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Legal Sidebar

# Free Exercise of Religion at School: The Supreme Court's *Mahmoud v. Taylor* Ruling

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On June 27, 2025, the Supreme Court issued its opinion in *Mahmoud v. Taylor*, a case addressing the application of the First Amendment's Free Exercise Clause in public schools. In *Mahmoud*, parents challenged school curriculum that involved "LGBTQ+-inclusive" books—and a policy disallowing opt-outs from that curriculum—which they argued violated their right to raise their children in accordance with their religious beliefs.

In its decision, the Court held that the school must allow opt-outs from the LGBTQ+-inclusive books. The Court concluded that a government action that substantially interferes with the religious development of a child or poses "a very real threat of undermining" the religious beliefs a parent wishes to instill in his or her child should be reviewed under a heightened constitutional standard—strict scrutiny—regardless of whether the action is neutral and generally applicable. The Court viewed the case as falling within an exception to its general rule in Free Exercise Clause cases, that the government may incidentally burden religious exercise so long as its action is neutral and generally applicable with respect to religion. This Legal Sidebar explains the decision and discusses some implications it may have for Free Exercise jurisprudence, as well as potential impacts on public education.

## First Amendment: Background

The Free Exercise Clause of the First Amendment forbids the government from "prohibiting the free exercise" of religion. The Supreme Court has explained that the Free Exercise Clause "protects not only the right to harbor religious beliefs inwardly and secretly" but also the ability to live out one's faith through "the performance of (or abstention from) physical acts." According to the Court, government action implicates the Free Exercise Clause when it penalizes religious practice or coerces someone—either directly or indirectly—into acting contrary to their religious beliefs. The Free Exercise Clause also protects religious observers against "unequal treatment," such as when the government denies a public benefit to otherwise eligible recipients "solely because of their religious character."

Some burdens on religious exercise may nevertheless be constitutionally permitted, however. For one thing, the government is "generally free to place incidental burdens on religious exercise" so long as its policy is neutral and generally applicable. If a government policy is not neutral or generally applicable, modern Free Exercise Clause jurisprudence instructs courts to apply strict scrutiny, meaning the

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government must prove its action "advances compelling interests and is narrowly tailored to achieve those interests."

### Relevant Caselaw

In Free Exercise Clause cases prior to 1990, the Supreme Court did not articulate one clear standard for evaluating claims. The Court, however, sometimes applied a heightened level of scrutiny to laws that burdened religiously motivated acts. For example, in a 1972 case, *Wisconsin v. Yoder*, the Court reviewed a challenge to a state compulsory-attendance law that required children to attend public or private school until the age of 16. The plaintiffs—members of the Old Order Amish religion—were convicted under the compulsory-attendance law because they refused to send their 14- and 15-year-old children to school after they completed the eighth grade. The plaintiffs challenged their convictions, arguing that the law violated their free exercise rights because the children's' attendance at high school—whether public or private—was "contrary to the Amish religion and way of life." The trial court record demonstrated that formal high school education was contrary to the Amish religion not only because it placed Amish children in an environment hostile to their beliefs but also because it took children away from their community "during the crucial and formative adolescent period of life."

The Supreme Court in *Yoder* said that although the state has the power to regulate education, the state's interest in educating its citizens must be balanced against citizens' "fundamental rights and interests," including the "traditional interest of parents with respect to the religious upbringing of their children." In balancing these two interests, the Court analyzed the impact the compulsory-attendance law had on the Amish parents' religious practice, observing that the law "affirmatively compels [the parents] under threat of criminal sanction to perform acts undeniably at odds with fundamental tenets of their religious beliefs." The Court viewed the law's application to the plaintiffs as presenting "precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent," as compelling school attendance for the plaintiffs' children carried a "very real threat of undermining the Amish community and religious practice as they exist." While acknowledging that the state law was neutral on its face toward religion, the Court nevertheless applied a heightened level of scrutiny to the law, stating it must "searchingly examine" the interests the State sought to promote for compelling attendance until the age of 16. The Court ultimately concluded that the state failed to demonstrate that "its interest in its system of compulsory education [was] so compelling" as to justify the law's "severe interference with religious freedom."

Nearly 20 years after *Yoder*, the Court decided *Employment Division v. Smith*, a landmark Free Exercise Clause case. In *Smith*, the Court appeared to reject the proposition that neutral laws should face a heightened level of scrutiny when they incidentally burden particular parties' religious beliefs, reasoning that "the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability.'" *Smith* did not overturn prior cases such as *Yoder*, however, instead suggesting that heightened scrutiny may still apply to claims that involve the Free Exercise Clause "in conjunction with other constitutional protections." Specifically, the Court said while the law at issue in *Yoder* was neutral and generally applicable, it involved the Free Exercise Clause "in conjunction with ... the right of parents ... to direct the education of their children." In post-*Smith* cases, the Court has applied strict scrutiny to laws that are not neutral or generally applicable (meaning laws that discriminate against religion, provide a mechanism for individualized exemptions, or treat religious and secular conduct differently).

## *Mahmoud v. Taylor*: Background

Maryland law requires that resident children attend public school, with exceptions for private school and homeschooling. Parents who fail to send their children to school may face criminal penalties. Public

education in Montgomery County, MD, is provided by Montgomery County Public Schools (MCPS), which is overseen by the Montgomery County Board of Education (the Board). In October 2022, the Board announced that it had approved a group of "LGBTQ+-inclusive texts" (the storybooks) into its English and Language Arts curriculum, five of which were approved for students in kindergarten through fifth grade. The storybooks portray LGBTQ+ characters in various situations, such as celebrating same-sex weddings and questioning their gender identity.

The Board instructed teachers to incorporate the storybooks "in the same way that other books are used," such as by putting them on a shelf or using them for read-aloud time. The Board also contemplated the storybooks would be used as part of English and Language Arts instruction. Teachers were provided suggested responses to student inquiries about the storybooks. For example, per guidance provided by the Board, if a student asserted that "two men cannot get married," a teacher was encouraged to respond by saying "[w]hen people are adults they can get married. Two men who love each other can decide they want to get married." If a student said, "That's weird. He can't be a boy if he was born a girl," the suggested response was, "[t]hat comment is hurtful." The guidance also provided suggested responses to inquiries from parents, including assuring parents that there would be no explicit gender or sexual identity instruction and that discussions about the storybooks were not intended to force children to change their views on a matter.

Parents began requesting that their children be excused when the storybooks were used, and the Board initially allowed opt-outs. Less than a year after the storybooks were implemented, however, the Board reversed its policy and no longer permitted such opt-outs. The decision was made in part because of difficulty accommodating the number of opt-out requests without "causing significant disruptions to the classroom environment," and because of concerns that allowing students to leave during the storybook instruction would subject other students to "social stigma and isolation."

In response, several parents of elementary students filed a lawsuit claiming the no-opt-out policy violated their free exercise rights under the First Amendment. In general, the parents expressed belief in a religious obligation to teach their children the tenets of their faith, including on matters related to gender identity and sexuality. Relying heavily on the Supreme Court's *Yoder* decision, the parents argued that not being allowed the opportunity to opt-out of the storybook instruction would force them to expose their children to teachings that contradicted their own faiths and thus would violate their right to raise their children in accordance with their religious beliefs. The parents requested a preliminary injunction that would require the Board to allow opt-outs from storybook instruction.

The district court declined to issue a preliminary injunction, ruling that the parents had failed to demonstrate a cognizable burden on their religious exercise. A panel of the U.S. Court of Appeals for the Fourth Circuit affirmed, concluding that the record failed to show how the storybooks were actually used in the classrooms, and therefore the parents could not establish that the lessons involving the storybooks pressured "students to change their views or act contrary to their faith."

## *Mahmoud v. Taylor*: Majority Decision

In a 6-3 decision authored by Justice Alito, the Supreme Court reversed the Fourth Circuit, holding that the parents were entitled to a preliminary injunction because the introduction of the storybooks, along with the Board's decision to withhold opt-outs, unconstitutionally burdened the parents' religious exercise.

The Court first addressed the nature of the burden at issue, reiterating that the Free Exercise Clause protects the ability to engage in religious acts, and "for many people ... there are few religious acts more important than the religious education of their children." According to the Court, the parental "right to direct 'the religious upbringing' of their children" extends beyond the home and limits "the government's ability to interfere with a student's religious upbringing in a public school setting." The Court cited two

prior cases involving religious objections to public school policies, including *Yoder*. The Court explained that the compelled-attendance law in *Yoder* threatened the parents' religious exercise not because they were compelled to engage in a practice forbidden by their religion but because high school education would expose the Amish children to influence that would substantially interfere with their religious development. That interference, according to the Court, placed the Amish children into a hostile environment where they would face "pressure to conform" to contrary viewpoints and lifestyles.

After delineating parents' right to direct their children's religious education, the Court turned to whether the storybooks and associated instruction substantially interfered with the religious development of the plaintiffs' children. The Court emphasized that the "question whether a law 'substantially interferes with the religious development of a child' will always be fact-intensive" and suggested various factors should be considered, including the specific religious beliefs and practices asserted, the specific nature of the educational requirement, the age of the children, and the specific context in which the instruction is presented (specifically, whether the instruction is hostile to religion and designed to "impose upon students a 'pressure to conform.'") Based on these factors, the Court concluded that the storybooks and instruction in *Mahmoud* imposed a burden on the parents' religious exercise because they were designed to express moral messages on same-sex marriage and gender identity that were contrary to the parents' religious beliefs. The Court suggested that the messages in the selected books, which might be readily accepted by young children, could go so far as to communicate that the parents' religious views were "hurtful, perhaps even hateful." These moral messages, according to the Court, presented a "very real threat of undermining" the beliefs the parents wished to instill in their children and imposed upon the children "a set of values and beliefs that are 'hostile' to the parents' religious beliefs." In the Court's view, the storybooks could even exert upon the young children a "psychological 'pressure to conform'" to the viewpoints within them, which, according to the Court, presented the "same kind of 'objective danger to the free exercise of religion'" at issue in *Yoder*.

After concluding that the storybooks, combined with the no-opt-out-policy, burdened the parents' free exercise of religion, the Court next turned to whether that burden was unconstitutional under the First Amendment. The Court acknowledged that under *Smith*, the government may incidentally burden religious exercise "so long as it does so pursuant to a neutral policy that is generally applicable." In the *Mahmoud* case, however, the Court reasoned that the *Smith* framework did not apply because the "character of the burden" at issue was the same as that imposed in *Yoder*. The Court indicated that *Smith* recognized *Yoder* as an exception to its "general rule" but declined to address whether *Mahmoud* was "a 'hybrid rights' case" as contemplated by *Smith*, saying instead simply that the burden was "of the exact same character as that in *Yoder*." Thus, rather than applying *Smith*, the Court held that strict scrutiny was appropriate in the present case regardless of whether the law was neutral or generally applicable.

In applying strict scrutiny, the Court rejected the Board's assertion that the no-opt-out policy was "necessary to serve" its compelling interest in "maintaining a school environment that is safe and conducive to learning for all students." The Court observed that various opt-out policies that were already permitted in the MCPS district, including state-mandated opt-outs for sex education instruction and opt-outs for non-curricular activities, all "undermine[d]" the Board's contention that allowing opt-outs would be infeasible. The Court was also unconvinced by the Board's justification for its no-opt-out policy based on an interest in protecting students from "social stigma and isolation," explaining that the Board "cannot purport to rescue one group of students from stigma and isolation by stigmatizing and isolating another."

## *Mahmoud v. Taylor*: Dissent

Justice Sotomayor authored the dissent, joined by Justice Kagan and Justice Jackson. The dissent argued that "mere exposure to objectionable ideas" does not give rise to a free exercise claim because exposure to ideas does not compel individuals—either directly or indirectly—to give up or violate their religious

beliefs. In this respect, the dissent asserted that the parents in *Mahmoud* had failed to show how the storybooks and no-opt-out policy had coerced the parents into violating their religious beliefs.

The dissent also criticized the majority's characterization of the burden in the case—that the storybooks "carry with them 'a very real threat of undermining' the religious beliefs that the parents with to instill in their children." The dissent argued that this new "threat" test was not rooted in precedent, largely because the majority's reading of *Yoder* was incorrect. In the dissent's reading, the law in *Yoder* "compelled Amish parents to do what their religion forbade," creating an affirmative compulsion to violate their religious tenets rather than merely exposing children to "material that would incidentally 'undermine' religious beliefs." The dissent also expressed concern as to future applications of the "threat" test because the majority placed "no meaningful limits on the types of school decisions subject to strict scrutiny." According to Justice Sotomayor, the lack of discernable limits on the majority's test could lead to "stringent judicial review" of school curriculum on topics such as "patriotism, women's rights, interfaith marriage, consumption of meat, [and] immodest dress." Parents could even challenge other interactions involving "implicit 'normative' messages" that are contrary to their religious beliefs, such as a "female teacher displaying a wedding photo with her wife," or a "student's presentation on her family tree featuring LGBTQ parents or siblings." In the dissent's view, the majority's "threat" test would create "chaos" in public schools, which now would be required to provide advance notice and a chance to opt-out of lessons that may implicate a parent's religious beliefs.

## Considerations for Congress

*Mahmoud v. Taylor* provides new insight on Free Exercise Clause jurisprudence broadly, and more specifically on how religious rights intersect with public education. For one, the Supreme Court returned to the principles from *Yoder*, using the case to define the burden at issue as well as setting a heightened standard for judicial scrutiny. Going forward, it appears that claims similar to those at issue in *Yoder* (and now *Mahmoud*)—namely, those involving government actions that substantially interfere with, and pose a real threat of undermining, parents' religious development of children—will be subject to strict scrutiny regardless of whether the government action is neutral or generally applicable.

It is not as clear, however, how courts will decide whether a government action substantially interferes with the religious development of a child or poses a real threat of undermining the religious beliefs that parents wish to instill in their children. The majority articulated factors for consideration in deciding if government action burdens this right, but the dissent argued that the majority put no "meaningful limits" on its test and claimed that "mere exposure" could now be actionable under the Free Exercise Clause. While the case leaves open questions about how its principles will be applied in the future, at least one court has cited *Mahmoud* to support the coercive nature of a state law mandating the display of the Ten Commandments in public school classrooms.

Other language from *Mahmoud* also may create increased opportunities for religious objectors to obtain opt-outs from generally applicable laws. The Court suggested that because the Free Exercise Clause prohibits the government from conditioning public benefits on a recipient's surrendering of his or her religious beliefs or status, the government also cannot condition the availability of public education on parents' "willingness to accept a burden on their religious exercise." Prior cases had held that if the government excludes a religious entity from an otherwise available public benefit solely because the potential grantee is religious, the government is expressly punishing religious exercise in a way that triggers heightened scrutiny. The relevant burden in this situation is denying the religious entity the

opportunity "to compete with secular organizations for a grant": an indirect coercion of the organization "to disavow its religious character." In *Mahmoud*, the Court suggested that school curriculum posing a threat of undermining religious development imposes a burden of the same character. The majority rejected the argument that parents who disagree with curriculum could choose educational alternatives such as private school, suggesting that it is "both insulting and legally unsound" to make parents choose between public education and raising their children according to their religious faiths when educational alternatives "can be prohibitively expensive."

To the extent *Mahmoud* impacts school curricular decisions, such decisions also may face other legal constraints. In the past, the removal of books or curricular topics has given rise to free speech or civil rights claims. For example, in 2023, the Department of Education entered into a resolution agreement with a public school district after it found that the district's removal of books with LGBTQ+ and racial minority themes may have created a "hostile environment" in violation of Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.

If Congress would like to address issues related to school curriculum and religious freedom, it has some options. Existing law generally prohibits federal officials from exercising control over school curriculum. Congress can amend its own statutes, but its options may be limited by constitutional federalism principles. Although Congress currently has a limited role in regulating public school curriculum, Congress may use its spending power to implement federal K-12 policy by providing funds through the Elementary and Secondary Education Act (ESEA). For example, during the 118th Congress, the House of Representatives passed H.R. 5, the Parents Bill of Rights Act, which, among other things, would have provided parents with the right to review curriculum and reading materials in their children's school.

## Author Information

Whitney K. Novak
Legislative Attorney

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