



UNITED STATES SUPREME COURT DECISION BRIEF

Texas Conservative Coalition
Research Institute

Carson v. Makin

(Decided on June 21, 2022)

FACTS AND BACKGROUND

School administrative units (SAUs) are institutions in Maine's public education system, and are similar to school districts in Texas. Following a state constitutional directive, state statute requires the Legislature to "enact the laws that are necessary to assure that all school administrative units make suitable provisions for the support and maintenance of the public schools" so that every child in the state has an opportunity for a free public education.ⁱ

More than half of the SAUs in Maine, however, lack a public secondary school. To address this issue, Maine offers a choice program under which the SAU pays the child's tuition at a school selected by the child's parents, which may be a public school or an approved private school. Religiously affiliated schools, while accredited by the state and otherwise qualified, were excluded from the program.ⁱⁱ The plaintiffs, several sets of parents suing on behalf of their children, argued that this nonsectarian requirement discriminates against religious schools, violating several provisions of the U.S. Constitution, most notably the Free Exercise (of religion) Clause of the First Amendment.

LOWER COURT RULING

Based on First Circuit precedent, the district court ruled against the plaintiffs and upheld the religious school exclusion from the program. The First Circuit affirmed the judgement of the district court.

QUESTION PRESENTED FOR THE U.S. SUPREME COURT

The issue before the court was whether a state's exclusion of qualified religious schools in an otherwise neutral program violates the Establishment Clause, the Free Exercise (of religion) clause, and/or the Equal Protection Clause of the United States Constitution.

HOLDING BY THE U.S. SUPREME COURT

The Supreme Court held that the nonsectarian requirement violates the Free Exercise clause of the Constitution. Relying heavily on two of its recent cases, *Trinity Lutheran Church of Columbia, Inc. v. Comer* (2017) and *Espinoza v. Montana Department of Revenue* (2020), the Court emphasized that “the program operates to identify and exclude otherwise eligible schools on the basis of their religious exercise.” The choice program Maine offers is a public benefit and the state may not “exclude religious persons from the enjoyment of public benefits on the basis of their anticipated religious use of the benefits.” In other words, Maine’s choice program funds parents and students. How they use those funds is up to them and to exclude accredited and otherwise qualified religious schools from their options is unconstitutional.

Importantly, the Court voiced skepticism that discrimination against religious organizations could be justified on the grounds of it being use-based rather than status-based. Status-based discrimination is the type at stake in cases such as *Trinity*, in which a Missouri program discriminated against religious organizations in dispensing grants for playground resurfacing. Such discrimination targets religious organizations simply because of their religious identity. In contrast, use-based discrimination is discrimination based on the concern that religious organizations will use public funding to further religious ends. In deciding *Carson*, the Court indicated that states cannot avoid strict scrutiny of programs that discriminate against religious organization simply by arguing that the discrimination is use-based.

MEANING FOR TEXAS

Carson is one in a growing line of Free Exercise clause cases that should hearten proponents of school choice. Like Maine, Texas is prohibited in its state constitution from providing direct state support of religious institutions.ⁱⁱⁱ *Carson* makes clear that if the Texas Legislature enacts an education choice program, then that program may allow participants in the program to select religious schools for their children without running afoul of that prohibition because an indirect benefit to a religious school does not amount to direct state support. The decision also likely extends beyond education to any program that provides general benefits to individuals who use those benefits to make their own choices.

ⁱ Me. Stat. tit. 20–A, Section 2(1).

ⁱⁱ The statute indirectly asserts that including sectarian schools in the program would be unconstitutional (“a nonsectarian school in accordance with the First Amendment of the United States Constitution.”) Me. Rev. Stat. Ann., Tit. 20–A, Section 2951(2).

ⁱⁱⁱ See Tex. Const. Art. I, Sec. 6-7.