

No. _____

In the
Supreme Court of the United States

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 Petition for Writ of Certiorari to the
Oklahoma Supreme Court**

PETITION FOR WRIT OF CERTIORARI

JOHN A. MEISER	STEVEN A. ENGEL
MEREDITH H. KESSLER	MICHAEL H. MCGINLEY
LINDSAY AND MATT	<i>Counsel of Record</i>
MOROUN RELIGIOUS	M. SCOTT PROCTOR
LIBERTY CLINIC	DECHERT LLP
Notre Dame Law School	1900 K Street, NW
1338 Biolchini Hall of Law	Washington, DC 20006
Notre Dame, IN 46556	(202) 261-3378
	michael.mcginley@dechert.com
MICHAEL R. PERRI	BRIAN A. KULP
SOCORRO A. DOOLEY	ANTHONY R. JADICK
PERRI DUNN, PLLC	DECHERT LLP
100 N. Broadway	Cira Centre
Suite 3280	2929 Arch Street
Oklahoma City, OK	Philadelphia, PA 19104
73102	

Counsel for Petitioner

October 7, 2024

QUESTIONS PRESENTED

This Court has repeatedly held that the Free Exercise Clause prohibits a state from denying generally available benefits to a school solely because it is religious. That principle should have resolved this case. Petitioner is a private religious institution. It seeks to partake in the benefits of Oklahoma’s charter school program. But the court below invalidated Petitioner’s contract with the charter school board. The court disregarded this Court’s Free Exercise precedents because, in its view, Petitioner had become an arm of the government by virtue of that contract. It thus held that the Establishment Clause and Oklahoma laws aimed at creating “a complete separation of church and state” compelled the court to deny Petitioner—on religious grounds—the benefits created by Oklahoma’s Charter Schools Act.

The questions presented are:

1. Whether the academic and pedagogical choices of a privately owned and run school constitute state action simply because it contracts with the state to offer a free educational option for interested students.
2. Whether a state violates the Free Exercise Clause by excluding privately run religious schools from the state’s charter school program solely because the schools are religious, or whether a state can justify such an exclusion by invoking anti-establishment interests that go further than the Establishment Clause requires.

PARTIES TO THE PROCEEDING

Petitioner St. Isidore of Seville Catholic Virtual School was an intervenor in the original proceeding below before the Oklahoma Supreme Court. Respondent Gentner Drummond, representing the State of Oklahoma, was the petitioner before the Oklahoma Supreme Court. Oklahoma Statewide Virtual Charter School Board, Robert Franklin, William Pearson, Nellie Tayloe Sanders, Brian Bobek, and Scott Strawn were respondents before the Oklahoma Supreme Court. Since the Oklahoma Supreme Court rendered its decision, the respondents before that court were succeeded by Oklahoma Statewide Charter School Board, and Brian T. Shellem, Angie Thomas, Kathleen White, Damon Gardenhire, Becky Gooch, Jared Buswell, Ben Lepak, Ryan Walters, and Dr. Kitty Campbell, in their official capacities as members of the Oklahoma Statewide Charter School Board.

CORPORATE DISCLOSURE STATEMENT

St. Isidore of Seville Catholic Virtual School is a private, non-profit corporation operated by the Archdiocese of Oklahoma City and the Diocese of Tulsa. No publicly traded corporation owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is related to the following proceedings within the meaning of Rule 14.1(b)(iii):

- *Drummond ex rel. State of Oklahoma v. Oklahoma Statewide Virtual Charter Sch. Bd., et al.*, Case No. MA-121694 (Okla.), judgment entered June 25, 2024.

TABLE OF CONTENTS

PETITION FOR WRIT OF CERTIORARI	1
OPINION BELOW	5
JURISDICTION	5
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	5
STATEMENT OF THE CASE	6
A. Legal Background	6
1. The Free Exercise Clause And School Funding	6
2. Oklahoma’s Law.....	8
B. Factual Background.....	11
C. Procedural History	14
REASONS FOR GRANTING THE PETITION.....	17
I. Oklahoma Cannot Deny Generally Available Benefits To A School Because It Is Religious...	17
II. By Trying To Dodge This Court’s Free Exercise Precedents, The Decision Below Deepened A Split.	19
A. The First, Third, And Ninth Circuits Hold That Educational Institutions Like Charter Schools Are Not State Actors.....	21
B. The Fourth Circuit And Oklahoma Hold That Institutions Like Charter Schools Are State Actors.	24
III. The Decision Below Is Wrong.	27
A. State-Law Labels Cannot Dictate The Federal State-Action Inquiry.....	27

B. The State Is Not Closely Entwined With St. Isidore’s Pedagogical Choices Or Private Operation.....	29
C. Education Is Not A Traditional And Exclusive Public Function.	31
D. The Oklahoma Supreme Court’s Flawed Conception Of State Action Cannot Justify Its Establishment Clause Concerns.	33
IV. The Questions Presented Are Exceptionally Important, And This Case Presents An Ideal Vehicle For Resolving Them.	35
CONCLUSION	38

TABLE OF APPENDICES

APPENDIX A — MAJORITY OPINION OF
THE SUPREME COURT OF THE STATE
OF OKLAHOMA, FILED JUNE 25, 2024 1a

APPENDIX B — DISSENTING OPINION OF
KUEHN, J., IN THE SUPREME COURT OF
THE STATE OF OKLAHOMA, FILED
JUNE 25, 2024 29a

APPENDIX C — DISSENTING OPINION OF
ROWE, V.C.J., IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA, FILED
JUNE 25, 2024 39a

APPENDIX D — OPINION OF THE
ATTORNEY GENERAL OF OKLAHOMA,
DATED DECEMBER 1, 2022..... 41a

APPENDIX E — OPINION OF THE
ATTORNEY GENERAL, FILED
FEBRUARY 23, 2023..... 74a

APPENDIX F — 70 OKL.ST.ANN.§ 3-131 79a

APPENDIX G — 70 OKL.ST.ANN.§ 3-132 81a

APPENDIX H — 70 OKL.ST.ANN.§ 3-134 88a

APPENDIX I — 70 OKL.ST.ANN.§ 3-135 97a

APPENDIX J — 70 OKL.ST.ANN.§ 3-136..... 102a

APPENDIX K — 70 OKL.ST.ANN.§ 1-106 107a

APPENDIX L — OK CONST.ART.2, § 5..... 108a

APPENDIX M — OK CONST.ART.1, § 5..... 109a

APPENDIX N — CHARTER SCHOOL
CONTRACT 110a

APPENDIX O — AFFIDAVIT OF SKYLER H. LUSNIA, DATED NOVEMBER 16, 2023..... 154a

APPENDIX P — EXCERPT OF TRANSCRIPT OF THE SPECIAL MEETING OF THE STATEWIDE VIRTUAL CHARTER SCHOOL BOARD, OKLAHOMA HISTORY CENTER, DATED JUNE 5, 2023 160a

APPENDIX Q — MINUTES OF SPECIAL MEETING IN THE STATEWIDE VIRTUAL CHARTER SCHOOL BOARD, DATED JUNE 5, 2023 166a

APPENDIX R — PETITIONER’S BRIEF IN THE SUPREME COURT OF THE STATE OF OKLAHOMA, DATED OCTOBER 20, 2023 172a

APPENDIX S — EXCERPTS FROM VIRTUAL CHARTER APPLICATION OF ST.ISIDORE OF SEVILLE CATHOLIC VIRTUAL SCHOOL, REVISED MAY 25, 2023 196a

TABLE OF AUTHORITIES

Cases

<i>Am. Mfrs. Mut. Ins. Co. v. Sullivan</i> , 526 U.S. 40 (1999)	22, 24
<i>Bd. of Cnty. Comm’rs, Wabaunsee Cnty. v. Umbehr</i> , 518 U.S. 668 (1996)	27
<i>Blum v. Yaretsky</i> , 457 U.S. 991 (1982)	20, 30
<i>Brammer-Hoelter v. Twin Peaks Charter Acad.</i> , 602 F.3d 1175 (10th Cir. 2010)	26
<i>Brentwood Acad. v. Tenn. Secondary Sch. Ath. Ass’n</i> , 531 U.S. 288 (2001)	29, 32
<i>Carpenter v. Shaw</i> , 280 U.S. 363 (1930)	28
<i>Carson v. Makin</i> , 596 U.S. 767 (2022)	1, 6, 8, 9, 13, 17, 18, 28, 31-32, 34, 37
<i>Caviness v. Horizon Cmty. Learning Ctr., Inc.</i> , 590 F.3d 806 (9th Cir. 2010)	21, 22, 26, 29, 30
<i>Espinoza v. Mont. Dep’t of Rev.</i> , 591 U.S. 464 (2020)	1, 3, 7-8, 11, 13, 16-19, 33-34
<i>Flagg Bros., Inc. v. Brooks</i> , 436 U.S. 149 (1978)	19
<i>Fulton v. City of Philadelphia</i> , 593 U.S. 522 (2021)	6, 28
<i>Harris v. Quinn</i> , 573 U.S. 616 (2014)	28

<i>Jackson v. Metro. Edison Co.</i> , 419 U.S. 345 (1974)	16, 28, 29
<i>Logiodice v. Trs. of Me. Cent. Inst.</i> , 296 F.3d 22 (1st Cir. 2002)	23, 26, 32
<i>Manhattan Cmty. Access Corp. v. Halleck</i> , 587 U.S. 802 (2019)	19, 28, 31, 32, 35
<i>McElrath v. Georgia</i> , 601 U.S. 87 (2024)	27, 28
<i>Peltier v. Charter Day Sch., Inc.</i> , 37 F.4th 104 (4th Cir. 2022).....	4, 25, 26,28-29, 31, 35-38
<i>Polk County v. Dodson</i> , 454 U.S. 312 (1981)	28
<i>Rendell-Baker v. Kohn</i> , 457 U.S. 830 (1982)	3, 20, 22-25, 30-32
<i>Robert S. v. Stetson Sch., Inc.</i> , 256 F.3d 159 (3d Cir. 2001)	24, 26, 32
<i>S.F. Arts & Ath., Inc. v. U.S. Olympic Comm.</i> , 483 U.S. 522 (1987)	29
<i>Santiago v. Puerto Rico</i> , 655 F.3d 61 (1st Cir. 2011)	31
<i>Trinity Lutheran Church of Columbia, Inc. v. Comer</i> , 582 U.S. 449 (2017)	1, 6, 7, 13, 17, 18, 34
<i>United States v. Craft</i> , 535 U.S. 274 (2002)	28

Constitutional Provisions

U.S. Const. amend. I	5
U.S. Const. amend. XIV, § 1.....	5
Okla. Const. art. I, § 5	5, 11
Okla. Const. art. II, § 5.....	5, 11

Statutes, Rules and Regulations

28 U.S.C. § 1257(a)	5
70 Okla. Stat. § 1-106.....	5, 10
70 Okla. Stat. § 3-131	5
70 Okla. Stat. § 3-131(A)	9, 19, 30
70 Okla. Stat. § 3-131(A)(4).....	32
70 Okla. Stat. § 3-132	5
70 Okla. Stat. § 3-132(D).....	10
70 Okla. Stat. § 3-134	5
70 Okla. Stat. § 3-134(C)	9
70 Okla. Stat. § 3-135	5
70 Okla. Stat. § 3-135(A)(9).....	10
70 Okla. Stat. § 3-136	5
70 Okla. Stat. § 3-136(A)(2).....	11
70 Okla. Stat. § 3-136(A)(3).....	9, 10, 30
70 Okla. Stat. § 3-136(A)(5).....	9, 10, 30
70 Okla. Stat. § 3-136(A)(8).....	10, 24
70 Okla. Stat. § 3-136(A)(10).....	10
70 Okla. Stat. § 3-136(B)	10
N.C. Gen. Stat. § 115C-218.15(a).....	25

Other Authorities

Catholic Charities of the Diocese of Arlington Amicus Br., <i>Charter Day Sch., Inc. v. Peltier</i> , No. 22-238 (U.S. Oct. 14, 2022)	36
Center for Education Reform, <i>National Charter School Law Rankings & Scorecard – 2024</i> , https://bit.ly/3Z2zCuK (last visited Oct. 7, 2024)	9, 21, 35
<i>Current Charter Schools of Oklahoma</i> , Okla. St. Dep’t of Educ. (July 22, 2024), https://bit.ly/4dN2YBM	10
Great Hearts Academy Amicus Br., <i>Charter Day Sch., Inc. v. Peltier</i> , No. 22-238 (U.S. Oct. 14, 2022)	35
<i>Oklahoma Charter Schools Program</i> , Okla. St. Dep’t of Educ. (Apr. 25, 2022), https://bit.ly/4eldMqU	31
States Amicus Br., <i>Charter Day Sch., Inc. v. Peltier</i> , No. 22-238 (U.S. Oct. 14, 2022).....	9, 35
Stephen D. Sugarman, <i>Is It Unconstitutional to Prohibit Faith-Based Schools from Becoming Charter Schools?</i> , 32 J. L. & Relig. 227, 250 (2017).....	34
United States Br., <i>Charter Day Sch., Inc. v. Peltier</i> , No. 22-238 (U.S. May 22, 2023)	36

PETITION FOR WRIT OF CERTIORARI

The decision below deepens an entrenched split among the lower courts and defies this Court’s precedents several times over. Like many states, Oklahoma has adopted a program to provide for choice and diversity in education by funding a network of independently designed and privately operated charter schools. It has invited private educators to participate in this program by contracting with the state for funding. But Oklahoma has denied that generally available benefit to religious educators—for no reason other than that they are religious.

This Court has repeatedly condemned that sort of religious hostility. In *Trinity Lutheran Church of Columbia, Inc. v. Comer*, the Court held that a state violates the Free Exercise Clause by “denying a qualified religious entity a public benefit solely because of its religious character.” 582 U.S. 449, 466 (2017). The Court then echoed that “unremarkable” principle to hold that a state could not constitutionally enforce a “no-aid provision” to “exclude[] schools from government aid solely because of religious status.” *Espinoza v. Mont. Dep’t of Rev.*, 591 U.S. 464, 475-76 (2020) (quotation marks omitted). And, most recently, this Court held that a state may not “exclude religious persons from the enjoyment of public benefits on the basis of their anticipated religious use of the benefits.” *Carson v. Makin*, 596 U.S. 767, 789 (2022).

But that is precisely what Oklahoma did here. The state denied St. Isidore of Seville Catholic Virtual School (“St. Isidore”) the right to participate in its charter school program solely because of St. Isidore’s religious character. If allowed to stand, that decision

will create a loophole through which the states can evade the Free Exercise Clause simply by labeling participants in government programs “public” actors.

The facts of this case demonstrate the dangers that loophole would pose to religious liberty. St. Isidore is a private religious institution incorporated by the Archdiocese of Oklahoma City and the Diocese of Tulsa. St. Isidore was created as a K-12 virtual school “dedicated to academic excellence” that would, in the Catholic tradition, “educate the entire child: soul, heart, intellect, and body.” Pet.App.197. Seeking to make this learning opportunity available to all interested Oklahomans, St. Isidore submitted a several-hundred-page application to the Oklahoma Statewide Virtual Charter School Board (the “Board”) to participate in the charter school program, detailing its school design and the education it would offer.

The Board agreed that St. Isidore fully satisfied all the secular criteria for the program and would bring a valuable new learning opportunity to families across Oklahoma. And the Board recognized that the First Amendment prohibited it from enforcing various “nonsectarian” provisions of Oklahoma law that would exclude St. Isidore based on its religious character. The Board thus approved the application and executed a contract with St. Isidore. But the Attorney General of Oklahoma (Respondent here) sought a writ of mandamus in the Oklahoma Supreme Court to extinguish St. Isidore’s contract and deprive it of the state funding it would receive if only it would abandon its religious exercise. In a split decision, the court issued the writ.

Along the way, the majority spurned the Free Exercise guarantees this Court has repeatedly upheld. The majority reasoned that Oklahoma law prohibited the “expenditure of state funds” to St. Isidore because it was a religious school. Pet.App.11. And it applied Oklahoma’s religiously exclusionary laws “to discriminate against [St. Isidore] and parents based on the religious character of the school.” *Espinoza*, 591 U.S. at 484. That ruling unconstitutionally “punishe[d] the free exercise of religion’ by disqualifying the religious from government aid.” *Id.* at 478 (citation omitted).

Conceding that St. Isidore is “operated by the Catholic church,” Pet.App.10, the majority nevertheless side-stepped this Court’s Free Exercise precedents by transmuted St. Isidore into an arm of the government. The court below reasoned that excluding St. Isidore on religious grounds raised no Free Exercise problem because St. Isidore’s contract would turn the school into a “surrogate of the State,” noting that Oklahoma’s legislature had labeled charter schools “public.” Pet.App.15-21. Then, based on that view, the court concluded that the Establishment Clause *forbid* Oklahoma from funding St. Isidore. Pet.App.22-24.

That logic contradicts this Court’s precedents and deepens a split among the lower courts. This Court has held, in the context of state-funded schools, that neither “extensive [state] regulation” nor “significant or even total engagement in performing public contracts” suffices to transform a private entity into a state actor. *Rendell-Baker v. Kohn*, 457 U.S. 830, 841 (1982). And this Court has never permitted state

labels to blot out federal rights. For decades, the lower courts had faithfully applied these teachings to hold that a privately operated school does not become a government actor merely by contracting with the state to provide free educational opportunities. But in recent years some courts have, like Oklahoma, veered astray. They have held that the actions of charter schools are necessarily attributable to the state simply because those schools are supported by public money or have been labeled “public” by the legislature.

These misguided decisions have sown uncertainty in this critical area of federal law. Indeed, Respondent has himself “recognize[d] that the law is currently unsettled as to whether charter schools are state actors.” Pet.App.75. And he has expressed “hope[] that [this] Court will definitively rule on this unsettled issue” soon. *Id.*

This case presents the ideal vehicle to resolve that exceptionally important question. Nearly every state has freed privately operated charter schools from government interference to foster operational independence, parental choice, and educational innovation. As a result, charter schools have flourished. But shackling them with the limitations and obligations of governmental bodies “den[ies] their very reason for being” and promises to thwart the “diverse educational options” they have provided to families across the country. *Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104, 155 (4th Cir. 2022) (en banc) (Wilkinson, J., dissenting).

This Court should grant certiorari to close the loophole that the Oklahoma Supreme Court created to

penalize St. Isidore’s religious liberty, to preserve the educational opportunities that charter school programs are designed to secure, and to restore uniformity in this important area of law.

OPINION BELOW

The Oklahoma Supreme Court exercised original jurisdiction. Its decision is reported at 2024 OK 53 and reproduced at Pet.App.1-40.

JURISDICTION

The Oklahoma Supreme Court issued its opinion on June 25, 2024. On September 19, Justice Gorsuch extended the time to file a petition for writ of certiorari to October 7, 2024. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment provides, in relevant part, that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. amend. I. The Fourteenth Amendment declares that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

Relevant Oklahoma statutes and constitutional provisions include Okla. Const. art. I, § 5; Okla. Const. art. II, § 5; and various provisions of the Oklahoma Charter Schools Act, *see* 70 Okla. Stat. §§ 3-131, 3-132, 3-134, 3-135, 3-136; *see also id.* § 1-106. These

state provisions are reproduced in the Appendix. *See* Pet.App.79-109.¹

STATEMENT OF THE CASE

A. Legal Background

1. The Free Exercise Clause And School Funding

“The Free Exercise Clause of the First Amendment, applicable to the States under the Fourteenth Amendment, provides that ‘Congress shall make no law . . . prohibiting the free exercise’ of religion.” *Fulton v. City of Philadelphia*, 593 U.S. 522, 532 (2021). That fundamental guarantee includes “protect[ions] against ‘indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.’” *Carson*, 596 U.S. at 778 (citation omitted). Accordingly, this Court has “repeatedly held that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits.” *Id.*

Three recent decisions illustrate the point. In *Trinity Lutheran*, this Court held that Missouri could not require a preschool “to renounce its religious character in order to participate in an otherwise generally available public benefit program” for playground resurfacing. 582 U.S. at 466. Even that subtle hostility toward religion “is odious to our Constitution.” *Id.* at 467. This Court also rejected Missouri’s effort to shelter behind the Establishment

¹ Oklahoma amended the Charter Schools Act effective July 1, 2024. All citations here are to the applicable provisions in effect prior to that date, which remain materially unchanged.

Clause, holding that a state's preference for "skating as far as possible from religious establishment concerns" could not justify discrimination against religious schools. *Id.* at 466.

Then, in *Espinoza*, this Court held that the Free Exercise Clause barred the kind of claim Respondent presses here. Like Oklahoma, Montana had established a program to help parents enroll their children in schools of their choice. *See* 591 U.S. at 467-68. And, like here, the ability of religious schools to participate in the program was challenged under a state constitutional provision that prohibited state funding of "sectarian" schools. *Id.* at 469-72. The Montana Supreme Court held that allowing religious schools to participate in the program violated this "no-aid" guarantee and invalidated the school-choice program. *Id.* at 472 (citation omitted).

This Court reversed. Echoing *Trinity Lutheran*, the Court reiterated that, whenever a state denies a generally available benefit "because of [an organization's] religious character," it "imposes a penalty on the free exercise of religion that triggers the most exacting scrutiny." *Id.* at 475 (citation omitted). Montana's use of the "no-aid" provision to prevent religious schools from receiving available tuition benefits could therefore be justified only by "interests of the highest order." *Id.* at 484 (citation omitted). And none of Montana's justifications sufficed, including Montana's claim that its carveout "protect[ed] the religious liberty of taxpayers by ensuring that their taxes [were] not directed to religious organizations." *Id.* at 485. The state's interests could not justify the "burden" imposed on

“religious schools” and “the families whose children . . . hope[d] to attend them.” *Id.* at 486.

This Court built on those two decisions in *Carson*. There, Maine offered a tuition-assistance program for families in rural areas that lacked access to government-run secondary schools. 596 U.S. at 773. However, the law allowed the tuition payments to be expended only at “nonsectarian” schools. *Id.* at 775. Maine defended this requirement by characterizing the “public benefit” it offered as ensuring rural students would still receive “the rough equivalent of a Maine public school education, an education that cannot include sectarian instruction.” *Id.* at 782 (cleaned up). It also tried to distinguish its program from those in *Trinity Lutheran* and *Espinoza* as one that did not exclude institutions based on their “religious ‘status,’” but rather, as a program that avoided “religious ‘uses’ of public funds”—namely, using funds to receive a religious education. *Id.* (citation omitted).

Neither argument persuaded this Court. A state cannot avoid the Free Exercise Clause by reconceptualizing its public benefit as an exclusively “secular” one. *Id.* at 784. Nor may a state deny people the right to “use” otherwise available funds to receive a religious education, which is just as “offensive to the Free Exercise Clause” as denial based on the recipient’s religious “status.” *Id.* at 787.

2. Oklahoma’s Law

Like Missouri, Montana, and Maine, Oklahoma has created a “state benefit program” for private organizations through its Charter Schools Act. *Carson*, 596 U.S. at 780. And, like those states,

Oklahoma has denied the program's otherwise generally available "benefit based on a recipient's religious exercise." *Id.* at 785.

The Charter Schools Act invites any qualified "private college or university, private person, or private organization" to apply for state funding to operate a charter school. 70 Okla. Stat. § 3-134(C). And Oklahoma affords these private institutions substantial flexibility to craft their curricula and run their schools free from state interference. *See id.* § 3-136(A)(3), (5).

Indeed, that is the very point of a charter school program. By inviting private organizations to design and operate independent institutions, Oklahoma's program *minimizes* government control of charter schools to promote educational innovation and diversity. The Act's express purpose is to "[i]ncrease learning opportunities for students"; "[e]ncourage the use of different and innovative teaching methods"; "[i]mprove student learning"; and "[p]rovide additional academic choices for parents and students" alike. *Id.* § 3-131(A). Nearly every other state has made this same policy choice. *See, e.g.*, States Amicus Br. at 4-16, *Charter Day Sch., Inc. v. Peltier*, No. 22-238 (U.S. Oct. 14, 2022) ("States Peltier Br."); Center for Education Reform, *National Charter School Law Rankings & Scorecard – 2024*, <https://bit.ly/3Z2zCuK> (last visited Oct. 7, 2024) (listing 47 jurisdictions with charter school programs).

The Act's substantive provisions bear out this commitment to autonomy. A charter school has wide latitude to "provide a comprehensive program of instruction" and may "offer a curriculum which

emphasizes a specific learning philosophy or style or certain subject areas.” 70 Okla. Stat. § 3-136(A)(3). A private “governing body,” rather than a publicly appointed school board, is “responsible for the policies and operational decisions of the charter school.” *Id.* § 3-136(A)(8). The school is also free to adopt its own “personnel policies, personnel qualifications, and method of school governance.” *Id.* § 3-136(B). And, except as specifically provided, “a charter school shall be exempt from all statutes and rules relating to schools, boards of education, and school districts.” *Id.* § 3-136(A)(5). In these ways and others, the Act aims to spark innovation and expand parental choice by funding the diverse array of private educators who choose to create charter schools. It has successfully achieved those goals, facilitating school choice through schools focused on science, engineering, math, fine arts, language immersion, tribal identity, and more. *See Current Charter Schools of Oklahoma*, Okla. St. Dep’t of Educ. (July 22, 2024), <https://bit.ly/4dN2YBM>.

Oklahoma nominally labels charter schools as “public”—in the sense that they are “free” to all students and “supported by public taxation.” *See* 70 Okla. Stat. §§ 1-106, 3-132(D); *see also id.* §§ 3-135(A)(9), 3-136(A)(10). But, because they are owned and operated by private parties, charter schools are not “public” in the sense that the government itself organizes and operates them, like it does with traditional public schools. Instead, charter schools are created and run by private entities.

Oklahoma has, however, forbidden one type of private entity—religious institutions—from

participating in the charter school program. Under the Charter Schools Act, the state “may not authorize a charter school or program that is affiliated with a nonpublic sectarian school or religious institution,” and charter schools must “be nonsectarian in [their] programs, admission policies, employment practices, and all other operations.” *Id.* § 3-136(A)(2). Oklahoma’s constitution imposes the same anti-religious discrimination. Embracing the Blaine Amendment movement of the late 1800s, Oklahoma’s constitution provides that “[n]o public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, . . . or sectarian institution.” Okla. Const. art. II, § 5; *see also id.* art. I, § 5 (system of public education shall be “free from sectarian control”).²

B. Factual Background

St. Isidore is a “privately operated religious non-profit organization” that seeks to participate in Oklahoma’s charter school program. Pet.App.111. The school has two members—the Archbishop of Oklahoma City and the Bishop of Tulsa. Pet.App.225. Driven by their faith and the Catholic Church’s commitment to education, these religious leaders endeavored to create a school that would “educate the entire child: soul, heart, intellect, and body” in the Catholic tradition. Pet.App.197. They established

² As this Court has noted, Blaine Amendments have a “shameful pedigree” of “bigotry” and “pervasive hostility” against Catholics. *Espinoza*, 591 U.S. at 482 (citation omitted).

St. Isidore as a private nonprofit corporation, with the aim of operating a Catholic virtual school available to all interested Oklahoma families. Pet.App.217-22. They also appointed a private board of directors to “manage and direct the business and affairs of the School.” Pet.App.226, 229.

In 2023, St. Isidore applied to participate in Oklahoma’s virtual charter school program. Pet.App.196-97. As its application explained, St. Isidore “envisions a learning opportunity for students who want and desire a quality Catholic education, but for reasons of accessibility to a brick-and-mortar location or due to cost cannot currently make it a reality.” Pet.App.206. St. Isidore would fulfill this need with an “interactive learning environment that is rooted in virtue, rigor and innovation”—and which “prepares students for a world of opportunity and a lifetime of learning” in accordance with the school’s Catholic faith. Pet.App.208. St. Isidore also committed to offering this opportunity to “any and all students” who choose to attend. Pet.App.213. “All students are welcome,” including “those of different faiths or no faith.” *Id.*

When St. Isidore applied, the Oklahoma Attorney General’s Office had recently issued an opinion instructing the Board that religious schools must be allowed to participate in the charter school program. The opinion recognized that charter schools “are not state actors.” Pet.App.69. Oklahoma would thus violate the First Amendment if it denied a religious school’s application based on the “nonsectarian” provisions of Oklahoma law. Pet.App.58-71. After all, Oklahoma invited private organizations to create new

schools, and “once qualified private entities are invited into the program, Oklahoma cannot disqualify some private persons or organizations ‘solely because they are religious’ or ‘sectarian.’” Pet.App.53 (quoting *Carson*, 596 U.S. at 780). The opinion further explained that “[n]o student is forced to attend a charter school—it is one option among several for parents.” Pet.App.54. So, as in *Carson*, *Espinoza*, and *Trinity Lutheran*, the fact that “public funds could be sent to religious organizations” poses no conceivable Establishment Clause concerns. *Id.*

In June 2023, the Board voted 3-2 to approve St. Isidore’s application. Pet.App.170-71. As one board member emphasized, using state law “to justify a denial of the application” would require the Board “to ignore the [U.S.] Constitution and relevant [U.S.] Supreme Court cases applying it.” Pet.App.164. Because St. Isidore was otherwise qualified, the First Amendment forbade the Board from denying its application on religious grounds. Pet.App.164-65.

A few months later, St. Isidore executed a charter contract with the Board. Pet.App.110-53. That contract reaffirmed that the “Charter School is a privately operated religious non-profit organization” and that the “governing board of the Charter School shall be responsible for the policies and operational decisions of [St. Isidore].” Pet.App.111, 120. It also recognized St. Isidore’s “right to freely exercise its religious beliefs and practices consistent with” all “Religious Protections” provided by state and federal law. Pet.App.135. And it confirmed that St. Isidore, like other charter schools, would “ensure that no student shall be denied admission” on the basis of any

protected characteristic, including “religious preference or lack thereof.” Pet.App.138. St. Isidore was scheduled to welcome students in the 2024 school year. Pet.App.114.

C. Procedural History

Respondent Gentner Drummond took office as the Attorney General for Oklahoma in 2023. Unlike his predecessor, he sought to bar St. Isidore from the state’s charter school program. In his view, approving St. Isidore’s application would “[u]nfortunately” require “the approval of charter schools by all faiths, even those most Oklahomans would consider reprehensible and unworthy of public funding.” Pet.App.77. In particular, he expressed his concern that approving St. Isidore “will require the state to permit extreme sects of the Muslim faith to establish a taxpayer funded public charter school teaching Sharia Law.” Pet.App.174.

Determined to prevent that possibility, Attorney General Drummond sought a writ of mandamus from the Oklahoma Supreme Court to cancel St. Isidore’s contract, and St. Isidore successfully intervened to protect its interests. Pet.App.2. The Attorney General argued that providing state funding to a Catholic school would violate the nonsectarian provisions of Oklahoma’s constitution and Charter Schools Act, as well as the federal Establishment Clause. Pet.App.181-92. And he insisted that St. Isidore relinquished its free exercise rights and had been “turned . . . into a state actor” by executing its contract with the Board. Pet.App.194.

In a split decision, the Oklahoma Supreme Court agreed with the Attorney General. Exercising original

jurisdiction, the court held that Oklahoma law prohibited the state from expending “funds for the benefit and support of the Catholic church.” Pet.App.11. Nor could the Board sponsor “a charter school program that is affiliated with a nonpublic sectarian school or religious institution.” Pet.App.12.

The majority then rejected St. Isidore’s Free Exercise defense. It purported to distinguish this Court’s recent Free Exercise precedents on the ground that St. Isidore “is a governmental entity and state actor.” Pet.App.14-15, 24-27. As the majority saw things, “St. Isidore will be acting as a surrogate of the State in providing free public education.” Pet.App.17. The majority stressed that charter schools had been statutorily designated as “public.” Pet.App.15. And it believed that St. Isidore was closely “entwined with the State” because the Board sponsored its contract and will generally monitor St. Isidore’s performance under that contract. Pet.App.18. The majority next conceded that “[t]he provision of education may not be a traditionally exclusive public function.” *Id.* But, it said, “the Oklahoma Constitutional provision for *free public* education is exclusively a public function.” Pet.App.18-19. Accepting that gerrymandered conception of what a charter school does, it followed (according to the majority) that St. Isidore is a state actor. Pet.App.19. Finally, the majority concluded its analysis by holding that funding St. Isidore would violate the federal Establishment Clause “[b]ecause it is a governmental entity and a state actor” that will “incorporate Catholic teachings into every aspect of the school.” Pet.App.24.

Justice Kuehn dissented.³ As she explained, “St. Isidore would not become a ‘state actor’ merely by contracting with the State to provide a choice in educational opportunities.” Pet.App.30. Thus, funding the school would not violate the Establishment Clause. *Id.* But excluding St. Isidore “based solely on religious affiliation[] would violate the Free Exercise Clause.” *Id.* Justice Kuehn criticized the majority’s deference to a statutory “label[]” as improperly exalting “form over substance.” Pet.App.33. And she recognized that “realities belie such labeling.” Pet.App.34. Indeed, this Court’s precedent makes clear that regulation alone—even if “extensive and detailed”—does not transform private entities “into arms of the state.” Pet.App.33-34 (quoting *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 350 (1974)). Nor could the majority “reframe” the relevant function as “publicly-funded education” to avoid the obvious fact that “education is not a ‘traditionally exclusive public function.’” Pet.App.33 & n.2. Accordingly, St. Isidore is a private entity with Free Exercise rights, and the State cannot bar it from “applying to operate a charter school” simply because it is religious. Pet.App.38. “By reaching the opposite conclusion,” Justice Kuehn submitted, “the Majority’s decision is destined for the same fate as the Montana Supreme Court’s opinion in *Espinoza*.” *Id.*

³ Chief Justice Rowe also dissented in relevant part. Pet.App.40.

REASONS FOR GRANTING THE PETITION

Time and again, this Court has held that the Free Exercise Clause prohibits a state from excluding a school from generally available funding programs solely because the school is religious. That is precisely what occurred here. Oklahoma has applied its law to bar St. Isidore from participating in the charter school program simply because it is Catholic.

The Oklahoma Supreme Court's effort to justify that Free Exercise violation by reference to anti-establishment interests also flouts this Court's precedent. And by reconceptualizing St. Isidore—a privately operated educational contractor—as a “surrogate of” the government, the Oklahoma Supreme Court distorts this Court's state-action precedents and exacerbates an intractable conflict among the lower courts. The Court should grant certiorari and reverse.

I. Oklahoma Cannot Deny Generally Available Benefits To A School Because It Is Religious.

“The Free Exercise Clause ‘protects religious observers against unequal treatment’ and subjects to the strictest scrutiny laws that target the religious for ‘special disabilities’ based on their ‘religious status.’” *Trinity Lutheran*, 582 U.S. at 458 (citation omitted). Applying that “basic principle,” this Court has consistently invalidated state efforts to “den[y] a generally available benefit” solely on account of religious exercise. *Id.*; see *Espinoza*, 591 U.S. at 489; *Carson*, 596 U.S. at 789.

The Board's approval of St. Isidore upheld that “straightforward rule.” *Espinoza*, 591 U.S. at 484.

And that rule required the Oklahoma Supreme Court to reject Respondent's invitation to exclude St. Isidore from the charter school program. *See id.* But, just as the states did in *Trinity Lutheran*, *Espinoza*, and *Carson*, the Oklahoma Supreme Court chose instead to enforce the "nonsectarian" provisions of state law to "bar[] [a] religious school[] from public benefits solely because of [its] religious character." *Espinoza*, 591 U.S. at 476. Indeed, "[i]t is undisputed that, aside from its religious affiliation, St. Isidore meets the requirements for operating a charter school." Pet.App.34. Yet, because St. Isidore is "operated by the Catholic church," the court below refused to allow the "expenditure of state funds" for St. Isidore's "benefit and support" in educating Oklahoma children. Pet.App.10-11.

"That is discrimination against religion." *Carson*, 596 U.S. at 781. Oklahoma has "exclude[d] schools from government aid solely because [they are] religious." *Espinoza*, 591 U.S. at 476. And, to avoid that policy, St. Isidore would have to "disavow its religious character" as a condition of receipt. *Trinity Lutheran*, 582 U.S. at 463. The Free Exercise Clause plainly bars Oklahoma from discriminating in this way. *See id.*; *Espinoza*, 591 U.S. at 487; *Carson*, 596 U.S. at 789.

The Establishment Clause cannot justify such hostility toward religious charter schools. This Court has "repeatedly held that the Establishment Clause is not offended when religious observers and organizations benefit from neutral government programs." *Espinoza*, 591 U.S. at 474. Any Establishment Clause objection would be

“particularly unavailing” here “because the government support makes its way to religious schools only as a result of [Oklahomans] independently choosing” to attend those schools. *Id.* Oklahoma Charter schools simply provide “additional academic choices for parents and students,” 70 Okla. Stat. § 3-131(A), and their funding is based entirely on the number of families who make that choice. “With no students, State Aid [to St. Isidore] would be zero.” Pet.App.157.

The Oklahoma Supreme Court had no good answer to any of this. Its lone response was to disregard this Court’s precedents by reconceptualizing St. Isidore (a privately operated entity) as an arm of the government. Pet.App.25-26. But by doing so, the Oklahoma Supreme Court walked straight into a circuit split—and straight into the teeth of decades of this Court’s precedents confirming that St. Isidore is *not* a “surrogate of the State.” That only underscores the need for this Court’s review.

II. By Trying To Dodge This Court’s Free Exercise Precedents, The Decision Below Deepened A Split.

The Oklahoma Supreme Court’s decision deepens a split among the lower courts over whether the activities of a privately operated school that receives state funding are attributable to the government.

This Court has long admonished that “a private entity can qualify as a state actor” only “in a few limited circumstances.” *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 809 (2019); *see, e.g., Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 158-66 (1978). Typically, the state must have “exercised

coercive power” or “provided such significant encouragement” that the private act at issue “must in law be deemed to be that of the State.” *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982).

In *Rendell-Baker v. Kohn*, this Court applied those principles to hold that a privately operated school that contracted with the state to educate maladjusted high-school students was not a state actor. 457 U.S. at 841-42. The state provided “virtually all” of the school’s funding and subjected it to “detailed regulations concerning” everything from “recordkeeping to student-teacher ratios” to “personnel policies.” *Id.* at 831-36, 840. The Court nevertheless held that the school was not a governmental actor. The school was a “private institution . . . operated by a board of directors, none of whom are public officials or are chosen by public officials,” and it did not become a state actor merely because it depended on government contracts for its funding. *Id.* at 832, 840-41. Nor did it matter that the school performed the “public function” of helping educate a population of students that the state itself could not educate. *Id.* at 842. Rather, what mattered was whether the actions at issue—the school’s personnel decisions—were forced on the school by the state. *Id.* at 841. Because they were not, there was no state action. *See id.* at 841-42.

Following that direction, at least three courts—the First, Third, and Ninth Circuits—have held that privately operated schools that contract with the state to provide free educational opportunities do not qualify as state actors. And now at least two courts—the Fourth Circuit and Oklahoma—have reached the

opposite conclusion, creating a split that has sown confusion across the 47 jurisdictions with charter school programs. *See* Center for Education Reform, *supra*. Only this Court can restore uniformity in the law.

A. The First, Third, And Ninth Circuits Hold That Educational Institutions Like Charter Schools Are Not State Actors.

At least three circuits have rejected the exact arguments that the Oklahoma Supreme Court embraced in concluding that St. Isidore is a state actor. They have instead correctly held that the actions of private educators like St. Isidore are just that—private, and not attributable to the state.

1. In *Caviness v. Horizon Community Learning Center, Inc.*, the Ninth Circuit considered whether “a private non-profit corporation running a charter school that [was] defined as a ‘public school’ by state law” engaged in state action. 590 F.3d 806, 812 (9th Cir. 2010). In a unanimous opinion authored by Judge Ikuta, the court rebuked each theory advanced by the Oklahoma Supreme Court here.

First, the Ninth Circuit explained that “a state’s statutory characterization of a private entity as a public actor for some purposes is not necessarily dispositive with respect to all of that entity’s conduct.” *Id.* at 814. Accordingly, the plaintiff could not “rel[y] on Arizona’s statutory characterization of charter schools as ‘public schools’” to support his claim under 42 U.S.C. § 1983. *Id.* That squarely conflicts with the decision below, which effectively treated Oklahoma’s “public school” label as dispositive. Pet.App.15-17.

Second, the Ninth Circuit held that the charter school was not “a state actor by virtue of ‘public entwinement in [its] management and control.’” *Caviness*, 590 F.3d at 816 n.6. Rather, as here, the state played no role in the charter school’s challenged decisions, and no public officials were involved in the charter school’s “governing board.” *Id.* Nor did the fact that the school’s state “sponsor ha[d] the authority to approve and review the school’s charter” alter the state-action calculus. *Id.* at 817. After all, “action taken by private entities with the mere approval or acquiescence of the State is not state action.” *Id.* (quoting *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 52 (1999)). And “[e]ven extensive government regulation of a private business is insufficient to make [it] a state actor if the challenged conduct was ‘not compelled or even influenced by any state regulation.’” *Id.* at 816 (quoting *Rendell-Baker*, 457 U.S. at 841-42).

Third, the Ninth Circuit rejected the exact “semantic legerdemain” that the Oklahoma Supreme Court used to conclude that St. Isidore engaged in a traditional and exclusive state function. Pet.App.34. In particular, the plaintiff in *Caviness* “argue[d] that since charter schools are ‘public schools’ under Arizona law, they therefore engage in the provision of ‘public educational services,’” as opposed to “educational services” more broadly. 590 F.3d at 814-15 (emphasis added). But this argument was “foreclosed by *Rendell-Baker*.” *Id.* at 815. While the Arizona legislature “chose to provide alternative learning environments at public expense,” that “‘in no way’ made their provision ‘the exclusive province of the State.’” *Id.* (quoting *Rendell-Baker*, 457 U.S. at

842). The relevant function was still the “provision of educational services,” which is not “traditionally and exclusively the prerogative of the state.” *Id.* at 816.

2. A divided panel of the First Circuit reached the same conclusion in *Logiodice v. Trustees of Maine Central Institute*, 296 F.3d 22 (1st Cir. 2002) (Boudin, C.J.). There, a student sued a “privately operated high school” that contracted with the government to “accept and educate all” of a district’s high school students, claiming that the school was a state actor whose disciplinary procedures deprived him of due process. *Id.* at 24-25.

The First Circuit disagreed. It explained that “education is not and never has been a function reserved to the state.” *Id.* at 26. Private entities widely educate students and have done so since the Founding. *See id.* at 26-27. And the plaintiff could not dodge that “obvious[]” conclusion by doing what the Oklahoma Supreme Court did here—by “narrow[ing] and refin[ing] the category as that of providing a publicly funded education available to all students generally.” *Id.*

Turning to government entwinement, the majority acknowledged that Maine “sponsored” attendance for the overwhelming majority of the school’s students and “regulate[d] contract schools in various respects.” *Id.* at 28. But the critical point remained that the school’s operations—including the “particular [disciplinary] activity sought to be classed as state action”—were “run by private trustees and not public officials.” *Id.* This case is no different: St. Isidore’s charter contract confirms that its board of privately appointed individuals, not the state, is “responsible

for the policies and operational decisions of the Charter School.” Pet.App.120; *see* 70 Okla. Stat. § 3-136(A)(8).

3. The Third Circuit, in an opinion authored by then-Judge Alito, also rejected the arguments accepted by the court below. In *Robert S. v. Stetson School, Inc.*, the Stetson School “worked in close concert with state and local governments” to “pursu[e] its mission of providing treatment and education to juvenile sex offenders.” 256 F.3d 159, 163 (3d Cir. 2001). A plaintiff then sued the private educational contractor under § 1983. *Id.* at 164.

The Third Circuit rejected the claim because the school and its staff “did not act under color of state law.” *Id.* at 161. This Court’s precedent made “clear” that “Stetson’s receipt of government funds did not make it a state actor.” *Id.* at 165. The “detailed requirements set out in [the state’s] contracts with Stetson” were “also insufficient because they did not ‘compel or even influence’” the challenged conduct. *Id.* (quoting *Sullivan*, 526 U.S. at 52). Nor did it matter that the school provided “services that [the government] was required by state law to provide.” *Id.* at 166. As then-Judge Alito explained, this “very argument” was “rejected in *Rendell-Baker*” too. *Id.*

B. The Fourth Circuit And Oklahoma Hold That Institutions Like Charter Schools Are State Actors.

Tellingly, the Oklahoma Supreme Court did not try to reconcile its analysis with the foregoing decisions. It refused even to acknowledge them. Instead, the court relied on flawed or misleading

decisions from other jurisdictions that only highlight the doctrinal disarray. Pet.App.19-21 & n.11.

Like Oklahoma, the Fourth Circuit sits squarely on the wrong side of this split. In *Peltier*, a sharply divided en banc court held that a charter school engaged in state action when it adopted a gender-based dress code. 37 F.4th at 112. Like the decision here, the majority emphasized that “North Carolina law expressly” designates that a charter school “*shall be a public school*” and provides such schools “substantial public funding.” *Id.* at 117-18 (quoting N.C. Gen. Stat. § 115C-218.15(a)). In the majority’s view, North Carolina had thus “delegated to charter school operators . . . part of the state’s constitutional duty to provide free, universal . . . education,” thereby rendering the schools state actors. *Id.* at 118. In addition, the majority characterized the relevant function of a charter school—in conflict with the First, Third, and Ninth Circuits—through a “narrower lens” as the operation of a “public” school “funded with public dollars.” *Id.* at 119. The majority then concluded that this circular conception of a charter school’s function—*i.e.*, the provision of a “public” education—was “traditionally and exclusively reserved to the state.” *Id.*

Six judges dissented. The lead dissent began by distilling “three important principles” for the state-action inquiry from this Court’s decision in *Rendell-Baker*: “(1) near-total or even total state funding carries little weight; (2) regulation by the state of the conduct in question is insufficient—the state must compel or coerce the conduct; and (3) the conduct at issue must be the historic exclusive prerogative of the

state to qualify as state action.” *Id.* at 142 (Quattlebaum, J., joined by Richardson, Rushing, Wilkinson, Niemeyer, and Agee, JJ., dissenting in part). These principles—“followed by [the] court’s sister circuits” in *Caviness*, *Logiodice*, and *Robert S.*—demonstrated that the charter school was not a state actor. *Id.* at 142-43. It made no difference that the school received “all or the vast majority of [its] funding through the state,” nor that it bore “the public school label,” because the state did not “compel or coerce the challenged conduct.” *Id.* at 143. And the dissent chided the majority for the same maneuver the Oklahoma Supreme Court performed here—“circular[ly]” defining the relevant function as a “free, public education” to load the dice in favor of state action. *Id.* at 147; *see also id.* at 154-55 (Wilkinson, J., dissenting).

In addition, the decision below noted that the Tenth Circuit has characterized a “public charter school” as “a local governmental entity” for purposes of municipal liability under § 1983. *Brammer-Hoelter v. Twin Peaks Charter Acad.*, 602 F.3d 1175, 1188 (10th Cir. 2010); *see* Pet.App.21 n.11. Although the Tenth Circuit did not engage in a complete state-action analysis, its characterization illustrates the confusion on this critical issue.

* * *

In short, lower courts cannot agree on whether a privately operated school becomes a state actor by contracting with the state to offer free educational opportunities. That entrenched split will deny families in Oklahoma and the Fourth Circuit the full opportunity to participate in valuable educational

programs based on the happenstance of geography. This Court should intervene to restore uniformity.

III. The Decision Below Is Wrong.

The decision below also sharply conflicts with this Court's precedents. As St. Isidore's contract makes clear, it is a "privately operated religious non-profit organization entitled to [constitutional rights]." Pet.App.111. It was created by "the Archdiocese of Oklahoma City and the Diocese of Tulsa." Pet.App.214-15; *see* Pet.App.225. And its members privately appoint a board to "manage and direct the business and affairs of the School" in accordance with the Catholic educational model they designed. Pet.App.226, 228.

Nevertheless, the Oklahoma Supreme Court concluded that St. Isidore lacks any Free Exercise rights and is instead an arm of the Oklahoma government because: (1) the state legislature had labeled charter schools "public," Pet.App.15-17; (2) charter schools are closely "entwined" with the state, Pet.App.18; and (3) "*free public* education is exclusively a public function," Pet.App.19. Each argument runs headlong into this Court's precedents.

A. State-Law Labels Cannot Dictate The Federal State-Action Inquiry.

To start, federal constitutional rights do not depend on "state law labels." *Bd. of Cnty. Comm'rs, Wabaunsee Cnty. v. Umbehr*, 518 U.S. 668, 679 (1996). Otherwise, states could manipulate their laws to defeat federal guarantees. This Court has thus long trained its "focus on substance over labels" when adjudicating constitutional questions. *McElrath v.*

Georgia, 601 U.S. 87, 96 (2024); *see also, e.g., Harris v. Quinn*, 573 U.S. 616, 641 n.10 (2014); *United States v. Craft*, 535 U.S. 274, 279 (2002); *Carpenter v. Shaw*, 280 U.S. 363, 367-68 (1930).

The state-action inquiry is no different. This Court has repeatedly rejected the facile notion that labeling an entity “public” makes it a state actor. In *Jackson*, for example, this Court held that state legislation defining a privately operated electric company as a “public utility” did not transform the company’s conduct into state action. *See* 419 U.S. at 350 n.7, 352-54. In *Polk County v. Dodson*, this Court rebuffed the argument that a “public defender” paid by the state had acted under color of state law. 454 U.S. 312, 317-20 (1981). And in *Halleck*, this Court determined that an operator of “public access channels” was still a “private actor.” 587 U.S. at 805.

Similarly, this Court has emphasized that the “substance of free exercise protections” does not turn “on the presence or absence of magic words.” *Carson*, 596 U.S. at 785. And it has refused to reduce the scope of First Amendment protections “to a simple semantic exercise.” *Id.* at 784 (citation omitted); *see also Fulton*, 593 U.S. at 538-40 (rejecting City’s argument that “a private religious foster agency” provided “a public accommodation”).

The Oklahoma Supreme Court therefore erred by fixating on the “legislative designation of public school.” Pet.App.17. St. Isidore is a privately run religious institution, and the state’s “statutory designations do not make [this] private actor’s conduct state action.” *Peltier*, 37 F.4th at 145

(Quattlebaum, J., dissenting in part) (citing *Jackson*, 419 U.S. at 350 n.7); see *Caviness*, 590 F.3d at 814.

B. The State Is Not Closely Entwined With St. Isidore’s Pedagogical Choices Or Private Operation.

The Oklahoma Supreme Court next posited that St. Isidore’s conduct is closely “entwined with the State.” Pet.App.18. But there is no “pervasive entwinement of public institutions and public officials in [St. Isidore’s] composition and workings” that could justify classifying its operation or curricular design as “state action.” *Brentwood Acad. v. Tenn. Secondary Sch. Ath. Ass’n*, 531 U.S. 288, 298-300 (2001).

First, the Oklahoma Supreme Court opined that St. Isidore is *part of* the government as a “state-created entity.” Pet.App.18. That is categorically false. St. Isidore was created by the Archbishop of Oklahoma City and Bishop of Tulsa. Pet.App.225. Its contract with the Board confirms that St. Isidore “is a privately operated religious non-profit organization.” Pet.App.111. And, regardless, a private corporation’s conduct is not state action merely because the government created it. This Court made that clear in holding that the U.S. Olympic Committee is not a state actor even though Congress “created” it, “granted it a corporate charter,” “imposed certain requirements” upon it, and provided it direct funding. *S.F. Arts & Ath., Inc. v. U.S. Olympic Comm.*, 483 U.S. 522, 542-44 & n.23 (1987). None of that was “enough to make the USOC’s actions those of the Government.” *Id.* at 547. The same goes for St. Isidore.

Second, none of the conduct of which Respondent complains is attributable to the government. Just as

in *Rendell-Baker*, St. Isidore “is operated by a board of directors, none of whom are public officials or are chosen by public officials.” *Rendell-Baker*, 457 U.S. at 832; see Pet.App.226-30. And Oklahoma law generally “exempt[s]” St. Isidore “from all statutes and rules relating to schools, boards of education, and school districts.” 70 Okla. Stat. § 3-136(A)(5). In fact, Oklahoma leaves charter school operators free to design and implement their own preferred curriculum and teaching philosophy with little state oversight. See *id.* §§ 3-131(A), 3-136(A)(3).

St. Isidore has merely “contracted with the state to provide students with educational services that are funded by the state.” *Caviness*, 590 F.3d at 815. “Acts of such private contractors do not become acts of the government by reason of their significant or even total engagement in performing public contracts.” *Rendell-Baker*, 457 U.S. at 841; see *Blum*, 457 U.S. at 1011. And this is true even if the contractor “is subject to extensive state regulation,” *Jackson*, 419 U.S. at 350, like the school in *Rendell-Baker*, 457 U.S. at 831-36.

Moreover, the state is not responsible for the specific acts Respondent has challenged: St. Isidore’s religious character and its choice to teach in the Catholic intellectual tradition. The Act explicitly frees charter schools to develop curricula *without* state interference, encourages them to offer “different and innovative teaching methods,” and allows them to “emphasize[] a specific learning philosophy or style or certain subject areas.” See 70 Okla. Stat. §§ 3-131(A), 3-136(A)(3). Nor will state officials teach St. Isidore’s curriculum. Oklahoma charter schools hire their own teachers, who are not subject to the state’s “Teacher

and Leader Effectiveness Standards” and are not required to have state teaching certificates. *See Oklahoma Charter Schools Program*, Okla. St. Dep’t of Educ. (Apr. 25, 2022), <https://bit.ly/4eldMqU>. No one could reasonably think that the state “compelled or even influenced” St. Isidore to affiliate with the Catholic Church or design and teach a Catholic curriculum. *Rendell-Baker*, 457 U.S. at 841.

C. Education Is Not A Traditional And Exclusive Public Function.

That leaves only the lower court’s belief that St. Isidore will take over a traditional and exclusive public function. The court agreed that “the education of children does not . . . fall within the narrow range of exclusive state functions.” *Santiago v. Puerto Rico*, 655 F.3d 61, 69 (1st Cir. 2011); *see* Pet.App.18. But the court sought to wriggle free from that conclusion by redefining the relevant “function” St. Isidore will perform as the provision of a “*free public* education.” Pet.App.19.

That “is nothing but a circular characterization assuming the answer to the very question asked.” *Peltier*, 37 F.4th at 154 (Wilkinson, J., dissenting). “By using outcome-determining adjectives such as ‘free’ and ‘public,’” the Oklahoma Supreme Court has all but “ignore[d] the threshold state-action question.” *Id.* at 147 (Quattlebaum, J., dissenting in part) (quoting *Halleck*, 587 U.S. at 811).

This Court rejected the same ruse in *Carson*. Maine argued that its tuition-assistance program subsidized the equivalent of a “free public education,” which must be secular. 596 U.S. at 782. But this Court saw through that “semantic exercise,” and

rejected Maine's effort to "manipulate[]" the definition of the program in order to "subsume" the very religious discrimination being challenged. *Id.* at 784 (citation omitted). And the result here otherwise defies this Court's precedent, which holds that a state's choice to fund private educational providers "in no way makes the[ir] services the exclusive province of the State." *Rendell-Baker*, 457 U.S. at 482.

That reality does not change even if Oklahoma is "required by state law" to provide for free education. *Robert S.*, 256 F.3d at 166 (Alito, J.). The relevant question is not whether a private actor supports "a proper public objective" but, instead, whether it performs one of the few functions that are "exclusively and traditionally public." *Brentwood*, 531 U.S. at 302-03. Education is not such a function. *See Logiodice*, 296 F.3d at 26-27. Further, Oklahoma's charter schools do not supplant the state's actual system of government-operated public schools. That system remains available to all Oklahoma students. And no student is assigned to attend St. Isidore or any other charter school. It is merely an "additional" option available to students. 70 Okla. Stat. § 3-131(A)(4). The state's "[c]ontracting to provide educational alternatives" is thus "not the same as a wholesale outsourcing of a government function," Pet.App.34-35, let alone one that the government has "traditionally and exclusively performed," *Halleck*, 587 U.S. at 809.

D. The Oklahoma Supreme Court's Flawed Conception Of State Action Cannot Justify Its Establishment Clause Concerns.

The Oklahoma Supreme Court's Establishment Clause concerns were equally baseless. The court "hinge[d]" its Establishment Clause analysis "on whether [the challenged] religious activity involve[d] a 'state actor' or constitute[d] 'state action.'" Pet.App.23. And because it concluded that St. Isidore is "a governmental entity and a state actor," it held that St. Isidore could not "operate . . . as a Catholic school." Pet.App.24.

But, as explained above, that conclusion proceeded from a flawed premise. St. Isidore is a privately incorporated entity, operated by a private board. The Establishment Clause "is not offended" when such entities "benefit from neutral government programs." *Espinoza*, 591 U.S. at 474. The phantom Establishment Clause concerns that flowed from the Oklahoma Supreme Court's erroneous conception of state action cannot justify its infringement of St. Isidore's Free Exercise rights. Nor does an errant reading of the Establishment Clause provide "a compelling governmental interest that satisfies strict scrutiny," as the lower court believed. Pet.App.27.

On the contrary, a state's "interest in separating church and State more fiercely than the Federal Constitution" demands "cannot qualify as compelling in the face of the infringement of free exercise." *Espinoza*, 591 U.S. at 484-85 (citation omitted). It is also beyond cavil that a state "violates the Free Exercise Clause" by "denying a qualified religious

entity a public benefit” on religious grounds. *Trinity Lutheran*, 582 U.S. at 466. As a result, “[a] State’s antiestablishment interest does not justify enactments that exclude some members of the community from an otherwise generally available public benefit because of their religious exercise.” *Carson*, 596 U.S. at 781.

* * *

At bottom, Oklahoma’s relationship to charter schools is “very much like” the relationship between the states and schools in the programs in *Espinoza* and *Carson*: “[I]n both instances the government is putting up money so as to facilitate the choice by families of privately run schools they prefer for their children.” Stephen D. Sugarman, *Is It Unconstitutional to Prohibit Faith-Based Schools from Becoming Charter Schools?*, 32 J. L. & Relig. 227, 250 (2017). And neither Oklahoma charter schools nor schools funded through state voucher money “have the central characteristics” of a school designed, created, and operated by the government. *Id.* at 252.

Accordingly, St. Isidore is not an arm of the Oklahoma government, and Oklahoma has plainly violated its Free Exercise rights by cutting it off from the benefits created by the Charter Schools Act “solely because [it is] religious.” *Espinoza*, 591 U.S. at 487. The Oklahoma Supreme Court’s attempt to dodge that “straightforward rule” warrants review. *Id.* at 484.

IV. The Questions Presented Are Exceptionally Important, And This Case Presents An Ideal Vehicle For Resolving Them.

This case raises profoundly important issues of federal law. Three times in the past decade, this Court has granted certiorari to rebuke states that denied generally available benefits to religious schools. But the decision below opens an untenable loophole through which the states can nullify the Free Exercise rights that religious institutions have to access such benefits on equal footing.

The consequences of that misguided approach reach far beyond religious schools. To safeguard “a robust sphere of individual liberty,” courts must enforce a clear “constitutional boundary” between public and private acts. *Halleck*, 587 U.S. at 808. And this case highlights why they must—not just for St. Isidore, but for the nearly 8,000 charter schools across the country. *See* Center for Education Reform, *supra*. Designating them state actors would “threaten[] [their] independence and send[] education in a monolithic direction, stifling the competition that inevitably spurs production of better options” for students. *Peltier*, 37 F.4th at 155 (Wilkinson, J., dissenting). It would also expose charter schools to substantial fee-shifting § 1983 liability that would chill innovation and harm educational choice. *See* States *Peltier* Br., *supra*, at 19-22; Great Hearts Academy Amicus Br. at 14-23, *Peltier*, No. 22-238 (U.S. Oct. 14, 2022).

Similar concerns extend well beyond charter schools. Thousands of religious charitable organizations serve the public through government-

funded programs. Yet, under the logic of the opinion below, each might be ordered to disavow their religious character to continue doing so. *See, e.g., Catholic Charities of the Diocese of Arlington Amicus Br.* at 5-8, 11-12, *Peltier*, No. 22-238 (U.S. Oct. 14, 2022).

This Court appears to have already recognized the importance of this issue, having called for the views of the Solicitor General in *Peltier*. The Fourth Circuit there held that a North Carolina charter school’s dress code violated the Fourteenth Amendment. But *Peltier* ultimately provided a poor vehicle for addressing the underlying state-action question. As the Solicitor General observed, it was “undisputed that [the defendant charter school was] obligated by North Carolina statute and the express terms of its charter to conform its [dress code] to the U.S. Constitution, including the Equal Protection Clause.” United States Br. at 21, *Peltier*, No. 22-238 (U.S. May 22, 2023). Hence, reversal on the constitutional state-action question would have “ha[d] no effect” on the merits of the challenge. *Id.*; *see also id.* at 7, 18-19. In addition, the plaintiffs had pursued other claims under Title IX and for breach of contract that offered all the relief they sought, regardless of whether the school was a state actor. *See id.* at 22-23.

Unlike *Peltier*, this case provides a clean opportunity to resolve this consequential issue. Most importantly, the state-action question is dispositive. The lower court concluded that St. Isidore’s operation violates the Establishment Clause solely because (the court believed) St. Isidore is a state actor. By contrast, “[t]here is no Establishment Clause issue if the action

in question is not ‘state action.’” Pet.App.33. Instead, the Free Exercise Clause would prevent the state from invalidating St. Isidore’s contract on religious grounds. *See Carson*, 596 U.S. at 789. And nothing else in this case could provide the Attorney General that remedy which he obtained. It is “undisputed” that St. Isidore otherwise “meets the requirements for operating a charter school.” Pet.App.34. And, contrary to *Peltier*, St. Isidore’s contract specifically carves out its rights to operate “consistent with [the] Religious Protections” secured by the First Amendment. Pet.App.111-12.

Moreover, nothing complicates this Court’s review. This was an original action in the Oklahoma Supreme Court. There is no voluminous record to sift. The issues have been preserved and exhaustively briefed. And this Court will have the benefit of considering the conflicting opinions of the court below—as well as the considered views of a number of respected jurists from multiple circuits.

* * *

Simply put, St. Isidore is a private religious entity that accepted Oklahoma’s invitation to create an innovative school to bring educational diversity and choice through the state’s charter school program. The state did not design that school, it did not create St. Isidore’s religious character, it did not instruct the school to offer an education in the Catholic tradition, and it will not hire or supervise the school’s teachers and administrators. *None* of what Respondent attacks is attributable to the state of Oklahoma.

Accordingly, the Free Exercise Clause protects St. Isidore from discriminatory state laws that would

bar it from participating in the charter school program or receiving funding solely because the school it has chosen to build is religious. This Court should grant review to safeguard that fundamental protection, uphold this Court's Free Exercise precedents, and resolve a significant split of authority that threatens to "drape a pall of orthodoxy over charter schools and shift educational choice and diversity into reverse." *Peltier*, 37 F.4th at 150 (Wilkinson, J., dissenting).

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

JOHN A. MEISER
 MEREDITH H. KESSLER
 LINDSAY AND MATT
 MOROUN RELIGIOUS
 LIBERTY CLINIC
 Notre Dame Law School
 1338 Biolchini Hall of Law
 Notre Dame, IN 46556

MICHAEL R. PERRI
 SOCORRO A. DOOLEY
 PERRI DUNN, PLLC
 100 N. Broadway
 Suite 3280
 Oklahoma City, OK
 73102

STEVEN A. ENGEL
 MICHAEL H. MCGINLEY
Counsel of Record
 M. SCOTT PROCTOR
 DECHERT LLP
 1900 K Street, NW
 Washington, DC 20006
 (202) 261-3378
 michael.mcginley@dechert.com

BRIAN A. KULP
 ANTHONY R. JADICK
 DECHERT LLP
 Cira Centre
 2929 Arch Street
 Philadelphia, PA 19104

Counsel for Petitioner

October 7, 2024

APPENDIX

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A — MAJORITY OPINION OF THE SUPREME COURT OF THE STATE OF OKLAHOMA, FILED JUNE 25, 2024.	1a
APPENDIX B — DISSENTING OPINION OF KUEHN, J., IN THE SUPREME COURT OF THE STATE OF OKLAHOMA, FILED JUNE 25, 2024	29a
APPENDIX C — DISSENTING OPINION OF ROWE, V.C.J., IN THE SUPREME COURT OF THE STATE OF OKLAHOMA, FILED JUNE 25, 2024	39a
APPENDIX D — OPINION OF THE ATTORNEY GENERAL OF OKLAHOMA, DATED DECEMBER 1, 2022	41a
APPENDIX E — OPINION OF THE ATTORNEY GENERAL, FILED FEBRUARY 23, 2023.....	74a
APPENDIX F — 70 OKL.ST.ANN. § 3-131	79a
APPENDIX G — 70 OKL.ST.ANN. § 3-132	81a
APPENDIX H — 70 OKL.ST.ANN. § 3-134	88a
APPENDIX I — 70 OKL.ST.ANN. § 3-135.....	97a
APPENDIX J — 70 OKL.ST.ANN. § 3-136.....	102a

Table of Appendices

	<i>Page</i>
APPENDIX K — 70 OKL.ST.ANN. § 1-106.....	107a
APPENDIX L — OK CONST. ART. 2, § 5.....	108a
APPENDIX M — OK CONST. ART. 1, § 5.....	109a
APPENDIX N — CHARTER SCHOOL CONTRACT	110a
APPENDIX O — AFFIDAVIT OF SKYLER H. LUSNIA, DATED NOVEMBER 16, 2023	154a
APPENDIX P — EXCERPT OF TRANSCRIPT OF THE SPECIAL MEETING OF THE STATEWIDE VIRTUAL CHARTER SCHOOL BOARD, OKLAHOMA HISTORY CENTER, DATED JUNE 5, 2023	160a
APPENDIX Q — MINUTES OF SPECIAL MEETING IN THE STATEWIDE VIRTUAL CHARTER SCHOOL BOARD, DATED JUNE 5, 2023.....	166a
APPENDIX R — PETITIONER’S BRIEF IN THE SUPREME COURT OF THE STATE OF OKLAHOMA, DATED OCTOBER 20, 2023	172a
APPENDIX S — EXCERPTS FROM VIRTUAL CHARTER APPLICATION OF ST. ISIDORE OF SEVILLE CATHOLIC VIRTUAL SCHOOL, REVISED MAY 25, 2023	196a

1a

**APPENDIX A — MAJORITY OPINION OF
THE SUPREME COURT OF THE STATE OF
OKLAHOMA, FILED JUNE 25, 2024**

IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

2024 OK 53
Case No. 121,694

GENTNER DRUMMOND, ATTORNEY
GENERAL FOR THE STATE OF OKLAHOMA,
ex rel. STATE OF OKLAHOMA,

Petitioner,

v.

OKLAHOMA STATEWIDE VIRTUAL CHARTER
SCHOOL BOARD; ROBERT FRANKLIN,
CHAIRMAN OF THE OKLAHOMA STATEWIDE
VIRTUAL CHARTER SCHOOL BOARD FOR THE
FIRST CONGRESSIONAL DISTRICT; WILLIAM
PEARSON, MEMBER OF THE OKLAHOMA
STATEWIDE VIRTUAL CHARTER SCHOOL
BOARD FOR THE SECOND CONGRESSIONAL
DISTRICT; NELLIE TAYLOE SANDERS,
MEMBER OF THE OKLAHOMA STATEWIDE
VIRTUAL CHARTER SCHOOL BOARD FOR THE
THIRD CONGRESSIONAL DISTRICT; BRIAN
BOBECK, MEMBER OF THE OKLAHOMA
STATEWIDE VIRTUAL CHARTER SCHOOL
BOARD FOR THE FOURTH CONGRESSIONAL
DISTRICT; SCOTT STRAWN, MEMBER OF
THE OKLAHOMA STATEWIDE VIRTUAL
CHARTER SCHOOL BOARD FOR THE FIFTH
CONGRESSIONAL DISTRICT,

Respondents,

2a

Appendix A

and

ST. ISIDORE OF SEVILLE
CATHOLIC VIRTUAL SCHOOL,

Intervenor.

Filed June 25, 2024

**APPLICATION TO ASSUME ORIGINAL
JURISDICTION FOR WRIT OF MANDAMUS AND
DECLARATORY RELIEF**

¶ 0 Petitioner brought this action seeking a writ of mandamus and declaratory relief that Respondents' contract with a religious charter school violates state and federal law and is unconstitutional. Original jurisdiction is assumed, and we grant the extraordinary and declaratory relief sought by Petitioner.

**ORIGINAL JURISDICTION ASSUMED;
WRIT OF MANDAMUS AND DECLARATORY
RELIEF GRANTED.**

Winchester, J.

¶ 1 Petitioner Gentner Drummond, Attorney General for the State of Oklahoma, *ex rel.* State of Oklahoma ("State") seeks a writ of mandamus directing Respondents Oklahoma Statewide Virtual Charter School Board, Robert Franklin, William Pearson, Nellie Tayloe Sanders, Brian Bobek, and Scott Strawn (collectively "Charter School Board") to rescind the Charter School Board's contract with Intervenor St. Isidore of Seville Catholic

Appendix A

Virtual School (“St. Isidore”) on grounds that the contract (“St. Isidore Contract”) violates state and federal law. The State also seeks a declaratory judgment that the St. Isidore Contract is unconstitutional. The Court held oral argument on April 2, 2024.

¶ 2 Original jurisdiction is assumed. Okla. Const. art. 7, § 4. The Court invokes its *publici juris* doctrine to assume original jurisdiction in this matter as the State has presented the Court with an issue of public interest that warrants an immediate judicial determination. *Indep. Sch. Dist. #52 of Okla. Cty. v. Hofmeister*, 2020 OK 56, ¶ 60, 473 P.3d 475, 500. We grant the extraordinary and declaratory relief sought by the State. *Ethics Comm’n of State of Okla. v. Cullison*, 1993 OK 37, ¶ 4, 850 P.2d 1069, 1072.

FACTS AND PROCEDURAL HISTORY

¶ 3 The Oklahoma Legislature has a constitutional duty to establish a system of free public schools. Okla. Const. art. 13, § 1. In 1999, the Legislature enacted the Oklahoma Charter Schools Act (“Act”), 70 O.S. Supp. 2023, §§ 3-130 *et seq.*, to help carry out this duty. Under the Act, a charter school is a public school, sponsored by an entity such as a school district, technology center, regional institution of higher education, federally recognized tribe, or the State Board of Education. 70 O.S. Supp. 2022, § 3-132. Charter schools use innovative methods and forms of accountability, provide academic choices for students and parents, and offer different professional opportunities for teachers and administrators. 70 O.S.2021, § 3-131.

Appendix A

However, the Act requires that all charter schools be nonsectarian in their programs, admission policies, and other operations. 70 O.S. Supp. 2022, § 3-132.

¶ 4 The Archdiocese of Oklahoma City and the Diocese of Tulsa applied to the Charter School Board to establish St. Isidore, a religious virtual charter school. St. Isidore does not dispute that it is a religious institution. Its purpose is “[t]o create, establish, and operate” the school as a Catholic school. Specifically, it plans to derive “its original characteristics and its structure as a genuine instrument of the church” and participate “in the evangelizing mission of the church.”¹ And

[r]ooted in the Catholic understanding of the human person and her or his relationship with God and neighbor, [St. Isidore] fully embraces the teachings of the Catholic Church’s Magisterium, and [St. Isidore] fully incorporates these into every aspect of the School, including but not limited to its curriculum and co-curricular activities.²

St. Isidore has two members, the Archbishop of the Archdiocese of Oklahoma City and the Bishop of the Diocese of Tulsa. A Board of Directors (between 5 and 15 members) will direct and manage the school; not more than two non-Catholics may serve on the board.

1. Pet’r’s. App. I, Ex. B, p. 92.

2. Pet’r’s. App. I, Ex. B, p. 276.

Appendix A

¶ 5 The Charter School Board is the state body with the sole authority to form virtual charter schools under the Act. 70 O.S.2021, § 3-145.1.³ On June 5, 2023, the Charter School Board voted 3-2 to approve St. Isidore’s revised application to become an Oklahoma virtual charter school. On October 9, 2023, the Charter School Board voted again 3-2 to approve St. Isidore’s contract for sponsorship. St. Isidore was created with the Charter School Board as its government sponsor. On October 16, 2023, the parties executed the St. Isidore Contract. The St. Isidore Contract commences on July 1, 2024.

¶ 6 A Virtual Charter School Authorization and Oversight Manual provides the model template for a virtual charter school contract. However, the Charter School Board can negotiate contract terms that add to or vary from the model contract, if the terms comply with “applicable state, federal, local, and/or tribal law.” Okla. Admin. Code § 777:10-3-3(g).

¶ 7 The St. Isidore Contract varies significantly from the model contract. The St. Isidore Contract recognizes that certain rights, exemptions, or entitlements apply to St. Isidore as a religious organization under state and federal law, including the “ministerial exception” and aspects of the “church autonomy doctrine.”⁴ The St. Isidore Contract does not contain the model contract section titled

3. On July 1, 2024, the Statewide Charter School Board will assume the duties of the Charter School Board. 70 O.S. Supp. 2023, § 3-132.1.

4. Pet’r’s. App. I, Ex. A, p. 3.

Appendix A

“Prohibition of religious affiliation,” which provides that, except as permitted by applicable law, a charter school “shall be nonsectarian in its programs.” Instead, the St. Isidore Contract states that St. Isidore has the right to freely exercise its religious beliefs and practices consistent with its religious protections.⁵ Under the model contract, a charter school must warrant “that it is not affiliated with a nonpublic sectarian school or religious institution.” In the St. Isidore Contract, St. Isidore warrants that it is affiliated with a nonpublic sectarian school or religious institution.⁶

¶ 8 Due to the nature of the St. Isidore Contract, the State seeks a writ of mandamus directing the Charter School Board to rescind the St. Isidore Contract. The question before this Court is whether the St. Isidore Contract violates state and federal law and is unconstitutional. We hold that the St. Isidore Contract violates the Oklahoma Constitution, the Act, and the federal Establishment Clause. St. Isidore is a public charter school. The Act does not allow a charter school to be sectarian in its programs, admissions policies, employment practices, and operations. The Act’s mandate is in line with the Oklahoma Constitution and the Establishment Clause, which both prohibit the State from using public money for the establishment of a religious institution. St. Isidore’s educational philosophy is to establish and operate the school as a Catholic school. Under both state and federal law, the State is not authorized to establish or fund St. Isidore.

5. Pet’r’s. App. I, Ex. A, p. 13.

6. Pet’r’s. App. I, Ex. A, p. 20.

Appendix A

DISCUSSION

I. OKLAHOMA'S CONSTITUTION AND THE ACT PROHIBIT THE ST. ISIDORE CONTRACT.

A. Article 2, Section 5 of the Oklahoma Constitution prohibits the State from using public money for the benefit or support of any religious institution.

¶ 9 We first look to the Oklahoma Constitution. Article 2, Section 5 states:

No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.

Okla. Const. art. 2, § 5. The objective of construing the Oklahoma Constitution is to give effect to the framers' intent, as well as the people adopting it. *Shaw v. Grumbine*, 1929 OK 116, ¶ 30, 278 P. 311, 315 (quoting *Lake Cty. v. Rollins*, 130 U.S. 662 (1889)).

¶ 10 Our Court discussed the framers' intent in drafting Article 2, Section 5 in *Prescott v. Oklahoma Capitol Preservation Commission*, 2015 OK 54, 373 P.3d 1032, wherein we held that the placement of a

Appendix A

Ten Commandments monument on the grounds of the Oklahoma State Capitol violated Article 2, Section 5. The Court concluded that although the State did not spend public funds to acquire the monument, the monument operated “for the use, benefit or support of a sect or system of religion.” *Id.* ¶ 7, 373 P.3d at 1034. The Court held:

The plain intent of Article 2, Section 5 is to ban State Government, its officials, and its subdivisions from using public money or property for the benefit of any religious purpose. Use of the words “no,” “ever,” and “any” reflects the broad and expansive reach of the ban.

Id. ¶ 4, 373 P.3d at 1033. Justice Taylor, concurring, went into greater detail regarding the framers’ intent, citing Albert H. Ellis, the Second Vice President of the Constitutional Convention. Mr. Ellis explained that Article 2, Section 5:

[N]ot only guards the citizens right to be free from taxation for the support of the church, but protects the rights of all denominations, however few the number of their respective adherents, by with-holding any incentive that might prompt any ecclesiastical body to participate in political struggles and by reason of their numbers exert an undue influence and become beneficiaries at the expense of the public and a menace to weaker denominations and ultimately destructive of rel[i]gious liberty.

Appendix A

Id. ¶ 5, 373 P.3d at 1037 (Taylor, J., concurring in denial of reh’g) (citations omitted). The concurrence also noted that the framers were religious men who started their proceedings during the Convention with prayers. However, “they recognized the necessity of a complete separation of church and state and sought to prevent the ills that would befall a state if they failed to provide for this complete separation in the Oklahoma Constitution.” *Id.* ¶ 6, 373 P.3d at 1038.⁷

¶ 11 As contended by the *Amici Curiae* in this case, the *Prescott* Court also wrestled with whether Article 2, Section 5 is a Blaine Amendment. Justice Gurich noted in her concurrence:

[I]n spite of the court filings in this case, which conclude that [Article 2, Section 5] of the Oklahoma Constitution is a Blaine Amendment, nothing in the recorded history of the Oklahoma Constitutional Convention, this Court’s case law, or any other historical evidence supports this conclusion. In fact, all evidence is to the contrary.

Id. ¶ 16, 373 P.3d at 1050 (Gurich, J., concurring in denial of reh’g). After discussing the long history of the Blaine Amendment in detail, she concluded:

7. After *Prescott*, Oklahoma voters in 2016, through State Question 790, were granted the opportunity to repeal Article 2, Section 5 of the Oklahoma Constitution. The voters declined to do so.

Appendix A

Characterizing [Article 2, Section 5] of the Oklahoma Constitution as a Blaine Amendment completely ignores the intent of the founders of the Oklahoma Constitution who purposely sought to ensure future generations of Oklahomans would be free to practice religious freedom without fear of governmental intervention.

Id. ¶ 24, 373 P.3d at 1052.⁸

¶ 12 The framers' intent is clear: the State is prohibited from using public money for the "use, benefit or support of a sect or system of religion." Although a public charter school, St. Isidore is an instrument of the Catholic church, operated by the Catholic church, and will further the evangelizing mission of the Catholic church in its

8. Other Justices also concluded that Article 2, Section 5 is not a Blaine Amendment. Justice Taylor noted that in his very complete discussion of Article 2, Section 5, Mr. Ellis never mentioned the Blaine Amendment and explained how any reliance on Article 2, Section 5 as a Blaine Amendment is misplaced. *Prescott*, 2015 OK 54, ¶¶ 5, 17-20, 373 P.3d at 1037, 1040-41 (Taylor, J., concurring in denial of reh'g). Justice Edmondson noted that the origin of Article 2, Section 5 was with Thomas Jefferson and the example set by the People of Virginia and not the 1876 Blaine Amendment. *Id.* ¶ 1, 373 P.3d at 1036 (Edmondson, J., concurring in denial of reh'g). Justice Combs, dissenting from the Court, stated that he "would agree with the other Justices of this Court that [Article 2, Section 5] is not Oklahoma's version of a Blaine Amendment. The breadth and scope of [Article 2, Section 5] differ significantly from the failed Blaine Amendment." *Id.* ¶ 12, 373 P.3d at 1057 (Combs, V.C.J., dissenting to denial of reh'g).

Appendix A

educational programs. The expenditure of state funds for St. Isidore's operations constitutes the use of state funds for the benefit and support of the Catholic church. It also constitutes the use of state funds for "the use, benefit, or support of . . . a sectarian institution." The St. Isidore Contract violates the plain terms of Article 2, Section 5 of the Oklahoma Constitution. Enforcing the St. Isidore Contract would create a slippery slope and what the framers' warned against—the destruction of Oklahomans' freedom to practice religion without fear of governmental intervention. *See Gurney v. Ferguson*, 1941 OK 397, ¶ 16, 122 P.2d 1002, 1005 (warning of an "at least partial control of [sectarian] schools by successive legislative enactment" and noting "[f]rom partial control to an effort at complete control might well be the expected development").

B. Article 1, Section 5 of the Oklahoma Constitution and the Act mandate that public charter schools are nonsectarian.

¶ 13 The Oklahoma Constitution also delegates to the Legislature the constitutional duty to establish and maintain a system of free public schools. Okla. Const. art. 13, § 1. As part of its duty, the Constitution mandates:

Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the state and free from sectarian control[.]

Okla. Const. art. 1, § 5.

Appendix A

¶ 14 The Legislature enacted the Act to help carry out this constitutional duty. Under the Act, a charter school is a *public school*, sponsored by a governmental entity. 70 O.S. Supp. 2022, § 3-132(D). In line with the constitutional mandate, the Act requires that all charter schools be nonsectarian in their programs, admission policies, and other operations. 70 O.S.2021, § 3-136(A)(2). The Act prohibits the Charter School Board from sponsoring a charter school program that is affiliated with a nonpublic sectarian school or religious institution. *Id.* Our Court has defined “sectarian institution” as a “school or institution of learning which is owned and controlled by a church and which is avowedly maintained and conducted so that the children of parents of that particular faith would be taught in that school the religious tenets of the church.” *Gurney*, 1941 OK 397, ¶ 7, 122 P.2d at 1003.

¶ 15 There is no question that St. Isidore is a sectarian institution and will be sectarian in its programs and operations. As set forth above, the Charter School Board had to alter various terms of the model contract to draft the St. Isidore Contract, allowing it to operate as a religious charter school. However, in changing the various terms of the model contract, the St. Isidore Contract violates the plain language of the Act and the Oklahoma Constitution.

II. AS A PUBLIC CHARTER SCHOOL, ST. ISIDORE IS A GOVERNMENTAL ENTITY AND A STATE ACTOR.

¶ 16 The Charter School Board and St. Isidore contend that the Oklahoma Constitution provision requiring that

Appendix A

Oklahoma's system of public schools be free from sectarian control does not apply to St. Isidore because St. Isidore is a private corporation and not a public school. They further argue that despite its sectarian nature, the St. Isidore Contract does not violate the Oklahoma Constitution or the Act because St. Isidore is merely a private actor contracting with the State to perform a substantial benefit for the State. The Charter School Board and St. Isidore rely primarily on two Oklahoma cases to support their contention: *Murrow Indian Orphans Home v. Childers*, 1946 OK 187, 171 P.2d 600, and *Oliver v. Hofmeister*, 2016 OK 15, 368 P.3d 1270.

¶ 17 These cases are distinguishable from the facts before us. In *Murrow*, the Court held that state funds paid to a sectarian institution in exchange for the housing and care of orphans discharged the State's duty to provide for needy children and did not violate Article 2, Section 5 of the Oklahoma Constitution. 1946 OK 187, ¶ 9, 171 P.2d at 603. However, the Court specifically noted that the institution had sectarian character as an organization and in its management but denied that it indoctrinated its dependent children. Instead, the children were allowed complete freedom of worship, and the orphanage did not mandate attendance at its church services. *Id.* ¶ 2, 171 P.2d at 601. We determined, “[i]t is not the exposure to religious influence that is to be avoided; it is the adoption of sectarian principles or the monetary support of one or several or all sects that the [S]tate must not do.” *Id.* ¶ 7, 171 P.2d at 602.

¶ 18 In *Oliver*, the Court found that a state-funded scholarship program allowing parents of students with

Appendix A

disabilities to apply for a scholarship for their children to attend private school did not violate Article 2, Section 5. 2016 OK 15, ¶ 27, 368 P.3d at 1277. Under the legislation at issue, the State would offset tuition at participating private schools through scholarships to eligible students. The State paid the scholarship funds directly to the parent and participation was purely voluntary. Any private school—sectarian or non-sectarian—was eligible to participate in the program. The Court held the scholarship program did not “directly fund religious activities” in violation of Article 2, Section 5. *Id.* ¶ 21, 368 P.3d at 1276. The program did not disperse funds directly to any private sectarian school until a parent of an eligible student made a private, independent selection. Any benefit to a participating sectarian school arose solely from the choice of the parent, not from any decree from the State. *Id.* ¶ 26, 368 P.3d at 1277.

¶ 19 Here, there is no question that the State will provide monetary support to teach a Catholic curriculum, and students at St. Isidore will be required to participate in the religious curriculum, both of which the *Murrow* Court disallowed. The funding will go directly to St. Isidore, dissimilar from giving scholarship funds to parents as in *Oliver*. The State will be *directly* funding a religious school and encouraging students to attend it.

¶ 20 Even more importantly, the present case does not involve a religious entity unaffiliated with the State providing the State with a substantial benefit. Instead, these cases are inapplicable because St. Isidore, a public charter school, is a governmental entity and state actor.

*Appendix A***A. St. Isidore is a governmental entity under the Act.**

¶ 21 The Act expressly states that a “charter school” means a “public school” established by contract with a school district or other governmental entity. *See* 70 O.S. Supp. 2022, § 3-132(D). The Oklahoma School Code defines “public school” as “all free schools supported by public taxation.” 70 O.S. 2021, § 1-106.⁹ Charter schools must “be equally free and open to all students as traditional public schools.” *Id.* § 3-135(A)(9). They must not “charge tuition or fees.” *Id.* § 3-136(A)(10). Oklahoma charter schools fall within the definition of a public school.

¶ 22 Charter schools are also “subject to the same academic standards and expectations as existing public schools.” *Id.* §§ 3-135(A)(11), 3-136(A)(10). Charter schools must comply with the same rules that govern public schools on school-year length, bus transportation, student testing, student suspension, and financial reporting and auditing. *Id.* §§ 3-135(C), 3-136(A)(4), (6), (11), (12), and (18), 3-141(A), 3-145.3(E). A charter school must also comply with all “laws relating to the education of children with disabilities in the same manner as a school district.” *Id.* § 3-136(A)(7).

¶ 23 Charter schools receive state “funding in accordance with statutory requirements and guidelines for existing

9. The St. Isidore Contract also used a similar definition of “Public School.” It states a “school that is free and supported by funds appropriated by the Legislature[.]” Pet’r’s. App. I, Ex. A, p. 3.

Appendix A

public schools.” *Id.* § 3-135(A)(12). The employees of charter schools are eligible for the same State retirement benefits that Oklahoma provides teachers at other public schools and the insurance programs available to the employees of the charter schools’ governmental sponsors. *Id.* §§ 3-136(A)(14), (15).

¶ 24 The Charter School Board is subject to the same conflict of interest and continuing education requirements as a local school board. *Id.* §§ 3-136(A)(6), 3-145.3(D)-(F). The Charter School Board exercises significant ongoing oversight and evaluation of all sponsored virtual charter schools through data collection, site visits, audits, attendance at the school’s governing board meetings, performance reports, and external school reviews. The Charter School Board has the power to place the school on probation if it finds deficiencies and ultimately close the school if it fails to resolve its deficiencies. *See* 70 O.S. Supp. 2023, § 3-132.2(A).

¶ 25 Charter schools, like other governmental entities, must “comply with the Oklahoma Open Meeting Act and the Oklahoma Open Records Act.” 70 O.S.2021, § 3-136(A) (16). Each public charter school operates as its own “local education agency” and is covered under the Oklahoma Governmental Tort Claims Act as its own “school district.” *Id.* §§ 3-136(A)(13), 3-142(C), 3-145.3(C).

¶ 26 The Legislature created Oklahoma charter schools, and Oklahoma law treats them as public schools and governmental bodies. They have many of the same privileges, responsibilities, and legal requirements that govern traditional public schools. They are creatures of

Appendix A

state law and may only operate under the authority granted to them by their charters with the State. St. Isidore will be acting as a surrogate of the State in providing free public education as any other state-sponsored charter school. Therefore, St. Isidore, a public charter school, is a governmental entity and state actor.¹⁰

B. St. Isidore is a state actor under the U.S. Supreme Court state actor tests.

¶27 The Charter School Board and St. Isidore claim that St. Isidore is not a state actor by the legislative designation of public school. Their argument still fails because a private actor may nonetheless be deemed a state actor whenever there is a close nexus between the State and the challenged action that private behavior may be treated as that of the State. *See Jackson v. Metro. Edison Co.*, 419 U.S. 345, 351 (1974); *see also Scott v. Okla. Secondary Sch. Activities Ass’n*, 2013 OK 84, ¶ 28, 313 P.3d 891, 900 (holding a private not-for-profit organization was a state actor when it behaved like a state agency).

¶28 The U.S. Supreme Court has applied five “state actor” tests over the years, i.e., the “significant encouragement” test, the “willful participant in joint activity” test, the government “control” test, the “entwinement” test, and the “public function” test. *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 298 (2001);

10. *See, e.g., Nat’l Collegiate Athletic Ass’n v. Tarkanian*, 488 U.S. 179, 192 (1988) (state universities); *United States v. Ackerman*, 831 F.3d 1292, 1295-1300 (10th Cir. 2016) (National Center for Missing and Exploited Children).

Appendix A

Blum v. Yaretsky, 457 U.S. 991, 1004 (1982); *see also VDARE Found. v. City of Colorado Springs*, 11 F.4th 1151, 1160 (10th Cir. 2021), *cert. denied*, 142 S. Ct. 1208 (Feb. 28, 2022). “If one of the tests indicates a party is a state actor, that alone is sufficient to find the party a state actor.” *Anaya v. Crossroads Managed Care Sys., Inc.*, 195 F.3d 584, 596 (10th Cir. 1999).

¶ 29 St. Isidore is a state actor under at least two tests—the entwinement and public function tests. First, under the entwinement test, the U.S. Supreme Court has stated that “a nominally private entity [i]s a state actor . . . when it is ‘entwined with governmental policies,’ or when the government is ‘entwined in [its] management or control.” *Brentwood Acad.*, 531 U.S. at 296 (quoting *Evans v. Newton*, 382 U.S. 296, 299 (1966)). As set forth above, Oklahoma charter schools are entwined with the State. Governmental entities serve as sponsors for the charter schools. As its sponsor, the Charter School Board will provide oversight of the operation for St. Isidore, monitor its performance and legal compliance, and decide whether to renew or revoke St. Isidore’s charter. As a state-created entity, charter schools also receive many of the same legal protections and benefits as their government sponsor. The State’s entwinement expands to the internal operations and affairs of the charter schools.

¶ 30 Second, under the “public function” test, it is sufficient to show that “the private entity performs a traditional, exclusive public function.” *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 809 (2019). The provision of education may not be a traditionally exclusive public function, but the Oklahoma Constitutional provision

Appendix A

for *free public* education is exclusively a public function. Even more, a private entity is a state actor when the government has outsourced one of its constitutional obligations to the entity. *Id.* at 810 n.1.

¶ 31 The Charter School Board and St. Isidore rely primarily on *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982), to support that Oklahoma charter schools are not state actors. The U.S. Supreme Court in *Rendell-Baker* held that a *private* school for troubled youths was not a state actor for purposes of employment-related claims. The state regulated the school and provided substantial governmental funding. The school obtained most of its students through referrals from public schools. *Id.* at 832-35, 843. However, the key difference between *Rendell-Baker* and this case is Oklahoma charter schools are public schools created through governmental action, not private like in *Rendell-Baker*.

¶ 32 A recent Fourth Circuit Court of Appeals case, *Peltier v. Charter Day School, Inc.*, 37 F.4th 104 (4th Cir. 2022), *cert. denied*, 1143 S. Ct. 2657 (June 26, 2023), is instructive. The *en banc* Fourth Circuit concluded that a charter school operator was a state actor for purposes of the students' equal protection claim, challenging a dress code requirement that females wear skirts. The students in *Peltier* argued that the charter school qualified as a state actor because the operation of schools, designated by North Carolina law as public, performed an exclusively public function. And by statute, the state had delegated its duty, in part, to charter school operators to fulfill the state's constitutional duty to provide free, universal schools. *Id.* at 116.

Appendix A

¶ 33 Relying on *Rendall-Baker*, the charter school argued that it was merely a private entity fulfilling a contract with the state like the Charter School Board and St. Isidore contend in this case. The school argued that the state did not require a student to attend any specific charter school, and the state had not delegated to charter schools the responsibility to educate North Carolina students. *Id.*

¶ 34 The statutory framework of North Carolina is much like Oklahoma’s Act, and charter schools may only operate under the authority granted to them by their charters with the state. Within its statutes, North Carolina also designated its charter schools as public. The *Peltier* Court noted that rejecting the state’s designation of such schools as public institutions would infringe on North Carolina’s sovereign prerogative, undermining fundamental principles of federalism. *Id.* at 121.

¶ 35 Applying the “public function” test, the *Peltier* Court concluded that the charter school operated in furtherance of the state’s constitutional obligation to provide free, universal education to its residents. The court rejected the argument that charter schools were an “alternative method” of education—such as private schools or home schooling—because that position ignored the universal and free nature of the public school system. In operating a school that is part of the North Carolina public school system, the charter school performed a function traditionally and exclusively reserved to the state. *Id.* at 119.

Appendix A

¶ 36 Importantly, the *Peltier* court also distinguished *Rendell-Baker* by noting that in material contrast to the personnel decisions at issue in *Rendell-Baker*:

[The charter school] implemented its dress code, including the skirts requirement, as a central component of the public school's educational philosophy. . . . By [the charter school's] own admission, the skirts requirement directly impacts the school's core educational function and, thus, directly impacts the constitutional responsibility that North Carolina has delegated to [the charter school].

Id. at 120.

¶ 37 As in *Peltier*, Oklahoma fulfilled its constitutional duty, in part, with the passage of the Act, which sets the procedure for the creation and funding of public charter schools. Oklahoma exercised its sovereign prerogative to treat these state-created and state-funded schools as public institutions that perform the traditionally exclusive government function of operating the State's free public schools. St. Isidore will implement a religious curriculum and activities that directly impact the school's core education function, and thus, the constitutional responsibility that Oklahoma delegated to the charter schools. Just as in *Peltier*, St. Isidore is a public charter school and a state actor.¹¹

11. The Tenth Circuit Court of Appeals has also treated charter schools as state actors. *See Coleman v. Utah State Charter*

*Appendix A***III. THE ESTABLISHMENT CLAUSE PROHIBITS
THE ST. ISIDORE CONTRACT.**

¶ 38 We next look at the U.S. Constitution. While we have already found the St. Isidore Contract to violate two provisions of the Oklahoma Constitution, which affords bona fide, separate, adequate, and independent grounds upon which today’s opinion is rested, the St. Isidore Contract also violates the federal Establishment Clause. *See Michigan v. Long*, 463 U.S. 1032, 1041 (1983).

¶ 39 Under the Establishment Clause of the First Amendment, made binding upon the States through the

Sch. Bd., 673 F. App’x 822, 830 (10th Cir. 2016) (noting “charter schools are public schools using public funds to educate school children”); *Brammer-Hoelter v. Twin Peaks Charter Acad.*, 602 F.3d 1175, 1188 (10th Cir. 2010) (holding a charter school was a governmental entity); *Milonas v. Williams*, 691 F.2d 931, 940 (10th Cir. 1982) (holding state funding, contracts with state, and extensive state regulation were some of the facts that demonstrated sufficiently close nexus between state and operators of school). Other federal courts across the country, including the Third and Ninth Circuits, have treated charter schools as governmental entities or state actors. *See, e.g., Family Civil Liberties Union v. Dep’t of Children & Families*, 837 F. App’x 864, 896 (3d Cir. 2020); *Nampa Classical Acad. v. Goesling*, 447 F. App’x 776, 777-78 (9th Cir. 2011); *Jones v. Sabis Educ. Sys., Inc.*, 52 F. SupP.2d 868, 876, 879 (N.D. Ill. 1999); *Daugherty v. Vanguard Charter Sch. Acad.*, 116 F. SupP.2d 897, 906 (W.D. Mich. 2000); *United States v. Minn. Transitions Charter Schs.*, 50 F. SupP.3d 1106, 1120 (D. Minn. 2014); *Patrick v. Success Acad. Charter Schs.*, 354 F. SupP.3d 185, 209 n.24 (E.D.N.Y. 2018); *Riester v. Riverside Cmty. Sch.*, 257 F. SupP.2d 968, 972-73 (S.D. Ohio 2002); *Pocono Mountain Charter Sch. v. Pocono Mountain Sch. Dist.*, 908 F. SupP.2d 597, 604-05 (M.D. Pa. 2012).

Appendix A

Fourteenth Amendment, Oklahoma cannot pass laws “which aid one religion, aid all religions, or prefer one religion over another.” *Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 15 (1947). The Establishment Clause prohibits government spending in direct support of any religious activities or institutions. *Id.* The Establishment Clause also prohibits the government from participating in the same religious exercise that the law protects when performed by a private party. *See Locke v. Davey*, 540 U.S. 712, 718 (2004) (recognizing that there is “play in the joints” between what the Establishment Clause permits, and the Free Exercise Clause compels). Thus, an Establishment Clause case hinges on whether religious activity involves a “state actor” or constitutes “state action.”

¶ 40 The Establishment Clause cases from the U.S. Supreme Court have not dealt with the creation of a religious public school. Rather, the cases have revolved around religious acts in public schools. In *Kennedy v. Bremerton School District*, 597 U.S. 507, 541-42 (2022), the U.S. Supreme Court discussed comparable situations that violated the Establishment Clause, specifically: *Zorach v. Clauson*, 343 U.S. 306 (1952), where the Court held that requiring or persuading students to spend time in religious instruction was a violation; *Lee v. Weisman*, 505 U.S. 577 (1992), where the Court held that reciting prayers as part of an official graduation ceremony because the school practically compelled attendance and participation was a violation; and *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), where the Court held that broadcasting prayer over the public address system and

Appendix A

activities where students were required or expected to participate was a violation. These cases demonstrate the Establishment Clause prohibits public schools (state actors) from requiring or expecting students to participate in religious activities.

¶ 41 Because it is a governmental entity and a state actor, St. Isidore cannot ignore the mandates of the Establishment Clause, yet a central component of St. Isidore's educational philosophy is to establish and operate the school as a Catholic school. St. Isidore will fully incorporate Catholic teachings into every aspect of the school, including its curriculum and co-curricular activities. It will require students to spend time in religious instruction and activities, as well as permit state spending in direct support of the religious curriculum and activities within St. Isidore—all in violation of the Establishment Clause. We hold that the St. Isidore Contract establishing a religious public charter school violates the Establishment Clause.

IV. THE FREE EXERCISE CLAUSE IS NOT IMPLICATED IN THIS CASE.

¶ 42 The Charter School Board and St. Isidore contend that the Free Exercise Clause of the First Amendment prohibits a state from denying St. Isidore its right to operate as a charter school solely because it is religious. In support, they point to recent U.S. Supreme Court decisions that held that once a state makes a public benefit available to its citizens, the state cannot exclude a religious entity's eligibility solely because of its religious affiliation.

Appendix A

If a state does so, it violates the Free Exercise Clause. *See Carson v. Makin*, 596 U.S. 767 (2022) (holding the “nonsectarian” requirement of Maine’s tuition assistance program for private secondary schools violated the Free Exercise Clause); *Espinoza v. Mont. Dep’t of Rev.*, 591 U.S. 464 (2020) (concluding the state scholarship program for students attending private schools was permissible under the Free Exercise Clause); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017) (holding the denial of grants to religiously affiliated applicants for purchase of rubber playground surfaces violated the Free Exercise Clause) (collectively “the Free Exercise Trilogy”).

¶ 43 The Free Exercise Trilogy cases do not apply to the governmental action in this case. St. Isidore is a state-created school that does not exist independently of the State. Unlike the private entities in the Free Exercise Trilogy cases, St. Isidore was created in furtherance of the State’s objective of providing free public education. The *Carson* Court specifically distinguished that the private schools at issue “were not public schools,” noting all the differences between private schools and public schools. 596 U.S. at 783-85. St. Isidore further contracted with the State to receive complete and direct financial support for a public charter school—funding mandated by the Act. In *Carson*, the Court noted that the state did not cover the full cost of the private secondary schools. *Id.* at 771. In *Espinoza*, the individual receiving the state scholarship determined its allocation, not the state. 591 U.S. at 474. In *Trinity Lutheran*, the government funding was for a non-religious use, playground resurfacing. 582 U.S. at

Appendix A

464-65. Finally, St. Isidore is not a religious private school or organization seeking to be treated equally with other private entities relative to a tax credit, grant, or tuition assistance.

¶ 44 The differences between the Free Exercise Trilogy cases and this case are at the core of what this case entails—what St. Isidore requests from this Court is beyond the fair treatment of a private religious institution in receiving a generally available benefit, implicating the Free Exercise Clause. It is about the State’s creation and funding of a new religious institution violating the Establishment Clause.¹² Even if St. Isidore could assert

12. The Charter School Board and St. Isidore contend that the mandate that a charter school is nonsectarian violates the Oklahoma Religious Freedom Act (“ORFA”), 51 O.S. Supp. 2023, §§ 251 *et seq.* They rely on a recent amendment to ORFA, which states that “[i]t shall be deemed a substantial burden to exclude any person or entity from participation in or receipt of governmental funds, benefits, programs, or exemptions based solely on the religious character or affiliation of the person or entity.” 51 O.S. Supp. 2023, § 253(D). St. Isidore claims that the ORFA implicitly overrode section 3-132 of the Act as the “most recently enacted law.” We disagree. The Legislature amended the Act after the most recent amendment to ORFA. *See* Laws 2023, SB 404, c. 189, § 2, eff. November 1, 2023, *available at* <http://www.oklegislature.gov/BillInfo.aspx?Bill=sb%20404&Session=2300>; Laws 2023, SB 516, c. 323, § 5, eff. July 1, 2024, *available at* <http://www.oklegislature.gov/BillInfo.aspx?Bill=sb516&Session=2300>. We have held that “[w]here statutes conflict in part, the one last passed, which is the later declaration of the Legislature, should prevail, superseding and modifying the former statute only to the extent of such conflict.” *City of Sand Springs v. Dep’t of Pub. Welfare*, 1980 OK 36, ¶ 28, 608 P.2d 1139, 1151. The section

Appendix A

free exercise rights, those rights would not override the legal prohibition under the Establishment Clause. Compliance with the Establishment Clause in this case is a compelling governmental interest that satisfies strict scrutiny under other provisions of the First Amendment. *See, e.g., Widmar v. Vincent*, 454 U.S. 263, 270-71 (1981).

CONCLUSION

¶ 45 Under Oklahoma law, a charter school is a public school. As such, a charter school must be nonsectarian. However, St. Isidore will evangelize the Catholic faith as part of its school curriculum while sponsored by the State. This State's establishment of a religious charter school violates Oklahoma statutes, the Oklahoma Constitution, and the Establishment Clause. St. Isidore cannot justify its creation by invoking Free Exercise rights as a religious entity. St. Isidore came into existence through its charter with the State and will function as a component of the State's public school system. This case turns on the State's contracted-for religious teachings and activities through a new public charter school, not the State's exclusion of a religious entity. The Court grants the extraordinary and declaratory relief sought by the State. The St. Isidore Contract violates state and federal law and is

regarding the prohibition on sectarian schools remained in the amended Act, and the Act controls over the ORFA. Thus, the ORFA did not override the Act's requirement that charter schools be nonsectarian. Even more, St. Isidore is a governmental entity and state actor, not a private entity. The ORFA is not implicated in this case for the same reasons the Free Exercise Clause is not implicated.

Appendix A

unconstitutional. By writ of mandamus, we direct the Charter School Board to rescind its contract with St. Isidore. Any petition for rehearing regarding this matter shall be filed within ten (10) days of the date of this opinion.

**ORIGINAL JURISDICTION ASSUMED;
WRIT OF MANDAMUS AND DECLARATORY
RELIEF GRANTED.**

Kauger, Winchester, Edmondson, Combs, Gurich, and Darby, JJ., concur.

Rowe, V.C.J. (**by separate writing**), concurs in part and dissents in part.

Kuehn, J. (**by separate writing**), dissents.

Kane, C.J., recused.

**APPENDIX B — DISSENTING OPINION OF
KUEHN, J., IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA, FILED JUNE 25, 2024**

IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

2024 OK 53
Case No. 121,694

GENTNER DRUMMOND, ATTORNEY
GENERAL FOR THE STATE OF OKLAHOMA,
ex rel. STATE OF OKLAHOMA,

Petitioner,

v.

OKLAHOMA STATEWIDE VIRTUAL CHARTER
SCHOOL BOARD; ROBERT FRANKLIN,
CHAIRMAN OF THE OKLAHOMA STATEWIDE
VIRTUAL CHARTER SCHOOL BOARD FOR THE
FIRST CONGRESSIONAL DISTRICT; WILLIAM
PEARSON, MEMBER OF THE OKLAHOMA
STATEWIDE VIRTUAL CHARTER SCHOOL
BOARD FOR THE SECOND CONGRESSIONAL
DISTRICT; NELLIE TAYLOE SANDERS,
MEMBER OF THE OKLAHOMA STATEWIDE
VIRTUAL CHARTER SCHOOL BOARD FOR THE
THIRD CONGRESSIONAL DISTRICT; BRIAN
BOBECK, MEMBER OF THE OKLAHOMA
STATEWIDE VIRTUAL CHARTER SCHOOL
BOARD FOR THE FOURTH CONGRESSIONAL
DISTRICT; SCOTT STRAWN, MEMBER OF
THE OKLAHOMA STATEWIDE VIRTUAL
CHARTER SCHOOL BOARD FOR THE FIFTH
CONGRESSIONAL DISTRICT,

Respondents,

30a

Appendix B

and

ST. ISIDORE OF SEVILLE
CATHOLIC VIRTUAL SCHOOL,

Intervenor.

Filed June 25, 2024

KUEHN, J., DISSENTING:

¶ 1 I dissent to the Majority’s opinion. St. Isidore would not become a “state actor” merely by contracting with the State to provide a choice in educational opportunities. By allowing St. Isidore to operate a virtual charter school, the State would not be establishing, aiding, or favoring any particular religious organization. To the contrary: Excluding private entities from contracting for functions, based solely on religious affiliation, would violate the Free Exercise Clause of the First Amendment to the United States Constitution.

A. Allowing religious organizations to contract with the State to provide educational services violates neither the “no aid” provision of the Oklahoma Constitution, nor the Establishment Clause of the First Amendment.

¶ 2 “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .” U.S.Const. Amend. I. Article 2, Section 5 of the Oklahoma Constitution, commonly referred to as the “no aid” provision, *see Oliver v. Hofmeister*, 368 P.3d 1270, 2016 OK 15, ¶ 3, bars public assets from being “appropriated, applied, donated, or used, directly

Appendix B

or indirectly,” for the “use, benefit, or support of” any religious organization, institution, or position. The Majority erroneously concludes that allowing sectarian organizations to operate charter schools violates these provisions.

¶ 3 Petitioner concedes his argument is *not* based on the fact that St. Isidore would receive public funds. His argument is that St. Isidore would be an arm of the government, simply because it is designated as a “public school” in the Act. But the reasoning that he, and the Majority, use to support that argument is circular. It goes something like this: (1) the State constitutionally must provide non-sectarian public education to all children; (2) publicly funded schools are, by definition, arms of the State; (3) under the Charter Schools Act, charter schools are defined as “public schools”; therefore, (4) charter schools are state actors and, as such, must be non-sectarian.

¶ 4 This argument is flawed. The Oklahoma Constitution requires the State to create a system of public schools, “free from sectarian control” and available to all children in the State. Okla.Const. Art. 1, § 5. It does not bar the State from contracting for education services with sectarian organizations, so long as a state-funded, secular education remains available statewide. St. Isidore would not be replacing any secular school, only adding to the options available, which is the heart of the Charter Schools Act. Simply put, requiring the state to fund non-sectarian education is not the same as allowing some funds to flow to sectarian education programs.

Appendix B

¶ 5 What about the “no aid” command in Article 2, Section 5 of our Constitution? As this Court has held many times, the “no aid” clause is not violated by contracts for services. The State contracts with private entities all the time for the performance of countless functions, from building roads to renewing motor-vehicle license tags. In contexts very similar to this one—involving public funds and religious organizations—this Court has held that public-private contracts are not invalid simply because a religious entity might receive some tangential benefit. In *Oliver*, 2016 OK 15, we rejected a “no aid” challenge to a school-voucher scholarship program. In *Burkhardt v. City of Enid*, 1989 OK 45, 771 P.2d 608, we rejected a challenge to the use of public funds for a purchase and lease-back arrangement involving a sectarian university. And in *Morrow Indian Orphans Home v. Childers*, 1946 OK 187, 171 P.2d 600, we approved the use of public funds to contract with the Baptist Church to operate an orphanage. The guiding principle in these cases is this: “[A]s long as the services being provided ‘involve the element of substantial return to the state and do not amount to a gift, donation, or appropriation to the institution having no relevancy to the affairs of the state, there is no constitutional provision offended.’” *Oliver*, 2016 OK 15, ¶ 19 (quoting *Morrow*, 1946 OK 187 at ¶ 9).¹ In short,

1. Even if Petitioner *did* focus on the fact that State funds would go directly to St. Isidore, that argument would be meritless. The funds are not a donation, but compensation for services rendered. Whether payment goes to the student/parent, or the school directly, is of no practical difference under this scheme; if a student does not enroll, the school does not receive funds related to that additional student.

Appendix B

contracts for services—including educational services—do not violate the “no aid” provision of our Constitution.

¶ 6 For the same reasons, St. Isidore’s operation of a charter school would not violate the Establishment Clause. There is no Establishment Clause issue if the action in question is not “state action.” Petitioner’s argument—and the Majority’s analysis—depend on labeling all charter schools as “public schools,” which is equivalent to “state actors.” Again, this places form over substance.

¶ 7 A private entity, such as a religious organization, may be deemed a state actor if it performs a function traditionally considered the *exclusive* realm of the state. *Rendell-Baker v. Kohn*, 457 U.S. 830, 842 (1982); *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 352 (1974). But the Majority concedes that education is not a “traditionally exclusive public function.” Majority at ¶ 30. It may be the State’s prerogative to create a new, hybrid class of educational institutions called “charter schools,” but that is not the same as claiming that *education itself* has traditionally been the exclusive prerogative of the State.²

¶ 8 Nor can charter schools be considered state actors simply because the State regulates them. It hardly needs to be said that regulation alone does not transform a private entity into a public one. *Jackson, id.* at 350. Even an “extensive and detailed” regulatory scheme does not

2. Instead, the Majority tries to reframe the relevant ‘function’ as something like, ‘a state-wide system of publicly-funded education,’ which of course by definition is a state function.

Appendix B

automatically transform an entity into a state actor. *Id.* The Charter Schools Act can place relevant requirements on prospective charter-school operators without thereby turning them into arms of the state. Ironically, one of the aims of the Act is to place *fewer* regulations on charter schools compared to traditional schools.³ It is undisputed that, aside from its religious affiliation, St. Isidore meets the requirements for operating a charter school.

¶ 9 Petitioner claims the Legislature made the analysis “easy” by labeling charter schools as public schools. 70 O.S. § 3-132(D). To the contrary, the analysis is easy because the realities belie such labeling. Regardless of how the State chooses to label charter schools, the Charter Schools Act is clearly an invitation for *private* entities to *contract* to provide educational choices. “[T]he definition of a particular program can always be manipulated to subsume the challenged condition,” and allowing the State to “recast” a condition on funding in this manner would result in “the First Amendment . . . reduced to a simple semantic exercise.” *Carson v. Makin*, 142 S.Ct. 1987, 1999 (2022) (citations omitted). A similar instance of semantic legerdemain was attempted in *Espinoza v. Montana Dept. of Revenue*, 591 U.S. 464, 487 (2020), discussed below.

¶ 10 Contracting to provide educational alternatives is not the same as a wholesale outsourcing of a government

3. Charter schools are exempt from statutes and rules relating to schools, boards of education, and school districts. 70 O.S. § 3-136(A)(5). They are not required to hire teachers with state teaching certificates. <https://sde.ok.gov/faqs/oklahoma-charter-schools-program>.

Appendix B

function.⁴ The virtual charter school St. Isidore seeks to undertake would simply be a choice for students and parents. It would not be the only virtual charter school. It would not be the only charter school. But most important, it would not supplant any state-mandated sectarian public school.

¶ 11 By choice, the State created a new type of educational entity—the charter school. By design, the very purpose of the Charter Schools Act is to allow *private* entities to experiment with innovative curricula and teaching methods, and to give students and parents “additional academic choices.” 70 O.S. § 3-131(A). The State is not required to partner with private entities to provide common education. But if it does, it cannot close the door to an otherwise qualified entity simply because it

4. Petitioner’s brief ends with an analogy that demonstrates the flaw in his argument:

[I]f the State decided to allocate public funds for private entities to beef up security, the State would of course be precluded from preventing the Catholic Church and other sectarian organizations from receiving those funds. However, if the State decided to start authorizing private entities to take over operations of the Oklahoma Highway Patrol, it would violate the Establishment Clause for the State to authorize a “Catholic Church Highway Patrol.”

The logical flaw is that, unlike law enforcement, enrollment in a charter school is fundamentally a choice for parents to make. St. Isidore would not be “taking over” any function that is traditionally the exclusive realm of the State. It would exist alongside state-mandated secular options.

Appendix B

is sectarian. *Espinoza*, 591 U.S. at 487; *see also Everson v. Board of Ed. of Ewing*, 330 U.S. 1, 16 (1947) (a State cannot exclude individuals “because of their faith, or lack of it, from receiving the benefits of public welfare legislation”). Contracting with private entities to provide such educational choices does not violate Article 2, § 5 of the Oklahoma Constitution.

B. Insofar as it denies religious organizations the chance to operate charter schools, the Charter Schools Act violates the Free Exercise Clause of the First Amendment.

¶ 12 The latter part of the First Amendment, known as the “Free Exercise Clause,” protects those who practice religion from laws that “impose special disabilities on the basis of . . . religious status.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S.Ct. 2012, 2021 (2017). Specifically, laws that disqualify otherwise eligible recipients from a public benefit, based solely on their religious character, impose “a penalty on the free exercise of religion that triggers the most exacting scrutiny.” *Id.* To pass constitutional muster under the so-called “strict scrutiny” test, the State must advance a compelling interest that justifies the action in question. The State’s interests must be of the “highest order,” and the means used must be narrowly tailored in pursuit of those interests. *Trinity, id.* at 2024.

¶ 13 *Espinoza v. Montana Dept. of Revenue*, decided quite recently, involved a very similar tension between the Free Exercise Clause and a “no aid” provision in the Montana Constitution. The issue in *Espinoza* was whether

Appendix B

students who received a state-funded scholarship to be used at private schools could use those funds at sectarian schools. Shortly after creation of the scholarship program, the Montana Department of Revenue promulgated a rule that, for purposes of the program, purported to redefine “qualified education provider” to exclude sectarian schools. The Department explained that the rule was necessary to reconcile the scholarship program with the “no aid” provision of the state’s constitution. *Espinoza*, 591 U.S. at 467-470.

¶ 14 When parents sued for the right to apply scholarship funds to attend a sectarian school, the Montana Supreme Court approved of the exclusion as consistent with the state constitutional command to give “no aid” to sectarian schools via public funds. The United States Supreme Court reversed. The question presented was “whether the Free Exercise Clause precluded the Montana Supreme Court from applying Montana’s no-aid provision to bar religious schools from the scholarship program.” 591 U.S. at 474. Because the scholarship program discriminated on the basis of religion, it was subjected to the strictest scrutiny. *Id.* at 484. The Court found unconvincing the Department of Revenue’s claim that such an interpretation of the “no aid” provision actually promoted religious liberty. And as for the argument that diverting public funds to sectarian schools served to rob public schools of funds, the Court simply noted that any such effect was a direct consequence of the scholarship program as a whole—not to the fact that sectarian schools could take part. *Id.* at 485-86.

¶ 15 Similarly, the only compelling interest advanced by Petitioner in the instant case, to justify barring a

Appendix B

religious organization from operating a charter school, is the “no aid” provision in our own Constitution. But as demonstrated above & under the long-standing line of authority from *Murrow*, to *Burkhardt*, to *Oliver*—that provision is not violated here. Contracting with a private entity that has religious affiliations, by itself, does not establish a State religion, nor does it favor one religion over another. Allowing St. Isidore to operate a charter school does not give it any preference over any other qualified entity, sectarian or otherwise.

¶ 16 I find nothing in the State or Federal Constitutions barring sectarian organizations, such as St. Isidore, from applying to operate charter schools. To the extent Section 3-136(A)(2) of the Charter Schools Act bars such organizations from even applying to operate a charter school, I would find it inconsistent with the Free Exercise Clause of the First Amendment.⁵ By reaching the opposite conclusion, the Majority’s decision is destined for the same fate as the Montana Supreme Court’s opinion in *Espinoza*.

5. The Act’s requirement that charter schools be nonsectarian (70 O.S. § 3-136(A)(2)) also violates the Oklahoma Religious Freedom Act (ORFA), which mandates that the State shall not “substantially burden a person’s free exercise of religion” – even if the law or rule in question is one of general applicability. 51 O.S. § 253(A). As amended in November 2023, this statute specifies that the State may not exclude any entity from participating in a government program “based solely on [its] religious character or affiliation.” 51 O.S. § 253(D). Aside from the fact that the Act’s “nonsectarian” requirement violates the Free Exercise Clause, it is also a dead letter under Oklahoma law, as the ORFA is the more recent expression of legislative intent. *City of Sand Springs v. Dep’t. of Pub. Welfare*, 1980 OK 36, ¶ 28, 608 P.2d 1139, 1151.

**APPENDIX C — DISSENTING OPINION OF
ROWE, V.C.J., IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA, FILED JUNE 25, 2024**

IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

2024 OK 53
Case No. 121,694

GENTNER DRUMMOND, ATTORNEY
GENERAL FOR THE STATE OF OKLAHOMA,
ex rel. STATE OF OKLAHOMA,

Petitioner,

v.

OKLAHOMA STATEWIDE VIRTUAL CHARTER
SCHOOL BOARD; ROBERT FRANKLIN,
CHAIRMAN OF THE OKLAHOMA STATEWIDE
VIRTUAL CHARTER SCHOOL BOARD FOR THE
FIRST CONGRESSIONAL DISTRICT; WILLIAM
PEARSON, MEMBER OF THE OKLAHOMA
STATEWIDE VIRTUAL CHARTER SCHOOL
BOARD FOR THE SECOND CONGRESSIONAL
DISTRICT; NELLIE TAYLOE SANDERS,
MEMBER OF THE OKLAHOMA STATEWIDE
VIRTUAL CHARTER SCHOOL BOARD FOR THE
THIRD CONGRESSIONAL DISTRICT; BRIAN
BOBECK, MEMBER OF THE OKLAHOMA
STATEWIDE VIRTUAL CHARTER SCHOOL
BOARD FOR THE FOURTH CONGRESSIONAL
DISTRICT; SCOTT STRAWN, MEMBER OF
THE OKLAHOMA STATEWIDE VIRTUAL
CHARTER SCHOOL BOARD FOR THE FIFTH
CONGRESSIONAL DISTRICT,

Respondents,

40a

Appendix C

and

ST. ISIDORE OF SEVILLE
CATHOLIC VIRTUAL SCHOOL,

Intervenor.

Filed June 25, 2024

**ROWE, V.C.J., CONCURRING IN PART
AND DISSENTING IN PART:**

¶ 1 I concur with the Majority that Article 1, Section 5 of the Oklahoma Constitution mandates that public charter schools are nonsectarian.

¶ 2 I dissent to the remainder of the Majority's opinion.

41a

**APPENDIX D — OPINION OF THE ATTORNEY
GENERAL OF OKLAHOMA, DATED
DECEMBER 1, 2022**

JOHN M. O'CONNOR
ATTORNEY GENERAL

**ATTORNEY GENERAL OPINION
2022-7**

Rebecca L. Wilkinson, Ed.D. December 1, 2022
Executive Director
Statewide Virtual Charter School Board
2501 N. Lincoln Blvd., Suite 301
Oklahoma City, OK 73105

Dear Executive Director Wilkinson,

This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following question:

Currently, an Oklahoma charter school must not be “affiliated with a nonpublic sectarian school or religious institution,” and must “be nonsectarian in its programs, admission policies, employment practices, and all other operations” under 70 O.S.2021, § 3-136(A)(2).

After the U.S. Supreme Court’s holdings in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020), and *Carson v. Makin*, 142 S. Ct.

Appendix D

1987 (2022), construing the First Amendment’s Free Exercise Clause, may the Statewide Virtual Charter School Board continue to enforce the nonsectarian requirements set forth in 70 O.S.2021, §3-136(A)(2)?

I.**BACKGROUND****A. Charter schools in Oklahoma**

In 1999, the State Legislature enacted the Oklahoma Charter Schools Act (“the Act”) to increase learning opportunities, encourage “the use of different and innovative teaching methods,” and provide “additional academic choices for parents and students.” 70 O.S.2021, § 3-13 l(A). Nearly twenty-five years later, there are approximately 30 charter schools in Oklahoma that serve over 80,000 schoolchildren. *See* OKLA. STATE DEP’T OF EDUC., Okla. Charter School Report 2021 at 4, 10-11. Those children make up around 11.7% of public school students in Oklahoma. *Id.* at 11.

This number “has increased dramatically over the last few years as a result of the expansion of virtual charter schools” in 2012. *Id.* In terms of funding, the “total State Aid Allocation to charter schools in the 2020-21 school year” was around \$420 million. *Id.* at 8.

A charter school, according to the Act, is a “public school established by contract . . . to provide learning

Appendix D

that will improve student achievement” 70 O.S.2021, § 3-132(D). A sponsor and an operator partner together to form a charter school. Sponsors must be public entities such as school districts, state colleges, or the State Board of Education. *Id.* § 3-132(A). Sponsors have various powers and duties, including approving charter applications if they “meet identified educational needs and promote a diversity of educational choices.” *Id.* § 3-134(1)(3). Before approving a new school, sponsors must consider factors such as an applicant’s “strong and reliable record of academic success,” “financial and operational success,” and “ability to transfer successful practices to a potentially different context that includes reproducing critical cultural, organizational, and instructional characteristics.” *Id.* § 3-132(C).

Operators who are authorized to establish a charter school may be public or private: this includes a “private college or university, private person, or private organization,” although an existing private school is ineligible. *Id.* § 3-134(C). An entity seeking to operate a charter school must submit a written application to the sponsor that includes, *inter alia*, a “description of the instructional design of the charter school, including the type of learning environment, class size and structure, curriculum overview and teaching methods.” *Id.* § 3-134(B)(14). Upon approval of the application, the sponsor and operator enter a contract. This contract must make the charter school “as equally free and open to all students as traditional public schools,” it must require “the same academic standards and expectations as existing public schools,” and it must contain a “description of the

Appendix D

requirements and procedures for the charter school to receive funding in accordance with statutory requirements and guidelines for existing public schools.” *Id.* § 3-135(A).

As the name indicates, a charter school is also required to adopt a charter that ensures compliance with certain requirements. *Id.* § 3-136(A). Under the charter, the school must participate in standardized testing and report test results as if it is a school district. *Id.* § 3-136(A)(4). The school must educate children with disabilities the same way a public school district does. *Id.* § 3-136(A)(7). The school cannot charge tuition or fees. *Id.* § 3-136(A)(10). The school is considered a school district for tort liability under The Governmental Tort Claims Act. *Id.* § 3-136(A)(13). In addition, charter school employees are authorized to participate in the Teachers’ Retirement System of Oklahoma. *Id.* § 3-136(A)(14).

Charter schools have substantial flexibility in terms of curriculum. A “charter school may offer a curriculum which emphasizes a specific learning philosophy or style or certain subject areas such as mathematics, science, fine arts, performance arts, or foreign language.” *Id.* § 3-136(A)(3). Indeed, from its inception, the Act has “exempt[ed] charter schools from the new core curriculum requirements for public schools found at 70 O.S.Supp.1999, § 11-103.6(B).” 1999 OK AG 64; *see also* 70 O.S.2021, § 3-136(A)(3) (“The charter of a charter school which offers grades nine through twelve shall specifically address whether the charter school will comply with the graduation requirements established in Section 11-103.6 of this title.”). Nor are charter schools required “to adhere

Appendix D

to the Teacher and Leader Effectiveness standards set by the state of Oklahoma.” OKLA. STATE DEP’T OF EDUC., Okla. Charter Schools Program, <https://sde.ok.gov/faqs/oklahoma-charter-schools-program> (last visited Nov. 28, 2022). Teachers at charter schools are not required to hold valid Oklahoma teaching certificates, either. *Id.* Overall, for curriculum and beyond, “[e]xcept as provided for in the Oklahoma Charter Schools Act and its charter, a charter school shall be exempt from all statutes and rules relating to schools, boards of education, and school districts.” 70 O.S.2021, § 3-136(A)(5).

Funding for Oklahoma charter schools is primarily public, but also includes some private sourcing. Like public schools, charters are funded mostly through the State Aid allocation. *Id.* § 3-142(A). They also receive federal funds if they are eligible and qualify, “and any other state-appropriated revenue generated by [their] students for the applicable year.” *Id.* A “Charter Schools Incentive Fund” also exists, which contains “all monies appropriated by the Legislature, gifts, grants, devises and donations from any public or private source.” *Id.* § 3-144(A).

Finally, at the center of this opinion request is 70 O.S.2021, § 3-136(A)(2), which provides: (1) that a “charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations,” and (2) that a “sponsor may not authorize a charter school or program that is affiliated with a nonpublic sectarian school or religious institution.”

*Appendix D***B. *Trinity Lutheran, Espinoza, and Carson***

The First Amendment to the U.S. Constitution states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” The U.S. Supreme Court has “repeatedly held that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits.” *Carson v. Makin*, 142 S. Ct. 1987, 1996 (2022). In the past five years alone, the U.S. Supreme Court has prevented officials in three States from excluding religious adherents from different types of public benefit programs relating to pre-K, primary, or secondary schools.

First, in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), the U.S. Supreme Court analyzed a Missouri policy barring churches, sects, or other religious entities from receiving financial grants to install softer playground surfaces made from recycled tires. Applying this policy, Missouri denied a grant to the Trinity Lutheran Church Child Learning Center. *Id.* at 2017-18. In doing so, Missouri relied upon a provision in the Missouri Constitution stating that “no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion” *Id.* (quoting Mo. CONST. art. I, § 7).

The U.S. Supreme Court found Missouri’s discriminatory behavior “odious” to the U.S. Constitution. *Id.* at 2025. Missouri, the Court held, had “expressly require[d] Trinity Lutheran to renounce its religious

Appendix D

character in order to participate in an otherwise generally available public benefit program.” *Id.* at 2024. Applying the “most rigorous” and strict judicial scrutiny to the policy, the Court held that there was a “clear infringement on free exercise” and no compelling anti-establishment interest that could justify such discrimination. *Id.* (citation omitted).

Second, in *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020), the U.S. Supreme Court evaluated a program in which Montana gave a tax credit to a person who sponsored a scholarship for a child’s tuition at any private school chosen by the child’s family. The Montana Constitution prohibits government aid to any “sectarian” school—i.e., any school “controlled in whole or in part by any church, sect, or denomination.” MONT. CONST. art. X, § 6(1). The Montana Department of Revenue cited this provision to prohibit families from using these scholarships at schools “owned or controlled in whole or in part by any church, religious sect, or denomination.” *Espinoza*, 140 S. Ct. at 2252 (citation omitted). Montana’s Attorney General disagreed, arguing that the discriminatory policy “very likely” violated the U.S. Constitution. *Id.* The Montana Supreme Court, on the other hand, dismantled the entire scholarship program because religious schools were required to be included. *Id.* at 2253-54.

On appeal, the U.S. Supreme Court reversed the Montana Supreme Court. “A State need not subsidize private education,” the Court explained, “[b]ut once a State decides to do so, it cannot disqualify some private

Appendix D

schools solely because they are religious.” *Id.* at 2261. The Montana Supreme Court’s application of the Montana Constitution wrongly barred “religious schools from public benefits solely because of the religious character of the schools.” *Id.* at 2255. “Given the conflict between the Free Exercise Clause and the application of the no-aid provision here, the Montana Supreme Court should have ‘disregard[ed]’ the no-aid provision and decided this case ‘conformably to the [C]onstitution’ of the United States.” *Id.* at 2262 (quoting *Marbury v. Madison*, 5 U.S. 137 (1803)). In sum, Montana’s religious exclusion was “odious to our Constitution” and “cannot stand.” *Id.* at 2262-63 (quoting *Trinity Lutheran*, 137 S. Ct. at 2025).

Third, in *Carson v. Makin*, 142 S. Ct. 1987 (2022), the U.S. Supreme Court evaluated a Maine program providing tuition assistance for parents in rural school districts that lacked a secondary school. “Under the program, parents designate the secondary school they would like their child to attend—public or private—and the school district transmits payments to that school to help defray the costs of tuition.” *Id.* at 1993. To receive payments, Maine required private schools to be accredited, teach Maine history, and maintain a certain student-teacher ratio, although their teachers did not need to be certified by the state or utilize Maine’s curricular requirements. *Id.* at 1993-94.

In 1981, Maine began to insist that any private school receiving tuition under this program must be “nonsectarian.” *Id.* at 1994 (quoting ME. REV. STAT. ANN., tit. 20-A, § 2951(2)). This route was chosen “in response

Appendix D

to an opinion by the Maine attorney general taking the position that public funding of private religious schools violated the Establishment Clause.” *Id.* Maine considered “a sectarian school to be one that is associated with a particular faith or belief system and which, in addition to teaching academic subjects, promotes the faith or belief system with which it is associated and/or presents the material taught through the lens of this faith.” *Id.* (quoting *Carson v. Makin*, 979 F.3d 21, 38 (1st Cir. 2020)).

Faced with a Free Exercise challenge to this discrimination, the First Circuit upheld Maine’s “nonsectarian” prohibition. *Carson*, 979 F.3d at 25-26. Per the First Circuit, *Espinoza* meant Maine could not bar schools from receiving funding “based on their religious *identity*,” but it could bar funding “based on the religious *use* that they would make of it in instructing children.” *Id.* at 40 (emphases added). In addition, the First Circuit found that Maine’s program was distinct from *Espinoza* because Maine sought to provide “a rough equivalent of the public school education that Maine may permissibly require to be secular.” *Id.* at 44.

Maine parents appealed to the U.S. Supreme Court, which ruled in their favor and held that “[t]he ‘unremarkable’ principles applied in *Trinity Lutheran* and *Espinoza* suffice to resolve this case.” *Carson*, 142 S. Ct. at 1997. By disqualifying schools from an open benefit solely because they are religious, Maine effectively penalized the free exercise of religion. *Id.* (citing *Trinity Lutheran*, 137 S. Ct. at 2021). Maine’s program was not neutral, the Court emphasized, but clearly discriminatory.

Appendix D

Id. at 1998. The “strictest scrutiny” therefore applied, whereby government action is invalid unless it advances compelling “interests of the highest order” and is “narrowly tailored in pursuit of those interests.” *Id.* at 1997 (citations omitted).

As it did in *Trinity Lutheran* and *Espinoza*, the U.S. Supreme Court found that an “interest in separating church and state ‘more fiercely’ than the Federal Constitution . . . ‘cannot qualify as compelling’ in the face of the infringement of free exercise.” *Carson*, 142 S. Ct. at 1998 (quoting *Espinoza*, 140 S. Ct. at 2260 & *Trinity Lutheran*, 137 S. Ct. at 2024). Only an actual Establishment Clause violation could suffice, according to the Court, and “a neutral benefit program in which public funds flow to religious organizations through the independent choices of private benefit recipients does not offend the Establishment Clause.” *Id.* at 1997 (citing *Zelman v. Simmons Harris*, 536 U.S. 639, 652-53 (2002)).

It did not matter that Maine said participating schools were required to provide the “rough equivalent” of a public school education, the Court held. *Id.* at 1998-2000 (quoting *Carson*, 979 F.3d at 44). For starters, the “differences between private schools eligible to receive tuition assistance under Maine’s program and a Maine public school are numerous and important.” *Id.* at 1999. Maine’s program did “not have to accept all students,” for example, whereas “[p]ublic schools generally do,” and Maine public education is free whereas private schools typically cost money. *Id.* Moreover, “the curriculum taught at participating private schools need not even

Appendix D

resemble that taught in the Maine public schools,” and “[p]articipating schools need not hire state certified teachers.” *Id.* The label “public” did not control, either, since a discriminatory condition on funding is still discrimination, no matter how much a state might claim it is part of the “definition of a particular program.” *Id.* at 1999-2000 (citation omitted).

That is to say, the U.S. Supreme Court looks at the “substance of free exercise protections, not on the presence or absence of magic words” like “public.” *Id.* at 2000. To hold otherwise, the Court observed, would render “our decision in *Espinoza* . . . essentially meaningless,” since Montana could have just claimed that its tax credit was limited to tuition payments for the “rough equivalent” of a secular public education. *Id.* at 2000. Put differently, the Free Exercise Clause applies to express discrimination *or* to “a party’s reconceptualization of the public benefit.” *Id.* By allowing state funds to go to private schools—a “decision [that] was not ‘forced upon’ it”—Maine could not “disqualify some private schools solely because they are religious.” *Id.* (quoting *Espinoza*, 140 S. Ct. at 2261).

Carson also held, importantly, that a state could not justify discrimination by claiming it was just preventing organizations from *using* state aid in religious ways. Use-based religious discrimination, the U.S. Supreme Court emphasized, is just as “offensive to the Free Exercise Clause” as status-based discrimination. *Id.* at 2001. Maine’s program was unconstitutional because, “[r]egardless of how the benefit and restriction are described, the program operates to identify and exclude

Appendix D

otherwise eligible schools on the basis of their religious exercise.” *Id.* at 2002.

In sum, *Carson* stands for the principle that “[a] State’s antiestablishment interest does not justify enactments that exclude some members of the community from an otherwise generally available public benefit because of their religious exercise.” *Id.* at 1998.

II.**DISCUSSION**

You ask what effect, if any, the *Trinity Lutheran*, *Espinoza*, and *Carson* decisions have on the validity of the non-sectarian restrictions found in Section 3-136(A) (2) of the Oklahoma Charter School Act. That passage states as follows:

A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations. A sponsor may not authorize a charter school or program that is affiliated with a nonpublic sectarian school or religious institution

We believe, based on the First Amendment and the *Trinity Lutheran*, *Espinoza*, and *Carson* line of decisions, that the U.S. Supreme Court would likely hold these restrictions unconstitutional. Because of the significant differences between the two sentences in Section 3-136(A) (2), we will address them separately.

*Appendix D***A. “A sponsor may not authorize a charter school or program that is affiliated with a nonpublic sectarian school or religious institution”**

The second sentence of Section 3-136(A)(2) is the most problematic, and very likely to be held unconstitutional. Under *Trinity Lutheran*, *Espinoza*, and *Carson*, it seems obvious that a state cannot exclude those merely “affiliated with” a religious or sectarian institution from a state created program in which private entities are otherwise generally allowed to participate if they are qualified. And that is exactly what this provision does.

The Act expressly allows any qualified “private college or university, private person, or private organization” to establish a charter school. 70 O.S.2021, § 3-134(C). And once qualified private entities are invited into the program, Oklahoma cannot disqualify some private persons or organizations “solely because they are religious” or “sectarian.” *Carson*, 142 S. Ct. at 1997 (quoting *Espinoza*, 140 S. Ct. at 2261). Even less so can the State exclude private persons or organizations that are merely “affiliated with” sectarian or religious institutions. *Cf. United States v. Brown*, 352 F.3d 654, 669 (2d Cir. 2003) (“Exercising peremptory strikes simply because a venire member affiliates herself with a certain religion is therefore a form of ‘state-sponsored group stereotype[] rooted in, and reflective of, historical prejudice.’” (quoting *J.E.B. v. Alabama*, 511 U.S. 127, 128 (1994))). Both approaches evince clear hostility, not neutrality, to religion. Thus, the provision in question is highly likely to be found unconstitutional if the State

Appendix D

continues to enforce it. *See Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1731 (2018) (states have a “duty under the First Amendment not to base laws or regulations on hostility to a religion or religious viewpoint”).

It is not a problem that, under this interpretation, a substantial amount of public funds could be sent to religious organizations or their affiliates. As the U.S. Supreme Court emphasized in *Carson*, “a neutral benefit program in which public funds flow to religious organizations through the independent choices of private benefit recipients does not offend the Establishment Clause.” 142 S. Ct. at 1997. No student is forced to attend a charter school—it is one option among several for parents. *See, e.g.*, OKLA. STATE DEP’T OF ED., School Choice, <https://sde.ok.gov/schoolchoice> (last visited Nov. 29, 2022). The Establishment Clause therefore provides no cover for a clear Free Exercise Clause violation here.

The Oklahoma Constitution provides no hurdle, either. To be sure, Article II, Section 5 of the Oklahoma Constitution states that “[n]o public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.” However, the Oklahoma Supreme Court has interpreted this restriction in a way that makes it inapplicable here. *See Oliver v. Hofmeister* 2016 OK 15, 368 P.3d 1270.

Appendix D

Starting in 1993, the Oklahoma Legislature gave school districts the option to provide services to children with disabilities or “enter into a written agreement with a private institution to provide the mandated services.” *Id.* ¶ 7, 368 P.3d at 1273 (emphasis omitted). In 2010, the Legislature crafted the Lindsey Nicole Henry Scholarships for Students with Disabilities Act, a program that “simply allowed parents and legal guardians the same right that school districts already enjoyed, the choice to use state funds to contract with an approved private institution for special education services.” *Id.* (emphases omitted). Participation in the program “is entirely voluntary,” as “(e)ach family independently decides without influence from the State whether to enroll their child.” *Id.* ¶ 8, 368 P.3d at 1273 (emphasis omitted).

Because the Lindsey Nicole Henry scholarship program allowed “[a]ny private school, whether sectarian or non-sectarian,” to participate, several taxpayers sued, arguing that the program violated Article II, Section 5. *Id.* ¶¶ 1, 11-12, 368 P.3d at 1271-72, 1274. The Oklahoma Supreme Court unanimously disagreed, reversing the district court. *Id.* ¶ 27, 368 P.3d at 1277. Relying on U.S. Supreme Court precedent pre-dating *Trinity Lutheran*, *Espinoza*, and *Carson*, the Oklahoma Supreme Court considered “the neutrality of the scholarship program” to be an important factor, as well as the “private choice exercised by the families.” *Id.* ¶ 13, 368 P.3d at 1274 (citing *Zelman*, 536 U.S. at 641). “When the *parents* and not the *government* are the ones determining which private school offers the best learning environment for their child,” the Oklahoma Supreme Court emphasized, “the

Appendix D

circuit between government and religion is broken.” *Id.* (emphases in original).

Utilizing those principles, the Oklahoma Supreme Court found that the Lindsey Nicole Henry scholarship program was “completely neutral with regard to religion” and therefore unobjectionable under Article II, Section 5. *Id.* ¶ 26, 368 P.3d at 1277. “Scholarship funds deposited to a private sectarian school occur only as the result of private independent choice by the parent or legal guardian.” *Id.* ¶ 14, 368 P.3d at 1274. “[T]his independence of choice by the parent breaks the circuit between government and religion,” the Court held. *Id.* ¶ 15, 368 P.3d at 1274. It was not unconstitutional for a public school district to “fulfill its state mandated duty to provide educational services to children by . . . entering into a written agreement with an eligible private institution in the public school district,” even a sectarian institution. *Id.* ¶¶ 23-24, 368 P.3d at 1276. This holding, the Court pointed out, flowed directly from previous decisions concerning Article II, Section 5. Those cases had “clarified that as long as the services being provided ‘involve the element of substantial return to the state and do not amount to a gift, donation, or appropriation to the institution having no relevancy to the affairs of the state, there is no constitutional provision offended.” *Id.* ¶ 19, 368 P.3d at 1275 (quoting *Murrow Indian Orphans Home v. Childers*, 1946 OK 187, ¶ 9, 171 P.3d 600, 603).¹

1. The plaintiffs in *Oliver* also sued under Article I, Section 5, which states that “[p]rovisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the state and free from sectarian control “

Appendix D

Applying *Oliver*'s principles here, allowing religiously affiliated participants to “provide educational services to children by ... entering into a written agreement” with a charter school sponsor would not violate the Oklahoma Constitution. *Id.* ¶ 24, 368 P.3d at 1276. This is because charter schools are entirely optional for parents, “break[ing] the circuit between government and religion.” *Id.* ¶ 15, 368 P.3d at 1274. And allowing the religious or religiously affiliated to participate would make the system neutral rather than hostile to religion. *See id.* ¶ 26, 368 P.3d at 1277. Thus, the Oklahoma Constitution does not prohibit religiously affiliated charter schools.²

In conclusion, the second sentence of Section 3-136(A) (2) of the Oklahoma Charter Schools Act is highly likely to be found unconstitutional under the Free Exercise Clause if it is enforced. In Oklahoma, so long as the Act permits private persons and organizations to establish and operate charter schools—and assuming the private applicant is otherwise qualified pursuant to neutral rules found elsewhere in the Act—sponsors should not disqualify an applicant solely based on the applicant's religion, “sectarianism,” or religious affiliation, as this

The district court granted summary judgment to the State on this claim, *Oliver v. Barresi*, No. CV-2013-2072, 2014 WL 12531242, at* 1 (Okla. Cnty. Sep. 10, 2014), and the Oklahoma Supreme Court did not, in *Oliver*, cite this provision or indicate that it would somehow change its analysis.

2. Of course, even if *Oliver* held otherwise, the U.S. Supreme Court has clearly explained that State officials must first follow the federal Constitution in these types of cases. *See Espinoza*, 140 S. Ct. at 2253-54, 2262-63.

Appendix D

would in all probability be deemed “odious” to the United States Constitution.

B. “A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations”

The more complex question here is whether a religiously affiliated applicant must be allowed to establish and operate a charter school in conformance with that applicant’s “sectarian” or “religious” traditions. In our view, the answer under the United States Constitution is likely yes, as well, for the following reasons.

To begin, it is helpful to remember that, when analyzing certain legal challenges under the U.S. Constitution, the U.S. Supreme Court employs various “tiers” or “levels” of scrutiny depending on the context. If “strict scrutiny” applies, the law or governmental practice in question must be “narrowly tailored to serve a compelling interest.” *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 444 (2015). Only in “rare cases” will a law survive a court’s strict scrutiny analysis. *Id.* A far less rigorous and more government-friendly approach is “rational basis review,” which merely requires a law to “be rationally related to a legitimate governmental purpose.” *Clark v. Jeter*, 486 U.S. 456, 461 (1988); *see also Sklar v. Byrne*, 727 F.2d 633, 640 (7th Cir. 1984) (“most legislative enactments survive the rational basis test”). Thirdly, “[b]etween these extremes of rational basis review and strict scrutiny lies a level of intermediate scrutiny.” *Clark*, 486 U.S. at 461. “To withstand intermediate scrutiny, a statutory

Appendix D

classification must be substantially related to an important governmental objective.” *Id.*

In the context of the First Amendment’s Free Exercise Clause, laws that “incidentally burden religion are ordinarily not subject to strict scrutiny ... so long as they are neutral and generally applicable.” *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021) (citing *Emp’t Div. v. Smith*, 494 U.S. 872, 878-882 (1990)). In such instances, courts apply “only ... rational-basis scrutiny.” *United States v. Wilgus*, 638 F.3d 1274, 1279 (10th Cir. 2011). The U.S. Supreme Court has for many years made it clear, however, that a “law targeting religious beliefs as such is never permissible,” and a law prohibiting religious *practices* is subject to strict scrutiny as well, if it “discriminate[s] on its face” or its object “is to infringe upon or restrict practices because of their religious motivation.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993).

Here, the first sentence of Section 3-136(A)(2) does both—it expressly targets religion, and its object is clearly to restrict religiously motivated practices. Thus, for the same reasons already discussed, this provision lacks neutrality and “the strictest scrutiny” would be applied by a federal court. *Carson*, 142 S. Ct. at 1997. And if generic “strict scrutiny” means a law will be upheld only in “rare” circumstances, *Williams-Yulee*, 575 U.S. at 444, it would stand to reason that a law will almost never survive when it is subjected to the “strictest scrutiny.”

Appendix D

In the wake of *Trinity Lutheran*, *Espinoza*, and *Carson*, the only conceivable way to show an interest compelling enough to survive the strictest judicial scrutiny in this context would be to argue that the Establishment Clause requires or at least permits Oklahoma to prohibit charter schools from being operated in accordance with religious principles. In *Locke v. Davey*, for instance, the U.S. Supreme Court held that the State of Washington did not violate the Free Exercise Clause by forbidding college students from using a state-granted scholarship “at an institution where they are pursuing a degree in devotional theology.” 540 U.S. 712, 715 (2004). This prohibition, the Court held, was permissible because of the “State’s antiestablishment interests,” even though funding these types of degrees would not actually be a federal Establishment Clause violation. *Id.* at 718-19, 722.

Having reviewed the relevant case law, however, we see little reason to believe the Supreme Court would divert from its recent precedent and hold that Oklahoma can rely on the Establishment Clause to justify discrimination in this context. There are multiple reasons to believe otherwise.

First, to hold that religiously affiliated organizations must be allowed to establish and operate a charter school but may be barred from acting in any way religious or “sectarian” in doing so, would be to embrace the distinction between religious “status” and “use” that the U.S. Supreme Court just rejected in *Carson*. Use-based religious discrimination, *Carson* explained, is just as “offensive to the Free Exercise Clause” as status-based

Appendix D

discrimination. *Carson*, 142 S. Ct. at 2001. To convey to a religious adherent that she can participate in a government program alongside other private entities but cannot act out her religious beliefs shows hostility to religion, not neutrality. *See Fulton*, 141 S. Ct. at 1877 (“Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts *practices* because of their religious nature.” (emphasis added)).

Second, Missouri, Montana, and Maine all attempted to rely on *Locke* and the Establishment Clause to justify their religious discrimination, and the Court rebuffed their attempts with explanations that apply here. We see no reason why the Court would change course now.

In *Trinity Lutheran*, the Court distinguished *Locke* in part because the Washington scholarship program in question “went ‘a long way toward including religion in its benefits.’” 137 S. Ct. at 2023 (quoting *Locke*, 540 U.S. at 724). Indeed, “[s]tudents in the program were free to use their scholarships at ‘pervasively religious schools.’” *Id.* The program at issue in Missouri, in contrast, put Trinity Lutheran “to the choice between being a church and receiving a government benefit” with a “simple” rule: “No churches need apply.” *Id.* at 2024. The Oklahoma provisions in question are much more like the latter restriction than *Locke*: they tell any religious or religiously affiliated private entities that they “need [not] apply” and that there will be no benefits whatsoever bestowed on anything pertaining to religious identity or use.

Appendix D

Going further, in *Espinoza* the Court pointed out that *Locke* was based on a “historic and substantial’ state interest in not funding the training of clergy.” 140 S. Ct. at 2257-58 (quoting *Locke*, 540 U.S. at 725). And that interest, the Court emphasized, did *not* extend to denying public funds to religious schools in general. To the contrary, “[i]n the founding era and the early 19th century, governments provided financial support to private schools, including denominational ones.” *Id.* at 2258. For example, “[a]fter the Civil War, Congress spent large sums on education for emancipated freedmen, often by supporting denominational schools in the South through the Freedmen’s Bureau.” *Id.*

Certainly, there was a trend of “no-aid” provisions that “more than 30 states” adopted starting in the mid-to-late 1800s. *Id.* But the Supreme Court rejected reliance on this trend. “[M]any of the no-aid provisions belong to a more checkered tradition shared with the Blaine Amendment of the 1870s,” the Court observed, which would “have added to the Federal Constitution a provision . . . prohibiting States from aiding ‘sectarian’ schools.” *Id.* at 2259. The Court criticized the Blaine Amendment as being “born of bigotry” and having arisen “at a time of pervasive hostility to the Catholic Church and to Catholics in general.” *Id.* (quoting *Mitchell v. Helms*, 530 U.S. 793, 828- 29 (2000) (plurality opinion)). And, the Court observed, “[i]t was an open secret that ‘sectarian’ was code for ‘Catholic.’” *Id.* (quoting *Mitchell*, 530 U.S. at 828). State counterparts to the Blaine Amendment were not spared the Court’s ire: “many” of them “have a similarly ‘shameful pedigree.’”

Appendix D

Id. (quoting *Mitchell*, 530 U.S. at 828-29).³ As a result, “[t]he no-aid provisions of the 19th century hardly evince a tradition that should inform our understanding of the Free Exercise Clause.” *Id.* In the end, the Court emphasized, “it is clear that there is no ‘historic and substantial’ tradition against aiding such [religious] schools comparable to the tradition against state-supported clergy invoked by *Locke*.” *Id.*

Third, the Supreme Court has routinely deployed broad language in this area, especially when describing basic constitutional law principles surrounding the First Amendment, schools, and school-choice programs that include private participants and operators. Even if one can discern factual distinctions between Oklahoma charter schools and the state regulations at issue in *Trinity Lutheran*, *Espinoza*, and *Carson*, the Court’s expansive phrasing—e.g., the “strictest scrutiny” signals loud and clear that the Court is not willing to uphold state discrimination in this arena.

3. Several state justices have argued that Article II, Section 5 of the Oklahoma Constitution did not originate with the Blaine Amendment. See *Prescott v. Okla. Capitol Pres. Comm’n*, 2015 OK 54 ¶ 1, 373 P.3d 1032, 1036 (Edmondson, J., concurring); *id.* ¶¶ 17-20, 373 P.3d at 1040-41 (Taylor, J., concurring); *id.* ¶¶ 16-24, 373 P.3d at 1050-52 (Gurich, J., concurring); *id.* ¶¶ 11-12, 373 P.3d at 1057 (Combs, J., dissenting). One such justice conceded, however, that the language in Article I, Section 5 stating that public schools must be “free from sectarian control” does trace back to “the failed Blaine Amendment.” *Id.* ¶¶ 18-19, 373 P.3d at 1051 (Gurich, J., concurring). This is an additional reason to conclude that Article I, Section 5 would not alter the analysis presented here. See also *supra* nn.1 & 2.

Appendix D

Carson is particularly prominent in this regard. There, the Court concluded that *Locke* “cannot be read beyond its narrow focus on vocational religious degrees to generally authorize the State to exclude religious persons from the enjoyment of public benefits on the basis of their *anticipated religious use* of the benefits.” *Carson*, 142 S. Ct. at 2002 (emphasis added). *Carson* also emphasized that “a neutral benefit program in which public funds flow to religious organizations through the independent choices of private benefit recipients does not offend the Establishment Clause.” *Id.* at 1997 (citing *Zelman*, 536 U.S. at 652-53). These principles apply here, clearly.

Fourth, that Oklahoma law considers charter schools to be public schools for various purposes does not mean that religious discrimination must be allowed. Indeed, plaintiffs may not even be able to bring a federal Establishment Clause challenge against religious charter schools, much less prevail on one. A bedrock principle of federal law is that certain statutory and constitutional claims may only be brought against the government or state. To determine whether an entity is acting “under color of” state law, 42 U.S.C. § 1983,⁴ or performing a “state action” such that a lawsuit can avoid being dismissed, courts analyze whether the action in question “can fairly be attributed to the State.” *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982); *see also id.* at 1009 n.20. Here, U.S. Supreme

4. Section 1983 is “a remedial vehicle for raising claims based on the violation of constitutional rights,” and “[t]here can be no ‘violation’ of § 1983 separate and apart from the underlying constitutional violations.” *Brown v. Buhman*, 822 F.3d 1151, 1161 n.9 (10th Cir. 2016).

Appendix D

Court precedent indicates that actions taken by charter schools are unlikely to fit this bill.

Most significantly, the U.S. Supreme Court held in *Rendell-Baker v. Kohn* that a school for special needs students, operated by a private board, was not a state actor for purposes of an employment lawsuit brought under § 1983, the First Amendment, and other laws. 457 U.S. 830 (1982). The Court explained, point-by-point, why the school was not a state actor in this instance even though it had contracted with public schools, “virtually all of the school’s income was derived from government funding,” the school “must comply with a variety of regulations ... common to all schools,” it took “nearly all” of its students from public school referrals, and it issued high school diplomas certified by nearby public schools. *Id.* at 831-33, 840-843. For state action, the Court emphasized that the State must coerce or significantly encourage the specific conduct being challenged, *id.* at 840 (citing *Blum*, 457 U.S. at 1004), and that it is not enough to show that the school merely performed a “public function.” *Id.* at 842. Rather, the function must have “been ‘traditionally the *exclusive* prerogative of the State.’” *Id.* (emphasis in original) (citations omitted). And serving “maladjusted high school students . . . who could not be served by traditional public schools” did not qualify. *Id.*

Relying on *Rendell-Baker*, the Ninth Circuit Court of Appeals has held that an Arizona charter school was not a state actor for employment law purposes. *See Caviness v. Horizon Cmty. Learning Ctr., Inc.*, 590 F.3d 806 (9th Cir. 2010). In reaching this conclusion, the Ninth Circuit found

Appendix D

that various public aspects of Arizona charter schools— aspects that also exist in Oklahoma charter schools, such as public funding—did not mean charter schools were state actors under federal law for all purposes. *See id.* at 808-18 (citations omitted). The Ninth Circuit concluded that the school in *Rendell-Baker* was very much like the charter school in Arizona: both involved “a private entity that contracted with the state to provide students with educational services that are funded by the state.” *Caviness*, 590 F.3d at 815 (citing *Rendell-Baker*, 457 U.S. 830). “The Arizona legislature chose to provide alternative learning environments at public expense, but, as in *Rendell-Baker*, that ‘legislative policy choice in no way makes these services the exclusive province of the State.’” *Id.* (quoting *Rendell-Baker*, 457 U.S. at 842). The Ninth Circuit also held that the fact that the charter school’s “sponsor has the authority to approve and review the school’s charter” did not change its decision because “[a]ction taken by private entities with the mere approval or acquiescence of the State is not state action.” *Id.* at 817 (quoting *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 52 (1999)).

Other circuits have reached similar results interpreting *Rendell-Baker*, albeit not directly in the charter school context. *See Logiodice v. Trs. of Maine Cent. Inst.*, 296 F.3d 22, 24-26 (1st Cir. 2002) (finding no state action for a privately operated school that contracted into the Maine public school system later described in *Carson*, in part because “[e]ducation is not and never has been a function reserved to the state”); *Robert S. v. Stetson Sch., Inc.*, 256 F.3d 159, 166 (3d Cir. 2001) (Alito, J., writing for the

Appendix D

panel) (holding that a publicly funded and contract-based school for juvenile sex offenders was not a state actor in part because it did not perform “a function that has been traditionally the exclusive province of the state”).

Not all courts have agreed, however, two of which deserve a mention here. The first is *Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104 (4th Cir. 2022), where the Fourth Circuit held *en banc* that the operator of a North Carolina charter school performed a state action in implementing a school dress code. Without dissecting that lengthy decision in full, our view is that the Ninth Circuit and the six dissenters in *Peltier* have the better of the argument, as their reading of *Rendell-Baker* is far more faithful to that decision’s facts and principles than the Fourth Circuit’s. *See, e.g., Peltier*, 37 F.4th at 137, 142-43 (Quattlebaum, J., dissenting in part) (“[T]he majority misconstrues and ignores guidance from the Supreme Court and all of our sister circuits that have addressed either the same or very similar issues. ... These principles the Supreme Court articulated in *Rendell-Baker* ... make clear that [the charter school] is not subject to liability under § 1983.”). For example, *Rendell-Baker* held that for state action to exist, the government “must compel or at least significantly encourage the conduct” in question, a critical point the Fourth Circuit ignored in its state action analysis even though it “properly conclude[d] that North Carolina did not coerce or compel the dress code” *Id.* at 148 (Quattlebaum, J., dissenting in part) (citing *Rendell-Baker*, 457 U.S. at 840). Applied to Oklahoma, any religious practice in charter schools would *not* be compelled or even significantly encouraged by the State.

Appendix D

See Blum, 457 U.S. at 1004 (“[O]ur precedents indicate that a State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State.”). Thus, it would not be state action challengeable under the Establishment Clause.

The other decision worth mentioning is from 1982, where the Tenth Circuit Court of Appeals held that the owners and operators of a private school and detention facility for troubled boys were state actors under Section 1983. *See Milonas v. Williams*, 691 F.2d 931(10th Cir. 1982). We agree with Justice Alito, then writing for the Third Circuit, that the “*Milonas* court’s reliance on ‘significant state funding of tuition’ and the detailed contracts between the school and local school districts appears to us to be squarely inconsistent with *Rendell-Baker*.” *Robert S.*, 256 F.3d at 168. Regardless, *Milonas* is distinguishable because the Tenth Circuit also “relied on the *involuntary* commitment of some students” to the detention facility—students sent by the state—to find state action. *Id.* at 167-68 (emphasis added); *see Milonas*, 691 F.2d at 940 (“Many of the members of the class were placed at the school involuntarily by juvenile courts and other state agencies acting alone”). No such involuntary commitment occurs in Oklahoma charter schools, which are entirely optional for parents.

Much like *Trinity Lutheran*, *Espinoza*, and *Carson* overwhelmingly indicate that the Oklahoma provisions in question violate the Free Exercise Clause, *Rendell-*

Appendix D

Baker and *Caviness* counsel strongly toward a federal law finding that Oklahoma charter schools are not state actors and thus not vulnerable as an initial matter to an Establishment Clause challenge. *See also* Nicole Stelle Garnett, *Religious Charter Schools: Legally Permissible? Constitutionally Required?*, MANHATTAN INSTITUTE at 4 (Dec. 2020) (“[I]n most states, charter schools ought not to be considered, for federal constitutional purposes, ‘state actors’”).⁵ Indeed, it should not be overlooked that *Rendell-Baker* itself involved the dismissal of a challenge brought under the First Amendment. *See Rendell-Baker*, 457 U.S. at 837.

Fifth, the preferred method for determining state action in these cases—eschewing labels for relevant functions-dovetails with the substantive approach the U.S. Supreme Court took in *Carson*. There, the Court emphasized that a state’s decision to classify or label privately operated schools as public schools does not control the Court’s First Amendment analysis. “Regardless of how the benefit and restriction are described,” the Court explained, “the program operates to identify and exclude otherwise eligible schools on the basis of their religious exercise.” *Carson*, 142 S. Ct. at 2002. Maine’s program was therefore unconstitutional. To hold otherwise would render *Espinoza* “essentially meaningless,” since Montana could have claimed that its tax credit was limited to tuition payments for the “rough equivalent” of a public education. *Id.* at 2000.

5. Available at <https://www.manhattan-institute.org/religious-charter-schools-legally-permissible-constitutionally-required>.

Appendix D

Admittedly, *Carson* walked through factors that can be used to distinguish private and public schools, and, unlike in *Carson*, those factors here would fall on both sides of the public/private ledger. Compare, e.g., *id.* at 1999 (“[P]rivate schools ... do not have to accept all students. Public schools generally do.”), with 70 O.S.2021, § 3-135(A) (9) (requiring charter schools to “be as equally free and open to all students as traditional public schools”), and *Carson*, 142 S. Ct. at 1999 (“Participating [private] schools need not hire state-certified teachers.”), with OKLA. STATE DEP’T OF EDUC., Okla. Charter Schools Program, <https://sde.ok.gov/faqs/oklahoma-charter-schools-program> (last visited Nov. 30, 2022) (“[Oklahoma] charter schools are not required to employ an individual who holds a valid Oklahoma teaching certificate.”).

But that is unsurprising, as it is most certainly *not* our contention that Oklahoma’s description of charter schools as “public” is an empty or incorrect label. See, e.g., 2012 OK AG 12 (“The Act authorized the creation of charter schools, which *are public schools* established by contract.” (emphasis added)). The analysis here is limited solely to determining how the two “Religion Clauses” of the First Amendment apply to charter schools, and nothing more. And in that context *and that context alone*, the most significant factors—such as private operation and curriculum flexibility—point to a violation of the Free Exercise Clause and the inapplicability of the Establishment Clause, under current U.S. Supreme Court jurisprudence. That is as far as the reasoning in this opinion goes.

Appendix D

Oklahoma, in short, has decided to let private organizations establish and operate charter schools. In *Carson*, the Supreme Court treated the situation very nearly as a tautology: if schools are operated by private organizations, then the First Amendment prohibits status *and* use discrimination. And this makes sense in the First Amendment context. The State cannot outsource operation of entire schools to private entities with “critical cultural, organizational, and institutional characteristics “that the State desires to see reproduced, 70 O.S.2021, § 3-132(C)(3), allow them to innovate in terms of curriculum, and then retain the ability to discriminate against private entities who wish to exercise their religious faith. The State cannot enlist private organizations to “promote a diversity of educational choices,” *id.* § 3-134(1)(3), and then decide that any and every kind of religion is the wrong kind of diversity. This is not how the First Amendment works.

* * *

In sum, we do not believe the U.S. Supreme Court would accept the argument that, because charter schools are considered public for various purposes, that a state should be allowed to discriminate against religiously affiliated private participants who wish to establish and operate charter schools in accordance with their faith alongside other private participants. Almost nothing in the text or trajectory of *Trinity Lutheran*, *Espinoza*, or *Carson* would lead one to that conclusion, nor does the Supreme Court’s Establishment Clause or state actor jurisprudence point in that direction. Thus, the limitations found in Section 3-136(A)(2) are likely to be found

Appendix D

unconstitutional insofar as they single out religiously affiliated organizations based solely on their “sectarian” status or their anticipated use of public funds for religious purposes.

It is important to emphasize, however, that to the extent that neutral and generally applicable limitations may be found elsewhere in the Act, those limitations can likely be applied to religious charter schools, so long as they are truly neutral and applied equally to all charter schools alike. *See Fulton*, 141 S. Ct. at 1876-77. In other words, just because the provision prohibiting charter schools from being sectarian “in its programs, admission policies, employment practices, and all other operations” is likely unconstitutional does *not* mean that religious or religiously affiliated charter schools can necessarily operate however they want in regard to “programs, admission policies, employment practices,” and the like. The constitutional problem is singling out religion, not necessarily the provisions found elsewhere regulating various aspects of charter schools. For instance, as it currently stands federal law does not in all likelihood prohibit Oklahoma from enforcing requirements like those indicating that charter schools must be “as equally free and open to all students as traditional public schools,” 70 O.S.2021, § 3-135(A)(9), or must not charge tuition or fees, *id.* § 3-136(A)(10), so long as hostility to religion is not present.

Appendix D

It is, therefore, the official Opinion of the Attorney General that:

Pursuant to the conclusions of the United States Supreme Court in *Trinity Lutheran, Espinoza*, and *Carson*, the non-sectarian and non-religious requirements found in 70 O.S.2021, § 3-136(A)(2) of the Oklahoma Charter Schools Act likely violate the First Amendment to the U.S. Constitution and therefore should not be enforced.⁶

/s/

JOHN M. O'CONNOR
ATTORNEY GENERAL OF OKLAHOMA

/s/

ZACH WEST
SOLICITOR GENERAL

6. It has long been recognized that an Attorney General opinion finding an “act of the legislature is unconstitutional should be considered advisory only, and thus not binding until finally so determined by an action in the District Court of this state.” *State ex rel. York v. Turpen*, 1984 OK 26, ¶ 12, 681 P.2d 763, 767. Accordingly, this opinion should be deemed advisory only.

74a

**APPENDIX E — OPINION OF THE ATTORNEY
GENERAL, FILED FEBRUARY 23, 2023**

GENTNER DRUMMOND
ATTORNEY GENERAL

February 23, 2023

Rebecca L. Wilkinson, Ed.D.
Executive Director
Statewide Virtual Charter School Board
2501 N. Lincoln Blvd., Suite 301
Oklahoma City, OK 73105

RE: Attorney General Opinion 2022-7

Dear Executive Director Wilkinson,

This letter is to notify you that I am withdrawing Attorney General Opinion 2022-7 issued by former Attorney General John O'Connor. As a preliminary matter, your prior request should have been rejected because it was not “accompanied by affirmation that such request was approved by vote of the governing board” of the Statewide Virtual Charter School Board. *See* STATEMENT OF POLICY OF THE ATTORNEY GENERAL REGARDING ISSUING FORMAL OPINIONS, ¶4. Therefore, Attorney General Opinion 2022-7 should not have been issued by my predecessor, and this office is not in receipt of a request for Opinion from an authorized requestor. *Id.*

Even if the prior request were procedurally proper, this office would still withdraw Attorney General Opinion 2022-7. The cases identified in your request: *Trinity*

Appendix E

Lutheran Church of Columbia, Inc. v. Comer, 137 S. Ct. 2012 (2017), *Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246 (2020), and *Carson v. Makin*, 142 S. Ct. 1987 (2022), involve private schools, not charter schools. This office has previously recognized that charter schools “are public schools established by contract.” 2012 OK AG 12, ¶ 1, *see also* 70 O.S. § 3-132(D) (defining a “charter school” as “a public school established by contract”). Consequently, the cases cited in your request concerning private schools have little precedential value as it relates to charter schools.

This office recognizes that the law is currently unsettled as to whether charter schools are state actors. I am hopeful that the U.S. Supreme Court will definitively rule on this unsettled issue next term. *See Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104 (4th Cir. 2022), *petition for cert. filed*, Sept. 14, 2022 (No. 22-238). Unfortunately, presently, there is no binding precedent applicable to Oklahoma discussing whether charter schools are state actors. At most, the Tenth Circuit Court of Appeals has previously assumed, without analysis, that charter schools are state actors. *See Brammer-Hoelter v. Twin Peaks Charter Acad.*, 602 F.3d 1175, 1188 (10th Cir. 2010) (“That is, because the Academy is a local governmental entity, it cannot be held liable for the acts of its employees on a theory of *respondeat superior*.”); and *Coleman v. Utah State Charter Sch. Bd.*, 673 F. App'x 822, 830 (10th Cir. 2016) (unpublished) (stating “charter schools are public schools using public funds to educate school children” and “charter schools are not free-floating entities unmoored from state governmental oversight and control”).

Appendix E

Without binding precedent definitively addressing whether charter schools are state actors, this office is not currently comfortable advising your board members to violate the Oklahoma Constitution’s clear directive: “Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the state and *free from sectarian control*. . . .” OKLA. CONST. art. I, § 5 (emphasis added). Likewise, without clear precedent, this office is not comfortable advising you to violate the Legislature’s clear directive that “[a] charter school shall be *nonsectarian* in its programs, admission policies, employment practices, and all other operations.” 70 O.S. § 3-136(A)(2) (emphasis added). Therefore, even if your prior request were procedurally proper, this office would still be compelled to withdraw Attorney General Opinion 2022-7.

I am aware that your request to this office was made in anticipation of the St. Isidore of Seville Catholic Virtual School (“SISCVS”) application currently before the Statewide Virtual Charter School Board. As it relates to this specific application, the executive director of the Catholic Conference of Oklahoma has said that the SISCVS intends to “be a fully Catholic school—Catholic in every way: Catholic in teaching, Catholic in employment. . . .”¹ Assuming a charter school is a state

1. https://tulsaworld.com/news/local/catholic-church-in-oklahoma-seeking-government-sanctioningtaxpayer-funding-for-first-religious-charter-school-in/article_1141db0a-a98e-11ed-b87c-f7ae31ee167e.html?utm_medium=social&utm_source=email&utm_campaign=user-share

Appendix E

actor, it would clearly violate the First Amendment and Oklahoma Constitution for a public school (i.e., a state actor) to be “Catholic in every way.” *Id.*

This previous point relates to a much broader aspect of the issue at hand. As a strong supporter of religious liberty, I am obliged to note that the Opinion does nothing to advance that worthy cause. Religious liberty is one of our most fundamental freedoms. It allows us to worship according to our faith, and to be free from any duty that may conflict with our faith. The Opinion, as issued by my predecessor, misuses the concept of religious liberty by employing it as a means to justify state-funded religion. If allowed to remain in force, I fear the Opinion will be used as a basis for taxpayer-funded religious schools, which is precisely what SISCVS seeks to become.

Further, this office is obliged to point out that the approval of the SISCVS application will create a slippery slope. While many Oklahomans undoubtedly support charter schools sponsored by various Christian faiths, the precedent created by approval of the SISCVS application will compel approval of similar applications by all faiths. I doubt most Oklahomans would want their tax dollars to fund a religious school whose tenets are diametrically opposed to their own faith. Unfortunately, the approval of a charter school by one faith will compel the approval of charter schools by all faiths, even those most Oklahomans would consider reprehensible and unworthy of public funding. Consequently, I urge your board members to use caution in reviewing the SISCVS application.

78a

Appendix E

Please feel free to contact the Office if you any further questions.

Sincerely,

/s/ Gentner Drummond
GENTNER DRUMMOND
ATTORNEY GENERAL OF OKLAHOMA

APPENDIX F — 70 OKL.ST.ANN. § 3-131

70 Okl.St.Ann. § 3-131

§ 3-131. Purpose

A. The purpose of the Oklahoma Charter Schools Act is to:

1. Improve student learning;
2. Increase learning opportunities for students;
3. Encourage the use of different and innovative teaching methods;
4. Provide additional academic choices for parents and students;
5. Require the measurement of student learning and create different and innovative forms of measuring student learning;
6. Establish new forms of accountability for schools; and
7. Create new professional opportunities for teachers and administrators including the opportunity to be responsible for the learning program at the school site.

B. The purpose of the Oklahoma Charter Schools Act is not to provide a means by which to keep open a school that may otherwise be closed. Applicants applying for a charter for a school which is to be otherwise closed shall be required to prove that conversion to a charter school fulfills the purposes of the act independent of closing the

80a

Appendix F

school. Nothing in this section shall be interpreted to preclude a school designated as a “high challenge school” from becoming a charter school.

APPENDIX G — 70 OKL.ST.ANN. § 3-132

70 Okl.St.Ann. § 3-132

§ 3-132. Application of act--Charter schools--
Limitation on establishment of new schools

Effective: May 5, 2022 to June 30, 2024

<Text of section effective until July 1, 2024.
See, also, text of Title 70, § 3-132 effective July 1, 2024.>

A. The Oklahoma Charter Schools Act shall apply only to charter schools formed and operated under the provisions of the act.¹ Charter schools shall be sponsored only as follows:

1. By any school district located in the State of Oklahoma, provided such charter school shall only be located within the geographical boundaries of the sponsoring district and subject to the restrictions of Section 3-145.6 of this title;
2. By a technology center school district if the charter school is located in a school district served by the technology center school district in which all or part of the school district is located in a county having more than five hundred thousand (500,000) population according to the latest Federal Decennial Census;
3. By a technology center school district if the charter school is located in a school district served by the technology center school district and the school district

1. Title 70, § 3-130 et seq.

Appendix G

has a school site that has been identified as in need of improvement by the State Board of Education pursuant to the Elementary and Secondary Education Act of 1965, as amended or reauthorized;

4. By an accredited comprehensive or regional institution that is a member of The Oklahoma State System of Higher Education or a community college if the charter school is located in a school district in which all or part of the school district is located in a county having more than five hundred thousand (500,000) population according to the latest Federal Decennial Census;

5. By a comprehensive or regional institution that is a member of The Oklahoma State System of Higher Education if the charter school is located in a school district that has a school site that has been identified as in need of improvement by the State Board of Education pursuant to the Elementary and Secondary Education Act of 1965, as amended or reauthorized. In addition, the institution shall have a teacher education program accredited by the Oklahoma Commission for Teacher Preparation and have a branch campus or constituent agency physically located within the school district in which the charter school is located in the State of Oklahoma;

6. By a federally recognized Indian tribe, operating a high school under the authority of the Bureau of Indian Affairs as of November 1, 2010, if the charter school is for the purpose of demonstrating native language immersion instruction, and is located within its former reservation or treaty area boundaries. For purposes of this paragraph, native language immersion instruction shall require that

Appendix G

educational instruction and other activities conducted at the school site are primarily conducted in the native language;

7. By the State Board of Education when the applicant of the charter school is the Office of Juvenile Affairs or the applicant has a contract with the Office of Juvenile Affairs and the charter school is for the purpose of providing education services to youth in the custody or supervision of the state. Not more than two charter schools shall be sponsored by the Board as provided for in this paragraph during the period of time beginning July 1, 2010, through July 1, 2016;

8. By a federally recognized Indian tribe only when the charter school is located within the former reservation or treaty area boundaries of the tribe on property held in trust by the Bureau of Indian Affairs of the United States Department of the Interior for the benefit of the tribe; or

9. By the State Board of Education when the applicant has first been denied a charter by the local school district in which it seeks to operate. In counties with fewer than five hundred thousand (500,000) population, according to the latest Federal Decennial Census, the State Board of Education shall not sponsor more than five charter schools per year each year for the first five (5) years after the effective date of this act, with not more than one charter school sponsored in a single school district per year. In order to authorize a charter school under this section, the State Board of Education shall find evidence of all of the following:

Appendix G

- a. a thorough and high-quality charter school application from the applicant based on the authorizing standards in subsection B of Section 3-134 of this title,
- b. a clear demonstration of community support for the charter school, and
- c. the grounds and basis of objection by the school district for denying the operation of the charter are not supported by the greater weight of evidence and the strength of the application.

B. An eligible non-school-district sponsor shall give priority to opening charter schools that serve at-risk student populations or students from low-performing traditional public schools.

C. An eligible non-school-district sponsor shall give priority to applicants that have demonstrated a record of operating at least one school or similar program that demonstrates academic success and organizational viability and serves student populations similar to those the proposed charter school seeks to serve. In assessing the potential for quality replication of a charter school, a sponsor shall consider the following factors before approving a new site or school:

1. Evidence of a strong and reliable record of academic success based primarily on student performance data, as well as other viable indicators, including financial and operational success;

Appendix G

2. A sound, detailed, and well-supported growth plan;
3. Evidence of the ability to transfer successful practices to a potentially different context that includes reproducing critical cultural, organizational and instructional characteristics;
4. Any management organization involved in a potential replication is fully vetted, and the academic, financial and operational records of the schools it operates are found to be satisfactory;
5. Evidence the program seeking to be replicated has the capacity to do so successfully without diminishing or putting at risk its current operations; and
6. A financial structure that ensures that funds attributable to each charter school within a network and required by law to be utilized by a school remain with and are used to benefit that school.

D. For purposes of the Oklahoma Charter Schools Act, “charter school” means a public school established by contract with a board of education of a school district, an area vocational-technical school district, a higher education institution, a federally recognized Indian tribe, or the State Board of Education pursuant to the Oklahoma Charter Schools Act to provide learning that will improve student achievement and as defined in the Elementary and Secondary Education Act of 1965, 20 U.S.C. 8065.

Appendix G

E. 1. For the purposes of the Oklahoma Charter Schools Act, “conversion school” means a school created by converting all or any part of a traditional public school in order to access any or all flexibilities afforded to a charter school.

2. Prior to the board of education of a school district converting all or any part of a traditional public school to a conversion school, the board shall prepare a conversion plan. The conversion plan shall include documentation that demonstrates and complies with paragraphs 1, 2, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 34 and 35 of subsection B of Section 3-134 of this title. The conversion plan and all documents shall be in writing and shall be available to the public pursuant to the requirements of the Oklahoma Open Records Act. All votes by the board of education of a school district to approve a conversion plan shall be held in an open public session. If the board of education of a school district votes to approve a conversion plan, the board shall notify the State Board of Education within sixty (60) days after the vote. The notification shall include a copy of the minutes for the board meeting at which the conversion plan was approved.

3. A conversion school shall comply with all the same accountability measures as are required of a charter school as defined in subsection D of this section. The provisions of Sections 3-140 and 3-142 of this title shall not apply to a conversion school. Conversion schools shall comply with the same laws and State Board of Education rules relating to student enrollment which apply to traditional public schools. Conversion schools shall be

Appendix G

funded by the board of education of the school district as a school site within the school district and funding shall not be affected by the conversion of the school.

4. The board of education of a school district may vote to revert a conversion school back to a traditional public school at any time; provided, the change shall only occur during a break between school years.

5. Unless otherwise provided for in this subsection, a conversion school shall retain the characteristics of a traditional public school.

F. A charter school may consist of a new school site, new school sites or all or any portion of an existing school site. An entire school district may not become a charter school site.

APPENDIX H — 70 OKL.ST.ANN. § 3-134

70 Okl.St.Ann. § 3-134

§ 3-134. Applications--Pre-submission training--
Contents--Procedures

Effective: May 5, 2022 to June 30, 2024

<Text of section effective until July 1, 2024.
See, also, text of Title 70, § 3-134 effective July 1, 2024.>

A. For written applications filed after January 1, 2008, prior to submission of the application to a proposed sponsor seeking to establish a charter school, the applicant shall be required to complete training which shall not exceed ten (10) hours provided by the State Department of Education on the process and requirements for establishing a charter school. The Department shall develop and implement the training by January 1, 2008. The Department may provide the training in any format and manner that the Department determines to be efficient and effective including, but not limited to, web-based training.

B. Except as otherwise provided for in Section 3-137 of this title, an applicant seeking to establish a charter school shall submit a written application to the proposed sponsor as prescribed in subsection E of this section. The application shall include:

1. A mission statement for the charter school;
2. A description including, but not limited to, background information of the organizational structure and the governing body of the charter school;

Appendix H

3. A financial plan for the first five (5) years of operation of the charter school and a description of the treasurer or other officers or persons who shall have primary responsibility for the finances of the charter school. Such person shall have demonstrated experience in school finance or the equivalent thereof;
4. A description of the hiring policy of the charter school;
5. The name of the applicant or applicants and requested sponsor;
6. A description of the facility and location of the charter school;
7. A description of the grades being served;
8. An outline of criteria designed to measure the effectiveness of the charter school;
9. A demonstration of support for the charter school from residents of the school district which may include but is not limited to a survey of the school district residents or a petition signed by residents of the school district;
10. Documentation that the applicants completed charter school training as set forth in subsection A of this section;
11. A description of the minimum and maximum enrollment planned per year for each term of the charter contract;
12. The proposed calendar for the charter school and sample daily schedule;

Appendix H

13. Unless otherwise authorized by law or regulation, a description of the academic program aligned with state standards;
14. A description of the instructional design of the charter school, including the type of learning environment, class size and structure, curriculum overview and teaching methods;
15. The plan for using internal and external assessments to measure and report student progress on the performance framework developed by the applicant in accordance with subsection C of Section 3-135 of this title;
16. The plans for identifying and successfully serving students with disabilities, students who are English language learners and students who are academically behind;
17. A description of cocurricular or extracurricular programs and how they will be funded and delivered;
18. Plans and time lines for student recruitment and enrollment, including lottery procedures;
19. The student discipline policies for the charter school, including those for special education students;
20. An organizational chart that clearly presents the organizational structure of the charter school, including lines of authority and reporting between the governing board, staff, any related bodies such as advisory bodies or

Appendix H

parent and teacher councils and any external organizations that will play a role in managing the school;

21. A clear description of the roles and responsibilities for the governing board, the leadership and management team for the charter school and any other entities shown in the organizational chart;

22. The leadership and teacher employment policies for the charter school;

23. Proposed governing bylaws;

24. Explanations of any partnerships or contractual partnerships central to the operations or mission of the charter school;

25. The plans for providing transportation, food service and all other significant operational or ancillary services;

26. Opportunities and expectations for parental involvement;

27. A detailed school start-up plan that identifies tasks, time lines and responsible individuals;

28. A description of the financial plan and policies for the charter school, including financial controls and audit requirements;

29. A description of the insurance coverage the charter school will obtain;

Appendix H

30. Start-up and five-year budgets with clearly stated assumptions;
31. Start-up and first-year cash-flow projections with clearly stated assumptions;
32. Evidence of anticipated fundraising contributions, if claimed in the application;
33. A sound facilities plan, including backup or contingency plans if appropriate;
34. A requirement that the charter school governing board meet at a minimum quarterly in the state and that for those charter schools outside of counties with a population of five hundred thousand (500,000) or more, that a majority of members are residents within the geographic boundary of the sponsoring entity; and
35. A requirement that the charter school follow the requirements of the Oklahoma Open Meeting Act¹ and Oklahoma Open Records Act.

C. A board of education of a public school district, public body, public or private college or university, private person, or private organization may contract with a sponsor to establish a charter school. A private school shall not be eligible to contract for a charter school under the provisions of the Oklahoma Charter Schools Act.

1. Title 25, § 301 et seq.

Appendix H

D. The sponsor of a charter school is the board of education of a school district, the board of education of a technology center school district, a higher education institution, the State Board of Education, or a federally recognized Indian tribe which meets the criteria established in Section 3-132 of this title. Any board of education of a school district in the state may sponsor one or more charter schools. The physical location of a charter school sponsored by a board of education of a school district or a technology center school district shall be within the boundaries of the sponsoring school district. The physical location of a charter school otherwise sponsored by the State Board of Education pursuant to paragraph 8 of subsection A of Section 3-132 of this title shall be in the school district in which the application originated.

E. An applicant for a charter school may submit an application to a proposed sponsor which shall either accept or reject sponsorship of the charter school within ninety (90) days of receipt of the application. If the proposed sponsor rejects the application, it shall notify the applicant in writing of the reasons for the rejection. The applicant may submit a revised application for reconsideration to the proposed sponsor within thirty (30) days after receiving notification of the rejection. The proposed sponsor shall accept or reject the revised application within thirty (30) days of its receipt. Should the sponsor reject the application on reconsideration, the applicant may appeal the decision to the State Board of Education with the revised application for review pursuant to paragraph 8 of subsection A of Section 3-132 of this title. The State Board

Appendix H

of Education shall hear the appeal no later than sixty (60) days from the date received by the Board.

F. A board of education of a school district, board of education of a technology center school district, higher education institution, or federally recognized Indian tribe sponsor of a charter school shall notify the State Board of Education when it accepts sponsorship of a charter school. The notification shall include a copy of the charter of the charter school.

G. Applicants for charter schools proposed to be sponsored by an entity other than a school district pursuant to paragraph 1 of subsection A of Section 3-132 of this title may, upon rejection of the revised application, proceed to binding arbitration under the commercial rules of the American Arbitration Association with costs of the arbitration to be borne by the proposed sponsor. Applicants for charter schools proposed to be sponsored by school districts pursuant to paragraph 1 of subsection A of Section 3-132 of this title may not proceed to binding arbitration but may be sponsored by the State Board of Education as provided in paragraph 8 of subsection A of Section 3-132 of this title.

H. If a board of education of a technology center school district, a higher education institution, the State Board of Education, or a federally recognized Indian tribe accepts sponsorship of a charter school, the administrative, fiscal and oversight responsibilities of the technology center school district, the higher education institution, or the federally recognized Indian tribe shall be listed in the

Appendix H

contract. No responsibilities shall be delegated to a school district unless the local school district agrees to assume the responsibilities.

I. A sponsor of a public charter school shall have the following powers and duties:

1. Provide oversight of the operations of charter schools in the state through annual performance reviews of charter schools and reauthorization of charter schools for which it is a sponsor;

2. Solicit and evaluate charter applications;

3. Approve quality charter applications that meet identified educational needs and promote a diversity of educational choices;

4. Decline to approve weak or inadequate charter applications;

5. Negotiate and execute sound charter contracts with each approved public charter school;

6. Monitor, in accordance with charter contract terms, the performance and legal compliance of charter schools; and

7. Determine whether each charter contract merits renewal, nonrenewal or revocation.

J. Sponsors shall establish a procedure for accepting, approving and disapproving charter school applications in accordance with subsection E of this section.

Appendix H

K. Sponsors shall be required to develop and maintain chartering policies and practices consistent with recognized principles and standards for quality charter authorizing as established by the State Department of Education in all major areas of authorizing responsibility, including organizational capacity and infrastructure, soliciting and evaluating charter applications, performance contracting, ongoing charter school oversight and evaluation and charter renewal decision-making.

L. Sponsors acting in their official capacity shall be immune from civil and criminal liability with respect to all activities related to a charter school with which they contract.

APPENDIX I — 70 OKL.ST.ANN. § 3-135

70 Okl.St.Ann. § 3-135

**§ 3-135. Sponsor to contract with governing board--
Contents of contract**

Effective: [See Text Amendments] to June 30, 2024

A. The sponsor of a charter school shall enter into a written contract with the governing body of the charter school. The contract shall incorporate the provisions of the charter of the charter school and contain, but shall not be limited to, the following provisions:

1. A description of the program to be offered by the school which complies with the purposes outlined in Section 3-136 of this title;
2. Admission policies and procedures;
3. Management and administration of the charter school, including that a majority of the charter governing board members are residents of the State of Oklahoma and meet no less than quarterly in a public meeting within the boundaries of the school district in which the charter school is located or within the State of Oklahoma in the instance of multiple charter school locations by the same sponsor;
4. Requirements and procedures for program and financial audits;

Appendix I

5. A description of how the charter school will comply with the charter requirements set forth in the Oklahoma Charter Schools Act;
 6. Assumption of liability by the charter school;
 7. The term of the contract;
 8. A description of the high standards of expectation and rigor for charter school plans and assurance that charter school plans adopted meet at least those standards;
 9. Policies that require that the charter school be as equally free and open to all students as traditional public schools;
 10. Procedures that require students enrolled in the charter school to be selected by lottery to ensure fairness if more students apply than a school has the capacity to accommodate;
 11. Policies that require the charter school to be subject to the same academic standards and expectations as existing public schools; and
 12. A description of the requirements and procedures for the charter school to receive funding in accordance with statutory requirements and guidelines for existing public schools.
- B. A charter school shall not enter into an employment contract with any teacher or other personnel until the

Appendix I

charter school has a contract with a sponsoring school district. The employment contract shall set forth the personnel policies of the charter school, including, but not limited to, policies related to certification, professional development evaluation, suspension, dismissal and nonreemployment, sick leave, personal business leave, emergency leave, and family and medical leave. The contract shall also specifically set forth the salary, hours, fringe benefits, and work conditions. The contract may provide for employer-employee bargaining, but the charter school shall not be required to comply with the provisions of Sections 509.1 through 509.10 of this title. The contract shall conform to all applicable provisions set forth in Section 3-136 of this title.

Upon contracting with any teacher or other personnel, the governing body of the charter school shall, in writing, disclose employment rights of the employees in the event the charter school closes or the charter is not renewed.

No charter school may begin serving students without a charter contract executed in accordance with the provisions of the Oklahoma Charter Schools Act and approved in an open meeting of the sponsor. The sponsor may establish reasonable preopening requirements or conditions to monitor the start-up progress of newly approved charter schools and ensure that each school is prepared to open smoothly on the date agreed and to ensure that each school meets all building, health, safety, insurance and other legal requirements for the opening of a school.

Appendix I

C. The performance provisions within the charter contract shall be based on a performance framework that clearly sets forth the academic and operational performance indicators, measures and metrics that will guide the evaluations of the charter school by the sponsor. The sponsor shall require a charter school to submit the data required in this section in the identical format that is required by the State Department of Education of all public schools in order to avoid duplicative administrative efforts or allow a charter school to provide permission to the Department to share all required data with the sponsor of the charter school. The performance framework shall include indicators, measures and metrics for, at a minimum:

1. Student academic proficiency;
2. Student academic growth;
3. Achievement gaps in both proficiency and growth between major student subgroups;
4. Student attendance;
5. Recurrent enrollment from year to year as determined by the methodology used for public schools in Oklahoma;
6. In the case of high schools, graduation rates as determined by the methodology used for public schools in Oklahoma;
7. In the case of high schools, postsecondary readiness;

Appendix I

8. Financial performance and sustainability; and

9. Governing board performance and stewardship, including compliance with all applicable laws, regulations and terms of the charter contract.

D. The sponsor shall not request any metric or data from a charter school that it does not produce or publish for all school sites in the district or under its sponsorship, unless the metric or data is unique to a charter school.

E. A charter contract may provide for one or more schools by an applicant to the extent approved by the sponsor and consistent with applicable law. An applicant or the governing board of an applicant may hold one or more charter contracts. Each charter school that is part of a charter contract shall be separate and distinct from any other charter school under the same charter contract.

APPENDIX J — 70 OKL.ST.ANN. § 3-136

70 Okl.St.Ann. § 3-136

§ 3-136. Rules and standards to be
incorporated into charter

Effective: [See Text Amendments] to June 30, 2024

<Text of section effective until July 1, 2024.
See, also, text of Title 70, § 3-136 effective July 1, 2024.>

A. A charter school shall adopt a charter which will ensure compliance with the following:

1. A charter school shall comply with all federal regulations and state and local rules and statutes relating to health, safety, civil rights and insurance. By January 1, 2000, the State Department of Education shall prepare a list of relevant rules and statutes which a charter school must comply with as required by this paragraph and shall annually provide an update to the list;
2. A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations. A sponsor may not authorize a charter school or program that is affiliated with a nonpublic sectarian school or religious institution;
3. The charter school may provide a comprehensive program of instruction for a prekindergarten program, a kindergarten program or any grade between grades one and twelve. Instruction may be provided to all persons

Appendix J

between the ages of four (4) and twenty-one (21) years. A charter school may offer a curriculum which emphasizes a specific learning philosophy or style or certain subject areas such as mathematics, science, fine arts, performance arts, or foreign language. The charter of a charter school which offers grades nine through twelve shall specifically address whether the charter school will comply with the graduation requirements established in Section 11-103.6 of this title. No charter school shall be chartered for the purpose of offering a curriculum for deaf or blind students that is the same or similar to the curriculum being provided by or for educating deaf or blind students that are being served by the Oklahoma School for the Blind or the Oklahoma School for the Deaf;

4. A charter school shall participate in the testing as required by the Oklahoma School Testing Program Act¹ and the reporting of test results as is required of a school district. A charter school shall also provide any necessary data to the Office of Accountability;

5. Except as provided for in the Oklahoma Charter Schools Act and its charter, a charter school shall be exempt from all statutes and rules relating to schools, boards of education, and school districts;

6. A charter school, to the extent possible, shall be subject to the same reporting requirements, financial audits, audit procedures, and audit requirements as a school district. The State Department of Education or State Auditor and

1. Title 70, § 1210.505 et seq.

Appendix J

Inspector may conduct financial, program, or compliance audits. A charter school shall use the Oklahoma Cost Accounting System to report financial transactions to the sponsoring school district;

7. A charter school shall comply with all federal and state laws relating to the education of children with disabilities in the same manner as a school district;

8. A charter school shall provide for a governing body for the school which shall be responsible for the policies and operational decisions of the charter school;

9. A charter school shall not be used as a method of generating revenue for students who are being home schooled and are not being educated at an organized charter school site;

10. A charter school may not charge tuition or fees;

11. A charter school shall provide instruction each year for at least the number of days required in Section 1-109 of this title;

12. A charter school shall comply with the student suspension requirements provided for in Section 24-101.3 of this title;

13. A charter school shall be considered a school district for purposes of tort liability under The Governmental Tort Claims Act;²

2. Title 51, § 151 et seq.

Appendix J

14. Employees of a charter school may participate as members of the Teachers' Retirement System of Oklahoma in accordance with applicable statutes and rules if otherwise allowed pursuant to law;

15. A charter school may participate in all health and related insurance programs available to the employees of the sponsor of the charter school;

16. A charter school shall comply with the Oklahoma Open Meeting Act³ and the Oklahoma Open Records Act;⁴

17. The governing body of a charter school shall be subject to the same conflict of interest requirements as a member of a local school board; and

18. No later than September 1 each year, the governing board of each charter school formed pursuant to the Oklahoma Charter Schools Act shall prepare a statement of actual income and expenditures for the charter school for the fiscal year that ended on the preceding June 30, in a manner compliant with Section 5-135 of this title. The statement of expenditures shall include functional categories as defined in rules adopted by the State Board of Education to implement the Oklahoma Cost Accounting System pursuant to Section 5-145 of this title. Charter schools shall not be permitted to submit estimates of expenditures or prorated amounts to fulfill the requirements of this paragraph.

3. Title 25, § 301 et seq.

4. Title 51, § 24A.1 et seq.

Appendix J

B. The charter of a charter school shall include a description of the personnel policies, personnel qualifications, and method of school governance, and the specific role and duties of the sponsor of the charter school.

C. The charter of a charter school may be amended at the request of the governing body of the charter school and upon the approval of the sponsor.

D. A charter school may enter into contracts and sue and be sued.

E. The governing body of a charter school may not levy taxes or issue bonds.

F. The charter of a charter school shall include a provision specifying the method or methods to be employed for disposing of real and personal property acquired by the charter school upon expiration or termination of the charter or failure of the charter school to continue operations. Except as otherwise provided, any real or personal property purchased with state or local funds shall be retained by the sponsoring school district. If a charter school that was previously sponsored by the board of education of a school district continues operation within the school district under a new charter sponsored by an entity authorized pursuant to Section 3-132 of this title, the charter school may retain any personal property purchased with state or local funds for use in the operation of the charter school until termination of the new charter or failure of the charter school to continue operations.

APPENDIX K — 70 OKL.ST.ANN. § 1-106

70 Okl.St.Ann. § 1-106

§ 1-106. Public schools—Definition—What included

The public schools of Oklahoma shall consist of all free schools supported by public taxation and shall include nurseries, kindergartens, elementary, which may include either K-6 or K-8, secondary schools and technology center schools, not to exceed two (2) years of junior college work, night schools, adult and other special classes, vocational and technical instruction and such other school classes and instruction as may be supported by public taxation or otherwise authorized by laws which are now in effect or which may hereafter be enacted.

APPENDIX L — OK CONST. ART. 2, § 5

OK Const. Art. 2, § 5

**§ 5. Public money or property--
Use for sectarian purposes**

No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.

APPENDIX M — OK CONST. ART. 1, § 5

OK Const. Art. 1, § 5

§ 5. Public schools

Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the state and free from sectarian control; and said schools shall always be conducted in English: Provided, that nothing herein shall preclude the teaching of other languages in said public schools.

APPENDIX N — CHARTER SCHOOL CONTRACT

**CONTRACT FOR CHARTER SCHOOL
SPONSORSHIP**

This Contract between the Oklahoma Statewide Virtual Charter School Board and the St. Isidore of Seville Board of Directors, the governing authority of the St. Isidore of Seville Catholic Virtual School (“Charter School”), shall set forth the terms and conditions of the sponsorship of the Charter School and shall constitute the Charter of St. Isidore of Seville Catholic Virtual School.

1. RECITALS

1.1 WHEREAS the Oklahoma State Legislature has enacted the Oklahoma Charter Schools Act set forth in 70 O.S. 3-130 *et seq.*; and

1.2 WHEREAS the provisions of the Oklahoma Charter Schools Act apply to all virtual charter schools formed and operated in the State of Oklahoma; and

1.3 WHEREAS the Statewide Virtual Charter School Board, a state agency established under 70 O.S. § 3-145.1 has the sole authority to authorize and sponsor statewide virtual charter schools in this state; and

1.4 WHEREAS the St. Isidore of Seville Board of Directors is the governing authority of the St. Isidore of Seville Catholic Virtual School, and its principal place of business is Oklahoma City, Oklahoma; and

Appendix N

1.5 WHEREAS the Charter School is a privately operated religious non-profit organization entitled to Religious Protections (defined below); and

1.6 Whereas the Charter School submitted an amended application for initial sponsorship to the Board dated May 24, 2023; and

1.7 WHEREAS the Charter School's authorization application was approved at a regular meeting of the Board on June 5, 2023, in accordance with the requirements of the Charter Schools Act; and

1.8 In consideration of the foregoing, the Parties enter into this Contract pursuant to the terms and conditions set forth herein. All attachments and recitals to this contract are incorporated by reference and made a part of this Contract.

2. DEFINITIONS

2.1 “**Applicable Law**” means all federal and state statutes and rules and regulations applicable to virtual charter schools organized under the Oklahoma Charter Schools Act, including without limitation provisions of the Oklahoma Constitution, Oklahoma Charter Schools Act, Oklahoma Governmental Tort Claims Act, federal statutes pertaining to labor and employment, unemployment compensation, and worker's compensation, and laws governing tax withholding and reporting of employee wages, federal and state regulations relating to health, safety, civil rights, and insurance, and any

Appendix N

other state, local, or federal law or regulation applicable by its own terms to the Charter School. The parties to this Contract recognize certain rights, exemptions or entitlements are applicable to the Charter School as a religious organization under federal, state, or local law, rules, and regulations, including without limitation the Charter School's rights under the so-called "ministerial exception" and other aspects of the "church autonomy" doctrine; Article 1, Section 2, of the Constitution of the State of Oklahoma; the Oklahoma Religious Freedom Act; the federal Religious Freedom Restoration Act; and the First Amendment to the Constitution of the United States (the "Religious Protections"). Accordingly, references in this Contract to the Charter School's compliance with Applicable Law shall be understood to mean compliance in a manner nonetheless consistent with the Charter School's Religious Protections.

2.2 "Average Daily Attendance" ("ADA") and "average daily membership" ("ADM") shall have the meanings set forth in 70 O.S. § 18-107.

2.3 "Board" or "Sponsor" means the Statewide Virtual Charter School Board.

2.4 "Contract" means this contract executed between the Board and the governing authority of the Charter School.

2.5 "Educational Management Organization" means a for-profit or non-profit organization that receives public funds to provide management, administration and/or

Appendix N

educational program implementation services for the Charter School.

2.6 “Extracurricular Activity” means any student activity, club, organization, meeting or event offered by the Charter School or a vendor providing activities to students enrolled in the Charter School that is attended by students and unrelated to the Charter School’s curriculum-based program of instruction set forth in section 4 of this Contract.

2.7 “Financial Records” means all documents in any form relating to the funds of the Charter School, including, but not limited to, all public funds disbursed to the Charter School pursuant to state or federal law.

2.8 “Full-Time” shall mean a student is enrolled within the first twenty (20) instructional days of the school’s instructional year through and including the date of administration of the exam, without an enrollment lapse often (10) or more consecutive instructional days.

2.9 “Public School” shall mean a school that is free and supported by funds appropriated by the Legislature pursuant to 70 O.S. § 1-106. The Charter School is a privately operated not-for profit entity operating a school consistent with the terms of this Contract.

3. GENERAL PROVISIONS

3.1 Authority. The Charter School is authorized by the Sponsor to operate a statewide virtual charter school

Appendix N

that is free and supported by funds appropriated by the Legislature in accordance with the terms and conditions set forth in this Contract and the Applicable Law. Any act by the Charter School or its governing board that is inconsistent with the terms of this Contract or the Applicable Law is hereby deemed a material violation of this Contract and shall constitute good cause for termination of this charter Contract and revocation of the charter; provided, however, that actions by the Charter School that are inconsistent with Applicable Law but nonetheless within the Charter School's rights under the Religious Protections shall not be deemed a violation of this Contract.

3.2 Term of the Contract. This Contract shall commence on July 1, 2024, and automatically terminate on June 30, 2029. The Contract may be renewed upon application of the Charter School in accordance with the Charter School Act and Statewide Virtual Charter School Board rules and regulations.

3.3 Operation. The Charter School agrees that it will begin operations on or before July 1, 2024.

4. CHARTER SCHOOL PROGRAM OF INSTRUCTION

4.1 Description of the program of instruction. The Charter School is authorized to implement the program of instruction, curriculum, and other services as specified in the Application, unless otherwise modified by this Contract.

Appendix N

4.1.1 Grade levels. The Charter School will provide a comprehensive program of instruction for grades K through 12.

4.1.2 Change to program of instruction. Any material change to the program of instruction, curriculum and other services specified in the Application or this Contract requires Sponsor approval prior to the change.

4.2 Graduation requirements. The Charter School will comply with the graduation requirements set forth in 70 O.S. § 11-103.6.

4.3 Textbooks, curriculum materials and equipment. The Charter School shall provide all enrolled students with sufficient textbooks, workbooks, materials, equipment and/or technological aids necessary to ensure delivery of the Charter School's program of instruction during every school year of operation during the term of this Contract.

4.3.1 Equipment necessary for special education and students with disabilities. In addition to the materials provided to students in accordance with the provisions of Section 4.3, the Charter School shall provide any additional equipment or technological aids to students with disabilities as necessary to ensure equal access to the Charter School's program of instruction in accordance with the student's IEP or Section 504 plan.

Appendix N

4.4 Extracurricular Activities. Nothing in this Contract shall obligate the Sponsor to provide funding of Extracurricular Activities to the Charter School unless explicitly required by statute or regulation. The provisions of Section 8.8.1 of this Contract prohibiting the Charter School from charging tuition and/or fees shall not preclude the Charter School from recovering the reasonable costs of Extracurricular Activities or special events offered pursuant to the provisions of this Section from participating students or their parents/legal guardians, provided that under no circumstance may the Charter School recover an amount in excess of the cost of the activity or event. Further, a student's income shall not be used as a basis for determining eligibility of a student to participate in Extracurricular Activities.

5. CHARTER SCHOOL OPERATIONS

5.1 Transportation. The Charter School acknowledges that as a statewide virtual charter school, daily transportation of students to and from a school site is not required. However, the Charter School may provide transportation to students as necessary for limited circumstances (e.g., transportation of students to secure testing sites), provided that the Charter School shall not be eligible to receive transportation supplement funds set forth in the state aid formula set forth in 70 O.S. § 18-200. t, unless funding is available and otherwise permitted by state law and disbursement is approved by the Sponsor.

5.2 Facilities. The Charter School acknowledges that Charter School must maintain a school administration

Appendix N

facility that is accessible to the public and the Sponsor is under no obligation to provide facilities, furniture, or other equipment to the Charter School unless and until the parties enter into an agreement to do so.

5.2.1 Inventory. No later than July 1st of each year of operation, the Charter School shall provide the Sponsor with an itemized inventory of all real and personal property leased or purchased with public funds.

5.2.2 Lease/purchase agreements. The Charter School shall provide the Sponsor with copies of all agreements and/or contracts governing lease and/or purchase of real property by the Charter School. All agreements shall be in the name of the Charter School, approved by the governing board, and signed by the governing board chairperson,

5.2.3 Pricing. Purchases or leases of real property must be for a reasonable amount, taking into consideration the fair market value at the time of purchase for like property.

5.3 Shared Services Agreements. The governing board of the Charter School may enter into shared service agreements with an Oklahoma school to share the services of an administrator, teacher, or support service provider, to share equipment or facilities, and/or to share duties or responsibilities required by of the state.

Appendix N

5.3.1 Sponsor Approval. Shared service agreements shall be effective only after approval by the Sponsor and such agreements shall be subject to change or termination by the Sponsor.

5.3.2 Duration. The duration of a shared service agreement shall be for a term of one (1) year and notice of intent of a participating school to withdraw from the shared service agreement must be given no later than March 15 for the ensuing school year. The agreements may be extended for one (1) year terms upon agreement by the parties and submission to the Sponsor annually for approval. The agreement shall also set forth a termination clause allowing either party to terminate the contract.

5.3.3 Specificity requirement. Shared service agreements shall not be blanket agreements for all services, but shall be separate, individualized, and specific agreements for each service/position/duty/equipment/facility sought to be shared.

5.3.4 Proportional responsibility. Shared service agreements shall specifically set forth the financial responsibility of each party, and specific payment terms. Payment for shared services shall be paid by each school in a proportionate manner, without reimbursement, except as set forth in section 5.3.6.

5.3.5 Calculation. The method of calculating the proportional share to be paid by each school shall be included in the agreement. If the calculation is based

Appendix N

upon an enrollment count report that is updated on a recurring basis, the initial report shall be attached to the agreement, and the subsequent reports shall be made available to the Sponsor upon request.

5.3.5.1 The shared service calculation shall be based on the separate student enrollment numbers for each participating school.

5.3.6 Reimbursement. Reimbursement shall only be allowed for equipment, testing sites, and utilities such as electrical, water, etc. that are unable to be invoiced separately. Reimbursement payments shall be paid on a quarterly basis, at a minimum.

5.3.7 Ownership. For agreements to share property or tangible items, the agreement shall be specific as to ownership and methods to be employed for disposing of property upon partial or complete termination of the agreement.

5.3.8 Benefits. For agreements to share personnel, the agreements shall account for how employees' benefits shall be paid proportionally by each party.

5.3.9 Certain agreements not allowed. Educational Management Organization contracts shall not be a shared service.

5.3.10 Out-of-state. The Charter School shall not enter into shared service agreements with school districts in states other than Oklahoma.

Appendix N

5.3.11 Governing boards. The governing boards of the two schools utilizing shared services must be made up of entirely different members.

5.3.12 Employment contracts. Employment contracts for Charter School employees that will provide shared services shall include provisions for proportional compensation and all related information.

6. CHARTER SCHOOL MANAGEMENT AND ADMINISTRATION

6.1 Governing Board. The governing board of the Charter School shall be responsible for the policies and operational decisions of the Charter School.

6.1.1 Members. The governing board of the Charter School shall have no less than five (5) members. One (1) of the members shall be a parent, grandparent, or legal guardian of a student currently or previously enrolled in the Charter School. New members of the governing board shall be selected by an interview process conducted by the governing board. Any governing board member serving on more than one governing board shall abstain from voting on shared services between the virtual charter school and any other school they serve as a governing board member.

6.1.2 Terms. The members of the governing board of the Charter School shall have specific terms of service set forth in its by-laws.

Appendix N

6.1.3 Residence. A majority of the governing board members shall be residents of the State of Oklahoma.

6.1.4 Meetings, The governing board shall meet no less than quarterly in a public meeting, in a location within the State of Oklahoma.

6.1.5 Notification of changes. The Charter School shall notify the Sponsor of any changes in the governing board within five (5) business days of the date of resignation or appointment. The Charter School shall also keep the Sponsor apprised of the officers of the governing board, and any changes thereto within five (5) business days of the election, appointment, or resignation.

6.1.6 Conflicts of interest. The governing board of the Charter School and the governing board of the Sponsor shall be subject to the same conflicts of interest requirements as members of local Public School district school boards in the State of Oklahoma, including but not limited to the provisions of 70 O.S. §5-113 and 70 O.S. §5124.

6.1.7 Confidentiality of student records. The Charter School shall comply with all provisions of federal and state law pertaining to parent/legal guardian access to student records and privacy of student records and student data, including but not limited to compliance with all provisions of the Family Education Rights and Privacy Act of 1974 (“FERPA”) and the Individuals with Disabilities Education Act (“IDEA”).

Appendix N

6.1.8 Instruction and Continuing Education. The members of the governing board of the Charter School shall be subject to the same instruction and continuing education requirements as a member of a local school board set forth in 70 O.S. §§ 5-110 and 5110.1.

6.2 Administration. The Chief Administrative Officer of the Charter School is the Superintendent. The duties of the Chief Administrative Officer shall include management and administration of the Charter School.

6.2.1 The individual tasked with primary financial responsibility, such as the Chief Financial Officer or Treasurer for the Charter School, shall be separate and apart from any Educational Management Organization, regardless of title.

6.3 Code of Ethics. The Charter School governing authority shall develop and approve a Code of Ethics and a Conflict of Interest policy.

6.4 Educational Management Organization. The governing board may contract with an Educational Management Organization but must retain oversight authority over the Charter School. If the governing board contracts with or otherwise utilizes an Educational Management Organization, the governing board agrees to abide by the following:

6.4.1 The relationship of the Charter School and an Educational Management Organization is that

Appendix N

of a customer and vendor contractor. As such, the Charter School and the Educational Management Organization shall be separate entities in all aspects, including but not limited to staffing, organizational management, financial, operations, etc.

6.4.2 Charter School employees shall not report to the Educational Management Organization or an employee of the Educational Management Organization. Charter School employees paid with public dollars shall report to the Superintendent of the Charter School, who reports to the governing board. Employees that report to the Educational Management Organization shall be employees of the Educational Management Organization.

6.4.3 All funds utilized to operate the Charter School, including but not limited to paying Charter School employees, providing curriculum, technology, supplies, and/or Extracurricular Activities to students shall be maintained in Charter School accounts and controlled by Charter School employees.

6.4.4 The governing board shall require the Educational Management Organization to report accurate, itemized expenditure information for the goods and services provided by the Educational Management Organization to the Charter School.

6.4.5 All fees charged by the Educational Management Organization shall be clearly stated in the contract with the governing board.

Appendix N

6.4.6 The governing board shall conduct an annual evaluation of the Educational Management Organization and an annual review of the Educational Management Organization's operating agreement, and such evaluation and review shall include an annual contract compliance audit. The governing board shall provide the Sponsor with a copy of the annual review.

6.4.7 The governing board shall have access to Educational Management Organization records necessary to overseeing the Educational Management Organization contract.

6.4.8 An employee of the Educational Management Organization for the Charter School shall not sit on the governing board of the Charter School.

7. FUNDING, MANAGEMENT, AND REPORTING

7.1 Financial Management. The Charter School shall comply with the same state and federal statutes and regulations relating to reporting requirements, financial audits, audit procedures, and audit requirements applicable to Oklahoma Public School districts unless otherwise expressly exempted by statute or regulation. In addition, the Charter School agrees to meet any additional requirements set forth herein deemed necessary by the Sponsor to ensure proper oversight and management of the Charter School's use of public funds. The Charter School shall comply with requests for appropriations, recording, reporting receipt, and expenditures of public

Appendix N

funds under state and federal statutes and regulations, Such compliance requirements include, but are not limited to the following provisions:

7.2 Fiscal year. The Charter School shall operate on a fiscal year basis. The Charter School’s fiscal year shall begin July 1st and end on June 30th of the following calendar year.

7.3 Indebtedness. The Charter School shall abide by the “pay as you go” fiscal year restrictions that apply to school districts and other political subdivisions set forth under Art. 10 § 26 of the Oklahoma Constitution.

7.4 No authority to bind Sponsor. The terms of this Contract shall not be construed as either express or implied authority of the Charter School to extend the faith and credit of the Sponsor or contractually bind the Sponsor to any third person or entity. The Charter School agrees and acknowledges that the Sponsor’s financial obligations to Charter School are limited to pass through distribution of state funding as authorized by law.

7.5 Assets of the Charter School. Pursuant to Art. 10 §15 of the Oklahoma Constitution, the Charter School shall not apply, hold, credit or extend credit, transfer, or otherwise make use of public funds for any purpose other than operation of the Charter School.

7.5.1 Transfer or sale of real property. No real property obtained by the Charter School with public funds shall be sold, alienated, transferred, or

Appendix N

otherwise disposed of without prior written consent of the Sponsor.

7.5.2 Prohibition against encumbrance. The Charter School shall not alienate, pledge, or otherwise encumber this Charter, public funds, or assets of the Charter School procured with public funds for the benefit of any individual, or entity, including creditors.

7.6 Reporting requirement. The Charter School and governing board shall promptly provide access to any and all records as requested by the Sponsor, the State Auditor and Inspector, the State Department of Education, or any other entity allowed by law to request and obtain records.

7.7 Calculation of state aid. State aid funding shall be calculated and disbursed in accordance with the provisions of the Oklahoma Charter Schools Act, accompanying statutes and regulations of the Sponsor, the Oklahoma State Department of Education, the Oklahoma State Board of Education, and the terms of this Contract. Calculation of state aid shall be determined by the Oklahoma State Department of Education in accordance with the provisions of the Oklahoma Charter Schools Act and accompanying Department regulations pertaining to calculation of weighted average daily membership, Average Daily Attendance, and other applicable student counts. The Charter School agrees that it shall maintain accurate and up-to-date records of student attendance and enrollment for all student grade levels and pupil categories and immediately report any changes as necessary to

Appendix N

ensure accurate calculation of state aid in accordance with the requirements and deadlines set forth by 70 O.S. § 18-200.1 and accompanying regulations. The Charter School shall also be eligible to receive any other federal, state, or local revenues allowed by law.

7.8 Disbursement of state aid. The Sponsor may charge not more than three percent (3%) of the State Aid allocation for administrative services rendered. The Sponsor shall provide Financial Records documenting state funds charged for administrative services for the previous year to the State Department of Education. The Charter School agrees that in the event the Charter School fails to comply with the provisions of state or federal statutes or regulations, the State Department of Education may withhold funds until compliance is achieved as allowed by law.

7.8.1 Oversight fee. The Sponsor shall cease collection of the fee described in 7.8, beginning the month after the Sponsor's operating account, funded by the fee, accumulates to a sum greater than 120% of the current Fiscal Year Budget. Collection of the fees by the Sponsor shall resume the month after the Sponsor's operating account balance is below the 120% threshold for the remaining Fiscal Year budget, or an action by the Board to resume collection has been passed in open public meeting.

7.8.2 Any fees collected by a vendor of the Charter School shall be calculated on the actual amount of state funding received by the Charter School after the Sponsor has charged its oversight fee.

Appendix N

7.9 Use of public funds. The Charter School agrees that any federal, state or local public funds disbursed to the Charter School shall be used solely and exclusively for the benefit of the Charter School, with the exception of reimbursement funds pursuant to a shared service agreement as set forth in section 5.3 and the corresponding sub-sections. Public funds must stay in public charter school account until a sufficiently itemized invoice or bill is paid. Detailed records shall be kept by the Charter School of all expenditures of public funds. In addition, records shall be kept of all expenditures of public funds by any entity associated or affiliated with the Charter School. Records shall be promptly provided to the Sponsor upon request,

7.9.1 Spending Limitations. The Charter School shall be subject to spending limitations, including but not limited to Oklahoma Constitution provisions on spending funds from the state, whether received through the State Department of Education or other source.

7.10 Commingling prohibited. The Charter School shall not commingle state funds disbursed to the Charter School with the funds of any other person or entity. The Charter School shall maintain separate and distinct accounting, budgeting, recordkeeping, admissions, employment, reporting, auditing, policies, and operational decisions for the management and operation of the Charter School.

7.11 Fundraising. Subject to limitations set forth by conflict of interest statutes and regulations applicable to

Appendix N

the Charter School and its governing board, the Charter School may accept private donations, provided, however, that private donations shall in no way be used either directly or indirectly to affect enrollment decisions or otherwise subvert the Charter School's policies and procedures pertaining to admission and enrollment.

7.12 Prohibition of funding home-schooled students or private school students. Under no circumstances shall the Charter School and/or its program of instruction offered in accordance with this Contract be used to provide or otherwise supplement instruction of home-schooled students or students enrolled in private schools, or used as a method of generating revenue for students who are being home-schooled or are enrolled in private schools. The Charter School shall not receive state aid funding for students that are not enrolled as a Full-Time student of the Charter School.

7.12.1 Part time enrollment. The Charter School shall implement and enforce policies and procedures prohibiting enrollment of students on a part time basis unless otherwise expressly required by state law for the sole purpose of providing remediation pursuant to the Reading Sufficiency Act in 70 O.S. § 1210.508A *et seq.*

7.13 Reporting. The Charter School shall use the Oklahoma Cost Accounting System ("OCAS") to report financial transactions to the Oklahoma State Department of Education and/or the Sponsor, and shall fully comply with all provisions of state law regarding school finance.

Appendix N

The Charter school shall comply with all provisions of the School District Transparency Act. If the Charter School utilizes an Educational Management Organization, the expenditures of the Educational Management Organization must be reported through the OCAS system, Financial reporting by the Charter School and the Educational Management Organization shall be itemized by actual costs, and not based on estimates or prorated amounts.

7.13.1 Quarterly financial statement. In addition to the reporting requirements set forth by state law, regulations of the Oklahoma State Department of Education, and regulations of the Sponsor, the Charter School shall provide the Sponsor with a quarterly financial statement that includes an itemized report of all income and expenses of the Charter School. The financial statement shall include a verification signed by the Charter School's treasurer substantially following the form provided below:

"I hereby certify under penalty of perjury under the laws of the State of Oklahoma and the United States of America that the foregoing is true and correct to the best of my knowledge as this _ day of [month], [year]."

7.13.2 Supporting documentation. The governing board must also provide to the Sponsor all supporting documentation for all expenditures upon request, including but not limited to an itemized invoice

Appendix N

clearly describing the item or service purchased, an encumbrance approved by the governing board, a purchase order, and proof of payment by warrant or check for each expenditure.

7.14 Annual audit. The Charter School shall ensure that an annual audit is conducted of the financial operations of the Charter School in accordance with the requirements of the Oklahoma Public School Audit law in 70 O.S. § 22-103 and accompanying regulations. Any expense of the audit shall be borne by the Charter School. The Sponsor may require the Charter School to present the audit at a regular or special meeting of the Board.

7.14.1 The Charter School shall change audit firms, at a minimum, every three (3) years to ensure annual audits are completed by two (2) different firms over the term of the Contract. If the term of the Contract is less than five (5) years, the Charter School shall change audit firms every two (2) years, or otherwise, to ensure annual audits are completed by two (2) different firms over the term of the Contract.

7.14.2 The Charter School shall be subject to requests for audit by the State Auditor's Office, and shall cooperate fully in all aspects of any request made pursuant to such audits.

7.14.3 The Charter School shall be subject to compliance audits conducted by the Sponsor at any time during the Contract term.

Appendix N

7.15 Recordkeeping. The Charter School and governing board shall maintain all Financial Records necessary to demonstrate compliance with the provisions of this Contract, the Charter School Act, and to conduct the annual financial audits required by the Oklahoma Public School Audit law. All records pertaining to finances and accounting of Charter School funds shall be maintained for at least five (5) years from the ending date of the latest fiscal year(s) to which the record relates. The Sponsor shall have access to all Financial Records pertaining to the school.

7.16 Access to records. The Sponsor shall have access to all Charter School records related in any respect to Sponsor oversight or use of public funds including, but not limited to, Financial Records of the Educational Management Organization. The Charter School shall provide any requested access to the Sponsor upon request.

7.17 Financial employees. The Charter School shall employ or contract with an individual tasked with primary financial responsibility, such as a Chief Financial Officer or Treasurer, that regardless of title, works only for the Charter School and is separate and apart from any Educational Management Organization. This individual may be subject to a shared service agreement only if approved by the Sponsor. The Charter School shall employ or contract with its own encumbrance clerk(s) that works only for the Charter School and is separate and apart from any Educational Management Organization. This individual may be subject to a shared service agreement only if approved by the Sponsor.

Appendix N

7.17.1 Access to public funding. Only individuals directly employed by or contracted with the Charter School's governing board shall have access to Charter School bank accounts and any other account that is used for the operation of the school.

7.18 Minimum requirement for financial policy and procedure. The policies and procedures for the Charter School shall include at a minimum:

- i. An explanation of the specific OCAS compliant accounting system used for the school.
- ii. An explanation of the responsibilities of the chief financial officer, other financial employees, and the encumbrance clerk(s).
- iii. An explanation of the purchasing process, including but not limited to the procedure from open to close of purchase orders, explaining what documentation is to be kept on file, what software systems are to be used, which employees are responsible at each point in the process, and what potential consequences would come to employees in violation of the policy.
- iv. A requirement that the encumbrance clerk must have all supporting documentation on file for purchase orders and invoices, based on the expenditure/procurement procedures approved by the governing board, prior to issuing payment.

Appendix N

- v. A policy for purchase order change orders indicating a threshold amount that may be approved by the Superintendent or designee and those that would require governing board approval.
- vi. An explanation of the payroll procedure process, including but not limited to an explanation of the calculation of payroll from the shared services employees, how the revenue will be allocated from the school's general fund to be ultimately paid out to employees, what documentation is to be kept on file by the accounting office, and what potential consequences would come to employees in violation of the policy.
- vii. An explanation of the calculation of student enrollment numbers that are used to calculate payroll for employees subject to shared service agreements.
- viii. A requirement that changes to the policy(ies) must be approved by the governing board of the Charter School.

8. COMPLIANCE WITH THE OKLAHOMA CHARTER SCHOOLS ACT

8.1 General. The Charter School agrees to comply with all Applicable Law.

Appendix N

8.2 Affiliation. The parties acknowledge and agree that if the Charter School is a religious nonprofit organization, it has the right to freely exercise its religious beliefs and practices consistent with its Religious Protections. If, on the other hand, the Charter School is not a religious nonprofit organization entitled to the Religious Protections, it shall be nonsectarian in its programs, admission policies, employment practices, and all other operations.

8.3 Accountability and assessment. The Charter School shall comply with all federal and state statutes and regulations pertaining to accountability and assessment of its student, including, but not limited to the following:

8.3.1 The Charter School shall participate in all state testing required by the Oklahoma School Testing Program Act and accompanying Oklahoma State Department of Education regulations, including, but not limited to, testing required by the Reading Sufficiency Act in 70 O.S. § 1210.508C. The Charter School shall ensure that the number and/or percentages of students assessed meet the requirements of state and federal law and regulations. The Charter School shall provide the Sponsor with the district, school and grade level results of state assessments as provided by the Oklahoma State Department of Education. In addition, the Charter School should monitor student progress through the local assessment plan outlined in the Charter School's application. Student data shall be provided at the request of the Sponsor.

Appendix N

8.3.2 The Charter School shall comply with all requirements for timely reporting of student test results to which Oklahoma Public School districts are bound, including, but not limited to the provisions of 70 O.S. § 1210.545.

8.3.3 The Charter School shall timely provide all necessary accountability and assessment data to the Oklahoma State Department of Education's Office of Accountability and Assessment as requested and in accordance with the deadlines established by the Oklahoma State Department of Education.

8.4 Performance Framework. The Performance Framework set forth in OAC 777:10-3-4 will be used to assess the Charter School's ability to operate in the areas of academic, financial and organizational capacities. The Sponsor shall evaluate the Charter School under the Performance Framework annually and present results of the evaluation to the governing board of the Charter School and the governing board of the Sponsor in an open meeting.

8.4.1 Board data submission. The Charter School agrees to participate in the Sponsor's data collection program for submitting school data as required by OAC 777:10-3-4, and submit all requested documentation by the required due dates.

8.5 Plan of Improvement. If the Performance Framework evaluation reveals weaknesses, concerns, violations, or deficiencies regarding the Charter School

Appendix N

during any school year during the term of this Contract, the Sponsor may require the Charter School to submit to the Sponsor a corrective action plan and corresponding timeline to be implemented during the following school year. The corrective action plan shall be incorporated into the terms of this Contract, and the Charter School shall implement the plan for any school years remaining during the terms of the Contract, provided that approval of the corrective action plan shall not be construed as a waiver of any rights of the parties to terminate or not renew the Contract. If the Charter Schools fails to substantially complete the corrective action plan, the Sponsor may choose not to renew the Contract.

8.6 Students with disabilities. The Charter School shall comply with all federal and state laws relating to the education of children with disabilities in the same manner as an Oklahoma Public School district, including but not limited to the Individuals with Disabilities Education Act (“IDEA”) in 20 U.S.C. § 1400 *et seq.*, Section 504 of the Rehabilitation Act of 1973 in 29 U.S.C. § 794, Title II of the Americans with Disabilities Act, and Policies and Procedures of the Oklahoma State Department of Education for Special Education in Oklahoma.

8.7 English language learners. The Charter School shall comply with all federal and state laws pertaining to the education of students identified as Limited English Proficient and/or English Language Learners, including but not limited to ensuring equal access to the Charter School’s program of instruction and related educational services in accordance with Title VI of the Civil Rights Act of 1964 and accompanying regulations.

Appendix N

8.8 Admission, attendance, and enrollment. The Charter School shall ensure that no student shall be denied admission to the Charter School on the basis of race, color, national origin, sex, sexual orientation, gender identity, gender expression, disability, age, proficiency in the English language, religious preference or lack thereof, income, aptitude, or academic ability.

8.8.1 Tuition and fees. The Charter School shall be as equally free and open to all students as a traditional Public School. The Charter School agrees that students and/or parents/legal guardians of students shall not be charged tuition or fees. The prohibition against charging tuition or fees applies to any attempt by the school, the governing board of the school, or employees or contractors of the school, directly or indirectly, to recover costs of offering curriculum based programs of instruction and related services to students.

8.8.2 Admission by lottery. In the event the Charter School is required to implement a lottery selection process due to a limitation in enrollment capacity, the Charter School shall provide the Sponsor with an opportunity to have a representative present to monitor and/or observe the lottery proceedings. The Charter School shall provide the Sponsor with notification of the date, time, and location of the lottery no later than five (5) business days prior to the date of the lottery or any related meetings. If a lottery results in generation of a waiting list for enrollment, the Charter School shall provide the

Appendix N

Sponsor with a copy no later than five (5) business days after the date of the lottery or any related meeting.

8.8.3 Verification of residency. The Charter School agrees that enrollment in the Charter School shall be open to any student who is considered a resident of the State of Oklahoma and who is eligible by age or grade to enroll in the Charter School's program of instruction. The Charter School shall not enroll any student who is not a legal resident of the State of Oklahoma, and shall ensure that verification of residency, enrollment of students, and admission of students is conducted in accordance with the policies and procedures of the Charter School. Such policies and procedures shall include a requirement that the parent/legal guardian of a prospective student sign, in either electronic or handwritten fashion, a form verifying the student's legal address, and the accuracy of the information provided in the enrollment application. The form shall also include an acknowledgement that the student is being enrolled in the Charter School.

8.8.4 Student support. During each school year of operation, the Charter School shall have a teacher assigned to each student to provide meaningful student interaction and timely and frequent feedback that is highly individualized and detailed to achieve continued student progress. In addition to the classroom teacher, support services required for student success in online education (i.e. tutors, mentors, and technical assistance) will be provided.

Appendix N

8.8.5 Student attendance. The Charter School shall establish a system of accurate logging and recording of student participation in instruction as necessary to monitor and report compliance with the compulsory student attendance provisions of Article 13, § 4 of the Oklahoma Constitution, 70 O.S. § 3-145.8, 70 O.S. § 10-105, and Oklahoma State Department of Education regulations.

8.8.5.1 Attendance Officer. The Charter School agrees that it will designate an attendance officer as necessary to ensure the Charter School's compliance with all compulsory attendance laws and ensure accurate recording, maintenance, and reporting of student attendance as required by Oklahoma law.

8.8.6 State records system. The Charter School agrees to participate in the state student records system as required by 70 O.S. § 3-160.

8.8.7 Transcripts. The Charter School agrees to transcript for each student, at a minimum, the Full-Time online courses the student is enrolled in per semester, all grades or incomplete grades received, grade-point averages, and/or class rank.

8.9 School year. The Charter School shall provide instruction each school year for at least the number of school date or hours required by Oklahoma law, 70 O.S. § 1-109 and 1-111(A). In the event an emergency, such as severe weather, interferes with the delivery of the

Appendix N

program of instruction, student attendance, cancellation of school programs or activities, the instruction shall be conducted in accordance with the Charter School's emergency policies and procedures.

8.10 Student conduct and discipline. The Charter School shall comply with the student suspension requirements set forth in 70 O.S. § 24-101.3, and in accordance with the Charter School's student conduct, discipline, and due process policies and procedures.

8.11 Employees. The Charter School shall ensure that employment of the Charter School's personnel is conducted in accordance with all Applicable Law. In addition, the Charter School shall ensure that employment is conducted in accordance with the Charter School's personnel policies and procedures.

8.11.1 Oklahoma Teachers' Retirement System. If the Charter School elects to participate in the Oklahoma Teachers' Retirement System ("OTRS"), the Charter School agrees that it will fully comply with all statutes and regulations governing the OTRS.

8.11.2 Employment Contracts. The Charter School's contracts for services with teachers and school personnel shall comply with the requirements of 70 O.S. § 3-135(8). On or before August 1st of the fiscal year, the Charter School agrees to provide the Sponsor documentation of all compensation (salaries, hourly wages,

Appendix N

benefit compensation, bonuses, etc.) paid to each and every employee of the Charter School, including the Chief Administrative Officer/Superintendent.

8.11.3 Disclosures. Upon contracting with any teacher or other personnel, the governing board of the Charter School shall, in writing, disclose employment rights of the employees in the event the Charter School closes or is not renewed.

8.11.4 Instructional personnel. The Charter School agrees that all individuals employed to teach students shall hold a valid teaching certificate issued or recognized by the State Board of Education or other qualifying credentials as allowed by the Oklahoma Charter School Act.

8.11.5 Background checks, The Charter School shall comply with the provisions of state law pertaining to background checks of school district employees.

8.12 Open Meeting Act and Open Records Act. The Charter School and its governing board shall comply with all provisions of the Oklahoma Open Meeting Act at 25 O.S. § 301 *et seq.* and the Oklahoma Open Records Act at 51 O.S. § 24A.1 *et seq.*

8.13 Contracts. Pursuant to 70 O.S. § 3-136(0), the Charter School may enter into contracts, sue and be sued.

Appendix N

8.14 Disposition of property. Within sixty (60) days of the date of school closure, or upon failure of the Charter School to continue operations, all real and personal property obtained by the Charter School with public funds shall be retained by the Sponsor consistent with state law, and the Charter School shall ensure execution of any title documents necessary to ensure legal title of such property is transferred to the State. The Sponsor shall not be responsible for any of the Charter School's non-payable warrants, certificates of indebtedness, or financial obligation related to the operation of the Charter School.

8.15 Inspection. The Charter School agrees to permit inspections of the Charter School by the Sponsor, State Department of Education, and the State Auditor and Inspector as necessary to ensure compliance with the provision of this Contract and applicable state and federal law and regulations. Further, the Charter School agrees to respond to requests for documentation by the Sponsor to ensure compliance with the provision of this Contract and applicable state and federal law and regulation.

8.16 Role of the Sponsor. The Statewide Virtual Charter School Board shall authorize, oversee, and sponsor the Charter School.

8.16.1 Duties of the Sponsor. The Sponsor shall oversee operations of the Charter School and establish rules, policies, and procedures required to operate statewide virtual charter schools and ensure free appropriate public education and related services are provided to virtual charter students

Appendix N

across the state in a safe, consistent, effective, and appropriate manner. The Sponsor shall also comply with its specific responsibilities provided in the Charter School Act.

8.16.2 Operation of the Sponsor. The Sponsor shall comply with the policies and procedures codified in Title 777 of the Oklahoma Administrative Code.

9. ASSUMPTION OF LIABILITY

9.1 Liability. The Charter School and the Sponsor agree that neither party agrees to indemnify or hold harmless the other party with regard to any loss, damage, or claims arising out of this Contract or the operation of the Charter School, unless expressly provided elsewhere in this Contract or as expressly stated by state or federal law.

9.2 Insurance. The Charter School shall be considered an Oklahoma Public School district for purposes of the Oklahoma Governmental Tort Claims Act.

9.2.1 Verification of Insurance. Prior to commencing operations of the Charter School for the school years set forth in this Contract and on an annual basis thereafter, the Charter School shall provide the Sponsor with copies of certificates of insurance proving that the Charter School maintains public liability insurance equal to or greater than the limits of liability required in the Oklahoma Governmental Tort Claims Act in 51 O.S. § 151. In addition, the Charter School shall provide the Sponsor with

Appendix N

copies of certificates of insurance and any other documentation required by the Sponsor, proving that the Charter School maintains sufficient property and casualty insurance to cover the value of all property of the Charter School purchased using state, federal or local funds. The Board or Oklahoma State Department of Education may not disburse state aid funds to the Charter School unless and until compliance with the requirements of this Section have been met.

10. MODIFICATION, RENEWAL, AND TERMINATION

10.1 Modification/Amendment of Contract. All modifications or amendments to the Contract shall require valid written approval by a majority of both the governing board of the Charter School and of the Sponsor. The modification or amendment shall be documented in writing and include the minutes of the governing board meetings in which the modification or amendment was approved. Failure by the parties to agree on modified or amended terms shall not constitute a basis for invoking rights to dispute resolution, arbitration, or mediation as set forth under the Oklahoma Charter School Act.

10.2 Renewal of Contract. Renewal of this Contract shall be conducted in accordance with the provisions of 70 O.S. § 3-137 and the accompanying regulations of the Board in effect as of the date of receipt of the Charter School's application.

Appendix N

10.3 Termination of the Contract. Termination of this Contract shall be conducted in accordance with the provisions of 70 O.S. § 3-137 and the accompanying regulations of the Board in effect as of the date of the Sponsor's notification of intent to terminate is received by the Charter School. All costs resulting from any termination of this Contract shall be the sole responsibility of the Charter School.

10.4 Prohibition of assignment. The Charter School's obligations under this Contract may not be assigned, delegated, subcontracted, transferred to, or assumed by any other person or entity, provided that the Charter School may contract with individuals or entities for services necessary to assist the Charter School in fulfilling its obligations under this Contract.

11. MISCELLANEOUS

11.1 Superseding law. In the event of any conflict between the terms of this Contract and Applicable Law, the terms of this Contract shall be deemed superseded by the conflicting Applicable Law; provided, however, that if the Charter School is a religious nonprofit organization, the Charter School shall be entitled to its Religious Protections even when in conflict with the Applicable Law.

11.2 Entire Agreement. The parties agree that this Contract, including all attachments and terms and provisions incorporated by reference, contains the entire agreement between the parties. All prior representations, understandings, and discussions between the parties are merged into, superseded by, and canceled by this Contract.

Appendix N

11.2.1 Construction. This Contract has been prepared jointly by the parties and shall not be construed more or less favorably with respect to either party.

11.3 Choice of Law. This Contract shall be interpreted and construed in accordance with the laws of the State of Oklahoma, without giving effect to any rule or provision governing choice of law or conflict of laws that would otherwise result in application of the laws of any jurisdiction other than the State of Oklahoma to govern the dispute.

11.4 Jurisdiction and Venue. Any claims arising from the terms and provisions of this Contract shall only be brought in the District Court of Oklahoma County, Oklahoma, or the United States District Court for the Western District of Oklahoma, provided, however, that this provision shall not be interpreted as a waiver of any or all rights of sovereign immunity to which the Board or individual members of the Board may be entitled to exercise.

11.5 Severability. In the event a court of competent jurisdiction issues a determination declaring any term or provision of this Contract to be void, invalid, and/or unenforceable, the remaining terms and provisions of this Contract shall remain in full force and effect.

11.6 No waiver of breach. The parties agree that neither express nor implied consent to any breach of any terms, warranties, or covenants of this Contract shall waive any succeeding or other breach.

Appendix N

11.7 Duty to Notify. The Charter School shall promptly notify the Sponsor if any adverse action such as litigation, audits, criminal investigations, or claims against teachers, etc., material finding of noncompliance, or pending action, claim, or proceeding arises relating to the Charter School or an Educational Management Organization or a Charter Management Organization that have contracted with the Charter School. In the event the Charter School and/or its governing board sues or is named by any individual or entity as a party in a suit or administrative proceeding in any jurisdiction, the Charter School agrees to provide the Sponsor with a copy of the complaint, petition, or other instrument initiating the suit or proceeding within five (5) business days of the date of service upon the Charter School or its governing board. In addition, the Charter School agrees to timely provide the Sponsor with any information concerning the suit or proceeding as may be requested by the Sponsor and as allowed by law.

11.8 Notice. All notices required by the provisions of this Contract shall be delivered to the address of record for the party. The parties shall be notified of any change in address of record of the other party within five (5) business days of the date of the change in address. The address of record for the parties shall be as follows:

Notice to the

Charter School: St. Isidore of Seville Catholic Virtual
School
7501 NW Expressway
Oklahoma City, OK 73132

Appendix N

Notice to the Sponsor: Statewide Virtual Charter
School Board
2501 N. Lincoln Blvd., Suite 301
Oklahoma City, OK 73105

11.9 Incorporation. The Charter School's Application for Sponsorship and accompanying documents approved by the Board on June 5, 2023, are hereby incorporated by reference. In the event of a conflict between the terms of this Contract and the approved terms in the Charter School's Application for Sponsorship, the terms of this Contract shall supersede.

12. WARRANTIES AND COVENANTS

12.1 The Charter School warrants that it has not entered into an employment contract with any teacher or other personnel prior to the execution of this Contract except as otherwise disclosed to the Sponsor.

12.2 The Charter School warrants that it is affiliated with a nonpublic sectarian school or religious institution.

12.3 The Charter School warrants that it is not chartered for the purpose of offering a curriculum for deaf or blind students that is the same or similar to the curriculum being provided by or for the education of deaf or blind students that are being served by the Oklahoma School for the Blind or the Oklahoma School for the Deaf.

12.4 The Charter School warrants that it shall not be used by the governing board or any other entity as a

Appendix N

method of generating revenue for students who are being home schooled or in private school and are not being educated by the Charter School.

12.5 The Charter School warrants that no governing board member, school staff member, or contractor/vendor shall receive pecuniary gain beyond negotiated transaction, incidental or otherwise, from the earnings of the school or the Educational Management organization.

12.6 The Charter School warrants that it and its governing board have not and shall not make any attempt to levy taxes or issue bonds except as may be allowed by law.

12.7 Other than the case styled *OKPLAC, Inc., db/a Oklahoma Parent Legislative Action Committee, et al., v. Statewide Virtual Charter School Board, et al.*, Case No. CV-2023-1857 in the District Court for Oklahoma County, State of Oklahoma, the Charter School warrants that it is aware of no other current, pending, threatened, or anticipated litigation as of the date of the execution of this Contract that could reasonably be foreseen to limit or otherwise adversely impact the operations of the Charter School and/or the governing board of the Charter School or the ability of the parties to discharge their duties under this Contract.

12.8 The individual(s) signing this Contract on behalf of the Charter School warrant and represent that they are authorized to execute this instrument on behalf of the Charter School.

Appendix N

Sponsor	Governing Board of Charter School
<u>/s/ Brian Bobek</u> Mr. Brian Bobek, Vice Chairperson, Statewide Virtual Charter School Board	<u>Michael Scaperlanda, Chairperson St. Isidore of Seville Catholic Virtual School</u>
<u>October 16, 2023</u> Date	<u>Date</u>
<u>/s/ Scott Strawn</u> Dr. Scott Strawn, Member Statewide Virtual Charter School Board	
<u>October 15, 2023</u> Date	
<u>/s/ Nellie Taylor</u> Ms. Nellie Taylor Sanders, Member Statewide Virtual Charter School Board	
<u>October 16, 2023</u> Date	

* * *

execution of this Contract that could reasonably be foreseen to limit or otherwise adversely impact the operations of the Charter School and/or the governing

153a

Appendix N

/s/
Ms. Nellie Taylor Sanders,
Member Statewide Virtual
Charter School Board

Date

154a

**APPENDIX O — AFFIDAVIT OF SKYLER H.
LUSNIA, DATED NOVEMBER 16, 2023**

**IN THE SUPREME COURT OF THE STATE
OF OKLAHOMA**

Case No.: MA-121694

GENTNER DRUMMOND, ATTORNEY GENERAL
FOR THE STATE OF OKLAHOMA, EX REL.
STATE OF OKLAHOMA,

Petitioner,

v.

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

Respondents,

ST. ISIDORE OF SEVILLE CATHOLIC
VIRTUAL SCHOOL,

Intervenor.

AFFIDAVIT OF SKYLER H. LUSNIA

Pursuant to 12 O.S. § 43 1, I, Skyler H. Lusnia, do hereby affirm and state as follows:

1. I am employed as a Compliance Auditor of the Oklahoma Statewide Virtual Charter School Board (the “Board” or “OKSVCSB”). I have held this position since

Appendix O

August 2020. I am both a Certified Public Accountant certified by the Oklahoma Accountancy Board and a Certified Internal Auditor certified by the Institute of Internal Auditors, Inc.

2. I have personal knowledge of the facts set forth below.

3. The Board sponsors seven statewide virtual charter schools operating in the 2023-24 school year. These virtual charter schools (one of which opened in the 2023-24 school year) include Dove Virtual Academy, Epic Charter School, E-School Virtual Charter Academy, Insight School of Oklahoma, Oklahoma Connections Academy, Oklahoma Virtual Charter Academy, and Virtual Preparatory Academy of Oklahoma. Together, they serve more than 33,000 Oklahoma students.

4. Each of the seven virtual charter schools sponsored by the Board offers its own approach to education. Insight School of Oklahoma, for example, “offers a fresh start for struggling secondary students, with an alternative education model designed to set up students for success.” OKSVCSB, Virtual Schools, <https://svcsb.ok.gov/schools>. Oklahoma Virtual Charter Academy “partners with families who are interested in becoming actively involved in their child’s education to create a personalized education.” OKSVCSB, Virtual Schools, <https://svcsb.ok.gov/schools>. Dove Virtual Academy “is dedicated to quality education and promotes science, mathematics, and educational technology in school environments.” OKSVCSB, Application for Initial Authorization, Cover Letter.

Appendix O

5. The state funding that virtual charter schools receive, like traditional public schools and brick-and-mortar charter schools, is referred to as the “State Aid allocation,” or “State Aid.” 70 O.S. § 3-142. For virtual charter schools, State Aid comes in two forms: Foundation Aid and Salary Incentive Aid (Virtual charter schools are not eligible for Transportation Aid). Up to 3% of a virtual charter school’s State Aid, subject to a cap of 120% of the Board’s current fiscal year budget (OKSVCSB, Contract for Charter School Sponsorship Template § 7.8.1) is paid by the school to the Board for administrative services rendered.

6. The full amount of Foundation Aid and Salary Incentive Aid that a virtual charter school receives is based on pupil count, using an average daily membership (“ADM”) method of counting pupils. 70 O.S. § 3-142. The ADM method begins in the charter school’s first year with a school’s “actual enrollment of students as of August 1” and is subject to adjustment based on later changes in pupil enrollment. 70 O.S. § 3-142. A school’s enrollment is then weighted based on pupil grade levels and pupil categories (e.g., learning impairments, economic disadvantage, English learner status, etc.). “Weighted ADM” is the calculation variable unique to each school and is used in the determination of both Foundation and Salary Incentive Aid. Weighted ADM is a weighted enrollment number; without enrollment, Weighted ADM would be zero.

7. Weighted ADM is multiplied by the Foundation Aid Factor to determine total Foundation Aid. (For example, for Fiscal Year 2020-21, the Foundation Aid

Appendix O

Factor on the Oklahoma State Department of Education (OSDE) initial allocation sheets was \$1,764.49). Weighted ADM is also multiplied by a salary incentive factor to determine Salary Incentive Aid. (For example, for Fiscal Year 2020-21, the salary incentive factor on the OSDE initial allocation sheets was \$85.10).

8. Because the number of enrolled students in a school is a requisite component in the calculation of Weighted ADM, the receipt of any State Aid depends upon the enrollment of students. With no students, State Aid would be zero. Thus, the amount of State Aid received by a virtual charter school is “generated by students enrolled in the virtual charter school for the applicable year.” 70 O.S. § 3-145.3(D).

9. Virtual charter schools neither receive local tax revenue (chargeables) nor do they qualify for small school or isolation weights as do traditional public school districts.

10. Oklahoma virtual charter schools may elect to or not to participate in the Oklahoma Teachers’ Retirement System (TRS) and Flexible Benefit Allowance (FBA) (for health insurance). Currently five of the seven schools elect not to participate in either TRS or FBA as most of their employees are employees of private educational management organizations that provide their own retirement and health benefits.

11. On June 5, 2023, the Board voted (by a 3-to-2 vote) to approve St. Isidore of Seville Catholic Virtual School (“St. Isidore”) as a virtual charter school; and

Appendix O

on October 9, 2023, the Board voted (by a 3-to-2 vote) to approve a sponsorship contract (also known as a charter contract) with St. Isidore.

12. I am familiar with both the initial application and revised application submitted to the Board by St. Isidore. Among other things, I reviewed the budget submitted with St. Isidore's applications before the Board's June 5, 2023, vote to approve the St. Isidore application.

13. Appendix H in St. Isidore's revised application sets forth its budget for a five-year term. In that budget, St. Isidore projects an enrollment for its first year of operations (*i.e.*, the 2024-25 school year) of 500 students, 250 of whom would be economically disadvantaged and 25 of whom would have a specific learning disability. Based on these enrollment projections, and an estimated State Aid factor of \$1,971.90, St. Isidore projected its total State Aid to be \$2,684,704.78 for the first full year of operation.

14. Attached as Exhibit 1 to this Affidavit is Attorney General Opinion No. 2022-7, which the Board's Executive Director, Rebecca L. Wilkinson, Ed. D., received on or about December 1, 2022.

15. Attached as Exhibit 2 to this Affidavit is a letter that Attorney General Gentner Drummond sent the Board's Executive Director, Rebecca L. Wilkinson, Ed.D., on or about February 23, 2023.

16. Attached as Exhibit 3 to this Affidavit is a letter that the Board's Executive Director, Rebecca L. Wilkinson, Ed. D., sent to Archdiocese of Oklahoma's

159a

Appendix O

Director of Catholic Education, Lara Schuler, on or about
April 13, 2023.

I, Skyler H. Lusnia, state under penalty of perjury
under the laws of Oklahoma that the foregoing is true
and correct.

Executed this 16th day of November, 2023, in
Oklahoma City, Oklahoma County, Oklahoma.

/s/ Skyler H. Lusnia
Skyler H. Lusnia

160a

**APPENDIX P — EXCERPT OF TRANSCRIPT OF
THE SPECIAL MEETING OF THE STATEWIDE
VIRTUAL CHARTER SCHOOL BOARD,
OKLAHOMA HISTORY CENTER,
DATED JUNE 5, 2023**

SPECIAL MEETING OF THE
STATEWIDE VIRTUAL CHARTER
SCHOOL BOARD
OKLAHOMA HISTORY CENTER
800 NAZIH ZHUDI DR.
OKLAHOMA CITY, OKLAHOMA 73105

Monday, June 5, 2023, 12:00 p.m.

Excerpt
Transcript Position Counter
1:35 to 4:23

Alliance Defending Freedom
15100 N. 90th St.
Scottsdale, AZ 85260
(480) 444-0025

[2](Begin portion designated for transcription.)

1:35 CHAIRMAN FRANKLIN: This moves us to
Item 4 on our agenda, which is Public Comments.

4. Public Comment.

The public comments will be limited to only those
subject matters listed in the current meeting agenda. A
sign-up sheet's posted at least fifteen (15) minutes prior

Appendix P

to the scheduled start and time of the meeting. Only individuals who have signed up so they can be recognized during the public comment period and will be recognized in the order in which they have signed.

Each speaker will be allocated three (3) minutes for presentation. And Skyler, if you'll help us keep the time. The Board Chairperson may interrupt and/or terminate any presentation during public comment, which does not conform to the procedures outlined under this section.

I understand we have several friends here. So we'll start with Doug Mann. And then Erica Wright would be after that, and then Andrea Kunkel right after that. So Doug Mann, we'll allow you to begin and welcome.

* * *

[23]building with no guardrails. I asked you all last time what are the guardrails going to be. And I didn't hear anything go into it at the end of the meeting. Because maybe you haven't seen this personally or haven't had a friend of yours blow their head off over all this stuff.

It's real. The guardrails are real. They have historically have the worst reputation I have ever heard of on, on this planet of taking care of this. Country to country to country to country. Now is the Notre Dame Religious Liberty Association going to come down and fight every one of those lawsuits?

Appendix P

Are you ready for that? I think with all of this being explained, people have a right to sue you down the line for what you've decided on. That's all I've got to say. Thank you.

CHAIRMAN FRANKLIN: Thank you, Mr. Cummings. Thank you everybody for speaking what was on their minds and hearts today and for abiding by what we asked you to speak to and the limits that we set forth.

So that moves us then to Item 5, which is Chairman Franklin.

[24]And so what I would like to begin with, with my opening comments is welcome to Ryan Bobek. We're glad you're here. We've tried to do our backgrounds. I happen to know you. I know that you served on the State Board of Education before. I know that you served on the Department of Career Tech Board. So you understand what board service is all about and we're grateful for you being here.

Second, I'd like to express gratitude to Barry Beauchamp for three years of service that he spent to this Board. Had he not invested that kind of energy for us, this Board would have been stymied and would have not been able to serve the functions that were before us.

He drove from Lawton through really nasty weather, inclement conditions. It's always windy in Lawton. So that's not a condition. That's just the state of affairs that are there. But he routinely came and served in a quiet

Appendix P

and humble, but informed manner. And I just want to say thank you to Barry. He was, he's a champion. Also served four decades to public education, so.

[25]I find it ironic today that we find ourselves sandwiched between Americas' two most patriotic celebrations, Memorial Day that we celebrated last week, July 4th, Independence Day coming up, of which many of us are going to get a chance to spend time with our families and do amazing things as a result of what's happened throughout our country.

Our nation was founded and has been defended by legions of dedicated Americans who have been devoted to upholding and guiding the principles which we have codified in constitutions and national and state laws.

As appointed members of the Statewide Virtual Charter Board, we each have signed an oath that reads, and I'll just read you mine:

“I, Robert Franklin, do solemnly swear and affirm that I will support, obey, and defend the Constitution of the United States and the Constitution of the State of Oklahoma, and that I will not knowingly receive directly or indirectly any money or valuable thing to performance or nonperformance of any act or duty pertaining to my office other than the compensation allowed by law.”

* * *

Appendix P

[128]CHAIRMAN FRANKLIN: — why we were doing this. So I appreciate the reminder of that. Thank you. Okay. Any other points of discussion? Sir?

MR. BOBEK: Yeah, I, thank you for welcoming me as your newest member. So I wanted to kind of let you folks know where I was coming from on this and put together some notes I'm just going to share with you before we move into the vote during this discussion section. Thank you, Chairman.

So I've been diligently reviewing the relevant authority materials and I'm convinced that in context of Oklahoma State law at issue in today's discretionary decision, namely Section 3-136 (a) (2) of Title 70, the Oklahoma statutes, does violate the free exercise clause of the First Amendment of the US Constitution, and that an affirmative vote is consistent with the establishment clause of the First Amendment to the US Constitution.

While I'm aware of the language in Section 3-136(a)(2) of Title 70, Oklahoma statutes, it could hardly be clearer to me that reliance on that provision to justify a denial of the application before us would [129]require me to ignore the US Constitution and relevant US Supreme Court cases applying it.

Said differently, the referenced statutory language cannot be said clearly established in a way that would support a no vote today. And to the contrary, what seems most clearly established are the rights thoroughly outlined in the letter that was submitted by First Liberty Institute.

165a

Appendix P

And as a board member, I'm duly bound to support, obey, and defend the United States Constitution which in my view leads to a single conclusion in this instance, that I must vote yes in favor of the application of St. Isidore of Seville Catholic Virtual School.

So I wanted to share that with you all to let you know where I stood as we go into the vote.

CHAIRMAN FRANKLIN: Thank you. Appreciate the clarity.

DR. STRAWN: Mr. Chairman, if I could make a few comments as well? Just first of all, thank you for your grace. I can't even imagine trying to chair all this. When I think about all the things you guys have

* * * *

**APPENDIX Q — MINUTES OF SPECIAL MEETING
OF THE STATEWIDE VIRTUAL CHARTER
SCHOOL BOARD, DATED JUNE 5, 2023**

Statewide Virtual Charter School Board Special Meeting
Approved Minutes - June 5, 2023

**Minutes of the Special Meeting of the
STATEWIDE VIRTUAL CHARTER SCHOOL BOARD
OKLAHOMA HISTORY CENTER
800 NAZIH ZUHDI DR.
OKLAHOMA CITY, OKLAHOMA**

JUNE 5, 2023

The Statewide Virtual Charter School Board met in special session at 12:05 p.m. on Monday, June 5, 2023, in the Oklahoma History Center at 800 Nazih Zuhdi Dr., Oklahoma City, Oklahoma. The final agenda was posted at 4:30 p.m. on Wednesday, May 31, 2023.

Members of the Statewide Virtual Charter School Board
Present:

Brian Bobek
Robert Franklin
William Pearson
Nellie Tayloe Sanders
Scott Strawn

Others in Attendance:

Rebecca Wilkinson, Executive Director
Skyler Lusnia, Secretary to the Board

Appendix Q

Lisa Daniels, Horizon Director
Arden Nerijs, Assistant Attorney General
Niki Batt, Deputy Attorney General
Erika Wright, Oklahoma Rural Schools Coalition
Andrea Kunkel, CCOSA
Paul Monies, Oklahoma Watch
Misty Bradley, OKPLAC
Clark Frailey, Pastors for Oklahoma Kids
Bennett Brinkman, NonDoc Media
Amanda Stephens, Bixby Public Schools
John Meiser, St. Isidore
A.J. Ferate, Spencer Fane, LLP
William Ezzell, KFOR
Sean Cummings, Citizen
James Bleecker, Arch OKC
Tyler Outlaw, Oklahoma Education Association
Brett Farley, St. Isidore
Rebekah Farley, St. Isidore
Sarah Franklin, Citizen
Katie Zimdors, Arch OKC
Laura Willis, Parent
Lucia Frohling, Parent
Jennifer Bevensee, Parent
Michael Scaperlanda, Archdiocese of OKC
Andrea Eger, Tulsa World
Adam Gorms, KFOR
Lara Schuler, Archdiocese of Oklahoma City
Rick Maranon, Fox 23 Tulsa
Allyson Starh, Fox 23 Tulsa
Dale Forbis, Radio Oklahoma Network
Jeanene Barnett, CCOSA
Savannah Stumph, Parent
Nuria Martinez-Keel, The Oklahoman

Appendix Q

Stephanie Lippert, Parent
Other general public

1. CALL TO ORDER AND ROLL CALL

Dr. Franklin called the Statewide Virtual Charter School Board special meeting to order at 12:05 p.m. Roll was called and ascertained there was a quorum.

2. STATEMENT OF COMPLIANCE WITH THE OKLAHOMA OPEN MEETING ACT

Mr. Lusnia read the Statement of Compliance with the Oklahoma Open Meeting Act.

3. PLEDGE OF ALLEGIANCE, SALUTE TO THE OKLAHOMA STATE FLAG, AND MOMENT OF SILENCE

Dr. Franklin led board members and all present in the Pledge of Allegiance to the American flag, a salute to the Oklahoma flag, and a moment of silence.

4. PUBLIC COMMENT

The SVCSB heard comments from the following individuals regarding agenda item Administration 6.b.:

Doug Mann, Oklahoma PLAC
Erika Wright, Oklahoma Rural Schools
Coalition

Appendix Q

Andrea Kunkel, CCOSA
Misty Bradley, OKPLAC
Clark Frailey, Pastors for Oklahoma Kids
Michael Scaperlanda, OU College of Law
A.J. Ferate, Spencer Fane, LLP
Sean Cummings, Self

5. CHAIRMAN COMMENTS – Chairman Robert Franklin

Dr. Franklin welcomed Brian Bobek to the Statewide Virtual Charter School Board. He read the Oath of Office board members have signed. Dr. Franklin referenced SB 516 and referenced the SVCSB statutory duties to review the revised St. Isidore of Seville Catholic Virtual School application to ensure compliance with Statute. Dr. Franklin reminded board members of their oaths and asked Mr. Bobek to abstain in consideration of the application. Dr. Franklin expressed deep respect for the Archdiocese and implored them to begin the virtual school regardless of the vote.

6. ADMINISTRATION

- a. PROPOSED EXECUTIVE SESSION** pursuant to Title 25 O.S. § 307(8)(4), and consistent with 2005 OK AG 29, ¶ 13, for the purpose of confidential communications between the Board and counsel from the Oklahoma Office of the Attorney General concerning threatened, anticipated, or potential legal challenges related the Board’s approval of, disapproval of, decision

Appendix Q

to take no action on, or other action(s) on the application of St. Isidore of Seville Catholic Virtual Charter School, where counsel has determined that disclosure of information related to the claim(s) or action(s) will seriously impair the ability of the Board to process or conduct litigation in this matter

The Board did not enter Executive Session.

b. Presentation, discussion, and possible action regarding the acceptance or rejection of the St. Isidore of Seville Catholic Virtual School Application for Initial Authorization

Ms. Schuler, Senior Director Department of Catholic Education for the Archdiocese of Oklahoma City, presented the St. Isidore of Seville Catholic Virtual School Revised Application and answered questions.

Ms. Batt provided the Board with information from Oklahoma Statute, and the SVCSB Charter Contract template and answered questions.

Dr. Strawn moved to approve the application. Ms. Sanders seconded the motion. The motion carried with the following votes:

Brian Bobek	Yes
Robert Franklin	No
William Pearson	No

171a

Appendix Q

Nellie Tayloe Sanders	Yes
Scott Strawn	Yes

Prior to adjournment, Dr. Franklin read a statement to the Board and those in attendance.

7. ADJOURNMENT

There being no further business, Dr. Strawn moved to adjourn the meeting at 2:54 p.m. Mr. Pearson seconded the motion. The motion carried with the following votes:

Brian Bobek	Yes
Robert Franklin	Yes
William Pearson	Yes
Nellie Tayloe Sanders	Yes
Scott Strawn	Yes

/s/ Robert Franklin
Robert Franklin, Chairman of the Board

/s/ Lynn Stickney
Lynn Stickney, Secretary of the Board

172a

**APPENDIX R — PETITIONER’S BRIEF IN
THE SUPREME COURT OF THE STATE OF
OKLAHOMA, DATED OCTOBER 20, 2023**

**IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA**

Case No: _____

GENTNER DRUMMOND, ATTORNEY
GENERAL FOR THE STATE OF OKLAHOMA,
EX REL. STATE OF OKLAHOMA,

Petitioner,

v.

OKLAHOMA STATEWIDE VIRTUAL CHARTER
SCHOOL BOARD; ROBERT FRANKLIN,
CHAIRMAN OF THE OKLAHOMA STATEWIDE
VIRTUAL CHARTER SCHOOL BOARD FOR THE
FIRST CONGRESSIONAL DISTRICT; WILLIAM
PEARSON, MEMBER OF THE OKLAHOMA
STATEWIDE CHARTER SCHOOL BOARD FOR
THE SECOND CONGRESSIONAL DISTRICT;
NELLIE TAYLOE SANDERS, MEMBER OF THE
OKLAHOMA STATEWIDE CHARTER SCHOOL
BOARD FOR THE THIRD CONGRESSIONAL
DISTRICT; BRIAN BOBEK, MEMBER OF THE
OKLAHOMA STATEWIDE CHARTER SCHOOL
BOARD FOR THE FOURTH CONGRESSIONAL
DISTRICT; AND SCOTT STRAWN, MEMBER
OF THE OKLAHOMA STATEWIDE

Appendix R

CHARTER SCHOOL BOARD FOR THE FIFTH
CONGRESSIONAL DISTRICT,

Respondents.

**PETITIONER’S BRIEF IN SUPPORT OF
APPLICATION TO ASSUME ORIGINAL
JURISDICTION AND PETITION FOR WRIT OF
MANDAMUS AND DECLARATORY JUDGMENT**

The Oklahoma Attorney General is compelled, as chief law officer of the State, to file this original action to repudiate the Oklahoma Statewide Virtual Charter School Board’s (“the Board”) Members’ intentional violation of their oath of office and disregard for the clear and unambiguous provisions of the Oklahoma Constitution—one of which has been in place since statehood and was soundly reaffirmed by Oklahoma voters in 2016.¹ Specifically, the Attorney General seeks to undo the unlawful sponsorship of St. Isidore of Seville Virtual Charter School (“St. Isidore”). He is duty bound to file this original action to protect religious liberty and prevent the type of state-funded religion that Oklahoma’s constitutional framers and the founders of our country sought to prevent.

1. *See* State Question Number 790, the results of which are publicly available here: <https://www.sos.ok.gov/documents/questions/790.pdf>. Of note, over 57% of Oklahoma voters in 2016 rejected State Question 790 that would have repealed Section 5, Article II of the Oklahoma Constitution, i.e., the constitutional prohibition against directing public money to sectarian institutions. *Id.*

Appendix R

Make no mistake, if the Catholic Church were permitted to have a public virtual charter school, a reckoning will follow in which this State will be faced with the unprecedented quandary of processing requests to directly fund all petitioning sectarian groups. *See Prescott v. Oklahoma Capitol Pres. Comm'n*, 2015 OK 54, ¶ 3, 373 P.3d 1032, 1045 (Gurich, J., concurring) (in which Justice Gurich acknowledged an onslaught of threatened litigation and applications from groups to erect their own symbols following the installation of the Ten Commandments on Capitol grounds.). For example, this reckoning will require the State to permit extreme sects of the Muslim faith to establish a taxpayer funded public charter school teaching Sharia Law. Consequently, absent the intervention of this Court, the Board members' shortsighted votes in violation of their oath of office and the law will pave the way for a proliferation of the direct public funding of religious schools whose tenets are diametrically opposed by most Oklahomans.

As to the merits, this case is simple: Oklahoma's Constitution disallows sectarian control of its public schools and the support of sectarian practices—indirect or otherwise. It is undeniable that the framers of Oklahoma's Constitution wished to memorialize religious liberty. *See OKLA. CONST.* art. I, § 2. But it is no coincidence that Section 5 of Articles I and II follow shortly thereafter. Article I, § 5 requires the State “establish[] and maint[ain] . . . a system of public schools, which shall be open to all the children of the state and free from sectarian control” Just as important, Article II, § 5 demands that “[n]o public money . . . shall ever be appropriated . . . or used, directly

Appendix R

or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion . . . or sectarian institution” These constitutional provisions are an inviolable safeguard to ensuring a strong separation of church and state.

The law requiring the Board to establish procedures “for accepting, approving and disapproving statewide virtual charter school applications,” *see* OKLA. STAT. tit. 70, § 3-145.3(A)(2), mandates that those procedures comply with the Oklahoma Charter Schools Act. *Id.* That act, consistent with constitutional directives, prescribes that a “charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations. A sponsor may not authorize a charter school or program that is affiliated with a nonpublic sectarian school or religious institution” *Id.* at § 3-136(A)(2). These sections of Oklahoma’s Constitution and associated laws decidedly preclude the Board’s challenged action.

In sum, despite the clear and unambiguous language of Oklahoma’s Constitution and statutes, the will of Oklahoma’s voters who soundly rejected amending Oklahoma’s Constitution in 2016 to allow public money to be applied to sectarian organizations, and the legal advice by the chief law officer of this State, the Board members violated their plain legal duty to deny sponsorship of St. Isidore. Accordingly, this Court must remediate the Board’s unlawful action.

*Appendix R***BACKGROUND**

The Board has the sole authority to authorize and sponsor statewide virtual charter schools in Oklahoma. *See* OKLA. STAT. tit. 70, § 3-145.1(A). The Board is vested with regulatory oversight over the schools it charters, through state laws, administrative regulations, and contracts it executes. *See id.* at 3-145.3. The Board’s oversight of charter schools is broad and comprehensive as shown in its nearly 250-page authorization and oversight process manual updated as of July 2023. *See* Pet. App. Vol. II at 454–702. For example, once a charter school is sponsored, the Board “provides ongoing oversight and evaluation of sponsored schools through the following practices: Data and evidence collection []; Site visits; Audits; Attendance at governing board meetings; Performance Framework reports []; [and] External school performance review(s).” Pet. App. Vol. II at 471.

On June 5, 2023, the Board took the unprecedented action—contrary to the advice of the Oklahoma Attorney General—of approving St. Isidore’s revised application for sponsorship (the “Application”). *See* Pet. App. Vol. II at 452. Following the approved Application, the Board’s sponsorship of St. Isidore was not yet complete until the Board and St. Isidore executed a contract for sponsorship on October 16, 2023. *See* Pet. App. Vol. I at 2–22; *see also* OKLA. ADMIN. CODE 777: 10-3-3(a)(1–8). Thus, on October 16, 2023, St. Isidore became an illegally sponsored public virtual charter school.

St. Isidore, by its own admission, is a sectarian school. It made its intent pointedly clear in its voluminous Application:

Appendix R

To create, establish, and operate the School as a Catholic School. It is from its Catholic identity that the school derives its original characteristics and its structure as a genuine instrument of the Church, a place of real and specific pastoral ministry. The Catholic school participates in the evangelizing mission of the Church and is the privileged environment in which Christian education is carried out. In this way Catholic schools are at once places of evangelization, of complete formation, of inculturation, of apprenticeship in a lively dialogue between young people of different religions and social backgrounds.

Pet. App. Vol. I at 92 (citation and quotations omitted). In its words, St. Isidore intends to conduct its charter school in the same way the Catholic Church operates its schools and educates its students. The key difference is St. Isidore will have the direct financial backing and authorization of the State as a sponsored public virtual charter school barring this Court's intervention.

The Board's sponsorship of St. Isidore, and the conditions set forth in the contract for sponsorship, solidify the sectarian nature of the school. Section 1.5 of the contract dictates that St. Isidore "is a privately operated religious non-profit organization . . ." Pet. App. Vol. I at 2. Even more, section 12.2 sets forth St. Isidore's warranty "that it is affiliated with a nonpublic sectarian school or religious institution." *Id.* at 20. If these provisions leave any doubt, section 4.1 authorizes St. Isidore "to implement

Appendix R

the program of instruction, curriculum, and other services as specified in the Application [approved as revised on June 5, 2023] . . .” *Id.* at 4.

A sponsored statewide virtual charter school receives State Aid, among other funding sources. *See e.g.*, OKLA. STAT. tit. 70, §§ 3-145.3(D), 3-142. The contract for sponsorship specifies that it commences on July 1, 2024. Pet. App. Vol. I at 4; § 3.2. Therefore, St. Isidore will begin receiving public money imminently if this Court does not assume original jurisdiction and compel the Board to follow its plain legal duty and rescind its illegal contract with St. Isidore.²

ARGUMENT AND AUTHORITIES**I. This Court’s Intervention is Appropriate and Necessary**

Original jurisdiction of this Court “shall extend to a general superintending control over all . . . Agencies, Commissions and Boards created by law.” OKLA. CONST. art. VII, § 4. The pressing concerns relevant to this matter—imminent redistribution of public funding to a religious sect based on an unlawful State board action

2. There is precedent for rescinding unlawful board action relating to charter schools. *See* May 24, 2021, meeting agenda and minutes, respectively, for the State Board of Education. Available at: <https://sde.ok.gov/sites/default/files/Agenda%20May%2024%2C%202021%20Special%20Meeting.pdf> ; <https://sde.ok.gov/sites/default/files/May%2024%2C%202021%20SPECIAL%20Mtg.pdf>.

Appendix R

and inter-governmental legal claims—certainly merit this Court’s exercise of its original jurisdiction. *See e.g., Indep. Sch. Dist. # 52 of Okla. Cnty. v. Hofmeister*, 2020 OK 56, ¶ 60, 473 P.3d 475, 500, *as corrected* (July 1, 2020) (finding that a public school funding conflict was one of *publici juris* because “[i]t present[ed] for adjudication public law issues relating to the internal conduct of government or the proper functioning of the State as such relates to proper accounting and expenditure of State funds.”) (citations omitted); *Ethics Comm’n of State of Okla. v. Cullison*, 1993 OK 37, ¶ 7, 850 P.2d 1069, 1073–74 (determining it proper and consistent with its precedent to exercise its discretionary superintending jurisdiction and provide declaratory relief to resolve “a claimed intolerable conflict between” a State agency and the legislature). The present conflict is consistent with those in which this Court has determined is a matter of public interest.

This Court has identified a “theme running through most” of the cases that it assumes original jurisdiction, which entails “that the matter must be affected with the public interest and there must be some urgency or pressing need for an early determination of the matter.” *Keating v. Johnson*, 1996 OK 61, ¶ 10, 918 P.2d 51, 56. As is self-evident and established above, issues relating to the accounting and expenditure of public State Aid funds is a matter of public interest—even more so when appropriated public money will directly support a sectarian institution. Moreover, the nature of this claim, involving a dispute between two State agencies, justifies this Court’s exercise of its superintending control. This matter is urgent and pressing because the conflict between

Appendix R

the parties persists, and the sponsored public virtual charter school, assuming this Court does not exercise its discretionary jurisdiction, will be the first ever sectarian charter school to be directly funded with public money. Furthermore, without this Court’s intervention, the Board has put at risk the billion plus dollars in federal education funds the State receives on a yearly basis.³ In sum, it is appropriate for this Court to assume original jurisdiction and necessary to resolve the unprecedented pressure on the separation of church and state.

3. A state that wishes to obtain federal education funds for its public schools must submit a plan to the Secretary of the United States Department of Education, with certain assurances, stating that the state will comply with all applicable laws and regulations. 20 U.S.C. §§ 6311, 7842. Under the Elementary and Secondary Education Act, a charter school must be “nonsectarian in its programs, admissions policies, employment practices, and all other operations.” 20 U.S.C. § 7221i(2)(E). Additionally, federal law authorizes the Secretary of Education to withhold funds or take other enforcement action if a state fails to comply with its approved state plan or any applicable laws and regulations. 20 U.S.C. §§ 1234c, 6311(a)(7). The State of Oklahoma has elected to participate in covered federal education programs and has an approved plan on file with the United States Department of Education. <https://sde.ok.gov/ok-essa-stateplan>. According to the National Center for Education Statistics—the primary statistical agency within the United States Department of Education—Oklahoma received \$1,130,566,000 in fiscal year 2021. <https://nces.ed.gov/pubs2023/2023301.pdf>.

*Appendix R***II. Oklahoma’s Constitution, Statutes, and the Board’s Regulations Strictly Prohibit the Sponsorship of a Sectarian Virtual Charter School**

The Board violated Oklahoma law when it approved St. Isidore’s Application on June 5, 2023 and executed a contract for sponsorship with the applicant on October 16, 2023. This Court’s issuance of a writ of mandamus is necessary to compel the Board to rescind its unlawful contract with St. Isidore.⁴ The Oklahoma Legislature established the Board and provided it “the sole authority to authorize and sponsor statewide virtual charter schools in the state.” OKLA. STAT. tit. 70, § 3-145.1. Moreover, the Legislature set forth a duty requiring the Board to “[e]stablish a procedure for accepting, approving and disapproving statewide virtual charter school applications” OKLA. STAT. tit. 70, § 3-145.3. That procedure, set forth in Okla. Admin. Code 777, includes several provisions under which the Board is required to comply with Oklahoma law. *See e.g.*, OKLA. ADMIN. CODE § 10-3-3(b)(1)(F) (requiring that

4. “Generally, a discretionary writ of mandamus issues to compel the performance of an act by a respondent when a petitioner: has a clear legal right to have the act performed; the act arises from a duty of the respondent arising from an office, trust, or station; the act does not involve the exercise of discretion; the respondent has refused to perform the act; and the writ will provide adequate relief and no other adequate remedy at law exists.” *Kelley v. Kelley*, 2007 OK 100, ¶ 2 n.5, 175 P.3d 400, 403 (citations omitted). The Oklahoma Attorney General, as Petitioner, has a clear legal right to have the act performed because he is “the proper party to maintain litigation to enforce a matter of public interest.” *State ex rel. Howard v. Okla. Corp. Comm’n*, 1980 OK 96, ¶ 35, 614 P.2d 45, 52.

Appendix R

new sponsorship applications include “[a]ny other topics deemed necessary by the [Board] to assess the applicant’s capability to administer and operate the charter school in compliance with all applicable provisions of federal and state laws”); § 10-3-3(c)(1)(F) (setting forth application format requirements, including that there be “signed and notarized statements from the Head of the School and the governing body members, as applicable, showing their agreement to fully comply as an Oklahoma public charter school with all statute[s], regulations, and requirements of the United States of America, State of Oklahoma”); § 10-3-3(d)(8) (requiring that contracts for sponsorship “shall contain any other terms necessary to ensure compliance with applicable provisions of state and/or federal law.”); § 10-3-3(g) (setting forth that adoption of a model sponsorship contract “shall not prohibit the Board from further negotiation of contract terms or addition of terms to the contract for sponsorship prior to execution of the contract so long as such terms are in compliance with applicable state, federal, local . . . law”). The Board is thus abundantly aware that its formal actions must comply with State law.

State law clearly bans the Board’s action of sponsoring a sectarian organization. Sponsorship of St. Isidore—a sectarian school seeking to receive public money—violates the Oklahoma Charter Schools Act. *See* OKLA. STAT. tit. 70, § 3-136(2) (“[a] sponsor may not authorize a charter school or program that is affiliated with a nonpublic sectarian school or religious institution.”). It matters not whether St. Isidore claims it is a private school or how it otherwise chooses to define itself. It is unavoidably a “sectarian

Appendix R

school or religious institution,” which unlawfully obtained a charter sponsorship to conduct the business of the State as a public virtual charter school. Thus, the Board has a clear duty to follow the above unambiguous State law, and this Court must compel its action in conformity therewith. *See supra*, n.5. Any argument that the Board acted within its discretion fails because “[t]he discretion must be exercised under the established rules of law” *State Highway Comm’n v. Green-Boots Const. Co.*, 1947 OK 221, ¶ 21, 187 P.2d 209, 214 (citations omitted). As supported herein, the Board clearly violated its own regulations and Oklahoma law when it voted to sponsor a sectarian institution. It cannot escape this Court’s mandate to compel rescission of the contract for sponsorship by arguing it acted within its discretion.

The wisdom of these statutes and regulations flows from and is anchored in the Oklahoma Constitution. Indeed, Section 5 of Articles I and II of the Oklahoma Constitution, concomitant to the relevant statutes and regulations, forbid the public sponsorship of St. Isidore. Article I, Section 5 unambiguously requires the provision of “a system of public schools . . . [that] shall be open to all the children of the state and free from sectarian control” OKLA. CONST. art. I, § 5. Seven sections following, Article II, Section 5 requires that “[n]o public money . . . shall ever be appropriated . . . or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.” OKLA. CONST. art. II, § 5. Years ago,

Appendix R

this Court acknowledged that it is “commonly understood that the term ‘sectarian institution’ includes a school or institution of learning which is owned and controlled by a church and which is avowedly maintained and conducted so that the children of parents of that particular faith would be taught in that school the religious tenets of the church.” *Gurney v. Ferguson*, 1941 OK 397, ¶ 7, 122 P.2d 1002, 1003. The Board’s sponsorship of St. Isidore is obviously the type of harm to religious liberty that these sections prohibit. This scenario is not simply one which involves the chartering of a school, but one in which the State of Oklahoma is explicitly granting state authority to a school that proudly touts its intent to teach the “religious tenets of the church.”

These sections do not interfere with religious liberty. On the contrary, the framers of Oklahoma’s Constitution thoughtfully included these safeguards as believers themselves. “The Oklahoma Constitutional Convention members started their proceedings with a prayer and the invocation of God’s guidance and prefaced the Oklahoma Constitution by invoking God’s guidance, all this showing that they were religious men who believed in God.” *Prescott v. Okla. Capitol Pres. Comm’n*, 2015 OK 54, ¶ 4, 373 P.3d 1032, 1037 (Taylor, J. concurring, with whom Gurich, J. joins). Justices in *Prescott* noted that the framers “intended [Article II, Section 5] to be one of the safest of our safeguards,” *id.* at ¶ 26 and that the “[Oklahoma Constitutional Convention] wrote Article II, Section 5 knowing the history of the union of Church and State in Europe and in New England in Colonial days, and utilized the lessons learned in those situations.” *Id.*

Appendix R

at ¶ 4 (quotations and citation omitted). Justices found that the framers' structure of the relevant safeguards no coincidence, and that, while men of God,

[the framers] were also men who advocated for the toleration of all religious beliefs and complete separation of church and state by going further than the federal constitution. Closely following the preamble is Article I, Section 2 of the Oklahoma Constitution, which is entitled "Religious liberty—Polygamous or plural marriages." Section 2 secures "[p]erfect toleration of religious sentiment" and provides "no inhabitant of the State shall ever be molested in person or property on account of his or her mode of religious worship" Okla. Const. Art. I, § 2. Then only three sections later, the Constitutional Convention provided for public schools "free from sectarian control." Okla. Const. art. I, § 5. Seven sections later, they prohibited the use of state property, directly or indirectly, for the use, benefit, or support of religious group. Okla. Const. art. II, § 5. **While the constitutional framers may have been men of faith, they recognized the necessity of a complete separation of church and state and sought to prevent the ills that would befall a state if they failed to provide for this complete separation in the Oklahoma Constitution.**

Id. at ¶ 6 (emphasis added). These "ills" Oklahoma's constitutional framers sought to prevent will certainly

Appendix R

befall the State if this Court does not intervene to compel the Board to follow its plain legal duty and rescind the unlawful contract for sponsorship with St. Isidore. *See supra*, n.5.

In an earlier case involving publicly funded bussing for a sectarian institution, this Court correctly determined that “there is no doubt that section 5, article 2 [] prohibits the use of public money or property for sectarian or parochial schools.” *Gurney*, 1941 OK 397 at ¶ 8, 122 P.2d at 1003. This principle logically flows from the necessity of churches to remain free from state control. Indeed, this Court acknowledged that:

we must not overlook the fact that if the Legislature may directly or indirectly aid or support sectarian or denominational schools with public funds, then it would be a short step forward at another session to increase such aid, and only another short step to some regulation and at least partial control of such schools by successive legislative enactment.

Id. at ¶ 16. Here, St. Isidore specifically petitioned the Board to authorize its sectarian goals. The Board’s Members, in violation of their oath of office, acquiesced in granting St. Isidore’s request and made it a public school with the benefit of public money. This arrangement ensures that the State will have a level of regulatory authority over St. Isidore. Such union of church and state is what the Justices in *Prescott* knew and what this Court must prohibit.

*Appendix R***III. The Board's Actions Also Violate the Establishment Clause of the First Amendment.**

Government spending in direct support of religious education violates the Establishment Clause. *See Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1 (1947). The Establishment Clause applies to the states by incorporation through the Fourteenth Amendment. *Id.* at 14. St. Isidore, an admittedly sectarian school in its “instruction, curriculum, and other services,” Pet. App. Vol. I at 4, § 4.1, unabashedly requested a public virtual school charter from the Board—a legislatively created State board having the sole authority to sponsor Oklahoma’s virtual charter schools, OKLA. STAT. tit. 70, § 3-145.1. The Board’s authorization is in direct contravention of the Establishment Clause, and as discussed above, Oklahoma’s Constitution, statutes, and regulations.

The Board will likely argue that St. Isidore possesses a structural degree of separation from the State—a virtual charter contract held by a private entity—allowing it to ignore the constitutionally required separation of church and state. But the United States Supreme Court has held that a private entity’s action is that of the state when the state has authorized that entity to act in the state’s place with the state’s authority—a concept referred to as “significant encouragement.” *See Rendell-Baker v. Kohn*, 457 U.S. 830, 840 (1982) (citation omitted). Such encouragement exists where “the government has outsourced one of its constitutional obligations to a private entity.” *Manhattan Cmty. Access Corp. v. Halleck*, 139

Appendix R

S. Ct. 1921 n.1 (2019). Like in *West v. Atkins*, where the United States Supreme Court held a state’s contractual delegation of its duty to provide prisoners healthcare to a physician rendered that physician a state actor. 487 U.S. 42, 56 (1988).

Similarly, when the function performed by the private organization is one that has been “traditionally the exclusive prerogative” of the state, the private entity performing that function for the state is engaged in state action. *Rendell-Baker v. Kohn*, 457 U.S. 830, 842 (1982) (citation omitted). The *en banc* Fourth Circuit recently utilized this analysis, concluding that a charter school operator was a state actor. See *Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104, 122 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 2657 (2023).

Fortunately, the Oklahoma Legislature made the analysis easy in this case by defining “charter school[s]” as “public school[s].” OKLA. STAT. tit. 70, § 3-132(D). A state’s designation of an entity as a state actor is generally accepted when analyzing the U.S. Constitution. For example, the Fourth Circuit, in addressing whether a public charter school was a state actor, recently held: “It was North Carolina’s sovereign prerogative to determine whether to treat these state-created and state-funded entities as public. Rejecting the state’s designation of such schools as public institutions would infringe on North Carolina’s sovereign prerogative, undermining fundamental principles of federalism.” *Peltier*, 37 F.4th at 121.

Appendix R

Here, Oklahoma chose to define charter schools as public schools. Clearly, the choice to treat charter schools as public schools is valid. *See Wentz v. Thomas*, 1932 OK 636, ¶ 87, 15 P.2d 65, 80 (“[T]he power of the Legislature to enact a law is subject to no restriction, except those imposed by state or Federal Constitution,” thus “a legislative act is valid unless prohibited”). Oklahoma’s Constitution certainly supports the Legislature’s choice. *See* OKLA. CONST. art. I, § 5; art. II, § 5. Consequently, Oklahoma’s sovereign prerogative to designate charter schools as public schools, and thus treat them as state actors, should be accepted.

Moreover, Oklahoma is required under OKLA. CONST. art. I, § 5 to “establish and maintain . . . a system of public schools, which shall be open to all the children of the state and free from sectarian control . . .” Oklahoma, in part, through the legislative creation of the Oklahoma Charter Schools Act, fulfills that constitutional duty. *See* OKLA. STAT. tit. 70, § 3-130, *et seq.* As already mentioned, the Oklahoma Legislature went a step further and statutorily defined charter schools—state created, funded, and regulated institutions—as public schools. *Id.* at § 3-132(D). Thus, St. Isidore, in fulfilling its object of creating, establishing, and operating its school “as a Catholic School” to participate in the “evangelizing mission of the Church” does so as an exercise of “power possessed by virtue of state law and made possible only because the [school] is clothed with the authority of state law.” *West v. Atkins*, 487 U.S. 42, 49 (1988) (citation and internal quotation marks omitted); *see also Coleman v. Utah State Charter Sch. Bd.*, 673 F. App’x 822, 830 (10th Cir. 2016) (unpublished) (stating “charter schools are public schools using public funds to educate school children” and

Appendix R

“charter schools are not free-floating entities unmoored from state governmental oversight and control”).

In addition to the State relying on St. Isidore to fulfill one of the State’s constitutional responsibilities (i.e., establishing a system of free public schools), St. Isidore is *alternatively* considered a state actor because the State provides “significant encouragement [to charter schools] . . . that the choice must in law be deemed that of the state.” *Rendell-Baker*, 457 U.S. at 840. For example, the Supreme Court has treated a private entity as a state actor when it is controlled by an agency of the State and when it is entwined by governmental policies. *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Assoc.*, 531 U.S. 288, 121 S. Ct. 924, 148 L. Ed. 2d 807.⁵

This is established here because the State brought charter schools into existence and exercises extensive oversight of public charter schools. To begin, the accreditation standards document for public charter schools sets forth more requirements for public charter schools than the application for traditional public junior high and middle schools.⁶

5. The Tenth Circuit previously determined the Oklahoma Secondary School Activities Association (the “OSSAA”), is a state actor due to its entwinement of public institutions and public officials, namely because its officials are public employees, and certain of its functions are authorized by statute. *Christian Heritage v. Oklahoma Secondary School Activities Ass’n*, 483 F.3d 1025, 1030-31 (10th Cir. 2007); *see also Scott v. Oklahoma Secondary School Activities Ass’n*, 2013 OK 84, 313 P.2d 891.

6. These are available on the Oklahoma State Department of Education’s official government website. *Compare, e.g.*, 2015-

Appendix R

Charter schools must meet the health, safety, civil rights and insurance requirements that are required of traditional public schools. OKLA. STAT. tit. 70 § 3-136(A)(1). According to the State Department of Education's interpretation, this ranges from the national fingerprint-based criminal history check under OKLA. STAT. tit. 70, § 5-142 to Oklahoma Employees Insurance and Benefits Act under OKLA. STAT. tit. 74, §§ 1301–1323.⁷ Charter schools must also report a myriad of student and school performance information to the State. These reports support transparency in the public expenditure of funds and serve as the basis for State-issued school report cards. OKLA. STAT. tit. 70, § 3-136(A)(4), (6), (18); §§ 5-135, 5-135.2; §§1210.544-1210.545. Consequently, even if the Board were not relying on St. Isidore to perform one of the State's constitutional responsibilities, St. Isidore would still be a state actor because of the State's extensive oversight of public charter schools.⁸

The Board will likely attempt to distance St. Isidore from what St. Isidore has become through its contract

2016 Application for Accreditation: Junior High/Middle School Available at: <https://sde.ok.gov/sites/ok.gov.sde/files/documents/files/Mid-Jr%20Combined%20%202016-2017.pdf>. *with* 2015-2016 Application for Accreditation: Charter School Available at: <https://sde.ok.gov/sites/ok.gov.sde/files/documents/files/Charter%20Combined%202016-2017.pdf>.

7. *See also* Pet. App. Vol. II at 704–15, Oklahoma State Department of Education Accreditation Compliance Review Sheet.

8. Moreover, the executed contract for sponsorship between the Board and St. Isidore demonstrates additional ways in which the State will be involved in the Catholic School's affairs. *See e.g.*, Pet. App. Vol. I at 7–19; §§ 6.1.6, 6.1.8, 6.4, 7.2, 7.3, 7.9, 7.13, 7.14, 7.16, 7.17, 8.11.5, 9.2, 9.2.1, and 11.7.

Appendix R

with the Board—a public school. But this is nothing more than an exercise in word play. This Court should not allow St. Isidore to avail itself of the benefits of being a public school, while it cherry picks rules that apply to it (conveniently not to include the separation of church and state). These types of word play are precisely what Article II, Section 5 prevents: “circumvention based upon mere form and technical distinction.” *Prescott v. Oklahoma Capitol Preservation Commission*, 2015 OK 54, ¶ 5, 373 P.3d 1032.

If this Court were to adopt the Board’s likely position—that a sectarian charter school may maintain its private status, i.e., not become a state actor, even though it is a public school under Oklahoma law—it would leave “[Oklahoma’s] citizens with no means for vindication of [constitutional] rights.” *See West*, 487 U.S. at 56–57 & n.14 (citation omitted). Such an outcome would allow Oklahoma to “outsource its educational obligation[s] to charter school operators, and later ignore blatant, unconstitutional discrimination committed by those schools.” *Peltier*, 37 F.4th 104 at 118. Accordingly, this Court should follow the rule rendering “a private entity a state actor” when the state delegates its responsibility to that entity and prevent the Board from annihilating the Establishment Clause. *Id.* citing *West*, 487 U.S. at 56.

*Appendix R***IV. Recent U.S. Supreme Court Cases Do Not Invalidate Oklahoma’s Prohibition Against Sectarian Control of Public Schools, Including Public Charter Schools.**

It is also anticipated that the Board will cite to recent U.S. Supreme Court cases such as *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), *Espinoza v. Montana Dep’t of Revenue*, 140 S. Ct. 2246 (2020), and *Carson v. Makin*, 142 S. Ct. 1987 (2022), for the proposition that the State cannot disqualify religious institutions from operating charter schools. But these cases have no application here. These U.S. Supreme Court cases are about the basic directive that: “A State need not subsidize private education. But once a State decides to do so, it cannot disqualify some **private schools** solely because they are religious.” *Espinoza*, 140 S. Ct. at 2261 (emphasis added).

Here, St. Isidore is not a “private school.” Under Oklahoma law, it is public school. OKLA. STAT. tit. 70, § 3-132(D). Therefore, these recent U.S. Supreme Court cases have no relevance to this dispute.

Moreover, this case is not about St. Isidore being precluded from receiving a public benefit. There are already numerous public funds St. Isidore is eligible to receive—directly or indirectly—as a Catholic private school. *See e.g.* 70 O.S. §§ 13-101.2 and 28-100–28-103. The problem with the St. Isidore contract is that the State has gone a step further and made St. Isidore a state actor. By way of analogy, if the State decided to allocate public funds

Appendix R

for private entities to beef up security, the State would of course be precluded from preventing the Catholic Church and other sectarian organizations from receiving those funds. However, if the State decided to start authorizing private entities to take over operations of the Oklahoma Highway Patrol, it would violate the Establishment Clause for the State to authorize a “Catholic Church Highway Patrol.” Consequently, the issue here is not the public funds going to St. Isidore, it is the fact that the State has turned the Catholic Church into a state actor. The latter clearly violates the Establishment Clause and must be stopped.

195a

Appendix R

CONCLUSION

For the foregoing reasons, this Court should grant Petitioner's requested relief to correct the Board's unlawful actions.

Respectfully Submitted,

/s/
GENTNER DRUMMOND, OBA #16645
Attorney General
GARRY M. GASKINS, II, OBA #20212
Solicitor General
BRAD CLARK, OBA #22525
Deputy General Counsel
KYLE PEPPLER, OBA #31681
WILLIAM FLANAGAN, OBA #35110
Assistant Solicitors General
OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA
313 N.E. 21st Street
Oklahoma City, OK 73105
Phone: (405) 521-3921
garry.gaskins@oag.ok.gov
Counsel for Petitioner

196a

**APPENDIX S — EXCERPT FROM VIRTUAL
CHARTER APPLICATION OF ST. ISIDORE OF
SEVILLE CATHOLIC VIRTUAL SCHOOL,
REVISED MAY 25, 2023**

TAB B

**ST. ISIDORE OF SEVILLE
CATHOLIC VIRTUAL SCHOOL**

[TABLE OF CONTENTS OMITTED]

**Virtual Charter Application
Section 1: Cover**

Name of applicant(s) and requested sponsor:

Applicant: St. Isidore of Seville Catholic Virtual School,
Archdiocese of Oklahoma City

Sponsor: Oklahoma Statewide Virtual Charter
School Board

Name of proposed charter school

St. Isidore of Seville Catholic Virtual School

Address of proposed charter school

Archdiocese Department of Education
7501 NW Expressway
Oklahoma City, OK 73132

Contact information: name, title, phone, email address

Mrs. Lara Schuler, Senior Director Department of
Catholic Education

197a

Appendix S

Ph: 405-709-2701

E: lschuler@archoke.org

Application submission date

1.30.2023—**Original**

05.25.2023—**Revised**

* * *

Section 2: Cover Letter

We find ourselves in a day an age that learning options are needed for a variety of reasons. Students need the ability to learn from anywhere to facilitate the work requirements of their parents, fulfill their achievement ability in a particular skill or talent, for medical reasons, or simply a desire to attend a quality school outside the boundaries assigned by the local school district.

The mission of St. Isidore of Seville Catholic Virtual School is to educate the entire child: soul, heart, intellect, and body of each child enrolled through a curriculum that will reach students at an individual level, with an interactive learning environment that is rooted in virtue, rigor and innovation. We are dedicated to academic excellence that empowers and prepares students for a world of opportunity and a lifetime of learning.

St. Isidore of Seville Catholic Virtual School envisions a learning experience that combines the best of online instruction with its capacity for individualized flexible learning. Our statewide Catholic virtual school, serving all K-12 grades, will feature an innovative and interactive

Appendix S

curriculum, which meets or exceeds the Oklahoma Academic Standards, and taught by talented certified teachers. Teacher-led instruction will include synchronous and asynchronous learning opportunities, one-to-one tutoring, organized peer interaction, and a focus on critical skills for success in college or trade school, the workforce, and life.

St. Isidore of Seville Catholic Virtual School will seek partnerships with higher education institutions to permit students to participate in AP Courses, early enrollment, dual credit/concurrent enrollment and internships. Each student will have a grade level appropriate College/Career Plan and the school will support students in pursuing their post-secondary goals, whether that includes college enrollment, entering the workforce, military enlistment, or other pathways. At the K-8 level, the focus is on building skill and background in the key subjects of the curriculum to allow for advancement to the next level and to develop a strong moral character in the child that will serve them well in life. The key elements of the St. Isidore of Seville Catholic Virtual program are to ensure success at the next level. This is done in the following ways:

1. Integrated Curriculum—Teacher will integrate the humanities and teach across the curriculum in Literature, English, History/Soc. Studies, and Religion to create a cohesive understanding of the material to build background knowledge for future courses and paths of study. Teachers will utilize discovery-based approaches and integrate science with math, music, architecture, and religion.

Appendix S

2. Rigorous Academics with a wide array of course offerings that span the liberal art spectrum for all abilities. Course work will meet or exceed the Oklahoma and national standards, Students will use the current Archdiocese of Oklahoma Curriculum Standards and Benchmarks as well as strategies and methodologies that are suitable for virtual learning such as Socratic method for discussion; reading, interpreting, recitation and memory work literature and other genres for reading; writing for purpose and writing creatively, and project-based learning based on unit themes, Each year the Archdiocese of Oklahoma City and the Diocese of Tulsa review a subject area and make the necessary changes for best practice and to keep in alignment with state and national standards.
3. Differentiated Instruction—The proposed Learning Management System allows teachers to personalize assignments and content for differentiated instruction, St. Isidore of Seville Catholic Virtual School teachers will be trained to effectively use student data to inform the small group and one-on-one instruction and customize course content for Individual students.
4. Progress Monitoring—Teachers will monitor student progress using short-cycle formative assessments, NWEA MAP, i Ready or Renaissance Reading, Math and Early Learning assessments etc. Students will also take a spring

Appendix S

norm based national achievement test such as, the CLT, Iowa Assessments or Terra Nova. Other recommended or required testing will be considered and/or implemented.

5. Whole Student Supports—The Student Services Team (SST) will empower students to overcome academic, social, emotional, mental health challenges to succeed in school and their community. Testing arrangements, parent information meetings, accommodations, and modifications, if necessary, will be created, documented and implemented within a Student Service Plan.
6. Student Engagement and participation—Teachers have multiple data sources to monitor student engagement and participation. They will use that data to understand how students spend their time in the system and offline. With this data, teachers can help get students back on track if they struggle or need academic challenges.

* * *

**Section 6: Development for
the Proposed School Charter**

Vision and purpose of the organization

St. Isidore of Seville Catholic Virtual School is organized and will be operated exclusively for educational, charitable,

Appendix S

and religious purposes. The school will operate as an Oklahoma virtual charter school established pursuant to the Oklahoma Charter School Act, 70 O.S. § 3-130 et. seq. Subject to the foregoing and other limitations set forth in the Certificate of Incorporation, the School shall have and exercise all the powers of nonprofit corporations under Oklahoma law.

Without limiting the generality of the foregoing, to the extent permissible under the Oklahoma Charter Schools Act, the School's purposes, activities, programs, and affairs shall include the following:

- A. To create, establish, and operate the School as a Catholic School, "It is from its Catholic identity that the school derives its original characteristics and its 'structure' as a genuine instrument of the Church, a place of real and specific pastoral ministry. The Catholic school participates in the evangelizing mission of the Church and is the privileged environment in which Christian education is carried out. In this way 'Catholic schools are at once places of evangelization, of complete formation, of inculturation, of apprenticeship in a lively dialogue between young people of different religions and social backgrounds.'" Congregation for Catholic Education, *The Catholic School on the Threshold of the Third Millennium* ¶11 (1997).
- B. To operate a "school [that] sets out to be a school for the human person and of human persons. 'The

Appendix S

person of each individual human being, in his or her material and spiritual needs, is at the heart of Christ's teaching: this is why the promotion of the human person is the goal of the Catholic school." Congregation for Catholic Education, *The Catholic School on the Threshold of the Third Millennium* ¶19 (1997). The heart of this mission "is oriented toward an integral formation of each student," Sacred Congregation for Catholic Education, *Lay Catholics in Schools: Witnesses to Faith* ¶28 (1982).

- C. To operate a school that understands "[t]he truth is that only in the mystery of the incarnate Word does the mystery of man take on light. . . . [Christ] fully reveals man to man himself and makes his supreme calling clear." Vatican II, *Gaudium et Spes* ¶22 (1965). The truth of the human person and the person's ultimate destiny is learned and understood through faith and reason, theology and philosophy, including the study of the natural sciences. There is a "profound unity which allows [faith and reason] to stand in harmony . . . without compromising their mutual autonomy." St. John Paul II, *Fides et Ratio* ¶48 (1998).
- D. To operate a school that educates its students for freedom, understanding that "in order to be authentic, freedom must measure itself according to the truth of the person, the fullness of which is revealed in Christ, and lead to a liberation from all that denies his dignity preventing him from achieving his own good and that of others,"

Appendix S

Congregation for Catholic Education, *Consecrated Persons and Their Mission in Schools: Reflections and Guidelines*, ¶37 (2022).

- E. To assist and accompany parents in their obligation to educate their children. *Code of Canon Law*, Canons 793-806; Vatican II, *Declaration on Christian Education* ¶3 (1965). This obligation includes forming and cultivating students to
- a. See and understand truth, beauty and goodness, and their author and source—God. *Catechism of the Catholic Church* ¶2500;
 - b. Know that among all creatures, the human person is the only one created in God’s image with the ability to know and love God, and that God created persons male and female. *Catechism of the Catholic Church* ¶355-379;
 - c. Know that because of sin humanity was separated from God, but in God’s love He has provided a path to salvation through the saving power of Christ, the second person of the Trinity, in His suffering, death and resurrection, *E.g.*, *Catechism of the Catholic Church* ¶651-655;
 - d. Know that in this earthly sojourn, each person is called to participate in Christ’s suffering and death by daily taking up their own cross and following Him. *Catechism of the Catholic Church* ¶618;

Appendix S

- e. Know that human persons are destined for eternal life with the Holy Trinity, *e.g.*, *Catechism of the Catholic Church* ¶1720-1724, but that in freedom, an individual may reject God’s invitation and by this “definitive self-exclusion” end up in hell, *Catechism of the Catholic Church* ¶1033;
 - f. Engage in the lifelong task of forming one’s conscience to know good from evil and developing the will to do good and avoid evil, *Catechism of the Catholic Church* ¶1749-1794;
 - g. Develop habits of the intellect and will allowing one to live a virtuous life, *Catechism of the Catholic Church* ¶1784, 1803-1829; and
 - h. Develop mind and body according to each student’s ability so that the student may go into the world, participating in the transformation and development of society by the efforts of his or her labor, *Catechism of the Catholic Church* ¶1877-1889.
- F. To provide rigorous high-quality educational opportunities to prepare students for professional life. Vatican II, *Declaration on Christian Education* ¶5 (1965).
 - G. To operate a school in harmony with faith and morals, including sexual morality, as taught and understood by the Magisterium of the Catholic

Appendix S

Church based upon Holy Scripture and Sacred Tradition.

- H. To hire educators, administrators, and coaches as ministers committed to living and teaching Christ's truth as understood by the Magisterium of the Roman Catholic Church through actions and words, using their commitment to Christ and his teachings in character formation, discipline, and instruction, and to live this faith as a model for students.

- I. To contribute to the common good of society by 1) putting the Church at the service of the community in the realm of education, 2) providing an example of an education directed toward the whole person—body, mind, soul and spirit—while rejecting the idea of a partial education directed solely toward mind and body; 3) sharing with parents, the state, and other educational institutions the universally recognized obligation to educate the young; 4) its openness to accept students of all faiths or no faith who appreciate and desire a robust Catholic education; and 5) guaranteeing cultural and educational pluralism, providing families to educate their children according to the dictates of their consciences. Congregation for Catholic Education, *The Catholic School on the Threshold of the Third Millennium* ¶ 16 (1997).

Appendix S

- J. To establish policies, plans, and procedures for the implementation and administration of the designated purposes;
- K. To enter into agreements with outside entities, including the Archdiocese of Oklahoma City and the Diocese of Tulsa, in connection with the foregoing purposes; and
- L. To fulfill such other purposes and functions, consistent with the Oklahoma Charter Schools Act and Oklahoma law, as the Board shall determine from time to time.

The St. Isidore Catholic Virtual Charter School envisions a learning opportunity for students who want and desire a quality Catholic education, but for reasons of accessibility to a brick-and-mortar location or due to cost cannot currently make it a reality. The Catholic education system has routinely matriculated students prepared not only for the next stage in life but prepared to be successful in life itself as good members of the community who take an active role in caring for others, being innovative in the development of new products and services, and serve as leaders in local, state, and global corporations, small business, government, and military. The ability to teach from a faith and reason perspective opens up for the student the best of the Catholic intellectual tradition, much of what the public educational system in the United States is modeled after in its design and course requirements. A liberal arts education prepares students to think critically and to be well read and well written individuals who care

Appendix S

about their generation and those to follow. It is the desire of the school to reach those students wherever they may be In Oklahoma.

St. Isidore of Seville Catholic Virtual Charter School envisions the ability to offer to students who wish to supplement their current school program the option of various accelerated courses or courses that will accelerate the student beyond their current status, such as in the areas of foreign language, computer programming courses of various types, mathematics, and special interest electives. Credit recovery for core subject areas would also be available for students to enroll in order to fulfill their grade level requirements.

St. Isidore of Seville Catholic Virtual Charter School envisions an experience that combines the best of online instruction with its capacity for individualized flexible learning. Our statewide virtual charter school, serving all K-12 grades, will feature an Innovative and Interactive curriculum, fully aligned to the Archdiocese of Oklahoma City standards and benchmarks which meet or exceed the Oklahoma Academic Standards and the national standards, and will teach by talented, certified teachers. Teacher-led instruction will include synchronous and asynchronous learning opportunities, one-to-one tutoring, organized peer Interaction, and a focus on critical skills for success in learning, which will lead to success at the next level of education, college, trade school, and in life.

St. Isidore of Seville Catholic Virtual Charter School will establish key institutional partners in the state, to further technical and trade opportunities to permit students to

Appendix S

pursue workplace learning opportunities either during their time at St. Isidore of Seville's or upon graduation. The school will seek partnerships with higher education institutions to permit students to participate in Oklahoma's Promise program to enable students to take advantage of post-secondary college and career opportunities. Each student will have a College and Career Readiness Plan and the school will support students in pursuing their post-secondary goals, whether that includes entering the workforce, college enrollment, military enlistment, or other pathways. We will partner with our families to ensure they have the appropriate resources to support their student's engagement and learning. This includes comprehensive student and parent onboarding programs to ensure students are ready to learn and parents are ready to support.

Mission of the proposed school

The mission of St. Isidore of Seville Catholic Virtual School is to educate the entire child; soul, heart, intellect, and body of each child enrolled through a curriculum that will reach students at an individual level, with an interactive learning environment that is rooted in virtue, rigor, innovation, and integrity. We are dedicated to academic excellence that empowers and prepares students for a world of opportunity and a lifetime of learning.

St. Isidore of Seville Catholic Virtual School envisions a learning experience that combines the best of online instruction with its capacity for individualized flexible learning. Our statewide Catholic virtual school, serving all K-12 grades, will feature an innovative

Appendix S

and interactive curriculum, which meets or exceeds the Oklahoma Academic Standards, and taught by talented Oklahoma state-certified teachers. Teacher-led instruction will include synchronous and asynchronous learning opportunities, one-to-one tutoring, organized peer interaction, and a focus on critical skills for success in college or trade school, the workforce, and life.

At the high school level, St. Isidore of Seville Catholic Virtual School will seek partnerships with higher education institutions to permit students to participate in AP Courses, early enrollment, dual credit and internships. Each student will have a grade level appropriate College/Career Plan and the school will support students in pursuing their post-secondary goals, whether that includes college enrollment, entering the workforce, military enlistment, or other pathways. At the K-8 level, the focus is on building skill and background in the key subjects of the curriculum to allow for advancement to the next level and to develop a strong moral character in the child that will serve them well in life.

Key elements of school design that align with and support the mission.

The key elements of the St. Isidore of Seville Catholic Virtual program are to ensure success at the next level of education and life. This is done in the following ways:

1. Integrated Curriculum—Teachers will integrate the humanities and teach across the curriculum In Literature, English, History/Soc. Studies, and

Appendix S

Theology to create a cohesive understanding of the material to build background knowledge for future courses and paths of study. Teachers will utilize discovery-based approaches and integrate science with math, music, architecture, and religion.

2. Rigorous Academics with a wide array of course offerings that span the liberal art spectrum for all abilities. Course work will meet or exceed the Oklahoma and national standards. Students will use the current Archdiocese of Oklahoma Curriculum Standards and Benchmarks as well as strategies and methodologies that are suitable for virtual learning such as Socratic method for discussion; reading, interpreting, recitation, memory work, literature and other genres for reading; writing for purpose and writing creatively, and project-based learning based on unit themes. Routinely, the Archdiocese of Oklahoma City and the Diocese of Tulsa review a subject area and make the necessary changes for best practice and to keep in alignment with state and national standards.
3. Differentiated Instruction—The proposed Learning Management System allows teachers to personalize assignments and content for differentiated instruction. St. Isidore of Seville teachers will be trained to effectively use student data to inform the small group and one-on-one instruction and customize course content for individual students.

Appendix S

4. Progress Monitoring—Teachers will monitor student progress using short-cycle assessments, NWEA MAP, I Ready or Renaissance Reading, Math and Early Learning assessments etc. Students will take a spring norm based national achievement test such as, the CLT, Iowa Assessments or Terra Nova. Dyslexia and dyscalculia screeners will be utilized for all students. Other recommended or required testing will be considered and/or implemented.
5. Whole Student Supports—The Student Services Team (SST) will empower students to overcome academic, social, emotional, mental health challenges to succeed in school and their community. Testing arrangements, accommodations, and modifications, if necessary, will be made and Implemented within a Student Service Plan.
6. Student Engagement and participation—Teachers have multiple data sources to monitor student engagement and participation. They will use that data to understand how students spend their time in the system and offline. With this data, teachers can help get students back on track If they struggle or need academic challenges.

*Appendix S***Section 7: Organizational Capacity****Records Access**

St. Isidore of Seville Catholic Virtual School will permit parents of students eligible for special education to inspect and review, during school business hours, any educational records relating to the student which are collected, maintained, or used by the district or other public agency under this chapter. St. Isidore of Seville Catholic Virtual School will comply with a request promptly and before any meeting regarding an individualized education program or hearing or resolution session relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student, including disciplinary proceedings. St. Isidore of Seville Catholic Virtual School will presume that a parent has authority to inspect and review records relating to his or her student unless (the school, local) school district or other public agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

Record of Access

St. Isidore of Seville Catholic Virtual School will keep a record of parties obtaining access to educational records collected, maintained, or used under this chapter including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. The agency is not required to keep a record of access by parents, and authorized employees with a legitimate educational interest in the records.

*Appendix S***Destruction of Information**

St. Isidore of Seville Catholic Virtual School will operate in accordance with FERPA and its regulations. Student information will be destroyed at the request of the parents/guardians when the information is no longer needed at St. Isidore of Seville Catholic Virtual School to provide educational services to the child. However, a permanent record of a child's name, address and telephone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

Student Recruitment Policies and Procedures (including lottery procedures)

Each year, St. Isidore of Seville Catholic Virtual School will announce its open enrollment period for any Oklahoma parents or guardians who would like to submit an application for their student(s). These outreach activities will be conducted statewide via multiple marketing pathways. If the number of applicants exceeds the capacity of the school or grade level, St. Isidore of Seville Catholic Virtual School will conduct a random selection lottery after first granting enrollment preferences for prior year students and then for a sibling of a current student enrolled in the school. As a statewide school, St. Isidore of Seville Catholic Virtual School will admit any and all students who reside in the state, provided there is capacity to serve that student's grade level per the annual enrollment goals for each year. All students are welcome, those of different faiths or no faith. Admission assumes the

Appendix S

student and family willingness to adhere with respect to the beliefs, expectations, policies, and procedures of the school as presented in the handbook.

Enrollment Process:

1. A parent or legal guardian should complete the digital or paper Application for Admission to St. Isidore of Seville Catholic Virtual School to be considered in the lottery process.

* * *

Section 11: Archdiocesan Charter History

Section 11: Charter History.

Has the applicant applied for authorization in other states? The applicant has not applied for authorization in other states.

To what states and authorizers? Not applicable

What was the result? Not applicable

Has the service provider(s) provided charter school services in other states? The service provider has not provided charter school services in other states

What is the applicant's relationship with the service provider(s)? The applicant and service provider are one and the same. The school falls under the umbrella

Appendix S

of the Oklahoma Catholic Conference comprised of the Archdiocese of Oklahoma City and the Diocese of Tulsa. The Archdiocese of Oklahoma City and the Diocese of Tulsa will act as consultants for the school administration and will direct on diocesan policies that apply to the school.

* * *

Section 13: Appendices

Appendix A: Virtual Charter School Training Certificate

Appendix B: Preopening Requirements Template

Appendix C: Archdiocese of Oklahoma City Catholic Schools Virtual Employee Handbook

Appendix D: Enrollment Charts

Appendix E: School Calendar

Appendix F: Governing Board Documents

Appendix G: Start-up Plan

Appendix H: Budget Documents

Appendix I: Archdiocese of Oklahoma City Letter of Support

Appendix J: OCCSAA/ OPSAC Accreditation

Appendix K: Organization Chart

Appendix L: In-Year Professional Development Calendar

* * *

Appendix S

**Section 13: Appendix F
Governing Board Documents**

- 1.) Approved Bylaws
- 2.) Statements of Assurances
- 3.) Conflict of Interest Forms
- 4.) Board Meeting Minutes

* * *

**Section 13: Appendix F.
Section 1—Approved Bylaws**

**BYLAWS OF
SAINT ISIDORE OF SEVILLE VIRTUAL
CHARTER SCHOOL, INC.**

January 27, 2023

Teaching unsupported by grace may enter our ears, but it never reaches the heart. When God's grace does touch our innermost minds to bring understanding, then his word, which is received by the ear, can sink deep into the heart.

—St. Isidore of Seville

Come, Holy Spirit, Divine Creator, true source of light and fountain of wisdom! Pour forth your brilliance upon my dense intellect, dissipate the darkness which covers me, that of sin and

Appendix S

of ignorance. Grant me a penetrating mind to understand, a retentive memory, method and ease in learning, the lucidity to comprehend, and abundant grace in expressing myself. Guide the beginning of my work, direct its progress, and bring it to successful completion. This I ask through Jesus Christ, true God and true man, living and reigning with You and the Father, forever and ever.

Amen.

—*St. Thomas Aquinas*

ARTICLE I

Name and Purpose

Section 1.1 Name. The name of this corporation is Saint Isidore of Seville Virtual Charter School, Inc., an Oklahoma not-for-profit corporation (the “School”).

Section 1.2 Purposes. The School is organized and will be operated exclusively for educational, charitable, and religious purposes. The School is an Oklahoma virtual charter school established pursuant to the Oklahoma Charter School Act, 70 O.S. § 3-130 et seq. Subject to the foregoing and other limitations set forth in the Certificate of Incorporation, the School shall have and exercise all the powers of nonprofit corporations under Oklahoma law.

Without limiting the generality of the foregoing, the School’s purposes, activities, programs, and affairs shall include the following:

Appendix S

- A. To create, establish, and operate the School as a Catholic School. “It is from its Catholic identity that the school derives its original characteristics and its ‘structure’ as a genuine instrument of the Church, a place of real and specific pastoral ministry. The Catholic school participates in the evangelizing mission of the Church and is the privileged environment in which Christian education is carried out. In this way ‘Catholic schools are at once places of evangelization, of complete formation, of inculturation, of apprenticeship in a lively dialogue between young people of different religions and social backgrounds.’” Congregation for Catholic Education, *The Catholic School on the Threshold of the Third Millennium* ¶11(1997).
- B. To operate a “school [that] sets out to be a school for the human person and of human persons. ‘The person of each individual human being, in his or her material and spiritual needs, is at the heart of Christ’s teaching: this is why the promotion of the human person is the goal of the Catholic school.’” Congregation for Catholic Education, *The Catholic School on the Threshold of the Third Millennium* ¶9 (1997). The heart of this mission “is oriented toward an integral formation of each student,” Sacred Congregation for Catholic Education, *Lay Catholics in Schools: Witnesses to Faith*, ¶28 (1982).
- C. To operate a school that understands “[t]he truth is that only in the mystery of the incarnate Word

Appendix S

does the mystery of man take on light. . . . [Christ] fully reveals man to man himself and makes his supreme calling clear.” Vatican II, *Gaudium et Spes* ¶22 (1965). The truth of the human person and the person’s ultimate destiny is learned and understood through faith and reason, theology and philosophy, including the study of the natural sciences. There is a “profound unity which allows [faith and reason] to stand in harmony . . . without, compromising their mutual autonomy.” St. John Paul II, *Fides et Ratio* ¶48 (1998).

- D. To operate a school that educates its students for freedom, understanding that “in order to be authentic, freedom must measure itself according to the truth of the person, the fullness of which is revealed in Christ, and lead to a liberation from all that denies his dignity preventing him from achieving his own good and that of others.” Congregation for Catholic Education, *Consecrated Persons and Their Mission in Schools: Reflections and Guidelines*, ¶37 (2022).
- E. To assist and accompany parents in their obligation to educate their children. *Code of Canon Law*, Canons 793-806; Vatican II, *Declaration on Christian Education* ¶3 (1965). This obligation includes forming and cultivating students to
 - a. See and understand truth, beauty and goodness, and their author and source God, *Catechism of the Catholic Church* ¶2500;

Appendix S

- b. Know that among all creatures, the human person is the only one created in God's image with the ability to know and love God, and that God created persons male and female. *Catechism of the Catholic Church* ¶355-379;
- c. Know that because of sin humanity was separated from God, but in God's love He has provided a path to salvation through the saving power of Christ, the second person of the Trinity, in His suffering, death and resurrection. *E.g.*, *Catechism of the Catholic Church*. ¶651-655;
- d. Know that in this earthly sojourn, each person is called to participate in Christ's suffering and death by daily taking up their own cross and following Him. *Catechism of the Catholic Church* ¶618;
- e. Know that human persons are destined for eternal life with the Holy Trinity, *e.g.*, *Catechism of the Catholic Church* ¶1720-1724, but that in freedom, an individual may reject God's invitation and by this "definitive self-exclusion" end up in hell, *Catechism of the Catholic Church* ¶1033;
- f. Engage in the lifelong task of forming one's conscience to know good from evil and developing the will to do good and avoid evil, *Catechism of the Catholic Church* ¶1749-1794;

Appendix S

- g. Develop habits of the intellect and will allowing one to live a virtuous life, *Catechism of the Catholic Church* ¶1784, 1803-1829; and
 - h. Develop mind and body according to each student's ability so that the student may go into the world, participating in the transformation and development of society by the efforts of his or her labor, *Catechism of the Catholic Church* ¶1877-1889.
- F. To provide rigorous high-quality educational opportunities to prepare students for professional life, Vatican II, *Declaration on Christian Education* ¶5 (1965).
- G. To operate a school in harmony with faith and morals, including sexual morality, as taught and understood by the Magisterium of the Catholic Church based upon Holy Scripture and Sacred Tradition.
- H. To hire educators, administrators, and coaches as ministers committed to living and teaching Christ's truth, as understood by the Magisterium of the Roman Catholic Church, through actions and words, using their commitment to Christ and his teachings in character formation, discipline, and instruction, and to live this faith as a model for students.

Appendix S

- I. To contribute to the common good of society by 1) putting the Church at the service of the community in the realm of education, 2) providing an example of an education directed toward the whole person—body, mind, soul and spirit—while rejecting the idea of a partial education directed solely toward mind and body; 3) sharing with parents, the state, and other educational institutions the universally recognized obligation to educate the young; 4) its openness to accept students of all faiths or no faith who appreciate and desire a robust Catholic education; and 5) guaranteeing cultural and educational pluralism, providing families to educate their children according to the dictates of their consciences. Congregation for Catholic Education, *The Catholic School on the Threshold of the Third Millennium* ¶16 (1997).
- J. To establish policies, plans, and procedures for the implementation and administration of the designated purposes;
- K. To enter into agreements with outside entities, including the Archdiocese of Oklahoma City and the Diocese of Tulsa, in connection with the foregoing purposes; and
- L. To fulfill such other purposes and functions, consistent with the Oklahoma Charter Schools Act, Oklahoma law, federal law, and Canon Law as the Board shall determine from time to time.

Appendix S

Section 1.3 Oklahoma Charter Schools Act. During the term that the School operates a charter school and maintains a contract as a charter school under the Oklahoma Charter Schools Act, the School will be subject to the requirements of such Act, including requirements relating to programs, admission policies, enrollment, testing, employment practices, and accountability, that are consistent with the School's constitutional rights as a religious school under the auspices of the Catholic Church. Additionally, during such time the School shall be entitled to the rights, benefits, privileges, prerogatives, and protections afforded to charter schools under such Act.

Section 1.4 Restrictions. At no time, either on dissolution or prior to dissolution, shall any part of the funds or assets of the School inure to the benefit of any private individual, nor be used for the purpose of carrying on propaganda or otherwise attempting to influence legislation, except as may be permitted by law and the Internal Revenue Code of 1986, as amended, (the "Code") or corresponding provisions of any subsequent federal tax laws (all references in these Bylaws to the Code shall include reference to any corresponding provisions of any. subsequent federal' tax laws). The School shall not participate in or intervene in any political campaign on behalf of any candidate for public office.

Section 1.5 Certain Restrictions. If the School is found to be a private foundation, as that term is defined in Section 509 of the Code, then (a) the School shall conduct its business and distribute its income as necessary for each taxable year at such time and in such manner as

Appendix S

not to become subject to the tax on undistributed income imposed by Section 4942 of the Code, and (b) the School shall not engage in any act of self-dealing as defined in Section 4941(d) of the Code, shall not retain any excess business holdings as defined in Section 4943(c) of the Code, shall not make any investments in such a manner as to subject the Corporation to tax under Section 4944 of the Code, and shall not make any taxable expenditures as defined in Section 4945(d) of the Code.

Section 1.6 Charitable Activities. The School shall carry on only those activities permitted to be carried on by an organization described in Section 501(c)(3) of the Code.

ARTICLE II
Offices

Section 2.1 Offices. The principal office of the School will be located 7501 Northwest Expressway Oklahoma City, OK 73132. The School may also have offices at other such places as the School's Board may determine.

Section 2.2 Registered Office. The School shall have and continuously manage a registered office in Oklahoma and a registered agent whose office shall be identical with the registered office.

Section 2.3 Governing Law. The business of the School shall be conducted under and be compliant with applicable Canon, Federal, and Oklahoma law.

Appendix S

ARTICLE III
Membership

Section 3.1 Members. The School shall have two Members (collectively, the “Members”). These Members are the Archbishop of the Archdiocese of Oklahoma City and the Bishop of the Diocese of Tulsa and their successors in office. Membership in the Corporation is not transferable or assignable, except by succession to the office, or, if *sede vacante*, the duly elected Administrator, under Canon Law, may serve as a Member until a new Archbishop or Bishop is elected.

Section 3.2 Rights of Members. The Members of the School shall be qualified to vote or to furnish any necessary consent, approval, or ratification or take other action on any matter that may be presented by the Members. The following actions require approval by the Members upon resolution passed by a majority vote of the directors present and voting at a meeting of the Directors *at* which a quorum is present:

- A. amendment or restatement of the Certificate of Incorporation or the Bylaws of the School;
- B. merger, consolidation, combination, or conversion of the School with or into any other entity, enterprise, agency, or body; sale of all or substantially all of the assets of the School; acquisition of the School by any other entity or enterprise; or converting the School into any other form of entity;

Appendix S

- C. appointment of Directors;
- D. appointment of President;
- E. dissolution, liquidation, or termination of the business of the School;
- F. any change in the purposes of the School; and
- G. any decision. to file a voluntary petition under any law involving the adjudication of the School as bankrupt or insolvent or taking any action with respect to the reorganization of the School.

ARTICLE IV
Board of Directors

Section 4.1 General Powers. The Board of Directors shall manage and direct the business and affairs of the School. The Board of Directors shall have all powers and authority provided in the Certificate of Incorporation and permitted by Oklahoma law, federal law, and Canon Law. The business and affairs of the School may be managed in a manner different from those specified in Section 1027 of the Oklahoma General Corporation Act. Such differences may include additional classes of Directors, longer terms of service of Directors, the use of less than unanimous consent for board action, and permitting the Members to designate committees and appoint committee chairs and members. The Board may delegate limited authority to an Educational Service Provider (“HMO”) as it may deem necessary and as specified in the contractual agreement with the EMO, including the power to operate the routine

Appendix S

affairs and activities of the School; provided, however, that the Board shall retain the ultimate oversight and responsibility of the affairs of the School.

Section 4.2 Specific Powers. The following actions require action be taken by the Board of Directors:

- A. sale, conveyance, assignment, or other transfer of any other property with a fair market value in excess of \$50,000;
- B. causing the School to borrow money, incur or increase any indebtedness (other than payables created in the ordinary course of the School's business and in amounts not in excess of those provided for in the applicable annual budget), refinance any indebtedness, repay any indebtedness or secure any of the foregoing by mortgage, pledge or other lien on any property of the School, except to the extent expressly set forth in the annual budget;
- C. execution of any agreement, or of any modification, amendment or restatement of or supplement to any agreement, or the exercise of any consent, approval or termination rights under any agreement, or the termination of any agreement, if the agreement is one which binds the School for a period exceeding one year or which involves aggregate expenditures exceeding \$100,000;
- D. making any capital improvements, alterations, or changes in or to any property of the School in

Appendix S

excess of \$100,000, except for such matters as may be provided for in the applicable annual budget;

- E. making any expenditures or incurring any obligations by the School, the combined cost of which in any one fiscal year exceeds \$100,000, except for expenditures made and obligations incurred pursuant to and specifically provided in the annual budget for such year;
- F. making any expenditure or incurring any obligation which, when added to any other expenditure for the fiscal year of the School, exceeds the amount allocated to the applicable budget category in the applicable annual budget by more than 25% or \$50,000, whichever is less;
- G. institution, prosecution, settlement, compromise and dismissal of lawsuits or other Judicial or administrative proceedings brought on behalf of, or against, or involving the School;
- H. acquisition by purchase, lease, or otherwise of any real property;
- I. sale, conveyance, assignment, or other transfer of any real property; and
- J. any agreement, contract, understanding, or arrangement providing for any of the foregoing.

Appendix S

Section 4.3 Number. The number of Directors shall be not less than five (5) nor more than fifteen (15), and within that range, shall be determined by the Members. The composition and qualifications of the Directors will be as follows:

- A. The minimum number of Directors shall include the Chancellors of the Archdiocese of Oklahoma City and the Diocese of Tulsa and the Directors of Catholic Education/Superintendents of both dioceses, all of whom shall serve as ex-officio, voting Directors.
- B. At no time shall there be more than two (2) non-Catholics serving as directors.
- C. Catholic members of the Board must have the support expressed in writing of their pastor. All directors who are members of the Catholic Church must sign the Statement Attached as Exhibit A to these bylaws,¹ and all directors must sign the Commitment attached as Exhibit B to these bylaws.²
- D. In addition to total number of directors, the Board of Directors shall appoint, by majority vote, one or more parent representatives to serve as Directors. A parent representative (a) must be a parent, grandparent, or guardian of a student currently or previously enrolled in the school, (b) may be

1. See Exhibit A.

2. See Exhibit B.

Appendix S

self-nominated in April of each school year, and (a) will be appointed for a term of one year and will not be eligible for re-appointment.

- E. No reduction in the number of Directors shall have the effect of removing any Director from office before the expiration of his or her term.

Section 4.4 Election: Terms. The Members of the School shall elect the individuals to serve as Directors of the School at the annual meeting of the Board of Directors. Other than Directors described in Sections 4.3A and 4.3D, the Directors shall be elected or designated to serve for terms of three (3) years and until their successors are elected and have qualified.

Directors, other than Directors described in Sections 4.3A and 4.3D, shall be divided into three classes, as nearly as equal in number as possible, with the terms of approximately one-third of the Directors expiring each year. When the number of Directors is changed, any newly created positions or any decrease in the number of Directors shall be so apportioned among the classes as to make all classes as nearly equal in number as possible. The initial Directors will be designated in identifiable seats, which will be for one-, two-, and three-year initial terms of service, The Board. should divide the initial Directors equitably between these three different initial terms of service.

Subject to the foregoing, the successors to the class of Directors whose term are expiring shall be elected to hold office for a term expiring at the third succeeding

Appendix S

annual meeting and until his or her successor has been duly elected and has qualified. A Director may be elected to succeed himself or herself upon the expiration of his or her term if the Members determines that the interests of the School would be best served by that retention.

Section 4.5 Vacancies. If a vacancy results from the resignation, removal, or other inability or incapacity of a Director, or as a result of an increase in the number of Directors, then the Members may fill the vacancy with a person recommended by a majority of the Board present and voting at a meeting. A Director so chosen shall be elected to serve for the remainder of the term of the director whose position had become vacant, or, when applicable, to serve for the term of a newly created position that increases the number of Directors.

Section 4.6 Resignation. Any Director may resign from the Board of Directors by giving thirty (30) days prior written notice to the Chair. Unless otherwise specified in the notice, the acceptance of the resignation shall not be necessary to make it effective.

ARTICLE V

Meeting of the Board of Directors

Section 5.1 Oklahoma Open Meeting Act. The School shall comply with the requirements of the Oklahoma Open Meeting Act. In the event of an inconsistency between the provisions of these Bylaws relating to meetings and meeting requirements and the provisions of the Oklahoma Open Meeting Act, the provisions of the Oklahoma Open Meeting Act shall control.

Appendix S

Section 5.2 Meetings. Annually, the Board shall hold a meeting in June at a time to be designated by the Board Chair for the purpose of electing officers and transacting any other business that may properly come before the meeting. The Board will hold additional at least three additional regular meetings each year, and may hold special, and emergency meetings at such place and time as the Board may determine.

Section 5.3 Notice of Meetings. Notice of the annual meeting and of any regular or special meetings of the Board of Directors shall be given at least seven days before the meeting, specifying the date, time, place, and purposes of the meeting. All notices of meetings, including notices of continued or reconvened meetings, notices of emergency meetings, posting of agendas, manner of giving notice, and other matters relating to meetings, will be subject to the provisions of the Oklahoma Open Meeting Act.

Section 5.4 Place of Meetings. Board meetings may be held at such places as the Board may determine or as may be specified in the notice of the meeting.

Section 5.5 Notice to Directors. Unless otherwise provided by these Bylaws, notice may be given in writing and delivered personally, sent by United States mail, or sent by electronic transmission, addressed to the individual to whom notice is being given at such address as appears on the records of the School.

Appendix S

Section 5.6 Waiver of Notice. An individual who is entitled to receive notice of any meeting may waive notice by signing a written waiver or by sending a waiver by electronic transmission, either before or after the meeting, and the waiver will be deemed equivalent to notice.

Section 5.7 Quorum and Voting. A majority of the directors, present in person, shall constitute a quorum for the transaction of business at any meeting of the Board. Each director shall be entitled to one vote on matters presented to the directors. Directors may not vote by proxy. Except as otherwise specified in these Bylaws, the act of a majority of voting directors present in person at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 5.8 Public Notices. The School shall publish a public notice by December 15 of each calendar year setting forth the date, time, and place of the regularly scheduled meetings of the Board of Directors for the following calendar year. In addition to such notice, the School shall display, at least 24 hours before such Meetings, public notice of the meeting, setting forth the date, time, place, and proposed agenda for the meeting, as provided in and subject to the provisions of the Oklahoma Open Meeting Act.

Section 5.9 Videoconference. Members of the Board of Directors may participate in a meeting of the Board or committee by means of videoconference that allows both visual and auditory communication for all directors participating in the meeting. Such participation shall be considered to be presence in person at the meeting.

Appendix S

Section 5.10 Executive Sessions. The Board may convene in executive session in the manner specified in the Oklahoma Open Meeting Act Agendas for executive sessions must contain sufficient information for the public to ascertain that an executive session will be proposed, must identify the items of business and purposes of the executive session, and must state specifically the provisions of the Oklahoma Open Meeting Act under which the executive session is authorized.

Section 5.11 Oklahoma Open Records Act. The School shall comply with the requirements of the Oklahoma Open Records Act. Although the records of the School will generally be open for public inspection, the School will protect the confidentiality of individual student records, teacher lesson plans, tests, teaching material, and personal communications concerning individual students to the extent permitted or required under such Act or otherwise by law.

ARTICLE VI
Officers and Employees

Section 6.1 Election. At each annual meeting, the Board of Directors shall elect such officers (individually, “Officer,” and collectively, “Officers”) of the School as may be necessary to enable the School to sign instruments that comply with the Oklahoma General Corporation Act. Officers may include a Chair, one or more Vice Chairs (who may be designated by different classes), a Secretary, a Treasurer, and other Officers with other titles, including Assistant Secretaries and Assistant Treasurers. An individual may serve in more than one office, except that

Appendix S

an individual may not simultaneously serve as both Chair and Secretary or Treasurer.

Section 6.2 Terms, Removal, and Vacancies. All Officers shall hold office for terms of two years and until their successors are duly elected and qualified (except as provided in any employment contract between the School and the Officer). They may be re-elected for additional terms. The Board of Directors may remove any Officer at any time whenever, in its judgment, removal would serve the best interests of the School (except as provided in any employment contract between the School and the Officer). Any Officer may resign at any time by giving written notice to the Chair, or, if the Chair, to the Members subject to any employment contract. Unless otherwise specified in the notice, the acceptance of the resignation shall not be necessary to make it effective. The Board of Directors may fill any vacancy in any office other than President. The Members may fill the office of President on recommendation of the Board of Directors.

Section 6.3 Compensation. The School shall not pay any compensation to its Officers for their services as Officers unless the Officers are also employed by the School. The Board of Directors shall determine the compensation of the Executive Director, and the Executive Director shall determine the compensation of any other Officers employed by the School.

Section 6.4 Chair. The Chair shall be a Director and shall perform such duties as the Board of Directors may assign. Additionally, the Chair shall be responsible for

Appendix S

setting agendas for meetings of the Board of Directors and Executive Committee, preside at and conduct meetings, and manage and oversee the regular affairs of the Board of Directors and Executive Committee. The Chair shall regularly report to the Members and the Board of Directors on the business and affairs of the School and the performance of School functions. In the absence or inability to act of the Executive Director, the Chair may perform the duties and discharge the responsibilities of the Executive Director or delegate such duties and responsibilities to another Director, Officer, or employee of the School.

Section 6.5 Vice Chair. The Vice Chair shall be a Director and shall perform such duties as the Board of Directors or the Members may assign. In the absence or inability to act of the Chair, the Vice Chair shall perform the duties and discharge the responsibilities of the Chair.

Section 6.6 Chief Administrative Officer. The Chief Administrative Officer shall be a non-voting Director and shall perform such duties as may be assigned by the Board of Directors. The Chief Administrative Officer shall:

- A. supervise the business of the School and direct the affairs and policies of the School, subject to any directions that may be given by the Board of Directors;
- B. assure that the School conforms with the requirements of authorized regulatory authorities and the Catholic Church;

Appendix S

- C. carry out all policies and procedures established by the Board of Directors; and
- D. in general, have all other powers and perform all other duties incident to the position of president and chief executive officer of a corporation and have such authority and responsibilities as may be prescribed by the Members and the Board of Directors.

The responsibilities of the Chief Administrative Officer shall include acting as a representative of the School to the public, the business community, governmental authorities, the Archdiocese of Oklahoma City, the Diocese of Tulsa, the Roman Catholic Church, The Virtual Charter Board, the Oklahoma State Department of Education, religious organizations, educational organizations, nonprofit organizations, and others, and reporting to the Board of Directors on the performance of School functions.

The Chief Administrative Officer shall have authority to execute deeds, mortgages, leases, contracts, and other instruments of the Corporation, except where the execution is delegated by the Board of Directors to another officer or agent of the School or reserved to the Board. Additionally, the Chief Administrative Officer shall perform such duties and responsibilities and carry out such functions as may be provided or prescribed in any employment agreement with the School. The Chief Administrative Officer will report to, and the Chief Administrative Officer's performance will be evaluated by, the Governance Committee of the Board.

Appendix S

Section 6.7 Secretary. The Secretary shall keep or cause to be kept at the School's principal's office a book of minutes of all meetings of the Board and Board committees, keep or cause to be kept a copy of the School's Bylaws with any amendments, give or cause to be given notice of the Board and committee meetings, and have such other powers and perform other such duties as the Members or the Board of Directors may prescribe.

Section 6.8 Treasurer. The Treasurer, or designee, may chair the finance committee, and be responsible for reviewing budgets, helping with the development of fundraising plans, and reporting to the Board on the financial affairs of the School. The Treasurer shall also perform such duties as the Board of Directors may assign. The Treasurer, or designee, may make a report at each Board meeting.

Section 6.9 Other Officers. If the Board of Directors elects or appoints other Officers, those Officers shall perform such duties as the Board of Directors may assign.

Section 6.10 Final Authority for Matters of Belief and Conduct. For purposes of implementing the School's Catholic mission, ministry, doctrine, practice, policy, and discipline, the Members are the Corporation's final interpretive authority with respect to matters of faith and morals as it pertains to its ministry, organization, and to the conduct of the Executive Director.

*Appendix S*ARTICLE VII
Committees

Section 7.1 Committees, Councils, and Task Forces. The Board may create and abolish committees consisting of at least two directors, appoint directors to and remove directors from those committees, designate one or more directors as alternate members to replace any absent or disqualified director at any meeting of the committee, and adopt committee charters for those committees setting forth the committee titles, designations, compositions, functions and duties, to assist in carrying out the business and affairs of the Corporation. The Chair shall appoint a chair of all committees, other than the Executive Committee. The Chair may appoint individuals who are not Directors to serve as members of committees. By accepting membership on any committee, each committee member agrees to adhere to the teachings of the Catholic Church and to advise, consistent with such teachings, the committees, the Board, and the Corporation. Additionally, the Board, may create and abolish Advisory Councils and Task Forces and may appoint members of Advisory Councils and Task Forces. Individuals who are not Directors may serve as members of Advisory Councils and Task Forces, as well as ex-officio, nonvoting members of Committees. All committees will be subordinate, advisory, recommending bodies that may not exercise the decision-making authority of the Board.

Section 7.2 Executive Committee. The Executive Committee shall consist of the Officers of the School who are Directors plus two additional Directors appointed by a majority vote of all of the Directors. The Executive

Appendix S

Committee may meet at stated times or on notice to all of its members.

Section 7.3 Governance Committee. The Board shall form a Governance Committee that will consist of less than a quorum of Board Members and may include other stakeholders selected by the Board to serve on the Governance Committee. The purpose of this Committee shall be to recruit, identify, and nominate prospective Board Members to serve on the Board. The Governance Committee shall publish a board member application and questionnaire, which shall be available to the members of the public interested in serving on the Board. The Governance Committee shall also be responsible for ensuring that there is no conflict of interest involving any prospective Board Members. The Governance Committee shall ensure an independent process is implemented for the identification, recruitment, selection, vetting, and nomination of Board Members. The Governance Committee will also be responsible for annually evaluating the performance of the Chief Administrative Office and reporting its evaluation to the full Board in Executive Session. The Directors of Education/Superintendents for the Archdiocese of Oklahoma City and the Diocese of Tulsa shall both serve on the Governance Committee.

Section 7.4 Finance Committee. The Finance Committee shall consist of the Treasurer, as Chair, and at least two other Board members. The Finance Committee shall make recommendations to the Board of Directors regarding the School's financial planning, prepare the School's annual budget, develop relevant financial plans for the School's operations, including fundraising and

Appendix S

procurement initiatives, and develop all such relevant plans regarding the School's financial needs and status.

Section 7.5 Audit Committee. The Audit Committee may include persons who are not members of the Board, but the member or members of the Audit Committee shall not include any members of the staff of the corporation, including the Chief Administrative Officer and the Treasurer. Members of the Finance Committee shall constitute less than one-half of the Audit Committee, and the chair of the Audit Committee may not be a member of the Finance Committee. Members of the Audit Committee shall not receive any compensation from the corporation and shall not have a material financial interest in any entity doing business with the corporation. Subject to the supervision of the Board, the Audit Committee shall be responsible for recommending to the Board the retention and termination of the independent auditor and may negotiate the independent auditor's compensation, on behalf of the Board. The Audit Committee shall confer with the auditor to satisfy its members that the financial affairs of the corporation are in order, shall review and determine whether to accept the audit, shall assure that any non-audit services performed by the auditing firm conform with applicable standards for auditor independence, and shall approve performance of non-audit services by the auditing firm.

Section 7.6 Term. Each member of a Committee shall continue as a member of that Committee until the next annual meeting and until a successor is appointed, unless the Committee is being discontinued earlier, the

Appendix S

Committee member resigns, or it removed by the Board. Members of Advisory Councils and Task Forces may continue to serve as determined by the Board.

Section 7.7 Meetings. The Chair of each Committee, Advisory Council, and Task Force shall determine the date, time, and place of meetings and shall arrange for written notice of the date, time, and place of each meeting to be given to each member of the Committee, Advisory Council, or Task Force at least three days prior to the meeting. Business to be transacted at any regular meeting of the Committees, Advisory Councils, or Task Forces shall not be limited to the matters set forth in the notice of meeting. The attendance of any member at any meeting shall constitute a waiver of notice of the meeting.

Section 7.8 Quorum and Voting. At least one-half of the voting members of any Committee, Advisory Council, or Task Force present in person constitutes a quorum for the transaction of business at any meeting of such Committee, Council, or Task Force. Each voting member of any Committee, Advisory Council, or Task Force is entitled to one vote on matters presented to the Committee, Advisory Council, or Task Force. Members may not vote by proxy. Except as otherwise specified in these Bylaws, the act of a majority of voting members of any Committee, Advisory Council, or Task Force present in person at a meeting at which a quorum is present shall be the act of the committee, advisory council, or task force.

Section 7.9 Vacancies. The Board Chair may appoint individuals to fill Committee, Advisory Council, or Task

Appendix S

Forces vacancies, other than vacancies on the Executive Committee, resulting from the resignation, removal, or other inability or incapacity of a committee member.

Section 7.10 Action Without Meeting. Any action required or permitted to be taken at any meeting of any Board Committee may be taken without a meeting if two-thirds (2/3rds) of the voting members of the Committee consent to the action in writing, and the written consent is filed with the minutes of the proceedings of the Committee. Written consent may be obtained and provided by electronic communication or other means.

ARTICLE VIII

Finance

Section 8.1 Fiscal Year. The fiscal year will run from July 1 to June 30.

Section 8.3 Issuance of Warrants and Reporting. As required by 70 O.S. § 18-116, the School shall not spend any public funds except by regularly issued warrants. The warrants shall be issued against properly approved encumbrances in the manner provided by law. All encumbrances shall be approved by the Board at a regular meeting or a special meeting. All original copies of encumbrances as represented by purchases orders shall be filed in either numerical or alphabetical order with the original paid invoice or invoice attached. This shall be accompanied by a signed and dated receiving copy verifying receipt of goods or services. The Board shall ensure there is a system for initiating, recording,

Appendix S

and paying contractual obligations as set forth in 70 O.S. § 5-135.

The Board shall also ensure the proper reporting of financial transactions and costs as required by 70 O.S. §5-135.2.

Section 8.4 Funds Deposit. All funds of the School shall be deposited to the credit of the School under such conditions and in such banks or depositories as shall be designated by the Board.

Section 8.5 Donations. The Board may accept on behalf of the School any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the School. The School shall separately inventory assets purchased with private or donated funds.

Section 8.6 Financial Reporting. A summary report of the financial operations of the School shall be prepared by the Treasurer and the financials will be provided to the School's authorizer as required. The Treasurer, or designee, shall present or cause to be presented the same to the Board at each regularly scheduled Board meeting. The Treasurer shall report directly to the Board

Section 8.7 Books and Records. The School shall keep correct and complete books and records of accounts and minutes of meetings by the Board. Said records shall be maintained and available for inspection as may be required by law.

Appendix S

Section 8.8 Exemption. This nonprofit organization shall apply for and maintain itself as a tax-exempt organization under the provisions of Section 501(c)(3) of the Internal Revenue code and its Regulations as they now exist.

Section 8.10 Budget. The Board shall be responsible for ensuring that an accurate budget is approved for each fiscal year and shall monitor financial compliance with the budget at Board meetings during the fiscal year. To the extent expenditures exceed the budget, the Board shall take action to ensure the financial solvency of the School.

Section 8.11 Educational Management Organization. To the extent the Board contracts with an Education Management Organization (“EMO”), the Board shall ensure compliance by the EMO and School with the provisions in 70 O.S. §5-200. The Board shall vote in an open meeting to approve any payment of public funds to an EMO, or any of its affiliated entities.

ARTICLE IX
Indemnification

Section 9.1 Actions Other than in the Right of the School. The School shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative (other than an action by or in the right of the School) by reason of the fact that the person is or was a director, officer, employee, or agent of the School

Appendix S

or is or was serving at the request of the School as a director, officer, partner, manager, member, trustee, employee, or agent of another corporation, partnership, joint venture, limited liability company, trust, or other enterprise against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit, or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the School, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the School and with respect to any criminal action or proceeding had no reasonable cause to believe that the conduct was unlawful.

Section 9.2 Actions by or in the Right of the School. The School shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the School to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee, or agent of the Corporation or is or was serving at the request of the School as a director, officer, partner, manager, member, trustee, employee, or agent of another corporation, partnership, joint venture, limited liability company, trust, or other enterprise against expenses

Appendix S

(including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interest of the School; except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable to the School unless and only to the extent that the court in which such action or suit was brought shall determine, upon application, that despite the adjudication of liability, but in the view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

Section 9.3 Advancement of Expenses. The School may advance expenses incurred in defending a civil or criminal action, suit, or proceeding, in advance of the final disposition of the action, suit, or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee, or agent to repay such amount if it is ultimately determined that the person is not entitled to be indemnified by the School as provided in these Bylaws. This advancement does not apply in suits brought by the School or the State or Federal Government against a director, officer, employee, or agent in civil or criminal proceedings.

Section 9.4 Insurance. The School may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the School, or is or was serving at the request of the School as a director,

Appendix S

officer, partner, manager, member, trustee, employee, or agent of another corporation, partnership, joint venture, limited liability company, trust, or other enterprise against any liability asserted against the person and incurred by the person in any such capacity or arising out of his or her status as such, whether or not the School would have the power to indemnify the person against such liability.

Section 9.5 Indemnification Required. To the extent that a director, officer, employee, or agent of the School has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in these Bylaws or in defense of any claim, issue, or matter within an action, suit, or proceeding, the person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the action, suit, or proceeding.

Section 9.6 Entitlement. Every such person shall be entitled, without demand upon the School or any action by the School, to enforce his or her right to such indemnity in an action at law against the School. The right of indemnification and advancement of expenses provided in this Article shall not be deemed exclusive of any rights to which any such person may now or later be otherwise entitled. Without limiting the generality of the foregoing, the right to indemnity shall not be deemed exclusive of any rights pursuant to statute or otherwise, of any such person in any action, suit, or proceeding to have assessed or allowed in his or her favor against the School or otherwise, costs and expenses incurred or connection with the matter.

Appendix S

ARTICLE X
General Provisions

Section 10.1 Notices. Unless otherwise provided by these Bylaws, notice may be given in writing, may be delivered personally or sent by United States mail postage paid, by email, or by other electronic means, and may be addressed to the individual to whom notice is being given at such address as appears on the records of the School.

Section 10.2 Waiver of Notice. A person entitled to receive notice under these Bylaws may waive the notice requirement by executing a written waiver, or in the case of notice of a meeting, by attending, and failing to object at or immediately prior to the beginning of the meeting in question.

Section 10.3 Non-Discrimination. The School shall not exclude from participation, deny benefits or services, or discriminate against any individual on the basis of race, color, national origin, age, sex, or physical disability or impairment under any program or activity it sponsors or conducts to the extent required by law, including the First Amendment, religious exemptions, and the Religious Freedom Restoration Act, with priority given to the Catholic Church's understanding of non-discrimination.

Section 10.4 No Implied Rights. Except as provided in Article IX of these Bylaws, nothing contained in these Bylaws is intended to confer any rights or benefits upon any individual or to confer any private right, remedy, or right of action upon any person. These Bylaws are

Appendix S

intended for internal corporate use only and solely for the governance of the internal affairs of the School.

Section 10.5 Immunities. To the fullest extent permitted by law, no Director shall be liable for monetary damages to the School or its Members or any other person, for breach of fiduciary duty as a Director.

ARTICLE XI
Dissolution

Section 11.1 Dissolution. The School may be dissolved by the Members or by a majority vote of the directors present and voting at a meeting of the directors at which a quorum is present, subject to the approval of the Members. Upon dissolution, the directors shall, after paying or making provision for the payment of all liabilities of the School, dispose of all of the assets by transferring and conveying the assets to one or more organizations exempt from federal income taxation under section 501(c)(3) of the Code, in the following order of priority: (a) to a successor organization to the School, if any, (b) the Archbishop of the Archdiocese of Oklahoma City and the Bishop of Tulsa, or (c) to one or more Catholic organizations with charitable, religious, and educational purposes similar to the purposes of the School, as determined by a majority vote of all of the directors with the approval of the Members.

ARTICLE XII
Amendments

Section 12.1 Bylaws. These Bylaws may be amended, altered, restated, or repealed, or new bylaws may be

251a

Appendix S

adopted, by a majority vote of the directors present and voting at a meeting of the directors at which a quorum is present, subject to the approval of the Members.

Section 12.2 Certificate. The undersigned does hereby certify that the foregoing Bylaws were duly and regularly adopted as such by the Members and that the above and foregoing Bylaws are in full force and effect.

CERTIFICATE OF SECRETARY

I, the undersigned, certify that I am the presently elected and acting Secretary of **Saint Isidore of Seville Virtual Charter School, Inc.**, a not-for-profit Oklahoma Corporation, and that the above Bylaws are the Bylaws of this Corporation as duly adopted by the Board on 27th day of January 2023, *the Third Friday of Ordinary Time*, and as approved by the Members.

/s/ _____
Michael A. Scaperlanda
Secretary