



Home Schoolers Strike Back

California case centers on parents' rights

BY JOSHUA DUNN AND MARTHA DERTHICK

To their surprise, California's home-schooling parents found out in February that they were scofflaws. A state appellate court ruled in *In re Rachel L.* that state law requires all children to be taught by certified teachers. Thus, nearly 200,000 children were being taught illegally, leading home schoolers

to predict the imminent arrival of police investigating accusations of truancy.

Few were aware that the legality of home schooling was even under judicial consideration. Home schooling was initially an ancillary consideration in a child welfare case involving Phillip and Mary Long, parents of eight home-schooled children. An investigation into claims of mistreatment by one of their daughters revealed that they were providing at best a poor education. A juvenile court judge ruled nonetheless that the Longs had a constitutional right to home school. At the request of a court-appointed attorney for two of the children, the appellate court both overturned the juvenile court and took the broader step of ruling that home-schooling parents must have state teaching certification, leaving the vast majority in violation of the law. To no one's surprise, the state's teachers unions praised the decision.

Prior to the ruling, the California Department of Education had interpreted the state's education code to allow four ways for children to be taught at home: 1) qualify as a private school, 2) use a certified tutor, 3) officially enroll in a private school satellite program, or 4) enroll in a public school's independent study program. The Longs had been home schooling under option 3, having enrolled their children in the Sunland Christian School's satellite program.

The appellate court ruled that there were only two permissible exceptions to the state's compulsory public education laws: enrollment in a private school or private tutoring by a certified teacher. A strict reading of the state's education code and judicial precedents on home schooling from the 1950s and '60s clearly supported the ruling. But the code and the precedents originated long before the rise of today's large home-schooling movement, with more than 1 million students nationwide as of 2003, according to the National Center for Education Statistics. This made the political circumstances surrounding the case far different from those of past judicial decisions.

If the court was unaware of the size and zeal of the home-school movement, that ignorance was short-lived. Within days the Home School Legal Defense Association (HSLDA), a national

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organization with more than 14,000 member families in California, had collected over 250,000 signatures calling on the California Supreme Court to "depublish" the appellate court's ruling, which would strip it of precedential value. As well, a resolution supporting home schooling was quickly introduced in the state legislature. Sensing the

groundswell of opposition, the state superintendent of public instruction, Jack O'Connell, announced his disagreement with the decision and promised that the state's policies would not change. Most strikingly, Governor Arnold Schwarzenegger called the ruling "outrageous" and declared that it "must be overturned by the courts and if the courts don't protect parents' rights then, as elected officials, we will."

Less than a month after the initial ruling the appellate court appeared to back down. The Longs, with the support of California's four home-schooling associations and the HSLDA, petitioned it to rehear the case. The court agreed, vacated the decision, and scheduled a rehearing for June. At the rehearing, the main defender of the court's previous ruling was the California Teachers Association. But dozens of attorneys for the governor, attorney general, state superintendent of schools, home-school associations, and religious liberty organizations urged the court to protect home schooling. Attorney General Jerry Brown explicitly called for the judges to rule that state law already authorizes home schooling, a position that would avoid legislative intervention.

Given the support offered by the political establishment, it seems likely that home schooling will continue in California regardless of what the court decides in its reconsidered opinion. Much like banks that become "too big to fail," home schooling appears to have become too widespread and embedded in educational practice, as well as too well organized and politically effective, to be undone by a judicial opinion.

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