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4/14/2024

Is The Government Allowed to Select Educational Funding Based on Sectarianism?

Carson, as Parent and Next Friend of O.C. et al. v. Makin, 596 U. S. 767. (2021 – 2022)

Since 1873 the state of Maine has offered financial assistance for tuition to parents due to its lack of public education facilities or education facility contracts in some of its school districts. In this program parents who live in such areas select a secondary school where they would like their children to go and Maine's Department of Education channels the money that would have been spent on the children's public education in their home district to this newly selected private school. There is a list of requirements that these selected institutions must meet in order for the Department of Education to send money their way. They must for example be accredited by the New England Association of Schools and Colleges (NEASC) or have been approved by the Department of Education itself. However, in 1981, the state changed its assistance program so that, though all parents in districts without public education presence could still receive tuition aid, they could only get it if their children would be attending a "nonsectarian" school. This adjustment was made under the cause of maintaining the "separation of church and state." Maine's Department of Education claimed that if they were to fund parent's who sent their children to religious schools, they would be violating the First Amendment's Establishment Clause, which states that the congress shall make no law respecting an establishment of religion.

In the year 2018 the Institute of Justice represented two Maine families in suing the commissioner of the Maine Department of Education for the exclusion of sectarian schools from the department's tuition assistance program under violation of the Free Exercise Clause and Establishment Clause in the 1st Amendment, along with the Equal Protection Clause of the Fourteenth Amendment. They argued that in the following of *Trinity Lutheran* that the Education Department of Maine denying funding, which was a benefit available generally to other private institutions, "solely because they are religious" was in consequence establishing a religion of sorts and denying equality of protection between the groups of religious and non-religious. The lawsuit was overturned in the District Court 2019 and the First Circuit soon after. In 2021 the Supreme Court took up the case.

Following the case's grant of certiorari, the supreme court case No. 20-1088 was started. The question was of the constitutionality of the state government of Maine to assist parents in funding their children's education only if the children attend nonsectarian schools. During the period between the case's commencement in 2019 and its grant of certiorari in 2021 the Supreme Court finished the case *Espinoza* and the plaintiffs filed again asking the First Circuit Court to factor in that ruling. The argument for the families was that a breach of the Free Exercise Clause contained "indirect coercion or penalties on the free exercise of religion, not just outright prohibitions." *Lyng v. Northwest Indian Cemetery Protective Assn.*, 485 U. S. 439, 450. Also, the aforementioned cases of *Trinity Lutheran* and *Espinoza* state that no such discrimination can be made in cases of financial assistance between parties "solely because of [one's] religious character." 591, 582 U. S. Additionally, according to the Supreme Court's Syllabus on the case when speaking on the similarities required between public schools and the private schools which the program assists: "the key manner in which participating private schools *are* required to resemble Main public schools, however, is that they must be secular."

The main dissent, written by Justice Breyer, took the altered perspective that there is a difference between not funding something because it is religious and not funding something because it will promote a religious agenda. The former being unacceptable while the latter not. Additionally, in her separate dissent, Justice Sotomayor states that “that Court has upended constitutional doctrine, shifting from a rule that permits States to decline to fund religious organizations to one that requires States in many circumstances to subsidize religious indoctrination with taxpayer dollars.” *Carson v. Makin*, 596 U. S. 808. The Supreme Court ruled 6 to 3 in favor of the plaintiff.