

Dear Kate:

I understand that your committee has taken up S. 219, An act relating to ensuring compliance with the U.S. and Vermont Constitutions in the use of public funds for tuition. By way of FYI, I wanted to make you aware of the procedural posture of several cases that relate to this bill as written.

*Carson v. Makin* is a case about Maine's regime for using public tuition dollars for private schools. At issue is the constitutionality of Maine's regime, specifically whether it runs afoul of the Free Exercise Clause of the U.S. Constitution. It is currently pending with the U.S. Supreme Court. This case is particularly relevant to Vermont because of similarities between Maine and Vermont's tuition regimes. The U.S. Supreme Court is set to rule in *Carson v. Makin* by June.

Vermont is also currently defending three cases in federal court in which the plaintiffs are arguing that any restriction on the payment of publicly funded tuition to approved independent religious schools violates the Free Exercise Clause. Last fall, the federal court stayed two of those cases, *AH v. French* and *Valente v. French*, because the Supreme Court's decision in *Carson* is likely to bear directly on them. The third case, *EW v. French*, was just filed, and the federal court will be holding a hearing on May 10 to determine whether the use of adequate safeguards in that case violated the US Constitution. It is not clear whether the court will issue a decision before the U.S. Supreme Court's decision in *Carson* comes out.

As this area of law is currently in flux, I just wanted to make you aware.

Best,  
Charity

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