

Brayan Cortez Phuong Uyen Tran Respondent Brief Del Valle High School

**Trinity Lutheran Church**

v.

**Sarah Parker Pauley**

**Certiorari granted by the United States Supreme Court  
on  
January 15, 2016  
Respondent's Brief**

**Attorney Team**

**Brayan Cortez**

**Phuong Uyen Tran**

**Del Valle High School**

**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**

**Marbury v Madison 1803**

**Statutes, Laws, Constitutions, Correspondence**

**Section 13 of 1789 Judiciary Act**

**Article I, § 6 and 7 of the Missouri Constitution**

**Thomas Jefferson Letter to the Danbury Ministerial Alliance**

**U.S. Constitution**

**U.S. 1st Amendment**

**U.S. 10th Amendment**

## **Respondent**

**Question: Does funding a playground associated with a Church violate the Establishment Clause of the First Amendment?**

### **Opening Statement**

Because we believe in the U.S. Constitution and the First Amendment which states 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. We believe that this Court should uphold the lower court's ruling and decide in favor of the respondent.

### **Facts of the Case**

#### **This case revolves around four essential facts**

- 1 Article One Section Seven of the Missouri Constitution is current law that the State of Missouri operates under and the same law that this grant was awarded under.
- 2 The Missouri State Supreme Court has ruled on this case
- 3 The U.S. Supreme Court should not be ruling on this case- it has no ability to hear this case
- 4 Originalist doctrine of the U.S. Constitution shows that nowhere in Article III the ability to have the Supreme Court be granted the power of Judicial Review and therefore, the case would fall under Amendment X and be sent back to the State which has already ruled upon it.

### **Four Main Arguments**

- 1 Article One Section Seven of the Missouri Constitution is the law
- 2 Missouri State Supreme Court has already upheld the lower court's ruling in this case
- 3 The U.S. Supreme Court should not be ruling on this case- it has no ability to hear this case
- 4 Originalist doctrine of the U.S. Constitution shows that nowhere in Article III the ability to have the Supreme Court be granted the power of Judicial Review and therefore, the case would fall under Amendment X and be sent back to the State which has already ruled upon it.

### **Argument Article One Section Seven of the Missouri Constitution**

Brief explanation: This law clearly states what State of Missouri can and cannot do concerning money and a Church. Since Trinity Luther Church is Church and since the wording of the Constitution does not allow money from the State to flow to a Church. This law must be upheld today.

## A. Article 1 Section 7

### **Public Aid for Religious Purposes—Preferences and Discriminations on Religious Grounds**

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

B. Note that Missouri did not claim to establish a religion or deny Trinity Lutheran Church the ability to practice a religion. By funding the Grant would have the State at odds with its own Constitution- forcing an Unconstitutional Act by definition. Can the Supreme Court of the US create an Unconstitutional Act- if they can they just took out their own logic because only the Legislature is supposed to create laws and the Executive enforce the laws. The Court by forcing this issue is acting as all three branches of Government.

**Reason To Prefer Over the Petitioner-** The USFG in the form of the United States

Supreme Court would in essence have to become not only all three branches of the government, they would in essence just completely tear up the Constitution and create a new rule to make Missouri go against their laws and grant money to this Church.

**Argument Two Missouri State Supreme Court has already upheld the lower court's ruling in this case**

**A. Missouri Constitution Article 1 Section 6** “no person can be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, minister, preacher or teacher of any sect, church, creed or denomination of religion”

**B. The Missouri Courts ruled** that instead of establishing a Church, the State by doing this remained neutral- they were equal and did not fund any religious group applying for this grant. If you treat everyone the same way and do not show any sort of discrimination against any one group- have you not also proved the point of being neutral. Neutral means not pick

**Reason to Prefer over the Petitioner-** the State of Missouri has heard this case and ruled in favor of the State. If you apply the Missouri Constitution Article 1 Sections 6 and 7 you can clearly see why a panel of experts on Missouri law did this. They had no choice. The Court saw that the State must abide by its own rules and rule of laws. In summary the petitioner tried to spin a well-constructed story today. They would have you believe that somehow the Church was a victim here. But look at the facts at hand

- 1) Did the Church apply for the grant- yes
- 2) Is the Day Care part of the Church- yes
- 3) Can Missouri give funds to a Church according to Article One Section seven of their Constitution- no
- 4) Are we a society that follows our laws- yes
- 5) What happens when a State doesn't follow their laws- troubles begin correct?

6) Therefore, the only option that the State had was to go with the Missouri Constitution- correct

7) Following the law was the only option the state had in this case- correct

### **Argument Three Article III of the U.S. Constitution- Powers of the Supreme Court do not include Judicial Review**

There are only three sections in Article III of the U.S. Constitution. Two of these sections deal with this case. Clearly applying Article Three Section Two will show that according to the U.S. Constitution- the U.S. Supreme Court does not have the ability to hear this case today.

#### **A. Article III Section 1.**

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

#### **B. Article III Section 2.**

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states;—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

**Reason To Prefer Over the Petitioner-** A careful look at this Section would clearly show that the U.S. Supreme Court would have no ability to hear this case today according the U.S. Constitution because this particular case does not fit into any of the following specified categories.

A. Cases arising under the Constitution, laws, and treaties of the United States (Federal question jurisdiction)

B. Cases involving ambassadors, other public ministers and consuls (Ambassador Jurisdiction)

C. Cases involving navigable waters (Admiralty jurisdiction)

D. Cases in which the United States is a party (United States as a party jurisdiction)

E. Cases between two or more states (State jurisdiction)

F. Cases between citizens of different states (Diversity jurisdiction)

G. Cases between citizens of the same state claiming land under the grants of different states (Land grants jurisdiction)

H. Cases between a state or citizens of a state and a foreign state or citizens of a foreign state

(Alienage jurisdiction)

Because it doesn't fit into these categories the U.S. Supreme Court should not hear this case.

#### **4 No Judicial Review- No Case Law- No Case for the Supreme Court to hear today.** Please cross apply Chief Justice John Marshall own words in the decision of **Marbury v Madison 1803**

"If an act of the Legislature repugnant to the Constitution is void, does it, notwithstanding its invalidity, bind the Courts and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow in fact what was established in theory, and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration. It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each. So, if a law be in opposition to the Constitution, if both the law and the Constitution apply to a particular case, so that the Court must either decide that case conformably to the law, disregarding the Constitution, or conformably to the Constitution, disregarding the law, the Court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty."

In essence- Justice Marshall put the Supreme Court above the Constitution. Now the greatest law of the land is no longer the Constitution but what the Supreme Court said or says is the Constitution. This takes out rule by law and inserts rule by man or woman instead. Considering the absurdity of the idea of Judicial Review- and the fact that ever since then the Courts have changed the purpose and structure of the U.S. Supreme Court it is essential in this case to get back to the basics. Get back to law and get back to the Constitution. In that case the only Court that would have jurisdiction is the Supreme Court of Missouri who heard and ruled on this case already. The US Supreme Court cannot rule on the Constitutionality of State Constitution because it was not expressed in Article III of the US Constitution and therefore would fall under the 10th amendment to the State of Missouri's Supreme Court to decide this case. Since Judicial Review is outside of the Constitution and was not provided by the Congress, it was clearly illegal and in effect even modifies the Constitution which goes against how you modify the Constitution through the established amendments.

#### **The Petitioner's Faulty Logic Problems**

**1 Corporations are not people.** This is not in the Constitution. We the people- not we the corporations. In fact the concept the corporations comes from case law- 2010 (Citizens United v. FEC) and 2014 (Burwell v. Hobby Lobby.) Case Law is a result of Judicial Review which was a result of Marbury v Madison. The problem here is that the case should

not have been heard by the Supreme Court in the first place. Without hearing the case- they could not have given a ruling and without a ruling there would not be any judicial review. This is turn because case law would be not allowed under the Constitution. The petitioner solely relies on the Supreme Court to interpret the Constitution and this ability was solely obtained by the Court through the Court and not the Constitution therefore this becomes an independent reason to vote for the respondent.

**2 The State should be neutral towards the Church.** The petitioner is arguing the fact that somehow they are harmed by not getting a grant they were not supposed to obtain. This harm is a manufactured harm. It is based again on case law. You cannot and should not be able to claim being a victim of discrimination that does not and did not exist. All Churches were not allowed. If you treat all people in a category the same and not show any sort of favoritism toward one particular group or another- is this not being the model of being neutral? This again would be turn because it is not allowed under the Constitution. Therefore, this therefore becomes an independent reason to vote for the respondent.

**3 The petitioners are correct that separation of Church is not constitutional.**

However when you apply logic to their arguments- they actually prove our point.

Separation of Church and State is by product of judicial review- the George P. Reynolds case and Everson Case. In both cases it was deigned that the founding fathers meant to say Separation of Church and State. This is faulty logic-appeal to authority. In Reynolds they took passages from James Madison's writings in the Federalist's Papers and Thomas Jefferson's private correspondence to come up with this idea. Even though Madison and Jefferson were founding fathers- the only document that can be legally used in this court room today is the U.S. Constitution. Anything else is plain wrong and should be voted down as such.

**4 They are correct when it comes to discrimination.** However, once again they have created a victim out of group trying to break the law. The Church clearly knew the rules going into the grant. They knew that the Missouri Constitution Article 1 Section 7 would not allow co-mingling of state funds given to a Church. The Constitution clearly said Church. It is equally clear that Trinity Lutheran Church owns and runs the Day Care Center. It is also equally clear that Trinity Lutheran Church purposefully applied for a grant that knew by law they could not legally get to claim that they were discriminated against. This logical fallacy of strawman argument. They applied to obtain state money that was illegal to be given to them. They were allowed to apply but not receive. All grants have requirements. If you award a judgement for the petitioner you have created slippery slope logical fallacy that will allow all non- awardees of grants the ability to sue because they have been discriminated against. Just because you did not get some- it that the new level for discrimination in our country?

Therefore we pray that you agree with the lower court rulings and apply the law to this case-

vote to uphold the law and vote for the State of Missouri in this matter before the court today

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