

A blurred background image of a classroom. In the foreground, the backs of several wooden desks are visible, along with the metal legs of chairs. In the background, there are green chalkboards and whiteboards. The overall atmosphere is that of a typical school classroom.

March 2025

NACSA Amicus Brief Overview & Summary Outline

nacsa
NATIONAL ASSOCIATION OF
CHARTER SCHOOL AUTHORIZERS

St. Isidore of Seville Catholic Virtual School/OSCSB v. Drummond: What's at Stake?

- Appeal of decision by the Oklahoma Supreme Court to bar the Oklahoma Statewide Charter School Board from opening a virtual religious public charter school
- If Petitioners are successful:
 - States may be required to amend their charter laws to allow the establishment of religious public charter schools
 - States may have to fund **all charter schools** differently than other public schools
 - Authorizers will be asked to consider and approve proposals to operate religious schools
 - Authorizers will need to develop capacity to evaluate religious education programs
 - Some states may decide to stop funding charter schools or abandon their charter law statutes altogether

NACSA Position

NACSA believes that charter schools are public schools. A decision by the Supreme Court to overturn the Oklahoma Supreme Court and require authorizers to establish religious public charter schools would be detrimental to public schooling.

- It would severely complicate authorizers' important role as the gatekeepers and stewards of public school chartering
- It could threaten the existence of charter schools which offer critical public school options to students and families across the country
- It would thrust charter school authorizers, especially state and local education agencies (State school boards and local school districts), into a hornets' nest of conflicting constitutional rights and fraught decision making on what qualifies as quality religious instruction and who should be permitted to deliver it

AMICUS BRIEF - SUMMARY OUTLINE: INTEREST OF AMICUS CURIAE

- I. NACSA and Authorizers
 - A. Composition
 - B. Scope and Reach
 - C. Mission and Goals
- II. Charter school authorizers are government sponsors for establishment of public charter schools
 - A. Public charter school programs are more than just government aid programs
 - B. Authorizers deputized to sponsor creation and operation of public schools
- III. Authorizers have a vested interest in ensuring that role as government sponsor is executed within the bounds of the Constitution
 - A. Vested interest in integrity of the public education system as a whole
 - B. Vested interest in fidelity to state law as state responsible for provision of public education

AMICUS BRIEF - SUMMARY OUTLINE: ARGUMENT

I. PUBLIC CHARTER SCHOOL STATE LAWS AND RESULTING CHARTER SCHOOL PROGRAMS ARE NOT PUBLIC AID PROGRAMS

- A. Public school chartering is not a funding program for private schools
 - 1. Chartering is a legislative tool that operates as an extension of the State's constitutional obligation to provide public education
 - 2. In Oklahoma, private schools are prohibited from applying to operate a public charter school
- B. Public school chartering requires that government authorize the operation of public schools by private institutions [without the government sponsorship, the school is just another private school]
- C. Public charter school authorizers are not merely doling out state aid dollars [detail day to day execution of authority]
 - 1. Authorizers hold public charter schools accountable for compliance with law and Constitution
 - 2. Authorizers measure and evaluate school performance on academic, financial and organizational compliance
 - 3. Authorizers maintain responsibility for ultimate delivery of education to public school students that meets state constitutional standards
 - 4. Authorizers have ultimate decision-making authority over establishment of charter school and charter school operator's ability to continue to function as a public charter school

AMICUS BRIEF - SUMMARY OUTLINE: ARGUMENT

II. STATE VIRTUAL CHARTER SCHOOL BOARD CREATION OF A RELIGIOUS PUBLIC SCHOOL VIOLATES THE ESTABLISHMENT CLAUSE (EC)

A. Direct violation of EC by a state actor

1. Authorizers are government/state actors who by their action confer public status on an otherwise private entity (at least for constitutional purposes)
2. When the government sponsors the creation of a religious institution, including a religious school, it violates the EC
3. SVCSB seeks to create a public religious school by conferring public charter school status
4. The State Board's creation of a religious school operated by Petitioner as proposed would be state action [sponsorship of manifestly religious exercise, *Wallace v. Jaffree*, 472 U.S. 38]

AMICUS BRIEF - SUMMARY OUTLINE: ARGUMENT

- II. STATE VIRTUAL CHARTER SCHOOL BOARD CREATION OF A RELIGIOUS PUBLIC SCHOOL VIOLATES THE ESTABLISHMENT CLAUSE
 - B. State action inquiry application – Outcome is the same, EC violation
 - 1. Conduct is attributable to the state [actions of local government are actions of the state, *Avery v. Midland Cty*, 390 U.S. 474]
 - 2. Conduct requires endorsement of religion
 - a. Chartering religious institutions would require direct government involvement in evaluation of religious instruction
 - b. Chartering religious institutions would require express government selection and endorsement of educational programs that advance a particular religion
 - 3. Conduct will necessarily lead to inextricable intertwinement between government sponsors and religious schools
 - a. Evaluation of religious public school will require government sponsors to develop expertise in religion and religious education
 - b. Government sponsors will be required to endorse some religions over others and pick religious winners and losers in deciding which religions are approved to open a school
 - c. To hold schools accountable, government sponsors will have to endorse and apply standards for religious instruction
 - d. Government sponsors who are charged with ensuring compliance with the law and Constitution will be forced to engage in complicated constitutional line-drawing on daily basis
 - 1) Squaring anti-discrimination laws that protect students on basis of race, sex, gender, ethnicity with religious beliefs/practices
 - 2) Squaring free exercise rights in school that requires all students participate in ceremonies, rituals, rites that conflict with student's religion
 - 3) Defining what does and what does not qualify as a religion or religious education
 - 4) Major potential for biased outcomes when picking which religions obtain right to operate a public religious school
 - e. Entanglements pose specific challenges for state and local education agencies that are authorizers and governing body for other public schools