



## LANDMARK VOUCHER CASE COULD FOSTER DISCRIMINATION AND FURTHER LOWER THE CHURCH-STATE WALL OF SEPARATION



It takes only a quick glance at its website to reveal that LGBTQ students, staff and families are not welcome at Stillwater Christian School in Kalispell, Montana.

“We believe that God wonderfully and immutably creates each person as male or female, and that these two distinct, complementary sexes together reflect the image and nature of God,” the school’s [Statement of Faith](#) reads. “We believe that God created marriage to be exclusively the union of one man and one woman, and that intimate sexual activity is to occur exclusively within that union.”

Yet in all likelihood, donors to student “scholarship organizations” that issue vouchers to support this school and others will soon be eligible for 100% state tax credits, even though Montana’s constitution clearly prohibits the direct or indirect use of public funds for religious school tuition. In June, the U.S. Supreme Court is predicted to issue a strongly pro-voucher ruling when it issues its decision in *Espinoza v. Montana Department of Revenue*, where oral arguments in the case were heard last week.

Conservative justices, who comprise a 5-4 majority of the Court, have signaled in this and other recent cases that they have little use for the “wall of separation” between church and state. Instead, they are troubled by religious institutions being denied equal access to government benefits (such as vouchers), which they see as a violation of the First Amendment’s free exercise clause.

Depending on the reasoning used by the Court in deciding the *Espinoza* case, a wide variety of state programs, including many related to education and other social services, may be

transformed. Governments may be required to provide taxpayer funding to religious institutions that are not subject to anti-discrimination laws and other rules designed to protect vulnerable populations.

Currently, in 17 states where legal barriers have been cleared, a billion dollars per year is being diverted into private schools—the vast majority of which are religious. Like Stillwater, the school at the center of the Montana case, many of these religious academies openly discriminate against LGBTQ families.

“What we define as discriminatory applies differently in public and private spaces,” NEPC Fellow [Julie Mead](#) told *The (Wisconsin) Daily Cardinal* this past fall. “The voucher language itself, about what schools have to permit and what they don’t have to permit, may make it possible to exclude LGBTQ kids or even straight kids whose parents are LGBTQ,” said Mead, a professor at UW Madison. “And because they have broken no law, they have not discriminated.”

Schools that receive vouchers may also be permitted to discriminate against students with disabilities. For instance, Trinity Christian Academy in Deltona, Florida, [which received more than \\$1.5 million in vouchers last year, does not accept students with a wide variety of disabilities](#), including students who are not ambulatory, students with emotional disorders, and students with below-average intelligence.

Although the Montana case will almost certainly be decided in a way that promotes voucher expansion, given the Court’s majority of far-right Justices, NEPC Director and CU Boulder Professor [Kevin Welner](#) expects even more far-reaching effects. In an interview last week with *Time*, he said:

To the extent that we are shifting further and further away from where we were a half century ago and creating greater entanglements between states and state funding and religious institutions, that will have implications down the line, both about where our tax money goes and about public influence on private religious institutions.

Similarly, NEPC Fellow and University of Connecticut Professor [Preston Green](#) told the education news outlet *Chalkbeat*, “This case could gradually erode the grounding for keeping public funds specifically and totally for just public education. Even if this doesn’t happen, you could have language that could move us even more in that direction.”

“If it’s unconstitutional to exclude private religious schools from a program that provides aid for public schools, it’s hard to see where the line is drawn and where the neutrality principle ends,” Welner told the *New York Times*. “It’s a fascinating Pandora’s box they could open.”

As a result, some of the nation’s most vulnerable families and children may face a new wave of discrimination on a variety of different fronts. Come June, we’ll see how far the Court wants to push this new frontier.

## NEPC Resources on Vouchers

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