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Frreedom of Religion

FREEDOM OF RELIGION

N.Y. CONST. art. XI, § 3:

Neither the state nor any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance . . . of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught, but the legislature may provide for the transportation of children to and from any school or institution of learning.

U.S. CONST. amend I:

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

SUPREME COURT

MADISON COUNTY

St. James Church v. Board of Education of the Cazenovia School District[1]
(decided December 23, 1994)

Plaintiff, St. James Church, sought a declaratory judgment against the Board of Education of the Cazenovia School District because the Board's new guidelines prohibited the rental or lease of school buses to religious organizations for the purpose of transporting students to off-site religious instruction.[2] The court declared judgment in favor of St. James, holding that under

1. 621 N.Y.S.2d 486 (Sup. Ct. Madison County 1994).
2. *Id.* at 487.

Education Law section 1501-b(1)(h),[3] the Board of Education is authorized to lease the buses,[4] and the Board does not violate either the Establishment Clause of the United States Constitution[5] or section 3 of article XI of the New York State Constitution[6] provided that St. James pays a fair price for the use of the buses.[7] The court accordingly concluded that denial of the leases to a not-for-profit organization because of its status as a church is an impartial application of the Education Law in violation of the

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3. N.Y. EDUC. LAW § 1501-b (McKinney 1994). This section states in pertinent part:

> 1. The board of education of any school district is hereby authorized and empowered to rent or lease for such consideration as may be determined by such board, a motor vehicle or vehicles owned by the respective school districts during any time when such vehicle or vehicles are not needed for the transportation of such children, which are otherwise used for the transportation of the school children of such district to:
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> (h) any not-for-profit organization, community based organization, or educational or employment and training agency which provides education or employment and training services for youths and adults in a rural county, as defined by seventy- three-c of the transportation law.

Id.

4. *St. James*, 621 N.Y.S.2d at 489.

5. U.S. CONST. amend. I. The First Amendment provides in pertinent part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." *Id.*

6. N.Y. CONST. art. XI, § 3. This section provides in pertinent part:

> Neither the state nor any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance . . . of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught, but the legislature may provide for the transportation of children to and from any school or institution of learning.

Id. This section of the New York Constitution is often referred to as the "Blaine Amendment."

7. *St. James*, 621 N.Y.S.2d at 489.

Equal Protection Clause of both Federal[8] and State[9] Constitutions.[10]

For over twenty years, the Cazenovia School District transported elementary school children both to and from plaintiff, St. James Church, for a religious instruction program.[11] Plaintiff operates as a not-for-profit organization, and in accordance with title eight of the New York State Compilation of Codes, Rules, and Regulations, section 109.2(b) [hereinafter NYCRR],[12] which provides for religious education of public school children on its property, as well as non-religious topics such as drug use, AIDS, marriage, sexuality, and dating.[13] Since 1992, a leasing arrangement was negotiated wherein plaintiff paid a fair rate to the school district for use of its buses.[14] New guidelines, issued in August 1993 by the Board of Education, revised the policy on the leases, stating it would no longer participate in any arrangement concerning the transportation of students to off-site religious instruction.[15]

The Cazenovia School District considered itself bound by the Board of Education's policy.[16] Requests made by the school district to the State Education Department for a ruling on whether the continued leasing arrangement would violate the new guidelines was refused on the ground that it would be improper to issue an advisory opinion on the matter without clarification from

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8. U.S. CONST. amend. XIV. The Fourteenth Amendment provides in pertinent part: "No state shall . . . deny to any person within its jurisdiction equal protection of the laws." *Id.*

9. N.Y. CONST. art. I, § 11. This section provides in pertinent part: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof." *Id.*

10. *St. James*, 621 N.Y.S.2d at 490.

11. *Id.* at 487.

12. N.Y. COMP. CODES R. & REGS. tit. 8, § 109.2(b) (1994). This provision states in pertinent part: "The courses in religious observance and education must be maintained and operated by or under the control of duly constituted religious bodies." *Id.*

13. *St. James*, 621 N.Y.S.2d at 487.

14. *Id.*

15. *Id.* at 489-90.

16. *Id.* at 487.

the court.[17] Therefore, the school district claimed it lacked authority under the new guidelines to offer the equipment for rent or lease, even at a fair rate, to plaintiff in view of its religious purposes.[18]

Plaintiff asserted that the plain language of section 1501-b(1)(h) of the New York Education Law allows them to rent or lease buses, and that a refusal to do so violates the Equal Protection Clause because the Education Law is neutral with respect to religious and nonreligious organizations.[19] The district's objection was whether construction of the statute includes religious training as part of the "educational services," and if so, whether it violated the New York State Constitution, as well as the United States Constitution.[20]

The district supported their position with a ruling by the State Education Department prior to the amendment of Education Law §1501-b(1)(h) that prohibited school districts from transporting students to and from religious instruction.[21] In *In re Fitch*,[22] the State Education Department based the prohibition on the New York State constitutional provision against using public money to aid a religious school.[23] Therefore, the district asserted that since the New York State Constitution was not amended because of the change to the Education Law, the decision was still valid.[24]

However, in the instant case, in interpreting the Education Law, the court found the leases to be within the plain language of the statute.[25] The term "education" could not be construed in a manner sufficiently narrow to exclude educational services of

17. *Id.* at 488.
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*
22. 2 Educ. Dep't Rep. 394 (1963). After a request to transport two of the appellant's children to religious instruction was denied by the local school district, the State Education Department affirmed the school district's denial in accordance with the New York State Constitution's prohibition of using public money to aid a religious school. *Id.* at 395.
23. *Id.*
24. *St. James*, 621 N.Y.S.2d at 488.
25. *Id.* at 488-89.

religious institutions.[26] In its analysis, the court cited *Branford House v. Michetti*,[27] which noted that generally, the plain language of a statute may not be changed by the judiciary.[28]

The court held that New York State's constitutional prohibition of using public funds to advance religion was not violated since plaintiff was paying a fair price for the leases.[29] In fact, the state was receiving income by allowing its use for this purpose.[30] The mere rental of buses does not, by itself, advance or otherwise aid religion.[31]

Using federal law in its analysis, the court cited to *School District of Abington Township v. Schempp*,[32] which stated that the government cannot use its power to serve any solely religious purpose[33] and held this to be a financial transaction which did not advance a religious purpose.[34] Again, the court noted that the school district would generate revenue, the opposite of using public funds to support a church.[35]

In addition, the *St. James* court held that the Establishment Clause prohibition of policies by the government that aid or inhibit religion[36] was not violated by the rental or leasing of buses to plaintiff.[37] The court stated that, since the Establishment Clause does not prohibit all interactions between the church and state, a determination must be made to decide when the

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26. *Id.* at 489.

27. 81 N.Y.2d 681, 623 N.E.2d 11, 603 N.Y.S.2d 290 (1993).

28. *Id.* at 686, 623 N.E.2d at 13, 603 N.Y.S.2d at 292. *See* People *ex rel.* French v. Lyke, 159 N.Y. 149, 53 N.E. 802 (1899) (stating a court can apply a definition to a statute that is different from the plain language if there is a clerical error or unintentional omission by the legislature and the legislative intent contradicts the plain language).

29. *St. James*, 621 N.Y.S.2d at 489.

30. *Id.*

31. *Id.*

32. 374 U.S. 203, 234 (1963).

33. *Id.* at 234.

34. *St. James*, 621 N.Y.S.2d at 489.

35. *Id.*

36. *See* Walz v. Tax Comm'n of N.Y., 397 U.S. 664 (1970) (holding that tax exemptions granted to churches does not sponsor religion).

37. *St. James*, 621 N.Y.S.2d at 489.

interaction rises to a constitutional violation.[38] The three prong test created in *Lemon v. Kurtzman*,[39] which has been used by the Supreme Court to decide whether an Establishment Clause violation has occurred, was employed by the *St. James* court.[40] The "*Lemon* Test" requires: "1) governmental action to have a secular purpose; 2) its primary effect must neither advance nor impede religion; and 3) it may not require excessive entanglement with religion."[41] Although the court stated that the facts of the case were consistent with satisfying the "somewhat disfavored" *Lemon* test,[42] they primarily focused on the standard set forth in *Widmar v. Vincent*.[43]

In *Vincent*, a state university policy excluded certain registered student groups from using facilities because inclusion in their group was determined by religion.[44] This policy was held to be an impermissible content-based regulation on free speech, as well as unnecessary to comply with the Establishment Clause because of the myriad of student groups using the facilities.[45] The *Vincent* Court stated that "a religious organization's enjoyment of merely 'incidental' benefits does not violate the prohibition against the 'primary advancement' of religion."[46] In the present case, the benefit to religion was insignificant; therefore, no "realistic danger that the community would think that the District was endorsing religion or any particular creed" existed.[47] In addition, when an attempt to buttress compliance with Establishment

38. *Id.*

39. 403 U.S. 602 (1971).

40. *St. James*, 621 N.Y.S.2d at 489.

41. *Id.* Although still good law, the *Lemon* test has come under heavy criticism for its varied results. *Cf.* Lamb's Chapel v. Center Moriches Union Free Sch. Dist., 113 S. Ct. 2141 (1993). In Justice Scalia's concurrence, there was a scathing attack on the *Lemon* test and its inconsistent use by the Court wherein he cited to prior cases that, at the time of this decision, totaled six members of the Court disfavoring its use. *Id.* at 2150 (Scalia, J., concurring).

42. *St. James*, 621 N.Y.S.2d at 489.

43. 102 S. Ct. 269 (1981).

44. *Id.* at 271.

45. *Id.* at 276-78.

46. *Id.* at 276.

47. *St. James*, 621 N.Y.S.2d at 489-90.

Clause goes to unnecessary lengths, an Equal Protection Clause violation may result from the overzealous action, as in the present case.[48]

The court also discussed *Lamb's Chapel v. Center Moriches Union Free School District*,[49] which involved the denial of a church to have after hours access to a school to present its view on family values.[50] Because the school had allowed non-religious groups the use of the facilities, the denial was based on content and thus violated the Free Speech Clause of the First Amendment.[51] The court in the present case stated that in both the present case and *Lamb's Chapel*, denial of use was decided on the basis of viewpoint, but because the present case does not involve the use of onsite facilities for the groups to convey their message, the court instead used the Equal Protection Clause because of dissimilar treatment to similarly situated not-for-profit organizations, rather than the Free Speech Clause of the First Amendment of the United States Constitution.[52]

Therefore, once the issue of the Education Law was held to be constitutional within the Establishment Clause of the First Amendment of the United States Constitution[53] and section 3 of article XI of the New York State Constitution,[54] the court used the federal and state constitutional requirement of equal protection to require the district to lease the buses to the plaintiff.[55] The court concluded by stating that equal protection demands that "[t]he District is under a constitutional obligation to apply the statute as neutrally written to religious and non-religious entities alike."[56]

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48. *Id.*
49. 113 S. Ct. 2141 (1993).
50. *Id.* at 2142.
51. *Id.*
52. *St. James*, 621 N.Y.S.2d at 490.
53. *See supra* note 5.
54. *See supra* note 6.
55. *St. James*, 621 N.Y.S.2d at 490. *See supra* notes 8 and 9.
56. *St. James*, 621 N.Y.S.2d at 490.