

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

GENTNER DRUMMOND, Attorney General )  
for the State of Oklahoma, ex rel. STATE OF )  
OKLAHOMA, )

Petitioner, )

v. )

OKLAHOMA STATEWIDE VIRTUAL )  
CHARTER SCHOOL BOARD; ROBERT )  
FRANKLIN, Chairman of the Oklahoma )  
Virtual Charter School Board for the First )  
Congressional District; WILLIAM PEARSON, )  
Member of the Oklahoma Virtual Charter )  
School Board for the Second Congressional )  
District; NELLIE TAYLOE SANDERS, )  
Member of the Oklahoma Virtual Charter )  
School Board for the Third Congressional )  
District; BRIAN BOBEK, Member of the )  
Oklahoma Virtual Charter School Board for )  
the Fourth Congressional District; and SCOTT )  
STRAWN, Member of the Oklahoma Virtual )  
Charter School Board for the Fifth )  
Congressional District, )

Respondents. )

Case No. 121,694

**MOTION TO INTERVENE BY MELISSA ABDO, KRYSTAL BONSTALL, BRENDA  
LENÉ, MICHELE MEDLEY, DR. BRUCE PRESCOTT, REV. DR. MITCH  
RANDALL, AND REV. DR. LORI WALKE**

Oklahoma taxpayers Melissa Abdo, Krystal Bonsall, Brenda Lené, Michele Medley, Dr. Bruce Prescott, Rev. Dr. Mitch Randall, and Rev. Dr. Lori Walke (collectively, “Taxpayers”) move to intervene in this case as petitioners. Taxpayers further move for leave to file the accompanying proposed Application and Petition in Intervention; proposed Brief in Support of Application and Petition in Intervention; and proposed Appendix in Support of Application and Petition in Intervention.

Taxpayers' motion should be granted for six reasons. First, Taxpayers are plaintiffs in a district-court action that challenges the same transaction that is challenged here: the Statewide Virtual Charter School Board's approval of and contracting with St. Isidore of Seville Catholic Virtual School as a public charter school. Second, Taxpayers have a legal interest—recognized by more than a century of caselaw—in preventing unlawful spending of their tax dollars, and St. Isidore will unlawfully be funded with public money absent judicial relief. Third, Taxpayers are educators, education advocates, parents of school-age children (some of whom are LGBTQ or have disabilities), and clergy who would provide the Court with diverse perspectives and information on the ways in which allowing St. Isidore to operate would harm a wide range of Oklahomans. Fourth, Taxpayers would provide additional factual and legal grounds for a ruling in petitioner Attorney General's favor. Fifth, Taxpayers' counsel are experts in church-state and education law, and that expertise would benefit the Court. Sixth, two sets of proposed intervenors—who are defendants in the district-court action filed by Taxpayers—have moved to intervene as respondents, and Taxpayers' participation would help ensure that the Court hears a balanced set of arguments, from all parties in the district-court litigation.

## **FACTS**

This action challenges the Board's approval of and contracting with St. Isidore as a public charter school that will be funded with state tax dollars. As detailed in Taxpayers' proposed Application and Petition, St. Isidore will indoctrinate students in particular religious beliefs; will discriminate in student admissions, student discipline, and employment based on religion, sexual orientation, gender identity, and other protected grounds; has not committed to fully serve students with disabilities as required by law; and has otherwise refused to agree

to fully comply with the law. *See* Taxpayers’ Pet. ¶¶ 18–28, 36–51. For these reasons, operation and taxpayer funding of St. Isidore as a public charter school would violate numerous state constitutional, statutory, and regulatory provisions. *See* Taxpayers’ Pet. ¶¶ 18, 24–35, 50.

Taxpayers are educators, education advocates, parents of school-age children (some of whom are LGBTQ or have disabilities), and clergy who pay taxes that provide revenue for public charter schools. Specifically, Melissa Abdo is a Catholic, a current member of the Jenks Public Schools Board of Education, a current member of the Board of Directors of the Oklahoma State School Boards Association, a former member of the Oklahoma State Superintendent’s Parent Advisory Committee, and a former member of the Governor’s Education Subcommittee on Parent Engagement. Krystal Bonsall is a parent of a child attending an Oklahoma public school who is a student with disabilities and is classified to receive special-education and related services in school. Brenda Lené is a parent of a child attending a public school and created and runs Oklahoma Education Needs / Donations, a Facebook group of over 25,000 members dedicated to helping public-school teachers obtain donations of school supplies. Michele Medley is the mother of three children, two of whom are children with autism and attend public schools and one of whom is LGBTQIA+, and she has been a staunch advocate at the State Capitol on behalf of children with autism. Dr. Bruce Prescott is a retired Baptist minister and a retired educator who has taught at the University of Oklahoma, Southwestern Baptist Theological Seminary, Phillips Theological Seminary, a public junior college, and a public high school. Rev. Dr. Mitch Randall is a citizen of the Muscogee (Creek) Nation, is currently the chief executive officer of Good Faith Media, and previously served as pastor of NorthHaven Church in Norman and as the executive director

of the Baptist Center for Ethics. Rev. Dr. Lori Walke is the Senior Minister of Mayflower Congregational United Church of Christ in Oklahoma City. (Taxpayers’ Decls., Intervenors’ Appendix (“IA”) at 2–16.)

All of the Taxpayers object to the use of their tax payments to fund St. Isidore because doing so would be unlawful. Further, as educators and education advocates, they fear that state funding of St. Isidore would harm public education by taking public funding away from existing public schools. As parents of school-age children who are non-Catholic, LGBTQ, or have disabilities, they oppose the operation and state funding of a public charter school that would not be open to or adequately serve their children. As clergy, they deeply value religious freedom and the separation of church and state, and believe that those fundamental principles would be gutted by the operation and state funding of a discriminatory, religious public charter school. (Taxpayers’ Decls., IA2–16.)

On July 31, 2023, Taxpayers and several other plaintiffs filed a lawsuit in the District Court of Oklahoma County, *OKPLAC, Inc. v. Statewide Virtual Charter School Board*, No. CV-2023-1857. That lawsuit seeks injunctive and declaratory relief prohibiting (1) continued state sponsorship of St. Isidore as a charter school, (2) implementation of the contract between the Board and St. Isidore, and (3) state funding of St. Isidore. The defendants in that lawsuit filed three motions to dismiss on September 20; Taxpayers filed a consolidated opposition brief on October 23; and a hearing on the motions is set for December 21, 2023. The defendants in the district-court lawsuit also have all been named or sought to intervene as respondents in this case. The docket and all filings in the district-court lawsuit are available at <https://bit.ly/3ShlMkF>.

## ARGUMENT

This Court has liberally allowed intervention in original-jurisdiction actions, including in circumstances similar to those here. For example, in *Phillips v. Oklahoma Tax Commission*, 1978 OK 34, ¶¶ 1, 5–6, 46, 577 P.2d 1278, the Court permitted taxpayers who had already filed a lawsuit challenging the constitutionality of a tax to intervene in an original-jurisdiction action that would be determinative of the issue and to present arguments against the tax that the existing parties had not made. Similarly, in *Findley v. State Election Board*, 1958 OK 137, ¶¶ 1–2, 325 P.2d 1037, this Court allowed intervention in an original-jurisdiction action concerning which candidates could be on a ballot, where the action sought a ruling contrary to a decision in favor of the intervenor that had been issued in a separate administrative proceeding. In *Campbell v. White*, 1993 OK 89, ¶ 2 & n.3, 856 P.2d 255, the Court authorized intervention in an original-jurisdiction action by a public official because he had “an interest in the constitutionality of the challenged” legislation, and the Court also allowed him to challenge related legislation that the existing parties had not challenged. In *Meder v. Oklahoma City*, 1960 OK 87, ¶¶ 2, 38, 42, 43, 350 P.2d 916, the Court granted a taxpayer’s motion to intervene in an original-jurisdiction action challenging a city’s performance of certain lease and bond-indenture agreements, and the Court permitted the taxpayer to make legal arguments that the existing parties had not made. In *Fent v. Henry*, 2011 OK 10, ¶ 6, 257 P.3d 984, the Court allowed intervention in an original-jurisdiction action challenging a measure that had been enacted through referendum, because the intervenor had an “interest in the matter as a member of the Senate who voted on the measure.” In *Ethics Commission v. Cullison*, the Court permitted intervention in an original-jurisdiction action by a person who raised a legal issue that had not been presented by the

existing parties. *See* 1993 OK 37, ¶¶ 3, 8, 850 P.2d 1069; *id.* n.31 (Opala, J., concurring in the result). And in *Morgan v. Daxon*, the Court granted a motion to intervene in an original-jurisdiction action by a person who brought to the Court’s attention relevant facts that the parties had not presented. *See* 2001 OK 104, ¶ 2, 49 P.3d 687; *id.* ¶ 23 (Summers, J., dissenting on other grounds).

As these cases do not set out a comprehensive test for intervention in original-jurisdiction cases, Taxpayers suggest that—in addition to considering factors that supported intervention in these cases—this Court consider as guidance 12 O.S. § 2024, which governs intervention in district-court proceedings (*see* 12 O.S. § 2001). Under 12 O.S. § 2024(A), “[u]pon timely application anyone shall be permitted to intervene in an action . . . [w]hen the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest.” Moreover, 12 O.S. § 2024(B) provides that “[u]pon timely application anyone may be permitted to intervene in an action . . . [w]hen an applicant’s claim or defense and the main action have a question of law or fact in common.” The Committee Comment to 12 O.S. § 2024 further notes that “[i]f a person has an interest that may be impaired and wants to intervene, the court should not force him to rely on someone else to protect his interest.” The Comment explains that—unlike under the analogous federal rule—whether “the applicant’s interest is adequately represented by existing parties” is *not* a relevant factor. *Id.* (quoting with *disapproval* Fed. R. Civ. P. 24(a)).

Both under the factors noted in the cases granting intervention in original-jurisdiction actions and under the standards of 12 O.S. § 2024, Taxpayers should be allowed to intervene, for a host of reasons.

***Taxpayers’ interest in their district-court action.*** First, as in *Phillips*, 1978 OK 34, ¶¶ 1, 5–6, and *Findley*, 1958 OK 137, ¶¶ 1–2, Taxpayers should be permitted to intervene because this action could be determinative of or supersede another proceeding that the proposed intervenors filed. A decision by this Court in this case could control the outcome of Taxpayers’ district-court case. The requirement for intervention under 12 O.S. § 2024(A) is satisfied, for “the disposition of [this] action may as a practical matter impair or impede the applicant[s]’ ability to protect th[eir] interest[s]” in the district-court case. And the standard of 12 O.S. § 2024(B) is met as well, for the “applicant[s]’ claim or defense and the main action have a question of law or fact in common.” Indeed, Taxpayers and the Attorney General challenge the same thing—the Board’s approval of and contracting with St. Isidore as a public charter school—based on overlapping legal grounds. *Compare* Att’y General’s Appl. & Pet. *with* Taxpayers’ Proposed Appl. & Pet.

***Taxpayers’ interest in preventing illegal use of their tax payments.*** Second, as in *Phillips*, 1978 OK 34, ¶¶ 1, 6, and *Meder*, 1960 OK 87, ¶ 2, the proposed intervenors have an interest as taxpayers in preventing illegal taxation or spending. More than a century of precedent recognizes that Oklahoma taxpayers have a right “to challenge the unlawful or unconstitutional expenditure of state funds.” *Okla. Pub. Emps. Ass’n v. Okla. Dep’t of Cent. Servs.*, 2002 OK 71, ¶ 11, 55 P.3d 1072; *see, e.g., Immel v. Tulsa Pub. Facilities Auth.*, 2021 OK 39, ¶ 16, 490 P.3d 135; *Fent v. Contingency Rev. Bd.*, 2007 OK 27, ¶ 8, 163 P.3d 512; *Kellogg v. Sch. Dist. No. 10*, 1903 OK 81, 74 P. 110. Taxpayers contend that state funding of

St. Isidore would be unlawful (*see* Taxpayers’ Pet. ¶¶ 18–51), and “the disposition of [this] action may as a practical matter impair or impede” (12 O.S. § 2024(A)) their ability to protect their interests in preventing that funding.

***Taxpayers’ interests and perspectives as educators, parents, and clergy.*** Relatedly, Taxpayers have additional interests in this litigation as educators, education advocates, parents of school-age children (some of whom are LGBTQ or have disabilities), and clergy; and they would provide the Court with valuable perspectives as members of groups that will be particularly affected if St. Isidore is allowed to operate as a public charter school. Taxpayers include educators and education advocates who do not want state funding of St. Isidore to harm public education by taking public funding away from existing public schools. (Taxpayers’ Decls., IA2, 6–9.) Taxpayers include parents of school-age children who are non-Catholic, LGBTQ, or have disabilities—children who would not be able to attend St. Isidore due to the school’s discriminatory policies or its failure to commit to adequately serve children with disabilities. (*See* Taxpayers’ Decls., IA4–5, 8–9; Taxpayers’ Pet. ¶¶ 36–44, 50.) And Taxpayers include clergy who deeply value religious freedom and the separation of church and state, and believe that those fundamental principles would be gutted by the operation and state funding of a discriminatory, religious public charter school. (Taxpayers’ Decls., IA10–16.)

***Presentation of additional grounds for a ruling in the Attorney General’s favor.*** Taxpayers would—in five ways—supplement the Attorney General’s petition and brief by presenting in their proposed petition and brief additional legal and factual grounds for a ruling in the Attorney General’s favor, similarly to the intervenors in *Phillips*, 1978 OK 34, ¶¶ 5, 46; *Meder*, 1960 OK 87, ¶¶ 2, 38, 42, 43; *Ethics Commission*, 1993 OK 37, ¶¶ 3, 8



(majority opinion), n.31 (Opala, J., concurring in the result); and *Morgan*, 2001 OK 104, ¶ 2 (majority opinion), ¶ 23 (Summers, J., dissenting on other grounds). First, Taxpayers provide additional arguments demonstrating that St. Isidore is a governmental entity and a state actor. Second, Taxpayers explain that, because St. Isidore’s educational program will indoctrinate students in a particular religion, operation of St. Isidore as a state-funded public charter school is barred by Article I, Section 2 of the Oklahoma Constitution in addition to the state constitutional and statutory prohibitions identified by the Attorney General. Third, Taxpayers explain that St. Isidore’s approved application for charter-school sponsorship violated a Board regulation requiring charter-school applicants to certify that they will comply with state law, and that St. Isidore’s charter and contract with the Board violate similar statutory requirements. Fourth, Taxpayers explain that funding and operation of St. Isidore as a public charter school would violate numerous state constitutional provisions and statutes because St. Isidore will discriminate in student admissions, student discipline, and employment based on religion, sexual orientation, gender identity, and other protected characteristics. Fifth, Taxpayers explain that St. Isidore has not committed to fully serving students with disabilities as required by the Oklahoma Charter Schools Act.

*Expertise of Taxpayers’ counsel.* Allowing Taxpayers to intervene would also benefit the Court because their attorneys have great expertise in church-state and education law. The legal team for Taxpayers is led by an attorney who has exclusively practiced church-state and religious-freedom law for the last twenty-three years, and includes attorneys who have done so for the last eighteen years, the last seventeen years, and the last thirteen years, as well as one who has done so for the last five years and practiced LGBTQ-rights law for the preceding thirteen years. (Luchenitser Decl., IA18.) The Taxpayers’ legal team

further includes an attorney who has engaged in litigation, policy, and advocacy related to civil rights, civil liberties, and public education for the last twenty-five years, as well as an attorney who has practiced education law for the last twenty years and another who has done so for the last nine years. (Luchenitser Decl., IA18–19.)

***Balancing the other intervenors.*** Two sets of proposed intervenors—St. Isidore; and the State Department of Education and Superintendent Walters—have moved to intervene as respondents. Both sets of proposed respondents-intervenors are defendants in the district-court case filed by Taxpayers, as are the existing respondents. Thus, if the proposed respondents-intervenors are allowed to participate, all the defendants in the district-court case would be parties to this original-jurisdiction proceeding. Permitting Taxpayers to intervene as well would help balance the scales by ensuring that all parties to the district-court case—on both sides of the controversy—are allowed to present their arguments to this Court.

\* \* \* \* \*

In addition to allowing them to intervene, Taxpayers respectfully ask that the Court allow them to file the accompanying proposed Application and Petition in Intervention; proposed Brief in Support of Application and Petition in Intervention; and proposed Appendix in Support of Application and Petition in Intervention. In district-court interventions, a motion to intervene must be accompanied by “a pleading setting forth the claim or defense for which intervention is sought.” 12 O.S. § 2024(C). Thus, a petitioner-intervenor in a district-court case would need to file a petition in intervention. While only a petition is required to initiate a district-court case, initiating an original-jurisdiction proceeding in this Court requires filing an application and petition and a brief in support, which may be accompanied by an appendix. *See* Rule 1.191. Accordingly, Taxpayers submit

a proposed application and petition, a proposed brief, and a proposed appendix. Allowing these documents to be filed now would give the respondents more time to respond and help speed the progress of this action.

### **CONCLUSION**

For the foregoing reasons, Taxpayers respectfully ask that this motion be granted.

Respectfully submitted on November 14, 2023.

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## CERTIFICATE OF SERVICE

I certify that on November 14, 2023, a true and correct copy of the foregoing document was served by mail to the counsel whose mailing addresses are set forth below and by email to the counsel whose email addresses are set forth below.

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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

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Case No. 121,694

**[PROPOSED] APPLICATION AND PETITION IN INTERVENTION  
BY MELISSA ABDO, KRYSTAL BONSALE, BRENDA LENÉ, MICHELE MEDLEY,  
DR. BRUCE PRESCOTT, REV. DR. MITCH RANDALL,  
AND REV. DR. LORI WALKE**

## INTRODUCTION

1. Petitioners-Intervenors Melissa Abdo, Krystal Bonsall, Brenda Lené, Michele Medley, Dr. Bruce Prescott, Rev. Dr. Mitch Randall, and Rev. Dr. Lori Walke are educators, public-education advocates, public-school parents, and clergy who object to the use of their tax dollars to fund St. Isidore of Seville Catholic Virtual School as a public charter school and are plaintiffs in an Oklahoma County District Court lawsuit that seeks to prevent the operation and state funding of St. Isidore as a public charter school. Intervenors supplement the Attorney General's petition in five ways. All the supplemental legal prohibitions identified by Intervenors are provisions of the Oklahoma Constitution, state statutes, and state regulations.

2. First, Intervenors provide additional information demonstrating that St. Isidore, as an Oklahoma public charter school, is a governmental entity and a state actor. Second, Intervenors provide more details about how St. Isidore's education program will indoctrinate students in a particular religion, and Intervenors explain that the operation of St. Isidore as a public charter school is barred by Article I, Section 2 of the Oklahoma Constitution, in addition to the state constitutional and statutory prohibitions identified by the Attorney General. Third, Intervenors explain that St. Isidore's application for charter-school sponsorship violated a Statewide Virtual Charter School Board regulation requiring charter-school applicants to certify that they will comply with state law, and that St. Isidore's charter and contract with the Board violate similar statutory requirements. Fourth, Intervenors explain that the funding and operation of St. Isidore as a public charter school would violate numerous state constitutional provisions and statutes because St. Isidore will discriminate in student admissions, student discipline, and employment based on religion, sexual orientation,



gender identity, and other protected characteristics. Finally, Intervenors explain that St. Isidore has not committed to fully serving students with disabilities as required by the Oklahoma Charter Schools Act.

### **JURISDICTION**

3. The Attorney General's petition sets forth the basis for this Court's jurisdiction.

### **PARTIES**

4. The Attorney General's petition describes the Attorney General and the respondents.
5. Petitioners-Intervenors are Melissa Abdo, Krystal Bonsall, Brenda Lené, Michele Medley, Dr. Bruce Prescott, Rev. Dr. Mitch Randall, and Rev. Dr. Lori Walke.
6. Intervenor Melissa Abdo is a Catholic, a current member of the Jenks Public Schools Board of Education, a current member of the Board of Directors of the Oklahoma State School Boards Association, a former member of the Oklahoma State Superintendent's Parent Advisory Committee, and a former member of the Governor's Education Subcommittee on Parent Engagement. Intervenor Krystal Bonsall is a parent of a child attending an Oklahoma public school who is a student with disabilities and is classified to receive special-education and related services in school. Intervenor Brenda Lené is a parent of a child attending a public school and created and runs Oklahoma Education Needs / Donations, a Facebook group of over 25,000 members dedicated to helping public-school teachers obtain donations of school supplies. Intervenor Michele Medley is the mother of three children, two of whom are children with autism and attend public schools and one of whom is LGBTQIA+, and she has been a staunch advocate at the State Capitol on behalf of children with autism. Intervenor Dr. Bruce Prescott is a retired Baptist minister and a retired educator who has taught at the University of Oklahoma, Southwestern Baptist Theological Seminary, Phillips

Theological Seminary, a public junior college, and a public high school. Intervenor Rev. Dr. Mitch Randall is a citizen of the Muscogee (Creek) Nation, is currently the chief executive officer of Good Faith Media, and previously served as pastor of NorthHaven Church in Norman and as the executive director of the Baptist Center for Ethics. Intervenor Rev. Dr. Lori Walke is the Senior Minister of Mayflower Congregational United Church of Christ in Oklahoma City. (Intervenors' Decls., IA2-16.<sup>1</sup>)

7. All the individual Intervenors pay various taxes to the State of Oklahoma that provide revenue for public schools, including charter schools. These include individual income taxes, general sales taxes, motor-vehicle taxes, motor-fuel taxes, alcoholic-beverage taxes, tobacco taxes, severance taxes, and property taxes. All the Intervenors object to the use of state tax dollars to support St. Isidore as a public charter school because they believe that state funding of St. Isidore would be unlawful. Moreover, all or some of the Intervenors further object to state funding of St. Isidore because they believe that (1) it would harm public education by taking public funding away from existing public schools; (2) public schools must be open to all, and taxpayers should not be forced to fund a school that discriminates against children based on religion, sexual orientation, gender identity, or other grounds; (3) public schools must provide appropriate education to children with disabilities, and taxpayers should not be forced to fund a school that will not commit to doing so; (4) some of their own children would not be able to enroll in, or be served adequately or equitably by, St. Isidore due to its discriminatory practices, its failure to commit to properly serve children with disabilities, and its indoctrination of children in a particular religion; (5) state funding of St. Isidore would

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<sup>1</sup> Citations to the Intervenors' appendix are in the format "IA\_\_." Citations to petitioner Attorney General's appendix are in the format "PA\_\_." All cited pages of the Attorney General's appendix are in its first volume.

violate the religious freedom of Oklahoma taxpayers by forcing them to fund the religious education of others; and (6) state funding of St. Isidore would violate the separation of church and state. (Intervenors’ Decls., IA2–16.)

8. On July 31, 2023, Intervenors filed a lawsuit in the District Court of Oklahoma County, *OKPLAC, Inc. v. Statewide Virtual Charter School Board*, No. CV-2023-1857. That lawsuit seeks injunctive and declaratory relief prohibiting (1) continued state sponsorship of St. Isidore as a charter school, (2) implementation of the charter contract between the Statewide Virtual Charter School Board and St. Isidore, and (3) state funding of St. Isidore. The defendants in that lawsuit filed three motions to dismiss on September 20; the plaintiffs (*i.e.*, the Intervenors here) filed a consolidated opposition brief on October 23; and a hearing on the motions is set for December 21, 2023. The docket and all filings in that lawsuit are available at <https://bit.ly/3ShlMkF>.

9. Intervenors have moved to intervene in this action before this Court to protect their interests as plaintiffs in the district-court action and their interests as taxpayers in preventing unlawful expenditures of public funds.

**FACTUAL AND LEGAL ALLEGATIONS  
SUPPLEMENTING THE ATTORNEY GENERAL’S PETITION**

**I. St. Isidore is a governmental entity and a state actor.**

10. St. Isidore, in its bylaws, identifies itself as “an Oklahoma virtual charter school established pursuant to the Oklahoma Charter School[s] Act, 70 O.S. § 3-130 et seq.” (Appl., PA310.) As an Oklahoma public charter school, St. Isidore is a governmental entity and a state actor.

**A. St. Isidore is a governmental entity.**

11. Oklahoma charter schools are governmental entities because they were created by legislation, Oklahoma law defines and treats them as public schools and governmental bodies, they have the same responsibilities and privileges as other public schools, and they must comply with myriad legal requirements that govern other public schools.

12. Charter schools were created by the Oklahoma legislature through the Charter Schools Act (70 O.S. § 3-130 *et seq.*), and they could be abolished by repeal of the Act. The Act expressly states that “‘charter school’ means a *public school* established by contract with a board of education of a school district” (70 O.S. § 3-132(D) (emphasis added)) or with certain other governmental entities (*see* 70 O.S. § 3-132(A)).

13. Oklahoma charter schools must “be as equally free and open to all students as traditional public schools.” 70 O.S. § 3-135(A)(9). They must “comply with all . . . laws relating to the education of children with disabilities in the same manner as a school district.” 70 O.S. § 3-136(A)(7). They must not “charge tuition or fees.” 70 O.S. § 3-136(A)(10). They are “subject to the same academic standards and expectations as existing public schools.” 70 O.S. § 3-135(A)(11). They receive state “funding in accordance with statutory requirements and guidelines for existing public schools.” 70 O.S. § 3-135(A)(12). They must comply with the same rules that govern public schools on school-year length (70 O.S. § 3-136(A)(11)), bus transportation (70 O.S. § 3-141(A)), student testing (70 O.S. § 3-136(A)(4)), student suspension (70 O.S. § 3-136(A)(12)), and financial reporting and auditing (70 O.S. § 3-135(C); 70 O.S. §§ 3-136(A)(6), (18); 70 O.S. § 3-145.3(E)).

14. Employees of Oklahoma charter schools are eligible for the same retirement benefits that Oklahoma provides to teachers at other public schools (70 O.S. § 3-136(A)(14)) and for

the same insurance programs that are available to employees of their employers' governmental sponsors (70 O.S. § 3-136(A)(15)). Oklahoma charter schools must “comply with the Oklahoma Open Meeting Act and the Oklahoma Open Records Act.” 70 O.S. § 3-136(A)(16). They are “eligible to receive current government lease rates” if they choose to lease property. 70 O.S. § 3-142(E). They must have governing boards that hold public meetings at least quarterly (70 O.S. § 3-135(A)(3)) and that are “subject to the same conflict of interest requirements as a member of a local school board” (70 O.S. §§ 3-136(A)(17), 3-145.3(F)).

15. Each Oklahoma charter school is considered a separate “local education agency” (70 O.S. §§ 3-142(C), 3-145.3(C)), which is a public board of education or other public authority legally constituted for administrative control or direction of public elementary or secondary schools (*see* 10 O.S. § 601.42(6)). Oklahoma charter schools are “considered . . . school district[s] for purposes of tort liability under The Governmental Tort Claims Act.” 70 O.S. § 3-136(A)(13). A 2007 Oklahoma Attorney General opinion states that “charter schools . . . are part of the public school system,” “are under the control of the Legislature,” and further the Legislature’s “mandate of establishing and maintaining a system of free public education.” Hon. Al McAffrey, Okla. Att’y Gen. Op. No. 07-23, 2007 WL 2569195, at \*7 (2007).

**B. St. Isidore is a state actor because it has a symbiotic relationship with and is entwined with the state.**

16. Oklahoma charter schools also are state actors because they have a symbiotic relationship with and are entwined with the state. Only governmental entities may serve as sponsors for a charter school and grant a charter. *See* 70 O.S. §§ 3-132(A), 3-145.1. The governmental sponsors must then “[p]rovide oversight of the operations of charter schools,”

“[m]onitor . . . the performance and legal compliance of charter schools,” and decide whether to renew or revoke charter contracts. *See* 70 O.S. § 3-134(I). The charter schools must comply with the numerous legal and reporting requirements described above. *See supra* ¶¶ 13–14. At the same time, the schools (so long as they comply with applicable legal requirements) provide a variety of benefits to the state. *See* 70 O.S. § 3-131(A).

**C. St. Isidore is a state actor because it performs a traditionally exclusive public function and fulfills a constitutional obligation of the state.**

17. Oklahoma charter schools further are state actors because they perform a traditionally exclusive public function, and—independently—because they fulfill a constitutional obligation of the state. As public schools, Oklahoma charter schools provide free, public education. 70 O.S. §§ 3-132(D), 3-135(A)(9)–(11). Though provision of education may not be a traditionally exclusive public function, the provision of *free public education* is. And even if it were not, Oklahoma charter schools are state actors because they contract with the state to perform one of the state’s constitutional obligations. The Oklahoma Constitution obligates the state to provide all Oklahoma children with a free, public education. *See* Okla. Const. Art. I, § 5; Art. XI, §§ 2, 3; Art. XIII, § 1.

**II. Article I, Section 2 of the Oklahoma Constitution prohibits the creation of a charter school that indoctrinates children in a religion, as St. Isidore will.**

18. As a governmental entity and a state actor, St. Isidore must comply with the Oklahoma Constitution. Article I, Section 2 of the Oklahoma Constitution provides: “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.” Under Article I, Section 2, public schools and other governmental entities and state actors are prohibited from

proselytizing or indoctrinating people in any religion or coercing people to engage in religious activity or undertake religious instruction. St. Isidore’s approved application for charter-school sponsorship makes clear that St. Isidore will violate these prohibitions.

19. The application openly states that St. Isidore will “operate the School as a Catholic School.” (Appl., PA92.) The application 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 . . . .’

(Appl., PA92 (quoting Congregation for Catholic Education, *The Catholic School on the Threshold of the Third Millennium* ¶ 11 (1997)).) 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 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.” (Appl., PA92 (quoting Vatican II, *Gaudium et Spes* ¶ 22 (1965)).) 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.’” (Appl., PA92 (quoting Congregation for Catholic Education, *Consecrated Persons and Their Mission in Schools: Reflections and Guidelines* ¶ 37 (2022)).)

20. The application is replete with other statements that demonstrate the religious nature of St. Isidore’s planned curriculum and programming (*see* Appl., PA78, 92–94, 99, 212–16, 264, 268, 276, 310–13), including that the school will “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.”

(Appl., PA92–93.)

21. St. Isidore will indoctrinate its students in the Catholic faith both by integrating Catholic religious doctrine into all its classes on otherwise secular subjects and by requiring its students to take theology classes. St. Isidore’s approved application explains that “[t]eachers will . . . integrate science with math, music, architecture, and religion” (Appl., PA78, 95); that “a Catholic perspective permeates all subjects informing the student of the unity of all knowledge” (Appl., PA214); that the school will “seek to offer excellent academic and co-curricular programs permeated by a Catholic anthropology” (Appl., PA264); that the curriculum will be “infused with Catholic faith and traditions” (Appl., PA264); that classroom lessons “should integrate Catholic social teachings and traditions” (Appl., PA264); and that “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” (Appl., PA276). The



application further explains that “[s]tudents will use the current Archdiocese of Oklahoma Curriculum Standards and Benchmarks” (Appl., PA78, 95), which include substantial theology requirements (see “Curriculum Documents” linked at Archdiocese of Oklahoma City, *Curriculum of the Archdiocese of OKC’s Catholic Schools Office*, <https://archokc.org/curriculum> (last visited Nov. 9, 2023)), and that “[a]dditional time has been added to the daily schedule to account for the religion/theology classes taught as a requirement of the school” (Appl., PA115).

22. St. Isidore also will 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.” (Appl., PA276.) Thus St. Isidore’s classroom environments will be “conducive to prayer and reflection.” (Appl., PA264.)

23. St. Isidore’s contract with the Board provides that “[t]he Charter School is authorized to implement the program of instruction, curriculum, and other services as specified in [its approved] Application, unless otherwise modified by the Contract.” (Contract, PA4, ¶ 4.1.) Similarly, the contract provides that St. Isidore’s approved application is “incorporated by reference” in the contract, except that “[i]n the event of a conflict between the terms of this Contract and the approved terms in the Charter School’s Application for Sponsorship, the terms of this Contract shall supersede.” (Contract, PA20, ¶ 11.9.) No provision in the contract modifies or supersedes any of the language in St. Isidore’s application that is quoted above or any other language in St. Isidore’s application that demonstrates that St. Isidore will teach a religious curriculum and inculcate a particular religion in its students. (Contract, PA2–21.)

**III. St. Isidore’s approved application, charter, and contract violate statutes and regulations requiring charter-school applicants to certify that they will comply with state law.**

24. One of the Board’s regulations requires applications for sponsorship of a new charter school to “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 . . . State of Oklahoma, Statewide Virtual Charter School Board, and Oklahoma Department of Education,” and to “[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.” OAC § 777:10-3-3(c)(1)(F). St. Isidore’s approved application did not comply with these requirements.

25. Instead, St. Isidore submitted notarized statements that it would comply with antidiscrimination and other legal requirements *only* “to the extent required by law, including . . . religious exemptions, . . . 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.” (Appl., PA181–90.) Similarly, elsewhere in the application, St. Isidore stated that “[t]he School complies with all applicable state . . . laws and statutes to the extent the teachings of the Catholic Church allow”; that “[t]he School complies with all applicable local [and] state . . . 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 [and] state . . . laws and regulations are inconsistent with the faith and moral teaching of the Catholic Church,” St. Isidore views itself as exempt from the laws and regulations. (Appl., PA217.) In other words, in violation of OAC § 777:10-3-3(c)(1)(F), St.

Isidore agreed in its approved application to comply with antidiscrimination and other legal requirements applicable to Oklahoma charter schools *only* to the extent that those requirements do not conflict with its religious beliefs.

26. Similarly, the Charter Schools Act requires charter schools to “adopt a charter which will ensure compliance with the following: . . . [a] charter school shall comply with all . . . state and local rules and statutes relating to health, safety, civil rights and insurance.” 70 O.S. § 3-136(A)(1). The Act further requires that “[t]he sponsor of a charter school shall enter into a written contract with the governing body of the charter school” that, among other provisions, must contain “[a] description of how the charter school will comply with the charter requirements set forth in the [Act].” 70 O.S. § 3-135(A)(5). The Board’s contract with St. Isidore also “constitute[s] the Charter” of St. Isidore (Contract, PA2), and the contract/charter does not comply with these provisions.

27. Instead of agreeing to “comply with all . . . state and local rules and statutes relating to health, safety, civil rights and insurance” (70 O.S. § 3-136(A)(1)), the contract/charter provides only that “[t]he Charter School agrees to comply with all Applicable Law” (Contract, PA13, ¶ 8.1). In turn, the contract/charter sets forth a complex definition of “Applicable Law” that purports to grant St. Isidore broad religion-based exemptions from legal requirements—including antidiscrimination requirements—that apply to charter schools:

**“Applicable Law”** means all federal and state statutes and rules and regulations applicable to virtual charter schools organized under the Oklahoma Charter Schools Act, including without limitation provisions of the Oklahoma Constitution, Oklahoma Charter Schools Act, Oklahoma Governmental Tort Claims Act, federal statutes pertaining to labor and employment, unemployment compensation, and worker’s compensation, and laws governing tax withholding and reporting of employee wages, federal and state regulations relating to health, safety, civil rights, and insurance, and any

other state, local, or federal law or regulation applicable by its own terms to the Charter School. The parties to this Contract recognize certain rights, exemptions or entitlements are applicable to the Charter School as a religious organization under federal, state, or local law, rules, and regulations, including without limitation the Charter School's rights under the so-called "ministerial exception" and other aspects of the "church autonomy" doctrine; Article 1, Section 2, of the Constitution of the State of Oklahoma; the Oklahoma Religious Freedom Act; the federal Religious Freedom Restoration Act; and the First Amendment to the Constitution of the United States (the "Religious Protections"). Accordingly, references in this Contract to the Charter School's compliance with Applicable Law shall be understood to mean compliance in a manner nonetheless consistent with the Charter School's Religious Protections.

(Contract, PA2-3, ¶ 2.1.) Similarly, other provisions of the contract/charter state that "actions by the Charter School that are inconsistent with Applicable Law but nonetheless within the Charter School's rights under the Religious Protections shall not be deemed a violation of this Contract" (Contract, PA3-4, ¶ 3.1) and that "if the Charter School is a religious nonprofit organization, the Charter School shall be entitled to its Religious Protections even when in conflict with the Applicable Law" (Contract, PA19, ¶ 11.1). In short, instead of requiring St. Isidore to fully comply with all antidiscrimination and other legal requirements applicable to Oklahoma charter schools, the contract/charter purports to grant St. Isidore broad exemptions from those requirements.

**IV. St. Isidore will discriminate in student admissions, student discipline, and employment based on religion, sexual orientation, gender identity, and other prohibited grounds.**

28. St. Isidore will, in fact, discriminate in student admissions, student discipline, and employment based on a variety of protected characteristics. Numerous state constitutional provisions and statutes prohibit the authorization and operation of a charter school that does so.

29. Article I, Section 5 of the Oklahoma Constitution requires that the State “establish[ ] and maint[ain] . . . a system of public schools, which shall be open to all the children of the state . . . .” Article XIII, Section 1 of the Oklahoma Constitution similarly requires that the State “establish and maintain a system of free public schools wherein all the children of the State may be educated.” Article XI, Section 2 of the Oklahoma Constitution established a “permanent school fund” that must “be used for the maintenance of the common schools in the State”; and Article XI, Section 3 of the Oklahoma Constitution prohibits the use of the permanent school fund “for any other purpose than the support and maintenance of common schools for the equal benefit of all the people of the State.”

30. Article I, Section 2 of the Oklahoma Constitution provides: “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.” Under Article I, Section 2, public schools and other governmental entities and state actors are prohibited from discriminating based on religion.

31. Article II, Section 36A of the Oklahoma Constitution provides that “[t]he state shall not grant preferential treatment to, or discriminate against, any individual or group on the basis of . . . sex . . . in the operation of public employment, public education or public contracting.” As discrimination based on sexual orientation and discrimination based on gender identity are forms of discrimination based on sex, the prohibitions in Article II, Section 36A encompass discrimination based on sexual orientation and gender identity, and bar public schools and other governmental entities and state actors from discriminating based on those grounds.

32. Article II, Section 7 of the Oklahoma Constitution includes an antidiscrimination component that affords protections against unreasonable or unreasoned governmental classifications that serve no important governmental interests. As discrimination based on religion, sexual orientation, or gender identity serves no important governmental interests, public schools and other governmental entities and state actors are prohibited under Article II, Section 7 from discriminating on these grounds.

33. The Charter Schools Act requires charter schools to “be as equally free and open to all students as traditional public schools.” 70 O.S. § 3-135(A)(9). The Act requires that a lottery be used to select which students may enroll in a charter school if the number of students applying exceeds the space available; and the Act prohibits any admission preferences other than geographic ones, specifically enumerating “gender” as an unlawful ground for denying admission. 70 O.S. §§ 3-135(A)(10), 3-140, 3-145.3(J). The Act requires charter schools to be “nonsectarian in [their] . . . admission policies [and] employment practices.” 70 O.S. § 3-136(A)(2).

34. 70 O.S. § 1210.201 provides that “[s]egregation of children in the public schools of the State of Oklahoma on account of race, *creed*, color or national origin is prohibited.” (Emphasis added.)

35. Contrary to the foregoing prohibitions, St. Isidore will discriminate in student admissions, student discipline, and employment based on religion, sexual orientation, gender identity, pregnancy outside of marriage, and sexual activity outside of marriage.

**A. Religious discrimination in student admissions and discipline.**

36. St. Isidore’s programming and operations will result in discrimination in admissions based on religion. While St. Isidore professes in its approved application that it will accept

students “of different faiths or no faith,” 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.” (Appl., PA113; *accord* St. Isidore website FAQs, IA37.)

37. In addition, St. Isidore’s approved application identifies the “Applicant” as “St. Isidore of Seville Catholic Virtual School, Archdiocese of Oklahoma City.” (Appl., PA76.) The application 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.” (Appl., PA177.) The Archdiocese of Oklahoma City, together with the Diocese of Tulsa, will “direct on diocesan policies that apply to” St. Isidore 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.” (Appl., PA177, 320.)

38. The Archdiocese of Oklahoma City’s policy is that “[s]hould a parent or student intentionally and knowingly” express “disagreement with Catholic faith and morals, they are effectively choosing not to fully embrace the promised school learning environment offered for all students and by that choice, freely made, they are choosing not to remain a part of the school community. School administration will respect that decision and act accordingly by withdrawing them from the school or decline to approve them for admission.” (Student-parent handbook of Christ the King Catholic School, a school of the Archdiocese of Oklahoma City, IA22–23.<sup>2</sup>)

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<sup>2</sup> All policies cited from the Christ the King handbook are expressly identified with blue highlighting in the original handbook as policies “required by the Archdiocese of Oklahoma City.” (See Christ the King handbook, IA21.)

39. Moreover, as detailed above, St. Isidore will immerse its students in instruction in its religious tenets, including by teaching students that if they “reject God’s invitation” they will “end up in hell.” (Appl., PA215 (quoting *Catechism of the Catholic Church* ¶ 1033).) Because St. Isidore’s program requires students to submit to instruction in particular religious tenets, it is not actually open to children of all faiths and is instead discriminatory based on religion. Indeed, students of a variety of faiths—including certain Jewish and Muslim students—would be prohibited by their own religions from “adher[ing] . . . to the beliefs” (*cf.* Appl., PA113) of, or submitting to religious indoctrination in, a faith different from their own.

**B. Discrimination in student admissions and discipline based on sexual orientation, gender identity, pregnancy outside of marriage, and sexual activity outside of marriage.**

40. St. Isidore also will discriminate among prospective or enrolled students based on sexual orientation, gender identity, pregnancy outside of marriage, and sexual activity outside of marriage.

41. In its approved application, 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.” (Appl., PA93.) St. Isidore’s “Anti-Discrimination, Anti-Harassment, and Anti-Retaliation Policy” provides that it 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 appropriate Catholic faith



leaders and teachings in implementing this policy and nothing in this policy is intended to conflict with those teachings.” (Appl., PA275–76.)

42. According to the *Catechism of the Catholic Church*—which is the “authoritative exposition” of the Catholic faith (*see Catechism of the Catholic Church* xv (2d ed.), <https://bit.ly/3Xm4Ub7>) and which St. Isidore cites as an authority numerous times in its application (*see, e.g.*, Appl., PA92–94, 181, 215–16)—authoritative Catholic teaching prohibits people from engaging in “homosexual acts” and requires gay and lesbian people to be “chast[e]” (*see Catechism of the Catholic Church* ¶¶ 2357–59). Authoritative Catholic teaching, as stated in the *Catechism of the Catholic Church*, also requires that “[e]veryone—man and woman—should acknowledge and accept his or her sexual *identity*” as biologically assigned at birth. *See id.* ¶ 2333. Authoritative Catholic teaching, as stated in the *Catechism of the Catholic Church*, further prohibits heterosexual activity outside of marriage. *Id.* ¶ 2353.

43. Thus, while St. Isidore’s revised application states that the school “shall not discriminate” “in its discipline policy and practices” based on a variety of characteristics that include “biological sex,” the application does not include sexual orientation and gender identity as protected characteristics. (Appl., PA118.) 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 . . . law[s] in its programs and activities.” (Appl., PA276 (emphasis added).)

44. As noted above, St. Isidore is an Archdiocese of Oklahoma City school, and the Archdiocese will control St. Isidore’s policies. *See supra* ¶ 37. Archdiocese of Oklahoma City policy is that “advocating for, or expressing same-sex attractions . . . is not permitted” for students. (Christ the King handbook, IA28.) The Archdiocese’s “Sexual Identity Policy” states that any student who “reject[s] his or her body by social transition (dressing and identifying as the opposite sex or as non-binary), medical transition (use of puberty blockers or cross sex hormones), or surgical transition (removal of sexual organs or of secondary sex characteristics, or surgeries designed to create secondary sex characteristics of the opposite sex)” will be “choosing not to remain enrolled,” because any of those actions would be contrary to Catholic doctrine. (Christ the King handbook, IA33–34.) The Archdiocese’s “Sexual Identity Policy” further provides that “school personnel will address students by . . . pronouns correlating to the student’s sexual identity based on biological sex from conception.” (Christ the King handbook, IA34.) Archdiocese policy additionally provides that “all students . . . must follow the dress code expectation of their biological sex.” (Christ the King handbook, IA26.)

**C. Discrimination in employment based on religion, sexual orientation, gender identity, pregnancy outside of marriage, and sexual activity outside of marriage.**

45. St. Isidore further will discriminate in employment based on religion, sexual orientation, gender identity, pregnancy outside of marriage, and sexual activity outside of marriage. St. Isidore’s approved application states that the school will “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.” (Appl., PA93.) The 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.’” (Appl., PA212 (quoting The Sacred Congregation for Catholic Education, *The Catholic School* (1977) (alteration in original)).)

46. Thus, both “in their day-to-day work and personal lives,” all St. Isidore employees are required to “adhere to the teachings of the Church” and “refrain from actions that are contrary to the teachings of the Church.” (Appl., PA213–14.) As noted above, authoritative Catholic teaching, as stated in the *Catechism of the Catholic Church*, prohibits people from engaging in “homosexual acts,” requires gay and lesbian people to be “chast[e],” requires that “[e]veryone—man and woman—should acknowledge and accept his or her sexual *identity*” as biologically assigned at birth, and prohibits heterosexual activity outside of marriage. *See Catechism of the Catholic Church* ¶¶ 2333, 2353, 2357–59. St. Isidore will accordingly 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.” (Appl., PA223–24.) And though St. Isidore represents that its employees are not required to be Catholic (*see* Appl., PA213), “[t]he School retains its right to consider religion as a factor in employment-related decisions” (Appl., PA217).

#### **D. Relevant contract provisions.**

47. The contract between the Board and St. Isidore states, “The parties acknowledge and agree that if the Charter School is a religious nonprofit organization, it has the right to freely exercise its religious beliefs and practices consistent with its Religious Protections.” (Contract, PA13, ¶ 8.2.) Another contract provision confirms that “the Charter School is a privately operated religious non-profit organization entitled to Religious Protections.”

(Contract, PA2, ¶ 1.5.) As noted above, the contract defines “Religious Protections” as

certain rights, exemptions or entitlements [that] are applicable to the Charter School as a religious organization under federal, state, or local law, rules, and regulations, including without limitation the Charter School’s rights under the so-called ‘ministerial exception’ and other aspects of the ‘church autonomy’ doctrine; Article 1, Section 2, of the Constitution of the State of Oklahoma; the Oklahoma Religious Freedom Act; the federal Religious Freedom Restoration Act; and the First Amendment to the Constitution of the United States.

(Contract, PA2–3, ¶ 2.1.) And, as detailed above, in several places the contract makes clear that the “Religious Protections” supersede “Applicable Law” and exempt St. Isidore from having to comply with “Applicable Law.” *See supra* ¶ 27 (citing Contract, PA2–4, 19, ¶¶ 2.1, 3.1, 11.1). The contract thus permits St. Isidore to ignore—on religious grounds—an antidiscrimination provision in the contract that otherwise would have ensured that “no student shall be denied admission to the Charter School on the basis of race, color, national origin, sex, sexual orientation, gender identity, gender expression, disability, age, proficiency in the English language, religious preference or lack thereof, income, aptitude, or academic ability” (Contract, PA15, ¶ 8.8).

48. Moreover, even if the contract’s clause concerning discrimination in admissions were not superseded by the contract’s exemptions and did require St. Isidore to enroll students who identify as non-Catholic or LGBTQ, the school is *de facto* not open to students of all religions and LGBTQ students. As explained above, students will be prohibited from expressing disagreement with the Catholic faith or acting in contradiction to Catholic religious tenets. *See supra* ¶¶ 36–38. St. Isidore’s indoctrination of students in that faith will make the school unsuitable for students of a variety of other religions—some of whom would actually be barred by their faiths from submitting to religious instruction in a faith different from their own. *See supra* ¶ 39. St. Isidore will prohibit LGBTQ students from living in

accordance with their identities. *See supra* ¶¶ 40–44. Further, nothing in the contract bars St. Isidore from discriminating against non-Catholic or LGBTQ students in discipline or otherwise after they enroll, or even from expelling them. (Contract, PA2–22.)

49. The contract also allows St. Isidore to discriminate in employment, providing that “[t]he Charter School shall ensure that employment of the Charter School’s personnel is conducted in accordance with all Applicable Law.” (Contract, PA19, ¶ 11.1.) As explained above, the contract’s definition of “Applicable Law” incorporates broad religious exemptions (*see supra* ¶ 27), including “the Charter School’s rights under the so-called ‘ministerial exception’” (Contract, PA2–3, ¶ 2.1), which is a doctrine that permits *private* religious organizations to disregard employment-discrimination laws with respect to certain employees (*see, e.g., Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2061 (2020)). The contract also provides that “the Charter School shall ensure that employment is conducted in accordance with the Charter School’s personnel policies and procedures” (Contract, PA19, ¶ 11.1), and as detailed above, those policies and procedures are discriminatory (*see supra* ¶¶ 45–46).

**V. St. Isidore has not committed to fully serving students with disabilities as required by the Charter Schools Act.**

50. The Charter Schools Act requires Oklahoma charter schools to “comply with all . . . laws relating to the education of children with disabilities in the same manner as a school district.” 70 O.S. § 3-136(A)(7). But St. Isidore’s approved application states only that the school “will comply with all applicable . . . [l]aws 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.” (Appl., PA155–56.) Moreover, as noted above, St. Isidore is an Archdiocese of Oklahoma City school, and the Archdiocese will control St. Isidore’s policies.

*See supra* ¶ 37. Archdiocese of Oklahoma City policy is that “[s]tudent service plans” for students with disabilities “cannot contain accommodations or modifications that are in opposition of Church teaching.” (Christ the King handbook, IA24.)

51. To be sure, the Board’s contract with St. Isidore states:

The Charter School shall comply with all federal and state laws relating to the education of children with disabilities in the same manner as an Oklahoma Public School district, including but not limited to the Individuals with Disabilities Education Act (“IDEA”) in 20 U.S.C. § 1400 et seq., Section 504 of the Rehabilitation Act of 1973 in 29 U.S.C. § 794, Title II of the Americans with Disabilities Act, and Policies and Procedures of the Oklahoma State Department of Education for Special Education in Oklahoma.

(Contract, PA14–15 ¶ 8.6.) But as explained above, the contract provides broad religious exemptions from its requirements (*see supra* ¶¶ 27, 47 (citing Contract, PA1–3, 13, 19 ¶¶ 1.5, 2.1, 3.1, 8.2, 11.1)), and the contract incorporates St. Isidore’s approved application to the extent that it does not conflict with the contract (*see* Contract, PA19, ¶ 11.1). Thus, the contract is properly understood as incorporating the caveat in St. Isidore’s application that the school will provide services to students with disabilities only “to the extent that it does not compromise the religious tenets of the school” (Appl., PA154–55).

### **REQUESTED RELIEF**

52. Intervenors respectfully ask that the Court order the Board to (1) terminate its contract with St. Isidore, (2) revoke the Board’s approval of St. Isidore’s application for sponsorship as a charter school, and (3) refrain from taking any action in the future that would authorize or facilitate St. Isidore operating or receiving state funding as a charter school. Intervenors further respectfully ask that the Court issue such other relief as the Court deems proper, including an award of costs and attorneys’ fees to Intervenors to the extent allowed by law.

Respectfully submitted on November 14, 2023.

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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

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for the State of Oklahoma, ex rel. STATE OF	)	
OKLAHOMA,	)	
	)	
Petitioner,	)	
and	)	No. 121,694
	)	
MELISSA ABDO, et al.,	)	On Petitioner’s application to assume
	)	original jurisdiction and petition for
Petitioners-Intervenors,	)	writ of mandamus and declaratory
	)	judgment against respondents
v.	)	Oklahoma Statewide Virtual Charter
	)	School Board and its members.
OKLAHOMA STATEWIDE VIRTUAL	)	
CHARTER SCHOOL BOARD, et al.,	)	
	)	
Respondents.	)	

**[PROPOSED] BRIEF IN SUPPORT OF APPLICATION AND PETITION  
IN INTERVENTION BY MELISSA ABDO, KRYSTAL BONSALE, BRENDA LENÉ,  
MICHELE MEDLEY, DR. BRUCE PRESCOTT, REV. DR. MITCH RANDALL,  
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## **INTRODUCTION**

Petitioners-Intervenors Melissa Abdo, et al. supplement the Attorney General’s brief in five ways. First, Intervenors provide additional argument demonstrating that St. Isidore of Seville Catholic Virtual School is a governmental entity and a state actor. Second, Intervenors explain that because St. Isidore’s educational program will indoctrinate students in a particular religion, operation of St. Isidore as a public charter school is barred by Article I, § 2 of the Oklahoma Constitution in addition to the state constitutional and statutory prohibitions identified by the Attorney General. Third, Intervenors explain that St. Isidore’s approved application for charter-school sponsorship violated a Statewide Virtual Charter School Board regulation requiring charter-school applicants to certify that they will comply with state law, and that St. Isidore’s charter and contract with the Board violate similar statutory requirements. Fourth, Intervenors explain that funding and operation of St. Isidore as a public charter school would violate numerous state constitutional provisions and statutes because St. Isidore will discriminate in student admissions, student discipline, and employment based on religion, sexual orientation, gender identity, and other protected characteristics. Finally, Intervenors explain that St. Isidore has not committed to fully serving students with disabilities as required by the Oklahoma Charter Schools Act.

### **SUMMARY OF THE RECORD (SUPPLEMENTING PETITIONER’S SUMMARY)<sup>1</sup>**

St. Isidore plans to “operate the School as a Catholic School” and “participate[] in the evangelizing mission of the Church.” (Approved application for charter-school sponsorship

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<sup>1</sup> Citations to the Intervenors’ appendix are in the format “IA\_\_.” Citations to petitioner Attorney General’s appendix are in the format “PA\_\_.” All cited pages of the Attorney General’s appendix are in its first volume.

(“Appl.”), PA92.) St. Isidore will indoctrinate students in the Catholic faith by suffusing its curriculum with Catholic religious doctrine and by requiring students to take theology classes. (Appl., PA78, 95, 115, 214, 264, 276; *see also* Intervenors’ Pet. ¶¶ 19–22.) Indeed, St. Isidore’s approved application for charter-school sponsorship is replete with statements that demonstrate the religious, indoctrinating nature of its planned curriculum. (*See* Appl., PA78, 92–94, 99, 212–16, 264, 268, 276, 310–13; *see also* Ints.’ Pet. ¶¶ 19–22.)

In its application, St. Isidore agreed to comply with antidiscrimination and other legal requirements applicable to Oklahoma charter schools *only* to the extent that those requirements do not conflict with its religious beliefs. (*See* Appl., PA181, 217; *see also* Ints.’ Pet. ¶¶ 25–27.) Similarly, St. Isidore’s contract with the Board, which doubles as St. Isidore’s charter, purports to grant St. Isidore broad religious exemptions from the antidiscrimination and other legal requirements applicable to Oklahoma charter schools. (Contract, PA1–4, 13, 19 ¶¶ 2.1, 3.1, 8.1, 11.1; *see also* Ints.’ Pet. ¶¶ 27, 47, 49, 51.)

St. Isidore will, in fact, discriminate in student admissions, student discipline, and employment based on religion, sexual orientation, gender identity, and other prohibited grounds. To begin with, St. Isidore will not be truly open to students of all religions. While St. Isidore claims in its application that it will admit students “of different faiths or no faith,” 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.” (Appl., PA113.) St. Isidore identifies itself as a school of the Archdiocese of Oklahoma City, and the Archdiocese will control St. Isidore’s “beliefs, expectations, policies, and procedures.” (Appl., PA76, 177, 320; *see also* Ints.’ Pet. ¶ 37.) It is the Archdiocese’s policy that, “[s]hould a parent or student intentionally and knowingly” express

disagreement with Catholic faith and morals, they are effectively choosing not to fully embrace the promised school learning environment offered for all students and by that choice, freely made, they are choosing not to remain a part of the school community. School administration will respect that decision and act accordingly by withdrawing them from the school or decline to approve them for admission.

(Student-parent handbook of Christ the King Catholic School, a school of the Archdiocese of Oklahoma City, IA21–23.<sup>2</sup>) In any event, because St. Isidore will immerse students in instruction in its religious tenets, and students of a variety of faiths would be prohibited by their religions from submitting to religious indoctrination in a faith different from their own, St. Isidore is *de facto* not open to students of all faiths. (*See also* Ints.’ Pet. ¶ 39.)

St. Isidore’s approved application also demonstrates that St. Isidore will discriminate among prospective or enrolled students based on sexual orientation, gender identity, pregnancy outside of marriage, and sexual activity outside of marriage. The application states that St. Isidore 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.” (Appl., PA93 (emphasis added).) Authoritative Catholic teaching prohibits people from engaging in “homosexual acts,” requires lesbian and gay people to be “chast[e],” requires that “[e]veryone—man and woman—should acknowledge and accept his or her sexual identity” as assigned at birth, and prohibits heterosexual activity outside of marriage. *See Catechism of the Catholic Church* ¶¶ 2333, 2353, 2357–59 (2d ed.), <https://bit.ly/3Xm4Ub7><sup>3</sup>; *see also* Ints.’ Pet. ¶ 42. Accordingly, St.

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<sup>2</sup> All policies cited from the Christ the King handbook are expressly identified with blue highlighting in the original handbook as policies “required by the Archdiocese of Oklahoma City.” (*See* Christ the King handbook, IA21.)

<sup>3</sup> St. Isidore cites the *Catechism of the Catholic Church* as an authority numerous times in its approved application. (*See, e.g.*, Appl., PA92–94, 181, 215–16.)

Isidore excludes sexual orientation and gender identity from the lists of characteristics protected under its nondiscrimination statements and policies. (Appl., PA118, 275–76; *see also* Ints.’ Pet. ¶ 43.) Moreover, as noted above, St. Isidore’s policies will be controlled by the Archdiocese of Oklahoma City, and it is Archdiocese policy that “advocating for, or expressing same-sex attraction . . . is not permitted for students” and that students who live as or transition to a gender different from the one they were assigned at birth will be expelled. (Christ the King handbook, IA28, 33–34; *see also* Ints.’ Pet. ¶ 44.)

In addition, St. Isidore plans to discriminate in employment based on religion, sexual orientation, gender identity, pregnancy outside of marriage, and sexual activity outside of marriage. St. Isidore’s revised application states that the school will “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.” (Appl., PA93; *see also* Ints.’ Pet. ¶ 45.) Thus, both “in their day-to-day work and personal lives,” all St. Isidore employees are required to “adhere to the teachings of the Church” and “refrain from actions that are contrary to the teachings of the Church.” (Appl., PA213–14; *see also* Ints.’ Pet. ¶ 46.) As noted above, authoritative Catholic teaching prohibits LGBTQ people from expressing their sexual orientation or gender identity, and prohibits all people from having sex or becoming pregnant outside of marriage. *See Catechism of the Catholic Church* ¶¶ 2333, 2353, 2357–59. And, though St. Isidore’s application asserts that its employees are not required to be Catholic (Appl., PA213), it expressly states that “[t]he School retains its right to consider religion as a factor in employment-related decisions” (Appl., PA217).

What is more, St. Isidore’s approved application states that the school will “comply with all applicable . . . [l]aws in serving students with disabilities” *only* “to the extent that it does not compromise the religious tenets of the school and the instructional model of the school.” (Appl., PA155–56.) And Archdiocese of Oklahoma City policy is that “[s]tudent service plans” for students with disabilities “cannot contain accommodations or modifications that are in opposition of Church teaching.” (Christ the King handbook, IA24.)

Also, the broad religious exemptions in the Board’s contract with St. Isidore (*see* Contract, PA1–3, 13, 19 ¶¶ 1.5, 2.1, 3.1, 8.2, 11.1; *see also* Ints.’ Pet. ¶¶ 27, 47, 51) will enable the school to override, on religious grounds, provisions in the contract that otherwise would have (1) prohibited St. Isidore from discriminating in admissions based on religion, sexual orientation, and gender identity and (2) required the school to fully comply with laws concerning services for students with disabilities (*see* Contract, PA14–15 ¶¶ 8.6, 8.8; *see also* Ints.’ Pet. ¶¶ 47, 51). And even if the contract’s clause concerning discrimination in admissions were not superseded by those exemptions and did require St. Isidore to enroll students who identify as non-Catholic or LGBTQ, the school is *de facto* not open to students of all religions and LGBTQ students. As explained above, students will be prohibited from expressing disagreement with the Catholic faith, St. Isidore’s indoctrination of students in that faith will make the school unsuitable for students of a variety of other religions, and St. Isidore will prohibit LGBTQ students from living in accordance with their identities. (*See supra* at 2–4; *see also* Ints.’ Pet. ¶¶ 36–44, 48.) Further, nothing in the contract bars St. Isidore from discriminating against non-Catholic or LGBTQ students in discipline or otherwise after they enroll or even from expelling them. (*See* Contract, PA2–22.)

## ARGUMENT AND AUTHORITIES (SUPPLEMENTING PETITIONER'S)

### I. As a public charter school, St. Isidore is a governmental entity and a state actor and therefore must comply with the Oklahoma Constitution.

Whether an entity must comply with constitutional requirements depends on whether the entity's conduct is state action. *See, e.g., Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019). The Attorney General correctly explains that St. Isidore is a state actor under various tests used to determine whether private entities are state actors, including the entwinement and public-function tests. (*See* Pet'r's Br. 10–14; *see also* Ints.' Pet. ¶¶ 16–17.) Intervenors wish to emphasize that although this is right, it is not necessary to apply these tests to reach the conclusion that St. Isidore is bound by constitutional prohibitions, because Oklahoma charter schools are governmental entities themselves.

As Justice Scalia explained for the U.S. Supreme Court in *Lebron v. National Railroad Passenger Corp.*, 513 U.S. 374, 378–82 (1995), when a party is a governmental official or entity, that is sufficient to render the party a state actor, and it is thus unnecessary to consider the tests that are used to assess *private* entities. Accordingly, without applying the tests used to analyze whether private entities are state actors, the Supreme Court has concluded that various organizations and persons are state actors because they are governmental entities or officials. *See, e.g., NCAA v. Tarkanian*, 488 U.S. 179, 192 (1988) (state universities); *Pennsylvania v. Bd. of Dirs. of City Trs.*, 353 U.S. 230, 231 (1957) (board created by state to operate privately endowed college); *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 624 (1991) (state judges); *Georgia v. McCollum*, 505 U.S. 42, 50 (1992) (prosecutors).

Indeed, in *Lebron*, without applying traditional state-action tests for private entities, the Supreme Court concluded that Amtrak is a governmental entity to which the First

Amendment applies, even though the statute that created Amtrak stated that it is a for-profit corporation and *not* “an agency or establishment of the United States government.” 513 U.S. at 383–86, 391, 397–400. The Court explained that Amtrak was created by legislation, its purpose is to pursue governmental goals, and it is controlled by government-appointed officials. *See id.* Likewise, without applying traditional state-action tests, then-Judge Gorsuch concluded for the Tenth Circuit in *United States v. Ackerman*, 831 F.3d 1292, 1295–1300 (10th Cir. 2016), that a clearinghouse for missing children that was originally created as a private, nonprofit organization was a governmental entity because it was given exclusive duties and powers by a federal statute and was funded primarily by the federal government.

As in these cases, Oklahoma charter schools are governmental entities. Charter schools were created by the Oklahoma legislature through the Charter Schools Act (70 O.S. § 3-130 *et seq.*), and they may be abolished by repeal of the Act. The Act expressly states that “‘charter school’ means a *public school* established by contract with a board of education of a school district” (70 O.S. § 3-132(D) (emphasis added)) or with certain other governmental entities (*see* 70 O.S. § 3-132(A)). Moreover, Oklahoma charter schools have numerous other characteristics that further confirm that they are public schools and governmental institutions.

For instance, Oklahoma charter schools must “be as equally free and open to all students as traditional public schools.” 70 O.S. § 3-135(A)(9). They must “comply with all . . . laws relating to the education of children with disabilities in the same manner as a school district.” 70 O.S. § 3-136(A)(7). They must not “charge tuition or fees.” 70 O.S. § 3-136(A)(10). They are “subject to the same academic standards and expectations as existing public schools.” 70 O.S. § 3-135(A)(11). They receive state “funding in accordance with statutory requirements and guidelines for existing public schools.” 70 O.S. § 3-135(A)(12).

And they must comply with the same rules that govern other public schools on school-year length (70 O.S. § 3-136(A)(11)), bus transportation (70 O.S. § 3-141(A)), student testing (70 O.S. § 3-136(A)(4)), student suspension (70 O.S. § 3-136(A)(12)), and financial reporting and auditing (70 O.S. §§ 3-135(C); 70 O.S. § 3-136(A)(6), (18); 70 O.S. § 3-145.3(E)).

Also, employees of Oklahoma charter schools are eligible for the same retirement benefits that Oklahoma provides to teachers at other public schools (70 O.S. § 3-136(A)(14)) and for the same insurance programs that are available to employees of the charter schools' governmental sponsors (70 O.S. § 3-136(A)(15)). Oklahoma charter schools must "comply with the Oklahoma Open Meeting Act and the Oklahoma Open Records Act." 70 O.S. § 3-136(A)(16). They are "eligible to receive current government lease rates" if they choose to lease property. 70 O.S. § 3-142(E). They must have governing boards that hold public meetings at least quarterly (70 O.S. §§ 3-135(A)(3), 3-145.3(F)) and that are "subject to the same conflict of interest requirements as a member of a local school board" (70 O.S. §§ 3-136(A)(17), 3-145.3(F)).

What is more, each Oklahoma charter school is considered a separate "local education agency" (70 O.S. §§ 3-142(C), 3-145.3(C)), which is "a public board of education or other public authority legally constituted" for "administrative control or direction" of public schools (*see* 20 U.S.C. § 7801(30)(A)). Oklahoma charter schools are "considered . . . school district[s] for purposes of tort liability under The Governmental Tort Claims Act." 70 O.S. § 3-136(A)(13). And a 2007 Oklahoma Attorney General opinion states that "charter schools . . . are part of the public school system," are "under the control of the Legislature," and further the Legislature's "mandate of establishing and maintaining a system of free



public education.” Hon. Al McAffrey, Okla. Att’y Gen. Op. No. 07-23, 2007 WL 2569195, at \*7 (2007).

In sum, Oklahoma charter schools were created by legislation; Oklahoma law defines and treats them as public schools and governmental bodies; they have the same responsibilities and privileges as other public schools; and they must comply with myriad legal requirements that govern other public schools. Because Oklahoma charter schools are governmental entities, there is no question that they are state actors, and “this ends the inquiry.” *See Riestler v. Riverside Cmty. Sch.*, 257 F. Supp. 2d 968, 972 (S.D. Ohio 2002).

The Tenth Circuit has accordingly treated charter schools as governmental entities. *See Brammer-Hoelter v. Twin Peaks Charter Acad.*, 602 F.3d 1175, 1188 (10th Cir. 2010) (charter school was “a local governmental entity” and therefore was subject to the same legal rules that apply to other governmental entities in lawsuits alleging violations of constitutional rights); *Coleman v. Utah State Charter Sch. Bd.*, 673 F. App’x 822, 830 (10th Cir. 2016) (employees of charter school were “government officials”); *accord Dillon v. Twin Peaks Charter Acad.*, 241 F. App’x 490, 496–97 (10th Cir. 2007). Many other federal courts across the country, including the en banc Fourth Circuit and panels of the Third and Ninth Circuits, have treated charter schools as governmental entities or other state actors as well. *See Peltier v. Charter Day Sch.*, 37 F.4th 104, 115–23 (4th Cir. 2022) (en banc), *cert. denied*, 143 S. Ct. 2657 (2023); *Fam. C.L. Union v. Dep’t of Child. & Fams.*, 837 F. App’x 864, 869 (3d Cir. 2020); *Nampa Classical Acad. v. Goesling*, 447 F. App’x 776, 777–78 (9th Cir. 2011);<sup>4</sup> *but*

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<sup>4</sup> *See also Patrick v. Success Acad. Charter Schs.*, 354 F. Supp. 3d 185, 209 n.24 (E.D.N.Y. 2018); *United States v. Minn. Transitions Charter Schs.*, 50 F. Supp. 3d 1106, 1120 (D. Minn. 2014); *Pocono Mountain Charter Sch. v. Pocono Mountain Sch. Dist.*, 908 F. Supp. 2d 597,

*see Caviness v. Horizon Cmty. Learning Ctr.*, 590 F.3d 806, 812–14, 817 (9th Cir. 2010) (holding that charter school’s employment decisions were not state action—without deciding whether performance of its educational functions is state action—based on analysis of Arizona statutory and constitutional provisions that are substantially different from Oklahoma’s).

Though they are not bound by it, Oklahoma courts generally look to federal caselaw to determine whether an entity is a state actor under state law. *See, e.g., Oklahomans for Life, Inc. v. State Fair of Okla., Inc.*, 1981 OK 101, ¶¶ 16–18 & nn.13–15, 634 P.2d 704. Thus St. Isidore is a governmental entity and a state actor under both federal and state law and must comply with the Oklahoma Constitution in addition to the federal one.

## **II. Article I, § 2 of the Oklahoma Constitution prohibits the creation of a public charter school that indoctrinates children in a religion, as St. Isidore will.**

One of the provisions of the Oklahoma Constitution that St. Isidore must obey as a public charter school and a governmental entity is Article I, § 2, which provides: “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

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604–05 (M.D. Pa. 2012); *Riester*, 257 F. Supp. 2d at 972–73; *Daugherty v. Vanguard Charter Sch. Acad.*, 116 F. Supp. 2d 897, 906 (W.D. Mich. 2000); *Jones v. Sabis Educ. Sys., Inc.*, 52 F. Supp. 2d 868, 876, 879 (N.D. Ill. 1999); *Lengele v. Willamette Leadership Acad.*, No. 6:22-cv-01077-MC, 2022 WL 17057894, at \*4 (D. Or. Nov. 17, 2022); *Falash v. Inspire Acads., Inc.*, No. 1:14-cv-00223-REB, 2016 WL 4745171, at \*2, 6 (D. Idaho Sept. 12, 2016); *Meadows v. Lesh*, No. 10-CV-00223(M), 2011 WL 4744914, at \*1–2 (W.D.N.Y. Oct. 6, 2011); *ACLU of Minn. v. Tarek Ibn Ziyad Acad.*, No. 09-138 (DWF/JJG), 2009 WL 2215072, at \*9–10 (D. Minn. July 9, 2009); *Jordan v. N. Kane Educ. Corp.*, No. 08 C 4477, 2009 WL 509744, at \*2–3 (N.D. Ill. Mar. 2, 2009); *Scaggs v. N.Y. Dep’t of Educ.*, No. 06-CV-0799 (JFB)(VVP), 2007 WL 1456221, at \*12–13 (E.D.N.Y. May 16, 2007); *Matwijko v. Bd. of Trs. of Glob. Concepts Charter Sch.*, No. 04-CV-663A, 2006 WL 2466868, at \*3–5 (W.D.N.Y. Aug. 24, 2006); *Irene B. v. Phila. Acad. Charter Sch.*, No. Civ.A. 02-1716, 2003 WL 24052009, at \*11 (E.D. Pa. Jan. 29, 2003).

religious test shall be required for the exercise of civil or political rights.” Yet St. Isidore plans to teach a religious curriculum and inculcate a religion in its students. (*See supra* at 1–2; *see also* Ints.’ Pet. ¶¶ 19–22.) The plain text of Article I, § 2 prohibits St. Isidore from operating in this manner. A public school that requires its students to submit to religious indoctrination in one faith inherently is intolerant of other beliefs, molests students based on their religious beliefs, and imposes a religious test on the civil right to receive an education.

The historical background of Article I, § 2 leads to the same conclusion. “The Oklahoma Constitutional Convention members . . . advocated for the toleration of all religious beliefs and complete separation of church and state . . . .” *Prescott v. Okla. Capitol Pres. Comm’n*, 2015 OK 54, ¶ 6, 373 P.3d 1032 (Taylor, J., concurring in denial of rehearing). Albert H. Ellis, the Second Vice President of the Oklahoma Constitutional Convention, explained that the approach to religion of the framers of the state constitution was shaped by their concern for the protection of religious minorities—“the rights of all denominations, however few the number of their respective adherents.” *See* Albert H. Ellis, *A History of the Constitutional Convention of the State of Oklahoma* 134 (1923). Ensuring that no public school, charter or otherwise, attempts to indoctrinate its students in any religion vindicates the framers’ concerns and protects the rights of religious minorities.

Furthermore, Article I, § 2 provides at least the same protections as the federal Establishment and Free Exercise Clauses. *See Prescott*, 2015 OK 54, ¶ 6 (Taylor, J., concurring); *McMasters v. State*, 207 P. 566, 568 (Okla. Crim. App. 1922); *Guinn v. Church of Christ of Collinsville*, 1989 OK 8, ¶ 6, 775 P.2d 766 (Kauger, J., concurring in part). The federal Establishment Clause prohibits state actors from inculcating religion in the classroom or otherwise coercing students to take part in religious activity or promoting religion to

students. *See, e.g., Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309–10 (2000); *Lee v. Weisman*, 505 U.S. 577, 587 (1992); *Edwards v. Aguillard*, 482 U.S. 578, 591–94 (1987); *Stone v. Graham*, 449 U.S. 39, 42 (1980); *Illinois ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203, 212 (1948). In addition, the federal Free Exercise Clause prohibits state actors from “coerc[ing] participation in religious programming.” *Janny v. Gamez*, 8 F.4th 883, 911–12, 916–18 (10th Cir. 2021), *cert. dismissed sub nom. Carmack v. Janny*, 142 S. Ct. 878 (2022).

### **III. St. Isidore’s application, charter, and contract violate statutes and regulations requiring charter-school applicants to certify that they will comply with state law.**

One of the Board’s regulations requires applications for sponsorship of a new charter school to “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 . . . State of Oklahoma, Statewide Virtual Charter School Board, and Oklahoma Department of Education,” and to “[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.” OAC § 777:10-3-3(c)(1)(F). In violation of these requirements, St. Isidore’s approved application includes notarized statements that the school will comply with antidiscrimination and other legal requirements *only* “to the extent required by law, including . . . religious exemptions, . . . 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.” (Appl., PA181; *see also* Ints.’ Pet. ¶ 25.)

Similarly, the Charter Schools Act requires each charter school to “adopt a charter which will ensure” that the “school shall comply with all . . . state and local rules and statutes relating to health, safety, civil rights and insurance.” 70 O.S. § 3-136(A)(1). The Act further

requires the contract between a charter school and its sponsor to describe “how the charter school will comply with the charter requirements set forth in the [Act].” 70 O.S. § 3-135(A)(5). In violation of these provisions, St. Isidore’s contract with the Board—which doubles as St. Isidore’s charter—purports to grant St. Isidore broad exemptions from the antidiscrimination and other legal requirements applicable to Oklahoma charter schools. (Contract, PA2–4, 13, 19 ¶¶ 2.1, 3.1, 8.2, 11.1; *see also* Ints.’ Pet. ¶ 27.)

**IV. St. Isidore will violate the Oklahoma Constitution and state statutes by discriminating in student admissions, student discipline, and employment.**

St. Isidore will, in fact, discriminate in student admissions, student discipline, and employment based on religion, sexual orientation, gender identity, pregnancy outside of marriage, and sexual activity outside of marriage. (*See supra* at 2–4; *see also* Ints.’ Pet. ¶¶ 28–49.) Numerous Oklahoma constitutional and statutory provisions bar charter schools from engaging in these discriminatory practices.

Several provisions of the Oklahoma Constitution require that public schools serve *all* students. Article I, § 5 requires that the State “establish[] and maintain[] . . . a system of public schools, which shall be open to all the children of the state.” Article XIII, § 1 requires that the State “establish and maintain a system of free public schools, wherein all the children of the State may be educated.” And Article XI, §§ 2 and 3 establish a “permanent school fund” and prohibit it from being used “for any other purpose than the support and maintenance of common schools for the equal benefit of all the people of the State.”

Article I, § 2 prohibits public schools from discriminating based on religion. That is evident from the clause’s text: “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.” The same conclusion follows from the caselaw holding that the clause is at least as protective as the federal Free Exercise and Establishment Clauses (*see supra* at 11), both of which prohibit religious discrimination by governmental entities (*see, e.g., Gillette v. United States*, 401 U.S. 437, 462 (1971); *Larson v. Valente*, 456 U.S. 228, 244 (1982); *Glassroth v. Moore*, 335 F.3d 1282, 1293 (11th Cir. 2003)).

Article II, § 36A of the Oklahoma Constitution provides that “[t]he state shall not grant preferential treatment to, or discriminate against, any individual or group on the basis of . . . sex . . . in the operation of public employment, public education, or public contracting.” This prohibition is properly construed as encompassing discrimination based on sexual orientation and gender identity. *See, e.g., Bostock v. Clayton County*, 140 S. Ct. 1731, 1741 (2020).

Further, Article II, § 7 of the Oklahoma Constitution—which provides that “no person shall be deprived of life, liberty, or property, without due process of law”—“contain[s] [a] built-in anti-discrimination component[] which afford[s] protection against unreasonable or unreasoned classifications which serve no important governmental interests” and is similar to the U.S. Constitution’s Equal Protection Clause. *See Okla. Ass’n for Equitable Tax’n v. Oklahoma City*, 1995 OK 62, ¶ 12, 901 P.2d 800. Article II, § 7 thus prohibits governmental discrimination based on religion (*see United States v. Armstrong*, 517 U.S. 456, 464 (1996)), sexual orientation (*see Pavan v. Smith*, 582 U.S. 563, 566 (2017); *Obergefell v. Hodges*, 576 U.S. 644, 670–76 (2015)), and gender identity (*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)).

In addition, the Charter Schools Act requires charter schools to “be as equally free and open to all students as traditional public schools” (70 O.S. § 3-135(A)(9)) and prohibits

any admission preferences other than geographic ones (*see* 70 O.S. §§ 3-135(A)(10), 3-140, 3-145.3(J)). The Act also requires charter schools to be “nonsectarian in [their] . . . admission policies [and] employment practices.” 70 O.S. § 3-136(A)(2). And a separate statute, 70 O.S. § 1210.201, provides that “[s]egregation of children in the public schools of the State of Oklahoma on account of . . . creed . . . is prohibited.”

**V. St. Isidore has not committed to fully serving students with disabilities as required by the Charter Schools Act.**

The Charter Schools Act requires Oklahoma charter schools to “comply with all . . . laws relating to the education of children with disabilities in the same manner as a school district.” 70 O.S. § 3-136(A)(7). But St. Isidore’s approved application states only that the school “will comply with all applicable . . . [l]aws 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.” (Appl., PA155–56.) Moreover, as noted above, St. Isidore is an Archdiocese of Oklahoma City school, and the Archdiocese will control St. Isidore’s policies. (*See supra* at 2; *see also* Ints.’ Pet. ¶ 37.) Archdiocese of Oklahoma City policy is that “[s]tudent service plans” for students with disabilities “cannot contain accommodations or modifications that are in opposition of Church teaching.” (Christ the King handbook, IA24.)

**CONCLUSION**

For the foregoing reasons, the Court should order the Board to (1) terminate its contract with St. Isidore, (2) revoke the Board’s approval of St. Isidore’s application for sponsorship as a charter school, and (3) refrain from taking any action in the future that would authorize or facilitate St. Isidore operating or receiving state funding as a charter school.

Respectfully submitted on November 14, 2023.

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## CERTIFICATE OF SERVICE

I certify that on November 14, 2023, a true and correct copy of the foregoing document was served by mail to the counsel whose mailing addresses are set forth below and by email to the counsel whose email addresses are set forth below.

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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

GENTNER DRUMMOND, Attorney General )  
for the State of Oklahoma, ex rel. STATE OF )  
OKLAHOMA, )

Petitioner, )

and )

MELISSA ABDO; KRYSTAL BONSALL; )  
BRENDA LENÉ; MICHELE MEDLEY; DR. )  
BRUCE PRESCOTT; REV. DR. MITCH )  
RANDALL; and REV. DR. LORI WALKE, )

Petitioners-Intervenors, )

v. )

OKLAHOMA STATEWIDE VIRTUAL )  
CHARTER SCHOOL BOARD; ROBERT )  
FRANKLIN, Chairman of the Oklahoma )  
Virtual Charter School Board for the First )  
Congressional District; WILLIAM PEARSON, )  
Member of the Oklahoma Virtual Charter )  
School Board for the Second Congressional )  
District; NELLIE TAYLOE SANDERS, )  
Member of the Oklahoma Virtual Charter )  
School Board for the Third Congressional )  
District; BRIAN BOBEK, Member of the )  
Oklahoma Virtual Charter School Board for )  
the Fourth Congressional District; and SCOTT )  
STRAWN, Member of the Oklahoma Virtual )  
Charter School Board for the Fifth )  
Congressional District, )

Respondents. )

Case No. 121,694

**[PROPOSED] APPENDIX IN SUPPORT OF APPLICATION AND PETITION IN  
INTERVENTION BY MELISSA ABDO, KRYSTAL BONSALL, BRENDA LENÉ,  
MICHELE MEDLEY, DR. BRUCE PRESCOTT, REV. DR. MITCH RANDALL,  
AND REV. DR. LORI WALKE**

## INDEX

### Tab A (starts at IA1<sup>1</sup>)

Description of item: Declarations of Petitioners-Intervenors.

Date of item: November 6–12, 2023.

Relevance: The declarations explain Intervenors’ interests in this action.

Synopsis: The declarations describe who Intervenors are; their filing of a lawsuit in Oklahoma County District Court—*OKPLAC, Inc. v. Statewide Virtual Charter School Board*, No. CV-2023-1857—to prevent operation and state funding of St. Isidore of Seville Catholic Virtual School; their payment of taxes to the State of Oklahoma; and why they object to the use of their tax payments to support St. Isidore.

### Tab B (starts at IA17)

Description of item: Declaration of Alex J. Luchenitser.

Date of item: November 12, 2023.

Relevance: The declaration explains the expertise of Intervenors’ counsel, which Intervenors contend supports allowing them to intervene. The declaration also presents and authenticates Tabs C and D.

Synopsis: The declaration explains that Intervenors’ attorneys have great expertise in church-state and education law. The declaration also describes and authenticates Tabs C and D.

### Tab C (starts at IA20)

Description of item: Excerpts of the student-parent handbook of Christ the King Catholic School. (A complete copy of the handbook was filed in the Oklahoma County District Court on July 31, 2023, as Exhibit C to the petition in *OKPLAC*.)

Date of item: July 29, 2022.

Relevance: Christ the King Catholic School, like St. Isidore, is a school of the Archdiocese of Oklahoma City. (Tab C, IA23; St. Isidore’s approved application for charter-school sponsorship, PA92, 177, 320.) The Christ the King student-parent handbook identifies in blue highlighting (the highlighting is in the original handbook) the policies that the

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<sup>1</sup> Citations to this appendix are in the format “IA\_\_.” Citations to petitioner Attorney General’s appendix are in the format “PA\_\_.” All cited pages of the Attorney General’s appendix are in its first volume.

Archdiocese requires its schools to have. (Tab C, IA21–22.) These policies support Intervenor’s claims that St. Isidore will unlawfully discriminate against students in admissions and discipline based on religion, sexual orientation, and gender identity.

Synopsis: The Christ the King handbook sets forth detailed policies—which the Archdiocese requires its schools to have—that discriminate against students based on religion, sexual orientation, and gender identity.

**Tab D (starts at IA36)**

Description of item: Webpage of St. Isidore of Seville Catholic Virtual School entitled “Frequently Asked Questions, When Will St. Isidore of Seville Catholic Virtual School Open?” (<https://stisidorevirtualschool.org/faqs>). (A copy of this webpage was also filed in Oklahoma County District Court on July 31, 2023, as part of Exhibit N to the petition in *OKPLAC*.)

Date of item: The webpage was printed off St. Isidore’s website on November 12, 2023. The webpage does not have its own date.

Relevance: The webpage supports Intervenor’s claim that St. Isidore will unlawfully discriminate against students in admissions.

Synopsis: The webpage contains the following statement: “Admission assumes the student and family willingness to adhere with respect to the beliefs, expectations, policies, and procedures of the school . . . .”

Respectfully submitted on November 14, 2023.

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John H. Sparks, OBA No. 15661  
Michael W. Ridgeway, OBA No. 15657  
Lisa M. Millington, OBA No. 15164  
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\* *Pro hac vice* application pending or forthcoming.

*Attorneys for Petitioners-Intervenors*

## CERTIFICATE OF SERVICE

I certify that on November 14, 2023, a true and correct copy of the foregoing document was served by mail to the counsel whose mailing addresses are set forth below and by email to the counsel whose email addresses are set forth below.

Counsel for petitioner Attorney General Gentner Drummond:

Gentner Drummond, Attorney General (*Gentner.Drummond@oag.ok.gov*)  
Garry M. Gaskins, II, Solicitor General (*Garry.Gaskins@oag.ok.gov*)  
Brad Clark, Deputy General Counsel (*Bradley.Clark@oag.ok.gov*)  
Kyle Pepler, Assistant Solicitor General (*Kyle.Pepler@oag.ok.gov*)  
William Flanagan, Assistant Solicitor General (*William.Flanagan@oag.ok.gov*)  
Office of Attorney General, State of Oklahoma  
313 N.E. 21st Street  
Oklahoma City, OK 73105

Counsel for respondents Statewide Virtual Charter School Board and its members:

Cheryl Plaxico (*cplaxico@plaxico.law*)  
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Philip A. Sechler (*psechler@adflegal.org*)  
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Counsel for proposed intervenor-respondents Oklahoma State Department of Education and State Superintendent of Public Instruction:

Bryan Cleveland (*Bryan.Cleveland@sde.ok.gov*)  
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Hiram Sasser (*hsasser@firstliberty.org*)  
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Anthony J. Ferate (*ajferate@spencerfane.com*)  
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Counsel for defendant St. Isidore of Seville Catholic Virtual School:

Michael H. McGinley (*michael.mcginley@dechert.com*)

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Respectfully submitted,

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Michael W. Ridgeway, OBA No. 15657

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# Tab A

Description of item: Declarations of Petitioners-Intervenors.

Date of item: November 6–12, 2023.

Relevance: The declarations explain Intervenors' interests in this action.

Synopsis: The declarations describe who Intervenors are; their filing of a lawsuit in Oklahoma County District Court—*OKPLAC, Inc. v. Statewide Virtual Charter School Board*, No. CV-2023-1857—to prevent operation and state funding of St. Isidore of Seville Catholic Virtual School; their payment of taxes to the State of Oklahoma; and why they object to the use of their tax payments to support St. Isidore.

## DECLARATION OF MELISSA ABDO

1. My name is Melissa Abdo. I am a Catholic who resides in Tulsa County, Oklahoma. I am of lawful age and competent to testify as to the statements in this declaration.

2. I am a plaintiff in *OKPLAC, Inc. v. Statewide Virtual Charter School Board*, Oklahoma County District Court No. CV-2023-1857. This district-court lawsuit seeks to prevent the state funding and operation of St. Isidore of Seville Catholic Virtual School as a public charter school.

3. I am a current member of the Jenks Public Schools Board of Education, a current member of the Board of Directors of the Oklahoma State School Boards Association, a former member of the Oklahoma State Superintendent's Parent Advisory Committee, and a former member of the Governor's Education Subcommittee on Parent Engagement.

4. I pay various taxes to the State of Oklahoma that provide revenue for public schools, including charter schools. These include individual income taxes, general sales taxes, motor-vehicle taxes, motor-fuel taxes, alcoholic-beverage taxes, and property taxes.

5. I object to the use of state tax dollars to support St. Isidore as a public charter school for the reasons stated below.

6. I believe that state funding of St. Isidore as a public charter school would harm public education.

7. Although I am Catholic, I believe that Oklahoma taxpayers should not be forced to pay for the religious education of others.

8. I believe that state funding of St. Isidore as a public charter school would violate the separation of church and state.

9. I believe that state funding of St. Isidore as a public charter school would be unlawful.

10. I seek to intervene in *Drummond v. Oklahoma Statewide Virtual Charter School Board*, Oklahoma Supreme Court No. 121,694, to protect my interests in the district-court lawsuit concerning St. Isidore in which I am a plaintiff, and to protect my interests as a taxpayer in preventing the unlawful state funding of St. Isidore as a public charter school.

I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

Date: November 9, 2023

Place: Tulsa, OK



Melissa Abdo

## **DECLARATION OF KRYSTAL BONSALL**

1. My name is Krystal Bonsall. I am a resident of McClain County, Oklahoma. I am of lawful age and competent to testify as to the statements in this declaration.

2. I am a plaintiff in *OKPLAC, Inc. v. Statewide Virtual Charter School Board*, Oklahoma County District Court No. CV-2023-1857. This district-court lawsuit seeks to prevent the state funding and operation of St. Isidore of Seville Catholic Virtual School as a public charter school.

3. I am a parent of a child attending an Oklahoma public school.

4. My child has disabilities and is classified to receive special-education and related services in school, including speech therapy, occupational therapy, and a paraprofessional aide.

5. My child's experience demonstrates to me how vital it is that public schools be open to all students and be committed to providing services to meet those students' needs.

6. I pay various taxes to the State of Oklahoma that provide revenue for public schools, including charter schools. These include individual income taxes, general sales taxes, motor-vehicle taxes, and motor-fuel taxes.

7. I object to the use of state tax dollars to support St. Isidore as a public charter school for the reasons stated below.

8. I believe that state funding of St. Isidore as a public charter school would take public funds away from other public schools, which are and must be open to all students regardless of ability, sexual orientation, gender identity, or religion, and which must provide adequate special-education services that are needed by students with disabilities, such as my child.

9. I understand that St. Isidore has not committed to adequately serving students with disabilities. Therefore, the school is not truly open to my own child and other children with similar disabilities.

10. I understand that St. Isidore would inculcate a particular religion in its students. The school is not truly open to my child for this reason as well, as our religious beliefs do not conform to St. Isidore's.


11. I believe that state funding of St. Isidore as a public charter school would be unlawful.

12. I seek to intervene in *Drummond v. Oklahoma Statewide Virtual Charter School Board*, Oklahoma Supreme Court No. 121,694, to protect my interests in the district-court lawsuit concerning St. Isidore in which I am a plaintiff, and to protect my interests as a taxpayer in preventing the unlawful state funding of St. Isidore as a public charter school.

I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

Date: November 7, 2023

Place: McClellan County, OK

  
\_\_\_\_\_  
Krystal Bonsall

## DECLARATION OF BRENDA LENÉ

1. My name is Brenda Lené. I am a resident of Oklahoma County, Oklahoma. I am of lawful age and competent to testify as to the statements in this declaration.

2. I am a plaintiff in *OKPLAC, Inc. v. Statewide Virtual Charter School Board*, Oklahoma County District Court No. CV-2023-1857. This district-court lawsuit seeks to prevent the state funding and operation of St. Isidore of Seville Catholic Virtual School as a public charter school.

3. In 2016, I created Oklahoma Education Needs / Donations, a Facebook group of over 25,000 members dedicated to helping public-school teachers obtain donations of school supplies.

4. Through my work and the generosity of individual donors across the state, more than \$100,000 worth of school supplies have been sent directly to teachers that they would otherwise have had to pay for out of their own pockets.

5. I am also a parent of a child attending public school.

6. I pay various taxes to the State of Oklahoma that provide revenue for public schools, including charter schools. These include individual income taxes, general sales taxes, and motor-fuel taxes.

7. I object to the use of state tax dollars to support St. Isidore as a public charter school for the reasons stated below.

8. I believe that public schools should be open to *all* students, and that no taxpayer should be forced to fund a public school that could refuse to enroll any taxpayer's child.

9. I believe that giving public tax dollars to a school like St. Isidore also will take funding away from our secular public schools and teachers, and that this will have a disastrous effect on the already underfunded public education system and create more financial inequality.

10. Too many teachers already must ask for donations or spend money out of their own paychecks to buy basic school supplies needed to facilitate learning and keep their classroom running, while working a second job just to pay their bills. I believe that diverting public funds to religious public charter schools will only exacerbate that problem.

11. I believe that state funding of St. Isidore as a public charter school would violate the separation of church and state.

12. I believe that state funding of St. Isidore as a public charter school would be unlawful.

13. I seek to intervene in *Drummond v. Oklahoma Statewide Virtual Charter School Board*, Oklahoma Supreme Court No. 121,694, to protect my interests in the district-court lawsuit concerning St. Isidore in which I am a plaintiff, and to protect my interests as a taxpayer in preventing the unlawful state funding of St. Isidore as a public charter school.

I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

Date: 11-6, 2023

Place: Edmond, Oklahoma  
Logan County

Brenda Lene

Brenda Lené

## **DECLARATION OF MICHELE MEDLEY**

1. My name is Michele Medley. I am a resident of Oklahoma County, Oklahoma. I am of lawful age and competent to testify as to the statements in this declaration.

2. I am a plaintiff in *OKPLAC, Inc. v. Statewide Virtual Charter School Board*, Oklahoma County District Court No. CV-2023-1857. This district-court lawsuit seeks to prevent the state funding and operation of St. Isidore of Seville Catholic Virtual School as a public charter school.

3. I am the mother of three children, two of whom are autistic and attend public schools.

4. I have been a staunch advocate at the State Capitol on behalf of children with autism, was instrumental in the passage of legislation requiring treatments and therapies for autism to be covered by insurance, and am acutely aware of the difficulties children with disabilities can have in vindicating their legal right to receive a free and appropriate public education that meets their unique individual needs.

5. Seeking an alternative to underfunded public schools, I spent years attempting to meet my children's special-education needs through private schools, including one Catholic private school. But I discovered that those schools were woefully unprepared and generally unwilling to provide educational opportunities suitable to meet the needs of autistic students.

6. One of my children is LGBTQIA+, and my children were not safe from harmful discrimination while attending private religious schools.

7. I pay various taxes to the State of Oklahoma that provide revenue for public schools, including charter schools. These include individual income taxes, general sales taxes, motor-vehicle taxes, motor-fuel taxes, alcoholic-beverage taxes, and property taxes.



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8. I object to the use of state tax dollars to support St. Isidore as a public charter school for the reasons stated below.

9. I believe that schools like St. Isidore not only lack the experience and resources to provide for children with disabilities but also place those children at further risk by refusing to abide by nondiscrimination laws that apply to other public schools.

10. I believe that funding St. Isidore as a public charter school would divert scarce funding from the State's other public schools, which are better situated to meet the needs of children with disabilities.

11. I believe that taxpayers should not be forced to fund religious schools that could discriminate against autistic or LGBTQ children.

12. I believe that allowing St. Isidore to operate as a state-funded, public charter school would subject other Oklahoma children at taxpayer expense—to the private-school experiences that failed my family.

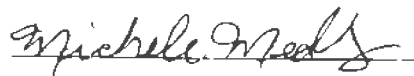
13. I believe that state funding of St. Isidore as a public charter school would be unlawful.

14. I seek to intervene in *Drummond v. Oklahoma Statewide Virtual Charter School Board*, Oklahoma Supreme Court No. 121,694, to protect my interests in the district-court lawsuit concerning St. Isidore in which I am a plaintiff, and to protect my interests as a taxpayer in preventing the unlawful state funding of St. Isidore as a public charter school.

I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

Date: NOVEMBER 6<sup>th</sup>, 2023

Place: OKLAHOMA CITY, OK



Michele Medley

## **DECLARATION OF DR. BRUCE PRESCOTT**

1. My name is Bruce Prescott. I am a resident of Cleveland County, Oklahoma. I am of lawful age and competent to testify as to the statements in this declaration.

2. I am a plaintiff in *OKPLAC, Inc. v. Statewide Virtual Charter School Board*, Oklahoma County District Court No. CV-2023-1857. This district-court lawsuit seeks to prevent the state funding and operation of St. Isidore of Seville Catholic Virtual School as a public charter school.

3. I am a retired Baptist minister. Before retiring, I served as the executive director of Mainstream Oklahoma Baptists, a nonprofit organization dedicated to supporting the traditional Baptist beliefs in separation of religion and government and in the defense of religious liberty for all people.

4. I am also a retired educator who has taught at the University of Oklahoma, Southwestern Baptist Theological Seminary, Phillips Theological Seminary, a public junior college, and a public high school. As a retired educator, I know that the hallmark of public schools is that they are nondiscriminatory and secular.

5. I pay various taxes to the State of Oklahoma that provide revenue for public schools, including charter schools. These include individual income taxes, general sales taxes, motor-vehicle taxes, motor-fuel taxes, alcoholic-beverage taxes, and property taxes.

6. I object to the use of state tax dollars to support St. Isidore as a public charter school for the reasons stated below.

7. I believe that the government should never fund discrimination.

8. I believe that no taxpayer-funded school should be allowed to turn away teachers or students because they are of the “wrong” religion, have a

disability, are involved in a same-sex relationship, have a gender identity different than was assigned to them on a birth certificate, or become pregnant.

9. I believe that religious schools—like houses of worship—should be funded through voluntary contributions from their own membership, not money extracted involuntarily with state taxes from members of a religiously diverse community.

10. I believe that permitting public schools to require students to receive religious instruction would violate the religious freedom of students, families, and taxpayers.

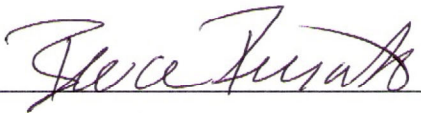
11. I believe that state funding of St. Isidore as a public charter school would be unlawful.

12. I seek to intervene in *Drummond v. Oklahoma Statewide Virtual Charter School Board*, Oklahoma Supreme Court No. 121,694, to protect my interests in the district-court lawsuit concerning St. Isidore in which I am a plaintiff, and to protect my interests as a taxpayer in preventing the unlawful state funding of St. Isidore as a public charter school.

I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

Date: 11/12/2023, 2023

Place: Norman, OK



Bruce Prescott

## DECLARATION OF REV. DR. MITCH RANDALL

1. My name is Mitch Randall. I am a resident of Cleveland County, Oklahoma. I am of lawful age and competent to testify as to the statements in this declaration.

2. I am a plaintiff in *OKPLAC, Inc. v. Statewide Virtual Charter School Board*, Oklahoma County District Court No. CV-2023-1857. This district-court lawsuit seeks to prevent the state funding and operation of St. Isidore of Seville Catholic Virtual School as a public charter school.

3. I was born in Oklahoma, and I am a citizen of the Muscogee (Creek) Nation—an experience that has offered me a first-hand perspective on issues regarding religious liberty and instilled in me strong support for church-state separation.

4. I hold a Bachelor of Arts degree from Northeastern State University, a Master of Divinity with Biblical Languages from Southwestern Baptist Theological Seminary, and a Doctor of Ministry from George W. Truett Theological Seminary.

5. I currently am the chief executive officer of Good Faith Media, which provides reflection and resources at the intersection of faith and culture through an inclusive Christian lens, via four primary channels: news and opinion, video and podcasts, publishing (books and journal), and experiences.

6. I previously served as pastor of NorthHaven Church in Norman and as the executive director of the Baptist Center for Ethics.

7. Coming from the Baptist tradition, I believe that the separation of church and state is a bedrock principle protecting religious liberty for every citizen.

8. I pay various taxes to the State of Oklahoma that provide revenue for public schools, including charter schools. These include individual income taxes, general sales taxes, and motor-fuel taxes.

9. I object to the use of state tax dollars to support St. Isidore as a public charter school for the reasons stated below.

10. I believe that the use of taxpayer dollars to indoctrinate children in a religion harkens back to Oklahoma's notorious past when thousands of Indigenous children were forcibly taken from their families and provided a "Christian" education paid for with tax money.

11. As an Indigenous person and the great-grandson of a resident of Chilocco Indian School, a federally funded boarding school in Oklahoma for Native American children that indoctrinated them into Christianity, it is appalling to me that state leaders would reopen a door to a time when the government sent tax dollars to schools that used those public funds for religious instruction and proselytization.

12. I believe that diverting precious funding away from secular public education to a religious public charter school not only would harm Oklahoma's public-education system but also would violate the religious liberty of those who do not want to support the school's religious teachings.

13. I believe that allowing state funding of St. Isidore as a public charter school could open the floodgates for taxpayer-funded discrimination.

14. I believe that state funding of St. Isidore as a public charter school would be unlawful.

15. I seek to intervene in *Drummond v. Oklahoma Statewide Virtual Charter School Board*, Oklahoma Supreme Court No. 121,694, to protect my interests in the district-court lawsuit concerning St. Isidore in which I am a

plaintiff, and to protect my interests as a taxpayer in preventing the unlawful state funding of St. Isidore as a public charter school.

I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

Date: 11/10, 2023

Place: Norman OK



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Mitch Randall

## **DECLARATION OF REV. DR. LORI WALKE**

1. My name is Lori Walke. I am the Senior Minister of Mayflower Congregational United Church of Christ.

2. I am a plaintiff in *OKPLAC, Inc. v. Statewide Virtual Charter School Board*, Oklahoma County District Court No. CV-2023-1857. This district-court lawsuit seeks to prevent the state funding and operation of St. Isidore of Seville Catholic Virtual School as a public charter school.

3. I pay various taxes to the State of Oklahoma that provide revenue for public schools, including charter schools. These include individual income taxes, general sales taxes, motor-vehicle taxes, motor-fuel taxes, tobacco taxes, alcoholic-beverage taxes, and property taxes.

4. I object to the use of state tax dollars to support St. Isidore as a public charter school for the reasons stated below.

5. As a pastor, I care deeply about religious freedom.

6. I believe that state funding of St. Isidore would violate the religious freedom of taxpayers by forcing them to fund the religious education of others.

7. I believe that state funding of St. Isidore would divert funds away from existing, chronically underfunded public schools—which must serve all students—to a school that is not equally open to all students, and thus violate the religious freedom of families and children against whom St. Isidore would discriminate.

8. I believe that state funding of St. Isidore as a public charter school would be unlawful.

9. I seek to intervene in *Drummond v. Oklahoma Statewide Virtual Charter School Board*, Oklahoma Supreme Court No. 121,694, to protect my interests in the district-court lawsuit concerning St. Isidore in which I am a

plaintiff, and to protect my interests as a taxpayer in preventing the unlawful state funding of St. Isidore as a public charter school.

I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

Date: November 11<sup>th</sup>, 2023

Lori Walke

Place: Oklahoma City, OK

Lori Walke



# Tab B

Description of item: Declaration of Alex J. Luchenitser.

Date of item: November 12, 2023.

Relevance: The declaration explains the expertise of Intervenors' counsel, which Intervenors contend supports allowing them to intervene. The declaration also presents and authenticates Tabs C and D.

Synopsis: The declaration explains that Intervenors' attorneys have great expertise in church-state and education law. The declaration also describes and authenticates Tabs C and D.

## DECLARATION OF ALEX J. LUCHENITSER

I, Alex J. Luchenitser, declare that, if called upon, I could and would competently testify to the following:

1. I am lead counsel for proposed petitioners-intervenors Melissa Abdo, Krystal Bonsall, Brenda Lené, Michele Medley, Dr. Bruce Prescott, Rev. Dr. Mitch Randall, and Rev. Dr. Lori Walke. I have been employed by Americans United for Separation of Church and State and have exclusively practiced church-state and religious-freedom law since 2001.

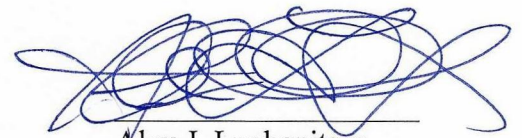
2. The legal team that represents the proposed petitioners-intervenors also includes the following attorneys: (1) Kenneth D. Upton, Jr., who has been employed by Americans United and has exclusively practiced church-state and religious-freedom law since 2018, and who I understand exclusively practiced LGBTQ-rights law during the preceding thirteen years; (2) Daniel Mach, who I understand has practiced constitutional law since 1998 and has been employed by the American Civil Liberties Union Foundation and has practiced church-state and religious-freedom law since 2006; (3) Heather L. Weaver, who has exclusively practiced church-state and religious-freedom law since 2005 and has been employed by the American Civil Liberties Union Foundation since 2008; (4) Patrick Elliott, who I understand has been employed by the Freedom From Religion Foundation and has exclusively practiced church-state and religious-freedom law since 2010; (5) Robert Kim, who I understand has engaged in litigation, policy, and advocacy related to civil rights, civil liberties, and public education since 1998, and who became the executive director of Education Law Center in 2023; (6) Jessica Levin, who I understand has been employed by Education Law Center and has exclusively practiced education law since 2014; and (7) Wendy Lecker, who I understand

has practiced education law since 2003 and has been employed by Education Law Center since 2013.

3. Included at Tab C of this appendix is a true and correct copy of excerpts of the student-parent handbook of Christ the King Catholic School, dated July 29, 2022, which I obtained from Christ the King Catholic School's website. A complete copy of the handbook was filed in the District Court of Oklahoma County on July 31, 2023, as Exhibit C to the petition in *OKPLAC, Inc. v. Statewide Virtual Charter School Board*, No. CV-2023-1857.

4. Included at Tab D of this appendix is a true and correct copy of a webpage of St. Isidore of Seville Catholic Virtual School entitled "Frequently Asked Questions, When Will St. Isidore of Seville Catholic Virtual School Open?," whose URL is <https://stisidorevirtualschool.org/faqs>, which I printed from St. Isidore's website on November 12, 2023. A copy of this webpage was also filed on July 31, 2023, as part of Exhibit N to the petition in *OKPLAC*.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this Declaration was executed on November 12, 2023, in the State of Virginia.



Alex J. Luchenitser

# Tab C

Description of item: Excerpts of the student-parent handbook of Christ the King Catholic School. (A complete copy of the handbook was filed in the Oklahoma County District Court on July 31, 2023, as Exhibit C to the petition in *OKPLAC*.)

Date of item: July 29, 2022.

Relevance: Christ the King Catholic School, like St. Isidore, is a school of the Archdiocese of Oklahoma City. (Tab C, IA23; St. Isidore's approved application for charter-school sponsorship, PA92, 177, 320.) The Christ the King student-parent handbook identifies in blue highlighting (the highlighting is in the original handbook) the policies that the Archdiocese requires its schools to have. (Tab C, IA21–22.) These policies support Intervenors' claims that St. Isidore will unlawfully discriminate against students in admissions and discipline based on religion, sexual orientation, and gender identity.

Synopsis: The Christ the King handbook sets forth detailed policies—which the Archdiocese requires its schools to have—that discriminate against students based on religion, sexual orientation, and gender identity.

Anything highlighted in yellow are new additions to the Student/Parent Handbook made by Christ the King School.

Language highlighted in blue are new additions required by the Archdiocese of Oklahoma City.

# Christ the King Catholic School

## MISSION STATEMENT

Christ the King Catholic School is committed to upholding Catholic faith and tradition and, in partnership with their families, helping students develop academically for a life of faith, integrity and service.

## MOTTO

WHERE EVERYBODY IS SOMEBODY  
AND ALL LIVE FOR GOD

## CURRICULUM

Religious Education  
Visual Arts  
Computer Education  
Foreign Language  
Geography  
Language Arts  
(English, Reading, Writing, Phonics, Spelling)  
Library  
Liturgy  
Mathematics  
Music/Drama  
Physical Education  
Science  
Social Studies

# 1 INTRODUCTION

## 1.1 WELCOME

Christ the King Catholic School -- your school -- welcomes you and your child. The Parent - Student Handbook has been prepared to serve as a guide and as a reference for information pertaining to student programs and activities.

You are joining with the total parish community in ensuring that Christ the King Catholic School continues to be Catholic, excellent and vital. By enrolling your child in this school, you are subscribing to the philosophy and agreeing to abide by the educational policies and regulations of the school and the Archdiocese of Oklahoma City. Everyone at CKCS must earnestly desire to make it a community of faith which is indeed "living, conscious, and active."

We expect parents to fully support and uphold the authority of the parish - school staff, and to become actively involved in the school and Church in order to reinforce the values and attitudes for living a genuine Christian life. It is our desire that Christ the King Catholic School become a true community of faith in which the formational efforts of Catholic families are complemented, reinforced, and extended.

## 1.2 MISSION INTEGRITY

Christ the King School welcomes students of all faith backgrounds. Christ the King School takes seriously its responsibility to teach Catholic faith and morals in all fullness. Therefore, Christ the King School promotes and fosters the teaching and values of the Catholic Church as professed by the Magisterium of the Catholic Church and articulated in the Catechism of the Catholic Church, including teaching documents and guiding principles issued by the local ordinary. Catechism of the Catholic Church (usccb.org).

At times, parents, guardians, and students whose religious beliefs and practices run counter to Church teaching may experience possible conflicts, as Christ the King School maintains mission integrity. Sincere questions seeking deeper understanding of the Catholic faith in practice are welcome. Should a parent or student intentionally and knowingly choose not to adhere to these policies for any reason, including disagreement with Catholic faith and morals, they are effectively choosing not to fully embrace the promised school learning environment offered for all students and by that choice, freely made, they are choosing not to remain a part of the school community. School administration will respect that decision and act accordingly by withdrawing them from the school or decline to approve them for admission.

Christ the King Catholic School stands as a most powerful, visible sign of the future life and capability of our Catholic faith in general and our parish in particular.

## **1.6 NON-DISCRIMINATION POLICY and RESERVED RIGHTS**

Christ the King Catholic School admits and does not discriminate on the basis of sex, race, color, national and ethnic origin in the administration of our educational and admissions policies, scholarship programs, athletic and other school-administered programs, or access to all rights, privileges, programs and activities generally accorded or made available to students at our school. Our school reserves the rights and protections granted to it in the areas of admissions and educational policies, scholarship and loan programs, athletic and other school-administered programs, employment practices, and other areas of operations by applicable laws and constitutional provisions to act in furtherance of its religious identity and objectives. Students are expected to treat each member of our school community with respect, including, but not limited to, showing respect for their cultural, ethnic and religious heritage. Any student who degrades, harasses or insults another with ethnic, sexual or religious slurs, intimidation, gestures, language or comments will face appropriate consequences.

## **1.7 SCHOOL ADVISORY COUNCIL**

The School Advisory Council is responsible for approving school budgets and making recommendations to the Pastor and Principal concerning school policy. The members of the Council concentrate their efforts in six areas—budget and finance, curriculum, policy formulation and evaluation, communications, long range planning and selection and evaluation of the Principal. Council meetings are held the third Wednesday of each month and are open to the school community.

## **1.8 ACCREDITATION**

Christ the King Catholic School is a parochial school in the Archdiocese of Oklahoma City. It is accredited by the Oklahoma Conference of Catholic Schools Accrediting Association (O.C.C.S.A.A.) and the Oklahoma State Department of Education.

O.C.C.S.A.A. accreditation is recognized by the State of Oklahoma. In obtaining this special accreditation, we have exceeded the standards of the state. We are being recognized for our efforts to go above and beyond what is simply required and create a higher set of standards for our students within the Catholic schools of the Oklahoma City Archdiocese.

# **2 STUDENT ADMISSIONS**

## **2.1 APPLICATION FEE**

- Sacramental records-Baptism and Eucharist as appropriate (Catholic applicants only)
- Report Cards
- Standardized Test Results
- Record of Individual Educational Plan (IEP)

The above records will be reviewed to determine whether the program at Christ the King will meet the educational needs of the students. An interview with the student and parent is part of the admissions process.

All new students are accepted on a probationary status. This period is normally during the first quarter of school though the administration reserves the right to determine if more/less time is needed. If, during this period, the student is not successful and/or does not adjust well to the academic or social expectations, an alternative placement at another school will be required. Any medications/clinical testing reports must be disclosed.

**2.23**

**Academic Needs**

Christ the King Catholic School does not have a designated Special Education program. Students seeking admission to the school with Rehabilitation Act Section 504 documentation, IEP documentation, long term medical/health/behavioral documentation, or requests for special student accommodations that significantly alter the regular classroom process may undergo an application review with the assistance of the Office of Catholic Education of the Archdiocese of Oklahoma City. Relevant educational reports or records of diagnosis, where applicable, must be provided upon request. Student service plans cannot contain accommodations or modifications that are in opposition of Church teaching.

**2.24**

**Student Assistance Program**

Parents are an integral part of the Student Assistance Process at Christ the King Catholic School.

**2.25**

**Immunization Requirements**

Oklahoma state law requires parents/guardians to present proof of immunization for diphtheria, pertussis, mumps, tetanus, rubella, rubella, poliomyelitis and hepatitis A & B before a student is admitted or enrolled in any Oklahoma school. Students advancing, entering, or transferring into 7<sup>th</sup> grade will need proof of an adolescent whooping cough booster immunization called “Tdap” to begin school. For more information, see the State Department of Health website at <http://imm.health.ok.gov>

A record provided by a licensed physician or public health authority must be presented that clearly indicates:



Parish Participation Form. Final determination will be made by the administration in coordination with the Pastor.

## 2.4 FINANCIAL OBLIGATIONS

### 2.41 Registration

A non-refundable registration fee of \$225.00 is due for each student at pre-registration time. This fee holds your child's enrollment for the coming year. All accounts must be current in order to register. **A \$50 late fee will apply after the close of pre-registration.**

### 2.42 Tuition

Tuition is handled through FACTS tuition management program. Families must set up an account via the school website(ckschool.com) A late charge of **\$25** will be assessed if payment is not received by your selected time.

### 2.43 Outstanding Obligations

Records, including report cards, will be withheld until payment is received from students with outstanding fees. Financial arrangements must be made with the pastor or the principal (in writing) for late tuition payments (3 months overdue, an immediate student suspension may result. All payments and fees must be current at the end of each quarter or report cards will be held and Ren-Web access denied. Pre-registration for the coming year will not be accepted until payments are made.t

## 3 STUDENT WITHDRAWAL FROM SCHOOL

When withdrawing a student from the school you should notify the school office in ample time of departure. A written notification is needed for school records. Parents need to sign a records release form in order to release proper records from Christ the King School to the transfer school. The transfer school must request these records. Records are not transferred if monies are owed to the school. **The withdrawal agreement that parents sign during the pre-enrollment process provides that a portion of the tuition must be paid depending on the date on which the cancellation notification is received.**

Possible letters of recommendation or other forms will only be provided by administration for students wishing to transfer to another school with the exception of graduating eighth graders, or those moving out of the area.

## 4 UNIFORM POLICY

Uniforms are a tradition at Christ the King Catholic School with the exception of our three-year old part-time preschool students, who are not required to wear uniforms due to the

short time they are here. The purpose is to maintain unity and pride in appearance while focusing on Catholic teachings and academics. In order to maintain uniform appearance and proper comportment throughout the school day and at school events, all students, staff and faculty must follow the dress code expectation of their biological sex while on campus and while representing the school at outside functions. Modesty is expected at all times.

Uniforms are to be purchased at Land's End or Dennis Uniforms. All clothing must either have the CK logo or no logo. **No clothing with brand names or logos may be worn with the uniform. This does not include shoes.** The uniform should be clean with all buttons attached, hem intact, and be free of rips or holes. Faded or heavily soiled garments should not be worn. Periodic checks both announced and unannounced will be conducted. The uniform policy is as follows:

#### 4.1 ALL STUDENTS (PK to 8)

##### 4.11 Pants: (PRE-K – 5 Navy Blue) (6 – 8 Khaki or Navy Blue)

- Are to be cotton or cotton blend with no contrasting stitching or colors.
- May have two side pockets and two back pockets only. Pant top will be located at the waist. Baggy, extremely tight, hip huggers, cargo pants/shorts, knit, nylon, or spandex pants, bell-bottoms, and pants with slits are not allowed.
- PRE-K to 5<sup>th</sup> grade students may wear pants with elastic waist; however, pants must adhere to the above traditional style.

##### 4.12 Shirts, Sweaters, and Jackets:

Please note: (Except for Preschool, all shirts must be long enough to be kept tucked in at all times, and not be inappropriately tight. The following are acceptable:

- (PK-8) White oxford cloth shirt with a button-down collar.
- (K-8) White, navy or maroon knit polo-style shirt (A solid white short-sleeved t-shirt can be worn under the regular uniform clothes for warmth. Printing on the t-shirt is not allowed.). Maroon and navy knit shirts must have school logo. (The maroon, navy or white shirts with logo must be purchased through Land's End or Dennis Uniform.)
- Dry-fit shirts may be worn.
- White turtlenecks.
- White, navy, or maroon cardigan sweaters may be worn over shirts or jumpers. (No oversized sweaters allowed)
- Navy pullover vests with the CK logo are allowed.
- Christ the King sweatshirts and 3 quarter zip-up shirts may be worn over the uniform shirt after Fall Break. In the event of unseasonal weather the administration may adjust the start date. These items include:
  - \* navy zippered and hooded sweatshirts with logo (Purchase through CK PTO)
  - \* CK maroon or gray hooded sweatshirts (Purchase through CK PTO)

- Socks of choice may be worn but they must be matching and can't have anything hanging from them.
- Necklaces of choice can be worn although they can't be too big or bulky or distracting to others.
- On special days when nylon shorts (this includes Nike shorts for girls) are allowed to be worn (Pajama days, Jr. High House Party days, and Auction Sportswear Day) the length of the short **must be no shorter than 3" above top of the knee. If the short is not an appropriate length, leggings must be worn under the short. Administration will determine if the short/skirt length is appropriate.** This rule applies to both boys and girls.
- No leggings, jeggings, or other skin-tight fitting pants may be worn as uniform pants. These items may be worn on **Jeans or Spirit days with a top that is long enough to reach fingertips of student standing with arms by side.**
- **Clothing intended to make a statement at odds with the teaching of the Catholic Church is not permitted.**

Violations of the uniform policy will be documented. The third violation of the uniform dress code will result in that student being denied participation in the next out-of-uniform day. **After the third violation, out-of-uniform privileges will continue to be withheld until appropriate uniform attire is produced.** Continued violations will be viewed as blatant disrespect for school rules and will receive disciplinary action to be determined by the Administration.

**At all times, the administration reserves the right to evaluate and correct an individual student's interpretation of the uniform policy as evidenced by his/her appearance.**

## 4.7 Graduation Dress Code

**Because Graduation takes place as part of Holy Mass, certain dress is required to show respect for the Blessed Sacrament.**

**Mass Attire:** All students will wear red graduation gowns during the Mass. These will be provided for the students and will be collected following the event. A few common guidelines must be observed:

No flip-flops are allowed. Since this is a religious ceremony appropriate attire should be worn that reflects modesty and respect. Generally speaking Gentlemen- a dress shirt and tie are worn with a sport jacket optional (but often desired for individual pictures).

Ladies- A dress, skirt and blouse outfit or dressy pants outfit are all options that can be worn.

## **4.8 Use of School Facilities**

All students, staff, faculty and visitors are to observe modesty when using changing facilities and may only use facilities that conform to the individual's biological sex.

## **4.9 School Dances and School Sponsored Activities**

In keeping with the Catholic mission and identity of Christ the King Catholic School, student dress and behavior is to conform with those characteristics of a virtuous and Christ-centered person at all times, including dances and social activities. Consistent with these expectations, students are to refrain from any sexually suggestive behavior both on and off the dance floor. Clothing worn to dances should be appropriate for the occasion, according to the standards of modesty that students are expected to maintain. In keeping with the Catholic Church's teachings on human sexuality, including its teaching in the Catechism of the Catholic Church #2357, advocating for, or expressing same-sex attractions, including same-sex couples at dances, is not permitted. If sexually suggestive or inappropriate behavior occurs, parents will be called, and the student(s) will be sent home. Students whose clothing violates standards of decency and modesty may be asked to change into something more appropriate. Clothing intended to convey a "gender identity" at odds with a student's sexual identity is not permitted, and parents will be called, and the student will be sent home to change. Guests of Christ the King Catholic School students are subject to the same Uniform Code, rules and regulations that govern the student body during the school day or at school-sponsored events both on and off the campus.

**4.10** No rolling backpacks are allowed.

## **5 MEDICAL NEEDS**

### **5.1 Health Care**

The school does not have a resident nurse.

Parents/guardians should notify the school if their child has a temporary or permanent health problem. Parents/guardians are requested to inform the school of the condition after the advice of the family physician has been obtained. Please refrain from requesting that a student be kept indoors during recess, as it is difficult to supervise the student.

- Written permission by the parent or guardian is necessary for a student to participate in a field trip. Verbal permission cannot be accepted. A form will be sent home. This is the one and only format that may be used to allow a student to leave school during school hours.
- Teachers, in consultation with the administration, reserve the right to restrict or deny student participation on any field trip due to, but not limited to, poor academic performance and/or poor conduct.
- Parents may refuse to permit their child from participating in a field trip by stating so on the proper form. Students who do not attend a field trip will remain at home with the parent and be marked absent for the day.
- Parents of students going on the field trip may be asked to transport and supervise students, so **no siblings are allowed on field trips.**

## 12.1 VOLUNTEER DRIVERS

Drivers are required to provide proof of auto insurance and a copy of their driver's license to the school, as well as completing the Archdiocesan Safe Environment program. They are responsible for all foreseeable risks and are required to use reasonable precautions to prevent injury to students, including having all passengers in the vehicle wear seat belts, driving the posted speed limit, and obeying all traffic laws. **Drivers on school trips should not make unauthorized extra stops or side trips.** As an agent of the school, they are responsible and liable for the students' welfare and are under the direction of the designated school authority. If a student is injured, get immediate emergency treatment for the student, and contact the school office and the parent.

## 13. EXTRA-CURRICULAR /SPORTS ACTIVITIES

Extra-curricular sports activities are an important part of our school program. Sports activities are structured to encourage participation by all students and are designed to develop physical capabilities, maintain good health, and develop individual and team sportsmanship, good conduct and attitudes. **Students only are eligible to participate on our school's athletic teams in a manner consistent with their biological sex.**

### 13.1 School Dances and School Sponsored Activities

School parking/facilities should not be used for any non-school sponsored activity without the permission of the Administration.

## 14. PARTIES AND TREATS

In-school suspension.

**15.33** Major disciplinary issues will result in immediate referral to Administration, who will choose the appropriate consequences which could include automatic detention, suspension or expulsion. Major issues include, but are not limited to:

- Insubordination/disrespect/disobedience.
- Damage to or destruction of property, either that of the parish/school or that of another individual (student, teacher, neighbors, etc.).
- Disruptive classroom behavior of a major or recurring nature.
- Use of cell phone during the school day.
- Use or possession of drugs/alcohol/tobacco products including the use of an e-cigarette (vaping/juuling).
- Use of Social Media during the school day.
- Cheating
- Violence or threat of violence to others (i.e. fighting).
- Use or possession of a dangerous weapon or dangerous material of any kind.
- Hazing
- Harassment, including sexual harassment, bullying, etc.

In the event of a student's violation of local, state or federal law, the principal reserves the right to notify law enforcement authorities.

## **15.4 OFF-CAMPUS CONDUCT**

### **15. 41 Off Campus Online Activity**

Christ the King School has gone to great lengths to educate parents on the potential risks of children's access to social media/unfettered internet/gaming, as well as the benefits of delaying online access and/or installing parental controls on devices. School personnel cannot monitor the behavior and actions of students outside of the school. That is the responsibility of the parents/guardians. However, **if there is a direct reference to the school and/or faculty, or any conduct counter to the mission of Christ the King School and the Catholic Church (including inappropriate texts, viewing of inappropriate online materials, and posting messages, videos or images online that promote racism, sexism, violence, immoral or illegal activities), the matter will be addressed with the student and parent(s).** In partnership with parents, efforts will always be made to support, nurture, and help any student who is facing negative treatment due to on-line activity. **All matters that come to the school's attention that involve concerns of online behavior outside of school hours and off school grounds that do not involve the above exception, will be shared with parents/guardians for handling.**

## 16.2 EXPULSION

Expulsion is an extremely serious matter. Students who pose a threat to themselves or others may be expelled from Christ the King Catholic School. Students who have been expelled will not be allowed to return to the school without prior permission of the principal.

## 16.3 SCHOOL – HOME PARTNERSHIP

Parents and teachers must be in a partnership for the school to successfully educate the students who are enrolled. Parents can expect to be treated with respect at all times and, when concerns arise, have access to teachers and administrators at mutually convenient times.

Teachers and administrators can expect to be treated with respect at all times and, when concerns arise, have access to parents at mutually convenient times. Emails and text messages written to teachers and administrators should have a respectful and professional tone. The school reserves the right to NOT respond to emails written in inflammatory and aggressive language. Should continued communication continue, the Administration will address the matter with parents/guardians and take appropriate action if necessary.

**Parents who have a concern should first contact the teacher directly.** If a satisfactory solution is not reached, then a three-way conference of parent-teacher-administrator will be scheduled. The student will be involved in most conferences and problem-solving decisions. This will enable the student to take ownership of his/her education, conduct, and choices.

A strong, cooperative partnership between home and school is an essential ingredient in effective education. The best interests and needs of the student remain paramount, yet must be balanced against the good of the community. As a partner in the process, the student is afforded the best possible educational experience.

Parents/guardians are the primary educators of their children, and Christ the King Catholic School is privileged to be a partner with them in the formation of their children. Mutual cooperation, trust and support are essential for the fulfillment of this responsibility. Students and parents/guardians are required to sign our Student-Parent Handbook acknowledgement form, indicating they have read the handbook, accept and support our philosophy, policies and procedures, and will comply with them.

Under usual circumstances, a child is not to be deprived of a Catholic education because of the attitude of a parent/guardian. However, a situation could arise whereby an uncooperative or destructive attitude of a student's family may diminish the school's effectiveness in acting in loco parentis, and the child's retention would be incompatible with the school's philosophy. If, in the school's judgment, such a situation is evident, the family will be asked to withdraw the student from Christ the King Catholic School. Parents/guardians must sign the Diocesan Memorandum of Understanding prior to their child's attendance.

staff employee who is determined to have engaged in sexual harassment will be subject to disciplinary action, up to and including termination of employment. Any student who is determined to have engaged in sexual harassment will be subject to strong disciplinary action, up to and including expulsion from school. Any visitor or parent, determined to have engaged in sexual harassment may be prohibited from entering the school building and grounds in the future, and may be prohibited from participating or attending school activities.

The person accused of harassment is strictly prohibited from retaliating against the individual who registered the complaint, whether or not harassment can be confirmed.

Harassment includes sexual harassment, intimidation and bullying. Any action based on lack of respect for others, including sexual and physical abuse, and the creation of a hostile environment by students, faculty, and/or staff is unacceptable. Harassment, intimidation, and bullying means **repeated use of** any gesture, written (including electronic messages) or verbal expression, or physical act that harms a student, damages another student's reputation or property, or places another student in reasonable fear of harm. Harassment includes insulting or demeaning any student or group of students in such a way as to interfere with the school's educational mission or the education of any student. **Please see section 15.41 of the handbook for the school's policy regarding handling off campus, online activity, including harassment as well as negative on-line behavior toward others.**

These include but are not limited to: religion, race, color, national origin, age, sex, sexual orientation, disability, height, weight, socioeconomic status, or any other distinguishing characteristics. All such acts are not acceptable at school, on school grounds, school-sponsored activities, or at school-sanctioned events. All complaints will be investigated and appropriate action will be taken.

## **24.4 ELECTRONIC RESOURCES - ACCEPTABLE USE POLICY**

### **24.41 PURPOSE**

Computers are valuable tools for education and one of this school's purposes is to encourage the proper use of computer related technology including the Internet. **Students are not permitted to use school computers or devices to access websites or apps on or off campus that are not in keeping with Catholic values or mission of school.** Students and all users of computer technology have a responsibility to use these tools properly and in accordance with the policy below:

### **24.42 GOALS**

To provide a variety of electronic tools to help students and teachers develop the ability to evaluate and synthesize information from a variety of sources and enable them to work effectively with various computer/communications technologies.



Parents/guardians and students who fail to follow the Code of Conduct for Christ the King Catholic School will be sent a letter from the principal documenting their failure of compliance. Any subsequent failure in compliance with the code will result in a meeting between the principal and parents/guardians. This meeting will outline potential consequences if further violations occur.

A third violation of the code dictates removal from the school at the discretion of the pastor upon his notification by the principal. Other, more serious violations, can result in removal upon the first violation of the code due to the severity of the action (as indicated above and in the Parent-Student Handbook.

## **29 SUSTAINABILITY**

Christ the King School is committed to upholding our Catholic Social Teaching of Caring for God's Creation. To that effect, Christ the King Catholic School has implemented several programs and formed various groups that enable the school to reduce its consumption and waste, support a more sustainable campus, and be good stewards of the earth. These include:

- Weekly recycling efforts of paper, glass, aluminum, plastic, and cardboard;
- Elimination of water bottle use in school cafeteria;
- Installation of on-site recycling dumpster;
- Replacement of lights with LED lights as bulbs burn out;
- Installation and maintenance of school gardens;
- Programming meant to educate students on environmental issues and sustainability;
- Free uniform donation and exchange program for CK families;
- Concerted efforts to “green” major school functions such as the CK Run, Auction, Street Party and Field Day;
- School-wide marker and crayon recycling;
- Establishment of Student Green Team club (called Knights of the Earth).

The school encourages parents, as first educators of their children, to embrace principles of Caring for God's Creation. Simple and easy ways to do this include:

- Send a reusable water bottle with your student to school and athletic events;
- Avoid single-use plastic as much as possible;
- Water conservation efforts (use of water barrels, avoid dumping unused water down the drain; dump in a plant or garden instead);
- Think through the trash when party planning – use reusable or compostable materials when entertaining (especially when planning class parties both for students and adults).

## **30. ARCHDIOCESE OF OKLAHOMA CITY SEXUAL IDENTITY POLICY**

According to foundational principles of the Catholic Church's teaching about human sexuality, Christ the King Catholic School accepts the following definitions. “Sex” means the

biological condition of being male or female as based upon physical differences from conception “Sexual identity” is a person’s identity as male or female, harmonious with one’s biological sex from conception (See Catechism of the Catholic Church #2333) Accordingly, Christ the King Catholic School will interact with students, faculty and staff according to their sexual identity as male or female from the point of conception.

As a Catholic school, Christ the King Catholic School understands some students experience distress or dissonance between their self-perception and what they understand as restrictive cultural norms or stereotypes. Christ the King Catholic School seeks to help all students understand their primary identity is a child of God (who is the source of their dignity) and that God creates each person as male or female with unique gifts and interests. In accord with Catholic Church teaching the sexed body is a gift from God which should be cherished. Therefore, Christ the King Catholic School can neither support nor facilitate a student rejecting his or her body by social transition (dressing and identifying as the opposite sex or as non-binary), medical transition (use of puberty blockers or cross sex hormones), or surgical transition (removal of sexual organs or of secondary sex characteristics, or surgeries designed to create secondary sex characteristics of the opposite sex). Because the process of a “gender transition” involves the rejection of the body as gift, the student who has begun to transition has chosen a path at odds with their integral human and God-given identity. Since the mission and identity of the Catholic school is to share and develop this holy and holistic view of the human persons, students and parents who profess or promote an alternate vision of the human person are choosing not to remain enrolled.

In accord with this sexual identity policy, school personnel will address students by the name with which the student is registered (or its common derivative) and pronouns correlating to the student’s sexual identity based on biological sex from conception. All other policies at this school will reflect the teaching of the Catholic Church concerning sexual identity.

**The Archdiocese of Oklahoma City Anti-Discrimination, Anti-Harassment,  
and Anti-Retaliation Policy  
And Grievance Procedure with Complaint Form**

This Policy and Grievance Procedure applies to all applicants for admission and employment, students, and employees. The Policy and Grievance Procedure will be disseminated to all such individuals, as well as parents and legal guardians of students.

Christ the King Catholic School (“school”) is a Catholic faith-based community providing students with exceptional Christ-centered Catholic formation and education. Rooted in the Catholic understanding of the human person and her or his relationship with God and neighbor, 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. The physical environment of the school has external signs of the Catholic tradition including images, symbols, icons, crucifixes in every classroom, liturgical celebrations, and other sacramental reminders of Catholic life. In short, every aspect of the school’s life reminds students, parents, faculty and staff to intentionally consider the implications Catholic teaching has for their lives and for the formation and education of the School’s students. This policy is not intended to conflict with any of the school’s religious tenants or teachings of the Catholic Church. This specifically includes Catholic teachings on modesty, sanctity of life, sanctity of marriage, the theology of the body, sexual orientation, and gender identity. The School will defer to the appropriate Catholic faith leaders, including the local ordinary, and teachings in implementing this policy and nothing in this policy is intended to conflict with those teachings.

A. Prohibited Discrimination, Harassment, and Retaliation of Students, Employees, and Others

The School is committed to providing a school environment that is free from unlawful discrimination, harassment, and retaliation. The School strictly prohibits and does not tolerate any discrimination, harassment, or retaliation that is inconsistent with Catholic teaching on the basis of a person’s race, color, national origin, disability, genetic information, sex, pregnancy, biological sex, age, military status, or any other protected classes recognized by applicable federal, state, or local law in its programs and activities. The School further prohibits discrimination on the basis of sex in the recruitment and admission of students, in its education programs and activities, and in all employment-related decisions, including recruitment, application, hiring, promotion, termination, and other employment actions.

The following persons have been designated as Coordinators to handle inquiries or complaints regarding the Anti-Discrimination, Anti-Harassment, and Anti-Retaliation Policy:

Name: Doella Gilmer  
Address: 1905 Elmhurst Ave.  
Telephone Number: 405-843-3909  
Email address: dgilmer@ckschool.com

# Tab D

Description of item: Webpage of St. Isidore of Seville Catholic Virtual School entitled “Frequently Asked Questions, When Will St. Isidore of Seville Catholic Virtual School Open?” (<https://stisidorevirtualschool.org/faqs>). (A copy of this webpage was also filed in Oklahoma County District Court on July 31, 2023, as part of Exhibit N to the petition in *OKPLAC*.)

Date of item: The webpage was printed off St. Isidore’s website on November 12, 2023. The webpage does not have its own date.

Relevance: The webpage supports Intervenors’ claim that St. Isidore will unlawfully discriminate against students in admissions.

Synopsis: The webpage contains the following statement: “Admission assumes the student and family willingness to adhere with respect to the beliefs, expectations, policies, and procedures of the school . . . .”



# ST. ISIDORE OF SEVILLE CATHOLIC VIRTUAL SCHOOL

Oklahoma City, OK

EDUCATING THE WHOLE CHILD  
MIND, BODY, SPIRIT

## FREQUENTLY ASKED QUESTIONS

WHAT IS ST. ISIDORE OF SEVILLE CATHOLIC VIRTUAL SCHOOL? ▼

WHEN WILL ST. ISIDORE CATHOLIC VIRTUAL SCHOOL OPEN? ▲

Having been approved by the Oklahoma Statewide Virtual Charter School Board, the school now enters the charter agreement phase. Upon completion, St. Isidore of Seville Catholic Virtual School Plans to open in August of 2024 for the 2024-2025 school year.

In the Spring of 2024, we will announce the open enrollment period for any Oklahoma parents or guardians who would like to submit an application for their student(s). To register interest and to receive updates on the enrollment process and opportunities to apply, please complete the [Parent Interest Form](#).

Please note: If the number of applicants exceeds the capacity of the school or grade level, St. Isidore of Seville Catholic Virtual School will conduct a random selection lottery. As a statewide school, St. Isidore of Seville Catholic Virtual School will admit any and all students who reside in the state, provided there is capacity to serve that student's grade level per the annual enrollment goals for each year. All students are welcome, those of different faiths or no faith. Admission assumes the student and family willingness to adhere with respect to the beliefs, expectations, policies, and procedures of the school as presented in the handbook. The handbook will be available to view prior to enrollment.