

IN THE SUPREME COURT OF  
THE STATE OF THE UNITED STATES

KENDRA ESPINOZA, JERI ELLEN ANDERSON, JAMIE SCHAFFER

Petitioners  
Vs.  
THE MONTANA DEPARTMENT OF REVENUE  
Respondent

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Christian Velazquez & Elizaveta Frolova  
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?

## TABLE OF AUTHORITIES

### Cases

Trinity Lutheran Church of Columbia V. Comer, 582 U.S (2017)  
Zelman V. Simmions-Harris, 536 U.S 369 (2002)  
Rosenberger v. Rector and Visitors of The University of Virginia, 515 U.S. 819 (1995)  
Widmar v. Vincent, 454 U.S. 263 (1981)  
Bowen v. Roy 476 U.S. 693 (1986)  
Everson v. Bd. of Educ. of Ewing Twp., 330 U.S. 1 (1947)  
Gillette v. the United States, 401 U. S. 437, 452 (1971)

### Other Authorities

James Madison, Memorial and Remonstrance against Religious Assessments (1785)  
Thomas Jefferson, Letter to Danbury Baptists (1802)  
Constitution of the United States  
Constitution of the State of Montana

## Statement of the Case

In 2015, the Montana state government established a program that gives individuals the opportunity to donate to nonprofit scholarship organizations, also known as the Tax Credit Program. This allows organizations to help finance tuition and fund education at various qualified educational institutions, both secular and religious. In an effort to abide by 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 plaintiff: 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. The District Court 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, once appealed to the Montana Supreme Court, it was ruled 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 religious institutions from a publicly available program, is unconstitutional.

## Statement of the Argument

The Montana Department of Revenue did not violate the First Amendment's Free Exercise Clause by adding Rule One to the Constitution of Montana because the exclusion of religious institutions and religiously associated people, precludes to the responsibilities of the separation of church and state.

**Argument One: The separation of church and state restricts the states actions of not providing this funding.**

The First Amendment of the United States Constitution prevents the government from making laws which regulate an establishment of religion, prohibit the free exercise of religion, or abridge the freedom of speech, the freedom of the press, the right to peaceably assemble, or the right to petition the government for redress of grievances. James Madison's fundamental argument was that religion "must be left to the conviction and conscience of every man," due to its dependence on "the evidence contemplated by their own minds" and "cannot follow the dictates of other men." For that reason, religious conviction was an inalienable right over which no government, including government based on majority rule, could have legitimate power. James Madison argued that Christianity flourished best without the support of the government. Religious establishments bred "pride and indolence in the clergy," and the assumption that Christianity could not survive without the patronage of government was "adverse to the diffusion of the light of Christianity." The purpose of separating church was to ensure that the government could not use religion for their responsibilities if not everyone believed in the same religion, or if the government did not approve of a religion or certain practice they would not have the power to punish or prohibit the people and their beliefs. The morality behind the separation relates to today's case in supporting the lack of involvement the government should have in the funding for a program that permits the choice of religious classes. The separation between church and state does not violate the Free Exercise clause as it does not prohibit religious organizations from practicing what they believe, or in today's case does not prohibit individuals from taking religious courses. The religious course or organization does not rely on the government. If the government was allow funding for the student aid program they would go against the morale of the separation of church and state. In several Supreme court cases the idea that If you buy it you own it. If you paid for it, it's yours. You shouldn't have to go ask permission of anybody to resell it. You shouldn't have to worry about being sued for copyright infringement because the original copyright owner or manufacturer doesn't like you being the person reselling it. Although this isn't an issue of copyright the government would be paying for these students to attend religious classes would allow them to have a say in the religious education program, thus going against the reliance and moral of the separation of church and state. In the case of Trinity Lutheran Church of Columbia v. Comer, in the dissent of Justice Sotomayor, the Church sought for state funds to improve the Learning Center's facilities, which, by the Church's own avowed description, are used to assist the spiritual growth of the children of its members and to spread the Church's faith to the children of nonmembers. The conclusion was that funding the Church would impermissibly advance religion. Trinity lutheran v. Comer relates to today's case, due to the church's need for the program will without doubt help to better the religion which the state may not do , according to the constitution under the 1st amendment( Neither a state nor the federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.) For the state to aid the church, this would suggest the state is aiding only one religion. Locke v. Davey, Rehnquist's opinion was that the subject of religion is one in

which both the United States and state constitutions embody distinct views that find no counterpart with respect to other callings or professions. That a State would deal differently with religious education for the ministry than with education for other callings is a product of these views.

### **Argument Two: The Constitution of Montana does not violate the First Amendment.**

Thomas Jefferson stated, “I contemplate with sovereign reverence that 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,’ thus building a wall of separation between Church & State.” With this in mind we can conclude the Montana Constitution, Article 10, Section 6 does not infringe the first amendment since it provides the division of the state and the church, with no hostility shown towards the church. This alone is not sufficient enough to conclude religious discrimination. *Locke v. Davey*, 530 U.S. 712 (2004) also suggests that (The state technically could extend its program to include devotional degrees. The Washington state constitution provides stricter requirements for the government. The program is designed to comply with its prohibition on indirect funding of religious instruction. While this prohibition might violate the Free Exercise Clause of the U.S. Constitution, the scholarship program itself does not appear to be driven by improper hostility toward religion. It allows students to attend religious colleges and take religious classes.) It is evident that the Montana state constitution also provides strict rules for the government however it does not exhibit opposing views on religion nor does the scholarship since it does not infringe on the rights of the children to attend religious classes or universities. *Trinity Lutheran Church of Columbia v. Comer*, dissenting opinion also suggested ( the funding in those cases came with assurances that public funds would not be used for religious activity, despite the religious nature of the institution. See, e.g., *Rosenberger*, 515 U. S., at 875–876 (Souter, J., dissenting) (chronicling cases). The Church has not and cannot provide such assurances here. Justice Rehnquist indicated (Without a presumption of unconstitutionality, *Davey*’s claim must fail. The State’s interest in not funding the pursuit of devotional degrees is substantial and the exclusion of such funding places a relatively minor burden on Promise Scholars. If any room exists between the two Religion Clauses, it must be here. We need not venture further into this difficult area in order to uphold the Promise Scholarship Program as currently operated by the State of Washington) “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) it would be somewhat outlandish to make it more difficult for the respondents.

not violate the Free Exercise clause as it does not prohibit religious organizations from practicing what they believe, or in today's case does not prohibit individuals from taking religious courses. The religious course or organization does not rely on the government. If the government was allow funding for the student aid program they would go against the morale of the separation of church and state. In several Supreme court cases the idea that If you buy it you own it. If you paid for it, it's yours. You shouldn't have to go ask permission of anybody to resell it. You shouldn't have to worry about being sued for copyright infringement because the original copyright owner or manufacturer doesn't like you being the person reselling it. Although this isn't an issue of copyright the government would be paying for these students to attend religious classes would allow them to have a say in the religious education program, thus going against the reliance and moral of the separation of church and state. In the case of Trinity Lutheran Church of Columbia v. Comer, in the dissent of Justice Sotomayor, the Church sought for state funds to improve the Learning Center's facilities, which, by the Church's own avowed description, are used to assist the spiritual growth of the children of its members and to spread the Church's faith to the children of nonmembers. The conclusion was that funding the Church would impermissibly advance religion. Trinity lutheran v. Comer relates to today's case, due to the church's need for the program will without doubt help to better the religion which the state may not do , according to the constitution under the 1st amendment( Neither a state nor the federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.) For the state to aid the church, this would suggest the state is aiding only one religion. Locke v. Davey, Rehqquist's opinion was that the subject of religion is one in which both the United States and state constitutions embody distinct views that find no counterpart with respect to other callings or professions. That a State would deal differently with religious education for the ministry than with education for other callings is a product of these views.

### **Conclusion**

In conclusion the State of Montana did not violate the First Amendment by not permitting the funding to Stillwater, where they offer some religious classes, due to the language of the Montana Constitution, First amendment of the United States Constitution, case law, and the morality and responsibilities of church and state.

### **Prayer**

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