

Nos. 24-396, 24-394

IN THE
Supreme Court of the United States

ST. ISIDORE OF SEVILLE CATHOLIC VIRTUAL SCHOOL,
Petitioners,

v.

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

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

v.

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

On Writ of Certiorari to the Oklahoma Supreme Court

**Brief of Governor Francis Keating II and Professor
William Jaynes as *Amici Curiae* in Support of Petitioners**

Randall L. Wenger
Independence Law Center
23 N. Front St., 1st Floor
Harrisburg, PA 17101
(717) 657-4990
rwenger@indlawcenter.org

Miles E. Coleman
Counsel of record
2 W. Washington St., 4th Floor
Greenville, SC 29601
(864) 373-2352
miles.coleman@nelsonmullins.com

Patrick M. Hagen
215 S. Monroe St., 4th Floor
Tallahassee, FL 32301
(850) 907-2500
patrick.hagen@nelsonmullins.com

Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE*¹

Former Oklahoma Governor Francis (“Frank”) Keating II has been called the “father of charter schools” in Oklahoma. Over nearly four decades, he has served his state and nation as an FBI agent, a United States Attorney, an elected member of both of Oklahoma’s legislative chambers, a member of the executive leadership of the Treasury, Justice, and Housing Departments under Presidents Reagan and Bush, and as a two-term Governor of Oklahoma.

In 1999, he signed House Bill 1759, the Education Reform Act, which first authorized the formation and operation of charter schools in the Sooner State. That charter-school law improved educational outcomes in Oklahoma and provided students and families with choices that all Oklahomans need and deserve. More than 25 years later, Governor Keating is committed to ensuring that Oklahomans continue to benefit from the widest available array of educational options.

Dr. William Jeynes is a Professor of Education at California State University, Long Beach. He holds graduate degrees from Harvard University, where he graduated first in his class, and the University of Chicago, where he received the Rosenberger Award as his cohort’s most outstanding student. He has published nearly 185 academic publications and has written for the White House and for three presidential administrations.

¹ No counsel for any party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution to fund the preparation or submission of this brief. No person or entity other than *amici* or their counsel made a monetary contribution to the preparation and submission of this brief.

Dr. Jaynes' scholarship includes a considerable amount of quantitative and qualitative research and writing on school choice, how to bridge the achievement gap, and the intersection of religion and public education. His scholarship demonstrates that the data confirm what Oklahoma's experience shows—students benefit from and perform better when they're able to choose the educational setting and context best suited to their individual needs.

SUMMARY OF THE ARGUMENT

This case raises important constitutional questions regarding religious entities' ability to participate in Oklahoma's charter school program. The parties have briefed the questions presented, and *amici* will not repeat their arguments. Rather, *amici* write to discuss three topics that may inform the Court's consideration of the issues of this case and about which *amici* have particular expertise.

1. A diverse array of educational options is vital to accommodate the varied academic needs of students with individual gifts, challenges, and learning styles. The need is particularly pronounced for low-income and rural students who, due to geographic or economic constraints, lack access to the educational resources more readily available to affluent, urban, or suburban families. Viewing education as the great equalizer, Governor Keating championed the Oklahoma Charter Schools Act of 1999 to empower parents with meaningful alternatives to failing public schools. Keating believed that competition drives excellence, and he saw charter schools as essential to providing diverse, high-quality educational options.

Despite the Act's success, the Oklahoma Attorney General's exclusion of faith-based schools from charter eligibility contradicts its core meaning and curtails options for families who seek an education best suited to their unique needs. Keating's vision was not about expanding schools for expansion's sake—it was about ensuring that every child, regardless of background, had access to an education that prepared them for success. To honor this vision, educational choice must remain broad, inclusive, and protected from political myopia that stifles opportunity.

2. History and scholarship confirm what Oklahoma's experience demonstrates. For centuries, religious institutions have played a pivotal role in American education, reinforcing the principle that moral instruction and academic excellence are inseparable. Extensive meta-analyses by Dr. Jeynes confirm that faith-based schools provide significant academic, behavioral, and social benefits.

Students in faith-based schools outperform their traditional public counterparts, reducing racial and socioeconomic achievement gaps by approximately 25% while fostering higher academic achievement—often at a lower per-student cost. These schools also produce stronger behavioral outcomes, reducing disciplinary issues while promoting responsibility, self-discipline, and social cohesion. By incorporating those faith-based schools that wish to participate in the charter system, Oklahoma would expand access to high-performing educational environments, increase competition, and offer families a broader range of choices tailored to their children's academic and moral development.

3. Ruling that charter schools are “state actors” would have wide-ranging, disruptive, and undesirable effects on a vast array of private entities that provide critical services to the public pursuant to contracts with the government. From hospitals and homeless shelters to addiction recovery programs and foster care providers, religious entities have historically partnered with the state and federal governments to serve vulnerable populations without being deemed state actors.

The Supreme Court has consistently upheld such partnerships, recognizing that receiving public funding does not transform private actors into government entities. But the lower court’s sweeping state-actor designation disregards this precedent and risks jeopardizing the delivery of critical services by faith-based institutions nationwide. If this decision stands, it will impose unnecessary legal uncertainty, deter faith-based providers from public service, and deprive communities of vital social, medical, and educational support. This Court should reverse the ruling and reaffirm that religious organizations do not forfeit their private status merely by contracting with the government to fulfill public needs.

ARGUMENT

I. Oklahoma’s experience illustrates the need for and value of diverse educational options, especially for low-income and rural families.

A. The introduction of charter schools in Oklahoma was a deliberate response to an identified need.

As Oklahoma’s Governor and, previously, a member of its House and Senate, Keating recognized early on

that the traditional public school system was not meeting the needs of all of Oklahoma’s children—particularly those in low-income or rural communities. In response, Keating signed into law the Oklahoma Charter Schools Act (the “Act”) in 1999, earning himself the nickname, “father of charter schools” in Oklahoma. *See* HFAA Foundation, *10th Anniversary Leadership in Arts & Educ. Awards Frank Keating*, (Mar. 27, 2023), <https://tinyurl.com/295tu97a> (“The charter school environment we now have . . . was birthed during his years as Governor.”).

The Act introduced school choice and charter schools to Oklahoma, laying the foundation for a more dynamic, innovative approach to public education. This landmark legislation transcended the limitations of traditional public schools, allowing parents to choose schools better aligned with their children’s needs, interests, and potential. The law also helped “strengthen[] the core high school curriculum,” ensuring that all students, regardless of background, had access to a world-class education. *Governor Keating Biography*, Okla. Dep’t of Libraries (ODL) 2–3 (2003–2004), <https://tinyurl.com/5busbtav>.

The passage of the Act was not just a legislative success; it was a philosophical victory. Charter schools provide “the competition necessary in public education to assure that we will have excellence in public education,” particularly in urban areas where traditional public schools were underperforming. *Keating Signs Education Bill, Changes Focus of Public Schools*, *The Journal Record* (June 8, 1999), <https://tinyurl.com/yckfwh3z>. For Keating, education reform meant empowering families to “vote with their feet” and attend schools that offered the best

opportunities for success. *Id.* His commitment to parental involvement and school choice remains central to the narrative of educational reform in Oklahoma. Yet Keating acknowledged: “Obviously this is only the beginning. We have further to go.” *Id.*

Keating’s rationale for signing the Act was not simply about reforming the education system—it was about preserving and expanding a diverse array of educational options for all students. Gov. Keating, *1999 State of the State Address* at 5–6, ODL (Feb. 1, 1999), <https://tinyurl.com/y4fy62ns>. He understood that a one-size-fits-all model left too many children behind, especially those unable to afford private schools or homeschooling. The ability for parents to choose the best educational environment for their children was not just a luxury—it was a necessity. *See Keating Signs Education Bill, Changes Focus of Public Schools*, *The Journal Record* (June 8, 1999), <https://tinyurl.com/yckfwh3z>.

This belief in school choice and its transformative power continued throughout Keating’s tenure. The introduction of charter schools gave families “trapped in chronically failing schools” the ability “to go elsewhere,” and “with the tax dollars they pay to educate their children.” Gov. Keating, *1998 State of the State Address* at 6, ODL (Feb. 2, 1998), <https://bit.ly/4bz4YNA>. By contracting with private entities, charter schools offered a viable option for parents to access quality education without the financial burden of private schooling. *See Gov. Keating, 2000 State of the State Address* at 3, ODL (Feb. 7, 2000), <https://tinyurl.com/mrzsbcm7>. Charter schools became a lifeline for low-income families, offering hope where none had existed before. By

providing diverse options, Keating sought to ensure that parents' choices were not constrained by geography or financial means.

Keating recognized that the Act was “a huge step forward for learning in Oklahoma.” *Education Reform Passes Bill Includes Charter Schools, Tougher Curriculum*, *The Oklahoman* (May 28, 1999), <https://tinyurl.com/2xwj29z7>. The next step is to approve faith-based charter schools, expanding alternative educational choices for underserved children in low-income and rural communities.

B. Governor Keating's contemporaneous comments demonstrate the original understanding and interpretation of Oklahoma's charter school law.

As the chief executive and the chief advocate for Oklahoma's then-nascent charter school law, the governor's contemporaneous actions and statements reflect the original understanding of the purpose, goals, and requirements of the legislation, shedding light on its intended application and meaning. *See History of Enactment Process—Messages of the Executive*, 2A Sutherland Statutory Construction § 48:5 (7th ed.). “When Keating arrived in the governor's office in January 1995, he had an agenda he planned to push through the Legislature, whether it took two years or eight.” Diane P. Clay, *State Address Marks Finale for Governor*, *The Oklahoman* (Feb. 4, 2002), <https://tinyurl.com/bp8mnd8k>. Among the key items on that agenda was the provision of educational options to families across Oklahoma—options that would empower parents to make decisions in the best interests of their children. *Id.*

For Keating, school choice is deeply personal. He has three children and eleven grandchildren. See *Frank Keating*, Oklahoma Hall of Fame, <https://tinyurl.com/ykrskdkt> (last visited Mar. 9, 2025). Keating recalled that the school his own son would have attended in Oklahoma City “was terrible,” so he placed his son in a private Catholic school. “The logic behind that decision was simple,” he said. Keating did not want his children held back because of inadequate academic rigor in their zoned public school. *Families Celebrate 20 Years of Oklahoma Charter Schools*, Oklahoma Council of Public Affairs, <https://tinyurl.com/p4uazzpm> (Oct. 18, 2019). This reality drove Keating to push for reform, recognizing that the state’s traditional public schools could no longer be the sole option.

In 1999, Keating, a Republican in an overwhelmingly Democrat state and legislature, understood the need to “raise the bar in education” by offering both (1) charter schools and (2) school choice. His goal was to ensure that the children of tomorrow would be better educated than those of yesterday. See *Governors’ Conference Agenda*, C-SPAN at 00:03:30–05:12 (Feb. 21, 1999), <https://bit.ly/4icZsmb>. This legislative agenda was rooted in a vision of providing real alternatives to parents, offering them the freedom to choose the educational path best suited to their children. More than two decades later, Keating’s vision remains steadfast: “Every child is precious. Every child is indispensable. And every child should be a well-educated citizen in the new Oklahoma.” *Families Celebrate 20 Years of Oklahoma Charter Schools*, Oklahoma Council of Public Affairs, <https://tinyurl.com/p4uazzpm> (Oct. 18, 2019).

Keating's vision was not simply about providing more schools—it was about providing a “better educated student,” a “better opportunity to go to college,” and a “better opportunity to remain in Oklahoma as a successful, prosperous member of the expanding workforce.” *1999 State of the State Address* at 5, ODL (Feb. 1, 1999), <https://tinyurl.com/y4fy62ns>. His goal was to ensure that every child, no matter where they lived, had access to an education that allowed them to succeed. *See Keating Signs Education Bill, Changes Focus of Public Schools*, *The Journal Record* (June 8, 1999), <https://tinyurl.com/yckfwh3z>.

Keating insisted that high-quality education must be available to all students, whether in an urban center or a rural community. *See National Education Summit Plenary Session*, C-SPAN at 00:20:11–00:20:26 (Oct. 1, 1999), <https://tinyurl.com/2tk45ej4> (advocating that the “same high standards apply for both rural and urban schools.”) To achieve this, Oklahoma needed to embrace educational innovation and expand the range of choices available to families. It was not just about competition—it was about fostering innovation to meet the diverse needs of Oklahoma's children. *See Gov. Keating, 1996 State of the State Address* at 10, ODL (Feb. 5, 1996), <https://tinyurl.com/27t62jtu> (“School choice [and] charter schools . . . will open our schools to innovation and true improvement.”).

Keating also recognized that “[t]he distinctions in the 21st century would not be between the haves and the have nots” but “between the educated and the uneducated.” Gov. Keating, *2000 State of the State Address* at 8, ODL (Feb. 7, 2000), <https://tinyurl.com/mrzsbcm7>. This stark realization drove him to

seek solutions to bridge the educational divide, particularly in communities where poverty and underachievement were most pronounced.

Some critical points of understanding are apparent from Keating's comments advocating for and implementing charter schools in Oklahoma. For one, the schools were to reflect a strong partnership between parents, teachers, and the community. See Gov. Keating, *1995 State of the State Address* at 6, ODL (Feb. 6, 1995), <https://tinyurl.com/2h6bssda>. In addition, charter schools were understood to allow for *innovation* as a path to seek improvement. Gov. Keating, *1996 State of the State Address* at 10, ODL (Feb. 5, 1996), <https://tinyurl.com/27t62jtu>. These innovations were meant to free schools from excessive, stifling regulations. Gov. Keating, *1997 State of the State Address* at 4, ODL (Feb. 3, 1997), <https://tinyurl.com/yfvxj9u9>. Further, charter schools were to provide a broader, more varied array of educational options, allowing families to seek the ones best suited to their needs. Gov. Keating, *1998 State of the State Address* at 6, ODL (Feb. 2, 1998), <https://bit.ly/4bz4YNA>.

Keating returned to this theme in his final State of the State Address, reiterating the need to “provide competition” in education. Gov. Keating, *2002 State of the State Address* at 4, ODL (Feb. 4, 2002), <https://tinyurl.com/35c2ff4r>. Without competition, and without “expand[ing] the number of charter school and choice opportunities in Oklahoma,” there would be little incentive to innovate or improve. *Id.*

What was true then is true now. Both the original understanding of the charter school law and Keating's

commitment to educational choice are at odds with the current position taken by the Oklahoma Attorney General, which unnecessarily excludes faith-based schools from the state’s charter school program solely because of their religious affiliation. This rigid stance undermines the very principles upon which the Act was founded to (i) “increase learning opportunities for students,” (ii) “encourage the use of different and innovative teaching methods,” and (iii) “provide additional academic choices for parents and students.” Okla. Stat. tit. 70, § 3-131(A) (July 1, 1999) (capitalization removed).

The exclusion of religious schools from the charter program fails to recognize that many families, particularly in low-income communities, want a faith-based education as a viable option for their children, who would achieve greater academic outcomes in a context customized to their needs and strengths. *See* Ray Carter, *As School Choice Fuels Demand, OKC Private School Set to Expand*, (Dec. 23, 2024), <https://tinyurl.com/2wdphjv2>. By limiting access to charter schools based on religious status, the Attorney General effectively narrows the scope of educational options available to Oklahoma families, where choices are already scarce.

II. Scholarly research and analyses confirm that diverse educational options enhance student achievement.

National data confirms Oklahoma’s experience: access to diverse educational options—particularly faith-based charter schools—leads to better outcomes for students. *Amicus* William Jeynes for many years has conducted meta-analyses examining the effects of

students attending faith-based schools versus traditional public schools. Meta-analyses, by definition, are comprehensive and give a statistical summary of the existing body of research. See William H. Jeynes, *Religiosity, Religious Schools, and their Relationship with the Achievement Gap: A Research Synthesis and Meta-Analysis*, 79 J. NEGRO EDUC. 263, 264–65 (2010) (hereinafter, “*Religious Schools*”). A meta-analysis, in essence, statistically summarizes the existing body of research, and can be much more effective than a typical single study in determining the association between types of schools and student outcomes. *Id.* at 265. A meta-analysis is “the single most popular type of academic article, because they enable people to grasp the indications of the overall body of research on a given topic.” *Id.* Dr. Jeynes has also examined these same issues using nationwide data sets. *Id.* at 268. The analyses reveal three observations, discussed below, that are relevant to this case.

A. Attending a faith-based school reduces the racial achievement gap.

The meta-analyses Dr. Jeynes has undertaken indicate that attending faith-based schools alone is associated with a 25% decrease in the racial achievement gaps. See William H. Jeynes, *School Choice: A Balanced Approach* (2014) (hereinafter, “*School Choice*”); William H. Jeynes, *School Choice and the Achievement Gap*, 46(2) EDUC. & URBAN SOC’Y 163–80 (2014); William H. Jeynes, *A Meta-Analysis on the Effects and Contributions of Public, Public Charter, and Religious Schools on Student Outcomes*, 87 PEABODY J. EDUC. 305, 326–28 (2012) (hereinafter, “*Religious Outcomes*”); *Religious Schools* at 274.

The meta-analytic research on the achievement gap indicates that the extent to which religious schools bridge the various educational gaps is quite consistent across the type of gap and the scholastic measure. “All of the effect size measures for religious schools were statistically significant.” *Religious Outcomes* at 318.

Not only do these meta-analyses indicate that attending faith-based schools reduces the racial achievement gap, but “students from faith-based schools were more likely to show positive behaviors than their counterparts in traditional public schools.” *Religious Outcomes* at 325. They achieve better both in terms of academic and behavioral outcomes at statistically significant levels. The effect sizes were “slightly positive by more than .25 of a standard deviation unit in academic measures and .35 of a standard deviation unit in behavioral measures.” *Religious Outcomes* at 324. This combination of academic and behavioral benefits highlights the value of faith-based schools in the broader educational landscape. *See id.* at 324–25.

B. Attending a faith-based school reduces the socioeconomic achievement gap.

The results of nationwide data sets and meta-analyses also indicate that the socioeconomic achievement gap is about 25% narrower at faith-based schools than in traditional public schools. *Religious Schools* at 270–73. In fact, the data indicate that religious private schools benefit the lowest socioeconomic status (SES) quartile of students the most, the second lowest quartile of these youths the second most, and the highest quartile of students the least.

See William H. Jeynes, *Educational Policy and the Effects of Attending a Religious School on the Academic Achievement of Children*, 16 EDUC. PSYCH. REV. 406, 416 (2002) (hereinafter, “*Effects of Attending a Religious School*”).

The meta-analysis suggests that school choice options that include faith-based charter schools might have a similar impact on the achievement gaps that exist with faith-based private schools. *Religious Schools* at 13; William H. Jeynes, *What Private and Public Schools Can Learn From Each Other*, 87 PEABODY J. EDUC. 285, 286 (2012) (hereinafter, “*Learn From Each Other*”). “Americans should rejoice that this [reduction in racial and SES achievement gaps] is taking place without regard to whether the gap is being bridged in a faith-based or public school.” *Religious Outcomes* at 329. These findings imply that incorporating faith-based schools into the charter system could extend these benefits to a broader population, particularly those in underserved communities. See, e.g., *Learn From Each Other* at 286; *Religious Outcomes* at 329; *Effects of Attending a Religious School* at 416. The data support the conclusion that faith-based charter schools could help bridge existing educational disparities in a cost-effective and academically effective manner. See *Religious Outcomes* at 325; *Effects of Attending a Religious School* at 406–424.

C. The combined effect of family engagement and the involvement of a faith community eliminates the racial and socio-economic achievement gaps.

The meta-analyses and nationwide data sets have indicated that faith and family factors together caused

the racial and SES achievement to totally disappear. William Jeynes, *The Effects of Black and Hispanic Twelfth Graders Living in Intact Families and Being Religious on Their Academic Achievement*, 38(1) URBAN EDUC. 35–57 (2003); William H. Jeynes, *Religion, Intact Families, and the Achievement Gap*, 3 INTERDISC. J. RSCH. ON RELIGION 1, 13 (2007). Faith-based schools provide an “atmosphere” that contributes to their overall success. They (i) “require students to do more homework”; (ii) “are less likely to have violence or threats of violence, which can often serve as major distractions for students trying to learn”; (iii) have “a higher level of racial harmony . . . because of the common thread of faith and Christian brotherhood”; and (iv) “have modes of discipline that make them more prone to success.” *Id.* at 10–11. This holistic approach indicates that faith-based schools are vital in fostering both academic and personal growth, making them a unique and irreplaceable component of the educational system.

“There is little question” that the data on racial and socioeconomic achievement gaps “appear to be the ideal for the alleviation of this social challenge.” *Learn From Each Other* at 298. The evidence suggests that “one of the most accessible methods to narrow the achievement gap would not require billions of dollars of additional government funding,” but rather a simple, proven solution: “facilitating schools of faith to do what they already do quite well.” After six decades of trying to reduce the achievement gap, and (to everyone’s chagrin) encountering repeated failure, part of the solution may be simpler than most people realize. *Religious Schools* at 263–65, 275–76. Instead of relying on costly and ineffective interventions,

policymakers should recognize that faith-based schools have a demonstrated track record of success in closing these gaps and should be empowered to continue their work.

III. If not corrected, the lower court’s ruling on the state-actor question would wreak havoc on the widespread, historic practice of faith-based entities providing important services to the public under contract with the state.

The Oklahoma Supreme Court’s conclusion that a private charter school operator is necessarily a state actor is not only wrong, it’s troublingly broad. Petitioners and other *amici* have addressed the first half of that concern, explaining why charter schools are not state actors. This brief addresses the latter aspect of the problem—the astonishingly broad implications of the lower court’s holding on other faith-based providers of public services.

Since the founding, religious groups have been at the forefront of serving and educating those in need, often in partnership with the state. Take, for example, the care for and education of needy children, which has historically been undertaken by private and religious groups in cooperation with the state. *See Fulton*, 141 S. Ct. at 1874–75 (“The Catholic Church has served the needy children of Philadelphia for over two centuries” through “cooperation between the City and private foster agencies”); Stephanie H. Barclay, *Spheres of Liberty and Free Exercise: Lessons for Fulton from Jefferson’s Correspondence with Ursuline Nuns*, Reason (Nov. 2, 2020), <https://perma.cc/YN6H-79WP> (documenting the long history of religious foster care agencies in the United States); Timothy A. Hacsı,

Second Home: Orphan Asylums and Poor Families in America 19, 25 (1997) (documenting Protestant and Jewish orphanages emerging in the 1800s); GEORGE WHITEFIELD'S JOURNALS, 395–404 (Iain Murray, ed., London 1960) (recounting how beginning in 1740, the renowned colonial minister founded and operated a home for orphaned boys near Savannah, Georgia); see also *Wilder v. Sugarman*, 385 F. Supp. 1013, 1019–21 (S.D.N.Y. 1974) (“The history of the child welfare system in New York is necessarily intertwined with the religious history and cultural development of the State.”).²

Or consider the provision of medical care. Almost one out of six hospitals in the United States are Catholic, and they fulfill a variety of services for the government and receive reimbursement through government programs like Medicare and Medicaid. See U.S. Dept. of Health & Human Servs., *Removing Barriers for Religious and Faith-Based Organizations to Participate in HHS Programs and Receive Public Funding* (Oct. 25, 2017), <https://www.regulations.gov/document/HHS-OS-2017-0002-0001>. These contracts

² See also Brenda G. McGowan, *Historical Evolution of Child Welfare Services*, in *CHILD WELFARE FOR THE TWENTY-FIRST CENTURY: A HANDBOOK OF PRACTICES, POLICIES, AND PROGRAMS* 10, 12 (Gerald P. Mallon & Peg McCartt Hess eds., 2005) (“A few private institutions for orphans were also established during the early colonial period. The first such orphanage in the United States was the Ursuline Convent,” a Catholic institution, “founded in New Orleans in 1727”); Brief Amici Curiae of the United States Conference of Catholic Bishops and Pennsylvania Catholic Conference in Support of Petitioners at 12–15, *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021) (No. 19-123) (listing examples of Catholic orphanages founded in the United States from the nineteenth and twentieth centuries).

enable religious ministries to provide a variety of essential services, including housing and care for homeless veterans, drug prevention programs for youth, comprehensive medical assistance, substance abuse rehabilitation, ministries to prison inmates, and retreats for service members and their families. *See* 114 Cong. Rec. H3288 (daily ed. May 26, 2016) (statement of Rep. Russell) (“More than 2,000 Federal Government contracts a year are awarded to religious organizations and contractors that provide essential services in many vital programs.”).

Both historically and today, religious entities’ provision of services to the public often involved contracts with the state or the receipt of the state’s financial support. *See, e.g., Removing Barriers for Religious and Faith-Based Organizations, supra* (noting that in one fiscal year alone, HHS “awarded over \$817 million in funding to faith-based organizations across 65 competitive, non-formula grant programs”); Edward Queen, *History, Hysteria, and Hype: Government Contracting with Faith-Based Social Service Agencies*, RELIGIONS 2017, at 4–5 (tracing the history since the early 1800s and noting that a “1901 federal survey of governmental subsidies of private charities found that . . . “there is probably not a state in the union where some aid is not given to religious organizations either by state or by counties and cities”); *see also* Hacsí, *supra*, at 31 (“Sectarian asylums, including Catholic institutions, could . . . receive public funds from any level of government that chose to distribute them.”); 5 *The Quarterly Bulletin: State Board of Charities and Corrections of South Carolina* 9 (1919) (noting that beginning in the 1870s, the Charleston, South Carolina, City Council

appropriated \$6,000 annually to support no less than 75 orphans in the care of the Sisters of the Order of our Ladies of Mercy).

The Supreme Court and lower courts have upheld the constitutionality of such contracts and partnerships and have never held that the private actors were automatically converted into state actors as a result of these partnerships and contracts. *See, e.g., Bowen v. Kendrick*, 487 U.S. 589 (1988) (upholding the direct federal funding of faith-based counseling centers to provide social services and noting “that this Court has never held that religious institutions are disabled . . . from participating in publicly sponsored social welfare programs”); *Bradfield v. Roberts*, 175 U.S. 291 (1899) (upholding a federal contract with a Roman Catholic hospital operated by nuns to serve the poor); *Hartmann v. Stone*, 68 F.3d 973 (6th Cir. 1995) (upholding the Army’s provision of funding to religious childcare providers who engage in religious practices during the daycare time).

The Oklahoma Supreme Court’s contrary analysis and conclusion is, therefore, incorrect legally and, if not corrected, portends a sea change in the law that would have significant ripple effects affecting and likely diminishing the critical services supplied under government contracts by religious hospitals, homeless shelters, addiction recover centers, foster care facilitators, and more. The Court should reverse and clarify charter schools and their operator are not automatically transformed into state actors merely because they receive governmental funding to provide a service to the public.

CONCLUSION

For the foregoing reasons, *amici* respectfully ask this Court to reverse the ruling below.

Miles E. Coleman
Counsel of Record
2 W. Washington Street, 4th Floor
Greenville, SC 29601
miles.coleman@nelsonmullins.com
(864) 373-2352

Patrick M. Hagen
215 S. Monroe St., 4th Floor
Tallahassee, FL 32301
(850) 907-2500
patrick.hagen@nelsonmullins.com

Randall L. Wenger
Independence Law Center
23 N. Front St., 1st Floor
Harrisburg, PA 17101
(717) 657-4990
rwenger@indlawcenter.org

Counsel for *Amici Curiae*
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