

24-394 OK CHARTER SCHOOL BOARD V. DRUMMOND

DECISION BELOW: 558 P.3d 1

LOWER COURT CASE NUMBER: 121,694

QUESTION PRESENTED:

This Court has "repeatedly held that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits." *Carson as next friend of O. C. v. Makin*, 596 U.S. 767, 778 (2022). Three times, the Court has applied that principle to strike down "state efforts to withhold otherwise available public benefits from religious organizations." *Id.* at 778-79 (citing *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017); *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464 (2020)).

Contrary to those precedents, the Oklahoma Supreme Court held that a state can exclude privately owned and operated religious charter schools from its charter-school program by enforcing state-law bans on "sectarian" and religiously affiliated charter schools. The court also held that a charter school engages in state action for constitutional purposes when it contracts with the state to provide publicly funded education. These rulings implicate an entrenched circuit split and present two questions for review:

1. 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.

2. 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.

CONSOLIDATED WITH 24-396 FOR ONE HOUR ORAL ARGUMENT. JUSTICE BARRETT TOOK NO PART.
EXPEDITED BRIEFING.

CERT. GRANTED 1/24/2025