No. 18-1195

United States Supreme Court

Kendra Espinoza

Petitioner

-v.-

Montana Department of Revenue

Respondent

Brief For the Respondent

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Questions Presented

1. Does it violate the Religion Clauses or Free exercise Clause of the United States Constitution to invalidate a generally available and religiously neutral student- aid program simply because the program affords students the choice of attending religious schools?

Statement of the Case

Petitioners in the case filed for scholarships in order to continue to have their children attend Stillwater Christian school in Kalispell Montana. In 2015 a tax-credit program was introduced in the state of Montana to help low-income parents pay for their children's education. This system also gave tax credits to those charitable enough to donate to scholarship programs throughout the state. The Montana Department of Revenue later enacted “Rule 1”. A rule preventing these scholarships from being used to send these children to religious institutions. When doing so the Montana Department of Revenue cited the state constitution, Article X Section VI, which states 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”

Summary of Argument

1. The State of Montana is not in violation of the free exercise clause as direct funding of scholarships for nonpublic, non-secular schools would in fact be in violation of the establishment clause under *Lemon v. Kurtzman (1971)*.

2. The Montana State Constitution prevents any appropriation of state funds to aid religious institutions, meaning that the inclusion of religious schools in this program would be in direct violation of the state of Montana's constitution.

3. Under *Locke v. Davey (2004)* the Montana Department of Finance is well within its right to provide state funding to non-secular educations exclusively.
4. According to the case of *Masterpiece Cake v. Colorado Civil Rights Commission (2017)* there is no anti-religious animus being demonstrated by the Montana department of finance meaning that they are not violating the standards set by this case.
5. *Engel v. Vitale (1962)* and *School District of Abington Township, Pennsylvania v. Schempp* (1963) both demonstrate the courts preventing laws "respecting an establishment of religion" under the establishment clause. The laws proposed by the petitioners would be in violation of the establishment clause as they would be "respecting an establishment of religion" with sending direct public funding into religious schools.

Argument

The court should find that the Montana Department of revenue is not only under no obligation under the free exercise clause to providing funding for students to go to religious schools, but they would also be in violation of the Montana state constitution. The Montana state constitution states in Article X, Section 6, that the government of Montana "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".

This also does not satisfy a standard of discrimination as well as strict scrutiny. In the case of *Trinity Lutheran Church of Columbia, Inc V. Comer (2017)*, Justice Sonia Sotomayor bases her dissenting opinion on the very idea of separation between church and state, saying it "slights both our precedents and our history, and its reasoning weakens this country's longstanding commitment to a separation of church and state beneficial to both." While the court did rule that the exclusion of churches from a secular aid program was not constitutional, it guarantees undue entanglement.This undue entanglement would come from state funding going directly into religious institutions. The direct financial aid of religious institutions by the state

government would be the very definition of undue entanglement between the government and religion. The participation of religious schools in this program would be in direct violation of the ruling made in *Lemon v. Kurtzman (1971)*, due to the undue entanglement that would inevitably ensue. Sotomayor says that "the Court today profoundly changes that relationship by holding, for the first time, that the Constitution requires the government to provide public funds directly to a church."

Under the standard set by *Lemon v. Kurtzman (1971)*, statutes that provide state funding for non-public, non-secular schools violate the Establishment clause of the first amendment. The reasoning for this is that government funding of a religious institution would cause undue entanglement between the government and religion, which would in turn be in direct violation of the third prong of the test established in Lemon v. Kurtzman. Therefore the state of Montana is not only in violation of no constitutional provisions with its tax credit laws, but if the laws were changed to allow funding for students to go to non-secular schools then that in fact would be in violation of the supreme court's previous rulings and therefore in direct violation of the constitution of the United States.

In the 7-2 decision of *Locke v. Davey (2004)* the US Supreme Court declared that providing states providing scholarships for secular institutions but not non-secular ones, is in fact not a violation of the free exercise clause of the first amendment, as the petitioner in this case is claiming that it is. This is an issue that has already been decided by the courts. The Montana department of revenue is completely within its right to withhold scholarship funding from religious schools in the state. If this tax credit program gave scholarships for students to attend religious institutions then the Montana department of revenue would not only be in violation of Article X section VI of the state constitution, but in violation of the establishment clause of the federal constitution.

The establishment clause of the US constitution clearly states that there can be no laws written by a government "respecting an establishment of religion". In the case of *Engel v. Vitale* (1962) the court ruled that mandated prayer in schools was unconstitutional and in violation of the establishment clause. Another example of the establishment clause being used to prevent the very same type of laws that the petitioner is trying to have passed from passing is the case of

School District of Abington Township, Pennsylvania v. Schempp (1963). The school district of Abington township attempted to force public school students to participate in daily bible reasons, this was obviously in violation of the establishment clause in the same way that school prayer was in the case of *Engel v. Vitale (1962)*. This clause in the US constitution makes it clear that the petitioner has no real legal ground to stand on in this case. The court has shown that state's have no obligation to fund religious activities, unless there is a clear anti-religious animus. In this case there is no anti-religious animus whatsoever. Meaning that in this case, the Montana Department of Revenue has violated absolutely no constitutional amendments or provisions. With all of this information and evidence, the court should without a doubt find in favor of the respondents, and not give credence to the unfounded claims of violation made by the petitioners.

The case of *Masterpiece Cakeshop v. Colorado Civil Rights Commission (2017)* suggests that there can be no anti-religious animus in the reasoning of a case or a law. The petitioner might try to claim that there is an anti-religious animus in this defense team, but there is none whatsoever. The Montana department of finance, has no bias whatsoever against any religious institutions or schools, yet just feels that constitutionally, they are not only not obligated to fund vouchers for religious schools, but not even constitutionally allowed.