

No. 18-1195

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**In The  
Supreme Court of the United States**

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KENDRA ESPINOZA, JERI ANDERSON,  
and JAIME SCHAEFER,

*Petitioners,*

v.

MONTANA DEPARTMENT OF REVENUE, and  
GENE WALBORN, in his official capacity as DIRECTOR  
of the MONTANA DEPARTMENT OF REVENUE,

*Respondents.*

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**On Writ Of Certiorari To  
The Montana Supreme Court**

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**JOINT APPENDIX**

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**Petition For Certiorari Filed March 12, 2019  
Certiorari Granted June 28, 2019**

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## RELEVANT DOCKET ENTRIES

*Espinoza, et al. v.*  
*Montana Department of Revenue, et al.*  
Case No. DA-17-04920  
Montana Supreme Court

<b>Date Filed</b>	<b>Document Description</b>
8/17/2017	Notice – Incoming – Notice of Appeal Filed (DG)
09/21/2017	Record – Transcript Filed – electronically transmitted transcripts of 3/7/16 and 3/7/17 hearings. (DG)
11/22/2017	Brief – Appellant’s Opening (DA)
01/19/2018	Brief – Appellees’ Response (DA)
02/12/2018	Brief – Appellant Reply (JS)
12/12/2018	Opinion – Published- Justice McKinnon, reversed. (DG)
12/24/2018	Appellees’ Motion – Stay Judgment pending US Supreme Court Review (held for response) (JS)
01/11/2019	Appellant’s Response/Objection – Response to Motion to Stay Judgment pending US Supreme Court Review (DA)
01/24/2019	Order – Stay Proceeding to allow Department to administer the Tax Credit Program through tax year 2018. (DA)

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## RELEVANT DOCKET ENTRIES

*Espinoza, et al. v.*  
*Montana Department of Revenue, et al.*  
Cause No. DA-15-1152C  
Montana Eleventh Judicial District Court,  
Flathead County

<b>Date Filed</b>	<b>Document Text</b>
12/16/2015	Complaint for Declaratory and Injunctive Relief/Exhibits Not Scanned
12/24/2015	Plaintiffs' Notice of Constitutional Challenge to a Statute
01/29/2016	Plaintiffs' Motion for Preliminary Injunction
01/29/2016	Plaintiffs' Brief in Support of Motion for Preliminary Injunction (exhibits not scanned)
02/02/2016	Defendant's Motion to Dismiss Plaintiffs' Complaint for Declaratory and Injunctive Relief for Lack of Standing
02/02/2016	Defendant's Brief in Support of its Motion to Dismiss
02/19/2016	Plaintiffs' Response to Defendant's Motion to Dismiss for Lack of Standing
02/23/2016	Defendant Montana Department of Revenue's Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction
03/04/2016	Plaintiffs' Reply Brief in Support of Motion for Preliminary Injunction

03/31/2016 Order on Plaintiffs' Motion for Preliminary Injunction and Defendant's Motion to Dismiss Plaintiffs' Complaint for Declaratory and Injunctive Relief for Lack of Standing

05/12/2016 Montana Department of Revenue's Answer to Plaintiffs' Complaint for Declaratory and Injunctive Relief

05/16/2016 Plaintiffs' Motion for Summary Judgment

05/16/2016 Plaintiffs' Brief in Support of MSJ/ Attached Affidavits not scanned

07/08/2016 Defendant Montana Department of Revenue's Cross MSJ

07/08/2016 Defendant Montana Department of Revenue's Brief in Opposition to Plaintiffs' MSJ & Brief in Support of DOR's Cross MSJ

05/23/2017 Order Granting Plaintiffs' MSJ and Denying Defendant's Cross-Mtn for SJ

06/12/2017 Order\_ Plaintiffs' Motion is GRANTED. Defendants' cross motion DENIED. Defendants are perm enjoined from applying or enforcing Rule 1, judgment is entered in favor of Plaintiffs

06/20/2017 Plaintiffs' Notice of entry of judgment

08/17/2017 SC Notice of Filing \_ Appeal

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MONTANA ELEVENTH JUDICIAL  
DISTRICT COURT, FLATHEAD COUNTY

KENDRA ESPINOZA,	) Cause No. DV 15-1152A
JERI ELLEN ANDERSON,	) Judge David M. Ortley
and JAIME SCHAEFER,	)
Plaintiffs,	) <b>AFFIDAVIT OF ERICA</b>
v.	) <b>SMITH IN SUPPORT</b>
MONTANA DEPARTMENT	) <b>OF PLAINTIFFS'</b>
OF REVENUE, and MIKE	) <b>MOTION FOR</b>
KADAS, in his official	) <b>SUMMARY JUDGMENT</b>
capacity as DIRECTOR of the	)
MONTANA DEPARTMENT	)
OF REVENUE,	)
Defendants.	)

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STATE OF VIRGINIA            )  
  ) ss:  
COUNTY OF ARLINGTON    )

Erica Smith, on oath, states:

I, Erica Smith, do hereby state under oath that if called as a witness, I would testify that the following facts are true and correct to the best of my knowledge and belief and are based on my personal knowledge:

1. I am an attorney with the Institute for Justice in Arlington, Virginia. I am co-counsel for Plaintiffs in this matter. I have personal knowledge of the facts set forth below and, if called as a witness, I could and would testify competently thereto under oath.

2. Using the website, privateschoolreview.com, I counted the number of religious and nonreligious private schools that Montana has, excluding schools that only serve prekindergarten or day care students (since the age cut off for program scholarships is 5 years old), but including the nonreligious therapeutic private schools that are for special needs and special education students. I determined that Montana has over 80 religious private schools that are banned from participating in the program by Rule 1. I also determined that these banned schools constitute approximately 69 percent of Montana's private schools.

3. Attached as Exhibit 1 to my affidavit is a true and correct copy of SB 410, which I obtained in the course of my representation of Plaintiffs in this matter.

4. Attached as Exhibit 2 to my affidavit is a true and correct copy of the Department of Revenue's Notice of Public Hearing on Proposed Adoption of "Rule 1," which I obtained in the course of my representation of Plaintiffs in this matter.

5. Attached as Exhibit 3 to my affidavit is a true and correct copy of the Department of Revenue's Notice of Adoption regarding "Rule 1," which I obtained in the course of my representation of Plaintiffs in this matter.

6. Attached as Exhibit 4 to my affidavit is a true and correct copy of the Results of the Poll of the Montana Legislature, released on December 1, 2015, which I obtained in the course of my representation of Plaintiffs in this matter.

7. Attached as Exhibit 5 to my affidavit is a true and correct copy of the legal memorandum, "Legal Analysis of Tuition Tax Credit," submitted to the Montana Legislature on September 30, 1992 and drafted by then Director of Legal Services to the Legislature Gregory J. Petesch. I obtained this memorandum in the course of my representation of Plaintiffs in this matter.

8. Attached as Exhibit 6 to my affidavit is a true and correct copy of the Comments from Dale Schowengerdt, the Solicitor General at the Montana Department of Justice, submitted to the Department of Revenue on November 17, 2015. I obtained these comments in the course of my representation of Plaintiffs in this matter.

9. Attached as Exhibit 7 are copies of decisions cited in Plaintiffs' Brief in Support of Summary Judgment not found in the Federal, Pacific or Montana reporting services available in the Flathead County Law Library.

/s/ Erica Smith  
Erica Smith

SUBSCRIBED AND SWORN TO  
before me this 10th day of May 2016, by Erica Smith.

/s/ Gretchen Embrey  
Notary Signature

360350  
Notary Number

GRETCHEN EMBREY  
NOTARY PUBLIC  
REG. #360350  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES  
AUG. 31, 2017

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