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U.S. Supreme Court Holds Parents Entitled To Opt Out of LGBTQ-Related Instruction on Religious Free Exercise Grounds

In *Mahmoud v. Taylor*, the U.S. Supreme Court extended constitutional protections for parents seeking to shield their children from public school instruction that conflicts with their religious beliefs.

Montgomery County Public Schools in the Maryland-side D.C. metro area is one of the largest school districts in the U.S., with more than 160,000 students enrolled. During the 2022-23 school year, the Montgomery County Board of Education introduced several LGBTQ+-inclusive storybooks into the K-5 English Language Arts curriculum which depicted same-sex relationships, transgender identities and non-traditional gender roles. Teachers were expected to use the materials in read-alouds, classroom discussions and group reading activities.

In March 2023, the Board announced a policy change in which no advance notice would be provided to parents about when LGBTQ+-inclusive books would be used, and no opt-outs would be permitted for instruction involving the books. According to Board officials, accommodating opt-out requests had become overly burdensome and risked stigmatizing LGBTQ+ students by creating visible classroom absences.

A diverse coalition of parents from Muslim, Catholic and Orthodox Christian backgrounds sought a preliminary injunction against the district, claiming that requiring their elementary-age children to attend classes that used these books without notice or the option to opt out violated their First Amendment right to direct their children's religious upbringing. The parents argued that the books and instruction presented normative messages about gender identity and same-sex marriage that directly contradicted their sincerely held religious beliefs. The U.S. District Court for the District of Maryland denied the preliminary injunction, and a divided panel of the U.S. Court of Appeals for the Fourth Circuit affirmed the denial.

In a 6-3 decision authored by Justice Alito, the Court held that a Maryland school district's refusal to provide notice to parents when "LGBTQ+-inclusive" storybooks would be utilized in K-5 English/Language Arts instruction and to allow opt-outs from such curriculum substantially burdened parents' rights under the Free Exercise Clause of the First Amendment. But the ruling may extend beyond storybooks.

The Court's decision underscores the principle that parental rights in religious upbringing go beyond one's home and extend into the public-school context. Rejecting the argument that parents can simply exit the system through private school or homeschooling, the Court concluded that public schools are a public benefit and within this public benefit is a constitutional obligation not to interfere with religious rights.

While the school district asserted that the use of inclusive storybooks was mere exposure to diverse viewpoints and therefore did not infringe on any religious rights, the Court found that the books went beyond exposure and, in any event, that exposure "is not the touchstone for determining whether the line is crossed." Instead, the question to ask is "whether the educational requirement or curriculum at issue would substantially interfere with the religious development of the child or pose a very real threat of undermining the religious beliefs and practices the parent wishes to instill in the child."

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The Court also brushed aside concerns regarding how administration of the opt-out process would create a substantial burden for schools. The Court pointed to other opt-outs in other contexts in Maryland and around the country (e.g., sex education) and faulted the school district for failing to show why opt-outs in this case could not be structured similarly.

The decision also provides guidance to lower courts but invites litigation to create the contours of the parental right. Whether a school district's actions substantially interfere with the religious development of a child "will always be fact-sensitive." This means general rules of application may be less likely and prediction of litigation outcomes for school district decisions may be more difficult, particularly before subsequent lower-court decisions are entered. The Court highlighted two principles for lower courts to apply:

1. Educational requirements targeted towards very young children may be analyzed differently from requirements for high school students
2. Whether the instruction or materials are presented neutrally or in a manner creating pressure to conform

The Court also clarified that parents need not wait for specific harms to occur in order to challenge an educational policy. In line with general First Amendment doctrine, a plaintiff may bring a challenge and obtain judicial relief so long as there is a substantial risk that the harm will occur. The Court found a risk of harm present, as the district required the use of the storybooks and had published instructions for how teachers were to implement them.

U.S. Supreme Court Rejects Higher Standard for K-12 Disability Discrimination Claims

In *A.J.T. v. Osseo Area Schools*, the U.S. Supreme Court rejected a heightened intent standard for education-based disability discrimination claims.

At a school district in Kentucky, AJT received a combination of in-school and evening at-home instruction due to a disability. In 2015, as she was entering the fourth grade, AJT moved to Osseo Area Schools in the Minneapolis metro area, the fifth-largest school district in Minnesota, serving more than 20,000 students. As part of her Individualized Education Program (IEP), Osseo Area Schools agreed AJT could begin school at noon but refused to extend instruction into after-school hours, despite repeated parental requests and medical input confirming AJT's alertness window. Specifically, the district offered 4.25 hours per day of intensive 1:1 instruction, a shorter period than the 6.5-hour instructional day offered to her nondisabled peers. The district contended the truncated schedule was sufficient based on staffing logistics, precedent-setting concerns, and other administrative constraints.

AJT, through her parents, challenged the truncated schedule through the three related legal theories, alleging that the school district denied AJT a free and appropriate public education (FAPE) under the Individuals with Disabilities Act (IDEA), and further asserting related disability-based discrimination claims under Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (ADA). AJT prevailed on her IDEA claim in front of an Administrative Law Judge, affirmed by the federal district court, and affirmed again by the U.S. Court of Appeals for the Eighth Circuit.

However, AJT's Section 504 and ADA claims were dismissed by the district court, and the Eighth Circuit affirmed the dismissal based on circuit precedent from the early 1980s applying a heightened requirement for education-based disability discrimination claims. Specifically, the Eighth Circuit's standard required that in the education context, students alleging ADA and Section 504 violations must show that school officials acted with *bad faith or gross misjudgment*, not mere denial of accommodations or noncompliance with IDEA. The Eighth Circuit acknowledged that this was a uniquely high burden, noting that even deliberate indifference (applicable in other ADA and Section 504 contexts) would not suffice. AJT petitioned the U.S. Supreme Court for review, asking it to resolve whether the "uniquely stringent" standard for disability discrimination claims should apply in the education context.

In a unanimous opinion authored by Chief Justice Roberts, the Court vacated the Eighth Circuit's decision and rejected the use of the "bad faith or gross misjudgment" standard for ADA and Section 504 claims in education, finding no basis or support in the statutory text for the higher burden on schoolchildren. Although the Court did not announce a specific standard to replace "bad faith or gross misjudgment," it held that education-based ADA and Section 504 claims are subject to the same standards that apply in other disability discrimination contexts. In those other contexts, the prevailing approach among federal circuit courts is that plaintiffs can show mere noncompliance with the statutes to obtain injunctive relief, but must show intentional discrimination to obtain compensatory damages, satisfied by a deliberate indifference standard.

The decision, however, does highlight some litigation defenses and arguments to limit or mitigate claims by parents in the future and inviting further development of this area of the law in subsequent appeals.

U.S. Supreme Court Upholds Tennessee Law Banning Gender-Affirming Medical Care for Youth

In 2023, Tennessee passed Senate Bill 1 (SB1), prohibiting healthcare providers from performing medical procedures on minors for the purpose of treating gender identity issues and gender dysphoria. However, similar procedures (e.g., puberty blockers, hormone therapy) would be permissible for treating early puberty, disease, or physical injury. Three transgender minors, their parents, and a doctor sued the state, contending that SB1 violates the Equal Protection Clause. The district court temporarily blocked SB1, finding that the law likely discriminated based on sex and transgender status, and thus was subject to the heightened constitutional standard of intermediate scrutiny (a heightened standard). The U.S. Court of Appeals for the Sixth Circuit reversed the injunction, finding that the law does not classify on the basis of sex, but rather regulates treatment for all minors irrespective of sex.

In *U.S. v. Skrmetti*, a 6-3 opinion by Chief Justice Roberts, the Court held that SB1 is not subject to heightened scrutiny under the Equal Protection Clause and satisfied rational basis review. The Court rejected the argument that SB1 classified on the basis of sex or gender identity, and viewed the law as treatment-based, regulating specific medical procedures across minors regardless of sex or gender identity. The Court emphasized that SB1 restricted based on the *purpose* of the treatment (i.e., treating gender dysphoria), as it allowed exceptions for other medical issues (e.g., early puberty).

The Court, therefore, declined to apply intermediate scrutiny and instead applied rational basis review, the most deferential standard under Equal Protection doctrine. With this framework, the Court concluded that Tennessee had a legitimate governmental interest in regulating medical procedures for minors, particularly given what it described as the uncertain and evolving scientific nature of gender-related treatments.

The dissent, authored by Justice Sotomayor (joined by Justice Jackson in full and Justice Kagan in large part), reasoned that the law allows certain treatments when they reinforce a child's sex assigned at birth, but prohibits those same treatments when they affirm a child's gender identity, thus amounting to a clear form of sex-based differential treatment warranting intermediate scrutiny. The dissent characterized the law as functioning as a blanket ban that impermissibly singled out transgender minors for differential treatment.

U.S. Supreme Court Limits ADA Protections To Current Workers or Job Seekers

In *Stanley v. City of Sanford*, an 8-1 opinion authored by Justice Gorsuch, the U.S. Supreme Court ruled that the Americans with Disabilities Act (ADA) does not protect retirees from post-employment discrimination under Title I of the statute. The case involved a firefighter who alleged that her city employer discriminated against her by reducing her health benefits after she was forced to retire early due to a disability. The Court held that to sue under Title I of the ADA, a person must be a "qualified individual" (defined as someone who "holds or desires" a job and can perform its essential functions) at the time the alleged discrimination occurs. Thus, because the plaintiff was no longer employed and did not seek re-employment when her benefits were curtailed, she was not covered by the ADA.

U.S. Supreme Court Upholds Constitutionality of Universal Service Fund

In *FCC v. Consumers' Research*, the U.S. Supreme Court upheld the legality of the Universal Service Fund, including the E-rate program, which subsidizes internet and communications services for schools, libraries, rural areas and other underserved populations. In a 6-3 decision authored by Justice Kagan, the Court rejected claims that the program violated the nondelegation doctrine, affirming that Congress provided adequate direction to the FCC in managing the program and collection contributions from telecommunications providers.

U.S. Supreme Court Upholds Texas Law Requiring Age Verification for Online Pornographic Content

In *Free Speech Coalition v. Paxton*, the U.S. Supreme Court, in a 6-3 decision authored by Justice Thomas, upheld a Texas law that requires commercial websites distributing sexually explicit material to verify that users are at least 18 years old. Although the law affects adults who must verify their age to access lawful speech, the Court considered this burden incidental and not a direct restriction on adult speech. The Court found that Texas had a longstanding and legitimate interest in shielding children from sexual content, and the law was sufficiently tailored to that interest, not suppressing more speech than necessary to achieve that goal. The ruling reinforces the legal space for digital safety and limiting minors' online exposure to harmful content.

U.S. Supreme Court Opens Door for Retailers to Challenge Vaping Product Bans

In *FDA v. R.J. Reynolds Vapor Co.*, a 7-2 decision authored by Justice Barrett, the U.S. Supreme Court ruled that retailers (e.g. vape shops, convenience stores) can sue the FDA when it denies marketing approval for new tobacco products, including e-cigarettes and flavored vapes. As a second-order effect, the ruling may lead to more legal delays in removing popular vaping products from the marketplace, complicating efforts to curb student vaping on campuses.

U.S. Supreme Court Petitions to Watch:

- *West Virginia v. B.P.J., by next friend and mother, Heather Jackson* – Whether Title IX or the Equal Protection Clause prevents a state from designating school sports teams based on biological sex determined at birth.
- *Little v. Hecox* – Whether laws that seek to protect women's and girls' sports by limiting participation based on sex violate the Equal Protection Clause.
- *Petersen v. Doe* – Whether Arizona's Save Women's Sports Act, which excludes biological males from girls' and women's sports teams, violates the Equal Protection Clause.
- *Montana v. Planned Parenthood of Montana* – Whether a parent's fundamental right to direct the care and custody of her children includes a right to know and participate in decisions concerning her child's medical care, including a minor's decision to seek an abortion.