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November 8, 2017

D. Stephen Elliott, Director and CEO
Minnesota Historical Society
345 W. Kellogg Blvd.
St. Paul, MN 55102

Dear Mr. Elliott,

I have the honor of serving as the Executive Director of the Congressional Prayer Caucus Foundation. The Foundation serves nearly 100 members of Congress who are part of the Congressional Prayer Caucus (the names of those members of Congress who serve on the Congressional Prayer Advisory Team are listed on the left).

In addition, the Foundation serves Legislative Prayer Caucuses in more than 30 states, which have nearly 1,000 state senators and state representatives as members. These leaders are working together to preserve the integrity of our Founding Principles and to protect First Amendment rights for all.

We recently learned from news reports that an out-of-state organization sent a letter accusing the Minnesota Historical Society of violating the Constitution by allowing historical churches to participate in your Arts and Cultural Heritage grant program that provides taxpayer funds to repair historic buildings. Since a program like yours was recently found constitutional by the U.S. Supreme Court, we thought you would appreciate additional information on this case, as well as our thanks for your even-handed program that does not discriminate against the religious members of your community.

Earlier this year, the U.S. Supreme Court decided *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), which involved a Missouri tax-supported program that provided funds to nonprofit organizations to purchase rubber playground material made from recycled tires. Because of a provision in the Missouri Constitution that prohibited aid to religious organizations, however, Missouri's program did not allow churches and religious schools to participate in this program. Accordingly, when Trinity Lutheran Church applied for funds to obtain rubber pellets from recycled tires to put on its school playground for the safety of its students, the Missouri agency denied the request.

This case was eventually appealed to the U.S. Supreme Court, which held that Missouri's policy violated the rights of Trinity Lutheran under the Free Exercise Clause of the First Amendment. More specifically, the Chief Justice, on behalf of the 7-2 Court, held that "the refusal to allow the church – solely because it is a church – to compete with secular organizations for a grant" was a violation of the Free Exercise Clause, and imposed on the State the burden of proving that the refusal was a compelling state interest, and that there was no less restrictive measure to achieve its compelling state interest, which it could not do. 137 S. Ct. at 2022. In short, the Court summed up the issue with this simple statement:

> [T]he exclusion of Trinity Lutheran from a public benefit for which it is otherwise qualified, solely because it is a church, is odious to our Constitution all the same, and cannot stand. *Id.* at 2025.

Your policy of even-handedly providing funds to both religious and secular non-profits that meet the criteria of your program not only is required by the Free Exercise Clause, but also by the Establishment Clause. Justice Thomas, who wrote for the Court in *Mitchell v. Helms,* 530 U.S. 793, 810 (2000) wrote the following with respect to the First Amendment's Establishment Clause requirement:

> [I]f the government, seeking to further some legitimate secular purpose, offers aid on the same terms, without regard to religion, to all who adequately further that purpose,... then it is fair to say that any aid going to a religious recipient only has the effect of furthering that secular purpose.

The secular purpose behind your Arts and Cultural Heritage grant program is, of course, to preserve Minnesota's historic sites for posterity. Refusing to allow a church to participate in this program would not only violate the Church's Free Exercise rights and the Establishment Clause, it would also show the program's hostility to religion. In its long history, the Court never said that government must be hostile to religion. In fact, as the U.S. Supreme Court stated well in *Zorach v. Clauson*, 343 U.S. 306, 314 (1952): "[W]e find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence."

We commend you on your good work and your respect for First Amendment freedom.

Sincerely,

Lea

Lea Carawan
Executive Director
Congressional Prayer Caucus Foundation