



ED LAW SCHOLARS FILE BRIEF IN U.S. SUPREME COURT CASE ON STATE FUNDING FOR RELIGIOUS SCHOOLS



A group of education law scholars has filed an [amicus brief](#) in a U.S. Supreme Court case, arguing that the Court should not require public funds to be spent for religious teaching. The brief was a project of [Derek Black](#), [Suzanne Eckes](#), [Preston Green](#) and [Kevin Welner](#), all of whom are NEPC Fellows who specialize in education policy and law.

The case, *Carson v. Makin*, challenges Maine’s exclusion of “sectarian” schools—those that include religious instruction—from the state’s “tuitioning” program. Maine has, for nearly 150 years, allowed towns too small to operate high schools of their own to pay for their students to attend other public or private high schools. The state has, since 1980, placed a ban on schools that would use the public funds for sectarian (religious) teaching.

Carson v. Makin was filed by families who would otherwise be eligible for tuitioning but wanted their children to attend such religious schools. Both religious schools that the families would attend engage in proselytizing and have belief-based policies that bar LGBTQ+ people from employment.

The amicus brief situates the Maine policy within its unique history and context, distinguishing it from voucher programs that are designed to create private school choice. In Maine, tuitioning is used as a way to deliver public education, with the private schools standing in the shoes of the public schools that would otherwise have to be built. As such, it would make no legal or policy sense to hold the private schools to a different set of rules around curric-

ulum, discrimination, or proselytizing. As explained in the brief:

To preclude Maine from carefully considering the mix of policy elements that must be evaluated when developing policies that will assure nondiscriminatory, nonsectarian and quality school environments for students would permit certain religious schools to demand state funding despite non-adherence to educational standards, and to operate outside of the realm of meaningful accountability. Maine would be left with but two choices: exclude private entities from its education programs altogether lest it be required to fund religious instruction, or include private entities but lose control over the type of education those private entities deliver. A state committed to nondiscriminatory, nonsectarian education would be inclined to opt for the former.

The Court is scheduled to hear oral arguments in *Carson v. Makin* on December 8th. The amicus brief from educational and constitutional law scholars is available at https://www.supremecourt.gov/DocketPDF/20/20-1088/198280/20211029170232395_Makin_Educ_Amicus%20Petition%20October%2029%202021%20EFile.pdf.

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This newsletter is made possible in part by support provided by the Great Lakes Center for Education Research and Practice: <http://www.greatlakescenter.org>

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