

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

OKPLAC, INC., d/b/a Oklahoma)
Parent Legislative Action)
Committee,)
MELISSA ABDO,)
KRYSTAL BONSALL,)
LESLIE BRIGGS,)
BRENDA LENÉ,)
MICHELE MEDLEY,)
DR. BRUCE PRESCOTT,)
REV. DR. MITCH RANDALL,)
REV. DR. LORI WALKE, and)
ERIKA WRIGHT,)

Plaintiffs,)

v.)

Case No. _____

STATEWIDE VIRTUAL CHARTER)
SCHOOL BOARD,)
MEMBER OF THE STATEWIDE)
VIRTUAL CHARTER SCHOOL)
BOARD FOR THE FIRST)
CONGRESSIONAL DISTRICT,)
currently DR. ROBERT)
FRANKLIN, in his official capacity,)
MEMBER OF THE STATEWIDE)
VIRTUAL CHARTER SCHOOL)
BOARD FOR THE SECOND)
CONGRESSIONAL DISTRICT,)
currently WILLIAM PEARSON, in)
his official capacity,)
MEMBER OF THE STATEWIDE)
VIRTUAL CHARTER SCHOOL)
BOARD FOR THE THIRD)
CONGRESSIONAL DISTRICT,)
currently NELLIE TAYLOE)
SANDERS, in her official capacity,)

MEMBER OF THE STATEWIDE)
 VIRTUAL CHARTER SCHOOL)
 BOARD FOR THE FOURTH)
 CONGRESSIONAL DISTRICT,)
 currently identified as BRIAN)
 BOBEK, in his official capacity,)
 MEMBER OF THE STATEWIDE)
 VIRTUAL CHARTER SCHOOL)
 BOARD FOR THE FIFTH)
 CONGRESSIONAL DISTRICT,)
 currently DR. SCOTT STRAWN, in)
 his official capacity,)
 OKLAHOMA STATE DEPARTMENT)
 OF EDUCATION,)
 STATE SUPERINTENDENT OF)
 PUBLIC INSTRUCTION, currently)
 RYAN WALTERS, in his official)
 capacity, and)
 SAINT ISIDORE OF SEVILLE)
 VIRTUAL CHARTER SCHOOL,)
 INC.,)
 Defendants.)

ORIGINAL PETITION

PRELIMINARY STATEMENT

1. The defining feature of America’s public schools is that they must welcome and serve all students, regardless of a student’s background, beliefs, or abilities. Oklahoma embraces this core principle in its constitution and through a comprehensive system of statutes and regulations. Schools that do not adhere to this principle have long existed and are entitled to operate, but they cannot be part of the public-education system. Permitting otherwise would upend the legal framework Oklahoma has constructed to govern public schools and protect students.

2. Yet, on June 5, 2023, the Oklahoma Statewide Virtual Charter School Board (“the Board”) took action that would do exactly that. The Board voted 3–2 to approve an application for charter-school sponsorship from St. Isidore of Seville Catholic Virtual School (“St. Isidore”), even though St. Isidore’s application made clear that the school would *not* be open to all students and that—for this and other reasons—the school’s operations would violate numerous provisions of the Oklahoma Constitution, the Oklahoma Charter Schools Act, and the Board’s own regulations.

3. Contrary to the Board’s regulations, St. Isidore refused to agree to comply with all legal requirements applicable to Oklahoma charter schools, including prohibitions against discrimination. And in violation of the Oklahoma Constitution and the Charter Schools Act, St. Isidore in fact will discriminate in admissions, discipline, and employment based on religion, sexual orientation, gender identity, and other protected characteristics.

4. Moreover, contrary to the Charter Schools Act, St. Isidore asserts a right to discriminate against students on the basis of disability. St. Isidore’s application also failed to comply with Board regulations requiring the school to demonstrate that it would provide adequate services to students with disabilities.

5. In addition, St. Isidore will violate Board regulations that require a charter school to be independent of its educational management

organization. In breach of those regulations, St. Isidore will hire as its educational management organization the Department of Catholic Education of the Archdiocese of Oklahoma City, which will have control over the school.

6. Further, in violation of the Oklahoma Constitution and the Charter Schools Act, St. Isidore will provide a religious education and indoctrinate its students in Catholic religious beliefs. Indeed, St. Isidore’s application states that the school will be a “place[] of evangelization” that “participates in the evangelizing mission of the Church.”

7. As a public charter school, St. Isidore will be directly funded with state tax dollars. The plaintiffs are clergy, public-school parents, and public-education advocates who object to the use of their tax dollars to fund St. Isidore’s unlawful operations.

8. The plaintiffs’ claims for relief are brought solely under the state constitution, state statutes, and state regulations. The plaintiffs seek injunctive and declaratory relief prohibiting the defendant state agencies and officials from continuing to sponsor St. Isidore as a charter school, contracting with St. Isidore, or funding St. Isidore.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this case because it has unlimited original jurisdiction of all justiciable matters under Article VII, § 7(a) of the Oklahoma Constitution.

10. Venue is proper in this District under 12 O.S. § 133 because the conduct giving rise to this case occurred in Oklahoma County, the defendant state agencies and officials hold their meetings and conduct their operations in Oklahoma County, and St. Isidore's principal place of business is in Oklahoma County.

PARTIES

Plaintiffs

11. Plaintiff **OKPLAC, Inc.**, d/b/a Oklahoma Parent Legislative Action Committee, is an Oklahoma not-for-profit corporation. OKPLAC is a nonpartisan, statewide organization of volunteer advocates committed to promoting policies that protect, support, and strengthen Oklahoma's public-school system. OKPLAC serves as an umbrella organization for many local parent legislative-action committees that actively represent more than 200,000 Oklahoma public-school students and their parents, many of whom are resident taxpayers in the State. OKPLAC's current state chair is Misty Bradley. OKPLAC's resident taxpayer members pay various taxes to the State of Oklahoma that provide revenue for public schools, including charter schools. They object to the use of state tax dollars to support St. Isidore, including because they believe that state funding of St. Isidore would harm public education and be unlawful. Their opposition to state funding of St. Isidore and commitment to protecting public education are germane to OKPLAC's mission. Their individual participation is not required to advance the claims in this lawsuit.

12. Plaintiff **Melissa Abdo** is a Catholic who resides in Tulsa County, Oklahoma. She is the treasurer of OKPLAC, 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. She pays 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. Plaintiff Abdo objects to the use of state tax dollars to support St. Isidore, including because she believes that (1) state funding of St. Isidore would harm public education; (2) Oklahoma taxpayers should not be forced to pay for the religious education of others; and (3) state funding of St. Isidore would be unlawful.

13. Plaintiff **Krystal Bonsall** is a resident of McClain County, Oklahoma. She is a parent of a child attending an Oklahoma public school. Her child has disabilities and is classified to receive special-education and related services in school, including speech therapy, occupational therapy, and a paraprofessional aide. Her child's experience demonstrates how vital it is that public schools be open to all students and commit to providing services to meet those students' needs. Plaintiff Bonsall pays 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. Plaintiff Bonsall objects to the use of state tax dollars to support St. Isidore, including because she believes that (1) it would take public funds away from other public schools, which are and must be open to all students and must provide adequate special-education services that are needed by students with disabilities, such as her child; (2) as St. Isidore has not committed to adequately serving students with disabilities, her own child and other children with similar disabilities could not enroll in the school; (3) state funding of St. Isidore would support a religious public school in which her child also could not enroll because her and her child's religious beliefs do not conform to St. Isidore's; and (4) state funding of St. Isidore would be unlawful.

14. Plaintiff **Leslie Briggs** resides in Tulsa County, Oklahoma, and is a native Tulsan. As the Legal Director of the Oklahoma Appleseed Center for Law and Justice, she believes that the law should be accessible to everyone regardless of their means or circumstance. In her view, public education is the bedrock of our democracy, and it is therefore critical to fully and strictly implement the Oklahoma Constitution's command that the legislature establish and maintain a system of free public schools in which all the children of the State may be educated. Plaintiff Briggs and her wife are proud parents of a child who will enter public school in the coming year.

Plaintiff Briggs pays various taxes to the State of Oklahoma that provide revenue for public schools, including charter schools. These include individual income taxes, severance taxes, general sales taxes, motor-vehicle taxes, motor-fuel taxes, tobacco taxes, alcoholic-beverage taxes, and property taxes. Plaintiff Briggs objects to the use of state tax dollars to support St. Isidore, including because she believes that (1) religious charter schools such as St. Isidore will discriminate against or turn away the children of LGBTQ parents or children who are themselves LGBTQ; (2) taxpayer-funded public schools should be open and equally available to all Oklahoma children; and (3) state funding of St. Isidore would be unlawful.

15. Plaintiff **Brenda Lené** is a resident of Oklahoma County, Oklahoma. In 2016, she created Oklahoma Education Needs / Donations, a Facebook group of over 25,000 members dedicated to helping public-school teachers obtain donations of school supplies. Through her work and the generosity of individual donors across the state, over \$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. Plaintiff Lené is also a parent of a child attending public school. Plaintiff Lené pays 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. Plaintiff Lené objects to the use of state tax dollars to support St. Isidore, including because she believes that (1) public schools

should be open to *all* students, and no taxpayer should be forced to fund a public school that could refuse to enroll any taxpayer's child; (2) state funding of St. Isidore would violate the separation of church and state; and (3) state funding of St. Isidore would be unlawful.

16. Plaintiff **Michele Medley** is a resident of Oklahoma County, Oklahoma. She is the mother of three children, two of whom are autistic and attend public schools. She has been a staunch advocate at the State Capitol on behalf of children with autism, was instrumental in passage of legislation requiring treatments and therapies for autism to be covered by insurance, and is 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. Seeking an alternative to underfunded public schools, she spent years attempting to meet her children's special-education needs through private schools, including one Catholic private school, but discovered that those schools were woefully unprepared and generally unwilling to provide educational opportunities suitable to meet the needs of autistic students. In addition, one of her children is LGBTQIA+, and her children were not safe from harmful discrimination while attending private religious schools. Plaintiff Medley pays 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. Plaintiff Medley objects to the use of state tax dollars to support St. Isidore, including because she believes that (1) schools like St. Isidore not only lack the experience and resources to provide for children with disabilities but also place those children at risk by refusing to abide by nondiscrimination laws that apply to other public schools; (2) funding St. Isidore would divert scarce funding from the State's other public schools, which are better situated to meet the needs of children with disabilities; (3) taxpayers should not be forced to fund religious schools that could discriminate against autistic or LGBTQ children; (4) 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 her family; and (5) state funding of St. Isidore would be unlawful.

17. Plaintiff **Dr. Bruce Prescott** is a resident of Cleveland County, Oklahoma. He is a retired Baptist minister. Before retiring, he 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 defense of religious liberty for all people. Dr. Prescott is also a retired educator who has taught at the University of Oklahoma, Southwestern Theological Seminary, Phillips Theological Seminary, a public junior college, and a public high school. As a retired educator, he knows that the hallmark of public schools is that they

are nondiscriminatory and secular. He pays 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. Dr. Prescott objects to the use of state tax dollars to support St. Isidore, including because he believes that (1) government should never fund discrimination; (2) permitting public schools to require students to receive religious instruction would violate the religious freedom of students, families, and taxpayers; and (3) state funding of St. Isidore would be unlawful.

18. Plaintiff **Rev. Dr. Mitch Randall** is a resident of Cleveland County, Oklahoma. Born in Oklahoma, he is a citizen of the Muscogee (Creek) Nation—an experience that offered him a first-hand perspective on issues regarding religious liberty and instilled in him strong support for church-state separation. He holds 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. Currently the chief executive officer of Good Faith Media, he previously served as pastor of NorthHaven Church in Norman and as the executive director of the Baptist Center for Ethics. He pays 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. Rev. Dr. Randall objects to the use of state tax dollars to support St. Isidore, including because he believes that (1) 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; (2) diverting precious funding away from secular public education to a religious charter school not only would harm Oklahoma's public-education system but also would violate the religious liberty of others who do not want to support the school's religious teachings; (3) allowing state funding of St. Isidore could open the floodgates for taxpayer-funded discrimination; and (4) state funding of St. Isidore would be unlawful.

19. Plaintiff **Rev. Dr. Lori Walke** is a resident of Oklahoma County, Oklahoma. She is the Senior Minister of Mayflower Congregational United Church of Christ. As a minister, she cares deeply about religious freedom. She pays 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. Rev. Dr. Walke objects to the use of state tax dollars to support St. Isidore, including because she believes that (1) state funding of St. Isidore would violate the religious freedom of taxpayers by forcing them to fund the religious

education of others; (2) 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 (3) state funding of St. Isidore would be unlawful.

20. Plaintiff **Erika Wright** is a resident of Cleveland County, Oklahoma. She is the founder and leader of the Oklahoma Rural Schools Coalition, which is a 10,000-member advocacy group of parents, educators, and business leaders that supports rural Oklahoma public schools. She is a former member of the Noble Public Schools Board of Education. As a leading advocate for rural public schools, she knows very well that public schools are the heartbeat—and often the largest employer—of rural Oklahoma communities. She is also the parent of two school-age children. Although those two children currently attend Oklahoma public schools, her oldest daughter (who is now an adult) attended a Catholic school from grades six through eight. Plaintiff Wright pays 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. Plaintiff Wright objects to the use of state tax dollars to support St. Isidore because she believes that (1) as St. Isidore principally aims to educate students in rural parts of Oklahoma, state funding of St. Isidore would take funds away from brick-and-mortar public schools in rural counties and thereby harm

those schools and their surrounding communities; (2) though she does not oppose Catholic schools or their teachings—having elected to provide a Catholic education to one of her children at her own expense—taxpayers should not be forced to subsidize for others the cost of providing a religious education that is contrary to the taxpayers’ faiths; and (3) state funding of St. Isidore would be unlawful.

21. Though their backgrounds are diverse, all the individual plaintiffs are united as Oklahoma taxpayers who object to their tax dollars funding a public charter school that will discriminate against students and families based on their religion and LGBTQ status, that further asserts a right to discriminate against students with disabilities and has not demonstrated that it will adequately serve those students, that will teach a religious curriculum and indoctrinate students into a religion, and that will violate Oklahoma law in other respects.

Defendants

Statewide Virtual Charter School Board and its members

22. Defendant **Statewide Virtual Charter School Board** (“the Board”) is a state agency created in 2012 by legislation encoded at 70 O.S. § 3-145.1 *et seq.*

23. The Board has “the sole authority to authorize and sponsor statewide virtual charter schools in” Oklahoma. 70 O.S. § 3-145.1(A).

24. The Board’s duties include “[p]rovid[ing] oversight of the operations of statewide virtual charter schools” and “accepting, approving and disapproving statewide virtual charter school applications.” 70 O.S. § 3-145.3(A)(1)–(2).

25. The Board is also responsible for entering into, renewing, and revoking contracts with virtual charter schools. *See* 70 O.S. §§ 3-135(A), 3-145.3(A)(2).

26. The Board has five voting members, one of whom must be a resident of the First Congressional District, one who must be a resident of the Second, one who must be a resident of the Third, one who must be a resident of the Fourth, and one who must be a resident of the Fifth. *See* 70 O.S. § 3-145.1(A)(1)–(3).

27. Defendant **Statewide Virtual Charter School Board Member for the First Congressional District**, currently Dr. Robert Franklin, is sued solely in his official capacity.

28. Defendant **Statewide Virtual Charter School Board Member for the Second Congressional District**, currently William Pearson, is sued solely in his official capacity.

29. Defendant **Statewide Virtual Charter School Board Member for the Third Congressional District**, currently Nellie Tayloe Sanders, is sued solely in her official capacity.

30. Defendant **Statewide Virtual Charter School Board**

Member for the Fourth Congressional District, currently identified as Brian Bobek,* is sued solely in his official capacity.

31. Defendant **Statewide Virtual Charter School Board**

Member for the Fifth Congressional District, currently Dr. Scott Strawn, is sued solely in his official capacity.

32. As detailed above and below, on June 5, 2023, the Board approved an application for charter-school sponsorship by St. Isidore even though the application and St. Isidore's planned operations violate the Oklahoma Constitution, the Charter Schools Act, and the Board's regulations.

* On June 2, 2023, Oklahoma Speaker of the House Charles McCall appointed Brian Bobek to succeed Barry Beauchamp as a member of the Board. On June 5, 2023, Deputy Attorney General and Counsel for the Board Niki S. Batt sent a letter to the Board's Executive Director, which is attached as Exhibit L, stating that Mr. Bobek's appointment was not effective until November 1, 2023. At a June 5, 2023 Board meeting, Mr. Bobek, not Mr. Beauchamp, participated as a member of the Board. (Minutes of the Special Meeting of the Statewide Virtual Charter School Board, June 5, 2023 (Ex. M hereto), at p. 1.). At that meeting, before the Board voted on a revised application for charter-school sponsorship by St. Isidore, Board Chair Dr. Franklin urged Mr. Bobek to abstain from voting on the revised application. (Ex. M § 5.) Mr. Bobek did not abstain, and the Board approved St. Isidore's revised application at that meeting by a vote of three to two, with Mr. Bobek casting one of the three votes in favor. (Ex. M § 6(b).) Mr. Bobek has continued to act as the Board member for the Fourth Congressional District since then. The plaintiffs' understanding is that only the Attorney General or Mr. Beauchamp would have the right under Oklahoma law to challenge the validity of Mr. Bobek's appointment.

*Oklahoma State Department of Education
and the State Superintendent of Public Instruction*

33. Defendant **Oklahoma State Department of Education** (“Department of Education”) is the state education agency of the State of Oklahoma.

34. Defendant **State Superintendent of Public Instruction**, currently Ryan Walters, is sued solely in his official capacity.

35. The State Superintendent of Public Instruction is the chief executive officer of the Department of Education.

36. The Department of Education is charged with determining the policies and directing the administration and supervision of the public school system of Oklahoma.

37. Public-school districts and charter schools, including virtual charter schools, are entitled to state funding—commonly referred to as “State Aid allocations”—that is determined through a complex statutory formula. *See* 70 O.S. §§ 3-135(A)(12), 3-142(A)–(B), 3-145.3(C)–(D), 18-200.1, 18-201.1.

38. The Department of Education is the entity that distributes State Aid allocations to public-school districts and charter schools, including virtual charter schools.

39. The Department of Education will distribute State Aid allocations to St. Isidore if an injunction preventing such distributions is not issued.

Saint Isidore of Seville Virtual Charter School, Inc.

40. Defendant **Saint Isidore of Seville Virtual Charter School, Inc.** (“St. Isidore”) also identifies itself and does business as St. Isidore of Seville Catholic Virtual School. (St. Isidore of Seville Catholic Virtual School, Virtual Charter School Revised Application to the Oklahoma Statewide Virtual Charter School Board (Ex. A hereto), at 2–3 (May 25, 2023).)

41. St. Isidore, in its bylaws, identifies itself as “an Oklahoma not-for-profit corporation.” (Ex. A, Section 13, Appendix F, Section 1, page 1, Section 1.1; *accord* Certificate of Incorporation of Saint Isidore of Seville Virtual Charter School, Inc. (Ex. B hereto), page 2, ¶ 7.)

42. St. Isidore, in its bylaws and certificate of incorporation, identifies itself as “an Oklahoma virtual charter school established pursuant to the Oklahoma Charter School[s] Act, 70 O.S. § 3-130 et seq.” (Ex. A, Section 13, Appendix F, Section 1, page 1, Section 1.2; Ex. B, page 1, ¶ 3.)

43. St. Isidore’s application also explains that “[t]he school falls under the umbrella of the Oklahoma Catholic Conference comprised of the Archdiocese of Oklahoma City and the Diocese of Tulsa.” (Ex. A at 91.)

44. St. Isidore’s application identifies the “Applicant” as “St. Isidore of Seville Catholic Virtual School, Archdiocese of Oklahoma City.” (Ex. A at 3.)

45. St. Isidore expects to principally serve Catholic students in rural areas of Oklahoma that do not have their own brick-and-mortar Catholic schools. (See Video Recording: Oklahoma Statewide Virtual Charter School Board meeting (Ex. O hereto), at 47:38–47:46, 1:22:31–1:22:59, 1:23:29–1:23:34 (Feb. 14, 2023), <https://bit.ly/3ZOBTHp>.)

46. As detailed below, as an Oklahoma virtual charter school, St. Isidore is a governmental entity and a state actor under state law and therefore—in addition to being bound by the Charter Schools Act and the Board’s regulations—must comply with the Oklahoma Constitution.

47. As detailed below, St. Isidore will operate in ways that are prohibited by the Oklahoma Constitution, the Charter Schools Act, and the Board’s regulations, including by using state funds in an unconstitutional and unlawful manner and to support its unconstitutional and unlawful operations.

48. In addition, St. Isidore has an interest in the subject of this action and is so situated that the disposition of the action in its absence may, as a practical matter, impair or impede its ability to protect that interest or leave other parties to this action subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of its interest.

49. St. Isidore is thus named as a defendant both as (1) a governmental entity and state actor under state law that will operate and

use state funds unconstitutionally and unlawfully and (2) a “person[] needed for just adjudication” under 12 O.S. § 2019(A).

LEGAL REQUIREMENTS APPLICABLE TO OKLAHOMA CHARTER SCHOOLS

50. Charter schools in Oklahoma must comply with a host of constitutional, statutory, and regulatory requirements.

Constitutional Requirements

51. Oklahoma charter schools are defined by the Charter Schools Act as “public school[s].” 70 O.S. § 3-132(D).

52. As detailed below, as public schools, Oklahoma charter schools are governmental institutions and state actors under state law.

53. As public schools, governmental institutions, and state actors under state law, Oklahoma charter schools are bound by and must comply with the provisions of the Oklahoma Constitution.

54. 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 and free from sectarian control.”

55. 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.”

56. 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.”

57. 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.”

58. As discrimination based on sexual orientation or gender identity constitutes discrimination based on sex, the prohibitions in Article II, Section 36A encompass discrimination based on sexual orientation and gender identity.

59. Article II, Section 7 of the Oklahoma Constitution—which provides that “[n]o person shall be deprived of life, liberty, or property, without due process of law”—has been construed as including an antidiscrimination component that affords protections against unreasonable or unreasoned governmental classifications that serve no important governmental interests.

60. 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 based on religion, sexual orientation, and gender identity.

61. 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.”

62. Under Article I, Section 2, public schools and other governmental entities and state actors are prohibited from discriminating based on religion, coercing people to engage in religious activity or undertake religious instruction, or proselytizing or indoctrinating people in any religion.

63. Article II, Section 5 of the Oklahoma Constitution provides: “No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.”

Statutory Requirements

64. Charter schools are public schools created by the Oklahoma legislature through the Oklahoma Charter Schools Act, 70 O.S. § 130 *et seq.*

65. The Charter Schools Act governs Oklahoma charter schools and imposes numerous requirements upon them.

66. Among other provisions, the Act prohibits charter schools from discriminating in admissions on any basis, discriminating in employment based on religion, and proselytizing or indoctrinating students in any faith; the Act also mandates that charter schools serve students with disabilities in the same manner as public-school districts.

67. Under the Act, charter schools are defined as public schools and governmental bodies, have the same responsibilities and privileges as other public schools, must comply with numerous legal rules that govern other public schools, are subject to substantial control by their governmental sponsors, provide substantial benefits to the State, receive substantial benefits from the State, and perform the traditionally exclusive and state-constitution-mandated governmental function of public education—all of which demonstrate that Oklahoma charter schools are governmental entities and state actors under state law.

68. The Act defines a “charter school” as “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 (70 O.S. §§ 3-132(A), (D)).

69. The 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).

70. 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” and “disabling condition” as unlawful grounds for denying admission. 70 O.S. §§ 3-135(A)(10), 3-140, 3-145.3(J).

71. The 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).

72. The Act requires charter schools to be “nonsectarian in [their] programs, admission policies, employment practices, and all other operations.” 70 O.S. § 3-136(A)(2).

73. The Act prohibits charter schools from “charg[ing] tuition or fees.” 70 O.S. § 3-136(A)(10).

74. The Act provides that charter schools are “subject to the same academic standards and expectations as existing public schools.” 70 O.S. § 3-135(A)(11).

75. Under the Act, charter schools receive state “funding in accordance with statutory requirements and guidelines for existing public schools.” 70 O.S. § 3-135(A)(12); *see also* 70 O.S. §§ 3-142(A)–(B), 3-145.3(C)–(D).

76. Specifically, charter schools receive state funding (commonly known as “State Aid allocations”) through a complex, statutory formula based on factors that include the number of students served, levels of

teacher experience, how long a school has been in operation, the population density of the area that the school serves, and various characteristics of enrolled students. *See* 70 O.S. §§ 3-135(A)(12), 3-142(A)–(B), 3-145.3(C)–(D), 18-200.1, 18-201.1.

77. The state funds that are paid to charter schools, including the State Aid allocations, are obtained from income, sales, and other taxes paid by Oklahoma taxpayers, including the plaintiffs.

78. The Act requires charter schools to “provide instruction each year for at least the number of days required” by law for other public schools. 70 O.S. § 3-136(A)(11) (citing 70 O.S. § 1-109).

79. The Act requires charter schools to provide bus transportation to their students to the same extent as public-school districts. 70 O.S. § 3-141(A) (citing 70 O.S. §§ 9-101–118).

80. The Act requires charter schools to participate in testing as required by the Oklahoma School Testing Program Act—which applies only to public schools—and in “the reporting of test results as is required of a school district.” 70 O.S. § 3-136(A)(4) (citing 70 O.S. § 1210.505 *et seq.*).

81. The Act provides that charter schools are “subject to the same reporting requirements, financial audits, audit procedures, and audit requirements as a school district.” 70 O.S. § 3-136(A)(6); *accord* 70 O.S. § 3-145.3(E).

82. The Act requires charter schools to submit performance data to the governmental body that sponsored them, which must be “in the identical format that is required by the State Department of Education of all public schools” and must cover a variety of matters, including “[r]ecurrent enrollment from year to year as determined by the methodology used for public schools in Oklahoma” and, “[i]n the case of high schools, graduation rates as determined by the methodology used for public schools in Oklahoma.” 70 O.S. § 3-135(C).

83. The Act requires charter schools to “comply with the student suspension requirements” that apply to other public schools. 70 O.S. § 3-136(A)(12) (citing 70 O.S. § 24-101.3).

84. The Act provides that employees of 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).

85. The Act provides that employees of charter schools “may participate in all health and related insurance programs available to the employees of” their governmental sponsor. 70 O.S. § 3-136(A)(15).

86. The Act requires charter schools to “comply with the Oklahoma Open Meeting Act and the Oklahoma Open Records Act.” 70 O.S. § 3-136(A)(16).

87. The Act provides that charter schools are “eligible to receive current government lease rates” if they choose to lease property. 70 O.S. § 3-142(E).

88. The Act requires charter schools to annually issue financial statements that meet requirements applicable to school districts. 70 O.S. § 3-136(A)(18) (citing 70 O.S. § 5-135).

89. The Act requires charter schools to have governing boards that hold public meetings at least quarterly. 70 O.S. §§ 3-135(A)(3), 3-145.3(F).

90. The Act provides that governing boards of charter schools 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).

91. The Act provides that members of the governing board of a virtual charter school appointed after July 1, 2019, are “subject to the same instruction and continuing education requirements as a member of a local school board.” 70 O.S. § 3-145.3(F).

92. The Act provides that “[a] charter school shall be considered a school district for purposes of tort liability under The Governmental Tort Claims Act.” 70 O.S. § 3-136(A)(13).

93. The Act provides that each 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).

94. The Act requires the State Board of Education to “identify charter schools in the state that are ranked in the bottom five percent (5%) of all public schools as determined pursuant” to a statutory formula, and charter schools that are so ranked over a three-year period are subject to closure by their sponsor or the State Board. 70 O.S. § 3-137(G) (citing 70 O.S. § 1210.545).

95. The Act requires virtual charter schools to comply with special rules concerning attendance and truancy and to “keep a full and complete record of the attendance of all students enrolled in the virtual charter school in one of the student information systems approved by the State Department of Education.” 70 O.S. § 3-145.8.

96. The purposes of the Act are to provide a variety of benefits to the State, including to (1) “[i]mprove student learning”; (2) “[i]ncrease learning opportunities for students”; (3) “[e]ncourage the use of different and innovative teaching methods”; (4) “[p]rovide additional academic choices for parents and students”; (5) “[r]equire the measurement of student learning and create different and innovative forms of measuring student learning”; (6) “[e]stablish new forms of accountability for schools”; and (7) “[c]reate new professional opportunities for teachers and administrators.” 70 O.S. § 3-131(A).

97. Under the Act, only governmental entities—such as school districts, state universities and colleges, the State Board of Education, and the Statewide Virtual Charter School Board—may serve as sponsors for a charter school. 70 O.S. §§ 3-132(A), 3-145.1(A).

98. The Act requires applicants for sponsorship of a charter school to take state-mandated training “on the process and requirements for establishing a charter school” before applying. 70 O.S. § 3-134(A).

99. The Act requires that, to establish a charter school, applicants must submit detailed applications that provide thirty-five statutorily enumerated categories of information. 70 O.S. § 3-134(B).

100. The Act provides that charter-school sponsors have the power and duty to grant or deny applications based on the quality of the applications. 70 O.S. §§ 3-134(I)(3)–(4).

101. The Act requires charter-school sponsors to (1) “[p]rovide oversight of the operations of charter schools”; (2) “[n]egotiate and execute sound charter contracts with each approved public charter school”; (3) “[m]onitor . . . the performance and legal compliance of charter schools”; and (4) “[d]etermine whether each charter contract merits renewal, nonrenewal or revocation.” 70 O.S. §§ 3-134(I)(1), (5), (6), (7); *see also* 70 O.S. § 3-145.3(A).

102. The Act provides that charter-school sponsors may approve a contract with a charter school only at “an open meeting of the sponsor.” 70 O.S. § 3-135(B).

103. The Act requires charter schools to seek renewal of their charter contracts every five years (70 O.S. § 3-137(C)(1)), and the Act provides that a charter-school sponsor may deny renewal of a charter contract or terminate a charter contract during a five-year term for poor performance or other good cause (70 O.S. §§ 3-137(D)–(G)).

104. Because charter schools are creatures of statute, the Oklahoma Legislature could eliminate all charter schools in Oklahoma by repealing the Act.

Regulatory Requirements

105. In addition to the constitutional and statutory requirements that govern them, Oklahoma virtual charter schools must comply with extensive regulations that the Statewide Virtual Charter School Board has adopted. *See* OAC 777:1-1-1 *et seq.*

106. One of the Board’s regulations requires applications for sponsorship of a new virtual 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.” OAC § 777:10-3-3(c)(1)(F).

107. The signed and notarized statements must “[s]pecifically cite agreement . . . to guarantee access to education and equity for all eligible students regardless of their race, ethnicity, economic status, academic ability, or other factors as established by law.” *Id.*

108. Another Board regulation requires “each statewide virtual charter school” to have “consistent lawful procedures in place governing admission, child find responsibilities, evaluation, and re-evaluation of students with disabilities, as well as applicable procedural safeguards and policies and procedures to ensure provision of free appropriate online and other educational and related services, supplementary aids and services, modifications, accommodations, supports for personnel, and other technical supports provided in the least restrictive environment to students with disabilities and/or other special needs in compliance with applicable . . . state laws and regulations.” OAC § 777:10-3-3(b)(3)(C).

109. Accordingly, under another Board regulation, a factor in deciding whether the Board should approve a charter-school application is “[w]hether the charter school has adequate human resources, facilities, systems, and structures in place as necessary to evaluate the needs of and provide effective services to students with disabilities.” OAC § 777:10-3-3(c)(3)(D).

110. A separate Board regulation requires that “[t]he relationship of the charter school and an educational management organization [must be] that of a customer and vendor” and that, “[a]s such, the charter school and the educational management organization shall be separate entities in all aspects.” OAC § 777:10-1-4(1).

111. Relatedly, a Board regulation requires that “[n]o governing board member [of a charter school], school staff member, or contractor/vendor shall receive pecuniary gain, incidentally or otherwise, from the earnings of the educational management organization or school.” OAC § 777:10-3-3(d)(4)(I).

FACTUAL ALLEGATIONS CONCERNING ST. ISIDORE

St. Isidore’s Submission of an Application to Become a Public Charter School

112. On January 30, 2023, St. Isidore submitted an application to the Board that asked the Board to sponsor St. Isidore as a statewide virtual public charter school.

113. On April 11, 2023, as detailed below, the Board rejected St. Isidore’s application, identifying eight categories of deficiencies in it.

114. St. Isidore submitted a revised charter-school sponsorship application to the Board on May 25, 2023.

115. The revised application is attached as Exhibit A.

116. St. Isidore’s revised application (like its original application) makes clear that St. Isidore (1) refuses to certify that it will comply with all

applicable laws, including antidiscrimination laws and laws requiring it to adequately serve students with disabilities; (2) will actually discriminate in admissions, discipline, and employment based on religion, sexual orientation, gender identity, and other legally prohibited grounds; (3) has not demonstrated that it will actually serve students with disabilities adequately; (4) will be improperly controlled by its educational management organization; and (5) will teach a religious curriculum and indoctrinate students in particular religious beliefs.

St. Isidore Will Discriminate in Student Admissions, Student Discipline, and Employment Based on Religion, Sexual Orientation, Gender Identity, and Other Prohibited Grounds

117. As noted above, 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).

118. In its revised application, St. Isidore failed to submit these guarantees to comply with antidiscrimination and other laws.

119. 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.” (Ex. A at 93 & Section 12.)

120. 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. (Ex. A at 109.)

121. St. Isidore’s revised application thus makes clear that St. Isidore will 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.

122. And St. Isidore will, in fact, discriminate in student admissions, student discipline, and employment on a variety of grounds.

Religious discrimination in admissions

123. St. Isidore’s programming and operations will result in discrimination in admissions based on religion.

124. While St. Isidore professes in its revised 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.” (Ex. A at 38; *accord Frequently Asked Questions, When Will St. Isidore of Seville Catholic Virtual School Open?*, St. Isidore of Seville Catholic Virtual School, <https://stisidorevirtualschool.org/faqs> (last visited July 24, 2023) (Ex. N hereto).)

125. Though St. Isidore students “will not be required to affirm [St. Isidore’s] beliefs . . . their experience will reflect the Catholic understanding of each person as created in the image and likeness of God, called to lives of holiness and service.” (Ex. A at 104.)

126. 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.” (Ex. A at 91; *id.*, Appendix F, Section 1, pp. 5, 11.)

127. 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 (Ex. C hereto) at 1, 3 (July 29, 2022), <https://bit.ly/3O7zsuU>.)

128. Moreover, as detailed below, 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.” (Ex. A at 107 (quoting *Catechism of the Catholic Church* ¶ 1033).)

129. 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.

130. Indeed, students of a variety of faiths—including certain Jewish and Muslim students—would be prohibited by their religions from “adher[ing] . . . to the beliefs” (*cf.* Ex. A at 38) of or submitting to religious indoctrination in a religious faith different from their own.

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

131. 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.

132. In its revised 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.” (Ex. A at 18.)

133. 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.” (Ex. A at 167–68.)

134. 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.*, Ex. A at 17, 18, 93, 107, 108)—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).

135. Authoritative Catholic teaching, as stated in the *Catechism of the Catholic Church*, requires that “[e]veryone—man and woman—should acknowledge and accept his or her sexual *identity*” as biologically determined at birth. *See id.* ¶ 2333.

136. Authoritative Catholic teaching, as stated in the *Catechism of the Catholic Church*, prohibits heterosexual activity outside of marriage. *Id.* ¶ 2353.

137. 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. (Ex. A at 43.)

138. 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.” (Ex. A at 168 (emphasis added).)

139. As noted above, 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.” (Ex. A at 91; *id.*, Appendix F, Section 1, pp. 5, 11.)

140. Archdiocese of Oklahoma City policy is that “advocating for, or expressing same-sex attractions . . . is not permitted” for students. (Ex. C at 15.)

141. The Archdiocese of Oklahoma City’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. (Ex. C at 45–46.)

142. The Archdiocese of Oklahoma City’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.” (Ex. C at 46.)

143. Archdiocese of Oklahoma City policy additionally provides that “all students . . . must follow the dress code expectation of their biological sex.” (Ex. C at 10.)

144. As noted above, St. Isidore’s revised application states that “[a]dmission assumes the student and *family* willingness to adhere with respect to the beliefs, expectations, policies, and procedures of the school.” (Ex. A at 38 (emphasis added).)

145. This statement suggests that—in addition to discriminating against prospective or enrolled students because they are LGBTQ, become pregnant outside of marriage, or are sexually active outside of marriage—St. Isidore will discriminate against students because their *parents or guardians* have any of those characteristics.

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

146. St. Isidore will discriminate in employment based on religion, sexual orientation, gender identity, pregnancy outside of marriage, and sexual activity outside of marriage.

147. 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.” (Ex. A at 18.)

148. 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.’” (Ex. A at 104 (quoting The Sacred Congregation for Catholic Education, *The Catholic School* (1977) (alteration in original)).)

149. 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.” (Ex. A at 105–06.)

150. 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 determined at birth, and prohibits heterosexual activity outside of marriage. See *Catechism of the Catholic Church* ¶¶ 2333, 2353, 2357–59.

151. St. Isidore will extend spousal employee benefits only to “opposite sex spouse[s].” (Ex. A at 136.)

152. St. Isidore will require that employees’ “[c]lothing and appearance . . . ensure modesty and sex-appropriateness, reflecting the

Church’s teaching on the dignity of the human person as well as the unique dignity of each sex.” (Ex. A at 115–16.)

153. Though St. Isidore represents that its employees are not required to be Catholic (*see* Ex. A at 105), “[t]he School retains its right to consider religion as a factor in employment-related decisions” (Ex. A at 109).

**St. Isidore Asserts a Right to Discriminate Against, and
Has Not Demonstrated That It Will Adequately Serve,
Students With Disabilities**

154. As stated above, 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).

155. But St. Isidore’s revised 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.” (Ex. A at 73–74.)

156. As noted above, 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.” (Ex. A at 91; *id.*, Appendix F, Section 1, pp. 5, 11.)

157. 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.” (Ex. C at 7.)

158. Further, as noted above, under the Board’s regulations, virtual charter schools must have “policies and procedures to ensure provision of free appropriate online and other educational and related services, supplementary aids and services, modifications, accommodations, supports for personnel, and other technical supports provided in the least restrictive environment to students with disabilities and/or other special needs” (OAC § 777:10-3-3(b)(3)(C)), and one factor in deciding whether the Board should approve a charter-school application is “[w]hether the charter school has adequate human resources, facilities, systems, and structures in place as necessary to evaluate the needs of and provide effective services to students with disabilities” (OAC § 777:10-3-3(c)(3)(D)).

159. St. Isidore’s revised application failed to demonstrate that St. Isidore will adequately serve students with disabilities.

160. The application states that legally required services for students with disabilities will be provided only “to the maximum extent possible *through a virtual education program.*” (Ex. A at 69 (emphasis added).)

161. Similarly, the application states that the school “shall not discriminate on the basis of a protected class, including but not limited to

. . . disability *that can be served by virtual learning* . . . in its discipline policy and practices.” (Ex. A at 43 (emphasis added).)

162. But the Board’s regulations place on virtual charter schools a duty to appropriately serve students with disabilities even if the services cannot be provided virtually: Virtual charter schools must “ensure provision of free appropriate online *and other* educational and related services . . . to students with disabilities and/or other special needs.” OAC § 777:10-3-3(b)(3)(C) (emphasis added).

163. By its terms, this regulation also requires virtual charter schools to appropriately serve all students with disabilities, regardless of whether the disabilities are physical or mental.

164. Yet St. Isidore’s application includes a nondiscrimination statement that identifies “physical disability or impairment” but not mental disability or impairment as a protected characteristic. (Ex. A, Appendix F, Section 1, p. 16.)

165. That nondiscrimination statement also states that it is to be construed “with priority given to the Catholic Church’s understanding of non-discrimination.” (Ex. A, Appendix F, Section 1, p. 16.)

166. In addition, an Oklahoma-specific state policy requires that, for a new student with a disability who already has an individualized education program, a public-school district or a charter school must adopt an existing or create a new individualized education program within ten school days of

the student's first day of attendance. See Joy Hofmeister, State Superintendent of Public Instruction, Special Education Policies and Procedures, Oklahoma State Department of Education 2–3, 150 (2022), <https://bit.ly/3XV5RJA>.

167. But St. Isidore's revised application states that, for a new student with a disability who already has an individualized education program, St. Isidore will adopt an existing or create a new individualized education program within ten school days *of obtaining the existing individualized education program (see Ex. A at 74)*—which could be far later than the deadline imposed by the Oklahoma state policy.

168. At a February 14, 2023 Board meeting, when asked about St. Isidore's capacity to educate children with significant learning-related disabilities, the school's representative responded, “that is something that we will need to develop,” explaining that “we don't see that very often” in the Archdiocese of Oklahoma City's brick-and-mortar schools. (Ex. O at 55:30–56:15.)

St. Isidore Will Violate Rules Prohibiting Its Educational Management Organization from Controlling the School or Providing Financial Benefits to the School's Board Members

169. An “educational management organization” is “a for-profit or nonprofit organization that receives public funds to provide administration and management services for a charter school, statewide virtual charter school or traditional public school.” 70 O.S. § 5-200(A).

170. As noted above, a Board regulation requires that “[t]he relationship of the charter school and an educational management organization [must be] that of a customer and vendor” and that, “[a]s such, the charter school and the educational management organization shall be separate entities in all aspects.” OAC § 777:10-1-4(1).

171. St. Isidore’s revised application states that the Archdiocese of Oklahoma City Department of Catholic Education will be the school’s initial educational management organization. (Ex. A at 25, 46; *id.*, Section 13, Appendix K.)

172. The application describes this “Department of Catholic Education” as “an entity within the Archdiocese of Oklahoma City.” (Ex. A at 46.)

173. St. Isidore’s application also explains that “[t]he school falls under the umbrella of the Oklahoma Catholic Conference comprised of the Archdiocese of Oklahoma City and the Diocese of Tulsa,” and that these two entities “will direct on diocesan policies that apply to the school.” (Ex. A at 91.)

174. St. Isidore’s bylaws state that “[t]he School shall have two Members”—“the Archbishop of the Archdiocese of Oklahoma City and the Bishop of the Diocese of Tulsa”—who will have the right to make major decisions concerning the school’s governance and, “[f]or purposes of implementing the School’s Catholic mission, ministry, doctrine, practice,

policy, and discipline,” will serve as the school’s “final interpretive authority with respect to matters of faith and morals.” (Ex. A, Appendix F, Section 1, pp. 5, 11.)

175. St. Isidore’s educational management organization will thus have control over the school.

176. As noted above, the Board’s regulations also require that “[n]o governing board member, school staff member, or contractor/vendor shall receive pecuniary gain, incidentally or otherwise, from the earnings of the educational management organization or school.” OAC § 777:10-3-3(d)(4)(I).

177. St. Isidore’s plan to hire the Archdiocese of Oklahoma City Department of Catholic Education as its educational management organization will cause the school to violate this requirement.

178. St. Isidore’s bylaws mandate that its board of directors “include the Chancellors of the Archdiocese of Oklahoma City and the Diocese of Tulsa and the Directors of Catholic Education/Superintendents of both dioceses.” (Ex. A, Appendix F, Section 1, p. 7.)

179. The people who hold these positions—including the director of the Archdiocese of Oklahoma City Department of Catholic Education—are, in fact, serving on St. Isidore’s Board of Directors. (Ex. A at 3, 45; *id.*, Appendix F, Sections 3 and 4.)

180. Therefore, at least one of St. Isidore’s board members—the one who also serves as the director of St. Isidore’s educational management

organization—will, through the latter role, receive pecuniary gain from the earnings of that management organization.

**St. Isidore Will Teach a Religious Curriculum
and Indoctrinate Students in Catholic Religious Beliefs**

181. St. Isidore’s revised application makes clear that the school will be like any other Catholic school, except that it will be virtual, publicly funded, and a governmental entity.

182. The application openly states that St. Isidore will “operate the School as a Catholic School.” (Ex. A at 17.)

183. 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’

(Ex. A at 17 (quoting Congregation for Catholic Education, *The Catholic School on the Threshold of the Third Millennium* ¶ 11 (1997)).)

184. 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.” (Ex. A at 17 (quoting Vatican II, *Gaudium et Spes* ¶ 22 (1965)).)

185. 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.’” (Ex. A at 17 (quoting Congregation for Catholic Education, *Consecrated Persons and Their Mission in Schools: Reflections and Guidelines* ¶ 37 (2022)).)

186. The application is replete with other statements that demonstrate the religious nature of St. Isidore’s planned curriculum and programming (*see* Ex. A at 5, 17–19, 24, 104–08, 156, 160, 168; *id.*, Appendix F, Section 1, pp. 1–4), 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.”

(Ex. A at 17–18.)

187. 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 the students to take theology classes.

188. St. Isidore’s revised application explains that “[t]eachers will . . . integrate science with math, music, architecture, and religion” (Ex. A at 5, 20); that “[a] Catholic perspective permeates all subjects informing the student of the unity of all knowledge” (Ex. A at 106); that the school will “seek to offer excellent academic and co-curricular programs permeated by a Catholic anthropology” (Ex. A at 156); that the curriculum will be “infused with Catholic faith and traditions” (Ex. A at 156); that classroom lessons “should integrate Catholic social teachings and traditions” (Ex. A at 156); 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” (Ex. A at 168).

189. The application further explains that “[s]tudents will use the current Archdiocese of Oklahoma Curriculum Standards and Benchmarks” (Ex. A at 5, 20), which contain substantial theology requirements (*see* “Curriculum Documents” linked at Archdiocese of Oklahoma City,

Curriculum, <https://archokc.org/curriculum> (last visited July 24, 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” (Ex. A at 40).

190. Speaking at a February 14, 2023 meeting of the Board, a St. Isidore representative confirmed that “the Catholic faith is a required course all the way through.” (Ex. O at 51:50–51:56.)

191. 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.” (Ex. A at 168.)

192. Thus St. Isidore’s classroom environments will be “conducive to prayer and reflection.” (Ex. A at 156.)

The Board’s Consideration and Approval of St. Isidore’s Application

193. On December 1, 2022, former Oklahoma Attorney General John O’Connor issued Opinion 2022-7, a copy of which is included in St. Isidore’s revised application as an appendix. (Ex. A, Section 13, Appendix N.)

194. In his opinion, former General O’Connor took the position that it is lawful for an Oklahoma charter school to teach a religious curriculum. (Ex. A, Section 13, Appendix N, pp. 14–15.)

195. But former General O’Connor’s opinion also stated:

It is important to emphasize, however, that to the extent that neutral and generally applicable limitations may be found

elsewhere in the [Charter Schools] Act, those limitations can likely be applied to religious charter schools, so long as they are truly neutral and applied equally to all charter schools alike. . . . [My opinion] does *not* mean that religious or religiously affiliated charter schools can necessarily operate however they want in regard to “programs, admission policies, employment practices,” and the like. . . . For instance . . . Oklahoma [can likely] enforc[e] requirements like those indicating that charter schools must be “as equally free and open to all students as traditional public schools,” 70 O.S.2021, § 3-135(A)(9), or must not charge tuition or fees, *id.* § 3-136(A)(10)

(Ex. A, Section 13, Appendix N, pp. 14–15.)

196. As noted above, on January 30, 2023, St. Isidore submitted an application to the Board asking the Board to sponsor St. Isidore as a statewide virtual charter school.

197. Through a February 23, 2023 letter to the Board’s Executive Director, which is attached as Exhibit D, current Oklahoma Attorney General Gentner Drummond withdrew former General O’Connor’s Opinion 2022-7, disagreeing with former General O’Connor’s position that it is lawful for an Oklahoma charter school to teach a religious curriculum.

198. On April 11, 2023, Deputy Attorney General and Counsel for the Board Niki S. Batt sent the Board a letter, which is attached as Exhibit E, explaining (on page 4) that “approval of this proposed virtual charter school [St. Isidore] is in direct violation of Oklahoma law.”

199. On April 11, 2023, the Board voted 5–0 to deny St. Isidore’s application.

200. Later in April, the Board sent St. Isidore a letter, which is attached as Exhibit F, that set forth eight “reasons for rejection” of the application.

201. One of the “reasons for rejection” was the application’s “[l]ack of detail regarding the proposed school’s special education plan, specifically its programs, services, and legal compliance.” (Ex. F at 1.)

202. Another of the “reasons for rejection” was “[c]oncerns with proposed governance and school management structure, specifically the lack of clarity and consistency regarding board membership, duties, responsibilities, and residency and the potential conflict of interest and lack of proper control between the two entities.” (Ex. F at 1.)

203. Yet another of the “reasons for rejection” was “[l]egal issues that may be applicable to the consideration of the St. Isidore of Seville Catholic Virtual School Application for Initial Authorization as an Oklahoma charter school, including the legal basis for religious reason aligning to Oklahoma statute [and] the Oklahoma Constitution . . . for approval of the application.” (Ex. F at 2.)

204. As noted above, St. Isidore submitted a revised application to the Board on May 25, 2023.

205. As detailed above, the revised application did not adequately remedy the three “reasons for rejection” quoted above.

206. The Board scheduled a vote on the revised application for a June 5, 2023 meeting.

207. Americans United for Separation of Church and State, whose attorneys are among the counsel for the plaintiffs, sent letters and a legal memorandum to the Board on January 31, February 10, March 17, and June 2, 2023, opposing the approval of St. Isidore’s application, explaining why approving it would be unlawful, and describing in detail virtually all of the unlawful aspects of the application that are set forth in this Petition. These letters and memorandum are attached as Exhibits G, H, I, J, and K.

208. The Board also received numerous other comments, both written and in person, opposing St. Isidore’s application.

209. At its June 5, 2023 meeting, the Board approved St. Isidore’s revised application by a vote of three to two. (Minutes of the Special Meeting of the Statewide Virtual Charter School Board, June 5, 2023 (Ex. M hereto), § 6(b).)

210. St. Isidore subsequently launched a website stating that “St. Isidore of Seville Catholic Virtual School is a [] newly approved virtual charter school in the state of Oklahoma.” (Ex. N, *What is St. Isidore of Seville Catholic Virtual School?*)

211. St. Isidore’s website also states that “St. Isidore of Seville Catholic Virtual School [p]lans to open in August of 2024 for the 2024–2025 school year.” (Ex. N, *When Will St. Isidore Catholic Virtual School Open?*)

212. St. Isidore’s website further states, “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).” (Ex. N, *When Will St. Isidore Catholic Virtual School Open?*)

FIRST CLAIM FOR RELIEF

Violation of OAC § 777:10-3-3(c)(1)(F): Failure to Certify Intent to Comply with Oklahoma Law, Including Nondiscrimination Requirements

213. All the paragraphs above are incorporated herein.

214. OAC § 777:10-3-3(c)(1)(F) 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.”

215. OAC § 777:10-3-3(c)(1)(F) requires these signed and notarized statements 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.”

216. In its revised application, St. Isidore did not provide the signed and notarized statements required by OAC § 777:10-3-3(c)(1)(F). *See supra* ¶¶ 118–20.

217. Instead, in its revised application, St. Isidore agreed to comply with legal requirements, including nondiscrimination requirements, only to the extent that the requirements do not conflict with its religious beliefs. *See supra* ¶¶ 119–21.

218. St. Isidore’s revised application thus violated OAC § 777:10-3-3(c)(1)(F).

219. Therefore the Board’s approval of St. Isidore’s revised application was unlawful; any contract between the Board and St. Isidore allowing St. Isidore to operate as a charter school would be unlawful; any operation of St. Isidore as a charter school would be unlawful; any provision of State Aid allocations or other state funding to St. Isidore would be unlawful; and any spending by St. Isidore of State Aid allocations or other state funding to support its operations would be unlawful.

SECOND CLAIM FOR RELIEF

Violations of the Oklahoma Constitution’s and Oklahoma Charter Schools Act’s Prohibitions Against Discrimination in Student Admissions, Student Discipline, and Employment

220. All the paragraphs above are incorporated herein.

221. 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”

222. 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.”

223. 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.”

224. 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.”

225. Under Article I, Section 2, public schools and other governmental entities and state actors are prohibited from discriminating based on religion.

226. 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.”

227. As discrimination based on sexual orientation or gender identity constitutes discrimination based on sex, the prohibitions in Article II, Section 36A encompass discrimination based on sexual orientation and gender identity.

228. 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.

229. 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 based on religion, sexual orientation, and gender identity.

230. Charter schools in Oklahoma, including St. Isidore, are public schools, governmental institutions, and state actors under state law and therefore are bound by and must comply with the provisions of the Oklahoma Constitution.

231. 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).

232. The Charter Schools 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).

233. The Charter Schools Act requires charter schools to be “nonsectarian in [their] . . . admission policies [and] employment practices.” 70 O.S. § 3-136(A)(2).

234. The Oklahoma Constitution and the Charter Schools Act thus prohibit charter schools from discriminating in admissions on any nongeographic ground, including religion, sexual orientation, gender identity, pregnancy outside of marriage, and sexual activity outside of marriage.

235. The Oklahoma Constitution and the Charter Schools Act thus also prohibit charter schools from discriminating in student discipline and in employment on grounds that include religion, sexual orientation, and gender identity.

236. St. Isidore will discriminate in student admissions and student discipline based on religion, sexual orientation, gender identity, pregnancy outside of marriage, and sexual activity outside of marriage. *See supra* ¶¶ 123–45.

237. St. Isidore will discriminate in employment based on religion, sexual orientation, gender identity, pregnancy outside of marriage, and sexual activity outside of marriage. *See supra* ¶¶ 146–53.

238. St. Isidore’s discriminatory policies and practices with respect to admissions, discipline, and employment violate the Oklahoma Constitution and the Charter Schools Act.

239. Therefore the Board’s approval of St. Isidore’s revised application was unconstitutional and unlawful; any contract between the Board and St. Isidore allowing St. Isidore to operate as a charter school would be unconstitutional and unlawful; any operation of St. Isidore as a charter school would be unconstitutional and unlawful; any provision of State Aid allocations or other state funding to St. Isidore would be unconstitutional and unlawful; and any spending by St. Isidore of State Aid allocations or other state funding to support its operations would be unconstitutional and unlawful.

THIRD CLAIM FOR RELIEF

Violations of Provisions of the Oklahoma Charter Schools Act and the Board’s Regulations Concerning Education of Children with Disabilities

240. All the paragraphs above are incorporated herein.

241. 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).

242. The Charter Schools Act prohibits Oklahoma charter schools from denying admission based on “disabling condition.” 70 O.S. §§ 3-140(D), 3-145.3(J).

243. OAC § 777:10-3-3(b)(3)(C) requires “each statewide virtual charter school” to have “consistent lawful procedures in place governing admission, child find responsibilities, evaluation, and re-evaluation of students with disabilities, as well as applicable procedural safeguards and policies and procedures to ensure provision of free appropriate online and other educational and related services, supplementary aids and services, modifications, accommodations, supports for personnel, and other technical supports provided in the least restrictive environment to students with disabilities and/or other special needs in compliance with applicable . . . state laws and regulations.”

244. Under OAC § 777:10-3-3(c)(3)(D), a factor in deciding whether the Board should approve a charter-school application is “[w]hether the charter school has adequate human resources, facilities, systems, and structures in place as necessary to evaluate the needs of and provide effective services to students with disabilities.”

245. Instead of agreeing 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)), St. Isidore’s revised application states that the school will only “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” (Ex. A at 73–74.)

246. St. Isidore’s revised application also failed to demonstrate that St. Isidore will adequately serve students with disabilities, including because the application (1) commits to serving students with disabilities only if, and to the extent that, their needs can be addressed solely through virtual means; (2) contains a non-discrimination statement that recognizes physical disability, but not mental disability, as a protected characteristic; and (3) sets forth a policy that does not comply with state rules governing when a new student with disabilities must be provided with an individualized education program. *See supra* ¶¶ 159–68.

247. For these reasons, St. Isidore’s revised application violated the Charter Schools Act and OAC § 777:10-3-3(b)(3)(C) and should have been denied under OAC § 777:10-3-3(c)(3)(D).

248. Therefore the Board’s approval of St. Isidore’s revised application was unlawful; any contract between the Board and St. Isidore allowing St. Isidore to operate as a charter school would be unlawful; any operation of St. Isidore as a charter school would be unlawful; any provision of State Aid allocations or other state funding to St. Isidore would be unlawful; and any spending by St. Isidore of State Aid allocations or other state funding to support its operations would be unlawful.

FOURTH CLAIM FOR RELIEF

Violation of Board Regulations Requiring Charter Schools and Their Board Members to be Independent from the Schools' Educational Management Organizations

249. All the paragraphs above are incorporated herein.

250. OAC § 777:10-1-4(1) requires that “[t]he relationship of the charter school and an educational management organization [must be] that of a customer and vendor” and that, “[a]s such, the charter school and the educational management organization shall be separate entities in all aspects.”

251. OAC § 777:10-3-3(d)(4)(I) requires that “[n]o governing board member [of a charter school], school staff member, or contractor/vendor shall receive pecuniary gain, incidentally or otherwise, from the earnings of the educational management organization or school.”

252. St. Isidore’s educational management organization will have control over the school. *See supra* ¶¶ 171–75.

253. At least one of St. Isidore’s board members will receive pecuniary gain from the earnings of St. Isidore’s educational management organization. *See supra* ¶¶ 177–80.

254. St. Isidore thus will violate OAC § 777:10-1-4(1) and OAC § 777:10-3-3(d)(4)(I).

255. Therefore the Board’s approval of St. Isidore’s revised application was unlawful; any contract between the Board and St. Isidore

allowing St. Isidore to operate as a charter school would be unlawful; any operation of St. Isidore as a charter school would be unlawful; any provision of State Aid allocations or other state funding to St. Isidore would be unlawful; and any spending by St. Isidore of State Aid allocations or other state funding to support its operations would be unlawful.

FIFTH CLAIM FOR RELIEF

Violation of the Oklahoma Constitution's and Oklahoma Charter Schools Act's Prohibitions Against a Charter School Teaching a Religious Curriculum or Indoctrinating Students in a Religion

256. All the paragraphs above are incorporated herein.

257. Article I, Section 5 of the Oklahoma Constitution requires that the State “establish[] and maint[ain] . . . a system of public schools, which shall be . . . free from sectarian control.”

258. 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.”

259. 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.

260. Article II, Section 5 of the Oklahoma Constitution provides: “No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.”

261. Charter schools in Oklahoma, including St. Isidore, are public schools, governmental institutions, and state actors under state law and therefore are bound by and must comply with the provisions of the Oklahoma Constitution.

262. The Charter Schools Act requires charter schools to be “nonsectarian in [their] programs . . . and all other operations.” 70 O.S. § 3-136(A)(2).

263. St. Isidore will provide a religious education to its students and indoctrinate its students in Catholic religious beliefs. *See supra* ¶¶ 181–92.

264. St. Isidore’s curriculum and operations will thus violate the Oklahoma Constitution and the Charter Schools Act.

265. Therefore the Board’s approval of St. Isidore’s revised application was unconstitutional and unlawful; any contract between the Board and St. Isidore allowing St. Isidore to operate as a charter school would be unconstitutional and unlawful; any operation of St. Isidore as a charter school would be unconstitutional and unlawful; any provision of

State Aid allocations or other state funding to St. Isidore would be unconstitutional and unlawful; and any spending by St. Isidore of State Aid allocations or other state funding to support its operations would be unconstitutional and unlawful.

PRAYER FOR RELIEF

266. The plaintiffs have no adequate remedy at law. They request that the Court enter judgment granting the following relief:

A. A temporary injunction under 12 O.S. § 1382, continuing through the pendency of this action, and a permanent injunction under 12 O.S. § 1381:

(1) prohibiting the Board and its voting members and any successors in interest to the Board and its voting members from continuing to serve as charter-school sponsor of St. Isidore, from entering into a contract or implementing any contract allowing St. Isidore to serve as a charter school, from providing or facilitating the provision of any State Aid allocations or other state funding to St. Isidore, and from taking any other action to authorize or enable St. Isidore to operate as a charter school;

(2) prohibiting the Department of Education and the State Superintendent of Public Instruction from providing or facilitating the provision of any State Aid allocations or other state funding to St. Isidore;

(3) prohibiting St. Isidore from entering into a contract with the Board allowing St. Isidore to operate as a charter school, from operating as a charter school, and from accepting or spending any State Aid allocations or other state funding to support its operations.

B. A declaratory judgment under 12 O.S. § 1651 that the Oklahoma Constitution, the Charter Schools Act, and the Board's regulations bar the provision of any State Aid allocations or other state funding to St. Isidore.

C. An award of costs and attorneys' fees to the extent allowed by law; and

D. Such other relief as the Court deems proper.

Dated: July 31, 2023

Respectfully submitted,

Benjamin H. Odom, OBA No. 10917
John H. Sparks, OBA No. 15661
Michael W. Ridgeway, OBA No. 15657
Lisa M. Millington, OBA No. 15164
ODOM & SPARKS, PLLC
2500 McGee Drive, Suite 140
Norman, OK 73072
(405) 701-1863
Fax: (405) 310-5394
odomb@odomsparks.com
sparksj@odomsparks.com
ridgewaym@odomsparks.com
millingtonl@odomsparks.com

J. Douglas Mann, OBA No. 5663
1116 E. 21st Place
Tulsa, OK 74114
(918) 742-6188
douglasmann66@icloud.com

Alex J. Luchenitser (*pro hac vice*
pending)
Kenneth D. Upton, Jr., OBA No. 12906
Kalli A. Joslin (*pro hac vice* pending)
AMERICANS UNITED FOR
SEPARATION OF CHURCH AND
STATE
1310 L Street NW, Suite 200
Washington, DC 20005
(202) 466-7306 / (202) 898-2133
luchenitser@au.org
upton@au.org
joslin@au.org

Daniel Mach (*pro hac vice* pending)
Heather L. Weaver (*pro hac vice*
pending)
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
915 15th Street, NW, Suite 600
Washington, DC 20005
(202) 675-2330
dmach@aclu.org
hweaver@aclu.org

Robert Kim (*pro hac vice* pending)
Jessica Levin (*pro hac vice* pending)
Wendy Lecker (*pro hac vice* pending)
EDUCATION LAW CENTER
60 Park Place, Suite 300
Newark, NJ 07102
(973) 624-1815
RKim@edlawcenter.org
JLevin@edlawcenter.org
WLecker@edlawcenter.org

Patrick Elliott (*pro hac vice* pending)
FREEDOM FROM RELIGION
FOUNDATION
P.O. Box 750
Madison, WI 53701
(608) 256-8900
pellott@ffrf.org

Attorneys for all Plaintiffs

The attorneys for the defendants are believed to be:

For defendants Statewide Virtual Charter School Board and its members:

Cheryl Plaxico
PLAXICO LAW FIRM, PLLC
923 North Robinson Ave., 5th Floor
Oklahoma City, OK 73103
(405) 400-9609
cplaxico@plaxicolaw.com

ALLIANCE DEFENDING FREEDOM (individual attorneys not known)
15100 N. 90th Street
Scottsdale, AZ 85260
(800) 835-5233
Fax: 480-444-0028

For defendants Oklahoma State Department of Education and State
Superintendent of Public Instruction:

Bryan Cleveland, General Counsel
Andy N. Ferguson, Assistant General Counsel
OKLAHOMA STATE DEPARTMENT OF EDUCATION OFFICE OF LEGAL
SERVICES
2500 North Lincoln Boulevard
Oklahoma City, OK 73105
(405) 521-6295
Fax: (405) 522-6256
legalservices@sde.ok.gov

The identity of counsel for defendant Saint Isidore of Seville Virtual Charter
School, Inc. is not known.

CERTIFICATE OF SERVICE

This is the Original Petition commencing this action. Service of process will be effected in accordance with 12 O.S. § 2004, with return of service filed accordingly.

Michael W. Ridgeway