Nos. 24-394, 24-396

IN THE

Supreme Court of the United States

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

v.

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

ST. ISIDORE OF SEVILLE CATHOLIC VIRTUAL SCHOOL,
Petitioner,

v.

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

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

BRIEF FOR NATIONAL PARENTS UNION, CENTER FOR LEARNER EQUITY, DIVERSE CHARTER SCHOOLS COALITION, NATIONAL CHARTER COLLABORATIVE, EDUCATORS FOR EXCELLENCE, AND BROWN'S PROMISE AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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INTEREST OF AMICI CURIAE

Amici curiae are nonprofit organizations of families, educators, and public-charter schools representing the Nation's diverse families and public schools.[1] Each promotes the positive change "options" that *Carson* v. *Makin*, 596 U.S. 767, 785 (2022), expressly invites by expanding the reach of the Nation's school systems to encompass more innovative and effective public schools attractive to all.

With more than 1,800 affiliated parent organizations in 50 States and ~1.7 million members, the **National Parents Union** is the united, independent voice of American families advocating more innovative and safer public schools readying our kids for tomorrow's world.

Providing those innovative schools, **Center for Learner Equity** partners with policymakers, charter authorizers, disability advocates, and charter schools to ensure public-school choice options are accessible and welcoming for students with disabilities. Each school in the **Diverse Charter Schools Coalition** works to provide an excellent, intentionally diverse and inclusive charter school setting for its students, families, and staff. Each of the **National Charter Collaborative**'s over 500 public-charter schools run by leaders of color provides high-quality public-schooling opportunities for their ~335,000 Black, Latino/a, and indigenous students.

Staffing those schools, **Educators for Excellence**'s 38,000 public-school teachers/members advocate policy

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

solutions enhancing teachers' autonomy and capacity to provide quality education for all students.

Motivating further change, **Brown's Promise**, hosted by The Southern Education Foundation, advocates for integrated, well-resourced public schools that work for all students.

SUMMARY OF ARGUMENT

St. Isidore is a private school. Oklahoma law makes "private school[s]" ineligible for charters. Okla. Stat. §70-3-134(C). To avoid needlessly addressing a novel constitutional issue whose resolution will not change the inevitable result below, the Court should dismiss or remand the case.

If the Court keeps the case, it should affirm. *Carson* v. *Makin* recognizes a constitutional safe harbor for a State that is committed to nondenominational public schooling and that chooses to offer new educational modalities without private-school assistance by "expand[ing] the reach of its public school system" and "operat[ing] [nontraditional] schools of its own." 596 U.S. 767, 785 (2022).

Virtual charter schools are among the many autonomy-rich schools that Oklahoma now includes in its constitutionally mandated "system of public schools." All such schools are subject to the "same" legally imposed standards, curriculum, accountability, and operational requirements as Oklahoma's "traditional public schools"—requirements that do not apply to private schools. Oklahoma's expanded system of public, nondenominational charter and other "empowered" schools fits squarely within *Carson*'s safe harbor. St. Isidore falls squarely outside that nondenominational system.

Carson's safe harbor is compelled by the Nation's tradition and its "guarantee to every State," of a "Republican Form of Government." U.S. Const. art. IV, §4. Thomas Jefferson's 1778 public-school proposal, the Northwest Ordinances, the Common School Movement, the Reconstructed Union, all States' compulsory-attendance laws, and the States' consensus practices today all have derived that safe harbor from a two-step syllogism of constitutionally assured republican government.

First, public schools attended together as universally as possible by children of all religions are essential to the survival of republican government in a nation ever at risk of decomposition from its prized but volatile mixture of liberty, self-government, and religious diversity.

Second, reserving public funds for public schools is an essential incentive, and schools' nondenominational character is an essential condition, for attracting most students and preparing them for the republican citizenship the Nation's continuity requires.

The syllogism has worked. At least since 1888, ~90% of the Nation's children have attended public schools. Overturning the decision below would shatter that tradition, offend the Guarantee Clause, and put the Nation in the peril the Founders most feared.

ARGUMENT

I. AN OPINION FAVORING ST. ISIDORE—AN AVOWED "PRIVATE SCHOOL"—WOULD BE ADVISORY

Petitioner St. Isidore Catholic Virtual School is a "privately owned and run school." Petitioner Oklahoma Charter Board's Br. i; No. 24-396 Pet. i ("private religious institution ... created as a K-12 virtual school"). Under Oklahoma's Charter Schools Act, "[a] private school shall not be eligible to contract for a charter

school." §70-3-134(C). Regardless of St. Isidore's denominational status, Section 70-3-134(C) dictates the outcome below. Because "the same judgment would be rendered by the state court after [this Court] corrected [any faulty] views of federal laws," *Herb* v. *Pitcairn*, 324 U.S. 117, 126 (1945), the case raises the "danger" of "advisory decisions," *Michigan* v. *Long*, 463 U.S. 1032, 1041-1042 (1983). To avoid that danger and to avoid needlessly reaching novel constitutional questions, the Court should remand for clarification or dismiss. *Long*, 463 U.S. at 1041-1042 nn.6-7; *Escambia Cnty.* v. *McMillan*, 466 U.S. 48, 51-52 (1984) (per curiam).

II. OKLAHOMA'S CONSTITUTION AND CHARTER LAW FALL WITHIN *CARSON*'S CONSTITUTIONAL SAFE HARBOR FOR NONDENOMINATIONAL PUBLIC-SCHOOL SYSTEMS

Today, all ~99,000 K-12 public schools in the Nation's ~19,000 public-school districts, enrolling ~50 million (91%) of the Nation's school children, are nondenominational, and nearly all have been since early in the nineteenth century.[2] Upending that arrangement would radically change the Nation's public-school systems.

Carson v. *Makin* confirms that the Court has made no such major change—the Constitution does not "'force'" public-school systems to "fund religious education." 596 U.S. at 785. A State "'need not subsidize'" religious schooling, unless it "decides to" subsidize "'private schools'"—in which case "'it cannot disqualify some private schools solely because they are religious.'" *Id.* at 779-780 (quoting *Espinoza* v. *Montana Dep't of*

[2] National Center for Education Statistics, Common Core of Data (2022); National Center for Education Statistics, Public and Private School Comparison (2022).

Revenue, 591 U.S. 464, 487 (2020)); *see id.* at 785 (a State "may provide a strictly secular education in its public schools").[3] *Carson* also confirms that a State wishing to preserve the tradition of nondenominational public schooling while innovating new instructional modalities has "a number of options," including "expand[ing] the reach of its public school system" and, for example, "'operat[ing] boarding schools of its own.'" *Id.* at 785.

Oklahoma honors these principles. Its occasional reliance on private schools for services not available in its public schools has always included religious institutions. *E.g.*, *Murrow Indian Orphans Home* v. *Childers*, 171 P.2d 600 (Okla. 1946) (orphans). In parallel fashion, a "nonpublic sectarian school or religious institution" *and* "[a] private school shall not be eligible to contract for a charter school." §§70-3-134(C), 70-3-136(A)(2).

Today, Oklahoma chiefly provides new educational services and modalities by invoking the public "options" *Carson* invited: "expand[ing] the reach of its public school system" and "'operat[ing nontraditional] schools of its own.'" *Carson*, 596 U.S. at 785. In particular, since

[3] At oral argument in *Espinoza*, Justice Breyer asked whether the Free-Exercise standard the Court ultimately adopted there "made a major change in the [nation's] public school system" by invalidating its expenditure of "many millions" annually on nondenominational public schools but none on religious schools. Oral Arg. Tr. 24-27, 33, *Espinoza* v. *Montana Dep't of Revenue*, No. 18-1195 (U.S. Jan. 22, 2020). "[G]et[ting] back to Justice Breyer's question," Chief Justice Roberts noted a "difference ... between general funding of [nondenominational] public schools and the decision to provide aid to private schools, except not religious schools." *Id.* at 32, 34-35; *see* Driver, *Three Hail Marys*: Carson, Kennedy, *and the Fractured Détente over Religion and Education*, 136 Harv. L. Rev. 208, 225 (2022) (*Carson* "preserves the public schools as a ... place free from ... religious [instruction]."); Tang, *Who's Afraid of* Carson v. Makin*?*, 132 Yale L.J. F. 504, 505-506 (2022) (same).

1999, Oklahoma's legislature has authorized many new forms of public schools with substantial operating flexibility.

Among those autonomy-rich options are several that must be "new" ("start-up") schools and may not be "private school[s]": physical charter schools authorized by the State, by a school district, by a state university or college, or by an Indian Tribe, and statewide virtual charter schools.[4] Two other options with the same "flexibilities" and "exemption[s] from all statutory requirements and State Board of Education rules [as] charters schools"—Conversion or Empowerment Schools—must instead be "traditional public school[s]."[5] Tulsa Public Schools operates its own highly autonomous "Partnerships Schools."[6]

Also included in Oklahoma's system of public schools are nontraditional Alternative Schools, Community Schools, Developmental Research Schools, Dual Language Schools, Early Childhood Schools, Early College High Schools, International Baccalaureate Schools, Magnet Schools, Outward Bound Schools, Technology Center Schools, and Virtual Schools.[7]

All of these operationally "empowered" and nontraditional schools are "public;" none may be private or

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[4] §§70-3-132(A), 70-3-132.1, 70-3-134(B)(26), 70-3-134(B)(29), 70-3-134(B)(30), 70-3-134(C).

[5] §§70-3-129.11(B)(1), 70-3-132.2(D)(1).

[6] Tulsa Public Schools, *Partnership Schools*.

[7] §§70-11-103.6k, 70-11-103.7, 70-14-103.3, 70-1210.528-1(A), 70-1210.567, 70-1210.572, 70-1210.702(5); *Outward Bound at Vanguard Academy*, Broken Arrow (Oct. 26, 2022); Tulsa Public Schools, *Learn About Our Schools*; *Tulsa Area Community Schools Initiative.*

denominational. §§70-3-129.3, 70-3-132.2(D), 70-3-136(A)(2), 70-11-101. Further promoting "freedom to innovate and improve," Oklahoma's Board of Education may exempt any public school from most statutory requirements. §§70-3-125, 70-3-126. Promoting choice, Oklahoma parents may enroll their children in any traditional, charter, or nontraditional public school *in the State* on a space-available basis.[8]

Another feature unites all Oklahoma's charter and other autonomy-rich and nontraditional schools. All bear "the same [obligations] as" and are obliged to operate "in the same manner as" the State's "existing" or "traditional" public schools:

- All must comply with state academic standards, testing, reporting, student-suspension, civil-rights, financial-reporting, transportation, auditing, frequency-of-meeting, conflict-of-interest, and staff-member-continuing-education requirements.[9]
- All adhere to Open Meetings and Records Acts.[10]
- All are (or are subdivisions of) "Local [E]ducation Agenc[ies]" defined by federal regulation as "public" entities (34 C.F.R. §303.23(a)).[11]

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[8] §70-8-101.2(A). All Tulsa families choose charter, other nontraditional, and traditional schools through an annual public-school lottery. *See* Tulsa Public Schools, *Enroll for Next School Year*.

[9] §§70-3-132(B)(13), (19), (25); 70-3-136(A)(1), (4), (5), (7); 70-3-141(A); 70-5-110; 70-5-124; 70-5-135.4(C)(2); 70-5-200(B); 70-9-101.1; 70-22-108(B); 70-1210.507(C)(1).

[10] §70-3-134(B)(34).

[11] §70-3-142(D).

- All count in the State's annual calculation of "the bottom five percent of all public schools" subject to state-mandated academic remediation.[12]

In short, by state and federal definitions, Oklahoma's charter and other autonomy-rich and nontraditional schools are all distinctly *public* schools. *See Brentwood Acad.* v. *Tennessee Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 299-300 (2001) (defining as public "an organization of public schools" performing legally mandated "function[s]" "integral" to "public schooling").

Oklahoma law recognizes the same "important" differences between private and public schools that *Carson* highlights. 596 U.S. at 783-784. None of the requirements listed above nor many others regulating Oklahoma's charter and traditional schools apply to Oklahoma's private schools.[13] Oklahoma, indeed, is the relatively rare State that does not require private schools to be accredited, registered, licensed, *or* approved.[14]

Preserving Oklahoma's stark differentiation of schools in and outside its public-school system, the Oklahoma Supreme Court ruled St. Isidore ineligible to join the public system because St. Isidore refused to accept

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[12] §70-3-137(H).

[13] Other Oklahoma laws binding charter and traditional public but not private schools are §§70-3-132(D); 70-3-134(B)(35); 70-3-136(A)(9), (12), (16)-(17); 70-3-137(H); 70-3-142(C); 70-3-145.6(A); 70-5-115; 70-5-117.5; 70-5-140; 70-5-142; 70-5-147; 70-5-200(C)-(D); 70-11-103.3; 70-11-103.9; 70-19-113; 70-24-100.4; 70-24-100a; 70-24-117; 70-24-138; 70-24-155; 70-1210.196.2; 70-1210.199; 70-1210.284; *see* Oklahoma Superintendent of Public Instruction, *Rules Applicable to Charter Schools*.

[14] U.S. Dep't of Education, *State Regulation of Private Schools* (Dec. 8, 2016).

the "same" rules binding all the system's other schools. St. Isidore's denominational character violates one such rule. §70-3-136(A)(2). Its insistence on its "private school" status violates another. §70-3-134(C). "The most obvious" way Oklahoma "private schools are different" is that "by definition they do not have to accept all students," *Carson*, 596 U.S. at 783, while Oklahoma "charter school[s must] be as equally free and open to all students as traditional public schools." §70-3-135(A)(9); *accord* Okla. Const. art. I, §5. At minimum, these rules bar schools from conditioning admission on adherence to specified religious beliefs.

But St. Isidore does just that. It—

- conditions "[a]dmission" on "student and family willingness to adhere ... to the beliefs ... presented in [its Parent & Student] handbook," which include "belief in Jesus Christ and the Church he established," "in the teachings of the Catholic Church's Magisterium," in "Evangelization," and that individuals who "reject God's invitation ... end up in hell";
- "reserves the right not to serve families who do not agree with" the "education plan for their child," including the "Christ-centered Catholic formation and education" that each plan includes; and
- complies with "Federal laws" only "to the extent [compliance] does not compromise the religious tenets of the school" and "reserves all rights, liberties, and exemptions that pertain to the School as a religious institution under applicable federal" law, including the liberty to bar membership in its "Catholic faith-based community" to families and students

whose religious beliefs or practices are discordant with St. Isidore's.[15]

Seeking full public funding, St. Isidore wants to join the many autonomy-rich Conversion, Empowerment, and Partnership Schools in Oklahoma's constitutional system of public schools. But it refuses to follow the system's most basic rules. Because St. Isidore is not an "otherwise eligible school," forcing Oklahoma to "direct ... payments" to it would work precisely the major change that *Carson* disclaimed. *Carson*, 596 U.S. at 785, 789.

III. *CARSON*'S SAFE HARBOR FOR SYSTEMS OF NONDENOMINATIONAL PUBLIC SCHOOLS IS COMPELLED BY THE NATION'S 250-YEAR-OLD TRADITION AND THE CONSTITUTION'S GUARANTEE CLAUSE

The Nation's commitment to republican government compels *Carson*'s safe harbor. Since the Founding, the Nation has understood that securing children's attendance together in nondenominational public schools that alone are publicly funded is a *constitutionally compelled* and *compelling* component of the "Republican Government" guaranteed to the States.[16] No wonder, then, that

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[15] St. Isidore Approved Application (A.G. Pet.App.133a, 157a, 193a, 457a, 461a, incorporating by reference *St. Isidore Parent & Student Handbook* (emphasis added)); *St. Isidore Parent & Student Handbook* 9, 17, 20, 27, 29, 45, 54, 168; St. Isidore for Charter School Contract §§2.1, 8.1-8.2, 11.1 (A.G. Pet.App.2a, 24a, 35a); *see Boy Scouts of Am.* v. *Dale*, 530 U.S. 640, 648 (2000) ("forced inclusion of an unwanted person" violates a private "group's [First Amendment] freedom of expressive association" if it impedes "the group's ability to advocate [its] viewpoints").

[16] Even if—contrary to *Carson*—the Court concluded that Oklahoma's 509 and the Nation's 19,000 nondenominational school districts offend Free-Exercise neutrality, the 250-year tradition documented here, the Guarantee Clause, and nondenominational public

43 state constitutions bar public funding of religious or all private schools, sectarian control of school funds, and/or religious instruction in public schools.[17] All 50 States adhere to that principle in practice.

This Part outlines the history and rationale for the longstanding constitutional safe harbor *Carson* affirmed.

A. Founding

The Founders widely agreed that public schooling was the "*sine qua non*" for "continuance of republican governments."[18] It was "essential" in a republic, President Washington told Congress, that "[a]t cheaper & nearer seats of Learning, parents with slender incomes may place their sons in a course of education putting them on a level with the sons of the Richest."[19] The

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schools' essential and well-tailored contribution to the survival of our republican form of government would bar the Court from forcing Oklahoma and other States to fund sectarian schools. *See Carson*, 596 U.S. at 780-781 (compelling-state-interest qualification on free-exercise adjudication).

[17] Every State but Louisiana has barred sectarian funding, control, or instruction at *some* point. The Appendix collects the relevant laws.

[18] Webster, *A Collection of Essays and Fugitive Writings on Moral, Historical, Political and Literary Subjects* (1790).

[19] Washington, *First Annual Address to Congress* (Jan. 8, 1790). Revolutionary War hero Robert Coram described public schooling as "an inherent quality in the nature of the government, universal, permanent, and uniform" to "be provided for in the constitution of every state" for "every child in the state," Coram, *Political Inquiries* (1791), *in Essays on Education in the Early Republic* 79, 112-113 (Rudolph ed., 1965)). James Madison deemed it a matter of "enlightened patriotism," requiring from each "State a Plan of

"whole people," John Adams insisted, must "take upon themselves the education of the whole people" and "bear the expenses of it [so t]here should not be a district of one mile square without a school in it, not founded by a charitable individual, but maintained at the public expense of the people themselves."[20] The Founders also identified "nonsectarian schooling ... as a politically unifying force in the heterogenous country."[21]

Two years after writing the Declaration of Independence, Thomas Jefferson urged the Virginia legislature to establish the Nation's first comprehensive system of public schools funded "at common expence of all" and open to all "without regard to wealth, birth, or other accidental condition."[22] Jefferson's plan, which he promoted until his death in 1826, "prohibit[ed] ministers of the gospel from serving as 'visitors' to the schools and forb[ade] teachers to give any religious instruction that is contrary to the belief of any sect."

Deeply religious themselves,[23] the Founders aimed to preserve the Republic and its bold experiment in self-government by people liberated to worship however

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Education" with "liberal appropriations." Letter of James Madison to W.T. Barry (Aug. 4, 1822).

[20] Letter of John Adams to John Jebb (Sept. 10, 1785), *in* 9 *The Works of John Adams* 540 (Adams ed., 1856); *see* Jefferson, *Eighth Annual Message to Congress* (Nov. 8, 1808) (Public schools are a duty of "public care," not for "private enterprise," because "a public institution can alone ... contribute to the improvement of the country, and ... its preservation.").

[21] Pangle & Pangle, *The Learning of Liberty* 100-101 (1993).

[22] Jefferson, *A Bill for the More General Diffusion of Knowledge* (1779).

[23] *See* Pangle & Pangle, *supra*, at 115-116.

they chose. The Founders, however, lived in desperate, oft-confirmed fear that "zeal for different opinions concerning religion" would irrevocably divide the People "into parties, inflame[] them with mutual animosity," and "excite their most violent conflicts."[24] While cherishing religious liberty, the Founders feared it would destroy the People's commitment to the "perfect equality in their political rights" of "every member of the community" that "alone can inspire and preserve the virtue of its members" and "engage the heart and affections to" the "publick and their fellow-citizens."[25]

The solution, the Founders believed, was to "knit *together*" young Americans in common schools.[26] Only schooling together could "eradicate" the "civil broils, national prejudices, and religious feuds and jealousies that" previously had destroyed "enlightened" republics and "harmoniz[e] the whole" of "a country circumstanced [with] considerable local diversity [across] a

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[24] Federalist No. 10 (Madison).

[25] *Id.*; Democraticus, *Loose Thoughts on Government* (June 7, 1776); *see* Rasmussen, *Fears of a Setting Sun* 2-3, 6 (2021) (Founders' fear that the Nation's "economic, cultural, and religious diversity" would keep "the people from *really* being a people"); Wood, *The Creation of the American Republic, 1776-1787*, at 64-77, 397-410, 500-502 (1998) (Founders' recognition that the "greatness of republicanism, its utter dependence on the people was at the same time, its source of weakness," igniting "jealousies" between "North and South," "city and country," "[f]armers, merchants, mechanics, manufacturers, debtors, creditors, Baptists [and] Presbyterians"—who "instead of consulting the interest of the whole community collectively" would "split into parties," pursue "'intestine quarrels,'" and proliferate "evils naturally destructive to virtue and freedom'" (citations omitted)).

[26] Pangle & Pangle, *supra*, at ix-x, 92 (emphasis added)

wide extent of territory."[27] Only common schooling could counteract "longstanding tensions between different political and religious factions" so "citizens [would] work *together* to serve their common good;"[28] "harmonize as much as possible[,] in matters which they must of necessity transact *together*," the Nation's "'heterogeneous, incoherent, distracted mass" of people;[29] make "lines of separation" between people and States "disappear," their common "interests identified, and their union cemented by new and indissoluble ties;"[30] let each American "know his rights," "understand the rights of others," and, "discerning the connection of his interest with the preservation of these rights, ... firmly support those of his fellow men;"[31] "teach[] the people themselves" how to "distinguish between [government] oppression and ... the inevitable exigencies of Society;"[32] and give "the nation's citizens" a "discriminating" capacity to "judge how far individual rights extend and where

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[27] Knox, *An Essay on the Best System of Liberal Education* 12-14, 71, 78 (1799).

[28] Neem, *Democracy's Schools* 8-9 (2017) (emphasis added); *accord* Cremin, *American Education: The National Experience 1783-1876*, at 117 (1980).

[29] Jefferson, *Notes on the State of Virginia* 93 (1787) (emphasis added).

[30] Jefferson, *Sixth Annual Message to Congress* (Dec. 2, 1806).

[31] Smith, *Remarks on Education* (1798) *in* Rudolph, *supra*, at 167, 180, 220-221. Smith and Knox (*supra* note 27) won the American Philosophical Society's 1797 prize for school-system designs "adapted to the genius of the [U.S.] government."

[32] Washington, *First Annual Address to Congress*, *supra* (emphasis added).

government can justly assert the rights of the community in limiting individual freedom."[33]

The Founders understood that in order to hold a diverse People together around a common practice of republican citizenship, common schools had to "comprehend" "the masses, rather than the few;"[34] "assimilate the principles, opinions, and manners" of "youth from every quarter;"[35] and imbue "American youth" with "an inviolable attachment" to republican government.[36] And their attachment to republicanism had to be strong enough to dissuade them as adults from forming a majority for supplanting republican government with a monarchy, aristocracy, or theocracy and denying equal citizenship to those of "different religious faiths" or others with whom they disagreed.[37]

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[33] Pangle & Pangle, *supra*, at 114.

[34] *Id.* at 111-112.

[35] Washington, *Eighth Annual Message to Congress* (Dec. 7, 1796).

The Founders well knew that John Locke advocated schooling "'in *the Company of Parents*'," to avoid the "'infection of bad Company'" from a "'mixed Herd'" of boys "'assemble[d] together from Parents of all kinds.'" Pangle & Pangle, *supra*, at 55-57 (citations omitted)). In rare disagreement with Locke, however, the Founders insisted on schooling *together* children different from each other, so "collective student life could help form the habits and tastes of republican citizens." *Id.* at 91 (citations omitted).

[36] Webster, *On the Education of Youth in America* 45, 64-65 (1788); *accord* Adams, *Defence of the Constitutions of Government of the United States (1787-1788)*, *in* 6 *The Works of John Adams* 168, 197 (Adams ed., 1851).

[37] Webster, *Education of Youth*, *supra*, at 45, 64-65; *see* Kesler, *Education and Politics: Lessons for the American Founding*, 1 U. Chi. Legal F. 101, 108-109, 115, 117 (1991) ("Republican morality

To attract the vast proportion of the populace's children to join together in modeling republican citizenship, States had to "lend to education the majesty of the law[,] the moral authority of governmental suasion [and] the moral weight of the community."[38] Their common schools had to "suit," children and families of "every description or situation and circumstance, uncircumscribed by partial endowments, local prejudices, or personal attachment."[39]

Jefferson proposed two ways to achieve near-universal participation in public schooling without "shock[ing] the common feelings [and] ideas by the forcible asportation [and] education of the infant against the will of the father."[40] Those proposals inaugurated the nondenominational public-school tradition that *Carson*'s safe harbor preserves.

First was a dual incentive for parents to enroll their children in public, not non-public schools: (1) only public-school children would receive an education for "free,"

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suffused" the Founders' "new kinds of schools" with "no doubt" or "relativism concerning the forms of government" they promoted; "[u]nity of opinion had to be cultivated" on "intolerance of intolerance," so the Nation's "great variety of peoples would come together").

[38] Barlow, *Two Letters to the Citizens of the United States and One to General Washington, Written from Paris in the Year 1799*, letter 2, at 79-80; Pangle & Pangle, *supra*, at 92.

[39] Knox, *supra*, at 170; *see McCollum* v. *Board of Educ.*, 333 U.S. 203, 206, 209 (1948) (invalidating a public-school system's "regular weekly religious instruction during school hours" in part because it kept students from being educated together: "[s]tudents who did not choose to take the religious instruction were required to leave their classrooms and go to some other place in the school").

[40] Jefferson, *Bill for Establishing Elementary Schools* (1817).

and (2) only they would be eligible to vote in state elections upon adulthood. "[R]emove the objection of expense" by "offering [only public] education gratis," Jefferson urged, while "strengthen[ing] parental excitement by the disenfranchisement" of those declining the opportunity.[41]

Second was an assurance of nondenominational schooling. With other Founders,[42] Jefferson knew that allowing the nearest school to fall into "the hands of ... the predominant sect of the county" and to evangelize children in doctrines reserving God's grace for members only of one sect, would deter members of other sects from attending together and erode the core republican principle of equal citizenship without reference to religion.[43] The result would be the Founders' greatest fear for the Republic: "faction, dissention, and consequent subjection of the minority to the caprice and arbitrary decisions of the majority."[44] "Society," Jefferson argued, must give a parent the option of "refusing to let his child be educated" with others in the habits of republican citizenship.[45] But to assure that such choices were "rare," Jefferson—among the most libertarian of the

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[41] *Id.*

[42] *See* Pangle & Pangle, *supra*, at 100-101.

[43] Letter of Thomas Jefferson to James C. Cabell (Nov. 28, 1820).

[44] Wood, *supra*, at 502 (quoting 3 *Debates in the Several State Conventions of the Adoption of the Federal Constitution* 107 (Elliot, ed., 1827) (Corbin, Virginia)); *see McCollum*, 333 U.S. at 216-217 (Frankfurter, J., concurring) (as "perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people, the public school must ... scrupulously [avoid] the strife of sects.").

[45] Jefferson, *Bill for Establishing Elementary Schools*, *supra*.

Founders—insisted that the Nation "has certainly a right to disavow him whom they offer, and are not [able] to qualify for[,] the duties of a citizen."[46] "If we do not force instruction," Jefferson concluded, "let us at least strengthen the motives to receive it."[47]

B. Territorial Ordinances

Congress's 1785 and 1787 Northwest Ordinances cemented the connection between States' republican governments and public schools' monopoly on public funding. First among the Ordinances' requirements for the "constitution and government" of the States "to be formed" from the territories was that they "shall be republican."[48] The Ordinances elaborated that requirement as a four-prong affirmative duty to establish a legislature, executive, judiciary, and "the means of education."[49] Elaborating the fourth prong, the Ordinances required that territories and later States reserve exclusively "for the maintenance of *public* schools" the proceeds from one (later amended to four) of the 36 sections of many millions of mile-square "townships" the Ordinances ceded for public sale.[50]

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[46] *Id.*

[47] *Id.*

[48] *An Ordinance for the Government of the Territory of the United States North-West of the River Ohio* §§13, 14 (July 13, 1787).

[49] *Id.* §§1, 2-12 & § 14, arts. 2-3.

[50] *An Ordinance for Ascertaining the Mode of Disposing of Lands in the Western Territory* (May 18, 1785) (emphasis added). All told, Congress set aside 145 million acres in 30-plus States to fund public schools. Kesler, *supra*, at 112.

The 1787 Ordinance was a "forerunner"[51] of the Constitution's "guarantee to every State in the Union [of] a Republican Form of Government." U.S. Const. art. IV, §4. As James Madison, the Guarantee Clause's co-author, explained, the Clause obliges States to have republican "forms of government" upon "enter[ing]" the Union and empowers "the general government" to assure that republican forms thereafter are "*substantially* maintained" against "innovations" that "exchange republican for antirepublican Constitutions."[52] Thereafter, Congress repeatedly exercised its Guarantee-Clause authority to condition States' entry into the Union on their adoption of republican forms of government defined by their establishment of a legislature, executive, judiciary, and nondenominational public schools for which public funds were reserved.[53]

C. Common School Movement

From the 1830s through the 1850s, the Common School Movement codified the Founders' vision of state systems of schools that were open and welcoming to all, nondenominational, and the exclusive beneficiaries of public funding. Horace Mann, the movement's "commanding figure" and the Nation's first state education secretary, "did more than" any other American "to establish in the minds of the American people the

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[51] Wiecek, *The Guarantee Clause of the U.S. Constitution* 15 (1972).

[52] Federalist No. 43.

[53] *E.g.*, Ohio Enabling Act of Apr. 30, 1802, Pub. L. No. 7-40, §§5, 7, 2 Stat. 173, 174-175; App.

conception that education should be universal, non-sectarian, [and] free."[54]

Mann's widely circulated July Fourth 1842 Oration to the People of Boston, delivered at the height of his national influence, argued that the Nation's "great experiment of Republicanism—of the capacity of man for self government"—was failing.[55] At fault was the people's "alienation from each other by all those natural jealousies which spring from sectional interests, from discordant local institutions, from difference in climate, language, and ancestry" and the Nation's inability to keep those differences from "rip[ping] apart the body politic."[56] Lacking "an inherent and indisputable principle of self-preservation," the Republic required meliorative "measures and institutions" to "save" it from its centripetal "propensities."[57]

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[54] Cremin, *supra*, at 142, 148; Cubberley, *Public Education in the United States* 167 (1919).

[55] Mann, *An Oration Delivered Before the Authorities of the City of Boston July 4, 1842* (1842) ("*Oration*"), *in* 4 *Life and Works of Horace Mann* 341, 345 (Mann ed., 1868) ("*Works*"); *see* Taylor, *Horace Mann's Troubling Legacy: The Education of Democratic Citizens* 38 (2010) (describing enthusiastic nationwide reception of Mann's oration).

[56] *Id.* at 345-346, 350-351.

[57] Mann, *The Necessity of Education in a Republican Government* (1839), *in* 2 *Works*, *supra*, at 143, 183, 187.

Mann's solution, like the Founders', was public schooling.[58] Mann, a "gifted lawyer,"[59] reasoned that common schools are constitutionally essential in a nation "postulate[d]" on "the superiority of a republican over all other forms of government," because common schooling is "indispensable to the continuance of republican government."[60] To "prepare[Americans] for self-government, their apprenticeship must commence in childhood"—"universal education joined hands with universal suffrage."[61] Only schools attended by all children in common could "predispose" all people as adults "to perform" their "civil and moral duties" and consider "the welfare of the State," and could "imbue[]" them as leaders "with a feeling for the wants, and sense of the rights,

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[58] Abraham Lincoln contemporaneously warned that Americans' "disposition to substitute the wild and furious passions" for "sober Judgment" was "crumbl[ing]" the Nation's "political edifice of liberty and equal rights" and called for the Nation to make "reverence for the Constitution and Laws" its "political religion" and for public schools to teach it. Lincoln, *Address Before the Young Men's Lyceum of Springfield, Illinois* (Jan. 27, 1838), *in* 1 *The Collected Works of Abraham Lincoln* 108-115 (Bassler et al. eds., 1953); Lincoln, *Communication to the People of Sangamon County* (Mar. 9, 1832) *in id.* at 8.

[59] Cremin, *Horace Mann's Legacy*, *in The Republic and the School: Horace Mann on the Education of Free Men* 3 (Cremin ed., 1957).

[60] Mann, *Report on the State of Schools in Massachusetts* (1846) *in* 4 *Works*, *supra*, at 105, 113 ("*1846 Report*").

[61] Mann, *Oration*, *supra*, at 362-365, 393; Mann, *Report on the State of Schools in Massachusetts* (1845), *in* 4 *Works*, *supra*, at 37 ("*1845 Report*"); *see* Taylor, *supra*, at 3, 7 (Mann's "ambitious plan of civic education" addressed the republic's "democratic paradox"—a self-governing people's freedom to reject self-government).

of those [they would] govern."[62] "Only the common school" has the practical advantages of "universality in its operation," engaging all people at once and over years, when "the materials on which it operates are so pliant and ductile."[63] "[N]o state," he proclaimed, "should be admitted into the Union which had not established a system of Free Schools for all its people."[64]

Like the Framers, Mann understood that, for "the first great principle of a republican government, that of native inborn equality," to be "practically inculcated," public schools had to be "*open* to all, *good enough* for all, and *attended* by all," with "[e]very man, not on the pauper list, taxed for their support."[65] He agreed with

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[62] Mann, *1845 Report*, *supra*, at 4; Mann, *1846 Report*, *supra*, at 113, 116.

[63] Mann, *Report on the State of Schools in Massachusetts* 232 (1848), *in* 4 *Works*, *supra*, at 232 ("*1848 Report*"); *see McCollum*, 333 U.S. at 231 (Frankfurter, J., concurring) ("The public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny.").

Mann understood that common schools' preparation for republican citizenship was more by "example" than by "precept"—with "[e]very school of children" "model[ing]" the "bond[s] of unity" and "reciprocation of kind offices" that republican government requires among its "community of men." Mann, *Oration*, *supra*, at 364, 373, 378; Mann, *1845 Report*, *supra*, at 3, 21, 96-97; Mann, *An Historical View of Education; Showing its Dignity and its Degradation*, *in* 2 *Works*, *supra*, at 241, 288. Common schools would replace "the war-whoop of party strife"—the "disturbing forces of party and sect and faction and clan"—with students' experience "adapt[ing]" solutions to "common wants" achieved by "common means." *Id.* at 288-289; Mann, *Special Preparation a Prerequisite to Teaching*, *in* 2 *Works*, *supra*, at 119; Mann, *1848 Report*, *supra*, at 334.

[64] Mann, *Historical View*, *supra*, at 264-265.

[65] Mann, *Oration*, *supra*, at 363, 365 (emphasis added).

Jefferson that States could not mandate the necessary near-universal public-school attendance across the Nation's "vast diversity of social, ethnic, and religious groups"[66] and instead had to incentivize attendance. The three incentives he and the Common School Movement embraced created the non-denominational safe harbor that *Carson* preserves.

First, States had to bar public funding of all private schools. Otherwise, private schools would draw "a majority of the wealthy persons in the state" out of common schools, leaving the latter in a "depressed state," with a "lowered" "standard" of "fitness and adequacy" for the mainly poorer "classes" left behind, driving still more parents "away."[67]

Second, States had to bar common schools from preaching doctrines that "keep [some Americans] outside of heaven,"[68] else they would become a "cauldron for the fermentation of all the hot and virulent opinions, in

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[66] Cremin, *Mann's Legacy*, *supra*, at 8, 17 (Mann's "penetrating observation" that "[o]nly in a heterogenous group of students could the unifying and socializing goals of the common school be accomplished").

[67] Numerous historians explain States' antebellum adoption of bans on public funding for private schools as a "denominationally neutral" way to "safeguard" public-school funding, "infuse democratic values in children," and "fuse them into a homogenous whole." Green, *The Bible, the School, and the Constitution* 45-50 (2012); Green, *Blaming Blaine: Understanding the Blaine Amendment and the No-Funding Principle*, 2 First Amend. L. Rev. 107, 127 (2003); Tarr, Espinoza *and the Misuses of State Constitutions*, 73 Rutgers U.L. Rev. 1109, 1138 (2021); *see* Cremin, *supra*, at 164-180, 228; Mann, *First Report of the Secretary* (1837), *in* 2 Mann, *Works*, *supra*, at 384, 410-419.

[68] Mann, *Thoughts Selected from the Writings of Horace Mann* 131-132 (Mann ed., 1867).

politics and religion, that now agitate our community," sealing their "speedy ruin" through "withdraw[al]" of children and funding by families opposing "sectarianism."[69]

Third, to continue attracting nearly all students, nondenominational public schools "continually" had to expand their reach—staying "elastic and expansive [enough] in regard to the courses of studies and the *thoroughness* of instruction ... to meet any new wants of citizens."[70]

By the mid-nineteenth century, the Common School Movement led "an increasing [number of] state constitutions" to incentivize non-denominational common schooling by fully funding it while "forbid[ding] public funds" to private or denominational schools.[71] Connecticut's 1818 Constitution was the first to bar public funding to any but "public, or common schools," followed by the constitutions of Tennessee (1834), Rhode Island (1843), New Jersey (1844), Indiana and New York (1846), California (1849), Massachusetts (1855), and Oregon (1857), and later, Alaska and Hawaii (1959) and Virginia (1971). Early limits on sectarian funding or instruction included New York City's 1825 ordinance banning distribution of common-school funds to religious schools and

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[69] Mann, *The Common School Controversy* 34 (1844); Mann, *1848 Report*, *supra*, at 280.

[70] Mann, *Means and Objects of Common School Education* (1840), *in* 2 *Works*, *supra*, at 39, 42; Mann, *Report on the State of Schools in Massachusetts* (1843), *in* 3 Mann, *Works*, *supra*, at 230, 287.

[71] Tyack et al., *Law & the Shaping of Public Education, 1785-1954*, at 54 (1987); *McCollum*, 333 U.S. at 218 (Frankfurter, J., concurring). The Appendix collects the laws this paragraph references.

Massachusetts's 1826 ban on schoolbooks "calculated to favour any particular religious sect or tenet." Catholic and Protestant clergy's insistence on nonsectarian public schooling influenced Michigan's 1835 adoption of the Nation's trend-setting constitutional ban on funding religious schools.[72] Between 1846 and 1849, Virginia, Tennessee, and Oregon directed public schools to "avoid sectarian influence." Then followed a wave of constitutional bans on denominational schools' receipt of or control over public funding: Wisconsin (1848), Indiana (1851), Ohio (1851), Minnesota (1858), Kansas (1859), Nevada (1864), and Nebraska (1866).[73]

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[72] Cooley, *Michigan: A History of Governments* 308-319 (1885); Green, *The Insignificance of the Blaine Amendment*, 2008 B.Y.U. L. Rev. 295, 312-313.

[73] "[T]he prohibition of furtherance by the State of religious instruction" was "the guiding principle, in law and feeling, of the American people" and "firmly established in the consciousness of the nation" "long before the Fourteenth Amendment" and even longer before the anti-Catholicism associated with James Blaine's failed 1875 constitutional amendment. *McCollum*, 333 U.S. at 215-218 (Frankfurter, J., concurring); *accord* Cubberley, *supra*, at 341-342 (by 1845, the Nation "had settled in the affirmative the question of general education at public expense" and "definitely eliminated the sectarian school from our program for public education"); Green, *The Bible*, *supra*, at 45, 57-59, 87 (States established the no-aid principle early in the nineteenth century to secure the financial stability of public schools). Among first movers, Connecticut and States following it barred funding for all, not just religious, private schools; Massachusetts's law protected Catholic students from Protestant evangelizing; Catholic and Protestant clergy concurred in Michigan's influential constitutional requirement (*supra* note 72); Virginia's and Tennessee's non-Protestant populations were minuscule (Walker, 1 *The Statistics of the Population of the United States* 327-328 (1870)); and conflict among Protestants influenced Indiana's 1851 Constitution (Fowler, *Report of the Debate and Proceedings of the Convention for the Revision of the Constitution of the State of*

As David Tyack, perhaps the Nation's greatest educational historian, concludes, the Common School Movement led Americans to "regard the common school as the sine qua non of republicanism"—an essential "*fourth branch of state government*, dependent on the other branches but standing in a special relation to the polity."[74] The Movement's successful appeal to republican values to justify common funding only for common schools made them a singular American anomaly bucking the Nation's otherwise powerful individualistic penchant for "privatization of social services."[75]

D. Reconstruction And Westward Expansion

Convinced that the planter class's systematic resistance to public schooling across the South had spurred its break with the Union,[76] the Reconstruction Congress

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Indiana 860-862 (1850); Holliday, *Life and Times of Rev. Allen Wiley* 69-72 (1853)).

[74] Tyack, *supra*, at 14, 44-45 (emphasis added); *see Rose* v. *Council for Better Educ.*, 790 S.W.2d 186, 206 (Ky. 1989) (since the nineteenth century, Kentucky's Constitution has made its common-school system "'part and parcel of our free institutions, woven into the very web and woof of popular government'"). Fifteen States' constitutions (denoted in the Appendix) describe "system[s] of public, free common schools" as essential to "[t]he stability of a republican" or to a "free" or "good" form of government or to "liberty." *E.g.*, Idaho Const. art. IX, §1.

[75] Tyack, *supra*, at 53-54.

[76] *See, e.g.*, Cong. Globe, 39th Cong., 1st Sess. 60, 2967 (1865, 1866) (Rep. Donnelly) (blaming "the absence of common schools and general education among the people of the lately rebellious States" for "the great disasters which have afflicted the nation"); Warren, *To Enforce Education: A History of the Founding Years of the United States Office of Education* 59 (1974) (prevalent understanding in the North that the South's "lack of common schools" was a "source of the nation's domestic conflict").

concluded that public schools open to all were "essential to the national welfare, and especially to the development of those principles of justice and morality which constitute the foundation of republican government."[77]

Drawing authority from that "great clause of the Constitution ... by which you are authorized to guaranty to every State a republican form of government,"[78] Congress in 1867 made clear that its approval for southern States to rejoin the Union would depend—and in 1869, it formally conditioned the States' readmission—on their new constitutions' inclusion of public-school systems open to all in perpetuity.[79] The constitutions of all 10

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[77] Cong. Globe, 40th Cong., 1st Sess. 49 (1867) (Sen. Sumner); *see, e.g.*, *id.* at 167 (Sen. Sumner) ("In a republic Education is indispensable."); *id.* at 168 (Sen. Morton) ("Republican government may go on for a while with half the voters unable to read or write, but it cannot long continue."); *see* Cong. Globe, 39th Cong., 1st Sess. 3044 (1866) (Sen. Moulton) ("The two great pillars of our American Republic ... are universal liberty and universal education."); Cong. Globe, 39th Cong., 1st Sess. 60 (Rep. Donnelly) (supporting creation of the Nation's first Education Bureau because "republican institutions can find permanent safety only upon the basis of the universal intelligence of the people"); Wiecek, *supra*, at 185-186 (Congress rested its power to reconstruct the South on the constitutional guarantee of republic governance, which was thought to require universal free public schooling).

[78] Cong. Globe, 40th Cong., 1st Sess. 168 (1867) (Sen. Sumner).

[79] Black, *Schoolhouse Burning* 104-113 (2020); Reconstruction Act of 1867, Pub. L. No. 39-153, §5, 14 Stat. 428, 429 (setting readmission conditions and requiring congressional approval); *see, e.g.*, Virginia Act of Jan. 26, 1870, Pub. L. No. 41-10, 16 Stat. 62, 63 (premising Virginia's readmission on its adoption of a "constitution of State government which is republican" and which "secured" "school rights and privileges" to all children and "shall never be so amended ... to deprive any citizen" of schooling); Mississippi Act of Feb. 23, 1870, Pub. L. No. 41-19, 16 Stat. 67, 68 (premising Mississippi's

States returning after 1867 affirmatively obliged them to provide systems of public schools that were "free," "uniform[ly]" available or "open" to all, and "public" or "common."[80] Eight then or after barred public funding for sectarian schools: Mississippi, North and South Carolina (1868), Virginia (1870), Alabama (1875), Texas (1876), Georgia (1877), and Florida (1885). Several northern and border States followed suit: Illinois (1870), Pennsylvania (1874), New Hampshire (1877), Kentucky (1891), and Delaware (1897).[81]

Congress's admission into the Union of Oklahoma and nine other plains and western States between 1889 and 1912 spread the Nation's nondenominational public-school systems nationwide: Montana, North Dakota, South Dakota, and Washington (1889), Idaho and Wyoming (1890), Utah (1894), Oklahoma (1906), Arizona and New Mexico (1912).[82] Solidifying Jefferson's, the Ordinances', and the Common School Movement's link between republican governance and nonsectarian public schooling, Congress—

- required that all 10 States' governments "shall be republican in form" and "shall provide" for several essential features of republican government;[83]

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readmission on its constitution's inclusion of "school rights and privileges" that thereafter would "not be amended or changed").

[80] *See* U.S. Bureau of Education, *Constitutional Provisions in Regard to Education in the Several States of the American Union* (No. 7-1875).

[81] *See* App.

[82] *Id.*

[83] Oklahoma Enabling Act of June 16, 1906, Pub. L. No. 59-234. §§2-3, 34 Stat. 267, 268-269.

- specified as republican essentials "[t]hat provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of said State and free from sectarian control;"[84] and
- ceded vast stretches of federal "lands" to be used "exclusively for the benefit of said educational institutions" on condition that they "remain under the exclusive control of said State, and no[t] ... be used for the support of any religious or sectarian school."[85]

Fifty years later, Hawaii and Alaska entered the Union on the same conditions.[86]

Incentivized by the restriction of public funding to public schools and by the schools' nonsectarian status, roughly 90% of American school-aged children have attended public nonsectarian schools in *every* year since statistics were first collected in 1888.[87]

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[84] *Id.* §3, 34 Stat. 270-271.

[85] *Id.* §§7-8, 34 Stat. at 272-273.

[86] App. The 1890s-1950s open-to-all-and-nonsectarian requirements postdated the anti-Catholic bias associated with the failed 1875 Blaine Amendment; and evidently were not influenced by that bias. *See* Green, *Insignificance*, *supra*, at 327-328; No. 24-394 Pet.App.12a (Oklahoma Supreme Court's finding that anti-Catholicism did not influence Oklahoma's constitutional open-to-all-and-nonsectarian requirement).

[87] *See* Chu et al., *Family Moves and the Future of Public Education*, 54 Colum. Hum. Rts. L. Rev. 469, 485-486 & nn.51-52; Tyack, *supra*, at 54.

E. Compulsory Attendance Laws From 1871 To 1918

Between 1871 and 1918, 50 States or their predecessor territories adopted laws mandating student attendance in schools as essential "preparation for the independent and intelligent exercise of the[] privileges and obligations as citizens in a free democracy.'"[88] Doing so required States to reconsider whether to fund private and religious schools in order to serve children now required to attend school. Given this opportunity to rethink the policy of incentivizing all children to attend republican schools together—and notwithstanding objections from religious schools, parents, taxpayers, and critics fearful of "mixing all classes together in public schools, ... breeding ... crime and 'pauperism'"—no State adopted and 46 States contemporaneously added or retained limitations on sectarian funding or instruction.[89] Although States allowed non-public schooling at families' expense, all 50 declined to join "system[s] of compulsory education [with] sectarian instruction in the public schools" or to fund "sectarian schools."[90] Either step,

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[88] *Commonwealth ex rel. School Dist.* v. *Bey*, 70 A.2d 693, 695 (Pa. Super. Ct. 1950); *see* App. (collecting laws); *Pierce* v. *Society of Sisters*, 268 U.S. 510, 534 (1925) (affirming States' power to require children to attend school and receive instruction "essential to good citizenship"); Kotin & Aikman, *Legal Foundations of Compulsory School Attendance* 26-29, 78 n.31 (1980) (compulsory-attendance laws reflected "growing public feeling that education was essential to protect the democratic form of government," assure "intelligent electorate and leadership," and integrate immigrants).

[89] Kotin & Aikman, *supra*, at 28; App.

[90] *Knowlton* v. *Baumhover*, 166 N.W. 202, 208 (Iowa 1918) (quoting *State ex rel. Freeman* v. *Scheve*, 91 N.W. 846, 847 (Neb. 1902), *aff'd*, 93 N.W. 169 (Neb. 1903); and citing supporting authority from 15 other States).

they concluded, would be "destructive" of public schooling's "'influence promotive of homogeneity among a [diverse] citizenship'" and of "'one of the most important, if not indispensable, foundation stones of our form of government.'"[91]

Thus was consolidated the Nation's exceptional system for incentivizing and funding nine-tenths of its children to join *together*, across religious and other potential divides, to prepare for and model the republican citizenship on which free and diverse nation's coherence depends. Ever since, through two World Wars, racial desegregation, election of the Nation's first Catholic President, the Civil Rights movement, and the Court's recent rethinking of the Religion Clauses, the Nation has remained committed to nonsectarian public-school systems open to all and attended by ~90% of school-aged children as a constitutionally compelled and compelling essential fourth branch of state government.

Along with the rest of "[t]he United States," this Court must "guarantee to every State in this Union" that essential feature of "a Republican Form of Government." U.S. Const. art. IV, §4. Requiring Oklahoma to open its system of public schools to an avowedly religious private school that "reserves the right not to serve families who do not agree with" its theology would obliterate that centuries-old tradition and offend the Constitution.

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[91] *Id.* at 207-208; *see id.* at 206 (describing the "fixed and unalterable determination" that public schools "supported by the taxation of all alike ... shall not be used directly or indirectly for religious instruction" or to "favor any religious organization, sect, creed, or belief" as the "one thing which is well settled in the policies and purposes of the American people as a whole").

CONCLUSION

Our Nation's public-school systems must improve to continue attracting nearly all children. Along with Oklahoma, amici work toward that goal every day by "expand[ing] the reach of" the Nation's public "school system" and "operat[ing]" autonomy-rich public charter and other "schools of [the public's] own." *Carson*, 596 U.S. at 785. Rather than dismantling that system, putting the Nation's republican government at risk, the Court should continue the 250-year improvement process and dismiss the petition or affirm the decision below.

Respectfully submitted.

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APPENDIX

APPENDIX
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State Legal Limits on Public Funds for Sectarian Schools

"Initial Limits" identifies the year when the State first adopted one or more of four types of limits on public funding for sectarian schools and whether and when Congress required those limits in a statehood Enabling or Admissions Act.

"Limits Coeval with CS" identifies limits adopted within 12 years of the adoption of compulsory schooling (CS).

"Limits Confirmed" indicates that the State retained preexisting constitutional limits when it adopted compulsory schooling (R) and/or adopted limits and compulsory schooling coevally (S).

"Year" columns use the following notations to indicate the source of law as well as the year:

Year:	State constitution
{Year}:	Federal statute
Year:	State statute or ordinance
(Year):	State high court decision

"Type" columns use the following codes to indicate the type of limit on sectarian or private schooling:

f:	Bars funding of religious schools
fp:	Reserves public funds for public schools
c:	Bars sectarian control of public-school funding
i:	Bars religious instruction or materials in public schools

Sources are chronological. **Bolded citations** identify *current* constitutions that limit public funding to nonsectarian public schools. Asterisked (*) constitutions identify public schooling as essential to "republican," "free," or "good government" or to "liberty."

State / Admit Year	Initial Limits		Limits Coeval with CS			Limits Con-firmed	Sources
	Year	Type	CS Year	Coeval Limits Year	Type		
AL 1819 1868	1875	f,fp	*1919*	*1919* *1920* *1922* *1927*	fp i fp,i f,fp	R,S	Ala. Const. of 1875 art. XIII, §§3, 8; Ala. Act No. 442 (1919), preamble & art. 15, §1; Ala. School Code No. 86 (1920), §6; 1922 Ala. School Code art. 23, §6, at 75; 1927 Ala. School Code §§257, at 11; **Ala. Const. art. XIV, §§73, 258-259, 263**
AK 1959	*1933* 1956 {1958}	i f,fp,c f,fp,c	*1929*	*1929* *1933*	fp,i fp	S	1933 Alaska Laws, ch.16, §§1301, 1351, 1384 (indicating 1929 adoption); *id.* §1421 (1933); Alaska Const. of 1956 art. VII, §1; Alaska Statehood Act, Pub. L. No. 85-508, ¶6(j), 72 Stat. 339 (1958); **Alaska Const. art. VII, §1**
AZ 1912	{1910} 1912	c f,fp,i	*1899* *1912*	1912 *1912*	f,fp,i fp,i	S	1899 Ariz. Terr. Laws, ch.13, §1; Pub. L. No. 219, ch. 310, §20(4), 36 Stat. 557, 570 (1910); Ariz. Const. of 1912 art. XI, §§7, 8, 10; Ariz. Rev. Stat. tit. 11 §§2802, 2808, 2819 (Pattee ed. 1913) (adopted by Arizona Session Laws 1912, ch. 77, §§89, 95, 103); **Ariz. Const. art. IX, §10 & art. XI, §7 & art. XX §7**

State / Admit Year	Initial Limits		Limits Coeval with CS			Limits Con-firmed	Sources
	Year	Type	CS Year	Coeval Limits			
				Year	Type		
AR 1836 1868	1868 *1873*	f,fp,c i	*1909*				Ark. Const. of 1868 art. IX, §1*, at 18-19; Ark. Acts, No. 130, §52 (adopted 1873); Ark. Act of May 23, 1909, §7485a (Kirby ed., Supp. 1911); Ark. Const. art. 14, §1*
CA 1850	1849 1879	fp f,fp,c,i	*1874*	1879 *1883*	f,fp,c,i i	R,S	Cal. Const. of 1849 art. IX, §§1*, 4; Act of Mar. 28, 1874, §1, Cal. Codes & Stat., Deering ed. 1886; Cal. Const. of 1879 art. IX, §§*1, 4, 6, 8; 1883 Cal. Law tit. 3, ch. 3, §1672 (Cal. 1872 Political Code, as amended (Newmark ed. 1883)); **Cal. Const. art. IX, §§1*, 8 & art. XVI, §5**
CO 1876	1876	f,fp,c,i	*1889*	*1891*	f	R,S	Colo. Const. of 1876 art. V, §34 & art. IX, §§7, 8; 1 Colo. Ann. Stat. ch. 26, div. 4, §418 (Mills ed., 1891) (adopted 1889); 1 Colo. Ann. Stat. art. IX, §426, at 291 (Mills ed., 1891); **Colo. Const. art. V, §34 & art. IX, §§7-8**

State / Admit Year	Initial Limits		Limits Coeval with CS			Limits Con-firmed	Sources
	Year	Type	CS Year	Coeval Limits Year	Type		
CT 1788	1818	fp	*1872*	*1875*	fp	R,S	Conn. Const. of 1818 art. VIII, §2; 1875 Conn. Laws 126, tit. 11, ch. 1, §1 (Gen. Stat. 1872); 1875 Conn. Laws 145, ch. 11, v §8 (Gen. Stat. 1875); **Conn. Const. art. VIII, §4**
DE 1787	1897	f,fp	*1907*	1897 *1915*	f,fp fp	R,S	Del. Const. of 1897 art. X, §§3, 4; Del. Act of March 15, 1907 to Compel Attendance of Children; Del. Code ch. 71, art. 8, §2705 (1915); **Del. Const. art. X, §§3, 4**
FL 1858 1868	1885	f,fp	*1915*	*1917*	i	R,S	Fla. Const. of 1885 art. XII, §§4, 13; Fla. Rev. Gen. Stat. tit. V, §541 (1920) (adopted Acts 1915, ch. 6831, §1); Fla. Rev. Gen. Stat. tit. V, §669 (1920) (adopted Acts 1917, ch. 7374, §1, amending Acts 1911, ch. 6178, §2); **Fla. Const. art. I, §3**

State / Admit Year	Initial Limits		Limits Coeval with CS			Limits Con-firmed	Sources
	Year	Type	CS Year	Coeval Limits Year	Type		
GA 1788 1870	1877	f,fp	*1919*	*1931*	fp,i	R,S	Ga. Const. of 1877 art. I, §I ¶14 & art. VIII, §III ¶1; Ga. Code of 1933 §32-2101 (adopted Acts 1919, p.33); *id.* §§32-703, 32-942 (adopted Acts 1931, at 33, 136); **Ga. Const. art. I, §2, ¶7 & art. VIII, §5, ¶7**
HI 1959	1950 {1959}	f,fp,c fp	*1890*				Hawaii School Law of 1896, preamble & §24 (first adopted 1890); Haw. Const. of 1950 art. X, §1; Hawaii Statehood Act, Pub. L. No. 86-3, §5(f), 73 Stat. 4 (1959); **Haw. Const. art. X, §1**
ID 1890	1889 {1890}	f,c,i fp,i	*1887*	*1887* 1889	fp,i f,c,i	S	Idaho Terr. Rev. Stat. tit. 3, §§623, 624, 632, 672, 705, 735 (Eleventh) (1887) (adopted 1887 Idaho Laws, tit. 3 & ch. 6, (1887)); Idaho Const. of 1889 art. IX, §§5, 6; Idaho Admission, Bill, Pub. L. No. 105-296, §8, 26 Stat. 215 (1890); **Idaho Const. art. IX, §§3, 5, 6**

State / Admit Year	Initial Limits		Limits Coeval with CS			Limits Con-firmed	Sources
	Year	Type	CS Year	Coeval Limits Year	Type		
IL 1818	1870	f	*1883*	1870 *1883*	f f	R,S	Ill. Const. of 1870 art. VIII, §3; Ill. Rev. Stat. ch. 122, §§77, 133 (adopted 1883) (Cothran ed. 1884); **Ill. Const. art. X, §3**
IN 1816	1851	f,fp	*1897*	*1893*	i	R,S	Ind. Const. of 1816 art. IX, §1*; Ind. Const. of 1851 art. I, §6 & art. VIII, §3*; Ind. Rev. Stat. §4422s (1897) (adopted 1893), *id.* §4541a (1897) (adopted 1889 Ind, Stat., pp.74, 248); **Ind. Const. art. 1, §6 & art. 8, §§1*, 3**
IA 1846	1846 *1873* (1918)	fp f f	*1902*	*1897* (1918)	f f	R,S	Iowa Const. of 1846 art. 10, §§3, 4; Iowa Code tit. IV, ch.11, §552 (1873); Iowa Ann. Code tit. IV, §593 (1897); 1902 Iowa Laws 325, ch.14-A, §2823a (Carter ed., Supp. 1902); *Knowlton v. Baumhover*, 166 N.W. 202 (Iowa 1918); **Iowa Const., art. IX (1st) §12 & art. IX (2nd) §3**

State / Admit Year	Initial Limits		Limits Coeval with CS			Limits Con-firmed	Sources
	Year	Type	CS Year	Coeval Limits Year	Type		
KS 1861	1859	f,c	*1874*	1859 *1876*	f fp,i	R,S	Kan. Const. of 1859 Ordinance (Second), art. VII, §§1*, 5, 6; 1868 Kan. Laws ch. 92, §271 (Dassler ed. 1879) (adopted L. 1874, ch. 123 §1); 1868 Kan. Laws ch. 92, §§3, 132, 171, 255 (Dassler ed. 1879) (adopted L. 1876 ch.122: art. 20, §22; art. 11, §23; art. 16, §1); **Kan. Const. Ordinance §1, art. VI, §6(c)**
KY 1792	1891	f,fp	*1896*	1891 *1893*	f,fp fp,i	R,S	Ky. Const. of 1891 §§184, 186, 189; Ky. Stat. §4521, at 1537-38 (adopted 1896) (Carroll, ed. 1899); Ky. Stat. §§4368, 4371, 4378, 4423, 4532, at 1479-80, 1482, 1496, 1541 (Carroll, ed. 1899) (adopted by Act of July 6, 1893); **Ky. Const. §189**
LA 1812 1868			*1916*				1916 La. Acts 59, Act No. 27 §1
ME 1820	(1854)	i	*1875*			R	Me. Const. of 1820 art. VII*; ***Donahoe v. Richards*, 38 Me. 379, 398 (Me. 1854)**; 1875 Me. Laws 21, ch. 24 §1

State / Admit Year	Initial Limits		Limits Coeval with CS			Limits Con-firmed	Sources
	Year	Type	CS Year	Coeval Limits Year	Coeval Limits Type		
MD 1788	*1978*	f,i	*1902*				1902 Md. Laws 378, ch. 269, §128; Md. Code Ann., Educ. §4-316, (West, 2025) (adopted 1978); Md. Code Ann., Educ. §17-107, (West, 2025) (adopted 1978); *see also* 1872 Md. Laws 641, ch. 377, §10(1)
MA 1788	*1826* 1855	i f,fp,c	*1852*	1855	f,fp,c	S	Mass. Const. of 1780 ch. V, §2*; 1826 Mass. Acts 179, ch. 143, §7; 1852 Mass. Acts 170, ch. 240, §1; Mass. Const. amend. XVIII (added 1855); **Mass. Const. ch. V, §2* & art. CIII**
MI 1837	1835	f	*1871*	*1881*	f,i	R,S	Mich. Const. of 1835 art. I, §5; 1871 Mich. Pub. Acts 251, Pub. L. No. 165 §1; 1881 Mich. Pub. Acts 172, No. 164, ch. 3, §11 & ch. 11, §14; **Mich. Const. art. I, §4 & art. VIII, §1*, 2**
MN 1858	1857	f	*1885*	*1881*	i	R,S	Minn. Const. of 1857 art. I, §16*; 1885 Minn. Laws 261, ch. 197, §1; 1881 Minn. Laws 375, ch. 6, §2; **Minn. Const. art. I, §16 & art. XIII, §§1*, 2**

State / Admit Year	Initial Limits		Limits Coeval with CS			Limits Con-firmed	Sources
	Year	Type	CS Year	Coeval Limits Year	Type		
MS 1817 1870	1868 1890	c f,c	*1918*	*1916* *1918*	i i	R,S	Miss. Const. of 1868 art. VIII, §9; Miss. Const. of 1890 art. 8, §208; School Laws of Miss. ch. 185, §4525(e) (1918), at 39 (adopted 1916); *id.* ch. 143, §4595, at 110 (adopted 1918); 1918 Miss. Laws 312, ch. 258 §1; **Miss. Const. art. IV, §66, art. VIII, §208**
MO 1821	1875	f,fp,c	*1905*			R	Mo. Const. of 1875 art. XI, §§1*, 11; 1905 Mo. Laws 146, H.B. 70, 247 §1; **Mo. Const. art. I, §8 & art. IX, §1(a)*, 8**
MT 1889	{1889} 1889	c f,fp,c,i	*1883*	*1887* 1889	f,i f,fp,c,i	S	Mont. Act of Mar. 8, 1883, 13th Leg. Assemb., ch. 55, §1149; Mont. Act of Mar. 5, 1887, 15th Leg. Assemb., ch. V, §1893; Enabling Act of 1889, Pub. L. No. 180, §4, ¶4, 25 Stat. 676, 676-677; Mont. Const. of 1889 art. XI, §7 & art. XI, §§5, 6, 8, 9; 15th Leg. Assembly of Mont., ch. CV, §1941; **Mont. Const. art. V, §11(5) & art. X, §§6, 7**

State / Admit Year	Initial Limits		Limits Coeval with CS			Limits Con-firmed	Sources
	Year	Type	CS Year	Coeval Limits Year	Type		
NE 1867	*1858* 1867	i c	*1887*	1867 *1875*	c i	R,S	An Act Providing for the Better Regulation of Schools in Nebraska, 1858 Neb. Laws 294, §55; Neb. Const. of 1867 art. VII, §1; 1875 Neb. Laws §20 (11th Session); 1887 Neb. Laws, ch. 78, §1 (20th Session); **Neb. Const. art. VII, §§7, 11** (as interpreted in *State v. Taylor*, 240 N.W. 573 (Neb. 1932))
NV 1864	1864 1880	i f,i	1864 *1873*	1864 *1864* *1865* *1877* 1880	f,i i fp f f,i	R,S	Nev. Const. of 1864 art. XII, §§2, 9; 1864 Nev. Stat., ch. 64, §3, at 89; 1865 Stat., ch. CXLV, §13 (1st Session), at 415; 1873 Nev. Stat, ch. XXXI, §1, at 89; 1877 Nev. Stat., ch. 27, §1, at 70; Nev. Const. of 1864 (as amended in 1880), art. XI, §§2, 9, 10; **Nev. Const. art. XI, §§2, 9, 10**
NH 1788	*1841* 1877	i f	*1871*	1877	f	S	N.H. Const. of 1784, at 27*; 1841 N.H. Laws 599, ch. 15, §8; 1871 N.H. Laws, ch. II, §1; N.H. Const. art. 83 (as amended 1877); **N.H. Const. art. 83***

State / Admit Year	Initial Limits		Limits Coeval with CS			Limits Con-firmed	Sources
	Year	Type	CS Year	Coeval Limits Year	Type		
NJ 1787	1844	fp	*1874*	*1874*	f	R,S	N.J. Const. of 1844 art. IV, §7; 1874 N.J. Laws, ch. 523, §1, at 135; An Act to Establish a System of Public Instruction, N.J. Laws §80 (1874); **N.J. Const. art. VIII, §4**; *see also id.* art. I, §5
NM 1912	{1910} 1912	fp,c f,fp,c	*1891*	*1891* *1897* 1912	i f,fp,c f,fp,c	S	29th Leg. Assemb., ch. 25, §42, 1891 N.M. Laws 59; 29th Leg. Assemb., ch. 77, §27, 1891 N.M. Laws 142; 32nd Leg. Assemb., ch. 20, §9, 1897 N.M. Laws 44; Pub. L. No. 61-219, §2(4th), 36 Stat. 557, 559 (1910); N.M. Const. of 1912 art. XXI, §4; **N.M. Const. art. XII, §3**
NY 1788	*1827* 1846	f fp	*1874*	*1873*	f	R,S	Palmer, *The New York Public School* 54 (1905) (1827 ordinance); N.Y. Const. of 1846 art. IX; 1873 N.Y. Laws 484, ch. 335, art. IX, §75, at 504; 1874 N.Y. Laws 532, ch. 421, §§1-11, at 532-535; **N.Y. Const. art XI, §3**

State / Admit Year	Initial Limits		Limits Coeval with CS			Limits Con-firmed	Sources
	Year	Type	CS Year	Coeval Limits Year	Type		
NC 1789 1868	1868 *1868*	fp i	*1907*			R	N.C. Const. of 1868 art. IX, §§1*, 4; 1868 N.C. Sess. Laws 458, ch. 134, §3; 1907 N.C. Sess. Laws 1284, ch. 894 §§1-11; **N.C. Const. art. IX, §§1*, 2, 6, 7**
ND 1889	1889 {1889}	c c	*1883*	*1883* 1889	f,i c	S	1883 N.D. Laws ch. 44, §§8, 59, 70, 89, 112, 115, 119, 130; Enabling Act of 1889, Pub. L. No. 180, §4, ¶4, 25 Stat. 676, 676-677; N.D. Const. of 1889 art. VIII, §§147, 152, 153, 154; N.D. Const. of 1889 art. VIII, §§147, 152, 153, 154; **N.D. Const. art. VIII, §§1, 5**
OH 1803	1851	f,c	*1877*			R	Ohio Const. of 1851 art. VI, §2; 74 Ohio Gen. and Local Laws 1877, Act of Mar. 20, 1877, §1, at 57-58; **Ohio Const. art. VI, §2**

State / Admit Year	Initial Limits		Limits Coeval with CS			Limits Con-firmed	Sources
	Year	Type	CS Year	Coeval Limits Year	Type		
OK 1907	{1906} 1907	c f,fp,c	*1907*	*1893* 1907 *1907*	i f,fp,c f,c	S	1893 Okla. Sess. Laws 1091, ch. 73, art. II, §25; Oklahoma Enabling Act, Pub. L. No. 59-234, §5, 34 Stat. 267, 271 (1906); Okla. Const. of 1907 art. I, §5 & art. II, §5 & art. XI, §§2, 3; 1907 Okla. Sess. Laws 393, ch. 34, art. I, §1-6; **Okla. Const. art. I, §5 & art. II, §5 & art. XI, §§2, 3**
OR 1859	*1849* 1857	i f,fp	*1889*			R	1850 Or. Stat., Act, of Sept. 5, 1849, §34, at 75; Or. Const. of 1857 art. I, §5 & art. VIII, §2; 1889 Laws of Oregon, Act of Feb. 25, 1889, §1, at 111
PA 1787	1874	f,fp,c	*1895*	*1901*	f	R,S	Pa. Const. of 1874 art. III, §§17-18 & art. X, §2; Compulsory Education Act, 1895 Pa. Laws 72-75; 1901 Pa. Laws 93-94; **Pa. Const. art. III, §§15, 29**
RI 1790	1843	fp	*1883*			R	R.I. Const. of 1843 art. XII, §§1*, 2, 4; 1883 R.I. Acts, Act of Apr. 12, 1883, §1, at 146-147; **R.I. Const. art. XII, §§1*, 2, 4**

State / Admit Year	Initial Limits		Limits Coeval with CS			Limits Con-firmed	Sources
	Year	Type	CS Year	Coeval Limits Year	Type		
SC 1788 1868	1868	f,fp,c,i	*1915*			R	S.C. Const. of 1868 art. X, §§5, 11; 1915 S.C. Acts, Act of Feb. 20, 1915, §1, at 118-119; **S.C. Const. art. X, §11 & art. XI, §4**
SD 1889	{1889} 1889	c f,fp,i	*1891*	1889 *1891*	f,fp,i fp,i	S	Enabling Act of 1889, Pub. L. No. 180, §4, ¶4, 25 Stat. 676, 676-677; S.D. Const. of 1889 art. VIII, §§1*, 2, 3, 16; 1891 S.D. Sess. Laws ch. 56, ch. II §18, at 124; 1891 S.D. Sess. Laws ch. 56, ch. VII §§1-6, at 138-140; 1891 S.D. Sess. Laws ch. 56, ch. IX §18, at 147; **S.D. Const. art. VIII, §§1*, 2, 3, 16**
TN 1796 1866	1834 *1848* 1870	fp f,c,i fp	*1905* *1913*	*1919*	i	R,S	Tenn. Const. of 1834 art. XI, §10*; 1847-1848 Tenn. Acts, ch. 74, §7(4), at 116; ch. 167, §6, ¶6, at 268; Tenn. Const. of 1870 art. XI, §12*; 1905 Tenn. Pub. Acts 1040, ch. 483, §1; 1913 Tenn. Pub. Acts 19, ch. 9, §1; 1919 Tenn. Pub. Acts 526, ch. 142, §3

State / Admit Year	Initial Limits		Limits Coeval with CS			Limits Con-firmed	Sources
	Year	Type	CS Year	Coeval Limits Year	Type		
TX 1845 1870	1876	f,fp	*1915*			R	Tex. Const. of 1876 art. VII, §§1*, 2, 3, 5; 1915 Tex. Gen. Laws 92, ch. 49 §1; Tex. Const. of 1876, art. VII, §5; **Tex. Const. art. I, §7 & art. VII, §§1*, 2, 3, 5(c)**
UT 1896	{1894} 1895	f,c f,c	*1890*	*1890* 1895	i f,c	S	1890 Utah Laws 110, ch. 72, §§65, 130; Utah Admission Act, ch. 138, §3, 28 Stat. 107, 108 (1894); Utah Const. of 1895 art. I, §4, art. III, §4 & art. X, §§1, 12, 13; **Utah Const. art. III, §4 & art. X, §1, 5, 9**
VT 1791			*1867*	*1872*	f	S	1867 Vt. Acts & Resolves 48, No. 35, §1; 1872 Vt. Acts & Resolves 54-55, No. 15, §1
VA 1788 1870	*1846* 1868 1902	i fp f,fp	*1908*	1902 *1910*	f,fp f	R,S	1846 Va. Acts 31, ch. 32, §9; Va. Const. of 1868 art. VIII, §8; Va. Const. of 1902 art. IV, §67 & art. IX, §141; 1908 Va. Acts ch. 364 §§1-8, 640-642; 1910 Va. Acts ch. 338 §1 (15th), 537 (amending §1466 of Virginia Code); **Va. Const. art. IV, §16 & art. VIII, §§8, 10**

State / Admit Year	Initial Limits		Limits Coeval with CS			Limits Con-firmed	Sources
	Year	Type	CS Year	Coeval Limits Year	Type		
WA 1889	{1889} 1889	c fp,c	*1871*	*1883* 1889	i fp,c	S	1871 Wash. Sess. Laws 29, ch. 1 (VI), §1; Wash. Laws, tit. 5, §38 (10th), at 13 & tit. 9, §53, at 16 (1883); Enabling Act of 1889, Pub. L. No. 180, §4, ¶4, 25 Stat. 676, 676-677 (1889); Wash. Const. of 1889 art. IX, §§2-4 & art. XXVI (4th); **Wash. Const. art. IX, §§2-4 & art. XXVI (4th)**
WV 1863			*1897*	*1909*	i	S	1897 W. Va. Acts 205, ch 98; W. Va. Rev. School Law § 4, at Supp. 7 (1908) (Supp. 1909)
WI 1848	1848	f,fp,i	*1879*	*1883*	i	R,S	Wis. Const. of 1848 art. X, §3; 1879 Wis. Sess. Laws 155, Pub. L. No. 38(A), ch. 121, §1; 1883 Wis. Sess. Laws 203, Pub. L. No. 262(A), ch. 251, §3; **Wis. Const. art. I, §18 & art. X, §§2, 3**

State / Admit Year	Initial Limits		Limits Coeval with CS			Limits Con-firmed	Sources
	Year	Type	CS Year	Coeval Limits Year	Type		
WY 1890	{1889} 1889	f,c f,fp, c,i	*1873, 1875*	*1886* 1889	i f,fp, c,i	S	1873 Wyo. Terr. Sess. Laws, ch. 103, §36 (as amended by Act. of Dec. 11, 1875), at 532, 536; 1886 Wyo. Sess. Laws, ch. 10, §§3, 4; Wyo. Const. of 1889 art. I, §19 & art. III, §36 & art. VII, §§8, 12; An Act of Admission, ch. 664, §8, 26 Stat. 222 (1889); **Wyo. Const. art. I, §19 & art. III, §36 & art. VII, §12**