

IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS
Murphy, P.J., and Gleicher and Letica, JJ.

COUNCIL OF ORGANIZATIONS AND OTHERS
FOR EDUCATION ABOUT PAROCHIAID (CAP),
AMERICAN CIVIL LIBERTIES UNION OF
MICHIGAN (ACLU), MICHIGAN PARENTS FOR
SCHOOLS, 482FORWARD, MICHIGAN
ASSOCIATION OF SCHOOL BOARDS, MICHIGAN
ASSOCIATION OF SCHOOL ADMINISTRATORS,
MICHIGAN ASSOCIATION OF INTERMEDIATE
SCHOOL ADMINISTRATORS, MICHIGAN SCHOOL
BUSINESS OFFICIALS, MICHIGAN ASSOCIATION
OF SECONDARY SCHOOL PRINCIPALS, MIDDLE
CITIES EDUCATION ASSOCIATION, MICHIGAN
ELEMENTARY AND MIDDLE SCHOOL PRINCIPALS
ASSOCIATION, KALAMAZOO PUBLIC
SCHOOLS, and KALAMAZOO PUBLIC SCHOOLS
BOARD OF EDUCATION,

Plaintiffs-Appellants,

v.

STATE OF MICHIGAN, GOVERNOR,
DEPARTMENT OF EDUCATION, and
SUPERINTENDENT OF PUBLIC INSTRUCTION,

Defendants-Appellees.

MSC No. 158751

COA No. 343801

Trial Ct No. 17-000068-MB

**THE APPEAL INVOLVES
A RULING THAT A
PROVISION OF THE
CONSTITUTION, A
STATUTE, RULE OR
REGULATION, OR
OTHER STATE
GOVERNMENTAL
ACTION IS INVALID**

PLAINTIFFS-APPELLANTS' SUPPLEMENTAL AUTHORITY

[CAPTION CONTINUED ON NEXT PAGE]

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On February 5, 2020, the Court entered an order holding this case in abeyance pending the United States Supreme Court's decision in *Espinoza v Montana Dep't of Revenue*, cert gtd ___ US ___; 139 S Ct 2777 (2019) (Docket No. 18-1195), which the Court believed "may resolve an issue raised in the present case."

The Supreme Court issued its decision in *Espinoza* on June 30, 2020. See *Espinoza v Montana Dep't of Revenue*, ___ US ___; ___ S Ct ___; ___ L Ed 2d ___; 2020 WL 3518364 (2020). In *Espinoza*, the Court addressed Article X, § 6(1) of the Montana Constitution, which bars aid to any school "controlled in whole or in part by any church, sect, or denomination." Mont Const, art 10, § 6(1). The Court found this provision to violate the Free Exercise Clause because it "plainly excludes schools from government aid solely because of religious status." *Espinoza*, 2020 WL 3518364 at *6.

In defending Montana's "no-aid" provision, the Montana Department of Revenue argued that it merely "safeguards the public school system by ensuring that government support is not diverted to private schools." *Id.* at *11. The Court rejected that "framing," observing that "an interest in public education is undermined by diverting government support to *any* private school, yet the no-aid provision bars aid only to religious ones." *Id.* (emphasis added). "A State need not subsidize private education," the Court explained, "[b]ut once a State decides to do so, it cannot disqualify some private schools solely because they are religious." *Id.*

Article 8, § 2 of the Michigan Constitution is plainly different from Montana's no-aid provision. It applies to *any* nonpublic school, and does not single out certain nonpublic schools "solely because of religious status." Thus, *Espinoza* has no bearing on the resolution of this case. MCL 388.1752b can be invalidated under Article 8, § 2 without running afoul of the United States Constitution.

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Dated: July 10, 2020

Respectfully submitted,

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