

# Separation of church and state at risk as Oklahoma case goes before Supreme Court this week



By Andrea Eger  
Tulsa World Projects Reporter

Apr 29, 2025

When the U.S. Supreme Court hears oral arguments this week for and against a proposal to open the nation's first-ever religious charter school in Oklahoma, it could consider removing a long-standing boundary between public school funding and religious teaching.

Proponents of expanding Catholic religious teachings to rural areas through St. Isidore of Seville Catholic Virtual School, and the state board that initially offered them sanctioning, are appealing after the Oklahoma Supreme Court found the scheme unconstitutional.

The case hinges on Oklahoma Catholic leaders' insistence that charter schools, which are defined in state and federal law as public schools, are actually private schools — and that denying them equal access to government funding to operate one would violate their right to free exercise of religion.

One of the nation's foremost experts on the separation of church and state — who was the principal drafter of three guides on religious freedom sent to every public school in the nation by the U.S. Department of Education in 2000 — believes a win for St. Isidore is possible and would represent “the most radical change to religious freedom under the First Amendment in American history.”

“Many people in this country have forgotten that their religious freedom depends on keeping government out of religion,” said Charles Haynes, senior fellow for religious liberty at the Freedom Forum. “The separation of church and state was seen as a core protection for religious freedom because that had been the history throughout humanity before — oppression and violence and government attempts to control religion. Many of our founders came from countries where there had been holy wars. And they said, ‘Here, we aren’t doing that. If we are going to have freedom of religion, we are going to have no entanglement between religion and government.’”

## **Motive and opportunity**

While Oklahoma City Archbishop Paul Coakley and Tulsa Bishop David Konderla declined requests to answer questions, the chancellor for the Archdiocese of Oklahoma City told the Tulsa World that the idea for St. Isidore emerged naturally during the pandemic — not from any desire to serve as a legal test case between decades-old legal doctrine on church-state separation.

“The two dioceses have long had a strong desire to provide Catholic education throughout Oklahoma, including rural areas where brick and mortar Catholic schools are not financially feasible. The question was how,” said Chancellor Michael Scaperlanda, who is also an emeritus faculty member at the University of Oklahoma College of Law. “The ability of Catholic schools in Oklahoma to deliver excellent virtual education during the early days of COVID gave us the confidence that we could provide this sort of education statewide, resolving the ‘how’ question. The question then became how to fund it.”

A trio of Supreme Court rulings over a five-year period were viewed by Scaperlanda and other proponents of St. Isidore as opening up a new window of opportunity for funding.

They went like this:

- *Trinity Lutheran Church of Columbia, Inc. v. Comer*, director, Missouri Department of Natural Resources, June 2017 — SCOTUS held that the state of Missouri

unconstitutionally excluded a religious preschool from a playground resurfacing program open to nonprofit organizations because of religion.

- *Espinoza v. Montana Department of Revenue*, June 2020 — SCOTUS found the Montana Supreme Court violated the free exercise clause of the First Amendment by invalidating a private school choice program because it included religious schools.
- *Carson v. Makin*, June 2022 — SCOTUS held that Maine violated the free exercise clause of the First Amendment by excluding religious schools from a program that allowed parents to direct state funds to private schools.

“With the U.S. Supreme Court’s rulings in *Trinity Lutheran* and *Espinoza*, it was becoming clear — became even clearer after *Carson* — that the free exercise clause of the First Amendment prohibited states from discriminating against religious entities in the funding of private educational

initiatives, like the innovative educational programs that Oklahoma funds through privately run charter schools,” said Scaperlanda. “Given our desire to offer Catholic education throughout the state, the two dioceses decided it was worth the effort despite the possibility of this becoming a ‘test’ case.”



State sanctioning for St. Isidore of Seville Catholic Virtual School was secured in 2023, but State Attorney General Gentner Drummond successfully challenged the constitutionality of the St. Isidore proposal at the Oklahoma Supreme Court in 2024.

In response to the St. Isidore and Statewide Virtual Charter School Board appeals, Drummond’s attorneys filed a court brief recently that addressed those three Supreme Court rulings head-on.

“Sometimes you can push a good thing too far. The *Trinity Lutheran-Espinoza-Carson* Trilogy protects free exercise rights by ensuring that religious institutions are not barred from generally available benefits programs. Oklahoma strongly supports that principle,” the brief reads. “But that principle has limits, and, as this Court recognized in *Carson*, it does not require the creation of religious public schools. The Court should reject petitioners’ invitation to extend the *Trinity*

Lutheran Trilogy to hold that States that offer charter schools must create and fund religious charter schools.

“Adopting that position would upend the charter school system to the detriment of children and families whose hopes are tied to such schools and radically change the relationship between Church and State. At the very least, States remain free under the Constitution to opt against going down that path.”

## **Who’s fighting for St. Isidore?**

St. Isidore’s proponents have said publicly that the application for state sanctioning and funding was developed in concert with a religious liberty clinic at the University of Notre Dame Law School, where Supreme Court Justice Amy Coney Barrett, a conservative bloc member, once taught.

She has recused herself from the case.

Justice Barrett also has past ties to the conservative Christian legal advocacy group Alliance Defending Freedom, whose lawyers are handling the Statewide Virtual Charter School Board’s half of the appeal to the Supreme Court.

From 2011 to 2017, Barrett was paid to teach at a summer program for Christian law students that was facilitated by ADF.

In its latest online pledge drive, which was posted in mid-April, ADF posted a video explainer on St. Isidore, summing up its argument in these simple terms: “Religious organizations should be afforded the same access to public benefit programs as other private organizations — equally and without discrimination.”

“This case is not just about St. Isidore — it’s about standing against discrimination against people of faith. It would be a significant win for both religious freedom and school choice. It’s only through the help of our Ministry Friends’ generosity that this and more cases like it are fueled to protect your religious freedom. Please give a gift to help defend freedom today,” reads the appeal.

Represented by Notre Dame Law School’s Lindsay and Matt Moroun Religious Liberty Clinic and law firms Dechert LLP, and Perri Dunn PLLC, St. Isidore’s proponents — the Archdiocese of Oklahoma City and the Diocese of Tulsa — say they’ve been denied their right to participate in Oklahoma’s charter school program based solely on their religion.

## First Amendment fight

The first 16 words of the First Amendment of the Constitution are at the heart of the legal controversy over the St. Isidore charter school proposal: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

Haynes, senior fellow for religious liberty at the Freedom Forum, has worked for decades to promote liberty of conscience — the freedom to hold beliefs and convictions without interference



from the government or others — and religious literacy and civil discourse.

He says the establishment and free exercise clauses coexist in the First Amendment because they were intended to function together to protect religious liberty.

“This case is another opportunity for many of these (Supreme Court) justices to expand their

emphasis on the free exercise clause — and many would say to the expense of the establishment clause,” Haynes said in an interview with the Tulsa World. “They are, I think, of a mind that the 70 years the establishment clause has been applied to the states — and therefore public schools — that the establishment clause has been applied in a way that has come at the expense of free exercise.

“Some scholars and observers of the court have called this ‘even handed neutrality,’ and whether one likes it or not, I think that is what this court is trying to enforce under the establishment clause — that secular and religious groups must be treated the same. That’s a sea change.”

Haynes attributes this shift in part to some modern separationists taking extreme steps to demand public education completely devoid of the subject of religion or free practice of individual religious rights.

“Some said, ‘You can’t have religious clubs, you can’t bring your Bible to school.’ They did that in such an extreme way on that side that it gave separation a bad name,” Haynes said. “The traditional separationists in this country were Southern Baptists.

“Many people in this country have forgotten that their religious freedom depends on keeping government out of religion. Baptists were put in prison in Colonial Virginia for preaching in open air because that was against the law. Baptists were oppressed and kept in the hatches, and the Founders fought for disestablishment of the Anglican church, and they fought hard for the First Amendment because they wanted the Baptists to be free.”

The establishment clause prohibits the government from establishing or creating an official religion or actions that unduly favor one religion over another or religion over non-religion, while the free exercise clause protects both the right to believe in and practice any religion or no religion at all.

“They go hand in hand — these two principles are not at war. They are inseparable for one freedom. That’s the American definition of religious freedom,” said Haynes. “It has created the boldest and most successful experiment in religious freedom in the history of the world. We have countless religions in this country and many, many people who have no religion. Why is that?”

“Because the arrangement, the framework in this country has worked so well. Gradually, we came to live up to this framework of protecting everyone’s religion. If this court decides that model doesn’t work anymore and it is harmful to religious freedom in their view to have these safeguards against government intrusion, good luck to them.”

[andrea.eger@tulsaworld.com](mailto:andrea.eger@tulsaworld.com)

# Opponents of religious charter school: St. Isidore poses threat to all public charters

**Andrea Eger** Apr 12, 2025 Updated Oct 14, 2025

Advocacy groups that helped establish and expand public school choice for parents over the past three decades say the authorization of a religious charter school in Oklahoma, if successful, would spark years of litigation across the nation and could spell the end of the only means of school choice altogether in some states.

Much of the focus on the appeal of St. Isidore of Seville Catholic Virtual School to the U.S. Supreme Court has been on how the case may test established legal doctrine on the separation of church and state in this country.

But ahead of oral arguments April 30, more than 75 organizations within the charter school community, as well as former officials from across the country who helped develop the public charter school system as it currently exists, made moves this week to warn the Supreme Court justices that St. Isidore's entire case is based on the false or mistaken belief that a charter school is anything other than a public school.

"Charter schools were enacted into law as, and remain, public schools. Since their creation in the early 1990s, charter schools have followed the same model. They are publicly funded open-enrollment schools that operate within a state's system of public education," states the argument within the [newly filed amicus brief](#) of nine former elected and appointed state, local and federal officials from across the United States — both Republicans and Democrats — who played a key role in developing and expanding charter schools as they currently exist.

"Over 30 years ago, I authored into law, with a strong bipartisan coalition, the first charter school law in the country, allowing publicly-funded open-enrollment schools to operate within a state's system of public education," former Minnesota state Sen. Ember Reichgott Junge said in the brief. "Since then, the law has been enacted in 45 states (now 46 states), in each case reinforcing that charter schools were always public schools."

Oklahoma Catholic leaders claim that charter schools are actually private schools and that denying them access to government funding to open one to provide greater access to Catholic school education across the state would violate their right to free exercise of religion.

They secured state sanctioning for St. Isidore of Seville Catholic Virtual School in 2023, despite state statute here defining charter schools as public schools, as well as state statute and federal regulation specifically prohibiting them from affiliation with a nonpublic sectarian school or religious institution.





Members of the Oklahoma Statewide Virtual Charter School Board discuss the St. Isidore of Seville Catholic Virtual School on June 19, 2023. Oklahoma Attorney General Gentner Drummond has assailed the state sponsorship of the private school as “clearly unconstitutional” and against his office’s repeated legal warnings. Tulsa World Archive

Oklahoma Attorney General Gentner Drummond sued, and the [Oklahoma Supreme Court ruled](#) in June that a religious charter school is unconstitutional, halting St. Isidore’s planned August 2024 opening for its 200-plus applicants.

Eighteen attorneys general also filed briefs with the U.S. Supreme Court to convey their concern about a ruling in favor of St. Isidore’s appeal potentially upending charter school laws in their states.

The high court’s decision is expected this summer.

## **‘They are going to wreck it for everyone else’**

The National Alliance for Public Charter Schools was among 76 organizations from within the charter school movement — including charter school authorizers or sponsors, school leaders and parents — that submitted briefs this week in favor of the Oklahoma Supreme Court’s 2024 decision.

In an interview with the Tulsa World, Starlee Coleman, president and CEO of the National Alliance for Public Charter Schools, said: “The implications beyond the separation of church and state are not well-understood. This is a huge, huge issue.”

The new amicus brief from the leading national nonprofit organization on advancing the public charter school movement claims that if charter schools are not treated as public schools, the per-pupil funding for public schools that charter school founders and advocates fought for years to access could be lost, putting charter school operations and facilities in jeopardy.





The Deborah Brown Community School was one of the first charter schools in Tulsa when it opened in 2000. Tulsa World Archive

Further, the brief states that another ripple effect of charter schools being found to be private entities would likely call into question charter school teacher participation in many states' retirement or health care programs for public school educators.

"The thing we just keep coming back to is what exactly are these people after? Because there is already a mechanism to fund private school programs with taxpayer money in Oklahoma and dozens of other states. What is this really about? Because it does not feel like an effort to expand school choice for students who do not have it," said Coleman. "We don't have a value judgment on the value of private schooling or religious education or parochial schooling. For millions of people across the country, that is already an excellent choice.

"The only way the Supreme Court gets to a 'yes' in this case is to say, 'Yes, charter schools are actually private schools.' If we are private schools, then we cannot access per-pupil funding. They're not going to get what they say they want, which is money — and they are going to wreck it for everyone else."

The three-decade-old charter school movement was founded and driven by people seeking a different kind of public school — but a public school, nonetheless, and recognition as such was hard-won in the early years, Coleman added.

"The people who start charter schools have chosen to start public schools. If they wanted to start a private school, they could have done that — but they didn't," she said. "They believe there is intrinsic value in having choice within the public school system, and the teachers who teach there and the parents who enroll their children there are actively choosing to be in that public school system.

"In some states, charter schools are the only means of school choice. In the blue states, the massive political backlash to publicly funded religious schools that we are worried about is if the choice becomes having religious charter schools or none — then the result could be: 'We choose none.'"

## Religious education already among parents' choices

In a recently filed legal brief laying out the legal arguments of Oklahoma's attorney general, St. Isidore of Seville Virtual Catholic Charter School and its supporters' claim that it is a private entity were labeled "an erroneous conceit" on which the proposed school has staked its legal claim.

"The implications beyond the separation of church and state are not well understood. This is a huge, huge issue," said Starlee Coleman, president and CEO of the National Alliance for Public Charter Schools.

Charter schools "bear all the classic indicia of public schools," states Drummond's brief. "Public charter schools are free, open to all, established and funded by the state, and can be closed by the state. Moreover, public charter schools are subject to state regulation and oversight concerning curriculum, testing and similar matters. It is thus no surprise that federal law and the laws of 46 states, including Oklahoma, define charter schools as public schools."

Drummond stated that the "exclusion of religious institutions from generally available benefits programs based solely on religion is odious to the Constitution" and that while he "condemns such discrimination," he also pointed out that Oklahoma's other school choice options include tax credits and tuition assistance for religious private schools.

"Oklahoma readily agrees that there is no categorical bar against public monies reaching (and funding) private religious schools, including for devotional instruction and ministry, through such parental choice programs," states his brief. "No one doubts that such an education can be profoundly valuable. But it is not one that states must provide in public schools."

The National Association of Charter School Authorizers, a nonprofit organization dedicated to advancing and strengthening the practices by charter school sponsors to ensure high-quality charter schools, filed an amicus brief echoing the claim that all charter schools are public schools.

But it also raised an additional point about that argument, based on the facts that 92% of authorizers or sponsors of charter schools are local or state school boards, school districts and state departments of education and the remaining ones are delegated their authority by the state, such as independent state boards and commissions, colleges and universities, and other entities deputized by the state for that purpose.

These sponsors set academic and operational expectations from the outset, oversee charter school performance, and ensure compliance with applicable laws and policies in determining whether they should remain open or must close.

"If the court sides with the petitioners, the very nature of authorizing (charter schools) will require government-endorsed sponsors to evaluate and approve the religious teachings espoused by each charter school operator that elects to run a religious charter school," states that organization's new [amicus brief](#).

“Authorizers are required to make judgments between high-quality and low-quality educational approaches. Approval of some religious charter school proposals but not others risks constant litigation and exposure to regular accusations of animosity to one particular religion or another.”

## **Catholic Church in Oklahoma seeking government sanctioning, taxpayer funding for first religious charter school in U.S.**

**Andrea Eger** Feb 13, 2023 Updated Mar 21, 2025

The Catholic Archdiocese of Oklahoma City and the Diocese of Tulsa are partnering in an attempt to establish the first religious charter school in the country, and the Statewide Virtual Charter School Board is poised to hear their government sponsorship pitch Tuesday.

A vote on the matter could come as soon as March.

Oklahoma Catholic leaders have submitted a 255-page proposal for St. Isidore of Seville Catholic Virtual School, named for a sixth-century Catholic bishop and scholar who is patron saint of the internet.

The application calls for a Catholic school, not a public school, that could enroll as many as 500 students at the outset and 1,500 by the fifth year of operation — and be funded by Oklahoma taxpayers.

“We think we can be a fully Catholic school — Catholic in every way: Catholic in teaching, Catholic in employment — and take public funding,” said Brett Farley, executive director of the Catholic Conference of Oklahoma, which is the public policy arm of both the Archdiocese of Oklahoma City and Diocese of Tulsa. “There is legal precedent that public funding can go to religious institutions and those religious institutions can continue to operate according to their beliefs. We intend to operate accordingly.”

St. Isidore’s application for sponsorship from the Statewide Virtual Charter School Board lays out a vision to offer both online instruction and curriculum in small-town, rural Oklahoma, where Catholic communities may be too small for a parish school, but also supplemental online courses in existing, brick-and-mortar Catholic schools to expand access to foreign languages, advanced math, technology, elective subjects and even credit recovery in core classes.

“One of the challenges of Catholic schools in the rural areas is the cost. In a virtual environment, you can have a handful of students in a parish sitting in the same room they are in on Sunday for catechism class on Monday doing school work,” said Farley. “And, for example, if we can pipe German into a school — in that sense it is an existing school we are already operating, like Bishop Kelley (a Catholic high school in Tulsa) — we could offer that in a designated classroom there through Isidore.”

Asked whether Oklahoma statute allows for the kind of part-time enrollment of students envisioned for some through St. Isidore, Farley responded: “Fair question. It may be subject to new legislation. If we get approval, we will be seeking guidance from the state — Tell us what we’re supposed to do, and that’s what we’re going to do.”

Oklahoma is on the frontline in a new, national push for religious charter schools because of the way its current charter school law is constructed compared to those of other states.

Catholic leaders here have been working with the University of Notre Dame Law School’s religious liberty office on the St. Isidore proposal for 18 months, according to Farley.

“What state has the most ripe opportunity for religious charter schools? The answer for Notre Dame is Oklahoma,” he said in a Friday interview with the Tulsa World. “Our statutes are framed in such a way that our charter schools essentially are private schools that are publicly funded. Management, curriculum — every way you slice it — they are private schools.”

But that is debatable, and even Farley will tell you no matter how the St. Isidore application shakes out in the short term, this is a legal test case that is destined for litigation.

## Legal test case

Oklahoma’s current law states that charter school sponsors “may not authorize a charter school or program that is affiliated with a nonpublic sectarian school or religious institution.” And any charter school’s programs, admission policies, employment practices and all other operations “shall be nonsectarian,” which means not involving or relating to a specific religious sect or political group.

But late last year before leaving office, then-Oklahoma Attorney General John O’Connor [issued an advisory opinion](#) that the state’s current ban on publicly funded charter schools being operated by sectarian and religious organizations could be a violation of the U.S. Constitution’s First Amendment “and therefore should not be enforced.”

Americans United for Separation of Church and State has already publicly urged the Oklahoma Statewide Virtual Charter School Board to disregard O’Connor’s advice, which it branded “incorrect.”

Other groups that advocate for the separation of church and state are likely to be following the development of the St. Isidore charter application, too.

O’Connor’s legal opinion was requested after the virtual charter school board received notice in November 2021 that the Oklahoma City Archdiocese planned to apply.

Gov. Kevin Stitt, who appointed O’Connor after former Attorney General Mike Hunter resigned in May 2021, hailed O’Connor’s advisory opinion as a new defense of religious liberty and educational freedom.

Advisory opinions from the Attorney General’s Office are legally nonbinding until an Oklahoma district court determines that it should be binding, but O’Connor’s opinion served as a green light to the Archdiocese of Oklahoma City to proceed.

O’Connor’s [advisory opinion](#) does include this clarifying statement: that “just because the provision prohibiting charter schools from being sectarian ‘in its programs, admission policies, employment practices, and all other operations’ is likely unconstitutional does not mean that religious or religiously-affiliated charter schools can necessarily operate however they want in regard to ‘programs, admission policies, employment practices,’ and the like.”

St. Isidore's application states it would exist for education, charitable and religious purposes, and that includes operating a school "in harmony with faith and morals, including sexual morality, as taught and understood" by the Catholic Church.

The proposed school would — "to the extent permissible" under the Oklahoma Charter Schools Act — "hire educators, administrators and coaches as ministers committed to living and teaching Christ's truth as understood" by the Catholic Church "and to live this faith as a model for students."

When asked whether that means St. Isidore would enroll students or hire employees who are LGBTQ or non-Christian, Farley said the answer goes back to the proposed school's founding as a Catholic school, not a public school.

As such, Catholic schools can hire according to their religious beliefs, he said, because there is legal precedent that every religious school employee is ministering through their work.

As for the question about how open its enrollment of LGBTQ students would be, Farley said: "We would have to look at the specifics. It's not something we haven't dealt with in our own Catholic schools before, because we have, and we do it on a case-by-case basis."

## **Virtual board membership**

The Statewide Virtual Charter School Board was unable to hold monthly meetings in December and January since its third member, Brandon Tatum, resigned in November to become Stitt's chief of staff.

Senate President Pro Tem Greg Treat recently appointed Nellie Tayloe Sanders of Kingfisher to the board, bringing its current membership back to three. That is the minimum quorum of members required so public meetings can resume.

Sanders works as senior vice president of philanthropy at the Center of Family Love, a 24-hour care facility in Okarche for mentally and physically disabled adults founded by the Oklahoma Knights of Columbus, a Catholic men's organization.

Her husband, Mike Sanders, served in the Oklahoma House of Representatives from 2008-2020, and their children attend a private Catholic school in Okarche.

Asked whether it was a coincidence that she was asked to join the Statewide Virtual Charter School Board as it prepares to tackle this Catholic school test case, Sanders didn't hesitate for a second before responding.

"I think it's absolutely not a coincidence," said Sanders. "But my religious affiliation and where I work have nothing to do with my passion for advocating for children with special needs. I believe every child learns differently and we have to be able to provide children with more opportunities to learn."



Robert Franklin, a Tulsa Technology Center administrator who currently serves as board chairman, said protocols for considering sponsorship of new schools call for the board to hear a presentation of the St. Isidore application and get any questions board members may have answered at their next scheduled meeting, on Feb. 14; then a vote on the matter could occur as soon as the board's March meeting.

The other current board member is a retired public school superintendent from Lawton, Barry Beauchamp. Two vacancies — one to be appointed by the governor and the other by House Speaker Charles McCall — remain on the board.