The Use of Amicus Briefs to Influence a Supreme Court Decision:

Framing *Espinoza v. Montana* (2020)

A Dissertation Presented for the

Doctor of Philosophy

Degree

The University of Tennessee, Knoxville

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August 2022

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DEDICATION

When I started this journey both of my parents were alive. They taught me that hard-work and dedication pays off. Mom and dad, I wish you were her to see me accomplish this goal. Thank you for the life lessons you taught me – I am by far a better person today because of you. To my brother Norman and nephew Jerry who both recently passed – I wish I had taken more time during the past few years to spend time with you, talk with you more, and just laugh about all the crazy stuff going on in this world. And to my dog, Sequo-yah, my most loyal friend and companion, who succumbed to cancer this past March – I have missed you these last few weeks of this journey. You always knew when to come and put your head on my lap to remind me it was time to take a break – even if it was just to take you for a walk or to give you a treat.

ACKNOWLEDGEMENTS

Family, colleagues, and friends supported me throughout this process. To my daughter, thank you for your unyielding belief that I could accomplish this goal. Your encouragement helped me continue this journey. To my son, if not for your willingness to help me on weekends with chores – like mowing the yard or taking the dog for a walk when I know you would have rather been doing just about anything else – I would not have had the time to complete this dissertation. You are both awesome kiddos!

To my friend Terry, you always believed I could accomplish this goal. Your support and willingness to be my sounding board even when I was complaining – thank you! Your friendship means the world to me. I could not have asked for a better friend these past thirty plus years. To Julie who was always willing to share her knowledge and resource finds – thank you! You have been a constant source of inspiration this past year.

To my committee - Dr. Fitzgerald and Dr. Biddix - thank you for serving on my committee at the last minute. Your guidance was so valuable in helping me accomplish this goal. Dr. Fitzgerald - NVivo was a time saver. I truly enjoyed learning the program. Thank you for directing me to it. Dr. Biddix, your comments during my proposal were encouraging and gave me that extra boost of energy I needed to keep going. Dr. Hayes, thank you for directing me to the right qualitative content analysis resources. The Hsieh and Shannon article was invaluable to my understanding of qualitative content analysis (though I still have a lot to learn). Your support and encouragement mean a lot to me. And... of course, Dr. Driscoll, my committee chair, for your constant support, steady guidance, and for pushing me to get this done. I would still be writing and mulling this thing over if you hadn't pushed so hard - thank you!

I would be amiss if I did not thank Rochelle Butler in the University of Tennessee's OIT department. Your willingness to meet with me and assist me with setting up this project was invaluable to my research. Thank you! And, to Professor Sibyl Marshall at the UT Law school – thank you for your willingness to help me figure out Bluebook's law citations. Again, you were both invaluable to me completing this dissertation.

ABSTRACT

The purpose of this qualitative content analysis was to examine how amici curiae frame policy preferences in amicus briefs submitted before the United States Supreme Court in the landmark case, *Espinoza v. Montana* (2020). The questions addressed in this study were what dominant policy frames do interest groups use to frame policy preference in *Espinoza v. Montana* (2020), and which (if any) policy frames found in the amicus briefs emerged in the written opinions of the United States Supreme Court?

Five a priori codes based on Semetko and Valkenburg's (2000) generic frames were used to analyze 18 out of 45 amicus briefs and seven justices' written opinions to identify which dominant frames emerged. The a priori codes included the attribution of responsibility frame, conflict frame, economic consequences frame, human interest frame, and morality frame. Using NVivo qualitative software, the researcher coded 1005 references across 18 amicus briefs and 180 references across seven written justices' opinions for a total of 1185 references. The documents were coded on two separate occasions resulting in an .85 intra-rater reliability. Dominant frames were identified for petitioners and respondents and for the written opinions of the Supreme Court justices.

The most dominant frame across the amicus briefs and justices' written opinions was the human interest fame. The next dominant fame was the conflict frame, and the third most dominant frame was the attribution of responsibility frame. The least dominant frames were the economic consequences frame and the morality frame respectively.

This study's major limitation's is that its primary focus was on the United States Supreme Court case *Espinoza v. Montana* (2020). Its applicability to other court cases should be called

into question. A much broader study must be undertaken before the results of this study can be generalized to other court cases.

Although more research is needed to determine if Semetko and Valkenburg's (2000) frames used in this study by amici curiae influenced judicial opinion in *Espinoza*, one implications of this study finds that frame analysis is a viable framework for studying how amici frame policy preferences in attempts to influence judicial outcomes.

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CHAPTER 1

INTRODUCTION TO THE STUDY

In *Espinoza v. Montana* ("*Espinoza*") the Supreme Court of the United States made a stunning ruling in the national debate over school choice when it handed down a favorable decision to proponents of state funded school vouchers.[1] The decision came in the form of tuition tax credits when the Court reversed and remanded the Montana's Supreme Court ruling in a 5-4 decision, holding that the Montana State Constitution violated the free exercise clause of the United States Constitution in relation to its tax credit program. In 2015 the Montana state legislature passed a tax credit scholarship program designed to extend school choice in K-12 education to students who attend private school programs.[2] The Montana program offered to match an income tax credit to state taxpayers who donated up to $150.00 to organizations offering scholarships.[3] To guarantee compliance with the Montana State Constitution, the state's department of revenue enacted Rule 1, a "no aid" clause which prohibited recipients from using the funds at religiously affiliated schools.[4] In December 2015, Kendra Espinoza and two other women whose children attended a private religious school challenged the rule contending that the rule violated the Religion and Equal Protection Clauses of the United States Constitution. The Supreme Court's ruling was significant because it signaled its support to end state practices that denied generally available state funds to faith-based organizations, and it provided a major lift to proponents of school choice (Russo & Thro, 2021).

School choice is an umbrella term for a variety of programs that offer parents and

[1] *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246 (2020). Hereinafter this case will be referred to in the text as *Espinoza v. Montana (2020)* or *Espinoza*.

[2] Mont. Code Ann. § 15-30-3101 (Nexis Uni current through 2021 Legis. Sess.).

[3] Mont. Code Ann. § 15-30-3102 (Nexis Uni current through 2021 Legis. Sess.).

[4] Mont. Const. Art. X, § 6 (Nexis Uni current through 2021 Legis. Sess.).

students the option to attend a school other than their zoned public school (Wang, et al., 2019). There are at least two categories for school choice: public and private (Skinner, 2019). Public school choice refers to educational choices offered within the public school system such as charter schools, magnet schools, or open enrollment. Private school choice options generally involve the transfer of public funds in the form of school vouchers, education saving accounts, and scholarship tax credits paid directly to parents to use at a private school of their choice (Skinner, 2019). Although there are several public-school choice options available to parents and students in most states, this study focused primarily on private-school choice programs funded in part or whole using public monies. The most prevalent school choice options in the United States are described in Table 1.

Private-School Choice

Prior to *Espinoza*, some states had already implemented tax credit scholarship programs. According to Kafer (2003), Arizona implemented the first tax credit scholarship program in 1997, and Florida and Alabama followed suit in 2001. Currently there are 27 voucher programs in 16 states and the District of Columbia (Erwin, et. al., 2021). Private-school options include voucher programs, often called state scholarship programs, education savings accounts, and tax credit scholarships (Erwin, et. al., 2021). Vouchers, or scholarship programs, allow students to use public monies to attend a private school of their choice. Education Savings Accounts make a portion of funds spent by the state at local public schools available to parents in the form of a spending account to use for private school tuition or other specified services (Cowen, 2019). Currently there are six states which offer ESA programs. Except for West Virginia, each state requires students who receive ESA funds to have a disability (Erwin, et. al., 2021). Tax credit scholarships allow individuals and corporations to receive a tax deduction in exchange for

Table 1

School Choice Options in the United States

School Choice Category	Type of Option	Description
Zoned Public Schools	Public	Allows parents to choose to send their students to their zoned neighborhood public school.
Charter Schools	Public	Semi-autonomous public schools that are exempt from many of the rules and regulations traditional public schools must follow.
Magnet Schools	Public	Themed based public schools that have a broader geographic boundary than traditional public schools.
Open Enrollment	Public	Allows parents to choose a public school outside of their assigned public-school zone.
Home Schools	Private	Allows parents to educate their children at home instead of sending them to traditional public or private schools. Parents who chose to home school must follow guidelines established by the state they live in.
Tax Credit Scholarships	Private	Provide incentives to businesses and individuals to donate to a nonprofit organization that provide private scholarships to eligible students in exchange for a tax credit from the state.
School Vouchers	Private	Publicly funded scholarships provided to parents who want their student to attend a school that is not a locally assigned school. Vouchers redirect state and local public-school funds by giving money directly to the parents on behalf of the student rather than the local school district.
Education Savings Account	Private	Government authorized savings accounts for parents to use for K-12 educational expenses.

Note. This author created table includes the most common school choice options in the United States circa 2022. There may be other types of school choice options available in different states, school districts, or regions of the United States that are not listed in this table.

contributing to student scholarship organizations (SSO). Student scholarship organizations are non-profit organizations that receive donations from businesses or individuals that in turn distribute the funds in the form of tuition scholarships to students who attend private schools (Levin, 2013). Currently, 19 states offer tax credit scholarships (Erwin, et al., 2021).

Pros and Cons of School Choice

The school choice debate is one of the most contested public policy issues in the United States (Debray-Pelot, et al., 2007). School choice initiatives such as those outlined above are polarizing as opponents and proponents exhibit deep convictions about their policy preferences. Proponents of school choice argue that private school vouchers empower parents to make decisions about their student's educational needs based on the child's unique cultural, religious, or academic needs (Scott, 2013). Chubb and Moe (1990) argue that the traditional public school system has become too institutionalized resulting in a large bureaucracy that is not responsive to parents or students. They contend that school choice provides an incentive for public schools to reorganize and become more efficient (Moe & Chubb, 1990). Other proponents argue that vouchers promote competition between area schools which raises the bar and forces public schools to improve (Friedman, 1955). Supporters believe vouchers allow all students equal access to better school opportunities despite of where the student might live, including low-income children who will have access to schools outside of neglected neighborhoods and low performing schools (Epple, et al., 2017).

Those who oppose school voucher programs argue that vouchers take money away from public school systems. These opponents believe financial cuts serve to undermine the value of public education (Gooden, et al., 2016). Opponents also argue that many parents use public-school vouchers at religious schools. By allowing the use of tax dollars to pay for secular

education, opponents argue that voucher programs undermine the separation between church and state (Sutton & King, 2011). Furthermore, many opponents believe that vouchers do not benefit all students since private schools can pick and choose which students to admit. Private schools can discriminate against LGBQT students, students with disabilities, or students with lower academic acumen (Eckes, et al., 2016). Opponents argue that vouchers skim the best students away from public schools (Epple, et al., 2017). Finally, opponents contend that school voucher programs have the potential to further divide the country by leading to increased racial and socio-economic segregation (Minow, 2011).

Framing the Issue

Policy debates in the public arena are often framed by interest groups. Malin, et al. (2021), argue that the language interest groups use to frame the school choice debate may ultimately shape U.S. educational policy. Interest groups compete to frame arguments in their favor by using moral arguments that appeal to the general public's emotions (Malin, et al., 2021). Interest groups work to influence education policy by directing public opinion towards these moral arguments and their own organizational goals. According to Minow (2011), the school choice debate has surfaced no less than five times in United States history, and each time has offered "choice" as the solution to conflict (p. 816). Table 2 highlights each major period.

Each historic period in Minow's (2011) analysis creates new challenges for the school choice movement. Minow (2011) states, "Its seductive frame at times obstructs, and at other times serves, equal opportunity, antiracism, tolerance, and multiculturalism" (p. 816). Minow (2011) argues that school choice rhetoric has served multiple purposes over time that has shaped the debate sometimes with unintended consequences as school choice policies appeal to different aspects of the American ethos. Hentschke (2017) contends that the arguments for or against

Table 2

Minow's Five Major Periods of Legal, Political, and Cultural Conflict Over School Choice in the United States.

Historic Period/Overarching Frame	Time Period	Issues and Concerns
Choice as individual religious and contractual liberty	1900-1925	Nativist opposition to immigration; Nativist attempt to pass compulsory school law requiring all students attend public schools. Culminated in *Pierce v. Society of Sisters* (1925) when the Supreme Court struck down the Oregon law and maintained the right of parental choice in the education of children.[5]
Choice as resistance to racial desegregation	1950-1960	In wake of *Brown v. Board of Educ.* (1954) private schooling became a way to evade court ordered desegregation.[6]
Choice as an instrument of racial desegregation	1970-1980	Liberals and progressives see school choice in form of vouchers as an opportunity for low-income families to exit failing schools and have access to private schools or Magnet schools.
Choice as an instrument of educational opportunity – and the triumph of religious school campaigns for public funding	1990-2008	Ushers in revival of calls for public funding of religious schools. Advocates argue that this policy opens the door for low-income students to attend private religious schools and escape failing public neighborhood schools. Challenged earlier court interpretations of the Establishment Clause culminating in *Zelman v. Simmons-Harris* (2002).[7]
Choice for pluralism and school reform and renewed risk of the regime of separate but equal schooling	2008-2011	System creates multiple issues that may led to renewed segregation based on identity politics. Integration across racial, religious, and other demographic differences enables new forms of segregation. Schools based on gender, disability, language, sexual identity, and other personal traits have emerged.

Note. Adapted from "Confronting the Seduction of Choice: Law, Education, and American Pluralism" by Minow, M., 2011, *Yale Law Journal, 120*, p. 814 -848.

[5] *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). Hereinafter this case will be referred to in the text as *Pierce v. Society of Sisters* (1925) or *Pierce*.

[6] *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954). Hereinafter this case will be referred to in the text as *Brown v. Board of Ed.* (1954) or *Brown*.

[7] *Zelman v. Harris-Simmons*, 536 U.S. 639 (2002). Hereinafter this case will be referred to in the text as *Zelman v. Harris-Simmons* (2002) or *Zelman*.

school choice in all its variant forms is designed to persuade and convince and often "serve as a proxy for some other, larger issues, such as school equity or racial integration" (p. 31). These issues are often framed by special interest groups who communicate with carefully chosen words and phrases associated with a desired issue frame (Brown, 2020).

Ultimately, school choice is a process whereby interest groups continuously evaluate it and seek to actively change it through collective political action. This activity may result in policy and legislation changes favorable to the policy preference of the intertest groups actively seeking change but may not necessarily be the policy preference of the general voter (Debray-Pelot, et al., 2007). Debray-Pelot, et al. (2007), point out that most school choice gains have been made through legislative and judicial action and not the ballot box. The most recent win came in the form of the United States Supreme Court case *Espinoza v. Montana* (2020).[8]

Friends of the Court

Espinoza catapulted the issue of state funded vouchers to the national level capturing the attention of interest groups from across the political spectrum.[9] Amici curiae, acting on behalf of interest groups which included a wide range of think tanks, state coalitions, 131 legislators and governors, teacher unions or affiliations, and religious organizations filed 45 amicus briefs either in opposition to or support of the lower court's decision. Amici curiae or "friends of the court" submit briefs on behalf of interest groups who hope to exert influence over the court to obtain a win for their policy preference (Collins, Corley, & Hamner, 2014). Initially, amicus briefs were used to clarify contested points of law by legal experts whose legal prowess was highly sought by judges (Mohan, 2010). Today, however, amicus briefs are used by interest groups as a tool to introduce policy preferences into the courts (Kearney & Merrill, 2000).

[8] *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246 (2020).
[9] Ibid.

The use of amicus briefs has proliferated in recent years. Kearney and Merrill (2000) noted in their seminal research on the influence of amicus briefs on the United States Supreme Court that the use of amicus briefs in the period from 1946-1995 had increased 800%. Collins (2004) noted that during this same period amicus curiae often formed alliances with other interest groups and individual policy actors as co-signers on briefs, so the actual number of participants also increased significantly. Other scholars have observed a similar phenomenon in the increase of amicus briefs and co-signers filed in United States Supreme Court cases dealing with race-conscious admission policies in higher education, special education law, and transgender student inclusion in K-12 public schools (Garces, et al., 2017; Lewis & Bray, 2019; Lewis & Eckes, 2020; Marin, et al., 2020). Larsen and Devins (2016) argue that the Courts' desire for information outside the legal record fuel what they call the "amicus machine" (p. 1902). Amici curiae acting on behalf of interest groups are part of the machine because they provide the supplemental non-legal information that the courts would otherwise not receive (Larsen and Devins, 2016).

Some studies support the view that amicus briefs do have some impact on United States Supreme Court decisions (Frankenberg & Garces, 2008; Garces, 2013; Morgan & Pullin, 2010). As a result, this has generated an interest in the examination of the influence amicus briefs may have on educational policy and law. Lewis and Bray (2019) argue that further examination of the use of amicus briefs by interest groups as a tool to influence courts should be pursued because briefs offer interest groups important opportunities to present non-legal arguments that provide context to issues beyond the disputed legal scope. Marin et al. (2018) echoes the same call arguing that briefs provide amici the opportunity to influence educational policy outcomes that otherwise might remain entangled in the political arena. Horn, et al. (2020) noted that in the past

twenty years the United States Supreme Court has issued several significant education-related decisions that have shaped education policy nationally. In each case multiple interest groups filed amicus briefs to promote their policy preference. Yet, despite the perceived impact the Court has on shaping education policy, studies on the policy frames interest groups use in amicus briefs to communicate their policy preferences before the Court are incomplete. The lack of research in this area limits scholars understanding of how interest groups may influence Supreme Court decisions by means of the amicus brief process (Collins, 2008).

Statement of the Problem

As mentioned above, Minow (2011) points out that there are at least five periods in United States history in which various groups have shaped the school choice debate, and each period has ushered in as many social problems as it has solved. A policy frame is ultimately the end result of the process of shaping the interpretation of a social problem in a direction that drives a particular groups policy preference. Exactly how these groups frame policy preferences is an under studied area of education policy. As Collins, et al. (2015) have noted, research related to the use of amicus briefs as a vehicle to influence United State Supreme Court decisions is not new. The focus by researchers on the content interest groups use to frame policy preferences communicated in amicus briefs, however, is relatively new and not fully understood. Most studies primarily focus on the extent to which amicus briefs add new information to the case, or they provide a count of the number of social science citations referenced in the briefs. Yet, systematic studies of the documents content for frames or themes are limited (Collins, 2007; Collins, 2008; Collins, et al., 2015; Hazelton, et al., 2019). According to Garces, et al. (2017) this is especially true in the area of education policy.

Espinoza is an ideal case for exploring the content interest groups use to frame policy preferences in amicus briefs for several reasons:[10]

1. Interest groups representing a large ideological swath filed briefs in this case.
2. The ruling is timely because it continues to raise questions about the Religion and Equal Protection Clauses which are often cited in school choice debates.
3. It raises questions concerning the legitimacy of excluding private religious schools from receiving public funds that otherwise are distributed to non-sectarian private schools.
4. The case has renewed the school choice movement as evidenced by subsequent court cases in other states to defeat "no-aid" clauses (McCartney, 2021).

The most prominent of these subsequent cases is *Carson v. Makin* (2021) which was granted certiorari on July 2, 2021.[11] This case also deals with school funding in the form of tuition assistance as it relates to the states' "no aid" clause. The question before the Court is essentially the same question as in *Espinoza*:

> Does a state law that allows for funding for education generally while prohibiting funding for religious schools violate the Religion Clauses or the Equal Protection Clause of the federal Constitution?[12]

In *Carson* amici curiae representing a broad range of interest groups and policy actors filed more than 40 amicus briefs. The relevancy of these two cases makes it timely for scholars to examine the policy frames interest groups present in amicus briefs and how those policy frames may (or may not) present themselves in the United States Supreme Court's justices' opinions.[13]

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[10] Ibid.

[11] *Carson v. Makin*, No. 20–1088 (2021). Hereinafter this case will be referred to in the text as *Carson v. Makin* (2021) or *Carson*. https://www.supremecourt.gov/docket/docketfiles/html/public/20-1088.html.

[12] *Espinoza v. Montana* (2020).

[13] *Carson v. Makin* (2021).

Limited studies focusing on how interest groups frame policy preferences submitted before the Court in amicus briefs has hindered our understanding of how interest groups may (or may not) influence justices' opinions. The opinions of the justices ultimately shape education law and policy in the form of written decisions rendered by the court. These decisions have repercussions for all of us. When the court rules on a case as it did in *Espinoza* the justice's opinions not only set precedent but often influence the standards that shape societal norms.[14]

Purpose Statement

Scholars have attempted to identify policy frames by conducting content analyses of a variety of different data published by interest groups. Interest groups communicate policy preferences through news media outlets (television and newspapers), social media (Facebook, YouTube, blogs, Tweeter, Reddit, and the Internet), policy reports, legislative bills, messaging platforms, and speeches (Van Gorp, 2010; Feuerstein, 2014; Shanahan, et al., 2011). Although framing studies have been conducted using different data types, few education policy studies using amicus briefs as the tool to identify the content or themes used by interest groups to frame policy preferences have been conducted (Collins, 2007; Collins, 2008; Collins, et al., 2015; Hazelton, et al., 2019; Garces, et al., 2017; Horn, et al., 2020; Lewis & Bray, 2019; Marin, et al., 2018). This study sought to identify the dominant policy frames interest groups used to frame policy preferences in *Espinoza* by conducting a qualitative content analysis of the amicus briefs and written opinions of the justices.[15] This study addressed the following goals:

1. This study determined which (if any) policy frames found in the amicus briefs emerged in the written opinions of the justices in *Espinoza*.

[14] Ibid.
[15] Ibid.

2. This study contributed to current understanding of how different themes and policy frames chosen by interest groups to frame their policy preferences may (or may not) have influenced the Courts' opinion in *Espinoza*, and ultimately education policy and law.
3. This study built upon the work of other scholars who have examined the role interest groups play in influencing education policy submitted in cases related to race-conscious admissions in higher education, special education law, and transgender student inclusion (Garces, et al., 2017; Lewis & Bray, 2019; Lewis & Eckes, 2020; Marin, et al., 2020).

The conceptual framework for this study was frame analysis which was used to identify the content of the policy frames and themes that emerged across the amicus briefs and justices' written opinions.

Research Questions

This qualitative content analysis was guided by two research questions that focused on the contents of amicus briefs submitted by interest groups to the United States Supreme Court in the landmark case *Espinoza v. Montanan* (2020).[16] The questions this study addressed are:

RQ1. What dominant policy frames do interest groups use to frame policy preferences in *Espinoza v. Montana* (2020)?

RQ2. Which (if any) policy frames found in the amicus briefs emerge in the written opinions of the United States Supreme Court justices in *Espinoza v. Montana* (2020)?

[16] Ibid.

Significance of the Study

As the United States becomes more politically polarized it becomes more difficult to create education policy through the legislative process (Plank & Boyd, 1994). Consequently, some education political actors are by-passing the legislative arena and using the judicial arena to influence educational policy decisions (Horn, et al., 2020). Education policy actors do this by submitting amicus briefs designed to sway the courts toward preferred policies. However, there are very few educational policy studies that focus on the use of amicus briefs in the judicial arena. There are even fewer studies that analyze the frames and themes that emerge in the briefs in relation to how they might influence judicial opinion. This study may potentially be the first education policy study to address this concern. This insight may help education policy leaders better understand how interest groups influence judicial decision making in the education policy arena.

Operational Definitions

This research aims to avoid ambiguity; therefore, the following definitions will apply to the terms used throughout this paper:

1. Amici Curiae/amici/amicus briefs – Individuals or groups who file "friend of the court" briefs, or legal briefs on behalf of an individual or interest groups who is not a party to the case but has an interest in the outcome of the case (Collins, et al., 2014).
2. Concurring Opinion – An opinion that agrees with the majority opinion in a court case but not necessarily the rationale behind the decision. The concurring judge writes a separate opinion that provides a rationale for their individual decision (*Concurring Opinion*. (n.d.). Https://www.Law.Cornell.Edu/Wex/Concurring_opinion. Retrieved May 14, 2022, from https://www.law.cornell.edu/wex/concurring_opinion).

3. Dissenting Opinion – An opinion that disagrees with the majority opinion in a court case. The dissenting judge writes a separate opinion that provides a rationale for their opposing decision (*Dissent*. (n.d.). Https://www.Law.Cornell.Edu/Wex/Dissent. Retrieved May 14, 2022, from https://www.law.cornell.edu/wex/dissent).
4. Education Equity – Belief that all students should receive the resources they need so they graduate prepared for success after high school (Barth, 2016).
5. Equal Protection Clause – Section 1 of the Fourteenth Amendment to the United States Constitution which extends to the states the duty to provide equal protection of the laws under the United States Constitution to all citizens (*Equal Protection Clause*. (n.d.). Https://www.Law.Cornell.Edu/Wex/Equal_protection. Retrieved May 14, 2022, from https://www.law.cornell.edu/wex/equal_protection).
6. Frame Analysis – A multi-disciplinary social science research method used to understand how policy elites frame issues relevant to their cause and use them to exploit and manipulate the general public or targeted audience to support their unique view or perspective on a topic. Frame analysis is used in communication studies, political science, psychology, sociology, and other social sciences (Entman, 1993; Druckman, 2001; Gamson and Modigliani, 1989; Iyengar, 1994).
7. Interest Groups – A group or organization formed by individuals that share similar political interests. These individuals come together to push public policy in a desired direction. These groups can be philanthropic, religious, or civic organizations that come together episodically, or they can be permanently involved in politics. The ultimate goal of members of these groups is not to seek public office, but to influence policy outcomes through formal and informal interactions with policymakers (Beyers, et al., 2008).

8. Justices' Opinions/Judicial Opinions – For this study these terms refer to the United States Supreme Court written statements explaining the Courts decision for a case (*Opinion*. (n.d.). Https://www.Law.Cornell.Edu/Wex/Opinion. Retrieved May 14, 2022, from https://www.law.cornell.edu/wex/opinion).
9. Majority Opinion – For this study this term refers to the United States Supreme Court judicial opinion that was joined by more than half the justices deciding the case (*Opinion*. (n.d.). Https://www.Law.Cornell.Edu/Wex/Opinion. Retrieved May 14, 2022, from https://www.law.cornell.edu/wex/opinion).
10. Policy Frame – The end result of the process of shaping the interpretation of a social problem in a direction that drives a particular groups policy preference. Often times, multiple frames can compete with each other in hopes of gaining the public or targeted groups favor on a policy issue (Entman, 1993; Gamson and Modigliani, 1989).
11. Political Actors – Groups and individuals, including members of local and state boards of education, superintendents, teachers, and community stakeholders (i.e., parents and business organizations), interest groups, think tanks, religious organizations, media, individual legislators at the local, state, and federal level, as well as philanthropists in a position to influence policy either through the legislative or judicial process (Bell & Stevenson, 2006).
12. Policy Elite – Political actors who actively promote policy ideas, policy agendas, and energize the diffusion process (Mintrom, 1997). These individuals are often associated with political parties, interest groups, think-tanks, and other. They actively seek to initiate policy change by identifying policy problems that attract the attention of policy decision makers at the local, state, or national level (Kingdon, 1984).

13. Private Religious Schools (or Private Faith-based Schools) – As used in this study, a school sponsored or supported, at least in part, by a religious denomination. These schools are sometimes also referred to as parochial schools (Martinez-Arino & Teinturier, 2019).
14. Religion Clauses – The Establishment Clause and Free Exercise Clauses of the First Amendment in the United States Constitution which guarantees freedom of religion (*The Religion Clauses*. (n.d.). Https://www.Law.Cornell.Edu/Constitution-Conan/Amendment-1/the-Religion-Clauses. Retrieved May 14, 2022, from https://www.law.cornell.edu/constitution-conan/amendment-1/the-religion-clauses).
15. School Choice – A variety of programs offering parents voluntary education alternatives for their students. School choice provides parents who do not want their child to attend an assigned local school with the option of sending their child to a magnet school, public charter school, homeschool, inter/intra-district public school, or private school. School choice allows public education dollars to follow students to a school of choice, including private secular and non-secular schools (Wang, et al., 2019).
16. School Vouchers – School vouchers are publicly-funded scholarships provided to parents who want their student to attend a school that is not a locally assigned school. Vouchers redirect state and local public-school funds by giving money directly to the parents on behalf of the student rather than the local school district. Parents can use these funds to send their student to a school of choice, including private secular schools (Carnoy, 2017).
17. Tax Credit Scholarships – A form of school vouchers that provide tax credits to individuals or corporations that donate to non-profit organizations that provide scholarships for students to attend private schools (Chou, 2011; Reczka, 2020).

18. United States Supreme Court – The highest court in the federal judiciary system of the United States that serves as the final court of appeals. Through the power of judicial review, the United States Supreme Court has the power to declare a legislative or executive acts in violation of the United States Constitution (*Supreme Court of the United States*. (n.d.). Https://www.Supremecourt.Gov/about/about.Aspx. Retrieved May 14, 2022, from https://www.supremecourt.gov/about/about.aspx).

Limitations

The primary limitation on this study was that qualitative content analysis relies heavily on the researcher's interpretation of the text's relationship with its' intended audience. Being aware of my role as researcher was part of the reflexivity process and I had to be constantly aware of my own biases. Creswell (2014) emphasizes that researchers must understand how their background may shape the direction of a study, including their professional background. My personal interest in this study evolves out of my more than 25 years as an educator and administrator in both public and private settings. This may be seen as a limitation because as the researcher, I am the primary collector of the data in a study that largely focuses on issues related to school choice. An additional limitation was that this study focused on one United States Supreme Court case and the findings may not be generalizable to other cases. To make this determination additional studies will need to be conducted on other Supreme Court cases.

Delimitations

Delimitations of a study are the boundaries set by the researcher that limit the scope of the study to ensure that the research does not become so large that it is unmanageable and loses sight of the study's original purpose. For the purpose of narrowing the scope of this study, this study is purposefully limited to one United States Supreme Court case, *Espinoza*. It is further

purposefully limited to 18 of the 45 amicus briefs and written opinions of the justices filed in the case. This study does not include Writs of Certiorari, translations of oral arguments, media commentary, or any other proceedings or orders related to the case. Furthermore, because this study is a qualitative content analysis of the amicus briefs and judges' opinions in *Espinoza,* the researcher is unaware of any additional sources that might have been considered by amici or the justices but not cited in the briefs or rendered opinions to form policy frames.

Organization of the Study

This qualitative content analysis is divided into five chapters. The first chapter I provide a brief overview of the study. This chapter introduces a summary of *Espinoza*, and the role amicus briefs play in providing an avenue for interest groups to introduce policy frames into the legal system for the purpose of influencing judicial decision making and ultimately educational policy outcomes. This chapter also includes a statement of the problem, purpose of the study, and research questions, as well as provides operational definitions relevant to the study. It also includes delimitations of the study.

Chapter two provides a review of the relevant literature related to the school choice and voucher's movement in the United States, *Espinoza*, the role amicus briefs play in the court process, and a brief review of the literature related to frame analysis - the process interest groups use to frame policy preferences and the theoretical lens for this study. Chapter 3 addresses the methodological design of the study, support for the design, and methodological procedures for conducting the study. The data analysis and verification procedures are also explained. The chapter concludes with a description of the characteristics of a qualitative content analysis and explains the process for data collection and the role of the researcher.

In fourth chapter I discussed the research findings by offering a description and summarization of the data. The dominant frames used by interest groups to frame policy preferences in amicus briefs and those cited by the justices in their written opinions are presented, along with a discussion of the major themes that emerged from the data found within each frame. Chapter five concluded the study with a discussion on how the findings extended the body of literature in the use of frame analysis in analyzing amicus briefs and implications for educational policy leaders going forward. This chapter provided a summary of the findings and recommendations for future research. The researchers' thoughts and reflections on the study concluded the chapter.

CHAPTER 2

REVIEW OF THE LITERATURE

The purpose of this study was to identify the dominant policy frames interest groups used to frame policy preferences in *Espinoza v. Montana* (2020) through a qualitative content analysis of the amicus briefs filed by interest groups in the case.[17] This study also determined if the same frames emerged in the written opinions rendered by the United States Supreme Court justices. This study may help education policy researchers develop a better understanding of how different policy frames and themes chosen by interest groups to frame policy preferences may (or may not) influence the Courts' opinion, and ultimately education policy and law. This study was guided by the following two research questions:

RQ1. What dominant policy frames do interest groups use to frame policy preferences in *Espinoza v. Montana* (2020)?

RQ2. Which (if any) policy frames found in the amicus briefs emerge in the written opinions of the United States Supreme Court justices in *Espinoza v. Montana* (2020)?

Chapter Overview

This literature review was divided into three parts. In Part I, I provided a summary of the history of the school choice movement through the conceptual lens of Minow's (2011) school choice framework. In Part II, I described the events leading up to *Espinoza* and traced the trajectory of the case as it made its way to the United States Supreme Court. I also discussed the Religion Clauses and the United States Supreme Court cases relevant to *Espinoza*. In Part III, I discussed frame analysis and how interest groups use framing to influence the courts.

[17] *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246 (2020).

Literature Review Search Process

The literature review process for this study began with a Boolean search of the University of Tennessee library databases which included Google Scholar, ERIC, SCOPUS, HeinOnline, Nexus Uni, and World of Science. These search engines provided peer-reviewed articles, books, case law, and law reviews utilized in this study. The search terms for articles, books, case law, and law reviews related to *Espinoza* included "*Espinoza v. Montana*" AND "Religion Clauses" OR "School Vouchers" OR "Tax Credit Scholarship". This search generated 124 articles, books, and law reviews published since 2015. In search of articles related to Minow's (2011) school choice framework the search terms included "Minow" AND "History of School Choice" OR "Magnet Schools" which generated 10,600 articles since 2010. Each search was refined to find specific articles related to *Espinoza*, tax credit scholarships, and the history of school choice. I read articles related to each topic covered in each section of this study until I acquired a command of the literature (Merriam & Tisdell, 2016). Additional articles, books, and law reviews were added as the literature was reviewed and relevant articles related to each topic emerged. In addition, 18 articles from previous research were included in the study.

Part I: Brief History of School Choice

According to Minow (2011), the school choice debate has surfaced no less than five times in United States history, and each historic period has created new challenges for the school choice movement. Minow (2011) argues that school choice rhetoric has served multiple purposes over time that has shaped the debate sometimes with unintended consequences as school choice policies appeal to different aspects of the American ethos. School choice first emerged as a "persistent framework" during the late nineteenth century when the compulsory school movement led to struggles between protestant and non-protestant religious groups (Minow, 2011

p. 816). Since then, conflicts over public schooling have led to a variety of political and cultural clashes that include struggles over religious and personal freedoms, civil rights, education equity, and school reform (Minow, 2011).

Choice as Individual Religious and Contractual Liberty

In 1848 Horace Mann launched a movement in Massachusetts to establish a system of public schools based on the idea of citizen education as set forth by Jefferson (Cremin, 1951). Mann's primary goals were to establish a secularized compulsory education system paid by means of publicly funded tax dollars and to create a unique American culture and character that could be used to mold and assimilate many immigrants into mainstream America (Cremin, 1951). Although common schools were open to all white children, they were typically Protestant in character and frowned upon Catholic teachings in the schools (Cremin, 1951). Tension mounted between the two groups and in response Catholic leaders created the earliest alternative to public schools by establishing a system of private Catholic schools (Cremin, 1951). When Catholic leaders petitioned for the right to use public funds to support Catholic school's anti-Catholic sentiment increased and in 1875 James Blaine proposed an amendment in congress to prevent the funding of sectarian institutions (Komer, 2009). Although the amendment did not pass, many states adopted what are now known as Blaine Amendments or "no aid" clauses into their state constitutions which prohibit state funding of religious schools or institutions (Komer, 2009).

By the turn of the century, as Catholic schools and other types of private schools were flourishing, anti-Catholic and nativist sentiment grew more intense (Woodhouse, 1992). This hostility was primarily directed against Germans, Polish, and Scandinavian populations who settled in communities where they formed their own schools and conducted instruction in their

native language (Hansen, 1940, as cited in Woodhouse, 1992). This practice led to conflict with their American born neighbors, and in 1919 several states, including Nebraska, passed legislation forbidding public and private schools from instructing students in a language other than English (Luebke, 1980). Conflict further escalated when Oregon also passed a Compulsory Education Act of 1922 which forbade all children between the ages of eight and sixteen from attending private schools – including parochial schools (Luebke, 1980).

As hostility grew, many of these state laws were challenged. In 1923 in *Meyer v. State of Nebraska* (1923) the United States Supreme Court invalidated the Nebraska law stating that it violated the due process clause of the Fourteenth Amendment.[18] In *Pierce v. Society of Sisters* (1925), the justices citing Meyer, prohibited Oregon from mandating that all children attend public schools.[19] In both cases the United States Supreme Court upheld the right of parents to oversee their child's education and firmly established school choice as a parental right. Yet, Minow (2011) contends, this decision also produced a dual system where only public schools received public funding and parents who wished to send their children to private schools had to rely on private philanthropy or their own financial resources. Minow (2011) argues, "the rhetoric of choice in this context obscured inequality in economic resources that made the option of private schools available to some and not to others…" (p. 820). Consequently, this decision fueled nearly a century of school choice advocacy for public aid for private religious schools.

Choice as Resistance to Racial Segregation

The second period of Minow's (2011) analysis argues that school choice was used to avoid desegregation after the *Brown v. Board of Education* (1954)[20] decision which struck down

[18] *Meyer v. State of Nebraska*, 262 U.S. 390 (1923). Hereinafter this case will be referred to in the text as *Meyer v. Nebraska* (1923) or *Meyer.*

[19] *Pierce v. Society of Sisters* (1925).

[20] *Brown v. Board of Ed.* (1954) or *Brown*.

the "separate but equal" doctrine established in *Plessy v. Ferguson* (1896).[21] The Court ruled that laws mandating segregation of the races in schools were a violation of the Equal Protection Clause of the Fourteenth Amendment, and, therefore, unconstitutional. Those opposed to desegregation sought ways to avoid complying with the Court's school desegregation mandate. Alexander and Alexander (2004) argue that resistance to desegregation was "blatantly confrontational" as massive opposition lead to social conflict that lasted for more than a decade (p.1132). White flight from the cities to the suburbs in the north was met by the rise of private religious academies in the south (Alexander & Alexander, 2004). In addition, middle-class white parents advocated for the use of tax funded school vouchers to help pay for enrollment at private parochial schools to circumvent desegregation (Alexander & Alexander, 2004).

The demand for private school vouchers gained momentum in 1955 when Milton Friedman, a free market economist, published an essay, *The Role of Government in Education*, in which he argued for school choice in the form of a voucher program (Friedman, 1955). In the essay Friedman proposed that parents should receive vouchers to send children to a state approved school of their choice (Friedman, 1955). These market-based state approved schools could be sectarian, private non-sectarian schools, or even schools operated for profit. Friedman (1955) believed market-based schools would encourage competition and less efficient schools would be forced to improve or close. In footnote No. 2 in the essay, Friedman explicitly addresses the issue of vouchers being used by segregationist to defy *Brown v. Board of Education* (1954).[22] In it he states that while he is opposed to forced segregation, he is also opposed to forced desegregation (Friedman, 1955, p. 52). Friedman argues that privatization of

[21] *Plessy v. Ferguson*, 163 U.S. 537 (1896). Hereinafter this case will be referred to in the text as *Plessy v. Ferguson* (1896) or *Plessy*.

[22] *Brown v. Board of Ed.* (1954).

public education supported by tax funded vouchers serves as an alternative to traditional schools because the system of vouchers will allow parents to send their children to any private school they choose, including all white schools. Ultimately, once the publicly funded voucher is in the hand of the parent, Friedman argues it would be wrong to prohibit its use in support of racially segregated schools (Friedman, 1955).

Mead (2008) asserts that those opposed to desegregation used school choice to avoid compliance with *Brown v. Board of Education* (1954) by devising plans to resist court-ordered desegregation.[23] In Virginia, state legislators passed a tuition voucher law that allowed for the closing of public schools but provided publicly funded vouchers so white students could attend private schools. Mead (2008) writes that state legislators knew that most private schools were segregated and private programs available to black students were limited. Furthermore, some southern states opened "freedom of choice" academies which allowed families to choose which school they wanted their student to attend (p. 4). The plans were ineffective, however, and failed to desegregate schools (Mead, 2008). For example, in *Green v. County School Board* (1968), the Court unanimously decided that the New Kent County, Virginia schools "freedom of choice" plan was ineffective, and the school district was in violation of the mandate to desegregate.[24] Consequently, because of racial politics becoming intertwined with school choice, Friedman's school voucher program was unsuccessful (Mead, 2008).

Minow (2011) contends that segregationist during this period used school choice as justification for avoiding racial integration in public schools. As a result, private schools "became an avenue for circumventing court-ordered desegregation in the wake of *Brown v.*

[23] Ibid.

[24] *Green v. County School Board*, 391 US 430 (1968). Hereinafter this case will be referred to in the text as *Green v. County School Board* (1968) or *Green*.

Board of Education" (Minow, 2011, p. 821). The use of school choice as a rationale to avoid desegregation undermined choice as an individual liberty and Friedman's free-market voucher proposal (Minow, 2011). The plans segregationist devised to oppose desegregation demonstrated how "freedom and choice could be empty phrases when underlying structures of opportunity and attitudes remain unchanged" (Minow, 2011, p. 824). Ultimately, school choice became synonymous with the racial bigotry and unrest that marred this phase of the school choice movement.

Choice as an Instrument of Racial Desegregation

Minow (2011) argues that the third phase of school choice ushered in a period where liberals and progressives embraced Friedman's school voucher plan as an attempt to support racial desegregation. By the late 1960s and 1970s, magnet schools emerged as a tool to counter "white flight" from the urban areas to the suburbs (Rossell, 2005, p. 46). Magnet schools used market like incentives as means to attract white students to black neighborhoods for their schooling (Rossell, 2005). White students were offered vouchers to attend magnet schools in the inner city with specialized curriculums that focused on advanced math, science, technology, or the arts (Rossell, 2005). Hence, magnet schools were specifically designed to attract white students away from their assigned public schools by offering curriculum taught through non-traditional instructional methods (Rossell, 2005).

Initially, magnet schools were embraced by school districts across the country to integrate schools and create racial balance. Goldring and Smrekar (2000) contend that the results of racial balance are complex and largely depend on school district size, transportation options, and overall school district demographics. School districts with larger minority demographics found it harder to desegregate, yet these were the districts that embraced magnet schools

(Goldring and Smrekar, 2000). In their case study which compared the magnet programs implemented in two major school districts, St. Louis and Cincinnati, Goldring and Smrekar (2000) determined that both districts were able to use magnet schools to effectively create racially balanced schools. Goldring and Smrekar (2000) contend that "on average, African Americans comprise 60% of magnet school enrollment in St. Louis and about 50% in Cincinnati, with White students making up the difference" (p. 27). Goldring and Smrekar (2000) report that magnet schoolteachers in both cities expressed positive "sentiments about the value of racially integrated schools and were equally impressed with the results of their racially balanced environments" (p. 28).

Although magnet schools initially seemed to achieve the results they were designed to achieve (i.e., racial balance in many inner-city schools), as so often happens, school choice in the form of magnet schools faced legal obstacles. In 1995, a lawsuit against several Boston, Massachusetts magnet schools that required entrance exams challenged admission policies that held a certain number of slots for Black and Hispanic students. According to Minow (2011), Sarah Wessmann, a White ninth grader challenged the policy and persuaded the courts to rule against the use of race as an admission criterion in competitive admissions (*Wessmann v. Gittens,* 1998).[25] Furthermore, the United States Supreme Court case, *Parents Involved in Community Schools v. Seattle School District* (2007), also known as the PICS case, found it unconstitutional to use student identities as a measure to ensure racial balance.[26] Minow (2011) argues that although the courts upheld magnet schools in the early 1970s and 1980s as an avenue for achieving racial balance in the public schools, by 1995, "the plurality opinion expressly called

[25] *Wessmann v. Gittens*, 160 F. 3d 790 (1st Circuit 1998). Hereinafter this case will be referred to in the text as *Wessmann v. Gittens* (1998) or *Wessmann*.

[26] *Parents Involved in Community Schools v. Seattle School District* No. 1, 551 U.S. 701 (2007). Hereinafter this case will be referred to in the text as *Parents Involved* (2007) or *PICS*.

for ending the use of race as a factor when school systems invite students to choose among educational options", thus formally ending the use of race as a means to integrate public schools (p. 828).

Choice as an Instrument of Educational Opportunity

Minow's (2011) fourth stage of school choice reveals how interest groups coalesce around school choice to extend vouchers to low-income students to attend private religious schools. Advocates from free market supporters to backers of public aid to parochial schools came out in support of publicly funded vouchers for low-income students in poor performing school districts (Minow, 2011). These advocates joined together to ensure that publicly funded school choice programs would include private religious schools. Advocacy groups successfully challenged several earlier Supreme Court decisions which found that state and local statues that authorized reimbursement of teacher salaries at private religious schools and deductions for textbooks to parents of students who attended private schools violated the Establishment Clause (*Lemon v. Kurtzman*, 1971[27]; *Aguilar v. Felton*, 1985[28]). According to Minow (2011), these earlier "decisions stood in the way of using public vouchers to pay for religious schooling, and unusual bedfellows joined forces for legal change" (p. 829).

Up to this point in Minow's (2011) analysis, the most successful challenge to earlier Court decisions was *Zelman v. Harris-Simmons* (2002).[29] This United States Supreme Court case stemmed from a lawsuit brought against the Cleveland, Ohio public school system which allowed parents of low-income students who attended low performing schools to use publicly

[27] *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Hereinafter this case will be referred to in the text as *Lemon v. Kurtzman* (1971) or *Lemon*.

[28] *Aguilar v. Felton*, 473 U.S. 402 (1985). Hereinafter this case will be referred to in the text as *Aguilar v. Felton* (1985) *or Aguilar.*

[29] Zelman v. Harris-Simmons (2002).

funded vouchers to attend a school of choice (McCarthy, 2016). McCarthy (2016) states that 96% of parents chose to enroll their students in private religious schools. The lawsuit argued that the program violated the Establishment Clause because the program provided taxpayer money to religious institutions (*Zelman v. Harris-Simmons*, 2002).[30] The state of Ohio contended that the program differed from previous programs in that it did not directly provide funds to the religious institution; the funding went directly to parents who made the decision as to where to spend the funds (*Zelman v. Harris-Simmons*, 2002).[31] The Court decided in favor of the voucher program in a 5-4 decision. The majority justices agreed that the intent of the voucher program was to provide families of students who attended low performing schools with educational choice and since the parents made the decision which school their student should attend, the voucher program was not a violation of the Establishment Clause (McCarthy, 2016).

Minow (2011) argues that the *Zelman v. Harris-Simmons* (2002) decision raises four major concerns for the use of publicly funded vouchers.[32] First, Minow (2011) asserts that minority students may have limited access to private schools because private programs are scarce in minority communities, and private schools often only admit the highest performing students. Second, school voucher programs skim the highest performing students or students whose parents have "clout", thus leaving the remaining students behind in poor performing public schools (Minow, 2011, p. 832). Third, school vouchers accepted at religious institutions risk pressuring students to attend a school with a religious denomination different from their own and, conversely, may pressure religious schools to modify their practices so that they can receive public funds. Last, Minow (2011) raises concern that school choice voucher programs only give

[30] Ibid.
[31] Ibid.
[32] Ibid.

the “illusion of choice” but are bound by district lines because voucher programs rarely cross district borders into the suburbs where higher performing public and private schools are concentrated, thus limiting access to poor urban students (p. 832).

Choice for Pluralism and School Reform

In the last phase of analysis, Minow (2011) evaluates the impact expanding public school options have on school choice. Public school options include magnet schools, charter schools, open enrollment, and traditionally zoned public schools – of which charter schools are the fastest growing option. According to Wells, et al. (2019), charter schools are market-driven schools of choice that can maneuver within and around neighborhoods and often pick and choose which students to include in their recruitment process. Wells, et al. (2019), who conducted research on gentrifying communities in urban neighborhoods, refers to this process as “manufactured” or “designed” diversity that cater to specific groups (p. 472). Rather than diversifying schools, charter schools which are often located in gentrifying neighborhoods, create multi-layers of segregation based on race, socio-economic status, and parental education which furthers racial and class stratification (Wells, et al., 2019). This system of manufactured diversity “drives a process of segregation and exclusion of students based on familial advantage that is highly subtle and complex, and thus not easily addressed in federal courts” (Wells, et al., 2019, p. 472).

Aside from further segregation based on student race and economic status, Minow (2011) also argues that as school choice options increase it could create situations where schools are separated by ethnicity, language, gender, disability, or other traits like sexual orientation. For example, in New York City, LGBTQ students have the option of attending Harvey Milk High School, and in Chicago African Americans can choose to attend the Betty Shabazz International Charter school designed to celebrate African American culture and contributions to history

(Minow, 2011). In areas of the country with high concentrations of ethnic students, charter options include thematic programs designed to appeal to the student's cultural heritage. Many of these heritage schools are divided along racial lines to appeal to certain demographic groups (Minow, 2011). Other special identity schools included schools specifically designed for students with disabilities such as autism. Minow (2011) suggests that these types of special identity schools could lead to self-separation leading to less diversity in public and private schools.

Summary

Minow (2011) maintains that there are at least three main concerns with school choice options. First, many parents are unaware of how to navigate the school choice process. Parents of higher socio-economic students or parents with greater levels of education often have more resources to navigate the myriad of options available to students. These parents often secure coveted spots in the more desirable schools of choice leaving out the most disadvantaged students (Minow, 2011). Second, diverse integration across all demographics is diminished as school choice may encourage separation based on identity politics or some other form of demographics. Last, the rhetoric surrounding private school choice is unappealing to the general public which often leads to misinformation about the various types of options available to parents and students. Minow (2011) states that more choice may actually lead to less diversity and may enable new forms of segregation based on personal aspirations, cultural and demographic characteristics, and identity politics. Consequently, based on Minow's analysis, aside from offering more school choice, the decision in *Espinoza* may create a slew of additional concerns for parents and education policy makers.[33]

[33] *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246 (2020).

Part II: Espinoza v. Montana Department of Revenue (2020)

In *Espinoza v. Montana* (2020), the United States Supreme Court held that a state may not exclude families and schools from participating in a student-aid program because of a school's religious status.[34] Previously, in *San Antonio Ind. Sch. Dist. v. Rodriguez* (1973), the United States Supreme Court held that the right to an education is not a fundamental right under the United States Constitution.[35] However, the plaintiffs in *Espinoza* asked the Court to recognize an analogous right to fund private religious education arguing that the state infringed upon the petitioners right when the state barred private religious schools from participating in a tax credit program generally available to other types of schools.[36] The Supreme Court's ruling is significant because it signaled its support to end state practices that denied generally available state funds to faith-based organizations (Russo & Thro, 2021).

Senate Bill 410

On May 8, 2015, the Montana legislature passed Senate Bill 410 which authorized income tax credits for donations to Student Scholarship Organizations (SSO).[37] SSOs provide scholarships for students to attend a private school of choice. The Montana Department of Revenue, which was tasked with implementing the program, implemented Rule 1 in accordance with the Montana State's Constitution "no aid" provision, prohibiting SSOs from distributing the money to religiously affiliated schools.[38] The Montana State Constitution's "no aid" provision is known as a Blaine Amendment. Blaine Amendments are named after a failed 1875 proposed

[34] Ibid.

[35] *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

[36] *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246 (2020).

[37] Montana Code Annotated § 15-30-3103, 3111. In 2015, the Legislature, through Senate Bill 410, enacted Title 15, chapter 30, part 32, MCA, entitled "Tax Credit for Qualified Education Contributions." Sections 15-30-3101, MCA (Part 31); 2015 Mont. Laws 2165. Hereinafter this bill will be referred to as Montana Code Annotated § 15-30-3103, 3111 (Senate Bill 410, 2015).

[38] Mont. Const. Art. X, § 6 (Nexis Uni current through 2021 Legis. Sess.).

United States constitutional amendment barring aid to sectarian schools. After the amendment failed at the federal level, many states implemented their own version of the bill into their state constitutions. Montana's Blaine Amendment reads as follows:

> The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.[39]

Blaine amendments raise controversy because they grew out of a period of anti-Catholic bigotry, and they severely limit or prohibit the distribution of state-based aid to religious institutions – including schools (Russo, et al., 2020).

The Montana tax credit scholarship program established by SB 410 allowed individuals and businesses to claim a tax credit up to $150 against their state income tax for their donation to an SSO.[40] The bill provided that neither the donor nor the SSO could restrict the use of the scholarship to a particular private school or categories of private schools (Berg and Laycock, 2020). It was entirely up to the parents or guardian to decide which school their student attended. Once SB 410 was passed, Big Sky Scholarships, the only SSO formed in the state, began to provided donations to low-income students to attend a private school of their choice, including private religious-based schools.[41] The Montana Department of Revenue, however, stepped in and prohibited the distribution of funds to religiously affiliated schools.[42]

[39] Ibid.
[40] Montana Code Annotated § 15-30-3103, 3111 (Senate Bill 410, 2015).
[41] *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246 (2020).
[42] Ibid.

As a consequence of the Montana Department of Revenues enforcement of Rule 1, Kendra Espinoza and two other litigants whose children attended a religious school sued the department for excluding the Christian school their children attended from participating in the program.[43] The plaintiffs argued that the rule was unconstitutional under the Religion Clauses of the United Sates Constitution's First Amendment and a violation of the Equal Protection Clauses of the Fourteenth Amendment.[44] The plaintiffs argued that Rule 1 discriminated against them based on their religious views.[45] Furthermore, the plaintiffs argued that since the funds reached the religious private school due to parental school choice, the tax credit scholarship program did not violate either Religion Clauses.[46] The Montana Department of Revenue in defense argued that Rule 1 was required by Article X, § 6 of the Montana Constitution since most of the private schools in Montana were religious based schools. According to the department, allowing religious based schools to participate in the program would benefit religious institutions which directly violates both the Montana State Constitutions "no aid" clause and the Religion Clauses found in the First Amendment of the United States' Constitution.[47]

Religion Clauses. The First Amendment contains two provisions concerning religion. It states that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof...".[48] The Establishment Clause forbids the federal government from establishing an official state religion, and the Free Exercise Clause prohibits the state from interference with religious beliefs. Since *Walz v. Tax Commission of the City of New York*

[43] Mont. Const. Art. X, § 6 (Nexis Uni current through 2021 Legis. Sess.).
[44] Order Granting Plaintiffs' Motion for Summary Judgement, Espinoza v. Montana Dep't of Rev. No. DV-15-1152(C) (Mont. 11th Jud. D. Ct., Flathead Cnty., May 30, 2017).
[45] Mont. Const. Art. X, § 6 (Nexis Uni current through 2021 Legis. Sess.).
[46] Ibid.
[47] Ibid.
[48] U.S. Const. amend 1.

(1970), the Court has acknowledged that there is "play in the joints" – or tension between the two clauses. Chief Justice Burger, who authored the majority opinion, wrote:

> We will not tolerate either governmentally established religion or government interference with religion. Short of those expressly proscribed government acts, there is ample room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference.[49]

According to Lindberg (2021), under current Establishment Clause jurisprudence school choice programs that allow participants to choose a private religious based school to attend does not violate the Establishment Clause if "the program is 'neutral' with respect to religion or if aid goes to a religious school based only on parental choice" (p. 217). Furthermore, the plaintiffs argued that the state of Montana violated the Free Exercise Clause when it denied generally available funds to individuals or groups solely based on their religious affiliation.[50]

Trial Court Decision. Initially, the plaintiffs filed suit in Montana state court challenging the Montana Department of Revenues decision to enact Rule I.[51] In March 2016, the Montana Eleventh Judiciary District Court upheld the constitutionality of the tax credit program and issued a preliminary injunction prohibiting Rule 1 from going into effect. In his order, Judge David Ortley stated, "The legislature's stated purpose in enacting the tax credit program is to provide parental and student choice in education…Rule 1 interjects qualifiers…that were not included by the Legislature in the plain language of Mont. Code Ann § 15-30-3101."[52] The trial court reasoned that the tax credit program did not appropriate money in violation of Montana's

[49] *Walz v. Tax Comm'n of City of New York*, 397 U.S. 422 (1969).

[50] Order of Plaintiff Prel. Junction, Espinoza v. Montana Dep't of Rev. No. DV-15-1152(D) (Mont. 11th Jud. D. Ct., Flathead Cnty., Mar. 31, 2016).

[51] Mont. Const. Art. X, § 6 (Nexis Uni current through 2021 Legis. Sess.).

[52] Order of Plaintiff Prel. Junction, Espinoza v. Montana Dep't of Rev. No. DV-15-1152(D) (Mont. 11th Jud. D. Ct., Flathead Cnty., Mar. 31, 2016).

"no-aid" provision and reinstated religious private school programs as potential recipients of tax credit scholarship money.[53]

Montana Supreme Court Decision. The Montana Department of Revenue appealed the trial court's decision to the Montana Supreme Court in August 2017.[54] Based on standard of review, the Montana Supreme Court exercises plenary review over constitutional issues. The Montana Supreme Court determined that even though the Montana's state constitutions "no aid" clause was more stringent than that of the United States Constitution's First Amendment Religion Clauses it did not violate the United States Constitution. Based on this determination, the Montana Supreme Court concluded that the only issue in the case was whether the tax credit scholarship program violated Montana's "no aid" provision.[55] The Montana Supreme Court addressed the issue on three fronts. First, the court reviewed the intentions of the 1972 Constitutional Convention delegates and concluded that the delegates intent was to exclude sectarian schools from receiving public funds.[56] Second, the court determined that the tax credit scholarship was unconstitutional because it indirectly funded sectarian schools in direct violation of Article X, § 6. Last, the court determined that the Montana Department of Revenue had no authority to implement Rule 1 in the first place – making it obsolete.[57] Based on these findings the Montana Supreme Court determined that the tax credit scholarship program was unconstitutional because it violated Article X, § 6 of Montana's Constitution.[58]

The Montana Supreme Court majority decided that the Montana Tax Credit Program exceeded the "play in the joints" and violated both Religion Clauses. The court determined that it

[53] Ibid.
[54] *Espinoza v. Montana*, 435 P.3d, 2018.
[55] Ibid.
[56] Ibid.
[57] Ibid.
[58] Ibid.

violated the Establishment Clause because it denied taxpayers the opportunity to choose whether their funds should be used to support a religious school.[59] In addition, the court concluded that the program violated the Free Exercise Clause because taxpayers were forced to support religious schools to receive the tax credit. As a result of the Montana Supreme Court's decision which invalidated the tax scholarship program as unconstitutional, Espinoza and the other two women appealed the decision to the United States Supreme Court which granted the Petition for Writ of Certiorari on June 28, 2019.[60]

United States Supreme Court Decision

On appeal to the United States Supreme Court, the petitioners argued that the Montana Supreme Court violated their Free Exercise Rights and Fourteenth Amendment right to equal protection.[61] Specifically, the petitioners argued that the program, and Rule 1, discriminated against them based on their religious views. Furthermore, the petitioners pointed to the history of Montana's "no aid" clause and asserted that the clause violated their right to equal protection under the Fourteenth Amendment. The United States Supreme Court in a 5-4 decision agreed with the plaintiffs.[62] In determining its decisions, the United States Supreme Court referenced the following caselaw as relevant to its ruling.

Everson v. Board of Education (1947). The 1947 foundational case, *Everson v. Board of Education* (1947) considered the constitutionality of a New Jersey statute that reimbursed parents for bus fare to send their children to school, including students who attended private religious schools.[63] This case challenged the child benefit doctrine that held that certain types of

[59] Ibid.
[60] *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246 (2020).
[61] Ibid.
[62] Ibid.
[63] *Everson v. Board of Education of the Township of Ewing*, 330 U.S. 1 (1947). Hereinafter this case will be referred to in the text as *Everson v. Board of Ed.* (1947) or *Everson*.

indirect state aid could flow from the state to parochial schools as long as the aid directly benefited the child and not the school.[64] The Court noted a tension between the two Religion Clauses but ultimately ruled that the use of public funds to provide transportation for students attending parochial schools was not a violation of the Religion Clauses (McCartney, 2021). Justice Black wrote the majority opinion in which he stated:

> In recent years, so far as the provision against the establishment of a religion is concerned, the question has most frequently arisen in connection with proposed state aid to church schools and efforts to carry on religious teachings in the public schools in accordance with the tenets of a particular sect. Some churches have either sought or accepted state financial support for their schools. Here again the efforts to obtain state aid or acceptance of it have not been limited to any one particular faith. The state courts, in the main, have remained faithful to the language of their own constitutional provisions designed to protect religious freedom and to separate religious and governments. Their decisions, however, show the difficulty in drawing the line between tax legislation which provides funds for the welfare of the general public and that which is designed to support institutions which teach religion.[65]

The Court in this ruling formulated the distinction between aid that benefits the child and aid that benefits the institution – the backbone of the argument of current proponents of state funded school vouchers (Geier, 2020).

Zelman v. Simmons-Harris (2002). *Zelman v. Simmons-Harris* (2002) is a landmark case in which the Court ruled that publicly funded school vouchers are not a violation of the

[64] *Everson v. Board of Ed.* (1947).
[65] Ibid, p. 14.

Establishment Clause provided certain conditions are met.[66] This case involved the Ohio voucher program which came under scrutiny because the program allowed parents whose students attended low performing schools to use vouchers to attend private sectarian schools. The Court focused on the question of whether the program as it was implemented in Ohio forced parents into sending their children to sectarian schools.[67] The Court concluded that the Ohio program did not violate the Establishment Clause because parents were the ones who made the decision as to where to spend the money (Geier, 2020). The Justices ruled that the program was consistent with previous cases, particularly *Mueller v. Allen* (1983),[68] *Witters v. Washington* (1986),[69] and *Zobrest v. Catalina Foothills School Dist.* (1993),[70] and, thus, was neutral in respect to religion. Writing for the majority, Chief Justice Rehnquist wrote:

> Mueller, Witters, and Zobrest thus make clear that where a government aid program is neutral with respect to religion and provides assistance directly to a broad class of citizens who, in turn, direct government aid to religious schools wholly as a result of their own genuine and independent private choice, the program is not readily subject to challenge under the Establishment Clause. A program that shares these features permits government aid to reach religious institutions only by way of the deliberate choices of numerous individual recipients. The incidental advancement of a religious mission, or the perceived endorsement of a religious message, is reasonably attributable to the individual recipient, not to the government, whose role ends with the disbursement of benefits.[71]

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[66] *Zelman v. Harris-Simmons*, 536 U.S. 639 (2002).

[67] Ibid.

[68] *Mueller v. Allen*, 463 U.S. 388 (1983). Hereinafter this case will be referred to in the text as *Mueller v. Allen* (1983) or *Mueller*.

[69] *Witters v. Washington Department of Services for the Blind*, 474 U.S. 481 (1986). Hereinafter this case will be referred to in the text as *Witters v. Washington* (1986) or *Witters*.

[70] *Zobrest v. Catalina Foothills School Dist*., 509 U.S. _ (1993). Hereinafter this case will be referred to in the text as *Zobrest v. Catalina Foothills School Dist.* (1993) or *Zobrest*.

[71] *Zelman v. Harris-Simmons*, 536 U.S. 652 (2002).

The Court argued that if "the circuit" between government and religion was severed, there was no violation against the Establishment Clause (Mead & Lewis, 2016). Consequently, the *Zelman* case opened the doors to school voucher programs and other like programs across the country leading to additional questions regarding the extent to which states are required to offer voucher programs.[72] This case affirmed that states could offer school voucher programs that included religious schools, but it did not address whether states were compelled to provide generally available funds to religious institutions.[73]

Locke v. Davey (2004). Joshua Davey, a Washington state Promise Scholarship recipient who wanted to pursue a double major in pastoral ministries and business at a non-secular school, challenged the states exclusion of a Theology major from its state-aid scholarship program. While *Zelman* v. *Harris-Simmons* (2002)[74] and other cases like it prior to *Locke v. Davey* (2004)[75] were specific to the establishment clause, this case invoked issues related to the Free Exercise Clause. At issue was the section of the state's constitution Blaine Amendment which prohibited public funding for religious activities.[76] The question at hand was if a state provides college scholarships for secular instruction, does the First Amendment's Free Exercise Clause require a state to fund religious instruction?[77] The Court recognized that the Washington states' constitution took a stronger stance on the Religion Clauses than the U.S. Constitution and argued that there was "play in the joints" between the two clauses.[78] Likewise, the Court even went further and determined that the Washington constitution did not violate the Free Exercise Clause,

[72] *Zelman v. Harris-Simmons*, 536 U.S. ___ (2002).
[73] Ibid.
[74] Ibid.
[75] *Locke v. Davey*, 540 U.S. 724 (2004). Hereinafter this case will be referred to in the text as *Locke v. Davey* (2004) or *Davey*.
[76] Washington Constitution, Art. I, §11.
[77] *Locke v. Davey* (2004).
[78] Ibid.

thus, disappointing some proponents of school choice who hoped the Court would take aim at state Blaine Amendments which they viewed as barriers to parochial school access to publicly funded dollars (Geier, 2020). Chief Justice Rehnquist argued:

> In short, we find neither in the history or text of Article I, §11 of the Washington Constitution, nor in the operation of the Promise Scholarship Program, anything that suggests animus towards religion. Given the historic and substantial state interest at issue, we therefore cannot conclude that the denial of funding for vocational religious instruction alone is inherently constitutionally suspect.[79]

Chief Justice Rehnquist further summed up the Courts opinion by writing that, "Since the founding of our country, there have been popular uprisings against procuring taxpayer funds to support church leaders, which was one of the hallmarks of an 'established religion'"[80]

Trinity Lutheran Church of Columbia, Inc. v. Comer (2017). In *Trinity Lutheran Church v. Comer* (2017) the Court ruled that the Missouri Department of Natural Resources violated the Free Exercise Clause when it denied a non-secular preschool affiliated with Trinity Lutheran Church a grant to resurface its playground with safer materials.[81] Like *Locke v. Davey* (2004), the state had invoked its Blaine Amendment which in part stated that, "no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, or denomination of religion."[82] Once denied the grant based on its religious affiliation, the church challenged the decision alleging discrimination based on religious.[83] Ultimately, in a 7-2 decision the Court ruled in favor of the church holding that religious entities cannot be denied generally

[79] *Locke v. Davey*, 540 U.S. 724 (2004).
[80] Ibid.
[81] *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S.__ (2017). Hereinafter this case will be referred to in the text as *Trinity Lutheran v. Comer* (2017) or *Trinity Lutheran*.
[82] Missouri Const. Art. I pt. VII.
[83] *Trinity Lutheran v. Comer* (2017).

available funds.[84] Recognizing the impact the decision had on the Free Exercise Clause and state Blaine Amendments, Justice Sotomayor wrote:

> To hear the Court tell it, this is a simple case about recycling tires to resurface a playground. The stakes are higher. This case is about nothing less than the relationship between religious institutions and the civil government—that is, between church and state. The Court today profoundly changes that relationship by holding, for the first time, that the Constitution requires the government to provide public funds directly to a church. Its decision slights both our precedents and our history, and its reasoning weakens this country's longstanding commitment to a separation of church and state beneficial to both.[85]

Trinity Lutheran v. Comer (2017) brought into question not only the constitutionality of Missouri's Blaine Amendment, but the constitutionality of all states with Blaine Amendments (Geier, 2020). The Court's decision seemed to uphold the *Locke v. Davey* (2004) decision in that funds used specifically for religious purposes could be denied to religious beneficiaries but denying generally available state-aid based funds to a religious entity simply because of religious status was indeed a violation of the Free Exercise Clause (McCartney 2021). This argument was at the crux of the petitioner's argument in *Espinoza*.

Espinoza v. Montana (2020). In *Espinoza v. Montana* (2020) the Court held in favor of the petitioners in a 5-4 decision.[86] The majority Court relied most extensively on *Trinity Lutheran* (2017*)* as evidenced through the multiple citations to the case. The majority framed the

[84] Ibid.
[85] Ibid, p. 2027.
[86] Chief Justice Roberts wrote the majority opinion of the Court in which Justice Thomas, Alito, Gorsuch, and Kavanaugh joined. Justices Alito and Gorsuch filed concurring opinions. Justice Thomas filed a concurring opinion in which Justice Gorsuch joined. Justice Ginsburg filed the dissenting opinion in which Justice Kagan joined. Justice Breyer filed a dissenting opinion in which Justice Kagan joined in Part I. Justice Sotomayor filed a dissenting opinion.

opinion in terms of the Free Exercise Clause as opposed to the Establishment Clause citing issues related to religious status versus religious use. The majority concluded that Montana's "no aid" rule excluded religious schools from the tax credit program solely because of religious status, and as such, the law was subject to strict scrutiny.[87] Chief Justice Roberts writing for the majority wrote, "It is enough in this case to conclude that strict scrutiny applies under Trinity Lutheran because Montana's no-aid provision discriminates based on religious status."[88]. Chief Justice Roberts went on to declare that "When otherwise eligible recipients are disqualified from a public benefit 'solely because of religious character,' we must apply strict scrutiny."[89]

Aside from addressing issues related to *Trinity Lutheran v. Comer* (2017), Chief Justice Roberts also addressed concerns related to *Davey v. Locke* (2004). Chief Justice Roberts argued that unlike the plaintiffs in *Espinoza*, Davey was not denied a scholarship because he wished to attend a private religious based school, he was denied a scholarship because of what he proposed to do with it, i.e., become a minister.[90] Apart from denying Davey a scholarship to pursue the ministry, the program at issue in *Davey v. Locke* (2004) otherwise allowed scholarships to be used at private religious schools. Chief Justice Robert writes,

> By contrast, Montana's Constitution does not zero in on any particular 'essentially religious' course of instruction at a religious school. Rather, as we have explained, the no-aid provision bars all aid to a religious school "simply because of what it is," putting the school to a choice between being religious or receiving government benefits.[91]

Roberts pointed out that Montana's "no aid" provision penalized families that wish to send their

[87] *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2257 (2020).
[88] Ibid.
[89] Ibid at 2260.
[90] Ibid.
[91] Ibid at 2257.

child to a private religious school by cutting them off from generally available benefits simply because of religious status.[92] Roberts sums up the majority argument by writing "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."[93]

Aside from the majority opinion and the three concurring opinions, four justices dissented. In writing the minority opinion, Ginsburg joined by Kagan argued that since the Montana Supreme Court had struck down the Montana Tax Credit Program, the state could not have discriminated against the plaintiffs because it made all schools and individuals ineligible for the benefit.[94] Justice Breyer in his own dissenting opinion rebuked the majority opinion by arguing that the majority ignored the Establishment Clause precedent and should have further considered the "play in the joints" between the two Religion.[95] Justice Sotomayor in her own dissenting opinion similar to Ginsburg, argued that since the Montana Supreme Court invalidated the tax credit program the petitioners did not have grounds to bring the case before the United States Supreme court. Furthermore, Sotomayor writes, "Not only is the Court wrong to decide this case at all, it decides it wrongly."[96] She goes on to argue that the majority decision weakens the country's long tradition of separation of church and state.[97]

Summary

As outlined above, *Espinoza* concerned the funding of private religious based schools by way of tax credit scholarships.[98] Plaintiffs in the case argued that they were discriminated against

[92] Ibid.
[93] Ibid at 2261.
[94] Ibid at 2281
[95] *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2292 (2020) (Breyer, J., dissenting).
[96] *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2292 (2020) (Sotomayor, J., dissenting).
[97] Ibid.
[98] *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246 (2020).

and denied general available funds because of their religious status. Based on recent decisions, it seems that the sentiment of the current Supreme Court Justices is to reduce the limits placed on public funds available to religious institutions as witnessed by the Courts most recent ruling in *Espinoza*. The Courts recent jurisprudence in *Espinoza* has two major implications: 1) the upholding may require states to allow religiously based schools to participate in school choice programs, including publicly funded voucher programs, and 2) the decision impacts the Religion Clauses by expanding the scope of the Free Exercise Clause and minimizing state's authority under the Establishment Clause by restricting states from denying aid based on religious associations (Russo, Thro, & Osborne, 2020).

Part III: Frame Analysis

Frame analysis is a multidisciplinary social science research method used to study social constructions of reality and is often applied in the areas of communication, psychology, political science, and other fields in the social sciences (Pan & Kosicki, 1993). Frame analysis focuses on how the media, political actors, and organizations represent topics by drawing attention to specific issues often at the expense of others. It also focuses on how elite individuals and organizations exert influence on public opinion and help shape the general perception of the topic at hand. The major assumption behind frame analysis is that an issue can be thought of from several perceptions and people's conceptualization of that issue can be altered based on how it is framed. Framing comprises one of the most important concepts in the study of public policy and opinion shaping, yet it is not without controversy. Scholars have debated the exact meaning of frame analysis, and some have referred to it as a "fractured paradigm" (Entman, 1993, p. 51). This section will explore the two prominent types of frame analysis (emphasis and equivalency framing), and how these types are used in policy analysis and political sciences.

What is Meant by the Term Frame Analysis?

Frame analysis has been applied to a whole range of topics and is used by virtually any individual, group or organization who wishes to push a certain agenda. Political interest groups, for example, frame issues in a way that will advance their position. Two major camps have emerged in the area of frame analysis: the emphasis framing and the equivalency framing camps. Entman (1993), whose works represent the emphasis framing camp, argues that framing includes any effort to influence public opinion through the formulation of messages. In contrast to Entman (1993), Iyengar (2009) limits the definition of frame analysis to presenting the same information in different ways and suggests that it is the equivalency between arguments that makes frame analysis relevant as a framework.

Erving Goffman first introduced the concept of framing in 1974. Goffman drew upon the works of linguist Gregory Bateson (1972) who argues that statements by themselves do not have any intrinsic meaning but are only acquired in a frame that is an outcome of how the individual contextualizes words or phrases. Bateson defined frames as a "spatial and temporary bounding set of interactive messages" that operate as a form of metacommunication (Bateson, 1972, p.127). Frames are essentially abstractions that help the audience structure and organize meaning. Goffman (1974) builds on Bateson's theory by introducing the concept of "primary framework" or interpretive schemas to classify and interpret information (Goffman, 1974, p. 24). Primary frameworks operate at both the macro and micro levels – at the macrolevel communicators present information in such a way that their audience is able to integrate complex information into existing schemas (Scheufele &Tewksbury, 2007). At the microlevel it describes how people use information to form impressions in everyday life.

While Goffman (1974) is often considered the father of frame analysis other scholars have built on Goffman's work across all social science fields. Gamson and Modigliani (1989), both sociologists, describe frames as "interpretive packages" (p. 2). The "interpretive package" includes central organizing ideas referred to as frames and symbols condensed into small strips of information designed to tell a story (Gamson and Modigliani, 1989, p. 2). Iyengar (1994), a political scientist, on the other hand describes the process in terms of frame effects. Iyengar (1994) maintains that frames are slight changes in the way the information is presented so as to led individuals to believe they have a choice. Iyengar's (1994) conceptualization is similar to research conducted by Kahneman and Tversky (1984), both psychologists, whose prospect theory used framing as way to describe subtle differences in choice alternatives. In their experiments Kahneman and Tversky (1984) provided their subjects with two choices that were identical in outcome, but in one scenario they used positive word choices to describe the outcome and in the other scenario they used negative word choices. This study demonstrated that even though the outcomes in both scenarios were identical, people make choices based on how the question is framed (Kahneman & Tversky, 1984). Iyengar's (2009) decades long research supports Kahneman and Tversky's analysis leading him to call upon others in the field to turn away from the emphasis framing camp in support of the equivalency framing camp in hopes of developing "a more powerful theoretical framework for understanding the conditions under which framing effects do or do not occur" (p. 190).

Whereas equivalency frames emphasis small subtle differences that led individuals to believe they have choices, emphasis framing emphasizes specific aspects of an issue that encourages certain interpretations of the meaningful context and discourages other aspects (Druckman, 2001). Entman (1993) in his controversial paper, *Framing: Toward Clarification of*

a Fractured Paradigm, in which he argued for a single paradigm for framing research, suggested that emphasis frames, also called issue frames, provide a broader understanding of frame analysis because the approach's focus is on salient points presented by a speaker or in a text which emphasizes a subset of ideas or viewpoints the speaker or author wants to convey. By focusing on these salient points, the individuals are led to construct opinions based on the points the speaker or author highlights. Druckman (2004) provides an example in which he describes a situation where a group may be asked to think about a hate group rally in terms of free speech as opposed to a public safety concern. How the question is framed will determine which salient points individuals focus on when framing thoughts on the issue. Entman (1993) states that,

> Framing essentially involves selection and salience. To frame is to select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation for the item described. (p. 52)

Borah (2011) described the debate between the two existing frame paradigms as frames living a "double life" (p. 257). Borah notes that the many disciplines that utilize frame analysis makes it difficult to nail down a specific paradigm that encompasses all framing research (Borah, 2011). Borah, however, unlike Iyengar (2009, 2011), argues for a more inclusive approach to framing research that embraces studies that examine specific framing issues or effects in such a manner that the research facilitates the development of a comprehensive theory without stifling the many definitions and methodologies used across the social science fields (Borah, 2011).

In 2012, de Vreese reviewed a serious of articles that specifically evaluated the findings from a project where the starting position was that frame analysis is a process in need of an integrated research approach (de Vreese, 2012). de Vreese (2012) maintained like Entman (1993)

that maintaining a broad and inclusive definition of frames in the initial stage of a research paradigm is preferred. He concludes his analysis with the assumption that a more general definition of frame analysis is necessary to allow cross-disciplinary studies and studies do need to clarify the conceptual status and the core assumptions of their framing research (de Vreese, 2012).

Agenda Setting, Priming, and Framing

Frame analysis cannot be addressed thoroughly without some discussion of the differences between agenda setting, priming, and framing. Framing is often equated with agenda setting and priming. Whereas framing involves the process of shaping the publics general attitude towards an issue, agenda setting is the process of bringing attention to an issue and is considered the first stage of the policy process. Research shows that the average citizen is not an active participant in the political process and is unaware of many of the issues shaping public policy (Chong & Druckman, 2007). Sabatier (2014) argues that before a policy issue can be brought before the government for solution policy elites must identify issues and bring them to the public's attention. There are multiple actors from government and non-government groups involved in this process and include the media, legislatures at different levels of government, as well as judges and court systems (Sabatier, 2014). These policy actors, politicians, elites, organizations, and other interest groups all try to control and shape public policy to achieve favorable policy outcomes to their political interest (Sabatier, 2014). This process is a struggle over whose political, social, or economic message will prevail (Gamson & Modigliani, 1989).

Priming, on the other hand, is an extension of the agenda-setting process. Priming usually occurs after an issue has entered the agenda-setting stage and elite groups work to make the issue salient in the general public's mind (Scheufele & Iyengar, 2014). Priming has its roots in

psychology where it is believed that information is stored in memory nodes. Each node corresponds to a concept that when activated cause the individual to recall information about the topic that is then associated with how the topic is being presented. With repeat exposure to a topic or idea the individual will begin to associate it with the larger agenda issue presented by policy elites (Moy & Tewskbury, 2016). Ultimately, by making the issue more salient in people's minds, policy elites can begin the process of shaping how the mass public or audience thinks about the issue. The success of priming is determined by how knowledgeable or involved the target audience is in relation to the topic at hand.

Framing is generally influenced by the media, political actors, and/or policy elites (Hanggli, 2012). Frames help policy elites simplify ideas or concepts in such a manner that the audience can make sense of it. A frame is a way of communicating ordinary everyday ideas to the audience and is typically associate with one specific issue or topic. Framing undergoes two stages of process: 1) frame building and 2) frame setting (Moy, et al., 2016). Frame-building is the process policy elites use to make everyday connections to events and is directly influenced by culture and social norms. Frame advocates will use social and cultural norms to develop frames for public consumption (Tewksbury & Scheufele, 2020). Frames from opposing advocates compete for audience attention. Frame-setting explains the effect the frame has on the audiences' beliefs and can influence public behavior (Moy, et al., 2016). According to Moy, et al. (2016), "The basic idea with frame-setting is that people have perceptions about public issues and problems. These perceptions comprise beliefs about the causes and consequences of problems and about who is responsible for correcting them" (p. 9). Consequently, frames help shape public policy by the influence they exert over the target audience.

In sum, frame analysis is a multi-disciplinary social science research method used to

understand how policy elites frame issues relevant to their cause and use them to exploit and manipulate the public or targeted audience to support their unique view or perspective on a topic. Frame analysis is used in communication studies, political science, psychology, sociology, and other social sciences. As a methodology, research scholars look for themes that exist within news sources or in written text, and then determine how those themes are framed to influence the targeted audience. Although there is much debate about whether frame analysis should be narrowed to nail down one specific paradigm, it continues to flourish and prove itself a useful tool for understanding how interest groups and policy actors influence the direction of public policy.

Interest Groups Use of Frame Analysis

Organized interest groups use framing strategies to engage with the public, the media, and policymakers (Moyer, 2021). The interest group's ability to convince others to support their policy-agendas is often determined by their ability to frame an issue in a way that is salient with the targeted audience. Most research on interest group and framing centers around influencing the public, legislators at the state and local level, or other policymakers through the media. Very little focus has been placed on the courts, yet interest groups spend a tremendous amount of time and money lobbying the courts by way of amicus curiae briefs. According to Collins, et al. (2015) most of the research utilizing amicus briefs focus on the political leanings of the courts or the outcome of the judges' votes. Very little research investigates the actual arguments raised in amicus briefs or evaluates the frames or themes used by amici curiae.

Interest groups file amicus briefs in hopes of influencing the legal decisions made by judges and by extension the policy decisions that may result. Although little research has been conducted to determine if a particular court ruling is the direct result of an amicus brief, there is

ample evidence that interest group lobbying of the courts does have some effect on the court's decision (Collins & Solowiej, 2007). The actual effect, however, is limited by several factors which include salience of the case, prestige and experience of the amicus involved in the case, the quality of the brief, and whether the brief is a "me too" brief and does nothing more than repeat the arguments of the main litigants and adds nothing new to the case (Collins, et al., 2014, p. 229). Other research has been conducted to determine if judges' ideological orientation influences their reception of amicus briefs filed by interest groups with opposing ideologies. Pacelle, et al. (2018) suggests that more conservative judges "tend to view the presence of powerful amicus groups as a signal to vote against the party that group supports – and at the same time, liberal justices are more likely to vote conservatively in cases involving a powerful conservative amicus" (p. 1255). Collins (2008) supports this claim and suggests that amicus briefs filed by interest groups may reinforce a judge's predisposition towards an issue.

Do Interest Groups Serve as Framers of Policy?

Epstein (1992) noted in her seminal book *Supreme Court and Legal Change: Abortion and the Death Penalty*, that the Court in the last part of the twentieth century made significant policy decisions typically reserved for the elected branches of government. The Court has made landmark decisions on school prayer, racial segregation, gay rights, and now, decisions that may affect school choice as it relates to state-based aid to religious institutions.

In essence, Epstein (1992) argues that the United States Supreme Court is not a neutral place where court cases are devoid of politics. Amici curiae representing partisan interest groups by way of amicus briefs attempt to influence justices' decisions on major cases that have ramifications for public policy (Epstein, 1992). It can be advanced that how amici curiae frame issues may influence the outcome of the Court's decision, thereby advancing policy making.

Frame Analysis as a Conceptual Lens

Frame analysis, as described by D'Angelo and Kuypers (2009), is an amalgamation of concepts, approaches, and multiparadigmatic research methodologies. Entman (2007) describes framing as "the process of culling a few elements of perceived reality and assembling a narrative that highlights the connections among them to promote a particular interpretation" (p. 164). Terkildsen and Schnell (1997) suggest that "framing is important whenever an issue can be presented in multiple ways which may potentially influence how people think about an issue" (p. 881). Ultimately, frame analysis asserts that people respond to issues based on the way issues are framed. Different framing may elicit a different response (Druckman, 2001). For example, suggesting that school tax credit scholarships promote opportunity will elicit a different response than suggesting that school tax credit scholarships undermine neighborhood public schools. Based on how the tools of school choice are framed may make people support an issue they may otherwise oppose, and vice versa (Brewer and Gross, 2005).

Neuman et al. (1992) in their influential study on the construction of political meaning identified several frames covering a range of issues that include powerlessness, conflict, economic consequences, human impact, and morality frames. In the early 1990s, these frames were used to analyze newspaper articles or television news stories in the United States. In a later study Semetko and Valkenburg (2000) expanded on Neuman, et al. (1992) study and revised the frames to include conflict, attribution of responsibility, morality, economic consequences, and human interest as a lens to analyze a variety of text related to topics such as climate change, autism, car crashes, and issues related to educational equity (Aman, et al., 2020; Dirikx & Gelders, 2010; Grooms, 2019; Luther & Zhou, 2005; Muhamad &Yang, 2017). Semetko and Valkenburg's (2000) study demonstrated how the five generic frames could be utilized for

research outside of the news media field. These five frames are further explained in Chapter 3.

Conclusion

The aim of this qualitative content analysis is to identify the dominant policy frames interest groups used to frame policy preferences in *Espinoza*. An additional goal is to determine which (if any) policy frames found in the amicus briefs emerge in the written opinions of the justices in *Espinoza*. This study will examine the process through the theoretical lens of frame analysis using Semetko and Valkenburg's generic frames as a priori codes. Frame analysis is a theoretical process by which people develop a particular conceptualization of an issue or reorient their thinking about an issue (Chong & Druckman, 2007). Frame analysis suggests that how something is presented to the audience (called "the frame") influences the choices people make about how to process information. Goffman (1974), who first coined the term maintains that frames help audiences "locate, perceive, identify, and label the flow of information" (p.21). Drucker and Chong (2007) expanded on Goffman's theory to incorporate framing effects, which they define as "a means by which politicians attempt to mobilize voters behind their policies by encouraging them to think about policies along a particular line" (p. 106).

In this chapter, I provided a summary of the history of the school choice movement through the lens of Minow's (2022) school choice framework. I also described the events leading up to *Espinoza* and traced the trajectory of the case as it made its way to the United States Supreme Court. I also discussed the Religion Clauses as they relate to *Espinoza*. In addition, in this section I reviewed the extant literature that focuses on how interest groups influence the courts through the amicus brief process. I closed this chapter with an exploration of the literature related to frame analysis and discussed how this theory will serve as my conceptual lens. In the next chapter, I described the methodological approach that I used to analyze the amicus briefs in

the *Espinoza*. I explained how I planned to evaluate the text of the briefs for dominant frames and emerging themes using Semetko and Valkenburg's (2000) generic frames, and how I extrapolated that information and compared it to the frames that emerge in the justices' written opinions.

CHAPTER 3

METHODOLOGY

The purpose of this qualitative content analysis was to identify the dominant policy frames interest groups used in their amicus briefs to frame policy preferences in the United States Supreme Court case *Espinoza v. Montana* (2020).[99] A second goal was to determine which (if any) policy frames found in the amicus briefs emerged in the written opinions of the justices. This study may help education policy researchers develop a better understanding of how different policy frames chosen by interest groups to frame policy preferences may (or may not) influence the Courts' opinion, and ultimately education policy and law. A caveat to this study, however, is that these results cannot be generalized to other Supreme Court cases outside this study. This study is guided by the following two research questions:

RQ1. What dominant policy frames do interest groups use to frame policy preferences in *Espinoza v. Montana* (2020)?

RQ2. Which (if any) policy frames found in the amicus briefs emerge in the written opinions of the United States Supreme Court justices in *Espinoza v. Montana* (2020)?

Research Design

To identify the policy frames used by interest groups, this study consisted of a qualitative content analysis of the amicus briefs and the written opinions of the justices in *Espinoza v. Montana* (2020).[100] My unit of analysis was a purposeful selection of 18 out of 45 amicus briefs filed by interest groups and the opinions rendered by the Supreme Court justices. The purposeful selection for this study did not include recordings of oral arguments, petition for writ of

[99] *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246 (2020).
[100] Ibid.

certiorari, motions, blanket consents, appendices, or any other material produced by the case.

According to Krippendorff (2013), “content analysis is a research technique for making replicable and valid inferences from texts (or other meaningful matter) to the contexts of their use” (p. 24). Krippendorff (2013) contends that all reading of text is qualitative even when certain characteristics are later converted into numbers – or quantified. Qualitative content analysis involves the examination of text, which can include magazines, newspapers, speeches, books, or even pictures (Krippendorff, 2013). Qualitative content analysis can either be deductive or inductive. Deductive content analysis is used when the researcher chooses a priori codes that guides the researcher’s collection and analysis of data (Mayring, 2000). Inductive content analysis is data driven by researchers who immerses themselves into the data by reading the text and identifying themes that are broken into categories that are then applied to the set of data (Hsieh & Shannon, 2005). For this study, I chose to utilize both deductive and inductive methodologies as shown in Figure 1 for two reasons:

1. Deductive analysis helps the researcher sort data into organizational categories to maintain alignment with research questions.
2. Inductive analysis helps the researcher make meaning from the data and develop emerging codes and themes.

Utilizing both deductive and inductive analysis processes support a more organized, rigorous, and analytically sound qualitative content analysis study (Bingham & Witkowsky, 2021). Bingham and Witkowsky (2021) contend that qualitative researchers must “focus on organizational practices, including organizing the data type, keeping track of transcriptions, and categorizing representative data excerpts while focusing on their research questions, coding schemes, and emergent theories and concepts" (p. 134).

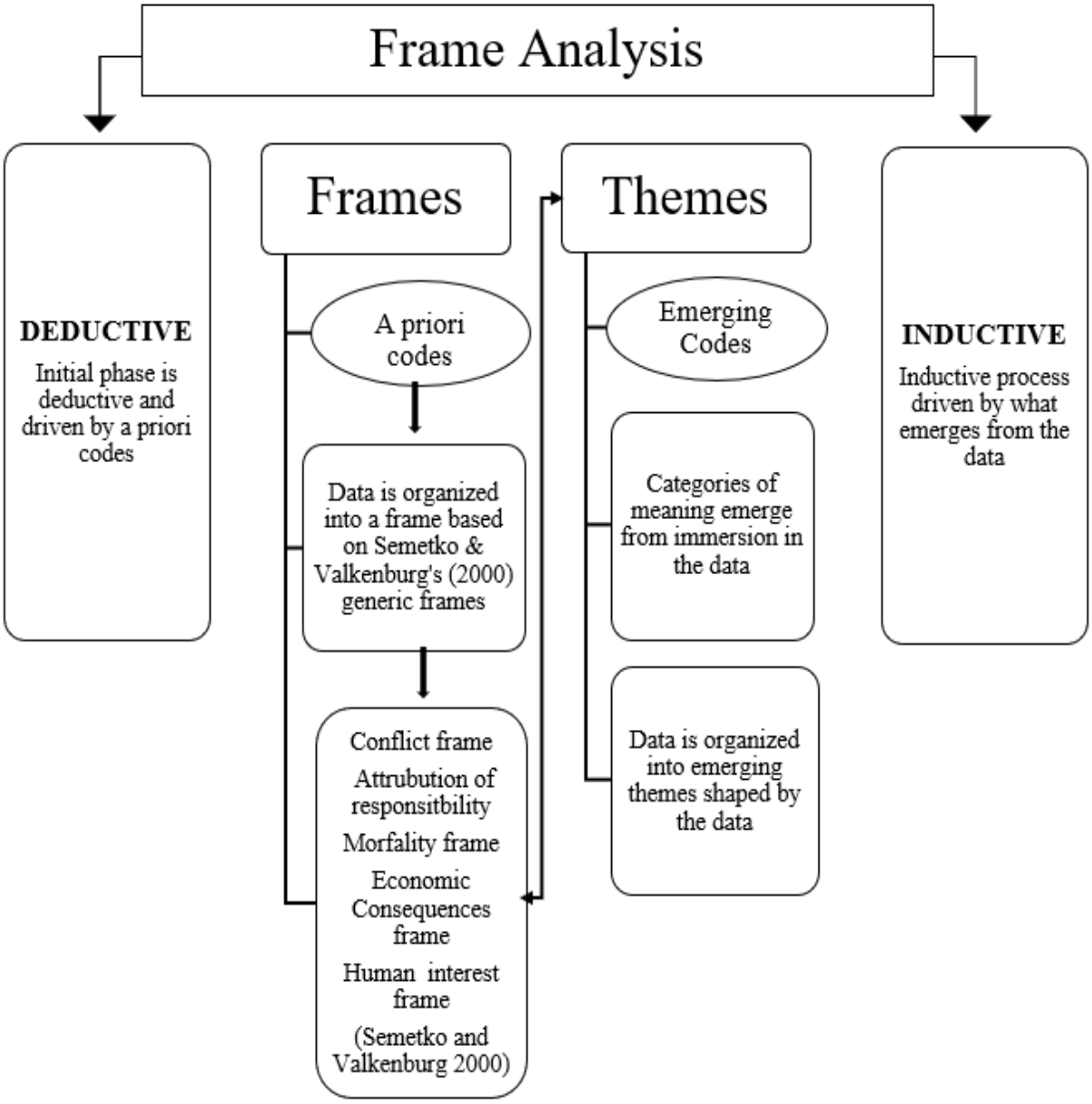

Figure 1

Research Design of Study

Purposeful Selection

In total, 45 amicus briefs were submitted in *Espinoza*. Amici curiae included a wide range of think tanks, state coalitions, 131 current and former state legislators and governors, non-profit organizations, teacher unions or affiliations, and religious organizations. Thirty-one amicus briefs called for the reversal of the Montana Supreme Court's decision and 14 briefs called for the affirmation of the lower court's decision as identified in Table 3.

In addition to the 45 amicus briefs, in total the Supreme Court justices wrote seven opinions. Chief Justice John Roberts wrote the majority opinion. Justice Clarence Thomas filed a concurring opinion and was joined by Justice Neil Gorsuch. In addition, Justices Samuel Alito and Gorsuch filed separate concurring opinions. Justice Kavanaugh signed on to the majority opinion. Justices Ruth Ginsburg, Stephen Breyer, and Sonia Sotomayor filed three dissenting opinions. Justice Elena Kagan joined with Ginsburg and Breyer.

Amicus Brief Selection Process

After initially immersing myself into the data, it became apparent that many of the amicus briefs filed in *Espinoza* were "me too" briefs. "Me too" briefs are briefs that repeat the same arguments contained in the litigant's briefs without adding any new or novel information (Collins, et al., 2014). According to Supreme Court Rule 37, amicus briefs should bring attention to the Court relevant information not already brought to its attention by the parties in the case. The Supreme Court Rule 37 states:

> An amicus curiae brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An amicus curiae brief that does not serve this purpose burdens the Court, and its filing is not favored (Rules of the Sup. Ct. R. 37, 2019).

Table 3

Amicus Briefs Filed in Espinoza v. Montana (2020)

Filed by	Conclusion
Alliance for Choice in Education	Reverse
American Center for Law and Justice	Reverse
Americans for Prosperity and Yes. Every Kid.	Reverse
Arizona Christian School Tuition Org, et al.	Reverse
Billy Graham Evangelist Assoc. et al.	Reverse
Center for Constitutional Jurisprudence	Reverse
Center for Education Reform, et al.	Reverse
Christian Legal Society, et al.	Reverse
EdChoice, et al.	Reverse
Forge Youth Mentoring	Reverse
Foundation for Moral Law	Reverse
Georgia Goal Scholarship Program, Inc.	Reverse
Honorable Scotty Walker	Reverse
Independence Institute	Reverse
Jerry and Kathy Armstrong, et al.	Reverse
Jewish Coalition for Religious Liberty	Reverse
Justice and Freedom Fund, et al.	Reverse
Liberty Justice Center and American Federation for Children	Reverse
Mackinac Center for Public Policy	Reverse
Montana Catholic School Parents, et al.	Reverse
Montana Family Foundation	Reverse
State of Oklahoma, et al.	Reverse

Table 3 cont.

Amicus Briefs Filed in Espinoza v. Montana (2020)

Filed by	Conclusion
Opportunity Scholarship Fund	Reverse
Pioneer Institute	Reverse
Rusty Bowers Speaker of Arizona House of Rep. et al.	Reverse
Sen. Steve Daines, et al.	Reverse
The Becket Fund for Religious Liberty	Reverse
The Cato Institute	Reverse
The Rutherford Institute	Reverse
The United States (Solicitor General)	Reverse
131 Current and Former Legislators	Reverse
Am. Federation of Teachers, et al.	Affirm
Baptist Joint Committee, et al.	Affirm
States of Colorado, California, et al.	Affirm
Freedom from Religion Foundation, et al.	Affirm
Montana Const. Convention Delegates	Affirm
Montana Northern Wyoming Conference, et al.	Affirm
Montana Association of Rabbis	Affirm
National Disability Rights Network, et al.	Affirm
National School Boards Association, et al.	Affirm
Public Funds Public Schools	Affirm
Religion Law Scholars	Affirm
Religious and Civil Rights Organization, et al.	Affirm
State of Maine	Affirm
Tennessee Ed. Association	Affirm

Aside from "me too" briefs, amicus briefs that lacked focus on the implications the Court's decision may have on a national level were also excluded. For example, the Brief of Amicus Curia Forge Youth Mentoring in support of petitioners was submitted by a Washington based local charitable organization. The Forge Charitable Organization fosters intergenerational mentoring relationships among local youths and adults. The brief primarily focused on the organization's history and local roots. The amici emphasized a desire to receive generally available funds to help support the organizations religious-based mission but do not advance an argument that has implications on a national level. Other briefs addressed grievances of individual states such as those briefs filed by the states of Maine and Oklahoma. However, since this study was primarily concerned with how interest groups framed policy preferences, I decided to narrow the scope of this research to include only those amicus briefs submitted by interest groups not associated with a government entity. Amicus briefs that met all of the following criteria were included in this study:

1. Added something new or novel to the discussion – not a "me too" brief.
2. Addressed the issues involved in the case on a national level – national scope.
3. Interest of amici curiae did not act on behalf of government – not a government entity

In total 18 amicus briefs met these criteria. The briefs represented a broad range of interest groups from across the political spectrum. The chosen briefs included a variety of organizations comprised of think tanks, non-profit organizations, teacher unions or affiliations, and religious organizations. Amicus briefs that met the criteria are identified in Table 4.

Table 4

Amicus Brief Selection Process

Filed By	Not a "Me Too" Brief	National Scope	Not a Government Entity
Alliance for Choice in Education		X	X
American Center for Law and Justice		X	X
Americans for Prosperity and Yes. Every Kid.	X	X	X
Arizona Christian School Tuition Org, et al.	X		X
Billy Graham Evangelist Assoc. et al.	X	X	X
Center for Constitutional Jurisprudence		X	X
Center for Education Reform, et al.	X	X	X
Christian Legal Society, et al.		X	X
EdChoice, et al.	X	X	X
Forge Youth Mentoring			X
Foundation for Moral Law		X	X
Georgia Goal Scholarship Program, Inc.	X	X	X
Honorable Scotty Walker			X
Independence Institute			X
Jerry and Kathy Armstrong, et al.	X	X	X
Jewish Coalition for Religious Liberty	X		X
Justice and Freedom Fund, et al.	X	X	X

Table 4 cont.

Amicus Brief Selection Process

Filed By	Not a "Me Too" Brief	National Scope	Not a Government Entity
Liberty Justice Center and American Federation for Children	X	X	X
Mackinac Center for Public Policy	X		X
Montana Catholic School Parents, et al.	X		X
Montana Family Foundation			X
State of Oklahoma, et al.	X		
Opportunity Scholarship Fund	X		X
Pioneer Institute		X	X
Rusty Bowers Speaker of Arizona House of Rep. et al.		X	
Sen. Steve Daines, et al.		X	
The Becket Fund for Religious Liberty		X	X
The Cato Institute	X	X	X
The Rutherford Institute		X	X
The United States (Solicitor General)		X	
131 Current and Former Legislators		X	

Table 4 cont.

Amicus Brief Selection Process

Filed By	Not a "Me Too" Brief	National Scope	Not a Government Entity
Am. Federation of Teachers, et al.	X	X	X
Baptist Joint Committee, et al.	X	X	X
States of Colorado, California, et al.	X	X	
Freedom from Religion Foundation, et al.	X	X	X
Montana Const. Convention Delegates	X		
Montana Northern Wyoming Conference, et al.	X	X	X
Montana Association of Rabbis	X	X	X
National Disability Rights Network, et al.	X	X	X
National School Boards Association, et al.	X	X	X
Public Funds Public Schools	X	X	X
Religion Law Scholars		X	
Religious and Civil Rights Organization, et al.		X	X
State of Maine	X		
Tennessee Ed. Association	X	X	X

Rationale for Qualitative Content Analysis

As stated above, qualitative content analysis can utilize existing theory or predefined codes or themes to guide a study (Hsieh & Shannon, 2005). As discussed in Chapter 2, as part of the deductive stage of this process, I used Semetko and Valkenburg's (2000) generic frames as my a priori codes to help guide the study. As I entered the inductive phase of this activity, I immersed myself more fully into the data. Through an iterative process new themes emerged based on the initial a priori codes. As an outcome of this process, I create a system of categories that enabled me to reflect and refine new concepts and themes. To help organize my study during this phase, I used NVivo, a qualitative data analysis computer-based software program, to help organize, analyze, and code the data into dominant frames and thematic units (see Appendix A). In accordance with Saldana (2009), this method of identifying codes and themes is appropriate for a qualitative content analysis study because it allows the researcher to "identify what a unit of data is about and/or what it means" (p. 199).

Procedures for Conducting a Qualitative Content Analysis

There is no single defining procedure to guide researchers through the qualitative content analysis (QCA) process. However, several scholars have identified basic steps and procedures to help guide novice researchers such as myself. Typically, these plans involve a minimum of three phases, and some plans involve as many as eight steps (Elo and Kyngas, 2008; Elo, et al., 2014; Hsieh & Shannon, 2005; Kibiswa, 2019; Mayring, 2000; Zhang & Wildemuth, 2009). The three phases as identified by Elo, et al. (2014) include a preparation phase, organization phase, and a reporting phase. I used these three phases as a guide to conduct this qualitative content analysis study. As I proceeded through the phases, I entered data into the NVivo software program to facilitate the coding process.

Phase One: Preparation Phase

According to Hsieh & Shannon (2005), deductive content analysis builds on existing theory which can help focus the research question. Based on this premise, during the preparation phase of my research, I immersed myself into the literature and identified a theory that was conducive to my study. The theory I identified was based on Semetko and Valkenburg's (2000) five generic frames. Multiple researchers have used these frames to analyze various text forms for basic themes (Aman, et al., 2020; Dirikx & Gelders, 2010; Grooms, 2019; Luther & Zhou, 2005; Muhamad &Yang, 2017). I used these generic frames to develop my study's analysis matrix – or codebook. The codes are identified in Table 5 through Table 9, inclusive. The codebook contains operational definitions that I continuously developed and refined throughout the research process. Additional codes and themes were added as they emerged in the data. Ultimately, I identified codes/themes that helped me make connections across the data set.

Once I developed the codebook, I began a process of familiarizing myself with the data. To do this, I fully immersed myself into the amicus briefs and written opinions of the justices by reading and re-reading the text until I had a comfortable command of the text contents. As I read, I identified themes and sub-themes based on the a priori codes initially identified in the studies codebook. During this process, I identified new subcategory codes and themes as they emerged from the text. To aid in the coding process, I used NVivo software to help me organize the text which allowed me to gather related material in one place so that I could more easily identify emerging frames, ideas, and themes. I recorded notes in NVivo to track my thoughts and reflect on my thinking which helped me maintain an audit trail of my research (see Appendix B). In addition, I made annotations as I read each brief and opinion (see Appendix C).

Table 5

A Priori Code: Conflict Frame

Code	Definition	When to use	When not to use	Example Excerpt
Conflict frame	This frame emphasizes conflict between individuals, groups, or institutions. This code applies to all references to individuals, groups, or institutions engaged in conflict. Conflict is defined as a clash of interest and the basis of the conflict may be personal, religious, racial, class, or political.	Use this code when the coder can affirm the following questions: • How does the text reflect disagreement between parties, individuals, or groups? • How does one party, individual, or group reproach another? • How does the text refer to two sides or to more than two sides of the problem or issue?	Do not use this code when the coder cannot affirm at least two of the *when to use* questions to the text.	"Not only is the record replete with discussion of activities, uses, and conduct, any jurisprudence grounded on a status use distinction seems destined to yield more questions than answers. Does Montana seek to prevent religious parents and schools from participating in a public benefits program (status)? Or does the State aim to bar public benefits from being employed to support religious education (use)." [101]

Note. Adapted from "Framing European Politics: A Content Analysis of Press and Television News" by Semetko, H. A., & Valkenburg, P. M., 2000, *Journal of Communication*, *50*(2), 93-109.

[101] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2275 (2020) (Gorsuch, J., concurring).

Table 6

A Priori Code: Attribution of Responsibility Frame

Code	Definition	When to use	When not to use	Example Excerpt
Attribution of responsibility frame	This frame emphasizes beliefs about the cause of an event or outcome of a situation. This frame attributes responsibility or a solution to a situation to either the government, individual, or group.	Use this code when the coder can affirm at least one of the following questions: • Does the brief/opinion suggest that some level of government can alleviate the problem? • Does the brief/opinion suggest that some level of government is responsible for the issue/problem? • Does the brief/opinion suggest solution(s) to the problem/issue? • Does the brief/opinion suggest that an individual or group is responsible for the issue/problem?	Do not use this code when the coder cannot affirm at least one of the *when to use* questions to the text.	"Rather than protecting these students, the Department would deny them the option of attending a religious school. The Department's rule flips the Establishment Clause on its head. It uses the power of the state to prohibit the exercise of civil liberties. Thus, the Department finds itself portrayed as the bouncer in the comic on the next page, barring the schoolhouse door to low-income children by relying on a state Blaine Amendment."[102]

Note. Adapted from "Framing European Politics: A Content Analysis of Press and Television News" by Semetko, H. A., & Valkenburg, P. M., 2000, *Journal of Communication, 50*(2), 93-109.

[102] Brief for the Liberty Justice Center and American Federation for Children as Amicus Curiae in Support of Petitioners. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 5118, *16.

Table 7

A Priori Code: Morality Frame

Code	Definition	When to use	When not to use	Example Excerpt
Morality frame	This frame puts the event, problem, or issue in context of religious tenets or moral prescriptions. It usually contains a moral message or prescription about how to behave.	Use this code when the coder can affirm at least one of the following questions: • Does the text contain a moral message? • Does the text make a reference to morality, God, other religious tenets or the constitution? • Does the text offer specific social prescriptions about how to behave?	Do not use this code when the coder cannot affirm at least one of the *when to use* questions to the text.	"This 'equality principle', the theory goes, prohibits the government from expressing any preference for religion—or even permitting any signs of religion in the governmental realm... This understanding of the Establishment Clause is unmoored from the original meaning of the First Amendment."[103]

Note. Adapted from "Framing European Politics: A Content Analysis of Press and Television News" by Semetko, H. A., & Valkenburg, P. M., 2000, *Journal of Communication, 50*(2), 93-109.

[103] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2263 (2020) (Thomas, J., concurring).

Table 8

A Priori Code: Economic Consequences Frame

Code	Definition	When to use	When not to use	Example Excerpt
Economic consequences frame	This frame reports an event, problem, or issue in terms of the consequences it will have economically on an individual, groups, or organizations.	Use this code when the coder can affirm at least one of the following questions: • Is there a mention of (financial) losses or gains now or in the future? • Is there a mention of the costs/degree of expense involved? • Is there a reference to (economic) consequences of pursuing or not pursuing a course of action?	Do not use this code when the coder cannot affirm at least one of the *when to use* questions to the text.	"Although a private education for her children is a priority for Christi, it's not for her kids' father. He refuses to contribute to his children's tuition expenses so Christi must cover the tuition on her own. Christi's daughter receives a merit scholarship and both children receive tuition assistance through the diocese and the Missoula Catholic Schools Fund."[104]

Note. Adapted from "Framing European Politics: A Content Analysis of Press and Television News" by Semetko, H. A., & Valkenburg, P. M., 2000, *Journal of Communication, 50*(2), 93-109.

[104] Brief for Montanan Catholic School Parents, et al., as Amici Curiae Supporting Petitioners, Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 4598, *16.

Table 9

A Priori Code: Human Interest Frame

Code	Definition	When to use	When not to use	Example Excerpt
Human interest frame	This frame brings a human face or an emotional angle to the presentation of an event, issue, or problem. It presents people and their problems, concerns, or achievements in a way that brings out empathy.	Use this code when the coder can affirm at least two of the following questions: • Does the text provide a human example or "human face" on the issue? • Does the text employ adjectives or personal vignettes that generate feelings of outrage, empathy, caring, sympathy, or compassion? • Does the text emphasize how individuals and groups are affected by the issue/problem? • Does the text go into the private or personal lives of the actors? • Does the text contain visual information that might generate feelings of outrage, empathy, caring, sympathy, or compassion?	Do not use this code when the coder cannot affirm at least one of the *when to use* questions to the text.	"Brittany Sukhbir's little girl Raelyn cried every night after a day at school. Raelyn attended second grade at the local public school in Livingston, and a classmate was bullying her unmercifully."[105]

Note. Adapted from "Framing European Politics: A Content Analysis of Press and Television News" by Semetko, H. A., & Valkenburg, P. M., 2000, *Journal of Communication, 50*(2), 93-109.

[105] Brief for Montanan Catholic School Parents, et al., as Amici Curiae Supporting Petitioners, Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 4598, *4.

Once this part was completed, I produced a visual representation of the first back-and-forth reading analyzing process, or what Saldana (2009) refers to as the first cycle of the coding process. During this first cycle, I identified the texts dominant frames and emerging thematic units.

Phase Two: Data Analysis

Phases two of this qualitative content analysis study involved a more intense level of data coding and data analysis. In this phase of my research, which Saldana (2009) refers to as second cycle of coding, I continued to analyze each individual brief and written opinion. I assigned codes or subcodes identified in the codebook to thematic units which I recorded in NVivo. The result of this process was a Reading Summary Form as shown in Table 10. This form was a document I produced in Excel that was based on the information entered into NVivo. I organized each brief and written opinion with the various codes, subcodes, and themes into this document so that I could more easily identify the text's attributes. I also created a Thematically Clustered Matrix or what Elo and Kyngas (2008) call a categorization matrix. I organized the data from multiple briefs and justices' opinions into the Thematically Clustered Matrix so that I could make comparisons across the briefs and written opinions (see Appendix D). Based on this cluster of text, I identified sections of the individual briefs and written opinions that matched the operational definitions identified in the code agenda.

After creating the Reading Summary Form, I made connections, interpreted the data, and drew conclusions. I analyzed the data including disconfirming themes that challenged the operational definitions identified in the codebook. In this phase I went beyond the obvious and began to make meaning and inferences about the relationship between the briefs and written

Table 10

Reading Summary Form

Amicus Brief/ Written Opinion	Filed	Conclusion	Code	Example Excerpt
The Cato Institute (Amicus brief)	Sept.17, 2019	Reverse	Morality frame	"The Free Exercise Clause protects religious observers from unequal treatment where that inequality is based solely on a person or organization's religious status."[106]
			Human interest frame	"The Court should also recognize that school choice programs allow parents to select schools that share their values, reducing the need to impose those values on others."[107]
Tennessee Education Association (Amicus brief)	Nov. 15, 2019	Affirmed	Economic consequences frame	"These types of programs divert much needed tax dollars away from the public schools and into the hands of individuals to facilitate their own education consumption."[108]
			Human interest frame	"Elevating individual desires over the public good, these programs ultimately undermine the important social and societal benefits of public education."[109]
Justice Clarence Thomas (Written opinion)	June 30, 2020	Concurring	Human interest frame	"Until we correct course on that interpretation, individuals will continue to face needless obstacles in their attempts to vindicate their religious freedom."[110]
Justice Sonia Sotomayor (Written opinion)	June 30, 2020	Dissenting	Attribution of responsibility frame	"Today's ruling is perverse. Without any need or power to do so, the Court appears to require a State to reinstate a tax-credit program that the Constitution did not demand in the first place."[111]

[106] Brief for the Cato Institute as Amicus Curiae Supporting Petitioners, Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 4450, *4.

[107] Ibid at 7.

[108] Brief for the Tennessee Education Association as Amicus Curiae Supporting Petitioners, Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 6590, *3.

[109] Ibid.

[110] *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2263 (2020) (Thomas, J., concurring).

[111] *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2297 (2020) (Sotomayor, J., dissenting).

opinions. I compared the dominant frames and themes that emerged in the briefs to the dominant frames and themes that emerged in the written opinions of the justices. I used this information to determine if a new subtheme should be considered an emerging frame and added to the original codebook. As mentioned earlier, the qualitative content analysis process is a sequential, systematic, and recursive process that requires coding and recoding data. Like Mayring (2000) stated, it was an ongoing process that required me to reach saturation before concluding the end of the analysis process. The goal in this phase was to uncover the manifest and/or latent content and to make sense out of the data (Kibiswa, 2019).

Phase Three: Reporting the Analysis Process

During phase three of my research, I reported the final results of the study. I identified the initial research plan and list of steps I followed to conduct the study from the beginning to the end to ensure confirmability and dependability. Confirmability involves ensuring that data interpretation is grounded in the data and not based on the researchers' subjective view (Korstjens & Moser, 2018). Dependability involves ensuring that the records of the research path are maintained throughout the process of the study and that the study follows the standard practices of a particular design (Korstjens & Moser, 2018). I created an audit trail using the NVivo software by documenting each step of the process in the note and annotation sections of the program as referenced above (see Appendix B).

At the end of this process, I developed a rich, thick, descriptive analysis of the findings that included matrices, quotes, excerpts, and evidence that supported the underlying frames and themes of the research (Lincoln & Guba, 1985). I engaged in a process known as reflexivity and reflected on my own conceptual framework to determine how my own perceptions influenced my research outcomes. According to Korstjens and Moser (2018), "As a qualitative researcher,

you have to acknowledge the importance of being self-aware and reflexive about your own role in the process of collecting, analyzing, and interpreting data, and in the preconceived assumptions, you bring to your research" (p. 123). Thus, I identified limitations of the study and made recommendations for future research.

In sum, qualitative content analysis is a very time consuming and challenging research methodology. The categories and themes that are described by the researcher can be very abstract. Since the analysis is based on interpretation, the initial coding of texts is crucial to the research process. The codebook contains the operational definitions that are developed and refined throughout the research process; if the coding is inaccurate, then the findings are invalid. Invalid findings pose challenges to the researcher to demonstrate the credibility and authenticity of the interpretation of the data (Graneheim, et al., 2017). Lincoln and Guba (1985) recommended that credibility can be established through activities such as triangulation, prolonged immersion into the data, audit trail, or peer debriefing - among other activities.

Verification Methods

According to Lincoln and Guba (1985) trustworthiness is the rigorous procedures the researcher maintains throughout the research process to ensure credibility. To ensure trustworthiness the researcher must maintain credibility. Credibility can be maintained by developing a thorough plan for data collection, adhering to a well-defined coding scheme, and providing a descriptive report of the findings. Several practices were utilized during each phase of this study to ensure trustworthiness and credibility of the data collected and reported results. These practices included prolonged immersion into the data, audit trail, data triangulation (intra-rater reliability), and reflexivity - practices Lincoln and Guba (1985) say help ensure credibility.

Prolonged Immersion into the Data

According to Nowell, et al. (2017), an important step in establishing trustworthiness in qualitative studies is the investment of appropriate time immersed in the data in which the researcher develops an understanding of the data, systematically organizes the text, looks for emerging patterns and ideas, identifies passages or themes based on the codebook, and detects codes that challenge the codebook. As identified in Phase Two of the qualitative content analysis procedure, I immersed myself into the amicus briefs and written opinions of the United States Supreme Court justices and created a Reading Summary Form. This document has text passages coded to match operational definitions based on the codebook for each amicus brief and justices' opinion rendered in the case. Aside from creating a Reading Summary Form, I also created a Thematically Clustered Matrix that chunks text from multiple briefs and justices' opinions together that matches the operational definitions identified in the codebook (see Appendix D).

Audit Trail

In addition to prolonged immersion into the data, some researchers recommend the development of an audit trail (Hsieh & Shannon, 2005; Lincoln & Guba, 1985; Nowell, et al., 2017). An audit trail is a systematic collection of materials that allow an independent auditor to draw their own conclusions about the study based on the data (Hsieh & Shannon, 2005). For my audit trail I included raw data codified to a codebook identified during phase one and two of the process, reflexive notes, and annotations maintained in NVivo during the data analysis phase (see Appendices B and C). The provision of a decision trail that describes my rules for categorizing data and making analytical inferences about the data are found in Table 5 through Table 9, inclusive.

Data Triangulation

Data triangulation involves the use of multiple data sources for the purpose of authenticating conclusions (Denzin, 2012). This process is like what Krippendorff (2013) refers to as the degree of stability. Stability is defined as the degree to which a process is unchanging over time and over conditions. According to Krippendorff (2013), "The data for such assessments are created under *test-retest* conditions; that is, one observer rereads, recodes, or reanalyzes the same text after some time has elapsed, or the same measuring device is repeatedly applied to one set of objects" (pp. 270-271). The test-retest method is sometimes referred to as the intra-rater reliability method. This is where the rater uses a comparison coding sheet to track first, second, and final coding's of data to ensure consistency over time. Typically, the researcher applies a coefficient of agreement method such Cohen's kappa statistic to assess reliability (Schreier, 2012). I checked consistency of my codes by calculating the average weighted percent agreement among coding sessions in NVivo with at least a three-week span between coding sessions.

Reflexivity

Reflexivity involves being aware of biases, prejudices, values, and judgments that the researcher brings to the study. Creswell (2014) describes reflexivity as how the researcher "reflects about how their role in the study and their personal background, culture, and experiences hold potential for shaping their interpretations, such as themes they advance and the meaning they ascribe to the data" (p. 186). To maintain reflexivity, I kept a journal in NVivo and recorded my thoughts on how my previous experiences and readings about my research affected my inquiry (see Appendix B). As part of the reflexivity process, I continuously assessed how my own bias affected how I coded, analyzed, and reported the data.

Role of the Researcher

Qualitative content analysis relies heavily on the researcher's interpretation of the text's relationship with its' intended audience. Being aware of my role as researcher was part of the reflexivity process identified above. As the researcher for this study, I developed a codebook that contained a list and description of all identified coding units of analysis (see Tables 5 through table 9 inclusive). The codebook identified the major thematic messages within the amicus briefs and written opinions of the justices. In addition, I explained the study's findings and provided details about the process that led to those findings. I discussed the limitations and strengths of the study. I ensured trustworthiness by providing all appendices, tables, and notes where necessary to support interpretations and conclusions drawn about the data (Zhang and Wildemuth, 2009).

Creswell (2014) emphasizes that researchers must understand how their background may shape the direction of the study, including their professional background. My personal interest in this study evolved out of my more than 25 years as an educator and administrator. As an educator, I developed an interest in how education policy was identified and formed during the era of No Child Left Behind. I was intrigued by the rapidity in which President Bush's education agenda was implemented. Equally fascinating was the idea that a republican president partnered with an iconic democratic leader, Ted Kennedy, to help push the legislation into law. My curiosity led me to return to the classroom to study how education policy was made and implemented at all levels of the legislative process. However, in recent years, it has become evident that the legislative process can be bypassed as policy actors and interest groups seek to avoid lengthy partisan debates by using the Court to mandate policy. This curiosity in how policy actors and interest groups go about this process has led me to this study on how the United States Supreme Court in recent years has become the arbitrator for many education policy decisions.

Conclusion

Chapter three of this study described the methodology and research design. All aspects of the research process were identified based on the qualitative content analysis method identified in this study. I discussed the procedures for data collection, data analysis, data reporting, and the development of the codebook. I included a visual for my research design (see Figure 1). I provided samples of my proposed codebook based on Semetko and Valkenburg's (2000) generic frames in Table 5 through Table 9 inclusive. I identified and discussed verification methods that I used to establish trustworthiness. Finally, I discussed my role as researcher and identified areas that may affect my reflexivity on this study.

CHAPTER 4

ANALYSIS AND FINDINGS

The first purpose of this qualitative content analysis was to identify the policy frames interest groups used in amicus briefs to frame policy preferences in the United States Supreme Court case *Espinoza v Montana* (2020).[112] A second purpose was to determine which (if any) policy frames found in the amicus briefs emerged in the written opinions of the justices. The findings of this study provide educational leaders, policy makers, and future researchers with information about which frames chosen by interest groups to frame policy preferences may (or may not) influence the Courts' opinion, and ultimately education policy and law.

This chapter is divided into four sections. First, a review of the coding process and results of intra-rater reliability were presented. In section two, a brief background was provided for each of the 18 amicus briefs selected for this study and each justice who served on the Supreme Court when *Espinoza* was decided. In the third section, findings were reported for each research question. In the fourth section results were reported for the themes that emerged from the codes.

Section One: Coding Process and Intra-rater Reliability

The following is a brief review of the coding process and the results of the intra-rater reliability. A detailed description of the methodology used to conduct this study can be found in Chapter 3.

Coding Process

Semetko and Valkenburg's (2000) generic frames were used as a lens to analysis the amicus briefs and justices written opinions in *Espinoza*. These frames were entered into NVivo as a priori codes as identified in Table 11. Next, the amicus briefs and justices written opinions

[112] *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246 (2020).

Table 11

Description of A Priori Coding Frames

Frame/A Priori Code	Definition
Conflict frame	This frame emphasizes conflict between individuals, groups, or institutions. This code applies to all references to individuals, groups, or institutions engaged in conflict. Conflict is defined as a clash of interest and the basis of the conflict may be personal, religious, racial, class, or political.
Attribution of responsibility frame	This frame emphasizes beliefs about the cause of an event or outcome of a situation. This frame attributes responsibility or a solution to a situation to either the government, individual, or group.
Morality frame	This frame puts the event, problem, or issue in context of religious tenets or moral prescriptions. It usually contains a moral message or prescription about how to behave.
Economic consequences frame	This frame reports an event, problem, or issue in terms of the consequences it will have economically on an individual, groups, or organizations.
Human interest frame	This frame brings a human face or an emotional angle to the presentation of an event, issue, or problem. It presents people and their problems, concerns, or achievements in a way that brings out empathy.

Note. Adapted from "Framing European Politics: A Content Analysis of Press and Television News" by Semetko, H. A., & Valkenburg, P. M., 2000, *Journal of Communication*, *50*(2), 93-109.

were uploaded into NVivo and organized into folders. Once assigned folders, each amicus brief and justices' opinion were assigned a case. Cases in NVivo represent units of analysis which in this study were represented by the amicus briefs and justices written opinions.

After the amicus briefs were organized into cases, each brief was assigned a position attribute based on whether the brief sought to reverse or affirm the decision. The same procedure was followed for judicial opinions. If the document was a majority opinion or concurring (majority) opinion, then the position attribute was concurring. If the document was a minority opinion including dissenting opinions, then the position attribute was dissenting.

The attributes assigned to each case were utilized to organize the data in NVivo so that a variety of queries could be explored through NVivo's exploration features such as charts, diagrams, and cluster analysis. These features were utilized to help identify patterns and relationships. NVivo's auto-coding feature was used to identify emerging sub-themes related to the dominant frame in each brief and written opinion. These sub-themes are discussed in sections three as emerging themes as they relate to each dominant frame.

Intra-Rater Reliability

Intra-rater reliability is a method used by qualitative researchers to measure consistency within an individual coders coding process (Neuendorf, 2017). Intra-rater reliability is measured in studies where there is only one coder who codes data during at least two separate periods of time. Typically, reliability measures of .80 or higher are considered reliable (Neuendorf, 2017). Data for this study was coded over a period of two months. During the coding period, I coded 18 amicus briefs and seven justices written opinions at two separate time intervals with at least three weeks between coding periods. Using the codebook created based on Semetko and Valkenburg's (2000) generic frames, I coded 1,183 references during the first coding period. A reference is a

piece of text that has been coded to one of the codes in a codebook. The same documents were coded at the later time interval and checked for reliability. I coded 1,185 references during the second coding period. Although there was three or more weeks between coding periods, I was able to maintain a high consistency in coding with an intra-rater reliability rate of .85 or 85%.

Section Two: Background of Selected Amici Curiae and Supreme Court Justices

In this next section I discussed the various backgrounds of the amici curiae acting on behalf of interest groups who filed briefs in *Espinoza.* I also provided background information on the Supreme Court justices who presided over this case.

Amici Curiae

The background of the amici curiae who filed briefs on behalf of interest groups in *Espinoza* cover a broad spectrum of political and social groups. Amici curiae, acting on behalf of interest groups which included think tanks, state coalitions, 131 current and former state legislators and governors, teacher unions or affiliations, and religious organizations, filed 45 amicus briefs either in opposition to or support of the lower court's ruling. Of the 18 selected amicus briefs used in this study, nine represented liberal and/or conservative non-profit organizations (NPO), four represented religious organizations, three represented educational related industry associations or unions, one represented a libertarian think tank, and one represented five individuals.

Several of the selected briefs had more than one organization or individual sponsor the brief. To identify the brief each one was assigned a Lead Amici based on the first organization or individual represented on the cover page of the brief. For example, Brief of EdChoice, Reason Foundation, and the Individual Rights Foundation as Amici Curiae in Support of Petitioners is identified in Table 12 as Lead Amici - EdChoice. Also found in Table 12 is a brief description of

Table 12

Description of 18 Amicus Briefs Used in This Study

Lead Amici	Mission/Belief Statement	Position	Dominant Frame
Americans for Prosperity and Yes, Every Kid 1310 N. Courthouse rd. Suite 700 Arlington, VA. 22201 https://americansforprosperity.org/about	"Americans for Prosperity is dedicated to the belief that every person has a unique set of gifts and the ability to contribute to society in their own way, an idea that has inspired progress since our country's founding."	Reverse	Attribution of Responsibility
Billy Graham Evangelist Assoc, et.al. 1 Billy Graham Parkway, Charlotte NC 28201 https://www.billygraham.org/about	"Continuing the lifelong work of Billy Graham, the Billy Graham Evangelistic Association exists to support and extend the evangelistic calling and ministry of Franklin Graham by proclaiming the Gospel of the Lord Jesus Christ to all we can by every effective means available to us and by equipping the church and others to do the same."	Reverse	Conflict
Center for Education Reform 1455 Pennsylvania Ave. NW Suite 462 Washington, DC 20004 https://edreform.com/about-2	"The mission of the Center for Education Reform is 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."	Reverse	Human Interest
EdChoice 111 Monument Circle Suite 2650 Indianapolis, IN 46204 https://www.edchoice.org/who-we-are/	"The EdChoice mission is to advance educational freedom and choice for all as a pathway to successful lives and a stronger society."	Reverse	Attribution of Responsibility
Georgia Goal Scholarship Program 3740 Davinci Court Suite 375 Peachtree Corners, GA 30092 https://www.goalscholarship.org/about_goal/page/mission	"The mission of Georgia GOAL Scholarship Program is to provide greater opportunities for access to learning for all Georgia children."	Reverse	Human Interest

Note. Mission/belief statement information obtained from Lead Amici's organization website and/or brief.

Table 12 cont.

Description of 18 Amicus Briefs Used in This Study

Lead Amici	Mission/Belief Statement	Position	Dominant Frame
Jerry and Kathy Armstrong/Pacific Legal Foundation, et al. 555 Capitol Mall, Suite 1290 Sacramento, CA 95814 https://pacificlegal.org	"Pacific Legal Foundation is a nonprofit legal organization that defends Americans' liberties when threatened by government overreach and abuse."	Reverse	Human Interest
Justice and Freedom Fund et al. 371 San Clemente San Clemente, CA 92772 (No website)	"Justice and Freedom Fund is a California non-profit, tax-exempt corporation formed to preserve and defend the constitutional liberties guaranteed to American citizens, through education, legal advocacy, and other means."[113]	Reverse	Conflict
Liberty Justice Center and Am. Fed. for Children 440 N. Wells St. Suite 200 Chicago, IL 60654 https://libertyjusticecenter.org/about/	"Liberty Justice Center fights for the constitutional rights of American families, workers, advocates, and entrepreneurs."	Reverse	Conflict
The Cato Institute 1000 Massachusetts Ave. NW Washington, DC 20001 https://www.cato.org/about	"The mission of the Cato Institute is to originate, disseminate, and increase understanding of public policies based on the principles of individual liberty, limited government, free markets, and peace. Our vision is to create free, open, and civil societies founded on libertarian principles."	Reverse	Morality
American Fed. of Teachers et al. 555 New Jersey Ave., N.W. Washington, DC 20001 https://www.aft.org/about/mission	"The American Federation of Teachers is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families, and our communities."	Affirm	Human Interest

Note. Mission/belief statement information obtained from Lead Amici's organization website and/or brief.

[113] Brief for Justice and Freedom Fund, et al., as Amici Curiae Supporting Petitioners. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), Briefs Lexis 4619.

Table 12 cont.

Description of 18 Amicus Briefs Used in This Study

Lead Amici	Mission/Belief Statement	Position	Dominant Frame
Baptist Joints Commission200 Maryland Ave., N. E. Washington, DC 20002 https://bjconline.org/?s=mission+state%2Cemt	"BJC's mission is to defend and extend God-given religious liberty for all, furthering the Baptist heritage that champions the principle that religion must be freely exercised, neither advanced nor inhibited by government."	Affirm	Human Interest
Freedom from Religion Foundation PO Box 750 Madison, WI 53701 https://ffrf.org/about	"The purposes of the Freedom from Religion Foundation, Inc., as stated in its bylaws, are to promote the constitutional principle of separation of state and church, and to educate the public on matters relating to non-theism."	Affirm	Economic Consequence
Montana/N. Wyoming Conf., et al. 2016 Alderson Ave. Billings, MT 59102 http://www.mnwcucc.org	"Drawn together by the Holy Spirit, we are a distinct and diverse community of Christians that come together as one church, joining faith and action. In covenant with the church in all of its settings, we serve God in the co-creation of a just and sustainable world as made manifest in the Gospel of Jesus Christ."	Affirm	Conflict
Montana Association of Rabbis McDermott Will & Emery LLP 500 North Capital Street, NW Washington, DC 20001 (No website)	"Montana Association of Rabbis is an association formed for the purpose of providing a rabbinical voice for Montana's Jews. MAOR may issue position papers and statements, respond to government policy and initiatives, engage in collaborative work with other religious and advocacy organizations, and perform other activities that address issues affecting the Jewish community of Montana."[114]	Affirm	Conflict

Note. Mission/belief statement information obtained from Lead Amici's organization website and/or brief.

[114] Brief for Montana Association of Rabbis as Amicus Curiae Supporting Respondents. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), Briefs Lexis 6585.

Table 12 cont.

Description of 18 Amicus Briefs Used in This Study

Lead Amici	Mission/Belief Statement	Position	Dominant Frame
National Disability Network 820 First St. NE, Suite 740 Washington, DC 20002 https://www.ndrn.org/about/	"NDRN's mission is to promote the integrity and capacity of the P&A and CAP national network and to advocate for the enactment and vigorous enforcement of laws protecting civil and human rights of people with disabilities. NDRN has a vision of a society where people with disabilities have equality of opportunity and are able to participate fully in community life by exercising choice and self-determination."	Affirm	Human Interest
National School Board Association 1680 Duke St. FL. 2 Alexandria, VA 22314 https://www.nsba.org/about	"Working with and through our State Associations and the U.S. territory of the Virgin Islands, NSBA Advocates for Equity and Excellence in Public Education through School Board Leadership."	Affirm	Economic Consequence
Public Finds Public Schools 60 Park Place, Suite 300 Newark, NJ 07102 https://pfps.org/about.html	"Efforts to undermine public education by promoting the use of public funds for private education, including through various kinds of private school vouchers (traditional private school vouchers, tax credit vouchers, and education savings account vouchers, among others), must be met with a robust, sustained response to safeguard the nation's public schools."	Affirm	Conflict
Tennessee Education Association 801 Second Avenue North Nashville, TN 37201 https://www.teateachers.org/about-tea	"The mission of the Tennessee education Association is to protect and advocate for our students, our profession, and our members to create great public schools that prepare everyone for success in global society."	Affirm	Economic Consequence

Note. Mission/belief statement information obtained from Lead Amici's organization website and/or brief.

the lead organizations mission and belief statements retrieved from the organization's website or mission statement found in the section of each brief labeled Interest of Amicus. Table 12 also identifies the amici's position and dominant frame coded within each brief.

Information about the United States Supreme Court Justices who served on the bench at the time of Espinoza can be found in Table 13. Table 13 also identifies the justices' position, and dominant frame coded within each written opinion. To recap, the question the Court was asked to address was as follows:

> Does a state law that allows for funding for education generally while prohibiting funding for religious schools violate the Religion Clauses of the Equal Protection Clause of the federal Constitution?[115]

Chief Justice John Roberts delivered the majority opinion of the Court. Justices Thomas, Alito, Gorsuch, and the newly appointed Kavanaugh joined. In addition, Justice Thomas filed a separate concurring opinion which Justice Alito also joined. Justices Alito and Gorsuch also filed separate concurring opinions. Aside from those who concurred with the majority opinion of the Court, Justice Ginsburg, Sotomayor, and Breyer filed dissenting opinions. Justice Kagan joined with both Justice Ginsburg and Justice Breyer in their separate dissenting opinions.

In conclusion, 18 amicus briefs and seven justices' written opinions were coded for dominant frames based on Semetko and Valkenburg's (2000) generic frames. Approximately 1,185 references were coded across the dataset. Dominant codes were identified for the amicus curiae briefs and the justices' written opinions. Dominant frames based on the attributes of the amicus briefs and justices' opinions were discussed along with the dominant emerging theme identified in each brief and opinion.

[115] *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246 (2020).

Table 13

Supreme Court Justices Background Information, Position, and Frame Findings

Justice	Background Information	Type of Opinion	Dominant Frame Findings
John G. Roberts, Jr. Chief Justice of the United States Supreme Court	Born January 27, 1955, Roberts was appointed to the United States Supreme Court on September 29, 2005, by President George W. Bush.	Majority opinion joined by Thomas, Alito, Gorsuch and Kavanaugh	Attribution of Responsibility
Clarence Thomas Associate Justice	Born June 23, 1948, Thomas was appointed to the United States Supreme Court on October 23, 1991, by President George H.W. Bush.	Concurring/joined by Gorsuch	Attribution of Responsibility
Stephen G. Breyer Associate Justice	Born August 15, 1938, Breyer was appointed to the United States Supreme Court on August 3, 1994, by President Bill Clinton.	Dissenting/joined by Kagan	Human Interest
Samuel A. Alito, Jr. Associate Justice	Born April 1, 1950, Alito was appointed to the United States Supreme Court on January 31, 2006, by President George W. Bush.	Concurring	Human Interest
Sonia Sotomayor Associate Justice	Born June 25, 1954, Sotomayor was appointed to the United States Supreme Court on August 8, 2009, by President Barack Obama.	Dissenting	Attribution of Responsibility
Elena Kagan Associate Justice	Born April 28, 1960, Kagan was appointed to the United States Supreme Court on August 7, 2010, by President Barack Obama.	Dissenting/joined with Ginsburg and Breyer	N/A
Neil M. Gorsuch Associate Justice	Born August 29, 1967, Gorsuch was appointed to the United States Supreme Court on April 10, 2017, by President Donald J. Trump.	Concurring	Conflict
Brett M. Kavanaugh Associate Justice	Born February 12, 1965, Kavanaugh was appointed to the United States Supreme Court on October 6, 2018, by President Donald J. Trump.	Joined with majority opinion	N/A
Ruth Bader Ginsburg Associate Justice	Born March 15, 1933, Ginsburg was appointed to the United States Supreme Court on August 10, 1993, by President Bill Clinton. Ginsburg died on September 18, 2020.	Dissenting	Ties w/attribution of responsibility, conflict, and economic consequence

Note. Information obtained from Supreme Court of the United States at https://www.supremecourt.gov/about/biographies.aspx

Section Three: Research Question Findings

This section of this chapter addressed the two research questions that guided this study. The research questions were as follows:

RQ1. What dominant policy frames do interest groups use to frame policy preferences in *Espinoza v. Montana* (2020)?

RQ2. Which (if any) policy frames found in the amicus briefs emerge in the written opinions of the United States Supreme Court justices in *Espinoza v. Montana* (2020)?

RQ1: Amicus Briefs – Dominant Frames

To answer the first research question of this study each brief was analyzed using Semetko and Valkenburg's (2020) generic frames. A codebook was developed as identified in chapter 3 Table 5 through Table 9 inclusive. Each brief was coded based on the criteria identified in the codebook. The total number of code references contained within all the amicus briefs totaled 1,005. All the amicus briefs had varying units of analysis as well as coding due to the different lengths of individual briefs, therefore the frequency of the code reference was converted from raw frequencies to percentages. This data was used to determine the least to most dominant frames across all the briefs by calculating the percentage outcome for each policy frame. This information can be found in Table 14.

Among the individual briefs, the most dominant frame was the human-interest frame. The second most dominant frame was the conflict frame. The economic consequence frame was the third dominant frame. The attribution of responsibility frame was the fourth dominant frame, and the least dominant frame was the morality frame. Surprisingly, there was more than an 18% spread between the most dominant frame (human interest) and least dominant frame (morality).

Table 14

Amicus Briefs: Results by Frame, Frequency of Code Reference, and Percentage of References

Frame	Frequency of code reference	Percentage
Morality frame	128	12.74%
Attribution of responsibility	137	13.63%
Economic consequence frame	173	17.21%
Conflict frame	258	25.67%
Human Interest frame	309	30.755
Total	1,005	100%

After identifying the dominant frames based on each individual brief, dominant frames based on the positionality of the interest group were identified (i.e., whether the amici curiae writing on behalf of the interest groups advocated to reverse or affirm the lower court decision). When the amicus briefs were evaluated based on whether the interest groups advocated for reversal or affirmation of the lower court's decision, a richer more detailed story emerged among the interest groups which demonstrated their different perceptions of the case. These differences among interest groups perceptions determined which frame each individual interest groups were more likely to use to frame their policy preference. The percentage of frame usage by petitioners and respondents is reported in Figure 2.

One difference, for example was that respondents cast policy preferences based on the human-interest frame 33.21% of the time while petitioners based their policy preference on the human-interest frame only 27.75% of the time – a clear 5.5% spread. Respondents were 5.7% more likely than petitioners to frame policy preferences based on the economic consequence frame, while petitioners were 6.5% more likely to reference concerns based on the morality frame. Respondents were less likely than petitioners to attribute responsibility of an event or situation to some other entity such as the government, individual, or group. Furthermore, petitioners were less likely to reference conflict as a policy frame than respondents.

The largest spread among the interest groups was within the attribution of responsibility frame. Respondents were coded to this frame 9.44% while petitioners were coded to this frame 18.72%. with a 9.3% spread. The code with the least spread among the interest groups was the conflict code. Petitioners were coded to this frame 23.13% while respondents coded to this frame 27.77% with a spread of 4.64%.

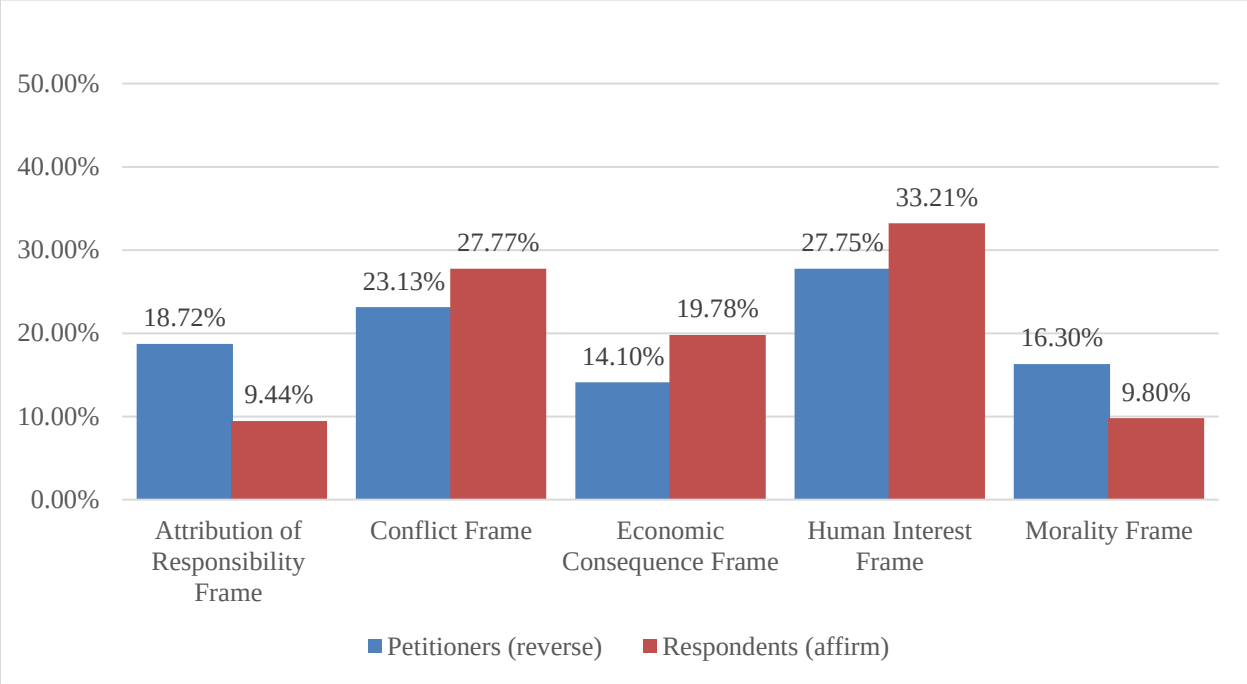

Figure 2

Percentage of Policy Frames Coded to Petitioners and Respondents

RQ2: Justices Written Opinions – Dominant Frames

The second research question of this study identified the dominant frames found in each of the justices' opinions. Each opinion was analyzed using Semetko and Valkenburg's (2000) generic frames based on the codebook identified in chapter 3 Table 5 through Table 9 inclusive. After identifying the dominant frame in each justices' opinion, each of the five frames were evaluated to determine which frame was dominant across all the justices' opinions. Like the amicus briefs, all the opinions had varying units of analysis as well as coding due to the different lengths of the opinions, therefore the frequency of the coding inquiry was converted from raw frequencies to percentages. This information is provided in Table 15.

As shown in Table 15, the total number of code references contained within the opinions totals 180. The dominant frame across the justices' opinions was the attribution of responsibility frame and the least dominant was the economic consequences frame. The second dominant frame was the conflict frame. When the opinions are evaluated based on whether the justices concurred or dissented differences among the justices emerge. For example, concurring justices cast policy preferences based on the human-interest frame 27% of the time, while dissenting justices based their policy preference on the human-interest frame only 18.75% of the time. Dissenting justices were 7.75% more likely than concurring justices to frame policy preferences based on the attribution of responsibility frame, while concurring justices were 3.50% more likely to reference concerns based on the morality frame. In addition, concurring justices were less likely than dissenting justices to attribute responsibility of an event or situation to some other entity such as the government, individual, or group. Furthermore, the concurring justices were 4.25% less likely to reference economic consequences as a policy frame than the dissenting justices. The percentage of frame usage by justices' is reported in Figure 3.

Table 15

Justices' Opinions: Results by Frame, Frequency of Code Reference, and Percentage of References

Frame	Frequency of code reference	Percentage
Economic consequence frame	16	8.90%
Morality frame	26	14.44%
Human interest frame	42	23.33%
Conflict frame	43	23.89%
Attribution of responsibility frame	53	29.44%
Total	180	100%

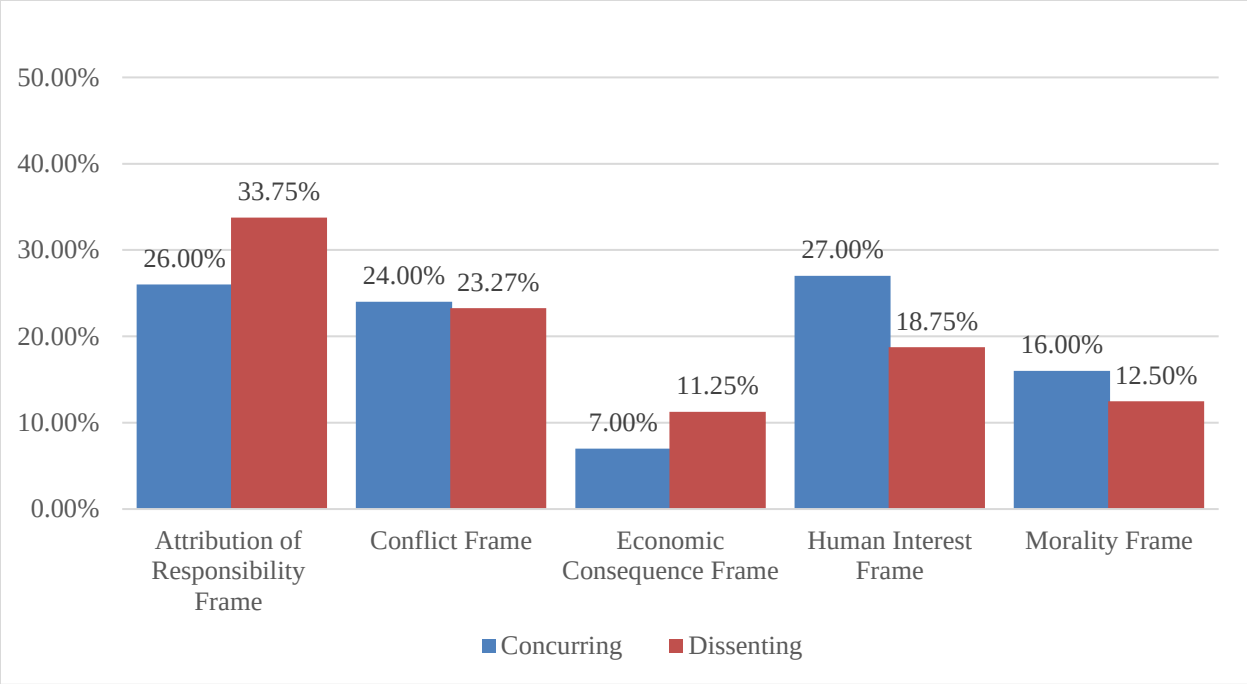

Figure 3

Percentage of Policy Frames Coded to Concurring and Dissenting Justices

Section Four: Emerging Themes

In this section emerging themes based on Semetko and Valkenburg's (2000) generic frames were explored. NVivo auto code software was used to identify emerging themes within each a priori frame identified in the codebook. The emerging themes that resulted from this query were reported as a frequency of occurrences for each generic frame. Furthermore, to understand how these emerging themes were framed by interest groups each theme was explored by highlighting excerpts from the text of the briefs and opinions. By illuminating how interest groups and justices referenced the theme a more comprehensive understanding of how interest groups frame policy preferences were formed.

To better visualize data from multiple sources excerpts from the briefs and opinions matching the emerging theme were identified and organized into a thematically clustered matrix for easy comparison. Frequency counts provided some insight into how often interest groups and justices used frames, but the written text provided greater understanding of how emerging themes were used to frame policy preferences. Placing this data into a thematically clustered matrix made it easier to identify nuances within the variety of text. This information was organized around each generic frame, emerging theme, and type of text (i.e., amicus brief or justices' opinion). The result of this query is discussed in the section that follows.

Thematically Clustered Matrix

The following information was organized around each a priori code identified in the code book, emerging themes, and text that illuminated the discussion. The frequency information for each a priori code was provided in a chart and the discussion was organized into a matrix for each a priori code and emerging frame. This information served to highlight how interest groups and justices used the same frame to emphasize different aspects of the same topic.

Attribution of Responsibility Frame

This frame emphasized beliefs about the cause of an event or outcome of a situation. This frame attributed responsibility or a solution to a situation to either the government, individual, group, or program established by one of the aforementioned. The emerging theme identified in this frame was Religion Clauses.

Religion Clause

The Religion Clauses theme referred to the two clauses found within the First Amendment of the United States Constitution which contains two provisions concerning religion. The Establishment Clause forbids the federal government from establishing an official state religion, and the Free Exercise Clause prohibits the state from interference with religious beliefs. Eight petitioners, six respondents, and five justices referenced this emerging theme. The National School Board Association referenced this theme 15 times. The Justice and Freedom Fund referenced the theme 18 times. Justice Thomas referenced this emerging theme 28 times while Justice Breyer referenced the emerging theme 12 times.

Amicus Briefs. It is evident that the amici for Americans for Prosperity's negative language (root out, wholly incompatible) signaled discontent with past decisions made by the Court as it related to the Religion Clauses. In the written brief, amici listed several cases reviewed by the Court in which they believe the Court erred in its decision. The respondent, Freedom from Religion Foundation, conversely, cited evidence of how the Court reaffirmed the Courts decision in *Everson v. Board of Education* (1947). Amici for Freedom of Religion foundation stated, "The American experiment in separating state and church succeeded. We lack the oppressive history of government-enforced tithing."[116]

[116] Brief for Freedom from Religion Foundation, et al., as Amicus Curiae in Support of Respondents. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 6523, *6.

Petitioners for the Liberty Justice Center, on the other hand, attributed the responsibility of the failure to honor adherences to the Religion Clauses as a failure on the part of the Montana Department of Revenue to protect students by denying students the option of attending a religious school. Amici for Liberty Justice Center stated:

> The department's rule flips the Establishment Clause on its head. It uses the power of the state to the exercise of civil liberties. Thus, the department finds itself as the bouncer… barring the schoolhouse door to low-income children by relying on the state Blaine Amendment.[117]

Justices Opinions. In his written opinion Justice Thomas attributed what he perceives as missteps in previous cases regarding the religion clauses to the Courts. Thomas specifically stated that his purpose for writing a separate opinion was to explain how the Establishment Clause interfered with free exercise rights. Thomas wrote, "Until we correct course on that interpretation, individuals will continue to face needless obstacles in their attempts to vindicate their religious freedom."[118] Justice Breyer, however, believes the Religion Clauses have helped the Court navigate potential discord. Breyer wrote, "Taken together, the Religion Clauses have helped our Nation avoid religiously based discord while securing liberty for those of all faiths."[119]

The frequency count for each amici curiae and justice was provided in Figure 4. Information illustrating how amici and the justices used this theme to help frame arguments as they related to the religion clause subtheme was displayed in Table 16.

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[117] Brief for the Liberty Justice Center and American Federation for Children as Amicus Curiae in Support of Petitioners. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 5118, *16.

[118] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2263 (2020) (Thomas, J., concurring).

[119] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2281 (2020) (Breyer, J., dissenting).

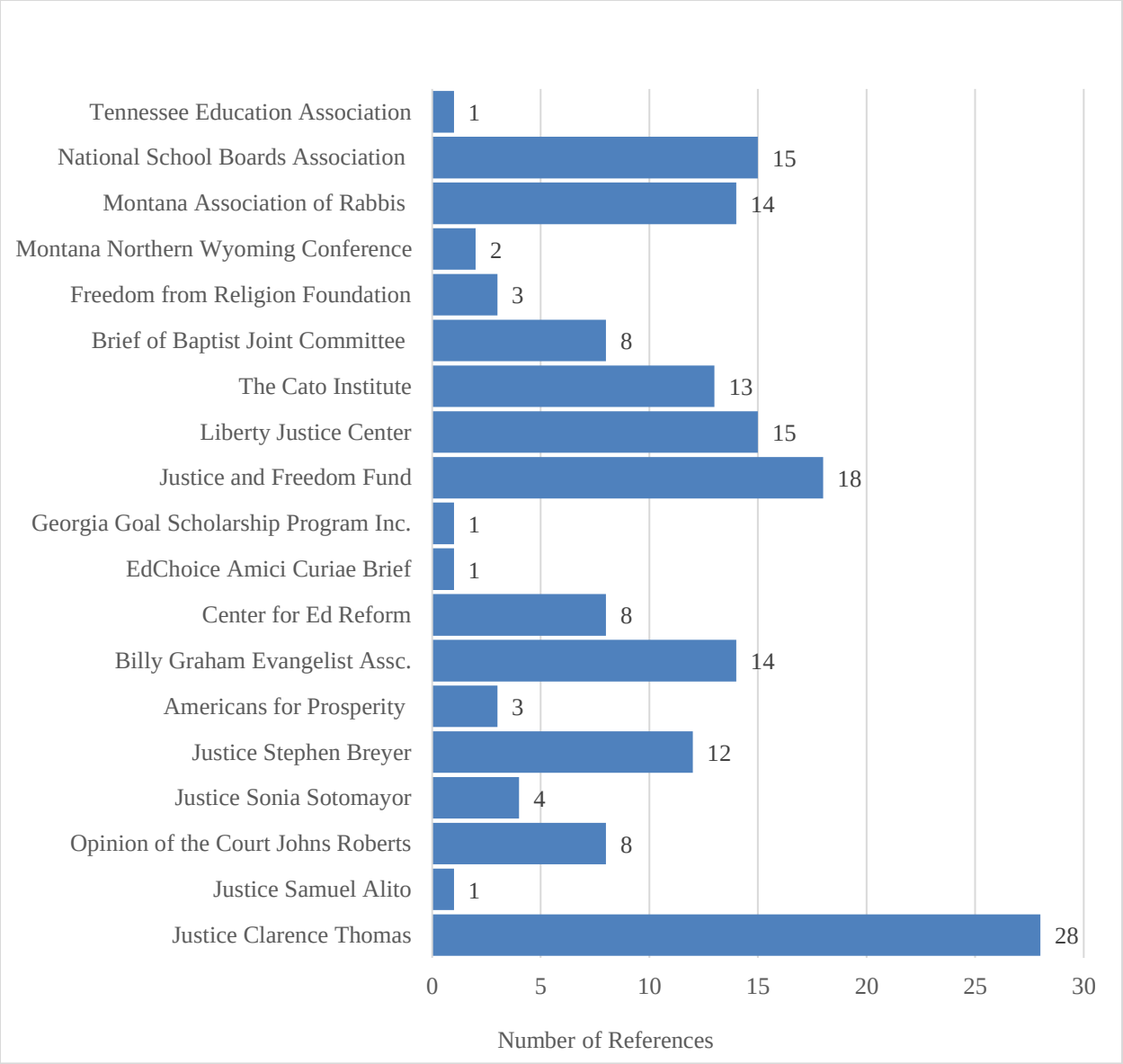

Figure 4

Frequency of Attribution of Responsibility Frame: Sub-Theme Religion Clause

Table 16

Attribution of Responsibility Matrix: Sub-Theme Religion Clauses

Case	Position	Excerpt
Americans for Prosperity	Reverse	"By trying to root out religious participation from a neutral program, the Montana Supreme Court applied a framework that is wholly incompatible with this Court's Establishment Clause and Free Exercise Clause jurisprudence."[120]
Freedom from Religion Foundation	Affirm	"The Court's lengthy discussions of the meaning and purposes of the First Amendment's religion clauses in these cases focused on the separation of religion and government—to the benefit of both. The Court never hinted that the religion clauses actually require taxpayers to fund religion."[121]
Justice Thomas	Concurring	"Thus, as I have explained, Locke incorrectly interpreted the Establishment Clause and should not impact free exercise challenges. Yet, as Montana's proffered justification for its law shows, governments continue to rely on Locke's improper understanding of 'antiestablishment interests' to defend against free exercise challenges."[122]
Justice Breyer	Dissenting	"That, in significant part, is why the Court has held that 'there is room for play in the joints' between the Clauses' express prohibitions that is 'productive of a benevolent neutrality,' allowing religious exercise to exist without sponsorship and without interference."[123]

[120] Brief for Americans for Prosperity, et al., as Amici Curiae Supporting Petitioners, Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 4433, *14.

[121] Brief for Freedom from Religion Foundation, et al., as Amicus Curiae in Support of Respondents. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 6523, *18.

[122] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2265 (2020) (Thomas, J., concurring).

[123] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2282 (2020) (Breyer, J., dissenting).

Conflict Frame

This frame emphasized conflict between individuals, groups, or institutions. This code applied to all references to individuals, groups, or institutions engaged in conflict. Conflict is defined as a clash of interest and the basis of the conflict may be personal, religious, racial, class, or political. The emerging theme identified in this frame was private schools.

Private School

The private schools theme referred to schools that are separate from public schools and require a fee paid by the student's family to attend. Some states allow the transfer of public funds in the form of school vouchers, education saving accounts, and scholarship tax credits paid directly to parents to use at a private school of their choice. Vouchers, or scholarship programs, allow students to use public monies to attend a private school of their choice. Education Savings Accounts make a portion of funds spent by the state at local public schools available to parents in the form of a spending account to use for private school tuition or other specified services. Nine petitioners, nine respondents, and five justices referenced this emerging theme. EdChoice referenced this theme 50 times and the National School Board Association referenced the theme 71 times. Chief Justice Roberts referenced this emerging theme 22 times while both Justice Ginsburg and Justice Breyer referenced the emerging theme nine times.

Amicus Briefs. Use of public funds to pay for private school tuition is often contentious. The debate often centers around issues of funding. Amici for EdChoice contended that at the center of this debate was the restrictive Blaine Amendments which limited or prevented states from funding private education which in turn limited parent choice due to the cost. EdChoice argued that individual tax credits and deductions allow parents to receive state income tax relief for approved educational expenses, which can include private school tuition, books, supplies, computers, tutors, and transportation. EdChoice argued, "Parents know what they want for their

children, but they often are not able to access the type of educational environment they desire for their child's education."[124]

Amici for the National School Board Association (NSBA), however, contended that programs that offered tax incentives or credits "purposely skirt state and federal legal constrictions, such as Montana's 'no-aid' provision, by funneling state dollars through parents or scholarship nonprofit corporations that in turn pay some portion of tuition at private schools".[125] This shift in funding ultimately hurts public schools and hinders public schools' ability to provide an abundance of programs that meet student needs. The NSBA argued that Montana's constitutional prohibition on funding to religious schools was based on the states dedication to ensuring top priority to the funding of public schools.

Justices' Opinions. Chief Justice Roberts disagreed with the NSBA. Roberts stated, "Montana's interest in public education cannot justify a 'no-aid' provision that requires only religious private schools to 'bear [its] weight.' 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."[126]

Justice Ginsburg, on the other hand, argued that a state was under no obligation to pay for private education, and that it was within the states right to choose not to fund private education.[127]

The frequency count for each amici curiae and justice was provided in Figure 5. Information illustrating how amici and the justices used this theme to help frame arguments as they related to the religion clause subtheme was displayed in Table 17.

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[124] Brief for EdChoice, et al., as Amici Curiae in Support of Petitioners. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 4461, *23.

[125] Brief for National School Boards Association et al., as Amici Curiae in Support of Respondents, Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis, 6535, *44.

[126] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2261 (2020) (Roberts, CJ).

[127] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2281 (2020) (Ginsburg, J., dissenting).

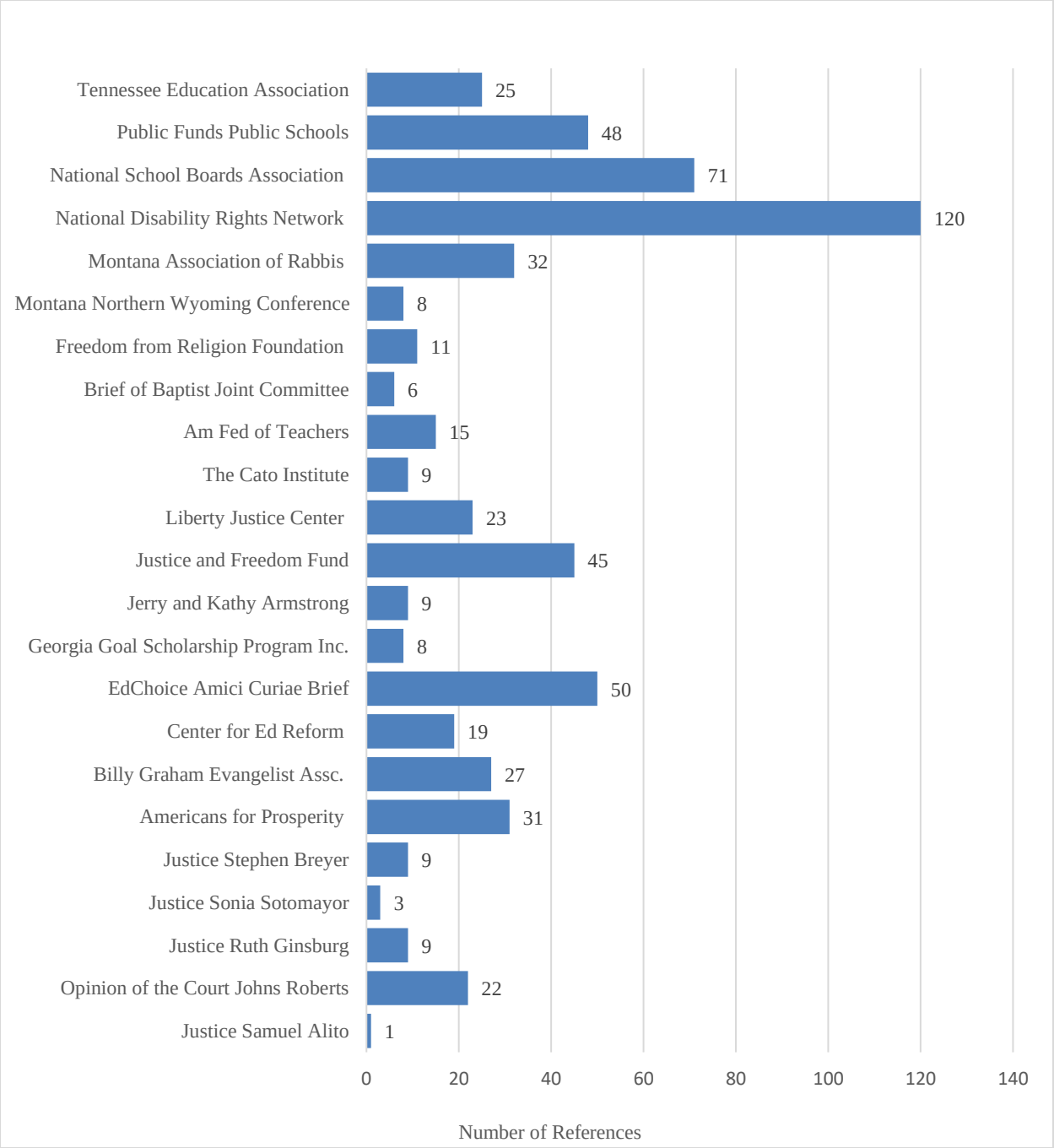

Figure 5

Frequency of Conflict Frame: Sub-Theme Private Schools

Table 17

Conflict Frame Matrix: Sub-Theme Private Schools

Case	Position	Excerpt
Center for Education Reform	Reverse	"Accordingly, the critical liberty interest of pursuing the most desirable education for one's child is promoted by programs that expand the options for parents to send their children to schools beyond their zip code—whether they take the form of vouchers, educational savings accounts, or tax credit scholarship programs."[128]
National School Boards Assoc.	Affirm	"If this Court decides to address whether the Montana constitutional provision as applied by its Supreme Court passes muster under the U.S. Constitution, Amici urge it not to steer away from its recognition that states may choose not to fund religious instruction in favor of supporting their public schools, and to consider the harm that will result to public education from any dramatic shift in its existing precedents."[129]
Chief Justice Roberts	Concurring	"Applying this provision to the scholarship program, the Montana Supreme Court noted that most of the private schools that would benefit from the program were 'religiously affiliated' and 'controlled by churches,' and the Court ultimately concluded that the scholarship program ran afoul of the Montana Constitution by aiding schools controlled by churches."[130]
Justice Ginsburg	Dissenting	"A State may distinguish within a benefit program between secular and sectarian schools, or it may decline to fund all private schools. The Court agrees that the First Amendment permits the latter course."[131]

[128] Brief for Center for Education Reform, et al., as Amici Curiae in Support of Petitioners. Espinoza v. Montana Dep't of Revenue, Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 4618, *15.

[129] Brief for National School Boards Association et al., as Amici Curiae in Support of Respondents, Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis, 6535, *14.

[130] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2256 (2020).

[131] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2280 (2020) (Ginsburg, J., dissenting).

Economic Consequence Frame

This frame reported an event, problem, or issue in terms of the economic consequences it had on individuals, groups, or organizations, and/or benefits/disadvantages of free market competition. The emerging theme identified in this frame was tax credits.

Tax Credits

Tax credits are incentives offered by a government entity that allows taxpayers to deduct the amount of the tax credit from the money they owe to the state. The contributed tax credit is donated to a student scholarship organization (SSO). As stated in chapter one, an SSO is non-profit organizations that receive donations from businesses or individuals that in turn distributes funds in the form of tuition scholarships to students who attend private schools. The issue of tax credits was at the heart of the *Espinoza.* Nine petitioners, seven respondents, and five justices referenced this emerging theme.

Amicus Briefs. Tennessee Education Association (TEA) referenced this theme six times and the Billy Graham Evangelist Assoc. referenced the theme eight times. According to amici for the TEA, tax credits are a means of repaying taxpayers who donate to student scholarship organizations (SSO) who support private education. TEA argued that the use of taxpayer funds to enable parents to send their child to a private school hurts public education because it takes much needed funds away from public schools.[132] The American Federation of Teachers (AFT) also supported this position.

Opposing TEA and AFT, amici for Billy Graham Evangelist Assoc. argued that like charitable organizations tax credits are not public funds because the money passes from taxpayers directly to private organizations. Amici for Billy Graham Evangelist Assoc. contended

[132] Brief for the Tennessee Education Association as Amicus Curiae in Support of Respondents. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 6590, *18.

that the funds were never part of the state's treasury because contrary to the oppositions argument it was erroneous to assume that taxpayer income "should be treated as if it were government property even if it has not come into tax collectors' hands…when the government decides not to tax something, it is granting a beneficence …"[133]

Justices' Opinions. Justice Gorsuch referenced this emerging theme seven times while Justice Breyer referenced this emerging theme two times. Justice Gorsuch, in support of the Billy Graham's organization position, argued donations enable school choice and without taxpayer support scholarships school choice in Montana would disappear. Gorsuch wrote,

> The people of Montana, acting through their legislature, adopted a school choice program. It provided a modest tax credit to individuals and businesses who donated to nonprofit scholarship organizations… What benefits the government decides to give, whether meager or munificent, it must give without discrimination against religious conduct.[134]

Justice Breyer argued that states have taken advantage of the 'play in the joints' between the Religion Clauses to develop programs which are designed to assist parents in the reimbursement of private school. Breyer writes, "…government benefits come in many shapes and sizes. The appropriate way to approach a State's benefit-related decision may well vary depending upon the relation between the Religion Clauses and the specific benefit and restriction at issue."[135]

The frequency count for each amici curiae and justice is provided in Figure 6. Information illustrating how amici and the justices used this theme to help frame arguments as it related to the religion clause subtheme is displayed in Table 18.

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[133] Brief for Billy Graham Evangelistic Association, et al., as Curiae Amicus in Support of the Petitioners, Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 5980, *10.

[134] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2274 (2020) (Gorsuch, J., concurring).

[135] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2290 (2020) (Breyer, J., dissenting).

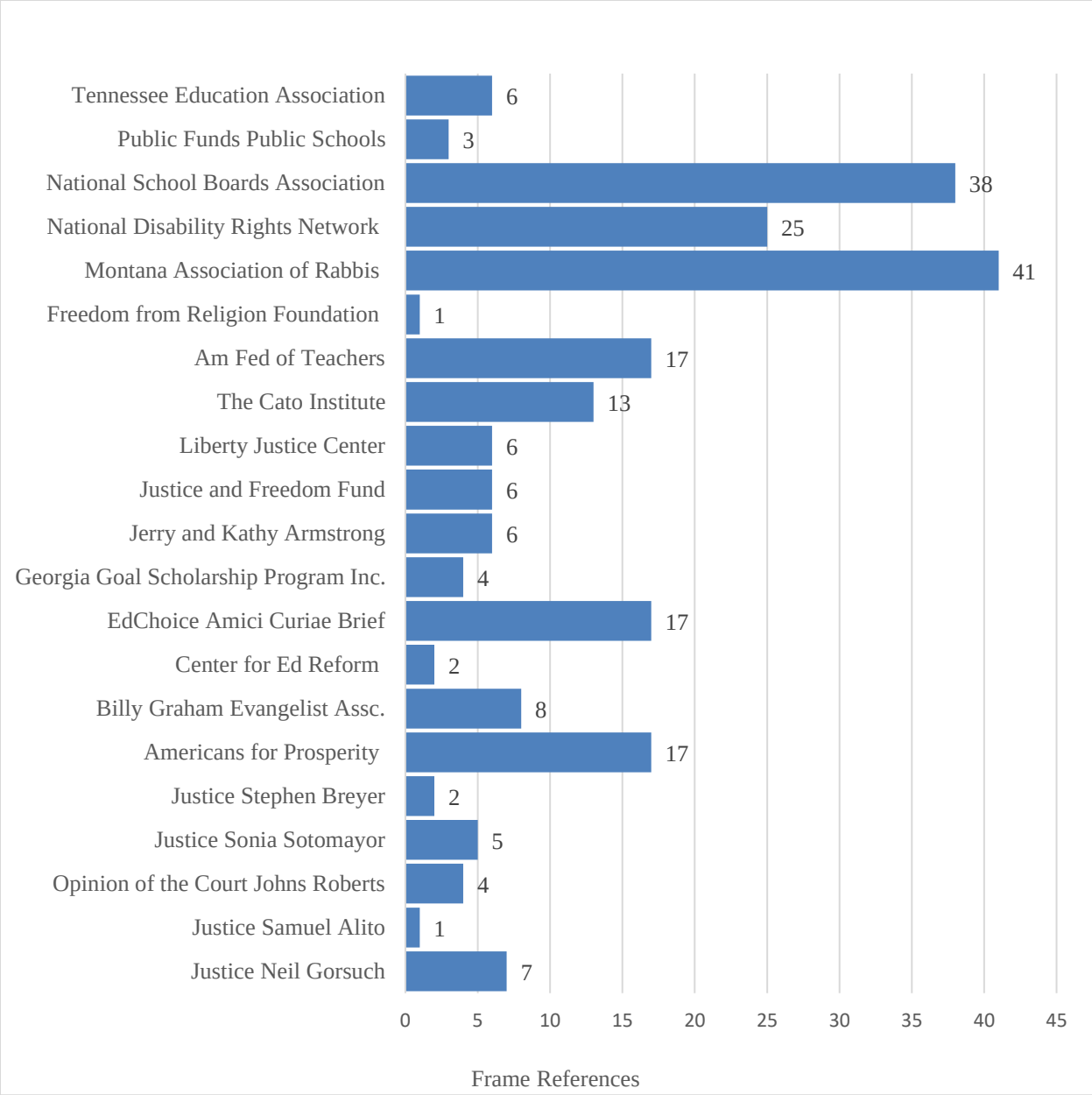

Figure 6

Frequency of Economic Frame: Sub-Theme Tax Credits

Table 18

Economic Consequences Frame Matrix: Sub-Theme Tax Credits

Case	Position	Excerpt
Billy Graham Evangelist Association	Reverse	"When the Montana Supreme Court predicated its decision on the assumption that the State owns all property it could tax and, thus, that the State is itself making a donation by giving a credit for an individual's donation, it assumed, albeit implicitly, that the State, like a communist or totalitarian form of government, was the owner and dispenser of all property and privileges. In doing so, it violated the guarantee in the Federal Constitution that (stating that racial segregation government be republican in form."[136]
Tennessee Education Association	Affirm	"The types of school-choice-at-taxpayer expense programs at issue here frustrate the societal purposes of public education by diverting government funds that otherwise would be spent to achieve those societal purposes."[137]
Justice Gorsuch	Concurring	"Those seeking a tax credit were free to choose whether to direct their donations to the independent scholarship organization; the organization was then free to choose scholarship recipients; and, after that, parents were free to choose where to use those scholarships."[138]
Justice Breyer	Dissenting	"Nor can I see how it could make a difference that the Establishment Clause might permit the State to subsidize religious education through a program like Montana's. The dissenting tax benefit here inures to donors, who choose to support a particular scholarship organization. That organization, in turn, awards scholarships to students for the qualifying school of their choice."[139]

[136] Brief for Billy Graham Evangelistic Association, et al., as Curiae Amicus in Support of the Petitioners, Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 5980, *21.

[137] Brief for the Tennessee Education Association as Amicus Curiae in Support of Respondents. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 6590, *18.

[138] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2274 (2020) (Gorsuch, J., concurring).

[139] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2287 (2020) (Breyer, J., dissenting).

Human Interest Frame

This frame effected a human face or an emotional angle to the presentation of an event, issue, or problem. It presented people and their problems, concerns, or achievements in a historical context and/or in a way that elicited empathy. The emerging theme identified in this frame was school choice.

School Choice

There are two general categories for school choice: public and private. Public school choice offers educational choice within the public school system such as charter schools, magnet schools, or open enrollment. Private school choice generally involves the transfer of public funds in the form of school vouchers, education saving accounts, and scholarship tax credits paid directly to parents to use at a private school of their choice. Eight petitioners, six respondents, and five justices referenced this emerging theme. Justice Alito referenced this emerging theme four times while Justice Sotomayor referenced this emerging theme only once. The Liberty Justice Center referenced this theme 20 times and the National Disability Rights Network (NDRN) referenced the theme five times.

Amicus Briefs. According to the Liberty Justice Center some parents favored school choice options because it allowed them to enroll their student in a school that supports their faith-based values, while other parents choose a school to meet the unique social-emotional needs of their student. Amici for the Liberty Justice Center, et. al., stated:

> There are numerous reasons why a family from a minority religion wish to send its children to a school affiliated with its faith…parents may wish to raise their children in their faith and send them to a school that offer systematic religious instruction.[140]

[140] Brief for the Liberty Justice Center, et al., as Amicus Curiae in Support of Petitioners. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 5118, *8.

Amici for the National Disability Rights Network (NDRN) oppose the Liberty Justice Centers perspective on school choice. The NDRN purported that private school choice programs do a disservice to students with disabilities because they often have little oversight in the services they provide, and they typically charge greater tuition than the amount of the voucher or tax-credit pays.[141]

Justices Opinions. Justice Alito argued that although today's public schools were very different from schools of the past, public schools still fall short of reassuring parents of different faiths that the local school does not promote a worldview different from their own. Referencing Horace Mann and the evolution of public schools in the United States, Justice Alito wrote, "Mann's goal was to 'Americanize' the incoming Catholic immigrants. In fact, he and other proponents of the common-school movement used language and made insinuations that today would be considered far more inflammatory."[142] Just as Justice Alito illuded to the indoctrination of students to worldly ways, Justice Sotomayor countered by arguing that some teachers in religiously affiliated schools are actual "ministers who inculcate the faith".[143] Sotomayor states that the majority decision in *Espinoza* "further slights both our precedents and our history and weakens this country's longstanding commitment to a separation of church and state beneficial to both" and thus she must respectfully disagree with the majority opinion.[144]

The frequency count for each amici curiae and justice was provided in Figure 7. Information illustrating how amici and the justices used this theme to help frame arguments related to the religion clause subtheme is displayed in Table 19.

[141] Brief for National Disability Rights Network, et al. as Amici Curiae in Support of Respondent. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 6743, *41.

[142] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2271 (2020) (Alito, J., concurring).

[143] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2297 (2020) (Sotomayor, J., dissenting).

[144] Ibid at 2292.

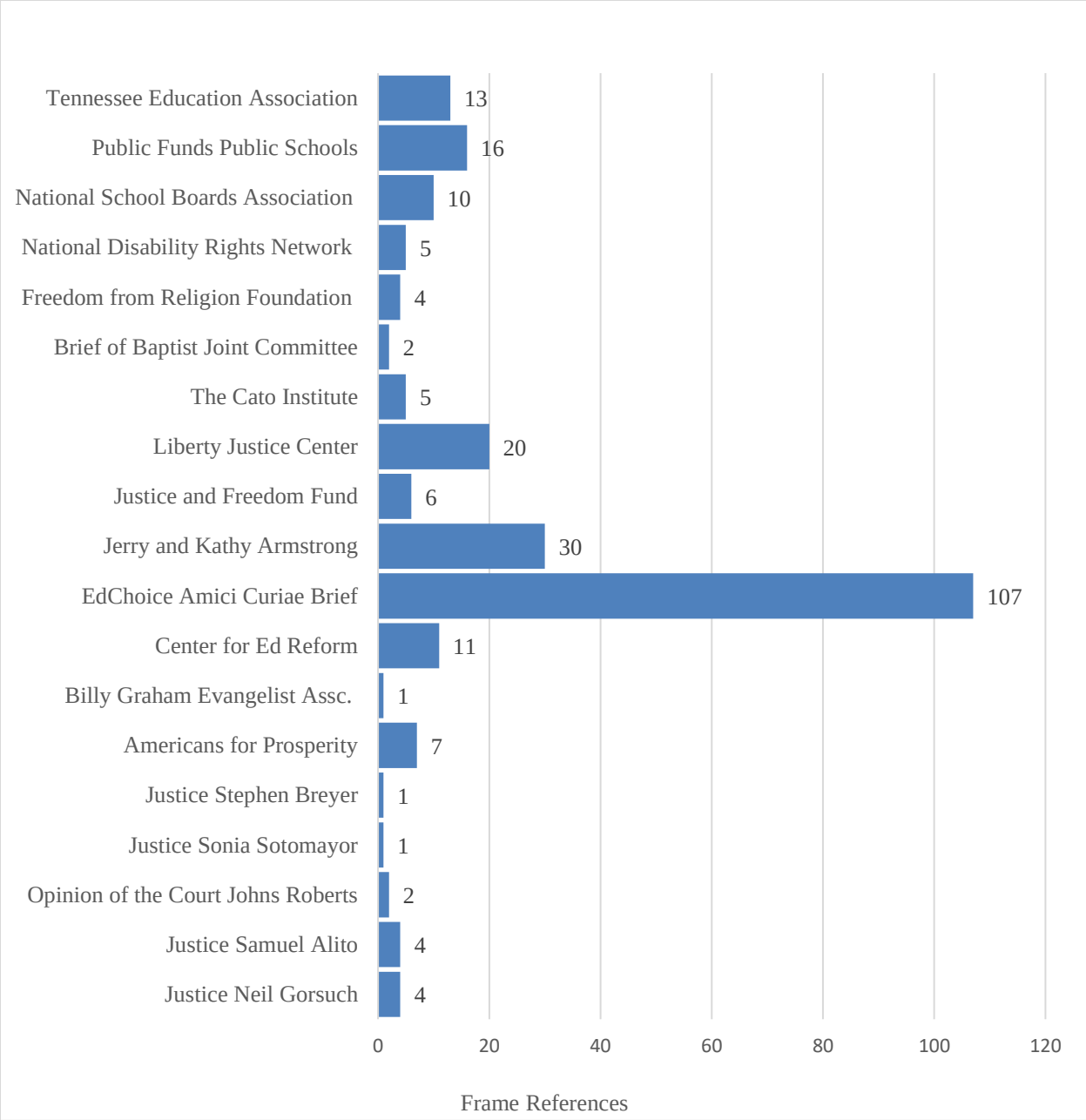

Figure 7

Frequency of Human Interest Frame: Sub-Theme School Choice

Table 19

Human Interest Matrix: Sub-Theme School Choice

Case	Position	Excerpt
Liberty Justice Center	Reverse	"Other children may look like most of their classmates, but some find themselves socially isolated or friendless because of their adherence to religious principles. They are bullied for not participating in the majoritarian activities of students at their public school: smoking e-cigarettes and marijuana, consuming alcohol underage, and sexting."[145]
National Disability Rights Network	Affirm	"Since enacting the IDEA in 1975, Congress has repeatedly enhanced it. But private-school voucher and tax credit programs, including the Montana program at issue in this case, risk arresting that progress and restoring the earlier era—during which millions of students with disabilities were barely educated, deprived of support and services, and segregated from their peers."[146]
Justice Alito	Concurring	"This history is well-known and has been recognized in opinions of this Court. A wave of immigration in the mid-19th century, spurred in part by potato blights in Ireland and Germany, significantly increased this country's Catholic population. Nativist fears increased with it. An entire political party, the Know Nothings, formed in the 1850s."[147]
Justice Sotomayor	Dissenting	"Neither differential treatment nor coercion exists here because the Montana Supreme Court invalidated the tax-credit program entirely. Because no secondary school (secular or sectarian) is eligible for benefits, the state court's ruling neither treats petitioners differently based on religion nor burdens their religious exercise. Petitioners remain free to send their children to the religious school of their choosing and to exercise their faith."[148]

[145] Brief for the Liberty Justice Center and American Federation for Children as Amicus Curiae in Support of Petitioners. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 5118, *15.

[146] Brief for National Disability Rights Network, et al. as Amici Curiae in Support of Respondent. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 6743, *18.

[147] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2269 (2020) (Alito, J., concurring).

[148] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2293 (2020) (Sotomayor, J., dissenting).

Morality Frame

This frame placed the event, problem, or issue in context of religious tenets, moral prescriptions, or the US Constitution/State Constitutions. It usually contained a moral message or prescription about how to behave or believe. The emerging theme identified in this frame was constitution.

Constitution

Constitution in this context referred to how amici and justice's lent special status to certain state and federal laws designed to promote or restrict issues concerning state rights, religious liberty and church-state separation issues, and other issues concerning the interpretation of the United States Constitution. Some amici and justices promoted strong adherence to the Courts interpretation of the Religion Clauses as outlined in *Everson*, while others promote a loose interpretation of the clauses. Nine petitioners, eight respondents, and seven justices referenced this emerging theme. Chief Justice Roberts referenced this theme 27 times while Justice Sotomayor referenced this emerging theme six times. The Cato Institute referenced this theme nine times and the Public Funds Public Schools referenced the theme 23 times.

Amicus Briefs. The divide on constitutional issues was not limited to the justices. The Cato Institute, for example, contended that the tax credit scholarship that Montana proposed to implement on its face value was neutral in respect to the Establishment Clause. The Cato Institute argued, however, that Blaine Amendments like the one in Montana's state constitution fueled the ideological conflict between supporters and non-supporters of school choice. Amici for the Cato Institute argued:

> Montana's Blaine Amendment can generate three results. First, when it serves to forestall any expenditure constituting an establishment – something equally disallowed under the

First Amendment – it is perfectly benign and serves as a valuable restatement of federal constitutional principles. The Tax Credit Program is not such an expenditure.[149]

Opposing the Cato Institute, Public Funds Public Schools contended that Montana's Blaine Amendment was designed by the 1972 Montana Constitutional Convention solely "to ensure that public funds be used solely to fund public schools, in order to safeguard Montana's mandate to provide its children a quality public education."[150] Amici for Public Funds Public Schools argued that the intent of Section 6 of the Montana State Constitution was to ensure that the state had the finest public school system accessible to all children in the state.[151]

Justices Opinions. The justices were also divided on many constitutional tenets. Justice Sotomayor contended that the Constitution does not require Montana to create a tax credit incentive. She maintained that the Court in *Espinoza* inappropriately mandated that Montana reinstate a tax credit program that was not required by the state's constitution. She goes on to argue that "Not only is the Court wrong to decide this case at all, it decides it wrongly."[152] Chief Justice Roberts asserts that the Court has standing, and strict scrutiny must be applied because "When otherwise eligible recipients are disqualified from a public benefit 'solely because of their religious character', we must apply strict scrutiny."[153]

The frequency count for each amici curiae and justice is provided in Figure 8. Information illustrating how amici and the justices used this theme to help frame arguments related to the religion clause subtheme was displayed in Table 20.

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[149] Brief for the Cato Institute as Amicus Curiae Supporting Petitioners, Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 4450, *9.

[150] Brief for Public Funds Public Schools as Amicus Curiae in Support of Respondents. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 6536, *11.

[151] Mont. Const. Art. X, § 6 (Nexis Uni current through 2021 Legis. Sess.).

[152] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2292 (2020) (Sotomayor, J., dissenting).

[153] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2260 (2020).

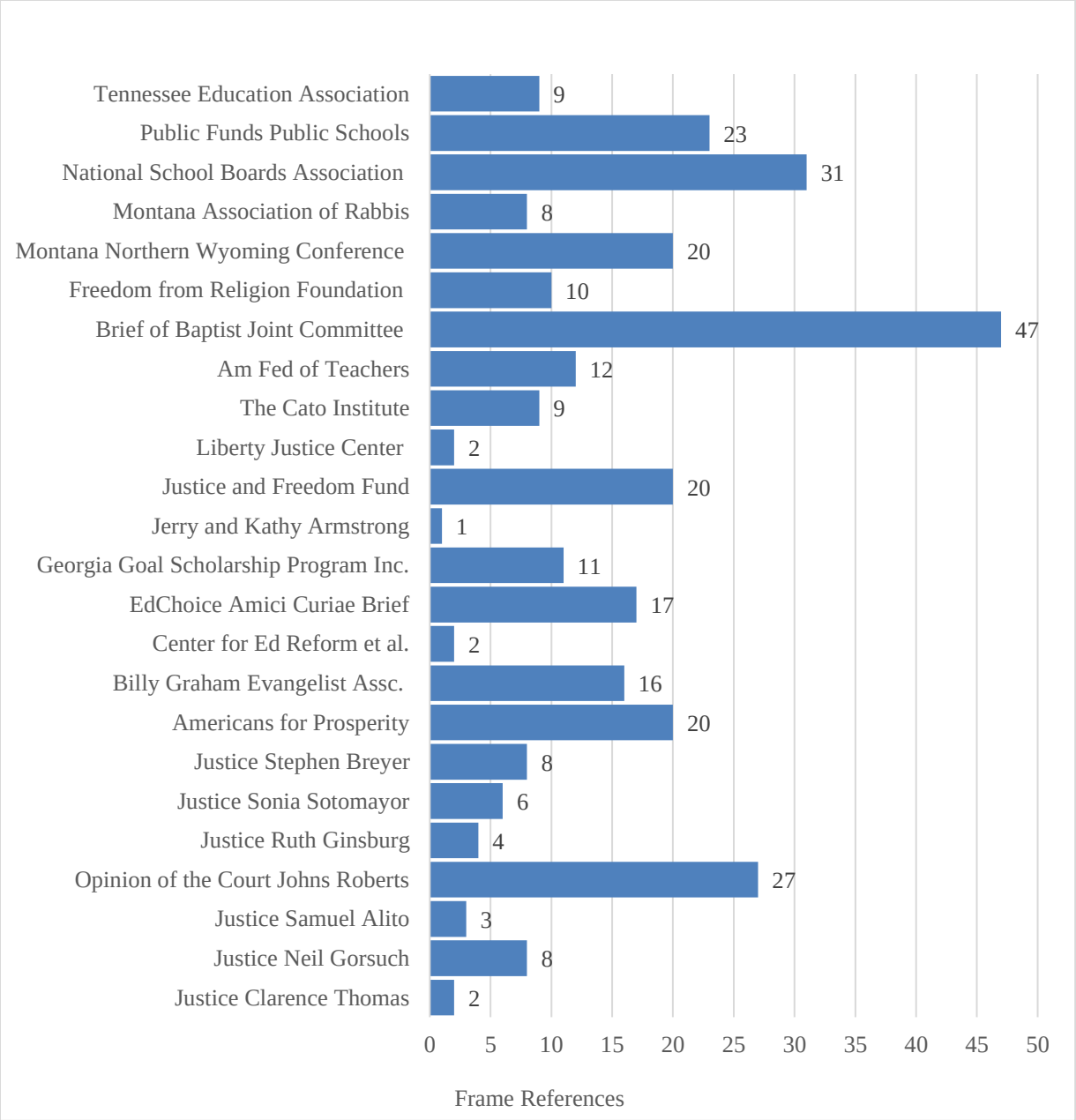

Figure 8

Frequency of Morality Frame: Sub-Theme Constitution

Table 20

Morality Frame Matrix: Sub-Theme Constitution

Case	Position	Excerpt
The Cato Institute	Reverse	"While this Court has never found the government's footing to be so narrow as to constitutionalize the entire field of relations between church and state, it has never been hesitant to offer correction when states fall on the side of either establishment or burdens on free exercise."[154]
Public Funds Public Schools	Affirm	"Constitution—the 'no-aid' clause—was debated, revised, and enacted as a result of Montana's well-documented 1972 constitutional reform process. Petitioners and Amici in support of Petitioners focus the lion's share of their briefing on constitutional debate and historical context from the 1800s. That is not the relevant inquiry. The meaning, intent, and popular understanding of Section 6 derive from the 1972 Constitutional Convention, from a statewide ratification process, and from Section 6's role as an integral part of the state constitution's guarantee of a system of free, quality public education."[155]
Chief Justice Roberts	Concurring	"Here too Montana's no-aid provision bars religious schools from public benefits solely because of the religious character of the schools. The provision also bars parents who wish to send their children to a religious school from those same benefits, again solely because of the religious character of the school. This is apparent from the plain text. The provision bars aid to any school controlled in whole or in part by any church, sect, or denomination."[156]
Justice Sotomayor	Dissenting	"Today's ruling is perverse. Without any need or power to do so, the Court appears to require a State to reinstate a tax-credit program that the Constitution did not demand in the first place. We once recognized that [w]hile the Free Exercise Clause clearly prohibits the use of state action to deny the rights of free exercise to anyone, it has never meant that a majority could use the machinery of the State to practice its beliefs."[157]

[154] Brief for the Cato Institute as Amicus Curiae Supporting Petitioners, Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 4450, *8.

[155] Brief for Public Funds Public Schools as Amicus Curiae in Support of Respondents. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 6536, *8-9.

[156] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2255 (2020).

[157] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2297 (2020) (Sotomayor, J., dissenting).

Conclusion

In this chapter, I provided a summary of the findings of this study. First, I reviewed the coding process, provided a brief description of the frames used to code data, and presented the results of intra-rater reliability. A brief background of the amici curiae and Supreme Court Justices was provided for each of the 18 amici selected for this study, as well as each justice who served on the Supreme Court when *Espinoza* was decided. Results of research questions one and two were also reported. In addition, the emerging themes identified in each coding frame were addressed. In the next chapter I will discuss findings and the relevancy of the findings to the use of amicus briefs to influence educational policy via the United States Supreme Court.

CHAPTER 5

DISCUSSION AND RECOMMENDATIONS

In this study five generic frames introduced by Semetko and Valkenburg (2000) were analyzed to determine the dominant policy frames interest groups used to frame policy preferences in the United States Supreme Court's landmark case *Espinoza v. Montana* (2020).[158] A second purpose of this study was to ascertain if these same frames emerged in the written opinions of the United States Supreme Court justices. This study aimed to answer the following two research questions:

RQ1. What dominant policy frames do interest groups use to frame policy preferences in *Espinoza v. Montana* (2020)?

RQ2. Which (if any) policy frames found in the amicus briefs emerge in the written opinions of the justices in *Espinoza v. Montana* (2020).

Discussion

The a priori codes identified at the start of this study are based on Semetko and Valkenburg's (2000) five generic frames – the attribution of responsibility frame, conflict frame, economic consequences frame, human interest frame, and morality frame. The researcher coded 1005 references across 18 amicus briefs and 180 across seven written justices' opinions for a total of 1185 references. The documents were coded on two separate occasions resulting in an .85 intra-rater reliability. Dominant frames were identified for petitioners and respondents and for the written opinions of the Supreme Court justices (Figure 9). Subthemes coded to each dominant frame were also identified using NVivo software. Based on this information each case was reviewed to determine which dominant frames and common themes emerged from the text.

[158] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246 (2020).

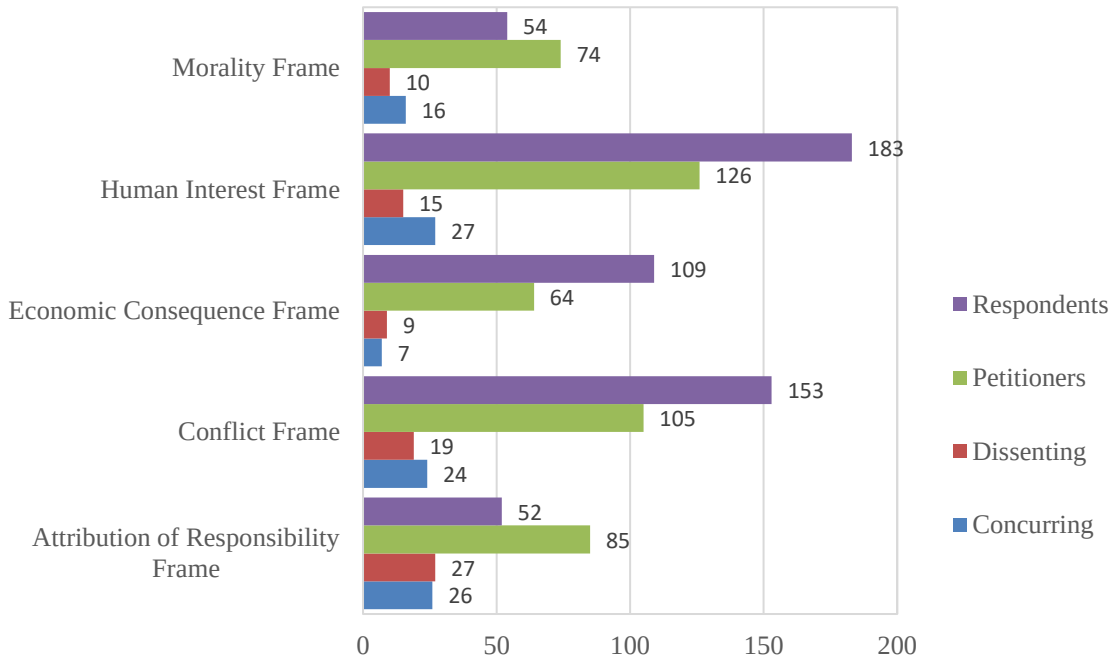

Figure 9

Dominant Frames by Amicus Briefs and Justices Opinions

Dominant Frames

The most dominant frame was the human-interest frame. Petitioners, respondents, and justices personalized stories about people facing harrowing situations or events that effected their lives. For example, Justice Gorsuch emphasized the lead petitioners single mother status who worked three jobs, and simply wanted to use the scholarship money to send her daughters to an accredited religious school.[159] Amici for Liberty Justice Center described a Jewish family who wanted to raise their children in their faith but could not afford to send their children to private religious school without assistance from the tax credit scholarship fund.[160] Amici for the Georgia Goal Scholarship Program highlighted what they perceived as devasting effects public schools have had on black communities by describing the historical impact segregated education had on the social and emotional learning of black students which still exist today in segregated urban black communities.[161] Conversely, the National Disability Rights Network (NDRN) described students with disabilities who are denied access to private schools.[162] They also emphasized that many students with disabilities who do use vouchers or tax credits to attend private schools lose federal protection under the Individuals with Disability Education Act (2004).[163]

The next dominant frame across the amicus briefs and justices' opinions was the conflict frame. Though private schools emerged as an overall theme within this frame, the primary focus of both concurring and dissenting justices was on how the Montana Supreme Court struck down the Tax Credit Program, thus denying parents the opportunity to send their students to private

[159] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2274 (2020) (Gorsuch, J., concurring).

[160] Brief for the Liberty Justice Center and American Federation for Children as Amicus Curiae in Support of Petitioners. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 5118, *8-9.

[161] Brief for Georgia Goal Scholarship Program, Inc. as Amicus Curiae in Support of Petitioners, Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), Briefs Lexis 4465. *12.

[162] Brief for National Disability Rights Network, et al. as Amici Curiae in Support of Respondent. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 6743, *19.

[163] Individuals with Disabilities Education Act, 20 U.S.C. § 1400 (2004).

school programs of their choice. Chief Justice Roberts contended that there was no violation of the Establishment Clause but argued that when the Montana Department of Revenue enacted Rule 1, the rule singled out faith-based institutions from receiving generally available public funds based on religious status – which was a violation of the Free Exercise Clause.[164]

Contesting Justice Roberts position, Justice Ginsburg posited that in so far as the Montana Supreme Court eliminated the tax credit program all together there could not possibly be any violation of the Free Exercise Clause.[165] Furthermore, petitioners and respondents tended to focus more on Blaine Amendments and no-aid clauses as opposed to the Religion Clauses. Amici for the Tennessee Education Association argued that striking down Montana's "no-aid" clause without proof that it was motivated by anti-Catholic sentiment based on the failed 1875 Blaine Amendment would cause harm to public schools by diverting much needed funds to the private sector.[166]

The attribution of responsibility frame closely mirrored the conflict frame. In large part the primary focus was on the Religion Clauses in which one side or the other placed blame on the following:

1) The Court for its failure to fully clarify its position on the Religion Clause (some arguing that the Court often sat on the fence),
2) The Montana Supreme Court for what is perceived as a fallacious ruling when it struck down the tax credit program.
3) The states for holding onto no-aid statutes in state constitutions, and the inconsistent rulings between the Circuit courts.

[164] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2252 (2020).
[165] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2278 (2020) (Ginsburg, J., dissenting).
[166] Brief for the Tennessee Education Association as Amicus Curiae in Support of Respondents. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 6590, *3.

Amici for EdChoice reasoned that state legislatures enact school choice programs knowing that they were likely to face challenges in one of the Circuit courts arguing that the "deep split" between the Circuit courts created confusion and left students who rely on student aid to attend schools of choice in limbo.[167] EdChoice argued that "The deep constitutional uncertainty manifested by the decision of the Montana Supreme Court and those of other federal and state courts is limiting the ability or inclination of states to provide a full range of educational options for America's children."[168]

The second least dominant frame was the economic consequence frame. Neither Justice Alito nor Justice Thomas referenced this frame, and most of the petitioners and respondents only fleetingly acknowledged economic benefits to parents and students – or negative impacts to public school funds as an obstacle. This is surprising considering that tax credits, tax credit scholarships, and school voucher programs are often proposed as ways to help alleviate parents of what some see as a form of "double taxation," or as a means to shift public funds to private schools. The amici for the Georgia Goal Scholarship Program, for example, argued that historically African Americans have paid "twice" for their children's education.[169] Referencing the Rosenwald program of the early twentieth century in which blacks matched contributions to build rural black schools while "whites all over the South seized the school funds belonging to the disenfranchised black citizen…black parents had no choice but to pay both direct and indirect 'voluntary' taxes for the public education of their children."[170]Amici for Georgia Scholarship argued that this was a system of double taxation. The Cato Institute, argued in favor of tax credit

[167] Brief for EdChoice, et al., as Amici Curiae in Support of Petitioners. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 4461, *16.

[168] Ibid at 10.

[169] Brief for Georgia Goal Scholarship Program, Inc. as Amicus Curiae in Support of Petitioners, Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), Briefs Lexis 4465. *34.

[170] Ibid at 33-34.

programs, extended this argument to devout parents who amici claim are forced to pay twice for their child's education.[171] Amici for the Cato Institute argued that "…initiatives like the Tax Credit Program work to rectify a deep structural unfairness in which devout parents pay twice, once for the secular public education made available through their tax dollars, and again for the parochial education their consciences demand."[172]

The least referred to frame, the morality frame, pertains to moral messaging, God, and the Constitution. Since *Espinoza* is a case that involves the Free Exercise Clause and the use of tax credit scholarship money for use at private religious-based schools, it was expected that this frame would be one of the more dominant frames. Justice Alito and the National Disability Network, however, did not reference this frame at all. The other amici and justices mainly discussed it in legal terms of what the government can and cannot do in relation to the Free Exercise Clause. Across the briefs and written opinions, there was little discussion as to what constitutes moral behavior outside of violating one of the tenets of the First Amendment Religion Clauses. Justice Gorsuch, for example, used this frame when he asserted that in cases like *Espinoza* government does not force individuals to forgo their religious convictions but, "Individuals are forced only to choose between forgoing state aid or pursuing some aspect of their faith. The government does not put a gun to the head, only a thumb on the scale."[173] He argued that the Free Exercise Clause cannot tolerate either situation, or to do so meets the demand of strict scrutiny by the Court.[174] The researcher expected with the number of religious organizations submitting briefs, there would be some conversation about honoring God and

[171] Brief for the Cato Institute as Amicus Curiae Supporting Petitioners, Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), 2019 U.S. S. Ct. Briefs Lexis 4450, *7.
[172] Ibid.
[173] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246, 2278 (2020) (Gorsuch, J., concurring).
[174] Ibid.

one's duty to country by ensuring a religious-based education for children – public or private.

Use of Amicus Briefs to Influence Courts

Most studies focusing on the use of amicus briefs to influence the Court focus on the increase in the number of amicus briefs filed in the past 20 or so years. Kearney and Merrill (2000) noted in their seminal research on the influence of amicus briefs on the United States Supreme Court that the use of amicus briefs in the period from 1946-1995 had increased 800%. Collins (2004) noted that during this same period amicus curiae often formed alliances with other interest groups and individual policy actors as co-signers on briefs, so the actual number of participants also increased significantly. Despite the increase in the use of amicus briefs by interest groups to lobby the Court, it is unclear to what extent amicus briefs influence the Court. Yet, the question of interest group influence is essential to our understanding of their role in the policy-decision making process.

The most important component for understanding how amicus curiae influence the court is through the examination of the content of the amicus briefs and court opinions. It is through the amicus brief process that interest groups frame their arguments in their effort to influence the outcome of a case. It is also arguably through the written opinions of the justices that the Court contributes to legal and social policy – including policy that may shape educational outcomes. Focusing only on the number of briefs submitted before the Court or case outcomes skirts the obvious question of *how* amici curiae leverage language to frame policy preferences to influence the Court, or equally important, our understanding of how justices craft the content of their opinions.

The use of language to shape policy can be found in the hidden frames that amici use to form their arguments. Interest groups strategically emphasis certain frames in order to gain

support for their preferred policy preferences while minimizing other aspects of an argument. Scholars agree that how an issue is framed can influence how individuals respond to an issue – including Supreme Court justices. Frames can sway the public, individuals, or groups toward a policy preference and potentially effect policy outcomes. According to Gamson (1992), a frame is a powerful social tool that when encoded just right stirs emotions and brings attention to an idea or concept that would otherwise go unnoticed by the public – in essence it is a manufactured response (my term). A manufactured response is one designed to illicit intense emotions by an interest group, organization, or individual explicitly to create a desired reaction or outcome from the targeted audience. Ideas such as tax credits, student scholarship funds, and school vouchers are concepts that when framed as forms of school choice invoke intense emotions from the targeted audience. These words are molded and shaped through the framing process by interest groups and policy elites to elicit a manufactured response from the target audience.

Contribution to the Literature

This qualitative content analysis contributes to the literature by adding a study based on five generic frames first introduced by Semetko and Valkenburg (2000) to the analysis of amicus briefs and Supreme Court Justices written opinions. The use of Semetko and Valkenburg's (2000) generic frames have been used in a variety of studies on topics ranging from autism to climate change. To my knowledge, this study is the first study to utilize frame analysis to identify dominant frames and emerging themes in amicus briefs or justices written opinions. As Collins, et al. (2015) have noted, the focus by researchers on the content interest groups use to frame policy preferences communicated in amicus briefs is relatively new and not fully understood. Most studies primarily focus on the extent to which amicus briefs add new information to the case, or they provide a count of the number of social science citations

referenced in the briefs, but systematic studies of the documents content for frames or themes are limited especially in education policy (Collins, 2007; Collins, 2008; Collins, et al., 2015; Hazelton, et al., 2019).

In addition to applying Semetko and Valkenburg's (2000) generic frames to identify policy preferences of amici, this study also illustrates the use of NVivo data analysis software as a useful tool in implementing qualitative content analysis in studies related to the judicial arena and education policy. Quantitative analysis strives for objective systematic quantification of data (i.e., statistical analysis) to describe the content of material. Qualitative content analysis, conversely, allows for the researcher to move away from objectivity while allowing for "the subjective interpretation of the content of data text through the systematic classification process of coding and identifying themes or patterns" (Hsieh and Shannon, 2005). The use of data software like NVivo allows for the systematic organization of the data set, thus allowing for a sequential review of the material while maintaining coding consistency and transparency. Numerous scholars have pointed to the advantages of using qualitative data software to aid research, but few researchers in the field of education policy studies have heeded the call.

Limitations

This study has certain limitation's that should be noted. First, this dissertation primary focus was on the United States Supreme Court case *Espinoza v. Montana* (2020).[175] Its applicability to other court cases should be called into question. A much broader study must be undertaken before the results of this study can be generalized to other court cases. Currently, a similar case has made its way to the United States Supreme Court, *Carson v. Makin, No.* 1:18-*CV-327-DBH* (*D. Me.*). A similar study that identifies the frames amici used to frame policy

[175] *Espinoza v. Mont. Dep't of Revenue,* 140 S. Ct. 2246 (2020).

preferences in that case compared to the results of this study would provide additional evidence to better understand how frames used by amici may influence judicial outcomes.

Second, qualitative content analysis involves intense and time-consuming research even with the assistance of computer added software programs. Identifying frames is a challenging task that often requires the coder to read and reread data multiple times before deciding on which code best fits the text. Qualitative content analysis is largely subjective and open to interpretation which is why it is best to employ multiple coders. Unfortunately, with this study due to time constraints it was not possible to use a second coder. In addition, this study was limited to identifying only dominant frames and the major sub-theme within each frame. A further exploration of how other subthemes might relate to the larger frame should be undertaken to possibly identify other emerging frames.

Another limitation was the sample size. As mentioned above, qualitative research is extremely time consuming. In *Espinoza* forty-five amicus briefs were submitted before the Court for review. Only 18 amicus briefs were analyzed in this study. While I was able to identify codes within the sample size for generic frames and reach thematic saturation, coding all the briefs related to the case may have identified broader themes within the data. For example, it might have identified new frames as well as broader themes across the data set that shed new light on how amici use frames to potentially influence policy preference outcomes. In addition, including the additional briefs would have made it easier to identify differences among interest groups and organizational types. For example, only one think tank organization was included in this study limiting the researcher's ability to compare frames across or between organization types.

Recommendations for Future Research

This study provides the basis for further inquiry related to framing amicus briefs and judicial written opinions. One area where this research could benefit is in the expansion of the number of court cases and amicus briefs included in a single study. A future study might incorporate a larger number of briefs across multiple cases to provide a more comprehensive picture of the influence amici have on the Court as well as how the framing of issues emerges across cases. In addition, a larger number of briefs across multiple cases will provide the researcher with a broader group of organizational types (think tanks, NGOs, faith-based organizations, labor, and industry related groups, etc.) to compare. In addition, the research may be able to expand the type of document analysis conducted by analyzing oral arguments, petition for writ of certiorari, brief on merits, brief of respondents, as well as documents related to lower court decisions. Tracing how amici policy frames change across court venues would add to the understanding of how amici frame policy preferences for a targeted audience.

Future research specific to the conceptual framework utilized in this study can also be beneficial. To this researcher's knowledge, frame analysis has not been applied to the study of amicus briefs or judicial written opinions in any extensive manner. One exception to this observation is Collins, et al. (2015) study which used plagiarism software to conduct a content analysis of judicial written opinions. Collin, et. al. (2015) used this information to determine if justices incorporated the written language of the amicus briefs into their majority opinions and to determine if any particular amici are more influential than others. Beyond this study the content analysis of Supreme Court opinions is limited especially in how judicial decision making may influence education policy. Furthermore, Collins, et al (2015) study did not assess how amici develop or choose frames to shape their policy preferences.

This brings me to my final recommendation for future studies. As Collins (2004) has pointed out, amicus curiae often form alliances with other interest groups and individual policy actors as co-signers on briefs. So, while the number of briefs submitted to the Court is increasing – so too, are the actual number of participants. In this study alone, I evaluated 18 briefs, but more than half of the briefs evaluated had at least one co-signer for a total of 68 participants. One brief alone had 16 co-signers. A study that examines why groups collaborate, how they come to agree on language contained within the brief, do they share the same overall ideology on different subject matters, and do single signer briefs or briefs with multiple co-signers have more sway with the court? These are just some of the questions future researchers may want to consider.

Implications

The findings of this qualitative content analysis have implications for policymakers, interest groups, and researchers. This study attempted to provide some insight into how amici curiae acting on behalf of interest groups have used frame analysis to shape the debate on various public and private school choice options to influence the United States Supreme Court justices toward favorable policy outcomes.

One implication for educational policymakers, is that very few studies identifying or analyzing how interest groups attempt to influence educational policymakers has been conducted. Therefore, little information on how educational policymakers are targeted by interest group messaging and framing of issues is available to help researchers understand the degree to which policy decisions are influenced by interest groups – that is, if decisions are influenced at all by interest groups. Policymakers need to be aware of how outside interest groups can influence decisions to ensure that decisions are made in a fair and equitable manner – and not manipulated to favor one group over another.

A second implication for interest groups is that more research is required to determine if amicus briefs influence justices' decisions. Filing an amicus brief may, according to Collins, et al. (2015) satisfy the interests' groups base, but the cost associated with filing a brief can be expensive. To ensure that any amount of money spent on filing a brief has a positive return on investment further research in this area is required. In addition, the types of frames interest groups use to influence justices needs further investigation. A cross study of Supreme Court cases or a study that traces the history of a case from the lower court to the higher court would add tremendously to our understanding of how interest groups use frames to influence judicial outcomes.

As for researchers, a deeper dive into the data is required before one can determine if amici curiae influenced the outcome of *Espinoza*. This study has revealed that despite the perceived impact the Court has on shaping education policy, studies on the policy frames interest groups use in amicus briefs to communicate their policy preferences before the Court are incomplete. Without further exploration it is difficult to make the connection between interest groups and judicial outcomes – or to understand the intricacies of the processes involved. Considering that in the past twenty years the United States Supreme Court has issued several significant education-related decisions that have shaped education policy nationally, it seems logical that researchers could benefit from gaining a better understanding of this process. This study demonstrates the viability of using frame analysis to help researchers develop a better understanding how interest groups attempt to influence Supreme Court decisions by means of the amicus brief process (Collins, 2008).

Conclusion

This qualitative content analysis attempted to provide insight into how amici acting on behalf of interest groups have used frame analysis to shape the debate on various school choice options to influence the United States Supreme Court towards favorable policy outcomes. This study used Semetko and Valkenburg's (2000) generic frames as a priori codes to compare the amicus briefs and judicial opinions in Espinoza to facilitate this analysis. Although it is inconclusive to say that there was a direct influence between the briefs and the justices' written opinions, it is without a doubt that Semetko and Valkenburg's (2000) generic frames can be applied to the content analysis of amicus briefs and justices written opinions in a variety of interdisciplinary fields. It is through frame analysis that new frames and emerging themes can be identified that researchers may find helpful in better understanding how amici influence the Courts decisions and ultimately education policy outcomes.

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Brief for Justice and Freedom Fund, et al., as Amici Curiae Supporting Petitioners. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), Briefs Lexis 4619. https://advance-lexis com.utk.idm.oclc.org/ api/document?collection=briefs-pleadings-motions&id=urn: contentitem:5x4k-gx41-f5dr-205r-00000-00&context=1516831.

Brief for the Liberty Justice Center and American Federation for Children as Amicus Curiae in Support of Petitioners. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), Briefs Lexis 5118. https://advance-lexis-com.utk.idm.oclc.org/api/ document?collection=briefs-pleadings-motions&id=urn: contentitem:5x69-1yk1-jjsf-2412-00000-00&context=1516831.

Brief for Montana Association of Rabbis as Amicus Curiae Supporting Respondents. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), Briefs Lexis 6585. https://advance-lexis-com.utk.idm.oclc.org/api/ document?collection=briefs-pleadings-motions&id=urn: contentitem:5xjh-6rr1-fbfs-s445-00000-00&context=1516831.

Brief for Montana-Northern Wyoming Conference, et al., as Amicus Curiae in Support of Respondent. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), Briefs Lexis 6525. https://advance-lexis-com.utk.idm.oclc.org/api/ document?collection=briefs-pleadings motions&id=urn: contentitem:5xj9-s3p1-jb7k-22yb-00000-00&context=1516831.

Brief for National Disability Rights Network, et al. as Amici Curiae in Support of Respondent. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), Briefs Lexis 6743. https://advance-lexis com.utk.idm.oclc.org/api/ document?collection=briefs-pleadings-motions&id=urn: contentitem: 5xks-g981-k054-g099-00000-00&context=1516831.

Brief for National School Boards Association et al., as Amici Curiae in Support of Respondents Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), Briefs Lexis 6535. https://advance-lexiscom.utk.idm.oclc.org /api/document?collection=briefs-pleadings-motions&id=urn: contentitem:5xj9-s3p1-jb7k-22yg-00000-00&context=1516831.

Brief for Public Funds Public Schools as Amicus Curiae in Support of Respondents. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), Briefs Lexis 6536. https://advance-lexis-com.utk.idm.oclc.org/ api/document? collection=briefs-pleadings-motions&id=urn: contentitem:5xj9-s3p1-jb7k-22yj-00000-00&context=1516831.

Brief for the Tennessee Education Association as Amicus Curiae in Support of Respondents. Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020) (No. 01-1015), Briefs Lexis 6590. https://advance-lexis-com.utk.idm.oclc.org/api/document?collection=briefs-pleadings-motions&id=urn:contentitem:5xjr-bg01-jkhb-639w-00000-00&context=1516831.

APPENDIX

APPENDIX A

NVIVO FRAMEWORK PLANNING GUIDE

DATA TYPES	**UNITS OF ANALYSIS**	**VARIABLES**	**TIME** **(will this be a longitudinal study, pre/post interviews or repeated over time?)**	**CODING FRAMEWORK**
Amicus briefs Espinoza v. Montana N = 45 n = 18 (used for study) Supreme Court Justices written opinions in case N = 7	Individual briefs Individual justices written opinions	Petitioners (reverse) Respondents (affirm) Concur Dissent Type of organization Ideology	Snapshot of one case heard before the United States Supreme Court (Espinoza v. Montana, 2020)	Framing a priori codes Identify Dominant Frames (5 generic frames) Attribution of Responsibility Frame Conflict Frame Economic Consequences Frame Human Interest Frame Morality Frame Identify dominant emerging theme within each frame

Note. NVivo planning guide as part of the audit trail

APPENDIX B

SAMPLE OF MY REFLECTION NOTES

(Uploaded from my notations in NVivo as I conducted the study.)

Completed frame design document - good document to have to help maintain focus. I have my documents ready to upload into NVivo and start coding. I can't help but feel like this might be a long journey. It will take a tremendous amount of time to code each brief.

As I began coding my first brief, I realized I needed to narrow the code unit. I decided to narrow it by paragraph. I think initially coding the paragraph to one of the five frames will work best. Afterword's I can come back and reevaluate the code and expand the code, add new codes, etc. as determined.

Just as I suspected - coding is going slowly. I really want to make sure that I evaluate each document thoroughly before moving on to the next document. This may take more time than I actually built into my research design. I think instead of taking two to three days to code each document I will have to speed up the process and spend no more than 2 days on each brief. The justice's opinion are a bit easier to code - once you get through the legal jargon and legal citations.

I will need to figure out how I want to manage paragraphs that can fit more than one code. I assume I will run into this issue with virtually every brief. My initial thoughts, however, are to continue coding the briefs paragraphs to one code and revisit during my second cycle coding. So far, most of the paragraphs are fitting predominantly one frame - But, at some point I may have to consider choosing which frame best fits the paragraph.

Decided to only code the argument section of the document. The front matter and back matter are redundant. I will do this for all briefs and justices' opinions.

I am also not going to code headings and section titles - at least until I discuss this with Dr. Driscoll. As for references to law - I will likely come back and code them into a points of law code that I will add later. I need to double check and think it through with Dr. Driscoll. Also, references to social science research and historical research is prevalent throughout the documents. I can see several papers emerging from this project (i.e., what cases are these guys citing and how; what about the social science research - who, what and how are they citing it...?) Just thoughts about future research. I think this is something that can be done with another project - maybe for a paper later.

Went ahead and added US Constitution to Morality Frame as an emerging theme because it is often referenced as a code of behavior by petitioner's and respondents - justices are referencing it too.

I am seeing potentially new codes emerging from the briefs. Ran NVivo auto code just to see what the program identified - and it picked up on several themes I was noticing as I coded. I think I will add "constitution" as an emerging code under the morality frame.

Need to either create separate codes for Religion Clauses and Blaine Amendments or develop theme/collapse into another code.

Protestant hegemony - how to code - add to multiple codes or collapse into a theme????

Georgia - brief mentions ACE program and compares it to religious teaching - should there be a separate code or theme? This is an extremely interesting comparison. Religious teachings of private-faith-based programs v. Character Education in the public schools. Raises several interesting points about who should be responsible for teaching moral character/behavior.

Cato Institute brief brings up an interesting point about humanist thinking - may have to merge with morality frame or develop a new code. I have come across this concept in several different formats in the briefs. While these ideas may be in conflict - I can't help but wonder if they are not just the other side of the same code.

In Am. Fed brief - question of standing raises some concern because it is primarily arguing that it hurts certain group organizations economically, i.e., economic consequence frame - yet it can be a conflict as well. I will have to put some thought into whether to code this as a conflict frame, economic consequence frame, or both frames.

Brief of Baptiste Joint Committee brief primarily outlines the historic background of 1st Amend Religion Clauses - aside from a review of history and declaration that petitioners did not have standing - not sure if this isn't one of those briefs that judges proport to be nonessential - it primarily focus on historic conflict with Blaine Amendment and reported position in terms of historic events. I'm not sure how this helped the Court come to a decision.

After careful reflection I realize that sometime justices may not know all the background of a situation - or the history related to it. I now see why the Baptiste Joint Committee laid out the history. They did do a decent job relating it to current situation.

I am very pleased with the outcomes of the auto coding. NVivo identified several emerging themes that I suspected would emerge from the data as I have been coding. It’s nice to have some affirmation - even if it's from a computer program. With the help of auto code, I have identified some pretty interesting emerging themes. I can see them in the way the justices and amici talk/write about different issues.

I have now identified five major emerging themes for each of the five frames. I like the way this came together. Now I just need to think about what it all means. I am finding that reflecting on the process is very helpful for helping me sort ideas and thoughts about the meaning of the data.

Trying to determine if I should use NVivo's visualizations (charts, graphs, etc.) or export to Excel. NVivo's charts are OK - but I like how they look in the Excel program. Now I have to figure out what this all means and how it relates to the research questions.

I decided to export the data summary tables to Excel to create my graphs and charts. Now - time to think about what they mean and to look deeper at what the amici and justices are saying. Framing is about the communication - let's find out how they are communicating their ideas and if the ideas are resonating with the justices.

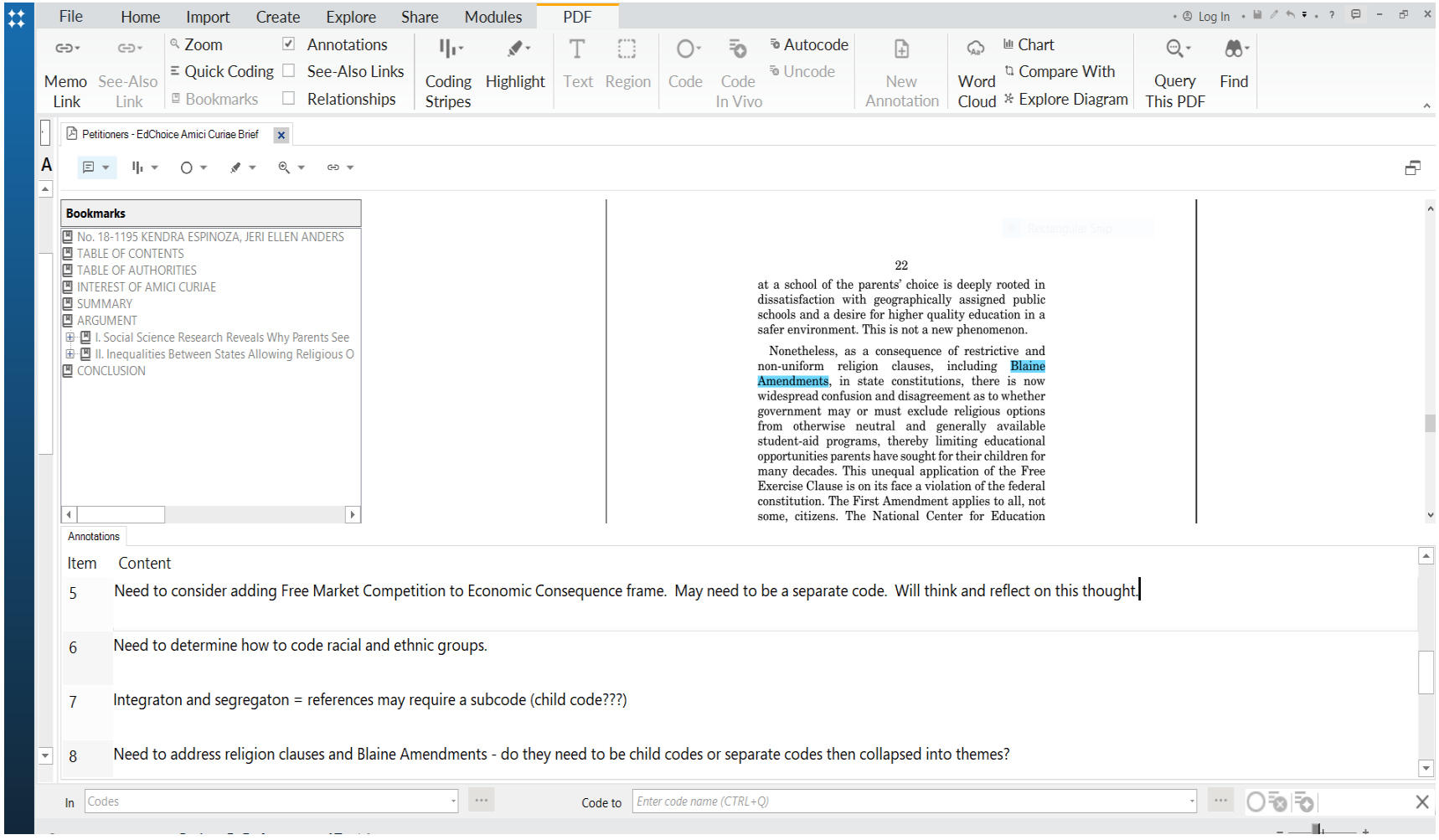
Interesting outcomes for dominant frames - who would have thought the human-interest frame would be at the top followed by the conflict frame. I guess I expected the economic consequences frame to dominant the five generic frames - but it's only second to the morality frame (which I also thought would be in the top three).

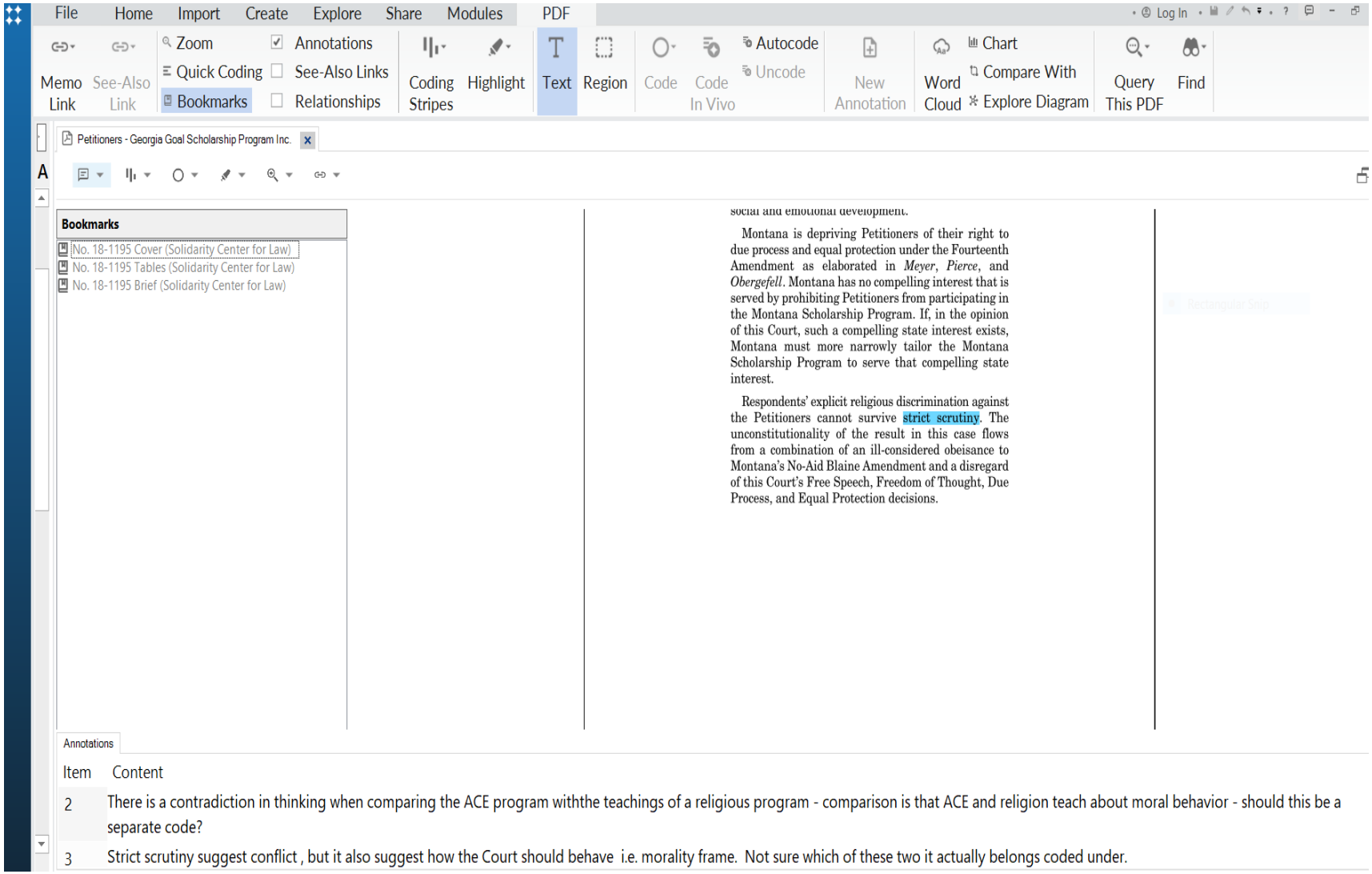
Completed by graphs, charts, and analysis. Time for more reflection before I jump back into writing. I need to pull excerpts from the data based on the dominant frame and emerging themes to review how amici are "talking" about the issue amongst each other and with the justices (i.e., via their written communications/stories contained in the briefs). I see these as stories now - very interesting!

Now I need to go tell the story

APPENDIX C

SAMPLE ANNOTATIONS




File
Home
Import
Create
Explore
Share
Modules
PDF
Log In
Memo Link
See-Also Link
Zoom
Quick Coding
Bookmarks
Annotations
See-Also Links
Relationships
Coding Stripes
Highlight
Text
Region
Code
Code In Vivo
Autocode
Uncode
New Annotation
Word Cloud
Chart
Compare With
Explore Diagram
Query This PDF
Find
Petitioners - Georgia Goal Scholarship Program Inc.
Bookmarks
No. 18-1195 Cover (Solidarity Center for Law)
No. 18-1195 Tables (Solidarity Center for Law)
No. 18-1195 Brief (Solidarity Center for Law)
social and emotional development.
Montana is depriving Petitioners of their right to due process and equal protection under the Fourteenth Amendment as elaborated in Meyer, Pierce, and Obergefell. Montana has no compelling interest that is served by prohibiting Petitioners from participating in the Montana Scholarship Program. If, in the opinion of this Court, such a compelling state interest exists, Montana must more narrowly tailor the Montana Scholarship Program to serve that compelling state interest.
Respondents' explicit religious discrimination against the Petitioners cannot survive strict scrutiny. The unconstitutionality of the result in this case flows from a combination of an ill-considered obeisance to Montana's No-Aid Blaine Amendment and a disregard of this Court's Free Speech, Freedom of Thought, Due Process, and Equal Protection decisions.
Annotations
Item
Content
2
There is a contradiction in thinking when comparing the ACE program withthe teachings of a religious program - comparison is that ACE and religion teach about moral behavior - should this be a separate code?
3
Strict scrutiny suggest conflict , but it also suggest how the Court should behave i.e. morality frame. Not sure which of these two it actually belongs coded under.

APPENDIX D

SAMPLE OF MY THEMATIC CLUSTER MATRIX

Case	A : Attribution of Responsibility Frame	B : Conflict Frame	C : Economic Consequence Frame	D : Human Interest Frame	E : Morality Frame
1 : Justice Clarence Thomas Organization = Government Political Ideology = Conservative Position = Concur	This understanding of the Establishment Clause is unmoored from the original meaning of the First Amendment. As I have explained in previous cases, at the founding, the Clause served only to "protec[t] States, and by extension their citizens, from the imposition of an established religion by the Federal Government." Zelman v. Simmons-Harris, 536 U. S. 639, 678 (2002) (THOMAS, J., concurring) (emphasis added); see also, e.g., Town of Greece v. Galloway, 572 U. S. 565, 604–607 (2014) (THOMAS, J., concurring in part and concurring in judgment); Elk Grove Unified School Dist. v. Newtown, 542 U. S. 1, 49–50 (2004) (THOMAS, J., concurring in judgment). Under this view, the Clause resists incorporation against	The Court has also repeatedly stated that a government has a compelling interest in avoiding an Establishment Clause violation altogether, which "may justify" abridging other First Amendment freedoms. See Good News Club v. Milford Central School, 533 U. S. 98, 112 (2001); Lamb's Chapel v. Center Moriches Union Free School Dist., 508 U. S. 384, 394 (1993); Widmar v. Vincent, 454 U. S. 263, 271 (1981). Unsurprisingly, governmental employers have relied on these pronouncements to defeat challenges from employees who alleged violations of their First Amendment rights. See, e.g., Berry v. Department of Social Servs., 447 F. 3d 642, 650–651 (CA9 2006); Knight v. Connecticut Dept. of Public Health, 275 F. 3d 156, 166		There is mixed historical evidence concerning whether the Establishment Clause was understood as an individual right at the time of the Fourteenth Amendment's ratification. Id., at 607–608. Even assuming that the Clause creates a right and that such a right could be incorporated, however, it would only protect against an "establishment" of religion as understood at the founding, i.e., "'coercion of religious orthodoxy and of financial support by force of law and threat of penalty.'" Id., at 608 (quoting Lee v. Weisman, Cite as: 591 U. S. ____ (2020) 3 THOMAS, J., concurring 505 U. S. 577, 640 (1992) (Scalia, J., dissenting); emphasis deleted); American Legion v. American Humanist Assn., 588 U. S. ___, ___ (2019) (THOMAS,	This case involves the Free Exercise Clause, not the Establishment Clause. But as in all cases involving a state actor, the modern understanding of the Establishment Clause is a "brooding omnipresence," Southern Pacific Co. v. Jensen, 244 U. S. 205, 222 (1917) (Holmes, J., dissenting), ever ready to be used to justify the government's infringement on religious freedom. Under the modern, but erroneous, view of the Establishment Clause, the government must treat all religions equally and treat religion equally to 2 ESPINOZA v. MONTANA DEPT. OF REVENUE THOMAS, J., concurring nonreligion. As this Court stated in its first case applying the Establishment Clause to the States, the government cannot "pass laws which aid

Case	A: Attribution of Responsibility Frame	B: Conflict Frame	C: Economic Consequence Frame	D: Human Interest Frame	E: Morality Frame
2 : **Justice Neil Gorsuch** Organization = Government Political Ideology = Conservative Position = Concur	Today, the Court explains how the Montana Constitution, as interpreted by the State Supreme Court, violates the First Amendment by discriminating against parents and schools based on their religious status or identity. The Court explains, too, why the State Supreme Court's decision to eliminate the tax credit program fails to mask the discrimination. But for the Montana Constitution's impermissible discrimination, after all, the legislature's tax credit and scholarship program would be still operating for the benefit of Ms. Espinoza and everyone else. I agree with all the Court says on these scores and join its opinion in full. I write separately only to address an additional point. The Court characterizes the Montana Constitution as discriminating against	In the first place, discussion of religious activity, uses, and conduct—not just status—pervades this record. The Montana Constitution forbids the use of public funds "for any sectarian purpose," including to "aid" sectarian schools. Art. X, §6(1). Tracking this directive, the State Supreme Court reasoned that the legislature's tax credit program Cite as: 591 U. S. ____ (2020) 3 GORSUCH, J., concurring could be used to "subsidiz[e] the sectarian school's educational program" and thereby "strengthen . . . religious education." 393 Mont. 446, 466, 467, 435 P. 3d 603, 613, 614 (2018). Meanwhile, Ms. Espinoza admits that she would like to use scholarship funds to enable her daughters to be taught in school the "same Christian values" they are taught at home. App. to Pet. for Cert. 152. Finally, in its	The people of Montana, acting through their legislature, adopted a school choice program. It provided a modest tax credit to individuals and businesses who donated to nonprofit scholarship organizations. As the program began to take root, Montana had just one scholarship organization. It granted scholarships to families who were struggling financially or had children with disabilities. Recipients were free to use the scholarships at the schools of their choice. Some families chose secular schools, others religious ones. Consistently, too, we have recognized the First Amendment's protection for religious conduct in public benefits cases. When the government chooses to offer scholarships, unemployment benefits, or other affirmative assistance to its citizens, those benefits	Kendra Espinoza, the lead petitioner in this case, is a single mother who works three jobs. She planned to use scholarships to help keep her daughters at an accredited religious school. That is, until the Montana Supreme Court struck down the tax credit program. Those seeking a tax credit were free to choose whether to direct their donations to the independent scholarship organization; the organization was then free to choose scholarship recipients; and, after that, parents were free to choose where to use those scholarships. But, the Montana Supreme Court held, this arrangement impermissibly allowed state funds to find their way to religious schools, in violation of a state constitutional provision. By way of remedy, the court ordered an end to the tax credit program,	Of course, in public benefits cases like the one before us the stakes are not so dramatic. Individuals are forced only to choose between forgoing state aid or pursuing some aspect of their faith. The government does not put a gun to the head, only a thumb on the scale. But, as so many of our cases explain, the Free Exercise Clause doesn't easily tolerate either; any discrimination against religious exercise must meet the demands of strict scrutiny. In this way, the Clause seeks to ensure that religion remains "a matter of voluntary choice by individuals and their associations, [where] each sect 'flourish[es] according to the zeal of its adherents and the appeal of its dogma,'" influenced by neither where the government points its gun nor where it places its thumb. McDaniel, 435 U. S., at 640 (opinion of Brennan J.) (quoting

Case	A: Attribution of Responsibility Frame	B: Conflict Frame	C: Economic Consequence Frame	D: Human Interest Frame	E: Morality Frame
5 : Justice Ruth Ginsburg Organization = Government Political Ideology = Liberal Position = Dissent	The First Amendment prohibits the government from "mak[ing a] law . . . prohibiting the free exercise" of religion. 2 ESPINOZA v. MONTANA DEPT. OF REVENUE GINSBURG, J., dissenting U. S. Const., Amdt. 1. This Court's decisions have recognized that a burden on religious exercise may occur both when a State proscribes religiously motivated activity and when a law pressures an adherent to abandon her religious faith or practice. Sherbert v. Verner, 374 U. S. 398, 406 (1963); Hobbie v. Unemployment Appeals Comm'n of Fla., 480 U. S. 136, 140-141 (1987). The Free Exercise Clause thus protects against "indirect coercion or penalties on the free exercise of religion." Lyng v. Northwest Indian Cemetery Protective Assn., 485 U. S. 439, 450 (1988). Invoking that principle in Trinity Lutheran Church of Columbia, Inc. v. Comer, 582 U. S. ___ (2017), the Court observed that disqualifying an entity from a public benefit "solely because of [the entity's] religious character" can impose "a penalty on the free exercise of religion." Id., at ___-___ (slip op., at 9- 10). The Court then concluded that a Missouri law making churches ineligible for a government playground-refurbishing grant	Petitioners argue that the Montana Supreme Court's decision fails when measured against Trinity Lutheran. I do not see how. Past decisions in this area have entailed differential treatment occasioning a burden on a plaintiff 's religious exercise. Lyng, 485 U. S., at 450-451; Trinity Lutheran, 582 U. S., at ___ (slip op., at 11). This case is missing that essential component. Recall that the Montana court remedied the state constitutional violation by striking the scholarship program in its entirety. Under that decree, secular and sectarian schools alike are ineligible for benefits, so the decision cannot be said to entail differential treatment based on petitioners' religion. Put somewhat differently, petitioners argue that the Free Exercise Clause requires a State to treat institutions and people neutrally when doling out a benefit—and neutrally is how Montana Cite as: 591 U. S. ____ (2020) 3 GINSBURG, J., dissenting treats them in the wake of the state court's decision. 1 Thus, contrary to this Court's assertion, see ante, at 21, the no-aid provision did not require the Montana Supreme ———— 1 In its opinion, Montana's highest court stated without explanation that	Accordingly, the Montana Supreme Court's decision does not place a burden on petitioners' religious exercise. Petitioners may still send their children to a religious school. And the Montana Supreme Court's decision does not pressure them to do otherwise. Unlike the law in Trinity Lutheran, the decision below puts petitioners to no "choice": Neither giving up their faith, nor declining to send their children to sectarian schools, would affect their entitlement to scholarship funding. 582 U. S., at ___ (slip op., at 10). There simply are no scholarship funds to be had. True, petitioners expected to be eligible for scholarships under the legislature's program, and to use those scholarships at a religious school. And true, the Montana court's decision disappointed those expectations along with those of parents who send their children to secular private schools. But, as JUSTICE SOTOMAYOR observes, see post, at 3 (dissenting opinion), this Court has consistently refused to treat neutral government action as unconstitutional solely because it fails to benefit religious exercise. See Sherbert, 374 U. S., at 412 (Douglas, J., concurring) ("[T]he Free		The Montana Legislature enacted a scholarship program to fund tuition for students attending private secondary schools. See Mont. Code Ann. §15-30-3111 (2019). In the decision below, the Montana Supreme Court struck down that program in its entirety. The program, the state court ruled, conflicted with the State Constitution's no-aid provision, which forbids government appropriations to religious schools. Mont. Const., Art. X, §6(1). Parents who sought to use the program's scholarships to fund their children's religious education challenged the state court's ruling. They argue in this Court that the Montana court's application of the no-aid provision violated the Free Exercise Clause of the Federal Constitution. Importantly, the parents, petitioners here, disclaim any challenge to the no-aid provision on its face. They instead argue—and this Court's majority accepts—that the provision is unconstitutional as applied because the First Amendment prohibits discrimination in tuition-benefit programs based on a school's religious status. Because the state court's decision does not so discriminate, I would reject petitioners' free exercise claim.

Case	A: Attribution of Responsibility Frame	B: Conflict Frame	C: Economic Consequence Frame	D: Human Interest Frame	E: Morality Frame
10 : Center for Ed Reform et al. Organization = NPO Political Ideology = Cons. Right-wing Position = Petitioner	Not only do parents possess a constitutional right right leads to better schools and better to direct the education of their children; facilitating this educational outcomes for parents and children, as recent studies underscore. The unfortunate truth is that, for an increasing number of working families in the United States, traditional school districts are not working. The data from a 2017 National Assessment of Educational Progress (NAEP) study are disturbing. Only 38% of public school 8th grade students tested at or above proficient in reading. Center for Education Reform, The Disappointing Reality of American Education, at 4, available at: . In math, the 8th grade proficiency level was even lower at 34%. Id. The study also found a six-year gap in reading achievement between the nation's poorest and wealthiest students. Id. The implications are serious. According to the Department of Justice, "the link between academic failure and delinquency, violence, and crime is welded to reading failure." Id. at 6. An astounding 85 percent of juveniles who "interface with the juvenile court system are	The Montana Supreme Court's decision denies parents the opportunity to participate in a neutral, generally available program intended to benefit the state's most at-risk children and to improve educational outcomes. That result inflicts significant and direct injuries on parents and their children. When a state prevents parents from choosing the best educational opportunity for their children, parents are unable to fully exercise their well-established constitutional right to direct the education of their children. Their children are also directly injured by the lack of educational opportunity. That these injuries derive from the mere fact that a family's desired school has a religious affiliation underscores the gravity and caprice of the harm Given this Court's repeated recognition of parents' constitutional right to control their children's education, denying parents their preferred educational option simply because their desired school has a religious affiliation inflicts direct and significant injury on parents and children. As this Court has long held, a State may not impinge on "the	For many low-income families, however, parents' ability to "direct the education and upbringing of [their] children" is constrained by financial restraints and the unfortunate but real connection between the price tag of a house and the quality of education a child receives. Accordingly, the critical liberty interest of pursuing the most desirable education for one's child is promoted by programs that expand the options for parents to send their children to schools beyond their zip code—whether they take the form of vouchers, educational savings accounts, or tax credit scholarship programs. Further, according to the Programme for International Student Assessment ("PISA"), the United States has one of the largest achievement gaps and one of the most "deeply inequitable" education systems in the industrialized world. Id. at 8-9. The United States is one of only five OECD countries that does not provide government funding for privately managed secular and sectarian schools. Id. In 2018, an estimated 43% of American children were growing up in low-income families. Id. at 3.	This Court recognized as much in Zelman v. Simmons-Harris, a case that involved 75,000 children enrolled in the Cleveland City School District–a district that failed to meet any of the 18 state standards for minimal acceptable performance. 536 U.S. 639 (2002). Only 1 in 10 ninth graders passed a basic proficiency exam and more than two-thirds of high school students either failed or dropped out. Id. at 644. The state auditor found the school system to be suffering a "crisis that is perhaps unprecedented in the history of American education." Id. Hardest hit were children from low-income and minority families, who were unable to move to wealthier communities with better schools. Id To address Cleveland's failing schools, Ohio enacted a scholarship program that provided tuition assistance for students to "attend a participating public or private school of their parent's choosing." Id. at 645. This Court upheld against an Establishment Clause challenge Ohio's program in part because it allowed parents to make a better educational choice	The constitutional liberty interest of parents to direct the education of their children is "perhaps the oldest of the fundamental liberty interests recognized by this Court." Troxel v. Granville, 530 U.S. 57, 65 (2000). Nearly a century ago, in Meyer v. Nebraska, this Court held that the "liberty" protected by the Due only 8 Process Clause includes the right of parents "to control the education" of their children. 262 U.S. 390, 399-401 (1923). The Court expounded upon that principle in Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary, a case which upheld the right of parents to send their children to private, religiously affiliated schools. 268 U.S. 510, 534-35 (1925). Pierce held that the "liberty of parents" includes the right "to direct the upbringing and education of children under their control." Id. As the Court explained, "[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." Id. at 535. Thus, "[i]n a long line of cases," this Court has held that "the 'liberty' specially protected by the Due

Case	A: Attribution of Responsibility Frame	B: Conflict Frame	C: Economic Consequence Frame	D: Human Interest Frame	E: Morality Frame
23 : Freedom from Religion Foundation et al Organization = NPO Political Ideology = Lib. Left-wing Position = Respondent	The Montana Supreme Court interpreted the Montana Constitution as sufficiently broad to encompass and end this neo-voucher program. Montana "shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or [school]." App. 17-18 ¶18-19. That text is clear, emphatic, and sweeping. The true purpose behind Montana's No Aid Clause is to protect religious freedom. Failing to enforce this clause or riddling it with unprecedented exceptions erodes religious liberty. The Supreme Court later reiterated a strong commitment to the religious liberty principles articulated in Everson, including the prohibition on giving public aid to religion. See Sch. Dist. of Abington Twp., Pa. v. Schempp, 374 U.S. 203, 216-17 (1963) (discussing the majority and dissenting opinions in Everson); Torcaso v. Watkins, 367 U.S. 488, 493 (1961) (recalling that, in the McCollum case, the Court was "urged to repudiate" the Everson principles and noting it "declined to do	Both purposes are religious, but the second purpose is rarely spoken of openly, at least now that "school choice" is the focus-group-tested language adopted by the movement. But in the minds of some school choice activists, the erosion of traditional Protestantism in America is due to public schools. These same activists "see the weakening of support for public education as a desirable side effect or even a goal of their work."6 As one researcher and author has found, the national groups supporting religious initiatives "see our system of public education as a bad thing."7 She reports, "These are the same groups that sponsor efforts to undermine, defund, and perhaps ultimately destroy the system altogether."8 This history seems distant today, but was the result of centuries–millennia–of oppression from religion blended with government. Thanks to the separation of state and church, Americans do not have that oppressive experience. And some have become complacent. We are, in some sense, victims of the successful American experiment in separating state and church. As a result, many	The Montana No Aid Clause protects and fosters the religious freedom of all citizens. It does so by ensuring that the state does not wield its taxing power to fund religious education either directly or indirectly. In this way, no taxpayer is compelled to financially support a religion that is not their own. In this case, Montana Christians claiming discrimination have drowned out that basic principle. But it remains true nonetheless. The constitutional prohibition on states taxing citizens for the benefit of religion, directly or indirectly, guarantees religious liberty for all. As Thomas Jefferson explained in the Virginia Statute for Religious Freedom, "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical. . . ."2 "a true standard of Religious liberty."3 James Madison called the statute He did so be-cause it stood as "the great barrier [against] usurpations on the rights of conscience."4 The state's taxing power is inherently coercive. When	The principle embodied in every No Aid Clause, in-cluding Montana's, is that the government should not tax citizens to benefit a religion. Religious worship, religious education, and maintaining places of worship should be the result of free and voluntary support given by the faithful. James Madison, the Father of the Bill of Rights and the Constitution, explained this purpose well in his condemnation of a three-penny tax to support Christian preachers and churches: "The Religion then of every man must be left to the conviction and conscience of every man," not the taxing power of the state.10 American governments simply do not have the power to tax citizens to fund churches and religious education. When they do so, they are acting ultra vires. Alexander Hamilton explained this in The Federalist No. 69, when he wrote that the government "has no particle of spiritual jurisdiction." Madison supported this sentiment, arguing that "[i]t is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him."11 This prin-	Religious liberty is imperiled in this case. But this case is not about discrimination; it is about government-compelled support of religion. The right to be free from that compulsion is religious liberty. That right is the progenitor of every other facet of religious freedom. That right is possessed by every Montana citizen and taxpayer, not just a few Christian parents. That is the right at issue here. Sometimes, proponents of neo-vouchers are open about this goal. Kyle Olson helped create and chaired National School Choice Week through its 2011 birth. As its executive director, Olson wrote, "I would like to think that, yes, Jesus would destroy the public education temple and save the children from despair and a hopeless future."9 While "school choice" is theoretically about providing choice in education, for many it is about ending public education. The compulsory support of a religion that is not one's own is anathema to American principles. Religious liberty cannot exist where the government can force

VITA

Anita F. Morgan was born and raised in Northern Illinois. Anita attended Northern Illinois University where she earned her baccalaureate degree in history. Anita graduated summa cum laude from the history department and was invited to deliver the commencement speech. Anita was offered several graduate assistantships to continue her education in history. She earned a master's degree in history and later pursued her doctoral studies in United States economic history in a joint program sponsored between Northern Illinois University and the University of Chicago. While at Northern Illinois University she served as Director of the Social Science Teacher Education Program and taught several education methods courses.

Anita always had a heart for teaching so after several years at Northern Illinois University she accepted an offer to return to the classroom and teach AP history at Main South High School. However, when Anita and her family moved to Knoxville, TN., Anita returned to teaching history at the collegial level. Anita taught US and Western Civilization at both Roane State Community College and Pellissippi Technical Community College in Knoxville, TN. During this time Anita also earned a second master's degree in Special Education at the University of Tennessee and an education administrative license. After earning her administrative license, Anita served in several administrative position as director of state sponsored programs. Eventually, Anita joined the staff at Oak Ridge City Schools where she has had many responsibilities including serving as a data coach and RtI2 Coordinator at Jefferson Middle School.

Currently, Anita lives in Knoxville, TN and enjoys spending time with her children, Jessica and Camruinn, and new grandbaby Liam. Anita enjoys hiking, swimming, and white-water rafting. Mostly, she enjoys taking her dog for long walks and swims on hot days.