Marcus Avery and Connor Pancoast Petitioner's Opening Brief

In the Supreme Court of the United States

March Term, 2017

TRINITY LUTHERAN CHURCH, PETITIONER

v.

SARAH PARKER PAULEY, RESPONDENT

ON WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

PETITIONER'S OPENING BRIEF

MARCUS AVERY & CONNOR PANCOAST

Counsel of Record

Lake Oswego High School

Room 213

Lake Oswego Oregon, 97034

(503) 534-2313

Counsel for Petitioner

Oral argument: https://www.youtube.com/watch?v=cqX_AdoIK-g

QUESTION PRESENTED

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

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Cases

STATEMENT OF ARGUMENT

The statement in question is whether or not funding a playground associated with a Church violate the Establishment Clause of the First amendment, and the answer is no. The leading test on the Establishment Clause is from Lemon v. Kurtzman, 403 U.S. 602 (1971) and is known as the "Lemon Test" and possess three prongs. Funding the playground at hand does not violate the Establishment Clause, as it should be seen through the lense of secular purpose and active support of religion. The Missouri Department of Natural Resources's neutral goal of supplying grants to everybody and the neutral use of the grants means there is no violation of the Establishment Clause. The Missouri State Constitution has a similar clause to the Establishment Clause, but is much more sweeping. A holistic interrogation of the entire clause is the best way to get the full meaning of the law itself. That interpretation is furthered because the grant is purely for the purchasing of tires for a playground that is open to all who go to the secular daycare. The religion involved with the daycare isn't so entwined with the daycare for the grant for tires to be considered as aiding the church. The Establishment Clause and Article One Section 7 of the Missouri Constitution are the only laws at hand that determine whether or not this case is enough of a separation of church and state or not, and neither of those are violated within this case.

ARGUMENT

1. The Establishment Clause

The first amendment establishment clause reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .". Thus the question in hand is whether or not funding the playground in question violates said clause. The key case that set the test for The Establishment Clause was Lemon v. Kurtzman, 403 U.S. 602 (1971). That case lead to the creation of a three pronged test known as The Lemon Test (Lemon v. Kurtzman, 403 U.S. 602 (1971)) denoting that first,the legislation must have a secular legislative purpose. Secondly, it must neither or advance or inhibit religion. Thirdly, it must not result in undue entanglement. Funding the playground passes all three of these standards. The purpose is to refurbish a playground for kids. It does not advance or inhibit religion, as its secular purpose absolves the case of that issue. Thirdly, there is no undue entanglement, as providing a usable and quality playground to kids is not providing resources to a religion. Providing money for tires to restore a playground is purely aimed at helping kids and not a religion, and as such is secular.

Neutrality is another important way for viewing Establishment Clause acts. A key case for that was Rosenberger v. Rector and Visitors of University of Virginia, 515 U.S. 819 (1995) that case established neutrality as a key framing issue for how Establishment Clause

questions are addressed. This emphasized the importance of neutrality as a standard for evaluating potential transgressions of The Establishment Clause. Within Rosenberger v. Rector and Visitors of University of Virginia, 515 U.S. 819 (1995) as the policies that supplied funding were neutral, the funding could be supplied to the religious organizations. That was confirmed as the university's policies were not intentionally targeting religious organizations, but the attempted actions of the university to withdraw funding did intentionally target said organizations. The second standard was that because the university provides specific facilities to a large spectrum of student organizations the addition of a religious one didn't violate the establishment clause. There was no constitutional difference between by using funds to give students access to the facilities, or for having a third party maintain aforementioned facilities. The implication of that is there's no undue entanglement with religion because the act was fundamentally secular and neutral. The neutrality standard also applies to the service who supplies the grants, namely the The Missouri Department of Natural Resources (DNR). The DNR's goal is to supply grants to all schools and organizations regardless of religion. The neutral disposition of the DNR means that the Establishment Clause would only be violated once religious organizations were excluded from receiving grants.

The Lemon test specifically talks about advancing or inhibiting religion, and a good example of that is within the case Locke v. Davey, 540 U.S. 712 (2004). In that case The Supreme Court upheld the fact that not giving scholarship money to those majoring in devotional theology was constitutional. The Supreme Court felt that Washington had a "compelling state interest" and that nothing was inherently constitutionally suspect. The Supreme Court held that The Establishment Clause was violated because advancement of religion was directly contingent on the scholarships, which under The Lemon Test would mean that religion was being advanced. The Establishment Clause was only violated because of the contingency of state action, which is something that the case at hand does not do. Thus, all that matters is the active advancement or inhibition of religion in a non-secular fashion. As the money here would have been used for religious purposes it was an issue. The case at hand is not;however, because all it does is provide money for a cause that has religion on the sidelines. The money advances playgrounds and not religion, and that's why it's constitutional.

The Establishment Clause challenge to the current case must be evaluated through a couple of key cases. First is The Lemon Test, the neutrality standard, and direct action aimed at religions. The current case passes The Lemon Test, is neutral, and is not for religious purposes. The funding for the tires is specifically for the refurbishment of playgrounds, and thus is not contradictory with The Establishment clause.

2. Missouri Constitution, Article I, Section 7

Article I, Section 7, of the Missouri Constitution reads as "That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; 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." Article 1 Section 7 of the Missouri Constitution should be evaluated holistically. The portion talking about "no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church" must be examined simultaneously with "no preference shall be given to nor any discrimination made against any church". If you look at each part of the clause separately it is somewhat contradictory. Part one seems to state that no public money can be used for a church, but part two says that no preference or discrimination against a church can occur. The aforementioned neutrality standard from Rosenberger v. Rector and Visitors of University of Virginia, 515 U.S. 819 (1995) shapes how these clauses should be looked at holistically. The intent of The Missouri Department of Natural Resources was to offer a grant to fund buying tires for refurbishing a playground. Denying that grant to The Trinity Lutheran Church when it is specifically for resurfacing a semi public playground is a violation of the second part of the clause. As the grant is not aiding the church but rather the daycare, the second part of the clause should supersede the prior clause. The intent of the grant means that the first part of the clause isn't violated, as the grant is for the daycare and not The Trinity Lutheran Church. Due to that, denying the grant would be a violation of the second part of the clause. As there is no direct aid to the church, denying the grant would be discrimination based on a church being involved even though it was not the directly affected party.

There's been precedent with public money and schools, one of the more prominent cases being Everson v. Board of Education of Ewing Township, 330 U.S. 1 (1947). That case involved the appropriation of taxes to spend on bussing for private schools, and mainly parochial schools. The Supreme Court held that the taxes didn't violate the establishment clause. That caused two things to happen. First, because the taxes were spent for a public purpose as it did not violate the due process clause of The Fourteenth Amendment. That means that even though public money from the The Missouri Department of Natural Resources (DNR), a state agency, it is can still be legitimately used for institutions that are religious. Secondly, The Supreme Court ruled it did not violate The Establishment Clause. Due to the similarity of Everson v. Board of Education of Ewing Township, 330 U.S. 1 (1947) and the case at hand, both of these standards should be valued highly. In the case at hand, the playground is public. While it might be on church grounds, the daycare is open to

everybody and the grounds can be accessed by all. A potential issue that some see is the third prong of the Lemon Test, which is undue entanglement.

CONCLUSION

In order to decide whether Trinity Lutheran was justified in its actions, we must decide whether the actions somehow violated either the Missouri Constitution or the United States Constitution. Through analysis of both of the relevant parts of the texts (being the Establishment Clause of the USC and Article 1 Section 7 of the Missouri Constitution,) we find that Trinity Lutheran Church doesn't violate either of these, the reasoning for each being in the Arguments section. While new precedent may be created to alter the Lemon test, this is not it. We urge the court to rule in favor of Trinity Lutheran Church of Columbia, MO.
