

What Would Religious Charter Schools Mean for Education Choice?

Longstanding conceptions of secular charter and religious private schools could be upended by an imminent high court decision

IN ST. ISIDORE OF SEVILLE CATHOLIC VIRTUAL SCHOOL V. DRUMMOND, the U.S. Supreme Court is poised to decide whether states that allow secular charter schools must also allow charter schools that are religious in their mission and curriculum. How would a decision in favor of St. Isidore of Seville, an upstart virtual Catholic school based in Oklahoma City, alter the school choice landscape? How would it impact the way reform advocates and the broader public view charter schools? And what would it mean for the private education sector?

To wrestle with these questions, *Education Next* welcomes two longtime champions of educational choice. Nicole Stelle Garnett, the John P. Murphy Foundation Professor of Law at the University of Notre Dame, argues that the advent of religious charter schools would be a net positive for parental choice and religious freedom. Derrell Bradford, president of 50CAN, warns that an erosion of the line between the charter and private school sectors could have unintended consequences.



Permitting Religious Charter Schools Would Strengthen Parental Choice

BY NICOLE STELLE GARNETT

IN 2012, I WROTE AN ESSAY called “Are Charters Enough Choice? School Choice and the Future of Catholic Schools.” At the time, charter schools were ascendant and growing exponentially, and private-school choice faced formidable political hurdles to expansion. I argued, and continue to believe, that charters are not enough choice. Instead, parental-choice advocates should embrace both charter schools and private-school choice for many reasons, including the fact that charter school laws universally prohibit religious charter schools.

CONTINUED ON PAGE 70



School Choice Relies on a Strong Contingent of Private-Education Options

BY DERRELL BRADFORD

WHEN I WORKED IN NEW JERSEY in the 2010s, the Reverend Monsignor Kevin Hanbury, a silver-haired and gregarious man, was the vicar for education in the Archdiocese of Newark, New Jersey, and an upbeat and cheerful ally in the fight to expand educational opportunity in a state that sorely needed it. Though I struggle to remember the exact year of the conversation, I recall a particular exchange we had with surprising clarity. The organization I worked for was supportive of private-school choice but also of charter schools. Moreover, we had all watched

CONTINUED ON PAGE 71



STUART MCREATH

GARNETT
CONTINUED
FROM PAGE 68

Much has changed since 2012. Private-school choice is now ascendant and growing exponentially, and charter schools face formidable political hurdles to expansion. And a series of recent U.S. Supreme Court decisions call into question the constitutionality of laws banning religious charter schools. The court is currently considering that question in a case concerning what would be the nation's first religious charter school, St. Isidore of Seville Catholic Virtual School. St. Isidore, a joint project of the two Roman Catholic dioceses in Oklahoma, wants to use charter school funds to make a high-quality, authentically Catholic education available to students across a large rural state, where many underserved communities lack access to options other than traditional public schools. But the Oklahoma Supreme Court ordered the Oklahoma Charter School Board to rescind its contract with St. Isidore because it is a Catholic school. The school argues that this exclusion amounts to unconstitutional religious discrimination.

Here, I focus not on the legal arguments in that case but on

operated and freed from regulations governing traditional public schools, but they would be called “public,” and they would be secular. Because of the support for charters on the political left, many on the right redirected their energies away from private-school choice and toward charters.

This charter compromise had consequences. Not only were charter school laws sometimes enacted to thwart vouchers, but they also forced religious-school operators to choose between their faith commitments and public funding: If you want a steady stream of government dollars, your schools must be religion-free. Some chose, and continue to choose, to take that deal. The Archdiocese of New York, for example, recently announced that it was closing four more of its urban Catholic schools and that Brilla Public Charter Schools, a secular operator, will operate charter schools in two of the buildings going forward. Other religious schools similarly “converted” into secular charter schools in order to secure access to public funding.

Many others rejected the deal, for reasons illustrated by the opening vignette in Derrell Bradford's thoughtful counter to this essay. As Monsignor Kevin Hanbury explained when Bradford

Decades of research finds that Catholic school students, especially disadvantaged ones, perform better than their public school peers across a range of metrics.

its policy consequences. Would a decision requiring Oklahoma to permit a religious charter school be a net positive for school choice? My answer—yes—flows from three principles: First, pluralism is good for parental choice. Second, religious freedom is good for parental choice. And third, the effects of a decision in favor of St. Isidore would be positive, but modest. It would advance religious freedom and expand options for families, but as a natural, incremental change to chartering, it would not fundamentally reshape the parental-choice landscape.

Pluralism Is Good

The nation's first modern voucher program, in Wisconsin, and first charter school program, in Minnesota, were created within a few months of one another—in 1990 and 1991, respectively. Few observers foresaw that charter schools would, for the next two decades, eclipse vouchers as the preferred parental-choice mechanism. Conservatives had promoted vouchers for decades; charter schools were an entirely novel idea. Vouchers would expand access to existing schools, including religious schools with a long record of excellence; charter school programs necessitated the creation of new schools. Within a few years, however, elite opinion had coalesced on the view that *charters were enough choice*. They offered a politically palatable alternative to vouchers. Charter schools would be privately

suggested that the Archdiocese of Newark convert its Catholic schools into secular charter schools, sacrificing their religious mission and identity was too dear a price to pay for public funding. And without those public funds, those schools closed their doors forever. Competition with charter schools has contributed to these closures, although other factors certainly have as well. When the Catholic schools closed, thousands of disadvantaged children lost a lifeline. Urban Catholic schools, in particular, have a commendable record of transforming young lives, and, my own research demonstrates, stabilizing neighborhoods. Decades of research finds that Catholic school students, especially disadvantaged ones, perform better than their public school peers across a range of metrics. And this record of success persists: Catholic schools dramatically outperformed traditional public and charter schools on the most recent National Assessment of Educational Progress, the overall results of which dishearteningly demonstrate that kids have not recovered from learning losses incurred during the Covid-induced school closures. Why does it make any sense to foreclose the option of some of these schools participating in charter school programs?

Some charter school proponents argue that allowing religious charter schools could have negative consequences. Some states, rather than approving such schools, might

CONTINUED ON PAGE 72

BRADFORD
CONTINUED
FROM PAGE 68

the city of Trenton close roughly one Catholic school a year during the 2000s, ultimately leaving the city with none. Our team saw this loss as an existential supply-side threat: If we prevailed in our

efforts, we might well see private-school-choice legislation enacted for students in underperforming schools only for them to have no place to go.

It was at this meeting with Monsignor Hanbury that our team floated the idea of Catholic schools converting to charter schools as a stopgap measure while we continued to push for tax-credit scholarships. Because the state would have to fund the students who attended these converted schools, we even believed this move might help advance the tax-credit effort. We suggested that our Catholic partners should “just take the

actors like myself will view *St. Isidore of Seville Catholic Virtual School v. Drummond* through the lens of charter schools and what a ruling in the affirmative might mean for the sector. The court’s 2018 *Janus v. AFSCME* ruling, which found that public employees could not be forced to pay union fees as a condition of employment, could offer insight here. The effect of *Janus* was blunted substantially by at-the-ready laws passed in public-sector union strongholds like New York, New Jersey, and California that made it harder for union members to opt out, gave unions the exclusive chance to “make their case” to prospective employees, and locked down employee data to insulate union members from campaigns that explained their newly bestowed rights. Far from making an exodus, unions and blue state elected leaders locked arms to stem the flood before the dam could crack.

Garnett has offered, thoughtfully, that the legal significance

A ruling supporting *St. Isidore* would almost certainly catalyze a deluge of clever and destructive legislation aimed at existing charter schools and networks.

crosses down during the day” and do religious instruction before or after school to make the charter school conversions possible. An uneasy silence ensued, but finally the monsignor replied, “Well, I would be worried about the Catholicity of the schools.” To which I responded—not flippantly but directly—“The least Catholic school in the world is a closed one.”

I have reflected on this conversation a lot lately because of *St. Isidore of Seville* (the patron saint of the Internet) Catholic Virtual School, whose application to become a charter school was ruled unconstitutional in Oklahoma. This case, now before the U.S. Supreme Court, touches upon some of the underlying tension in the room that day in New Jersey. I cannot make the establishment clause or free exercise arguments that Nicole Stelle Garnett makes so persuasively and eloquently, and upon which *St. Isidore*’s petition turns, but I am sympathetic to them. And I now understand that I was asking Monsignor Hanbury to do to schools that were “Catholic by design” something akin to removing the “No Excuses” ethos from many of the best charter networks in an effort to stay their execution—a measure that likely would have corrupted the thing beyond recognition.

I support both charter and private schools, as well as other options on the growing continuum of education choice, but I would be dissembling if I said this case does not concern me. And while I respect the precedent of *Trinity Lutheran v. Comer*, *Espinoza v. Montana*, and *Carson v. Makin* and consider the anti-Catholic Blaine amendments that still soil many state constitutions deeply problematic, most education policy

of the case is being overstated. This may be true, but the political significance of the ruling should not be underestimated. Unlike *Peltier v. Charter Day*, which sought to determine whether a North Carolina charter school was a state actor, and which was denied a hearing by the Supreme Court, *St. Isidore* has an inherently religious nature. And this reality, as Garnett notes when citing the role religious discrimination plays in the case, portends a different sort of opposition.

Given this, the *Janus* precedent, and the frequency of teachers-union-led anti-charter legislation across the country in both blue states and red, a ruling supporting *St. Isidore* would almost certainly catalyze a deluge of clever and destructive legislation aimed at existing charter schools and networks. The existence of a “religious charter school” would seemingly confound the secular definition of public schools, and the debate over that could halt charter authorizing in some states. Injunctions on charter contracts could see schools not allowed to open or forced to close while the dispute plays out in local legislatures. Teachers union heads and anti-charter progressives might well argue that, in a time of shrinking enrollment, the existence or even possibility of a religious charter school should mean a halt to current charter-school funding, no matter the model. Some states may preemptively amend their charter laws to make it clearer that charter schools are public schools, but this tightening of the charter definition could present its own problems, inviting greater regulation and eroding the “different by design” spirit of the sector.

CONTINUED ON PAGE 73

GARNETT
CONTINUED
FROM PAGE 70

stop approving any new charter schools, or, worse, close them all. Michael Petrilli, president of the Thomas B. Fordham Institute, recently warned that “the Supreme Court might be about to answer the teachers unions’ prayers by critically wounding the most successful education reform initiative in a generation.”

These predictions, like so much of the rhetoric surrounding religious charter schools, are hyperbolic. But the underlying premise—that government officials’ antipathy to religion is a reason to continue state-sanctioned religious discrimination—is curious. The fact that some government officials dislike religion in general—or certain religions in particular—is not a justification for religious discrimination; it is one reason why the First Amendment prohibits it. Oklahoma Attorney General Gentner

corporations are created by the corporate chartering process. Under either theory, Oklahoma charter operators ought to be considered private, not government, actors: They are private nonprofits, their employees don’t work for the government, and they are statutorily guaranteed many freedoms from the rules covering government-run public schools.

Nevertheless, many charter advocates cling to their “publicness,” which they mistakenly equate with being governmental. When St. Isidore’s charter application was approved, the National Alliance for Public Charter Schools stated that “all charter schools are public schools, and as such must be non-sectarian” and promised to “fight to preserve the public nature of these unique schools.” The alliance made an unfortunate logical error. Prior to chartering, all public schools were run by the government and were rightly considered state actors. But chartering created separate space in public education for private nonprofit groups

Charter schools ought to fight any suggestion that they are government schools. A decision that they are government actors would place them in a constitutional straitjacket.

Drummond repeatedly says bigoted things about Muslims, for example, but that’s hardly a reason to ban religious charter schools in Oklahoma.

In any event, more is at stake here than the continuity of charter schools’ funding. Legally, the question before the court turns on whether charter schools are private actors or government actors. Up to this point in the case, the argument about the legal status of Oklahoma charter schools has focused on the so-called state action doctrine, which recognizes the right of private organizations to participate in government work without losing their status as nongovernmental entities. Under the state action doctrine, a private entity is only bound by the federal Constitution in the very rare cases when the entity is so closely controlled that its actions are attributable to the government. However, in Drummond’s brief at the Supreme Court, he pivoted to a slightly different argument, asserting that all charter schools in Oklahoma are actually government entities because they are created by the chartering process. But I dispute that. A private nonprofit doesn’t automatically become a government entity just because it is engaged in work alongside a state or local government or, for that matter, is created by the government—after all, all

to run schools. Charters, as private entities, should not be considered government entities simply because they are engaging in work similar to government-run schools. Charter schools ought to fight any suggestion that they are government schools. They are, by design, freed from government control so as to enable innovation. A decision that they are government actors

would undermine that goal by placing them in a constitutional straitjacket. And that decision’s ramifications would also threaten the autonomy of government-funded private organizations that provide services other than education, including health care, foster care, community development, and poverty alleviation.

Religious Liberty Is Good

Many states now reject the “charters are enough choice” compromise. Thirty-five states have at least one private-school choice program, and 16 states extend eligibility to participate in

those programs to all or most families. Most of the latter group of states have chosen to create Education Savings Account (ESA) programs that permit parents to spend public funds on a range of education expenses, including private-school tuition.

Some have argued private-school choice programs are a

CONTINUED ON PAGE 74



Oklahoma Attorney General Gentner Drummond’s effort to rescind St. Isidore’s charter status ultimately reached the U.S. Supreme Court.

AP PHOTO

BRADFORD
CONTINUED
FROM PAGE 71

All of these options are bad, particularly when we consider the recent experience of some states with strong charter sectors. Massachusetts, for instance, has seen glacially slow charter-sector growth, adding just 23 new seats in the last five years, according to a report from the National Alliance for Public Charter Schools. Expansion in the Bay State has been held back by politics, not a lack of demand. And a Pandora's Box of novel political threats sits on the verge of opening.

However, while the concerns for charter schools are

to create new public schools or make existing ones more desirable. Well-meaning board members may want to pursue other improvement strategies, but the model prevents them from doing so. Charter schools, with their combination of authorizers, charter commitments and timelines for renewal, unelected nonprofit boards, and parental choice, provide a very different set of incentives and motivations to bring excellent and varied schooling options into the world.

While independent school governance may come with its own political crosswinds, its existence principally outside of elected and governmental bureaucracies is essential to the kinds of schools and educational institutions it produces. In particu-

The existence of independent school governance outside of elected and governmental bureaucracies is essential to the kinds of schools and educational institutions it produces.

considerable, the stakes and tradeoffs are equally great for independent and religious schools, and there has been little examination of their fate if St. Isidore's challenge is affirmed by the court. It is essential that those who support private schools, and those who lead, work at, and attend them, consider the matter seriously.

lar, the ability to define clear missions grounded in a range of principles—from spiritual to secular, current to timeless—are vital to the American education landscape. As an example at the collegiate level, Notre Dame (where I serve as an advisory board member for the Alliance for Catholic Education), unlike

CONTINUED ON PAGE 75

Independent School Governance Is Indispensable

While most parents in pursuit of the right fit for their child may not care about a school's model of governance, the positioning of that model on a continuum from state control to educational autonomy does matter and has a substantial impact on what is created. One could allow that elected-school board governance—the model by which most public schools are run—may quench a thirst for “democracy,” but it is quite poor at creating new schools or improving existing ones. To wit, the most powerful policy in an elected school board's tool box may be exclusivity, as these boards often use a new test-in magnet school (I write this as a supporter of magnets) or a tightened attendance zone as their preferred strategies



The 2018 Janus decision gave workers the right to opt out of paying union fees. Unions then lobbied for legislation that blunted its effect, a strategy that could be used by teachers unions after St. Isidore.

AP PHOTO

GARNETT
CONTINUED
FROM PAGE 72

better fit for religious schools than charter school programs are. They argue that charter school bureaucracy would threaten religious liberty. As I have previously explained, concerns about regulatory threats to religious liberty are real. But these concerns are hardly limited to charter school programs. While the regulation of private-school choice has thus far been minimal, these pro-

charter schools but bad for education policy. Moreover, as Andy Smarick has argued, the growth of private-school choice exposes the incongruity of prohibiting religious charter schools. States increasingly use a range of funding mechanisms to subsidize a variety of private education services, but only the charter school option takes religious instruction off the table.

There are good reasons why the First Amendment protects the right of religious organizations to participate fully in public funding programs. As recent debates about federal

In Catholic schools, children are taught that they have infinite worth.

It is a shame—morally and pedagogically—to force schools to excise these types of invaluable principles if they want to participate in chartering.

grams are not equipped with magical anti-regulation invincibility shields. As private-school choice expands, advocates must vigilantly attend to the risk of regulatory creep (which has occurred in charter schools).

In any event, which funding mechanisms will most benefit religious schools is a prudential question, not a legal one. In states with private-school choice, most religious schools will choose that path rather than hassle with charter authorization, even if per-pupil funding in an ESA program is significantly lower. Also, some charter schools might opt to become private schools, and charter school operators might open private schools in order to participate in ESA programs. Bradford suggests that charter school regulations might threaten the independence and religious identity of faith-based schools. To be clear, St. Isidore has not asked to open a school that is Catholic in name only; its argument in the Supreme Court is that the First Amendment prohibits Oklahoma from precluding St. Isidore from being authentically Catholic. And I assume that if Oklahoma's charter law deprived schools of the operational autonomy necessary to do that, many religious educators would, as Hanbury did, pass on the option of opening a charter school. Indeed, for the reasons articulated in Bradford's essay, operational autonomy is critical to the success of secular charter schools as well.

But the decision whether to pursue charter school status (as opposed to some other funding mechanism) should be left up to school operators, not mandated by the government. And in states without private-school choice, religious schools don't have multiple options for procuring government funding. They must choose between forgoing their faith and forgoing public funds. Secular charter schools are not similarly constrained, which is good for secular

funding have shown, the government wields enormous power over private conduct through its spending decisions. The Supreme Court has made clear that "any attempt by the government to dictate or even to influence" "matters of faith and

CONTINUED ON PAGE 76



The Oklahoma virtual charter school at the center of the case takes its name from St. Isidore of Seville, the patron saint of the Internet and computer users.

WIKIMEDIA

BRADFORD
CONTINUED
FROM PAGE 73

many of its peers, could only have been created by an independent entity, the Congregation of the Holy Cross, whose values and beliefs are distinct even among Catholic orders.

Furthermore, the affirmative ability to match school mission, values, and culture with parent and student expectations in the admissions process is unique to independent private schools. This mix is so powerful that many school districts use housing wealth as a proxy to achieve it, and many of the nation's best charter schools have worked to adopt it inasmuch as they are allowed. What are the plaid skirts of many charter schools if not a signal that they share many values with Catholic schools? What was the original KIPP slogan "Work Hard. Be Nice," if not a take on St. Paul's timeless "I

Americans in the process, with two-thirds of the nation's 8th graders now unable to read proficiently, as measured by the National Assessment of Educational Progress. This chapter of American life was, and remains, a moral and policy failure of the highest order.

And yet, if not for the nation's private schools, including urban Catholic schools, whose tuition-funded models required them to be open and educating students in order to stay afloat, it could have been worse. While the Archdiocese of Chicago continued its work, the Chicago Teachers Union, whose pandemic militancy knew no bounds, accused anyone broaching the idea of reopening schools as sexist, racist, and misogynistic. Private schools in California sued to remain open amidst Governor Gavin Newsom's blanket shutdown order. And Larry Hogan, then governor of Maryland, overrode a Montgomery County executive order that would have

A sector of schools the government doesn't run isn't a luxury; it's a necessity.

To the extent private schools sacrifice this freedom by joining the charter community, the schooling ecosystem, and indeed liberty, are compromised.

have fought the good fight, I have finished the race, I have kept the faith"? Indeed, one could argue that the independence of private schools provides a critical reference point by which charter schools gauge their own freedom and recognize regulation that erodes it. As such, a supportive ruling for St. Isidore could be viewed as a victory for religious liberty or as an expansion of state control under the charter banner. And to the extent the ruling allows or incentivizes the creation of a subsector of schools that significantly ablates essential elements of the private-school sector's independence, we should all be concerned.

Families Need Schools the Government Doesn't Run

Five years ago, on March 13, 2020, I stood in Atlanta's airport, having given a speech at the Georgia Charter Schools Association's annual conference. There were signs that the world was unraveling around me, but I did not know the extent to which these omens—empty streets, panicked gazes, and elbow bumps—were harbingers of the future. That Monday, as a country, we embarked on the initially well-intentioned but later deeply political journey of Covid-induced school closings in America. A journey that saw some of the nation's poorest students locked out of consistent in-person learning for almost two years. A journey that saw teachers unions and public school bureaucracies handsomely rewarded with \$190 billion in federal funds for their intransigence. A journey that sacrificed a generation of young

closed the area's private and parochial schools. State executives knew the obvious: Public school closings would only be tolerated if there were no counter examples demonstrating that schools could safely re-open for in-person learning. More pointedly, large urban Catholic school systems provided both the greatest contrast to public school closings and the best rationale for the reopening of schools in cities and elsewhere. One could say that the discontent sown during this moment germinated into the tree of education pluralism we see growing across the country today.

There are many reasons that private and Catholic schools were able to serve as exemplars during the pandemic, but the most important is that they are not governed or run by the state. This freedom to decide, do, and act is distinct to the sector and now, clearly, both a shield against political overreach and a safety valve for parents when our allegedly egalitarian education system is captured by corrosive and self-serving politics. A sector of schools the government does not run isn't a luxury; it's a necessity. We should be thankful that such a sector exists. And to the extent private schools sacrifice this freedom by joining the charter community, the schooling ecosystem, and indeed liberty, are compromised.

The Tools Are Now There

For almost a quarter century, I have worked to create systems of education finance that not only expand educational opportunity but also help sustain private schools that

CONTINUED ON PAGE 77

GARNETT
CONTINUED
FROM PAGE 74

doctrine” is categorically prohibited. Permitting the government to wield the power of the purse to shape the internal decisions of religious organizations is not only wrong but also dangerous.

As Charles Glenn demonstrated over two decades ago in his important book, *The Ambiguous Embrace*, when these distortions are permitted, private organizations, including religious ones, are tempted to preemptively capitulate in order to secure public funding. (One might argue this has begun to happen within some corners of the charter world.)

Protecting religious freedom also is good for education policy. In *How the Other Half Learns*, Robert Pondiscio attributes urban charter schools’ successes in part to the fact that they are “Catholic on the outside,” embracing the external trappings and pedagogical strategies of Catholic schools. Kathleen Porter-Magee has argued, on the other hand, that Catholic schools may succeed because they are “Catholic on the inside.” That is,

whether it is unconstitutional to prohibit religious charter schools in 46 states. Again, the legal question driving that determination—whether charter schools in Oklahoma are private actors protected by the Free Exercise Clause or government actors bound by the Establishment Clause—turns on the state action doctrine. This doctrine itself turns on the specific details of a state’s charter school laws, asking whether a private actor is so closely controlled by the government that its actions are effectively the government’s. The court’s decision should, of course, set forth the factors relevant to the question of whether religious charter schools must be permitted in other states. In some, the answer will be yes. In others, where they are closely controlled by the government, perhaps not. And all states could amend their laws to transform charter schools into state actors, although, for the reasons that Bradford articulates, among others, that would be terrible for charter schools and parental choice more broadly.

Also, “thousands” of religious schools are not about to become charter schools. Private-school choice represents an

In the end, a victory for St. Isidore would be a victory for pluralism and religious liberty, and those things are good for parental choice.

they don’t just act Catholic but actually *are* Catholic. In Catholic schools, teachers and administrators believe that all children are made in the image and likeness of a loving God, a belief that obliges them to form their students’ minds, hearts, and souls in ways that will help them achieve their God-given potential. And in this environment, children are taught that, whatever their current circumstances, they have infinite worth. It is a shame—morally and pedagogically—to force schools to excise these types of invaluable principles if they want to participate in chartering.

Beyond being unwise, this may well be impossible. For schools in many faith traditions, religious instruction and secular pedagogy cannot be disentangled. To tell Catholic, Jewish, or Islamic schools to stop teaching Catholicism, Judaism, or Islam is tantamount to telling them to stop being Catholic, Jewish, and Muslim schools. Thus, we should not expect that stripping them of the religious mission that animates their very being won’t negatively affect their success. The freedom to be religious *on the inside* is key to that success.

Modest, Not Monumental, Change

Many people mistakenly believe that the Supreme Court is poised to open the floodgates for religious charter schools. Michael Petrilli stated recently, “Religious charter schools would become legal overnight in . . . the forty-six states with charter school laws” and predicted that “we’ll see thousands of Catholic and other religious schools turn into charter schools in every corner of the country in the next year or two.”

Very unlikely. First, the Supreme Court cannot decide

attractive alternative and path of least resistance for religious schools in a growing number of states. Moreover, the court’s decision will have no effect on aspects of the charter school authorization process unrelated to religion, including laws prohibiting existing private schools from becoming charter schools. And, lamentably, charter authorizations have slowed to a trickle in many states, making it difficult for any new charter schools to open, religious or not.

In the end, a victory for St. Isidore would be a victory for pluralism and religious liberty, and those things are good for parental choice. But it would be an incremental victory. Religious charter schools would be a salutary addition to an expanding menu of publicly funded education options. Apparently some Oklahoma families are drawn to virtual online Catholic education. Some 200 students enrolled in St. Isidore before its charter contract was rescinded. Many other families will have no interest in that kind of school. That is the whole point of school choice—empowering parents to choose among a range of education options to best serve their children’s unique learning needs. Yet, despite their record of operating excellent schools that serve a diversity of students, the Oklahoma dioceses have been told that they may not open St. Isidore’s (virtual) doors for one reason and one reason only: St. Isidore is Catholic. And that’s not only bad for parental choice, it is also not how the First Amendment works.

Nicole Stelle Garnett is the John P. Murphy Foundation Professor of Law at the University of Notre Dame.

BRADFORD
CONTINUED
FROM PAGE 75

have long histories of educating low-income and working-class students. Ironically, these same schools educated many of today's political elites who oppose these methods of education finance.

It is understandable that the two Catholic dioceses in Oklahoma would want to launch a virtual school that could reach far-flung students in a rural state. That is a worthwhile goal. And, given the school funding landscape before 2020—

especially in low-performing school districts, into the charter sector. The financial windfall for the school is significant, but so is the loss of independence when big decisions such as expansion or renewal now belong to the state. The head of the state's teachers union is currently running for governor and, were he to win, his administration would control charter authorizing. Need more be written about this perilous deal?

But in 2025 there are other options, as a raft of states, including Oklahoma, have adopted flexible education financing that lets families choose the education that's right for them. The

In 2025, there are other options. The policy environment is growing into one that allows families—and private schools—to maintain their independence.

which often included rural Republicans hostile to private-school choice—and echoing my exchange with the monsignor in the 2010s, it is also understandable that a private or religious institution might look to charter-like flexibility and charter finance as a way to accomplish this goal. Indeed, New Jersey policy allows the state to “cream” strong private schools,

policy environment is growing into one that allows families—and private schools—to maintain their independence. That's being accomplished through the expansion of existing tax-credit or voucher programs, the creation of Education Savings Accounts, refundable tax credits (which Idaho implemented this year), and potentially congressional action on the Educational Choice for

Children Act, which could provide private-school scholarships to two million students across the country. These are the policy tools needed to support a long-awaited “confluence of pluralism,” where private and charter schools, along with homeschoolers, microschools, and other fast-growing sectors of the education choice movement work together to meet family needs in an environment where families have real financial power to choose. These are the tools that protect “the Catholicity” of Catholic schools, as Monsignor Hanbury offered. They are the tools that allow independent school governance to do what it does best. They are the tools that preserve the complementary distinction between traditional public, charter, and private schools. And they are the tools I hope the justices of the U.S. Supreme Court will affirm when they rule on religious charter schools.

Derrell Bradford is president of 50CAN, a national nonprofit that advocates for equal opportunity in K–12 education.



Critics warn a ruling in favor of St. Isidore could compromise the independence of private schools.

ADOBE STOCK