

Introduction¹

Students will assume the role of counsel in the legal dispute *Maxwell v. Board of Education*, a civil lawsuit originally filed in federal district court in the District of McGee. The case is currently on appeal to the 14th Circuit, following the district court order granting summary judgment to defendants.

Issues

The issues on appeal are:

1. Does the provision of McGee state law prohibiting a charter school from being “operated by a religious organization which intends to provide religious instruction in the charter school” violate the Free Exercise Clause?
2. Is an employment decision by the charter school “state action” for purposes of liability under 42 U.S.C. § 1983?

Each team must argue both issues. Briefing and arguments must be limited to these two issues. The parties should not argue other issues outside the identified issues (meaning, the parties should not argue the issue of whether the school’s employment decision actually violates the Equal Protection Clause or section 1983, if it is state action).

This case was filed in the federal district of McGee, which is part of the fictional Fourteenth Circuit. Therefore, decisions of the United States Supreme Court are binding precedent, while decisions from other federal courts and state courts are merely persuasive.

Procedural History

In *Maxwell v. Board of Education*, Plaintiffs Lenore Maxwell and the Coalition for a Secular State initiated a civil lawsuit in the federal district court of the District of McGee. Plaintiffs sought injunctive relief against Baudolino Community School, operated by Defendant Eternalist Educational and Outreach Foundation (Foundation), and requested

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Defendant McGee State Board of Education to revoke the charter granted to the Foundation. The basis for the legal challenge is a McGee state law provision prohibiting a charter school from being operated by a religious organization that intends to provide religious instruction. Additionally, Plaintiffs alleged violations of Lenore Maxwell's Equal Protection rights and Section 1983 of Title 42 of the United States Code, stemming from an employment decision made by the charter school. The claims were consolidated as per McGee court rules. Defendants, including the State Board and the Foundation, moved for summary judgment, contending that both claims lacked merit. The district court, in its findings of fact, adopted the parties' stipulated facts. The court granted defendants' motion for summary and this appeal follows.

Factual Background

The State of McGee, in compliance with its constitution and relevant legislation, operates free public schools that educate 64 percent of K-12 students in the state. Charter schools, authorized by the McGee state legislature, educate eight percent of the student population, while private schools and homeschooling together account for 28 percent.

The Eternalism Christian denomination, characterized by a traditionalist interpretation of Christianity, has a substantial presence in McGee. The Eternalist Educational and Outreach Foundation, a religious non-profit organization, has operated a religious K-12 school since 1999. In 2023, the Foundation applied to the McGee State Board of Education to sponsor Saint Baudolino Community School, a proposed K-12 charter school in McGee City.

The application outlined the Foundation's intent to provide religious instruction in the tenets of Eternalist faith and (1) to emphasize parents' choice in the environment in which their children will be educated; (2) to provide access to students regardless of financial status; and (3) to require community service by all students. The curriculum also includes elective courses related to ministry and service learning. The application also stated that the school's code of conduct and employment conditions would align with Eternalism's tenets.

On November 3, 2022, the State Board of Education approved the Foundation's application and agreed to sponsor Saint Baudolino as a charter school operated by the Foundation, sited in the City of McGee, to begin operating in fall 2023. The anticipated operating budget for fall 2023 expected eighty-nine percent of Saint Baudolino's operating budget to come from state and federal funding and eleven percent to come from private donations.

As a public charter school, no student in the state of McGee or in McGee City will be required to attend Saint Baudolino Community School. The McGee City school district operates public district schools that would be capable of providing a public elementary school education to each eligible child within the McGee City school district. No religious instruction nor "service learning" occurs at public district schools in the state of McGee or McGee City.

Forty-five charter schools currently operate in the state of McGee, nine of which are sponsored by the State Board of Education upon applications by non-profit organizations, and one of those charter schools operates within the geographical boundaries of the school district of the City of McGee. Prior to the Foundation's application, the State Board of Education had never approved an application of a religious organization to operate a charter school.

The school's board of directors, following approval, began operational preparations, including developing codes of conduct. Notably, one provision prohibited employees from being in a same-sex marriage, consistent with Eternalism's beliefs.

Lenore Maxwell, a mathematics teacher applicant, had her employment offer rescinded after the board discovered her same-sex marriage.

Standard of Review

In *Maxwell v. Board of Education*, Plaintiffs claim that allowing the Foundation to provide religious instruction at its charter school is a direct violation of McGee state law. Defendants respond that barring the Foundation from doing so at the charter school is an unconstitutional

violation of its Free Exercise rights. Additionally, Defendants contest Plaintiffs' claimed application of 42 U.S.C. Section 1983 to the employment decision made by the charter school. The legal questions presented in this case will be reviewed de novo. The court will independently assess the constitutionality of the state law and the application of Section 1983 to the employment decision without giving deference to the district court's findings or conclusions. While students are expected to acknowledge and understand the de novo standard of review, the focus of their briefing and arguments should be on the substantive issues at hand.

Summary of Arguments

First Amendment Claim:

Petitioners/appellants will likely argue that the McGee statute barring public charters from providing religious instruction to its students is legitimate regulation aimed at maintaining the separation of church and state within the public educational system. They may argue that the law does not prevent religious organizations from operating private schools and emphasize the government's interest in preventing the establishment of religiously affiliated schools, which use public funds. Publicly funding these schools may encourage sectarianism and undermine public education in general.

Respondents/Appellees are likely to argue that the provision of McGee state law restricting religious organizations from operating charter schools infringes upon the Free Exercise Clause of the First Amendment and is religion-based discrimination. They may emphasize that this restriction hinders the Foundation's ability to establish and operate the charter school based on its religious principles, limiting its rights to freely exercise its religious beliefs. They may also contend that the law unfairly singles out religious organizations, imposing a burden on their ability to provide educational opportunities that secular organizations do not face.

42 U.S. Code Section 1983 Claim:

Petitioners/appellants may argue that the employment decision made by the charter school constitutes "state action" under 42 U.S.C. § 1983. They may assert that the charter school, by receiving state sponsorship and funding, acts as a government entity, and therefore, its employment decisions should be subject to constitutional scrutiny.

Respondents/appellees may counter by arguing that the employment decision is not "state action" under Section 1983. They may emphasize the autonomy of the charter school's board of directors in making employment decisions and argue that these decisions are not compelled or influenced by state regulations. They may contend that the charter school, as a private entity, should have the discretion to establish employment policies consistent with its religious beliefs without triggering constitutional scrutiny.

Relevant Law - General

The First Amendment of the United States Constitution states:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The 42 U.S Code § 1983 states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted

unless a declaratory decree was violated or declaratory relief was unavailable.

McGee Statutes Section 125.002, subd. 2 defines “charter school” for the purposes of the McGee Charter School Act as:

A public school established by contract (charter) with a board of education of a school district, a higher education institution, a federally recognized Indian tribe, or the State Board of Education pursuant to the McGee Charter School Act.

McGee Statutes Section 125.005, subd. 1 provides:

Any non-profit corporation may apply to establish a charter school. An applicant seeking to establish a charter school shall submit a written application to the proposed sponsor of the charter school.

McGee Statutes Section 125.007 provides:

Subd. 1. A charter school’s hiring process and employment contract with a teacher or other employee shall comply with the personnel policies of the charter school as identified in the school’s charter or as promulgated by the charter school’s governing board, provided the promulgated policies are consistent with the charter. Policies of the charter school governed by this subdivision include policies related to eligibility for hire, professional certification, professional development, evaluation, suspension, dismissal, and leave. The employment contract shall also set forth the salary, hours, fringe benefits, and work conditions.

Subd. 2. The charter school shall not be required to comply with provisions of McGee state law governing the hiring, evaluation, or retention of teachers that are applicable to teachers in public schools that are not charter schools, including provisions of other law relating to teacher certification, personnel policies, or collective bargaining.

McGee Statutes Section 126.008, subd.1.(c) provides that a charter school’s application and charter must comply with the provision that:

A charter school shall be nonsectarian in its program, admission policies, employment practices, and other operations. *A sponsor may not authorize a charter school that is operated by a religious organization which intends to provide religious instruction in the charter school.* (emphasis added).

a.

The First Amendment claim – Relevant law

1. ***Espinoza v. Montana Department of Revenue*, 591 U.S. ----, 140 S. Ct. 2246, 2261 L.Ed.2d 679 (2020).**

The Free Exercise Clause of the First Amendment protects against the “indirect coercion or penalties on the free exercise of religion, not just outright prohibition.” *Lyng v. Northwest Indian Cemetery Protective Assn.*, 485 U.S. 439, 450 (1988). “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.” *Espinoza v. Montana Department of Revenue*, 591 U.S. ----, 140 S. Ct. 2246, 2261 L.Ed.2d 679 (2020).

A state that utilizes programs to subsidize private education cannot disqualify select private schools solely because the schools would utilize the funds for religious instruction. Under the First Amendment’s Free Exercise Clause, state governments are not permitted to penalize the practice of religion, such as by withholding public benefits from people or organizations due to their religious beliefs or practices.

Espinoza holds that the disqualification of some private schools from otherwise available public funds solely based on religious affiliation is deemed as religion-based discrimination, triggering strict scrutiny. Strict scrutiny is used for both status and use-based discrimination claims. To prevail under the strict scrutiny test, the challenged government action must be narrowly tailored to achieve a compelling state interest.

2. *Carson v. Makin*, 596 U.S. 767 (2022):

Carson v. Makin is a United States Supreme Court case that also addresses the Free Exercise Clause and is a follow-up to *Espinoza v. Montana Department of Revenue*. The State of Maine put in place a tuition-assistance voucher program for families living in school districts without a public high school. This public benefit program was available for a multitude of private schools but did not include Bangor Christian Schools and Temple Academy due to the schools providing religious instruction. Thus, strict scrutiny applied, given Maine conditioned the receipt of otherwise available public benefits on religious practice, which, the court held, is a penalty for free exercise of religion and is religious discrimination. The Supreme Court held that the State of Maine violated the Free Exercise Clause by preventing religious observers from receiving public benefits. That is because the Maine legislature excluded “private religious schools from those eligible to receive such funds” and such exclusion separates church and state more than intended under the Establishment Clause. Relying on *Zelman*, which stated that “a benefit program under which private citizens’ direct government aid to religious schools wholly as a result of their own genuine and independent private choice’ does not offend the Establishment Clause.” *Zelman v. Simmons-Harris*, 536 U.S. 639, 652-653 (2002). The court ruled that Maine purposely “identifies and excludes otherwise eligible schools on the basis of their religious exercise” and that that is “discrimination against religion”.

42 U.S. Code Section 1983 claim – Relevant law:

42 U.S. Code Section 1983, is a crucial component of the Civil Rights Act of 1871, which provides legal recourse for individuals whose constitutional rights are violated by those acting under the color of state law. While traditionally applied to actions by government officials, Section 1983's relevance extends to situations involving employees of private schools under certain circumstances. If a private school, or its employees, acts in a manner that is deemed to be performing a traditional government function or working in concert with state authorities, it may be considered to be acting “under color of law.” In such cases, an employee who faces unjust termination or discriminatory actions by the private school could potentially invoke Section 1983. Section 1983 serves as a legal avenue for employees of private schools to seek remedies when their constitutional

rights are violated, contingent upon the specific circumstances and the extent of the school's connection to government entities.

Relevant Case Law

***Rendell-Baker v. Kohn*, 457 U.S. 830 (1982):**

Rendell-Baker v. Kohn is a landmark Supreme Court case that clarifies the scope of "state action" under the Fourteenth Amendment to the United States Constitution and its connection to 42 U.S.C. Section 1983. The case involved the termination of employees at New Perspectives School, a private school, and it addressed the question of whether the private school's actions could be considered "state action" subject to constitutional scrutiny.

In *Rendell-Baker*, the Court held that the actions of a private entity, even if it performs a function traditionally undertaken by the government, do not constitute "state action" unless there is significant government involvement or coercion. The Court emphasized that mere receipt of government funding or regulation is insufficient to transform private conduct into state action. Instead, the focus should be on whether the private entity's actions can be fairly attributed to the state, indicating government responsibility or compulsion.

This decision is crucial in the context of 42 U.S.C. Section 1983, a federal statute that provides a cause of action for individuals whose constitutional rights are violated under the color of state law. *Rendell-Baker* clarified that not all actions by entities receiving government funding or involved in government-regulated activities automatically amount to state action. To invoke Section 1983, there must be a direct and significant connection between the government and the alleged constitutional violation.

Rendell-Baker helps to establish when certain private entities, even when performing functions traditionally carried out by the government, may not be subject to Section 1983 liability if their actions lack the requisite government involvement. This distinction is crucial in determining when constitutional protections apply and when they do not in the realm of private conduct that may have some tangential connection to the government.

***Peltier v. Charter Day School*, 37 F. 4th 1004 (4th Cir. 2022)**

In *Peltier v. Charter Day School*, 37 F. 4th 1004 (4th Cir. 2022), the case primarily focuses on the constitutional issue of whether a public charter-school dress code that imposed disparate requirements on girls and boys violated the Equal Protection Clause. The court ruled that the dress code, specifically mandating girls to wear skirts while allowing boys to wear pants and shorts, violated the Equal Protection Clause, applying intermediate scrutiny to gender as a quasi-suspect classification. To survive intermediate scrutiny, a defendant must show that the classification is substantially related to the accomplishment of an important governmental purpose.

In the context of Section 1983, the court's decision in *Peltier* underscores the constitutional rights of individuals within the public school system. Section 1983 enables individuals to bring legal actions against state actors who, acting under the color of law, violate their constitutional rights. In *Peltier*, the court found that the public charter-school's dress code, which mandated disparate requirements for girls and boys, constituted state action.

This determination is crucial for the application of Section 1983, as it established that the school, despite being a public charter institution, was acting under the color of state law. The court in *Peltier* analyzed the school's actions, including the formulation and enforcement of the dress code, and concluded that the school's conduct was intertwined with state authority. The school's status as a public charter school, operating with government authorization and public funding, played a pivotal role in attributing its actions to the state. By establishing the public charter-school's actions as state action, *Peltier* satisfied a crucial element for invoking Section 1983. This case underscores the significance of the state's involvement in the challenged conduct, ensuring that constitutional claims under Section 1983 are directed at actions that can be legitimately considered as governmental actions, rather than purely private ones