

Mahmoud v. Taylor: The Supreme Court's Jurisprudential Retreat on LGBTQ+ Inclusivity in Public Education

Introduction

LGBTQ+ rights have always been a sensitive and polarized social issue, and where issues exist, the law and the judiciary intend to bridge the gap, especially when constitutional law and the rights of minorities inevitably clash. Yet, the Supreme Court of the United States (SCOTUS) made a controversial decision when deciding the case of *Mahmoud v. Taylor*¹. In *Mahmoud*², the SCOTUS ruled with a 6-3 decision in favor of the plaintiff granting a preliminary injunction stating that when the school teaches LGBTQ+ content, the parents are to be notified and retain their rights to opt their children out, for exposing children to a curriculum that differs from their religious belief, in this case reading LGBTQ+ content in class, violates the Free Exercise Clause³ outlined in the First Amendment of the constitution and the Fourteenth Amendment Due Process Clause⁴.

Despite the SCOTUS's majority ruling in favor of the plaintiff, I contend that the decision is an unprecedented extension of precedents, doctrines, and statutory law. My basis is clear: under the doctrine of *stare decisis*, the essence of common law, there are decades worth of precedent against the current decision, such as *Mozert v. Hawkins County Board of Education*⁵, the constitutional doctrines were misinterpreted, as I contend that there has to be coercion in order for there to be a violation of the Free Exercise Clause⁶ along with that the state has compelling interest to not allow parents to opt their children out; hence, not violating the due process clause. Moreover, the interpretation of the case law cited differs from natural evolution without satisfying the burden to overturn existing precedent, the societal impacts of this decision on both the LGBTQ+ community and education, and comparing the SCOTUS's ruling with other foreign courts such as the Supreme Court of Canada. Moreover, I wish to propose a potential doctrinal reform that adds LGBTQ+ into a group that triggers strict scrutiny.

¹ *Mahmoud v. Taylor*, No. 24-297, 606 U.S. ____, slip op. (U.S. June 27, 2025).

² *Id.*

³ U.S. Const. amend. I.

⁴ U.S. Const. amend. XIV.

⁵ *Mozert v. Hawkins County Bd. of Educ.*, 827 F.2d 1058 (6th Cir. 1987).

⁶ U.S. Const. amend. I.

Background Information of the Case At Hand

Before discussing making a critique regarding the SCOTUS's ruling, it is of paramount importance to have knowledge of the background of the case at hand. In *Mahmoud*⁷, the main issue the plaintiffs litigated was that during the 2022–2023 school year, the Montgomery County Board of Education implemented LGBTQ+-friendly storybooks as part of the kindergarten to fifth-grade curriculum. At first, the Board allowed the parents to opt their kids out of the classes that read books to the students. However, the Board then rescinded the opt-out option due to the disruption and potential stigma for students who opted out. A group of religious parents believed that it violated their 1st Amendment Free Exercise Clause⁸, and Fourteenth Amendment Due Process Clause⁹, relying on *Wisconsin v. Yoder*¹⁰. Hence, they filed a lawsuit attempting to reinstate the opt-out option.¹¹

Having established the basic facts, I now turn to provide a dissection of the majority and dissenting opinions regarding the matter at hand.

Majority and Dissenting Opinions

The majority opinion written by Justice Alito, claimed that the lack of opt-out option as “lack(king) [of] a compelling interest supporting the Board’s policies,”¹² to address challenges that are based off of rational basis, while arguably equality, inclusivity, and civil rights are a compelling interest, which I will elaborate further later on. The majority also claimed that there is some sort of “‘very real threat of undermining’ the religious beliefs and practices that the parents wish to instill.”¹³ Moreover, the majority claims that “the balance of equities tips in their favor, and that an injunction would be in the public interest.”¹⁴

The dissent written by Justice Sotomayor, on the other hand, has a significantly different holding regarding the matter at hand. In the dissenting opinion, Justice Sotomayor wrote a powerful counter against the majority opinion where she stated, “Today’s ruling ushers in that new reality. Casting aside longstanding precedent, the Court invents a

⁷ Mahmoud slip op.

⁸ U.S. Const. amend. I.

⁹ U.S. Const. amend. XIV, § 1.

¹⁰ *Wisconsin v. Yoder*, 406 U.S. 205 (1972)

¹¹ Mahmoud, slip op.

¹² *Id.* at 41 (Majority, Alito J.)

¹³ *Id.* at 1 (Majority, Alito J.)

¹⁴ *Id.* at 17 (Majority, Alito J.)

constitutional right to avoid exposure to ‘subtle’ themes ‘contrary to the religious principles’ that parents wish to instill in their children.”¹⁵

To emphasize on the long standing doctrine and principal that there needs to be coercive elements in order for there to be a violation of the Free Exercise Clause¹⁶, Justice Sotomayor stated, “[...] the Clause prohibits the government from compelling individuals, whether directly or indirectly, to give up or violate their religious belief [...] Simply being exposed to beliefs contrary to your own does not ‘prohibit’ the ‘free exercise’ of your religion.”¹⁷

This striking contrast indicates the drastic split between the 9 justices who sits on the supreme court regarding this controversial issue, and that the majority may, to some extent, be appears to weigh religion over inclusion, while the dissenting sticks to *stare decisis* and legal positivism, which will be elaborated on later.

Upon establishing the background and dissecting the opinions, I now turn to contend that the SCOTUS misapplied constitutional doctrines when deciding the case at hand.

Free Exercise, Not Free Exclusion: A Critical Analysis of Mahmoud v. Taylor’s Application of Constitutional Doctrines

The plaintiffs cited *Yoder*¹⁸, yet it is important to note that in *Yoder*¹⁹, there were coercive elements. Notably, it is criminalized under Wis. Stat. § 118., where it is compulsory for kids to attend school, and if not, the parents may be subjected to criminal prosecution under § 118.15. However, this is simply not the case in *Mahmoud*, for nowhere did the State of Maryland implement statutes that compel an individual or legal person to endorse LGBTQ+-friendly materials or ideals, which is in stark contrast to *Yoder*. Moreover, the plaintiffs were far from satisfying the burden of proof for proving a violation of the Free Exercise Clause²⁰ mentioned in the District Court Opinion on *Mozert v. Hawkins County Public Schools*²¹. In *Mozert*²², the U.S. District Court for the Eastern District of Tennessee held that courts apply a two-step analysis when handling a case regarding the violation of the Free Exercise Clause²³. First, the plaintiff must prove, with preponderant evidence, that the government’s actions indeed created a

¹⁵ *Id.* at 1 (Dissenting, Sotomayor J.)

¹⁶ U.S. Const. amend. I.

¹⁷ Mahmoud, slip op. at 10 (Dissenting, Sotomayor J.)

¹⁸ *Yoder*, 406 U.S. 205.

¹⁹ *See Id.*

²⁰ U.S. Const. amend. I.

²¹ *Mozert v. Hawkins County Public Schools*, 647 F. Supp. 1194 (E.D. Tenn. 1986)

²² *Id.*

²³ U.S. Const. amend. I.

burden on the litigant's exercise of their religion. Once such a burden is met, it must then be balanced against the government's interest, with the government needing to show compelling reasons for its action²⁴.

In the matter at hand, although it is important to note that some religious ideals frown upon LGBTQ+, it would be hard to sustain the argumen that simply reading books with Queer characters for storytime in kindergarten is somehow "creating a burden on the litigant's exercise of their religion."²⁵ Since none of the books explicitly or implicitly coerce or preach on being part of the LGBTQ+ community. Hence, the plaintiffs had not met the burden under the *Mozert* two-step test framework²⁶, as there was no coercion involved.

Assuming the most extreme situation at hand, the burden is met due to some niche religions that frowns upon the mere exposure of LGBTQ+, weighing it against the government's interest. The government may still have a good chance of having compelling reasons for its act of not having the opt-out option. For instance, the opt-out option led to many students leaving class, leaving the few queer students behind. This is arguably a subtle form of isolation, perhaps even mild bullying or discrimination, regardless of motive.

Under *Tinker v. Des Moines Independent Community School District*²⁷, the SCOTUS implicitly decided that although the First Amendment protected the speech and expressive conduct of children in public schools, if the actions of the students in the school are significantly undermining discipline, those rights may be limited²⁸. The actions in *Tinker*²⁹ were deemed protected under the First Amendment³⁰ because the act of wearing armbands was seen as a "silent, passive expression,"³¹ in stark contrast to opting students out of a class because books with LGBTQ+ characters were read during storytime, which may cause queer students to be isolated. Hence ensues the claim that even in the worst scenario, where the burden is satisfied because of some non-mainstream or common religious beliefs that condemns the mere exposure to LGBTQ+ books a burden on their ability to practice their religion, it still doesn't outweigh the government's interest under the frameworks established by *Mozert*³².

²⁴ *Mozert*, 647 F. Supp. at 1196.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

²⁸ *Id.*

²⁹ *Id.*

³⁰ U.S. Const. amend. I.

³¹ *Tinker*, 393 U.S. at 506. at 508.

³² *Mozert*, 647 F. Supp. at 1196.

Having established that the merits of the plaintiff's case may be questionable and the plaintiff hasn't met the burden of proof, I will turn to contend that the decision significantly diverts from precedent and law thus diverting from *stare decisis* and legal positivism.

The Supreme Court's Rejection of Stare Decisis and the Jurisprudential Logic of Legal Positivism

It has been long established by courts that simply being exposed to ideas contrary to religious beliefs does not violate the Free Exercise Clause³³, and under the doctrine of *Stare Decisis*, it shouldn't be "disturbed" once settled. Ironically, such jurisprudential underpinning that being exposed to idea does not violate anything is even perpetuated in *Yoder*³⁴, which the plaintiff used as their underlying rationale. By ruling in favor of the plaintiff, the SCOTUS overturned decades' worth of precedent. Most notably, undermining the 6th Circuit precedent, *Mozert v. Hawkins County Board of Education*³⁵. *Mozert*³⁶ had a background similar to the case at hand, where a group of Christian parents litigated against the Hawkins County Board of Education because they believed that the school's required readings violated their Free Exercise Clause under the First Amendment³⁷ because those books exposed students to ideas contrary to their religious beliefs, such as secular humanism, witchcraft, evolution, etc.. The 6th Circuit Court of Appeals ruled in favor of the defense, Hawkins County Board of Education, holding that the Constitution doesn't forbid public schools from exposing children to ideas through their curriculum with which the children's parents disagree.³⁸

The case has been a standing precedent for decades, and with that being stipulated and established, it is more than reasonable to state that this precedent likely falls under the settled matters under *quieta non movere*. According to *Parenthood v. Casey*³⁹, the SCOTUS held that when deciding whether or not it is justified to overturn a precedent, the court considers four key factors: workability (whether the precedent is proven to be unworkable), legal development (whether the legal doctrines or facts changed substantially since the original ruling), reliance interest (whether people or institutions come to rely on the precedent, and whether it would spark unrest if overturned), and quality of reasoning.⁴⁰ Yet, it would be reasonable to conclude that things regarding the

³³ U.S. Const. amend. I.

³⁴ *Yoder*, 406 U.S. 205.

³⁵ *Mozert v. Hawkins County Bd. of Educ.*, 827 F.2d 1058 (6th Cir. 1987).

³⁶ *Id.*

³⁷ U.S. Const. amend. I.

³⁸ *Mozert* 827 F.2d 1058 (6th Cir. 1987).

³⁹ *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992).

⁴⁰ *Id.*

doctrinal underpinning of the matter at hand have, in fact, haven't changed enough to justify the overturning of such long-standing case law. Ergo, a ruling like this is arguably a stretch that steers away from existing precedent and doctrinal frameworks.

Moreover, as seen in the previous section, *Yoder*⁴¹ partly established that an act only violates the Free Exercise Clause⁴² if coercion is involved. The interpretation of *Yoder* in favor of the plaintiff's claims is frowned upon under jurisprudential theories, most notably legal positivism. Under legal positivism frameworks, "[the law] is synonymous with positive norms, that is, norms made by the legislator or considered as common law or case law."⁴³ As the great jurist H.L.A. Hart once stated, "The law is a system of rules; and its existence is one thing, its merit or demerit another."⁴⁴ By siding with the plaintiff, the SCOTUS blurred the lines between legal merits and some version of virtuous morality, which directly contradicts how arguments were prioritized in *Gonzales v. Carhart*⁴⁵. In *Gonzales*⁴⁶, the SCOTUS prioritized law over other non law arguments. Hence, *Gonzales*⁴⁷ may have a bearing in rejecting the court's decision to integrate *Yoder*⁴⁸ into its majority decision.

Having analyzed the merits and legal underpinnings of the decision itself through the lens of US law, I now turn to analyzing the merits and legal underpinnings or lack thereof through the lens of comparative law by comparing how the SCOTUS ruled to how other common law jurisdictions such as Canada dealt with similar cases.

Comparative Retreat or Progress? LGBTQ+ Education Rights Across Jurisdictions

In 2002, the Supreme Court of Canada encountered a case where its core issue being litigated is nearly identical to the one in *Mahmoud*⁴⁹. In *Chamberlain v. Surrey School District*⁵⁰, the respondent, Surrey School District, excluded LGBTQ+ content in class based on religious objections, ensuing the lawsuit that comes with such an act of weighing religion over inclusivity and equality. Hence, the plaintiffs sued the school district under Section 76(1) of the School Act⁵¹, alleging that the act of excluding

⁴¹ *Yoder*, 406 U.S. 205.

⁴² U.S. Const. amend. I.

⁴³ James Fieser & Bradley Dowden eds., *Legal Positivism*, INTERNET ENCYC. PHIL., <https://iep.utm.edu/legalpos/> (last visited July 31, 2025).

⁴⁴ H.L.A. HART, *THE CONCEPT OF LAW* 185 (2d ed. 1994).

⁴⁵ See *Gonzales v. Carhart*, 550 U.S. 124, 145 (2007).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Yoder*, 406 U.S. 205.

⁴⁹ *Mahmoud*, slip op.

⁵⁰ *Chamberlain v. Surrey Sch. Dist. No. 36*, 2002 SCC 86, [2002] 4 S.C.R. 710 (Can.).

⁵¹ School Act, R.S.B.C. 1996, c. 412, s. 76(1) (Can.).

LGBTQ+ content in class violated the principle outlined that makes secularism a statutory requirement in schools. The statute explicitly says, “All schools and Provincial schools must be conducted on strictly secular and non-sectarian principles.”⁵²

The court then ruled that, “...[S]ecularism does rule out [...] any attempt to use the religious views of one part of the community to exclude from consideration the values of other members of the community. A requirement of secularism implies that, although the Board is indeed free to address the religious concerns of parents, it must be sure to do so in a manner that gives equal recognition and respect to other members of the community. Religious views that deny equal recognition and respect to the members of a minority group cannot be used to exclude the concerns of the minority group.”⁵³

This is in stark contrast to the majority opinion of *Mahmoud* that may suggest that it favors religious objections significantly over equality and inclusivity.⁵⁴ Hence, under a comparative lens, the majority opinion is a significant jurisprudential retreat from both doctrine and principle.

That concludes the legal and doctrinal analysis regarding the matter at hand. I now proceed to analyze the potential ripple effects on the LGBTQ+ community and society as a whole that may ensue from this decision.

The Ripple Effects of The Case At Hand

The deeper societal implications have been touched on slightly in previous sections, but it is important to have an entire section dedicated to the analysis of the potential societal implications as a precedent set by the SCOTUS would inevitably have an affect on the life of ordinary citizens and public policy. In this case, the main parties who will be impacted by the potential ripple effects is largely the LGBTQ+ community and students. The exclusion of inclusive learning will inevitably impact the entire societal dynamics regarding being inclusive and may undermine the decades of work to build equality.

In this case, I contend that allowing exclusion will result in a significant negative impact on the LGBTQ+ community. A research brief from the Gay, Lesbian & Straight Education Network shows that in schools that do have some sort of rigorous inclusive learning environment students are, “half as likely to experience high levels of victimization because of sexual orientation (16.3% vs. 31.9%) or gender expression

⁵² *Id.*

⁵³ Chamberlain, 2002 SCC 86, at para 19.

⁵⁴ See *Mahmoud*, slip op.

(16.0% vs. 30.4%),” “less likely to feel unsafe at school because of their sexual orientation (42.1% vs. 63.6%) or gender expression (28.1% vs. 41.4%),” and “about half as likely to miss school because of feeling unsafe or uncomfortable (17.1% vs. 31.6%).”⁵⁵

Hence, by making inclusive learning optional, and not constantly trying to reinforce inclusivity and equality, there can be an opposite effect as homophobia and harmful conduct may be more likely to occur.⁵⁶

Beyond the surface level impacts, the doctrinal implications are just as impactful. By allowing this to stand, it risks echoing the logic of *Plessy v. Ferguson*⁵⁷ where the SCOTUS endorsed the separate but equal doctrine creating segregation. In this case, the SCOTUS ruled that it is optional for students to attend inclusive learning and even just the mere exposure of LGBTQ+ content. This is analogous to *Plessy*⁵⁸ as both are a form of exclusion, and while the facts are different, “parental opt-out” still perpetuates the same stigma of isolation, as queer kids are left behind when all the other kids leave, they still all go to public school, which is arguably “equal” while being separated, and it is a state-sanctioned inequality. Ironically, the Fourteenth Amendment⁵⁹, which the plaintiff cited also outlines equal protection, and just as *Plessy*⁶⁰ violated the equal protection clause⁶¹, there might be an argument made that *Mahmoud*⁶² violated the equal protection clause as well since both cases are to some extent analogous.

Hence, it is clear that the potential ripple effects of this decision will impact the LGBTQ+ community and society as a whole in a way that is inherently negative, as it risks undermining the decades of hard work this nation dedicated to promoting equality and inclusion.

Having established a comprehensive view of the issue at question, it is crucial to come up with a next step to mitigate or even eradicate the potential ongoing ripple effects through doctrinal reform.

⁵⁵ GLSEN, “Teaching Respect Finds Having an LGBT-Inclusive Curriculum,” GLSEN (Apr. 24, 2012), <https://www.glsen.org/news/teaching-respect-finds-having-lgbt-inclusive-curriculum>.

⁵⁶ *See Id.*

⁵⁷ *Plessy v. Ferguson*, 163 U.S. 537 (1896)

⁵⁸ *Cf. Id.*

⁵⁹ U.S. Const. amend. XIV

⁶⁰ *Plessy*, 163 U.S. 537 (1896)

⁶¹ *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

⁶² *Mahmoud*, slip op.

Potential Doctrinal Reform

As stated before, *Casey*⁶³ reaffirms the principle that *stare decisis* is not absolute as prior holdings may become obsolete. This is consistent with the natural evolution of the common law as Blackstone endorsed where the judiciary is “being sworn to determine, not according to his (its) own private judgment, but according to the known laws and customs of the land,”⁶⁴ and when societal factors change, there is a change in the “customs of the land,”⁶⁵ hence the jurisprudential underpinning of a potential reform under natural evolution.

The new doctrine reform that I intend to propose is to extend the strict scrutiny test from previously covering narrowly race⁶⁶, religion⁶⁷, etc. to covering inclusive education as well, for it is sexual orientation may also be a “label” and the presence of laws or lack thereof must be placed under strict scrutiny as the Fourteenth Amendment safeguards equal protection for all⁶⁸. This may be perceived as unprecedented, but I must note that it is a form of natural evolution and it doesn’t contradict with current doctrinal law, and hence it is backed by, as Blackstone states “the known laws and customs of the land”⁶⁹. Moreover, the LGBTQ+ community should be treated just like any other minority triggering strict scrutiny. Much like how *Brown*⁷⁰ treated the separation of “white” and “colored” segregation as unconstitutional, inclusive education itself should be treated like a “next step” continuing *Brown*’s⁷¹ desegregation journey.

Hence, the reform proposed above is not only plausible, but also consistent with current law and beneficial to the LGBTQ+ community, constitutional interpretation, natural rights, and the progression of society as a whole.

Conclusion

In conclusion, this case isn’t just the SCOTUS establishing a controversial precedent. Instead, it is a cornerstone of law, society, and social justice. The LGBTQ+ community, since 2021 represents roughly around 13.9 million people in the United States⁷², and by

⁶³ See generally *Casey*, 505 U.S. 833 (1992).

⁶⁴ 1 WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* 69–70 (Univ. of Chi. facsimile ed. 1979) (1765).

⁶⁵ *Id.*

⁶⁶ See generally *Brown* 347 U.S. 483 (1954).

⁶⁷ See generally *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).

⁶⁸ U.S. Const. amend. XIV

⁶⁹ BLACKSTONE, *COMMENTARIES* 69-70.

⁷⁰ See generally *Brown* 347 U.S. 483 (1954).

⁷¹ See generally *Id.*

⁷² See generally Kerith J. Conron & Andrew R. Flores, *Adult LGBT Population in the United States* (Dec. 2023), Williams Institute, UCLA Sch. of Law,

<https://williamsinstitute.law.ucla.edu/publications/adult-lgbt-pop-us/>

making inclusive learning optional and not rigorously reinforced it makes 13.9 million people⁷³ exposed to not being known well enough by society, not being well represented by society, a gap between queer and non-queer people, and lastly exposes that 13.9 million people⁷⁴ in America to be potentially harmed. Beyond the impact on the LGBTQ+ community, this decision may also drive a wedge between groups of society as a whole, and potentially create more gaps between the ideologies and ensue ideological clashes between libertarian political entities, which are more accepting towards the LGBTQ+ community and conservative political entities, which mainly frowns upon the LGBTQ+ community. This will inevitably cause a new round of ideological dogmatism, and cause harm to society as a whole.

In the end, if another *Brown*⁷⁵ doesn't appear to overturn another *Plessy*⁷⁶, and the LGBTQ+ community isn't categorized as a minority that triggers strict scrutiny, it risks echoing the doctrine of separate but equal, and a resurrection of segregation that was once thought to be "dead". Hence, the legitimacy of this decision must be seriously reconsidered and eventually overturned, as desegregation doesn't and shouldn't stop at *Brown*⁷⁷, nor should it backslide at *Mahmoud*⁷⁸.

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⁷³ *Id.*

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1 WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* 69–70 (Univ. of Chi. facsimile ed. 1979) (1765).