

# PUBLICATION

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## The Supreme Court Declines to Require Religious Charter Schools

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**In a one-sentence, 4-to-4 *per curiam* decision, the Supreme Court upheld the Oklahoma Supreme Court's ruling that approval of a religious school's participation in the state's charter school program would violate the Establishment Clause and Oklahoma law that mandate the separation of church and state. Justice Amy Coney Barrett was recused from the case.**

The case was among the most watched from this Term, and a decision overruling the Oklahoma Supreme Court was expected to carry significant effects for charter school systems across the country. While the Supreme Court's decision leaves the current legal landscape in place, Baker Donelson anticipates that there will be continuing litigation in this space and that the Court will likely weigh in on the issue when presented with a vehicle without recusal issues.

A Baker Donelson team consisting of Melissa Grand, Joshua Tropper, Eduardo Bruera, and Destiney Parker-Thompson submitted an *amicus* brief on behalf of a bipartisan group of former state and federal legislators and officials in support of the Oklahoma Attorney General. This represents the second time this Term that Baker Donelson has played an important role in obtaining a favorable result for its clients before the Supreme Court.

### Recap

The case involved St. Isidore, a virtual Catholic school located in Oklahoma. In early 2023, St. Isidore sought to participate in Oklahoma's charter school program. The school's application was granted by the Oklahoma Statewide Charter School Board. In response, the Oklahoma Attorney General brought suit to enjoin the grant of the charter. The Attorney General argued that allowing St. Isidore to act as a charter school, and receive public funds, would transform it into an instrumentality of the state. That result, the Attorney General argued, would contravene the Establishment Clause of the federal Constitution, as well as Oklahoma's Constitution and statutes. In response, both St. Isidore and the Charter School Board argued that denying charter status to St. Isidore would amount to discrimination on the basis of religion in violation of the Free Exercise Clause of the federal Constitution.

The Supreme Court of Oklahoma ultimately sided with the Attorney General. That court reasoned that, "[u]nder Oklahoma law, a charter school is a public school," and that the establishment of a public charter school would contravene federal and Oklahoma law.

St. Isidore and the Charter School Board then sought certiorari by the Supreme Court, which granted the request for review on whether the First Amendment of the U.S. Constitution required Oklahoma to grant St. Isidore's application for charter status.

### Arguments Before the High Court

There was significant interest in the case, reflected by the large number of *amici* participants. Notably, the Solicitor General's Office participated in support of the petitioners.

The Supreme Court heard more than two hours of oral arguments in the case on April 30, 2025, with a wide-ranging and contentious debate. Petitioners' counsel argued that recent Supreme Court decisions such as

*Trinity Lutheran v. Comer* and *Carson v. Makin* stood for the proposition that when the government makes public funds generally available, those funds cannot be denied to religious groups or programs simply because they are religious in nature. In response, counsel for the Oklahoma Attorney General argued that charter schools had "all the hallmarks of government entities," distinguishing them from government grant programs.

Based on the arguments, it appeared that Justices Thomas, Alito, Gorsuch, and Kavanaugh were disposed to the petitioners' position, while Justices Sotomayor, Kagan, and Jackson appeared to support the Oklahoma Attorney General's stance. By contrast, Chief Justice Roberts had difficult questions for both sides.

In the wake of the arguments, court watchers expected a decision in the case sometime in June, toward the end of the Court's term. The speed with which the Court issued its split decision – just over three weeks after argument – was thus surprising.

### **Key Takeaways and Future Implications**

The Supreme Court's decision leaves the current legal landscape unaffected: states are not required to grant charter status to religious schools. However, Justice Barrett's recusal makes it a near certainty that proponents of religious charter schools will seek another vehicle that will permit the full Court to weigh in on this question.

When such a case arrives at the Court, it is unclear where Justice Barrett will fall. In *Carson v. Malkin*, she joined the majority opinion holding that states which offer private school tuition vouchers must also allow those vouchers to be used to pay tuition at religious schools. But, as the Chief Justice observed, that case involved a much more discrete program than the full chartering of a religious school. Moreover, Justice Barrett has tended toward a careful and calibrated jurisprudence that reflects a close attention to factual details.

More broadly, the opinion may spur defensive policy shifts among potentially affected states. States that are concerned about having to charter religious schools may adopt more stringent, and perhaps intrusive, curricular requirements to limit the impact of any legal change. Baker Donelson's [Education Team](#) regularly advises clients in this space.

At bottom, while the legal landscape remains unaffected by the Supreme Court's decision, Baker Donelson's view is that it will not remain static. We anticipate continuing legal challenges and potential changes to state charter frameworks in the coming months and years.