

Elkins HS Respondent Brief 2017-Riley Tribble & John Fregonara

In The

Supreme Court of the United States

Trinity Lutheran Church of Columbia, Inc.,

Petitioner,

v.

Sara Parker Pauley, Director, Missouri Department of Natural Resources,

Respondent.

BRIEF OF RESPONDENT

RILEY TRIBBLE & JOHN FREGONARA

Elkins High School (WV)

https://www.youtube.com/watch?v=1qY4ILj_tng

Table of Cited Authorities

Establishment Clause of First Amendment

Missouri State Constitution

Engel v. Vitale

St. George Tucker, Blackstone's Commentaries with Notes of Reference

Virginia Statute for Religious Freedom

Memorial and Remonstrance Against Religious Assessments

Lemon v. Kurtzman

The Handbook for Public Playground Safety

Locke v. Davey

Rosenberger v. Rector and Visitors of University of Virginia

Statement of Argument

The case of *Trinity Lutheran Church v. Pauley* is a case dealing with the way religion interacts with government. Because of this, the First Amendment will be a large focus in this argument. The intent the First Amendment can be found by referencing historical documents such as the Virginia Statute for Religious Freedom, and the American Edition of Commentaries on the Laws of England. Other Supreme Court decisions dealing with this same issue such as *Engle v. Vitale*, *Lemon v. Kurtzman*, *Locke v. Davey*, and *Rosenberger v. Rector and Visitors of University of Virginia* will also play a key factor in the argument. After examination of these items, it is evident that Sarah Pauley, the respondent, should win the case. The First Amendment prohibits the government from establishing religion: "Congress shall make no law respecting an establishment of religion." The key

word “establishment” will play a significant role in deciding this case, which will be defined for this case by the Supreme Court norm of the Lemon Test. The Trinity Lutheran Church of Columbia, New Jersey, applied for a Division of Natural Resources Playground Scrap Tire Surface Material Grant to build a playground but were denied their application because of the 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.”

Meaning of “Establishment”

The word “Establishment” comes from Old French *establis*—“cause to stand still, stipulate, set up, erect, build”. Establishment as used in the First Amendment of The Constitution has a broad meaning. Establishment can mean setting an official religion for the entire country to follow, for example, The Church of England. It also extends to any form of favoring one religion over another or over secular views. The Respondent can see that the Supreme Court agreed with this claim based on their decision in the *Engel v. Vitale*.

Families of children that went to public schools in New Hyde Park, New York, complained that the voluntary prayer written by the state board of regents to “Almighty God” contradicted their religious beliefs. The Supreme Court ruled that government-written prayers were not to be recited in public schools and were a violation of the U.S. Constitution and the Establishment Clause of the First Amendment. They said that the state board’s prayer idea promoted a religious belief over secular beliefs and was therefore unconstitutional.

History and Intent of First Amendment

Trinity Lutheran Church v. Pauley is heavily interwoven with the First Amendment, so an in depth understanding of the intent behind the First Amendment will be vital in deciding this case. The Respondent can see an example of an established religion when King Henry the VIII was forced to create his own religion when the Roman Catholic Church would not allow him to divorce his wife. Many founders of the United States of America came from England and they wanted to prevent any legislative manipulation as a result of religion. The *Declaration of Independence* references this fear of government control “We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here”. St. George Tucker was a lawyer and a professor of law at the College of William and Mary after the American Revolution. He also wrote an American Edition of Commentaries on the Laws of England. While St. George Tucker was a man of faith, he strongly believed in no interference from religion in government “To separate them by mounds which can never be overleaped, is the only means by which our duty to God, the peace of mankind, and the genuine fruits of charity and fraternal love, can be preserved or

properly discharged.” His reasoning for this separation is that without it, people would turn against the government and people of other faiths. “This prohibition, therefore, may be regarded as the most powerful cement of the federal government, or rather, the violation of it will prove the most powerful engine of separation.”

He also goes far enough to say that a fully government established religion would promote ignorance. “But what I wish most to urge is the tendency of religious establishments to impede the improvement of the world.” In his view, there was no need for any government involvement in religion or any religious involvement in government.

The need for complete separation is expressed in the First Amendment to The Constitution, of which James Madison was the principal architect. James Madison was inspired by Thomas Jefferson’s Virginia Statute for Religious Freedom where he outlines the principle of separation of church and state. In this, Jefferson states “That our civil rights have no dependence on our religious opinions any more than our opinions in physics or geometry”. James Madison grew up in Virginia in which the Episcopal Church was the established church in the 1780’s, which lead him to have experience with the problems that established churches caused through taxes and jailing of all peoples of different faiths. His views can be fairly analyzed by his own words.

In 1785, Madison wrote a pamphlet called the *Memorial and Remonstrance Against Religious Assessments* in response to a proposed tax in Virginia to support Christian preachers. In this document, Madison is opposing statewide taxes for religious teaching purposes including priests “We the Subscribers say, that the General Assembly of this Commonwealth have no such authority”. In this same pamphlet, Madison says that if we give up our right to religious freedom that we might as well give up on other rights as well “they are bound to leave this particular right untouched and sacred: Either we must say, that they may control the freedom of the press, may abolish the Trial by Jury, may swallow up the Executive and Judiciary Powers of the State; nay that they may despoil us of our very right of suffrage, and erect themselves into an independent and hereditary Assembly or, we must say, that they have no authority to enact into law the Bill under consideration.” It is evident from these quotes and analysis, that James Madison strongly agrees with the notion of complete separation of church and state. As the main architect of the First Amendment his opinion about the relationship between religion and government is needed for an understanding of how the Establishment Clause should be applied in the *Trinity Lutheran Church v. Pauley* case.

Lemon Test

The Lemon Test is an official test performed by the Supreme Court in order to determine whether a given situation violates the Establishment Clause. If it fails this test, then the case is ruled unconstitutional. Since 1971, it has even stood as a guideline for lower courts. It is no simple, quick “yes” or “no”; it is a three-pronged test. The origin of the Lemon Test comes from the *Lemon v. Kurtzman* Supreme Court case in 1971 which The Supreme

Court found Pennsylvania's Nonpublic Elementary and Secondary Education Act from 1968 unconstitutional. It was deemed necessary for a test to be created to deal with the complexity of interpreting the Establishment Clause of the First Amendment. In the *Lemon v. Kurtzman* case the Supreme Court ruled in an 8-1 decision that Pennsylvania's Nonpublic Elementary and Secondary Education Act from 1968 was unconstitutional, the Court ruled that it violated the Establishment Clause of the First Amendment. This act allowed the Superintendent of the public schools to reimburse the salaries of the teachers who taught at the private schools.

The Lemon Test was born out of the final opinion of the court. "Three ... tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion." In the case of *Trinity Lutheran Church vs Pauley*, the court decision will determine whether the current Missouri state legislation Article I, Section 7 "That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church" is overturned. The common interpretation of the first prong of the Lemon Test is a judge of religious neutrality, or secularism. If the Court were to side with Trinity Lutheran Church, this unarguably already neutral law would be overturned. How could overturning an already secular law to give public funds to a church be secular in itself?

In addressing the second prong of the Lemon Test, if funding the church's playground is ruled constitutional, it will advance religion. The effect of the case is that the Trinity Lutheran Church gets a top- of- the- line playground. That will result in more kids wanting to attend the school. The new children will pay tuition money to the church because it is a private school. This increased revenue would clearly be aiding the church. The church being able to get governmental grants for any reason will also hinder secular public schools because if churches can take these grants there is less government money available for public schools to get a playground.

The third and final prong of the Lemon Test deals with "excessive entanglement." If there was to be a government-funded playground built at Trinity Lutheran Church, it must not have any religious references in it. To ensure that the playground does not, a government official would have to travel to the church and search it. That would create an unnecessary "entanglement." The excessive entanglement lies with the givers of the government grant and the church. The Church must have been working with the State DNR extensively, going through processes that last a long period of time just to get the grant. If the Court rules in favor of the Trinity Lutheran Church, then every future church to go through a grant process will also be excessively entangled with government.

Benefits and Costs of Assisting the Trinity Lutheran Playground

One could argue that the benefits of the state of Missouri funding the playground is that the kids there would be provided with a safe playground environment with the grant

money. The flaw in this is that no matter how the playground is funded, any new playground must live up to strict safety codes and regulations. Then there is no risk of children being in an unsafe environment, just that the playground may be a smaller or without scrap tire surface. Common playground surfaces that are cheaper than rubber, referencing *The Handbook for Public Playground Safety* include pea gravel, sand, wood mulch or wood chips. There are plenty of private grants for playground building that the church would qualify for including the Play and Park Structures Grant. They are also eligible for The National Gardening Association's Grant and numerous other money sources.

The most major consequence of Trinity winning the case would be the precedent that this would set nationwide. Churches across the country would consider all federal grants as a possibility when looking for money. This opens up a slippery slope for America's future. It is possible for this Supreme Court decision to be stretched, which could lead to a significant crossover between church and state.

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State Role in Fostering Religious Organizations

Churches do wonderful things, but it would be against the First Amendment for government to aid in the establishment of churches in any way. Churches receive funds from other sources including private grants, member donations, and community business donations. It is not necessary for churches to receive tax money that is supposed to be neutral and secular when they have other sources of revenue. These sources have always been available to the churches so there is no need to set a precedent to overturn this now. This is a true test to the judicial system's ability to stay true to The Constitution even under public pressure.

Other Precedents

If sticking to strong precedents set by the Supreme Court, the Court should now side with Pauley. The Respondent can see from the *Locke v. Davey* that States have the right to deny financial aid to religious situations. Joshua Davey received a promise scholarship from the state of Washington and was enrolled in Northwest College when he changed his major to include pastoral ministries. Following that, his government scholarship was revoked. Davey filed a lawsuit and took it all the way to the Supreme Court. The Supreme Court ruled in favor of the state's decision to deny this funding for religious pursuits. The situation where Washington refused to fund Davey's religious studies is similar to the *Trinity Lutheran Church v. Pauley* case in which Missouri refused to fund a religious establishment's playground. *Locke v. Davey* offers a clear precedent that justifies Pauley's decision to refuse the Trinity Lutheran Church a federal grant.

Another important court precedent that deals with similar issues is *Rosenberger v. Rector and Visitors of University of Virginia*. Ronald Rosenberger, a student at the University of Virginia, asked the University for \$5,800 from the students activities fund to help pay for

printing costs that would normally be paid for by the church. The University denied his request and the Supreme Court ruled that their policy was Constitutional. This precedent should show The Supreme Court that allowing The Trinity Lutheran Church to collect the money from the government grant is unconstitutional as well as the University of Virginia giving Ronald Rosenberger the \$5,800.

Conclusion

The *Trinity Lutheran Church v. Pauley* case is very important because it will have a lasting precedent set affecting how the first amendment is interpreted. The prongs of Lemon Test can be referenced to determine constitutionality, specifically about the Establishment Clause of the First Amendment. The current Missouri laws are completely secular in nature because they equally deny all churches. The effect of Trinity Lutheran Church winning the case would be more churches applying for government grants, leading to less funding for public schools that draw from the same pools of money. This advances religious practices by allowing them access to additional funding, also creating an “excessive entanglement” between the government and churches as more churches would be working with the government, trying to get grants for themselves. If any of the three prongs are violated, the government must rule that there was violation of the Establishment Clause of the First Amendment. If the Court would rule in favor of the Trinity Lutheran church, it could also jeopardize the value of The Constitution, which is a key part of having an American identity. The intent of the Framers when writing the First Amendment was for a strong separation of church and state. St. George Tucker provides important insight into the consequences of entangling government with religion. That intent should be preserved and shown in the outcome of the *Trinity Lutheran Church v. Pauley* case. Similar to the precedents previously described, the Supreme Court should rule in favor of Pauley and the state of Missouri right to deny funds for any direct or indirect aid in the establishment of religion. Failure to follow this would cause a serious damaging effect on the future relationship between church and state. The Court should rule that the current Missouri Constitution, Article I, Section 7 is constitutional and that allowing Trinity Lutheran Church to receive this grant money violates the Establishment Clause of the First Amendment.