

# **Bond Case Briefs**

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## **Recent United States Supreme Court Ruling Has Far-Reaching Ramifications for Bond Financing: Bryant Miller Olive**

TAMPA, Fla., Aug. 28, 2017 /PRNewswire/ — A recent U.S. Supreme Court ruling has paved the way for religious entities to potentially use tax-exempt bonds for secular projects on their properties, leading to questions about how this will play out as organizations consider bond financing for new projects.

Many church leaders are wondering if bonds could be used for everything from playgrounds to buildings as legal experts determine exactly what is covered in the recent *Trinity Lutheran Church v. Comer* decision.

On June 26, the U.S. Supreme Court, in a 7-2 decision, held that the government cannot exclude religious institutions from generally available, secular government programs solely because of the institutions' religious character.

A key potential ramification of this ruling is that religious institutions are now on solid legal footing to apply for tax-exempt bonds for building projects that are unrelated to religious instruction or ministry.

Historically, religious entities – most often a church and adjoining school – struggled to obtain bond financing due to uncertainty surrounding the breadth of the U.S. Establishment Clause and Blaine Amendments. The U.S. Establishment Clause and the Blaine Amendments (enacted in more than 35 states) were enacted to further the separation of church and state, including prohibiting direct government aid to educational institutions whose religious mission cannot be separated from their purpose.

In *Trinity Lutheran Church v. Comer*, the U.S. Supreme Court opinion highlighted a distinction between the status of the applying entity and the actual use of the facility being financed. In essence, the ruling stated that the intended use of the facility carries significantly more weight than the religious status of the applying entity.

“Previously, even if religious entities were not explicitly ineligible for bonds, financiers would shy away from these potentially controversial projects,” said Kareem Spratling, Bryant Miller

Olive shareholder and public finance expert. “With this decision, I am now confidently recommending bonding as a potential funding avenue for clients trying to fund secular projects such as playgrounds and gymnasiums.”

Spratling says several things for religious institutions to consider include the specific use of the project, if the facility would be open and available to the public, and if the project, while not directly tied to religious instruction, may have some crossover with religious instruction – for example, a roof that covers both a church and gymnasium.

As with any landmark decision, Spratling advises there is a strong possibility of further clarifying litigation on this issue around the country as religious entities move to utilize tax-exempt bonding for their projects. Due to the complex nature of bonding and the legal uncertainty of the landscape, entities should seek legal advice from bonding experts to determine if their project qualifies.

**About Bryant Miller Olive:** With a distinguished 45-year history of serving its clients' needs, Bryant Miller Olive represents governments, businesses and agencies in legal matters relating to public finance, state and local government law, complex transactions, project finance, and litigation. The firm has served as Bond Counsel on more deals than any other firm in the Southeast over the past five years, and more than any other firm in Florida over the past decade. Members of the firm are often called upon to handle some of the most complex legal issues in the boardroom and in the courtroom. The firm has offices in Tampa, Tallahassee, Orlando, Miami, Jacksonville, Atlanta and Washington, D.C. For more information, visit <http://www.bmolaw.com>.