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What Would Religious Charter Schools Mean for Public Education?

The Catholic Church wants to open the nation's first religious charter school in Oklahoma

By Kevin G. Welner — May 29, 2024 ⌚ 5 min read



— Richard Mia for Education Week

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The charter school movement was once the golden child of the U.S. education reform world, celebrated and bolstered by billionaire philanthropists and by politicians of both major parties. But charter schools are in the midst of radical changes and are confronting an increasingly unstable alliance supporting them.

Republicans arguably dealt the first major blow. While President Donald Trump embraced the charter school growth policies of the Clinton, Bush, and Obama administrations, U.S. Secretary of Education Betsy DeVos' great passion was instead for private school vouchers. Other Republicans have shown the same preference, with charters suffering from a bit of GOP neglect.

But the key rupture came in 2020-21, when the Democratic Party's 2020 platform and President Joe Biden himself angered some charter school advocates by calling for increased accountability, transparency, and access.

This shift among Democrats was in response to concerns about fraud and mismanagement within the charter sector as well as access inequities tied to charter schools' control over who enrolls and who stays enrolled, thereby underserving students with disabilities and English-language learners, among others.

Importantly, the shift was not in response to the specter of religious charter schools. But that's about to change.

And the prospect of religious teaching in charter schools that are purportedly public is only the half of it. The second half involves the prospect of the U.S. Supreme Court holding that these religious charter schools have a right, under the U.S. Constitution's clause protecting the free exercise of religion, to engage in faith-based discrimination against LGBTQ+ students and others.

How did we get to this point that's so far from the original goals of charters, such as community connectedness, curricular and instructional innovation, and a caring embrace of at-risk student populations?

A central part of the answer lies in three recent decisions by the U.S. Supreme Court. The latest of these decisions, in a case called Carson v. Makin, was handed down in 2022 and concerned Maine's "town tuitioning" policy. That policy, which dates back to 1873, helps pay private school tuition for students living in sparsely populated areas lacking a public

school. While the policy allowed religious organizations to run participating private schools, the education provided was required to be religiously neutral, without teaching through the lens of any particular faith and without proselytizing to the children.



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The Supreme Court balked at that last part, holding that if a state decides to fund private school education, it could not do so in a way deemed to discriminate against religious schools. The discrimination argument is as follows: (1) the state set up a program providing public funding for private schools; (2) it would be discriminatory if some private schools were disallowed from participation simply because they were church-run; and (3) it is similarly discriminatory if that state disallows those church-run schools from exercising their religious beliefs—even if public money is used to support those religious practices.

Hoping to extend the holding in *Carson*, Oklahoma in 2023 granted a charter for a religious school run by the Roman Catholic Church. Of course, unlike the Maine private schools that were brought within the town-tuitioning plan, any given charter school is created by a state action—by the granting of a charter. But courts may not find this distinction to be important. In fact, additional efforts to create religious charter schools are undoubtedly on the way, driven by [well-funded](#) law firms pursuing a version of religious freedom. Already, [Guam](#) has greenlighted the idea, and a lawsuit was filed last year in [California](#) by Christian parents challenging the state’s secular education rule as applied to independent study charter schools that serve home schoolers.

The constitutionality of Oklahoma’s new charter school is currently [being considered](#) by the state’s supreme court with a decision expected soon. That court must decide, among other things, whether the charter violates the state constitution’s prohibition on the use of public money to directly or indirectly benefit any church—and, even if there would be such a violation, whether enforcing that provision would deny the church its free-exercise rights under the U.S. Constitution.

The Catholic authorities in Oklahoma argue that charter school policies are not meaningfully different from the town-tuitioning policy in Maine. They contend that if the state decides to provide public funding to private organizations to run charter schools, it cannot then deny that benefit to religious organizations.