

OCT 23 2023

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

RICK WARREN  
COURT CLERK  
126

OKPLAC, INC., et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
STATEWIDE VIRTUAL CHARTER	)	No. CV-2023-1857
SCHOOL BOARD, et al.,	)	
	)	
Defendants.	)	
	)	

**PLAINTIFFS' CONSOLIDATED OPPOSITION  
TO DEFENDANTS' MOTIONS TO DISMISS**

Benjamin H. Odom, OBA No. 10917  
 John H. Sparks, OBA No. 15661  
 Michael W. Ridgeway, OBA No. 15657  
 Lisa M. Millington, OBA No. 15164  
 ODOM & SPARKS, PLLC  
 2500 McGee Drive, Suite 140  
 Norman, OK 73072  
 (405) 701-1863  
 Fax: (405) 310-5394  
 odomb@odomsparks.com  
 sparksj@odomsparks.com  
 ridgewaym@odomsparks.com  
 millingtonl@odomsparks.com

J. Douglas Mann, OBA No. 5663

Robert Kim\*  
 Jessica Levin\*  
 Wendy Lecker\*  
 EDUCATION LAW CENTER

Alex J. Luchenitser\*  
 Kenneth D. Upton, Jr., OBA No. 12906  
 Kalli A. Joslin\*  
 Jenny Samuels\*\*  
 Sarah Taitz\*\*  
 AMERICANS UNITED FOR  
 SEPARATION OF CHURCH AND  
 STATE  
 1310 L Street NW, Suite 200  
 Washington, DC 20005  
 (202) 466-7306 / (202) 898-2133  
 luchenitser@au.org  
 upton@au.org  
 joslin@au.org  
 samuels@au.org  
 taitz@au.org

Daniel Mach\*  
 Heather L. Weaver\*  
 AMERICAN CIVIL LIBERTIES UNION  
 FOUNDATION

Patrick Elliott\*  
 FREEDOM FROM RELIGION  
 FOUNDATION

\*Appearing *pro hac vice*.  
 \*\**Pro hac vice* application pending.

*Attorneys for all Plaintiffs; full contact information for all is on signature page.*

## TABLE OF CONTENTS

INTRODUCTION .....	1
FACTS .....	3
The Oklahoma Charter Schools Act .....	3
St. Isidore’s Application and Its Approval .....	4
Plaintiffs’ Lawsuit .....	7
STANDARD OF REVIEW .....	8
ARGUMENT .....	9
I. Plaintiffs’ claims are justiciable .....	9
A. Plaintiffs have standing as taxpayers to challenge illegal public spending .....	9
B. Taxpayers have a private right of action to challenge all illegal public spending .....	11
C. Plaintiffs’ claims are ripe .....	13
1. The issues presented are fit for judicial reivew .....	13
2. Withholding judicial review would cause hardship .....	16
D. Defendants are not immune from suit.....	17
II. Plaintiffs’ causes of action all state claims.....	20
A. First claim: failure to certify intent to comply with Oklahoma law .....	21
B. Second claim: discrimination in admissions, discipline, and employment.....	23
C. Third claim: failure to fully commit to serve students with disabilities .....	29
D. Fourth claim: violation of regulations requiring charter schools and their board members to be independent of their educational management organizations.....	29

E. Fifth claim: teaching a religious curriculum.....	30
1. Article I, § 2 .....	31
2. Article I, § 5 .....	34
3. Article II, § 5.....	35
III. Defendants have no valid “religious freedom” defense.....	37
A. As a public charter school, St. Isidore is a governmental entity and a state actor.....	38
1. Oklahoma charter schools are state actors because they are governmental entities .....	39
2. Even if Oklahoma charter schools are not governmental entities, they are still state actors under the symbiotic-relationship and public-function tests .....	42
3. The Tenth Circuit and numerous other courts have concluded that charter schools are governmental entities and state actors .....	45
B. Because St. Isidore is a governmental entity and a state actor, it may not challenge under the Free Exercise Clause state law that governs the school.....	48
C. Even if St. Isidore could assert Free Exercise Clause rights, they do not supersede the state prohibitions on which Plaintiffs rely.....	49
1. Plaintiffs’ first through fourth claims rely solely on religion-neutral prohibitions .....	49
2. Even if the prohibitions underlying Plaintiffs’ fifth claim trigger strict scrutiny under the Free Exercise Clause, the prohibitions satisfy it.....	52
D. Article I, § 2 of the Oklahoma Constitution does not provide a defense.....	54
E. The Oklahoma Religious Freedom Act does not provide a defense .....	55
IV. Plaintiffs’ requested relief is not overbroad .....	58
CONCLUSION.....	58

## TABLE OF AUTHORITIES

### Cases

<i>Abab, Inc. v. Midwest City</i> , No. CIV-20-0134-HE, 2020 WL 9073568 (W.D. Okla. Sept. 1, 2020).....	18
<i>Abbott Lab’ys v. Gardner</i> , 387 U.S. 136 (1967).....	13, 16
<i>ACLU of Minn. v. Tarek Ibn Ziyad Acad.</i> , No. 09-138 (DWF/JJG), 2009 WL 2215072 (D. Minn. July 9, 2009).....	46
<i>Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.</i> , 570 U.S. 205 (2013).....	51
<i>Agostini v. Felton</i> , 521 U.S. 203 (1997) .....	53, 54
<i>Anaya v. Crossroads Managed Care Sys., Inc.</i> , 195 F.3d 584 (10th Cir. 1999).....	42
<i>ANR Pipeline Co. v. Corp. Comm’n of Okla.</i> , 860 F.2d 1571 (10th Cir. 1988).....	16
<i>Barnard v. Chamberlain</i> , 897 F.2d 1059 (10th Cir. 1990).....	39
<i>Barrios v. Haskell Cnty. Pub. Facilities Auth.</i> , 2018 OK 90, 432 P.3d 233.....	18, 19, 20
<i>Bell v. Phillips Petroleum Co.</i> , 1982 OK 28, 641 P.2d 1115.....	22
<i>Bittle v. Okla. City Univ.</i> , 2000 OK CIV APP 66, 6 P.3d 509 .....	47
<i>Bontkowski v. Smith</i> , 305 F.3d 757 (7th Cir. 2002).....	58
<i>Bostock v. Clayton County</i> , 140 S. Ct. 1731 (2020) .....	25
<i>Bowen v. Kendrick</i> , 487 U.S. 589 (1988).....	53, 54
<i>Brammer-Hoelter v. Twin Peaks Charter Acad.</i> , 602 F.3d 1175 (10th Cir. 2010).....	45
<i>Brandon v. Ashworth</i> , 1998 OK 20, 955 P.2d 233 .....	13
<i>Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n</i> , 531 U.S. 288 (2001).....	43, 44
<i>Burton v. Wilmington Parking Auth.</i> , 365 U.S. 715 (1961) .....	43

<i>Burwell v. Hobby Lobby Stores, Inc.</i> , 573 U.S. 682 (2014) .....	50, 57
<i>Cap. Square Rev. &amp; Advisory Bd. v. Pinette</i> , 515 U.S. 753 (1995).....	52
<i>Carson ex rel. O.C. v. Makin</i> , 142 S. Ct. 1987 (2022) .....	54
<i>Caviness v. Horizon Cmty. Learning Ctr.</i> , 590 F.3d 806 (9th Cir. 2010) .....	47
<i>Christian Heritage Acad. v. Okla. Secondary Sch. Activities Ass’n</i> , 483 F.3d 1025 (10th Cir. 2007) .....	43
<i>Coleman v. Utah State Charter Sch. Bd.</i> , 673 F. App’x 822 (10th Cir. 2016) .....	45
<i>Comm. for Pub. Educ. &amp; Religious Liberty v. Nyquist</i> , 413 U.S. 756 (1973) .....	53
<i>Consol. Rail Corp. v. United States</i> , 896 F.2d 574 (D.C. Cir. 1990) .....	16
<i>Daugherty v. Vanguard Charter Sch. Acad.</i> , 116 F. Supp. 2d 897 (W.D. Mich. 2000) .....	46
<i>Dillon v. Twin Peaks Charter Acad.</i> , 241 F. App’x 490 (10th Cir. 2010) .....	45
<i>Dingxi Longhai Dairy, Ltd. v. Becwood Tech. Grp. L.L.C.</i> , 635 F.3d 1106 (8th Cir. 2011) .....	58
<i>Edmonson v. Leesville Concrete Co.</i> , 500 U.S. 614 (1991) .....	39
<i>Edwards v. Aguillard</i> , 482 U.S. 578 (1987) .....	32
<i>Emp. Div. v. Smith</i> , 494 U.S. 872 (1990) .....	50
<i>Ernst &amp; Young v. Depositors Econ. Prot. Corp.</i> , 45 F.3d 530 (1st Cir. 1995) .....	16
<i>Espinoza v. Mont. Dep’t of Revenue</i> , 140 S. Ct. 2246 (2020) .....	54
<i>Evans v. Newton</i> , 382 U.S. 296 (1966) .....	43, 44
<i>Everson v. Bd. of Educ.</i> , 330 U.S. 1 (1947) .....	53, 54
<i>Fair Sch. Fin. Council of Okla., Inc. v. State</i> , 1987 OK 114, 746 P.2d 1135 .....	24
<i>Falash v. Inspire Acads., Inc.</i> , No. 1:14-cv-00223-REB, 2016 WL 4745171 (D. Idaho Sept. 12, 2016) .....	46

<i>Fam. C.L. Union v. Dep't of Child. &amp; Fams.</i> , 837 F. App'x 864 (3d Cir. 2020).....	46
<i>Fanning v. Brown</i> , 2004 OK 7, 85 P.3d 841 .....	15
<i>Farley v. City of Claremore</i> , 2020 OK 30, 465 P.3d 1213 .....	7, 19
<i>Fent v. Contingency Rev. Bd.</i> , 2007 OK 27, 163 P.3d 512.....	11
<i>Fent v. State ex rel. Off. of State Fin.</i> , 2008 OK 2, 184 P.3d 467.....	16
<i>Fields v. Speaker of Pa. House of Representatives</i> , 936 F.3d 142 (3d Cir. 2019) .....	49
<i>Frew ex rel. Frew v. Hawkins</i> , 540 U.S. 431 (2004).....	18
<i>Fulton v. City of Philadelphia</i> , 141 S. Ct. 1868 (2021) .....	50
<i>Gallagher v. Neil Young Freedom Concert</i> , 49 F.3d 1442 (10th Cir. 1995) .....	43
<i>Garcetti v. Ceballos</i> , 547 U.S. 410 (2006).....	48
<i>Georgia v. McCollum</i> , 505 U.S. 42 (1992) .....	39
<i>Gillette v. United States</i> , 401 U.S. 437 (1971).....	24
<i>Glenn v. Brumby</i> , 663 F.3d 1312 (11th Cir. 2011) .....	25
<i>Grimm v. Gloucester Cnty. Sch. Bd.</i> , 972 F.3d 586 (4th Cir. 2020).....	25
<i>Guinn v. Church of Christ of Collinsville</i> , 1989 OK 8, 775 P.2d 766.....	32
<i>Gundy v. City of Jacksonville</i> , 50 F.4th 60 (11th Cir. 2022) .....	49
<i>Gurney v. Ferguson</i> , 1941 OK 397, 122 P.2d 1002 .....	37
<i>H &amp; L Operating Co. v. Marlin Oil Corp.</i> , 1987 OK 39, 737 P.2d 565.....	13
<i>Hall v. Bd. of Sch. Comm'rs</i> , 656 F.2d 999 (5th Cir. 1981) .....	32
<i>Harwood v. Ardagh Grp.</i> , 2022 OK 51, 522 P.3d 473 .....	9, 28
<i>Hirschfeld v. Okla. Tpk. Auth.</i> , 2023 OK 59, ___ P.3d ___ (rehearing denied Sept. 11, 2023).....	19
<i>Ho v. Tulsa Spine &amp; Specialty Hosp., L.L.C.</i> , 2021 OK 68, 507 P.3d 673.....	8

<i>Hunt v. McNair</i> , 413 U.S. 734 (1973).....	53
<i>Illinois ex rel. McCollum v. Bd. of Educ.</i> , 333 U.S. 203 (1948) .....	33
<i>Immel v. Tulsa Pub. Facilities Auth.</i> , 2021 OK 39, 490 P.3d 135.....	9, 12, 16, 17, 19
<i>Irene B. v. Phila. Acad. Charter Sch.</i> , No. Civ.A. 02-1716, 2003 WL 24052009 (E.D. Pa. Jan. 29, 2003).....	46
<i>Jackson v. Metro. Edison Co.</i> , 419 U.S. 345 (1974).....	47
<i>Janny v. Gamez</i> , 8 F.4th 883 (10th Cir. 2021).....	33, 52
<i>Jatoi v. Hurst-Euless-Bedford Hosp. Auth.</i> , 807 F.2d 1214 (5th Cir.).....	45
<i>Jones v. Sabis Educ. Sys., Inc.</i> , 52 F. Supp. 2d 868 (N.D. Ill. 1999) .....	46
<i>Jordan v. N. Kane Educ. Corp.</i> , No. 08 C 4477, 2009 WL 509744 (N.D. Ill. Mar. 2, 2009).....	46
<i>Kellogg v. Sch. Dist. No. 10</i> , 1903 OK 81, 74 P. 110.....	9, 12, 17
<i>Kennedy v. Bremerton Sch. Dist.</i> , 142 S. Ct. 2407 (2022).....	33, 53, 54
<i>Lebron v. Nat’l R.R. Passenger Corp.</i> , 513 U.S. 374 (1995).....	39, 40
<i>Lee v. Weisman</i> , 505 U.S. 577 (1992) .....	52
<i>Lengele v. Willamette Leadership Acad.</i> , No. 6:22-cv-01077-MC, 2022 WL 17057894 (D. Or. Nov. 17, 2022) .....	46
<i>Logiodice v. Trs. of Me. Cent. Inst.</i> , 296 F.3d 22 (1st Cir. 2002) .....	47
<i>Manhattan Cmty. Access Corp. v. Halleck</i> , 139 S. Ct. 1921 (2019).....	38, 44, 45
<i>Matwijko v. Bd. of Trs. of Glob. Concepts Charter Sch.</i> , No. 04-CV-663A, 2006 WL 2466868 (W.D.N.Y. Aug. 24, 2006).....	46
<i>McFarland v. Atkins</i> , 1979 OK 3, 594 P.2d 758 .....	10, 11
<i>McMasters v. State</i> , 207 P. 566 (Okla. Crim. App. 1922).....	32
<i>Meadows v. Lesh</i> , No. 10-CV-00223(M), 2011 WL 4744914 (W.D.N.Y. Oct. 6, 2011).....	46

<i>Milo v. Cushing Mun. Hosp.</i> , 861 F.2d 1194 (10th Cir. 1988).....	44
<i>Milonas v. Williams</i> , 691 F.2d 931 (10th Cir. 1982) .....	45
<i>Morgan v. Daxon</i> , 2001 OK 104, 49 P.3d 687 .....	16
<i>Murray County v. Homesales, Inc.</i> , 2014 OK 52, 330 P.3d 519 .....	10
<i>Murrow Indian Orphans Home v. Childers</i> , 1946 OK 187, 171 P.2d 600 .....	33, 35, 36
<i>Muskogee Indus. Dev. Co. v. Ayres</i> , 1916 OK 125, 154 P. 1170 .....	56, 57
<i>Nampa Classical Acad. v. Goesling</i> , 447 F. App'x 776 (9th Cir. 2011).....	46, 48, 49
<i>NCAA v. Tarkanian</i> , 488 U.S. 179 (1988).....	39
<i>Obergefell v. Hodges</i> , 576 U.S. 644 (2015).....	25
<i>Okla. Ass'n for Equitable Tax'n v. Oklahoma City</i> , 1995 OK 62, 901 P.2d 800 .....	25
<i>Okla. Call for Reprod. Just. v. Drummond</i> , 2023 OK 24, 526 P.3d 1123 .....	57
<i>Okla. Call for Reprod. Just. v. State</i> , 2023 OK 60, 531 P.3d 117 .....	19
<i>Okla. Gas &amp; Elec. Co. v. State ex rel. Okla. Corp. Comm'n</i> , 2023 OK 33, ___ P.3d ___ (mandate issued April 3, 2023).....	23
<i>Okla. Pub. Emps. Ass'n v. Okla. Dep't of Cent. Servs.</i> , 2002 OK 71, 55 P.3d 1072.....	9, 10, 11, 12
<i>Oklahomans for Life, Inc. v. State Fair of Okla., Inc.</i> , 1981 OK 101, 634 P.2d 704 .....	55
<i>Oliver v. Hofmeister</i> , 2016 OK 15, 368 P.3d 1270 .....	35, 36, 37
<i>Oral Roberts Univ. v. Okla. Tax Comm'n</i> , 1985 OK 97, 714 P.2d 1013 .....	23
<i>Our Lady of Guadalupe Sch. v. Morrissey-Berru</i> , 140 S. Ct. 2049 (2020) .....	49
<i>Patrick v. Success Acad. Charter Schs.</i> , 354 F. Supp. 3d 185 (E.D.N.Y. 2018) .....	46
<i>Pavan v. Smith</i> , 582 U.S. 563 (2017).....	25
<i>Payne v. Jones</i> , 1944 OK 86, 146 P.2d 113.....	10



<i>Peltier v. Charter Day Sch.</i> , 37 F.4th 104 (4th Cir. 2022) (en banc), cert. denied, 143 S. Ct. 2657 (2023) .....	44, 46, 47
<i>Pennsylvania v. Bd. of Dirs. of City Trs.</i> , 353 U.S. 230 (1957).....	39
<i>Pleasant Grove City v. Sumnum</i> , 555 U.S. 460 (2009).....	49
<i>Pocono Mountain Charter Sch. v. Pocono Mountain Sch. Dist.</i> , 908 F. Supp. 2d 597 (M.D. Pa. 2012) .....	46
<i>Polk County v. Dodson</i> , 454 U.S. 312 (1981).....	47, 48
<i>Prescott v. Okla. Capitol Pres. Comm’n</i> , 2015 OK 54, 373 P.3d 1032.....	32, 35, 37
<i>Regan v. Tax’n with Representation of Wash.</i> , 461 U.S. 540 (1983) .....	51
<i>Rendell-Baker v. Kohn</i> , 457 U.S. 830 (1982) .....	46, 47
<i>Riester v. Riverside Cmty. Sch.</i> , 257 F. Supp. 2d 968 (S.D. Ohio 2002).....	42, 46
<i>Ritter v. State</i> , 2022 OK 73, 520 P.3d 370 .....	19
<i>Robert S. v. Stetson School, Inc.</i> , 256 F.3d 159 (3d Cir. 2001).....	47
<i>Roberts v. U.S. Jaycees</i> , 468 U.S. 609 (1984) .....	50, 57
<i>Roemer v. Bd. of Pub. Works</i> , 426 U.S. 736 (1976).....	53
<i>Rust v. Sullivan</i> , 500 U.S. 173 (1991).....	51
<i>Santa Fe Indep. Sch. Dist. v. Doe</i> , 530 U.S. 290 (2000).....	32
<i>Scaggs v. N.Y. Dep’t of Educ.</i> , No. 06-CV-0799 (JFB)(VVP), 2007 WL 1456221 (E.D.N.Y. May 16, 2007) .....	46
<i>Shellem v. Gruneweld</i> , 2023 OK 26, ___ P.3d ___ (mandate issued Oct. 12, 2023).....	19
<i>Sholer v. State</i> , 1995 OK 150, 945 P.2d 469 .....	18, 19, 20
<i>State ex rel. State Ins. Fund v. JOA, Inc.</i> , 2003 OK 82, 78 P.3d 534 .....	17
<i>Stevens v. Fox</i> , 2016 OK 106, 383 P.3d 269 .....	10

<i>Stone v. Graham</i> , 449 U.S. 39 (1980) .....	33
<i>Tarabishi v. McAlester Reg'l Hosp.</i> , 827 F.2d 648 (10th Cir. 1987).....	40
<i>Thomas v. Henry</i> , 2011 OK 53, 260 P.3d 1251 .....	10
<i>Toch, LLC v. City of Tulsa</i> , 2023 OK 69, 532 P.3d 28 .....	19
<i>Trinity Lutheran Church of Columbia, Inc. v. Comer</i> , 137 S. Ct. 2012 (2017) .....	54
<i>Tulsa Indus. Auth. v. City of Tulsa</i> , 2011 OK 57, 270 P.3d 113 .....	12
<i>United States v. Ackerman</i> , 831 F.3d 1292 (10th Cir. 2016).....	40
<i>United States v. Armstrong</i> , 517 U.S. 456 (1996).....	25
<i>United States v. Minn. Transitions Charter Schs.</i> , 50 F. Supp. 3d 1106 (D. Minn. 2014) .....	46
<i>Vanderpool v. State</i> , 1983 OK 82, 672 P.2d 1153 .....	17, 19, 20
<i>VDARE Found. v. City of Colorado Springs</i> , 11 F.4th 1151 (10th Cir. 2021) .....	39, 42
<i>Vette v. Childers</i> , 1924 OK 190, 228 P. 145.....	10, 16
<i>West v. Atkins</i> , 487 U.S. 42 (1988).....	45
<i>Widmar v. Vincent</i> , 454 U.S. 263 (1981).....	52
<i>Wittner v. Banner Health</i> , 720 F.3d 770 (10th Cir. 2013).....	43
<i>Ysursa v. Pocatello Educ. Ass'n</i> , 555 U.S. 353 (2009).....	48
<i>Zelman v. Simmons-Harris</i> , 536 U.S. 639 (2002).....	53

**Statutes**

20 U.S.C. § 7801(30)(A).....	42
25 O.S. § 2.....	18, 20
36 O.S. § 6453(6).....	17, 20
70 O.S. § 5-200(A).....	29

70 O.S. § 18-200.1 .....	36
70 O.S. § 18-201.1 .....	36
Oklahoma Charter Schools Act, 70 O.S. § 3-130 <i>et seq.</i> .....	passim
Oklahoma Declaratory Judgment Act, 12 O.S. § 1651 .....	12, 13
Oklahoma Governmental Tort Claims Act, 51 O.S. § 151 <i>et seq.</i> .....	17, 18, 19, 20, 42
Oklahoma Religious Freedom Act, 51 O.S. § 251 <i>et seq.</i> .....	55, 56, 57
S.B. No. 404 (May 2, 2023).....	55, 56
S.B. No. 516 (June 5, 2023).....	57

**Regulations**

OAC § 210:40-87-3 .....	15
Statewide Virtual Charter School Board Rules and Regulations, OAC § 777:1-1-1 <i>et seq.</i> .....	passim

**Oklahoma Constitutional Provisions**

Article I, § 2 .....	passim
Article I, § 5 .....	24, 30, 34, 35, 45
Article II, § 5.....	30, 35, 37
Article II, § 7.....	25
Article II, § 36A.....	24, 25
Article XI, § 2 .....	24, 36, 45
Article XI, § 3 .....	24, 36, 45
Article XIII, § 1.....	24, 36, 45

**Other Authorities**

Albert H. Ellis, <i>A History of the Constitutional Convention of the State of Oklahoma</i> (1923).....	32
---	----

Hon. Al McAffrey, Okla. Op. Att’y Gen. No. 07-23,  
2007 WL 2569195 (2007)..... 42

House Floor Afternoon Session, 59 Legis. (Apr. 25, 2023, 1:30 p.m.),  
<https://bit.ly/3MOfPY7> ..... 56

Okla. Const. of 1907, Art. I, § 5, <https://bit.ly/3S1A2xW> ..... 34

State Powers Committee (Apr. 5, 2023, 9:00 a.m.), <https://bit.ly/3MOfPY7> ..... 56, 57

*State Questions*, Oklahoma Secretary of State, <https://bit.ly/3PWVOjJ> ..... 34

## INTRODUCTION

Because all children have the right to an education, public schools are open to and welcoming of all students, and they do not indoctrinate students in any religion. These principles lie at the heart of our pluralistic democracy and are embodied in Oklahoma's constitution, statutes, and regulations. Yet, contrary to these principles, and in violation of Oklahoma law, the Oklahoma Statewide Virtual Charter School Board has approved the nation's first religious public charter school—St. Isidore of Seville Catholic Virtual School. St. Isidore, which plans to open next August, will discriminate against students and employees on a variety of grounds, indoctrinate its students in the Catholic faith, and operate in various other respects in a manner prohibited by Oklahoma law.

Plaintiffs are taxpayers who object to the expenditure of their tax dollars to fund an unlawful religious public school. Plaintiffs seek injunctive and declaratory relief prohibiting the defendant state agencies and officials from continuing to sponsor St. Isidore as a charter school, implementing a contract with St. Isidore, or funding St. Isidore.

In their motions to dismiss, Defendants contend that Plaintiffs have no right to bring this lawsuit. But Oklahoma has a long tradition of permitting taxpayers to challenge prospective unlawful expenditures of public funds. Defendants also argued that this case was not ripe, focusing principally on the fact that a charter contract between the Board and St. Isidore had not been signed at the time Defendants filed their motions. But the contract was signed shortly before the filing of this Opposition. To the extent that Defendants still maintain a ripeness argument, the Court should not wait until St. Isidore is up and running to intervene. Plaintiffs have a right to relief now, before their tax funds are unlawfully dispersed.

Defendants further argue that Plaintiffs fail to state a claim. On the contrary, all five of Plaintiffs' claims validly allege violations of the Oklahoma Constitution, the Oklahoma Charter Schools Act, or the Board's regulations: First, St. Isidore has refused to certify that it will comply with Oklahoma law, as is required by the Board's regulations. Second, in violation of the Oklahoma Constitution and the Charter Schools Act, St. Isidore will discriminate in admissions, discipline, and employment based on religion, sexual orientation, gender identity, and other protected characteristics. Third, contrary to the Charter Schools Act and Board regulations, St. Isidore has not guaranteed that it will provide adequate services to students with disabilities. Fourth, St. Isidore will violate Board regulations by hiring, as its educational management organization, the Department of Catholic Education of the Archdiocese of Oklahoma City, because that entity will have control over the school. Fifth, in violation of the Oklahoma Constitution and the Charter Schools Act, St. Isidore will teach a religious curriculum and indoctrinate its students in Catholic religious beliefs.

Defendants assert that St. Isidore has a right under the First Amendment's Free Exercise Clause to receive state funding for its religious public school. But Oklahoma charter schools are governmental entities. As such, they have no federal constitutional rights to challenge the state laws and regulations that govern them. Even if they did have such rights, Defendants' free-exercise attacks on Plaintiffs' first through fourth claims fail because those claims are based on religion-neutral legal prohibitions. And Oklahoma's compelling interest in complying with the First Amendment's Establishment Clause satisfies any scrutiny that the prohibitions underlying Plaintiffs' fifth claim may trigger under the Free Exercise Clause. Because St. Isidore is a state actor, the Establishment Clause prohibits it from inculcating

students in religion. And even if St. Isidore were not a state actor, the Establishment Clause prohibits direct state aid to the religious activities of religious institutions.

For these reasons, Defendants' motions to dismiss should be denied.

## FACTS

### The Oklahoma Charter Schools Act

Charter schools are “public school[s] established by contract with a board of education of a school district” or with certain other governmental entities to “provide learning that will improve student achievement.” 70 O.S. § 3-132(D). Charter schools were created by the Oklahoma legislature through the Oklahoma Charter Schools Act, 70 O.S. §§ 3-130 *et seq.* They receive state funding (70 O.S. § 3-142) and must “be as equally free and open to all students as traditional public schools” (70 O.S. § 3-135(A)(9)). They are subject to the same academic standards as other Oklahoma public schools (70 O.S. § 3-135(A)(11)), as well as numerous other legal rules that govern public schools, including prohibitions on discrimination in admissions and employment (*see, e.g.*, 70 O.S. §§ 3-135(A)(9), 3-135(C), 3-136(A)(1), 3-136(A)(4), 3-136(A)(6), 3-136(A)(11)–(12), 3-136(A)(16)–(18), 3-141(A)). Charter schools are required to be “nonsectarian in [their] programs, admission policies, employment practices, and all other operations.” 70 O.S. § 3-136(A)(2).

The Board authorizes, sponsors, and provides oversight to Oklahoma virtual charter schools. 70 O.S. §§ 3-145.1(A), 3-145.3(A)(1)–(2). The Board is responsible for “accepting, approving and disapproving statewide virtual charter school applications,” as well as entering into, renewing, and revoking contracts with virtual charter schools. 70 O.S. §§ 3-135(A), 3-145.3(A)(1)–(2).

Charter-school applications are detailed documents that must include thirty-five statutorily enumerated categories of information. 70 O.S. § 3-134(B)(1)–(35). Applicants must provide “a set of policies and procedures governing administration and operation of the proposed . . . school.” OAC § 777:10-3-3(b)(1). In evaluating applications, the Board must “determine whether the applicant’s proposal for sponsorship complies with the . . . provisions of the Oklahoma Charter Schools Act.” OAC § 777:10-3-3(c)(3). If an application is accepted, “[t]he sponsor of a charter school shall enter into a written contract with the governing body of the charter school.” 70 O.S. § 135(A). The “policies and procedures” set out in the application “shall be incorporated into the terms of the contract” (OAC § 777:10-3-3(b)(1)), and “[t]he contract shall incorporate the provisions of the charter of the charter school” (70 O.S. § 3-135(A)).

### **St. Isidore’s Application and Its Approval**

St. Isidore identifies itself as “an Oklahoma virtual charter school” (Ex. B at 1, ¶ 3<sup>1</sup>) that “falls under the umbrella of the Oklahoma Catholic Conference comprised of the Archdiocese of Oklahoma City and the Diocese of Tulsa” (Ex. A at 91). On January 30, 2023, St. Isidore submitted an initial application to the Board for sponsorship as a statewide virtual public charter school. (*Id.* at 3.) The Board rejected that application and sent a letter to St. Isidore outlining several “reasons for rejection,” including a “[l]ack of detail regarding the proposed school’s special education plan,” “[c]oncerns with proposed governance and school management structure,” and “[l]egal issues that may be applicable,” such as “the legal basis

---

<sup>1</sup> All exhibit citations are to exhibits to Plaintiffs’ petition, except that Exhibit P is attached hereto.



for religious reason aligning to Oklahoma statute [and] the Oklahoma Constitution.” (Ex. F at 1–2.)

On May 25, 2023, St. Isidore submitted a revised application, asserting that it had addressed the identified deficiencies. (Ex. A.) Like the original application, the revised application explains that St. Isidore plans to open a public charter school that would be “operate[d] . . . as a Catholic school.” (*Id.* at 17.)

St. Isidore’s revised application makes plain that St. Isidore views itself as exempt from certain laws and regulations, including anti-discrimination laws. (*See, e.g., id.* at 109 (stating that “[t]he School complies with all applicable state . . . laws and statutes to the extent the teachings of the Catholic Church allow”; that “[t]he School complies with all applicable local [and] state . . . laws and regulations governing fair employment practices that are not inconsistent with the faith or moral teaching of the Catholic Church”; and that, “[t]o the extent that local [and] state . . . laws and regulations are inconsistent with the faith and moral teaching of the Catholic Church,” St. Isidore views itself as exempt from the laws and regulations).)

The application further demonstrates that St. Isidore will discriminate in student admissions, student discipline, and employment based on religion, sexual orientation, gender identity, pregnancy outside of marriage, and sexual activity outside of marriage. (Pet. ¶¶ 117–53.) For example, while St. Isidore states that it will accept students “of different faiths or no faith,” it also states that “[a]dmission assumes the student and family willingness to adhere with respect to the beliefs, expectations, policies, and procedures of the school.” (Ex. A at 38.) And the Archdiocese of Oklahoma City, together with the Diocese of Tulsa, will “direct on diocesan policies that apply to” St. Isidore and serve as the school’s “final interpretive

authority with respect to matters of faith and morals.” (*Id.* at 91; *id.*, App. F, § 1, pp. 5, 11.)

The policies that the Archdiocese imposes on its schools discriminate against students on the basis of religion, sexual orientation, and gender identity. (Pet. ¶¶ 127, 140–43.)

Similarly, St. Isidore’s application states that the school will “comply with all applicable . . . [l]aws in serving students with disabilities” only “to the extent that it does not compromise the religious tenets of the school and the instructional model of the school.” (Ex. A at 73–74.) And Archdiocese policy provides that “[s]tudent service plans” for students with disabilities “cannot contain accommodations or modifications that are in opposition of Church teaching.” (Ex. C at 7.)

St. Isidore’s application additionally states that the Archdiocese of Oklahoma City Department of Catholic Education will be the school’s initial educational management organization. (Ex. A at 25, 46; *id.*, § 13, App. K.) Although the Board’s regulations require charter schools to be independent from their educational management organizations (OAC § 777:10-1-4(1)), the Archdiocese will have control over the school (Pet. ¶¶ 173–74).

Finally, St. Isidore’s application explains that the school will teach a religious curriculum and indoctrinate students in Catholic religious beliefs. (Pet. ¶¶ 181–92.) The application is replete with statements describing the religious nature of St. Isidore’s planned curriculum and programming. (*See, e.g.*, Ex. A at 5, 17–19, 24, 104–08, 156, 160, 168; *id.*, App. F, § 1, pp. 1–4.) It states, for instance, that the school will “participate[] in the evangelizing mission of the Church and [be] the privileged environment in which Christian education is carried out.” (*Id.* at 17.) St. Isidore plans to fulfill its mission of evangelization by integrating Catholic doctrine into all its classes on otherwise secular subjects and by requiring students to take theology classes. (Pet. ¶ 187.)

At its June 5, 2023 meeting, the Board approved St. Isidore’s revised application by a vote of three to two. (Ex. M.) While the Board now asserts that it determined that St. Isidore satisfied all applicable legal requirements except that the school be “nonsectarian” (Board Br. 1), there is no evidence that the Board’s majority discussed those requirements or made any such determination.

St. Isidore subsequently launched a website stating that “St. Isidore of Seville Catholic Virtual School is a[] newly approved virtual charter school in the state of Oklahoma.” (Ex. N.) St. Isidore’s website also states that “St. Isidore of Seville Catholic Virtual School [p]lans to open in August of 2024 for the 2024–2025 school year.” (*Id.*) The website further states, “In the Spring of 2024, we will announce the open enrollment period for any Oklahoma parents or guardians who would like to submit an application for their student(s).” (*Id.*)

On October 9, 2023, the Board approved a charter contract with St. Isidore, and that contract was signed as of October 16, 2023. The contract, which is attached as Exhibit P,<sup>2</sup> includes various provisions that purport to exempt St. Isidore on religious grounds from laws that apply to all charter schools. (Ex. P ¶¶ 2.1, 3.1, 8.2, 8.11, 11.1.)

### **Plaintiffs’ Lawsuit**

Plaintiffs filed this suit on July 31, 2023. Plaintiffs are OKPLAC—a nonprofit committed to strengthening Oklahoma’s public school system—and nine individual Oklahoma taxpayers. (Pet. ¶¶ 11–21.) Defendants are the Board and its members, the

---

<sup>2</sup> Courts may “rel[y] upon facts not appearing on the face of a plaintiff’s petition” in deciding a motion to dismiss “based upon a jurisdictional ground.” *Farley v. City of Claremore*, 2020 OK 30, ¶ 12, 465 P.3d 1213.

Oklahoma State Department of Education, the State Superintendent of Public Instruction, and St. Isidore. (*Id.* ¶¶ 22–49.)

Plaintiffs challenge the approval of St. Isidore’s application on five grounds. First, in violation of the Board’s regulations, St. Isidore failed to certify that it will comply with Oklahoma law, including nondiscrimination requirements. (*Id.* ¶¶ 213–19.) Second, St. Isidore will violate the Oklahoma Constitution’s and Oklahoma Charter Schools Act’s prohibitions against discrimination in student admissions, student discipline, and employment. (*Id.* ¶¶ 220–39.) Third, St. Isidore has not complied with the Charter School Act’s requirement that it agree to adequately serve students with disabilities. (*Id.* ¶¶ 240–48.) Fourth, St. Isidore plans to violate Board regulations requiring charter schools to be independent from the schools’ educational management organizations. (*Id.* ¶¶ 49–55.) Fifth, St. Isidore will violate the Oklahoma Constitution’s and the Charter Schools Act’s prohibitions against a charter school teaching a religious curriculum or indoctrinating students in a religion. (*Id.* ¶¶ 256–65.)

Plaintiffs seek injunctive and declaratory relief prohibiting the defendant state agencies and officials from continuing to sponsor St. Isidore as a charter school, implementing the contract with St. Isidore, or funding St. Isidore, as well as relief prohibiting St. Isidore from operating as a charter school or receiving or using state funds. (*Id.* ¶ 266.)

### **STANDARD OF REVIEW**

To prevail on a motion to dismiss, Defendants must demonstrate “beyond any doubt that the litigant can prove no set of facts which would entitle the plaintiff to relief.” *Ho v. Tulsa Spine & Specialty Hosp., L.L.C.*, 2021 OK 68, ¶ 10, 507 P.3d 673. The Court is required to “take as true all of the challenged pleading’s allegations together with all

reasonable inferences which may be drawn from them.” *Id.* ¶ 9. “Motions to dismiss are usually viewed with disfavor under this standard, and the burden of demonstrating a petition’s insufficiency is not a light one.” *Harwood v. Ardagh Grp.*, 2022 OK 51, ¶ 15, 522 P.3d 473.

## ARGUMENT

### I. Plaintiffs’ claims are justiciable.

Defendants argue that Plaintiffs lack standing, that there is no private right of action for Plaintiffs’ statutory and regulatory claims, that the case is not ripe, and that statutory immunity shields Defendants. All of these arguments are incorrect. Plaintiffs have standing as taxpayers. In that capacity, they have the right to challenge unlawful spending on any ground, regardless of whether the statutes and regulations that Defendants are violating authorize a private suit. This case is ripe, as the Board has approved St. Isidore’s application, the Board and St. Isidore have signed a charter contract, and state funding of St. Isidore is inevitable absent court intervention. And the immunity statutes Defendants cite apply only to actions for damages, not suits that solely seek equitable relief, as this case does.

#### A. Plaintiffs have standing as taxpayers to challenge illegal public spending.

Oklahoma taxpayers have the right to seek equitable relief “to challenge the unlawful or unconstitutional expenditure of state funds.” *Okla. Pub. Emps. Ass’n v. Okla. Dep’t of Cent. Servs.* (“OPEA”), 2002 OK 71, ¶ 11, 55 P.3d 1072; accord *Immel v. Tulsa Pub. Facilities Auth.*, 2021 OK 39, ¶ 16, 490 P.3d 135. For more than a century, taxpayer standing has served as an important vehicle for suits challenging illegal governmental conduct. *See, e.g., Kellogg v. Sch. Dist. No. 10*, 1903 OK 81, 74 P. 110; *Immel*, 2021 OK 39, ¶ 12 (collecting cases). Courts have jurisdiction to decide taxpayer lawsuits as part of their

“equitable powers to protect the public treasury from unlawful dissipation or management by those officially charged with the care and custody of public funds.” *Murray County v. Homesales, Inc.*, 2014 OK 52, ¶ 16, 330 P.3d 519.

Plaintiffs’ challenge to the funding of St. Isidore as a public charter school falls squarely within Oklahoma’s well-established doctrine of taxpayer standing. Defendants’ arguments to the contrary (Board Br. 8–10; St. Isidore Br. 7) are unavailing.

First, St. Isidore and the Board contend (Board Br. 8; St. Isidore Br. 7) that Plaintiffs lack standing because they do not allege that their personal tax liability will be impacted by the funding of St. Isidore. But Oklahoma courts have routinely held that taxpayers had standing in cases that did not include such allegations. *See, e.g., Stevens v. Fox*, 2016 OK 106, ¶ 15, 383 P.3d 269; *Thomas v. Henry*, 2011 OK 53, ¶ 3, 260 P.3d 1251; *OPEA*, 2002 OK 71, ¶ 10. Indeed, the Oklahoma Supreme Court has stated that a taxpayer need not show a “special or private interest” pertaining to the illegal use of public funds to have standing. *OPEA*, 2002 OK 71, ¶ 14 (quoting *Payne v. Jones*, 1944 OK 86, 146 P.2d 113, 117). The Board incorrectly cites (Board Br. 8) *Vette v. Childers*, 1924 OK 190, 228 P. 145, 146, as somehow requiring a showing of personal tax liability. In fact, *Vette* roundly rejected the defendant’s argument that a taxpayer was required to “show some injury special in its nature and different from that inflicted upon the community or state at large.” 228 P. at 145–46.

Second, the Board argues (Board Br. 9) that *McFarland v. Atkins*, 1979 OK 3, 594 P.2d 758, controls this case and precludes taxpayer standing. *McFarland* is inapposite, however. There, the plaintiff sought an injunction requiring the State Department of Health to enforce certain legal requirements against Planned Parenthood. 1979 OK 3, ¶ 22. The Court held that taxpayer standing could not be used to require the Department of Health to enforce

the law or to compel Planned Parenthood to comply with the law. *Id.* Here, by contrast, Plaintiffs are not seeking state enforcement of the law against St. Isidore. Rather, Plaintiffs argue that the state cannot lawfully contract with or fund a public charter school that has made clear that it will not comply with numerous state constitutional, statutory, and regulatory requirements. (*See* Pet. ¶ 266.) The plaintiff in *McFarland* did not allege that the underlying financial relationship between the state and Planned Parenthood was unlawful. *See* 1979 OK 3, ¶ 22. Moreover, unlike Planned Parenthood, St. Isidore is a state actor, not a private body (*see infra* §§ III(A), III(D)), and so Plaintiffs have standing to challenge St. Isidore’s own planned unlawful spending of state funds.

**B. Taxpayers have a private right of action to challenge all illegal public spending.**

Defendants argue (Board Br. 11–15; St. Isidore Br. 5–6) that Plaintiffs cannot challenge St. Isidore’s funding on statutory and regulatory grounds because the statutes and regulations that Plaintiffs allege are being violated do not create a private right of action. But no statutory right of action is necessary when taxpayers sue to challenge unlawful spending. Instead, as taxpayers, Plaintiffs have a right to seek declaratory and injunctive relief to block funding of St. Isidore on any ground that makes that funding illegal.

As noted above, Oklahoma taxpayers have broad rights “to challenge the unlawful or unconstitutional expenditure of state funds.” *OPEA*, 2002 OK 71, ¶ 10. Thus “a taxpayer possesses standing to seek equitable relief when alleging that a violation of a statute will result in an illegal expenditure of public funds.” *Id.* A challenge to the legality of government action affecting the use of public funds “is a matter of public right.” *Fent v. Contingency Rev. Bd.*, 2007 OK 27, ¶ 8, 163 P.3d 512.

Oklahoma cases have never required taxpayer plaintiffs to identify a statute providing a private right of action, regardless of the grounds on which taxpayers sued. For example, in *Tulsa Industrial Authority v. City of Tulsa*, 2011 OK 57, ¶ 26, 270 P.3d 113, the Oklahoma Supreme Court ruled that, although a taxpayer lacked a “statutory remedy” under the statutes that he alleged were violated, “his allegation of unauthorized or unlawful expenditure of municipal taxes by a city . . . may be addressed by a proceeding brought by a taxpayer seeking equitable relief.” *See also, e.g., Immel*, 2021 OK 39, ¶¶ 1, 6, 9, 15, 19 (taxpayers alleging violation of common-law public trust doctrine, who did not assert a right of action created by any statute relating to public trusts, were permitted “to bring th[eir] action in equity to challenge the illegal expenditure of public funds via a declaratory judgment action”); *OPEA*, 2002 OK 71, ¶ 10 (permitting taxpayer suit seeking declaratory judgment and injunction preventing implementation of a government contract without requiring a statutory cause of action); *Kellogg*, 74 P. at 116 (permitting taxpayer suit seeking injunction to prevent illegal spending by a school district without requiring a statutory cause of action).

Ignoring the voluminous caselaw allowing taxpayers to seek equitable relief against illegal governmental spending, Defendants cite irrelevant cases—not involving taxpayer challenges—that required statutory causes of action. (*See* Board Br. 11–12; St. Isidore Br. 5.) There is no precedent for mandating a statutory cause of action in taxpayer suits, and doing so would eviscerate over a century of Oklahoma taxpayer-standing precedent.

Moreover, even if a statutory private right of action were required here, the Declaratory Judgment Act, 12 O.S. § 1651, provides such a right. The State Defendants contend (State Defs.’ Br. 17) that the Act is limited to the construction of a statute or regulation. But the plain language of the Act broadly allows courts to “determine rights,



status, or other legal relations, including *but not limited to*” statutory and regulatory construction. 12 O.S. § 1651 (emphasis added). A taxpayer’s challenge to the legality of public spending can thus be brought under the Act. *See, e.g., Brandon v. Ashworth*, 1998 OK 20, ¶ 8, 955 P.2d 233.

### **C. Plaintiffs’ claims are ripe.**

A case is ripe “if there is a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant consideration.” *H & L Operating Co. v. Marlin Oil Corp.*, 1987 OK 39, ¶ 8, 737 P.2d 565. The ripeness doctrine under Oklahoma law parallels federal law, which requires an evaluation of two factors: (1) “the fitness of the issues for judicial decision,” and (2) “the hardship to the parties of withholding court consideration.” *See id.* (citing *Abbott Lab ’ys v. Gardner*, 387 U.S. 136 (1967)). Plaintiffs’ suit is ripe under this standard, and Defendants’ arguments to the contrary (Board Br. 5–8; St. Isidore Br. 6–7; State Defs.’ Br. 18–19) fail.

#### **1. The issues presented are fit for judicial decision.**

The principal argument against ripeness in Defendants’ briefs was that the Board and St. Isidore had not yet signed a charter contract and that St. Isidore had not yet adopted a charter. (*See* Board Br. 6; St. Isidore Br. 6–7.) But after Defendants’ briefs were filed, and shortly before the filing of this brief, the Board and St. Isidore did sign a charter contract, which also constitutes St. Isidore’s charter. (Ex. P at 1.) As St. Isidore’s application has been approved and the contract has been signed, the effects of the Defendants’ conduct are “sufficiently direct and immediate” (*Abbott Lab ’ys*, 387 U.S. at 152), and the case is fit for judicial decision. Unless the Court intervenes, St. Isidore will receive state funding and operate unlawfully as a public school.

Defendants also argue (Board Br. 6–7; St. Isidore Br. 7) that this case is not ripe because of uncertainty regarding St. Isidore’s policies. But, in accordance with a Board regulation that requires that the “policies and procedures” described in a charter school’s application “be incorporated into the terms of the contract” (OAC § 777:10-3-3(b)(1)), the signed contract incorporates St. Isidore’s application wholesale. (Ex. P § 11.9.) The application—which is more than 400 pages (Ex. A)—provides ample evidence as to how the school will operate, including that it will engage in the discrimination and religious indoctrination challenged in this suit. *See infra* § II. In addition, like the application (*see, e.g.*, Pet. ¶¶ 119–21), the signed contract has a variety of provisions that purport to allow St. Isidore to disregard on religious grounds applicable laws and regulations (Ex. P ¶¶ 2.1, 3.1, 8.2, 8.11, 11.1).

Defendants specifically fault Plaintiffs (*see* Board Br. 6; St. Isidore Br. 7) for referencing the handbook of another Archdiocese of Oklahoma City school—Christ the King Catholic School—for some of the evidence of what some of St. Isidore’s policies will be (*see, e.g.*, Pet. ¶ 127). St. Isidore is an Archdiocese of Oklahoma City school as well, however. (Ex. A at 3.) The Archdiocese, together with the Diocese of Tulsa, will “direct on diocesan policies that apply to” St. Isidore and, “[f]or purposes of implementing the School’s Catholic mission, ministry, doctrine, practice, policy, and discipline,” will serve as the school’s “final interpretive authority with respect to matters of faith and morals.” (*Id.* at 91; *id.*, App. F, § 1, pp. 5, 11.) And the policies cited by Plaintiffs in the Christ the King handbook are ones that the handbook expressly identifies as policies that the Archdiocese requires its schools to follow. (*See* Pet. ¶¶ 127, 141–43, 157; Ex. C at 1, 3, 7, 10, 45–46.)

St. Isidore also argues (St. Isidore Br. 7) that Plaintiffs’ Fourth Claim—which alleges that St. Isidore will unlawfully contract with an educational management organization, the Archdiocese’s Department of Catholic Education, that will also control the school (Pet. ¶¶ 249–55)—is not ripe because St. Isidore is not required to contract with an educational management organization at all. But that does not matter, because St. Isidore repeatedly stated in its application and in its presentations to the Board that it *will* contract with the Archdiocese’s Department of Catholic Education to be its educational management organization. (Ex. A at 25, 46; *id.*, App. F, § 1, pp. 5, 11; Ex. O at 1:07:55–1:08:25, 1:19:55–1:20:25, 1:29:50–1:30:00.)

In all events, Defendants’ arguments about purported uncertainties in St. Isidore’s policies pertain only to some of Plaintiffs’ allegations. (*See* Board Br. 6–7; St. Isidore Br. 7.) Any uncertainties about St. Isidore’s plans would warrant discovery to resolve them, not dismissal of the entire case as unripe. *See, e.g., Fanning v. Brown*, 2004 OK 7, ¶ 22, 85 P.3d 841 (denying motion to dismiss because plaintiff “must be afforded an opportunity to complete discovery so that the court will have a fully developed factual record to determine the issue”).

The State Defendants separately argue (State Defs.’ Br. 18–19) that this case is not ripe with respect to them because they have not yet commenced distribution of state funds to St. Isidore. Oklahoma law *requires* the State Department of Education to fund all approved charter schools pursuant to a statutory formula, however. *See* 70 O.S. §§ 3-142, 3-145.3(D); OAC § 210:40-87-3(a)(1). That the State Defendants may not yet have taken formal action with respect to St. Isidore is also not relevant, as it is common for taxpayers’ suits to name as a defendant an official responsible for paying challenged funding even though that official

may not yet have taken any action in the matter. *See Fent v. State ex rel. Off. of State Fin.*, 2008 OK 2, ¶ 1, 184 P.3d 467; *Morgan v. Daxon*, 2001 OK 104, ¶ 1, 49 P.3d 687; *Vette*, 1924 OK 190.

Thus, this case is not rendered unripe by the absence of currently flowing state funding to St. Isidore. As the Tenth Circuit stated in *ANR Pipeline Co. v. Corporation Commission of Oklahoma*, 860 F.2d 1571, 1578 (10th Cir. 1988), “[o]nce the gun has been cocked and aimed and the finger is on the trigger, it is not necessary to wait until the bullet strikes” to bring a legal challenge. *See also Ernst & Young v. Depositors Econ. Prot. Corp.*, 45 F.3d 530, 536 (1st Cir. 1995) (“[I]f the operation of a challenged statute is inevitable, ripeness is not defeated by the existence of a time delay before the statute takes effect.”). At this point, absent judicial intervention, state payment of tax funds to St. Isidore is inevitable. Plaintiffs are not required to wait until that harm is realized to bring suit. *See, e.g., Immel*, 2021 OK 39, ¶ 16 (“[A] taxpayer . . . may bring an action in equity to challenge the *prospective* unauthorized expenditure of public funds or a *prospective* unauthorized act related to public funds.”).

## **2. Withholding judicial review would cause hardship.**

Though a showing of hardship is not required under *Abbott Laboratories* if the judicial fitness factor is met (*see Consol. Rail Corp. v. United States*, 896 F.2d 574, 577 (D.C. Cir. 1990)), Plaintiffs nonetheless make such a showing.

St. Isidore plans to open in August 2024 and begin recruiting students in Spring 2024. (Ex. N.) Without timely adjudication of this case, St. Isidore will receive public funding, in violation of Oklahoma law and Plaintiffs’ rights as taxpayers. In addition, potential students and employees will face uncertainty about whether the school is a viable option.

St. Isidore’s position (St. Isidore Br. 7) that this case will not be ripe until the school starts operating and receiving funds is not tenable: The harm will have already occurred at that point. Oklahoma’s taxpayer-lawsuit jurisprudence has repeatedly permitted challenges to expenditures that have not yet been made to avoid this very situation. *See, e.g., Immel*, 2021 OK 39, ¶ 9 (allowing challenge to sale of public land before sale was carried out); *Kellogg*, 74 P. at 110, 119 (allowing challenge to construction of schoolhouses before they were built). To force taxpayers to wait until funds have already been dispersed unlawfully by the state and spent unlawfully by St. Isidore would cause needless hardship and contradict the purpose of taxpayer suits.

**D. Defendants are not immune from suit.**

The Oklahoma Supreme Court abrogated common-law sovereign immunity in 1983. *Vanderpool v. State*, 1983 OK 82, ¶ 19, 672 P.2d 1153. Thus, sovereign immunity exists in Oklahoma only to the extent prescribed by statute. *See State ex rel. State Ins. Fund v. JOA, Inc.*, 2003 OK 82, ¶ 17, 78 P.3d 534. Because no Oklahoma immunity statute is applicable to this case, Defendants’ arguments (*see* Board Br. 10–11; State Br. 15–17) that they are immune from suit fail.

Defendants argue (Board Br. 10–11; State Br. 15–16) that this suit is barred by the Oklahoma Governmental Tort Claims Act, 51 O.S. §§ 151 *et seq.*, which renders the state “immune from liability for torts” (*id.* § 152.1(A)) except as provided by the statute. But the Tort Claims Act does not apply here, because Plaintiffs seek only injunctive and declaratory relief.

While the Tort Claims Act does not define “liability,” elsewhere in the Oklahoma code “liability” is defined as “legal liability for damages.” 36 O.S. § 6453(6). Under

Oklahoma law, “[w]henver the meaning of a word . . . is defined in any statute, such definition is applicable to the same word . . . wherever it occurs,” unless context indicates otherwise. 25 O.S. § 2. The word “liability,” as used in the Tort Claims Act, thus excludes injunctive and declaratory relief.

Indeed, the Oklahoma Supreme Court has consistently concluded that the Tort Claims Act covers only suits for monetary damages. In *Barrios v. Haskell County Public Facilities Authority*, the Court stated that the Tort Claims Act does *not* “affect claims that fail to implicate the state’s sovereign immunity, such as . . . those seeking only prospective injunctive relief.” 2018 OK 90, n.13, 432 P.3d 233; *see also Abab, Inc. v. Midwest City*, No. CIV-20-0134-HE, 2020 WL 9073568, at \*1 (W.D. Okla. Sept. 1, 2020) (citing *Barrios* for this proposition). In so concluding, the Court cited parallel federal precedent holding that the Eleventh Amendment allows state officials to be sued for injunctive relief to enforce federal law. *See Barrios*, 2018 OK 90, n.13 (citing *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 436–37 (2004)).

Similarly, in *Sholer v. State*, 1995 OK 150, ¶ 14, 945 P.2d 469, the Court held that a suit seeking relief other than “compensation” was not covered by the Tort Claims Act. In support of this conclusion, the Court explained, “[t]he [Tort Claims Act] defines ‘claim’ as ‘any written demand presented by a claimant or his authorized representative in accordance with this act to recover money from the state or political subdivision as compensation for an act or omission of a political subdivision or the state or an employee.’” *Id.* (quoting 51 O.S. § 152(3)). Thus, because the plaintiffs were “not seeking compensation . . . the [Tort Claims Act] provide[d] no bar to their action.” *Id.* ¶ 15.

The limitation of immunity to monetary damages that was recognized in *Barrios* and *Sholer* follows from *Vanderpool*, 1983 OK 82. In that case—which prompted the passage of the Tort Claims Act—the Court stated that the abrogation of common-law sovereign immunity would make the state liable “for money damages.” *See* 1983 OK 82, ¶ 21. The Court expressly authorized the legislature to “limit or prescribe conditions of liability, their insurance against loss, [and] the maximum monetary liability to be allowed” but did not suggest that the legislature could immunize the state against claims for declaratory or injunctive relief. *See id.* ¶ 26.

Consistent with *Barrios* and *Sholer*, the Oklahoma Supreme Court has routinely adjudicated cases seeking injunctive and declaratory relief against governmental entities without requiring compliance with the Tort Claims Act. *See, e.g., Ritter v. State*, 2022 OK 73, n.1, 520 P.3d 370 (rejecting sovereign-immunity argument asserted by State of Oklahoma in suit seeking injunctive and declaratory relief); *Toch, LLC v. City of Tulsa*, 2023 OK 69, ¶ 2, 532 P.3d 28; *Okla. Call for Reprod. Just. v. State*, 2023 OK 60, ¶ 7, 531 P.3d 117; *Hirschfeld v. Okla. Tpk. Auth.*, 2023 OK 59, ¶ 1, \_\_\_ P.3d \_\_\_ (rehearing denied Sept. 11, 2023); *Shellem v. Grunewald*, \_\_\_ P.3d \_\_\_, 2023 OK 26, ¶ 4 (mandate issued Oct. 12, 2023); *Immel*, 2021 OK 39, ¶ 15; *see also Farley v. City of Claremore*, 2020 OK 30, ¶ 57, 465 P.3d 1213 (holding that Tort Claims Act barred claim seeking money damages, but not applying a Tort Claims Act analysis to plaintiff’s claim for injunctive relief). Defendants’ overbroad interpretation of the Tort Claims Act cannot be correct because it would bar an entire category of lawsuits frequently taken up by Oklahoma courts.

For similar reasons, Plaintiffs are not barred from suing the Board by the Charter Schools Act’s clause that “[s]ponsors 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” (70 O.S. § 3-134(L) (cited in Board Br. 10–11)). Importantly, even if this clause were applicable here, only the Board Defendants, not the other defendants, would be covered by it. But regardless, the Charter Schools Act does not immunize the Board from suits for injunctions and declaratory judgments. Like the Tort Claims Act, the Charter Schools Act’s immunity clause does not define “liability,” so the definition in 36 O.S. § 6453(6)—“legal liability for damages”—is applicable. *See* 25 O.S. § 2. While the Charter Schools Act’s immunity clause may prevent charter-school authorizers from being sued for damages for acts of the charter schools that they sponsor, it does not prevent Plaintiffs from suing for injunctive and declaratory relief to stop the illegal sponsorship and funding of an unlawful charter school. Defendants point to no case, in Oklahoma or elsewhere, that barred a suit seeking injunctive or declaratory relief against a charter-school sponsor. To prohibit such a suit would greatly expand the scope of governmental immunity in Oklahoma and would be inconsistent with the Oklahoma courts’ approach to statutory immunity. *See Barrios*, 2018 OK 90, n.13; *Sholer*, 1995 OK 150, ¶¶ 14–15; *Vanderpool*, 1983 OK 82, ¶ 15.

## **II. Plaintiffs’ causes of action all state claims.**

Plaintiffs’ petition divides Plaintiffs’ allegations into five causes of action: (1) that St. Isidore violated a Board regulation requiring it to certify that it will comply with Oklahoma law; (2) that St. Isidore intends to discriminate in admissions, discipline, and employment in violation of the Oklahoma Constitution and the Charter Schools Act; (3) that St. Isidore failed to fully commit to serving students with disabilities as required by the Charter Schools Act; (4) that St. Isidore intends to violate Board regulations by contracting with an educational management organization that will control the school; and (5) that St. Isidore



intends to teach a religious curriculum and indoctrinate students in a religion in violation of the Oklahoma Constitution and the Charter Schools Act. (Pet. ¶¶ 213–65.) All of these causes of action state valid claims, and Defendants’ arguments to the contrary have no merit.

**A. First claim: failure to certify intent to comply with Oklahoma law.**

Plaintiffs’ first claim for relief explains that St. Isidore’s revised application and the Board’s approval of it were unlawful because St. Isidore violated a Board regulation requiring charter-school applicants to certify that they will comply with state law. (Pet. ¶¶ 213–19.) The regulation, OAC § 777:10-3-3(c)(1)(F), requires each application for sponsorship of a new charter school to “include signed and notarized statements from the Head of the School and the governing body members . . . showing their agreement to *fully comply* as an Oklahoma public charter school with *all* statute[s], regulations, and requirements of the . . . State of Oklahoma, Statewide Virtual Charter School Board, and Oklahoma Department of Education.” (Emphasis added.) It also requires those statements to “[s]pecifically cite agreement . . . to guarantee access to education and equity for all eligible students regardless of their race, ethnicity, economic status, academic ability, or other factors as established by law.” *Id.*

St. Isidore’s revised application did not comply with these requirements. Instead, it contains statements that show an agreement to comply with applicable laws, including antidiscrimination laws, *only to the extent that those laws do not conflict with St. Isidore’s religious beliefs*. Specifically, the application’s “Statements of Assurance” certify St. Isidore’s intent to comply with the pertinent statutes and regulations only “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 itself

and its rights and obligations pursuant to the Code of Canon law and the Catechism of the Catholic Church.” (Ex. A at 93.) The “Assurance[s]” then state that St. Isidore “[g]uarantees access to education and equity for all eligible students regardless of their race[,] ethnicity, economic status, academic ability, or other factors *subject to the provisions in [the sentence quoted] above.*” (*Id.* (emphasis added).)

Defendants argue (Board Br. 15–16; St. Isidore Br. 21–22) that St. Isidore was entitled to qualify its “Statements of Assurance” based on its religious beliefs, but the regulation at issue offers no religious exemption. Contrary to what St. Isidore argues, the phrase “as established by law” in the antidiscrimination section of the regulation does not mean that St. Isidore need only comply with guarantees against discrimination “to the extent those guarantees do not conflict with St. Isidore’s legally established religious rights.” (St. Isidore Br. 22.) Rather, the regulation requires charter-school applicants to agree that they will not discriminate based on “race, ethnicity, economic status, academic ability, or other factors as established by law.” OAC § 777:10-3-3(c)(1)(F). The phrase “as established by law” modifies the words “other factors,” which, in turn, act as the final, general item in an otherwise enumerated list of protected characteristics. Instead of limiting the obligation of a charter-school applicant to follow antidiscrimination law, the phrase “other factors as established by law” expands the breadth of that obligation beyond the enumerated protected characteristics.

Defendants also contend (Board Br. 15–16; St. Isidore Br. 22) that the Court should defer to the Board’s interpretation of its regulations. But no deference is due to agency interpretations when a regulation is unambiguous (*cf. Bell v. Phillips Petroleum Co.*, 1982 OK 28, ¶ 24, 641 P.2d 1115), and here St. Isidore’s “Statements of Assurance” plainly

contradict the regulation’s unambiguous terms. Moreover, there is no evidence that the Board actually interpreted the regulation at issue in any manner, as opposed to negligently or even willfully ignoring the regulation when it approved St. Isidore’s application. And even if there were some ambiguity in the regulation and the Board had actually interpreted it, deference to the Board would be appropriate only if the Board was “(1) acting in its area of expertise or (2) applying a longstanding administrative construction” of the regulation. *Okla. Gas & Elec. Co. v. State ex rel. Okla. Corp. Comm’n*, 2023 OK 33, ¶ 8, \_\_\_ P.3d \_\_\_ (mandate issued April 3, 2023); *see also Oral Roberts Univ. v. Okla. Tax Comm’n*, 1985 OK 97, ¶ 10, 714 P.2d 1013 (deference is given to a “long standing executive or departmental construction” of a statute). Here, the Board would not have been acting in its area of expertise but rather “making legal conclusions, which are the expertise of the Court.” *Okla. Gas & Elec. Co.*, 2023 OK 33, n.17. In addition, Defendants point to no longstanding agency interpretation of the regulation at issue. For these reasons, Defendants’ administrative-deference argument fails.

**B. Second claim: discrimination in admissions, discipline, and employment.**

Plaintiffs’ second claim for relief is that St. Isidore will discriminate in student admissions, student discipline, and employment based on religion, sexual orientation, gender identity, and other protected characteristics in violation of the Oklahoma Constitution and the Charter Schools Act. (Pet. ¶¶ 220–39.)

The Oklahoma Constitution, through numerous clauses, broadly prohibits charter schools from engaging in discriminatory practices. As detailed below (*see infra* §§ III(A), III(D)), Oklahoma charter schools are public schools, governmental entities, and state actors and therefore must comply with the state constitution. And while Oklahoma courts interpret the state constitution independently of the federal one, they can consider for guidance federal

interpretations of federal constitutional clauses that are analogous to state constitutional clauses. *See, e.g., Fair Sch. Fin. Council of Okla., Inc. v. State*, 1987 OK 114, ¶¶ 53–55 & nn.46, 48, 746 P.2d 1135.

Several provisions of the Oklahoma Constitution require that Oklahoma public schools serve *all* students. Article I, § 5 requires that the State “establish[] and maintain[] . . . a system of public schools, which shall be open to all the children of the state.” Article XIII, § 1 similarly requires that the State “establish and maintain a system of free public schools, wherein all the children of the State may be educated.” And Article XI, §§ 2 and 3 establish a “permanent school fund” and prohibit it from being used “for any other purpose than the support and maintenance of common schools for the equal benefit of all the people of the State.”

Article I, § 2 prohibits public schools from discriminating based on religion. That is evident from the clause’s text: “Perfect toleration of religious sentiment shall be secured, and no inhabitant of the State shall ever be molested in person or property on account of his or her mode of religious worship; and no religious test shall be required for the exercise of civil or political rights.” The same conclusion follows from state caselaw holding that the clause is at least as protective as the federal Free Exercise and Establishment Clauses (*see infra* at 32), both of which prohibit religious discrimination by governmental entities (*see, e.g., Gillette v. United States*, 401 U.S. 437, 462 (1971); *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 590 (1989), *dicta on different issue disapproved by Town of Greece v. Galloway*, 572 U.S. 565, 579–80 (2014)).

Article II, § 36A of the Oklahoma Constitution provides that “[t]he state shall not grant preferential treatment to, or discriminate against, any individual or group on the basis

of . . . sex . . . in the operation of public employment, public education, or public contracting.” This prohibition is properly construed as encompassing discrimination based on sexual orientation and gender identity. *See, e.g., Bostock v. Clayton County*, 140 S. Ct. 1731, 1741 (2020).

Finally, Article II, § 7 of the Oklahoma Constitution—which provides that “no person shall be deprived of life, liberty, or property, without due process of law”—“contain[s] [a] built-in anti-discrimination component[] which afford[s] protection against unreasonable or unreasoned classifications which serve no important governmental interests” and is similar to the U.S. Constitution’s Equal Protection Clause. *See Okla. Ass’n for Equitable Tax’n v. Oklahoma City*, 1995 OK 62, ¶ 12, 901 P.2d 800. Article II, § 7 thus prohibits discrimination based on religion (*see United States v. Armstrong*, 517 U.S. 456, 464 (1996)), sexual orientation (*see Pavan v. Smith*, 582 U.S. 563, 566 (2017); *Obergefell v. Hodges*, 576 U.S. 644, 670–76 (2015)), and gender identity (*see Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 608–09 (4th Cir. 2020); *Glenn v. Brumby*, 663 F.3d 1312, 1320 (11th Cir. 2011)). Collectively, the foregoing constitutional provisions prohibit public schools—including St. Isidore—from discriminating in admissions on any ground and from discriminating in student discipline and employment based on grounds that include religion, sexual orientation, and gender identity.

Similarly, the Charter Schools Act requires charter schools to “be as equally free and open to all students as traditional public schools” (70 O.S. § 3-135(A)(9)) and prohibits any admission preferences other than geographic ones (*see* 70 O.S. §§ 3-135(A)(10), 3-140, 3-145.3(J)). The Act also requires charter schools to be “nonsectarian in [their] . . . admission policies [and] employment practices.” 70 O.S. § 3-136(A)(2).

Yet St. Isidore’s revised application shows that the school will violate all of the foregoing prohibitions by discriminating in admissions, discipline, and employment. For example, St. Isidore will not be open to students of all religions. (Pet. ¶¶ 123–30.) While St. Isidore claims in its application that it will admit students “of different faiths or no faith,” it qualifies that statement by warning that “[a]dmission assumes the student and family willingness to adhere with respect to the beliefs, expectations, policies, and procedures of the school.” (Ex. A at 38.) As noted above, St. Isidore’s “beliefs, expectations, policies, and procedures” will be controlled by the Archdiocese of Oklahoma City. (Pet. ¶ 126.) And it is the Archdiocese’s policy that, “[s]hould a parent or student intentionally and knowingly” express “disagreement with Catholic faith and morals, they are effectively choosing not to fully embrace the promised school learning environment offered for all students and by that choice, freely made, they are choosing not to remain a part of the school community. School administration will respect that decision and act accordingly by withdrawing them from the school or decline to approve them for admission.” (Ex. C at 1, 3.) In any event, because St. Isidore will immerse students in instruction in its religious tenets, and students of a variety of faiths would be prohibited by their religions from submitting to religious indoctrination in a faith different from their own, St. Isidore cannot truly be open to students of all faiths. (Pet. ¶¶ 128–30.)

St. Isidore’s application also demonstrates that St. Isidore will discriminate among prospective or enrolled students based on sexual orientation, gender identity, pregnancy outside of marriage, and sexual activity outside of marriage. (Pet. ¶¶ 131–45.) The application states that St. Isidore will “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.” (Ex. A at 18 (emphasis added).) Authoritative Catholic teaching prohibits people from engaging in “homosexual acts,” requires lesbian and gay people to be “chast[e],” requires that “[e]veryone—man and woman—should acknowledge and accept his or her sexual identity” as assigned at birth, and prohibits heterosexual activity outside of marriage. (Pet. ¶¶ 134–36 (quoting and citing *Catechism of the Catholic Church* ¶¶ 2333, 2353, 2357–59 (2d ed.), <https://bit.ly/3Xm4Ub7>)). Accordingly, St. Isidore excludes sexual orientation and gender identity from the lists of characteristics protected under its antidiscrimination statements and policies. (Pet. ¶¶ 137–38.) Moreover, as noted above, St. Isidore will be an Archdiocese of Oklahoma City school whose policies are controlled by the Archdiocese, and it is Archdiocese policy that “advocating for, or expressing same-sex attraction . . . is not permitted for students” and that students who live as or transition to a gender different from the one they were assigned at birth will be expelled. (Pet. ¶¶ 139–45.)

In addition, St. Isidore plans to discriminate in employment based on religion, sexual orientation, gender identity, pregnancy outside of marriage, and sexual activity outside of marriage. (Pet. ¶¶ 146–53.) St. Isidore’s revised application states that the school will “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.” (Ex. A at 18.) Thus, both “in their day-to-day work and personal lives,” all St. Isidore employees are required to “adhere to the teachings of the Church” and “refrain from actions that are contrary to the teachings of the Church.” (*Id.* at 105–06.) As noted above, authoritative Catholic teaching prohibits

LGBTQ people from expressing their sexual orientation or gender identity, and prohibits all people from having sex or becoming pregnant outside of marriage. (Pet. ¶¶ 134–36.) And, though St. Isidore’s application asserts that its employees are not required to be Catholic (Ex. A at 105), it expressly states that “[t]he School retains its right to consider religion as a factor in employment-related decisions” (*id.* at 109).

The Board Defendants and St. Isidore appear to dispute that they will discriminate on all the alleged grounds. (*See* Board Br. 16–17; St. Isidore Br. 22–23.) But they point to antidiscrimination policies that expressly omit religion, sexual orientation, gender identity, and pregnancy outside of marriage from their lists of protected categories. (*See* Board Br. 17; St. Isidore Br. 23.) Moreover, as described above and detailed further in Plaintiffs’ petition (Pet. ¶¶ 117–53), Plaintiffs’ allegations about discrimination have substantial documentary support, and they must be taken as true at the motion-to-dismiss stage. *See, e.g., Harwood*, 2022 OK 51, ¶ 14.

The Board Defendants also take issue (Board Br. 17) with Plaintiffs’ references to the Christ the King Catholic School handbook and the Catechism of the Catholic Church for some of the support for some of their allegations. But, as detailed above, St. Isidore and Christ the King are both Archdiocese of Oklahoma City schools, the Archdiocese will control St. Isidore’s policies, and Plaintiffs rely only on policies in the Christ the King handbook that it identifies as being “required by the Archdiocese.” *See supra* at 14; Ex. C at 1. And the Catechism identifies itself as the “authoritative exposition” of the Catholic faith (at xv) and is cited numerous times by St. Isidore’s own application as an authority (*see, e.g.,* Ex. A at 17, 18, 93, 107, 108).



**C. Third claim: failure to fully commit to serve students with disabilities.**

Plaintiffs’ third claim is that St. Isidore has not adequately committed to serving students with disabilities as mandated by the Charter Schools Act. (Pet. ¶¶ 240–48.) The Act requires charter schools to “comply with all . . . laws relating to the education of children with disabilities in the same manner as a school district.” 70 O.S. § 3-136(A)(7). Yet St. Isidore’s revised application states that the school will only “comply with all applicable . . . [l]aws in serving students with disabilities . . . to the extent that it does not compromise the religious tenets of the school and the instructional model of the school.” (Ex. A at 73–74.) And St. Isidore’s brief (at 24) stands by this language. What is more, Archdiocese of Oklahoma City policy is that “[s]tudent service plans” for students with disabilities “cannot contain accommodations or modifications that are in opposition of Church teaching.” (Ex. C. at 7.)

Plaintiffs have thus sufficiently alleged that St. Isidore has not agreed to fully comply with laws requiring it to serve students with disabilities.

**D. Fourth claim: violation of regulations requiring charter schools and their board members to be independent of their educational management organizations.**

Plaintiffs’ fourth claim alleges that St. Isidore intends to enter into a relationship with an educational management organization that is prohibited by the Board’s regulations. (Pet. ¶¶ 249–55.) (An “educational management organization” is “a for-profit or nonprofit organization that receives public funds to provide administration and management services for a charter school, statewide virtual charter school or traditional public school.” 70 O.S. § 5-200(A).)

OAC § 777:10-1-4(1) requires that “[t]he relationship of the charter school and an educational management organization [must be] that of a customer and vendor” and that,

“[a]s such, the charter school and the educational management organization shall be separate entities in all aspects.” St. Isidore stated in several places in its revised application that the Archdiocese of Oklahoma City Department of Catholic Education—“an entity within the Archdiocese of Oklahoma City”—will be the school’s initial educational management organization. (Ex. A at 25, 46; *id.*, § 13, App. K.) And, as Plaintiffs have emphasized, the Archdiocese will control St. Isidore. (Pet. ¶¶ 173–74.) Thus, in violation of OAC § 777:10-1-4(1), St. Isidore and its educational management organization will not be “separate entities in all respects” and will not have the relationship of “a customer and vendor.”

In addition, OAC § 777:10-3-3(d)(4)(I) requires that “[n]o governing board member [of a charter school], school staff member, or contractor/vendor shall receive pecuniary gain, incidentally or otherwise, from the earnings of the educational management organization or school.” As required by St. Isidore’s bylaws, the director of the Archdiocese’s Department of Catholic Education is a member of St. Isidore’s board. (Pet. ¶¶ 178–79.) That person will therefore, at least “incidentally,” “receive pecuniary gain” as a result of the Department of Catholic Education serving as St. Isidore’s educational management organization.

Plaintiffs’ fourth claim thus adequately alleges that St. Isidore intends to violate OAC §§ 777:10-1-4(1) and 777:10-3-3(d)(4)(I). The Board’s administrative-deference argument (Board Br. 29) fails for the same reasons as with respect to Plaintiffs’ first claim. *See supra* at 22–23.

**E. Fifth claim: teaching a religious curriculum.**

Plaintiffs’ fifth claim alleges that St. Isidore will teach a religious curriculum, in violation of the Charter Schools Act and three provisions of the Oklahoma Constitution—Article I, § 2; Article I, § 5; and Article II, § 5. (Pet. ¶¶ 256–65.) Defendants do not dispute

that St. Isidore’s plan to teach a religious curriculum is contrary to the Charter Schools Act’s requirement that charter schools be “nonsectarian in [their] programs . . . and all other operations” (70 O.S. § 3-136(A)(2)); and we refute below in § III Defendants’ arguments that the Act is overridden by the federal Free Exercise Clause and the state Religious Freedom Act. Defendants do contend (Board Br. 20–24; St. Isidore Br. 8–12) that the Oklahoma Constitution allows charter schools to inculcate religion. They are wrong.

**1. Article I, § 2.**

As stated earlier, Article I, § 2 of the Oklahoma Constitution, provides: “Perfect toleration of religious sentiment shall be secured, and no inhabitant of the State shall ever be molested in person or property on account of his or her mode of religious worship; and no religious test shall be required for the exercise of civil or political rights.” And as explained below (*see infra* §§ III(A), III(D)), St. Isidore is a public school, a governmental entity, and a state actor, and so it must comply with this constitutional mandate. Yet St. Isidore plans to “operate the School as a Catholic School” and “participate[] in the evangelizing mission of the Church.” (Ex. A at 17.) St. Isidore will indoctrinate students in the Catholic faith by suffusing its curriculum with Catholic religious doctrine and by requiring students to take theology classes. (Pet. ¶¶ 187–89.) Indeed, as detailed in Plaintiffs’ petition, St. Isidore’s application is replete with statements that demonstrate the religious nature of its planned curriculum and programming. (Pet. ¶¶ 182–92.)

The plain text of Article I, § 2 prohibits St. Isidore from operating as it plans. A public school cannot “secure[]” “[p]erfect toleration of religious sentiment” if it inculcates a particular religion in its students.

The historical background of Article I, § 2 leads to the same conclusion. “The Oklahoma Constitutional Convention members . . . advocated for the toleration of all religious beliefs and complete separation of church and state by going further than the federal constitution.” *Prescott v. Okla. Capitol Pres. Comm’n*, 2015 OK 54, ¶ 6, 373 P.3d 1032 (Taylor, J., concurring in denial of rehearing). Albert H. Ellis, the Second Vice President of the Oklahoma Constitutional Convention, explained that the approach to religion of the framers of the state constitution was shaped by their concern for the protection of religious minorities—“the rights of all denominations, however few the number of their respective adherents.” See Albert H. Ellis, *A History of the Constitutional Convention of the State of Oklahoma* 134 (1923). The framers wished to prevent dominant religions from “exert[ing] an undue influence and becom[ing] . . . a menace to weaker denominations and ultimately destructive of religious liberty.” *Id.* Ensuring that no public school, charter or otherwise, attempts to indoctrinate its students in any religion vindicates the framers’ concerns and protects the rights of religious minorities.

Furthermore, Article I, § 2 provides at least the same protections as the federal Establishment and Free Exercise Clauses. See *Prescott*, 2015 OK 54, ¶ 6 (Taylor, J., concurring); *McMasters v. State*, 207 P. 566, 568 (Okla. Crim. App. 1922) (“[B]oth the federal and state Constitutions forbid the abridging of the freedom of conscience and religious liberty.”); *Guinn v. Church of Christ of Collinsville*, 1989 OK 8, ¶ 6, 775 P.2d 766 (Kauger, J., concurring in part). The federal Establishment Clause prohibits state actors from teaching religion in the classroom (see, e.g., *Edwards v. Aguillard*, 482 U.S. 578, 591–94 (1987); *Hall v. Bd. of Sch. Comm’rs*, 656 F.2d 999, 1001–03 (5th Cir. 1981)), leading students in prayer or presenting prayer at school events (see, e.g., *Santa Fe Indep. Sch. Dist.*

*v. Doe*, 530 U.S. 290, 309–10 (2000)), displaying religious texts or symbols to students (*see, e.g., Stone v. Graham*, 449 U.S. 39, 42 (1980)), or otherwise coercing students to take part in religious activity (*see, e.g., Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2429 (2022)) or promoting religion to students (*see, e.g., Illinois ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203, 212 (1948)). In addition, the federal Free Exercise Clause prohibits state actors from “coerc[ing] participation in religious programming.” *Janny v. Gamez*, 8 F.4th 883, 911 (10th Cir. 2021), *cert. dismissed sub nom. Carmack v. Janny*, 142 S. Ct. 878 (2022).

The Board Defendants argue (Board Br. 24) that *Murrow Indian Orphans Home v. Childers*, 1946 OK 187, 171 P.2d 600, which upheld state funding of a religiously affiliated orphanage, allows St. Isidore to proselytize and indoctrinate. But *Murrow* did not even consider Article I, § 2; there was no allegation that the orphanage there was a state actor; and the orphanage did not proselytize its children but instead allowed them complete freedom of worship (*see* 1946 OK 187, ¶ 2).

And that attendance at St. Isidore may be voluntary (*cf.* Board Br. 24) does not matter. All attendance at public schools is, in one manner of speaking, voluntary: Public-school students could choose to enroll in private schools or be home-schooled. But once students exercise their constitutionally protected right to attend a public school—whether it be it a district, magnet, or charter school, or an in-person or virtual school—no authority permits the school, which is a government entity and a state actor, to disregard its constitutional obligations on the ground that the students could have gone elsewhere. No matter what public school they choose to attend, students still have the right under Article I, § 2 to be free from school-sponsored religious indoctrination. Both the state constitution and the Charter

Schools Act require St. Isidore to accept all students (*see supra* § II(B)), and once students enroll St. Isidore must respect their constitutional rights.

## **2. Article I, § 5.**

Article I, § 5 requires the state to “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.” Yet St. Isidore would be a public school that evangelizes its students and teaches a religious curriculum. Plainly, allowing St. Isidore to operate as a charter school would run afoul of the requirement that “public schools” be “free from sectarian control.”

The Board Defendants contend (Board Br. 23) that Article I, § 5 only “requires that Oklahoma’s ‘system of public schools’” and not “each and every school” be free from sectarian control. They argue (Board Br. 23–24) that the phrase “open to all the children of the state”—and thus the subsequent phrase “free from sectarian control”—must apply only to the whole “system,” not individual schools, because public schools typically serve only certain localities and grade levels. But Article I, § 5 cannot properly be interpreted to allow public schools to refuse admission on other grounds. The original 1907 version of Article I, § 5 had a clause, removed by amendment in 1978, that expressly authorized separate schools for White and Black children. *See* Okla. Const. of 1907, Art. I, § 5, <https://bit.ly/3S1A2xW>; *State Questions*, Oklahoma Secretary of State, <https://bit.ly/3PWVOjJ> (enter “526” into “State Question Number” search field and click “Submit”; then click on “526”). If the Board’s interpretation of Article I, § 5 were correct, the inclusion of that segregationist clause would have been unnecessary, and Article I, § 5 would still permit segregated schools today.

In any event, the “system of public schools” can only be “free from sectarian control” if all its schools are free from sectarian control. If even one school is under sectarian control, then the system is partially under sectarian control.

*Oliver v. Hofmeister*, 2016 OK 15, 368 P.3d 1270 (cited at Board Br. 23) is inapplicable to Plaintiffs’ Article I, § 5 claim. The Oklahoma Supreme Court did not consider Article I, § 5 in that case. Moreover, the school-voucher program that the Court upheld in *Oliver* funded only private schools (2016 OK 15, ¶ 26), not public schools, and thus did not present the question of whether a public charter school can indoctrinate its students in a religion.

### **3. Article II, § 5.**

Article II, § 5 of the Oklahoma Constitution provides: “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.” 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.” *Prescott*, 2015 OK 54, ¶ 4. As St. Isidore will provide a religious education, Article II, § 5 prohibits the state from funding St. Isidore. Moreover, because St. Isidore is a governmental entity and a state actor (*see infra* §§ III(A), III(D)), Article II, § 5 bars St. Isidore itself from using public funds to pay for its program of religious education.

Relying on *Murrow* and *Oliver*, Defendants argue (Board Br. 21–22; St. Isidore Br. 9–10) that state funding of St. Isidore would not violate Article II, § 5 because the state will

receive a benefit from St. Isidore in exchange, in the form of provision of education. To be sure, in *Murrow* and *Oliver*, the Court upheld (respectively) state funding of a religiously affiliated orphanage and a school-voucher program for children with disabilities partly because each funding arrangement relieved the state of a legal duty—to take care of needy children or to provide legally required special-education services. *See Murrow*, 1946 OK 187, ¶ 9; *Oliver*, 2016 OK 15, ¶ 24. But here, though the state constitution imposes a duty upon Oklahoma to provide public education, the constitutional provisions that create that duty also require public schools to be open to all Oklahoma children and free from sectarian control. *See Okla. Const. Art. I, § 5; Art. XI, §§ 2–3; Art. XIII, § 1.* Because St. Isidore is neither open to all Oklahoma children nor free from sectarian control, funding the school will not benefit the state or help the state fulfill a duty.

Moreover, the principal reason that the Court upheld the school-voucher program in *Oliver* was that program funds went to parents, not directly to religious schools, and reached religious schools only “at the sole and independent choice and direction of the parent and *not the State.*” 2016 OK 15, ¶¶ 21–22. Here, by contrast, the state will pay public funds directly to St. Isidore. *See 70 O.S. §§ 3-135(A)(12), 3-142(A)–(B), 3-145.3(C)–(D).* And the funds will not reach St. Isidore solely as a result of choices by parents. Rather, state funds flow to charter schools through a complex formula that—though it includes the number of students served—also incorporates factors such as levels of teacher experience, how long a school has been in operation, the population density of the area that the school serves, and various characteristics of enrolled students. *See 70 O.S. §§ 3-135(A)(12), 3-142(A)–(B), 3-145.3(C)–(D), 18-200.1, 18-201.1.*



The Board Defendants also contend that the Board’s decision was not based on a religious preference and argue that therefore, under *Oliver*, state funding of St. Isidore would not violate Article II, § 5. (Board Br. 22–23.) In *Oliver*, however, the religious neutrality of the voucher program at issue was merely one of eight factors that supported upholding the program. *See* 2016 OK 15, ¶ 17. Nothing in *Oliver* suggests that the religious neutrality of state funding is sufficient by itself to satisfy Article II, § 5. Indeed, in *Gurney v. Ferguson*, 1941 OK 397, ¶¶ 2, 12, 122 P.2d 1002, the Oklahoma Supreme Court struck down a student-transportation program as violative of Article II, § 5 even though the program was neutral with regard to religion.

The State Defendants attempt (State Defs.’ Br. 11) to tie Article II, § 5 to an 1875 proposed federal constitutional amendment referred to by some as the “Blaine Amendment,” which they contend was motivated by anti-Catholic sentiment. But the Oklahoma Supreme Court Justices who have considered the issue have explained that Article II, § 5, which was enacted in 1907, was not based on the Blaine Amendment and was not motivated by anti-Catholic animus. *See Prescott*, 2015 OK 54, ¶ 1 (Edmonson, J., concurring in denial of rehearing); *id.* ¶¶ 17–20 (Taylor, J., concurring in denial of rehearing); *id.* ¶¶ 16–24 (Gurich, J., concurring in denial of rehearing); *id.* ¶ 12 (Combs, V.C.J., dissenting to denial of rehearing). Rather, “[t]he Oklahoma Constitutional Convention members . . . were religious men . . . who advocated for the toleration of all religious beliefs.” *Id.* ¶ 6 (Taylor, J., concurring).

### **III. Defendants have no valid “religious freedom” defense.**

Defendants argue that the U.S. Constitution’s Free Exercise Clause, Article I § 2 of the Oklahoma Constitution, and the Oklahoma Religious Freedom Act override the state

constitutional provisions, statutes, and regulations on which Plaintiffs' claims are based. But, as a public charter school, St. Isidore is a governmental entity. It therefore is precluded from asserting any federal constitutional right to violate state law.

Even if St. Isidore can assert federal free-exercise rights, they do not supersede the state prohibitions at issue. Plaintiffs' first through fourth claims are based on religion-neutral prohibitions, so any free-exercise attack on them easily fails. In any event, those four claims are based on legal prohibitions that advance compelling state interests—including preventing discrimination—and so would survive even strict scrutiny under the Free Exercise Clause. The free-exercise argument also cannot defeat Plaintiffs' fifth claim, because operation and funding of St. Isidore as a public charter school would violate the federal Establishment Clause, and complying with the Establishment Clause is a compelling governmental interest that satisfies any level of scrutiny under the Free Exercise Clause. As St. Isidore is a governmental entity and a state actor, the Establishment Clause prohibits it from teaching a religious curriculum and indoctrinating students in a religion. In addition, the Establishment Clause bars Oklahoma from providing direct state aid to institutions for religious activities, such as St. Isidore's planned religious instruction.

Finally, the Article I, § 2 and Religious Freedom Act arguments fail for similar and related reasons.

**A. As a public charter school, St. Isidore is a governmental entity and a state actor.**

Whether an entity must comply with the requirements of the U.S. Constitution depends on whether the entity's conduct is state action. *See, e.g., Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019). To determine whether an entity is a state actor, the U.S. Supreme Court first considers whether the entity is a governmental entity

itself. *See Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 378–82 (1995). If that is not the case, the Supreme Court and the Tenth Circuit apply four principal tests (detailed below) to assess whether the entity is a state actor. *See, e.g., VDARE Found. v. City of Colorado Springs*, 11 F.4th 1151, 1160 (10th Cir. 2021), *cert. denied*, 142 S. Ct. 1208 (2022). Here, Oklahoma charter schools are public schools and governmental entities. Even if they were not governmental entities, they are state actors under at least two of the four state-action tests (meeting any of the four tests is sufficient to render an entity a state actor) that apply to private entities—the symbiotic-relationship and public-function tests.

**1. Oklahoma charter schools are state actors because they are governmental entities.**

As Justice Scalia explained for the Court in *Lebron*, when a party is a governmental official or entity, that is sufficient to resolve whether the party is a state actor, and it is unnecessary to consider the tests that are used to assess private entities. *See* 513 U.S. at 378–82. Accordingly, without applying the tests used to analyze whether private entities are state actors, the Supreme Court has concluded that various organizations and persons are state actors because they are governmental entities or officials. *See, e.g., NCAA v. Tarkanian*, 488 U.S. 179, 192 (1988) (state universities); *Pennsylvania v. Bd. of Dirs. of City Trusts*, 353 U.S. 230, 231–32 (1957) (board created by state to operate privately endowed college); *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 624 (1991) (state judges); *Georgia v. McCollum*, 505 U.S. 42, 50 (1992) (prosecutors). Similarly, without applying any of the state-action tests that are used with private entities, the Tenth Circuit concluded that the Utah State Bar is a state actor because it is “a governmental entity established by state law and created as an administrative agency of the Utah Supreme Court” (*Barnard v. Chamberlain*, 897 F.2d 1059, 1062 (10th Cir. 1990)), and that a hospital in Oklahoma was a state actor because it was a

“public trust” established by state statute and “its trustees [we]re public officers acting as an agency of the State of Oklahoma” (*Tarabishi v. McAlester Reg’l Hosp.*, 827 F.2d 648, 652 (10th Cir. 1987)).

Indeed, in *Lebron*, without applying traditional state-action tests for private entities, the Supreme Court concluded that Amtrak is a governmental entity to which the First Amendment applies, even though the statute that created Amtrak stated that it is a for-profit corporation and *not* “an agency or establishment of the United States government.” 513 U.S. at 383–86, 397–400. The Court explained that Amtrak was created by legislation, its purpose is to pursue governmental goals, and it is controlled by government-appointed officials. *See id.* Likewise, without applying traditional state-action tests, then-Judge Gorsuch concluded for the Tenth Circuit in *United States v. Ackerman*, 831 F.3d 1292, 1295–1300 (10th Cir. 2016), that a national clearinghouse for missing children that was originally created as a private, nonprofit organization was a governmental entity because it was given exclusive duties and powers by a federal statute and was funded primarily by the federal government.

As in these cases, Oklahoma charter schools are governmental entities. Charter schools were created by the Oklahoma legislature through the Charter Schools Act (70 O.S. § 130 *et seq.*), and they could be abolished by repeal of the Act. The Act expressly states that “‘charter school’ means a *public school* established by contract with a board of education of a school district” (70 O.S. § 3-132(D) (emphasis added)) or with certain other governmental entities (*see* 70 O.S. § 3-132(A)). The Act could not be more clear on this point, but Oklahoma charter schools have numerous other characteristics that further confirm that they are public schools and governmental institutions.

For instance, Oklahoma charter schools must “be as equally free and open to all students as traditional public schools.” 70 O.S. § 3-135(A)(9). They must “comply with all . . . laws relating to the education of children with disabilities in the same manner as a school district.” 70 O.S. § 3-136(A)(7). They must not “charge tuition or fees.” 70 O.S. § 3-136(A)(10). They are “subject to the same academic standards and expectations as existing public schools.” 70 O.S. § 3-135(A)(11). They receive state “funding in accordance with statutory requirements and guidelines for existing public schools.” 70 O.S. § 3-135(A)(12). And they must comply with the same rules that govern public schools on school-year length (70 O.S. § 3-136(A)(11)), bus transportation (70 O.S. § 3-141(A)), student testing (70 O.S. § 3-136(A)(4)), student suspension (70 O.S. § 3-136(A)(12)), and financial reporting and auditing (70 O.S. §§ 3-135(C); 70 O.S. § 3-136(A)(6), (18); 70 O.S. § 3-145.3(E)).

Also, employees of Oklahoma charter schools are eligible for the same retirement benefits that Oklahoma provides to teachers at other public schools (70 O.S. § 3-136(A)(14)) and for the same insurance programs that are available to employees of their employers’ governmental sponsors (70 O.S. § 3-136(A)(15)). Oklahoma charter schools must “comply with the Oklahoma Open Meeting Act and the Oklahoma Open Records Act.” 70 O.S. § 3-136(A)(16). They are “eligible to receive current government lease rates” if they choose to lease property. 70 O.S. § 3-142(E). They must have governing boards that hold public meetings at least quarterly (70 O.S. §§ 3-135(A)(3), 3-145.3(F)) and that are “subject to the same conflict of interest requirements as a member of a local school board” (70 O.S. §§ 3-136(A)(17), 3-145.3(F)).

What is more, each Oklahoma charter school is considered a separate “local education agency” (70 O.S. §§ 3-142(C), 3-145.3(C)), which is “a public board of education

or other public authority legally constituted” for “administrative control or direction” of public schools (*see* 20 U.S.C. § 7801(30)(A)). Oklahoma charter schools are “considered . . . school district[s] for purposes of tort liability under The Governmental Tort Claims Act.” 70 O.S. § 3-136(A)(13). And a 2007 Oklahoma Attorney General opinion states that “charter schools . . . are part of the public school system,” “are under the control of the Legislature,” and further the Legislature’s “mandate of establishing and maintaining a system of free public education.” Hon. Al McAffrey, Okla. Op. Att’y Gen. No. 07-23, 2007 WL 2569195, at \*7 (2007).

In sum, Oklahoma charter schools were created by legislation; Oklahoma law defines and treats them as public schools and governmental bodies; they have the same responsibilities and privileges as other public schools; and they must comply with myriad legal requirements that govern other public schools. Because Oklahoma charter schools are governmental entities, there is no question that they are state actors, and “this ends the inquiry.” *See Riester v. Riverside Cmty. Sch.*, 257 F. Supp. 2d 968, 972 (S.D. Ohio 2002).

**2. Even if Oklahoma charter schools are not governmental entities, they are still state actors under the symbiotic-relationship and public-function tests.**

The Tenth Circuit applies four principal tests to determine whether private entities are state actors: “(1) the nexus test, (2) the symbiotic-relationship test, (3) the joint-action test, and (4) the public-function test.” *See VDARE*, 11 F.4th at 1160. “If any 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). Oklahoma charter schools are state actors under at least two of the tests—the symbiotic-relationship and public-function tests.

***Symbiotic relationship.*** Under the “[s]ymbiotic [r]elationship” test, “[s]tate action is . . . present if the state ‘has so far insinuated itself into a position of interdependence’ with a private party that ‘it must be recognized as a joint participant in the challenged activity.’” *Gallagher v. Neil Young Freedom Concert*, 49 F.3d 1442, 1451 (10th Cir. 1995) (quoting *Burton v. Wilmington Parking Auth.*, 365 U.S. 715, 725 (1961)). The Supreme Court has similarly stated that “a nominally private entity [i]s a state actor . . . when it is ‘entwined with governmental policies,’ or when government is ‘entwined in [its] management or control.’” *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 296 (2001) (quoting *Evans v. Newton*, 382 U.S. 296, 299, 301 (1966) (alteration in *Brentwood*)). The Tenth Circuit has explained that the “symbiotic relationship” test and the “entwinement” analysis are the same test. *See Wittner v. Banner Health*, 720 F.3d 770, 778 (10th Cir. 2013).

Applying this test, the Supreme Court and the Tenth Circuit have held that the Tennessee and Oklahoma state athletic associations are state actors because of the “pervasive entwinement of public institutions and public officials in [their] composition and workings.” *See Brentwood*, 531 U.S. at 298–302; *Christian Heritage Acad. v. Okla. Secondary Sch. Activities Ass’n*, 483 F.3d 1025, 1030–31 (10th Cir. 2007). Similarly, the Supreme Court ruled that a private restaurant that leased space in a city parking-garage building from a city authority was a state actor because the relationship between the city and the restaurant conferred a “variety of mutual benefits” on both. *See Burton*, 365 U.S. at 724.

Here too, Oklahoma charter schools have a symbiotic relationship with and are entwined with the state. Only governmental entities may serve as sponsors for a charter school and grant a charter. *See* 70 O.S. §§ 3-132(A), 3-145.1. The governmental sponsors must then “[p]rovide oversight of the operations of charter schools,” “monitor . . . the

performance and legal compliance of charter schools,” and decide whether to renew or revoke charter contracts. *See* 70 O.S. § 3-134(I). The charter schools must comply with the numerous legal and reporting requirements described above. *See supra* § III(A)(1). At the same time, the schools (so long as they—unlike St. Isidore—comply with applicable legal requirements) provide a variety of benefits to the state. *See* 70 O.S. § 3-131(A). As in *Brentwood*, 531 U.S. at 302, “entwinement to the degree shown here requires” that Oklahoma charter schools “be charged with a public character and judged by constitutional standards.”

**Public function.** To satisfy the “public function” test, it is sufficient to show that “the private entity performs a traditional, exclusive public function.” *Halleck*, 139 S. Ct. at 1928. For example, when private groups run elections or operate company towns, they are state actors. *See id.* at 1929. As public schools, Oklahoma charter schools provide free, public education. 70 O.S. §§ 3-132(D), 3-135(A)(9)–(11). Though provision of education may not be a traditionally exclusive public function, provision of free, *public* education is. *Peltier v. Charter Day Sch.*, 37 F.4th 104, 119 (4th Cir. 2022) (en banc), *cert. denied*, 143 S. Ct. 2657 (2023).

For instance, though not all parks have traditionally been operated by the government, the Supreme Court concluded that private trustees of a *public* park were state actors partly because a *public* park is “like a fire department or police department that traditionally serves the community.” *See Evans*, 382 U.S. at 302. Similarly, while private entities often operate hospitals, the Tenth Circuit ruled that a private company that managed a *public* hospital was a state actor in part because the government “cannot escape liability by delegating responsibility” for “a public purpose” to “another party.” *See Milo v. Cushing Mun. Hosp.*,



861 F.2d 1194, 1197 (10th Cir. 1988) (quoting *Jatoi v. Hurst-Euleless-Bedford Hosp. Auth.*, 807 F.2d 1214, 1221–22 (5th Cir.), *modified on other grounds*, 819 F.2d 545 (5th Cir. 1987)).

But even if the provision of free, public education were not a traditionally exclusive public function, a private entity also may be “deemed a state actor when the government has outsourced one of its constitutional obligations to” the entity. *Halleck*, 139 S. Ct. at 1929 n.1. For example, in *West v. Atkins*, 487 U.S. 42, 56 (1988), the Supreme Court held that a physician who contracted with the state to provide medical services to prison inmates was a state actor even though he was not a state employee, because the state had “delegated” to the doctor “its constitutional duty to provide adequate medical treatment to those in its custody.” Several provisions of the Oklahoma Constitution obligate the state to provide free, public education. *See* Art. I, § 5; Art. XI, §§ 2, 3; Art. XIII, § 1. As Oklahoma charter schools perform a duty that the State is constitutionally mandated to perform—provision of free, public education—they are state actors.

**3. The Tenth Circuit and numerous other courts have concluded that charter schools are governmental entities and state actors.**

Consistently with the analysis above, the Tenth Circuit has treated charter schools as governmental entities. *See Brammer-Hoelter v. Twin Peaks Charter Acad.*, 602 F.3d 1175, 1188 (10th Cir. 2010) (charter school was “a local governmental entity” and therefore was subject to the same legal rules that apply to other governmental entities in lawsuits alleging violations of constitutional rights); *Coleman v. Utah State Charter Sch. Bd.*, 673 F. App’x 822, 830 (10th Cir. 2016) (employees of charter school were “government officials”); *accord Dillon v. Twin Peaks Charter Acad.*, 241 F. App’x 490, 496–97 (10th Cir. 2010); *see also Milonas v. Williams*, 691 F.2d 931, 939–40 (10th Cir. 1982) (private school for behaviorally troubled boys was state actor because it received substantial public funding, it was

significantly regulated by state, and many of boys were placed at school by school districts or juvenile courts). Many other federal courts across the country, including the en banc Fourth Circuit and panels of the Third and Ninth Circuits, have treated charter schools as governmental entities or other state actors as well. *See Peltier*, 37 F.4th at 115–23; *Fam. C.L. Union v. Dep’t of Child. & Fams.*, 837 F. App’x 864, 869 (3d Cir. 2020); *Nampa Classical Acad. v. Goesling*, 447 F. App’x 776, 777–78 (9th Cir. 2011).<sup>3</sup>

Ignoring most of these authorities, Defendants rely on the Supreme Court’s decision in *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982), to assert that Oklahoma charter schools are not state actors. (Board Br. 26; State Defs.’ Br. 12–13; St. Isidore Br. 17–19.) But there, the Supreme Court ruled that a *private* school for troubled youths was not a state actor for purposes of employment-related claims even though it received substantial governmental funding, was heavily regulated, and obtained most of its students through referrals from public schools. 457 U.S. at 832–35, 843. As discussed above, Oklahoma charter schools are public schools, not private ones. 70 O.S. § 3-132(D). They are created through governmental

---

<sup>3</sup> *See also Patrick v. Success Acad. Charter Schs.*, 354 F. Supp. 3d 185, 209 n.24 (E.D.N.Y. 2018); *United States v. Minn. Transitions Charter Schs.*, 50 F. Supp. 3d 1106, 1120 (D. Minn. 2014); *Pocono Mountain Charter Sch. v. Pocono Mountain Sch. Dist.*, 908 F. Supp. 2d 597, 604–05 (M.D. Pa. 2012); *Riester*, 257 F. Supp. 2d at 972–73; *Daugherty v. Vanguard Charter Sch. Acad.*, 116 F. Supp. 2d 897, 906 (W.D. Mich. 2000); *Jones v. Sabis Educ. Sys., Inc.*, 52 F. Supp. 2d 868, 876, 879 (N.D. Ill. 1999); *Lengele v. Willamette Leadership Acad.*, No. 6:22-cv-01077-MC, 2022 WL 17057894, at \*4 (D. Or. Nov. 17, 2022); *Falash v. Inspire Acads., Inc.*, No. 1:14-cv-00223-REB, 2016 WL 4745171, at \*2, 6 (D. Idaho Sept. 12, 2016); *Meadows v. Lesh*, No. 10-CV-00223(M), 2011 WL 4744914, at \*1–2 (W.D.N.Y. Oct. 6, 2011); *ACLU of Minn. v. Tarek Ibn Ziyad Acad.*, No. 09-138 (DWF/JJG), 2009 WL 2215072, at \*9–10 (D. Minn. July 9, 2009); *Jordan v. N. Kane Educ. Corp.*, No. 08 C 4477, 2009 WL 509744, at \*2–3 (N.D. Ill. Mar. 2, 2009); *Scaggs v. N.Y. Dep’t of Educ.*, No. 06-CV-0799 (JFB)(VVP), 2007 WL 1456221, at \*12–13 (E.D.N.Y. May 16, 2007); *Matwijko v. Bd. of Trs. of Glob. Concepts Charter Sch.*, No. 04-CV-663A, 2006 WL 2466868, at \*3–5 (W.D.N.Y. Aug. 24, 2006); *Irene B. v. Phila. Acad. Charter Sch.*, No. Civ.A. 02-1716, 2003 WL 24052009, at \*11 (E.D. Pa. Jan. 29, 2003).

action (*see* 70 O.S. §§ 3-132(A), 3-145.1), unlike the school in *Rendell-Baker* (*see* 457 U.S. at 832). They perform the traditionally exclusive public function of providing free *public* education (*see Peltier*, 37 F.4th at 119), while the school in *Rendell-Baker* was for “students who could not be served by traditional public schools,” a function “that until recently the State had not undertaken” (457 U.S. at 842). Moreover, the educational functions of Oklahoma charter schools are heavily regulated (*see supra* § III(A)(1)), but “regulators showed relatively little interest in the [*Rendell-Baker*] school’s personnel matters,” and the Supreme Court’s holding in the case addressed only whether the school was a state actor with respect to employment claims (*see* 457 U.S. at 841–42).

Other cases that Defendants cite are inapposite for similar reasons. In *Caviness v. Horizon Community Learning Center*, 590 F.3d 806, 814 (9th Cir. 2010), the court emphasized that the claims against the charter school there were employment-law claims, and that “a private entity may be designated a state actor for some purposes but still function as a private actor in other respects.” *Logiodice v. Trustees of Maine Central Institute*, 296 F.3d 22, 24–25 (1st Cir. 2002), and *Bittle v. Oklahoma City University*, 2000 OK CIV APP 66, ¶ 18, 6 P.3d 509, were lawsuits against private schools, not charter schools. *Robert S. v. Stetson School, Inc.*, 256 F.3d 159, 162, 166 (3d Cir. 2001), was also a suit against a private school, and far from performing a traditionally exclusive public function, the school performed services provided *only* by private schools.

Defendants also rely (Board Br. 26–27; St. Isidore Br. 20) on *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974), and *Polk County v. Dodson*, 454 U.S. 312 (1981), for the proposition that an entity is not automatically a state actor just because it is labelled as “public.” In *Jackson*, the U.S. Supreme Court ruled that “a utility company which [was]

privately owned and operated” and merely received from the state a certificate allowing it to deliver electricity to a particular geographic area was not a state actor. 419 U.S. at 346, 350. Oklahoma charter schools, by contrast, are statutorily treated as—and function as—governmental bodies in numerous ways. *See supra* § III(A)(1). In *Polk*, the Court concluded that a public defender is not a state actor when acting as counsel in a criminal proceeding—for the unique reason that they are acting as an adversary to the state—but indicated that a public defender could be a state actor when exercising administrative functions. *See* 454 U.S. at 318–20, 325. Public charter schools, on the other hand, fulfill the state’s educational functions (70 O.S. § 3-131(A)) and are not charged with obstructing them.

**B. Because St. Isidore is a governmental entity and a state actor, it may not challenge under the Free Exercise Clause state law that governs the school.**

Because Oklahoma charter schools are governmental entities and state actors, they have no right under the Free Exercise Clause to present programming—religious or other—that state law prohibits. Oklahoma charter schools are created by state law through charters granted by other governmental entities to which the schools are subordinate. *See* 70 O.S. § 3-132(A), (D). “[S]ubordinate unit[s] of government . . . ‘ha[ve] no privileges or immunities under the federal constitution which [they] may invoke in opposition to the will of [their] creator.’” *Ysursa v. Pocatello Educ. Ass’n*, 555 U.S. 353, 363 (2009) (quoting *Williams v. Mayor of Baltimore*, 289 U.S. 36, 40 (1933)). For this reason, the Ninth Circuit ruled that an Idaho charter school had no right to assert federal constitutional claims against an Idaho policy that prohibited “the use of sectarian or denominational texts in public schools.” *See Nampa Classical*, 447 F. App’x at 777–78.

In addition, when a state actor speaks in the course of exercising their official duties, their speech is government speech. *See Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006);

*Nampa Classical*, 447 F. App'x at 778. A person delivering government speech has no right under the First Amendment, including its Free Exercise Clause, to deliver speech that a statute or a governmental policy prohibits. See *Pleasant Grove City v. Summum*, 555 U.S. 460, 467 (2009); *Gundy v. City of Jacksonville*, 50 F.4th 60, 80–81 (11th Cir. 2022); *Fields v. Speaker of Pa. House of Representatives*, 936 F.3d 142, 158–60 (3d Cir. 2019).

Thus, as governmental entities and state actors, Oklahoma charter schools have no right to challenge under the Free Exercise Clause provisions of Oklahoma law that govern them, including state constitutional and statutory prohibitions against religious programming.

**C. Even if St. Isidore could assert Free Exercise Clause rights, they do not supersede the state prohibitions on which Plaintiffs rely.**

Even if St. Isidore could assert federal free-exercise rights, they would not override any of the legal prohibitions that Plaintiffs invoke. Because Plaintiffs' first through fourth claims are all based on constitutional provisions, statutes, and regulations that are neutral with respect to religion, the Free Exercise Clause cannot defeat those claims. And with respect to Plaintiffs' fifth claim, the Free Exercise Clause cannot help St. Isidore either, because the federal Establishment Clause (as well as the Free Exercise Clause itself!) prohibits public schools from indoctrinating students in a religion, and because the Establishment Clause bars states from sending institutions direct funding for religious activity.

**1. Plaintiffs' first through fourth claims rely solely on religion-neutral prohibitions.**

As the Supreme Court recently reaffirmed, the Free Exercise Clause “does not mean that religious institutions enjoy a general immunity from secular laws.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020). Thus, laws that are neutral toward religion and generally applicable do not violate the Free Exercise Clause even if they

burden religious conduct. *Emp. Div. v. Smith*, 494 U.S. 872, 879 (1990). As Justice Scalia explained for the Court in *Smith*, a contrary rule would render “professed doctrines of religious belief superior to the law of the land,” which would “in effect . . . permit every citizen to become a law unto himself.” *Id.* (quoting *Reynolds v. United States*, 98 U.S. 145, 166–67 (1878)). All the prohibitions on which Plaintiffs rely in their first through fourth claims are religion-neutral and generally applicable, so the Free Exercise Clause cannot give St. Isidore any right to disregard them.

The State Defendants grievously misstate the law in apparently arguing (State Defs.’ Br. 7) that strict scrutiny is triggered under the Free Exercise Clause because the Board exercises discretion in deciding which charter schools to sponsor. The exercise of governmental discretion results in strict scrutiny only when the government provides discretionary, individualized *exemptions* from otherwise-applicable laws but denies them to religious objectors. *See Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1878 (2021). Here, none of the constitutional clauses, statutes, or regulations on which Plaintiffs rely allow for discretionary exemptions.

In any event, even if the prohibitions raised in Plaintiffs’ first through fourth claims did somehow trigger strict scrutiny under the Free Exercise Clause, they would survive that scrutiny. For those prohibitions—such as the ones against discrimination in admissions and employment—serve compelling state interests through the least restrictive means. *See, e.g., Roberts v. U.S. Jaycees*, 468 U.S. 609, 624, 628–29 (1984); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 733 (2014).

Invoking the unconstitutional-conditions doctrine, St. Isidore asserts (St. Isidore Br. 21, 23 n.3) that Oklahoma may not require St. Isidore to relinquish its free-exercise rights as

a condition of charter-school funding. But this doctrine does not apply here for two reasons. First, for the doctrine to apply, the claimant must establish that the condition at issue is actually in conflict with the claimant’s constitutional rights. *See Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 570 U.S. 205, 213 (2013). As explained above, the legal prohibitions raised in Plaintiffs’ first through fourth claims are all religion-neutral and therefore do not violate St. Isidore’s free-exercise rights. Second, even if the conditions in a governmental funding program restrict the exercise of a funded entity’s otherwise-existing constitutional rights, the unconstitutional-conditions doctrine only prohibits the government from using a funding or benefits program to regulate a recipient’s constitutionally protected activity *outside* that program. *See Rust v. Sullivan*, 500 U.S. 173, 196–98 (1991); *Regan v. Taxation with Representation of Wash.*, 461 U.S. 540, 544–45 (1983). Here, St. Isidore was created by, is comprised of, and is controlled by two entities—the Archdiocese of Oklahoma City and the Diocese of Tulsa (*see* Pet. ¶¶ 43–44, 173–74)—and those real parties in interest are free to exercise their religious rights through their many private schools without needing to comply with the rules applicable to public charter schools.

The Board Defendants and St. Isidore further contend (Board Br. 17; St. Isidore Br. 23) that the “ministerial exception” defeats Plaintiffs’ claims concerning St. Isidore’s plans to discriminate in employment. But that exception has never applied to public employment; nor could it. The ministerial exception, rooted in the First Amendment’s Religion Clauses, forecloses certain employees of *private* religious organizations from bringing employment discrimination claims against their employers. *See Morrissey-Berru*, 140 S. Ct. at 2061. But because St. Isidore is a governmental entity and a state actor, it must comply with the U.S. Constitution. The U.S. Constitution’s Free Exercise and Establishment Clauses bar state

actors from discriminating based on religion, and its Equal Protection Clause bars them from discriminating based on religion, sexual orientation, and gender identity. *See supra* at 24–25.

**2. Even if the prohibitions underlying Plaintiffs’ fifth claim trigger strict scrutiny under the Free Exercise Clause, the prohibitions satisfy it.**

Even if the constitutional provisions and statutes raised in Plaintiffs’ fifth claim—which challenges St. Isidore’s plan to teach a religious curriculum—result in strict scrutiny under the Free Exercise Clause, they meet it. Compliance with the federal Establishment Clause is a compelling governmental interest that satisfies strict scrutiny under other provisions of the First Amendment. *See Cap. Square Rev. & Advisory Bd. v. Pinette*, 515 U.S. 753, 761–62 (1995) (plurality opinion of Scalia, J., joined by Rehnquist, C.J., Kennedy, J., and Thomas, J.); *accord id.* at 783 (O’Connor, J., concurring in part and concurring in the judgment, joined by two other Justices); *Widmar v. Vincent*, 454 U.S. 263, 271 (1981); *see also Lee v. Weisman*, 505 U.S. 577, 587 (1992). The Establishment Clause prohibits state actors from teaching religion in the classroom or otherwise promoting religion to students or coercing them to take part in religious activity. *See supra* at 32–33. In addition, the Free Exercise Clause itself prohibits state actors from “coerc[ing] participation in religious programming.” *Janny*, 8 F.4th at 911; *see also id.* at 912, 916–18. Because St. Isidore is a state actor, the federal constitutional prohibitions against public schools pushing any religion on students apply to it and defeat any argument that the Free Exercise Clause gives it a right to do so.

And even if St. Isidore were not a state actor, the Establishment Clause would still prohibit Oklahoma from funding religious education or activity at a charter school. The Establishment Clause has long barred governmental bodies from directly providing public funds to institutions that use those funds to support religious activities, including religious



instruction. *See, e.g., Agostini v. Felton*, 521 U.S. 203, 228–30 (1997); *Bowen v. Kendrick*, 487 U.S. 589, 621 (1988); *Roemer v. Bd. of Pub. Works*, 426 U.S. 736, 755 (1976) (plurality opinion); *Comm. for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 780 (1973); *Hunt v. McNair*, 413 U.S. 734, 743 (1973).

To be sure, there is a narrow exception to the Establishment Clause bar against tax funding of religious activity: Public funds may support religious education when “a government aid program is neutral with respect to religion, and provides assistance directly to a broad class of citizens who, in turn, direct government aid to religious schools *wholly* as a result of their own genuine and independent private choice.” *See Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002) (emphasis added). For this “true private choice” exception to apply, “government aid” must “reach[ ] religious schools *only* as a result of the genuine and independent choices of private individuals.” *Id.* at 649 (emphasis added). But the funding of Oklahoma charter schools does not satisfy the “true private choice” exception, because the funds are paid directly from the state to the schools, and the funding amounts are not based solely on the number of students served and are instead determined through a complex formula that incorporates a number of other factors. *See supra* at 36.

Contrary to what the State Defendants’ brief suggests (at 6), the Establishment Clause’s ban against direct public funding of religious instruction was not disturbed by the Supreme Court’s statement in *Kennedy* that “the Establishment Clause must be interpreted by ‘reference to historical practices and understandings’” in a manner that “‘faithfully reflect[s] the understanding of the Founding Fathers’” (142 S. Ct. at 2428–29 (quoting *Greece*, 572 U.S. at 576–77)). The Establishment Clause’s prohibition against direct state aid to the religious activities of religious institutions was first recognized in *Everson v. Board of*

*Education*, 330 U.S. 1, 8–16 (1947), based on extensive historical analysis. *Kennedy* did not overrule *Everson* or any of the later cases—such as *Bowen*, 487 U.S. at 621, and *Agostini*, 521 U.S. at 228–30—that reaffirmed that direct public funding of religious activities is unconstitutional. Furthermore, under *Agostini*, only the Supreme Court can overrule its own precedents, even when there is an argument that a precedent’s underpinnings have been undermined by a later Supreme Court decision. *See* 521 U.S. at 237.

Thus, the need to comply with the Establishment Clause here satisfies any level of scrutiny under the Free Exercise Clause for two reasons: The Establishment Clause prohibits governmental entities and state actors, including public charter schools, from inculcating religion; and it prohibits direct public funding of religious instruction. Accordingly, the three principal cases on which Defendants rely for their free-exercise argument—*Carson ex rel. O.C. v. Makin*, 142 S. Ct. 1987 (2022); *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020); and *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017)—are inapplicable here because the funding upheld in each of these cases would *not* have violated the Establishment Clause. None of the religious schools involved in the three cases were state actors. In *Carson* and *Espinoza*, the programs in controversy satisfied the “true private choice” exception. *See Carson*, 142 S. Ct. at 1994, 1997; *Espinoza*, 140 S. Ct. at 2254. And in *Trinity Lutheran*, the funding would not have been put to religious uses. *See* 137 S. Ct. at 2017–19, 2024 n.3.

**D. Article I, § 2 of the Oklahoma Constitution does not provide a defense.**

St. Isidore’s argument (St. Isidore Br. 11–12) that Article I, § 2 of the Oklahoma Constitution overrides Plaintiffs’ claims fails for the same reasons as Defendants’ Free Exercise Clause argument. Oklahoma courts, though they are not bound by it, generally look

to federal caselaw to determine whether an entity is a state actor under state law. *See, e.g., Oklahomans for Life, Inc. v. State Fair of Okla., Inc.*, 1981 OK 101, ¶¶ 16–18 & nn.13–15, 634 P.2d 704. The same analysis that demonstrates that St. Isidore is a state actor under federal law shows that it is a state actor under state law as well. As explained above, because St. Isidore is a state actor under state law, multiple provisions of the Oklahoma Constitution—including Article I, § 2 itself—prohibit St. Isidore from discriminating in admissions and employment and from indoctrinating its students in a religion. *See supra* §§ II(B), II(E).

**E. The Oklahoma Religious Freedom Act does not provide a defense.**

Defendants also rely on the Oklahoma Religious Freedom Act (“ORFA”). (Board Br. 29–30; St. Isidore Br. 12–13; State Defs.’ Br. 11–12.) ORFA provides that “no governmental entity shall substantially burden a person’s free exercise of religion . . . unless it demonstrates that application of the burden to the person is [1] [e]ssential to further a compelling governmental interest; and [2] [t]he least restrictive means of furthering that compelling governmental interest.” 51 O.S. § 253. ORFA was recently amended by S.B. 404, which Governor Stitt signed into law on May 2, 2023. The amendment provides 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.” S.B. No. 404, § 1. For several reasons, ORFA provides no defense here.

First, the Oklahoma Constitution prohibits the existence of a charter school that discriminates in admissions, discipline, and employment and presents a religious curriculum.

*See supra* §§ II(B), II(E). Of course, a state statute cannot override the state constitution. *See, e.g., Muskogee Indus. Dev. Co. v. Ayres*, 1916 OK 125, 154 P. 1170, 1171.

Second, the ORFA amendment prohibits denial of state funding “based *solely* on the religious character or affiliation of the person or entity.” S.B. No. 404, § 1 (emphasis added). Conversely, therefore, it is not a substantial burden to deny a religious entity public funding on a basis other than the entity’s religious status. Denying St. Isidore state funding because of its plans to teach a religious curriculum would be based on its intended *conduct*, not on its “religious character or affiliation,” as an entity can be religious without engaging in religious indoctrination of the people whom it serves. Similarly, enjoining the funding of St. Isidore based on any of the other grounds Plaintiffs present—such as the school’s intent to discriminate and to be controlled by its educational management organization—would plainly not be a denial “based solely on the religious character or affiliation” of the school.

Indeed, the ORFA amendment’s legislative history confirms that it was intended to apply *only* to denials of funding based *solely* on an entity’s religious status. The bill’s House sponsor, Representative Jon Echols (R-90), repeatedly made this clear during floor debate in the House. He explained that a governmental official considering an application for public funding “can’t solely discriminate based on religion, but there are a million other reasons you can say no.” House Floor Afternoon Session, 59 Legis., 2:20:10–2:20:17 (Apr. 25, 2023, 1:30 p.m.), <https://bit.ly/3MOfPY7>. He gave examples of grounds on which public officials can still deny funding under the amendment: “You can discriminate based on proselytization. You can discriminate based on they don’t have the right system set in place to follow whatever the rules are. . . . You absolutely could deny someone who violated some other antidiscrimination law that existed.” *Id.* at 2:20:25–2:20:32, 2:29:36–2:29:42. Likewise, before the State Powers

Committee, Representative Echols noted that religious entities would have to “follow the same rules as everyone else.” State Powers Committee, 9:10:37–9:10:42 (Apr. 5, 2023, 9:00 a.m.), <https://bit.ly/3MOFpY7>. St. Isidore’s desire to disregard those rules on religious grounds thus is not protected by the amendment to ORFA.

Third, even if a denial of state funding to St. Isidore were a “substantial burden” under the amended statute (which it is not), the denial would not violate the amended statute so long as it furthered a compelling governmental interest through the least restrictive means. 51 O.S. § 253(B). Adhering to the state constitutional provisions on which Plaintiffs rely is a compelling governmental interest that cannot be pursued through any means other than actually complying with the provisions. *Cf., e.g., Muskogee Indus.*, 154 P. at 1171. And the statutory and regulatory prohibitions on which Plaintiffs rely, such as the prohibitions against discrimination in admissions and employment, also serve compelling state interests through the least restrictive means. *See, e.g., Roberts*, 468 U.S. at 624, 628–29; *Burwell*, 573 U.S. at 733.

Finally, “[w]here statutes conflict in part, the one last passed, which is the later declaration of the Legislature, should prevail.” *Okla. Call for Reprod. Just. v. Drummond*, 2023 OK 24, ¶ 14, 526 P.3d 1123. The Charter Schools Act was amended by S.B. 516 on June 5, 2023, one month *after* the ORFA amendment. The amendment to the Charter Schools Act modified several provisions of 70 O.S. § 3-136(A) but reenacted the requirement that “[a] charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations.” S.B. No. 516, § 7. If the Legislature believed that the ORFA amendment superseded this requirement, it would not have reenacted the requirement one month later.


#### **IV. Plaintiffs' requested relief is not overbroad.**

St. Isidore argues (St. Isidore Br. 29–30) that Plaintiffs' request for relief that would prevent St. Isidore from receiving state funding and operating as a charter school is overbroad because the Court could order St. Isidore to fix some of the deficiencies that Plaintiffs identify. But the deficiencies in St. Isidore's application are so fundamental and widespread that it is inconceivable that they could all be fixed. In any event, the scope of relief is properly addressed at the remedy stage, and it is premature to address it on a motion to dismiss. *See, e.g., Dingxi Longhai Dairy, Ltd. v. Becwood Tech. Grp. L.L.C.*, 635 F.3d 1106, 1108 (8th Cir. 2011) (“[T]he selection of an improper remedy in the . . . demand for relief will not be fatal to a party's pleading if the statement of the claim indicates the pleader may be entitled to relief of some other type.” (quoting 5 Wright & Miller, *Federal Practice & Procedure: Civil* § 1255, at 508–09 (3d ed. 2004)); *Bontkowski v. Smith*, 305 F.3d 757, 762 (7th Cir. 2002) (“[E]ven if . . . [the plaintiff] is seeking relief to which he's not entitled, this would not justify dismissal of the suit.”).

#### **CONCLUSION**

For the foregoing reasons, Defendants' three Motions to Dismiss should be denied.

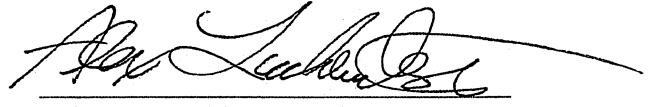
Respectfully submitted on October 23, 2023.



Benjamin H. Odom, OBA No. 10917  
John H. Sparks, OBA No. 15661  
Michael W. Ridgeway, OBA No. 15657  
Lisa M. Millington, OBA No. 15164  
ODOM & SPARKS, PLLC  
2500 McGee Drive, Suite 140  
Norman, OK 73072  
(405) 701-1863  
Fax: (405) 310-5394  
*odomb@odomsparks.com*  
*sparksj@odomsparks.com*  
*ridgewaym@odomsparks.com*  
*millingtonl@odomsparks.com*

J. Douglas Mann, OBA No. 5663  
1116 E. 21st Place  
Tulsa, OK 74114  
(918) 742-6188  
*douglasmann66@icloud.com*

Robert Kim\*  
Jessica Levin\*  
Wendy Lecker\*  
EDUCATION LAW CENTER  
60 Park Place, Suite 300  
Newark, NJ 07102  
(973) 624-1815  
*RKim@edlawcenter.org*  
*JLevin@edlawcenter.org*  
*WLecker@edlawcenter.org*



Alex J. Luchenitser\*  
Kenneth D. Upton, Jr., OBA No. 12906  
Kalli A. Joslin\*  
Jenny Samuels\*\*  
Sarah Taitz\*\*  
AMERICANS UNITED FOR  
SEPARATION OF CHURCH AND  
STATE  
1310 L Street NW, Suite 200  
Washington, DC 20005  
(202) 466-7306 / (202) 898-2133  
*luchenitser@au.org*  
*upton@au.org*  
*joslin@au.org*  
*samuels@au.org*  
*taitz@au.org*

Daniel Mach\*  
Heather L. Weaver\*  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
915 15th Street, NW, Suite 600  
Washington, DC 20005  
(202) 675-2330  
*dmach@aclu.org*  
*hweaver@aclu.org*

Patrick Elliott\*  
FREEDOM FROM RELIGION  
FOUNDATION  
P.O. Box 750  
Madison, WI 53701  
(608) 256-8900  
*pellott@ffrf.org*

\*Appearing *pro hac vice*.

\*\**Pro hac vice* application pending.

*Attorneys for all Plaintiffs*

## CERTIFICATE OF SERVICE

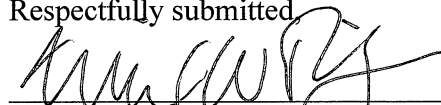
Pursuant to the Stipulation Concerning Electronic Service filed on September 15, 2023, this is to certify that on October 23, 2023, a true and correct copy of the foregoing document has been served via email to the following:

Philip A. Sechler (*psechler@adflegal.org*)  
Caleb Dalton (*cdalton@adflegal.org*)  
Hailey Sexton (*hsexton@adflegal.org*)  
Cheryl Plaxico (*cplaxico@plaxico.law*)  
*Counsel for defendants Statewide Virtual Charter School Board and its members*

Bryan Cleveland (*Bryan.Cleveland@sde.ok.gov*)  
Hiram Sasser (*hsasser@firstliberty.org*)  
Holly M. Randall (*hrandall@firstliberty.org*)  
Anthony J. Ferate (*ajferate@spencerfane.com*)  
Andrew W. Lester (*alester@spencerfane.com*)  
*Counsel for defendants Oklahoma State Department of Education and State Superintendent of Public Instruction*

Michael H. McGinley (*michael.mcginley@dechert.com*)  
Steven A. Engel (*steven.engel@dechert.com*)  
M. Scott Proctor (*scott.proctor@dechert.com*)  
John Meiser (*jmeiser@nd.edu*)  
Michael R. Perri (*mrperri@perridunn.com*)  
Socorro Adams Dooley (*sadooley@perridunn.com*)  
*Counsel for defendant St. Isidore of Seville Catholic Virtual School*

Respectfully submitted,



Michael W. Ridgeway, OBA No. 15657  
ODOM & SPARKS, PLLC  
2500 McGee Drive, Suite 140  
Norman, OK 73072  
(405) 701-1863  
Fax: (405) 310-5394  
*ridgewaym@odomsparks.com*



Exhibit P  
Contract for Charter School Sponsorship  
between Oklahoma Statewide Virtual  
Charter School Board and St. Isidore of  
Seville Catholic Virtual School  
(October 16, 2023)

**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

**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 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 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 of ten (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 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.

**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.

**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. § 18-200.1, 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 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 1<sup>st</sup> 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.

**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 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.

**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.

**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").

**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 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.

**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 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 1<sup>st</sup> and end on June 30<sup>th</sup> 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 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 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.

**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 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. 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 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.

## EXECUTION COPY

**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.

**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.

**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:

## EXECUTION COPY

- 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.
- 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.

**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.

**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 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.

**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 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.

**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 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(B). On or before August 1<sup>st</sup> of the fiscal year, the Charter School agrees to provide the Sponsor documentation of all compensation (salaries, hourly wages, 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(D), the Charter School may enter into contracts, sue and be sued.

**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 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 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.

**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.

**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.

**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

**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 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., d/b/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

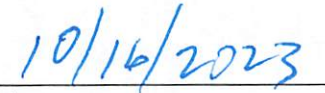
**EXECUTION COPY**


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.

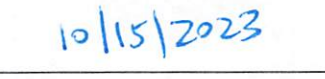
**12.8** The individual(s) signing this Contract on behalf of the Charter School warrant and represent that they are authorized to execute this instrument on behalf of the Charter School.

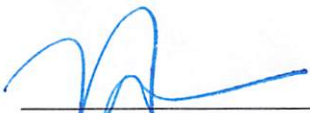
**Sponsor**


  
\_\_\_\_\_  
Mr. Brian Bobek, Vice Chairperson,  
Statewide Virtual Charter School Board

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Dr. Scott Strawn, Member  
Statewide Virtual Charter School Board

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Ms. Nellie Tayloe Sanders, Member  
Statewide Virtual Charter School Board

  
\_\_\_\_\_  
Date

**Governing Board of Charter School**

\_\_\_\_\_  
Michael Scaperlanda, Chairperson  
St. Isidore of Seville Catholic Virtual School

\_\_\_\_\_  
Date

**EXECUTION COPY**

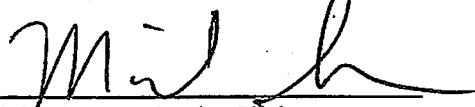
execution of this Contract that could reasonably be foreseen to limit or otherwise adversely impact the operations of the Charter School and/or the governing board of the Charter School or the ability of the parties to discharge their duties under this Contract.

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.

**Sponsor**

**Governing Board of Charter School**

\_\_\_\_\_  
Mr. Brian Bobek, Vice Chairperson,  
Statewide Virtual Charter School Board

  
\_\_\_\_\_  
Michael Scaperlanda, Chairperson  
St. Isidore of Seville Catholic Virtual School

\_\_\_\_\_  
Date

10/13/23  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Dr. Scott Strawn, Member  
Statewide Virtual Charter School Board

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ms. Nellie Tayloe Sanders, Member  
Statewide Virtual Charter School Board

\_\_\_\_\_  
Date

**CERTIFIED COPY**  
AS FILED OF RECORD  
IN DISTRICT COURT

OCT 23 2023

**RICK WARREN** COURT CLERK  
Oklahoma County  
