

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

MAY 31 2024

RICK WARREN
COURT CLERK

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OKPLAC, INC., et al.,)	
)	
Plaintiffs,)	
)	
v.)	
)	
STATEWIDE VIRTUAL CHARTER)	No. CV-2023-1857
SCHOOL BOARD, et al.,)	
)	
Defendants.)	
)	

PLAINTIFFS' MOTION FOR A TEMPORARY INJUNCTION

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INTRODUCTION

The nation's first religious public school, St. Isidore of Seville Catholic Virtual School, is set to open in Oklahoma and receive state funds in less than three months. St. Isidore refuses to abide by numerous state constitutional, statutory, and regulatory mandates enacted to ensure that all Oklahoma children are treated equally by our public-education system. And the school plans to indoctrinate children in its particular religious beliefs.

To prevent these violations of Oklahoma law, Plaintiffs move pursuant to 12 O.S. § 1382 for a temporary injunction that (1) prohibits defendants Statewide Virtual Charter School Board (“the Charter Board”) and its voting members—as well as all successors in interest to the Charter Board and its voting members—from continuing to serve as charter-school sponsor of St. Isidore, from implementing the contract allowing St. Isidore to serve as a charter school, from providing or facilitating the provision of any State Aid allocations or other state funding to St. Isidore, and from taking any other action to authorize or enable St. Isidore to operate as a charter school; (2) prohibits defendants Oklahoma State Department of Education, State Superintendent of Public Instruction, Oklahoma State Board of Education, and its members from providing or facilitating the provision of any State Aid allocations or other state funding to St. Isidore; and (3) prohibits St. Isidore from implementing its contract with the Charter Board, from operating as a charter school, and from accepting or spending any State Aid allocations or other state funding to support its operations.

All of the criteria for issuing a temporary injunction under Oklahoma law weigh in favor of granting the requested relief. First, Plaintiffs are likely to prevail on their claims that operation and state funding of St. Isidore as a public charter school violates Oklahoma law because the school (1) has not agreed to comply with all laws applicable to charter schools;

(2) will unlawfully discriminate in admissions, discipline, and employment; (3) refuses to commit to fully serving students with disabilities; and (4) will indoctrinate children in religious beliefs. Second, Plaintiffs will be irreparably harmed if the injunction is denied, because their tax dollars will be spent illegally. Third, this irreparable harm to Plaintiffs would outweigh any inconvenience to Defendants. And fourth, ensuring that Defendants follow Oklahoma law, including antidiscrimination provisions, is in the public interest.

FACTS

Plaintiffs are OKPLAC—a nonprofit committed to strengthening Oklahoma’s public school system—and nine individual Oklahoma taxpayers who object to the expenditure of their tax dollars to fund a discriminatory and religious public school. (Ex. AP [PE1092–1111].¹) Defendants (listed above) are the parties responsible for the creation, operation, and funding of St. Isidore. (Am. Pet. ¶¶ 20–49.)

Charter schools, which were created by the Oklahoma legislature through the Oklahoma Charter Schools Act (70 O.S. §§ 3-130 et seq.), are “public school[s] established by contract with a board of education of a school district” or with certain other governmental entities. 70 O.S. § 3-132(D). They are funded by the state (70 O.S. § 3-142), must “be as equally free and open to all students as traditional public schools” (70 O.S. § 3-135(A)(9)), and must be “nonsectarian in [their] programs, admission policies, employment practices,

¹ Plaintiffs’ exhibits have been consecutively paginated with the numbering “PE__” in the lower right-hand corner. All exhibit citations provide both the “PE” numbering and the exhibit’s letter and original page numbering. All exhibits are submitted herewith, both in hard copy and in a single PDF file on a flash drive. Exhibits A through U were previously filed with Plaintiffs’ Amended Petition. Exhibit letters V, W, and X are not being used. Exhibits Y through AH were previously filed with Plaintiffs’ Consolidated Opposition to Defendants’ Motions to Dismiss. Exhibits AI through AS are new.

and all other operations” (70 O.S. § 3-136(A)(2)). They are subject to the same academic standards as other Oklahoma public schools (70 O.S. § 3-135(A)(11)), as well as numerous other legal rules that govern public schools, including prohibitions on discrimination in admissions and employment (*see, e.g.*, 70 O.S. §§ 3-135(A)(9), 3-135(C), 3-136(A)(1), 3-136(A)(4), 3-136(A)(6), 3-136(A)(11)–(12)).

On June 5, 2023, the Charter Board—the entity responsible for authorizing, sponsoring, and providing oversight to Oklahoma virtual charter schools (70 O.S. §§ 3-145.1(A), 3-145.3(A)(1)–(2))—approved St. Isidore to open as a Catholic virtual charter school. (Ex. M § 6(b) [PE590].) On October 9, 2023, the Charter Board approved a charter contract with St. Isidore, and that contract was signed as of October 16, 2023. (Ex. P [PE597–618]; Ex. R.) The first day of school for students is scheduled for August 12, 2024. (Ex. Y at 69 [PE709].) In the absence of judicial relief, payments of substantial state funds to St. Isidore will commence in or about mid-August of 2024. (Ex. AO at 12–13 [PE1044–45].)

In its approved application to the Charter Board, St. Isidore asserted that it is exempt from complying with certain laws and regulations, including antidiscrimination laws. (*See, e.g.*, Ex. A at 109 [PE195] (stating that “[t]he School complies with all applicable state . . . laws and statutes to the extent the teachings of the Catholic Church allow”; that “[t]he School complies with all applicable local [and] state . . . laws and regulations governing fair employment practices that are not inconsistent with the faith or moral teaching of the Catholic Church”; and that, “[t]o the extent that local [and] state . . . laws and regulations are inconsistent with the faith and moral teaching of the Catholic Church,” St. Isidore views itself as exempt from the laws and regulations).) St. Isidore’s charter contract with the

Charter Board also grants St. Isidore broad religious exemptions from legal requirements. (Ex. P at 1–3, 12, 18 ¶¶ 1.5, 2.1, 3.1, 8.2, 11.1 [PE598–600, 609, 615].)

And St. Isidore will in fact discriminate against students and employees on a variety of grounds. Though St. Isidore asserts that it will admit students of any faith, it warns that “[a]dmission assumes the student and family willingness to adhere with respect to the beliefs, expectations, policies, and procedures of the school.” (Ex. A at 38 [PE91]; Ex. AI [PE989].) As a result, St. Isidore will not actually be open to students of all faiths and beliefs.

St. Isidore plans to “operate . . . as a Catholic School” (Ex. A at 17 [PE70]), “under the umbrella of the Oklahoma Catholic Conference comprised of the Archdiocese of Oklahoma City and the Diocese of Tulsa” (*id.* at 91 [PE155]). As a Catholic School, St. Isidore will “participate[] in the evangelizing mission of the Church and [be] the privileged environment in which Christian education is carried out.” (*Id.* at 17 [PE70].) “The traditions and teaching of the Catholic Church and the virtue of Christian living [will] permeate the School day” and will be “expressed through worship, prayer, religion classes, and the general climate of the school.” (Ex. Y at 17 [PE657]; *see also* Ex. A at 5, 17–19, 24, 104–08, 156, 160, 168 [PE56, 70–72, 77, 190–94, 242, 246, 254]; *id.*, App. F, § 1, pp. 1–4 [PE288–91]; Ex. Y at 9, 14–15, 17–18, 21, 27–29, 54 [PE649, 654–55, 657–58, 661, 667–69, 694]; Ex. Z at 3, 6–10 [PE720, 723–27]; Ex. AA [PE729–802]; Ex. AC at 6–7, 46 [PE844–45, 884]; Ex. AI [PE972, 980–82, 988, 991–93].)

Students will be required to “demonstrate high standards of Catholic behavior.” (Ex. Y at 45 [PE685].) St. Isidore will teach that “Christ is present in the Holy Eucharist” and will consider “[i]rreverence towards the Holy Eucharist [to be] irreverence toward Christ

himself.” (*Id.* at 45 [PE685].) Students will further be taught that they will “end up in hell” if they “reject God’s invitation.” (Ex. A at 107 [PE193].)

All students will be required to take Catholic theology courses every year. (Ex. Y at 17–18 [PE657–58]; Ex. Z at 6–10 [PE723–27]; Ex. AA [PE734–37].) In these courses, students will be taught that Catholic religious beliefs are objective fact. For example, the kindergarten curriculum will teach students about “the concepts of virtue and sin” and “communicat[ing] with God through prayer.” (Ex. AA [PE738].) In fourth grade, students will “learn about what it means to be created in the image and likeness of God,” including “how to respond to His grace so they can spend eternity with Him in Heaven.” (*Id.* [PE739].) In eighth grade, students will “learn about . . . forming one’s conscience through prayer and understanding the objective moral standards set by God,” and “will be able to learn about God’s Plan for Marriage and Family.” (*Id.* [PE740].) And in high school, students will “explore[] Christianity as the existence of God and how to attain a state of happiness in this life and the next.” (*Id.* [PE741].)

Traditionally secular subjects will also be infused with Catholic religious beliefs. (Ex. A at 5, 20, 156 [PE56, 73, 242]; Ex. Y at 15 [PE655].) For example, students will learn handwriting by writing out religious passages, math classes will include “references to . . . the Catholic faith,” and science classes will discuss “God’s creation.” (Ex. AA [PE745, 761, 766].) In this way, St. Isidore will ensure that a “Catholic perspective permeates all subjects informing the student of the unity of all knowledge.” (Ex. A at 106 [PE192].)

All St. Isidore students—Catholic and non-Catholic—will be required to attend an “All School Mass” every year. (Ex. Y at 27 [PE667].) St. Isidore describes the Mass as “the source and summit of our belief in Jesus Christ and the Church he established” and an

occasion for “[c]oming together as a community in prayer.” (*Id.*) St. Isidore will offer additional school masses once a month (*id.*), as well as a program of “Sacramental preparation.” (*Id.* at 28 [PE668].)

St. Isidore will design a “physical environment” that will have “external signs of the Catholic tradition including images, symbols, icons, crucifixes in every classroom, liturgical celebrations, and other sacramental reminders of Catholic life.” (Ex. A at 168 [PE254]; Ex. AJ at 1 [PE995].) Students will be required to use books illustrated with “key moments in Jesus’ earthly ministry” (Ex. AA [PE745]) and will decorate their home workspace with images of “favorite saints” (Ex. Z at 4 [PE721]).

Catholic parents of St. Isidore students will be required to attend Mass and “teach the Catholic faith by word and example.” (Ex. Y at 14 [PE654].) And all parents will be barred from making “defamatory comments” about the Catholic Church. (*Id.*)

St. Isidore further will discriminate against LGBTQ+ students. It will “operate a school in harmony with faith and morals, *including sexual morality*, as taught and understood by the Magisterium of the Catholic Church based upon Holy Scripture and Sacred Tradition.” (Ex. A at 18 [PE71] (emphasis added).) The Catechism of the Catholic Church—authoritative Catholic teaching repeatedly cited in St. Isidore’s application and other materials (*e.g.*, Ex. A at 17, 18, 93, 107, 108 [PE70, 71, 159, 193, 194]; Ex. Y at 9 [PE649]; Ex. AC at 4, 6 [PE842, 844])—prohibits people from engaging in “homosexual acts,” requires lesbian and gay people to be “chast[e],” and requires that “[e]veryone—man and woman—should acknowledge and accept his or her sexual identity” as assigned at birth. *Catechism of the Catholic Church* 560 ¶ 2333, 566 ¶¶ 2357–59 (2d ed.), <https://bit.ly/3Xm4Ub7>.

The Archdiocese of Oklahoma City, together with the Diocese of Tulsa, will “direct on diocesan policies that apply to” St. Isidore and, “[f]or purposes of implementing the School’s Catholic mission, ministry, doctrine, practice, policy, and discipline,” will serve as the school’s “final interpretative authority with respect to matters of faith and morals.” (Ex. A at 91 [PE155]; *id.*, App. F, § 1, pp. 5, 11 [PE292, 298].) The Archdiocese’s policy is that “advocating for, or expressing same-sex attractions . . . is not permitted” (Ex. C at 15 [PE450]) for students in schools under Archdiocese control (*see* Ex. C at 1, 5 [PE436, 440]).

“On all matters, the School will interact with students, faculty, and staff according to their biological sex.” (Ex. Y at 45 [PE685].) Thus St. Isidore will require students to follow “the dress code expectation of their biological sex,” and boys—but not girls—will be required to have short hair. (*Id.* at 36–37, 45 [PE676–77, 685].) St. Isidore likewise will require students to “only use facilities that conform to the individual’s biological sex.” (*Id.* at 66 [PE706].) Moreover, “[a]ll students will be addressed by their legal name and by pronouns that correspond with their biological sex,” and any “standardized nicknames must be approved by parents, should correspond with the person’s biological sex, and [may] not be intended to communicate the student’s ambivalence of his or her sex.” (*Id.* at 45 [PE685].)

Like students, St. Isidore employees and employment applicants will suffer discrimination based on religion, sexual orientation, and gender identity. St. Isidore will require most employees to be Catholic. (Ex. AC at 7 [PE845]; Ex. AE [PE904, 908, 913, 918, 923, 926, 930]; Ex. AF [PE932–33, 938, 943, 949].) Both “in their day-to-day work and personal lives,” all St. Isidore employees will be required to “adhere to the teachings of the Church” and “refrain from actions that are contrary to the teachings of the Church.” (Ex. A at 105–06 [PE191–92]; *accord* Ex. AE [PE903, 906, 910, 915, 920, 927].) Most employees

will be deemed “ministers” (Ex. AC at 8 [PE846]; Ex. AE [PE904–05, 908–09, 913–14, 919, 923, 926, 930]), will be compelled to “preach the Gospel in both word and deed in both their private and public lives in accordance with the teachings of *Catechism of the Catholic Church* . . . and the . . . Archbishop of Oklahoma City and Bishop of Tulsa” (Ex. AC at 6 [PE844]), and will be required to “be especially familiar with and adherent to the teachings of the Church on natural law, human anthropology, holy matrimony, [and] the family as the domestic church” (*id.* at 9 [PE847]). As noted above, these teachings prohibit sexual acts between people of the same gender and bar transgender people from expressing their gender. *See Catechism of the Catholic Church* 560 ¶ 2333, 566 ¶¶ 2357–59, <https://bit.ly/3Xm4Ub7>. Accordingly, like students, all employees will be required to “follow the dress code expectation of their biological sex” (Ex. AC at 26 [PE864]) and to “only use facilities that conform to the individual’s biological sex” (Ex. Y at 66 [PE706]).

Finally, St. Isidore has refused in two main ways to commit to fully serving students with disabilities. First, the school will “comply with all applicable . . . [l]aws in serving students with disabilities” *only* “to the extent that it does not compromise the religious tenets of the school and the instructional model of the school.” (Ex. A at 73–74 [PE133–34].) Thus “[s]tudent service plans” for students with disabilities “cannot contain accommodations or modifications that are in opposition to Church teaching.” (Ex. Y at 31 [PE671]; Ex. AB at 2 [PE806].) Second, as part of its admissions process, St. Isidore will review a student’s Individualized Education Program “to determine if the virtual program will appropriately meet the needs of the student.” (Ex. AB at 2 [PE806]; *accord* Ex. Y at 12 [PE652].) The school will deny admission to students with disabilities that would not—in school officials’

opinion—be well-suited to being served virtually. (Ex. Y at 31 [PE671]; *see also* Ex. A at 43, 69 [PE96, 129]; Ex. Z at 3 [PE720].)

ARGUMENT

“To obtain a temporary injunction, a plaintiff must show that four factors weigh in their favor: 1) the likelihood of success on the merits; 2) irreparable harm to the party seeking the relief if the injunction is denied; 3) their threatened injury outweighs the injury the opposing party will suffer under the injunction; and 4) the injunction is in the public interest.” *Okla. Call for Reprod. Just. v. Drummond*, 2023 OK 111, ¶ 2, 543 P.3d 110. These factors weigh in favor of granting a temporary injunction here.

I. Plaintiffs are likely to succeed on the merits.

A. Plaintiffs have taxpayer standing.

Oklahoma taxpayers have the right to seek equitable relief “to challenge the unlawful or unconstitutional expenditure of state funds.” *Okla. Pub. Emps. Ass’n v. Okla. Dep’t of Cent. Servs.*, 2002 OK 71, ¶ 11, 55 P.3d 1072. For more than a century (*see Kellogg v. Sch. Dist. No. 10*, 1903 OK 81, 74 P. 110), taxpayer standing has served as an important vehicle to “protect the public treasury from unlawful dissipation or management by those officially charged with the care and custody of public funds.” *Murray County v. Homesales, Inc.*, 2014 OK 52, ¶ 16, 330 P.3d 519; *see also Immel v. Tulsa Pub. Facilities Auth.*, 2021 OK 39, ¶ 12, 490 P.3d 135 (collecting cases).

Plaintiffs’ challenge to the funding of St. Isidore as a charter school falls squarely within this long-existing doctrine of taxpayer standing. Plaintiffs are residents of Oklahoma who pay various taxes to the state that provide revenue for public schools, including charter schools. *See* Ex. AO at 6, 8, 10 [PE1038, 1040, 1042]; Ex. AP [PE1092–1111]; 68 O.S. §§

1353(A)(1), 2352(1)(a); 70 O.S. § 18-200.1. As explained below, state funding of St. Isidore would represent an unlawful and unconstitutional expenditure of Plaintiffs' tax dollars.

B. First claim: failure to certify intent to comply with Oklahoma law.

Plaintiffs are likely to succeed on their claim (Am. Pet. ¶¶ 252–65) that the Charter Board's approvals of St. Isidore's application and contract were unlawful because St. Isidore violated both a Charter Board regulation and provisions of the Charter Schools Act requiring charter-school applicants to certify that they will comply with state law.

The regulation, OAC § 777:10-3-3(c)(1)(F), requires each application for sponsorship of a new charter school to “include signed and notarized statements from the Head of the School and the governing body members . . . showing their agreement to *fully comply* as an Oklahoma public charter school with *all* statute[s], regulations, and requirements of the . . . State of Oklahoma, [Charter] Board, and Oklahoma Department of Education.” (Emphasis added.) It also requires those statements to “[s]pecifically cite agreement . . . to guarantee access to education and equity for all eligible students regardless of their race, ethnicity, economic status, academic ability, or other factors as established by law.” *Id.*

St. Isidore's approved application did not satisfy these requirements. Instead, it includes statements that show an agreement to comply with applicable laws, including antidiscrimination laws, *only to the extent that those laws do not conflict with St. Isidore's religious beliefs*. Specifically, the application's “Statements of Assurance” certify St. Isidore's intent to comply with the pertinent statutes and regulations only “to the extent required by law, including the First Amendment, religious exemptions, and the Religious Freedom Restoration Act, with priority given to the Catholic Church's understanding of itself and its rights and obligations pursuant to the Code of Canon law and the Catechism of the

Catholic Church.” (Ex. A at 93 [PE159].) Doubling down on this caveat, the “Assurance[s]” then state that the school only “[g]uarantees access to education and equity for all eligible students regardless of their race[,] ethnicity, economic status, academic ability, or other factors *subject to the provisions in [the sentence quoted] above.*” (*Id.* (emphasis added).)

Similarly, the Charter Schools Act requires charter schools to adopt a charter and enter into a contract that ensures that the “charter school shall comply with all . . . state and local rules and statutes relating to health, safety, civil rights and insurance.” 70 O.S. § 3-136(A)(1). St. Isidore’s contract with the Charter Board, which doubles as St. Isidore’s charter, nevertheless purports to grant St. Isidore broad religious exemptions from those requirements. (Ex. P at 1–3, 12, 18 ¶¶ 1.5, 2.1, 3.1, 8.2, 11.1 [PE598–600, 609, 615].) The contract/charter thus also violates the Charter Schools Act.

C. Second claim: discrimination in admissions, discipline, and employment.

Plaintiffs are likely to prevail on their claim (Am. Pet. ¶¶ 266–93) that funding St. Isidore as a public charter school is unlawful because the school’s policies discriminate in student admissions, student discipline, and employment based on religion, sexual orientation, and gender identity in violation of the Oklahoma Constitution, the Charter Schools Act, and a state statute prohibiting segregated public schools.

Several provisions of the Oklahoma Constitution require that public schools serve *all* students. *See* Art. I, § 5; Art. XIII, § 1; Art. XI, §§ 2, 3. The Oklahoma Constitution also has provisions that prohibit public schools from discriminating based on religion (Art. I, § 2); sex (Art. II, § 36A), including sexual orientation or gender identity (*see Bostock v. Clayton County*, 590 U.S. 644, 660 (2020)); and any other “unreasonable or unreasoned classifications which serve no important governmental interests” (*Okla. Ass’n for Equitable*

Tax'n v. Oklahoma City, 1995 OK 62, ¶ 12, 901 P.2d 800 (citing Art. II, § 7)). *See also* Pls.' Consolidated Opp'n to Defs.' Mots. to Dismiss Am. Pet. ("Pls.' Opp'n") 22–24.

Because Oklahoma charter schools are public schools, governmental entities, and state actors, there is no question that each of these constitutional provisions governs St. Isidore's conduct. Governmental entities are inherently state actors. *See Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 378–82 (1995); *see also United States v. Ackerman*, 831 F.3d 1292, 1295–1300 (10th Cir. 2016) (Gorsuch, J.). Charter schools, which are created by the Oklahoma legislature through the Charter Schools Act, are expressly defined as “*public school[s]* established by contract with a board of education of a school district” (70 O.S. § 3-132(D) (emphasis added)) or with certain other governmental entities (*see* 70 O.S. § 3-132(A)). Charter schools must be “as equally free and open to all students as traditional public schools” (70 O.S. § 3-135(A)(9)) and are subject to numerous requirements that apply to other Oklahoma public schools.² Like public universities (*NCAA v. Tarkanian*, 488 U.S. 179, 192 (1988)) and public hospitals (*Tarabishi v. McAlester Reg'l Hosp.*, 827 F.2d 648, 652 (10th Cir. 1987)), K–12 public schools are inherently governmental entities that are bound by constitutional requirements (*see Brammer-Hoelter v. Twin Peaks Charter Acad.*, 602 F.3d 1175, 1188 (10th Cir. 2010)). *See also* Pls.' Opp'n 39–43.

² *See, e.g.*, 70 O.S. § 3-136(A)(10) (prohibition on tuition and fees); 70 O.S. § 3-135(A)(11) (academic standards); 70 O.S. § 3-136(A)(7) (education of children with disabilities); 70 O.S. § 3-135(A)(12) (funding requirements); 70 O.S. § 3-136(A)(14)–(15) (retirement benefits and insurance); 70 O.S. § 3-136(A)(16) (Open Meeting Act and Open Records Act); *see also* Jud. Ethics Op. 2023-3, 2023 OK JUD ETH 3 ¶ 4, 538 P.3d 572 (concluding that charter school board members serve on a “[g]overnmental committee, board, commission, or other governmental position” (quoting Okla. Code Jud. Conduct R. 3.4)).

Moreover, even if Oklahoma charter schools were private entities (which they are not), they would still be state actors under the symbiotic-relationship test and two public-function tests for state action, any of which is sufficient to render a private entity a state actor. An entity is a state actor under the symbiotic-relationship test when it is “entwined with governmental policies” and “the government is ‘entwined in [its] management or control.’” *See Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 296 (2001) (quoting *Evans v. Newton*, 382 U.S. 296, 299, 301 (1966)); *Wittner v. Banner Health*, 720 F.3d 770, 778 (10th Cir. 2013). Oklahoma charter schools are entwined with government in this manner: For instance, only governmental entities may sponsor charter schools and grant charters (*see* 70 O.S. §§ 3-132(A), 3-145.1), and governmental entities exercise control over charter schools in many respects (*see, e.g.*, 70 O.S. § 3-134(I) (monitoring performance and legal compliance); OAC § 777:10-3-4(b), (i) (deciding whether to renew charters); 70 O.S. §§ 3-104.4(I)–(J) (evaluating compliance with state accreditation requirements)). In addition, a nominally private entity is a state actor when it performs a traditional, exclusive public function (*see Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1929 (2019)), and charter schools do so by providing free, public education (*see Peltier v. Charter Day Sch.*, 37 F.4th 104, 119 (4th Cir. 2022) (en banc), *cert. denied*, 143 S. Ct. 2657 (2023)). Furthermore, an entity is a state actor “when the government has outsourced one of its constitutional obligations to” the entity (*Halleck*, 139 S. Ct. at 1929 n.1; *accord West v. Atkins*, 487 U.S. 42, 56 (1988)), and here charter schools perform a duty that the Oklahoma Constitution obligates the state to perform—provision of free, public education (*see* Art. I, § 5; Art. XI, §§ 2, 3; Art. XIII, § 1). *See also* Pls.’ Opp’n 47–50.

Like the Oklahoma Constitution, the Charter Schools Act prohibits charter schools from discriminating. The Act requires charter schools to “be as equally free and open to all students as traditional public schools” (70 O.S. § 3-135(A)(9)) and prohibits any admission preferences other than geographic and age-based ones (*see* 70 O.S. §§ 3-135(A)(10), 3-140, 3-145.3(J)). The Act also requires charter schools to be “nonsectarian in [their] . . . admission policies [and] employment practices.” 70 O.S. § 3-136(A)(2). And a separate statute, 70 O.S. § 1210.201, provides that “[s]egregation of children in the public schools of the State of Oklahoma on account of race, creed, color or national origin is prohibited.”

St. Isidore will violate the foregoing constitutional and statutory prohibitions by discriminating in admissions, discipline, and employment on grounds that include religion/creed, sexual orientation, and gender identity.

First, St. Isidore will discriminate against students on the basis of religion/creed. While St. Isidore claims that it is open to non-Catholic students, its operations and policies will plainly exclude non-Catholic students in practice. As detailed above, St. Isidore students will be indoctrinated in Catholic theology, required to participate in Catholic religious activities, and immersed in Catholicism in other respects. *See supra* at 4–6. This kind of religious programming is inherently discriminatory. *See Ams. United for Separation of Church & State v. Prison Fellowship Ministries, Inc.*, 509 F.3d 406, 414, 425 (8th Cir. 2007) (prison program that required inmates “to productively participate in a program that is Christian-based” inherently was “not available on a nondiscriminatory basis” even though program was nominally willing to accept inmates of any faith).

Second, St. Isidore will discriminate against students based on sexual orientation and gender identity. As detailed above, St. Isidore students will be prohibited from engaging in

“homosexual acts” or “advocating for, or expressing same-sex attractions.” *See supra* at 6–7. It is no answer that St. Isidore may let gay and lesbian students enroll if they agree to these restrictions, for the U.S. Supreme Court has held that discrimination based on same-sex conduct constitutes sexual-orientation discrimination. *See Christian Legal Soc’y Chapter of Univ. of Cal. v. Martinez*, 561 U.S. 661, 689 (2010) (“Our decisions have declined to distinguish between status and conduct in this context.”). Similarly, by requiring students to dress, wear their hair, use names, and use facilities in accordance with the school’s expectations for “their biological sex” (*see supra* at 7), St. Isidore will discriminate based on gender identity (*see, e.g., Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 608–13 (4th Cir. 2020)). Indeed, St. Isidore’s gender-based dress and grooming requirements discriminate based on sex against both cisgender and transgender students by requiring them to conform to gender stereotypes. *See Peltier*, 37 F.4th at 125–26.

Third, St. Isidore plainly plans to discriminate in employment based on religion by requiring most of its employees to be Catholic. *See supra* at 7.

Finally, St. Isidore will discriminate in employment on the basis of sexual orientation and gender identity. St. Isidore employees will be required to follow Catholic teachings that prohibit sexual acts between people of the same gender and bar transgender people from expressing their gender, including through dress. *See supra* at 7–8.

D. Third claim: failure to fully commit to serve students with disabilities.

Plaintiffs are likely to succeed on their claim (Am. Pet. ¶¶ 294–305) that St. Isidore has not adequately committed to serving students with disabilities as mandated by the Charter Schools Act and the Charter Board’s regulations. The Act requires charter schools to “comply with all . . . laws relating to the education of children with disabilities in the same

manner as a school district,” and it prohibits charter schools from denying admission based on “disabling condition.” 70 O.S. §§ 3-136(A)(7), 3-140(D), 3-145.3(J). Moreover, the Charter Board’s regulations require virtual charter schools to appropriately serve students with disabilities even if the services cannot be provided virtually: As public schools, virtual charter schools must “ensure provision of free appropriate online *and other* educational and related services . . . to students with disabilities and/or other special needs.” OAC § 777:10-3-3(b)(3)(C) (emphasis added).

Yet St. Isidore will only “comply with all applicable . . . [l]aws in serving students with disabilities . . . to the extent that it does not compromise the religious tenets of the school and the instructional model of the school.” (Ex. A at 73–74 [PE133–34].) What is more, St. Isidore’s “[s]tudent service plans” for students with disabilities “cannot contain accommodations or modifications that are in opposition to Church teaching.” (Ex. AB at 2 [PE806]; Ex. Y at 31 [PE671].) And, in violation of the Charter Schools Act’s prohibition on denying admission based on “disabling condition” (70 O.S. § 3-140(D)) and the requirement in OAC § 777:10-3-3(b)(3)(C) that virtual charter schools appropriately serve students with disabilities even if the services cannot be provided virtually, St. Isidore will deny admission to students with disabilities that, in school officials’ view, are not well-suited to being served virtually. (Ex. Y at 31 [PE671]; *see also* Ex. A at 43, 69 [PE96, 129]; Ex. AB at 2 [PE806].)

E. Fourth claim: teaching a religious curriculum.

Plaintiffs are likely to succeed on their claim (Am. Pet. ¶¶ 306–22) that St. Isidore will unlawfully teach a religious curriculum in violation of the Charter Schools Act and the Oklahoma Constitution.

First, the Charter Schools Act straightforwardly requires that charter schools be “nonsectarian in [their] programs . . . and all other operations.” 70 O.S. § 3-136(A)(2). It is indisputable that St. Isidore will violate this requirement. St. Isidore plans to “operate the School as a Catholic School” and “participate[] in the evangelizing mission of the Church.” (Ex. A at 17 [PE70].) St. Isidore’s curriculum and operations will be permeated with religion, including through “worship, prayer, Religion classes, and the general climate of the school.” (Ex. Y at 17 [PE657]; *see also supra* at 4–6.)

Second, Article I, § 2 of the Oklahoma Constitution states: “Perfect toleration of religious sentiment shall be secured, and no inhabitant of the State shall ever be molested in person or property on account of his or her mode of religious worship; and no religious test shall be required for the exercise of civil or political rights.” As noted above, because St. Isidore is a public school, a governmental entity, and a state actor, it must comply with that constitutional mandate. *See supra* at 12–13. But St. Isidore plans to operate in a manner barred by the plain text of Article I, § 2: A public school that requires its students to submit to religious indoctrination in one faith is inherently intolerant of other beliefs, molests students based on their religious beliefs, and imposes a religious test on the civil right to receive a public education. *See also* Pls.’ Opp’n 30–31.

In addition, Article I, § 2 provides at least the same protections as the federal Establishment and Free Exercise Clauses. *See Prescott v. Okla. Capitol Pres. Comm’n*, 2015 OK 54, ¶ 6, 373 P.3d 1032 (Taylor, J., concurring in denial of rehearing); *McMasters v. State*, 207 P. 566, 568 (Okla. Crim. App. 1922); *Guinn v. Church of Christ of Collinsville*, 1989 OK 8, ¶ 6, 775 P.2d 766 (Kauger, J., concurring in part). The federal Establishment Clause prohibits public schools from promoting religion to students. *See, e.g., Illinois ex rel.*

McCullum v. Bd. of Educ., 333 U.S. 203, 212 (1948). In accordance with this principle, the U.S. Supreme Court has barred public schools from engaging in the very practices that St. Isidore will implement. *See, e.g., Edwards v. Aguillard*, 482 U.S. 578, 591–94 (1987) (inculcating religious beliefs during class); *Engel v. Vitale*, 370 U.S. 421, 430 (1962) (leading students in prayer); *Stone v. Graham*, 449 U.S. 39, 42 (1980) (displaying religious symbols to students); *see also* Pls.’ Opp’n 31–32.

What is more, the Establishment Clause bars states from establishing religious institutions: “Neither a state nor the Federal Government can set up a church.” *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947). It also bars “a fusion of governmental and religious functions.” *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 222 (1963); *accord Larkin v. Grendel’s Den, Inc.*, 459 U.S. 116, 126–27 (1982); *Bd. of Educ. v. Grumet*, 512 U.S. 687, 696–97 (1994) (plurality opinion). In clear contravention of these principles, the Charter Board has established a religious public school, which will exercise and combine governmental and religious functions.

Third, Article I, § 5 of the Oklahoma Constitution requires the state to “establish[] and maint[ain] . . . a system of public schools, which shall be open to all the children of the state and free from sectarian control.” Plainly, allowing St. Isidore to operate as a public charter school that evangelizes its students and teaches a religious curriculum would run afoul of the requirement that “public schools” be “free from sectarian control.”

Finally, Article II, § 5 “ban[s] State Government, its officials, and its subdivisions from using public money or property for the benefit of any religious purpose.” *Prescott*, 2015 OK 54, ¶ 4. As St. Isidore will provide a religious education, Article II, § 5 prohibits the state from funding St. Isidore. Moreover, because St. Isidore is a governmental entity

and a state actor (*see supra* at 12–13), Article II, § 5 bars St. Isidore itself from using public funds to pay for its program of religious education.

II. The remaining temporary-injunction factors weigh in favor of granting an injunction to preserve the status quo.

The remaining temporary-injunction factors further weigh in favor of temporarily enjoining the state funding and the operation of St. Isidore.

First, Plaintiffs will suffer irreparable harm if St. Isidore receives state funding and is allowed to open as a public charter school this August. The spending of Plaintiffs’ tax dollars on a religious public school would violate numerous Oklahoma constitutional, statutory, and regulatory requirements. Illegal use of tax payments irreparably harms taxpayers. *See Indep. Sch. Dist. No. 9 v. Glass*, 1982 OK 2, ¶¶ 10–11, 639 P.2d 1233; *Rath v. City of Sutton*, 673 N.W.2d 869, 885 (Neb. 2004); *Idaho Cnty. Prop. Owners Ass’n, Inc. v. Syringa Gen. Hosp. Dist.*, 805 P.2d 1233, 1239 (Idaho 1991). Moreover, state funding of St. Isidore would violate Plaintiffs’ constitutional rights to not have their tax dollars spent in support of religion (*see Okla. Const. Art. I, § 2; Art. II, § 5*), and “any deprivation of any constitutional right” constitutes an irreparable injury (*Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 806 (10th Cir. 2019)).

Second, the irreparable harm faced by Plaintiffs outweighs any harm that an injunction may impose on Defendants. “When a constitutional right hangs in the balance,” the harm that deprivation of that right would inflict on the plaintiffs “usually trumps any harm to the defendant.” *Id.* And Defendants have no legitimate interest in operating a charter school in violation of state law. *See id.* (“The City has no interest in keeping an unconstitutional law on the books.”).

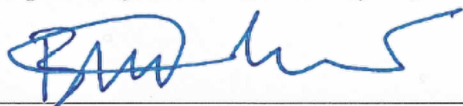
Even if Defendants could suffer legally cognizable harm from an injunction, it would be of their own making. Anticipating litigation, Defendants created St. Isidore as a public charter school with full knowledge that “Oklahoma’s virtual charter law purports to prohibit the operation of a religious school.” (Ex. A [PE45].) Indeed, a St. Isidore board member (Ex. AI [PE984]) stated in March 2023, “No matter what happens with the board, someone’s going to file a lawsuit against the state. . . . I think we’re gonna see this hopefully go to the Supreme Court. . . . This situation is gonna blow up pretty big[.]” Reagan Reese, *‘Gonna Blow Up’: Oklahoma Seeks to Open First-Of-Its-Kind Religious Virtual Charter School as Court Cases Loom*, Daily Caller (Mar. 12, 2023), <https://bit.ly/4bwRCR2>. Moreover, in the face of this lawsuit and the Attorney General’s, St. Isidore charged forward with enrolling students and hiring employees (Ex. AI [PE976, 985, 990]), rejecting an August 2023 proposal by Plaintiffs that the school refrain from opening until final resolution of this case (Ex. AQ [PE1113–14]; Ex. AR [PE1116]; Ex. AS ¶ 3 [PE1119]). And there is no evidence that St. Isidore gave parents notice that litigation could delay its opening. (See Ex. AI [PE976].)

Finally, an injunction would be in the public interest. It is in the public interest that Defendants comply with the Oklahoma Constitution and other state laws. See, e.g., *Awad v. Ziriox*, 670 F.3d 1111, 1132 (10th Cir. 2012). Similarly, ensuring that public-school students and employees are not subjected to unlawful discrimination is in the public interest. See *Roberts v. U.S. Jaycees*, 468 U.S. 609, 624 (1984). And the public certainly has an interest in prevention of the expenditure of public funds for illegal purposes. See *Fent v. Contingency Rev. Bd.*, 2007 OK 27, ¶¶ 8, 11, 163 P.3d 512.

CONCLUSION

For the foregoing reasons, this Court should grant this temporary-injunction motion.

Respectfully submitted on May 31, 2024.



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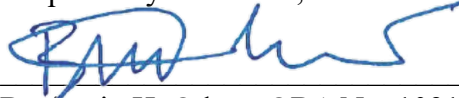
Pursuant to the Stipulation Concerning Electronic Service filed on September 15, 2023, this is to certify that on May 31, 2024, a true and correct copy of the foregoing document has been served via email to the following:

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