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Analysis of Carson v. Makin

Wilson Huhn
Duquesne University, huhnw@duq.edu

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INTRODUCTION

Many school districts in the State of Maine lack high schools, so the children in those districts must attend another school selected by their parents.[1] In 1873 the State of Maine enacted a tuition assistance program, called "town tuitioning," that offers a stipend to participating schools to partially defray the cost of educating children from districts that lack a high school.[2] In 1981 the State of Maine enacted a law that categorically excludes "sectarian schools" from participating in the tuition assistance program.[3] The Maine Department of Education defines a "sectarian school" as a school that is both associated with a particular religious faith and that promotes that faith or presents academic material through the lens of that faith.[4]

Two schools, Bangor Christian Schools (BCS) and Temple Academy, sought the right to participate in the town tuitioning program despite meeting the definition of a "sectarian school." One of the educational objectives of BCS is to "lead each unsaved student to trust Christ as his/her personal savior,"[5] and one of the objectives of Temple Academy is to "foster within each student an attitude of love and reverence of the Bible as the infallible, inerrant, and authoritative Word of God."[6]

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* Professor of Law, Duquesne University Thomas R. Kline School of Law and Distinguished Professor Emeritus, University of Akron School of Law.

1. *See* Carson v. Makin, 142 S. Ct. 1987, 1993 (2022) (Roberts, C.J.) (summarizing facts of case); *see also* Coleen Hroncich and Solomon Chen, Carson v. Makin*: Another Win for Education Freedom*, CATO INST.: CATO AT LIBERTY (July 21, 2022), https://www.cato.org/blog/carson-v-makin-another-win-education-freedom (same); Carson v. Makin*: Maine Families Fight for School Choice in U.S. Supreme Court Appeal*, INST. FOR JUST., https://ij.org/case/maine-school-choice-3/ (last visited Oct. 16, 2022) (same).

2. *See* sources cited *supra* note 1.

3. Approval for Tuition Purposes, ME. REV. STAT. ANN. tit. 20-A, § 2951 (West 2021). Section 2951(2) provides:

> A private school may be approved for the receipt of public funds for tuition purposes only if it . . . [i]s a nonsectarian school in accordance with the First Amendment of the United States Constitution . . . .

4. *See Carson*, 142 S. Ct. at 2007–08 (Breyer, J., dissenting).

5. *Id.* at 2008.

6. *Id.*

Three sets of parents, including Amy and David Carson, sued Pender Makin, the Commissioner of the Maine Department of Education, asserting that the exclusion of sectarian schools, and specifically the exclusion of BCS and Temple Academy, from the tuition assistance program violates the Free Exercise Clause of the First Amendment of the Constitution.[7] On June 21, 2022, the Supreme Court ruled in favor of the parents and held that Section 2951(2) is unconstitutional.[8]

What is remarkable about this decision is that it is the first time that the Supreme Court has forced a state to pay for the religious education of the state's children. The Supreme Court has previously ruled that it is permissible under the Establishment Clause of the First Amendment for a state to *voluntarily include* religious schools in a parental voucher program.[9] But the Court has never before ruled that it violates the Free Exercise Clause for a state to *exclude* religious schools from a taxpayer-funded tuition assistance program.[10]

THE RELIGION CLAUSES OF THE CONSTITUTION

Our most cherished rights are set forth in the Bill of Rights. And the first words of the Bill of Rights are these: "Congress shall make no law respecting an establishment of religion . . . ."[11] Notice the precise wording of the Establishment Clause. It does not prohibit the establishment of "a" religion. It prohibits the establishment of "religion." Notice also the word "respecting." Not only is Congress prohibited from establishing religion, but it may also not make any law "respecting" an establishment of religion. That is, Congress may not enact any laws involving or having anything to do with an establishment of religion.

The second provision of the Bill of Rights is this: "Congress shall make no law . . . prohibiting the free exercise [of religion]."[12] Under the Free Exercise Clause, there can be no laws in our country regulating religious belief or religious doctrine. Americans are free to believe whatever they want to believe and to express their religious

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7. *See id.* at 1994–95 (majority opinion).

8. *Id.* at 2002 ("Maine's "nonsectarian" requirement for its otherwise generally available tuition assistance payments violates the Free Exercise Clause of the First Amendment.").

9. Zelman v. Simmons-Harris, 536 U.S. 639, 643–44 (2002) (holding that a state school voucher program that included religious schools does not violate the Establishment Clause).

10. The Court foreshadowed its about-face on this issue in 2020 in Espinoza v. Mont. Dep't of Revenue, 140 S. Ct. 2246 (2020) (striking down a regulation of the Montana Department of Revenue prohibiting the use of tax-credit scholarships at religious schools).

11. U.S. CONST., amend. 1.

12. *Id.*

beliefs.[13] Religiously-motivated conduct, however, is subject to reasonable regulation.[14]

THE COLONIAL EXPERIENCE

Why was the Establishment Clause so important to the Framers that they listed it first among the Bill of Rights? It was because of the colonial experience with laws tending to establish religion. The Establishment Clause is historically identified with the concept that there must be a "separation of church and state."

That phrase was coined by the colonial leader Roger Williams, who in 1635 was exiled from the Massachusetts Bay Colony for heresy.[15] In 1644, in protest of the Massachusetts laws requiring church attendance at the established church and outlawing the expression of beliefs that deviate from the accepted norm, Williams wrote,

> [W]hen they have opened a gap in the hedge or wall of Separation between the Garden of the Church and the Wildernes [sic] of the world, God hath ever broke down the wall it selfe, . . . and made his Garden a Wilderness, as at this day.[16]

Williams' point was that the exercise of governmental authority by the church inevitably corrupts the church. But separation of church and state means more than that. Williams also wrote that civil government is based upon the will of the people, not religious authority. He concluded: "the sovereign, original, and foundation of civil power lies in the people . . . ."[17] Williams was correct. Our government is based not upon the Christian religion but upon the principle of popular sovereignty. Our present form of government was created in 1788 when "We the People" ordained and established the Constitution of the United States.[18] It is a government of the people, by the people, and for the people.[19]

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13. *See* Cantwell v. Connecticut, 310 U.S. 296 (1940).

14. *See* Employment Division v. Smith, 494 U.S. 872 (1990) (holding that a law is constitutional under the Free Exercise Clause so long as it is not directed at religion and serves a legitimate governmental interest).

15. *See Roger Williams: American Religious Leader*, BRITTANICA, https://www.britannica.com/biography/Roger-Williams-American-religious-leader (last updated Aug. 31, 2021).

16. ROGER WILLIAMS, MR. COTTONS LETTER LATELY PRINTED, EXAMINED AND ANSWERED, 45 (1644).

17. ROGER WILLIAMS, THE BLOUDY TENENT OF PERSECUTION (1644).

18. U.S. CONST. pmbl.

19. ABRAHAM LINCOLN, *Gettysburg Address*, *in* 7 THE COLLECTED WORKS OF ABRAHAM LINCOLN 22, 23 (Roy P. Basler ed., 1953).

The colony of Massachusetts continued to punish dissenters, exiling Ann Hutchinson[20] and executing Mary Dyer and other Quakers.[21] But freedom of religion blossomed in Rhode Island under the leadership and example of Roger Williams.[22]

A century later, in 1786, the year before the Constitutional Convention, James Madison and Thomas Jefferson opposed a tax that the State of Virginia had adopted to support ministers. Madison wrote his famous *Memorial and Remonstrance Against Religious Assessments*. Madison stated:

> [W]e hold it for a fundamental and undeniable truth, "that Religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence." The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate.[23]

Madison also successfully led the fight to enact Jefferson's Bill for Religious Freedom, making it unlawful to use tax dollars to support religious establishments. The Bill begins with these words:

> Almighty God hath created the mind free . . . all attempts to influence it by temporal punishments, or burthens . . . are a departure from the plan of the holy author of our religion . . . . [N]o man shall be compelled to frequent or support any religious worship, place, or ministry . . . nor shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion . . . .[24]

Our first president, George Washington reassured both Catholics and Jews that in this country they would be free to practice their

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20. *See Ann Hutchinson*, HISTORY.COM, https://www.history.com/topics/colonial-america/anne-hutchinson (last updated Aug. 3, 2022).

21. *See Mary Dyer: Quaker Martyr*, BRITANNICA, https://www.britannica.com/biography/Mary-Barrett-Dyer (last updated Sept. 23, 2022).

22. John M. Barry, *God, Government and Roger Williams' Big Idea*, SMITHSONIAN MAG. (Jan. 2012) (describing Williams' role in founding and leading the colony of Rhode Island).

23. Nat'l Archives, *Memorial and Remonstrance Against Religious Assessments, [ca. 20 June] 1785*, FOUNDERS ONLINE, (quoting VA. DECLARATION OF RIGHTS OF 1776, art. XVI), https://founders.archives.gov/documents/Madison/01-08-02-0163 (last visited Oct. 6, 2022).

24. Nat'l Archives, *A Bill for Establishing Religious Freedom, 18 June 1779*, FOUNDERS ONLINE, https://founders.archives.gov/documents/Jefferson/01-02-02-0132-0004-0082 (last visited Oct. 6, 2022).

religion without interference from the government. In 1788 Washington informed the Vatican through Benjamin Franklin that the Vatican could appoint bishops for the United States without seeking authorization from the American government.[25] In 1790, in his letter to the Touro Synagogue, the new President wrote:

> [F]or, happily, the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens . . . [and] every one shall sit in safety under his own vine and fig tree and there shall be none to make him afraid.[26]

In 1791 the Bill of Rights was adopted, whose first provision we have seen was the Establishment Clause.[27]

In 1802, our third President, Thomas Jefferson, wrote to the Danbury Baptist Association and described the Establishment Clause and Free Exercise Clause in these terms:

> Believing with you, that religion is a matter which lies solely between Man and his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, & not opinions, *I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between Church and State*.[28]

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25. *See* Sylvia Poggioli, *The Sometimes Tricky Relations Between Popes and Presidents*, NPR (Mar. 26, 2014), https://www.npr.org/sections/parallels/2014/03/26/294320752/the-sometimes-tricky-relations-between-popes-and-presidents (quoting Vatican foreign minister, Archbishop Dominique Mamberti, describing how President Washington informed the Vatican "that it did not need to seek authorization from the U.S. for the appointment of bishops"). The article states:

> The president's reasoning, Mamberti explained, was because "the revolution that brought freedom to the Colonies, first and foremost brought that of religious freedom."

Id.

26. *George Washington's Letter to the Hebrew Congregation of Newport*, TOURO SYNAGOGUE NAT'L HIST. SITE, https://tourosynagogue.org/history/george-washington-letter/washington-seixas-letters/ (last visited Oct. 6, 2022, 9:20 PM).

27. *See supra* notes 11–12 and accompanying text.

28. *Jefferson's Letter to the Danbury Baptists (Jan. 1, 1802)*, LIBR. OF CONG. (June 1998), https://www.loc.gov/loc/lcib/9806/danpre.html (emphasis added) (quoting U.S. CONST. amend. I).

THE SUPREME COURT'S RECOGNITION OF THE PRINCIPLE OF SEPARATION OF CHURCH AND STATE, THE REQUIREMENT OF GOVERNMENT NEUTRALITY, THE SECULAR PURPOSE TEST, AND THE USE/STATUS DISTINCTION

The first time that the Supreme Court struck down a law in protection of freedom of religion was in 1940 in *Cantwell v. Connecticut*.[29] Seven years later, in *Everson v. Board of Education*, after reviewing the words and actions of Madison and Jefferson in colonial Virginia, the Court issued this description of the meaning of the religion clauses:

> *The "establishment of religion" clause of the First Amendment means at least this*: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or nonattendance. *No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.* Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between Church and State."*[30]

For 75 years the Supreme Court consistently and repeatedly adhered to the bedrock principle that freedom of religion requires the government to remain neutral with respect to religion.

In 1962, the Court in *Engel v. Vitale* ruled that it was unconstitutional for the New York State Board of Regents to compose a prayer to be read to public school students,[31] and, in 1963, the Court

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29. Cantwell v. Connecticut, 310 U.S. 296 (1940) (reversing convictions for breach of the peace and soliciting without approval as violations of the Establishment Clause and Free Exercise Clause).

30. Everson v. Bd. of Educ., 330 U.S. 1, 15–16 (1947) (upholding use of state funds to transport children to public and religious schools) (emphasis added) (quoting Reynolds v. United States, 98 U.S. 145, 164 (1878)).

31. Engel v. Vitale, 370 U.S. 421 (1962) (striking down an official prayer composed by the New York State Board of Regents for use in the public schools).

in *School District of Abington Township v. Schempp* struck down a Pennsylvania law that required ten Bible verses to be read to public school students every day.[32] In *Schempp*, the Court noted that while there is a tension between the Establishment Clause and the Free Exercise Clause, both of the religion clauses serve the same purpose: the requirement that the government must remain *neutral* in matters of religion:

> The wholesome "neutrality" of which this Court's cases speak thus stems from a recognition of the teachings of history that powerful sects or groups might bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end that official support of the State or Federal Government would be placed behind the tenets of one or of all orthodoxies. This the Establishment Clause prohibits. And a further reason for neutrality is found in the Free Exercise Clause, which recognizes the value of religious training, teaching and observance and, more particularly, the right of every person to freely choose his own course with reference thereto, free of any compulsion from the state. This the Free Exercise Clause guarantees.[33]

The Court in *Schempp* explained that any law must have a *secular purpose* and a *primary secular effect*:

> The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.[34]

This came to be called the "*Lemon* test," because the Court used it in the 1971 case of *Lemon v. Kurtzman*. In *Lemon*, the Court created the test:

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32. School Dist. of Abington Twp. v. Schempp, 374 U.S. 203 (1963) (striking down state law requiring daily Bible readings or recitation of the Lord's Prayer in the public schools).

33. *Id.* at 222.

34. *Id.*

> First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster "an excessive government entanglement with religion."[35]

In *Lemon*, and many other cases involving funding of religious schools, the Supreme Court distinguished between state funding that would be used for secular purposes such as school bus transportation which was permissible,[36] and funding that would be used for religious purposes such as teacher salaries which was not permissible.[37]

The conundrum over what is "neutral" with respect to religion led to the Court's recognition that the states must have some degree of discretion in charting a course between the Establishment Clause and the Free Exercise Clause. There is not just a single right answer to every question involving freedom of religion, but rather that there must be some "play in the joints" between the demands of separation of church and state and religious liberty.

PLAY IN THE JOINTS

The related concepts of government "neutrality" toward religion and of "play in the joints" between the demands of the Establishment Clause and the Free Exercise Clause appeared in the seminal case *Walz v. Tax Commission of City of New York*[38] in 1970. In an opinion by Chief Justice Burger the Court stated:

> The Court has struggled to find a neutral course between the two Religion Clauses, both of which are cast in absolute terms, and either of which, if expanded to a logical extreme, would tend to clash with the other.[39]

Justice Burger added:

> The course of constitutional neutrality in this area cannot be an absolutely straight line; rigidity could well defeat the basic purpose of these provisions, which is to insure that

35. Lemon v. Kurtzman, 403 U.S. 602, 612 (1971) (internal citations omitted).

36. *See, e.g.,* Everson v. Bd. of Educ., 330 U.S. 1, 17 (1947) (upholding the use of taxpayer funds to transport children to religious schools).

37. *See, e.g.*, *Lemon*, 403 U.S. at 606 (striking down the use of taxpayer funds to pay for teacher salaries in religious schools).

38. *See generally* Walz v. Tax Com. of N.Y., 397 U.S. 664 (1970) (upholding the granting of property tax exemptions for houses of worship).

39. *Id.* at 668–69.

> no religion be sponsored or favored, none commanded, and none inhibited. The general principle deducible from the First Amendment and all that has been said by the Court is this: that we will not tolerate either governmentally established religion or governmental interference with religion. Short of those expressly proscribed governmental acts there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference.[40]

The Supreme Court cited the phrase "play in the joints" in several subsequent opinions. In 1973 in *Sloan v. Lemon*[41] the Court struck down Pennsylvania's tuition reimbursement program as violative of the Establishment Clause, ruling that the "play in the joints" that offered the states room to operate between the conflicting demands of the Establishment Clause and the Free Exercise Clause would not allow the state to reimburse parents for the cost of religious education.[42] In 2004 in *Locke v. Davey*[43] the Court acknowledged that under the "play in the joints" doctrine the State of Washington was free to fund theological training and was also free to withhold

40. *Id.* at 669.

41. Sloan v. Lemon, 413 U.S. 825, 835 (1973) (striking down Pennsylvania's tuition reimbursement program under the Establishment Clause).

42. *Id.* at 835. The Court stated:

> But if novel forms of aid have not readily been sustained by this Court, the 'fault' lies not with the doctrines which are said to create a paradox but rather with the Establishment Clause itself: 'Congress' and the States by virtue of the Fourteenth Amendment 'shall make no law respecting an establishment of religion.' With that judgment we are not free to tamper, and while there is 'room for play in the joints,' Walz v. Tax Comm'n, supra, 397 U.S., at 669, 90 S.Ct., at 1412, the Amendment's proscription clearly forecloses Pennsylvania's tuition reimbursement program.

Id.

43. Locke v. Davey, 540 U.S. 712, 718–19 (2004) (upholding state law prohibiting the use of state funds to pursue a degree in theology).

funding for theological training.[44] In 2005 in *Cutter v. Wilkinson*[45] the Court found that "'there is room for play in the joints between' the Free Exercise and Establishment Clauses, allowing the government to accommodate religion beyond free exercise requirements, without offense to the Establishment Clause."[46]

In contrast in its three most recent decisions dealing with conflicts between the Establishment Clause and the Free Exercise Clause, the Supreme Court has found there to be no room between the demands of the Establishment Clause and the Free Exercise Clause. Instead, the Court has ruled that if a denial of benefits to religious bodies is not required by the Establishment Clause, then it by definition constitutes discrimination against religion that is forbidden by the Free Exercise Clause.

The Court in *Carson* makes no attempt to chart a course of government neutrality towards religion. This turns fundamental decisions such as *Everson v. Board of Education* and *Walz v. Tax Commissioner* on their heads. In those cases, the Supreme Court ruled that the discretion afforded the states under the religion clauses *allowed* the states to treat religious institutions the same as private non-profit institutions. In *Carson*, as in *Espinoza*, the Supreme Court has ruled that religious institutions *must* be granted the same benefits as private non-profit institutions.

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44. *Id.* at 718–19. The Court stated:

> The Religion Clauses of the First Amendment provide: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." These two Clauses, the Establishment Clause and the Free Exercise Clause, are frequently in tension. Yet we have long said that "there is room for play in the joints" between them. In other words, there are some state actions permitted by the Establishment Clause but not required by the Free Exercise Clause.
>
> This case involves that "play in the joints" described above. Under our Establishment Clause precedent, the link between government funds and religious training is broken by the independent and private choice of recipients. As such, there is no doubt that the State could, consistent with the Federal Constitution, permit Promise Scholars to pursue a degree in devotional theology, and the State does not contend otherwise. The question before us, however, is whether Washington, pursuant to its own constitution, which has been authoritatively interpreted as prohibiting even indirectly funding religious instruction that will prepare students for the ministry, can deny them such funding without violating the Free Exercise Clause.

Id. (internal citations omitted).

45. Cutter v. Wilkinson, 544 U.S. 709, 725–26 (2005) (upholding §3 of the Religious Land Use and Institutionalized Persons Act of 2000 as a permissible accommodation of religion under the Establishment Clause).

46. *Id.* at 713 (citing Walz v. Tax Commissioner, 397 U.S. 664, 669 (1970)).

THE STATUS-USE DISTINCTION

In applying the *Lemon* test in school funding cases, the Supreme Court developed a distinction between the *use* of the funds and the *status* of the recipient. The Establishment Clause prohibited using public funds for religious purposes, but it permitted religious institutions to receive funding for secular purposes. For example, in the 2004 case *Locke v. Davey*, the Court upheld the right of the state to prohibit the use of state funding to study for the ministry because those funds would be *used* for a religious purpose.[47] In contrast, in 2017, the Court in *Trinity Lutheran Church v. Comer* ruled that it violated the Free Exercise Clause for the State of Missouri to prohibit a religious preschool center from qualifying for state funding to improve the safety of its playground because the denial of funding was based solely upon the *status* of the recipient.[48]

THE OVERRULING OF THE "SECULAR PURPOSE" TEST AND THE "USE/STATUS DISTINCTION" AND THEIR REPLACEMENT WITH A TRADITION TEST

In 2014, in *Town of Greece v. Galloway*, a case involving official prayer, the Supreme Court overruled the *Lemon* test and substituted for it a tradition test.[49] In *Galloway*, the Court upheld the practice of a Town Board to hold sectarian prayer at the beginning of town meetings because it was consistent with tradition.[50]

In *Carson v. Makin*, the Supreme Court abandoned the use/status distinction and, as in *Galloway*, the Court replaced this practical standard with a tradition test. In *Carson v. Makin* it was clear that the town tuition funds would be *used* for religious purposes, but the Court distinguished *Locke v. Davey* on the ground that there is a "historic and substantial state interest against using taxpayer funds to support church leaders, . . . [but] that there is no historic and substantial tradition against aiding private religious schools."[51]

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47. *Locke*, 540 U.S. at 712 (upholding a statute prohibiting state aid to students for the study of devotional theology).

48. Trinity Lutheran Church of Columbia, Inc. v. Comer, 137 S. Ct. 2012 (2017) (striking down the exclusion of religious institutions from state aid for improvement of playground surfaces).

49. Town of Greece v. Galloway, 572 U.S. 565, 584 (2014) (upholding the practice of opening town meetings with prayer delivered by invited members of the clergy and concluding that "[t]he prayers delivered in the town of Greece do not fall outside the tradition this Court has recognized.").

50. *Id.*

51. Carson v. Makin, 142 S. Ct. 1987, 2002 (2022) (brackets and internal quotation marks omitted).

Not only did the court in *Carson v. Makin* abandon the secular purpose test and the use/status distinction and replace them with tradition standards, but the Court also grossly misstated our country's history. There is, in fact, a longstanding tradition against using public funds to support private religious schools,[52] and before the Court's recent decision in *Espinoza* there is absolutely no support in American history for the proposition that the government is *required* to support religious education.[53]

Finally, in *Carson v. Makin*, as a practical matter the majority of the Supreme Court also eliminated any "play in the joints" between the Establishment Clause and the Free Exercise Clause, thereby circumscribing the discretion of the states in dealing with religion. The majority stated, "a state's interest in separating church and state 'more fiercely' than the Federal Constitution . . . 'cannot qualify as compelling in the face of the infringement of Free Exercise.'"[54]

In *Carson v. Makin* the majority of the Supreme Court does not mention the bedrock principle of separation of church and state. The majority does not attempt to analyze whether its ruling is "neutral" with respect to religion. And the majority manufactures a purported tradition of government subsidization of religious education.

52. *See* Jane G. Rainey, *Blaine Amendments*, FIRST AMEND. ENCYCLOPEDIA https://www.mtsu.edu/first-amendment/article/1036/blaine-amendments (last visited Nov. 4, 2022) (describing the adoption of state constitutional amendments prohibiting the use of public funds to support religious schools). *See also supra* text accompanying notes 22–24, 30.

53. As the Court stated in *Everson*: "No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever from they may adopt to teach or practice religion." Everson v. Bd. of Educ., 330 U.S. 1, 16 (1947).

54. *Carson*, 142 S. Ct. at 1998 (citing Espinoza v. Mont. Dep't of Revenue, 140 S. Ct. 2246, 2250 (2020)).