Madison Adelstein and Adonis Birch-Franklin, Del Valle High School Petitioner Brief

Trinity Lutheran Church

v.

Sarah Parker Pauley

Certiorari granted by the United States Supreme Court

Petitioner's Brief

Attorney Team

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Cases

Burwell v. Hobby Lobby 573, (2014)

Citizens United v. Federal Election Comm'n 558 U.S. ___ (2010),

Everson v Board of Education of Ewing Township 1947

Hale v. Henkel 201 U.S. 43 (1906)

Louisville, Cincinnati & Charleston R. Co. v. Letson 43 U.S. 497 (1844)

Marbury v Madison 1803

Marshall v. Baltimore & Ohio Railroad Company 57 U.S. 314 (1853)

Missouri Nonprofit Corporation Laws 2016

Missouri DNR Playground Scrap Tire Surface Material Grant

Russian Volunteer Fleet v. United States 282 U.S. 481 (1931)

Santa Clara County v. Southern Pacific R. Co. 118 U.S. 394 (1886)

Smyth v. Ames 169 U.S. 466 (1898)

Statutes, Laws, Constitutions, Correspondence

Section 13 of 1789 Judiciary Act

Article I, § 7 of the Missouri Constitution

Thomas Jefferson Letter To The Danbury Ministerial Alliance

U.S. Constitution

U.S. 1st Amendment

U.S. 10th Amendment

Opening Statement

On behalf of the Trinity Lutheran Church Inc. runs a Daycare and Learning Center that applied for State Grant. They were denied this grant for augmenting safety needs of their playground on religious grounds. Today, your honors, you will see that words have meanings and Constitution is truly the law of this great land. We cannot, we will not, and we shall not lose sight of the fact that in order to uphold a law you most uphold that law. Rights based on intentions are no rights at all and this is why we pray that you overturn the lower court's ruling on this case and grant the petitioner their constitutional rights. Can we exist as a country if judge people by intentions, innuendo, and interpretations or do we judge them against what the law says? If we do the former we will not have the later. Stand up the rights of all people and vote to bring back the Constitution, vote for little children, and vote to allow TLC Inc. the ability to be awarded the grant for their playground.

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. (TLC Inc.) is a Missouri Non-Profit Corporation filed on November 8, 1954. They have been a Missouri corporation for more than sixty years. The company's filing status is listed as Good Standing and its File Number is N00033214.

The TLC Incorporated also has a Missouri State license # 000171522

to operate a Daycare Center for up to 96 children ages six months to six years of age from 6am to 9pm Monday to Friday. The daycare center was founded as a non-secular non-profit, but later became a part of TLC Inc. in 1985. As a part of a Missouri Nonprofit 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, TLC 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."

TLC 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 TLC Inc. did not present a valid case, or state a claim. Today in this Court, TLC Inc. asks that they be awarded a grant because being a Missouri Nonprofit Corporation they cannot be discriminated against a corporation, they cannot be discriminated against of illegal interpretations that actually not only take out the respondent's own arguments but take out the Constitution if allowed to stand . By discriminating against one Missouri Nonprofit Corporation you are effectively diminishing the rights of all Missouri Non-Profit Corporations. They have been a duly licensed Missouri Nonprofit Corporation for over sixty five years and they have been a duly licensed Daycare 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 then most of the other grantees.

Arguments

1. Trinity Lutheran Church Inc., Is a Missouri Nonprofit Corporation And As Such Deserves To Be Treated As A Duly Established Non Profit Corporation With Rights Enjoyed As A Person and therefore under the Missouri Constitution May Receive Funds

First, the argument that Trinity Lutheran Church Inc, a Missouri Nonprofit Corporation since November 8, 1954 # N00033214 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 Nonprofit 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. For the past almost 190 years, the Supreme Court has ruled that corporations were people and as such had rights. This would mean as a Missouri Corporation for more than 60 years they (TLC Inc.) would enjoy all of the rights of person-thus making discrimination against religion illegal s well as taking out the argument under Article I, § 7 of the Missouri Constitution .

Cross apply Louisville, Cincinnati & Charleston R. Co. v. Letson 43 U.S. 497 (1844). Here the court ruled for the first time that corporations were "citizens" of the states where they incorporated. This was even further clarified in Marshall v. Baltimore & Ohio Railroad Company 57 U.S. 314 (1853) where the U.S. Supreme Court ruled that corporations were citizens, but only for the purposes of court jurisdiction; they did not have the same constitutional rights as actual people. Thirty three years later in Santa Clara County v. Southern Pacific R. Co. 118 U.S. 394 (1886) the U.S. Supreme Court modified their 1853 decision and granted that "corporations are persons within the provisions of the Fourteenth Amendment." In Smyth v. Ames 169 U.S. 466 (1898), the U.S. Supreme Court added cc government taking a corporation's property without due process—a violation of its 14th Amendment. In Hale v. Henkel 201 U.S. 43 (1906) Justice Henry Billings Brown found that corporations, like people, are protected from unreasonable searches and seizures under the Fourth Amendment. Then in Russian Volunteer Fleet v. United States 282 U.S. 481 (1931), the U.S. Supreme Court ruled that even foreign corporations are protected from unlawful government seizures under the Fifth Amendment, which ensures fair treatment by the legal system. Several recent U.S. Court decisions were based on these precedents but they go much further to make corporations enjoy the rights of individual citizens. In Citizens United v. Federal Election Comm'n 558 U.S. ___ (2010), the U.S. Supreme Court ruled that corporations and people enjoy the same legal rights, the government can't limit a corporation's independent political donations. If the government cannot limit a person from contributing to a corporation for political purposes how can they limit a state from contributing to a corporation by awarding them a grant that they applied for, were qualified for and should have been awarded? Then in Burwell v Hobby Lobby 2014, the U.S. Supreme Court found that corporations can assert the religious rights of their owners. If this is indeed the case and if you believe that the U.S. Supreme Court is the highest court in the land and that they have ability to rule on the Constitutionality of different procedures- then clearly please remember that TLC Inc. is corporation- and as such should have had the ability to both apply and obtain the grant from the State of Missouri. Scoring their grant 5th out of 45 applicants and then pulling any funding because the State's claim that they were a Church goes against case law that corporations are people and such enjoy the same rights. It is clearly against TLC Inc.'s 14th Amendment rights, 1st Amendment Rights, and under Burwell it should be noted that discrimination of this sort against a corporation is illegal. Essentially the State of Missouri is claiming here is that they can under law legally discriminate when they want to against corporations whenever they wish too. This is against Federal and State law.

2. Congress Can Establish a Religion- Giving A Grant Does Not Accomplish This

Second, we have the argument of establishment of religion. The U.S. Constitution in the First Amendment addresses this issue: 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. For the purposes of this case today let us look at the first part of the Amendment- Congress shall make no law respecting an establishment of religion. This is very clear and concise. It states clearly that Congress shall make no law. We need to make a bright line distinction here between the Constitutions, what it says and what we think it says. This is the point of this argument.

If we look at the Constitution you will note that most power branch with most enumerated powers was the Congress. In Article One they obtained the powers of: making laws, power of the purse, power to declare war, oversight/investigations, advice/consent, treaties, and impeachment. No other branch comes close in enumerated powers. In fact if we had frozen the powers of our government during the time of George Washington we would not have three equal branches of government. The reason being is that both the Executive Branch and Judicial Branch have obtained powers over the years that were not granted to them by the Constitution. The greatest example of this is with the U.S. Supreme Court in Marbury v Madison 1803.

The power of Judicial Review was taken by the Supreme Court during the Marbury v. Madison case by the Supreme Court- not given by the Constitution. In his decision, Chief Justice John Marshall ruled that Section 13 of 1789 Judiciary Act was unconstitutional. He came to this conclusion because and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States. He concluded, "To enable this court then to issue a mandamus, it must be shown to be an exercise of appellate jurisdiction, or to be necessary to enable them to exercise appellate jurisdiction. It has been stated at the bar that the appellate jurisdiction may be exercised in a variety of forms, and that if it be the will of the legislature that a mandamus should be used for that purpose, that will must be obeyed. This is true; yet the jurisdiction must be appellate, not original. It is the essential criterion of appellate jurisdiction, that it revises and corrects the proceedings in a cause already instituted, and does not create that case. Although, therefore, a mandamus may be directed to courts, yet to issue such a writ to an officer for the delivery of a paper, is in effect the same as to sustain an original action for that paper, and therefore seems not to belong to [5 U.S. 137, 176] appellate, but to original jurisdiction. Neither is it necessary in such a case as

this, to enable the court to exercise its appellate jurisdiction. The authority, therefore, given to the supreme court, by the act establishing the judicial courts of the United States, to issue writs of mandamus to public officers, appears not to be warranted by the constitution; and it becomes necessary to inquire whether a jurisdiction, so conferred, can be exercised." The problem herein lies in the fact that if Madison could not bring the case to court, the court in effect ruled on case that they could not hear. Therefore applying a ruling from a case they could not hear would be unconstitutional in and of itself. Using the same logic that Marshall used to get to his decision, the concept of Judicial Review is totally extra constitutional and never had been used on the Federal level before 1803. If the Constitution is the Supreme Law of the Land- yet the Supreme Court has to tell us what the Constitution actually says or does not say- what then is the Supreme Law of the Land- the Constitution or the Supreme Court? This clearly blatant attempt to usurp power not proclaimed in the constitution, violates our most basic democratic laws as well as undermining the real Constitution of our great Republic.

Our argument here is that the Constitution acts as the basis on which our country stands upon. However, if we use people's decisions instead of Constitution we have in essence decreased and diminished the importance of the Constitution. Without a Supreme Law of the Land, our country would cease to exist as a Republic- a country of Laws. This is based on two insurmountable facts:

- The constitution was meant to be a document that was not up for interpretation, almost like a carving in stone that can be added to, but followed explicitly to provide the best form of democracy.
- Nowhere in the constitution does it say that it has the power of judicial review trumps over the constitutionality of laws.

The original mistake was made during the very late part of President John Adams term of office. Right before leaving office, he strategically placed Marbury as justice of the peace in the District of Columbia. Thomas Jefferson, the new president, refused to recognize the appointment of Marbury. Not only did Jefferson and Adams not get along but the idea about appointing him at such a late date really got Jefferson upset. So Jefferson instructed Madison to refuse the delivery of Marbury's commission, which then led to Marbury suing Madison, and the Supreme Court taking the case. It was in the ruling of this case that Chief Justice John Marshall said that since Article III of the United States Constitution did not allow one branch of the Federal government to force action on the part of another branch. In effect with this one case it was the first time the Supreme Court declared something as

unconstitutional, which was the beginning of the practice of "judicial review." Judicial Review is the ability that the U.S. Supreme Court has gained from this case- the ability to effectively look at any law before them and be able to see if it is Constitutional or not.

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. It is also important to note that by not allowing certain nonprofit corporations because you may not like those corporations is discrimination. The bottom line being that the scrap tires are a waste product and something that State would like to get rid of. Because of this, giving out grants to get rid of scrap tires was something that promoted a public good or virtue.

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 1947. The Everson Case is based on the logic that was established by Reynolds v United States 1878. More important than this specific decision, however, was the historical approach to interpreting the religion clauses adopted by the Chief Justice, which has had the effect of essentially writing Thomas Jefferson and James Madison directly into the First Amendment. Not just any aspects of these two influential framers were incorporated into constitutional doctrine, but their writings that have come to stand for the principle of a strict separation of church and state. This idea was created out two different sources. First, colonial Virginia-Madison's Memorial and Remonstrance against Religious Assessments and Jefferson's Bill for Establishing Religious Freedom-together with Jefferson's now-famous letter to a group of Danbury, Connecticut, Baptists, declaring that the First Amendment erected a "wall of separation between church and state." Never mind that

idea that this wall was supposed to protect the Church from the State not the other way around. Never mind the idea that phrase did not appear in the Constitution or ever even discussed at the Constitutional Convention.

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 Nonprofit 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 14th 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 14th 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 Nonprofit 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 Nonprofit 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.

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, TLC Inc. is a Missouri Nonprofit 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.
