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SCHOOL FUNDING - FEDERAL

Carson as next friend of O. C. v. Makin

Supreme Court of the United States - June 21, 2022 - S.Ct. - 2022 WL 2203333

Parents of secondary school students filed § 1983 action against Commissioner of Maine Department of Education, alleging the "nonsectarian" requirement of Maine's tuition assistance program for private secondary schools violated the Free Exercise Clause and the Establishment Clause of the First Amendment, as well as the Equal Protection Clause of the Fourteenth Amendment, and seeking declaratory and injunctive relief against enforcement of the requirement.

The United States District Court for the District of Maine granted the Commissioner's motion for judgment on a stipulated record. Parents appealed. The United States Court of Appeals for the First Circuit affirmed. Certiorari was granted.

The Supreme Court held that:

- Program's "nonsectarian" requirement conditioned benefits solely due to a school's religious character, and thus was subject to strictest scrutiny;
- Program's "nonsectarian" requirement violated the Free Exercise Clause of the First Amendment; and
- Program's "nonsectarian" requirement could not be justified on ground it imposed a use-based, and not a status-based, restriction on state funds.

Maine law, which required that any private secondary school receiving state funds from its otherwise generally available tuition assistance program be "nonsectarian," conditioned the availability of benefits solely due to a school's religious character, and thus, the law was subject to the strictest scrutiny, on § 1983 claim brought by parents of secondary school students, who alleged the law violated the Free Exercise Clause of the First Amendment; the program effectively penalized the free exercise of religion by disqualifying some private schools from a generally available benefit for families whose school district did not provide a public secondary school solely because the schools were religious.

Maine's requirement, that any private secondary school receiving state funds from its otherwise generally available tuition assistance program be "nonsectarian," violated the Free Exercise Clause of the First Amendment; regardless of how the benefit and restriction were described, the program was not neutral, as it operated to identify and exclude otherwise eligible schools on the basis of their religious exercise, the exclusion of religious schools from the program promoted stricter separation of church and state than the Federal Constitution required, and under the program a private school did not have to offer an education that was equivalent to that available in Maine public schools in order to be eligible for state funds.

Maine law requiring that any private secondary school receiving state funds from tuition assistance program be "nonsectarian" could not be justified, under the First Amendment's Free Exercise Clause, on the ground the law imposed a use-based restriction on state funds, and not a restriction based on religious status; any attempt to give effect to such a distinction by scrutinizing whether

and how a religious school pursued its educational mission would raise serious concerns about state entanglement with religion and denominational favoritism, and Maine conceded that it barely engaged in any such scrutiny when enforcing the “nonsectarian” requirement.

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