Report of the Minority
Regarding Bill S4767

LEAH Legislative Standing Committee

PREFACE

It is customary practice for a committee to deliver the results of its work to its Board in the form of a report. When a committee is unanimous in its recommendation, the nature of this report is straightforward. However, in many situations, the committee may reach a split decision as to its recommendation. In the case of a split decision, it is appropriate that the committee submit a report that reflects the nature of its findings, and that proceeds to show how the sum of those findings supports its recommendation. However, it is the right of the Board to know why its committee was not unanimous, in order to know both sides of the issues so that it can fully consider the question before it. Therefore, it is the duty of the minority to ensure that its views are enunciated to the Board, to fully explain how and why they believe the evidences and findings support their minority recommendation. Therefore, it is customary (and described in Robert's Rules of Order) for the minority of the committee to present its views in a minority report.

It is in this spirit that the undersigned offer this Minority Report. In offering it, we do not seek to question the members of the majority as to their motives, sincerity, or their commitment to home education. Obviously, we do question the validity of their analysis and the wisdom of their recommendations.

We do ask that you carefully and prayerfully consider both the Report of the Committee and the Minority Report before coming to a conclusion. If you have any questions, please feel free to contact us. Likewise, we are confident that members of the majority also stand ready to answer your questions.

Respectfully submitted,
Rich Stauter
Pam Stauter
May 17, 2001

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INTRODUCTION: The Timing of a Bill

We are at a great point to jump off with this bill before us, especially in light of its sponsor, Senator John Kuhl, Chair of the Senate Education Committee. This bill gives us substantial decrease in regulations that we've sought since the inception of the 1988 Regulations— things which neither the HIAG Group nor the requests to the Commissioner have succeeded. The Senator has elicited feedback from homeschoolers, and heeded requests in the drafting of this bill – he has been attentive. In New York there is no chance for a bill to be amended in discussions unless the sponsor (Senator Kuhl here) signs off for it. This means that the bill is what the sponsor makes it, all the way through the process. We have a legislator who offered to work on this, went to the State Ed. Department, Commissioner Mills, and requested change for us, then took matters into his own hands and drafted a bill; would we want to trample his offer underfoot ungratefully? No matter how gracious we would be in declining his work, he may well have a jaundiced eye towards future requests from us. He and his staff are well aware of our constitutional concerns, and have assured us that there is not an issue here that would preclude the possibility of making that case later. Some have questioned what Senator Kuhl's motivation is here, but it really doesn't matter what the motive is – the heart of the king is in Lord's hand, and God is willing to work through our government leaders. **In point of fact, this timing may be perfect – Senator Kuhl is again advancing his bill to raise compulsory education age, so he may be quite interested in advancing a cause for us, as we've been a major faction against that pet project of his.**

God has provided providential timing for chance and appointed meetings of legislative committee members, Duane Motley, and members of Senator Kuhl's staff and even Commissioner Mills to help us see that God has watched over steps. For instance, we know that Mr. Mills is very interested in testing, whereas this bill makes testing just an option through all grade levels. HSLDA has given counsel and is strongly in favor of this bill; they note that this would make New York one of the best states in regulatory level, rather than the worst. HSLDA also views this bill as an important increment towards getting total emancipation.

There is a chance that Commissioner Mill's tenure will end soon; we don't know if his successor would be better or worse for homeschoolers? If we have our oversight addressed in statute rather than regs, we won't be at the mercy of a commissioner who can just change the regs at his whim, today, tomorrow or never. Statute has a mechanism of redress that is absent in regs, and plainly a good statute is much safer for us than bad regulations. Furthermore, lawyers have analyzed that the Constitution argument might even be stronger if there is an actual law/statute in place to challenge, rather than the easily amended regs.

Bottom line, as a summary, this bill is within the goals of LEAH, and would do the following:

- **No Individualized Home Instruction Plan (IHIPs);**
- **Eliminate required courses at all grade levels;**
- **No quarterly reports at all;**
- **Permit the alternative method of evaluation (instead of standardized testing) every year;**
- **Permit parents who wish to test their children to choose any nationally-normed standardized achievement test, in addition to a State Education Department test or another approved test;**
- **Eliminate the requirement that the local superintendent consent to the person who administers a standardized achievement test or who conducts the alternative method of evaluation;**
- **Lower the minimum standardized test score from above the 33rd percentile to above the 23rd percentile; and**
- **Eliminate the provision for home visits while a home instruction program is on probation.**

Frequently Asked Questions on New York S4767
A Bill to put Home Education into Statute

1. What would this bill do for home educators?

A. Senate Bill 4767 would make the following changes in the current law:

1. Eliminate the requirement of an Individualized Home Instruction Plan (IHIP);
2. Eliminate the requirement of quarterly reports;
3. Eliminate required subjects at all grade levels;
4. Permit the alternative method of evaluation (instead of standardized testing) every year;
5. Permit parents, who wish to test their children, to choose any nationally-normed standardized achievement test, a State Education Department test or another approved test;
6. Eliminate the requirement that the local superintendent consent to the person who administers a standardized achievement test or who conducts the alternative method of evaluation;
7. Lower the minimum standardized test score from above the 33rd percentile to above the 23rd percentile; and
8. Eliminate the provision for home visits while a home instruction program is on probation.

2. Who supports Senate Bill S4767?

A. Home School Legal Defense Association (HSLDA), CHELA (Christian Home Educators Legislative Association), Greater Rochester LEAH, Syracuse LEAH, Rev. Duane Motley of New Yorkers for Constitutional Freedoms, and various independent homeschool church-based groups/ministries.

3. Who opposes Senate Bill S4767?

A. Seth Rockmuller, respected homeschooling father and NY attorney, who is head of the ALL-PIE group, as well as various individual homeschoolers.

4. What is the government's basis for any oversight of home education?

A. The basic answer is two-fold: constitutional and case law (which have both contributed to legislative initiatives). The federal constitution reserves back to the states on any matter of education as it is not addressed explicitly, but the New York Constitution (unfortunately) does not prohibit the state from regulating education done in the private sector. The four main pertinent court cases are:

- Yoder v. Wisconsin – found that the state has a compelling state interest in two areas: literacy and self-sufficiency
- Packer Collegiate Institute v. The University of the State of New York – found that the **legislature**, under their police power, has a limited right to regulate private sector education in the public interest.
- April 1988 Blackwelder Family Court – dismissed charges against the family, but also ruled that home visits were constitutional
- June 1988 Blackwelder v. Safnauer in Federal Court – the pre-1987 intrusive practices of the state were found to be constitutional interpretations of homeschool oversight. The court did not even agree to void its decision when the new (current) Regulations came out on that very same day. (The judge did rule against the Blackwelder and Standish families.) These new Regs thus became a new "safe haven" for all homeschoolers who follow them.

"…the 1948 decision of the New York Court of Appeals in Packer Collegiate Institute v. The University of the State of New York which you sent us… does not support your position that

the State has no authority to regulate private education. In that case the court declared unconstitutional a statute authorizing the Commissioner of Education to regulate private schools without any standards or limitations in the statute. The statute in question was unconstitutional because it delegated legislative power to the Commissioner of Education. The court said that the Legislature must formulate standards to govern the exercise of discretion by the Commissioner. Citing the Pierce v. Society of Sisters case, the court said that the Legislature, under the police power, has a limited right to regulate private schools in the public interest." From HSLDA letter, April 24, 2000.

There are further cases cited in the LEAH Regs Manual, third section.

5. What is the basis for legislative oversight then?

A. From Dee Black of HSLDA: "It is also well settled that even though a state may regulate through a state agency or official, it cannot do so without express authority from its legislature. In this case, there must be some statutory basis for the Commissioner of Education's promulgation of Section 100.10, or this regulation of home instruction programs in New York is invalid. I believe the required statutory authority is present in Section 3210 of the New York Statutes."

"Section 3210, from which the Packer case arose, also has language in a different subsection which is part of the basis for the home school regulation. The home school regulation cites this statute as part of its authority to regulate home instruction. Subsection (2)(d) of 3210 authorizes the State Education Department to promulgate regulations approving instruction elsewhere than at school which are "substantially equivalent in amount and quality to that required by the provisions of part one of this article." Part one has to do with compulsory attendance, instruction by competent teachers, and instruction in prescribed courses. I believe this is sufficient statutory authority for the home instruction regulation…"

6. Does the US Constitution help us towards complete freedom?

A. No -- The US Supreme Court has ruled that the state has an interest [compelling state interest] in two areas: Literacy and Self-sufficiency. The state can require from parents to that extent. It may be that the NY Regs are more than is necessary to meet the state's compelling interest. S4767 is a step to get back towards the minimum of what is necessary to meet their compelling interest.

7. Does the New York Constitution helps us towards complete freedom?

A. No. Quoting Attorney Dee Black:

"As a threshold matter, we need to consider the difference between the basis for federal legislation and the basis for state legislation. Because of the Tenth Amendment to the United States Constitution, the Congress is limited (theoretically at least) to enacting laws based upon the express authority to do so in the other provisions of the Constitution. States have no such restraint on their authority to legislate unless the state constitution expressly limits this authority. States have the inherent authority to legislate based upon their police power.

"New York's Constitution contains no provision prohibiting the Legislature from passing laws governing private education. The constitutional history … containing statements made by members of the Committee on Education during the 1894 New York State Constitutional Convention do not indicate anything to the contrary. <u>While there is</u> a clear expression of the right of parents to educate their children themselves, there is no statement that it was ever intended that the State <u>could not regulate this or any other form of private education</u>. As you know, in Wisconsin v. Yoder the U.S. Supreme Court determined that the state's interest in

education was two-fold: *literacy and self-sufficiency*. Clearly, a state may pass legislation regulating private education within these parameters unless there is a state constitutional provision prohibiting it. Given the current state of the law of the land and the absence of proscriptive language in the New York Constitution, no one could successfully argue that New York does not have the authority to regulate private education."

8. Are the New York home education regulations more like guidelines or more like law?

A. Section 100.10 is part of the Regulations of the Commissioner of Education. It is regulatory law. If these regulatory provisions were merely guidelines, we would not recommend that our members comply with such burdensome provisions. Those who elect not to comply with the regulation are faced with demonstrating teacher competency and substantial equivalence under Section 3204 of the NY Statutes. The Blackwelder decision prescribed how this is to be done. This is why Mike Farris has characterized the regulation as a "safe haven," because it avoids having to do all that is involved in Blackwelder.

9. Did LEAH (NYS Loving Education At Home) ask Senator Kuhl to introduce this legislation?

A. No. Paul Matte of LEAH did work with Senator Kuhl's office for a year to have the State Education Department's Commissioner Richard Mills reduce the current regulations, and had also submitted language to Senator Kuhl for legislation to exempt home educators from compulsory attendance, but he did not ask for this legislation per se.

10. Why is Senator Kuhl authoring legislation to help homeschoolers?

A. That would best be asked of Senator Kuhl. The senator did hear from many homeschoolers during the past two years over issues such as sports legislation concerning homeschoolers, and total exemption, and the raising of the compulsory attendance age. He did contact Commissioner Mills with requests to diminish the regulations, unsuccessfully.

11. Does HSLDA have a vested interest in supporting this bill?

A. No. Dee Black of HSLDA writes: "Our vested interest would be to oppose it, not support it. Legal problems are what give us job security. I spend about 30 % of my time dealing with NY problems alone. If this bill passes, then I will be looking for additional work to do. But preserving job security is not what we, as Christians and advocates of freedom for home educators, are about. When I came to work here 10 years ago, Mike Farris told me our goal was to work ourselves out of a job by eliminating all legal problems for home schooling. We have consistently tried to do that. Supporting Senator Kuhl's bill is part of that effort. New York can go from the worst legal climate in the nation for home educators to one of the best. We think this is worth supporting."

12. Since HSLDA sees a fair amount of the current problems that home educators have within New York, what do they have to say on this bill?

A. Dee Black of HSLDA writes, "The legal problems I deal with almost always have to do with provisions in the regulation being deleted in Senator Kuhl's bill. Occasionally I will run across a problem with something like whether a child is of compulsory attendance age, but probably 95% of what I spend my time doing in helping our members with legal problems has to do with IHIP's, quarterlies, required subjects, and annual assessments. If Senator Kuhl's bill passes, all this will go away."

13. What is the "constitutionality argument" that has been advocated?

A. Based on writings of the New York founders, especially in the deliberations of the 1894 NY Constitutional Convention, there are quotes to show that the founders did not explicitly state that home education was allowed, because that was a known practice of the time and was an

unnecessary addition. Find more at: www.open_ny.tripod.com. To be noted: the founding fathers did not say that the practice of home education was to be completely unregulated.

14. What is the incremental view of getting to total emancipation, which supports S4767, but also the Total Emancipation/repeal of compulsory attendance at the same time?

A. Chris Klicka of HSLDA writes, Spring 2001 (emphasis added):
"Our goal at HSLDA is to always move forward **toward the goal of ultimately repealing** the compulsory attendance laws. In all of our legislative positions, we have worked and continue to work on rolling back the state's interest in education further and further **until it is a baby step to repeal the compulsory attendance altogether.**

"No state is ready to repeal their compulsory attendance law at this point. Much education of the legislators has yet to take place. However, we can gradually change the laws to lift the controls over home education in the meantime to help families. That is how, by God's grace, we got this far in our fight for freedom.

"When I started working at HSLDA 15 years ago, it was only clearly legal to home school in about 5 states. Now after many court cases and many legislative battles we handled, we contributed significantly to the present legal atmosphere. In our daily work, we continue to maintain that freedom which is regularly being challenged by the NEA and other public school organizations."

"The battle in which we are engaged is intensely practical as we work to preserve parent's right to train their children at home. We fought hard to win the right to home school and now we have to work hard to maintain it. So far we have been successful in all 50 states in preserving the gains we have made."

"Of course we have not done this alone. The members in HSLDA, state home school organizations, and the many home schoolers who have made calls to their legislators have made these gains possible in the first place.

"We would love to pass laws like Alaska's or Michigan's in all states. But it will take time and a consistent and united effort. At the same time, we work in each state battling individual superintendents, social workers, truant officers, prosecutors, and even judges who exceed the law. It is hard work but needed because families need us now to continue to home school.

"To argue in court that the state has no compelling interest will lose cases for our families at this time. The courts are not ready. God calls us to be wise as serpents and as gentle as doves.

"As I have traveled around the world in the last few years and helped many home schoolers in many countries, I can say with confidence that we are the freest country on earth. We are looked upon by the other countries as the beacon of liberty to home school.

"In my books, "Home Schooling: The Right Choice," and "The Right to Home School" available on our web page, I articulate HSLDA's goals and achievements and discuss the state's compelling interest. Also on our web page (www.hslda.org) we have a section on the history of HSLDA in the area of legislation and cases."

15. Why are some homeschoolers opposed to passage of S4767?

A. Reasons come down to statements that reflect the following:
- We're building a community based on working for total emancipation, and we haven't all agreed to this yet.

- Negotiate with Senator Kuhl--don't just take the first offer.
- If home educators get this amount of freedom, they won't fight for total emancipation later.
- Do these things on our timetable, not being dictated to by Senator Kuhl or others
- Working on this bill at all undermines the whole basis of the constitutionality argument--that there should not be any oversight of home education ('sovereignty of the home').
- Some feel that S4767 is an unconstitutional bill and should not be acted on.

16. How is it that some people feel that S4767 is an unconstitutional bill and should not be acted on?

A. The following is a compilation which reflects the beliefs of those who believe that S4767 is unconstitutional: "If the law in NY banned homeschooling would you break the law? Remember that our argument is bolstered by the constitution (ultimate law), federal district court decision, and US Supreme Court decisions. Those who don't comply with the regulations and submit the paperwork are not breaking the law, but rather upholding it! You don't uphold the law by submitting to unlawful laws! The entire point of our constitution is to protect liberty and provide a bench mark by which subordinate law is measured. If we do not uphold constitutionality of every single level of law, we support the idea that expedience is the rule - rather than keeping the constitution as a standard. Being practical is not the bottom line; a law (S4767) is either constitutional or not, rather than it's more constitutional or less constitutional. I also realize that the NY leg does not spend much time considering this point - they figure that it will get ruled on by the courts eventually. I find that irresponsible - they are each sworn to uphold the constitution. It's not a little bit wrong that the state would have jurisdiction over private/home/religious education - it is WRONG. And it just isn't in us to say, Wow, thanks Senator Kuhl for 'allowing us' to live under a system that's a little less wrong."

NOTE: See Question # 21 on the process of getting a NY Constitutional Amendment.

17. Would S4767 preclude the possibility of getting constitutionally-based total emancipation from oversight?

A. No. HSLDA, Senator Kuhl, Rev. Duane Motley**,** and other legal counselors all concur that there is not a basis for this concern. Some of the reasoning has been that if homeschoolers had advocated for the bill, then they couldn't later question the underpinnings of its existence. Practice in our society does not bear this fear out. Also, if new evidence is found to bolster constitutionality concerns, we can then develop the fact that we have discovered new case.

18. Would having this bill argued for undermine the whole premise of the constitutional approach?

A. Constitutional rights cannot be eliminated by passing a bill, they remain in the Constitution. It stands regardless. It can be ignored, neglected, but after all is said and done, the Constitution is still there. It cannot change (unless we amend it by set procedures). When enough legislators and judges have been convinced to do their duty and not neglect or ignore the Constitution, then unconstitutional laws and regulations will be repealed (including S4767 if it really is unconstitutional).

19. What if the current regulations are found to be unconstitutional? (Wouldn't we be better off waiting for this to be tested than getting a bill now?) Attorney Seth Rockmuller has stated that there is a double chance of showing that the regs are unconstitutional, but only a single chance of showing that a statute would be unconstitutional.

A. It would be likely that many (teachers' unions, etc) would simply rush for a statute, thus putting us right where we are now anyway. Mr. Rockmuller was also plain to state that the problem is lack of Statutory Authority, not Constitutional Authority. **This enhances the plight we would be in then, that without regs or new statute, we would be back at the Blackwelder status (home visits, proving teacher competency, proving substantial education equivalence).**
B. Mr. Rockmuller wrote: "For legislation to be constitutional, it must simply be not inconsistent with the constitution. For a regulation to be constitutional (valid), not only must the law relied upon be constitutional but the law must also provide sufficient authority for the regulation - two hurdles instead of one. In challenging a regulation, you can make both arguments, and success on either would invalidate the regulation.**"**

20. Could New York get a constitutional exemption such as Oklahoma has for their homeschoolers?

A. Dee Black of HSLDA writes, "If New York wants to get a constitutional exemption from the state's regulation of private education, then it would require a constitutional amendment. Mike Farris reviewed the Oklahoma constitution's language and found nothing prohibiting the state from regulating private education. Our summary of the law for OK should be clarified to indicate that the State Department of Education may not regulate private education because it has been given no authority to do so. The rule is that a state legislature may regulate private education under its police power unless there is an express constitutional provision prohibiting it."

21. How could New York get a constitutional argument advanced?

A. A direct constitutional amendment requires two successive NY legislatures to vote for it, and a popular vote of New York citizens to ratify it.

Apart from a Constitutional amendment there are two primary ways in which a constitutional argument could be raised:

- One is to challenge the law judicially once enacted.
- Attorney Seth Rockmuller writes: "The second is to make a constitutional argument to the legislature. This could be done by arguing against the enactment of the statute or by arguing in favor of a statute that explicitly recognizes the constitutional limitations on the authority to regulate home education. Practically speaking, the second route would no longer be available once the law is in place; I don't think you would be able to get the legislature to reconsider the issue of home education once they had acted in the area. Thus, you would be limited to a judicial challenge."

22. Why don't we hold out for the level of regulation that the private, non-registered schools have?

A. In the Packer decision, 1948, it was determined that it isn't clear what statutory oversight the SED and Commissioner have over these schools. The practice has been that these schools go through oversight and approval by local school districts at their inception (including curriculum and results), and then are largely forgotten and allowed to function on their own. Rev. Motley works with these schools. It is not clear that home educators would be ahead by having our programs scrutinized for curriculum and results for the inception period, especially in light of relying upon getting "forgotten." Legislators and officials might argue that homeschools should have less oversight than private schools, or maybe more oversight.

But especially there is the fact that the Packer v. New York decision said (emphasis added): "Private schools have a constitutional right to exist, and parents have a constitutional right to send their children to such schools. (Pierce v. Society of Sisters, 268 U.S. 510). The

Legislature, under the police power, **has a limited right to regulate such schools** in the public interest (Pierce v. Society of Sisters, supra; Meyer v. Nebraska, 262 U.S. 390)." This ruling made plain that the state of New York does have the right to regulate education in the private sector in the public interest. It would be our burden as homeschoolers to help convince that the public interest can be lessened incrementally over time.

23. Is it true that we homeschoolers would not be able to fight a home education statute if we urged it?

A. NO. The home educators would not have written them. Further, there may be advancing knowledge that will help to show that the constitutionality argument can be compellingly made with legislature and/or courts. Furthermore, we are producing a paper trail that clearly shows that our reservation is that we are interested in constitutional rights.

24. Is there a danger of changing the oversight of home education from SED regulations to statute done by the legislature?

A. First of all, both are treated as law. If you are found to be not in compliance, the same enforcement happens. Additionally, the court views them both the same as far as enforcement. The other place that courts would look to would be case law, such as Blackwelder v Safnauer, which gives a 'safe haven' from prosecution if the family is complying with the regulations. HSLDA's view is that this bill would give us a 'safer haven' than the current regulations do. This is because this bill removes the danger, that is, the pre-Blackwelder laws.

25. This law would be enforced more stringently than the current regs are enforced.

A. This argument is only a problem for non-compliers. If you are not complying now, or wouldn't be under this proposed bill, you should be prepared for legal enforcement. HSLDA membership is a recommended precaution – they will accept membership from non-compliers. However, it is also to be noted that there is some doubt about the assertion of this premise.

26. Current regulations aren't mandatory, but are written as "a basis" (rather than "the basis") for determining if home education is equivalent and that teacher(s) are competent. Thus a homeschooler's standing is stronger under the regulations than under a statute.

A. This is untested in the courts. The next questions should be, "What other basis would the home educator be using?" and, "Would the courts accept their basis?"

27. Would Senator Kuhl amend S4767 now that it is out?

A. It is possible. It should be noted that only the sponsor of a bill CAN amend it in New York (as opposed to the practice at federal level or in other states). Some have suggested that a strong change would be to only require a one-time notice, rather than yearly.

28. Bill S4767 still values testing; unschoolers particularly don't like testing.

A. The bill has clear provision for "alternative testing" through grade 12, which the current regs do not have. Furthermore, the district does not have the option of "consenting" to the test option that parents choose, as is the case with current regulations. Also, parents may choose themselves or any "other person" (not limited to a certified teacher or peer review panel) to do the annual assessment write-up about their student(s). In other words, parents have much more freedom under this bill than current regulation.

29. What if the test-writers change the test over time? Couldn't they just change the law to reflect it, and the tests might get away from math and grammar and become all social sciences, etc.?

A. Dee Black of HSLDA writes:

"Regarding this testing question, I suppose that the basic battery could be changed to include science and social studies, but I think this is very unlikely. I just spent 4 days in San Antonio serving on a bias review panel for a standardized test being developed by The Psychological Corporation. While there, I found out that one of the versions of the Stanford Achievement Test was developed for Christian students. So there are accommodations out there for us in the event testing became mandatory, as it is now in grades 9-12. Also, HSLDA would challenge as unconstitutional any effort to require testing of home school students to indicate compliance with any state standard of learning standards based on a public school curriculum. That would effectively destroy private education."

30. What is the difference between fundamental right and inalienable right?

A. The term "inalienable rights" is found in the Declaration of Independence in which it is said that these include such things as life, liberty, and the pursuit of happiness. While generally considered to be something that can't be taken away, obviously such inalienable rights can be taken away by the government. People who have received the death penalty for crimes have been deprived of life, liberty, and the pursuit of happiness. (Courts generally do not use the terminology "inalienable rights" in discussing constitutional rights -- they are either considered to be fundamental rights or ordinary rights.) Fundamental rights are protected by law but are not absolute; such as a right to free speech is limited should you cross the line to slandering another. Some feel that parents should have free reign in their sovereign homes – to do as they see fit/or not with their own children. However, this could also include child abuse, for example.

31. Can anyone guarantee that we aren't irrevocably trampling the chance of a constitutionality argument?

A. Senator Kuhl, the lawyers of HSLDA, Rev. Duane Motley of NYFRF all agree that this is not a problem. Going through Attorney Seth Rockmuller and Attorney Scott Perkin's notes did not reveal any danger either. In fact, Seth Rockmuller's and Attorney Chris Klicka's assessment is: If there are only regulations, not statute, then there isn't something concrete to go to court over.

32. When will this bill be voted on?

A. It is not clear when this bill will be acted on. It is currently at the Senate Education committee, being sponsored by its chairman, Senator Kuhl. No amendments can be made unless he approves of the amendments. Once out of committee, the whole Senate will need to act on it, as well as send it to the New York Assembly. This may take more than one year to pass.

33. How can I follow the progress of this bill ?

A. You can see the internet posting of progress at: http://assembly.state.ny.us/leg/, enter "S4767" in the appropriate place (without quotation marks). You may also phone the bill status hotline in Albany, at 1-800-342-9860.

34. What can I do to support this bill?

A. See HSLDA's attached alert. It is not likely that this bill will pass unless there is a groundswell of support from home educators.

35. What can I do to oppose this bill?

A. Call your legislators and tell them why you are opposed to the bill, stating that you want more freedom, unless of course you are satisfied with the current regulations.

Refutation of the Assertions and Opinions of the Majority

"But everything should be done in a fitting and orderly way." I Cor 14:40

Basically we all want the magic bullet that will give us full freedom. But the magic bullet doesn't seem to be around. Should this bullet become available, we'll be very happy to shoot it, because we are not ruining its chances by getting S4767 enacted.

The Legislative Standing Committee has had an animated discussion on the merits of this bill, on the process of getting any bills passed, and even about what the current state of affairs is. We think that it is fair to say that one basic premise may separate the majority view (against the proposed bill) from our minority view (for the proposed bill): Is this a legitimate step in the march towards freedom?

This document is divided into the different areas that we felt we really differed from the majority, and we explain why. We first attempt to explain their view primarily using their own words or summations of their comments, and then give refutation. We will give the assertion, and then answer from our viewpoint.

I. ERRONEOUS LEGAL INTERPRETATION

A. Codification is a new thing

The majority view is that our current regulations are not at the level of law, but are more so at the level of guidelines, and as such they are not so diligently enforced, nor is there much risk of arrest or fines. When the majority did deviate and say that the regs are law, they called it *"subordinate law"* under the level *of "superior law,"* this latter being actual statutes that the Legislature (Senate and Assembly) has passed. They, therefore, felt that this bill was establishing authority of the Legislature and the school districts over the home schools, and that it imposes [new?] standards and procedures over us. They also felt that it would [newly?] interfere with parental rights.

One of the more colorful remarks came from them on concerns about *'getting newly put under law:' "Eliminates IHIPs, quarterlies, etc?. This offers but a crumb of supposed freedom, while making the remainder of Regs into statutory law. It is not worth the trade. Why not stick our necks in a noose?"*

Now indeed, we wonder why anyone is complying at all if indeed there is no current authority of the school districts over our homeschools? We would further note that most of us comply with yearly notice, then IHIPs on each child, then quarterly reports, then annual assessments. If these things are not done, you might get a visit from the truancy officers and/or police. Our point being, of course, that we are currently under scrutiny and answering with accountability for where our children are receiving their education, what subjects they're covering, the quarterly reports are supposed to be determining that we've covered 80% of expected material, and then the annual assessment is designed to assure the state that progress has been made. In speaking with HSLDA, they assure us that what we have currently is law, as they would never recommend this level of burdensome work if it were merely 'guidelines.'

The simple fact is that Blackwelder (the federal court case) firmly established that the former pre-1988 guidelines were constitutional, and the fact that the court ruled at all establishes it all as law. It is law, not suggestions, or musings or anything but law. When we asked Dee Black about whether the regs are law or not, hear his plain answer: "Section 100.10 is part of the Regulations of the Commissioner of Education. It is regulatory law. If these regulatory provisions were merely guidelines, we would not recommend that our members comply with such burdensome provisions. Those who elect not to comply with the regulation are faced with demonstrating teacher competency and substantial equivalence under Section 3204 of the NY Statutes. The Blackwelder decision prescribed how this is to be done. This is why Mike Farris has characterized the regulation as a "safe haven," because it avoids having to do all that is involved in Blackwelder."

Paul Matte did assert that, *"The Regulations were cast in CLAY; The Statute will be cast in CONCRETE,"* meaning that regulations can fairly easily be changed, in fact at the whim of the Commissioner at any time. It is true that the Regents would cover his action with a vote affirming his action, but it is generally a rubber stamp move. Statute cannot so easily be changed – which has both good and bad aspects, of course. Consider this basic logic: If you have a good bill (such as S4767 is currently written), then the stable statute from it gives you much more security than bad regulations; conversely a bad bill/statute would be worse than 'good' regulations.

B. Private School Comparison; They do have state oversight

The Constitution-Only folks kept calling for homeschoolers to have just the same amount of oversight as the non-registered non-public schools*, "have NO restrictions, NO accountability at all. We should have the same opportunity;"* and *"Should be as non-public, non-registered (NP NR) schools: one notice for life of program."*

The very basic problem with this argument is that it is just plain not true. Rev. Duane Motley works regularly with these schools and explains that they have an inception period where their curriculum and results are looked at fairly closely, but then they are largely forgotten. Notice that they can get "remembered" again though!

Our main point would have to be from the 1948 Packer v. State of New York decision that determined (emphasis added): "Private schools have a constitutional right to exist, and parents have a constitutional right to send their children to such schools. (Pierce v. Society of Sisters, 268 U.S. 510). The **Legislature**, under the police power, **has a limited right to regulate such schools** in the public interest (Pierce v. Society of Sisters, supra; Meyer v. Nebraska, 262 U.S. 390)." This ruling made plain that the state of New York does have the right to regulate education in the private sector in the public interest. It would be our burden as homeschoolers to help convince that the public interest can be lessened incrementally over time." This is actually based upon the same law section (#3210) that is the introductory section of bill S4767.

C. Do Local Officials have a conflict of interest?

The Constitution-Only group did not care for the route that any appeals processes would follow, saying that, *"[It] allows for administrative due process by parents to the school district and SED Commissioner, then to the courts. All 'proper channels' are within the state system which all have vested interest. Like playing against a stacked deck of cards."*

With tongue in cheek, we suppose that we could refer all appeals cases to the sewer commission? While there may not be a perfect place to take appeals, the existing educational system does seem a logical route to follow. Should a family be aggrieved, they certainly have the right to retain legal counsel and pursue judicial redress at any point.

D. Child Protection Services isn't included in the Bill

There was concern expressed that this bill didn't have Child Protective Services included in the bill. The concern was that the CPS's abuse of the family should have penalty for any abuse.

We would respectfully point out that the current regulations certainly do not mention such concerns, nor would we expect them to do so. This is an education bill, and after trying to cleave social services from education for years, we just would not advocate for its inclusion here.

E. School Officials Abuse isn't included in the Bill

"[This bill] … does nothing to reduce the conflicts that will arise as more homeschoolers choose the subjective assessments."

Much like the previous section, this is largely a matter that is a process issue, it's not particularly required to be covered by this legislation. It certainly isn't covered in the current regulations. If Senator Kuhl was willing to entertain amendments we could certainly suggest this.

F. Takes Freedom away

The majority felt that S4767 would not allow the parent freedom to take responsibility for their children, and*, "imposes the local common public school model on diverse and individually derived educational programs with the assumption that educational quality can be determined by hours per day or year and number of days."* Also, *"Parental authority is amply recognized by courts. State oversight is not given to NR,NP schools."* And lastly when we pointed out: "This bill is not perfect (not even Total Emancipation would be);but this is a vast improvement from current state of regulation;" their answer was: *"Total emancipation would return the responsibility to the parents where it has always belonged."*

First of course, we've covered that the non-registered non-public schools are covered in law (1948 Packer decision). Next we'd ask common sense questions: how many of us have felt a real lack of control or responsibility about their children and their upbringing

under the current regs? Have you been denied anything that you thought that you should do, or ever been required to do something that was against God and His commandments? Are you able to worship as you see fit, and teach the doctrines that you want them to know?

The Constitution-Only folks felt that S4767, *"Violates the bounds set by the intent of Article XI Section 1 [New York Constitution] as explained by the framers of that section (local common public school 'does not interfere directly or by implication' with the right of the parent)."*

We would point out that as much as we aren't required to do evil, nor prohibited from doing good with our children, we have much better control than we would if our children were in the public schools. Furthermore, the New York Founding Fathers who extolled the practice of homeschooling did not ever mention or argue that such schools should be without any oversight. The Bible does teach that government exists to reward the good and punish the evil-doer. This seems to imply some level of accountability. Although the family was established in the beginning as the preeminent human authority, since the Fall in Genesis 3, we have had the institutions of the church and the state that have helped to keep accountability. (We have included an appendices that contains some thoughts on the Fifth Commandment.)

It is claimed that our parental rights are under "attack" in 2001 not because we have to commit or omit anything against our God-given conscience, but because we inform the civil magistrates about a minimal accounting of our time and education. This accountability is a basic function of Church or government. Our preference is that we would wean the government overseers from the current level of oversight, but both Scripture and the two Constitutions assert and/or allow that there is accountability: "compelling state interest" on federal level; "in the public interest" on New York level; "16 Live as free men, but do not use your freedom as a cover-up for evil; live as servants of God. 17 Show proper respect to everyone: Love the brotherhood of believers, fear God, honor the king. 18 Slaves, submit yourselves to your masters with all respect, not only to those who are good and considerate, but also to those who are harsh." (1 Peter 2: 16-18)

While we do not now expect to figure out exactly where oversight level will be drawn, we do think that S4767 is a legitimate and good step in the march towards freedom.

G. Might preclude constitutional argument (or: hurry this to court as there is now a statute)

"How do you argue in court that the bill you supported is unconstitutional? That is HSLDA's problem with arguing against the Regs." Also: *"Violates the bounds set by the intent of Article XI Section 1 as explained by the framers of that section (local common public school 'does not interfere directly or by implication' with the right of the parent). Violation means bad law. Why ask legislature to violate the Constitution and then want to argue the point later."*

We would respectfully point out that it does not appear to be a Constitutional concern present that we would be violating. If there were, we are not actually prohibited from arguing it – we can point out that we have had new evidence come to light (which would be ideal!) and keep a paper trail that shows we had the concern about constitutionality all along. We have been assured by "the counsel of many" that there is not a danger of precluding the constitutional argument. The majority failed to prove this argument because it simply is not accurate.

Furthermore, if our goal is to ultimately get to the point of challenging oversight, then what exactly are we going to challenge? Especially if you have argued that the current Regulations are merely guidelines? Wouldn't they simply be changed? But if a statute is in place, there is fodder for a lawsuit. While not an advocate of having new statutes, Attorney Seth Rockmuller did note, "Clearly, you could still raise the issue that the statute is unconstitutional on its face once it is enacted; in fact, there would be nothing to challenge prior to its enactment."

II. PHILOSOPHICAL: no oversight

The Constitutional-Only folks seem not to want any oversight of home education whatsoever – if children are illiterate as adults, then so be it. This goes to the view that each man is sovereign in his home, and the family being the first institution in Genesis. A prevalent view of S4767 was, *"Retains State oversight of a parental responsibility; is not the ideal;" and "It does not protect freedom as originally sought."*

We might disagree with our worthy majority, in that church and government are also institutions of God's working – that they exist for rewarding the doer of good and punish the evil-doer, rulers are there "to do you good…he is God's servant" (Romans 13:4), and that we are to submit to these governing authorities. The tension will always be in finding that point of being "just right." We feel that S4767 is a big "bite of the elephant" towards getting little oversight, and it is being sought by respectful appeal in a decent and orderly fashion which retains the testimony of honest, law-abiding Christians. Our witness to the world should be of utmost importance and always be considered when we choose an action.

Another aspect of the majority view is, *"In any other venue CONFLICT of interest would be charged were a competitor arbitrarily authorized to be quality assurance over the competition. This inequity is NOT addressed by this legislation though it could easily be done."* And also, *"Continues lack of trust in parents."*

We would respectfully point out that government is not necessarily our competition, especially if we view the government agents as God's servants. Do they all appreciate that they are put in place by the Lord God above? Probably not – but from Old Testament through the New Testament, this principle stands. As for trusting in parents or not, it is a matter for us to convince them, as a teenager convinces his parents, that we just don't need their oversight. S4767 is a step of weaning them.

They asked: *"How does this move us closer to emancipation when we are bound by codified statute?"* When you understand that we are already bound by codified statute (per Packer, Society of Sisters, Yoder, Blackwelder, etc.) then it is obviously a big step to freedom, because the written content of what is submitted to the state is diminished by so much.

III. NIT PICKY BAD POINTS

The Constitutional-Only majority had several exceptions taken to the testing provisions of this bill. They stated ideas like, *"Parents are not allowed to test or score their own children unless "qualified" to do so; this bill defines the parent's qualification by an external standard that was originally meant for public schools, not private or home schools."* We observe though that this is the same language as we are living with now – that the test preparers/suppliers are the ones that determine who is qualified. Furthermore, the superintendent will have much less oversight in that the test and the option of location are specifically selected by parent, without needing consent of the district. No more submitting information on third quarterly report and wondering if you'll need to contest the district's decision! And there is the wonderful new situation of doing alternative assessments by the parent or anyone of their choosing. There really shouldn't be a need for anyone to go on probation anymore. If you have a special needs child, then find someone with a similar philosophy who is willing to attest to a year's worth of progress (unless you'd rather write it up yourself!)

Another point of disagreement was the probation section. The comment was made, *"Public schools have no probation. Merely keep re-writing the program. NR, NP schools have NO accountability for any student, even special needs."* We would point out that there will be little need of using the probation procedures. If your child doesn't reach the 23rd percentile in testing, you may switch to an alternative assessment method.

At the end of the prescribed two-year probation period, S4767 calls for unsuccessful remediation cases to be sent to the board of education. The majority view was, *"Parents are not allowed to deny school board review of determination of non-compliance at the end of second year;"* and *"Assumes final authority is the state, SED, Commissioner, and school district (including local school board); parents are not allowed to deny school board review of determination of non-compliance at the end of second year."* To begin with, the vast majority of people should be able to avoid getting to probation under S4767! The final outcome of the review is that the board determines that the family is either "compliant, or non-compliant."

There was also the matter that we identified that having "no required subjects" was a big step towards freedom. The reply was, *"No required subjects … is debatable since testing drives the curriculum AND we have yet to fully examine the scope of S4767."* But we respectfully point out that the parents are in complete control of which standardized achievement test they use, or even if they switch to written narratives. We then asked Dee Black about the possibility of the testing changing drastically so that math and grammar diminished and the subjective value-driven subjects were the mainstay (a point made on the nyhs-forum e-list)? His response was strong and simple: "Regarding this testing

question, I suppose that the basic battery could be changed to include science and social studies, but I think this is very unlikely. I just spent four days in San Antonio serving on a bias review panel for a standardized test being developed by The Psychological Corporation. While there, I found out that one of the versions of the Stanford Achievement Test was developed for Christian students. So there are accommodations out there for us in the event testing became mandatory, as it is now in grades 9-12. Also, HSLDA would challenge, as unconstitutional, any effort to require testing of home school students to indicate compliance with any state standard of learning standards based on a public school curriculum. That would effectively destroy private education."

IV. TIMING: Now is good, vs. What's the rush?

We have a basic disagreement about the timing of our decisions and work on this bill: we feel that the time is now, as the bill has been introduced and HSLDA has expressed support for it, and Commissioner Mills has publicly expressed refusal to change the regulations. The majority has lamented that *we should not feel that we need to respond to anyone else's timetable, that we're building a coalition with unschoolers, that there is no hurry here.* Our concern is that our President was in regular contact with Senator Kuhl's office for well over a year, with different details and a few meetings, expressing our concerns and then when Senator Kuhl addresses our grievances, we basically reject it out of hand? We anticipate that Senator Kuhl may well be in office for a lengthy duration – we would not want to be ungrateful, nor incur the disfavor of the most influential office for our special interest. This is plainly a good bill, one that HSLDA's esteemed opinion "wholeheartedly" endorses.

We also pointed out that Senator Kuhl seems to have listened to the amendments that HSLDA and others had given to him, that there is a good no-testing option (unlike Commissioner's interest in testing) and the first introductory paragraph was removed before the final draft of this bill. The dominant view of our committee was, *"He may be acting as if he is listening, but will do what is "politically feasible" always, which here is not really in the best interests of homeschoolers. Again: remember the NP, NR schools."* We are stymied then as to how an elected official would ever be able to please such a group as we appear to be? Further, we would only reiterate that the non-public non-registered schools are not completely free from the state's regulatory oversight (Packer, 1948).

V. ONE POTENTIAL BAD POINT

We had a basic disagreement with a major presumption put out by chair for our discussion, namely that if there *was even one point wrong with this bill (other than constitutionality) then we would have to vote against this bill*. We had also run against this mindset when the bill was first given to us as a draft and the committee did not seek to give input about alternative language. These documents are open for negotiation, and as HSLDA noted on the **draft** version – "this is worth supporting unless Senator Kuhl is willing to sponsor something even better;" which the senator did.

An issue that might well be addressed with Senator Kuhl:

- Some people think the bill concedes too much before going to the SEC where it is potentially going to be added to, rather than reduced further. *"Establishes a new section of law which gives the Commissioner legal authority for further regulation, does not explicitly prohibit the Commissioner from writing further regulations as they are not "in conflict" with the statute*." We asked Dee Black about this concern, for his attorney's opinion on this:

  "First, Senator Kuhl's bill takes the original language of the regulation and then deletes most of it in arriving at the language in the proposed statute. If it were the senator's intention that we would still have the regulation, there is no reason for him to do the bill. The bill adds nothing to the regulation; it takes away from it. Second, the bill in section 1 recites that the SED may issue regs to do with a shorter school day or year, etc., but then Senator Kuhl's language says, "Provided, however, that home instruction of a minor shall be in accordance with section three thousand two hundred twenty-nine of this part." In my opinion, this indicates that home instruction is not subject to the regs referred to earlier in the section. Third, the new section, 3229, says that it will govern and control over "any other state or local law, rule, or regulation" which is inconsistent with it. So even if the Commissioner issued a new reg or kept the same reg, home educators cannot be required to comply with anything which would require more of them."

- *"We might consider the fact that this bill doesn't allow for a religious exemption,"* was brought up by the majority. But the level of restrictions on what we do in our homes does not make this an insurmountable obstacle.

VI. WHAT HAPPENS IF THE REGS ARE REPEALED? (Or: "The Horrors of Blackwelders' World")

We have a very basic but large and real disagreement about what happens if the Regulations, as we know them, are repealed. It seems readily apparent that if the top (most recent) layer of law is repealed (removed), then the previous topmost layer will be the law in effect. For New York homeschoolers, this was the federal Blackwelder v. Safnauer case that ruled that the pre-1988 oversights of homeschooling were constitutional as law, and the family court Blackwelder that ruled that home visits were constitutional (think about that for a moment), and of course that all the previous district actions against homeschoolers were all acceptable.

Our worthy majority felt that *perhaps it would have been better for homeschoolers if the 1986-7 era had jailed homeschool parents rather than ending up on a route with regulations. They also disputed that Blackwelder would be what is standing, as that would be so horrible. We also were told that a judge repealing the Regs would merely turn to the legislature and direct that they make up a new statute – which would work out well because the legislators would be ready to listen to homeschoolers by then!* BRETHREN! This is not how separation of powers and checks and balances works – this last scenario was grievous to hear: judges cannot constitutionally direct legislatures – they might suggest, but they don't direct. Furthermore, it is plain that Blackwelder would be the standing law – Dee Black explained that this is a simple legal argument.

VII. OTHER LAWYERS' VIEWS – a valuable contribution to our deliberations

A. Scott Perkins letter:

As minority view, we think that both Seth Rockmuller and Scott Perkins have advanced arguments about the statutory authority over homeschooling; but the Packer decision does seem to void some of the heart of that, in that there is authority around out there, based "on the public interest."

Mr. Perkins points out that there are areas that authority isn't granted by the Commissioner, but he writes regulations. We know this to be the customary practice -- it becomes part of the vigilance of citizens/legislators to smack the hand and undo it. The more correct perspective of practice (unfortunately) is that 'if not prohibited, then you can write regs.' This would therefore be an advantage of not being under the commissioner any longer.

Near the end of his letter he speaks of how parents utilizing private schools don't need to give progress reports, why should home school parents? Thing is, the private school administrator/teachers are getting started/regulated, and our problem may be that some smart legislator is going to point out that the homeschool parents don't have to send in reports, but the homeschool administrators (yes, it's the parents) do have to.

Mr. Perkins says that he thinks home educators will end up with both the regulation and the statute. We disagree for a number of reasons. First, Senator Kuhl's bill deletes most of the language of the regulations in the proposed statute. If it were the senator's intention that we would still have the regulation, there is no reason for him to do the bill. Second, the bill in section 1 recites that the SED may issue regs to do with a shorter school day or year, etc., but then S4767 says, "Provided, however, that home instruction of a minor shall be in accordance with section three thousand two hundred twenty-nine of this part." This takes care of addressing the regs referred to earlier in the section. Third, the new section (#3229) says that it will govern and control over "any other state or local law, rule, or regulation" which is inconsistent with it (the key idea being "control over"). So even if the Commissioner issued a new reg or kept the same regs, home educators cannot be required to comply with anything which would require more of them than is in S4767.

Mr. Perkins has an interesting paragraph: "I cannot speak with any authority as to whether the New York Constitution prohibits governmental control of home-based education. I do believe, however, that the courts will rule that the State has a compelling interest in an educated citizenry and therefore may regulate home school education through compulsory attendance and the teaching of mandatory subjects."

It is clear that S4767 has a better set of requirements than what Mr. Perkins hopes for here, in that the required subjects are done away with.

B. Seth Rockmuller letter:

Having a statute put into place may well be a way of getting the whole thing to court. Seth Rockmuller has noted that having a statute would give fodder for something to joust

over in court -- "Clearly, you could still raise the issue that the statute is unconstitutional on its face once it is enacted; in fact, there would be nothing to challenge prior to its enactment." IF S4767 (or some other) does become law/statute, it is the next step, not endgame. Sometimes you play by their rules (enacting a bill) in order to challenge and deal it the fatal blow -- a la "straw man."

Mr. Rockmuller also described an unnamed case ("similar to the one relied upon…in Packer") where a law was passed authorizing the Board of Regents to adopt regulations for the mandatory registration of nonpublic schools; then the court was unable to ascertain what areas the Regents could regulate and what areas were beyond their authority; and that this would "arguably …give [the Commissioner] less authority, not more, than the Regents were found to have in Packer." We note that authority is assumed but not clearly delineated, and that Regents are shown to have authority from Packer, then.

SUMMARY

This is a reasonable step in the march to freedom. We do not find that this bill precludes a constitutionality argument because there is already legal precedence for the statutory authority of the legislature to set statutes over education in the private sector, and for our purposes here it covers private schools as well as home education. We cite Packer particularly. When the Regents cover areas as diverse as medical and nursing licenses, it is not difficult to see why the Regents feel that they have oversight of school children in homeschools. In 1988 the Blackwelder case did use constitutional arguments, and they lost.

We would note that we have found much of the tone of the complaints about this bill to be fearful or full of rhetoric, and based on faulty interpretation of the preceding court cases and the constitutions. We would simply urge respectful questions of one another so that we continue to disclose truth.

We have been sharpened in our understanding of history, and hope for the future. We appreciate the opportunity that we have in this free land to be part of just such "great conversation."

New York State Constitution

Article XI – Education

Section 1. The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated

(Formerly Section 1 of Art. 9. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938).

Section 2. The corporation created in the year one thousand seven hundred eighty four, under the name of the Regents of the University of the State of New York, is hereby continued under the name of The University of the State of New York. It shall be governed and its corporate powers, which may be increased, modified or **diminished by the legislature**, shall be exercised by not less than nine regents

(Formerly Section 2 Art. 9. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of people November 8, 1938).

CONCLUSIONS AND RECOMMENDATIONS ON S4767

We are very interested in seeing this bill become statute. Is it a legitimate step in the march towards freedom? We feel that it is. We urge vigorous pursuit of its success.

Looking through all the posts on the two e-groups, conversations with chapter leaders, certainly in discussions with LEAH board, Legislative Standing Committee, and phone or e-mail questions to our ever-patient lawyer-friends at HSLDA, consultation with lobbyist Rev. Duane Motley and to Senator Kuhl's office, we do not see the dangers that are purported about this bill. Even in the midst of confusion about whether or not LEAH will endorse this bill, we hear that the senators of the Senate Education Committee are surprised by the amount of interest shown in this bill (judged by number of phone calls).

A turning point for our confidence level in support of this bill was by gaining a fuller understanding of the manner in which the case law precedents added up together, and especially when meshed with the federal and New York constitutions. It does not seem like there is room for a "constitutional loophole" in gaining total exemption from compulsory attendance, unless there is a powerful legislator who is willing to hoof that bill on our behalf. We don't see who that would be, however. It was also weighty with us that though Mr. Campbell and others in 1894 commended education at home, their intents of allowing the existence of home education do not also include a stipulation that they are free from oversight.

We would note that there is still a good amount of confusion about whether our current regulations rise to the level of being "law" or not. The fact that they are enforced the same as statute (same police officers, same truant officers, same court system) and that the courts would view compliance with regulations just the same as compliance with statute – helped convince us that it is a reasonable conclusion that regs are law. It is true that regulations are written or amended with much less fanfare or to-do than the legislature needs to write statutes; this can serve as a blessing or a curse to those who labor under them. An apt catch phrase is: A good statute is much better than mediocre regulations, while a bad law would be much worse than mediocre regulations.

While there will yet be much discussion about this proposed bill, we have endeavored to shine light upon the salient issues, and maybe a few tangential ones as well! We rest assured that we have treated all men honorably, and sought to serve.

There may be some who feel that we have given up on the U.S. Constitution or the New York Constitution. Nothing could be further from the truth – we have studied them more than ever, and weighed most heavily the case laws set before us that had constitutional interpretations. We anticipate that we may yet see a court case in New York that may challenge the constitutionality of this very law – that would be a marvel to behold! But in the meantime, should the bill pass, thousands of families will live freer lives, and contribute to the homeschool experience, showing and 'weaning' the overseers from the notion that oversight is necessary for success in home education.

We heartily commend the idea of New York-specific research, as well. We would like to see a researcher who is willing to look at ways of defining success, that is not tied completely to tests, come and pull a project together. We have forged new ties to unschoolers, and we would truly desire to work with these friends, for the good of homeschooling now and in the future, for generations to come!

We therefore heartily urge:

- strenuous effort in support of S4767; and
- the pursuit of New York-specific research; and
- the pursuit of a Parental Rights Amendment to the NY Constitution (in appendices).

Rich and Pam Stauter

APPENDICES

The Text of Bill S4767

STATE OF NEW YORK

4767

2001-2002 Regular Sessions

IN SENATE

April 17, 2001

Introduced by Sen. KUHL -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to home instruction

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph d of subdivision 2 of section 3210 of the education law is amended to read as follows:

d. Exception. In applying the foregoing requirements a minor required to attend upon full time day instruction by the provisions of THIS part {one of this article} may be permitted to attend for a shorter school day or for a shorter school year or for both, provided, in accordance with the regulations of the state education department, the instruction he receives has been approved by the school authorities as being substantially equivalent in amount and quality to that required by the provisions of THIS part {one of this article}. PROVIDED, HOWEVER, THAT HOME INSTRUCTION OF A MINOR SHALL BE IN ACCORDANCE WITH SECTION THREE THOUSAND TWO HUNDRED TWENTY-NINE OF THIS PART.

S 2. The education law is amended by adding a new section 3229 to read as follows:

S 3229. HOME INSTRUCTION. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, TO THE EXTENT THAT ANY PROVISION OF THIS SECTION IS INCONSISTENT WITH ANY OTHER STATE OR LOCAL LAW, RULE OR REGULATION, THE PROVISIONS OF THIS SECTION SHALL GOVERN AND BE CONTROLLING. 1. NOTICE OF INTENTION TO INSTRUCT AT HOME. A. EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH B OF THIS SUBDIVISION, PARENTS OR OTHER PERSONS IN PARENTAL RELATION TO A STUDENT OF COMPULSORY SCHOOL ATTENDANCE AGE SHALL ANNUALLY PROVIDE WRITTEN NOTICE TO THE SUPERINTENDENT OF SCHOOLS OF THEIR SCHOOL DISTRICT OF RESIDENCE OF THEIR INTENTION TO EDUCATE THEIR CHILD AT HOME BY JULY FIRST OF EACH SCHOOL YEAR. THE SCHOOL YEAR BEGINS JULY FIRST AND ENDS JUNE THIRTIETH FOR ALL PURPOSES WITHIN THIS SECTION. IN THE CASE OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, THE SCHOOL DISTRICT OF

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets { } is old law to be omitted.

LBD05845-02-1

RESIDENCE FOR STUDENTS WHO, IF ENROLLED IN THE PUBLIC SCHOOLS, WOULD ATTEND ELEMENTARY SCHOOL, INTERMEDIATE SCHOOL OR JUNIOR HIGH SCHOOL IN A COMMUNITY SCHOOL DISTRICT, SHALL BE DEEMED TO BE THE COMMUNITY SCHOOL DISTRICT IN WHICH THE PARENTS RESIDE.

B. PARENTS WHO DETERMINE TO COMMENCE HOME INSTRUCTION AFTER THE START OF THE SCHOOL YEAR, OR WHO ESTABLISH RESIDENCE IN THE SCHOOL DISTRICT AFTER THE START OF THE SCHOOL YEAR, SHALL PROVIDE WRITTEN NOTICE OF THEIR INTENTION TO EDUCATE THEIR CHILD AT HOME WITHIN FOURTEEN DAYS FOLLOWING THE COMMENCEMENT OF HOME INSTRUCTION WITHIN THE SCHOOL DISTRICT.

2. ATTENDANCE REQUIREMENTS. EACH CHILD SHALL ATTEND UPON INSTRUCTION AS FOLLOWS: THE SUBSTANTIAL EQUIVALENT OF ONE HUNDRED EIGHTY DAYS OF INSTRUCTION SHALL BE PROVIDED EACH SCHOOL YEAR. THE CUMULATIVE HOURS OF INSTRUCTION FOR GRADES ONE THROUGH SIX SHALL BE NINE HUNDRED HOURS PER YEAR. THE CUMULATIVE HOURS OF INSTRUCTION FOR GRADES SEVEN THROUGH TWELVE SHALL BE NINE HUNDRED NINETY HOURS PER YEAR. ABSENCES SHALL BE PERMITTED ON THE SAME BASIS AS PROVIDED IN THE POLICY OF THE SCHOOL DISTRICT FOR ITS OWN STUDENTS. RECORDS OF ATTENDANCE SHALL BE MAINTAINED BY THE PARENT AND SHALL BE MADE AVAILABLE TO THE SCHOOL DISTRICT UPON REQUEST. INSTRUCTION PROVIDED AT A SITE OTHER THAN THE PRIMARY RESIDENCE OF THE PARENTS SHALL BE PROVIDED IN A BUILDING WHICH HAS NOT BEEN DETERMINED TO BE IN VIOLATION OF THE LOCAL BUILDING CODE.

3. ANNUAL ASSESSMENT. THE PARENT SHALL FILE AN ANNUAL ASSESSMENT IN ACCORDANCE WITH THIS SUBDIVISION. THE ANNUAL ASSESSMENT SHALL INCLUDE THE RESULTS OF A COMMERCIALLY PUBLISHED NORM-REFERENCED ACHIEVEMENT TEST WHICH MEETS THE REQUIREMENTS OF PARAGRAPH A OF THIS SUBDIVISION, OR AN ALTERNATIVE FORM OF EVALUATION WHICH MEETS THE REQUIREMENTS OF PARAGRAPH B OF THIS SUBDIVISION.

A. COMMERCIALLY PUBLISHED NORM-REFERENCED ACHIEVEMENT TESTS.

(1) THE TEST SHALL BE SELECTED BY THE PARENT FROM ONE OF THE FOLLOWING: A NATIONALLY-NORMED STANDARDIZED ACHIEVEMENT TEST, A STATE EDUCATION DEPARTMENT TEST, OR ANOTHER TEST APPROVED BY THE STATE EDUCATION DEPARTMENT.

(2) THE TEST SHALL BE ADMINISTERED IN ACCORDANCE WITH ONE OF THE FOLLOWING OPTIONS, TO BE SELECTED BY THE PARENTS:

(I) AT THE PUBLIC SCHOOL, BY ITS PROFESSIONAL STAFF;

(II) AT A REGISTERED NONPUBLIC SCHOOL, BY ITS PROFESSIONAL STAFF, PROVIDED THAT THE CONSENT OF THE CHIEF SCHOOL OFFICER OF THE NONPUBLIC SCHOOL IS OBTAINED;

(III) AT A NONREGISTERED NONPUBLIC SCHOOL, BY ITS PROFESSIONAL STAFF, PROVIDED THAT THE CONSENT OF THE CHIEF SCHOOL OFFICER OF THE NONPUBLIC SCHOOL IS OBTAINED; OR

(IV) AT THE PARENTS` HOME OR AT ANY OTHER REASONABLE LOCATION, BY A NEW YORK STATE-CERTIFIED TEACHER OR BY ANOTHER QUALIFIED PERSON.

(3) THE TEST SHALL BE SCORED BY THE PERSONS ADMINISTERING THE TEST OR BY A TESTING SERVICE CHOSEN BY THE PARENT.

(4) THE TEST SHALL BE PROVIDED BY THE SCHOOL DISTRICT UPON REQUEST BY THE PARENT, PROVIDED THAT THE COST OF ANY TESTING FACILITIES, TRANSPORTATION, AND/OR PERSONNEL FOR TESTING CONDUCTED AT A LOCATION OTHER THAN THE PUBLIC SCHOOL SHALL BE BORNE BY THE PARENT.

(5) IF A SCORE ON A TEST IS DETERMINED TO BE INADEQUATE, THE PROGRAM SHALL BE PLACED ON PROBATION PURSUANT TO PARAGRAPH C OF THIS SUBDIVISION. A STUDENT`S SCORE SHALL BE DEEMED ADEQUATE IF: THE STUDENT HAS A COMPOSITE SCORE ABOVE THE TWENTY-THIRD PERCENTILE ON NATIONAL NORMS; OR THE STUDENT`S SCORE REFLECTS ONE ACADEMIC YEAR OF GROWTH AS COMPARED TO A TEST ADMINISTERED DURING OR SUBSEQUENT TO THE PRIOR SCHOOL YEAR.

B. ALTERNATIVE EVALUATION METHODS. AN ALTERNATIVE FORM OF EVALUATION SHALL BE PERMITTED TO BE CHOSEN BY THE PARENT ONLY AS FOLLOWS: FOR GRADES ONE THROUGH TWELVE, A WRITTEN NARRATIVE PREPARED BY A PERSON SPECIFIED IN THIS PARAGRAPH. FOR THE PURPOSES OF THIS PARAGRAPH, THE PERSON WHO PREPARES THE WRITTEN NARRATIVE SHALL BE A NEW YORK STATE-CERTIFIED TEACHER, A HOME INSTRUCTION PEER GROUP REVIEW PANEL, OR OTHER PERSON, WHO HAS INTERVIEWED THE CHILD AND REVIEWED A PORTFOLIO OF THE CHILD`S WORK. SUCH PERSON SHALL CERTIFY EITHER THAT THE CHILD HAS MADE ADEQUATE ACADEMIC PROGRESS OR THAT THE CHILD HAS FAILED TO MAKE ADEQUATE PROGRESS. IN THE EVENT THAT SUCH CHILD HAS FAILED TO MAKE ADEQUATE PROGRESS, THE HOME INSTRUCTION PROGRAM SHALL BE PLACED ON PROBATION PURSUANT TO PARAGRAPH C OF THIS SUBDIVISION. THE CERTIFIED TEACHER, PEER REVIEW PANEL OR OTHER PERSON SHALL BE CHOSEN BY THE PARENT. ANY RESULTING COST SHALL BE BORNE BY THE PARENT.

C. IF A DISPUTE ARISES BETWEEN THE PARENTS AND THE SUPERINTENDENT OF SCHOOLS, INCLUDING DISPUTES OVER THE ADMINISTRATION OF THE COMMERCIALLY PUBLISHED NORM-REFERENCED ACHIEVEMENT TEST OR THE USE OF ALTERNATIVE EVALUATION METHODS, THE PARENTS MAY APPEAL TO THE BOARD OF EDUCATION. IF THE PARENTS DISAGREE WITH THE DETERMINATION OF THE BOARD OF EDUCATION, THE PARENTS MAY APPEAL TO THE COMMISSIONER WITHIN THIRTY DAYS OF RECEIPT OF THE BOARD`S FINAL DETERMINATION.

PROBATION. (1) IF A CHILD`S ANNUAL ASSESSMENT FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS SUBDIVISION, THE HOME INSTRUCTION PROGRAM SHALL BE PLACED ON PROBATION FOR A PERIOD OF UP TO TWO SCHOOL YEARS. THE PARENT SHALL BE REQUIRED TO SUBMIT A PLAN OF REMEDIATION WHICH ADDRESSES THE DEFICIENCIES IN THE CHILD`S ACHIEVEMENT, AND SEEKS TO REMEDY SUCH DEFICIENCIES. THE PLAN SHALL BE REVIEWED BY THE SCHOOL DISTRICT. THE SCHOOL DISTRICT MAY REQUIRE THE PARENTS TO MAKE CHANGES IN THE PLAN PRIOR TO ACCEPTANCE.

(2) IF AFTER THE END OF ANY SEMESTER OF THE PROBATIONARY PERIOD, THE CHILD PROGRESSES TO THE LEVEL SPECIFIED IN THE REMEDIATION PLAN, THEN THE HOME INSTRUCTION PROGRAM SHALL BE REMOVED FROM PROBATION. IF THE CHILD DOES NOT ATTAIN AT LEAST SEVENTY-FIVE PERCENT OF THE OBJECTIVES SPECIFIED IN THE REMEDIATION PLAN AT THE END OF ANY GIVEN SEMESTER WITHIN THE PERIOD OF PROBATION, OR IF AFTER TWO YEARS ON PROBATION ONE HUNDRED PERCENT OF THE OBJECTIVES OF THE REMEDIATION PLAN HAVE NOT BEEN SATISFIED, THE SUPERINTENDENT OF SCHOOLS SHALL PROVIDE THE PARENTS WITH NOTICE AND THE BOARD OF EDUCATION SHALL REVIEW THE DETERMINATION OF NONCOMPLIANCE IN ACCORDANCE WITH THIS PARAGRAPH, EXCEPT THAT CONSENT OF THE PARENTS TO SUCH REVIEW SHALL NOT BE REQUIRED.

S 3. This act shall take effect on the first day of July next succeeding the date on which it shall have become a law.

.SO DOC S 4767 *END* BTXT 2001

THE ANALYSIS AND RECOMMENDATION OF HSLDA

>From the HSLDA@Capitol Hill E-lert Service...

April 26, 2001

Dear New York HSLDA Members and Friends,

I am pleased to share with you some very good news about Senate Bill 4767 which was introduced in the New York Senate on April 17, 2001. Senator John R. Kuhl, Chairman of the Senate Education Committee, has introduced legislation which would eliminate the most burdensome restrictions of the law governing home instruction programs since 1988. Parents would no longer be subject to the regulatory provisions of Section 100.10 of the Regulations of the Commissioner of
Education.

REQUESTED ACTION:

(1) We **urge you** to contact the members of the Senate Education Committee listed below with this message:

"Please vote for Senate Bill 4767 which will relieve public school officials and home schooling parents from burdensome administrative tasks. Home educators have earned the right to regulatory relief after demonstrating their success under the current law for the past 12 years."

• Senate Education Committee:

Sen. John Kuhl, Chair,	(518) 455-2091
Sen. Suzi Oppenheimer,	(518) 455-2031
Sen. Roy Goodman,	(518) 455-2211
Sen. Olga Mendez,	(518) 455-3361
Sen. Velmanette Montgomery,	(518) 455-3451
Sen. Guy Velella,	(518) 455-3264
Sen. Seymour Lachman,	(518) 455-2437
Sen. Nick Spano,	(518) 455-2231
Sen. Kenneth LaValle,	(518) 455-3121
Sen. Daniel Hevesi,	(518) 455-3431
Sen. Thomas Libous,	(518) 455-2677
Sen. James Seward,	(518) 455-3131
Sen. Toby Ann Stavisky,	(518) 455-3461
Sen. Byron Brown,	(518) 455-3371
Sen. Carl Marcellino,	(518) 455-2390
Sen. Stephen Saland,	(518) 455-2411
Sen. Charles Fuschillo,	(518) 455-3341
Sen. Thomas Morahan,	(518) 455-3261

(2) Please call your state senator and give him this message:

"Please vote for Senate Bill 4767 which will relieve public school officials and home schooling parents from burdensome administrative tasks. Home educators have earned the right to regulatory relief after demonstrating their success under the current law for the past 12 years."

• To get the name and telephone number of your state senator, use HSLDA's Legislative Toolbox at: http://www.hslda.org/toolbox. If you do not have Internet access, call the office of the Sectratary of the Senate at (518) 455-2051 and ask for your state senator's name.

THE REASONS WE SUPPORT THIS BILL ARE:

Senate Bill 4767 would make the following changes in the current law:

• eliminate the requirement of an Individualized Home Instruction Plan (IHIP);

• eliminate the requirement of quarterly reports;

• eliminate required subjects at all grade levels;

• permit the alternative method of evaluation (instead of standardized testing) every year;

• permit parents who wish to test their children to choose any nationally-normed standardized achievement test, in addition to a State Education Department test or another approved test;

• eliminate the requirement that the local superintendent consent to the person who administers a standardized achievement test or who conducts the alternative method of evaluation;

• lower the minimum standardized test score from above the 33rd percentile to above the 23rd percentile; and

• eliminate the provision for home visits while a home instruction program is on probation.

BACKGROUND:

If this bill is enacted into law, it will not only relieve parents and public school officials of time-consuming administrative tasks, it will significantly increase the freedom of home educators in New
York to direct the education of their children. New York has the potential through this legislation to go from the state with the most restrictive home school law in the nation to a state with one of the
most favorable laws for home educators.

As a lawyer who has spent the past 10 years at HSLDA assisting our member families in New York, I can say from first-hand experience that passage of Senate Bill 4767 will virtually eliminate all of the legal problems for home schooling families in your state. While all of us would prefer a law completely exempting students receiving home instruction from the compulsory attendance requirements, it is simply not politically feasible at this time. HSLDA's goal continues to be

repeal of all compulsory attendance laws, but in the meantime we will support efforts to make laws incrementally better for home schoolers. We believe Senator Kuhl's bill would make great strides toward our ultimate goal, so we wholeheartedly support this legislation and ask that you do so as well.

To review a copy of the bill text, go to: http://www.hslda.org/elink.asp?ID=89

To view a complete list of bills HSLDA is monitoring in the state of New York, visit our website at: http://www.hslda.org/elink.asp?ID=90

Very truly yours,

Dewitt T. Black, III

CONSTITUTIONAL SUMMARY OF HOME EDUCATION IN NEW YORK

Phone Conversation of Rich Stauter with Dee Black (5/14/01)

1. In Yoder v. Wisconsin, the US Supreme Court established that the State has a compelling interest in the literacy and self-sufficiency (i.e., basic education) of children. This is the law of the land. Implicit in this compelling interest is some measure of accountability, i.e., some State oversight is permissible.
2. While it may be clear from their notes and writings that the framers of the NYS constitution thought very highly of home education, there is nothing in the NYS Constitution prohibiting the State from having some oversight of private education. Therefore, under Police Powers, the State may regulate it.
3. In Packer, the NYS court held that while parents have a constitutional right to send private school their children, it also affirmed that the State has a limited right to regulate private education. This was in spite of the fact that the court struck down the particular regulations in question.
4. Relative to the Packer decision, a limited right does not require the "least intrusive means"; rather the standard is "reasonable means" (Myers v. Nebraska).
5. Relative to the Packer decision, there is no difference, for the purposes of this discussion, between private education and home education.

Summary: Citing compelling interest, the US Supreme Court found that the State has some oversight over private education. In NYS, the State has a limited right to regulate private education, as affirmed in Packer. It is constitutional that we are under some state oversight.

LEGAL STATUS OF HOMESCHOOLING IN NEW YORK STATE

Compiled from the LEAH Reg Manual, various emails from and phone conversation with Dee Black (5/14/01)

The Blackwelder decisions (NYS Family Court in April 1988 and Federal Court in June 1988) affirmed the constitutionality of various intrusive and extremely burdensome requirements with respect to homeschooling. These include the constitutionality of home visits by educational authorities, and the need by parents to prove teacher competency and substantial educational equivalence under Section 3204 of the NY Statutes. **This law and these interpretations of it by the courts remain the legal status of homeschooling in New York.** It was only the simultaneous issuance of the S100.10 regulations in June 1988 by the Commissioner of Education that provided a safe haven for parents to homeschool without having to directly satisfy the requirements of Section 3204.

Should the S100.10 Regulations be removed for whatever reason (court challenge, action of the Commissioner, etc.), the homeschooling environment in NYS would revert back to the situation that existed prior to Blackwelder, unless the legislature were to enact a new law with respect to homeschooling.

LETTER FROM HSLDA

April 24, 2000

Mr. Paul Matte
President, Loving Education At Home
6628 Woodruff Road
Lima, NY 14485-9427

Dear Paul:

Mike Farris and Mike Smith have asked me to write you and provide you with our opinion on whether the New York Legislature has the authority to pass laws governing private education without this authority being expressed in the State Constitution. You and I have discussed this on a number of occasions over the past year or so, and I have previously advised you that no such constitutional authority is required in order for a state to enact laws affecting private education. However, not until now have I examined all of the materials on which you have relied in forming your opinion that no such legislation is permissible in New York. Please share our analysis with the rest of the LEAH Board members.

As a threshold matter, we need to consider the difference between the basis for federal legislation and the basis for state legislation. Because of the Tenth Amendment to the United States Constitution, the Congress is limited (theoretically at least) to enacting laws based upon the express authority to do so in the other provisions of the Constitution. States have no such restraint on their authority to legislate unless the state constitution expressly limits this authority. States have the inherent authority to legislate based upon their police power.

New York's Constitution contains no provision prohibiting the Legislature from passing laws governing private education. The constitutional history you provided containing statements made by members of the Committee on Education during the 1894 New York State Constitutional Convention do not indicate anything to the contrary. While there is a clear expression of the right of parents to educate their children themselves, there is no statement that it was ever intended that the State could not regulate this or any other form of private education. As you know, in Wisconsin v. Yoder the U.S. Supreme Court determined that the state's interest in education was two-fold: literacy and self-sufficiency. Clearly, a state may pass legislation regulating private education within these parameters unless there is a state constitutional provision prohibiting it. Given the current state of the law of the land and the absence of proscriptive language in the New York Constitution, no one could successfully argue that New York does not have the authority to regulate private education.

I have also read the 1948 decision of the New York Court of Appeals in Packer Collegiate Institute v. The University of the State of New York which you sent us. Unfortunately, this case does not support your position that the State has no authority to regulate private education. In that case the court declared unconstitutional a statute authorizing the Commissioner of Education to regulate private schools without any standards or limitations in the statute. The statute in question was unconstitutional because it delegated legislative power to the Commissioner of Education. The court said that the Legislature must formulate standards to govern the exercise of discretion by the Commissioner. Citing the Pierce v.Society of Sisters case, the court said that the Legislature, under the police power, has a limited right to regulate private schools in the public interest**.**

It is also well settled that even though a state may regulate through a state agency or official, it cannot do so without express authority from its legislature. In this case, there must be some statutory basis for the Commissioner of Education's promulgation of Section 100.10, or this regulation of home instruction programs in New York is invalid. I believe the required statutory authority is present in Section 3210 of the New York Statutes.

Section 3210, from which the Packer case arose, also has language in a different subsection which is part of the basis for the home school regulation. The home school regulation cites this statute as part of its authority to regulate home instruction. Subsection (2)(d) of 3210 authorizes the State Education Department to promulgate regulations approving instruction elsewhere than at school which are "substantially equivalent in amount and quality to that required by the provisions of part one of this article." Part one has to do with compulsory attendance, instruction by competent teachers, and instruction in prescribed courses. I believe this is sufficient statutory authority for the home instruction regulation, although I suppose a legal argument could be made to the contrary.

Your article in the Autumn 1999 LEAH newsletter makes mention of the concept of "the consent of the governed" as found in the Declaration of Independence. This principle is fulfilled in a republican form of government when the people elect representatives to speak for them and to pass laws governing them, i.e., to give consent on behalf of their constituents. As you can imagine, it would be a completely unworkable situation for government to have to obtain the consent of each individual or group before a law could be enacted and enforced. In the case of the home instruction regulation in New York, the elected members of the Legislature, speaking for the people of New York, have authorized the State Education Department to issue regulations for educational programs outside of the public school.

Paul, having said all this, we do not like New York's law any more than you do. We are committed to continuing to work for more freedom for the home schooling families in New York. At this time we believe the best approach is to seek an improvement of the home instruction regulation. As I indicated in my letter to you of June 8, 1998, we stand ready to assist in this effort in any way we can. If efforts to obtain regulatory relief are unsuccessful, we would be happy to assist LEAH in seeking a legislative remedy.

With best personal regards, I am

Very truly yours,

Dewitt T. Black, III

Senate Bill #454, Parental Rights Constitutional Amendment

S00454 Memo:

TITLE OF BILL : An act proposing an amendment to article 11 of the constitution, in relation to parental rights

PURPOSE : To amend the Constitution to ensure parental rights.

SUMMARY OF PROVISIONS : Adds a new Section 4 to Article 11 of the State Constitution stating that the right of parents to direct in the upbringing and education of their children shall not be infringed.

JUSTIFICATION : The Parental Rights Amendment is expected to have impact in three major areas of public policy: education, health, and the integrity of the family.

The Amendment would:

1) Give parents better standing to challenge topics or methods of instruction in schools that subvert the right of the parents of a community to have the primary role in forming their children;

2) More firmly establish the role of parents as the central decision makers as to the health of their children within socially acceptable norms. Recent developments in the courts and elsewhere have brought into question the legal status of the family;

3) Give parents added standing in asserting their role as the primary shapers of family decisions.

LEGISLATIVE HISTORY : S.4260 of 1999-2000 Referred to Judiciary

FISCAL IMPLICATIONS : None.

EFFECTIVE DATE : January first, following approval at the last general election.

S T A T E O F N E W Y O R K

454

2001-2002 Regular Sessions

I N S E N A T E

(PREFILED)

January 3, 2001

Introduced by Sens. MALTESE, DeFRANCISCO, JOHNSON, PADAVAN, TRUNZO --
read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing an amendment to article 11 of the constitution, in relation to parental rights

Section 1. Resolved, (if the Assembly concur), That article 11 of the constitution be amended by adding a new section 4 to read as follows:

S 4. THE RIGHT OF PARENTS TO DIRECT THE UPBRINGING AND EDUCATION OF THEIR CHILDREN SHALL NOT BE INFRINGED. THE LEGISLATURE SHALL HAVE POWER TO ENFORCE, BY APPROPRIATE LEGISLATION, THE PROVISIONS OF THIS SECTION.

S 2. Resolved, (if the Assembly concur), That the foregoing amendment be referred to the first regular legislative session convening after the next succeeding general election of members of the assembly, and, in conformity with section 1 of article 19 of the constitution, be published for 3 months previous to the time of such election.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets { } is old law to be omitted.

LBD89072-01-1

.SO DOC S 454 *END* BTXT 2001

Thoughts From Scripture on Oversight

"The Fifth Commandment"

From: *The Shorter Catechism for Study Classes, Volume Two*
By G. I. Williamson, Presbyterian and Reformed Publishing Co, Phillipsburg, New Jersey
Pages 51-54

(Given for your consideration, not as a teaching; take any questions to your own spiritual authority)

LESSON ELEVEN

Question 63. Which is the fifth commandment?

Answer: The fifth commandment is, Honor thy father and thy mother; that thy days may be long upon the land which the Lord thy God giveth thee.

Question 64. What is required in the fifth commandment? *Answer:* The fifth commandment requireth the preserving the honour, and performing the duties, belonging to every one in their several places and relations, as superiors,' inferiors,2 or equals.3

Question 65. What is forbidden in the fifth commandment? *Answer:* The fifth commandment forbiddeth the neglecting of, or doing any thing against, the honour and duty which belongeth to every one in their several places and relations.4

Question 66. What is the reason annexed to the fifth commandment? *Answer:* The reason annexed to the fifth commandment, is a promise of long life and prosperity (as far as it shall serve for God's glory and their own good) to all such as keep this commandments

1. Wives, submit yourselves to your own husbands, as unto the Lord (Eph.. 5:22). Children, obey your parents in the Lord (Eph. 6.1). Let every soul be subject to the higher powers (Rom.. 13:1).

2. And ye masters, do the same thing unto them, knowing that your Master also is in heaven (Eph. 6:9).

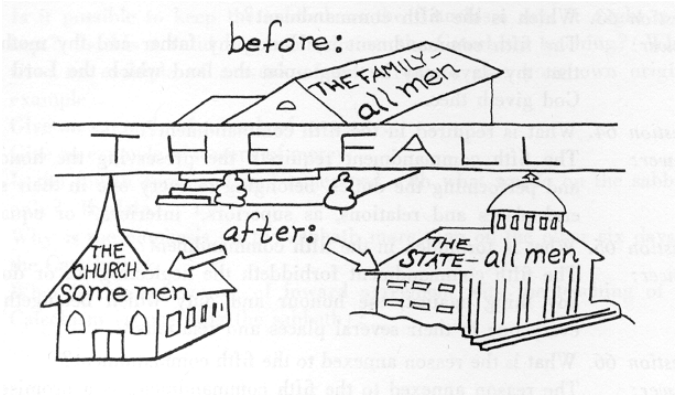
3. Be kindly affectioned one to another with brotherly love: in honour preferring one another (Rom. 12:10).

4. Render therefore to all their dues (Rom. 13:7).

5. Honour thy father and mother: (which is the first commandment with promise) (Eph. 6:2).

All legitimate human authority is God-given. It is there because God has put it there. Thus the husband is given authority over the wife (Eph. 5:2). The parents are given authority over the children. And the duty to respect this authority is ultimately a duty unto the Lord!

When God created man the family was the only divine institution of communal life. After the fall of man, however, two other important institutions were given. These are the Church and the state. God gave the Church for the work of teaching the gospel and exercising a spiritual government over those who profess faith in Christ. The state was given in order to restrain lawlessness and evil in the world. We might diagram this as follows:



It will be evident, from the diagram, that the family is the archetype, and that the other institutions (Church and state) are based upon it. Had man never sinned the family would have been (to all intents and purposes) identical with both Church and state. That is, every member of the human family would – at the same time – have belonged to the same spiritual (Church) and political (state) body. It is sin which has disturbed this unity. Because of that we now have, in addition to the original God-given authority of parents, the *official* authority of rulers appointed in Church and state. We are commanded to obey our civil rulers (Rom. 13:1-7) , and the elders and deacons in the Church (Phil. 1:1; Acts 20:28; Heb. 13:17). We might say that there is a divinely appointed extension of the original (parental) authority in both Church and state. Or we might say that God has instituted authority in Church and state after the pattern of parental authority. Perhaps this is why civil rulers are sometimes called fathers in the Bible (Isa. 49:23), and similarly the rulers of the Church (I Cor. 4:15). In any event, it is the obligation of Christians to honor and respect all God-given authority. It is this principle – *respect for, and obedience unto, duly constituted authority* – that this commandment teaches.

It is important to realize, however, that *no one has absolute authority except God*. He alone is "lord over all." (In our diagram, for example, God alone has complete authority over family, state, and Church.) All authority delegated to man by God is limited to that sphere ordained for it by Him. Thus there are family matters in which the state has no right whatever to meddle. There are Church affairs in which the state may not interfere. And, again, there are state affairs in which the Church is not competent to intrude. This limitation of authority is a most important principle, and it is one that is often violated today. It is violated when, for example, the state seeks to control the education of our children. The Bible clearly teaches us that this belongs within the sphere of parental authority (Deut. 6:6-15; Eph. 6:4). Parents are commanded to educate their children in the Lord (that is, with God's Word as the all-conditioning influence). But the Church today frequently invades the proper sphere of the state too. This is what happens when Church synods attempt to make all sorts of pronouncements on political matters. These are, of course, only examples. But they remind us of the fact that this great principle is often violated. Christians are therefore to be commended when they resist this evil by organizing communally. Family controlled Christian schools are a worthy example.

We see, then, that there will be times when *Christians will have to resist the abuse of God-given authority*. When Jewish authorities commanded Peter and the other apostles to stop preaching, Peter said, "we ought to obey God rather than men" (Acts 5:29). When any person with authority (such as parent, minister, governor, etc.) transgresses the limits placed upon his authority – and intrudes upon the proper authority of another – then the Christian may resist, and ought to resist. This is what the Covenanters did in Scotland. They refused to submit to an unwarranted attempt (by the king) to impose religious compromise on the Church. When force was used against them in this illicit way they resisted with force. Luther followed the same principle when he resisted the tyranny of the pope of Rome. He saw that when the pope goes against the Scriptures, he no longer has any true authority and it is therefore right to resist him. All divinely conferred authority is limited, in other words, and it is our duty to respect and obey it only so long as it operates within the sphere appointed by God. From this it will be clear that much of our present-day "civil disobedience" is not Christian at all (even though it claims to be). It is not Christian to insult civil rulers. It is not Christian to break laws merely because we do not like them. The Bible clearly teaches that resistance is legitimate only at that point where the authority is transgressing the scriptural limits. A Christian must obey all laws, for example, except those that are directly contrary to the Bible. Even though there may be heavy burdens, and many things that we cannot approve in the affairs of our government, we still must give tribute and honor (as Christ did when He commanded that taxes be paid to Caesar). When we are compelled to disobey man in order to obey God, then this is what we must do. But even then, we must continue – in all other possible ways – to show due honor and respect.

In concluding our discussion of the fifth commandment, we note that it contains "a promise of long life and prosperity (as far as it shall serve for God's glory, and their own good,) to all such as keep this commandment." We have seen that this commandment is not primarily concerned with individuals. We are not to think, then, that every individual who strives to keep this commandment will enjoy a long life. WE are rather to understand this commandment to mean that preservation of God's covenant people as a continuing community will depend upon their fidelity to this command. In other words, when we (as God's covenant people) live under a strong sense of God-given authority (in family, Church, and nation) we will be preserved by the Lord. But when we become careless and indifferent about this principle of God-given authority the result will be the loss of those blessings which can be ours only when these institutions are

strong. When parents no longer teach their children to obey them, for example, it is no surprise that they grow up to have little or no respect for those who hold office in Church or state. When the family fails the Church is weakened, and the nation struggles to control the violence of its citizens. Is this, we believe, that helps to bring human totalitarian government upon men. It is truly a punishment from God. True totalitarianism is that which acknowledges God alone as supreme: His word alone is final in every sphere of life: and every human authority is subordinate to Him. When men no longer acknowledge God, they are punished by an enforced totalitarianism. In the Middle Ages it was the Church that became dictatorial and tyrannical. Today it is often the state. But the only real hope is a mighty revival of Christianity, with strong covenant family life. Only out of such God-dominated families will there be the spiritual strength to resist human totalitarianism. For only out of such families will there come people who are ready to exercise God-given authority in every sphere of life under the absolute sovereignty of God.