



Written by [C. Mitchell Shaw](#) on December 10, 2021

Is SCOTUS Poised to Begin Restoring Religious Liberty in Education?

While much attention has been given to the Supreme Court hearing oral arguments that could lead to the overturning of *Roe v. Wade*, that is not the only important case before by the now largely conservative court. The Supreme Court recently heard oral arguments in *Carson v. Makin* — a case of religious liberty coming out of Maine. The implications of *Carson v. Makin* are momentous. The court's decision could unravel a generation of government hostility toward religious practice and instruction.



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As Catholic News Agency [reports](#):

Attorneys representing a Maine family at the Supreme Court are feeling confident following Wednesday's oral arguments in the case *Carson v. Makin*.

The case asks whether a state — such as Maine — breaches the free exercise clause or equal protection clause of the First Amendment by barring students in a student-aid program from using their aid to attend schools offering a “sectarian” education.

In Maine, there are areas that — because of their remoteness and other factors — do not have public schools. About 5,000 students who live in these areas in Maine qualify for a school-choice program that pays tuition for them to attend a school of their parents' choice. But there is a kicker: The tuition money cannot be used to pay for attendance at a “sectarian school.”

A “sectarian school” is defined as a school that is “associated with a particular faith or belief system and which, in addition to teaching academic subjects, promotes the faith or belief system with which it is associated and/or presents the material taught through the lens of this faith.” And while the secularism and “scientism” taught in public schools clearly fits the description of being “associated with a particular faith or belief system” where “material [is] taught through the lens of this faith,” that is allowed.

Again, from Catholic News Agency:

The Carson family, consisting of parents Amy and David and their daughter Olivia, reside in Glenburn, Maine. Because Glenburn has no public school system, families with school-age children are eligible for a school-choice program that pays tuition at either public or non-sectarian schools.

And as that article explains, the case stems from Maine disallowing the school-choice program to be used to pay tuition at a school that — in every respect except for the religious prohibition — meets the guidelines for that program:



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The Carson parents are alumni of Bangor Christian Schools, a K-12 school in the nearby city of Bangor. But because Bangor Christian Schools mandates Bible class, it is ineligible for the town tuition program, meaning the Carsons have to pay for Olivia's tuition.

The Carsons, along with two other Maine families seeking to send their children to "sectarian" schools, filed suit in 2018. The Supreme Court agreed to hear the case on July 2, 2021.

Michael Bindas, senior attorney at the Institute for Justice, told the court Dec. 8 that "Maine's sectarian exclusion discriminates based on religion."

"Like all discrimination based on religion, it should be subjected to strict scrutiny and held unconstitutional unless Maine can show that it is necessary to achieve a compelling government interest," he said.

Bindas noted that the religious schools "satisfy every secular requirement to participate in the tuition assistance program" and are only excluded from the program due to religious affiliation and religious classes.

After the oral arguments were heard Wednesday, the attorneys representing the families in the case expressed optimism. During the arguments and afterward, a majority of the justices seemed to indicate that they agree that the religious prohibition is unconstitutional.

For instance, Justice Clarence Thomas asked Maine's Chief Deputy Attorney General Christopher Taub if a parent had the option of simply not sending their children to school. When Taub referred to the state's "compulsory education laws," Thomas replied, "So you require them to go to school and you, in certain areas, you don't have schools available. So if you require them to go and you don't have schools available and you make provisions for them to comply with that compulsory law, then how can you say that going to a particular school is a subsidy?"

And Justice Samuel Alito asked if the program would cover such elite private schools as Phillips Exeter Academy, or Miss Porter's School. Taub indicated that it likely would since those schools provide the "rough equivalent of a public education."

Taub somehow managed to keep a straight face while making that claim. Alito followed up by asking if a school that does have a religious affiliation and taught such values as nondiscrimination and charity but did not teach "dogma" would be allowed by the program. Taub answered that such a school would be considered as being "very close to a public school" since public schools often have "a set of values that they want to instill," adding, "I think what the defining feature, or what would make the difference, is whether children are being taught that your religion demands that you do these things."

Again, Taub showed no sign of acknowledging the ridiculousness of what he was saying. Alito, however, seemed neither amused nor convinced, remarking, "What I described is, I think, pretty close to Unitarian Universalism, isn't it?" He went on to say, "So that religious community is okay — they can have a school that inculcates students with their beliefs because those are okay religious beliefs — but other religious beliefs, no. Is that what Maine is doing?"

When Malcolm Stewart, the deputy solicitor general of the U.S. Department of Justice, claimed, "We are not trying to tell the parents what they should do with their children. The question is not whether you can be denied the unrelated benefit based on your faith or based on your religious practice. It's whether



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the government has to subsidize the religious practice itself,” Justice Brett Kavanaugh offered this challenge:

But, at its core, Mr. Stewart, you’re suggesting that with, say, two neighbors in — in Maine, in a neighborhood, and they both — there is not a public school available, and the first neighbor says we’re going to send our child, children, to secular private school, they get the benefit. The next-door neighbor says: Well, we want to send our children to a religious private school, and they’re not going to get the benefit. And I don’t see how your suggestion that the subsidy changes the analysis. That’s just discrimination on the basis of religion right there at that — at the neighborhood level.

Kavanaugh also stated that as he sees it, the parents in the case “are seeking equal treatment, not special treatment.”

If — as seems likely — the court rules the Maine religious prohibition unconstitutional, it would be a major blow to the anti-Christian establishment. As Bindas said, it would “mean that, finally after four decades, families are empowered to choose the schools that they believe are best for their kids.”



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