

Whose Prayers Will Be Answered: Awaiting the High Court's Decision on Religious School Choice in *Espinoza v. Montana Dep't of Revenue*, 2018 MT 306, 393 Mont. 446, 435 P.3d 603, cert. granted, 139 S. Ct. 2777, 204 L. Ed. 2d 1157 (2019)

By Leighann K. Fink

On January 22, 2020, the Supreme Court of the United States heard oral arguments in *Espinoza v. Montana Department of Revenue*, the case that could have serious consequences in the school choice debate. Parents of children attending a religiously affiliated Montana school brought an action in Montana state court to challenge a rule adopted by the Montana Department of Revenue that invalidated a tax credit program that once allowed scholarships to be used at religiously affiliated schools. The Montana district court agreed with the Parents' position that families should be allowed to use the tax credit scholarships at any private schools, including those that are religiously affiliated. However, the Supreme Court of Montana reversed the district court's decision, concluding that the tax credit, created by law, violated Article X, Section 6, of the Montana Constitution, which banned **any** type of aid to religiously affiliated schools. The Supreme Court is now faced with the question of whether the Constitution of the United States allows the complete exclusion of religious schools from a state scholarship program, or whether this type of practice violates the Free Exercise Clause because it is religiously discriminatory.

If the Supreme Court concludes that religiously affiliated schools must not be excluded from tax credit programs, such as the one in Montana, what does that mean for the future of public education? The Trump Administration, state governments, teachers' unions, and school boards anxiously await the Supreme Court's ruling on this issue, as all have high stakes in the outcome. Justice Department lawyers, who align with the Parents, contend that application of Article X, Section 6, of the Montana Constitution to the tax credit program penalized parents who chose to send their children to religiously affiliated schools rather than public schools. Whereas public education groups, such as AASA, The School Superintendents Association, filed amicus briefs raising concerns regarding using public money to fund religious education to the detriment of public-school students.

Indeed, if the Supreme Court's ruling in *Espinoza* is broader than its previous ruling in *Trinity Lutheran Church of Columbia Inc. v. Comer*, wherein the Court held that Missouri's Department of Natural Resources unconstitutionally denied playground materials to a religiously affiliated preschool, it certainly could have a profound effect on public education.

Please contact any of the listed attorneys regarding the potential impact of this issue on your district. We welcome any questions.

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