Mai/PhanBrief

Introduction

This brief is written by Alexis Phan and Aileen Mai on behalf of the Petitioner, Trinity Lutheran Church. This is directed to the Supreme Court of the United States.

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Statement of the Case

The Establishment Clause of the U.S. Constitution's First Amendment would not be violated if the government were to allow the grant for The Learning Center's resurfacing of playgrounds.

Issue Presented

The issue on appeal today is whether funding a playground associated with a Church violates the Establishment Clause of the First Amendment?

Statement of the Facts

In Columbia, Missouri; The Learning Center, affiliated with Trinity Lutheran Church, is a preschool and daycare that is open to anyone regardless of their allegiances. Trinity Lutheran, on behalf of The Learning Center had applied for a Playground Scrap Tire Surface Material Grant managed by The Missouri Department of Natural Resources(DNR), a Government Agency. The grant allowed for the purchase of recycled tires for the use of resurfacing a playground. Trinity was denied by the DNR because of Article I Section 7 of the Missouri Constitution which outlines that public funds are not to be used to aide a religion. Trinity disputed that the denial violated the Equal Protection Clause of the Fourteenth Amendment and the First Amendment's protection of religious exercise and speech. The district court dismissed the church's motion. Trinity then amended its complaint to include allegations that grants had previously been given to religious organizations. The district court denied this appeal and the eighth circuit court affirmed, Trinity then appealed to the Supreme Court and in January 15, 2016 the Supreme Court granted certiorari.

Argument

Point of Error 1: Allowing the Learning Center to use the grant would not violate the Establishment Clause of the First Amendment and not permitting the use of the grant would violate the Missouri Constitution.

It is ordained within the Missouri Constitution Article I Sec. 7, "That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, or denomination of religion...and that no preference shall be given to nor any discrimination made against any church, sect, or creed of religion, or any form of religious faith or worship." This means that the State may not discriminate or aide a religion.

As established through *Lemon v. Kurtzman 403 U.S. 602 (1971)* and modified in *Agostini v. Felton 521 U.S. 203 (1997),* the Lemon Test contains separate purpose and effects prongs to ensure that government and religion don't overlap or intertwine to the point that the line between religion and state is too muddled. The following three criteria to determine whether the line is too intertwined are: A.) Government indoctrination, B.)Defining the recipients of government benefits based on religion, and C.)Excessive entanglement between government and religion.

The government would not indoctrinate a group of persons by allowing the grant to be used by Trinity, because it follows an open admission policy, letting anyone enroll regardless of their faith. Also, a playground has no purpose for religion as it is merely commonplace in public schools and where children play; not an area to promote religion.. In *Lamb's Chapel v. Center Moriches Union Free School District 508 U.S. 384 (1993)*, the Court held that, "Permitting District property to be used to exhibit the film series would not have been an establishment of religion under the [Lemon Test], Since the series would not have been shown during school hours, would not have been sponsored by the school, and would have been open to the public, there would be no realistic danger that the community would think that the District was endorsing religion or any particular creed, and any benefit to religion or the Church would have been incidental. *Widmar* v. *Vincent 454 US 263 (1981)*"

Applying the case, The Learning Center is open to the public and the playground's use is not for instruction. Thus the DNR would not be endorsing religion.

The second criteria to consider is whether the government act defines the recipients of government benefits based on religion. The Learning Center would accept government benefits, but not based on religion. "A public university does not violate the Establishment Clause when it grants access to its facilities on a religion-neutral basis to a wide spectrum of student groups, even if some of those groups would use the facilities for devotional exercises." *Rosenberger v. Rector and Visitors of University of Virginia 515 U.S. 819 (1995).* This frames a precedence that even if certain activities or affiliations to a religion are present, this does not necessarily mean the Establishment Clause is violated. As explained in *Rosenberger v. Rector and Visitors of University of Virginia 515 U.S. 819 (1995)* for what may be permissible"the upkeep, maintenance, and repair of those facilities is paid out of a student activities fund to which students are required to contribute. There is no difference

in logic, principle, [or] constitutional significance, between using such funds to operate a facility to which students have access, and paying a third-party contractor to operate the facility on its behalf. "

There would be no excessive entanglement between state and religion by allowing The Learning Center to access the grant. As held in *Everson v. Board of Education of Ewing Township 330 U.S. 1 (1947)*, "The expenditure of tax raised funds" onto the reimbursement of parents for transportation of children enrolled in public and Catholic schools pursuant to a statute granting boards of education to create rules and contracts for transportation "did not violate the due process clause of the Fourteenth Amendment". Further, "the statute and resolution did not violate the [Establishment Clause of the First Amendment]". This sets a precedent that tax funds, such as the grant, can even be used for the purpose of paying for schools *affiliated* with religion. So long as it was for a public purpose such as resurfacing a playground; this would not violate the Establishment Clause. According to *Allegheny County v. ACLU 492 U.S. 573 (1989)*, "Under *Lemon v. Kurtzman*, a practice which touches upon religion, if it is to be permissible under the Establishment Clause, must not, inter alia, advance or inhibit religion in its principal or primary effect...the Court's subsequent decisions have variously spoken in terms of "endorsement," "favoritism," "preference," or "promotion," the essential principle remains the same: the Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief." This means that as long as the State's decisions will not display "endorsement, favoritism, preference, promotion", or discrimination it will not be violating the Establishment Clause.

Permitting The Learning Center to access the grant would not violate the Establishment Clause as seen through the Lemon Test set forth by precedence and thus follows precedence.

Point of Error 2: The DNR's exclusion is discrimination based on religion.

Art.1 sec.7 of the Missouri Constitution excludes religious organizations based on their religious status, however, the free exercise clause prevents the government from imposing disabilities because of their religious status. *McDaniel v. Patty 435 U.S. 618 (1978)* states that it, "invalidated a statute that forbids ministers, gospels, and priests to serve as delegates to the state's constitutional convention." This relates to the establishment clause because the eligibility for office includes certain religious status, and in the case we have today because the DNR's rejection was due to the fact that they are a religious organization. Even after being ranked 5/44th of churches that were able to receive and benefit from the grant, the DNR still refused to give the learning center the grant for the playground. They are discriminating because "The violation following from the University's denial of SAF support to petitioners is not excused by the necessity of complying with the Establishment

Clause...neutrality is a significant factor in upholding programs in the face of Establishment Clause attack...There is no suggestion that the University created its program to advance religion or aid a religious cause.The program's neutrality distinguishes the student fees here from a tax levied for the direct support of a church or group of churches, which would violate the Establishment Clause." *Rosenberger v. Rector and Visitors of University of Virginia 515 U.S. 819 (1995)* This procès that they are discriminating the church. If the government or an organization discriminated based on religion, they are establishing non-religion over religion. This is what happened today with the learning center.

Mcdaniel v. Patty 435 U.S. 618 (1978) the trial court had a ruling of "governments not being able to use religion as a basis of classification for the imposition of duties, penalties, privileges, or benefits". In this circumstance, Missouri used religion to impose the privileges and benefits received. Completely stopping the learning center from gaining that fund needed to protect the welfare and benefit the children. The fund itself is not something that will contribute to harm or danger or even do anything that involves religion or religious affiliations, instead it will benefit the safety or well being of the children.

In *West Virginia State Board of Education v. Barnette 319 U.S. 624 (1943)* it states "one's religion ought not affect one's legal rights or duties or benefits. Putting a defect in so would violate the right to free exercise".

In the situation in today's case yet again had the learning center's benefits stripped away because of their identity being a "religious organization". Leaving the people to make a very difficult decision, they will have to choose between practicing their beliefs or receiving a public benefit, something a person should not have to decide.

In order to receive a grant, an organization must meet the following requirements:

1 . Being the applicant is now owned or controlled by a church, sect, or denomination of religions and the grant would not directly aid any church, sect, or denomination of religion.

2. The applicants mission and activities are secular.

3. The grant will be used for secular purposes rather than for sectarian.

The applicant, the learning center has asked for the grant for their playground, which is not helping or benefiting the church, it's just gonna entertain and protect the children, having nothing to do with religion or religious affiliations. The second prong is that the church's purpose for receiving the grant is does have to do with religion, building a playground that children of all ages can play on is not secular (religious), this connects to the third and final prong saying that the grant for the playground will not be used for religious purposes. Which again, it will not, it'll be used for a playground.

The petitioner met these requirements, but the petitioner was still refused the grant. These points are indicating to the fact that DNR's exclusion is discrimination based on religion, this proves that they are discriminating against the church.

Conclusion

Your honor(s) we have proven that funding a playground associated with a church does not violate the Establishment Clause of the First Amendment because it passes the Lemon Test and Exclusion Test set forth from precedence, and thus will follow precedence. Therefore, we pray that you find in favor of the petitioner

Prayer

It is for these reasons that we respectfully pray that you reverse the lower court's decisions, or at the very least reverse and remand for a new trial.
