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OPINION AND COMMENTARY

Fundamentalist schools and the law

By Neal Devins

Fundamentalist Christian educators throughout the nation are beginning to enter the courtroom. Their claim: a constitutionally unjustifiable stranglehold is being placed on their religious liberty by state laws and bureaucracies. In some cases, the fundamentalists can substantiate their accusation. In others, they cannot. Complicating matters, the courts thus far have been unable to provide consistent guidance either to the states or to the fundamentalist schools.

The overt issues in these cases center on efforts by state education agencies to license private schools as well as prescribe course offerings and teacher qualifications in these schools. The lawsuits require an analysis by the courts of whether the state has: (1) improperly infringed on the fundamentalists' right freely to practice their religion; (2) improperly involved itself in the affairs of these religious schools; or (3) improperly denied parents the right to control their children's education.

Any one of these issues compels a careful factual determination by the courts. The courts' widespread failure to make such determinations has resulted in numerous decisions totally at odds with each other.

Poor lawyering on the part of some state prosecutors and Christian school attorneys offers partial explanation for this judicial failure. More significant, however, these cases often present courts with an apparently hopeless entanglement of fact, judgment, secular

values, and religious conviction.

The fundamentalist schools involved in these cases generally claim that the state's only legitimate interest lies in ensuring that every school provides its students with a basic core curriculum (reading, writing, computation) and satisfies reasonable fire, health, and safety standards. More intrusive regulations which mandate, for example, that teachers possess college degrees or that certain "nonessential" courses be offered by the school are objected to by the fundamentalists. In fact, the fundamentalists refuse to abide by these regulations. That is why they are in court.

The fundamentalists believe that education is inherently religious. As a result, they cannot comply with state licensing procedures which grant broad authority to state boards of education to promulgate "equivalent educational standards" for nonpublic schools. For the fundamentalists, this authority in effect makes the state lord over their schools.

To strengthen their claims, the fundamentalists suggest that there is no positive correlation between educational quality and state licensing, curriculum, and teacher certification requirements. They generally do this by presenting evidence to the court which indicates that their students perform at least as well on nationally recognized achievement tests as do public school students.

Another issue often raised in this type of litigation is whether the state's compelling interest in education can be stifled through the

taking of these tests. Thus far, the two courts which have passed on this issue have reached opposite results.

The state reply to the fundamentalists' claims is twofold. First, it alleges that the existing structure of state laws is a necessary and unobtrusive means to ensure that every child in the state receives an adequate education. Second, the state contends that its regulations have no serious or significant adverse impact on sincere religious belief. In support of this contention, the state often points to the fact that it has only been over the past three years that the fundamentalists have "realized the significance of these regulations on their convictions" and refused to abide by existing state procedures.

Is the education of children primarily a religious or a secular act? The questions of proof involved in making this determination are often unresolvable. To a large extent, the outcome of these cases may hinge on whether the courts prefer unrestrained parental choice in education or state control over some of the essential components of Christian education.

The stakes are high. Religious liberty is one of America's cherished freedoms and the provision of good education to all youngsters is one of the state's most compelling responsibilities.

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