

# HOME SCHOOL LEGAL DEFENSE ASSOCIATION

*Advocates for Family & Freedom*

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## TESTIMONY IN OPPOSITION TO HP 3048 BEFORE THE PUERTO RICO EDUCATION & CULTURE COMMITTEE

BY MICHAEL SMITH, PRESIDENT  
HOME SCHOOL LEGAL DEFENSE ASSOCIATION

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By way of introduction, I am the President of Home School Legal Defense Association, a national organization which has as its primary purpose the protection of the right of parents to educate their children at home. We presently have more than 77,000 member families in all 50 states, with 140 member families in the Commonwealth of Puerto Rico.

Our members in Puerto Rico homeschool through the private non-governmental school exception found in the Puerto Rico Constitution at Article II, Section 5, and corresponding statutory and regulatory exemptions. Puerto Rico is like twelve states in the United States where homeschoolers operate as private schools.

On behalf of our members in Puerto Rico, we oppose HP 3048 in its entirety.

### INTRODUCTION.

Parents in Puerto Rico have a fundamental right to direct the upbringing and **education** of their children as guaranteed by the First and Fourteenth Amendments to the U.S. Constitution. Puerto Rico has recognized that fundamental right as natural and inalienable as well.

Because home education is a fundamental right for parents in Puerto Rico, any law which burdens this freedom of choice in any way must pass constitution scrutiny. This means that the restriction that is being placed on the freedom must be of the utmost interest of the state and be essential to the accomplishment of the legitimate goals of the state enacting such a law. This means that any law that restricts parental freedoms in the area of home education is subject to "strict scrutiny." In essence, the courts will look at the law to see if the law or regulation is essential to

meet the legitimate educational goal of literacy and self-sufficiency, and if there is a less restrictive means of achieving the legitimate governmental interest. Since each Representative has taken an oath to uphold the Constitution, we will examine HP 3048 in relation to its constitutionality, applying the proper constitutional standard which is “strict scrutiny.”

It is clear when you examine HP 3048 in light of the constitutional protections afforded parents to teach their children at home, the bill is unconstitutional and would be unenforceable. It is the most oppressive homeschool bill by far that I have ever seen in my 20 years of representing families who teach their children at home. Additionally, there is no justification for attempting to regulate home education in Puerto Rico as homeschoolers on the average score 30 percentile points above the 50<sup>th</sup> percentile. Homeschoolers in Puerto Rico should be congratulated rather than regulated.

The following addresses specific provisions in the bill and our objection to them:

**AN APPLICATION TO HOMESCHOOL SUBMITTED 60 DAYS PRIOR TO BEGINNING IS UNCONSTITUTIONAL.**

Since home education is a fundamental right, any law that would seek prior approval, violates the fundamental right to home educate and is therefore unconstitutional. To restrict homeschooling only to those that seek approval and apply within a specific time requirement is not essential, therefore unconstitutional.

**THE COLLEGE DEGREE/CERTIFIED TEACHER SUPERVISION REQUIREMENT IS UNCONSTITUTIONAL.**

Since HP 3048 is subject to constitutional “strict scrutiny,” and since no other state requires only a college degree and/or certified teacher supervision to qualify as a homeschool teacher, the teacher qualification provision is unconstitutional. It is not the least restrictive means available to achieve the government’s legitimate interest, nor is it essential. It is unfair, as the poor would not be able to homeschool.

**CURRICULUM/STUDY PLAN APPROVAL IS UNCONSTITUTIONAL.**

Parents have a fundamental right to choose curriculum which complies with their belief system which cannot be subjected to prior approval, especially where there are no guidelines established which are clear and objective.

**THE MAINTANENCE OF A REGISTER REQUIREMENT IS UNCONSTITUTIONAL.**

The requirement is over burdensome in light of the parents’ fundamental right to direct the education of their children and is clearly not essential to achievement of literacy and self-sufficiency of the students.

**INTERVIEWS OF STUDENTS BY LICENSED PSYCHOLOGIST OR CERTIFIED TEADCHER IS UNCONSTITUTIONAL.**

There is no state that has a requirement for interviewing the students by government officials. It is clearly not the least restrictive way of determining literacy and self-sufficiency and clearly intrudes into the fundamental right of parents to raise and education their children without unconstitutional intervention by the government.

**DETERMINATION OF EDUCATIONAL PROGRESS BY THE HOMESCHOOL BOARD IS UNCONSTITUTIONAL.**

This provision not only interferes with the fundamental right of parents to direct the education of their children, but also violates the “due process” protection of the Fourteenth Amendment which protects parents against arbitrary and vague laws and regulations. The decision of the five-member board is subjective, therefore arbitrary and capricious. Based upon the makeup of the board, the board cannot be a neutral decision maker in light of the requirement that the teachers have ten years previous teaching experience.

**THE ANNUAL EXAMINATION REQUIREMENT IS UNCONSTITUTIONAL.**

Any testing created, approved, provided, and administered and supervised by the Department of Education for homeschool students violates the fundamental right of parents to choose education other than public education as guaranteed by *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). Also, clearly this provision violates the least restrictive means requirement, as no state requires homeschool children to be tested over test established, created, provided and administered by public school personnel, nor is it essential.

**THE HOME VISIT PROVISION OF HP 3048 IS UNCONSTITUTIONAL.**

The home visit provision of the proposed law is a violation of the Fourth Amendment to the U.S. Constitution which protects against unreasonable searches and seizures of individuals’ homes. This home visit intrusion is clearly a violation of the right to privacy as guaranteed by the U.S. Constitution. Home visits, like those proposed here, have been declared unconstitutional in the state of Massachusetts.

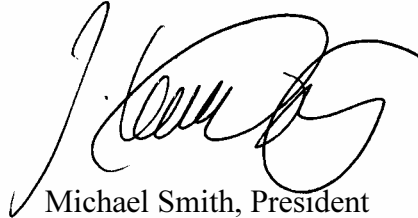
**THE DEPARTMENT OF EDUCATION’S AUTHORITY TO ESTABLISH REGULATIONS TO REGULATE HOMESCHOOL PROGRAMS IS UNCONSTITUTIONAL.**

In addition to the parents’ fundamental right to direct the education of their children, they are also entitled to due process protections of the Constitution which guarantees them a right to a neutral arbitrator in all situations. Because homeschooling represents loss of revenue for public education, the Department of Education is in conflict with home education, and therefore, cannot be neutral in making decisions and regulations. This provision is unconstitutional, as well.

**CONCLUSION.**

Homeschooling in Puerto Rico pursuant to the non-governmental entity school exemption has served Puerto Rico well. There is no basis for enacting regulation of home education in Puerto Rico. Additionally, the particular piece of legislation to regulate homeschooling is unconstitutional in its entirety in that it is an attack on the fundamental right of parents to choose home education for their children, and a violation of the basic due process (fairness) requirements of the U.S. Constitution and the laws of Puerto Rico.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Smith", written in a cursive style.

Michael Smith, President  
Home School Legal Defense Association