

The Honorable Theresa L. Fricke¹

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KONSTANTIN AVERKIEV,

Plaintiff,

v.

LAKE WASHINGTON SCHOOL
DISTRICT, et al.,

Defendants.

No.: 2:26-cv-03201

**PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

NOTE ON MOTION CALENDAR:

October 20, 2026

Oral Argument Requested

¹ At the time of filing, no district judge has been assigned to this case. Plaintiff Konstantin Averkiev has not yet received a magistrate judge consent form. Mr. Averkiev reserves his right to decline to proceed before a magistrate judge.

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INTRODUCTION

This case is about a school district shutting a father out of his role as his son’s primary educator, the primary director of his son’s religious upbringing, and primary protector of his son’s best interests. The Constitution protects each of these roles. The First Amendment protects a father’s right to “guide” his son’s religious development at school. *Mahmoud v. Taylor*, 606 U.S. 522, 559 (2025). The Fourteenth Amendment protects his right to direct his son’s upbringing and education. *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026). Both rights recognize parents as the “primary protectors” of their child’s best interests. *Id.* at 496–97.

Yet the Lake Washington School District has defied those rights. When his son started fourth grade last year, Konstantin Averkiev asked for notice of LGBTQ+ lessons. But his son’s teacher disregarded his request. Without notice, his then-9-year-old son was taught about gender-change surgery during a Pride Month lesson—directly violating *Mahmoud*. Then when Mr. Averkiev asked the District to honor specific opt-out requests this year—including an opt out from at-school gender transitions—the District refused, directly violating *Mirabelli*. The District even threatened to punish his son if he fails to use biologically inaccurate pronouns—violating *Mahmoud* and *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943).

District policy says parents have no notice or opt-out rights beyond what *state* law compels. But Mr. Averkiev’s rights are not so limited. Under *Mahmoud*, his free-exercise right extends to any “educational requirement or curricular feature” that “undermin[es] the religious beliefs” he wishes to instill in his son. 606 U.S. at 550, 565. Under *Mirabelli*, his parental right includes the right not to be “shut out” of consequential decisions about his child’s care, including gender transitions. 607

1 U.S. at 497. And under *Barnette*, he has the right to protect his son from having to
 2 “confess by word or act” beliefs contrary to his religious upbringing. 319 U.S. at 642.

3 Because the school year has already begun, Mr. Averkiev needs a preliminary
 4 injunction barring the District and its officials from applying its no-opt-out policy to
 5 Mr. Averkiev, undermining his son’s religious upbringing and education at school.
 6 This Court should order the District to (1) notify Mr. Averkiev of any LGBTQ+
 7 instruction or school-led events and excuse his son upon request without penalty,
 8 (2) notify Mr. Averkiev of any LGBTQ+-related conversations between District staff
 9 and Mr. Averkiev’s son, including conversations about gender transitions, and
 10 prohibit District staff from engaging in any such conversations without penalty to
 11 the Averkievs, and (3) opt his son out of any requirement to refer to others by
 12 biologically inaccurate pronouns without penalty. *See* Proposed Order.

13 STATEMENT OF FACTS

14 **I. Mr. Averkiev has a sacred duty to direct his son’s upbringing and** 15 **education on consequential matters like sex, gender, and marriage.**

16 Konstantin Averkiev is a Christian whose sincerely held religious beliefs
 17 guide what he teaches his son about sex, gender, and marriage. Compl. ¶ 43. He
 18 believes God created human beings as male and female, that biological sex reflects
 19 divine creation, and that sex and gender are inseparable. Compl. ¶ 45. He believes
 20 children should accept their God-given sex and live accordingly. *Id.* He also believes
 21 that marriage is a sacred covenant between one man and one woman, instituted by
 22 God, and that sexual intimacy is reserved for marriage. Compl. ¶ 46.

23 Mr. Averkiev believes he bears a religious obligation to teach these principles
 24 and shield his son, S.A., from conflicting influences. Compl. ¶ 47. That includes
 25 curricula that encourage children to question their gender identity. Compl. ¶ 49.
 26
 27

1 Mr. Averkiev believes that failing to fulfill his duty renders him accountable before
2 God. Compl. ¶ 47.

3 Instruction is just the baseline problem. Compl. ¶ 48. Anything that requires
4 Mr. Averkiev's son to affirm contrary beliefs by word or act undermines his son's
5 religious development—including the use of biologically inaccurate pronouns. *Id.*
6 Similarly, Mr. Averkiev believes that letting teachers discuss sexuality with his 10-
7 year-old son or promote or facilitate gender transitioning is spiritually and
8 emotionally harmful. Compl. ¶ 50.

9 Mr. Averkiev does not seek to overhaul the District's curriculum or
10 requirements—only to receive meaningful notice and the opportunity to opt his son
11 out from certain instruction or requirements that contravene his religious beliefs
12 about sex, gender, and marriage. Compl. ¶ 51. But the District will not yield.

13 **II. Mr. Averkiev requests notice and an opt out from LGBTQ+**
14 **instruction, but his son's teacher disregards his request.**

15 In September 2025—just three months after the Supreme Court decided
16 *Mahmoud*—Mr. Averkiev met in person with his son's fourth-grade teacher, Warren
17 Petchalonis, at Henry David Thoreau Elementary School. Compl. ¶ 59. In the
18 meeting, Mr. Averkiev asked for notice and an opportunity to opt out before any
19 lessons on LGBTQ+ topics, gender identity, or transgender/gender-change subjects
20 so that he could “decide about [his] child's participation.” Ex. 1, ParentSquare
21 Messages with Mr. Petchalonis (June 16, 2026). Mr. Averkiev explained that this
22 request was based on his Christian beliefs and important to the religious
23 upbringing he desires for his son. *Id.*

24 Mr. Petchalonis assured Mr. Averkiev that he would notify him and allow
25 him to opt out before any such instruction. Compl. ¶ 61. But Mr. Petchalonis never
26
27

1 contacted Mr. Averkiev during the 2025-2026 school year to notify him of LGBTQ+
2 curriculum, much less seek his consent. Compl. ¶ 62.

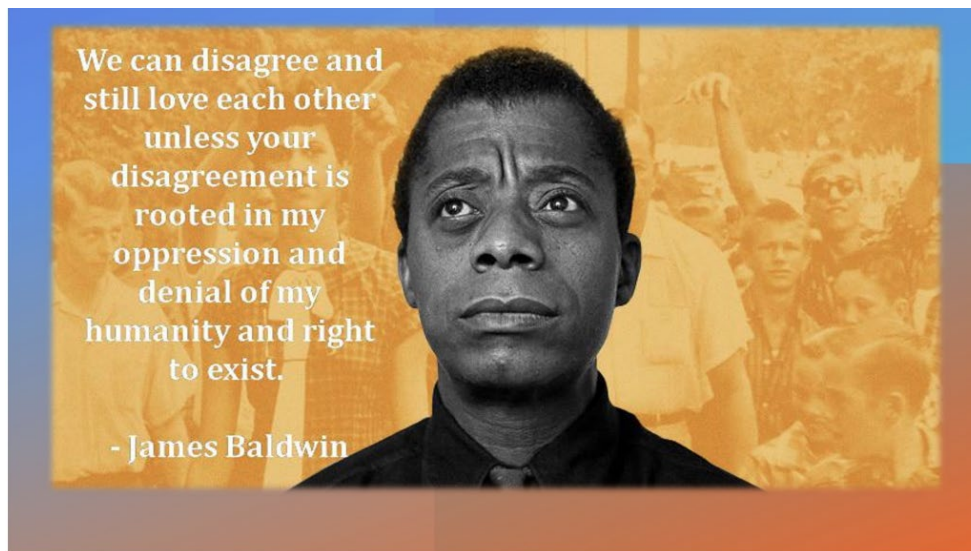
3 In June 2026, Mr. Averkiev discovered from his son that his class had
4 received a lesson on “gender change” surgery as part of a Pride Month lesson.
5 Compl. ¶ 63. He received no notice and gave no consent. *Id.* So Mr. Averkiev
6 messaged Mr. Petchalonis on ParentSquare, a school-to-home messaging platform,
7 asking if he remembered their September conversation regarding notice and opt
8 out. Compl. ¶ 64. He also requested information about the lesson’s content. *Id.*

9 Mr. Petchalonis confirmed the lesson and acknowledged in writing that he
10 remembered Mr. Averkiev’s opt-out request. Ex. 1. Mr. Petchalonis agreed to send
11 Mr. Averkiev the PowerPoint. Compl. ¶ 65. He admitted he should have sent the
12 lessons ahead of time. *Id.* He also represented that he “explained” to S.A.’s “5th
13 grade teachers” that they would need to send such material to Mr. Averkiev “ahead
14 of time” when it comes up “next year.” *Id.* But he said nothing about an opt out. *Id.*

15 The slides hit Mr. Averkiev’s inbox minutes later. Compl. ¶ 66. Titled “Pride
16 Month,” the lesson lays out instruction for fourth and fifth graders about “dislike or
17 prejudice against gay people.” Ex. 2, Pride Month PowerPoint. It also instructed
18 fourth graders about “romantic attraction to people of the same sex or gender,” as
19 well as those “whose gender identity does not match the sex they were assigned at
20 birth.” *Id.* The lesson also celebrated the “Stonewall Uprising” that launched the
21 “LGBTQ+ fight for freedom and equality.” *Id.*

22 The lesson then ran the kids through surveys about LGBTQ+ “belonging” at
23 Henry David Thoreau Elementary School. *Id.* And the lesson emphasized the
24 results of a 2010 Gay, Lesbian & Straight Education Network (GLSEN) survey of
25 elementary students, careful to note that LGBTQ+ bullying is common while
26 bullying a classmate due to their religion is the least common bullying form. *Id.* And
27

at the end of the lesson, a slide implies to the children that the District condemns certain kinds of disagreement with the lesson's message:



Id. Notably absent in the slides: any preview of the in-class gender-change surgery discussion that Mr. Averkiev's son told him they had in class. Compl. ¶ 68.

The next day, Mr. Averkiev wrote Principal Heidi Gilmore. Ex. 3, Email to Principal Gilmore (June 17, 2026). He recounted his September conversation with Mr. Petchalonis, his request for notice and opt out, and the Pride Month lesson his son endured without notice. *Id.* Mr. Averkiev asked Principal Gilmore to confirm in writing "[b]efore the next school year" that he would receive "advance notice and a religious opt-out" for such topics. *Id.*

Principal Gilmore never responded. Compl. ¶ 70. So Mr. Averkiev contacted Superintendent Dr. Jon Holmen.

III. Mr. Averkiev asks the District for specific notice and opt outs before his son starts fifth grade, but the District refuses.

After a six-week silence from Principal Gilmore, Mr. Averkiev, through counsel, delivered notice and opt-out requests to Superintendent Holmen and Principal Gilmore. Compl. ¶ 71. The letter asserted his rights under *Mahmoud* and

1 *Mirabelli* and recounted the District’s failure to honor those rights during his son’s
 2 fourth-grade year. Ex. 4, Letter to Principal Gilmore & Superintendent Holmen
 3 (July 27, 2026); Compl. ¶ 72.

4 To avoid any misunderstanding, Mr. Averkiev was specific. He requested that
 5 his son be opted out of all LGBTQ+ instruction—including lessons, materials,
 6 educational activities, and assemblies. Ex. 4. He withheld permission for any
 7 District staff member to (1) speak with his son about LGBTQ+ topics in
 8 conversation or counseling, (2) change his son’s name or pronouns at school or
 9 otherwise socially transition his son, or (3) require his son to use another student’s,
 10 teacher’s, or staff member’s biologically inaccurate pronouns. *Id.* Mr. Averkiev also
 11 opted his son out of surveys and sex-education instruction. *Id.*

12 Mr. Averkiev requested advance notice of any of these activities including (1)
 13 the date, time, location, staff involved, and mandatory status; (2) complete copies of
 14 all materials, prompts, surveys, scripts, slides, books, handouts, and links; and (3)
 15 the non-stigmatizing alternative assignment or placement. *Id.*

16 But the District, through counsel, denied Mr. Averkiev any notice or opt out
 17 beyond the topics for which state law requires an accommodation—promising
 18 notice, opt outs, and adequate alternatives only for the sex-education curriculum
 19 and surveys. Ex. 5, District Response Letter (Aug. 5, 2026) (citing RCW
 20 28A.605.005(2)(i) (sex education opt out); RCW 28A.605.005(2)(h)(i)-(vii) (survey opt
 21 out)). The District rejected all opt outs related to LGBTQ+ topics saying the
 22 requests were “not feasible” and “practically impossible”—despite promising to
 23 provide the same alternative for sex education and surveys. *Id.* Lessons like the
 24 Pride Month lesson S.A. sat through would not fall under those categories.

25 Ignoring the U.S. Constitution, *Mahmoud*, and *Mirabelli*, the District
 26 asserted that “there is no provision in the Revised Code of Washington permitting a
 27

1 broad parental opt-out from LGBTQ+ topics that may arise in the ordinary course of
 2 education or instruction.” *Id.* So, according to the District, “any parental opt-out
 3 right is specifically limited to sex education and health instruction.” *Id.*

4 Further, the District complained that it would be “impractical” for its staff to
 5 avoid individual conversations about LGBTQ+ topics with Mr. Averkiev’s son—
 6 including in “counseling sessions.” *Id.* So nothing limits the LGBTQ+ topics that
 7 District staff can discuss with him. That concern is heightened because the District
 8 declined to disavow any attempt to socially transition his son. *See id.* And the
 9 District threatened to punish S.A. for “harassment” should he “misgender” other
 10 students by referring to them with biologically inaccurate pronouns. *Id.*

11 **IV. District instruction and requirements threaten to undermine Mr.**
 12 **Averkiev’s son’s religious upbringing.**

13 By design, the District’s no-opt-out policy reaches nearly every aspect of
 14 student life. Mr. Averkiev and his son are the objects of that policy’s demands.

15 Start with curriculum. District policy requires “inclusive curricula” that
 16 “include[s] the histories, contributions, and perspectives of ... LGBTQ people.” Ex. 6,
 17 Procedure Course Design Selection and Adoption of Instructional Materials, 2020P.
 18 That produced the Pride Month lesson Mr. Averkiev’s son sat through last year and
 19 will sit through again in fifth grade—an Equity Team lesson that “celebrates”
 20 LGBTQ+ “differences” and “support[s]” the school’s “LGBTQ+ students.” Ex. 7,
 21 Equity Team; Compl. ¶ 94.

22 The District’s Approved Instruction & Materials List, Ex. 8, promotes
 23 instruction like the Southern Poverty Law Center’s “Learning for Justice,” which
 24 “celebrate[s]” LGBTQ+ identities and teaches LGBTQ+ history, Ex. 9, Learning for
 25 Justice. That program’s resources include a story called *Fireflies*, which is about a
 26 10-year-old who comes out to his brother and finds “love and acceptance.” Ex. 10,
 27

1 *Fireflies*. The curriculum list notably omits the Pride Month lesson S.A. sat through,
 2 so the District administers more LGBTQ+ instruction than it advertises. *See* Ex. 8.

3 Next, consider at-school gender transitioning. The District “will not condone
 4 the intentional or persistent refusal to respect a student’s gender identity or gender
 5 expression,” including when that student’s parents are “not supportive” of preferred
 6 names or biologically inaccurate pronouns. Ex. 11, Procedure Gender-Inclusive
 7 Schools for Students, 3211P. Rather, District policy says that “it’s important to ask
 8 the student how school employees should refer to the student when talking with
 9 their parents and guardians.” *Id.* Recall that the District has already denied Mr.
 10 Averkiev’s request to avoid such topics in “counseling sessions.” Ex. 5.

11 Beyond that, the District requires more LGBTQ+ affirmation. Its Gender-
 12 Inclusive Schools policy—adopted in January 2020—applies to “communication and
 13 the use of names and pronouns,” Ex. 12, Gender-Inclusive Schools for Students,
 14 3211. That means students must address other “students by their requested name
 15 and pronouns, with or without a legal name change.” Ex. 13, Student Rights &
 16 Responsibilities (2025-2026) at 16. The District has threatened to punish S.A.
 17 should he “misgender” another student, Ex. 5,—students that Henry David Thoreau
 18 Elementary created a Rainbow Squad to support, *see* Ex. 7 (noting that the Rainbow
 19 Squad exists to support the school’s LGBTQ+ students).

20 Under this no-opt-out policy, the District claimed that Mr. Averkiev’s
 21 requests were “not feasible,” “practically impossible,” and even “prohibited by state
 22 law.” Ex. 5. Because the District refuses to honor Mr. Averkiev’s constitutional
 23 rights, he moves for a preliminary injunction: (1) prohibiting the District from
 24 including his son in any LGBTQ+ instruction or events identified in his letter
 25 without notice and opportunity to opt out without penalty, (2) prohibiting the
 26 District from speaking with his son on any LGBTQ+ topics, including during
 27

counseling sessions, without prior notice and the opportunity to opt out without penalty, and (3) prohibiting the District from requiring his son to use biologically inaccurate pronouns. *See* Proposed Order.

STANDARD FOR GRANTING THE MOTION

A plaintiff is entitled to a preliminary injunction when he shows a likelihood of success on the merits; irreparable harm; the balance of equities tips in his favor; and an injunction serves the public interest. *Mahmoud*, 606 U.S. at 546. Courts analyze these factors on a “sliding scale.” *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 684 (9th Cir. 2023) (citation modified). So “a stronger showing of one element may offset a weaker showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–32 (9th Cir. 2011). A preliminary injunction is also proper when the plaintiff shows “serious questions going to the merits” and a balance of hardships that “tips sharply” in his favor. *Id.* at 1135. All factors favor Mr. Averkiev.

ARGUMENT

I. Mr. Averkiev is likely to succeed on the merits of each of his claims.

The District violates Mr. Averkiev’s free-exercise and parental rights by denying him notice and opt outs. Each violation triggers—and fails—strict scrutiny. A preliminary injunction is warranted.

A. The District’s policy violates Mr. Averkiev’s free-exercise rights.

The Free Exercise Clause protects “the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life.” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022). That includes parents who “direct the religious upbringing of their children” in public schools. *Mahmoud*, 606 U.S. at 546 (citation modified). Their free-exercise right is “not shed at the schoolhouse gate.” *Id.* at 545

(citation modified). So the District “may not place unconstitutional burdens” on that right. *Id.*

School policies trigger strict scrutiny when they burden religious exercise in any one of three ways. First, under *Mahmoud*, even a neutral and generally applicable policy triggers strict scrutiny if it “substantially interfere[s]” with a child’s “religious development” or “undermin[es] the religious beliefs and practices ... parents wish to instill.” *Id.* at 565 (citation modified). Second, a policy triggers strict scrutiny if it is not “neutral” or “generally applicable.” *Fulton v. City of Phila.*, 593 U.S. 522, 533 (2021). And third, a policy triggers strict scrutiny if it conditions the receipt of a public benefit on the waiver of the free-exercise right. *Carson v. Makin*, 596 U.S. 767, 780 (2022). Strict scrutiny applies here for all three reasons.

i. The District’s no-opt-out policy triggers strict scrutiny because it imposes at least three *Mahmoud*-type burdens.

In *Mahmoud*, religiously diverse parents sued the Montgomery County Board of Education after it introduced “LGBTQ+-inclusive” storybooks into the elementary school curriculum and refused parental notice or opt outs. 606 U.S. at 531–32, 538–43. Like Mr. Averkiev, the *Mahmoud* parents held sincere religious beliefs that biological sex reflects divine creation, that sex and gender are inseparable, that marriage is between one man and one woman, and that sex should occur only within marriage. *Id.* at 540–41; Compl. ¶¶ 43–51. Like Mr. Averkiev, the parents were concerned that LGBTQ+ instruction posed “a very real threat of undermining” the religious beliefs they wished to instill. *Mahmoud*, 606 U.S. at 551–54 (citation omitted). And their children were in the same age bracket as S.A.—grades K-5. *Id.*; Compl. ¶ 11.

Mahmoud held that the Board’s no-opt-out policy unconstitutionally burdened the parents’ free exercise. 606 U.S. at 530. The storybooks presented

1 certain views on gender and marriage “as things to be celebrated” while treating
 2 contrary religious beliefs “as things to be rejected”—thereby “exert[ing] upon
 3 children a psychological pressure to conform.” *Id.* at 550, 554 (citation modified).
 4 Because this burden was of the same character as in *Wisconsin v. Yoder*, 406 U.S.
 5 205 (1972), strict scrutiny applied regardless of whether the policy was generally
 6 applicable. *Mahmoud*, 606 U.S. at 564–65.

7 Under strict scrutiny, the Court rejected the Board’s claim that its no-opt-out
 8 policy was necessary to avoid classroom disruption. *Id.* at 566. Because the Board
 9 permitted opt outs for other instruction—like sex education—the Court found its
 10 refusal to provide opt outs from the LGBTQ+ storybooks was not narrowly tailored.
 11 *Id.* at 566–68. The Court granted the parents preliminary relief and ordered the
 12 District to notify parents “in advance whenever one of the books in question *or any*
 13 *other similar book* is to be used in any way” and excuse their children from that type
 14 of instruction. *Id.* at 569 (emphasis added).

15 Other courts have applied *Mahmoud* to grant similar relief. In *Alan L. v.*
 16 *Lexington Public Schools*, a court granted a preliminary injunction requiring notice
 17 and opt outs for LGBTQ+ instruction. 814 F. Supp. 3d 61 (D. Mass. 2025). That
 18 court recognized what the District here refuses to accept: *Mahmoud*’s protections
 19 apply wherever public schools compel children to participate in instruction that
 20 undermines their parents’ religious beliefs.

21 The burden does not fall on Mr. Averkiev to foresee every specific book,
 22 lesson, or event the District chooses to impose on his son this school year. The
 23 District has that information. For purposes of injunctive relief, what matters is the
 24 likelihood he will be exposed to similar instruction going forward. Here, S.A.’s
 25 exposure to the Pride Month lesson in fourth grade confirms that the District
 26
 27

1 promotes LGBTQ+ content. Indeed, LGBTQ+ curricula is *required* by District
2 policy. Ex. 6. So absent an injunction, he will continue to encounter such content.

3 Under *Mahmoud*, courts need not “‘wait and see’ how a particular book is
4 used in a particular classroom on a particular day before evaluating the parents’
5 First Amendment claims.” 606 U.S. at 560. The same analysis compels the same
6 result here. Mr. Averkiev objects to any curricula or events that “present as a
7 settled matter a hotly contested view of sex and gender that sharply conflicts with”
8 his religious beliefs. *Id.* at 553. Children “emulat[e]” and “implicitly trus[t]” their
9 teachers, so his ability to instill his beliefs in his son “is undermined when the exact
10 opposite message is positively reinforced in the public school classroom.” *Id.* at 552,
11 554–55 (citation modified). He has asked to opt his son out of LGBTQ+ instruction
12 that “impose[s] upon children a set of values and beliefs that are hostile to [his]
13 religious beliefs.” *Id.* at 554 (citation modified). The District categorically refuses.

14 The same goes for the District’s refusal to abstain from LGBTQ+-related
15 conversations with S.A., including conversations about gender transition, without
16 notice to Mr. Averkiev. Under *Mirabelli*, the “unconsented facilitation of a child’s
17 gender transition” by using the child’s “preferred names and pronouns regardless of
18 [his] parents’ wishes” imposes a *Yoder*-like burden. 607 U.S. at 492, 496. In fact, the
19 “intrusion on parents’ free exercise rights” through the “unconsented facilitation of
20 a child’s gender transition” is “greater than the introduction of LGBTQ storybooks
21 [the Court] considered sufficient to trigger strict scrutiny in *Mahmoud*.” *Id.* at 496.
22 Mr. Averkiev holds “sincere religious beliefs about sex and gender,” but the
23 District’s no-opt-out policy boxes him out—paving the way for the District to speak
24 unfiltered to S.A. on crucial topics like gender identity. *Id.*

25 Mr. Averkiev need not “make any specific showing as to the likelihood that
26 [his] child would actually experience gender dysphoria and have that information
27

1 withheld.” *City of Huntington Beach v. Newsom*, No. 25-3826, 2026 WL 1785110, at
 2 *3 (9th Cir. June 18, 2026). He is the “object[] of the challenged” policy that excludes
 3 him from these consequential conversations between District staff and his son.
 4 *Mirabelli*, 607 U.S. at 498 (citing *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100,
 5 114 (2025)). And that policy is subject to strict scrutiny.

6 The District’s pronoun requirement receives no less scrutiny. The Court has
 7 long held that “no official, high or petty, can prescribe what shall be orthodox in
 8 politics, nationalism, religion, or other matters of opinion or force citizens to confess
 9 by word or act their faith therein.” *Barnette*, 319 U.S. at 642. Just as the *Barnette*
 10 parents challenged on religious grounds their children’s compelled affirmation of a
 11 “graven image,” *id.* at 629, Mr. Averkiev challenges his son’s compelled affirmation
 12 of what he believes is biological falsehood. The District has already threatened to
 13 punish S.A. for “discriminatory harassment” should he “misgender” another
 14 student. Ex. 5. But the District cannot compel S.A. to affirm beliefs contrary to his
 15 religious upbringing unless it can show a “grave and immediate danger to interests
 16 which the state may lawfully protect.” *Barnette*, 319 U.S. at 639.

17 Nor can the District escape strict scrutiny by hiding behind state law. The
 18 Supremacy Clause does not work in reverse. State law cannot shrink the reach or
 19 breadth of federal constitutional guarantees. The First Amendment “has the same
 20 meaning” whether enforced in Washington or Texas—“local attitudes can neither
 21 shrink nor inflate the meaning of fundamental Bill of Rights guarantees.” *Wolford*
 22 *v. Lopez*, 146 S. Ct. 2032, 2050 (2026). State law may define the scope of certain
 23 educational obligations, but “a State has no power to confer immunity from *federal*
 24 causes of action.” *Doe v. Dynamic Physical Therapy, LLC*, 607 U.S. 11, 11 (2025).

1 **ii. The District’s no-opt-out policy triggers strict scrutiny**
 2 **because it is neither neutral nor generally applicable.**

3 The District’s no-opt-out policy targets religious beliefs concerning LGBTQ+
 4 issues. Meanwhile, the District bends over backward to accommodate myriad
 5 secular needs in similar contexts. The Constitution requires religious neutrality and
 6 general applicability. The District’s policy fails both.

7 Neutrality and general applicability are “interrelated,” and “failure to satisfy
 8 one requirement is a likely indication that the other has not been satisfied.” *Church*
 9 *of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 531 (1993). Start with general
 10 applicability. A policy lacks general applicability if it allows “individualized”
 11 exemptions or “prohibits religious conduct while permitting secular conduct that
 12 undermines the government’s asserted interests in a similar way.” *Fulton*, 593 U.S.
 13 at 533–34. Here, the District grants opt outs from sex education and surveys—
 14 providing notice and alternative activities. Compl. ¶ 79; Ex. 5. But it refuses the
 15 same for LGBTQ+ instruction or requirements in any other context, claiming such
 16 opt outs are “not practically feasible” and “prohibited by state law.” Ex. 5. Because
 17 the District has “a formal mechanism for granting exceptions,” its policy “is not
 18 generally applicable.” *Fulton*, 593 U.S. at 534, 537. So it “may not refuse to extend
 19 that system” to accommodate Mr. Averkiev “without compelling reason.” *Id.* at 534
 20 (citation omitted).

21 The policy also fails the neutrality prong. The government “fails to act
 22 neutrally when it proceeds in a manner intolerant of religious beliefs.” *Id.* at 533. Or
 23 when it “treat[s] *any* comparable secular activity more favorably than religious
 24 exercise.” *Tandon v. Newsom*, 593 U.S. 61, 62 (2021). Even “subtle departures from
 25 neutrality” trigger strict scrutiny. *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm’n*,

1 584 U.S. 617, 638 (2018) (citation modified). And a policy’s “effect ... is strong
2 evidence of its object.” *Lukumi*, 508 U.S. at 535.

3 Here, the District’s no-opt-out policy relegates Mr. Averkiev’s religious beliefs
4 to second-class status compared to similar secular activity. Most notably the
5 District elevates secular objections to sex education and surveys above Mr.
6 Averkiev’s religious beliefs. This non-neutral treatment under the Free Exercise
7 Clause reveals the District’s targeting of religious beliefs about sex and gender like
8 those held by Mr. Averkiev.

9 After *Mahmoud*, the District knows that the “burden” its no-opt-out policy
10 imposes “in practical terms, falls on [religious] adherents.” *Lukumi*, 508 U.S. at
11 536–37. For many religious parents, “the religious education of children is not
12 merely a preferred practice but rather a religious obligation.” *Mahmoud*, 606 U.S.
13 at 547. The District is “doubtless aware” of “substantial religious communities
14 whose members hold traditional views on marriage, sex, and gender.” *Id.* at 567.
15 Yet its policy disproportionately burdens these communities’ beliefs. *Bates v.*
16 *Pakseresht*, 146 F.4th 772, 794 (9th Cir. 2025).

17 The disproportionate impact on religious families is itself evidence of
18 targeting. Policies that stand “in opposition to more traditional understandings of
19 sexuality and gender” and whose burdens fall predominantly on religious adherents
20 raise the specter of non-neutrality. *Id.* at 794–95. Although the District may believe
21 it acts in students’ best interests, that belief “does not make [its] policy neutral
22 toward religion.” *Id.* at 795. Because the policy “implicate[s] uniquely religious
23 matters that prove most problematic for parents who view these issues through a
24 traditional religious lens,” it fails the neutrality requirement. *Id.*

25 Because the District’s policy is neither generally applicable nor neutral, it
26 triggers strict scrutiny under the First Amendment.
27

1 **iii. The District’s policy triggers strict scrutiny because it**
 2 **imposes an unconstitutional condition on free exercise.**

3 LGBTQ+ curricula and requirements hang over Mr. Averkiev’s head every
 4 day his son attends school. By denying Mr. Averkiev notice and opt outs, the
 5 District has conditioned his son’s access to public education on his “willingness to
 6 accept a burden on [his] religious exercise.” *Mahmoud*, 606 U.S. at 561 (citation
 7 omitted). But “[p]ublic education is a public benefit,” and the government may not
 8 coerce families into surrendering their rights to obtain it. *Id.*; see *Trinity Lutheran*
 9 *Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 458 (2017).

10 By “conditioning the availability of benefits” on Mr. Averkiev’s willingness to
 11 accept a burden on his right to direct his son’s religious upbringing, the District
 12 “effectively penalizes the free exercise of religion.” *Carson*, 596 U.S. at 780 (citation
 13 modified). A policy “that operates in that manner ... must be subjected to ‘the
 14 strictest scrutiny.’” *Id.* (quoting *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464,
 15 478 (2020)). For this additional reason, strict scrutiny applies here.

16 **B. The District’s policy violates Mr. Averkiev’s parental rights.**

17 The Fourteenth Amendment “provides heightened protection against
 18 government interference with certain fundamental rights and liberty interests.”
 19 *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality op.) (citation modified); see, e.g.,
 20 *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). The government may not “infringe” a
 21 fundamental right “unless the infringement is narrowly tailored to serve a
 22 compelling state interest.” *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)
 23 (citation modified).

24 The right to direct the upbringing and education of children “is perhaps the
 25 oldest” fundamental right. *Troxel*, 530 U.S. at 65. It rests on a foundational truth:
 26 “[t]he child is not the mere creature of the state.” *Pierce v. Soc’y of Sisters*, 268 U.S.
 27

1 510, 535 (1925). When it comes to “important decisions” concerning their children,
 2 parents have the preeminent “guiding role.” *H.L. v. Matheson*, 450 U.S. 398, 410
 3 (1981) (citation modified).

4 *Mirabelli* held that the fundamental parental right applies “during school
 5 hours” and includes the right not to be “shut out of participation” in “consequential
 6 decisions regarding their children’s mental health and wellbeing.” 607 U.S. at 497.
 7 The same reasoning applies here. By refusing Mr. Averkiev’s notice and opt-out
 8 requests, the District has shut him out of consequential decisions about what his
 9 child is taught regarding marriage, sex, and gender—not to mention his son’s
 10 participation in events that affirm the District’s viewpoint on these matters and
 11 contravene his own. *See City of Huntington Beach*, 2026 WL 1785110, at *3–4.

12 Like the Board in *Mahmoud*, which would “not notify parents” ahead of time
 13 or allow them to opt out, the District here denies notice and an ability to opt out.
 14 606 U.S. at 560. Without notice, parents cannot protect their children from
 15 instruction that threatens to undermine the religious beliefs and practices they
 16 wish to instill. *See id.*

17 The District cannot satisfy its constitutional obligation by offering to provide
 18 “curriculum information as required by District policy and state law.” Ex. 5. Mr.
 19 Averkiev asked for specific, advance notice—including “[t]he date, time, location,
 20 staff involved,” and “[c]omplete copies of all materials”—before any LGBTQ+
 21 instruction occurs. Ex. 4. But the District refused, claiming such notice is neither
 22 “feasible” nor permitted by “state law.” Ex. 5. Both claims fail.

23 As to feasibility, the District already demonstrates that providing notice and
 24 opt outs is feasible. It provides specific notice, curriculum materials, and alternative
 25 activities for sex education, and it affords written notice and opt-out rights for
 26 surveys. *See id.* The same administrative mechanisms can readily accommodate Mr.
 27

1 Averkiev’s requests for notice and opt outs from any LGBTQ+ instruction. If the
 2 District “can structure the [sex education] curriculum to more easily accommodate
 3 opt outs, it could structure instruction” on LGBTQ+ topics “similarly.” *Mahmoud*,
 4 606 U.S. at 567.

5 As to the law, passive access to generic “curriculum information” does not
 6 satisfy *Mahmoud*’s demands: what’s required is notice “in advance whenever one of
 7 the books in question *or any other similar book is to be used in any way.*” 606 U.S. at
 8 569 (emphasis added). The Court need not “wait and see” how the District will act
 9 on a particular day “before evaluating the parents” constitutional claims. *Id.* at 560.
 10 It need only decide whether—if the District follows its policy—“a burden on”
 11 parents’ right to direct their children’s upbringing and education “will occur.” *Id.* It
 12 will. And it already has. Plus, curriculum access would not have revealed the Pride
 13 Month lesson that S.A. sat through anyway because gender-change surgery
 14 appeared nowhere in the slides the school belatedly provided Mr. Averkiev.

15 Nor does passive access to curriculum information even attempt to satisfy
 16 *Mirabelli*’s requirement that parents be allowed to meaningfully participate in
 17 “consequential decisions” about their “children’s mental health.” 607 U.S. at 497.
 18 The curriculum does not reflect all circumstances where District employees
 19 interfere with these consequential decisions—just as the Pride Month slides did not
 20 reflect the gender-change discussion S.A.’s teacher led. Staff make daily decisions
 21 about what to discuss in class, what to address in an assembly, and what to say in a
 22 counseling session—decisions that can deeply affect a child’s understanding of sex,
 23 gender, and identity. Passive access to curricular information gives Mr. Averkiev no
 24 voice in those decisions and no opportunity to shield his son. That is “shut[ting him]
 25 out.” *Id.*

1 The District’s refusal to excuse S.A. from individual discussions and
 2 counseling sessions with District staff on LGBTQ+ topics is squarely at odds with
 3 *Mirabelli*. One-on-one conversations or counseling sessions between District staff
 4 and a 10-year-old about sex and gender identity implicate the kind of “consequential
 5 decisions” that affect a child’s “mental health and wellbeing.” *Id.* at 501 (Barrett, J.,
 6 concurring). Yet the District categorically refuses to provide any notice before such
 7 discussions occur or to allow Mr. Averkiev to opt his son out. Ex. 5. That alone
 8 warrants injunctive relief.

9 The District’s insistence that S.A. must use biologically inaccurate pronouns
 10 when talking with fellow students also burdens Mr. Averkiev’s parental rights. Mr.
 11 Averkiev sincerely believes that using such language affirms a fundamental
 12 falsehood about humanity. Compl. ¶¶ 45, 48. And forcing his son to do so
 13 undermines Mr. Averkiev’s right to direct his upbringing and education.

14 Because the District’s policy violates Mr. Averkiev’s fundamental parental
 15 rights, it is subject to strict scrutiny.

16 **C. The District’s no-opt-out policy fails strict scrutiny.**

17 The District must prove that denying each of Mr. Averkiev’s requests
 18 “furthers a compelling governmental interest and is narrowly tailored to that end.”
 19 *Reed v. Town of Gilbert*, 576 U.S. 155, 171 (2015). It cannot meet that standard.

20 **i. The District lacks a compelling interest.**

21 The District must show a compelling interest in denying Mr. Averkiev’s
 22 *specific* requests—not just a general interest underlying its policy. *Fulton*, 593 U.S.
 23 at 541. Mr. Averkiev seeks notice and opt outs only for his son. But the District
 24 complains about broad administrability concerns with providing notice and opt outs.
 25 *Mahmoud* rejected similar administrability concerns because the government
 26 “cannot escape its obligation to honor parents’ free exercise rights by deliberately
 27

1 designing its curriculum to make parental opt outs more cumbersome”—
 2 particularly when opt outs are available for similar instruction. 606 U.S. at 567.
 3 Nothing in *Mirabelli* suggests that administrative convenience would ever justify
 4 “cut[ting] out the primary protectors of children’s best interests: their parents.” 607
 5 U.S. at 496–97.

6 Nor can the District justify its no-opt-out policy by citing its general interest in
 7 preventing discrimination against LGBTQ+ students. The Pride Month slides were
 8 far more than mere anti-bullying literature—they instructed S.A. on terms like
 9 “homophobia” and condemned dissenting viewpoints. And no anti-bullying interest
 10 justifies teaching 10-year-olds about gender-change surgery without parental
 11 consent. Simply put, the District cannot “purport to rescue” LGBTQ+ students from
 12 discrimination by discriminating against religious families. *Mahmoud*, 606 U.S. at
 13 568. Mr. Averkiev is not asking to exclude anyone—he’s just asking to excuse his
 14 son from lessons.

15 The historical precedent necessary to establish a compelling interest is also
 16 lacking. The District cannot “identify any tradition of teaching sexuality and gender
 17 identity to young children—much less a tradition of preventing parents from opting
 18 their children out of such instruction.” *Id.* at 583 (Thomas, J., concurring). Rather,
 19 our history and tradition recognize the opposite: parents’ fundamental right to
 20 direct their children’s upbringing and education. *Id.* at 547.

21 Nor has the law ever compelled students to affirm by word or act biological
 22 falsehoods at odds with their parents’ faith. *See Barnette*, 319 U.S. at 642 (“[N]o
 23 official, high or petty, can prescribe what shall be orthodox in politics, nationalism,
 24 religion, or other matters of opinion or force citizens to confess by word or act their
 25 faith therein.”); *Waln v. Dysart Sch. Dist.*, 54 F.4th 1152, 1158 (9th Cir. 2022)
 26 (recognizing that religious expression at school is “doubly protect[ed]” under the
 27

Free Speech and Free Exercise Clauses). Requiring S.A. to use biologically inaccurate pronouns that conflict with the religious beliefs his father is instilling in him—on pain of discipline—compounds the burden on Mr. Averkiev’s right to direct his son’s religious upbringing.

In short, the District has no compelling interest that justifies this intrusion through instruction, at-school gender transitioning, or compelled pronoun usage.

ii. The District’s policy is not narrowly tailored.

The District’s policy also fails narrow tailoring. The District provides notice and opt outs for sex education and surveys—proving that notice and opt outs are feasible. *See* Ex. 5. When planning those accommodations, the District provides notice and alternative activities, ensuring students can participate in school without surrendering their constitutional rights.

But when Mr. Averkiev seeks the same accommodations from LGBTQ+ instruction outside of sex education, the District refuses. If it “can structure the [sex education] curriculum to ... accommodate opt outs, it could structure instruction concerning” LGBTQ+ materials “similarly.” *Mahmoud*, 606 U.S. at 567. Notably, “[s]everal States across the country permit broad opt outs from discrete aspects of the public school curriculum without widespread consequences.” *Id.* at 568.

The District’s accommodation of other student needs further undermines any narrow-tailoring defense. Like other school districts nationwide, the District routinely provides individualized programming for students with Individualized Education Programs (IEPs) and multilingual learners—removing them from standard instruction for specialized services. *See* Ex. 14, Multilingual Learners; Ex. 15, Special Services. The District also permits students to miss class for “religious or cultural purposes” and “observance of a religious holiday.” Ex. 16, Procedure Excused and Unexcused Absences, 3122P. If the District can administer these

1 accommodations without upending its mission, it can easily provide notice and opt
2 outs for one family's religious objections to specific LGBTQ+ content.

3 The District "has failed to offer any showing that it has even considered less
4 restrictive measures." *Fellowship of Christian Athletes*, 82 F.4th at 694. "[W]hen so
5 many [other schools] offer an accommodation," the District "must, at a minimum,
6 offer persuasive reasons why it believes that it must take a different course." *Holt v.*
7 *Hobbs*, 574 U.S. 352, 369 (2015). Its statement to Mr. Averkiev that LGBTQ+ topics
8 may arise "naturally during classroom instruction" does not excuse failing to
9 provide notice and opt outs for school-led instruction—such as Pride Month lessons
10 and events. Ex. 5. The District's "practically impossible" argument proves too much:
11 it would excuse any constitutional violation that is inconvenient to remedy. *Id.*; see
12 *Mahmoud*, 606 U.S. at 567. "There is no *de maximis* exception to the" Constitution.
13 *Mahmoud*, 606 U.S. at 567. And if the District cannot justify teaching these topics
14 to Mr. Averkiev's son, it cannot justify the "greater" intrusion of unconsented
15 gender counseling. *Mirabelli*, 607 U.S. at 496.

16 As for pronouns, the District cannot justify its vague interest by forcing S.A. to
17 speak what is not in his mind. The "freedom to differ is not limited to things that do
18 not matter much," and S.A.'s abstention from mouthing the District's viewpoint on
19 sex and gender cannot be punished without "invad[ing] the sphere of intellect and
20 spirit which it is the purpose of the First Amendment to our Constitution to reserve
21 from *all* official control." *Barnette*, 319 U.S. at 642 (emphasis added). The
22 Constitution does not "permit an exception." *Id.*

23 **II. Mr. Averkiev and his son will suffer irreparable harm.**

24 "The loss of First Amendment freedoms, for even minimal periods of time,
25 unquestionably constitutes irreparable injury." *Mahmoud*, 606 U.S. at 569
26 (citation modified); see also *Mirabelli*, 607 U.S. at 497. Without an injunction, Mr.
27

1 Averkiev “will continue to be put to a choice: either risk [his] child’s exposure to
 2 burdensome instruction [and requirements], or pay substantial sums for
 3 alternative educational services.” *Mahmoud*, 606 U.S. at 569. Every day without
 4 relief is a day his constitutional rights are violated.

5 S.A.—now a 10-year-old child—also faces irreparable harm. Because he is
 6 young and “susceptib[le] to peer pressure” and to accepting “without question any
 7 moral messages conveyed by [his] teachers’ instruction,” *id.* at 551, 554–55
 8 (citation omitted), each day without an injunction is a day the District may
 9 pressure him to act and speak in a manner that “sharply conflicts with the
 10 religious beliefs” his father wishes to instill in him, *id.* at 553. It has already
 11 happened once. An injunction is needed to prevent it from happening again.

12 **III. The balance of equities and public interest favor Mr. Averkiev.**

13 The balance of equities and public interest—which “merge when the
 14 Government is the opposing party,” *Nken v. Holder*, 556 U.S. 418, 435 (2009)—
 15 favor Mr. Averkiev. “[I]t is always in the public interest to prevent the violation of
 16 a party’s constitutional rights.” *Fellowship of Christian Athletes*, 82 F.4th at 695
 17 (citation modified). And “serious First Amendment questions ... alone compel[] a
 18 finding that the balance of hardships tips sharply in [his] favor.” *Id.* (citation
 19 modified).

20 An order protecting Mr. Averkiev’s free-exercise and parental rights does
 21 not require the District to change its curriculum for other students—only to
 22 provide notice and opt outs for his son. And such an order ensures that Mr.
 23 Averkiev can protect his son from the District leading him down potentially risky
 24 paths, such as the road toward gender transition. “Everyone agrees that children’s
 25 safety is the overriding equity.” *Mirabelli*, 607 U.S. at 497.

1 That means an injunction “is both equitable and in the public interest.”
 2 *Mahmoud*, 606 U.S. at 569. The Constitution demands immediate injunctive relief.

3 CONCLUSION

4 The District has refused Mr. Averkiev the notice and opt outs the
 5 Constitution guarantees. It has forced him to choose between surrendering his
 6 sacred duty to guide his son’s religious upbringing or withdrawing him from public
 7 school. Compelling that choice violates the Free Exercise Clause and his
 8 fundamental parental rights. Mr. Averkiev is likely to succeed on the merits. He
 9 faces irreparable harm every day his rights are denied. And the balance of equities
 10 and public interest demand relief. This Court should grant a preliminary injunction.

11 Respectfully submitted this 22nd day of September, 2026.

12 By: s/ Katherine L. Anderson

13 Katherine L. Anderson

14 WSBA #41707

15 ALLIANCE DEFENDING FREEDOM

16 15100 N. 90th Street

17 Scottsdale, Arizona 85260

18 Telephone: (480) 444-0020

19 Facsimile: (480) 444-0025

20 kanderson@ADFlegal.org

21 By: s/ David A. Cortman

22 David A. Cortman*

23 GA Bar No. 188810

24 ALLIANCE DEFENDING FREEDOM

25 1000 Hurricane Shoals Rd. NE

26 Ste. D-1100

27 Lawrenceville, GA 30043

Telephone: (770) 339-0774

Facsimile: (770) 339-6744

dcortman@ADFlegal.org

By: s/ Noel W. Sterett

Noel W. Sterett*

IL Bar No. 6292008

By: s/ Dalton A. Nichols

Dalton A. Nichols*

IN Bar No. 37499-71

ALLIANCE DEFENDING FREEDOM

44180 Riverside Parkway

Lansdowne, VA 20176

Telephone: (571) 707-4655

Facsimile: (571) 707-4790

nsterett@ADFlegal.org

dnichols@ADFlegal.org

Attorneys for Plaintiff Konstantin Averkiev

*Admitted *pro hac vice*

CERTIFICATE OF COMPLIANCE

I certify that the motion contains 6,858 words, in compliance with Local Civil Rule 7(e)(4).

s/ Katherine L. Anderson
Katherine L. Anderson
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of September, 2026, I served the foregoing document on Sarah Mack, counsel for Defendants, via email and first class U.S. mail.

s/ Katherine L. Anderson
Katherine L. Anderson
Counsel for Plaintiff