

Based on the Free Exercise and Establishment Clauses, relevant case law, and recent legislative and administrative acts, the separation of church and state is clearly essential to the nation. Yet, cases like *Trinity Lutheran Church* demonstrate the importance of protecting religion by not discriminating against churches. While the *Lemon* test has been used for countless cases regarding the church and state, it is widely criticized for its subjective nature.[182] Therefore, many contend a new test is necessary.[183]

Professor Michael McConnell proposed a historical approach to Establishment Clause cases, which emphasizes establishment of religion as the Founders understood it.[184] He recognized six indicators of establishment in colonial times: "government control over the doctrine and personnel of the established church, mandatory attendance in the established church, government financial support of the established church, restrictions on worship in dissenting churches, restrictions on political participation by dissenters, and use of the established church to carry out civil functions."[185] Under this test, an action would be considered unconstitutional if involved one of the six characteristics.[186] However, the third prong of this test—concerning governmental financial support—does not bar any fiscal relationship between

[181]*Locke v. Davey*, 540 U.S. at 725.
[182]David L. Hudson, *The Fate of the Lemon Test: D.O.A. Or Barely Surviving?*, FREEDOM FORUM INSTITUTE (July 8, 2019), https://www.freedomforuminstitute.org/2019/07/08/the-fate-of-the-lemon-test-d-o-a-or-barely-surviving/.
[183]Luke Goodrich, *Will the Supreme Court Replace the* Lemon *Test?*, HARVARD LAW REVIEW BLOG (Mar. 11, 2019), https://blog.harvardlawreview.org/will-the-supreme-court-replace-the-_lemon_-test/.
[184]Mark David Hall, *Will the Court Finally Kill the Lemon Test Ghoul?*, LAW & LIBERTY (March 7, 2019), https://lawliberty.org/will-the-court-finally-kill-the-lemon-test-ghoul/.
[185]Goodrich, *supra* note 183.
[186]*Id.*

the church and state. Instead, it prohibits the *exclusive* funding of any church or religious entity.[187] Nondiscriminatory funding, as was emphasized in *Trinity Lutheran Church*, would presumably remain constitutional.[188] This approach is more objective than the *Lemon* test, and it provides a clearer method for identifying unconstitutional practices.[189]

While no perfect resolution to the complex relationship between the church and state exists, this historical approach maintains the crucial separation between the church and state, without treating churches and religious organizations unfairly.[190] Therefore, perhaps the Supreme Court should replace the *Lemon* test with McConnell's historical approach.

Conclusion

In sum, the fiscal relationship between the church and state has continued to evolve throughout the centuries. From arguments on the tax exemption and employment discrimination that religious institutions enjoy to the dispute over the relief funds they receive, contentions are unlikely to cease. Ultimately, the government must balance the freedom and rights of religious organizations with the aim of remaining unaffiliated with any religion.

[187]Luke Goodrich, *Symposium: Three Establishment Clause Paths*, SCOTUS BLOG (Dec. 12, 2018), https://www.scotusblog.com/2018/12/symposium-three-establishment-clause-paths/.
[188]Hall, *supra* note 184.
[189]Goodrich, *supra* note 183.
[190]Hall, *supra* note 184.