AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 12: The Contemporary Era – Individual Rights/Religion/Free Exercise

**Carson v. Makin, \_\_\_ U.S. \_\_\_** (2022)

*David Carson was the parent of a child who attended Bangor Christian School. Troy Nelson wanted his daughter to attend Temple Academy, another private religious school, but he could not afford the tuition. Neither Carson nor Nelson had the option of sending their children to local public schools because they lived in rural counties that lacked a public high school. Maine law provided parents in such areas with tuition to attend any public or private school that accepted their children, but not a religious school. Carson, Nelson and other similarly situated families filed a lawsuit against A. Pender Makin, the Maine Commission of Education, claiming that Maine’s failure to provide tuition for religious schools violated the free exercise clause of the First Amendment as incorporated by the due process clause of the Fourteenth Amendment. The local federal district court rejected the lawsuit as did the Court of Appeals for the First Circuit. Carson appealed to the Supreme Court of the United States.*

*The Supreme Court by a 6-3 vote reversed the lower federal courts. Chief Justice John Roberts’ majority opinion held that Maine unconstitutionally discriminated against religion when denying tuition to parents who wished to send their children to religious schools. Both the majority opinion and Justice Stephen Breyer’s dissent treat* Trinity Lutheran Church of Columbia, Inc. v. Comer *(2017) and* Espinoza v. Montana Department of Revenue *(2020) as the relevant precedents. How does each opinion interpret these cases? Why do they think their preferred result follows from their interpretation? Who has the better of the argument? Breyer and Justice Sonia Sotomayor point out that private schools regularly discriminate. Suppose Maine passed a law granting tuition at any school that did not discriminate on the basis on race, gender, religion, or sexual orientation. Would that law be constitutional? Consider the politics of* Carson v. Makim. *Breyer worries about upset taxpayers. The additional tax, however, is likely to be minute. Might the decision provide a substantial financial boon to conservative Christians already likely to vote Republican?*

Chief Justice [Roberts](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0258116001&originatingDoc=I209fdf4bf16211ec906eda8f4f9d8a3e&refType=RQ&originationContext=document&transitionType=DocumentItem&ppcid=390019b679dc4041ae4c63edffbae0c7&contextData=(sc.Search)&analyticGuid=I209fdf4bf16211ec906eda8f4f9d8a3e) delivered the opinion of the Court.

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The Free Exercise Clause of the First Amendment protects against “indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.”  In particular, we have repeatedly held that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits. A State may not withhold unemployment benefits, for instance, on the ground that an individual lost his job for refusing to abandon the dictates of his faith.

We have recently applied these principles in the context of two state efforts to withhold otherwise available public benefits from religious organizations. In *Trinity Lutheran Church of Columbia, Inc.* v. *Comer* (2017), we considered a Missouri program that offered grants to qualifying nonprofit organizations that installed cushioning playground surfaces made from recycled rubber tires. . . . We deemed it “unremarkable in light of our prior decisions” to conclude that the Free Exercise Clause did not permit Missouri to “expressly discriminate[ ] against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character.” Two Terms ago, in *Espinoza v. Montana Department of Revenue* (2020), we reached the same conclusion as to a Montana program that provided tax credits to donors who sponsored scholarships for private school tuition. . . . The application of the Montana Constitution's no-aid provision, we explained, required strict scrutiny because it “bar[red] religious schools from public benefits solely because of the religious character of the schools.”  “A State need not subsidize private education,” we concluded, “[b]ut once a State decides to do so, it cannot disqualify some private schools solely because they are religious.”

The “unremarkable” principles applied in *Trinity Lutheran* and *Espinoza* suffice to resolve this case. Maine offers its citizens a benefit: tuition assistance payments for any family whose school district does not provide a public secondary school. Just like the wide range of nonprofit organizations eligible to receive playground resurfacing grants in *Trinity Lutheran*, a wide range of private schools are eligible to receive Maine tuition assistance payments here. And like the daycare center in *Trinity Lutheran*, BCS and Temple Academy are disqualified from this generally available benefit “solely because of their religious character.” By “condition[ing] the availability of benefits” in that manner, Maine's tuition assistance program—like the program in *Trinity Lutheran*—“effectively penalizes the free exercise” of religion.

Our recent decision in *Espinoza* applied these basic principles in the context of religious education that we consider today. There, as here, we considered a state benefit program under which public funds flowed to support tuition payments at private schools. And there, as here, that program specifically carved out private religious schools from those eligible to receive such funds. While the wording of the Montana and Maine provisions is different, their effect is the same: to “disqualify some private schools” from funding “solely because they are religious.” A law that operates in that manner, we held in *Espinoza*, must be subjected to “the strictest scrutiny.”

To satisfy strict scrutiny, government action “must advance ‘interests of the highest order’ and must be narrowly tailored in pursuit of those interests.”  “A law that targets religious conduct for distinctive treatment ... will survive strict scrutiny only in rare cases.”

This is not one of them. As noted, 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. Maine's decision to continue excluding religious schools from its tuition assistance program after *Zelman* thus promotes stricter separation of church and state than the Federal Constitution requires. But as we explained in both *Trinity Lutheran* and *Espinoza*, such an “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.”  JUSTICE BREYER stresses the importance of “government neutrality” when it comes to religious matters,  but there is nothing neutral about Maine's program. The State pays tuition for certain students at private schools—so long as the schools are not religious. That is discrimination against religion. A State's antiestablishment interest does not justify enactments that exclude some members of the community from an otherwise generally available public benefit because of their religious exercise.

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. . . . The benefit is *tuition* at a public *or* private school, selected by the parent, with no suggestion that the “private school” must somehow provide a “public” education. . . . To start with the most obvious, private schools are different by definition because they do not have to accept all students. Public schools generally do. Second, the free public education that Maine insists it is providing through the tuition assistance program is often *not* free. That “assistance” is available at private schools that charge several times the maximum benefit that Maine is willing to provide. Moreover, the curriculum taught at participating private schools need not even resemble that taught in the Maine public schools. . . . Participating schools need not hire state-certified teachers. In short, it is simply not the case that these schools, to be eligible for state funds, must offer an education that is equivalent—roughly or otherwise—to that available in the Maine public schools.

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. . . [W]were we to accept Maine's argument, our decision in *Espinoza* would be rendered essentially meaningless. By Maine's logic, Montana could have obtained the same result that we held violated the First Amendment simply by redefining its tax credit for sponsors of generally available scholarships as limited to “tuition payments for the rough equivalent of a Montana public education”—meaning a secular education. But our holding in *Espinoza* turned on the substance of free exercise protections, not on the presence or absence of magic words. . . .

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The dissents are wrong to say that under our decision today Maine “*must*” fund religious education.  Maine chose to allow some parents to direct state tuition payments to private schools; that decision was not “forced upon” it.  The State retains a number of options: it could expand the reach of its public school system, increase the availability of transportation, provide some combination of tutoring, remote learning, and partial attendance, or even operate boarding schools of its own. . . .

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. . . . In *Trinity Lutheran* and *Espinoza*, we held that the Free Exercise Clause forbids discrimination on the basis of religious status. But those decisions never suggested that use-based discrimination is any less offensive to the Free Exercise Clause. This case illustrates why. “[E]ducating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school.”  Any attempt to give effect to such a distinction by scrutinizing whether and how a religious school pursues its educational mission would also raise serious concerns about state entanglement with religion and denominational favoritism. . . .

Maine and the dissents invoke [*Locke* v. *Davey* (2004)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2004158374&pubNum=0000780&originatingDoc=I209fdf4bf16211ec906eda8f4f9d8a3e&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=390019b679dc4041ae4c63edffbae0c7&contextData=(sc.Search)), in support of the argument that the State may preclude parents from designating a religious school to receive tuition assistance payments. In that case, Washington had established a scholarship fund to assist academically gifted students with postsecondary education expenses. But the program excluded one particular use of the scholarship funds: the “essentially religious endeavor” of pursuing a degree designed to “train[ ] a minister to lead a congregation.”  We upheld that restriction against a free exercise challenge, reasoning that the State had “merely chosen not to fund a distinct category of instruction.”

Our opinions in *Trinity Lutheran* and *Espinoza*, however, have already explained why *Locke* can be of no help to Maine here. Both precedents emphasized, as did *Locke* itself, that the funding in *Locke* was intended to be used “to prepare for the ministry.”  Funds could be and were used for theology courses; only pursuing a “vocational religious” *degree* was excluded.

*Locke*’s reasoning expressly turned on what it identified as the “historic and substantial state interest” against using “taxpayer funds to support church leaders.” [540 U. S., at 722, 725](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2004158374&pubNum=0000780&originatingDoc=I209fdf4bf16211ec906eda8f4f9d8a3e&refType=RP&fi=co_pp_sp_780_722&originationContext=document&transitionType=DocumentItem&ppcid=390019b679dc4041ae4c63edffbae0c7&contextData=(sc.Search)#co_pp_sp_780_722). But as we explained at length in *Espinoza*, “it is clear that there is no ‘historic and substantial’ tradition against aiding [private religious] schools comparable to the tradition against state-supported clergy invoked by *Locke*.” *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.

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Justice [Breyer](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0254766801&originatingDoc=I209fdf4bf16211ec906eda8f4f9d8a3e&refType=RQ&originationContext=document&transitionType=DocumentItem&ppcid=390019b679dc4041ae4c63edffbae0c7&contextData=(sc.Search)&analyticGuid=I209fdf4bf16211ec906eda8f4f9d8a3e), with whom Justice [Kagan](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0301239401&originatingDoc=I209fdf4bf16211ec906eda8f4f9d8a3e&refType=RQ&originationContext=document&transitionType=DocumentItem&ppcid=390019b679dc4041ae4c63edffbae0c7&contextData=(sc.Search)&analyticGuid=I209fdf4bf16211ec906eda8f4f9d8a3e) joins, and with whom Justice [Sotomayor](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0145172701&originatingDoc=I209fdf4bf16211ec906eda8f4f9d8a3e&refType=RQ&originationContext=document&transitionType=DocumentItem&ppcid=390019b679dc4041ae4c63edffbae0c7&contextData=(sc.Search)&analyticGuid=I209fdf4bf16211ec906eda8f4f9d8a3e) joins [in part]

The First Amendment begins by forbidding the government from “mak[ing] [any] law respecting an establishment of religion.” It next forbids them to make any law “prohibiting the free exercise thereof.” The Court today pays almost no attention to the words in the first Clause while giving almost exclusive attention to the words in the second. The majority also fails to recognize the “ ‘play in the joints’ ” between the two Clauses. That “play” gives States some degree of legislative leeway. It sometimes allows a State to further antiestablishment interests by withholding aid from religious institutions without violating the Constitution's protections for the free exercise of religion. In my view, Maine's nonsectarian requirement falls squarely within the scope of that constitutional leeway. . . . .

The First Amendment's two Religion Clauses together provide that the government “shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” Each Clause, linguistically speaking, is “cast in absolute terms.”  The first Clause, the Establishment Clause, seems to bar all government “sponsorship, financial support, [or] active involvement ... in religious activity,” while the second Clause, the Free Exercise Clause, seems to bar all “governmental restraint on religious practice.”  The apparently absolutist nature of these two prohibitions means that either Clause, “if expanded to a logical extreme, would tend to clash with the other.”  Because of this, we have said, the two Clauses “are frequently in tension,”  and “often exert conflicting pressures” on government action.

On the one hand, the Free Exercise Clause “ ‘protect[s] religious observers against unequal treatment.’ ”  We have said that, in the education context, this means that States generally cannot “ba[r] religious schools from public benefits solely because of the religious character of the schools.” On the other hand, the Establishment Clause “commands a separation of church and state.”  A State cannot act to “aid one religion, aid all religions, or prefer one religion over another.” . . .

Although the Religion Clauses are, in practice, often in tension, they nonetheless “express complementary values.”  Together they attempt to chart a “course of constitutional neutrality” with respect to government and religion.  They were written to help create an American Nation free of the religious conflict that had long plagued European nations with “governmentally established religion[s].” . . .

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And in applying these Clauses, we have often said that “there is room for play in the joints” between them.  This doctrine reflects the fact that it may be difficult to determine in any particular case whether the Free Exercise Clause *requires* a State to fund the activities of a religious institution, or whether the Establishment Clause *prohibits*the State from doing so. Rather than attempting to draw a highly reticulated and complex free-exercise/establishment line that varies based on the specific circumstances of each state-funded program, we have provided general interpretive principles that apply uniformly in all Religion Clause cases. At the same time, we have made clear that States enjoy a degree of freedom to navigate the Clauses’ competing prohibitions.  This includes choosing not to fund certain religious activity where States have strong, establishment-related reasons for not doing so. And, States have freedom to make this choice even when the Establishment Clause does not itself prohibit the State from funding that activity.

I have previously discussed my views of the relationship between the Religion Clauses and how I believe these Clauses should be interpreted to advance their goal of avoiding religious strife. Here I simply note the increased risk of religiously based social conflict when government promotes religion in its public school system. . . .

This potential for religious strife is still with us. We are today a Nation with well over 100 different religious groups, from Free Will Baptist to African Methodist, Buddhist to Humanist. People in our country adhere to a vast array of beliefs, ideals, and philosophies. And with greater religious diversity comes greater risk of religiously based strife, conflict, and social division. The Religion Clauses were written in part to help avoid that disunion. . . .

. . . [A] “rigid, bright-line” approach to the Religion Clauses—an approach without any leeway or “play in the joints”—will too often work against the Clauses’ underlying purposes. . . . Not all state-funded programs that have religious restrictions carry the same risk of creating social division and conflict. In my view, that risk can best be understood by considering the particular benefit at issue, along with the reasons for the particular religious restriction at issue. Recognition that States enjoy a degree of constitutional leeway allows States to enact laws sensitive to local circumstances while also allowing this Court to consider those circumstances in light of the basic values underlying the Religion Clauses.

In a word, to interpret the two Clauses as if they were joined at the hip will work against their basic purpose: to allow for an American society with practitioners of over 100 different religions, and those who do not practice religion at all, to live together without serious risk of religion-based social divisions.

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. . . . We have thus concluded that a State *may*, consistent with the Establishment Clause, provide funding to religious schools through a general public funding program if the “government aid ... reach[es] religious institutions only by way of the deliberate choices of ... individual [aid] recipients.” But the key word is “may.” We have never previously held what the Court holds today, namely, that a State *must*(not *may*) use state funds to pay for religious education as part of a tuition program designed to ensure the provision of free statewide public school education.

What happens once “may” becomes “must”? Does that transformation mean that a school district that pays for public schools must pay equivalent funds to parents who wish to send their children to religious schools? Does it mean that school districts that give vouchers for use at charter schools must pay equivalent funds to parents who wish to give their children a religious education? What other social benefits are there the State's provision of which means—under the majority's interpretation of the Free Exercise Clause—that the State must pay parents for the religious equivalent of the secular benefit provided? . . .

The state-funded program at issue in *Trinity Lutheran* provided payment for resurfacing school playgrounds to make them safer for children. Any Establishment Clause concerns arising from providing money to religious schools for the creation of safer play yards are readily distinguishable from those raised by providing money to religious schools through the program at issue here—a tuition program designed to ensure that all children receive their constitutionally guaranteed right to a free public education. After all, cities and States normally pay for police forces, fire protection, paved streets, municipal transport, and hosts of other services that benefit churches as well as secular organizations. But paying the salary of a religious teacher as part of a public school tuition program is a different matter.

. . . . Schools were . . . disqualified from receiving playground funds “solely because of their religious character,” not because of the “religious uses of [the] funding” they would receive.  . . . Maine . . . excludes schools from its tuition program not because of the schools’ religious character but because the schools will use the funds to teach and promote religious ideals.

For similar reasons, *Espinoza*does not resolve the present case. In *Espinoza*, Montana created “a scholarship program for students attending private schools.” . . . As in *Trinity Lutheran*, Montana denied funds to schools based “expressly on religious status and not religious use”; “[t]o be eligible” for scholarship funds, a school had to “divorce itself from any religious control or affiliation.” Here, again, Maine denies tuition money to schools not because of their religious affiliation, but because they will use state funds to promote religious views.

These distinctions are important. The very point of the Establishment Clause is to prevent the government from sponsoring religious activity itself, thereby favoring one religion over another or favoring religion over nonreligion. State funding of religious activity risks the very social conflict based upon religion that the Religion Clauses were designed to prevent. And, unlike the circumstances present in *Trinity Lutheran*and *Espinoza*, it is religious activity, not religious labels, that lies at the heart of this case.

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. . . . “The religious education and formation of students is the very reason for the existence of most private religious schools.” . . . Indeed, we have recognized that the “connection that religious institutions draw between their central purpose and educating the young in the faith” is so “close” that teachers employed at such schools act as “ministers” for purposes of the First Amendment. By contrast, public schools, including those in Maine, seek first and foremost to provide a primarily civic education. We have said that, in doing so, they comprise “a most vital civic institution for the preservation of a democratic system of government, and ... the primary vehicle for transmitting the values on which our society rests.”  To play that role effectively, public schools are religiously neutral, neither disparaging nor promoting any one particular system of religious beliefs. . . .

Maine legislators who endorsed the State's nonsectarian requirement recognized these differences between public and religious education. . . . Maine's nonsectarian requirement, they believed, furthered the State's antiestablishment interests in not promoting religion in its public school system; the requirement prevented public funds—funds allocated to ensure that all children receive their constitutional right to a free public education—from being given to schools that would use the funds to promote religion.

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Nothing in our Free Exercise Clause cases *compels* Maine to give tuition aid to private schools that will use the funds to provide a religious education. As explained above, this Court's decisions in *Trinity Lutheran*and *Espinoza* prohibit States from denying aid to religious schools solely because of a school's religious *status*—that is, its affiliation with or control by a religious organization.  . . . Maine does not refuse to pay tuition at private schools because of religious status or affiliation. The State only denies funding to schools that will use the money to promote religious beliefs through a religiously integrated education—an education that, in Maine's view, is not a replacement for a civic-focused public education. . . .

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In my view, Maine's nonsectarian requirement is also constitutional because it supports, rather than undermines, the Religion Clauses’ goal of avoiding religious strife. Forcing Maine to fund schools that provide the sort of religiously integrated education offered by Bangor Christian and Temple Academy creates a similar potential for religious strife as that raised by promoting religion in public schools. It may appear to some that the State favors a particular religion over others, or favors religion over nonreligion. Members of minority religions, with too few adherents to establish schools, may see injustice in the fact that only those belonging to more popular religions can use state money for religious education. Taxpayers may be upset at having to finance the propagation of religious beliefs that they do not share and with which they disagree. And parents in school districts that have a public secondary school may feel indignant that only *some* families in the State—those families in the more rural districts without public schools—have the opportunity to give their children a Maine-funded religious education.

. . . Bangor Christian and Temple Academy have admissions policies that allow them to deny enrollment to students based on gender, gender-identity, sexual orientation, and religion, and both schools require their teachers to be Born Again Christians. Legislators did not want Maine taxpayers to pay for these religiously based practices—practices not universally endorsed by all citizens of the State—for fear that doing so would cause a significant number of Maine citizens discomfort or displeasure. . . .

Maine's nonsectarian requirement also serves to avoid religious strife between the State and the religious schools. Given that Maine is funding the schools as part of its effort to ensure that all children receive the basic public education to which they are entitled, Maine has an interest in ensuring that the education provided at these schools meets certain curriculum standards. Religious schools, on the other hand, have an interest in teaching a curriculum that advances the tenets of their religion. And the schools are of course entitled to teach subjects in the way that best reflects their religious beliefs. But the State may disagree with the particular manner in which the schools have decided that these subjects should be taught.

This is a situation ripe for conflict, as it forces Maine into the position of evaluating the adequacy or appropriateness of the schools’ religiously inspired curriculum. Maine does not want this role. . . .  Nor do the schools want Maine in this role. Bangor Christian asserted that it would only consider accepting public funds if it “did not have to make any changes in how it operates.” . . . The nonsectarian requirement ensures that Maine is not pitted against private religious schools in these battles over curriculum or operations, thereby avoiding the social strife resulting from this state-versus-religion confrontation. By invalidating the nonsectarian requirement, the majority today subjects the State, the schools, and the people of Maine to social conflict of a kind that they, and the Religion Clauses, sought to prevent.

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Justice [Sotomayor](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0145172701&originatingDoc=I209fdf4bf16211ec906eda8f4f9d8a3e&refType=RQ&originationContext=document&transitionType=DocumentItem&ppcid=390019b679dc4041ae4c63edffbae0c7&contextData=(sc.Search)&analyticGuid=I209fdf4bf16211ec906eda8f4f9d8a3e), dissenting.

This Court continues to dismantle the wall of separation between church and state that the Framers fought to build. . . .

First, this Court should not have started down this path five years ago. Before *Trinity Lutheran*, it was well established that “both the United States and state constitutions embody distinct views” on “the subject of religion”—“in favor of free exercise, but opposed to establishment”—“that find no counterpart” with respect to other constitutional rights. . . . *Trinity Lutheran*veered sharply away from that understanding. After assuming away an Establishment Clause violation, the Court revolutionized Free Exercise doctrine by equating a State's decision not to fund a religious organization with presumptively unconstitutional discrimination on the basis of religious status. A plurality, however, limited the Court's decision to “express discrimination based on religious identity” (*i.e.,*status), not “religious uses of funding.”  . . . I warned in *Trinity Lutheran*, however, that the Court's analysis could “be manipulated to call for a similar fate for lines drawn on the basis of religious use.” That fear has come to fruition: The Court now holds for the first time that “any status-use distinction” is immaterial in both “theory” and “practice.”  It reaches that conclusion by embracing arguments from prior separate writings and ignoring decades of precedent affording governments flexibility in navigating the tension between the Religion Clauses. As a result, in just a few years, the Court has upended constitutional doctrine, shifting from a rule that permits States to decline to fund religious organizations to one that requires States in many circumstances to subsidize religious indoctrination with taxpayer dollars.

Second, the consequences of the Court's rapid transformation of the Religion Clauses must not be understated. From a doctrinal perspective, the Court's failure to apply the play-in-the-joints principle here, leaves one to wonder what, if anything, is left of it. . . . From a practical perspective, today's decision directs the State of Maine (and, by extension, its taxpaying citizens) to subsidize institutions that undisputedly engage in religious instruction. In addition, while purporting to protect against discrimination of one kind, the Court requires Maine to fund what many of its citizens believe to be discrimination of other kinds. . . .

Finally, the Court's decision is especially perverse because the benefit at issue is the public education to which all of Maine's children are entitled under the State Constitution. As this Court has long recognized, the Establishment Clause requires that public education be secular and neutral as to religion. The Court avoids this framing of Maine's benefit because, it says, “Maine has decided *not*to operate schools of its own, but instead to offer tuition assistance that parents may direct to the public or private schools of *their*choice.”  In fact, any such “deci[sion],” was forced upon Maine by “the realities of remote geography and low population density,” which render it impracticable for the State to operate its own schools in many communities.

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What a difference five years makes. In 2017, I feared that the Court was “lead[ing] us ... to a place where separation of church and state is a constitutional slogan, not a constitutional commitment.”  Today, the Court leads us to a place where separation of church and state becomes a constitutional violation. If a State cannot offer subsidies to its citizens without being required to fund religious exercise, any State that values its historic antiestablishment interests more than this Court does will have to curtail the support it offers to its citizens. With growing concern for where this Court will lead us next, I respectfully dissent.