

SCHOOL CHOICE & CHARTERS OPINION

What Would Religious Charter Schools Mean for Public Education?

The Catholic Church wants to open the nation's first religious charter school in Oklahoma

By Kevin G. Welner — May 29, 2024 ⌚ 5 min read



— Richard Mia for Education Week

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The charter school movement was once the golden child of the U.S. education reform world, celebrated and bolstered by billionaire philanthropists and by politicians of both major parties. But charter schools are in the midst of radical changes and are confronting an increasingly unstable alliance supporting them.

Republicans arguably dealt the first major blow. While President Donald Trump embraced the charter school growth policies of the Clinton, Bush, and Obama administrations, U.S. Secretary of Education Betsy DeVos' great passion was instead for private school vouchers. Other Republicans have shown the same preference, with charters suffering from a bit of GOP neglect.

But the key rupture came in 2020-21, when the Democratic Party's 2020 platform and President Joe Biden himself angered some charter school advocates by calling for increased accountability, transparency, and access.

This shift among Democrats was in response to concerns about fraud and mismanagement within the charter sector as well as access inequities tied to charter schools' control over who enrolls and who stays enrolled, thereby underserving students with disabilities and English-language learners, among others.

Importantly, the shift was not in response to the specter of religious charter schools. But that's about to change.

And the prospect of religious teaching in charter schools that are purportedly public is only the half of it. The second half involves the prospect of the U.S. Supreme Court holding that these religious charter schools have a right, under the U.S. Constitution's clause protecting the free exercise of religion, to engage in faith-based discrimination against LGBTQ+ students and others.

How did we get to this point that's so far from the original goals of charters, such as community connectedness, curricular and instructional innovation, and a caring embrace of at-risk student populations?

A central part of the answer lies in three recent decisions by the U.S. Supreme Court. The latest of these decisions, in a case called Carson v. Makin, was handed down in 2022 and concerned Maine's "town tuitioning" policy. That policy, which dates back to 1873, helps pay private school tuition for students living in sparsely populated areas lacking a public

school. While the policy allowed religious organizations to run participating private schools, the education provided was required to be religiously neutral, without teaching through the lens of any particular faith and without proselytizing to the children.



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The Supreme Court balked at that last part, holding that if a state decides to fund private school education, it could not do so in a way deemed to discriminate against religious schools. The discrimination argument is as follows: (1) the state set up a program providing public funding for private schools; (2) it would be discriminatory if some private schools were disallowed from participation simply because they were church-run; and (3) it is similarly discriminatory if that state disallows those church-run schools from exercising their religious beliefs—even if public money is used to support those religious practices.

Hoping to extend the holding in *Carson*, Oklahoma in 2023 granted a charter for a religious school run by the Roman Catholic Church. Of course, unlike the Maine private schools that were brought within the town-tuitioning plan, any given charter school is created by a state action—by the granting of a charter. But courts may not find this distinction to be important. In fact, additional efforts to create religious charter schools are undoubtedly on the way, driven by well-funded law firms pursuing a version of religious freedom. Already, Guam has greenlighted the idea, and a lawsuit was filed last year in California by Christian parents challenging the state’s secular education rule as applied to independent study charter schools that serve home schoolers.

The constitutionality of Oklahoma’s new charter school is currently being considered by the state’s supreme court with a decision expected soon. That court must decide, among other things, whether the charter violates the state constitution’s prohibition on the use of public money to directly or indirectly benefit any church—and, even if there would be such a violation, whether enforcing that provision would deny the church its free-exercise rights under the U.S. Constitution.

The Catholic authorities in Oklahoma argue that charter school policies are not meaningfully different from the town-tuitioning policy in Maine. They contend that if the state decides to provide public funding to private organizations to run charter schools, it cannot then deny that benefit to religious organizations.

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St. Isidor, the Oklahoma charter school, also argues that the state cannot deny religious organizations the freedom to exercise their religious beliefs in the operation of those schools. As alleged in a second [lawsuit](#) currently challenging Oklahoma's decision to grant this charter, the school stated its intent to discriminate in admissions, discipline, and employment based on religion, sexual orientation, or gender identity.

Since charters are privately operated yet are statutorily part of the public school system, courts are split on the issue of whether or when charter schools should be legally treated as public. The U.S. Supreme Court has yet to directly address this question. But the Oklahoma charter lawsuits may well serve as its vehicle for weighing in, which alarms those who have long argued that charters are public.

To put it bluntly, the current U.S. Supreme Court has shown an inclination to make highly political decisions, even if those decisions fly in the face of [established facts and precedent](#). The smart money is therefore on the court continuing to find discrimination when governmental actions effectively restrain religious practices, no matter the countervailing interests. States, the highest court is likely to rule, must allow church-run charters to exist, to proselytize, to teach their religious beliefs as truth, and even to engage in faith-based discrimination against students.

The problem then facing charter school advocates is that few Democrats will back a reform that claims a right to use public funding to discriminate. And this will greatly degrade support in key jurisdictions. California houses the nation's largest number of charter schools. Other

blue states like New York, Oregon, Hawaii, Minnesota, and Colorado have been among the jurisdictions that have ardently embraced charters.

At this point, as we watch the charter school sector transmogrifying into a type of voucher, all the while acknowledging charters' history of denied access, we may mourn what could have been. But that sense of regret that charters never lived up to their potential should not translate into a nostalgic defense of what charters have truly become. Discrimination and proselytizing on the taxpayer dime will never be acceptable. It is time for public schooling to turn elsewhere for solutions to challenges.

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