

**In the Supreme Court of the United States**

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OKLAHOMA STATEWIDE CHARTER SCHOOL BOARD;  
ROBERT FRANKLIN, CHAIRMAN OF THE OKLAHOMA STATEWIDE  
VIRTUAL CHARTER SCHOOL BOARD FOR THE  
FIRST CONGRESSIONAL DISTRICT, ET AL,

*Petitioners,*

v.

GENTNER DRUMMOND, ATTORNEY GENERAL FOR THE  
STATE OF OKLAHOMA, *EX. REL.* STATE OF OKLAHOMA,

*Respondent.*

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**On Petition for a Writ of Certiorari to  
the Oklahoma Supreme Court**

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**BRIEF IN OPPOSITION**

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## QUESTIONS PRESENTED

The Oklahoma Constitution requires the State 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. The Oklahoma Constitution also demands that “[n]o public money . . . shall ever be appropriated . . . or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion . . . or sectarian institution . . . .” OKLA. CONST. art. II, § 5. Consistent with these constitutional mandates, the Oklahoma Legislature established a type of “public school[] established by contract” called a “charter school.” OKLA. STAT. tit. 70, § 3-132.2(C)(1).

The Oklahoma Charter School Board (the “Board”) established a public charter school that “fully incorporate[s] Catholic teachings into every aspect of the school, including its curriculum and co-curricular activities.” Pet.App.26a. Thus, the questions presented are:

1. Where the Oklahoma Supreme Court found that the contract establishing Intervenor St. Isidore of Seville Virtual Charter School violates two provisions of the Oklahoma Constitution, is the decision below supported by adequate and independent state law grounds?

2. Is the State of Oklahoma prohibited by the First Amendment from establishing a public charter school to promote the “evangelizing mission of the church” by “fully incorporat[ing] Catholic teachings into every aspect of the school, including its curriculum and co-curricular activities,” when the School is sub-

ject to the State's ongoing supervision of all significant functions, including a requirement that the School obtain prior authorization for any material changes to the State-approved Catholic curriculum?

## **PARTIES TO THE PROCEEDINGS**

Petitioners are the Oklahoma Statewide Charter School Board and Brian T. Shellem, Angie Thomas, Kathleen White, Damon Gardenhire, Becky Gooch, Jared Buswell, Ben Lepak, Ryan Walters, and Dr. Kitty Campbell, all in their official capacities as members of the Oklahoma Statewide Charter School Board. Petitioners succeeded the respondents below Oklahoma Statewide Virtual Charter School Board, Robert Franklin, William Pearson, Nellie Tayloe Sanders, Brian Bobek, and Scott Strawn.

Intervenor below, St. Isidore of Seville Catholic Virtual School, is Petitioner in a separately filed petition in this case.

Respondent is Gentner Drummond, in his official capacity as Attorney General for the State of Oklahoma.

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## INTRODUCTION

The Oklahoma Constitution requires the State 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 also* art. XIII, § 1. In furtherance of this constitutional duty, the Oklahoma Legislature enacted the Oklahoma Charter Schools Act (the “Act”). The Act authorizes the creation of public charter schools to, among other things, “improve student learning” and “establish new forms of accountability” for public schools. OKLA. STAT. tit. 70, § 3-131. The public charter schools are overseen by three governmental bodies: (1) a public board of education, (2) the State Charter School Board (“Board”)<sup>1</sup>, and (3) the State Board of Education. OKLA. STAT. tit. 70, §§ 1-105, 3-132, 3-132.2, 3-134, 3-136.

At the outset, it is important to understand the players because Petitioners conflate the private non-profit corporation, St. Isidore of Seville Virtual Charter School, Inc. (the “Church Corporation”), which applied to the Board to establish a state-created public charter school, with the resulting entity the state-created public charter school itself, Intervenor St. Isidore of Seville Virtual Charter School (the “SISVC School”). Res.App.42a.

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<sup>1</sup> While the case below was litigated against the Oklahoma Statewide Virtual Charter School Board, the Oklahoma Charter School Board assumed all obligations of the Oklahoma Statewide Virtual Charter Board effective on July 1, 2024. *See* OKLA. STAT. tit. 70, § 3-132.1(D). *See* Res.App.567a.

The Oklahoma Supreme Court appropriately issued a writ of mandamus ordering the Board to rescind a contract which created the nation's first Catholic public charter school. The gravamen of the decision below relates to an application and sponsorship contract that permits the Church Corporation "to establish" a public school created to "fully incorporate Catholic teachings into every aspect of the school, including its curriculum and co-curricular activities." Pet.App.7a. Indeed, SISVC School intends to deliver "its original characteristics and its structure as a genuine instrument of the church" and to serve the "evangelizing mission of the church." Res.App.327a. In violation of the Oklahoma Constitution and United States Constitution, the State, through the Board, approved the application, executed the sponsorship contract, and unlawfully established the nation's first religious public school.

As such, the petition for certiorari should be denied for several reasons. First, the Oklahoma Supreme Court found "the St. Isidore Contract to violate two provisions of the Oklahoma Constitution, which affords bona fide, separate, adequate, and independent grounds upon which today's opinion is rested." Pet.App.25a. Any claim that the state law decision is intertwined with the First Amendment claims is flawed. In the proceedings below, SISVC School and the Board did not affirmatively seek a declaration that the Oklahoma Constitution violates the U.S. Constitution. Thus, these arguments were not presented to the Oklahoma Supreme Court and should not be considered by this Court in the first instance.

Second, there is no split among the circuits. Only two courts of appeals<sup>2</sup> have addressed whether a charter school is a state actor, and they both applied the same fact-specific inquiry that considers the specific function the school sought to undertake and the applicable laws of the subject state. Here, the contract contemplated that SISVC School would act in a sectarian manner with respect to all functions. SISVC School failed to allege below that it was impossible for it to act as a state actor for all functions. As a result, even though the circuit courts of appeals are in alignment on the applicable legal standard, none of the cited circuit courts of appeals cases is implicated here.

Third, this is a poor vehicle to address the question presented. This is the first time a state has created a public charter school that fully incorporates religious teachings into “every aspect of the school.” Moreover, SISVC School’s status as a public school turns on the unique provisions of Oklahoma state law, and a decision in this case would offer little guidance about whether “charter schools” in other states are public or private. More precisely, each state has its own unique constitutional and statutory regime for regulating charter schools. And each contract sponsoring a charter school will have its own customized terms. For instance, the sponsorship contract at issue here uniquely requires prior authorization from the Board before SISVC School can make material changes to the State-approved Catholic curriculum. Pet.App.5a. Therefore, it would be difficult for the

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<sup>2</sup> *Caviness v. Horizon Cmty. Learning Ctr., Inc.*, 590 F.3d 806 (9th Cir, 2010); and *Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104 (4th Cir. 2022).

Court to fashion a rule that would guide other courts in addressing this issue.

Fourth, the decision below is correct. SISVC School meets all the “numerous and important” norms that make it a public rather than private school. *Carson ex rel. O. C. v. Makin*, 596 U.S. 767, 769 (2022). Because Oklahoma’s charter schools are public schools, Oklahoma “may provide a strictly secular education in its [charter schools].” *Id.* at 785. Therefore, the decision below does not warrant review.



## STATEMENT OF THE CASE

### A. State Law Background

Children in Oklahoma have the right to receive a free public education. The Oklahoma Legislature is constitutionally required to “establish and maintain a system of free public schools wherein all the children of the State may be educated.” OKLA. CONST. art. XIII, § 1. The Legislature fulfilled its obligation, in part, with the passage of the Act,<sup>3</sup> which sets forth the procedure for the creation and funding of public charter schools.

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<sup>3</sup> In its 2023 Regular Session, the Oklahoma Legislature made several changes to the Act—including increasing the State’s regulatory responsibility over virtual charter schools and their boards. This became effective during and after the pendency of the underlying litigation. *See* Charter schools, 2023 Okla. Sess. Laws 323. Citation to the Act herein reflects the current state of the law, unless specifically expressed otherwise.

In the Act, the Legislature exercised its sovereign prerogative and defined “charter school” to mean “a public school established by contract with . . . the Statewide Charter School Board.” *Id.* at § 3-132.2(C)(1)(b). The Legislature also defined public schools to include “all free schools supported by public taxation.” OKLA. STAT. tit. 70, § 1-106. Charter schools are public schools and are, in turn, recognized by state and federal law as government entities. OKLA. STAT. tit. 70, § 3-132.2(C)(1)(b); *see also* OKLA. STAT. tit. 70, § 6-149.3(2); 20 U.S.C. § 7801; 34 C.F.R. § 303.23.

A survey of the Act below displays that public charter schools and public virtual charter schools operate within and are an integral part of Oklahoma’s system of public schools. The Board’s control of a public virtual charter school exists from establishment through closure.

### **1. Sponsorship by the Statewide Charter School Board**

The Board is the “sole authority to sponsor statewide virtual charter schools” in Oklahoma. OKLA. STAT. tit. 70, § 3-132.1(A).<sup>4</sup>

To sponsor a charter school, an applicant, such as the Church Corporation, must first submit a written application to the Board, requesting the Board to “establish a virtual charter school.” *Id.* at § 3-134(B)

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<sup>4</sup> The Board is comprised of the Oklahoma Superintendent of Public Instruction (or his or her designee), the State Auditor (or his or her designee), and state officers appointed by the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives. *Id.* at § 3-132.1(A)(1–5). The members of the Board may only be removed for cause. *Id.* at § 3-132.1(C).



(1–35). Relevant to this matter, a “private organization may contract with [the Board] to *establish* a charter school or virtual charter school.” *Id.* at § 3-134(C) (emphasis added). But the Act provides that “[a] private school [secular or non-secular] shall not be eligible to contract for a charter school or virtual charter school under the provisions of the [Act].” *Id.*

Oklahoma provides that a “new charter school will be considered established” when the State approves an application that complies with all requirements in the Act. OKLA. ADMIN. CODE § 210:40-87-5. Further, charter schools cannot start enrolling students or employ staff until a contract that complies with the Act is executed. OKLA. STAT. tit. 70, § 3-136(C). This control measure exists because the State may “establish reasonable preopening requirements or conditions to monitor . . . and to ensure that each school meets all building, health, safety, insurance, and other legal requirements . . . .” *Id.* The charter school then operates only after it submits to the State several documents, including an executed contract and a request to assign—as it does with all other public schools—a county code, school district code, and site code. OKLA. ADMIN. CODE § 210:40-87-5.

## 2. Board Oversight of Public Charter Schools

After the Board establishes a public virtual charter school, the Board must “[p]rovide *supervision*, services, and *oversight* of the operations of statewide virtual charter schools.” *Id.* at § 3-132.2(A)(1) (emphases added).

The Board’s oversight of charter schools is broad and comprehensive as reflected in state and federal

regulations, the sponsorship contract, and the Board's nearly 250-page authorization and oversight process manual updated as of July 2023. Res.App.470a-840a. Measures of oversight include the following practices: Data and evidence collection; Site visits; Audits, including by the State Auditor and Inspector; Attendance at governing board meetings; Performance Framework reports; and External school performance review(s). Res.App.499a-500a; OKLA. STAT. tit. 70, § 3-134(I), 3-136(A)(5).

If the public virtual charter school does not meet expectations, the Board can require the school to develop a corrective action plan with the Board's oversight. *Id.* at § 3-137(B). Ultimately, if the school's deficiencies are not adequately addressed, the Board has the power to revoke the public school charter. *Id.* Furthermore, in addition to poor student performance, charter non-compliance, poor fiscal management, violations of law, or other good cause can result in the State revoking the charter and closing the public school. *Id.* at § 3-137(F).

### **3. Admissions, Transfer, and Student Conduct**

Numerous state laws mandate charter schools comply with the same laws and regulations as traditional public schools. Like all Oklahoma public schools, virtual charter schools must "be equally free and open to all students." *Id.* at § 3-136(A)(9). A public virtual charter school may not "limit admission based on ethnicity, national origin, gender, income level, disabling condition, proficiency in the English language, measures of achievement, aptitude, or athletic ability." *Id.* at § 3-140(D). Public school students who

wish to enroll in a public virtual charter school are considered transfer students under the Act. *Id.* at § 3-140(I). Moreover, public virtual charter schools must “comply with all . . . laws relating to the education of children with disabilities in the same manner as a school district.” OKLA. STAT. tit. 70, § 3-136(A)(6). Additionally, they must follow the same rules as public schools relating to student suspension, student testing, bus transportation, the pledge of allegiance, and financial reporting and auditing. *Id.* at §§ 3-136(A)(4), (A)(5), (A)(11), (A)(18), 3-141(A); *see also* OKLA. STAT. tit. 70, § 24-106; *West Virginia State Board of Ed. v. Barnette*, 319 U.S. 624, 642 (1943). Further, the State Department of Education includes charter schools among the public schools required to honor a parental objection “to public schools imposing unwanted instruction on questions of sex, morality, or religion.” OKLA. ADMIN. CODE §§ 210:10-2-1; 210-10-2-2.

#### 4. Funding

Consistent with its obligation to provide public school students with a free public education, Oklahoma robustly supports charter schools once operational. Charter schools receive State Aid allocations like other traditional public schools. *Id.* at § 3-142(A). This includes the State appropriations under the Oklahoma Constitution and the State’s funding formula. They are likewise eligible for State appropriated and locally charged ad valorem taxes distributed through the legislatively established “Redbud Fund.” OKLA. CONST. art. XIII, §1a; OKLA. STAT. tit. 70, § 3-142; OKLA. STAT. tit. 70, § 3-104(A)(21), (B). All of this guarantees another hallmark of public education: charter school students do not pay tuition or fees.

OKLA. STAT. tit. 70, § 3-136. And, as a public entity, the State’s sponsorship contract with the Church Corporation required the Charter School to comply with the Oklahoma Constitution’s “pay as you go” requirement, which prohibits a public entity, like the SISVC School, from incurring debt beyond the current year’s state appropriation. OKLA. CONST. Art. X, § 26.

### **5. Increased Regulation of Virtual Charter School Governing Boards**

The Legislature’s recent changes to the Act, *see supra* n. 3, go farther in bringing charter school governing boards in line with traditional school district boards of education. Consistent with their status as public officers who control public funds and exercise state authority, charter school governing boards unsurprisingly are now subject to laws covering public officer ethics, conflicts of interest, and continuing education requirements. OKLA. STAT. tit. 70, § 3-136(A)(7).

#### **B. Factual Background of This Dispute**

The Church Corporation is a private entity incorporated in Oklahoma on January 27, 2023, Res.App.107a. It applied to establish a public virtual charter school under the Act. *Id.* at 196, 201. This corporation itself is not a public charter school; it is the applicant seeking “[t]o create, establish, and operate the School as a Catholic School.” *Id.* at 201; OKLA. STAT. tit. 70, § 3-134(B) (“applicant seeking to establish a virtual charter school”). The Church Corporation stated its intent was for SISVC School to be a “genuine instrument of the Church,” Res.App.155a. and “participate[] in the evangelizing mission of” the Catholic Church. *Id.* Ultimately, the Church Corpora-

tion sought “[t]o operate a school in harmony with faith and morals, including sexual morality, as taught and understood by the Magisterium of the Catholic Church based upon Holy Scripture and Sacred Tradition.” *Id.* at 204–05. The entity’s intent was to fully incorporate and embrace “the teaching of the Catholic Church’s Magisterium “into every aspect of the school, including but not limited to its curriculum and co-curricular activities.” Pet.App.26a.

On June 5, 2023, the Oklahoma Statewide Virtual Charter School Board narrowly voted in favor of establishing SISVC School. *Id.* at 166–71. According to the State Board of Education, “[a] new charter school will be considered established when a charter school application complies with [OKLA. STAT. tit. 70, § 3-134] and is approved by the governing board of a sponsoring entity . . . .” OKLA. ADMIN. CODE § 210:40-87-5(b). Accordingly, the Board established SISVC School on June 5, 2023.<sup>5</sup> Thereafter, the Board entered a contract for sponsorship with SISVC School. Res.App.1a-42a.

In the sponsorship contract itself, the SISVC School provides the Board veto power over material changes to its curriculum. Specifically, the contract states that “[a]ny material change to the program of instruction, curriculum and other services specified in the Application or this Contract requires Sponsor

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<sup>5</sup> The incorporation of the Church Corporation on January 27, 2023, and the Board’s establishment of SISVCS School on June 5, 2023, further illustrates the factual and legal reality that the two entities are separate and distinct. One, the Church Corporation, is a private corporation that applied for a charter, and the other, SISVC School, is a public school created by the Board to operate within the Oklahoma public school system.

approval prior to the change.” Res.App.5a. The SISVC School also subjected itself to compliance with state graduation requirements for grades nine through twelve. *Id.*, see OKLA. STAT. tit. 70, § 3-136(A)(3). Relating to its status, the contract prohibits SISVC School from operating as anything other than a public school, providing that:

“[u]nder no circumstances shall the Charter School and/or its program of instruction offered in accordance with this Contract be used to provide or otherwise supplement instruction of home-schooled students or students enrolled in private schools, or used as a method of generating revenue for students who are being home-schooled or are enrolled in private schools.” Res.App.535a.

The public charter school is also contractually bound to provide the State with all records relating to expenditures, an annual audit just as any other public school must provide, physical inspections of facilities, and broadly to “any and all records as requested by the Sponsor, the State Auditor and Inspector, [or] the State Department of Education . . .” Res.App.16a. The contractual entwinement is vast and controlling.

### **C. Procedural History**

Following the Board’s predecessor’s establishment of the SISVC School, the Oklahoma Attorney General was “duty bound to file [an] original action [with the Oklahoma Supreme Court] to protect religious liberty and prevent the type of state-funded religion that Oklahoma’s constitutional framers and the founders of our country sought to prevent.” Res.App.833a. Specifically, the Attorney General peti-

tioned the court to issue a writ of mandamus directing the Board's predecessor and its members to rescind the contract for sponsorship and a declaratory judgment that the contract violated the Oklahoma Constitution. Pet.App.5a-6a. SISVC School subsequently intervened in the lawsuit. Pet.App.2a.

Having "superintending control over all . . . [Oklahoma] Agencies, Commissions and Boards created by law," OKLA. CONST. art. VII, § 4, the court "invoke[d] its *publici juris* doctrine to assume original jurisdiction" in the underlying matter because the State "presented the Court with an issue of public interest that warrant[ed] an immediate judicial determination." Pet.App.6a. The court granted the relief sought by the State because "the St. Isidore Contract violates the Oklahoma Constitution, [and] the Act." *Id.* Specifically, the Oklahoma Supreme held that "[t]he expenditure of state funds for St. Isidore's operations constitutes the use of state funds for the benefit and support of the Catholic church," which "violates the plain terms of Article 2, Section 5 of the Oklahoma Constitution." Pet.App.13a. The court found that "[e]nforcing the St. Isidore Contract would create a slippery slope and what the framers' warned against—the destruction of Oklahomans' freedom to practice religion without fear of governmental intervention." *Id.*

Likewise, the court found that the "Board had to alter various terms of the model contract to draft the St. Isidore Contract, allowing it to operate as a religious charter school." Pet.App.15a. These changes "violate[] the plain language of the Act" and Article I, Section 5 of the Oklahoma Constitution. *Id.*

Despite holding that violations of the Oklahoma Constitution constituted “bona fide, separate, adequate, and independent grounds upon which [the] opinion is rested,” the Oklahoma Supreme Court additionally held that the “Contract also violates the federal Establishment Clause.” Pet.App.25a. The court found that “[t]he Free Exercise Trilogy cases do not apply to the governmental action in this case” because SISVC School is a public rather than private school under the distinguishing factors outlined in *Carson*, 596 U.S. at 769 (2022). Pet.App.27a-28a.

Finally, the court held that the Free Exercise Clause was not implicated because what SISVC School requested “is beyond the fair treatment of a private religious institution in receiving a generally available benefit.” Pet.App.28a.

Following the court’s order in *Drummond*, the Board eventually complied with the writ of mandamus and rescinded the contract. *See* Res.App.826a-827a.





## REASONS FOR DENYING CERTIORARI

### I. The Decision Below Is Supported by Adequate and Independent State Law Grounds.

Relying on *Michigan v. Long*, 463 U.S. 1032, 1041 (1983), the Oklahoma Supreme Court found “the St. Isidore Contract to violate two provisions of the Oklahoma Constitution, which affords bona fide, separate, adequate, and independent grounds upon which [the] opinion is rested.” Pet.App.25a.

The Oklahoma Constitution demands that “[n]o public money . . . shall ever be appropriated . . . or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion . . . or sectarian institution.” OKLA. CONST. art. II, § 5.<sup>6</sup> The Oklahoma Constitution also requires that “[p]rovisions shall be made for the establishment and maintenance of 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. The Oklahoma Legislature, in turn, defined a charter school as “a public school established by contract.”

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<sup>6</sup> This is not a so-called “Blaine Amendment.” See Pet.App.12a (quoting *Prescott v. Okla. Capitol Pres. Comm’n*, 2015 OK 54, ¶ 24, 373 P.3d 1032, 1052 (Gurich, J., concurring in denial of reh’g) (“Characterizing [Article 2, Section 5] of the Oklahoma Constitution as a Blaine Amendment completely ignores the intent of the founders of the Oklahoma Constitution who purposely sought to ensure future generations of Oklahomans would be free to practice religious freedom without fear of governmental intervention.”))

OKLA. STAT. tit. 70, § 3-132.2(C)(1). Accordingly, the Oklahoma Supreme Court correctly concluded that, as a matter of Oklahoma law, a charter school is a public school and thus must be “free from sectarian control” and cannot be funded by “public money.” Pet.App.17a-18a. The Court then correctly found that the SISVC School would, were it a charter school, violate the Oklahoma Constitution. Pet.App.30a.

Any attempt by Petitioners to claim that their First Amendment arguments are intertwined with the state law decision is flawed. Neither SISVC School nor the Board ever affirmatively sought to have the Oklahoma Supreme Court declare that Article I, Section 5 or Article II, Section 5 of the Oklahoma Constitution violate the U.S. Constitution. To be sure, SISVC School stated below that the “Court should avoid a collision with the First Amendment“ and “[t]he Free Exercise Clause [b]ars Oklahoma [f]rom [e]xcluding St. Isidore.” Res.App.809a, 813a. But these statements were in a response brief, and neither SISVC School nor the Board filed their own request for assumption of original jurisdiction and declaratory relief. The Oklahoma Supreme Court has made clear that “a statement in respondent’s response and supporting brief . . . is not a formal request for assumption of original jurisdiction and declaratory relief.” *Indep. Sch. Dist. No. 12 of Okla. Cnty. v. State Bd. of Educ.*, 2024 OK 39, ¶ 21. As a result, while the Oklahoma Supreme Court interacted with the First Amendment in its order, it did not definitively rule on whether the Oklahoma Constitution violates the First Amendment.

This case is distinguishable from *Espinoza v. Montana Department of Revenue*, 591 U.S. 464 (2020), because the present dispute is essentially an issue of

preservation as opposed to intertwinement. Here, the Oklahoma Supreme Court concluded that the Oklahoma Constitution bars the subject contract because, as a matter of *state* law, charter schools are *public* schools. SISVC failed to affirmatively seek a declaration that the subject provisions of the Oklahoma Constitution violate the U.S. Constitution. Pet.App.25a. Thus, there is nothing precluding the Oklahoma Supreme Court's decision to enforce the Oklahoma Constitution.

Accordingly, the decision below is supported by adequate and independent state law grounds.

## **II. There Is No Split in the U.S. Courts of Appeals.**

The Oklahoma Supreme Court found that the subject contract permitted SISVC School "to establish and operate the school as a Catholic school." Pet.App.26a. Consistent with this, the Oklahoma Supreme Court held that the contract enabled SISVC School to "fully incorporate Catholic teachings into every aspect of the school, including its curriculum and co-curricular activities." *Id.* Consequently, because the contract permitted SISVC School to act in a sectarian manner with respect to all functions, the question presented to the Oklahoma Supreme Court was essentially whether SISVC School could ever be considered a state actor for any purpose. At least as it relates to "the school's core education function," the Oklahoma Supreme Court correctly found that SISVC School would be a state actor. Pet.App.24a.

That decision is factually and legally distinguishable from the cases relied on by SISVC School. Regardless, the Oklahoma Supreme Court's analysis

aligns with every circuit’s decision on whether charter schools are treated as state actors.<sup>7</sup> Any difference in outcomes is not based on disagreements over the applicable law. Instead, they are based on (i) different facts, (ii) vastly different histories of state-provided functions, (iii) arrangements that are more distant from the state, or (iv) all of the above.

This Court has held it is “necessarily [a] fact-bound inquiry” to determine whether an entity has acted as a state actor. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 939 (1982). This is reflected in the only two courts of appeals cases relied on by SISVC School that involved charter schools. The Ninth Circuit in *Caviness v. Horizon Community Learning Center, Inc.*, 590 F.3d 806 (9th Cir. 2010), held that an Arizona charter school did not act as a state actor for the purposes of its post-employment treatment of a former employee. The Court recognized that “a private entity may be designated a state actor for some purposes but still function as a private actor in other respects.” *Id.* at 814. With regards to the treatment of employees, Arizona law exempted charter schools “from all statutes and rules relating to schools, governing boards and school districts[,]” including statutes governing dismissal of teachers. *Id.* at 810. Thus, the Ninth Circuit’s finding on this specific issue—the charter school’s official’s alleged false statements to the former employee’s prospective employer—was based

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<sup>7</sup> The position also aligns with a position taken by the amici South Carolina Attorney General in 2022. There, the South Carolina Attorney General issued a formal opinion finding South Carolina’s “charter schools are state actors whose operations are supported with public funds.” 2022 WL 20471447, at \*3 (S.C.A.G. June 30, 2022).

on Arizona’s decision to exempt charter schools from state regulation on employment practices.

In a later case concerning Idaho charter schools, the Ninth Circuit recognized *Caviness’s* limited reach when it noted that “Idaho charter schools are [] subject to state control that weighs in favor of a finding that they are governmental entities.” *Nampa Classical Acad. v. Goesling*, 447 Fed.Appx. 776, 777–78 (9th Cir. 2011) (unpublished); *see also id.* at 778 n.1. But Arizona law contrasts with Oklahoma law which subjects charter schools to “significant ongoing oversight and evaluation” and to the same academic standards as other public schools. Pet.App.18a-19a.

The Fourth Circuit in *Peltier v. Charter Day School, Inc.*, 37 F.4th 104, 121 (4th Cir. 2022), cert. denied, 143 S. Ct. 2657 (2023), agreed that *Caviness* and the cases it relied on did not “establish[] bright-line rules applicable to every case” in deciding whether a charter school is a state actor. The Fourth Circuit correctly found that *Caviness* simply “evaluat[ed] the specific conduct challenged by the plaintiffs in the context of the governing state law.” *Id.* The Fourth Circuit adopted the same approach by applying a “totality-of-the-circumstances inquiry [which] is guided not only by the factual circumstances of a plaintiff’s claim, but also by the laws of the state regulating the school in question.” *Id.*

The different outcomes between *Caviness* and *Peltier* lie in the nature of the actions that were challenged. *Peltier* focused on the implementation of a dress code by a charter school, a core educational policy regulated by North Carolina. *Id.* at 120. On the other hand, *Caviness* dealt with employment decisions, which were not sufficiently regulated by Arizona

to constitute state action. 590 F.3d at 811. Therefore, the different outcomes are based on the specific functions challenged and how those specific functions were regulated by their respective states.

St. Isidore, next, relies on two circuit decisions involving purely private schools, to suggest a circuit split. Pet. at 23–24 (discussing *Logiodice v. Trs. of Me. Cent. Inst.*, 296 F.3d 22 (1st Cir. 2002) and *Robert S. v. Stetson Sch., Inc.*, 256 F.3d 159 (3d Cir. 2001)). *Logiodice* involved Maine’s practice of contracting with private schools to provide education in rural communities. 296 F.3d at 24. The plaintiff challenged a private school’s disciplinary action. *Id.* at 25. The First Circuit held that there was no entwinement between state and private school largely because the school’s trustees possessed the exclusive right to “promulgate, administer and enforce all rules and regulations pertaining to” behavior and discipline. *Id.* at 28.

*Robert S* concerned a private school “that specialize[d] in the treatment and education of juvenile sex offenders.” 256 F.3d at 162. The plaintiff relied exclusively on the theory that the private school performed a function that was traditionally the exclusive province of the state. *Id.* at 165. The Third Circuit rejected the plaintiff’s argument—holding that the “undisputed evidence” showed that only private schools offered the same services. *Id.* at 166.

Neither *Logiodice* nor *Robert S* involved the establishment of a state-sponsored public school. And unlike *Caviness* or *Peltier*, the decision below did not address whether SISVC School is a state actor for a specific function in a lawsuit arising under 42 U.S.C. § 1983. Instead, the decision analyzed whether the

State's establishment of a public school to promote and incorporate one religion to the exclusion of all others was unlawful. The contract at issue in this case broadly permitted SISVC School to act in a sectarian manner for all functions. Pet.App.26a. As a result, there was no need for the Oklahoma Supreme Court to conduct a "fact-bound inquiry" as to whether SISVC School acted as a state actor for a specific function to determine that SISVC's evangelizing mission was fairly attributable to the State.

Nevertheless, the Oklahoma Supreme Court conducted the same fact-based inquiry as the cases cited by Petitioner to determine that the State had sufficient control over the SISVC School to be considered a state actor. The Oklahoma Supreme Court analyzed the features of Oklahoma law and concluded that there was sufficient governmental control over SISVC School's actions to make them attributable to the State. Pet.App.20a-24a. Specifically, the Board "serve[s] as sponsors for the charter schools" and "will provide oversight of the operation for [SISVC School], monitor its performance and legal compliance, and decide whether to renew or revoke St. Isidore's charter." *Id.* at ¶ 29. Further, SISVC School "receive[s] many of the same legal protections and benefits as their government sponsor. The State's entwinement expands to the internal operations and affairs of the charter schools." *Id.*

Therefore, there is no circuit split. The Oklahoma Supreme Court applied the same legal standard as the cited circuit courts of appeals cases to determine whether a charter school is a state actor. Using this same legal standard, the Oklahoma Supreme Court correctly found that SISVC was a state actor for at

least some purposes based on Oklahoma’s unique statutory scheme and facts of the sponsorship contract.

### **III. This Case Is a Poor Vehicle for Deciding the State Action Question.**

This is the first time a state has attempted to authorize a public charter school that fully incorporates religious teachings into “every aspect of the school.” Pet.App.26a. The Court would benefit from permitting this issue to percolate through the lower courts.

Moreover, whether SISVC School is a public or private school turns on the unique provisions of Oklahoma state law, and a decision in this case would offer little guidance regarding whether “charter schools” in other states are public or private. Namely, each state has their own unique constitutional and statutory regime for regulating charter schools.<sup>8</sup> And there are

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<sup>8</sup> For example, Kansas requires local public school boards of education and the state board of education to approve a charter school application; however, there is no statewide authorizing body named as such. *See* KAN. STAT. ANN. § 72-4208. Wisconsin authorizes, *inter alia*, local school boards, the city of Milwaukee, certain universities, and one county (if the school is located in that county) to approve charter schools. WIS. STAT. § 118.40 Requirements to intervene and close schools also vary by state. *See, e.g.*, MO. REV. STAT. § 160.405 (intervention required for failing to maintain a 70% graduation rate); FLA. STAT. § 1002.33 (sponsor may terminate for failing to participate in the state’s education accountability system); N.H. REV. STAT. ANN. § 194-B:16 (State board may immediately revoke a charter in circumstances posing extraordinary risk of harm to students). Differences also occur regarding requirements for employees of a charter school. *See* ARIZ. REV. STAT. ANN. § 15-183 (State Board of Education may not adopt rules that exceed the requirements for persons qualified to teach in charter schools prescribed in federal law); CONN. GEN. STAT. § 10-66dd (at least 50% of teachers



facts unique to the present dispute. For instance, the subject contract requires that material changes to the approved curriculum be approved by the State. Res.App.5a. Therefore, it would be difficult for the Court to fashion a rule that would guide other courts in addressing this issue.

Additionally, the underlying case is an original jurisdiction proceeding seeking a writ of mandamus on a contract that permitted SISVC School to “fully incorporate Catholic teachings into every aspect of the school.” Pet.App.26a. As a result, the typical “fact-bound inquiry” on whether state action occurred was not undertaken in this matter. *Lugar*, 457 U.S. at 939. While the Oklahoma Supreme Court suggested that “the school’s core education function” constituted state action, there were no findings as to any other potential functions to be undertaken by SISVC School. Pet.App.24a. Therefore, even if the Court were to agree that some core education functions did not constitute state action, this would not be the end of the inquiry. The State would still press the Oklahoma Supreme Court on remand to conduct a fact-bound inquiry to determine whether any other function sought to be undertaken by SISVC School, such as school discipline, constitutes state action.

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must hold a state teacher certification); N.C. GEN. STAT. § 115C-218.90 (same). Finally, states are unique in their exemptions for charter schools. See ARK. CODE ANN. § 6-23-103 (exemptions must be listed in each charter, except there are no exemptions for assessment and accountability waivers); FLA. STAT. § 1002.33 (charter schools must comply with traditional public-school salary schedule requirements); GA. CODE ANN. § 20-2-2065 (teacher evaluations required just like in traditional public schools).

Moreover, on remand, the State would also press whether the terms of the contract independently violated Oklahoma statutory law. The Board's Rules precluded it from altering the model contract if the terms fail to comply "with applicable state, federal, local, and/or tribal law." OKLA. ADMIN. CODE § 777:10-3-3(g). But as observed by the Oklahoma Supreme Court, the executed contract was altered to "state[] that [SISVC School] has the right to freely exercise its religious beliefs and practices consistent with its religious protections." Pet.App.9a.

The effect of these changes to the model contract eliminated the contractual guardrails preventing SISVC School from acting in a sectarian fashion in its programs. As the contract is currently written, SISVC School can act in a sectarian fashion however it wishes if it subjectively believes it is consistent with its "religious protections." Therefore, in addition to determining whether any other function sought to be undertaken by SISVC School could constitute state action, the State would still press the Oklahoma Supreme Court on remand to determine whether the Board could have reasonably concluded that the contract "complied with applicable state, federal, local, and/or tribal law." OKLA. ADMIN. CODE § 777:10-3-3(g).

Therefore, this case is a poor vehicle for deciding the state action question.

#### **IV. The Decision Below Is Correct.**

The Oklahoma Supreme Court correctly held that "[u]nder Oklahoma law, a charter school is a public school. As such, a charter school must be nonsectarian," and "[Oklahoma's] establishment of a religious charter school violates Oklahoma statutes,

the Oklahoma Constitution, and the Establishment clause.” Pet.App.29a.

**A. The Oklahoma Supreme Court Correctly Determined That Oklahoma Charter Schools Are Public Schools, Which the State May Lawfully Require to Provide a Strictly Secular Education.**

Under *Carson*, “[Oklahoma] may provide a strictly secular education in its public schools.” *Carson v. Makin*, 596 U.S. at 769. In fact, this Court recently stated that it would “not ordinarily pause to consider whether . . . public schools” are state actors. *Lindke v. Freed*, 601 U.S. 187, 188 (2024). The Oklahoma Supreme Court faithfully applied this Court’s recent precedents and held that Oklahoma charter schools are public schools, which the Oklahoma Legislature lawfully requires to provide strictly secular education. The Oklahoma Supreme Court correctly concluded that the charter agreement between the State and the Church Corporation violated the lawful requirement that Oklahoma’s public charter schools provide a strictly secular education.

Oklahoma’s charter schools are public schools.<sup>9</sup> *Carson* identified the “numerous and important” dif-

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<sup>9</sup> The amici Oklahoma Governor agreed when he wrote to the Secretary of U.S. Department of Education on April 18, 2022, that “[c]harter schools are public schools, and many of the 3.5 million American students enrolled in charter schools are educated through the public education system in our states.” He was joined in the letter by, among others, the Governors of the amici states Alabama, Arkansas, Nebraska, and Texas. Letter joined by J. Kevin Stitt, Governor of Oklahoma, to Dr. Miguel Cardona, Secretary of the United States Department of Education. (April 18, 2022) (available at <https://content.govdelivery.com/>

ferences between public and private schools. Oklahoma's charter schools bear all of the hallmarks of a public school identified by this Court and more.

While not dispositive, Oklahoma charter schools are statutorily designated as public schools. OKLA. STAT. tit 70 § 3-132.2(C)(1)(a). On this issue, the Petitioners are careful to avoid arguing that SISVC School would be a private school. Petitioners even refuse to call SISVC School a "private school" in their brief. Petitioners are careful to avoid such a label because they know private schools, religious and secular alike, are ineligible to operate charter schools under Oklahoma law. OKLA. STAT. tit. 70, § 3-134(C). As a result, the Court should not be confused by Petitioners' attempt to conflate the would-be public charter school, SISVC School, with the private non-profit entity created by the Archdiocese of Oklahoma City and Diocese of Tulsa, the Church Corporation, by simply referring to both entities as "St. Isidore."

The reality is that SISVC School was not an Oklahoma charter school until it was sponsored by the Board via the approved application and sponsorship contract with the Church Corporation. OKLA. STAT. tit. 70, § 3-132 (private entities may *apply* and *contract* with an eligible sponsor, but once *established* by contract, the charter school is a public school). Therefore, any attempt by SISVC School to suggest that it is the equivalent of a private school should be dismissed.

Despite the reality that a designation of SISVC School as a private entity is fatal to its ability to obtain

a public charter school sponsorship contract, Petitioners attempt to align this case with *Carson* by arguing that Oklahoma’s statutory designation of charter schools is “not controlling.” Pet. Br. At 31. Yet, for good reason, Petitioners decline to even attempt to analyze whether Oklahoma’s charter schools are public schools under the factors outlined by this Court in *Carson*. Under each of the factors considered by this Court in *Carson*, Oklahoma’s charter schools are plainly public schools.

First, “[t]o start with the most obvious, private schools are different by definition because they do not have to accept all students. Public schools generally do.” *Carson*, 596 U.S. at 783. In Oklahoma, charter schools, like all other public schools, must be open to all students.<sup>10</sup>

“Second, the free public education that [Oklahoma] insists it is providing” through the charter school system is truly free. *Id.* Public charter schools, like all other public schools in Oklahoma, are tuition-free. OKLA. STAT. tit. 70 § 3-136(9). While Oklahoma recently enacted a tax credit to help offset up to \$7,500 of private school tuition costs, OKLA. STAT. tit. 70, § 28-101, which is entirely separate from the Act and public charter schools, there is no statutory limit to the amount private schools can charge for tuition.

Third, while charter schools may vary in their methods of presentation and emphasis, each charter school’s curriculum must be approved by the State before it is taught. OKLA. STAT. tit. 70 § 3-136(B)(13). Moreover, under the subject contract, any material

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<sup>10</sup> In fact, Oklahoma law prohibits the formation of single-sex charter schools, a factor considered relevant by this Court in *Carson*. OKLA. STAT. tit. 70, § 3-140.

change to the approved curriculum must be authorized by the State prior to implementation. *See* Res.App.5a. The State’s pervasive and ongoing control of charter schools’ curriculum has no analogue in Oklahoma private schools.

Fourth, charter schools in Oklahoma are “subject to the same academic standards and expectations as existing public schools.” OKLA. STAT. tit. 70, § 3-135(A) (11). Charter schools must also, “as is required of a school district,” conduct standardized testing as required by the Oklahoma School Testing Program Act and provide pertinent data to the Office of Accountability within the State Department of Education. *Id.* at §§ 3-136(A)(4); 1210.505. Charter schools must also report a myriad of student and school performance information to the State. *Id.* at § 3-136 (A)(18). These reports provide transparency in the public expenditure of funds and serve as the basis for State-issued school accountability report cards, which state and federal law mandate for public schools. *Id.* at § 3-136 (A)(4), (6); §§ 5-135, 5-135.2, and 5-135.4; §§1210.544—1210.545; 20 U.S.C. § 6311. There are no analogous statutory mandates for private schools.

Fifth, while Oklahoma’s charter schools are not restricted to hiring state-certified teachers, neither are traditional public schools. Since 2022, Oklahoma permits traditional public school districts to employ non-certified individuals who are determined by the local board of education to be persons with “distinguished qualifications in their field.” OKLA. STAT. tit. 70, § 122.3(G). Numerous other factors not considered by this Court in *Carson* confirm that Oklahoma charter schools are public schools, which Oklahoma

may lawfully require to “provide a strictly secular education.” *Carson*, 596 U.S. at 785.

Like all other Oklahoma public schools, charter schools must obtain—and maintain as a condition of continued existence—accreditation directly from the State Board of Education.<sup>11</sup> Illustrating the control and supervision of public charter schools, the State Board of Education accreditation standards sets forth more requirements for public charter schools than for traditional public schools. Res.App.850a.

Charter schools are also (a) considered a “school district” and protected under the Oklahoma Government Tort Claims Act,<sup>12</sup> (b) subject to State “reporting requirements, financial audits, audit procedures, and audit requirements,”<sup>13</sup> (c) required to comply with the Oklahoma Open Meeting Act and the Oklahoma Open Records Act,<sup>14</sup> (d) eligible for State employee retirement and insurance programs,<sup>15</sup> (e) required to

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<sup>11</sup> OKLA. STAT. tit. 70, § 3-132.2(B).

<sup>12</sup> OKLA. STAT. tit. 70, § 3-136(A)(12). The Government Tort Claims Act, OKLA. STAT. tit. 51, § 151, *et seq.*, applies to the State, its political subdivisions, and employees of the State and its political subdivision who are acting within the scope of their employment. *Id.* This act “adopt[s] the doctrine of sovereign immunity” for torts for those parties, *id.* at § 152.1(A), and sets forth the scope of liability, extent of liability, and exemptions from liability among other things. *Id.* at §§ 153--155. The Oklahoma Legislature’s extension of The Government Tort Claims Act to public virtual charter schools displays its intent to treat such schools as the state or political subdivisions thereof.

<sup>13</sup> *Id.* at (A)(5).

<sup>14</sup> *Id.* at (A)(15).

<sup>15</sup> *Id.* at (A)(13),(14).

designate multiple occupancy restrooms as “for the exclusive use” of the male or female sex,<sup>16</sup> (f) subject to inspection by the State Auditor,<sup>17</sup> (g) required to comply with legislatively approved due process measures for student discipline matters,<sup>18</sup> and (h) subject to all “laws relating to educating students with disabilities in the same manner as a [traditional] school district.”<sup>19</sup> Additionally, charter schools must also meet the health, safety, civil rights and insurance requirements that are required of traditional public schools. OKLA. STAT. tit. 70, § 3-136(A)(1). In addition to other laws and regulations, the State Department of Education interprets this to include more than seventy laws and regulations, including laws and regulations covering the national fingerprint-based criminal history check, surety bonds for public officers, smoking in public places, and Oklahoma Employees Insurance and Benefits Act. Oklahoma’s Legislature even recently decided to bring charter school governing boards in line with school district boards of education, including with respect to public officer ethics, conflicts of interest, and continuing education requirements. OKLA. STAT. tit. 70, § 136(A)(7).

Beyond the extensive control over charter schools granted to the Board by the Legislature, the charter itself gives the Board control of all significant aspects of the charter school. The charter confirms that the school is subject to State regulations regarding (a)

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<sup>16</sup> OKLA. STAT. tit. 70, § 1-125

<sup>17</sup> *Id.* at (A)(5)

<sup>18</sup> *Id.* at (A)(11)

<sup>19</sup> *Id.* (A)(7)



conflicts of interest among the members of the charter school's governing board (Pet.App.121a), (b) the school's relationship with Educational Management Organizations (Pet.App.122a), (c) the school's ability to take on debt (Pet.App.125a), (d) constitutional spending limitations (Pet.App.128a), (e) reporting of financial transactions through the Oklahoma Cost Accounting Systems (Pet.App.129a) and annual audits (Pet.App.131a), (f) access to records (Pet.App.132a), (g) requirements that teachers pass background checks and have valid teaching certificates or the equivalent (Pet.App.142a), (h) insurance requirements and coverage under the Oklahoma Governmental Tort Claims Act (Pet.App. 144a), and (i) notification requirements in the event of adverse action taken against the school (Pet.App.148a).

Moreover, had the contract not been rescinded, the fact that the contract gives the Board full veto power over material changes to the charter school's Catholic curriculum would present multiple obvious and unavoidable constitutional issues. *See* Pet.App.115a. At the outset, the State's official approval of one particular "Catholic curriculum" presents an obvious Establishment Clause issue in that the State has elevated the doctrinal beliefs of one rite of Catholicism over all others. This fundamental issue would be amplified when the charter school attempts to incorporate the ever-changing landscape of Catholic doctrine through updates to the school's curriculum.

For example, the Pope's issuance of an Encyclical Letter or a Third Vatican Council could create material expansions or revisions of Catholic doctrine. Under the charter, SISVC School would be prohibited from instructing students on such teachings unless and until the State approves of the Church's new teachings.

Even if there were some dispute as to whether instructing students on a new Encyclical Letter or updating religious instruction following a Third Vatican Council constitute a material deviation from the State-approved Catholic curriculum, the First Amendment issues persist. This Court has been clear that courts must “heed the First Amendment, which ‘commands civil courts to decide legal disputes without resolving underlying controversies over religious doctrine.’” *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732, 763 (2020) (Thomas, J., concurring) (quoting *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969)). If the Board were to believe that SISVC School made a material change to the approved Catholic curriculum without prior authorization from the State, the Board could pursue a breach of contract claim. This would leave Oklahoma’s courts to decide what Catholic doctrine is, whether there has been a material change in Catholic doctrine, and whether SISVC School has made a material change without State authorization based on novel teachings from the Catholic Church’s Magisterium. It is hard to imagine a more clear-cut First Amendment violation.

Simply stated, there can be no question that the Oklahoma Supreme Court correctly concluded that Oklahoma’s charter schools are public schools and that Oklahoma’s laws requiring charter schools to provide a strictly secular education are constitutionally valid.

**B. The Oklahoma Supreme Court Correctly Concluded That Oklahoma’s Establishment of a Catholic Public Charter School Is Unlawful.**

Petitioners, careful to avoid arguing that SISVC School would have been a private school, attempt to recast the Oklahoma Supreme Court’s decision as excluding the Church Corporation from participating in Oklahoma’s public charter school program because of the Church Corporation’s religious identity. But the Oklahoma Supreme Court was clear that its conclusion rested “on the State’s contracted-for religious teachings and activities through a new public charter school, not the State’s exclusion of a religious entity.” ¶ 45.

Oklahoma’s laws governing charter schools at issue here are readily distinguishable from the unconstitutional restrictions on aid to private religious schools which this Court recently struck down in *Espinoza* and *Carson*.

Those cases concerned state subsidization of tuition at existing private religious schools, not state establishment of new public religious schools. See *Espinoza*, 591 U.S. at 467; *Carson*, 596 U.S. at 783. As set forth in detail above, the schools at issue in *Carson* and *Espinoza* are fundamentally different from SISVC School in that SISVC School is not—and does not claim to be—a private school; it is a public charter school established by the State.

Further, this is not a case where the State has chosen to “disqualify some private schools” from generally available tuition assistance “solely because they are religious.” *Espinoza*, 591 U.S. at 487; *Carson*, 596 U.S. at 780. In both *Carson* and *Espinoza*, private

schools were eligible to participate in the tuition assistance program, so long as the private schools were not religious. *Id.* Here, private schools, religious and secular alike, are categorically excluded from the charter program. OKLA. STAT. tit. 70, § 3-134(C).

Moreover, SISVC School's inability to operate as a public charter school is not a penalty. There is nothing in the law precluding SISVC School from operating as a private school as opposed to public charter school. The Oklahoma Constitution and Establishment Clause simply preclude the SISVC School from operating a Catholic public charter school.

This case is also distinguishable from *Carson* and *Espinoza* in that Church Corporation has not been excluded from operating a public charter school because of its religious nature. To be clear, despite its self-acknowledged religious nature, the Church Corporation is not prohibited from operating a secular public charter school under the Oklahoma Supreme Court's decision. Nor is the Church Corporation prohibited from operating a Catholic private school that would be eligible for Oklahoma's recently enacted tax credit. Rather, what the Oklahoma Supreme Court correctly prohibited was the State's attempt to establish a Catholic public charter school. It is the religious nature of the entity established by the State, through its charter establishing SISVC School, that invalidates the charter, not the religious nature of the Church Corporation itself.

Finally, while Petitioners heavily rely on this Court's decision in *Rendell-Baker*, it is similarly readily distinguishable. That case involved certain personnel decisions at a specialized private school for troubled children that was only nominally overseen by

state agencies. *Rendell-Baker v. Kohn*, 457 U.S. 830, 832-834 (1982). Further, as a private school, the school in that case did not provide free and universal education, nor was it entangled with the state to the degree that Oklahoma charter schools are. *Id.* Therefore, *Rendell-Baker* is not helpful to Petitioners.

Accordingly, the decision below is correct.



**CONCLUSION**

For the foregoing reasons, the Court should deny the petition for certiorari.

Respectfully submitted,

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