

FACTS OF THE CASE

Espinoza Background **Separation of State and Church**

Two years ago, the Supreme Court ruled that Missouri's policy of excluding churches from a program to provide grants to resurface playgrounds violated the Constitution. In a footnote in their opinion in *Trinity Lutheran Church v. Comer*, the justices emphasized that their decision was limited to the facts before them and did "not address religious uses of funding or other forms of discrimination." This winter, the justices will return to the question that they left open in *Trinity Lutheran*, when they review a decision by the Montana Supreme Court invalidating a tax-credit program because the scholarships created by the program could be used at religious schools. The impact of the justices' eventual ruling could be significant: According to one "friend of the court" brief supporting Espinoza's petition for review, 18 other states have similar tax-credit scholarship programs.

The Montana legislature created the scholarship program at the heart of the dispute in 2015. The program provides a dollar-for-dollar tax credit of up to \$150 for individuals and businesses who donate to private scholarship organizations. The money donated to the scholarship organizations is used to provide scholarships for children to attend private schools – the vast majority of which, in Montana, are religious.

Soon after the tax-credit program was created, the Montana Department of Revenue issued a rule that bars families from using the scholarships at religious schools. The department indicated that the rule was necessary to comply with the state constitution's ban on aid for churches and religious schools.

Three low-income mothers who say they were "counting on" on the scholarship money to be able to keep their children in a Christian school in Kalispell, Montana, went to state court in 2015. They argued that barring religious schools from the scholarship program would violate the federal

constitution. The trial court agreed with them, but the Montana Supreme Court reversed.

The Montana Supreme Court concluded that the tax-credit program violated the state constitution because it allowed families to use scholarships at religious schools. The state court reasoned that because “religious education is a rock on which the whole church rests,” giving a tax benefit to a religious school is no different from giving the church itself a benefit, and it rejected the plaintiffs’ suggestion that its interpretation of the state constitution would violate the federal constitution. The plaintiffs went to the U.S. Supreme Court, which agreed in June to hear their case.