



# *New Mexico School Boards Association*

## **POLICY SERVICE ALERT**

**To: Superintendents and Board Members**  
**Date: July 20, 2022**  
**From: John F. Kennedy, Policy Service Director**  
**Re: U.S. Supreme Court Decisions**

As you may know, the Supreme Court has handed down two decisions in late June 2022, with significant implications for public schools.

In ***Carson v. Makin***, 596 U.S. \_\_\_ (June 21, 2022), the Court ruled for the third time in five years that the First Amendment's Free Exercise of Religion Clause requires states to include religious institutions and religious schools in state funding programs. This time, it invalidated a requirement of Maine's secondary school tuition program that requires participating private schools to be nonreligious.

In ***Kennedy v. Bremerton Sch. Dist.***, 597 U.S. \_\_\_ (June 27, 2022), the same 6-3 majority held that a Washington State school district violated a public school football coach's Free Exercise and Free Speech rights when it refused to allow him to pray on the field immediately after games. The Court ruled that the Free Exercise and Free Speech Clauses protect an individual engaging in personal religious observance from government reprisal, and that the Constitution neither mandates nor permits the government to suppress such religious expression.

These decisions by the nation's highest court call into question the continued viability of New Mexico's constitutional provision on public v. private religious schools. Article XII of the New Mexico Constitution addresses education issues generally. Section 3 within this article deals with private, sectarian schools as follows:

**"The schools, colleges, universities and other educational institutions provided**

**for by this constitution shall forever remain under the exclusive control of the state, and no part of the proceeds arising from the sale or disposal of any lands granted to the state by congress, or any other funds appropriated, levied or collected for educational purposes, shall be used for the support of any sectarian, denominational or private school, college or university.” Art. XII, Sec. 3., N.M. constitution.**

The Policy Service is not aware of any current challenge to New Mexico’s constitutional provision on public v. private religious school funding, but given the significant import of these rulings, impacting employee exercise of religious rights and public v. private religious school funding, debate as to New Mexico’s restrictions on such funding should be anticipated in the not-too-distant future. The National School Boards Association has made available a detailed description and analysis of the issues. If members desire to review this document, please advise.