STATE OF MINNESOTA
TAX COURT
REGULAR DIVISION

NATHAN COLESTOCK and JOSEPH OSBURN, Plaintiffs, v. PAUL MARQUART, in his official capacity as the COMMISSIONER OF REVENUE, Defendant.	**COMPLAINT** Tax File No.

TO: Paul Marquart, Commissioner of Revenue, Minnesota Department of Revenue, 600 Robert Street N, St. Paul, Minnesota 55101, and its counsel of record the Minnesota Attorney General's Office, Tax Litigation Division.

INTRODUCTION

1. Nathan Colestock and Joseph Osburn are Minnesota fathers who believe God calls them to teach their children to know and love Him. Part of that calling is raising and educating their children in accord with a Biblical

worldview that understands God as the good creator of all things. That means no subject can be taught apart from an understanding of God and His creation—not reading, arithmetic, science, or history. For them, there is no such thing as a secular subject. So, they choose Christian curricula, materials, academies, and co-ops that teach every lesson through that lens.

2. Minnesota helps parents pay for their children's education. Its K-12 Education Subtraction and Credit offset the cost of tutoring, textbooks, instructional materials, and enrichment classes. Nearly every Minnesota parent can claim them. But there is a catch: the instruction cannot be religious. Minn. Stat. § 290.0674, subd. 1a(b)(2); Minn. Stat. § 290.0132, subd. 4.

3. Because of that catch, Minnesota makes these fathers choose between their faith and the benefit. To receive it, they must strip their faith from their children's lessons. To remain faithful, they must go without. Their faith forbids the first option. So they go without.

4. The Constitution forbids that choice. Once Minnesota decides to subsidize education expenses, it "cannot disqualify some" recipients "solely because they are religious." *Carson v. Makin*, 596 U.S. 767, 785 (2022) (quoting *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464, 487 (2020)). Excluding religious families from generally available benefits "penalize[s] the free exercise of religion" and is "odious to our Constitution." *Id.* at 779–80 (quoting *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462, 467

(2017)). Yet that is exactly what Minnesota has done.

5. In every respect but one, both families are exactly who Minnesota's Subtraction and Credit were written for. They are Minnesota parents. They pay for tutoring, instructional fees, and educational materials for their school-age children. The one thing that disqualifies them is that their children's education is religious.

6. By excluding religious instruction from these generally available tax benefits, Minnesota violates these fathers' rights under the Free Exercise Clause of the First Amendment, the Minnesota Constitution's guarantee of freedom of conscience, and the Fourteenth Amendment's protection of parents' right to direct the upbringing and education of their children. Nathan Colestock and Joseph Osburn ask only for the same tax treatment Minnesota gives every other parent—without having to strip the faith that animates their lives from their children's education.

THE PARTIES

7. Nathan Colestock is an individual residing in Washington County, Minnesota. He is a pastor and the parent of four dependent children, including A.C. (age 7) and P.C. (age 5), who are currently of age to receive qualifying K-12 education-related expenses under Minn. Stat. § 290.0674, subd. 1a and Minn. Stat. § 290.0132, subd. 4. His younger children, J.C. and J.R.C., are not yet old enough to attend school.

8. Joseph Osburn is also an individual residing in Washington County, Minnesota. He is the parent of six dependent children, including E.O. (age 13), A.O. (age 10), J.O. (age 8), and M.O. (age 7). Mr. Osburn incurs education-related expenses under Minn. Stat. § 290.0132, subd. 4 for each of them. His younger children, D.O. and S.O., are not yet old enough to attend school.

9. Paul Marquart is the Commissioner of Revenue ("Commissioner") of the State of Minnesota, sued in his official capacity, and is named as Defendant as the state official responsible for administering and enforcing the challenged statutory condition under 42 U.S.C. § 1983. The Commissioner's office is located at the Minnesota Department of Revenue, 600 Robert Street N, St. Paul, Minnesota 55101.

JURISDICTION AND VENUE

10. There is no order of the Commissioner for Plaintiffs to appeal, so Plaintiffs bring this Complaint to the Tax Court directly.

11. Plaintiffs have not claimed and cannot claim the Subtraction or Credit. Doing so would require them to represent that their children's education does not teach religious tenets, doctrines, or worship—a representation that is not true and could not be true consistent with their faith.

12. This Court has jurisdiction over challenges to Minnesota's tax laws under Minn. Stat. § 271.01, subd. 5, which grants it "the sole, exclusive, and final authority" over "all questions of law and fact arising under the tax

laws of the state."

13. The Tax Court, as an executive-branch tribunal, lacks original jurisdiction to decide constitutional questions. *Singer v. Comm'r of Revenue*, 817 N.W.2d 670, 674 n.1 (Minn. 2012) (citing *Erie Mining Co. v. Comm'r of Revenue*, 343 N.W.2d 261, 264 (Minn. 1984)). Plaintiffs thus separately request, by motion filed contemporaneously with this Complaint, that the Court refer those questions to the Minnesota District Court.

14. If the Minnesota District Court transfers the case back to this Court, it will then have jurisdiction to answer the constitutional questions. *Id.* at 264 & n.1; *Sargent v. Comm'r of Revenue*, No. 9019-R, 2017 WL 6813394, at *2 n.16 (Minn. T.C. Dec. 15, 2017).

15. Both Plaintiffs reside in Washington County, Minnesota, within the Tenth Judicial District, and Defendant maintains his principal office in Ramsey County, Minnesota.

16. Plaintiffs are separately serving notice of this constitutional challenge on the Minnesota Attorney General. *See* Minn. Stat. § 555.11.

FACTUAL BACKGROUND

Minnesota offers tax benefits to help offset the cost of K-12 education.

17. Minnesota allows two related tax benefits for K-12 "education-related expenses."

18. The first tax benefit is a subtraction from taxable income (the

"Subtraction"). Minn. Stat. § 290.0132, subd. 4. It is capped at $1,625 per child in kindergarten through grade 6 and $2,500 per child in grades 7 through 12. *Id*.

19. The Subtraction traces its origins to a dependent education-expense deduction Minnesota enacted in 1955, originally codified at Minn. Stat. § 290.09, subd. 22, and revised in 1976 and 1978. The United States Supreme Court upheld that deduction against an Establishment Clause challenge in *Mueller v. Allen*, 463 U.S. 388 (1983). The deduction was substantially amended in 1997, Laws 1997, 1st Special Session, chapter 4, article 13, which raised the per-child caps and eliminated the itemization requirement. It is now codified at Minn. Stat. § 290.0132, subd. 4.

20. The second tax benefit is a fully refundable credit equal to 75 percent of qualifying expenses up to $1,500 per child (the "Credit"). Minn. Stat. § 290.0674. The Credit is only available to filers whose household income falls below a particular statutory threshold. *Id*.

21. The Credit was enacted in Minnesota's 1997 special session, Laws 1997, 1st Special Session, chapter 4, article 13, section 3. It has been amended repeatedly since, including in 1998, 1999, 2001, 2005, 2016, 2017, 2019, and 2023, principally to adjust the income thresholds and per-child caps.

22. Both benefits cover similar expenses, including tuition for after-school enrichment and tutoring, fees paid to co-ops and academies taking place

outside school hours, and costs for textbooks, instructional materials, and educational equipment. Minn. Stat. § 290.0674, subd. 1a.

Minnesota excludes religious instruction from those benefits.

23. The Subtraction and Credit expressly exclude from their definition of qualifying "textbooks," "instructional materials," and qualifying "instructional fees or tuition" any books, materials, fees, or tuition "used in the teaching of religious tenets, doctrines, or worship, the purpose of which is to instill such tenets, doctrines, or worship." Minn. Stat. § 290.0674, subd. 1a(b)(2), (e); Minn. Stat. § 290.0132, subd. 4 (the "Religious Exclusion").

24. The Commissioner administers the Subtraction and the Credit. He also publishes guidance outlining what "qualifying expenses" will and will not be permitted.

25. That guidance reveals that, apart from the Religious Exclusion, there are few restrictions on what educational expenses parents can claim. For example, "[m]ost expenses for educational instruction or materials qualify if they're ... for subjects normally taught in public school grades K-12." Minnesota Department of Revenue, Qualifying Expenses For the K-12 Education Credit and Subtraction (last updated Dec. 16, 2025), https://perma.cc/YQ3E-R44G. That can include "paper, pens, pencils, notebooks, rulers, and special supplies needed for shop, home economics, or art class." *Id.* Also covered are "fees paid for field trips," including "local transportation costs," as well as

"musical instruments and calculators." *Id.*

26. Importantly, the guidance for normal-school-day expenses names only one prohibited perspective: it asserts that normal-school-day "[e]xpenses for home schooling of children may qualify for the credit or subtraction" only if they are "not primarily religious in nature," and it lists "religious textbooks" as "Expenses That Don't Qualify." *Id.*

27. The Credit and Subtraction broadly cover educational enrichment programs, tutoring, and summer programs as long as they are "[a]cademic in nature," which "includes courses in such subjects as reading, math, science, history and fine arts." *Id.* It only excludes athletic activities and "religious instruction." *Id.*

28. Minnesota provides specific examples of expenses that do and do not qualify for the Subtraction or Credit. Minnesota Department of Revenue, Qualifying Home School Expenses for K-12 Education Subtraction and Credit: Income Tax Fact Sheet 8a (last updated Dec. 16, 2025), https://perma.cc/5YDZ-CYLF. The Credit and Subtraction cover "special supplies" such as materials "used for shop, home economics, art, dance, music, physical education, or other classes." *Id.* "[B]ooks ... used in teaching subjects normally taught in public schools" (including reading, music, and art) qualify—but only if the books are "nonreligious." *Id.* Indeed, the only books used in the normal school day that are specifically excluded are "books used to teach religion" and "reference

books." *Id.*

29. Fees for after-school enrichment programs that qualify include "science exploration, study habits, music lessons, dance lessons, voice lessons, academic tutoring, or driver's education." *Id.* But again, any "[e]xpenses for books, materials, and fees paid for a program that teaches religious beliefs" are excluded. *Id.*

30. Beyond such guidelines, Minnesota does not prescribe a curriculum, approve or review the viewpoint of the materials parents purchase, or require that qualifying materials align with any state academic standards. For example, a book teaching history from any secular viewpoint or philosophy qualifies.

Nathan Colestock has a sacred duty to ensure God's truth is in every part of his children's education.

31. For Nathan Colestock, following Christ has never been confined to Sunday mornings. For Pastor Colestock, that belief started at home. His parents taught him the faith from his earliest years, and that education shaped how he thinks and acts today.

32. Pastor Colestock believes his mission is to glorify God in all life—and he has built his life around helping others do the same.

33. That conviction led him to seminary. He earned a B.S. in Bible Exposition and Exegesis from Emmaus Bible College and a Master of Divinity

from Bethlehem College and Seminary in 2023.

34. Today, he serves as Executive Pastor of a Christian church in Stillwater, Minnesota. There, he shepherds, teaches, and organizes the charge to make disciples who glorify God in every part of life—not just the parts that look overtly religious.

35. Pastor Colestock also serves part-time as Head of School at Valor Classical Academy. Valor Classical Academy provides Christian education and meets three days per week. There, his goal is the same as in the pulpit: to make disciples who glorify God in all life.

36. Those same convictions shape how Pastor Colestock and his wife educate their four children. Both hold sincere religious beliefs that God directs every part of life and that there is accordingly no meaningful line between "religious" and "secular" education in their home. All of their curriculum is taught from a religious perspective.

37. Pastor Colestock's two oldest children A.C. (age 7) and P.C. (age 5) attend Valor Classical Academy three days a week. Because three days alone do not provide a full-time education, A.C. and P.C.'s education is supplemented by home instruction on the remaining days.

38. His younger children, J.C. and J.R.C., are not yet old enough to attend school. But he and his wife plan to educate them in the same way that they have educated A.C. and P.C.—with all aspects of their education steeped

in a Biblical worldview.

39. In the Colestock household, a Bible lesson and a mathematics lesson are both religious. Both are taught for the purpose of forming children into successful and prayerful adults who understand the whole of creation, numbers included, as belonging to God.

40. For example, when the Colestocks take their children on trips to a history museum or the zoo, those outings are religious too. A visit to a history museum teaches the children that human history unfolds under God's sovereign hand. A trip to the zoo teaches them to marvel at the variety and order of creatures God made. These activities are not breaks from religious instruction; they are also religious instruction.

41. The Colestocks' 2025 adjusted gross income falls below the statutory cap of $70,000, qualifying them for the maximum Education Credit allowed under Minn. Stat. § 290.0674, subd. 2(a), but for the religious nature of their curriculum.

Pastor Colestock cannot claim the Subtraction or Credit consistent with his faith.

42. Despite incurring substantial costs for his children's education, Pastor Colestock has not claimed the Subtraction or Credit on any Minnesota income tax return.

43. Pastor Colestock has not and will not claim either benefit because

he cannot represent that any of his children's education expenses are not used in the teaching of religious tenets, doctrines, or worship. Every lesson his children receive—from Scripture to arithmetic—is religious instruction designed to instill his faith. Representing otherwise to Minnesota would be untrue.

44. On top of tuition for Valor Classical Academy, the Colestocks expect to spend approximately $700 in the coming school year on curricula and instructional materials.

45. Because of financial constraints, Pastor Colestock is not able to enroll his children in additional educational opportunities he would otherwise choose for them.

46. For example, with additional funds (which would be available if he is able to receive these benefits), Pastor Colestock would enroll his daughter A.C. in theater classes because she has already shown a passion for it—she attended a low-cost theater camp this past summer and now does theater during recess. He would enroll his daughter P.C. in tumbling classes and soccer because she thrives in physical activities and those programs would build her coordination and teamwork skills. And (in the future) he would enroll his son in wrestling and soccer because those sports would teach him perseverance and how to work alongside others.

47. Access to the Subtraction and Credit—benefits Pastor Colestock is otherwise entitled to—would materially expand those opportunities for the

Colestock children.

Joseph Osburn has a religious obligation to keep Christ at the center of every part of his children's education.

48. Like the Colestock family, Joseph Osburn and his wife also reside in Washington County, Minnesota. They are the parents of six children.

49. Mr. Osburn's path to religion looked very different from Pastor Colestock's. Although he grew up in a Christian home, he received a public education. He rebelled against his parents' faith and eventually dropped out of high school. In his mid-twenties, he realized that his life was a mess, and his future felt hopeless. Something was missing. Through encouragement from family, he went to church where a sermon spoke to his heart. So, he gave his life to Jesus Christ.

50. Now, Mr. Osburn is the Director of Technology at a Christian ministry whose mission is teaching the truth that satisfaction is found only in Jesus Christ. He views this role as a way to use his God-given gifts for God's glory.

51. Mr. Osburn feels it is his religious duty to provide for his children what he lacked for so many years. He wants them to know Christ from the start.

52. Like the Colestock family, Mr. Osburn and his wife hold sincere religious beliefs that there is no such thing as a purely secular subject. In the

Osburns' faith, for example, mathematics reflects an order that God authored and that human beings merely discovered. The natural sciences are the study of God's creation. History, literature, and every other subject are properly taught only within a framework that acknowledges God as their first and primary source.

53. The Osburns accordingly do not, and as a matter of conscience cannot, treat any portion of their children's education as "not used in the teaching of religious tenets, doctrines, or worship."

54. Three of the Osburns' children—E.O. (age 13), A.O. (age 10), and J.O. (age 8)—are enrolled at Knox Classical Academy. Similar to Valor Classical Academy, Knox Classical Academy provides Christian education and meets three days per week.

55. Because Knox Classical Academy meets only three days a week, the Osburns supplement their children's education with additional homeschooling on the remaining days.

56. Mr. Osburn's wife provides all of M.O.'s education at home, in part because of the costs of Knox Classical Academy.

57. The Osburn family also participates in Faith Co-op, a Christian homeschool co-op.

58. On top of expensive tuition for Knox Classical Academy and co-op fees, the family expects to spend $500 to $700 this year on curricula and

instructional materials.

59. The Osburns do not choose their children's curricula and materials at random. They select each one because it combines academic excellence with instruction that reflects and reinforces their Christian faith—and even when a resource is not overtly religious, they use it to teach their children about God.

60. For example, the Osburns chose Master Books for history, math, and language arts because of its reputation for academically rigorous instruction that prepares students for college, its "open and go" approach, and the way it weaves Biblical principles that align with the Osburns' Christian faith throughout every lesson.

61. Likewise, they chose Apologia for science because of its reputation for an engaging, scientifically accurate, and Biblically-aligned curriculum.

62. And when the children began moving quickly through Master Books math, the Osburns added Singapore Dimensions to provide a different scope and sequence. Although Singapore Dimensions is not explicitly religious, the Osburns teach it—like every subject—through the lens of the Bible. They teach their children that mathematics is the discovery of something God made, that it expresses the beauty and intelligence of God, and that even the pencils they use come from the ingenuity God gave to the minds of men.

63. His younger children, D.O. and S.O., are not yet old enough to attend school. But he and his wife plan to educate them in the same way that

they have educated their older children—with all aspects of their education steeped in a Biblical worldview.

Mr. Osburn cannot claim the Subtraction without violating his faith.

64. Although the Osburn family income does not qualify for the Credit, Mr. Osburn qualifies for the Subtraction. But Mr. Osburn did not claim the Subtraction in the last three tax years.

65. Doing so would require him to represent that his children's educational expenses, shaped at every turn by prayer, Scripture, and a Biblical worldview, were not used in the teaching of religious tenets, doctrines, or worship. To Mr. Osburn, every one of those expenses is used to teach and instill his faith, so that representation would be untrue. And providing his children an education not designed to teach them his religious values would violate his sincerely held religious beliefs. Going forward, Mr. Osburn will not claim the Subtraction for any tax year in which doing so requires him to represent that his children's educational expenses are not religious.

66. Because of financial constraints, Mr. Osburn is not able to enroll his children in additional educational opportunities he would otherwise choose for them.

67. For example, if Mr. Osburn had the funds to do so, he would consider enrolling his child M.O. at Knox Classical Academy alongside her siblings. He would also consider enrolling his children in Eagle Wings Co-op, a

Christian homeschool co-op, to provide the children a larger community of fellow believers to build friendships and learn alongside.

68. With additional funds (which would be available if he is able to receive this benefit), Mr. Osburn would enroll his daughter E.O. in pottery classes because she enjoys making things with her hands and using her creativity. He would also hire a math tutor for E.O. because she struggled with math during the 2025–2026 school year. Mr. Osburn would enroll his daughters A.O. and M.O. in gymnastics because they both enjoy performing and developing new skills, and many of their friends already attend. And he would enroll his son J.O. in violin lessons because he loves music.

69. Access to the Subtraction would materially expand opportunities for the Osburn children.

The Religious Exclusion will continue to exclude both families.

70. Pastor Colestock satisfies every requirement of the Subtraction and Credit—including the income-eligibility threshold—except the requirement that education not include religion.

71. Likewise, Mr. Osburn satisfies every requirement of the Subtraction except the requirement that education not include religion.

72. Both of their children are dependents enrolled in kindergarten through grade 12.

73. Both have educational expenses which fall within the statute's

enumerated categories of tuition, instructional fees, and instructional materials.

74. Pastor Colestock and Mr. Osburn will continue to incur substantially similar education-related expenses for their children for many future tax years and will continue to be unable to certify that those expenses are not related to the teaching of religious tenets, doctrines, or worship because their children's education will continue to be religious for as long as the fathers direct it.

75. This is so even if the precise reach of the Religious Exclusion were uncertain as to particular expenses—for example, whether a mathematics textbook, a history museum visit, or a co-op science class falls within the exclusion. Whatever line Minnesota might draw, Pastor Colestock and Mr. Osburn do not view *any* of their children's education expenses as secular. Under their sincerely held religious beliefs, each and every one of their children's education expenses are used to teach and instill their faith.

76. Absent relief, Pastor Colestock and Mr. Osburn will be denied the Subtraction and Credit in future tax years, solely because of the Religious Exclusion.

CAUSES OF ACTION

Count One: Violation of the Free Exercise of Religion U.S. Const. amend. I, XIV; 42 U.S.C. § 1983

Free Exercise—Public Benefits Cannot Exclude Religion

77. Plaintiffs repeat and reallege each of the allegations in paragraphs 1 through 76 of this Complaint.

78. The First Amendment, incorporated against the States and their subdivisions by the Fourteenth Amendment, bars laws "prohibiting the free exercise [of religion]." U.S. Const. amend. I; *see id.* amend. XIV.

79. The Free Exercise Clause "protects religious observers against unequal treatment" and forbids the government from imposing "special disabilities on the basis of religious views or religious status." *Espinoza*, 591 U.S. at 475 (quoting *Trinity Lutheran*, 582 U.S. at 458) (collecting cases).

80. Thus, states cannot "discriminate[] against otherwise eligible recipients by disqualifying them from a public benefit" based on "religious character." *Trinity Lutheran*, 582 U.S. at 462.

81. Defendant has done just that here; he has withheld "the benefit based on [Pastor Colestock's and Mr. Osburn's] religious exercise," which the Free Exercise Clause "prohibit[s]." *Carson*, 596 U.S. at 785. Minnesota does not have to subsidize educational materials, but once it "decides to do so, it cannot disqualify some [materials] solely because they are religious." *Carson*, 596 U.S. at 779–80, 785 (quoting *Espinoza*, 591 U.S. at 487).

82. Minnesota provides parents the Subtraction and Credit. Its "administration of that benefit is subject to the free exercise principles governing

any such public benefit program—including the prohibition on denying the benefit based on a recipient's religious exercise." *Carson*, 596 U.S. at 785, 789.

83. Such a denial "triggers the most exacting scrutiny." *Espinoza*, 591 U.S. at 475 (quoting *Trinity Lutheran*, 582 U.S. at 462). Indeed, "[w]hen otherwise eligible recipients are disqualified from a public benefit 'solely because'" they may "put[] aid to religious uses," courts "must apply strict scrutiny." *Id.* at 484 (citing *Trinity Lutheran*, 582 U.S. at 458-62); *Carson*, 596 U.S. at 786 (quoting *Espinoza*, 591 U.S. at 478).

84. Defendant's actions burdening Pastor Colestock and Mr. Osburn's First Amendment rights fail strict scrutiny because they are not narrowly tailored to any compelling interest.

85. Actions, such as those of Defendant, that "target[] religious conduct for distinctive treatment . . . will survive strict scrutiny only in rare cases." *Carson*, 596 U.S. at 780–81 (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993)). This is not one of those rare cases.

86. Indeed, Minnesota has no compelling interest in excluding religious instruction from an otherwise generally available educational-expense benefit, and the exclusion is not narrowly tailored to any such interest. Teaching a child to add fractions does not lose its academic value merely because the lesson begins in prayer or is taught by someone who is deeply religious and incorporates religious teaching into all academic subjects.

87. In short, the Religious Exclusion violates the Free Exercise Clause of the First Amendment, both facially, insofar as it categorically disqualifies religious instructional materials and fees that otherwise satisfy the statute's requirements, and as applied to Plaintiffs.

Free Exercise—Right to Direct Children's Religious Upbringing

88. Plaintiffs repeat and reallege each of the allegations in paragraphs 1 through 76 of the Complaint.

89. The First Amendment, incorporated against the States and their subdivisions by the Fourteenth Amendment, bars state laws "prohibiting the free exercise [of religion]." U.S. Const., amend. I; *see id*., amend. XIV.

90. The Free Exercise Clause "protects 'the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of' religious acts." *Mahmoud v. Taylor*, 606 U.S. 522, 546 (2025) (quoting *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022)). For Pastor Colestock and Mr. Osburn, "there are few religious acts more important than the religious education of [their] children," and "the religious education of [their] children is not merely a preferred practice but rather a religious obligation." *Id.* at 547 (citing *Our Lady of Guadalupe Sch. v. Morrissey-Berru,* 591 U.S. 732, 754–56 (2020)).

91. "The practice of educating one's children in one's religious beliefs, like all religious acts and practices, receives a generous measure of protection

from our Constitution." *Id.* Pastor Colestock and Mr. Osburn's free-exercise rights include the right to raise their children in accordance with their religious beliefs and the right to direct their children's education and religious upbringing consistent with their religious beliefs. *E.g., Mahmoud*, 606 U.S. at 543, 546–48, 568; *Espinoza*, 591 U.S. at 486; *Employment Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872, 881–82 (1990); *Parham v. J.R.*, 442 U.S. 584, 590 (1979); *Wisconsin v. Yoder*, 406 U.S. 205, 213–14 (1972); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 518 (1925).

92. "[T]hose rights are violated by government policies that 'substantially interfer[e] with the religious development' of children." *Mahmoud,* 606 U.S. at 546 (quoting *Yoder*, 406 U.S. at 218). Such policies "carr[y] with [them] precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent." *Id.* (quoting *Yoder*, 406 U.S. at 218).

93. The same principle governs the tax benefits Minnesota provides to defray the cost of a child's education. Indeed, the Religious Exclusion substantially interferes with Pastor Colestock and Mr. Osburn's religious upbringing of their children. The Religious Exclusion's requirement that the fathers must strip faith from the lessons they choose for their children "substantially interferes with the religious development" of their children and poses "a very real threat of undermining the religious beliefs and practices the parent[s] wish to

instill in [their] child[ren].” *Mahmoud*, 606 U.S. at 556 (quoting *Yoder,* 406 U.S. at 218) (citation modified).

94. The Subtraction and Credit are public benefits. Defendant “cannot ‘condition’ [their] ‘availability’ on parents’ willingness to accept a burden on their religious exercise.” *Id.* at 561 (citing *Trinity Lutheran*, 582 U.S. at 462). “[H]omeschooling comes with a hefty price,” *Mahmoud*, 606 U.S. at 562, and Minnesota makes that price steeper only for families whose education is religious.

95. Because the Religious Exclusion substantially interferes with Pastor Colestock and Mr. Osburn’s religious upbringing of their children, it receives strict scrutiny regardless of whether it is neutral and generally applicable. *Id.* at 550, 564–65.

96. The Religious Exclusion fails strict scrutiny because it is not narrowly tailored to any compelling interest.

97. Actions, such as those of Defendant, that “target[] religious conduct for distinctive treatment . . . will survive strict scrutiny only in rare cases.” *Carson,* 596 U.S. at 780–81 (quoting *Hialeah,* 508 U.S. at 546). This is not one of those rare cases.

Free Exercise—Neutrality and General Applicability

98. Plaintiffs repeat and reallege each of the allegations in paragraphs 1 through 76 of the Complaint.

99. The First Amendment's Free Exercise Clause protects Plaintiffs from laws that impose special disabilities on religious views, target individuals for their religious beliefs, or penalize the exercise of religious beliefs.

100. Laws that impose special disabilities on, target, or penalize religious exercise burden that religious exercise.

101. Plaintiffs exercise their religious belief by educating their children consistent with their faith.

102. For Plaintiffs, that means that all education is religious, whether the class being taught is math or theology.

103. The Religious Exclusion imposes special disabilities on, targets, and penalizes Plaintiffs for that religious exercise.

104. The Religious Exclusion thus substantially burdens Plaintiffs' sincerely held religious beliefs by requiring them either to violate their religious beliefs and not educate their children consistent with their faith or to be financially penalized. *See Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 717–18 (1981) ("Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith" that "put[s] substantial pressure on an adherent to modify his behavior and violate his beliefs," which imposes "a burden upon religion" that is "substantial.").

105. The Religious Exclusion is neither neutral nor generally applicable and is thus subject to strict scrutiny.

106. "Neutrality and general applicability are interrelated," and "failure to satisfy one requirement is a likely indication that the other has not been satisfied." *Church of Lukumi*, 508 U.S. at 531.

107. Regarding neutrality, the Free Exercise Clause "forbids subtle departures from neutrality and covert suppression of particular religious beliefs" and "protects against governmental hostility which is masked, as well as overt." *Id.*

108. The "[g]overnment fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021).

109. Indeed, "laws that impose special disabilities on the basis of religious status" or "discriminate against some or all religious beliefs" are "not, in fact, neutral." *Trinity Lutheran,* 582 U.S. at 461 (cleaned up) (collecting cases).

110. Here, the Religious Exclusion "singles out the religious for disfavored treatment" and is thus not neutral. *Id.* at 460.

111. Government action is not generally applicable if it "provid[es] a mechanism for individualized exemptions." *Fulton*, 593 U.S. at 533–34 (cleaned up). Put another way, the government fails general applicability when it can hand out "entirely discretionary exceptions" from the challenged rule or conduct. *Id.* at 536.

112. Here, Defendant has interpreted the Religious Exclusion to

exclude expenses that are "primarily religious in nature" and has discretion to determine what that rubric covers. Minnesota Department of Revenue, Qualifying Expenses For the K-12 Education Credit and Subtraction (last updated Dec. 16, 2025), https://perma.cc/YQ3E-R44G.

113. Because Defendant—in his discretion—can allow some expenses to be claimed as not religious while denying other expenses because they are too religious in his view, the law is not generally applicable.

114. A law lacks general applicability when it "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Bremerton Sch. Dist.*, 597 U.S. at 526 (quoting *Fulton*, 593 U.S. at 534).

115. Government action is "not neutral and generally applicable ... whenever [it] treat[s] any comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 593 U.S. 61, 62 (2021).

116. The Religious Exclusion specifically targets religion. It allows parents who purchase secular educational materials to take the Credit and Subtraction, but it prohibits parents who purchase comparable religious educational materials from doing so.

117. Because the Religious Exclusion treats "comparable secular activity more favorably than religious exercise," it is not neutral or generally applicable and "trigger[s] strict scrutiny under the Free Exercise Clause." *Id.*

118. The Religious Exclusion fails strict scrutiny because it is not narrowly tailored to a compelling interest.

Count Two: Violation of the Minnesota Constitution (Article I, § 16 Freedom of Conscience)

119. Plaintiffs repeat and reallege each of the allegations in paragraphs 1 through 76 of this Complaint.

120. Article I, Section 16 of the Minnesota Constitution provides that "[t]he right of every man to worship God according to the dictates of his own conscience shall never be infringed," and that no "control of or interference with the rights of conscience [will] be permitted," except to the extent an exercise of that right would excuse acts of licentiousness or would be inconsistent with the peace or safety of the state. Minn. Const. art. I, § 16.

121. Minnesota courts have long construed Article I, Section 16 independently of, and more protectively than, the federal Free Exercise Clause, retaining a compelling-interest, least-restrictive-means test for burdens on religious conscience and placing the burden of proof on the state to show the interest cannot be achieved by a less restrictive means. *State v. Hershberger*, 462 N.W.2d 393, 397–98 (Minn. 1990); *Hill-Murray Fed'n of Teachers v. Hill-Murray High Sch.*, 487 N.W.2d 857, 865 (Minn. 1992).

122. As a result, all Plaintiffs need to show is that they hold sincerely held religious beliefs and the Religious Exclusion burdens the right to exercise

those beliefs by conditioning a government benefit on forfeiting that right. The burden then shifts to Minnesota to prove that its interest in the Religious Exclusion is overriding or compelling and the Religious Exclusion is the least restrictive means of achieving that interest.

123. Article I, Section 16 permits the State to assert only two interests: (1) the public peace or safety and (2) the prevention of acts of licentiousness. Neither interest is implicated here.

124. Plaintiffs sincerely believe, for the religious reasons described above, that the religious and secular dimensions of their children's education cannot be separated, that all of their children's education is and must be designed to teach religion, and that certifying otherwise would be untrue and impossible to do consistent with their faith.

125. The Religious Exclusion burdens that belief by conditioning a generally available tax benefit on Plaintiffs' willingness to remove religious content from their children's education—an impossibility under Plaintiffs' sincerely held beliefs.

126. Withholding a tax benefit from a family that teaches its children long division from a religious perspective does not serve the peace or safety of Minnesota, and the Religious Exclusion is not the least restrictive means of serving any interest the State might identify.

127. The Religious Exclusion, and Defendant's enforcement of it,

therefore violates Article I, Section 16 of the Minnesota Constitution. This claim requires independent analysis under the state constitution's text, structure, and history, and is not resolved merely by incorporating the federal Free Exercise analysis set forth in Count One.

Count Three: Violation of the Fundamental Right to Direct the Upbringing and Education of One's Children (U.S. Const. amend. XIV; 42 U.S.C. § 1983)

128. Plaintiffs repeat and reallege each of the allegations in paragraphs 1 through 76 of the Complaint.

129. The Fourteenth Amendment prohibits the States from "mak[ing] or enforc[ing] any law which shall abridge the privileges or immunities of citizens of the United States," and from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const., amend. XIV, § 1.

130. This Amendment "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

131. Among the fundamental rights and liberty interests the Supreme Court has recognized is "the [liberty] interest of parents in the care, custody, and control of their children"—"perhaps the oldest of the fundamental liberty interests recognized" by the Court. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality op.). Indeed, the Court's "long-established precedent" confirms the right, emphasizing that "parents—not the State—have primary authority with

respect to 'the upbringing and education of children.'" *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) (quoting *Pierce*, 268 U.S. at 534–35) (citing *Meyer v. Nebraska*, 262 U.S. 390, 399–400 (1923)).

132. This fundamental right "without doubt" includes the right of parents to "establish a home and bring up children" and "to control the education of their own." *Meyer*, 262 U.S. at 399, 401.

133. Pastor Colestock's and Mr. Osburn's right to direct their children's education and upbringing includes the right to use religious instruction. *Pierce*, 268 U.S. at 534–35; *Yoder*, 406 U.S. at 218–19.

134. The fundamental right of parents to direct the upbringing and education of their children is "objectively, 'deeply rooted in this Nation's history and tradition.'" *Glucksberg*, 521 U.S. at 720–21 (citation omitted).

135. The government may not condition a benefit on a person's non-exercise of a constitutional right, including the right to direct the upbringing of one's child. *Cf. Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013) ("[T]he government may not deny a benefit to a person because he exercises a constitutional right." (quoting *Regan v. Tax'n With Representation of Wash.*, 461 U.S. 540, 545 (1983))).

136. Defendant infringed Pastor Colestock's and Mr. Osburn's fundamental right to direct the upbringing and education of their children by conditioning a public benefit on them forfeiting that fundamental right—by

requiring them to not use religious materials to educate their children in order to receive tax benefits.

137. Strict scrutiny applies to Defendant's violation of Pastor Colestock's and Mr. Osburn's fundamental rights to direct the upbringing and education of their children. *Mirabelli*, 607 U.S. at 496-97.

138. The Religious Exclusion is not narrowly tailored to any compelling interest.

139. The Religious Exclusion and Defendant's enforcement of it violates Pastor Colestock's and Mr. Osburn's fundamental rights under the Fourteenth Amendment to direct the religious upbringing and education of their children.

RELIEF REQUESTED

Pastor Colestock and Mr. Osburn respectfully request that this Court enter judgment against Defendant and provide the following relief:

A. A declaration that the exclusion of religious materials and instruction from the otherwise available tax benefit in Minn. Stat. § 290.0674, subd. 1a, and the parallel exclusion in Minn. Stat. § 290.0132, subd. 4, are unconstitutional as applied to Plaintiffs, and facially to the extent they categorically disqualify religious instructional materials, fees, and tuition that otherwise satisfy the statute's requirements, under the Free Exercise Clause of the First Amendment, Article I, Section 16 of the Minnesota Constitution, and the Fourteenth Amendment;

B. A preliminary and then permanent injunction barring Defendant, and any person acting in concert with him, from denying or conditioning the K-12 Education Credit or Subtraction on removing religion from otherwise-qualifying educational materials, fees, or tuition;

C. Nominal Damages;

D. Reasonable attorneys' fees, costs, and other costs and disbursements in this action pursuant to 42 U.S.C. § 1988 and Minn. Stat. § 363A.33 subd. 7, or other applicable law; and

E. Any and all further relief to which Plaintiffs may be entitled.

Respectfully submitted,

UPPER MIDWEST LAW CENTER

Dated: November X, 2026

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