

HOW THE *ESPINOZA* CASE COULD IMPACT RELIGIOUS LIBERTY

QUICK FACTS

THE CASE: *Espinoza v. Montana Department of Revenue*

THE COURT: The United States Supreme Court

OPINION ISSUED ON: Opinion issued on June 30, 2020

THE HOLDING: The Free Exercise Clause prohibits Montana from excluding religious schools from participating equally in the state's scholarship program for low-income students.

ABOUT THE CASE

Montana established a scholarship tax credit program to provide tuition assistance to low income families, helping parents send their children to the private school of their choice. Because some parents chose to send their children to religious schools, the Montana Supreme Court ended the scholarship program altogether, citing the state constitution's prohibition on state funding of religious organizations. Under *Espinoza*, it is unconstitutionally discriminatory to exclude religious schools from participating equally in a government benefit solely because of the schools' religious character.

IMPLICATIONS FOR RELIGIOUS LIBERTY

Espinoza will impact school choice programs across the country. If a state provides scholarships, tuition assistance, or other benefits to students attending private schools, it cannot exclude faith-based schools from participating in the programs on equal footing with secular private schools.¹

The decision extends the landmark *Trinity Lutheran* decision, which held that a church could not be excluded from a neutral government program designed to improve childrens' playgrounds on the basis of the church's religious status. The *Espinoza* opinion held that prohibited religious status discrimination was also at issue here. Because of the improper religious "status" discrimination, it did not matter whether the state's goal was to prevent religious organizations from aiding religious "uses."

Espinoza rejects arguments often used to justify excluding religious schools from neutral school choice programs, such as general anti-establishment interests. The Court distinguished a prior case that allows states to refuse to fund the theological training of pastors.

COURT BREAKDOWN

MAJORITY: Roberts, Thomas, Alito, Gorsuch, and Kavanaugh

DISSENT: Ginsburg, Kagan, Breyer, Sotomayor

OTHER POTENTIAL IMPLICATIONS

Thirty-eight states have "Blaine Amendments" similar to the provision in the Montana constitution that limit state aid to religious organizations. Although *Espinoza* did not categorically invalidate these Blaine Amendments, it significantly limits their scope. The ruling will enable more faith-based organizations to be eligible for government benefit programs.

Footnote 1: The only way for such a program to survive is if it satisfies "strict scrutiny," which is a heavy burden requiring the state to prove that it is furthering a compelling interest by narrowly tailored means.