No. 18-1195

In The
Supreme Court of the United States

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.

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

BRIEF FOR *AMICUS CURIAE* OPPORTUNITY SCHOLARSHIP FUND IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Does a state violate the Free Exercise and Equal Protection Clauses of the Constitution when it terminates a religiously neutral, generally available student aid program because the legislature did not exclude religious institutions?

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INTEREST OF *AMICUS CURIAE*[1]

Amicus Curiae Opportunity Scholarship Fund ("OSF") is a scholarship granting organization ("SGO"), created under the Oklahoma Equal Opportunity Scholarship Act ("the Oklahoma Act"), which provides scholarships to kindergarten through 12th grade students attending both non-religious and religious private schools. In 2018, OSF awarded over 1,300 scholarships, totaling $3.8 million, to its 64 member schools, of which the substantial majority are religious institutions. Since its founding in 2014, OSF has granted approximately $8.4 million in scholarships to almost 3,000 students.[2]

As authorized by the Act, OSF funds these scholarships through donations by individuals, families, and eligible business entities. Participating donors are eligible for both Oklahoma tax credit and charitable contribution deductions for itemizing taxpayers. The Act is similar, both in structure and purpose, to the Montana tax-credit scholarship statute the Montana Supreme Court invalidated in this case. Moreover, the Montana Supreme Court, in rendering its decision, relied upon a provision of the Montana Constitution that

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[1] All parties have consented to the filing of this brief. No counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than *amicus* and its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

[2] Opportunity Scholarship Fund, *2018 Annual Report*, https://osfkids.org/wp-content/uploads/2019/03/2018_Annual_Report_WEB_FINAL.pdf.

closely resembles Art. II, § 5 of the Oklahoma Constitution ("the Benefit Clause").

While the Act, which was passed in 2011, has not yet been challenged in court, it is in the interest of OSF that this Court rule that the Constitution of the United States forbids any state from excluding religious institutions from participating in a religiously neutral and generally available student aid program. Until this Court provides this legal clarity, tax-credit scholarship in Montana, Oklahoma, and many other states will live under an unnecessary cloud of legal jeopardy caused by state constitutional provisions that some courts continue to read as forbidding any aid to families who seek to send their children to religious institutions.

SUMMARY OF ARGUMENT

For over thirty years, this Court, in interpreting the Religion Clauses of the Constitution as applied to state student aid programs, has consistently developed a doctrinal framework that should guide states as they consider policies that promise to provide a wider range of choices to parents seeking the best education for their children. This Court has made clear that when a student aid program is neutral with respect to religion, and provides aid to a broad class of citizens who, with the assistance of the program, make a genuine and independent private choice to attend religious schools, the Establishment Clause is not violated.

The other side of this doctrinal coin is that, because no state can claim it is avoiding an Establishment Clause violation by excluding religious institutions from participation in a neutral, generally available student aid program, it must violate both the Free Exercise and Equal Protection Clauses to wantonly discriminate against religious institutions. This case involves this side of the coin. Montana need not—and may not—interpret Art. X, § 6 of its Constitution to require it to terminate any program, no matter how it is structured, that results in a benefit to religious institutions that can be traced, no matter how faintly, to public funds. It can—and must—interpret this provision to permit its legislature to enact religiously neutral, generally available student aid programs without imposing the weight of legal uncertainty on those who rely upon and administer these programs.

Given the partisan passions and the frequent resort to litigation that characterizes the political struggle over education policies, in states like Montana and Oklahoma, in which you have the confluence of new experiments in private school choice programs and the existence of constitutional no-aid provisions, no supporter or beneficiary of programs that include religious institutions can ever rest easy that these programs are safe from legal challenge. The only way, in this area, to achieve the significant benefits of legal, policy, and social stability is for this Court to finally complete both sides of the Religion Clauses doctrinal framework it started long ago.

ARGUMENT

I. THE MONTANA AND OKLAHOMA TAX-CREDIT SCHOLARSHIP PROGRAMS PRESENT THE SAME LEGAL ISSUES

A. THE MONTANA AND OKLAHOMA TAX-CREDIT SCHOLARSHIP PROGRAMS ARE NEARLY IDENTICAL IN STRUCTURE

In 2015, the Montana Legislature enacted what it termed the "Tax Credit for Education Contributions" law ("Montana Tax Credit program") Mont. Code. Ann §§ 15-30-3101 to 3114 . The Montana Tax Credit program provides a dollar for dollar tax credit to taxpayers who donate either to provide supplemental funding to public schools or to fund scholarships for students attending private schools. These scholarships are administered by Student Scholarship Organizations ("SSO"), charitable organizations that must expend at least 90% of their annual revenue on providing qualified students scholarships to eligible private schools, including religiously affiliated schools. *Espinoza v. Mont. Dep't of Rev.*, 393 Mont. 446, 455 (2018).

The Oklahoma Act similarly provides that taxpayers may be granted tax credits for contributions made to scholarship-granting organizations ("SGO") or educational improvement organizations (which make grants to public schools). Okla. Stat. tit. 68, § 2357.206(A). Like a Montana SSO, an Oklahoma SGO must expend 90% of its annual revenue on student scholarships. These scholarships are awarded to

eligible students[3] attending qualified early childhood, elementary, or secondary private schools, with no distinction made between religious and non-religious schools. Okla. Stat. tit. 68, § 2357.206(G).

B. THE MONTANA AND OKLAHOMA CONSTITUTIONS HAVE SIMILAR PROVISIONS LIMITING STATE AID OR SUPPORT OF RELIGIOUS INSTITUTIONS

Article X, § 6, of the Montana Constitution, which is entitled "Aid prohibited to sectarian schools," states:

> (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.
>
> (2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to nonpublic education.

In this case, the Montana Supreme Court held that the meaning of this provision was clear—it

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[3] The Act provides for three categories of eligibility: (1) students from families of low or modest income; (2) students who reside in school districts the State Board of Education has classified as being in need of improvement; and (3) students with special needs. Okla. Stat. tit. 68, § 2357.206(G).

establishes a stringent limitation on any aid to religious schools that, no matter how the program is structured, can be traced to any kind of public funds. This barrier is far higher, the Court remarks, than that constructed by the Federal Establishment Clause. This high wall, the Court concluded, was breached by the provision of tax credits to those who donate to an SSO. In the Court's words,

> The Legislature, by enacting the Tax Credit Program, involved itself in donations to religiously-affiliated private schools. The Tax Credit Program provides a dollar-for-dollar incentive of up to $150 for taxpayer donations to SSOs. The tax credit encourages the transfer of money from a taxpayer donor to a sectarian school because the taxpayer donor knows she will be reimbursed, dollar-for-dollar, for her donation to an SSO. SSOs, in turn, directly fund tuition scholarships at religiously-affiliated QEPs [qualified schools]. The Legislature, by enacting a statute that provides a dollar-for-dollar credit against taxes owed to the state, is the entity providing aid to sectarian schools via tax credits in violation of Article X, Section 6.

The Court held that it did not matter either that scholarships were granted to students attending all qualified private schools, religious or non-religious, or that the school was chosen by the parents and paid by the SSO. The state subsidy of the scholarship, no matter how indirect, was sufficient to breach the high wall of separation between church and state. The Court

concluded that: "The Legislature's enactment of the Tax Credit Program is facially unconstitutional and violates Montana's constitutional guarantee to all Montanans that their government will not use state funds to aid religious schools." *Id.* at 467.

The Benefit Clause contained in Art. II, § 5 of the Oklahoma Constitution is a close relative of the Montana provision at issue in this case. It states: "No public money or property shall ever be appropriated, applied, donated, used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such." A court that found, as did the Montana Supreme Court, that a tax credit is in substance no different than an appropriation of public money could also conclude that programs like that established by the Oklahoma Act constitute an indirect appropriation or application of public money for the use, benefit, or support of a sectarian institution. If an Oklahoma court, as was the Montana Supreme Court, is determined to find that any ultimate economic benefit to a religious institution, no matter how many independent choices by private actors lie between the state and the institution, equals an appropriation or use of public money, Oklahoma's tax-credit scholarship program could face the same legal jeopardy as does Montana's.

II. WHILE THE OKLAHOMA SUPREME COURT HAS RIGHTLY HELD THAT THE PROGRAMS THAT ARE BOTH NEUTRAL WITH REGARD TO RELIGION AND DISTRIBUTE FUNDS BASED ON INDEPENDENT PRIVATE CHOICES ARE CONSTITUTIONAL UNDER THE BENEFIT CLAUSE, THE PRECEDENT CONTAINS DICTA THAT COULD PUT THE OKLAHOMA ACT IN LEGAL JEOPARDY

In addition to the tax-credit scholarship program established by the Oklahoma Act, Oklahoma has enacted another scholarship program designed to assist children attending private school, including both religious and non-religious institutions. The Lindsey Nicole Henry Scholarship Program for Students With Disabilities ("Henry Scholarship"), established by the Lindsey Nicole Henry Scholarship Act ("the Henry Act"), contains several requirements. Okla. Stat. tit. 70, § 13-101.2. First, the student must: (1) have a disability as defined by the Henry Act; (2) have spent the previous year in a public school; and (3) have an individualized education plan ("IEP") in place prior to requesting the scholarship. The student must be accepted at a private school that the state determines is eligible to participate in the scholarship program and must physically attend the private school, including regular and direct contact with the school's staff. The parents then must apply to the State Department of Education ("SDE") for the scholarship.

Second, to be eligible to participate in the scholarship program, a school must meet several requirements. It must, for example: comply with the accreditation requirements set or approved by the State Board of Education; demonstrate fiscal soundness to the satisfaction of the SDE; comply with certain anti-discrimination laws; comply with health and safety laws; employ teachers with a minimum level of qualifications; guarantee students a minimum level of due process before expulsion; and comply with general regulatory laws concerning private schools. Okla. Stat. tit. 70, § 13-101.2(H). Once the family applies for a scholarship and the SDE determines the school is eligible to enroll scholarship students, the SDE will issue a check made out to the parents, but mailed to the school, which the parents must endorse over to the school. Okla. Stat. tit. 70, § 13-101.2(I). Once the scholarship is accepted, it relieves the public school of the state and federal mandates to provide specialized educational services and their associated financial costs. Okla. Stat. tit. 70, § 13-101.2(F).

The Henry Act was challenged by a group of Oklahoma taxpayers (several of whom were former or present school administrators) who alleged that the Henry Act and, thus, the Henry Scholarship violated several provisions of the Oklahoma Constitution, including the Benefits Clause. The trial court determined the Henry Scholarship program violated the Benefits Clause, and the Oklahoma Supreme Court took up that sole question on appeal. *Oliver v. Hofmeister*, 2016 OK 15, 368 P.3d 1270 (2016).

The Oklahoma Supreme Court unanimously held that the program was constitutional. While the court acknowledged that students received scholarships to attend religious schools, it identified eight key facts that undergirded its analysis, including: "(1) voluntary participation by families in scholarship program; (2) genuine independent choice by parent or legal guardian in selecting sectarian or non-sectarian school private school; (3) payment warrant issued to parent or legal guardian; (4) *parent* endorses payment to approved school for scholarship program; (5) Act is religion neutral with respect to criteria to become an approved school for scholarship program; (6) each public school district has the option to contract with a private school to provide mandated special education services instead of providing services in the district; (7) acceptance of the scholarship under the Act serves as parental revocation of all federally guaranteed rights due to children who qualify for services [under Oklahoma law]; and (8) the district public school is relieved of its obligation to provide educational services to the child with disabilities as long as the child utilizes the scholarship." *Id.* at ¶17.

The first five of these factors cohere with the analysis applied by this Court in *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), where, as described by the Oklahoma Supreme Court in *Oliver*, the determining factors in upholding the Cleveland school-voucher program were "the neutrality of the scholarship program and the private choice exercised by the families." *Oliver*, 2016 OK 15 at ¶13. The Oklahoma Supreme Court

concluded, with regard to the Federal Establishment Clause issue, that, in *Zelman*, this Court found that "When the *parents* and not the *government* are the ones determining which private school offers the best learning environment for their child, the circuit between government and religion is broken." *Id.* at ¶13.

In rendering its ultimate holding in *Oliver*, the Oklahoma Supreme Court relied on the doctrinal approach it attributed to *Zelman*, which asks, first, whether the program treats religious and non-religious schools equally and, second, whether particular schools receive funding as a result of the individual choice of families and not the government. In rejecting the Benefits Clause challenge to the Henry Act, the court concluded: "We are persuaded that the Act is completely neutral with regard to religion and that any funds deposited to a sectarian school occur as the sole result of the parent's independent decision completely free from state influence . . . The parent, *not the State*, determines where the scholarship funds will be applied. We are satisfied that under this scenario, the State is not adopting sectarian principles or providing monetary support of any particular sect.'" *Id.* at ¶26.

The Oklahoma Supreme Court's adoption of this doctrinal framework bodes well for constitutional prospects of the state's tax-credit scholarship program in any future Benefits Clause litigation. As with the Henry Act, religious and non-religious schools are treated equally under the Oklahoma Act. Okla. Stat. tit. 68, § 2357.206(G)(5). Indeed, a good case can made that the neutrality of the Oklahoma Act is more

evident than even the Henry Act, as the tax-credit program includes a component that provides tax credits for donations to educational improvement granting organizations, which award these grants to public schools seeking to implement innovative educational programs. Okla. Stat. tit. 68, § 2357.206(G)(12). (But, it should be recalled, a similar public schools component did not save the Montana program.) With regard to the question of whether funds are distributed by private, independent choice, the connections between the state and any participating religious school are even more attenuated than under the Henry Scholarship. Individuals and businesses must first choose to donate to an SGO, and then families must apply to these SGOs (which are private entities) for scholarships to schools of their choice. The SGO, once a scholarship to attend a particular school is granted, pays the money to the school. The state has no role in any of the aspects of this program, other than providing the tax credits. Okla. Stat. tit. 68, § 2357.206(G)(7)(b). It seems obvious that, given the Oklahoma Supreme Court's approach in *Oliver*, the Oklahoma Act should survive any Benefits Clause challenge.

But, while this understanding is the best reading of *Oliver*, there is an ambiguity to the opinion that may produce a legal threat to the Oklahoma Act. This ambiguity is rooted in the last three factors the Oklahoma Supreme Court identified, all of which involve the state's obligation to provide services to disabled children. Relying upon *Murrow Indian Orphans Home v. Childers*, 171 P.2d 600, 603 (Okla. 1946), that held that

payments to religious institutions from public funds presented no problem under the Benefits Clause when these payments compensated the religious institution for particular services rendered to the state, the court suggests what some might read as an alternative approach to upholding the Oklahoma Act. *Oliver*, 2016 OK 15 at ¶24. The court stated: "Acceptance of the scholarship by the parent is deemed a revocation of the federally guaranteed rights for students who meet the requirements for a disability. This revocation relieves the school district of its obligation to the student to provide special education services mandated by the state and federal governments. Accordingly, we find the public school, the State, receives a substantial benefit, being relieved of the duty to provide special education services to the scholarship recipient." *Id.* at ¶24.

Perhaps sensing this ambiguity, Oklahoma Supreme Court Justice Steven Taylor, joined by two other Justices, wrote a separate concurrence relying directly on this substantial benefit theory. Justice Taylor concluded that when the Oklahoma funds the Henry Scholarship, it "is simply contracting with private schools to perform a service (education of children with special needs) for a fee. The State receives great benefit from this arrangement that has nothing to do with religion. It has to do with education and caring for children with special needs, whose education is the responsibility of the state." *Oliver*, 2016 OK 15 at ¶5. (Taylor, J., concurring). The Taylor opinion suggests, therefore, that a payment of public funds to a religious institution passes scrutiny under the Benefits Clause

only when payment is made under a contract in which the religious entity agrees to provide a specific service to the state and such service provides a substantial benefit to the state.

If a future Oklahoma Supreme Court finds this substantial benefit theory is the only path to constitutionality under the Benefits Clause, the Oklahoma Act faces a serious legal thereat that it would not if the court continued to adhere to the *Zelman*-derived approach. It is far more difficult to argue that the tax-credit supported scholarship program relieves the state of a specific legal obligation than it is with the Henry Scholarship. If the Oklahoma Supreme Court holds that, in effect, a specific fee for service relationship is required to pass Benefits Clause scrutiny, it opens up the possibility that a future Oklahoma court will, like the Montana Supreme Court, hold that any use of public funds that ultimately benefits a religious institution, even if the religious and non-religious institutions are treated equally and the religious institution received the benefit because of the independent choices made by families and SGOs, must constitute a violation of the Benefits Clause. This result would be a severe blow to the welfare of families, especially as the Oklahoma tax-credit scholarship, precisely because it has a wider scope than the Henry Scholarship, serves substantially more children.[4] Such a result, as is

[4] In 2018, the tax-credit scholarship program served approximately 2500 students, while, in 2019, the Henry Scholarship serves less than 900. EdChoice, *School Choice Oklahoma,* https://www.edchoice.org/school-choice/state/oklahoma/.

alleged in this case, will also constitute discrimination against religious institutions and, thus, trigger scrutiny under the Free Exercise Clause of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment.

III. THIS COURT CAN LIFT THE WEIGHT OF UNJUSTIFIABLE LEGAL UNCERTAINTY AND OBSTRUCTIONIST LITIGATION BURDENING NEUTRAL AND GENERALLY AVAILABLE STUDENT AID PROGRAMS BY HOLDING IT IS UNCONSTITUTIONAL FOR STATES TO EXCLUDE RELIGIOUS INSTITUTIONS FROM THESE PROGRAMS

For decades now, opponents of religiously neutral programs that seek to support families who seek different schooling options for their children, if they are unable to defeat these proposals politically, have turned to litigation, particularly in state courts, to obstruct and, they hope, permanently forbid the implementation of these programs. Their principal legal tools are the large variety of no aid or support clauses such as that of Montana's at issue in this case and Oklahoma's Benefit Clause. *See* Joseph P. Viteretti, *Blaine's Wake: School Choice, the First Amendment, and State Constitutional Law*, 21 Harv. J.L. & Pub. Pol'y 657, 714 (Summer 1998). These efforts, however, when aimed at programs such as the tax-credit scholarship programs enacted in Montana, Oklahoma, and 16 other states or the Henry Scholarship, should never have succeeded in any jurisdiction because both the

Free Exercise Clause of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment forbid states from broadly excluding religious institutions from participation in neutral, generally available student aid programs. It is time for this Court to put an end to this systematic effort to frustrate both self-government and experimentation in education reform by bringing its over 30-year effort to develop a sound doctrinal framework for considering Religion Clause challenges to student aid programs to its logical conclusion.

In 1986, this Court, in *Witters v. Washington Department of Services of the Blind*, 474 U.S. 481 (1986), delivered the first modern articulation of the core principles that should govern the constitutional consideration of student aid programs. Dealing with an Establishment Clause challenge to a program that provided aid to a disabled student that enabled him to attend a religious institution, the Court upheld the program because it was: (1) religiously neutral, meaning that the aid was available generally without regard to whether the chosen institution was religious or nonreligious; and (2) any aid ultimately flowed to religious institutions "only as a result of the genuinely independent and private choices of aid recipients." *Witters*, 474 U.S. at 487.

In the 26 years between *Witters* and the culmination, at least in the Establishment Clause context, of this doctrinal development in *Zelman v. Simmons-Harris*, this Court in cases such as *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1 (1993), continued to

uphold student aid programs that were both religiously neutral and distributed aid based on the independent and private choices of individuals, not the government. In *Zelman*, this Court, relying on both *Witters* and *Zobrest*, definitively pronounced that "where a government aid program is neutral with respect to religion, and provides assistance directly to a broad class of citizens who, in turn, direct government aid to religious schools wholly as a result of their own genuine and independent private choice, the program is not readily subject to challenge under the Establishment Clause. A program that shares these features permits government aid to reach religious institutions only by way of the deliberate choices of numerous individual recipients. The incidental advancement of a religious mission, or the perceived endorsement of a religious message, is reasonably attributable to the individual recipient, not to the government, whose role ends with the disbursement of benefits." *Zelman*, 539 U.S. at 652

Some state supreme courts, taking the lead from *Zelman*, began, as well, to apply these principles to their interpretation of their state constitutions. A recent decision by the Indiana Supreme Court, for example, rejected a constitutional challenge to a sweeping school choice program under the Indiana version of the Benefit Clause.[5] *Meredith v. Pence*, 984 N.E. 2d 1213 (Ind. 2013). The Court held that the program was

[5] The Indiana provision states that "[n]o money shall be drawn from the treasury, for the benefit of any religious or theological institution." Ind. Const. art. I, § 6.

enacted to provide lower income families "a wider array of education options, a valid secular purpose." *Id.* at 1229. The Court concluded that, as with the Henry scholarship: "Any benefit to program-eligible schools, religious or non-religious, derives from the private, independent choice of the parents of program-eligible students, not the decree of the State, and is thus ancillary and incidental to the benefit conferred on these families." *Id.* at 1229.

Now that this Court has made clear that a state cannot claim a student aid program meeting the *Zelman* criteria violates the Establishment Clause, it is equally clear that this decision deprives states of the only plausible constitutional defense for excluding religious institutions from neutral, generally available student aid programs. Without any Establishment Clause defense, states cannot justify, under the Free Exercise or Equal Protection Clauses, wanton discrimination against religious institutions. It has long been time for this Court to complete the doctrinal path it began to walk in *Witters*.

This Court's decision that the law challenged in *Locke v. Davey*, 540 U.S. 712 (2004), was not the appropriate vehicle for perfecting its doctrinal work does not alter the logic and substance of the Court's legal architecture regarding student aid programs. In holding that the state could forbid state scholarship students from pursuing a degree in devotional theology, the Court emphasized that this exclusion was based on the narrow and historically-supported "interest in not funding the religious training of clergy." *Locke*, 540 U.S.

at 722 n. 5. The Court took great pains to demonstrate that the exclusion in *Locke* bore little resemblance to the broad exclusion religious institutions have suffered in cases like this one, concluding that "far from evincing . . . hostility toward the religion," the scholarship program in that case went "a long way toward including religion in its benefits" by, for example, "permit[ting] students to attend pervasively religious schools." *Id.* at 724.

Any doubt that *Locke* did not represent an abandonment of its doctrinal intentions was dispelled in *Trinity Lutheran Church of Columbia, Inc. v, Pauley*, 137 S. Ct. 2012, 582 U.S. ___ (2017). In *Trinity Lutheran*, while the case concededly did not involve student aid programs, the Court once again reaffirmed that any state policy that "expressly discriminates against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character . . . imposes a penalty on the free exercise of religion that triggers the most exacting scrutiny." *Trinity Lutheran*, 137 S. Ct. at 2021. Rejecting the state's reliance upon *Locke*, this Court concluded: "the State has pursued its preferred policy to the point of expressly denying a qualified religious entity a public benefit solely because of its religious character. Under our precedents, that goes too far. The Department's policy violates the Free Exercise Clause." *Id.* at 2024.

Montana's decision to shut down its religiously neutral, generally available tax-credit scholarship program because its legislature committed the sin of

treating religious institutions equally also goes too far. States like Oklahoma and many others across the nation that have decided to experiment with policies that provide families with a broader range of individual choices should no longer carry the burden of legal uncertainty imposed by the unconstitutional interpretation of the ubiquitous no-aid clauses in state constitutions. This Court can, and should, lift that burden.

CONCLUSION

This Court should reverse the decision of the Montana Supreme Court and hold that the Montana Constitution cannot be interpreted to exclude religious institutions from a religiously neutral, generally available student aid program.

Respectfully submitted,

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