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Opinion Editorial Board

# Montgomery County's unneeded Supreme Court fight

The school district tried to solve one diversity problem by ignoring another one.

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Supporters of an opt-out policy regarding LGBTQ+ content at Montgomery County schools rally outside the Supreme Court in D.C. on Tuesday. (John McDonnell/For The Washington Post)

“What’s the big deal?” This was the very pertinent question posed by Justice Samuel A. Alito Jr. during Tuesday’s oral arguments in *Mahmoud v. Taylor*. Why has the defendant — the Montgomery County, Maryland, school district — come before the Supreme Court with what should have been a minor administrative issue?

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In 2022, Montgomery County introduced into its language arts curriculum a set of books that affirm LGBTQ+ identities. As with other material that might conflict with families’ religious values, such as sex education, the district allowed parents an opt-out. Then, it abruptly rescinded that option and refused to reconsider, even after some parents sued.

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This is how Alan Schoenfeld, the school district’s lawyer, ended up in court trying to explain to Alito why the district was unable to accommodate parents with religious objections. “The plaintiffs here are not asking the school to change its curriculum,” Alito pointed out. “They’re just saying, look, we want out. Why isn’t that feasible? What is the big deal about allowing them to opt out of this?”

Schoenfeld tried to argue that the administrative burden was too great but, when asked why it was so much greater than the opt-outs available for health class, he appeared to struggle, finally responding that those opt-outs were mandated by state law, whereas the reading opt-outs were not.

“It’s not compelled as a matter of state law,” Alito retorted, “but why should it not be compelled as a matter of the — the free exercise clause of the First Amendment?” The court is unlikely to be satisfied with Schoenfeld’s answers to that question.

Certainly, the district’s motives were good. It was trying to make sure that Montgomery County schools welcome all the children in its diverse student body, including gay and trans children. But religious diversity is also important — so much so that it is enshrined in the First Amendment.

The district appears to have been trying to solve one diversity problem by ignoring another one. This is not a good strategy in a pluralistic society that often must allow groups with conflicting views to disagree. Gender and sexuality are the focus of some of the most complicated, sensitive and divisive debates in society. And these conflicts cannot be resolved by forcibly favoring one side’s message.

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“Forcibly” is not too strong a word to use in this situation. Recall that schooling is mandatory, and not all parents have the means to finance private school, or to manage home schooling, or to move to a different district. Montgomery County effectively required many religious parents to send their children to a school where the curriculum would directly contradict the values of their parents, often at an age when they are too young to critically engage with such ideas.

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Schoenfeld insisted that the message that “these things ought to be normalized and treated with respect” was “incidental” to the stories, but this is not plausible to anyone who has read them (including several of the conservative justices). Supplementary educational materials for one of the books, cited by the plaintiffs, suggested that teachers tell students: “When we are born, people make a guess about our gender and label us ‘boy’ or ‘girl’ based on our body parts. Sometimes they’re right, and sometimes they’re wrong. Our body parts do not decide our gender. Our gender comes from inside — we might feel different than what people tell us we are. We know ourselves best.”

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District officials surely are aware that this message is controversial and directly conflicts with the teachings of many religious denominations.

We emphasize that the district has a right to decide which books belong in its libraries and curriculums. And schools should demand that all students treat one another with respect, even across differences in faith, culture and sexual identity. No doubt, the Montgomery County officials thought the books in question would help promote such respect.

But forcing children to read books that contravene their family’s faith suppresses diversity in the name of saving it. The district should have maintained the opt-out and, having made the mistake of rescinding it, should have restored it after parents protested. Instead, time and money were wasted defending a lawsuit. Those resources would have been better used to improve the quality of education for all Montgomery County students, regardless of what they believe.

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