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LGBTQ+ Inclusive Books and Parent Opt-Outs on Religious Grounds

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THE 2024–25 U.S. Supreme Court term addressed a range of issues relevant to education and beyond. One such case is *Mahmoud v. Taylor*, a case out of Montgomery County Public Schools in Rockville, MD. During the 2022–23 school year, the school district introduced a new LGBTQ+ inclusive English Language Arts curriculum at the elementary level. After initially allowing opt-outs, in March of 2023, the school district decided to no longer permit parents to opt their elementary school children out of LGBTQ+ inclusive books in the English language

elementary school children out of LGBTQ+ inclusive books in the English language arts curriculum. Under the First Amendment, parents argued that they should have the option to opt out of LGBTQ+ inclusive books on religious grounds.

In this article, we discuss relevant precedents, provide insight into the Court's analysis in *Mahmoud v. Taylor*, and discuss potential implications of the Court's decision. Although the case focuses primarily on the elementary school context, it is an important case for middle and high school principals to have on their radar.

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Relevant Cases

A plethora of cases set the stage for *Mahmoud v. Taylor*. These cases relate to parental rights, free exercise of religion, and school district authority to set the curriculum for students in public schools. This article provides some illustrative examples, as opposed to an exhaustive overview of relevant case law. Discussion of additional case law, such as *Kennedy v. Bremerton* and *Trinity Lutheran* can be found in recent "Legal Matters" columns (e.g., Lewis & Cattell, 2023; Lewis & Eckes, 2024; Lewis & Lin, 2025).

Pierce v. Society of Sisters (1925): In this case, the Supreme Court struck down an Oregon law requiring all children to attend public schools, having the practical effect of banning private schools. The Court found that the law unreasonably interfered with the rights of parents to direct their children's education, thereby violating the Due Process Clause of the Fourteenth Amendment.

West Virginia v. Barnette (1943): A West Virginia resolution required students to participate in the Pledge of Allegiance and failure to comply was considered insubordination. Parents opposed the requirement based on their religious beliefs. The Supreme Court ruled that the resolution was unconstitutional, emphasizing its compulsory and coercive characteristics.

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Wisconsin v. Yoder (1972): The Supreme Court ruled that Wisconsin's compulsory school attendance law violated the First Amendment rights of Amish parents who objected to sending their children to school beyond the eighth grade. More specifically, the Court found that the requirement infringed upon their free exercise of religion and interfered with their way of life.

Parker v. Hurley (2008): Parents in Massachusetts filed a lawsuit arguing that exposing their children to books promoting tolerance of LGBTQ couples violated their religious beliefs. The First Circuit Court ruled that exposure did not significantly burden their right to free exercise under the First Amendment because the books were intended to promote tolerance as opposed to indoctrination.

Oral Arguments

In April of 2025, the Supreme Court heard oral arguments in *Mahmoud v. Taylor*, which lasted two and a half hours. The Justices heard from the parents' attorney, the attorney for the Department of Justice, and the school district's attorney. The Justices took turns peppering the attorneys with questions, seeking clarity, nuance, and elaboration. To inform the parameters of a ruling, the Justices presented hypotheticals and asked the attorneys to identify similarities and differences between *Mahmoud v. Taylor* and prior case law. Notably, the conservative wing of the court appeared more sympathetic to the parents' legal arguments, while the more liberal Justices expressed concern about the implications of increased opt-outs.

A significant portion of oral arguments focused on the burden on the parents, specifically the burden on their free exercise of religion under the First Amendment. As a part of this discussion, the Justices and the attorneys reflected upon whether the use of the books amounted to simple exposure, coercion, or indoctrination. The parents' attorney argued that the messages of the LGBTQ+ storybooks conflicted with his clients' religious beliefs. He also noted that their legal argument was not simply about books being on the shelves. He further clarified that the parents were seeking to opt their children out, as opposed to challenging the use of these materials by the school district, in general. Related to

the burden on parents, arguments examined education as a public good, compulsory education laws, and whether parents' ability to select a private school is relevant from a legal perspective.

Another notable focal point of oral arguments was the practicality or feasibility of implementing the optout process put forth by the parents. The parents' attorney argued that opt-outs are provided regularly by school districts nationally, in areas such as dissection, sex education, and choir. The school district's attorney argued that these instances are a discrete universe of opt-outs, while the proposed opt-out process within the English curriculum is more amorphous. To support this argument, the school district's attorney argued that at the elementary school level, there is a blurry distinction between curriculum originating from the teacher and a discussion that begins amongst classmates. For example, what if kids read a book independently, begin talking about it together, and then have questions for the teacher? How would notice to parents happen in situations like this? What would planning look like for space and supervision in these ad hoc instances?

To assess the implications of the case and to shape a potential ruling, the Justices sought insight from the attorneys to help identify where to draw that line. For example, the following questions were raised: Can someone object to teaching about the accomplishments of women? If the Court were to rule in favor of the parents, is a logical extension of the argument that LGBTQ+ inclusive books shouldn't be included at all, since students opting out will miss instruction? What if a teacher is gay and has a wedding photo on their desk? Can a parent opt out of the discussion about the photo? Relatedly, is the case about books or ideas more broadly? Should the Court's decision apply just to elementary school, or should it apply to other grade levels as well?

The Supreme Court Decision

In June of 2025, the Supreme Court ruled along ideological lines in *Mahmoud v. Taylor* (6-3), with the majority in favor of the parents, led by Justice Alito. The majority cited *Wisconsin v. Yoder*, finding that reversing the opt-out process violated the Free Exercise Clause of the First Amendment and imposed a "substantial burden on their religious beliefs," exposing young children to "coercive pressures," threatening the parents' right to direct their religious

upbringing.

The dissenting opinion, led by Justice Sotomayor, argued that mere exposure to LGBTQ+ inclusive books was not a valid defense for claiming that it was an "indoctrination" of their children, but rather an attempt by the school board to promote inclusivity. Further, the dissent argued that it is in the nature of the public education system to promote the exposure of diverse ideas and that the majority shifted power from the elected school officials and placed it in the hands of parents and judges.

Implications and Conclusion

The Court's decision presents implications for school district leaders throughout the country. Schools may see an increase in opt-out requests, with parents seeking more detailed curriculum disclosures, allowing parents to review materials before they are taught. This could also present practical challenges for school districts, particularly because the decision opens the door for greater opt-outs, which could become difficult for districts to manage.

It is important to note that the decision is not about removing inclusive books from the curriculum. On the contrary, school districts can continue their efforts toward inclusion, representation, and belonging. Furthermore, the facts of the case focus on the elementary school context and the majority opinion similarly emphasizes age as an important consideration in its analysis. Given these considerations, it will be important to follow the implications of the decision and any derivative cases that may emerge in the future.

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