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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

EVAN JUSTIN TAYLOR and ROSE
 ELIZABETH TAYLOR,

 Plaintiffs,

v.

SUNNYVALE SCHOOL DISTRICT;
 GUIDEL R. CROSTHWAITE, in his personal
 and official capacity as Superintendent of
 Schools for the Sunnyvale School District;
 PEGGY SHEN BREWSTER, in her personal
 and official capacities as member of the
 Sunnyvale School District Board of
 Education; ISABEL JUBES-FLAMERICH,
 in her personal and official capacities as
 member of the Sunnyvale School District
 Board of Education; EVELYN CASTILLO
 PROFETA, in her personal and official

CASE No.: 5:26-cv-06211

JUDGE: Noël Wise

**PLAINTIFFS' NOTICE OF MOTION
 AND MEMORANDUM IN SUPPORT
 OF MOTION FOR PRELIMINARY
 INJUNCTION**

Hearing Date: September 30, 2026
 Hearing Time: 9:00 a.m.
 Courtroom: 3
 Judge: Noël Wise

**NOTICE OF MOTION AND MEMORANDUM IN SUPPORT OF PRELIMINARY
 INJUNCTION**
CASE NO.: 5:26-cv-06211

capacities as member of the Sunnyvale School District Board of Education; MICHELLE MAGINOT, in her personal and official capacities as member of the Sunnyvale School District Board of Education; and BRIDGET WATSON, in her personal and official capacities as member of the Sunnyvale School District Board of Education; PAUL SLAYTON, in his official capacity as Director of Student Support Services for the Sunnyvale School District; and SHANA RIEHL, in her official capacity as Interim Principal of Cumberland Elementary School,

Defendants.

NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION

TO ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, on September 30, 2026, at 9:00 a.m., or as soon as it may be heard, Plaintiffs Justin and Rose Taylor, by and through their undersigned counsel, move for a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure and Civil Local Rules 7-2 and 65-2. This motion will be made before the Honorable Judge Noël Wise, San Jose Courthouse, Courtroom 3 – 5th Floor, 280 South 1st Street, San Jose, CA 95113.

The Taylors seek to enjoin Defendants from denying them notice of and opt-outs from LGBTQ+ instruction in their children's public school. This Motion and its accompanying Memorandum show that the Taylors are likely to succeed on the merits of their claims under the Free Exercise Clause and the Due Process Clause because Sunnyvale's denial of their request for notice and opt-outs burdens their religious exercise and parental rights and fails strict scrutiny. Because Defendants' policy imposes irreparable harm, and because the equities and public interest favor preventing constitutional violations, the Taylors are entitled to a preliminary injunction.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
MEMORANDUM OF POINTS AND AUTHORITIES	1
STATEMENT OF FACTS	3
A. Sunnyvale's LGBTQ+ Instruction	3
B. The Taylors' Religious Beliefs	7
C. Sunnyvale's Provision and Denial of Opt-Outs	9
LEGAL STANDARD.....	11
ARGUMENT.....	11
I. The Taylors are likely to succeed on the merits of their claims.....	11
A. Prohibiting parental opt-outs triggers strict scrutiny under the Free Exercise Clause.	11
1. Sunnyvale's no-opt-out policy violates the Free Exercise Clause under <i>Mahmoud</i> by interfering with the Taylors' right to direct their children's religious upbringing and education.....	12
2. Sunnyvale's no-opt-out policy violates the Free Exercise Clause under <i>Fulton</i> by allowing individualized exemptions.	15
3. Sunnyvale's no-opt-out policy violates the Free Exercise Clause under <i>Tandon</i> because it includes categorical exclusions.....	17
4. Sunnyvale's no-opt-out policy violates the Free Exercise Clause under <i>Lukumi</i> and <i>Masterpiece</i> because it targets religious exercise.	18
B. Prohibiting parental opt-outs also triggers strict scrutiny under the Due Process Clause.	19
II. The no-opt-out policy cannot survive strict scrutiny.	20
A. Sunnyvale lacks a compelling government interest in denying notice and opt-outs for LGBTQ+ instruction.....	20

1	B. The no-opt-out policy is not the least restrictive means for	
2	achieving the asserted government interest.	23
3	III. The Taylors satisfy the remaining preliminary injunction factors.....	24
4	CONCLUSION	25
5	CERTIFICATE OF SERVICE	27

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Alan L. v. Lexington Pub. Schs.</i> , 814 F. Supp. 3d 61 (D. Mass. 2025)	14
<i>Bates v. Pakseresht</i> , 146 F.4th 772 (9th Cir. 2025)	11, 18, 19
<i>Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah</i> , 508 U.S. 520 (1993)	18-19
<i>City of Huntington Beach v. Newsom</i> , No. 25-3826, 2026 WL 1785110 (9th Cir. June 18, 2026)	20, 21
<i>Doe v. Dynamic Physical Therapy, LLC</i> , 607 U.S. 11 (2025)	21
<i>Fellowship of Christian Athletes v. San Jose Unified Sch. Dist.</i> <i>Bd. of Educ.</i> , 82 F.4th 664 (9th Cir. 2023)	<i>passim</i>
<i>Fulton v. City of Philadelphia</i> , 593 U.S. 522 (2021)	15, 22
<i>Holt v. Hobbs</i> , 574 U.S. 352 (2015)	24
<i>Kennedy v. Bremerton Sch. Dist.</i> , 597 U.S. 507 (2022)	18
<i>Mahmoud v. Taylor</i> , 606 U.S. 522 (2025)	<i>passim</i>
<i>Masterpiece Cakeshop v. Colo. C.R. Comm’n</i> , 584 U.S. 617 (2018)	18
<i>Mayweathers v. Newland</i> , 314 F.3d 1062 (9th Cir. 2002)	20
<i>Mirabelli v. Bonta</i> , 607 U.S. 492 (2026)	20, 21
<i>Nken v. Holder</i> , 556 U.S. 418 (2009)	24

1	<i>Pierce v. Soc’y of Sisters,</i>	
2	268 U.S. 510 (1925)	20
3	<i>Ramirez v. Collier,</i>	
4	595 U.S. 411 (2022)	22, 23
5	<i>Roman Catholic Diocese of Brooklyn v. Cuomo,</i>	
6	592 U.S. 14 (2020)	24
7	<i>Tandon v. Newsom,</i>	
8	593 U.S. 61 (2021)	17, 18
9	<i>Troxel v. Granville,</i>	
10	530 U.S. 57 (2000)	23
11	<i>Waln v. Dysart Sch. Dist.,</i>	
12	54 F.4th 1152 (9th Cir. 2022)	15, 16, 18
13	<i>Winter v. Nat. Res. Def. Council, Inc.,</i>	
14	555 U.S. 7 (2008)	11
15	<i>Wisconsin v. Yoder,</i>	
16	406 U.S. 205 (1972)	12, 22
17	<i>Wolford v. Lopez,</i>	
18	No. 24-1046, 2026 WL 1825723 (U.S. June 25, 2026)	21
19	Statutes	
20	Cal. Educ. Code § 51937	9
21	Cal. Educ. Code § 51938	9, 17, 23
22	Cal. Educ. Code § 51939	9
23	Other Authorities	
24	Dr. Charles Hinman, <i>Countywide Letter in Support of LGBTQIA</i>	
25	<i>Students</i> , Santa Clara County Office of Education (Mar. 6, 2025)	4, 13
26	Santa Clara Cnty. Off. of Educ., <i>LGBTQ+ Teaching Guide</i>	5, 6, 14
27	Sunnyvale Sch. Dist., <i>LGBTQIA+ Resources</i>	5, 6
28	Sunnyvale Sch. Dist., <i>Resolution # R22-08: Enhancing Supports and</i>	
	<i>Resources for Our LGBTQIA Students and Staff</i> (Oct. 7, 2021)	3, 4

1	Sunnyvale Sch. Dist., <i>Resolution # R26-08: Reaffirming</i>	
2	<i>Sunnyvale’s Commitment to Safe, Inclusive Schools for</i>	
3	<i>All Students and Staff</i> (Sep. 18, 2025)	4, 5, 14, 24
4	Sunnyvale Sch. Dist., <i>SSD Board of Education passes resolution</i>	
5	<i>reaffirming the District’s commitment to safe, inclusive schools</i>	5
6	Sunnyvale Sch. Dist., <i>What Are My Rights at School?</i>	
7	<i>Transgender + Nonbinary Students</i>	3-4
8	Sunnyvale Sch. Dist., <i>4th - 8th Grade Growth Development</i>	
9	<i>& Sexual Health Scope & Sequence</i>	9
10	Sunnyvale Sch. Dist., <i>Parent Resources for Growth,</i>	
11	<i>Development and Sexual Health – Grades 4-8</i>	9
12	Constitutional Provisions	
13	U.S. Const. art. VI	21

MEMORANDUM OF POINTS AND AUTHORITIES

In recent years, some public school districts have incorporated books and lessons promoting LGBTQ+ messages in kindergarten and elementary instruction. Last year, the Supreme Court held in *Mahmoud v. Taylor* that public schools burden parents' First Amendment rights when they require children to participate in "LGBTQ+-inclusive" instruction that conflicts with their parents' religious beliefs. The decision to "withhold notice to parents" and to "forbid opt outs" from such instruction imposes an "unacceptable" "burden on religious exercise" and immediately triggers strict scrutiny.

Defendants Sunnyvale School District (the "District"), its Superintendent and Board members, and the named District employees (collectively, "Sunnyvale") resisted. Shortly after *Mahmoud* was handed down, the District resolved to "confidently implement inclusive materials and resist pressures that would erase or diminish LGBTQIA content." It pledged to provide "robust education that celebrates diverse ... gender expressions." And it fulfills that pledge by supplying teachers with lesson plans and books applauding pride parades, same-sex relationships and attendant family structures, gender transitions, and drag queens.

Plaintiffs Justin and Rose Taylor are devout Christians who have a rising third-grade son and rising first-grade daughter at Cumberland Elementary School in the District. They believe that Sunnyvale's LGBTQ+ instruction is age-inappropriate and inconsistent with their religious beliefs, practices, and child-raising philosophies, and that forcing their children to participate in Sunnyvale's LGBTQ+ instruction will undermine their efforts to raise their children in accordance with their religious beliefs. So, last September, they asked Sunnyvale to notify them and opt their children out of all LGBTQ+ instruction.

At first, Sunnyvale displayed discretion and willingness to accommodate the Taylors. Sunnyvale provided the Taylors with a form acknowledging opt-outs not only for categories like sexual health education, but also for "[i]nstructional [m]aterials" that

1 “substantially interfere with [a] child’s religious development” or “conflict with [parents’]
2 religious beliefs or moral convictions.” And Cumberland also directed school librarians
3 not to check out LGBTQ+ materials to the Taylor children.

4 But months later, Sunnyvale abruptly reversed course and denied the Taylors’
5 request for notice and opt-outs. Sunnyvale announced in a letter that it is “not granting
6 opt-outs from LGBTQ+-inclusive curriculum or storybooks that are part of our adopted
7 educational program.” In doing so, Sunnyvale dismissed *Mahmoud* as a decision from
8 “another state” that “does not override” its interpretation of “California’s statutory
9 requirements governing instructional content.” But Sunnyvale’s rejection of *Mahmoud*
10 is baseless, and its denial of notice and opt-outs is unconstitutional several times over.

11 First, *Mahmoud* straightforwardly controls here. Sunnyvale insists upon the same
12 kind of religiously violative LGBTQ+ instruction, at the same grade levels, using the
13 same or similar books, without the notice and opt-outs *Mahmoud* demands. Lacking
14 daylight, Sunnyvale is left to claim that the Free Exercise Clause somehow applies
15 differently in California. But the Supreme Court rejects this backward view: Bill of
16 Rights guarantees have “the same meaning in all parts of the United States” regardless
17 of “local attitudes.” Sunnyvale’s theory of Californian exceptionalism is unserious.

18 Second, Sunnyvale has independently burdened the Taylors’ religious exercise by
19 enforcing a policy that is neither neutral nor generally applicable. It is not generally
20 applicable because Sunnyvale retains discretion to allow individualized exemptions—
21 both through its tailored Opt-out Form, and its library accommodation for the Taylor
22 children. Sunnyvale’s policy also lacks general applicability because it permits
23 comparable secular opt-outs for health class (including LGBTQ+ components) and a host
24 of other educational and extracurricular programming, thus categorically treating such
25 secular activity more favorably than the Taylors’ religious exercise. And Sunnyvale’s
26 awareness that the burden of its no-opt-out policy falls overwhelmingly on religious
27 parents means that the policy is not neutral, either.

1 Third, under recent Supreme Court precedent, Sunnyvale’s policy violates the
 2 Taylors’ parallel Due Process Clause right to make key decisions regarding the education
 3 of their children. *Mirabelli v. Bonta* eliminated any doubt about the force of this right
 4 and its applicability in the Golden State, confirming that “parents who objected to
 5 [California’s] policies” limiting parental rights in public schools “on due process grounds”
 6 were equally entitled to constitutional protection. So too here.

7 Strict scrutiny necessarily follows, and Sunnyvale cannot satisfy it. Any purported
 8 interests in uniformity, administrability, and inclusivity are undermined by Sunnyvale’s
 9 extensive opt-outs from other instruction and programming, including LGBTQ+ lessons
 10 in health class. And forcing the Taylor children to undergo instruction that contradicts
 11 their parents’ religious guidance is not the least restrictive means of accomplishing any
 12 compelling interest. The Taylors’ motion for preliminary injunction must be granted.

13 STATEMENT OF FACTS

14 A. Sunnyvale’s LGBTQ+ Instruction

15 Sunnyvale has made LGBTQ+ instruction and advocacy a mainstay of its educational
 16 agenda, including at the elementary level. In 2022—observing that “LGBTQIA people
 17 have achieved significant milestones, ensuring that future generations will enjoy a more
 18 equal and just society”—the Sunnyvale Board of Education resolved to “support[]
 19 training to deepen understanding of LGBTQIA issues and policy implementation to
 20 support LGBTQIA students, staff and community members.” Sunnyvale Sch. Dist.,
 21 *Resolution # R22-08: Enhancing Supports and Resources for Our LGBTQIA Students*
 22 *and Staff* at 1 (Oct. 7, 2021), <https://perma.cc/5SBX-SNYG>. Sunnyvale has demonstrated
 23 its commitment to the LGBTQ+ movement in myriad ways.

24 For example, Sunnyvale has adopted a policy for “[t]ransgender and [n]onbinary
 25 [s]tudents” declaring that, “[i]n Sunnyvale School District, we have Gender Support
 26 Plans, which allow YOU to decide how teachers and school staff should support your
 27 gender identity.” Sunnyvale Sch. Dist., *What Are My Rights at School? Transgender +*
 28

1 *Nonbinary Students*, <https://perma.cc/D7FM-JSV5>. The same policy explains that, in
 2 Sunnyvale, “it’s up to YOU who knows your real name & pronouns,” and that “includes
 3 your parent(s)/guardian(s), if they are unaware or unsupportive.” *Id.* And it tells children
 4 that, in Sunnyvale, “[y]ou have the right to use any restroom and locker room that
 5 matches your gender identity,” no matter the feelings or privacy of others. *Id.*

6 This case concerns Sunnyvale’s infusion of LGBTQ+ instruction throughout
 7 elementary school. In its 2022 Resolution on the subject, the Board committed to “ensure
 8 that diversity and inclusion are better reflected across the preschool to eighth grade
 9 curriculum.” *Resolution # R22-08* at 1, <https://perma.cc/5SBX-SNYG>. More recently, in
 10 response to perceived “federal attempts to roll-back LGBTQIA+ rights,” Sunnyvale
 11 joined other Santa Clara County school districts in pledging to “stand firmly with our
 12 LGBTQIA+ community” and “support[] a robust education that celebrates
 13 diverse ... gender expressions.” Santa Clara Cnty. Off. of Educ., *Countywide Letter in*
 14 *Support of LGBTQIA Students* at 1 (Mar. 6, 2025), <https://perma.cc/JTD8-5JUC> (signed
 15 by the superintendent of Sunnyvale School District).

16 The result of Sunnyvale’s commitment is a sweeping mandate integrating LGBTQ+
 17 history, representation, and examples throughout school curricula to celebrate “diverse
 18 backgrounds, identities, experiences, and abilities, including those who are lesbian, gay,
 19 genderqueer, bisexual, transgender, queer/questioning, intersex, [and] asexual
 20 (LGBTQIA).” Sunnyvale Sch. Dist., *Resolution # R26-08: Reaffirming Sunnyvale’s*
 21 *Commitment to Safe, Inclusive Schools for All Students and Staff* at 1 (Sep. 18, 2025),
 22 <https://perma.cc/L8UG-QFHF>. According to Sunnyvale, “California state law and
 23 [Sunnyvale’s own] Board-adopted policy regarding instructional materials and
 24 curriculum” demand that it does so. Compl. Ex. A at 2. “Under California law,” as glossed
 25 by Sunnyvale, “districts are required to provide inclusive instructional content that
 26 reflects the diversity of our community, including representation of LGBTQ+ individuals
 27 and families, as part of our core academic program.” *Id.* Following the Supreme Court’s
 28

1 decision in *Mahmoud*, Sunnyvale stated it “will continue to ... [e]nsure that inclusive
2 curriculum—including LGBTQIA representation”—“remains integral to the District’s
3 equity and inclusion efforts.” *Resolution # R26-08* at 2, <https://perma.cc/L8UG-QFHF>.
4 Sunnyvale has made clear that this mandatory instruction applies “across [all] grade
5 levels.” Sunnyvale Sch. Dist., *SSD Board of Education passes resolution reaffirming the*
6 *District’s commitment to safe, inclusive schools*, <https://perma.cc/B33Q-YZF5>.

7 Sunnyvale has left little doubt about the pervasiveness of its instruction. It has a
8 dedicated webpage providing “LGBTQIA+ Resources,” including lesson plans and
9 recommended LGBTQ+ book lists for all reading levels. Sunnyvale Sch. Dist.,
10 *LGBTQIA+ Resources*, <https://perma.cc/RA8E-HSHG>. Some come directly from
11 controversial LGBTQ+ advocacy organizations. *See id.* (referring teachers to lessons,
12 booklists, and resources from Glisten (formerly GLSEN), the Human Rights Campaign’s
13 Welcoming Schools initiative, and the group Gender Spectrum). Sunnyvale also
14 embraces County guidance on LGBTQ+ instruction. *See id.* (linking Santa Clara County
15 Office of Education (“SCCOE”) LGBTQ+ teaching guidance under “Staff Resources”).

16 Through various book recommendations and “Example Lesson” plans across grade
17 levels and class subjects, the SCCOE’s *LGBTQ+ Teaching Guide* illustrates how
18 Sunnyvale’s commitment to LGBTQ+ instruction is meant to work in practice. According
19 to the Guide, “Health and Science Lessons” should adopt a “strategy” of “explicitly
20 teach[ing] about gender identity and sexual orientation in a comprehensive and inclusive
21 way.” Santa Clara Cnty. Off. of Educ., *LGBTQ+ Teaching Guide* at 21,
22 <https://perma.cc/EVJ5-Y8Y6>. “History Lessons” should promote “acceptance of diverse
23 gender identities and expressions,” with the goal of “disrupt[ing] traditional definitions
24 of the family.” *Id.* at 8-10. Similarly, for math, the Guide directs that “[i]ncorporating
25 LGBTQ+ inclusion in mathematics curriculum is crucial,” so teachers should “use
26 problems that relate to marriage equality, gender-neutral bathrooms, and LGBTQ+
27 rights to demonstrate mathematical concepts such as statistics, probability, and
28

1 geometry.” *Id.* at 12. And “Literacy Lessons” should include various “LGBTQ” books for
 2 “Pre K – Elementary” ages. *Id.* at 17 (collecting recommended book lists). The normative
 3 motivation is plain, as the Guide observes in quoting “LGBTQ+ rights activist” Barbara
 4 Gittings: “The struggle is really won in the hearts and minds of the community, where
 5 it really counts.” *Id.* at 8.

6 To that end, Sunnyvale promotes dozens of recommended “LGBTQIA+ and gender-
 7 related” picture books for classroom instruction. *LGBTQIA+ Resources*,
 8 <https://perma.cc/RA8E-HSHG>; Compl. ¶¶ 73-74, 82. The normative throughlines in the
 9 colorful stories are unmistakable. The books encourage children to question sexuality
 10 and gender identity, focus at an early age on romantic feelings, affirm same-sex
 11 relationships, embrace gender transitioning, and celebrate LGBTQ+ lifestyles. *See id.*
 12 ¶¶ 75-81. Some examples of the books Sunnyvale recommends for LGBTQ+ instruction
 13 are illuminating:

- 14 • *The Hips on the Drag Queen Go Swish, Swish, Swish*, by a drag queen’s
 15 persona Lil Miss Hot Mess, celebrates drag to the lyrics of “The Wheels on the
 16 Bus,” with images of bearded drag queens “swish[ing]” their hips and
 “shimmy[ing]” their shoulders. *Id.* ¶ 77.
- 17 • *Pride Puppy* invites three- and four-year-olds to look for images of things they
 18 might find at a pride parade (e.g., “[drag] queen,” “leather,” “underwear,” and
 19 a famous LGBTQ activist and sex worker) and depicts a minister wearing a
 20 rainbow stole and students and teachers enthusiastically advocating for “Peers
 21 + Queers,” “Pride Club,” “Love Knows No Gender,” and “Two Spirit Pride.” *Id.*
 22 ¶ 75.
- 23 • *Prince and Knight* is a romance about a prince who falls into the “embrace” of
 24 a “handsome” knight, culminating in the whole kingdom applauding “on the
 25 two men’s wedding day.” *Id.* Ex. E at 6-36; *id.* ¶ 76.
- 26 • *Stella Brings the Family* tells the story of a young girl who brings her two
 27 fathers and extended family to a classroom Mother’s Day party, which ends up
 28 being even “better than [she] had imagined” after she is joined by “the biggest
 crowd of them all.” *Id.* ¶ 80.
- *Jack (not Jackie)* follows the story of a young girl, Susan, who struggles with
 her younger sibling Jackie’s gender transition but, with her mother’s guidance
 (“not wrong ... just different”), declares “My sister. My brother. It’s okay, either
 way,” causing her “heart ... to feel bubbly again.” *Id.* ¶ 78.

- *Born Ready: The True Story of a Boy Named Penelope* traces others' acceptance of the gender transition of a young girl, who doesn't "want tomorrow to come because tomorrow" she will look like her mom, and whose family and educators come around to the idea that "gender isn't such a big deal" and that the child's self-identification is determinative because "[t]his is about love." *Id.* Ex. F at 13, 18-19; *id.* ¶ 81.

B. The Taylors' Religious Beliefs

The Taylors are devout members of The Church of Jesus Christ of Latter-day Saints. Decl. ¶ 3. They teach their children that every individual has inherent divine worth and equal dignity before God and should be treated with love, kindness, and respect, regardless of religion, race, gender, or nationality. *Id.* ¶¶ 6-7. They also embrace the Church's teachings on gender, sexuality, and the family, which for them have eternal significance. *Id.* ¶¶ 8-9. In accordance with these teachings, the Taylors believe that sexuality is a gift from God that should be expressed only in marriage between a man and a woman. *Id.* ¶ 10. And they believe that a person's biological sex is inseparable from that person's "gender" and constitutes an essential characteristic of that person's eternal identity and purpose. *Id.* ¶¶ 8-9.

The Taylors have a religious obligation to teach these principles to their children and to protect them from conflicting influences and authorities. *Id.* ¶¶ 11-14, 16-20. They believe that young children must especially be protected from contrary influence during their "formative" years, when it is not necessary for them to explore issues surrounding human sexuality. *Id.* ¶ 14. This is protected time for parents to teach the children a faith-based perspective on these complex and sensitive issues. *Id.* ¶¶ 14-20. The Taylors believe that failure to fulfill this protective duty—which extends to any "lessons or examples" that would "confuse" or lead children astray—leaves them "accountable before God." *Id.* ¶¶ 13-14.

Even as their young children mature, the Taylors believe they should be taught about gender and sexuality in age-appropriate ways and consistent with their religious beliefs. *Id.* ¶¶ 17-18. This includes teaching their children to channel eventual romantic passions, rather than indulge them at first spark. *Id.* ¶ 19. It also requires teaching their

1 children to honor God’s divine plan concerning marriage, sexuality, and gender, and not
2 to condone, affirm, or celebrate perspectives or lifestyles that invert or reject that plan.
3 *Id.* ¶¶ 19-20. Indeed, the Taylors believe that it is spiritually harmful to suggest,
4 especially to young children, that a person’s biological sex can be “wrong” or otherwise
5 unwoven from that person’s “gender,” and that encouraging children prematurely to
6 question their sexuality and gender identity is spiritually injurious. *Id.* ¶¶ 16-17, 20.

7 Teaching such principles and perspectives to children is inconsistent with the
8 Taylors’ religious beliefs and interferes with their chosen way of life, their aspirations
9 for their children, and their understanding of God’s will. *Id.* ¶¶ 14-15, 18-20. The Taylors
10 also believe that letting teachers talk to children about sexuality, inviting them to
11 question their gender identity, and encouraging them to embrace or celebrate same-sex
12 relationships and gender transitioning is spiritually and emotionally harmful. *Id.* ¶¶ 12,
13 16, 19. This includes instruction about LGBTQ+ identities and language usage (*e.g.*,
14 different-sex pronouns) that “embed ideological, sexualized, and religiously violative
15 messages under the guise of ‘inclusion.’” *Id.* ¶¶ 16. And because children—particularly
16 those, like the Taylors’ own, in elementary school—are highly impressionable, exposing
17 them to one-sided ideological instruction from authoritative schoolteachers on such
18 complex and sensitive issues imposes serious risks. *Id.* ¶¶ 16-17. Encouraging them to
19 focus prematurely on such issues can similarly distort their understanding of who they
20 are and what is most important in life—questions young children should “consider with
21 the guidance of their parents and religious community.” *Id.* ¶¶ 12, 14, 17.

22 The Taylors’ faith forbids subjecting their young children to Sunnyvale’s LGBTQ+
23 instruction, which undermines the very beliefs and values they are obligated to instill.
24 *Id.* ¶¶ 13, 18, 20. They do not ask to change the curriculum itself. *Id.* ¶ 23. They seek
25 only a modest accommodation: the right to be notified and to opt their children out from
26 instruction that violates their religious beliefs. *Id.* ¶¶ 24-26.

C. Sunnyvale's Provision and Denial of Opt-Outs

Sunnyvale, like public school districts nationwide, liberally accommodates students' unique needs every day. Under California law, Sunnyvale must provide notice and opt-outs for health classes because "parents and guardians have the ultimate responsibility for imparting values regarding human sexuality to their children." Cal. Educ. Code § 51937; *see also id.* §§ 51938-39 (notice, opt-outs, and alternative activities). In elementary school, health education includes instruction on "Gender Identity and Sexual Orientation," with objectives such as: to explore "[d]ifferent types of gender identities"; to define "attraction & the most common sexual orientations"; and to consider the relationship between "[b]ody parts and gender identity."¹ When such instruction is provided during health class, state law requires facilitating parental opt-outs.

Sunnyvale's accommodations go further still. More than one-in-seven Cumberland students are removed from class for special programming like Individualized Education Programs, and an even greater share receives similar accommodations as emergent multilingual learners ("EMLs"). Compl. ¶ 85 & n.8.

At least as of October 2025, Sunnyvale provided parents a form listing various "opt out options." *Id.* ¶ 92. In addition to opt-outs from health class (comprehensive or partial), the form included parental opt-out rights for behavioral health surveys, physical examinations, and "[o]ther [i]nstructional [m]aterials" that "substantially interfere with [a] child's religious development" or "conflict with [parents'] religious beliefs or moral convictions." *Id.* ¶ 93. The form indicated that Sunnyvale would "review" requests and "excuse [the parents'] child from that instruction in accordance with applicable law." *Id.*

Based on their religious beliefs and attention to their children's faithful upbringing, in September 2025, the Taylors reached out to their children's teachers and

¹ Sunnyvale Sch. Dist., *4th - 8th Grade Growth Development & Sexual Health Scope & Sequence*, <https://perma.cc/7BHS-NUSV>; *see also* Sunnyvale Sch. Dist., *Parent Resources for Growth, Development and Sexual Health – Grades 4-8*, <https://perma.cc/Z5UV-TZU8>.

1 Cumberland's Interim Principal Shana Riehl to request such an accommodation. *Id.*
2 ¶ 87. Specifically invoking *Mahmoud*, they asked that the school (1) provide them with
3 "[a]dvance written notice whenever any 'LGBTQ+-inclusive' storybooks or similar
4 materials, will be used in any way"; (2) allow their children to be "excused from those
5 lessons, instructions, and events" and be afforded "a neutral alternative activity"; and
6 (3) provide "[i]nformation about how the District permits parents to review curriculum
7 materials." *Id.* ¶ 89. The Taylors also engaged the District's Director of Student Support
8 Services, Paul Slayton. *Id.* ¶¶ 92, 94; *id.* Ex. B at 2-7.

9 Initially, there was hope. Cumberland made a notation to school librarians not to
10 check out books that carried LGBTQ+ messages to the Taylor children and tried to
11 facilitate review of curricular materials. *Id.* ¶ 91; *id.* Ex. B at 2-7. Mr. Slayton provided
12 a completed religious Opt-out Form in October 2025. *Id.* ¶¶ 92-93; *id.* Ex. B. And on
13 January 28, 2026, Mr. Slayton explained that Sunnyvale's "typical 'opt out' process [was]
14 not functional for Mahmoud v. Taylor yet" and that "legal council [sic] [was] still a bit
15 confused as to how to formally respond to these requests." *Id.* ¶ 97. He thus stated he
16 would "defer" the Taylors' request until he could consult District leadership. *Id.*

17 Days later, on February 3, 2026, Sunnyvale issued a wholesale denial. *Id.* ¶ 102.
18 Acknowledging the "shift" in approach, Mr. Slayton provided an official denial letter from
19 the Superintendent and Board based on "a comprehensive review" of the Taylors' request
20 "at the District leadership level." *Id.* ¶¶ 102-03. The denial letter expressed Sunnyvale's
21 position that LGBTQ+ instruction is mandatory under "California state law and Board-
22 adopted policy," and stated: "Sunnyvale School District is not granting opt-outs from
23 LGBTQ+-inclusive curriculum or storybooks that are part of our adopted educational
24 program." *Id.* ¶ 104; *id.* Ex. A at 1. And, observing that *Mahmoud* involved "another
25 state," the letter asserted that the ruling "does not override California's statutory
26 requirements governing instructional content," as interpreted by Sunnyvale. *Id.* Ex. A

1 at 1. Sunnyvale did not substantively respond to the Taylors' subsequent reconsideration
 2 request and continues to deny them their requested notice and opt-outs. *Id.* ¶¶ 111-14.

3 **LEGAL STANDARD**

4 A preliminary injunction is appropriate where the plaintiff has established (1) "that
 5 he is likely to succeed on the merits," (2) "that he is likely to suffer irreparable harm in
 6 the absence of preliminary relief," (3) "that the balance of equities tips in his favor," and
 7 (4) "that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*,
 8 555 U.S. 7, 20 (2008). That standard is easily met here. *E.g., Mahmoud v. Taylor*, 606
 9 U.S. 522, 569 (2025) (finding all factors met on similar facts).

10 **ARGUMENT**

11 **I. The Taylors are likely to succeed on the merits of their claims.**

12 **A. Prohibiting parental opt-outs triggers strict scrutiny under the Free** 13 **Exercise Clause.**

14 Although "people of goodwill in our country can have different perspectives" on
 15 "sensitive matters that involve children, parents, sexuality, and religion," binding
 16 precedent clearly establishes "some common ground under law." *Bates v. Pakseresht*, 146
 17 F.4th 772, 783 (9th Cir. 2025). In particular, *Mahmoud v. Taylor* establishes that parents
 18 have the right to receive notice and to opt their children out of LGBTQ+ instruction that
 19 violates their sincerely held religious beliefs and substantially interferes with the
 20 religious upbringing of their children. 606 U.S. at 550. And more broadly, *Fellowship of*
 21 *Christian Athletes v. San Jose Unified School District Board of Education* establishes
 22 that even when parental rights are not implicated, a government policy that violates one
 23 of the "three bedrock requirements of the Free Exercise Clause" is not neutral and
 24 generally applicable. 82 F.4th 664, 686 (9th Cir. 2023) (en banc) ("*FCA*"). Because
 25 Sunnyvale's no-opt-out policy burdens the Taylors' religious exercise under both strands
 26 of free-exercise jurisprudence, it is subject to strict scrutiny. *See Mahmoud*, 606 U.S. at
 27 564; *FCA*, 82 F.4th at 685-86. And because Sunnyvale cannot satisfy strict scrutiny, its
 28 policy violates the Free Exercise Clause.

1 **1. Sunnyvale’s no-opt-out policy violates the Free Exercise Clause under**
 2 ***Mahmoud* by interfering with the Taylors’ right to direct their**
 3 **children’s religious upbringing and education.**

4 Straightforward application of *Mahmoud* resolves this case. Public schools burden
 5 parents’ free exercise when they “require[] them to submit their children to instruction
 6 that poses ‘a very real threat of undermining’ the religious beliefs and practices that the
 7 parents wish to instill in their children.” *Mahmoud*, 606 U.S. at 530 (quoting *Wisconsin*
 8 *v. Yoder*, 406 U.S. 205, 218 (1972)). This includes mandatory “LGBTQ+-inclusive”
 9 instruction that, even if “subtly,” “present[s] certain values and beliefs as things to be
 10 celebrated”—such as “same-sex marriage” or that people “can choose [which gender] to
 11 identify with”—when religious parents “wish to present a different moral message to
 12 their children.” *Id.* at 550-52. When such a burden exists, strict scrutiny applies
 13 “regardless of whether the [policy] is neutral or generally applicable,” and failing it
 14 means schools must provide notice and honor religious opt-out requests. *Id.* at 565, 568.

15 *Mahmoud*’s factual parallels are striking. There, the Montgomery County, Maryland,
 16 school board incorporated “LGBTQ+-inclusive” storybooks and lessons in its K-12
 17 curriculum. *Id.* at 533. The plaintiff parents, like “[m]any Americans,” faithfully believed
 18 that “same-sex marriage should not be condoned,” “that biological sex reflects divine
 19 creation, that sex and gender are inseparable, and that children should be encouraged
 20 to accept their sex and to live accordingly.” *Id.* at 550, 552. Yet Montgomery County’s
 21 LGBTQ+ instruction “present[ed] the opposite viewpoint to young, impressionable
 22 [elementary-aged] children who are likely to accept without question any moral
 23 messages conveyed by their teachers’ instruction.” *Id.* at 550-51. Among the books
 24 approved for instruction were *Pride Puppy*, *Prince & Knight*, and *Born Ready*, along with
 25 others that—sometimes “subtly” or “slyly” and sometimes in a “less veiled manner”—
 26 reflected messages that “same-sex marriage should be accepted” and that it is incorrect
 27 and even “hurtful” to “hold the view that gender is inextricably bound with biological
 28 sex.” *Id.* at 551-53. Religious parents petitioned the school board to provide notice of the

1 LGBTQ+ instruction and allow opt-outs. *Id.* at 540-43. Despite already providing notice
2 and opt-outs for gender and sexuality instruction in health classes, Montgomery County
3 refused to notify parents and allow them to opt their children out. *Id.* at 538-49, 568. In
4 all this, so too here.

5 And *Mahmoud*'s legal analysis is dispositive. The Court held that the school board's
6 "introduction of the 'LGBTQ+-inclusive' storybooks [and classroom instruction]—
7 combined with its decision to withhold notice to parents and to forbid opt outs—
8 substantially interfere[d] with the religious development of [the plaintiff parents']
9 children and impose[d]" an "unacceptable" "burden on religious exercise." *Id.* at 550. This
10 was so because the books approved by the board for instruction, "[l]ike many books
11 targeted at young children," were "unmistakably normative" and conveyed "values,"
12 "viewpoint[s]," "perspective[s]," and "moral messages" around same-sex marriage and
13 "hotly contested view[s] of sex and gender" that conflicted with the "religious principles"
14 and "beliefs that the parents wish to instill in their children." *Id.* at 550-53. That the
15 instruction was geared toward "very young" children put this burden into sharper relief.
16 *Id.* at 551. Children "emulat[e]" and "implicitly trus[t]" their "teachers as role models"
17 and are "susceptibl[e] to peer pressure." *Id.* at 554-55. So the "objective danger" of
18 classroom LGBTQ+ instruction that "contradict[s] their parents' religious views" "is only
19 exacerbated [where] the books will be presented to young children by authority figures
20 in elementary school classrooms." *Id.*

21 Sunnyvale's mandatory LGBTQ+ instruction without parental notice and opt-outs
22 substantially interferes with the Taylors' right to direct the religious development of
23 their elementary-aged children for all the same reasons. Sunnyvale "require[s]" LGBTQ+
24 instruction "as part of [its] core academic program." Compl. Ex. A at 1. It has committed
25 to "supporting a robust education that celebrates diverse ... gender expressions."
26 *Countywide Letter in Support of LGBTQIA Students* at 1, <https://perma.cc/JTD8-5JUC>.
27 And it has resolved, in *Mahmoud*'s wake, to "[p]rovide strong guidance, resources, and
28

1 training for teachers to confidently implement inclusive materials and resist pressures
2 that would erase or diminish LGBTQIA content.” *Resolution # R26-08* at 2,
3 <https://perma.cc/L8UG-QFHF>.

4 The teaching guidance, lesson plans, and books recommended by Sunnyvale all
5 march to the same beat: encouraging students to question “society’s norms” around
6 sexual orientation and gender identity; promoting “acceptance of diverse gender
7 identities and expressions”; “disrupt[ing] traditional definitions of the family”; and
8 advocating “marriage equality.” *LGBTQ+ Teaching Guide* at 7-9, 12,
9 <https://perma.cc/EVJ5-Y8Y6>. These are the same normative messages as the instruction
10 in *Mahmoud*—sometimes via the same books. Messages such as: That all should accept
11 the moral equivalence of same-sex marriage and, indeed, “celebrat[e]” it (*Prince &*
12 *Knight*). *Mahmoud*, 606 U.S. at 551; Compl. ¶ 76. That pride parades are jubilant,
13 family-friendly events enjoyed by clergy, teachers, and children alike (*Pride Puppy*).
14 *Mahmoud*, 606 U.S. at 533 n.3 (observing that school board “removed [*Pride Puppy*] from
15 the curriculum due to content concerns”); Compl. ¶ 75. That drag queens are objects of
16 celebration and emulation (*The Hips on the Drag Queen*). Compl. ¶ 77. That youth gender
17 transitions are no big deal and should be affirmed (*Jack (not Jackie)*; *Born Ready*).
18 *Mahmoud*, 606 U.S. at 553; Compl. ¶¶ 78-79. And that “any arrangement of people—of
19 whatever sex—can be a family so long as they ‘love each other.’” (*Stella Brings the*
20 *Family*). *Alan L. v. Lexington Pub. Schs.*, 814 F. Supp. 3d 61, 74, 77 (D. Mass. 2025)
21 (citing *Mahmoud* and granting preliminary injunction requiring notice and opt-outs for
22 LGBTQ+ instruction including *Stella Brings the Family* and *Prince & Knight*). All this
23 “unmistakably convey[s] a particular viewpoint about same-sex marriage and gender.”
24 *Mahmoud*, 606 U.S. at 555-56. And such decisions may well be Sunnyvale’s prerogative.
25 But Sunnyvale has gone further, declaring that it “is not granting opt-outs from
26 LGBTQ+-inclusive curriculum or storybooks that are part of [its] adopted educational
27 program.” Compl. Ex. A at 1. So there is no escaping Sunnyvale’s LGBTQ+ messages.

1 But the Taylors “wish to present a different moral message to their children,” and
 2 their ability to do so “is undermined when the exact opposite message is positively
 3 reinforced in the public school classroom at a very young age” without notice or opt-outs.
 4 *Mahmoud*, 606 U.S. at 552; *see supra* at 7-9 (explaining the Taylors’ religious beliefs
 5 regarding marriage, family, sexuality, gender, and child-rearing). That is a classic
 6 burden on “parents’ right to the free exercise of religion,” and its “special character”
 7 requires immediate strict scrutiny. *Id.* at 563-65.

8 **2. Sunnyvale’s no-opt-out policy violates the Free Exercise Clause under**
 9 ***Fulton* by allowing individualized exemptions.**

10 In addition to blatantly disregarding *Mahmoud*, Sunnyvale has also infringed the
 11 Taylors’ religious exercise by enforcing a policy that is neither neutral nor generally
 12 applicable.

13 To start, Sunnyvale’s no-opt-out policy is not generally applicable. “General
 14 applicability requires, among other things, that [government policies] be enforced
 15 evenhandedly.” *Waln v. Dysart Sch. Dist.*, 54 F.4th 1152, 1159 (9th Cir. 2022). And when
 16 the government “prohibits religious conduct while permitting secular conduct that
 17 undermines the government’s asserted interests in a similar way,” its enforcement is not
 18 evenhanded, and its policy therefore “lacks general applicability.” *Fulton v. City of*
 19 *Philadelphia*, 593 U.S. 522, 534 (2021). That’s true whether the government’s
 20 discrimination is categorical or individualized. *See FCA*, 82 F.4th at 686-90.

21 Sunnyvale’s discretion to allow individualized exemptions is obvious from both its
 22 inconsistent treatment of the Taylors and the content of its own Opt-out Form. When the
 23 Taylors contacted Sunnyvale about receiving notice and excusing their children from
 24 LGBTQ+ instruction, Sunnyvale “sent the Taylors Sunnyvale’s Parent Opt-out Form,”
 25 which “identified various ‘opt out options’ available to parents.” Compl. ¶¶ 92-93.
 26 Separately, Cumberland granted their request in part—“exercis[ing] discretion in
 27 facilitating the Taylors’ request that their children not be permitted to check out
 28 LGBTQ+ books from the library.” *Id.* ¶ 138; *accord id.* ¶¶ 88-91 (citing *id.* Ex. B). Yet,

1 after waffling on whether to grant the rest of the Taylors’ request, Sunnyvale ultimately
2 denied them notice and opt-outs from LGBTQ+ instruction in the classroom. *See id.*
3 ¶¶ 94-106.

4 This inconsistent application of the no-opt-out policy—including Sunnyvale’s
5 discretionary grant of the Taylors’ library request and denial of their broader curricular
6 request—is the opposite of the “evenhanded[]” enforcement the Free Exercise Clause
7 requires. *Waln*, 54 F.4th at 1159. It’s also *more* than what’s needed to trigger strict
8 scrutiny, for, when it comes to “individualized exemptions,” it’s not necessary to show an
9 exemption has been granted: “the mere existence of government discretion is enough to
10 render a policy not generally applicable.” *FCA*, 82 F.4th at 687-88 (quoting *Fulton*, 593
11 U.S. at 533).

12 Sunnyvale’s Opt-out Form demonstrates such a system of government discretion. In
13 addition to listing defined categories of instruction from which parents could opt out, *see*
14 *infra* Section I.A.3, the Form offers opt-outs for any “Other Instructional Materials” that
15 “substantially interfere with [a] child’s religious development” or “conflict with [parents’]
16 religious beliefs or moral convictions.” Compl. ¶ 93 (quoting *id.* Ex. C). With respect to
17 these “other” opt-outs, Sunnyvale states that it “welcomes parent involvement and
18 believes in working together to support [their] child’s education.” *Id.* Ex. C. As Mr.
19 Slayton’s communications with the Taylors indicated, “working together” included
20 “explor[ing] potential accommodations” and “focus[ing] on designing an individual
21 implementation plan” for parents to “excuse [their] child” from instruction inconsistent
22 with their “religious beliefs or moral convictions.” *Id.* ¶ 140; *id.* Ex. C. No matter whether
23 Sunnyvale had ever granted an opt-out (it has, *id.* ¶ 138), “the mere existence of a
24 discretionary mechanism” for exploring and designing individual exemptions precludes
25 a finding of general applicability. *FCA*, 82 F.4th at 687-88.

3. Sunnyvale’s no-opt-out policy violates the Free Exercise Clause under *Tandon* because it includes categorical exclusions.

Even if Sunnyvale didn’t allow for individualized assessments, its no-opt-out policy would still not be generally applicable. That’s because Sunnyvale’s policy categorically treats “comparable secular activity more favorably than [the Taylors’] religious exercise.” *Tandon v. Newsom*, 593 U.S. 61, 62 (2021).

Sunnyvale’s favoritism is reflected through both the legally required and District-selected categorical exemptions to its no-opt-out policy. For example, although Sunnyvale refuses to follow the CDE’s instruction to provide opt-outs under *Mahmoud*, see Compl. ¶¶ 3-9, 107, Sunnyvale does comply with California law requiring it to “permit[] parents to excuse their children from ‘all or part of comprehensive sexual health education [and] HIV prevention education,’” *id.* ¶ 142 (quoting Cal. Educ. Code § 51938(a)); see also *id.* ¶ 83. Thus, as in *Mahmoud*, Sunnyvale “continues to permit children to opt out of other school activities, including the ‘family life and human sexuality’ unit of instruction, for which opt outs are required under [state] law” regardless of reason—while refusing to excuse children from LGBTQ+ instruction based on their parents’ sincere religious beliefs. 606 U.S. at 540.

Sunnyvale’s categorical exemptions also extend beyond health class. Like the school board in *Mahmoud*, Sunnyvale “goes to great lengths to provide independent, parallel programming for many other students, such as those who qualify as emergent multilingual learners (EMLs) or who qualify for an individualized educational program.” 606 U.S. at 566 (collecting sources); accord Compl. ¶ 85. Sunnyvale’s Opt-out Form includes categorical opt-outs for “Physical Examination[s]” and behavioral-health “[s]urveys, tests, research, and evaluation.” Compl. ¶ 144; *id.* Ex. C. And Sunnyvale also permits opt-outs from instruction for other reasons, including student participation in extra-curricular activities. *Id.* ¶ 145. In other words, while Sunnyvale’s no-opt-out policy categorically disregards parents’ religious objections to their children engaging with

1 LGBTQ+ instruction, it categorically honors parents' comparable secular objections to
2 their children's engagement with other instruction.

3 To the extent Sunnyvale believes its prescribed categorical opt-outs are meaningfully
4 different from the opt-out the Taylors requested, it is wrong. The comparability of "two
5 activities" is "judged against" the "government interest that justifies the regulation at
6 issue." *Waln*, 54 F.4th at 1159 (quoting *Tandon*, 593 U.S. at 62). And Sunnyvale has no
7 valid—much less compelling—interest in allowing other parents to opt their children out
8 of certain instruction while prohibiting the Taylors from doing the same. *See infra*
9 Section II.A.

10 **4. Sunnyvale's no-opt-out policy violates the Free Exercise Clause under**
11 ***Lukumi* and *Masterpiece* because it targets religious exercise.**

12 In addition to lacking general applicability, Sunnyvale's no-opt-out policy is also
13 subject to strict scrutiny because it is not neutral. Instead, it unconstitutionally targets
14 faithful parents' religious exercise.

15 "A government policy will not qualify as neutral if it is specifically directed at
16 religious practice"—detectable if the policy "discriminates on its face, or if a religious
17 exercise is otherwise its object." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 526
18 (2022) (cleaned up). And if the record shows even "subtle departures from neutrality" or
19 creates even "slight suspicion[s]" of religious intolerance, the policy violates the Free
20 Exercise Clause. *Masterpiece Cakeshop v. Colo. C.R. Comm'n*, 584 U.S. 617, 638 (2018).
21 Thus, showing overt religious hostility is not necessary. Because a government policy's
22 "effect ... is strong evidence of its object," a policy's outsized impact on religious exercise
23 can also demonstrate non-neutrality. *Church of the Lukumi Babalu Aye, Inc. v. City of*
24 *Hialeah*, 508 U.S. 520, 535 (1993). As recent precedent confirms, a policy standing
25 "obviously in opposition to more traditional understandings of sexuality and gender" is
26 a prime example of targeting in action. *Bates*, 146 F.4th at 794.

27 After *Mahmoud*, there's no question that Sunnyvale knows that the "burden" of its
28 no-opt-out policy, "in practical terms, falls on [religious] adherents." *Lukumi*, 508 U.S.

at 536-37; *see Bates*, 146 F.4th at 794-95 (applying *Mahmoud*, *Masterpiece*, and *Obergefell* to find an Oregon regulation not neutral where the “overarching import and effect of Oregon’s policy [fell] on prospective foster parents whose sincerely held religious beliefs contradict the state’s perspective on gender identity”). For many religious parents, including “Christians, Jews, Muslims, and others, the religious education of children is not merely a preferred practice but rather a religious obligation.” *Mahmoud*, 606 U.S. at 547. And like Montgomery County, Sunnyvale must be “doubtless aware” of the “substantial religious communities whose members hold traditional views on marriage, sex, and gender.” *Id.* at 567. “[A]lthough one can imagine non-religious objections” to teachings on gender and sexuality, it’s these religious communities whose beliefs and exercise are disproportionately impacted by Sunnyvale’s targeted denial of opt-outs to its LGBTQ+ instruction. *Bates*, 146 F.4th at 794.

Even assuming Sunnyvale “intended to act in the best interests of children, and not out of hostility or animus toward religion,” that would “not make [Sunnyvale’s] policy neutral toward religion.” *Id.* at 795; *see also id.* at 783 (“[A] state’s general conception of the child’s best interest does not create a force field against the valid operation of other constitutional rights.”). Instead, because Sunnyvale’s categorical denial of opt-outs to LGBTQ+ instruction “implicate[s] uniquely religious matters that prove most problematic for parents who view these issues through a traditional religious lens,” its no-opt-out policy is non-neutral. *Id.* at 795.

B. Prohibiting parental opt-outs also triggers strict scrutiny under the Due Process Clause.

After the Supreme Court confirmed that the Free Exercise Clause prohibits the government from stripping away religious parents’ “critical right ... to guide the religious development of children,” *Mahmoud*, 606 U.S. at 559, the Court held that the Due Process Clause provides overlapping protection. Because *all* “parents—not the State—have primary authority with respect to ‘the upbringing and education of children,’” the

Taylors' parental rights receive additional constitutional protection. *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) (quoting *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534-35 (1925)).

Mirabelli rejected a Ninth Circuit panel's view of *Mahmoud* as "a narrow decision" that did not reach California policies requiring public schools to facilitate and conceal from parents their children's gender transitioning at school. *Mirabelli*, 607 U.S. at 495-97. Instead, the Supreme Court relied on "long-established precedent" to hold that the "parents who object[ed] to [California's] policies on due process grounds" were equally entitled to constitutional protection. *Id.* at 497; *see also City of Huntington Beach v. Newsom*, No. 25-3826, 2026 WL 1785110, at *3-4 (9th Cir. June 18, 2026) (applying *Mirabelli* and concluding parents were likely to succeed on due-process challenge to California law limiting parental rights in school setting).

By denying the Taylors notice and opportunity to opt their children out of LGBTQ+ instruction, Sunnyvale has likewise violated the Taylors' fundamental right to make key decisions regarding the "upbringing and education of [their] children." *Pierce*, 268 U.S. at 534-35. This, too, triggers strict scrutiny. *See Mirabelli*, 607 U.S. at 496-97.

II. The no-opt-out policy cannot survive strict scrutiny.

Denying the Taylors notice and opt-outs is neither "justified by a compelling state interest" nor "narrowly tailored in pursuit of that interest." *Mahmoud*, 606 U.S. at 564. Sunnyvale thus cannot satisfy strict scrutiny.

A. Sunnyvale lacks a compelling government interest in denying notice and opt-outs for LGBTQ+ instruction.

Whereas Sunnyvale "has a strong interest" in avoiding "conduct that infringes individual liberties, such as the free practice of one's religion," *Mayweathers v. Newland*, 314 F.3d 1062, 1067 (9th Cir. 2002), it has no compelling interest in forcing children to participate in lessons designed to advance views about LGBTQ+ issues that contradict their parents' teachings. Neither Sunnyvale's express reason for its formal denial, nor its other insinuated justifications, support its denial of the Taylors' opt-out request.

1 First, in response to the Taylors' request, Sunnyvale blamed its denial exclusively on
 2 its interpretation of California law. Compl. Ex. A (LGBTQ+ instruction "required," "not
 3 optional," and "not subject to parent opt-out provisions"). Neither the California
 4 Department of Education nor other districts, like Riverside, have taken this absolutist
 5 position post-*Mahmoud*. See *id.* ¶¶ 3-5, 107. Nevertheless, Sunnyvale dismissed the
 6 Supreme Court's opinion as one that "addressed a specific set of facts in another state"
 7 and "does not override California's statutory requirements governing instructional
 8 content." *Id.* Ex. A.

9 But this justification is not legally accurate, much less compelling. It starts off badly
 10 by inverting the Supremacy Clause. See U.S. Const. art. VI, cl. 2. And its judicial
 11 acceptance would reduce the Bill of Rights to a geographic patchwork. But the First
 12 Amendment "has the same meaning in all parts of the United States"—"[m]erely local
 13 attitudes can neither shrink nor inflate the meaning of fundamental Bill of Rights
 14 guarantees that apply to the States through the Fourteenth Amendment." *Wolford v.*
 15 *Lopez*, No. 24-1046, 2026 WL 1825723, at *11 (U.S. June 25, 2026). While "[d]efining the
 16 scope of liability" and obligations of public schools "under state law is the State's
 17 prerogative," "a State has no power to confer immunity from *federal* causes of action,"
 18 and judges "are bound to follow federal law." *Doe v. Dynamic Physical Therapy, LLC*,
 19 607 U.S. 11, 11 (2025) (summarily reversing Louisiana's elevation of state over federal
 20 law). Sometimes that means telling California governments "no." See *Mirabelli*, 607 U.S.
 21 at 495-97, 800, 802 (applying *Mahmoud* over California's "claim[] that state
 22 law ... required it to adopt [its] policies"); *City of Huntington Beach*, 2026 WL 1785110
 23 (applying *Mirabelli* to another California law). Sunnyvale has no more "power ... to strip
 24 away the critical right of parents to guide the religious development of their children"
 25 than does Montgomery County. *Mahmoud*, 606 U.S. at 559.

26 Second, adding to Sunnyvale's formal justification, Mr. Slayton suggested that
 27 Sunnyvale's interest was also rooted in its dedication to the District's "core instructional
 28

1 framework,” “commitment to a unified curriculum,” and “goal [of] providing a supportive
2 and inclusive learning environment for all students while maintaining the integrity of
3 the board-approved curriculum.” Compl. Ex. G. But given Sunnyvale’s mechanisms for
4 individualized and categorical exceptions, these interests are no more compelling than
5 Montgomery County’s. *See Mahmoud*, 606 U.S. at 565-67 (holding asserted “compelling
6 interest in ‘maintaining a school environment that is safe and conducive to learning for
7 all students’” was fatally “undermine[d]” by the county’s “robust ‘system of exceptions’”).

8 And even without those mechanisms, Sunnyvale still must show a compelling interest
9 in denying the Taylors’ “*specific* exemption[.]”—not just an interest in denying opt-outs
10 generally. *Fulton*, 593 U.S. at 541 (emphasis added). But only “interests of the highest
11 order” that are “not otherwise served can overbalance legitimate claims to the free
12 exercise of religion.” *Yoder*, 406 U.S. at 215. And “the historical pedigree” necessary to
13 demonstrate any such interest is sorely lacking because Sunnyvale cannot “identify any
14 tradition of teaching sexuality and gender identity to young children—much less a
15 tradition of preventing parents from opting their children out of such instruction.”
16 *Mahmoud*, 606 U.S. at 581, 583 (Thomas, J., concurring). Instead, Sunnyvale’s approach
17 is “novel” and “controversial,” not deeply rooted and reflective of highest-order interests.
18 *Id.* at 583-83; *accord Ramirez v. Collier*, 595 U.S. 411, 428 (2022) (rejecting religiously
19 burdensome practice that broke with “long history”); *id.* at 442-43 (Kavanaugh, J.,
20 concurring) (“Often, the Court also examines history and contemporary state practice to
21 inform” “compelling” interests and “least restrictive” means.).

22 By contrast, the Taylors’ interest in directing the religious upbringing of their
23 children is part of an “enduring American tradition.” *Yoder*, 406 U.S. at 226-27, 232. This
24 is reflected in the near-ubiquitous human sexuality opt-outs that school districts grant
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26
27
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1 nationwide. *See, e.g.*, Cal. Educ. Code § 51938.² Given that our country has long
 2 recognized that parents hold the “primary function and freedom” to prepare their
 3 children for the obligations the state cannot administer, *Troxel v. Granville*, 530 U.S. 57,
 4 65-66 (2000), Sunnyvale is not entitled to dismiss the Taylors’ rights “out of hand,”
 5 *Mahmoud*, 606 U.S. at 557. Instead, Sunnyvale must respect the widespread,
 6 “longstanding practice” of protecting parental rights for what it embodies, *Ramirez*, 595
 7 U.S. at 435: “a principle of general applicability” that provides “robust protection for
 8 religious liberty.” *Mahmoud*, 606 U.S. at 558. Because Sunnyvale refuses, it fails at step
 9 one.

10 **B. The no-opt-out policy is not the least restrictive means for achieving the**
 11 **asserted government interest.**

12 Even if Sunnyvale could identify a compelling interest, denying the Taylors’ request
 13 for notice and opt-outs is not the least restrictive means of achieving that interest.

14 Here too, Sunnyvale’s conduct reveals that its total denial of religious-based opt-outs
 15 from LGBTQ+ instruction is overkill. Its maintenance of categorical opt-outs and
 16 discretionary accommodations for a variety of other educational programs “undermines
 17 [any] contention that the provision of opt outs to religious parents would be infeasible or
 18 unworkable.” *Id.* at 567. Simply put, if Sunnyvale can “structure the [health] curriculum
 19 to more easily accommodate opt outs, it could structure instruction concerning the
 20 ‘LGBTQ+-inclusive’ storybooks similarly.” *Id.* Less restrictive means are readily at hand.

21 And to date, Sunnyvale “has failed to offer any showing that it has even considered
 22 less restrictive measures than those implemented here.” *FCA*, 82 F.4th at 694. After all,
 23 although Sunnyvale believes its “first responsibility is to remind families of the richness
 24

25 ² *See also* Cert. Pet. at 6-7 & nn.5-7, *Mahmoud*, 606 U.S. 522 (No. 24-297) (collecting
 26 opt-out and opt-in provisions from 47 states and the District of Columbia); *Mahmoud*,
 27 606 U.S. at 568 (emphasizing that “[s]everal States across the country permit broad opt
 28 outs from discrete aspects of the public school curriculum without widespread
 consequences,” and collecting examples).

of what ‘opting in’ [to LGBTQ+ instruction] provides,” it still admits that “legal opt-out provisions [to that instruction] may exist.” *Resolution # R26-08* at 1, <https://perma.cc/L8UG-QFHF>. Especially “[w]hen so many [other schools] offer an accommodation,” Sunnyvale “must, at a minimum, offer persuasive reasons why it believes that it must take a different course.” *Holt v. Hobbs*, 574 U.S. 352, 369 (2015); *see supra* n.2. It cannot do so with a straight face, and thus fails the least-restrictive-means analysis.

III. The Taylors satisfy the remaining preliminary injunction factors.

In addition to showing a likelihood of success on the merits, a preliminary injunction is warranted when plaintiffs demonstrate that they are likely to suffer irreparable harm in the absence of a preliminary injunction, that the balance of equities tips in their favor, and that an injunction is in the public interest. *Mahmoud*, 606 U.S. at 569. Just so here.

Irreparable harm. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Id.* (quoting *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020)). Here, “[i]n the absence of an injunction, the [Taylors] will continue to be put to a choice: either risk their child’s exposure to burdensome instruction, or pay substantial sums for alternative educational services.” *Id.* This “choice unconstitutionally burdens the parents’ religious exercise” and establishes irreparable harm. *Id.*

Balance of equities and public interest. The last two preliminary injunction factors—the balance of the equities and the public interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). They are uncomplicated here. “[I]t is always in the public interest to prevent the violation of a party’s constitutional rights,” and “rais[ing] serious First Amendment questions ... alone compels a finding that the balance of hardships tips sharply in [the movants’] favor.” *FCA*, 82 F.4th at 695 (internal quotation marks omitted).

1 “[I]n light of the strong showing made by the parents here, and the lack of a
2 compelling interest supporting the Board’s policies, an injunction is both equitable and
3 in the public interest.” *Mahmoud*, 606 U.S. at 569. The Taylors therefore “should receive
4 preliminary relief while this lawsuit proceeds.” *Id.* Namely, Sunnyvale “should be
5 ordered to notify them in advance whenever one of the [LGBTQ+] books in question or
6 any other similar book [or lesson] is to be used in any way and to allow them to have
7 their children excused from that instruction.” *Id.*

8 CONCLUSION

9 Plaintiffs’ motion for preliminary injunction should be granted in full.
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1 Dated: July 2, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2026, a copy of Plaintiffs' Notice of Motion and Memorandum in Support of Motion for Preliminary Injunction, with the supporting declaration and Proposed Order, were electronically filed in this case and were emailed and mailed via First-Class Mail, postage prepaid, to Defendants' counsel below in accordance with Fed. R. Civ. P. 5(b)(1):

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