

February 10, 2023

*Via email and U.S. mail*

Members of the Oklahoma Statewide Virtual Charter School Board:

Dr. Robert Franklin, Chairman

Barry Beauchamp, Clerk

Nellie Tayloe Sanders

Ryan Walters, State Superintendent of Public Instruction, Secretary of  
Education, and ex-officio member

Dr. Rebecca L. Wilkinson, Executive Director, Oklahoma Statewide Virtual  
Charter School Board

M.C. Connors Building

2501 N. Lincoln Blvd., Suite 301

Oklahoma City, OK 73105

Re: St. Isidore of Seville Catholic Virtual Charter School application

Dear Dr. Franklin, Mr. Beauchamp, Ms. Sanders, Mr. Walters, and Dr.  
Wilkinson:

We write to urge you to reject the application for charter-school sponsorship submitted to you by St. Isidore of Seville Catholic Virtual Charter School. As explained in our letter and memorandum of January 31, 2023, both the Oklahoma Charter Schools Act and the Establishment Clause of the U.S. Constitution's First Amendment prohibit Oklahoma charter schools from teaching a religious curriculum. The Oklahoma Constitution does so as well. Yet St. Isidore's application makes clear that St. Isidore will provide a religious education and seek to indoctrinate its students in Catholic religious beliefs. Indeed, the application states that the school will be a "place[] of evangelization" that "participates in the evangelizing mission of the Church."<sup>1</sup>

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<sup>1</sup> St. Isidore of Seville Catholic Virtual School, *Virtual Charter School Application to the Oklahoma Statewide Virtual Charter School Board*, at 10 (Jan. 30, 2023) (quoting Congregation for Catholic Education, *The Catholic School on the Threshold of the Third Millennium* ¶ 11 (1997)).

The application also fails to comply with other prohibitions that are imposed by the Act, your regulations, the U.S. Constitution, and the Oklahoma Constitution. St. Isidore plans to, or at the very least reserves the right to, unlawfully discriminate in admissions and employment based on religion, sexual orientation, gender identity, pregnancy, and disability. The school additionally intends to violate rules prohibiting its management company from having control or improper influence over it or its board members.

At bottom, St. Isidore seeks to run a public charter school as a religious school while ignoring antidiscrimination and other rules that all Oklahoma charter schools must follow. There is no precedent for this radical effort to subvert Oklahoma's public-school system and disregard the rights of children and parents to religion-neutral education and the rights of taxpayers not to fund religious instruction. The application should be denied.

**St. Isidore's Curriculum and Programming Will Be Deeply Religious, in Violation of the U.S. Constitution, the Oklahoma Constitution, and the Charter Schools Act**

St. Isidore's application makes clear that the school will be like any other Catholic school, except that it will be virtual and publicly funded. The application straightforwardly states that St. Isidore will "operate the School as a Catholic School."<sup>2</sup> It explains:

It is from its Catholic identity that the school derives its original characteristics and its 'structure' as a genuine instrument of the Church, a place of real and specific pastoral ministry. The Catholic school participates in the evangelizing mission of the Church and is the privileged environment in which Christian education is carried out. In this way 'Catholic schools are at once places of evangelization, of complete formation . . . .'<sup>3</sup>

The application further states that St. Isidore will "operate a school that understands '[t]he truth is that only in the mystery of the incarnate Word does the mystery of man take on light,'" that "[Christ] fully reveals man to

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.* (quoting Congregation for Catholic Education, *The Catholic School on the Threshold of the Third Millennium* ¶ 11 (1997)).

man himself and makes his supreme calling clear,” and that “[t]he truth of the human person and the person’s ultimate destiny is learned and understood through faith and reason, theology and philosophy, including the study of the natural sciences.”<sup>4</sup> The application adds that St. Isidore will “educate[] its students for freedom, understanding that ‘in order to be authentic, freedom must measure itself according to the truth of the person, the fullness of which is revealed in Christ.’”<sup>5</sup>

The application is replete with other statements that demonstrate the highly religious nature of St. Isidore’s planned curriculum and programming.<sup>6</sup> These include that the school intends to “form[] and cultivat[e] students to”:

- “[s]ee and understand truth, beauty and goodness, and their author and source—God”;
- “[k]now that among all creatures, the human person is the only one created in God’s image with the ability to know and love God, and that God created persons male and female”;
- “[k]now that because of sin humanity was separated from God, but in God’s love He has provided a path to salvation through the saving power of Christ, the second person of the Trinity, in His suffering, death and resurrection”;
- “[k]now that in this earthly sojourn, each person is called to participate in Christ’s suffering and death by daily taking up their own cross and following Him”; and
- “[k]now that human persons are destined for eternal life with the Holy Trinity . . . but that in freedom, an individual may reject God’s invitation and by this ‘definitive self-exclusion’ end up in hell.”<sup>7</sup>

St. Isidore plans to indoctrinate its students in the Catholic faith both by integrating Catholic religious doctrine into all its classes on otherwise secular

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<sup>4</sup> *Id.* (quoting Vatican II, *Gaudium et Spes* ¶ 22 (1965)).

<sup>5</sup> *Id.* (quoting Congregation for Catholic Education, *Consecrated Persons and Their Mission in Schools: Reflections and Guidelines* ¶ 37 (2022)).

<sup>6</sup> *See id.* at 5, 10–13, 17, 74–78, 127, 131, 139; *id.*, Appendix F, Section 1, pp. 1–4.

<sup>7</sup> *Id.* at 10–11 (quoting *Catechism of the Catholic Church* ¶ 1033).

subjects<sup>8</sup> and by requiring the students to take theology classes.<sup>9</sup> The School also plans to design a “physical environment” that will have “external signs of the Catholic tradition including images, symbols, icons, crucifixes in every classroom, liturgical celebrations, and other sacramental reminders of Catholic life.”<sup>10</sup> Thus St. Isidore’s classroom environments will be “conducive to prayer and reflection.”<sup>11</sup>

As we explained in our January 31 memorandum, under both the Charter Schools Act and the Establishment Clause, Oklahoma charter schools are prohibited from teaching a religious curriculum, leading students in prayer or presenting prayer at school events, displaying religious texts or symbols to students, or otherwise promoting religion to students or coercing students to take part in religious activity.<sup>12</sup> And the State of Oklahoma is prohibited from funding charter schools that do so.<sup>13</sup> Moreover, the Oklahoma Constitution contains similar prohibitions.<sup>14</sup> The proposed St. Isidore school would blatantly violate all these prohibitions.

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<sup>8</sup> *See id.* at 5, 13 (“Teachers will . . . integrate science with math, music, architecture, and religion.”); *id.* at 76 (“[A] Catholic perspective permeates all subjects informing the student of the unity of all knowledge.”); *id.* at 127 (the school will “seek to offer excellent academic and co-curricular programs permeated by a Catholic anthropology”); *id.* (the curriculum will be “infused with Catholic faith and traditions”); *id.* (classroom lessons “should integrate Catholic social teachings and traditions”); *id.* at 139 (“the School fully embraces the teachings of the Catholic Church’s Magisterium, and the School fully incorporates these into every aspect of the School, including but not limited to, its curriculum and co-curricular activities”).

<sup>9</sup> *See id.* at 5, 13 (“Students will use the current Archdiocese of Oklahoma Curriculum Standards and Benchmarks,” which contain substantial theology requirements, as shown in the “Curriculum Documents” linked at Archdiocese of Oklahoma City, *Curriculum*, <https://archokc.org/curriculum> (last visited Feb. 8, 2023)); *id.* at 26 (“Additional time has been added to the daily schedule to account for the religion/theology classes taught as a requirement of the school.”).

<sup>10</sup> *Id.* at 139.

<sup>11</sup> *Id.* at 127.

<sup>12</sup> *See* Okla. Stat. tit. 70 § 3-136(A)(2); Americans United for Separation of Church and State, *Legal Memorandum on Whether Oklahoma Charter Schools May Provide Religious Education* § I (Jan. 31, 2023).

<sup>13</sup> *See* Jan. 31 Memorandum § II.

<sup>14</sup> *See* Okla. Const. art. I, § 5 (“Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the state and free from sectarian control . . . .”); Okla. Const. art. II, § 5 (“No public money or property shall ever be appropriated, applied, donated, or used, directly or

## St. Isidore Plans to Unlawfully Discriminate in Admissions and Employment

The Charter Schools Act requires Oklahoma charter schools to “be as equally free and open to all students as traditional public schools,” prohibits them from discriminating in admissions on *any* basis other than geographic preferences that are inapplicable in the statewide-virtual context, and requires that if they are oversubscribed only a lottery may be used to determine who may enroll.<sup>15</sup> The Act also prohibits Oklahoma charter schools from discriminating in employment based on religious grounds.<sup>16</sup> In addition, as governmental entities and state actors, Oklahoma Charter Schools must comply with the U.S. Constitution.<sup>17</sup> Three separate provisions of the U.S. Constitution prohibit state actors from discriminating based on religion: the Establishment Clause,<sup>18</sup> the Free Exercise Clause,<sup>19</sup> and the Equal Protection Clause.<sup>20</sup> The Equal Protection Clause further prohibits state actors from discriminating based on sexual orientation<sup>21</sup> or gender identity.<sup>22</sup> The Oklahoma Constitution also, at the very least, prohibits

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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.”).

<sup>15</sup> See Okla. Stat. tit. 70 §§ 3-135(A)(9)–(10), 3-140, 3-145.3(J).

<sup>16</sup> See Okla. Stat. tit. 70 § 3-136(A)(2).

<sup>17</sup> See Jan. 31 Memorandum § I.

<sup>18</sup> See *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 590 (1989), *dicta on different issue disapproved by Town of Greece v. Galloway*, 572 U.S. 565, 579–80 (2014); *Larson v. Valente*, 456 U.S. 228, 244 (1982).

<sup>19</sup> See *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm’n*, 138 S. Ct. 1719, 1731 (2018); *McDaniel v. Paty*, 435 U.S. 618, 626 (1978) (plurality opinion); *Cruz v. Beto*, 405 U.S. 319, 322 (1972); *Gillette v. United States*, 401 U.S. 437, 462 (1971); *Sherbert v. Verner*, 374 U.S. 398, 402 (1963); *Everson v. Bd. of Educ.*, 330 U.S. 1, 16 (1947); *Venters v. City of Delphi*, 123 F.3d 956, 970–71 (7th Cir. 1997); *Brown v. Polk Cnty.*, 61 F.3d 650, 654 (8th Cir. 1995).

<sup>20</sup> See, e.g., *United States v. Armstrong*, 517 U.S. 456, 464 (1996); *Miller v. Johnson*, 515 U.S. 900, 911 (1995).

<sup>21</sup> See *Pavan v. Smith*, 137 S. Ct. 2075, 2077 (2017); *Obergefell v. Hodges*, 576 U.S. 644, 670–76 (2015); *Hughes v. Farris*, 809 F.3d 330, 334 (7th Cir. 2015); *SmithKline Beecham Corp. v. Abbott Lab’ys*, 740 F.3d 471, 484 (9th Cir. 2014).

<sup>22</sup> See *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 608–09 (4th Cir. 2020); *Glenn v. Brumby*, 663 F.3d 1312, 1320 (11th Cir. 2011).

public schools—which charter schools are<sup>23</sup>—from discriminating in admissions on any basis<sup>24</sup> and prohibits all state actors from discriminating based on religion.<sup>25</sup>

Consistently with these statutory and constitutional mandates, the Statewide Virtual Charter School Board’s regulations require charter-school applicants to warrant that they will comply with all antidiscrimination provisions in the law (in addition to all other applicable legal requirements). An application for sponsorship of a new charter school must “include signed and notarized statements from the Head of the School and the governing body members . . . showing their agreement to fully comply as an Oklahoma public charter school with all statute[s], regulations, and requirements of the United States of America, State of Oklahoma, Statewide Virtual Charter School Board, and Oklahoma Department of Education.”<sup>26</sup> And these statements must “[s]pecifically cite agreement . . . to guarantee access to education and equity for all eligible students regardless of their race, ethnicity, economic status, academic ability, or other factors as established by law.”<sup>27</sup>

But St. Isidore has blatantly refused to submit these guarantees to comply with antidiscrimination and other laws. Instead, the school submitted notarized statements that it would comply with antidiscrimination and other requirements only “to the extent required by law, including the First Amendment, religious exemptions, and the Religious Freedom Restoration Act, with priority given to the Catholic Church’s understanding of itself and its rights and obligations pursuant to the Code of Canon Law and the Catechism of the Catholic Church.”<sup>28</sup> Similarly, elsewhere in its application St. Isidore states that “[t]he School complies with all applicable state and federal laws and statutes to the extent the teachings of the Catholic Church

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<sup>23</sup> See Okla. Stat. tit. 70 § 3-132(D).

<sup>24</sup> See Okla. Const. art. I, § 5 (“Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the state and free from sectarian control . . .”).

<sup>25</sup> See Okla. Const. art. I, § 2 (“Perfect toleration of religious sentiment shall be secured, and no inhabitant of the State shall ever be molested in person or property on account of his or her mode of religious worship; and no religious test shall be required for the exercise of civil or political rights.”).

<sup>26</sup> Okla. Admin. Code § 777:10-3-3(c)(1)(F).

<sup>27</sup> *Id.*

<sup>28</sup> See Application at 62; *id.*, Appendix F, Section 2.

allow”; that “[t]he School complies with all applicable local, state, and federal laws and regulations governing fair employment practices that are not inconsistent with the faith or moral teaching of the Catholic Church”; and that “[t]o the extent that local, state, and federal laws and regulations are inconsistent with the faith and moral teaching of the Catholic Church, the School claims a religious exemption to such laws pursuant to the First Amendment to the U.S. Constitution and other applicable local, state, and federal laws and regulations.”<sup>29</sup>

In other words, St. Isidore’s application makes very clear that it plans to comply with antidiscrimination (and other) rules applicable to Oklahoma charter schools only to the extent those rules do not conflict with its religious beliefs.<sup>30</sup> But as we explain below, the school has no right to a religious exemption from antidiscrimination and other requirements that are applicable to all Oklahoma charter schools.<sup>31</sup>

Not only does St. Isidore reserve the right to violate antidiscrimination requirements that are imposed by law, numerous statements in its application demonstrate or indicate that it in fact plans to do so.

### *Religious discrimination in admissions*

To begin with, St. Isidore’s planned programming and operations will result in discrimination in admissions based on religion. While St. Isidore

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<sup>29</sup> *Id.* at 79.

<sup>30</sup> *See also id.*, Appendix F, Section 1, p. 4 (“During the term that the School operates a charter school and maintains a contract as a charter school under the Oklahoma Charter Schools Act, the School will be subject to the requirements of such Act, including requirements relating to programs, admission policies, enrollment, testing, employment practices, and accountability, that are consistent with the School’s constitutional rights as a religious school under the auspices of the Catholic Church.”); *id.*, Appendix F, Section 1, p. 16 (“The School shall not exclude from participation, deny benefits or services, or discriminate against any individual on the basis of race, color, national origin, age, sex, or physical disability or impairment under any program or activity it sponsors or conducts to the extent required by law, including the First Amendment, religious exemptions, and the Religious Freedom Restoration Act, with priority given to the Catholic Church’s understanding of non-discrimination.”).

<sup>31</sup> *See infra* at pp. 11–12.

professes that it will accept students “of different faiths or no faith,”<sup>32</sup> it qualifies that statement by warning that “[a]dmission assumes the student and family willingness to adhere with respect to the beliefs, expectations, policies, and procedures of the school.”<sup>33</sup> Though students “will not be required to affirm our beliefs . . . their experience will reflect the Catholic understanding of each person as created in the image and likeness of God, called to lives of holiness and service.”<sup>34</sup> As noted above, St. Isidore plans to immerse its students in instruction in its particular religious tenets, including by teaching students that if they “reject God’s invitation” they will “end up in hell.”<sup>35</sup> As the U.S. Court of Appeals for the Eighth Circuit held in *Americans United for Separation of Church & State v. Prison Fellowship Ministries, Inc.*, a program that requires participants to submit to instruction in particular religious tenets is not—even if it claims otherwise—open to people of all religions and is instead discriminatory based on religion.<sup>36</sup>

*Discrimination in admissions based on sexual orientation, gender identity, pregnancy, and other personal reproductive choices*

Many statements in St. Isidore’s application indicate that the school also intends to discriminate among prospective or enrolled students based on sexual orientation, gender identity, pregnancy status, and other personal reproductive choices. St. Isidore states that it will “operate a school in harmony with faith and morals, including sexual morality, as taught and understood by the Magisterium of the Catholic Church based upon Holy Scripture and Sacred Tradition.”<sup>37</sup> The school’s “Anti-Discrimination, Anti-Harassment, and Anti-Retaliation Policy” states that “[t]his policy is not in[t]en[d]ed to conflict with any of the School’s religious ten[e]ts or teachings of the Catholic Church,” “specifically includ[ing] Catholic teachings on modesty, sanctity of life, sanctity of marriage, the theology of the body, sexual orientation, and gender identity,” and that “[t]he School will defer to the

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<sup>32</sup> Application at 24; *accord id.* at 11.

<sup>33</sup> *Id.* at 24.

<sup>34</sup> *Id.* at 74.

<sup>35</sup> *Id.* at 11 (quoting *Catechism of the Catholic Church* ¶ 1033).

<sup>36</sup> 509 F.3d 406, 413–16, 425 (8th Cir. 2007).

<sup>37</sup> Application at 11.

appropriate Catholic faith leaders and teachings in implementing this policy and nothing in this policy is intended to conflict with those teachings.”<sup>38</sup>

Catholic teaching prohibits people from engaging in sexual acts with someone of the same gender and requires gay and lesbian people to be chaste.<sup>39</sup> It also requires that “[e]veryone, man and woman, should acknowledge and accept his sexual *identity*,” as biologically determined at birth.<sup>40</sup> And it prohibits heterosexual activity outside marriage.<sup>41</sup>

Thus, St. Isidore states that it “shall not discriminate” “in its discipline policy and practices” on the basis of a variety of characteristics that include “biological sex” but not sexual orientation or gender identity.<sup>42</sup> Similarly, St. Isidore’s “Anti-Discrimination, Anti-Harassment, and Anti-Retaliation Policy” states that “[t]he School strictly prohibits and does not tolerate any unlawful discrimination, harassment, or retaliation *that is also inconsistent with Catholic teaching* on the basis of a person’s race, color, national origin, disability, genetic information, sex, pregnancy (*within church teaching*), *biological sex (gender)*[,] age, military status, or any other protected classes recognized by applicable federal, state, or local law in its programs and activities.”<sup>43</sup>

What is more, St. Isidore’s statement that “[a]dmission assumes the student and *family* willingness to adhere with respect to the beliefs, expectations, policies, and procedures of the school”<sup>44</sup> raises the question of whether—in addition to discriminating against prospective or enrolled students because they are LGBTQ, become pregnant outside of marriage, or are sexually active outside of marriage—the school will discriminate against students because *their parents or guardians* have any of those characteristics.

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<sup>38</sup> *Id.* at 139.

<sup>39</sup> See *Catechism of the Catholic Church* ¶¶ 2357–59 (2d ed.), <https://bit.ly/3Xm4Ub7>.

<sup>40</sup> See *id.* ¶ 2333.

<sup>41</sup> *Id.* ¶ 2353.

<sup>42</sup> Application at 31.

<sup>43</sup> *Id.* at 139 (emphasis added).

<sup>44</sup> *Id.* at 24 (emphasis added).

*Discrimination among students based on disability*

St. Isidore further professes to reserve a right to discriminate against students based on disability. The Charter Schools Act requires Oklahoma charter schools to “comply with all federal and state laws relating to the education of children with disabilities in the same manner as a school district.”<sup>45</sup> But St. Isidore’s application states only that the school “will comply with all applicable State and Federal Laws in serving students with disabilities . . . to the extent that it does not compromise the religious tenets of the school and the instructional model of the school.”<sup>46</sup>

*Discrimination in employment based on religion, sexual orientation, gender identity, and other personal reproductive choices*

St. Isidore’s application also evinces that the school intends to discriminate in employment based on religion, sexual orientation, gender identity, and other personal reproductive choices.

St. Isidore plans “[t]o hire educators, administrators, and coaches as ministers committed to living and teaching Christ’s truth as understood by the Magisterium of the Roman Catholic Church through actions and words, using their commitment to Christ and his teachings in character formation, discipline, and instruction, and to live this faith as a model for students.”<sup>47</sup> The school’s application explains that “Catholic teachers are called ‘in imitation of Christ, the only Teacher, [to] reveal the Christian message not only by word but also by every gesture of their behavior.’”<sup>48</sup> Thus, both “in their day-to-day work and personal lives,” all St. Isidore employees must “adhere to the teachings of the Church” and “refrain from actions that are contrary to the teachings of the Church.”<sup>49</sup>

Accordingly, though employees of St. Isidore are not required to be Catholic,<sup>50</sup> “[t]he School retains its right to consider religion as a factor in

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<sup>45</sup> Okla. Stat. tit. 70 § 3-136(A)(7).

<sup>46</sup> Application at 52.

<sup>47</sup> *Id.* at 11.

<sup>48</sup> *Id.* at 74 (quoting The Sacred Congregation for Catholic Education, *The Catholic School* (1977) (alteration in original)).

<sup>49</sup> *Id.* at 75–76; *accord id.* at 85, 93, 95, 120, 128.

<sup>50</sup> *Id.* at 75.

employment-related decisions.”<sup>51</sup> St. Isidore plans to extend spousal employee benefits only to “opposite sex spouse[s].”<sup>52</sup> And it will require that employees’ “[c]lothing and appearance . . . ensure modesty and sex-appropriateness, reflecting the Church’s teaching on the dignity of the human person as well as the unique dignity of each sex.”<sup>53</sup>

### *Sibling preference*

Finally, St. Isidore plans to give siblings of previously enrolled students preference in admission.<sup>54</sup> Though this presents no constitutional issue, it still violates the Charter Schools Act’s prohibition against any type of non-geographic preference in admissions.<sup>55</sup>

### *No right to religious exemption*

From the statements in its application, it appears that St. Isidore believes that it has a right under the First Amendment’s Free Exercise Clause to a religious exemption from anti-discrimination prohibitions or other requirements that are applicable to all Oklahoma charter schools.<sup>56</sup> It does not. First, as explained in our January 31 memorandum, because Oklahoma charter schools are governmental entities, they have no constitutional rights to challenge the state laws and regulations that govern them.<sup>57</sup> Second, even if they did have such rights, the U.S. Constitution *prohibits* them—because they are state actors—from discriminating based on religion, sexual orientation, or gender identity,<sup>58</sup> and another clause of the Constitution cannot override those prohibitions.<sup>59</sup>

Third, as the Supreme Court recently reaffirmed, the Free Exercise Clause “does not mean that religious institutions enjoy a general immunity from

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<sup>51</sup> *Id.* at 79.

<sup>52</sup> *Id.* at 107.

<sup>53</sup> *Id.* at 85–86.

<sup>54</sup> *Id.* at 24–25.

<sup>55</sup> See Okla. Stat. tit. 70 §§ 3-135(A)(10), 3-140.

<sup>56</sup> See Application at 62, 79; *id.*, Appendix F, Section 1, pp. 4, 16; *id.*, Appendix F, Section 2.

<sup>57</sup> See Jan. 31 Memorandum § I.B.

<sup>58</sup> See *supra* at p. 5.

<sup>59</sup> See Jan. 31 Memorandum § I.B.

secular laws.”<sup>60</sup> Thus, laws that are neutral toward religion and generally applicable do not violate the Free Exercise Clause even if they burden religious conduct.<sup>61</sup> As Justice Scalia explained for the Supreme Court in *Employment Division v. Smith*, a contrary rule would render “professed doctrines of religious belief superior to the law of the land,” which would “in effect . . . permit every citizen to become a law unto himself.”<sup>62</sup> Yet that is exactly what St. Isidore appears to desire here, seeking to be granted a charter without having to follow any rules governing charter schools that it disagrees with based on its religious beliefs. Even former Attorney General O’Connor recognized in his otherwise highly misguided Opinion 2022-7 on religious charter schools that such schools must comply with religion-neutral laws and regulations that apply to them, such as the Charter Schools Act’s requirement that charter schools be “as equally free and open to all students as traditional public schools.”<sup>63</sup>

### **St. Isidore Plans to Violate Rules Prohibiting Its Management Company From Controlling It**

Anti-discrimination prohibitions are not the only religion-neutral rules that St. Isidore plans to violate.

The Statewide Virtual Charter School Board’s regulations require that “[t]he relationship of the charter school and an educational management organization is that of a customer and vendor” and that, “[a]s such, the charter school and the educational management organization shall be separate entities in all aspects.”<sup>64</sup> St. Isidore does not plan to comply with these requirements. Its application states that the Archdiocese of Oklahoma City Department of Catholic Education will be the school’s initial educational management organization.<sup>65</sup> But the application also explains that “[t]he school falls under the umbrella of the Oklahoma Catholic Conference comprised of the Archdiocese of Oklahoma City and the Diocese of Tulsa,” and that these two entities “will direct on diocesan policies that apply to the

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<sup>60</sup> *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020).

<sup>61</sup> *Emp. Div. v. Smith*, 494 U.S. 872, 879 (1990).

<sup>62</sup> *Id.* (quoting *Reynolds v. United States*, 98 U.S. 145, 166–67 (1878)).

<sup>63</sup> Rebecca L. Wilkinson, Ed.D., Okla. Op. Att’y Gen. No. 2022-7, 2022 WL 18495399, at \*15 (2022) (quoting Okla. Stat. tit. 70 § 3-135(A)(9)).

<sup>64</sup> Okla. Admin. Code § 777:10-1-4(1).

<sup>65</sup> Application at 18, 35.

school.”<sup>66</sup> Moreover, St. Isidore’s bylaws state that “[t]he School shall have two Members”—“the Archbishop of the Archdiocese of Oklahoma City and the Bishop of the Diocese of Tulsa”—who will have the right to make major decisions concerning the school’s governance and, “[f]or purposes of implementing the School’s Catholic mission, ministry, doctrine, practice, policy, and discipline,” will serve as the school’s “final interpretive authority with respect to matters of faith and morals.”<sup>67</sup> Thus, in obvious violation of your regulations, St. Isidore’s educational management organization will have control over the school.

Relatedly, your regulations require that “[n]o governing board member, school staff member, or contractor/vendor shall receive pecuniary gain, incidentally or otherwise, from the earnings of the educational management organization or school.”<sup>68</sup> St. Isidore’s plan to hire the Archdiocese of Oklahoma City as its educational management organization will cause it to run afoul of this requirement as well. For St. Isidore’s bylaws mandate that its board of directors “include the Chancellors of the Archdiocese of Oklahoma City and the Diocese of Tulsa and the Directors of Catholic Education/Superintendents of both dioceses,”<sup>69</sup> and the people who hold those positions are indeed currently serving as directors of the school.<sup>70</sup>

## Conclusion

St. Isidore’s application unabashedly demonstrates that the school would violate constitutional, statutory, and regulatory prohibitions against Oklahoma charter schools teaching a religious curriculum, discriminating in admissions and employment, and becoming subordinate to their educational management organizations. We urge you to deny the application. We would be happy to discuss this letter and our prior correspondence with you, and you should feel free to contact us.

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<sup>66</sup> *Id.* at 60.

<sup>67</sup> *Id.*, Appendix F, Section 1, pp. 5, 11.

<sup>68</sup> Okla. Admin. Code § 777:10-3-3(d)(4)(I).

<sup>69</sup> Application, Appendix F, Section 1, p. 7.

<sup>70</sup> *See id.*, Appendix F, Sections 3 and 4.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Alex Luchenitser". The signature is fluid and cursive, with the first name "Alex" written in a larger, more prominent script than the last name "Luchenitser".

Alex J. Luchenitser, Associate Vice President & Associate Legal Director  
([luchenitser@au.org](mailto:luchenitser@au.org))

Kenneth D. Upton, Jr., Senior Litigation Counsel, Oklahoma Bar Association  
No. 12906 ([upton@au.org](mailto:upton@au.org))

Cc: The Hon. Gentner Drummond, Oklahoma Attorney General