



**The Washington Flyer**  
**June 24, 2022**

*“The price of freedom is eternal vigilance.”*  
*Thomas Jefferson*

**Supreme Court Upholds Free Exercise in Maine School Choice Program**

On Tuesday, the Supreme Court ruled 6-3 to uphold religious liberty in the Maine school choice case *Carson v. Makin*. The case concerns a school choice program that allows rural Maine families that live in school districts without a public high school to use state funds to attend the public or private school of the parents’ choice. Although parents could choose the school, the state of Maine prohibited the use of funds at “sectarian” schools, effectively excluding religious schools from participation in the program. Three families, represented by [First Liberty Institute](#) and [Institute for Justice](#), sued the state, arguing that the exclusion of religious schools from an otherwise generally available public program violated the First Amendment.

The Supreme Court [agreed](#). The state of Maine defended its exclusion of religious schools by arguing that it protected the state from supporting religion in violation of the Establishment Clause of the First Amendment. Maine also tried to distinguish between religious *status* and religious *use* by arguing that the state was not discriminating against religious schools based on their identity rather upon what it thought the schools would do with the money, primarily using it to promote their religious mission through education. But Chief Justice John Roberts, writing for the majority opinion, stated that “a neutral benefit program in which public funds flow to religious organizations through the independent choices of private benefit recipients does not offend the Establishment Clause.” Rather, the Court found that the *status/use* distinction made by Maine by analyzing the religious nature of religious schools to determine whether they were too religious to qualify for the program ran afoul of the Court’s previous decisions holding that states cannot “scrutinize whether and how a religious school pursues its educational mission.” The Court referenced several recent cases, including [Trinity Lutheran](#), [Espinoza](#), and [Our Lady of Guadalupe](#), in support of its decision. It drew a line, however, between this case and the precedent set in [Locke v. Davey](#), a case in which the Court upheld a prohibition on state funds going to provide ministerial training at a seminary. Chief Justice Roberts noted the difference, stating, “*Locke* cannot be read beyond its narrow focus on vocational religious degrees to generally authorize the State to exclude religious persons from the enjoyment of public benefits on the basis of their anticipated religious use of the benefits.” Justice Stephen Breyer, joined by Justices Elena Kagan and Sonya Sotomayor, wrote a dissenting opinion in which he argued that the Court’s decision would force Maine to fund religion in violation of the Establishment Clause. Chief Justice Roberts disagreed, noting that Maine chose to provide education through a unique tuitioning system and must administer that system according to the First Amendment. Maine can require that public schools be secular, but it cannot require that the private schools that parents choose to send their children to through the public tuition benefit also be secular. That, in the eyes of the Court, is discrimination against religious exercise. The case comes as a major victory at the end of a contentious Supreme Court term. The AACCS joined an amicus brief in support of the families in the case, and Government Relations Director Jamison Coppola stated in an [interview](#) response to the decision that Tuesday was a “good day for parents, [a] victory for parents. Our schools exist to serve families, and we are grateful that families will be able to now have more choice for how to deliver that education to their children.”

## **AACS Sends Letter to Congress on School Safety Issue**

State leaders of the American Association of Christian Schools sent a letter last week to Congressional leadership and the ten Republican senators who were negotiating the gun control bill. The letter urges action to strengthen school safety without violating an individual's Second Amendment rights. In the wake of the tragic school shooting in Uvalde, Texas, Congress has taken up the issue of gun control, considering [legislation](#) that many conservatives believe infringes on the constitutional freedom to bear arms rather than addressing issues that would actually strengthen school safety. The AACS letter points out that in each school shooting case, "These shootings have been stopped by others who use a gun to protect students." The AACS leaders urged Congress to take action by repealing the Gun Free School Zones Act of 1990 in order to give more power to state and local legislatures and local constituents to enact policies that will best secure the safety of the schools in their communities. The letter notes that "from its beginning, this federal law has been misguided in its attempt to prevent the tragedy of school shootings and is unconstitutional in its regulation of private K-12 schools." The letter further explains that the law has "deprived the concerned pastors, administrators, parents, and teachers of First Amendment rights of religious assembly as well as the Second Amendment rights to arm themselves for the protection of their students." While debate often ensues over whether or not school personnel should be armed, the letter points to a [report by Dr. John Lott](#) that shows that those "states allowing guns in schools are extremely safe." The letter notes, "Depriving the good citizens who come together in private school communities of their God-given rights to self-defense only makes them easier prey for those with evil intent."

## **Idaho Passes Microgrants Instead of True School Choice**

Idaho recently failed to pass a strong school choice bill, opting instead to enact the weaker Empowering Parents microgrant. The Empowering Parents microgrant gives families \$1,000 to use on educational expenses but limits the options only to public schools. Some [applauded](#) educational microgrants as putting the money back in parents' hands, and [Governor Brad Little](#) claimed it will "put families in control of their child's education and [help] set them up for success." However, a closer look at the [Empowering Parents law](#) reveals that not only will it cost [taxpayer additional dollars](#), it will also prohibit parents from spending that money on private school tuition. Idaho's Hope and Opportunity Scholarship Program bill stands in contrast. The bill would have redirected [up to \\$5,950](#) per family to education-related costs, including private school tuition and fees, out of the state's current education budget. This bill would have given families more options while keeping taxpayer rates the same. However, microgrants allow politicians to [play both sides](#)—conceding just enough to school choice proponents without losing their standing with school choice opponents. The Idaho teachers' union also supported the microgrants, primarily because the microgrants cannot be used for private schools; and the group Yes, Every Kid (YEK) [actively campaigned](#) for the microgrants and against the Hope and Opportunity Scholarship Program. The Hope and Opportunity Scholarship Program bill died in the House Education Committee by one vote on the same day Governor Little signed the Empowering Parents microgrant into law. School choice proponents should take note of how states might pursue similar programs in order to appear supportive of school choice without passing meaningful legislation to expand families' educational options. *By AACS Summer Intern Olivia Summers*

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

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

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

[Promise to America's Children](#)