April 18, 2017

The Hon. Scott S. Harris, Clerk of the Court
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543-0001

VIA E-MAIL, HAND DELIVERY, AND UPS OVERNIGHT

RE: ***Trinity Lutheran Church of Columbia, Inc.* v. *Carol S. Comer, Director, Missouri Department of Natural Resources*, No. 15-577**

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Dear Mr. Harris:

Amici write to respond briefly to recent developments in this case. The new administration in Missouri has announced a complete reversal of the very policy at issue here, calling the State's own past policy "discriminat[ory]," "prejudiced," and "just wrong." https://governor.mo.gov/news/archive/governor-greitens-announces-new-policy-defend-religious-freedom (Apr. 13 Press Release); accord https://www.facebook.com/EricGreitens/videos/10155199351954747/ (Apr. 13 video). The State will now permit religious institutions to receive grants from the Department of Natural Resources. As a result, Petitioner Trinity Lutheran Church has received all the substantive relief that it sought in its complaint. The case is therefore moot. The interests of Petitioner and Respondent are aligned, ending the controversy and depriving this case of proper adversarial presentation. Accordingly, to avoid issuing an advisory opinion or adjudicating an important constitutional issue without fair presentation and true adverseness between the parties, the Court should either dismiss the case or remand to the court of appeals.

On April 13, 2017, Missouri Governor Eric Greitens formally announced that the State "is reversing policies that previously discriminated against religious organizations." Apr. 13 Press Release. Under this new policy, Respondent Missouri Department of Natural Resources will "allow religious organizations to apply for and be eligible to receive DNR grants." *Id.*

That is precisely the relief Petitioner sought. In its complaint, Petitioner requested no damages or reimbursement, but instead simply sought an injunction prohibiting "the Defendant . . . from discriminating against the Church

on future grant applications" (as well as a declaratory judgment,[1] costs, and fees). Complaint at 14-15. What is more, Petitioner makes clear that this case is an as-applied challenge to its exclusion from the recycled-tire grant program, not a facial challenge to the Missouri Constitution. *Id*. at 15. Because Petitioner has received all the relief that it has requested—eligibility to compete for future grants from the Department of Natural Resources—there is no live controversy, and the case is moot. See, *e.g.*, *Already, LLC* v. *Nike, Inc*., 133 S. Ct. 721, 726-27 (2013).

This case does not fall within the "voluntary cessation" exception to mootness because Respondent has made absolutely clear that it will not return to its challenged conduct. This is not a case, as in *Knox* v. *SEIU*, 132 S. Ct. 2277, 2287 (2012), in which the defendant "continues to defend the legality" of its past actions. See also, *e.g., Parents Involved in Cmty. Sch.* v. *Seattle Sch. Dist. No. 1*, 551 U.S. 701, 719 (2007) ("But the district vigorously defends the constitutionality of its race-based program, and nowhere suggests that if this litigation is resolved in its favor it will not resume using race to assign students."). On the contrary, the State has now officially declared its prior actions to be "discriminat[ory]," "prejudiced," and "just wrong," and has made clear that its policy will henceforth be to "ensure that future groups will not be discriminated against based on religion again." Apr. 13 Press Release.

Simply put, there is no longer any adverseness of interests between Petitioner and Respondent. Both may wish to proceed, yet both consider and declare the prior policy invalid. Given this dramatic change and Respondent's public explanation therefor, the State is not in a position to present in this Court a vigorous defense of its past policy—a policy that the State has officially disavowed and publicly condemns.[2] "Cases that no longer touch the legal relations of parties having adverse legal interests are moot because federal courts are without power to decide questions that cannot affect the rights of litigants in the case before them." *U.S. Parole Comm'n* v. *Geraghty*, 445 U.S. 388, 411 (1980) (internal quotation marks omitted) (quoting *North Carolina* v. *Rice*, 404 U.S. 244, 246 (1971) (per curiam)). "The limitation flows directly

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[1] It is well-settled that a request for declaratory judgment, standing alone, is not sufficient to avoid mootness. See, *e.g.*, *Diffenderfer* v. *Cent. Baptist Church of Miami, Inc.*, 404 U.S. 412, 414-15 (1972).

[2] Indeed, Respondent's April 17, 2017, letter confirms this fundamental problem: Rather than suggest that it will "continue[] to defend the legality" of its past policy in this Court, *Knox*, 132 S. Ct. at 2287, the State argues against mootness solely by speculating about what future administrations might do, and about what state-court lawsuits it might face under the *current* policy.

from Art. III." *Id.* (quoting *DeFunis* v. *Odegaard*, 416 U.S. 312, 316 (1974) (per curiam)).

Accordingly, the Court should dismiss this case as improvidently granted or moot, or in the alternative should remand to the court of appeals for it to assess the appropriate next steps in light of the Respondent's reversal of position and policy.

Respectfully submitted,

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