

# Public Comment from Americans United Senior Litigation Counsel Kenneth Upton

Oklahoma Statewide Virtual Charter School Board  
Feb. 14, 2023

My name is Kenneth Upton. I was born and raised in Oklahoma – a proud graduate of the state’s public school system. My sister is a life-long educator who currently teaches in the Head Start Program in Southeast Oklahoma.

I also am the Senior Litigation Counsel at Americans United for Separation of Church and State. Recently my colleagues and I sent letters and a memorandum explaining why approving an application that intends to provide a religious education – like the one submitted by St. Isidore of Seville – would violate the U.S. Constitution and Oklahoma law.

In Oklahoma, charter schools are public schools. Lawmakers, the state government, and the charter schools themselves have long understood this. It even is acknowledged in the FAQs on this Board’s website. And as public schools, charter schools must abide by the First Amendment to the U.S. Constitution.

The First Amendment requires that public schools be neutral on issues of religion. This fundamental and historic safeguard is essential to protecting religious freedom, which ensures that students and their families – not school officials – make their own decisions about religion. It also ensures that the government doesn’t tax any of its citizens to fund someone else’s religion.

Even if charter schools were private entities instead of public schools, they *still* are *state actors* under U.S. Supreme Court precedent. And state actors, of course, are also subject to the First Amendment.

Thus, whether classified as public schools or state actors, Oklahoma charter schools are prohibited from teaching religion, sponsoring prayer, discriminating based on religion, or otherwise promoting religion or coercing students to take part in religious activities.

Yet, St. Isidore makes clear in its application that it intends to do all of these things – running the school “as a Catholic School” which they make clear is a “place of evangelization.” Granting this application and funding a charter school that teaches religion would be a *sea change in the law* and upend the Oklahoma educational landscape.

We urge that you deny the application. This would both fulfill your duty to uphold the Constitution and protect the religious freedom of students, families, and all Oklahomans.

We would be pleased to meet with you for further discussions.

Thank you.