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"CONTROLLED BY A CREED?"

Is Saint Louis University a religious institution?

By Chad Flanders

When I teach a course at Saint Louis University (SLU) law school, I like to start the first class with a case from the Missouri state courts. Giving my students a "local angle" is my way of showing them that the principles they'll be learning are relevant to issues right in their own neighborhood. Imagine my delight, then, when preparing for my class on Religion and the First Amendment, I found a case that wasn't just from Missouri, but that involved my own home institution.

The case, *Saint Louis University v. Masonic Temple Association*, arose out of SLU's efforts to secure funding for its new sports arena. Predictably, SLU sought state money, in the form of Tax Increment Financing (TIFs). I don't pretend to know how the details of how that financing works (I leave that to the tax professors), but the connection between SLU and government money was apparently too close for comfort for the Masons. They balked and, in good American fashion, filed a lawsuit. Funding SLU's sports arena using public money was an "establishment of religion," they claimed, something forbidden under the Missouri constitution.

I couldn't believe my luck. The case was perfect. I had been searching for cases to introduce my students to the two big ideas the class would be covering: first, that both state constitutions and the United States Constitution protect the "free exercise" of religion and second, that both state constitutions and the U.S. Constitution also prohibit the "establishment" of religion. I had already found my case for free exercise, and *Masonic Temple* would be my case about establishment.

Even better, the case demonstrated something I also wanted to emphasize to my students: sometimes states will offer slightly different (sometimes better, sometimes worse) protections for the religious people and institutions. In the case of Missouri, its "establishment clause" was more restrictive than the U.S. Constitution's. Where the U.S. Constitution didn't specify what it meant to be an "establishment of religion," the Missouri Constitution was pretty clear that it meant no funding to aid of religious institutions.

Things looked bad for my dear SLU. But at the same time, I knew that the arena had been built. I had even recently attended a basketball game there. What happened? Did the University secure extra funding from some non-state benefactor (was *that* why it was called the "Chaifetz" Arena)? Did they find a loophole in the Missouri Constitution?

I almost couldn't believe my eyes.

As it turned out it was the latter, although not in the way I expected. I knew that it was common for religious institutions to make the argument that even though they *were* religious, government funding was OK, so long as that money went to secular projects. My sense was that this was SLU's best argument. After all, they weren't using the money to fund repairs to the campus church down the street from the law school. They were using it to pay for a basketball arena. I know some people treat Billiken basketball as a religion but still...

In my mind I had also anticipated the argument that, it turns out, the ACLU (which filed an amicus brief in the case) had made several times before: when you give money to a religious institution, even if they *say* that they will spend the money on secular projects like sports arenas, this still frees up money in the rest of the University budget, and some of that money will be used for religious purposes. The logic was simple: if SLU has money to spend on its arena courtesy of the government, that means it can spend other money on repairs to the church. Government ends up indirectly funding religion and, under the Missouri Constitution, it can't do that.

So I sat back, ready to see the battle joined on familiar turf.

But as I read on, my predictions

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turned out to be totally wrong. The Missouri Supreme Court ruled for SLU not because the money was going to a basketball court and not a church, but because *SLU wasn't a religious institution.*

I almost couldn't believe my eyes. SLU not a religious institution? What about the crosses in the law school classrooms? What about the part of the orientation session I attended last semester emphasizing our *Catholic* mission? What about our web page, which touted SLU as among the top five *Jesuit* universities in the nation? And what about those e-mails we faculty always get from *Father* Biondi, a Jesuit priest?

Yet there it was: the Court ruled that because SLU was not controlled by a religious creed, it was not a religious institution (the language of being "controlled by a creed" was from earlier decisions, which set this as the standard for being a religious institution). The Court decided the matter on summary judgment, which meant that it thought there was not a "genuine issue of material fact" over whether SLU was controlled by a religious creed. It might have Jesuit ideals and aspirations, the Court conceded. But "controlled" by a religion? No way.

Reading the decision over again later, I concluded that the Court's decision was probably technically correct. Our daily affairs are not meticulously run by nuns; we are not given marching orders from Rome. Our university's mission is in a sense spiritual, but it is not first and foremost to convert students. We welcome all faiths.

But even if the decision was right as a matter of law, it still discomfits me. It seems a lawyerly way out of a deep and important question. *Should* we be controlled by a creed? Perhaps SLU shouldn't — and isn't — controlled by a creed in the way the Court was talking about. We aren't an institution that follows the Rule of Saint Benedict. Should we, however, as individual teachers and students at a Jesuit university see ourselves as controlled by a creed?

I am also discomfited by this possibility. I am only in the vaguest sense a Christian, still less a Catholic, and not a Jesuit. I don't view it as any part of my job to proselytize.

But I still find it important that SLU identifies itself as Jesuit. I smile when I pass the Jesuit Hall down the street, kitty corner to the newly built Chaifetz Arena. I grin and try to say hello to the priests in robes and sandals strolling through campus. Our association with a religious order makes us at SLU different. It says, probably not as often as it should, that our purpose is not just preparing students to get the best jobs that pay the most money. It says that we are bound by, if not "controlled by," a creed which says that the state of our students' souls should be our utmost concern.

This is something no government funding can give us and no court decision can take away. For that we should be grateful. ■

Students and faculty at Saint Louis University.

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