

No. 21-1295

IN THE
Supreme Court of the United States

ST. AUGUSTINE SCHOOL, *et al.*,

Petitioners,

v.

JILL UNDERLY, IN HER OFFICIAL CAPACITY
AS SUPERINTENDENT OF PUBLIC
INSTRUCTION, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

DANIELLE B. TIERNEY,
Counsel of Record
LORI M. LUBINSKY
AXLEY BRYNELSON, LLP
2 East Mifflin Street,
Suite 200
Madison, WI 53703
(608) 257-5661
dtierney@axley.com

Counsel for Respondent
Friess Lake School District

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312768



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Did the Seventh Circuit properly (1) consider *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020) upon remand and, in so doing, determine that it needed a predicate state-law question answered, and (2) upon receiving that answer from the Wisconsin Supreme Court, hold in Petitioners' favor on grounds of an erroneous application of state law?

CORPORATE DISCLOSURE STATEMENT

Friess Lake School District has no parent corporation and no publicly held company has any ownership interest.

INTRODUCTION

Respondent Friess Lake School District joins in co-Respondent Jill Underly's opposition to the pending petition for certiorari. As fully explained in Respondent Underly's submission, Petitioners received a favorable decision from the Seventh Circuit upon remand and this Court should not expend its limited resources reviewing favorable decisions. Further, this case, now on its second trip to this Court, would present a poor vehicle for addressing First Amendment issues that the Petitioners have attempted to revive; Petitioners' argument is premised on a single challenge to the application of a statute (and, notably, Petitioners never argued that the statute itself is unconstitutional) and is supported by unique facts not likely to be repeated in future cases. Petitioners make no argument that resolution of this case would resolve any broad First Amendment issues or provide any legal clarity to any case other than this one. Finally, Petitioners' representation regarding how the Seventh Circuit addressed the case on remand is fundamentally incorrect. The Seventh Circuit properly reviewed the case in light of the *Espinoza* decision, as directed. Petitioners' dissatisfaction with the ultimate outcome of the case does not warrant review by this Court, and this Court should deny the petition.

STATEMENT OF THE CASE

I. Statutory and Factual Background

Respondent Friess Lake School District joins and adopts Underly's Statutory and Factual Background as if fully stated herein.

II. Procedural History

Respondent Friess Lake School District joins and adopts Underly's Procedural History as if fully stated herein.

REASONS FOR DENYING THE WRIT

Under the Supreme Court Rules, a petition for a writ of certiorari will be granted only for compelling reasons. [Rule 10.] Rule 10 sets forth criteria indicating "the character of the reasons the Court considers . . ." in determining whether to grant a petition. Petitioners have not established meritorious grounds satisfying these conditions and, as such, this Court should deny the Petition.

I. The Seventh Circuit Ruled in Petitioners' Favor.

As noted by Respondent Underly, the Petitioners received a favorable decision from the Seventh Circuit upon remand. Despite that, they now seek review to attempt to move towards another favorable decision on different grounds. This does not justify review by this Court.

Respondent Friess Lake School District joins and adopts Underly's argument on this point as if fully stated herein.

II. Petitioners' Fact-Specific Challenge to a Single Application of a State Statute (Which Petitioners Contend is Constitutional) Presents a Poor Vehicle to Address First Amendment Issues.

Petitioners' case stems from a single application of a state-specific statute regarding transportation benefits for students. This would present a poor vehicle for addressing national First Amendment issues because the Petitioners are not challenging the statutory scheme; rather, they are simply challenging the single application of the statute to the Petitioners. Further, this case is extremely fact specific, the likes of which are not likely to be repeated. As such, it would provide nominal, if any, guidance for any future First Amendment issues. Therefore, it is a poor candidate for review by this Court.

Respondent Friess Lake School District joins and adopts Underly's argument on this point as if fully stated herein.

III. The Seventh Circuit Complied with this Court's Grant-Vacate-Remand Order.

On remand from this Court, the Seventh Circuit ordered briefing from the parties on *Espinoza* to consider the case's impact, if any, on this present case. The Seventh Circuit fully complied with this Court's directive, and Petitioners' argument to the contrary is merely dissatisfaction with the outcome, rather than a valid critique of the Court's compliance with the remand order.

Respondent Friess Lake School District joins and adopts Underly's argument on this point as if fully stated herein.

CONCLUSION

For the reasons stated herein, as more fully argued in Respondent Jill Underly's Response to the Petition for Writ of Certiorari, Respondent Friess Lake School District respectfully requests the Petition for Writ of Certiorari be denied.

Dated: April 27, 2022

Respectfully submitted,

DANIELLE B. TIERNEY,
Counsel of Record
LORI M. LUBINSKY
AXLEY BRYNELSON, LLP
2 East Mifflin Street,
Suite 200
Madison, WI 53703
(608) 257-5661
dtierney@axley.com

*Counsel for Respondent
Friess Lake School District*