

Subject: SB4767
Date: Tue, 22 May 2001 17:17:56 -0400
From: "Dewitt Black"
To: David Forrest; Rich Stauter
CC: "Chris Klicka"; "Nathan Richmond"

David,

I don't think I have the e-mail addresses of all the LEAH Board members, so please forward this to them to the extent that you want to do so.

I have read the majority and minority reports of the Legislative Standing Committee and do not find anything in them which would change HSLDA's legal analysis of SB 4767. Quite simply, we support this legislation because it is unquestionably a tremendous improvement over current law. As I write this, I am trying to help several of our member families seeking to conduct the annual assessment of their children themselves. These are honest, qualified parents who either want to administer the required standardized test or do the alternative method themselves, but the superintendent is saying no. My hands are tied because of the authority given to the superintendent in the regulation to consent to the person who performs the evaluation in these instances. It grieves me to have to go back to these parents and tell them of the superintendent's decision. This is only one of many problems Senator Kuhl's bill would solve for law-abiding home educators.

I am not going to address everything that is contained in the majority report, because we have previously responded multiple times to their positions. There are some new comments contained in the report and some e-mails I have received that are hurtful to those of us here at HSLDA. Other things are inaccurately stated and give the wrong impression of how things have transpired. I will try to address those things that are most relevant to whether SB 4767 should be supported.

I guess all of us have a tendency to be prideful about the value of our opinions, so I will trust that the Lord is working on us through the comments made about the worth of our legal analysis. However, some of the comments seem to reflect a disdain for us and even hostility toward us. Frankly, I would not want a lawyer I felt this way about to be representing me or giving me advice.

The LSC in its report says that HSLDA has a conflict of interest because I told Paul Matte in an e-mail that HSLDA could not be involved in challenging the constitutionality of the regulation. This opinion is shared by [one couple] individually in an attachment and follows [her] e-mail of 4-30-01 in which she said, "As for the encouragement of HSLDA to endorse the bill, I say, 'Fooney!'" This pretty much sums up the LSC's view of our opinion. Obviously there is a misunderstanding about what a conflict of interest is. It occurs when an attorney is unable to exercise independent professional judgment on behalf of a client. He has competing interests which require his loyalty. We have no conflict of interest in seeking to have the regulation held unconstitutional or unauthorized. Although it is now obvious that there are those in NY who don't trust us or believe us and question our motives, the truth is that we exist to expand the freedoms of home educators. We support any legal means to do so. From a practical standpoint, however, it would be difficult for Mike Farris to argue before a judge that a regulation he wrote was unconstitutional. This is not a conflict of interest, because we have only one interest--to improve the legal climate for parents teaching their children at home. At the time this discussion was taking place, our recommendation to Paul was to pursue a non-litigation approach to solving the problem of a restrictive law. Make no mistake about it, though, that we are prepared to zealously assert any legal argument, constitutional or otherwise, in representing our members in court in defending their right to home school. We have always done this and will continue to do so.

[Another member] says in her attachment to the LSC report regarding the law in PA that "HSLDA was in large part responsible for this mess because it was 'what they could get' at the time." She refers to Dr. Howard Richman, the leader of PA Homeschoolers, a group her family was in. Here's what Dr. Richman said about the new law in his newsletter in the winter of 1991: "Before it passed about 50 families were in court, now none are prosecuted. Before it passed home visits were routine, now they are prohibited.

Before it passed homeschoolers were tested in the schools, now they can be tested at home. Before it passed many parents could not homeschool unless they had teaching certificates or at the least 2 years of college, now all can homeschool with a high school diploma or GED. Before it passed you had to get approval to homeschool from the local school superintendent, now you just send in an affidavit by certified mail. Before our law passed the school superintendent decided whether you were properly educating your children. Now an evaluator whom you hire makes that decision. Not only that, the law allows evaluators to be nonpublic noncertified teachers, or to come from within the homeschooling community, and if one evaluator says you are not giving your children an education, you can hire another and turn in the second evaluation. Try firing the school superintendent."

In my humble opinion, I think the "mess" in PA existed before the law was enacted, not as a result of the law. Howard Richman obviously would agree with me. By the way, according to Chris Klicka, HSLDA was not the main player in getting the PA legislation enacted. State leaders there took the initiative on this, and we expressed our opinion that they were giving up too much. There is no question that PA has a law that is too restrictive, and we expect two home schooling dads in the Legislature to sponsor a bill this session to improve the law. Will it give them utopia? No. [This member] says we should have held out for a constitutional amendment or exemption from compulsory attendance. A constitutional amendment would require first that the Legislature agree to submit it to the people, and then the people of PA would have to vote in favor of setting home schoolers free. Even today, it would be impossible to get the people of a state to agree to set home schoolers free in a statewide vote. In 1988, it was unthinkable. Obviously the Legislature was unwilling to do anything close to this. I spent 45 minutes yesterday on the phone with the Christian legislator who will be the primary sponsor of the bill this year. He is a member of the House Education Committee. While he is sympathetic to our desire to rid home educators completely of state oversight, he deals in political reality. We may get a better law there, but we won't even get that if the home school community is divided the way it is now in NY.

Responding to what the LSC said about our legislative effort in Texas, one might get the wrong impression that we proposed a restrictive law there. Actually we were plaintiffs in a class action suit (Leeper case) that sought to have Texas recognize home schools as private schools. The public school officials disagreed that home schools were private schools under Texas law, and so 80 families were being criminally prosecuted for truancy. The legislative history supported our position, and the Texas Supreme Court agreed with us. Several years later we discussed with state leaders there the possibility of codifying the Leeper decision. Chris Klicka drafted some language patterned after the court decision which would not have added one bit more of state oversight than what the Supreme Court had said. After discussing it further with state leaders, it was decided not to try to get this law enacted.

In reviewing the "cons" listed by the LSC, the approach taken by the LSC in developing these is that there is now no law governing home education, so SB 4767 would impose all of these bad things on home schoolers. How I wish this were true. I would join with them in their condemnation of this bill. The fact is that there are laws governing home instruction in NY, one of which is Section 100.10 containing all of the provisions the cons complain about and more. The vast majority of parents conducting home instruction in NY are abiding by the law in Section 100.10 and would welcome relief from the administrative burdens of the regulation. Not only are there administrative burdens of having to compile the IHIPs and quarterlies, but the school districts give them a hard time about what they submit. What Senator Kuhl has done is delete the most problematic provisions of the law as contained in the regulation and given NY the opportunity to become one of the most favorable home schooling states in the nation instead of the worst. All a parent would have to do is give written notice of intent to home school and then submit an annual evaluation prepared by someone the parent chose without the consent of the superintendent. The parent could choose anyone in the world. Folks, that's a good law.

Regarding possible amendments to the bill and Senator Kuhl's motives, I can only say that I believe he showed good faith when he adopted virtually all of the changes I proposed to his draft. Also, any bill is subject to amendment, no matter how favorable it is. Are we going to refuse to participate in the legislative process because of the fear that a good bill may be amended?

I don't think we can count on the Commissioner to change the regulation after the letters I have seen from him in response to Senator Kuhl's request for changes. Maybe he has changed his mind, and I hope he has, but I don't think we should take that chance and not support this bill. Both of these can be working at the same time.

I have had no expectation to change anyone's mind about this bill. But I am sure that this bill will have no chance unless LEAH gives a strong endorsement of it and then works to get it passed. In the end, the analysis is simple—does this bill significantly improve current law? There is no question about it.

Thanks for asking for my comments.

Dee