Elkins HS Petitioner Brief 2017-Will Gongola & Matt Wilson
No. 01-463

In The

Supreme Court of the United States

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Trinity Lutheran Church of Columbia, Inc,
Petitioner,

v.

Pauley.
Respondent.

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brief in support of Petitioner

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Will Gongola
Matt Wilson
https://www.youtube.com/watch?v=-wtlZTN87S8

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First Amendment
Locke v. Davey (2004)
Everson v. Board of Education of Ewing Township (1947)
Fourteenth Amendment
Lemon v. Kurtzman (1971)
White House Faith-Based & Community Initiative (2001)
Letter from Thomas Jefferson, U.S. President (1802)
Virginia Statute for Religious Freedom (1786)
Rosenberger v. Rector and Visitors of the University of Virginia (1995)
Missouri State Constitution, Article 1, Section 7 (1820)
Maryland Toleration Act (1649)
William Penn Charter of Liberties (1701)

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summary of argument

The funding of a playground associated with a Church is not a violation of the First Amendment's Establishment Clause. However, the Free Exercise right of the Church is violated because the State is taking into account the status of religion when making a decision where religion is not a relevant factor. The denying of Trinity Lutheran's application to the State of Missouri's Scrap Tire Grant Program on the sole basis of being a Church is a violation of the Fourteenth Amendment's Equal Protection Clause. If the State of Missouri were to provide tire scraps to Trinity school, the students would be given a safer space to play. Children's safety was ruled a public cause in *Everson v. Board of Education of Ewing Township*. The usage of the ruling in *Locke v. Davey* to exclude a Church from receiving state funds is not valid since in this case the assistance form the State is for a secular purpose. When applying the Lemon Test from the *Lemon v. Kurtzman* ruling to this case it passes all three prongs of the test and shows no clear violation of the Establishment Clause.

ARGUMENT

I. THE FIRST AND FOURTEENTH AMENDMENTS

According to William Cox in his article on the original meaning of the Establishment Clause, he states that to establish a religion "...means instead the creation of a national or state church..." One of the first examples of religious freedom in America was the Maryland Toleration Act (1649), "No person or persons...shall from henceforth be any waies troubled, molested or discountenanced for or in respect of his or her religion nor in the free exercise thereof." Later, in 1701 when William Penn founded Pennsylvania Penn drafted a Charter of Liberties. In the Charter he stated "I do hereby grant and declare that no person or persons

inhabiting in this province... shall be in any case molested or prejudiced in his or their person or estate because of his or their conscientious persuasion or practice, nor be compelled to frequent or maintain any religious worship...” Both of these are early examples of laws that were designed not to protect the government from religion but the people from being forced to follow a certain religion. These later influenced the establishment clause.

In the creation of the First Amendment, the Founding Fathers acknowledged that many of the first immigrants to travel to what would become America did so in search of free worship, therefore, in the First Amendment of the Bill of Rights they create the right of what is known as the “freedom

of religion." Many reference the Establishment Clause of the First Amendment which narrows down the focus to where neither a state nor the federal government can set up a Church. But at the same time, neither the State nor the Federal Government can deny any person or persons the right to worship as the wish. The Establishment Clause denies the ability of the government to establish, advance, or inhibit any religion. At first it may seem like that is enough evidence to make a ruling on the case. However, there is much more to take into consideration than the literal text of the First Amendment. The playground is owned by Trinity Lutheran, but would have zero religious affiliations. In The state is inappropriately factoring religion in a place where religion has no place. In the Free Exercise Clause, the State cannot control

the religious activities of any person or organization. The fact a church owns the daycare has nothing to do with the funding of the playground.

The Establishment Clause in the First Amendment was originally put in place not to protect the government from religion, but rather the other way around, as seen in Thomas Jefferson's 1802 letter he states, "that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, & not opinions..." The Bill of Rights as a whole was put in place in order to appease the Anti-Federalists such as Patrick Henry, Samuel Adams, and Thomas Jefferson, who were concerned with the government having too much power. Patrick Henry

once said “The Constitution is not an instrument for the government to restrain the people, it is an instrument for the people to restrain the government.” The rest of the Bill of Rights is focused on protecting the rights of the people from the government, for example, the Fourth Amendment protects from unlawful search and seizure without probable cause. The Establishment Clause is no different, its original intent was to ensure the government could not interfere with religion. When put into the context of the case of Trinity Lutheran Church v. Pauley it is clear that the State Government is not hurting or helping any religion by providing materials to resurface a playground.

In addition to the Bill of Rights being focused on restraining the government, the intent of the Establishment Clause can be seen in the views of the original author, Thomas Jefferson. In 1777 Thomas Jefferson wrote the Virginia Statute for Religious Freedom, which provided religious freedom for people of all faiths living in Virginia "Be it enacted by General Assembly that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever..." Here it can be seen that Jefferson believes that everyone should have the freedom to believe, or no believe, in whatever religion they wish. Regardless of what anyone, especially the government, says. The State of Missouri supplying Trinity Lutheran with scrap tires is not forcing anyone to follow a particular religion. Later, when James Madison

wrote the Bill of Rights, he drew inspiration from Jefferson's Statute.

Denying Trinity Lutheran Church supplies to improve the safety of their playground is a violation of not only the Church's Fourteenth Amendment rights, but also the rights of the children who attend Trinity Lutheran Child Learning Center. Public schools and public playgrounds are eligible to receive the grant from the DNR to improve the safety of playgrounds for children. Denying that right to a Church and the children who attend it for the sole reason that they are religious is not executing "equal protection of the laws." Especially when the aid being denied, in this case the funding for rubber to make a playground safer, is purely secular and cannot be used to advance religion in

any way. In *Citizens United v. Federal Election Commission* it was ruled that corporations and organizations have the same rights as people. The same can be reinforced in the case of *Burwell v. Hobby Lobby* Stores where it was ruled that since corporations are made up of people and used as means to achieve goals, organizations have rights to the same freedoms as individuals, including the Free Exercise Clause.

II. THE LEMON TEST

The Lemon Test originates from the case of *Lemon v. Kurtzman* (1971), in which a school board passed a law to supplement the salaries of private school teachers, who made less than a public school teacher. In order to qualify for the salary supplement, the teacher must have taught only

classes offered in public schools and only used materials used in public schools such as textbooks. A teacher named Alton Lemon sued the acting head of Department of Public Education, Davis Kurtzman for violation of The Establishment Clause of the First Amendment. The Court ruled in favor of Mr. Lemon, and found that the funding of teacher's salaries at private schools does in fact violate the First Amendment. Since all 250 of the beneficiaries of the law in question were teachers at Catholic Schools and Catholic Schools are, according to Cornell Law School, "an integral part of the religious mission of the Catholic Church," the Statute was creating "excessive government entanglement." The ruling in the case led to the creation of the Lemon Test, a test that helps

determine if the government's action is too involved with a particular religion:

a. Part 1: "the statute must have a secular legislative purpose" – if it does not – then it does violate the Establishment Clause.

b. Part 2: "its principal or primary effect must be one that neither advances nor inhibits religion" – if it does either – then it violates the Establishment Clause.

c. Part 3: "the statute must not foster "an excessive government entanglement with religion."" – if it does – then it violates the Establishment Clause.

In the case of Trinity Lutheran Church, the Governments actions appear to pass the Lemon

Test. The State Government's actions do have a secular purpose; simply to provide funding for rubber mulch to make the playground safer for children to use. It also does not help or hurt the religion (or another religion) in any way. In the eyes of a child, a playground is a playground, regardless of whether it is located at their private Christian school or the neighborhood playground. And finally, the funding of the playground does not result in "excessive (government) entanglement." The only involvement the state will have is the funding of the playground, they do not need to build it, monitor it, or maintain it nor are only religious institutions the only ones who are taking advantage of the program.

III. THE RELATIONSHIP BETWEEN THE STATE AND THE CHURCH

The benefits of funding the Trinity playground are equal to those of funding a public school's playground. Not only does it service the children in the school, but the neighborhood children will reap benefits as well since the playground is open after school hours. In *Everson v. Board of Education*, it was held that public funds could be used to reimburse parents for transportation costs because it was for a public cause. Although Trinity is a private institution, the playground is for the students who attend a school – just like any other child in the nation – regardless of religion. The funding of this playground ensures safety to children, which is a universally significant concern.

The State of Missouri is right to be cautious in funding a religious organization. It is a dangerous precedent to set. In *Locke v. Davey* (2004), it became established that a state has the right to deny funds if they are to be used to train clergy, a clearly religious purpose. That precedent does not extend to allowing states to deny funds to a Church that would be used for secular purposes that benefits the general population, in this case, a playground used by children.

The State Government should not look directly at who is designing strategies to help the public community, but consider more so what the result will be. With George W. Bush's idea, now known as the White House Faith-Based and Neighborhood Partnerships, starting in 2001, President Bush

sought to exploit religious organizations for social services. The state could reap many benefits in working with religious affiliates as long as the situation was well-managed and benefited the community. For example, Bush's program has helped churches provide nutritious meals to children during the summer. Churches and religious organizations are responsible for an infinite amount of community services such as housing the homeless, soup kitchens, painting city parks, and growing community gardens. The state would not need to foster religious organizations that benefit the community, but by partnering with those organizations, the social services they provide could be tenfold since churches are more often than not full of people who want to help and volunteer.

The State of Missouri should not see Trinity Lutheran School as a Christian institution or a religious organization, but rather a secular school trying to better itself for the good of its students. In the case of Rosenberger v. Rector and Visitors of the University of Virginia (1995), the court held that because the University had previously given funds regardless of their religious content, then it was against the First Amendment to deny the Christian magazine the ability to publish. The State cannot justify giving funding resources to public schools and not to a private, secular school. Trinity Lutheran School is applying to Scrap Tire Grant Program for funds to better their facilities and help provide a safe place for their students to play and should not be denied solely on the fact that their school is located at a Church. The Court should strike down Article 1, Section 7 of Missouri's State Constitution as it completely prohibits providing churches with funds. This may sometimes prevent Establishment Clause violations but also creates violations of the Fourteenth Amendment in cases such as this where supplying a church with State aid is acceptable.

conclusion

The Court should find that the denying of funds to Trinity Lutheran Church in violation of the First Amendment's Establishment Clause and the Fourteenth Amendment's Equal Protection Clause. In the case of *Everson v. Board of Education of Ewing Township*, the Court found it acceptable to use government funds for a public purpose. There is a clear benefit to the public by improving the safety of a playground that is not only used by children who attend the preschool at Trinity but also by neighborhood children after hours. By denying Trinity Lutheran funds that are to be used for a secular purpose they are also violating the Fourteenth Amendment and Free Exercise rights of the Church. Being a religious organization does not automatically disqualify an organization from receiving government aid. Only if that aid is in violation of the Establishment Clause as per the Lemon Test should religion be a factor when being considered to receive state funding. In this particular case, the State Government's funding of the Church would pass the Lemon Test since the money is strictly being used to improve the safety of a playground for children. In a case like *Locke v. Davey*, the money from the promise scholarship was allowed to be denied to theology majors because the state would be advancing religion by funding the training of clergy. This is not valid in the case of Trinity Lutheran since the ultimate goal of the tires is going to improve a playground. Therefore, the fact that Trinity is being denied funding based solely on being a Church despite the funds having a secular purpose that does not advance or inhibit any religion, is in violation of their Fourteenth Amendment rights since corporations and organizations have the rights as people as ruled in *Citizens*

United v. Federal Election Commission and *Burwell v. Hobby Lobby*. Allowing for churches to receive government aid will allow churches to improve the community and things used by the community, such as a playground or perhaps community gardens, funds to run food kitchens, or anything else that needs volunteers who want to help. The Court should rule in favor of Trinity Lutheran Church as their First Amendment rights as well as their Fourteenth Amendment rights have been violated.

Respectfully submitted,

WILL GONGOLA

MATT WILSON
