STUDENT AID AND RELIGIOUS SCHOOLS

CONTROVERSIAL ISSUES IN THE NEWS

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CENTRAL QUESTION

Can a state forbid students in religious schools from being eligible for a general student aid program?

BACKGROUND

What Are the Constitutional Issues at Play? This *Close Up in Class Controversial Issue in the News* focuses on *Espinoza v. Montana Department of Revenue*, a Supreme Court case that deals with both the First Amendment and the 14th Amendment. So, what do these parts of the Constitution promise?

The First Amendment reads, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." This amendment includes two frequently referenced clauses. The Establishment Clause ("Congress shall make no law respecting an establishment of religion") prevents the government from establishing an official religion, from favoring one religion over another, and from favoring non-religion over religion or religion over non-religion. The Free Exercise Clause ("prohibiting the free exercise thereof") protects from government interference a person's right to adopt any religious belief and to engage in religious rituals and practice.[1]

As for the 14th Amendment, one of its opening lines reads, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The Equal Protection Clause of this amendment ("nor deny to any person within its jurisdiction the equal protection of the laws") requires the government to treat a person in the same manner as it treats others in similar circumstances.[2]

FACTS OF THE CASE

In 2015, the Montana legislature created a tax credit scholarship program, providing a dollar-for-dollar tax credit (an amount of money a taxpayer can subtract from taxes owed to the government) of up to $150 for individuals and businesses who donate to private scholarship organizations. The organizations then use those funds to provide scholarships for children to attend private schools.[3]

Shortly after the state created the tax credit program, the Montana Department of Revenue issued a new rule (Rule 1) that forbids families from using the scholarships at religious schools. According to the Department, Rule 1 is necessary because Montana has a state constitutional ban on "direct or indirect" public funding for religiously affiliated educational programs.[4]

Three low-income mothers, who say they were "counting on" the scholarship money to keep their children enrolled in Stillwater Christian School in Kalispell, filed a lawsuit challenging Rule 1 in state court. They argued that Rule 1's exclusion of religious schools from the student aid program violates the U.S. Constitution, since the Establishment Clause, the Free Exercise Clause, and the Equal Protection Clause "all demand that the government show neutrality—not hostility—toward religion in student aid programs." The court agreed with the plaintiffs and granted them summary judgment (a judgment made for one party without a full trial).[5]

The Montana Department of Revenue appealed, claiming that the tax credit program was unconstitutional without Rule 1. The state argued that giving a tax benefit in favor of a religious school is no different from giving the church a benefit, since "[r]eligious education is a rock on which the whole church rests." The Montana Supreme Court agreed and reversed the lower court's decision.[6]

The plaintiffs then took their case to the Supreme Court, which agreed to hear oral argument in *Espinoza v. Montana Department of Revenue* on January 22, 2020.

QUESTION BEFORE THE COURT

Is it consistent with the religion clauses and the Equal Protection Clause of the Constitution to invalidate a generally available and religiously neutral student aid program simply because the program allows students the choice of attending religious schools?

PRECEDENT CASES

When the Supreme Court considers constitutional questions, it looks to previous cases—or precedents—to help guide its decisions. Consider the following cases:

***Locke v. Davey* (2004)**: The Washington legislature created the Washington State Promise Scholarship in 1999, which gives college scholarship money to talented students. However, the money cannot be used to obtain a theology degree if the program is taught to cause belief, as the state constitution bans the funding of religious instruction. When Joshua Davey forfeited his Promise Scholarship in order to keep his major in pastoral ministries at a private Christian college, he sued the state government (under Governor Gary Locke, D-Wash.), claiming that the state's constitutional ban on the funding of religious instruction violated his First Amendment right to free exercise of religion. But the Supreme Court disagreed, ruling 7-2 that a state does not violate the Free Exercise Clause when it funds secular college majors but excludes devotional theology majors.[7]

***Trinity Lutheran Church of Columbia, Inc. v. Comer* (2017)**: Trinity Lutheran Church of Columbia, Inc., operates a licensed preschool and daycare called The Learning Center, which was originally a nonprofit corporation but merged with Trinity in 1985. The school has an open admissions policy and provides daily religious instruction. Trinity applied for a Playground Scrap Tire Surface Material Grant from the Missouri Department of Natural Resources, which provides funds for qualified organizations to purchase recycled tires for playground resurfacing. The state denied Trinity's grant application, citing a provision of the state constitution that reads, "No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, section, or denomination of religion." Trinity sued the Department (under director Carol Comer), arguing that the state had violated the First Amendment's protections of religion and free speech, and the 14th Amendment's Equal Protection Clause. The Supreme Court agreed, ruling 7-2 that the exclusion of churches from an otherwise neutral and secular aid program violates the First Amendment's guarantee of free exercise of religion. The Court found that the state's denial of Trinity's grant application was an example of discrimination against an otherwise eligible organization based solely on its religious character.[8]

DEBATE

CAN A STATE FORBID STUDENTS IN RELIGIOUS SCHOOLS FROM BEING ELIGIBLE FOR A GENERAL STUDENT AID PROGRAM?

YES: Montana is following its constitution and preserving the separation of church and state.

The state of Montana was correct when it decided to prevent students in religious schools from being eligible for a tax credit scholarship program. By doing so, the state followed its constitution, showed that it is serious about supporting public (rather than private) education, and prevented the government from interfering in religious instruction and practice.

"At issue in *Espinoza* is a voucher-type program in Montana designed to divert millions in government dollars to private schools, the overwhelming majority of which are religiously affiliated," wrote Daniel Mach, director of the American Civil Liberties Union Program on Freedom of Religion and Belief. "The program, enacted in 2015, allows taxpayers to receive dollar-for-dollar tax credits for donations to Student Scholarship Organizations [SSOs], which then award scholarships to students attending private elementary and secondary schools. In other words, if a taxpayer owes the state, say, $100 in taxes, she can decide instead to send that money directly to an SSO, which will then spend it on private-school scholarships."[9]

So, why is this a problem? "In practice, the tax-credit program has served its unmistakable goal of funneling government dollars to religious education: The only SSO operating in the state supports 13 private schools, 12 of which are religiously affiliated, and over 94 percent of program scholarships have gone to finance religious education," wrote Mach. "The Montana constitution embraces the core principle that taxpayer support for religious education not only harms public schools but also undermines true religious liberty by diverting public funds to religious uses, inviting state interference with religious institutions, and fostering religious organizations' dependence on government largesse."[10]

In other words, a state should not be required to provide government aid to religious schools, especially when those funds would undoubtedly "subsidize religious activities, instruction, training, and indoctrination on a daily basis," as Mach notes.[11]

Furthermore, Montana has outlawed such actions in its constitution, which says that the government "shall not make any direct or indirect appropriation or payment ... for any sectarian purpose or to aid any church, school, academy ... controlled in whole or in part by any church, sect, or denomination." That provision is not intended to discriminate against religion. In fact, it was thoughtfully modified in 1972 with the intent of solidifying the government's commitment to public education and preventing any diversion of public funds from public schools.[12]

In short, the Supreme Court should rule in favor of the Montana Department of Revenue to protect public education and the vital separation of church and state.

NO: Montana is discriminating against students simply because they attend religious schools.

When Montana decided to deny students their right to participate in a generally available scholarship program simply because they attend religious schools, the state engaged in unconstitutional discrimination. The First and 14th Amendments prevent the government from unduly favoring non-religion over religion, and from treating similarly situated individuals differently. Yet that is exactly what the state has done in this case.

Montana indeed has a state constitutional provision that prevents "any direct or indirect appropriation or payment ... for any sectarian purpose or to aid any church, school, academy ... controlled in whole or in part by any church, sect, or denomination."[13] In fact, at least 37 state constitutions contain similar language, known as a Blaine Amendment.[14] But these Blaine Amendments have an ugly discriminatory history. "At the time these amendments were passed, it was widely understood that public schools followed a curriculum sympathetic to Protestantism to the exclusion of other religious traditions. 'Sectarian' was a euphemism for 'Catholic' and the Blaine Amendments were widely recognized as an effort to bar funding to Catholic schools," wrote Ilya Shapiro, Trevor Burrus, Neal McCluskey, and Dennis Garcia of the libertarian-leaning Cato Institute. "While their anti-Catholic motivations are now a matter of history, Blaine Amendments, such as Article X, Section 6 of the Montana Constitution, are still in effect and often serve as a pretext for discrimination against religious groups."[15]

Meanwhile, it is disingenuous for supporters of the state's action to argue that Montana is simply acting to protect public education. "'Public education,' correctly understood, is the education of the public, and everyone knows (even if some regret) that education is provided very well, particularly to underprivileged children, in non-state schools with vibrant religious missions," wrote Richard Garnett, a professor of law at the University of Notre Dame.[16]

In the end, this case is about letting state governments enact programs that support the needs of *all* students. By allowing students in religious schools to participate in this generally available student aid program, the state of Montana would not be favoring religion; it would be acting neutrally toward religion and allowing students to make their own educational choices.

"The well-off enjoy school choice; the less well-off want to as well," continued Garnett. "Neither the state of Montana nor any other government or official has a permissible, let alone a compelling, interest in maintaining an education-funding regime that categorically discriminates against faith-based schools and the families who choose them."[17]

QUESTIONS TO CONSIDER

1. How do you believe the Supreme Court would rule in *Espinoza v. Montana Department of Revenue* if the justices followed the precedent of *Locke v. Davey?* How do you believe the justices would rule if they followed the precedent of *Trinity Lutheran Church of Columbia, Inc. v. Comer?* Explain your reasoning.

2. If you were a justice on the Court, how would you rule in this case? Explain your reasoning.

3. Which do you believe to be the more important role of government: to protect the right of free exercise of religion or to ensure the separation of church and state?

The New York Times https://nyti.ms/2P4A5Yq

The Supreme Court Could Upend This State's Schools Over $150

The Montana education system was designed for fairness and pulling together. The justices should appreciate that legacy.

By Sarah Vowell
Contributing Opinion writer

Feb. 18, 2020

Scrutinizing the avuncular sphinx Chief Justice John Roberts throughout the impeachment trial of President Trump, I kept wondering whether he will preserve or ransack the legacy of the framers we revere — framers like the Republican Betty Babcock and the Democrat Dorothy Eck. It's the question on all Americans' minds: Do Mr. Roberts and his eight co-workers fully appreciate the public-spirited grandeur of the winter of 1971-72, when 100 Montanans, including housewives, ministers, a veterinarian and a beekeeper, gathered at the state capital, Helena, for the constitutional convention, affectionately nicknamed the "Con Con"?

The question haunts the current Supreme Court case Espinoza v. Montana Department of Revenue. This newspaper has called the dispute over whether state tax credits can apply to donations for scholarships to private religious schools "a proxy battle over school choice." However, the back story is so clumsily specific to Montana's small population and immense geography that the case doesn't entirely translate to states where people outnumber cows.

The novelist Ivan Doig wrote that in the scruffy Montana of yore, "when you met up with someone apt to give you trouble from his knuckles, the automatic evaluation was 'too much Butte in him.'" When, as the grateful graduate of a Montana public school, I was determining whether I had a duty to stick up for the Con Con framers regarding the Espinoza case, I spotted a sequence in the web address of an article about it in The Atlantic that read "montana-bigoted-laws." At that moment this Bozeman girl had too much Butte in her. Dorothy Eck wrote no "bigoted" anti-Christian laws — she was a blatant Methodist!

Before it ended up at the Supreme Court, the Espinoza ruckus started with a $150 tax credit. Montanans will make an appellate-level stink about chump change because that's the only available change. The tiny tax base is basically eight coal miners, a couple of ski lift operators, that family in Belgrade making organic goat cheese and Huey Lewis.

Kendra Espinoza counted on scholarships to help pay for her daughters' tuition at Stillwater Christian, a private school in Kalispell. No wonder. At up to $8,620 per year, ninth grade is more than $1,000 higher than undergraduate tuition at the University of Montana. What we called a "band room" at Bozeman High, Stillwater considers a "conservatory."

School choice partisans pounced when Ms. Espinoza and other private-school parents sued to overturn the State Supreme Court's ruling that the tax credit for scholarship donations violated the "no-aid" clause for sectarian schools in the Montana Constitution. They argued that it was time to erase "antiquated" anti-Catholic laws against public funding for private religious education. The subtle former state senator Matthew Monforton denounced the law as "Jim Crow for Christians."

It is worth pointing out that the eighth word of the '72 Constitution is "God." In the first draft of the preamble, some wistful Jeffersonians tried to thank the "Spirit of the Creator" for "the quiet beauty of our state." They were shot down in the Bill of Rights Committee because "not mentioning 'God' specifically would be unacceptable" and so they "voted unanimously to retain Him in the Preamble." The framers included a priest from Great Falls, Mitt Romney's cousin Miles, the self-proclaimed "first Roman Catholic ever elected to anything in Yellowstone County," and enough Presbyterians to warrant their own photo op.

While the '72 Constitution's no-aid clause looks similar to its predecessor in the 1889 original, the update was motivated by fortifying public schools, not shunning people of faith. Rethinking education was, along with open government and the right to individual dignity, part of the Con Con's crusade to take a stand that no one dared dream of at statehood: that Montana would be a state in a republic and not an exceedingly wide company town.

"We were known as the state that wore the copper collar, controlled by the Anaconda Company," Ms. Eck once said. A swashbuckler for the League of Women Voters, she referred to the copper company lording over the "richest hill on earth" and thus the newspapers and politicians. "There were stories of how their lobbyists would sit in the balcony at the legislature and do thumbs up and thumbs down of how people should vote."

The Con Con delegates, who arranged themselves not by party but alphabetically, were so preoccupied with the public interest that they agreed public funds could be spent only on public agencies. During deliberations on the no-aid clause, the pastor of Helena's Plymouth Congregational led the charge of "preserving our public school system," preaching, "that's what this issue is all about. I don't think we

ought to dilute that in any way." (Diluting that is the aim of Espinoza.)

Article X, Section 1, of the '72 Constitution proclaims that it is the duty of the state to "develop the full educational potential of each person." That is an expensive ideal in a desolate wasteland. Public schools are supposed to be a volume business, but tell that to the Great Plains. The state of Montana has about 60,000 fewer inhabitants than the number of students enrolled in New York City's public school system. I have volunteered in that epic system, which is to say I have had to excuse myself from a struggling student to go cry in a bathroom, so I sympathize with an urban kid who might eye a parochial school as her best chance.

That school choice logic doesn't apply to Montana, where the poorest schools often have the smallest class sizes. The Montana Free Press reported that out in Prairie County, "Terry High School's sophomore class has just five students this school year." Starting in first grade, my friend Genevieve would ride her horse Croppy to the Malmborg School near Bozeman Pass; one year she and her brother Pete were half the student body.

When USA Today asked Ms. Espinoza if she had any qualms about what her case could mean for public schools, she insisted, "They have plenty of money."

How I wish that were true. Last year, the public school district in Kalispell announced $1.7 million in budget cuts, Great Falls recently lost almost a hundred teachers, and Billings just announced about $4 million in cuts that mean canceling fifth grade orchestra and band.

A Supreme Court decision on Espinoza is expected in June. If the justices rule against Montana's voters, tax credits for private school scholarship donations could surge. Revenue that might revive the Billings fifth grade band program could underwrite the fifth grade band at a pricey Kalispell private school.

Kalispell is the seat of Flathead County, which between 2000 and 2015 added more than 15,000 jobs just as rural Chouteau County was losing more than 300. Overturning the no-aid clause will shovel more money into the cities (where most of the private schools are) and kick Chouteau while it's down, thereby thwarting the framers' plan to spare needy districts from taxing "their residents three or four times as much as rich districts to provide less than half as much money per student."

The public schools the framers conjured ask the taxpayers to splurge on fairness, not privilege, to pull together, not away. That beekeeper, those clergymen and moms chartered a state in a republic where a first grader on horseback is supposed to be as big and important as the mountains. As the Supreme Court justices ponder whether to upend all that over what appears to be a $150 trifle, I'll pass along this lesson of Montana winters: A collapsed roof starts with a single snowflake.

Sarah Vowell, a contributing Opinion writer, is the author of "The Wordy Shipmates" and "Lafayette in the Somewhat United States."

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Jim Kelly *Guest*
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Symposium: Do Blaine Amendments create a public-school monopoly over moral education?

Jim Kelly is President of Solidarity Center for Law and Justice, P.C., and Founder and General Counsel of Georgia GOAL Scholarship Program, Inc., Georgia's largest K-12 tax credit student scholarship program.

During its upcoming term, in *Espinoza v. Montana Department of Revenue*, the Supreme Court will decide whether it violates the religion clauses or the equal protection 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. In considering the case, the court will examine whether state agencies, such as Montana's Department of Revenue, can rely on "Blaine Amendments" to deny parties direct or indirect access to public funds for use in schools operated by religious groups.

Montana's Blaine Amendment is based on an 1875 proposal by U.S. Representative James Blaine of Maine to amend the U.S. Constitution to prohibit states from using money raised by taxation, or from providing public lands, for the support of schools that are under the control of religious sects or denominations. In *Espinoza*, Montana officials cited the state's Blaine Amendment as the basis for denying parents seeking to educate their children in the religious schools of their choice access to a K-12 scholarship program funded by state income-tax-credit-eligible contributions to private nonprofit scholarship organizations. Because there are 37 states whose constitutions contain Blaine Amendments, the question raised by *Espinoza* has national significance.

Most likely, during its deliberations, the court will consider the deep history evidencing the anti-Catholic animus at the root of the adoption of the Blaine Amendments in the second half of the 19th century. This evidence reflects a nativist fear that providing public funds for the education of millions of children from Catholic European immigrant families would embolden the anti-democratic "Papists," who, allegedly, would be loyal to Rome, not to liberal republican values.

Of course, supporters of the Blaine Amendments made it clear that any prohibitions on the use of public funds for K-12 education conducted by "sectarian" institutions would not prevent the continued moral education of public-school children in accordance with Protestant Christian teachings that, in their view, were foundational to America's greatness and survival. Thus, by adopting Blaine Amendments, state officials were not arguing against the teaching of religion in public schools – they were arguing in favor of a monopoly for the teaching of a "common," pan-Protestant civic religion.

Ultimately, the Supreme Court made it clear that the teaching of Christian morality in government-funded public schools is unconstitutional. Since that time, educators have grappled with what many politicians and religious leaders view as the consequences of a secularized public school system, including youth anxiety, depression, substance abuse, violence, crime and trauma. To restore some semblance of moral formation in public schools, along the way, educators have called for in-school "civic education," "values clarification," "character education" and, lately, "social and emotional learning." They have also facilitated "released time" for off-campus religious education and making available public-school classrooms on an after-school basis for youth groups engaged in the moral education of children.

Thus, as part of its deliberations in *Espinoza*, the court may consider whether reliance on Blaine Amendments is enabling states like Montana to engage in moral education that, to use Justice Clarence Thomas' phrasing from the Supreme Court's opinion in *Good News Club v. Milford Central Schools*, is not logically different in kind from the Christian moral education provided in the private religious schools in which Kendra Espinoza and the other petitioners are educating their children. Montana's reliance on the Blaine Amendment to discriminate against Christian and other religious schools engaged in the moral education of students, in favor of the "social and emotional learning," known as SEL, in which Montana public schools are engaging, raises serious First Amendment and equal protection concerns.

Montana public schools are teaching mental and behavioral health and social and emotional thoughts, beliefs, attitudes and practices to student their classrooms all day, every day. In 1995, Montana developed the Montana Behavioral Initiative, which school officials describe as "a proacti approach in creating behavioral supports and a social culture that establishes social, emotional, and academic [illegible] MB

components are designed "to assist educators, parents, and other community members in developing the attitudes, skills, and systems necessary to ensure that each student, regardless of ability or disability, leaves public education and enters the community with social and academic competence."

Further evidencing the natural, nontheistic (as opposed to supernatural, theistic) religious nature of SEL, in July 2016, the Montana Office of Public Instruction published the Montana Health Enhancement Standards Model Curriculum Guide for K-12 Health and Physical Education. For grades 9-12, the ~~Montana Guide~~ provides for the thorough inculcation of children in thoughts, beliefs, attitudes and practices pertaining to their mental and behavioral health, including their social and emotional well-being. The Performance Indicators and Health Goals applicable to students in grades 9-12 include many private and sensitive subjects about which parents have the primary right to teach their children. These include, but are not limited to, life skills, good character traits and behaviors, self-esteem, self-respect, social-emotional environment, societal norms and health, personal values and beliefs, responsible decision-making, building resistance skills, conflict avoidance, conflict resolution, mind-body connection, depression, loss and grief, co-dependence, marriage, parenting, sexual attitudes and conduct, friendship, mental health and disorders, suicide, adjusting to family changes, coping with stressful life changes and dating skills.

The recent transformation of K-12 public education from a purely academic undertaking into a holistic religious naturalist model for the social, emotional and academic training of students is a national phenomenon, in which most states are engaged. The Collaborative for Academic, Social, and Emotional Learning, a leading proponent of SEL across the country, has recognized five "core competencies" that schools should include in their SEL programs: self-awareness, self-management, social awareness, relationship skills and responsible decision-making.

The transformation is also a global trend, which the United Nations Educational, Scientific and Cultural Organization and its affiliated Mahatma Gandhi Institute of Education for Peace and Sustainable Development are leading. In order to "transform education for humanity", the UNESCO-MGIEP programs "are designed to mainstream SEL in education systems, innovate digital pedagogies, and put youth as global citizens at the center of the 2030 agenda for Sustainable Development."

In *Good News Club*, the Supreme Court held that denying the Good News Club, a Christian youth-development organization, after-school access to a public-school cafeteria constituted impermissible viewpoint discrimination against the "purely" religious approach the club took toward the moral and character education of children. Montana public school officials have determined that, throughout each school day, they will teach students mental and behavioral health and social and emotional thoughts, beliefs, attitudes and practices consistent with a religious naturalism. Yet, Montana is denying the petitioners equal access to a scholarship program funded by contributions for which taxpayers receive a state income-tax credit. In light of the court's decision in *Good News Club*, Montana should not be able to discriminate against petitioners by denying them equal access to generally available K-12 student aid to communicate their preferred viewpoints about mental and behavioral health and social and emotional thoughts, beliefs, attitudes and practices to their children at the accredited nonpublic Christian schools of their choice. Hopefully, in *Espinoza*, the court will consider this unique, but critical, aspect of the case.

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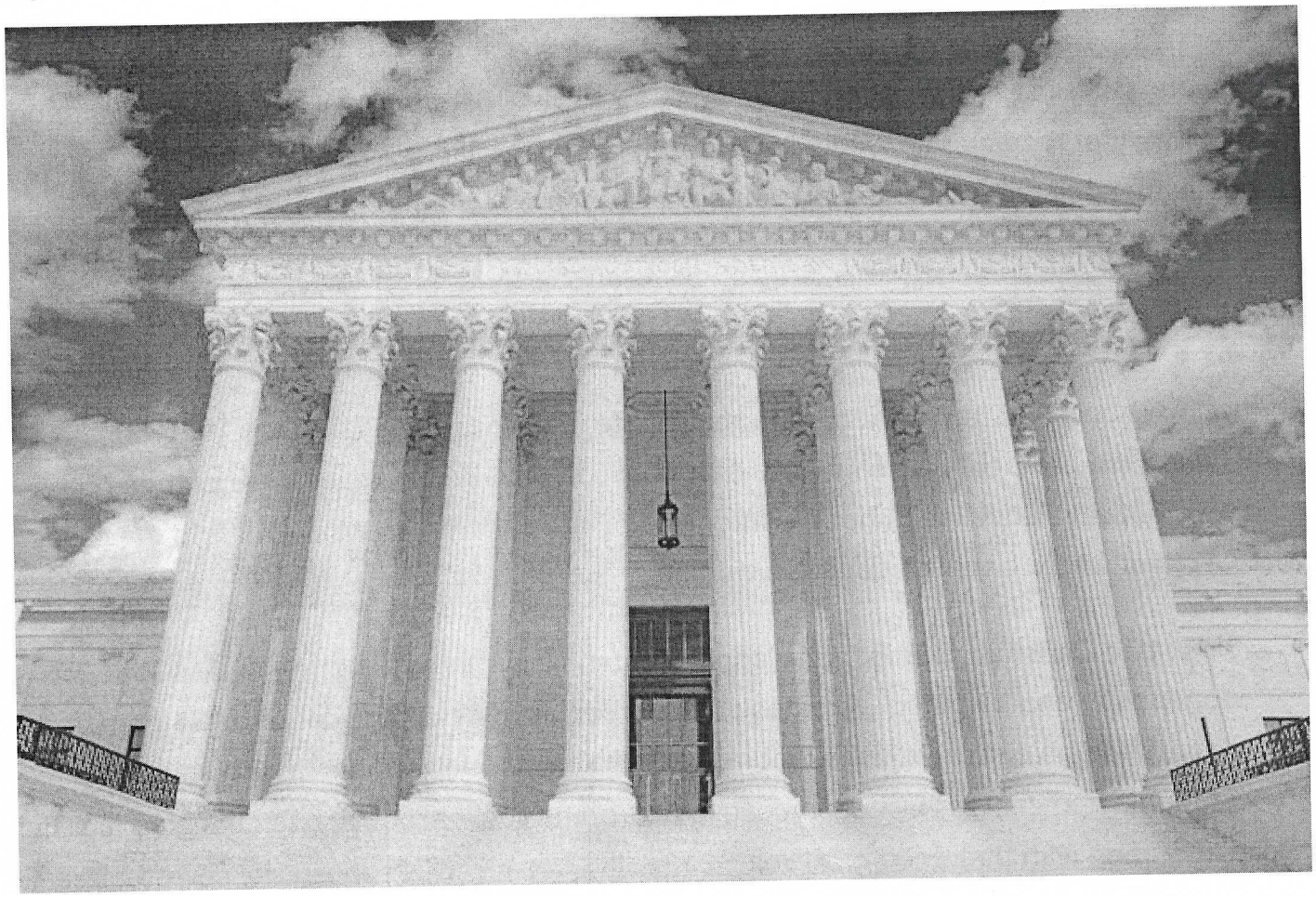
An Under-The-Radar SCOTUS Case Could Obliterate The Line Between Church And State

A Montana education program at the center of a Supreme Court case was filled with anti-LGBTQ schools.

By Rebecca Klein



The Supreme Court is scheduled to hear the case against the Montana program.

Nearly a third of the schools that participated in a Montana education tax credit program at the center of a controversial Supreme Court case maintain explicitly anti-LGBTQ policies, according to a HuffPost analysis.

The program at the center of Espinoza v. Montana Department of Revenue, which the Supreme Court is hearing later this month, provided tax credits to individuals and corporations that donated to private school scholarship groups. However, because Montana has a constitutional provision barring public dollars for religious schools — and nearly all of the schools participating in the program were religious — the Montana Supreme Court found the program unconstitutional and shut the program down in 2018.

Now, after the plaintiffs appealed, the case is before the Supreme Court, with public school advocates worrying the conservative-leaning court could call into question whether states are allowed to bar public funding for religious entities. But the issue isn't just one of church and state or education funding, it is also about public dollars going to institutions with discriminatory practices, they say.

A previous HuffPost investigation found that at least 14% of private religious schools around the country that receive public funding through programs like the one in Montana actively discriminate against LGBTQ staff and employees. In the Montana tax credit program, these numbers were even higher.

Anti-LGBTQ Policies On The Books

Of the 13 schools that had signed up to participate in the Montana tax credit program as of 2018, when the program was shut down, four have anti-LGBTQ policies. One of these schools, Stillwater Christian School, is attended by the children of the plaintiffs in the case, who say they would benefit from the program.

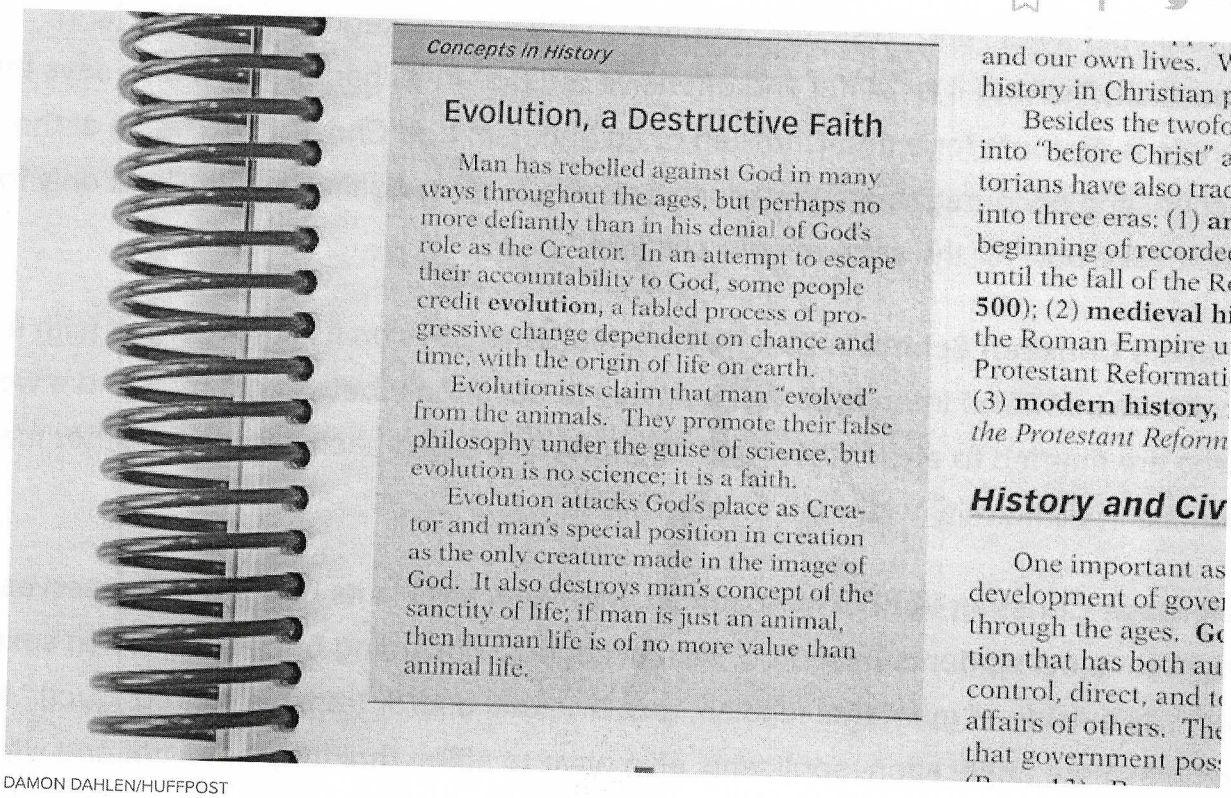
- **Stillwater Christian School** in Kalispell, Montana, says in its handbook that "God wonderfully and immutably creates each person as male or female" and "God created marriage to be exclusively the union of one man and one woman." It also says that "students and campus visitors must use restrooms, locker rooms, and changing facilities conforming with their biological sex."

lesbian behavior" and "bisexual conduct" in the same category as "incest" and "bestiality," saying it is "sinful and offensive to God" in its handbook. It also says that "there is no room for a non-Christian or an uncommitted Christian" to teach at the school and encourages employees to become "a born-again Christian" not only for their sake but "for the sake of your children."

- **Helena Christian School** in East Helena, Montana, says on its statement of faith it believes that "God intends sexual intimacy to occur only between a man and a woman who are married to each other" and "immutably created each person as either male or female in conformity with their biological sex."

- **Heritage Christian School** in Bozeman, Montana, says in its handbook it reserves the right to reject students based on "sexual conduct (including but not limited to sexual activity outside of marriage, lesbian, gay, bisexual and/or transgender conduct)." In its employment application, applicants also have to affirm that they have not and will not engage in such behaviors.

Three of the schools that participated in the program also advertise using curriculum from the Christian textbook companies Abeka or Bob Jones University. A previous HuffPost analysis of these textbooks found that their social studies textbooks consistently teach distorted, whitewashed versions of history, and their science textbooks sometimes flout widely accepted facts. One Abeka history textbook previously analyzed by HuffPost, for example, says that Satan hatched "the ideas of evolution, socialism, Marxist-socialism (communism), progressive education, and modern psychology." A Bob Jones University history textbook calls science a "false religion" and portrays Islam as a violent religion, including a section titled "Islam and Murder." Both companies' textbooks dismiss evolution in favor of creationism.



Concepts in History

Evolution, a Destructive Faith

Man has rebelled against God in many ways throughout the ages, but perhaps no more defiantly than in his denial of God's role as the Creator. In an attempt to escape their accountability to God, some people credit **evolution**, a fabled process of progressive change dependent on chance and time, with the origin of life on earth.

Evolutionists claim that man "evolved" from the animals. They promote their false philosophy under the guise of science, but evolution is no science; it is a faith.

Evolution attacks God's place as Creator and man's special position in creation as the only creature made in the image of God. It also destroys man's concept of the sanctity of life; if man is just an animal, then human life is of no more value than animal life.

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A world history textbook published by Abeka disparages evolution "fable."

Blurring The Line Between Church And State

In general, the case has the ability to greatly expand private school choice and the amount of tax dollars flowing to private religious schools. Currently, more than half the states have some form of private school choice program, including voucher or tax credit schemes.

Proponents of private school choice argue that these programs are a way to help lower-income students gain the same options as more affluent ones, by helping them to attend a

school. The plaintiff this case is named for, Kendra Espinoza, struggled to send her children to Stillwater Christian School and looked forward to some financial help.

"Ultimately, Montana residents with extremely limited educational options are being denied the ability to provide a better education for their children due to this perhaps well-meaning but misguided interpretation of the First Amendment," argues EdChoice, a group that pushes school choice, in a friend-of-the-court brief.

On the other side of the aisle, public school advocates say these programs blur the separation of church and state, drain resources from public schools and contribute to the privatization of public education.

"This has the potential to nullify three-fourths of states' religious freedoms protections. It could force taxpayers to fund discrimination," said Rachel Laser, executive director of Americans United for Separation of Church and State. "It's very concerning to divert public funds to private religious schools. We all know our public schools are already hurting across the country."

This case comes on the heels of another Supreme Court case in 2017 that also concerned public funding for religious entities, Trinity Lutheran Church v. Comer. In that case, the Supreme Court ruled that Missouri could not exclude churches from a general state program that provided funds to fix up playgrounds solely because they are religious institutions. In Montana, though, the state did not single out religious schools in the program but rather chose to shut down the entire program.

If the Supreme Court does rule in Espinoza's favor, it would constitute a major win for U.S. Secretary of Education Betsy DeVos. DeVos has spent her career fighting for expanded access to tax credit and voucher programs. In February 2019, she helped legislators introduce a bill that would create a federal school choice program, though it has yet to gain any momentum.

Religious schools, in general, are not subject to the same anti-discrimination policies as public schools and are thus allowed to exclude students and employees based on sexual orientation or on religious grounds. Only one school voucher program in the country, in Maryland, forbids participating schools from discriminating based on sexual orientation.

that it could have a devastating effect on education and play a major role in disintegrating the U.S. doctrine of the separation of church and state.

"It would turn [the separation of church and state] on its head," said Randi Weingarten, president of the American Federation of Teachers, on a conference call with reporters. "It will basically change over 200 years of practice in the United States."

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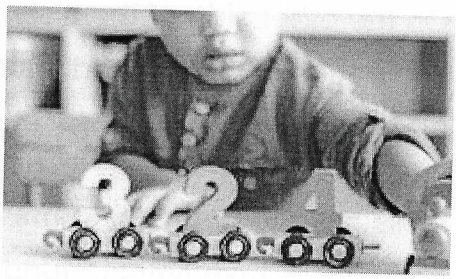

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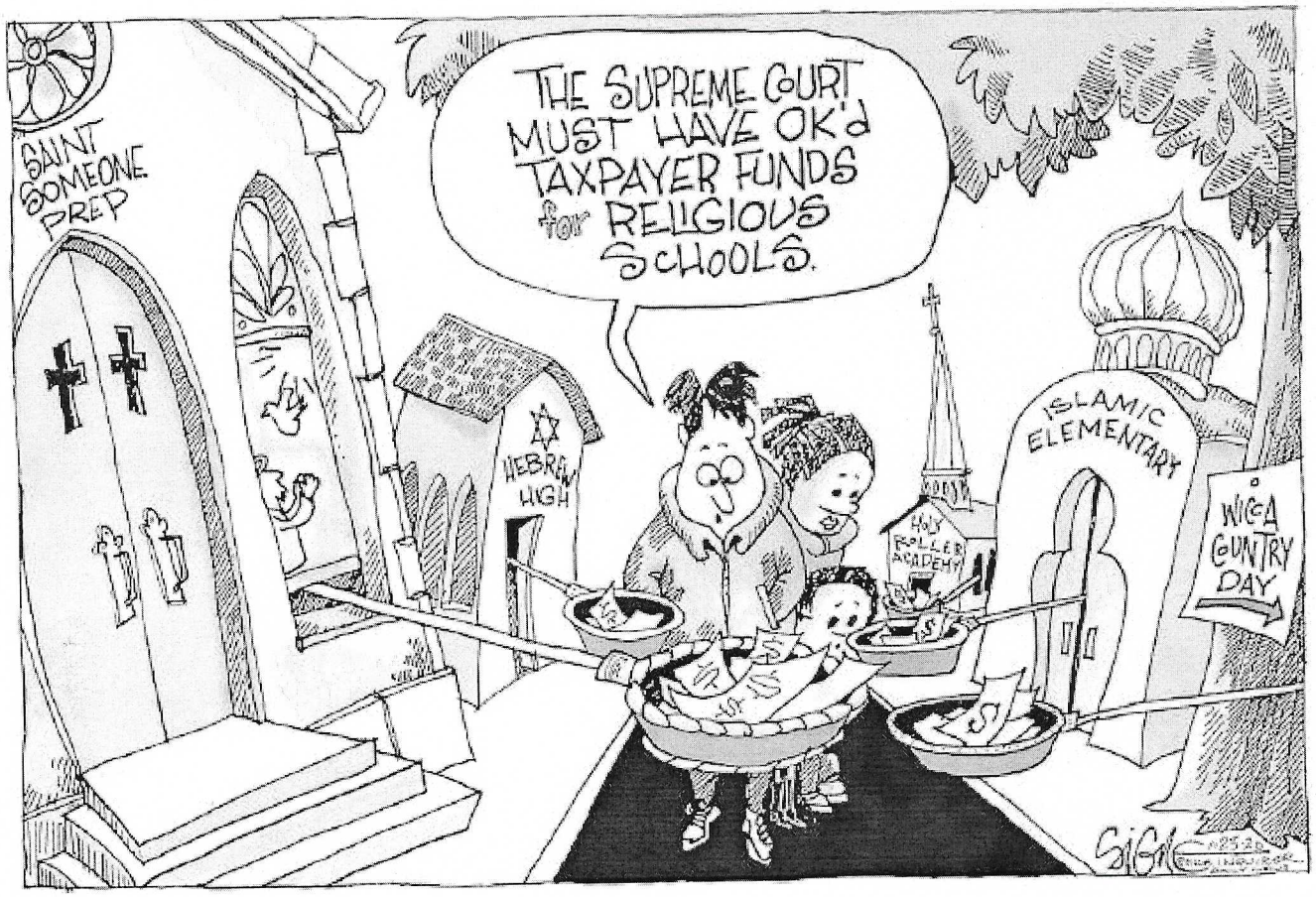

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ENDNOTES

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