

May 13, 2020



# EDUCATIONAL CHOICE ADVOCACY ALERT TO PARENTS, CLERGY AND EDUCATORS

RE: Forthcoming U.S. Supreme Court Decision

*“Not only do parents possess a constitutional right to direct the education of their children; facilitating this right leads to better schools and better educational outcomes for parents and children.”*

*Amicus Brief to the United States Supreme Court,  
Espinoza v. Montana Department of Revenue*

On January 22, 2020 the Supreme Court of the United States heard oral arguments in *Espinoza v. Montana Department of Revenue* which is about a parent’s right to control their child’s education. A favorable decision, will open the floodgates to educational opportunity in 37 states where educational choice programs have previously been hampered.

The case was a result of a constitutional provision called a Blaine Amendment, which is state precedent. It was cited as the reason the Montana Supreme Court denied parents the opportunity to take advantage of a legislatively approved scholarship program to help them send their children to private schools. Blaine Amendments are often used as an excuse for legislative failure to enact educational choice programs that give parents the ability to send their children to a faith-based or other private school.

What most people do not know is that the man behind the Blaine Amendments intended it that way.

Created amidst 19th century anti-immigrant and anti-Catholic bigotry, James G. Blaine, was a Know Nothing party Congressman who wanted the Congress to amend the U.S. Constitution to forbid any public funds from ever touching a religious institution.

**Because he failed at that level, he took his case to the states.**

Today, 37 state constitutions have his legacy enshrined in Blaine Amendments which prevent any public funds from directly or indirectly supporting religious education of any kind. According to the Institute for Justice, which represented the parents fighting the Montana Blaine Amendment:

*“A Blaine Amendment is any provision that specifically prohibits state legislatures (and often other governmental entities) from appropriating funds to religious sects or institutions, including religious schools.”*

So as we watch more and more religious schools shrink or shutter their doors year after year, even as traditional public education continues to fail most students, particularly the less-fortunate, we have Mr. Blaine, and more than 100 years of complacent state lawmakers to blame.

That's the bad news. The good news is that after decades, the Supreme Court reviewed the Blaine Amendment and considered prior cases that have been fought over related issues.

With the Supreme Court unable to hear oral arguments in other cases, the decision may very well be handed down before the expected date in June. If the Court rules *for* Kendra Espinoza and against Montana's Blaine Amendment, and if it is a broad enough decision that it would apply to other Blaine Amendments around the country, the result could be dramatic for expanding education opportunity. Countless American students will be given new opportunities to obtain and continue a quality education.

**We are standing at the precipice of one of the most important decisions in education in our lifetimes, one that will help ensure the education of millions more students who will no longer be stuck in schools that fail to meet their needs.**

And that's why we are writing.

As soon as we learned the case was making its way to the High Court, we organized a broad coalition of groups representing minority parents, business, and policymakers. Thanks to the generosity of our supporters, we were able to help develop and file a powerful amicus brief in favor of the plaintiff in *Espinoza* and urging the court to strike down Blaine amendments everywhere. The brief is authored by prominent attorney and former Solicitor General of the United States, Paul Clement.

A full explanation of the case and what it means is detailed in the Amicus Brief CER filed with the Court. You can read it in its entirety at <https://edreform.com/blaine/amicus-brief-filed-in-most-important-education-case-in-decades/>

## IT IS IMPORTANT TO GET INFORMED AND PREPARED TO TAKE ACTION

We need to promote the arguments in our brief and others' briefs to the media, opinion shapers, the public, and our grassroots to inform these communities on the merits of the case against Blaine amendments, and to prepare the public for a ruling against them and in favor of choice for religious schools.

The fact is that so few people - even those whose lives will change and education leaders whose schools will benefit - even know about Blaine Amendments and *Espinoza v. Montana*. **The Benefit to Children Across the Country** is clear - millions of school children would benefit directly from a favorable ruling in the Blaine amendments case because it would lift the constitutional cloud over enacting education choice programs, thereby allowing millions more children access to the schools that better meet their needs than schools they must attend by virtue of their zip code.

Millions more would *also* be impacted for the better even without changing schools, by making those enrolled in religious schools eligible to receive vouchers or scholarships in states where Blaine Amendments now block it. America's education landscape could be fundamentally different and offer far more opportunity than it does today just a few months from now.

## **But, it's a long road between here and such an outcome. Here's what we are up against:**

- Opponents, including the teachers unions, are doing everything they can to push the Supreme Court to rule against *Espinoza*, or at least rule narrowly by striking down only Montana's Blaine Amendment. They flooded the Court with amicus briefs, and as we get closer to oral arguments, they will be flooding the airwaves and media to poison the very idea of freedom of opportunity.
- If we win, the opponents will be working hard to poison the ruling in the minds of lawmakers who we need to enact choice laws.
- Most people are wholly unaware of Blaine, the *Espinoza* case, or its significance. By educating you we hope you will help educate others around you so we may be ready to fight for parents, especially if a decision is made in their favor.

## **Here's what you can do:**

Until the Court rules, we need to make some noise. The Supreme Court justices do indeed read the newspapers and hear the public sentiment. They especially pay attention to amicus briefs in contentious cases like this one. We know this because we filed an amicus brief in 2002 in *Zelman v. Simmon-Harris*, which upheld an Ohio law allowing school vouchers. Our arguments were used in the majority ruling!

And while everyone is still quarantined, lawmakers are still reviewing what they can do to help the people so that when they return they are ready to take action. We must begin to communicate to lawmakers what is coming.

***Write to your own community groups or in newsletters to your congregations.***

***Share this letter.***

***Share our website (<https://edreform.com/blaine/>)***

***Write to your legislators (if you need help write us at [opportunity@edreform.com](mailto:opportunity@edreform.com))***

***Stay Informed!***

Following are some materials to help you learn more and to share. We are ready and willing to work with you to inform people in your community and your schools.

Please let us know if we can help you in any way or have questions. Also follow us on [Facebook](https://www.facebook.com/theCenterforEducationReform/) and [Twitter](https://twitter.com/edreform)

[CER Blaine on Trial Page](https://edreform.com/blaine/)  
(<https://edreform.com/blaine/>)

[Podcast with CER attorney and former US Solicitor General Paul Clement](https://podcasts.apple.com/us/podcast/parent-choice-on-trial-scotus-blaine-amendments-attorney/id1324131074?i=1000451926341)  
(<https://podcasts.apple.com/us/podcast/parent-choice-on-trial-scotus-blaine-amendments-attorney/id1324131074?i=1000451926341>)

[Time Magazine Article](https://time.com/5767864/blaine-amendment-supreme-court-espinoza/)  
(<https://time.com/5767864/blaine-amendment-supreme-court-espinoza/>)

[FAQs from Espinoza law firm The Institute for Justice](https://ij.org/issues/school-choice/blaine-amendments/answers-frequently-asked-questions-blaine-amendments/)  
(<https://ij.org/issues/school-choice/blaine-amendments/answers-frequently-asked-questions-blaine-amendments/>)

[CER Amicus Brief](https://edreform.com/blaine/amicus-brief-filed-in-most-important-education-case-in-decades/)  
(<https://edreform.com/blaine/amicus-brief-filed-in-most-important-education-case-in-decades/>)

[FACT SHEET](https://edreform.com/blaine/espinoza-v-montana-fact-sheet/)  
(<https://edreform.com/blaine/espinoza-v-montana-fact-sheet/>)

**Learn more at <https://edreform.com/blaine/> and again, please contact us at [opportunity@edreform.com](mailto:opportunity@edreform.com) if you have thoughts about how to spread the word and want to help.**

*Founded in 1993, the [Center for Education Reform](#) aims to expand educational opportunities that lead to improved economic outcomes for all Americans — particularly our youth — ensuring that conditions are ripe for innovation, freedom and flexibility throughout U.S. education.*

# EDUCATIONAL FREEDOM GETS ITS BIGGEST DAY IN COURT YET

*In Espinoza v. Montana, discrimination's loss will be students' gain*



Throughout the United States, **37 state constitutions currently have “Blaine Amendments”** – named after 19th century House Speaker James Blaine – that only allow public dollars to aid some schools while restricting them from others.



These Amendments are a prime example of how **the current system is failing to ensure academic success** for students of every need and closing doors to education opportunities that we believe should be wide open.



CER agrees with countless legal scholars that, because of the Blaine Amendments' discriminatory origin and intent – against schools with religious affiliations – **they are not just unfair and harmful but unconstitutional.**



The facts are sad but clear: **each Blaine Amendment is a product of prejudice from a shameful chapter in American history** – tragically still intact and putting countless students at risk.



When first written, Blaine Amendments were specifically designed to **target, hurt, and coercively “assimilate” new immigrants** to the U.S. who held non-Protestant religious beliefs.



**Systemic, government-enforced religious discrimination** is just as vile and unacceptable today as it was in the 1800s Know-Nothing era.



The Espinoza v. Montana Dept. of Revenue case was heard on January 22, 2020. **The U.S. Supreme Court with their upcoming ruling has an opportunity to bury this “doctrine borne of bigotry”** – as the Court has already called it – and prevent it from denying any more kids the education they need.



In accordance with Supreme Court precedent, if litigators can prove that **religious discrimination was a motivating factor in the Blaine Amendment's enactment** (which history shows it certainly was!), then it cannot be considered constitutional and must be struck down.



If justice prevails and each state's Blaine Amendment is eventually overruled, then **tens of thousands of underserved students will be free to obtain and/or continue their quality education** without fear of having it taken from them—which is sadly what happened in Montana.

Visit [edreform.com](https://edreform.com) to learn more and help spread the word!