

*St. Isidore of Seville  
Catholic Virtual School v.  
Drummond & Statewide  
Charter School Board v.  
Drummond*  
High Level Overview

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# Background: Charter School Laws

- ▶ Charter Schools are authorized by Title IV-C of the Elementary and Secondary Education Act (ESEA), 20 U.S.C. §§ 7221-7225j. 20 U.S.C. 7221i(2)(E) requires a charter school to be “nonsectarian in its programs, admissions policies, employment practices, and all other operations, and [not to be] affiliated with a sectarian school or religious institution”
- ▶ Oklahoma established the Oklahoma Charter Schools Act in 1999
  - Under the act, charter schools are public schools, sponsored by an entity like a school district, regional institution of higher education, federally recognized tribe, or the State Board of Education.
  - “Charter schools use innovative methods and forms of accountability, provide academic choices for students and parents, and offer different professional opportunities for teachers and administrators.” ¶ 3
  - The act requires all charter schools to be nonsectarian “in their programs, admission policies, and other operations.” ¶ 3
- ▶ Under Oklahoma law, the Charter School Board is the only state body with the authority to form virtual charter schools. ¶ 5

## Background: Facts

- ▶ The Archdiocese of Oklahoma City and the Diocese of Tulsa applied to the Charter School Board to establish St. Isidore as a religious virtual charter school. ¶ 4
  - ▶ From St. Isidore’s application: “Rooted in the Catholic understanding of the human person and her or his relationship with God and neighbor, [St. Isidore] fully embraces the teachings of the Catholic Church’s Magisterium, and [St. Isidore] fully incorporates these into every aspect of the School, including but not limited to its curriculum and co-curricular activities.” ¶ 4
- ▶ In October 2023, the Charter School Board voted 3-2 to approve a contract for sponsorship for St. Isidore. The model contract for such charter schools was modified to state that St. Isidore “has the right to freely exercise its religious beliefs and practices consistent with its religious protections.” ¶ 7
- ▶ The State of Oklahoma sued, seeking a writ of mandamus directing the Charter School Board to rescind the St. Isidore Contract. ¶ 8

# *Drummond ex rel. State v. Okla. Statewide Virtual Charter Sch. Bd., 558 P.3d 1 (2024)*

- ▶ The Oklahoma Supreme Court found that under both state and federal law, the State is not authorized to establish or fund St. Isidore. ¶ 8
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  - ▶ The OK Constitution states “No public money or property shall ever be appropriated, applied, donated, or used directly or indirectly for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.” ¶ 9
  - ▶ The court found that “expenditure of state funds for St. Isidore’s operations constitutes the use of state funds for the benefit and support of the Catholic church,” in violation of the OK Constitution. ¶ 12
- ▶ The OK Constitution also delegates to the Legislature the duty to establish and maintain “a system of public schools, which shall be open to all the children of the state and free from sectarian control.” ¶ 13
  - ▶ OK’s charter school law also requires charter schools to be nonsectarian.
  - ▶ The court found that changing the terms of the contract to allow St. Isidore to exercise its religious freedom violated the “plain language of the Act and the Oklahoma Constitution.” ¶ 15

## *Drummond cont.*

### ▶ Governmental Entity and State Actor

- ▶ The school argued that there was some amount of separation between the school as a private entity, and the role it was serving that would make it NOT a governmental entity nor a state actor.
- ▶ The court did not agree. As a charter school, the court found St. Isidore was sufficiently entwined with governmental policies and the state itself was sufficiently entwined with the management and control of St. Isidore that St. Isidore is a state actor.

### ▶ Establishment clause

- ▶ “Congress shall make no law respecting an establishment of religion”
- ▶ States cannot pass laws that “aid one religion, aid all religions, or prefer one religion over another” ¶ 39
- ▶ “Because it is a governmental entity and a state actor, St. Isidore cannot ignore the mandates of the Establishment Clause, yet a central component of St. Isidore’s educational philosophy is to establish and operate the school as a Catholic school. St. Isidore will fully incorporate Catholic teachings into every aspect of the school, including its curriculum and co-curricular activities. It will require students to spend time in religious instruction and activities, as well as permit state spending in direct support of the religious curriculum and activities within St. Isidore—all in violation of the Establishment Clause. We hold that the St. Isidore Contract establishing a religious public charter school violates the Establishment Clause.” ¶ 41

## *Drummond cont.*

- ▶ But what about the Free Exercise Clause?
  - ▶ “Congress shall make no law...prohibiting the free exercise thereof”
  - ▶ The Board and school both argued that the Free Exercise Clause prohibits a state “denying St. Isidore its right to operate as a charter school solely because it is religious.” ¶ 42
  - ▶ In support of this argument, they rely on the “Free Exercise Trilogy”—*Trinity*, *Espinoza*, and *Carson*—it cannot be excluded based solely on its religious affiliation
  - ▶ The court did not agree
  - ▶ St. Isidore is a state-created school that only exists because of the state
  - ▶ As opposed to *Carson*, where the Court noted that the private school at issue was not a public school, noted the many differences between public and private schools, and further noted that the state did not cover the full cost of the private schools ¶ 43

## *Drummond* holding

- ▶ “What St. Isidore requests from this Court is beyond the fair treatment of a private religious institution receiving a generally available benefit, implicating the Free Exercise Clause. It is about the State’s creation and funding of a new religious institution violating the Establishment Clause. Even if St. Isidore could assert free exercise rights, those rights would not override the legal prohibition under the Establishment Clause. Compliance with the Establishment Clause in this case is a compelling governmental interest that satisfies strict scrutiny under other provisions of the First Amendment.” ¶ 44
- ▶ The court ordered the Charter School Board to rescind its contract with St. Isidore ¶ 45

# What happens next?

- ▶ Case is currently on appeal to the U.S. Supreme Court from the Oklahoma Supreme Court. Oral argument was held on April 30<sup>th</sup>. This will likely be one of the last, “big” opinions the Supreme Court issues in late June.
- ▶ Justice Amy Coney Barrett recused herself. If the Court splits 4-4, the decision of the Oklahoma Supreme Court will stand.
- ▶ How the parties are framing the issues the Supreme Court should decide:
  - ▶ St. Isidore and the Charter Board:
    - ▶ “Whether the academic and pedagogical choices of a privately owned and run school constitute state action simply because it contracts with the state to offer a free educational option for interested students.”
    - ▶ “Whether a state violates the 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 an exclusion by invoking anti-establishment interests that go further than the Establishment Clause requires.” *Brief of Petitioners at i.*
  - ▶ State of Oklahoma:
    - ▶ Whether the First Amendment requires the State of Oklahoma to establish, fund, and oversee religious public charter schools because it establishes, funds, and oversees nonreligious public charter schools.” *Brief of Respondent at i.*