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A new Supreme Court case makes EdChoice challenges more difficult

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On June 30, 2020, the U.S. Supreme Court issued its opinion in Espinoza v. Montana Department of Revenue, which has potential ramifications for public schools across the country that are losing money when students attend religious schools. At issue in the case was a program in which a Montana resident could receive a tax credit for donating to a scholarship fund. The fund would then bundle those smaller donations into scholarships for low-income families to use. However, a provision of the Montana state constitution prevented any money from going to schools controlled by religious organizations. Several families that wanted to use their scholarships at a religious school sued, arguing that this provision of the state constitution violated the Free Exercise Clause of the First Amendment.

The Court agreed, relying significantly on its previous opinion in Trinity Lutheran v. Comer. In Trinity Lutheran, the Court held that a religious organization cannot be denied a generally-available public benefit on the sole basis of its religious status, unless there is a compelling government interest at stake. While the separation of church and state is a significant concern, the Court has long approved of programs in which private citizens make the independent choice to direct public funds to religious schools. In other words, when a parent independently chooses to use a publicly-funded scholarship at a religious school, the Court does not view that situation as

public funding of religion. Hence, there is no compelling government interest at stake, at least as far as a majority of the Court is concerned. So, denying religious schools the benefit of these scholarships is impermissible.

This opinion has ramifications for Ohio educators, because it strengthens the argument in favor of the state's EdChoice program. As previously mentioned, arguments against EdChoice have previously been difficult because the Court has approved of parents choosing to direct public money to religious schools. Those previous opinions generally fall under the Establishment Clause of the First Amendment. With Espinoza approving of such programs under the Free Exercise Clause as well, the Court has foreclosed another potential avenue to challenge programs like EdChoice. While other grounds for challenges remain, a First Amendment argument against EdChoice just became notably more difficult.