

**AUSTRALIAN COUNCIL FOR THE DEFENCE OF GOVERNMENT  
SCHOOLS  
PRESS RELEASE 822**

**THE AMERICAN SUPREME COURT, FREEDOM OF RELIGION  
AND PUBLIC EDUCATION**

***Espinoza v Montana Department of Revenue***

The American First Amendment was adapted and adopted by the Australian Founding Fathers, in particular Andrew Inglis Clark and Henry Bourne Higgins succeeded in placing Section 116, the religious liberty clause, in the Australian Constitution.

The history and the relationship between church and State and public education has been outlined elsewhere on this website at <http://www.adogs.info/high-court-case> and <http://www.adogs.info/separation-church-and-state>.

Unfortunately, the strong human rights intention of the Founding Fathers has been rendered meaningless by the Australian High Court in the *DOGS* case of 1981

But to date, the American Supreme Court, unlike the Australian High Court, has resisted efforts by promoters of private religious schools to entangle religion with the State. The Trump Supreme Court, however, is now on trial in a seminal case on this issue. This case, like many before it in the past few years, is a voucher system case.

***Espinoza v Montana Department of Revenue in the Montana Supreme Court***

In December 2018, the Montana Supreme Court struck down a private school voucher program that used tax credits to divert public funds to private religious schools. This decision in *Espinoza v. Montana Department of Revenue* protected both religious freedom and public education because taxpayers should not be forced to pay for religious education or private schools that can discriminate against students and families.

The matter has gone to the American Supreme Court on appeal.

***Espinoza v Montana Department of Revenue in the American Supreme Court***

The U.S. Supreme Court will hear oral arguments in this case on Jan. 22. [In a friend-of-the-court brief](#) filed on November 15 by Americans United for Separation of Church and State<sup>i</sup> and 17 religious freedom and civil rights organizations, the groups urged the U.S. Supreme Court to affirm the Montana court's decision.

Rachel Laser, president and CEO of Americans United, in a Press release had this to say:

*The Montana Supreme Court protected America's guarantee of religious freedom when it struck down private school vouchers last year. Considering 94 percent of taxpayer-funded vouchers in the state financed religious schools, the court's decision ensures residents can't be forced to fund religious education. Furthermore, these private religious schools have free*

*rein to discriminate against children and families if they don't share the school's religious beliefs, if a student's parents are LGBTQ or if a child has a disability.*

*"Using public money to fund discrimination in the name of religion is a clear violation of church-state separation. We urge the U.S. Supreme Court to uphold the constitutional promise of religious freedom for Montanans and all Americans by affirming the lower court's decision."*

The organizations' brief explains that nearly 70 percent of all private schools in Montana teach a religious curriculum. Additionally, some Montana private schools discriminate against or refuse to admit students because they or their families don't adhere to the schools' religious tenets, such as rejecting same-sex relationships or accepting Jesus Christ as a personal savior.

The following are brief details why the Montana Supreme Court reached the correct decision when it struck down the private school voucher program:

- Montana has demonstrated a longstanding interest in protecting religious freedom by ensuring that public money funds public schools, not private religious education.
- The decision is consistent with the 2004 U.S. Supreme Court ruling in *Locke v. Davey*, which upheld Washington State's decision not to provide government funding for religious education and training.
- The decision is also consistent with the U.S. Supreme Court's 2017 narrow ruling in *Trinity Lutheran Church v. Comer*, which said a Missouri church preschool was entitled to a state grant to resurface its playground. The justices' decision permitted government funding only for a nonreligious purpose; they did not establish a right to public funding for religious activities such as sectarian education.
- Because the Montana Supreme Court struck down the entire voucher program for both secular and religious private schools, there is no discrimination against religious schools.

Ever since Montana became a state in 1889, its constitution has protected residents' religious freedom by ensuring they are not forced to fund private religious education. This protection, sometimes referred to as a no-aid clause, was so important to the state's citizens that a similar provision was included in the new state constitution that was ratified in 1972. About three-quarters of all U.S. states have similar constitutional provisions.

Alex J. Luchenitser, associate legal director at Americans United noted that

*"Montana has a longstanding, deeply held commitment to protecting citizens' religious freedom that goes back to the state's inception," said. "We urge the U.S. Supreme Court to affirm that Montana and all states have the right to ensure that taxpayer dollars aren't used to fund religious education, and that private schools do not have a constitutional right to demand government funding for religious instruction. Never before has the Supreme Court ruled that states must fund religious education – that precedent must be maintained."*

Organizations and religious leaders joining Americans United on the brief include the American Civil Liberties Union; ACLU of Montana; ADL (Anti-Defamation League); Central Conference of American Rabbis; Stated Clerk of the General Assembly of the Presbyterian Church; Hindu American Foundation; Interfaith Alliance Foundation; Men of Reform Judaism; Muslim Advocates; National Council of Jewish Women; People For the American Way Foundation; Reconstructing Judaism; Texas Impact; Texas Interfaith Center for Public Policy; Union for Reform Judaism; Unitarian Universalist Association; and Women of Reform Judaism.

Together with Luchenitser, the brief has been authored by Americans United Legal Director Richard B. Katskee and Madison Legal Fellow Sarah R. Goetz, with input from joining organizations.

For further information see : <https://www.au.org/media/press-releases/americans-united-joined-by-17-religious-freedom-and-civil-rights-groups-urges>

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<sup>i</sup> *Americans United is a religious liberty watchdog group based in Washington, D.C. Founded in 1947, the organization educates Americans about the importance of church-state separation in safeguarding religious freedom.*