



Thomas More
SOCIETY

April 7, 2026

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Re: Kirkwood School District’s obligations under *Mahmoud* and *Mirabelli* to provide notice and opt out from upcoming LGBTQ+ “Day of Silence” activism

Ms. Moutray and Ms. Brasher:

As you are aware from our previous correspondence, North Kirkwood Middle School has a history of violating Kirkwood parents’ First Amendment rights, as recently clarified by the U.S. Supreme Court’s decision in *Mahmoud v. Taylor*, 606 U.S. 522 (2025), by presenting, last October, 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. NKMS made their violation more grave by providing continuing access to that video to some students within the curricular application “Schoology,” 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, parental notice and opportunity to opt out were clearly required under *Mahmoud*. (Letter of TMS to Kirkwood School District, dated October 30, 2025)

In response to correspondence from Thomas More Society informing Kirkwood School District of their obligations to parents under *Mahmoud*, North Kirkwood Middle School removed access to the video from affected students’ school devices. You also committed your client, Kirkwood School District, to “full compliance with the [*Mahmoud*] decision,” including by “respond[ing] to requests for religious accommodations by District students and parents

promptly upon receipt.” (E-mail correspondence from Counsel for KSD to TMS dated November 26, 2025)¹

Since these events, our firm secured a landmark victory at the Supreme Court in *Mirabelli v. Bonta*, 146 S. Ct. 797 (March 2, 2026), further strengthening and clarifying parents’ rights against their children’s schools. In that case, brought by the undersigned on behalf of teachers and parents in the State of California who objected to that state’s gender-transition-secrecy policy, the Supreme Court confirmed the longstanding principle that all parents have a Fourteenth Amendment due process right to guide their children’s upbringing and education, including during the school day.²

Particularly in light of these past events and recent legal developments, we are disappointed that a recent communication to parents at North Kirkwood Middle School makes clear that Kirkwood School District once again proposes to violate the rights of parents by airing another video supporting LGBTQ+ ideas and beliefs during official school announcements with inadequate parental notice and no notice of parents’ right to opt their children out of viewing such a video.

Worse, the new video promotes the District’s intention to facilitate student participation in a “National Day of Silence” demonstration in support of LGBTQ+ causes that will span an entire day of instruction at North Kirkwood Middle School on Friday, April 10. (We are unaware of any attempt, as yet, to notify parents in other Kirkwood School District schools of this upcoming protest and their right to opt out, though other schools are known to have hosted the same demonstration in past years.) The school-sponsored “Day of Silence”—which involves student silence throughout the day, including in the hallways, in uniform protest of alleged ongoing discrimination against LGBTQ individuals—“exerts upon children a psychological pressure to conform,” *Mahmoud*, 606 U.S. at 554, by refraining from speaking lest a student be viewed by fellow students and staff as discriminatory.

As we have explained before, under the *Mahmoud* decision, and as confirmed in *Mirabelli*, if Kirkwood School District insists on engaging in “unmistakably normative” LGBTQ+ advocacy at school, including by making school-wide announcements and hosting public protests promoting LGBTQ+ ideas and beliefs, it has a legal obligation to notify all parents in advance and allow them to opt their children out. Along with this opt out,

¹ We also still intend to respond to your March 13, 2026, email regarding Kirkwood School District’s failure to adequately notify parents of inappropriate materials on its SORA app, including in library “preview” function and on “MOREnet,” but Kirkwood’s promotion of an “unmistakably normative” LGBTQ+ “Day of Silence” presents an intervening exigency.

² The District Court in *Mirabelli* recently ordered the State of California to pay \$4,818,675.20 in fees and costs for the work of Thomas More Society attorneys in that court, not including fees and costs incurred in the Ninth Circuit and Supreme Court. *See* Ord., Dkt. #366 (April 2, 2026).

Kirkwood School District must provide affected students with adequate alternative instruction that is free from the pressure imposed by a school-sponsored, public expectation of silence.

Your November 26, 2025, e-mail invited parents to “direct any requests for religious accommodations to the District’s Assistant Superintendent for Student Services, Dr. Matthew Bailey.” (E-mail correspondence from Counsel for KSD to TMS dated November 26, 2025) Thomas More Society has advised parents in submitting such requests. **We expect all requests to be honored in full accord with *Mahmoud* and *Mirabelli*, including with Kirkwood School District’s provision of suitable alternate instruction for the entire length of the school-sponsored LGBTQ+ video and protest.**

I. Background

According to an e-mail newsletter sent to North Kirkwood Middle School (“NKMS”) parents on April 1, 2026, from the Kirkwood School District e-mail address “nkmsnews@kirkwoodschoools.org,” NKMS will transmit to students during Homeroom on April 8, 2026, a video that promotes LGTBQ+ ideas and beliefs by encouraging students to join in an April 10 protest supporting LGBTQ+ ideas and beliefs.

Moreover, the video indicates that NKMS proposes to participate in a National Day of Silence in support of LGBTQ+ ideas and beliefs on Friday, April 10, 2026. The video encourages students to show support for LGBTQ+ ideas and beliefs on April 10 by, *inter alia*, remaining silent throughout the school day, between and, to the extent possible, during classes.

Further inquiry reveals that Kirkwood School District has a history of participating in this National Day of Silence supporting LGBTQ+ ideas and beliefs over past years in multiple schools and facilities.

II. *Mahmoud v. Taylor* and *Mirabelli v. Bonta*

Given these facts as we understand them, your client’s proposed actions will violate the constitutional rights of many Kirkwood parents, as clarified by the Supreme Court’s landmark recent decisions in *Mahmoud v. Taylor*, as outlined in our previous letters, and now *Mirabelli v. Bonta*. Indeed, *Mirabelli* rejected some courts’ attempts to cabin *Mahmoud* as “a narrow decision focused on uniquely coercive ‘curricular requirements’” and instead applied it broadly against policies that “substantially interfere” with parents’ rights—including policies that violate parents’ “sincere religious beliefs about sex and gender.” 146 S. Ct. at 802-03. *Mirabelli* also made clear that *Mahmoud* applies to parents of K-12 students, not just elementary school age children. *Id.* at 800-01. Finally, and perhaps most critically, *Mirabelli* held that *all* parents, not just religious parents, have a similar right to opt their children out of school programming and activity that interferes with their fundamental “rights to direct the upbringing and education of their children.” *Id.* at 803.

Importantly for your purposes, if a government school’s “unmistakably normative” pro-LGBTQ+ activity exerts “pressure to conform” to that activity on students, **parents must be afforded notice and the opportunity to opt-out their children from the activity—unless the school can show that denying notice and opt-outs would satisfy “strict scrutiny,”** the most rigorous test in constitutional law. *Mahmoud*, 606 U.S. at 550, 565.

III. Kirkwood School District is poised to again violate the First Amendment as applied in *Mahmoud*.

North Kirkwood Middle School’s proposed subjection of all students to another video presentation promoting and celebrating LGBTQ+ ideas and beliefs, and its “unmistakably normative” pro-LGBTQ+ “Day of Silence,” without meaningful notice and opportunity to opt their children out of same, openly violates *Mahmoud* by ignoring the rights of religious parents who are attempting to instill in their children religious values that are inconsistent with this content.

As to the video, the insertion of a few lines announcing it amid a multitude of announcements in one parent electronic newsletter, with no mention of parents’ right to opt out of the video and the corresponding demonstration, do not satisfy the robust standard of protection for religious parents’ free exercise rights set forth in *Mahmoud*. *See also, e.g., Tatel v. Mt. Lebanon Sch. Dist.*, 752 F. Supp. 3d 512, 577 (W.D. Pa. 2024) (holding that “opt out” was “unrealistic and ineffective” where school district’s purported notice to parents was not “realistic or effective” in communicating objectionable content).

Moreover, Kirkwood School District has a history of hosting similar protests in other facilities. To do so without *any* notice to parents is an even clearer violation of parents’ notice and opt out rights under *Mahmoud*.

Even more gravely, Kirkwood School District’s proposal to transform every word uttered in the hallways of North Kirkwood Middle School (and any other affected schools) into a sign of support (or not) for LGBTQ+ causes on Friday, April 10, is precisely the type of District action flagged by the Supreme Court as “‘hostile’ to religious viewpoints and designed to impose upon students a ‘pressure to conform.’” *Mahmoud*, 606 U.S. at 554. According to the video, the proposed protest encourages students to maintain silence in between classes and, to the extent possible, during classes, in support of LGBTQ+ ideas and beliefs. This school-sponsored invitation to silence turns any ordinary student speech into a *de facto* public opposition to LGBTQ+ causes, effectively singling out students of religious parents we represent. The school-sponsored pressure to conform to the LGBTQ+ students’ request for supportive silence is compounded by Kirkwood School District’s endorsement of their request, by disseminating it to the entire school during Homeroom and reserving a day on the calendar for the exercise.

In *Mahmoud*, the Supreme Court recognized that reading certain LGBTQ+ favorable storybooks to young children imposes “**pressure to conform**,” 606 U.S. at 554 (emphasis added), imbuing normal student conversational speech with negative political and social connotations for an entire day is easily more coercive.

Accordingly, **Kirkwood School District has a clear obligation under *Mahmoud* to provide all parents with constitutionally sufficient notice and opt out opportunities for this proposed school-sponsored, day-long demonstration, along with offering adequate alternate instruction for affected students.** Any inconvenience this poses to the school is the cost of KSD’s decision to use an entire school day to engage in politically and morally charged advocacy that is offensive to many religious believers.

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, to comply with *Mahmoud*, North Kirkwood Middle School (and any other Kirkwood School District entity proposing similar conduct) must immediately cease and desist from presenting the proposed April 8, 2026, video or hosting the April 10, 2026, school-sponsored “Day of Silence” without first providing meaningful advance notice to parents and the opportunity to opt out their children from viewing or participating in such material and instruction, pursuant to parents’ First Amendment rights to direct the religious upbringing of their children. Parents opting their children out of such activities must be provided with reasonable alternate instruction that does not impede their First Amendment rights.

As previously noted, Kirkwood School District must also immediately refrain from “us[ing]” “other similar” “instruction or material” without providing meaningful advance notice and opt-out opportunities.

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). Parents whose rights are violated this week will thus retain the authority to sue Kirkwood for damages and attorneys’ fees for at least five years, as we discussed in October 2025 letter.

V. Conclusion

Please respond before the video airs tomorrow, April 8, 2026, confirming, and explaining how, Kirkwood School District will comply with *Mahmoud's* notice and opt out requirements with respect to the above-referenced video and the protest scheduled for April 10, 2026.

Should you have any questions, please let us know.

Very truly yours,



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