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# Court Holds California's Homeschoolers in Suspense

BY STEVEN GREENHUT

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Anyone interested in the nearly criminal mismanagement of the nation's government-run schools need only do research on the acronym LAUSD. In March 2006 Los Angeles Mayor Antonio Villaraigosa gave a speech blasting the LAUSD—Los Angeles Unified School District—for its “culture of complacency” and described the dropout problem in the district as “the new civil rights issue of our time.” These aren't the words of a conservative education reformer, but of a liberal Democratic mayor with close ties to the teachers' union. He is the latest in a string of LA mayors who have tried to deal with a school system that's immune from serious reform, not to mention unable to keep students safe.

I offer this as a background to an article on homeschooling for this simple reason: California officials operate some of the worst education bureaucracies in the nation. Yet some officials here are concerned not so much with the government-run schools, but with the possibility that a fraction of the state's students are being educated by their non-credentialed parents at home. This is the “let no flower bloom” approach to public policy, as government officials and public-sector unions react against small private successes in their midst, mainly, I suppose, because of the embarrassment it entails. If for a few bucks a year parents can teach kids who go on to excel in state tests, get accepted to Berkeley, and win spelling bees, then why can't the professional “educators” do as well with \$11,000 or more per student each year taken from taxpayers?

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In California this issue of homeschooling had been dormant for about five years, after the current superintendent of public instruction overruled his predecessor's policy of harassing homeschools. But a February ruling by the state district court of appeal brought back

reminders of the bad old days after it ruled that “parents do not have a constitutional right to homeschool their children. . . . Because parents have a legal duty to see to their children's schooling within the provisions of these laws, parents who fail to do so may be subject . . . to imposition of fines or an order to complete a parent education and counseling program.” The court even issued a threat to parents that they could lose custody of their children if they persist in teaching them at home: “the juvenile court has authority to limit a parent's control over a dependent child.”

This ruling—which stemmed from a Child Protective Services action against a Los Angeles County homeschooling parent accused of physically and emotionally harming his kids—was remarkably broad and viewed by most observers as outlawing homeschooling. My newspaper columns argued that parents had much to fear from the ruling, which could give local school

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districts the rationale to declare homeschooled kids truants. The case needs to be overturned, but two significant things happened in the ensuing weeks.

First, although the California Teachers Association celebrated the ruling, prominent Republican and Democratic politicians rebuked it. Gov. Arnold Schwarzenegger vowed to push for a legislative fix, but he seems unclear on what course his administration is going to take. More important, the superintendent of public instruction, Jack O'Connell, declared that homeschooling is legal and that his department would respect the choices made by homeschooling parents.

Second, in the wake of such political and public outrage, the court of appeal vacated the ruling and said it would rehear the case. It will take months to get a new ruling, but homeschool families are safe for now, and it's likely that any new ruling will be tailored in a narrower manner. Homeschoolers still have reason for worry, though, so it's worth looking closely at how such a basic freedom could come under a sustained government assault.

The good news is that the homeschooling landscape has changed significantly in California in the past five years. In a February 2003 *Freeman* article, I described "California's War on Homeschoolers" under then-Superintendent Delaine Eastin. A teachers' union ideologue (who lacked a teaching credential herself!), Eastin believed homeschooling to be illegal and was dedicated to stamping it out. She argued that parents who homeschooled needed a state teaching credential, even though at the time about 13 percent of public-school teachers in California lacked one.

The problem: California law then, as now, is unclear on the issue of homeschooling. The state has compulsory-education laws that require government schooling for minor children unless they attend private schools or are tutored by someone with a teaching certificate or meet some other narrow exceptions. Foes of homeschooling argue that homeschooled kids don't meet any of those exceptions. But homeschool defenders point

to another section of the education code: "Children who are being instructed in a private full-time day school by persons capable of teaching shall be exempted" from the compulsory-education law.

## Legislation and Unions

In an ideal world (or some place more rational than the California legislature), some sort of legislative clarification would be welcome, but homeschooling families and their defenders have been correctly frightened by such a direct approach. They understand that the teachers' unions, which have much power in both houses of the Democratic-dominated legislature, could easily steer such a "fix" into a direct banishment of homeschooling, which could leave families far worse off than they are now.

So homeschoolers and most school districts—which ultimately decide whether to pursue cases against truants—embraced a sort of "don't ask, don't tell" work-around. Parents registered their homeschools as private schools or enrolled in a private or charter school, then taught their kids in a home-study program. Those who chose to call themselves private schools filled out a private-school affidavit at their local county department of education. The occasional department challenged this, but most did not.

But in 2002 the state Department of Education adopted a change in how parents were required to file those affidavits. Instead of filing with their county education departments, parents were told to file the affidavits directly with the state's department online. It sounded simpler, but homeschoolers got nervous, given the department's position on homeschooling. To make matters worse, Eastin sent a letter to the local departments explaining the state's policy regarding the new private-school filing procedures:

"As generally understood, the term homeschooling describes a situation in which non-credentialed parents . . . teach their own children, exclusively, at home, often using a correspondence course or other types of



Jack O'Connell, California Superintendent of Public Instruction  
Photo by Cyndy Sullivan, North County (Calif.) Times



courses. Defined in this way, homeschooling is not authorized in California, and children receiving homeschooling of this kind are in violation of the state's truancy laws."

Eastin was clear. The "not authorized in California" line is a giveaway. Yet she denied that she was using her post to outlaw homeschooling.

Fortunately, Eastin's term ended soon after this, and she left the state. Although he was noncommittal during his campaign for superintendent, former legislator Jack O'Connell quickly put the kibosh on Eastin's anti-homeschool efforts after he was elected. He said he believed in homeschooling as a choice in education, and homeschoolers have operated in peace until the court decision in February.

The *Rachel L.* case should send shivers down any freedom-lover's spine. Three judges—two Republican

appointees and one Democratic appointee—not only denied that there is any right to homeschool in California, but described education and the role of parents in starkly big-government terms. The case also gives disturbing insight into the state of parental rights in America today.

In giving the case background, the judges explained that the family's eldest child reported physical and emotional mistreatment by the father: "The Los Angeles County Department of Children and Family Services investigated the situation and discovered, among other things, that all eight of the children in the family had been homeschooled by the mother rather than educated in a public or private school."

In a footnote the court explained that one of the explanations the parents offered for not sending their kids to school was that "educating children outside the



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home exposes them to 'snitches.'" The court seems to be mocking the parents here, but Leslie Heimov, executive director of the organization that represented the family's two children in the case, told the *San Francisco Chronicle* that "her organization's chief concern was not the quality of the children's education, but their 'being in a place daily where *they would be observed* by people who had a duty to ensure their ongoing safety'" (emphasis added). So the winning party in the case argued directly that education per se wasn't at issue, only the ability of outsiders to monitor what was going on inside this particular family's home.

### The State's View of Education

The court then quoted the California Constitution, which states: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." Based on that sentence, the court echoed this point from an earlier case: "In obedience to the constitutional mandate to bring about a general diffusion of knowledge and intelligence, the Legislature, over the years, enacted a series of laws. A primary purpose of the educational system is to train school children in good citizenship, patriotism and loyalty to the state and the nation as a means of protecting the public welfare."

Read that again for full effect: A primary purpose of education is train children to be loyal to the state! This is ironic, because when libertarian critics of public education argue that the main goal of public education is not to teach, but to promote the government or to propagandize, we are mocked as extremists. Yet the court's own opinion supports this view.

Here's the court explaining why private schools are acceptable, but homeschools are not, based on what is known as the *Turner* case (1953): "The court observed that whereas it is unreasonably difficult and expensive for a state to supervise parents who instruct children in

their homes, supervising teachers in organized private schools is less difficult and expensive."

The sole focus of the court was the prerogative of government. The above statement is most telling, in that it mentions nothing about the rights of the people and is committed to approving a scenario that is most convenient for the government. Have things really gotten this bad?

But as bad as this case has been, some homeschooling advocates told the public not to worry. They argued that the appeals court's decision here was narrow and only dealt with one family that happened to homeschool through a home-study arrangement with a religious school. One blogger, called Ace of Spades, argued, "If only the parents had attempted to homeschool their kids in one of the statutorily prescribed methods, they would have prevailed." It's just one opinion, of course, but the blog post was e-mailed widely—even by homeschool supporters who wanted to reassure fellow homeschoolers that they had nothing to worry about. But falsely reassuring people is no better than unnecessarily scaring them. Most legal authorities on both sides of the issue, however, agreed that the ruling could spell trouble for the state's homeschoolers.

Those who echoed Ace of Spades' reasoning clearly misunderstand California's law regarding homeschooling. Parents could not simply follow "statutorily prescribed methods" for homeschooling because there are no clear statutorily prescribed methods. The law is unclear, which leaves parents dependent on the latest interpretations of state officials. The court ruling gives ammunition to districts that might want to take a negative view of homeschooling.

By striking down homeschooling through a private-school program, the court attacked one of the main ways parents homeschool in this state. Parents can enroll their kids in private or charter schools, the court argued, but their kids must actually go to those schools and not be schooled instead at home, unless the tutor or parent has a government teaching certificate (some-

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thing few parents have or even would want). No wonder most homeschool families have been alarmed by the decision; it seems to undermine the way most of them operate within the current system.

### The Scope of the Decision

“The scope of this decision by the appellate court is breathtaking,” said Brad Dacus, president of the Pacific Justice Institute (PJI) in Sacramento, which defends homeschool families. “It not only attacks traditional homeschooling, but also calls into question homeschooling through charter schools and teaching children at home via independent study through public and private schools.”

Fortunately, homeschoolers got agitated at the decision and the state’s political establishment reacted appropriately. Right after the decision was publicized, I called O’Connell’s office and his spokeswoman emphasized that the superintendent supports homeschooling as an educational choice.

The superintendent issued a statement: “I have reviewed this case, and I want to assure parents that chose to homeschool that California Department of Education policy will not change in any way as a result of this ruling. Parents still have the right to homeschool in our state. . . . As the head of California’s public school system, I hope that every parent would want to send their children to public school. However, traditional public schools may not be the best fit for every student. . . . [S]ome parents choose to send their children to private schools or to homeschool, and I

respect that right. I admire the dedication of parents who commit to oversee their children’s education through homeschooling.”

That statement was exactly what was needed. It reinforced that the state still considers homeschooling legal, and it was respectful toward the “right” parents have to homeschool. This was great news, especially coming from a prominent Democrat who is running for governor.

Furthermore, the current Republican governor said, “Every California child deserves a quality education and parents should have the right to decide what’s best

for their children. Parents should not be penalized for acting in the best interests of their children’s education. This outrageous ruling must be overturned by the courts and if the courts don’t protect parents’ rights then, as elected officials, we will.”

Then came word that the court would rehear the case.

The outcry against the case has been broad, and news of the court’s reconsideration was well-received. My sense is homeschooling has come into its own in the last few years—so much so that it’s harder to

attack now than it was in 2002, when Eastin was trying to treat homeschoolers as truants. Eternal vigilance remains the key to preserving fundamental liberties. And what is more fundamental to the idea of a free society than the ability to teach one’s children at home without the prying eyes and approval of the state?

Homeschoolers will be watching the rehearing closely.

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# Compromise, Principles, and Politics

BY GARY M. GALLES

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“Public servants” laud compromise as a principled and sensible political course. They call it statesmanship or bipartisanship, and portray it as the path to unity, while roundly criticizing those unwilling to compromise in the desired way. This appeal often strikes a chord with the public. (Leave aside that compromise is usually sought by legislative near-majorities that intend for others to move toward them, rather than the other way around.)

Political reality reveals that the unity argument is a sham. The diametrically opposed things people want government to do guarantees disunity. America cannot be unified about government powers that some consider essential but others reject as unjustifiable. Unity in defense of freedom cannot be achieved when some intend to violate others’ rights to get what they want. How can those who wish to pick pockets and those who are to have their pockets picked unite? As long as government is involved in income distribution, real unity is beyond reach. There is only the question of whose preferences will dominate.

Further, politicians’ self-congratulatory compromise rhetoric glosses over important distinctions. In particular, there are huge differences between market compromises—flexible, voluntary compromises by all whose rights are affected—and political compromises—typically arrangements in which just over half the participants compromise on an agreement to coerce others.

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There are few better illustrations of the distinction between market compromises and political compromises than the legislation governments impose on economic arrangements.

The free market (as opposed to the current mixed economy) is nothing but a name for voluntary, peaceful compromise. For example, in a market negotiation, I may offer you \$5 for an item and you may ask for \$10.

The resulting price we agree on will typically be something in between—a compromise, but unlike political compromises, one without coercion. It is practical. It disturbs no one’s harmony or peace. And as any of innumerable circumstances change, that price can change in response, again without coercion. No less important, everyone whose rights are involved, but no one else, must come to mutual agreement.

## Market Compromise

Unfortunately, the nature of market compromise can be easily misunderstood, especially when misunderstanding is continually promoted by demagogues. During negotiations, when a higher price benefits the seller

more and a buyer less, and a lower price benefits the buyer more and the seller less, it is easy to lose sight of the mutual benefit that drove buyer and seller together in the first place. The apparent win-lose imagery of the

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