News

Demonstrators in front of the Supreme Court join in song during a rally to support St. Isidore of Seville Catholic Virtual School in Oklahoma in its fight for approval from the U.S. Supreme Court for state taxpayer support. (NCR photo/Carol Zimmermann)

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The U.S. Supreme Court heard more than two hours of often feisty arguments on April 30, in a potential landmark case involving a proposed Oklahoma Catholic school that, if approved, would be the nation's first religious public charter school.

In their questioning, the court's conservative justices appeared sympathetic to arguments that the Catholic Church has the same right as any other private group in Oklahoma to operate a charter school.

"All the religious school is saying is, 'Don't exclude us on account of our religion,' " said Justice Brett Kavanaugh, who added that the court's precedents "are very clear" that states cannot treat religious organizations as "second-class citizens."

Justice Samuel Alito suggested that the attorneys who argued against St. Isidore of Seville Catholic Virtual School were defending a position "seemingly motivated by hostility toward particular religions." He cited Oklahoma Attorney General Gentner Drummond's legal opinion that Oklahomans would not want to fund a religious school whose tenets were "diametrically opposed to their own."

"Isn't that a very serious Masterpiece Cakeshop problem?" Alito said, referencing a 2018 decision where the court ruled the Colorado Civil Rights Commission violated the religious free exercise rights of a baker who did not design a wedding cake for a gay couple.

The court's three liberal justices, however, all struck a skeptical tone as they questioned how St. Isidore would not violate the First Amendment's prohibition against the government establishing a favored religion.

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"What you're suggesting is that the Free Exercise Clause trumps the Establishment Clause," Justice Sonia Sotomayor said to attorney James Campbell, who argued that Oklahoma's prohibition against "sectarian" charter schools violated St. Isidore's constitutional right of religious free exercise.

Justice Ketanji Brown Jackson suggested that St. Isidore, which would be completely funded by taxpayer money and operate as a "place of evangelization" for the Catholic Church, would in effect be using public money for proselytization.

"How is that not an Establishment Clause problem?" Jackson asked U.S. Solicitor General Dean John Sauer, who argued in support of St. Isidore.

Justice Elena Kagan appeared to challenge Campbell's arguments that St. Isidore is not a public school for purposes of state and federal law. She noted that St. Isidore, as well as other charter schools in Oklahoma, are subject to state regulations that pertain to testing and curriculum standards, among other benchmarks.

"With respect to a whole variety of things, the state is running these schools," Kagan said.

Chief Justice John Roberts, meanwhile, emerged as a potential swing vote that could make the difference in a case where another justice, Amy Coney Barrett, has recused herself. A former law professor, Barrett used to teach at the University of Notre Dame. The university's Religious Liberty Clinic is helping to represent St. Isidore.

A cart full of placards is by the steps of the U.S. Supreme Court just prior to oral arguments determining if St. Isidore of Seville Catholic Virtual School in Oklahoma should get state taxpayer support. (NCR photo/Carol Zimmermann)

Roberts noted that the cases cited as precedents by Campbell and other attorneys arguing in favor of the school did not have as much direct government involvement as St. Isidore. Those cases dealt with private religious institutions and questions of state-funded vouchers and scholarship programs.

"This does strike me as a much more comprehensive involvement" by the state in how charter schools operate, Roberts said. "And I wonder what case do you think supports the position with respect to that level of involvement."

If Roberts sides with the liberal wing, the court would tie 4-4, which would leave in place the Oklahoma Supreme Court's June 2024 decision that found St. Isidore violated the U.S. Constitution's Establishment Clause, as well as provisions of the Oklahoma Constitution and the state's charter school law that explicitly prohibit public money from being used to support sectarian activities.

A tied ruling, however, would leave unresolved the question of whether charter schools are state actors, as well as the matter of whether a state can require that charter schools be secular without violating the Constitution's religion clauses.

"That religious exclusion violates the Free Exercise Clause," Campbell said in his argument.

Rally outside Supreme Court supports St. Isidore

A few dozen demonstrators stood in front of the blocked-off steps to the Supreme Court April 30 holding signs saying "Free to Learn" and hearing from advocates pushing for the nation's high court to side in favor of St. Isidore of Seville Catholic Virtual School.

"We are not here to rally against anyone," said Robert Enlow, president and CEO of EdChoice, a nonprofit that advocates for school choice. "We're here to rally for every option ... for a future where every family has the freedom and flexibility to choose a school that works best for them or a learning environment that works best for them."

EdChoice, which coordinated the rally, believes that Oklahoma can't deny a school a charter because it's religious, said Thomas Fisher, the organization's director of litigation. EdChoice filed an amicus brief with other organizations siding with St. Isidore. Should the court rule in the school's favor, Fischer said he thinks other states will then look at how to apply that decision at home.

"It'll let everybody know that when it comes to charters, you have to take everybody who's got a high-quality school, regardless of religious affiliation, religious curriculum," Fischer said in an interview outside the courthouse.

Fisher said the issue doesn't impact the Constitution's Establishment Clause, which prohibits Congress from establishing a religion.

"The Supreme Court has said, as long as the money is following the decisions the parents make for their kids, that breaks the chain between the state and the religion," he said.

Another speaker who addressed rallygoers was Kandice Jeske, a mom with three kids in the Oklahoma City area, who said her oldest son struggled to read and do his homework while attending public school. While the school assured her that her son was fine, she found out through private testing that he had learning disabilities, and she moved him to another school where his work and confidence both improved, she said.

"Parents are the experts on their children," Jeske said. "We deserve the right to find schools that align with their needs and our family's values."

—Allison Prang

Approved by a state education board in 2023 amid significant controversy, St. Isidore was set to open last autumn as a K-12 virtual school that would educate students in underserved Oklahoma rural counties while also being described as an entity that "participates in the evangelizing mission of the Church."

In their application to the Oklahoma Statewide Virtual Charter School Board, the state's two Catholic bishops said St. Isidore would be a Catholic school operated "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."

The contract that the Oklahoma Statewide Virtual Charter School Board signed with St. Isidore's board in October 2023 stipulated that the school would be free and open to all students "as a traditional public school," and that it would comply with local, state and federal laws pertaining to the education of children with disabilities and children who are English language learners.

While the contract says that St. Isidore will ensure that no student is denied admission based on race, sex, sexual orientation, gender identity or gender expression, its language also recognizes that the school may have "certain exemptions or entitlements" from laws and regulations based on its status as a religious organization.

In its revised application to the state's virtual charter school board, St. Isidore said it will comply with laws pertaining to nondiscrimination requirements and educating students with disabilities, "to the extent" that they do not compromise the school's religious tenets.

Those apparent exemptions were highlighted by Jackson, who suggested that St. Isidore was not applying for the same public benefit that secular groups seek when they apply to operate a charter school in Oklahoma.

Sotomayor made a similar point when she told Campbell that St. Isidore "doesn't want to be a charter school. It wants to be a religious charter school."

Gregory Garre, an attorney who argued against St. Isidore, said charter schools have long been considered to be public schools in Oklahoma and federal law. He said the Catholic Church in Oklahoma was seeking a "special status" to establish St. Isidore instead of abiding by the state's charter school program on equal terms with other applicants.

"Teaching religion as truth in public schools is not allowed," Garre said.

Kavanaugh asked Garre how his position would not result in religious organizations that regularly partner with the government from being classified as "state actors." Justice Neil Gorsuch noted the example of religious agencies that provide adoption services with comprehensive government involvement.

"What's the difference?" said Gorsuch. He asked Garre how the court would "draw that line" to distinguish between public schools and other incorporated entities that

receive state funding as contractors.

Under questioning by Alito, who raised several hypothetical situations about whether certain progressive or ultraconservative charter schools would be allowed in Oklahoma, Garre said charter schools all have to abide by the state law that created the program.

"What we're talking about here is a school that's closely regulated and is part of the public school system," said Garre, who added that the court's ruling in the case had the potential to have "a dramatic effect" on charter schools across the country.

The court is expected to render its decision sometime in June.

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