STATE OF MICHIGAN

COURT OF CLAIMS

COUNCIL OF ORGANIZATIONS AND OTHERS FOR EDUCATION ABOUT PAROCHIAID, *et al.*,	**OPINION AND ORDER**
Plaintiffs,	
v	Case No. 17-000068-MB
STATE OF MICHIGAN, *et al.*,	Hon. Cynthia Diane Stephens
Defendants.	

Currently before the Court is Plaintiffs' motion for preliminary injunction—or, stated more precisely, whether this Court's previously issued preliminary injunction should remain in effect in light of the United States Supreme Court's decision in *Trinity Lutheran Church of Columbia, Inc v Comer*, __ US__; 137 S Ct 2012; __ L Ed 2d __ (2017). For the reasons discussed herein, the motion for preliminary injunction is GRANTED and Defendants are temporarily restrained and enjoined from disbursing any funds appropriated under MCL 388.1752b until a final order issues on Plaintiffs' claims.

In deciding whether to grant injunctive relief, the Court considers:

> (1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. [*Davis v Detroit Fin Review Team*, 296 Mich App 568, 613; 821 NW2d 896 (2012) (citation and quotation marks omitted).]

On July 6, 2017, this Court entered an order concluding that: (1) Plaintiffs demonstrated a likelihood of success on the merits; (2) Plaintiffs demonstrated a requisite level of irreparable harm; (3) a balancing of the interests favored the issuance of injunctive relief; and (4) injunctive relief was in the public interest. This decision to extend the hold placed on the disbursement of funds was rooted in existing caselaw, see e.g., *Traverse City Sch Dist v Attorney General*, 384 Mich 390; 185 NW2d 9 (1971), regarding the interpretation given to Article 8, § 2 of this State's Constitution. In addition to extending the hold on the disbursement of funds, this Court's July 6, 2017 order asked the parties to file additional briefing in light of the United States Supreme Court's decision in *Trinity Lutheran*, a case involving the Free Exercise Clause of the First Amendment to the United States Constitution. Having reviewed the parties' briefing and the decision in *Trinity Lutheran*, the Court's conclusion on the appropriateness of preliminary injunctive relief remains unchanged.

At issue in *Trinity Lutheran*, __ US at __; 137 S Ct at 2017, was Trinity Lutheran Church Child Learning Center's application for a state-funded grant to resurface the Center's playground. Due to limited funding, grants were awarded by the Missouri Department of Natural Resources on a competitive basis. *Id.* at __; 137 S Ct at 2018. Despite ranking fifth among the 44 applicants—and otherwise ranking high enough to earn a grant—the Center's application was rejected pursuant to a state policy that categorically excluded religiously affiliated applicants from consideration. *Id.* at __; 137 S Ct at 2018.

The issue presented in that case was whether the state's policy—categorically excluding from eligibility for grants all religiously affiliated organizations—violated the Free Exercise Clause of the First Amendment to the United States Constitution. The Free Exercise Clause, explained the *Trinity Lutheran* Court, " 'protect[s] religious observers against unequal treatment'

and subjects to the strictest scrutiny laws that target the religious for 'special disabilities' based on their 'religious status.' " *Id.* at __; 137 S Ct at 2019, quoting *Church of Lukumi Babalu Aye, Inc v Hialeah*, 508 US 520, 533, 542; 113 S Ct 2217; 124 L Ed 2d 472 (1993). In accordance with that principle, "denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest of the highest order." *Trinity Lutheran*, __ US at __; 137 S Ct at 2019 (citation and quotation marks omitted).

The *Trinity Lutheran* Court contrasted cases in which the Supreme Court found Free Exercise Clause violations, i.e., those that singled out religion for disfavored treatment or for the denial of a generally available benefit, with those cases that did not rise to the level of a Free Exercise violation. Cases that did not rise to the level of a Free Exercise Clause violation, explained the Court, involved laws that "have been neutral and generally applicable without regard to religion," rather than laws "that single out the religious for disfavored treatment." *Id.* at __; 137 S Ct at 2020.

Turning to the case at bar, the Court concludes at this juncture that the constitutional provision at issue in this case, Article 8, § 2 of the Michigan Constitution, can be understood as falling within the category of neutral and generally applicable laws, rather than a provision that singles out the religious for disfavored treatment. To this end, the constitutional provision expressly applies equally to all "private" and "nonpublic" schools, regardless of religious affiliation. To the extent that this State's Supreme Court in *Traverse City Sch Dist* expressed some concerns about the neutrality of Article 8, § 2 based on its impact, see *Traverse City Sch Dist*, 384 Mich at 433-434, it must be noted that the Supreme Court's action of striking an offending part of the constitutional provision can be viewed as alleviating the specific concerns

noted by the Court in that case.[1] Moreover, it must be noted that the United States Supreme Court in *Trinity Lutheran* took care to point out that its decision in that case concerned "*express discrimination* based on religious identity with respect to playground resurfacing" and that the Court declined to address other scenarios at that time. *Trinity Lutheran*, __ US at __, n __; 137 S Ct at 2024 n 3 (emphasis added). At this preliminary stage of the present case, this Court is disinclined to extend the *Trinity Lutheran* decision to a case that plainly does not involve express discrimination. See *Mich Coalition of State Employee Unions v Mich Civil Serv Comm*, 465 Mich 212, 226-227; 634 NW2d 692 (2001) (emphasizing the role of *preliminary* injunctive relief).

IT IS HEREBY ORDERED that the motion for preliminary injunction is GRANTED and Defendants are temporarily enjoined and restrained from disbursing any funds appropriated under MCL 388.1752b.

Dated: July 25, 2017

Hon. Cynthia Diane Stephens
Court of Claims Judge

[1] To the extent that portions of the *Traverse City* decision could be viewed as noting broader concerns about Article 8, § 2, those portions of the opinion are best left for further discussion and a full decision on the merits.