

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

GENTNER DRUMMOND, Attorney General for the State of Oklahoma, ex rel. STATE OF OKLAHOMA,

*Petitioner,*

v.

OKLAHOMA STATEWIDE VIRTUAL CHARTER SCHOOL BOARD; ROBERT FRANKLIN, Chairman of the Oklahoma Statewide Virtual Charter School Board for the First Congressional District; WILLIAM PEARSON, Member of the Oklahoma Statewide Charter School Board for the Second Congressional District; NELLIE TAYLOE SANDERS, Member of the Oklahoma Statewide Charter School Board for the Third Congressional District; BRIAN BOBEK, Member of the Oklahoma Statewide Charter School Board for the Fourth Congressional District; and SCOTT STRAWN, Member of the Oklahoma Statewide Charter School Board for the Fifth Congressional District,

*Respondents,*

ST. ISIDORE OF SEVILLE CATHOLIC VIRTUAL SCHOOL,

*Intervenor.*

FILED  
SUPREME COURT  
STATE OF OKLAHOMA  
JUL 15 2024  
JOHN D. HADDEN  
CLERK

Case No. 121,694

**PETITIONER’S RESPONSE TO INTERVENOR’S MOTION FOR LIMITED ADMINISTRATIVE STAY**

Pursuant to this Court’s order issued July 8, 2024, Petitioner hereby provides his Response and Objection to the *Intervenor’s Motion for Limited Administrative Stay*.

The Intervenor’s stay request is foreclosed by *Application of Oklahoma Capitol Imp. Auth.*, 1998 OK 25, 964 P.2d 873, *as corrected* (Aug. 21, 1998). There, this Court denied a request to stay the effectiveness of a decision in an original jurisdiction proceeding pending appeal to the U.S. Supreme

Court because the decision was supported by “separate, adequate, and independent state grounds.” *Id.* at ¶ 2. Thus, there was no basis for U.S. Supreme Court review consistent with *Michigan v. Long*, 463 U.S. 1032, 1039 (1983). *Okla. Capitol Imp. Auth.*, 1998 OK 25 at ¶ 2.

Similarly, here, this Court “found the St. Isidore Contract to violate two provisions of the Oklahoma Constitution, which affords bona fide, separate, adequate, and independent grounds upon which today’s opinion is rested.” *Drummond ex rel. State v. Okla. Statewide Virtual Charter Sch. Bd.*, 2024 OK 53, ¶ 38 (citing *Long*, 463 U.S. at 1041). Moreover, neither Intervenor nor the Respondents ever affirmatively requested this Court in the parties’ briefing to find Oklahoma’s Constitution violated the U.S. Constitution. Therefore, there is no possible path by which Intervenor can avoid the “bona fide, separate, adequate, and independent [state law] grounds upon which” the subject decision rested. Accordingly, any appeal of this Court’s decision to the U.S. Supreme Court is futile, and a stay of this Court’s decision is inappropriate.

Further, Intervenor’s citation to *Peltier v. Charter Day School, Inc.*, 37 F.4th 104 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 2657 (2023), as proof that a grant of certiorari is likely is puzzling. Petitioner agrees that *Peltier* is instructive on the independent questions of federal law. But the U.S. Supreme Court *denied* certiorari in that matter on June 26, 2023. As a result, even if this Court’s decision were not supported by “bona fide, separate, adequate, and independent [state law] grounds,” the U.S. Supreme Court’s denial of certiorari in *Peltier* shows that a grant of certiorari is unlikely here.

Finally, Intervenor fails to articulate how it will suffer irreparable harm absent a stay. Simply being required to execute a new contract cannot possibly constitute irreparable harm. Regardless, any minimal inconvenience to the Intervenor related to executing a new contract is outweighed by the illegal contract’s injury to the State and its people. While Intervenor says it is not going to open while its ineffectual appeal is pending and its website says “it is not taking applications at this time,”<sup>1</sup> this

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<sup>1</sup> <https://stisidorevirtualschool.org/>

Motion mentions no impediment to planning and preparation for the 2025–2026 school year and beyond if a stay were granted. This planning and preparation would necessarily include reopening the student application process. Prior to this Court’s decision, more than 200 children and their families applied for enrollment at Intervenor for the 2024–2025 school year.<sup>2</sup> The Intervenor’s and Respondents’ violations of the Oklahoma Constitution left those families scrambling to find alternative schooling mere weeks before the school year.<sup>3</sup> A stay would unfortunately permit a repeat of this by allowing Intervenor to continue to tout its unconstitutional contract to unsuspecting families. Accordingly, Intervenor has failed to establish irreparable harm, and any possible harm is outweighed by the injury the illegal contract will cause to the State and its people.

WHEREFORE, Petitioner respectfully requests this Court overrule and deny *Intervenor’s Motion for Limited Administrative Stay*.

Respectfully Submitted,



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<sup>2</sup> Available at: <https://stisidorevirtualschool.org/application-lottery-registration>.

<sup>3</sup> <https://www.koco.com/article/oklahoma-catholic-charter-school-supreme-court-ruling-st-isidore/61412484> (quoting one parent as being “completely blindsided because [she] thought that everything had been pushed through”).

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July 2024 a true and correct copy of the foregoing instrument was mailed by depositing it in the U.S. Mail, postage prepaid to the following:

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