



Are Charter Schools Really Public? Will They Become Voucher Policies?



It is no coincidence that the major advocacy and support group for the charter school sector (the National Alliance for Public Charter Schools) includes the word “public” in its name. Charter schools have invested [substantial resources](#) into communicating that they are public.

However, a case currently before the U.S. Supreme Court questions about whether charters are indeed public and subject to the statutory and constitutional restrictions placed on public entities. In *St. Isidore of Seville Catholic Virtual School v. Drummond*, the Oklahoma State Charter School Board argues that, because charter schools in the state are already operated by private organizations, the Catholic Archdiocese of Oklahoma City and Diocese of Tulsa should be permitted to open a religious charter school—replete with proselytizing and religious curriculum. This is even though Oklahoma law says charters must be nonsectarian and even though that state’s supreme court determined that a religious charter would be a violation of the state’s constitution.

[With authorizing legislation](#) in 46 states plus the District of Columbia, charter schools are generally designed to be independently operated, publicly funded schools that are authorized by state or local boards. Those boards grant the charters’ operators a level of independence unavailable to traditional public schools (e.g., curricular flexibility or choosing to remove certification requirements for some teachers).

Though a defendant victory in the case could, in theory, increase the reach of charter schools by allowing religious organizations to open new schools or convert existing private schools to charters, the case has divided supporters of charters and even [advocates for vouchers](#). The National Alliance for Public Charter Schools (NAPCS) and 75 other pro-charter organizations filed a [friend of the court brief](#) opposing the St. Isidore charter. “To allow charter schools to be religious (and therefore private) would prohibit them from accessing state authorized per pupil funding, which is the primary funding source for charter schools,” the organization wrote in a [statement](#).

In truth, the NAPCS may have other, more political concerns in mind. As NEPC director Kevin Welner of the University of Colorado Boulder told [Forbes](#):

I can only speculate, but as essentially an industry organization akin to the National Association of Realtors or the American Bankers Association, NAPCS may see its main job as expanding the sector’s growth. If SCOTUS transforms the sector to require religious charter schools, this would threaten that growth in at least two ways. First, it would make charters politically toxic in states that have repeatedly rejected vouchers because voters and legislators are wary of funding schools that are not subject to basic regulation and anti-discrimination laws. Second, it may make charters superfluous in states that do have voucher laws.

Taken together, those two results would seriously tighten the market for charter schools, which are already having an increasingly difficult time.

The anti-discrimination issue raised by Welner arises because the Supreme Court has held that religious organizations can have free-exercise protection to engage in faith-based discrimination. “The most obvious group to be targeted would be LGBTQ+ students and students with unpopular religious, or non-religious, beliefs,” Welner told [The 74](#) (an education-focused outlet), adding that students with gay parents, pregnant teens or students with single moms could also face discrimination.

Others have noted that this could be a situation where the success of the charter school lobby, in demanding a deregulated and largely privatized sector, has created this new threat to that sector.

NEPC Fellow [Preston Green](#) of the University of Connecticut, [told](#) the education news site [Chalkbeat](#), “Charter schools have wanted to have it both ways, where they were public for matters that they like, like funding, and private for things that they may not like, for instance, teacher rights.”

In an [interview](#) with [The 74](#), NEPC Fellow [Carol Burris](#), who directs the [Network for Public Education](#), made a similar point. She noted that charter schools received paycheck protection program loans during the pandemic, but public schools did not. “They claim public when it is in their interest, private when it is not,” she said. “There is a reason that this is the case that the charter world dreaded.”

During oral arguments April 30th, the Supreme Court’s conservative justices (minus Amy Coney Barrett, who recused herself) signaled that they’re [likely to rule in favor](#) of the reli-

gious charter school. A decision is expected in June or July.

The charter school landscape left in the wake of that decision will be very different from the vision held by many earlier supporters of the reform. Welner [wrote](#) last year in *Education Week*:

At this point, as we watch the charter school sector transmogrifying into a type of voucher, all the while acknowledging charters' history of denied access, we may mourn what could have been.

But that sense of regret that charters never lived up to their potential should not translate into a nostalgic defense of what charters have truly become. Discrimination and proselytizing on the taxpayer dime will never be acceptable. It is time for public schooling to turn elsewhere for solutions to challenges.

NEPC Resources on Charter Schools

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