

# *Carson v. Makin*: Another Win for Education Freedom

By **Colleen Hroncich** and **Solomon Chen**

---

“If our neighbors have the freedom to choose a private school and receive tuition from our town, why are we denied this same benefit just because we desire a religious education for our daughter?” This simple question, **asked** by Maine parents Alan and Judy Gillis, is at the heart of today’s Supreme Court ruling in *Carson v. Makin*.

Fortunately for the Gillis family, and families throughout Maine, a majority of the Court agreed. In a 6–3 decision, the Court ruled that “Maine’s ‘nonsectarian’ requirement for its otherwise generally available tuition assistance payments violates the Free Exercise Clause of the First Amendment.”

*Carson v. Makin* is centered on Maine’s tuition assistance program, one of the oldest school choice programs in the nation. Created in 1873, the program funds students from a town without a public school to attend a school of their parents’ choice—whether private or public, in-state, or out-of-state. For more than a century, parents could direct these funds towards religious schools. In 1980, Maine Attorney General Richard S. Cohen released an opinion that said funding a child to attend a school with a “pervasively religious atmosphere” would be unconstitutional. In response, the legislature changed the law to prohibit families from using the tuition assistance at religious schools.

The Institute for Justice filed a federal lawsuit in 2018 on behalf of three sets of parents—Alan and Judy Gillis, David and Amy Carson, and Troy and Angela Nelson—whose children qualified for the program but were prevented from directing funds towards the schools they preferred because those schools provided religious instruction. The district court initially found for the state and the First Circuit affirmed on appeal. Last July, the Supreme Court agreed to hear the case.

In today’s ruling, as it did previously in *Espinoza v. Montana Department of Revenue*, the Court flatly rejected the respondent’s claims that allowing religious schools to receive the tuition funds violates the first amendment. Written by Chief Justice Roberts, today’s opinion states, “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.” He continues even more forcefully:

Indeed, were we to accept Maine’s argument, our decision in *Espinoza* would be rendered essentially meaningless. By Maine’s logic, Montana could have obtained the same result that we held violated the First Amendment simply by redefining its tax credit for sponsors

that we held violated the First Amendment simply by recognizing its tax credit for sponsors of generally available scholarships as limited to “tuition payments for the rough equivalent of a Montana public education”—meaning a secular education. But our holding in *Espinoza* turned on the substance of free exercise protections, not on the presence or absence of magic words.

The three dissenting justices argue Maine’s policy excludes schools based not on “religious status” (such as in the past cases of *Trinity Lutheran* and *Espinoza*) but on “religious use.” Justice Breyer, author of the dissent, writes, “Maine thus excludes schools from its tuition program not because of the schools’ religious character but because the schools will use the funds to teach and promote religious ideals.” Breyer also compares private, religious education with what he defines as “purely civic, public education.” Breyer says, “By contrast, public schools, including those in Maine, seek first and foremost to provide a primarily civic education.” Breyer also issues concern about “the increased risk of religiously based social conflict” when he warns, “Taxpayers may be upset at having to finance the propagation of religious beliefs that they do not share and with which they disagree.”

The Cato Institute’s **amicus brief** filed last fall decimated this argument:

Under the guise of providing a “religiously neutral” education, Maine discriminates against religious families whose children attend or hope to attend private religious schools. Public schools are, however, anything but religiously neutral. Maine cannot cleanly separate public education from religion; it has merely elevated the secular above the religious. Indeed, secularism in public schools has become akin to a state-established religion: the secular values that the state promotes conflict with deeply and sincerely held religious beliefs, so classroom conflicts often arise. Maine unjustly alienates religious individuals, treating them as second-class citizens in the context of school tuitioning for merely living as their faith demands.

Moreover, a quick glance at news headlines shows that public schools are far from the neutral institutions Justice Breyer imagines. From **sex education standards** to “critical race theory” to **book challenges**, a lack of educational freedom constantly forces families into **zero-sum battles**.

Today’s ruling isn’t groundbreaking—it follows logically from a series of cases dealing with the ability of religious organizations to participate in publicly funded programs. But it was important because it represented a direct challenge to the Court’s *Espinoza* ruling. As Cato’s brief put it, Maine was attempting an “end-run around the Free Exercise Clause’s requirement of religious equality in the distribution of neutral public benefits.”

School choice supporters can still celebrate today’s ruling. Opponents often frame their opposition around public support of religion. While this can be debunked by pointing to preschool vouchers and college Pell grants, the *Carson* ruling is specific to K-12 education.

After 2021 became the year of educational choice, with new or expanded programs in 19 states

After 2021 became the **year of educational choice**, with new or expanded programs in 18 states, the pace this year has slowed. But recent **polls** and **elections** have shown that parents still want options for their children. State lawmakers should use *Carson* as inspiration as they push forward with school choice legislation. By funding students instead of a school system, they can help put every child on the path to a better future.

---

#### RELATED TAGS

**Education, Center for Educational Freedom, School Choice**



This work is licensed under a **Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License**.