



Sotomayor Says Supreme Court Ruling in Religious Discrimination Case Is ‘Perverse’

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The U.S. Supreme Court, in a 5-4 decision on Tuesday, held in *Espinoza v. Montana Department of Revenue* that Montana’s removal of a discriminatory tax credit program was itself discrimination. Chief Justice **John Roberts** penned the opinion and was joined by conservative justices **Clarence Thomas**, **Samuel Alito**, **Neil Gorsuch** and **Brett Kavanaugh**. Liberal Justices **Ruth Bader Ginsburg**, **Stephen Breyer**, and **Elena Kagan** dissented. So did Justice **Sonia Sotomayor**, who went so far as to call the decision “perverse.”

The Montana rule, which “discriminated against religious schools and the families whose children attend or hope to attend them” by excluding them from taxpayer-funded scholarships, was previously ruled unlawful by the Montana Supreme Court. But instead of trying to salvage the program by voiding the rule, Montana’s high court invalidated the entire program. For the U.S. Supreme Court’s conservative majority, the Montana court’s tossing (rather than salvaging) of the program was its own sort of blatant discrimination against people of faith.

Justice Kavanaugh was clear about that during oral arguments. The state’s position of having a “principled objection to funding of religious institutions” was, Kavanaugh said, “certainly rooted in — in grotesque religious bigotry against Catholics.”

The Cato Institute’s **Ilya Shapiro** argued that this case should have been an “easy call.”

Justice Sotomayor clearly did not agree with this take. “Today’s ruling is perverse,” she wrote in her dissent.

“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,” Sotomayor concluded. “I respectfully dissent.”

