

Nos. 24-394, 24-396

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IN THE  
**Supreme Court of the United States**

OKLAHOMA STATEWIDE CHARTER SCHOOL  
BOARD, et al.,

*Petitioners,*

*v.*

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

*Respondent.*

ST. ISIDORE OF SEVILLE CATHOLIC VIRTUAL SCHOOL,

*Petitioner,*

*v.*

GENTNER DRUMMOND, ATTORNEY GENERAL for the State  
of Oklahoma, *ex rel.* STATE OF OKLAHOMA,

*Respondent.*

ON WRITS OF CERTIORARI TO THE  
OKLAHOMA SUPREME COURT

**BRIEF OF AMICI CURIAE PUBLIC SCHOOL  
ORGANIZATIONS AND ADVOCATES IN SUPPORT  
OF RESPONDENT**

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## TABLE OF CONTENTS

	<b>Page</b>
TABLE OF AUTHORITIES .....	ii
INTEREST OF AMICI CURIAE .....	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	4
ARGUMENT .....	6
I. Public Education Is A Bedrock Of American Democracy And Charter Schools Are Part Of The Public Education System.....	6
II. Requiring States To Authorize Religious Charter Schools Would Undermine State Public Education And Harm Traditional Public Schools. ....	15
A. Religious charter schools would draw funds away from traditional public schools, which would harm students with disabilities in particular.....	16
B. Religious charter schools would present extraordinary operational challenges for public school administrators.....	22
C. Religious charter schools could become the only neighborhood schools in some communities, leaving students without an accessible nonsectarian option. ....	28
CONCLUSION .....	33

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>Ambach v. Norwick</i> , 441 U.S. 68 (1979).....	10
<i>Brown v. Bd. of Ed. of Topeka</i> , 347 U.S. 483 (1954).....	6
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<i>Garcetti v. Ceballos</i> , 547 U.S. 410 (2006).....	13
<i>In re Grant of Charter Sch. Application</i> , 753 A.2d 687 (N.J. 2000) .....	14
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<i>Johnson v. Poway Unified Sch. Dist.</i> , 658 F.3d 954 (9th Cir. 2011).....	13
<i>Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.</i> , 344 U.S. 94 (1952).....	22, 24
<i>Lee v. Weisman</i> , 505 U.S. 577 (1992).....	32
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<i>People of State of Ill. ex rel. McCollum</i> <i>v. Bd. of Ed. of Sch. Dist. No. 71,</i> 333 U.S. 203 (1948).....	10
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<i>Our Lady of Guadalupe Sch. v.</i> <i>Morrissey-Berru,</i> 591 U.S. 732 (2020).....	24, 25
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<i>United States v. Lopez,</i> 514 U.S. 549 (1995).....	9
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<b>Constitutional Provisions</b>	
Okla. Const. art. I, § 5.....	9, 26
<b>Statutes &amp; Regulations</b>	
20 U.S.C. § 1400 .....	13
20 U.S.C. § 1681 .....	13
20 U.S.C. § 1681(a)(3) .....	26
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42 U.S.C. § 2000d.....	13, 26

42 U.S.C. § 12187 .....	20
Ala. Code § 16-6F-7(a)(8) .....	12
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	13
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Nev. Rev. Stat. Ann. § 388A.366(1)(d) .....	13
Okla. Stat. tit. 70, § 3-134(B) .....	12
Okla. Stat. tit. 70, § 3-134(D) .....	12
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Okla. Stat. tit. 70, § 3-136(A)(1) .....	13
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24 C.F.R. § 300.131 .....	20
24 C.F.R. § 300.132 .....	20

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## INTEREST OF AMICI CURIAE<sup>1</sup>

This brief is submitted on behalf of 14 organizations that share a commitment to supporting and preserving free, equitable, well-funded public schools in every state in the nation. Because amici have extensive experience with public schools and a deep interest in ensuring their continued viability, they submit this brief to assist the Court in its resolution of this case.

**AASA, the School Superintendents Association (AASA)**, represents 10,000 school district leaders across the United States. AASA members help shape federal, state, and local policy, oversee its implementation, and set the pace for academic achievement in their districts.

**The National Education Association (NEA)** is the nation's oldest and largest union of educators, which works to advance the cause of public education from pre-school to university graduate programs.

**The National School Attorneys Association (NSAA)** is a non-profit membership organization of attorneys who advocate for elementary and secondary public school districts nationwide.

**The National Association of Elementary School Principals (NAESP)**, founded in 1921, is a

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<sup>1</sup> No counsel for a party authored this brief in whole or in part. No party, counsel for a party, or any person other than amici curiae and their counsel made a monetary contribution intended to fund the brief's preparation or submission of the brief.

professional organization that advocates for and supports elementary and middle school principals and other education leaders.

**The Council of Administrators of Special Education (CASE)** is an international non-profit professional organization providing leadership and support to approximately 6,000 members, primarily local school district administrators of special education programs, who are dedicated to enhancement of the worth, dignity, potential, and uniqueness of students with disabilities.

**The National Center for Learning Disabilities (NCLD)** partners with educators, students, families, and young adults to advance innovative research and advocate for equitable policies that address systemic barriers in schools, workplaces, and communities.

**The National School Boards Association (NSBA)** is a non-profit organization founded in 1940 that represents state associations of school boards, and the Board of Education of the U.S. Virgin Islands, ensuring they have the resources they need to provide all students access to excellent and equitable education.

**The American Federation of Teachers (AFT)**, founded in 1916, is an affiliate of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), that represents 1.8 million members nationwide, including pre-K through 12th-grade teachers, ensuring that students receive the highest quality public education.

**People For the American Way (PFAW)** is a national nonpartisan civic organization established to promote and protect civil and constitutional rights and other important values, including public education.

**The American Federation of State, County and Municipal Employees (AFSCME)** is a union of 1.4 million public service workers, including upwards of 200,000 public school employees, who are committed to creating effective and healthy learning environments for every student.

**The Association of Educational Service Agencies (AESA)** strengthens regional educational service agencies nationwide by advocating for impactful policies, providing professional development, and fostering collaboration through networks and research.

**The Council of the Great City Schools**, founded in 1956 and incorporated in 1961, is a coalition of 78 of the nation's largest urban public-school systems and is the only national organization exclusively representing the needs of the largest urban public-school districts in the United States.

**First Focus on Children (FFC)** is a bipartisan advocacy organization dedicated to making children the priority in federal policy and budget decisions. Founded in 2005 to meet the growing need for a children's voice, FFC educates the public and advocates for policies that protect and promote the health, safety and well-being of the nation's 72 million children.

**The Association of School Business Officials International (ASBO)** is a non-profit association that provides programs, resources, services, and a global network to school business professionals. ASBO members are the finance and operations leaders of school systems who manage educational resources to support student learning.

## INTRODUCTION AND SUMMARY OF ARGUMENT

“[T]he public school has been called by many the supreme achievement of American democracy.” James E. Wood, Jr., *Religion and the Public Schools*, 1986 BYU L. Rev. 349, 350 (1986). After the Nation’s founders recognized the importance of public education, state constitutional conventions and state legislatures beginning in the 19th century created state public education systems and recognized those systems as the foundation for our democracy. While those systems vary somewhat across states, they all provide for education that is free and open to all, subject to meaningful oversight and quality standards, and nonsectarian. In the late 20th century, states adopted legislation to allow for charter schools as a vehicle for innovation within state public education systems while maintaining the overall goals of those systems, including public accountability and transparency. Requiring states to permit religious school participation in charter school programs would seriously undermine the core goals of public education and do real harm to traditional public schools.

To start, public school funding is a finite resource that is projected to decline in coming years. Adding

religious schools to state charter school programs, and potentially depriving states of the ability to turn such schools away, would divert funds from traditional public schools without a commensurate reduction in operating expenses. Because traditional public schools educate the vast majority of students—including the majority of students with disabilities, a population that religious charter schools are less likely to serve—such reductions would disproportionately impact traditional public schools and harm the broad cross-section of students that those schools are intended to educate.

Beyond questions of funding, religious school participation in state charter school programs would not meet the fundamental requirements for state public education systems. Efforts to ensure oversight and accountability would present serious and perhaps intractable operational challenges for public school administrators. Among other things, clashes between religious schools' interests and the interests of the state in managing public schools would inevitably arise if religious charter schools were to seek broad exemptions from applicable legal requirements for charter schools, such as those bearing on financial accountability.

Finally, religious charter schools could become the only free public school option in some communities that can support only one local school at a particular level. Rendering nonsectarian education inaccessible to families in those communities would put them in an impossible position, effectively forcing them to attend a religious school rather than a nonsectarian public school.



For all of these reasons, religious charter schools would be incompatible with the public school system and would do real harm to our public schools.

## ARGUMENT

### **I. Public Education Is A Bedrock Of American Democracy And Charter Schools Are Part Of The Public Education System.**

A. As this Court has long recognized, public education is “perhaps the most important function of state and local governments.” *Brown v. Board of Ed. of Topeka*, 347 U.S. 483, 493 (1954). The distinctly American system of education that exists today reflects hard-fought and fundamental choices. Between the Founding and Reconstruction, heated policy battles led to state constitutional protections for education that so firmly establish “[a] right to a public-school education” that it is now “arguably deeply rooted in American history and tradition and is implicit in the concept of ordered liberty.” Steven G. Calabresi & Sarah E. Agudo, *Individual Rights Under State Constitutions When the Fourteenth Amendment Was Ratified in 1868: What Rights Are Deeply Rooted in American History and Tradition?*, 87 Tex. L. Rev. 7, 108 (2008). While public education systems have evolved over time, they represent states’ longstanding—and continuing—efforts to ensure that public schools are nonsectarian, prepare students for economic and civic participation, meet important quality standards, and operate subject to public oversight and accountability requirements. At every level, our democratic processes have developed laws and regulations in furtherance of these goals.

In colonial and early post-Revolutionary America, education was “limited, informal, and sporadic,” and “structured schooling in special buildings subsidized by tax dollars ... did not yet exist.” Johann N. Neem, *Democracy’s Schools: The Rise of Public Education in America* 5-7 (2017). Schools were either private or religious in nature, and access was not universal and tuition not necessarily free. Carl F. Kaestle, *Pillars of the Republic: Common Schools and American Society, 1760–1860* at 166-67 (1983).

The Founders quickly recognized that this patchwork system of education would not serve the country well. “With the creation of the new national government, political and civic leaders became convinced that the education of children was indispensable for the stability and ultimate success of the new republic.” Steven K. Green, *The Insignificance of the Blaine Amendment*, 2008 BYU L. Rev. 295, 301 (2008). “Thomas Jefferson ... first conceived of public schools—free, secular, and tax supported—as the basis of an informed, democratic citizenry.” Wood, *supra*, 1986 BYU L. Rev. at 351. He and others recognized that “some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence.” *Plyler v. Doe*, 457 U.S. 202, 221 (1982) (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972)).

**B.** Despite the Founders’ recognition of the importance of public education, the federal Constitution did not mention—much less provide for—education. So the project of creating public schools fell to the states. But while in the Nation’s early years taxpayer

support for education expanded in some places, it failed to take root in others, due to “[r]esistance to new taxes, devotion to local control and individual choice, and a faith in existing educational arrangements.” Kaestle, *supra*, at 9. As a result, education in rural communities tended to be “rudimentary,” and in urban areas it was stratified by social status and public funding was uneven. *Id.* at 21, 59-60. Many children, especially children of color, received little to no formal education. *Id.* at 4, 24, 60.<sup>2</sup>

As the American economy expanded and become more interconnected, and with the rise of industrialization and surges in immigration, this hodgepodge approach to education was no longer sufficient. Kaestle, *supra*, at 23-24, 62-64. Between the 1830s and the beginning of the Civil War, a movement for common schools gradually led to the adoption of statewide school systems in the North. *Id.* at 104-35. These systems were nonsectarian, publicly controlled and funded, and became increasingly centralized and standardized. *Id.* at 221-22; Wood, *supra*, 1986 BYU L. Rev. at 352. Following the Civil War, statewide school systems spread to the Southern states as well, in part because of express and implied conditions on

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<sup>2</sup> Indeed, education of enslaved and freed African Americans was prohibited throughout the South in the years leading up to the Civil War, and even afterwards was hotly and often violently contested. Neem, *supra*, at 3; Derek W. Black, *Dangerous Learning: The South’s Long War on Black Literacy* 2, 56, 105-07, 137-52 (2024).

readmission to the Union. Derek W. Black, *The Constitutional Compromise to Guarantee Education*, 70 Stan. L. Rev. 735, 775-76 (2018).

By 1868, 36 of the then-37 states' constitutions contained provisions guaranteeing a right to public education. Barry Friedman & Sara Solow, *The Federal Right to an Adequate Education*, 81 Geo. Wash. L. Rev. 92, 124 (2013). Today, all 50 state constitutions contain such guarantees. See Emily Parker, *50-State Review: Constitutional Obligations for Public Education* 1, 5-22, Educ. Comm'n States (Mar. 2016), <https://tinyurl.com/3vtv4rfx>. In fact, "in many state constitutions, public education is the only service that the constitution definitively requires the state to provide." Michael A. Rebell, *Safeguarding the Right to A Sound Basic Education in Times of Fiscal Constraint*, 75 Alb. L. Rev. 1855, 1871 (2012).

Public education remains principally a state and local responsibility. *United States v. Lopez*, 514 U.S. 549, 580-81 (1995) ("[I]t is well established that education is a traditional concern of the States.") (Kennedy, J., concurring). And every state requires, whether by state constitution or statute, that its public schools "shall be open to all the children of the state." *E.g.*, Okla. Const. art. I, § 5. This mandate reflects the premise that "education provides the basic tools by which individuals might lead economically productive lives," and its "deprivation" can thus have a "lasting impact ... on the life of [a] child." *Plyler*, 457 U.S. at 221.

State public education systems are organized by state constitutions and statutes, which provide for

oversight of the system through a state education officer and/or a state board of education as well as through local school districts. Together, these state and local bodies define the public education experience for students, from setting the curriculum, to establishing graduation requirements, to structuring school course offerings and more. Indeed, as the Court has recognized, the public schools created by these state education systems instill the shared values “necessary to the maintenance of a democratic political system.” *Ambach v. Norwick*, 441 U.S. 68, 77 (1979). In this way, “[t]he public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny.” *People of State of Ill. ex rel. McCollum v. Bd. of Ed. of Sch. Dist. No. 71*, 333 U.S. 203, 231 (1948) (Frankfurter, J., concurring).

C. Schools that are operated under the direct supervision of a school district, funded by local and state taxes, and subject to oversight by the state educational officer and/or school board are often termed “traditional public schools.” See Katherine Schaeffer, *U.S. Public, Private and Charter Schools in 5 Charts*, Pew Rsch. Ctr. (June 6, 2024), <https://tinyurl.com/n6rusjns>. Traditional public schools educate the vast majority of the Nation’s children. *Id.*

Around seven percent of children across the country now attend public charter schools. *Id.* In 1991, policy experts and legislators in Minnesota created and passed the nation’s first charter school law. Judith Johnson & Alex Medler, *The Conceptual and Practical Development of Charter Schools*, 11 Stan. L. & Pol’y Rev. 291, 293 (2000). The core attributes of char-

ter schools are enhanced autonomy from school districts—so the schools can engage in innovative education practices—combined with public accountability to ensure that they “uphold the principles of public education” and “protect[] all students’ right to a free and appropriate public education.” *Id.* at 292-93. In no state, however, are charter schools free to run their school however they wish. Rather, charter schools are subject not only to oversight by the chartering authority but also to a wide variety of requirements that also apply to traditional public schools.

Today, 46 states and the District of Columbia have laws allowing charter schools as part of their public school systems. *See* Nat’l All. for Pub. Charter Schs., *Charter Schools 101: Charter School Quick Facts*, <https://tinyurl.com/2r9yms4a> (last visited Apr. 3, 2025); *see also* James E. Ryan & Michael Heise, *The Political Economy of School Choice*, 111 Yale L.J. 2043, 2073-78 (2002) (recounting origins and early history of charter school programs). Charter “authorizers” are the bodies within states that “set academic and operational expectations, and oversee [charter] school performance.” Nat’l Ass’n of Charter Sch. Authorizers (NACSA), *What is Charter School Authorizing?*, <https://tinyurl.com/479x4rex> (last visited Apr. 3, 2025). “Nearly 90 percent of authorizers across the country are local school districts,” but some states feature other authorizers too, which may include “state education agencies” and “municipalities.” *Id.* In Oklahoma, authorizers can be “the board of education of a school district, a higher education institution, a private institution of higher learning ..., a federally recognized Indian tribe ..., or beginning July 1, 2024, the

Statewide Charter School Board.” Okla. Stat. tit. 70, § 3-134(D).

While charter schools are invariably defined by state law as public schools, *see, e.g.*, Okla. Stat. tit. 70, § 3-134(I) (referring to “public charter school[s]”); N.Y. Educ. Law § 2853(1)(c) (defining a charter school as an “independent and autonomous public school”), the indicia of their public nature go far beyond that. Public charter schools are authorized, and their charters renewed, under detailed conditions and processes specified by statute, which serve to ensure that schools fulfill the requirements of the state’s public education system. *See, e.g.*, Okla. Stat. tit. 70, § 3-134(B) (requiring authorizers to consider 35 different elements in evaluating charter applications, including academic programs, financial management, and employment policies); Ala. Code § 16-6F-7(a)(8) (requiring authorizers to review over 30 different categories of information in evaluating charter applications). They are subject to open meetings and public records laws. *See, e.g.*, Okla. Stat. tit. 70, § 3-136(A)(15); La. Rev. Stat. Ann. § 17:3996(B)(9), (10).

Members of charter school governing boards are nearly always subject to ethics in government laws that apply to other public officials. *See, e.g.*, Okla. Stat. tit. 70, § 3-136(A)(7) (“The governing board of a charter school or virtual charter school shall be subject to the same conflict of interest requirements as a member of a school district board of education....”); Ala. Code § 16-6F-9(a)(9) (“All members of a governing board shall be subject to the State Ethics Law.”). And charter schools must comply with state and federal nondiscrimination laws. *See, e.g.*, Okla. Stat.

Ann. tit. 70, § 3-136(A)(1) (“[A] charter school or virtual charter school shall comply with all federal regulations and state and local rules and statutes relating to health, safety, civil rights, and insurance.”); Nev. Rev. Stat. Ann. § 388A.366(1)(a), (d) (requiring charter schools to comply with “all laws and regulations relating to discrimination and civil rights” as well as “any plan for desegregation ordered by a court that is in effect in the school district in which the charter school is located”).<sup>3</sup>

In sum, in creating and authorizing charter schools, states are establishing alternative schools within the state public education system to meet the state’s constitutional obligation to provide public education. Just as a school district could turn away a teacher seeking employment in a traditional public school to teach subjects outside the approved school curriculum,<sup>4</sup> a charter school authorizer may turn

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<sup>3</sup> Federal prohibitions against race discrimination have been attached to federal education funding since 1964. *See* Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. Prohibitions against sex discrimination have been attached to federal education funding since 1972. *See* Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681. And the guarantee of a free appropriate public education for students with disabilities dates to 1975. Pub. L. No. 94-142, 89 Stat. 773 (1975) (as amended by the Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, tit. I, 118 Stat. 2647, 2647-99), codified as amended at 20 U.S.C. § 1400.

<sup>4</sup> This follows from *Garcetti v. Ceballos*, 547 U.S. 410, 421-22 (2006), as the courts of appeals have explained. *See, e.g., Evans-Marshall v. Bd. of Educ. of Tipp City Exempted Vill. Sch. Dist.*, 624 F.3d 332, 334 (6th Cir. 2010) (Sutton, J.); *see also Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 966-70 (9th



away an organization seeking to run a state charter school advancing its religious views rather than the state’s public education objectives. Doing so reflects no discrimination against religious organizations but a decision by the state regarding the type of education it will provide within its public education system—namely, a free, public, and nonsectarian education.<sup>5</sup>

While both secular and religious private schools provide valuable additions to the educational landscape, their role has been to supplement public educational options. Wood, *supra*, 1986 BYU L. Rev. at 351-52. Sectarian schools in particular are “responsive to their own particular religious views”—and rightly so. *Id.* at 355-56. The goal of state public education systems to prepare each and every child to contribute to civil society, and participate in our democracy, differs but is just as weighty. Ensuring the integrity of public education systems is necessary to guarantee that all children receive the education they deserve and to preserve the democracy-enhancing project specific to public schools. *See Sch. Dist. of*

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Cir. 2011); *Mayer v. Monroe Cnty. Comm. Sch. Corp.*, 474 F.3d 477, 479-80 (7th Cir. 2007).

<sup>5</sup> *See, e.g., In re Grant of Charter Sch. Application*, 753 A.2d 687, 691 (N.J. 2000) (“The choice to include charter schools among the array of public entities providing educational services to our pupils is a choice appropriately made by the Legislature so long as the constitutional mandate to provide a thorough and efficient system of education in New Jersey is satisfied.”); *State ex rel. Ohio Cong. of Parents & Teachers v. State Bd. of Educ.*, 857 N.E.2d 1148, 1158-59 (Ohio 2006) (holding the General Assembly may create charter schools to create variation within the public school system, so long as the charter schools adhere to certain state standards).

*Abington Twp. v. Schempp*, 374 U.S. 203, 242 (1963) (Brennan, J., concurring) (discussing the importance of “preserv[ing]” the “choice ... between a public secular education with its uniquely democratic values, and some form of private or sectarian education, which offers values of its own”).

## **II. Requiring States To Authorize Religious Charter Schools Would Undermine State Public Education And Harm Traditional Public Schools.**

Amici do not dispute that there are many high-quality religious schools that serve their students and communities well. But forcing states to authorize religious charter schools would undermine state public education systems and divert funding and resources from traditional public schools that fulfill the states’ overall educational objectives to other schools that do not. It would also set up endless, irreconcilable conflicts between the schools’ religious rights and core state interests in providing schools that are accountable to public education requirements and authorities, not to religious authorities. Finally, religious charter schools could become the only publicly funded school option in some communities, creating the very religious coercion problem that nonsectarian public education was designed to prevent.

**A. Religious charter schools would draw funds away from traditional public schools, which would harm students with disabilities in particular.**

Despite recent growth in charter and private schools, traditional public schools in this country still educate the vast majority of students. During the 2021-22 school year, for example, 83% of the country's roughly 54.6 million school students in prekindergarten through twelfth grade attended traditional public schools; only 10% attended private schools and 7% attended public charter schools. Schaeffer, *supra*. Traditional public schools also educate a greater proportion of students with disabilities than do charter or private schools. *See infra* 19. Because traditional public schools must be open to all, requiring them to share funding with religious charter schools while still educating the majority of students would further strain their resources and jeopardize the quality of the education they can provide.

1. Public schools receive funding based on the number of students they serve. *See* David S. Knight & David DeMatthews, *The Fiscal Impacts of Expanded Voucher Programs and Charter School Growth on Public Schools: Recommendations for Sustaining Adequate and Equitable School Finance Systems*, Nat'l Educ. Policy Ctr. 8 (Nov. 2024), <https://tinyurl.com/ytzu4f6k> ("State and federal funding for K-12 education is distributed on a per-student basis...."). "When students leave their public school for a charter school, most—or all—of that funding 'follows' them to their new school." In the Public Int., *Charter Schools and Fiscal Impact* 1 (May 2023),

<https://tinyurl.com/5526sc2n>. Changes in student enrollment therefore directly affect public school budgets.

Crucially, although lower student enrollment might suggest lower costs warranting less funding, “studies show that as enrollment declines, districts are not able to reduce spending at the same rate as they lose funding.” Knight & DeMatthews, *supra*, at 8. “For example, if a district loses one or two students at each of its 20 elementary schools, it may not save any money at each school since one fewer student does not reduce the need for a given number of teachers, staff, or services. However, at the district level, the total decline of 20 to 40 students would cause a significant loss in revenue.” *Id.*; see also In the Public Int., *supra*, at 2 (discussing “stranded costs”—“expenses that don’t go down just because a few kids leave”). And the effects of declining enrollment “disproportionately impact[] schools located in urban and rural higher-poverty areas.” Knight & DeMatthews, *supra*, at 6.

Traditional public schools have already felt the financial strain of sharing limited public funds with charter schools and school voucher programs. See *id.* at 8-11. Spreading the same amount of funds among more and different kinds of schools—essentially funding parallel education systems—“creates redundancies: More principals. More administrators. More bus routes and drivers,” all while “[e]conomies of scale are lost for things like supplies, library books, [and] equipment.” In the Public Int., *supra*, at 2.

Religious charter schools would exacerbate this problem. Adding yet another school option to be funded from the same pool of public money would only worsen the funding inefficiencies discussed above: (1) Lowering enrollment in traditional public schools would not make traditional public education any cheaper to provide; and (2) adding more schools and a new kind of school is inefficient and thus more expensive to fund. *See id.*

Making matters worse, school enrollments are projected to decline nationwide because of “fewer school-age children in the population.” Knight & DeMatthews, *supra*, at 6. As a result, “districts with declining enrollment will face lower budgets.” *Id.*; *see also* Nat’l Ctr. for Educ. Stat., *Projections of Education Statistics to 2030* (Feb. 2024), <https://tinyurl.com/yax74apd> (predicting 8% decrease in enrollment for all public and private K-12 schools through 2030). In an environment of already decreasing funds, having to split those funds even further could be disastrous and leave some communities, particularly in rural areas, with few or no viable public school options. *See, e.g.*, Knight & DeMatthews, *supra*, at 8-9.

In short, requiring states to grant charters to religious schools would reduce the amount of funding available for existing schools, whether traditional public schools or charter schools. And reducing funds available to traditional public schools would require them to make very difficult—and perhaps impossible—decisions about how to cut costs while minimizing impacts on educational quality. *See id.* at 3.

2. Diverting resources from traditional public schools to religious charter schools would be particularly harmful because traditional public schools educate a disproportionate percentage of students with disabilities compared to charter and private schools. See Lauren Morando Rhim et al., *Improving Outcomes for Students with Disabilities*, Ctr. for Am. Progress (Jan. 31, 2017), <https://tinyurl.com/432bj4hz> (estimating that “95 percent of the students eligible to receive special education are enrolled in traditional district schools”); Ctr. for Learner Equity, *Enrollment of Students with Disabilities in Charter and Traditional Public Schools 2* (Oct. 8, 2024), <https://tinyurl.com/y7x3jpey> (explaining that 14.1% of students in traditional public schools are eligible to receive services under the [IDEA] compared with 11.5% of students in charter schools).

Traditional public schools serve a relatively high proportion of students with disabilities because they are well equipped to educate and provide for students who need extra support, as the schools tend to be larger and economies of scale dictate that they can accommodate a wider range of student needs. In addition to “[h]igh quality instruction in the general education environment,” “many students with disabilities also need high-quality and highly individualized special education and related services, such as visual impairment teachers and audiologists.” Rhim, *supra*. Other services may include “instruction from certified special education teachers, behavioral counseling, speech therapy, support from a paraprofessional, and access to assistive technology”—services which can be “extremely costly.” *Id.*

Religious charter schools, by contrast, would likely be unable to meet the full range of needs of students with disabilities as adeptly as traditional public schools. At present, private religious schools are exempt from the Americans with Disabilities Act’s requirement to reasonably accommodate disabled students, *see* 42 U.S.C. § 12187, need not accommodate students with disabilities under Section 504 of the Rehabilitation Act unless they receive federal funding, *see* 29 U.S.C. § 794, and are not required to provide special education and related services under the Individuals with Disabilities Education Act, *see* 24 C.F.R. §§ 300.131, 300.132—and thus have not had to fully confront the challenge of meeting these student needs. *See generally* Campbell Sode, *Unlocking Accommodations for Disabled Students in Private Religious Schools*, 116 Nw. Univ. L. Rev. Online 171, 176 (2021), <https://tinyurl.com/2z3s2k86>. Religious charter schools, however, would presumably be required to serve students with disabilities to the same extent as other charter schools. *Cf.* U.S. Dep’t of Educ., Office for Civil Rights, *Know Your Rights: Students with Disabilities in Charter Schools*, <https://tinyurl.com/mryk9v9h> (last visited Apr. 3, 2025).

The experience of existing charter schools helps illustrate the complexities that religious charter schools might face on this front. Existing charter schools have made significant strides in their ability to serve students with special needs, but challenges remain, in part because of their smaller scale. Ctr. for Learner Equity, *supra*, at 3-4. According to the National Council on Disability, “[t]hese challenges include (1) limited knowledge and understanding of special education responsibilities and requirements

on the part of some charter operators and charter authorizers, (2) limited availability of special education funds that are distributed in complex ways, and (3) potential tension between the charter school movement's underlying principles related to autonomy and flexibility and special education requirements." Nat'l Council on Disability, *Charter Schools—Implications for Students with Disabilities* 13 (Nov. 15, 2018), <https://tinyurl.com/4nt67bdp>. And, despite an increase in the number of students with disabilities across the country, "the proportion of students with disabilities in charter schools continues to lag behind the proportion of students with disabilities in traditional public schools." Ctr. for Learner Equity, *supra*, at 4.

Religious charter schools would likely face similar challenges, but the impacts may be further magnified in this context. For example, religious schools' inexperience in accommodating the full range of disability needs covered by the Americans with Disabilities Act, given the exemption of private religious schools from that statute, may hinder religious charter schools in seeking to meet students' needs. Further, as discussed in more detail below, religious charter schools might seek to obtain exemptions under the First Amendment from applicable mandates. *Infra* 22-27. For these reasons, religious charter schools would be unlikely to serve students with disabilities in a manner proportional to their overall enrollment in the school system. "By enrolling fewer students who receive costly special education services," religious charter schools would likely further "increase the proportion of students with disabilities served within the traditional public system." Knight &



DeMatthews, *supra*, at 9. Increasing the proportion of students with disabilities served by traditional public schools while simultaneously drawing funds away from them, *see supra* 16-18, would further undermine their ability to provide high-quality education for all students—which is the central mission of public education.

**B. Religious charter schools would present extraordinary operational challenges for public school administrators.**

Even beyond questions of funding and related problems, the prospect of religious charter schools presents a host of grave administrative issues. Among other concerns, serious clashes between religious schools' interests and the interests of other stakeholders in public education would inevitably arise if religious charter schools were to seek exemptions from the usual charter school laws, rules, and regulations applicable to their operations.

***Charter school oversight and church autonomy.*** The church-autonomy doctrine recognizes the general principle that religious institutions have a right to manage their own affairs, free from intrusive government interference. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 196-97 (2012) (Thomas, J., concurring) (“[T]he Religion Clauses guarantee religious organizations autonomy in matters of internal governance....”). This “freedom for religious organizations” guarantees their “independence from secular control.” *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952).

But independence from secular control is not readily compatible with participation in a state charter school program. As discussed above (at 11), charter schools are supervised by state authorizers—overwhelmingly local school districts, though occasionally other state agencies. Here, for example, St. Isidore applied to participate as a charter school under the authorization of the Oklahoma Statewide Virtual Charter School Board, St. Isidore Br. 1, at the time “the primary state agency committed to high-quality online learning opportunities for Oklahoma students,” *Statewide Charter School Board*, Oklahoma.gov, <https://tinyurl.com/4yb4uxes> (last visited Apr. 3, 2025). The role of the authorizing agency is, again, to “oversee[] charter schools” through, among other things, engaging in “ongoing performance monitoring” and making decisions regarding whether to renew or terminate the charters of authorized charter schools. Ctr. for Learner Equity, *Equity-Minded Charter School Authorizing for Students with Disabilities* 6 (July 2024), <https://tinyurl.com/2u5z44vs>; see also NACSA, *Principles & Standards For Quality Charter School Authorizing* 11 (2023), <https://tinyurl.com/4w2cebwd> (recommending that authorizers “implement[] a comprehensive performance accountability and compliance monitoring system that is defined by the charter contract and provides the information necessary to make rigorous and standards-based ... decisions”).

This kind of oversight is an integral part of a state’s constitutional obligation to provide “[e]ach child ... with an equal opportunity to have an adequate education.” *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 211 (Ky. 1989). States take this

obligation seriously, “carefully supervis[ing]” their schools “on a continuing basis.” *Id.* State oversight remains critical with respect to charter schools, as “[t]he core idea behind charters is to grant greater flexibility to schools in exchange for greater accountability.” Ryan & Heise, *supra*, 111 Yale L.J. at 2074.

But this same oversight may also implicate the kind of “secular control” from which religious organizations have generally been granted “independence.” *Kedroff*, 344 U.S. at 116. Should this Court conclude that states cannot exclude religious schools from charter programs, religious schools might opt to invoke the church-autonomy doctrine to seek exemptions from applicable oversight requirements, including, for example, requirements bearing on audits and financial accountability. Such requests would put responsible authorities in a difficult position as they attempt to assess how to consider a religious charter school’s religious status in the context of evaluating its management, operations, and performance.

***Charter school teachers and the ministerial exception.*** A sub-component of the broader church-autonomy doctrine, the “ministerial exception,” requires courts “to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions.” See *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020); see also *Hosanna-Tabor*, 565 U.S. at 188 (“Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the

internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs.”).

This doctrine is not limited to formal ministers (like members of the clergy) and encompasses a range of teachers and personnel at religious schools, including at Catholic schools like St. Isidore’s. *See, e.g., Our Lady of Guadalupe*, 591 U.S. at 756-57 (finding Catholic “elementary school teachers responsible for providing instruction in all subjects” to be qualifying ministers). Moreover, the ministerial exception is not limited to employment decisions motivated by religious conviction; one of the teachers in *Our Lady of Guadalupe* alleged that she was discriminated against after “request[ing] a leave of absence to obtain treatment for breast cancer.” *Id.* at 745. St. Isidore’s briefing suggests that it believes it would be entitled to invoke the ministerial exception even if it were organized under Oklahoma’s charter school program. *See* St. Isidore Br. 38-39, 46.

***Charter schools and curriculum.*** One of the distinguishing features of charter schools is that they enjoy more autonomy in crafting their curriculum than traditional public schools. *Supra* 11-12. Religious charter schools, however, could present a unique challenge in this respect, forcing charter authorizers to make difficult choices in assessing the adequacy of religious charter schools’ programs. One would expect a religious charter school’s curriculum to be religious in certain respects. But could a religious charter school decline to teach its students portions of the state’s required curriculum on a topic such as the scientific theory of evolution, or opt to instruct

its students that the Earth is flat or only 10,000 years old? *Cf. Mayer*, 474 F.3d at 479. Such questions would inevitably arise in the oversight of religious charter schools.

***Charter schools and student rights.*** As noted above, traditional public schools in Oklahoma and elsewhere must generally be “open to *all* the children of the state.” Okla. Const. art. I, § 5 (emphasis added); *supra* 9. Private religious schools, on the other hand, are generally free to craft selective admission criteria, including by giving preference to adherents of their religion or requiring students to comply with religiously inspired codes of conduct.<sup>6</sup> The existence of religious charter schools would require state authorizers to confront the question of whether religious charter schools operating under the auspices of the state can preference co-religionists in admissions, or impose religious conditions on student admission or conduct.

***Charter schools and parental rights.*** The Court is poised to address this Term in *Mahmoud v.*

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<sup>6</sup> For example, Title IX’s bar on sex discrimination in “any education program or activity receiving Federal financial assistance” does “not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization.” 20 U.S.C. § 1681(a)(3). Title VI’s prohibitions apply to religious schools that accept federal funding, but those prohibitions are limited to discrimination “on the ground of race, color, or national origin” and do not encompass religious discrimination. 42 U.S.C. § 2000d.

*Taylor*, No. 24-297, whether the First Amendment requires traditional public schools to offer parents an opportunity to opt their children out of instruction that is contrary to their religious convictions. The present case implicates a related question. If the Court requires states to authorize religious charter schools alongside secular charter schools, the question will likewise arise whether religious charter schools must allow parents to opt their children out of instruction contrary to their own convictions—e.g., whether parents can send their children to a religious charter school but opt their child out of, say, religion classes or instruction.

Such opt-outs might be especially appealing to parents who desire a charter alternative to traditional public school but do not share the religious beliefs of the available charter school—or, as discussed below, to parents whose only neighborhood school might be a religious charter school. But requests for such opt-outs would place charter school authorizers in an intolerable position, forcing them to choose between students' rights to be free from religious coercion and a religious charter school's fundamentally religious character.

These and other questions would present very serious and possibly intractable challenges for public officials overseeing religious charter schools.

**C. Religious charter schools could become the only neighborhood schools in some communities, leaving students without an accessible nonsectarian option.**

1. Private religious schools serve their communities by allowing parents, if they wish, to enroll their children in a religious school of their choice. For this reason, the religious schools available in a locality may often reflect the most common religious groups in the area, whether that is Jewish schools in Lakewood, New Jersey (where 93% of private schools are Jewish), Baptist schools in Madison County, Alabama (where 57% of private schools are Baptist), Catholic schools in New Orleans (where 56% of private schools are Catholic), or Islamic schools in Dearborn, Michigan (where 33% of private schools are Islamic). See ProPublica, *Private School Demographics*, <https://tinyurl.com/4yxtekbh> (last visited April 3, 2025).

Religious school participation in state charter school programs, however, threatens paradoxically to limit choices in some communities, reducing (if not eliminating) the availability of secular public neighborhood schools. This is not a hypothetical scenario, but rather a logical extension of what has already happened in many communities where charter schools have become the only neighborhood school. This phenomenon sometimes occurs in sparsely populated rural areas, where an area's population can only support, say, one high school. If a charter school opens in one of these communities, it may displace the traditional public school in the area altogether.

Consider, for example, Loganton, Pennsylvania, which has a population of about 500 people. Since at least the mid-1950s, children in Loganton had attended the Sugar Valley Area School. *See* Sugar Valley Historical Society, *Sugar Valley Overview and its Current Contributions* (June 13, 2015), <https://tinyurl.com/4xskpz9c>. But after the Sugar Valley Rural Charter School opened in 2000, the Sugar Valley Area School closed in 2012. *See id.*; *see also* Sugar Valley Rural Charter School, *Needs Assessment*, <https://tinyurl.com/5e4ycbue> (last visited Apr. 3, 2025) (recognizing closure of Sugar Valley Area School). Now, families can either send their children to the charter school in town or send them to the closest traditional public school, 15 miles away in Mill Hall, Pennsylvania.

Alternatively, charter schools sometimes open in rural areas to fill gaps in rural school districts' school offerings. Consider, for instance, Starbuck, Minnesota, a remote rural community with about 1,300 residents. After the town's elementary school closed because of low enrollment, Starbuck students had to take the bus about 30 minutes each way to the neighboring town. *See* Bellwether Educ. Partners, *Local Roots Take the Lead: Lessons from Rural Charter Schools, Case Studies*, <https://tinyurl.com/5dcuz5u4> (last visited Apr. 3, 2025). Two years later, local residents opened the Glacial Hills Elementary School, a charter school that now enrolls about 90 K-6 students and is the only elementary school in the town. *Id.* Similar examples in rural communities abound, like in Oregon where "12 rural single-school districts ... converted to charter schools in the face of closure or consolidation." Karen Eppley, *The Unique Case for Rural*



*Charter Schools, The Conversation* (Apr. 4, 2017), <https://tinyurl.com/nhkketpf>.

Charter schools have also become the only public schools in many city neighborhoods. In New Orleans, almost “every [non-private] school ... is now a charter school.” Carol Burris & Ryan Pflieger, *Broken Promises: An Analysis of Charter School Closures from 1999-2017*, Network for Pub. Educ. 8 (Aug. 2020), <https://tinyurl.com/yckabzbw> (noting that New Orleans has about 80 charter schools run by 38 different private boards). Likewise, in Detroit, 245 charter schools opened in the metropolitan area between 1998 and 2015, which in many instances led to “the disappearance of the neighborhood school.” *Id.* at 26-27. And Gary, Indiana, a city with a population of about 70,000, has only one remaining non-charter public high school, and nearly 50% of its students are enrolled in charter schools. Michelle Gallardo, *Gary Public Schools Start Year No Longer Under State Control After 7 Years of Oversight*, ABC7 Eyewitness News (Aug. 14, 2024), <https://tinyurl.com/mn4z9ah6>; Post-Tribune, *Gary Leads State in Students Lost to Charter, Private Schools* (Nov. 29, 2019), <https://tinyurl.com/5472exey>. All told, several urban school districts have more than 40% of their students enrolled in charter schools, including Oklahoma City Public Schools (51.6%). Cynthia Xu, *Where are Charter Schools Located?*, Nat’l All. for Pub. Charter Schs. (Nov. 20, 2024), <https://tinyurl.com/y4vu7bs8>.

2. If charter school authorizers cannot decline to authorize a charter school due to the religious nature of the education it would offer, then communities

without traditional public schools could become communities without any nonsectarian school options.

There is no dispute that opening the charter sector to religious operators would create substantial financial incentives for religious schools that are currently operating as private schools to reorganize themselves as religious charter schools. *See, e.g.,* Michael Q. McShane & Andrew P. Kelly, *Sector Switches: Why Catholic Schools Convert to Charters and What Happens Next* 1-2 (Apr. 2014), <https://tinyurl.com/2uubuw6b>; Tammy Harel Ben Shahr, *Race, Class, and Religion: Creaming and Cropping in Religious, Ethnic, and Cultural Charter Schools*, 7 Colum. J. Race & L. 1, 20-21 (2016). The prospect of such reorganization increases the “counterintuitive” risk that adding religious charter schools to the already crowded educational playing field may “lead to the dissolution of one set of providers, actually narrowing the set of choices students have.” McShane & Kelly, *supra*, at 1. For example, an established religious school reorganized as a charter school that draws even a few students away from the traditional public school in a rural area could compromise the ability of the public school to remain in operation to serve its remaining students.

This result is antithetical to public education. “For the state to carry out its constitutional obligations in regard to public education, it has to maintain a public education system across all districts. Otherwise, traditional public education becomes a happenstance of where one lives, rather than a constitutional

guarantee.” Derek W. Black, *Preferencing Educational Choice: The Constitutional Limits*, 103 Cornell L. Rev. 1359, 1426 (2018) (footnotes omitted).

And crucially, regardless of how the situation comes about (i.e., whether by conversion or otherwise), if the only school serving a particular community is a charter school and that charter school is a religious school, families may be left with no accessible nonsectarian option for obtaining the free public education guaranteed by the state constitution. As this Court has explained, “the State may not, consistent with the Establishment Clause, place primary and secondary school children” in the position of choosing between “participating [in], with all that implies, or protesting” a religious exercise. *Lee v. Weisman*, 505 U.S. 577, 593 (1992). But that is effectively the choice that a religious charter school would pose if it were the only neighborhood school in a particular area: It would constrain the educational choices for parents, who would be forced to choose whether to send their children to the religious charter school, whatever its affiliation; pay to attend a private school; perhaps arrange for their children to go to a traditional public school farther away—or, ultimately, simply pack up and move. This problem is particularly likely to confront families who do not share the predominant religious tradition in the local area—e.g., say, Catholic families in Madison County, Alabama. *Supra* 28.

This Court’s precedents do not countenance this type of forced choice. “The lesson of history ... is that a system of free public education forfeits its unique contribution to the growth of democratic citizenship

when that choice ceases to be freely available to each parent.” *Schempp*, 374 U.S. at 242 (Brennan, J., concurring).

It is notable that our nonsectarian public schools were designed to remedy precisely the kind of unwanted sectarian education at risk here. Such schools became the norm in this country’s educational systems in the mid-1800s. *See* Wood, *supra*, 1986 BYU L. Rev. at 352. At that time, the level of “religious heterogeneity in America ... was pretty much unprecedented.” Noah Feldman, *Non-Sectarianism Reconsidered*, 18 J.L. & Pol. 65, 69 (2002). It thus became imperative to “remov[e] sectarian influences from the public schools,” given that newly arrived religious minorities—at the time, Catholic, Eastern Orthodox, and Jewish immigrants—chafed at “any form of religious establishment, especially when manifested in public schools.” Wood, *supra*, 1986 BYU L. Rev. at 352. Indeed, the advent of the modern Catholic parochial school was a response to Protestant “influences and teachings in ... public schools,” which drove Catholics “to escape sectarian teachings in conflict with their own.” *Id.*; *see also* Feldman, *supra*, 18 J.L. & Pol. at 81-92. Fast forward to now, and religious charter schools would improperly risk leaving families in some communities with no viable nonsectarian educational option for their children.

## CONCLUSION

For the foregoing reasons, the Court should affirm the judgment of the Oklahoma Supreme Court.

Respectfully submitted,

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