Virtual Supreme Court – Kevin Pataroque & Robert Richardson, Lake Oswego High School, Oregon

Harlan Institute – Kevin Pataroque & Robert Richardson – Lake Oswego High School

March Term, 2017

TRINITY LUTHERAN CHURCH OF COLUMBIA, PETITIONER

V.

SARAH PARKER PAULEY, RESPONDENT

ON WRIT OF CERTIORARI

TO THE UNITED COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

Respondent's Brief

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Counsel of Record

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Room 213

Oral Argument: https://youtu.be/J__u7Wx79OY

Question Presented

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

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Statement of Argument

Funding Trinity's playground repair would cause an advancement of religion. Under the current standard set in Lemon v. Kurtzman, 403 U.S. 602 (1971), any advancement of religion by the state defies the Establishment clause, as it intensifies religious divides. The Learning Center was integrated into the Lutheran Church in 1985, and so funding The

Learning Center with state assets advances Lutheranism. This disobeys not only the Effect Prong of the Lemon test, but also Article I Section 7 of Missouri's constitution, and by extension of both, the Establishment clause. This does not defy the Equal protection clause, as explained by Locke v. Davey 540 U.S. 712 (2004), because there is a compelling state interest to keep church and state separate. This means that denying Trinity's grant is constitutional. Also, under Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990), the denial of the grant is constitutional as the Missouri constitution, the Establishment Clause, and the Lemon test were not created to discriminate against any singular religion, but to put all religions equally apart from the state. This means that Trinity Lutheran v. Pauley does not contradict the free exercise clause of the 1st Amendment

Argument

1. **Federal funding of parochial institutions leads to undue entanglement of government and religion.**

Remembering centuries of Protestant-Catholic conflict, our Founding Fathers created America with an ideal of religious freedom. Mary, Queen of Scots's bloody reign left countless Protestants dead. The acceptance of Anglicanism as a national faith only invited hostility. By 1620, it was noted"'The numberless martyrdoms and massacres which have drenched the whole earth with blood" (Tucker, 1803) remained high on both sides, leading to English citizens leaving to seek religious tolerance. Though the colonies remained homogenous in Judeo-Christian beliefs, tolerance for other beliefs allowed Anglicans, Quakers, and Catholics to coexist in relative harmony. U.S. Constitution, Amendment I protects against a tyranny of a singular religion. Trinity Lutheran Church's expected grant would defy this amendment, since the US would publicly endorse a singular religion. In this, the grant towards a religiously-affiliated institution violates the Effect prong of the Lemon Standard through advancing Lutheranism.

The Learning Center was originally founded as a secular institution, but soonafter became affiliated with Trinity Lutheran Church. In addition, daily religious instructions were implemented in The Learning Center. The preschool is clearly linked to the Lutheran Church, and thus faces scrutiny of the Lemon test.

Lemon v. Kurtzman, 403 U.S. 602 (1971) is the current standard in publicly-funded religious organizations, in which governmental funds were similarly distributed to parochial institutions. The violated prong in the Lemon Standard, advancement of religion, explains that any state action that advances a singular religion, or religion in general, is unconstitutional. Publicly affirming a singular religion hosts a variety of problems, from

antagonizing other religions, and also introducing religious bias into public education. Parochial education bolstered by public funding introduces the danger that ¨a teacher under religious control and discipline poses to the separation of religious from purely secular aspects of elementary education in such schools"(Id. At 615-620). Trinity Lutheran Church's grant for playground equipment would create a religious bias in the state, creating a divide amongst religion.

Trinity Lutheran Church v. Sarah Parker Pauley is not related to Everson v. Board of Education, 330 U.S. 1 (1947), in which school transportation funds were an expenditure for public as well as private school utilization, since the playground is privately-owned by a singular religion. This is unlike Everson v. Board, as funds were directed to a religiously-diverse community in which all religions could benefit from the bussing program, or reimbursement equivalent to the use of the bussing program. Because the law was unbiased towards a specific religion, as Lemon v. Kurtzman 403 U.S. 604 forbids, in bussing the entire community, Everson v. Board of Education is constitutional, where as Trinity Lutheran v. Pauley is unconstitutional due to the creation of uneven distribution of funds to a single religion (Id. 604).

Rosenberger v. Rector and Visitors of University of Virginia, 515 U.S. 819 (1995) does not set precedence for Trinity Lutheran Church v. Sarah Parker Pauley due to a private institution's interference. In Rosenberger, Wide Awake was run by students instead of governmental officials, and wasn't centered in University of Virginia. In contrast, the proposed playground would become incorporated in Learning Center's property, directly impacting Trinity Lutheran Church. Money would also be allocated to members of the church, instead of students. Therefore, Rosenberger v. Rector and Visitors of University of Virginia cannot be applied to the case. Also, the case Allegheny County v. ACLU, 492 U.S. 573 (1989) is not applicable to Trinity Lutheran v. Pauley as the playground is not a religious symbol, and does not portray an advancement of Lutheranism on its own. Lastly, Lamb's Chapel v. Center Moriches Union Free School District 508 U.S. 384 (1993) is irrelevant to Trinity Lutheran Church v. Sarah Parker Pauley as there is no use of public facilities, only public funding.

In terms of the Free exercise clause of the 1st Amendment, under Smith v. Oregon 494 U.S. 872 (1990), we can see that if legislation does not intend to discriminate a single religion, or is discriminating against religion in general, it is constitutional. This relates to Trinity Lutheran v. Pauley as the state constitution, the lemon test, and the Establishment clause were not meant to specifically discriminate against Lutheranism, but religion in general, which is constitutional. Also, under Footnote Four of the case United States v. Carolene 304 U.S. 144 (1938), "discrete and insular minorities"(Id. 144, Footnote 4) are not a

protected class of the Equal Protection clause. Because Lutheranism is not a minority religion, it is not protected under the Equal Protection clause.

Proposed Standard

Under the standard of Lemon v. Kurtzman, state funding must be directed towards secular institutions only.

Conclusion

Missouri Department of Natural Resources's refusal to award a grant to Trinity was constitutional by upholding the Establishment Clause. Trinity Lutheran failed to state a claim, because Missouri cannot, under law, give grants to religiously-based organizations. Prior circumstances, in which Missouri awarded grants to other religious organizations, fails to address that Missouri cannot specifically the Lutheran Church, because doing so would violate precedent established in Lemon v. Kurtzman. In the case of Allegheny County v. ACLU, 492 U.S. 573 (1989), justices reaffirmed governmental-organizations should remain secular, further justifying Missouri's stance. Missouri upholds Missouri Constitution, Article I, Section 7, and through it, religious tolerance that benefits the American public.
