

Committee Members: I received this email from Brian Kane concerning SB1328

From: Kane, Brian <brian.kane@ag.idaho.gov>
Sent: Thursday, February 20, 2020 12:25 PM
To: Senator Steven Thayn <sthayn@senate.idaho.gov>
Cc: White, Kimi <Kimi.White@ag.idaho.gov>
Subject: RE: question from Senator Thayn

Hi Senator Thayn:

The Trinity Lutheran Church of Columbia, Inc. v. Comer decision dramatically lessened the impact of the Blaine Amendment in this context.

Quoting from Attorney General Opinion No. 18-01, “[t]he decision in Trinity Lutheran Church of Columbia, Inc. v. Comer, -U.S. -, 137 S. Ct. 2012, 198 L.Ed.2d 551 (2017), will likely have some limiting effect on the application of article IX, section 4 of Idaho's Constitution (the "Blaine Amendment"). Like the Missouri Constitution, which was at issue in Trinity Lutheran, Idaho's Constitution provides for greater separation of church and state than what is already ensured by the Establishment Clause in the First Amendment of the United States Constitution, as it contains a so-called "no aid" provision which is commonly referred to as a Blaine Amendment. “ Denying students at parochial schools the right to participate in Advanced Opportunities, if the program is expanded to allow participation to private schools, would deny participation in a public benefit solely because it is a school affiliated with a church, and under the Trinity Lutheran analysis would violate the right to the free exercise of religion.

NNU and BYU-Idaho already offer dual credit courses to Idaho public students participating in the Advanced Opportunities. Sectarian courses offered for dual credit funded through the Advanced Opportunities program would likely run afoul of Idaho Constitution, Article IX, Section 5. To date no institutions have proposed offering sectarian dual credit courses.

I hope this is helpful.

Brian