

# Public Money & Private Schools: Vermont's Constitutional Backdrop

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# What does the VT Constitution say about education?

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## Chapter II, § 68

“...a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth...”

## Chapter I, Art. VII

“That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community...”

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“[T]he state must ensure substantial equality of educational opportunity throughout Vermont.”

*Brigham v. State*, 166 Vt. 246, 268 (1997)

## *Vitale v. Belloz Falls Union High School et al.* (2023)

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“In essence, neither the state nor Vermont children are entitled to one specific method of providing for education under the Education Clause. Providing school districts with the choice between maintaining a public school, tuitioning, or some combination of the two is a ‘legislative means’ to achieve the constitutional ends of maintaining a ‘competent number of schools . . . in each town unless the general assembly permits other provisions for the convenient instruction of youth.’ Vt. Const. ch. II, § 68. Within this framework, school choice itself is not an educational opportunity but rather a means to provide for educational opportunities. As such, school choice is permitted but not required by the Education Clause; there is no entitlement to school tuitioning at the state’s expense derived from the Education Clause itself. . . In sum, the Education Clause does not require the state to provide Vermont children with school choice at its expense to meet its fundamental obligation to provide for education.”



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“[A] school district violates Chapter I, Article 3 when it reimburses tuition for a sectarian school . . . in the absence of adequate safeguards against the use of such funds for religious worship.”

*Chittenden Town Sch. Dist. v. Dep't of Educ.*, 169 Vt. 310,  
312 (1999)

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# A Changing Relationship between Free Exercise and the Establishment Clause

The Road to *Carson v. Makin*

# *Trinity Lutheran Church of Columbia, Inc. v. Comer* (2017)

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- ◆ *Facts:* A church challenged Missouri's exclusion of religious organizations from a state grant program for playground resurfacing
- ◆ *Holding:* The First Amendment's Free Exercise Clause prohibited the state from excluding a church from this otherwise available public benefit due to its religious status

## *Espinoza v. Montana Department of Revenue* (2020)

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- ◆ *Facts:* Montana Department of Revenue regulations excluded religious schools from the state's tax credit voucher program based on the state constitution's no-aid clause prohibiting public funding of religious schools
- ◆ *Holding:* The Free Exercise Clause prohibited the state from excluding schools from the voucher program due to their religious status



## *Carson v. Makin* (2022)

- ◆ *Facts*: Maine excluded (some) religious schools from its program providing publicly funded education in towns without public schools by paying tuition at private schools that met certain requirements include offering a secular education
- ◆ *Holding*: The Free Exercise Clause prohibited the state from excluding schools from the tuition program due to their religious status or religious use of the tuition funds

## *Carson v. Makin* (2022)

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“As we held in *Espinoza*, a ‘State need not subsidize private education. But once a State decides to do so, it cannot disqualify some private schools solely because they are religious.’”

– Chief Justice Roberts’s Majority Opinion

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“In light of the U.S. Supreme Court’s decision in *Carson v. Makin*, we are writing to advise you of the following: School districts may not deny tuition payments to religious approved independent schools or religious independent schools that meet educational quality standards based on the Vermont Constitution’s Compelled Support Clause, Vermont Constitution Chapter I, Article 3. Requests for tuition payments for resident students to approved independent religious schools or religious independent schools that meet educational quality standards must be treated the same as requests for tuition payments to secular approved independent schools or secular independent schools that meet educational quality standards.”

Letter to Superintendents from Sec. French, 9/13/22

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## *Vitale v. Belloz's Falls Union High School et al.* (2023)

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“The Education Clause does not require the state to provide school choice at its expense to meet its fundamental obligation to provide Vermont children with an education. School choice is a means to meet educational ends. [What] the state must provide children with [is] substantial equality of educational opportunity under the Common Benefits Clause.”

2023 VT 15, Paragraph 18