Parents Win Key Supreme Court Test in *Mahmoud v. Taylor*

The decision could strengthen the case for universal school choice

By Joshua Dunn

ASSOCIATED PRESS

Parents and students demonstrate outside the Supreme Court on April 22, 2025, during oral arguments in* Mahmoud v. Taylor*. On June 27, the Court decided 6–3 in favor of Montgomery County (Maryland) parents, finding the district's refusal to let students opt out of lessons with LGBTQ themes violated religious families' First Amendment rights.

To no one's surprise, the Supreme Court agreed with the parents in *Mahmoud v. Taylor*, among the most high-profile cases of the court's 2025 term. The case arose when the Montgomery County (Maryland) school board decided to force students in kindergarten through 6th grade to read or listen to books exploring themes such as transgenderism and Pride parades. In a 6–3 decision, the court granted the Muslim, Jewish, and Christian parents' request for an injunction protecting their right to opt their children out of instruction on gender and sexuality that violates their religious convictions, ruling that the parents were likely to succeed on the merits.

Recognizing what a disaster the case was for the school district and the public education establishment,

American Federation of Teachers president Randi Weingarten lamented on X that the case "should have been worked out on a local level, it's a shame it went all the way to SCOTUS. Parents must have a say about their own kids, they are our partners in education." Except a belligerent school board that was too stubborn or mathematically challenged to count votes on the Supreme Court made that impossible. Even though the decision reached the rather obvious conclusion that compelling children to receive instruction contrary to parents' traditional religious beliefs on sexual ethics violates their free exercise rights, it raises other questions related to school choice.

Citing *Pierce v. Society Sisters* (1925) and *Wisconsin v. Yoder* (1972), Justice Samuel Alito's opinion for the majority strongly reaffirmed that parents have the right to direct the religious upbringing of their children. Pierce famously declared that "the child is not the mere creature of the state" (see "The Centennial of *Pierce v. Society of Sisters*," features, Summer 2025). *Yoder* held that Wisconsin's compulsory education law violated the free exercise rights of Amish parents because it would force their children into an environment "hostile" to their beliefs. Bizarrely, the lower courts had held that *Yoder* only applied to the Amish, claiming it was "sui generis" and "inexorably linked to the Amish community's unique religious beliefs and practices"—as if a religion had to be a quaint tourist attraction to receive constitutional protection. Alito quickly dispensed with that claim, writing that "*Yoder* is an important precedent of this Court, and it cannot be breezily dismissed as a special exception granted to one particular religious minority."

Combined with the Court's reasoning in the trilogy of *Trinity Lutheran v. Comer* (2017), *Espinoza v. Montana* (2020), and *Carson v. Makin* (2022)—holding that the government cannot make receipt of a public benefit contingent on accepting a burden on religious belief—the *Mahmoud* decision clearly provides additional ballast for school choice. As Justice Alito pointed out, the school board's callous defense that, in its graciousness, the state still allowed parents to send their children to private school and teach them at home was no defense at all. "It is both insulting and legally unsound," he wrote, "to tell parents that they must abstain from public education in order to raise their children in their religious faiths, when alternatives can be prohibitively expensive and they already contribute to financing the public schools."

As Justice Stephen Breyer noted in his dissent in *Espinoza*, it is a very short walk from the court's reasoning to a mandate for universal school choice. Must a school district, Breyer wondered, "pay equivalent funds to parents who wish to send their children to religious schools?" After all, if education is the generally available public benefit, then paying only for education in secular public schools deprives parents whose convictions impel them to seek out a religious education for their child of a benefit available to others. It's not difficult to imagine other school districts adopting a similarly rigid and discriminatory posture towards religious parents, followed by additional litigation that pushes the majority in *Mahmoud* toward the position that a neutral, secular education is a chimera. Blinkered and obstinate school boards like Montgomery County's could turn out to be school choice's best friend.

The majority's opinion in *Mahmoud* also does not address how its reasoning applies to public schools of choice. Could, for instance, a charter school tell parents that they cannot opt their children out of similar instruction if it were central to the school's mission? Since charter school enrollment is always voluntary, some concerns about compulsion might be mitigated. This question is even more confounding because of the Court's 4–4 deadlock this May in *Oklahoma Statewide Charter School Board v. Drummond*. That case involved the creation of an explicitly religious Catholic charter school. Following the logic of *Carson*, Oklahoma's attorney general had declared that

religious entities could not be excluded from operating charter schools that reflect their faith traditions. A newly elected attorney general reversed that decision, leading to the case. The Oklahoma Supreme Court held that the proposed school was unconstitutional. When the U.S. Supreme Court agreed to hear the case, Justice Amy Coney Barrett recused herself, setting up the 4–4 result. Since the outcome was a tie, the Oklahoma decision stands for the time being, but the Supreme Court's decision has no precedential value. The court also offered no reasoning, simply declaring "the judgment is affirmed by an equally divided Court."

The central legal issue in the Oklahoma case was whether charter school providers are "state actors." Had the court ruled that they are, then Oklahoma would likely be justified in preventing the creation of charter schools that required students to participate in instruction as coercive as what Montgomery County tried to dictate. However, if the court had ruled that charter school providers are private entities contracting with the government, then charter schools—at least religious ones—would have to be exempt from *Mahmoud*'s reasoning and could not be forced to let students opt out of religious instruction.

In the end, *Mahmoud* will mark a pivotal point in the continued application and expansion of free exercise rights in education. Intransigent school boards like Montgomery County's will undoubtedly continue feeding the case for greater choice, which will undoubtedly lead to more litigation. Combined with the unresolved tensions raised in *Drummond*, we can be sure that the Roberts Court's grappling with the implications of its Free Exercise Clause jurisprudence is far from over.

Joshua Dunn is executive director of the Institute of American Civics at the Baker School of Public Policy and Public Affairs.

This article appeared at EducationNext.org on July 3, 2025.