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Client News Brief

Mahmoud v. Taylor: Supreme Court Affirms Parental Opt-Out Rights in Curriculum Dispute

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Written by:
Anna M. Wood
Associate
Los Angeles

Sloan R. Simmons
Partner
Walnut Creek

The Supreme Court has held that the parents of elementary school students challenging a school board's introduction of LGBTQ+-inclusive storybooks, along with the board's decision not to provide notice or allow opt outs, are entitled to a preliminary injunction. In doing so, the Court has broadened the range of policies that may be subjected to strict scrutiny for First Amendment Free Exercise challenges, indicating that policies that "substantially interfere with the religious development" of children, even if such policies are neutral and generally applicable, must be narrowly tailored to advance a compelling government interest.

Background

On June 27, 2025, the Supreme Court issued a decision in *Mahmoud v. Taylor*, (U.S., June 27, 2025, No. 24-297) 606 U.S. ___, concerning the rights of parents to challenge LGBTQ+-inclusive storybooks adopted as part of the English curriculum on the basis that such storybooks unconstitutionally burdened their religious exercise under the First Amendment, including their right to "direct the religious upbringing of their children."

Supreme Court Holding

The Court granted the parents' request for a preliminary injunction, allowing them to receive notice and opt out of instruction related to the LGBTQ+-inclusive storybooks while their lawsuit proceeds. In considering whether the parents were entitled to a preliminary injunction, the Court found that the parents were likely to succeed on the merits of their claim, specifically, that the school board's policies of including the LGBTQ+-inclusive storybooks in the English curriculum for grades K-5 unconstitutionally burdens the parents' religious exercise. The Court remanded the case to the lower court to decide the issue on the merits.

In this case, the school board had determined that the books used in its existing English curriculum were not representative of many students and families in its district, in part because they did not include LGBTQ+ characters. The board introduced LGBTQ+-inclusive texts into the curriculum and initially allowed

parents to opt out of the instruction. However, due to the increasing number of opt out requests and the resulting significant disruption to the classroom environment, the board changed its policy. Notifications regarding the storybooks were no longer provided and parents could no longer opt out of instruction. Shortly thereafter, groups of parents brought a challenge to the LGBTQ+-inclusive storybooks alleging that those storybooks infringed on the free exercise of their religion and undermined their right to direct the religious upbringing of their children.

Previously, under *Employment Division v. Smith* (1990) 494 U.S. 872, the Court held that the government can place incidental burdens on religious exercise so long as it does so through a neutral policy that is generally applicable. The Court in *Mahmoud v. Taylor* seems to differentiate this case from its *Smith* precedent, instead finding that when a law imposes a "burden of the same character" as that in *Wisconsin v. Yoder* (1972) 406 U.S. 205, which is discussed below, the government must meet the burden of demonstrating that its policy advances a compelling interest and is narrowly tailored to achieve that interest regardless of whether the law is neutral or applies the same to all students .

In its 1972 *Yoder* decision, the Court held that the state requirement that all children attend school until age 16 placed a burden on Amish students and their families because their high school attendance would interpose a serious barrier to the integration of the Amish child into the Amish religious community. While there was no suggestion that the compulsory attendance law would compel the Amish children to make an affirmation that was contrary to their parents' or their own religious beliefs, the Court found that exposure of the Amish children to worldly influences contrary to their beliefs would substantially interfere with the religious development of the Amish child.

Relying on *Yoder*, the Court here held that a government burdens the religious exercise of parents when it requires them to submit their children to instruction that poses "a very real threat of undermining" the religious beliefs and practices that the parents wish to instill. The Court stated that whether a law substantially interferes with the religious development of a child will always be fact-intensive, and courts should look to (1) the specific religious beliefs and practices asserted, (2) the specific nature of the educational requirement or curricular feature at issue, and (3) the specific context in which the instruction or materials at issue are presented.

Here, the Court found that the LGBTQ+-inclusive storybooks were presented to very young and impressionable children in grades K-5 and that the materials were not presented in a neutral manner because the books presented LGBTQ+ "values and beliefs as things to be celebrated and certain contrary values and beliefs as things to be rejected." Therefore, the Court found that inclusion of the storybooks, as well as the decision to withhold notice and prohibit opt outs, substantially interfered with the religious upbringing of the children and imposed the kind of burden on religious exercise that *Yoder* found impermissible.

Takeaways

The Court's opinion does not include precise guidance on what constitutes substantial interference with religious development in the context of parent challenges to curriculum moving forward. While the opinion includes factors that school boards and districts should consider, it does not include specific parameters regarding how those facts should be weighed or interpreted. The opinion opens

the door for parents to challenge neutral and generally applicable curricular policies, above and beyond LGBTQ+ issues, that have long been left to the expertise of local elected school boards and school administrators. While it will take time to fully understand the impact of the opinion, ramifications may include limitations on the ability of schools to teach a diverse curriculum. School districts should consider reviewing and updating their board policies to ensure compliance with the notice and opt-out concepts outlined by the Court in *Mahmoud*.

If you have any questions about this Supreme Court decision, or need guidance on any parental or student rights issues, please contact the author of this Client News Brief or an attorney at one of our eight offices located statewide. You can also subscribe to our podcast, follow us on Facebook, and LinkedIn or download our mobile app.

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