



How the Supreme Court's 2020 Ruling in *Espinoza v. Montana Department of Revenue* Affects Churches and Ministries

ESPINOZA V. MONTANA DEPARTMENT OF REVENUE

In *Espinoza v. Montana Department of Revenue*, the U.S. Supreme Court ruled that religious schools and religious families cannot be discriminated against in state tax credit programs simply because they are religious.

This ruling built on ADF's 2017 Supreme Court victory in *Trinity Lutheran*, where the Court ruled that it was unconstitutional for churches to be excluded from general public benefits solely because of their religious status.

The *Espinoza* ruling paves the way for more states to offer school choice programs that help parents fund their children's education at private, religious schools.

HOW DOES ESPINOZA PROTECT CHURCHES AND MINISTRIES?

The ruling in *Espinoza* reinforces the right of religious people and religious institutions to be treated the same as non-religious people and secular institutions. After all, the First Amendment requires that religion should not be treated worse than non-religion.

The immediate impact of the ruling was felt in *A.M. v. French* – an ADF case where we represent two Catholic school students, their parents, and the Roman Catholic Diocese of Burlington. The State of Vermont has a Dual Enrollment Program where high school upperclassmen can take college courses at public expense. But the State was prohibiting students at religious schools from participating in the program.

Thankfully, in August 2020, the U.S. Court of Appeals for the 2nd Circuit temporarily halted this anti-religious discrimination against children as the case proceeds. The 2nd Circuit relied on the reasoning of the *Espinoza* ruling when deciding that the students are likely to prevail on the merits.

As activists and government officials seek to punish religious people and institutions, rulings like *Espinoza* make victories for students and families more likely. This ruling provides clearer interpretation of the First Amendment, so that religious people can freely live out their faith in everyday contexts, like deciding where they send their children to school. It also ensures that in states that have adopted tax-credit, voucher, educational-savings-account, or similar programs for families attending private secular schools, families who wish to send their children to private religious schools will be able to participate on an equal footing, enabling religious schools to remain a financially viable option for many.

WHAT QUESTIONS STILL REMAIN AFTER THE *ESPINOZA* DECISION?

While *Espinoza* was a positive ruling, it did not address every question that could impact churches and religious schools, such as:

- Can the government enact COVID-19 restrictions that treat churches or Christian schools worse than similarly-situated secular institutions?
- Will governments be permitted to discriminate against religious schools that hold biblical beliefs about marriage and sexuality when distributing public scholarship funds?
- Can local governments discriminate against churches and religious schools in zoning ordinances and in requests to access or rent public property?

Unfortunately, unequal treatment of churches and ministries continues across the country and is often litigated. The Supreme Court may address additional questions of unequal treatment soon.

WHAT CHALLENGES RELATED TO UNEQUAL TREATMENT ARE AHEAD FOR CHURCHES AND MINISTRIES?

During the COVID-19 pandemic, some government officials have treated churches worse than secular organizations. For example, as Nevada began reopening in May 2020, casinos, restaurants, bars, theme parks, and gyms were permitted to open at half capacity. Thousands gathered at those establishments, but only 50 people were allowed to gather at a church, regardless of its facility size.

Some government officials are also targeting those with religious beliefs about human sexuality, treating institutions with biblical beliefs worse than others. For example, in Maryland, state officials have attempted to force a Christian school to pay back over \$100,000 in voucher money that it had accepted – because of the school's religious beliefs and code of conduct.

Churches and other religious institutions are often treated worse than others when it comes to acquiring and using land for religious purposes. Churches and religious schools have been told they cannot use the buildings they own for worship services, solely because those services were religious in nature. Government officials have even restricted access to buildings available for public rent – such as schools or civic centers.

WHAT CAN I DO TO PROTECT MY CHURCH OR MINISTRY?

Churches and ministries should consider documenting interactions with government officials and agencies when unequal or discriminatory treatment is suspected. As religious organizations interact with governing authorities, it is important to consider what rules and processes are customary and which may be intended to harass or harm ministry. Some laws, rules, or processes may be reasonable even if arduous, while others may be signs of anti-religious bias.

ADF attorneys can help review your situation if you are encountering roadblocks in a government benefit or approval process. ADF can help determine if unequal treatment is present and if legal action is appropriate. Review of religious liberty legal situations is available to ADF Church Alliance and ADF Ministry Alliance members for free.



WHAT IF MY CHURCH OR MINISTRY NEEDS LEGAL HELP?

Before applying for or requesting a public benefit, or seeking relief from a law that discriminates against your religious institution, we encourage you to speak with an ADF attorney who can review your situation and provide recommendations.

If your church or ministry encounters a legal situation challenging your religious freedom, please contact us immediately by [requesting legal help here](#). We recommend seeking legal advice before responding in any manner.

In addition to document review, members of the Alliance have access to attorneys to advise on the best possible protections for your church or ministry. To request legal help, follow these three easy steps:

- (1) Go to the [legal intake form](#).
- (2) Fill out [the form](#), and in the “Brief description of your legal situation” section, state that you are an ADF Church Alliance or ADF Ministry Alliance member requesting legal help.
- (3) After you submit this form, an ADF attorney will contact you about your legal situation.

Members of ADF Ministry Alliance and ADF Church Alliance can access this and many other resources within the members-only website.

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1-800-835-5233
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