

No. 18-1195

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In the  
**Supreme Court of the United States**

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KENDRA ESPINOZA, ET AL.,  
*Petitioners,*

v.

MONTANA DEPARTMENT OF REVENUE, ET AL.,  
*Respondents.*

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**On Writ of Certiorari  
to the Supreme Court of Montana**

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**BRIEF OF *AMICUS CURIAE*  
FORGE YOUTH MENTORING  
IN SUPPORT OF PETITIONERS**

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KELLY J. SHACKELFORD  
JEREMY DYS  
LEA E. PATTERSON  
KEISHA T. RUSSELL  
FIRST LIBERTY INSTITUTE  
2001 W. Plano Parkway  
Suite 1600  
Plano, Texas 75075  
972-941-4444  
kshackelford@firstliberty.org  
jdys@firstliberty.org  
lepatterson@firstliberty.org  
krussell@firstliberty.org

JOSHUA D. DAVEY  
*Counsel of Record*  
MARY K. GROB  
MCGUIREWOODS LLP  
201 North Tryon Street  
Suite 3000  
Charlotte, NC 28202-2146  
704-343-2000  
jdavey@mcguirewoods.com

*Counsel for Amicus Curiae  
Forge Youth Mentoring*

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES. . . . . ii

INTEREST OF AMICUS. . . . . 1

SUMMARY OF ARGUMENT . . . . . 2

ARGUMENT . . . . . 3

I. Mentorship Provides Much Needed Support  
and Benefits to America’s Youth . . . . . 3

II. Forge Youth Mentoring Has a Record of  
Providing Positive Results for Children and  
its Community Through its Faith-Based  
Mentoring . . . . . 5

III. In 2018, Forge Faced Discrimination Solely  
Because of its Religious Identity. . . . . 8

IV. Excluding Religious Organizations from  
Public Benefit Programs Solely Because of  
Their Religious Character Violates the  
United States Constitution. . . . . 10

V. The Implications of the Montana Supreme  
Court’s Holding Extend Far Beyond School  
Choice. . . . . 14

CONCLUSION. . . . . 15

## TABLE OF AUTHORITIES

### CASES

<i>Espinoza v. Montana Dep’t of Revenue</i> , 393 Mont. 446 (2018) . . . . .	11, 12
<i>Church of the Lukumi Babalu Aye, Inc. v. Hialeah</i> , 508 U.S. 520 (1993). . . . .	11
<i>Everson v. Board of Educ.</i> , 330 U.S. 1 (1947). . . . .	10
<i>Locke v. Davey</i> , 540 U.S. 712 (2004). . . . .	<i>passim</i>
<i>Trinity Lutheran Church of Columbia, Inc. v. Comer</i> , 137 S. Ct. 2012 (2017) . . . . .	<i>passim</i>

### CONSTITUTION AND STATUTES

Mont. Const. art. X, § 6 . . . . .	12, 14
Mont. Code § 15-30-3101 . . . . .	11
Mont. Code § 15-30-3102 . . . . .	11

### OTHER AUTHORITIES

Kym R. Ahrens, Youth in Foster Care With Adult Mentors During Adolescence Have Improved Adult Outcomes. <i>Pediatrics</i> (2008) . . . . .	5
Commission on Children at Risk, <i>Executive Summary</i> to Hardwired to Connect: The New Scientific Case for Authoritative Communities. Institute for American Values (2003) . . . . .	4

Forge Youth Mentor Application Packet (2018),  
*available at* <https://forgeyouthmentoring.org/wp-content/uploads/2018/12/FORGE-Mentor-APPLICATION-2018.pdf> . . . . . 7

Joseph P. Tierney & Jean Baldwin Grossman,  
Making a Difference: An Impact Study of Big  
Brothers Big Sisters (2000) . . . . . 3, 4

*Welcome to the Tri-Cities*, Tri-City Development  
Counsel, <https://www.tridec.org/welcome-to-the-tri-cities/> . . . . . 5

**INTEREST OF AMICUS<sup>1</sup>**

The Amicus Curiae Forge Youth Mentoring (“Forge”) is a Washington State charitable organization whose mission is to help youth discover their God-given potential by connecting them with older mentors to form intergenerational mentoring relationships. Today, more than ever, intergenerational mentoring is necessary to help overcome the social isolation and the absence of role models that face many youth today. Forge recruits, trains, and organizes the highest quality adult mentors for children in need. Through its program, Forge has strengthened communities and provided youths with much needed intergenerational support.

Forge is a Christian organization and is interested in protecting the constitutional rights of religious organizations and individuals like Petitioners. Forge believes that all Americans have a God-given and constitutional right to free exercise of religion. However, Forge’s interest in this case extends past the context of school choice because the constitutional principles that this case will establish will have a far-reaching impact. Specifically, religious organizations like Forge support America’s youth through programs that often collaborate with, or are financially supported by, local governments. If this Court were to uphold the

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus curiae, its members, or its counsel made a monetary contribution to fund its preparation or submission. The parties in this case have filed blanket consent for amicus briefs. Counsel of record was respondent in *Locke v. Davey*, 540 U.S. 712 (2004).

decision of the Montana Supreme Court, it would establish a principle that could drastically hinder Forge’s ability—and the ability of similar organizations—to positively influence young men and women throughout the nation solely because of its religious identity.

### SUMMARY OF ARGUMENT

In *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), this Court affirmed that under the United States Constitution, a government body may not categorically exclude an organization from a generally available benefit “solely because of its religious character,” *Trinity Lutheran*, 137 S. Ct. at 2024. In light of this fundamental principle, the Montana Supreme Court’s reliance on an expansive reading of *Locke v. Davey*, 540 U.S. 712 (2004)—which dealt with the much narrower question of funding of vocational religious instruction—in the decision below is misplaced. Furthermore, embracing such an interpretation would have far-reaching consequences for religious people and organizations, well beyond the immediate context of school choice presented here. This Court should reverse the decision of the Montana Supreme Court.

## ARGUMENT

### I. **Mentorship Provides Much Needed Support and Benefits to America's Youth.**

*"...Something I wanted to tell you that I just didn't—is that I never grew up with a father figure in my life and you[re] kinda like that. So when you tell me these things, I listen and I think. I feel this is what I've needed for me to change...someone to tell me what I've done wrong so I can fix it, so I can be held accountable. Thank you for that."— A Forge Youth Mentee*

Historically, society has relied on schools, families, and communities to provide support to adolescents as they grow.<sup>2</sup> However, over the past several decades these institutions have changed and evolved in unanticipated ways. Simply put, childhood today is drastically different from childhood fifty years ago. More and more children are raised in single-parent homes. Schools are chronically overcrowded, especially in the highest need areas, minimizing much-needed one-on-one adult attention.<sup>3</sup> Children are further isolated within their neighborhoods because of security and safety concerns.<sup>4</sup>

So what happens to children who are left without sufficient interactions with positive adult role models? According to a study from the Commission on Children

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<sup>2</sup> See Joseph P. Tierney & Jean Baldwin Grossman, *Making a Difference: An Impact Study of Big Brothers Big Sisters 2* (2000).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

at Risk, the lack of connection between generations and weakening social institutions are causes of America's current emotional and mental health crisis.<sup>5</sup> Although reconnecting children with positive adult mentors is not a panacea for this crisis, studies repeatedly show that mentorships provide numerous, tangible benefits to adolescents. For example, in Big Brothers Big Sister's ("BBBS") seminal study on the success of mentorship, BBBS found that over an eighteen-month period, children who received an adult mentor:

- Were less likely to start using drugs and alcohol;
- Were less likely to hit someone;
- Improved school attendance, school performance, and attitudes towards completing schoolwork; and
- Improved family and peer relationships.<sup>6</sup>

Similarly, another study published in the Journal of the American Academy of Pediatrics found that mentored youth in foster care "were less likely to report suicidal ideation, having received a diagnosis of a sexually transmitted infection, and having hurt someone in a fight in the past year," and "mentored

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<sup>5</sup> See Commission on Children at Risk, *Executive Summary to Hardwired to Connect: The New Scientific Case for Authoritative Communities*. Institute for American Values (2003).

<sup>6</sup> Joseph P. Tierney & Jean Baldwin Grossman, *Making a Difference: An Impact Study of Big Brothers Big Sisters* ii (2000).

youth had, on average, a significantly greater number of positive outcomes than nonmentored youth.”<sup>7</sup>

## **II. Forge Youth Mentoring Has a Record of Providing Positive Results for Children and its Community Through its Faith-Based Mentoring.**

To address this crisis, Todd Kleppin and Brian Vaughan founded Forge Youth Mentoring in early 2019 in the Tri-Cities<sup>8</sup> community of Washington State. Kleppin and Vaughan have a long history of community involvement and mentorship. Kleppin, who previously worked as a youth minister, first found his passion for mentorship in 2005 while helping city officials open a million-dollar skate park next to his church. After observing several middle-school-age children seek out an elderly park visitor simply to talk, Kleppin recognized the desperate need of many youth for meaningful adult mentorship. Since then, Kleppin has trained and worked with several national youth mentoring programs. Vaughan, who also manages a CPA firm, joined Kleppin in forming Forge to pursue his own deep connection to youth and commitment to helping children find their purpose in life.

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<sup>7</sup> Kym R. Ahrens, Youth in Foster Care With Adult Mentors During Adolescence Have Improved Adult Outcomes. *Pediatrics* 1 (2008).

<sup>8</sup>The Tri-Cities refers to a community in southeastern Washington encompassing Kennewick, Pasco, Richland, and West Richland. Approximately 273,100 people currently live in Tri-Cities. See *Welcome to the Tri-Cities*, Tri-City Development Counsel, <https://www.tridec.org/welcome-to-the-tri-cities/> (last visited Sept. 17, 2019).

During its brief existence under Kleppin and Vaughn's leaderships, Forge has already made a profound impact on the Tri-Cities community. Forge's mentees are a diverse group of young men and women between the ages of eight and eighteen. Many come from single-family homes and live in low-income neighborhoods. Forge pairs these youth with caring adult mentors who have been carefully screened and extensively trained in fields such as empathy, listening, cultural awareness, acceptance, social capital, and consistency. In doing so, Forge provides a safe environment for meaningful intergenerational mentoring of youth with the greatest need for such guidance.

Forge also supports the individualized needs of its community by working with other community and government organizations, including the local chapter of United Way, law enforcement, and local city government to ensure it is adequately responding to the needs of the community. For example, earlier this year, Forge reached out to staff at the Benton & Franklin County Juvenile Justice Center located in Kennewick, Washington to see how Forge could better support children within the juvenile justice system. Forge also serves a growing Hispanic community. Through its work, Forge realized that some Hispanic parents felt the phrase "mentor" had a negative stigma and suggested the parents were not doing their job as their child's mentor. To address this misconception, Forge worked with the Hispanic Community to come up with a title that more accurately reflects Forge's mission. Today, dozens of Hispanic youths have been

successfully paired up with Amigo Tutors, or “teacher friends.”

Forge accepts youth mentees without regard to their religious background or beliefs, and Forge mentors engage with mentees in secular activities such as hiking, video games, sports, and cooking. At the same time, Forge employs a distinctively Christian approach to mentoring, which it regards as essential to both its mission and its success. Forge requires every mentor to have a personal relationship with Jesus Christ and to have been affiliated with a local church for at least six months. As part of Forge’s application process, mentors agree to “liv[e] by scriptural principals,” “[s]hare [their] life and words in a way that reflects the Gospel,” and “[d]eepen [their] relationship with God through prayer, scripture, reading, fellowship, and church involvement.”<sup>9</sup> Because of their shared faith, Christian mentors are already committed to the core principles Forge desires to instill in youth—principles such as empathy, understanding, giving, and consistency. In addition, like many faith-based organizations, Forge has also found that churches offer valuable support to participants and can help recruit quality volunteers.

In fact, recent research by the Christian Association of Youth Mentoring (CAYM) suggests that mentors supported by a church are more likely than non-faith-supported mentors to complete their initial one-year mentoring commitment and to choose to continue the

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<sup>9</sup> Forge Youth Mentor Application Packet (2018), *available at* <https://forgeyouthmentoring.org/wp-content/uploads/2018/12/FORGE-Mentor-APPLICATION-2018.pdf>.

relationship for a second year. The importance of consistency for mentorship programs like Forge cannot be understated. Many mentees—including those from the most at risk communities—enter mentorship programs after having been abandoned or rejected by the adults in their lives. Those children need commitment and security in order to receive all the benefits mentorship offers.

In order to offer mentees the best experience possible, Forge relies on financial partnerships with local communities and donations from churches, business, and families. With their support, Forge is able to cover the cost of recruiting, screening, and training its amazing mentors, who volunteer their time for free. Forge also has day-to-day expenses associated with running a non-profit, such as insurance premiums, promoting its services within the community, and developing referral partnerships with local organizations like schools and counseling agencies.

In the coming years, Forge intends to expand its footprint and help youths throughout the country. In order to be successful, Forge will continue to seek out partnerships with local communities and governments.

### **III. In 2018, Forge Faced Discrimination Solely Because of its Religious Identity.**

Forge's distinctively Christian approach has already met with opposition. In November 2018, shortly before its official launch, Forge entered into a two-year contract with Benton County, Washington, to provide youth mentoring services. Forge's program was unique

in Benton County and was specifically designed to help prevent children from joining gangs and committing crimes. Consistent with Forge's existing volunteer model, the contract allowed Forge to continue to select mentors who shared Forge's religious beliefs. Importantly, the contract made clear that Forge would accept mentees of any faith and that Forge would not use Benton County funds to promote religion. At Benton County's request, Forge even signed a separate document in January 2019 reiterating that Forge would not use any funds for religious purposes and that mentees of all faiths could participate.

On May 10, 2019, the Freedom From Religion Foundation ("FFRF") filed a complaint with Benton County regarding its contract with Forge. FFRF alleged that Forge's hiring practices amounted to discrimination against potential employees because of religion. FFRF argued that Forge must accept and hire mentors that do not share Forge's religious beliefs in order to receive County funds.

Based on FFRF's complaint, Benton County threatened to revoke Forge's funding unless it changed its mentor-selection practices. At the time, Benton County's contract amounted to approximately 60% of the newly-formed Forge's funding. The potential revocation of Forge's contract threatened the very existence of Forge's mentoring programs.

#### **IV. Excluding Religious Organizations from Public Benefit Programs Solely Because of Their Religious Character Violates the United States Constitution.**

Despite this Court’s clear affirmation that the government may not categorically exclude an organization from a generally available benefit “solely because of its religious character,” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2024 (2017), religious organizations like Forge continue to face opposition from groups like the FFRF, which misconstrue the scope of the Establishment Clause and pressure state and local governments to cut ties with faith-based organizations. *See also Everson v. Board of Educ.*, 330 U.S. 1, 18 (1947) (“State power is no more to be used so as to handicap religions than it is to favor them.”).

In *Trinity Lutheran*, the Missouri Department of Natural Resources disqualified Trinity Lutheran Church Child Learning Center—solely on the basis of its religious status—from a public grant program that would have allowed the daycare and preschool center to purchase rubber playground surfaces made from recycled tires for its facility. *Trinity Lutheran*, 137 S. Ct. at 2017. The program was otherwise open to public schools, private schools, nonprofit daycare centers, and other nonprofits, and Trinity Lutheran ranked fifth among the 44 applicants based on the Department’s assessment. *Id.* at 2017-18.

As this Court reasoned, Trinity Lutheran was, as a member of the community, simply “assert[ing] a right to participate in a government benefit program without

having to disavow its religious character.” *Id.* at 2022. As implemented, the Department’s program expressly discriminated against Trinity Lutheran’s religious exercise by categorically refusing to allow Trinity Lutheran, as a religious organization, to “compete with secular organizations for a grant.” *Id.* Such a discriminatory policy “imposes a penalty on the free exercise of religion that triggers the most exacting scrutiny.” *Id.* at 2021 (citing *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993)).

The Court’s reasoning in *Trinity Lutheran* applies equally in this case. In 2015, the Montana Legislature enacted a tax credit scholarship program (“Tax Credit Program”). *Espinoza v. Montana Dep’t of Revenue*, 393 Mont. 446, 455 (2018). The purpose of the program was “to provide parental and student choice in education with private contributions through tax replacement programs.” *Id.* (citing Mont. Code § 15-30-3101). The Tax Credit Program operated by providing a tax credit to individuals and businesses that donated to non-profit, private scholarship organizations. *Id.* Once the scholarship organization received the funds, they would then use the donations to fund scholarships for Montana students aged five through eighteen to “qualified education providers”—essentially any private schools throughout the state. *Id.* at 456; Mont. Code § 15-30-3102.

Shortly after the Tax Credit Program was enacted, the Montana Department of Revenue implemented administrative Rule 1, which excluded religiously-affiliated private schools from the definition of qualified education providers. *Espinoza*, 393 Mont. at 457. The

Department reasoned that absent the rule, the Tax Credit Program would aid religious schools in violation of Article X, Section 6, of Montana's Constitution, which prohibited aid to any church or any school "controlled in whole or in part by any church, sect, or denomination." *Id.* (citing Mont. Const. art. X, § 6). Petitioners, parents whose children attended a religiously affiliated school, filed suit challenging the constitutionality of Rule 1 under the United States and Montana Constitutions. *Id.*

In the decision below, the Montana Supreme Court held that the Tax Credit Program was unconstitutional because it "violate[ed] Article X, Section 6's stringent prohibition on aid to sectarian schools." *Id.* at 469. Citing to this Court's decision in *Locke v. Davey*, 540 U.S. 712 (2004), (with which the author of this brief is personally familiar), the Montana Supreme Court dismissed any Free Exercise concerns under the federal constitution by arguing that *Locke* allowed "[a] state's constitutional prohibition against aid to sectarian schools may be broader and stronger than the First Amendment's prohibition against the establishment of religion." *Id.* at 459.

But the Montana Supreme Court's holding overstates the reach of *Locke* and ignores this Court's ruling in *Trinity Lutheran*. In *Locke*, this Court upheld the constitutionality of a Washington State scholarship program that forbade recipients from using the scholarship for a degree in theology. *Locke*, 540 U.S. at 715. However, *Locke* does not stand for the blanket proposition that states are free to exclude religious individuals and organizations from otherwise generally

available, public benefit programs solely on the basis of their religious status. As this Court explained in *Trinity Lutheran*, “Davey was not denied a scholarship because of who he was; he was denied a scholarship because of what he proposed to do — use the funds to prepare for the ministry.” *Trinity Lutheran*, 137 S. Ct. at 2023. By contrast, in *Trinity Lutheran* there was “no question that Trinity Lutheran was denied a grant simply because of what it is — a church.” *Id.*

Accordingly, the holding in *Locke* reflects only a well-established “interest in not funding the religious training of clergy.” *Locke*, 540 U.S. at 722 n. 5. In fact, as this Court explained, rather than “evincing . . . hostility toward religion,” the scholarship program at issue in *Locke* went “a long way toward including religion in its benefits.” *Id.* at 724. The program specifically allowed scholarship recipients to “attend pervasively religious schools, so long as they are accredited” and to take religious course work as long as the recipient did not major in theology. *Id.* at 724-25. Based on the unique facts presented in that case, this Court concluded that “[i]f any room exists between the two Religion Clauses, it must be here.” *Id.* at 725 (emphasis supplied).

Unlike in *Locke*, the Tax Credit Program scholarship recipients in this case have no intention of using the scholarship to fund a college education in theology. Quite the contrary, Petitioners simply seek to provide a quality primary education for their children. The “play in the joints” between the Establishment Clause and the Free Exercise Clause discussed in *Locke* does not authorize the wholesale

exclusion—solely on the basis of religion—of individuals from the Tax Credit Program scholarship. Instead, the principles this Court articulated in *Trinity Lutheran* control. The Montana Supreme Court’s holding, like the Missouri Department of Natural Resources’ policy in *Trinity Lutheran*, categorically denies religious organizations from participating in a generally-available benefit solely because of their identity as a religious organization. Just as in *Trinity Lutheran*, families are forced to choose between “participating in an otherwise available benefit program” and sending their children to religious affiliated schools. *Trinity Lutheran*, 137 S. Ct. at 2020-21.

**V. The Implications of the Montana Supreme Court’s Holding Extend Far Beyond School Choice.**

If this Court were to adopt the Montana Supreme Court’s expansive reading of *Locke*, the impact would extend far beyond the school choice context presented in this case. Among other things, mentoring and after-school programs similar to Forge could be precluded from contracting with local governments in states with provisions like Article X, Section 6 of the Montana Constitution. Such a holding would signal that state Blaine Amendments and similar state Establishment Clauses allow state and local governments to preclude religious organizations from contracting with local government entities for the benefit of the communities they serve. This would have terrible consequences for faith-based and church-affiliated after-school and

mentorship programs—depriving high-risk youth of the many benefits organizations like Forge have to offer.

And this risk is far from hypothetical. Forge itself has already been the target of this sort of overbroad reading of *Locke*. Fortunately, in Forge’s case, these efforts did not deal a deathblow to the organization. With the assistance of First Liberty Institute, Forge ultimately convinced Benton County that Forge was entitled to the same treatment as nonreligious nonprofits and that Forge need not abandon its sincerely held religious beliefs in order to serve its community and at-risk youth. However, Forge’s experience demonstrates the consequences that would flow from reading *Locke* to exclude more than chosen vocational religious instruction. Such a holding would sweep far more broadly than the school choice context at issue in this case, because it could be taken to authorize the exclusion of faith-based organizations from contracting with the government simply because they have a religious identity.

### CONCLUSION

No American should be forced to “choose between their religious beliefs and receiving a government benefit.” *Trinity Lutheran*, 137 S. Ct. at 2023 (quoting *Locke*, 540 U.S. at. 720-21).

Accordingly, Forge urges this Court to reverse the decision of the Montana Supreme Court and reaffirm the principles articulated in *Trinity Lutheran*.

Respectfully submitted,

KELLY J. SHACKELFORD  
JEREMY DYS  
LEA E. PATTERSON  
KEISHA T. RUSSELL  
FIRST LIBERTY INSTITUTE  
2001 W. Plano Parkway  
Suite 1600  
Plano, Texas 75075  
972-941-4444  
kshackelford@firstliberty.org  
jdys@firstliberty.org  
lepatterson@firstliberty.org  
krussell@firstliberty.org

JOSHUA D. DAVEY  
*Counsel of Record*  
MARY K. GROB  
MCGUIREWOODS LLP  
201 North Tryon Street  
Suite 3000  
Charlotte, NC 28202-2146  
704-343-2000  
jdavey@mcguirewoods.com

*Counsel for Amicus Curiae*  
*Forge Youth Mentoring*

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