

Regulating Homeschooling: Can We Protect Children from Their Parents'

Martyrdom?

*"Parents may be free to become martyrs themselves. But it does not follow that they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves."*¹

Just outside of Allentown, Pennsylvania, Stephen and Megan Scheibner live with their seven children and none of the children go to school. Instead, the Scheibner children are homeschooled by their parents, who also "protect" them from malls, television, sports, dating, and perhaps most importantly, other children.² As fundamentalist Baptists, the Scheibners feel that they must "shelter [their children] from evil until they are spiritually ready to stand firm." When their oldest child went to kindergarten at a private Christian school, "she got more interested in what her peers were doing than in what her family was doing! We felt like our family-centered little girl was being pulled away from us."³ The Scheibners are an example of a rapidly growing trend in America: parents keeping their children out of public and private schools and educating them instead at home. Not surprisingly, there are strong advocates both for and against homeschooling. Arguments routinely revolve around two controlling interests: a parent's right to direct the upbringing of their child or the state's responsibility to educate children. Peculiarly, a child's interest in an education is often overshadowed in the

¹ *Prince v. Massachusetts*, 321 U.S. 510, 534 (1925).

² McMullen, Judith. *Behind Closed Doors: Should States Regulate Homeschooling?*, 54 S.C. L. Rev. 75, 79 (2002); citing Talbot, Margaret, *A Mighty Fortress*, New York Times (Feb. 27, 2000). Talbot's article can be found online: http://www.newamerica.net/publications/articles/2000/a_mighty_fortress.

³ *Id.*

analysis. In the first section of this paper, I will address the history and recent growth of homeschooling in the United States. The second section is devoted to the conflict between parents and states to control education. The final section of this paper will emphasize that in order to truly educate children, it is important that home schooling is tightly regulated. Ultimately, states should regulate homeschooling more closely to ensure that children receive an adequate education. However, short of a landmark decision, states cannot regulate socialization and exposure, so where religious parents seek to shelter their children and cut them off from society, these children sadly have no voice in the matter.

I. The Recent Growth and Development of Homeschooling

From colonial times into the nineteenth century, children were educated at least in part in their homes.⁴ Early laws regarding education placed responsibility on parents and “masters” to teach children, but did not establish public schools or specifically mention teachers.⁵ In the early twentieth century, however, compulsory education laws were enacted that required students to attend school.⁶ Today, all fifty states and the District of Columbia have compulsory education laws. Consequently, homeschooling temporarily fell out of favor and was illegal in most states in the early 1980’s.⁷

Since the 1980s, homeschooling has resurfaced in a dramatic fashion. Homeschooling is no longer illegal in most states; in fact, it is legal in every state.⁸ In 2003, the National Center for Education Statistics reported that an estimated 1.1 million

⁴ McMullen, 54 S.C. L. Rev. at 76.

⁵ *Id.* at 77.

⁶ *Id.*

⁷ Yuracko, Kimberly A., *Education Off the Grid: Constitutional Constraints on Homeschooling*, 96 Cal. L. Rev. 123, 124 (2008).

⁸ *Id.*

children were being homeschooled. This is believed to be a conservative estimate and other estimates put the number of children homeschooled around 2 million, since many families do not report and instead teach their children “off the grid.”⁹ Experts believe that the number of homeschooled children is growing at a rate of 11% per year.¹⁰

Parents have decided to educate their children at home in recent years for three overarching reasons. A major impetus is religion. Parents have chosen to educate their children at home in order to provide them with a religious education that inculcates values and beliefs not taught in public schools.¹¹ A second major reason parents choose to homeschool their children is dissatisfaction with the quality of public schools. Poor student performance, overcrowded classrooms, and lack of discipline are oft-cited factors by parents. In a Department of Education study, 49% of parents engaged in homeschooling stated that they homeschool, at least in part, because they “[c]an give [the] child [a] better education at home.”¹² Finally, parents are choosing to homeschool in order to provide a safe environment and protect their children from perceived disciplinary problems and violence in public schools.¹³

From the 1990’s onward, however, homeschooling divided into two distinct movements: secular and conservative Christian.¹⁴ The division is not an even split; the Christian homeschooling movement dominates the secular counterpart in size, profile, and political influence.¹⁵ Therefore, although parents cite a number of reasons for homeschooling their children, religious issues are usually at the forefront of the

⁹ Nappen, Louis P., *The Privacy Advantages of Homeschooling*, 9 Chap. L. Rev. 73, 80 (2005).

¹⁰ McMullen, 54 S.C. L. Rev. at 76. Some experts estimate that the number of children being homeschooled is growing at rates as high as 20% per year. See also: Yuracko, 96 Cal. L. Rev. at 125.

¹¹ *Id.* at 78.

¹² *Id.* at 80.

¹³ *Id.* In Florida, for example, “safety” was the number one reason listed by parents.

¹⁴ Yuracko, 96 Cal L. Rev. at 126.

¹⁵ *Id.*

homeschooling debate. As the next section will demonstrate, this has affected states' ability to regulate homeschooling. Thus, homeschooling is on the rise in the United States and growing at an incredible rate.

II. The Conflict Between Parents and States to Control Education

The battle over homeschooling has essentially been fought between parents and the states. In simple terms, parents claim that because they have the right to raise their children, they should be free to homeschool their children and teach them as they see fit. On the other hand, states argue that the state has a duty to protect children, and part of this protection includes ensuring that a child receives an adequate education. There has been little commentary, however, as to what extent society should condone or constrain homeschooling in light of what is best for children and their growth and development.¹⁶ This is not to say that neither parents nor states have advanced arguments regarding the “best” means of education, but upon closer look, their battle is waged over whether it is proper for parents or the state to control the means and subject matter of education. This may seem like a tiny distinction to draw, but it is important one when one ultimately asks “what should happen next?” in the growth of homeschooling.

The United States Supreme Court has consistently affirmed that parents have a fundamental right to the care, custody, and control of their children that is protected by the Due Process Clause of the Constitution.¹⁷ Recently, the Supreme Court emphasized that a parent's right to their child's control is one of the oldest and most fundamental of the liberty interests protected by the Constitution.¹⁸ Thus, pro-homeschoolers claim that

¹⁶ *Id.* at 131.

¹⁷ See *Santosky v. Kramer*, 455 U.S. 745, 752 (1982); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972).

¹⁸ *Troxel v. Granville*, 530 U.S. 57, 60 (2000).

it is squarely within a parent's fundamental right to educate their child as they see fit. There is little case law addressing whether a parent may homeschool their child instead of enrolling them in school, but pro-homeschooling advocates point to several Supreme Court cases as authority.

First, in *Meyer v. Nebraska*, the Supreme Court struck down a statute that prohibited the teaching of a foreign language to any student who had not yet completed eighth grade.¹⁹ While *Meyer* did not involve homeschooling, the Court stated that a parent has the right to direct the education of their children.²⁰ After *Meyer*, the Supreme Court in *Pierce v. Society of Sisters* invalidated an Oregon statute that required all children to attend public school on the grounds that the statute interfered with the liberty of parents to direct the upbringing and education of their children.²¹ In *Pierce* the Court specifically stated, "The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, couple with the high duty, to recognize and prepare him for additional obligations."²² While neither of these cases mentioned homeschooling directly, homeschooling advocates read these cases to support a parent's right to direct a child's education, and argue that included in that right is the right to educate the child at home rather than in school.

On the other hand, states have argued that they maintain a vital interest in the education of children. Every state constitution has an education clause that requires the state to provide a free system of public education.²³ While the language of these clauses varies from state to state, courts have interpreted these clauses to require that the state

¹⁹ *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923).

²⁰ *Id.*

²¹ *Pierce v. Society of Sisters*, 268 U.S. 510, 533 (1925)

²² *Id.* at 535.

²³ *Yuracko*, 96 Cal. L. Rev. at 134.

establishes and operates public schools that provide children with a basic minimum or adequate education.²⁴ Thus, states argue that they can regulate homeschooling to ensure that children receive, at the least, a basic minimum or adequate education. States have attempted to regulate homeschooling by requiring examinations, sit-ins, and curriculum reviews.

Courts have acknowledged that states have an important interest in education. In *Brown v. Board of Education*, the Supreme Court stated that “[E]ducation is perhaps the most important function of state and local governments.”²⁵ In *Prince v. Massachusetts*, the Court upheld limitations on a parent’s right to raise their child. In that case, the Court upheld a state statute that prohibited children from selling merchandise in public places.²⁶ When a child’s legal guardian, a Jehovah’s Witness, appealed the statute on grounds that it violated her freedom of religion and freedom to raise her ward as she saw fit, the Court affirmed the validity of the statute. Significantly, the Court stated, “[T]he family itself is not beyond regulation in the public interest, as against a claim of religious liberty.”²⁷ The Court even listed *requiring school attendance* as a permissible state restriction on parental control.²⁸ States, hoping to restrict homeschooling, argue that in light of *Prince*, the state has a legitimate interest in protecting children from dangers that their parents have not adequately protected against.²⁹ More importantly, if the state has an interest in educating children, then it follows that the state can protect children from ignorance imposed upon them by parents who refuse to provide an adequate education.³⁰

²⁴ *Id.* (emphasis added).

²⁵ *Brown v. Board of Education*, 347 U.S. 483, 493 (1954).

²⁶ *Prince v. Massachusetts*, 321 U.S. 158 (1944).

²⁷ *Id.* at 166.

²⁸ *Id.*

²⁹ McMullen, 54 S.C. L. Rev at 94.

³⁰ *Id.*

In *Wisconsin v. Yoder*, the Supreme Court addressed the issue of homeschooling directly and addressed the competing claims of parents and of the state. In *Yoder*, Amish parents were convicted for violating the Wisconsin compulsory school attendance law for refusing to send their children to public or private school after completion of the eighth grade.³¹ The Amish parents objected to sending their children to high school because they believed the school taught values contrary to the Amish way of life and drew the children away from the community.³² The state countered by claiming a legitimate interest in compulsory education, supported by two claims: first that compulsory school attendance was necessary to prepare citizens to participate intelligently and effectively in the political system, and second, because education prepares individuals to be self-reliant and self-sufficient participants in society.³³ The Court found that the forcing Amish teens to attend high school would threaten the religious practice of the Amish community and was therefore an impermissible burden on the Amish's freedom of religion.³⁴

The Court, however, critically distinguished between religious belief and mere philosophy or way of life: if State regulation interferes with homeschooling taken for sincerely religious reasons, then the state must show a compelling interest in regulation and that it used the least restrictive means available to achieve that interest.³⁵ Yet if a parent homeschools for secular reasons, then the state need only to show that its regulations are reasonable in furtherance of a legitimate interest.³⁶

³¹ *Wisconsin v. Yoder*, 406 U.S. 205, 207 (1972).

³² *Id.* at 210-212.

³³ *Id.* at 221.

³⁴ *Id.* at 218.

³⁵ *Id.* at 216.

³⁶ *Id.*

Yoder was an important victory for parents and the right to homeschooling; however, it was a narrow ruling for a particular circumstance. *Yoder* imposes a significant burden on states to justify regulation of homeschooling where a sincere religious belief is involved. As mentioned earlier, *Yoder* is frequently cited by pro-homeschooling advocates today because of the overwhelming conservative Christian contingent. But ultimately, *Yoder* was a narrow ruling that dealt specifically with parental rights to their children regarding freedom of religion, and not a parent's general right to raise their child. Legislatures and courts have recognized this distinction going forward: because of the administrative burden of distinguishing between religious and nonreligious belief and separating religious motivation from non-religious motivations, most states have adopted a loose system of regulation that is applied to all homeschoolers, regardless of motivation.³⁷

III. What Should Be Done Now

Every state allows some form of homeschooling, but the regulations imposed on homeschooling vary. For example, some states require that parents submit curriculum plans; other states require periodic reports and standardized testing, or a combination of these things.³⁸ However, in recent years, state laws regulating homeschooling have become increasingly lenient.³⁹ Currently, only twenty-five states require standardized testing and evaluation of homeschooled students. In ten states, parents are not even required to notify the state that they are homeschooling.⁴⁰ The children in these states are

³⁷ McMullen, 54 S.C. L. Rev. at 97.

³⁸ Nappen, 9 Chap. L. Rev. at 101.

³⁹ Yuracko, 96 Cal. L. Rev. at 129.

⁴⁰ *Id.*

effectively “off of the grid” and states have no way to ensure that they are receiving an education at all, much less an adequate one.

Certainly, many parents that homeschool their children do so adequately. Homeschooled students are regularly admitted to college, and often achieve higher scores on testing than public school students.⁴¹ However, these conclusions are misleading because not all homeschoolers take standardized tests and, as explained above, many homeschooled children are “off the grid.” The children that are not tested are the ones that need to be protected. For example, some families believe in “unschooling,” where a child simply decides to “study” whatever they are interested in, at their own pace. When an “unschooled” fifteen year old was asked by a reporter what he studies, his response was, “To be perfectly honest, I snowboard a lot.”⁴² Another homeschooled student in Naperville, Illinois decided to study only dance because she was not interested in math or composition. However, when she realized she needed to learn to read and write to get into college, she stated, “My mom and I are going to spend this whole year on math and learning to write.”⁴³

Despite homeschooling being very successful for some students, many children are homeschooled and there is simply no way to assess whether they are learning anything. Therefore, states should impose stricter regulations on parents that elect to homeschool their children – rather than continue to erode regulation. For example, Ohio requires that the parent must have a high school diploma or work under someone with a baccalaureate degree, teach required courses in math, language arts, and science, and

⁴¹ In 2000, the average SAT score for home schoolers was 1100 while the general population average was 1019. McMullen, 54 S.C. L. Rev. at 84.

⁴² *Id.* at 82.

⁴³ *Id.* at 84.

children must pass testing requirements to gauge their progress.⁴⁴ With tight restrictions like Ohio's, states would be able to gauge whether students are truly receiving an adequate education.

Pro-homeschooling advocates would object to such requirements, but the fact of the matter is that states can impose reasonable restrictions on parental rights and it is clear from cases like *Prince* and *Yoder* that states have an important interest in the education of children. Requiring children to take tests to gauge whether they are learning appropriate subjects and developing proficiencies are certainly reasonable. Moreover, as *Yoder* indicated, a state action in cases where parents homeschool their children for secular reasons only needs to pass rational basis review, and restrictions like testing requirements are certainly rationally related to a states legitimate goal of educating children.

The biggest threat to imposing tougher restrictions on homeschooling comes from religious families, who claim that the subjects taught in schools infringe on their religious beliefs. Therefore, it is important for courts to realize that reasonable restrictions, like testing requirements or required subjects such as math and language arts, do not violate any religion.⁴⁵ Courts should recognize that requiring that parents teach their children to read and demonstrate that ability does not endorse or deny any religious belief. Religious parents often seek to remove their children from schools to prevent "bad" influences from affecting them. Requiring students to learn certain subjects and demonstrate their aptitude simply has nothing to do with religion. Requirements, like Ohio's, would not violate a parent's First Amendment rights. The best way to describe proficiency

⁴⁴ See Ohio Admin. Code Section 3301-34-03(9) (2002)

⁴⁵ Science, obviously, is a potential problem area for religious conservatives and may give courts trouble, but that debate is beyond the scope of this paper.

requirements would be to consider them secular requirements. In fact, they would serve as an incentive for parents to adequately teach their children because children would be subject to compulsory school attendance if they could not demonstrate proficiency.

Focusing on academics tends to obfuscate perhaps the most important issue in homeschooling: that socialization and exposure, which children can only learn from interaction with their peers, is an important part of an education. Social science data proves that school plays a significant role in the socialization of children by “providing them context in which to develop fundamental aspects of their personality, including cooperation with peers and acquisition of social skills.”⁴⁶ Socialization and exposure are necessary for children to develop robust lives and skills and explore their interests. However, as cases like *Yoder* point out, socialization seems to be precisely the reason why religious parents feel public schools are contrary to their beliefs. Therefore, although socialization and exposure are vital part of a child’s development, the state is powerless to require a child to go to school, because such a requirement violates free exercise of religion. The United States Supreme Court in *Prince* stated that parents cannot make martyrs of their children, but the reality is that a state is virtually powerless to ensure that children socialize and develop where their parents desire to shelter them for truly religious reasons. Short of a landmark decision that declares socialization an integral part of education, states will continue to lack the ability to require children to go to school and develop fully.

Homeschooling is on the rise in dramatic fashion in America. More and more children are leaving public schools and being taught at home. In many cases, this is

⁴⁶ Lebeda, Samantha, *Homeschooling: Depriving Children of Social Development*, 16 J. Contemp. Legal Issues 99, 102 (2005).

largely successful. However, restrictions on homeschooling are becoming increasingly loose and states are losing the ability to ensure that children are being adequately educated. Therefore, states should impose greater restrictions on homeschooling that would require parents to teach certain subjects and kids to demonstrate proficiency in those subjects – to show that children are truly learning at home. These requirements are entirely secular, and therefore, would not violate free exercise of religion. However, because the courts have not recognized socialization as an integral part of education, parents will remain free to shelter their children from virtually anything, and one cannot but help feel sorry that these children – like the Scheibner seven – will never get to truly be kids.