

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 intertwining 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