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United States Supreme Court Legal Update

Carson v. Makin

The United States Supreme Court's decision *Carson v. Makin* is another victory for educational freedom and free exercise of religion.

At issue was Maine's program that pays tuition for students to attend private high schools if no public high school is provided in the school district where they reside. But the program limited choices to only "non-sectarian" schools.

When parents seeking to enroll students in Christian schools challenged the law, Maine officials distinguished recent decisions in *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020) and *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), arguing that without the restriction, program funds would support a *religious use*.

The Court held Maine's statute unconstitutional, ruling 6-3 that once a state adopts a policy enabling parents to choose private education, it can't selectively prohibit them from choosing schools solely because they are religious in nature. A program limiting choices based on religion must withstand strict scrutiny – the policy must advance a compelling government interest using narrowly tailored means to achieve that interest. Maine's policy failed the test.

First Freedoms Foundation General Counsel Mike Dean stated, "Imagine a program that provides low-income families with tuition benefits to private schools so long as the schools are 'non-female' or 'non-African-American.' Almost 30 years ago, Wisconsin ended religious discrimination in the Milwaukee Parental Choice Plan by removing the word 'non-sectarian' from the statute. *Carson* is a testament to Rep. Polly Williams, Gov. Tommy Thompson, and other Wisconsin leaders who pioneered educational and religious freedom. First Freedoms Foundation applauds the Court's decision and will continue working to restore historic First Amendment rights."

Carson v. Makin. https://www.supremecourt.gov/opinions/21pdf/20-1088_dbfi.pdf