

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

AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, 80 F Street  
NW, Washington, D.C. 20001,

Plaintiff,

v.

U.S. DEPARTMENT OF EDUCATION and  
LINDA MCMAHON, in her official capacity  
as Secretary of Education, 400 Maryland  
Avenue, SW, Washington, D.C. 20202,

Defendants.

Civil Action No. \_\_\_\_\_

**COMPLAINT**

1. To blame its political opponents for the federal government shutdown that began on October 1, 2025, the Trump Administration has gone to extraordinary measures to leverage its control of federal agencies. Going far beyond the traditional and lawful use of the presidential bully pulpit, the Trump Administration is unlawfully compelling agencies and civil servants across the federal government to engage in political rhetoric to serve the interests of the governing party.

2. This whole-of-government approach to partisan messaging is unprecedented, and it makes a mockery of statutory prohibitions like the Hatch Act. Especially pernicious, however, are the Administration's efforts to co-opt the voices of rank-and-file employees in the nonpartisan civil service to take part in political messaging. Forcing civil servants to speak on behalf of the political leadership's partisan agenda is a blatant violation of federal employees' First Amendment rights.

3. Without giving notice to their employees, let alone obtaining their consent, the Department of Education has replaced employees' out-of-office email messages with partisan language that blames "Democrat Senators" for the shutdown. Employees are now forced to involuntarily parrot the Trump Administration's talking points with emails sent out in their names.

4. The American Federation of Government Employees is filing this complaint on behalf of its federal civilian employee members at the Department of Education. This Court should enjoin and declare unlawful the Department of Education's effort to put political speech in federal employees' mouths.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction under 28 U.S.C. § 1331 because this action arises under federal law.

6. The Court has authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief under Rules 57 and 65 of the Federal Rules of Civil Procedure; the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202; and the Court's inherent equitable powers.

7. Venue is proper in this district because Defendants reside in the District of Columbia, a substantial part of the events giving rise to the claim occurred in the District of Columbia, and Plaintiff resides in the District of Columbia. 28 U.S.C. § 1391(e)(1).

### **PARTIES**

8. Plaintiff American Federation of Government Employees (AFGE) is a labor organization and unincorporated association headquartered in Washington, D.C. As the largest union of federal employees, AFGE represents approximately 800,000 federal civilian employees through its affiliated councils and locals at 192 Departments, agencies, and sub-agencies of the

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

9. Defendant Department of Education is a federal agency. Its headquarters are in Washington, D.C.

10. Defendant Linda McMahon is the Secretary of Education. This suit is brought against her in her official capacity.

## STATEMENT OF FACTS

### **I. The shutdown blame game**

11. At midnight on September 30, 2025, the congressional appropriations that had been funding various federal agencies, including the Department of Education, expired. A lapse in appropriations, commonly known as a government shutdown, began on October 1, 2025.

12. Members of Congress had been engaged in attempted negotiations to pass an appropriations bill to avoid the shutdown.

13. Which political party is to blame for the shutdown is a deeply contested political issue. Even before the shutdown, the Trump Administration began to blame the Democratic Party for Congress's failure to pass a continuing resolution that would keep the government open.<sup>1</sup>

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<sup>1</sup> 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-DYCQ> ("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.").

14. The political blame game only intensified once the government shut down.

15. Fighting over which side is to blame has been a hot political issue in previous government shutdowns, but the Trump Administration has gone to unprecedented lengths to use the apparatus of government to shift the public debate in its favor.

## **II. Government-wide use of power to tilt the public debate**

16. Soon after the lapse in appropriations, numerous federal agencies posted highly partisan messages on their official websites, blaming the “Democrats” or the “Radical Left” for the shutdown.

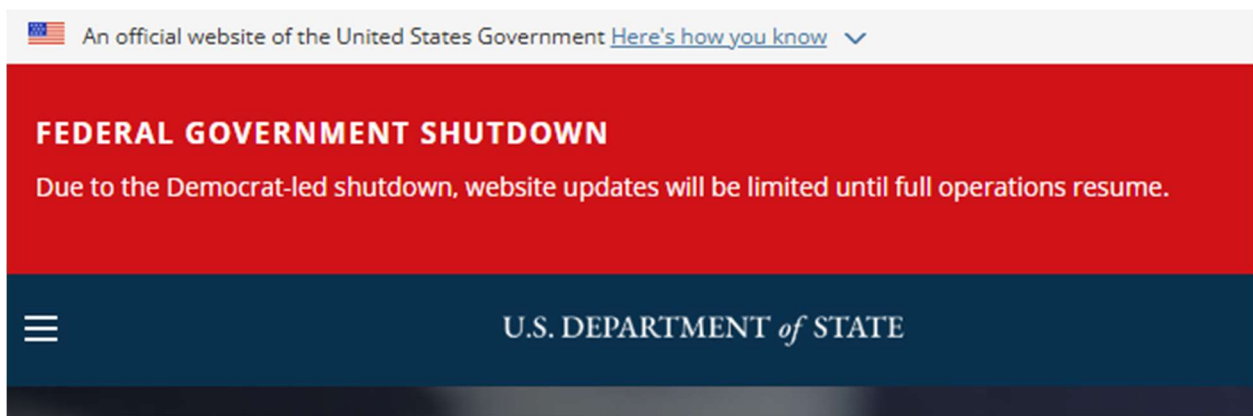
17. The following image is a screenshot of the official website of the U.S. Department of Housing and Urban Development, which blames the “Radical Left” for the shutdown.



18. The following image is a screenshot of the official website of the U.S. Department of Justice, which blames “Democrats” for the shutdown.



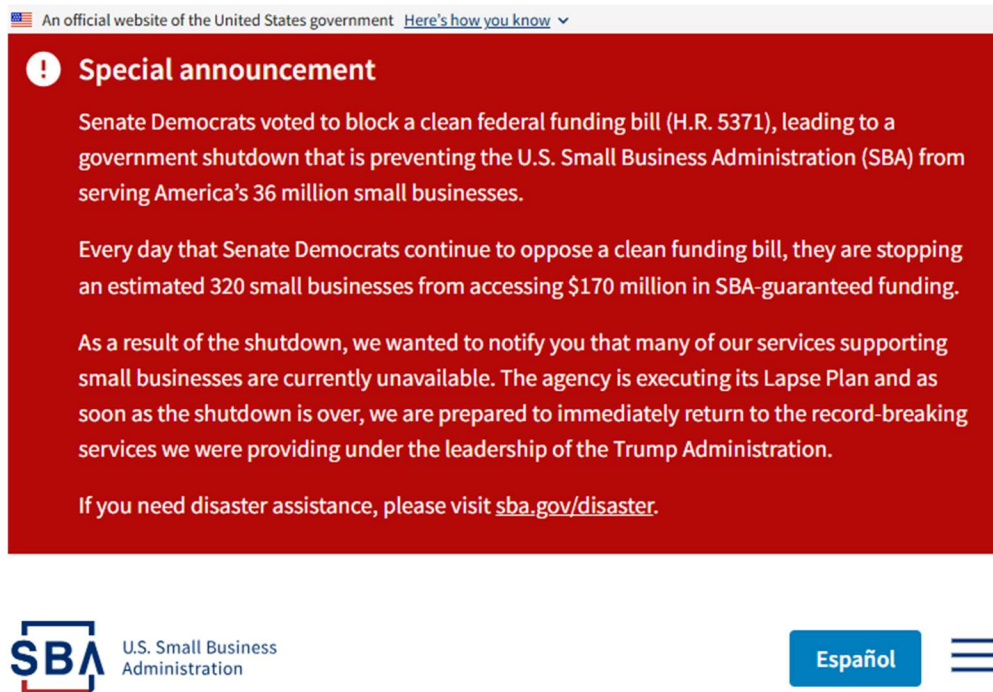
19. The following image is a screenshot of the official website of the U.S. Department of State, which describes the shutdown as “Democrat-led.”



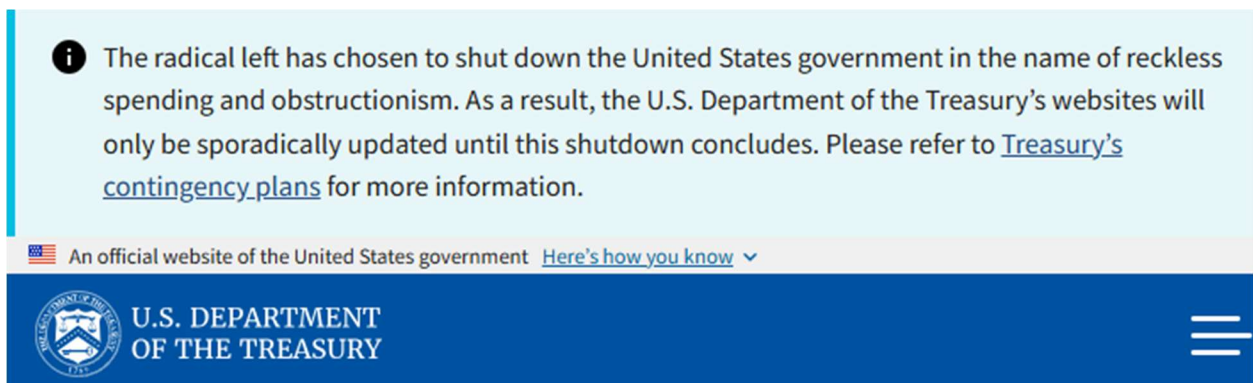
20. The following image is a screenshot of the official website of the U.S. Department of Agriculture, which refers to “the Radical Left Democrat shutdown.”



21. The following image is a screenshot of the official website of the U.S. Small Business Association, which blames “Senate Democrats” for the shutdown.



22. The following image is a screenshot of the official website of the U.S. Department of the Treasury, which blames “the radical left” for the shutdown.



23. The following image is a screenshot of the official website of the U.S. Department of Health and Human Services, which refers to the “Democrat-led government shutdown.”



24. Many agencies also sent mass emails to their own employees. Those emails, which were nearly identical across agencies, stated: “Unfortunately, Democrats are blocking this continuing resolution in the U.S. Senate due to unrelated policy demands.”<sup>2</sup>

### **III. Defendants’ modification of employees’ out-of-office messages**

25. Defendants have gone even further by conscripting individual federal employees into becoming unwilling mouthpieces for their partisan agenda. They did so by inserting partisan rhetoric into federal employees’ automatic out-of-office email messages.<sup>3</sup>

26. When the government shut down on October 1, 2025, some Department of Education employees were already on administrative leave due to pending reduction-in-force notices. Many of those employees had set up automated out-of-office responses for their government email addresses that stated that they were out on administrative leave.

<sup>2</sup> Joey Heckman, *Mass email tells federal employees not to blame Trump for government shutdown*, Federal News Network (Sept. 30, 2025), <https://perma.cc/5UVK-6R4V>.

<sup>3</sup> 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>.



27. Other Department of Education employees were not on leave when the government shut down but were furloughed due to the lapse in appropriations. According to the Department's contingency plan for the lapse in appropriations, about 87% of the Department's employees were expected to be furloughed.<sup>4</sup>

28. The Department's Chief Human Capital Officer provided those employees with instructions on furlough preparations. Those instructions provided Department employees subject to the furlough with up to four on-duty hours to conduct orderly shutdown activities. The Department instructed furloughed employees that orderly shutdown activities should include setting up out-of-office email messages. The Department provided model language for the out-of-office messages that was factual and nonpartisan: "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."

29. Later in the day on October 1, 2025, many Department of Education employees discovered that the language in the out-of-office messages associated with their government email accounts had been changed. The out-of-office messages were 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."

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<sup>4</sup> Memorandum from Linda McMahon, Sec'y of Educ., to Office 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-DVNI> (showing 2,457 employees on board, including the Office of Federal Student Aid, and 2,117 of those employees expected to be furloughed).



30. The modified out-of-office messages use the term “Democrat Senators.” The adjectival “Democrat” is a “pejorative shortening of ‘Democratic Party’ common among Republicans.”<sup>5</sup>

31. The modified out-of-office messages are written in the first person, as if the individual employee is the person conveying the message.

32. This impression is reinforced by the fact that the out-of-office messages are being sent automatically in the employee’s name and from their email address in response to incoming email messages.

33. On information and belief, Defendants took advantage of their control of agency technology systems to change the language in the Department employees’ out-of-office messages. Defendants made those changes without giving notice to employees or obtaining their permission.

34. Many of the Department employees who were on administrative leave at the time of the shutdown had already lost access to their government-furnished equipment. Those employees could find out about their changed out-of-office messages only by sending a test email to their government email address from another email account to see what automated response is sent. Those employees are unable to change the out-of-office messages that are automatically sent from their government email accounts.

35. Some Department employees who still had access to their government equipment tried to change their out-of-office messages back to nonpartisan language that did not place for

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<sup>5</sup> 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>.

the shutdown. They found out later that their out-of-office messages had been changed yet again to include the partisan language.<sup>6</sup>

36. As part of their employment duties, many Department employees regularly use their government email accounts to communicate with school district representatives, college administrators, parents, students, vendors, and other external stakeholders. So long as the out-of-office messages remain up, members of the public who try to reach a Department of Education employee will receive as an auto-reply a partisan message blaming “Democrat Senators” for their inability to respond.

37. Making public statements with such partisan language is not an ordinary part of the job responsibilities of federal civil servants.

38. 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.

39. A Department of Education spokesperson reportedly responded to an inquiry about the changed out-of-office emails by stating: “The email reminds those who reach out to Department of Education employees that we cannot respond because Senate Democrats are refusing to vote for a clean [continuing resolution] and fund the government. Where’s the lie?”<sup>7</sup>

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<sup>6</sup> 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.”).

<sup>7</sup> Sullivan & Bender, *supra* n.3.

## **CAUSE OF ACTION**

### **Count I: First Amendment**

40. Plaintiffs restate and reallege all paragraphs above as if fully set forth here.

41. Plaintiffs have a non-statutory right of action to seek, and federal courts have the equitable power to grant, injunctive relief for violations of federal law by federal officials.

42. The First Amendment to the U.S. Constitution prohibits any law “abridging the freedom of speech.”

43. The First Amendment prohibits the government from compelling speech. Government-compelled speech violates the principle that the First Amendment prohibits the government from telling people what they must say.

44. Government employees retain First Amendment rights.

45. The partisan language added to Department of Education employees’ out-of-office email responses is not speech that is within the employees’ official duties. Making public statements about political issues is not an ordinary part of their job responsibilities.

46. The language in the Department of Education out-of-office email responses is written as if the individual employee were speaking in the first person, suggesting that the language should be ascribed to the employee.

47. Defendants have no legitimate interest in forcing Department employees to recite partisan words that they would not have spoken otherwise.

48. Defendants’ co-opting of their employees’ email correspondence to speak against their will on this matter of public concern violates employees’ First Amendment rights to free speech and free association.

### PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter the following relief:

- A. Declare unlawful and enjoin Defendants' modification of federal employees' out-of-office messages to include partisan political speech.
- B. Issue preliminary and permanent relief barring Defendants, their officers, employees, and agents from continuing to modify federal employees' out-of-office messages to include partisan political speech.
- C. Award Plaintiffs their costs, reasonable attorney fees, and other disbursements as appropriate.
- D. Grant such other relief as the Court deems necessary, just, and proper.

Respectfully submitted,

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