Laboratories of Authoritarianism

Mahmoud v. Taylor and the Decay of Democracy

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In *Mahmoud v. Taylor*, the U.S. Supreme Court expanded the 1st Amendment Free Exercise Clause to grant conservative religious parents a constitutional right to remove their children from any classroom where a teacher includes LGBTQAI+ people in the curriculum. In effect, the Court has allowed public schools to discourage mutual tolerance, parents to opt out of Equal Protection, and fringe legal strategists to continue to use children's constitutional rights as a test case for authoritarianism. Youth rights provide fertile ground for authoritarian policies as young people are a vulnerable population, their autonomy is almost entirely up to the discretion of their parents and the state, and lawmakers can easily cloak their desires to remake government institutions under the guise of care, protection, and parent rights. However, youth rights are not entirely separate from those of the rest of society – and the erosion of children's rights becomes the foundation upon which other rights are eroded.

Constitutional test subjects

Today, a transgender girl in 4th grade can wake up to news anchors discussing how the highest court in the land ruled in *Mahmoud v. Taylor* that schools may not read books that include trans voices or celebrate families and friends who embrace girls like her. When that 4th grader arrives at school, she might see Mahmoud in action when her teacher hastily moves her peers to different classrooms before reading a book with trans characters because parents must provide "permission" for their children to even acknowledge trans lives. In many states, that same young person will learn that her doctor can no longer provide her with gender-affirming medical treatment because of the Supreme Court's ruling in *Skrmetti v. United State*s. If that young person seeks a counselor to work through the psychic harm of these experiences at school or in doctors offices, the counselor might tell her that trans people do not exist, that her parents are causing harm by providing affirming education and healthcare, and suggest that she consider conversion therapy in a local church. And if the child and her guardian challenge that practice as unethical and harmful, that therapist might be able to assert that the Supreme Court interpreted the First Amendment to develop a constitutional right to do so in *Chiles v. Salazar*. Keep in mind that this child cannot vote, run for office, and make campaign contributions (but, ironically, she can work certain jobs and pay taxes). This child is not learning in a healthy democracy. She is living as the constitutional test subject of legal strategists.

Scholars of authoritarianism discuss two "soft guardrails" of democracy: 1) "mutual toleration" — a shared understanding that people and parties with different views and values must respect one another as legitimate to promote and uphold democratic institutions; and 2) "forbearance" — the understanding that government actors must demonstrate restraint in their roles to promote checks and balances on state power. These "norms of toleration and restraint" are what keep people with different politics, values, and lifestyles from trying to destroy one another; and the place where they are most often taught and learned are in public schools. But the Court has allowed fringe legal strategists to decay those norms and attack public education, in many cases using children's rights to further polarize political parties, dismantle social welfare, and entangle courts in culture wars. The Supreme Court has ruled in favor of these legal strategists to roll back a variety of children's rights which in turn erode rights, resources, and liberties for everyone.

Their success includes eroding bodily autonomy at the site of the constitutional rights of undocumented children (*Azar v. Garza* (2018)), attacking healthcare at the site of the constitutional rights of transgender children (*United States v. Skrmetti* (2025)), shrinking higher education at the site of constitutional rights of students of color (*Students for Fair Admissions (SFFA) v. Harvard* (2023)), and now, decimating equal protection and public education at the site of constitutional rights of LGBTQAI+ elementary school students (*Mahmoud v. Taylor* (2025)). Legal strategists have realized that the rights of vulnerable children provide the perfect site to experiment with culture wars and unquestioned obedience to authorities. Given the success of these experiments, I have developed the term laboratories for authoritarianism to describe how children's constitutional rights have become a vehicle for fringe legal strategists to craft jurisprudence that undermines democracy and promotes authoritarianism.

Mahmoud v. Taylor provided a particularly powerful vehicle for this project as it attacked constitutional rights within public schools. Public schools are a battleground for democracy, as they are the single institution where the most people spend the most time in the United States. They serve as "the most pervasive means for promoting our common destiny." (Sotomayor, dissenting, at 1, *Mahmoud v. Taylor*). In eroding constitutional rights for such a vulnerable group in a stronghold of democracy, Mahmoud obstructs public schools from promoting mutual toleration or teaching an accurate understanding of the Constitution among some of our nation's most vulnerable children.

Denying marriage equality in public schools

The majority opinion first discourages public schools from promoting mutual toleration and understanding their constitutional rights by asserting the following message infringes on the religious liberty of parents: "Two people can get married, regardless of whether they are of the same or opposite sex, so long as they "love each other." (*Mahmoud v. Taylor* at 23). According to the majority, celebrating the constitutionally protected marriage between people of the opposite sex is acceptable, but celebrating the constitutionally protected marriage between two people enshrined in *Obergefell v. Hodges* may cause "destruction" for religious communities. While the dissent describes this reasoning as pure "absurdity," the decision will discourage public schools from affirming the constitutionally protected right to marriage equality or promoting mutual toleration of marriage traditions and norms across religious and cultural identities. In enshrining this absurdity in the Constitution, the Court also undermines the intolerance against the children of LGBTQAI+ couples explicitly rejected in *Windsor v. United States* (2013). In effect, the Court encourages public schools to erode mutual tolerance and constitutional literacy by invisibilizing the constitutional rights of LGBTQAI+ families, "mak[ing] it even more difficult for [] children to understand the integrity and closeness of their own family and its concord with other families in their community and their daily lives." Amicus Brief for Students Engaged in Advancing Texas at 29 (citing *Windsor*).

Disregarding constitutional protections against discrimination

The majority further discourages public schools from promoting mutual toleration and accurate understandings of constitutional rights when recasting the following message as another unconstitutional burden on religious liberty: "Sex and gender are [not always] inseparable" (*Mahmoud v. Taylor* at 3). In terms of mutual toleration, the majority "fail[s] to accept and account for a fundamental truth: LGBTQ people exist. They are part of virtually every community and workplace of any appreciable size." (Sotomayor dissenting, at 21). By asserting that the Free Exercise clause "requires the government to alter its programs to insulate students from that "message," the Court forecloses the possibility of schools teaching public school students, especially those who currently or may later identify as LGBTQAI+, about their constitutional rights to Equal Protection.

For example, in *Bostock v. Clayton County*, the Court determined that it is impossible to discriminate

against homosexual or transgender people without engaging in sex discrimination. See Brief for Students Engaged in Advancing Texas et al. as Amici Curiae 24. However, under Mahmoud, a school cannot affirm that gender and sex are separable, foreclosing the possibility of a public school student even conceptualizing the idea of LGBTQAI+ people existing with constitutional rights. To teach an accurate understanding of the Constitution and basic rights in this country, public schools would need to have the authority to explain that LGBTQAI+ people exist and that "the differential treatment by the state" as compared to heteronormative or cisgender should "amount[] to impermissible sex discrimination under Equal Protection." Amicus brief for Students Engaged in Advancing Texas at 24. However, the Court instructs schools to neglect existing constitutional protections for isolated minorities like the LGBTQAI+ community and, in some ways, encourage students to further erode them. In doing so, the Court allows for the further decay of Equal Protection and mutual toleration — an indispensable guardrail for what remains of our democratic institutions.

Looking forward

While the majority emphasizes that the holding of *Mahmoud v. Taylor* applies specifically to the context of storytime with "impressionable children," that is plainly untrue. The Court's willingness to take up cases like *Mahmoud*, *Skrmetti*, and *Chiles v. Salazar* within a single year reveals a willingness to entertain experiments in democratic backsliding. More importantly, LGBTQAI+ families in and outside of public schools will continue to feel the impact of the constitutional rot of Equal Protection and mutual toleration for generations to come. In coming months, the Court will rule on whether to expand the Free Exercise Clause to therapy sessions. If it decides that it does, mental health counselors may hold a constitutional right to suggest conversion therapy to an LGBTQAI+ fourth grader in the same school where parents hold a constitutional right to facilitate a mass exodus when LGBTQAI+ lives are mentioned in the classroom. And if that is not enough, it is only a matter of time before one of the university complaints seeking relief from the Trump administration's university funding freezes reaches the Court. Then, five justices will decide whether the government can also restrict college students from learning and celebrating topics too controversial for storytime in K-12 schools.

If the conservative fringe has focused on children's constitutional rights as the site for its political-legal project, defenders of constitutional democracy must do the same.

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