

Public Funds Public Schools (PFPS) Urges the US Supreme Court to Support the State of Maine's Constitutional Prohibition of Funding Religious Schools

PFPS has supported challenges to the constitutionality of vouchers in various states in the past. Now PFPS, in an *amicus curiae* brief, is asking the US Supreme Court to uphold Maine's longstanding program allowing districts with no public schools of their own to pay tuition to private schools that agree to provide secular education.

PFPS URGES U.S. SUPREME COURT NOT TO FORCE RELIGION INTO MAINE'S PUBLIC EDUCATION SYSTEM

In an *amicus curiae* brief, Public Funds Public Schools (PFPS) is urging the U.S. Supreme Court to uphold Maine's longstanding program allowing school districts with no public schools of their own to pay tuition to private schools that agree to provide secular education.

The case before the nation's high court, *Carson v. Makin*, concerns the exclusion of private religious schools from delivering public education through Maine's tuition program. PFPS's amicus brief supports Maine's decision to limit the tuition program to non-religious schools, because the program operates as an integral component of Maine's public education system.

"Under a wealth of Supreme Court precedent, Maine is well within its rights to limit the tuition program to private schools that meet the carefully designed criteria for providing a publicly funded education, including the requirement that these schools cannot provide a religious curriculum," said Jessica Levin, Education Law Center Senior Attorney and PFPS Director. "We urge the Court to follow its own prior rulings and affirm the constitutionality of Maine's program."

Maine's constitution, like those in all 50 states, affirmatively obligates the State Legislature to maintain and support a system of free public education available to all resident children. In carrying out this mandate, the Maine Legislature, for over 125 years, has permitted local school districts that do not operate their own schools for geographic or historical reasons to use their public school funding to pay tuition to approved, nonsectarian private schools. Participating private schools must comply with a host of legal requirements to ensure they provide an appropriate, nondiscriminatory education consistent with Maine's public school standards.

The *Carson* case was filed on behalf of a few parents who want to use public school funding to pay for their children to receive a religious education. The plaintiffs are represented by the Institute for Justice, an Arizona-based group of pro-voucher lawyers behind lawsuits across the country attempting to break down constitutional barriers that separate the states' funding and delivery of public education from religious curriculum and instruction.

PFPS's amicus brief argues that the U.S. Supreme Court's own precedents, including its 1973 school funding decision in *San Antonio Independent School District v. Rodriguez*, require rational basis review – the lowest level of constitutional scrutiny – of Maine's decision to limit its tuition program to secular schools. Because the U.S. Constitution neither guarantees nor addresses public education, and the provision of public education is an affirmative obligation enshrined in every state's constitution, the states are afforded great deference in their decisions regarding how to deliver public education to their resident children.

As PFPS makes clear, Maine's tuition program easily satisfies rational basis review. It fulfills Maine's core interest in providing public education to students in districts without their own public schools by paying tuition at private schools that satisfy the state's carefully designed criteria for an appropriate public education. One of the few restrictions on states' authority over their public schools is the prohibition in the Establishment Clause against curriculum tailored to specific religions. As a result, Maine can, if not must, require that private schools be nonsectarian in order to stand in for a non-existent public school in a district.

Maine's tuition program also does not unconstitutionally discriminate against religion because, unlike voucher programs that subsidize private education as an alternative to an available public school, it enables districts without public schools to utilize their public education funding on tuition at private schools that meet the state's criteria. Because the tuition program fulfills Maine's affirmative state constitutional obligation, it is readily distinguishable from the discretionary grant programs at issue in *Trinity Lutheran Church of Columbia, Inc. v. Comer* and *Espinoza v. Montana Department of Revenue*, previous Supreme Court decisions on which the Institute for Justice lawyers base their lawsuit.

PFPS was represented pro bono on its amicus brief by the law firm Wiley Rein LLP and the University of North Carolina Law School's Supreme Court Program.

Both the U.S. District Court and the First Circuit Court of Appeals previously rejected the plaintiffs' claims that Maine's policy violates the First and Fourteenth Amendments of the U.S. Constitution. The Supreme Court will hear oral argument in the case next month.

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