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,
Respondent.

ST. ISIDORE OF SEVILLE CATHOLIC VIRTUAL SCHOOL,
Petitioner,
v.
GENTNER DRUMMOND, ATTORNEY GENERAL OF OKLAHOMA, EX REL. OKLAHOMA,
Respondent.

On Writs of Certiorari to the Supreme Court of Oklahoma

BRIEF OF COLORADO AND 17 STATES AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

PHILIP J. WEISER
Attorney General

SHANNON STEVENSON
Solicitor General
Counsel of Record

Office of the Colorado
Attorney General
1300 Broadway, 10th Floor
Denver, Colorado 80203
Shannon.Stevenson@coag.gov
(720) 508-6000

RUSSELL D. JOHNSON
Deputy Solicitor General

JOE PETERS
Senior Assistant Attorney General

ABBY CHESTNUT
Assistant Solicitor General

DAYNA ZOLLE HAUSER
Assistant Solicitor General

Counsel for the State of Colorado

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INTEREST OF AMICI

Amici are the State of Colorado, 16 other States—Arizona, California, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, and Washington—and the District of Columbia, all of whom (like Oklahoma) have statutes requiring charter schools to be nonsectarian. *See, e.g.*, Okla. Stat. tit. 70, § 3-136(A)(2) ("A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations."); Colo. Rev. Stat. § 22-30.5-104(1) ("A charter school shall be a public, nonsectarian, nonreligious, non-home-based school which operates within a public school district.").

In all, *forty-four* States and the District of Columbia have enacted such laws as part of their charter schools acts, *see* App., while two more States impose the same nonsectarian requirement on charter schools through their general school laws, *see* Haw. Rev. Stat. § 302D-1; Tex. Const. art. I, § 7.[1] The Federal government, too, expressly requires charter schools to be nonsectarian. 20 U.S.C. § 7221i(2)(E). These laws exist not because every State and a full generation of Congresses[2] were hostile to religion but because charter schools are bound by the First Amendment—and

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1 Four States do not have charter schools. No State—not one—permits sectarian charter schools.

2 Congress adopted its law in 1994 and has reaffirmed it three times since. *See* Improving America's Schools Act of 1994, Pub. L. No. 103-382, sec. 101, § 10306, 108 Stat. 3518, 3829–30 (enacting Charter Schools Program and defining charter schools as

granting charters to create religious schools would violate the Establishment Clause.

Amici have an interest in enforcing the laws duly enacted by their elected representatives. *See Maine v. Taylor*, 477 U.S. 131, 137 (1986) ("[A] State clearly has a legitimate interest in the continued enforceability of its own statutes."). Amici thus have an interest in preserving charter schools as public, governmental entities that bring citizens into the governance of their public schools.

In addition, Amici are concerned about the potentially massive disruption from holding that charter schools are private institutions. Because many States have tight constitutional restrictions that prevent public funding of private schools, and because bond markets have invested tens of billions of dollars in reliance on charter schools' public status, such a holding could destroy the country's extensive and popular charter school systems.

SUMMARY OF THE ARGUMENT

Charter schools are not private entities that agree to provide education on the State's behalf. They are public schools, in which the State has placed control over day-to-day operations in school-level boards to empower the schools' parents and teachers.

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public, nonsectarian schools); Charter School Expansion Act of 1998, Pub. L. 105-278, sec. 3, § 10306, 112 Stat. 2682, 2687 (expanding program without amending definition); No Child Left Behind Act of 2001, Pub. L. No. 107-110, sec. 501, § 5210, 115 Stat. 1425, 1798–99 (2002) (readopting definition); Every Student Succeeds Act, Pub. L. No. 114-95, sec. 4301, §§ 4301–4305, 129 Stat. 1802, 1993–2013 (2015) (readopting program without amending definition).

The model is widely used. Nationwide, more than 3.5 million students attend charter schools.[3] In at least nine States, charter schools enroll more than one in ten students. And in many cities, charter enrollment is higher yet: over 30% of students in Kansas City, MO, Gary, IN, and Cleveland, OH; over 40% of students in Detroit and Flint, MI, and Washington, DC; and (remarkably) over 90% of students in New Orleans, LA. The model's prevalence illustrates the desire for citizen-led public schools, as embodied in the declarations of statutes like Illinois's: "There are educators, community members, and parents in Illinois who can offer flexible and innovative educational techniques and programs" and who deserve "an avenue through which to provide them within the public school system." 105 Ill. Comp. Stat. 5/27A-2(a)(2).

St. Isidore frames this case as if it had applied for public aid—that is, as if it were a private entity, seeking a subsidy or other benefit offered to the public at large. But that's simply not so: charter schools are not a type of subsidy, outsourcing, or public-private partnership. They are public schools in which citizens participate directly in running the school. They exist only when the State approves a request by parents, teachers, and other school-level stakeholders to form and operate their own public school; their boards, governance structures, and educational programs must be approved by the State; and their assets ultimately belong to the State. And while States usually require these schools to operate through a corporate form,

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[3] U.S. Dep't of Educ., Nat'l Center for Educ. Statistics, https://nces.ed.gov/fastfacts/display.asp?id=30 (last visited Apr. 3, 2025).

they do so simply because a corporate form empowers the local stakeholders' operational control. A charter school is thus like an appointed board or commission or any other public entity in which citizens themselves engage in governing. And like any public entity, they are bound by the Establishment Clause.

Contrary to Petitioners' suggestion, St. Isidore is a putative governmental entity—formed under a statute authorizing citizens to propose a charter school, to open if (and only if) they receive the State's approval to operate. As a result, whatever the First Amendment might require when State-sponsored education has been outsourced to a private entity is irrelevant. The question instead is whether States may create public schools as participatory institutions—that is, governmental entities in which citizens engage directly in governing—without those schools thereby becoming private actors. And given the respect this Court owes both to federalism and to the States' longstanding responsibility for education, the answer is "yes."

ARGUMENT

I. Charter schools are public, governmental entities.

In looking to this Court's state-action cases, Petitioners continue a framing error begun in the briefing below. The nuanced doctrine governing when private entities will be treated as state actors is not relevant because the proposed school is not a private entity. *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 378 (1995) (finding it "unnecessary" to address state-action doctrine where entity "is not a private entity but Government itself"). When an entity is created and

controlled under the State's authority, with its mission, operations, and even budget determined by legislative processes, it is part of the government for constitutional purposes. *See Dep't of Transp. v. Ass'n of Am. R.Rs.*, 575 U.S. 43, 50–55 (2015). Applying this analysis here, a charter school is simply a public school—and like any other public school, it is an arm of the State.

A. The core aspects of charter schools confirm their public nature.

Petitioners assume that charter schools are private because, in most States, they are incorporated as nonprofit entities. Charter Board Br., pp. 33–34; St. Isidore Br., p. 40. But that elevates form over substance, letting the legislative label control the constitutional analysis. The reality is precisely the opposite: the essential aspects of charter schools—*including* separate incorporation—confirm their governmental nature. *Cf. Dep't of Transp.*, 575 U.S. at 50–55 (rejecting legislative label based on constitutional substance).

To begin with, charter schools are created and operated under State authority, through an authorizing statute. *See id.* at 51 ("It is appropriate to begin the analysis with [the entity's] ownership and corporate structure."). Colorado's statute is illustrative: under it, parents, teachers, and other community members can come to their school district with a proposal for a public school. Colo. Rev. Stat. §§ 22-30.5-102(3) & -106(3). Doing so requires a comprehensive application, a public hearing at which the school district's community can be heard, and a public vote by the elected school

board. Colo. Rev. Stat. §§ 22-30.5-106 & -107. If approved, the proposed school's organizers adopt a corporate form and execute a charter contract detailing their obligations. Colo. Rev. Stat. §§ 22-30.5-104(4)(a) & -105. The State maintains ownership despite the use of a municipal corporation: the school has no shareholders, Colo. Rev. Stat. § 7-123-102(2), and its assets revert directly to the government when it closes, Colo. Rev. Stat. §§ 22-30.5-118(10), -119(4), -404(6), -405(4) & -513(6)(b).[4] Similarly, a charter school's employees are public employees. *See* Colo. Rev. Stat. §§ 22-30.5-111(3) & -512. Their teachers even take the same loyalty oath as any other public school teacher. *See* Colo. Rev. Stat. § 22-61-103. As Colorado's statute expressly explains, the separate incorporation does not change its status as a public entity for any such purpose. Colo. Rev. Stat. §§ 22-30.5-104(4)(a) & -104.9. Other State's laws, including Oklahoma's, are materially the same on nearly every point.

States also control the board and management of charter schools. In Colorado, for example, charter school board members take the same oath of office taken by every elected and appointed public official in

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[4] Or sooner. The New Mexico legislature once swept charter schools' bank accounts to help balance the State budget. *See* New Mexico Political Report, *Martinez signs budget-balancing measures* (Jan. 31, 2017), https://nmpoliticalreport.com/2017/01/31/martinez-signs-budget-balancing-measures/. The rule that charter schools' assets revert to the State (or authorizing school district) appears in nearly every charter schools act in the country. *E.g.*, Me. Stat. tit. 20-A, § 2411(8)(B); Mich. Comp. Laws § 380.507(9); Minn. Stat. § 124E.25, subd. 1a(c); N.Y. Educ. Law § 2851(2)(t).

the State. Colo. Rev. Stat. § 22-30.5-104.9(4); *cf. Dep't of Transp.*, 575 U.S. at 57–58 (noting the importance of oaths of office) (Alito, J., concurring). To be sure, since the central purpose of charter schools is to empower local stakeholders, Colo. Rev. Stat. § 22-30.5-102, the State does not appoint individuals to their governing boards. Yet the State does pre-approve each individual applicant's plans for its board and for the management that board will oversee. Colo. Rev. Stat. § 22-30.5-106(1)(h). And even then, in appropriate cases the Commissioner of Education can remove or replace the board members—or even reform the school's articles of incorporation and bylaws, reconstituting the very structure of the board. Colo. Rev. Stat. § 22-30.5-703(8)(b). In fact, the Commissioner can assume the powers of the board, vest those powers in an independent fiduciary, and rescind or reform the school's contracts. Colo. Rev. Stat. §§ 22-30.5-703 & -704. Again, Oklahoma's and other State's statutes are materially identical on most of these points. A charter school nominally appoints its own board, as needed for the school community to control the school's affairs. But that board's membership and conduct are thoroughly governed by the State.

Finally, the governmental authority of charter schools—and the thorough public regulation of that authority—also confirm their public nature. *See Dep't of Transp.*, 575 U.S. at 50–55 (noting that "the political branches exercise substantial, statutorily mandated supervision over [entity's] priorities and operations"). Charter schools exercise the delegated power of their authorizing public entity to issue public-school diplomas, to regulate student conduct, and even to suspend and expel students—all with the

same legal consequences as when done by traditional public schools. *See* Colo. Rev. Stat. §§ 22-30.5-104(8) & -106(1)(p); *cf. Goss v. Lopez*, 419 U.S. 565 (1975) (recognizing such matters as the exercise of state power). Unsurprisingly, then, charter schools are subject to the same legal constraints in doing so as any school district. Colo. Rev. Stat. §§ 22-30.5-110(3)(d) & -112(7); *cf. Carson v. Makin*, 596 U.S. 767, 782–85 (2022) (distinguishing private schools for lacking these features). They must be open to all students on the same terms as any other public school, Colo. Rev. Stat. § 22-30.5-104(3); they cannot charge tuition, Colo. Rev. Stat. § 22-30.5-104(5) ; they must honor the same instructional mandates and assessments, Colo. Rev. Stat. §§ 22-7-1003(9), 22-11-103(1) & (28); and unless they receive a waiver, they must hire State-licensed teachers subject to the State's system of tenure-like job protections, *see* Colo. Rev. Stat. § 22-30.5-104(6)(b)(III). Once more, these features are not unique to Colorado—each point here is true in most or all States' laws, including Oklahoma's.

To be sure, charter schools receive waivers from some of Colorado's usual school regulations. Colo. Rev. Stat. § 22-30.5-104(6). But so do school districts and traditional public schools. *See* Colo. Rev. Stat. § 22-2-117 (creating broad authority to waive state education laws and regulations). As a result, these waivers do not distinguish charter schools from traditional public schools—they are, rather, one more way in which

charters are *just like* other public schools.[5] Charter schools are also schools of choice, open to students mostly without regard to residence, Colo. Rev. Stat. § 22-30.5-104(3)—but again, in Colorado (as in many States), so too are traditional public schools, Colo. Rev. Stat. § 22-36-101. And charter schools are just like other public schools in at least one other way as well: like school districts, they can *never* waive out of the fundamental rules of the public sector—like open-records and open-meetings laws, limited sovereign immunity, and public employees' retirement systems. Colo. Rev. Stat. §§ 22-30.5-104.9(2) & -111(3); § 24-10-106.3. All this is true in Oklahoma, too.

The foregoing features all follow logically from the core premise of Colorado's charter schools act: "A charter school shall be a public school of the school district[.]" Colo. Rev. Stat. § 22-30.5-104(2)(b). Its board members and staff are thus public servants—just like in any other public school. Colo. Rev. Stat. § 22-30.5-104.9(2)(b). And Colorado's charter schools act is not unique. Most States' acts, including Oklahoma's, share nearly all these features. Unsurprisingly, then,

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[5] Petitioners make much of the waivers and exemptions that charter schools receive, arguing that it makes them non-governmental. Charter Board Br., pp. 42–43; St. Isidore Br., p. 35. But just like Colorado, Oklahoma makes substantially the same waivers available to traditional public schools. *See* Educational Deregulation Act, Okla. Stat. tit. 70, §§ 3-124 to 3-129.11 (2011). Most States have such laws for their traditional public schools. *E.g.*, Cal. Educ. Code §§ 33050–33054; 105 Ill. Comp. Stat. 5/2-3.25g; Me. Stat. tit. 20-A, § 8. These waivers may be easier to come by for charter schools but are not otherwise a material distinction.

each State's statute also establishes charter schools as public schools—in substance, not mere label.

B. Charter schools' incorporation and charter contracts confirm their public status.

Despite the clear public nature of charter schools, Petitioners point to their incorporation and their charter contracts to claim that charter schools are simply private entities that contract with the State for funding. Charter Board Br., pp. 35–37; St. Isidore Br., pp. 1, 3. This framing misunderstands the legal framework twice over.

Begin with the separate incorporation. Colorado's statute is again illustrative: like every State, Colorado gives school-level actors control over a charter school's day-to-day operations; that's the whole point of a charter school. *See* Colo. Rev. Stat. § 22-30.5-104(7)(a) ("A charter school shall be responsible for its own operation including, but not limited to, preparation of a budget, contracting for services, facilities, and personnel matters."). To exercise that control, a charter school must sign its own contracts—hiring employees, purchasing property, and so on—which in turn requires separate legal personhood. *Cf. First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 625 (1983) ("Separate legal personality has been described as an almost indispensable aspect of the [governmental] corporation." (quotation omitted)); *Lebron*, 513 U.S. at 386–91 (tracing "the allure of the corporate form" in public entities). Indeed, Colorado overlooked this step at first—which led to confusion over a charter board's legal status, *Acad. of Charter Sch. v. Adams Cnty. Sch. Dist. No. 12*, 32 P.3d 456, 459

n.2, 469–70 (Colo. 2001), and a quick statutory amendment allowing charter boards to incorporate, 1997 Colo. Sess. Laws 400. In giving charter schools legal personhood, however, Colorado made explicit that it did *not* create private entities:

> [E]ach charter school that was initially chartered on or after August 6, 1997, shall organize as a nonprofit corporation pursuant to the "Colorado Nonprofit Corporation Act" . . . which shall not affect its status as a public school for any purposes under Colorado law.

Colo. Rev. Stat. § 22-30.5-104(4)(a). Instead, it simply borrowed the nonprofit statutes' governance rules as a default system for charter schools to follow. *See* Colo. Rev. Stat. § 22-30.5-104.9(5) (explaining default structure). The same purpose underlies Oklahoma's requirement for separate incorporation.

The lesson is exactly the same for charter contracts. In most States, they are not common-law contracts at all, in the sense of a legally enforceable exchange of consideration. *See Contract*, Black's Law Dictionary (12th ed. 2024) (defining "contract"). They are instead a *charter*—a legal instrument reflecting the sovereign's grant of permission to operate in its name. *See id.* at *Charter* (defining "charter" as an "instrument that establishes a body politic or other organization, or that grants rights, liberties, or powers to its citizens or members"); *see also* Colo. Rev. Stat. § 22-30.5-110(1)(a) ("When a local board of education approves a new charter application, the charter is authorized for a period of at least four years. The local board of education and the charter school may renew the charter for successive periods as provided in this

section."). A charter school program is thus not an offer of funding to private entities who wish to provide education on the State's behalf. In fact, in many states—like Oklahoma—private schools are *prohibited* from applying to become charter schools. *E.g.*, Colo. Rev. Stat. § 22-30.5-106(2); Okla. Stat. tit. 70, § 3-134(C). A charter contract is, instead, a delegation of sovereign authority to those who wish to govern one of the State's own schools.

To be sure, the grant of authority is reflected in a negotiated instrument, known as a "charter contract." *E.g.*, Colo. Rev. Stat. § 22-30.5-105(1)(a) ("An approved charter application shall serve as the basis for a contract between a charter school and the chartering local board of education."). But that's only because the school district or other authorizing entity must hold the charter school accountable for meeting its stated goals. *See* Colo. Rev. Stat. § 22-30.5-110(3)(b) (allowing district to revoke charter if school fails "to meet or make adequate progress toward" goals). The charter contract is, in other words, the written instrument reflecting the terms of the State's grant of authority to operate in its name.

Indeed, a charter contract lacks the hallmarks of a regular contract. In Colorado, for example, the State Board of Education can compel a school district to negotiate a charter contract against its will, *Bd. of Educ. of Sch. Dist. No. 1 v. Booth*, 984 P.2d 639, 650–54 (Colo. 1999), violating the voluntariness essential to common-law contracts. Further, Colorado's charter contracts generally cannot be sued upon and are instead enforced only through the State Board of Education's power to supervise the public school system.

Acad. of Charter Sch., 32 P.3d at 462–63, 468–69. And there is no such thing as either damages or specific performance: following a dispute, the State Board of Education can direct that the school open or remain open (for disputes over granting or revoking a charter), or it can review a mediator's report (for disputes over construing a charter). Colo. Rev. Stat. §§ 22-30.5-107.5(4) & -108(3)(d). The only further remedy is mandamus. *See* Colo. R. Civ. P. 106(a)(2). These are the remedies of a sovereign charter, not a common-law contract.[6]

A charter school's separate incorporation and charter contract thus confirm its *public* status. These features exist under a special statute authorizing public schools to be organized in such a manner, and they serve the shared purpose of empowering a school's stakeholders to manage the affairs of that school. Neither feature changes the fact that charter schools, like any public school, are thoroughly infused with State

[6] It is this State grant of authority through the charter contract that prompts Establishment Clause concerns. If a State were to grant a charter contract to a religious charter school, the State itself would be empowering a religious entity to operate in the State's name, and the State would retain ultimate control over the charter school's existence and performance. This it cannot do. *See Everson v. Bd of Educ. of Ewing*, 330 U.S. 1, 15–16 (1947) ("The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.").

control.[7] That's because they are unmistakably *governmental* entities.

C. Petitioners and their amici mischaracterize the history of charter schools.

Petitioners pick up the story of charter schools in the 1980s and 1990s, as if the idea began there. *See Charter Board Br.*, pp. 8–9. In doing so, they overlook the idea's origins in the civil rights movement—and they mistake as privatization a model many viewed as a tool for community empowerment.

Charter schools first arose from the frustration that some communities felt with large school systems and elected school boards. *See generally* Ansley T. Erickson and Ernest Morrell (eds.), *Educating Harlem: A Century of Schooling and Resistance in a Black Community* 276–97 (2018) (tracing ties between charter schools and "community control" movement); Derrick Bell, *Silent Covenants:* Brown v. Board of Education *and the Unfulfilled Hopes for Racial Reform* 170–74 (2004) (endorsing charters). As the great civil rights leader Kenneth Clark argued, after the disheartening early years of desegregation, elected school

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[7] Indeed, the level of State control goes far beyond what any truly private entity would tolerate. No private school—and especially no church, synagogue, or mosque private school—would agree to the State takeover of its management, personnel, funds, property, contracts, and ownership in the event the State disapproves of its conduct. *Cf. Carson*, 596 U.S. at 787 (citing *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 759–62 (2020); *Larson v. Valente*, 456 U.S. 228, 244 (1982), and decrying invasive scrutiny of religious schools). Nor could the government exercise these responsibilities without intimately involving itself in the religious affairs of the schools to a degree that should give schools, religious communities, and governments alike pause.

systems were often "captives" of the dominant political class. Kenneth B. Clark, *Alternative Public School Systems*, 38 HARV. EDUC. REV. 100, 101–03 (1968). While Clark did not give up on reforming school districts, he became the first to urge a new model: school choice featuring "alternative public school systems" outside the usual district structure. *Id.* at 111–13.

Clark's proposal interested many who sought to expand the role of parents and teachers in the affairs of their own schools. *See* Ember Reichgott Junge, *Zero Chance of Passage: The Pioneering Charter School Story* 42–43 (2012) (noting Clark's influence). For these advocates, the alternatives Clark sought could be created by vesting the day-to-day control of individual public schools in each school's own parents and teachers. *See, e.g.*, Ray Budde, *Education by Charter: Restructuring School Districts* 6, 9–10, 39–45 (1974/1988) ("Changing the internal organization of the school district would involve making substantial changes in the roles of teachers, principals, the superintendent, the school board, parents, and others in the community."); Albert Shanker, President, Am. Fed'n of Teachers, National Press Club Speech (Mar. 31, 1988) ("It would be a way for parents and teachers to cooperate with each other, to build a new structure."). Each school's self-governance would be reflected in a written charter held by a council of the school's community members—and so the model became known as "charter schools."

Petitioners correctly cite Professors Chubb and Moe as advocates for charter schools to be schools of choice, reiterating the arguments made earlier by Clark, Junge, Budde, and Shanker. *See* Charter Board

Br., p. 8 (citing John E. Chubb & Terry M. Moe, *America's Public Schools: Choice Is a Panacea*, Brookings Rev., Summer 1990, at 4). But in doing so, Petitioners cherry-pick from Chubb's and Moe's argument—overlooking the central premise that charter schools would not be *private* schools but would instead be a new approach to democratic accountability:

> This proposal calls for fundamental changes in the structure of American public education. Stereotypes aside, however, these changes have nothing to do with "privatizing" the nation's schools. The choice system we outline would be a truly public system—and a democratic one.

Chubb & Moe, at 12. Like their predecessors, Chubb and Moe saw the charter model as a means to facilitate the responsiveness of a public school to its own students, parents, and teachers.

Adopting this model, Minnesota passed the first charter schools act in 1991. The law allowed teachers to "form and operate a school" under the authority of a sponsoring school district. 1991 Minn. Laws 1124. The teachers would negotiate "the terms and conditions" for doing so with their sponsor, and the school would have a "board of directors" elected by the "staff members employed at the school" and the "parents of children enrolled in the school." *Id.* Once a sponsoring school district delegated control to the individual school's own board, that board would retain control for as long as it met its academic goals and complied with its fiscal and legal obligations. *Id.* at 1128.

Within two years, California and Colorado followed suit, with both States recognizing the roles of

parents and teachers in guiding their individual public schools. *See* 1992 Cal. Stat. 3756, (declaring intent "to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently"); 1993 Colo. Sess. Laws 1051 (declaring that "educators and parents have a right and a responsibility to participate in the education institutions which serve [their students]").

Within five years, half the States had done the same—and today, all but four States have adopted a charter schools act. *See* Alyssa Rafa et al., Educ. Comm'n of the States, *50-State Comparison: Charter School Policies*, https://www.ecs.org/charter-school-policies/ (last visited Apr. 3, 2025). Almost without fail, each State emphasizes the need to expand the role of parents and teachers in running their own public schools. *E.g.*, 105 Ill. Comp. Stat. 5/27A-2(c) ("[T]o create a legitimate avenue for parents, teachers, and community members to take responsible risks and create new, innovative, and more flexible ways of educating children within the public school system."); Me. Stat. tit. 20-A, § 2402 ("[T]o provide students, parents, community members and local entities with expanded opportunities for involvement in the public education system."). Also without fail, each State reaffirms that, despite being one degree removed from traditional elected structures, charter schools must remain public schools—accepting all students, charging no tuition, and meeting core academic standards. *E.g.*, Ala. Code § 16-6F-9(a) & (c); Del. Code tit. 14, § 506(a); La. Stat. § 17:3991(E); Utah Code § 53G-5-404. These essential public mandates include, of course, complying with the Establishment Clause. *See* App.

The charter model is thus straightforward: it vests substantial operational control in a school-level board, to empower the individual school's community members. *See, e.g.*, *Colo. State Bd. of Educ. v. Brannberg*, 525 P.3d 290, 294 (Colo. 2023) ("[T]he General Assembly adopted the Act to create a form of direct citizen participation in government through which members of a community can come together to build and operate a public school.").

D. Even if private entities could become charter schools, such schools would be pervasively entwined with the State.

As described above, charter schools are not private entities. But even if they were, as some States try to claim, such schools are still state actors because they are sufficiently "entwined" with the State or acting solely due to the State's "coercive" power and "significant encouragement." *See Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 303 (2001) ("[T]he relevant facts show pervasive entwinement to the point of largely overlapping identity[.]"); *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982) ("[A] State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State.").[8] This test is easily satisfied with respect to charter schools.

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[8] As this Court has already explained, the reasoning in *Rendell–Baker v. Kohn*, 457 U.S. 830 (1982), is immaterial when the purported state action is predicated on entwinement rather than on traditional public functions. *Brentwood Acad.*, 531 U.S. at

Take South Carolina's statute as an example. Although South Carolina asserts that its charter schools are private, Br. of Amici Curiae South Carolina et al. at 5, its own statute belies that claim. In South Carolina, the charter school's governing board must be approved by the government and must comply with numerous statutory criteria (including mandated election by school stakeholders). S.C. Code §§ 59-40-40(2)(c), -50(B)(9), & -155. The schools are deemed public schools for all state-law purposes, S.C. Code § 59-40-40(2)(a), and must meet the same academic, financial, transparency, and ethics standards as a traditional public school, S.C. Code § 59-40-50(B)(2), (3), (10), & (11); § 59-40-75(C). They are open to all students on the same terms as a traditional public school. S.C. Code § 59-40-50(B)(7)–(8). They are formed only after a thorough evaluation, S.C. Code § 59-40-60, and are subject not just to termination of their contract but to forced dissolution at the State's direction, S.C. Code § 59-40-110 & -120. Their assets revert to the State upon dissolution. *Id.* They are funded on precisely the same basis as any other public school. S.C. Code § 59-40-140. Their employees are in the public employees' pension system. S.C. Code § 59-40-125. And before South Carolina allows a private school to become a charter school, it must first dissolve its previous corporate existence. S.C. Code § 59-40-210. Finally, the

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302–03; *cf. Blum*, 457 U.S. at 1005 (describing public-function test as alternative to other tests). That said, Amici agree with the public-function analysis in Respondent's brief, agree that public education is a traditional and exclusive State function distinguishable from private (even State-subsidized private) education, and note that all applicable tests point in the same direction.

legislature's stated intent and purposes make no mention whatsoever of privatization or private education, speaking solely of empowering teachers and creating innovation "within the public school system." S.C. Code §§ 59-40-20 & -30. If these features do *not* constitute the "pervasive entwinement" and the "coerci[on]" or "significant encouragement" sufficient to ascribe the acts of the charter schools to the State, then these tests have no meaning.

All the same features (or nearly so) can be found in Oklahoma's statute—and in most other States' laws, too. In truth, these same features compel the conclusion that the schools are not private entities at all. But even if that were not so, the state-action doctrine would still require that States be constitutionally responsible for their charter schools.

* * *

Charter schools are public entities. *Cf. Dep't of Transp.*, 575 U.S. at 51–55 (identifying features of governmental entities). They exist under special statutes authorizing them to be formed on the State's behalf; they are independently managed under the State's direction and supervision; they exercise discretion only as set forth under State law and a State-issued charter; and the State lays claim to all their funds and assets. There is simply nothing private about them.

Petitioners thus misframe the issue by arguing that St. Isidore is a private entity seeking to participate in a public benefit.[9] Correctly framed, the *dioceses*, not St. Isidore, are the private entities at issue. And when the dioceses organized St. Isidore, they created an inchoate governmental entity (as they were authorized to do by the Oklahoma Charter Schools Act), to be operated as a public charter school if and only if they received the State's approval to do so.

II. States have the discretion to create participatory *public* institutions.

"Providing public schools ranks at the very apex of the function of a State." *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972). This Court has thus often affirmed the "considerable discretion in operating public schools" that the Constitution affords to States, *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987), including the discretion to create new forms of democratic accountability within the school system, *e.g.*, *Sailors v. Bd. of Educ. of Kent Cnty.*, 387 U.S. 105, 109 (1967) ("The science of government . . . is the science of experiment." (cleaned up)). Petitioners' claims would upend these long-established, paramount principles of federalism.

A. States are free to structure their governmental entities as they see fit.

States often experiment with nontraditional governance structures. *See generally* Jeffrey S. Sutton, *Who Decides? States as Laboratories of Constitutional*

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[9] Again, Oklahoma law does not allow private schools to apply to become charter schools in the first place. Okla. Stat. tit. 70, § 3-134(C).

Experimentation 147–235, 303–27 (2022); Miriam Seifter, *Understanding State Agency Independence*, 117 MICH. L. REV. 1537 (2018). They use appointed boards of citizen-experts to regulate the professions. *E.g.*, Colo. Rev. Stat. § 12-115-104. They use municipal and other governmental corporations as special-purpose authorities. *E.g.*, Colo. Rev. Stat. § 24-77-102(15). They allow local governments to band together in joint ventures. *E.g.*, Colo. Rev. Stat. §§ 29-1-203 & -203.5. And in myriad different ways, they mix-and-match these models to create the precise administrative structure needed for a given job. *E.g.*, Colo. Rev. Stat. §§ 22-5-101 to -122 (authorizing school-district cooperatives governed by appointed boards as negotiated by member districts).

Many of these innovations bring the people themselves directly into the work of governing. And by and large, these innovations also provide a form of responsiveness and democratic accountability to specific constituencies. *See N.C. State Bd. of Dental Exam'rs v. F.T.C.*, 574 U.S. 494, 512 (2015) ("The States have a sovereign interest in structuring their governments . . . . There is, moreover, a long tradition of citizens esteemed by their professional colleagues devoting time, energy, and talent to enhancing the dignity of their calling." (cleaned up)). For a licensing agency like a state bar or medical board, the structure allows the profession itself to be heard. For a charter school, the structure holds the school accountable to its own parents and teachers—elevating their voices to a primary role, distinct from the voters and taxpayers of the geographic school district.

At no point has this Court ever doubted that the Constitution reserves to States the sovereignty to engage in such innovation. *See Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 71 (1978) (states have "extraordinarily wide latitude" in creating "various types of political subdivisions and conferring authority upon them"); *Wisc. Pub. Intervenor v. Mortier*, 501 U.S. 597, 607–08 (1991) (states have "absolute discretion" to create political subdivisions "as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them" (quoting *Sailors*, 387 U.S. at 108) (cleaned up)); *Schuette v. Coal. to Defend Affirmative Action*, 572 U.S. 291, 327 (2014) (characterizing this discretion as "near-limitless sovereignty") (Scalia, J., concurring). And when the States that create these structures believe the structures to be governmental in nature—that is, to be instrumentalities of the State—this Court does not second-guess the matter. *E.g.*, *Biden v. Nebraska*, 600 U.S. 477, 488–94 (2023) (respecting statutory declaration that special-purpose authority was "public instrumentality" of the State); *Sailors*, 387 U.S. at 108 (approving county-level school boards appointed by elected members of district school boards).

At bottom, there is no "one best way" to govern. The Constitution affords States the discretion to create novel models of governance. In public education, one popular innovation has been to bring parents and teachers directly into the governing of their own schools. And never in this Court's history has it doubted that such citizen boards, appointed under State authority and clothed with the power of the State, are still public entities.

B. States' discretion includes creating public school choices, private choices, or both—as they see fit.

To the best of Amici's knowledge, every State to date has designed charter schools as a tool to expand the role of a public school's own parents and educators in school affairs. *See, e.g.*, Colo. Rev. Stat. § 22-30.5-102(3) ("In authorizing charter schools, it is the intent of the general assembly to create a legitimate avenue for parents, teachers, and community members to implement new and innovative methods of educating children . . . *within the public education system*." (emphasis added)). And every State to date has required charter schools to be public, nonsectarian schools. *See* App; *cf. Carson*, 596 U.S. at 785 (States "may provide a strictly secular education in [their] public schools"). Amici are aware of no State that adopted charter schools as a type of subsidy for private education, a tool for outsourcing, or any other method of relying on the private sector to assist in the delivery of public services. Indeed, many States—like Oklahoma—have adopted *both* charter schools *and* private school choice, clearly delineating between them.

Take Oklahoma's charter schools act, which bears the usual hallmarks of school-level governance and of public school choice. The statute was adopted to empower parents and teachers. *E.g.*, Okla. Stat. tit. 70, § 3-131 (stating intent to "[c]reate new professional opportunities for teachers and administrators . . . to be responsible for the learning program at the school site"). It expressly declares that charter schools are public schools, part of the State's regular system of public education. Okla. Stat. tit. 70, § 3-132.2(C)(1). It

subjects charter schools to the regulations usually applied to governmental entities. *E.g.*, Okla. Stat. tit. 70, § 3-136(A)(5)–(17) (requiring charter schools to be open to all, free of tuition, subject to sovereign immunity waivers and transparency laws, and subject to all the same financial oversight as school districts). It subjects charter schools to the comprehensive, soup-to-nuts evaluations that all public schools face but that few private entities would tolerate. *E.g.*, Okla. Stat. tit. 70, §§ 3-136(A)(18) & -137. It requires charter schools to be open to all students, Okla. Stat. tit. 70, § 3-140, and it subjects them to the State's usual test-based accountability system, Okla. Stat. tit. 70, § 3-153. And finally, it requires charter schools to return their funds and property to the State upon closure. Okla. Stat. tit. 70, § 3-136(G).

These features contrast sharply with Oklahoma's policies for relying on *private* educators. The State offers at least three different voucher-like programs to support private school choice. *See* Okla. Stat. tit. 68, § 2357.206; Okla. Stat. tit. 70, §§ 13-101.1 to -101.2; §§ 28-100 to -103. These private-school programs are widely available to religious and nonreligious schools alike. *Oliver v. Hofmeister*, 368 P.3d 1270 (Okla. 2016); *see also* Br. of Amicus Curiae the Wolff Family, App. (listing sectarian participants). And in none of these programs does the State of Oklahoma lay claim to the school's governance or property, nor does it purport to authorize the schools as public schools.

Amici reject the claim by some states that their charter schools are private. *See* Br. of Amici Curiae South Carolina et al. But that does not mean that there are not other ways a state could allow a private

entity to provide some educational services. It is the prerogative of sovereign States to innovate with new systems of democratic accountability. It is also only through their sovereignty that States who wish to rely on the private sector to help provide public education can choose to do so. Whether to pursue one model, the other, or neither, or both—these are decisions properly reserved to the States to make.

III. A broad ruling would disrupt charter schools across the country and likely force thousands of schools to close.

The public-private distinction is not a matter of mere legislative labels. If the Court finds charter schools to be private entities here, that ruling would undermine the settled understanding to the contrary in countless other legal contexts. After all, a governmental entity for one constitutional purpose is usually a governmental entity for any other constitutional purpose too. *See Lebron*, 513 U.S. at 386–91 (Amtrak is public for First Amendment purposes); *Dep't of Transp.*, 575 U.S. at 50–55 (Amtrak is public for separation-of-powers purposes). And even in statutory contexts, substance generally prevails over form. *See, e.g.*, *Apple Inc. v. Pepper*, 587 U.S. 273, 284 (2019) (arguing against rule that "would elevate form . . . over substance"); *id.* at 295 (arguing against rule that "exalts form over substance") (Gorsuch, J., dissenting). States, school districts, and private investors have all relied on the public status of charter schools for countless legal purposes. Petitioners' ill-conceived litigation threatens to upend all of it.

A. States' education funding policies rely on charter schools' *constitutional* status as public schools.

Dating to the Northwest Ordinance of 1787, the federal government has directed nearly every State admitted to the Union to provide for public schools. *Papasan v. Allain*, 478 U.S. 265, 268–70 (1986); *see, e.g.*, Northwest Ordinance of 1787, Confederation Cong., § 14, art. 3; Oklahoma Enabling Act, ch. 3335, 34 Stat. 267, 270–71 (June 16, 1906). In many States, Congress even provided a trust fund—seeded with federal lands—for this purpose. *Papasan*, 478 U.S. at 268–70, 289 n.18; *see, e.g.*, 34 Stat. at 272–74.

In the years since, these Congressional mandates and the state constitutional doctrines arising from them have become the foundation for States' complex systems of school finance. *See, e.g.*, Okla. Const. art. XIII (mandated system of public schools relying on and derived from federal trust). These doctrines draw sharp constitutional distinctions between public and private schools. The experiences of Michigan, Washington, and Kentucky are instructive.

Michigan does not have school vouchers or other forms of private school choice, due to its "extremely restrictive" constitution.[10] But in 1993, it adopted a charter schools act. *See Council of Organizations & Others for Educ. About Parochiaid, Inc. v. Governor*, 566 N.W.2d 208, 211 (Mich. 1997). The program was

[10] EdChoice, *School Choice in Michigan*, https://www.edchoice.org/school-choice/state/michigan/ (last visited Apr. 3, 2025).

immediately enjoined by a state trial court (in a decision upheld by the intermediate appellate court) on precisely the grounds urged by Petitioners here: that the schools were not public because they were not under the "immediate, exclusive control of the state" through "publicly elected bodies." *Id.* at 212. As a result, the courts reasoned, charter schools could not lawfully receive the state's constitutionally protected funding for public schools. *Id.* The Michigan Supreme Court reversed in 1997, reasoning that charter schools were, in fact, under the State's control through the statutory chartering process and the statutory constraints on selecting charter schools' governing boards. *Id.* at 216–21.[11]

Washington faced a similar challenge. The relevant enabling act, as per usual, directed new States in the territory to provide in their constitutions "for the establishment and maintenance of systems of public schools, which shall be open to all the children of said States," and it provided a federal trust fund to support that effort. Act of Feb. 22, 1889, ch. 180, 25 Stat. 676, 677, 679–80. The Washington Constitution then explicitly tied these mandates together, providing that the funds derived from or commingled with the federal trust could be spent only on its constitutional "common schools." *See* Wash. Const. art. IX, §§ 2–3. When the voters of Washington first adopted charter schools

[11] Michigan is not unique. Similar lawsuits in Ohio, Louisiana, and Mississippi have challenged charter schools' access to their States' constitutionally protected education funding. *State ex rel. Ohio Cong. of Parents & Teachers v. State Bd. of Educ.*, 857 N.E.2d 1148, 1156–60 (Ohio 2006); *Iberville Par. Sch. Bd. v. La. State Bd. of Elementary & Secondary Educ.*, 248 So. 3d 299, 306–11 (La. 2018); *Araujo v. Bryant*, 283 So. 3d 73, 78–83 (Miss. 2019).

outside the "complete control" of local elected school boards, the Washington Supreme Court declared them not to be common schools eligible for funding under the State's regular school-finance system. *League of Women Voters of Wash. v. State*, 355 P.3d 1131, 1137–40 (Wash. 2015). Charter schools survived in the State only after the legislature switched to a wholly separate stream of funding. *El Centro De La Raza v. State*, 428 P.3d 1143, 1154–55 (Wash. 2018). The voters of Washington adopted school choice by initiative—and due to litigation over the constitutional status of charter schools as public schools, it took six years and legislation allocating an entirely new funding stream before the people received the benefit of their decision.

Kentucky provides a fitting bookend. The State adopted a charter schools act in 2017 but did not appropriate funds until 2022. *See* 2017 Ky. Acts 758; 2022 Ky. Acts 1982. And when the legislature provided funds, the State was promptly enjoined on the ground that charter schools are, for constitutional purposes, private schools. *Council for Better Educ., Inc. v. Glass*, No. 23-CI-0020, 2023 WL 11987862 (Ky. Cir. Ct. Dec. 11, 2023), *appeal pending sub. nom. Commonwealth ex rel. Coleman v. Council for Better Educ., Inc.*, No. 2024-SC-0002 (Ky.). The Kentucky Constitution also forbids any funding of private schools with constitutionally protected funds. *See Commonwealth ex rel. Cameron v. Johnson*, 658 S.W.3d 25 (Ky. 2022). As a result, until its charter schools are recognized as public entities for constitutional purposes, the people of

Kentucky have virtually no access to school choice—despite their elected legislature's efforts.[12]

Now, more than three million students attend charter schools whose funding usually relies on the settled question that charter schools are public schools—as a matter of constitutional substance, not just of legislative label. If this Court declares otherwise, many States will live or relive disruptive litigation (and potential need to identify new funding);[13] or, contrary to their own duly enacted laws, end up like Kentucky—with no charter schools at all.

B. Private markets have invested billions in reliance on charter schools' public status.

Constitutional lawyers are not the only ones who care about charter schools' public status. Charter schools rely on their public status to pay for school buildings, and so do the investors who provide that capital.

Most States do not require school districts to share their district-owned facilities with charter schools, nor to include charter schools in local bond

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[12] Again, there is not much unique about Kentucky's story. South Carolina likewise has little constitutional power to fund private schools, *Eidson v. S.C. Dep't of Educ.*, 906 S.E.2d 345 (S.C. 2024)—raising the grave risk that, if its charter schools are not public entities for constitutional purposes, they too are on the constitutional chopping block.

[13] As if to prove the flood of litigation waiting just behind the gates, a lawsuit predicated on charter schools' alleged private status is already pending in Colorado. *See Mamas de DPS, LLC v. Denver Public Sch. Dist. No. 1*, Case No. 24CV33951 (Denver Dist. Ct.) (filed Dec. 19, 2024).

elections. *See, e.g.*, Colo. Rev. Stat. §§ 22-30.5-104(7.5) & -404 (discretionary access to district facilities and bonds). Instead, States provide credit enhancements that help charter schools access public bonds in their own right.[14] In the past decade, more than $40 billion in tax-exempt bond financing has been issued to provide charter schools with school facilities.[15] Every one of these bond issuances relies on representations, in the offering statement, about the debtors' funding system and resulting ability to service the loans. And that means every such bond is threatened by the wave of litigation to be set loose by Petitioners' claims. Take Colorado: a lawsuit arguing that charter schools are not public schools in constitutional substance would undermine the funding systems on which investors have purchased nearly $4 billion in bonds over the past decade. The investment is nearly as large in California, and fully twice as large—about $8 billion—in Texas.

These threats to revenue are only the beginning of the risk. Although most charter schools (being separately incorporated) qualify for tax-exempt bonds based on their nonprofit status, many charter schools

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[14] *See, e.g.*, U.S. Dep't of Educ. Charter School Resource Center, *Facilities Financing Opportunities (Credit Enhancement)*, https://charterschoolcenter.ed.gov/funding/facilities-financing-opportunities (last visited Apr. 3, 2025).

[15] Sara Sorbello, Local Initiatives Support Corporation, *Charter School Bond Issuance by State*, https://assets.foleon.com/eu-central-1/de-uploads-7e3kk3/48388/charter_school_bond_issuance_volume_4_1312024.41cd689c8da3.pdf.

choose to do so based on their public status instead.[16] Bond counsel and underwriters are unlikely to support such issuances if courts hold that charter schools are not, in substance, public schools. And because the tax exemption for nonprofit uses is currently on the congressional chopping block,[17] financing based on public status may soon be the only route left to affordable facilities. Declaring charter schools to be private schools threatens not only to disrupt the existing $40 billion charter bond market, but also to eliminate future bonds altogether—leaving charter schools with no access to affordable financing.

C. The harms alleged by Petitioners and their amici are fictional.

For all the foregoing reasons, the rule urged by St. Isidore would disrupt the legal frameworks and settled interests on which millions of students and billions of dollars have relied. Nonetheless, Petitioners and their amici claim two types of adverse consequences running the opposite direction. Both are illusory.

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[16] For example, Addenbrooke Classical Academy in Lakewood, Colorado, issued $25.3 million in bonds as a public entity in 2020. *See* Electronic Municipal Market Access, https://emma.msrb.org/IssueView/Details/SS401108 (last visited Apr. 3, 2025). So too did the Paradise Schools Project in Arizona, for over $14 million. *See* Electronic Municipal Market Access, https://emma.msrb.org/IssueView/Details/ES397606 (last visited Apr. 3, 2025).

[17] Cong. Budget Off., Budget Options: Eliminate the Tax Exemption for New Qualified Private Activity Bonds (Dec. 12, 2024) https://www.cbo.gov/budget-options/60944.

The biggest risk claimed by Petitioners and their amici is from unduly expanding the state-actor analysis. On this theory, treating charter schools as state actors sets a precedent that threatens the same treatment for the countless private providers—religious or otherwise—on which State and local governments rely to deliver healthcare, foster care, and dozens of other public services. But this claim is easily dismissed: those other private providers are (obviously) *private providers*, and charter schools *are not*. At least in most States, charter schools are governmental corporations. Charter schools are created under special statutes authorizing them to exist, they are subject to thorough State control, and they exercise sovereign authority. They are in no sense similarly situated to the private providers of Petitioners' and their amici's parade of horribles.

The second adverse consequence urged by Petitioners is from overly regulating charter schools themselves. On this theory, the diversity and innovation of the charter sector would be diminished by requiring charter schools to be secular. Yet that's the current law in every State; the diversity and innovation of the charter sector *currently exists* in a wholly secular environment. Indeed, three of the States with the fastest-growing charter enrollment[18] are in the Tenth Circuit, which has always treated charter schools as public entities. *See, e.g.*, *Brammer-Hoelter v. Twin Peaks Charter Acad.*, 602 F.3d 1175, 1188–91 (10th

[18] Matthew Ladner, *In Defense of Education's "Wild West*," Education Next (Jan. 25, 2018), https://www.educationnext.org/in-defense-educations-wild-west-charter-schools-thrive-four-corners-states/.

Cir. 2010) (considering *Monell* claim against charter school as a local governmental entity). It is Petitioners, not Respondent, who seek to unsettle the law—and it is thus Petitioners' claim, not the decision below, that threatens the existing success of the charter school movement.

CONCLUSION

This Court extends considerable deference to the States when it comes to public schooling. Amici urge the Court to exercise the same caution here. States should be able to let parents and educators govern their own schools while still maintaining those schools as public, governmental entities.

Respectfully submitted,

PHILIP J. WEISER
Attorney General

SHANNON WELLS STEVENSON
Solicitor General
Counsel of Record

Office of the Colorado Attorney General
1300 Broadway
10th Floor
Denver, Colorado 80203
Shannon.Stevenson@coag.gov
(720) 508-6000

RUSSELL D. JOHNSON
Deputy Solicitor General

JOE PETERS
Senior Assistant Attorney General

ABBY CHESTNUT
Assistant Solicitor General

DAYNA ZOLLE HAUSER
Assistant Solicitor General

(*counsel continues on next page)*

KRIS MAYES
Attorney General
State of Arizona
2005 N. Central Ave.
Phoenix, AZ 85004

ROB BONTA
Attorney General
State of California
1300 I St.
Sacramento, CA 95814

WILLIAM TONG
Attorney General
State of Connecticut
165 Capitol Ave.
Hartford, CT 06106

KATHLEEN JENNINGS
Attorney General
State of Delaware
820 N. French St.
Wilmington, DE 19801

BRIAN L. SCHWALB
Attorney General
District of Columbia
400 6th St., NW., Ste. 8100
Washington, D.C. 20001

KWAME RAOUL
Attorney General
State of Illinois
500 S. 2nd St.
Springfield, IL 62701

AARON M. FREY
Attorney General
State of Maine
6 State House Station
Augusta, ME 04333

ANTHONY G. BROWN
Attorney General
State of Maryland
200 Saint Paul Place
Baltimore, MD 21202

ANDREA JOY CAMPBELL
Attorney General
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108

KEITH ELLISON
Attorney General
State of Minnesota
102 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

AARON D. FORD
Attorney General
State of Nevada
100 N. Carson St.
Carson City, NV 89701

MATTHEW J. PLATKIN
Attorney General
State of New Jersey
25 Market St., 8th Fl.
Trenton, NJ 08625

RAÚL TORREZ
Attorney General
State of New Mexico
408 Galisteo St.
SANTA FE, NM 87501

LETITIA A. JAMES
Attorney General
State of New York
28 Liberty St.
New York, NY 10005

DAN RAYFIELD
Attorney General
State of Oregon
1162 Court St. NE
Salem, OR 97301

PETER F. NERONHA
Attorney General
State of Rhode Island
150 S. Main St.
Providence, RI 02903

NICHOLAS W. BROWN
Attorney General
State of Washington
P.O. Box 40100
Olympia, WA 98504

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APPENDIX

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LIST OF STATE STATUTES

1. Alabama

Ala. Code §§ 16-6F-7(b)(3) ("An authorizer shall not approve a public charter school application that includes . . . [a]ny parochial or religious theme.") & 16-6F-9cb)(2) ("No public charter school may engage in any sectarian practices in its educational program, admissions or employment policies, or operations.")

2. Alaska

Alaska Stat. § 14.03.265(c) ("In addition to other requirements of law, a charter school shall be nonsectarian.")

3. Arizona

Ariz. Rev. Stat. § 15-183(E) ("The charter of a charter school shall do all of the following . . . [e]nsure that it is nonsectarian in its programs, admission policies and employment practices and all other operations.")

4. Arkansas

Ark. Code § 6-23-401(a) ("An open-enrollment public charter school . . . [s]hall not be religious in its operations or programmatic offerings.")

5. California

Cal. Educ. Code § 47605(e)(1) ("In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against a pupil on the basis of the characteristics listed in Section 220.")

6. Colorado

Colo. Rev. Stat. § 22-30.5-104(1) ("A charter school shall be a public, nonsectarian, nonreligious, non-home-based school which operates within a public school district.")

7. Connecticut

Conn. Gen. Stat. § 10-66aa(1) ("'Charter school' means a public, nonsectarian school[.]")

8. Delaware

Del. Code tit. 14, § 506(a) ("A charter school may not . . . [b]e home-based nor engage in any sectarian or religious practices in its educational program, admissions policies, employment policies or operations.")

9. District of Columbia

D.C. Code § 38-1802.04(c)(15) ("A public charter school shall be nonsectarian and shall not be affiliated with a sectarian school or religious institution.")

10. Florida

Fla. Stat. § 1002.33(9)(a) ("A charter school shall be nonsectarian in its programs, admission policies, employment practices, and operations.")

11. Georgia

Ga. Code § 20-2-2065 ("[T]he local board and state board shall ensure that a charter school, or for charter systems, each school within the system, shall be . . . [a] public, nonsectarian, nonreligious, nonprofit school[.]")

12. Idaho

Idaho Code § 33-5206(1) ("A public charter school shall be nonsectarian in its programs, affiliations, admission policies, employment practices, and all other operations[.]")

13. Illinois

105 Ill. Comp. Stat. 5/27A-5(a) ("A charter school shall be a public, nonsectarian, nonreligious, non-home based, and non-profit school.")

14. Indiana

Ind. Code § 20-24-1-4 ("'Charter school' means a public elementary school or secondary school established under this article that . . . is nonsectarian and nonreligious[.]")

15. Iowa

Iowa Code § 256E.7(2) ("A charter school established under this chapter is exempt from all state statutes and rules and any local rule, regulation, or policy, applicable to a noncharter school, except that the charter school shall . . . [o]perate as a nonsectarian, nonreligious school.")

16. Kansas

Kan. Stat. § 72-4207 ("The board of education of any school district may authorize the establishment of a nonsectarian charter school[.]")

17. Kentucky

Ky. Rev. Stat. § 160.1592(14) ("A public charter school shall be nonsectarian in its programs, admissions policies, employment practices, partnerships, and all other operations[.]")

18. Louisiana

La. Stat. § 17:3991(C) ("A charter school shall . . . [b]e nonsectarian in its programs, admissions policies, and employment practices.")

19. Maine

Me. Rev. Stat. tit. 20-A, § 2412(4)(B) ("A public charter school may not engage in any religious practices in its educational program, admissions or employment policies or operations.")

20. Maryland

Md. Code, Educ. § 9-102 ("In this title, 'public charter school' means a public school that . . . [i]s nonsectarian in all its programs, policies, and operations[.]")

21. Massachusetts

Mass. Gen. Laws ch. 71, § 89(d) ("Private and parochial schools shall not be eligible for charter school status.")

22. Michigan

Mich. Comp. Laws § 380.1217 ("A board of . . . a public school academy shall not apply money received by it from any source for the support and maintenance of a school sectarian in character.")

23. Minnesota

Minn. Stat. § 124E.06, subd. 3(c) ("A charter school must be nonsectarian in its programs, admission policies, employment practices, and all other operations.")

24. Mississippi

Miss. Code § 37-28-43(1) ("A charter school may not engage in any sectarian practices in its educational program, admissions or employment policies or operations.")

25. Missouri

Mo. Stat. § 160.405(4) ("A charter school shall . . . [b]e nonsectarian in its programs, admission policies, employment practices, and all other operations[.]")

26. Montana

Mont. Code § 20-6-811(6)(a) ("A public charter school may not engage in any sectarian practices in its educational program, admissions policies, employment policies or practices, or operations.")

27. Nevada

Nev. Rev. Stat. § 388A.366(1) ("A charter school shall . . . [r]emain nonsectarian, including, without limitation, in its educational programs, policies for admission and employment practices.")

28. New Hampshire

N.H. Rev. Stat. § 194-B:1(IV) ("A chartered public school shall operate as a nonprofit secular organization under a charter granted by the state board and in conformance with this chapter.")

29. New Jersey

N.J. Stat. § 18A:36A-4.1 ("The application of a nonpublic school to convert to a charter school shall certify that upon conversion to charter school status the school shall prohibit religious instruction, events,

and activities that promote religious views, and the display of religious symbols.")

30. New Mexico

N.M. Stat. § 22-8B-4(J) ("A charter school shall be a nonsectarian, nonreligious and non-home-based public school.")

31. New York

N.Y. Educ. Law § 2854(2)(a) ("A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations and shall not charge tuition or fees; provided that a charter school may require the payment of fees on the same basis and to the same extent as other public schools.")

32. North Carolina

N.C. Gen. Stat. § 115C-218.50(a) ("A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations.")

33. Ohio

Ohio Rev. Code § 3314.029(a)(1) ("Each application submitted to the department shall include the following . . . [a] statement that the school will be nonsectarian in its programs, admission policies, employment practices, and all other operations[.]")

34. Oklahoma

Okla. Stat. tit. 70, § 3-136(A)(2) ("A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations.")

35. Oregon

Or. Rev. Stat. § 338.115(4) ("A public charter school may not violate the Establishment Clause of the First Amendment to the United States Constitution or Article I, section 5, of the Oregon Constitution, or be religion based.")

36. Pennsylvania

24 Pa. Stat. § 17-1715-A(a)(4)–(5) ("A charter school shall be nonsectarian in all operations." "A charter school shall not provide any religious instruction[.]")

37. Rhode Island

16 R.I. Gen. Laws § 16-77-3.1(d) ("Any charter public school authorized by this chapter shall be nonsectarian and nonreligious in its programs, admissions policies, employment practices, and all other operations.")

38. South Carolina

S.C. Code § 59-40-40(1) ("A 'charter school' means a public, nonreligious, nonhome-based, nonprofit corporation forming a school that operates by sponsorship of a public school district, the South Carolina Public Charter School District, or a public or independent institution of higher learning[.]")

39. Tennessee

Tenn. Code § 49-13-111(a) ("A public charter school shall . . . [o]perate as a public, nonsectarian, nonreligious public school[.]")

40. Utah

Utah Code § 53G-5-404(1) ("A charter school shall be nonsectarian in the charter school's programs, admission policies, employment practices, and operations.")

41. Virginia

Va. Code § 22.1-212.6:1(G) ("No public charter school shall engage in any sectarian practices in its educational program, admissions or employment policies, or operations.")

42. Washington

Wash. Rev. Code § 28A.710.040(4) ("A charter school may not engage in any sectarian practices in its educational program, admissions or employment policies, or operations.")

43. West Virginia

W. Va. Code § 18-5G-3(a)(4) ("Public charter schools authorized pursuant to this article shall meet the following general criteria: . . . Are not affiliated with or espouse any specific religious denomination, organization, sect, or belief and do not promote or engage in any religious practices in their educational program, admissions, employment policies, or operations[.]")

44. Wisconsin

Wis. Stat. § 118.40(4) ("A charter school governing board shall . . . [b]e nonsectarian in its programs, admissions policies, employment practices and all other operations.")

45. Wyoming

Wyo. Stat. § 21-3-304(a) ("A charter school shall be a public, nonsectarian, nonreligious, nonhome-based school which operates within a public school district.")