Nos. 24-394 and 24-396

In the Supreme Court of the United States

OKLAHOMA STATEWIDE CHARTER SCHOOL BOARD, ET AL., PETITIONERS

v.

GENTNER DRUMMOND, ATTORNEY GENERAL OF OKLAHOMA, EX REL. OKLAHOMA

ST. ISIDORE OF SEVILLE CATHOLIC VIRTUAL SCHOOL, PETITIONER

v.

GENTNER DRUMMOND, ATTORNEY GENERAL OF OKLAHOMA, EX REL. OKLAHOMA

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

1. Whether a charter school that is founded and operated by private entities is, for First Amendment purposes, considered either part of the government or generally engaged in state action.

2. Whether a State violates the Free Exercise Clause by excluding religious schools from a charter-school program.

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INTEREST OF THE UNITED STATES

This case presents the question whether Oklahoma may, consistent with the First Amendment's Religion Clauses, exclude a school from the State's charter-school program because of the school's religious character. The Oklahoma Supreme Court answered that question in the affirmative because it believed that an entity that

contracts with the State to provide publicly funded education cannot assert free exercise rights. The United States has a substantial interest in the interpretation and application of the legal principles that establish, for constitutional purposes, when an ostensibly private entity is considered part of the government or engaged in state action. The United States also has a substantial interest in the preservation of the free exercise of religion.

INTRODUCTION

The Constitution forbids States from attempting to carve out religious schools from a program that generally permits private entities to receive public funds. Three times in recent years, this Court has held that such restrictions—whether in Missouri, Montana, or Maine—"effectively penalize[] the free exercise" of religion and cannot stand. *Carson* v. *Makin*, 596 U.S. 767, 780 (2022) (citation omitted). That rule applies with equal force here, to Oklahoma's attempt to exclude a school from a charter-school program based solely on religious character. That restriction should have been a nonstarter.

The Oklahoma Supreme Court instead sided with the State based on its belief that a charter school is a governmental entity or—at a minimum—that the conduct in which a charter school engages is generally attributable to the State under this Court's state-action precedents. Working from that premise, the court concluded that Oklahoma's exclusion of religiously affiliated charter schools from its program does not implicate the Free Exercise Clause. Conversely, the court reasoned, if charter schools are governmental entities, allowing public funds to flow to a religious charter school would offend the Establishment Clause and Oklahoma law.

But the Oklahoma Supreme Court's premise was incorrect. Under this Court's precedents, the relevant question is whether a charter school is a governmental entity, and that depends on whether the State creates and runs the school. Here, Oklahoma does neither. "By design, the very purpose of [Oklahoma's] Charter Schools Act is to allow *private* entities to experiment with innovative curricula and teaching methods, and to give students and parents 'additional academic choices.'" Pet. App. 35a (Kuehn, J., dissenting) (citation omitted).

By contrast, this Court's state-action precedents ask whether particular actions by otherwise private actors are so bound up with the State as to render the private actors *liable* for infringing others' constitutional or federal rights. Those state-action precedents are a poorer fit to address the question presented here: whether charter schools like St. Isidore *lack* free exercise protections. Regardless, St. Isidore is not generally engaged in state action under those precedents. Accordingly, the Free Exercise Clause applies and prohibits Oklahoma from excluding St. Isidore based on its religious observance.

The United States previously advanced a different view of a charter school's relationship with a State in *Charter Day School, Inc.* v. *Peltier*, 143 S. Ct. 2657 (2023), after this Court called for the views of the Solicitor General regarding whether a charter school's adoption and enforcement of a student dress code was state action that could potentially violate the Constitution. The United States contended (Br. 9-14) that the charter school was engaged in state action because it performed an educational function that was traditionally exclusively reserved to the State.

After the recent change in Administration, the United States has concluded that charter schools do not perform functions exclusively reserved to the State. More broadly, the state-action inquiry on which the United States focused in *Peltier* has obvious application to cases asking whether a school *violates* the Constitution in taking a specific action. Where, as here, the question is whether a school *lacks* constitutional protections due to its governmental character, the key consideration is whether the school is itself a governmental entity, created and controlled by the State. A charter school like St. Isidore does not meet those criteria.

That conclusion respects this Court's precedents. It also properly accounts for the Office of Legal Counsel's 2020 determination that the restriction in 20 U.S.C. 7221i(2)(E) barring religiously affiliated schools from participating in the federal charter-school grant program violates the Free Exercise Clause. *Exclusion of Religiously Affiliated Schools from Charter-School Grant Program*, 44 Op. O.LC. 131, 137 (2020). Recognizing that a charter school "may be created or operated by an individual or private nonprofit organization," the opinion explained that "[f]orbidding charter schools under the program from affiliating with religious organizations discriminates on the basis of religious status." *Id.* at 132, 137. That conclusion necessarily rested on the understanding that at least some charter schools retain Free Exercise rights—the United States' position here. And because charters like St. Isidore possess Free Exercise rights, States like Oklahoma cannot exclude them from generally available public programs simply for being religious.

STATEMENT

A. The Oklahoma Constitution provides that "[n]o public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, * * * or sectarian institution." Okla. Const. Art. II, § 5. The constitution further requires the legislature 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." Okla. Const. Art. I, § 5; see Okla. Const. Art. XIII, § 1.

To carry out that mandate, the State maintains a comprehensive network of traditional public schools that any child in Oklahoma can attend, "free of charge." 70 Okla. Stat. § 1-114. Those schools are public entities, created by the State and run by local school districts, with day-to-day operations controlled by the State. *Id.* §§ 1-101 *et seq.* During the 2022-2023 school year, more than 650,000 schoolchildren attended traditional public schools in Oklahoma. Okla. Dep't of Educ., *Oklahoma Charter School Report 2023*, at 9 (2023), https://perma.cc/7BV3-Y6FT.

Those traditional public schools are not, however, the only academic option available to families in Oklahoma. Parents can homeschool their children. Okla. Const. Art. XIII, § 4. Parents can also opt to send their children to private school. See Okla. Dep't of Education, *School Choice* (Mar. 2025), https://perma.cc/LPY6-NLAH. Various state programs—including scholarships, tax credits, and vouchers—are available to subsidize private-school tuition. *Ibid.*

As in nearly every other State, parents in Oklahoma also have another option: charter schools. Oklahoma's Charter Schools Act of 1999, 70 Okla. Stat. § 3-130 *et seq.*,

authorizes the establishment of "charter schools" to "[p]rovide additional academic choices for parents and students," as well as to "[i]mprove student learning" and to "[e]ncourage the use of different and innovative teaching methods." *Id.* § 3-131(A).[1] Charter schools must be "as equally free and open to all students as traditional public schools," *id.* § 3-135(A)(9), and "may not charge tuition or fees," *id.* § 3-136(A)(10). Instead, charter schools are eligible to receive state funds, tied to how many students choose to enroll. *Id.* §§ 3-142(A), 18-200.1. During the 2022-2023 school year, approximately 30 charter schools operated in Oklahoma, educating more than 50,000 schoolchildren. *Oklahoma Charter School Report 2023*, at 10.

Any qualified "private college or university, private person, or private organization" can apply to establish a charter school by "submit[ting] a written application" to a potential "sponsor." 70 Okla. Stat. §§ 3-134(B), 3-134(C). In 2023, the Statewide Virtual Charter School Board had "the sole authority to authorize and sponsor statewide virtual charter schools." *Id.* § 3-145.1(A).[2] If the Board approved an application, the Board and the applicant could then execute "a contract for sponsorship." Okla. Admin. Code § 777:10-3-3(a). Such contracts must "incorporate[] the provisions of the [school's] charter," and such charters must in turn include "a

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[1] Except where otherwise noted, this brief refers to the provisions of Oklahoma law in effect in 2023 when petitioner St. Isidore of Seville Virtual Charter School, Inc. applied to the charter-school program. Pet. App. 196a-197a. "Pet. App." citations refer to the petition appendix filed in No. 24-396.

[2] Petitioner Statewide Charter School Board has since replaced the Statewide Virtual Charter School Board as the state sponsor of virtual charter schools. 70 Okla. Stat. §§ 3-132.1(A), 3-132.1-134(E)(3) (2024).

description of the personnel policies, personnel qualifications, and method of school governance." 70 Okla. Stat. §§ 3-135(A), 3-136(B).

By law, a charter school, unlike a traditional public school, is generally "exempt from all statutes and rules relating to schools, boards of education, and school districts." 70 Okla. Stat. § 3-136(A)(5). For example, a charter school is "exempt[]" from "core curriculum requirements for public schools," 64 Op. Att'y Gen. Okla. (Sept. 27, 1999), and can instead "offer a curriculum which emphasizes a specific learning philosophy or style or certain subject areas such as mathematics, science, fine arts, performance arts, or foreign language," 70 Okla. Stat. § 3-136(A)(3). And a charter school must establish its own "governing body" composed of private individuals that are "responsible for the policies and operational decisions of the charter school." *Id.* § 3-136(A)(8).

At the same time, Oklahoma law requires charter schools to "comply with all federal regulations and state and local rules and statutes relating to health, safety, civil rights, and insurance." 70 Okla. Stat. § 3-136(A)(1). Oklahoma also requires charter schools to comply with certain state-law requirements applicable to traditional public schools, such as a minimum number of instructional days. *Id.* § 3-136(A)(11). Charters must also follow certain state-law requirements applicable to entities that receive public funds, including open meetings and records laws. *Id.* § 3-136(A)(12)-(16).

Additionally, Oklahoma law imposes obligations on the Board, as the State sponsor of charter schools. The Board must provide "oversight" of the sponsored charter school "through annual performance reviews" and by "[m]onitor[ing], in accordance with charter contract

terms, the performance and legal compliance of" the school. 70 Okla. Stat. § 3-134(I). Of particular relevance here, Oklahoma law prohibits the Board from "authoriz[ing] a charter school or program that is affiliated with a nonpublic sectarian school or religious institution." *Id.* § 3-136(A)(2). And Oklahoma requires that a charter school must "be nonsectarian in its program, admission policies, employment practices, and all other operations." *Ibid.*

B. Petitioner St. Isidore of Seville Virtual Charter School is a "privately operated religious non-profit organization" founded by the Archdiocese of Oklahoma City and the Diocese of Tulsa to offer a virtual "learning opportunity for students who want and desire a quality Catholic education, but for reasons of accessibility to a brick-and-mortar location or due to cost cannot currently make it a reality." Pet. App. 111a, 206a.

St. Isidore is structured as an Oklahoma not-for-profit corporation with two members: the Archbishop of Oklahoma City and the Bishop of the Diocese of Tulsa. Pet. App. 217a, 225a. Those members appointed a board of directors, which included specified private individuals as well as seats for additional directors selected by the other members. See *id.* at 226a-231a.

In 2023, St. Isidore applied to the Statewide Virtual Charter School Board to participate in Oklahoma's charter-school program. Pet. App. 196a-197a. A few months earlier, then-Oklahoma Attorney General John O'Connor had issued an opinion advising the Board that excluding religious schools from Oklahoma's charter-school program would violate the First Amendment of the U.S. Constitution. *Id.* at 41a-71a. Because Oklahoma had "invited" "qualified private entities * * * into

the program," he explained, "Oklahoma cannot disqualify some private persons or organizations 'solely because they are religious' or 'sectarian'" without running afoul of the Free Exercise Clause. *Id.* at 53a (citation omitted). Charter schools "are not state actors," he added, and therefore it "is not a problem" that "public funds could be sent to religious organizations"; "'a neutral benefit program in which public funds flow to religious organizations through the independent choices of private benefit recipients does not offend the Establishment Clause.'" *Id.* at 54a, 69a (citation omitted).

After St. Isidore submitted its application, respondent Gentner Drummond—the newly elected Attorney General of Oklahoma—withdrew his predecessor's opinion. Pet. App. 74a-78a. Respondent explained that "[w]ithout binding precedent" from this Court "definitively addressing whether charter schools are state actors," he could not advise the Board "to violate the Oklahoma Constitution's clear directive" requiring public schools to be "free from sectarian control." *Id.* at 76a (quoting Okla. Const. Art. I, § 5) (emphasis omitted). Turning to St. Isidore's application in particular, he explained that "[a]ssuming a charter school is a state actor, it would clearly violate the First Amendment and Oklahoma Constitution" for St. Isidore to run a charter school that is "Catholic in every way." *Id.* at 76a-77a. He warned that approving St. Isidore's application would "create a slippery slope"; "[u]nfortunately, the approval of a charter school by one faith will compel the approval of charter schools by all faiths, even those most Oklahomans would consider reprehensible and unworthy of public funding." *Id.* at 77a.

In June 2023, the Board nonetheless voted to approve St. Isidore's application. Pet. App. 170a-171a. A

few months later, St. Isidore and the Board executed a charter-school contract. *Id.* at 110a-153a. The contract stated that St. Isidore "is a privately operated religious non-profit organization," and that St. Isidore's own "governing board" "shall be responsible for the policies and operational decisions" of the school. *Id.* at 111a, 120a. The contract further affirmed St. Isidore's "right to freely exercise its religious beliefs and practices consistent with" all "Religious Protections" under federal and state law. *Id.* at 135a. St. Isidore was scheduled to begin operations in the 2024 academic year. *Id.* at 114a.

C. Respondent sought a writ of mandamus from the Oklahoma Supreme Court, urging the court to order the Board to repudiate the contract with St. Isidore. Pet. App. 172a-195a. Respondent argued (*id.* at 187a-192a) that the contract violated the Establishment Clause of the U.S. Constitution. He further argued (*id.* at 181a-186a) that the contract violated various Oklahoma laws, including state constitutional requirements that Oklahoma's public schools be "free from sectarian control," Okla. Const. Art. I, § 5, and that "[n]o public money" be used for the benefit of any "sectarian institution," Okla. Const. Art II, § 5, as well as the Charter Schools Act's requirement that charter schools "be nonsectarian" and unaffiliated with a "religious institution," 70 Okla. Stat. § 3-136(A)(2). St. Isidore intervened. Pet. App. 2a.

The Oklahoma Supreme Court agreed with respondent, ordering the Board "to rescind its contract with St. Isidore." Pet. App. 28a; see *id.* at 1a-28a. The court held that the Oklahoma Constitution and Oklahoma's Charter Schools Act prohibited the State from expending funds "for the benefit and support of the Catholic church," including by funding "a charter school program that is affiliated with a nonpublic sectarian school

or religious institution." *Id.* at 11a-12a. The court also believed that admitting St. Isidore to the charter-school program would violate the federal Establishment Clause. *Id.* at 25a-27a.

The Oklahoma Supreme Court rejected petitioners' argument that *excluding* St. Isidore would violate the Free Exercise Clause. Pet. App. 14a-27a. The court acknowledged that this Court has repeatedly held that the Clause prohibits States from disqualifying religious schools from public funding programs. *Id.* at 24a-25a. But the Oklahoma Supreme Court believed that the Clause was "not implicated in this case" because, in its view, St. Isidore is a "governmental entity" that "does not exist independently of the State," rather than a "private religious institution" seeking a "generally available benefit." *Id.* at 14a-17a, 24a-26a. The court noted that Oklahoma law labels charter schools "public schools," and that Oklahoma imposes on charter schools "many of the same privileges, responsibilities, and legal requirements that govern traditional public schools." *Id.* at 16a.

The Oklahoma Supreme Court also held that even if St. Isidore is a private entity, St. Isidore would "still" be a state actor "under at least two" of the "five 'state-actor' tests" this Court has applied "over the years." Pet. App. 17a-18a. First, the court believed that "Oklahoma charter schools are entwined with the State," due to State "oversight" and "monitor[ing]." *Id.* at 18a. Second, the court believed that charter schools "perform[] a traditional, exclusive[ly] public function"—providing "free public education"—because "Oklahoma fulfilled its constitutional duty" to provide public education "in part" by creating and funding "public charter schools." *Id.* at 18a-19a, 21a (citation and emphasis omitted).

Vice-Chief Justice Rowe concurred in part and dissented in part, agreeing with the majority only insofar as the Oklahoma Constitution "mandates that public charter schools are nonsectarian." Pet. App. 40a.

Justice Kuehn dissented. Pet. App. 29a-39a. She concluded that St. Isidore is not a state actor because Oklahoma's charter-school system "is clearly an invitation for *private* entities to *contract*" with the State "to provide educational choices." *Id.* at 34a. She emphasized that the "very purpose of the Charter Schools Act is to allow *private* entities to experiment with innovate curricula and teaching methods," and to provide additional choices for students and parents. *Id.* at 35a. Accordingly, she explained, nothing in the Oklahoma Constitution "bar[s] sectarian organizations, such as St. Isidore, from applying to operate charter schools." *Id.* at 38a. She added that "[t]o the extent" any provision of Oklahoma law "bars such organizations from even applying to operate a charter school," that provision would be "inconsistent with the Free Exercise Clause of the First Amendment." *Ibid.*

SUMMARY OF ARGUMENT

Excluding charter schools like St. Isidore from otherwise available funding programs based solely on their religious exercise violates the Free Exercise Clause.

A. The First Amendment generally forbids a State from penalizing religion by denying an entity access to a public-funding program based on the entity's religious character. Three times in the last decade, this Court has thus confirmed that a State may not discriminate against religiously affiliated schools by excluding them from otherwise available government programs—whether a grant program in Missouri, *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 582 U.S. 449, 458 (2017); a

scholarship program in Montana, *Espinoza* v. *Montana Dep't of Revenue*, 591 U.S. 486, 488 (2020); or a tuition-assistance program in Maine, *Carson* v. *Makin*, 596 U.S. 767, 773-774 (2022).

That rule applies with equal force here. Oklahoma generally permits private entities to apply to operate charter schools and to receive public funding. But Oklahoma has excluded, as a matter of law, one type of private entity from its charter-school program; religious entities need not apply. Like Missouri, Montana, and Maine, Oklahoma has thus put schools and families to the choice of forgoing religious exercise or forgoing government funding. And as respondent largely does not dispute, no compelling interest saves that burden on religious exercise. A State "need not subsidize" charter schools, but once it "decides to do so, it cannot disqualify" some schools "solely because they are religious." *Carson*, 596 U.S. at 785 (citation omitted).

B. The Oklahoma Supreme Court held that the Free Exercise Clause has no application here because, in the court's view, St. Isidore is part of the State itself. But under this Court's precedents, St. Isidore is not the kind of entity that, while "nominally private," is nonetheless considered a governmental entity for First Amendment purposes; St. Isidore is neither "[g]overnment-created" nor "[g]overnment-controlled." *Lebron* v. *National Railroad Passenger Corp.*, 513 U.S. 374, 396-397 (1995). Rather, St. Isidore is a privately founded entity, operated by a private board, that applied to offer an educational alternative to traditional public schools. And neither Oklahoma nor state employees would run St. Isidore. Instead, the school's own private board of directors, whom Oklahoma has no authority to appoint or remove, would manage the school.

The Oklahoma Supreme Court also held that even were St. Isidore a private entity, its conduct can be generally attributed to Oklahoma under the state-action tests this Court has applied in cases like *Manhattan Community Access Corp.* v. *Halleck*, 587 U.S. 802 (2019), and *Brentwood Academy* v. *Tennessee Secondary School Athletic Association*, 531 U.S. 288 (2001). But those cases concerned whether constitutional limitations that apply only to state actors nonetheless constrained the specific action of a private entity. It is unclear that those tests govern the question presented: whether a private entity itself lacks constitutional protections—specifically, Free Exercise protections—because of some association with a State.

Regardless, this Court need not definitively resolve whether those state-action tests control here because St. Isidore would not be a state actor under those tests. St. Isidore is not so "entwined" with Oklahoma as to make the school's actions generally attributable to the State. *Brentwood*, 531 U.S. at 296 (citation omitted). A State's high-level oversight and supervision does not turn a charter school into a state actor when, as here, private individuals manage and direct its day-to-day operations. Nor do charter schools like St. Isidore perform "a traditionally exclusive public function." Pet. App. 18a. As this Court made clear in *Rendell-Baker* v. *Kohn*, 457 U.S. 830 (1982), educating schoolchildren, even at "public expense," is not the "exclusive province of the State." *Id.* at 842.

ARGUMENT

A. Excluding St. Isidore From The State's Charter-School Program Violates The Free Exercise Clause

The Free Exercise Clause protects religion against discrimination by the Federal Government, and the

Fourteenth Amendment makes that guarantee applicable to the States. Accordingly, when a State creates a generally applicable program but discriminates against religious entities, the "strictest scrutiny" applies. *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 582 U.S. 449, 458 (2017). And as this Court has repeatedly held, that rule applies in full force to religious schools. Oklahoma thus cannot exclude St. Isidore from its charter-school program based on St. Isidore's religious character unless that exclusion is narrowly tailored to a compelling interest—and none exists here.

1. The Free Exercise Clause generally forbids a State from excluding otherwise qualified schools from public funding programs based on religious exercise

At its core, the Free Exercise Clause "protects religious observers against unequal treatment." *Church of Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 542 (1993) (citation and brackets omitted). That means that the "government may not force people to choose between participation in a public program and their right to free exercise of religion." *Trinity Lutheran*, 582 U.S. at 469 (Gorsuch, J., concurring in part).

In the last decade, this Court has three times applied that rule to hold unconstitutional various efforts to exclude religious schools from state funding programs—settling, beyond any doubt, that withholding generally available public funding from a school based on its religious character runs afoul of the Free Exercise Clause.

First, in *Trinity Lutheran*, this Court held that Missouri had violated the Free Exercise Clause by offering grants to local schools to improve their playgrounds but disqualifying church schools from participation. 582 U.S. at 453. Missouri's program, this Court held, "ex-

pressly discriminate[d] against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character." *Id.* at 462. And "the exclusion of [a church school] from a public benefit for which it is otherwise qualified, solely because it is a church, is odious to our Constitution." *Id.* at 467.

Three years later, in *Espinoza* v. *Montana Department of Revenue*, 591 U.S. 464 (2020), this Court held that the Free Exercise Clause likewise "precluded the Montana Supreme Court from applying Montana's no-aid provision"—a provision of the Montana Constitution "barring government aid to sectarian schools"—to exclude religious schools from a scholarship program that used "tax credits to 'subsidize tuition payments' at private schools." *Id.* at 469, 472, 474 (citation omitted). The Court reiterated that a State cannot "bar[] religious schools from public benefits solely because of the religious character of the schools." *Id.* at 476.

Most recently, in *Carson* v. *Makin*, 596 U.S. 767 (2022), this Court applied these "unremarkable principles" to Maine's program to pay tuition at the "approved private school of the parent's choice" in localities with no public secondary school. *Id.* at 773-774, 795. The Court held that Maine's requirement that "any school receiving tuition assistance payments" be "nonsectarian" "effectively penalizes the free exercise" of religion. *Id.* at 774, 780 (quoting *Trinity Lutheran*, 582 U.S. at 462). Maine had maintained that it could "exclude[] religious persons from the enjoyment of public benefits on the basis of their anticipated religious *use* of the benefits" even if the State could not exclude persons based on "religious *status*." *Id.* at 787 (emphases added). The Court re-

jected that argument, emphasizing that "use-based discrimination" is no less "offensive to the Free Exercise Clause." *Id.* at 787 (emphasis added).

2. Oklahoma's exclusion of St. Isidore from the charter-school program based on religious exercise violates the Free Exercise Clause

Those bedrock principles resolve the ultimate constitutional question here. A State may not put schools, parents, or students to the choice of forgoing religious exercise or forgoing government funds. But that is precisely what Oklahoma did here.

Specifically, Oklahoma has chosen to establish a charter-school program that generally permits private entities to apply to operate charter schools and receive public funding. The Charter Schools Act invites any qualified "private college or university, private person, or private organization" to apply for state funding to operate a charter school. 70 Okla. Stat. § 3-134(C). And Oklahoma affords those private entities substantial flexibility to operate their schools free from state interference. See *id.* § 3-136(A)(3) and (5); pp. 5-8, *supra*.

But Oklahoma has singled out and excluded one type of private entity—religious organizations—from participating in the charter-school program. Under the Act, the State cannot authorize a charter school "that is affiliated with a nonpublic sectarian school or religious institution" and charter schools must be "nonsectarian" in operation. 70 Okla. Stat. § 3-136(A)(2). As the Oklahoma Supreme Court held, a private entity like St. Isiodre thus cannot participate in Oklahoma's charter-school program based on its religious exercise. Pet. App. 27a.

Put simply, Oklahoma has "expressly discriminate[d] against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character." *Trinity Lutheran*, 582 U.S. at 462. And "[a] law that operates in that manner * * * must be subjected to the 'strictest scrutiny.'" *Carson*, 596 U.S. at 780 (citation omitted). Oklahoma "need not subsidize" charter schools, but once it "decides to do so, it cannot disqualify" some schools "solely because they are religious." *Id.* at 785 (citation omitted).

No compelling interest justifies that discrimination here. This Court has "repeatedly held that the Establishment Clause is not offended when religious observers and organizations benefit from neutral government programs." *Espinoza*, 591 U.S. at 474. And this Court has likewise confirmed that a State's "interest in separating church and state 'more fiercely' than the Federal Constitution * * * 'cannot qualify as compelling' in the face of the infringement of free exercise." *Id.* at 484-485 (citations omitted). Accordingly, this Court held that Montana's no-aid provision could not justify "bar[ring] religious schools from public benefits solely because of the religious character of the schools." *Id.* at 476. Likewise, this Court held that Maine's "nonsectarian" requirement "for its otherwise generally available tuition assistance payments violates the Free Exercise Clause" when used "to identify and exclude otherwise eligible schools on the basis of their religious exercise." *Carson*, 596 U.S. at 789. So too here. Neither the Oklahoma constitution nor any other provision of state law can justify the penalty the State imposed on St. Isidore's religious exercise.

B. The Free Exercise Clause Protects St. Isidore

The Oklahoma Supreme Court's contrary decision rested largely on its belief that charter schools like St. Isidore are not entitled to Free Exercise protection at all. That is incorrect.

Specifically, the Oklahoma Supreme Court believed that St. Isidore is a governmental entity that therefore necessarily lacks Free Exercise rights. Pet. App. 12a-17a, 24a-27a. But to assess whether, for federal constitutional purposes, a nominally private entity is in fact "Government itself," this Court has long underscored two structural considerations: government "creat[ion]" and government "control." *Lebron* v. *National Railroad Passenger Corp.*, 513 U.S. 374, 396-397 (1995). Here, St. Isidore is neither state-created nor state-controlled. Rather, it is a privately incorporated entity, operated by a private board, that applied to run an educational program that would supplement the options offered by the State's traditional public schools.

The Oklahoma Supreme Court also invoked this Court's state-action jurisprudence. Pet. App. 17a-18a. That body of caselaw is an awkward fit for the question presented here, which does not ask whether St. Isidore took a particular action that violated someone else's constitutional rights. Instead, the central question is whether St. Isidore itself wholly *lacks* constitutional protections that ordinarily protect private entities—specifically, Free Exercise protections—by virtue of its character as a government entity. As this case comes to the Court, however, the parties and the Oklahoma Supreme Court seem to have assumed that if St. Isidore satisfies any of the state-action tests articulated in this Court's precedents in any respect, Oklahoma could ex-

clude St. Isidore from its charter-school program consistent with the First Amendment. There is no need to definitively resolve whether that assumption was mistaken because the Oklahoma Supreme Court's state-action analysis was itself flawed: St. Isidore is neither "entwined with the State" nor performing "a traditionally exclusive public function." Pet. App. 18a.

1. St. Isidore is not part of the State itself

The Oklahoma Supreme Court held that the Free Exercise Clause is "not implicated" here because St. Isidore is a "governmental entity." Pet. App. 21a, 24a; see *id.* at 12a, 14a, 16a-17a, 20a-21a (labeling St. Isidore a "public institution[]," "governmental bod[y]," and "surrogate of the State"). St. Isidore, however, lacks the hallmarks that would qualify an entity as the "Government itself" for federal constitutional purposes even when the entity has a legal personality separate from the State. See *Lebron*, 513 U.S. at 378.

a. In analyzing whether a private corporation "must be regarded as a Government entity," this Court has long emphasized two structural considerations that apply to federal and state governments alike: government "creat[ion]" and government "control." *Lebron*, 513 U.S. at 383, 396-397.

For example, in *Bank of the United States* v. *Planters' Bank,* 22 U.S. (9 Wheat.) 904 (1824), the Court observed that "[t]he United States was not a party to suits brought by or against" the Bank of the United States "in the sense of the constitution." *Id.* at 908. Although "[t]he government of the Union" held "shares" in the bank, the Court explained that "the privileges of the government were not imparted by that circumstance to the bank," where the government neither "exercise[d]" any "power or privilege which is not derived from the

charter" nor controlled the operation of the bank through governmental appointees. *Ibid.*

By contrast, the Court had "no doubt" that a privately incorporated entity could be treated as the federal government itself in *Cherry Cotton Mills* v. *United States*, 327 U.S. 536, 539 (1946). Although "Congress chose to call [the Reconstruction Finance Corporation (RFC)] a corporation," this Court observed that RFC was "an agency selected by Government," whose directors were "appointed by the President and confirmed by the Senate." *Id.* at 540. Those features of control over the RFC's structure meant that a counterclaim for debts owed to the RFC in fact belonged to "the Government of the United States." *Id.* at 538.

The Court has long emphasized similar features in cases involving state governments, too. In *Arkansas* v. *Texas*, 346 U.S. 368 (1953), for example, the Court held that Arkansas could invoke the Court's original jurisdiction to assert the interests of the University of Arkansas because the university was a "state instrumentality." *Id.* at 370. The Court explained that the university had been "created by the Arkansas legislature," was "governed by a Board of Trustees appointed by the Governor with consent of the Senate," and "report[ed] all of its expenditures to the legislature." *Ibid.* And in *Pennsylvania* v. *Board of Directors of City Trusts*, 353 U.S. 230 (1957) (per curiam), this Court held that a private college in Pennsylvania was a governmental actor for constitutional purposes because it was operated and controlled by a board of state appointees, which was itself a state agency. *Id.* at 231.

This Court in *Lebron* then synthesized federal- and state-entity cases and distilled two critical considerations from prior decisions: "Government-created and

-controlled corporations" are, "for many purposes at least," "part of the Government." 513 U.S. at 396-397. *Lebron* applied those considerations to address whether Amtrak, though "nominally" a private corporation, is "part of the Government for purposes of the First Amendment." *Id.* at 383, 400. The Court answered yes, emphasizing that the federal government had "create[d]" Amtrak "by special law," "set forth its structure and powers," defined its "goals," and "outline[d] procedures under which Amtrak" would provide "rail passenger service." *Id.* at 384, 399-400. The Court further noted that the government had "retain[ed] for itself permanent authority to appoint a majority of the directors of that corporation." *Id.* at 400. Amtrak is thus "under the direction and control of federal governmental appointees." *Id.* at 398.

The Court has made clear that the *Lebron* considerations establish that Amtrak is a "governmental entity" for other constitutional purposes too, such as application of the private nondelegation doctrine. *Department of Transp.* v. *Association of Am. Railroads*, 575 U.S. 43, 46, 50, 55 (2015). The Court explained that Amtrak is a corporation "established and authorized by a detailed federal statute enacted by Congress"; "[t]he political branches created Amtrak, control its Board, define its mission, specify many of its day-to-day operations, have imposed substantial transparency and accountability mechanisms, and, for all practical purposes, set and supervise its annual budget." *Id.* at 46, 55.

In *Biden* v. *Nebraska*, 143 S. Ct. 2355 (2023), the Court likewise drew on *Lebron* in holding that the Missouri Higher Education Loan Authority (MOHELA), "a nonprofit government corporation" that Missouri established "to participate in the student loan market," is "an

instrumentality of Missouri" for purposes of Article III standing. *Id.* at 2365-2366. As in *Lebron*, the Court emphasized that MOHELA "was created by the State to further a public purpose, is governed by state officials and state appointees, reports to the State, and may be dissolved by the State." *Id.* at 2366.

b. Applying that framework, charter schools like St. Isidore that are neither "[g]overnment-created" nor "[g]overnment-controlled" are not part of the State for federal constitutional purposes. See *Lebron*, 513 U.S. at 396-397.

First, the State did not create St. Isidore. Rather, St. Isidore originated as a private non-profit corporation, conceived of and incorporated by the Archdiocese of Oklahoma City and the Diocese of Tulsa. Pet. App. 4a, 217a, 225a. That non-profit corporation applied to the Statewide Virtual Charter School Board to operate a charter school and, following the Board's approval, entered into a contract with the Board to begin academic operations. See *id.* at 110a-153a, 196a-197a. Unlike Amtrak and MOHELA, private entities independently initiated and founded St. Isidore.[3]

To be sure, Oklahoma law affords such private entities the opportunity to contract with the State to run a charter school. 70 Okla. Stat. §§ 3-134(B) and (C). But authorizing a private entity to contract with the State to provide

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[3] Respondent belatedly suggests (Br. in Opp. 1) that St. Isidore, the corporation, is distinct from St. Isidore, the school. But the school is simply the program that St. Isidore, the corporation, applied to run. Both St. Isidore's application and St. Isidore's contract with the Board make clear that the school does not have a distinct legal personality. See, *e.g.*, Pet. App. 111a (referring to the school itself as "a privately operated religious non-profit organization); *id.* at 200a-201a (contemplating that the corporation's "Certificate of Incorporation" would apply to the school).

certain services may make the private entity, upon entering the contract, a government contractor. Contracting with the State does not, however, automatically transform the private entity into a state instrumentality. "Acts of * * * private contractors do not become acts of the government by reason of their significant or even total engagement in performing public contracts." *Rendell-Baker* v. *Kohn*, 457 U.S. 830, 841 (1982). Oklahoma's charter-school program "is clearly an invitation for *private* entities to *contract*" with the State "to provide educational choices." Pet. App. 34a (Kuehn, J., dissenting). St. Isidore, like other private entities, simply chose to accept that invitation.

For similar reasons, the Oklahoma Supreme Court's observation that Oklahoma charter schools "may only operate under the authority granted to them by their charters" does not turn these schools into state-created actors for constitutional purposes. Pet. App. 16a-17a. All corporate entities "act under charters granted by a government," but corporations "do not thereby lose their essentially private character." *San Francisco Arts & Athletics, Inc.* v. *United States Olympic Comm.*, 483 U.S. 522, 543-544 (1987). Rather, it has long been the rule that "nothing can be inferred, which changes the character of the institution, or transfers to the government any new power over it," from the fact "that a charter of incorporation has been granted." *Trustees of Dartmouth Coll.* v. *Woodward*, 17 U.S. (4 Wheat.) 518, 638 (1819).

As to the second part of the governmental-actor test: St. Isidore is not "under the direction and control of [State] government appointees." *Lebron*, 513 U.S. at 398. Rather, the school is "manage[d] and direct[ed]" by its own private board of directors—none of whom are

public officials, chosen by public officials, or removable by public officials. Pet. App. 226a; see *id.* at 226a-231a. That distinguishes schools like St. Isidore from Amtrak, where six of Amtrak's nine board members are "appointed directly by the President of the United States." *Lebron*, 513 U.S. at 397. That feature also distinguishes MOHELA, whose "board consists of two state officials and five members appointed by the Governor and approved by the Senate." *Nebraska*, 143 S. Ct. at 2366.

Moreover, St. Isidore's charter confirms that its own private board of directors, not the State, is "responsible for the policies and operational decisions" of the school. Pet. App. 120a; see 70 Okla. Stat. § 3-136(A)(8). Indeed, charter schools are generally "exempt from all statutes and rules relating to schools, boards of education, and school districts." 70 Okla. Stat. § 3-136(A)(5). That is because charter schools are designed to "encourage * * * different and innovative teaching methods" and to "[p]rovide additional academic choices for parents and students" beyond those provided by traditional public schools. *Id.* § 3-131(A)(3) and (4). Private control of day-to-day operations enables and promotes that "diversity of educational choices." *Id.* § 3-134(I)(3).

c. The Oklahoma Supreme Court instead deemed St. Isidore to be part of the State largely based on the provision of Oklahoma's Charter Schools Act defining a "'charter school'" as "a public school established by contract" with a sponsor under the terms of the Act. Pet. App. 15a (quoting 70 Okla Stat. § 3-131(A)). That "legislative designation of public school," the court believed, made St. Isidore a "governmental entity." *Id.* at 17a.

But as this Court has explained, the "label" the government attaches to an entity does not control its status as a governmental actor for constitutional purposes.

Lebron, 513 U.S. at 392-393. This Court has frequently refused to credit Congress' characterizations of an entity's governmental status because the "Constitution constrains governmental action * * * under whatever congressional label." *Ibid.*; see *Association of Am. Railroads*, 575 U.S. at 50-51. Similarly, "state law labels" do not control whether someone is entitled to federal constitutional rights. *Board of Cnty. Comm'rs* v. *Umbehr*, 518 U.S. 668, 679 (1996). Rather, the relevant inquiry "focus[es] on substance." *McElrath* v. *Georgia*, 601 U.S. 87, 96 (2024). And as to that substance, St. Isidore lacks the structural hallmarks of a governmental entity.

That the Oklahoma Legislature referred to charter schools as "public schools," moreover, is unremarkable. Oklahoma charter schools *are* "public" in an important sense; they must be "as equally free and open to all students as traditional public schools," 70 Okla. Stat. § 3-135(A)(9), and they "may not charge tuition or fees," *id.* § 3-136(A)(10). But those requirements do not transform such schools into governmental entities; they simply define the terms on which the State is willing to fund the services that the private entity contracted to provide.

d. Respondent, for his part, maintains (Br. in Opp. 26-32) that this Court in *Carson* "outlined" particular "factors"—such as whether a school is free and open to all, whether the school is subject to the State's curricular requirements, whether teachers require state-certification, and whether the school must abide by school-board regulations—that determine whether a school is a "public school" and, therefore, a governmental entity. But *Carson* distinguished between private and public schools in service of rejecting Maine's argument that

the benefit program it had offered was limited to funding the "rough equivalent" of a "public school education." 596 U.S. at 782-783 (citation omitted). *Carson* did not suggest, let alone establish, a sui generis test for determining when schools are part of the government for constitutional purposes.

In any event, that discussion in *Carson* is, on the whole, unhelpful to respondent. To be sure, as already explained, charter schools do share some characteristics with traditional public schools: most fundamentally, charter schools are funded by the State and must accept all comers. But this Court has already rejected the proposition that near-total state funding converts a school into a state actor. *Rendell-Baker*, 457 U.S. at 840-841. That charter schools like St. Isidore receive their funding from the State, under a contract with the State, does not make them "fundamentally different from many private corporations whose business depends primarily on [government] contracts." *Ibid.* State funding, moreover, only flows to St. Isidore if and when Oklahoma families independently choose St. Isidore as the educational home for their children, Pet. App. 157a—analogous to other Oklahoma programs that enable public funds to flow to private schools as a result of private choices, like scholarship and voucher programs. See p. 5, *supra*. Likewise, the requirement that a charter school be open to all is simply a condition of the contractual bargain between the State and the private entity—it does not turn the school into an arm of the government. See pp. 23-25, *supra*.

In other important ways, Oklahoma charter schools more closely resemble the *private* school archetype that *Carson* described. Charter-school curricula "need not

even resemble that taught in * * * public schools." *Carson*, 596 U.S. 683. Instead, a charter school can design its own curriculum to "emphasize[] a specific learning philosophy or style." 70 Okla. Stat. § 3-136(A)(3). As to staffing, Oklahoma charter schools "need not hire state-certified teachers." *Carson*, 596 U.S. at 784. St. Isidore's teachers are not required to have "a valid Oklahoma teaching certificate." Okla. Dep't of Educ., *Oklahoma Charter Schools Program* (Apr. 25, 2022), perma.cc/4T8X-MEJH. And as a default rule, charter schools are generally "exempt from all statutes and rules relating to schools, boards of education, and school districts." 70 Okla. Stat. § 3-136(A)(5).

Respondent emphasizes (Br. in Opp. 27-28) that certain Oklahoma regulations applicable to public schools and other public entities—including regulations relating to health and safety, the number of instructional days, Oklahoma's open meetings and records requirements, and tort immunity—do apply to charter schools. But even "extensive regulation" of a private entity's operations "does not make [that entity] a state actor," *Manhattan Cmty. Access Corp.* v. *Halleck*, 587 U.S. 802, 815 (2019)—let alone a governmental body.

Moreover, many private entities that contract with Oklahoma to receive public funds are subject to similar state regulation. The same open meetings and records laws apply to other entities that are "supported in whole or in part by public funds or entrusted with the expenditure of public funds or administering or operating public property." 51 Okla. Stat. §§ 24A.3, 24-304. Likewise, Oklahoma's Government Tort Claims Act also protects other private entities, in addition to charter schools, that

perform services for the State. 51 Okla. Stat. §§ 152.2(3), 152.3(3), 152(11)(*o*), 152(11)(q), 152(11)(t).[4]

2. St. Isidore's conduct is not generally attributable to the State

The Oklahoma Supreme Court further held (Pet. App. 17a) that even if St. Isidore is not a governmental entity, at least some of St. Isidore's conduct is nonetheless attributable to the State under this Court's "state actor tests." Pet. App. 17a-21a. From there, the court seemingly concluded that St. Isidore necessarily lacks Free Exercise rights across the board. *Id.* at 24a-27a.

That reasoning lacks an obvious doctrinal basis. "In the typical case raising a state-action issue, a private party has taken the decisive step that caused the harm to the plaintiff, and the question is whether the State was sufficiently involved to treat that decisive conduct as state action." *NCAA* v. *Tarkanian*, 488 U.S. 179, 192 (1988); cf., *e.g.*, *Blum* v. *Yaretsky*, 457 U.S. 991, 1003 (1982) (assessing whether nursing homes engaged in state action in discharging Medicaid patients). The state-action inquiry is necessary in that context because the Constitution only "constrains governmental actors." *Halleck*, 587 U.S. at 804. Whether a plaintiff can make out a constitutional violation based on the conduct of a private defendant thus depends on whether the harm-causing conduct is "fairly attributable to the State." *Lugar* v. *Edmondson Oil Co.*, 457 U.S. 922, 937 (1982).

Here, however, no one has pinpointed any specific action St. Isidore took that allegedly violated *someone*

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[4] Such protections are not unique to Oklahoma. See, *e.g.*, Tex. Transp. Code §§ 452.061(c), 452.056(d) (2024); Fla. Stat. Ann. § 768.28(9)(a) (2025); Wis. Stat. § 893.80(4) (Supp. 2024); N.J. Stat. Ann. § 59:3-15 (2024).

else's constitutional rights. Instead, the key question is whether St. Isidore's connections with the State stripped *St. Isidore* of its entitlement to the protections of the Free Exercise Clause. The state-action framework does not readily translate to that distinct question. Because no plaintiff has challenged any particular action by St. Isidore, it is unclear which "decisive conduct," *NCAA*, 488 U.S. at 192, should supply the focal point for the state-action inquiry. Also unclear: If some of St. Isidore's intended conduct qualified as state action and some not, would St. Isidore lose its Free Exercise rights across the board? Cf. *Kennedy* v. *Bremerton School District*, 597 U.S. 507, 531-532 (2022) (affirming that a public-school employee retains free exercise rights when engaging in private conduct). Here, that question is particularly salient because St. Isidore has argued that, at a minimum, "the State is not responsible for the specific acts [r]espondent has challenged—St. Isidore's religious character and its choice to educate in the 'Catholic intellectual tradition.'" St. Isidore Br. 38 (citation omitted).

As this case comes to the Court, however, the parties—and the Oklahoma Supreme Court—have seemingly assumed that if St. Isidore satisfies any of the state-action tests articulated in this Court's precedents in *any* respect, St. Isidore loses its Free Exercise rights across the board and Oklahoma can exclude it from the charter-school program based on religious exercise. There is no need to definitively resolve whether that doctrinal maneuver is sound because the Oklahoma Supreme Court's state-action analysis fails on its own terms.

Specifically, the Oklahoma Supreme Court relied on two different strands of this Court's state-action doctrine, concluding that St. Isidore "is a state actor" because it is "entwined with the State" and because it would be performing "a traditionally exclusive public function." Pet. App. 18a. Both conclusions lack merit.

As to entwinement, the Oklahoma Supreme Court believed that "Oklahoma charter schools are entwined with the State" because "Governmental entities serve as sponsors for the charter schools," and those sponsors "provide oversight," "monitor [the school's] performance and legal compliance," and "decide whether to renew or revoke [the school's] charter." Pet. App. 18a. But the State's general oversight of charter schools, vis-à-vis the Board or other government sponsors, does not "entwine" the schools with the State. That high-level government supervision—ensuring that a school complies with applicable laws, monitoring adherence to the charter, and deciding whether to renew the school's contract after a set term—typifies many government contracting relationships, to ensure proper stewardship of public funds. Such oversight does not turn a contractor into a state actor—particularly here, when the school's day-to-day operations, curriculum, and policies are determined by private decisionmakers that the State has no authority to appoint or remove. See pp. 7-8, 24-25, *supra*.

The State's oversight of St. Isidore also starkly contrasts with the facts of *Brentwood Academy* v. *Tennessee Secondary School Athletic Association*, 531 U.S. 288 (2001), the only entwinement case the Oklahoma Supreme Court invoked, see Pet. App. 17a-18a. In *Brentwood*, this Court concluded that a statewide interscho-

lastic athletic association was a state actor when it attempted to enforce a particular rule. But there, more than 80% of the association's members were themselves public schools. *Brentwood*, 531 U.S. at 298. The association's controlling board was selected by that membership and was, at the relevant time, composed entirely of public-school employees. *Id.* at 298-299. And the State Board of Education had previously designated the association as the official regulator of interscholastic athletics and had in fact approved the specific rule at issue. *Id.* at 300-301. In other words, public entities largely constituted the association, selected those who controlled the association, and even authorized the specific action the plaintiff had challenged. None of that is true of St. Isidore.

As to St. Isidore's performance of an "exclusive public function," the Oklahoma Supreme Court believed that a charter school is tasked with "operating the State's free public schools" and that such task is an "exclusive government function." Pet. App. 18a, 21a. True, the Oklahoma Constitution directs the legislature to create a system of public schools, open to all children in the State. Okla. Const. Art. 1, § 5. But the legislature has not "delegated," *West* v. *Atkins*, 487 U.S. 42, 56 (1988), or "outsourced," *Halleck*, 587 U.S. at 810 n.1, that obligation to charter schools. Rather, the legislature long ago fulfilled that mandate by establishing a comprehensive system of traditional public schools. Those schools are operated by local school districts, the teachers must follow a district-mandated, nonsectarian curriculum, and any child in Oklahoma can attend one of those schools. 70 Okla. Stat. §§ 1-105, 1-108, 1-114, 11-103.6v2. Charter schools (established by Oklahoma

in 1999) supplement, rather than supplant, those traditional public schools—and only if a family decides that an alternative educational model is the right choice for their child. See Pet. App. 54a.

And, as the Oklahoma Supreme Court did not dispute, Pet. App. 18a, education more broadly is not traditionally an exclusive public function. Indeed, this Court held the opposite in *Rendell-Baker*. There, this Court considered a privately owned school that "specialize[d] in dealing with students who have experienced difficulty completing high school[]" and that received "nearly all" of its students via referrals from public entities, which paid to educate the students they referred. 457 U.S. at 832. The Court recognized that "education of maladjusted high school students is a public function" and that Massachusetts laws made clear "that the State intends to provide services for such students at public expense." *Id.* at 842. Nonetheless, the Court determined that such educational services are not the "exclusive province of the State." *Ibid.*

The same logic obtains here. "[E]ducation is not and never has been a function reserved to the state." *Logiodice* v. *Trustees of Maine Cent. Instit.*, 296 F.3d 22, 26 (1st Cir. 2002) (Boudin, C.J.). To the contrary, private entities have educated the Nation's children since the Founding. See *Rendell-Baker*, 457 U.S. at 842; *Pierce* v. *Society of the Sisters*, 268 U.S. 510, 534-536 (1925). And many of those schools received state aid—including, for example, Collegiate School in New York, which dates to at least 1638; Phillips Academy in

Massachusetts, founded in 1778; and Cheshire Academy in Connecticut, which opened its doors in 1794.[5]

In Oklahoma, too, private entities have long operated schools, aided by government funds. As petitioner St. Isidore has explained, religious organizations operated private schools (called "mission schools") even before Oklahoma joined the Union, with funding sourced in part from the federal government. See St. Isidore Pet. Br. 42; Former Okla. Att'ys General Amicus Br. 7. The role of educating schoolchildren in Oklahoma—and doing so with the benefit of government aid—has never belonged exclusively to the State. Charter schools, though a more modern innovation, follow in that enduring tradition.[6]

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"By choice," Oklahoma—like many other States—has "created a new type of educational entity": "the charter school." Pet. App. 35a (Kuehn, J., dissenting).

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[5] See Porter E. Sargent, *A Handbook of American Private Schools* 163, 434, 467 (6th ed. 1920); Richard J. Gabel, *Public Funds for Church and Private Schools* 186, 201 (1937); Henry W. Dunshee, *History of the School of the Collegiate Reformed Dutch Church, from 1633 to 1883*, at 70 (1883); Resolve of Feb. 27, 1797, ch. 45, reprinted in [1796-97] *Acts and Laws of the Commonwealth of Massachusetts* 309-310 (1896); St. Isidore Br. 41-42.

[6] Although charter schools like St. Isidore are not governmental entities or generally engaged in state action for federal constitutional purposes, various provisions of federal law by their terms apply to charter schools (like private schools), including Title III of the Americans with Disabilities Act, 42 U.S.C. 12181(7)(J), 12182, and—depending on whether and to what extent the school receives government funds—Titles IV and VI of the Civil Rights Act, 42 U.S.C. 2000c, 2000c-6, 2000c-8, 2000d, Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.

The core thesis of a charter-school program is to allow "private entities" to offer "additional" and "innovative" educational options beyond the State's traditional public schools, 70 Okla. Stat. §§ 3-131(A); 3-134(C), "freer from state control," *Peltier* v. *Charter Day School, Inc.*, 37 F.4th 104, 155 (4th Cir. 2022) (en banc) (Wilkinson, J., dissenting), cert. denied, 143 S. Ct. 2657 (2023). States need not offer private entities the opportunity to open and operate these publicly funded "educational alternative[s]." Press Release, President George W. Bush, The White House, National Charter Schools Week (Apr. 27, 2007). But when States choose to do so, they cannot say religious entities need not apply.

CONCLUSION

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

Respectfully submitted.

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MARCH 2025