



Thomas More
SOCIETY

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**Re: Kirkwood Middle School's violation of parents' First Amendment rights
under *Mahmoud v. Taylor***

Dear Superintendent Roumpos and Principal Liberton,

We are attorneys for the Thomas More Society, a national non-profit public interest law firm dedicated to defending the rights of individuals and organizations across the country for the past 30 years. We represent Kirkwood for Educational Integrity ("KFEI"), an association of parents and community members committed to protecting concerned parents' fundamental rights to direct the upbringing and education of their children attending Kirkwood School District.

We are aware that on and since October 23, 2025, North Kirkwood Middle School has violated many Kirkwood parents' First Amendment rights as recently clarified by the U.S. Supreme Court's decision in *Mahmoud v. Taylor*. In short, on October 23, 2025, North Kirkwood Middle School presented a highly controversial, school-wide announcement video overtly celebrating October as "LGBTQ+ History Month" without giving parents, many of whom have deeply held religious values conflicting with the alleged norms celebrated in the video, any prior notice or opportunity to opt their children out of viewing the video. We are further aware that at least one North Kirkwood Middle School teacher has made the same highly controversial video available within the curricular application "Schoology" to at least one class of North Kirkwood

Middle School students, similarly without providing parents any prior notice or opportunity to opt their children out of having access to or viewing the video. In both of these circumstances, notice and opportunity to opt out is clearly required under *Mahmoud*.

I. Background

North Kirkwood's school-wide "October 23rd, 2025 News" announcement video included a more-than-three-and-a-half-minute segment (more than half the length of the entire "announcement") actively promoting and celebrating the designation of October as "LGBTQ+ History Month." The video featured a script recited in turns by a cadre of students characterizing the LGBTQ+ "Pride" movement and related ideas and conduct as worthy of celebration. While the students read their assigned lines, a continuous series of photographs of rainbow flags, "Pride" parades, police raids, immodestly (or half- or cross-dressed) individuals, "We Resist" and "Gay Liberation Day" signs, and numerous other controversial images paraded across the screen.

Throughout the video, the student narrators informed their fellow students that, among other things:

- "Pride" is "more than just a big party" but also "celebrates people being true to themselves."
- "Years ago" being "openly LGBTQ+ was difficult and dangerous" and "everything changed" for the good during the "Stonewall Uprising," thanks in part to "brave activists like Marsha P. Johnson [a self-identified 'drag queen'] and Sylvia Rivera [a self-identified 'transvestite']," which led to "speak[ing] up" for "LGBTQ+ rights" across the world.
- The "Christopher Street liberation day march" was the first "Pride parade" that served as a way for self-identified LGBTQ+ individuals to "step out of the shadows" and "show the world who they were," because "being yourself is something to celebrate, not hide."
- "Pride" is about "being proud of your identity."
- "Pride month" is "celebrated" with "parades, festivals, and flags full of bright colors." The rainbow flag was created as a "symbol of love, acceptance, diversity, and hope."
- Newer versions of the "Pride flag" include the "progress pride flag" adding "black and brown to highlight the inclusion of people of color," along with "pink, blue,

and white to include the ‘trans’ community.” “This evolution shows that the movement is growing and working hard to include *everyone*.”

- “The Pride community today is a huge and amazing group”; “it’s a supportive family.”
- “Pride reminds us to[:] Be proud of who you are[,] Stand up for fairness and equality[,] Support Others” [as also displayed in illustrated text on the video], “no matter who they love or how they identify.”
- “It started as a protest, and today it’s also a celebration of courage, history, and community.” “Supporting ‘Pride’ means supporting equality, kindness, and the right to be yourself.”
- “HAPPY LGBTQ+ HISTORY MONTH” [shouted by student-narrators in unison, and as further displayed in illustration on video].

The full video presentation, starting at 02:05, is available at the following link:

<https://www.youtube.com/watch?v=LzpmZ2ooX0o>.

Since October 23, this video has been continuously available via Kirkwood Middle School devices to at least one Kirkwood Middle School class within the curricular application “Schoolology.”

It is our understanding that, prior to airing it to all students or making it available electronically to students, North Kirkwood Middle School failed to give parents prior notice of this video or the opportunity to excuse their children from viewing it. Also unknown is whether the parents of the young children narrating the video’s highly controversial script, and parents of any children involved in production of the video and script, had prior notice or the opportunity to request that their children be excused from such activity.

II. *Mahmoud v. Taylor*

Given these facts as we understand them, your school’s actions have violated, and continue to violate, the First Amendment rights of many North Kirkwood parents, as clarified by the Supreme Court’s landmark recent decision in *Mahmoud v. Taylor*, 145 S. Ct. 2332 (June 27, 2025). Specifically, *Mahmoud* recognized that parents’ right “to direct the religious upbringing of their children . . . extends to the choices that parents wish to make for their children outside the home.” *Id.* at 2351. That right “would be an empty promise if it did not follow those children into the public school classroom.” *Ibid.* The Supreme Court “ha[s] thus recognized limits on government’s ability to interfere with a student’s religious upbringing in a public school setting.” *Ibid.*

Based on these core principles, the Supreme Court went on to hold that a government school like yours “burdens the religious exercise of parents when it requires them to submit their children to instruction that poses ‘a very real threat of undermining’ the religious beliefs and practices that the parents wish to instill.” *Mahmoud*, 145 S. Ct. at 2342. And, in particular, the government school that was before the Court “substantially interfere[d] with the religious development of [religious parents’] children” by the “introduction of [] ‘LGBTQ+inclusive’ storybooks—combined with its decision to withhold notice to parents and to forbid opt outs.” *Id.* at 2353.

The Supreme Court made clear that *any* “educational requirement or curricular feature,” and *any* “instruction or materials,” can “substantially interfere[e] with the religious development of a child” depending on the parent’s particular religious beliefs and the nature of the material at issue. *Ibid.* Courts must consider “the specific context” in which the “instruction or materials at issue are presented,” and whether “they are presented in a neutral manner, or . . . in a manner that is ‘hostile’ to religious viewpoints and designed to impose upon students a ‘pressure to conform.’” *Ibid.*

Importantly for your purposes, if a government school’s “instruction or materials” would substantially interfere with or threaten to undermine the religious beliefs parents are attempting to instill in their children, those **parents must be afforded notice and the opportunity to opt-out their children from viewing the materials—unless the school can show that denying notice and opt-outs would satisfy “strict scrutiny,”** the most rigorous test in constitutional law. *Id.* at 2361.

III. North Kirkwood Middle School violated the First Amendment under *Mahmoud*.

North Kirkwood Middle School’s subjection of all students to a video presentation promoting and celebrating LGBTQ+, transgender, and “Pride” activities and ideas openly violated *Mahmoud* by ignoring the rights of religious parents who are attempting to instill in their children religious values that are inconsistent with this content. Its continuous provision of the same video to any students, on Schoology or by any other means, without providing their parents with notice and opportunity to opt their children out, is a continuing violation of the same nature.

A. Substantial interference with parental religious rights.

North Kirkwood’s LGBTQ+ History Month video substantially interfered with and threatened to undermine parental religious beliefs that hold marriage exists only between one man and one woman; that sex is biological and binary; and that lifestyles contradicting these principles are not to be promoted or celebrated.

First, the school-wide announcement video easily constituted an “instruction” or “material” akin to the LGBTQ+ storybooks in *Mahmoud*. The video clearly presented official school messaging and included a statement from Assistant Principal Jordan Hohm. Further, its depiction and explanation of “LGBTQ+ History Month” was “unmistakably normative,” as it was “clearly designed to present certain values and beliefs as things to be celebrated and certain contrary values and beliefs as things to be rejected.” *Mahmoud*, 145 S. Ct. at 2353; *see also id.* at 2354 (deeming it “significant” that the LGBTQ+ storybooks there “presente[d] acceptance of same-sex marriage as a perspective that should be celebrated”). Such material “carr[ies] with [it] a very real threat of undermining the religious beliefs that the parents wish to instill in their children” by “impos[ing] upon children a set of values and beliefs that are ‘hostile’ to their parents’ religious beliefs.” *Id.* at 2355 (internal quotes omitted). Like the LGBTQ+ books in *Mahmoud*, the North Kirkwood Middle School’s video’s celebratory manner of describing LGBTQ+ “Pride” and related conduct and beliefs “exert[ed] upon children a psychological pressure to conform to [the video’s] specific viewpoints,” thus “present[ing]” an “objective danger” to the religious values their parents are attempting to instill in them. *Ibid.* (internal quotes omitted).

Indeed, *Mahmoud* observed that “[m]any Americans, like the parents in th[a]t case, believe that biological sex reflects divine creation, that sex and gender are inseparable, and that children should be encouraged to accept their sex and to live accordingly.” *Ibid.* Additionally, “[m]any Americans ‘advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned.’” *Id.* at 2353 (quoting *Obergefell v. Hodges*, 576 U.S. 644, 679 (2015)).

Therefore, just like the books at issue in *Mahmoud*, North Kirkwood Middle School’s video “present[ed] as a settled matter a hotly contested view of sex and gender [and marriage] that sharply conflicts with the religious beliefs that [many] parents wish to instill in their children.” *Mahmoud*, 145 S. Ct. at 2354. Accordingly, “[s]uch instruction carries with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent.” *Id.* at 2356 (internal quotes omitted). By failing to provide notice and opt-out opportunities *before* it presented the video, North Kirkwood Middle School cognizably “burden[ed]” many “parents’ right to the free exercise of religion.”

B. North Kirkwood Middle School’s conduct cannot withstand strict scrutiny.

For the reasons set forth above and in the *Mahmoud* case, North Kirkwood Middle School’s conduct was not constitutionally permissible unless it can survive the crucible of strict scrutiny. It plainly cannot.

“To survive strict scrutiny, a government [school] must demonstrate that its policy advances interests of the highest order and is narrowly tailored to achieve those interests.” *Mahmoud*, 145 S. Ct. at 2351 (cleaned up). In *Mahmoud*, the school failed strict scrutiny even

where it alleged that opt outs “would result in significant disruptions to the classroom environment” and “expose certain students to social stigma and isolation.” *Id.* at 2362 (internal quotes omitted). But the school already allowed opt outs for “noncurricular activities” (e.g., school sports) and sex-ed “unit[s] of instruction,” and already provided “independent, parallel programming for many other students, such as” emergent multilingual learners or special education students on an individualized educational program. *Id.* The school thus could not contend that similar opt-out opportunities for religious reasons were not possible.

The Supreme Court also rejected the school’s attempt to argue that allowing opt outs would impractically result in “unsustainability high numbers of absent students.” *Ibid.* The Court held that the school’s “concern [was] self-inflicted.” *Id.* at 2362-63. In other words, the burden of allowing many opt outs came from the frequency and offensiveness of objectionable content in the school’s curriculum, not from the opt out requirement. “When it comes to instruction that would burden the religious exercise of parents, the [school] cannot escape its obligation under the Free Exercise Clause by crafting a curriculum that is so burdensome that a substantial number of parents elect to opt out. There is no *de maximis* exception to the Free Exercise Clause.” *Id.* at 2363.

The same is plainly true here. North Kirkwood Middle School surely already allows case-by-case opt-outs and other individualized learning accommodations for non-curricular activities, multilanguage learners, special education students, sex ed, and other reasons. Moreover, unlike the *ad hoc* reading of numerous LGBTQ+ storybooks in *Mahmoud*, both airing and posting the video at issue here were discrete and intentional (and thus pre-planned) events. And, like in *Mahmoud*, your school is “doubtless aware of the presence in [your school district] of substantial religious communities whose members hold traditional views on marriage, sex, and gender.” *Ibid.* Accordingly, it was all the more feasible and obligatory for North Kirkwood to provide notice and an opportunity for opt outs *before* exposing children to this video.

Accordingly, North Kirkwood’s actions have violated, and continue to flagrantly violate, the First Amendment rights of numerous religious parents whose children attend school there.

IV. Consequences

In *Mahmoud*, the Supreme Court specifically directed that the government school must “notify [parents] in advance whenever one of the books in question or *any other similar book* is to be used *in any way* and to allow them to have their children excused from that instruction.” *Mahmoud*, 145 S. Ct. at 2364 (emphasis).

Therefore, consistent with *Mahmoud*, North Kirkwood Middle School must likewise immediately cease and desist from presenting the October 23rd, 2025, News” celebratory video of “LGBTQ+ History Month” in any form, including its continued availability to students via Schoology or any other electronic application, and including on the school’s public web presence

as a school “announcement,” without first providing advance notice to parents and the opportunity to opt out their children from viewing such material, pursuant to parents’ First Amendment rights to direct the religious upbringing of their children.

North Kirkwood must also immediately refrain from “us[ing]” “other similar” “instruction or material” without providing meaningful advance notice and opt-out opportunities. For example, we understand that Kirkwood School District provides access to sexually explicit materials to students through the “Sora” reading app without providing parents sufficient notice of the nature of the sexually explicit material available on such app. This defect must be corrected immediately to comply with *Mahmoud*.

Additionally, it is blackletter law that a violation of First Amendment rights “requires an award of nominal damages.” *Risdal v. Halford*, 209 F.3d 1071, 1072 (8th Cir. 2000); *Lowry ex rel. Crow v. Watson Chapel School Dist.*, 540 F.3d 752, 762 (8th Cir. 2008).

Because North Kirkwood Middle School already violated religious parents’ First Amendment rights by presenting the celebratory video of “LGBTQ+ History Month” without advance notice and the opportunity to opt out, it is liable for nominal damages right now and will remain so for at least the next five years. *See Sulik v. Taney Cnty., Mo.*, 393 F.3d 765, 766-67 (8th Cir. 2005) (holding the statute of limitations for actions under 42 U.S.C. § 1983 in Missouri is five years, consistent with Missouri’s statute of limitations for personal injury claims).

Additionally, North Kirkwood Middle School is engaging *ongoing* violations of First Amendment rights by continuing to maintain the “LGBTQ+ History Month” video on students’ Schoology or any other electronic application, and on the school’s public web presence as a school “announcement,” without first providing advance notice to parents and the opportunity to opt out.

If North Kirkwood Middle School does not immediately cease and desist from these actions, the Thomas More Society intends to bring a legal action vindicating any parent’s, or association of parents’ (including KFEI’s), First Amendment rights, including an action for injunctive and declaratory relief to prevent any such future violations by North Kirkwood Middle School or any other school in the Kirkwood School District. In doing so, we will also seek substantial attorney fees and expenses pursuant to 42 U.S.C. § 1988 for the time and costs required to vindicate our clients’ First Amendment rights. Make no mistake: based on our track record of First Amendment victories and fee recoveries across the country (including by undersigned counsel), those amounts are likely to be substantial and a significant burden on the Kirkwood taxpayers for years to come.

To be clear: the Kirkwood School District is presently vulnerable to legal action for damages (and attorney fees) based (at least) on their airing and posting of the aforementioned video without providing parents with notice and a chance opt out. Increasing liability will accrue

with every similar instance of instruction on obviously controversial subjects, and with each parental opt out request on the grounds of religion that the Kirkwood School District fails immediately to implement.

Of course, all that can, and should, be avoided by Kirkwood School District immediately coming into compliance with *Mahmoud*. We have attached a model policy that outlines one system of notice and opt outs that would bring Kirkwood School District into such compliance.

V. Conclusion

Please respond within one week (7 days) confirming, and explaining how, Kirkwood School District will comply with *Mahmoud* going forward, including with respect to the violations discussed above. You are in receipt of our model guidance on compliance, and we would welcome the opportunity to work with you to see that it is adopted by the Kirkwood School District Board of Education and implemented appropriately.

Should you have any questions, please let us know.

Sincerely,



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