

**AUSTRALIAN COUNCIL FOR THE DEFENCE OF GOVERNMENT
SCHOOLS
PRESS RELEASE 848**

ESPINOZA V MONTANA DEPARTMENT OF REVENUE

**THE AMERICAN SUPREME COURT HAS JUST TURNED THE SEPARATION OF
CHURCH AND STATE UPSIDE DOWN**

The U.S. Supreme Court on Tuesday delivered a ruling civil liberties advocates warned could make taxpayers “underwrite religious education”—opening a massive crack in the American bedrock principle of church and state separation. It was a dangerous

The [decision](#) in the case, *Espinoza v. Montana Department of Revenue*, was 5-4, with the court’s conservatives in the majority.

As *NBC News* [put it](#), the ruling “further lowered the wall of separation between church and state and will likely affect laws or constitutional provisions in more than two-thirds of the nation that bar public funding for churches and religious schools.”

Facts of the Case:

CNBC [laid out](#) the background:

The case concerned a scholarship program enacted in Montana in 2015, which provided individuals and businesses with up to \$150 in tax credits to match donations to private, nonprofit scholarship organizations.

Shortly after the program was enacted, the Montana Department of Revenue put in place a rule that barred scholarship recipients from using funds from the program to pay for religious schools.

Three mothers who sent their children to a Christian school and relied upon the funds sued. The state Supreme Court struck down the program, prompting the high court challenge

“A State need not subsidize private education. But once a State decides to do so, it cannot disqualify some private schools solely because they are religious,” Chief Justice John Roberts wrote for the majority.

Justice Stephen Breyer wrote in a dissent, in which Justice Elena Kagan joined, *“The majority’s approach and its conclusion in this case, I fear, risk the kind of entanglement and conflict that the Religion Clauses are intended to prevent.”*

“Today’s ruling is perverse,” Justice Sonia Sotomayor said in a separate dissent. She wrote, in part:

Without any need or power to do so, the Court appears to require a State to reinstate a tax-credit program that the Constitution did not demand in the first place. We once recognized that “[w]hile the Free Exercise Clause clearly prohibits the use of state action to deny the rights of free exercise to anyone, it has never meant that a majority could use the machinery of the State to practice its beliefs. Today’s Court, by contrast, rejects the Religion Clauses’ balanced values in favor of a new theory of free exercise, and it does so only by setting aside well-established judicial constraints.

The decision drew outrage from groups including the American Federation of Teachers.

AFT president Randi Weingarten said the ruling represents “*a seismic shock that threatens both public education and religious liberty*” and called it “*a radical departure from our Constitution, American history, and our values.*”

“Never in more than two centuries of American history has the free exercise clause of the First Amendment been wielded as a weapon to defund and dismantle public education,” she said. “It will hurt both the 90 percent of students who attend neighborhood public schools, by siphoning off needed funds, and, in the long term, those who attend religious schools by curtailing their freedom with the accountability that comes with tax dollars.”

“The court’s narrow conservative majority joined with Donald Trump, [Education Secretary and “school choice” proponent] Betsy DeVos, and other wealthy donors and special interests to attack public education and turn the First Amendment on its head,” Weingarten added, warning that “*financial backers of this case will now use it to open the floodgates to litigation across the country.*”

According to Daniel Mach, director of the ACLU Program on Freedom of Religion and Belief, the ruling “*undermines true religious freedom and is the latest in a disturbing line of Supreme Court cases attacking the very foundations of the separation of church and state.*”

“In the past, the court used to guard against government-funded religion,” he said. *“Today, the court has not only allowed, but actually required taxpayers to underwrite religious education.”*

Rachel Laser, president and CEO of Americans United for Separation of Church and State President, [blasted](#) the ruling.

“Forcing taxpayers to pay for private religious education—as Montana’s tax-credit voucher program does—is a fundamental violation of their religious freedom,” she said.

Another possible effect of the ruling, Laser warned, is that public dollars will go towards amplifying discrimination.

“Too often, religious schools reject civil rights for women and LGBTQ people, and promulgate religiously based interpretations of science, civics, and history,” she said.

Laser further accused “10 of the 12 religious schools in Montana’s voucher program” of having “discriminatory policies, including permitting expulsion of students who identify as LGBTQ and refusing admission to students with disabilities.”

“Let’s not forget that vouchers were first developed to evade integration orders and fund segregation academies specifically designed to keep Black and white students apart,” she noted, warning that private-school vouchers could worsen segregation in schools.

The White House, meanwhile, [celebrated](#) the ruling as a right-wing victory for so-called “school choice” and religious freedom.

Written by [Andrea Germanos](#) / [Common Dreams](#) June 30, 2020

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