

Religious Organizations Cannot Be Disqualified From Government Aid Programs

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State constitution “no-aid” provisions that exclude religious organizations from government aid programs solely because of their religious status violate the First Amendment’s Free Exercise Clause.

Montana, like California and dozens of other states, has a provision in its state constitution banning government aid from being used “for any sectarian purpose” including a religious school. In 2015, the Montana Legislature established a state program that gave tax credits to those who donated to scholarship funds for students attending private school. To comply with the “no-aid” provision in the state constitution, the Montana Department of Revenue adopted an administrative rule that prohibited students from using the scholarship funds at religious schools.

In *Espinoza v. Montana Department of Revenue*, the Montana Supreme Court considered a lawsuit filed by families seeking to use the program’s scholarship funds at a Christian school. The Court determined that the administrative rule improperly contradicted the legislation, and it invalidated the program on the basis of the “no-aid” provision in Montana’s state constitution because scholarship funds could be used at religious schools.

The U.S. Supreme Court took up the case on appeal and ruled in favor of the families. The Court held that the First Amendment’s protection for free exercise of religion takes precedence over the “no-aid” provision in Montana’s state constitution. The Court ruled that public scholarship funds could be used at religious schools.

Public agencies that operate a government aid program must review the eligibility criteria to ensure that religious organizations are not disqualified in violation of the First Amendment’s free exercise protections.

The Court’s opinion is available [here](#).

If you have any questions about how this case may impact your jurisdiction, please contact your RWG attorney. This e-alert was written by Jacob Metz, a RWG summer associate from UCLA School of Law.