CHRISTIAN LEGAL SOCIETY

Seeking Justice with the Love of God

Inside the Supreme Court's Decisions Protecting Minors
Christian Legal Society Center for Law & Religious Freedom
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I. Summaries of Legal Significance

Mahmoud is arguably the most significant reaffirmation of parents' religious freedom right to control their children's public school education in over half a century.

Skrmetti clarified that a state has the power to regulate medicine for minors based on a child's medical condition without running afoul of the Equal Protection Clause of the Fourteenth Amendment even when the regulation may affect minors suffering from gender dysphoria.

II. *Mahmoud v. Taylor*[1]

A. Issue

Do public schools burden parents' religious exercise when they compel elementary school children to receive instruction on gender and sexuality that violates their parents' religious convictions and without prior notice or affording parents the opportunity to opt out their children?

B. Background

The Montgomery County (MD) Board of Education wove into the lesson plans for pre-K and elementary-aged children books that promote same-sex marriage and gender transitioning. Plaintiffs, represented by the Becket Fund For Religious Liberty, are parents from a variety of faiths—including Islam, Catholicism, and Orthodox Christianity—whose requests to be notified when the books will be read to their children and to be given an opportunity to opt out were denied by the Board.

The parents unsuccessfully brought an interlocutory appeal to the U.S. Court of Appeals For The Fourth Circuit from the district court's denial of a preliminary injunction. The appellate panel held the parents were unlikely to prevail on their Free Exercise Clause and hybrid due process claims because they had suffered no

[1] 605 U.S. ____ (No. 24-297, June 27, 2025).

cognizable burden and the Board's policy satisfied rational basis review. The appellate panel thought it was critical that none of the parents had provided any information about how any teacher had actually used the pro-LGBT books in their child's classroom. That court said that "simply hearing about other views does not necessarily exert pressure to believe or act differently than one's religious faith requires." 102 F.4th 191, 210 (4th Cir. 2024) (citation omitted).

The parents appealed to the U.S. Supreme Court. The CLS Center for Law & Religious Freedom filed an amicus brief with the Supreme Court arguing that parents of public-school children suffer injury cognizable under the Free Exercise Clause when their children are taught values contrary to the parents' religious beliefs and to their training of their children, without prior notice or the right to opt out their child from such indoctrination.

C. Holding (6-3)

The majority held that these parents are entitled to an injunction as they are likely to prevail on their claim of a Free Exercise Clause violation. "[T]he Board's introduction of the 'LGBTQ+-inclusive' storybooks—combined with its decision to withhold notice to parents and to forbid opt outs—substantially interferes with the religious development of their children and imposes the kind of burden on religious exercise that [*Wisconsin v.*] *Yoder* [406 U. S. 205 (1972)] found unacceptable."[2]

D. Majority Opinion (Written by Justice Alito)

Applying and reaffirming the broad applicability of its decision in *Yoder*,[3] these books go beyond mere "exposure" and unacceptably burden the parent's rights; the books carry with them "a very real threat of undermining" the religious beliefs that the parents wish to instill in their children. Relying on *Yoder* and distinguishing *Employment Div. v. Smith*, the majority held: "Thus, when a law imposes a burden of the same character as that in *Yoder*, strict scrutiny is appropriate regardless of whether the law is neutral or generally applicable."[4] The Board cannot prove that its system of "no opt-outs" is necessary to maintain the learning environment or workability because it allows other opt-outs from other curricula.

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[2] Slip op., at 3.
[3] "We have never confined *Yoder* to its facts." *Id*. at 29.
[4] *Id*. at 36.

E. Concurrence (Justice Thomas)

"The Board's 'LGBTQ+-inclusive' curriculum and no-opt-out policy pursue the kind of ideological conformity that *Pierce* [*v. Society of Sisters*, 268 U. S. 510 (1925)] and *Yoder* prohibit."[5] "[T]he Board's no-opt-out policy imposes conformity with a view that undermines parents' religious beliefs, and thus interferes with the parents' right to "direct the religious upbringing of their children."[6] "The Board may not insulate itself from First Amendment liability by 'weav[ing]' religiously offensive material throughout its curriculum and thereby significantly increase the difficulty and complexity of remedying parents' constitutional injuries."[7]

F. Dissent (Justice Sotomayor, joined by Justices Kagan and Jackson**)**

"Today's ruling threatens the very essence of public education. The Court, in effect, constitutionalizes parental veto power over curricular choices long left to the democratic process and local administrators. That decision guts our free exercise precedent and strikes at the core premise of public schools: that children may come together to learn not the teachings of a particular faith, but a range of concepts and views that reflect our entire society. Exposure to new ideas has always been a vital part of that project, until now."[8]

G. Legal Significance

1. Strict scrutiny, not *Employment Div. v Smith*, applies when state actor burdens parental rights under the Free Exercise Clause to control the welfare of their children in public school. The hybrid rights mentioned in *Smith* are not dicta, but rather trigger strict scrutiny even of neutral and generally applicable laws.

2. *Wisconsin v. Yoder* has never been limited to its Amish context and is fully invokable by other parents living outside of a cloistered community.

3. The law does not countenance burdens on religion in public elementary school as "mere exposure;" rather, it applies strict scrutiny when the burden carries '"a very real threat of undermining' the religious beliefs that the parents wish

[5] Thomas concurrence, at 8.
[6] *Id*. at 10-11.
[7] *Id*. at 12-13 (citation omitted).
[8] Sotomayer dissent, at 38.

to instill in their children."[9] The measure of the threat seems to depend on the age of the students, the subject matter, and the balance or subjectivity of viewpoints presented in the controversial curriculum.

4. When government allows other opt outs, it fails to prove its interest is sufficiently compelling.

5. Liberal advocacy groups are warning that *Mahmoud* opens the floodgates for claims of opt-out by every believer who objects to any part of public school curriculum (e.g., teaching of evolution). That remains to be seen, but one should not constrict the implications of this huge Free Exercise win by narrowly construing it. Suffice it to say *Mahmoud* tells school districts that they had best: listen to parental concerns before imposing curriculum; consider the impressionability of primary school children; if they worry about too many students opting out, the school should re-think the suitability of the curriculum rather than denying notice and opt-out because the school district has chosen such a controversial curriculum that opt-outs become unworkable.

6. Finally, expect to see school districts in future sexuality curricula pay attention to the lesson plans and FAQs they issue to teachers. Montgomery County's teacher guidebook plainly evidenced an indoctrination goal that teachers challenge and counter religious beliefs unsupportive of gender transition and homosexuality. If that guidebook had not been in the record, *Mahmoud* might have been a much closer case.

III. United States v. Skrmetti[10]

A. Issue

Is a Tennessee law banning certain medical care for transgender minors subject to heightened scrutiny and in violation of the Equal Protection Clause of the Fourteenth Amendment?

B. Background

Tennessee's law, SB1, prohibits medical practitioners from administering gender-affirming care, such as puberty blockers and hormone therapy, to minors for the

[9] Slip op., at 15 (quoting *Yoder*, 406 U. S. 218, 233).
[10] 605 U.S. ___ (No. 23-477, June 18, 2025)

purposes of "enabling the minor to identify with, or live as, a purported identity different than the minor's sex; or treating purported discomfort or distress from discordance between a minor's sex and asserted identity." The bill does not restrain the use of puberty blockers and hormones for other medical purposes such as, for example, the treatment of precocious puberty.

Three transgender teens, their families, and a Tennessee doctor who treats youth with gender dysphoria filed suit claiming SB1 discriminated against transgender youth and violated their constitutional rights to equal protection and due process because cisgender youth with other conditions could receive puberty blockers and hormone therapy treatments.

The Justice Department under the Biden Administration intervened and it was the USA's question that the Court agreed to decide. So the original parents' rights claims were not in play before the Supreme Court (they probably will be raised in the future).

Applying heightened scrutiny, the district court partially enjoined SB1, finding that transgender individuals constitute a quasi-suspect class and that SB1 discriminates based on sex and transgender status. The Sixth Circuit reversed, ruling SB1 did not discriminate based on sex and only required rational basis review.[11]

C. Holding (6-3)

A state law forbidding hormone and other treatment for gender dysphoria in minors is not subject to heightened legal scrutiny, but rather rational basis review and, under such, does not violate the Equal Protection Clause. The majority did not reach the issue of whether transgender status is a quasi-suspect class under the 14th Amendment.

D. Majority Opinion (Written by Chief Justice Roberts)

The Court held that SB1—in banning certain gender-affirming treatments for minors while allowing them for adults and for other medical conditions—did not require heightened judicial scrutiny because it did not classify based on sex. The majority found the law's classifications were based on age (minor vs. adult) and the specific medical use (gender-affirming care vs. other treatments). "SB1 prohibits healthcare providers from administering puberty blockers or hormones to any minor to treat gender dysphoria, gender identity disorder, or gender incongruence, regardless of the minor's sex; it permits providers to administer puberty blockers and hormones to minors of any sex for other purposes" such as congenital defects, precocious puberty,

[11] Portions of this summary are taken from the Supreme Court's Syllabus, Slip op., at 1

diseases, and physical injuries.[12] SB1 "does not exclude any individual from medical treatments on the basis of transgender status but rather removes one set of diagnoses—gender dysphoria, gender identity disorder, and gender incongruence—from the range of treatable conditions."[13] Court found that "SB1's age- and diagnosis-based classifications are plainly rationally related to these findings and the State's objective of protecting minors' health and welfare"[14] and declined to second-guess the lines drawn by the Tennessee legislature regarding gender-affirming care for minors. The decision emphasizes that states have 'wide discretion to pass legislation in areas where there is medical and scientific uncertainty."[15]

E. Concurrence (Justice Thomas)

"The Court today reserves 'to the people, their elected representatives, and the democratic process' the power to decide how best to address an area of medical uncertainty and extraordinary importance. . . . That sovereign prerogative does not bow to 'major medical organizations.' . . . [E]xperts and elites have been wrong before—and they may prove to be wrong again."[16]

F. Concurrence in part and in judgment (Justice Alito)

"Because transgender status is not a suspect or 'quasi-suspect' class, even if Tennessee's SB1 classifies on that ground, it must be sustained so long as it 'bears some fair relationship to a legitimate public purpose.' . . . As the Court notes, SB1 easily satisfies that standard."[17]

G. Concurrence (Justice Barrett, joined by Justice Thomas)

Transgender individuals do not constitute a suspect class under the Equal Protection Clause because they lack the "obvious, immutable, or distinguishing characteristics" of a "discrete group."[18]

H. Dissent (Justice Sotomayor, joined by Justice Jackson and, in part, by Justice Kagan)

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[12] Syllabus, Slip op., at 2.
[13] Slip op., at 17
[14] Slip op., at 22.
[15] *Id*. at 22-23.
[16] Thomas concurrence, at 23 (citations omitted).
[17] Alito concurrence, at 8.
[18] Barrett concurrence, at 3.

Tennessee's ban on gender-affirming care for minors should be subject to heightened scrutiny, not just rational basis review, because it discriminates based on sex arguing that SB1 classifies individuals based on sex by conditioning access to medical treatments on whether they are "inconsistent with" a minor's sex and pushing back against the majority's finding that the law is an age- and medical-based distinction.

I. Dissent (Justice Kagan)

The Court erred by not applying heightened scrutiny, but "I take no view on how SB1 would fare under heightened scrutiny."[19] The Court should have "start[ed] and stop[ped] at the question of what test SB1 must satisfy."[20]

J. Legal Significance

1. In *Skrmetti*, the majority clarified that a state has the power to regulate medicine for minors based on a child's medical condition without running afoul of the Fourteenth Amendment just because it may affect minors suffering from gender dysphoria.
2. Because the law did not classify on the basis of transgender status, the majority decision did not decide whether transgender status is a quasi-suspect class subject to heightened scrutiny review under the Equal Protection Clause.[21] Neither were parental rights at issue here (in the federal government's intervention case).
3. States retain their police power to protect the health and welfare of minors, rather than it being stripped from elected representatives in favor of "experts."

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[19] Kagan dissent, at 1.

[20] *Id*. at 2.

[21] The Court may have occasion to address this next term, having granted cert in *West Virginia v B.P.J.*, No. 24-43, where the questions presented are: "1. Whether Title IX prevents a state from consistently designating girls' and boys' sports teams based on biological sex determined at birth. 2. Whether the Equal Protection Clause prevents a state from offering separate boys' and girls' sports teams based on biological sex determined at birth."