

WILL: Federal court rules superintendent of public instruction and school district violated school transportation law

Posted on Thursday, Sep 29, 2022

>> **WisPolitics is now on the State Affairs network. Get custom keyword notifications, bill tracking and all WisPolitics content. [Get the app or access via desktop.](#)**

SUIT CHALLENGED UNLAWFUL DENIAL OF TRANSPORTATION BENEFITS TO FAMILIES OF PRIVATE RELIGIOUS SCHOOL

The News: A federal district court [ruled](#) that the Wisconsin Superintendent of Public Instruction (SPI) and Friess Lake School District violated state transportation law when they refused to approve the transportation attendance area of St. Augustine School, a private school in Colgate, Wisconsin. The Superintendent and Friess Lake denied St. Augustine's request based on their own unilateral determination that St. Augustine was affiliated with schools of the Archdiocese of Milwaukee, even though St. Augustine had shown that it is an independent school with no secular or religious ties to the Archdiocese. The Wisconsin Institute for Law & Liberty (WILL) then [sued](#) on behalf of St. Augustine and the parents of three children who attended the school. Last week, WILL [obtained a ruling](#) that the government entities violated state law.

The Quote: WILL Deputy Counsel, Anthony LoCoco, said, "It has always been clear that the government has no right to decide the meaning of religious terms such as 'Catholic,' much less to deny public benefits based on such determinations. But we are pleased that a Court has now confirmed that doing so violates state law."

Background: Wisconsin provides transportation aid to qualifying private school

students as long as there is not an overlapping attendance area between private schools that are affiliated with one another; or, more specifically, affiliated with the same sponsoring group. In this case, SPI and Friess Lake School District (now part of Holy Hill Area School District) denied St. Augustine students busing rights because there is an Archdiocesan Catholic school in the attendance area.

However, St. Augustine is independent and unaffiliated with the Archdiocese. In this case, the school district and SPI determined the definition of “Catholic” and withheld government benefits until St. Augustine agreed not to call itself “Catholic.”

The Lawsuit: WILL [filed this case](#) in August of 2016 and originally lost the case, but pursued it through numerous different venues including both the Wisconsin and U.S. Supreme Courts. In a vigorous dissent in the Seventh Circuit Court of Appeals, Judge Kenneth Ripple warned that the original adverse decision against the Plaintiffs “raises haunting concerns about the future health of the Religion Clauses [of the First Amendment] in this circuit.” The decision was also criticized in an article in the June 2019 edition of the [Harvard Law Review](#).

The United States Supreme Court took the case and vacated the original decision of the Seventh Circuit and remanded the case for further consideration. Finally, in 2021, the Seventh Circuit issued a [decision](#) making clear that the Wisconsin Department of Public Instruction violated state law when it denied the families at St. Augustine school transportation benefits; and, then remanded the case to the District Court for further proceedings. Then, last week, the District Court issued a [formal declaration](#) that the Defendants violated state law.

Read More:

- [Order and Decision](#), September 19, 2022
- [Judgement](#), September 19, 2022