Del Valle High School Respondent Brief 2017 Jason Cano and Pam De La Cerda

Trinity Lutheran Church v State of Missouri

Respondent Brief

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Constitutions
Amendments to the US Constitution First, Tenth, Fourteen
Article I, § 7 Missouri Constitution

Cases
Engel v. Vitale (1962)
Everson v Board of Education 1947
Reynolds v. United States (1878)

Statement of Facts

Trinity Lutheran Church of Columbia, Missouri has a day care school. The school wanted to apply for a State grant to build a playground. The funds came from a state tax on tires and the Church applied for a grant award. The problem is not in the application, it would be in awarding the Church this grant.

This Court has never held that the Establishment Clause would allow the direct funding of churches, much less that the Constitution requires it. From its first constitution in 1820, Missouri has prohibited state funding of churches. Similar provisions exist in thirty-nine other states, reflecting a commitment to religious freedom firmly rooted in history and

experience. The ability to worship is protected but so is the ability to make sure that State or Federal Government does not interfere in the politics of the Church or in support of the Church.

Question

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

Arguments

Because we agree that the United States should never have an established Church or religion, we are totally against the idea of funding religious organizations with taxpayer money. We also believe that Trinity Lutheran Church Day Care Center should not have been awarded a grant. This is an argument that is based upon three pillars of our society. It is based upon the U.S. Constitution, it is based upon the current laws of the land, and it based upon the concept that there should be a Wall of Separation between Church and State.

Argument One- Wall of Separation

First, there is a great deal of talk about a wall today. However, the wall we are talking about is not a wall on our border; it is wall within our borders. The first use of the "wall of separation" metaphor was by Roger Williams, the same gentleman who founded Rhode Island in 1635. He said an authentic Christian church would be possible only if there was "a wall or hedge of separation" between the "wilderness of the world" and "the garden of the church." Any government involvement in the church, he believed, corrupts the church. There was nothing scary or spooky about this concept. He called for a wall to protect the Church. It appears that Roger Williams was foreshadowing the very words of President Gerald R. Ford when in 1974 he said before a joint session of Congress, "...a government big enough to give you everything you want is a government big enough to take from you everything you have."

A Church that was established by the Government would be Church of the Government not a Church of God. You cannot or should not simply merely replace God with the Government because if we did- would we be any different than Lenin? Isn't this what the Communists tried to do in Russia? In the end how successful were they? This year (2017) will make the 100th anniversary of the fall of the Russian Czar. The Communists took over. The Czar was murdered and the Church was taken over. Now, one hundred years later which of these are standing today tall and proud in Russia? A Czar is no longer running the government, The Communists are no longer running the Government, and Russian Church today is experiencing a period of fast growth and wide influence.

The Russians tried a government that took over their lives and their religion. What happened? After a little more than 70 years, they rebelled and today they have their rights of freedom of religion back. Do we want to go down this road? Do we want to give up our rights to the large tentacles of out of control government who is eager and will willing to

take over our individual constitutionally guaranteed rights? Are you willing to bet your rights on the fact that some time in the future you may get them back again?

Argument Two- Religious Ideas and Practices Are Not Above The Law

Second, look at the ***Reynolds v. United States (1878)***. Here you have a perfect test case for this court to consider today. George P. Reynolds was a member of the Church of the Jesus Christ of Latter Day Saints. He was charged with bigamy (Marrying more than one wife). Bigamy was against the law but it was a principle of the Church. Reynolds argued that he had the Freedom of Religion under the First Amendment to practice anything he wanted to do and the Court would have to approve it because if they did not, that would be against his free exercise clause of the First Amendment.

Amendment I

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

The Court reasoned in this case, "Congress cannot pass a law for the government of the Territories which shall prohibit the free exercise of religion. The first amendment to the Constitution expressly forbids such legislation....Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order." In other words, while Congress could not outlaw a belief in the correctness of polygamy, it could outlaw the practice of it. This was in part, the Court held, because marriage was a "most important" feature of social life: "Upon it [marriage] society may be said to be built. Marriage, while from its very nature a sacred obligation, is nevertheless, in most civilized nations, a civil contract, and usually regulated by law."

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."

Article I § 7 of the **Missouri Constitution** clearly can fit not only into the First Amendment- free exercise clause- because it does not prohibit the exercise of the religion and since the State of Missouri is not Congress and since the First Amendment Establishment Clause apply to the US Congress not the State of Missouri the establishment clause would not apply here.

This would only leave the fact that did Missouri have the right to add this to their Constitution? Cross apply the 10th Amendment which states that all things not stated in the Constitution are reserved for the States. This would mean that Missouri could actually have the right and responsibility to add **Article I § 7** to their **State Constitution**.

Normally it may appear to be an unusual argument for the respondent to use State Law and State Rights as a defense for an action, but in this case- we ask the court- what side more

clearly upholds both the U.S. Constitution and the Constitution of Missouri? Can the appellant possibly argue that Missouri has no right to enforce their own laws? Can they argue that Missouri has no right to uphold the U.S. Constitution? Can they argue that by establishing a religion and taking taxpayer funds to support a religion that they are uphold the words of Roger Williams, the words of Gerald R. Ford, or the words of the Constitution? We say not.

If we apply this same ruling to our case- you will note three different things.

A) The law did not discriminate against Trinity Lutheran from applying for a grant. This would have been illegal.

B) The law does clearly state that Trinity Lutheran being a Church could not receive funds from the State and by giving the Church a grant it would be clearly be against the law.

C) The Church may have a day care center. The Church may have a day care ministry and the Church may serve the entire community in any way it would like. The problem is not in a religious tenant or practice it is that what they are asking is against the law. The Church may not break the law to exercise its rights.

Reynolds clearly backs up both arguments in the Trinity Lutheran case.

Argument Three – The State Can Not Use Money Without Establishing A Religion

Third, you have the issue of Establishment of Religion and the ***Engel v. Vitale (1962)*** and a State force participation in a religious exercise. This case was a simple case. There was prayer that was said before school in New York called the Regent's prayer. The prayer stated, "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country."

If a public school student were to say this non-denominational prayer quietly to him or herself, there would be no constitutional conflict. No one at the time was arguing that a person couldn't say a prayer. What was at the center of the controversy was the State formally requiring all student to say this. The State requiring people to do a prayer is the key to the argument here and it is very similar to what is going on in the ***Trinity Lutheran Church Case***. The Trinity Lutheran Church can put in their playground and put in used tires as the base of the playground- the problem is when you use taxpayer's money to buy something for the Church. Requiring the State to pay money to a Church is not only illegal in Missouri it would amount to establishing a Church.

The First Amendment states, "Congress shall make no law respecting an establishment of religion." This was originally added to the Constitution to keep the federal government from establishing a national religion, and to stop it from interfering with establishments of religion in the states. Today, the amendment is often used to keep religion out of government spaces such as public schools, libraries, and courtrooms. Challenges to religion in schools grew in the Twentieth Century for two reasons: The growth of public schools in

the twentieth century, combined with the Supreme Court's use of the Fourteenth Amendment to apply First Amendment limitations to the states. In ***Engel v. Vitale***, the Court ruled that for public schools to hold official recitation of prayers violated the Establishment Clause. It should be noted that this would also not allow co-mingling of tax payer grant money to be given to a Church.

Justice Hugo Black wrote in the Majority decision in ***Engle***, "We think that by using its public school system to encourage recitation of the Regents' prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause...It is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government." Some people wrongly believe this decision outlawed all prayer in public schools. It did not. The ruling did prohibit schools from writing or choosing a specific prayer and requiring all students to say it. This is an important aspect to apply to the ***Trinity Lutheran*** case. The lower court ruled that Trinity Lutheran could apply for the grant, they could use the materials for their playground- all they couldn't do is to use taxpayers funds to pay for any of it. This is against the Missouri State Law and is supported by the ***First, Tenth, and Fourteenth Amendments*** of the **U.S. Constitution**.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Insofar as the second phase of the due process argument may differ from the first, it is by suggesting that taxation for transportation of children to church schools constitutes support of a religion by the State. But if the law is invalid for this reason, it is because it violates the First Amendment's prohibition against the establishment of religion by law. This is the exact question raised by appellant's second contention, to consideration of

which we now turn.

Fourth, we would like apply another one of Hugo Black's decisions. In the majority opinion of ***Everson v Board of Education 1947,*** Justice Black wrote, "These words of the First Amendment reflected in the minds of early Americans a vivid mental picture of conditions and practices which they fervently wished to stamp out in order to preserve liberty for themselves and for their posterity. Doubtless their goal has not been entirely reached; but so far has the Nation moved toward it that the expression "law respecting an establishment of religion," probably does not so vividly remind present-day Americans of the evils, fears, and political problems that caused that expression to be written into our Bill of Rights. Whether this New Jersey law is one respecting an "establishment of religion" requires an understanding of the meaning of that language, particularly with respect to the imposition of taxes. Once again, therefore, it is not inappropriate briefly to review the background and environment of the period in which that constitutional language was fashioned and adopted. A large proportion of the early settlers of this country came here from Europe to escape the bondage of laws which compelled them to support and attend government-favored churches. The centuries immediately before and contemporaneous with the colonization of America had been filled with turmoil, civil strife, and persecutions, generated in large part by established sects determined to maintain their absolute political and religious supremacy."

With these words one the majority opinion of one greatest court cases that changed the United States concluded that there was a wall of separation that existed between the Church and State and this wall should not be bridged. In a very odd or peculiar twist the Court did not address the fact that this could have been considered religious discrimination. Instead they took the attitude that if the Government (both state and federal) was neutral then everything be clearly under the First Amendment. Justice Black reached this conclusion by applying this logic in this part of the ***Everson*** decision, "With the power of government supporting them, at various times and places, Catholics had persecuted Protestants, Protestants had persecuted Catholics, Protestant sects had persecuted other Protestant sects, Catholics of one shade of belief had persecuted Catholics of another shade of belief, and all of these had from time to time persecuted Jews. In efforts to force loyalty to whatever religious group happened to be on top and in league with the government of a particular time and place, men and women had been fined, cast in jail, cruelly tortured, and killed. Among the offenses for which these punishments had been inflicted were such things as speaking disrespectfully of the views of ministers of government-established churches, non-attendance at those churches, expressions of non-belief in their doctrines, and failure to pay taxes and tithes to support them. These practices of the old world were transplanted to and began to thrive in the soil of the new America. The very charters granted by the English Crown to the individuals and companies designated to make the laws which would control the destinies of the colonials authorized these individuals and companies to erect

religious establishments which all, whether believers or non-believers, would be required to support and attend. An exercise of this authority was accompanied by a repetition of many of the old-world practices and persecutions. Catholics found themselves hounded and proscribed because of their faith; Quakers who followed their conscience went to jail; Baptists were peculiarly obnoxious to certain dominant Protestant sects; men and women of varied faiths who happened to be in a minority in a particular locality were persecuted because they steadfastly persisted in worshipping God only as their own consciences dictated."

Warren G. Harding, a Republican Senator, coined the term Founding Fathers in his 1916 Republican National Convention Keynote address and then in his inaugural address in 1921 a President Harding referred to the "divine inspiration of the founding fathers." With a slight change of language- a great disservice began here in the United States. People began to believe not in real history, but in a new self created history. **Until 1947, few Americans knew** about Thomas Jefferson's comment, made in a private letter to the Danbury Baptist Association, that the First Amendment's guarantee against a federally established church made a "wall of separation between church and state." It was in that year, in the case of ***Everson v. Board of Education*****,** that the Supreme Court overturned a continuous line of cases stretching to the founding era and beyond by applying the First Amendment's religion clause, aimed at limiting federal power, against the states. The Court dredged the Danbury letter from obscurity, claiming that it, though written well after the Constitution's adoption and by a man who took no part in drafting it or its amendments, somehow summed up the meaning and requirements of religious liberty.

Cross apply the fact that **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." You end up with establishing a Church by giving funding illegally and also tearing up the Constitution

Prayer

We pray when you fully consider the facts presented here that rule against allowing Trinity Lutheran Church to obtain a grant because it clearly is against the Missouri Constitution and if granted would entangle the Church and State. We must not, we can not and we shall not tear up our rights as a civilized society to go back to having an establishment of Church and State. This is what our Forefathers created and this is what our grandchildren deserve.
