

**UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

CAPSTONE CLASSICAL ACADEMY,
KAYLIE M. YOUNG, and PAUL D.
NELSON,

Plaintiffs,

v.

LEVI BACHMEIER, in his official capacity as Superintendent of Public Instruction and ex officio member of the Education Standards and Practices Board; CORY STEINER, chair and member, EVAN KRITZBERGER, vice chair and member, JENNIFER BLADOW, member, SIRI COLEMAN, member, DUSTIN HAGER, member, SARAH LERUD, member, ANGELA NAGEL, member, SHEILA SCHLAFMANN, member, PATTI STEDMAN, member, and DENA VENNEMAN, member, in their official capacities as officers and members of the Education Standards and Practices Board; and REBECCA PITKIN, in her official capacity as executive director and secretary of the Education Standards and Practices Board,

Defendants.

CASE NO. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This is a federal, constitutional lawsuit challenging North Dakota’s onerous and invasive teacher licensing requirements for private schooling. Unlike virtually any other state, North Dakota requires all private school teachers to be licensed or approved by the state. Moreover, North Dakota limits private school teachers to teaching only those areas, fields of

study, and courses that their licenses authorize or for which they have obtained an “endorsement” from the state. The licensing standards, meanwhile, are the same that apply to North Dakota’s public schools, which the state constitution requires to be “uniform.” Parents choose private schooling precisely because they want *alternatives* to the uniform public schools, and the licensing requirements interfere with the ability of private schools to offer those alternatives. The requirements also impose severe financial and administrative costs on private schools and private school teachers, and they drastically restrict the available pool of teacher candidates, making it far more difficult for a private school to hire teachers aligned with the school’s unique identity and mission. North Dakota’s teacher licensing requirements for private schools violate the Due Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth Amendment to the U.S. Constitution.

JURISDICTION, VENUE, AND DIVISION ASSIGNMENT

2. Plaintiffs Capstone Classical Academy, Kaylie Young, and Paul Nelson, bring this civil rights lawsuit pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983, and the Declaratory Judgments Act, 28 U.S.C. §§ 2201–02, for violations of the Due Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth Amendment to the U.S. Constitution.

3. Plaintiffs seek declaratory and injunctive relief regarding North Dakota statutes that require private school teacher licensing or approval and condition private school approval on such licensure.

4. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3), (4).

5. Venue is proper in this District under 28 U.S.C. § 1391(b)(2), because a substantial part of the events giving rise to Plaintiffs’ claims occurred in this District. Venue is

also proper in this District under 28 U.S.C. § 1391(b)(1), because Defendants reside in this District and are residents of North Dakota.

6. Assignment to this Division is proper under Local Civil Rule 3.1, because the action arose in this Division and multiple defendants reside within it.

PARTIES

7. Plaintiff Capstone Classical Academy (hereinafter, “Capstone”) is a nonprofit, nonpublic school located in Fargo, ND. It was founded in 2021 and opened its doors to students in 2022. Capstone’s mission is to engage children to acquire wisdom, cultivate virtue, and pursue rigorous academic study within a Christian worldview through the study of the Good, the True, and the Beautiful for the glory of God and the benefit of their community. Capstone uses a classical model of education because the school believes that education should be concerned with formation and learning how to think, rather than just information and learning what to think. Capstone believes that classical education’s methods are time-tested, engaging, and highly effective in cultivating not only skills, but also wisdom and virtue. As a nonpublic (*i.e.*, private) school in North Dakota, Capstone is subject to North Dakota’s statutes requiring teacher licensing or approval as a condition of private school approval.

8. Plaintiff Kaylie Young is a resident of Leonard, ND and a teacher employed by Capstone. She is also the mother of three Capstone students. Kaylie has taught for 16 years, including 12 years in public schools in Enderlin and Casselton. Kaylie holds a B.A. degree in English Education, with a minor in Spanish, from North Dakota State University and a M.S. degree in Education with an emphasis in English from Valley City State University. Kaylie teaches at Capstone because she believes that a classical model of education centered around Jesus Christ is the best way to help children grow in wisdom and virtue, which she believes to be

the ultimate aim of education. As a private school teacher in North Dakota, Kaylie is subject to North Dakota's statutes requiring teacher licensing or approval. Noncompliance with those statutes and regulations would subject Kaylie to reprimand, license suspension or revocation, monetary fines, and/or other disciplinary action. *See* N.D. ADMIN. CODE 67.1-03-01-01, -03; *id.* 67.1-03-02-01; N.D. CENT. CODE § 15.1-13-17(4).

9. Plaintiff Paul Nelson is a resident of Oxbow, ND and the father of a student at Capstone. Paul has chosen Capstone because he believes the school's classical pedagogy and Christian mission are the best educational option for his child. As the parent of a school-aged child in North Dakota, Paul is subject to the state's compulsory attendance laws. His child's attendance at Capstone or any other private school will only satisfy Paul's legal obligations under the compulsory attendance laws if the school is approved by the state. Paul's failure to comply with those legal obligations would subject him to conviction for an infraction (for a first offense) or a class B misdemeanor (for a second or subsequent offense), as well as fines totaling \$1,000 (for a first offense) and imprisonment for 30 days and/or fines totaling \$1,500 (for a second or subsequent offense). N.D. CENT. CODE §§ 15.1-20-03(4), 12.1-32-01.

10. Defendant Levi Bachmeier is the North Dakota Superintendent of Public Instruction and a nonvoting, *ex officio* member of the North Dakota Education Standards and Practices Board. He is sued in his official capacity only.

11. Superintendent Bachmeier has the legal responsibility and authority to, among other things: supervise the provision of kindergarten through twelfth-grade education in North Dakota; supervise the establishment and maintenance of schools in the state; assure that public and nonpublic elementary, middle-junior high, and high schools in the state comply with statutory minimum requirements; supervise the development of course content standards; and

certify the approval of nonpublic schools. N.D. CENT. CODE §§ 15.1-02-04(1)–(3), 15.1-06-06.1; N.D. ADMIN. CODE 67-01-01-01.1(2).

12. As Superintendent of Public Instruction, Superintendent Bachmeier is the chief administrative officer of the North Dakota Department of Public Instruction (hereinafter, “Department”), which is headquartered in Bismarck. N.D. CENT. CODE § 15.1-03-01; N.D. ADMIN. CODE 67-01-01-01.1, -02(1).

13. Superintendent Bachmeier has direct authority over the Department’s personnel, as well as the responsibility and practical ability to: (1) ensure that his own and the Department’s powers and duties are exercised in accordance with the U.S. Constitution; and (2) ensure that the statutes that he and the Department are charged with implementing, as well as his and the Department’s regulations, policies, practices, and customs, are implemented in accordance with the U.S. Constitution.

14. Defendant Cory Steiner is the chair and a member of the North Dakota Education Standards and Practices Board (“ESPB”). He is sued in his official capacity only.

15. Defendant Evan Kritzberger is the vice chair and a member of the ESPB. He is sued in his official capacity only.

16. Defendant Jennifer Bladow is a member of the ESPB. She is sued in her official capacity only.

17. Defendant Siri Coleman is a member of the ESPB. She is sued in her official capacity only.

18. Defendant Dustin Hager is a member of the ESPB. He is sued in his official capacity only.

19. Defendant Sarah Lerud is a member of the ESPB. She is sued in her official capacity only.
20. Defendant Angela Nagel is a member of the ESPB. She is sued in her official capacity only.
21. Defendant Sheila Schlafmann is a member of the ESPB. She is sued in her official capacity only.
22. Defendant Patti Stedman is a member of the ESPB. She is sued in her official capacity only.
23. Defendant Dena Venneman is a member of the ESPB. She is sued in her official capacity only.
24. Defendant Rebecca Pitkin is the executive director and secretary of the ESPB. She is sued in her official capacity only.
25. The ESPB (which is not, itself, a defendant) is a state board comprised of ten members appointed by the governor. The Superintendent of Public Instruction (or his or her designee) also serves as a nonvoting, *ex officio* member. The ESPB is headquartered in Bismarck. N.D. CENT. CODE § 15.1-13-02; N.D. ADMIN. CODE 67.1-01-01-01.
26. The ESPB has the legal power and duty to, among other things, regulate and supervise the licensure and approval of teachers, set standards for and approve teacher preparation programs, and issue major and minor equivalency endorsements. N.D. CENT. CODE § 15.1-13-08(1), (2), (6); N.D. ADMIN. CODE 67.1-01-01-02(1). It also has the legal authority to adopt rules in pursuit of its duties. N.D. CENT. CODE § 15.1-13-09(1).

27. The ESPB has the legal power and duty to review complaints against teachers and administrators regarding alleged licensing violations and to initiate formal disciplinary action.

N.D. ADMIN. CODE 67.1-01-01-02(4); N.D. CENT. CODE § 15.1-13-24, -25.

28. As members and, in the case of Defendant Pitkin, executive director of the ESPB, Defendants Steiner, Kritzberger, Bladow, Coleman, Hager, Lerud, Nagel, Schlafmann, Stedman, Venneman, and Pitkin have direct authority over the ESPB's staff, as well as the responsibility and practical ability to: (1) ensure that the powers and duties of the ESPB and its staff are exercised in accordance with the U.S. Constitution; and (2) ensure that the statutes that the ESPB and its staff are charged with implementing, as well as the ESPB's regulations, policies, practices, and customs, are implemented in accordance with the U.S. Constitution.

THE TEACHER LICENSING REQUIREMENTS

29. North Dakota requires nonpublic (*i.e.*, private) school teachers to be licensed or otherwise approved by the state.

30. "Before being employed to teach by a nonpublic school," state law provides, "an individual shall present to the school business manager a teaching license or other evidence of approval to teach issued by the [ESPB]." N.D. CENT. CODE § 15.1-13-18(2); *see also id.* § 15.1-13-17(1) ("An individual may not engage in the profession of teaching unless . . . [t]he individual holds a teaching license issued by the [ESPB] . . . or . . . [t]he individual is approved to teach by the [ESPB].").

31. The licensing requirement attaches as well through the state's compulsory attendance laws. North Dakota compels every parent of a child between the ages of seven and sixteen to "ensure the child attends a public school for the duration of each school year." N.D. CENT. CODE § 15.1-20-01(1). Parents are exempted from this requirement if they instead send

their child to a nonpublic school “for the same length of time,” but only if it is “an *approved* nonpublic school.” *Id.* § 15.1-20-02(1)(a) (emphasis added).

32. Approval, in turn, requires that the nonpublic school employ only licensed or approved teachers. Specifically, to obtain and maintain approval, a school’s administrator must submit an annual compliance report verifying, among other things, that: (1) “[e]ach classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board”; and (2) “is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception[.]” N.D. CENT. CODE § 15.1-06-06.1(1)(a), (b).

33. The teacher licensing standards applicable to private school teachers are the same as those that apply in the public school system.

34. The teacher licensing requirements apply even to persons teaching subjects or courses that the state does not require to be taught: for example, foreign languages at the K–8 level.

35. North Dakota is an extreme outlier in this regard. The overwhelming majority of states require neither state approval of private schools nor state licensing or approval of private school teachers. North Dakota requires both.

PATHWAYS TO LICENSURE

36. There are several pathways to teacher licensure or approval, all of which are expensive, time-intensive, onerous, and complex.

Traditional Licensure

37. The traditional pathway to licensure requires a minimum of a four-year bachelor's degree from a teacher education program approved by the ESPB. *See* N.D. CENT. CODE §§ 15.1-18-02, 15.1-18-02.1; N.D. ADMIN. CODE 67.1-02-02-02.

38. The teacher education program must meet standards established by the legislature and ESPB. These standards cover, among other things, subject-specific coursework, pedagogical coursework, professional education experience, and student teaching experience. Requirements differ based on grade level and/or subject to be taught. *See* N.D. ADMIN. CODE 67.1-02-02-02; *see also* N.D. CENT. CODE §§ 15.1-18-02, -02.1

39. There are only twelve teacher education programs approved by ESPB and one other with probationary approval. All are located in North Dakota. There is also one “alternative program” approved by ESPB, but it is specific to special education. *See* N.D. EDUC. STANDARDS AND PRACTICES BD., *ND State Approved Teacher Preparation Programs*, <https://www.nd.gov/esp/program-approval/nd-state-approved-teacher-preparation-programs>.

40. Prior to obtaining a license, a traditional licensure candidate must pass a series of examinations written, administered, and evaluated by the Educational Testing Service (“ETS”): a global standardized testing corporation that is involved in, among other things, the SAT, AP, GRE, and TOEFL exams.

41. ETS was founded in the 1940s to house the growing standardized testing industry. It has been widely criticized for its lack of oversight and near monopolistic power.

42. A prospective teacher pursuing traditional licensure must obtain passing scores on the following ETS exams: (1) the Core Academic Skills for Educators exams (also referred to as Praxis I) in reading, writing, and mathematics, which cost \$90 per exam or \$150 if taken in a combined format; (2) for content areas other than special education, the grade-level-specific

Principles of Learning and Teaching exam (or Praxis II PLT), which costs \$156; and (3) any additional exams required for specific licensure areas, called Praxis II content-specific exams, which cost between \$130 and \$185 each.

43. North Dakota recognizes approximately 90 different Praxis II content-specific exams, covering subjects ranging from English, math, and science to agriculture, art, business, computer science, drama, family and consumer science, health, journalism, marketing, music, and sociology. *See* N.D. EDUC. STANDARDS AND PRACTICES BD., *Testing Information*, <https://www.nd.gov/esp/licensure/testing-information>; *see also* N.D. ADMIN. CODE 67.1-02-02-02; PRAXIS, *North Dakota*, <https://praxis.ets.org/state-requirements/northdakota-tests.html>.

44. To obtain his or her initial, two-year license, an applicant must pay ESPB an initial application fee of \$30 and an initial in-state, two-year license fee of \$85. N.D. ADMIN. CODE 67.1-02-02-02(4), (5).

45. If, at the end of the two-year period of the license, the teacher has fewer than eighteen months of successful contracted teaching in North Dakota, he or she may apply for a two-year renewal license, at a cost of \$65. N.D. ADMIN. CODE 67.1-02-02-04(1)(a).

46. Once the teacher has taught successfully for a full-time equivalent of 18 months during the past five years in North Dakota, the teacher may obtain a five-year renewal license at a cost of \$140. N.D. ADMIN. CODE 67.1-02-02-04(2)(a).

47. Thereafter, a teacher may obtain subsequent five-year renewal licenses, provided he or she was under contract to teach at least 30 days during the previous renewal period and completed at least six semester hours of “re-education” credits during the previous renewal period. The cost of a five-year renewal license is \$140. N.D. ADMIN. CODE 67.1-02-02-04(2)(a)(1), (2).

48. ESPB encourages applicants who have completed a teaching degree outside of North Dakota to obtain a teaching license in the state where the degree was earned, which would then enable the applicant to apply for an “other state educator license” and not have to meet North Dakota’s standards. If the applicant does not first obtain licensure in the state in which the degree was earned, however, he or she will need to apply for an “out of state reciprocal license,” which will allow the applicant to teach while completing all North Dakota teacher-certification requirements not covered by the other state’s education degree; the applicant may have up to five years to meet North Dakota’s requirements. N.D. EDUC. STANDARDS AND PRACTICES BD., *License FAQs*, <https://www.nd.gov/espb/licensure/license-information/license-faqs>; *see also* N.D. ADMIN. CODE 67.1-02-06-03, 67.1-02-06-01(3).

49. For an initial other state educator license, the applicant must pay ESPB an initial application fee of \$30, plus a license fee of \$85 for a two-year license or \$190 for a five-year license. A two-year renewal is \$65 and a five-year renewal is \$140.

50. For an out of state reciprocal license, the applicant must pay ESPB an initial application fee of \$30, plus a license fee of \$85. N.D. EDUC. STANDARDS AND PRACTICES BD., *License Fees*, <https://www.nd.gov/espb/licensure/license-information/licensing-fees>.

American Board Licensure

51. The next pathway to licensure or approval is called American Board licensure, which was added as an option in 2019. It requires, among other things: (1) a bachelor’s degree in any subject from an accredited institution; (2) completion of a \$1,900, year-long online certification program through the American Board for Certification of Teacher Excellence (“American Board”); and (3) passage of the American Board’s Professional Teaching Knowledge exam and relevant subject area examinations. N.D. EDUC. STANDARDS AND PRACTICES BD.,

American Board, <https://www.nd.gov/esp/icensure/american-board>; AM. BD. FOR CERTIFICATION OF TEACHER EXCELLENCE, *North Dakota Teacher Certification*, <https://www.americanboard.org/north-dakota/>.

52. Although the bill adding American Board licensure as a pathway in 2019 did not name the American Board specifically and was drafted so as to appear to not grant a privilege to one particular certification entity, the requirements that the bill set for an “alternative teacher certification program” to meet were ones that only the American Board itself could satisfy. For example, a program had to: (1) “[r]equire applicants to pass a subject area and pedagogy examination, known as the professional teaching knowledge examination,” which is the American Board’s own examination; and (2) “[a]llow an individual who obtains an initial or renewal license to teach in the subject areas of” elementary education, elementary education with a reading endorsement, English language arts, United States and world history, mathematics, general science, biology, chemistry, physics, and special education, which are the very subject areas certified by the American Board. 2019 N.D. Laws 581 (H.B. 1287); *see also* AM. BD. FOR CERTIFICATION OF TEACHER EXCELLENCE, *North Dakota Teacher Certification*, <https://www.americanboard.org/north-dakota/>.

53. In addition to the \$1,900 payable to the American Board, an American Board license applicant must pay ESPB an initial application fee of \$30 and an American Board license fee of \$85. N.D. EDUC. STANDARDS AND PRACTICES BD., *License Fees*, <https://www.nd.gov/esp/icensure/license-information/licensing-fees>.

54. An American Board license holder must then complete additional training in order to become eligible for a five-year renewal license. The training includes: (1) coursework in cultural diversity; (2) the American Board’s clinical experience program; (3) a state-approved

mentor program; and (4) competency training in youth mental health. N.D. CENT. CODE §§ 15.1-13-10(9), 15.1-13-35; AM. BD. FOR CERTIFICATION OF TEACHER EXCELLENCE, *North Dakota Teacher Certification*, <https://www.americanboard.org/north-dakota/>.

Alternate Access Licensure

55. The next pathway to licensure or approval is called alternate access licensure. It is a temporary licensure program that first requires ESPB to declare a shortage of regularly licensed teachers. N.D. ADMIN. CODE 67.1-02-04-01(2). Currently, all content areas are in critical shortage and have been for years. See N.D. EDUC. STANDARDS AND PRACTICES BD., *Education Standards and Practices Board Statement Regarding Critical Shortage Areas*, <https://www.nd.gov/espb/critical-shortage>.

56. Before a prospective teacher can apply for an alternate access license, the school desiring to employ the prospective teacher must put in writing that it tried to find a fully licensed teacher but could not do so. N.D. ADMIN. CODE 67.1-02-04-01(3). Specifically, the private school must “explain unsuccessful attempts to find a fully licensed teacher, in a signed and dated letter, sent to the [job] candidate as a PDF for them to upload into their application.” N.D. EDUC. STANDARDS AND PRACTICES BD., *North Dakota Alternate Access Licensure*, <https://www.nd.gov/espb/sites/www/files/documents/Alternate-Access-License-One-Pager.pdf>.

57. The letter must specify, among other things:

- the length of time the job posting was advertised;
- the format used for the job posting;
- the number of applications received;
- the number of candidates interviewed; and

- the incentives that were used to try to attract qualified applicants, including whether increases in salary were offered.

N.D. ADMIN. CODE 67.1-02-04-01(3).

58. If these and other prerequisites are met, the applicant may obtain a one-year temporary license with only a bachelor's degree in any subject, although it is preferred that the degree be in the content area the school needs taught. At a minimum, the bachelor's degree must include at least 30 credits in the content area or a closely related area. N.D. ADMIN. CODE 67.1-02-04-01(6); N.D. EDUC. STANDARDS AND PRACTICES BD., *North Dakota Alternate Access Licensure*, <https://www.nd.gov/espb/sites/www/files/documents/Alternate-Access-License-One-Pager.pdf>.

59. Alternate access licenses are issued for one year at a time, for up to three years, provided the applicant makes regular progress toward permanent licensure—*i.e.*, completes all college coursework necessary for a regular teacher license within three years. Alternatively, the applicant may pursue licensure through the American Board, but this must be accomplished in the first year on an alternate access license. N.D. ADMIN. CODE 67.1-02-04-01(8); N.D. EDUC. STANDARDS AND PRACTICES BD., *North Dakota Alternate Access Licensure*, <https://www.nd.gov/espb/sites/www/files/documents/Alternate-Access-License-One-Pager.pdf>.

60. The alternate access license applicant must pay ESPB an initial application fee of \$30, as well as an alternate access license fee of \$165 for each year a license is issued. N.D. EDUC. STANDARDS AND PRACTICES BD., *License Fees*, <https://www.nd.gov/espb/licensure/license-information/licensing-fees>.

61. Significantly, however, an alternate access license cannot be issued before July 1 of the upcoming school year. N.D. ADMIN. CODE 67.1-02-04-01(1). This creates great

uncertainty for hiring schools, which typically must sign parent enrollment contracts and create their budgets well before that date, with no guarantee that they will actually have a teacher available.

Teaching Permit

62. The next pathway is a teaching permit, another form of temporary approval that, like the alternate access license, requires a declared shortage of regularly licensed teachers and written verification from the hiring school that all efforts were made to hire a licensed teacher. N.D. CENT. CODE § 15.1-18-10(6); N.D. EDUC. STANDARDS AND PRACTICES BD., *Teaching Permit Information*, <https://www.nd.gov/espb/licensure/teaching-permit-information>.

63. The teaching permit pathway, however, is categorically unavailable for an applicant who wants to teach any “core subject,” including elementary education, mathematics, science, language arts, and social studies. N.D. CENT. CODE § 15.1-18-10(4).

64. Unlike the alternate access license, a teaching permit applicant does not require a bachelor’s degree. Rather, the applicant may apply with a high school diploma and either 4,000 hours (spread over at least 5 years) of relevant work experience *or* a certificate, license, or degree in the relevant subject area. N.D. CENT. CODE § 15.1-18-10(4).

65. In order to teach, however, a permit holder must enroll in a state-approved teacher mentorship program. N.D. CENT. CODE § 15.1-18-10(4).

66. Teaching permits are subject to more relaxed renewal requirements than alternate access licenses and may be issued annually for up to a total of three years without showing any progress toward permanent licensure and up to a total of seven years if the applicant also enrolls in a teacher education program. N.D. CENT. CODE § 15.1-18-10(6), (7). The applicant must pay ESPB an initial application fee of \$30, as well as a teaching permit fee of \$150 for each year the

permit is issued. N.D. EDUC. STANDARDS AND PRACTICES BD., *License Fees*,
<https://www.nd.gov/espb/licensure/license-information/licensing-fees>.

67. Significantly, however, the state will not issue a teaching permit until even later than it will issue an alternate access license. Specifically, a teaching permit cannot issue before August 1, a mere few weeks before the start of the school year. N.D. EDUC. STANDARDS AND PRACTICES BD., *Teaching Permit Information*, <https://www.nd.gov/espb/licensure/teaching-permit-information>.

68. Finally, the teaching permit pathway is set to sunset in July 2031.

Additional, But More Limited, Pathways

69. There are several other pathways to teaching with more relaxed requirements, but they are more limited in scope and/or availability.

70. For example, an individual with no college degree may receive a “restricted” license to teach Native American languages and culture, provided she or he is: (1) “recommended for licensure to teach North Dakota native languages by an indigenous language board created by a tribal government in” North Dakota; (2) “[d]isplays competence in North Dakota American Indian languages and culture”; and (3) completes a three-semester hour course in classroom instruction at an institution of higher education. N.D. CENT. CODE § 15.1-13-22; *see also* N.D. ADMIN. CODE 67.1-02-05-04(4)(c)(2). Such an “eminence-credentialed” teacher enjoys “the same legal authority and status” as a regularly licensed teacher. N.D. CENT. CODE §§ 15.1-18-10(2), 15.1-18-04(1).

71. An individual may also receive a “restricted” license to teach theology if she or he (1) has a bachelor’s degree, (2) completes the requisite application, (3) submits the requisite fees and transcripts, (4) completes a background investigation, and (5) is “recommended for approval

as an instructor of theological studies by the governing board or administration of a nonpublic school offering a theological studies course.” N.D. CENT. CODE § 15.1-13-34; *see also* N.D. ADMIN. CODE 67.1-02-05-04(4)(b)(9).

72. Military spouses and military members also have a pathway with significantly relaxed requirements, including the possibility of case-by-case exceptions to ordinary licensing standards. N.D. CENT. CODE § 43-51-11.1; *see also id.* §§ 15.1-13-17(3), 15.1-13-17.1, 15.1-18-12, 43-51-11.

73. And when a shortage of regularly licensed substitute teachers exists, an interim substitute license may be issued to someone with either: (1) 48 semester hours of college coursework or (2) a high school diploma (or equivalent) and completion of a \$99, 20-hour online training program operated by a private corporation called Frontline Technologies. An interim licensed substitute teacher may teach no more than 30 consecutive days in the same classroom. Moreover, neither a regularly licensed nor interim licensed substitute teacher may be the teacher of record for a classroom. *See* N.D. ADMIN. CODE 67.1-02-02-10, 67.1-02-04-02; N.D. EDUC. STANDARDS AND PRACTICES BD., *Substitute License Requirements and Application*, <https://www.nd.gov/espblicensure/substitute-license-requirements-and-application>. The interim substitute license itself, which is valid for two years, costs \$95, and ESPB charges an additional \$30 to apply. N.D. EDUC. STANDARDS AND PRACTICES BD., *License Fees*, <https://www.nd.gov/espblicensure/license-information/licensing-fees>.

ENDORSEMENTS AND LICENSE/COURSE CODES

74. A teaching license does not enable a teacher to teach every subject or course at every grade level. Rather, teachers may teach only those subjects and courses, at those grade

levels, that their license authorizes or for which they have obtained an “endorsement” from ESPB.

75. The North Dakota Department of Public Instruction maintains a “Course Code Directory,” listing hundreds of courses by subject matter and grade level. See N.D. DEP’T OF PUB. INST., *Course Codes*, <https://www.nd.gov/dpi/districtschools/course-codes>. ESPB, in turn, relies on these course codes to annually produce a “License Code Manual,” which identifies the specific courses that a teacher is allowed to teach based on his or her particular license and endorsement(s). See N.D. EDUC. STANDARDS AND PRACTICES BD., LICENSE CODE MANUAL, [https://www.nd.gov/espb/sites/www/files/documents/License-Code-Manual-2025-2026\(12-23-25\).pdf](https://www.nd.gov/espb/sites/www/files/documents/License-Code-Manual-2025-2026(12-23-25).pdf).

76. For example, a restricted license in theological studies, or a more general license with a Theology Education, 9-12 endorsement, currently allows the license holder to teach the following courses, listed by course code and name:

60001	K-3 Religious Education
60002	4-8 Religious Education
60010	9-12 Religious Foundations
60011	9-12 Comparative Religion
60012	9-12 Eastern Religions
60013	9-12 Western Religions
60014	9-12 Scriptures
60015	9-12 Old Testament
60016	9-12 New Testament
60017	9-12 Bible History

60018	9-12 Christology
60019	9-12 Religious Figures
60020	9-12 Liturgy and Prayer
60021	9-12 Prayer and Spirituality
60022	9-12 Religious Ethics and Morality
60023	9-12 Justice, Peace, and Faith
60024	9-12 Faith and Lifestyle
60025	9-12 Ministry
60026	9-12 Religious Education and Theology—Aide
60027	9-12 Religious Ed. and Theology—Ind. Study
60028	9-12 Religious Ed. and Theology—Work Exp.
60029	9-12 Religious Ed. and Theology—Other
60030	9-12 Formal and Material Logic
60031	9-12 Basic Questions of Philosophy
60032	9-12 Theological Anthropology
60033	9-12 Catholic Studies through Literature

N.D. EDUC. STANDARDS AND PRACTICES BD., LICENSE CODE MANUAL 49–50,

[https://www.nd.gov/esp/esp/sites/www/files/documents/License-Code-Manual-2025-2026\(12-23-25\).pdf](https://www.nd.gov/esp/esp/sites/www/files/documents/License-Code-Manual-2025-2026(12-23-25).pdf).

77. Although there are hundreds of license and course codes, the list is not comprehensive.

78. For example, although a teacher with a Theology Education, 9-12 endorsement may teach a course in Catholic Studies through Literature, there is no comparable course code

authorizing her to teach Jewish Studies through Literature, even if she is an expert on, say, Maimonides, Spinoza, and Bellow. The same teacher, however, *would* be permitted to teach the Catholic Studies through Literature course despite never having read Augustine, Dante, or O'Connor.

79. Similarly, several years ago, a private school wished to offer a logic course to its students, but there was no course code for logic. The school was therefore unable to offer the course; in the absence of a specific course code tied to a specific endorsement, no teacher, in ESPB's view, was qualified to teach a course in logic. Eventually, ESPB added a course code for Formal and Material Logic under the Theology Education endorsement and, later, for "Formal Logic" under the English Education endorsement. *See* N.D. EDUC. STANDARDS AND PRACTICES BD., LICENSE CODE MANUAL 18, 50, [https://www.nd.gov/esp/esp/sites/www/files/documents/License-Code-Manual-2025-2026\(12-23-25\).pdf](https://www.nd.gov/esp/esp/sites/www/files/documents/License-Code-Manual-2025-2026(12-23-25).pdf).

80. The state expressly recognizes problems that the interaction of licensing, endorsement, and course codes may present for a school's curricular offerings. "Times may arise," the Department of Public Instruction explains, "where a school may find it necessary to request a new course." N.D. DEP'T OF PUB. INST., *Course Codes*, <https://www.nd.gov/dpi/districtschools/course-codes>. In such situations, a school wishing to offer the course must make a "new course request" on a particular form, called a SFN 60065, which the Department "reviews and processes . . . once a year." *Id.* "The date for submitting a new course code for the following school year is February 1. Any request made after the due date will be saved and processed on the next review date." *Id.* A "Specialized Content Committee" "completes an in-depth review to analyze the information and standards provided,"

and it may “request further information or consult field experts.” *Id.* “After reviewing all the information, the [committee] makes the final decision.” *Id.* “If approved, the course information is provided to the Education Standards and Practices Board for review.” *Id.* The ESPB then determines what license and/or endorsement is required to teach the course. *Id.*

81. Typically, obtaining an endorsement to teach in a new content area or grade level requires passage of one or more Praxis II exams, completion of a new degree or additional coursework, or a major or minor equivalency in a particular area. N.D. ADMIN. CODE 67.1-02-03-01 to -07.

82. In addition to the hundreds or thousands of dollars in Praxis testing or coursework necessary to obtain an endorsement, ESPB itself charges \$80 simply to add the endorsement.

83. Despite insisting that a new endorsement is necessary to ensure that a licensed teacher is qualified to teach in a new area, ESPB tolerates teaching in new subject areas for up to two years *without* passing the relevant Praxis II exams, taking the requisite additional coursework, or securing a major or minor equivalency, so long as the teacher pays the \$80 endorsement fee to ESPB. Specifically, the teacher may apply for an “out-of-field” endorsement, which allows a fully licensed teacher to teach in an out-of-field area (excluding special education and pre-kindergarten/kindergarten) for a period of one year. An out-of-field endorsement requires a written request to ESPB from a school administrator on behalf of the teacher, and the endorsement can be renewed at the school’s request for one additional year. N.D. EDUC.

STANDARDS AND PRACTICES BD., *Out-of-Field Endorsement*,

<https://www.nd.gov/espblicensure/endorsement-information/out-field-endorsement>.

84. By way of example, ESPB explains, “A ND licensed physical education teacher could teach English for a school year with this endorsement. The school could request this

endorsement to be renewed for a following year (so two years total). The teacher would need to pass the English Praxis test if the school needs them to teach English the third year.” N.D. EDUC. STANDARDS AND PRACTICES BD., *Out-of-Field Endorsement*, <https://www.nd.gov/esp/licensure/endorsement-information/out-field-endorsement>.

ONGOING REGULATION, OBLIGATIONS, COSTS, AND BURDENS

85. The regulation, obligations, costs, and other burdens imposed by North Dakota do not end with the obtaining of a teaching license and the desired endorsement(s).

86. Teachers must renew their licenses periodically and are only eligible for a “lifetime” license once they have been licensed in North Dakota for at least 25 years. N.D. CENT. CODE § 15.1-13-12.1(1). Depending on the type of renewal, the cost ranges from \$65 to \$140. N.D. EDUC. STANDARDS AND PRACTICES BD., *License Fees*, <https://www.nd.gov/esp/licensure/license-information/licensing-fees>.

87. In order to obtain five-year renewal licenses, moreover, a teacher must complete at least six “re-education” credits authorized by ESPB. Typically, one credit requires 15 hours of instructional time, for a total of 90 hours, which must “be documented by college or state-approved alternative program transcripts.” N.D. ADMIN. CODE 67.1-02-02-04(2)(a)(2). Re-education credits typically cost at least \$100 each and often more.

88. An applicant who fails to complete the six semester hours of re-education credit within the required time may not have their license renewed until he or she provides proof of eight semester hours of re-education and agrees to be placed on a two-year “probationary” license. A second probationary license will not be issued. N.D. ADMIN. CODE 67.1-02-02-04(2)(c), (e).

89. Many North Dakota school districts use public funds to pay or reimburse license renewal fees, re-education credit costs, Praxis exam fees, coursework tuition, and other costs associated with licensure on behalf of their public school teachers; many districts also pay stipends, or cover lodging, meal, and travel expenses, for public school teachers to attend re-education training.

90. Private school teachers, on the other hand, must pay such costs on their own, hope that the private schools they work for can afford and are willing to cover the costs on their behalf, or hope that some of the expenses may be defrayed through federal Title II funding.

91. Finally, noncompliance with the regulations and statutes governing licensure may subject a teacher to reprimand, license suspension or revocation, monetary fines, and/or other disciplinary action. *See* N.D. ADMIN. CODE 67.1-03-01-01, -03; *id.* 67.1-03-02-01; N.D. CENT. CODE § 15.1-13-17(4).

THE STATE’S FAR LIGHTER TOUCH ON HOMESCHOOLING

92. Despite North Dakota’s extensive, invasive, and stifling regulation of private schools and their teachers, the state takes a far lighter regulatory touch on parents who homeschool their children.

93. A child’s education at a private school will satisfy her parent’s compulsory attendance obligations *only if* the private school is “approved” by the state, which requires that “[e]ach classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board” and “is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception,” N.D. CENT. CODE § 15.1-06-06.1(1)(a), (b).

94. A parent may also satisfy her compulsory attendance obligations by ensuring her child receives a “home education.” N.D. CENT. CODE § 15.1-20-02(1)(e). A parent may supervise “home education” with only a high school diploma or GED. In fact, a parent may do so *without* a high school diploma or GED, so long as he or she is monitored by the local school district for the first two years. After that initial period, if the child obtains a basic composite standardized achievement test score at the fiftieth percentile nationally or better, there is no further monitoring required. N.D. CENT. CODE §§ 15.1-23-03(1), (2), 15.1-23-06.

95. What’s more, the parent’s obligation is merely to “supervise[.]” the homeschool program—that is, to “select[.] . . . materials, determin[e] . . . an educational philosophy, and overs[ee] . . . the method, manner, and delivery of instruction.” N.D. CENT. CODE § 15.1-23-01(1), (3). The parent need not provide the actual instruction herself but may outsource it to someone(s) else. And there are *no* licensing, permitting, or minimum education requirements for the someone(s) else.

96. As the Department of Public Instruction explains, the home education law “gives parents freedom to choose how the child is educated [A] parent may choose any way they see fit to educate their child. This may be virtually, through independent classes, work study, public school, etc.” N.D. DEP’T OF PUB. INSTRUCTION, HOME EDUCATION “SUPERVISION” GUIDANCE, <https://www.nd.gov/dpi/sites/www/files/documents/SAO/Home%20Education/09.25HomeEducationGuidance.pdf>.

97. Private schools, by contrast, may only employ teachers who are licensed or approved by ESPB.

98. The state’s instructional time requirements, moreover, are far more draconian for private schools than they are for home education. Whereas a private school student must receive at least 962.5 hours annually at the elementary level and 1,050 hours annually at the middle and secondary level, a home-educated child must receive only 700 hours of instruction annually, regardless of her grade level. *Compare* N.D. CENT. CODE § 15.1-20-02(1)(a), *and id.* § 15.1-06-04, *with id.* § 15.1-23-04.

99. In other words, private school students must receive 37.5 or 50 percent *more* instruction than homeschooled students, and all of that additional instructional time must be provided by licensed or permitted teachers. That North Dakota does not require this additional instruction for home-educated students makes clear that the state does not consider the instruction necessary. Yet the state not only makes private schools provide this unnecessary instruction—it also requires them to provide it through licensed or otherwise approved teachers. In other words, North Dakota requires licensure to provide instruction that it does not consider necessary for a child to receive, including in subjects that it does not require private schools to teach.

LICENSING’S IMPACT ON CAPSTONE, KAYLIE YOUNG, AND PAUL NELSON

100. North Dakota’s teacher licensing requirements impose severe burdens on private schools, private school teachers, and private school parents, including plaintiffs Capstone Classical Academy, Kaylie Young, and Paul Nelson.

Capstone’s Immediate Compliance Costs in Response to the Department’s 2025 Letter

101. When Capstone was founded, it hired teachers who, in the view of the school’s administration and board, were exceptionally qualified, committed to the school’s classical model of education, and aligned with the school’s mission, which is to engage children to acquire

wisdom, cultivate virtue, and pursue rigorous academic study within a Christian worldview through the study of the Good, the True, and the Beautiful for the glory of God and the benefit of their community. Because Capstone’s administration and board viewed the teacher licensing requirements as an interference with the school’s ability to pursue its mission and model—and inconsistent with rights of private schools, teachers, and parents—Capstone did not concern itself with whether the teachers it hired satisfied the state’s licensure requirements.

102. For nearly three years, Capstone did not meet the state’s mandate that each classroom teacher be: (1) “licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board” and (2) “teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception.” N.D. CENT. CODE § 15.1-06-06.1(1)(a), (b).

103. The school nevertheless flourished, nearly doubling in size from the 2022–23 to 2024–25 school year (approximately 120 students to approximately 220 students) and boasting an approximately 95 percent student retention rate during that period. Reviews from parents were highly favorable, and both Capstone’s administration and the parents of children enrolled at the school were highly satisfied with the school’s faculty.

104. In May 2025, however, Capstone received a letter from the Department of Public Instruction informing it that it was not in compliance with North Dakota’s teacher licensing requirements and ordering it to come into compliance.

105. The letter stated, “Our records indicate that several current Capstone teachers were either unlicensed or teaching outside of their licensed areas, including individuals who held expired or out-of-state licenses. While we appreciate the commitment of these individuals to meeting student needs, licensure is a legal requirement for school approval.” The letter noted

that the Department “has referred these licensure matters to the ESPB,” and it ordered Capstone to “[p]rovide executed teaching contracts for each classroom teacher who will be employed for the 2025-2026 school year, confirming they are appropriately licensed or approved by ESPB.” The letter then warned that “[f]ailure to meet these conditions may result in non-renewal of Capstone’s nonpublic school approval” and that, “[i]f approval is not granted,” the Department would “notify families and media outlets that Capstone is not an approved nonpublic school, and that student attendance at the school may not fulfill the state’s compulsory education requirements.”

106. In light of the letter, Capstone was forced to bring the school into compliance if it wished to be an approved school: one at which a child’s attendance would satisfy his or her parents’ compulsory attendance obligations.

107. Capstone’s teachers, meanwhile, faced the possibility of reprimand, monetary fines, and/or other disciplinary action if they continued teaching without having been licensed or approved by ESPB. *See* N.D. ADMIN. CODE 67.1-03-01-01, -03; *id.* 67.1-03-02-01; N.D. CENT. CODE § 15.1-13-17(4).

108. Coming into compliance was a massive, costly, year-long undertaking for Capstone and its teachers. Capstone expended well over ten thousand dollars in, among other things, ESPB licensing and application fees, costs associated with various pathways toward regular licensure (*e.g.*, American Board tuition), and fees for re-education credits.

109. Capstone also incurred countless hours in administrative time navigating the relevant statutes and regulations, consulting with the ESPB, working with individual teachers to identify and enroll them in a pathway to licensure, sending teachers to complete state mentorship training, and providing required mentorship hours to teachers.

110. At the time Capstone received the letter, about half of Capstone’s teachers were already licensed or otherwise approved by ESPB. However, many teachers had to take significant steps to come into compliance for the 2025–26 school year. All told,

- one teacher had to obtain an American Board license;
- four teachers had to obtain alternate access licenses and begin working toward American Board licensure;
- one teacher had to obtain a teaching permit;
- one teacher had to obtain an initial, two-year restricted theology license;
- one teacher had to obtain a probationary license;
- one teacher had to obtain an “other state educator” license;
- four teachers had to obtain interim substitute licenses;
- seven teachers had to obtain 40-day provisional licenses; and
- one teacher had to obtain an additional endorsement.

111. Alternate access and teaching permit pathways are multi-year endeavors, which means teachers now on these pathways are having to expend significant time and effort—time and effort that could instead be spent on actual teaching and class preparation—to make adequate progress within the relevant pathway.

112. Capstone, meanwhile, is also continuing to incur ongoing injuries as its teachers work toward regular licensure. These injuries include: (1) ongoing fees and costs associated with the various licensing pathways that its teachers remain on; (2) the loss of teacher time as teachers are forced to work toward regular licensure; (3) Praxis testing fees; (4) fees, costs, and lost time associated with “re-education” credit compliance; and (5) license and permit renewal fees.

113. What's more, there is no guarantee that the Capstone teachers currently on a pathway toward regular licensure will be able to complete all of the various requirements for their particular pathway within the applicable timeframe, in which case they might not be able to remain teaching.

114. Moreover, not every Capstone teacher has yet been able to dedicate the time necessary to start on a pathway to regular licensure. One of Capstone's teachers is a Ph.D. candidate in Islamic studies (Christian-Muslim relations) at the University of Edinburgh, where he received a prestigious scholarship from the university's Alwaleed Centre for the Study of Islam in the Contemporary World. He has completed his Ph.D. coursework and is in the middle of writing his dissertation. He also holds a bachelor's degree in history from Western Michigan University, with minors in Latin, Arabic, and comparative religion, as well as a Master of Arts degree in history from Eastern Michigan University with a focus on classics and Middle Eastern history. Prior to commencing his Ph.D. studies, he taught and served as a department head at a college preparatory school in Michigan. In the eyes of the ESPB, however, he is not qualified for licensure to teach elementary, middle, or high school in North Dakota. The demands of his dissertation, meanwhile, are such that he is not currently able to begin the American Board, alternate access, or teaching permit pathway to full licensure. Because he has completed 48 semester hours of college coursework, however, he has been able to obtain an interim substitute license, which is the only reason he has been able to remain at Capstone. The interim substitute license does not allow him to be teacher of record in a classroom, however, and it expires in November 2027.

Impacts on Future Hiring and School Mission/Identity

115. Even assuming that all of Capstone’s teachers are able to obtain licensure within the relevant timeframes, Capstone will inevitably desire to hire new teachers in the future, whether due to expanded enrollment, expanded course offerings, or routine faculty turnover. If new teachers whom Capstone wishes to hire are not licensed at the time Capstone wishes to hire them, then Capstone will be confronted with the same dilemma again.

116. North Dakota has been facing a declared critical shortage of teachers in every area for years. Yet there is not a dearth of teachers whom Capstone believes to be qualified; rather, there is a dearth of teachers who meet North Dakota’s qualifications.

117. For example, in 2023, a science professor from North Dakota State University applied to teach science at Capstone. She was interested in teaching at the K-12 level because of her concerns with the condition of higher education, including low academic standards and the need of many admitted students for remedial work, and she felt that much of the solution was to improve K-12 education. The professor was highly qualified and had the perfect theological and philosophical disposition for Capstone’s model of education. She was not, however, legally qualified to teach at the K-12 level in North Dakota. The professor instead took a job at a Christian liberal arts college in another state.

118. Similarly, Capstone wished to have a professor from a local two-year college teach a course in her field at Capstone. ESPB, however, informed Capstone that although the professor could teach the course to Capstone students at her college under a dual-credit program, she could not teach it as a standalone high school course at Capstone. Capstone had to explain to the professor that, according to the state of North Dakota, she was not qualified to teach in an elementary, middle, or high school.

119. North Dakota’s teacher licensing requirements artificially and arbitrarily restrict the pool of teacher candidates, and that restriction is far more pronounced for private schools than it is for public schools. Public schools, after all, are part of the *state* public school system. The North Dakota Constitution requires that that system be “uniform.” N.D. CONST. art. VIII, § 2. Thus, a hiring public school district’s primary—even sole—concern in hiring is likely to be whether the candidate meets the statewide licensing qualifications that the Legislature, Department of Public Instruction, and ESPB have established.

120. Private schools like Capstone, by contrast, exist for the very purpose of offering *alternatives* to the “uniform” public school system. Capstone, like all private schools, has its own identity and mission, and a prospective teacher’s alignment with that mission and identity is an absolute necessity in hiring.

121. The few state-approved teacher preparation programs, which are the default source of licensed teachers in the state, operate from a much different pedagogical and ideological perspective than does Capstone, a classical, Christian school, and the pedagogical and ideological perspectives of these programs are often at loggerheads with those of Capstone.

122. Finding a teacher who is acceptable to Capstone *and* legally employable—that is, (1) aligned with Capstone’s mission and identity, (2) qualified, in Capstone’s eyes, to teach its students, *and* (3) licensed by the state of North Dakota—is often impossible.

123. Moreover, because of the requirements appurtenant to the alternate access and teaching permit pathways, when a candidate comes along who *is* aligned with Capstone’s mission and identity, *is* otherwise qualified (in Capstone’s eyes) to teach its students, but *not* regularly licensed by ESPB, Capstone may consider hiring that candidate only if: (1) Capstone endures the considerable time and expense of searching for and attempting to hire a regularly

licensed teacher, even if the available regularly licensed candidates are completely unacceptable to Capstone; (2) convinces ESPB that these efforts have been sufficiently exhaustive; *and* (3) Capstone’s preferred candidate is able to obtain an alternate access license or, if the need is for a non-core subject, a teaching permit.

124. Specifically, before Capstone’s preferred candidate can apply for an alternate access license or teaching permit, Capstone must “explain [its] unsuccessful attempts to find a fully licensed teacher, in a signed and dated letter,” detailing, among other things:

- the length of time the job posting was advertised;
- the format used for the job posting;
- the number of applications received;
- the number of candidates interviewed; and
- the incentives that were used to try to attract qualified applicants, including whether increases in salary were offered.

N.D. ADMIN. CODE 67.1-02-04-01(3); *see also* N.D. EDUC. STANDARDS AND PRACTICES BD., *North Dakota Alternate Access Licensure*, <https://www.nd.gov/espb/sites/www/files/documents/Alternate-Access-License-One-Page.pdf>.

125. Only if ESPB is satisfied with Capstone’s efforts to find and hire a regularly licensed candidate (however unacceptable to Capstone)—and only if Capstone’s preferred candidate meets all state requirements—the candidate may obtain a one-year alternate access license or teaching permit.

126. Significantly, however, the alternate access license or teaching permit cannot be issued before July 1 or August 1 of the upcoming school year. N.D. ADMIN. CODE 67.1-02-04-

01(1); N.D. EDUC. STANDARDS AND PRACTICES BD., *Teaching Permit Information*,
<https://www.nd.gov/espblicensure/teaching-permit-information>.

127. Capstone budgets, makes enrollment decisions, and executes enrollment contracts for an upcoming school year *months* before July 1 or August 1. The inability to hire for needed positions before those dates injects incredible uncertainty, forcing Capstone to make budgeting, enrollment, and class-size decisions before knowing whether it will have the needed teachers available.

128. Moreover, even alternate access licensure and teaching permit pathways will become unavailable to Capstone if ESPB ever determines that there is no longer a teacher shortage. And regardless of the existence of a teacher shortage, the teaching permit pathway will sunset in 2031.

129. Needing to search for and hire unacceptable but regularly licensed teacher candidates instead of being able to freely hire acceptable, fully qualified (in Capstone's eyes), but unlicensed teachers is a grave interference with Capstone's ability to maintain and advance its identity and mission. So, too, is being unable to hire acceptable, fully qualified (in Capstone's eyes), but unlicensed teachers without ESPB forcing those teachers into one of the licensure pathways and imposing all the attendant costs and burdens.

130. Capstone, like other private schools, should not require the state's legal imprimatur to identify and hire qualified teachers who are aligned with and committed to the school's mission and identity. Capstone's administration and board are the appropriate decisionmakers on personnel matters, and they are ultimately held accountable in their decisions by parents, who make the free and independent choice to send their children to the school. If

Capstone’s administration and board make poor hiring decisions, parents will hold them to account.

Impacts on Curricular Offerings

131. The teacher licensing requirements also negatively impact and chill the curricular offerings of Capstone and other private schools.

132. Teachers are limited to teaching at grade levels and in areas and courses for which they are licensed or have received endorsements from ESPB.

133. Often, though, the available licensing categories and course codes do not encompass the types of courses that schools wish to offer. In such situations, a school wishing to offer a new course may have to wait a full school year—and likely more—as: (1) the school prepares and submits a “new course request” to the Department of Public Instruction; (2) the Department reviews and processes the request; (3) a “Specialized Content Committee” analyzes the information and standards provided, requests further information, and/or consults field experts; (4) the Department makes a final decision; (5) the Department provides the new course information to ESPB for review; and (6) ESPB determines what license/endorsement is required to teach the course.

134. Even if the Department and ESPB already have an approved course code for a particular course, Capstone and other private schools may still be impeded in their ability to offer it.

135. For example, Capstone follows a classical model of education that does not segregate and silo different subjects and courses the way that a non-classical approach does. It is not uncommon that multiple subjects are taught together, in a single lesson. The study of ancient Rome, for example, may incorporate not only history, but also literature (*e.g.*, the *Aeneid* or

Julius Caesar), art (e.g., Trajan’s column or the equestrian statue of Marcus Aurelius), and philosophy (e.g., the Stoics or Epicureans). Endorsements and course codes, however, treat each of these subjects in isolation, if they recognize them at all (a course code does not even exist for philosophy before the high school level). Thus, a private school may not be able to undertake such holistic instruction if the school does not have a teacher with the particular endorsement that authorizes his or her teaching the particular course code that ESPB determines the instruction should be pigeonholed into.

136. The consequence of the licensing regime, including the endorsements and course codes that are inherent in the regime, is a homogenizing effect on private schools. Because the same licensing standards apply to public and private schools alike, they impede the ability of Capstone and other private schools to differentiate themselves from public schools in the types of teachers that they hire, the model of education that they follow, and the instruction that they offer.

137. What’s more, the teacher licensing requirements interact with other state curricular requirements to impose additional burdens on Capstone and other private schools. For example, the state recently mandated instruction in computer science and cybersecurity, as well as “[d]evelop[ment] [of] a computer science and cybersecurity integration plan to ensure introduction to foundational computer science and cybersecurity knowledge,” in all schools, public and private. N.D. CENT. CODE § 15.1-21-01(1)(g), (2) (elementary and middle school level); *id.* § 15.1-21-02(1)(k), (2)(b) (high school level).

138. The person providing the instruction must be a licensed teacher and must obtain a “computer science and cybersecurity credential” from the Department of Public Instruction. There are three levels of credential, each of which allows the licensed teacher to provide the

mandated instruction, at certain grade levels, either integrated into other content areas or as standalone courses. The *lowest* level of credential, “Level 3,” requires the licensed teacher to complete at least: (1) 15 hours of approved computer science or cybersecurity training; or (2) three approved micro-credentials in computer science or cybersecurity. The credential must be renewed every five years and requires a valid teaching license issued by ESPB. Each renewal requires at least 30 hours of training in computer science and/or cybersecurity or two micro-credentials in computer science and/or cybersecurity. N.D. DEP’T OF PUB. INSTRUCTION, *Computer Science and Cyber Security Credentials*, <https://www.nd.gov/dpi/educators/credentials-and-certificates/computer-science-and-cybersecurity-credentials>.

139. Private schools and/or their teachers must bear the cost of the required training themselves, and depending on when the approved training is offered, teachers may have to take leave from the classroom, requiring private schools to place substitutes in their stead. (Of course, the substitutes would have to be licensed.)

140. The computer science and cyber security mandate is particularly offensive to Capstone: the school uses a classical model of education that purposely avoids use of computer technology in the classroom, yet the school is now mandated to integrate it. And because the credentialed persons providing this newly mandated instruction must also be licensed teachers, Capstone must either hire *new*, licensed teachers to provide the instruction or require current teachers in other content areas to become credentialed, so that they can, in turn, provide instruction that neither they nor the school wishes to provide and that both believe is contrary to the school’s mission, identity, and model of education.

Additional Impacts on Teachers

141. Private school teachers like Kaylie Young, meanwhile, are also severely impacted by the teacher licensing requirements. The licensing requirements, after all, directly regulate teachers themselves, conditioning their ability to pursue their chosen calling on the grace of the state.

142. Teachers themselves are the ones who have to comply with and complete all initial licensing and renewal requirements.

143. Teachers themselves are the ones forced to undergo continuing, state-approved “re-education” training, and the available options are often irrelevant to, or even incompatible with, the mission and pedagogy employed by them and their private schools.

144. And it is teachers themselves who, in spending time pursuing regular licensure or complying with re-education requirements to renew a license, have less time to devote to classroom instruction or preparation for that instruction.

145. Although private schools may, at times, absorb the costs associated with licensing, teachers are ultimately responsible for paying these thousands of dollars, with no guarantee that their employing private school will be willing and able to bear the costs, now or in the future.

146. For Kaylie Young and most private school teachers, working in a private school is a vocation, not merely a job. Teachers choose to teach at a private school because of a deep, abiding commitment to the school’s unique mission and identity—that is, precisely because the school is not part of the “uniform” system of public schools mandated by the North Dakota Constitution. Kaylie, for example, teaches at Capstone because she believes that a classical model of education centered around Jesus Christ is the best way to help children grow in wisdom and virtue, which she believes to be the ultimate aim of education. Yet the licensing standards,

which apply equally to public and private school teachers alike, are homogenizing and have no regard for the uniqueness of private schools like Capstone.

147. Kaylie wants the freedom and flexibility to teach courses other than those bearing the specific course codes that the state has deemed appropriate for her license and endorsements.

148. Kaylie does not want to have to fear that employing a holistic, classical approach to education, incorporating multiple subjects into individual lessons, may be deemed by the state to be teaching outside of her license and endorsements.

149. Kaylie does not want to be subject to mandatory “re-education” requirements, especially when so many approved programs have no relevance to—and, indeed, are at loggerheads with—the classical education approach that she and Capstone employ.

150. Kaylie does not want to take time away from classroom instruction or class preparation to undergo mandatory re-education.

151. Kaylie does not want to have to pay hundreds of dollars for state-mandated re-education credits or have Capstone pay them on her behalf.

152. Kaylie does not want to have to pay licensing renewal fees or have Capstone pay them on her behalf.

153. Noncompliance with the teacher licensing requirements, however, will subject Kaylie and all other private school teachers to the possibility of reprimand, license suspension or revocation, monetary fines, and/or other disciplinary action. *See* N.D. ADMIN. CODE 67.1-03-01-01, -03; *id.* 67.1-03-02-01; N.D. CENT. CODE § 15.1-13-17(4).

Additional Impacts on Parents

154. Finally, parents of private school students—parents such as plaintiff Paul Nelson—are also severely impacted by the teacher licensing requirements.

155. Parents have a fundamental, federal constitutional right to direct the education of their children, including choosing private schooling for them. *See Pierce v. Soc’y of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923).

156. Many parents choose private schooling precisely because it offers something different than North Dakota’s “uniform” system of public schools—something that can better meet their children’s unique educational needs.

157. Unlike public schools, which are owned and operated by the public, utilize public employees as teachers, and are subject to the “uniformity” mandate of the North Dakota Constitution, private schools are privately owned and operated, utilize private employees to teach, and are not subject to the state constitution’s “uniformity” mandate.

158. Moreover, unlike public schools, which are constitutionally *required* to exist and to which children are assigned *by the government*, private schools exist only because there is private demand for them and because parents make the free and independent choice to use them. If a private school makes poor hiring decisions and employs unqualified teachers, parents will either demand change or cease using the school for their children.

159. Parents, moreover, often choose a particular private school for their child because they believe the school’s unique mission and identity are consistent with their own values and with the best interests and educational needs of their child.

160. Paul Nelson, for example, chose Capstone for his son because he values its rigorous, classical approach to education and the faith grounding that it provides to its students, and because he believes both of those things best meet his son’s educational needs. Paul trusts the administration and board of Capstone to hire teachers who are highly qualified, dedicated to the school’s mission, and aligned with the school’s identity. He trusts Capstone’s administration

and board more than the State of North Dakota to determine which teachers are best suited to provide the education he desires for his son.

161. In restricting the available field of teachers that a private school may hire, however, North Dakota's licensing regime necessarily restricts the field of teachers whose services Paul and other parents may engage to educate their children.

162. Moreover, in making it more difficult for private schools to hire teachers aligned with the schools' unique identities and missions, the licensing regime necessarily makes it more difficult for Paul and other parents to engage the services of teachers who are committed to the values they seek in their children's education.

163. And in barring highly competent and qualified teachers from offering their services in North Dakota, the licensing regime necessarily makes it more difficult for Paul and other parents to engage teachers who can best meet their children's unique educational needs.

164. The licensing regime thus impedes the right of Paul and other parents to direct the education of their children.

165. Paul does not want Capstone to have to hire teachers who are less qualified and less committed to Capstone's mission and identity simply because they are licensed.

166. Paul wants Capstone and its teachers to provide his son with an education that is not bound or limited by the specific, state-approved courses and course codes that ESPB deems appropriate for the licenses and endorsements of Capstone's teachers.

167. Paul wants the tuition he pays to Capstone and the contributions he makes to the school to go to his son's education, not administrative costs associated with licensure compliance.

168. However, if Paul sends his son to a private school where any classroom teacher is not licensed or approved to teach by the ESPB, or is teaching in a course area or field for which the teacher is not licensed or has not received an exception, then the education his son receives may not satisfy Paul's legal obligations under the compulsory attendance laws and may subject Paul to conviction for an infraction (for a first offense) or a class B misdemeanor (for a second or subsequent offense), as well as fines totaling \$1,000 (for a first offense) and imprisonment for 30 days and/or fines totaling \$1,500 (for a second or subsequent offense). N.D. CENT. CODE §§ 15.1-20-03(4), 12.1-32-01.

CONSTITUTIONAL CLAIMS

CLAIM I: FOURTEENTH AMENDMENT DUE PROCESS

169. Plaintiffs incorporate and reallege the allegations in paragraphs 1–168, above.

170. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides, in relevant part: “No State shall . . . deprive any person of life, liberty, or property, without due process of law” U.S. CONST. amend. XIV, § 1.

171. As the U.S. Supreme Court held in *Meyer v. Nebraska*, 262 U.S. 390 (1923), *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), and *Farrington v. Tokushige*, 273 U.S. 284 (1927), the Due Process Clause provides substantive protection for the rights of nonpublic schools to provide an alternative to public schooling, hire teachers of their own choosing, and offer their services to willing parents; the rights of nonpublic school teachers to pursue the common occupation of teaching and contract with nonpublic schools for employment; and the rights of parents to direct their children's education and engage nonpublic schools and teachers of their choosing to provide that education.

172. These rights are inextricably intertwined, and North Dakota’s teacher licensing requirements abridge each of them and all of them. Parents, after all, may choose a nonpublic school to satisfy their compulsory attendance obligations toward their children, but only if the nonpublic school is approved by the state, N.D. CENT. CODE § 15.1-20-02(1)(a), and the state will only approve a nonpublic school if every classroom teacher satisfies state licensing or approval requirements and teaches only those course areas or fields that the state authorizes them to teach, N.D. CENT. CODE § 15.1-06-06.1(1)(a), (b).

173. North Dakota’s teacher licensing requirements substantially burden the due process rights of Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents.

174. On their face and as applied to Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-18(2) and N.D. CENT. CODE § 15.1-06-06.1(1)(a), (b) are not narrowly tailored, substantially related, reasonably related, or rationally related to any governmental interest—whether compelling, important, substantial, legitimate, or otherwise—that North Dakota purports to have.

175. As applied to Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-17(1) is not narrowly tailored, substantially related, reasonably related, or rationally related to any governmental interest—whether compelling, important, substantial, legitimate, or otherwise—that North Dakota purports to have.

176. On their face and as applied to Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D.

CENT. CODE § 15.1-13-18(2) and N.D. CENT. CODE § 15.1-06-06.1(1)(a), (b) go further than reasonably necessary to achieve any governmental interest that North Dakota purports to have.

177. As applied to Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-17(1) goes further than reasonably necessary to achieve any governmental interest that North Dakota purports to have.

178. On their face and as applied to Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-18(2) and N.D. CENT. CODE § 15.1-06-06.1(1)(a), (b) are not consistent with our nation's historical tradition of education regulation.

179. As applied to Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-17(1) is not consistent with our nation's historical tradition of education regulation.

180. On their face and as applied to Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-18(2) and N.D. CENT. CODE § 15.1-06-06.1(1)(a), (b) violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

181. As applied to Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-17(1) violates the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

CLAIM II: FOURTEENTH AMENDMENT EQUAL PROTECTION

182. Plaintiffs incorporate and reallege the allegations in paragraphs 1–168, above.

183. The Equal Protection Process Clause of the Fourteenth Amendment to the U.S. Constitution provides: “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV, § 1

184. The Equal Protection Clause prohibits government from treating similarly situated people differently.

185. In all relevant respects, Capstone, Kaylie Young, Paul Nelson, and other nonpublic schools, nonpublic school teachers, and nonpublic school parents are similarly situated to parents who supervise home education for their children.

186. In all relevant respects, Capstone, Kaylie Young, Paul Nelson, and other nonpublic schools, nonpublic school teachers, and nonpublic school parents are similarly situated to the outside instructors and service providers that parents may engage in the course of their child’s home education.

187. Nonpublic schooling is an equally valid method of satisfying compulsory attendance requirements as home education is.

188. Nevertheless, North Dakota treats Capstone, Kaylie Young, Paul Nelson, and other nonpublic schools, nonpublic school teachers, and nonpublic school parents vastly differently than it does parents who supervise home education for their children.

189. North Dakota likewise treats Capstone, Kaylie Young, Paul Nelson, and other nonpublic schools, nonpublic school teachers, and nonpublic school parents vastly differently than it does the outside instructors and service providers that parents may engage in the course of their child’s home education.

190. North Dakota allows parents to supervise home education with only a high school diploma or GED, and even parents without a high school diploma or GED may homeschool if they are under supervision of the local school district for the first two years.

191. Parents supervising home education may engage outside instructors and service providers, thus outsourcing the instruction of their children to other persons and entities who need no qualifications whatsoever, so long as the parent “supervises” the program of instruction.

192. By contrast, North Dakota imposes the onerous and invasive teacher licensing requirements on nonpublic schooling, insisting, among other things, that “[e]ach classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board” and “is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception.” N.D. CENT. CODE § 15.1-06-06.1(1)(a), (b).

193. Nonpublic school students, moreover, must receive far more instructional time than home-educated students—962.5 or 1050 hours, depending on grade level, as opposed to 700 hours—and all of this extra time (along with the baseline 700 hours) must be provided by a licensed or otherwise approved teacher.

194. North Dakota’s teacher licensing requirements substantially burden the equal protection rights of Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents.

195. On their face and as applied to Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-18(2) and N.D. CENT. CODE § 15.1-06-06.1(1)(a), (b) are not narrowly tailored, substantially related, reasonably related, or rationally related to any governmental

interest—whether compelling, important, substantial, legitimate, or otherwise—that North Dakota purports to have.

196. As applied to Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-17(1) is not narrowly tailored, substantially related, reasonably related, or rationally related to any governmental interest—whether compelling, important, substantial, legitimate, or otherwise—that North Dakota purports to have.

197. On their face and as applied to Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-18(2) and N.D. CENT. CODE § 15.1-06-06.1(1)(a), (b) violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

198. As applied to Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-17(1) violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

CLAIM III: FOURTEENTH AMENDMENT PRIVILEGES OR IMMUNITIES¹

199. Plaintiffs incorporate and reallege the allegations in paragraphs 1–168, above.

¹ Plaintiffs recognize that this claim may be foreclosed by the *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873), but nevertheless state the claim in order to preserve it for possible U.S. Supreme Court review.

200. The Privileges or Immunities Clause of the Fourteenth Amendment to the U.S. Constitution provides: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States” U.S. CONST. amend. XIV, § 1.

201. The Privileges or Immunities Clause provides substantive protection for the rights of nonpublic schools to provide an alternative to public schooling, hire teachers of their own choosing, and offer their services to willing parents; the rights of nonpublic school teachers to pursue the common occupation of teaching and contract with nonpublic schools for employment; and the rights of parents to direct their children’s education and engage nonpublic schools and teachers of their choosing to provide that education.

202. These rights are inextricably intertwined, and North Dakota’s teacher licensing requirements abridge each of them and all of them. Parents, after all, may choose a nonpublic school to satisfy their compulsory attendance obligations toward their children, but only if the nonpublic school is approved by the state, N.D. CENT. CODE § 15.1-20-02(1)(a), and the state will only approve a nonpublic school if every classroom teacher satisfies state licensing or approval requirements and teaches only those course areas or fields that the state authorizes them to teach, N.D. CENT. CODE § 15.1-06-06.1(1)(a), (b).

203. North Dakota’s teacher licensing requirements substantially burden the privileges or immunities of Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents.

204. On their face and as applied to Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-18(2) and N.D. CENT. CODE § 15.1-06-06.1(1)(a), (b) are not narrowly tailored, substantially related, reasonably related, or rationally related to any governmental

interest—whether compelling, important, substantial, legitimate, or otherwise—that North Dakota purports to have.

205. As applied to Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-17(1) is not narrowly tailored, substantially related, reasonably related, or rationally related to any governmental interest—whether compelling, important, substantial, legitimate, or otherwise—that North Dakota purports to have.

206. On their face and as applied to Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-18(2) and N.D. CENT. CODE § 15.1-06-06.1(1)(a), (b) go further than reasonably necessary to achieve any governmental interest that North Dakota purports to have.

207. As applied to Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-17(1) goes further than reasonably necessary to achieve any governmental interest that North Dakota purports to have.

208. On their face and as applied to Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-18(2) and N.D. CENT. CODE § 15.1-06-06.1(1)(a), (b) are not consistent with our nation’s historical tradition of education regulation.

209. As applied to Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-17(1) is not consistent with our nation’s historical tradition of education regulation.

210. On their face and as applied to Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-18(2) and N.D. CENT. CODE § 15.1-06-06.1(1)(a), (b) violate the Privileges or Immunities Clause of the Fourteenth Amendment to the U.S. Constitution.

211. As applied to Capstone, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-17(1) violates the Privileges or Immunities Clause of the Fourteenth Amendment to the U.S. Constitution.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court grant the following relief:

A. a declaratory judgment that, on their face and as applied to Capstone Classical Academy, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-18(2) and N.D. CENT. CODE § 15.1-06-06.1(1)(a), (b) violate the Due Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth Amendment to the U.S. Constitution;

B. a declaratory judgment that, as applied to Capstone Classical Academy, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents, N.D. CENT. CODE § 15.1-13-17(1) violates the Due Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth Amendment to the U.S. Constitution;

C. a preliminary and permanent injunction prohibiting Defendants from enforcing N.D. CENT. CODE §§ 15.1-13-17(1), 15.1-13-18(2), and 15.1-06-06.1(1)(a), (b) against Capstone

Classical Academy, Kaylie Young, Paul Nelson, other nonpublic schools, other nonpublic school teachers, and other nonpublic school parents;

- D. an award of attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988; and
- E. such other legal or equitable relief as this Court may deem appropriate and just.

Dated: June 9, 2026

Respectfully submitted:

INSTITUTE FOR JUSTICE

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**Pro hac vice motions pending*

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