

1 David J. Hacker, SBN [REDACTED]
2 [REDACTED]
3 Nathan W. Kellum, *pro hac vice**
4 [REDACTED]
5 FIRST LIBERTY INSTITUTE
6 2001 W. Plano Pkwy, Suite 1600
7 Plano, TX 75075

Dean R. Broyles, [REDACTED]
The National Center for Law &
Policy
539 West Grand Avenue
Escondido, California 92025

8 Kayla A. Toney, *pro hac vice**
9 [REDACTED]
10 1331 Pennsylvania Ave. NW Suite 1410
11 Washington, DC 20004

Robert J. Reynolds, [REDACTED]
Law Office of Robert J. Reynolds
16950 Via de Santa Fe, Suite
5060-145
Rancho Santa Fe, CA 92091

*Application forthcoming

12
13 **UNITED STATES DISTRICT COURT**
14 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

15 S.E., a minor by and through his parents,
16 CARLOS AND JENNIFER ENCINAS;
17 CARLOS AND JENNIFER ENCINAS;
18 P.D., a minor by and through his parents,
19 TOM AND REBECCA DOE; TOM
AND REBECCA DOE,
Plaintiffs,

v.

20 ANDRÉE GREY, in her official capacity
21 as Superintendent of the Encinitas Union
22 School District, and in her individual
23 capacity; AMY ILLINGWORTH, in her
24 official capacity as Assistant
25 Superintendent of the Encinitas Union
26 School District, and in her individual
capacity; CHRISTIE KAY, in her
official capacity as Principal of La Costa

Case No. '24CV1611 BEN SBC

VERIFIED COMPLAINT FOR:

- 1. Violation of Free Speech Clause of First Amendment to U.S. Constitution: Compelled Speech**
- 2. Violation of Free Exercise Clause of First Amendment to U.S. Constitution: Not Neutral or Generally Applicable**

1 Heights Elementary School, and in her
2 individual capacity; SEAN MURPHY,
3 in his official capacity as Teacher at La
4 Costa Heights Elementary School, and in
5 his individual capacity; KATHRYN
6 WEST, in her official capacity as
7 Teacher at La Costa Heights Elementary
8 School, and in her individual capacity;
9 EMILY ANDRADE, in her official
10 capacity as a board member of the
11 Encinitas Union School District; TOM
12 MORTON; in his official capacity as a
13 board member of the Encinitas Union
14 School District, MARLA STRICH; in
15 her official capacity as a board member
16 of the Encinitas Union School District;
17 MARLON TAYLOR, in his official
18 capacity as a board member of the
19 Encinitas Union School District; JODIE
20 WILIAMS, in her official capacity as a
21 board member of the Encinitas Union
22 School District,

Defendants.

**3. Violation of Free Exercise
Clause of First Amendment to
U.S. Constitution: Religious
Upbringing of Children**

**4. Violation of Due Process Clause
of Fourteenth Amendment to
U.S. Constitution: Parental
Rights**

**5. Violation of Due Process Clause
of Fourteenth Amendment to
U.S. Constitution: Lack of
Notice**

**6. Injunctive and Declaratory
Relief; Nominal Damages**

INTRODUCTION

19 1. This is a civil rights action challenging a public school program that
20 subjects elementary school students to “equity” books and other instruction on
21 gender identity in conflict with their and their parents’ religious beliefs and then
22 forces them to affirm and convey this instruction to younger students whom they
23 have mentored over the course of the school year – without giving their parents an
24 opportunity to opt out of the program or advance notice of the activity.

1 6. Defendants' policy and practices have deprived and will continue to
2 deprive plaintiffs of their paramount rights guaranteed in the United States
3 Constitution.

4 7. Each and every act of defendants alleged herein was committed by
5 defendants, each and every one of them, under the color of state law and authority.

6 **JURISDICTION AND VENUE**

7 8. The instant civil rights action raises federal questions under the First and
8 Fourteenth Amendments to the U.S. Constitution, and 42 U.S.C. § 1983.

9 9. This Court has original subject-matter jurisdiction under 28 U.S.C. §§
10 1331 and 1343 over plaintiffs' claims arising under the U.S. Constitution and laws
11 of the United States.

12 10. This Court has authority to award the requested declaratory relief
13 under 28 U.S.C. §§ 2201-02 and Federal Rule of Civil Procedure 57; the requested
14 injunctive relief under 28 U.S.C. § 1343 and Federal Rule of Civil Procedure 65;
15 the requested nominal damages under 28 U.S.C. § 1343; and costs and attorneys'
16 fees under 42 U.S.C. §§ 1988.

17 11. The constitutional violations are actionable under 42 U.S.C. § 1983.

18 12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because
19 all events giving rise to the claims detailed in this complaint occurred within the
20 Southern District of California, and at least one defendant resides in the Southern
21 District of California.

22 **PLAINTIFFS**

23 13. Plaintiffs Carlos and Jennifer Encinas are residents of Carlsbad,
24 California. They are also the parents of S.E., fully responsible for S.E.'s care,
25 retaining custody and control.

1 20. Defendant Tom Morton is a current board member of the School
2 District. He is responsible for making decisions regarding School District policy,
3 programming, and operations, and resides in this judicial district.

4 21. Defendant Marla Strich is a current board member of the School
5 District. She is responsible for making decisions regarding School District policy,
6 programming, and operations, and resides in this judicial district.

7 22. Defendant Marlon Taylor is a current board member of the School
8 District. He is responsible for making decisions regarding School District policy,
9 programming, and operations, and resides in this judicial district.

10 23. Defendant Jodie Williams is a current board member of the School
11 District. She is responsible for making decisions regarding School District policy,
12 programming, and operations, and resides in this judicial district.

13 24. Defendant Andrée Grey (“Superintendent Grey”) was and is at all
14 material times the Superintendent of the School District and has served in this
15 position since 2019. As the Superintendent, Grey oversees and is responsible for
16 applications of policies and programming in the schools within the District,
17 including La Costa Heights. She is sued in both her individual and official
18 capacities and resides in this judicial district.

19 25. Defendant Amy Illingworth (“Assistant Superintendent Illingworth”)
20 was and is at all material times the Assistant Superintendent of the School District
21 and has served in this position since 2019. Assistant Superintendent Illingworth
22 oversees and is responsible for the selection of curriculum for the entire school
23 district, including La Costa Heights. She also assists the Superintendent with
24 oversight of the School District’s operations. Assistant Superintendent Illingworth
25

1 is sued in both her individual and official capacities and resides in this judicial
2 district.

3 26. Defendant Christie Kay (“Principal Kay”) was at all material times the
4 Principal of La Costa Heights in the School District, having served in that position
5 from 2013 to July 2024. As the Principal at La Costa Heights, Principal Kay
6 oversaw and was responsible for operations of La Costa Heights and enforcing
7 school district policies and programming. Principal Kay is sued in both her
8 individual and official capacities and resides in this judicial district.

9 27. Defendant Sean Murphy (“Mr. Murphy”) was and is at all material
10 times a fifth-grade teacher at La Costa Heights in the School District, receiving
11 tenured status in October 2021. As a teacher, Mr. Murphy is responsible for
12 selecting books and activities for his fifth-grade students, which include materials
13 instructing them on gender identity and for use in their “buddy” program with
14 younger students. Mr. Murphy is sued in both his individual and official capacities
15 and resides in this judicial district.

16 28. Defendant Kathryn West (“Ms. West”) was and is at all material times
17 a kindergarten teacher at La Costa Heights in the School District. As a teacher,
18 Ms. West is responsible for selecting books and activities for her kindergarten
19 students to use during their “buddy” program with older students. Ms. West is
20 sued in both her individual and official capacities and resides in this judicial district.

21 **FACTUAL BACKGROUND**

22 *Plaintiff Parents’ Sincere Religious Beliefs*

23 29. Plaintiffs Carlos and Jennifer Encinas are devout Christians. They are
24 faithful members of a Bible-believing evangelical church and also of a Catholic
25

1 church in their local parish. They regularly attend church with their children and
2 raise their children in the Christian faith.

3 30. Plaintiffs Tom and Rebecca Doe are devout Christians. They are
4 faithful members of their local Catholic church and parish and raise their children
5 in the Christian faith.

6 31. The religious faith of Plaintiffs Carlos and Jennifer Encinas and Tom
7 and Rebecca Doe (jointly “Plaintiff Parents”) shapes their roles as parents.

8 32. Plaintiff Parents believe the Bible is the inspired and infallible Word of
9 God that speaks as the final authority on truth, morality, and appropriate behavior.
10 They follow the tenets of the Bible in raising their children.

11 33. Plaintiff Parents believe, consistent with the teachings of the Bible and
12 at their churches, that all humans are created in God’s image as either male or
13 female.

14 34. Plaintiff Parents further adhere to biblical and church teaching that
15 every man and woman should acknowledge and accept his sexual identity as male
16 or female and that physical differences between sexes are complementary and
17 beneficial to the flourishing of the family.

18 35. As part of their Christian faith and tradition, Plaintiff Parents
19 wholeheartedly believe sex is ordained by God, determined and designated by God
20 alone, that everyone should love and care for the body God gives him or her, accept
21 the biological sex given to him or her, and not deny that biological sex, or attempt
22 to alter his or her sex through drugs, surgical means, or other means. They also
23 believe it is imperative to train their children in this understanding about biological
24 sex.

1 36. Plaintiff Parents also train their children to respect authority figures,
2 which include their teachers and school administrators.

3 37. Viewing children as a gift from God, Plaintiff Parents believe it is their
4 responsibility as Christian parents to raise their children according to their
5 sincerely held religious beliefs as delineated in Scripture. School promotion of
6 ideologies and concepts that run counter to their sincerely held religious beliefs
7 undermines their parental authority and interferes with their essential roles as
8 parents.

9 38. Because of their sincere religious beliefs about sex and gender, Plaintiff
10 Parents believe it is sinful and harmful for anyone to develop their own personal
11 sense of gender that conflicts with biological sex and identify as such.

12 39. Plaintiff Parents believe the School District should not encourage their
13 minor children to question their God-given sex or gender or urge other students to
14 do so, as this would force their children to betray their own religious beliefs.

15 40. Plaintiff Parents further believe the School District should not compel
16 their minor children to speak or act contrary to their religious beliefs in a school
17 setting where they are temporarily apart from parental guidance and expected to
18 comply with school authorities.

19 ***S.E.'s Sincere Religious Beliefs and School Involvement***

20 41. Plaintiff S.E. maintains his own authentic Christian faith independent
21 from his parents. He is very involved in church and religious youth group, and
22 frequently invites friends and classmates to attend church with him. S.E. attends
23 church camp every summer. He has a passion for Jesus and sharing the love of
24 Jesus with his peers.

1 42. True to his Christian faith and understanding of biblical and church
2 teaching, S.E. believes God created humans as either male or female, and humans
3 are not at liberty to choose a gender different from God-given gender.

4 43. According to his Christian faith, S.E. also believes he is called to
5 respect authority figures, like teachers and school administrators, in addition to his
6 parents. For this reason, it is confusing and distressing for him when teachers and
7 administrators teach concepts about sex and sexuality that contradict his
8 understanding of sex and sexuality as derived from his parents, church community,
9 and the Bible.

10 44. S.E. has attended La Costa Heights since kindergarten and recently
11 completed his fifth-grade year. He has done well at school, academically and
12 behaviorally.

13 45. S.E. served in various leadership roles at La Costa Heights this past
14 school year. He was a mentor for students with special needs through “Teaching
15 Independence through Differential Education” (TIDE) and served as a California
16 native garden volunteer. Principal Kay specifically praised S.E. as an excellent
17 tour guide and school ambassador for new students and their families.

18 46. S.E. has participated in the “buddy” program since kindergarten. While
19 in fifth grade, S.E. served as a mentor for a kindergartener in the program.

20 ***P.D.’s Sincere Religious Beliefs and School Involvement***

21 47. Plaintiff P.D. has his own authentic Christian faith apart from his
22 parents. He has been baptized and completed his First Reconciliation and First
23 Communion in his family’s local Catholic parish. He actively attends religious
24 education classes, known as the Confraternity of Christian Doctrine, and his
25 mother also teaches him at home through the family model of faith formation. P.D.

1 is very involved in his church, attending mass every Sunday he is able. Every
2 summer P.D. attends the same church camp as S.E.

3 48. True to his Christian faith and his understanding of biblical teaching,
4 P.D. believes God creates humans as either male or female, and humans are not at
5 liberty to discern or change their own gender.

6 49. According to his Christian faith, P.D. also believes he is called to show
7 respect toward authority figures, like teachers and school administrators, as well
8 as his parents. For this reason, it is confusing and distressing for him when teachers
9 and administrators teach concepts about sex and sexuality that contradict biblical
10 teaching he has received from his parents and church community.

11 50. P.D. recently finished his fifth-grade year at La Costa Heights. He has
12 served in many leadership roles at La Costa Heights, including as a mentor for
13 students with special needs through TIDE. He is also active in athletics. He has
14 done well at school, academically and behaviorally.

15 51. P.D. has been an active participant in the “buddy” program every year
16 at La Costa Heights since kindergarten and was a mentor for a kindergartener
17 during the 2023-24 school year.

18 ***The School District Advances Gender Identity***
19 ***as Part of its Comprehensive Health Education***

20 52. EDC § 51210 establishes courses of study for grades 1 to 6 in California
21 public school districts. Among other requirements, subsection 51210(6) of EDC
22 requires state school districts to study “[h]ealth, including instruction in the
23 principles and practices of individual, family, and community health.”

24 53. The School District adopted Regulation 6142.8 to facilitate
25 “Comprehensive Health Education” for all schools in the district. It incorporates

1 the mental health of LGBTQ students in its educational goals. Explaining the
2 purpose for the comprehensive health education, the regulation advises the Board
3 of Trustees “believes . . . that creating a safe, supportive, inclusive, and
4 nonjudgemental environment is crucial in promoting healthy development of all
5 students.”

6 54. School District Regulation 6142.8 contemplates a “planned, sequential,
7 research-based, and developmentally appropriate health curriculum for students in
8 grades K-6[.]” with the Superintendent determining subject areas and providing
9 professional development for personnel to ensure knowledge about “academic
10 content standards[.]”

11 55. District Regulation 6142.8 expounds on a wide range of required
12 content for “health” instruction, listing “[m]ental, emotional, and social health”
13 among other broad subject areas, like alcohol, tobacco, and drugs, human growth,
14 development, and sexual health, injury prevention and safety, nutrition and
15 physical activity, as well as personal and community health, including instruction
16 on personal hygiene and disease transmission.

17 56. With each content area, District Regulation 6142.8 mandates the
18 schools in the system design instruction and curriculum to help students “use
19 interpersonal communication skills, decision-making skills, and goal-setting skills
20 to enhance health.”

21 57. District Regulation 6142.8 specifies numerous resources for its policy
22 on comprehensive health education, such as California School Board Association’s
23 publications on oral health, physical health, marijuana use, mental health, sun
24 safety, and asthma management. Another listed resource is a publication produced
25

1 by the Human Rights Campaign Foundation (“HRCF”) entitled “California
2 LGBTQ Youth Report, January 2019.”¹

3 58. The HRCF Report was prepared in partnership with the California
4 School Board Association, along with the Association of California School
5 Administrators, California School Nurse Association, California State PTA,
6 California Association of School Counselors, California Federation of Teachers,
7 California Teachers Association, California Association of School Psychologists,
8 and Equality California.

9 59. The HRCF Report focuses on the mental health of LGBTQ students,
10 claiming a significant disparity between these students and their non-LGBTQ
11 counterparts, as well as a need to cultivate inclusive school climates to promote
12 better mental health for LGBTQ students.

13 60. Specifically addressing the need for LGBTQ inclusion in elementary
14 schools, the HRCF Report recommends California public school districts adopt a
15 “proactive” approach to aid the mental health of LGBTQ students, urging that
16 “[a]ll students, especially transgender and non-binary children, need supportive
17 school environments that affirm their identities.”

18 61. According to the HRCF Report, the best practices for creating a healthy
19 school climate include the provision of “diverse books” and training for teachers
20 on LGBTQ acceptance. In the section entitled “What You Can Do,” the HRCF
21 Report recommends, among other things, that school district leaders, school board
22

23
24
25 ¹ The report is available here:

26 <https://assets2.hrc.org/files/assets/resources/YouthReport-California-Final.pdf>.

1 members, and policy makers create district policy dedicated to supporting
2 transgender students.

3 62. District Regulation 6142.8 follows this recommendation,
4 contemplating school curriculum that supports LGBTQ students and advances
5 gender identity and transgenderism as part of its comprehensive health education.

6 ***The School District Endeavors to Promote Gender Identity to***
7 ***Elementary School Students through “Equity” Books***

8 63. The School District maintains guidelines for supporting students who
9 are gender diverse. To ensure compliance, it supplies in-service training sessions
10 for teachers and educators to make classroom and school climates more LGBTQ-
11 inclusive environments.

12 64. In these training sessions, the School District directs teachers and
13 educators to select books for their curriculum that promote gender identity.
14 According to District guidelines, the term “gender identity” is defined to “refer[]
15 to a person’s internal, strongly held sense of their gender [that] may or may not
16 correspond to the sex they were assigned at birth.”

17 65. Assistant Superintendent Illingworth is the school official responsible
18 for selecting curriculum for the School District. In this role, Illingworth has
19 encouraged teachers in the District to purchase “inclusive” instructional materials
20 focusing on LGBTQ matters.

21 66. Additionally, Assistant Superintendent Illingworth is responsible for
22 conducting numerous mandatory School District trainings for all staff on gender
23 identity.

24 67. At the mandated teacher equity trainings for the School District, school
25 officials encourage teachers to purchase books containing so-called “equity” topics.

1 In a 2022 training session, Illingworth publicly expressed that one of the District’s
2 “equity” goals is to “increase representation in books and curriculum through
3 Equity PD and curriculum audit.”

4 68. Illingworth applies for grants to purchase books focused on LGBTQ
5 topics for teachers to obtain and use. Over the last several years, the School District
6 has given a significant monetary grant (approximately \$5,000 per grant) to each
7 school site to purchase “equity” books to “enhance representation.”

8 69. In October 2022, the School District gave elementary school teachers
9 the following directive on “equity” books: “Think about some equity books you
10 would like to purchase for your classroom. For example, the books could go along
11 with your social studies curriculum, they could be for read aloud, or you could
12 purchase a classroom set. The only caveat is that the books must be equity books. . . .
13 I will use district equity funds to make your purchase. These books will be the
14 property of [the school site], but will be for your classroom, not the library.”

15 70. School teachers comply with this mandate by obtaining books from a
16 list of “equity” books approved by the School District.

17 71. In April 2023, the School District extended enough funding for teachers
18 to order around twenty (20) “equity” books for each grade.

19 72. Each school site creates and submits their book purchases, and the
20 principals approve the purchases.

21 73. Mr. Murphy and Ms. West attended mandatory School District staff
22 training on equity and inclusion in spring 2023, where Illingworth praised teachers
23 for purchasing “equity” books from the approved list, advising that LGTBQ-
24 inclusive curriculum is necessary to encourage non-LGBTQ students to reflect on
25 their actions and beliefs.

1 74. Illingworth also expounded on the School District’s intentional choice
2 to present LGBTQ-related books to elementary school students for supposed mental
3 health concerns. “Kids already know at this age if they’re gay! And if they see
4 zero representation, they think they’re doing something wrong or that they’re bad
5 or evil, so we need to make sure that our representation looks like all the pieces of
6 one person’s identity . . . in the back of these slides we have the link back to our
7 equity website and additional book resources that have books with all sorts of
8 identity markers in it to make sure that we’re finding that diversity in telling stories.”

9 75. At this same mandatory training, Illingworth recommended “reading a
10 picture book and just once in a while, take out the he or she, and say they, just to
11 get used to practicing reading something that way,” in order to normalize pronoun
12 use that conflicts with biology among elementary school students.

13 76. Illingworth also contended in the session that parents should not know
14 about gender identity instruction or programming. She said, for any student who
15 expresses a desire to change gender through a different name or pronoun, the school
16 staff should develop a “gender support plan,” and “the parents aren’t in the plan,
17 they never see the plan, they never know about the plan . . . I want a parent not to
18 know.” The gender support plan is part of the District’s guidelines on this subject.

19 77. Illingworth claimed that students in the School District start
20 transitioning genders as young as “Kindergarten.” “We have children who enroll
21 in school who are already transgender and have already moved away from their sex
22 assigned at birth and are coming to us with their new name and pronoun . . . we’ve
23 had that as young as kindergarten and then these plans have K to 6, all grades.”

24 78. In defending School District policy of promoting LGBTQ-related
25 books to all young children, Illingworth expressed orally and through written

1 training materials: “*Homophobia, heterosexism, and transphobia are present in*
2 *many of our schools and communities. . . . This bias hurts all children, both those*
3 *directly affected, and those who learn in an atmosphere of fear and tension, afraid*
4 *to explore their own lives because of worry about disapproval and rejection. . . .*
5 *Students need to be encouraged to reflect on their own actions and friendships, learn*
6 *from their peers who are different from them, and support allies who stand up to the*
7 *prejudice and hate.”*

8 79. Illingworth added in the training that “the question we get the most” is
9 “are elementary school students too young to be introduced to this topic?” She
10 surmised no, because children have already been introduced to information about
11 LGBTQ topics from home, which the School District considers wrong-headed and
12 derived from biased stereotypes.

13 80. According to the School District’s mandatory staff training materials,
14 “At a very young age children have already been introduced to information about
15 LGBTQIA+ people which is often based on misinformation and negative
16 stereotypes. When adults are silent about LGBTQIA+ people, students learn from
17 this omission that it is acceptable to use homophobic and transphobic putdowns. . . .
18 Teachers are not introducing a new topic, they are helping the young students
19 understand bias and prejudice and will learn to use respectful language.”

20 81. The express reason the School District pushes teachers to choose books
21 promoting gender identity is to address “transphobia” and correct “misinformation
22 and negative stereotypes” young children are presumably learning from their
23 parents at home.

1 82. Entering the 2023-2024 school year, Mr. Murphy and Ms. West were
2 well aware of the School District’s directive to obtain “equity” books for teaching
3 gender identity to elementary school students.

4 83. Both Mr. Murphy and Ms. West received consistent marketing emails
5 promoting LGBTQ-themed books for elementary school students, including
6 communications from the Zinn Education Project that market “Banned Books Week”
7 and promote various “equity” books, including *My Shadow is Pink* and *My Shadow*
8 *is Purple*.

9 84. In January 2024, School District teachers including Mr. Murphy and
10 Ms. West were encouraged to participate in a “professional learning opportunity”
11 focused on “how educational leaders proactively create an LGBTQ+ affirming
12 environment for students and their parents/caregivers. . . . As educational leaders
13 know, LGBTQ+ inclusion efforts often come with pushback and resistance. As part
14 of the new tools covered in this session, educators will build their confidence in
15 responding to and overcoming these common barriers to moving LGBTQ+
16 inclusion work forward.”

17 85. Mr. Murphy and Ms. West planned to employ an “equity” book for the
18 “buddy” program for the 2023-2024 school year, eventually choosing the *My*
19 *Shadow is Pink* book, a picture book about gender identity.

20 ***The School District Allows Families to Receive Notice and Opt-Out from***
21 ***Religiously Objectionable Instruction and Programming about Gender Identity,***
22 ***But Only in the Limited Context of a Health Unit***

23 86. Under California law, families who have religious objections to gender
24 identity instruction and programming should receive notice and have an
25 opportunity to opt out of it. EDC § 51240(a) provides: “If any part of the school’s
26 instruction in health conflicts with the religious training and beliefs of a parent and

1 guardian of a pupil, the pupil, upon written request of the parent or guardian, shall
2 be excused from the part of the instruction that conflicts with the religious training
3 and beliefs.”

4 87. However, the School District maintains a policy that prohibits opt-outs
5 from and parental notice of religiously objectionable instruction and programming
6 on gender identity, except in the limited context of teaching a health unit.

7 88. The School District’s policy adopts an extremely narrow interpretation
8 of “instruction in health” in EDC § 51240(a), concluding that notice and an opt-
9 out is disallowed unless religiously objectional material is presented as part of a
10 health unit.

11 89. As a result of this policy, the School District gives parents notice of
12 gender identity instruction if it is taught as part of the fifth-grade health unit,
13 allowing students to be excused from the full unit, but the School District will not
14 give notice or allow opt-out of gender identity instruction presented in any other
15 school curriculum or program.

16 90. Consistent with this policy, on April 9, 2024, the School District sent
17 out a letter to parents of fifth graders, including Plaintiff Parents, apprising them
18 of an upcoming health unit entitled “Human Growth and Development.” This
19 letter was authored by Maria Waskin, Executive Director, Student Services.

20 91. The letter described the health unit as having lessons on “puberty,
21 health reproduction, media influences on health habits and body image, hygiene,
22 boundaries and bullying and diseases and their transmission, including
23 information about HIV/AIDS.”

24 92. The School District further explained that this health unit would not
25 discuss sexual intercourse.

1 93. The School District also invited parents to review the content of the
2 lessons, referencing slides found on a website link displayed in the letter.

3 94. Though not mentioned in the letter, a review of the slides revealed
4 direct teaching on gender identity and transgenderism, visually and orally
5 depicting these subjects in ways that conflict with the religious beliefs of
6 plaintiffs.

7 95. Plaintiff Parents reviewed the slides in the link and were troubled by
8 the School District's instruction on gender identity and transgenderism,
9 considering the teaching an affront to their religious beliefs.

10 96. The School District's letter, in addition to supplying notice of the
11 health unit and objectionable materials, offered a mechanism for parents to opt
12 out of the materials, which only required they advise their child's teacher of a
13 desire to opt out.

14 97. In April and May 2024, Mr. Murphy received opt-out requests from
15 multiple parents in his fifth-grade class regarding the gender identity instruction
16 in the health unit. He told a parent, "It's [] just if you want to opt out of the class
17 you can email me and I will have an alternative for him to do," and told another
18 parent, "The kids who opt out are provided with work to do in a separate space."

19 98. Tom and Rebecca wished to opt out of the gender identity instruction,
20 but not the entire unit. Rebecca emailed Ms. Waskin, asking: "Is there an option
21 to opt out of one or two lessons, or is it all or none?" Ms. Waskin replied that it
22 was a full opt-out of the entire unit, preventing parents from only opting out of
23 objectionable material.

24 99. Highly concerned about the gender identity instruction in the unit,
25 Tom and Rebecca exercised their option for P.D. to opt out, even if it meant
26

1 opting out of all of the entire unit. Rebecca emailed P.D.’s teachers requesting
2 that he be excused.

3 100. Sharing the same concern, Carlos and Jenny also opted S.E. out of the
4 health unit.

5 101. By utilizing the opt-out mechanism, Plaintiff Parents were able to
6 avoid their children being exposed to religiously objectionable instruction on
7 gender identity in the health unit.

8 102. Plaintiff Parents believed their use of an opt-out spared their children
9 from instruction on gender identity that conflicted with their sincerely held
10 religious beliefs. But unbeknownst to Plaintiff Parents, the School District would
11 expose S.E. and P.D. to the same gender identity instruction in another school
12 program at around the same time – and force S.E. and P.D. to affirm it.

13
14 ***The School District Subjected S.E. and P.D. to Gender Identity Instruction and***
15 ***Required Them to Affirm Religiously Objectionable Views in a “Buddy”***
16 ***Program without Parental Notice or Opt-Out***

17 103. Every elementary school in the School District, including La Costa
18 Heights, conducts a “buddy” program during instructional time for one class per
19 week in the school year. During this session, older students are paired with
20 younger students as “buddies” to spend time together and form mentoring-based
21 relationships.

22 104. The “buddy” program at La Costa Heights and other elementary
23 schools in the School District is mandatory instructional time for every grade level.
24 Families are not afforded an opportunity to opt students in or out of the “buddy”
25 program.

1 105. Both S.E. and P.D. participated in the “buddy” program at La Costa
2 Heights as kindergarten students, and it had a significant, positive impact on them.
3 They looked up to their “buddies” with admiration and had fond memories of the
4 experience.

5 106. S.E and P.D. were part of the “buddy” program in other grades at La
6 Costa Heights too, including the fifth grade, when they both served as mentors.
7 They fully understood the influence they had on the younger buddy students, taking
8 on a “big brother” role to them for the school year, building trust and strong
9 relationships with them.

10 107. Mr. Murphy, as a fifth-grade teacher, and Ms. West, as a kindergarten
11 teacher, worked together on the “buddy” program for their respective grades,
12 pairing up students as buddies.

13 108. For the 2023-2024 school year, S.E. and P.D. participated in the buddy
14 program every Wednesday, beginning at 8:00 a.m. S.E was paired with a
15 kindergarten buddy, as was P.D.

16 109. S.E. and P.D. met up with their buddies every Wednesday for some
17 kind of informal activity, allowing the buddies to get to know each other and build
18 a relationship with each other.

19 110. Getting together with their kindergarten buddies on a regular basis
20 throughout the school year, S.E. and P.D. had formed tight bonds with them.

21 111. Toward the end of the school year, with the buddy relationships in
22 place and well established, Mr. Murphy and Ms. West planned a unique event for
23 May 1, 2024. During this “buddy” program, the District would use fifth graders to
24 help kindergarteners learn about gender identity.
25

1 112. On April 30, Mr. Murphy texted Ms. West, asking if her class had read
2 the book “My Shadow is Pink.” Ms. West responded, “I just looked it up and
3 watched the short film it’s sooooo sweet! We could have the big buddy trace the
4 littles shadow and then they add to it after?” Mr. Murphy responded, “Exactly what
5 I was thinking. . . Also have a little page they can do together before they trace
6 their outline . . . so we can read that together (show the video) then have them [d]o
7 that activity.”

8 113. Ms. West agreed to the plan with, “love the overall message,” “Yep we
9 have chalk,” and, “We might just inspire some sweet things to fly toward their
10 shadow tomorrow.”

11 114. Utilizing the *Shadow is Pink* book and associated activity for the
12 “buddy” program, Mr. Murphy and Ms. West were following School District policy
13 and directives from mandatory training to teach younger students about gender
14 identity through an “equity” book.

15 115. *My Shadow is Pink* is an “equity” book among the books approved by
16 the School District. On information and belief, La Costa Heights obtained the book
17 for Mr. Murphy and Ms. West through “equity” funds received from the School
18 District.

19 116. In *My Shadow is Pink*, a young biological boy wonders about his
20 gender and how he believes it differentiates from his father’s gender, commenting
21 how he “loves wearing dresses and dancing around,” and “loves. . . pink toys,
22 princesses, fairies, and things not for boys.” The book depicts an ensuing conflict
23 between the boy and his father over this questioning, as the father “walks in [the
24 room] with a glare” and refers to his son’s gender identity as “just a phase.”

1 117. The book resolves the conflict by showing the father abandoning his
2 prior beliefs. While the dad is initially “anxious and stressed” when the boy wears
3 a dress to school, he decides to wear a dress too, “with shimmering seams and pink
4 sparkling hoods,” after his son had a difficult day at school. The father tells the
5 child to “pick up that dress! Your shadow is pink. I see now it’s true. It’s not just
6 a shadow, it’s your inner-most you.” And the story ends with the father advising
7 his child, “So put on that dress and get back to school; if someone won’t like you
8 then they are the fool.”

9 118. As a rhyming picture book, *My Shadow is Pink* is not geared toward
10 fifth graders, being well below their reading level, using words, sentences, and
11 graphics more suitable for far younger audiences. Excerpts from the book are as
12 follows:



My heart skips a beat as I put on a dress
and I look at my Dad who is anxious and stressed.





119. The *My Shadow is Pink* book was not mentioned in any book list published to fifth graders or their parents for the school year.

120. Though La Costa Heights and the teachers advised parents about the “buddy” program, they never notified parents that *My Shadow is Pink* would be used in the “buddy” program. In fact, Mr. Murphy omitted the book and activity from his weekly newsletter to parents.

121. On the day of this special “buddy” program, at 8:00 a.m. on Wednesday, May 1, 2024, Mr. Murphy pulled out *My Shadow is Pink* and read the book aloud to S.E., P.D., and other fifth graders in the class. The reading was unusual. It was rare for Mr. Murphy to read any book to them, and he had never read a book to them for the “buddy” program.

122. S.E. and P.D. listened to Mr. Murphy’s reading of *My Shadow is Pink*, which was their introduction to the book.

123. They were both immediately concerned about the gender identity messaging in the book. S.E. and P.D. strongly disagreed with the point of the book on religious grounds, taking issue with the proposition that gender is a choice that can change, as portrayed in the book.

1 124. Right after his reading, Mr. Murphy directed S.E., P.D. and the other
2 fifth graders to go meet up with their kindergarten buddies as part of the “buddy”
3 program, leaving S.E. and P.D. with no time to consult with their parents about
4 their concerns or give it much thought.

5 125. Mr. Murphy and Ms. West arranged for their combined classes of fifth
6 graders and kindergarteners to watch a read-along video of *My Shadow is Pink*
7 together.²

8 126. After meeting up with the kindergarteners, P.D. realized his buddy was
9 absent, so S.E. and P.D. shared the same buddy that day.

10 127. S.E. and P.D. were directed to sit next to their kindergarten buddy and
11 watch the read-along video about *My Shadow is Pink* with him. Though S.E. and
12 P.D. were bothered about kindergarteners watching that video, they were afraid of
13 speaking up about it. They did not want to get in trouble and knew of no way to
14 get excused from it.

15 128. The video tracked the *My Shadow is Pink* book, but presented the
16 message of the book in a way that kindergarteners could comprehend, using music
17 and graphics designed to capture their attention.

18 129. Following the video presentation, the teachers told S.E. and P.D. to go
19 outside with their buddy to jointly participate in a chalking activity. The teachers
20 asked all kindergarten students, including S.E. and P.D.’s buddy, to “pick a color
21 that represents you.”

22
23
24 ² This read-along video that S.E. and P.D. watched with their “buddies” is available
here:

25 https://www.youtube.com/watch?v=tEnOdHNQYV8&ab_channel=AmebaProductionsandDistribution.

1 130. S.E. and P.D. were compelled to make their kindergarten buddy choose
2 a color and tell them the color he chose for his shadow, representing his gender
3 identity. The inquiry presupposed S.E. and P.D. believed people can have a
4 personal sense of their own gender.

5 131. S.E. and P.D. were also forced to trace and fill in their buddy’s shadow
6 on the pavement with sidewalk chalk using the color chosen by their buddy to
7 “represent” his gender identity.

8 132. S.E. and P.D. were both disturbed by the series of events promoting
9 gender identity in the “buddy” program. The book, the video, and the activity all
10 conflicted with their religious beliefs. They believe God and biology determines
11 gender, not internal feelings. And they thought it was especially inappropriate to
12 compel them to be a mouthpiece for the School District and foist that messaging
13 on vulnerable kindergarteners.

14 133. Despite their earnest religious beliefs, S.E. and P.D. had no choice but
15 to participate in all aspects of the *My Shadow is Pink* “buddy” program that day.
16 They did not want to read the book or watch the video, nor betray their conscience
17 by affirming the idea that gender identity is internal and can change. While the
18 video was playing, S.E. wanted to cover his buddy’s eyes and ears to protect him.

19 134. S.E. and P.D. were especially bothered that they had to push the idea
20 that individuals can select their own gender to a kindergartener, knowing this
21 kindergarten buddy looks up to them as role models and trusts their opinions.

22 135. S.E. and P.D. believed their participation in the *My Shadow is Pink*
23 “buddy” program, making their buddy choose a color representing their gender and
24 drawing the buddy’s shadow in that chosen color on the sidewalk, communicated
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1 to their buddy that they believed gender was determined by an internal feeling
2 despite their religious beliefs to the contrary.

3 136. When S.E. left school that day, he was deeply troubled by what
4 happened to P.D., his kindergarten buddy, and him. After school, on the way to a
5 dental appointment, he told his father Carlos about the *My Shadow is Pink* book,
6 listening to Mr. Murphy read the book, watching the video with their kindergarten
7 buddy, and drawing the gender identity shadow, describing to his father how
8 upsetting these activities were for him.

9 137. S.E. told his parents he was upset and confused that Mr. Murphy, a
10 teacher he likes and respects, used a book for the “buddy” program that Mr.
11 Murphy knew went against his Christian beliefs and used him to convey this
12 troubling message to a kindergartener. S.E. hoped his buddy would not understand
13 the real meaning of the activity or the teaching on gender identity.

14 138. P.D. expressed the same distress to his parents that day. He did not
15 want to hear a reading of that book. He did not want kindergarteners watching the
16 video. He did not want to participate in the activity in any respect, but had no
17 advance notice or ability to opt out.

18 139. The blatant promotion of gender identity in the *My Shadow is Pink*
19 book is self-evident and obvious. The book is marketed as “a rhyming story that
20 touches on the subjects of gender identity, equality, and diversity.”

21 140. S.E.’s father Carlos and mother Jenny were shocked when they learned
22 about the activities involving the *My Shadow is Pink* book. They could not believe
23 the School District read the book to S.E. and forced him to participate in an activity
24 affirming the book with his kindergarten buddy without giving them notice and
25

1 opportunity to opt out of this exercise that clearly conflicted with their religious
2 beliefs.

3 141. Carlos reached out to Mr. Murphy to obtain an explanation about the
4 situation. He informed Mr. Murphy that the content of the book made S.E., and
5 several of his friends, like P.D., very uncomfortable, and asked for more details
6 about the book. He asked Mr. Murphy why he would instruct S.E. to read a book
7 about gender identity with a kindergarten student who looks up to him. In his
8 communication, Carlos made clear that he and Jenny expected the School District
9 to seek their approval for material containing sexual content.

10 142. Mr. Murphy responded, admitting that he “read [the book] to the class
11 and then with their buddies they chalked what color their shadow would be and they
12 got to pick any color they wanted.” He acknowledged that “the book is about a kid
13 who feels like his shadow is pink and is embarrassed about this because he thinks
14 his shadow needs to be the same as his dad’s (blue).”

15 143. Carlos was upset the School District would secretly teach and require
16 his son to affirm a view about gender identity contrary to their religious beliefs.

17 144. Carlos wrote Mr. Murphy back and shared his belief that the book was
18 inappropriately focused on gender identity. He asked who chose the book and why
19 it was presented. From his research, he knew the book was promoted by LGBTQ+
20 communities. Carlos did not believe the book was appropriate for elementary-aged
21 children.

22 145. Mr. Murphy confirmed that he chose the *My Shadow is Pink* book. He
23 attempted to defend his choice of the book and having fifth graders share it with
24 kindergarteners, claiming “as an educator it is [his] responsibility to do [his] best to
25 represent everyone in our school.”

***Superintendent Grey and Principal Kay Dismiss Plaintiff Parents’ Concerns
about Inability to Opt Out from Gender Identity Instruction
and Forced Affirmation of School District’s Viewpoint***

146. The day following the *My Shadow is Pink* “buddy” program, on May 2, 2024, S.E. and P.D. noticed Mr. Murphy had placed the *My Shadow is Pink* book on the ledge of the dry eraser board, a prominent place where everyone could see it, serving as a constant reminder of the gender identity exercise.

147. S.E. also noticed a copy of a *My Shadow is Purple* book sitting on Mr. Murphy’s desk. This is a book written by the same author as *My Shadow is Pink*, likewise promoting views on gender diversity contrary to S.E.’s religious beliefs. S.E. was scared Mr. Murphy would use this book for the next “buddy” program.

148. P.D. and S.E. told their parents what they saw in Mr. Murphy’s classroom.

149. Bothered by what happened to S.E. with the *My Shadow is Pink* exercise, Carlos and Jenny were further troubled by the prospect of something like this happening to S.E. and the other children again.

150. On May 8, 2024, Carlos called Principal Kay to see how they could avoid another occurrence. Not reaching her, he left a voice message for her.

151. This same day, May 8, 2024, Carlos and Jenny emailed Superintendent Grey to express their concerns in hopes of obtaining relief. They advised Superintendent Grey that S.E. was very upset about the *My Shadow is Pink* book and associated activity with his kindergarten buddy. They explained the book went against S.E.’s religious convictions and was inappropriate for his kindergarten buddy.

152. Carlos and Jenny complained the book choice failed to take into account how the teaching would impact children with Christian upbringings like S.E., adding that S.E. was confused and anxious because he had always trusted his teacher.

1 Carlos and Jenny asked why the School District hid the *My Shadow is Pink* book
2 and activity from parents. They expressed their disappointment in the lack of notice
3 and opportunity to opt out of the exercise.

4 153. In a follow-up email the next day, May 9, 2024, Jenny advised of
5 backlash, hostility, and threats they and S.E. were receiving from many in the school
6 community for speaking out against the *My Shadow is Pink* book exercise and the
7 need for the School District to protect their children.

8 154. That day, May 9, 2024, Superintendent Grey and Principal Kay
9 responded to the emails from Carlos and Jenny. They explained that the School
10 District policy on parental notice and opt-outs for religiously objectionable health
11 curriculum would not be changed unless the state legislature required them to take
12 this step, suggesting Carlos and Jenny speak to their elected representatives about
13 the issue.

14 155. The Does' concerns similarly fell on deaf ears. On May 9, 2024,
15 Rebecca Doe emailed Principal Kay, Superintendent Grey, and Mr. Murphy,
16 expressing that while he had been an excellent teacher for her child, the book Mr.
17 Murphy chose to use for the "buddy" program was unacceptable. She observed
18 that young children are literal in their thinking and the book could cause a lot of
19 confusion for them. Rebecca also conveyed her concern that those in disagreement
20 with the *My Shadow is Pink* book were subjected to hatred, shame tactics, and
21 mischaracterizations.

22 156. Principal Kay emailed the Does back that same day but did not directly
23 address Rebecca's concerns. She referenced a letter she planned to send out to the
24 school community bemoaning recent divisiveness that had arisen over the book.
25 She did not offer any further response.

1 157. On May 13, 2024, Carlos called Principal Kay again, left a voicemail,
2 emailed, and offered to come by her office. Principal Kay finally returned Carlos's
3 telephone call and they spoke for approximately 35 minutes. Carlos reiterated his
4 worries and asked Principal Kay how they could avoid the school teaching its
5 views on gender identity to S.E. in the future. Principal Kay responded the Encinas
6 family could not and would not avoid gender identity instruction. She made clear
7 that religiously objectionable curriculum on gender identity could and would
8 appear again in La Costa Heights' instruction and programming, emphasizing the
9 school would not offer opt-outs from or notice of the objectionable curriculum.

10 158. After explaining to Principal Kay how harmful the *My Shadow is Pink*
11 exercise was for S.E., he asked her if the school would handle the matter differently
12 in the future. To his dismay, the principal responded the school would not change
13 its approach.

14 159. Carlos inquired why they could opt out of gender identity instruction
15 when presented as part of a health unit but could not opt out of gender identity
16 instruction in other kinds of curriculum like the buddy program. The principal did
17 not provide a direct answer, vaguely suggesting he take the issue up with the state
18 legislature.

19 160. Principal Kay also defended the *My Shadow is Pink* book and its use
20 in the "buddy" program. She said teachers have discretion to choose approved
21 equity books, remarking that La Costa Heights was obliged to support other
22 members of the school community with the curriculum, referencing gender diverse
23 students.

1 ***The School Board Dismisses Plaintiff Parents’ Concerns about***
2 ***Gender Identity Instruction and Affirmation***

3 161. The Encinas and Doe families were troubled by the stance articulated
4 by Mr. Murphy, Principal Kay, and Superintendent Grey about gender identity
5 instruction and the refusal to allow opt-outs. They decided to take their grievances
6 directly to the School Board for the School District.

7 162. The first regular meeting of the Encinitas Union School District Board
8 following the *My Shadow is Pink* “buddy” program took place in the District office
9 on May 21, 2024. This board meeting allowed for general public comments, and
10 Carlos and Tom planned to be there to let their concerns be known.

11 163. The board meeting was well-attended that day, with all seats in the
12 facility taken. Hundreds of concerned parents were turned away and had to remain
13 in the parking lot.

14 164. Both Carlos and Tom arrived early and were able to get into the facility,
15 but the first several rows of seats were reserved for unionized teachers wearing
16 matching t-shirts that stated “Choose to Include.”

17 165. Public comments lasted over two hours. Many speakers strayed from
18 the issue at hand relating to notice and opt-outs, and commented on the propriety
19 of transgenderism generally, safety concerns surrounding LGBTQ students, and
20 other tangential matters.

21 166. In his comment, Carlos addressed the *My Shadow is Pink* book and
22 spoke about the need for parents to have notification and opt-outs from gender
23 identity or other religiously objectionable curriculum. Tom spoke as well, asked
24 for opt-outs, and discussed the District’s lack of responsiveness to parental
25 concerns.

1 167. Several other parents and community members spoke against the *My*
2 *Shadow is Pink* book and exercise and urged the School District to provide notice
3 and opt-outs of religiously objectionable curriculum supporting gender identity
4 and transgenderism.

5 168. One parent spoke about the need to consider the beliefs and feelings of
6 children like S.E. “I’m here for Carlos and his son I wanted to speak to who
7 supported Carlos’s son when he felt uncomfortable reading this content to a
8 kindergartener? He was too afraid to speak to the teachers and speak against it.
9 Where were the considerations for his inclusion?”

10 169. Another parent asked the School District adopt a policy to notify
11 parents and gain consent from each student’s parents prior to exposing them to
12 divisive or controversial curriculum, such as that promoting LGBTQ issues.

13 170. Additionally, a classroom teacher in the School District shared her
14 apprehensions about gender identity teachings in elementary school classrooms
15 and the pressure the School District was applying to teachers to support
16 transgenderism. “I’ve been to all the mandated teacher equity trainings, and in
17 these trainings, teachers were not only encouraged, but given free reign and money
18 to purchase books with controversial subject matter. We don’t all agree with that.”
19 She added: “The District introduced gender ideology to all teachers and told them
20 it was ok for them to read these types of books, no age limit. Many teachers do
21 not agree with this. Again, they’re not going to come here and speak, because
22 they’re afraid. . . . We all need to protect our children’s innocence. Parents know
23 their children better than anyone. Each family is entitled to their own values, and
24 I ask that you respect all families’ values and keep controversial topics out of the
25 classroom.”

1 171. Other teachers spoke, offering a contrary view, emphasizing their
2 commitment to advancing gender identity in the schools.

3 172. During the meeting, the School Board did not indicate any willingness
4 to reconsider its policy of disallowing notice and opt-outs for religiously
5 objectionable curriculum dealing with gender identity outside of health unit. It
6 never put the issue on the board agenda or publicly spoke about the issue.

7 173. Both before and after the school board meeting, at least 23 parents sent
8 emails to Superintendent Grey, Principal Kay, Mr. Murphy and Ms. West, and
9 other School District officials, expressing serious concerns about the *My Shadow*
10 *is Pink* book and activity, and requesting future notice and opt-outs. Several of
11 these parents had children in either the kindergarten class or the fifth-grade class
12 that did the activity.

13 174. In these emails, many parents expressed their concerns were rooted in
14 their religious beliefs. For example, a family identifying themselves as Jewish
15 expressed that they would “like to confirm that our teachers are being transparent
16 with us about what is being read and taught to our children we would be very
17 upset and surprised if books or any curriculum was geared towards indoctrinating
18 our children in any fashion.”

19 175. Soon after the controversy about the *My Shadow is Pink* book began,
20 two other parents at La Costa Heights started a petition on Change.org, called
21 “Parental Opt-in for Controversial Curriculum in Encinitas Union School District.”
22 This petition secured 546 signatures, including that of the Encinases and Does.

23 176. The petition called on the School District to implement a policy
24 requiring parental consent before exposing students to any divisive and
25

1 controversial curriculum, including gender identity and other LGBTQ-oriented
2 curriculum.

3 177. The School District never responded to the petition or any of the
4 concerns set out in the petition.

5 178. On May 28, Superintendent Grey emailed to the School Board a
6 “sample response that I will sending regarding the inquiry after last week’s
7 meeting.” This template letter described the District’s restrictive position on opt-
8 outs.

9 ***The School District Denies the Encinases and Does’ Formal Requests to***
10 ***Opt Out of Objectionable Curriculum on Gender Identity***

11 179. Following his telephone conversation with Principal Kay, Carlos
12 reviewed pertinent California education laws and was reminded of EDC § 51420.
13 From his review, he surmised that an opt-out as envisioned in that law was applicable
14 for future teachings of gender identity and other LGBTQ topics.

15 180. He and Jenny believed the requirement for notice and an opt-out for
16 health instruction applied to *My Shadow is Pink, My Shadow is Purple*, and similar
17 “equity” books that La Costa Heights could offer in the future as part of the “buddy”
18 program or through other curriculum.

19 181. On May 17, 2024, Carlos emailed Principal Kay an opt-out form he
20 and Jenny filled out for S.E. and their other child at La Costa Heights.

21 182. In the opt-out request, the Encinases checked the box for EDC § 51240,
22 as well as some others. Regarding EDC § 51420, they specified a desire to opt out
23 of curriculum concerning “sex, family life, morality, religion, gender identity.”

24 183. Regarding this request for an opt-out, on May 22, 2024, the School
25 District, through Superintendent Grey, responded to the Encinases by letter and
26 denied their request, using the template.

1 184. Two days before Superintendent Grey sent the letter to the Encinases,
2 she asked Principal Kay and Assistant Superintendent Illingworth to “review/edit
3 the attached draft letter” and also planned to “review and discuss with Christie and
4 Amy I. prior to sending it.”

5 185. In the letter, the School District acknowledged the concern over the *My*
6 *Shadow is Pink* book, but in denying the request, the District apprised Carlos and
7 Jenny of its position that the notice and opt-out under § 51240 only applied to
8 “instruction in health,” meaning only in the fifth-grade health unit.

9 186. The School District did not explain in the letter how it reached this
10 conclusion.

11 187. The Encinases were perplexed by the response and disagreed with the
12 reasoning. They did not understand why notice and opt-out of gender identity
13 instruction is provided solely when offered as part of a health unit.

14 188. The Encinases shared the School District’s response with the Does and
15 other concerned parents.

16 189. The Does also believed the School District’s conclusion was faulty.

17 190. Another parent wrote to Superintendent Grey, pointing out the error.
18 She states: “While the law does not expressly mandate a specific provision for
19 parents uncomfortable with certain curriculum components, it is important to note
20 that it also *does not prohibit* school districts from accommodating parental requests
21 regarding curriculum opt-in/opt-out options. . . . EUSD is actively disregarding
22 parental and community concerns by introducing controversial ideologies and
23 discussions about sexuality to our students aged 5 to 11. Despite the absence of
24 any state or federal mandates requiring EUSD to take this approach, there are
25

1 constitutional safeguards in place to protect parental rights.” The School District
2 did not respond.

3 191. Neither Superintendent Grey nor anyone affiliated with the School
4 District responded to the Does’ concerns expressed at the Board Meeting.

5 192. Having not heard from the School District, the Does presumed a
6 request for notice and opt-out from curriculum advancing gender identity and
7 transgenderism would be denied.

8 193. Notwithstanding, on July 26, 2024, the Does submitted a formal
9 request for an opt-out. They checked the box pertaining to opt-out for health
10 instruction as set out in EDC § 51240, specifying gender identity as one of the
11 sources of concern.

12 194. A few days later, on July 30, 2024, the Does received a response
13 denying the request from Superintendent Grey, on behalf of the School District.
14 This response was nearly identical to the response Superintendent Grey sent to the
15 Encinases, except for proper names, and the addition of the chilling line, “students
16 must participate in the District’s curriculum.”

17 ***The School District Provides Notice and Allows for Opt-Outs in Other Scenarios***

18 195. While the School District denied the Encinases and Does’ requests for
19 notice and opt-outs from curriculum involving gender identity, it permits opt-outs
20 for a range of topics that fall within the District’s broad understanding of
21 comprehensive health education.

22 196. If gender identity is taught as part of a health unit, like the one offered
23 in May 2024, the School District provides notice and an option for opt-outs.

24 197. The School District also allows opt-outs from many other
25 instructional activities as well, such as Farm Lab, an off-site student experience.

1 While the District has publicly stated that “all fourth-graders participate,” it allows
2 opt-outs for any family for any reason.

3 198. Further, the School District extends an opportunity for parents to opt
4 their students out of certain elements of TRAC (Teamwork, Regulation,
5 Acceptance and Community). While students cannot opt out of weekly social-
6 emotional learning instruction, certain activities focused on conflict resolution and
7 behavioral management require parental notice and approval.

8 199. Other educational activities require parental opt-in through the use of
9 permission slips, such as an after-school art program and a “Study Buddy club”
10 where elementary school students are paired with teens for academic support.

11 200. Mr. Murphy and other teachers regularly facilitate opt-outs as part of
12 the school day. For example, in February 2024 Mr. Murphy sent a “permission
13 slip for the California Healthy Kids survey. You have the option to opt in or opt
14 out of the survey.”

15 201. Teachers have discretion to allow additional opt-outs from certain
16 lessons and curricular activities. For example, a third-grade teacher notified her
17 families that an additional spelling packet “will be sent home” and “[i]t is up to
18 you and your child to decide if they will be challenging themselves . . . [t]hey may
19 opt out if that is what you decide.”

20 202. The School District further allows opt-outs as directed by state law,
21 including from standardized testing, student surveys, doctor examinations, and
22 animal dissections for students with moral objections. These opt-outs are
23 attributable to the School District as an agency for the state.

***The Harmful and Lingering Effects of Gender Identity
Instruction and Programming Without Opt-Outs or Notice***

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203. S.E. was shocked and disturbed when Mr. Murphy, his fifth-grade teacher, read aloud the *My Shadow is Pink* book to him and the rest of his class. The content of the book contradicts S.E.’s religious beliefs and those of his family. He was deeply offended by the reading.

204. The reading of the book was made worse coming from Mr. Murphy. S.E. likes Mr. Murphy, one of his favorite teachers at the school. He trusted Mr. Murphy. Yet Mr. Murphy, knowing S.E. and other students in his classroom are Christians, presented the message of the book as morally right and the only appropriate way to view gender. To S.E., it seemed like Mr. Murphy was teaching that his religion is wrong, his beliefs are repugnant, and that he ought to be ashamed for having these beliefs.

205. S.E. was further and especially troubled by the *My Shadow is Pink* exercise that followed with the “buddy” program. He had built a relationship with his kindergarten buddy over the course of the school year, valued this relationship, and did not want to do anything that could harm or confuse him.

206. For this reason, S.E. did not want to tell his “buddy” that he could choose his own gender. S.E. believes this idea is false, that it contradicts teachings of the Bible, and can cause serious harm to people, but S.E. was forced to affirm this concept to his buddy by watching the read-along *My Shadow is Pink* video with him, asking his buddy to choose a color to represent his gender, and chalking out that choice with him. S.E. felt like he was forced to betray the trust of someone whom he cares for very much.

207. The exposure to the religiously objectionable messaging and compulsion to affirm and communicate that messaging to someone else violated

1 S.E.’s fundamental constitutional rights. It also caused S.E. to suffer a great deal
2 of mental anguish, and to lose sleep.

3 208. The events of this day also harmed S.E.’s parents, Carlos and Jenny.
4 They were upset to learn what happened to S.E. at school. The School District
5 grossly interfered with the religious upbringing of their child. School officials
6 evinced hostility toward their religion and their religious beliefs about gender
7 identity specifically.

8 209. Failing to give the Encinases notice of and an opportunity to opt out of
9 this objectionable activity adversely affecting their son S.E. violated their
10 fundamental constitutional rights.

11 210. Also, the School District’s and school officials’ refusal to allow for
12 notice and opt-out of future gender identity instruction and curriculum, including
13 that presented in the “buddy” program, posed a likelihood of significant harm for
14 Carlos and Jenny, as well as S.E. They consider the real prospect of the school
15 subjecting S.E. to religiously objectionable teaching without their knowledge again
16 untenable.

17 211. For this reason, and because of the backlash, hostility, threats and
18 mistreatment Carlos, Jenny, S.E., and their younger child have received from many
19 in the school community for raising their concerns, Carlos and Jenny made the
20 difficult choice to withdraw their children out of La Costa Heights in August 2024,
21 and place them at a private school at a significant financial and relational cost to
22 them.

23 212. P.D. was also directly and significantly affected by the events
24 described herein. He could not believe Mr. Murphy, a teacher whom he loved and
25 respected, read the *My Shadow is Pink* book and promoted the ideas in that book

1 to the class as though no good person could see the transgender issue in any other
2 light. The presentation made P.D. feel like Mr. Murphy was saying he is a bad kid
3 for believing the way he does.

4 213. P.D. was also troubled by the compulsion to go along with this idea
5 that goes against his faith, by watching the video with a kindergartener, asking him
6 to pick a color representing his gender, and chalking out the choice. The exercise
7 upset him very much. P.D. felt like they were causing the kindergarteners
8 significant harm and confusion with this exercise.

9 214. Hearing the messaging of the book and having to repeat this messaging
10 to kindergarteners troubled P.D. immensely. The exposure and compulsion
11 violated his fundamental constitutional rights. He also suffered mental anguish,
12 and lost sleep.

13 215. The activity surrounding the *My Shadow is Pink* book caused harm to
14 P.D.'s parents, Tom and Rebecca Doe, as well. As Christians, the Does were
15 alarmed and distressed over the way the school exposed and forced their child to
16 affirm a book espousing beliefs contrary to their religion without them knowing
17 about it.

18 216. The teaching and required affirmance of *My Shadow is Pink* directly
19 interferes with their upbringing of P.D. and what they teach P.D. at home. The
20 activity violated the Does' fundamental constitutional rights.

21 217. The Does are also concerned about future harm to P.D. and their family.
22 The School District denied their request to opt out of gender identity instruction.

23 218. With P.D. attending the same school in the sixth grade, his class is
24 already paired with a first-grade class for the "buddy" program during the 2024-25

1 school year, and they meet every week during the school day. His sibling’s class
2 is also paired with another class for the “buddy” program.

3 219. Thus, the Does fear that something akin to *My Shadow is Pink* “buddy”
4 program will occur again, harming their child, interfering their parental rights. And
5 like the *My Shadow is Pink* exercise, it will happen without their knowledge,
6 keeping them from being able to do anything about it.

7 220. The policy and practice providing gender identity curriculum to P.D.
8 without giving the Does notice or opportunity to opt out of religiously
9 objectionable instruction and programming presents a threat to P.D. and the Does’
10 constitutional rights and causes them to suffer irreparable injury.

11 221. There is no adequate remedy at law that can correct the persistent
12 deprivations of Does’ constitutional liberties.

13 **FIRST CAUSE OF ACTION**

14 **Violation of the First Amendment and Fourteenth Amendments:**
15 **Free Speech Clause, Compelled Speech**
16 **42 U.S.C. § 1983**

17 222. Plaintiffs hereby incorporate and re-allege all preceding paragraphs.

18 223. Plaintiffs S.E. and P.D. bring this cause of action against the School
19 District’s Board Members in their official capacities, and against Defendants Grey,
20 Illingworth, Kay, Murphy, and West, in their individual and official capacities, as is
21 set forth more fully below.

22 224. The government cannot compel citizens to speak or affirm messages
23 that violate their sincerely held religious beliefs or consciences.

24 225. This principle applies in the public school context. School officials
25

1 may not compel children to affirm or speak messages that violate their sincerely
2 held religious beliefs or consciences.

3 226. Defendants violated the free speech clause of the First Amendment by
4 compelling S.E. and P.D. and other elementary age students to actively participate
5 in the *My Shadow is Pink* activity and affirm gender identity in action and word in
6 violation of their religious beliefs and consciences.

7
8 227. Plaintiffs S.E. and P.D. were not afforded an opportunity to opt out of
9 this required instructional activity. Nor was it a passive experience; they had to
10 actively participate in teaching kindergarteners about questioning, discerning, and
11 proclaiming their own gender identity.

12
13 228. For the upcoming school year, which began August 13, 2024, P.D. has
14 a well-founded fear the School District will continue violating his constitutional
15 rights.

16 229. Defendants therefore violated the free speech clause of the First
17 Amendment to the U.S. Constitution, made applicable to the states through the
18 Fourteenth Amendment.

19
20 **SECOND CAUSE OF ACTION**
21 **Violation of the First and Fourteenth Amendments:**
22 **Free Exercise Clause**
23 **42 U.S.C. § 1983**

24 230. Plaintiffs hereby incorporate and re-allege all preceding paragraphs.

25 231. Plaintiffs bring this cause of action against the School District's Board
26 Members in their official capacities, and against Defendants Grey, Illingworth,
27
28

1 Kay, Murphy, and West, in their individual and official capacities, as is set forth
2 more fully below.

3 232. Plaintiffs maintain sincere religious beliefs regarding biological sex
4 and gender identity.

5 233. The government fails to act neutrally when it proceeds in a manner
6 intolerant of religious beliefs.

7 234. The government cannot impose regulations that are hostile to the
8 religious beliefs of affected citizens.

9 235. Defendants' policy and practice are hostile toward religion, denying
10 religious parents advance notice and opt-out despite state law allowing advance
11 notice and opt-out for religious objectors to the curriculum.

12 236. Defendants' policy and practice are also not generally applicable,
13 allowing various other opt-outs from curriculum.

14 237. The School District allows for opt-outs for religiously objectionable
15 instruction and material in a health unit, but not in other teaching contexts.

16 238. A government policy or practice is also not neutral and generally
17 applicable when it treats secular conduct more favorably than religious exercise.
18 By allowing a wide range of opt-outs for other reasons and in other contexts, but
19 not for plaintiffs' religious beliefs, the School District treats non-religious concerns
20 more favorably than religious concerns.

21 239. School District officials exercise discretion to allow opt-out from
22 numerous educational activities and instruction, including but not limited to Farm
23 Lab, field trips, and TRAC social emotional learning lessons while refusing to
24 allow opt-outs from instruction about gender identity when parents request it for
25 religious reasons.

1 240. Because the School District’s practice is not neutral or generally
2 applicable, strict scrutiny applies, which requires the government to show it is
3 using the least restrictive means to pursue a compelling interest.

4 241. The School District cannot assert a compelling interest in forcing
5 these specific plaintiffs to participate in activities that violate their faith.

6 242. Even if Defendants can specify a compelling interest of some kind,
7 forcing religious students to read books, participate in activities, and speak
8 messages that violate their consciences and sincerely held religious beliefs cannot
9 be the least restrictive means of pursuing any such interest.

10 243. For the new school year begun in August 2024, Plaintiffs P.D. and the
11 Does have a well-founded fear Defendants will continue violating their
12 constitutional rights.

13 244. Defendants therefore violate the free exercise of religion clause of the
14 First Amendment to the U.S. Constitution, made applicable to the states under the
15 Fourteenth Amendment.

16
17 **THIRD CAUSE OF ACTION**
18 **Violation of the First and Fourteenth Amendments:**
19 **Free Exercise Clause, Religious Upbringing of Children**
20 **42 U.S.C. § 1983**

21 245. Plaintiffs hereby incorporate and re-allege all preceding paragraphs.

22 246. Plaintiffs Carlos Encinas, Jennifer Encinas, Tom Doe, and Rebecca
23 Doe bring this cause of action against the School District’s Board Members in
24 their official capacities, and against Defendants Grey, Illingworth, Kay, Murphy,
25 and West, in both their individual and official capacities, as is set forth more fully
26 below.

1 247. The free exercise clause of the First Amendment protects parents’
2 freedom to direct their children’s education and their ability to impart their sincere
3 religious beliefs to their children without government interference.

4 248. By denying Plaintiff Parents’ requests for advance notice and opt-outs
5 from teaching that violates their Christian faith, and by insisting that religious
6 children participate in activities that promote gender identity in violation of their
7 faith, the School District is willfully disregarding and violating their First
8 Amendment right to direct the religious upbringing of their children.

9 249. Defendants have no compelling or legitimate reason justifying the
10 infringement on religious beliefs.

11 250. Defendants therefore violate the free exercise of religion clause of the
12 First Amendment to the U.S. Constitution, made applicable to the states under the
13 Fourteenth Amendment.

14 **FOURTH CAUSE OF ACTION**
15 **Violation of the Fourteenth Amendment:**
16 **Substantive Due Process, Parental Rights**
17 **42 U.S.C. § 1983**

18 251. Plaintiffs hereby incorporate and re-allege all preceding paragraphs.

19 252. Plaintiffs Carlos Encinas, Jennifer Encinas, Tom Doe, and Rebecca
20 Doe bring this cause of action against the School District’s Board Members in their
21 official capacities, and against Defendants Grey, Illingworth, Kay, Murphy, and
22 West, in both their individual and official capacities, as is set forth more fully
23 below.

24 253. The due process clause provides heightened protection against
25 government interference with certain fundamental rights and liberty interests.

1 254. Plaintiff Parents have a fundamental liberty interest to direct the
2 upbringing of the children.

3 255. Defendants interfere with Plaintiff Parents’ fundamental liberty
4 interest by exposing their children to instruction and programming contrary to their
5 sincere religious beliefs and failing to provide advance notice and the opportunity
6 to opt out of the objectionable curriculum.

7 256. Defendants’ policy and practice violates Plaintiff Parents’ right to
8 substantive due process of the Fourteenth Amendment to the U.S. Constitution by
9 denying requests for notice and opt-out from instructional material relating to
10 gender identity that violates their sincerely held religious beliefs.

11 **FIFTH CAUSE OF ACTION**
12 **Violation of the Fourteenth Amendment:**
13 **Procedural Due Process**
14 **42 U.S.C. § 1983**

15 257. Plaintiffs hereby incorporate and re-allege all preceding paragraphs.

16 258. Plaintiffs Carlos Encinas, Jennifer Encinas, Tom Doe, and Rebecca
17 Doe bring this cause of action against the School District’s Board Members in their
18 official capacities, and against Defendants Grey, Illingworth, Kay, Murphy, and
19 West, in both their individual and official capacities, as is set forth more fully
20 below.

21 259. Under the Due Process Clause of the Fourteenth Amendment, “No
22 State shall ... deprive any person of life, liberty, or property, without due process
23 of law.”

1 260. Procedural due process imposes constraints on governmental
2 decisions which deprive individuals of “liberty” or “property” interests within the
3 meaning of the due process clause of the Fourteenth Amendment.

4 261. Plaintiff Parents have a liberty interest in the ability to raise their
5 children without undue interference from the government.

6 262. The School District’s comprehensive health education includes
7 instruction on gender identity.

8 263. The School District recognizes a parental right to opt out of health
9 curriculum, including gender identity instruction, as set out in EDC § 51240, but
10 only in a limited context. It maintains an arbitrary policy of allowing opt-outs for
11 gender identity curriculum in health units while denying opt-outs for gender
12 identity curriculum in other units or programming.

13 264. The School District interferes with Plaintiff Parents’ ability to raise
14 their children through an arbitrary reading and application of state law.

15 265. Thus, the School District’s strained interpretation and prohibitive
16 policy deprives the Plaintiff Parents of a liberty right without notice, resulting in a
17 violation of their procedural due process under the Fourteenth Amendment to the
18 U.S. Constitution.

19 **PRAYER FOR RELIEF**

20 Wherefore, Plaintiffs request that the Court:

- 21 a. Enter a declaration that forcing Plaintiffs S.E. and P.D., against their religious
22 or moral beliefs, to read, listen to, discuss, write about, affirm and/or
23 participate in activities or books about gender identity violated Plaintiffs’
24 rights under the Free Exercise Clause and Free Speech Clause of the First
25 Amendment;

- 1 b. Enter a declaration that failing to afford Plaintiffs a right to opt out from forced
2 reading and activities about the School District’s books about gender identity
3 violated the Free Exercise Clause of the First Amendment and the Due Process
4 Clause of the Fourteenth Amendment;
- 5 c. Enter preliminary and permanent injunctions prohibiting the School District
6 from forcing P.D. and other students—over the objection of their parents—to
7 read, listen to, discuss, or write about, affirm and/or participate in activities or
8 books about gender identity;
- 9 d. Enter preliminary and permanent injunctions prohibiting Defendants from
10 forcing minor children to speak or affirm messages through “equity” books
11 that violate their moral conscience or sincerely held religious beliefs;
- 12 e. Enter preliminary and permanent injunctions requiring the School District to
13 provide to the Does and other parents advance notice and an opportunity to
14 opt out of curriculum, activities, or any other instruction related to gender
15 identity or other LGBTQ topics.
- 16 f. Award nominal damages to all Plaintiffs;
- 17 g. Award damages for mental and emotional distress and anguish caused to all
18 Plaintiffs;
- 19 h. Award attorneys’ fees and costs under 42 U.S.C. § 1988; and
- 20 i. Award such other relief as the Court may deem just and proper.

1 Respectfully submitted this 10th day of September 2024.

2
3 By: */s/Dean R. Broyles*
4 Dean R. Broyles, SBN [REDACTED]
5 The National Center for Law & Policy
6 539 West Grand Avenue
7 Escondido, California 92025
8 [REDACTED]

9 Robert J. Reynolds, [REDACTED]
10 Law Office of Robert J. Reynolds
11 16950 Via de Santa Fe, Suite 5060-145
12 Rancho Santa Fe, CA 92091
13 [REDACTED]

14 FIRST LIBERTY INSTITUTE
15 David J. Hacker, [REDACTED]
16 [REDACTED]
17 Nathan W. Kellum, *pro hac vice**
18 [REDACTED]
19 FIRST LIBERTY INSTITUTE
20 2001 W. Plano Pkwy, Suite 1600
21 Plano, TX 75075

22 Kayla A. Toney, *pro hac vice**
23 [REDACTED]
24 FIRST LIBERTY INSTITUTE
25 1331 Pennsylvania Ave. NW Suite 1410
26 Washington, DC 20004
27 [REDACTED]

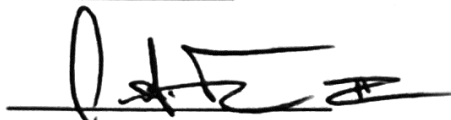
28 *Applications forthcoming

Attorneys for Plaintiffs

VERIFICATION

I, Carlos Encinas, have reviewed the foregoing Verified Complaint and verify under penalty of perjury that it is true and correct.

Executed in Carlsbad, California on September 9th, 2024



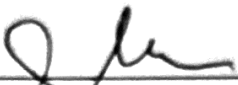
Carlos Encinas

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VERIFICATION

I, Jennifer Encinas, have reviewed the foregoing Verified Complaint and verify under penalty of perjury that it is true and correct.

Executed in Carlsbad, California on September 9th, 2024



Jennifer Encinas

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VERIFICATION

I, Rebecca Doe, have reviewed the foregoing Verified Complaint and verify under penalty of perjury that it is true and correct.

Executed in Carlsbad, California on 9/10/24.

Rebecca Doe

Rebecca Doe

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VERIFICATION

I, Tom Doe, have reviewed the foregoing Verified Complaint and verify under penalty of perjury that it is true and correct.

Executed in Carlsbad, California on 9-10-24.

Tom Doe

Tom Doe

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

S.E.; Encinas, Carlos; Encinas, Jennifer; P.D.; Doe, Tom; Doe, Rebecca

(b) County of Residence of First Listed Plaintiff San Diego County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Dean R. Broyles, The National Center for Law & Policy; 539 W Grand Ave., Escondido, CA 92025; 760-747-4529; see attachment for additional counsel

DEFENDANTS

Encinitas Union School District, Grey, Andree (Superintendent); Illingworth, Amy (Assistant

County of Residence of First Listed Defendant San Diego County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

N/A

24CV1611 BEN SBC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF, DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor, Intellectual Property Rights, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S. 1983

Brief description of cause: Compelled speech in classroom; violation of free exercise of religion and parental rights under substantive and procedural due process clauses

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Preliminary and perm JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 9-10-24 SIGNATURE OF ATTORNEY OF RECORD /s/ Dean R. Broyles

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Additional Counsel:

David J. Hacker, SBN [REDACTED]
[REDACTED]

Nathan W. Kellum, *pro hac vice**

[REDACTED]
FIRST LIBERTY INSTITUTE
1600 W. Plano Pkwy
Plano, TX 75075

Robert J. Reynolds, SBN [REDACTED]

Law Office of Robert J. Reynolds
16950 Via de Santa Fe, Suite
5060-145
Rancho Santa Fe, CA 92091

Kayla A. Toney, *pro hac vice**

[REDACTED]
FIRST LIBERTY INSTITUTE
1331 Pennsylvania Ave. NW Suite 1410
Washington, DC 20004

[REDACTED]
*Application forthcoming