



Written by [Dave Bohon](#) on March 21, 2011

NH High Court Upholds Ruling Against Home Schooler

The New Hampshire Supreme Court has upheld a lower court ruling ordering a home schooled girl to attend public school, overriding the desire of the girl's mother that she be educated at home. The March 16 decision came following an extended conflict between the divorced parents of the girl, who were at odds over whether she should be taught at home, as her mother wished, or attend public school, which was her father's desire.



The girl spends the majority of time with her mother, but sees her father on a weekly basis. After the child finished kindergarten her mother chose to home school her, a decision the father disagreed with, arguing that the mother's constant Christian teaching was harmful and his daughter needed the socialization a public school classroom offered. In 2009, a family court judge ruled that the now ten-year-old girl must attend public school, noting that the youngster's "vigorous defense of her religious beliefs" to a counselor suggested that she had not had "the opportunity to seriously consider any other point of view."

In explaining the state supreme court's unanimous decision to send the girl into a public school classroom, Justice Robert Lynn wrote that because the circumstances of the case had caused the parents to reach an impasse in the "exercise of their joint authority" relative to where their daughter would go to school, "the trial court faced a circumstance in which it had to resolve a parenting matter over which father and mother shared joint decision-making authority." Continued the justice, "Both parents enjoy the fundamental liberty interest to direct the upbringing and education of their children. Each parent was equally entitled to the presumption that his or her respective decision was consonant with [the] daughter's best interests."

Lynn wrote that the inability of the two parties to come to an agreeable resolution prompted the state supreme court to order the girl to attend the public school. He explained, however, that while the case included significant religious overtones, "it is not about religion." Additionally, "While it involves home schooling, it is not about the merits of home versus public schooling. This case is only about resolving a dispute between two parents, with equal constitutional parenting rights and joint decision-making responsibility, who have been unable to agree how to best educate [their] daughter."

Attorney John Anthony Simmons of the [Alliance Defense Fund](#) (ADF), the pro-family legal advocacy



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group which represented the mother in the case, argued that religion was, indeed, a core issue in the court's decision. "Courts can settle disputes, but they cannot legitimately order a child into a government-run school on the basis that her religious views need to be mixed with other views," [Baptist Press News](#) quoted Simmons as saying. "That's precisely what the lower court admitted it was doing."

Simmons pointed out that the lower court "held the Christian faith of this mother and daughter against them. Unfortunately, the Supreme Court bypassed this issue and wrote this off as a 'parent versus parent' issue without recognizing the very real underlying threat to religious liberty."

According to BP News, "Simmons argued that the burden of proof was on the father to prove that home schooling was harming the child, and since no harm was demonstrated and the girl was acknowledged to be academically superior and socially interactive even by the court, the home schooling arrangement should not have been altered."

While home school advocates were concerned the case might set a precedent for other courts to force home schooled children to attend public school, Joseph Infranco, senior counsel for ADF, predicted that because the state court limited its decision to the facts in the case, the ruling could not be used "as a battering-ram against religious liberty or home schooling — and ADF will be vigilant to make sure that it's not."

The [Home School Legal Defense Association](#) (HSLDA), which became involved in the case out of concern that it could be used by courts to favor public schooling over home education, emphasized in a press release that the New Hampshire Supreme Court had "flatly rejected that the lower ruling created any such precedent and HSLDA will oppose any efforts to wrongly use the case beyond its limited scope."

Michael Donnelly, an attorney and spokesman for the HSLDA, said that while his group is disappointed that the young girl in the case "is being forced to attend a public school over her mother's — and reportedly her own — wishes," the home school advocacy group was happy that the court had confined its ruling to the specifics of the case, "avoiding any collateral impact on the rights of other parents in New Hampshire who home school their children. While the lower court's decision could have been read to create a presumption in favor of public education over home schooling, the court emphatically rejected this notion."

Photo: New Hampshire Supreme Court



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