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# Groups nationwide eye Supreme Court hearing on Montgomery County LGBTQ books in schools case

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When the Supreme Court hears arguments Tuesday in Mahmoud v. Taylor, it will be considering whether Montgomery County parents have a right, on religious grounds, to opt their children out of classes in county schools that use LGBTQ+ friendly books.

But to the scores of religious, legal and educational groups across the country who have filed friend-of-the-court briefs, it's a case with national implications.

"Whatever rule the Court promulgates in this case will apply far beyond the circumstances of this dispute," says a 30-page brief filed on behalf of the School Superintendents Association, Consortium of State School Boards Associations, Council of the Great City Schools and National School Attorneys Association. That brief does not support either side in the dispute, but asks the justices to tread carefully.

Most of the other briefs, however, are decidedly on one side or the other: With the parents who argue that the county policy infringes on their right to raise their children according to their religion, or with the school board that says the books are part of an inclusive curriculum and are not coercive or targeting any religion.

The case began at the start of the 2022-23 school year, when the county unveiled a list of "LGBTQ+-inclusive texts for use in the classroom," including books for grades as low as kindergarten and pre-K. After initially saying that parents could opt their children out of lessons that included those and other books, the school board reversed course in March 2023 and said opt-outs would not be allowed beginning in the 2023-24 school year.

Parents are allowed to opt their children out of parts of sex education classes, but not other parts of the curriculum, like language arts.

The parents sued the school board in May 2023, saying the inability to opt their children out of the classes infringes on their First Amendment freedom of religion rights. They also wanted the schools to notify them when lessons involving the books were coming up, and to plan alternative lessons for their children.

But school officials claim the books were not part of "explicit instruction on gender identity and sexual orientation in elementary school, and that no student or adult is asked to change how they feel about these issues."

In its December filing that urged the Supreme Court to reject the case, the county said, "MCPS (Montgomery County Public Schools) believes that representation in the curriculum creates and normalizes a fully inclusive environment for all students and supports a student's ability to empathize, connect, and collaborate with diverse peers and encourages respect for all." It went on to say "teachers are not permitted to use the storybooks to enforce a particular viewpoint."

Lower courts have rejected the parents request for a preliminary injunction, with a divided panel of the 4th U.S. Circuit Court of Appeals ruling that the county policy did not have the coercion required to make it a burden on religious exercise.

In their petition to the Supreme Court, the parents cited a few of the elementary-aged books the school board includes as "LGBTQ-inclusive" and the guidance for teachers that went with each:

- "Born Ready," a story about Penelope, a student who identifies as a boy. "Teachers are told to instruct students that, at birth, doctors guess about our gender, but we know ourselves best";
- "Love, Violet," a story about two young girls and their same-sex playground romance. "Teachers are encouraged to have a think-aloud moment to ask students how it feels when they don't just like but like like someone"; and
- "Intersection Allies," a picture book for children to ponder what it means to be "transgender" or "non-binary" and asks, "what pronouns fit you?"

Mark Graber, a regents professor at the University of Maryland Francis King Carey Law School in Baltimore, said in an interview Monday that a Supreme Court decision in favor of the petitioners, or parents, would create "an administrative nightmare."

"There are a lot of religions out there. Schools have to figure out what violates religion, what parents they have to contact," he said.

Graber said the court will have to determine whether county teaches the topics "as secular" subjects.

"The parent has the right to go in and say, 'What are you teaching?' Public schools can teach one plus one equals two, regardless of what your religion says about the simpleness

of mathematics," he said. "They can teach about different forms of couples, regardless of what religion says about the simpleness of different kinds of relationships.

"The crucial thing is public schools must teach it as secular," he said. "They may not praise or condemn any religion for holding opinions consistent with the public schools, or inconsistent."

Even though parents have lost in lower courts on their preliminary injunction request, Graber said it makes senses for them to press the case with the current Supreme Court, given the justices' openness to free exercise claims.

"The court has been extraordinarily sympathetic to free exercise claims brought by evangelical Christians," he said. "They think they got the most sympathetic court they've ever had, so why not [petition the court]?"

**'Case is very important'**

The fact the high court will be hearing the case based only "on an undeveloped and untested, preliminary injunction record," and not hearings on the full merits of case in lower courts, was concerning to the school groups that filed the brief in support of neither side of the case.

"There are great risks presented by asking the Court to potentially adopt new rules for evaluating Free Exercise claims or constitutionalizing notice and opt out requirements," said the brief from the School Superintendents Association, Consortium of State School Boards Associations, Council of the Great City Schools and National School Attorneys Association.

One other brief that supports neither side in the dispute came from the California Parents for the Equalization of Educational Materials (CAPEEM), a nonprofit and nonpartisan organization that focuses on "eradicating the disparaging treatment of Hinduism" in that state's public schools.

The organization's brief proposes the court adopt a four-part test to determine if school policies violate free exercise rights: Does the curriculum material negate religious beliefs or practices?; does the curriculum material itself or the process through which it was adopted reflect targeted hostility toward religion or a particular religion?; does the material or the adoption process lack neutrality toward a particular religion?; and is the curriculum material coercive?

"The outcome of this case is going to clearly affect my client's rights, but whatever test the court comes up with ... we have ideas in what would make sense in litigating the case," Glenn Katon, counsel representing CAPEEM, said in an interview Monday.

“We’re not there to help either party. We’re there to try and get the court to adopt the test that makes sense, that will help Hindus get treated fairly in California,” he said. “This case is very important for schools in California [and] even across the country.”