

**IN THE
SUPREME COURT OF THE UNITED STATES**

Nos. 24-394 & 24-396

OKLAHOMA STATEWIDE CHARTER SCHOOL BOARD, et. al.,
Applicant-Petitioners,

v.

GENTNER DRUMMOND, Attorney General of Oklahoma,
ex rel. OKLAHOMA,
Respondent.

ST. ISIDORE OF SEVILLE CATHOLIC VIRTUAL SCHOOL,
Applicant-Petitioner,

v.

GENTNER DRUMMOND, Attorney General of Oklahoma,
ex rel. OKLAHOMA,
Respondent.

JOINT MOTION OF PETITIONERS FOR DIVIDED ARGUMENT

Pursuant to Rules 21 and 28.4 of the Rules of this Court, Petitioners in No. 24-394, Oklahoma Statewide Charter School Board and Brian T. Shellem, Angie Thomas, Kathleen White, Damon Gardenhire, Becky Gooch, Jared Buswell, Ben Lepak, Ryan Walters, and Dr. Kitty Campbell, all in their official capacities as members of the Oklahoma Statewide Charter School Board (collectively, “the Board”), and Petitioner in No. 24-396, St. Isidore of Seville Catholic Virtual School (“St. Isidore”), respectfully move for divided argument in these consolidated cases. The Board and St. Isidore request equally divided time. This division of argument time

will ensure that both the Board and St. Isidore have their interests fully represented and that the Court fully understands the perspectives and arguments of both. Respondent takes no position on this motion.

1. This case presents two questions. *First*, it asks whether the academic and pedagogical choices of a privately owned and run school constitute state action simply because it contracts with the state to offer a free educational option for interested students. *Second*, it asks whether a state violates the Free Exercise Clause by excluding privately run religious schools from the state's charter school program solely because the schools are religious, or whether a state can justify such an exclusion by invoking anti-establishment interests that go further than the Establishment Clause requires.

2. The Board is an Oklahoma state agency. Oklahoma law empowers the Board to approve and sponsor Oklahoma's statewide virtual charter schools. The Board approved St. Isidore's application and then negotiated and executed a charter contract with St. Isidore. The Board was named as respondent in the petition before the Oklahoma Supreme Court.

3. St. Isidore is a privately operated religious non-profit organization with two members—the Archbishop of Oklahoma City and the Bishop of Tulsa. It applied for and contracted with the Board to receive access to funds through Oklahoma's charter school program. Because its religious rights are at issue in this case, St. Isidore successfully intervened in the proceedings before the Oklahoma Supreme Court.

4. Petitioners have distinct interests and perspectives regarding the questions presented. As the government entity, the Board seeks to ensure that the state's charter school program is operated in compliance with the law, including the United States Constitution, and to provide more academic choices for parents by approving high-quality charter school applicants without regard to their religious status or conduct. As the regulated private entity, St. Isidore seeks to protect its free exercise right to participate in Oklahoma's charter school program on equal terms as secular private parties, and it seeks to maintain its identity as a private actor despite its voluntarily assumed contractual obligations. The Board and St. Isidore have been represented by separate counsel throughout this proceeding and will continue to be represented by separate counsel before this Court. Counsel for both participated in oral argument before the Oklahoma Supreme Court. And both submitted their own briefs before this Court.

5. Petitioners in each of the cases bring distinct perspectives that will prove invaluable to this Court. St. Isidore can speak to how it will operate the school as a private religious entity. Because its rights are at stake, St. Isidore is well positioned to explain why the Free Exercise Clause protects its right to participate in the charter school program free from religious discrimination. For its part, the Board can explain the state's interest in approving more high-quality educational options for Oklahomans and its role in regulating charter schools like St. Isidore. It can also articulate the basis for approving St. Isidore's application and entering the charter

contract, in addition to explaining why the state's neutral role does not violate the Establishment Clause.

6. This Court has regularly granted motions for divided argument when a government entity and a private party have appeared on the same side of the case. *See, e.g., Nat'l Pork Producers Council v. Ross*, 143 S. Ct. 46 (2022) (mem.); *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 583 U.S. 110 (2018) (mem.); *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Comm'n*, 583 U.S. 991 (2017) (mem.); *Util. Air Regul. Grp. v. EPA*, 575 U.S. 902 (2015) (mem.). In particular, the Court has frequently granted divided argument when a government party and private party appear on the same side of a case implicating the First Amendment's Religion Clauses, thus ensuring that both the governmental and private perspectives are fully aired. *See, e.g., Fulton v. City of Philadelphia*, 141 S. Ct. 230 (2020) (mem.); *Am. Legion v. Am. Humanist Ass'n*, 586 U.S. 1125 (2019) (mem.); *Zelman v. Simmons-Harris*, 534 U.S. 1111 (2002) (mem.); *Bowen v. Kendrick*, 484 U.S. 1041 (1988) (mem.).

For the foregoing reasons, Petitioners jointly request that the Court divide oral argument time equally between them.

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CERTIFICATE OF SERVICE

A copy of this motion was served by email and U.S. mail to the counsel listed below in accordance with Supreme Court Rules 21.3 and 29.3:

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