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*“I believe there are more instances of the abridgement of freedom of the people by gradual and silent encroachments by those in power than by violent and sudden usurpations.”*

**James Madison**

**U.S. Department of Justice Files Statement of Interest in School Choice Case**

The U.S. Department of Justice has [filed a 21-page statement of interest](#) in a school choice case being considered by the U.S. Supreme Court. The case, *Carson v. Makin*, involves three families in Maine who filed suit against the state’s Town Tuitioning Program, charging that it is discriminatory because religious schools are excluded as an educational option for parents. Established in 1873 and one of the oldest school choice programs in the nation, the [program](#) allows school districts with no public high schools either to arrange for students to attend school in another district or provide the funds for families to use towards the school of their choice. However, the state prohibits the use of funds for a religious school, claiming the state’s Blaine amendments prohibits public funds from supporting religious education. Blaine amendments are included in approximately 39 states constitutions. They originated in the late 1800s in an effort to block public funds from supporting Catholic education because, at the time, most public schools were vaguely Protestant in ideology. Today school choice opponents often point to Blaine amendments as justification for prohibiting school choice programs and public funding for faith-based schools. Attorneys for the Institute for Justice, the legal firm representing the Maine families, are hopeful the Supreme Court will issue a ruling on this case that could prove the Blaine amendments to be unconstitutional. Such a ruling could open the door for school choice in many states where these amendments are blocking the expansion of school choice programs. The statement of interest filed by the U.S. Department of Justice [notes](#) that “by putting students to a ‘choice’ between participating in the ‘otherwise available’ tuition program and remaining enrolled at a religious institution, the state has ‘impose[d] a penalty on the free exercise of religion.’” The Justice Department [points](#) to the Supreme Court’s ruling in *Trinity Lutheran v. Comer* in which the court ruled that “denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion.” Assistant Attorney General Eric Dreiband [stated](#), “Under the Constitution, governments may not exclude students from education programs solely because of their religious status or their religious choices. The Department of Justice is committed to ensuring that all children and their families may participate in benefit programs without discrimination based on their faith.” The statement of interest comes as a result of [guidance](#) that was set forth by the Department of Justice regarding protecting religious liberty through federal law. The guidance was issued in October of 2017, following the direction of President Trump’s [Executive Order Promoting Free Speech and Religious Liberty](#).

**West Virginia Legislature Holds Special Session for Education**

After a contentious battle over education earlier this year, West Virginia Governor Jim Justice allowed for a special session for the legislature to continue work on education policy. During the regular session, the state Senate passed an education bill that died in the House of Delegates. National attention was drawn to the state after teachers statewide [went on strike](#) in opposition to a school choice provision that would have given teachers

a five percent pay raise in exchange for establishing West Virginia’s first seven charter schools and an education savings account (ESA) program. In the special session, the state Senate is pushing a new bill, the Student Success Act (SB 1039), with a few notable changes. If passed, the [new law](#) would give schools greater flexibility in using block grants, create an unlimited number of charter schools, increase funding for many schools, give teachers a pay raise, and prohibit teacher strikes. Senators also passed SB 1040 in special session, which would create an ESA program that provides funds to parents to use for a child’s tuition, fees, transportation, and other educational expenses. According [to Senate Education Chairwoman Patricia Rucker](#), “The focus of this bill is to help students who are right now in the public school system but are not having their needs served.” The WV House of Delegates is proposing funding only three charter schools with heavy state oversight, standing in stark contrast to the Senate’s version of the bill. The House of Delegates will convene at the end of the month to consider these bills.

### **Masterpiece Cakeshop Receives Third Discrimination Lawsuit**

Jack Phillips, owner of Masterpiece Cakeshop in Lakewood, CO, is facing his third discrimination lawsuit for refusing to design a cake that he felt violated his religious beliefs. In 2012, Phillips and his bakery, Masterpiece Cakeshop, made headlines when Phillips refused to design a cake for the wedding of a gay couple. After years of battling in court, the case finally reached the U.S. Supreme Court in 2018. There, the Supreme Court [ruled](#) 7-2 that the Colorado Civil Rights Commission acted unfairly toward Phillips but did not rule on greater constitutional questions concerning religious freedom rights and sexual orientation and gender identity protections. Shortly after this ruling, Autumn Scardina, a man who believes he is a woman, filed a complaint with the Commission against Masterpiece Cakeshop. Scardina requested a “gender transition” cake—a cake with blue icing and pink cake inside—to symbolize Scardina’s transition from male to female. Upon learning what the cake represented, Phillips once again declined to make the cake, citing his religious beliefs. After Scardina’s initial lawsuit, [Phillips sued the state](#), stating that his constitutional right to exercise his faith was being attacked. This lawsuit was eventually dropped, but now Scardina is trying again. Scardina claims that Phillips was asked to make a [birthday cake](#) and refused based on his gender identity. In response to this third lawsuit, [Jim Campbell](#) of Alliance Defending Freedom reiterated that “Jack serves everyone; he just cannot express all messages through his custom cakes.”

### **In Case You Missed It:**

[Weekly Market Update](#) provided by Jeff Beach of the [AACS Investment Team at Merrill Lynch](#)

[Harvard Study Reveals Religious Upbringing Better for Kids' Health, Well-Being](#)

[Arizona Governor Doug Ducey Protects School Choice Program for Navajo Children](#)

[Illinois Tax Credit Program Protected from Budget Cuts](#)