Judge Upholds PA Home Education Law

HSLDA Suit Flops in Federal Court

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Home School Legal Defense Association's (HSLDA) lawsuit against the Pennsylvania Home Education Law received a severe setback on December 8, 2005 when Judge Schwab issued a ruling that upheld the Pennsylvania Home Education Law (Act 169 or 1988) against all of HSLDA´s Civil Rights and Religious Freedom Protection Act (RFPA) claims. In other words, the United States District Court for Western Pennsylvania held that Act 169 does not violate any of the following:

- Pennsylvania´s Religious Freedom Protection Act (RFPA)
- The free exercise clause of the First Amendment
- Various other clauses of the First and Fourteenth amendment, when combined with the free exercise clause of the First Amendment.

The lawsuit is not over yet. The judge's ruling was in response to the plaintiffs' (six sets of parents represented by HSLDA) motion for summary judgment. He still has to issue his final ruling in response to the defendants' (school districts) request for a summary judgment. There is little doubt, however, that Judge Schwabb's final ruling will go against HSLDA. At a January 5 meeting, he told lawyers for both sides that "unless something dramatically changes [his] mind," he will rework his December 8 ruling a little bit and then issue it in response to the school districts' request for summary judgment.

This was the second Civil Rights suit filed by homeschoolers against the Pennsylvania home education law that lost at the local federal district court level. The first case, which lasted from 1995 to 1998, Lawvere v. East Lycoming School District, first lost in the United States District Court for the Middle District of Pennsylvania and then went on to lose its appeals to the Third Circuit Court of Appeals and the US Supreme Court. HSLDA will soon appeal the summary judgment of this decision to higher federal courts.

According to Judge Schwabb, HSLDA not only failed to show that the Pennsylvania Home Education Law *substantially* burdened religious freedom, they also failed to provide any evidence that it burdened religious freedom whatsoever. Furthermore, he stated that their argument that laws were more lax in other states was pointless, since neither the court nor other state legislatures are supposed to make the laws for Pennsylvania. Here is a selection from the judge's 69-page ruling:

> ***First the judge discussed the RFPA:***
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> Despite having home schooled their children from at least five to thirteen years, however, Plaintiffs do not specify any actual, tangible ways in which Act 169 impairs or restricts the *exercise, practice, conduct* or *expression* of their religion

during those five to thirteen years or currently. The " Effects of Portfolios" that Plaintiffs identify as flowing from Act 169's portfolio and log requirements (i.e., those requirements are time consuming and stressful, and not beneficial to their children's education) are the same effects encountered by *all* parents and supervisors of home schooled children, not just those who home school for religious reasons. In other words, these "Effects" do not describe any particular impact on the *exercise, practice, conduct* or *expression* of religion, but rather describe the common, general consequences caused by Act 169's requirements that home schoolers compile, organize and present portfolios and logs for review by school districts and their superintendents.

Although Plaintiffs state that their "focus" in this litigation is Act 169's portfolio requirements, the only negative effect alleged that is not common to all home schoolers, and the only religious impact that a fair reading of Plaintiffs' concise statement of material facts and brief will sustain, is that Act 169 places "authority" over their children's education, which, to Plaintiffs, "is religion," in secular hands, and that placing of authority in any state agency violates their sincerely held religious beliefs. *Brief in Support of Summary Judgment at 5-7*. Plantiffs state that "the Lord has established jurisdictional boundaries between the family and the State," that 'subjecting their home education program to the authority, oversight and discretionary review of the State violates Biblically-ordained jurisdictional lines between the family and the State," and that these "twelve plaintiffs, who come from diverse religious backgrounds, have each concluded that compliance with Act 169 amounts to an unbiblical surrendering of their God-given authority as parents to the State." *Brief in Support of Summary Judgment at 6-7*....

As will be explained more fully in the Court's discussion of the First Amendment-Free Exercise jurisprudence, Plaintiffs cannot show that Act 169, on its face places any restriction on or infringement on the practice or *exercise* of their religion, but (accepting for now the sincerity of their beliefs, which defendants dispute) only that it interferes with their sincerely held religious beliefs that "education is religion" and that the state has *no authority* to regulate home education programs by such religiously motivated home schoolers. Conceivably, Plaintiffs may be able to demonstrate that, as applied in practice, one or more of the defendant school districts or superintendents applies Act 169 in such a way as to restrict or infringe upon their religious practice or exercise, but Act 169 on its face does not violate the RFPA. Plaintiffs' motions for summary judgment on their facial RFPA challenge to Act 169 must be denied.

Next he discussed the First Amendment Free Exercise Clause:

While it may be true, as Plaintiffs herein argue, that other states have no procedures concerning home schoolers or simpler and less time consuming procedures for home schooling parents and guardians to provide the necessary assurances of adequate education to the state, it is not the role of the judiciary to substitute its judgment, or the judgment of elected or non-elected officials of other states, for the wisdom of the elected legislative body who crafted the procedures for the Commonwealth of Pennsylvania. In fact, the Pennsylvania

General Assembly has accommodated home schooling parents by statute, subject to statutory requirements, thus ensuring that home schooling would satisfy the Compulsory Attendance Law even over possible objections to local school board, school administrator or the PDE. Further, the Pennsylvania RFPA is always available to parents and guardians should any local school board, school administrator or the PDE attempt to regulate educational content, textbooks, curriculum and instructional materials on the basis of religious content, or otherwise attempt to apply or interpret Act 169 in a manner that impacts the exercise, practice, conduct or expression of religion.

For all of the foregoing reasons, this Court will deny Plaintiffs' motion for summary judgment as to their facial challenge to Act 169 as a violation of their right to freely exercise their religion, but will leave open the possibility that they might be able to establish such a claim "as applied".

Next he discussed the Remaining Constitutional Challenges

The Court will also deny summary judgment on Plaintiffs' remaining constitutional facial challenges to Act 169 -- that it violates the Establishment Clause of the First Amendment; several aspects of the Due Process Clause of the Fourteenth Amendment; and the Free Speech Clause of the First Amendment (including their right to resist "compelled speech"). As Plaintiffs' brief in support of summary judgment manifests, these cases are *principally* about the RFPA and the Free Exercise Clause of the First Amendment. The cases discussed in the preceding section illustrate that each of Plaintiffs' additional constitutional claims are frequently joined with free exercise claims in the parental-rights-compulsory education arena, and the analysis and resolution of the claims substantially overlap. Those additional challenges fare no better, in the parental rights-compulsory education arena, than the free exercise claims. Accordingly, the Court will not elaborate its rulings on these additional facial challenges, and will deny summary judgment on said challenges. However as stated above, Plaintiffs' "as applied" challenges will proceed through a second round of summary judgment motions and/or trial.

Here is the judge's summary:

Although parents and guardians have the primary and crucial role in the upbringing of and choice of education for their children, the state has a secondary, yet substantial, role to play, and has since the founding of our Nation. The Pennsylvania Constitution has provided for public education since 1776, and currently directs the General Assembly to "provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth." Pa. Const., Art III, § 14.

Implementing its constitutional mandate, the Pennsylvania General Assembly has created a system of public education and compulsory attendance, and has authorized four alternative means of satisfying the compulsory attendance law, including under Act 169, Pennylvania's Home Schooling Act. Act 169 does not require or prohibit any particular content in textbooks courses, curriculum or

> other educational materials, but merely requires instruction for a minimum amount of time and days, in certain specific courses deemed necessary by the legislature, with procedures for demonstrating compliance.
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> This Court does not function as a super school board, questioning the effectiveness of the procedures crafted by the duly elected representatives of the citizens of Pennsylvania, nor may the Court substitute its opinion for the collective wisdom of the General Assembly as to what is "appropriate education" or what are the best procedures to achieve the constitutional mandate of providing a thorough and efficient system of public schools. Those decisions are within the legislative prerogative. This Court's role is, instead, the substantially more circumscribed one of measuring the decisions made by the legislature against the protections afforded by the Constitution of the United States and by governing statutes.
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> For the reasons set forth above, this Court finds that Act 169 does not, on its face, violate the Free Exercise, Establishment, or Free Speech Clauses of the First Amendment to the Constitution of the United States, the Due Process Clause of the Fourteenth Amendment, or the Pennsylvania Religious Freedom Act.

HSLDA's Response

In their April 13 brief HSLDA argued that the Judge was failing to differentiate between the Religious Freedom Protection Act's use of the words "inhibits" and "compels." They admitted that the Pennsylvania Home Education Law does not inhibit free expression of religion but instead claimed that it *compelled* worship of a religion different from the libertarian religion of their clients. Here is their interesting argument based upon Biblical examples:

> A statute that forbids a religious person from praying inhibits expression mandated by religious faith, but it does not compel expression. For example, in Daniel 6, the Persian client-king Darius passed a law forbidding any person from praying to any god but him, on pain of being cast into the den of lions. Daniel 6:7-9. This statute *inhibited* prayer, but it did not force any person to pray if he chose not to. On the other hand, the government edict in Daniel 3:4-6 *compelled* conduct and expression in violation of religious faith. In that case, the Caldaean king, Nebuchadnezzar, commanded every government official present at the dedication of his great golden statue to bow down and worship it, under penalty of burning alive. This statute did not *inhibit* expression; instead; it compelled conduct or expression that violated a specific tenet of Shadrach, Meshrach, and Abednego's religious faith. Thus, in the space of three chapters familiar to both Christians and Jews, we see the distinction between ordinances that compel conduct or expression that a person's religious belief forbids and those that inhibit conduct or expression that a person's religion mandates.
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> Plaintiffs have not claimed that Act 169 inhibits their conduct or expression. They have instead claimed that Act 169 *compels* conduct or expression (the keeping of a log and portfolio and turning it in to the school district for approval of their homeschool program) that violates a specific tenet of their religious faith.

The New Libertarian Theology

In this court case, HSLDA is enunciating a libertarian theology: "Subjecting [parents] to the authority, oversight and discretionary review of the State violates Biblically-ordained jurisdictional lines between the family and the State." This new theology contrasts strongly with the traditional Judeo-Christian view which protects children and ensures that they receive an education. For example, the Puritans of Massachusetts introduced a compulsory education law because of, as stated in the Massachusetts Education Law of 1642, "the great neglect of many parents and masters in training up their children in learning."

If Judge Schwabb is any indication, this new libertarian theology will be a hard sell in court. Although this court case is not over, and the appeals have not yet been exhausted, a summary judgment like this is a severe setback. A victory on appeal now would simply send the case back to the district court for presentation of evidence so that HSLDA and the school districts would have a chance to cross-examine each others' witnesses.

Until the appeals process is complete, the homeschoolers involved should be able to continue to homeschool without problem. After that, they may be faced with a difficult decision: comply with the compulsory education law or face the consequences of failure to comply.

In the old days when HSLDA had true discrimination against homeschooling to fight, they were always able to protect their clients and the result was the legalization of homeschooling throughout the country. Today, HSLDA espouses a libertarian theology which compares laws that protect children to laws that require worship of idols. They are encouraging their libertarian clients to see themselves as the modern Shadrach, Meshrach and Abednego.

We will continue to follow the appeal process and then follow what happens to these clients afterwards. A fiery furnace may await them: those who refuse to comply with compulsory education laws in Pennsylvania lose custody of their children.