CONSTITUTIONALITY OF HOME EDUCATION: HOW THE SUPREME COURT AND AMERICAN HISTORY ENDORSE PARENTAL CHOICE

I. INTRODUCTION

The year 2008 frightened many homeschooling parents. A California Court of Appeals case, *In re Rachel L.*,[1] appeared to close the door on many parents' assumed right to home school their children. The court said, "[P]arents do not have a constitutional right to home school their children,"[2] and added that non-credentialed parents may not home school their children.[3]

This case caused an immediate public outcry[4] and, just two months after *Rachel*, the California court granted a petition for a rehearing in *Jonathan L. v. Superior Court*.[5] The rehearing court faced the outcry created in *Rachel*, but successfully calmed the public[6] by holding that parents have a right to direct their children's education and that home schools are permitted under California statutes as a species of private schools.[7]

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1. 73 Cal. Rptr. 3d 77 (Ct. App. 2008).

2. *Id.* at 79.

3. *Id.* at 84; *see California Home-Schoolers Must be Certified, Court Says*, ORLANDO SENTINEL, Mar. 9, 2008, at A11.

4. *See* Bob Egelko, *California Homeschooling Case to be Reheard*, S.F. CHRON., Mar. 27, 2008, at B2; Bob Egelko & Jill Tucker, *Homeschoolers Suffer Setback*, S.F. CHRON., Mar. 7, 2008, at A1; Seema Mehta & Mitchell Landsberg, *Ruling Hits Home Schooling*, L.A. TIMES, Mar. 6, 2008, at B1.

5. 81 Cal. Rptr. 3d 571, 576–77 (Ct. App. 2008). In lieu of the rehearing, the court invited a number of interested organizations to submit amicus briefs. *Id.* at 577.

6. *See* Seema Mehta, *Parents May Home School Children Without Teaching Credential, Court Says*, L.A. TIMES, Aug. 9, 2008, at A1 (quoting California Governor Arnold Schwarzenegger, "'This is a victory for California's students, parents and education community,'" and "'[t]his decision confirms the right every California child has to a quality education and the right parents have to decide what is best for their children. . . . I hope the ruling settles this matter for parents and home-schooled children once and for all in California'").

7. *Jonathan*, 81 Cal. Rptr. 3d at 576.

The *Rachel* ruling, which spurred the rehearing, illustrates how quickly traditional home schooling can come under attack; this article attempts to calm apprehension about future attacks on home education. By considering *Rachel* and the rehearing, examining relevant Supreme Court precedent, and considering a historical home education perspective, this article illustrates that the debate of "home schooling versus public schooling" is unnecessary, because home education's validity in America is unquestionable.

Part II of this article provides the background information relevant to understanding the court's rehearing decision in *Jonathan*. This includes information about *Rachel* and the concurrent publicity. Part III then analyzes *Jonathan* and its implications. Following this analysis, Part IV examines Supreme Court precedent that is relevant to home education. Next, Part V gives a historical perspective on home education in the United States. Finally, Part VI offers a brief conclusion.

II. BACKGROUND

To set the stage, the family in *Rachel* consisted of a father, a mother, and eight children.[8] All eight children had been home schooled in Los Angeles County by their parents.[9] The mother, who had an eleventh grade education and who was the primary educator, taught by providing the children with educational work-packets.[10] Sunland Christian School, a private school that provides home education guidelines and standards, supervised the mother's teaching and the children's education.[11]

The parents chose to home school their children because of their religious beliefs and because they did not believe in certain public school policies.[12] However, there were significant problems in the home that necessitated repeated interventions by the Department of Child and Family Services (DCFS).[13] In

8. *Id.* at 578; *Rachel*, 73 Cal. Rptr. 3d at 80.

9. *Rachel*, 73 Cal. Rptr. 3d at 80.

10. *Jonathan*, 81 Cal. Rptr. 3d at 579.

11. *Id.* at 579–80. Sunland Christian School's guidelines include, for example, that parents must teach at least three hours per day, and 175 days per year. *Id.* In addition, Sunland Christian School's principal, during the time Mary was teaching the children, reported that the school "interviews and supervises all parents to make certain that they are capable of teaching. *Id.* at 579.

12. *Rachel*, 73 Cal. Rptr. 3d at 80 n.1.

13. *Jonathan*, 81 Cal. Rptr. 3d at 578.

1987, the father physically abused the oldest daughter, who then left the home to live with her birth mother.[14] Later, the father abused the second daughter. The court subsequently declared the second daughter dependent on the state[15] and removed her from the home.[16]

A. In re Rachel L.

The *Rachel* case began with more abuse from the father, this time to the third daughter, Rachel.[17] At the time of this case, Rachel was one of three children still living at home as minors.[18] In addition to the abuse, both parents faced charges of failing to protect Rachel from sexual abuse by another individual and of failing to cooperate with social workers.[19] As a result, DCFS filed dependency petitions for the three children.[20]

1. The trial court grants dependency, but refuses to order mandatory public education

At trial, the court granted dependency for all three children, but refused to order mandatory public education.[21] Counsel for Rachel argued that she should be dependent on the state because of the abuse and because of the parents' failure to send her to a public school.[22] Counsel for the other two children, Jonathan and Mary Grace, also argued that they should be dependent because of the abuse.[23] Although the court

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14. *Id.*

15. In a California dependency hearing, the court may declare a child dependent on the state, which means, the state, or specifically the courts, will stand in place of the parent and make decisions concerning the child. A court often declares a child dependent on the state because of some parental failure, like abuse or neglect. DEPENDENCY COURT: HOW IT WORKS, January 2001, http://www.courtinfo.ca.gov/reference/4_18fam_juvct.htm.

16. *Jonathan*, 81 Cal. Rptr. 3d at 578.

17. *Id.*

18. *Id.* at 578–79; *Rachel*, 73 Cal. Rptr. 3d at 80.

19. *Jonathan*, 81 Cal. Rptr. 3d at 579 n.5.

20. *Id.* at 580–81; *Rachel*, 73 Cal. Rptr. 3d at 79–80. The parents were never accused of abusing the two youngest children, Jonathan and Mary Grace. *Jonathan*, 81 Cal. Rptr. 3d at 578–79. Instead, these children's petition for dependency was based on the abuse to their siblings. *Id.*

21. *Jonathan*, 81 Cal. Rptr. 3d at 580.

22. *See id.* The argument concerning failure to send Rachel to a public school was based, in part, on Rachel's below average test scores. *Id.*

23. *See id.*

granted dependency for all three children because of the abuse, the court dismissed the allegation that Rachel should be dependent for the parents' failure to send her to a public school.[24] The court stated it could not conclude that Rachel's home education was so poor as to be damaging to her.[25]

At the following dispositions hearing, the court held that Rachel should be removed from the home,[26] but that the two younger children, Jonathan and Mary Grace, should remain at home.[27] Upon this decision, counsel for Jonathan and Mary Grace asked the court to order the children to attend public school.[28] Counsel argued that "[i]t was necessary for the children to attend a school where they would have regular contact with mandatory reporters of child abuse."[29] The court, however, declined to issue the order for fear of interfering with parents' constitutional right to educate their own children.[30]

The court then ordered school district representatives to investigate the adequacy of Jonathan and Mary Grace's homeschooling.[31] The representative seemed satisfied with the home education;[32] thus, although the children's counsel again requested the court to order mandatory public education at a progress hearing, the court again declined to issue such an order.[33] The children's counsel then petitioned the California Court of Appeals for an extraordinary writ of relief, "asking [the Court] to direct the juvenile court to order that the children be enrolled in a public or private school, and actually attend such a school."[34] The children's counsel reasoned that the trial court's refusal to order attendance was an abuse of discretion.[35]

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24. *Id.* at 580.
25. *Id.*
26. *Id.* The court subsequently placed Rachel with an older sister. *Id.* at 580 n.11.
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.* at 580.
32. *Id.* at 580–81.
33. *Id.* at 581.
34. *Rachel*, 73 Cal. Rptr. 3d at 79.
35. *Id.*

2. The appellate court mandates public education and prohibits homeschooling in California in the process

The appellate court's determination that public education was mandatory resulted in the prohibition of home schooling in California.[36] The court of appeals decided that the trial court did not abuse its discretion, but instead held that the trial court erred on the law[37] because there is no parental constitutional right to home school.[38] Consequently, the court of appeals held that "parents do not have a constitutional right to home school their children,"[39] and that California law clearly requires public school attendance, unless the child is (1) attending a private full-time school, (2) tutored by someone holding a current state teaching credential for the child's appropriate grade level, or (3) exempted by one of the few statutory exemptions.[40]

The court reasoned that the parents did not follow this California law because working through Sunland Christian School does not qualify as attending a full-time private school, because the parents did not show that Mary has proper teaching credentials,[41] and because the parents did not show that any statutory exemption applies to the children.[42] The court then clarified that compulsory public school attendance laws were constitutional; thus, parents do not have an absolute, constitutional right to home school their children.[43]

The court relied on the California case of *People v. Turner*[44] to reach their conclusion.[45] In *Turner*, the parents refused to

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36. *See id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.* California's Education Code lists these statutory exemptions. *See* CAL. EDUC. CODE §§ 48220–32 (West 2002). An example would be a child who holds a work permit for working in the entertainment industry. *Id.* § 48225.5(a).

41. *Rachel*, 73 Cal. Rptr. 3d at 84.

42. *Id.* at 79.

43. *Id.* at 79–83. The court also stated that, "parents who fail to [comply with California's law] may be subject to a criminal complaint against them, found guilty of an infraction, and subject to imposition of fines or an order to complete a parent education and counseling program." *Id.* at 83.

44. 263 P.2d 685 (Cal. App. Dep't Super. Ct. 1953).

45. *Rachel*, 73 Cal. Rptr. 3d at 81 The court also cited briefly to the Supreme Court cases of *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (reasoning that the state could reasonably regulate schools and require children to attend some school), and *Meyer v. Nebraska*, 262 U.S. 390 (1923) (reasoning that enforcing compulsory education

send their children to public school and argued that the California attendance law is unconstitutional.[46] However, the court rejected the parents' unconstitutionality argument because, under the constitution, it was sufficient to simply give parents the choice between public education and the exceptions listed in California's statutory exemptions to compulsory public school attendance.[47]

B. Rachel *Elicits Wide-scale Public Fear and Interest, and the Court Grants a Rehearing Petition*

Following wide-scale public fear about the result of the *Rachel* decision, the court granted a rehearing petition. The *Rachel* court's words—"parents do not have a constitutional right to home school their children"—caused quite the public stir.[48] Homeschooling parents, in California and nationwide,[49] feared that their right and privilege to home school their children no longer existed.[50] In Virginia, the Home Schooling Defense Association President, J. Michael Smith, stated, "We believe the court erred in ruling,"[51] and in California, protestors picketed the state education department.[52] One California parent even reported her reaction to *Rachel*: "At

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of children was within state power). *Rachel*, 73 Cal. Rptr. 3d at 80.

46. *Turner*, 263 P.2d at 686–87; *Rachel*, 73 Cal. Rptr. 3d at 81.

47. *Rachel*, 73 Cal. Rptr. 3d at 81; *Turner*, 263 P.2d at 686–87. The *Turner* court states, "There can be no doubt that if the statute, without qualification or exception required parents to place their children in public schools, it would be unconstitutional." *Turner*, 263 P.2d at 687. However, the Turner court went on to say that, California law "recognizes the right of parents not to place their children in public schools if they elect to have them educated in a private school or through the medium of a private tutor or other person possessing certain specified qualifications." *Id.* Thus, the court reasoned that, "We see no basis therefore upon which to predicate a holding of unconstitutionality unless such a holding is compelled because the statute denies the right of parents to educate their children unless such parents possess the qualifications prescribed therein." *Id.*

48. *See supra* text accompanying notes 56–57.

49. *See* Seema Mehta, *Parents May Home-School Children Without Teaching Credential, California Court Says*, L.A. TIMES, Aug. 9, 2008, at A1 (stating that the *Rachel* decision "caused nationwide uproar").

50. *See* Seema Mehta, *Bill on Home School Rights Urged*, L.A. TIMES, Mar. 8, 2008, at B1 (quoting a co-founder of a Christian home educators association in the aftermath of *Rachel*: "'We're very busy' answering phones . . . . 'Most [parents] are confused and just want to be reassured. There is some talk that home school is illegal after today.'").

51. Linda Jacobson, *Home-School Advocates Push to Blunt, Reverse California Ruling*, 27 EDUC. WK. 15 (2008).

52. *Id.*

first, there was a sense of, 'No way' . . . Then there was a little bit of fear. I think it has moved now into indignation."[53] *Rachel*'s ruling turned parents of 166,000[54] California children into outlaws.[55]

Following the public fear caused by *Rachel*, government officials began speaking out against the decision. Jack O'Connell, California State Superintendent of Public Instruction, stated in a news conference that he supports parents' choice in their children's education.[56] California Governor Arnold Schwarzenegger called for a reversal of the *Rachel* decision because, "if the courts don't protect parents' rights then, as elected officials, we will."[57]

On March 25, 2008, less than one month after the *Rachel* opinion, the court granted a petition for rehearing.[58] The court, possibly in light of the strong public reaction elicited by *Rachel*, also invited a number of interested parties to file amicus briefs.[59] Notable among the sixteen invited parties were Sunland Christian School,[60] Los Angeles Unified School District, Jack O'Connell,[61] Governor Schwarzenegger with the California Attorney General, members of the United States Congress, and various homeschool associations.[62]

III. THE REHEARING: JONATHAN V. SUPERIOR COURT

The rehearing reestablished parental rights to direct their children's education. Most parties that submitted amicus briefs disagreed with *Rachel*'s holding,[63] and so did the rehearing

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53. Egelko & Tucker, *supra* note 4.

54. Egelko, *supra* note 4.

55. Gale Holland, *Don't Restrict Home Schooling, Say Supporters to State Justices*, L.A. TIMES, June 24, 2008, at B4. Many California parents also felt that home schooling their children according to California's law would be too difficult, since becoming credentialed requires a bachelor's degree and completion of multiple examinations. *California Home-Schoolers Must be Certified, Court Says*, ORLANDO SENTINEL, Mar. 9, 2008, at A11. Most home schooling parents would not meet this credentialing requirement. Egelko, *supra* note 4.

56. Mehta, *supra* note 49.

57. *Id.*

58. *Jonathan*, 81 Cal. Rptr. 3d at 576–77.

59. *Id.* at 577.

60. *See supra* text accompanying note 11.

61. *See supra* text accompanying note 56.

62. *Jonathan*, 81 Cal. Rptr. 3d at 577.

63. *See* Brief for Members of the United States Congress as Amici Curiae

court, issuing a holding that permitted home schooling in California and recognizing the parents' right to direct their children's education.[64] The court held that "California statutes permit home schooling as a species of private school education"[65] and that "parents possess a constitutional liberty interest in directing the education of their children, but the right must yield to state interests in certain circumstances."[66]

To reach this holding, the court inquired into the legislative intent behind the California law,[67] and reasoned it was necessary to "ascertain the intent of the legislature so as to effectuate the purpose of the law."[68] This was no easy task; the court found that legislative intent changed over time. At first, California's 1903 law expressly permitted home education. But under the 191 law, it only impliedly permitted it. Then in 1929, it appeared that California prohibited home education because the legislature mandated teaching credentials for all educators.[69] The *Turner* case, on which the *Rachel* court relied, was decided during this latest period of legislative intent.[70]

As the court continued looking for meaning in the

Supporting Respondents, Jonathan L. v. Superior Court, 81 Cal. Rptr. 3d 571 (Ct. App. 2008) (No. B192878), 2008 WL 2328760 ("California, like the rest of the country, should protect this fundamental right of parents to direct the education of their children by continuing to promote homeschool instructional programs."); Application for Leave to file Brief for the Governor of the State of California and the Attorney General of the State of California as Amici Curiae Supporting Respondents, Jonathan L. v. Superior Court, 81 Cal. Rptr. 3d 571 (Ct. App. 2008), ***available at*** http://gov.ca.gov/pdf/press/051908Brief.pdf. (arguing that case law, subsequent to the 1953 *Turner* case relied on by the court in *Rachel*, allows for home education taught by those without teaching credentials). Some parties submitting briefs, however, agreed with *Rachel*'s holding. *See* Brief for Los Angeles Unified School District as Amici Curiae Supporting Respondents, Jonathan L. v. Superior Court, 81 Cal. Rptr. 3d 571 (Ct. App. 2008) (No. B192878), 2008 WL 2614771 ("LAUSD agrees with the legal analysis presented by the court in its original opinion in the instant case.").

64. *Jonathan*, 81 Cal. Rptr. 3d at 576.

65. *Id.*

66. *Id.* at 592.

67. *See supra* text accompanying note 40.

68. *Jonathan*, 81 Cal. Rptr. 3d at 581–82 (citing Wilcox v. Birtwhistle, 987 P.2d 727, 729 (Cal. 1999)). The court went on to say,

> If the language [of the statute] permits more than one reasonable interpretation, . . . the court looks "to a variety of extrinsic aids, including the . . . legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." . . . [After which] we "must select the construction that comports most closely with the apparent intent of the Legislature, with a view of promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences."

69. *Id.* at 587–88.

70. *See Turner*, 263 P.2d at 685.

legislature's intent, the court found evidence of post-*Turner* legislative intent that favored home education. The court reasoned, "While the Legislature has never acted to expressly supersede *Turner* . . . it has acted as though home schooling is, in fact, permitted in California."[71] The court found three examples of legislative intent favoring home education. These examples show that the legislature intended to include home education under the private schools exemption in California law. First, the California law mandated that private schools file a yearly affidavit with the Superintendent of Public Instruction, but the California legislature exempted "private schools with five or fewer students" from filing the affidavit.[72] The court said the private schools with five or fewer students most likely referred to home schools.[73] Second, the court pointed to another exception in the California Education Code that said "parent[s] or guardian[s] working exclusively with his or her children" do not have to submit fingerprints for criminal record checks, which are otherwise required by private school employees.[74] Third, the court mentioned indicators of legislative intent found outside California private school law.[75] For example, California Education Code section 56346 mentions special education services for "a child who is home schooled." Also, California Health and Safety Code section 42301.9 excludes private, home-based schools from being included in the definition of schools for the purpose of California laws that prohibit hazardous air pollution within 1000 feet of schools.[76]

The legislative intent illustrated by these statutes was sufficient for the *Jonathan* court to rule that home education fits under the private school exemption in California law.[77] Furthermore, the court reasoned that the private school exception is facially ambiguous and capable of different interpretations.[78] Therefore, including home schools as private

71. *Jonathan*, 81 Cal. Rptr. 3d at 588.

72. *Id.* at 588. California law requires private schools to file a yearly affidavit with the Superintendent of Public Instruction, verifying, for example, the private school's contact and enrollment information. CAL. EDUC. CODE §§ 33190, 48222.

73. *Jonathan*, 81 Cal. Rptr. 3d at 588.

74. *Id.* (quoting CAL. EDUC. CODE § 44237).

75. *Jonathan*, 81 Cal. Rptr. 3d at 589.

76. *Id.*

77. *Id.* at 589–90.

78. *Id.*

schools is the only way to avoid rendering these other statutes, like the fingerprinting exception,[79] meaningless.[80]

A. Parents Have the Right to Direct Their Children's Education

By interpreting the legislative intent the way it did, the court permitted home education in California, but still faced the specifics of the *Rachel* case—the fact that the case involved abuse. To deal with this issue, the court focused on the parents' right to educate their children and *Rachel*'s holding that "no such absolute right to home school exists."[81]

The court held, just as in *Rachel*, that "no such absolute right to home school exists,"[82] but also acknowledged that, "parents possess a constitutional liberty interest in directing the education of their children."[83] The court reasoned that, though parents possess this right, it must "yield to the interest of the state in certain circumstances,"[84] and a case, like this one, involving children who have "already been found dependent due to abuse and neglect of a sibling,"[85] provides such a circumstance where the parents' right must yield to the state's interest in protecting the child.[86]

The court went on to hold that, though parental rights must yield to the state interests in cases like this, the state must still justify interfering with the parental liberty by satisfying the judicial scrutiny test.[87] The court has two options in carrying out the judicial scrutiny test.[88] It can either (1) allow the interference, if the state's actions are rationally related to an existing state power, or (2) strictly scrutinize the interference by allowing the interference only when it is accompanied by a compelling state interest and is the least restrictive means of enforcing the state's compelling interest.[89] The *Jonathan* court strictly scrutinized California's interference in light of a

79. *See supra* text accompanying note 74.
80. *Jonathan*, 81 Cal. Rptr. 3d at 590.
81. *Id.* at 592.
82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.* at 593–94.
86. *Id.*
87. *Id.* at 592.
88. *Id.*
89. *Id.* at 592–93.

Supreme Court case, *Troxel v. Granville*,[90] which strictly scrutinized a Washington State law that violated a parent's liberty interest in the custody of her child.[91]

In applying the strict scrutiny test, the court held that the state could interfere with the parents' right to direct their children's education because California considers children's welfare to be a compelling state interest and one that the state has a duty to protect.[92] The court reasoned that parental rights are subject to state interference when the parents' decisions jeopardize the child's health or safety, or have potentially significant social burdens.[93] In applying the state's interference in *Rachel*, the court reasoned that, if a dependency court considers a case involving abuse and neglect and requires a dependent child to have regular contact with persons, such as teachers, who are mandatory-suspected abuse reporters, then the dependency court's order would satisfy strict judicial scrutiny. [94]

B. The Appellate Court Remands the Case Back to the Trial Court

The court's careful ruling, which allowed the state in this case to "override" the parents' liberty interest of directing their children's education while still explicitly recognizing the parental liberty interest, required the court to remand the case back to the trial court.[95] The court stated, "We are not concerned with the interference with the rights of a *fit* parent; the parents in dependency have been judicially determined not to be fit."[96] Thus, it was necessary for the trial court to determine if the children's safety in this case necessitated removing them from home education, in light of the appellate court's new holding that it is constitutionally acceptable to mandate public school attendance in these circumstances.[97]

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90. 530 U.S. 57 (2000).

91. *Id.* at 65–71; *Jonathan*, 81 Cal. Rptr. 3d at 592.

92. *Jonathan*, 81 Cal. Rptr. 3d at 593 (citing *In re* Marilyn, 851 P.2d 826 (Cal. 1993)).

93. *Id.* at 593 (citing *In re* Roger S., 569 P.2d 1286 (Cal. 1977)).

94. *Id.* at 594.

95. *See id.*

96. *Id.* at 594.

97. *Id.*

IV. SUPREME COURT'S PRECEDENT FOR HOME EDUCATION

Throughout the Twentieth Century, the Supreme Court created a favorable right to home education, especially when the right to home education couples with the free exercise of religion. Such a favorable precedent should assure parents of their right to direct their children's education and should continue to protect home education against future challenges.

A. The Supreme Court Creates a Pro-Home Education Precedent

There are two controlling lines of Supreme Court precedent governing home education. In one line, the Supreme Court established that parents have a liberty interest in directing their children's education. In the other line, the Supreme Court strengthened this parental right when it is coupled with the free exercise of religion.

1. The Supreme Court establishes the parent's right to direct their children's education

In 1923, the Supreme Court ruled on *Meyer v. Nebraska*.[98] This case involved a 10-year-old child who was "unlawfully taught the subject of reading in the German language" in school.[99] Under Nebraska law at that time, teachers could only teach English in schools until after the eighth grade,[100] and any teacher who violated this law was subject to a fine and possible imprisonment.[101] The Nebraska courts upheld this law and ruled against the teacher. The Supreme Court reversed the state court decisions, and held that the Nebraska law violated the teacher's Fourteenth Amendments rights[102] because the statute was "unreasonable and arbitrary and, therefore, unconstitutional,"[103] and that "certain fundamental rights must be respected."[104] The court also reasoned that the

98. 262 U.S. 390 (1923).

99. *Id.* at 396.

100. *Id.* at 397 (quoting Nebraska law from the year 1919).

101. *Id.*

102. *Id.* at 399–403.

103. James W. Tobak & Perry A. Zirkel, *Home Instruction: An Analysis of the Statutes and Case Law*, 8 U. DAYTON L. REV. 1, 15 (1982).

104. *Meyer*, 262 U.S. at 401. The Court arrived at this conclusion because, in part, teaching the German language was not harmful, thus the statute went too far in trying

teacher's right to teach, along with a parent's right to direct the teaching, are within the liberty protected by the Fourteenth Amendment.[105] Therefore, the state must respect the "natural duty of the parent to give his children education."[106]

Two years after *Meyer*, the Supreme Court ruled on *Pierce v. Society of Sisters*.[107] This case involved a private corporation that challenged an Oregon law requiring children between the ages of eight and sixteen to attend public school.[108] The Court held that the Oregon law "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control."[109] The Court reasoned,

> The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture [the child] and direct [the child's] destiny have the right, coupled with the high duty, to recognize and prepare [the child] for additional obligations.[110]

The Supreme Court again upheld parents' liberty interest in directing their children's education in *Farrington v. Tokushige*.[111] In *Farrington*, the Court reasoned that *Meyer* and *Pierce* affirmed this parental right guaranteed by the Fourteenth Amendment and then extended the right by holding that the Fifth Amendment's protection against due process violations also protects these fundamental rights.[112]

2. Coupling parental rights to direct their children's education with the freedom of religion strengthens this parental right

The Supreme Court has held that when parents choose to home school their children because of a religious belief, the religious belief fortifies the parents' right to direct their

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to foster the legislature's desire for a homogeneous population. *Id.* at 402–03.

105. *Id.* at 400.
106. *Id.* at 400.
107. 268 U.S. 510 (1925).
108. *Id.* at 530.
109. *Id.* at 534.
110. *Id.* at 535.
111. 273 U.S. 284 (1927).
112. *Id.* at 298–99.

children's education. In 1963, the Supreme Court set the stage for fortifying this right in the case of *Sherbert v. Verner*.[113] In *Sherbert*, an employee was fired from work and subsequently denied government unemployment benefits after refusing to work on Saturdays, due to religious beliefs.[114] The Court sided with the employee, holding that the state, in the absence of a compelling interest,[115] "may not constitutionally apply the [state unemployment benefit] provisions so as to constrain a worker to abandon his religious convictions."[116] In this holding, the Court affirmed that "[t]he door of the Free Exercise Clause stands tightly closed against any governmental regulation of religious *beliefs*."[117]

Nine years after *Sherbert*, the Court heard *Wisconsin v. Yoder* and again ruled that the Free Exercise Clause stoutly protects individuals from government interference, but this time the Court specifically applied this ruling to the parental right to direct their children's education.[118] In *Yoder*, parents that belonged to the Amish faith refused to send their children to school after the children completed the eighth grade.[119] The children were only ages fourteen and fifteen, but the Wisconsin law mandated children attend school until reaching age sixteen.[120] The parents' reason for pulling their kids out of school was based on the Amish belief that attending high school "was contrary to the Amish way of life"[121] and "would not only expose [the parents] to the danger of the censure of the church community, but . . . [would] also endanger their own

113. 374 U.S. 398 (1963). *Sherbert* was overturned by *Employment Div., Oregon Dep't of Human Res. v. Smith*, 494 U.S. 872 (1990) (holding that generally applicable laws may be applied to religious exercise even in the absence of a compelling governmental interest). The ruling in *Employment Div., Or. Dep't of Human Res. v. Smith*, caused Congress to pass the Religious Freedom Restoration Act, which stopped the government from interfering with the exercise of religion unless there was a compelling interest and it was the least restrictive means of furthering that interest. 42 U.S.C. § 2000bb-1(a), (b). However, the religious Freedom Restoration Act was struck down as applied to the states in *City of Boerne v. Flores*, 521 U.S. 507, 117 S.Ct. 2157, 138 L.Ed.2d 624 (1997).

114. *Sherbert*, 374 U.S. at 399–401.

115. *Id.* at 406–07.

116. *Id.* at 410.

117. *Id.* at 402.

118. 406 U.S. 205, 213–14 (1972).

119. *Id.* at 207.

120. *Id.*

121. *Id.* at 209.

salvation and that of their children."[122]

The Court stated that "[t]here is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education;"[123] however, the Court continued, "even this paramount responsibility was, in *Pierce*, made to yield to the right of parents . . . . As [*Pierce*] suggests, the values of parental direction of the religious upbringing and education of their children . . . have a high place in our society."[124] Therefore, the Court concluded that the state's education interest "is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause . . . and the traditional interest of parents with respect to the religious upbringing of their children."[125]

The Court went on to reason that if Wisconsin's compulsory attendance law interferes with legitimate religious beliefs, then it must appear that the state "does not deny the free exercise of religious belief by its [interference], or that there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause."[126] The Supreme Court held, in this case, that the Amish belief was legitimate and that Wisconsin's interest in compelling attendance was insufficient, as the evidence showed that the Amish belief was not deleterious to the children, nor did it produce any undesirable economic effects.[127]

Yoder strongly acclaimed parental right to direct their children's education when this right is coupled with the Free Exercise Clause, and *Employment Division, Department of Human Resources of Oregon v. Smith*, affirmed this holding in 1990.[128] In *Smith*, the Court allowed a state to interfere with a professed religious belief when it was not coupled with another right—for example, the parental right to direct their children's education.[129] The Court explicitly recognized, however, that the

122. *Id.*
123. *Id.* at 213.
124. *Id.* at 213–14 (emphasis added).
125. *Id.* at 214.
126. *Id.*
127. *Id.* at 219–29.
128. 494 U.S. 872, 881–82 (1990).
129. *Id.*

Free Exercise Clause could bar state interference when it was coupled with another constitutional protection.[130] The Court specifically mentioned *Yoder* as an example of this "coupled" protection.[131]

B. Parents' Right to Direct Their Children's Education is Likely to Face Future Challenges, Though These Rights Should be Protected Under the Supreme Court Precedent

Though there is favorable Supreme Court precedent for home education, it is still not immune from future infringements on the parents' right to direct their children's education. As the *Rachel* case demonstrates, courts may choose to undervalue this parental right and overstate a state's compulsory attendance laws. One such example where a future court is likely to face this error lies in the differing moral and political views about school curriculum. These differing views on what is appropriate to teach in schools may increase the number of parents opting for home schooling, thus increasing cases for judicial examinations of the parents' right to direct their children's education. For example, in 2006, some Massachusetts parents ran into such a problem. A differing view on the same-sex marriage subject between these parents and the local school erupted when the school read a book about a prince marrying another prince to the children.[132] The school also sent the children home with a "diversity packet," which included materials showing same-sex couples.[133] These parents expressed their disagreement with the school's curriculum and stated that presenting same-sex marriage is "not a value that our family supports."[134] The school superintendent told the parents that the school could not cater to every religious and moral belief of parents.[135]

Examples such as this one, involving the same-sex marriage debate, illustrate how differing moral, religious, and political views may lead to an increased number of parents deciding to home school their children because of religious

130. *Id.*

131. *Id.* at 882 n.1.

132. Tracy Jan, *Parents rip school over gay storybook*, BOSTON GLOBE, Apr. 20, 2006, at B1.

133. *Id.*

134. *Id.*

135. *Id.*

beliefs. Amid such controversies, *Yoder* sets a strong precedent giving parents the right to direct their children's education based on their religious beliefs, as long as the religious belief is legitimate and there is no overriding, compelling state interest.[136]

V. THE HISTORICAL IMPORTANCE OF HOME EDUCATION AND ITS PURPOSE IN AMERICAN SOCIETY

The history of home education in America reveals that moral and religious convictions have long been part of choosing home education[137] and provides another reason home education should be secure from governmental interference. History reveals how home education in America has changed over time and how education's purpose in America has changed over time.

A. Foundations of Home Education in America

Home schooling has a long history in America and "was a major form, if not the predominant form, of education in colonial America and in the early years after the adoption of the Constitution."[138] In fact, many prominent early Americans received home education, from George Washington, James Madison, Benjamin Franklin, and Abraham Lincoln to Mark Twain, Andrew Carnegie, and Thomas Edison.[139]

Since learning primarily took place in the home, the success

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136. *See supra* text accompanying notes 126–27.

137. *See* Patricia Lines, *Home Instruction: The Size and Growth of the Movement*, *in* HOME SCHOOLING: POLITICAL, HISTORICAL, AND PEDAGOGICAL PERSPECTIVES 9, 12, 16 (Jane Van Galen & Mary Anne Pitman eds., Ablex Publ'g Corp. 1991).

138. JOHN W. WHITEHEAD & WENDELL R. BIRD, HOME EDUCATION AND CONSTITUTIONAL LIBERTIES 22–23 (1984); MILTON GAITHER, HOMESCHOOL: AN AMERICAN HISTORY 19 (2008) ("...the home was the basis for nearly all colonial education."); *Id.* at 9 (stating that home education was "once a primary form of education in America"). Philosopher John Locke, who was very influential in early America, advocated home education, specifically in-home tutoring: "[Locke] strongly recommended the practice [of home education], especially over schools, which in his view were unhealthy and immoral." *Id.* at 19. Others, such as William Penn, also preferred home education to public schools "where [children] might pick up too many 'vile impressions.'" *Id.*

139. WHITEHEAD & BIRD, *supra* note 138, at 23–24. Many other prominent Americans have received home education, including: John Quincy Adams, Franklin D. Roosevelt, Abigail Adams, Mercy Warren, Martha Washington, Woodrow Wilson, George Patton, Douglas MacArthur, Agatha Christie, Pearl S. Buck, John Stuart Mill, George Bernard Shaw, and Patrick Henry. *Id.*

of education relied largely upon successful families,[140] or more specifically, on the parents. Parents solely shouldered responsibility for their children's education,[141] and the "decisions to educate or not to educate [their children], and the substance of that education . . . were made by the parents as a right."[142] Coinciding with education's dependence on successful families, many believed that education increased family happiness; thus, there was a reciprocal relationship between family and education in that education increased family happiness, and family success was necessary for home education.[143]

By the 1880s, America's paradigm shifted[144] from the family-focus to a larger national identity.[145] This national identity was part of an "American synthesis,"[146] or the "goal of forging a common American identity [and largely a religious identity] from the disparate groups that made up the population."[147] With this paradigm change, public school attendance increased[148] and Massachusetts enacted the first compulsory school attendance law in 1852.[149] To illustrate the

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140. GAITHER, *supra* note 138, at 11–12. In the early colonies, the family unit was "the crucial institution" for education and other social services. *Id.* Moreover, the family was so crucial that, for example, Massachusetts established tithingmen, whose job was to monitor families and report any unacceptable behavior. *Id.* at 13. Failure to maintain a well-ordered family would lead to community intervention. *Id.*

141. WHITEHEAD & BIRD, *supra* note 138, at 23 (citing to E. Alice Law Beshoner, *Home Education in America: Parental Rights Reasserted*, 49 UMKC L. REV. 191(1981)).

142. Tobak & Zirkel, *supra* note 103, at 13–14.

143. ISAAC TAYLOR, HOME EDUCATION 23, 52–53 (N.Y., D. Appelton & Co. 1838). However, Isaac Taylor in 1838 stated, "the happiness which we speak of as a necessary condition of home education involves much more than what can come in our way while treating of intellectual culture merely. Family Happiness is the fruit of a sound and vigorous moral and religious training." *Id.* at 23. *See* GAITHER, *supra* note 138, at 16–19, 21 (describing, in part, how moral and religious training played part in home education).

144. *See* Joseph Kirschner, *The Shifting Roles of Family and School as Educator: A Historical Perspective*, *in* HOME SCHOOLING: POLITICAL, HISTORICAL, AND PEDAGOGICAL PERSPECTIVES 139 (Jane Van Galen & Mary Anne Pitman eds., Ablex Publ'g Corp. 1991).

145. GAITHER, *supra* note 138, at 38–46; Kirschner, *supra* note 144, at 139–140.

146. GAITHER, *supra* note 138, at 28–37.

147. *Id.* at 28.

148. Kirschner, *supra* note 144, at 141. The increased school attendance corresponded with an increased number of school days per year. *Id.*

149. Rachel S. Cox, *Home Schooling Debate*, 13 CQ RESEARCHER ONLINE 25, 35 (2003), *available at* http://library.cqpress.com/cqresearcher/cqresrre2003011700. ("[1852,] Massachusetts passes first compulsory-education law, requiring children 8-14 to attend school at least 12 weeks a year—unless they were too poor. By 1900, all

change in American's paradigm and public schools, consider the following example:

> Between 1840 and 1850 the immigrant population increased by 240 percent. Many of these immigrants were Irish Catholics and other groups whose home cultures were very different from that idealized by the American synthesis. So Americans created public schools.
>
> . . . .
>
> . . . The founders of the public schools *were* Christians[150] . . . . [And they] knew that they could not formally establish their brand of Christianity as the official religion of the nation. . . . [So,] they tried through the schools and other institutions to encourage voluntary adoption of the American synthesis by all.[151]

Public education served as a tool to spread the American synthesis and, since its creation, public education has continued to grow,[152] but in modern times, public education has seen a small shift back to home education beginning around the mid-twentieth century. "By the end of the 1960s the idea of a national mission for public schooling had disappeared"[153] and in the years to come, social distrust of governmental institutions grew.[154] Therefore, even though public school reliance increased in the 1960s,[155] parents increasingly turned

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northern states follow suit.").

150. Mainly evangelical Protestants. GAITHER, *supra* note 138, at 38.

151. GAITHER, *supra* note 138, at 38–39. Also:

> They wanted schools to teach their values to their children. Yet, these Whigs "expected the schools to make immigrant children more like native Americans than like their parents, to make the poor economically ambitious and socially virtous [sic], to make Catholic children Protestant" (citation omitted). Schools for these children would modify rather than reinforce habits learned at home.

Kirschner, *supra* note 144, at 147 (citing ROBERT L. CHURCH & MICHAEL W. SEDLAK, EDUCATION IN THE UNITED STATES, AN INTERPRETIVE HISTORY 84 (Free Press 1976)).

152. Though the modern growth of public education, arguably, did not stem from the earlier idea of spreading the American identity. Instead, the modern growth developed out of the transition away from viewing education as a means of morality and virtue, towards viewing education more solely as a tool of knowledge. *See infra* Part V. B.

153. Kirschner, *supra* note 144, at 139.

154. *Id.*; *See* GAITHER, *supra* note 138, at 94 (stating that the government was aware of its increasing involvement in intimate aspects of daily life and of the resentment this involvement caused among the people).

155. Perhaps the strong reliance on public schools during this time, despite the growing anti-institution feeling among many Americans, can be understood by the "age-old problem faced by mothers needing some time to do things other than take care

to public education alternatives, including home education.[156]

B. America's View on the Purpose of Education has Changed

So why has there been a modern push for home education? America's changing view of education's purpose gives one answer.[157] Early Americans believed that education served mainly family, religious, moral, and civic purposes; however, this view has changed over time and now focuses mainly on learning and knowledge.

1. Education in early America emphasized virtue

Going back to early America, with the birth of the new nation and a new government, America's founding fathers and citizens believed strongly in education as a pillar for the new government. Early Americans believed that, for their new republic to stand the test of time, the people needed to be virtuous.[158] Virtue enabled America's citizenry by clothing them with belief in morality and in civic duty for the greater public good.[159] One difficulty with this belief though, was establishing virtue among the people. To resolve this,

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of the kids. Schools for many were a place to dump the kids off for a while and hopefully get their minds improved in the process." GAITHER, *supra* note 138, at 39. Though Milton Gaither, in *Homeschool: An American History*, gives the need to dump the kids off as a reason for public school growth earlier in history, this reason still illustrates a plausible reliance theory in the modern era, especially in light of today's busy society. *Id.*; *see* Michael S. Jellinek, *Running on empty: the busy family*, 41 PEDIATRIC NEWS 19 (2007); Tracy Thompson, *Do nothing*, 24 WORKING MOTHER 50 (2001).

156. Kirschner, *supra* note 144, at 153; GAITHER, *supra* note 138, at 94.

157. *See supra* Part V.A.

158. "Free suffrage of the people can only be assured only so long as there shall remain any virtue in the body of the people." The First Inaugural Address of George Washington (1789) *available at* http://www.yale.edu/lawweb/avalon/presiden/inaug/wash1.htm (last visited March 15, 2008). Furthermore, John Adams stated, "liberty . . . can no more exist without virtue and independence than the body can live and move without a soul." John Adams, quoted in BERNARD BAILYN, THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION 135 (London, 1967). In addition, according to European historian Francis Grund: "Change the domestic habits of the Americans, their religious devotion, and their high respect for morality, and it will not be necessary to change a single letter in the Constitution in order to vary the whole form of their government." FRANCIS J. GRUND, THE AMERICANS IN THEIR MORAL, SOCIAL, AND POLITICAL RELATIONS 171 (1837). *See* GORDON S. WOOD, THE CREATION OF THE AMERICAN REPUBLIC 1776-1787, at 68–69 ("Virtue was truly the lifeblood of the republic.").

159. *See also* GRUND, *supra* note 158.

education, which relied on successful families at that time,[160] became the primary source of virtue in America.[161] James Madison declared, "What spectacle can be more edifying or more seasonable, than that of *liberty* and *learning*, each leaning on the other for their mutual and *surest* support.[162]

2. Modern America views education as a tool for knowledge and preparation for the workforce

Over time, after America's focus changed from home education to public education,[163] America's view of education's purpose changed[164] and became focused simply on knowledge and learning. Throughout the twentieth century,[165] America has grown technologically and economically; society now demands that students obtain enough knowledge to prepare them for the workforce.[166] Thus, education has increasingly focused on math and science,[167] and the public attention has turned to standardized test scores and national educational

160. *See supra* notes 140–43 and accompanying text.

161. *See* Brigham v. State, 692 A.2d 384, 392–93 (Vt. 1997) (stating that the 1777 and 1786 Vermont Constitution used education to encourage virtue, and that this use was "perfectly consistent with the commonly held view of the Framers that virtue was essential to self-government, and that education was the *primary* source of virtue") (emphasis added); Kirschner, *supra* note 144, at 141 (reasoning that America was unique in supporting the national aims of religion, morality, and knowledge via schools); WILLIAM BENNETT, OUR SACRED HONOR: WORDS AND ADVICE FROM THE FOUNDERS IN STORIES, LETTER, POEMS, AND SPEECHES 219 (Broadman & Holman 1997) ("In addition to enriching citizens intellectually, [education is] important precisely because [it] cultivates the intellectual base requisite to the proper functioning of a republican government.")

162. BENNETT, *supra* note 161, at 259 (emphasis added).

163. *See supra* Part V.A.

164. Kirschner, *supra* note 144, at 154 ("By the 1970s the faith in a national destiny that shaped American dreams throughout the 19th century was lost . . . . Gone was a belief that public schools could shape a virtuous citizenry.").

165. *See* GAITHER, *supra* note 138, at 85.

166. *See* Charles S. Clark, Education Standards, 4 CQ RESEARCHER ONLINE 217, 217–240 (1994), available at http://library.cqpress.com/cqresearcher/cqresrre1994031100 (Quoting Gordon M. Ambach, executive director of the Council of Chief State School Officers, in that "The attainment of basic skills in math and language is no longer sufficient for productive employment . . . . Increasingly, American workers must have higher-order capacities").

167. Joan Hennessey, *Teaching Math and Science*, 12 CQ Researcher, 30, 699 (2002), *available at* http://library.cqpress.com/cqresearcher/cqresrre2002090600 (indicating that educators feel students need to take more science and math to prepare them in this technological age, even though more students are already taking higher level math and science classes than ever before). Global politics and competition, such as the Cold War and the launching of Sputnik, may have also played major roles in turning America's education focus to math and Science. Cox, *supra* note 149, at 35.

"knowledge" standards. Recent presidential administrations have provided prime examples of these growing "knowledge" standards by the promotion of the Educate America Act[168] and the No Child Left Behind Act.[169]

C. Reasons Parents Home School their Children under America's Modern View of Education

America's modern view and early view of education's purpose are quite different, and this difference is a reason many parents now choose to educate their children at home.[170] For example, the No Child Left Behind Act, which illustrates America's modern view, does not mention that education's purpose involves virtue, morality, or religious conviction; instead, the Act's Statement of Purpose speaks mainly of quantifiable academic assessment and achievement.[171]

Many parents now choosing to home school their children believe that home schooling is the better way to promote views similar to America's early purpose for education. These parents point out that home education can help bridge the ever-widening gap between schools and religion, can help promote character and moral development, and can help nurture strong families.[172] In 1999,[173] and then again in 2003,[174] the U.S.

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168. *See* Clark, *supra* note 166, at 217–25.

169. Barbara Mantel, *No Child Left Behind*, 15 CQ RESEARCHER ONLINE 469 *passim* (2005), *available at* http://library.cqpress.com/cqresearcher/cqresrre2005052700.

170. *See supra* Part V.A. There has also been recent growth in home education because of nontraditional reasons: "The latest believers in home schooling aren't fundamentalist Christians . . . of the earlier days. Instead, the ranks of home schoolers are being swelled by a new wave of conventional parents who suspect their children are being let down in some way by the public schools." Jessica Garrison, *The Region; Staying Home to Go to School; Education: Academic Reasons, not religious, are Often Cited for the Dramatic Increase in Parent-taught Students*, L.A. TIMES, May 8, 2001, at B6.

171. *See* No Child Left Behind Act of 2001, Pub. L. No. 107-110, § 1001 (2001), *available at* http://www.ed.gov/policy/elsec/leg/esea02/index.html.

172. Cox, *supra* note 149, at 28. Home education may have other advantages, as pointed out by early American writer Isaac Taylor: "Home education . . . in consequence of its power of adaptation, may be made highly advantageous as well to ungifted, as to gifted children." TAYLOR, *supra* note 143, at 7.

173. U.S. Department of Education: National Center for Education Statistics, *Parents' Reasons for Homeschooling* (2001), *available at* http://nces.ed.gov/pubs2001/HomeSchool/reasons.asp.

174. Department of Education: National Center for Education Statistics, *Parents' Reasons for Homeschooling* (2006), *available at*

Department of Education, National Center for Education Statistics reported that parents gave the following reasons for choosing home education: giving their child(ren) a better education,[175] upholding religious beliefs, avoiding the poor learning environment at school, family-based reasons, developing character and morality, objecting to the school's teachings, and believing the school does not challenge the child enough.

D. The Differences Between Home Education and Public Education Should be Reconciled for the Benefit of the Children

As home education has grown,[176] it has separated itself from mainstream public education[177] and attracted scrutiny that creates more harm than benefit. As evidenced by *Rachel* and *Jonathan*, courts have scrutinized home education as something separate from public education and questioned home education's validity in America. This approach, however, is wrong. America needs to validate home education needs as a complementary part of educating the public. As Michael Romanowski states, scrutinizing home education "is due, in part, to a lack of understanding by public school educators as to why parents choose to homeschool their children."[178] Romanowski says that this lack of understanding creates an

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http://nces.ed.gov/pubs2006/homeschool/parentsreasons.asp.

175. Many people also feel that modern public education does not promote civic duty as it did in America's early days. A recent study by the Intercollegiate Studies Institute showed that greater civic learning goes hand-in-hand with more active citizenship; however, America's schools are failing to increase student's civic knowledge. Intercollegiate Studies Institute, (*Our Fading Heritage, Americans Fail a Basic Test on Their History and Institution,* (2008), *available at* www.americancivicliteracy.org/2008/summary_summary.htm. The Intercollegiate Studies Institute also reported their recommendations for improving civic education, one of which is to make the education system "more accountable to its mission and fundamental responsibility to prepare its students to be informed, engaged participants in a democratic republic." *Id.*

176. An estimated 1.1 million children were home schooled in 2003; meanwhile, an estimated 850,000 were home schooled in 1999. Department of Education: National Center for Education Statistics, *Estimated Number of Homeschooled Students in the United States,* (2006) *available at* http://nces.ed.gov/pubs2006/homeschool/estimated.asp.

177. Kirschner, *supra* note 144, at 147 ("When public schooling no longer seemed to instill the values desired by some parents for their children, resistance became rebellion.").

178. Michael H. Romanowski, *Home School and Public School: Rethinking the Relationship,* 19 STREAMLINED SEMINAR 1,1 (2001)

"us versus them" mentality; however, rethinking this mentality would benefit the children.[179] Public educators, and those that disfavor home education, need to rethink the role of parents in education and their rights in directing their children's education.[180] If this happens, home education and public education will not be viewed differently, but as component parts of the whole—education.

Rethinking the role of home education starts with understanding that America has moved past mandating cultural uniformity by expanding the old "American Synthesis" via public schools, and that home education has a unique potential to promote virtue and provide at least some parents with the assurance of better education.[181] If a growing number of parents[182] feel that education increasingly needs to provide for things such as virtue, then public education may benefit from a system overhaul to incorporate these values. It is plausible that, if a public education system can accommodate those who have certain values, such as believing in same-sex marriage,[183] it can also accommodate those who believe differently. President and patriot John Adams said, "In vain are Schools, Academies, and universities instituted, if loose Principles and licentious habits are impressed upon Children in their earliest years."[184]

VI. CONCLUSION

The Supreme Court in *Pierce* correctly reasoned that alternatives to public education are "not inherently harmful, but long regarded as useful and meritorious."[185] Such words would have provided sound advice for both the *Rachel* and *Jonathan* courts. Instead, the California court of appeals in *Rachel* used a case involving unfit parents "to throw the book at tens of thousands of home schoolers throughout

179. *Id.* One reason for rethinking the relationship with the children in mind is because "[i]n the long run, students lose because shared information might improve learning and academics success in both educational settings." *Id.* at 2.

180. *Id.*

181. *See supra* text accompanying footnotes 173–74.

182. *See supra* note 176.

183. *See supra* text accompanying notes 132–35.

184. JOHN ADAMS, 4 DIARY AND AUTOBIOGRAPHY OF JOHN ADAMS 123 (L.H. Butterfield, et al. 1961).

185. Pierce v. Society of Sisters, 268 U.S. 510, 534 (1925).

California."[186] The court reheard the case and properly upheld the parental right to direct their children's education, reasoning that the parents in *Rachel* and *Jonathan* were unfit parents.[187]

Supreme Court precedent also protects parents' right to direct their children's education. In *Meyer*, *Pierce*, and *Farrington*, the Court clearly established this parental right, and in *Sherbert*, *Yoder*, and *Smith*, the Court held that coupling this parental right with the freedom of religion strengthened parental rights against state interference. This precedent is valuable for protecting parental rights against future infringements on home education.

Home education's history also serves as a valuable tool for protecting parental rights because it illustrates the importance of home education in American society. Public education no longer mandates cultural uniformity, and home education provides many parents with the ability to teach moral and religious values to their children. If home education and public education rethought the "us versus them" attitude, education as a whole may benefit. Home education should not be scrutinized differently than public education; both home and public education should be considered component parts in America's educational purpose.

*Chad Olsen**

186. *Learning power*, L.A. TIMES, Mar. 12, 2008, at A20.

187. *See Homeschool Victory*, WALL ST. J., Aug. 16, 2008, at A10 (stating that in the rehearing of *Rachel*, "Common sense and constitutionalism have prevailed in the California judiciary").

* J.D. candidate (2010), J. Reuben Clark Law School.