IN THE SUPREME COURT OF THE UNITED STATES

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No. 18-1195

KENDRA ESPINOZA, ET AL., PETITIONERS

v.

MONTANA DEPARTMENT OF REVENUE, ET AL.

_____

ON WRIT OF CERTIORARI
TO THE MONTANA SUPREME COURT

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MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

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Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case and that the United States be allowed ten minutes of argument time. This case presents the question whether the no-aid provision of the Montana Constitution, Mont. Const. Art. X, § 6, which disqualifies religious schools from receiving neutral and generally available public funds, violates the Free Exercise Clause of the U.S. Constitution. The United States has filed a brief as amicus curiae supporting

petitioners, arguing that the no-aid provision does violate the Free Exercise Clause. Petitioners have agreed to an allocation of ten minutes of their argument time to the United States and therefore consent to this motion.

The United States has a substantial interest in this case. As a general matter, the United States has a substantial interest in the preservation of the federal constitutional right of free exercise of religion. In addition, Congress has enacted certain restrictions on the use of federal funds for religious activities. The United States is thus well positioned to address the reconciliation of religious-funding restrictions with the freedom of religion protected by the First Amendment. Moreover, the United States previously presented oral argument as an amicus curiae in Locke v. Davey, 540 U.S. 712 (2004) (No. 02-1315). Participation by the United States in oral argument could therefore materially assist this Court in its consideration of this case.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

NOVEMBER 2019