Petitioner Brief – Trinity Lutheran Church v. Sarah Parker Pauley – Jackson Dyal and Kyle Padgett (LOHS)

Petitioner Brief – Dyal & Padgett

In the Supreme Court of the United States

March Term, 2017

TRINITY LUTHERAN CHURCH, PETITIONER

V.

SARAH PARKER PAULEY, RESPONDENT

ON WRIT OF CERTIORARI

FOR THE EIGHTH CIRCUIT

PETITIONER'S OPENING BRIEF

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Oral Argument: https://www.youtube.com/watch?v=883lzHNybvA&edit=vd

QUESTION PRESENTED

DOES FUNDING A PLAYGROUND ASSOCIATED WITH A CHURCH VIOLATE THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT?

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Cases

Church of Lukumi Babalu Aye, Inc. v. Hialeah
508 U. S. 520
Cty. of Allegheny v. ACLU

492 U.S. 573 (1989)
Lemon v Kurtzman
403 U.S. 602 (1971)
Locke v. Davey
540 U.S. 712 (2004)
Walz v. Tax Commission of the City of New York
397 U.S. 664 (1970)

Other Authorities

First Amendment to the United States Constitution
Missouri Department of Natural Resources Scrap Tire Surface Material Grant Information.
Missouri Department of Natural Resources Playground Scrap Tire Material Grants Application Instructions, PUB2425
SERRITELLA, JAMES A. graduate of the University of Chicago Law School and a partner at Reuben & Proctor in Chicago, Illinois.

Statement of Argument

The first amendment of the United States Constitution states that, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof". *Lemon v Kurtzman 403 U.S. 602 (1971)* set the 3 pronged Lemon test which stated that state action must: (1) have a secular purpose, (2) not have the primary effect of advancing nor inhibiting a religion, and (3) not foster undue entanglement. The issuance the Playground Scrap Tire Surface Material Grant by The Missouri Department of Natural Resources (DNR) to the Trinity Lutheran Church would not violate any prongs of the Lemon test. Issuing the grant would have the secular purposes of recycling tires and allowing children to play, would put the Church on even ground with other daycares that received a similar grant, and the one time grant would not create any undue or excessive entanglements. The denial of the grant to the Trinity Lutheran Church's licensed preschool and daycare constitutes a violation of the standard established in *Locke v. Davey 540 U.S. 712 (2004)* which states that, as "the State had singled out religion for unfavorable treatment, its exclusion of [religious programs] had to be narrowly tailored to achieve a compelling state interest under *Church of Lukumi Babalu Aye, Inc. v. Hialeah, 508 U. S. 520.*" In this instance, the state interest is neither compelling nor narrowly tailored enough to justify exclusion from the program for religious affiliation alone. Rather, the compelling state interest upon which the grant was created, to recycle scrap tire material in a helpful

and functional way, compels this grant to be issued to as many both secular and nonsecular organization as possible.

Argument I

1. **A. The grant has an established secular purpose**

The first prong of the Lemon Test states: "*The statute must have a secular legislative purpose" Lemon v. Kurtzman, 403 U.S. 602 (1971).* The purpose of the grant is to recycle scrap tire material. Firstly, the grant was created when, "the Missouri General Assembly renewed the 50-cent scrap tire fee collected on the sale of new tires." Furthermore, according to the Missouri Department of Natural Resources' report on Scrap Tire Surface Material Grant Information, "These funds are then made available as follows: … Up to 45 percent for grants". The grants were to be used for playground and non-playground purposes. The Trinity Lutheran Church met all other requirements the General Assembly set forth. Secondly, "Up to 50 percent [of the funds] for enforcement, permitting and inspection". The "enforcement" refers to collecting tax revenue, and the "Permitting and inspection" refers to monitoring the implementation of the grants, ensuring that the funds were distributed correctly, and testing whether specific brands of Missouri sourced scrap tire material passed safety requirements. Additionally, the Missouri DNR outlined that, "the project must use at least 40 percent Missouri generated scrap tires to be eligible". The secular purpose of the grant is very clear in this policy: to repurpose scrap tire material specifically generated within Missouri.

2. **The denial of the grant inhibits religion**

The second prong of the Lemon Test states: "The principal or primary effect of the statute must not advance nor inhibit religion." *Lemon v. Kurtzman, 403 U.S. 602 (1971)* The Trinity Lutheran Church was otherwise qualified for the grant. Thus, the state made the decision to withhold the grant exclusively on the grounds that the Trinity Lutheran Church and it's affiliated daycare and preschool were associated with a religious organization. This violates the second prong of the Lemon test by inhibiting religion. By allowing a similarly equipped playground with no religious ties to take advantage of this program, the state is effectively denying a generally available public service to religious organizations who intend to use it for secular reasons. Courts across the country have mistakenly relied upon interpretations of *Locke v. Davey 540 U.S. 712 (2004)* to justify the burdensome exclusions of religious organizations, persons, and institutions from a large number of public programs. Justice Kennedy may have put it best when he stated "[A]s the modern administrative state expands . . . and redirects [citizens'] financial choices through programs

of its own," courts have effectively turned *Locke* into a "First Amendment cudgel" for imposing a trend of "latent hostility to religion" by preventing all manner of religious actors from utilizing the massive amount of public benefits programs available to the general public. *Cty. of Allegheny v. ACLU, 492 U.S. 573 (1989)* Rather, the standard set by *Locke* was determined by the Ninth Circuit Appellate Court's majority brief. Given the fact that "the State had singled out religion for unfavorable treatment, its exclusion of [religious programs] had to be narrowly tailored to achieve a compelling state interest under *Church of Lukumi Babalu Aye, Inc. v. Hialeah, 508 U. S. 520." Locke v. Davey 540 U.S. 712 (2004)* In this specific instance, the reasoning behind denying the Trinity Lutheran Church and affiliated preschool and daycare access to this program is not narrowly tailored and serves directly counter to the compelling state interest and secular purpose upon which this grant was created. It is also worth noting that the denial of this generally available public service that has been granted to non-religious playgrounds solely on the basis that a religious group runs the playground creates a system in which religion is inherently disadvantaged. Thus, to satisfy both the second prong of the Lemon test and the established standard under *Locke*, the court must rule that the use of a public service for a secular purpose cannot be denied for the sole reason that the organization utilizing the public service is religiously affiliated. Additionally, the Trinity Lutheran Church will not be the recipient of any funds as a result of their acceptance into the grant program. The program's funds go directly to the vendors, circumventing any chance the church has to utilize the funds in an inappropriate or otherwise non-secular purpose. Even if malignant or subversive motives were at play, the structure and procedural execution of the grant make misuse of funds for the advancement of religion either in general or with specific regard to the Lutheran faith an impossibility. Therefore, the Trinity Lutheran Church and affiliated preschool and daycare must receive access to the program to promote equal footing of non secular and secular organizations.

3. **No excessive entanglement will be created**

Since the grant is a one time payment, no undue entanglements could emerge. *Walz v Tax Commission* established that, "minimal and remote involvement between church and state and far less than taxation of churches" *Walz v. Tax Commission of the City of New York 397 U.S. 664 (1970).* Although one year before *Lemon*, the Burger court hinted towards the entanglement standard hinted in *Lemon*. Since the one time grant did not create a relationship between the government and the religious organization, the court must rule that the grant does not create any undue entanglement.

4. **Other factors to consider**

There are three additional factors that must be considered when interpreting and applying the Lemon test to a policy. First, the nature of aid the state provides. Second, the resulting

relationship between government and religious authority. Third, the court must consider the government interest served.

In this instance, the state is providing funds for a narrowly tailored secular purpose; the repurposing of scrap tire material as a useful and functional external surface, particularly in playground and park areas. This material cannot reasonably be used for any non-secular purpose. The aid itself is indirect, as the preschool and daycare will not be receiving any funds. To stress this: there is *no possible way* for any funds prescribed by the grant to be misused in a way that would advance religion over a similar yet secular organization, location, or facility.

The resulting relationship between government and religious authority must also be considered. In this instance, the one time financial grant will not create a long term relationship nor excessive entanglement. As stated earlier, the grant itself provides assistance in an indirect manner, with funds going directly to approved vendors. This only furthers the distance between government and religious authorities. Additionally, the Trinity Lutheran Church will no longer be unfairly disadvantaged in reference to other similar, secular organizations.

Finally, by allowing the Trinity Lutheran Church and affiliated preschool and daycare access to the grant, the government's secular purpose (the recycling of Missouri-produced tire waste) will be served. Since the purpose of the grants is to provide an avenue for recycling scrap tire material, the effects of the grant would be the same if given to either a secular institution or religious institution. The intent and the effect of the grants are to encourage recycling of tires. Since the grant does not disparage different groups and the government has a clear secular intent, the grants are constitutional.

Proposed Standards

Any legislation or policy that puts religious bodies on equal footing with similar yet secular bodies does not violate the establishment clause of the first amendment. Additionally, the following three factors must be considered when evaluating a policy under the third prong of the Lemon Test:

1. The nature of the aid provided,
2. The resulting relationship between the government and the religious authority, and
3. The government interest served.

Conclusion

The denial of access to the Scrap Tire Surface Material Grant by the Missouri Department of Natural Resources to the Trinity Lutheran Church and affiliated preschool and daycare does not comply with the standards set by the Lemon test nor the additional standards proposed above. Furthermore, the state of Missouri is unfairly disparaging and disadvantaging the Trinity Lutheran Church by denying it services granted to similar yet secular organizations and facilities, violating the establishment clause of the First Amendment to the United States Constitution. The rationale for denying access to this public grant is unfounded under *Locke v. Davey*, which has been too broadly interpreted to unfairly deny generally available services for the specific reasoning of religious affiliation, thus violating the establishment clause. Under the standards established by the Ninth Circuit Appellate Court majority opinion in regards to *Locke*, should a policy or piece of legislation single out religion or religious organizations for unfavorable treatment, it must be narrowly tailored to meet a specific state interest under *Church of Lukumi Babalu Aye, Inc. v. Hialeah, 508 U. S. 520.* In this instance, the policy in effect is not narrowly tailored to meet any feasible state interest, let alone the compelling interest and reasoning behind the existence of the grant. By allowing the Trinity Lutheran Church access to the grant, the state will not create a circumstance where excessive entanglement is a possibility, the secular purpose for the policy will be met, and the clear inhibiting of religious groups, institutions, and organizations will end.

Additionally, the proposed standards established through this case will create a much more comprehensive review process when determining the constitutionality of any individual policy or piece of legislation in regards to the establishment clause. This will result in a much more equal and fair treatment of religious and secular organizations under any future law or policy.

In the case of Trinity Lutheran Church v. Sarah Parker Pauley, the Supreme Court should rule in favor of the petitioner. Secularity is not a sufficient condition for the award of favorable treatment, and the denial of access to this generally available grant constitutes favorable treatment for secular organizations and therefore unequal and disadvantageous treatment of religious organizations

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