



## **ACSI Legal Memo on Supreme Court's Religious Charter School Decision May 23, 2025**

Just over three weeks ago, the Supreme Court heard oral arguments in *Oklahoma Statewide Charter School Board v. Drummond*, answering the question of whether Oklahoma can have religious charter schools. In a rare outcome, the court was equally split (4 to 4 decision) in its ruling yesterday (May 22, 2025) after Justice Amy Coney Barrett recused herself from this case for a likely conflict of impartiality.

When such a split happens, the higher court upholds the lower court's outcome. So, in this case, the ruling of the Oklahoma Supreme Court still stands as the final word on religious charter schools in Oklahoma. However, this rubber stamping of the lower court ruling holds no authority beyond just the parties involved in the case. This means the same questions and challenges on whether religious charter schools are legal still remain and future courts cannot cite this Supreme Court case as a reason to deny or uphold other attempts at religious charter schools. The Supreme Court answered zero questions on religious charter schools for the remaining 49 states.

The Oklahoma Supreme Court had struck down the operating contract for the nation's first religious charter school, St. Isidore of Seville, citing a violation of both federal and state constitutional provisions. Those included the creation of a state-sponsored religious effort (Establishment Clause violation) and direct funding to a religious organization with Oklahoma state dollars. So, the ruling stands but applies only to Oklahoma. It has yet to be seen if the US Supreme Court will adopt this state court's interpretations of the US Constitution.

### **What Comes Next**

In the 2022 Supreme Court case, *Carson v. Makin*, the court made it clear that the Free Exercise Clause of the Constitution required states to make educational funding programs equally available to religious programs if they opened up such programs to the private sector. This was the third such case making this point in the space of private, religious education. These rulings served to be the Grim Reaper for state Blaine Amendments (prohibitions on state aid going to religious education) and other attempts to offer school choice but exclude religious schools.

What was left unanswered, and is still an open question, is how those protections extend to questions around the Establishment Clause concerns of religious charter schools. Is a religious charter school a government actor and therefore, to fund it would be the

establishment of a government-endorsed religious viewpoint? This will likely be a more nuanced state-by-state answer based on how charter schools are created and operated, as states differ greatly on their models.

We had hoped the Supreme Court would extend its understanding on these issues to religious charter schools, but it did not do so in this Oklahoma case.

So, we wait for the next opportunity for the Supreme Court to bring clarity to this issue. In every state but Oklahoma, business continues as usual.

Philip Scott, ACSI Vice President for Legal Affairs