

SUPREME COURT OF WISCONSIN

St. Augustine School v. Carolyn Stanford Taylor

2021 WI 70 · No. 2021AP265-CQ · Decided July 2, 2021

SUMMARY

The Wisconsin Supreme Court answered a certified question from the United States Court of Appeals for the Seventh Circuit concerning the methodology for determining whether private schools are affiliated with the same religious denomination under Wis. Stat. § 121.51. The court held that the state superintendent may consider neutral corporate information and a school's public self-identification and affiliation, but may not investigate the school's religious beliefs, practices, or teachings. The certified question was answered and the cause remanded.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Ann Walsh Bradley, J.; Dallet, J.; Hagedorn, J.; Karofsky, J.; Roggensack, J.; Rebecca Grassl Bradley, J.; Ziegler, C.J.
JURISDICTION	Wisconsin
DECIDED	July 2, 2021
DOCKET	2021AP265-CQ
DISPOSITION	remanded
PROCEDURAL POSTURE	The Wisconsin Supreme Court answered a certified question of Wisconsin law from the United States Court of Appeals for the Seventh Circuit concerning the methodology for determining whether private schools are affiliated with the same religious denomination under Wis. Stat. § 121.51(1).
STANDARD OF REVIEW	Statutory interpretation and application of constitutional principles present questions of law reviewed independently.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	St. Augustine School, Joseph Forro, Amy Forro v. Carolyn Stanford Taylor, Friess Lake School District

TOPICS

statutory interpretation

establishment clause

free exercise clause

appellate procedure

constitutional law

PRACTICE AREAS

constitutional law

education law

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether, in determining whether private schools are affiliated with the same religious denomination under Wis. Stat. § 121.51(1), the Superintendent must rely exclusively on corporate documents and other neutral organizational criteria.
2. Whether the Superintendent may consider a school's self-identification and statements of affiliation appearing on its website or in filings with the state.
3. What constitutional limits the Establishment Clause places on the Superintendent's inquiry into religious affiliation.

HOLDINGS

1. The Superintendent is not limited to considering a school's corporate documents exclusively when determining whether schools are affiliated with the same religious denomination.
2. As part of a neutral and secular inquiry, the Superintendent may consider a school's professions concerning its self-identification and affiliation, including statements on its public website and in filings with the state.
3. The Superintendent may consider evidence of affiliation that does not require inquiry into a school's or denomination's religious beliefs, practices, or teachings, but may not investigate or surveil those matters.

KEY QUOTATIONS

“In conducting a neutral and secular inquiry, the Superintendent may also consider the professions of the school with regard to the school's self-identification and affiliation, but the Superintendent may not conduct any investigation or surveillance with respect to the school's religious beliefs, practices, or teachings.” (¶5)

“We thus conclude this methodological inquiry, determining that in examining whether schools are “affiliated with the same religious denomination” pursuant to Wis. Stat. § 121.51, the Superintendent is not limited to consideration of a school's corporate documents exclusively.” (¶55)

“The line the Holy Trinity court drew between the constitutional and the unconstitutional was at the investigation and surveillance of a school's religious practices.” (¶47)

FACTUAL BACKGROUND

St. Augustine is a private religious school in the Friess Lake School District. Its website described it as an independent and private traditional Roman Catholic school, while the school represented to the district and Superintendent that it was unaffiliated with the Archdiocese of Milwaukee. Because St. Gabriel, an Archdiocesan Catholic school in the same district, already received transportation benefits, the Superintendent concluded that St. Augustine's attendance area could not overlap St. Gabriel's under Wis. Stat. § 121.51(1).

PROCEDURAL HISTORY

St. Augustine sought publicly funded transportation for its students. The school district and the Superintendent of Public Instruction denied the request after determining that St. Augustine and St. Gabriel were affiliated with the same religious denomination and had overlapping attendance areas. The federal district court granted defendants summary judgment on St. Augustine's federal claims, and the Seventh Circuit affirmed. The United States Supreme Court vacated and remanded for consideration in light of *Espinoza v. Montana Department of Revenue*. On remand, the Seventh Circuit certified the state-law methodology question to the Wisconsin Supreme Court.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The Seventh Circuit was directed to conduct further proceedings, including applying the Wisconsin Supreme Court's methodology to determine whether St. Augustine and St. Gabriel are actually affiliated with the same religious denomination. The Wisconsin Supreme Court did not decide that factual application.

CASES CITED

- State ex rel. Vanko v. Kahl, 52 Wis. 2d 206, 188 N.W.2d 460 (1971)
- Holy Trinity Community School, Inc. v. Kahl, 82 Wis. 2d 139, 262 N.W.2d 210 (1978)
- Winebow, Inc. v. Capitol-Husting Co., Inc., 2018 WI 60, ¶23, 381 Wis. 2d 732, 914 N.W.2d 631
- State v. Roundtree, 2021 WI 1, ¶12, 395 Wis. 2d 94, 952 N.W.2d 765
- L.L.N. v. Clauder, 209 Wis. 2d 674, 686-87, 563 N.W.2d 434 (1997)
- Providence Catholic School v. Bristol School District No. 1, 231 Wis. 2d 159, 176, 605 N.W.2d 238 (Ct. App. 1999)
- St. Augustine School v. Evers, 276 F. Supp. 3d 890 (E.D. Wis. 2017)
- St. Augustine School v. Evers, 906 F.3d 591 (7th Cir. 2018)
- St. Augustine School v. Taylor, 141 S. Ct. 186 (2020)
- *Espinoza v. Montana Department of Revenue*, 591 U.S. ___, 140 S. Ct. 2246 (2020)
- Service Employees International Union, Local 1 v. Vos, 2020 WI 67, ¶24, 393 Wis. 2d 38, 946 N.W.2d 35
- State v. Guarnero, 2015 WI 72, ¶12, 363 Wis. 2d 857, 867 N.W.2d 400
- State ex rel. Kalal v. Circuit Court for Dane County, 2004 WI 58, ¶¶45-46, 271 Wis. 2d 633, 681 N.W.2d 110
- Cape v. Plymouth Congregational Church, 130 Wis. 174, 109 N.W. 928 (1906)
- State ex rel. Knudsen v. Board of Education, Elmbrook Schools, Joint Common School District No. 21, 43 Wis. 2d 58, 168 N.W.2d 295 (1969)
- State ex rel. Zignego v. WEC, 2021 WI 32, ¶16 & n.9, 396 Wis. 2d 391, 957 N.W.2d 208
- Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803)
- Trinity Lutheran Church of Columbia, Inc. v. Comer, 137 S. Ct. 2012 (2017)
- Lemon v. Kurtzman, 403 U.S. 602, 613 (1971)

