

No. 24-394

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

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OKLAHOMA STATEWIDE CHARTER SCHOOL BOARD,  
et al.,  
*Petitioners,*

v.

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

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*On Writ of Certiorari to the  
Supreme Court of Oklahoma*

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**BRIEF FOR COVENANT JOURNEY ACADEMY  
AS AMICUS CURIAE SUPPORTING PETITIONER**

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**TABLE OF CONTENTS**

	Page
TABLE OF AUTHORITIES .....	iii
INTEREST OF AMICUS CURIAE .....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT .....	4
I. Traditional Public Schools Are in Decline Due to Systemic Failures, Driving Families Toward Virtual and Alternative Education. ....	4
A. Teachers’ unions have contributed to public school decline by prioritizing political agendas over student success.....	4
B. The increasing ideological bias in public schools has led to parental dissatisfaction and an exodus to alternative educational models.	8
II. Virtual Schools Expand Education Access and Protect the Constitutional Right of Parents to Direct Their Children’s Education. ....	11
A. Virtual schools provide flexible, family-centered education. ....	12
B. CJA families who chose virtual education testify to its transformative impact on their children’s academic and personal growth. .	17
III. The Court’s Ruling in this Case Will Have Far-Reaching Implications for Educational Freedom Nationwide. ....	19
A. The constitutional right of parents to direct their children’s education necessarily includes the right to choose faith-based virtual schools....	20

B. School choice strengthens education by  
expanding options for families and ensuring  
no child is trapped in a failing system. .... 22

CONCLUSION..... 27

## TABLE OF AUTHORITIES

	Page
<b>Cases</b>	
<i>Arizona Christian Sch. Tuition Org. v. Winn</i> , 563 U.S. 125 (2011) .....	26
<i>Carson v. Makin</i> , 596 U.S. 767 (2022) .....	3, 21, 22
<i>Espinoza v. Montana Dep’t of Rev.</i> , 591 U.S. 464 (2020) .....	3, 21, 22
<i>Meyer v. Nebraska</i> , 262 U.S. 390 (1923) .....	20
<i>Pierce v. Society of Sisters</i> , 268 U.S. 510 (1925) .....	20
<i>Tinker v. Des Moines Indep. Cmty. Sch. Dist.</i> , 393 U.S. 503 (1969) .....	11
<i>Trinity Lutheran Church of Columbia, Inc. v. Comer</i> , 582 U.S. 449 (2017) .....	3
<i>Wisconsin v. Yoder</i> , 406 U.S. 205 (1972) .....	20, 21
<i>Witters v. Washington Dep’t of Servs. for the Blind</i> , 474 U.S. 481 (1986) .....	23
<i>Zelman v. Simmons-Harris</i> , 536 U.S. 639 (2002) .....	3, 23, 24, 26
<i>Zobrest v. Catalina Foothills Sch. Dist.</i> , 509 U.S. 1 (1993) .....	23
<b>Other Authorities</b>	
<i>A Policymaker’s Guide to Virtual Schools</i> , Educ. Comm’n of the States (2020) .....	14
<i>About CJ Academy</i> , Covenant Journey Acad....	14, 15
Alex Molnar et al., <i>Virtual Schools in the U.S. 2023</i> 11, Nat’l Educ. Policy Ctr. (May 2023) .....	12, 13

<i>Background &amp; Frequently Asked Questions, St. Isidore of Seville Catholic Virtual Sch. (Oct. 8, 2024)</i> .....	12
Betsy VanDenBerghe, <i>Is My School Indoctrinated? Inside the Fight against Progressive Ideology in Education</i> , Deseret News (Nov. 3, 2022) .....	9
Catrin Wigfall, <i>Teachers Union Labels School Choice Policies as ‘Schemes’, Center of the American Experiment (Oct. 30, 2023)</i> .....	7
Cecilia E. Rouse et al., <i>Feeling the Florida Heat? How Low-Performing Schools Respond to Voucher and Accountability Pressure</i> , 5 Am. Econ. J. 251 (2013) .....	24
Chris Cargill, <i>There Are 187 Studies on Impact of Education Choice—and the Results Are Overwhelming</i> , Mountain States Pol’y Ctr. (Jan. 24, 2024).....	25
Chuck Ross, <i>FBI Investigated Dozens of Parents Who Criticized School Boards, Found No Legitimate Threats</i> , Wash. Free Beacon (Mar. 22, 2023) .....	10
Covenant Journey Academy, <i>Student &amp; Parent Testimonials</i> , YouTube (Jan. 20, 2025) .....	17
<i>Florida Virtual School</i> , Fla. Dep’t of Educ.....	13
Hannah Schmid, <i>Teachers Unions to Fight Nationwide School Choice Bill after Killing Option in Illinois</i> , Ill. Pol’y Inst. (Jan. 30, 2025) .....	8
James Powel, <i>Department of Education Launches Investigation into Denver School’s All-Gender Bathroom</i> , USA Today (Jan. 29, 2025) .....	10
Jay P. Greene et al., <i>Effectiveness of School Choice</i> , 31 Educ. & Urban Soc’y 190 (1999) .....	24

Kevin Bushweller, <i>Americans' Satisfaction with Public Schools Hits 24-Year Low</i> , Education Week (Feb. 5, 2025) .....	4
Maria Öhrstedt et al., <i>Studying Online with Special Needs: A Student Perspective</i> , 24 J. Res. Special Educ. Needs 771 (2024) .....	16
Martin Peretz, <i>An 1895 8th Grade Final Exam: I Couldn't Pass It. Could You?</i> , The New Republic (Nov. 28, 2010) .....	8
Nat'l Ctr. for Educ. Stat., <i>2023 Long-Term Trend Assessment Results: Reading and Mathematics</i> , U.S. Dep't of Educ. (2023) .....	5
Nat'l Ctr. for Educ. Stat., <i>Public School Enrollment</i> , U.S. Dep't of Educ. (2024) .....	11
Nat'l Ctr. for Educ. Stat., <i>Public School Expenditures</i> , U.S. Dep't of Educ. (2024).....	5
Pedro Enamorado, <i>The Impact of Voucher Programs: A Deep Dive Into the Research</i> , Thomas Fordham Inst. (Oct. 1, 2021) .....	24
Peter Brimelow, <i>The Worm in the Apple: How the Teacher Unions Are Destroying American Education</i> (2004) .....	6
<i>Private School Vouchers Don't Help Kids</i> , Am. Fed'n of Teachers .....	7
S. Beth Ruff & Michael A. Klein, <i>Revolving Doors: The Impact of Multiple School Transitions on Military Children</i> , 4 Prof. Couns. 103 (2014) .....	15
<i>School Choice</i> , Am. Fed'n for Children.....	23
Suzanne Buchanan, <i>Evolution of Parental Rights in Education</i> , 16 J. L. & Educ. 340 (1987) .....	19
Terry M. Moe, <i>Teachers Unions, Vested Interests, and America's Schools</i> , Hoover Inst. (2013) .....	6

Tim Walker, <i>'No Accountability': Vouchers Wreak Havoc on States</i> , NEA Today (Feb. 2, 2024) .....	26
<i>What Is Synchronous and Asynchronous Learning?</i> , Stanford Graduate Sch. of Educ. ....	13
<i>Woke Schooling: A Toolkit for Concerned Parents</i> , Manhattan Inst. (June 17, 2021) .....	9, 10

## **INTEREST OF AMICUS CURIAE<sup>1</sup>**

Amicus Covenant Journey Academy (CJA) is an online, full-service K-12 Christian school dedicated to delivering a superior education grounded in a biblical worldview. CJA offers over 150 courses taught by certified teachers, alongside more than 30 college-level courses led by qualified university faculty for dual credit in which students may graduate with a high school and an Associate of Arts, accredited college degree. CJA also offers six foreign languages (Spanish, French, Latin, German, Chinese, and American Sign Language). CJA courses are self-paced and provide flexibility to students and parents to provide for a wide array of learning abilities and skills.

CJA's mission is to develop and empower highly skilled students, thoroughly grounded in Christian principles, to courageously transform culture. CJA serves both families and private schools by offering flexible, high-quality education that integrates faith and learning.

As a virtual school committed to upholding parental rights in education, CJA has an interest in the outcome of this case, which addresses the inclusion of faith-based virtual schools in publicly available charter-school programs. Indeed, the Court's decision will significantly impact the ability of faith-based virtual schools to participate in school choice programs.

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



## SUMMARY OF ARGUMENT

The American public school system is failing. By nearly every metric, public schools nationwide are underperforming, unaccountable, and increasingly out of touch with the families they purport to serve. Despite record levels of taxpayer funding, student achievement continues to decline, parents are withdrawing their children at unprecedented rates, and confidence in public education has plummeted to historic lows. The culprit is no mystery. Entrenched special interests—chief among them, powerful teachers’ unions—have systematically obstructed reforms that would improve accountability and student outcomes. Instead of prioritizing student achievement, these groups have insulated underperforming educators, opposed meaningful competition, and imposed ideological curricula that alienate parents. Indeed, presently before the Court this term is *Mahmoud v. Taylor*, No. 24-297, in which a public school system in Maryland was attempting to force sexual and transgender ideology into the minds of children as young as five, over the objections (and without opportunity for an opt-out) of parents with sincerely held religious beliefs against it. In response, families are fleeing public schools in droves and turning to alternatives that better serve their children’s needs. Among these alternatives are virtual schools like Petitioner St. Isidore and Amicus Covenant Journey Academy.

Virtual education offers a viable solution to the failures of traditional public schooling. It provides families with a flexible yet academically rigorous alternative, free from the bureaucracy and politicization that plague brick-and-mortar public schools. For many

students—namely, military children frequently on the move, students with disabilities requiring tailored learning environments, and families seeking an education that is not hostile to their religious convictions—virtual schooling is not simply another option; it is the only viable option. This Court has long recognized that parents, not the government, bear the primary responsibility for directing their children’s education. That fundamental right—the oldest fundamental right recognized by this Court—must necessarily include the ability to choose a virtual school that accords with their family values and meets their children’s needs.

The question before this Court is straightforward: whether a state may exclude a religious school from its publicly available charter-school program. This Court will find the answer to that question in its decisions in *Carson v. Makin*, 596 U.S. 767 (2022), *Espinoza v. Montana Department of Revenue*, 591 U.S. 464 (2020), and *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002). Put simply: Once a state provides a benefit for private education, it cannot exclude religious institutions. Accord *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017). To do so would plainly run afoul of the Establishment Clause and substantially burden the parent’s religious beliefs in violation of the Free Exercise Clause.

This Court’s decision will have far-reaching implications for educational freedom. If Oklahoma is permitted to exclude faith-based virtual schools from its charter-school program, it would set a dangerous precedent—one that allows the government to dictate which schools are “too religious” for public participation. As this Court’s precedents make clear, the

Constitution does not permit such arbitrary line-drawing. The Court should reverse.

## ARGUMENT

### I. **Traditional Public Schools Are in Decline Due to Systemic Failures, Driving Families Toward Virtual and Alternative Education.**

The American public school system is in crisis. Despite record levels of taxpayer funding, academic performance continues to decline, and families are seeking alternatives in unprecedented numbers. According to a recent Gallup poll, trust in public education has hit a 24-year low, with parents increasingly frustrated by falling academic standards, politicized instructional materials, and administrative bloat. See Kevin Bushweller, *Americans' Satisfaction with Public Schools Hits 24-Year Low*, Education Week (Feb. 5, 2025).<sup>2</sup> This crisis is no accident. Indeed, the decline of public schools is not merely the result of shifting demographics or pandemic disruptions—it is a systemic failure driven by powerful special interests that prioritize political advancement, radical indoctrination, and ideological agendas over student achievement and parental rights.

#### **A. Teachers' unions have contributed to public school decline by prioritizing political agendas over student success.**

Public education in the United States is a massive enterprise, consuming nearly \$1 trillion annually in

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<sup>2</sup> Available at <https://www.edweek.org/leadership/americans-satisfaction-with-public-schools-hits-24-year-low/2025/02>.

taxpayer funds. In the 2020–21 school year alone, total spending for public elementary and secondary schools reached \$927 billion, with an average per-pupil spending of \$18,614—a figure that rivals tuition at many private institutions. See Nat’l Ctr. for Educ. Stat., *Public School Expenditures*, U.S. Dep’t of Educ. (2024).<sup>3</sup>

One might assume that such munificent funding would translate into academic excellence, or at the very least, steady year-over-year improvement. But the opposite is true. Despite the unprecedented financial investment, American public schools are in decline. Standardized test scores—long regarded as a bellwether for student proficiency—are stagnant or falling. In 2023, the National Assessment of Educational Progress (NAEP) reported that average scores for 13-year-olds dropped by four points in reading and nine points in mathematics compared to pre-pandemic assessments. Over the past decade, the declines are even more dramatic: seven points lost in reading, fourteen in math. See Nat’l Ctr. for Educ. Stat., *2023 Long-Term Trend Assessment Results: Reading and Mathematics*, U.S. Dep’t of Educ. (2023).<sup>4</sup> Put simply, even as public-school budgets swell, student outcomes continue to decrease.

The commonsense response to this crisis would be for school administrators and policymakers to focus on setting higher academic standards, hiring quality teachers, and firing bad ones. One would also suspect

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<sup>3</sup> Available at <https://nces.ed.gov/programs/coe/indicator/cmb> (last visited Feb. 26, 2025).

<sup>4</sup> Available at <https://www.nationsreportcard.gov/highlights/ltt/2023> (last visited Feb. 26, 2025).

that the ideological entrenchment and radical indoctrination plaguing public education might be placed on the chopping block along with failing teachers. But that is not what has happened. Instead, teachers' unions—the most powerful force in public education—have systematically resisted meaningful reforms while insulating their members from accountability. See Terry M. Moe, *Teachers Unions, Vested Interests, and America's Schools*, Hoover Inst. (2013) (“The teachers unions have been masters of the politics of blocking for the past quarter century. Major reform is threatening to their vested interests in the existing system, and they have used their formidable power—leveraged by checks and balances—to repel and weaken the efforts of reformers to bring real change.”).<sup>5</sup> Specifically, teachers' unions have opposed performance-based instructor evaluations, fought efforts to streamline the removal of ineffective educators, and championed a tenure system that prioritizes seniority over merit. See generally Peter Brimelow, *The Worm in the Apple: How the Teacher Unions Are Destroying American Education* (2004). And, that does not even touch the radical and discriminatory diversity, equity, and inclusion efforts championed by the teacher's unions that eliminate any meaningful determinations based on quality or merit. The result? A system in which teachers—regardless of competence—are nearly impossible to dismiss, where funding increases do not translate into better student performance, and where entrenched bureaucratic interests prevail over academic excellence. The

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<sup>5</sup> Available at <https://www.hillsdale.edu/wp-content/uploads/2016/02/FMF-2013-Teachers-Unions.pdf> (last visited Feb. 26, 2025).

clear victim in this ideological war? *Students*. The consequences? *Catastrophic*.

Teachers' unions have also wielded their political clout to block school choice initiatives that provide families with better alternatives. Time and again, unions have opposed policies that would allow students—particularly those in underperforming districts—to escape failing public schools. See, e.g., *Private School Vouchers Don't Help Kids*, Am. Fed'n of Teachers (arguing, falsely, that private school vouchers “take money away from neighborhood public schools,” “actually hurt student achievement,” and “lack accountability”).<sup>6</sup> Their reason for such vigorous resistance is clear: School choice threatens the monopoly of union-controlled public education and diminishes the union's ability to indoctrinate all of America's pupils with their radical ideologies.

Indeed, the National Education Association (NEA) has labeled programs like education savings accounts and tax-credit scholarships as “schemes,” not because they fail students, but because they shift control away from the unions. See, e.g., Catrin Wigfall, *Teachers Union Labels School Choice Policies as ‘Schemes’*, Center of the American Experiment (Oct. 30, 2023).<sup>7</sup> The American Federation of Teachers (AFT) has taken a similarly hostile stance, blocking school choice legislation wherever possible. See Hannah Schmid, *Teachers Unions to Fight Nationwide School Choice Bill after Killing Option in Illinois*, Ill. Pol'y

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<sup>6</sup> Available at <https://www.aft.org/private-school-vouchers-dont-help-kids> (last visited Feb. 26, 2025).

<sup>7</sup> Available at <https://www.americanexperiment.org/teachers-union-labels-school-choice-policies-as-schemes>.

Inst. (Jan. 30, 2025).<sup>8</sup> Simply put: the teacher’s unions prioritize power and influence over pupils and instruction. At bottom, the problem is not a lack of resources—it is a lack of accountability. Public schools continue to deteriorate because powerful special interests have obstructed reform at every turn. This is the reality that has driven millions of families to seek alternatives, including virtual schools.

**B. The increasing ideological bias in public schools has led to parental dissatisfaction and an exodus to alternative educational models.**

Another reason driving the widespread shift toward alternative education is the increasing politicization of school curricula and policies. Parents once trusted that schools would be academic institutions where students learned math, science, history, and literature without political interference.<sup>9</sup> Yet in recent years, public education has become a laboratory for ideological agendas and radical indoctrination that many parents find not only inappropriate but irreconcilable with basic American values such as Judeo-Christian morality, individual freedom, and personal

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<sup>8</sup> Available at <https://www.illinoispolicy.org/teachers-unions-to-fight-nationwide-school-choice-bill-after-killing-option-in-illinois/>.

<sup>9</sup> For context, Amicus refers to an eighth-grade final exam from 1895 in Salina, Kansas, taken from the original document on file at the Smokey Valley Genealogical Society and Library in Salina, and reprinted by the *Salina Journal*. See Martin Peretz, *An 1895 8th Grade Final Exam: I Couldn't Pass It. Could You?*, *The New Republic* (Nov. 28, 2010), <https://newrepublic.com/article/79470/1895-8th-grade-final-exam-i-couldnt-pass-it-could-you>.

responsibility. The previously indelible three “Rs” of reading, writing, and arithmetic have been supplanted by a newly minted woke version—radicalization, racialism, and raunchiness.

Examples of ideological creep in public education are not difficult to find. Across the country, parents have voiced concerns about curricula that prioritize political and social activism over core academic subjects. A 2022 *Deseret News* investigation detailed the increasing presence of progressive ideological content in public school classrooms, covering topics from gender identity theory to radical critiques of American history. See generally Betsy VanDenBerghe, *Is My School Indoctrinated? Inside the Fight against Progressive Ideology in Education*, *Deseret News* (Nov. 3, 2022).<sup>10</sup> Similarly, a 2021 report from the Manhattan Institute highlighted the systematic embedding of political ideology into K-12 education, warning that many public schools no longer maintain even a pretense of neutrality in their instruction. See *Woke Schooling: A Toolkit for Concerned Parents* at 3, Manhattan Inst. (June 17, 2021).<sup>11</sup> And school districts are increasingly adopting radical “gender theory” policies that have discriminated against female students. See James Powel, *Department of Education Launches*

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<sup>10</sup> Available at <https://www.deseret.com/2022/11/3/23413478/culture-war-public-schools-book-banning-gender-ideology>.

<sup>11</sup> Available at <https://media4.manhattan-institute.org/sites/default/files/woke-schooling-toolkit-for-concerned-parents.pdf>.



*Investigation into Denver School's All-Gender Bathroom*, USA Today (Jan. 29, 2025).<sup>12</sup>

This shift has not gone unnoticed by families, particularly those with religious convictions. See *Woke Schooling*, *supra* note 11 (noting that “[p]arents across the country are increasingly worried about the extremism spreading in their children’s schools”). Parents who once assumed that public education was a neutral space now find themselves increasingly at odds with the politicized lessons being taught in the classroom and with their daughters being forced to share locker rooms with biological males.<sup>13</sup> Rather than subject their children to an educational system that actively denigrates and undermines their beliefs, these families have sought alternatives.

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<sup>12</sup> Available at <https://www.usatoday.com/story/news/nation/2025/01/29/east-high-school-denver-bathroom/78031478007/>.

<sup>13</sup> Not only are parents at odds with curriculum choices; they also face government investigations simply for voicing their concerns. In 2021, the National School Boards Association sent a letter to the Department of Justice requesting federal intervention regarding parents protesting at school board meetings, characterizing their actions as potential “domestic terrorism.” This prompted then-Attorney General Merrick Garland to issue a memorandum directing the FBI to address these purported threats. Subsequent whistleblower reports and congressional investigations revealed that the FBI initiated investigations into parents, some of whom were reported for merely expressing opposition to school policies. See Chuck Ross, *FBI Investigated Dozens of Parents Who Criticized School Boards, Found No Legitimate Threats*, Wash. Free Beacon (Mar. 22, 2023), <https://freebeacon.com/biden-administration/fbi-investigated-dozens-of-parents-who-criticized-school-boards-found-no-legitimate-threats/>.

Just look at the numbers. Since 2020, public school enrollment has declined by over 1.2 million students, with a corresponding increase in private school and homeschooling enrollment. See Nat'l Ctr. for Educ. Stat., *Public School Enrollment*, U.S. Dep't of Educ. (2024).<sup>14</sup> Where did they go? Many enrolled in private or faith-based schools, while homeschooling surged. And a growing share of those students are turning to faith-based virtual schools.

Public education was never meant to be an experimental lab for social engineering, nor was it intended as an “enclave of totalitarianism” in which students are merely “closed-circuit recipients” of the radical ideologies or obscenity the State chooses to espouse. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969). As schools increasingly drift into political and social activism, however, parents are left with no real choice but to exit the system entirely. As discussed below, virtual schools have provided these families with an alternative that public education no longer offers: a rigorous, values-aligned, politically neutral learning environment.

## **II. Virtual Schools Expand Education Access and Protect the Constitutional Right of Parents to Direct Their Children's Education.**

Petitioner St. Isidore is a privately organized virtual charter school in Oklahoma whose stated goal is “to bring a new educational opportunity to serve all interested students—Catholic and non-Catholic alike—throughout the state.” See *Background & Frequently*

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<sup>14</sup> Available at <https://nces.ed.gov/programs/coe/indicator/cga>.

*Asked Questions*, St. Isidore of Seville Catholic Virtual Sch. (Oct. 8, 2024).<sup>15</sup> In particular, St. Isidore’s “experience educating children virtually during the height of the COVID pandemic revealed the possibility of bringing new opportunities to families in remote areas, or families with children who might learn better in non-traditional settings, through a virtual school.” *Id.* And “Oklahoma’s virtual charter school program specifically invites private educators to design and operate new schools for this very reason: to expand educational choices throughout the state.” *Ibid.* Beyond the questions presented for this Court’s review, the heart of this case is the role of faith-based virtual schools in publicly available educational programs—whether they can be included in state programs on equal footing with their brick-and-mortar counterparts. That being so, the Court should understand how virtual schools operate and why they have become a vital alternative to traditional public schooling and a bulwark of religious freedom.

**A. Virtual schools provide flexible, family-centered education.**

Virtual schools are not a technological experiment or an alternative for a niche group of students. They are a well-established, fully functional component of American education that serves hundreds of thousands of students across the country. See Alex Molnar et al., *Virtual Schools in the U.S. 2023* 11, Nat’l Educ. Policy Ctr. (May 2023).<sup>16</sup> Virtual schools offer

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<sup>15</sup> Available at <https://stisidorevirtualschool.org/faqs>.

<sup>16</sup> Available at [https://nepc.colorado.edu/sites/default/files/publications/Complete%202023%20Virtual%20Schools\\_0.pdf](https://nepc.colorado.edu/sites/default/files/publications/Complete%202023%20Virtual%20Schools_0.pdf).

flexibility, accessibility, and a customized learning experience—qualities that traditional public schools, with their one-size-fits-all approach, have largely failed to provide. To understand the role of virtual education in the modern school system, the Court should understand how these institutions operate, who they serve, and why so many families are choosing them.

A virtual school is a public or private institution that delivers coursework primarily online. Instruction may be synchronous (real-time lessons where students interact with teachers and classmates) or asynchronous (self-paced coursework that students complete independently and at their own pace), or in many cases, a combination of both. See generally *What Is Synchronous and Asynchronous Learning?*, Stanford Graduate Sch. of Educ.<sup>17</sup>

As of 2023, one third of all virtual schools are organized as charter schools, accounting for 58.4% of enrollment. See Molnar, *supra* note 16, at 11. Districts created 245 new full-time virtual schools during the pandemic, while charter schools added only a net of four virtual schools. See *id.* These schools range from state-sponsored programs, which provide supplemental or full-time virtual education, to charter-based virtual schools, which operate independently under state authorization. See generally *Florida Virtual School*, Fla. Dep’t of Educ.<sup>18</sup> Some virtual schools

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<sup>17</sup> Available at <https://teachingresources.stanford.edu/resources/what-is-synchronous-and-asynchronous-learning/> (last visited Feb. 24, 2025).

<sup>18</sup> Available at <https://www.fldoe.org/schools/school-choice/virtual-edu/florida-virtual-school/> (last visited Feb. 24, 2025).

are run by individual districts, while others function as multi-district or even national programs. See *A Policymaker's Guide to Virtual Schools* 2–3, Educ. Comm'n of the States (2020).<sup>19</sup> Many others, like Amicus, are privately run nonprofit organizations.

But virtual schools are not mere glorified correspondence courses with a digital facelift. Today's virtual schools leverage cutting-edge technology to create highly interactive, student-centered learning environments. Amicus Covenant Journey Academy (CJA) is one such virtual school. CJA is “a full-service K-12 online Christian academy that is available to families and private schools around the world 24/7/365.” *About CJ Academy*, Covenant Journey Acad.<sup>20</sup> Unlike traditional brick-and-mortar schools, CJA does not require students to be in a physical classroom at prescribed hours. Instead, students engage in asynchronous learning, progressing at their own pace under the guidance of certified teachers who provide instruction and feedback through multiple digital platforms. See *id.*

Course offerings at CJA are extensive—over 150 K-12 courses, including Advanced Placement, honors, and elective options, alongside more than 30 dual enrollment courses taught by college faculty. See *supra* note 20. Moreover, high school students have the opportunity to earn college credit while completing their diploma, in some cases graduating with an Associate of Arts degree. See *id.*

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<sup>19</sup> Available at <https://www.ecs.org/wp-content/uploads/Policy-makers-Guide-to-Virtual-Schools.pdf>.

<sup>20</sup> Available at <https://cj.academy/about> (last visited Feb. 26, 2025).

CJA’s structure also demonstrates the scalability of virtual education. With rolling enrollment, students can begin coursework at any time of year. See *supra* note 20. Parents retain access to real-time academic tracking, which allows them to monitor their student’s progress and intervene when necessary. See *id.* Working remotely, teachers remain actively involved while providing individualized feedback and holding virtual office hours. See *id.*

Finally, CJA’s reach extends beyond homeschooling families. It partners with private schools, offering them full curricula or supplementary courses for institutions seeking online integration. See *supra* note 20. This complementarity underscores a broader point: Virtual education is not a wholesale replacement for traditional schooling—it simply expands opportunities for families.

With its fixed schedules, geographically bound limitations, and bureaucratic inefficiencies, the traditional school model simply does not work for every family. Consider a military family frequently moving from base to base—should their child’s education suffer because they must change schools every two years? See generally S. Beth Ruff & Michael A. Klein, *Revolving Doors: The Impact of Multiple School Transitions on Military Children*, 4 Prof. Couns. 103 (2014) (noting how “[t]ensions at home, enrollment issues, adapting to new schools, and a lack of familiarity with military culture by public school professionals may adversely impact the academic, social and emotional growth of these students”).<sup>21</sup> Virtual schools solve

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<sup>21</sup> Available at <https://files.eric.ed.gov/fulltext/EJ1063210.pdf>.

that problem by providing continuity in education, no matter where the family is stationed.

Or consider a student with disabilities who struggles with the overstimulation of a traditional classroom but thrives in a controlled, home-based learning environment. See generally Maria Öhrstedt et al., *Studying Online with Special Needs: A Student Perspective*, 24 J. Res. Special Educ. Needs 771 (2024).<sup>22</sup> Virtual schools eliminate physical barriers to education and instead provide individualized accommodations that many public schools cannot offer.

Finally, consider the parents dissatisfied with the ideological tilt of public education—families that want an academically rigorous yet values-aligned education for their children. Increasingly—as evident by a case pending before this Court right now, *Mahmoud v. Taylor*, No. 24-297—those parents face school boards who not only seek to indoctrinate their children but refuse to provide parents with an opt-out for objectionable curriculum or—in some cases—even inform the parents that the curriculum will include inappropriate content. As shown in the below testimonials by CJA families, faith-based virtual schools offer an alternative that respects their deeply held beliefs while delivering a high-quality curriculum.

As public schools buckle under the weight of bureaucratic inertia, plummeting test scores, and ideological indoctrination, families are left searching for a way out. Virtual schools like St. Isidore and CJA are not a backup plan or a last resort; they are a model for what

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<sup>22</sup> Available at <https://nasenjournals.onlinelibrary.wiley.com/doi/epdf/10.1111/1471-3802.12670>.

education can and should be: rigorous, flexible, and responsive to the needs of students, not the demands of special interests.

**B. CJA families who chose virtual education testify to its transformative impact on their children’s academic and personal growth.**

Whether because of concerns about academic rigor, ideological content, or the need for a more flexible learning environment, parents are seeking alternatives to the traditional public school system. As the following families can attest, Covenant Journey Academy (CJA) has provided that alternative.

Meet the O family. When Ashley O. enrolled her daughter Addilyn in preschool, she assumed it would be a nurturing environment that would build a foundation for Addilyn’s future academic success. See Covenant Journey Academy, *Student & Parent Testimonials*, YouTube (Jan. 20, 2025).<sup>23</sup> Instead, Ashley grew increasingly concerned about the curriculum’s focus, which seemed to emphasize ideological agendas over basic skills development. See *id.* Sadly, Addilyn also was bullied by three other students. The school officials refused to stop the bullying. Addilyn became afraid to use the restroom, and her otherwise happy personality began to change to the point she dreaded going to school.

Ashley searched for a school that aligned with her family’s faith and values that would also provide a safe place, and this search led her to CJA. Indeed, CJA’s commitment to a Bible-centered curriculum

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<sup>23</sup> Available at <https://www.youtube.com/watch?v=sHE7H0K1WcY>.



resonated with Ashley, as it reinforced the principles she taught at home. See *id.* She also was impressed by the emphasis on practical skills development, even for the youngest learners. See *id.* CJA's model has provided Addilyn with an education that is consistent with the O family's values while equipping her with essential life skills. Now in first grade, Ashley is learning Spanish, among her other interactive courses. Ashley says CJA has made learning fun for the entire family.

The H family has a similar story. Their daughter, an academically capable but highly social high school student, struggled to focus in a conventional classroom. CJA proved to be the perfect fit. Its virtual format gave their daughter the flexibility to learn in a structured yet comfortable environment where she could thrive both academically and spiritually. The personalized curriculum allowed her to regain focus, improve her grades, and develop a newfound sense of responsibility and self-discipline.

Shannon C-M's search for a better education for her daughter, Caley, began after a troubling experience at a homeschool learning center. Despite excelling academically, Caley struggled under an inflexible English teacher; and when Shannon raised her concerns, the administration dismissed them outright. Determined to find a school that prioritized both academic excellence and her family's values, Shannon explored various options before discovering CJA. As a public-school assistant principal, Shannon was particularly impressed with CJA's learning platform—one she describes as “fabulous,” integrating everything she would want to see in a school. While Caley initially enrolled in just one class, the experience was so

positive that she will soon transition to full-time enrollment. Beyond CJA's academic rigor, Shannon was drawn to its biblically based curriculum and leadership. In today's world, she explained in a testimonial, that foundation is more valuable than ever.

Amicus shares these anecdotes because, for these families, the ability to choose a faith-based virtual school is not just about religious instruction—it is about ensuring their children receive an education that is both tailored to their needs and does not undermine their values. Losing access to such an option, as the families of St. Isidore currently face, would strip these parents of their fundamental right to direct the religious and educational upbringing of their children. The Constitution forbids such theft.

### **III. The Court's Ruling in this Case Will Have Far-Reaching Implications for Educational Freedom Nationwide.**

The American education system was not designed to function as a monopoly. From the earliest days of the Republic, education was a local, diverse, and family-driven endeavor. See generally Suzanne Buchanan, *Evolution of Parental Rights in Education*, 16 J. L. & Educ. 340 (1987). Parents, not government bureaucrats, bore the primary responsibility for their children's instruction. See *id.* at 341 (discussing parental rights in early America).<sup>24</sup> Yet, over time, public schooling has morphed into a one-size-fits-all behemoth that resists reform, shields underperformance, and prioritizes the preservation of "the system" over

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<sup>24</sup> Available at <https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=1714&context=jled>.

the success of the students it was meant to serve. Far from than the “marketplace of ideas” it was intended to be, public education now seeks a monopoly over the minds of children. Consequently, this case presents a pivotal question: whether the Constitution will continue to protect parents’ fundamental right to direct their children’s education or whether the state may entrench its monopolistic enterprise by arbitrarily excluding religious alternatives from publicly available education programs.

**A. The constitutional right of parents to direct their children’s education necessarily includes the right to choose faith-based virtual schools.**

The right of parents to direct the education of their children is far from novel to this Court. Nearly a century ago, in *Pierce v. Society of Sisters*, the Court struck down an Oregon law that sought to eliminate private education, holding that “[t]he child is not the mere creature of the State.” 268 U.S. 510, 535 (1925). Instead, the Court observed, “those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” *Ibid.*; accord *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) (“Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life[.]”).

This Court reaffirmed that principle in *Wisconsin v. Yoder*, where it held that a state’s compulsory school attendance law could not be used to override the religious convictions of Amish parents. 406 U.S. 205, 232 (1972). The Court recognized that the State may “impose reasonable regulations for the control and

duration of basic education,” but this function must “yield to the right of parents to provide an equivalent education in a privately operated system.” *Id.* at 213–14. The Court observed that “the values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society.” *Id.*

This Court’s precedents thus confirm that the Constitution does not permit government officials to dictate the manner in which children are educated, nor does it confine parents to a state-approved curriculum. Parents—not bureaucrats—bear the primary responsibility for shaping their children’s intellectual and moral development. Consequently, this Court made clear that when a state attempts to impose an educational model that contradicts the deeply held beliefs of parents, it trespasses into constitutionally forbidden territory. See *Yoder*, 406 U.S. at 232.

Nor may parents be precluded from accessing their tax dollars to send their children to religious schools. In *Espinoza v. Montana Department of Revenue*, this Court made clear that a state cannot exclude religious schools from generally available public-benefit programs simply because they are religious. 591 U.S. 464 (2020). And in *Carson v. Makin*, the Court went even further, holding that when a state offers public funding for private education, it cannot discriminate against religious schools without violating the Free Exercise Clause. 596 U.S. 767, 780 (2022).

The logic of these decisions extends seamlessly to faith-based virtual schools. If the state subsidizes school choice, it cannot constitutionally disqualify religious options. Accord *Espinoza*, 591 U.S. at 508

(Gorsuch, J., concurring) (“What benefits the government decides to give, whether meager or munificent, it must give without discrimination against religious conduct.”). A virtual school is no less a school simply because it lacks a physical building. And a curriculum is no less constitutionally protected because the instruction takes place online and is faith based.

The principle at stake here is simple: The Constitution does not permit the government to dictate which schools are “too religious” to participate in public education programs. Just as the state cannot bar a Christian family from using a tuition assistance program at a religious private school, see *Carson*, 596 U.S. at 780, it likewise cannot prohibit them from selecting a faith-based virtual school that aligns with their values. Cf. *Espinoza*, 591 U.S. at 508 (Alito, J., concurring) (“Today’s public schools are quite different from those envisioned by Horace Mann, but many parents of many different faiths still believe that their local schools inculcate a worldview that is antithetical to what they teach at home.”).

**B. School choice strengthens education by expanding options for families and ensuring no child is trapped in a failing system.**

As discussed above, the American public education system has devolved into a monolithic and monopolistic bureaucracy that prioritizes vested interests and ideological agendas over student achievement. Consequently, school choice—which is “[a]ny policy that allows families to take their children’s education dollars to the approved education provider of their choosing”—emerges not merely as a policy preference but

as an imperative. See *School Choice*, Am. Fed'n for Children.<sup>25</sup> Indeed, no child should be condemned to languish in a failing institution. Thus, parents must be empowered to select an educational environment that best suits their children's unique needs.

This Court has affirmed the constitutionality of school choice initiatives. In *Zelman v. Simmons-Harris*, the Court upheld an Ohio voucher program, recognizing that it provided “true private choice” by enabling parents to direct public funds to private educational options, including religious schools. 536 U.S. 639, 653 (2002); see also *id.* at 680 (Thomas, J., concurring) (“The program does not force any individual to submit to religious indoctrination or education. It simply gives parents a greater choice as to where and in what manner to educate their children.”). The decision thus stands for the proposition that when aid reaches religious institutions solely through the independent decisions of parents, it does not contravene the First Amendment. See also, *e.g.*, *Witters v. Washington Dep't of Servs. for the Blind*, 474 U.S. 481 (1986) (holding that First Amendment did not preclude state from extending assistance under vocational rehabilitation assistance program to blind person studying at Christian college and seeking to become pastor); *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1 (1993) (rejecting an Establishment Clause challenge to a federal program that permitted sign-language interpreters to help deaf children enrolled in religious schools). Combined with this Court's decisions in *Carson* and *Espinoza*, the rule is clear: Once

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<sup>25</sup> Available at <https://www.schoolchoicefacts.org/> (last visited Feb. 27, 2025).

a state decides to subsidize private education, it cannot disqualify institutions based on their religious character.

Contrary to the arguments lobbed by teachers' unions, school choice is not an attack on public education; it is an escape hatch for children trapped in failing schools. Accord *Zelman*, 536 U.S. at 681 (Thomas, J., concurring) ("Religious schools, like other private schools, achieve far better educational results than their public counterparts."). It offers parents an alternative when their public school fails to provide a safe, rigorous, or ideologically neutral environment. And it serves as a necessary corrective when government-run schools become unresponsive to the needs of the families they purport to serve.

Empirical evidence corroborates the benefits of school choice. For one thing, introducing competition through vouchers and charter schools often compels public schools to improve performance—a rising tide that lifts all boats. See, e.g., Cecilia E. Rouse et al., *Feeling the Florida Heat? How Low-Performing Schools Respond to Voucher and Accountability Pressure*, 5 *Am. Econ. J.* 251 (2013); Pedro Enamorado, *The Impact of Voucher Programs: A Deep Dive Into the Research*, Thomas Fordham Inst. (Oct. 1, 2021);<sup>26</sup> Jay P. Greene et al., *Effectiveness of School Choice*, 31 *Educ. & Urban Soc'y* 190 (1999).<sup>27</sup>

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<sup>26</sup> Available at <https://fordhaminstitute.org/national/commentary/impact-voucher-programs-deep-dive-research>.

<sup>27</sup> Available at <https://cpb-us-e1.wpmucdn.com/wordpress.uark.edu/dist/9/451/files/2018/04/Effectiveness-of-school-choice-1999-xdcmwz.pdf>.

Moreover, parents exercising choice report higher satisfaction levels, saying that alternative educational settings better address their children’s academic and developmental needs. See Chris Cargill, *There Are 187 Studies on Impact of Education Choice—and the Results Are Overwhelming*, Mountain States Pol’y Ctr. (Jan. 24, 2024) (noting that 31 of 33 studies across thirteen states that examined parent satisfaction with education choice programs “found that private school choice programs had positive effects on parent satisfaction”).<sup>28</sup>

For example, for CJA parent Shannon C-M, school choice is not an abstract policy debate—it “matters tremendously.” As a public-school assistant principal, Shannon has seen firsthand how rigid, one-size-fits-all schooling models harm students’ mental and emotional well-being. With her daughter Caley dedicating over 20 hours a week to dance, a traditional 8-to-3 school schedule left her overwhelmed and unable to study properly. Similarly, Shannon’s oldest daughter, a high-achieving senior, thrived in a flexible home-school and dual-enrollment program, earning a 4.0 GPA and securing a volleyball scholarship at a Christian university—an opportunity she believes would have been impossible in a conventional high school. The ability to choose a faith-based virtual education, Shannon argues, is essential. Without it, families like hers would be forced into schools that contradict their deeply held beliefs and fail to meet their educational needs. “The family knows their situation best,” she

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<sup>28</sup> Available at <https://www.mountainstatespolicy.org/there-are-187-studies-on-impact-of-education-choice-and-the-results-are-overwhelming>.



stated in a testimonial, “not the government.” America was founded on individual freedom—including the freedom to direct one’s education. To deny families the right to choose a faith-based virtual school while allowing other specialized institutions would be, in Shannon’s view, both illogical and unjust.

Critics argue that school choice siphons resources from public schools. See Tim Walker, ‘*No Accountability: Vouchers Wreak Havoc on States*, NEA Today (Feb. 2, 2024) (claiming that school vouchers laws “are damaging public schools and draining state budgets”).<sup>29</sup> Yet this perspective overlooks a fundamental principle: Education funding exists to serve *students*, not institutions. Cf. *Zelman*, 536 U.S. at 653 (noting that Ohio’s voucher program “confers educational assistance directly to a broad class of *individuals* defined without reference to religion, *i.e.*, any parent of a school-age child who resides in the Cleveland City School District” (emphasis added)). Moreover, in addition to being an inappropriate consideration, it is not even accurate. See *Arizona Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 137 (2011) (“By helping students obtain scholarships to private schools, both religious and secular, the STO program might relieve the burden placed on Arizona’s public schools.”). Allocating funds to empower parental choice simply ensures that education dollars follow the child.

In sum, school choice is a manifestation of the constitutional right of parents to direct the upbringing and education of their children. It introduces necessary dynamism into an ossified system, expands

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<sup>29</sup> Available at <https://www.nea.org/nea-today/all-news-articles/no-accountability-vouchers-wreak-havoc-states>.

educational opportunities, and, most critically, ensures that no child remains trapped in a failing school due to socioeconomic circumstances. As this Court's precedents have made clear, the Constitution does not countenance a system that restricts educational freedom; instead, it demands that we uphold the rights of families to seek the best possible education for their children.

### CONCLUSION

The judgment of the Supreme Court of Oklahoma should be reversed.

Respectfully submitted.

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