

A state legislature enacted a statute to provide parental and student choice in education. The statute established a program that allocates taxpayer funds to private organizations that award scholarships to students for tuition at private or charter schools within the state. However, the statute expressly prohibits scholarship recipients from using the funds at any school controlled by a church, sect, or denomination.

A group of parents whose children were awarded tuition assistance through the program sought to use the funds at a private, religious school. The state denied the parents' request pursuant to the statutory provision. The parents have filed suit in federal district court to obtain an injunction, challenging the constitutionality of the provision.

Is the court likely to uphold the provision?

- A. No, because the provision is an unconstitutional establishment of religion.
- B. No, because the provision unconstitutionally restricts the parents' right to freely exercise their religious beliefs.
- C. Yes, because the parents do not have standing.
- D. Yes, because the Tenth Amendment gives the state legislature plenary power to appropriate state funds in the manner that it deems most conducive to the welfare of its people.

Explanation:

The First Amendment **free exercise clause** bars governments from enacting laws or policies that impose **burdens based on** an individual's **religious beliefs or conduct**. The **level of scrutiny** applied to such laws and policies **depends on whether** that burden was:

- **direct** (intentional) – triggering **strict scrutiny**, which invalidates a law unless the government proves that it is necessary to achieve a compelling government interest *or*
- **incidental** (generally applicable) – triggering **rational basis scrutiny**, which upholds a law unless the challenger proves that the law has no rational relation to any legitimate government interest.

Here, the statutory provision directly burdens religion because it intentionally prohibits scholarship recipients from using the funds at schools controlled by a church, sect, or denomination. Since the state has the nearly impossible task of satisfying strict scrutiny, this provision unconstitutionally restricts the parents' right to freely exercise their religious beliefs. As a result, the court is unlikely to uphold the provision.

(Choice A) The First Amendment **establishment clause** prohibits the government from expressing a religious preference or otherwise violating the separation of church and state. The statutory provision does not violate the establishment clause because it applies equally to all religious schools and promotes the separation of church and state.

(Choice C) The parents have **standing** since their right to direct the religious upbringing of their children was intentionally burdened (injury-in-fact) by the statutory provision (causation) and an injunction will provide relief (redressability).

(Choice D) Although the Tenth Amendment gives states the power to establish laws for the welfare, health, and safety of their people, that power is not plenary (ie, absolute). Instead, the state must comply with the other provisions of the U.S. Constitution (eg, free exercise clause) when exercising this power.

Educational objective:

Direct burdens on the free exercise of religion are almost always invalidated under strict scrutiny, which requires the government to prove that the burden is necessary to achieve a compelling government interest.

References

- *Emp't Div. v. Smith*, 494 U.S. 872, 878–79 (1990) (establishing the direct/incidental burden test for the free exercise clause).
- *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2261 (2020) (holding that a state cannot prohibit state-sponsored scholarships from being used at religious schools).

Free exercise analysis

