SCOTUS Requires Opt-Out Opportunity for Parents based on Religious Objection to Curriculum

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On June 27, 2025, the United States Supreme Court issued its 6-3 opinion in Mahmoud v. Taylor ordering the grant of the plaintiffs' request for a preliminary injunction, and overruling the decisions of the Fourth Circuit Appeals Court and the U.S. District Court of Maryland, which had denied the preliminary injunction. This holding requires the Board of Education of Montgomery County, Maryland (the "Board") to offer an opt-out option to parents for their children when the curriculum includes content that burdens the parents' right to the free exercise of religion.

The underlying case stems from the Board's introduction of "LGBTQ+-inclusive" texts into its curriculum in October 2022. This included storybooks on the topic for students in kindergarten through fifth grade. Initially, the Board allowed objecting parents to opt-out from such instruction. In March 2023, however, the Board reversed its policy on opt-outs, citing the administrative burden of managing individual opt-outs and disruptions to the schools.

The Plaintiffs, a group of parents and other interested parties, brought suit in the U.S. District Court of Maryland seeking an injunction requiring the Board to reinstate the opt-out procedures. They argued the Board's existing policy violated their First and Fourteenth Amendment rights by interfering with their ability to determine the religious upbringing of their children. The parents emphasized the particular importance of protecting the younger, more "impressionable" children.

Both the District Court and the Fourth Circuit denied the motion for preliminary injunction, finding the plaintiffs could not demonstrate that merely exposing children to the books infringed on their parental rights under the Constitution. The Supreme Court reversed, and instead held the plaintiffs would likely be successful in establishing a violation of their

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Constitutional Rights – a necessary element for the issuance of an injunction.

In support, the Court cited to existing case law recognizing the limits on the government's ability to interfere with a child's religious upbringing in a public school setting. The opinion relied heavily on the Court's 1972 decision in Wisconsin v. Yoder, in which it held that Wisconsin's compulsory education law interfered with the religious beliefs of the Amish plaintiffs. Expanding on its prior holding, the majority found the books and supporting direction to teachers in how to discuss the curriculum explicitly touted pro-LGBTQ+ ideals and acceptance as being positive, while intolerance of those beliefs was presented as negative. The Court, citing *Yoder*, reasoned that this curriculum could "'substantially interfer[e] with the religious development' of the child or pose 'a very real threat of undermining' the religious beliefs and practices the parent wishes to instill in the child."

Further, the Court did not credit the Board's argument that the opt-out procedures were unworkable, instead pointing to several other opt-outs the Board provided on other subject matter. It likewise was unpersuaded by the argument that the availability of private school or homeschooling permitted this "burden" on the parents' religious freedom.

The Court split along ideological lines, with conservative justices joining Justice Samuel A. Alito Jr. in his majority opinion, while Justice Sonia Sotomayor penned a dissent joined by Justices Elena Kagan and Ketanji Brown Jackson. The dissent cautioned that the majority's decision could limit the topics schools feel comfortable teaching, and specifically highlighted that under-resourced schools may not have the administrative capacity to manage opt-out absences or engage in costly litigation over the topic. The dissent also expressed concern that the decision calls into question public schools' ability to teach other topics, like Darwin's theory of evolution.

The Court's decision left unanswered the question of whether a school must provide any student who is opted out an alternative assignment. Rather, its decision only explicitly required that an opt-out be offered.

We will continue to monitor this topic for further developments, including a final decision on the merits of the permanent injunction from the lower court. For now, schools and districts should provide parents an

opportunity to opt-out of curriculum that interferes with the religious beliefs the parents wish to instill in their children.

If you have any questions about complying with the decision in this case, please reach out to a member of our School Law Group.