

WHY THE RELIGIOUS EXEMPTION FROM SCHOOL ATTENDANCE BELONGS AND THE STUDY PROPOSED IN HJ 92 IS UNNECESSARY

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Background

1. HJ 92 proposes that the Virginia Department of Education be tasked with undertaking a study and answering five specific questions related to Virginia's religious exemption statute.
2. There are two ways to homeschool in Virginia: the "home instruction" statuteⁱⁱ and the religious exemption statute.ⁱⁱⁱ Both options are very popular.
3. One of the most important differences between the two statutes is that the home instruction statute contains red tape and mandates which, if not satisfied, can result in a family being forced to stop homeschooling.^{iv} Because of the high cost of private schools, this would mean those families would be forced to violate their sincere religious convictions and put their children in public school like the Spurgeon Rice family.^v
4. But the religious exemption statute contains no such red tape or mandates. Under the protection of the statute, families cannot be forced to violate their sincere religious convictions and put their children in public school.
5. Private schools in Virginia are likewise under no red tape or educational mandates. Homeschooling under the religious exemption is identical, from a legal and regulatory perspective, to private schooling.
6. The religious exemption statute was enacted in 1976. It has endured without change for 37 years. It is a bedrock component of homeschooling in Virginia. And it is a bedrock component of religious freedom in Virginia.
7. Between 1976 and 1984 there was no other way to homeschool legally in Virginia. The home instruction statute was enacted in 1984.
8. The religious exemption statute and home instruction statute operate independently, but they are equally important. If the home instruction statute were ever repealed, the religious exemption statute would continue to protect the First Amendment (free exercise of religion) rights of religious homeschool families of all faiths.
9. Virginia has significant Amish and Mennonite communities. They have historically pursued a high degree of separation between the state and their homes and churches. Many of them rely on the religious exemption statute to allow them to practice their way of life.
10. Virginia enacted the religious exemption statute to implement the U.S. Supreme Court's landmark *Wisconsin v Yoder* case,^{vi} and to protect religious families from the kind of prosecution the Spurgeon Rice family experienced^{vii}. Many states enacted laws to implement the Court's ruling that the children of parents with religious convictions against public school attendance cannot be forced to attend.

11. In keeping with Virginia's exemplary history of protecting religious liberty to the highest degree,^{viii} the Virginia implementation of the *Yoder* case protected religious liberty more robustly than the corresponding enactment of any other state.

No Study Is Needed

12. Studies are usually conducted when there are persistent problems in an area. The fact that the religious exemption statute has operated without change for 37 years demonstrates that it operates smoothly. It has operated so smoothly that only one case dealing with religious exemption has come before the Virginia appellate courts in 37 years.
13. The five questions to be studied under the proposal can be answered without any study at all.
14. The proposed question: “how do school boards determine if a religious exemption is appropriate in a particular case?” is answered simply: the school board applies the clear, simple terms of the statute, and when appropriate evidence is presented, they grant the exemption.
15. The proposed question asking whether school boards “review” their decision is answered simply. If there is evidence that justifies a review, laws already on the books permit a school board to review their decision so long as due process rights are protected—just as with any administrative decision.
16. The proposed question: “do school boards require the exemption to be renewed, and how often?” is answered simply: some school boards require annual renewal and others do not.
17. The proposed question: “do school boards monitor the educational progress of exempted students?” is answered by the simple terms of the religious exemption statute: no—because as the Virginia Supreme Court said in *Johnson v. Prince William County*^{ix}, the provisions of the compulsory attendance law shall not apply to an exempt student.
18. The proposed question: “should the religious exemption statute be amended to better carry out sections 1 and 3 of Article VIII of the Virginia Constitution?” is based on a misunderstanding of the Virginia Constitution, but it can be answered simply. The religious exemption statute was never intended to implement those sections of the Virginia Constitution (they deal with the operation of a public school system and compulsory attendance). Instead, it implements an older and more foundational provision: Article I, Section 15, which guarantees the free exercise of religion in Virginia. And it implements the Free Exercise Clause of the First Amendment.

Recent Criticism

19. Some commentators are dismayed that families homeschooling under the religious exemption are not required to comply with any government education mandates and red tape. They fear the children will not receive an adequate education.
20. The available data lay this concern to rest. Dr. Brian Ray found that students homeschooled under the religious exemption scored on average 33 percentile points higher than others.^x

21. Dr. Ray found that homeschooled students fare just as well academically in states with heavy government mandates as in states with few.^{xi} The largest study of homeschoolers revealed that the average 8th grade homeschool student impressively scores at the 12th grade level.^{xii}
22. Historically, one of the most powerful motivations for parents to teach their children to read was to enable their children to read the foundational documents of their faith (the Bible, Torah, etc.) Families who choose the religious exemption today are just as eager for their children to read—for the same historical reason, and others.
23. One commentator has suggested that the religious exemption is unconstitutional because it violates a child's right to an education.^{xiii} No court has ever said this, nor is it likely. Children have many rights. Many of them are exactly the same as adult rights. However, while a child is a minor, his or her parent makes the final decision about how the child's right should be exercised, if at all. It is not unconstitutional for parents to decide whether to exercise their minor child's right to a public school education or waive it by homeschooling the child.
24. One commentator has suggested that the religious exemption is problematic because it does not give school boards details on how it must be implemented. In fact, the statute's absence of administrative mandates is not a problem. It allows each school board has maximum flexibility in creating its own efficient and workable method of implementation. Some school boards have adopted formal implementation policies while others have not found it necessary.
25. Some commentators criticize the exemption because no year-end testing is required. But fewer than half the states require year-end testing for homeschoolers. In the states with no year-end testing, the students do just as well academically.^{xiv} The national trend is to abolish year-end testing for homeschoolers simply because there is no empirical evidence that it helps.

The Remedial Class Issue

26. Recently a homeschool graduate criticized the religious exemption on the ground that it resulted in him having to take remedial or developmental classes when he enrolled in community college. But taking remedial courses did not make him different. According to the Community College Research Center, 60% of community college students take at least one remedial course.^{xv}
27. The student in question now attends Georgetown University in Washington, D.C., ranked as one of the nation's top 25 universities.^{xvi} This makes him different than most students who attended community college. He is earning good grades.
28. A recent nationwide survey of over 5,000 adults who were homeschooled revealed that only 2% were *not* glad they were homeschooled.^{xvii}

ⁱ Based in Purcellville, Virginia, Home School Legal Defense Association was established in 1983 and currently has over 80,000 member families nationally. Cell phone for Scott Woodruff: 703 508-3243; email: scottw@hsllda.org Mr. Woodruff has been helping families with religious exemption questions for over 15 years. Ver. 1-27-14

ⁱⁱ VA Code §22.1-254.1

ⁱⁱⁱ VA Code §22.1.254.B.1

^{iv} For example, see VA Code §22.1-254.1.C, second paragraph, penultimate sentence.

^v *Spurgeon S. Rice v. Commonwealth of Virginia*, 188 Va. 224, 49 S.E.2d 342 (Virginia, 1948)

^{vi} *Wisconsin v. Yoder*, 406 U.S. 205 (1972)

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- ^{vii} Spurgeon Rice had sincere religious convictions against sending his children to public school. He was prosecuted for not sending his children to public school. See *Spurgeon S. Rice v. Commonwealth of Virginia*, 188 Va. 224, 49 S.E. 2d 342.
- ^{viii} See for example the pioneering Virginia Statute for Religious Freedom (originally enacted in 1789 and now part of the Virginia Constitution) and Virginia’s Religious Freedom Restoration Act, VA Code §57-2.02.
- ^{ix} *Johnson v. Prince William County School Board*, 494 S.E. 2d 209 (Va. 1991). “Once it is determined, however, that a child is entitled to a religious exemption..., ‘[t]he provisions of [the compulsory school attendance law] shall not apply.’”
- ^x http://www.hsllda.org/hs/state/VA/Ray_Va_Study_94.pdf
- ^{xi} http://www.hsllda.org/docs/study/ray2009/2009_Ray_StudyFINAL.pdf
- ^{xii} <http://www.hsllda.org/docs/study/rudner1999/FullText.asp> See Figure 2 and Table 3.5.
- ^{xiii} In *Scott v. Commonwealth* 443 S.E.2d 138(1994), the plaintiffs argued that unequal funding of Virginia’s school districts violated the Virginia Constitution. The Virginia Supreme Court ruled that it did not. In passing, the Court said, “[W]e agree... that education is a fundamental right under the Constitution.” This case did not detract from the well-established principle that parents exercise the rights of their children during their minority.
- ^{xiv} http://www.hsllda.org/docs/study/ray2009/2009_Ray_StudyFINAL.pdf
- ^{xv} <http://www.usatoday.com/story/news/nation/2013/07/25/stateline-remedial-education/2586013/>
- ^{xvi} <http://colleges.usnews.rankingsandreviews.com/best-colleges/georgetown-university-131496/overall-rankings>
- ^{xvii} <http://www.hsllda.org/research/ray2003/> See Table 3.