



NO RIGHT TO HOMESCHOOL? **THE CALIFORNIA COURT OF APPEALS' UNPRECEDENTED BLOW AGAINST PARENTAL RIGHTS**

March 27, 2008

~~~~~

Parental rights suffered an unprecedented blow last month when the California Court of Appeals for the Second District handed down its decision in *In re Rachel L.*<sup>1</sup> In one of the most audacious rulings on parental rights to date, this California state court brazenly declared that parents simply have no constitutional right to home school their children. And not only do parents lack the right to home school their children, but according to this cavalier California court, any parent who home schools his or her child without a “valid state teaching credential *for the grade being taught*” violates state compulsory attendance laws.<sup>2</sup> Such an unconstitutional attempt to curb parental rights must not be permitted.

### ***A Home School “Ban” Would Violate Constitutionally-Protected Parental Rights***

The court’s outrageous attempt to ban home schooling with its February 2008 decision effectively chisels away at basic parental rights that have been upheld time and again by the United States Supreme Court. A host of cases dating back to the 1920s have continually recognized the fundamental rights of parents to direct the upbringing and education of their children. Two notable cases on this matter include *Meyer v. Nebraska*<sup>3</sup> and *Pierce v. Society of Society of Sisters*,<sup>4</sup> which together established the premise that parenting is a fundamental right protected by the U.S. Constitution. In *Pierce*, the Court specifically rejected state legislation that “unreasonably interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control.”<sup>5</sup> In *Prince v. Massachusetts*, the Court recognized that the “custody, care and nurture of the child reside first in the parents.”<sup>6</sup> In *Wisconsin v. Yoder*, the Court explicitly acknowledged that the “primary role of the parents in the upbringing of their children is now established *beyond debate* as an enduring American tradition.”<sup>7</sup>

---

<sup>1</sup> *In re Rachel L.*, No. B192878, 2008 Cal. App. LEXIS 292 (Cal. Ct. App. Feb 28, 2008)

<sup>2</sup> *Id.* at \*2 (emphasis added).

<sup>3</sup> 262 U.S. 390 (1923).

<sup>4</sup> 268 U.S. 510 (1925).

<sup>5</sup> *Id.* at 534-35.

<sup>6</sup> *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

<sup>7</sup> *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (emphasis added).

The Supreme Court has been crystal clear about the protections that parental rights enjoy under the Constitution. Quite simply, any attempt by a court or legislature to circumscribe the ability of parents to home school *their own children* is utterly unconstitutional. Any and all such attempts must be thwarted before they further chisel away at such precious and fundamental rights.

### ***A Proper Interpretation of California's Education Code Permits Parents to Home School Their Children***

According to California's state compulsory attendance laws, minor children must be enrolled in a public full-time day school unless they are enrolled in a private full-time day school or qualify for another exemption under the California Education Code.<sup>8</sup> Under the private school exemption, parents should be able to educate their children at home provided that they comply with various education requirements imposed by the Education Code. In its February 2008 decision, however, the California Court of Appeals intimated that the private school exemption simply does not include home education as a valid private full-time day school. Thus, in the court's view, as parents are legally incapable of running their own private day schools, they are legally incapable of home schooling their own children. Under a proper interpretation of California's Education Code and the aforementioned Supreme Court case law, however, this conclusion is entirely misguided, unfounded, and unconstitutional.

### ***The Rights of All Home School Parents in California Should Not Hinge Upon One Closed-Door Proceeding***

As stated, in its February 2008 decision, the California Court of Appeals ruled that parents do not possess the constitutional right to home school their children and that most forms of home education are illegal under California state law. This over-reaching and legally unfounded decision, however, was based on a confidential proceeding concerning one family and its involvement with home education. Many argue that this family alone will be directly affected by the final outcome of the case. While the final *order* may be restricted to this family alone, the final outcome will undoubtedly establish legal precedent that will affect all families within the court's jurisdiction.<sup>9</sup> And if the California Supreme Court chooses to ratify the decision, then it will affect all families in the state of California.<sup>10</sup> A decision so expansively detrimental to constitutionally-protected parental rights simply cannot be permitted to stand.

~~~~~

Fortunately, as of March 25, 2008, the California Court of Appeals for the Second District has agreed to rehear *In re Rachel L.* Let us hope that on its second hearing of this crucial case, the court comes down in favor of constitutionally guaranteed fundamental rights rather than erroneous statutory interpretations and unconstitutional pronouncements.

⁸ See *In re Rachel L.*, 2008 Cal. App. LEXIS 292 at *2.

⁹ The case is currently in the California Court of Appeals for the Second District, which includes Los Angeles, San Luis Obispo, Santa Barbara, and Ventura counties.

¹⁰ HSLDA, Update—Defending Homeschool Freedom in California, <http://www.hslda.org/hs/state/ca/200803120.asp> (last visited Mar. 27, 2008).