Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

TRINITY LUTHERAN CHURCH OF COLUMBIA, INC. *v.* COMER, DIRECTOR, MISSOURI DEPARTMENT OF NATURAL RESOURCES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 15–577. Argued April 19, 2017—Decided June 26, 2017

The Trinity Lutheran Church Child Learning Center is a Missouri preschool and daycare center. Originally established as a nonprofit organization, the Center later merged with Trinity Lutheran Church and now operates under its auspices on church property. Among the facilities at the Center is a playground, which has a coarse pea gravel surface beneath much of the play equipment. In 2012, the Center sought to replace a large portion of the pea gravel with a pour-in-place rubber surface by participating in Missouri's Scrap Tire Program. The program, run by the State's Department of Natural Resources, offers reimbursement grants to qualifying nonprofit organizations that install playground surfaces made from recycled tires. The Department had a strict and express policy of denying grants to any applicant owned or controlled by a church, sect, or other religious entity. Pursuant to that policy, the Department denied the Center's application. In a letter rejecting that application, the Department explained that under Article I, Section 7 of the Missouri Constitution, the Department could not provide financial assistance directly to a church. The Department ultimately awarded 14 grants as part of the 2012 program. Although the Center ranked fifth out of the 44 applicants, it did not receive a grant because it is a church.

Trinity Lutheran sued in Federal District Court, alleging that the Department's failure to approve its application violated the Free Exercise Clause of the First Amendment. The District Court dismissed the suit. The Free Exercise Clause, the court stated, prohibits the government from outlawing or restricting the exercise of a religious practice, but it generally does not prohibit withholding an affirmative

benefit on account of religion. The District Court likened the case before it to *Locke* v. *Davey*, 540 U. S. 712, where this Court upheld against a free exercise challenge a State's decision not to fund degrees in devotional theology as part of a scholarship program. The District Court held that the Free Exercise Clause did not require the State to make funds available under the Scrap Tire Program to Trinity Lutheran. A divided panel of the Eighth Circuit affirmed. The fact that the State could award a scrap tire grant to Trinity Lutheran without running afoul of the Establishment Clause of the Federal Constitution, the court ruled, did not mean that the Free Exercise Clause compelled the State to disregard the broader antiestablishment principle reflected in its own Constitution.

Held: The Department's policy violated the rights of Trinity Lutheran under the Free Exercise Clause of the First Amendment by denying the Church an otherwise available public benefit on account of its religious status. Pp. 6–15.

(a) This 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. Thus, in *McDaniel* v. *Paty*, 435 U. S. 618, the Court struck down a Tennessee statute disqualifying ministers from serving as delegates to the State's constitutional convention. A plurality recognized that such a law discriminated against McDaniel by denying him a benefit solely because of his "*status* as a 'minister.'" *Id.,* at 627. In recent years, when rejecting free exercise challenges to neutral laws of general applicability, the Court has been careful to distinguish such laws from those that single out the religious for disfavored treatment. See, *e.g.*, *Lyng* v. *Northwest Indian Cemetery Protective Assn.*, 485 U. S. 439; *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872; and *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520. It has remained a fundamental principle of this Court's free exercise jurisprudence that laws imposing "special disabilities on the basis of . . . religious status" trigger the strictest scrutiny. *Id.*, at 533. Pp. 6–9.

(b) The Department's policy expressly discriminates against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character. Like the disqualification statute in *McDaniel*, the Department's policy puts Trinity Lutheran to a choice: It may participate in an otherwise available benefit program or remain a religious institution. When the State conditions a benefit in this way, *McDaniel* says plainly that the State has imposed a penalty on the free exercise of religion that must withstand the most exacting scrutiny. 435 U. S., at 626, 628.

The Department contends that simply declining to allocate to Trinity Lutheran a subsidy the State had no obligation to provide does

not meaningfully burden the Church's free exercise rights. Absent any such burden, the argument continues, the Department is free to follow the State's antiestablishment objection to providing funds directly to a church. But, as even the Department acknowledges, the Free Exercise Clause protects against "indirect coercion or penalties on the free exercise of religion, not just outright prohibitions." *Lyng*, 485 U. S., at 450. Trinity Lutheran is not claiming any entitlement to a subsidy. It is asserting a right to participate in a government benefit program without having to disavow its religious character. The express discrimination against religious exercise here is not the denial of a grant, but rather the refusal to allow the Church—solely because it is a church—to compete with secular organizations for a grant. Pp. 9–11.

(c) The Department tries to sidestep this Court's precedents by arguing that this case is instead controlled by *Locke* v. *Davey*. It is not. In *Locke*, the State of Washington created a scholarship program to assist high-achieving students with the costs of postsecondary education. Scholarship recipients were free to use state funds at accredited religious and non-religious schools alike, but they could not use the funds to pursue a devotional theology degree. At the outset, the Court made clear that *Locke* was not like the cases in which the Court struck down laws requiring individuals to "choose between their religious beliefs and receiving a government benefit." 540 U. S., at 720–721. Davey was not denied a scholarship because of who he *was*; he was denied a scholarship because of what he proposed *to do*. Here there is no question that Trinity Lutheran was denied a grant simply because of what it is—a church.

The Court in *Locke* also stated that Washington's restriction on the use of its funds was in keeping with the State's antiestablishment interest in not using taxpayer funds to pay for the training of clergy, an "essentially religious endeavor," *id.*, at 721. Here, nothing of the sort can be said about a program to use recycled tires to resurface playgrounds. At any rate, the Court took account of Washington's antiestablishment interest only after determining that the scholarship program did not "require students to choose between their religious beliefs and receiving a government benefit." *Id.*, at 720–721. There is no dispute that Trinity Lutheran *is* put to the choice between being a church and receiving a government benefit. Pp. 11–14.

(d) The Department's discriminatory policy does not survive the "most rigorous" scrutiny that this Court applies to laws imposing special disabilities on account of religious status. *Lukumi*, 508 U. S., at 546. That standard demands a state interest "of the highest order" to justify the policy at issue. *McDaniel*, 435 U. S., at 628 (internal quotation marks omitted). Yet the Department offers nothing more

than Missouri's preference for skating as far as possible from religious establishment concerns. In the face of the clear infringement on free exercise before the Court, that interest cannot qualify as compelling. Pp. 14–15.

788 F. 3d 779, reversed and remanded.

ROBERTS, C. J., delivered the opinion of the Court, except as to footnote 3. KENNEDY, ALITO, and KAGAN, JJ., joined that opinion in full, and THOMAS and GORSUCH, JJ., joined except as to footnote 3. THOMAS, J., filed an opinion concurring in part, in which GORSUCH, J., joined. GORSUCH, J., filed an opinion concurring in part, in which THOMAS, J., joined. BREYER, J., filed an opinion concurring in the judgment. SOTOMAYOR, J., filed a dissenting opinion, in which GINSBURG, J., joined.

SUPREME COURT OF THE UNITED STATES

No. 15–577

TRINITY LUTHERAN CHURCH OF COLUMBIA, INC., PETITIONER *v.* CAROL S. COMER, DIRECTOR, MISSOURI DEPARTMENT OF NATURAL RESOURCES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[June 26, 2017]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court, except as to footnote 3.

The Missouri Department of Natural Resources offers state grants to help public and private schools, nonprofit daycare centers, and other nonprofit entities purchase rubber playground surfaces made from recycled tires. Trinity Lutheran Church applied for such a grant for its preschool and daycare center and would have received one, but for the fact that Trinity Lutheran is a church. The Department had a policy of categorically disqualifying churches and other religious organizations from receiving grants under its playground resurfacing program. The question presented is whether the Department's policy violated the rights of Trinity Lutheran under the Free Exercise Clause of the First Amendment.

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The Trinity Lutheran Church Child Learning Center is a preschool and daycare center open throughout the year

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