LETTERS TO THE EDITOR

Chemerinsky on *Trinity*: 3rd time won't be the charm

In each of the past two weeks the Daily Journal has printed Dean Erwin Chemerinsky's assertion that the U.S. Supreme Court held in *Trinity Lutheran Church of Columbia v. Comer*, 2017 DJDAR 622 (June 26), that "the government is constitutionally required to provide assistance to religious institutions." ["A troubling free exercise decision," July 18; "Berkeley Law dean discusses Supreme Court's last term and future," July 12].

A third time won't be the charm; further repetition will not make this false statement true.

Missouri created a ranking system based on criteria having nothing to do with religion. A religious school scored high enough to earn funding for playground safety. The Supreme Court thus required state funds to go to the Trinity Lutheran school, not because it was religious, but because it ranked high enough according to religiously neutral criteria.

Nothing in the ruling requires state "assistance to religious institutions" — the court disavowed "any entitlement to a subsidy" — they earn them only when they outperform nonreligious schools under neutral criteria. The result was no different than if the state promised a prize to the winner of a spelling bee or baseball tournament, and that winner happened to be a religiously affiliated school.

Describing the funding recipient with regard to a happenstance result (it was a religious institution) rather than its justification (it ranked among the highest-scoring schools) is highly misleading. One wonders whether Chemerinsky would describe the sentencing in the Boston Marathon bombing case as "Jury decides Muslim immigrant must die."

Contrary to Dean Chemerinsky's assertion, there is nothing unprecedented about religious institution's receiving state funds when they deserve them for reasons unrelated to their religious character. It is not even the first time the Supreme Court has authorized funds to flow to a Lutheran congregation. In *First English Evangelical Lutheran Church of Glendale v. Los Angeles County*, 482 U.S. 304 (1980), the court held a church would be entitled to compensation for the state's taking its property under eminent domain law, as would any other (nonreligious) property owner.

Likewise, a congregation victimized by a state created nuisance would deserve compensation under religiously neutral criteria. *See Baltimore & P.R. Co. v. First Baptist Church*, 108 U.S. 317, 334 (1883): "[T]he congregation had the same right to the comfortable enjoyment of its house for church purposes that a private gentleman has to the comfortable enjoyment of his own house."

It is because religious institutions have this same right to comfort and safety that the government has opened its Nonprofit Security Grant Program to synagogues, churches, and mosques. This funding is designed not to promote religion but to provide protection for those who need it most. Denying the most vulnerable institutions the security they need just because they are religious institutions, as seven of the nine justices agreed, is "odious" and cannot withstand the constitutional imperative of neutrality toward religious institutions.

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