

Implications of *Carson v. Makin* for
Vermont's special education
programs

Three Questions

- What did the Supreme Court decide and what are the implications for Vermont's "school choice" options generally?
- How might that impact "school choice" options for special needs students from "non operating districts"?
- How might that impact placements of special needs students from "operating" and "non operating districts" in appropriate private school settings?

Maine's Education Law: Nature of Challenge

Maine's system for providing education to students from districts without public schools of their own:

- (1) Designation option: Designation by district of public or private school as the district's school.
- (2) School Choice Option: Paying tuition at public or "approved" private school that the student's parents select.

Only the second of these was challenged.

Maine's tuition reimbursement policy

Maine refused to provide tuition reimbursement for attendance at private religious schools.

Grounds for doing so.

Challenged by parents who wanted to send children to religious schools

What the Court decided

Supreme Court held that the parents' "free exercise rights" under the U.S. Constitution were violated.

Rationale

- State provided “benefits” (tuition reimbursement”) to be distributed based on a system of “private individual choice”
- The only reason challengers were denied benefits was because of religious character of the schools they wanted to send their children to.
- This constituted unconstitutional discrimination against parents because of their religious beliefs.

Important Caveat: Decision does not require states to fund religious education

- “A state needs not fund private school education, but if it chooses to do so, it cannot discriminate based on religious status, use, or practice.”
- Court encouraged states to consider a range of “public school” options to eliminate the need to fund religious education.

Implications for Vermont's current approach to tuition reimbursement

- Similar to Maine's system
- Only applies to school districts without public schools of their own.
- Distribution of "benefits" (tuition reimbursement) based on "private individual choice"
- Important difference: Article 3 of Chapter I of the Vermont Constitution: Vermont's "Religious Liberty" Provision

The “Compelled Support” Clause in Article 3 of Chapter I of the Vermont Constitution

- Prohibits the state from requiring its citizens from supporting with their tax dollars religious worship or instruction – from supporting with their tax dollars the propagation of religious views with which they may disagree.
- No such constitutional provision in the Maine case

The Challenge in Vermont

- How design an approach that complies with:
 - (1) the Supreme Court's caveat that a state need not fund private religious schools, but has to do so if it establishes a system of "school choice" which includes a private school option.
 - (2) the Vermont constitutional prohibition against using taxpayer dollars to fund religious worship or education.

Additional Complication I

Settlement Agreement reached last year in *EW v. French* (Vermont equivalent of Maine case)

Settlement Agreement

- Binding on three defendant school districts and Commissioner French as Secretary of Education
- School districts agreed not to deny tuition reimbursement to parents wanting to send children to religious schools
- Secretary French agreed to advise school districts not to deny tuition reimbursement based on requirements of Article 3.

Additional Complication II

- S.219: stalled in legislature
- Would move from a “school choice” model to a “state contract” model
- Criteria for determining which schools eligible for tuition reimbursement?

Implications for Vermont's Special Education Programs

- (1) Special education placements for students from “non operating districts” (districts without public schools of their own)
 - made by district (education officials)?
 - based on “private individual choice”?

Implications for Vermont's Special Education Programs

(2) Special education placements of students from districts with public schools of their own in specially equipped private (“independent”) schools

- made by district (education officials)?
- based on “private individual choice”?