

In the Supreme Court of the United States

OKLAHOMA STATEWIDE CHARTER SCHOOL BOARD, ET AL.,
Petitioners,

v.

GENTNER DRUMMOND, ATTORNEY GENERAL OF OKLAHOMA,
EX REL. OKLAHOMA,
Respondent.

ST. ISIDORE OF SEVILLE CATHOLIC VIRTUAL SCHOOL,
Petitioner,

v.

GENTNER DRUMMOND, ATTORNEY GENERAL OF OKLAHOMA,
EX REL. OKLAHOMA,
Respondent.

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

**BRIEF OF AMICUS CURIAE
NATIONAL ALLIANCE FOR PUBLIC CHARTER SCHOOLS
IN SUPPORT OF RESPONDENT**

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INTEREST OF THE AMICUS CURIAE¹

The NATIONAL ALLIANCE FOR PUBLIC CHARTER SCHOOLS is a leading organization in the public charter school movement, which promotes the creation and support of charter schools. Its board features a distinguished and diverse group of nationally recognized figures from business, law, education, and public policy. There are currently more than 7,000 public charter schools and campuses in 46 states and U.S. territories, employing more than 200,000 teachers and serving more than 3.7 million students.

The Alliance champions the establishment of public charter schools—tuition-free, publicly funded institutions that operate with greater flexibility than traditional public schools, allowing for tailored educational approaches that meet diverse student needs. The Alliance plays a pivotal role in advocating for policies that support the growth and sustainability of these schools, ensuring they receive equitable funding and resources. By empowering families with the ability to choose the best educational environment for their children, the Alliance fosters a landscape where academic excellence and opportunity are accessible to all. The Constitution has not impeded this movement.

¹ Pursuant to Rule 37.2, counsel affirms that all parties received timely notice of amicus curiae’s intent to file this brief and no other party authored this brief in whole or in part, and no person or entity, other than amicus curiae or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

The Alliance stresses that public charter schools are more than mere government aid. Public charter schools are joint undertakings with the state, fully funded by the state, occupying a unique space within the public school system—and accepting of both the rights and responsibilities that come with that. In Oklahoma and elsewhere, public charter schools are and always have been subject to federal and state civil rights laws and gladly extend free speech, due process, religious accommodation, and equal protection rights to students and faculty to the same extent as any other public school. At the same time, their public entity status affords access to a host of government benefits and state protection from tort liability.

The Alliance has a vested interest in ensuring that public charter schools are recognized as integral components of the public education system and operate within constitutional boundaries. Public charter schools are not mere tools for circumventing constitutional obligations; rather, they are designed to innovate within the framework of public education while maintaining accountability to state and federal law. The Alliance strongly opposes any suggestion that the public charter school model permits the state to evade its constitutional responsibilities, including adherence to the Establishment Clause. By collaborating with government sponsors, public charter schools remain bound by their foundational role as public institutions tasked with delivering equitable education in fulfillment of the state's constitutional duty to provide public schooling to all students. The Alliance is committed to defending this critical balance to preserve the integrity and purpose of public charter schools.



SUMMARY OF ARGUMENT

The Petition should be denied because the questions presented rest on a fundamental misunderstanding of the nature of a public charter school and the public charter school's role within the public education system. It also mischaracterizes the factual underpinnings, misstates relevant state law, and misinterprets the decision below, especially by blurring the distinction between the nonprofit applicant and the public charter school itself referring to both as "St. Isidore." The questions seem drafted to fit the square peg of a public charter school into the round hole of a public aid program. In doing so, Petitioners assume that the public charter school program is merely a grant program in which the state fully funds a private school. That assumption is far off base.

Properly understood, this case does not provide a proper vehicle for resolving these issues, as they are not outcome-determinative, and the Oklahoma Supreme Court's ruling can be upheld on alternative bases. Regardless of Petitioners' factual and legal mischaracterizations, the ruling can be affirmed on the alternative ground that the Oklahoma Statewide Virtual Charter School Board's sponsorship and creation of a religious public school violates the Establishment Clause. Because the Establishment Clause violation stems directly from the State Board's actions in creating a religious public charter school, the outcome does not depend on whether St. Isidore is deemed a state actor.

Still, if the state action inquiry were applied, not only would the result be the same, but it would reveal

that the alleged circuit split is illusory. A finding that a private entity is a state actor in one context does not mean it is a state actor for all purposes—a private school contracting with the state, for example, is neither always nor never a state actor. The proper inquiry examines whether the specific conduct at issue is fairly attributable to the state—a precise, highly fact-intensive, and context-specific standard that Petitioners fail to engage with, or even mention. The purported split stems from differing factual circumstances rather than a substantive conflict in legal standards. And, even under this narrow framework, when the state expressly contracts for religious instruction in its public schools—particularly considering the totality of the charter school program—such instruction is fairly attributable to the state.

The two issues here arise in areas of law that have evaded bright lines. But this is not the case to establish them. The actions at issue are prototypical Establishment Clause violations and either direct state action or public-private joint action resulting in conduct fairly attributable to the state.



ARGUMENT

The Oklahoma Supreme Court’s decision can stand on Establishment Clause grounds based on the actions of the Statewide Virtual Charter School Board (“State Board”) without regard to whether any private entity is a state actor. Oklahoma’s nonsectarian requirement as applied to the formation of new public charter schools under the Oklahoma Charter School Act goes no further than the Establishment Clause requires because when the government sponsors the creation of a religious institution, including a religious school, it violates the Establishment Clause.

The charter school is a state-created public school under Oklahoma law, and its actions are state actions. But, even attributing the conduct to a private entity, under state action doctrine, specifically the joint action test, unaddressed by the Oklahoma Supreme Court, St. Isidore’s religious instruction is fairly attributable to the state, which provides an additional alternative ground.

I. Determining St. Isidore’s State Actor Status Is Not Necessary to Affirm the Decision of the Oklahoma Supreme Court.

A. Under the Establishment Clause, the Government Cannot Create Public Religious Institutions.

The First Amendment’s Religious Clause “encompasses two distinct guarantees—the government shall make no law respecting an establishment of religion or prohibiting the free exercise thereof—both with the

common purpose of securing religious liberty.” *Lee v. Weisman*, 505 U.S. 577, 605 (1992); *see also* *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 8 (1947) (citing *Murdock v. Commonwealth of Pennsylvania*, 319 U.S. 105 (1943)). Thomas Jefferson described these guarantees as a “wall” separating church and state. *Everson*, 330 U.S. at 16. Within the Religious Clause, the Court employs a different analogy, recognizing that its “jurisprudence in th[e] area [of balancing the guarantees of the Establishment Clause and Free Exercise Clause] is of necessity one of line-drawing.” *Lee*, 505 U.S. at 598. This case is about where the First Amendment draws that line.

Under the Establishment Clause, no doubt the state cannot “pass laws which aid one religion, aid all religions, or prefer one religion over another.” *Everson*, 330 U.S. at 15. Nor can the state force anyone “to go to or to remain away from church . . . [or] religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.” *Id.* at 15-16. And while eliminating state religious coercion and maintaining government neutrality on religious matters are key concerns of the Establishment Clause, they are not essential elements of a claim. *See, e.g., Allegheny County v. Greater Pittsburgh ACLU*, 492 U.S. 573 (1989). *Lee v. Weisman* instructs that a showing of state religious coercion may be sufficient but not necessary. 505 U.S. at 619.

Nor can notions of neutrality swallow up the Establishment Clause. The Establishment Clause itself is not perfectly neutral on religion. After all, it singles out religion as the thing that the government cannot establish. *Walz v. Tax Commission of New York*, 397 U.S. 664, 668-69 (1970). Accordingly, the Court warns

against extreme views of either the Establishment Clause or the Free Exercise Clause as taking either to their extremes would cause the constitutional guarantees found in each to “clash.” *Walz*, 397 U.S. at 668-69. Undoubtedly, states may set up various state institutions, such as schools, boards, commissions, and agencies, but they cannot set up religious institutions.

In *Walz v. Tax Commission of New York*, the Court observed that “[t]he course of constitutional neutrality in this area cannot be an absolutely straight line.” Such “rigidity could well defeat the [clause’s] basic purpose,” which, as it relates to the Establishment Clause, is “to insure that no religion be sponsored or favored” by the government. 397 U.S. at 669; *see also School Dist. of Abington Township v. Schempp*, 374 U.S. 203, 216 (1963). Sometimes the line is thin. At the margins, the Court has ruled on both sides of public prayer,² public religious displays,³ and public funds to religious institutions⁴ depending on the circumstances of the case.

But, regardless of the margins, the government crosses the line when—and many cases have turned on whether—the “government . . . sponsor[s] a manifestly religious exercise.” *Wallace v. Jaffree*, 472 U.S. 38, 72 (1985). Thus, while precedent has not always “drawn perfectly straight lines,” *Lee*, 505 U.S. at 619, “[t]he

² Compare *Engel v. Vitale*, 370 U.S. 421 (1962) with *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022).

³ Compare *Stone v. Graham*, 449 U.S. 39 (1980) with *Van Orden v. Perry*, 545 U.S. 677 (2005).

⁴ Compare *Levitt v. Committee for Public Ed. and Religious Liberty*, 413 U.S. 472 (1973) with *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).

[Establishment Clause] means at least this: Neither a state nor the Federal Government can set up a church,” *Everson*, 330 U.S. at 15. This prohibition on setting up churches extends to church schools. In *Kiryas Joel Village School District v. Grumet*, for example, the Court held that a New York state statute creating a special school district to serve a religious enclave of Satmar Hasidim, a strict form of Judaism, violated the Establishment Clause. 512 U.S. 687, 698 (1994).

B. The Oklahoma Statewide Virtual Charter School Board Formed St. Isidore as a Public Charter School.

Public charter schools are tuition-free, open enrollment public schools that operate under a charter contract with a state or local government. This alternative form of public school provides students, parents, and school administrators flexibility with curriculum and academic focus. “While they tend to operate separately from local public school districts (and often have private management), they’re creations of state law, highly regulated and publicly funded.” David French, *NEW YORK TIMES*, *Oklahoma Breaches the Wall Between Church and State* (June 8, 2023).

These schools are explicitly “formed and operated” under the Oklahoma Charter Schools Act. Okla. Stat. tit. 70, § 3-132(A). An indispensable step in forming a public charter school is securing government “sponsorship,” without which no charter school can exist. Okla. Stat. tit. 70, § 3-134(C). Oklahoma law allows private individuals or organizations—but not private schools—to contract with a government sponsor to establish a public charter school. *Id.* During the pendency of this case, the Statewide Charter School Board assumed

“sole authority to sponsor statewide virtual charter schools in this state.” Okla. Stat. tit. 70, § 3-132.1(A). Previously, this authority resided with the Oklahoma Statewide Virtual Charter School Board, which approved St. Isidore, Inc.’s application to jointly establish a new public charter school fully funded by the state. Okla. Stat. tit. 70, §§ 3-132.1(I), 3-137(H)(7).

This arrangement reflects a public-private partnership where the resulting institution remains a public entity for constitutional purposes. The schools’ inherently public nature is evident in the statutory framework. Public charter schools operate as an extension of the state’s constitutional obligation to provide public education. Okla. Const. art. I, § 5, art. XIII, § 1. These schools are tuition-free, open to all, publicly funded through the state per-pupil formula, subject non-discrimination requirements, and operate under state oversight. Okla. Stat. tit. 70, § 3-136(A)(9). Indeed, the State Board must actively “monitor” the charter school it sponsors, ensuring the school operates strictly “in accordance with the charter contract terms.” Okla. Stat. tit. 70, § 3-134(I)(7).

The Petition obscures this arrangement by conflating the private nonprofit applicant with the state-created public charter school. It blurs the line between St. Isidore, Inc., a private nonprofit organization, and the public charter school that would bear the same name referring to both as “St. Isidore.” Throughout the Petition, St. Isidore, Inc. alternates between describing itself as a nonprofit and a private school depending on the legal theory advanced. This conflation not only muddles the facts but also obscures the legal boundaries established by Oklahoma law.

To be clear, no one suggests that St. Isidore, Inc., the nonprofit, was established under the Oklahoma Charter Schools Act. Nor was that at issue in the case below. Rather, the Oklahoma Supreme Court held that public charter schools formed under the Act and established by contract with a state sponsor are “state-created.” Pet. App. 21a. St. Isidore, Inc. is not itself a public charter school; it is the “applicant seeking to establish a virtual charter school.” Okla. Stat. Ann. tit. 70, § 3-134(B). The resulting charter school, distinct from the nonprofit, is a state-created entity that operates as a public school under state law.

And Oklahoma law applies the label “public school,” not to the nonprofit, but specifically to the “school established by contract” with the state sponsor. Okla. Stat. tit. 70, § 3-132.2(C)(1). Despite this, Petitioners repeatedly claim that “St. Isidore” is a private school. This claim forms the foundation for their questions presented. But it ultimately undermines their Petition. If it is Petitioners’ assertion that the nonprofit is a private school—already existing as a school before sponsorship and charter—then their questions presented collapse.

Petitioners’ first question wrongly assumes that a private school, rather than a private corporation, is contracting with the state. The same is true of their second question. By framing their second question as whether the state may exclude “privately run religious schools” from the charter-school program “solely because the schools are religious,” Petitioners presuppose two flawed premises: (1) that St. Isidore, Inc. is a private school, and (2) that Oklahoma’s program extends eligibility for public charter school management to private schools generally.

As to the latter, the opposite is true. Oklahoma law expressly excludes all private schools—religious or otherwise—from applying to form and operate public charter schools. Okla. Stat. tit. 70, § 3-134(C) (“A private school shall not be eligible to contract for a charter school . . . under the provisions of the Oklahoma Charter Schools Act.”). Taking Petitioners’ assertion of private school status at face value, this categorical exclusion renders Petitioners’ free exercise claim inapplicable.

Unlike the programs in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017), *Espinoza v. Montana Dep’t of Revenue*, 591 U.S. 464 (2020), and *Carson as next friend of O. C. v. Makin*, 596 U.S. 767 (2022), which involved generally available public benefits, Oklahoma’s charter school program does not extend eligibility to private schools. As this Court has emphasized, the Free Exercise Clause does not mandate states to fund religious education, nor does it require states to extend benefits to religious entities that are unavailable to their nonreligious counterparts. Thus, Petitioners’ characterization of St. Isidore as a private school would resolve the case on state statutory grounds alone.

Admittedly, that is not the contention. Properly understood, St. Isidore, Inc. was never a private school. No school existed—public or private—until the State Board sponsored and established the new public charter school by approving St. Isidore, Inc.’s application to create St. Isidore (the school) within the state’s public school system.

C. St. Isidore, a Public Charter School Formed Under the Oklahoma Public Charter School Act, Is a Religious Institution

St. Isidore of Seville Virtual Charter School, a government-sponsored public charter school, is undeniably a religious institution. This conclusion follows directly from its charter application, where St. Isidore, Inc. petitioned the State Board to sponsor it “[t]o create, establish, and operate the School as a Catholic School.” Pet. App. 7a. In Catholic schools, religion “occup[ies] the first place.” *Everson*, 330 U.S. at 22. Catholic canons require that “[t]he instruction and education in a Catholic school must be grounded in the principles of Catholic doctrine,” Code of Canon Law 803, § 2, and direct religious institutes to remain faithful to their mission by “devot[ing] themselves to Catholic education through their schools.” Code of Canon Law 801. These religious commitments are not merely incidental; they are expressly contemplated and sanctioned by the terms of the charter contract with the State.

As the Oklahoma Supreme Court noted, St. Isidore explicitly intends to maintain “its original characteristics and its structure as a genuine instrument of the church” and to serve “the evangelizing mission of the church.” Pet. App. 7a. Rooted in Catholic teachings on the human person and relationships with God and neighbor, the school “fully embraces the teachings of the Catholic Church’s Magisterium” and integrates them into “every aspect of the School, including but not limited to its curriculum and co-curricular activities.” *Id.*

No one disputes St. Isidore’s religious nature. Far from it, Petitioners have always been “up front” about that. Pet. 7. What is equally indisputable, however, is

the role of the government in bringing this religious institution into existence. No school existed on June 5, 2023, then the State Board issued the charter at its meeting, and now there is a school. The resulting school, St. Isidore, is neither all church nor all state, but a blend of church and state. The joint endeavor goes beyond the “symbolic union” of church and state; the charter forms an actual union of church and state. *Kiryas Joel Vill. Sch. Dist.*, 512 at 695.

D. St. Isidore’s Charter Violates the Establishment Clause

These facts demonstrate an unmistakable violation of the Establishment Clause. The State Board’s action—establishing a religious school—is no doubt state action. By establishing a church school, the State Board has, in effect, “sponsor[ed] a manifestly religious exercise.” *Wallace*, 472 U.S. at 72. The Establishment Clause is generally unconcerned with government actions that, though benefiting religion, are “not aimed at establishing, sponsoring, or supporting religion.” *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 12 (1989). But here, the aim is unmistakable: the sponsorship, establishment, and government support of a new religious institution—the nation’s first religious public charter school—“an establishment rarely found in such straightforward form in modern America.” *Cf. Kiryas Joel Vill. Sch. Dist.*, 512 U.S. at 697.

Taking a step back, the real issue is not about the government restricting money flow to an admittedly religious institution, but that the government cannot create such a religious institution in the first place. Consider the sequence here. The state first forms the religious establishment and only then guarantees full

funding to it. This combination of facts separates the present case from precedent dealing with mere public aid finding its way to existing religious institutions.

There are numerous and significant differences between the establishment of St. Isidore here and the issues addressed in *Trinity Lutheran*, *Espinoza*, and *Makin*. Those three cases addressed the distinct question of whether the state may withhold generally available public aid from private religious schools based solely on their religious use or status. It cannot. But that has no bearing here.

Unlike here, the state neither sponsored, nor entered a contract charter, nor voted to establish any of the private schools in *Trinity Lutheran*, *Espinoza*, and *Makin*—the schools existed independent of any government act. The trilogy of cases presented situations characterized by little to no intermingling of the government with the religious school—certainly not a contractual relationship forming the school. Nor did the government provide guaranteed, complete, and direct financial support to the private religious schools.

Makin explicitly observed that the state did not cover the full costs. 596 U.S. at 783. *Espinoza* emphasized that the individual receiving the state scholarship, not the government, determined its allocation—a sharp distinction from the current scenario, where funding is mandated by law and written contract. 591 U.S. at 474. It is correct that the amount of money allocated to public charter schools in Oklahoma is determined by total enrollment, but the per-pupil amount provided to each public charter school is calculated using the same per-pupil formula for other public schools under the State Aid distribution process. Okla. Stat. tit. 70, § 3-142(A).

From this perspective, the case does not require addressing St. Isidore's status as a state actor because the preliminary issue revolves around the State Board's actions. By law, charter schools require a government sponsor. Granted, public charter schools operate outside local school districts, and some state laws do not apply. Okla. Stat. tit. 70, § 3-136(A)(5). But it does not follow that the Establishment Clause therefore does not apply to the State Board.

While this Court has developed different tests to address state action, the overarching standard in a state-action analysis is whether the challenged conduct is "fairly attributable to the State." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982). Application of that standard is straightforward when a suit is brought challenging the actions of a government entity, such as a state board. "The actions of local government *are* the actions of the State." *Avery v. Midland County*, 390 U.S. 474, 480 (1968).

Here, the State Board's approval of St. Isidore's charter contract directly creating a religious institution is plainly state action. This alone satisfies the "fairly attributable" standard and establishes the violation of the Establishment Clause. No additional nexus to government action is required beyond the plain terms of the contract. Moreover, the case does not hinge on labels. The state cannot create, set up, establish, or sponsor to establish a church school, whether labeled "public" or "private."

* * *

But turning to the label, whether St. Isidore, the school formed under the Oklahoma Charter School Act, is a "public school" is a matter of state law. The

Oklahoma Supreme Court’s determination that St. Isidore is a public school pursuant to state law resolves both questions on state grounds. Pet. App. 14a. That is, by statutory definition, a charter school is a public school, which is a governmental entity and a state actor under Oklahoma law, meaning the instruction it provides is state action. And a state may choose to provide strictly secular education in its public schools without running afoul of the Free Exercise Clause.

Even with some aspects outsourced, it is still the state’s prerogative to integrate the schools it establishes and fully funds into its public education system. These schools are specifically “formed and operated” in accordance with the Oklahoma Charter Schools Act. Okla. Stat. tit. 70, § 3-132(A). The Oklahoma Charter School Act does not authorize the State Board to establish private schools, only “public schools.” Oklahoma law defines charter schools as “public schools” which, in turn, are recognized by state law as government entities. Okla. Stat. tit. 70, § 3-132.2(C)(1); *see also* Okla. Stat. tit. 70, § 6-149.3(2). Charter schools are also publicly funded through the same per-pupil State Aid allocation as a traditional public school—not payment to a private contractor whose biggest client is the government like in *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982).

The Oklahoma Supreme Court merely applied the plain statutory meaning and common understanding of “public school.” While the term “public” in isolation may not resolve all inquiries, in the context of the Oklahoma School Code, its meaning is unmistakable. When the Code uses the term “public” to modify “school,” it consistently refers to institutions “[o]f, relating to, or involving [the] state.” Definition of “Public”, BLACK’S

LAW DICTIONARY (11th ed. 2019). For example, the Code defines the state’s public schools as “all free schools supported by public taxation . . . authorized by law[.]” Okla. Stat. tit. 70, § 1-106. Although public charter schools are “established” differently—through contracts between applicants and government sponsors—they retain the same core public characteristics as other schools in the system. Unlike private schools, public charter schools execute their responsibilities under the auspices and appearance of state authority.

Establishing a public charter school in Oklahoma requires direct and participatory governmental action, not merely licensure or accreditation. The formation process distinguishes public charter schools from private schools, which do not require state sponsorship and are not subject to the same public funding mechanisms, open enrollment requirements, or state-mandated accountability standards. Indeed, public charter schools have for decades readily accepted that they are highly accountable institutions that fulfill the state’s constitutional mandate to provide quality public education.

This is not to suggest that the entity operating the school is a state actor in all respects. For instance, in Oklahoma, the Comanche Nation, a federally recognized Indian tribe, operates a public charter school called Comanche Academy, which focuses on cultural preservation and language immersion. The cultural and language education provided at the school may be fairly attributed to the state without raising constitutional issues. But Oklahoma does not consider every act of the Comanche Nation—a distinct sovereign—to be an act of the state simply because the school it operates carries a “public school” designation.

This understanding aligns with this Court’s recognition in *Makin* of the “numerous and important” distinctions between public and private schools in Maine. 596 U.S. at 783. While charter schools may establish their curricula by contract rather than by statute, they remain bound by the same overarching principles as traditional public schools. Public schools—including charter schools—must accept all students, provide free education funded entirely through the state’s per-pupil funding formula, and adhere to state-mandated academic standards. As for the local-exemption statute applicable to charter schools, it merely replaces one set of state rules with another through contractual arrangements. Okla. Stat. tit. 70, § 3-136 (A)(5).

In short, the term “public schools” in the Oklahoma Charter School Act means the same thing that it meant in *Makin*, where this Court recognized that states “may provide a strictly secular education in its public schools.” 596 U.S. at 769.

II. St. Isidore’s Religious Inculcation Is Fairly Attributable to the State

Still, even if we consider the religious inculcation as being performed by the private entity, state action may still be attributed to St. Isidore, Inc. on grounds that the Oklahoma Supreme Court left on the table. Apart from the public function and entwinement tests, the facts of this case independently satisfy the joint action test. Under that test, when a state expressly contracts with a private entity to form a new institution for the express purpose of providing religious instruction, that religious instruction is fairly attributable to the state.

Determining whether a private entity qualifies as a state actor requires analyzing the specific conduct and circumstances at issue. Again, the central inquiry is whether the particular conduct in question is “fairly attributable to the State.” *Lugar*, 457 U.S. at 937. “[C]onstitutional standards are invoked only when it can be said that the State is *responsible* for the specific conduct.” *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982). Thus, courts begin by identifying the “specific conduct” alleged to constitute state action, focusing on whether the actions of the private entity can be attributed to the state, rather than making a blanket determination about the entity’s overall status. *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982). For example, in *Rendell-Baker v. Kohn*, the Court assessed whether a private school’s personnel decisions were state action, not whether the private school itself was a state actor for all purposes. 457 U.S. at 841.

A private entity’s conduct may qualify as state action in only “a few limited circumstances,” including: “(i) when the private entity performs a traditional, exclusive public function; (ii) when the government compels the private entity to take a particular action; and (iii) when the government acts jointly with the private entity.” *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019).

Joint action exists when the government collaborates closely with a private entity to achieve a shared objective or when their activities are so intertwined that the private entity’s conduct can be treated as that of the state. *See Lugar*, 457 U.S. at 941-42. Joint action does not require government coercion. On the contrary, it requires that the private entity be a “willful participant in joint activity with the State or its agents.”

Lugar, 457 U.S. at 941. The joint action test ensures that the state cannot delegate its responsibilities to private actors to circumvent constitutional accountability. For instance, in *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961), the Court held that a privately owned restaurant’s discriminatory practices were attributable to the state because of the “symbiotic relationship” between the restaurant and the state-owned property where it operated. *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 357 (1974).

Here, the challenged conduct is not the mere offering of a free educational option. Rather, it is the explicit inclusion of religious instruction in public school as a contractual term in the public-private partnership between the State Board and St. Isidore. This arrangement satisfies the joint action test for state action. The state’s involvement goes beyond mere regulation or passive approval. This arrangement embodies a “symbiotic relationship” between the state and the church.

The State Board’s active sponsorship of St. Isidore, coupled with its complete funding, establishment of the school as a public charter, and ongoing oversight to ensure compliance with state-mandated contractual terms—including religious instruction—demonstrates a quintessential joint endeavor.



CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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