

IN THE SUPREME COURT OF

THE UNITED STATES

Espinoza

Petitioner

Vs.

Montana Department of Revenue

Respondent

Brief for Respondent

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?

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Cases

Reynolds v. United States, 98 US 145 (1879)

Everson v. Board of Education, 330 US 1 (1947)

Locke v. Davey, 540 US 712 (2004)

Trinity Lutheran Church of Colombia, Inc. v. Comer, 582 US (2017)

Employment Div., Dept of Human Resources of Ore. v. Smith, 494 US 872 877 (1990)

Church of Lukumi Babalu Aye, Inc. v. Hialeah, 508 US 520 547 (1993)

Statement of the Argument

The Blaine Amendment does not violate the Free Exercise Clause of the First Amendment and the Blaine Amendment is constitutionally permitted because it provides clarity to the framers' intentions and purpose.

Argument One: The Blaine Amendment is constitutionally permitted because it provides clarity.

The Blaine Amendment of Montana states that "The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation of payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or aid and church, school, academy, seminary, college, university, or any other literary or scientific institution, controlled in whole or in part by any church, sect or denomination." As stated by Thomas Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and state." Reynolds v. United States Due to the fact that there are no specifications on how small or large the divide between the church and the state must or must not be, the State of Montana uses this amendment to further clarify the separation they have set between the church and the state. It is implied and assumed that there is indeed a separation that was initiated by those that belong to religious groups, and all that the state is doing is providing clear boundaries and clarify the separation that has been created by the church. As stated in Everson v. Board of Ed. of Ewing, The Amendment's purpose was not to merely strike at the official establishment of a single religion, but it was to uproot all such relationships in terms of the relationship between the church and the state. The objective of this amendment was broader than just separating the church and the state. The amendment was created to create a complete and permanent separation of religious activities and civil authorities to prevent the prohibition of the free exercise of religion that is provided by the religion clauses of the First Amendment. The religion clause of the First Amendment prohibits the state from making laws "respecting an establishment of religion, or prohibiting the exercise thereof..." The intention of the framers of the constitution was to create laws that were to be neutral in relation to religious and non-religious groups; it does not require the state to be their adversary Everson v. Board of Ed. of Ewing. For the state to be able to aid those that belong to a certain religion would be to favor them over those that don't belong to one at all. State power is no more to be used as to handicap religions than it is to favor them. In Everson v. Board of Ed. of Ewing, the Supreme Court found that it is reasonable to help religious sects depending on the certain circumstances given in the particular case. In that case, it was agreed by all that parents might be reluctant to allow their children to attend schools where the State cut off general government services. For example, police and fire protection, public sidewalks and highways. Cutting these basic government services makes it very difficult for the schools to operate. In our own case, the issue being brought to the court is the issue upon financial aid which would benefit those that belong to a certain religion and leave those who are non-religious at a disadvantage. The Court held that New Jersey's aid to the church in this instance is constitutional because there was no advantage or favoring of those that are devoted to a certain religion over those that are non-religious.

In Locke v. Davey, the State of Washington created a similar scholarship program called the "Promise Scholarship Program." To be eligible for this scholarship, a student must meet academic and enrollment standards. They must graduate from a private or public high school in Washington, ranking in

the top 15% or higher, attain on the first attempt a cumulative score of 1,200 or better on the SAT or a score of 27 or higher on the ACT. The student that is applying for the scholarship must not be majoring or pursuing a degree in devotional theology. The two programs prohibit those that are pursuing a degree in devotional theology from being given the scholarship. In doing so, the state would be subsidizing the church which is out of their power and leaves those who are nonreligious to an economic, and possibly educational disadvantage. Allowing those that are religious to get aid from the government to continue their studies and beliefs is unfair to those that are non-religious.

Argument Two: The Blaine Amendment does not violate the free exercise clause.

The Free Exercise Clause pertains to the right to freely exercise one's religion. In Trinity Lutheran Church of Columbia, Inc. v. Comer, the court stated that the Free Exercise Clause prohibits the government from outlawing or restricting the exercise of religious practice, but it generally does not prohibit withholding an affirmative benefit on account of religion. In the case before the court, the petitioners argue that the Blaine amendment violates the Free Exercise Clause of the first amendment. The parents contend that it is unconstitutional to invalidate a generally available and religiously neutral student-aid program afforded students the choice of attending religious schools. However, in Employment Div., Dept of Human Resources of Ore. v. Smith, and Church of Lukumi Babalu Aye, Inc. v. Hialeah, it further explains that the government may not “devise mechanisms, overt or disguised, designed to persecute or oppress a religion or its practices. The regulation that Montana created stating that “scholarships could not be provided to students at a church, school, academy, seminary, college, university, literary, or scientific denomination,” prevented Big Sky from awarding scholarships to students at Christian schools but did not oppress Christianity. The Free Exercise Clause is not violated because the government still allows the parents and their students to freely exercise their religion. The government is not responsible for paying for any type of student and just because they decided to do so because of any reason does not necessarily mean they have done an unconstitutional act. It must be the responsibility of the parents to be able to pay the funds for the school they would like to send their children to and if they failed to do so, the fault must be on them. It was their own choice and decision to send their child/children to a certain school to study a certain major and must compensate for their own decisions. Additionally, the money that would go into the scholarships would merely help in the group of students practicing their religion but does not suppress their ability to practice their religion and therefore not a violation of the free exercise clause.

In Trinity Lutheran Church of Columbia, Inc. v. Comer, the center sought to replace a large portion of the pea gravel with a pour in place rubber surface by participating in Missouri’s Scrap Tire Program. The program was run by the State’s Department of Natural Resources who offered reimbursement grants to qualifying non-profit organizations that install playground surfaces made from recycled tires. The department had a strict and express policy of denying grants any applicant owned or controlled by a church, sect or other religious entity. The court ruled in favor of Trinity Lutheran Church of Columbia because the court held that denying grants for any applicant owned or controlled by a church, sect or other religious entity for this specific situation in which it is not a religious practice is unconstitutional. Since the center needed funds to replace a large portion of the pea gravel with a pour in place rubber surface, this was not a religious practice which made it unconstitutional to discriminate against Trinity Lutheran Church of Columbia.

However, in Espinoza v. Montana the scholarships could be used for religious purposes. The funds are going towards the education side of the spectrum and since it is for students that have chosen to attend religious schools, the scholarships will go toward the education of that religion which is different in the case of Trinity Lutheran Church of Columbia, Inc. v. Comer. The no-aid clause implies the fact that Montana can’t aid religious schools because of the separation of church and state. Since the scholarships would be used for religious purposes, the court must find a distinction between church and state. Additionally, the students that decided to go to a private religious school did decide to go to those schools when they all had the option to go to a secular school. There must be a distinction between the scholarships that are provided because a student decided to go to a secular school just like many other

people and the students that attend private schools because they have chosen to attend a different school than others. The rights enumerated when going to a secular school is the same for all the students but when the rights are for a non-secular school, the rights should be lowered and the standards for how much the state has to give scholarships must be different. However the students can still exercise their religion without these additional funds and therefore also does not violate the free exercise clause of the first amendment.

Argument Three: The removal of the Big Sky Program justifies constitutionality.

The removal of the program overall justifies its constitutionality by leveling down both the treatment of religious and nonreligious groups from the government. This satisfies the first amendment by prohibiting any advantage from either nonreligious or religious groups. Leveling them down creates a fair and even level of how they are both treated by the government and state. By leveling them down, we are not stating that they are the same, but simply just treating both the nonreligious and religious groups on the same level. Additionally, as stated in Montana's no aid clause, they cannot financially aid any religions and not give the same benefits to nonreligious groups. Using both the no aid clause and the reasonableness of removing the Big Sky Program, the court can come to the conclusion that it justifies constitutionality. We, as the State of Montana and the respondent in today's case, are only trying to clarify the separation of the state and church that is unspecified and unclear in the constitution. The result of the separation between the church and state is an effect of the choices and decisions that have been made by those that belong to religious groups. Religious parents are choosing to send their children to a university/college to continue their studies. Their choices from their religious beliefs makes the circumstances and consequences different due to their intentions and decisions.

Conclusion

In conclusion, the court did not violate the free exercise clause of the first amendment to invalidate a generally available and religiously neutral student-aid program because the scholarships do not object with one's right to freely practice their religion. Additionally, the Blaine amendment is constitutional because it gives clarity to the separation of church and state.

Prayer

It is for these reasons, we pray, that the court upholds the ruling of the lower court and rules in favor of the Respondent.