

Religious Freedom Suit Opens with Wide Publicity

by Howard Richman

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The first of the two Religious Freedom Protection Act suits began with preliminary motions on July 31, 2004, at the Westmoreland County Court House, and articles about it appeared in newspapers all across the country.

In April the Home School Legal Defense Association filed two Religious Freedom Protection Act (RFPA) suits, one for the Newborn family of Westmoreland County, the other for the Hankin family of Bucks County, both claiming that Pennsylvania's home education law substantially burdened homeschoolers' religious beliefs and was unconstitutional.

The suits' proponents were not arguing that the PA home education law prevents them from homeschooling. Nor were they arguing that it prevents them from teaching their own religion to their children. Instead, they were arguing that their religious beliefs hold that the "government lacks jurisdiction to approve or administratively supervise the education that they provide." When interviewed, proponents argued that a homeschool law should provide no more child protection than a private school law, ignoring the fact that there are two sets of adults protecting children in private schools (the parents and the school staff), but only one set in homeschools.

So far, editorial writers and columnists have not been buying the premise that there should be no child protection in a homeschool law. Instead, they are having a field day coming up with Biblically-based reasons for opposing the suit. For example, the editorial for the Carlisle Sentinel concluded, "Sometimes you just have to render unto Caesar the things that are Caesar's," while the column for the Philadelphia Inquirer concluded, "Imagine a state that altered its constitution, absolving itself of all responsibility for educating its young, leaving it in the hands of parents and caring nothing about the outcome. I won't want to answer for that on Judgment Day."

Here is a selection from a July 31 Carlisle Sentinel editorial which argues that these suits confuse freedom and responsibility:

The unique aspect of these lawsuits is that they are being filed under the state's Religious Freedom Protection Act. Because these families are homeschooling their children for religious reasons, they believe the state's education laws should not apply to them.

It sounds to us like these families are confusing freedom with responsibility. In neither case is their right to teach their own children at issue. Their complaint is with a law passed especially to give legal status to families who homeschool.

Before that law, homeschooling families were subject to investigation by child welfare agencies who were unfamiliar with or unsympathetic to the families'

chosen way of life. In 1988 the General Assembly passed the Homeschooling Act, which sets up the reporting requirements these families now object to, but the law also prevents local authorities from interfering in a couple's decision to teach their children at home.

While it's true many families homeschool because of their religious beliefs, the act does not mention religion. Anybody who wants to teach at home has to follow the law. Parents of athletic and artistic prodigies, as well as Hollywood parents whose children act professionally, often choose to homeschool their kids.

Maryalice Newborn, one of the litigants, told the AP, "The parents are the stewards over the child, not the state." In a perfect world, that would be the ultimate argument.

But in a world where parents sometimes neglect their responsibilities, it falls to the state to clean up the mess left behind by those who don't take their duties as seriously as the Newborns and the Hankins. That's why we have educational standards, not to mention laws governing child welfare.

Homeschooling has come a long way in Pennsylvania since the days before the act was passed to protect it. Unless the point of all of this is to give the children of the Newborns and Hankins some real-life experience with the court system, we think the litigants should just buckle down and do their homework.

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And here is an excerpt from Philadelphia Inquirer columnist Jane Eisner who argues that the state does have a legitimate role to play in insuring that children get an education:

What the Hankins really want is to be left alone.

They've never complied with the state rules and so can point to no horror story of overzealous bureaucracy. It's the "idea" they object to, the paperwork and proof they must submit, the possibility that a secular school official will pass judgment on their values.

Part of me says: Fine. Babette Hankin seems like a reasonable person - college-educated, articulate - and if she wants to stay in a three-bedroom house all day with seven kids, who am I to object?

Hiding behind the Religious Freedom Protection Act, however, seems only a convenient mechanism. The government isn't persecuting the Hankins because they are Christian. It's an equal-opportunity persecutor: Live in Pennsylvania, follow the rules.

And in a time-honored American tradition, this family doesn't want to follow the rules. As long as they hurt no one, why should the rest of us care?

Here's why: If I believe that the state has no responsibility whatsoever to ensure that the Hankin kids are educated, then I have no reason to care about the kid in North Philadelphia whose prospects are severely weakened because he's stuck in an awful school that doesn't care about his education, either.

If I leave the Hankins alone, I may as well tell lawmakers to forget about the kids in Pennsylvania's poor and neglected rural areas. And those not fortunate enough to have parents as devoted or learned as the Hankins, or as patient. Of course, if I left them alone, I wouldn't " know whether they were devoted, learned or patient because there'd be no public oversight of their activities. No matter; I wouldn't care.

Some states don't seem to care. New Jersey demands little of its home-schooling families, no paperwork, no proof of accomplishment, no standards. Only Pennsylvania and 10 other states require parents to sign affidavits, send in achievement scores, portfolio their children's work, and have it professionally evaluated.

Either lawmakers here care a lot, or way too much. Take your pick.

"Many home-schoolers believe that God has given children to them as a sacred trust," says Darren Jones, staff attorney for the Home School Legal Defense Association, which is involved in the Hankins case. "They believe they'll be standing before God on Judgment Day, and that's a much higher standard than standing before the school superintendent."

Indeed. The problem with that logic is that it can be used to excuse ourselves from all sorts of communal responsibilities, from paying taxes to helping the disabled to ensuring that the next generation is taught well enough to become productive citizens.

Yes, Pennsylvania's rules may be unnecessarily stringent, although that hasn't stopped 25,000 other children from being home-schooled in the state. But imagine a state that altered its constitution, absolving itself of all responsibility for educating its young, leaving it in the hands of parents and caring nothing about the outcome.

I won't want to answer for that on Judgment Day.

These court cases are only just beginning. They are at the preliminary argument stage in county court houses. We will continue to follow them as they wind their way up through the court system. The U.S. Supreme Court has never yet heard a homeschooling case. Based upon the publicity, I suspect that one of these suits could be the first. But that would probably be about 5 years from now.