The Supreme Court of the United States

_____

ESPINOZA
Petitioner

V.

MONTANA DEPARTMENT OF REVENUE
Respondent

_____

_____

Brief of the Petitioner

QUESTION

Does it violate the Free Exercise Clause of the First Amendment to invalidate a generally available and religiously neutral student-aid program simply because the program affords students the choice of attending religious schools?

Elizabeth Adeoye

Yashica Nabar

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Zelman v Simmons-Harris

Trinity Lutheran v Comer

Widmar v Vincent

Rosenberger v. Rector and Visitors of the University of Virginia

Other Authorities

Montana Constitution art. X, § X.
U.S. Constitution

Statement of the Case

A 2015 law by Montana State legislature created a tax credit program for taxpayers that donated to scholarship organizations that aided students in their efforts to attend private schools. This meant that the Montana Department of revenue was responsible to give out the tax credit and make sure that the whole program was constitutional. The Montana Department of Revenue found that the program was not in compliance with the Montana State Constitution and thereby issued Rule 1, which excluded all students wanting to attend schools that were religious from benefiting from the scholarship program.

Mothers of students affected by this rule (Kendra Espinoza, Jeri Anderson, and Jaime Schafer) contended that this issuing was unconstitutional, they argued that this violates the free-exercise clause. Initially, in the Montana Judicial District Court, the plaintiff was granted summary judgment, on appeal in the Montana Supreme Court, the lower court's judgment was reversed. The plaintiffs then appealed to the U.S Supreme Court.

Statement of Argument

We argue that the free-exercise clause prohibits states from invalidating a generally available and religiously neutral student-aid program simply because the program affords students the choice of attending religious schools. Today the plaintiff will address two main points, the first being that without Rule 1 the tax credit program put forth by Montana bill 410 is constitutional. Using precedent set by *Trinity Lutheran v. Comer* and *Zelman v Simmons -Harris* we will argue that absent Rule 1 the tax credit program does what it intended to do, help students and taxpayers, justly and in compliance with the U.S Constitution. Next point we will address is that the Blaine Amendment, the reasoning behind the issuing of Rule 1, is unconstitutional and has strict

scrutiny because a parent's right to choose the upbringing of their child is a fundamental right and the Blaine Amendment of the Montana Constitution blatantly infringes on this right.

Argument

1. **The tax credit program was constitutional as it stood before the issuing of Rule 1.**

A. In Widmar vs Vincent, A college religious organization on the University of Missouri campus wanted to use rooms to hold their weekly meetings, but the university rejected their application for continued use based on the fact that it would violate sections of the rules and regulations of the University of Missouri. These rules did not allow the use of University buildings for religious teaching. It was held that the refusal of the University of Missouri to assist religious groups on campus was unconstitutional. The reasoning behind this decision was that when the University opened its facilities it gave a neutral policy that any student groups would be allowed to use it, they argued about a neutral policy towards religion would achieve obligation that complied with its constitutional obligations. This has a clear relationship to the case of Espinoza versus the Montana Department of Revenue because the Department of Revenue is arguing that issuing of Rule 1 was to fix the unconstitutionality of the original document when the precedent of this case would show that the issuing of a neutral living policy would also achieve this. My argument has several historical sources that continue to prove exactly how restricting a student to receive aid would not allow them to freely exercise their religion. James Madison's "Memorial and Remonstrance Against Religious Assessments" argued for religious freedom, Madison thus led the Government to not only further expand their beliefs of multiple religions being exercised

within a majority but also, allowing Americans the ‘right’ to complete religious liberty. Similar to this, Thomas Jefferson wrote a series of letters to Danbury Baptists addressing how “the act of the whole American people which declared that their legislature should ‘make no law respecting an establishment of religion, or prohibiting the free exercise thereof’”. By saying this, he has created a basis of how officials should create non-threatening laws on behalf of the religiously affiliated citizens. This has great importance to the current argument as Thomas Jefferson, an influential figure in our society is implying that as Americans who are guaranteeing liberty to all those who inhabit the states, it only makes sense to flourish through this liberty by allowing everyone to follow whichever beliefs that they may. The many free exercise claims that have gone through the Supreme Court and historical sources about religion in our laws simply prove that restricting a student to receive aid would not allow them to freely exercise their religion and Rule 1 is therefore unconstitutional and is in violation of the Free-Exercise clause.

B. Per the standards set by *Zelman v Simmons Harris* and *Trinity Lutheran v Comer*, the Tax Credit Program followed all guidelines to be constitutional.

The free-exercise clause of the first amendment clearly states that: “Congress shall make no law prohibiting the free exercise (of religion)”. In other words, legislators are legally not allowed to exclude religious practices in any way, because restricting religions and cultures from getting equal rights can result in a major amount of offense to the individuals and groups that take part in said religions. But the issuing of rule 1 goes in direct violation of that. In *Zelman v Harris* the court set up a five-prong test to test whether or not a voucher program was constitutional or not. Even though the matter in today’s case isn't about a voucher for the establishment clause but a tax credit program, this just goes to show the basis of the constitutionality of government aid in

secular programs. The test is 1) The program must have a valid secular purpose 2) Aid must go to parents, not schools. 3) A broad class of beneficiaries must be covered 4) The program must be neutral in respect to religion 5) There must be adequate nonreligious options. Using the standards and rationale set in *Trinity Lutheran v Comer*, the tax credit program, in this case, is constitutional and would've done exactly what it intended to do which is aid students in their effort to attend a good school. In the case, it was deemed that as long as religious and nonreligious entities were given the same opportunities or the lack thereof then the program in consideration is constitutional. In Lutheran Church vs. Comer, a church-backed child learning center wanted a government grant even though the program met all the criteria for the grant they were turned down because of a clause in the Missourian Constitution. Just like the petitioner in today's case. It was held that the exclusion of churches from an otherwise neutral and secular aid program violates the First Amendment's guarantee of free exercise of religion. This directly relates to the case of Espinoza v Montana Department of Revenue, being that in this case the issuing of Rule 1 directly excluded students attending a religious school from participating in a generally neutral scholarship program. In this program, everyone irrespective of their religion has an equal opportunity to receive aid.

1. **Montana's Blaine Amendment is unconstitutional under the free exercise clause.**

A. Montana's Blaine Amendment**,** as applied, is unconstitutional. The Department of Montana's rationale behind issuing rule 1 was that the tax credit program was unconstitutional under the Montana Constitution's Blaine Amendment. State's with no-aid clauses argue that the reason they are in place is to protect the separation of church and state. But after a look at the background of these amendments, it has a history of prejudice against religion that is not the

norm not just religion a whole. Even the language of the amendment shows forms of discrimination. “The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.” *Montana Constitution Clause X, Section 6* The definition of sectarianism is a form of prejudice, discrimination, or hatred arising from attaching relations of inferiority and superiority to differences between subdivisions within a group. Simply put, the reason Blaine amendments were put into place was to be discriminatory. B. In the case of Rosenberger v. Rector and Visitors of the University of Virginia, the Court held that the University of Virginia violated the First Amendment rights of the Christian magazine staff by denying them the same funding resources that would be available to non-religious student-run magazines. The Court held that if the university chooses to promote speech at all it must also promote speech in all forms and equally. This proves that even if religion at first was an issue amid the case, the majority ruled that it was only just to treat all opinions and beliefs on an equal and leveled basis. In the case of Espinoza vs. Montana Department of Revenue because Rule 1 inhibits the promotion of Education to students attending religious schools. America itself is diverse as a whole, is made up of many religions and races, so the very people who were denying the resources for students to thrive are setting up our country for a downward spiral in innovation and creativity. Religions are already made up of depth in culture and a rich amount of diversity. If the Montana Department of Revenue can’t see that blocking off all this culture is like blocking off the spread of culture, then they need to take a second look at their thoughts towards true citizens. If the Montana Department of Revenue used the scholarship program to

promote education in the state, then how does it make sense that limiting the practice of education based on religion is in the greater good of citizens in the United States?

Conclusion

Out of the many freedoms that are protected by the United States Constitution the ones protected by the First Amendment are among the most important ones. The amount of effort that was put into including the Bill Of Rights in the United States Constitution just goes to show how important these rights are. Simply put, infringing on these rights in any way shape or form is infringing on the American way of life. And through the issuing of Rule 1 and not allowing innocent students to reap the benefits of the American way of life is simply immoral and unjust. Through the many precedent cases that have gone through the Supreme Court and the historical sources that are used in Many religious conversations to this day, we argue that the mere restriction of a student to receive Aid based on the fact that they want to attend a religious school is unconstitutional, unethical, and violates the free exercise clause of the First Amendment. The unalienable rights that are promised to everyone are the freedom to life, liberty, and the pursuit of happiness and those are what the entire Constitution was made to protect and uphold.

Prayer

It is for the reasons previously stated, that we pray this court reverses the decision of the Montana Supreme Court and takes note of the blatant unconstitutionality in the issuing of Rule 1 and rules in favor of the Petitioner.