

Linda Greenhouse Justice on the Brink presentation by Carol Stoufer

Included as a speaker at the Freedom From Religion Foundation's conference was Linda Greenhouse a recognized expert on her perspective of the Supreme Court. She teaches at Yale Law School and continues writing for the NYT as she has for forty years.

After her talk, I purchased her recent 2021 book Justice on the Brink. On the cover are the words, “The Death of Ruth Bader Ginsburg, and Rise of Amy Coney Barrett, and 12 months that Transformed the Supreme Court.” In the book Chapter 11 is called Religion Established. This book is the source of my remarks on the Supreme Courts shift towards favoritism of funding Religion.

There are two clauses in the Constitution which affect Religion:

- First, The Free Exercise clause protects Believers from Government Interference.
- Second, The Establishment clause prevents the government from endorsing or coercing a religious practice or viewpoint.

Linda Greenhouse posits that the Supreme Court has weaponized the Free Exercise Clause turning it from its historic role as a shield into a sword that vaulted believers into a position of privilege.

She cites three cases that reflect the Supreme Court's erosion of the Free Exercise Clause giving power to believers.

The first case is Trinity Lutheran Church of Columbus vs Comer in 2017. The church is located in Missouri. The Missouri Constitution provided that “No Money shall ever be taken from the public treasury, directly or indirectly in aid of any church, sect or denomination by religion.” The church wanted to participate in a State sponsored program that provided grants to upgrade its school ground. The state deemed the church ineligible which was supported by the Federal District Court and the Eighth Circuit.

The Supreme Court ruled for the Church by a vote of 7 to 2. Sotomayer and Ginsburg dissented. Chief Justice Roberts wrote, “Here there is no question in that Trinity Lutheran was denied a grant simply because of what it is—a church,” He went on “But the exclusion of Trinity Lutheran from which it is otherwise qualified solely because it is a church, is odious to our Constitution and cannot stand.”

The second case is Espinoza vs Montana Department of Revenue. Montana's constitution has a “no aid” provision that prohibited “any direct or indirect appropriation of public funds to religious schools. In this instance it was a tax credit that parents could use for private school tuition. The Montana Department of Revenue ruled that the tax credit could not be used for religious education. The State Supreme Court upheld the ruling and went further. It invalidated the entire program for religious and secular schools as there was no way to police the program.

The Institute of Justice took the case to the Supreme Court. The vote was 5 to 4. Roberts said that the Montana “no aid” provision itself violated the Free Exercise clause and should not have been withheld from the religious school in the first place. The five justices in the majority had Catholic upbringings and four had attended Catholic secondary schools.

The third case is Carson and Makin. This case involves Maine. Maine's Constitution requires a free public education through twelfth grade but fewer than half of the school districts have a high school. Does the Free Exercise clause require the religious use of public money?

This case is pending in the Supreme Court. I have been following the Case on Wikipedia. Will the Court's decision require the use of public money? My hope is that many of you will follow Wikipedia and be interested in the Supreme Court's decision and whether or not the decision further requires the religious use of public money.