

# Civil Rights Suit Against Home Education Law Scheduled

by Howard Richman

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Home School Legal Defense Association's (HSLDA) Civil Rights Suit (Combs et. al. v. Homer Center School District, #04-1599), designed to get the PA Home Education Law declared to be unconstitutional, has been scheduled for trial on April 3, 2006, in the Pittsburgh Federal Court. Here is the current schedule:

- September 9, 2005. Parties shall complete Discovery
- October 10. Plaintiff expert reports due.
- Nov. 10. Defendant expert reports due.
- Dec. 10. Expert depositions due.
- Dec. 30. Summary judgment/Dispositive motions
- Jan. 16, 2006. Any responses thereto
- Feb. 16. Plaintiffs pretrial statement
- March 16. Defendant's pretrial statement
- April 3. Trial set for 9 am in Courtroom 7, 9th Floor.

This suit did not start out as a Civil Rights suit in Federal Court, but as six different Religious Freedom Protection Act suits with HSLDA suing various school districts in state court. However, Attorney Carl P. Beard, on behalf of the Superintendent of the Homer Center School District, successfully argued for removal of his case to federal court based upon the fact that the HSLDA was raising claims arising under the United States Constitution and "the Federal District Court has original jurisdiction over controversies based upon federal questions, such as alleged claims of rights arising under the Constitution of the United States."

After the Homer Center School District suit was moved to Federal Court, two motions were filed, with Attorney Beard winning one motion and HSLDA winning the other. Attorney Beard won when Judge Schwabb rejected a motion to move the suit back to state court writing that there were "no extraordinary circumstances" to warrant that move. HSLDA won when Judge Schwabb rejected a motion to dismiss the whole case writing, "The Court simply cannot say, at this early stage of the proceedings, that plaintiffs will be able to state no set of facts in support of their claims."

HSLDA clearly out-lawyered Attorney Beard in the briefs filed under the motion to dismiss. HSLDA had ignored the evaluator in their complaint, and Attorney Beard failed to point this out. It is the evaluator, chosen by the home schooling family, who makes the all important *initial* determination of whether education is taking place. The superintendent's role is to keep the evaluator honest and the due process hearing officer's role is to keep the superintendent honest. Unlike the superintendent, the evaluator cannot be accused of bias against homeschooling and can help make homeschooling better in a non-threatening

way. The evaluator can even be a non-public school teacher with no connection at all to the state -- no need to even have state teaching certification.

Soon after these briefs, five other state court suits were also moved into the case. Now there are six different law firms representing six different school superintendents. It may be more difficult for HSLDA to outlawyer the combined efforts of these six firms.

No matter what the decision made by Judge Schwabb after the April 3 trial, this suit is likely to continue for several more years. Whoever loses is likely to appeal to a Federal Court of Appeals and the loser there may appeal to the U.S. Supreme Court. A similar case (Lawvere v. East Lycoming School District) lost at every stage, but the lawyers in this case are different. The Lawveres represented themselves. The HSLDA lawyers are much more formidable.