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*It does not take a majority to prevail . . . but rather an irate, tireless minority,
keen on setting brushfires of freedom in the minds of men.*
Sam Adams

Supreme Court Hears Oral Arguments for Case over Religious Charter School

On Wednesday, the Supreme Court heard [oral arguments](#) for a case regarding whether it is constitutional to establish a religious charter school. The case involves St. Isidore of Seville Catholic Virtual School which was approved by the virtual charter school board in Oklahoma in October 2023. That same month, Oklahoma’s state attorney general, Gentner Drummond, filed a lawsuit challenging the constitutionality of the school, pointing to both the state law that prohibits public funds supporting religious efforts and the U.S. Constitution that prohibits the state establishment of religion. The state supreme court [sided with Drummond](#), ruling that the establishment of a religious charter school is unconstitutional and violates state law. On appeal to the U.S. Supreme Court, [attorneys for St. Isidore argued](#) that prohibiting a religious charter school violates the free exercise clause of the U.S. Constitution.

At the center of the oral arguments on Wednesday was whether the charter school is considered a “state actor” as a publicly funded school. James Campbell, an attorney for Alliance Defending Freedom representing St. Isidore, argued that since the charter school was created by a private organization and is controlled by a privately run board, it qualifies as a private entity rather than an arm of the government. Since Oklahoma allows other types of charter schools run by private organizations, he argued the exclusion of a religious charter school simply because it is religious violates the free exercise of the First Amendment. He further pointed to three recent Supreme Court decisions—[Trinity Lutheran v. Comer](#), [Espinoza v. Montana Dept. of Revenue](#), [Carson v. Makin](#)—that all ruled that a program generally available to the public cannot exclude religious groups solely based on religion. Gregory Carre representing Drummond and arguing against St. Isidore, argued that charter schools are generally considered public schools, and, therefore, must be non-sectarian according to the language of the law. He pointed out that charter schools have “all the hallmarks of government entities,” such as being “free” to the public, open to all, funded by the state, and subject to the requirements of non-discrimination laws.

The three liberal justices seem to favor the arguments made by Carre, challenging the idea that a religious charter school is not a “public entity” or “state actor.” Chief Justice John Roberts asked probing questions of both sides. Justice Amy Coney Barrett has recused herself from the case. The four other conservative justices seemed satisfied with the explanation in favor of upholding a religious charter school. “You can’t treat religious people, and religious institutions, and religious speech as second-class in the United States. And when you have a program that’s open to all comers except religion . . . that seems like rank discrimination against religion,” [stated Justice Kavanaugh](#) at one point. He continued, “They’re not asking for special treatment, they’re not asking for favoritism. They’re just saying, ‘Don’t treat us worse because we’re religious.’ ” The outcome of this case will have [significant ramifications](#) for school choice and the religious liberty of schools that participate in choice programs.

Research Shows Success Rate of Students Who Are Recipients of School Choice

A new [research report](#) has shown the positive effects of school choice on students who attend college. The research examined students who participated in Ohio's EdChoice Voucher Program and was published by the Urban Institute. The researchers tracked 6,000 students who participated in the school choice program from 2008 to 2014 and compared them with their public school counterparts. The [results](#) show that the school choice students were more likely to attend and complete college. For instance, 64% of school choice students enrolled in college compared to 48% of public school students. The smaller subset of school choice students who attended college were also more likely to complete their bachelor's degrees. The researchers found that 23% of school choice students earned their diplomas compared to 15% of public school students. The researchers contrasted the college improvement of school choice students to the somewhat limited standardized test score gains. They suggested that standardized tests might be an ineffective way to measure the effects of school choice since private schools often focus on other areas of teaching than state exams. "Researchers continue to confirm what parents already know: school choice works," [said](#) Tommy Schultz, CEO of American Federation for Children. "This is another huge win for the data behind school choice coupled with the surging demand for educational options across our nation and another indication that we are embarking on the golden age in American education fueled by school choice."

Religious Liberty Case Before the Supreme Court

The Supreme Court heard [*Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission*](#), a case involving the religious rights of organizations. The Catholic Charities Bureau serves the local Wisconsin poor, regardless of their age, sex, or religion. The charity operates under the bishop of its diocese but is incorporated separately to maintain maximum efficiency. In 2016, the charity applied for a religious exemption from a state unemployment program. The state grants these exemptions to church-run nonprofit organizations that operate "primarily for religious purposes." However, Wisconsin denied the charity its religious exemption because the charity engages in "secular" activities despite its religious motivations. In oral arguments before the U.S. Supreme Court, the counsel for the charity [argued](#) that Wisconsin violated the religion clauses of the First Amendment. For instance, he said Wisconsin violated the [church autonomy doctrine](#), entangled itself in religious affairs, and preferred some religious groups to others. The counsel for Wisconsin argued that the state denied the exemption because the charity did not engage in any specific religious activities. Most Supreme Court justices appeared [sympathetic](#) to the charity's arguments. Justice Clarence Thomas noted that the charity would be exempt if it were incorporated as part of the church. Justice Neil Gorsuch questioned how the state would determine what activities were religious enough to qualify. "Some religions proselytize," said Justice Elena Kagan. "Other religions don't. Why are we treating some religions better than others based on that element of religious doctrine?" The court will likely rule on the case before the end of June.

In Case You Missed It:

[Weekly Market Update](#) provided by Jeff Beach of the [AACIS Investment Team at Merrill Lynch](#)

[Practical Legal Help for Christian Schools: ADF Ministry Alliance](#)

[Trump Executive Order Stands Up Presidential Religious Liberty Commission](#)

[UK Supreme Court Defines 'Man,' 'Woman,' and 'Sex' as Biological](#)

[Children 'Do Not Belong to Government,' Education Department Warns Colorado on Transgender Bill](#)

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