

Case Summary: *Oklahoma Statewide Virtual Charter School Board v. Drummond*

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(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

605 U.S. 165 (2025)

In 2023, the Archdiocese of Oklahoma City and the Diocese of Tulsa applied to the Oklahoma Statewide Charter School Board to create a tuition-free, online K–12 charter school. This school, the St. Isidore of Seville Catholic Virtual School, was intended to operate within Oklahoma’s charter school system, making it distinct from private Catholic schools. St. Isidore did not dispute that it is a religious institution and explicitly planned to “participate in the ‘evangelizing mission of the church.’”¹ On October 9, 2023, the Charter School Board approved St. Isidore’s contract for sponsorship by a 3–2 margin, which established the school as a public charter school.²

The Oklahoma Charter Schools Act of 1999 requires that all charter schools be nonsectarian in their programs.³ The Charter School Board allows for

¹ *Drummond v. Oklahoma Statewide Virtual Charter School Board*, OK 53–121694, slip op. at ¶ 4 (Okla. June 25, 2024) (“St. Isidore does not dispute that it is a religious institution.... Specifically, it plans to... participate ‘in the evangelizing mission of the church.’”).

² *Id.* at ¶ 5 (“On October 9, 2023, the Charter School Board voted again 3-2 to approve St. Isidore’s contract for sponsorship.”).

³ *Id.* at ¶ 3 (“However, the Act requires that all charter schools be nonsectarian in their

negotiation of contract terms that vary from the Board’s provided model contract if the terms comply with “applicable state, federal, local, and/or tribal law.”⁴ The St. Isidore Contract differed from the model contract in important ways. Most significantly, it did not include the model contract section titled “Prohibition of religious affiliation.”⁵ A charter school is required to stipulate “that it is not affiliated with a nonpublic sectarian school or religious institution” under the model contract; St. Isidore concedes that it is affiliated with a nonpublic sectarian school or religious institution in its contract.⁶ The State of Oklahoma, through Attorney General Gentner Drummond, sought a writ of mandamus directing the Charter School Board to rescind the St. Isidore Contract “on grounds that the contract violate[d] state and federal law.”⁷ The Oklahoma Supreme Court had original jurisdiction in this case⁸ and held in a 6–2 decision that the “Contract violate[d] the Oklahoma Constitution, the Act, and the federal Establishment Clause.”⁹

The Oklahoma Supreme Court argued in its opinion that Oklahoma’s Constitution and the Oklahoma Charter Schools Act prohibit the St. Isidore

programs...”).

⁴ *Id.* at ¶ 6 (“However, the Charter School Board can negotiate contract terms that add to or vary from the model contract, if the terms comply with ‘applicable state, federal, local, and/or tribal law.’”).

⁵ *Id.* at ¶ 7 (“The St. Isidore Contract varies significantly from the model contract.... The St. Isidore Contract does not contain the model contract section titled ‘Prohibition of religious affiliation...’”).

⁶ *Id.* at ¶ 7 (“Under the model contract, a charter school must warrant ‘that it is not affiliated with a nonpublic sectarian school or religious institution.’ In the St. Isidore Contract, St. Isidore warrants that it is affiliated with a nonpublic sectarian school or religious institution.”).

⁷ *Id.* at ¶ 1 (“Petitioner Gentner Drummond, Attorney General for the State of Oklahoma...seeks a writ of mandamus... to rescind the Charter School Board’s contract with Intervenor St. Isidore of Seville Catholic Virtual School (‘St. Isidore’) on grounds that the contract (‘St. Isidore Contract’) violates state and federal law.”).

⁸ *Id.* at ¶ 2 (“Original jurisdiction is assumed.”).

⁹ *Id.* at ¶ 8 (“We hold that the St. Isidore Contract violates the Oklahoma Constitution, the Act, and the federal Establishment Clause.”).

Contract.¹⁰ It also argued that since St. Isidore is a governmental entity and a state actor as a public charter school,¹¹ the Establishment Clause prohibits the St. Isidore Contract,¹² and the Free Exercise Clause is not implicated in this case.¹³ Justice Rowe briefly concurred in part, agreeing with the majority that “the Oklahoma constitution mandates . . . public charter schools [be] nonsectarian” while dissenting from the rest of the majority’s opinion.¹⁴ Justice Kuehn issued a comprehensive dissenting opinion; she argued that “[a] private entity . . . may be deemed a state actor if it performs a function traditionally considered the exclusive realm of the state.” Consequently, given the established role of private entities in education, a religious charter school would not be considered a “state actor,” even if it were technically public.¹⁵ Kuehn further argued that “excluding private entities like St. Isidore from contracting for educational services, based solely on religious affiliation, would violate the Free Exercise clause.”¹⁶

¹⁰ *Id.* at ¶ 9–15 (“Section I. OKLAHOMA’S CONSTITUTION AND THE ACT PROHIBIT THE ST. ISIDORE CONTRACT”).

¹¹ *Id.* at ¶ 16–37 (“Section II. AS A PUBLIC CHARTER SCHOOL, ST. ISIDORE IS A GOVERNMENTAL ENTITY AND A STATE ACTOR”).

¹² *Id.* at ¶ 38–41 (“Section III. THE ESTABLISHMENT CLAUSE PROHIBITS THE ST. ISIDORE CONTRACT”).

¹³ *Id.* at ¶ 41–44 (“Section IV. THE FREE EXERCISE CLAUSE IS NOT IMPLICATED IN THIS CASE”).

¹⁴ *Drummond v. Oklahoma Statewide Virtual Charter School Board*, OK 53–121694 (Rowe, J., dissenting in part and concurring in part), slip op. at ¶ 1-2 (Okla. June 25, 2024) (“I concur with the Majority that Article 1, Section 5 of the Oklahoma Constitution mandates that public charter schools are nonsectarian. I dissent to the remainder of the Majority’s opinion.”).

¹⁵ *Drummond v. Oklahoma Statewide Virtual Charter School Board*, OK 53–121694 (Kuehn, J., dissenting), slip op. at ¶ 7 (Okla. June 25, 2024) (“A private entity, such as a religious organization, may be deemed a state actor if it performs a function traditionally considered the exclusive realm of the state....But the Majority concedes that education is not a ‘traditionally exclusive public function.’”).

¹⁶ *Id.* at ¶ 1 (Okla. June 25, 2024) (“Excluding private entities from contracting for functions, based solely on religious affiliation, would violate the Free Exercise Clause of the First Amendment to the United States Constitution.”).

The Oklahoma Supreme Court’s decision was appealed to the United States Supreme Court. In a 4–4 decision, with Justice Barrett recusing herself without providing an official explanation, the Supreme Court upheld the ruling by the Oklahoma Supreme Court. In line with longstanding custom for the Court, the tie resulted in an affirmation of the lower court’s judgment *Per Curiam*, or by the Court as a whole, with no additional concurring or dissenting opinions.¹⁷ Given the 4–4 split, the decision in this case does not establish binding precedent for other jurisdictions beyond the parties in this case.

The publicity of the case and the Court’s 4–4 deadlock indicate that similar cases are likely to be litigated in other states with the hope for another successful appeal to the U.S. Supreme Court. Given that Justice Barrett typically leans conservative and is unlikely to recuse herself from all cases on this subject, there is potential for the full U.S. Supreme Court to issue a favorable decision for the establishment of religious charter schools like St. Isidore. Given South Carolina’s political landscape and the amicus brief indicating its interest in this case, future litigation on religious charter schools could lead to substantial educational changes in the state.

¹⁷ *Oklahoma Statewide Virtual Charter School Board v. Drummond*, 605 U.S. 165, 166 (2025) (“The judgment is affirmed by an equally divided Court. Justice Barrett took no part in the consideration or decision of these cases.”).