

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

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

Petitioner, )

and )

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

Petitioners-Intervenors, )

v. )

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

Respondents. )

Case No. 121,694

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

## INTRODUCTION

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

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

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

### **JURISDICTION**

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

### **PARTIES**

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

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

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

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

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

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

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

### **FACTUAL AND LEGAL ALLEGATIONS SUPPLEMENTING THE ATTORNEY GENERAL'S PETITION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. As a governmental entity and a state actor, St. Isidore must comply with the Oklahoma Constitution. Article I, Section 2 of the Oklahoma Constitution provides: “Perfect toleration of religious sentiment shall be secured, and no inhabitant of the State shall ever be molested in person or property on account of his or her mode of religious worship; and no religious test shall be required for the exercise of civil or political rights.” Under Article I, Section 2, public schools and other governmental entities and state actors are prohibited from



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

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

It is from its Catholic identity that the school derives its original characteristics and its ‘structure’ as a genuine instrument of the Church, a place of real and specific pastoral ministry. The Catholic school participates in the evangelizing mission of the Church and is the privileged environment in which Christian education is carried out. In this way ‘Catholic schools are at once places of evangelization, of complete formation . . . .’

(Appl., PA92 (quoting Congregation for Catholic Education, *The Catholic School on the Threshold of the Third Millennium* ¶ 11 (1997)).) The application further states that St. Isidore will “operate a school that understands ‘[t]he truth is that only in the mystery of the incarnate Word does the mystery of man take on light,’” that “[Christ] fully reveals man to man himself and makes his supreme calling clear,” and that “[t]he truth of the human person and the person’s ultimate destiny is learned and understood through faith and reason, theology and philosophy, including the study of the natural sciences.” (Appl., PA92 (quoting Vatican II, *Gaudium et Spes* ¶ 22 (1965)).) The application adds that St. Isidore will “educate[ ] its students for freedom, understanding that ‘in order to be authentic, freedom must measure itself according to the truth of the person, the fullness of which is revealed in Christ.’” (Appl., PA92 (quoting Congregation for Catholic Education, *Consecrated Persons and Their Mission in Schools: Reflections and Guidelines* ¶ 37 (2022)).)

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

- “[s]ee and understand truth, beauty and goodness, and their author and source—God”;
- “[k]now that among all creatures, the human person is the only one created in God’s image with the ability to know and love God, and that God created persons male and female”;
- “[k]now that because of sin humanity was separated from God, but in God’s love He has provided a path to salvation through the saving power of Christ, the second person of the Trinity, in His suffering, death and resurrection”;
- “[k]now that in this earthly sojourn, each person is called to participate in Christ’s suffering and death by daily taking up their own cross and following Him”; and
- “[k]now that human persons are destined for eternal life with the Holy Trinity . . . but that in freedom, an individual may reject God’s invitation and by this ‘definitive self-exclusion’ end up in hell.”

(Appl., PA92–93.)

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

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

22. St. Isidore also will design a “physical environment” that will have “external signs of the Catholic tradition including images, symbols, icons, crucifixes in every classroom, liturgical celebrations, and other sacramental reminders of Catholic life.” (Appl., PA276.) Thus St. Isidore’s classroom environments will be “conducive to prayer and reflection.” (Appl., PA264.)

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

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

24. One of the Board’s regulations requires applications for sponsorship of a new charter school to “include signed and notarized statements from the Head of the School and the governing body members . . . showing their agreement to fully comply as an Oklahoma public charter school with all statute[s], regulations, and requirements of the . . . State of Oklahoma, Statewide Virtual Charter School Board, and Oklahoma Department of Education,” and to “[s]pecifically cite agreement . . . to guarantee access to education and equity for all eligible students regardless of their race, ethnicity, economic status, academic ability, or other factors as established by law.” OAC § 777:10-3-3(c)(1)(F). St. Isidore’s approved application did not comply with these requirements.

25. Instead, St. Isidore submitted notarized statements that it would comply with antidiscrimination and other legal requirements *only* “to the extent required by law, including . . . religious exemptions, . . . with priority given to the Catholic Church’s understanding of itself and its rights and obligations pursuant to the Code of Canon Law and the Catechism of the Catholic Church.” (Appl., PA181–90.) Similarly, elsewhere in the application, St. Isidore stated that “[t]he School complies with all applicable state . . . laws and statutes to the extent the teachings of the Catholic Church allow”; that “[t]he School complies with all applicable local [and] state . . . laws and regulations governing fair employment practices that are not inconsistent with the faith or moral teaching of the Catholic Church”; and that, “[t]o the extent that local [and] state . . . laws and regulations are inconsistent with the faith and moral teaching of the Catholic Church,” St. Isidore views itself as exempt from the laws and regulations. (Appl., PA217.) In other words, in violation of OAC § 777:10-3-3(c)(1)(F), St.

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

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

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

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

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

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

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

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

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

30. Article I, Section 2 of the Oklahoma Constitution provides: “Perfect toleration of religious sentiment shall be secured, and no inhabitant of the State shall ever be molested in person or property on account of his or her mode of religious worship; and no religious test shall be required for the exercise of civil or political rights.” Under Article I, Section 2, public schools and other governmental entities and state actors are prohibited from discriminating based on religion.

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

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

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

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

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

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

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



students “of different faiths or no faith,” it qualifies that statement by warning that “[a]dmission assumes the student and family willingness to adhere with respect to the beliefs, expectations, policies, and procedures of the school.” (Appl., PA113; *accord* St. Isidore website FAQs, IA37.)

37. In addition, St. Isidore’s approved application identifies the “Applicant” as “St. Isidore of Seville Catholic Virtual School, Archdiocese of Oklahoma City.” (Appl., PA76.) The application explains that “[t]he school falls under the umbrella of the Oklahoma Catholic Conference comprised of the Archdiocese of Oklahoma City and the Diocese of Tulsa.” (Appl., PA177.) The Archdiocese of Oklahoma City, together with the Diocese of Tulsa, will “direct on diocesan policies that apply to” St. Isidore and, “[f]or purposes of implementing the School’s Catholic mission, ministry, doctrine, practice, policy, and discipline,” will serve as the school’s “final interpretive authority with respect to matters of faith and morals.” (Appl., PA177, 320.)

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

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

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

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

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

41. In its approved application, St. Isidore states that it will “operate a school in harmony with faith and morals, including sexual morality, as taught and understood by the Magisterium of the Catholic Church based upon Holy Scripture and Sacred Tradition.” (Appl., PA93.) St. Isidore’s “Anti-Discrimination, Anti-Harassment, and Anti-Retaliation Policy” provides that it is “not in[t]en[d]ed to conflict with any of the School’s religious ten[e]ts or teachings of the Catholic Church”—“specifically includ[ing] Catholic teachings on modesty, sanctity of life, sanctity of marriage, the theology of the body, sexual orientation, and gender identity”—and that “[t]he School will defer to the appropriate Catholic faith

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

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

43. Thus, while St. Isidore’s revised application states that the school “shall not discriminate” “in its discipline policy and practices” based on a variety of characteristics that include “biological sex,” the application does not include sexual orientation and gender identity as protected characteristics. (Appl., PA118.) Similarly, St. Isidore’s “Anti-Discrimination, Anti-Harassment, and Anti-Retaliation Policy” states that “[t]he School strictly prohibits and does not tolerate any unlawful discrimination, harassment, or retaliation *that is also inconsistent with Catholic teaching* on the basis of a person’s race, color, national origin, disability, genetic information, sex, pregnancy (*within church teaching*), *biological sex (gender)*[,] age, military status, or any other protected classes recognized by applicable . . . law[s] in its programs and activities.” (Appl., PA276 (emphasis added).)

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

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

45. St. Isidore further will discriminate in employment based on religion, sexual orientation, gender identity, pregnancy outside of marriage, and sexual activity outside of marriage. St. Isidore’s approved application states that the school will “hire educators, administrators, and coaches as ministers committed to living and teaching Christ’s truth as understood by the Magisterium of the Roman Catholic Church through actions and words, using their commitment to Christ and his teachings in character formation, discipline, and instruction, and to live this faith as a model for students.” (Appl., PA93.) The application

explains that “Catholic teachers are called ‘in imitation of Christ, the only Teacher, [to] reveal the Christian message not only by word but also by every gesture of their behavior.’” (Appl., PA212 (quoting The Sacred Congregation for Catholic Education, *The Catholic School* (1977) (alteration in original)).)

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

**D. Relevant contract provisions.**

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

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

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

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

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

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

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

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

50. The Charter Schools Act requires Oklahoma charter schools to “comply with all . . . laws relating to the education of children with disabilities in the same manner as a school district.” 70 O.S. § 3-136(A)(7). But St. Isidore’s approved application states only that the school “will comply with all applicable . . . [l]aws in serving students with disabilities . . . to the extent that it does not compromise the religious tenets of the school and the instructional model of the school.” (Appl., PA155–56.) Moreover, as noted above, St. Isidore is an Archdiocese of Oklahoma City school, and the Archdiocese will control St. Isidore’s policies.

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

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

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

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

### **REQUESTED RELIEF**

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



Respectfully submitted on November 14, 2023.

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

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