

Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

“So long as the state engages in the widespread business of molding the belief structure of children, the often recited metaphor of a "wall of separation" between church and state is unavoidably illusory.” – Judge McKay, *Lanner v. Wimmer*

Unique beginnings often produce unexpected outcomes, and such is the case of *Lanner v. Wimmer*, a Tenth Circuit decision holding that the LDS seminary system in Utah public schools did not violate the First Amendment. The beginning features a religious minority, fleeing state persecution and later decrying the government’s meddling in religion. The end includes a court decision inadvertently expanding the involvement of the same religion, but now as a majority, in public schools. The result may be surprising, but really, it was written in the salt over 150 years ago.

### **The LDS Church and the Settling of Utah**

To understand the unspoken, underlying context behind *Lanner v. Wimmer*, it is important to recount the inseparable histories of both the Church of Jesus Christ of Latter Day Saints<sup>1</sup> (“the LDS” or “LDS Church” or “the Church”) and the State of Utah.<sup>2</sup> Without understanding how the LDS Church is intertwined in Utah history and culture, we cannot fully appreciate what was at stake in *Lanner*.<sup>3</sup>

#### The Beginnings of the Church

In 1830, a young man named Joseph Smith wrote the Book of Mormon, though “wrote” is actually a disputed verb. Smith claimed that three years prior, the angel Moroni visited him and disclosed the location of golden plates that contained ancient writings, which the prophet Mormon previously compiled. Smith said he transcribed the plates’ contents using two rocks and the help of God. Smith and a few initial followers formed what came to be known as the LDS Church.<sup>4</sup>

After establishing a following and accumulating Church members, Smith and company relocated from his upstate New York home to a small town in Ohio. The stay in

---

<sup>1</sup> Note that the LDS are commonly referred to as “Mormons,” but they prefer the term LDS and therefore I will use that term throughout the paper.

<sup>2</sup> That these histories are indivisible is evidenced by the fact that the historical account I give (of both the LDS Church and state of Utah) is similar to that taught in sixth grade social studies classes throughout Utah public schools. This is unsurprising, since teaching the history of Utah would be impossible without also teaching a partial history of the LDS Church.

<sup>3</sup> Note that this historical summary will not include information on the school system, as schools receive their own discussion in the next section.

<sup>4</sup> Allan Kent Powell, *Utah History Encyclopedia*, “The Church of Jesus Christ of Latter Day Saints” (Univ. of Utah Press 1994), available at <http://www.media.utah.edu/UHE/c/CHURCHJESUSLATTER.html>. To avoid redundant citations within this section, I will only cite when I have referenced a new historical source.

Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

Ohio didn't last long, after financial troubles forced the LDS to flee to Missouri. They found Missouri to be equally unwelcoming. After several scuffles between the LDS and the state militia, the Missouri governor issued an executive order declaring that the LDS were to leave the state or face extermination. As a result, Church members fled to Illinois, where they purchased land and established a town called Nauvoo.

Smith envisioned Nauvoo as a city where all citizens would work together towards building the Kingdom of God. Therefore, there was little distinction between religious leadership and local government leadership. Joseph Smith led the LDS not only as a religious prophet, but also as Nauvoo's mayor, newspaper editor, and lieutenant general. The model was temporarily successful, as the inhabitants simultaneously built city infrastructure along with a beautiful LDS temple, and the town operated with around 12,000 residents.

But Nauvoo did not thrive long before the LDS once again found themselves in hostile territory. Neighboring Illinoisans had little tolerance for the LDS' unique religious beliefs and practices, particularly polygamy, and they were threatened by the LDS' increasing economic and political power. After a civil war seemed imminent, the governor ordered the arrest of Joseph Smith and his brother and had them brought to a local jail. Smith was murdered by an angry mob while awaiting trial at the jailhouse.

In the wake of Smith's murder, Brigham Young took charge of the LDS congregation. Due to increasing mob violence and the seemingly unavoidable state persecution that plagued them in Illinois, Young immediately made plans to lead the congregation west, to establish a new settlement – in the model of Nauvoo - where the LDS could be free to build a holy city.

### Settling the Salt Lake Valley

In 1847, Young and 147 fellow pioneers set out west, without a chosen destination.<sup>5</sup> This initial group would leave a clear trail and establish settlements so that the remainder of the congregation in Nauvoo could later follow. The band of 148 generally stuck to the path beaten by the many adventurers who had recently immigrated to Oregon and California. Along the trail, Young met several pioneers who offered him advice on where the LDS ought to make their final settlement. Eventually, Young chose the Salt Lake Valley and utilized the trail through Emigration Canyon blazed just one year earlier by the ill-fated Donner-Reed party. After surviving this treacherous ascent through the Wasatch Mountains, Young and company were pleased to arrive in the Salt Lake Valley largely unscathed.<sup>6</sup>

---

<sup>5</sup> Thomas G. Alexander, *Utah, The Right Place: The Official Centennial History* (Gibbs Smith 1995).

<sup>6</sup> This is not to say it was an easy journey. The pioneers survived serious bouts of fever and digestive diseases along the trail, but none from the original party died on the trail.

Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

Although the area had previously seen its fair share of Spanish explorers and a few passing through on their way west, the Salt Lake Valley was desolated upon the LDS pioneers' arrival in 1847. This emptiness, coupled with the protection of mountain ranges to the north and east and deathly deserts to the south and west, provided ideal conditions for establishing a new religious mecca free from the persecution of non-believers. Though Utahns would soon battle Native Americans due to expansion into their territory, initially the Salt Lake Valley provided an undisputed safe haven for the LDS settlers. While the Native Americans occasionally visited the valley in warm months to enjoy its mineral springs and fish, the major tribes were settled in the areas immediately north, south, and west of the valley. The desolation was ideal. Indeed, as legend has it, upon reaching a mountain peak where he could take in the beauty and solace of the valley, Young reportedly declared, "This is the right place. Drive on."<sup>7</sup>

For about a generation, the LDS enjoyed a model religious society in the quiet valley much like they had hoped for.<sup>8</sup> Just four days after arrival, Brigham Young selected a ten-acre plot to house the future Salt Lake City LDS Temple. Church leaders then designed a grid system for the city, with similar ten-acre lots forming city blocks, and streets that were numbered based on their distance north, south, east, and west of the temple plot.<sup>9</sup> Early settlement life was highly cooperative, but with private industry based on agriculture and local crafts. Church leaders called for LDS Church members in other areas of the nation and abroad to join them in their newfound holy land, and many did.<sup>10</sup> By 1850, around 11,000 people inhabited Salt Lake City. By 1860, over 40,000 people resided in the Utah territory, and almost all were LDS.

This initial homogeneity allowed the LDS to create the religious society they had begun in Nauvoo, without interference or persecution from outsiders. Initially, Church leaders served as city officials and bishops of each ward (the term for a local Church chapter, usually comprised of around 100 families) served as arbiters and judges.<sup>11</sup> Eventually, when a territorial government was established, the LDS Church had a recognized (and winning) political party on the ballot. Brigham Young was appointed as

---

<sup>7</sup> "This Is The Place Heritage Park" is today a popular family spot in Salt Lake City, and features a monument to the pioneers that is sixty feet high and eighty-six feet long.

<sup>8</sup> Allan Kent Powell, *Utah History Encyclopedia*, "Salt Lake City" (Univ. of Utah Press 1994), available at <http://www.media.utah.edu/UHE/s/SALTLAKECITY.html>

<sup>9</sup> Much to the confusion of tourists, to this day the majority of streets in Salt Lake and other large cities have no street names, but rather, a coordinate number east/west and north/south based on the distance from the town's LDS temple.

<sup>10</sup> While their base had largely been in the mid-West, the LDS began sending missionaries abroad to recruit new members early in Church history. The LDS Church initially encouraged members living overseas to physically relocate and join the congregation in Utah. By 1870, 35% of Utahns were foreign born, comprised largely of LDS members from the British Isles and Scandinavia.

<sup>11</sup> The first City Council of Salt Lake City was comprised of the Twelve Apostles of the LDS Church.

Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

the first governor of the territory. Along with the governor, a territorial legislature was established, initially entirely comprised of LDS Church members. In this way, the Church largely controlled every aspect of early public life.

Additionally, the Church led efforts to settle new areas outside Salt Lake City, “calling” families and members to leave their homes and colonize wilderness outside the town.<sup>12</sup> Through this colonization model, the LDS Church extended the Salt Lake City model to the majority of the settled areas of the territory.<sup>13</sup>

### Changes and Challenges

This homogeneity was temporary. Utah’s population began to diversify, albeit slowly, after completion of the transcontinental railroad in 1869.<sup>14</sup> Exploration of unsettled Utah land, coupled with demand thanks to the new railroads, sparked expansion of iron, coal, copper, and silver mining in the territory. The mining industry attracted Irish and Welsh non-LDS workers, but this wave of immigration did not take off until the 1890s.<sup>15</sup> The railroad also brought imports and the ability to export these fruits of the Utah mining operations.

While Brigham Young encouraged the expansion of railroads throughout Utah in order to promote economic growth and facilitate easier migration for the LDS, he also foresaw that the railroads would lead to an increased non-LDS presence in the territory. In preparation for the shifting demographics, Young sought to protect the LDS from exposure to non-LDS and to make the LDS community strong and self-sufficient.<sup>16</sup> In 1866, Young announced a ban of non-LDS businesses, urging Church members to rely strictly on fellow LDS for goods and services.<sup>17</sup>

---

<sup>12</sup> Much like modern day missionaries (often recognized by their black suits and name tags), these families were called by church leadership (and by extension, God) to sacrifice and carry out a duty. The sacrifice should not be underestimated, since families settling areas outside Salt Lake City faced harsh weather conditions and bloody battles with Native American tribes. Callings are not generally optional.

<sup>14</sup> Allan Kent Powell, *Utah History Encyclopedia*, “Railroads in Utah” (Univ. of Utah Press 1994), available at <http://www.media.utah.edu/UHE/r/RAILROAD.html>.

<sup>15</sup> Allan Kent Powell, *Utah History Encyclopedia*, “Immigration to Utah” (Univ. of Utah Press 1994), available at <http://www.media.utah.edu/UHE/i/IMMIGRATION.html>

<sup>16</sup> Allan Kent Powell, *Utah History Encyclopedia*, “Brigham Young” (Univ. of Utah Press 1994), available at <http://www.media.utah.edu/UHE/y/YOUNG%2CBRIGHAM.html>

<sup>17</sup> Fanny Brooks, a well established businesswoman, met with Young to protest the ban and appears to be the only exception to the policy. See Yvette D. Ison, *Businesswoman Fanny Brooks Helped Establish the Jewish Community in Utah* (1995), [http://historytogo.utah.gov/utah\\_chapters/pioneers\\_and\\_cowboys/fannybrookshelpedestablishthejewishcommunity.html](http://historytogo.utah.gov/utah_chapters/pioneers_and_cowboys/fannybrookshelpedestablishthejewishcommunity.html)

Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

To facilitate this process, in 1868 the LDS Church opened the Zion's Cooperative Mercantile Institution, where the LDS could come to purchase a wide variety of goods at a reasonable price.<sup>18</sup> In some towns in Utah, the LDS cooperative model was extended (with Young's encouragement) to create actual communes, in which there was no private ownership and life was highly regulated by Church authorities.<sup>19</sup>

In Salt Lake City, the local printing press was highly divided between a Church owned and operated paper, *The Deseret News*, and other smaller Non-LDS papers including *The Salt Lake Tribune*.<sup>20</sup> The LDS and non-LDS alike frequently aired openly hostile views towards one another via the local news.

This is all to say that Young was less than enthusiastic about the increasing presence of non-LDS, took steps to insulate the LDS community, and the relationship between the LDS and non-LDS was often contentious in the early days of the territory.

### **The Push for Statehood**

While it may seem counterintuitive based on the desire for insulation and a separatist community, the LDS Church aimed early on to achieve statehood for Utah.<sup>21</sup> Young recognized that statehood offered greater autonomy for the community, in that as a state, citizens could elect its own representatives, but as a territory, leaders were appointed from the outside. The Church hastily put together its first attempt at statehood in 1849, petitioning for the expansive area between the Colorado Rockies and the Sierra Nevada Mountains.<sup>22</sup> This first bid was rejected, but territorial status was granted and Brigham Young was appointed the territory's first governor.

---

<sup>18</sup> ZCMI claimed to be America's first department store, and functioned as such until it was sold to Macy's in 1999. Allan Kent Powell, *Utah History Encyclopedia*, "ZCMI" (Univ. of Utah Press 1994), available at <http://www.media.utah.edu/UHE/z/ZCMI.html>.

<sup>19</sup> This system was known as the United Order and Young explained that it was based on early instruction from Joseph Smith that was never fully practiced. Young lamented in his final year alive that the LDS did not universally adopt the United Order. Under increasing pressure to assimilate to gain statehood, Young's successor to the Presidency quietly phased out the system. Allan Kent Powell, *Utah History Encyclopedia*, "United Order" (Univ. of Utah Press 1994), available at <http://www.media.utah.edu/UHE/u/UNITEDORDER.html>.

<sup>20</sup> This situation is unchanged today, except that the Tribune now outsells the Deseret News. Allan Kent Powell, *Utah History Encyclopedia*, "Journalism in Utah" (Univ. of Utah Press 1994), available at <http://www.media.utah.edu/UHE/j/JOURNALISM.html>.

<sup>21</sup> The territory, and proposed state, was originally called "Deseret," a term used in the Book of Mormon to mean "honeybee." Today, the beehive is the official state symbol of Utah, a nod to its brief past as Deseret, as well as to the hard-working and industrious nature of Utahns. Allan Kent Powell, *Utah History Encyclopedia*, "Deseret" (Univ. of Utah Press 1994), available at <http://www.media.utah.edu/UHE/d/DESERET.html>

<sup>22</sup> Fun fact: there was a great deal of confusion among historians over the initial bid for statehood. It appeared that the Church was separately but simultaneously applying for territorial status and statehood. After some sleuthing, a historian concluded that the Church originally applied for territorial recognition,

Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

Between 1850 and 1887, five additional attempts for statehood failed. Federal legislators expressed two key concerns with the Utah territory as justification for rejecting statehood: the LDS practice of polygamy and the LDS relationship with politics.<sup>23</sup>

### The Polygamy Issue

Polygamy was a practice of Church members, especially leaders, from its inception until 1890, though it was not openly preached as a tenet of the Church until 1852. Joseph Smith claimed to receive a revelation indicating that he and his followers should take multiple wives, and Smith did so in the mid 1830s. While Church leaders had multiple wives without exception, not all general Church members did and participation varied greatly depending on city and wealth.<sup>24</sup>

Negative response to the practice was widespread. The Republican Party referred to polygamy and slavery as the "twin relics of barbarism" which had to be eliminated in order to fully civilize the Union. With this principle in mind, Congress refused statehood and openly declared it would continue to do so until the LDS Church banned the practice. In 1862, Congress passed the Morrill Act, which made polygamy illegal in the territories and restricted the LDS Church's ownership of property in Utah. However, the law wasn't widely enforced until the 1870's due to the Civil War. In 1879, the Supreme Court upheld the Act as constitutional. A series of later amendments and provisions disenfranchised convicted polygamists and banned them from public office and juries, forced wives to testify against their husband, lowered the required showing for a conviction, and created a mechanism for seizing the property of the Church.

Despite these early measures, the LDS continued to practice polygamy and the Church refused to ban the practice, claiming that the restrictions were an unconstitutional impediment on their right to free exercise of their religion. When federal prosecutors began going after polygamists in the 1870s, the Church was affected; many members went into hiding to avoid prosecution or testifying, rather than abandon their wives, including Young's successor, President Taylor.<sup>25</sup>

---

but that Brigham Young changed his mind shortly after submitting the paperwork. Without enough time to have the requisite constitutional convention and vote, Young and Church leaders drafted a constitution based on Iowa's, and forged convention, election, and legislative minutes and records. *See id.*

<sup>23</sup> Allan Kent Powell, *Utah History Encyclopedia*, "Statehood for Utah" (Univ. of Utah Press 1994), available at <http://www.media.utah.edu/UHE/s/STATEHOOD.html>.

<sup>24</sup> Allan Kent Powell, *Utah History Encyclopedia*, "Polygamy" (Univ. of Utah Press 1994), available at <http://www.media.utah.edu/UHE/p/POLYGAMY.html>.

<sup>25</sup> Taylor died in hiding and his successor, Wilford Woodruff, was in hiding when he got the news of Taylor's death.

Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

Wilford Woodruff took over the Church presidency after Taylor's death in 1889. Woodruff had supported polygamy despite persecution, but changed his tune under intense political pressure. The threat of federal legislation that would have disenfranchised all LDS Church members prompted Woodruff to promise a change in Church policy. In 1890, Woodruff issued his Manifesto, warning all LDS Church members to "refrain from contracting any marriages forbidden by the law of the land." Woodruff claimed that he was divinely inspired to issue the statement, and that God had shown him the fate of the Church if polygamy were to continue. The image was likely unpleasant, as Woodruff was well aware that federal prosecutors were on the verge of seizing LDS temples under the Morrill Act if polygamy continued.

Despite the change in policy, ambiguity and uncertainty remained regarding plural marriage. The Manifesto banned new plural marriages within the United States, but members did not believe it affected then-existing plural marriages. All Church leaders continued to cohabit with multiple wives. Additionally, many suspected new polygamous marriage ceremonies continued in Canada and Mexico. Despite these doubts, the Manifesto was sufficient in the minds of Congressmen to resolve the polygamy issue for statehood purposes.

### The Political Issue

Apart from polygamy, federal politicians expressed concern that the LDS Church was overly involved in politics, that its members did not respect the separation of church and state, and that LDS Church members blindly voted as a block based on the guidance of Church leadership.<sup>26</sup> The LDS were known for "following counsel" in nearly every realm of religious, social, and political life – meaning they sought the advice of Church leadership and heeded that advice closely. With the Church still operating a political party, Congressmen were concerned that the state of Utah would be a theocracy.

To combat this problem, the Church quietly dismantled its political party in 1891, and urged its members to divide themselves among the Democratic and Republican parties. This happened with some success, as the LDS initially joined both parties with a slight advantage for Republicans.<sup>27</sup> With that information in tow and with the Manifesto banning polygamy in hand, Republicans in Congress pushed for Utah statehood approval. Statehood was approved in 1894 and went into effect in 1896.

---

<sup>26</sup> Allan Kent Powell, *Utah History Encyclopedia*, "Statehood for Utah" (Univ. of Utah Press 1994), available at <http://www.media.utah.edu/UHE/s/STATEHOOD.html>.

<sup>27</sup> Today, the LDS have the highest percentage of self-identified Republicans of any major religious group. See Gallup, *Mormons Most Conservative Major Religious Group in U.S.* (2010), <http://www.gallup.com/poll/125021/mormons-conservative-major-religious-group.aspx>.

Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

### **Utah Schools**

The Utah public school system has its own unique story that helps set the backdrop for the *Lanner* litigation. In the period when LDS pioneers first settled the valley, through 1869 with the completion of the transcontinental railroad, the LDS Church operated informal schools in local ward buildings. The local bishop appointed trusted Church members to teach using LDS scripture as curriculum, and the schools were financially supported by local taxes and Church member contributions. Looking back to the brief history just recounted, this should be unsurprising, since the Salt Lake Valley was almost exclusively inhabited and operated by the LDS. Nonetheless, it's telling that the roots of the public school system of the state developed in the foundation of the Church.<sup>28</sup>

The period from 1869 through 1890 saw the beginnings of a transition to a public school system, with the formation of twenty-one school districts based on the twenty-one Salt Lake City LDS wards. The schools, however, continued to operate as quasi-public LDS schools, almost entirely taught by the LDS and using LDS scripture in curriculum.

In the meantime, as non-LDS began to populate the valley in greater numbers,<sup>29</sup> non-LDS religious groups established numerous private schools, finding the LDS doctrine taught in public schools unacceptable. Congregational, Methodist, Presbyterian, Episcopalian, and Catholic schools were all operated in the period between 1869 and 1890.

But in 1890, in conjunction with the Church's efforts to de-politicize and assimilate into American culture to achieve statehood, the territorial legislature passed the Free Public Schools Act. This Act established a public school system in conformity with the federal requirements for compulsory free public education. The twenty-one districts remained, but the school names were changed to great American authors, rather than the ward number. A school board election was held, and seven non-LDS and three LDS were elected.

The secularization of the public school system was alarming to many LDS, fearing that non-LDS control of schools would lead to teachings in conflict with the LDS value system. As a result, at least one ward successfully built a private LDS school, but Church leadership discouraged other wards from doing the same. This was largely due to financial difficulties the Church was facing in the 1880s and 1890s due to expansion and government takings of the Church's property. But the Church also encouraged members to use public schools because of the battle for statehood, since assimilation into secular

---

<sup>28</sup> Allan Kent Powell, *Utah History Encyclopedia*, "Education in Utah" (Univ. of Utah Press 1994), available at <http://www.media.utah.edu/UHE/e/EDUCATION.html>.

<sup>29</sup> By 1890, roughly half of Salt Lake City residents were non-LDS. Outside of the city, Utah remained almost entirely LDS. Allan Kent Powell, *Utah History Encyclopedia*, "Salt Lake City" (Univ. of Utah Press 1994), available at <http://www.media.utah.edu/UHE/s/SALTLAKECITY.html>.



Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

public life was a key criterion of statehood for federal legislators. Without public or private LDS schools, the Church established religious education programs to fill the gap. These classes occurred outside of school, and before or after school hours.

But in 1912, the Church found a better way to integrate religious teachings with public schools. In that year the Church, in conjunction with the school board, established the released time seminary program. This program allowed LDS students in public junior high and high schools to take a daily class, *during the regular school day*, taught by Church officials, in a seminary building directly adjacent to the school.<sup>30</sup> The students would choose to take the seminary class in lieu of some other elective course like art or music.<sup>31</sup> Four seminary courses were available: the Book of Mormon, LDS Church History, which taught the fundamentals of the LDS faith, New Testament, and Old Testament. The Book of Mormon and Church History courses were not for credit. But students did attain elective credit towards graduation for the two Bible studies classes, which the Church claimed were taught in a mainly “non-denominational” manner.

The seminary program in Utah expanded rapidly from its modest beginnings in 1912. And aside from one school board official’s vocal disapproval in 1930, the LDS seminary program carried on in most districts in Utah without question until the *Lanner* litigation in 1981.<sup>32</sup>

The LDS Church was not the only religious group to pursue a released time program. A number of different religious groups created released time programs, including Jewish and Protestant faiths. By 1942, roughly 1.5 million students in forty-eight states participated in some form of released time.<sup>33</sup> These programs varied from the LDS-style, adjacent building format to groups who studied religious doctrine while gathered at private homes.

Indeed, across the country, released time programs had faced few challenges, with just a handful of cases helping to define the boundaries of propriety. The first challenge came in 1948, when the Supreme Court ruled that a released time religious instruction program was unconstitutional in the state of Illinois.<sup>34</sup> The program was run in public high schools in Champagne, where students had the option of taking Catholic, Jewish, or

---

<sup>30</sup> By adjacent, I mean that the seminary building was often just a few feet from the regular school building, often not even requiring students to cross the street.

<sup>31</sup> It should be noted that today, a student can obtain released time to study any religion. That student would have to make arrangements with his church to arrange study and transportation. Students who do not take a released time period simply fill the period with another elective, like ceramics or painting.

<sup>32</sup> *Status of Church Seminaries Seek Court Decision*, Deseret News, June 28, 1930.

<sup>33</sup> Released Time Bible Education, *History* (2011), [http://www.releasedtime.org/sitert/besthtml/best\\_history.htm](http://www.releasedtime.org/sitert/besthtml/best_history.htm).

<sup>34</sup> *McCullum v. Board of Education*, 333 U.S. 203 (1948).

Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

Protestant religious education classes, during the regular school day.<sup>35</sup> Church officials came to school during the religious instruction period and taught the courses inside the public school building in regular classrooms.<sup>36</sup> Students who did not wish to take any of the religious courses had to leave their classroom and study a secular subject elsewhere on campus.<sup>37</sup>

The Court found the system unconstitutional, making clear its displeasure with the use of public school buildings for religious instruction. But the Court also took issue generally with the ability of the churches to siphon off students from the public schools, warning that the system “affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the State's compulsory public school machinery.”<sup>38</sup>

LDS Seminary classes were not held inside public school buildings, though they were held in buildings directly adjacent to the school, often by no more than a few feet, with architecture identical to the school. Still, these buildings were owned and operated by the Church, leaving little doubt that the LDS program complied with the first holding of *McCullum*. The second holding, however, left room for interpretation.

Any doubt of the constitutionality of released time programs generally was eased four years later in *Zorach v. Clauson*. The Court upheld a released time program in New York, in which students were permitted to leave school grounds during school hours to attend one of a variety of different Christian religious instruction courses off campus.<sup>39</sup> The various churches paid all costs of the program and kept their own attendance records.<sup>40</sup> Because of these fact, the Court distinguished the case from *McCullum* and found that the program did not establish any religion, but was simply a state accommodation of religion.<sup>41</sup>

The Establishment Clause got more in depth treatment a few decades later, when Chief Justice Burger established a three-part test for determining if a state law established religion.<sup>42</sup> In *Lemon v. Kurtzman*, the Court held unconstitutional a law that reimbursed

---

<sup>35</sup> *Id.* at 207-208.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Zorach v. Clauson*, 343 U.S. 306, 308-309 (1952).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

religious schools and teachers for portions of their budget spent on secular instruction.<sup>43</sup> In coming to this holding, the Court found that when evaluating whether a law violates the Establishment Clause, courts must address three questions: First, whether the state law has a clearly secular legislative purpose; Second, whether the law has a primary effect that neither advances nor inhibits religion; and, Third, whether the law avoids excessive government entanglement with religion.<sup>44</sup> The court found that a state law must pass all three parts of this test, and the Rhode Island statute at issue did not.<sup>45</sup>

It was in light of the *Lemon* test, established after the *Zorach* case, that the plaintiffs in *Lanner* brought a challenge to the Utah LDS Seminary system. The plaintiffs would question the purpose, effect, and possible entanglement of the program, arguing that the system failed all three prongs of the test.

### **Setting the Modern Scene**

Logan, Utah is a town that sits along the Logan River and the northernmost portion of the jutting Wasatch Mountains, roughly eighty miles north of Salt Lake City. Three LDS pioneer families, called by Brigham Young to establish a settlement on the river, colonized the town in 1859. Within a year, the town had expanded to 100 families and the residents built a ward and schoolhouse from logs. The town grew at a modest rate, but was helped when Utah State Agricultural College was founded in Logan in 1888. The College would eventually become Utah State University, which today is the third largest school of higher education in the state and the top employer for the town of Logan.

By 1980, Logan was home to just over 26,000 people. The city was by far the largest in Cache County, which apart from Logan and its suburbs was largely rural.<sup>46</sup> The county was overwhelmingly LDS majority, with at least eighty percent of residents identifying as LDS.<sup>47</sup> This LDS majority was reflected in public school LDS seminary attendance. Out of the 870 students at Logan High, roughly eighty-five percent were enrolled in the seminary program.

---

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* The statute did not involve released time.

<sup>46</sup> 1980 U.S. Census

<sup>47</sup> This information is extremely hard to verify. We know that as of the year 2000, over 80% of Cache County residents were LDS, thanks to a survey by the Glenmary Research Center. I think it is fair to assume the percentage of LDS in the county was the same or higher in the 1980s, but census data does not track this and the LDS Church (who tracks the info) has not been willing to share this information. *See also* PBS Newshour, *Cache County, UT*, <http://www.pbs.org/newshour/interactive/patchworknation/ut/cache-county/>

Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

### Lanners

The Lanners were fish out of water in the homogenous Logan pool - namely, they were Jewish. The family moved to Logan from Minneapolis, Minnesota in 1967 so that Ronald Lanner could take a position at Utah State University as professor of forest biology.<sup>48</sup> Mr. Lanner became active in the community quickly, founding a Logan branch of the ACLU of Utah. The Lanners' two children were enrolled in public schools, apparently without issue through middle school. But starting in 1976, Mr. Lanner would engage in a heated battle with the Logan School District.

Mr. Lanner's daughter attended Logan High School and one day shared a story with her father about the LDS seminary class, which her friend was enrolled in. Mr. Lanner became very concerned about the nature of the seminary class, and asked his daughter and her friend to bring him materials about the class. They fulfilled his request, and after reviewing the materials he became convinced that the seminary class taught sectarian curriculum and violated the separation of church and state. Maybe most importantly, Lanner was concerned that seminary served to "out" non-LDS students, leaving them to be treated as "second class members of the student body."<sup>49</sup> He would later testify that his children were the victims of this treatment.<sup>50</sup>

Mr. Lanner contacted Kathryn Collard at the ACLU of Utah main office, letting her know that he would be willing to serve as a plaintiff in a lawsuit challenging the LDS Seminary program. Shortly thereafter, the ACLU sent a letter to the Logan school board, demanding that the district stop awarding credit for seminary classes, and end entangling aspects of the seminary program.<sup>51</sup> The Logan school board forwarded the letter to the Utah State School Board Association for guidance, and the State Board's attorney responded to the district, assuring it that the seminary program was in full compliance with state and federal law. Mr. Lanner, meanwhile, had repeatedly requested a meeting with district officials. Instead of receiving one, he received a copy of the State Board's legal opinion in the mail.

---

<sup>48</sup> Ronald Lanner, *Ronald Lanner's Tree World: Biography*, <http://www.ronaldlanner.com/bio.htm>.

<sup>49</sup> *ACLU May File Seminary Suit*, *Deseret News*, December 16, 1976; *ACLU Threatens to Sue*, *Herald Journal*, Dec. 16, 1976, 1.

<sup>50</sup> It is difficult to find published stories of non-LDS and their feelings about living in a majority LDS area, but I can share mine. I moved to Utah as a non-LDS child at the age of eleven and was enrolled in public middle school. My classmates were quick to ask me which ward I would be in, only to learn I was not LDS. As a result, many students were not allowed to play with me or talk to me. In addition, students frequently discussed which seminary section they would enroll in the following year, a discussion that I did not take part in. I was shocked that LDS religious classes could be taught as part of the normal school day, so I wrote a letter to Senator Hatch to complain about what I perceived as a violation of the separation of church and state. Senator Hatch responded by informing me that the seminary program was legal, and he pointed me to *Lanner v. Wimmer*. My family enrolled me in Catholic school the next year, so as to avoid further ostracism. This choice created a huge financial burden on my low-income family, but it was one that I am extremely grateful for.

<sup>51</sup> It is unclear if this letter was drafted by Lanner himself, or staff at the ACLU.

Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

Lanner later stated that he would have been willing to compromise with the District, even to the point of maintaining the seminary system but eliminating course credit. But with no response from the school board, Lanner and the ACLU prepared for litigation. The ACLU declared its intention to sue both in a press conference and in a one-page advertisement in the Logan newspaper. The advertisement called for other interested parents to join as plaintiffs. Only one person took up the offer, John Sherting, another professor at Utah State University.

The ACLU announced the official filing of its complaint in U.S. District Court on March 21, 1976. In the complaint, the ACLU sang a different tune than Mr. Lanner had, demanding far more than the end of credit for the seminary courses. Instead, the suit demanded injunctive relief, ending the released time program in its entirety. An ACLU attorney indicated that they would not be satisfied simply with the end of credit for the courses, but instead, demanded that the school district end “any integration, cooperation, or other contact with the [seminary] program.” Raising the stakes one step higher, the ACLU also indicated that this would be a test case, and if successful, they would file similar suits in districts with religious released time programs nationwide.

For Mr. Lanner also, the stakes were high. By filing the suit, he had put his family in the limelight, challenging the school system and indirectly, the LDS Church itself.

### **Defendants**

A successful outcome for Lanner and the ACLU would spell chaos and turmoil for the Logan school district, the statewide education system, and the LDS Church’s religious education program throughout the country. For Logan, many residents viewed the lawsuit as an attack by outsiders on their way of life. The suit would become a hot button issue among parents in the local papers.

For the state, the elimination of released time would create a huge demand overnight for secular courses to fill the time slots once held by seminary. Ninety-eight high schools and forty-six junior high schools in Utah operated LDS seminary programs at the time the suit was filed.<sup>52</sup> Because LDS Church staff, rather than public school staff, taught seminary periods, eliminating the seminary course offerings during the day would mean hiring new public school instructors to teach new course offerings to fill the gaps. The State Board of Education estimated that it would cost an additional \$6,000,000 annually to hire instructors to teach new classes to replace seminary.<sup>53</sup>

For the Church, the end of the released time program would mean huge modifications to the curriculum and format of seminary in order to move to a before-

---

<sup>52</sup> Personal correspondence from Frank Day, Assistant Commissioner of LDS Church Education System to Ross Patterson Poore, Jr., August 27, 1982.

<sup>53</sup> Ross Patterson Poore, *Church-School Entanglement in Utah: Lanner v. Wimmer* (1983).

Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

school or after-school model, with a high likelihood of lower participation. With the ACLU's unabashed goal to file similar suits in other states, a loss in *Lanner* would likely require the LDS Church to overhaul its religious education program nationwide.

Of these three groups facing serious consequences from the outcome of the litigation, only the local school district and state school board were official litigants in the suit. The ACLU named as defendants all members of the Logan Board of Education, the superintendent of Logan schools, and the principals of both Logan High School and Logan Junior High School. The Utah State Board of Education was a defendant in intervention.<sup>54</sup>

The defendants in the lawsuit urged the LDS Church to intervene in the suit, or at least help with some of the legal costs, since it was their seminary program that would ultimately win or lose at trial.<sup>55</sup> On advice from its counsel, the Church chose neither of these options, and rather took no part in the litigation whatsoever. As a consolation prize, an attorney for the Church suggested that the District hire Arthur H. Nielsen, one of the most respected attorneys in Utah.

The suggestion was unnecessary, since the District's attorney David Sorenson, feeling unable to handle such an important case, had already decided to ask Mr. Nielsen to take on the challenge.<sup>56</sup> Sorenson was Nielsen's student in law school at the University of Utah, knew of his reputation and skill, and felt confident in his ability to win.<sup>57</sup> The Niensens took on the case with vigor. Clark Nielsen, son of Arthur, worked on the case as well, and noted that it had personal importance to the defense attorneys involved, all of whom were LDS. Nielsen felt the lawsuit was more than an attack on the release time program, but rather, was the attack of an aggressive anti-LDS attorney (Kathryn Collard), making a name for herself by going after the Church.<sup>58</sup> Collard disagreed at the time, claiming that the lawsuit was not about the LDS Church specifically, but simply about enforcing the separation of church and state generally.<sup>59</sup>

The Logan community took on the role of unofficial defendant as well, frequently discussing the case in the local newspaper opinion sections. Not surprisingly, the majority

---

<sup>54</sup> *Lanner v. Williams*, 463 F. Supp. 867 (D.C. Utah 1978).

<sup>55</sup> Interview by Casey Griffith with LDS Church attorney Oscar W. McConkie, September 26, 2008. See Casey Griffiths, *A Case Study in Culture Clash and Accommodation: The 1978 Lanner v. Wimmer Lawsuit*.

<sup>56</sup> Email interview with Clark Nielsen, Mar. 21, 2011. Clark is Arthur's son and was co-counsel on the case.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *ACLU May File Seminary Suit*, Deseret News, December 16, 1976; *ACLU Threatens to Sue*, Herald Journal, Dec. 16, 1976.

Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

of residents were in favor of maintaining the seminary system, and vehemently and vocally defended it. A fair amount of students and parents would be involved in the litigation as witnesses, testifying about the curriculum, nature of the program, and effect it had in school. The feeling of the majority of Logan residents was made clear to Ronald Lanner as well. He noted that during the trial, “A lot of people shunned us. People who had been friendly before tended to not notice us on the street or in stores. My daughter was elbowed a couple of times. I received a lot of letters telling us to move out.”<sup>60</sup>

### **District Court**

But there was one more important actor in the story: the judge. Before trial could begin, an interesting twist took place. Judge Anderson of the U.S. District Court of Utah recused himself due to the fact that he was a practicing member of the LDS Church.<sup>61</sup> In his place, Judge Brimmer of the U.S. District Court from Wyoming was brought in to Utah to hear the case. As a non-LDS, he was certainly a better choice for the ACLU. But the Nielsen’s were pleased with the choice as well. Having tried federal cases in Wyoming, Arthur Nielsen was familiar with Brimmer’s style and views. He was from a small town with conservative views, leaving the Niensens to feel confident he would be “receptive to the idea of religious instruction in a released time scenario” and would not “impressed by the plaintiffs’ anti-LDS grandstanding.”<sup>62</sup>

Trial began roughly a year after the suit was filed. Because Judge Brimmer had to fly between Wyoming and Utah, it would not conclude until the end of the summer.

The ACLU strategy was to challenge the authority of *Zorach* based on the three-part Establishment Clause test laid out several years after in *Lemon*. The ACLU would argue that the *Zorach* holding, finding off-campus release time programs constitutional, had to be called into question in light of the more recent jurisprudence on separation of church and state. The plaintiffs would also attempt to distinguish Utah LDS Seminary from the release time program in *Zorach*, by demonstrating entangling aspects of the program and questioning its purpose and effect, and therefore showing that the program violated the three *Lemon* factors.

To attest to the entangling effect of the LDS Seminary program, the ACLU called the parent plaintiffs to talk about the ostracism their children faced in school, and how it affected their families. The Lanner and Sherting children, too, testified about being ignored or bullied at school because of their religious beliefs and choice to not attend seminary.<sup>63</sup> Additionally, the ACLU called a photographer to talk about the

---

<sup>60</sup> Casey Griffith interview with Ronald Lanner, 2008.

<sup>62</sup> Clark Nielsen Interview, Mar. 21, 2011.

<sup>63</sup> It is unclear why more non-LDS families did not come forward. This could be because they did not share in the feelings of ostracism, or they commiserated but wished to avoid further ostracism through their involvement.

Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

architecturally identical seminary and school buildings. They also pointed to the fact that the announcement and bell system were wired in the seminary building, further blurring the lines between the schoolhouse and the church.<sup>64</sup>

While the ACLU shot for the moon and tried to establish a violation of the Establishment Clause, they also worked to strengthen Plan B. Although the ACLU had made clear that stripping the program of credits alone would not be a satisfying victory, they nonetheless argued that at a minimum, the LDS seminary classes should not be awarded credit. The issue of whether denominational courses could receive elective credit had less clear precedent generally. Working under the assumption that religious, but non-denominational, coursework could receive credit, but denominational coursework could not, the ACLU also strategized to show that the Bible studies classes reflected the specific teachings and views of the LDS Church.

The plaintiffs called religious experts to discuss the curriculum of the two credited Bible classes, and point out aspects that were specifically LDS. Religious leaders from Methodist, Jewish, Presbyterian, and United Church of Christ congregations examined teaching materials and criticized areas that taught doctrine unique to the LDS Church. One expert also took issue with the teaching that the LDS Church was the one true church on earth. These aspects of the curriculum, plaintiffs argued, were sectarian in nature and therefore should not be eligible for elective credit.

Meanwhile, defendants sought to protect released time in its entirety. They would argue that any entangling aspects of the seminary program were insignificant. To show the seminary system did not create entangling effects, the defendants called two non-LDS students from Logan High who were popular and well liked among their peers. One was a cheerleader and homecoming queen, certainly challenging the story presented by the plaintiffs that non-LDS were social outcasts.

Additionally, defendants argued that the seminary coursework was non-denominational, and taught morals and values in conformity with the Utah state constitution.<sup>65</sup> To do this, they called their own religion and philosophy experts who examined the curriculum materials, and testified that the coursework taught general morals and values, rather than LDS specific doctrine. In addition to questioning their own experts, Mr. Nielsen called into question the credibility of one of the plaintiffs top religion experts, Max Rogers.

---

<sup>64</sup> These details, along with the fact that seminary is taken as a class during the regular school day, work to make seminary virtually indistinguishable from other public school courses like art or music. A student could transition from first period Chemistry to second period Seminary quite seamlessly.

<sup>65</sup> Interview with Clark Nielsen, Mar. 21, 2011.



Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

Rogers was a current professor at the University of Utah<sup>66</sup>, but had previously taught at Brigham Young University (BYU), and LDS Seminaries in Utah and Idaho. Rogers identified as LDS, but Nielsen, a member of the same ward, pushed him on this issue. Rogers eventually admitted that he left the BYU faculty in scandalous fashion.<sup>67</sup> The BYU president at the time requested the tithing status of faculty members from their respective bishops. The inquiry revealed that Rogers had not been paying tithing, leading to his resignation.<sup>68</sup> The questioning on this issue led to a tense moment at trial:

Nielsen: Has [the experience at BYU] disturbed you to the point where since that time you have never paid any tithing to the Church?

Cook: I will object to that, Your Honor, as being first of all completely irrelevant and second of all a matter between he and his Church. It's a privilege.

Judge Brimmer: He may answer.

Rogers: You realize, don't you, that is my private business between the bishop and me?

Nielsen: Yes, I do realize that but I want to know to what extent, Max, that this has caused you over the years to have deep-seated feelings, either one that you were coming in here to court to testify as you have as apart –

Rogers: Now wait a minute now.

Nielsen: Just answer the question.

Rogers: Okay. It is not a deep-seating feeling. You have isolated a point –

Nielsen: Since that time have you paid tithing to the Church?

Cook: Same objection, Your Honor.

Judge Brimmer: Overruled, same ruling.

Rogers: No, I haven't paid tithing to the Church since that time.<sup>69</sup>

Nielsen successfully questioned the credibility of the plaintiffs' star witness, showing he may have had a personal bias in testifying against the LDS seminary program.

After a heated trial, Judge Brimmer's decision was less than obvious.

---

<sup>66</sup> For context, it should be noted that the University of Utah is a secular school, and has a more liberal faculty and student body. Brigham Young University is LDS affiliated.

<sup>67</sup> Casey Griffiths citing Robert Bryson, *Scholar Questions LDS Bible Study Credit*, Salt Lake Tribune, May 6, 1978.

<sup>68</sup> Tithing is a requirement of Church members to pay 10% of their income towards the Church. It is also an indication of commitment and active participation in the Church.

<sup>69</sup> Lewis Max Rogers testimony, Trial Transcript, Vol. IV, 559-560.

### **District Court Ruling**

Judge Brimmer issued his opinion some three months after the close of trial. First, he quickly dismissed the plaintiffs’ arguments that *Zorach* must be called into question in light of *Lemon*, pointing out that *Lemon* itself cited to *Zorach* as precedent that not all government interactions with religion were overly entangling.<sup>70</sup>

Brimmer went on to apply the three-part *Lemon* test. He quickly held that the LDS Seminary program met the requirement of a secular purpose: accommodating religious practice.

Brimmer next held that the released time program as a whole did not have overly entangling effects. He noted that the state need not be hostile towards religion, but simply may not advance a particular faith. As for the peer pressure and ostracism the plaintiffs complained of, Brimmer noted that this was not necessarily a product of seminary: “The existence of certain social pressures and the partial segregation of non-members of a particular church are not unexpected in a geographical area inhabited by a population predominantly of one religious persuasion, such as Logan City.”<sup>71</sup>

However, Brimmer ruled that the program failed the second prong of the *Lemon* test, insofar as students receiving credit for Bible studies courses. Brimmer held that despite any attempts at teaching the Bible in a “non-denomination” fashion, the classes were religious in nature and therefore granting public school credit for these courses was unconstitutional. He pointed to many facts indicating the religious nature of the courses: each class started with a prayer, and ended with students giving testimony as to the truth of the Bible; the classes included information about the redemption of Christianity through Joseph Smith; the courses instructed students to abstain from caffeine and alcohol for life, and about male students going on missions; the courses taught about the virtue of marriage to an eternal partner in the Temple; the course taught about baptism of the dead, and other practices unique to the LDS faith; in general, the courses taught not Biblical history, but the teachings of the Bible as truth.

As a result of all this, Brimmer held that students enrolled in the seminary courses could not be awarded credit.

### **10th Circuit Appeal**

After the District Court ruling, both sides immediately appealed to the 10th Circuit Court of Appeals. The ACLU wanted more than just credit stripping and it persisted in its goal of dismantling the release time program as a whole. The Logan School District sought reversal on the credit issue, and worked to preserve the release time program exactly as it had operated.

---

<sup>70</sup> *Lanner I* at 877.

<sup>71</sup> *Id.* at 878-879.

Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

The case was assigned to Justices Barrett, Doyle, and McKay, with McKay writing the unanimous opinion. Interestingly, Judge Monroe McKay attended BYU, taught on the BYU Law faculty, and was a practicing member of the LDS Church.<sup>72</sup> In addition, Judge McKay is the grandson of the late LDS Church President David McKay. Why he did not feel the need to recuse himself, as Judge Anderson in the District Court had because of his Church membership, is a mystery and adds to the entangling elements of this story.

The 10th Circuit essentially upheld the district court opinion, almost in its entirety. The court confirmed the validity of released time programs broadly under the *Lemon* test, but held that the granting of elective credit for religious instruction violated the secular effect prong of the test.<sup>73</sup> The Court held that offering elective credit for “non-denominational” courses was impermissible, because such a test “requires the public school officials to entangle themselves excessively in church-sponsored institutions by examining and monitoring the content of courses offered there to insure that they are not “mainly denominational.”<sup>74</sup> The seminary program could continue largely unchanged, but students could not gain elective credit towards graduation.

## **Results**

Perhaps unsurprisingly, though neither side in the litigation reached their initially stated goal, both sides claimed victory. For the Lanners and the ACLU, they were vindicated in the sense that the court confirmed that religion was being given credit in the Logan public schools, and this practice came to an end.<sup>75</sup> For the Logan School District, the State Board of Education, and the LDS Church, the decision meant that the seminary program, like the original 148 LDS pioneers traversing desert and mountains, arrived at the end of litigation intact and largely unscathed. The loss of credit was irksome, but not enough to seek appeal. Seminary attendance remained high after the decision, despite the loss of academic credit.<sup>76</sup>

---

<sup>72</sup> Church News, *New chief justice is former member of BYU law faculty* (1991), <http://www.ldschurchnews.com/articles/21156/New-chief-justice-is-former-member-of-BYU-law-faculty.html>

<sup>73</sup> *Lanner v. Wimmer*, 662 F.2d 1349, 1357 (10th Cir. 1981).

<sup>74</sup> *Lanner* at 1361. In addition the court upheld the district court’s holding that the seminaries had to manage their own attendance records, rather than the schools.

<sup>75</sup> The ACLU has not challenged the LDS religious instruction programs since *Lanner*.

<sup>76</sup> Utah students can take four years of un-credited seminary and still take all the classes required under state law to graduate. Nor do the four elective classes have a negative impact on students applying to college, as LDS students have an extremely high college attendance rate compared to other religious groups. See Stan L. Albrecht & Tim B. Heaton, *Chapter 9: Secularization, Higher Education, and Religiosity*, available at <http://rsc.byu.edu/archived/latter-day-saint-social-life-social-research-lds-church-and-its-members/9-secularization-hi>.

Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

The unforeseen consequence was that, without pressure to teach Bible courses in a non-denominational fashion, the seminary program was free to teach courses in an unabashedly LDS manner. As defendant attorney Clark Nielsen shared, “So far as I am aware, released time has grown stronger and the LDS program more sophisticated in the past 20 years, and is just as widely implemented and just as influential in the lives of LDS families.”<sup>77</sup>

Mr. Nielsen is correct. Today LDS released time programs exist in all school districts in Utah, as well as districts with high concentrations of LDS Church members in Arizona, Colorado, Idaho, Nevada, New Mexico, Oregon, Washington, and Wyoming.<sup>78</sup>

The importance and prominence of seminary in the Utah public school system today is clear from recent events. When a Democratic candidate for governor revealed that his education plan would increase the number of math and science credits required for high school graduation, his Republican opponent accused him of trying to destroy the LDS Seminary program (since students would have fewer school periods available to use for non-credited seminary classes).<sup>79</sup>

With an LDS Seminary system in public schools alive and well, it seems unclear that the ACLU and Lanners can claim any type of victory. Mr. Lanner seems to feel optimistic about the ordeal, sharing, “We were the winners in the lawsuit, even though we didn’t get everything we asked for.” However, shortly after the litigation his family relocated to California. Since the trial, his children have refused to ever set foot in Utah again.<sup>80</sup>

### **Rethinking Released Time**

In light of post-*Lemon* cases hashing out Establishment Clause debates, it’s appropriate to question the validity of the LDS released time program under the most recent framework laid out by the Court. In *Zelman v. Simmons-Harris*, the Court upheld a voucher program that subsidized the cost of students attending a private school. This was due in large part to the failure of Cleveland public schools and legislators’ desire to offer low-income students alternatives to their failing schools. In evaluating whether the program met the “effect” prong of the *Lemon* test, Justice O’Connor laid out a test to determine if the policy endorses a particular religion. In her analysis of whether the voucher program served to “endorse” religion or religious education, Justice O’Connor

---

<sup>77</sup> Clark Nielsen Interview, Mar. 21, 2011.

<sup>78</sup> See *Church Educational System*, <http://church-educational-system.co.tv/>.

<sup>79</sup> Robert Gurkhe, *Guv Claims Corroon Could Eliminate LDS Seminary*, Salt Lake Tribune, Aug. 27, 2010, available at <http://www.sltrib.com/sltrib/home/50172502-76/corroon-herbert-education-governor.html.csp>

<sup>80</sup> Casey Griffiths interview with Ronald Lanner, June 26, 2008.

Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

noted that the Court evaluates endorsement challenges based on what a reasonably informed observer would think. She further explained that "the reasonable observer in the endorsement inquiry must be deemed aware of the history and context underlying a challenged program."<sup>81</sup>

Recently, a district court in Indiana evaluated a religious education released time program in exactly this way.<sup>82</sup> A group of churches in Indiana operated a released time program in which the group would park a trailer in the elementary school parking lot and conduct religious instruction courses inside the trailer.<sup>83</sup> The court held that the program violated *McCullum* because the religious instruction was held on campus.<sup>84</sup> But in addition, the program was impermissible under the *Lemon* test, because defendants could not show that the program had an effect that neither advanced nor inhibited religion.<sup>85</sup>

The court considered whether a reasonable observer, aware of the context and history underlying the challenged program, would feel the released time program endorsed the religious group. The court concluded a reasonable observer would perceive endorsement. The court noted that the place of religious instruction was "in plain sight right next to the main entrance of the school, and [was] visible to children on one of the school's playgrounds."<sup>86</sup> Further, the court noted that because the trailer lacked religious markings, it blended in with the school building, increasing the perception of endorsement. Because of these facts, the released time program failed the endorsement test and was impermissible under the *Lemon* test.<sup>87</sup>

A second challenge to the released time program in light of this new precedent is not unfathomable, especially considering the rapidly increasing population of non-LDS citizens in Utah.<sup>88</sup> *Lanner v. Wimmer* did not evaluate the LDS seminary program under the endorsement test, but under a new challenge the LDS seminary program would have to overcome an endorsement analysis. O'Connor's focus on the context and history of a challenged program would have particular weight if the seminary program were to be challenged again. As has been explained, the history and context of the LDS Church's

---

<sup>81</sup> *Zelman v. Simmons-Harris*, 536 U.S. 639, 655 (2002).

<sup>82</sup> *H.S. v. Huntington County Community School Corp.*, 616 F.Supp.2d 863 (N.D. Ind. 2009).

<sup>83</sup> *Id.* at 866.

<sup>84</sup> *Id.* at 877.

<sup>85</sup> *Id.* at 879.

<sup>86</sup> *Id.* at 878.

<sup>87</sup> *But see Smith v. Smith*, 523 F.2d 121 (4th Cir. 1975) (holding that a released time program allowing students to leave campus did not violate the *Lemon* test).

<sup>88</sup> *LDS Population of Utah Declining*, Deseret News, Nov. 29, 2009, available at <http://www.deseretnews.com/article/705266634/LDS-population-of-Utah-declining.html>

Audrey Barron

Entangled Roots, Entangled Fruits – *Lanner v. Wimmer* and the Separation of the LDS Church and Utah Public Schools

relationship with the state in general is one of deeply entangled roots. The school system as well began as an LDS Church operated program.

In addition, the LDS program has some striking similarities with the released time program invalidated in *H.S.* The fact that seminary buildings are most often directly adjacent to schools, with identical architecture, and connected by a bell and announcement system should not be forgotten when considering a reasonable observers' view of the program and its entanglement. If a reasonable observer had this context in mind, he would likely have an easier time perceiving state endorsement of the LDS Church through the seminary program.

### **Conclusion**

The state of Utah as we know it would likely not exist if not for the colonizing efforts of the LDS pioneers. The Church's religious holy land eventually evolved into a prospering state open to people of all faiths. It is interesting that by ending religious schools and moving to a secular school system with a released time program, the Church once saw itself as acting to separate church and state. Today, the LDS seminary program serves as a symbol of pervasive entanglement between the LDS Church and Utah state government.

Whether anyone will ever bring a second case challenging the LDS seminary program is as unsettled as the deserted Wasatch Front in 1846.