

No. 24-394 Vide No. 24-396

IN THE
Supreme Court of the United States

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

V.

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

(For Continuation of Caption, See Inside Cover)

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

**AMICI CURIAE BRIEF OF THE JEWISH
COALITION FOR RELIGIOUS LIBERTY,
ABRAHAM KNOWLEDGE ACADEMY, AND THE
RELIGIOUS FREEDOM INSTITUTE,
SUPPORTING PETITIONERS**

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ST. ISIDORE OF SEVILLE CATHOLIC VIRTUAL SCHOOL,
Petitioner,

v.

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

QUESTIONS PRESENTED

1. Whether the academic and pedagogical choices of a privately owned and run school constitute state action simply because it contracts with the state to offer a free educational option for interested students.

2. Whether a state violates the Free Exercise Clause by excluding privately run religious schools from the state's charter-school program solely because the schools are religious, or whether a state can justify such an exclusion by invoking anti-establishment interests that go further than the Establishment Clause requires.

TABLE OF CONTENTS

QUESTIONS PRESENTED i
TABLE OF AUTHORITIES iii
INTEREST OF THE *AMICI CURIAE* 1
SUMMARY OF ARGUMENT..... 2
ARGUMENT 4
 I. The Attorney General’s actions to thwart St. Isidore’s charter are tainted by explicit discrimination against religious minorities in violation of the First Amendment. 4
 II. Educational choice—including religious options—is beneficial and consistent with American ideals...... 10
CONCLUSION 17

TABLE OF AUTHORITIES

Cases

| | |
|--|----------|
| <i>Carson v. Makin</i> , 596 U.S. 767 (2022) | 10 |
| <i>Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah</i> , 508 U.S. 520 (1993) | 7 |
| <i>Espinoza v. Montana Department of Revenue</i> , 591 U.S. 464 (2020) | 10 |
| <i>Fulton v. City of Philadelphia</i> , 141 S. Ct. 1868 (2021) | 7 |
| <i>Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission</i> , 584 U.S. 617 (2018) | 3, 7, 8 |
| <i>Pierce v. Society of Sisters</i> , 268 U.S. 510 (1925) | 11 |
| <i>Trump v. Hawaii</i> , 585 U.S. 667 (2018) | 8, 9, 10 |

Other Authorities

| | |
|---|----|
| Abraham Education, <i>Applying for an Islamic Charter School in Minnesota</i> (Oct. 18, 2024), https://bit.ly/aka-app | 15 |
| Abraham Knowledge Academy, Letter of Intent to Apply, https://drive.google.com/file/d/1eBwnvcaye1GZiq- N5OV53yDJhX1e3kcY/view (last visited Oct. 29, 2024)..... | 15 |

- Al-Qalam Academy, *About Us*,
<http://www.alqalamus.org/educational-institution-about-us> (last visited Oct. 29, 2024) 14
- Amanda Koehn, “Orthodox educators praise school choice,” *Cleveland Jewish News* (Feb. 10, 2017) .. 12
- Anti-Defamation League, *School & Workplace Accommodations for the Jewish High Holidays: Know Your Rights and Obligations*,
<https://www.adl.org/sites/default/files/SWAJHH.pdf>
 12
- CAIR Oklahoma, *Guide to Islam and Muslims in Oklahoma*,
<https://www.cairoklahoma.com/islamguide/> 5
- Houston Quran Academy, *HQA Vision and Mission*,
<https://hquranacademy.org/> (last visited Oct. 29, 2024) 14
- Letter from Attorney General Gentner Drummond to Rebecca L. Wilkinson, Ed.D. (Feb. 23, 2023),
https://oklahoma.gov/content/dam/ok/en/oag/documents/news-documents/2023/march/rebecca_wilkinson_ag_opinion_2022-7_virtual_charter_schools.pdf..... 3, 5
- Margaret F. Brinig & Nicole S. Garnett, *Catholic Schools, Urban Neighborhoods, and Education Reform*, 85 *Notre Dame L. Rev.* 887 (2010) 13
- Mercy School Institute, *Welcome from the Principal*,
<https://www.mercyschool.com/welcome-from-the-principal> (last visited Oct. 29, 2024) 14
- Nader Al-Refai, *Muslim schools and the teaching of citizenship*, University of Huddersfield (2007) 13

| | |
|---|-------|
| Nadia S. Ansary, <i>Religious-Based Bullying: Insights on Research and Evidence-Based Best Practices from the National Interfaith Anti-Bullying Summit</i> , Institute for Social Policy and Understanding (2018)..... | 13 |
| Pet.’s Br. in Supp. of Appl. to Assume Original Juris. at 1, <i>Drummond v. Okla. Statewide Virtual Charter Sch. Bd.</i> , No. 121,694 (Oct. 20, 2023) | 6 |
| Press Release, Office of the Oklahoma Attorney General, Attorney General Drummond comments on St. Isidore filing (Oct. 7, 2024), https://oklahoma.gov/oag/news/newsroom/2024/october/attorney-general-drummond-comments-on-st-isidore-filing.html | 6, 9 |
| Press Release, Office of the Oklahoma Attorney General, Drummond files lawsuit against state virtual charter board members for violating religious liberty of Oklahoma taxpayers (Oct. 20, 2023), https://oklahoma.gov/oag/news/newsroom/2023/october/drummond-files-lawsuit-against-state-virtual-charter-board-membe.html | 6, 10 |
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| Uriel Heilman, “Why some public school parents are switching to Jewish day schools,” Jewish Telegraph Agency (Aug. 28, 2015)..... | 11 |

INTEREST OF THE *AMICI CURIAE*¹

The Jewish Coalition for Religious Liberty (“JCRL”) is a non-denominational organization of Jewish communal and lay leaders, seeking to protect the ability of Americans to freely practice their faith. Since its founding, JCRL has recruited a volunteer network of accomplished attorneys, submitted legal briefs, and written many op-eds in Jewish and general media outlets in defense of religious liberty. One of those op-eds directly addressed Attorney General Drummond’s position in this case.

The Abraham Knowledge Academy (AKA) is a non-profit association that is in the process of creating a charter school in the Minneapolis, Minnesota, metropolitan area. The initiative was founded after area Muslim leaders conducted an intensive survey of parents that revealed a strong aspiration for the establishment of accessible Islamic schools and a willingness and eagerness among parents to invest in their children's education, albeit with concerns about affordability. In response to this demand, AKA initially sought to establish the first Islamic Charter School in Minnesota, committed to enhancing pupil learning and student achievement through a unique, holistic educational approach, integrating a knowledge-based curriculum with the teachings and

¹ Rule 37 statement: No counsel for any party authored any part of this brief, and no person or entity other than Amici funded its preparation or submission. All parties received timely notice of Amici’s intent to file this brief.

values of Islam, with an emphasis on virtue ethics and good citizenship. With the state government currently prohibiting religious schools from participating in the charter school program, AKA is focused on establishing a school offering the same academic excellence but with religion taught from a purely academic standpoint.

The Religious Freedom Institute (RFI) is a non-profit organization based in Washington D.C. that defends religious freedom in the United States and abroad. Its Islam and Religious Freedom Action Team (IRF) serves as a Muslim voice for religious freedom grounded in the traditions of Islam. To this end, the Team engages in research, education, and advocacy on core issues including freedom from coercion in religious exercise and equal citizenship for people of diverse faiths.

SUMMARY OF ARGUMENT

Amici endorse and support petitioners' persuasive arguments regarding why allowing St. Isidore to exist is permissible under both federal and Oklahoma law. In this brief, Amici will offer their unique perspective on the Attorney General's hostile comments regarding religious minorities and explain how his position would disproportionately harm religious minorities.

The Oklahoma Attorney General has evinced a stunning hostility toward religious minorities by repeatedly demeaning Islam and other minority faiths as religions that "most Oklahomans would consider

reprehensible and unworthy of public funding.”² These were not isolated statements; they have pervaded every official action taken by his office in its efforts to thwart the St. Isidore charter school, arguing that its charter must be withdrawn to ensure that religious institutions he disfavors are unable to establish charter schools. The Attorney General’s disparaging comments about religious minorities evince an animus based anti-religious motivation for his official acts in this case.

The Attorney General’s aversion to religious plurality and educational choice in Oklahoma is misguided, both legally and with respect to the tangible public benefits of expanding school choice to include religious institutions. Legally, the Attorney General’s disparaging comments about minority faiths betray the First Amendment’s mandate that government officials approach their official duties with “religious neutrality” as this Court articulated in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 584 U.S. 617 (2018). The Attorney General is also wrong when he argues that Oklahomans should fear religious pluralism and educational choice. Families of all faiths (or no faith) benefit from a broad range of educational options. And while the Attorney General may find it “reprehensible” to allow educators from

² Letter from Attorney General Gentner Drummond to Rebecca L. Wilkinson, Ed.D. (Feb. 23, 2023), https://oklahoma.gov/content/dam/ok/en/oag/documents/news-documents/2023/march/rebecca_wilkinson_ag_opinion_2022-7_virtual_charter_schools.pdf.

minority religions to access public funding on the same ground as secular entities, this Court—and Americans generally—have rejected such hostile views of their neighbors.

In granting the Attorney General’s petition to thwart St. Isidore’s charter, the Oklahoma Supreme Court failed to address the Attorney General’s explicit religious discrimination. This Court should therefore grant certiorari, not only to address the important question of whether charter schools’ pedagogical choices should be considered state action, but also to enforce this Court’s precedent ensuring that state action is not tainted by religious discrimination.

ARGUMENT

I. The Attorney General’s actions to thwart St. Isidore’s charter are tainted by explicit discrimination against religious minorities in violation of the First Amendment.

Shortly after taking office, the Attorney General reversed his predecessor’s legal opinion that recognized that this Court’s precedent prohibited Oklahoma’s Virtual Charter School Board from discriminating against the establishment of faith-based charter schools. In that letter, the Attorney General explicitly cited animus toward religious minorities as the underlying motivation of his action:

While many Oklahomans undoubtedly support charter schools sponsored by various Christian faiths, the precedent created by approval of the SISCVS application will compel approval of

similar applications by all faiths. I doubt most Oklahomans would want their tax dollars to fund a religious school whose tenets are diametrically opposed to their own faith. Unfortunately, the approval of a charter school by one faith will compel the approval of charter schools by all faiths, even those most Oklahomans would consider reprehensible and unworthy of public funding.³

While that statement maligned all faiths outside the Christian majority as “reprehensible and unworthy of public funding,” Attorney General Drummond directed his animus specifically toward Oklahomans of the Muslim faith—a religious minority comprising more than 30,000 residents of the state⁴—in his press release announcing the petition to cancel St. Isidore’s charter:

Because of the legal precedent created by the Board’s actions, tomorrow we may be forced to fund radical Muslim teachings like Sharia law. In fact, Governor Stitt has already indicated that he would welcome a Muslim charter school funded by our tax dollars. That is a gross violation of our religious liberty.⁵

³ Office of the Oklahoma Attorney General, *supra*, note 2.

⁴ CAIR Oklahoma, Guide to Islam and Muslims in Oklahoma, <https://www.cairoklahoma.com/islamguide/>.

⁵ Press Release, Office of the Oklahoma Attorney General, Drummond files lawsuit against state virtual charter board members for violating religious liberty of Oklahoma taxpayers (Oct. 20, 2023),

That sentiment is also reflected in the petition and corresponding motion filed by his office before the Oklahoma Supreme Court, asserting that the State must shut down St. Isidore to avoid a “reckoning” that would “permit extreme sects of the Muslim faith to establish a taxpayer funded public charter school teaching Sharia Law.”⁶ Even in response to the above captioned petitions for certiorari, the Attorney General has doubled down on his animus toward religious minorities stating about “will open the floodgates and force taxpayers to fund all manner of religious indoctrination, including radical Islam or even the Church of Satan.”⁷

The Attorney General’s comments demonstrate that his actions to thwart St. Isidore are motivated by an animus toward religious minorities impermissible under this Court’s First Amendment precedent. “Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature.” *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021). For ex-

<https://oklahoma.gov/oag/news/newsroom/2023/october/drummond-files-lawsuit-against-state-virtual-charter-board-membe.html>.

⁶ Pet.’s Br. in Supp. of Appl. to Assume Original Juris. at 1, *Drummond v. Okla. Statewide Virtual Charter Sch. Bd.*, No. 121,694 (Oct. 20, 2023).

⁷ Press Release, Office of the Oklahoma Attorney General, Attorney General Drummond comments on St. Isidore filing (Oct. 7, 2024)

<https://oklahoma.gov/oag/news/newsroom/2024/october/attorney-general-drummond-comments-on-st-isidore-filing.html>.

ample, in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993), this Court struck down ordinances prohibiting animal sacrifice rituals, holding that its “Establishment Clause cases [recognize] the principle that the First Amendment forbids an official purpose to disapprove of a particular religion or of religion in general.” *Id.* at 532. In finding that the ordinances were impermissibly motivated by religious bias, this Court examined the comments of city officials, including the City Attorney’s comment that “[t]his community will not tolerate religious practices which are abhorrent to its citizens,” and the city council’s stated “commitment to a prohibition against any and all acts of any and all religious groups which are inconsistent with public morals, peace or safety.” *Id.* at 526, 540-42.

Likewise, in *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm’n*, the Court built upon its holding from *Church of Lukumi*: “[The Court has] made clear that the government, if it is to respect the Constitution’s guarantee of free exercise, cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices. The Free Exercise Clause bars even ‘subtle departures from neutrality’ on matters of religion.” 584 U.S. at 638 (citing *Church of Lukumi*, 508 U.S. at 534).

With that guidance, the Court overturned a decision of the Colorado Civil Rights Commission in which the commissioner stated that “freedom of reli-

gion has been used to justify discrimination” and criticized a citizen’s stated religious beliefs as “one of the most despicable pieces of rhetoric that people can use.” *Masterpiece Cakeshop*, 584 U.S. at 635. The Court stated that the Constitution “commits government itself to religious tolerance, and upon even slight suspicion that proposals for state intervention stem from animosity to religion or distrust of its practices, all officials must pause to remember their own high duty to the Constitution and the rights it secures.” *Id.* at 638–639.

In *Trump v. Hawaii*, this Court considered remarks made by President Trump as possible motivation for his Proclamation colloquially known as the “Muslim Ban.” 585 U.S. 667 (2018). In declining to give those remarks significant weight, the majority recognized that the Proclamation itself (the President’s official action) was neutral on its face, that many of the remarks were made prior to the President taking office, and that the special powers of the Executive in foreign affairs and national security required significant deference. *Id.* at 701–02. Even with those mitigating factors, Justice Sotomayor recognized in her dissent that “the full record” of President Trump’s campaign comments “paint[ed] a . . . picture, from which a reasonable observer would readily conclude that the Proclamation was motivated by hostility and animus toward the Muslim faith.” *Id.* at 731 (Sotomayor, dissenting). “[T]he dispositive and narrow question here is whether a reasonable observer, presented with all “‘openly available data,’ the text and ‘historical context’ of the Proclamation, and the

“specific sequence of events” leading to it, would conclude that the primary purpose of the Proclamation is to disfavor Islam and its adherents by excluding them from the country. The answer is unquestionably yes.” *Id.* at 737 (internal citations omitted). “Given the overwhelming record evidence of anti-Muslim animus, it simply cannot be said that the Proclamation has a legitimate basis.” *Id.* at 743 (Sotomayor, dissenting).

Here, the Attorney General’s statements go far beyond the “subtle departures from neutrality” disavowed in *Masterpiece Cakeshop* and other cases; he has instead explicitly and repeatedly referenced discrimination against Islam and other minority religious faiths as the basis for—and directly in connection with—each of his official actions. The Attorney General’s repeated invocations of “Sharia Law”⁸ and characterizations of Islam as “radical”⁹ unquestionably lead to the conclusion that his policy against religious charter schools is motivated by an animus toward Islam and its adherents.

⁸ See Office of the Oklahoma Attorney General, *supra*, note 5; see also Press Release, Office of the Oklahoma Attorney General, Drummond remarks on actions of Oklahoma Charter School Board (July 30, 2024), <https://oklahoma.gov/oag/news/newsroom/2024/july/drummond-remarks-on-actions-of-oklahoma-charter-school-board.html> (“Rather than acting to protect religious liberty, they are recklessly committed to using our tax dollars to fund radical religious teachings like Sharia law.”)

⁹ See Office of the Oklahoma Attorney General, *supra*, notes 5, 8.

By disregarding the Attorney General’s explicit motivating animus, the Supreme Court of Oklahoma disregarded decades of this Court’s First Amendment precedent.

II. Educational choice—including religious options—is beneficial and consistent with American ideals.

The Attorney General—while acknowledging that “Oklahoma students underperform their peers across the country in every subject”—seeks to reduce educational choice for Oklahomans based on his “prefer[ence]” that schools “focus on reading proficiency so [kids] can read the bible at home.”¹⁰ But this Court rejected the Attorney General’s outdated view of public education and First Amendment jurisprudence—in which religious people and institutions are barred from equal access to public benefits simply because of their faith—in *Espinoza v. Montana Department of Revenue*, 591 U.S. 464 (2020) and *Carson v. Makin*, 596 U.S. 767 (2022). And for good reasons: that view is incompatible with the original public meaning of the First Amendment, and with “the principles of religious freedom and tolerance on which this Nation was founded.” *Trump*, 585 U.S. at 701.

Religious families have long shared the tax burden of funding public schools, even if they did not view those schools as a viable option for their children. While wealthy families can afford to send their

¹⁰ Office of the Oklahoma Attorney General, *supra*, note 5.

children to private schools that match their religious principles, thousands of low- and middle-income families struggle to do so while providing for other material needs. Ultimately, no parent should be made to choose between putting food on the table and providing their child with an appropriate education. And, despite the Attorney General's divisive rhetoric, no person should wish that on anyone else, despite their own religious beliefs (or lack thereof).

There are numerous reasons why a family from a minority religion might wish to send its children to a school affiliated with its faith. First, parents may wish to raise their children in their faith and to send them to a school which offers “[s]ystematic religious instruction and moral training according to the tenets” of that faith. *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 532 (1925). For example, one Jewish mother explained her decision to move her daughter from a public school to a Jewish day school as follows:

“This is her bat mitzvah year. She’s missing out on the Jewish part of her education, and that’s important to us. When it’s Purim, I want her to feel like it’s Purim that day. When it’s Chanukah, I want her to feel it’s Chanukah all week long. You’re not going to get that in a public school. And that’s an experience I want my daughter to have.”¹¹

¹¹ Uriel Heilman, “Why some public school parents are switching to Jewish day schools,” Jewish Telegraph Agency (Aug. 28, 2015).

For many Jewish families, these options would only be affordable through school choice programs. According to Rabbi Yitz Frank: “There is something to be gained by attending a Jewish day school and the reality is that there are many families that would not have the resources to do that without the help of [school choice] programs.”¹²

Jewish day schools facilitate Jewish children's ability to flourish, both as students and as observant Jews. For example, these schools are closed on Jewish holidays. An Orthodox Jewish student in a public school would have to skip approximately a dozen days of school each year to observe the holidays. During these times, students cannot write, use electricity, or travel by car or bus. It would be effectively impossible for an Orthodox student to attend class on such days. Jewish students who attend public schools will necessarily miss class time and accrue a number of absences that may create disciplinary issues.¹³

Other days on the Jewish calendar pose a different set of difficulties: on certain dates, an observant Jewish student could go to school, but he would nevertheless face difficulties due to specific religious

¹² Amanda Koehn, “Orthodox educators praise school choice,” *Cleveland Jewish News* (Feb. 10, 2017).

¹³ Anti-Defamation League, *School & Workplace Accommodations for the Jewish High Holidays: Know Your Rights and Obligations*, <https://www.adl.org/sites/default/files/SWAJHH.pdf>

practices. For example, on the intermediate days of the Holiday of Sukkot, Orthodox Jews eat all of their meals in an outdoor booth known as Sukkah. If a Jewish day school is open on those days, it will provide a Sukkah in which to eat. A student attending a secular school would be unable to observe this practice while at school.

In other circumstances, school choice may be essential to safeguard children from a hostile environment where they are targeted for wearing unusual headgear or not cutting their hair like most of their classmates. For example, young “Muslims and Jews experience disproportionately high rates of hate speech and bullying.”¹⁴ Religious educational institutions reflecting their faith can help protect children from acts of discrimination.

Similarly, parents’ faith may include a deeply held commitment to community service, which they see encouraged at their faith’s educational institutions.¹⁵ Many Islamic schools focus on the core values of citizenship and community service in addition to aca-

¹⁴ Nadia S. Ansary, *Religious-Based Bullying: Insights on Research and Evidence-Based Best Practices from the National Interfaith Anti-Bullying Summit*, Institute for Social Policy and Understanding (2018) 21.

¹⁵ See Margaret F. Brinig & Nicole S. Garnett, *Catholic Schools, Urban Neighborhoods, and Education Reform*, 85 Notre Dame L. Rev. 887 (2010) (documenting the positive social effects of Catholic schools).

demic excellence.¹⁶ Islamic schools focus on community-oriented goals such as “preparing students to contribute to the betterment of American society,”¹⁷ “fostering students who are determined to achieve the highest academic success while being actively engaged in making a difference in the world around them,”¹⁸ and “promoting excellence in teaching and community participation to ensure the successful education of all students.”¹⁹ The goals espoused in the mission statements of these schools are ones which many parents would support, regardless of their religious beliefs. Parents from minority or even majority religions may choose to enroll their children at Islamic schools because they believe their faith compels them to teach the value of community service to their children.

For example, amicus curiae The Abraham Knowledge Academy applied in 2023 to open an Islamic charter school in Minnesota to meet the unfulfilled need for an Islamic education amongst the large

¹⁶ See Nader Al-Refai, *Muslim schools and the teaching of citizenship*, University of Huddersfield (2007).
https://eprints.hud.ac.uk/id/eprint/351/1/RefaiFinal_MPhil_Thesis.pdf.

¹⁷ Mercy School Institute, *Welcome from the Principal*,
<https://www.mercyschool.com/welcome-from-the-principal> (last visited Oct. 29, 2024).

¹⁸ Houston Quran Academy, *HQA Vision and Mission*,
<https://hquranacademy.org/> (last visited Oct. 29, 2024).

¹⁹ Al-Qalam Academy, *About Us*,
<http://www.alqalamus.org/educational-institution-about-us> (last visited Oct. 29, 2024).

population of low socio-economic status families in the Minnesota Muslim community, particularly those with a refugee background from East Africa.²⁰ These families, despite limited resources, considered it so vital to pursue an Islamic education that they were willing to choose hybrid schooling options, which required financial sacrifices and offered fewer resources, rather than send their children to the available public schools.²¹ Many families chose to move their children back to Africa before the start of the 2023 school year to meet their desire for their children to have an Islamic education. *Id.* The Abraham Knowledge Academy is envisioned as a solution to this unfulfilled need. The Abraham Knowledge Academy aims to inculcate students with “a willingness to contribute to the common good,” and prioritizes religious literacy, cultural heritage, moral character development, and understanding of virtue-ethics based perspectives. *Id.* It will not strive to be a racially or religiously homogenous institution in its student body; indeed, people from diverse ethnic and racial backgrounds have shown an interest in the Academy’s offerings and non-Muslim families will be welcomed. *Id.* The school’s mission to offer quality academics with a focus on religious literacy and Islamic

²⁰ Abraham Education, *Applying for an Islamic Charter School in Minnesota* (Oct. 18, 2024), <https://bit.ly/aka-app>.

²¹ Abraham Knowledge Academy, Letter of Intent to Apply, <https://drive.google.com/file/d/1eBwnvcaye1GZiq-N5OV53yDJhX1e3kcY/view> (last visited Oct. 29, 2024).

values is anticipated to attract a broad spectrum of families in a welcoming environment. *Id.*

Ultimately, Americans benefit as the panoply of distinctive educational institutions expands and reinforces the rich mosaic of diversity that makes up our nation. These values of diversity, pluralism, and the freedom to choose one's associations lie at the heart of our social order. By approving St. Isidore's—the nation's first explicitly religious charter school—the Oklahoma Virtual Charter School Board sought to honor these American values, consistent with this Court's precedent. The Supreme Court of Oklahoma erred in its decision to stifle religious freedom, and the Attorney General violated the First Amendment by leveraging religious bigotry as the basis for his official actions to revoke St. Isidore's charter.

CONCLUSION

This Court should grant certiorari and reverse.

Respectfully submitted,

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