

Court to hear case on religious schools barred from Maine choice program

WASHINGTON (CNS) – The Supreme Court is going back to school this term.

The justices are taking up a challenge by two sets of parents in Maine against a state education department rule that lets families who live in towns without public schools receive public tuition funds to send their children to another public or private school as long as it's not a religious school.

By mid-September, religious liberty groups had weighed in with amicus briefs in support of these parents who wanted to use state funds to send their children to Christian schools in the state.

The parents took their case to federal court, arguing that the program violated their constitutional rights.

The case, *Carson v. Makin*, will decide the future of tuition reimbursement for schools with a religious affiliation and is likely to be a key decision in the future of government oversight and parental choice in education.

The state program currently remains in place because it was upheld by the U.S. Court of Appeals for the 1st Circuit, which said religious schools could be excluded because state funds would go toward religious instruction.

In a similar case last year, the Supreme Court ruled in *Espinoza v. Montana Department of Revenue* that states are not required to subsidize private education, but they can't exclude religious schools from receiving tuition funding simply because they are religious.

The U.S. Conference of Catholic Bishops praised the Espinoza decision, which they said “means that religious persons and organizations can, like everyone else, participate in government programs that are open to all.”

The Maine case looks at an issue that wasn't resolved in the Espinoza case: Does a state violate the Constitution with a program that provides students with money to attend private schools but bars them from attending schools that provide religious instruction?

On Sept. 10, the Notre Dame Law School Religious Liberty Initiative filed an amicus brief on behalf of elementary and secondary schools from three faith traditions – Catholic, Muslim and Jewish – in support of the Maine parents.

The groups represented in the brief are Partnership Schools, a group of nine Catholic schools in New York and Cleveland; Council of Islamic Schools of North America; and the National Council of Young Israel.

Nicole Garnett, a law professor at Notre Dame Law School who signed the brief, said in a statement that the “protection of school choice in the form of tuition reimbursement programs is a fundamental right for American families.”

She also called the government's blocking of tuition reimbursement for religious institutions “a direct violation of this constitutional standard.”

Becket, a religious liberty law firm, also filed an amicus brief in this case Sept. 10 that emphasized states have had a long history of excluding religious institutions from public benefits, often because of the Blaine Amendments passed during a time of anti-Catholic sentiment in the last 19th century.

It pointed out that the Supreme Court has long recognized that the Constitution prevents laws that burden religious beliefs or actions just because they are religious. The Becket brief

also noted that in the Espinoza case, the court ruled Montana couldn't single out religious schools for exclusion from its state scholarship program.

"It's not right to target religious parents, students and schools for a denial of government benefits," Diana Thomson, senior counsel at Becket, said in a statement.

"The Supreme Court has said that schools cannot be excluded for their religious status – that should have been enough" she said. "But now it should clarify that this rule includes schools that want to actually teach the faith to their students."

A date for oral arguments in this case has not been given. The court begins its new term, in person, Oct. 4.