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## Supreme Court Will Hear Potentially Landmark Maine School Choice Case

**Arlington, Virginia**—Today, the U.S. Supreme Court agreed to hear a potentially landmark case challenging a Maine law that bans families from an otherwise generally available student-aid program if they choose to send their children to schools that teach religion. The Institute for Justice (IJ), which represents the parents in [Carson v. Makin](#), will argue the case in the 2021-22 term before the justices.

In 2020, the Institute for Justice won the landmark Supreme Court victory in [Espinoza v. Montana Department of Revenue](#), in which the High Court held that states cannot bar families participating in generally available student-aid programs from selecting religiously affiliated schools for their children. The Court held that discrimination based on the religious “status,” or identity, of a school violates the Free Exercise Clause of the U.S. Constitution.

Despite that ruling, in October 2020 the 1st U.S. Circuit Court of Appeals upheld a religious exclusion in Maine’s tuition assistance program for high school students. Under that program, if a school district does not maintain its own public school or contract with a school to educate its students, it must pay for students to attend the school of their parents’ choice—whether public or private, in-state or out-of-state. Parents, however, may not select a school that Maine deems “sectarian,” which the state defines as a school that provides religious instruction.

According to the 1st Circuit’s decision, this exclusion turns not on the religious “status” of the excluded schools, but rather on the religious “use” to which a student’s aid would be put—that is, procuring an education that includes religious instruction. And the 1st Circuit upheld the exclusion even though it is parents—not government—who choose the schools their children attend under the program. In other words, the court held that although *Espinoza* prohibits Maine from excluding schools because they *are* religious, Maine can still exclude parents from choosing schools that *do* religious things.

“By singling out religion—and only religion—for exclusion from its tuition assistance program, Maine violates the U.S. Constitution,” said Senior Attorney Michael Bindas of the Institute for Justice. “The state flatly bans parents from choosing schools that offer religious instruction. That is unconstitutional. The Supreme Court now has the opportunity to hold that such religious ‘use’ discrimination in student-aid programs is just as unconstitutional as the religious ‘status’ discrimination it held unconstitutional in *Espinoza*.”

“In student-aid programs like Maine’s, parents—not the government—choose the schools their children will attend,” said IJ Managing Attorney Arif Panju. “If parents believe a school that aligns with their faith is best for their child, the state should not be allowed to deny them that choice.”

“The Court’s decision to hear this appeal is a tremendously important development not only for Maine families, but for all families who simply want access to the schools that will best serve their children’s needs,” added Bindas. “If a family believes that a school that provides religious instruction is the best option for their child, they should be permitted to choose it, just as they should be permitted to choose a school with a strong STEM curriculum, language immersion classes or a robust arts program.”

Lea Patterson, an attorney with IJ’s co-counsel First Liberty Institute, said, “For 40 years, Maine has rejected parental choice in education and allowed religious discrimination to persist. We are confident the Supreme Court will put an end to that discrimination, so that schoolchildren are no longer deprived of desperately needed educational opportunity and the right to freely exercise their religion.”

IJ President and General Counsel Scott Bullock added, “Now more than ever, it is time to expand educational opportunity for all families. Parents should have access to a wide array of educational options—public and private, religious and non-religious—so that they can access the school that best meets their child’s unique, individual needs. The Supreme Court now has the chance to help make that a reality.”

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### **About First Liberty Institute**

First Liberty Institute is the largest legal organization in the nation dedicated exclusively to defending religious freedom for all Americans.

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