IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

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PETITIONER: Kendra Espinoza, Jeri Ellen Anderson and Jaime Schaefer

VS.

RESPONDENT: The Montana Department of Revenue

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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?

The petitioners will argue that the Free Exercise Clause prohibits states from withholding funding from student aid programs because the money may be given to religious schools.

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Dixon, 59 Mont. at 78, 195 P. at 845.

Wisconsin v. Yoder, 406 U.S. 205, 233 (1972)

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OTHER AUTHORITIES

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St. George Tucker, Blackstone's Commentaries, 1:App. 296--97, 2:App. 3--11

Joseph Story, Commentaries on the Constitution 3:§§ 1865--73

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Mont. Code Ann. § 15-30- 3101

Montana Constitution of 1889

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Montana Constitutional Convention Delegates Transcript

https://courts.mt.gov/portals/189/library/mt_cons_convention/vol6.pdf

SUMMARY OF ARGUMENT:

The crux of our argument rests in the idea of equal opportunity. If a secular organization is getting a benefit, a sectarian organization shouldn't be getting any less just because it is religiously affiliated. A variety of cases support this, but arguably the most important one is the *Trinity Lutheran Church of Columbia, Inc. vs. Comer* case. The Trinity Lutheran Church merged with another organization called The Learning Center,

which was religiously affiliated. After doing so, the Trinity Lutheran Church applied to purchase recycled tires and playground parts from the Missouri Department of Natural Resources. However, they were denied because The Learning Center incorporated religious instruction in their lesson plans. Trinity ended up taking the Department to the Supreme Court, and they won because the court ruled that the government had to provide equal opportunities to both sectarian and secular organizations. In terms of the *Espinoza vs. Montana Department Revenue* case, students applying to secular institutes are getting scholarships from the Tax Credit Program, but students wanting to apply to sectarian institutes are unable to get access to these same scholarships solely because they are applying to religious institutions. This is very blatantly an unequal opportunity for those applying to religious institutions because they cannot get access to the same benefits their secular counterparts. The thesis of our case is to rule in uniform with the *Trinity Lutheran Church of Columbia, Inc. vs. Comer* case among others such as *Rosenberger vs. Rector and Visitors of the University of Virginia.*

INTRODUCTION:

Kendra Espinoza, Jeri Anderson and Jaime Schaefer are three hardworking, motivated, and driven mothers who are dedicated to ensuring the safety and prosperity of their children's future. Unfortunately, after Mrs. Espinoza's daughter was bullied in government public school, Mrs. Espinoza took the proactive step in putting her daughter into a sectarian school— Stillwater Christian. Mrs. Espinoza believes that her daughter embraces the principles of a Christian religion and that her motive for enrolling her in this

school is because she “love[s] that the school teaches the same Christianalues that [she] teach[es] at home.” (Pet. App. 152, ¶ 12.)

In 2015, the Montana State Department of Revenue enacted a tax-credit scholarship program to provide a miniscule tax credit to individuals and businesses who donate to private, nonprofit scholarship organizations. These three women and their families relied on individuals, or themselves, giving donations to the Tax Credit For Qualified Education Contributions Act(TCQEC). The tax-credit act would then grant a $150 tax deduction to the donor and proceed to give scholarships to low-income individuals like Mrs.Espinoza.

In time, however, the Montana State Department of Revenue enacted Rule 1, a clause prohibiting scholarship recipients from using their scholarships at religious schools. The Montana State Department wished to enact Rule 1 to parallel their motives in their own state constitution; Specifically, Article X, Section 6 which cites that “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.”

As Rule 1 established that the TCQEC could not allocate scholarship money to sectarian schools, and thus, this would mean that the money would not go to the children of the three women, they filed a lawsuit challenging Rule 1. The first court ruled that the scholarship program was in fact **constitutional** and that absent Rule 1, the scholarship money should have gone to both the religious and secular schools. The Montana Supreme

Court reversed this decision and established that the program was **unconstitutional** as it was funded by taxpayer dollars.

Petitioner observes that the founders recognized that "Christianity ought to receive encouragement from the state, so far as was not incompatible with the private rights of conscience, and the freedom of religious worship." However, in order to preserve the intent of the written constitution, this quote does indicate that the fathers wanted individuals to be able to think, decide, and preside over their minds. This would establish that there must be "a wall of separation between Church & State" as individuals who are practicing Islam or Hinduism would rationally object to an amalgamated Church and State which is also upheld by the Free Exercise Clause.

On the basis that the TCQEC is a constitutional act on the basis of merit whilst the Rule 1 provision is an infraction of the Free Exercise Clause of the First Amendment and that "religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence" we humbly ask the court to reverse.

ARGUMENT

1. PREVIOUS RULINGS HAVE ESTABLISHED THAT INVALIDATING A NORMALLY GENERAL BENEFIT TOWARD A RELIGIOUS ORGANIZATION DOES NOT COMPLY WITH THE FREE EXERCISE CLAUSE.

A. ALLOWING THE INVALIDATION OF SUCH BENEFITS WOULD REQUIRE OVERRULING PAST PRECEDENT.

There have been a variety of similar cases to *Espinoza vs. Montana Department Revenue* in the past. The most similar cases to this one all rule in a similar way: in favor of the side that most closely resembles Espinoza's. An example is *Trinity Lutheran Church of Columbia, Inc. vs. Comer,* where the "Trinity Lutheran Church of Columbia, Inc. (Trinity) operates a licensed preschool and daycare called The Learning Center that was initially opened as a non-profit corporation but merged with Trinity in 1985. The Learning Center has an open admissions policy and incorporates daily religious instruction into its programs. The Missouri Department of Natural Resources (DNR) offers Playground Scrap Tire Surface Material Grants that provide funds for qualifying organizations to purchase recycled tires to resurface playgrounds. Trinity applied for such a grant but was denied because Article I, Section 7 of the Missouri Constitution states, 'no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, section or denomination of religion."

However, Trinity sued on the basis that the Missouri Constitution violated the Fourteenth Amendment, but more importantly, the Free Exercise Clause of the First Amendment. The Supreme Court settled on a 7-2 decision for Trinity Lutheran Church of Columbia, Inc. The implication is that the Missouri Constitution was attempting to prevent government money, in the form of a grant, from flowing to the Trinity Lutheran Church of Columbia, Inc. In the *Espinoza vs.*

Montana Department Revenue case, a part of the Montana Constitution is attempting to prevent government money gained from the Tax Credit Program from flowing to scholarship organizations that provide their services to students attending religious institutions. There is a clear connection between the Montana Constitution and the Missouri Constitution along with Trinity and the Tax Credit Program.

A similar situation arose when, "Ronald W. Rosenberger, a University of Virginia student, asked the University for $5,800 from a student activities fund to subsidize the publishing costs of Wide Awake: A Christian Perspective at the University of Virginia. The University refused to provide funding for the publication solely because it 'primarily promotes or manifests a particular belief in or about a deity or an ultimate reality,' as prohibited by University guidelines." The Supreme Court settled on a 5-4 decision, which means the court concluded that the magazine staff's First Amendment rights were violated due to the fact that they were denied the same funding a secular magazine would have received from the university. In the case of *Espinoza vs. Montana Department Revenue,* siding with the Respondents would mean that students aiming for secular institutions are in consideration for scholarships but those aiming for religious institutions would not be. This reality breaks the precedent set by the *Rosenberger vs. Rector and Visitors of the University of Virginia* case, which aimed to show that both the secular and non-secular magazines should have received funding.

Even putting money aside, there have been numerous scenarios in which the Free Exercise Clause was violated because the government prohibited the ability of groups to fully engage in their religious activities. In the case of *Church of Lukumi Babalu Aye, Inc. vs. City of Hialeah*, "The Church of Lukumi Babalu Aye practiced the Afro-Caribbean-based religion of Santeria. Santeria used animal sacrifice as a form of worship in which an animal's carotid arteries would be cut and, except during healing and death rights, the animal would be eaten. Shortly after the announcement of the establishment of a Santeria church in Hialeah, Florida, the city council adopted several ordinances addressing religious sacrifice. The ordinances prohibited possession of animals for sacrifice or slaughter, with specific exemptions for state-licensed activities." The people of the Church of Lukumi Babalu Aye exercised their religion by sacrificing animals, but the government prohibited this, which was ruled as unconstitutional. Similar to these people, in Montana, people are trying to get scholarships to go to a religious institute they would like to go to, so they can further exercise their religion. Allowing the invalidation of this effort would be in direct contradiction of the *Church of Lukumi Babalu Aye, Inc. vs. City of Hialeah* case.

In *Widmar vs. Vincent*, a student-led organization on the University of Missouri campus called Cornerstone applied to use a series of rooms for organization meetings. However, because they were a religious institution, the university rejected their application for rooms repeatedly. In an 8-1 decision, the Supreme Court confirmed that was a violation of the Free Exercise Clause of the individuals in the Cornerstone organization. The university barred the students'

ability to exercise their religion on campus. Similarly, in Montana, not allowing scholarships to go to students applying for religious institutions prevents them from exercising their religion before they even get on campus.

Religious organizations haven't been given an advantage over secular organizations, so there is no warranting or precedent as to why they should be at a disadvantage either. In *Chambers vs School District No. 10, "*the Court considered whether a tax levy intended to fund general teaching positions at a religiously-affiliated private school violated Article XI, Section 8, of the Montana Constitution of 1889. The Court observed that the tax levy permitted a religiously-affiliated school to unconstitutionally obtain teachers at public expense." If courts have ruled that religious schools should not have an advantage over secular schools, when it comes to the *Espinoza vs. Montana Department Revenue* case, there is no reason it should be the other way around either.

In *Wisconsin vs. Yoder*, it was ruled that religious schooling is a free exercise right, which means that stripping the ability to engage in it if the desire is there is unconstitutional in terms of the First Amendment. The court also found that "depriving families of scholarships on that basis penalizes that right." Essentially, past precedent has proven that depriving a student of a scholarship simply because he or she wants to attend a religious school is unconstitutional under the Free Exercise Clause. This extends beyond *Wisconsin vs. Yoder* as every aforementioned contributes to the solidified precedent that such an act is not compatible with the First Amendment.

B. THE FREE EXERCISE CLAUSE ESTABLISHES THE FEDERAL GOVERNMENT AND STATE GOVERNMENTS AS THE PRIMARY AUTHORITIES TO BRING ABOUT EQUAL OPPORTUNITY AMONG SECULAR AND NON-SECULAR ORGANIZATIONS.

It is widely believed that the sole purpose of the Free Exercise Clause is to dictate that the government cannot adopt an official religion. However, in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, it is made clear that the job of the government is to also ensure that religious organizations and secular organizations have equal opportunities. In fact, in the *Trinity Lutheran Church of Columbia, Inc. v. Comer* case, "the law did not need to prevent the religious organization from practicing its religion; it was sufficient that the law denied a religious organization the same opportunity to compete for a benefit that is otherwise available to all secular organizations." This can be applied to the *Espinoza vs. Montana Department Revenue* case because the Tax Credit Program's benefits are supposed to be general benefits, which means that everyone has an opportunity to get them. However, Rule 1 solidified the idea that religious organizations do not have the ability to get these benefits, which means that the idea of equal opportunity, created by the *Trinity Lutheran Church of Columbia, Inc. v. Comer* case, would vanish. Not only is there a past precedent indicating that Rule 1 violates the Free Exercise Clause, but the *Trinity Lutheran Church of Columbia, Inc. v. Comer* case provides an in-depth explanation as to why Rule 1 violates this part of the First Amendment.

Previous case rulings have prompted us to realize to take everyone into account rather than just those in secular organizations. In *Zelman vs. Simmons-Harris* and *Everson v. Board of Education of the Township of Ewing,* the judges ruled in favor of the mindset that every family and student should be taken into account when it comes to a program like the Tax Credit Program. This includes not only those in secular organizations, but also those affiliated with religious organizations.

C. THE RULING OF THE ESPINOZA VS. MONTANA DEPARTMENT OF REVENUE MUST BE IN LINE WITH THE INTENTIONS OF MONTANA'S FOUNDING FATHERS.

Siding with the Respondents on this matter would be sending across a message that Rule 1 does not violate the First Amendment. Problematically, the fundamental principles of the Tax Credit Program and Rule 1 contradict each other. The fundamental principle of Rule 1 is that no aid can be given to religious organizations, but the fundamental principle of the Tax Credit Program is that it considers any third party organization, even those that are religiously affiliated. These two contradicting policies are what the *Montana Constitutional Convention Delegates* wanted to avoid; they were seeking to avoid "jeopardiz[ing] the precarious historical balance which has been struck between opposing doctrines and countervailing principles." By siding with the Respondents, you have two contradicting policies in Montana, which is precisely what their founding fathers wanted to avoid. By siding with the petitioners, Rule 1 must be nullified since it is

contrary to the First Amendment. This means the intent of the founding fathers is preserved, which is of utmost importance.

2. THE RESPONDENT'S EVIDENCE IS UNRESPONSIVE, IT DOES NOT ENGAGE WITH THE CENTRAL ISSUES, AND IS INCONCLUSIVE AT BEST.

A. RESPONDENT'S ARGUMENT: INDIRECT PAYMENTS OR APPROPRIATIONS HAVE BEEN CLAIMED TO ALSO VIOLATE THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT.

This assertion does not have merit. It is quintessential to note the difference between an appropriation and a payment. A governmental organization that has to give regular appropriations to schools is succinctly different from payments that are constituted by donations. Legislatures cannot give out "appropriations" to private individuals. Both must be direct as explained in *Article X, Section 6.* However, the problem arises when *Article X, Section 6* mentions that indirect payments also must not be given. Under this court's precedent, terms and verbiage of "indirect effect" go against principled constitutional text. Concise constitutional language must be interpreted as written. It should not be held that ambiguous text such as "indirect", "aid", and "appropriation of payment" validate disproving of sectarian schools. On a strict interpretation basis, " direct or indirect" modifies the terms "appropriations and payments" and does not modify the non-parallel phrases "from public funds or monies" or "to aid any" sectarian school.

B. RESPONDENT'S ARGUMENT: THAT A VARIETY OF STATES HAVE CREATED A SYSTEM WHERE INDIVIDUALS CAN FREELY EXERCISE RELIGION WHILE ALSO BARRING THE GOVERNMENT FROM GIVING AID TO RELIGIOUS ORGANIZATIONS.

Respondent's notion that the North Carolinian and New Jersian Constitutions of 1776 guarantee the practicing of religion without malice along with the contradictory notion that religious institutions must be withheld from state aid does not have merit. *Espinoza v. Montana Department of Revenue* distinguishes that this is not a case about religious institutions; instead, there is a fine line to what the Respondent argues and the programs of private choice that aid individuals. This case marks that the private individual had the option of sending their child to a Christian school and that the tax-credit program is indeed a program of private choice. Precedent has noted that the basic purpose of the program is to "provide parental and student choice in the education" *Mont. Code Ann. § 15-30- 3101.* Respondents argument here would be disregarding the principal facts of the case. The Espinozas did have liberty.

CONCLUSION

United States democracy is the epitome of fragility. It represents the necessity to hold ourselves to the utmost, highest moral standards. But sometimes, the greatest sword of American democracy also functions as its greatest shield— the Constitution. It is crucial to look at numerous case precedents and see their overwhelming similarity to this case. We must leverage *Trinity* and see that Petitioner is the side that upholds the freedom of

religion. It is crucial to understand the Tax-Credit program simply was awarding scholarships to individuals who needed it the most, the most hardworking citizens like Kendra Espinoza. Rule 1 is errant in its conclusion; It barrs equal opportunity for secular and sectarian organizations. Pursuant to this notion, the Supreme Court should reverse the decision of the lower court.

Respectfully submitted,

Vedanth Ramabhadran, Saumya Jhaveri