FIRST LIBERTY

May 24, 2022

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Sent via email and U.S. Mail

Re: Family Life Center Pool

Dear Mayor Hill, City Commission members, and Ms. Thomas:

First Liberty Institute is the nation's largest law firm dedicated exclusively to defending and restoring religious liberty for all Americans. We represent the Calvary Missionary Baptist Church ("Calvary Missionary"), who recently applied for $35,000 to restore the indoor, junior Olympic swimming pool located in its Family Life Center so that, as a part of its religious mission to serve the community, it may reopen the pool freely for the community's use and enjoyment. Please direct all communications regarding this matter to us.

We understand that the Palatka City Commission (the "Commission") recently received a letter from the Freedom From Religion Foundation ("FFRF") complaining about the Commission's mere consideration of Calvary Missionary's application. We urge you to reject its analysis. We write to inform you of the state of the law concerning the availability of public funds for religious organizations as the Commission prepares to consider Calvary Missionary's application at its upcoming meeting on Thursday, May 26, 2022.

In short, the Establishment Clause of the First Amendment to the U.S. Constitution permits religious organizations to receive generally available government benefits like the funds at issue here. Moreover, the Free Exercise Clause forbids the type of religious discrimination proposed by FFRF whereby otherwise qualified religious organizations would be excluded because of their religious character or identity.

Religious organizations are eligible to receive generally available public funds.

The First Amendment to the U.S. Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." *Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246, 2254 (2020) (quoting U.S. Const. amend. I). These Religion Clauses "aim to foster a society in which people of all beliefs can live together harmoniously." *Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 2067, 2074 (2019). The First Amendment therefore requires the government "to be a neutral in its relations with groups of religious believers and non-believers." *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 18 (1947). Indeed, the U.S. Supreme Court has "repeatedly confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion" that cannot be justified but for the most exacting of reasons. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019 (2017).

Significantly, government neutrality means that the state cannot use its powers to handicap or otherwise treat religious organizations with hostility. *Id.*; *see also Am. Legion*, 139 S. Ct. at 2074 (stating "a hostility toward religion . . . has no place in our Establishment Clause traditions"). Thus, consistent with this mandate of neutrality, the Supreme Court has long held that the Establishment Clause permits religious organizations to receive generally available government benefits. *See Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 839 (1995) (stating "the guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse"); *Witters v. Washington Dep't of Servs. for the Blind*, 474 U.S. 481, 489 (1986) (holding the First Amendment did not preclude a state from extending assistance under its vocational rehabilitation assistance program to a blind person who chose to study at Christian college to become pastor, missionary, or youth director); *Mueller v. Allen*, 463 U.S. 388, 403 (1983) (upholding a state law allowing parents to deduct educational expenses incurred from their children attending religious schools); *Everson*, 330 U.S. at 17 (upholding a law enabling local school districts to reimburse parents for the public transportation costs of sending their children to either public or religious schools).

The Supreme Court addressed a situation remarkably similar to Calvary Missionary's request five years ago in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017). There, a Christian church applied to a generally available grant program to help resurface its playground. *Id.* at 2017. Like Calvary Missionary, the church in *Trinity Lutheran* anticipated the benefits of a new playground surface would "extend beyond its students to the local community, whose children often use[d] the playground during non-school hours." *Id.* at 2018. As in *Trinity Lutheran*, Calvary Missionary simply "asserts a right to participate in a government benefit program without having to disavow its religious character." *Id.* at 2022. The Commission, the Supreme Court has concluded, may not require that Calvary Missionary be "put to the choice between being a church and receiving a government benefit." *Id.* at 2016. After all, "the Establishment Clause is not offended when religious observers and organizations benefit from neutral government programs." *Espinoza*, 140 S. Ct. at 2254.

FFRF's letter inexplicably ignores these precedents, opting instead to focus on cases predating these recent Supreme Court decisions. None of the cases cited by FFRF are controlling here. In fact, the Court has disclaimed the application of many of those cases to neutral benefits

programs. *See Zelman v. Simmons-Harris*, 536 U.S. 639, 662 (2002) (holding the *Nyquist* case did "not govern neutral . . . programs that . . . offer aid directly to a broad class of individual recipients defined without regard to religion"). Moreover, *Tilton v. Richardson*, 403 U.S. 672, 689 (1971) actually ***upheld*** neutral one-time grants to construct buildings at religious and non-religious colleges. *Wirtz v. City of S. Bend, In.*, 813 F. Supp. 2d 1051 (N.D. Ind. 2011), is equally inapplicable here because it involved the sale of government property to a Catholic high school for below-market value, not an application for a neutral government benefit like the one submitted by Calvary Missionary. In any event, the *Wirtz* decision—and indeed most cases cited by FFRF—has no relevance here because it applied the three-part test annunciated by *Lemon v. Kurtzman*, 403 U.S. 602 (1971), a test the Supreme Court "no longer applies" to cases examining "government benefits and tax exemptions that go to religious organizations." *Am. Legion*, 139 S. Ct. at 2092 (Kavanaugh, J., concurring). Adopting FFRF's understanding of the Establishment Clause would directly contradict recent Supreme Court precedent.

The Commission need not fear religious institutions—including churches—applying for grants along with their secular neighbors. Moreover, the Commission honors the intent of the First Amendment by awarding benefits from government programs for which religious institutions are qualified.

Denying Calvary Missionary's application based on its status as a church would be unconstitutional.

Further, denying Calvary Missionary's application because of its status as a church would run afoul of the First Amendment's Free Exercise Clause. The Free Exercise Clause "protects religious observers against unequal treatment and against laws that impose special disabilities on the basis of religious status." *Espinoza*, 140 S. Ct. at 2254; *see also Lyng v. Northwest Indian Cemetery Protective Assn.*, 485 U.S. 439, 449 (1988) (stating the Free Exercise Clause protects against laws that "penalize religious activity by denying any person an equal share of the rights, benefits, and privileges enjoyed by other citizens"). The Supreme Court has therefore held that denying a generally available benefit solely because of an organization's religion imposes a penalty on the free exercise of religion that can be justified only by a state interest "of the highest order." *See McDaniel v. Paty*, 435 U.S. 618, 628 (1978).

Seeking to implement a "policy preference for skating as far as possible from religious establishment concerns" cannot satisfy that standard. *See Trinity Lutheran*, 137 S. Ct. at 2024–25 (holding a state violated the First Amendment by excluding a church from a generally available grant program for playgrounds); *Espinoza*, 140 S. Ct. at 2261 (holding a state's exclusion of religious schools from a scholarship program could not be justified by its interest in separating church and state).

Were the Commission to deny the funding to Calvary Missionary in the way FFRF suggests, the practical consequence may be, in all likelihood, a few less people in the community enjoy the pool. But the exclusion of Calvary Missionary "from a public benefit for which it is otherwise qualified, solely because it is a church, is odious to our Constitution all the same, and cannot stand." *Trinity Lutheran*, 137 S. Ct. at 2025.

Conclusion

The Commission may grant Calvary Missionary's application without fear of violating the First Amendment to the U.S. Constitution. Given the obvious benefit that restoring the only indoor, junior Olympic sized pool in the county would offer to your community, we urge the Commission to do so as soon as possible. Should you have any questions, we would be happy to meet to more fully explain the cases and legal doctrines articulated herein.

If we may be of further service, please do not hesitate to call [redacted] or email [redacted].

Respectfully,

Keisha Russell, Counsel
Ryan Gardner, Counsel

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