

STATE OF MICHIGAN  
IN THE SUPREME COURT  
Appeal from the Michigan 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 ASSOCIATIONS OF SECONDARY SCHOOL PRINCIPALS; MIDDLE CITIES EDUCATION ASSOCIATION; MICHIGAN ELEMENTARY AND MIDDLE SCHOOL PRINCIPALS ASSOCIATIONS; KALAMAZOO PUBLIC SCHOOLS; AND KALAMAZOO PUBLIC SCHOOLS BOARD OF EDUCATION,

Supreme Court No. 158751  
Court of Appeals No. 343801  
Michigan Court of Claims  
No. 17-000068-MB

**The appeal involves a ruling that a provision of a statute is invalid.**

Plaintiffs-Appellants,

v

STATE OF MICHIGAN; GRETCHEN WHITMER, Governor, in her official capacity, MICHIGAN DEPARTMENT OF EDUCATION; and MICHAEL RICE, Superintendent of Public Instruction, in his official capacity,

Defendants-Appellees.<sup>1</sup>

**SUPPLEMENTAL STATEMENT OF THE GOVERNOR AND SUPERINTENDENT OF PUBLIC INSTRUCTION REGARDING THE U.S. SUPREME COURT’S DECISION IN *ESPINOZA***

<sup>1</sup> The current state officials substitute for the original defendants, which occurs without a formal order of substitution. See MCR 2.202(C), (D).

The U.S. Supreme Court’s opinion in *Espinoza v Montana Dep’t of Revenue*, 140 S Ct 2246 (2020), confirms that Michigan’s constitution validly prohibits the public financing of nonpublic schools. As the Court made clear, “[a] State need not subsidize private education. But once a State decides to do so, it cannot disqualify some private schools solely because they are religious.” *Id.* at 2261. Unlike the Montana law in *Espinoza*, article 8, § 2 fully comports with these principles. Its prohibition is neutral and generally applies to every “private, denominational or other nonpublic, pre-elementary, elementary, or secondary school.” It does not single out religious schools, but it reaches both religious and nonreligious schools alike without distinction. See Defs’ Br, pp 31–32, n 13. Applying this prohibition’s plain terms to MCL 388.1752b thus raises no federal constitutional concerns.

The statements of amici MCC and IHM to the contrary are unavailing. The Montana Supreme Court’s application of its state law in *Espinoza* is not analogous. That court “chose to invalidate the entire program” under Montana law, not just for religious schools. That even-handed outcome still proved unconstitutional, but only because it was based on “a state law provision that expressly discriminates on the basis of religious status.” 140 S Ct at 2262. Article 8, § 2 is not such a law, and *Espinoza* supports this Court’s straightforward application of it here.

And the argument that secular, private schools may become charter schools, see IHM’s Supp, p 2, is beside the point. Article 8, § 2 treats all public schools alike, and it treats all nonpublic schools alike. That other laws might create limits on public charter schools does not make this constitutional provision discriminatory.

**RELIEF REQUESTED**

This Court should hold that the reimbursement for transportation-related costs under MCL 388.1752b is constitutional but reimbursement for non-transportation-related costs violates article 8, § 2 and is invalid. If this Court believes that additional briefing regarding the U.S. Supreme Court's decision in *Espinoza* would be beneficial, the Governor and Superintendent are prepared to provide it.

Respectfully submitted,

B. Eric Restuccia (P49550)  
Deputy Solicitor General  
Counsel of Record

/s/ B. Eric Restuccia

Raymond O. Howd (P37681)  
Toni L. Harris (P6311)  
Precious Boone (P81631)  
Assistant Attorneys General  
Attorneys for Plaintiffs-Appellants  
Health, Education & Family  
Services Division  
P.O. Box 30758  
Lansing, MI 48909  
(517) 373-7700

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