

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,

Plaintiff,

v.

U.S. DEPARTMENT OF EDUCATION and
LINDA MCMAHON, in her official capacity as
Secretary of Education,

Defendants.

Civil Action No. 25-cv-3553

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff American Federation of Government Employees moves under Federal Rule of Civil Procedure 56 for summary judgment. In support of this motion, Plaintiff submits the accompanying memorandum of law, statement of undisputed material facts, the declarations and exhibits listed in the attached index, and a proposed order.

Through a separate motion filed today, Plaintiff seeks an expedited briefing schedule on this motion.

Respectfully submitted,

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**PLAINTIFF'S MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

Who bears the blame for the ongoing government shutdown is a heavily disputed political issue. In an unprecedented effort to tilt the public debate in its favor, the Trump Administration has leveraged its control of federal agencies to amplify the message that its political opponents are to blame. This whole-of-government approach to partisan political messaging goes far beyond the traditional use of the presidential bully pulpit.

Especially pernicious is the Administration's co-opting of the voices of rank-and-file civil servants in support of its political agenda. The Department of Education has done so by replacing its employees' automated out-of-office email responses with partisan language that blames "Democrat Senators" for the shutdown. Now, whenever somebody sends an email to a furloughed Department of Education employee, they will receive an automatic response—sent in the name of that employee—that parrots the Trump Administration's political talking points.

Forcing employees to attach their names to partisan statements—much less attaching employees' names to such statements without their knowledge or consent—is a gross violation of their First Amendment rights. Neither the government nor the public has a legitimate interest in compelling partisan speech, and ordinary out-of-office messages would suffice to serve all legitimate government interests. Accordingly, Plaintiff, the American Federation of Government Employees (AFGE), seeks declaratory and permanent injunctive relief on behalf of its members who are federal civil service Department of Education employees.

In response to this suit, the Department of Education revised the out-of-office messages to remove first-person language, but it retained the language blaming "Democrat Senators." Judicial relief remains necessary to declare unlawful and enjoin the revised version of the message, which continues to violate the First Amendment; to declare the unlawfulness of the earlier version of the message; to enjoin Defendants from any further use of the earlier version of

the message; and to correct for the sending of the earlier version of the message under employees' first-person voices. This relief is necessary to remedy the Department of Education's unlawful efforts to turn its nonpartisan civil servants into unwilling political spokespersons.

BACKGROUND

I. The government shutdown leads to a political blame game.

A lapse in appropriations, commonly known as a government shutdown, began on October 1, 2025. Even before the shutdown, the Trump Administration began to blame their political opponents in the Democratic Party for Congress's failure to pass a funding bill that would keep the government open.¹ The political blame game only intensified once the government shut down. Pointing the finger at the opposing party is typical politician behavior when there is a government shutdown. But what is unprecedented is how the Trump Administration has leveraged its control of federal agencies in a whole-of-government campaign to try to tilt the public debate in its favor.

Soon after the lapse in appropriations, multiple federal agencies posted highly partisan messages on their official websites. The following screenshot, from the official website of the Department of Housing and Urban Development, is just one example.²

¹ *E.g.*, Riley Beggin et al., *White House begins plan for mass firings if there's a government shutdown*, Wash. Post (Sept. 25, 2025), <https://perma.cc/G78V-DYCY> ("President Donald Trump told reporters Thursday that there 'could be' a shutdown, which he preemptively blamed on Democrats."); Theodoric Meyer & Marianna Sotomayor, *Congress is barreling toward a shutdown, despite the perils*, Wash. Post (Sept. 26, 2025), <https://perma.cc/4JRL-5NQ2> ("President Donald Trump has ignored Democrats' demands to negotiate since he canceled a meeting with Democratic leaders in Congress this week, setting the stage for the first government shutdown since 2019 absent a breakthrough. Each side has insisted voters will blame the other, giving them little incentive to compromise.").

² U.S. Dep't of Hous. and Urb. Dev., *The Radical Left in Congress shut down the government. HUD will use available resources to help Americans in need*, <https://perma.cc/6B9N-JVLN>; see also Compl. ¶¶ 17–23 (listing other examples).



The coordinated messaging campaign did not stop there. Many agencies also sent mass emails to their own employees blaming Democrats for the shutdown.³

II. The Department inserts political messaging into employees' out-of-office emails.

The Department of Education took part in this whole-of-government messaging effort, but went even further than other agencies, by conscripting individual employees into becoming unwilling mouthpieces for the partisan messages.⁴ It did so by inserting partisan rhetoric into federal employees' automatic out-of-office email messages.

When the government shut down on October 1, 2025, some Department of Education employees were already on administrative leave because of pending reduction-in-force notices. *E.g.*, E. Doe Decl. ¶ 5; G. Doe Decl. ¶ 5; J. Doe Decl. ¶ 5; L. Doe Decl. ¶ 5; P. Doe Decl. ¶ 5.

³ Joey Heckman, *Mass email tells federal employees not to blame Trump for government shutdown*, Fed. News Network (Sept. 30, 2025), <https://perma.cc/5UVK-6R4V>.

⁴ *E.g.*, Eileen Sullivan & Michael C. Bender, *Partisan Language Inserted Into Education Dept. Workers' Automated Emails*, N.Y. Times (Oct. 2, 2025), <https://perma.cc/CFQ6-LVBS>; Sunlen Serfaty et al., *Out-of-office messages blaming Democrats for shutdown sent on behalf of some federal workers without their consent*, CNN (Oct. 2, 2025), <https://perma.cc/5RHC-KQJ2>.

Other employees were not on leave at the time but were notified that they would be put on furlough due to the lack of funding. *E.g.*, D. Doe Decl. ¶ 4; F. Doe Decl. ¶ 4; K. Doe. Decl. ¶ 5; M. Doe Decl. ¶ 5; N. Doe Decl. ¶ 5; Q. Doe Decl. ¶ 5. According to the Department’s contingency plan for the lapse in appropriations, about 87% of the Department’s employees were expected to be furloughed.⁵

In general, employees on administrative leave had already set up automated out-of-office responses for their government email addresses stating that they were unavailable. The typical language in those automatic replies was factual and nonpartisan. E. Doe Decl. ¶ 5; J. Doe Decl. ¶ 5; L. Doe Decl. ¶ 5.

Furloughed employees who were not already on leave were instructed to conduct orderly shutdown activities. F. Doe Decl. ¶ 4; M. Doe Decl. ¶ 5. The Department of Education’s Chief Human Capital Officer provided those instructions as part of the furlough notice. C. Doe Decl. ¶ 6 & Exs. A & B; M. Doe Decl. ¶¶ 5–6. According to those instructions, furloughed employees were allowed up to four hours of work to perform orderly shutdown activities, which included setting up automatic out-of-office email responses. *Id.* The Chief Human Capital Officer’s instructions included model language for the out-of-office responses that was short, factual, and nonpartisan. *Id.* That model language reflected the type of out-of-office message that one would expect to receive in a professional workplace setting:

Hello, you have reached the [US Department of Education’s Information Resource Center]. We are unable to respond to your request due to a lapse in appropriations for the Department of Education. We will respond to your request when appropriations are enacted. Thank you.”

⁵ Mem. from Linda McMahon, Sec’y of Educ., to Off. of Mgmt. and Budget, Re: *U.S. Department of Education Contingency Plan for Lapse in Fiscal Year (FY) 2026 Appropriations* (Sept. 28, 2025), <https://perma.cc/K73P-DVNJ> (showing 2,457 employees on board, including the Office of Federal Student Aid, and 2,117 of those employees expected to be furloughed).

Id.

Later that day, after setting nonpartisan out-of-office messages pursuant to those instructions, many Department of Education employees discovered that the out-of-office language on their government email accounts had been changed. *E.g.*, D. Doe Decl. ¶ 6; E. Doe Decl. ¶ 6; F. Doe Decl. ¶ 5; M. Doe Decl. ¶ 7. The out-of-office messages had been modified to say:

Thank you for contacting me. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in appropriations I am currently in furlough status. I will respond to emails once government functions resume.

E.g., D. Doe. Decl. ¶ 7; E. Doe Decl. ¶ 9. The modified out-of-office messages used the term “Democrat Senators,” which is a pejorative shortening of “Democratic Party.”⁶ The modified messages were written in the first person, as if the individual employee were conveying a personal message. Making public statements with such partisan language is not ordinarily part of the job responsibilities of civil servants. *E.g.*, D. Doe Decl. ¶ 3; E. Doe. Decl. ¶ 4; F. Doe Decl. ¶ 3; G. Doe Decl. ¶ 4; I. Doe Decl. ¶ 3; Q. Doe Decl. ¶ 11.

Department employees who were on administrative leave when the shutdown started do not have access to their government equipment or email addresses. E. Doe. Decl. ¶ 5; G. Doe Decl. ¶ 5; J. Doe Decl. ¶ 5; L Doe Decl. ¶ 5. Those employees have had no ability to change the out-of-office messages being sent out under their name. E. Doe Decl. ¶ 11; G. Doe Decl. ¶ 11; J. Doe Decl. ¶ 11; L. Doe Decl. ¶ 11.

⁶ Eileen Sullivan & Chris Cameron, *Federal Agencies Use Official Websites to Blame Democrats for Shutdown*, N.Y. Times (Oct. 1, 2025), <https://perma.cc/5JW9-TC3S>; see also Julie Carr Smyth, *What’s in an adjective? ‘Democrat Party’ label on the rise*, AP News (Feb. 27, 2021), <https://perma.cc/GR8L-ENLY>.

Some Department employees who still had access to their government equipment changed their out-of-office messages back to nonpartisan language that did not place blame for the shutdown. F. Doe Decl. ¶¶ 7–10. Those employees later found that their out-of-office messages had been changed yet again, without their consent, to reinclude the partisan language. *Id.*⁷ One employee was instructed by their supervisor not to try to change the out-of-office message set by the Department. M. Doe Decl. ¶ 7.

Department of Education employees regularly use their government email addresses to communicate with external stakeholders like school district representatives, college administrators, parents, students, vendors, and other members of the public. D. Doe Decl. ¶ 9; E. Doe Decl. ¶ 11; F. Doe Decl. ¶ 11; G. Doe Decl. ¶ 11; I. Doe Decl. ¶ 10; J. Doe Decl. ¶ 11; M. Doe Decl. ¶¶ 12–13; N. Doe Decl. ¶ 11. Any member of the public who tried to reach a furloughed Department of Education employee automatically received a response, purportedly in the employee’s own voice, blaming “Democrat Senators” for that employee’s inability to respond.

III. The Department’s revised messages still contain partisan political language.

Plaintiff filed its complaint on Friday, October 3, 2025. ECF No. 1. Immediately upon filing the complaint, Plaintiff sent a cease-and-desist letter to inform the Department of Justice that Plaintiff would move for a temporary restraining order if the Department of Education did not cease its unlawful behavior by Monday morning. Ex. 1.

⁷ Leah Feiger & Vittoria Elliott, *Government Workers Say Their Out-of-Office Replies Were Forcibly Changed to Blame Democrats for Shutdown*, WIRED (Oct. 2, 2025), <https://perma.cc/QCF3-CGFS> (“Some [Department of Education] employees changed their responses back to the more neutral language, only to have it changed yet again to the partisan response, multiple sources tell WIRED.”).

On Monday, October 6, the Department of Justice informed Plaintiff that the Department of Education was changing the out-of-office messages of its furloughed employees to the following:

The Department employee you have contacted is currently in furlough status. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. The employee you have contacted will respond to emails once government functions resume.

Id. The Department of Justice stated its position that “[t]he out-of-office message [as revised] is no longer written in the first person and thus no longer conveys that the message is on behalf of the person in their individual or personal capacity, as opposed to the Department itself (assuming it ever did).” *Id.* Accordingly, the Department of Justice stated its view that “this change obviates the need to seek emergency injunctive relief from the court.” *Id.*

Individual employee’s email accounts still respond with this revised partisan message in response to any email that they receive to that individual address. The Department continues to harm the personal reputations of individual employees by causing partisan political out-of-office responses to be sent to anyone who attempts to reach those civil service employees. *See A. Doe Decl.* ¶¶ 10–12; *Q. Doe Decl.* ¶¶ 12–14.

IV. Plaintiff AFGE represents affected employees.

AFGE is a labor organization and unincorporated association representing approximately 800,000 federal employees through its affiliated councils and locals in every state in the United States. *Kelley Decl.* ¶ 2. Through its affiliate AFGE Local 252, AFGE has more than 1,700 dues-paying members who are employees of the Department of Education. *Id.* ¶ 7. AFGE members employed by the Department have been harmed by having their out-of-office messages involuntarily changed as described above. *Id.* ¶¶ 8–11.

LEGAL STANDARD

A court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “A dispute is genuine only if a reasonable fact-finder could find for the nonmoving party; a fact is material only if it is capable of affecting the outcome of the litigation.” *Serv. Emps. Int’l Union Nat’l Indus. Pension Fund v. Forest Hill Health Care Ctr., Inc.*, 170 F. Supp. 3d 16, 19 (D.D.C. 2016). In assessing a summary judgment motion, the court must view the facts in the light most favorable to the opposing party. *Id.*

ARGUMENT

I. Plaintiff has standing.

A union, like any other membership association, has standing to sue on behalf of its members when it can establish that “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Ass’n of Flight Attendants-CWA, AFL-CIO v. U.S. Dep’t of Transp.*, 564 F.3d 462, 464 (D.C. Cir. 2009) (quoting *Int’l Bhd. of Teamsters v. Transp. Sec. Admin.*, 429 F.3d 1130, 1135 (D.C. Cir. 2005)). AFGE satisfies all three criteria.

First, all AFGE members subject to the involuntary partisan edits to their out-of-office messages would otherwise have standing to sue in their own right. They have suffered, and are suffering, a constitutional injury in fact that was caused by the Department’s actions and is redressable by relief from this Court. *See Utility Workers Union of Am. Local 464 v. FERC*, 896 F.3d 573, 577 (D.C. Cir. 2018). It is “self-evident” that “compelled speech in violation of the First Amendment” constitutes a cognizable “constitutional injury.” *Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of Am. v. USDA*, 573 F. Supp. 3d 324, 337 (D.D.C. 2021).

Causation and redressability are equally self-evident: The Department directly edited its employees' out-of-office messages to insert partisan political speech, and Plaintiff's members' injuries would be redressed by an order requiring the Department to reverse those edits.

Second, defending the First Amendment rights of its members against compelled partisan speech is germane to AFGE's organizational purpose of organizing and advocating on behalf of its members. Kelley Decl. ¶¶ 4, 8–11.

Third, participation of individual members is not necessary because of the nature of Plaintiff's claim, which "seek[s] prospective and injunctive relief, not damages for its members." *Powder River Basin Res. Council v. U.S. Dep't of Interior*, 749 F. Supp. 3d 151, 163 (D.D.C. 2024).⁸

II. This controversy is not mooted by the Department's voluntary revision of the out-of-office messages.

The Department's October 6 revision to employees' automatic messages does not lessen Plaintiff's need for declaratory and injunctive relief arising from the original messages. It is well established that "[a] defendant's voluntary cessation of allegedly unlawful conduct ordinarily does not suffice to moot a case." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 174 (2000). The Department cannot avoid the Court's review by "suspend[ing] its challenged conduct"—or, here, altering it—"after being sued." *FBI v. Fikre*, 601 U.S. 234, 241 (2024).

⁸ Even at the merits stage, an association may establish standing while maintaining the anonymity of individual member declarants. See *Advocs. for Highway & Auto Safety v. Fed. Motor Carrier Safety Admin.*, 41 F.4th 586, 594 (D.C. Cir. 2022) (holding that "anonymity is no barrier to standing on this record"). Department of Education employees have filed pseudonymous declarations because of fears about the likelihood of retaliation from their current employer. E.g. A. Doe Decl. ¶ 1; B Doe Decl. ¶ 1. *But see* Vaive Decl. ¶ 2 (declaration, not under pseudonym, from recently retired Department employee). The true names of individual declarants provide "no essential information bearing on the injury component of standing." *Advocs. for Highway Safety*, 41 F.4th at 594.

To establish that judicial intervention is no longer warranted, “a defendant must prove no reasonable expectation remains that it will return to [its] old ways,” which the Supreme Court has emphasized is a “formidable burden.” *Id.* And that rule “holds for governmental defendants no less than for private ones.” *Id.* Defendants cannot make that showing here, particularly given their manifest commitment to maintaining partisan political language in employees’ out-of-office messages even after Plaintiff filed this suit. In response to Plaintiff’s communication upon filing the case, Defendants revised the language in the out-of-office email messages. *See* Ex. 1 (October 6 email from counsel for Defendants). But the voluntary cessation doctrine applies to federal agencies where they “act[ed] in order to avoid litigation.” *Alaska v. U.S. Dep’t of Agric.*, 17 F.4th 1224, 1229 (D.C. Cir. 2021). In those situations, “the prospect of manipulation gives [the court] reason to doubt the party’s claims that it will not resume the challenged activity once the court dismisses the challenge.” *Id.* Thus, even setting aside that the revised language continues to violate employees’ First Amendment rights, Defendants cannot evade review of their original unconstitutional conduct by responding to Plaintiff’s complaint and cease-and-desist letter with a revision to the challenged partisan political messages.

III. The First Amendment prohibits the Department from compelling its employees to speak on a political issue outside their employment duties.

By forcing employees to speak on a partisan political issue against their will, the Department’s injection of partisan political opinions into out-of-office messages violates employees’ First Amendment rights against compelled speech. This conclusion holds true for both versions of the message. Although the First Amendment gives public employers some latitude to manage the speech of their employees when they speak as part of their official duties, making public statements blaming a political party for failed congressional negotiations is not

part of any employee's job duties. As such, the Department is compelling employee speech that falls outside the scope of their employment, with no legitimate basis.

In response to this suit, the Department modified its conduct by revising the out-of-office messages to remove the first-person language. But the Department continues to automatically send messages from email accounts associated with individual employees, with language blaming "Democrat Senators" for the shutdown. Both the earlier and current versions of the out-of-office messages violate the First Amendment.

1. The First Amendment prohibits any law "abridging the freedom of speech." U.S. Const. amend. I. The First Amendment not only protects a person's right to speak their mind but also prevents the government from compelling a person to "to utter what is not in [their] mind." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 634 (1943); *see also Wooley v. Maynard*, 430 U.S. 705, 714 (1977); *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 797 (1988) (recognizing that the First Amendment protects "the decision of both what to say and what *not* to say"). Government-compelled speech violates the "principle that freedom of speech prohibits the government from telling people what they must say." *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 61 (2006). "Compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command." *Janus v. AFSCME*, 585 U.S. 878, 892 (2018).

The First Amendment also protects against forced association. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) ("Freedom of association . . . plainly presupposes a freedom not to associate."); *Pac. Gas & Elec. Co. v. Pub. Utilities Comm'n of Cal.*, 475 U.S. 1, 12 (1986) ("[F]orced associations that burden protected speech are impermissible.").

First Amendment protections extend to public employees. “[A] public employee does not relinquish First Amendment rights to comment on matters of public interest by virtue of government employment.” *Connick v. Myers*, 461 U.S. 138, 140 (1983). Public employees retain First Amendment protections against compelled speech as well. *See Janus*, 585 U.S. at 905 (“[P]rominent members of the founding generation condemned laws requiring public employees to affirm or support beliefs with which they disagreed.”); *see also Kilborn v. Amiridis*, 131 F.4th 550, 562 (7th Cir. 2025) (“[P]ublic employees receive some measure of protection against compulsion by their employer to endorse messages they find objectionable.”).

To be sure, the government does have an interest “as an employer in regulating the speech of its employees” that differs from its interest in regulating the speech of the general public. *Connick*, 461 U.S. at 140. “[W]hen public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes.” *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006). Rather, “[w]hen an employee engages in speech that is part of the employee’s job duties, the employee’s words are really the words of the employer.” *Janus*, 585 U.S. at 910; *see also id.* at 905 (“[E]mployee speech is largely unprotected if it is part of what the employee is paid to do.”); *id.* at 908 (“Of course, if the speech in question is part of an employee’s official duties, the employer may insist that the employee deliver any lawful message.”).

The threshold question is thus whether the speech at issue is within the employee’s official duties—in other words, part of what the employee is paid to do—and therefore can be properly regulated by the Department as part of its management of employees. *Id.* at 905. The “proper inquiry” as to whether “conducting the task is within the scope of the employee’s

professional duties for First Amendment purposes” is “a practical one.” *Garcetti*, 547 U.S. at 424–25.

2. The partisan political rhetoric that the Department added to employees’ out-of-office messages is plainly not speech within the employees’ official duties. As declarants explain, making such statements is not part of their roles as nonpartisan civil servants. *E.g.*, D. Doe Decl. ¶ 3; E. Doe Decl. ¶ 4; F. Doe Decl. ¶ 3; G. Doe Decl. ¶ 4; I. Doe Decl. ¶ 3. Those statements do not become part of employees’ job responsibilities because they purport to explain why the employee cannot respond to an email. “The critical question... is whether the speech at issue is itself ordinarily within the scope of an employee’s duties, not whether it merely concerns those duties.” *Lane v. Franks*, 573 U.S. 228, 240 (2014). It is not ordinarily within the scope of the employees’ duties to state a political opinion about which party is responsible for a government shutdown.

Reinforcing this point, the Hatch Act provides that “[a]n employee may not engage in political activity while the employee is on duty.” 5 U.S.C. § 7324(a)(1). The statute does not define “political activity,” but Office of Personnel Management regulations define “political activity” as “an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.” 5 C.F.R. § 734.101. Blaming a particular political party for a shutdown may be considered “an activity directed toward the success or failure of a political party.” *Id.* In this vein, the Office of Special Counsel, which enforces the Hatch Act, advises federal employees that pursuant to the Hatch Act, “while at work” they may

not “[u]se any email account or social media to distribute, send, or forward content that advocates for or against a partisan political party.”⁹

That employees are likely prohibited from engaging in such activity while “on duty,” 5 U.S.C. § 7324(a)(1), reinforces the conclusion that the Department is forcing words into its employees’ mouths that are not part of the employees’ “official duties,” *Janus*, 585 U.S. at 908. Although an “employer may insist that the employee deliver any lawful message” as part of the employee’s official duties, *id.*, the Hatch Act makes the lawfulness of the message questionable at best. The Department is thus compelling its employees to speak, not within the scope of their employment, but “as a citizen on a matter of public concern.” *Garcetti*, 547 U.S. at 418.

3. In cases where a public employer seeks to restrict an employee’s personal speech on a matter of concern, courts apply the balancing test from *Pickering v. Board of Education*, 391 U.S. 563 (1968). Under that test, courts balance the government’s interest “as an employer, in promoting the efficiency of the public services it performs through its employees” against the employee’s interests, “as a citizen, in commenting upon matters of public concern.” *Janus*, 585 U.S. at 905 (quoting *Harris v. Quinn*, 573 U.S. 616, 653 (2014)).

The *Pickering* balancing test, however, “fits much less well where the government compels speech” rather than restricts speech. *Id.* at 908. In fact, the Supreme Court “ha[s] never applied *Pickering* in such a case.” *Id.* The *Pickering* balancing test recognizes that a public employer may be justified in restricting employee speech because “the speech of a public-sector employee may interfere with the effective operation of a government office.” *Id.* But when a public employer “commands that its employees mouth a message on its own behalf, the calculus

⁹ *Federal Employee Hatch Act Information*, U.S. Off. of Special Couns., <https://perma.cc/DT2Q-2UEG> (under “Prohibited Activities for Less Restricted Employees”).

is very different.” *Id.* In those situations, the employee’s interest in not speaking cannot be outweighed by whatever interest the employer might have. After all, “it is not easy to imagine a situation in which a public employer has a legitimate need to demand that its employees recite words with which they disagree.” *Id.* Thus, the Court need not even attempt to balance the employer interest against the employee interest to conclude that the Department is violating the First Amendment by forcing political language into its employees’ mouths.

4. Even if the *Pickering* balancing test were to apply, however, the Department’s actions would be unlawful. The balancing question would be whether the government’s “proffered interests justify the heavy burden” that it inflicted on its employees’ First Amendment interests. *Id.* at 914. The balance does not favor the government.

As to the first version of partisan out-of-office messages with first-person language ascribed to each individual employee, the messages violated the First Amendment because Defendants had no interests that could justify the imposition on the employees’ interests. The Department lacked any legitimate interest in forcing employees to put their own names on political messages that were sent as an auto-response from their accounts to anyone who emailed them while they were furloughed. The burden on the employees’ speech and associational rights was particularly heavy because the Department forced employees to speak a political pejorative that associates them with one side of the political debate: “Democrat Senators.” The messages purported to personally associate the employees with both a particular political viewpoint and a jarringly unprofessional and arguably unlawful use of an out-of-office message, which threatened employees’ individual reputations with people who contacted them by email.

The balance of interests was particularly skewed for the first version of the partisan out-of-office messages, which was written in the first person. By thanking the recipient for

“contacting me” and by making first-person statements about the employee’s work status and response timeframe, the message plainly purported to speak in the employee’s voice. Because the message was written as if the individual employee were speaking in the first person, it suggested that the language should be ascribed to the employee personally.

Meanwhile, the Department had no legitimate interest in compelling speech that violated the law and exposed the employee to a potential Hatch Act violation. Political leadership in the government can make use of their own voices, among other legitimate ways for them to communicate their own opinions, but they may not co-opt civil servants as pawns in their political blame game. *Wooley*, 430 U.S. at 717 (“[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.”); *303 Creative LLC v. Elenis*, 600 U.S. 570, 592 (2023) (government may not “coopt an individual’s voice for its own purposes”).

5. The revised version of the partisan out-of-office messages, which currently remains in place, suffers from the same constitutional defect. The Department has removed the first-person language (at least for now), although with no assurance that it will not change the out-of-office messages again. Even without the first-person language, the revised version burdens employees’ free speech rights. The partisan language, including the pejorative reference to “Democrat Senators,” is still sent from an individual email account associated with an individual speaker, to anyone who attempts to reach an individual furloughed employee.

The government suggests that no First Amendment right is implicated at all because the revised out-of-office messages arguably reflect government speech, not personal speech. Ex. 1. But the Department is still sending out political messages from individual email addresses, under

individual employees' names. The government is still speaking through its employees. Where the government is controlling its employees' speech, the threshold question is whether the messages are unprotected by the First Amendment (because "the employee's words are really the words of the employer," *Janus*, 585 U.S. at 910) or whether they do implicate the First Amendment (because the compelled speech is personal, on matters of public concern, *id.* at 905). Put another way, the test is whether the speech is within the employee's "official duties" and "part of what the employee is paid to do." *Janus*, 585 U.S. at 905, 908; *Garcetti*, 547 U.S. at 421. The ordinary job duties of Plaintiff's members do not include speaking to members of the public about the Department's views on the cause of the government shutdown.

The *Pickering* balance of interests comes out the same way. Partisan messages sent from an individually named email address threaten the employee's professional reputation and the employee's interest in not being associated with speech that they would prefer not to make—including because, at a minimum, it may create the appearance of carelessness with respect to Hatch Act prohibitions. The government has no legitimate interest in using individual employee email accounts for political speech. No partisan finger-pointing is necessary to serve the only legitimate government interest at play: letting an external stakeholder know that a particular federal employee whom they are trying to reach is temporarily unavailable. An ordinary, nonpartisan out-of-office message would suffice.

6. The conclusion that requiring federal employees to attach their names to political speech is unlawful is consistent with cases that have long recognized that the First Amendment protects public employees against being forced to adopt political beliefs as a condition of their employment. "The First Amendment prevents the government, except in the most compelling circumstances, from wielding its power to interfere with its employees' freedom to believe and

associate, or to not believe and not associate.” *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 76 (1990). Requiring public employees to provide “support for the favored political party . . . unquestionably inhibits protected belief and association.” *Elrod v. Burns*, 427 U.S. 347, 359 (1976) (plurality opinion). Doing so both implicates employees’ right to free belief and erodes the value of nonpartisan civil service: “[I]t is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent.” *U.S. Civ. Serv. Comm’n v. Nat’l Ass’n of Letter Carriers, AFL-CIO*, 413 U.S. 548, 565 (1973).

In sum, both the earlier and current versions of the out-of-office messages that the Department set for its employees violate the First Amendment.

IV. This Court has jurisdiction over Plaintiff’s claim.

The Civil Service Reform Act (CSRA) and its implied exhaustion of administrative remedies for challenges to prohibited personnel practices pose no barrier to this suit. Plaintiff is not alleging any personnel-related claim that would be subject to the CSRA’s review scheme. In fact, Plaintiff is alleging the opposite: that the government is violating its members’ First Amendment rights by compelling speech beyond the scope of their employment. Plaintiff’s claim is not “of the type Congress intended to be reviewed within” the statutory scheme. *See Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 212 (1994).

As the D.C. Circuit has held, the CSRA’s exhaustion requirement does not apply to constitutional claims “seeking declaratory and injunctive relief” that “stand[] independently” of any claim under the CSRA. *Weaver v. U.S. Info. Agency*, 87 F.3d 1429, 1434 (D.C. Cir. 1996). In *Weaver*, an agency employee was orally admonished for violating a pre-publication review policy and sued in district court to challenge both the reprimand, under the CSRA, and the pre-

publication review policy, directly under the First Amendment. *Id.* at 1432. The D.C. Circuit affirmed the dismissal of the CSRA claim on exhaustion grounds but allowed her constitutional claim to proceed to the merits. The court reasoned that the constitutional claim “stands independently” of the admonishment, because the plaintiff could “promptly refile her complaint shorn of references to her refusal to observe the review requirement and the resulting admonishment.” *Id.* at 1434. If she did so, “the district court would have jurisdiction over such a suit, framed as a simple pre-enforcement attack on a regulation restricting employee speech,” in contrast to an “ordinary case of a failure to exhaust CSRA remedies, in which the employee would have no claim that she could file directly in federal court if isolated from her claims for relief from a personnel action against her.” *Id.*

Not all constitutional claims are subject to the CSRA. Here, where the case does not challenge a change to “working conditions” within the meaning of the statute, a constitutional claim may be brought directly in district court, without CSRA exhaustion. *Turner v. Agency for Global Media*, 502 F. Supp. 3d 333, 366–67 (D.D.C. 2020) (citing 5 U.S.C. § 2302(a)(2)(A)(xii)). “[C]ourts have determined that the term ‘working conditions’ generally refers to the daily, concrete parameters of a job, for example, hours, discrete assignments, and the provision of necessary equipment and resources.” *Id.* at 367. Thus, in *Turner*, this court concluded that a challenge to agency “defendants’ alleged transformation ... of [Voice of America] and [associated] networks from media outlets committed to editorial and journalistic independence and integrity into ‘organ[s] of state media’ that actively suppress the First Amendment rights of their employees” was not subject to exhaustion under the CSRA, because the constitutional claim did “not allege a change in the conventionally understood circumstances of her employment, like a change in schedule or chain of command.” *Id.*

Likewise, here, Plaintiff is not challenging any change in the conventionally understood circumstances of employment of its members. Indeed, the Department here has not taken any personnel action against any individual employee. Instead, the agency has acted across the board to edit all employees' out-of-office messages, with the same constitutional effect as the paradigmatic regulation restricting employee speech that *Weaver* recognized may be challenged directly without the need to exhaust administrative remedies. In fact, employees do not even have a way to subject themselves to an adverse personnel action through noncompliance because changing the out-of-office message only leads to a reverting of the out-of-office message to the partisan language. *Supra* Background Section II. This case thus presents “a constitutional claim that under First Amendment principles is as final, ripe and free from exhaustion difficulties as it need be, and that [Plaintiff] has standing to pursue,” *Weaver*, 87 F.3d at 1434, and the CSRA is no obstacle to this Court's resolution of the merits.

A finding of preclusion would plainly foreclose all meaningful judicial review. *Axon Enter., Inc. v. Fed. Trade Comm'n*, 598 U.S. 175 (2023) (noting that the first *Thunder Basin* factor asks whether a finding of preclusion would foreclose meaningful judicial review). Plaintiff alleges ongoing First Amendment injury because the government is forcing its members to speak during a lapse in appropriations. But the Office of Special Counsel and the Merit Systems Protection Board, the two administrative bodies that would even arguably hear Plaintiff's claim, are both shut down due to that lapse. OSC's website states: “Due to a lapse in appropriations, the U.S. Office of Special Counsel is closed. Complaints may still be filed, but most will not be addressed until OSC reopens.”¹⁰ Likewise, a press-release on the MSPB's website states that “[d]ue to the partial shutdown of the federal government ... [the MSPB] has ceased all

¹⁰ U.S. Off. of Special Couns., <https://perma.cc/KSW4-N7EU>.

operations.”¹¹ There is no way for Plaintiff to receive meaningful review other than through this Court’s jurisdiction. Congress could not have impliedly required Plaintiff’s claim—which challenges uniquely shutdown-related conduct that will last only for the duration of the shutdown—to be raised in an administrative process that is itself shut down. *Cf. Nat’l Ass’n of Immigr. Judges v. Owen*, 139 F.4th 293, 304 (4th Cir. 2025) (CSRA exhaustion applies only when the CSRA is “functioning as Congress intended.”).

V. A declaratory judgment and permanent injunctive relief are appropriate remedies.

Plaintiff is entitled to a declaratory judgment that both forms of the out-of-office messages violate the First Amendment. Under the Declaratory Judgment Act, “any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a). In determining whether to exercise their discretion to grant declaratory relief, courts may consider various non-dispositive factors, including “the public importance of the question to be decided.” *Hanes Corp. v. Millard*, 531 F.2d 585, 591 n.4 (D.C. Cir. 1976). In the D.C. Circuit, “declaratory judgment will ordinarily be granted only when it will either ‘serve a useful purpose in clarifying the legal relations in issue’ or ‘terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.’” *President v. Vance*, 627 F.2d 353, 364 n.76 (D.C. Cir. 1980) (quoting Edwin Borchard, *Declaratory Judgments* 299 (2d ed. 1941)); *see also New York v. Biden*, 636 F. Supp. 3d 1, 31 (D.D.C. 2022).

A declaration would serve those ends. Whether a federal agency may use its employees as involuntary mouthpieces for the Administration’s partisan agenda is a question of significant public importance. A declaration would clarify that employees were compelled to speak against

¹¹ U.S. Merit Sys. Prot. Bd., *Status of the U.S. Merit Systems Protection Board During a Partial Government Shutdown* (Oct. 1, 2025), <https://perma.cc/F43E-JEZA>.

their will, which would mitigate (although not fully repair) employees' reputational harms. Finally, a declaration would vindicate employees' First Amendment rights and provide a measure of dignitary relief.

Plaintiff is also entitled to permanent injunctive relief. A plaintiff seeking a permanent injunction must demonstrate that: (1) they have suffered an irreparable injury; (2) remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) the public interest would not be disserved by a permanent injunction. *See Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156–57 (2010). The first two factors “are often considered together,” *Grundmann v. Trump*, 770 F. Supp. 3d 166, 187 (D.D.C. 2025), and the latter two merge when the defendant is the government, *see Singh v. Berger*, 56 F.4th 88, 107 (D.C. Cir. 2023).

Dragging unwilling federal employees into an ongoing partisan debate causes irreparable harm. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (per curiam) (quoting *Elrod*, 427 U.S. at 373 (plurality opinion)). Compelled speech causes uniquely irreparable harm. “Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning....” *Janus*, 585 U.S. at 893. Affected federal employees have been unable to do anything to avert the harm. In fact, some employees tried to change their out-of-office messages to a version that straightforwardly says that they are out of the office without a partisan statement—as the Department originally instructed employees to do when they were first furloughed. F. Doe Decl. ¶¶ 7–10; *supra* n.7. To their surprise, they found that their out-of-office messages were again reverted to the partisan language. *Id.* The use of

technology to force words into employees' mouths is an extraordinary form of compelled speech that cannot be addressed by remedies available at law.

The balance of equities decidedly favors the public interest in safeguarding First Amendment rights against unlawful government infringement. There is no legitimate government interest, or public interest, in unlawful action. “[T]he Constitution is the ultimate expression of the public interest.” *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013). “[G]overnment actions in contravention of the Constitution are ‘always contrary to the public interest.’” *Turner*, 502 F. Supp. 3d at 386 (quoting *Gordon*, 721 F.3d at 653).

The Trump Administration has had ample other means to communicate its message to the public. The President has the power to “us[e] the office’s ‘bully pulpit’ to persuade Americans, including by speaking forcefully or critically, in ways that the President believes would advance the public interest.” *Trump v. United States*, 603 U.S. 593, 629 (2024). Political leaders in the Trump Administration also have powerful voices in public discourse. The government has no legitimate interest in forcing nonconsenting employees to amplify a message that its leadership can speak loudly enough. This “lack of a compelling interest supporting” the government’s challenged action has a significant bearing on the balance of the equities. *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2364 (2025).

CONCLUSION

The Court should grant Plaintiff’s motion for summary judgment and provide the relief described in the attached proposed order.

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,

Plaintiff,

v.

U.S. DEPARTMENT OF EDUCATION and
LINDA MCMAHON, in her official capacity as
Secretary of Education,

Defendants.

Civil Action No. 25-cv-3553

**PLAINTIFF’S STATEMENT OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Civil Rule 7(h), Plaintiff hereby provides the following statement of material facts as to which there is no genuine issue:

1. A lapse in appropriations, commonly known as a government shutdown, began on October 1, 2025.¹
2. When the government shut down, some Department of Education employees were already on administrative leave because of pending reduction-in-force notices. *E.g.*, E. Doe Decl. ¶ 5; G. Doe Decl. ¶ 5; J. Doe Decl. ¶ 5; L. Doe Decl. ¶ 5; P. Doe Decl. ¶ 5.
3. In general, employees on administrative leave had already set up automated out-of-office responses for their government email addresses stating that they were unavailable. The

¹ Riley Beggin et al., *Government set to shut down overnight after Senate blocks funding extension*, Wash. Post (Sept. 30, 2025), <https://www.washingtonpost.com/business/2025/09/30/government-shutdown-senate/>.

typical language in those automatic replies was factual and nonpartisan. E. Doe Decl. ¶ 5; J. Doe Decl. ¶ 5; L. Doe Decl. ¶ 5.

4. Other employees were not on leave at the time of the shutdown but were notified that they would be put on furlough due to the lack of funding. *E.g.*, D. Doe Decl. ¶ 4; F. Doe Decl. ¶ 4; K. Doe. Decl. ¶ 5; M. Doe Decl. ¶ 5; N. Doe Decl. ¶ 5; Q. Doe Decl. ¶ 5.

5. Furloughed employees who were not already on leave were instructed to conduct orderly shutdown activities. F. Doe Decl. ¶ 4; M. Doe Decl. ¶ 5.

6. The Department of Education’s Chief Human Capital Officer provided those instructions as part of the furlough notice. C. Doe Decl. ¶ 6 & Exs. A & B; M. Doe Decl. ¶¶ 5–6.

7. According to those instructions, furloughed employees were allowed up to four hours of work to perform orderly shutdown activities, which included setting up automatic out-of-office email responses. *Id.*

8. The Chief Human Capital Officer’s instructions included model language for the out-of-office responses that was short, factual, and nonpartisan. *Id.* That model language stated:

Hello, you have reached the [US Department of Education’s Information Resource Center]. We are unable to respond to your request due to a lapse in appropriations for the Department of Education. We will respond to your request when appropriations are enacted. Thank you.”

Id.

9. After furloughed employees set up their out-of-office messages, the Department of Education modified the out-of-office messages for those employees.² The modified out-of-office messages read:

² *E.g.*, Eileen Sullivan & Michael C. Bender, *Partisan Language Inserted Into Education Dept. Workers’ Automated Emails*, N.Y. Times (Oct. 2, 2025), <https://perma.cc/CFQ6-LVBS>; Sunlen Serfaty et al., *Out-of-office messages blaming Democrats for shutdown sent on behalf of some federal workers without their consent*, CNN (Oct. 2, 2025), <https://perma.cc/5RHC-KQJ2>.

Thank you for contacting me. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in appropriations I am currently in furlough status. I will respond to emails once government functions resume.

E.g., D. Doe Decl. ¶ 7; E. Doe Decl. ¶ 9.

10. Making public statements with partisan language is not part of the job responsibilities of civil servants. *E.g.*, D. Doe Decl. ¶ 3; E. Doe Decl. ¶ 4; F. Doe Decl. ¶ 3; G. Doe Decl. ¶ 4; I. Doe Decl. ¶ 3; Q. Doe Decl. ¶ 11.

11. The Department did not inform employees that it was modifying their out-of-office messages. *E.g.*, D. Doe Decl. ¶ 6; E. Doe Decl. ¶ 6; F. Doe Decl. ¶ 5; M. Doe Decl. ¶ 7.

12. Department employees who were on administrative leave when the shutdown started do not have access to their government equipment or email addresses. E. Doe Decl. ¶ 5; G. Doe Decl. ¶ 5; J. Doe Decl. ¶ 5; L. Doe Decl. ¶ 5.

13. Those employees have no ability to change the out-of-office messages being sent out under their name. E. Doe Decl. ¶ 11; G. Doe Decl. ¶ 11; J. Doe Decl. ¶ 11; L. Doe Decl. ¶ 11.

14. After seeing that the messages had been changed to a partisan political message, some Department employees who still had access to their government equipment changed their out-of-office messages back to nonpartisan language. F. Doe Decl. ¶¶ 7–10.³

15. When employees who were able to alter their out-of-office messages did so, the messages were changed yet again, without their consent, to include the partisan language. *Id.*

³ Leah Feiger & Vittoria Elliott, *Government Workers Say Their Out-of-Office Replies Were Forcibly Changed to Blame Democrats for Shutdown*, WIRED (Oct. 2, 2025), <https://perma.cc/QCF3-CGFS> (“Some [Department of Education] employees changed their responses back to the more neutral language, only to have it changed yet again to the partisan response, multiple sources tell WIRED.”).

16. At least one employee was instructed not to try to change the out-of-office message set by the Department. M. Doe Decl. ¶ 7.

17. Department of Education employees regularly use their government email addresses to communicate with external stakeholders like school district representatives, college administrators, parents, students, vendors, and other members of the public. D. Doe Decl. ¶ 9; E. Doe Decl. ¶ 11; F. Doe Decl. ¶ 11; G. Doe Decl. ¶ 11; I. Doe Decl. ¶ 10; J. Doe Decl. ¶ 11; M. Doe Decl. ¶¶ 12–13; N. Doe Decl. ¶ 11.

18. On October 6, 2025, as a result of this litigation, the Department of Education changed the out-of-office messages to the following:

The Department employee you have contacted is currently in furlough status. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. The employee you have contacted will respond to emails once government functions resume.

Respectfully submitted,

/s/ Tsuki Hoshijima

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,

Plaintiff,

v.

U.S. DEPARTMENT OF EDUCATION and
LINDA MCMAHON, in her official capacity as
Secretary of Education,

Defendants.

Civil Action No. 25-cv-3553

[PROPOSED] ORDER

Upon consideration of Plaintiff's motion for summary judgment, and the entire record in this case, it is hereby:

ORDERED that the motion is **GRANTED**;

DECLARED that the Department of Education and Linda McMahon, in her official capacity as Secretary of Education, violated the First Amendment rights of furloughed agency employees by changing employees' out-of-office email messages to include partisan political language without the employees' knowledge or consent;

ORDERED that the Department of Education and Linda McMahon, in her official capacity as Secretary of Education, take immediate steps to remove all partisan political language that they caused to be added to agency employees' out-of-office email messages;

ORDERED that the Department of Education and Linda McMahon, in her official capacity as Secretary of Education, be **ENJOINED** from modifying agency employees' email out-of-office messages to include partisan political speech or otherwise requiring agency employees to include partisan political speech in email correspondence;

ORDERED that this order shall apply to the maximum extent provided for by Federal Rule of Civil Procedure 65(d)(2); and

ORDERED that the Department of Education and Linda McMahon, in her official capacity as Secretary of Education, shall file a status report within 24 hours of this order apprising the Court of the status of their compliance with this order and providing a copy of any directive that they provided to their employees or agents to ensure continued compliance with this order.

SO ORDERED.

Dated: October __, 2025

UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,

Plaintiff,

v.

U.S. DEPARTMENT OF EDUCATION and
LINDA MCMAHON, in her official capacity as
Secretary of Education,

Defendants.

Civil Action No. 25-cv-3553

**INDEX OF EXHIBITS IN SUPPORT OF PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT**

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9-8	Declaration of C. Doe
9-9	Ex. A to Declaration of C. Doe (Department of Education, Memorandum of Chief Human Capital Officer, “Formal Notification for Non-Excepted Employees Regarding Furlough Due to Lapse of Appropriations” (Sept. 30, 2025))
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9-27	Ex. 1: Email from Department of Justice to counsel for Plaintiffs (Oct. 6, 2025)

DECLARATION OF EVERETT KELLEY

I, Everett Kelley, declare as follows:

1. I am over the age of 18 and competent to testify to the matters described below.

This declaration is based on my personal knowledge, information, and belief.

2. I am the National President of the American Federation of Government Employees, AFL-CIO (“AFGE”), a labor organization and unincorporated association that represents approximately 800,000 federal civilian employees through its affiliated councils and locals in every state in the United States.

3. AFGE is headquartered in Washington, D.C.

4. AFGE advocates on behalf of its members and seeks to promote dignity, safety, and fairness for all government employees. Our core functions include providing support, guidance, and resources to our affiliates, which are the officially recognized exclusive representatives of federal employees in various bargaining units.

5. Membership in AFGE is voluntary.

6. AFGE represents more than 2,000 federal employees at the Department of Education.

7. Through its affiliate AFGE Local 252, AFGE has more than 1,700 dues-paying members who are employees of the Department of Education.

8. AFGE has learned from its members at the Department of Education that furloughed AFGE members have had their out-of-office messages involuntarily changed to include a partisan message blaming “Democrat Senators” for the ongoing government shutdown. Affected AFGE members have reported that they did not authorize this change to their out-of-office emails. AFGE members have expressed concerns that their email addresses were being used to make statements that they would not have chosen to make on their own.

9. These concerns by AFGE members are germane to AFGE's purpose. It is essential that our members' First Amendment rights are protected. AFGE's voice as an organization is the collective voice of our members and the employees we represent. When members are unlawfully restricted in their speech or compelled to take positions that they do not agree with, it harms AFGE's ability to collectively advocate for the rights of federal employees.

10. That harm is compounded when the compelled speech, in members' names, is done without members' knowledge or consent.

11. AFGE's mission also includes promoting dignity and fairness for all government employees. Furloughed government employees are already subject to uncertainty about when they will be allowed to return to work, when they will be paid, and whether their jobs might be eliminated during the shutdown. A government shutdown is a uniquely stressful and distressing time for federal employees, and this Administration is already compounding those psychic harms by threatening to use the opportunity of the shutdown to conduct more reductions in force. Forcing furloughed employees to make involuntary political statements is further demeaning for federal employees who are already suffering significant dignitary harms because of the shutdown. Protecting federal employees from this type of harm is an important part of AFGE's work.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 3rd day of October 2025.

/s/ Everett Kelley
EVERETT KELLEY

DECLARATION OF A. DOE

I, A. Doe, declare as follows:

1. I am over the age of 18 and competent to testify to the matters described below. I am submitting this declaration under a pseudonym, as I am currently an employee of the Department of Education and am concerned about the likelihood of retaliation.

2. I work in the United States Department of Education, Office for Civil Rights. I have served as a federal government employee for approximately 15 years.

3. In my role as a nonpartisan civil servant, I understand that I should not make partisan statements while on work time. I have received ethics training each year on the Hatch Act and the limitations it imposes on my political activities while I am employed by the federal government.

4. On October 1, 2025, I was informed that I would be furloughed because of the lapse in appropriations starting on October 1, 2025. Before I was furloughed, I was directed to set up an automatic out-of-office message in my government email account to include the following language: "Thank you for your email. There is a temporary shutdown of the U.S. government due to a lapse in appropriations. I will respond to your email as soon as possible after the temporary shutdown ends. Please visit [ED.gov](https://www.ed.gov) for the latest information on the Department's operational status." I set up that automatic reply as instructed.

5. On October 1, 2025, I heard from Department colleagues that our automatic out-of-office messages had been changed without our knowledge or consent.

6. I emailed my government email address from my personal account. In response, I received an automatic out-of-office message from my government email address.

7. The automatic message, set up in my name from my government email address, stated: "Thank you for contacting me. On September 19, 2025, the House of Representatives

passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in appropriations I am currently in furlough status. I will respond to emails once government functions resume.”

8. I did not draft this automatic message or know that it was being sent out in my name. This message purports to convey my own political views about which political party is responsible for the shutdown. I did not wish to share the views expressed in this message. I would not have written this automatic message if I had access to my account.

9. I understand that on October 6, 2025, the Department again changed my automatic out-of-office message to state: “The Department employee you have contacted is currently in furlough status. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. The employee you have contacted will respond to emails once government functions resume.”

10. I did not draft this revised automatic message, and the Department did not inform me of it. The revised message purports to convey political views about which political party is responsible for the shutdown, in an email that is automatically sent under my name to anyone who attempts to contact me through my government email address. I do not wish to share the views expressed in this message. I would not have written this automatic message if I had access to my account because I believe it is a partisan message.

11. The Department’s revisions to my automatic email response, which appear under my name, force me to appear partisan. Both the earlier and revised versions of the partisan out-of-office messages thus have the potential to affect my professional reputation with any persons who attempt to reach me.

12. Because I do not have access to my government email account, I cannot change this message. As part of my ordinary duties as a Department of Education employee, I have regularly used my government email address to correspond with recipients of federal financial assistance and complainants complaining of violations of civil rights laws. I expect that the automatic message will be sent from my account, in my name, to anyone who emails my government address, from inside or outside the government, as long as the shutdown continues.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 6th day of October 2025.

/s/ A. Doe
A. DOE

DECLARATION OF B. DOE

I, B. Doe, declare as follows:

1. I am over the age of 18 and competent to testify to the matters described below. I am submitting this declaration under a pseudonym, as I am currently an employee of the Department of Education and am concerned about the likelihood of retaliation.

2. I work in the Office for Civil Rights. I have served as a federal government employee for approximately 6 years.

3. I am a member of the American Federation of Government Employees.

4. In my role as a nonpartisan civil servant, I understand that I should not make partisan statements while on work time. I have received training on the Hatch Act and the limitations it imposes on my political activities while I am employed by the federal government.

5. I have been on administrative leave since approximately March 24, 2025, in connection with the Department's recent reductions in force. As a result, I do not have access to my federal government equipment or email.

6. On October 1, 2025, a lapse in appropriations occurred, causing a government shutdown. That same day, I heard from Department colleagues that our automatic out-of-office messages had been changed without our knowledge or consent.

7. Because I am unable to access my government email account, I tried emailing my work email address from my personal email account. In response, I received an automatic out-of-office message from my government email address.

8. The automatic message, sent in my name from my government email address, stated "Thank you for contacting me. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in

appropriations I am currently in furlough status. I will respond to emails once government functions resume.”

9. I did not draft this automatic message or know that it was being sent out in my name. This message purports to convey my own political views about which political party is responsible for the shutdown. I did not wish to share the views expressed in this message. I would not have written this automatic message if I had access to my account.

10. Because I do not have access to my government email account, I cannot change this message. I expect that the automatic message will be sent from my account to anyone who emails my government address, from inside or outside the government, as long as the shutdown continues.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 3rd day of October 2025.

/s/ B. Doe
B. DOE

DECLARATION OF C. DOE

I, C. Doe, declare as follows:

1. I am over the age of 18 and competent to testify to the matters described below. I am submitting this declaration under a pseudonym, as I am currently an employee of the Department of Education and am concerned about potential retaliation.

2. I have served as a federal government employee for more than ten years. I am reluctant to provide more specific information about my position at the Department because I fear retaliation if my employer discovers that I made this declaration.

3. I am also a member of the American Federation of Government Employees.

4. In my role, I communicate with individuals from educational institutions, state agencies, and other organizations.

5. I understand that the political leadership of the Department determines the policies of the Department and my role is to help implement those policies. I therefore approach my job responsibilities from a nonpartisan perspective.

6. I was informed that I would be furloughed as a result of the lapse in appropriations starting on October 1, 2025. I received instructions in a memorandum, checklist, and several emails circulated by the Department's Chief Human Capital Officer regarding furlough preparations. *See* Ex. A (memorandum); Ex. B (checklist). Consistent with those instructions, on the morning of October 1, I went to the Department's office to conduct orderly shutdown activities, including submitting and verifying my timesheet and setting up an automatic email reply to alert the public that I had been furloughed during a lapse in appropriations.

7. The language I used for my automatic reply was simple, factual, and nonpartisan, as were the models the Department had instructed me to use.

8. In the evening of October 1, I discovered that the language in the automatic reply associated with my government email account and my colleagues' accounts had changed, so that they now read: "Thank you for contacting me. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in appropriations I am currently in furlough status. I will respond to emails once government functions resume."

9. I did not draft this automatic message or know that it was being sent out in my name. This message purports to convey my own political views about which political party is responsible for the shutdown. I did not wish to share the views expressed in this message.

10. I was surprised that the automatic reply had been changed because the Department had sent several emails detailing the process and content of the automatic reply, and setting up the auto-reply was one of two main tasks the Department had asked employees to come to the office to complete on October 1.

11. I was also surprised that the automatic reply had been changed to a partisan message blaming one party for the lapse in appropriations because the model language the Department had provided was politically neutral. In my years as a Department employee, I had never been asked to use language taking a partisan position in a communication attributed to me.

12. I am concerned that individuals who email me in the coming days or weeks will think that I decided to draft the automatic reply with a partisan message that they will receive from my email account, which makes me appear unprofessional and conveys a political view that I do not personally hold. I fear that this will damage professional relationships that have taken years to build.

13. I expect that the automatic message will be sent from my account to anyone who

emails my government email, from inside or outside the government, as long as the shutdown continues.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 3rd day of October 2025.

/s/ C. Doe
C. DOE

Exhibit A



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF FINANCE AND OPERATIONS

September 30, 2025

MEMORANDUM

FOR: U.S. Department of Education Non-Excepted Employees

FROM: Jacqueline Clay
Chief Human Capital Officer
Office of Human Resources

SUBJECT: Formal Notification for Non-Excepted Employees Regarding Furlough Due to Lapse of Appropriations

This is to notify you of the absence of either an FY 2026 appropriation, or a continuing resolution, for the Department of Education (ED). No further financial obligations may be incurred by ED, except for those related to the orderly suspension of agency operations or performance of excepted activities as directed by the Office of Management and Budget (OMB).

Certain positions within ED have been designated as “excepted” from the furlough and other positions have been deemed “non-excepted.” **You occupy a position that is identified as “non-excepted”.** This means you are being placed in a non-excepted employee furlough status effective your first regular duty date following September 30, 2025.

- Guidance for furloughed employees regarding what activities are permitted during a lapse in funding:
 - You are to report to duty on your first scheduled workday for a period not to exceed four (4) hours to perform work that is necessary to ensure the orderly suspension (shutdown) of operations.
 - After orderly shutdown activities are complete, you may not perform any further work during the shutdown unless you receive a notice that your status has changed to “excepted.”

- During the orderly shutdown:
 - You may perform up to 4 hours of work as necessary for an orderly shutdown.
 - These orderly shutdown activities should occur on your next regularly scheduled work day following the lapse in funding.
 - ◆ For most employees, this will be 4 hours beginning on the morning of Wednesday, 10/1/2025.
 - ◆ Your POC leadership or supervisor will provide guidance if your orderly shutdown activities should occur at a different date/time
 - You may not conduct regular business between the lapse in funding (midnight on 9/30/2025) and when you start orderly shutdown activities (for most employees, Wednesday, 10/1/2025).

400 MARYLAND AVE., S.W., WASHINGTON, DC 20202
www.ed.gov

- Orderly shutdown activities may be performed at your usual work location (whether remote or in person), unless instructed otherwise by your Principal Operating Component (POC) leadership (for example, if orderly shutdown activities require you to access a resource that is only available in person)
 - Orderly shutdown activities must include:
 - ◆ Submitting and verifying your timesheet for pay period, 2025-21 (September 21 – October 4, 2025).
 - ◆ Providing current contact information to your immediate supervisor.
 - ◆ Setting up your out of office email and voicemail messages with the following language, “Hello, you have reached the [US Department of Education’s Information Resource Center]. We are unable to respond to your request due to a lapse in appropriations for the Department of Education. We will respond to your request when appropriations are enacted. Thank you.”
 - ◆ Canceling any scheduled leave for the next week.
 - ◆ Canceling any scheduled travel for the next week.
 - Your POC leadership will provide further guidance on what additional specific activities you should perform as part of your orderly shutdown activities.
- After orderly shutdown is complete (for most employees, this is the afternoon on 10/1/2025):
- It is a violation of federal law for furloughed employees to perform any further work.
 - You therefore may not check your work email, work voicemail, work teams accounts, etc.
 - Use of government furnished equipment is not authorized during this period. You may not use your government furnished devices for non-work purposes while furloughed. Government-furnished computers and phones automatically connect to the Education Department VPN once powered on, and therefore cannot be used even for non-work purposes while you are furloughed.
 - You may be contacted and required to report to duty during this period as needed to continue the efficient and effective operation of the government. If you are required to report, you will be contacted by an appropriate management official and be advised as to the time you must report.
 - You may never perform work on personal devices. The only work-related function you can perform is receiving a call or email from your supervisor or POC leadership on your personal phone or personal email address telling you that your status has been changed from “non-excepted” to “excepted.” In that instance, you may then power on your work device, confirm that you have received an official letter changing your status to “excepted,” and then perform excepted work as directed by your supervisor/POC leadership.
 - During the furlough period, you will be in a non-pay and non-duty status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer at ED and must remain away from your workplace unless and until recalled.
 - Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is cancelled.
- Returning to work when the lapse in appropriations has finished:
- This furlough, e.g., non-pay, non-working status, is not expected to exceed thirty (30) days. Therefore, this furlough notice expires no later than October 30, 2025.

- Furloughed employees are responsible for monitoring the news to learn when the lapse in appropriations has finished. You should listen to public broadcasts, news media, and other means for further updates.
- Upon notification that a continuing resolution or a FY 2026 appropriation for ED has been approved, you will be expected to return to work (telework or in person) on your next regular duty day.

This action is being taken because of a sudden emergency requiring curtailment of the agency's activities; therefore, no advance notification is possible. The customary thirty (30)-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404 (d)(2). The thirty (30)-day advance notice otherwise required by 5 CFR 359.806(a) for Senior Executive Service (SES) career appointees (other than reemployed annuitants) is likewise suspended.

You may file an appeal with the Merit System Protection Board (MSPB). You must be an "employee" as defined in accordance with 5 U.S.C. 7511 and 5 CFR Part 752 as summarized in relevant part below:

- a) If you are in the competitive service and have completed one (1) year of current continuous employment under other than a temporary appointment, you may appeal this action to the MSPB.
- b) If you are in the excepted service and have veteran's preference, you may appeal to the MSPB if you have completed one (1) year of current continuous service in the same or similar positions as the one that you now hold.
- c) If you are in the excepted service but do not have veteran's preference, you may appeal to the MSPB if you have completed two (2) years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment that is limited to two (2) years or less. In addition, with the exception of veterans, you cannot be in a trial or probationary period, whether in a competitive or excepted service position, in order to have appeal rights to the MSPB.
- d) Career SES appointees (except reemployed annuitants) who believe requirements of 5 CFR Part 359, subpart H, or the agency's procedures have not been correctly applied may also appeal to the MSPB. Career SES appointees may review the regulations related to this action at the website listed below:

[5 CFR 359, Subpart H](#)

If you have the right to appeal this action to the MSPB, your appeal must be in writing and within thirty (30) calendar days after the effective date of your furlough. The MSPB's regulations, and instructions for filing an appeal, are available at the following website:

<http://mspb.gov/appeals/appeals.htm>

If your appeal is found untimely, it will be dismissed by an MSPB Administrative Judge unless you can demonstrate a good reason for the delay. The MSPB requires an appeal to be filed with

the MSPB regional or field office serving the area where your duty station was located when the action was taken. If you do not want to utilize the electronic filing feature, you may file a paper appeal by using the following link:

<https://e-appeal.mspb.gov/PDFTemplate/MspbAppealForm.pdf>

If either link is not functioning or if you are otherwise unable to access it, please send an email to fundinglapseinfo@ed.gov for additional instructions.

If you are a bargaining unit employee, you have the right to file an appeal to the MSPB in accordance with the procedures outlined above, or file a grievance using the negotiated grievance procedure outlined in the Collective Bargaining Agreement, but not both.

Once a continuing resolution, or **FY 2026** appropriation, for the Department of Education has been approved, notification of the government status, which includes ED, will be provided via OPM's website and media reports. Employees are encouraged to download OPM's Alert mobile app or OPM's ListServ to receive email updates of operating status. You may access the site through the following links:

[OPM Alert Mobile App](#)

[Operating Status Listserv Subscription](#)

All employees are expected to stay abreast of government status and return to work on the next regularly scheduled workday once notification of the Federal Government being open for business occurs.

ADDITIONAL EMPLOYEE SUPPORT OPTIONS:

The Employee Assistance Program is available to employees who may need additional assistance. Self-help tools and other resources may be accessed through the following contact information:

Toll-free number 24/7: 1-800-222-0364

TTY 24/7: 1-888-262-7848

Website: www.FOH4you.com

We recognize the difficult financial implications of any furlough. We will make every effort to keep you informed as additional information regarding the Agency funding level becomes available.

Exhibit B

**Basic Employee Furlough
Checklist As of 9/30/25**

This document provides a basic checklist that serves as a **starting point** for you to use **before** a Shutdown Furlough to make sure you are well prepared. Please review this information thoroughly, complete the checklist, and have all materials printed or saved to a non-Government personal computer/ device. We cannot stress enough how important it is for you to complete this **BEFORE** a Shutdown Furlough. **Please do not wait until the day a Shutdown Furlough is announced or confirmed to begin working through this checklist.** The checklist includes a description of each item with Web links to more information, when available.

You will receive more information regarding the Shutdown Furlough from the Agency, your POC, and/or your supervisor. We have attempted to capture some of this important information; however, our list is not all-inclusive. We recommend making a list of important phone numbers and e-mail addresses to supplement this checklist so you have the information readily available in one place.

√	Basic Checklist Before Shutdown Furlough	Description
	Provide your personal contact information to your supervisor	You should provide the following information to your supervisor: <ul style="list-style-type: none"> a. Home and/or personal cell phone number(s) where you can be reached during the furlough. b. Personal e-mail addresses you will have access to during the furlough.
	Obtain and save on a non-Government personal computer/ device the personal contact information for: <ul style="list-style-type: none"> • Your supervisor and/or • Any other Points of Contact (POCs) as directed by your supervisor(s) 	During a Shutdown Furlough, Government-owned resources (e.g., cell phones, e-mail accounts, etc.) may not be always available. Obtain the following information: Supervisor Name: _____ Personal Phone: _____ Alternate Phone: _____ Personal E-mail: _____ Other POC Name: _ Personal Phone: _____ Alternate Phone: _____ Personal E-mail: _____ Other POC Name: _ Personal Phone: _____ Alternate Phone: _____ Personal E-mail: _____

v	Basic Checklist Before Shutdown Furlough	Description
	<p>Save and/or print copies of your latest and/or important personnel documents.</p>	<p>We recommend you have several important documents readily available on a non-Government personal computer/device or in hard copy form. While your individual situation may require other documents, the following list includes some of the most important ones we recommend you gather relating to your Federal employment:</p> <ol style="list-style-type: none"> 1. Standard Form (SF) 50, Notification of Personnel Action (located in your eOPF) <p>Be sure to save/print the most recent year of SF 50s, including the one with your most recent pay information. Please ensure you access and print any needed information before a Shutdown Furlough.</p> <ol style="list-style-type: none"> 2. Earnings and Leave Statement (located in Employee Express) <p>Be sure to save/print your most recent Earnings and Leave Statements. If you believe you will be interested in unemployment compensation, please remember each state unemployment office has requirements as to what period your Earnings and Leave Statements must cover (e.g., 1 month, 3 quarters, 1 year, etc.). BEFORE a furlough, contact your servicing unemployment office to determine what you need.</p> <ol style="list-style-type: none"> 3. Form W-2, Wage and Tax Statement (located in Employee Express) 4. SF 8, Notice to Federal Employee About Unemployment Insurance (provided to employees before a Shutdown Furlough and prefilled with ED information) 5. Formal furlough notice.
	<p>IT at ED</p>	<p>Employees must use the Virtual Private Network (VPN) whenever conducting any activities on ED equipment, including:</p> <ul style="list-style-type: none"> • Orderly shutdown activities. • ED excepted services during the Government Shutdown. • All Employees: Personally owned IT devices, technology, and applications are prohibited from connecting to any ED network or system in addition to any network or system that stores or processes ED data. • Non-Excepted Employees: Utilization of government furnished equipment is not authorized during a furlough. • Excepted Employees (Full-Time, Part-Time, and On-Call): You can keep your Government-issued IT devices on during the shutdown. <p>Please remember to use the Virtual Private Network (VPN) whenever you are conducting ED excepted services during the shutdown due to a lapse in funding. This ensures your IT device is getting appropriate patching and is protected by other layers of ED's network infrastructure to guard against cyber threats.</p> <p>Excepted employees will still have limited IT support during the furlough from. Excepted individuals in need of assistance, should continue to call 1-202-708-4357.</p>

√ Basic Checklist Before Shutdown Furlough	Description
<p>From your ED computer, check system passwords and account information for all systems and programs you may need to access. Collect the system links you may need from a non-Government personal computer/device. Test the system links using a non-Government personal computer/device.</p>	<p>You should review password expiration dates and reset any passwords that may expire in the next 30 days to ensure you are not locked out.</p> <p>NOTE: ALL password resets should be done from your ED computer BEFORE a Shutdown Furlough. Be sure you maintain compliance with security regulations (e.g., do <u>not</u> record that information in this document).</p> <p>After collecting the links, usernames, and passwords (in the previous item), test all of them from a non-Government personal computer/device. It is critical to complete this test BEFORE a Shutdown Furlough so you know you can access the systems and sites. Keep in mind that during a furlough, some or all the sites may not be available, but that is determined by each event’s circumstances.</p>
<p>Determine the status of any training or academic education already scheduled for you.</p>	<p>If you have training scheduled during a time when a Shutdown Furlough is possible or anticipated, do the following:</p> <ol style="list-style-type: none"> 1. Typically, the following applies to academic education: <ol style="list-style-type: none"> a. Employees who are in a pay status and attend academic programs on a full-time basis will NOT be allowed to continue with their scheduled courses during a shutdown. b. Employees who attend academic courses during normal work hours (and are compensated for time spent in class) will NOT be allowed to continue with their scheduled courses during a shutdown. c. Employees who attend academic courses outside normal work hours (and are not compensated for time spent in class) will be allowed to continue with their scheduled courses during a shutdown. Employees are encouraged to reach out to their Servicing HR Office if there’s a question of whether funding has been approved/sent to the academic institution BEFORE a shutdown occurs. d. Use of Government-issued computers is NOT permitted for these purposes as it is considered a non-expected activity. 2. Contact your Servicing HR Office and supervisor for additional information.
<p>Determine what happens if you are scheduled to travel, if you are on travel, or if you are on Temporary Duty (TDY)/Extended Temporary Duty (ETDY).</p>	<p>If you are on travel or are scheduled to be on travel during a time when a Shutdown Furlough is possible or anticipated, contact your supervisor for additional information.</p>
<p>Know and understand your Shutdown Furlough status (i.e., full-time, part-time, on-call excepted or non-excepted).</p>	<p>Determining Furlough Status for Activities and Employees: ED has worked to determine which of our activities may continue under the legal restrictions that govern a Shutdown Furlough (i.e., lapse in appropriations). The activities that may legally continue are called “excepted” activities. The activities that may not legally continue are called “non-excepted” or “furloughed” activities.</p>

✓ Basic Checklist Before Shutdown Furlough	Description
	<p>Excepted Status: Based on the legal determination about the excepted activities, ED has determined which employees would continue to report to work to perform the excepted activities. If excepted, you may work on:</p> <ul style="list-style-type: none"> • Full-time Activities • Part-time Activities for which you are required to work only for the duration of specific, named activities or during specific time periods. • On-call Activities for which you may be called to work (at home or in the office) to perform specific excepted work. <p>As an excepted employee you will be retained beyond the furlough date for the orderly suspension of agency operations and to continue your duties for a specific, or possibly for the full, furlough period. If you have questions, you should contact your first line supervisor.</p> <p>Non-excepted/Furloughed Status: All employees who are not assigned to perform excepted activities must legally be placed on furlough. During the furlough, you will not be permitted to serve as an unpaid volunteer but must remain away from your workplace unless and until recalled. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is cancelled.</p> <p>Changes in Status: Your status may change over time as circumstances evolve (e.g., you may be non-excepted then be called in to work); if this occurs, you will be informed directly.</p> <p>What Your Status Means: Your categorization/status as excepted or non-excepted (i.e., furloughed) is <u>not</u> a reflection on the quality of your work, nor is it an indication of your importance to our Agency. It is merely a reflection of the legal requirements under which we must operate should a lapse in funding occur.</p> <p>Receiving Shutdown Furlough Status Notifications: If you will perform full-time, part-time, or on-call excepted activities during a Shutdown Furlough, you will receive individual notification of your excepted status. After excepted status notifications are issued, a general notice will be sent to all employees informing them that, unless they have already received excepted status notifications, they will be furloughed. NOTE that this general notice is not the formal furlough notice that is normally delivered on the day the Shutdown Furlough begins.</p>
<p>Gather information if you will or may be required to work.</p>	<p>If you will or may be required to work during the shutdown (i.e., excepted), you should have the following information:</p> <ol style="list-style-type: none"> 1. The specific days and hours worked is to be performed, if known. If you are on-call, how you will be contacted. 2. What work you are permitted to perform. 3. Any specific security requirements. 4. How you will record and report time performing excepted work. 5. How you will be notified if you are required to work (e.g., Are you required to check e-mail at intervals? Will you receive a phone call?). 6. Guidance on filing a Federal Workers' Compensation claim if you sustain a work-related injury/illness while you are on duty/performing excepted work. <p>Please take note of the following information:</p>

✓ Basic Checklist Before Shutdown Furlough	Description
	<ol style="list-style-type: none"> 1. You may perform only the identified excepted work. 2. You will be furloughed during all time you are not performing the excepted work.
<p>Determine when and how you will perform shutdown activities.</p>	<p>Shutdown activities must be done in person for employees regularly scheduled to be in the office on October 1, 2025.</p> <p>If you will be performing any excepted activities via telework during the Shutdown Furlough, you must have an approved Telework Agreement on file prior to the shutdown.</p>
<p>Save and/or print copies of information, guidance, and communications related to the shutdown.</p>	<p>Before a Shutdown Furlough, a great deal of information will be sent out or made available. During a furlough, many Web sites may be down, and Government computer access may be limited. We recommend that you save the information on a non-Government personal computer/device or print out relevant information and have it readily available. Examples of information and communications to save/print include, but are not limited to:</p> <ul style="list-style-type: none"> • Leadership messages. • Agency and Office of Human Resources messages. • Office of Personnel Management’s (OPM’s) Frequently Asked Questions (FAQs). (From the OPM Pay & Leave Furlough Guidance Page, click the Shutdown Furlough tab and the Guidance for Shutdown Furloughs link.)
<p>Ensure your timesheet in Quicktime is accurate before a Shutdown Furlough.</p>	<p>You will receive guidance on updating Quicktime for the days prior to the shutdown effective date. For you to receive an accurate accounting of benefits and entitlements, you must enter your time in accordance with guidance received. We recommend you print/save the instructions and have them handy because you may be asked to complete this information shortly before a shutdown.</p>
<p>Obtain any advice on your Federal ethics requirements you will need during the Shutdown Furlough.</p>	<p>Federal ethics requirements remain in force during a Shutdown Furlough, and certain kinds of outside work must be approved by ED beforehand. You should obtain any ethics advice and outside activity approvals you need prior to shutdown.</p>
<p>Know the procedures established by your organization for shutdown activities, which will include at a minimum:</p> <ol style="list-style-type: none"> 1. Open/Acknowledge your Shutdown Furlough notice 2. Activate your out-of-office for your phone and e-mail 	<ol style="list-style-type: none"> 1. Open, review, save/print your Shutdown Furlough notice and follow instructions. Should a shutdown occur, you will be contacted and either provided a written or verbal notification of your Shutdown Furlough notice. You must acknowledge Shutdown Furlough notices in accordance with your supervisor’s direction. Since access to your ED e-mail during the shutdown may be limited, we recommend that you print out or save your Shutdown Furlough notice and any attachments on a non-Government personal computer/device. 2. Activate your out-of-office messages according to

√	Basic Checklist Before Shutdown Furlough	Description
		<p>your excepted or furloughed status. Be sure you have procedures for doing this remotely, if needed.</p> <ul style="list-style-type: none"> If you are an excepted employee during a Shutdown Furlough, work with your supervisor to develop appropriate messages. <p>3.ED recommends the following template verbiage for out-of-office messages for furloughed employees:</p> <ul style="list-style-type: none"> Voice Mail Template and E-mail Out of Office Template – Furloughed Employee. “Hello, you have reached the [US Department of Education’s Information Resource Center]. We are unable to respond to your request due to a lapse in appropriations for the Department of Education. We will respond to your request when appropriations are enacted. Thank you.”
	Understand your “return to work” procedures.	Before shutting down, discuss with your supervisor how you will be notified to return to work.
	Understand your rights and responsibilities regarding Federal Workers’ Compensation.	<p>If you are currently receiving or have an approved Federal Workers’ Compensation claim, you will continue to work with DOL regarding your claim, which may include filing forms and submitting information to support continuing compensation or medical reimbursement.</p> <p>If during a Shutdown Furlough you are an excepted employee and are injured on the job:</p> <ol style="list-style-type: none"> Obtain medical treatment if needed. Contact the supervisor you are reporting to during the furlough to report the injury. If you choose to file an injury/illness claim for compensation, access the DOL Employees’ Compensation Operations & Management Portal (ECOMP) page.
	Understand your rights and responsibilities regarding Unemployment Compensation.	<p>Please refer to the following appendix and attachment in this document for more information:</p> <ul style="list-style-type: none"> Appendix C, Unemployment Compensation for Federal Employees and Attachment 1, SF 8, Notice to Federal Employee About Unemployment Insurance, Prefilled for ED Employees <p>Please note that if you receive Unemployment Compensation for the Shutdown Furlough, you will be required to repay the Unemployment Compensation funds due to the fact that you will receive retroactive pay per the Government Employee Fair Treatment Act of 2019 (S. 24).</p>
	If you need access to mental health counseling during the Shutdown Furlough, contact your Employee Assistance Program (EAP) counselor to determine that program’s local status	The EAP can be contacted at (800) 222-0364 or by visiting the website at www.FOH4you.com

DECLARATION OF D. DOE

I, D. Doe, declare as follows:

1. I am over the age of 18 and competent to testify to the matters described below. I am submitting this declaration under a pseudonym, as I am currently an employee of the Department of Education and am concerned about the likelihood of retaliation.

2. I work in the Federal Student Aid Office. I have served as a federal government employee for approximately 5 years.

3. In my role as a nonpartisan civil servant, I understand that I should not make partisan statements while on work time. I've received training each year on the Hatch Act and the limitations it imposes on my political activities while I am employed by the federal government.

4. On September 30, I was informed that I would be furloughed because of the lapse in appropriations starting on October 1, 2025. Before I was furloughed, I was directed to post an automatic out-of-office message in my government email account. I used a standard out-of-office message that stated that due to a lapse in appropriations funding there would be a delay in responding to any inquiries.

5. Department staff typically set their own out-of-office messages. I have always done so in the past. To my knowledge, the Department has not previously altered my out-of-office messages.

6. On October 2, 2025, I became aware that my automatic out-of-office message had been changed without my knowledge or consent.

7. The automatic message, set up in my name from my government email address, stated: "Thank you for contacting me. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking

passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in appropriations I am currently in furlough status. I will respond to emails once government functions resume.”

8. I did not draft this automatic message or know that it was being sent out in my name. This message purports to convey my own political views about which political party is responsible for the shutdown. I did not wish to share the views expressed in this message. I would not have written this automatic message.

9. As part of my ordinary duties as a Department of Education employee, I have regularly used my government email address to correspond with universities, non-profits, vendors, and other third parties. I expect that the automatic message will be sent from my account to anyone who emails my government address, from inside or outside the government, as long as the shutdown continues.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 3rd day of October 2025.

/s/ D. Doe
D. Doe

DECLARATION OF E. DOE

I, E. Doe, declare as follows:

1. I am over the age of 18 and competent to testify to the matters described below. I am submitting this declaration under a pseudonym, as I am currently an employee of the Department of Education and am concerned about the likelihood of retaliation.

2. I work in the Office for Civil Rights. I have served as a federal government employee for approximately 2 years.

3. I am a member of the American Federation of Government Employees.

4. In my role as a nonpartisan civil servant, I understand that I should not make partisan statements while on work time. I have received training each year on the Hatch Act and the limitations it imposes on my political activities while I am employed by the federal government.

5. I have been on administrative leave since March 2025, in connection with the Department's recent reductions in force. As a result, I do not have access to my federal government equipment or email. Before I went on administrative leave, I set an automatic out-of-office message in my government email account. The out-of-office message simply stated that I would not be replying and I didn't believe the e-mail address would be monitored.

6. On October 1, 2025, a lapse in appropriations occurred, causing a government shutdown. That same day, I heard from Department colleagues that our automatic out-of-office messages had been changed without our knowledge or consent.

7. Department staff typically set their own out-of-office messages. I have always done so in the past. To my knowledge, the Department has not previously altered my out-of-office messages.

8. Because I am unable to access my government email account, I tried emailing my work email address from my personal email account. In response, I received an automatic out-of-office message from my government email address.

9. The automatic message, sent in my name from my government email address, stated: "Thank you for contacting me. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in appropriations, I am currently in furlough status. I will respond to emails once government functions resume."

10. I did not draft this automatic message or know that it was being sent out in my name. This message purports to convey my own political views about which political party is responsible for the shutdown. I did not wish to share the views expressed in this message. I would not have written this automatic message if I had access to my account.

11. Because I do not have access to my government email account, I cannot change this message. As part of my ordinary duties as a Department of Education employee, I have regularly used my government email address to correspond with the public, public schools, major colleges and universities, and their leadership. I expect that the automatic message will be sent from my account to anyone who emails my government address, from inside or outside the government, as long as the shutdown continues.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 2nd day of October 2025.

/s/ E. Doe
E. Doe

DECLARATION OF F. DOE

I, F. Doe, declare as follows:

1. I am over the age of 18 and competent to testify to the matters described below. I am submitting this declaration under a pseudonym, as I am currently an employee of the Department of Education and am concerned about the likelihood of retaliation.

2. I work in the Office for Civil Rights. I have served as a federal government employee for approximately six years.

3. In my role as a nonpartisan civil servant, I understand that I should not make partisan statements while on work time. I have received training on the Hatch Act and the limitations it imposes on my political activities while I am employed by the federal government.

4. On September 30, 2025, I was informed that I would be furloughed because of the lapse in appropriations starting on October 1, 2025. Before I was furloughed, I was directed to and in fact did set up an automatic out-of-office message in my government email account. The text of my automatic out-of-office message was as follows: "Thank you for your email. There is a temporary shutdown of the U.S. government due to a lapse in appropriations. I will respond to your message as soon as possible after the temporary shutdown ends. Please visit ED.gov for the latest information on the Department's operational status."

5. On October 1, 2025, I heard from Department colleagues that our automatic out-of-office messages had been changed without our knowledge or consent.

6. Department staff typically set their own out-of-office messages. I have always done so in the past. To my knowledge, the Department has not previously altered my out-of-office messages, with the exception of providing a forwarding contact during my temporary placement on administrative leave pending the Department's March 2025 reduction-in-force notice.

7. The Department's furlough instructions specified that furloughed employees were permitted up to four hours of time on October 1 to conduct shutdown activities, including setting up an out-of-office message. Within that four-hour allotment, later on October 1, I logged back into my government email account and confirmed that the out-of-office message I had set up had been replaced with a different message.

8. The automatic message, set up in my name from my government email address, stated: "Thank you for contacting me. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in appropriations I am currently in furlough status. I will respond to emails once government functions resume."

9. I did not draft this automatic message or know that it was being sent out in my name. This message purports to convey my own political views about which political party is responsible for the shutdown. I did not wish to share the views expressed in this message. I would not have written this automatic message.

10. Once I confirmed my out-of-office message had been replaced, I re-accessed my email settings (still within the permissible four-hour allotment) and changed the automatic message back to the original, nonpartisan, script. I later emailed my government email account from my personal email account and received the altered automatic message that I had not written or consented to.

11. As part of my ordinary duties as a Department of Education employee, I have regularly used my government email address to correspond with members of the public, elementary and secondary educational institutions, and post-secondary institutions. I expect that

the automatic message will be sent from my account to anyone who emails my government address, from inside or outside the government, as long as the shutdown continues.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 3rd day of October 2025.

/s/ F. Doe
F. DOE

DECLARATION OF G. DOE

I, G. Doe, declare as follows:

1. I am over the age of 18 and competent to testify to the matters described below. I am submitting this declaration under a pseudonym, as I am currently an employee of the Department of Education and am concerned about the likelihood of retaliation.

2. I work in the Office for Civil Rights. I have served as a federal government employee for approximately 3 years.

3. I am a member of the American Federation of Government Employees.

4. In my role as a nonpartisan civil servant, I understand that I should not make partisan statements while on work time. I have received training each year on the Hatch Act and the limitations it imposes on my political activities while I am employed by the federal government.

5. I have been on administrative leave since March 21, 2025, in connection with the Department's recent reductions in force. As a result, I do not have access to my federal government equipment or email.

6. On October 1, 2025, a lapse in appropriations occurred, causing a government shutdown. That same day, I heard from Department colleagues that our automatic out-of-office messages had been changed without our knowledge or consent.

7. Department staff typically set their own out-of-office messages. I have always done so in the past. To my knowledge, the Department has not previously altered my out-of-office messages.

8. Because I am unable to access my government email account, I tried emailing my work email address from my personal email account. In response, I received an automatic out-of-office message from my government email address.

9. The automatic message, sent in my name from my government email address, stated: “Thank you for contacting me. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in appropriations I am currently in furlough status. I will respond to emails once government functions resume.”

10. I did not draft this automatic message or know that it was being sent out in my name. This message purports to convey my own political views about which political party is responsible for the shutdown. I did not wish to share the views expressed in this message. I would not have written this automatic message if I had access to my account.

11. Because I do not have access to my government email account, I cannot change this message. As part of my ordinary duties as a Department of Education employee, I have regularly used my government email address to correspond with school districts, colleges, universities, students, parents, and attorneys. I expect that the automatic message will be sent from my account to anyone who emails my government address, from inside or outside the government, as long as the shutdown continues.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 2nd day of October 2025.

/s/ G. Doe
G. DOE

DECLARATION OF H. DOE

I, H. Doe, declare as follows:

1. I am over the age of 18 and competent to testify to the matters described below. I am submitting this declaration under a pseudonym, as I am currently an employee of the Department of Education and am concerned about the likelihood of retaliation.

2. I work in the Office for Civil Rights (OCR). I have served as a federal government employee for approximately 20 years, 24 years when counting my prior honorable military service.

3. I am a member of the American Federation of Government Employees.

4. In my role as a nonpartisan civil servant, I understand that I should not make partisan statements while on work time. Throughout my time with the federal government, the requirements and prohibitions of the Hatch Act have been repeatedly emphasized to me, particularly the prohibitions against engaging in political or partisan speech that favors or denigrates one political party over another. The requirements of the Hatch Act are so important to the federal government and its workforce that I regularly receive training about the Act and the types of actions that it prohibits.

5. On September 30, 2025, I was informed that I would be furloughed because of the lapse in appropriations starting on October 1, 2025. Before I was furloughed, I received from the Department's Chief Human Capital Officer (CHCO) a September 30, 2025 notice regarding my furlough status that stated numerous actions that I had to take prior to being furloughed to best ensure the most orderly shutdown for my employment position. Included in the notice was a section titled "Orderly shutdown activities must include" that stated actions that I needed to complete prior to ceasing all of my employment activities. One of the actions stated:

Setting up your out of office email and voicemail messages with the following language, “Hello, you have reached the [US Department of Education’s Information Resource Center]. We are unable to respond to your request due to a lapse in appropriations for the Department of Education. We will respond to your request when appropriations are enacted. Thank you.”

6. Following the above directive, I changed my out-of-office auto response that is sent by Microsoft Outlook so that it would read: “Hello, you have reached the U.S. Department of Education’s Office for Civil Rights. We are unable to respond to your request due to a lapse in appropriations for the Department of Education. We will respond to your request when appropriations are enacted. Thank you.”

7. On October 1, 2025, I heard from Department colleagues that our automatic out-of-office messages had been changed without our knowledge or consent.

8. Throughout my time at the Department, I have always personally enabled my out-of-office auto response and written for myself what it should state whenever I have been away from my office for any length of time. The only time this did not happen was earlier this year when I was placed on administrative leave pending separation due to a reduction in force (RIF) and someone, without my knowledge or consent, at the beginning of April 2025, activated an out-of-office auto response to my email account.

9. On October 2, 2025, I emailed my government email address from my personal account. In response, I received an automatic out-of-office message from my government email address.

10. The automatic message, set up in my name from my government email address, stated : “Thank you for contacting me. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in

appropriations I am currently in furlough status. I will respond to emails once government functions resume.”

11. I did not draft this automatic message or know that it was being sent out in my name. This message purports to convey my own political views about which political party is responsible for the shutdown. I did not wish to share the views expressed in this message. I would not have written this automatic message if I had access to my account.

12. Because I do not have access to my government email account, I cannot change this message. As part of my ordinary duties as a Department of Education employee, I have regularly used my government email address to correspond with individuals who have filed complaints, administrators at school districts and postsecondary institutions that are the subject of complaints, employees and staff at educational institutions who are witnesses to the alleged discrimination stated in complaints, employees and staff at the state education department, employees and staff at county offices of education and at special education local plan areas (SELPAs), and other outside parties and individuals. I expect that the automatic message will be sent from my account to anyone who emails my government address, from inside or outside the government, as long as the shutdown continues.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 3rd day of October 2025.

/s/ H. Doe
H. DOE

DECLARATION OF I. DOE

I, I. Doe, declare as follows:

1. I am over the age of 18 and competent to testify to the matters described below. I am submitting this declaration under a pseudonym, as I am currently an employee of the Department of Education and am concerned about the likelihood of retaliation. I work in the Office for Civil Rights.

2. I am a member of the American Federation of Government Employees.

3. In my role as a nonpartisan civil servant, I understand that I should not make partisan statements while on work time. I have received training on the Hatch Act, as recently as December 2024. I understand the limitations it imposes on my political activities while I am employed by the federal government.

4. On October 1, 2025, I was informed that I would be furloughed because of the lapse in appropriations starting that day. Before I was furloughed, I strictly followed the instructions provided by the Department of Education and set up an automatic out-of-office message in my government email account using the script provided to me. To the best of my recollection, it stated: "Thank you for your email. There is a temporary shutdown of the U.S. government due to a lapse in appropriations. I will respond to your message as soon as possible after the temporary shutdown ends. Please visit [ED.gov](https://www.ed.gov) for the latest information on the Department's operational status." It did not contain a partisan political statement.

5. On October 1, 2025, I heard from Department colleagues that our automatic out-of-office messages had been changed without our knowledge or consent.

6. Department staff typically set their own out-of-office messages. I have always done so in the past. To my knowledge, the Department has not previously altered my out-of-office messages.

7. My spouse emailed my government email address from their personal account. In response, they received an automatic out-of-office message from my government email address.

8. The automatic message, set up in my name from my government email address, stated: “Thank you for contacting me. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in appropriations I am currently in furlough status. I will respond to emails once government functions resume.”

9. I did not draft this automatic message or know that it was being sent out in my name. This message purports to convey my own political views about which political party is responsible for the shutdown. I did not wish to share the views expressed in this message. I would not have written this automatic message if I had access to my account.

10. Because I do not have access to my government email account, I cannot change this message. As part of my ordinary duties as a Department of Education employee, I have regularly used my government email address to correspond with schools, universities, attorneys, and members of the public. I expect that the automatic message will be sent from my account to anyone who emails my government address, from inside or outside the government, as long as the shutdown continues.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 2nd day of October 2025.

/s/ I. Doe
I. DOE

DECLARATION OF J. DOE

I, J. Doe, declare as follows:

1. I am over the age of 18 and competent to testify to the matters described below. I am submitting this declaration under a pseudonym, as I am currently an employee of the Department of Education and am concerned about the likelihood of retaliation.

2. I work in the Office for Civil Rights. I have served as a federal government employee for almost one year.

3. I am a member of the American Federation of Government Employees.

4. In my role as a nonpartisan civil servant, I understand that I should not make partisan statements while on work time. During my onboarding, I received training on the Hatch Act and the limitations it imposes on my political activities while I am employed by the federal government.

5. I have been on administrative leave since March 11, 2025, in connection with the Department's recent reductions in force. As a result, I do not have access to my federal government equipment or email. Before I went on administrative leave, I set an automatic out-of-office message in government email account informing the public that my office was subject to a reduction in force and that there would be a transitional period in the handling of complaints. The message did not include any partisan political statements.

6. On October 1, 2025, a lapse in appropriations occurred, causing a government shutdown. That same day, I heard from Department colleagues that our automatic out-of-office messages had been changed without our knowledge or consent.

7. Department staff typically set their own out-of-office messages. I have always done so in the past. To my knowledge, the Department has not previously altered my out-of-office messages.

8. Because I am unable to access my government email account, I tried emailing my work email address from my personal email account. In response, I received an automatic out-of-office message from my government email address.

9. The automatic message, sent in my name from my government email address, stated: “Thank you for contacting me. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in appropriations I am currently in furlough status. I will respond to emails once government functions resume.”

10. I did not draft this automatic message or know that it was being sent out in my name. This message purports to convey my own political views about which political party is responsible for the shutdown. I did not wish to share the views expressed in this message. I would not have written this automatic message if I had access to my account.

11. Because I do not have access to my government email account, I cannot change this message. As part of my ordinary duties as a Department of Education employee, I have regularly used my government email address to correspond with students, school districts, and parents of complainants. I expect that the automatic message will be sent from my account to anyone who emails my government address, from inside or outside the government, as long as the shutdown continues.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 2nd day of October 2025.

/s/ J. Doe
J. DOE

DECLARATION OF K. DOE

I, K. Doe, declare as follows:

1. I am over the age of 18 and competent to testify to the matters described below. I am submitting this declaration under a pseudonym, as I am currently an employee of the Department of Education and am concerned about the likelihood of retaliation.

2. I work in the Office of Federal Student Aid. I have served as a federal government employee for approximately two years.

3. I am a member of the American Federation of Government Employees.

4. I receive annual training on the Hatch Act, which limits the partisan political activities of federal civil servants. Part of the restrictions in the Hatch Act include banning the use of government equipment and resources for partisan political activities.

5. On October 1, 2025, I was informed that I would be furloughed because of the lapse in appropriations starting that day. Before I was furloughed, I was directed to set up an automatic out-of-office message in my government email account. The templated message the Chief Human Capital Officer's office directed employees to use stated: "Thank you for your email. There is a temporary shutdown of the U.S. government due to a lapse in appropriations. I will respond to your message as soon as possible after the temporary shutdown ends. Please visit ED.gov for the latest information on the Department's operational status."

6. On the evening of October 1, 2025, I heard from Department colleagues that our automatic out-of-office messages had been changed without our knowledge or consent.

7. Department staff typically set their own out-of-office messages. I have always done so in the past. To my knowledge, the Department has not previously altered my out-of-office messages.

8. I emailed my government email address from my personal account. In response, I received a different automatic out-of-office message from my government email address than the one I set that morning.

9. The new automatic message, set up in my name from my government email address, stated: "Thank you for contacting me. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in appropriations I am currently in furlough status. I will respond to emails once government functions resume."

10. I did not draft this automatic message or know that it was being sent out in my name. This message purports to convey my own political views about which political party is responsible for the shutdown. As a nonpartisan civil servant, I did not, and would not, set an out-of-office message with the views expressed in the new message.

11. Because I do not have access to my government email account, I cannot change this message. As part of my duties with the Office of Federal Student Aid, I use my government email address to correspond with federal student loan borrowers, attorneys, institutions of higher education, and Department contractors. I expect that the automatic message will be sent from my account to anyone who emails my government address, from inside or outside the government, as long as the shutdown continues.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 2nd day of October 2025.

/s/ K. Doe
K. DOE

DECLARATION OF L. DOE

I, L. Doe, declare as follows:

1. I am over the age of 18 and competent to testify to the matters described below. I am submitting this declaration under a pseudonym, as I am currently an employee of the Department of Education and am concerned about the likelihood of retaliation.

2. I work for the U. S. Department of Education, Office for Civil Rights. I have served as a federal government employee for approximately 22 years.

3. I am a member of the American Federation of Government Employees.

4. In my role as a nonpartisan civil servant, I understand that I should not make partisan statements while on work time. I have received training each year on the Hatch Act and the limitations it imposes on my political activities while I am employed by the federal government.

5. I have been on administrative leave since March 21, 2025, in connection with the Department's recent reductions in force. As a result, I do not have access to my federal government equipment or email. Before I went on administrative leave, I set an automatic out-of-office message in my government email account. My message stated I was out of the office and would respond to their email upon my return. My out-of-office email did not include any partisan political statements.

6. On October 1, 2025, a lapse in appropriations occurred, causing a government shutdown. That same day, I heard from Department colleagues that our automatic out-of-office messages had been changed without our knowledge or consent.

7. Department staff typically set their own out-of-office messages. I have always done so in the past. To my knowledge, the Department has not previously altered my out-of-office messages.

8. Because I am unable to access my government email account, I tried emailing my work email address from my personal email account. In response, I received an automatic out-of-office message from my government email address.

9. The automatic message, sent in my name from my government email address, stated: "Thank you for contacting me. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in appropriations I am currently in furlough status. I will respond to emails once government functions resume."

10. I did not draft this automatic message or know that it was being sent out in my name. This message purports to convey my own political views about which political party is responsible for the shutdown. I did not wish to share the views expressed in this message. I would not have written this automatic message if I had access to my account.

11. Because I do not have access to my government email account, I cannot change this message. As part of my ordinary duties as a Department of Education employee, I have regularly used my government email address to correspond with complainants, witnesses and external entities such as schools and universities. I expect that the automatic message will be sent from my account to anyone who emails my government address, from inside or outside the government, as long as the shutdown continues.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 3rd day of October 2025.

/s/ L. Doe
L. DOE

DECLARATION OF M. DOE

I, M. Doe, declare as follows:

1. I am over the age of 18 and competent to testify to the matters described below. I am submitting this declaration under a pseudonym, as I am currently an employee of the U.S. Department of Education (“Department”) and am concerned about the likelihood of retaliation, especially as I am currently still under a one-year probationary period for new employees.

2. I work for the Department’s Office for Civil Rights (“OCR”). I have served as a federal government employee for nearly 1 year.

3. I am a member of the American Federation of Government Employees (“AFGE”) union. I am a dues-paying, AFGE union member in good standing.

4. In my role as a non-partisan civil servant, I understand that I should not make partisan statements while on work time. During my new employee orientation in 2024, I received training on the Hatch Act and limitations imposed on my political activities while I am employed by the federal government.

5. On October 1, 2025, I received formal notice that I would be furloughed, as a “non-excepted” employee, because of the lapse in federal appropriations starting on that date. This notice came via a memo, attached to an e-mail from CHCO (the Chief Human Capital Office at the Department) to my government e-mail account at 9:50 a.m. ET. As confirmed in the formal furlough notice, Department employees subjected to the furlough were allowed up to 4 on-duty hours that day, in order to address logistical tasks necessary for the shutdown, prior to officially starting their employee furlough period. Accordingly, I used part of that allotted time to set up an automatic out-of-office message for my government e-mail account, per Department

directives. I set up this message around 11:30 a.m. ET, prior to signing out of my account, turning off my government furnished laptop, and beginning my (ongoing) furlough period.

6. My automatic e-mail reply message, which I activated that morning, did not include any partisan political statements. My message was based on the out-of-office e-mail and voicemail message text that was previously provided by the Department as an example for employees to use in their government accounts while on furlough. This example text was included in government shutdown contingency instructions that the Department e-mailed to employees on September 29, September 30, and October 1, 2025, and was even included in my formal furlough notice itself. The example text, with bracketed text to be customized, read as follows, “Hello, you have reached the [US Department of Education’s Information Resource Center]. We are unable to respond to your request due to a lapse in appropriations for the Department of Education. We will respond to your request when appropriations are enacted. Thank you.”

7. On the evening of October 1, 2025, at 6:40 p.m. ET, I received a telephone call from my Department supervisor to my personal cell phone. In the days immediately prior to the current shutdown, Department employees had been asked to confirm the accuracy of personal contact information on file, so that supervisors could contact subordinates with any important and urgent updates regarding the furlough. During the aforementioned call, my supervisor informed me that our automatic out-of-office messages had been changed by the Department and directed me not to try to access my account to change (or remove) the new message. I was instructed to leave the new text “as-is,” despite being set without my prior knowledge or consent.

8. Department staff typically set their own out-of-office messages. I have always done so in the past. To my knowledge, the Department has not previously altered my out-of-office messages.

9. After receiving the call from my Department supervisor, I corresponded with a Department colleague via text message between our personal cell phones that same evening, asking if the colleague had been informed by her supervisor of any changes to our out-of-office messages. At 9:40 p.m. ET, that colleague text-messaged me a screenshot of the automatic reply that she received after e-mailing her government e-mail from her personal e-mail. Accordingly, I e-mailed my government e-mail address from my personal account, to confirm whether the out-of-office message that I had set up that morning had later been replaced with a different message. In response, I received an automatic out-of-office message from my government e-mail address at 9:46 p.m. ET. This automatic response matched the automatic out-of-office message that my colleague received after she did the same with her own accounts that evening.

10. The automatic message that I received that evening (on October 1, 2025), set up in my name and coming from my government e-mail address, read, "Thank you for contacting me. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in appropriations I am currently in furlough status. I will respond to emails once government functions resume."

11. I did not draft this new automatic message, nor did I know in advance that it was being added to my government e-mail account and sent in my name. This message purports to convey my own political views about which political party is responsible for the shutdown. I did not (and do not) wish to share the views expressed in this message. I would not have written this automatic message, or any partisan message, if I had current access to my government account.

12. Because I do not have legal authorization to access my government e-mail account while furloughed, I cannot change this message. As part of my ordinary duties as a Department employee, I have regularly used my government e-mail address to correspond with

school district representatives; college administrators; parents, students, and other individuals alleging civil rights violations in educational settings; as well as similar external stakeholders across multiple U.S. states. I expect that the new automatic message will be sent from my account to anyone that e-mails my government address, from inside or outside the government, for as long as the shutdown continues.

13. I fear that the new automatic message, set on my behalf without my permission, may undermine external stakeholders' confidence in the non-partisan posture that my role at OCR requires, as well as potentially undermine confidence in the neutrality of my office as a whole. My office's ability to properly serve the American public depends on partisan impartiality. As mandated by federal statutes, OCR enforces multiple federal civil rights protections. OCR staff members are tasked with receiving, evaluating, investigating, resolving, and/or monitoring related legal compliance issues raised in educational settings. OCR holds itself out to the public as, and verbatim represents itself to be, a "neutral fact finder." I believe that publicly making explicitly partisan statements, such as the one in the automatic e-mail response currently being attributed to my colleagues and me without consent, undermines that capacity.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 3rd day of October 2025.

/s/ M. Doe
M. DOE

DECLARATION OF N. DOE

I, N. Doe, declare as follows:

1. I am over the age of 18 and competent to testify to the matters described below. I am submitting this declaration under a pseudonym, as I am currently an employee of the Department of Education and am concerned about the likelihood of retaliation.
2. I work in the Office of Special Education and Rehabilitative Services. I have served as a federal government employee for approximately 19 years.
3. I am a member of the American Federation of Government Employees.
4. In my role as a nonpartisan civil servant, I understand that I should not make partisan statements while on work time. I have received training each year on the Hatch Act and the limitations it imposes on my political activities while I am employed by the federal government.
5. On September 30, 2025 at 6:35 pm, I was informed via email that I would be furloughed because of the lapse in appropriations starting on October 1, 2025. Before I was furloughed, I was directed to set up an automatic out-of-office message in my government email account. My message included that I was in furlough status and unable to respond to email requests due to a lapse in appropriations for the Department of Education. I included that I would respond to requests when appropriations were enacted. The message that I set in my email account did not include any partisan political statements.
6. On October 2, 2025, I heard from Department colleagues that our automatic out-of-office messages had been changed without our knowledge or consent.
7. Department staff typically set their own out-of-office messages. I have always done so in the past. To my knowledge, the Department has not previously altered my out-of-office messages.

8. I emailed my government email address from my personal account. In response, I received an automatic out-of-office message from my government email address.

9. The automatic message, set up in my name from my government email address, stated “Thank you for contacting me. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in appropriations I am currently in furlough status. I will respond to emails once government functions resume.”

10. I did not draft this automatic message or know that it was being sent out in my name. This message purports to convey my own political views about which political party is responsible for the shutdown. I did not wish to share the views expressed in this message. I would not have written this automatic message.

11. As part of my ordinary duties as a Department of Education employee, I have regularly used my government email address to correspond with grantees, potential grantees, parents and families of children with disabilities, and the general public. I expect that the automatic message will be sent from my account to anyone who emails my government address, from inside or outside the government, as long as the shutdown continues.

12. I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 3rd day of October 2025.

/s/ N. Doe
N. DOE

DECLARATION OF O. DOE

I, O. Doe, declare as follows:

1. I am over the age of 18 and competent to testify to the matters described below. I am submitting this declaration under a pseudonym, as I am currently an employee of the U.S. Department of Education (Department) and am concerned about the likelihood of retaliation.

2. I currently work as a Civil Rights Attorney in the Department's Office for Civil Rights (OCR), a cabinet-level agency. I have served as a federal government employee for years. My role involves enforcing federal civil rights laws for the most vulnerable student populations across the country, primarily students with disabilities, in a manner that is impartial and grounded in law—not politics.

3. Neutrality is a core component of OCR's work. On a regular basis, I explain to the parties in my cases that we are neutral at OCR. This is essential to maintaining public trust in OCR's enforcement decisions.

4. As a nonpartisan civil servant, I understand that I should not make partisan statements through my work in my official capacity. I have received training on the Hatch Act and the limitations it imposes on my political activities while I am employed by the federal government. Any appearance of political bias or partisanship, particularly in official communications, undermines the credibility of OCR's federal investigations and can erode confidence in our ability to administer civil rights laws objectively. For this reason, I ensure that my written and verbal communications—particularly those sent in my official capacity—reflect this commitment to neutrality.

5. On October 1, 2025, I was informed that I would be furloughed because of the lapse in federal appropriations. That morning, I was furloughed and directed, in writing, by the Chief Human Capital Officer for the U.S. Department of Education, to set up an automatic out-

of-office message with specific, neutral language for my government email account. At that time, it did not include any partisan political statements. Per the directions in the “Basic Employee Furlough Checklist,” I wrote the following message (to the best of my recollection) that was neutral and devoid of politically charged language or blame for the shutdown: “Thank you for your email. There is a temporary shutdown of the U.S. government due to a lapse in appropriations. I will respond to your message as soon as possible after the temporary shutdown ends.”

6. In the afternoon of October 1, 2025, I heard from Department colleagues that our automatic out-of-office messages had been changed behind our backs. Without my consent, language had been added to my out-of-office message that attributed political blame specifically to the Democrats for the federal government shutdown.

7. I emailed my government email address from my personal account on October 1, 2025, in the evening and again on October 2, 2025, at 9:09 A.M. CST. In response, I received an automatic out-of-office message from my government email address.

8. The automatic message, set up in my name from my government email address without my consent, stated: “Thank you for contacting me. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in appropriations I am currently in furlough status. I will respond to emails once government functions resume.” I did not write this automatic message and I object to, and disagree with, its content and viewpoint both personally and professionally.

9. The altered out-of-office message is falsely written in the first person as though I wrote it and it purports to convey my own political views about the political party that is allegedly responsible for the shutdown. I was not informed of the changes to my message prior

to its dissemination. I did not wish to share the views expressed in this message. I did not write this message. I did not agree with the partisan viewpoint contained in this message, and I would not have written this automatic message if I had access to my account. This compelled speech misrepresents my views and associates me with government speech that conflicts with my personal beliefs and views as well as my professional obligations to neutrality.

10. Because we are not permitted to access our computers once in furlough status apart from the limited time when we complete our “orderly shutdown procedures” on the first day of the furlough, I am prohibited from accessing my government email account without repercussions. As such, I was forced to express, disseminate, and appear to endorse a government-mandated political message with which I disagree in my professional capacity as a federal government attorney. I expect that the automatic message will be sent from my account to members of the public and anyone who emails my government address, from inside or outside the government, as long as the shutdown continues—without my consent.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 3rd day of October 2025.

/s/ O. Doe
O. DOE

DECLARATION OF P. DOE

I, P. Doe, declare as follows:

1. I am over the age of 18 and competent to testify to the matters described below. I am submitting this declaration under a pseudonym, as I am currently an employee of the Department of Education and am concerned about the likelihood of retaliation.

2. I work in the Department's Office for Civil Rights. I have served as a federal government employee for approximately 10 years.

3. I am a member of the American Federation of Government Employees.

4. In my role as a nonpartisan civil servant, I understand that I should not make partisan statements while on work time. I have received training each year on the Hatch Act and the limitations it imposes on my political activities while I am employed by the federal government.

5. I have been on administrative leave since March 21, 2025, in connection with the Department's recent reductions in force. As a result, I do not have access to my federal government equipment or email.

6. On October 1, 2025, a lapse in appropriations occurred, causing a government shutdown. That same day, I heard from Department colleagues that our automatic out-of-office messages had been changed without our knowledge or consent.

7. Department staff typically set their own out-of-office messages. I have always done so in the past. To my knowledge, the Department has not previously altered my out-of-office messages.

8. Because I am unable to access my government email account, I tried emailing my work email address from my personal email account. In response, I received an automatic out-of-office message from my government email address.

9. The automatic message, sent in my name from my government email address, stated: "Thank you for contacting me. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in appropriations I am currently in furlough status. I will respond to emails once government functions resume."

10. I did not draft this automatic message or know that it was being sent out in my name. This message purports to convey my own political views about which political party is responsible for the shutdown. I did not wish to share the views expressed in this message. I would not have written this automatic message if I had access to my account.

11. Because I do not have access to my government email account, I cannot change this message. As part of my ordinary duties as a Department of Education employee, I have regularly used my government email address to correspond with schools, outside counsel, and state education agencies. I expect that the automatic message will be sent from my account to anyone who emails my government address, from inside or outside the government, as long as the shutdown continues.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 3rd day of October 2025.

/s/ P. Doe
P. DOE

DECLARATION OF Q. DOE

I, Q. Doe, declare as follows:

1. I am over the age of 18 and competent to testify to the matters described below. I am submitting this declaration under a pseudonym, as I am currently an employee of the Department of Education and am concerned about the likelihood of retaliation.

2. I work in the Office for Civil Rights. I have served as a federal government employee for approximately 28 years.

3. I am a member of the American Federation of Government Employees.

4. In my role as a nonpartisan civil servant, I understand that I should not make partisan statements while on work time. I have received training each year on the Hatch Act and the limitations it imposes on my political activities while I am employed by the federal government.

5. On September 30, 2025, I was informed that I would be furloughed because of the lapse in appropriations starting on October 1, 2025. Before I was furloughed, I was directed to set up an automatic out-of-office message in my government email account with the following specific language, "Thank you for your email There is a temporary shutdown of the U.S. government due to a lapse in appropriations. I will respond to your message as soon as possible after the temporary shutdown ends. Please visit ED.gov for the latest information on the Department's operational status."

6. On October 1, 2025, I heard from Department colleagues that our automatic out-of-office messages had been changed without our knowledge or consent.

7. Department staff typically are directed to set their own out-of-office messages during a furlough and are provided with language to include in the message. In my nearly three-

decade career of federal service, the language has never been partisan, and to my knowledge, the Department has not previously altered my out-of-office messages.

8. I emailed my government email address from my personal email account on October 1, 2025, and on October 2, 2025, at 2:44 p.m. Both times, I received an automatic out-of-office message from my government email address.

9. The automatic message, set up in my name from my government email address, stated: “Thank you for contacting me. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in appropriations I am currently in furlough status. I will respond to emails once government functions resume.”

10. I did not draft this automatic message or know that it was being sent out in my name. This message purports to convey my own political views about which political party is responsible for the shutdown. I did not wish to share the views expressed in this message. I would not have written this automatic message if I had access to my account because I believe it is a partisan message.

11. I understand that on October 6, 2025, the Department again changed my automatic out-of-office message to state: “The Department employee you have contacted is currently in furlough status. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. The employee you have contacted will respond to emails once government functions resume.”

12. I did not draft this revised automatic message, and the Department did not inform me of it. The revised message purports to convey political views about which political party is

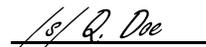
responsible for the shutdown, in an email that is automatically sent under my name to anyone who attempts to contact me through my government email address. I do not wish to share the views expressed in this message. I would not have written this automatic message if I had access to my account because I believe it is a partisan message.

13. I take seriously my responsibility, as a federal employee, to be nonpartisan in performing my work and in my communications with the public. The Department's revisions to my automatic email response, which appear under my name, force me to appear partisan. Both the earlier and revised versions of the partisan out-of-office messages thus have the potential to affect my professional reputation with any persons who attempt to reach me.

14. Because I do not have access to my government email account, I cannot change this message. I expect that the automatic message will be sent from my account, in my name, to anyone who emails my government address, from inside or outside the government, as long as the shutdown continues.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this sixth day of October 2025.


Q. DOE

DECLARATION OF R. DOE

I, R. Doe, declare as follows:

1. I am over the age of 18 and competent to testify to the matters described below. I am submitting this declaration under a pseudonym, as I am currently an employee of the Department of Education and am concerned about the likelihood of retaliation.

2. I work in the Office for Civil Rights. I have served as a federal government employee for approximately 9 years.

3. I am a member of the American Federation of Government Employees.

4. In my role as a nonpartisan civil servant, I understand that I should not make partisan statements while on work time.

5. I have been on administrative leave since approximately March 24 2025, in connection with the Department's recent reductions in force. As a result, I do not have access to my federal government equipment or email.

6. On October 1, 2025, a lapse in appropriations occurred, causing a government shutdown. That same day, I heard from Department colleagues that our automatic out-of-office messages had been changed without our knowledge or consent.

7. Department staff typically set their own out-of-office messages. I have always done so in the past. To my knowledge, the Department has not previously altered my out-of-office messages.

8. A colleague emailed my work email address from their personal email account and shared the automatic out-of-office message they received from my government email address.

9. The automatic message, sent in my name from my government email address, stated: "Thank you for contacting me. On September 19, 2025, the House of Representatives

passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in appropriations I am currently in furlough status. I will respond to emails once government functions resume.”

10. I did not draft this automatic message or know that it was being sent out in my name. This message purports to convey my own political views about which political party is responsible for the shutdown. I did not wish to share the views expressed in this message. I would not have written this automatic message if I had access to my account.

11. Because I do not have access to my government email account, I cannot change this message. I expect that the automatic message will be sent from my account to anyone who emails my government address, from inside or outside the government, as long as the shutdown continues.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 3rd day of October 2025.

/s/ R. Doe
R. DOE

DECLARATION OF LARA VAIVE

I, Lara Vaive, declare as follows:

1. I am over the age of 18 and competent to testify to the matters described below.
2. I worked in the Office for Civil Rights of the U.S. department of Education until September 30, 2025. I served as a federal government employee for twenty years. Effective September 30, 2025, I separated from the Department and retired from federal service.
3. In my role as a nonpartisan civil servant, I understand that I should not make partisan statements while on work time. I have received training on the Hatch Act and the limitations it imposes on my political activities while I am employed by the federal government.
4. On October 1, 2025, many current employees were informed that they would be furloughed because of the lapse in appropriations starting on that date.
5. In the afternoon of October 1, 2025, I heard from Department colleagues that our automatic out-of-office messages had been changed behind our backs without consent.
6. My husband emailed my former government email address on October 3, 2025. In response, he received an automatic out-of-office message from my government email address.
7. The automatic message, set up in my name from my government email address, stated: "Thank you for contacting me. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. Due to the lapse in appropriations I am currently in furlough status. I will respond to emails once government functions resume."
8. I did not draft this automatic message, and prior to the morning of October 3, 2025, I did not know that it was being sent out in my name. This message purports to convey my own political views about the political party that is allegedly responsible for the shutdown. I did

not wish to share the views expressed in this message. I would not have written this automatic message if I had access to my account.

9. Because I relinquished my government furnished equipment prior to September 30, 2025, I am no longer able to access my government email account. I expect that the automatic message will be sent from my account to anyone who emails my government address, from inside or outside the government, as long as the shutdown continues.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 3rd day of October 2025.

/s/ Laura Vaive
Lara Vaive

Exhibit 1



Tsuki Hoshijima <thoshijima@democracyforward.org>

[EXTERNAL] AFGE v. Dep't of Education: letter about forthcoming TRO motion

Wen, James J. (CIV) <James.J.Wen@usdoj.gov>

Mon, Oct 6, 2025 at 9:54 AM

To: "thoshijima@democracyforward.org" <thoshijima@democracyforward.org>, "rthurston@democracyforward.org" <rthurston@democracyforward.org>, "ccoogles@democracyforward.org" <ccoogles@democracyforward.org>, "azieve@citizen.org" <azieve@citizen.org>, "cearly@citizen.org" <cearly@citizen.org>
Cc: "Borson, Joseph (CIV)" <Joseph.Borson@usdoj.gov>, "Kelleher, Diane (CIV)" <Diane.Kelleher@usdoj.gov>

Dear Counsel:

Thank you for your message. The Department of Education is altering the out-of-office message identified in Paragraph 29 of the Complaint to the following:

The Department employee you have contacted is currently in furlough status. On September 19, 2025, the House of Representatives passed H.R. 5371, a clean continuing resolution. Unfortunately, Democrat Senators are blocking passage of H.R. 5371 in the Senate which has led to a lapse in appropriations. The employee you have contacted will respond to emails once government functions resume.

At Paragraph 30 of the Complaint, Plaintiff averred that: "[t]he [original] out-of-office messages are written in the first person, as if the individual employee is the person conveying the message." The out-of-office message above is no longer written in the first person and thus no longer conveys that the message is on behalf of the person in their individual or personal capacity, as opposed to the Department itself (assuming it ever did).

We understand these messages have been altered beginning at 9am this morning, and may take several hours for all messages to be changed. We believe that this change obviates the need to seek emergency injunctive relief from the court. We are available to discuss further.

James J. Wen, Trial Attorney

U.S. Department of Justice, Civil Division

Federal Programs Branch

[1100 L Street Northwest](#)

[Washington, DC 20005](#)

Email: James.J.Wen@usdoj.gov

From: Tsuki Hoshijima <thoshijima@democracyforward.org>

Sent: Friday, October 3, 2025 6:58 PM

To: Haas, Alex (CIV) <Alex.Haas@usdoj.gov>; Kelleher, Diane (CIV) <Diane.Kelleher@usdoj.gov>

Cc: Robin Thurston <rthurston@democracyforward.org>; Christine Coogles <ccoogles@democracyforward.org>; Allison Zieve <azieve@citizen.org>; Cormac Early <cearly@citizen.org>

Subject: [EXTERNAL] AFGE v. Dep't of Education: letter about forthcoming TRO motion

Dear Alex and Diane:

Please find attached a letter regarding our just-filed complaint against the Department of Education. As further explained in the letter, we intend to move for a temporary restraining order if we do not receive confirmation by Monday morning that the Department has ceased its unlawful behavior.

We look forward to receiving your response.

Thank you,

Tsuki


Tsuki Hoshijima
Senior Counsel
Democracy Forward
he/him ([why I share my pronouns](#))

Cell: (202) 812-5749
Email: thoshijima@democracyforward.org
Website: democracyforward.org

When we fight, democracy wins.

Democracy Forward's team works across multiple time zones so my working hours may not be the same as yours. Please feel free to read, act on, and respond to my messages at a time that works for you.

NOTICE: This communication and any attachments may contain privileged or other confidential information and is intended only for use by the individual or entity named above. If you have received this communication in error, please immediately advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents.

