The Phyllis Schlafly Report

VOL. 17, NO. 8, SECTION 1 | BOX 618, ALTON, ILLINOIS 62002 | MARCH, 1984

Regulation Of Non-Public Schools

Those who deplore the steady migration of children from public schools into private and religious schools are striking back. They are resorting to a variety of strategems to circumvent what has been established law in the United States since 1925, when the U.S. Supreme Court ruled that parents may NOT be forced to send their children to public schools.

Will private schools become just another branch of public education? Will private schools become "private" only in the sense that they are financed by private contributions (instead of taxes) while the government actually runs them? That's the issue.

Many state education boards or state education departments are aggressively trying to control nonpublic schools. They want to have the power to license nonpublic schools, supervise them, decide what they will teach, who will teach it, and how subjects shall be taught, plus the power to close down the schools that do not conform.

The whip usually invoked to accomplish these goals is criminal prosecution of parents for violation of the truancy laws, which require all children to attend some schools. If the nonpublic school has not surrendered to state regulations, no matter how arbitrary or vague or oppressive, the parents can be jailed for violating the truancy law.

The goals, tactics and aggressiveness of these state education bureaucracies vary greatly from state to state. Their efforts to achieve what is called "governance" over nonpublic schools take several forms: (1) state certification of nonpublic school teachers, (2) state prescription of curriculum, and (3) state licensing of nonpublic schools.

Teacher certification is supposed to assure quality teachers, but the evidence is overwhelming that certification is no key to that goal because certification is tied to the taking of "education" courses. A dedication to teaching, a love of children, and a good general education are far more important; and those qualities abound among nonpublic school teachers.

In regard to curriculum control, no nonpublic school has challenged a requirement to teach the basics (English, mathematics, civics, history, geography, etc.). However, the nonpublic schools, especially the religious schools, vigorously oppose permitting state boards or departments to impose other curricula on them.

Nonpublic school licensing is sometimes called "accreditation," "certification," "chartering," or "approval," but whatever the name it still means that the nonpublic school cannot exist without permission of the state. The licensing statutes vest wide discretionary powers in the state bureaucracy, which can then impose arbitrary conditions on the granting of the license.

Private and religious schools readily accept fire, safety, building, and sanitary ordinances. But statutes which make the government education bureaucracy the ultimate arbiter, supervisor and prescriber are fiercely resisted as violative of educational freedom.

In the principal court cases, nonpublic schools have been willing to submit to a "proof of the pudding" test; and the proof is overwhelming that their pupils do as well or better on standardized tests than public school students. But the education bureaucracies become almost hysterical at a "results" comparison because they want control of the curriculum, teacher qualification, teaching methodology, and textbooks. The 1983 report of the National Commission on Excellence in Education, *A Nation at Risk*, shows that the state education bureaucracies are hardly in a position to criticize the quality of nonpublic schools.

In his testimony before the Senate Committee on Labor and Human Resources, attorney William B. Ball gave dramatic examples of state efforts to close down Christian schools under vague and arbitrary laws. Ball has probably had more Supreme Court cases involving private education than any other U.S. lawyer.

Michigan tried to close down two Christian schools because the statute says that the nonpublic school must be "of the same standard as provided by the general school laws of the states."

But the "general school laws" say nothing about "standards," and state officials who testified in the trial couldn't agree on what the "standards" are.

Kentucky tried to jail parents whose children attended Christian schools alleged to be in violation of the following mandate: "Curriculum objectives, decisions, and implementations should be characterized by unit, balance, and articulation with the schools below and above, while retaining flexibility." Yet nobody could explain what this "mandate" meant.

The state education bureaucracies conjure up the boogeyman that, without state governance of nonpublic

schools, children will have an inferior education in fly-by-night schools. That's a false fear. Parents will not remove their children from a free school giving a superior education in order to put them in an inferior school for which they must make financial sacrifices to pay the tuition.

Victory For Maine Christian Schools

Christian schools have won a major court battle in Maine — the first victory for Christian schools in a Federal court. It will be interesting to see if it is true that, "as Maine goes, so goes the nation."

U.S. District Court Judge Conrad K. Cyr ruled in favor of the Maine Association of Christian Schools (MAC) by finding that the state does not have the right to shut down religious schools. This was the denouement of an emotional and legal battle that started in 1977 and expanded to pit dozens of fundamentalist Christian schools and churches against Maine's attempt to close those schools if they didn't cooperate with the state certification process.

The litigation phase of the controversy started in October 1981 when the Maine Association of Christian Schools filed suit against the state asking for a declaratory judgment against the state's power to close down 40 Christian schools which opposed the state certification process.

State officials are claiming that the Cyr ruling is "narrow" because it focused on state law rather than large constitutional questions. Maybe so, but the 83-page decision will be far-reaching in its impact because its core issue is the fundamental question of the state's relationship with private and religious schools.

Judge Cyr not only ruled that the Christian schools will stay open, but that the Department of Education and the Attorney General have no power to seek their closure and that licensure of religious schools is optional. He also ruled that no pastor or administrator will be prosecuted for encouraging a student to attend a church school.

The state had claimed that Christian schools, merely by their existence, were causing children not to go to state-approved schools and therefore were encouraging truancy; this was called "inducing habitual truancy." Judge Cyr rejected that argument; it simply is a non sequitur of the truancy law.

The education establishment argued that the state has a legitimate interest in maintaining a minimal level of educational quality. Specifically, that means that the state demands the right (a) to certify private schools, (b) to certify private school teachers, (c) to approve curriculum, and (d) to close down schools that don't "cooperate."

The Christian schools, on the other hand, argued that their schools are arms of their churches, and that state control of teacher certification and curriculum violates religious freedom.

The real problem with these constitutional and legal arguments is that they don't address the real goal, which is to assure quality education for our children. The state simply could not (and did not try to) prove that certification and curriculum standards ensure a minimal quality of education — in private schools or in public schools!

Standards which are based on such factors as the number of college courses taken by a teacher, or the number of courses offered in a curriculum, don't tell a thing in the world about how much the pupils learn.

The only standards that can be justified are those which evaluate the school's product. That can be easily done by requiring the pupils to take standardized tests and comparing the scores, something that Christian and other private schools have been very willing to do. The state's education establishment rejected this approach because it wants to control what the schools teach.

Parents who shop around and select a private school for their children are doing their own job of comparing results. They are perfectly able to observe the world around them, compare the product of various schools, and recognize educational malpractice when they see it.

The litigation was terribly expensive for the several dozen small Christian schools involved in the suit. They had to pay more than $200,000 in out-of-pocket expenses for court costs and legal fees, as well as sustain a significant loss of income because many parents pulled their children out of the Christian schools under the fear that they might be prosecuted and jailed or have their children taken away from them. Considering the state's behavior, that was a realistic fear. MAC has now filed a motion to recover its costs from the state.

Religious Freedom In Nebraska?

The most underreported news story of our era is the case of the seven fathers who were jailed in Nebraska for three months starting November 23, 1983 for exercising their parental rights and religious freedom to send their children to a non-certified Christian school. If a half dozen civil rights demonstrators from the other side of the political spectrum were kept so long in a southern jail without being charged with any crime, you can be sure that network-newscasts would give us emotional and redundant coverage.

But there is a deafening silence in the national media about the Nebraska Seven and about their wives who fled Nebraska in order to avoid being jailed, too. Although the fathers were in jail over Thanksgiving, Christmas and New Year's, they didn't receive one percent of the national media coverage given to the Cabbage Patch dolls.

With all the thugs and criminals prowling our streets, it is a puzzlement that, here in America, non-criminals can be held so long in jail without bail. The judge locked up the fathers for refusing to answer questions about their role in the church and school, and he denied the fathers' attempt to plead the Fifth Amendment.

Only if you are a reader of conservative or religious publications have you been kept posted on the incredible story of Faith Baptist Church school in Louisville, Nebraska, and its Pastor, Everett Sileven. Only then would you know that more than 800 ministers plus a thousand other Christian leaders from some 40 states traveled to Nebraska to show their public support of the imprisoned fathers.

If there ever was a David-and-Goliath struggle, this is it. The "David," a little church school with about 30 students in a town of only 1,000 people southwest of

Omaha, has been pitted in a dramatic confrontation with a "Goliath" — the State of Nebraska, its Department of Education, and the National Education Association (NEA).

On October 18, 1982, 18 armed officers entered Faith Baptist Church, broke up a prayer meeting, dragged a hundred worshippers out of the church, padlocked the doors, and stationed armed guards to prevent reentry.

Pastor Sileven himself spent four months in jail in 1982 for contempt of court, although he was never charged with any crime. One of his fellow prisoners in jail had shot and killed two men, but he spent a total of only three weeks in jail.

There is not and never was any problem about the 30 pupils getting an adequate education in Faith Christian School. Tests consistently show that they are one to three years ahead of public school pupils of the same age. The teachers are college graduates and Pastor Sileven has three degrees.

The school uses the curriculum called Accelerated Christian Education. This system is now in use in some 5,000 other schools across the country, where its pupils are doing excellent academic work.

Nebraska is one of only six of the 50 states which require licensure of all private schools and certification of every private school teacher. Faith Christian School was the first school in Nebraska to refuse to apply for a license, and the heavy arm of the state has retaliated massively.

Faith Christian's teachers and parents decline to seek a state license because compliance with these state regulations would violate their religious freedom. For example, Pastor Sileven objects to the State Board of Education's Rule 14 which says that all Christian and parochial schools must be substantially the same as the public schools.

Rule 14 also states that a high school must have 3,000 volumes in its library and 98% of them must be religious-free. Rule 21 requires that all teachers take a minimum number of university courses in education.

These parents have sacrificially assumed the heavy expense of maintaining a Christian school precisely because they want their children in a school different from public schools, using books with a Christian rather than a religious-free perspective, and taught by teachers with a Christian perspective rather than the secular humanist perspective taught in university education courses.

One wonders why conservative, middle-western Nebraska became the front line in the battle between religious schools and the state. Pastor Sileven says this is the legacy of the famous John Dewey who came to Nebraska in the 1920s and set up his pilot program there, including a teachers' college within the state university and the initial framework of the NEA.

Victory For Home Schooling

Some people have very strange ideas of what should be punished as a crime. While all sorts of people who commit horrible offenses go unapprehended and unpunished, in some states parents are arrested and even jailed for the alleged crime of either teaching their own children at home or of sending them to an "uncertified" religious school.

The Georgia Supreme Court, in the case of *Roemhild v. State*, has struck a blow for parents' constitutional right to teach their children at home. The district attorney had prosecuted parents for the criminal offense of giving six hours per day of wholesome formal instruction to their children at home, contrary to Georgia's compulsory education statute. The court voided the Georgia compulsory school law as unconstitutional because it is impermissibly vague in violation of due process.

The decision is a significant victory not only for Mr. and Mrs. Roemhild, and not only for the principle of home schooling, but also for the Rutherford Institute and lawyers John W. Whitehead of Virginia and Wendell R. Bird of Georgia who filed a 120-page brief with a 200-page Appendix as *amici curiae*. They made persuasive arguments that home education is a constitutional right and that the Georgia compulsory education statute should be construed to permit home education.

The brief argues that the home education is a right based on the First Amendment guarantees of religious freedom, *no* establishment of religion, free speech and belief, privacy, and parental liberty, plus the guarantees of due process and the Ninth Amendment. They quoted expert witnesses and cited evidence ignored or overlooked by the court-appointed attorney representing the parents.

No argument was made in the case that the Roemhild children were uncared for, abused, unloved, or uneducated. The parents gave daily instruction to their children, documented in calendars of attendance, and the children made satisfactory scores on the Georgia Criterion Referenced Tests.

The argument that a child must be in a formal school (public or "certified" nonpublic) is so incongruent with American historical experience as to be laughable. As the Rutherford Institute pointed out, home education was the principal form of education in early America and the main source of the primary education of nine presidents (George Washington, John Quincy Adams, Abraham Lincoln, Woodrow Wilson, and Franklin D. Roosevelt) and of many other prominent Americans (including Benjamin Franklin, Thomas Edison, the Wright brothers, Andrew Carnegie, and Pearl Buck).

It has been recognized since *Pierce v. Society of Sisters* in 1925 that the state may not force a child to attend a public school. The Rutherford Institute brief accurately points out that what the education establishment is trying to do today is to achieve indirectly by burdensome regulation what *Pierce* prohibits the states from doing directly.

Most states today expressly or impliedly allow the option of home education to fulfill the compulsory education statutes: 15 states have statutes that expressly allow home education; and 7 states permit home education by treating it as a private school. No one knows how many children are instructed at home, but estimates run as high as one million.

Home education utilizes the tutorial method of instruction which numerous studies have found superior to traditional classroom instruction. Even if its educational effectiveness had not been demonstrated in the past, it would be a shortsighted public policy to restrict home education at the very time that personal computer technology is developing the potential of raising home instruction to the state of the art.

The National Commission on Excellence in Education reported last year that "about 13% of all U.S.

17-year-olds are functionally illiterate," and the "average achievement of high school students on most standardized tests is now lower than 26 years ago when Sputnik was launched." This is hardly a time for the education establishment to point any fingers at home instruction.

Dr. Raymond S. Moore, president of Hewitt Research Foundation and the leading authority on home education, has shown that "youngsters educated at home achieve higher than national averages in standardized measures." This result includes even children who are taught by parents who have no teacher's certificate and could not pass the certification process demanded by those who now want to outlaw home schooling.

The NEA's Hidden Agenda

The National Education Association (NEA) publishes an "Annual" — a sort of yearbook summarizing the year's activities and setting forth the organization's goals. The 1984 Annual proudly proclaims at the beginning that its credo since 1857 has been "To elevate the character and advance the interests of the profession of teaching and to promote the cause of popular education in the United States."

That's a noble cause. The Annual's other 185 pages, however, spell out the NEA's hidden agenda, and it is hard to see how it promotes the credo's goals. Most Americans would be shocked to read the official Resolutions adopted at the NEA's last convention and its "legislative program," as published in the Annual.

The NEA supports forced busing to achieve racial integration. Resolution H-2 demands forced integration in the public schools through Affirmative Action, geographic realignment, pairing of schools, grade pairing, satellite and magnet schools, and busing.

The NEA supports socialized medicine. Resolution A-13 supports a "mandatory" taxpayer-financed "national health insurance plan."

The NEA strongly opposes cutting or limiting taxes. Its legislative program contains the stern warning that the NEA "opposes any effort to amend the Constitution respecting tax limitations or the federal budget and the indexing of future income tax revenues."

The NEA wants to take funds away from national defense and spend them on federal programs in the schools. The NEA's legislative program states that "the proposed disproportionate allocation of funds increasing the national defense budget and decreasing federal funding for education must be reversed."

The NEA supports a nuclear freeze. Its resolution H-27 takes a strong stand against the testing, development, production, emplacement, and deployment of nuclear weapons.

The NEA's resolution H-28 supports the use of classroom materials in schools at all levels in order to spread the NEA's anti-nuclear views. Indeed, the NEA has already published its own anti-defense curriculum called "Choices."

Curiously, the NEA legislative program supports a dramatic takeaway of traditional women's rights: military draft registration for young women as well as young men. The NEA also opposes denying federal benefits to those who disobey the law by not registering for the draft. The NEA strongly urges gun control legislation.

The NEA "vehemently" opposes freedom of choice in education for pupils and parents, but wants an unusual choice for teachers. NEA resolution A-9 opposes tuition tax credits and vouchers to allow pupils' attendance at nonpublic schools.

At the same time, the NEA wants teachers to have the option to be in the Social Security system or not. In other words, according to resolution E-11, the NEA wants Social Security to be voluntary for teachers even though it is mandatory for most other Americans.

The NEA comes out strongly pro-abortion. Resolution H-16 supports the right to abortion of all women, and the NEA legislative program comes out against any efforts "to eliminate reproductive freedom."

NEA resolution E-13 wants personnel policies and practices to "guarantee that no person be employed, retained, paid, dismissed, suspended, demoted, transferred, or retired because of . . . sexual orientation." The same resolution suggests that Affirmative Action may be necessary "to overcome past discrimination." Resolution H-111 urges adding "sexual orientation" to our civil rights laws, also.

The NEA strongly supports Affirmative Action programs, and states that any plans to weaken them "must be opposed." The NEA vigorously opposes any efforts to limit the jurisdiction of the federal courts.

The NEA, in resolution E-5, endorses the controversial concept of Comparable Worth, which rejects market wage-setting factors in favor of federal wage control. That's equal pay for UNequal work.

The NEA endorses unisex insurance, the system which would forbid using actuarial tables which give women the benefit of lower automobile accident insurance rates (because they have fewer accidents) and lower life insurance rates (because they live longer).

NEA resolution H-16 vigorously supports the Equal Rights Amendment, "full funding" of the feminist boondoggle called the Women's Educational Equity Act, and the censorship of "sexist" language in textbooks.

The NEA brags in its Annual that it had 500 Delegates elected to the Democratic and Republican National Conventions in 1980. Presumably, the NEA will have as many or more at the 1984 conventions, working to implement its leftwing hidden agenda.

Phyllis Schlafly has her B.A. from Washington University, her M.A. from Harvard University, her J.D. from Washington University Law School, and an honorary L.L.D. from Niagara University. She is the author of nine books and over 1,000 network television and radio commentaries. Before her marriage, she was a librarian. She taught all her six children to read before they entered school. Two are lawyers, one is an orthopedic surgeon, one has his Ph.D. in mathematics and is the author of a book on Rubik's Cube, one is an electrical engineer, and the youngest is in college.

The Phyllis Schlafly Report
Box 618, Alton, Illinois 62002
ISSN0556-0152

Published monthly by The Eagle Trust Fund, Box 618, Alton, Illinois 62002.
Second Class Postage Paid at Alton, Illinois.
Subscription Price: $10 per year. Extra copies available: 50 cents each; 4 copies $1; 30 copies $5; 100 copies $10.