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“The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sun beam, in the whole volume of human nature, by the hand of divinity itself; and can never be erased or obscured by mortal power.”
Alexander Hamilton, “The Farmer Refuted”

Supreme Court Hears Oral Arguments in Religious Liberty and Education Case *Carson v. Makin*

On Wednesday, the Supreme Court heard [oral arguments](#) in *Carson v. Makin*, an important religious liberty and education case. The case concerns a Maine statute that provides tuition assistance to parents in rural districts of Maine without a public school for their children to attend the private school of their choice. For one hundred years, parents were able to use the tuition assistance system to attend religious private schools, but in 1982 the law changed to exclude religious schools from participating in the program. The Carsons sued after they were unable to use the state program to send their daughter to the Christian school that aligned with their values. The Carsons appealed to the Supreme Court after the First Circuit Court of Appeals ruled in Maine’s favor.

Oral arguments focused heavily on the [status and use distinction](#) and whether Maine discriminated against religion. Michael Bindas, the attorney for the Carsons, argued that the First Circuit drew a distinction between religious use and religious status to justify ruling against the families that wanted to use the scholarships at religious schools. The status/use distinction states that while government cannot prohibit religious individuals or organizations from participating in a widely available public program simply because they are religious, it is not required to fund religious activity. The AACCS joined an [amicus brief](#) that argues the status/use distinction breaks down under constitutional analysis and the Supreme Court’s recent jurisprudence. Liberal Justices Sonya Sotomayor and Elena Kagan focused on the status/use distinction, reasoning that the Maine policy allows the state to avoid religious entanglement. Justice Sotomayor stated that Maine’s program was “extremely cabined” and meant to provide a secular education for all Maine students. Bindas disagreed, arguing that the “program doesn’t fund schools, it funds families. . . . Not a penny flows to any school under this program but for the private and independent choice of families.” Christopher Taub, the Chief Deputy Attorney General for Maine, argued that “the defining feature of a public education is that it is religiously neutral” and secular. Taub argued that funds could not go to schools that inculcate religion into their students in either purely religious classes or “secular” classes like math and sciences taught with a religious perspective. Conservative justices focused on whether this aspect of Maine’s program unconstitutionally discriminated on the basis of religion. Chief Justice John Roberts asked Taub whether a school that identifies as religious but did not have a doctrine to inculcate faith into students would be eligible for the program, compared to a school that inculcated faith. When Taub affirmed that the school would qualify for funds, Roberts stated, “So it is the beliefs of the two religions that determines whether or not their schools are going to get the funds or not. And we have said that that is the most basic violation of the First Amendment religious clauses for the government to draw distinction between religions based on their doctrine.” Other justices picked up on the government’s apparently discriminatory actions, indicating that the state’s policy gives bureaucrats in Maine the authority to determine how religious a school is. The case is important because it implicates Blaine Amendments, laws that prohibit state funding from going toward religious entities. The Court ruled last year in [Espinoza v. Montana Department of Revenue](#) that a

state could not exclude religious schools from a state school choice program. While Maine does not have a Blaine Amendment, many states justify religious discrimination with the status/use distinction. A ruling from the Court against this distinction could [finally end](#) application of Blaine Amendments and signal a major victory for religious liberty. The Court will release a decision in spring of 2022.

Drafting Women Provision Dropped from NDAA

Surprising and unprecedented news came this week that the provision to force women to sign up for selective service has been dropped from the House version of the National Defense Authorization Act (NDAA). The bill has hit multiple snags from both sides of the aisle in recent weeks, from debates over the cost of the bill to competition with China. Reports this week indicate that leadership of both the House and the Senate Armed Services Committees struck an agreement to drop the controversial provision to get more Republican support for the defense spending bill. Politico reporter Connor O'Brien [called](#) the decision to drop the provision “a stunning turnaround” considering the broad bipartisan support it had received in the Senate. A majority of Republican Senators on the Armed Services Committee supported drafting women into war, with only 5 out of 13 members opposing it. Senators Josh Hawley (MO) and James Inhofe (OK) opposed forcing women to register for the draft, and Sen. Hawley introduced an [amendment](#) to strip the provision from the NDAA. While the House has [passed](#) its version of the NDAA, the Senate must still vote on the bill. A vote is expected by the end of this week or next week. While it is unusual that a provision agreed upon by both the House and Senate would be stripped before a final vote, conservative grassroots vocally opposed Republicans supporting a measure that would harm women and families. Until the NDAA passes both chambers, it is important that Americans continue to encourage Senators to stand in opposition to drafting women into the military.

New Report Shows Learning Loss During COVID-19 Pandemic

A [new report](#) by Curriculum Associates shows that students continue to suffer from the prolonged lockdowns and virtual learning mandated by COVID-19 policies. The report compares the achievement levels of students from 2020 when students were sent home to begin virtual schooling into the 2021 school year, when many students were back in the classroom. The report [found](#) that students that already struggled prior to the pandemic did worse than their peers. Additionally, younger students who were still learning fundamentals in reading and math performed at a lower level than when the pandemic started. Particularly worrisome is that students that are performing below their grade level are often performing two or more grade levels below where they should be. Upper-elementary and middle school students generally did better than younger students, while ability to perform some subjects like mathematics on grade level saw a decrease across the board. Michael Petrilli, president of the Thomas B. Fordham Institute, [stated](#) of the findings, “This is a disaster. The bottom has fallen out, and the results are as bad as you can imagine. We haven’t seen this kind of academic achievement crisis in living memory.” The picture painted by the report is one of long-term harms inflicted upon students who were forced to shift their education to a virtual platform. The Curriculum Associates recognizes that the full effect of learning during COVID-19 is yet unrealized, stating, “We acknowledge that the pandemic has most likely affected our students’ education in ways we have yet to fully comprehend.” As Americans emerge from pandemic living, reports like this continue to show the value of in-person learning and the negative and lasting effects that virtual learning and shutdowns continue to have on America’s children.

In Case You Missed It:

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

[Practical Legal Help for Christian Schools: ADF Ministry Alliance](#)

[Promise to America’s Children](#)

[Vaccination Mandate Extended to NYC Religious, Private School Staffers](#)