

Supreme Court Rules in Favor of Religious Freedom and School Choice

The U.S. Supreme Court ruled 6-3 in *Carson v. Makin*, a case that challenges a Maine law that discriminates against parents based on religion by providing some families with tuition support for the school of their choice but denying that same support to other families. The High Court held that the Maine program violates the Free Exercise Clause.

The High Court considered whether a 1982 Maine law violates the First Amendment by excluding religious schools from the state's "tuitioning system," which pays for students to attend private schools.

Three families from three different small towns in Maine sued the state over a program that bans families from an otherwise generally available student-aid program if they choose to send their children to schools that teach religion. They qualified for Maine's Town Tuitioning Program in all other respects, but they are excluded from participating only because they chose religious schools for their children.

As a result, these families who want to send their children to Christian schools in Bangor and Waterville were denied in lower federal courts and then appealed to the Supreme Court.

Because many areas of the state are rural and sparsely populated, not all school districts run their own secondary schools. To help students in those districts attend secondary school, the state has paid for students to attend either another public school or a private school of their choice. However, since 1982, the state has only allowed tuition payments under the program to go to private schools that do not provide religious instruction.

Chief Justice John Roberts wrote the opinion with Justices Thomas, Alito, Gorsuch, Kavanaugh and Barrett joining. Justice Breyer wrote a dissent joined by Justice Kagan and in which Justice Sotomayor joined in part. Justice Sotomayor also filed a dissent.

Justice Roberts wrote, “A neutral benefit program that gives public funds to religious organizations through the independent choices of the recipients of those benefits does not violate the Constitution’s establishment clause. The principles outlined in two recent cases, *Trinity Lutheran v. Comer* and *Espinoza v. Montana Department of Revenue*, decide this case. Because the benefits hinge on whether a school is religious, the Maine program ‘effectively penalizes the free exercise’ of religion.”

The majority opinion continues: “The ‘unremarkable’ principles applied in *Trinity Lutheran* and *Espinoza* suffice to resolve this case. Maine offers its citizens a benefit: tuition assistance payments for any family whose school district does not provide a public secondary school. Just like the wide range of nonprofit organizations eligible to receive playground resurfacing are eligible to receive Maine tuition assistance payments here. And like the daycare center in *Trinity Lutheran*, BCS and Temple Academy are disqualified from this generally available benefit ‘solely because of their religious character.’ By ‘condition[ing] the availability of benefits’ in that manner, Maine’s tuition assistance program—like the program in *Trinity Lutheran*—‘effectively penalizes the free exercise’ of religion” [citations omitted].

“While the wording of the Montana and Maine provisions is different, their effect is the same: to ‘disqualify some private schools’ from funding ‘solely because they are religious.’ A law that operates in that manner, we held in *Espinoza*, must be subjected to ‘the strictest scrutiny’” [citations omitted].

“As noted, a neutral benefit program in which public funds flow to religious organizations through the independent choices of private benefit recipients does not offend the Establishment Clause. Maine’s decision to continue excluding religious schools from its tuition assistance program after *Zelman* thus promotes stricter separation of church and state than the Federal Constitution requires” [citations omitted].

The High Court also wrote, “Maine’s ‘nonsectarian’ requirement for its otherwise generally available tuition assistance payments violates the Free Exercise Clause of the First Amendment. Regardless of how the benefit and restriction are described, the program operates to identify and exclude otherwise eligible schools on the basis of their religious exercise.”

Justice Breyer dissents, in an opinion joined by Justice Kagan and in part by Justice Sotomayor. He writes that the High Court’s decision doesn’t pay enough attention to the Establishment Clause while paying too much attention to the Free Exercise Clause. Justice Breyer also writes, “The majority’s decision ‘also fails to recognize the ‘play in the joints’ between the two clauses.’”

In her dissent filled with strong language, Justice Sotomayor wrote: “What a difference five years makes. In 2017, I feared that the Court was ‘lead[ing] us ... to a place where separation of church and state is a constitutional slogan, not a constitutional commitment.’ Today, the Court leads us to a place where separation of church and state becomes a constitutional violation.”

Liberty Counsel Founder and Chairman Mat Staver said, “This is great victory for religious freedom and school choice. For 40 years, Maine’s law has unconstitutionally discriminated against parents regarding private schools based on religion. That discrimination ends today. Faith-based schools make an important contribution to their communities and are part of

the foundation of America. Parents need more educational choices for their children.” {eoa}

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