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V.

MISSOURI DEPARTMENT OF NATURAL RESOURCES (DNR)

Brief for the Respondents

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Lake Oswego High School

Lake Oswego, Oregon, 97034

Oral Argument: https://www.youtube.com/watch?v=YyqRQEq1igQ&feature=youtu.be

QUESTION PRESENTED

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

CONSTITUTIONAL PROVISIONS

The First Amendment to the United States Constitution provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."

The Fourteenth Amendment to the United States Constitution provides:

"...Nor deny to any person within its jurisdiction the equal protection of the laws."

LEGISLATIVE PROVISIONS

Missouri Constitution, Article I, Section 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, 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

BACKGROUND

The Learning Center, a preschool and daycare, was originally founded as non-secular organization but later became a part of the Trinity Lutheran Church in 1985. Religious beliefs are incorporated into the daily lesson programs at the daycare. The Learning Center will accept any child regardless of his or her religion. The Learning Center wanted to build a playground and applied for the Playground Scrap Tire Surface Material Grants, which funds the purchasing of recycled tires for playgrounds. The Missouri Department of

Natural Resources (DNR) rejected Trinity's application under Article I, § 7 of the Missouri Constitution, which prohibits the government from giving money to an institution affiliated with a church or religious sect. Trinity sued, arguing a violation of the Equal Protection Clause and a violation of the Free Exercise clause under the First Amendment.

SUMMARY OF ARGUMENT

The First Amendment alongside the Equal Protection Clause of the 14th Amendment Establishes that neither the federal nor state government are not allowed to inhibit the free exercise of religion allowed to promote one religion over the other.

Jefferson, in his letter to the Danbury Baptists, defines the wall of separation. The importance of the wall of separation to the United States is that it guarantees individual rights to free choice and privacy of choice.

In the case of Trinity Lutheran Church v. the Missouri Department of Natural Resource, it would be a violation of the Establishment Clause and Article 1, Section 7 of the Missouri Constitution to grant money to Trinity Lutheran Church. A grant of money towards a playground is aid that advances the lutheran religion because a daycare with a playground is more attractive than a daycare without one. On top of the grant being a violation of the Establishment Clause and the Missouri Constitution, the denial of the grant towards the Trinity Lutheran Church is not a violation of the Free Exercise Clause. Although the grant for the playground was denied, DNR never coercively prohibited Trinity Lutheran Church from building the playground. In addition, not aiding in the production of a playground is by no means preventing a practice of that religion. Giving the grant to the Trinity Lutheran Church will be a violation of the Establishment if the money directly benefits the parochial institution, and the not the children. See Everson v. Board of Education and Allen v. Board of Education.

ARGUMENT

1. ACCORDING TO THE MISSOURI CONSTITUTION AND THE U.S. CONSTITUTION IT FOLLOWS, THE STATE IS NOT ALLOWED TO GIVE ANY FINANCIAL AID TO ANY RELIGION

A. Giving the grant to the Trinity Lutheran Church is a direct violation of the Establishment Clause in the U.S. Constitution and is a direct violation of the Missouri Constitution

The US Constitution states that "Congress shall make no law respecting an establishment of religion." Judging if a policy is an establishment of religion is dependent on how the act of government aids the religious organization. It would be a direct violation of the Establishment Clause for any state or federal government to explicitly grant money that would be given to a direct religious organization. "Everson v. Board of Education of the Township of Ewing, 330 U.S. 1 (1947). See also Zelman v. Simmons-Harris, 536 U.S. 639 (2002).

Furthermore, giving the Playground Scrap Tire Surface Materials Grant to the Trinity Lutheran Church would be a direct violation of the Missouri Constitution, a legislative act that reaffirms exactly what the U.S. Constitution delineates: "that no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, or denomination of religion" (Missouri Constitution, Article I, Section 7). While the petitioners argue that giving money to the daycare is not in aid of any specific religion, the DNR giving the grant will still create indirect aid to a church or denomination of religion, and will thus make that religious organization more attractive to parents.

B. The Supreme Court has already established that in order for an act of government relating to religion to be constitutional, it must not violate any prong of the Lemon Test.

The Supreme Court has already deemed that any act of government that directly benefits a religious school is only constitutional if it fits the three prong test that emerged from Lemon v. Kurtzman.

the Supreme Court struck down the Pennsylvania legislation that required a 15% increase in teachers' salary on the grounds that it caused excessive entanglement between government and religion as the legislation required constant monitoring of the parochial schools, ruling that is a violation of the Establishment Clause. The Supreme Court came to establish what is known as the Lemon Test, thus creating a standard that all cases would follow. Lemon v. Kurtzman, 403 U.S. 602 (1971). See also Agostini v. Felton, 521 U.S. 203 (1997).

The first component of the Lemon Test is that all acts of government relating to religion must have a secular purpose. The petitioner will make a good point that the purpose of the grant, which is to help fund a playground for children to play on, is secular.

The second component of the Lemon Test is that the primary effect of the acts of government must not advance nor inhibit any religious denomination. Providing that the grant would directly benefit the Trinity Lutheran Church as the money indirectly promotes the religious institution. The addition of a playground will make it more appealing for people to sign up for the parochial daycare with scheduled religious studies, thereby advancing the religion. The Court held that making a parochial institution more attractive than secular institutions is a violation of the Establishment Clause since it has a positive influence on religion. Agostini v. Felton, 521 U.S. 203 (1997).

The last component, that there shall be no excessive entanglement between the church and the government, is not violated if the grant is given to the church. While the petitioner may make a point that the first and last prong of the Lemon Test will not be violated, there is direct violation of the second component considering that the grant will benefit the church.

C. Despite the petitioner's claim that the DNR denying the grant to the Trinity Lutheran church is a violation of the Free Exercise Clause and the Equal Protection Clause, it is not.

In any case relating to the free exercise clause, the Supreme Court has established that the petitioners must show a "coercive effect of the enactment as it operates against him in the practice of his religion." Allen v. Board of Education, 392 U.S. 236. Denying the grant is not coercively preventing the Trinity Lutheran Church from building a playground, nor does it coercively prevent the Learning Center from practicing their prescribed religion. Further shown in Locke v. Davey, the Supreme Court has established that it is not a violation of the Free Exercise Clause for Washington State University to deny a student's scholarship because that student had a religiously-affiliated major. Denying the scholarship is not a form of preventing the student from enjoying his right to major in a religious practice. It simply limits the government's support. Locke v. Davey 540 U.S. 712 (2004). Following that same train of thought, it would not be a violation of the Free Exercise Clause for the DNR to deny giving a financial benefit to the church.

The petitioner's claim that denying the grant is a violation of the Equal Protection Clause, but there is no precedent to support this claim. Not only is a lack of a precedent, the Equal Protection Clause has never been used to protect a religious organization. The Equal Protection Clause has been established to protect individuals from government acts, not protect a whole institution.

2. THE SUPREME COURT HAS CONTINUED TO UPHOLD THAT ANY GRANTS OR SUBSIDIES PROVED TO PAROCHIAL SCHOOLS ARE ONLY

ALLOWED WHEN THE MONEY DIRECTLY BENEFITS THE STUDENTS, NOT THE RELIGIOUS ORGANIZATION.

A. The Supreme Court allows for governmental funding to go to the students but not to the religious institution.

The Board of Education of Central School No. 1 sued James E. Allen, a representative for the Commissioner of Education of the State of New York, under the grounds that denying students of private schools the free access to textbooks while students of public schools can enjoy this benefit. The Supreme Court ruled that it was not a violation of the First Amendment, specifically the Establishment Clause, to give students of parochial schools textbooks because "Books are furnished at the request of the pupil and ownership remains, at least technically, in the State. Thus, no funds or books are furnished to parochial schools, and the financial benefit is to parents and children, not to schools." (emphasis added) Board of Education v. Allen 392 U.S. 236 at 244. The Supreme Court clearly states that it is not a violation of the Establishment Clause for parochial students to collect benefits from the government because it is not the school. This standard was again upheld when the Supreme Court ruled that it is constitutional for tuition aid to be given to students of both public and private school in need because the money is going to parents, not the institutions. Zelman v. Simmons-Harris, 536 U.S. 639.

B. The clear parallelism with a religious daycare to that of a religious private school amounts to direct contradiction of the ruling in Board of Education v. Allen

Stated clearly as the representative of the Trinity Lutheran Church, the Learning Center has an obvious association with a religious sect. While the daycare has an open admission policy to any child, regardless of religious preference, religious teaching is integrated in the daily schedule of the daycare. Thus, there is an argument to be made that this parallels with that of private parochial school, which are designed to not only educate students, but to also promote a religion. In the ruling of Board of Education v. Allen, acts of government would not be a violation as long as the act does not directly support the religious affiliation. In this case, the grant from the DNR would go directly to the Learning Center, thus contradicting the ruling of Board of Education v. Allen. Board of Education v. Allen 392 U.S. 236. See also Everson v. Board of Education, 330 U.S. 1 (1947). (tax reliefs granted to the parents of both religious and nonreligious students and the tax reliefs were not directly given to the school).

CONCLUSION

The Missouri Department of Natural Resources denying the Playground Scrap Tire Surface Materials Grants for the Trinity Lutheran Church is not a violation of the Free Exercise Clause or the Equal Protection Clause. Giving the grant to the TLR would be a clear violation of the Establishment Clause on the grounds that it directly benefits a religiously-affiliated daycare. The Supreme Court should deliver the same rulings as the District Court and U.S. Court of Appeals of the Eighth Circuit, and side with the respondents.
