

*Legal Corner*

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## ***U.S. Supreme Court Rules that Government Cannot Condition Free Public Education on Parents' Acceptance of Instruction that Threatens Religious Beliefs***

As a new school year begins, administrators must grapple with new decisions from the United States Supreme Court and determine how to implement the rulings into the administration of their school districts. In *Mahmoud v. Taylor*,<sup>1</sup> the United States Supreme Court, in a 6-3 decision delivered by Justice Samuel Alito, reversed a lower court's decision and granted a preliminary injunction in favor of the parents. This injunction, which is a temporary order pending the full outcome of the lawsuit, requires the school district to provide notice to parents and allow them, based on sincerely held religious beliefs, to opt their children out of the instruction on storybooks that the parents find objectionable.

The case arose from a decision of the school board in Montgomery County, Maryland, to include 13 "LGBTQ+ inclusive" storybooks approved for elementary school students in grades K-5. After the board approved the books, some parents attended board meetings and voiced their frustration and concern that "educators and administrators are going behind what [parents] are teaching their kids at home, and pushing ideas of gender ideology on their kids."<sup>2</sup> Initially, the board compromised with objecting parents by notifying them when the LGBTQ+ inclusive books would be part of lessons, and permitted their children to be excused. However, the board later stated that students and families could not opt out of engaging with the storybooks. In response, there was additional parent outcry, and the board clarified that the storybooks would not be used for explicit instruction on sexuality and gender, but rather as part of the "literacy curriculum."

However, the Supreme Court noted that the board continues to permit children to opt out of other school activities, including "family life and human sexuality," as required under Maryland law. In addition, the board amended its guidelines to allow opt outs for "noncurricular activities" such as classroom parties or free-time events.

Parents representing different religious backgrounds brought this lawsuit and asked for a preliminary injunction, asking the court to permit their children to opt out of the challenged instruction pending the lawsuit's completion. The District court denied their request, and a divided panel of the Fourth Circuit affirmed. On appeal to the Supreme Court, the Court reversed the District and Circuit courts and granted the injunction, pending the outcome of the lawsuit before the District court.

The case provides a detailed discussion of the First Amendment and religious freedoms that is far too detailed and lengthy to recount in this short article. However, it is essential to note that in granting the parents' request for a preliminary injunction, the Court held as follows:

1. The Board's refusal to allow opt outs substantially interfered with parents' First Amendment right to the free exercise of religion by interfering with the religious development of their children;<sup>3</sup>
2. The option that parents have to place their children in private schools that align with their religious beliefs, or to homeschool them, is not a valid defense to their First Amendment objections;<sup>4</sup>
3. The Board's policy of not allowing students to opt out when the LGBTQ+ inclusive storybooks were taught did not serve a compelling interest in having uninterrupted learning sessions;<sup>5</sup>
4. The burden of the Board's policies on the parents' First Amendment rights was an irreparable injury that supported the preliminary injunction;<sup>6</sup>
5. It was equitable and in the public interest to grant the injunction requiring notice to the parents and an opportunity to opt out of the instruction on the storybooks, pending the outcome of the litigation.<sup>7</sup>

### **What this Means for School Administrators:**

While there will undoubtedly be a great deal of discussion among administrators, board members, and the school community at large about permitting parents to opt students out of lessons, administrators need to recognize that this decision does not proscribe what a school district *can* teach. Significantly, it does not mandate which materials may or may not be included in a school curriculum. In addition, it does not indicate whether the Court's reasoning applies to grades above K-5. What it does provide is that when there are lessons or materials that parents may find to be objectionable, and the parents request to opt their children out of the lessons on religious grounds, the school district must take such requests seriously and make accommodations for the parents.

Here are some important takeaways for school administrators:

- **Review Existing Policies:** Familiarize yourself with your school district's current policies and procedures for handling parent requests to opt out of lessons for religious reasons. If your district does not have such a policy, now is the time to work with the school board, the board attorney, and policy advisors to implement policies that ensure consistent processing of these requests.

- **Take All Requests Seriously:** The Court did not provide specific limitations on which parts of the curriculum might infringe on a parent’s religious beliefs. Therefore, it is wise to take all opt out requests for religious reasons seriously and consult with your board attorney on any issues that are unclear or confusing.
- **Expect More Litigation:** This ruling is likely to be a catalyst for further litigation as interest groups and parents try to expand on this holding. While the Supreme Court’s decision gives a strong indication of how it will likely rule in the future, more guidance may be provided in a later decision.
- **Utilize the Services of your Board Attorney:** It is very likely that school administrators and educators, who do not have legal backgrounds, will have difficulty applying the Court’s decision to some opt out requests that might be submitted throughout the school year. That is to be expected. In those instances, we strongly recommend working with the board attorney, or your NJASA attorney, to understand the legal implications of any requests.

## **CONCLUSION**

The dissenting Justices noted that this decision casts aside longstanding precedent and places an extraordinary burden on schools by requiring them to notify parents any time anything potentially objectionable to their religious beliefs may be taught. While this may be true, administrators should be able to navigate this new burden by knowing their board policies and relying on the legal support available to them. While new issues will undoubtedly be raised as *Mahmoud* and the cases it spawns proceed through the courts, administrators can reach out to their own board attorney, or their NJASA attorney, for assistance in working toward solutions.

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<sup>1</sup> 606 U.S. \_\_\_, 145 S.Ct. 2332 (2025).

<sup>2</sup> 145 S.Ct. at 2345.

<sup>3</sup> *Id.* at 2350-53.

<sup>4</sup> *Id.* at 2359.

<sup>5</sup> *Id.* at 2362-63.

<sup>6</sup> *Id.* at 2350.

<sup>7</sup> *Id.* at 2364.