

**IN THE DISTRICT COURT
OF LANCASTER COUNTY, NEBRASKA**

JUSTIN JACOBSEN,

TIMOTHY & JOANNA
MENTER,

Plaintiffs,

v.

JOEY SPELLERBERG, in his
official capacity as the Nebraska
State Treasurer,

BRIAN L. MAHER, in his official
capacity as the Nebraska
Commissioner of Education,

ELIZABETH TEGTMEIER, in
her official capacity as President
of the Nebraska State Board of
Education,

RACHEL M. GARVER, in her
official capacity as Treasurer of
Lancaster County, Nebraska,

PIYUSH SRIVASTAV, in his
official capacity as President of
the Lincoln Board of Education,

Case No. _____

**COMPLAINT FOR
DECLARATORY,
INJUNCTIVE, AND
MONETARY RELIEF
FOR VIOLATION OF
CIVIL RIGHTS**

CITY OF LINCOLN,
NEBRASKA,

LANCASTER COUNTY,
NEBRASKA,

LINCOLN PUBLIC SCHOOLS,

MICHAEL HILGERS, in his
official capacity as Attorney
General for the State of
Nebraska,

Defendants.

INTRODUCTION

1. Formal education occurs through *speech*. Teaching—including the ideas taught, the texts selected, the hypotheticals used, the values emphasized, and the behavior incentivized—takes place via oral or written words, images, music, and expressive conduct.

2. The paramount authority and obligation to educate children, and the right to provide educational speech, rests with parents. *See Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) (“[I]t is the natural duty of the parent to give his children education suitable to their station in life.”); *In re Nathaniel P.*, 22 Neb. App. 46, 50, 846 N.W.2d 681, 684–85 (Neb. 2014) (“The U.S. Supreme Court has clearly established that parents have a fundamental liberty interest in directing the education of their children.”); *see also State v. Sch. Dist.*, 31 Neb. 552 (Neb. 1891); *State v. Ferguson*, 95 Neb. 63; 144 N.W. 1039 (Neb. 1914).

3. Parents' educational speech, like other private speech, is protected by the United States and Nebraska Constitutions. *See West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624, 641 (1943) (upholding First Amendment challenge to mandatory Pledge of Allegiance in school); *Dossett v. First State Bank, Loomis, Nebraska*, 261 Neb. 959, 966 (2001) ("the guarantee of freedom of speech under the Nebraska Constitution is the same as under the First Amendment to the federal Constitution").

4. The state and federal Constitutions therefore preclude government abridgment of parents' educational speech.

5. But education in public/government schools consists primarily of government supplied, selected, and reinforced educational viewpoints.

6. When parents send their children to a government school, the government's preferred speakers instruct the child using a government's choice of curricula, standards, codes of conduct, textbooks, lessons, and other applicable resources or rules. The messages are chosen or influenced by state legislatures and departments of education, school boards, and other government entities or employees.

7. The speech in government schools therefore inevitably advances values and ideas preferred by the government. Government schools do not merely teach students *how* to think; they teach them *what* to think. *See, e.g., Edwards v. Aguillard*, 482 U.S. 578, 583 (1987) (observing that "students in" government schools "are impressionable").

8. Nebraska mandates that Plaintiffs, the parents of school-aged children, educate their children or enroll them in an

educational institution—on pain of criminal punishment. Neb. Rev. Stat. § 79-201. Various Defendants then enforce that mandate.

9. At the same time, Defendants provide various and significant educational benefits *only* if Plaintiffs enroll their children in government schools, where the government’s viewpoint reigns.

10. The financial inducement offered for adopting government-school messaging is considerable. Nebraska recently spent an average of over \$19,000 per student for one year of government K-12 education.

11. This combination of a mandate and substantial financial incentive abridges parents’ freedom of speech by pressuring them to adopt the government’s educational viewpoints in place of their own or forcing them to pay to escape the government’s educational viewpoint.

12. Plaintiffs in this case, for example, have been forced to undertake burdens not imposed on public school parents and have, in effect, been penalized for refusing to continue to adopt government messaging as their own educational speech.

13. Yet, the Supreme Court has recognized that the government may not, under the First Amendment’s free-speech guarantee, establish an educational orthodoxy. *See Barnette*, 319 U.S. at 641; *see also Chiles v. Salazar*, 146 S.Ct. 1010, 1024 (2026).

14. The Supreme Court has banned, for example, school prayer and other religious practices in government schools in recognition that school-sponsored teaching could infringe—if not displace—parents’ teaching. *See Engel v. Vitale*, 370 U.S. 421

(1962); *Wisconsin v. Yoder*, 406 U.S. 205 (1972). The force of this logic naturally extends to other realms of speech and thought.

15. Here, the abridgment of Plaintiffs' speech is viewpoint-based. Defendants simultaneously mandate educational speech and pressure parents to adopt education presented from the government's viewpoint; parents who exercise their right to provide a different viewpoint are forced to suffer financial and other harms.

16. Defendants' K-12 education regime, which combines an education mandate with funding only for education from the government's viewpoint, is not narrowly tailored to serve a compelling government interest as would be required to uphold this viewpoint discrimination.

17. Similarly, but distinctly, Defendants' K-12 educational regime unconstitutionally conditions educational benefits on Plaintiffs limiting their own constitutionally protected educational speech and adopting the government's educational viewpoints.

18. Whether considered as a direct abridgment or as an unconstitutional condition, the financial and other pressures Defendants exert on parents restricts their speech or penalizes them by forcing them to pay to escape government indoctrination.

PARTIES

19. Plaintiff Justin Jacobsen and his family reside in the Lincoln Public School District in Lincoln, Nebraska. Justin has four school-aged children in the 4th through 12th grades. Mr. Jacobsen's oldest child, a senior, is homeschooled and takes classes online. His youngest children are in 4th grade and attend

a private elementary school. Mr. Jacobsen also has a child that attends high school in the Lincoln Public School District.

20. Plaintiffs Timothy and Joanna Menter reside in the Lincoln Public School District in Lincoln, Nebraska. They have three school-aged children in the first through fifth grades as well as two younger children. The Menters currently homeschool their children, but the older two children previously attended Lincoln Public Schools.

21. Defendant Joey Spellerberg is the Nebraska State Treasurer and is sued in his official capacity. The State Treasurer aids in the collection and disbursement of funds to Nebraska's government schools. Such actions, at least as they relate to Plaintiffs, may need to be partially enjoined to provide appropriate relief.

22. Defendant Brian L. Maher is the Nebraska Commissioner of Education and is sued in his official capacity. Defendant Maher oversees Nebraska's Department of Education, a state agency that assists with financial management and calculation of funding for Nebraska's K-12 government schools. Aspects of these duties may need to be altered or enjoined if Plaintiffs prevail.

23. Defendant Elizabeth Tegtmeier is the President of the Nebraska State Board of Education and is sued in her official capacity. The Nebraska State Board of Education assists with the management of, and setting policies for, Nebraska's K-12 government schools. Aspects of these activities may need to be enjoined or altered if Plaintiffs prevail.

24. Defendant Michael Hilgers is the Attorney General for the State of Nebraska and is sued in his official capacity. The

Attorney General has the authority to prosecute violations of criminal law, including the educational mandate. *See* Neb. Rev. Stat. § 84-204. The Attorney General also has charge and control of all the legal business of all departments in the state. *Id.* § 84-202. To provide interim or adequate relief, this Court may need to temporarily enjoin enforcement of various laws as they apply to Plaintiffs.

25. Defendants Spellerberg, Maher, Tegtmeier, and Hilgers are the “State Official Defendants.”

26. Defendant Rachel M. Garver is the Lancaster County Treasurer and is sued in her official capacity. In this role, she collects and disburses Lancaster County property taxes that are distributed to government schools. Aspects of the distribution may need to be altered or enjoined if Plaintiffs prevail.

27. Defendant Piyush Srivastav is President of the Lincoln Public Schools Board of Education and is sued in his official capacity. The Lincoln Board of Education is responsible for the “general care and upkeep” of the district’s schools and allocating and spending state and local educational funds. Neb. Rev. Stat. § 79-526. Aspects of Board’s fiscal management of the Lincoln Public Schools (“LPS”), particularly as they relate to local funds, may need to be altered or enjoined if Plaintiffs prevail.

28. Defendant City of Lincoln contributes to Plaintiffs’ injuries as detailed below and at a minimum by enforcing the education mandate against parents within its jurisdiction and providing resources for educational speech only when it is provided by the government. Indeed, local funding provides the single greatest source of revenue for LPS, reported at 46% of the schools’ funding for 2024-2025. Lincoln Public Schools Budget Development 2026-2027, presentation, Available at

https://drive.google.com/file/d/1BjWEFLhdSPm7nUILrgnQrhl2l_VV6PAR/view [Slide 22]. The city may be liable for injunctive relief and monetary damages pursuant to 42 U.S.C. § 1983 if Plaintiffs prevail.

29. Defendant Lancaster County contributes to Plaintiffs' injuries as detailed below and at a minimum by collecting and providing funds for educational speech only when it is provided by the government. The county may be liable for injunctive relief and monetary damages pursuant to 42 U.S.C. § 1983 if Plaintiffs prevail.

30. Defendant LPS is the government educational district for Plaintiffs' residences. LPS contributes to Plaintiffs' injuries, at a minimum, by establishing the policies and budgets that impact the funding for the school district and by receiving and managing government educational funds. The school district may be liable for injunctive relief and monetary damages pursuant to 42 U.S.C. § 1983 if Plaintiffs prevail.

31. Defendants City of Lincoln, Lancaster County and LPS are the "Municipal Entity Defendants." Defendants Garver, Srivastav, City of Lincoln, Lancaster County and LPS are the "Municipal Defendants."

JURISDICTION AND VENUE

32. This court has personal jurisdiction over Defendants because they are Nebraska state officials empowered by Nebraska law and sued in their official capacities for prospective relief, local municipalities, or local municipal officials; such Defendants reside, conduct business within, or have caused constitutional injury by acts or omissions occurring within

Lancaster County. *See* Neb. Rev. Stat. § 25-536; *See* Neb. Rev. Stat. § 25-510.02.

33. The relevant causes of action are 42 U.S.C. § 1983 and Neb. Rev. Stat. § 25-21,149, and this Court has subject matter jurisdiction over this matter pursuant to Neb. Rev. Stat. § 24-302.

34. This Court also has jurisdiction to enter the requested declaratory and injunctive relief pursuant to Neb. Rev. Stat. § 25-21,149 (Declaratory Judgments) and Neb. Rev. Stat. § 25-1062 (Injunctions) and the requested monetary damages pursuant to 42 U.S.C § 1983.

35. Venue is proper in this district as the vast majority of the acts or omissions by Defendants giving rise to this Complaint occurred, and continue to occur, in Lancaster County and Plaintiffs reside in and suffer harm within Lancaster County.

LEGAL AND HISTORICAL BACKGROUND

Education Occurs Through Speech and States Cannot Abridge Freedom of Speech

36. Education consists of speech. Parents or other educators impart ideas to children and teach them about the world through words, images, music, and other expression.

37. Even when a child is taught via means other than pure speech, such as when an educator demonstrates a concept or a child participates in a science experiment, that conduct is expressive because it is intended to convey an idea.

38. Throughout education—in every educational discipline, in the school hallways, and during school activities—

teachers use speech and expressive conduct to educate and to encourage or discourage various messages.

39. The First Amendment to the United States Constitution and Article I, Section 5 of Nebraska’s Constitution (“the free speech clauses”) both guarantee Nebraskans the right to speak freely without government abridgment.

40. One of the most egregious ways governments violate the free speech clauses is by engaging in viewpoint discrimination. *Chiles*, 146 S.Ct. at 1021 (“‘Viewpoint discrimination’ ... represents an ‘egregious form’ of content regulation, and governments in this country must nearly always ‘abstain’ from it.” (quoting *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995))).

41. Supreme Court jurisprudence establishes that much of the communication that occurs in the educational environment is protected speech under the First Amendment.

42. For example, courts have long recognized that teachers and students hold First Amendment interests in their speech and expression in the school environment. *See Tinker v. Des Moines*, 393 U.S. 503, 506 (1969) (“First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students.”).

43. Student speech that occurs outside the classroom, but inside of schools, is itself protected by the First Amendment. *See id.* at 511.

44. Parents too have First Amendment rights related to their children’s education.

45. The highest courts of Nebraska and the United States consistently recognize that parents possess the paramount

right and duty to make educational decisions for their children. *See State v. School Dist.*, 31 Neb. 552 (1891) (“The right of the parent, therefore, to determine what studies his child shall pursue is paramount to that of the trustees or teacher.”); *Ferguson*, 144 N.W. at 1044 (affirming student’s right to choose courses and noting, “[b]ut in this age of agitation ..., we want to be careful lest we carry the doctrine of governmental paternalism too far, for, after all is said and done, the prime factor in our scheme of government is the American home”); *Meyer*, 262 U.S. at 400-01.

46. The free speech clauses also guarantee parents the right to delegate their educational speech to the speakers of their choice. *See Riley v. Nat’l Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988) (“The First Amendment mandates that we presume that speakers, not the government, know best both what they want to say and *how to say it*.”) (emphasis added).

47. In the context of parents’ educational speech, the free speech clauses thus guarantee parents the right to provide or to choose the source of the educational speech directed at their children.

48. If parents did not hold this right, the state could—without parents’ consent—select the entirety of the educational speech and messages that children receive.

49. That result is foreclosed by existing precedent. *See Pierce v. Society of Sisters*, 268 U.S. 510, 573 (1925) (“The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only.”).

50. States, for example, may not bar teaching in a modern language, as this interferes with “the right of parents to engage [a teacher of their choosing] so to instruct their children.” *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923).

51. States also may not educate children in a manner that violates parents’ First Amendment free-exercise rights. *Mahmoud v. Taylor*, 606 U.S. 522, 530 (citing *Yoder*, 406 U.S. at 218).

52. Nor may states mandate that children attend government schools. *Pierce* establishes that parents possess the right to send their children to private schools or to homeschool. 268 U.S. at 534-35.

53. The Supreme Court has repeatedly recognized that the “State exerts great authority and coercive power through” government schools “because of the students’ emulation of teachers as role models and the children’s susceptibility to peer pressure.” *Aguillard*, 482 U.S. at 584; see *School Dist. of City of Grand Rapids v. Ball*, 473 U.S. 373, 383 (1985) (“[G]overnment’s activities” in the context of public education “can have a magnified impact on impressionable young minds[.]”).

54. For this reason, education and its accompanying speech are “dominant factor[s] affecting political consciousness and participation.” See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 113-14 (1973) (Marshall, J. dissenting).

55. In fact, the Supreme Court in *Wisconsin v. Yoder* warned that public education could *determine* children’s beliefs, reasoning: “[I]f the State is empowered, as *parens patriae*, to ‘save’ a child from himself or his Amish parents by requiring an additional two years of compulsory formal high school education,

the State will in large measure influence, if not determine, the religious future of the child.” 406 U.S. at 232.

56. Likewise, Nebraska’s Supreme Court has recognized that although the “public school is one of the main bulwarks of our nation,” “we should be careful to avoid permitting our love for this noble institution to cause us to regard it as ‘all in all’ and destroy both the God-given and constitutional right of a parent to have some voice in the bringing up and education” of their children. *Ferguson*, 144 N.W. at 1043.

57. The force of the courts’ reasoning logically dictates that states cannot abridge parents’ speech by wielding the stick of compelled educational speech, while simultaneously offering fully funded educational benefits only so long as the recipients accept the government’s viewpoint. This combination requires parents either to adopt government educational orthodoxies or pay to escape them.

FACTUAL ALLEGATIONS

I. Defendants Mandate Education, Compelling Educational Speech, But Fund Only Government Schools

58. Nebraska and the Municipal Entity Defendants mandate that a parent (or legal guardian) enroll their child in a “public, private, denominational, or parochial school.” Neb. Rev. Stat. § 79-201(2)(A). Parents may also satisfy that mandate by homeschooling. Nebraska Department of Education, *Exempt School [Home School] Program* (September 11, 2025), <https://www.education.ne.gov/fos/exempt-schools/>.

59. If a parent fails to comply with the educational mandate, they may be charged with a Class III misdemeanor,

which carries a maximum penalty of “three months imprisonment,” a “five hundred dollars fine,” “or both.” Neb. Rev. Stat. § 28-106(1).

60. Nebraska, with the aid of the Municipal Entity Defendants, provides cost-free education to parents who enroll their children in government K-12 education. Neb. Const. art. VII, § 1.

61. During the 2023-2024 school year, the State Legislature appropriated nearly \$2 billion dollars to fund government schools. Lou Ann Linehan, *Truths about state funding of pre-K-12 public education in Nebraska*, Nebraska Examiner (Aug. 26, 2025), [https://nebraskaexaminer.com/2025/08/26/truths-about-state-funding-of-pre-k-12-public-education-in-nebraska/#:~:text=According%20to%20the%20Nebraska%20Department,be%20more%20than%20\\$2%20billion.](https://nebraskaexaminer.com/2025/08/26/truths-about-state-funding-of-pre-k-12-public-education-in-nebraska/#:~:text=According%20to%20the%20Nebraska%20Department,be%20more%20than%20$2%20billion.)

62. During the 2024-2025 school year, the state-wide average cost per student in government school was \$19,038. Nebraska Department of Education, *Per Pupil Costs 2024/25* (calculated per average daily attendance), https://www.education.ne.gov/fos/annual-financial-report-school-district/statewide-information/per-pupil-costs/#:~:text=The%20Nebraska%20Department%20of%20Education%20receives%20Annual,*%20Past%20years'%20Per%20Pupil%20Cost%20reports.

63. That same year, LPS spent \$17,432 per pupil. See Neb. Dept. of Ed. Sch. Fin. & Org. Servs, *Cost Per Pupil by Average Daily Attendance (ADA) and Average Daily Membership (ADM) From the 2024/25 Annual Financial Report*,

https://www.education.ne.gov/wp-content/uploads/2026/03/2425AFR_PPC.pdf.

64. Government schools, where parents must accept government educational viewpoints and orthodoxies from the government’s preferred speakers, represent the only cost-free way for Plaintiffs to fulfill Defendants’ educational mandate. *See* Ed Choice, *Nebraska*, edchoice.org (“Nebraska has no school choice programs”), <https://www.edchoice.org/state/nebraska/>.

65. When parents fulfill the educational mandate but exercise their right to educational speech by homeschooling or by choosing a private speaker, absent special and rare circumstances, the parent bears the *entire cost* of that education.

66. Nebraska ranks among the worst states in the nation for educational choice. *See* American Legislative Exchange Council, *2026 ALEC Index of State Education Freedom, A 50-State Guide to Parental Empowerment*, at 71 (2026), https://alec.org/wp-content/uploads/2026/02/ALEC_EdFreedomIndex2026_FINAL.pdf.

67. And while the Municipal Entity Defendants levy taxes, disburse public funds, or provide other services to support government K-12 schools, they refuse to support alternative educational viewpoints, and they assist in enforcement of the educational mandate.

68. The cost to comply with Defendants’ educational mandate without sacrificing a parent’s own educational speech is substantial. The average private elementary school tuition in Nebraska totals \$7,106 per year, and the average private high school tuition reaches nearly \$11,000 per year. Private School Review, *Nebraska Private Schools by Tuition Cost*,

<https://www.privateschoolreview.com/tuition-stats/nebraska>. A full private education through high school would cost a family, on average, over \$100,000 per student.

69. While homeschooling's direct costs are often less than the cost of a private school's tuition, the full cost to a family is nevertheless steep.

70. Beyond the expense of educational materials and experiences, homeschooling parents suffer the opportunity cost of foregone income, as homeschooling "requires at least one parent to stay at home during the normal workday to educate children, thereby forgoing additional income opportunities." *Mahmoud*, 606 U.S. at 562.

71. The average salary for a full-time worker in Nebraska is \$73,410, and the median salary for a full-time worker in Nebraska is \$56,448. Anthony Morales, *Nebraska Income Statistics for 2024*, Income by Zipcode (Dec. 18, 2024), <https://www.incomebyzipcode.com/nebraska>.

72. The true cost of homeschooling, then, often reaches into the tens of thousands of dollars when both direct and opportunity costs are considered.

II. Government Educational Viewpoints Pervade Nebraska's Government Schools

73. Government-school environments, including Nebraska's, are saturated with government-curated ideologies conveyed by the state's preferred speakers. Government education therefore consists of a particular educational viewpoint and orthodoxy. At least some of these ideologies are controversial.

74. Nebraska’s Department of Education has encouraged its government schools to implement “Social and Emotional Learning Practices” that are aimed, in part, toward building an “equitable learning environment” and instilling various “social and ethical norms” in students. Nebraska Department of Education, *Social and Emotional Learning* (July 11, 2024), <https://www.education.ne.gov/socialstudies/social-and-emotional-learning/>. The “approach infuses social and emotional learning into every part of students’ daily lives[.]” *Id.*

75. While these concepts sound unbiased or even desirable, they may be more divisive in their application. See Kate Bierly, *Is SEL Just DEI?* Texas Public Policy Foundation, Apr. 29, 2025. Available at <https://www.texaspolicy.com/is-sel-actually-just-dei/>.

76. LPS requires its staff to “be trained in restorative and trauma-informed practices” and “implement those practices” to “enhance positive relationships with students.” Lincoln Board of Education, *Board of Education Equity Areas of Focus, Positive Behavior*, Lincoln Public Schools, <https://home.lps.org/board/all/>. While purportedly neutral, this practice occurs against the backdrop of a district-wide “equity plan” explicitly focused on students’ races. See Madison Pitsch, *LPS introduces “All means All” equity plan for district*, 1011 Now KOLN KGIN (May 16, 2022), <https://www.1011now.com/2022/05/16/lps-introduces-all-means-all-equity-plan-district/>.

77. Goals related to “equity” pervade LPS institutions, with the district’s equity plan emphasized in the district’s five-year strategic plan. See Lincoln Public Schools, *2024-2029 LPS Strategic Plan, Equity Statement*, <https://home.lps.org/strategicplan/>.

78. For example, while the Menter's very young children were in government school, LPS produced a sticker endorsing alternative sexuality and transgendered ideologies. The sticker was prominently displayed on many classroom doors.

79. Similarly, a LPS librarian recommended that one of the Menter children checkout and read books promoting transgender ideology.

80. One of Mr. Jacobsen's daughters was told that she must accommodate transgender individuals in the girls' bathrooms and locker rooms. She was encouraged to remove *herself* from those spaces if she felt uncomfortable sharing them with biological males.

81. Mr. Jacobsen's children were also, at times, expected to use LGBTQ-affirming pronouns while at school, even when those pronouns did not conform with a student's biological sex.

82. Omaha Public Schools, the largest school district in the state, also adopted "Gender Identity Equity Guidelines" in 2017 that required students in the school to refer to transgender students by the student's preferred "name and pronoun." Omaha Public Schools, *Gender Identity Equity Guidelines*, at 2, <https://resources.finalsite.net/images/v1758547087/wwwopsorg/rz8hso4vnhqjlhsoj1zv/GenderIdentityEquityGuidelines.pdf>.

83. The same policy requires schools in the district to "reduce or eliminate the practice of segregating students by gender," and where students must be separated by their genders, students must be placed "in the group that corresponds to the student's gender identity." *Id.*

84. In addition to the examples above, Plaintiffs experienced other government school messaging affecting their

children. One of the Menter's children became very forceful in suggesting that her parents reduce their driving because the school had successfully inculcated the child with the idea that carbon-dioxide was a pollutant that would destroy the planet. The government's education was motivating conduct through fear. Not only that, but the child was coached to take a hostile or disrespectful tone toward adults concerning this topic.

85. Mr. Jacobsen's children, on the other hand, were exposed to narratives suggesting that some races were victims and some races were oppressors due solely to the color of their skin.

86. Moreover, government schools *must* take certain ideological positions, as these schools are constitutionally required to deliver a form of secular education.

87. Even if government schools were *not* obligated to deliver education in part according to a particular viewpoint, normative judgments by state actors that influence government education are inescapable. See Richard F. Duncan, *Why School Choice is Necessary for Religious Liberty and Freedom of Belief*, Case Western Reserve Law Review, Vol. 73, Iss. 4, 1055 (2023) ("Education is not value-free; indeed, it is value-laden. And in a country as divided as ours, we no longer share common values and common truths."). In other words, it is *impossible* for a government educational institution not to espouse a worldview or viewpoint.

88. Messages and practices like these are neither apolitical nor value-neutral: Each comes with a set of normative commitments and policy prescriptions that parents may, or may not, want to espouse for a variety of religious, moral, philosophical, cultural, political, or other reasons.

89. Some of the above government messages and practices may be correct. The point is *not* that government schools should be apolitical or alter their messages, but instead that government education conveys ideological and value-based orthodoxies that parents are pressured to accept as their own educational speech or pay to avoid.

III. Defendants' Educational Regime Violates Plaintiffs' Free-Speech Rights

90. The Defendants' educational regime—which includes both the mandate for educational speech and the financial pressure to adopt the government's educational viewpoints—abridges Plaintiffs' freedom of speech, both directly and by condition. And it does so despite the lack of a compelling interest or narrowly tailored approach.

A. Defendants abridge Plaintiffs' educational speech

91. Defendants directly abridge freedom of speech through a combination of measures: their mandate that parents provide or arrange for educational speech and their financial pressure on parents to adopt government-supplied educational speech in place of their own or pay to escape government teaching.

92. In addition, Defendants indirectly abridge Plaintiffs' freedom of speech by conditioning the funding and provision of education benefits on acceptance of the government's viewpoint.

93. Nebraska and the Municipal Entity Defendants provide educational funding—over \$17,000 per child per year—*only* to residents who cede to the viewpoints expressed in government schools.

94. Parents who educate outside state-run institutions are denied educational benefits solely because they refuse to adopt government orthodoxies for their children. This viewpoint discrimination, both directly and by means of the funding condition, abridges their freedom of speech.

95. The unconstitutional conditions doctrine provides that the government violates the Constitution when its conditions a benefit on the individual forsaking a constitutional right. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (government “may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially, in his interest in freedom of speech”).

96. The unconstitutional conditions doctrine “vindicates the Constitution’s enumerated rights by preventing the government from coercing people into giving them up.” *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013).

97. When a condition conflicts with the First Amendment, the Supreme Court has held that even minimal amounts of financial pressure by the government violate the unconstitutional conditions doctrine. *See F.C.C. v. League of Women Voters*, 468 U.S. 364 (1988) (involving a condition on grants as small as 1% of a broadcasting station’s overall income); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 463 (2017) (involving a grant for a rubber playground surface).

98. Further, the Supreme Court has “made clear that even though a person has no ‘right’ to a valuable governmental benefit and even though the government may deny him the benefit for any numbers of reasons.... It may not deny a benefit to

a person on a basis that infringes his constitutionally protected interests[.]” *Sindermann*, 408 U.S. at 597.

99. Education is such a benefit. As the Supreme Court recognized in *Brown v. Board of Education*, 347 U.S. 483, 493 (1954), “where the state has undertaken to provide” the opportunity or benefit of an education, it cannot do so in a way that violates constitutional protections. In *Brown*, the state violated the equal protection clause; here, Defendants violate the free speech clause.

100. The Supreme Court recently reiterated that state education cannot be provided subject to an unconstitutional condition, holding that the “government cannot condition the benefit of a free public education on parents’ acceptance” of instruction that violates their First Amendment free-exercise rights. *Mahmoud*, 606 U.S. at 530. So too with free speech.

101. Accordingly, the First Amendment and the unconstitutional conditions doctrine bar Defendants from conditioning educational funding and other benefits on Plaintiffs abandoning their preferred educational speech and acquiescing in their children being inculcated by the government’s viewpoints.

102. The mere fact that “a statute’s practical effect may be to *discourage* protected speech is sufficient” to abridge the First Amendment. *Federal Election Comm’n v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 255 (1986) (emphasis added).

103. Moreover, the government abridges one’s right to free speech when it penalizes one for speaking. *Nat’l Rifle Ass’n v. Vullo*, 602 U.S. 175, 188 (2024) ([T]he government may not “use the power of the State to punish or suppress disfavored expression.”).

104. Defendants' funding of only their educational viewpoints is particularly problematic here because Defendants compel Plaintiffs, on pain of criminal punishment, to provide educational speech. Plaintiffs do not have the legal option (or the desire) to avoid government pressure by merely refraining from educational speech or not undertaking the activity associated with educational benefits. In no other context does the government require one to *pay* to avoid repeated and prolonged submission to government orthodoxies.

105. Legally, Defendants may not *compel* speech and then impose costs on that speech based on the viewpoint Plaintiffs choose to espouse. *See Wooley v. Maynard*, 430 U.S. 705 (1977) (“[W]here the state’s interest is to disseminate an ideology, no matter how acceptable to some, such interest cannot outweigh an individual’s First Amendment right to avoid becoming the courier for such message.”).

106. That Defendants have chosen *children’s* education for this arrangement is especially pernicious, as children are uniquely susceptible to the state’s educational messages. *See, e.g., Yoder*, 406 U.S. at 232.

107. In sum, Defendants’ educational regime violates Plaintiffs’ free-speech rights. And as the Nebraska Supreme Court noted long ago, we must avoid permitting love for public education to destroy the constitutional right of parents’ voices in the education of their children. *Ferguson*, 144 N.W. at 1043.

B. Municipal Entity Defendants’ role in the abridgement of Plaintiffs’ freedom of speech

108. The Municipal Entity Defendants play a distinct and substantial role in the abridgment of Plaintiffs’ freedom of speech.

109. As discussed, local funding provides the largest source of revenue for LPS at nearly *half* of the district’s funding. And the LPS budget drives that amount of funding.

110. The City of Lincoln provides other forms of assistance to LPS. For example, the city has an “Interlocal Agreement” with LPS that exists “for the purpose of providing School Resources Officers from the Lincoln Police Department to serve the public high schools of Lincoln Public Schools.” Mayor Leirion Gaylor Baird, *Executive Order* (Sept. 29, 2025), <https://app.lincoln.ne.gov/city/sskib/pdf/2025-26%20EO%20LPS%20SRO%20Funding%20Agreement.pdf>. The city provides this service to LPS at a discount.

111. Lincoln and LPS have “partnered on many initiatives” aimed at improving neighborhoods in Lincoln and “protecting students from reasonably perceivable risks.” Interlocal Cooperation Agreement Between Lincoln Public Schools and City of Lincoln, Nebraska For Lincoln Safe and Successful Kids (June 9, 2021), [https://app.lincoln.ne.gov/city/sskib/pdf/Interlocal%20Agreement%20\(2021\).pdf](https://app.lincoln.ne.gov/city/sskib/pdf/Interlocal%20Agreement%20(2021).pdf). Pursuant to these initiatives, Lincoln and LPS have established Community Learning Centers in both LPS’s schools and Lincoln’s recreation facilities. *Id.*

112. Lincoln and Lancaster County have also coordinated with LPS schools to provide emergency response training and

active threat drills. Zach Worthington, *Lincoln Southeast High School hosts Active Shooter Training* (July 23, 2018), <https://www.klkntv.com/lincoln-southeast-high-school-hosts-active-shooter-training/>.

113. Lincoln does not provide analogous monetary or non-monetary support for those using non-government forms of K-12 education. This is despite the fact that Lincoln has, for example, previously provided grants to private organizations to facilitate the education of healthcare workers. City of Lincoln, *City Workforce Grants Help Train Nearly 200 Healthcare Professionals* (Feb. 26, 2025), <https://www.lincoln.ne.gov/News/2025/2/26a>.

114. Thus, like the State, Lincoln discriminates between parents providing their own educational speech and those who acquiesce in adopting government viewpoints, providing benefits exclusively to the latter.

115. Moreover, state law dictates that school boards, “in collaboration with the county attorney,” “shall have a written policy on attendance[.]” Neb. Rev. Stat. § 79-209(2). The purpose of this policy is to ensure enforcement of the educational mandate.

116. LPS and Lancaster County have adopted such a policy or custom, under which these Defendants retain substantial enforcement discretion. See Lincoln Public Schools, Policy 5140-1, *Reporting and Responding to Excessive Absenteeism* (July 23, 2025), <https://secure4.compliancebridge.com/lps/public/index.php?fuseaction=print.preview&docID=3258>.

117. Under the policy, LPS, aided by Lancaster County, begins intervention for excessive student absences at five unexcused absences in a school quarter, which is earlier than mandated by state law. *See* Neb. Rev. Stat. § 79-209(2). LPS also retains discretion over whether to refer cases of absenteeism to the Lancaster County Attorney. *Id.* (“The school may report to the county attorney ... when the school has documented its efforts to address excessive absences ... and the student has accumulated more than 20 absences per school year.”).

118. Similarly, even after LPS refers a case of excessive absenteeism to the Lancaster County Attorney, the County attorney retains discretion over how to respond. The county, for example, maintains a “High School Truancy Diversion” program that may be used instead of a traditional enforcement action. Lancaster County, *High School Truancy Diversion*, <https://www.lancaster.ne.gov/1115/High-School-Truancy-Diversion/>.

119. Thus, LPS and Lancaster County, in addition to collecting and disbursing funds only for the benefit of government schools, also choose to aggressively enforce the attendance mandate and increase the related pressure on parents.

120. Upon information and belief, the Municipal Entity Defendants provide other benefits only to parents who enroll their children in government schools.

121. The Municipal Entity Defendants, acting under color of state law, have and effectuate a variety of local customs and policies that independently contribute to, and facilitate, the regime abridging Plaintiffs’ freedom of speech.

**C. No compelling state interest justifies Defendants’
abridgment of Plaintiffs’ freedom of speech**

122. Defendants cannot justify the viewpoint discrimination present here. A government may only persist in viewpoint discrimination that satisfies “strict scrutiny,” meaning the government policy must be “narrowly tailored” to achieve a “compelling state interest.” Defendants’ education regime does not satisfy either prong of the strict scrutiny test.

123. First, Defendants do not have a compelling interest in *government* education. *See Pierce*, 268 U.S. 573. Defendants may possess an interest in an educated citizenry, but not in *government* education. *See Meyer*, 262 U.S. at 400-01 (“The American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted ... but the individual has certain fundamental rights which must be respected.”).

124. Defendants particularly have no constitutional interest in viewpoint discrimination that suppresses parents’ educational speech or imposes the government’s educational orthodoxies. As the Supreme Court has recognized, in matters of education, states and local school boards must exercise their discretion “in a manner that comports with the transcendent imperatives of the First Amendment.” *Aguillard*, 482 U.S. at 583 (citing *Board of Education, Island Trees Union Free School Dist. No. 26 v. Pico*, 457 U.S. 853, 864 (1982)).

125. Second, Defendants’ scheme is not narrowly tailored to meet whatever legitimate interest they may have. Nebraska and the Municipal Entity Defendants could fulfill any interest in advancing educational attainment or socialization without

viewpoint discrimination or otherwise abridging parents' rights to educational speech.

126. For example, Nebraska and the Municipal Entity Defendants could provide tax credits or educational savings plans. They could provide facilities or other resources to be used by parents wishing to exercise their own educational voice.

127. Plaintiffs, however, do not ask this Court to decide among these or various other possible solutions. Nor do Plaintiffs ask this Court to require Defendants or the state legislature to make any such choice as to their entire educational programs. Instead, Plaintiffs ask only that the Court declare the aforesaid pressures, burdens, and conditions imposed on Plaintiffs to be unconstitutional and to provide concrete remedies for the Plaintiffs.

D. Defendants' educational regime harms Plaintiffs

128. Defendants' abridgement of Plaintiffs' free-speech rights causes harm.

129. Ms. Menter is currently not employed outside of the home. Rather, she provides homeschooling for her older children and other care for the younger children.

130. The ongoing educational duty will delay her outside employment, causing her to forego income and limiting other benefits such as social security.

131. Additionally, the Menters spend more money on their children's education than they would if the children attended government school. Yet, given a playing field level with parents choosing government schools, the Menters would likely devote more resources to their children's education.

132. Similarly, Mr. Jacobsen's family has spent tens of thousands of dollars to enroll his youngest children in a private elementary school. His family incurs those costs due solely to the fact that several of Mr. Jacobsen's children do not attend Nebraska's government schools. Further, those costs are expected to increase should the children attend a private high school.

133. If Mr. Jacobsen were provided the same benefit for education as parents of public school children, he would choose private school for all of his children.

134. In short, the Defendants' constitutional interest in education cannot justify the current educational regime, the system and its viewpoint discrimination are not narrowly tailored to effectuating a compelling government interest, Plaintiffs suffer harm, and the system therefore violates Plaintiffs' rights under the First Amendment and Article I, Section 5 of the State Constitution.

CAUSES OF ACTION

COUNT I:

Defendants' Educational Regime Directly Abridges Plaintiffs' First Amendment Free-Speech Rights

135. Plaintiffs restate the preceding allegations as if set forth herein.

136. The First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, prohibits Defendants from abridging the freedom of speech.

137. Federal law permits litigants to sue state and local actors that violate their rights under the United States Constitution. 42 U.S.C. § 1983.

138. Plaintiffs' speech rights under the First Amendment include the freedom to convey educational speech. That freedom, buttressed by their fundamental rights and obligations as parents, guarantees parents the right to provide or to choose the source of their educational speech directed at their children.

139. Defendants simultaneously mandate educational speech and provide cost-free K-12 education, but only through government schools.

140. This scheme abridges Plaintiffs' right to freedom of speech by compelling a type of speech and then pressuring them to adopt government viewpoints or requiring them to pay to avoid them.

141. Defendants' scheme discriminates based on viewpoint.

142. While Defendants may have an interest in education, they do not have a compelling interest in government education, nor is their educational program narrowly tailored to a government interest.

143. Defendants' educational mandate and funding scheme abridge Plaintiffs' free-speech rights and cause Plaintiffs injury.

COUNT II:
Defendants' Educational Regime
Directly Abridges Plaintiffs' Free-Speech Rights
Under the Nebraska Constitution

144. Plaintiffs restate the preceding allegations as if fully set forth herein.

145. Article I, Section 5 of the Nebraska Constitution guarantees that “[e]very person may freely speak ... on all subjects.”

146. Litigants may seek a declaratory judgment under Nebraska law where the state has violated their rights under state law.

147. Nebraska’s Constitution is at least as protective of Plaintiffs’ speech as the United States Constitution. *See State v. Zitterkopf*, 317 Neb. 312, 323 (Neb. 2024); *Dossett v. First State Bank, Loomis, Nebraska*, 261 Neb. 959, 966 (Neb. 2001).

148. Accordingly, Defendants’ educational scheme also abridges Article I, Section 5 of the Nebraska Constitution and causes Plaintiffs to suffer a constitutional injury.

COUNT III:

Defendants Unconstitutionally Condition Benefits on Recipients Compromising Free-Speech Rights

149. Plaintiffs restate the preceding allegations as if fully set forth herein.

150. The unconstitutional conditions doctrine dictates that Defendants cannot offer a public benefit with a condition that infringes a constitutional right.

151. Defendants’ educational scheme creates an unconstitutional condition. While Defendants may provide the benefit of educational funding and other related resources, they may not do so with a condition that violates Plaintiffs’ speech rights.

152. Yet, to receive educational benefits from Defendants, Plaintiffs must allow their children to be educated by the government's preferred institutions and speakers, who inculcate the government's educational viewpoints, in place of the Plaintiffs' own preferred educational institutions, speakers, and viewpoints.

153. Defendants' educational scheme therefore violates the unconstitutional conditions doctrine and causes Plaintiffs to suffer a constitutional injury.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment in their favor and grant the following relief:

A. A declaration that Nebraska Revised Statute Section 79-201(2)(a), the State's compulsory education law, in tandem with Defendants' choice to provide education benefits only when coupled with government-supplied speech in government schools, directly abridges Plaintiffs' free-speech rights under the First Amendment to the United States Constitution.

B. A declaration that Nebraska Revised Statute Section 79-201(2)(a), the State's compulsory education law, in tandem with Defendants' choice to provide education benefits only when coupled with government-supplied speech in government schools, directly abridges Plaintiffs' right to speak freely pursuant to Article I, Section 5 of the Nebraska Constitution.

C. A declaration that Defendants' conditioning of educational funding and other benefits on Plaintiffs accepting the government's educational viewpoint

constitutes an unconstitutional condition abridging Plaintiffs' First Amendment right to freedom of speech.

D. A declaration that Defendants' conditioning of educational funding and other benefits on Plaintiffs accepting the government's educational viewpoint constitutes an unconstitutional condition abridging Plaintiffs' Article I, Section 5 right to speak freely.

E. An injunction barring Defendants from imposing the afore-declared unconstitutional condition on educational benefits.

F. Pursuant to 42 U.S.C. § 1983, damages from the Municipal Entity Defendants City of Lincoln and/or Lancaster County with such damages equal to the per pupil value of funding or other benefits those Defendants collect or provide for the benefit of the Lincoln Public Schools, multiplied by the number of Plaintiffs' school-aged children, with such damages continuing until the unconstitutional scheme no longer exists, such children graduate from high school, obtain a GED, or turn 19 years of age, whichever comes first.

G. Alternatively, an award of nominal damages.

H. An award of Plaintiffs' fees and related costs of this action, including reasonable attorneys' fees.

I. Any other relief this Court considers just and appropriate.

DATED: This 13th day of August 2026

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**Pro hac vice* forthcoming