IN THE SUPREME COURT OF

THE STATE OF THE UNITED STATES

KENDRA ESPINOZA, JERI ELLEN ANDERSON,

JAMIE SCHAFER

Petitioners

Vs.

THE MONTANA DEPARTMENT OF REVENUE

Respondent

Brandon Fantine & Isaac Yoo

Brief for Petitioner

QUESTION PRESENTED

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?

TABLE OF AUTHORITIES

Cases

Other Authorities

Statement of the Case

In 2015, the Montana state government established the Tax Credit Program, which would award individuals to donate to nonprofit scholarship organizations. This would allow these organizations to help finance tuition and fund education at various qualified educational institutions, both secular and religious. However, in an effort to adhere to the Montana Constitution, the state's Department of Revenue issued Rule 1 on the Tax Credit Program, prohibiting religious and sectarian institutions from being able to receive this public benefit. This included Stillwater Christian School, where the children of the plaintiffs: Kendra Espinoza, Jeri Ellen Anderson, and Jaime Schaefer, attend. They claim that the exclusion of religious institutions is a violation of the Free Exercise Clause and that the Tax Credit Program was constitutional without Rule 1. They contested in District Court, where it was ruled in favor of the Plaintiffs, claiming that Rule 1 may be in violation of the First Amendment and that the Tax Credit Program, as originally drafted, was constitutional. However, the respondent appealed to the Montana Supreme Court, which ruled in favor of the respondent, claiming that Rule 1 did not violate the Free Exercise Clause and that the Tax Credit Program was in violation of the Montana Constitution, without Rule 1. The plaintiffs again appealed to the Supreme Court, again arguing that Rule 1 is in violation of the Free Exercise Clause, as the discrimination of qualifying religous institutions from a publicly available program, is unconstitutional.

Statement of the Argument

The Montana Department of Revenue did violate the First Amendment's Free Exercise Clause by adding Rule 1 to the because the exclusion of religous institutions and religiously associated people, merely due to their religous association, is nothing more than blatant discrimination. The Tax Credit Program, without Rule 1 was publicly available and facially neutral in nature, therefore Rule 1 was unnecessary. The complete termination of the program in its totality is also a violation and was done to limit religious institutions.

Argument 1: The generality of the scholarship and the methods of discrimination

The exclusion of Stillwater Christian School students from receiving a scholarship meant for the general student body based on how their religion is taught/practiced violates previous case precedents and violates the free exercise clause as well. The case this is in violation of is Rosenberger v. Rector and Visitors of The University of Virginia, 515 U.S. 819 (1995). In Rosenberger v. Rector, a distinction was made between the intent of a grant/funds and the religious content it supports. According to this case, if funds are meant to support a very broad subject, they must be equally distributed and support all involved parties in this subject. In Rosenberger, a group of funds were meant to go to support the general topic of "free speech," so the distribution of these funds cannot discriminate who or what topics they would support. Therefore, applying the same rationale to Espinoza v. Montana Department of Revenue, these scholarship funds are meant to provide support to education which is a very general topic. Since it is supporting the broad umbrella-term of "education," it has to promote education for all peoples. Concurrently, imposing financial burdens upon someone due to the content of their religion and their practices is viewpoint discrimination, and viewpoint discrimination violates the

Free Exercise Clause. The precedent was also set in Rosenberg v. Rector. In Espinoza v. Montana Department of Revenue, the discrimination is resulting from the Stillwater Christian school engaging in religious teachings. As a result, this is discriminating against how one practices their religion; therefore it is viewpoint discrimination and in violation of the free exercise clause.

Argument 2: The unconstitutionality of the Montana state statute in its application.

At a facial level, the Montana statute is constitutional since it applies to all religions and all non-secular programs. However, the way in which the statute is written and how it is applied in this case is a direct violation of not only the statute itself, but of the Free Exercise Clause as well. The first major component of Article X, Section 6, of the Montana State Constitution is how there shall be no "direct or indirect appropriation or payment from any public fund or monies" to a religious institution. This would mean any direct gift to a religious identity is not allowed, along with any tax revenue that's indirectly gifted. However, according to Everson v. Bd. of Educ. of Ewing Twp., 330 U.S. 1 (1947), indirect support to a religious program does not violate the constitution and/or the establishment clause because indirect support is usually under an "umbrella" in which it would apply to all other programs as well. As interpreted, direct funding to a religious program can be unconstitutional, while indirect funding is wholistically constitutional. In the case of the Montana statute, the prohibition on providing indirect aid to religious institutions would violate the establishment clause because it would directly contradict the ruling and the interpretation outlined in Everson v. Bd. of Educ., and therefore violates the First Amendment. Additionally, it would contradict the historical precedent in Joseph Story's

commentary about religious freedom and anti-establishment, as he states, “There is always a difference to be made between toleration and establishment.” Therefore, making a public benefit that can be awarded to students of religious institutions is toleration of their religious beliefs, not the establishment of their respective religion. Secondly, the statute goes on to state that it prevents “aid [to] any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole in part by any church, sect or denomination.” Meaning, aid to religious programs is prohibited, but not aid to religious persons. The Tax Credit Program in question would not have gone to a school first, it would be originally awarded to a qualified individual. The Stillwater Christian school would not receive any money from this award. Therefore, preventing these students from receiving the scholarship violates the free exercise clause because of how it is interpreted: no persons even related to a religious institution can benefit from public funds or monies. For that reason, the Montana statute violates the Free Exercise Clause as applied in this case.

Argument 3: The addition of Rule 1 to the preexisting Tax Credit Program was unconstitutional as it violates the Free Exercise Clause at face value.

The addition of Rule 1 to the preexisting Tax Credit Program is indeed unconstitutional and in violation of the Free Exercise Clause of the First Amendment. This is because Rule 1 prohibits the donation of scholarships to any individuals or students that attend any academic or sectarian institutions or organizations associated with religious denominations or sects. This rule was initially added to adhere to Article X, Section 6 of the Montana Constitution which states:

“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 or 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.” However, despite this attempt to adhere to the Montana state constitution, Rule 1 still violates the Constitution. This is because the exclusion of students of religious academies is a fundamental violation of the principle of free expression stated in the First Amendment and is an example of facial discrimination against religous institutions. The inability for these students to receive scholarships and financial aid is a significant disadvantage they are faced with, merely due to the fact that they attend a religiously affiliated institution, constitutes under the grounds of a violation of the Free Exercise Clause of the First Amendment. And as addressed previously by my co-council, this Tax Credit program, without Rule 1, is facially neutral and constitutional, so the inhibitive nature of Rule 1 towards religous institutions, considering the parameters of this neutral program is facial discrimination. This is supported by the precedent in the case of the Church of the Lukumi Babalu Aye, Inc. v. Hialeah, 508 U.S. 520 (1993), which involved the local government deciding to ban and restrict the church’s ability to perform animal sacrifices, which was a major component and ritual of the church’s religious identity and practices. As the aforementioned case states, “ The Free Exercise Clause ‘protect[s] religious observers against unequal treatment’ and subjects to the strictest scrutiny laws that target the religious for ‘special disabilities’ based on their ‘religious status.’” This same principle is affirmed in the case of Trinity Lutheran Church of Columbia, Inc. v. Comer, 582 U.S. ___ (2017), involving a church who is unable to receive a grant for a public benefit grant offered by the state government. As the case states, “The express discrimination against religious exercise

here is not the denial of a grant, but rather the refusal to allow the Church—solely because it is a church—to compete with secular organizations for a grant…the exclusion of Trinity Lutheran from a public benefit for which it is otherwise qualified, solely because it is a church, is odious to our Constitution all the same, and cannot stand." Both of these precedents are applicable to today's case: the inability for students of a religious institution to receive public government benefits, simply due to their religion is a clear example of unfair treatment and special disadvantages put on the religious institutions, merely because of their religious affiliation, as outlined by both Lukumi and Trinity Lutheran.

This fundamental principle can also be found in historical precedents. For example, James Madison says, " As the Bill violates equality by subjecting some to peculiar burdens, so it violates the same principle, by granting to others peculiar exemption.", in his letter to the Virginia Common Assembly, concerning his ideas about religion and his remonstrance against the establishment of religion. Despite his expressed opposition to the establishment of religion by the government, he does affirm the principle that providing different religious groups with different burdens and/or benefits, is unequal treatment, and therefore a fundamental violation of the Free Exercise Clause. With all of these precedents and reasons considered, the addition of Rule 1 to the Tax Credit Program is a facial violation of the Free Exercise Clause and is unconstitutional.

Argument 4: The complete dissolution and termination of the scholarship program created by the Tax Credit for Qualified Education Contributions Act are unconstitutional.

The complete dissolution of the Tax Credit program enacted by the Montana Supreme Court is also unconstitutional. The fact that the Montana Supreme Court completely shut down the program as whole, preventing both religious and secular institutions and the students of both, from receiving financial assistance and scholarship funding- "leveling down"- instead of allowing religious institutions to be able to qualify to receive this publicly available funding along with secular institutions- "leveling up"- is again a violation of the Free Exercise Clause. While it may not be facially discriminatory like the addition of Rule 1 may be, this disbandment of the program is still an example of discrimination against religous institutions and their students, like Stillwater. As Church of the Lukumi Babalu Aye, Inc. v. Hialeah, 508 U.S. 520 (1993) states, "The Free Exercise Clause, like the Establishment Clause, extends beyond facial discrimination." The case also later cites Gillette v. the United States, 401 U. S. 437, 452 (1971) and Bowen v. Roy 476 U.S. 693 (1986), that declares that the Free Exercise Clause "prohibits subtle departures from neutrality" and "covert suppression of particular religious beliefs", respectively. This termination of the program was a clear method for the state to avoid having to fund religious institutions directly or indirectly, as they clearly "leveled down" instead of "leveling up" to not have to make this public benefit accessible to religious institutions, thus adhering to Rule 1. While this may be due to the state's worries about violating the Montana Constitution and its separation of state and church principles, the Tax Credit Program without Rule 1 was available to all qualifying academic institutions, based purely on academic performance and merit. Instead, the state decides to eliminate the entire program and rather bar both secular and religious institutions, than give both the ability to receive these benefits. While the state is technically within their right to disband the program which they run and fund and have no legal obligation to provide these tax cuts or scholarships, we firmly believe that the state

was not “justified by a compelling interest” as required by Church of the Lukumi Babalu Aye, Inc. v. Hialeah, 508 U.S. 520 (1993). Therefore, the “leveling down” of the Tax Credit Program was also another instance of religous discrimination, committed by the state and is another violation of the Free Exercise Clause.

Conclusion

The automatic disqualification of religious institutions, like Stillwater, from participating in the public tax credit and scholarship program, via the addition of Rule 1, is undeniably a violation of the Free Exercise Clause of the First Amendment. Rule 1’s facially discriminates against these religious institutions by barring their ability to participate in this facially neutral, public, and government-funded program, for no other reason than their religious association, disregarding the religious institutions’ academic qualification and merit. The statute of the Montana Constitution that Rule 1 is designed to adhere to is also misapplied to today’s case. And the complete dissolution or leveling down of the entire Tax Credit Program, enacted by the Montana Supreme Court is another example of discrimination, as it was done with the clear intent to limit the abilities of religous institutions and is discriminatory toward the students of these religous institutions, while the state government lacks a clear compelling justification for this decision.

Prayer

It is for these reasons that we pray that the court rules in favor of the Petitioners: Kendra Espinoza, Jeri Ellen Anderson, and Jamie Schafer and reverses the decision of the lower court.