

Montana Moms Take Fight Over Religious Schools to Top Court

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The Supreme Court took up a challenge Friday by low-income Montana mothers who have been denied state scholarships to help send their children to Christian schools.

Montana tax officials instituted the restriction against religious schools shortly after state lawmakers created the scholarship fund with a tax-credit program in 2015.

As noted in the petition for certiorari by lead plaintiff Kendra Espinoza, the restriction known as “Rule 1 threatened the success of the program” because 69 percent of private Montana schools for children in grades kindergarten to 12 are religiously affiliated.

Espinoza and her co-plaintiffs all send their children to the nondenominational Stillwater Christian School and say they were counting on the scholarship, along with financial aid from Stillwater, to make ends meet.

After they filed suit, challenging Rule 1 as unconstitutional, a trial court initially enjoined the rule but the Montana Supreme Court reversed 5-2 last year.

Espinoza’s petition asks whether it is constitutional “to invalidate a generally available and religiously neutral student-aid program simply because the program affords students the choice of attending religious schools?”

Per its custom, the U.S. Supreme Court did not issue any comment in taking up the case Friday.

Erica Smith, an attorney for the moms with the Institute of Justice, said the group was pleased Espinoza’s case will be heard.

“It’s been affecting thousands of kids across the country for decades,” Smith said in a phone interview Friday. “Every family should be able to guide the education of their children, regardless of their income.”

Montana Special Assistant Attorney General Daniel Whyte said the state’s Department of Revenue didn’t think the case would have been accepted because it was decided on independent state grounds.

“That being said, we’ll move forward and write the briefs, file those and prepare for argument,” Whyte said in a phone interview Friday.

The court also granted motions to file amicus briefs from The Cato Institute, a D.C., libertarian think tank, the Liberty Justice Center, a nonprofit center that litigates economic and civil liberties

cases, the Pioneer Institute Inc., a Massachusetts research institute, and the Georgia Goal Scholarship Program Inc.