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Supreme Court Ruling Widens the Door to Use Public Funds for Vouchers and Religious Schools

"Leaders must listen to the students, families and advocates fighting to keep the public in public education."

- IDRA President & CEO Celina Moreno, J.D.

San Antonio, July 1, 2020 - Yesterday, [the U.S. Supreme Court ruled](#) that states must allow religious schools to participate in programs that use state aid to support private school scholarship funds for students. The decision in *Espinoza v. Montana Department of Revenue** allows states to funnel more public monies toward private schools, even as public schools that serve the majority of the nation's students remain underfunded and face an economic downturn.



The Court found that a Montana rule prohibiting religious schools from participating in a tax credit scholarship program discriminated against those schools and the families who wanted their children to attend them. The Court held that the rule violates the First Amendment's Free Exercise Clause, which protects people against government actions that limit the practice of their religion.

"Tragically, the Court's decision may lead more states to adopt policies that divert much-needed funds away from public schools to benefit private schools," said IDRA President & CEO Celina Moreno, J.D. "But, importantly, this ruling does not require federal or state

governments to funnel public funds away from public schools - these leaders must listen to the students, families and advocates fighting to keep the public in public education."

Tax credit scholarship programs are a form of vouchers. They use state funds to give people and businesses a financial benefit for their contributions to programs that distribute money to individual students to attend private schools. The Court's decision opens the door for states to adopt or expand similar tax credit programs and other direct voucher programs. It also creates confusion and uncertainty regarding the constitutionality of "no aid" clauses in state constitutions, which generally prohibit the use of public funds for religious schools.

In the 5-4 decision the Court relied on its previous ruling in [Trinity Lutheran Church v. Comer](#), which found that a Missouri rule that excluded religious schools from a state program to improve playgrounds violated the Free Exercise Clause. In *Espinoza*, the Court doubled down on its position that denying schools access to public benefits based on their religious affiliation violates the U.S. Constitution.

The Court rejected the Montana Department of Revenue's argument that the state had a compelling interest in furthering and safeguarding public education, noting that the Department's rule only prohibited participants seeking to use tax credits for religious schools while permitting use of the public funds at non-religious private institutions. While the opinion contains some sweeping language supporting private school "choice," that language is not binding, and the opinion concludes with a reminder that a "state need not subsidize private education."

The U.S. Department of Education [has already begun](#) to use this decision to support its agenda to funnel public resources away from traditional public schools. Undoubtedly, many states are planning to do the same, even as they see public schools struggling to stretch budgets and respond to the needs of students during a global pandemic and economic crisis. The Department has taken several recent actions to advance school privatization, e.g.:

- Created a [program](#) to use CARES Act funds for "microgrants" to individual families to purchase private education services and technology;
- Issued a [rule](#) that could increase the CARES Act resources public schools must give away to private schools under so-called "equitable services" provisions;
- Proposed an "Education Freedom Scholarship" to create a \$5 billion annual tax credit program to benefit individuals and businesses that donate to private scholarship funds; and
- [Infused](#) a continuous stream of federal monies into privately-operated charter schools.

"People of all races and faiths stand for equitable, excellent public schools that are accountable to the public for their actions or results and that serve all students regardless of background, financial circumstances or religious affiliation," Moreno said. "For the sake of all students and the future of our country, we must strengthen - not dismantle - public education for the common good."

Throughout July, IDRA will publish a series of articles exploring how federal decisions are pushing the movement to privatize our public education system and how students and families must fight to protect and improve their schools.

* Background: The plaintiffs in *Espinoza v. Montana Department of Revenue* - three Montana families - sued the Montana Department of Revenue after it placed limits on a state program that gave dollar-for-

dollar tax credits to people who donated to private scholarship funds. Because some of the scholarships were for students who attended religious schools, the Department of Revenue determined that providing tax credits for those particular donations violated the state's constitutional ban on giving state aid to religious schools or churches. The Department therefore issued a rule prohibiting use of the scholarships at religious schools.

Media contact: [Christie L. Goodman, APR, IDRA Director of Communications, christie.goodman@idra.org](mailto:christie.goodman@idra.org)

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We are committed to the IDRA valuing philosophy, respecting the knowledge and skills of the individuals we work with and build on the strengths of the students and parents in their schools.