

No. 24-394, 24-396

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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  
OF OKLAHOMA, *ex rel.* OKLAHOMA,

*Respondent.*

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ST. ISIDORE OF SEVILLE CATHOLIC  
VIRTUAL SCHOOL,

*Petitioner,*

*v.*

GENTNER DRUMMOND, ATTORNEY GENERAL  
OF OKLAHOMA, *ex rel.* OKLAHOMA,

*Respondent.*

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ON WRITS OF CERTIORARI TO THE  
SUPREME COURT OF OKLAHOMA

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**AMICUS CURIAE BRIEF OF FORMER ELECTED  
AND APPOINTED STATE, LOCAL, AND FEDERAL  
OFFICIALS IN SUPPORT OF RESPONDENT**

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

*Amici* are former elected and appointed State, local and federal officials from across the United States—from New York to Hawaii, Republicans and Democrats—who each played a key role in developing and driving forward the public charter school system as it currently exists.<sup>2</sup> *Amici* have a personal understanding of the origins of this unique public school arrangement and believe that their insights will be of benefit to the Court.

In delivering this narrative, *amici* have relied upon the National Charter School Founders Library (the “Founders Library”), founded in 2017, which serves as a repository for the historical foundations of chartering and the groundbreaking charter school stories from multiple States.<sup>3</sup> The Founders Library was launched by the National Charter Schools Institute and is co-led by former Minnesota State Senator and *amicus* Ember Reichgott

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1. In accordance with this Court’s Rule 37.6, no counsel for any party has authored this brief in whole or in part. In accordance with that same Rule, the organization CharterFolk made a monetary contribution intended to fund the preparation of this brief.

2. *Amici* are: California Board of Education Member Sue Burr (also legislative aide to the late California State Senator Gary Hart); North Carolina Speaker of the House Harold Brubaker (R); Hawaii Governor David Ige (D); Minnesota State Senator Ember Reichgott Junge (D); Indiana State Senator Teresa Lubbers (R); Colorado Governor Bill Owens (R); Secretary of Education Rod Paige (R); Indianapolis, Indiana Mayor Bart Peterson (D); and Michigan Senate Majority Leader Dick Posthumous (R).

3. The National Charter Schools Founders Library, <https://charterlibrary.org> (last visited Apr. 3, 2025).

Junge, the senate author of the nation's first charter school law. Because every State has a unique story about the origins of the charter schools serving the communities within its borders, the Founders Library is dedicated to collecting and preserving these stories—making them digitally accessible and ensuring that everyone seeking to do so, can explore the rich history and significant impact of the charter school movement on our nation's public school system.

### **SUMMARY OF ARGUMENT**

Charter schools were enacted into law as, and remain, public schools. Since their creation in the early 1990s, charter schools have followed the same model. They are publicly-funded open-enrollment schools that operate within a State's system of public education. Charter schools are created through State chartering laws and are typically governed by a group or organization under a legislative arrangement—a charter. These charters are issued by State agents called “authorizing bodies,” which are typically a State agency, school district, or another public educational entity and are charged by the legislature with overseeing school compliance with applicable law. A charter exempts the school from certain State or local rules and regulations. In return for this flexibility and autonomy over operations, budget, and curriculum, the charter school must meet the accountability standards outlined in its charter, many of which are identical to those which govern traditional public schools.

This accountability has teeth. The State-designated authorizers issue charters to new and existing public schools in the charter sector. Like other administrative

agencies, authorizers are tasked by a legislature to implement the law. They play a crucial role in ensuring quality education by evaluating charter schools based on academic, financial, and operational performance. They are responsible for granting approvals, overseeing operations, renewing charters, and, when necessary, closing schools that do not meet the established standards. This robust oversight helps maintain high educational standards and provides families with valuable choices in their children's education.

Charter schools' unique combination of publicness, flexibility, and accountability has led to their success. Currently, there are approximately 8,150 charter schools educating about 3.7 million students across 46 States, as well as in Guam, Puerto Rico, and Washington, D.C. In the last five years, enrollment in charter schools has increased over 10%.<sup>4</sup>

Despite their prevalence, there remains a significant level of misunderstanding about the origins of charter schools, as well as their intended design and purpose. Petitioner Oklahoma Statewide Charter School Board (the "Board") allocates a significant portion of its brief summarizing what it claims to be the historical background of charter school origins. However, the Board's version of history is fundamentally flawed. *Amici* aim to correct the Board's inaccuracies and offer a comprehensive history of charter schools from the viewpoints of the lawmakers and educational policy pioneers who successfully brought the charter school vision to life.

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4. CHARTER SCHOOL QUICK FACTS, The National Charter Schools Founders Library, <https://publiccharters.org/charter-schools-101> (last visited April 3, 2025).

## ARGUMENT

### **I. Charter schools were established as public schools that leverage innovative and flexible alternatives to traditional public schooling.**

Charter schools emerged in response to the growing demand from parents for meaningful reform in public education, as well as the U.S. Government recognition of this urgent need. The intended design and purpose of these schools were to create different and better public schools.<sup>5</sup>

The idea of charter schools—public schools that operate independently of the traditional district structure—has always been rooted in efforts to improve public education. Ray Budde, the education academic who is recognized as coining the term “charter schools,” initially used it in connection with a strategy to reform school districts using site-based management.<sup>6</sup> This concept was built upon by Albert Shanker, then president of the American Federation of Teachers (AFT) and a well-regarded leader at the forefront of the charter school movement. Shanker

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5. Minnesota’s SUMMARY OF THE BILL TO ESTABLISH OUTCOME-BASED SCHOOLS (1991), The National Charter Schools Founders Library, <https://charterlibrary.org/library/summary-of-bill-to-establish-outcome-based-schools> (last visited April 3, 2025).

6. RAY BUDDE, “EDUCATION BY CHARTER: RESTRUCTURING SCHOOL DISTRICTS. KEY TO LONG-TERM CONTINUING IMPROVEMENT IN AMERICAN EDUCATION,” The Regional Laboratory for Educational Improvement of the Northeast & Islands, Andover, Mass. 1988.

The Regional Laboratory for Educational Improvement of the Northeast & Islands. Andover, MA. 1988.

viewed this concept to be one in which autonomous, teacher-led schools would nonetheless operate inside a traditional district structure. In 1988, he first floated the idea in a speech to the National Press Club in Washington D.C., and, later that year, spoke further about his concept at the Itasca Conference in Minnesota.<sup>7</sup> Shanker suggested that teachers, with the agreement of both the union and the school board, should have the opportunity to create new educational options within the public school system.<sup>8</sup> He emphasized that, “[e]ighty percent of students do not learn in traditional settings . . . they just don’t fit.”<sup>9</sup> Also during the Itasca Seminar, Dr. Joe Nathan, who had been recently tasked by National Governors Association Chair (and future U.S. Senator) Lamar Alexander to coordinate an education project, shared the Governors’ report on education, which proposed the idea of “*less* regulation in exchange for better results.”<sup>10</sup>

In the years that followed, the idea of loosening regulations on public schools gained traction. In September 1989, President George H.W. Bush invited the nation’s Governors to an unprecedented Summit on Education. During that Summit, the group reached an

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7. ALBERT SHANKER, PRESIDENT, AM. FED’N OF TEACHERS, NAT’L PRESS CLUB SPEECH (Mar. 31, 1988), <https://reuther.wayne.edu/files/64.43.pdf> (last visited Apr. 3, 2025); EMBER REICHGOTT JUNGE, ZERO CHANCE OF PASSAGE: THE PIONEERING CHARTER SCHOOL STORY (Beaver’s Pond Press, 2012) at p. 43–44, 47; October 2–5, 1988: Itasca Seminar, hosted by Minneapolis Foundation.

8. REICHGOTT JUNGE, ZERO CHANCE OF PASSAGE: THE PIONEERING CHARTER SCHOOL STORY at p. 43–44, 47.

9. *Id.* at 38.

10. *Id.* at p.47 (emphasis added).

agreement to collaborate on establishing a comprehensive set of national education goals. This was a significant milestone that demonstrated a greater willingness on the part of elected officials to adopt a nation-wide rethink of educational policy.<sup>11</sup>

Shortly after President Bush's Summit, on February 25, 1990, the National Governors Association adopted a report acknowledging the education crisis.<sup>12</sup> The report highlighted the gap between current performance levels and those necessary to secure the nation's future.<sup>13</sup> It observed that public schools were failing to meet national goals and recognized that the way students learn in school bore little resemblance to how they would learn in the workforce, leaving students ill-prepared for the future.<sup>14</sup>

Soon thereafter, a group of Minnesota leaders from business, labor, education, and government known as the Citizens League Task Force developed a framework for legislation to answer the call. Prompted by the League's

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11. *Id.* at p.76–77 (citing National Commission on Excellence in Education, *A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM* (1983)).

12. REICHGOTT JUNGE, *ZERO CHANCE OF PASSAGE: THE PIONEERING CHARTER SCHOOL STORY* at p.76–77.

13. DAVID P. GARDNER, ET AL., *A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM. AN OPEN LETTER TO THE AMERICAN PEOPLE. A REPORT TO THE NATION AND THE SECRETARY OF EDUCATION*, National Commission on Excellence in Education (Apr. 1983).

14. REICHGOTT JUNGE, *ZERO CHANCE OF PASSAGE: THE PIONEERING CHARTER SCHOOL STORY*\_at p.77 (citing National Commission on Excellence in Education, *A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM*).

former executive director Ted Kolderie, their report built on the Shanker-Budde idea to allow for new public schools to operate outside district structures, but within a State's system of free public education.<sup>15</sup> They invited Minnesota Senator Ember Reichgott Junge, who had previously authored public school open enrollment legislation, to author what would later become the first charter school legislation in the country.

In 1991, Minnesota took a groundbreaking step by passing a bill that led to the creation of the first charter school in the entire country.<sup>16</sup> The bill's text thus made concrete the underlying vision: charter schools would be *public schools* available to all students. These schools would be financed by the State and operate independently of existing school districts, empowering them to explore novel methods of teaching and respond to the unique needs of their students. Most importantly, charter schools would be held to a rigorous standard of accountability for their performance, in a way that existing public schools could never be. As the Founders Library explains:

The purposes listed are basically self-explanatory. Maybe the most important (after the first) are to test new forms of measurement/assessment and to give teachers an option to own the school (learning program) in which they work.

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15. CITIZENS LEAGUE, CHARTERED SCHOOLS = CHOICES FOR EDUCATORS + QUALITY FOR ALL STUDENTS (Nov. 17, 1988), The National Charter Schools Founders Library, <https://charterlibrary.org/library/chartered-schools-choices-for-educators-quality-for-all-students-citizens-league-report-1988-11-17> (last visited April 3, 2025).

16. Minn. Stat. §§ 124D.10, 124D.11 (1991).

The bill basically opens up for the [S]tate a way to create different and better public schools . . . to supplement (and stimulate) the present effort to improve schools that now exist.<sup>17</sup>

California followed shortly after by enacting the California Charter Schools Act of 1992.<sup>18</sup> Echoing the Minnesota statute, the California charter legislation explained that the purpose of charter schools was to, among other things—

- (a) Improve pupil learning.
- (b) Increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low achieving.
- (c) Encourage the use of different and innovative teaching methods.
- (d) Create new special opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.
- (e) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.

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17. Minnesota's SUMMARY OF THE BILL TO ESTABLISH OUTCOME-BASED SCHOOLS (1991), The National Charter Schools Founders Library, <https://charterlibrary.org/library/summary-of-bill-to-establish-outcome-based-schools> (last visited April 3, 2025).

18. California Charter Schools Act of 1992 (Sept. 1992); *see also* Cal. Educ. Code §§ 47610.



- (f) Hold the schools established under this part accountable for meeting measurable pupil outcomes, and provide schools with a method to change from rule-based to performance-based accountability systems.<sup>19</sup>

As with Minnesota, California understood charter schools to be public institutions “within the public school system.” Indeed, the legislation emphasized that charter schools were necessarily different from private (i.e., *non-public*) schools: “No charter shall be granted under this part that authorizes the conversion of any private school to a charter school.”<sup>20</sup> This would prove to be a key theme in the rapid adoption of charter school legislation by numerous other States. As former Indiana Senator Teresa Lubbers—who was instrumental in shaping that State’s charter laws—observed:

I can’t tell you how many times people refer to [charter schools] as public charter schools. I always say that’s redundant, yet I prefer this usage over having them claim it’s not a public school at all. This highlights the need for greater clarity and understanding in the ongoing dialogue about the role of charter schools in our educational landscape.<sup>21</sup>

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19. Cal. Charter Schools Act of 1992, § 47601.

20. *Id.* at Ch. 781, § 47602(b).

21. INTERVIEW BY JIM GOENNER WITH TERESA LUBBERS (Mar. 12, 2025), The National Charter Schools Founders Library, <https://charterlibrary.org/library/interview-of-theresa-lubbers> (last visited Apr. 3, 2025).

## **II. The legislative frameworks of States that adopted charter school laws after Minnesota and California demonstrate that charter schools were designed to be public schools.**

The Minnesota and California laws inspired a wave of additional legislation.<sup>22</sup> In 1993, several States passed legislation establishing charter schools, including Colorado, Massachusetts, Michigan, New Mexico, and Wisconsin. Notably, these States consciously adopted the text of Minnesota and California statutes.<sup>23</sup> This legislative choice shows that lawmakers wrote their bills to make these new schools into public institutions. That was further reinforced in the enumerated purposes outlined in these bills, which emphasized that charter schools are intrinsically linked to traditional public schools.<sup>24</sup> Thanks

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22. National Charter Schools Institute, NATIONAL TIMELINE, The National Charter Schools Founders Library, <https://charterlibrary.org/timeline> (last visited Apr. 3, 2025).

23. *See, e.g.*, Colo. Rev. Stat. § 22-30.5-104 (1993); Colo. Legislative Council, Fiscal Note, S.B. 93-183 Concerning Charter Schools (Feb. 3, 1993); *see also* Mich. Comp. Laws §§ 380.501.(1), 380.552.

24. *See, e.g.*, Colo. Rev. Stat. § 22-30.5-104; Colo. Legislative Council, Fiscal Note, S.B. 93-183 Concerning Charter Schools (Feb. 3, 1993); Mass. Gen. Laws Ch. 71 § 89(c) (stating “[a] commonwealth charter school shall be a public school, operated under a charter granted by the board, which operates independently of a school committee and is managed by a board of trustees.”); Mich. Comp. Laws §§ 380.501.(1), 380.552 (establishing the created of a Public School Academy, which is a State-funded public school under the State constitution that operates under a charter issued by a public authorizing body and explaining that “[a] public school academy is a public school under section 2 of article VIII of the [S]tate

to this wave of legislation, 46 States, the District of Columbia, and even Puerto Rico and Guam, have adopted charter school legislation.<sup>25</sup>

Undergirding this legislation is a fundamental understanding that charter schools and traditional public schools coexist within the public education system.

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constitution of 1963[.]”); N.M. Ann. § 22-8B-3 (explaining that the purpose of charter schools, among other things, is to “to provide parents and students with an educational alternative to create new, innovative and more flexible ways of educating children within the public school system; to encourage parental and community involvement in the public school system[.]”); (underscoring the interconnectivity between charter schools and public schools by detailing the requirements for establishing a charter school, specifically providing “[w]henver a school board intends to establish a charter school, it shall notify the [S]tate superintendent of its intention” and further requiring that “petition shall be signed by at least 10 percent of the teachers employed by the school district or by at least 50 percent of the teachers employed at one school of the school district.”) that charter schools must notify the State superintendent of its intention.”); *see also* Ariz. Rev. Stat. Ann. § 15-183; HI Rev. Stat. § 302D-3 (explaining that “[t]he mission of the [State public charter school] commission shall be to authorize high-quality public charter schools throughout the State.”); Kan. Stat. Ann. § 72-4206 (explaining that the intention of the statute is to “provide an alternative means within the public school system for ensuring accomplishment of the necessary outcomes of education by offering opportunities for school building or school district employees groups, educational services contractors, and other persons or entities to establish and maintain charter schools that operate within a school district structure, but independently from other schools of the district.”); Ak. Stat. Ann. § 14.03.255; and Ark. Code Ann. §§ 6-23-103, 6-23-107.

25. National Charter Schools Institute, NATIONAL TIMELINE, The National Charter Schools Founders Library, <https://charterlibrary.org/timeline> (last visited Apr. 3, 2025).

Importantly, this was a bipartisan and nationwide understanding. For instance, the former Republican Governor of Colorado, Bill Owens, has remarked about the importance of garnering support from Democratic Representative Peggy Kerns and former Democratic Colorado Governor Roy Romer. Owens articulated his vision clearly: “I wanted this to pass not as a Republican bill, but as a Colorado bill.”<sup>26</sup>In North Carolina, Harold Brubaker, a Republican and then-Speaker of the North Carolina House of Representatives, emphasized that the appeal of charter schools stemmed from lawmakers’ deep understanding of the diverse needs present across the State’s various regions. He declared, “[w]e should never forget . . . the importance of charter schools as part of the public school system throughout the country.”<sup>27</sup> State and local representatives, school officials, and policy advocates from a range of political backgrounds shared a collective recognition that the public education crisis demanded urgent action. And, from this recognition, this group came together and championed the establishment of a public solution to this public problem in the form of charter schools.

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26. INTERVIEW BY EMBER REICHGOTT JUNGE WITH BILL OWENS (Feb. 28, 2019), The National Charter Schools Founders Library, <https://charterlibrary.org/library/interview-of-bill-owens/> (last visited Apr. 3, 2025).

27. INTERVIEW BY EMBER REICHGOTT JUNGE WITH HAROLD BRUBAKER, (Aug. 24, 2021), The National Charter Schools Founders Library, <https://charterlibrary.org/library/interview-of-harold-brubaker> (last visited Apr. 3, 2025).

### III. Legislators designed charter schools to enhance the public education system.

Input from public school teachers about the most effective ways to implement the innovative delivery model was also central to these reform efforts.<sup>28</sup> This feedback loop—which continues today—makes clear that charter schools are integral to the success of the public school system as a whole.<sup>29</sup> When asked about the thought process underlying the charter school model, the education innovator Ted Kolderie explained—

[W]hat the legislatures essentially did was . . . insert this new second sector in this embryonic way into the American public education system, and then different States in different ways in relation to their own political situation and their own context adapted it and the system changed.<sup>30</sup>

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28. *See, e.g.*, CORRESPONDENCE FROM CALIFORNIA FEDERATION OF TEACHERS CORRESPONDENCE TO GARY HART AND SUE BURR (June 22, 1992), The National Charter Schools Founders Library, <https://charterlibrary.org/library/letter-to-gary-hart-and-sue-burr-from-california-federation-of-teachers-june-1992> (last visited April 3, 2025), explaining that to maximize the potential of the charter school model, charter schools would need to be exempt from specific laws and regulations.

29. Minnesota’s SUMMARY OF THE BILL TO ESTABLISH OUTCOME-BASED SCHOOLS (1991), The National Charter Schools Founders Library, <https://charterlibrary.org/library/summary-of-bill-to-establish-outcome-based-schools> (last visited April 3, 2025).

30. DISCUSSION BY TED KOLDERIE, EMBER REICHGOTT JUNGE AND JAMES GOENNER, CHARTERING WHY AND HOW: THE EXPECTED AND UNEXPECTED (May 22, 2018) at 2:27, The National Charter Schools

This reflection, from a premier advocate for charter schools in our nation, underscores the essential design and mission of charter schools: to transform the public education system in a manner that effectively addresses the various needs of families across each State.

In a 2019 interview, Dick Posthumus, the former Michigan Senate Majority Leader responsible for championing that State’s charter schools law, observed that the law had “transformative” goals.<sup>31</sup> These were to empower low-income students with educational choices, enhance public schools through healthy competition, and rectify funding disparities across the system. The bill he sponsored in Michigan in 1993 included specific language that a public school academy (a charter school) was a public school under the Michigan constitution; was a school district for purposes of the State constitution; and was “subject to the leadership and general supervision of the State board over all public education, under the constitution.”<sup>32</sup>

Similarly, the education innovator, Joe Nathan, explained that charter schools were initially referred to as “outcome-based schools” and were aimed at “giving educators an opportunity to create new kinds of schools

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Founders Library, <https://charterlibrary.org/library/2018-kolderie-oral-history-phase-ii-transcript-pdf> (last visited April 3, 2025).

31. INTERVIEW BY DON COOPER WITH SENATOR DICK POSTHUMUS (Sept. 25, 2019) at 17:40, The National Charter Schools Founders Library, <https://charterlibrary.org/library/interview-of-dick-posthumus> (last visited Apr. 3, 2025).

32. Mich. Comp. Laws § 380.501(i).

within some limits, and the schools had to be non-sectarian, and the schools had to be open to all.”<sup>33</sup>

The origins of charter schools, as recounted by the public representatives who helped established their existence, clearly demonstrate their integral role to the public school system. As such, charter schools promote competition with the traditional public school system by provoking innovative methods of delivering public education in novel and effective ways.<sup>34</sup> Not only do charter schools empower educators to adopt innovative teaching styles by allowing greater classroom flexibility, but they also enable varied methods of learning by students. This unique approach enables families to choose the most suitable educational paths for their children’s success and reinforces the fundamental mission of charter schools: to provide a viable alternative within the public education system.

At bottom, charter schools were established as a direct response to parents’ growing desire for impactful reforms in *public education*, as well as the U.S. Government’s

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33. INTERVIEW BY DARLENE CHAMBERS WITH JOE NATHAN, DIRECTOR, THE CENTER FOR SCHOOL CHANGE (2019) at 30:18, The National Charter Schools Founders Library, <https://charterlibrary.org/library/joe-nathans-story> (last visited Apr. 3, 2025) (emphasis added).

34. *See, e.g.*, REPORT BY MINNESOTA DEPT. OF EDUCATION, CHARTER SCHOOLS: TEACHER FORMED AND OPERATED SCHOOLS THAT ARE OUTCOME-BASED (Sept. 1991). This correspondence explained that charter schools were created to, among other things, encourage “educational programs which improve pupil learning; . . . different innovative teaching methods; . . . and different and innovative forms of measuring outcomes.”

acknowledgment of this pressing need. Stated well by former New York Governor George Pataki—

Charter schools are public schools that create that competitive climate. They can innovate, they can try new ideas and new systems, and that we know work. So if there's one big change, to enhance the lives of people, particularly those who have too long been trapped in poverty, it's improving their education. And this is a proven way to dramatically enhance their educational opportunities.<sup>35</sup>

**IV. Charter schools have always been and remain accountable to State and local boards and must comply with relevant laws and regulations, reinforcing their role as public institutions.**

Charter schools, while benefiting from specific exemptions under State and local laws, remain under the oversight of authorizing entities—generally representatives or employees of State and local governments connected to traditional education. This dual accountability underscores their commitment to meeting or exceeding the standards of a public education.<sup>36</sup> Indeed, this strict, public-facing

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35. INTERVIEW BY ROBERT BELLAFFIORE WITH FORMER GOVERNOR OF NY, GEORGE E. PATAKI (June 1, 2023) at 33:46, The National Charter Schools Founders Library, <https://charterlibrary.org/library/interview-of-former-governor-of-ny-george-e-pataki> (last visited Apr. 3, 2025).

36. *See, e.g.*, The District of Columbia School Reform Act of 1995, D.C. Code § 38-1802.01 *et seq.* Section 2211 of the Act provides that the chartering authority “shall monitor the operations of each public charter school to which it has granted a charter; shall



accountability played a key role in the creation of charter schools.

Charter schools are a response to parent demand for public education reform. Because of this, in many ways, charter schools have a *greater* level of accountability to State and local authorities than traditional public schools, as charter schools' continued existence depends on maintaining academic performance and success to the satisfaction of the authorizing entities. For example, former Florida Governor Jeb Bush explained well how charter schools have a level of accountability that stretches beyond that of a traditional public school and stated—

I think it's important that these choices parents are making [are] informed choices and that there's an expectation, when you sign up for a kid going to a charter school, that you know what you're going to get, and that there's an accountability system beyond the traditional one; in our [S]tate, we grade schools, A through F; charters are graded that way, too. But beyond that there is an implicit accountability system by the leadership of the charter school and their board.<sup>37</sup>

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ensure that each such school complies with applicable laws and the provisions of the charter; and shall monitor the progress of each such school in meeting student academic achievement expectations specified in the charter.”

37. INTERVIEW BY EMBER REICHGOTT JUNGE WITH JOHN ELLIS (JEB) BUSH (May 13, 2021) at 28:28, The National Charter Schools Founders Library, <https://charterlibrary.org/library/interview-of-john-ellis-jeb-bush> (last visited Apr. 3, 2025).

This commitment to academic standards is also embodied in federal law. The Every Student Succeeds Act (the “ESSA”) is the main federal law relating to K-12 public education in the United States. Signed into law in 2015, ESSA replaced the No Child Left Behind Act and establishes various accountability measures within the public school system. This includes a requirement for each State to implement appropriate metrics to evaluate student performance in reading, math, and science.<sup>38</sup> Charter schools are subject to ESSA.<sup>39</sup> Notably, ESSA provides that “[t]he accountability provisions under this Act shall be overseen for charter schools under State charter school law.”<sup>40</sup>

Importantly, State executives and legislators understood public accountability to go beyond just the academic. Rather, they understood it to require the same normative standards that govern public entities, ensuring that charter schools reflect the inclusiveness and availability that are hallmarks of public education.<sup>41</sup> On this point, former Hawaii Governor David Ige remarked:

[W]e believe that public money should only go to public schools, and in order to be a public school

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38. 20 U.S.C. § 6301; Every Student Succeeds Act of 2015, Pub. L. No. 114–95, 114th Cong. (2015).

39. Every Student Succeeds Act of 2015, Pub. L. No. 114–95, 114th Cong. (2015) at 38.

40. *Id.*

41. INTERVIEW BY EMBER REICHGOTT JUNGE WITH JOHN ELLIS (JEB) BUSH (May 13, 2021), The National Charter Schools Founders Library, <https://charterlibrary.org/library/interview-of-john-ellis-jeb-bush> (last visited Apr. 3, 2025).

and receive public money, then you need to play by the rules, which means you take all students . . . You can't select students. You have to take anyone who wants to go there, and if you have more applicants th[a]n you have spaces, then there should be a fair process, not a selective process, of a school deciding who they want and who they don't want.<sup>42</sup>

As Governor Ige makes clear, charter schools are public schools precisely because they do and must serve the public.

To ensure that both academic and normative standards are maintained, no State grants a complete exemption from the laws and regulations governing education at both the State and local levels.<sup>43</sup> This continued oversight

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42. INTERVIEW BY EMBER REICHGOTT JUNGE WITH DAVID IGE AND MIKE MCCARTNEY (Mar. 11, 2025) at 50:09, The National Charter Schools Founders Library, <https://charterlibrary.org/library/interview-of-gov-david-ige-and-mike-mccartney> (last visited Apr. 3, 2025).

43. *See, e.g.*, Colo. Rev. Stat. § 22-30.5-104 (explaining that charter schools are public schools that operate within a public school district and requiring that charter schools in Colorado comply with certain federal, State, and local laws including school performance assessments and reports); Conn. Gen. Stat. (“C.G.S.”) § 10-66dd(b)(1) (establishing that subject to certain limited exceptions, “charter schools shall be subject to all federal and [S]tate laws governing public schools.”); Ind. Code Ann. § 20-24-8-5 (explaining the applicability of certain federal, State, and local laws to charter schools operating in the State of Indiana); Minn. Stat. Ann. 124E.03(1)–(2) (stating “[a] charter school is a public school and is part of the State’s system of public education[,] and explaining that Minnesota charter schools “must comply with

and governance highlights the importance of consistent accountability across all public educational institutions. Ultimately, charter schools, despite their pedagogical freedom, are held to—and often exceed—the standards of traditional public schools.<sup>44</sup> The interconnectivity between traditional and charter schools is evident in the protection that traditional schools offer to their charter school adjuncts. For instance, there are State and local laws in place to support charter schools and to safeguard students in the event of a significant issue. If a charter school fails to meet the required performance objectives, the governing authority has the power to intervene and close the school. In such cases, parents can choose to transition their children to a traditional public school or seek a different charter school that better suits their needs.<sup>45</sup> This situation not only underscores the interdependence between charter schools and traditional public schools

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Statewide accountability requirements governing standards and assessments” as detailed by the applicable statute).

44. See REPORT BY EDUCATION COMMISSION OF THE STATES, 50-STATE COMPARISON (January 2020) <https://reports.ecs.org/comparisons/charter-school-policies-14> (last visited Apr. 3, 2025), which provides information about 45 States and the Traditional of Columbia that have charter school laws. It does not include data for the five States that have not enacted such laws.

45. See INTERVIEW BY JIM GOENNER WITH TERESA LUBBERS (Mar. 12, 2025) at 20:48 (underscoring that if charter schools fail to perform according to applicable State and local governments, as well as the terms of their charter, these schools may be closed down); see e.g., Kan. Stat. Ann. § 72-4208 (detailing that charter schools, as alternative forms to public education, may be discontinued in operation for failure to meet required performance standards under applicable charter and State and local regulations).

but also reinforces the fundamental mission of both: to deliver a high-quality public education to every student.

### CONCLUSION

Historical analysis of charter schools in this country shows that legislators and officials created charter schools to be public schools within the public education system.

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