



September 28, 2026

Travis Jacott
Attorney at Law
Adams & Sullivan, P.C., L.L.O.

[REDACTED]
City Attorney
City of Fremont
400 East Military Avenue
Fremont, Nebraska 68025

Re: City of Fremont's unconstitutional exclusion of Mr. Andrew Coates from Firefighter/EMT hiring process; REQUEST FOR *IMMEDIATE* PRESERVATION OF DOCUMENTS AND ELECTRONICALLY STORED INFORMATION

Dear City Attorney:

The American Center for Law & Justice represents Mr. Andrew Coates in connection with the City of Fremont's exclusion of him from the 2026 Firefighter/EMT hiring process. Federal litigation over the violation of his federal constitutional rights is reasonably anticipated. Fed. R. Civ. P. 37(e). The City, its departments, officials, employees, agents, contractors, counsel, information-technology personnel, and all other persons acting on its behalf must therefore take immediate, affirmative steps to preserve *all* documents and data that may be in any way relevant to this matter. "Documents and data" include hard and electronic copies of documents, including correspondence, memoranda, reports, tabulations, calculations, invoices, vouchers, ledgers, journals, external and internal literature, books, notes, schedules, worksheets, plans, minutes, diaries, charts, and drafts of all such documents, as well as photographs, audio and video tapes or recordings, and all other electronically stored information as defined by the Federal Rules of Civil Procedure.

This letter provides formal notice of the City's preservation obligations, and a more detailed description of examples of the documents subject to those obligations. It is not a discovery request and is not limited by the scope of any future discovery request. Nor is it an exhaustive statement of Mr. Coates's claims, facts, legal theories, requested relief, or damages, all of which are expressly reserved.

STATEMENT OF FACTS

The City violated Andrew Coates's constitutional and statutory rights when it excluded him from the firefighter/EMT hiring process. The City's operative job posting at the time Mr. Coates applied required "graduation from high school or equivalent GED." It did not require graduation from an accredited high school. Mr. Coates graduated from Coates Christian Academy, a lawful Nebraska Rule 13 exempt school. The school was religious in identity and operation, and his education was undertaken and completed in accordance with sincerely held religious beliefs.

Mr. Coates's parents chose and directed his education through Coates Christian Academy pursuant to Nebraska's Rule 13 framework, Neb. Rev. Stat. § 79-1601, and their sincerely held religious convictions. Mr. Coates participated in and completed that religious course of education. The diploma the City rejected was therefore the official product of both Mr. Coates's religious exercise and his parents' exercise of their right to direct his religious upbringing and education.

At the time of his application, in addition to his high school diploma, Mr. Coates possessed a current Nebraska EMT license, volunteer firefighting experience, and substantial accredited postsecondary coursework in Firefighting subjects. His community-college transcript reflected 78 credit hours and a cumulative GPA of 3.8367.

On April 14, 2026, Mr. Coates personally delivered his hiring documentation to Human Resources Director Jennifer McDuffee and disclosed that his high-school diploma resulted from homeschooling. He was not told during that review that he was ineligible. Ms. McDuffee commented on the diploma during the interaction, prompting Mr. Coates to explain that it was the product of homeschooling.

On April 15, 2026, the day after the application period closed, Ms. McDuffee told Mr. Coates that his diploma was not accredited, removed him from the process, and stated that he would need a GED. Mr. Coates offered to address the perceived issue immediately but was told it was too late for that hiring pool.

On May 15, 2026, Seth Coates, Mr. Coates's father, sought written guidance from the Nebraska Department of Education ("NDE") concerning a Rule 13 graduate holding a lawfully issued diploma. On May 18, 2026, NDE's Director of Adult Education and GED Administrator stated that Mr. Coates was considered a graduate and that "it wouldn't be appropriate or necessary" for him to take the GED tests to earn a second high-school-equivalency credential because the diploma issued by his homeschool was his official credential.

On May 27, 2026, the City stated that it had no responsive records identifying a written Rule 13 employment policy, an alternative pathway, decision-making authority, or an explanation of how a Rule 13 graduate could qualify. After learning of Mr. Coates's homeschooling, the City revised the Firefighter/EMT job description by adding, "graduation from an accredited high school or equivalent GED."

The City Council is considering proposed Resolution No. 2026-256, which would accept graduates of non-accredited schools, including Nebraska Rule 13 exempt schools and Rule 14 approved schools, as satisfying high-school-level minimum qualifications for City employment, including civil-service positions. The accompanying staff report describes alternative means of managing hiring risk, including probationary employment, performance reviews, competency testing, skills training, and consideration of prior training and experience.

Fremont never determined whether Mr. Coates was qualified. It prevented him from taking the written examination, physical-agility test, interviews, and other competitive steps because it rejected the credential produced by his religious education.

STATEMENT OF LAW

A. Free Exercise

The City's exclusion of Mr. Coates violated the Free Exercise Clause on two independent and cumulative grounds: non-neutrality and lack of general applicability. The Supreme Court has

ruled that a law that is not neutral or not generally applicable must satisfy strict scrutiny, meaning it must be narrowly tailored to advance a compelling governmental interest. *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 531–32 (1993). Each ground subjects the City’s action to strict scrutiny.

1. Non-Neutrality

Under Supreme Court precedent, a law’s “facial” neutrality alone is not enough to avoid strict scrutiny. “The Free Exercise Clause, like the Establishment Clause, extends beyond facial discrimination.” *Id.* at 534. The Clause “forbids subtle departures from neutrality.” *Gillette v. United States*, 401 U.S. 437, 452 (1971). “Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality. The Free Exercise Clause protects against governmental hostility which is masked as well as overt.” *Lukumi*, 508 U.S. at 534. The Constitution “commits government itself to religious tolerance, and upon even slight suspicion that proposals for state intervention stem from animosity to religion or distrust of its practices, all officials must pause to remember their own high duty to the Constitution and to the rights it secures.” *Id.* at 547. *Lukumi* instructs courts to look beyond the statement or text itself to the full circumstantial record: the sequence of events leading to the decision, departures from normal procedure, and the historical background of the decision. *Id.* at 540 (citing *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977)).

Several features of the City’s decision support an inference of non-neutrality under *Arlington Heights*. First, the City departed from the announced standard: the posting under which Mr. Coates applied contained no accreditation requirement, yet the City applied an unpublished, more restrictive standard to exclude him. Second, the City’s own public-records response confirms that no responsive written Rule 13 policy existed at the time of the decision, foreclosing any claim that a neutral, preexisting rule—rather than an ad hoc judgment directed at Mr. Coates—compelled the result. Third, the City formalized and then reversed its position only after excluding him. It added accreditation language to the job description after his exclusion, supporting the inference that the requirement was constructed to justify a decision already made rather than applied as an existing standard.

The timing is particularly important. Mr. Coates personally delivered his hiring documentation to HR Director Jennifer McDuffee on April 14, 2026, and disclosed during that review that his diploma resulted from homeschooling, but was not told that he was ineligible. McDuffee nonetheless commented on the diploma during that interaction, prompting Mr. Coates to explain that it was the product of homeschooling. Fremont then excluded him the very next day, within approximately twenty-four hours of that disclosure. Even more significantly, Mr. Coates offered to address the issue immediately but was told it was too late for that hiring pool. That sequence supports an inference that the exclusion was tied to his religious homeschool education, not to a neutral rule that had already been communicated to him. The refusal to allow an immediate cure further suggests that Fremont was not neutrally applying a fixed educational-credential rule, but chose to treat Mr. Coates’s homeschool diploma as conclusively disqualifying when nothing required that result. By analogy, the Eighth Circuit has held that “the timing of one incident of adverse employment action following protected activity sufficed to establish causal connection.” *Smith v. Allen Health Sys.*, 302 F.3d 827, 832 (8th Cir. 2002); *see also O’Bryan v. KTIV Television*, 64 F.3d 1188, 1193–94 (8th Cir. 1995) (three months between filing administrative complaints and firing established causal connection).

Taken together, those facts support the conclusion that Fremont did not neutrally apply a settled credential rule. It singled out Mr. Coates’s religious homeschool diploma for disfavored treatment and then changed its written position after the exclusion. Even apart from the direct evidence of purpose, *Lukumi* permits courts to consider a rule’s practical operation in determining neutrality. 508 U.S. at 535. That point matters here because Nebraska’s Rule 13 framework exists largely to accommodate families who object to ordinary compulsory-school requirements on religious grounds, and Fremont’s categorical disfavoring of Rule 13 diplomas therefore predictably burdens a religiously defined educational pathway. (Approximately 64% of homeschoolers in Nebraska do so for explicitly religious reasons. <https://www.firerescue1.com/firefighter-training/neb-volunteer-firefighters-homeschool-diploma-rejected-when-applying-for-career-firefighter-position>). That disparate effect, combined with the absence of a preexisting written policy, the discretionary treatment of Rule 13 credentials, and the post hoc addition of accreditation language, reinforces the inference that Fremont’s application of the rule was not religiously neutral.

In short, the sequence-of-events, departure-from-policy, post hoc formalization, and shifting-rationale evidence set out above independently supports the same inference under *Arlington Heights*. Mr. Coates disclosed a homeschool diploma tied to a Rule 13 educational pathway; Fremont excluded him almost immediately; the job posting did not contain the accreditation requirement Fremont later invoked; the City could not identify a preexisting written policy applying that requirement; and the City formalized accreditation language only after the fact. Taken together, those facts support a plausible inference that Fremont did not merely apply a neutral credentialing rule, but instead singled out Mr. Coates’s homeschool-based diploma for disfavored treatment.

2. Lack of General Applicability

“The creation of a formal mechanism for granting exceptions renders a policy not generally applicable, regardless whether any exceptions have been given, because it ‘invite[s]’ the government to decide which reasons for not complying with the policy are worthy of solicitude.” *Fulton v. City of Philadelphia*, 593 U.S. 522, 537 (2021); *see also Tandon v. Newsom*, 593 U.S. 61 (2021).

Here, the City retained authority to decide whether to accept a Rule 13 diploma, whether to allow supplemental documentation, and whether to permit an applicant to cure a perceived credential problem. The City had no written Rule 13 employment policy, the operative posting did not require an accredited diploma, and Mr. Coates offered to address the perceived issue immediately but was told it was too late for that hiring pool. A system that permits individualized exceptions or treats comparable secular conduct more favorably is not generally applicable.

The City’s own public-records response affirmatively concedes that no written Rule 13 employment policy existed at the time of the decision—meaning Fremont’s diploma-acceptance practice was, by the City’s own admission, an ad hoc, case-by-case judgment rather than a fixed, categorical rule. The absence of any governing standard is itself the kind of discretionary system *Fulton* and *Emp’t Div. v. Smith*, 494 U.S. 872 (1990), identify as defeating general applicability: a practice with no fixed rule necessarily proceeds by individualized determination.

Lukumi teaches that a law lacks general applicability where the government pursues its stated interests only against religiously motivated conduct while leaving comparable secular conduct unregulated: there, the ordinances “fail to prohibit nonreligious conduct that endangers

these interests in a similar or greater degree than Santeria sacrifice does. The underinclusion is substantial, not inconsequential.” *Lukumi*, 508 U.S. at 543. The City’s asserted interest here is not accreditation as an end in itself, but reliable proof that firefighter applicants had sufficient education, competence, and integrity. Yet the City accepted other means of assessing those interests—including written testing, physical-agility testing, interviews, fingerprinting, background checks, EMT licensure, and accredited fire-science coursework—while categorically refusing to consider Mr. Coates’s lawful Rule 13 religious homeschool diploma.

A government system that permits officials to decide which reasons for noncompliance merit flexibility, or that treats comparable secular credential problems more favorably, is not generally applicable. The absence of a fixed standard, the undisclosed qualification, the comparator treatment, and the refusal to permit an immediate cure establish a substantial basis for strict scrutiny.

3. Strict Scrutiny

Once strict scrutiny applies, the City must show that excluding Mr. Coates specifically was the least restrictive means of advancing a compelling interest. *See Fulton*, 593 U.S. at 541 (explaining that the government must show it could not accommodate the religious objector through a means less restrictive of religious liberty). “The question . . . is not whether the City has a compelling interest in enforcing its non-discrimination policies generally, but whether it has such an interest in denying an exception to [the religious claimant].” *Id.* at 541. The City may assert interests in reliable credential verification, minimum educational attainment, administrative consistency, and public safety, but categorical exclusion was not narrowly tailored as applied to Mr. Coates specifically: less restrictive and more direct methods were readily available, including review of his transcript and Rule 13 documentation, verification of his current Nebraska EMT license, consideration of his accredited postsecondary fire-science coursework, and administration of the written and physical-agility tests already built into the hiring process before any credential-based exclusion occurred. The City’s own conduct undercuts necessity: it did not identify an operative written policy and did not review the evidence Mr. Coates offered. The proposed resolution and staff report make the tailoring problem still sharper because the City itself now identifies probationary employment, performance reviews, competency testing, skills training, and consideration of prior training and experience as alternative ways to manage hiring risk while accepting lawful non-accredited diplomas. Those officially identified alternatives are strong evidence that outright exclusion of Mr. Coates was not the least restrictive means of protecting the City’s asserted interests.

B. Nebraska First Freedom Act

The same conduct violates Nebraska’s First Freedom Act, Neb. Rev. Stat. §§ 20-701 to 20-705. The Act applies to local governmental action and prohibits a substantial burden on religious exercise unless the government proves that application of the burden to the particular person furthers a compelling interest through the least restrictive means. Unlike the constitutional claim, the Act does not require Mr. Coates first to establish non-neutrality or lack of general applicability; a substantial burden on religious exercise is enough. Fremont excluded him from a municipal hiring process because it rejected the official credential produced by his religious education, despite multiple less restrictive ways to assess educational attainment and job qualification. The same less-restrictive alternatives defeating constitutional strict scrutiny—transcript review, credential verification, consideration of accredited college work and licensure, and the City’s own

existing examinations—defeat the statutory defense as well. The staff report accompanying the proposed resolution strengthens that showing because the City has itself identified probationary employment, performance reviews, competency testing, skills training, and consideration of prior training and experience as means of managing hiring risk while accepting lawful non-accredited diplomas.

C. Equal Protection

The Equal Protection Clause requires that “all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). The City’s conduct also violated the Equal Protection Clause because Fremont intentionally treated Mr. Coates differently on account of the religious character of his education and the resulting Rule 13 diploma. Fremont drew a categorical line between graduates of conventional or accredited schools and graduates of lawful Nebraska Rule 13 schools—a distinction that uniquely burdens a form of education commonly chosen and conducted for religious reasons.

The surrounding facts support a plausible inference that this unequal treatment was purposeful rather than accidental. Mr. Coates was excluded immediately after disclosing his homeschool diploma; the operative posting contained no accreditation requirement; the City could identify no preexisting written Rule 13 policy; and the City added accreditation language only after excluding Mr. Coates. Considered together, the unexplained departure from the announced criteria, timing, post hoc revision, and later reversal support the conclusion that Fremont intentionally denied Mr. Coates equal treatment because his lawful educational credential arose from religiously motivated homeschooling.

D. Civil Service and Due Process

The conduct further implicates Nebraska civil-service requirements and due process. The City prevented Mr. Coates from reaching the competitive process that would test merit, efficiency, and fitness; applied a qualification absent from the operative posting; did not identify settled authority for that qualification; refused a cure opportunity; and subsequently changed its written position. Mr. Coates therefore lacked fair notice of the actual criterion applied and was excluded through an ad hoc standard rather than an ascertainable rule.

E. Legal Summary

The conclusion is inescapable: the City violated Mr. Coates’s rights. It excluded a qualified applicant from even competing for public employment because his lawful diploma was the product of a religious education, applied an accreditation requirement that did not appear in the operative posting, afforded discretion and flexibility elsewhere while denying Mr. Coates any meaningful opportunity to cure, and disregarded readily available means of evaluating his actual competence. That conduct was neither neutral nor generally applicable, cannot survive strict scrutiny, substantially burdened religious exercise in violation of the Nebraska First Freedom Act, denied equal treatment, and deprived Mr. Coates of fair notice and a fair opportunity to compete under ascertainable standards. The City did not merely mishandle an application; it imposed a public-employment penalty on Mr. Coates because of the religious educational path he and his family lawfully chose. The Constitution and Nebraska law do not permit the government to convert protected religious exercise into a civic disability. Mr. Coates’s rights were violated, and the City must preserve all evidence bearing on that violation and the resulting harm.

PRESERVATION OBLIGATIONS

Because litigation is reasonably anticipated, the City must immediately preserve all potentially relevant documents, ESI, communications, audio and video recordings, data, and tangible evidence. The City must suspend routine destruction, deletion, overwriting, recycling, device replacement, reimaging, log rotation, video overwrite, and retention practices that could affect relevant information. Preservation must include native files and associated metadata, attachments, version histories, audit information, and available backups.

The preservation obligation applies to City officials, Human Resources, the City Administrator, the Civil Service Commission, Fire Department personnel, City Council and Clerk personnel, information-technology and records personnel, relevant contractors or vendors, and any person who used a personal device or account for City business concerning this matter.

The City must preserve all documentation related to this matter. The following examples are illustrative, not exhaustive:

1. Preserve all records concerning Mr. Coates, his application, diploma, transcript, qualifications, status, exclusion, communications, and any review or reconsideration of his eligibility. Preserve the original Firefighter/EMT posting and every draft, revision, approval, publication record, applicant-tracking entry, screening criterion, workflow, and audit history associated with the hiring process.
2. Preserve all records concerning Rule 13 schools, Rule 14 schools, homeschooling, religious education, exempt schools, non-accredited or unaccredited diplomas, accreditation requirements, GED requirements, alternative credentials, educational qualification standards, and the acceptance or rejection of such credentials for City employment.
3. Preserve all potentially relevant emails, text messages, Teams or other chat messages, notes, memoranda, voicemail, call logs, calendar entries, meeting records, recordings, and attachments concerning Mr. Coates, Coates Christian Academy, Rule 13, homeschooling, religion, accreditation, GED requirements, applicant qualifications, the Civil Service proceedings, the revised posting, or the proposed resolution.
4. Preserve all records concerning applicants in the same hiring pool who were permitted to supplement educational credentials, cure documentation deficiencies, submit information after a deadline, or receive other flexibility concerning educational qualifications. Preserve records sufficient to determine what issue arose, what opportunity was given, who authorized it, and how the applicant was ultimately treated.
5. Preserve all communications with NDE personnel concerning Mr. Coates, Rule 13 or exempt-school diplomas, graduation status, GED eligibility, official credentials, employer acceptance, or related guidance, including requests, notes, attachments, and internal discussion of NDE's responses.
6. Preserve all records concerning the adoption, interpretation, revision, or enforcement of accreditation language and minimum educational qualifications, including the revised Firefighter/EMT descriptions; all drafts, redlines, tracked changes, comments, metadata, version histories, and approval records concerning the addition of the term "accredited"; Proposed Resolution No. 2026-256 and the accompanying staff report; all related City Council consideration and communications, and any Civil Service

Commission proceeding involving Mr. Coates or Rule 13 credentials, homeschool diplomas, non-accredited educational credentials, GEDs, foreign-school credentials, alternative-school diplomas, educational equivalency determinations, or other nontraditional educational credentials.

7. Preserve every video, audio recording, surveillance file, still image, export, clip, transcript, backup, and derivative relating to Mr. Coates, Seth Coates, Jennifer McDuffee, Jody Sanders, Human Resources, or relevant interactions. Preserve all associated metadata, camera or system information, access logs, audit logs, administrator logs, deletion logs, retention settings, exports, backups, and records identifying anyone who accessed, viewed, copied, edited, exported, deleted, or had the ability to delete the material.

If any relevant recording has already been altered, deleted, overwritten, lost, or rendered unavailable, preserve all remaining evidence of that event, including the affected source, date, custodian, system, responsible persons, available backups, policies, logs, and recovery efforts. Do not recreate, replace, or modify any remaining evidence. The above examples are merely illustrative, and the City is expected to preserve all documents related to this matter.

CONCLUSION

The duty to preserve arises when litigation is reasonably anticipated. Destruction or alteration of relevant evidence after that point may support appropriate sanctions and remedial measures. Please direct the confirmation and any questions concerning preservation to the undersigned. Nothing in this letter waives any right, claim, privilege, remedy, objection, or demand of Mr. Coates. All are expressly reserved.

Sincerely,

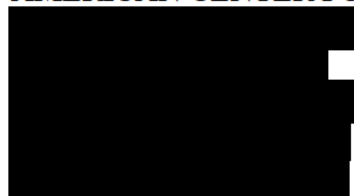
/s/ Nathan J. Moelker

NATHAN MOELKER

LINDSEY BACHMAN

BENJAMIN SISNEY

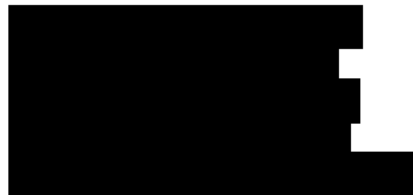
AMERICAN CENTER FOR LAW AND JUSTICE

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/s/ Shane J. Placek

Shane J. Placek

SidnerLaw

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