

SCHOOLS MUST ALLOW OPT-OUT OF LGBTQ+ STORYBOOKS FOR RELIGIOUS OBJECTIONS: *MAHMOUD v. TAYLOR* EXPLAINED

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The U.S. Supreme Court announced its decision on June 27, 2025, in the case *Mahmoud v. Taylor*, 606 U.S. --, 145 S.Ct. 2332 (2025), holding that public school parents with a religious objection may opt-out their young children from books or lessons that include LGBTQ+ characters or themes. Parents in Pennsylvania already have a broader right to opt-out of classroom instruction based on a religious objection.

The majority *Mahmoud* decision is dismissive of the harm and stigma caused to LGBTQ+ people and the fundamental principles and benefits of equality and representation in education upheld by the U.S. Court of Appeals for the Fourth Circuit. The holding in the case is fact-dependent, and it must be applied narrowly to ensure that schools uphold their continuing obligations and that all students' rights are respected.

ELC urges Pennsylvania educators to resist any move away from inclusive practices. Our public education system must remain a place that embraces differences, celebrates diversity, and provides opportunities for children to cultivate respect and understanding for all.

WHAT DID THE U.S. SUPREME COURT DECIDE IN THE CASE *MAHMOUD v. TAYLOR*?

The Supreme Court held that a group of elementary-school parents in Maryland are entitled to a preliminary injunction (an immediate temporary ban) that requires their children's school to provide notice and an option to opt-out their child from classroom time if they have a religious objection to the LGBTQ+ inclusive books being read in elementary classrooms.¹

What are the facts and arguments in the case?

The Board of Education for the Montgomery County (Maryland) School District directed a study of all of the district's curricula with the purpose of adding more inclusive instruction and materials. The board wanted to address gaps where the district previously had failed to include experiences of historically marginalized communities, including those who identify as Black, Latino, Asian, people with disabilities, women, and LGBTQ+.² The board identified a variety of LGBTQ+ inclusive books to be used as available texts in English Language Arts (ELA) instruction at all grade levels, including a set of nine storybooks to be made available in the elementary ELA lessons that are at issue in the case.³ There was no explicit instruction given to the children on gender identity and

sexual orientation in elementary school; the additional books were available in the same manner as other ELA books for lessons such as identifying key events in a book.⁴

A group of parents sought to excuse their elementary-age children from instruction involving LGBTQ+ inclusive storybooks based on their religious objections, and the district initially agreed to provide notice when the books would be used and an opportunity to opt-out.⁵ After several months, the district decided to stop allowing opt-outs because it “could not accommodate the growing number of opt-out requests without causing significant disruptions to the classroom environment.”⁶ The objecting parents then sought an order from the federal court to stop the district from removing the opt-out policy.⁷ The district court denied the motion for an injunction, and the U.S. Court of Appeals for the Fourth Circuit affirmed that ruling.⁸ The case advanced to the U.S. Supreme Court.

The parents asserted that their respective religions conflict with the storybooks’ positive messages about same-sex marriage and gender identity and that the district’s refusal to provide an opt-out violated their First Amendment right to direct the religious upbringing of their children.⁹

The school board argued that they have a compelling interest in maintaining a school environment that is safe and conducive to learning for all students, and individual opt-outs for LGBTQ+ storybooks were not workable as a practical matter and, in this case, also stigmatized LGBTQ+ students and families.¹⁰

What was the Supreme Court’s reasoning?

Public school policies and instruction must not endorse any particular religion and may not place unconstitutional burdens on religious exercise.¹¹ The Supreme Court explained that classroom instruction must be presented in a manner that is neutral to religion¹² and that some people’s religious tenets include an idea that same-sex marriage is a sin and that gender cannot be understood separately from male and female sex.¹³ The court reviewed the particular storybooks at issue in the case¹⁴ and determined that they did not constitute “mere exposure” to an idea, but included a “narrative” that transgender people exist and are entitled to respect and that same-sex marriage can be celebrated, which was in conflict with the religious beliefs of the plaintiff parents.¹⁵ The court acknowledged that many Americans accept and celebrate same-sex marriage, but the plaintiff parents “wish to present a different moral message to their children ... [a]nd their ability to present that message is undermined when the exact opposite message is positively reinforced in the public school classroom at a very young age.”¹⁶

Age of Students. The Court’s decision focused on the impact of narratives contrary to parents’ religious beliefs that were presented to “young, impressionable children who are likely to accept without question any moral messages conveyed by their teachers’ instruction.”¹⁷ The Court emphasized that the storybooks would “be presented to young children by authority figures in elementary school classrooms”¹⁸ and distinguished that “[h]igh school students may understand that widespread approval of a practice [in a book narrative] does not necessarily mean that everyone should accept it, but very young children are most unlikely to appreciate that fine point.”¹⁹

The Court held that the “books impose upon children a set of values and beliefs that are ‘hostile’ to their parents’ religious beliefs” and “exert a ‘pressure to conform’ to their specific viewpoints.”²⁰ The Court found that instruction related to the storybooks would “substantially interfer[e] with the parents’ ability to direct the religious development of their children,” in violation of the Constitution.²¹

Ability to Accommodate. The court also focused on the fact that the school district accommodated other opt-out requests in other contexts and would not recognize any distinction between a student opting out of a planned unit of “family life and human sexuality” and unique challenges presented by young children sharing common books in a classroom.²²

The Supreme Court’s specific ruling only directs the Maryland school that was sued to change its policies. However, because the Supreme Court is the highest federal court in our country, when they provide an opinion interpreting the U.S. Constitution, all schools across the country should ensure that their policies do not present the same specific problem that the court found was a constitutional violation. **It’s important to note that the *Mahmoud* ruling centered on policies required for individual religious objections and does not prevent educators from continuing to create inclusive school environments for all children.**

THE MAJORITY OPINION IS CONTRARY TO PRECEDENT, VULNERABLE TO SIGNIFICANT CRITICISM, AND HARMFUL TO LGBTQ+ STUDENTS, FAMILIES, & EDUCATORS

LGBTQ+ people have always existed and are valuable members of our public school communities as students, parents, and educators. Schools must respect religious beliefs of all people and also must take care not to over-read the *Mahmoud* majority to support stigmatizing LGBTQ+ people in our schools and broader communities.

As Justice Sonia Sotomayor asserted in her dissent in the case (an opinion written by those who disagree with the majority), our public schools “offer to children of all faiths and backgrounds an education and an opportunity to practice living in our multicultural society. That experience is critical to our Nation’s civic vitality. Yet it will become a mere memory if children must be insulated from exposure to ideas and concepts that may conflict with their parents’ religious beliefs.”²³ The dissent argued that “exposing students to the ‘message’ that LGBTQ people exist and that their loved ones may celebrate their marriages” and their gender identity is not enough to be considered a burden on religious beliefs under the law.²⁴

Justice Sotomayor rightfully criticized the majority opinion’s “casting aside longstanding precedent” (prior court opinions and authority) to “invent[] a constitutional right to avoid exposure to subtle themes contrary to the religious principles that parents wish to instill in their children.”²⁵ The dissent argued that the majority opinion is a significant move from Supreme Court precedent and stated that never before had the court held that “mere exposure to concepts inconsistent with one’s religious beliefs could give rise to a First Amendment claim.”²⁶

The dissent warns that the majority opinion may have a “chilling effect” on many school districts that do not have the resources to provide supervision for students opting out of classroom time and

may instead choose to abandon or censor their curricula to strip material that could risk generating religious objection opt-outs.²⁷ See below for more about schools' continuing obligations under the law and the many benefits of inclusive curricula and materials.

WHAT DOES THE *MAHMOUD* DECISION MEAN FOR PENNSYLVANIA SCHOOLS?

Pennsylvania law also requires that access to public education must be provided without discrimination based on religion.²⁸ Parents already have the right to review their child's instructional materials²⁹ and a broad right to opt-out their child from "specific instruction that conflicts with their religious beliefs upon receipt by the school entity of a written request from the parent or guardians."³⁰ The *Mahmoud* decision does not expand that right – it only clarifies that parents with a specific religious objection to their child's exposure to positive narratives about LGBTQ+ people must be afforded an opportunity to identify topics within their child's education that may be at odds with their religion and an option to opt-out of that type of instruction or materials if contrary to their religious beliefs.

A recent decision in the case *Tatel v. Mt. Lebanon School District*, from a federal district court in western Pennsylvania, presented a challenge from parents who raised religious objections when their child's 1st-grade teacher observed Transgender Awareness Day by reading noncurricular books with students without giving parents notice or the chance to opt-out.³¹ The district court held that it was a violation of the plaintiffs' constitutional religious and parental rights that the school did not provide notice and an opportunity to opt-out their elementary-age child from noncurricular instruction related to transgender people as they did for other "sensitive" topics.³² The *Tatel* decision is based on the particular facts of that case and is not controlling (does not set a mandatory rule) for any other school districts.

Pennsylvania law does not require and the Supreme Court did not hold that a school is obligated to publicly identify all class material that may have positive references to LGBTQ+ people. Under Pennsylvania law and the *Mahmoud* decision, schools must provide notice and an opportunity to opt-out as they do for any topic: Schools must provide parents notice of their right to review the curricula, and the burden is on the parent to give written notice to their school about the scope of their religious objection. Educators cannot guess as to the specifics of anyone's religious objection, so parents with concerns should request to review material for their child's current class to determine if they want to opt their child out of any of it.

Schools must ensure that opt-outs under *Mahmoud* are handled with sensitivity and discretion to avoid stigmatizing LGBTQ+ students and families. Pennsylvania schools have an important ongoing obligation under the state's Human Relations Act to prevent discrimination and a hostile environment in school based on harassment due to a person's sex, gender identity or sexual orientation.³³

THE SUPREME COURT DID NOT ADDRESS OTHER ISSUES; SCHOOLS MUST NOT OVER-READ *MAHMOUD v. TAYLOR* AND VIOLATE OTHER LEGAL OBLIGATIONS

The *Mahmoud* decision addressed only the issue of opt-out policies. It does not restrict schools from having books with LGBTQ characters or themes, nor does it prevent schools from embracing inclusive curricula that reflect the diversity of all students or from intervening against anti-LGBTQ harassment of students. In fact, inclusive curricula, book materials, and a robust anti-bullying program are still required to ensure all students' success and to help prevent a hostile environment for gay and transgender students. See below for more research supporting the benefits of inclusive curricula for all students.

The *Mahmoud* case did not address and therefore does not require school action on any other potential issues relating to LGBTQ+ students or families and schools. The Supreme Court did not make any decisions about transgender students' bathroom access, sports participation, pronouns and name use in school, or harassment of LGBTQ+ students. Schools should be very wary of any parent requests suggesting such an over-reach of the *Mahmoud* decision and should clarify that they will follow current federal and state law regarding the rights of LGBTQ+ students. See more in ELC's fact sheet on "[The Rights of LGBTQ+ and Gender Diverse Students](#)."

ALL STUDENTS BENEFIT FROM INCLUSIVE CURRICULA AND MATERIALS

The Pennsylvania constitution requires all children to have access to a comprehensive, effective, and contemporary system of public education.³⁴ This requires a safe learning environment and inclusive curriculum that allows all children to see themselves and others reflected in their classroom materials. Although the *Mahmoud* decision was focused on books about LGBTQ+ people, we know that, for too long, women, people with disabilities, and people who are Black, Native American, Latino, and Asian have also been excluded from school curricula.

Research shows that implementing an LGBTQ-inclusive curriculum is associated with reduced incidences of bullying and victimization,³⁵ reduced adverse mental health outcomes,³⁶ reduced prejudices,³⁷ higher GPAs for LGBTQ+ students,³⁸ and more positive school climates for everyone.³⁹ LGBTQ-inclusive curricula are also shown to be beneficial to all youth.⁴⁰ This research was highlighted in [an amicus brief](#) submitted in the *Mahmoud v. Taylor* case by the Women's Law Project and Community Justice Project, on behalf of Education Law Center and others.

WHAT CAN WE DO TO SUPPORT INCLUSIVE CURRICULA AND SCHOOL ENVIRONMENTS?

ELC will continue to fight to ensure our public schools offer children of all backgrounds a quality education in a welcoming environment with inclusive curricula that provide an opportunity to practice engaging in our multicultural society. Parents and guardians should advocate to their school boards and school administrators for adopting or maintaining inclusive curricula and classroom materials, including materials with positive narratives about LGBTQ+ people. For resources and support, join other parents and community members in the statewide coalition that ELC co-founded, [Pennsylvanians for Welcoming and Inclusive Schools \(PA-WInS\)](#). You can learn more about engaging with your school board in ELC's fact sheet on "[The School Board, Its Power and How to Advocate](#)."

OPT-OUT FOR RELIGIOUS OBJECTIONS TO LGBTQ+ STORYBOOKS: *MAHMOUD V. TAYLOR* | 2025

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice — visit www.elc-pa.org/contact or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) — or contact another attorney of your choice.

¹ *Mahmoud v. Taylor*, 606 U.S. --, 145 S.Ct. 2332, 2363 (2025).

² *Id.* at 2382 (Sotomayor, J., dissenting) (describing the board of education actions from the case record).

³ *Id.* (Sotomayor, J., dissenting). For a list and description of the nine storybooks at issue, see Pen America, Authors and Illustrators Respond to Oral Arguments in *Mahmoud v. Taylor* (Apr. 23, 2025), <https://pen.org/authors-and-illustrators-respond-to-oral-arguments-in-mahmoud-v-taylor/>.

⁴ *Mahmoud*, 145 S.Ct. at 2383-84 (Sotomayor, J., dissenting).

⁵ *Id.* at 2348.

⁶ *Id.* at 2346.

⁷ *Id.* at 2349.

⁸ *Mahmoud v. Taylor*, 102 F.4th 191 (4th Cir. 2024).

⁹ *Mahmoud*, 145 S.Ct. at 2349.

¹⁰ *Id.* at 2362.

¹¹ U.S. Const. Amend. I; *Mahmoud*, 145 S.Ct. at 2350.

¹² *Mahmoud*, 145 S.Ct. at 2353.

¹³ *Id.* at 2353-54.

¹⁴ The authors of the nine children's picture books at issue are opposed to the Supreme Court's mischaracterization of their books' messages. See Pen America, Authors and Illustrators Respond to Oral Arguments in *Mahmoud v. Taylor*, *supra* note 3. Pen America has collected statements from the authors and illustrators of these books. See Pen America, *Mahmoud v. Taylor Supreme Court Case*, <https://pen.org/mahmoud-v-taylor-supreme-court-case/> (last visited Aug. 19, 2025).

¹⁵ *Mahmoud*, 145 S.Ct. at 2354-56.

¹⁶ *Id.* at 2354.

¹⁷ *Id.* at 2353.

¹⁸ *Id.* at 2355.

¹⁹ *Id.* at 2354.

²⁰ *Id.* at 2355 (citing *Wisconsin v. Yoder*, 406 U.S. 205, 218, 211 (1972)).

²¹ *Id.* at 2355 (citing *Yoder*, 406 U.S. at 218).

²² *Id.* at 2362.

²³ *Id.* at 2381 (Sotomayor, J., dissenting).

²⁴ *Id.* (Sotomayor, J., dissenting).

²⁵ *Id.* (Sotomayor, J., dissenting)(internal quotes removed).

²⁶ *Id.* at 2387, 2388-89 (Sotomayor, J., dissenting) (explaining prior cases and distinguishing *Yoder*).

²⁷ *Id.* at 2381-82, 2395 (Sotomayor, J., dissenting).

²⁸ The Pennsylvania Human Relations Act prohibits discrimination based on religion in public accommodations, including public schools. 43 P.S. § 953. See also 22 Pa. Code § 4.4(c) ("Access to educational programs shall be provided without discrimination on the basis of a student's race, sex, color, religion, disability, sexual orientation or national origin").

²⁹ 22 Pa. Code § 4.4(d)(1-2)(School entities shall adopt policies to assure parents or guardians have access to information about the curriculum and a process for review of instructional materials).

³⁰ 22 Pa. Code § 4.4(d)(3).

³¹ *Tatel v. Mt. Lebanon Sch. Dist.*, 752 F.Supp.3d 512 (W.Pa. 2024).

³² *Tatel*, 752 F.Supp.3d at 580.

³³ See Pa. Human Relations Act, 43 P.S. § 953 (prohibiting discrimination in public accommodations based on sex and other characteristics), § 954(l) (defining public accommodations to include public schools); 16 Pa. Code § 41.206 (defining sex discrimination to include gender identity and sexual orientation); see also 22 Pa. Code § 4.4(c) (access to education programs shall be provide without discrimination based on sex). See *Wible v. Sch. Dist. Of Philadelphia*, No. 15-043169, 1392 CD 2018 (Phila. Cty. Ct. of Comm. Pls 2018) (finding school liable for \$500,000 damages and \$578,000

attorney fees for failing to intervene and address bullying and harassment that a student experienced from other students due to her gender presentation).

³⁴ *William Penn Sch. Dist. v. Pa. Dep't of Educ.*, 294 A.3d 537, 892 (Comm. Ct. 2023).

³⁵ Chelsea Proulx et al., *Associations of LGBTQ-Inclusive Sex Education with Mental Health Outcomes and School-Based Victimization in U.S. High School Students*, 64 J. Adolescent Health 608, 611 (2019); Joseph Kosciw et al., *The Effect of Negative School Climate on Academic Outcomes for LGBT Youth and the Role of In-School Supports*, 12 J. Sch. Violence 45, 55 (2013); Shannon Snapp et al., *LGBTQ-Inclusive Curricula: Why Supportive Curricula Matter*, 15 Sex & Educ. 580, 590-92 (2015); William Hall, *Psychological Risk and Protective Factors for Depression Among Lesbian, Gay, Bisexual, and Queer Youth: A Systematic Review*, 65 J. Homosexuality 263, 283 (2018).

³⁶ Proulx et al., *supra* note 35, at 611 (finding that the amount of reported student suicide plans decreased when schools introduced and increased use of LGBTQ-inclusive curricula).

³⁷ Shannon D. Snapp et al., *Students' Perspectives on LGBTQ-Inclusive Curriculum*, 48 Equity & Excellence in Educ. 249, 251 (2015).

³⁸ Kosciw et al., *The Effect of Negative School Climate*, *supra* note 35, at 55.

³⁹ Snapp et al., *Students' Perspectives*, *supra* note 35, at 590-92 (“[T]he presence and supportiveness of LGBTQ-inclusive curricula reduce students’ reports of bullying and have positive implications for safety, which suggests that the overall school climate improves when inclusive curriculum is taught and is supportive”).

⁴⁰ See V. Paul Poteat et al., *Factors Affecting Academic Achievement Among Sexual Minority and Gender-Variant Youth*, 47 *Advances in Child Dev. & Behav.* 261, 290 (2014) (“[A]n inclusive curriculum that promotes respect for [gender and sexual orientation] diversity stands to benefit all youth along indices of psychological and social well-being.”); Snapp et al., *supra* note 37, at 251 (“[W]hen schools teach LGBTQ-inclusive curriculum, all students, including heterosexual . . . students felt safer, experienced less victimization, reported hearing fewer homophobic slurs, and experienced greater peer acceptance”).