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87-62            timely/~~no~~ response/reply

Schmidt v. Ohio

Cert to Ohio Supreme Court

Petrs challenge the constitutionality of an Ohio statute that requires parents who wish to educate their children at home to obtain the permission of a school district superintendent and allows the superintendent to give such permission upon a showing that the student is being instructed at home by a person "qualified to teach."

Petrs are self-described born-again Christians who adhere to a literal interpretation of the Bible and have little sympathy with the secular world. When their child reached school-age, they decided to educate her at home. They did not seek the permission of the school superintendent; they simply did not enroll her in school. The state brought charges against them for failing to send their child to school. The TC convicted petrs of these charges, and the appellate courts affirmed. Throughout the litigation, petrs have challenged the requirement of the Ohio statute that parents seek and receive the approval of the school board superintendent before embarking on a program of home education.

Petrs first argue that the requirement that they receive the permission of the school superintendent violates the free exercise clause. This claim must fail. The petrs here cannot complain that the state has required them to

send their children to public <sup>school</sup> ~~children~~; they can only complain that the state has required them to apply for an exemption if they wish to educate their children at home. This burden on religious freedom is slight, and the interest of the state is great. I cannot see ruling that the statute is unconstitutional on this ground.

Petrs also argue that the statute is unconstitutional because it does not set forth specific standards to govern the school superintendent's decision as to whether to permit home education. The statute, as noted above, provides that the superintendent may grant permission if he finds that the home instructor is "qualified to teach." Petrs urge that this "standard" effectively gives the superintendent unbridled discretion to grant or deny permission. I don't think that this claim is particularly strong. Legislatures use open-ended language of this kind all the time. The delegation of responsibility here is broad, but constitutionally permissible.

DENY

ek

August 14, 1987

S.L. 15, p. 54

In its response, the State takes essentially the same position as I took above.

Still deny ek

Oct. 21, 1987

Nov. 6 Conf., p. 1