

Del Valle High School Petitioner Bryssa Rodriguez Munro and Lance Belderol

**Trinity Lutheran Church**

v.

**Sarah Parker Pauley**

**Certiorari granted by the United States Supreme Court**

on

**Jan. 16, 2016**

**Petitioner's Brief**

**Attorney Team**

**Bryssa Rodriguez Munro**

**Lance Belderol**

**Del Valle High School**

## Cases

***Bradford v Roberts (1899)***

***Burwell v. Hobby Lobby 573, (2014)***

***Everson v Board of Education OF Ewing Township, 330 U.S. 1 (1947)***

***Hein v. Freedom From Religion Foundation, 551 U.S. 587 (2007)***

***Zobrest v. Catalina Foothills School District (1993)***

## Statues, Laws, Constitutions, Correspondence

***Article I, § 7 of the Missouri Constitution***

***Missouri Non-Profit Corporation Laws 2016***

***Missouri DNR Playground Scrap Tire Surface Material Grant***

***Thomas Jefferson Letter To The Danbury Ministerial Alliance***

***U.S. Constitution***

***U.S. 1st Amendment***

***U.S. 10th Amendment***

present four arguments in this legal brief to fully negate the idea that funding a playground associated with a Trinity Lutheran Church Inc. violated the Establishment Clause of the First Amendment. In fact, the concept that one could establish a religion by creating a playground is not only absurd, it not based solidly upon the U.S. Constitution.

## Facts of the Case

Trinity Lutheran Church (Trinity) in Columbia, Missouri, manages a licensed preschool and daycare called *The Learning Center*. This center is located at 2201 W Rollins Road in Columbia. Trinity Lutheran Church Of Columbia, Missouri, Inc. is a Missouri Non-Profit Corporation filed on November 8, 1954. The company's filing status is listed as Good Standing and its File Number is N 00033214. Trinity Lutheran Church Inc. also has a Missouri State license # 000171522 to operate a Day Care Center for up to 96 children ages six months to six years of age from 6 am to 9 pm Monday to Friday. The daycare center was founded as a non-secular non-profit, but later became a part of Trinity Lutheran Church Inc in 1985. As a part of a Missouri Non-Profit Corporation they follow an open admissions policy, where anyone can enroll, regardless of their faith. They provide a service for the community and because of the service they perform as well as their hours of operation, the need for physical fitness and outdoor activities is an essential aspect of their service to their patrons as well as to the community.

The Missouri Department of Natural Resources (DNR), a state agency, offers Playground Scrap Tire Surface Material Grants. This grant funds qualifying organizations to purchase recycled tires to resurface their playgrounds. In 2012, Trinity Lutheran Church Inc applied for a grant, disclosing that the school and daycare were a part of the Missouri Non-Profit Corporation. Although the Non-Profit Corporation was otherwise qualified for the grant, DNR denied their application because of **Article I, § 7 of the Missouri Constitution**, which provides: **“no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, section or denomination of religion.”**

Trinity Lutheran Church Inc sued and argued that denying their application violated the Equal Protection Clause of the Fourteenth Amendment as well as the First Amendment’s protections of freedom of religious exercise and speech. The district court dismissed the case, finding that Trinity did not present a valid case, or state a claim. Today in this Court, Trinity Lutheran Church asks that they be awarded a grant because being a Missouri Non-Profit Corporation they cannot be discriminated against. By discriminating against one Missouri Non-Profit Corporation you are effectively diminishing the rights of all Missouri Non-Profit Corporations. They have been a duly licensed Missouri Non-Profit Corporation for over sixty five years and they have been a duly licensed Day Care Provider for over thirty years. They provide the community with tremendous service Monday through Friday and their hours of operation from six in the morning to nine in the evening would allow for greater use of playground equipment than most of the other grantees.

## **Arguments**

### **1. Trinity Lutheran Church Inc., Is a Missouri Non Profit Corporation And As Such Deserves To Be Treated As A Duly Established Non Profit Corporation**

First, the argument that Trinity Lutheran Church Inc, a Missouri Non-Profit Corporation since November 8, 1954 # N 00033214 could not either receive a grant from The Missouri Department of Natural Resources (DNR) is something that should be looked at here. The State argued that the DNR could not give Trinity Lutheran Church Inc, a Missouri Non Profit Corporation, a playground grant (Playground Scrap Tire Surface Material Grants) simply because the name Trinity Lutheran Church actually proves the reason why that is discriminatory. Cross apply the fact that Trinity Lutheran Church Inc has been a Missouri Non- Profit Corporation since November 8, 1954- well over sixty years. By not allowing one Missouri Non- Profit Corporation to apply for a grant- you have in effect discriminated against the entity simply because you do not like or want their Corporation to obtain the grant. This is not only discriminatory it is against the 14<sup>th</sup> amendment please cross apply **Burwell v. Hobby Lobby 573, 2014**. The Court ruled in Burwell that Corporation were indeed persons and as such had rights. Realizing that Trinity Lutheran Church Inc was originally a Church but effectively after November 8, 1954 it became a Non- Profit Corporation with all of the rights of a Corporation according to the State of Missouri and applying the ruling in **Burwell v Hobby Lobby**. To deny Trinity Lutheran Church their

day in court because they were a Church has effectively denied Trinity Lutheran Church Inc had been operating in the state of Missouri as Non Profit Corporation for more than sixty years and should have as a Corporation been able to qualify for a grant.

## **2. Because of Non Profit Corporation Status Denial Of A Grant As Establishment Of A Religion**

Second, the argument that giving money to a Church is against the Missouri Constitution is something that we both agree upon. Article I, § 7 of the Missouri Constitution, which provides: “No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, section or denomination of religion.” This argument follows with the first argument and is based upon the fact that Trinity Lutheran Church is a Church.

However as one can clearly see that Trinity Lutheran Church Inc. is a Missouri Non Profit Corporation duly licensed by the State # N 00033214. As such, the State is arguing that they cannot give money to a Church negates as well as undermines the concept that State of Missouri over sixty years ago has recognized that they were no longer a Church but they were a Non Profit Corporation. This was established by the State of Missouri on November 8, 1954 and has been effect ever since. Technically speaking, the State of Missouri would be awarding grant money to a Non Profit Corporation not a Church. Therefore, according to the rules of Missouri, Article I, § 7 would not apply here. If Article I, § 7 would apply here, the State of Missouri would in effect have taken out their ability to create or regulate businesses within their State. This would be granted to the State of Missouri under the U.S. Constitution’s Tenth Amendment. If the State of Missouri indeed had the power to grant Trinity Lutheran Church Non Profit Corporation status on November 8, 1954, then technically they cannot come back sixty years later and discriminate against this status. If they continue to argue this point, they have effectively proven that they are discriminating proving the petitioner’s claim. Also cross apply the rest of Missouri Constitution, Article I, Section 7 which states, “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.” Clearly since Trinity Lutheran Church is Non Profit Missouri Corporation and as such cannot be discriminated against- Missouri Constitution, Article I, Section 7 could not apply because if you applied it here you would be discriminating against Non Profit Corporations.

## **3. Missouri Department of Natural Resources Playground Scrap Tire Grant Allows Non Profit Corporations To Apply**

Third, the argument that Trinity Lutheran Church Inc, a Missouri Non Profit Corporation could not apply or should not apply for a Playground Scrap Tire Surface Material Grant is quickly negated if you closely look at the State of Missouri Department of Natural Resources Application Instructions. At the beginning of this form it states under

the heading of **Who may apply for a scrap tire surface material grant** it clearly states that groups who could apply for the grant are: “Public school districts, private schools, park districts, non-profit day care centers, other non-profit entities and governmental organizations other than state agencies are eligible to submit applications. Privately owned, residential backyard areas and private in-home day care centers are not eligible.” Note that non-profit day care centers are allowed to apply. Trinity Lutheran Church Inc. is a Missouri Non Profit Corporation that runs a Day Care Center. As such, Trinity Lutheran Church Inc. should have been allowed to apply and receive a **Missouri DNR Playground Scrap Tire Surface Material Grant**. In the Instructions form on page 2 it stated that Due to a Missouri Supreme Court ruling, religious based organizations may be eligible for a grant if:

1. The applicant is not 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 applicant’s mission and activities are secular (separate from religion; not spiritual) in nature.
3. The grant will be used for secular (separate from religion; not spiritual) purposes rather than for sectarian (denominational, devoted to a sect) purposes.

Cross apply the **Bradford v Roberts 1899** ruling which allowed federal government’s funding of a hospital because even though the hospital was owned and staffed by a religious order, its primary function was to provide secular health care services. Then in **Zobrest v. Catalina Foothills School District (1993)** the Court ruled that the Establishment Clause allowed the government to provide a sign-language interpreter for a hearing-impaired student during instruction at his religious high school. If you could use public funds in a religious high school to help out a person, why could you not use public funds for a playground for a Day Care Center?

Here the problem becomes clear- this is discrimination. 1) Trinity Lutheran Church Inc is a Missouri Non Profit Corporation and has functioned as such since November 8, 1954. As a Non-Profit Corporation they are not a Church. They are legally a Non Profit Organization and as such they own a Day Care Center. This Day Care Center has been operating for more than thirty years now Monday through Friday from the hours of six in the morning to nine at night. They are licensed to watch up to ninety six children from ages of six months to six years of age. 2) Trinity Lutheran Church Inc. is a Missouri Non Profit Corporation and as such purpose it’s not religious but to obey the laws of Missouri. If you deny this and say that it is religion- why would the State of Missouri license them? If they licensed them then wouldn’t put the State of Missouri under violation of the First Amendment- separation of church and state. 3) The grant will be used for a playground for the children who the Non Profit Day Care Center watches Monday through Friday.

#### **4. The Actual Meaning of the Separation Of Church And Establishment Of Religion Are Not Correctly Applied In This Case**

Fourth, there is the argument of the Separation of Church and State. This argument was based upon the landmark case *Everson v Board of Education OF Ewing Township, 330 U.S. 1 (1947)*. This case quotes from a letter that President Thomas Jefferson wrote to the Danbury Minister's Alliance, "Believing with you that religion is a matter which lies solely between Man & his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, & not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a *wall of separation between Church & State*. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties."

The real problem here is that Jefferson was telling the concerned Minister that the USFG was not interested the affairs of the Church. The USFG would not interfere with the local Church. However, ever since Everson it appears that USFG would actually interfere with a local Church by not allowing that Church the ability to apply for grant for a playground. Is this not what Jefferson said the Government would not do?

In **Everson v. Board of Education of Ewing Township, 330 U.S. 1 (1947)**, the Court held

1. The expenditure of tax raised funds thus authorized was for a public purpose, and did not violate the due process clause of the Fourteenth Amendment.
2. The statute and resolution did not violate the provision of the First Amendment (made applicable to the states by the Fourteenth Amendment) prohibiting any "law respecting an establishment of religion."

Trinity Lutheran Church Inc., a Missouri Non Profit Corporation would use the funds for the grant for playground for the children enrolled in the day care program. Therefore, these funds would not violate any due process clause of the 14<sup>th</sup> amendment by giving them a grant and if a grant was denied, they would actually be in violation of the due process clause of the 14<sup>th</sup> amendment.

The **First Amendment** states that **Congress** shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Clearly Congress is the only one by law that is forbidden to establish a religion and since the Trinity Lutheran Church Inc, is a Missouri Non Profit Corporation and not either Congress or a Church, giving money to this entity would be not against the First Amendment. Please also cross apply **Burwell v. Hobby Lobby 573, 2014** and note since

Corporation are individuals and have the same rights, by not allowing Trinity Lutheran Church Inc, a Missouri Non Profit Corporation, the ability to redress this discrimination, the State of Missouri denied the right to petition the Government for a redress of their grievances therefore it is the State of Missouri who is in violation of the First Amendment. Also cross apply *Hein v. Freedom From Religion Foundation* **551 US 587 (2007)**, which would take out any argument that either an impacted individual could sue Trinity Luther Church, Inc on this establishing a religion under an **Everson** ruling of Separation of Church and State. This ruling denied taxpayers the right to challenge the executive branch's use of discretionary funds for programs that support religious groups.

### **Prayer**

In conclusion, the only decision that is proper in this court today is to uphold the U.S. Constitution and to overturn the lower Court's rulings and to find for the Petitioner. Clearly, Trinity Lutheran Church, Inc. is a Missouri Non Profit Corporation and because of such, is entitled to the rights of a Non Profit Corporation which includes being able to apply for this playground grant.