

SCHOOL LAW

INFORMATION MEMO

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Religious Charter Schools Continue to be Impermissible ... for Now

The State of Oklahoma has a charter school law similar in many respects to New York's Charter Schools Act. Like in New York, Oklahoma charter schools are authorized by a state board via charter agreements between the state and non-elected boards of trustees responsible for school operations. Oklahoma's law requires state monitoring and oversight of charter schools and allows the state to close underperforming schools. Charter schools in Oklahoma receive state funding and are eligible for federal Charter Schools Program ("CSP") grant funds under the Every Student Succeeds Act ("ESSA"). Oklahoma's law also considers charter schools to be public schools and requires they be non-sectarian.

In 2023, Oklahoma's Statewide Charter Board ("state board") approved a charter application submitted by the Catholic Archdiocese of Oklahoma City and the Diocese of Tulsa to create St. Isidore of Seville, which would have been the *nation's first religious charter school*. Like all public schools in Oklahoma, St. Isidore was to be funded via a per pupil allocation formula based on enrollment (approximately \$13,700/student).

St. Isidore's application made clear it was a Catholic school, had an explicit religious purpose, would teach religious education and incorporate Catholic teachings "into every aspect" including "all subjects." The state board approved the application. The state's attorney general and the ACLU, on behalf of parents, faith leaders and public school advocates, took immediate steps to prevent St. Isidore from opening.

In June 2024, Oklahoma's highest state court sided with the attorney general and invalidated the charter agreement on the grounds that public funds could not be used to operate a public school established as a religious institution. The court further held the notion of a religious public school violated Oklahoma's state constitution.

St. Isidore and the state board appealed the decision to the U.S. Supreme Court, which agreed to hear the case referred to as *Oklahoma Statewide Charter Board v. Drummond*. The issues presented were as follows:

- "Whether the academic and pedagogical choices of a privately owned and run school constitute a state action simply because it contracts with the state to offer a free educational option for interested students."
- "Whether a state violates the [First Amendment's] Free Exercise Clause by excluding privately run religious schools from the state's charter school program solely because the schools are religious, or whether a state can justify such and exclusion by invoking anti-establishment interests that go further than the Establishment Clause requires."

On April 30, 2025, eight of the nine justices on the Supreme Court heard oral argument on the

case. Notably Justice Amy Coney Barrett recused herself from the case, most likely because she has a close personal relationship with one of the advocates who filed the appeal.

On May 22, 2025, the Supreme Court issued a one line per *curiam* decision (on behalf of all justices) that stated: “The judgment is affirmed by an equally divided court.” Because the justices were evenly split, the Oklahoma court’s decision still stands, but is not considered “precedential.” Meaning, the U.S. Supreme Court’s decision does not control or give clarity or significance to any other case. Additionally, because the lower court decision was issued by a state court, it would not control the outcome of any similar dispute in another state should one arise.

The case generated interest across K-12 education nationwide because allowing religious public charter schools could have significant ramifications. There are approximately four million students enrolled in charter schools in at least 45 states across the United States. In New York, there have been 425 charters issued and state law currently caps the total number of allowable charters at 460; there are approximately 180,000 students attending charter schools.

Public school advocates have argued school districts and charter schools would be competing with religious organizations for students and funding, while others expressed concerns about religious indoctrination, implications for special education FAPE obligations, curriculum, and teacher certification rules, among others. Proponents have argued excluding religious schools from contracting with a state via a charter agreement constitutes discrimination based on religion, and families should have the option of choosing a religious school that aligns with their faith beliefs and traditions at no cost. They also point out government funding goes to religious organizations for other services and argue simply labeling a school as a “public school” in a state’s statute does not necessarily make it so.

Given the U.S. Supreme Court’s split, it is likely we will see more cases similar to *Oklahoma Statewide Charter School Board v. Drummond* in the coming months and years and it seems realistic to expect the U.S. Supreme Court to revisit this issue with a full bench.

For more information, please contact [Jennifer M. Schwartzott](#), [Kirsten J. Barclay](#), or any attorney in Bond’s [school law practice](#) or the Bond attorney with whom you are regularly in contact.

