Nos. 24-394, 24-396

IN THE

Supreme Court of the United States

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

v.

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

ST. ISIDORE OF SEVILLE CATHOLIC VIRTUAL SCHOOL,
Petitioner,

v.

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

On Writs of Certiorari to the Supreme Court of Oklahoma

BRIEF OF *AMICI CURIAE* CLASSICAL CHARTER SCHOOLS OF AMERICA, INC., PINNACLE CLASSICAL ACADEMY, AND NORTH CAROLINA COALITION FOR CHARTER SCHOOLS SUPPORTING PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

Amicus North Carolina Coalition for Charter Schools ("the Coalition") is a 501(c)(6) trade association that advocates for charter schools in North Carolina. The Coalition serves 90 member schools and over 72,000 students who benefit from the education each school provides. The Coalition seeks, among other things, to ensure regulatory autonomy for charter schools and to defeat bills and policies that adversely affect them. The Coalition therefore has a strong interest in seeing that the Court corrects the decision below, which threatens to destroy the independence of charter schools through the mistaken application of the state-action doctrine.

Amici Classical Charter Schools of America, Inc. ("CCS") and Pinnacle Classical Academy operate secular charter schools in North Carolina. They each provide a tuition-free classical model of education, with an emphasis on high character and behavioral standards. Collectively, they operate five charter schools and educate thousands of students from kindergarten to twelfth grade.

Amicus CCS recently found itself on the wrong end of the split of authority at issue in this case. According to the Fourth Circuit, CCS is a state actor under 42 U.S.C. § 1983, and its dress-code policy—designed by the parents who chose to enroll their students at the school—violated the Equal Protection Clause.[2] As a result of that decision, CCS had to pay millions of dollars in attorneys' fees, suffer

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[1] In accordance with this Court's Rule 37.6, no counsel for any party has authored this brief in whole or in part, and no person or entity, other than *amici*, their members, or their counsel, have made a monetary contribution to the preparation or submission of this brief.

[2] CCS recently changed its name from "Charter Day School, Inc.," which was the name used in the Fourth Circuit decision.

seven years of burdensome federal-court litigation, and ultimately jettison a unique feature of its culture that parents and educators supported.

That experience, and the prospect of undergoing similar legal battles in the future, greatly concern *amici* and fuel their strong interest in the state-action question presented here. While *amici* are not religious charter schools, the state-action question is existential for *all* charter schools. No charter school should have to fight for its life merely because it fulfills the very reason for its existence: providing parents and students innovative options and meaningful choices in the primary-education market.

Amici CCS, Pinnacle Classical Academy, and the Coalition accordingly submit this brief in support of Petitioners.

SUMMARY OF ARGUMENT

Amici are all too familiar with the lawfare charter schools face under the state-action doctrine. CCS itself endured a seven-year-long suit concerning an aspect of its traditional-values-based dress code that ultimately culminated in a fractured en banc opinion by the Fourth Circuit and a seven-figure fee award for plaintiffs' counsel. The crippling cost of the experience is compounded by the threat that the decision—and the decision from the Oklahoma Supreme Court that follows it—now poses to charter schools writ large.

Make no mistake: If the thousands of charter schools across the country are considered state actors under section 1983, a civil-rights lawsuit will lie in wait at every turn, sanding off the edges of cultural and pedagogical difference until the schools are virtually indistinguishable from their government-school counterparts. Those previously

ambitious enough to start a charter school of their own may fear to take on such a costly and litigious endeavor. Charter schools across the Nation, currently founts of innovation and parental choice, will see the legal risk in both and offer neither.

The decision below, which embraced this result and thereby rejected a fundamental premise of the charter-school project, must be reversed. It repeats the same erroneous logic that the Fourth Circuit deployed in CCS's case, and it breaks with the principles this Court has articulated in its state-action precedents. Charter schools are created, operated, and directed by *private* individuals, and often by parents and volunteers. So this Court can, as it has done in many of its prior state-action cases, reject the misleading legislative label of "public" school and recognize the charter school as an entity that harnesses the strengths of the free market and private choice and sheds the constraints of governmental bureaucracy and control.

If charter schools are to have any meaningful reason for existence, the Court should reverse the judgment below and hold that charter schools are not state actors.

ARGUMENT

I. CCS was dragged through the federal courts and forced to pay millions in legal fees, all because it accepted the state's invitation to provide an innovative educational option

A. Privately operated charter schools have become immensely popular all around the country. As many as forty-six states, along with Washington, D.C., now authorize charter schools to educate their children. In recent years, attendance has skyrocketed. Nearly 8,000 charter-school campuses nationwide educate almost four million

students.[3] And their popularity is well deserved. According to a recent study conducted by a research group at Stanford University, which has reviewed the statistics over a twenty-five-year timeline, "charter schools are now outpacing their peers in traditional public schools in math and reading achievement, cementing a long-term trend of positive charter school outcomes."[4]

Driving that positive trend are educators like CCS, a nonprofit corporation that operates four charter schools in North Carolina. Started over two decades ago, CCS offers a classical curriculum, emphasizing subjects like public speaking, debate, Latin, and history. CCS also inculcates a traditional-values-based education. Students must strive toward the four classical virtues (prudence, justice, fortitude, and temperance) and use traditional manners and polite expressions of respect (*e.g.*, "Yes, Ma'am" and "No, Sir").

CCS's educational model has been, and continues to be, a success. CCS has won numerous academic and athletic awards and, like many other charter schools, has outpaced neighboring public schools in various metrics. And attendance at CCS, of course, is completely voluntary. Parents and students who find CCS—with its unique staffing, mission, curriculum, and operating procedures—to be an attractive alternative option to a government-run public school may choose to enroll if they wish. Or not. The

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[3] Garnett, *Religious Charter Schools: Legally Permissible? Constitutionally Required?*, Manhattan Inst. 6 (2020), available at https://perma.cc/EF8G-FAUZ (citing National Alliance for Public Charter Schools, "National Charter School Facts" (2020)).

[4] Stanford, *Charter Schools Are Outperforming Traditional Public Schools: 6 Takeaways From a New Study*, EducationWeek (June 6, 2023), https://perma.cc/ERQ2-P4CM.

choice always has, and always will, remain with the parents.

B. CCS's long track record of success, however, has not pleased all parents and students all of the time. In 2015, a parent who chose to enroll her daughter at CCS took issue with the dress-code policy that had existed since the school's founding in 1999. Her complaint, aimed at the school's sex-specific uniform requirements, alleged discriminatory treatment. School officials responded that parents had designed the dress code to preserve discipline and respect among the students. Rather than choose a school with different dress-code standards, four parents filed a federal lawsuit.

The suit, premised on the notion that charter schools are state actors and could therefore be sued under section 1983, dragged CCS through every level of the federal judiciary. The Eastern District of North Carolina held that CCS was a state actor, but it was quickly reversed by a panel of the Fourth Circuit. *Peltier* v. *Charter Day Sch., Inc.*, 8 F.4th 251, 263-268 (4th Cir. 2021). CCS's dress-code policy, the panel observed, could not be fairly attributed to the state because "there is no state policy at all that requires, prohibits or regulates uniform policies." *Id.* at 266. Indeed, CCS—a private, nonprofit corporation—had designed the policy with no state input, encouragement, or guidance whatsoever. *Id.* at 266-267.

Yet a sharply divided en banc majority of the Fourth Circuit disagreed and held that CCS was a state actor because of its public funding and statutory label as a "public school." *Peltier* v. *Charter Day Sch., Inc.*, 37 F.4th 104, 118 (4th Cir. 2022) (en banc). In so doing, the Fourth Circuit departed not only from three sister circuits that had

previously addressed the issue,[5] but also this Court's decision in *Rendell-Baker* v. *Kohn*, which held that education is not a "traditionally exclusive public function" and that public funding could not transform a privately run school into a state actor. 457 U.S. 830, 840-842 (1982).

CCS, finding itself on the wrong side of the circuit split, petitioned for certiorari. After calling for the views of the Solicitor General, this Court denied CCS's petition in June 2023, *Charter Day Sch., Inc.* v. *Peltier*, No. 22-238, 143 S. Ct. 2657 (mem.) (June 26, 2023). That left intact the plaintiffs' victory, which required CCS to abandon part of its longstanding dress code and labor under the state-actor label indefinitely. A unique feature of CCS was lost to judicially mandated conformity.

C. The dress-code policy, however, was not the only casualty of this seven-year-long suit. CCS's teachers, principals, and board members were distracted from their education mission by depositions, court proceedings, and the threat of personal liability. See *Peltier*, 37 F.4th at 113-114 (noting that "members of the Board" were sued). Worse yet, as the losing party in a section 1983 action, CCS was forced to hand over more than a million dollars in attorneys' fees to plaintiffs' counsel at the ACLU. *See* 42 U.S.C. § 1988(b).

[5] See *Caviness* v. *Horizon Cmty. Learning Ctr., Inc.*, 590 F.3d 806, 818 (9th Cir. 2010) (holding that a private corporation operating a public charter school was not a state actor); *Logiodice* v. *Trs. of Maine Cent. Inst.*, 296 F.3d 22, 26-30 (1st Cir. 2002) (holding that a private corporation operating a high school under a contract with the Maine public-school district was not a state actor); *Robert S.* v. *Stetson Sch., Inc.*, 256 F.3d 159, 164-169 (3d Cir. 2001) (Alito, J.) (same with respect to a private contractor operating a publicly funded school for juvenile sex offenders).

Amici thus know all too well how the fee-shifting scheme in civil-rights lawsuits can "entice [entities like] the American Civil Liberties Union * * * to litigate perceived violations" in the classroom. Dunn & West, The Supreme Court as School Board Revisited, in From Schoolhouse to Courthouse: The Judiciary's Role in American Education 13 (2009).[6] That prospect of attorneys' fees "encourage[s plaintiffs' lawyers] to accept risky § 1983 cases as well as those that promise only small judgments," M. Brown & K. Kinports, Constitutional Litigation Under § 1983 491 (2d ed. 2008), or even no judgment at all, see *Lackey* v. *Stinnie*, No. 23-621, slip op. at 17-18 (2025) (Jackson, J., dissenting) (noting the "predictable and practical effect of" fewer section 1983 suits in the absence of fee shifting). As this Court observed in *Hudson* v. *Michigan*, "[t]he number of public-interest firms and lawyers who specialize in civil-rights grievances has greatly expanded" since the adoption of section 1988(b). 547 U.S. 586, 598 (2006). With no "counterbalancing threat of law," section 1988(b) "encourages the pursuit of claims of all sorts in all situations," Rowe, *Predicting the Effects of Attorney Fee Shifting*, 47 L. & Contemp. Prob. 139, 147 (1984), and classrooms are no exception.

Public schools are already hotbeds of civil-rights litigation, see *infra*, section II.C, and if the decision below stands, charter schools will attract even more litigation

[6] As the ACLU recently confirmed in an *amicus* brief before this Court, it would not pursue many perceived civil-rights violations without the promise of fees under section 1988(b). See Brief of American Civil Liberties Union, et al., *Amicus Curiae* Supporting Respondents at 28–29, *Lackey* v. *Stinnie*, No. 23-621 (Aug. 2024) (arguing that attorneys' fees "play a critical role" in choosing which lawsuits to file and that institutional litigators like the ACLU "rely substantially" on local counsel who in turn "depend upon the availability of fee awards").

given their innovative nature. See *Peltier*, 37 F.4th at 155 (Wilkinson, J., dissenting) ("States should be able to fund diverse education options without incurring massive litigation costs."). The seven-figure fee award in CCS's case, for example, signals to other charter schools that innovation comes at a price—and a steep one at that. Even the threat of litigation can pose an equally potent deterrent, as lawsuits can subject charter schools to "the slow strangulation of litigation." *Id.* at 159.

Fortunately, CCS had the financial, institutional, and moral fortitude to withstand the throes of section 1983 litigation. But many others will not. Studies show that the "single largest hurdle facing charter schools * * * [is] the lack of start-up funds." Johnson & Medler, *The Conceptual and Practical Development of Charter Schools*, 11 Stan. L. & Pol'y Rev. 291, 294 (2000). And the reality is that "it is more likely now than ever that a school official will face a lawsuit." Dunn & West, *supra*, at 13. The resulting cost will manifest not only in bankrupting legal fees for educators and their institutions, but also in a virulent chilling effect on charter schools' volunteer school boards—usually consisting of parents—who want to serve their communities by offering creative educational models.[7] Enterprising individuals who desire to start a charter school will be predictably and understandably deterred from participating in the charter-school project altogether.

[7] These fears are not merely theoretical. "[A] national survey conducted in 2004 by Public Agenda found that 82 percent of public school teachers and 77 percent of principals practiced 'defensive teaching' in order to avoid legal challenges." Dunn & West, *supra*, at 3 (internal quotation marks and citation omitted).

"Regardless of the constitutional merits of such challenges," Judge Wilkinson rightly observed, "the costs of litigation may well accomplish opponents' lamentable goal of rendering such innovative and diverse programs an experiment that died aborning." *Peltier*, 37 F.4th at 156.

II. Converting charter schools into state actors frustrates their purpose for existence

A. Oklahoma's charter-school statute mirrors North Carolina's in its express aim of fostering innovative pedagogy.[8] Finding new and better ways to educate students is the raison d'être of charter schools. See *Peltier*, 37 F.4th at 150 (Wilkinson, J., dissenting) ("The whole purpose of charter schools is to encourage innovation and competition within state school systems."). Parents and students deliberately opt in expecting that charter schools' new approaches will improve on the status quo.

Indeed, the students at *amici*'s schools have gotten exactly that. Their schools have accomplished the original purpose of the charter-school endeavor to be "incubators of change," "laboratories for curricular education," and outposts for parents and students who seek learning environments that suit their cultural preferences. O'Brien, *Free at Last? Charter Schools and the "Deregulated" Curriculum*, 34 Akron L. Rev. 137, 155 (2000); see also Barnes, *Black America and School Choice*, 109 Yale L.J. 2375, 2381 (1997) (noting that the "innovative teaching and learning models developed in charter schools are

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[8] Compare Okla. Stat. tit. 70, § 3-131(A)(1)-(3) ("The purpose of the Oklahoma Charter Schools Act is to * * * [i]improve student learning" and "[e]ncourage the use of different and innovative teaching methods."), with N.C. Gen. Stat. § 115C-218(a)(1)-(3) ("The purpose of [charter schools] is to * * * "[i]mprove student learning" and "[e]ncourage the use of different and innovative teaching methods.").

expected, over the long run, to translate into benefits for children district-wide," particularly for minority students). As one of the first visionaries of charter schools put it, these "autonomous" schools would "do things that are very different from the rest of the system * * * and move out of a lock-step situation." Johnson & Medler, *supra*, at 292 (quoting Albert Shanker).

The many charter-school programs across forty-six states and D.C. will, to be sure, inevitably vary in their curricular independence and adherence to standardized testing. O'Brien, *supra*, at 157. But charter-school innovation extends to the "hidden curriculum" as well—that is, the cultural norms and values that they inculcate in their students. *Ibid.*; see *Peltier*, 37 F.4th at 154 (Wilkinson, J., dissenting) ("Subsumed within the right to choose a charter school is * * * a choice as to the cultural and curricular components of education advanced within school walls."). "Charter provisions that are not likely to lead to change in the official curriculum," one scholar has observed, still "give each charter school greater latitude to create a school culture, to independently define the power relationships within the school, and to change the 'unstated norms, values and beliefs embedded in and transmitted to students through the underlying rules that structure the routines and relationships in school and classroom life." O'Brien, *supra*, at 157 (internal quotation marks omitted).

That charter schools are empowered to create their own cultures and approaches to learning stems from the idea of "school-based management." Hassel, The Charter School Challenge 5 (1999). Rather than take top-down orders from a central district office, charter schools allocate key decision-making responsibility to educators and parents, thus allowing them to innovate and adapt the learning environment as they see fit.

B. Puzzlingly, however, the majorities on the Fourth Circuit and Oklahoma Supreme Court failed to grasp these basic premises of the charter-school enterprise. See *Peltier*, 37 F.4th at 151 (Wilkinson, J., dissenting) ("[The majority's opinion] is essentially dismissive of what charter schools might have to contribute, prejudging them as miscreants that must be brought to heel."). Their categorical holding that charter schools are state actors—and must therefore conform their classrooms to norms and practices that government-run schools follow—is self-defeating. It effectively flattens the field of choice, "sends education in a monolithic direction," *id.* at 155, and substitutes school-based management systems with *court*-based management systems.

The bitter irony is only compounded by the fact that such a regime gets the constitutional calculus exactly backward. Constitutional rights are typically asserted in a defensive posture, *Whole Woman's Health* v. *Jackson*, 595 U.S. 30, 49-50 (2021), and the liberty interests that they protect encompass a parent's right to choose how and where to educate their children, *Pierce* v. *Soc'y of the Sisters*, 268 U.S. 510, 534-535 (1925). Yet, in the cases of CCS and St. Isidore, constitutional rights were wielded offensively to extinguish parental choice and ensure educational uniformity. And the message from each decision is clear: Conform or be sued.

The en banc Fourth Circuit, for its part, downplayed these consequences, suggesting that charter schools can be different, but only insofar as the Constitution allows them to be. "Innovative programs in North Carolina's [charter] schools," the majority wrote, "can and should continue to flourish, but not at the expense of constitutional protections for students." *Peltier*, 37 F.4th at 122. A concurrence echoed the sentiment, retorting that "the

specter of parental choice is not a trump card that gives [the state's charter schools] license to practice unconstitutional discrimination." *Id.* at 135 (Wynn, J., concurring).

The serious charge of "unconstitutional discrimination" in CCS's case, of course, was aimed at the *parent-designed* dress-code policy that *parents choose* when they enroll their children at CCS. Nonetheless, "those who promulgate a dress code aimed at cultivating 'mutual respect' among men and women have been greeted with a boundless determination to litigate their views out of the charter school setting." *Id.* at 152 (Wilkinson, J., dissenting). This approach turns the Constitution's protection for parental rights and private innovation against itself, defeating the whole purpose of the state-action doctrine. Properly understood, the doctrine aims to protect a "robust sphere of individual liberty," *Manhattan Cmty. Access Corp.* v. *Halleck*, 587 U.S. 802, 808 (2019), "in which the opportunity for individual choice is maximized," *Jackson* v. *Metro. Edison Co.*, 419 U.S. 345, 372 (1974) (Marshall, J., dissenting).

The state-action doctrine, in other words, is foreign to a world in which individuals are empowered to make choices for themselves and their children. Cf. *Zelman* v. *Simmons-Harris*, 536 U.S. 639, 650 (2002) (distinguishing between "government programs" and "programs of true private choice"). Parents who choose to send their children to charter schools retain the ultimate authority as to *which* school their children attend and, in many instances, *how* the charter school educates their children. Parents who send their children to government-run schools, by contrast, temporarily delegate at least some of their "right[s] to control the education of their children." *Fields* v. *Palmdale Sch. Dist.*, 427 F.3d 1197, 1206 (9th Cir. 2005). In those schools, courts have held that "the school

curriculum, the hours of the school day, school discipline, the timing and content of examinations, the individuals hired to teach at the school, the extracurricular activities offered at the school, [and the] dress code" are all "generally committed to the control of state and local authorities." *Blau* v. *Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381, 395 (6th Cir. 2005).

Thus, parents of children in government-run schools may have no other option but to resort to a federal lawsuit if the state actors running the school violate the Constitution. This Court recognized as much in the prison context, holding that a privately contracted prison doctor was a state actor under section 1983 because the inmate had no other option but to "rely on prison authorities to treat his medical needs." *West* v. *Atkins*, 487 U.S. 42, 54 (1988) (internal quotation marks omitted). No such all-or-nothing dilemma presents itself in the charter-school context. Quite the opposite. Parents unhappy with an aspect of a charter school may simply do what they did initially: Make a different choice. A charter school that provides parents an alternative way to educate their children should not have to lawyer up merely because it dared to fulfill its purpose.

C. Yet if charter schools are deemed state actors, a section 1983 suit will await them at every turn. "Seemingly," some scholars have observed, "no aspect of education policy has been too insignificant to escape judicial oversight. Schools and districts now regularly face lawsuits over discipline policies, personnel decisions, holiday celebrations, and more." Dunn & West, *supra*, at 3. As another scholar explained in his robust account of constitutional law in public school: "One cannot plausibly claim to understand public education in the United States today * * * without appreciating how the Supreme Court's

decisions involving students' constitutional rights shape the everyday realities of schools across the country." J. Driver, The Schoolhouse Gate: Public Education, the Supreme Court, and the American Mind 9 (2018).

Indeed, some of this Court's most recent and consequential First Amendment decisions arose in the public-school context. See, *e.g.*, *Kennedy* v. *Bremerton Sch. Dist.*, 597 U.S. 507, 512 (2022) (addressing whether a high-school football coach may pray on the school's football field); *Mahonoy Area Sch. Dist.* v. *B.L.*, 594 U.S. 180, 183 (2021) (addressing whether school officials may punish a student for her social-media use outside school hours and away from campus). In virtually no other setting is there more frequent contact between government officials and private citizens. For that reason, "the public school has served as the single most significant site of constitutional interpretation within the nation's history. No other arena of constitutional decisionmaking * * * comes close to matching the cultural import of the Supreme Court's jurisprudence governing public schools." Driver, *supra*, at 9.

Public schools, in short, are wellsprings of constitutional litigation. Decisions regarding personnel, security, discipline, dress codes, library books, curriculum, and inculcation of moral values have all been vigorously litigated. Cf. Driver, *supra*, at 11 ("[C]ases arising from the schooling context involve many of the most doctrinally consequential, hotly contested constitutional questions that the Supreme Court has ever addressed—including lawsuits related to sex, race, crime, safety, liberty, equality, religion, and patriotism.").

Charter schools were designed to escape this universe of litigation and conformity by allowing *private* entities to

operate publicly funded schools of choice with minimal government oversight. Cf. Hassel, *supra*, at 2 (noting that charter schools can "sidestep" the political "battlegrounds" that public schools have become). But if privately operated charter schools are nonetheless deemed state actors, it would be difficult to accept the Fourth Circuit majority's assurance that their "innovative programs * * * can and should continue to flourish." *Peltier*, 37 F.4th at 122. There is little room for such innovation if school manuals must incorporate by reference the many pages of federal caselaw governing public-employee due process rights, First and Fourth Amendment rights, and the Equal Protection Clause. No parent or conscientious citizen, for that matter, will want to volunteer as a member of a charter school's private board if that title will inevitably be swapped out for "defendant." Recruiting volunteers for an unpaid position is hard enough; recruiting volunteers for an affirmatively *costly* one will be practically impossible.

D. The foregoing concerns of *amici*, to be sure, are not new. Despite the intrusion of constitutional law into so much day-to-day student life, this Court has repeatedly recognized that education policy is best left in the hands of educators—and out of the courtroom.

"[T]he education of the Nation's youth," this Court observed in one of its landmark public-school cases, "is primarily the responsibility of parents, teachers, and state and local school officials, and not federal judges." *Hazelwood Sch. Dist.* v. *Kuhlmeier*, 484 U.S. 260, 273 (1988). Or, as Justice Robert Jackson put it decades earlier, the Supreme Court cannot serve as the "super board of education for every school district in the nation." *McCollum* v. *Bd. of Educ.*, 333 U.S. 203, 237 (1948) (Jackson, J., concurring). These appeals to judicial restraint concerning

school litigation, among many others,[9] derive from a simple truth: "[T]he courtroom is rarely the optimal venue for education policymaking." Dunn & West, *supra*, at 4.

What is true for traditional, government-run public schools must be especially true for privately-run charter schools. That is because charter schools are, by design, given the autonomy necessary to devise their own educational policies, unshackled by the rules and policies of local school boards.[10] CCS's volunteer board of directors has accordingly taken an independent—and, by all measures, successful—path in how it educates its students. But if the decisions of the Fourth Circuit and the Oklahoma Supreme Court remain good law, plaintiffs who disagree with the value systems espoused by St. Isidore and *amici* will "stretch the Fourteenth Amendment to stamp out [their]

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[9] See, *e.g.*, *Morse* v. *Frederick*, 551 U.S. 393, 414 (2007) (Thomas, J., concurring) ("Applying *in loco parentis*, the judiciary was reluctant to interfere in the routine business of school administration, allowing schools and teachers to set and enforce rules and to maintain order."); *id.* at 428 (Breyer, J., concurring in part) ("[T]he more detailed the Court's supervision becomes, the more likely its law will engender further disputes among teachers and students."); *Couture* v. *Bd. of Educ.*, 535 F.3d 1243, 1251 (10th Cir. 2008) (McConnell, J., joined by Gorsuch, J.) ("The Fourth Amendment sets outer boundaries for official conduct. It does not empower federal courts to displace educational authorities regarding the formulation and enforcement of pedagogical norms."); *Peltier*, 37 F.4th at 155 (Wilkinson, J., dissenting) ("Judicial restraint in turn requires that we stay hands-off. States and localities and schools and parents and students will do just fine without our help and achieve educational progress on their own.").

[10] See, *e.g.*, Okla. Stat. tit. 70, § 3-136(A)(1) ("[A] charter school and virtual charter school shall be exempt from all statutes and rules relating to schools, boards of education, and school districts * * * ."); N.C. Gen. Stat. § 115C-218(a) (authorizing "charter schools to * * * operate independently of existing schools").

right * * * to hold different values and to make different choices." *Peltier*, 37 F.4th at 152 (Wilkinson, J., dissenting). The governing power of charter-school boards will, in turn, be increasingly surrendered to federal judges, thereby "forc[ing] complex issues [of education policy] onto a procrustean bed of rights," Dunn & West, *supra*, at 9.

The end result will be damaging: Charter schools, once bastions of innovation and choice, will see the legal risk in both and offer neither.

III. The rationale of the decision below would convert all charter schools into state actors

The Oklahoma Supreme Court's reasoning on the state-actor question would invariably sweep every charter school in the Nation under section 1983. An express rejection of the decision below is essential not just for aspiring religious charter schools, but for charter schools like *amici* that wish to offer diverse, secular approaches to education.

A. Much like the Fourth Circuit, the Oklahoma Supreme Court found compelling, if not dispositive, the bare fact that the legislature had labeled charter schools as "public schools." "The [Charter Schools] Act states that a 'charter school' means a 'public school,'" the majority explained, and "Oklahoma exercised its sovereign prerogative to treat these state-created and state-funded schools as public institutions * * * ." Pet.App.17a-24a.

In this respect, the Oklahoma Supreme Court found the Fourth Circuit's analysis "instructive." Pet.App.22a. "The statutory framework of North Carolina is much like Oklahoma's Act," the court pointed out, and the Fourth Circuit had "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." Pet.App.22a-23a (citing *Peltier*, 37 F.4th at 121).

As Petitioners have explained, statutory labels carry little, if any, analytical weight in the state-action analysis. In a particularly illustrative case, *Jackson* v. *Metropolitan Edison Co.*, this Court held that, despite being designated as a "public utility" under state law, a privately operated electric utility was not a state actor because it neither provided a traditionally exclusive state function nor was compelled by the state to engage in the challenged conduct. 419 U.S. 345, 350-354 (1974). As *Jackson* and many other precedents show, this Court has repeatedly rejected labels that belie their underlying substance. See, *e.g.*, *Lindke* v. *Freed*, 601 U.S. 187, 197 (2024) ("The distinction between private conduct and state action turns on substance, not labels."); *Tyler* v. *Hennepin Cnty.*, 598 U.S. 631, 638 (2023) (rejecting a state's attempt to redefine an owner's property interest in the excess value of her home); *Austin* v. *United States*, 509 U.S. 602, 621-622 (1993) (rejecting Congress's label that sanctions are "remedial" when they bear no relationship to the cost of enforcement and the damages sustained by the public); *Cherry Cotton Mills, Inc.* v. *United States*, 327 U.S. 536, 539 (1946) ("That the Congress chose to call it a corporation does not alter its characteristics so as to make it something other than what it actually is."). That is because "[t]he Constitution deals with substance, not shadows," *Cummings* v. *Missouri*, 71 U.S. (4 Wall.) 277, 325 (1867), and the "public" label on charter schools is a mere shadow, with little value under this Court's state-action precedents.

After all, charter schools were conceived precisely to substitute private operation for the governmental control that is the lynchpin of state action. One of the Court's

seminal state-action precedents, *Lebron* v. *National Railroad Passenger Corp.*, 513 U.S. 374 (1995), proves the point well and provides a neat contrast to this case. There, the Court also rejected a legislative label for purposes of the state-action question, but for a putatively "private" corporation, Amtrak. See *id.* at 392 ("[I]t is not for Congress to make the final determination" as to the governmental status of an entity). This Court held that, despite its label, Amtrak was an "instrumentality of the United States" because it was (1) created by statute and (2) controlled by a board of government-appointed officers. *Id.* at 397.

Charter schools, by contrast, lack both features. While state statutes permit their creation, private actors like *amici* and St. Isidore are the ones contracting with states[11] and building these institutions from the ground up—establishing their governance structure and budget; hiring teachers, administrators, and facility managers; creating the curriculum and planning extra-curricular activities; and preparing the facilities for academic, recreational, and food-service operations—just to name a few. None of their boards, moreover, consist of government officials. They are instead staffed entirely by privately appointed members, and often by parents. Charters schools, in short, are simply not "Government-created and -controlled corporations." *Ibid*; see also *Pennsylvania* v. *Bd. of Dirs. of City Trusts of Phila.*, 353 U.S. 230, 231 (1957) (*per curiam*) (holding that a college was a government actor because its board was "an agency of the State"); *Free Enterprise Fund* v. *Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477,

[11] See, *e.g.*, Okla. Stat. tit. 70, § 3-134(C) ("A * * * private organization may contract with a sponsor to establish a charter school or a virtual charter school.").

485-86 (2010) (holding that a "Government-created, Government-appointed entity, PCAOB, was "'part of the Government' for constitutional purposes" (citing *Lebron*, 513 U.S. at 397)). If they were, they would cease to be charter schools.

B. The Oklahoma Supreme Court's reflexive use of an empty label to drive the state-action analysis would sweep in thousands of charter schools across the Nation.

As the appendix to this brief demonstrates, as many as forty-six states, along with Washington, D.C., designate charter schools as "public." Thus, under the Oklahoma Supreme Court's reasoning, every charter school in virtually every state in the Nation is a state actor under section 1983. The dissenting judges on the Fourth Circuit were right to worry about the reach of the majority's rationale. See *Peltier*, 37 F.4th at 137 (Quattlebaum, J., dissenting) ("My worry is that the majority's reasoning transforms all charter schools in North Carolina, and likely all charter schools in the other states that form our circuit, into state actors.").

That reasoning has now swallowed up all charter schools in Oklahoma, and it will call into question "charter schools of all stripes," including "single-sex charter schools," ones "serving underserved and dispossessed populations," and even others "offering a progressive culture and curriculum." *Id.* at 155-156 (Wilkinson, J., dissenting). No charter school is beyond the grasp of the demonstrably flawed premises propelling the Fourth Circuit's and Oklahoma Supreme Court's decisions.

CONCLUSION

The Nation's Charter is not a school charter. The judgment of the Oklahoma Supreme Court should be reversed.

Respectfully Submitted.

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APPENDIX

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States that Designate Charter Schools as "Public" 1a

States that Designate Charter Schools as "Public"[*]

State	Statute
Alabama	Ala. Code § 16-6F-4
Alaska	Alaska Stat. § 14.03.255
Arizona	Ariz. Rev. Stat. § 15-101
Arkansas	Ark. Code § 6-23-103
California	Cal. Educ. Code § 47601
Colorado	Colo. Rev. Stat. § 22-30.5-104
Connecticut	Conn. Gen. Stat. § 10-66aa
Delaware	Del. Code tit. 14, § 503
District of Columbia	D.C. Code § 38-1800.02
Florida	Fla. Stat. § 1002.33

[*] The four omitted states—Nebraska, North Dakota, South Dakota, and Vermont—do not authorize charter schools.

Georgia	Ga. Code § 20-2-2062
Hawaii	Haw. Rev. Stat. § 302D-1
Idaho	Idaho Stat. § 33-5202A
Illinois	105 Ill. Comp. Stat. § 5/27A-5
Indiana	Ind. Code § 20-24-1-4
Iowa	Iowa Code § 256E.1
Kansas	Kan. Stat. § 72-4206
Kentucky	Ky. Rev. Stat. § 160.1590
Louisiana	La. Stat. § 17:3973
Maine	Me. Rev. Stat. tit. 20-A, § 2401
Maryland	Md. Code Educ. § 9-102
Massachusetts	Mass. Gen. Laws ch. 71, § 89
Michigan	Mich. Comp. Laws § 380.501
Minnesota	Minn. Stat. § 124E.03

Mississippi	Miss. Code § 37-28-5
Missouri	Mo. Stat. § 160.400
Montana	Mt. Stat. § 20-6-803(9)
Nevada	Nev. Rev. Stat. § 388A.150
New Hampshire	N.H. Rev. Stat. § 194-B:1
New Jersey	N.J. Stat. § 18A:36A-3
New Mexico	N.M. Stat. § 22-8B-2
New York	N.Y. Educ. Law § 2853
North Carolina	N.C. Gen. Stat. § 115C-218.15
Ohio	Ohio Rev. Code § 3314.01
Oklahoma	Okla. Stat. § 70-3-132.2
Oregon	Ore. Rev. Stat. § 338.005
Pennsylvania	24 Pa. Stat. § 17-1703-A
Rhode Island	16 R.I. Gen. Laws § 16-77 2.1

South Carolina	S.C. Code § 59-40-40
Tennessee	Tenn. Code § 49-13-104
Texas	Tex. Educ. Code § 12.105
Utah	Utah Code § 53G-5-401
Virginia	Va. Code § 22.1-212.5
Washington	Wash. Rev. Code § 28A.710.010
West Virginia	W. Va. Code § 18-5G-2
Wisconsin	Wis. Stat. Ann. § 118.40
Wyoming	Wyo. Stat. § 21-3-304