

HÖGSTA DOMSTOLEN  
THE SUPREME COURT

Mål nr. [REDACTED]

**Annie Johansson & Christer Johansson**

vs

The Gotland Social Welfare Board/Socialnämnden Gotland

IN THE MATTER OF

THE TRANSFER OF GUARDIANSHIP

over

DOMENIC JOHANSSON

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Appeal against the Verdict Of the Svea Court of Appeal  
and  
Application for Leave to Appeal to the Supreme Court

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HOME SCHOOL LEGAL DEFENSE ASSOCIATION,  
BRIEF OF *AMICI CURIAE* in support of Petitioner

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Michael Donnelly, Esq.<sup>1</sup>  
Home School Legal Defense Association  
P.O. Box 3000  
Purcellville, VA 20134  
(540) 338-5600  
Fax: (540) 338-1952

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<sup>1</sup> The author is an attorney admitted to the bars of the states of Massachusetts, New Hampshire, West Virginia, the District of Columbia, and the United States Supreme Court.

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## **INTEREST OF *AMICI CURAE***

The Home School Legal Defense Association is an international organization with over 80,000 members in all 50 states of the United States of America, the District of Columbia, and 36 countries. Our mission is to protect and advance the right of parents to teach their children at home. The Johansson's are members. HSLDA attorneys assist member families to understand the law in their countries or states, represent them in court when necessary, and advocate in national, federal and state legislatures on behalf of the interests of our members. Since our founding in 1983, HSLDA has been on the front line defending the natural, fundamental and constitutional human right of parents to direct the education of their children by teaching them at home. HSLDA attorneys have been involved in scores of home school cases and have assisted in resolving thousands of legal contacts around the world.

During the early years of home education in the United States, the issue of homeschooling would sometimes appear within the context of dependency (abuse and neglect) cases with more frequency. Today cases of educational neglect are rare given the relatively large numbers of homeschooling families in America. In the United States, when parents cannot agree, or a parent has been deemed unfit, courts are called upon to determine what is in the best interest of the individual child based on evidence in the particular case.

In the case before this Court, the child had always been homeschooled. The uncontroverted evidence in the record supports the conclusion that his academic and social needs were being met by his mother and father, Annie and Christer Johansson. In this case, Gotland Authorities determined that rather than let Domenic Johansson leave Sweden with his parents, they would seize him and separate him from his parents - a gross violation in and of itself under international law and by all standards of human decency and dignity. The initial reason given, and one that has been cited by courts in both this case and cases in the Administrative court, recite his having been homeschooled.

A tragic irony in this case is that when Domenic was taken from his parents all schools in Sweden were finished for the year.

In its order, the Appeals court appeared to adopt a presumption in favor of public school in all cases – no matter what the evidence might show about a particular child’s best interests. Such a presumption is in opposition to the evidence-based case-by-case analysis that courts are required to conduct in making educational decisions in the best interests of the child. Due to the high publicity of this case, other courts may adopt the trial court’s presumption rule. This would be contrary to law and detrimental to homeschooled children both in Sweden and potentially in other countries, who might look to this case for guidance about this increasingly common issue.

Not only does a presumption in favor of public school in custody cases go against the law as explained in the Appellant’s brief, the “opinion” testimony to the contrary in the context of home education is factually erroneous. The entire body of research on homeschooled children indicates the reverse. Numerous studies and surveys show that children who are homeschooled thrive educationally and socially both during and after their compulsory education years.

The purpose of this brief is to assist the court by giving background and context to homeschooling, and to empirically demonstrate that homeschooling does meet the developmental needs of children. Many scientific studies show that home educated children exceed their peers both academically and in measures of social competence.

## STATEMENT OF FACTS AND STATEMENT OF CASE

Amici adopt statement of facts as presented in Petitioner's brief.

### SUMMARY OF ARGUMENT

Sweden's treatment of the Johansson family in particular on the basis of their choice to educate their child at home is a gross violation of the family's basic human rights under international law. Sweden's policies regarding the rights of parents to educate their children at home also reflect an enforcement approach that is inimical to the underlying international human rights framework.

Furthermore, at the appeals court, opinion testimony was heard that homeschooling could not meet the necessities of social training for children. And while no experts, studies, or other published works were cited to support the proposition that homeschooling is insufficient to meet the needs of a child, this presumption became an important part to the Appeals court's order. In reality, however, there is an abundance of published social science and other research that demonstrates homeschoolers' success, both in and after their school years, and often in ways superior to their public or private schooled counterparts. If the court's unqualified opinion were allowed to stand, in the face of overwhelming evidence to the contrary, this case could become a model for other courts to follow. This result would harm homeschoolers across Sweden and eventually in other countries.

### ARGUMENT

#### ***I. Sweden's violation of Basic Human Rights Generally and Particularly in This Case Violates International Law***

By using the fact that Domenic Johansson was homeschooled as a reason for taking him into and keeping him in care, Swedish authorities have violated the basic and fundamental human rights of both his parents and himself. Parents who seek to homeschool in Sweden are often denied

permission arbitrarily. Many have left the country for neighboring Finland where the parental right to home school is constitutionally protected.<sup>2</sup> This makes Swedish homeschoolers essentially international refugees. “Persecution is widely recognized as the sustained or systematic violation of basic human rights demonstrative of a failure of state protection.”<sup>3</sup>

**a. Basic human rights demand respect for the religious and philosophical convictions in education of the Johansson’s and all parents.**

It is beyond dispute that the freedom of religion and conscience as parental rights are also basic human rights, and the birthright of all Swedish citizens. The Universal Declaration of Human Rights, 71 G.A. Res. 217A (III), U.N. Doc A/810 (1948) [hereinafter UDHR], adopted in 1948 by unanimous vote of the United Nations General Assembly, is widely acknowledged as the cornerstone of modern human rights law. The UDHR recognizes that “parents have a prior right to choose the kind of education that shall be given to their children.” UDHR, Art. 26(3).

This aspirational article has been assimilated into binding provisions of two core human rights treaties. Parties to the International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR] “undertake to have respect for the liberty of parents . . . to ensure the religious and moral education of their children in conformity with their own convictions.” ICCPR, Art. 18(4). Parties to the International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR] similarly pledge:

[R]espect for the liberty of parents . . . to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

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<sup>2</sup> Alex Newman, *Persecuted & Exiled Swedish Homeschoolers “Walk to Freedom,” Vow to Fight On*, The New American, July 19, 2012. <http://www.thenewamerican.com/world-news/europe/item/12145-persecuted-exiled-swedish-homeschoolers-%E2%80%9Cwalk-to-freedom%E2%80%9D-vow-to-fight-on>, accessed March 8, 2013.

<sup>3</sup> Law of Asylum in the United States, § 4:1 (2012); see also 8 U.S.C. 1101(a)(42)(A)

ICESCR, Art. 13(3).<sup>4</sup>

Collectively known as the “International Bill of Rights,” these treaties establish three truths about the relationship between the state and parents as it pertains to children: 1) parental rights concerning their children are “prior” to any claim of the state, both in time and in rank; 2) parents have the right to ensure that their child’s education conforms to their own moral convictions; and 3) parents and others have the right to start schools that are separate from those offered by the state.

The primacy of these basic human rights is of the highest order. The ICCPR permits a nation to override certain human rights guarantees in times of “public emergency” when the life of the nation is threatened. ICCPR, Art. 4(1). Article 4(2), however, contains an important exception: “No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.” Tellingly, a parent’s right to ensure that her child’s education is in conformity with her own religious or moral convictions (Art. 18), is at the very pinnacle of human rights protections, as a non-derogable right. The Swedish government seizure and maintenance of custody over Domenic Johansson even in part based on the justification that he was being educated by his parents at home in accordance with their convictions is a gross violation of these non-derogable rights

**b. Sweden is obligated to respect and protect the freedom of conscience and the rights of parents as a party to the ICCPR and ICESCR, and as a member of the international community.**

As a party to the ICCPR and ICESCR, Sweden is obligated to respect and protect basic non-derogable human rights and has publically pledged to “have respect for the liberty of parents . . . to ensure the religious and moral education of their children in conformity with their own convictions,” ICCPR, Art. 18(4), and the liberty of parents “to choose for their children schools, other than those

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<sup>4</sup> Sweden signed the ICCPR and the ICESCR on September 29, 1967 and ratified them both on December 6, 1971.

established by the public authorities . . . to ensure the religious and moral education of their children in conformity with their own convictions.” ICESCR, Art. 13(3).

An important question before this Court is whether the Municipality of Gotland has violated binding norms of international law through its treatment of the Johansson family. Sweden adopted both treaties with a single reservation to Article 7d of the ICESCR regarding public holidays and reserving the right not to apply the provisions of article 10, paragraph 3, with regard to the obligation to segregate juvenile offenders from adults, the provisions of article 14, paragraph 7, and the provisions of article 20, paragraph 1, of the ICCPR. These reservations in no way imposed any limitations concerning the issues of religious parental liberty, nor any reservations about its affirmative obligation to honor these provisions of the treaties. This sets Sweden apart from the United States, which declared the ICCPR to be “non-self-executing” when it ratified the treaty. Sweden has also routinely objected to countries acceding to the treaty with reservations.<sup>5</sup> Sweden has additional independent obligations to honor basic human rights under the rules of customary international law. It is well-established that rules of customary international law are binding upon all nations regardless of their individual consent. Sweden has specifically incorporated international law with respect to criminal acts.<sup>6</sup>

A policy which prevents parents from exercising their legal right to homeschool their children is inconsistent with the protection of fundamental human rights, as identified in the UDHR and protected by the ICESCR and the ICCPR.

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<sup>5</sup> See record of communications with United Nations committees overseeing these treaties: <http://treaties.un.org/Pages/showDetails.aspx?objid=0800000280004bf5>, accessed March 5, 2013.

<sup>6</sup> Mark Klamberg, *International Criminal Law in Swedish Courts: The Principle of Legality in the Arklöv Case*, *International Criminal Law Review* 9 (2009) 395–409 at 397. Available at [http://www.geneva-academy.ch/RULAC/pdf\\_state/Klamberg-ICL-in-Swedish-courts.pdf](http://www.geneva-academy.ch/RULAC/pdf_state/Klamberg-ICL-in-Swedish-courts.pdf), accessed March 5, 2013.

**c. Homeschooling is recognized by the UN as being a legitimate form of education.**

The right to homeschool is a legitimate application of the basic, fundamental rights of parents to decide how their children should be educated. The UN Human Rights Council's Special Rapporteur issued a report in February of 2006, in which he determined not only that homeschooling is a valid application of the rights of parents contained in the ICESCR, but also that Germany, by effectively banning the practice, violated core human rights obligations:

Distance learning methods and home schooling represent valid options which could be developed in certain circumstances, bearing in mind that parents have the right to choose the appropriate type of education for their children. . . . The promotion and development of a system of public, government-funded education should not entail the suppression of forms of education that do not require attendance at a school. In this context, the Special Rapporteur received complaints about threats to withdraw the parental rights of parents who chose home-schooling methods for their children.<sup>7</sup>

Because Germany's treatment of religious homeschoolers clearly violated its international obligations under the ICESCR, the Special Rapporteur called for "necessary measures" to "uphold the right of parents to employ this form of education."<sup>8</sup> Sweden's public policy posture in general is more closely associated with Germany than any other Western nation. In this particular case Sweden has grossly violated the Johansson family's basic rights that should have been protected.

## **II. *Case-by-case Analysis is the Correct Standard***

Instead of relying on opinion testimony regarding "social training," this Court should uphold the premise that custody decisions are best made on a case-by-case basis with a presumption in favor of the child continuing in the familiar educational setting with their parents. Homeschooling is not

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<sup>7</sup> UN Human Rights Council, UN Human Rights Council: Addendum to the Report of the Special Rapporteur on the Right to Education, Mission to Germany (13-21 February 2006), 9 March 2007, A/HRC/4/29/Add.3, at 16, ¶62. Available at: <http://www.unhcr.org/refworld/docid/4623826d2.html>, accessed March 5, 2013.

<sup>8</sup> Id. ¶ 93(g).

merely a viable educational option for students. It promises the potential for success beyond that offered in a traditional school setting. Homeschooling does not harm children’s “social training” and therefore may not be categorically dismissed in favor of public school in custody cases.

### **III. *Homeschooling Produces Well-Developed and Socialized Adults***

Homeschooling has grown rapidly in the United States since the early 1980s, and especially so in the past decade. “The increase in the homeschooling rate (from 1.7 percent in 1999 to 2.2 percent in 2003 to 2.9 percent in 2007) represents a 74 percent relative increase over the 8-year period and a 36 percent relative increase since 2003.”<sup>9</sup>

As homeschooling has increased in popularity, it has been the subject of increasing social research.<sup>10</sup> Most relevant to this case is research indicating that homeschooled students develop into well rounded and socially integrated adults and become responsible citizens who are productive members of society.

Noteworthy among this body of research is Brian Ray’s 2004 study *Home Educated and Now Adults*.<sup>11</sup> This study surveyed 5,254 homeschooled adults ages 18 through 24, and found that homeschoolers are involved in their community, civics, and higher education to a greater extent than their traditionally educated peers. For example, 50.2% of homeschooled students go on to some form of college, compared to 34% of their peers; 8.7% received associates degrees, compared to 4.1% of their peers, 11.8% received bachelor’s degrees, compared to 7.6% of their peers; and 0.8% received master’s degrees, compared to 0.3% of their peers.

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<sup>9</sup> U.S. Department of Education, National Center for Education Statistics, *1.5 Million Homeschooled Students in the United States in 2007*, NCES 2009–030, December 2008, at <http://nces.ed.gov/pubs2009/2009030.pdf>.

<sup>10</sup> Tanya K. Dumas, Sean Gates, & Deborah Schwarzer, “Evidence for Homeschooling: Constitutional Analysis in Light of Social Science Research,” *Widener Law Review* (forthcoming), draft available at <http://ssrn.com/abstract=1317439>.

<sup>11</sup> Brian D. Ray *Home educated and now adults: Their community and civic involvement, views about homeschooling, and other traits* (Salem, OR: National Home Education Research Institute, 2004).

Furthermore, 95% of those surveyed responded that they either agreed or strongly agreed that they were glad to be homeschooled, 92% agreed or strongly agreed that being homeschooled gave them advantages in adulthood, 88% disagreed or strongly disagreed that homeschooling limited their educational opportunities, 94% disagreed or strongly disagreed that being homeschooled limited their career choices, and 82% agreed or strongly agreed that they would homeschool their own children.

Homeschool graduates also ranked very highly on social and civic involvement. “Seventy-one percent of subjects were participating in any ongoing community service activity (e.g., coaching a sports team, volunteering at school, or working with a church or neighborhood association), while 37% of similarly aged U.S. adults and 39% of all U.S. adults did so in 1996. While 88% of these home-educated subjects were a member of any organization (e.g., a community group, church or synagogue, union, homeschool group, or professional organization), 50% of similarly aged U.S. Adults and 59% of all U.S. adults were in 1996.”<sup>12</sup> The study also revealed that homeschooled graduates are as tolerant, if not more so, of differing viewpoints than the general population, as well as being more civically involved.<sup>13</sup>

These results are not limited to this single study. Another study, presented to the Annual Meeting of the American Educational Research Association in 1995, looked at homeschooled students who went on to college and discovered that homeschoolers are often leaders on college campuses.<sup>14</sup> This study looked at 60 students who had been exclusively homeschooled in high school, and compared them to the rest of the student population according to sixty-three indicators. Homeschooled students came in first in 43 of the 63 indicators. “Because many indicators for which

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<sup>12</sup> Id. 48, internal citations omitted.

<sup>13</sup> Id. 48-49.

<sup>14</sup> Rhonda A. Galloway, “Home Schooled Adults: Are They Ready for College?,” in *American Educational Research Association* (San Francisco: 1995), available at [http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content\\_storage\\_01/0000019b/80/14/0a/d0.pdf](http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/14/0a/d0.pdf).

home-schooled students took first place involved positions of leadership, Galloway concluded that home-schooled students were readily recognized for their leadership abilities. She stated flatly, “They are the leaders on campus.”<sup>15</sup>

Other studies demonstrate the same results. One study found that homeschooled children score in the 84<sup>th</sup> percentile for socialization, in contrast to their peers who scored in the 23<sup>rd</sup> percentile, and concluded that “children kept home are more mature and better socialized than those who are sent to school.”<sup>16</sup> Another study was unable to find a lack of adjustment among home schooled students who went to college, and noted that “they appear to be able to adjust as well or better than traditionally schooled freshmen to collegiate life at a Christian college as measured by these various scales of college adjustment.”<sup>17</sup> Yet another study found that “College students who were previously homeschooled were found to be significantly more Agreeable, Conscientious and Open as compared to their peers in the national college-aged norms.”<sup>18</sup>

In an article published in 2000 in the Peabody Journal of Education, Richard Medlin, Professor of Psychology at Setson University who teaches both Child Psychology and Childhood Behavior Disorders, surveyed the research concerning homeschoolers’ social skills. In none of the studies he reviews are homeschoolers behind their traditionally educated peers. Rather, he finds that homeschooled children are very engaged in their community and social lives:

Despite the widespread belief that home schooling is socially isolating, the research documents quite clearly that home-schooled children are very much engaged in the social routines of their communities. They are involved in many different kinds of activities with many different kinds of people. In fact, the flexible schedule and more efficient use of time

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<sup>15</sup> Richard G. Medlin, *The Question of Socialization*, Peabody Journal of Education 75(1 & 2), 107-123, 117, (2000).

<sup>16</sup> Thomas C. Smedley, *Socialization of Home School Children*, Home School Researcher 8(3), 9-16, (1992).

<sup>17</sup> Scott White, et al., *Emotional, Social & Academic Adjustment to College: A Comparison Between Christian Home Schooled & Traditionally Schooled College Freshman*, Home School Researcher 17(4), 1-7, (2007).

<sup>18</sup> Scott White, Megan Moore, and Josh Squires, *Examination of Previously Homeschooled College Students with the Big Five Model of Personality*, Home School Researcher 25(1), 1-7, (2009).

home schooling affords may allow home-schooled children to participate in more extracurricular activities than children attending conventional schools.<sup>19</sup>

He likewise finds that homeschoolers are learning proper social behavior.

The research confirms that home-schooled children are learning rules for appropriate social behavior and forming healthy attitudes toward themselves. Their social behavior and self-esteem are certainly no worse than those of children attending conventional schools and are probably better.<sup>20</sup>

More recently, Medlin conducted another study, and found: “Homeschooled children’s social skills scores were consistently higher than those of public school students. Differences were most marked for girls and for older children, and encompassed all four of the specific skills tested: cooperation, assertiveness, empathy, and self-control,”<sup>21</sup> and concludes that “[t]here appears to be, therefore, a convergence of evidence from three different perspectives—parental report, objective observers, and self-report—that homeschooled children’s social skills are exceptional.”<sup>22</sup>

#### **IV. *Homeschooled Students Are Academically Successful***

Since 1988, there have been a number of studies done comparing the success of homeschooled students with those in the public education system. These include official studies by the Tennessee Department of Education in 1988<sup>23</sup> and the Oregon Department of Education in 1999.<sup>24</sup> Additionally, there have been at least five national studies of the success of homeschooling by professional researchers<sup>25</sup>, including Lawrence Rudner formerly the Director of the Education

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<sup>19</sup> Medlin 2000, 112-113 *supra*.

<sup>20</sup> *Id.*, 116

<sup>21</sup> Richard G. Medlin, *Homeschooled Children’s Social Skills*, *Home School Researcher* 17(1), 1-8, (2006).

<sup>22</sup> *Id.*

<sup>23</sup> Tennessee Department of Education. *Tennessee statewide averages, home school student test results, Stanford Achievement Test, grades 2, 5, 7 and 9* (Nashville, TN, 1988).

<sup>24</sup> Oregon Department of Education, Office of Student Services, *Annual report of home school statistics 1998-99* (Salem, OR, May 20, 1999).

<sup>25</sup> Brian D. Ray, *Academic Achievement and Demographic Traits of Homeschool Students: A Nationwide Study*, *Academic Leadership Live: The Online Journal*, 8 no. 1 (February 2010), available at [http://www.academicleadership.org/emprical\\_research/Academic\\_Achievement\\_and\\_Demographic\\_Traits\\_of\\_Hom](http://www.academicleadership.org/emprical_research/Academic_Achievement_and_Demographic_Traits_of_Hom)

Resources Information Center (ERIC) Clearinghouse on Testing and Measurement, a research library sponsored by the U.S. Department of Education.<sup>26</sup>

All of these studies demonstrate that homeschooling produces higher scores on educational achievement tests than public school students. Homeschoolers achieve, on average, between 15 and 30 percentile points above public school averages. These studies reveal that this is true for all grade levels and subjects.

Studies also show that there is no significant correlation between teacher certification and educational success in homeschooling. Homeschool students achieve high results whether or not their parents possess a state teaching credential.<sup>27</sup>

When the achievement of homeschooled students is analyzed according to the educational level of their parents (high school diploma, some college, college degree, etc.), some studies find that there is a small correlation between parental education and student success while other studies find no correlation at all.<sup>28</sup> However, all studies have found that even those students whose parents have the lowest level of educational background still score higher than public school averages.

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eschool\_Students\_A\_Nationwide\_Study.shtml; Brian D. Ray, *A nationwide study of home education: Family characteristics, legal matters, and student achievement* (Salem, OR: National Home Education Research Institute, 1990); *Research Project*. Home School Researcher, 6(4), 1-7; (1990); Deani Van Pelt. *The choices families make: Home schooling in Canada comes of age*, Frasier Forum, March 2004, available at [http://www.fraserinstitute.org/Commerce.Web/product\\_files/The%20Choices%20Families%20Make~%20Home%20Schooling%20in%20Canada%20Comes%20of%20Age-Mar04ffpelt.pdf](http://www.fraserinstitute.org/Commerce.Web/product_files/The%20Choices%20Families%20Make~%20Home%20Schooling%20in%20Canada%20Comes%20of%20Age-Mar04ffpelt.pdf).

<sup>26</sup> Lawrence M. Rudner, *Scholastic achievement and demographic characteristics of home school students in 1998*, Educational Policy Analysis Archives, 7(8). (1999). available at <http://epaa.asu.edu/epaa/v7n8/>.

<sup>27</sup> Jennie F. Rakestraw, *Home schooling in Alabama*, Home School Researcher, 4(4), 1, 5 (1988); Brian D. Ray 1990, 13, 38 *supra*; Brian D. Ray, *Home schooling: The ameliorator of negative influences on learning?* Peabody Journal of Education 75(1 & 2), 71, 83, 90 (2000); Howard B. Richman, William Girtten, & Jay Snyder, *Academic achievement and its relationship to selected variables among Pennsylvania homeschoolers*, Home School Researcher, 6(4), 9, 13, (1990); Rudner 1999, Table 3.11 *supra*.

<sup>28</sup> Joan Ellen Havens, *A study of parent education levels as they relate to academic achievement among home schooled children*. Doctoral (Ed.D.) dissertation, Southwestern Baptist Theological Seminary, Fort Worth TX (1991), 92-97; Brian D. Ray, *Home education in Oklahoma: Family characteristics, student achievement, and policy matters*, National Home Education Research Institute (Salem, OR, 1992), 25; Rudner 1999, Table 3.12: "It is worthy to note that, at every grade level, the mean performance of home school students whose parents do not have a college degree is much higher than the mean performance of students in public schools. Their [homeschooled] percentiles are mostly in the 65th to 69th percentile range."

In public schools, however, there is a strong correlation between the parents' educational level and student success.<sup>29</sup> In public schools, the children of highly educated families are the achievers; students from families with lower-level educational backgrounds score significantly lower on achievement tests. Not so in homeschooling. There is virtually no educational disparity between the children of the most highly educated compared to those with less. Every segment of the homeschooling community scores materially higher than public school averages. Public schools are unable to attain the results achieved by homeschooled children.

This same phenomenon can be found when educational results are segmented according to family income. It is tragic to see that in public schools, students who come from low-income families have significantly lower results than students from high-income families.<sup>30</sup>

In contrast, homeschooled children from every income level achieve results that are significantly above public school averages. Moreover, in some studies of homeschoolers there is no material difference in the achievement of the children from the poorest families compared to the children from the richest families.<sup>31</sup> Although some studies show a marginal difference in homeschool student success based on family income, even in these cases, students from the lowest income levels achieve well above public school averages.<sup>32</sup>

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<sup>29</sup> Gary Neil Marks, *Are father's or mother's socioeconomic characteristics more important influences on student performance? Recent international evidence*. *Social Indicators Research*, 85(2), 293-309, (January 2008).

<sup>30</sup> James S. Coleman & Thomas Hoffer, *Public and private high schools: The impact of communities* Chapter 5 (New York, NY: Basic Books, Inc, 1987); Gordon Dahl & Lance Lochner, *The impact of family income on child achievement*. Discussion Paper No. 1305-05, Institute for Research on Poverty, 2005 available at <http://www.eric.ed.gov/>; Catherine E. Snow, Wendy S. Barnes, Jean Chandler, Irene F. Goodman, & Lowry Hemphill, *Unfulfilled expectations: Home and school influences on literacy 2-3* (Cambridge, MA: Harvard University Press, 1991).

<sup>31</sup> Ray 2000, 83-90 *supra*; Terry Russell, *Cross-validation of a multivariate path analysis of predictors of home school student academic achievement*, *Home School Researcher*, 10(1), 9, (1994).

<sup>32</sup> Rudner 1999, Table 3.10 *supra*; Jon Wartes, *The relationship of selected input variables to academic achievement among Washington's homeschoolers*. (Woodinville, WA, September 1990), 79, 122.

Public schools appear unable to break the cycle of low achievement for students from low income families. But homeschooling has demonstrated that children from low income families succeed; and children of parents with lower educational levels also succeed.

Homeschoolers have scored higher on the ACT than the national average for 10 years – from 1996 until 2006.<sup>33</sup> In 2006, the ACT stopped reporting the results of homeschooled students separately. In 2006, the average ACT composite score for homeschooled students was 22.4, compared to the national average composite of 21.1.<sup>34</sup> The 2005 average ACT composite score for homeschooled students was 22.5, compared to the national average of 20.9. Part of this academic achievement may be related to the fact that homeschool kids spend their time in radically different ways than their public- or private-schooled counterparts. In a study of fourth graders, 0.1 percent of homeschooled children watched six hours or more of television per day whereas 19 percent of public schooled children watched television at this staggering rate.<sup>35</sup>

Studies also show that homeschooled graduates demonstrate success and do as well or better, on average, than the general public in all measures of adult success. These measures include the rates of matriculation in college, completion of college, civic engagement, and community service.<sup>36</sup>

**a. Popular Reports Demonstrate that homeschooling is highly successful**

Homeschool success has also been demonstrated by a number of other popular indicators of success. California's youngest college student, 10-year-old genius Moshe Kai Cavalin, was

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<sup>33</sup> The ACT is a college entrance examination.

<sup>34</sup> *Once Again Home-schoolers Score High on the ACT Exam*, HSLDA, July 31, 2007, available at <http://www.hslda.org/docs/news/hslda/200707310.asp>.

<sup>35</sup> Rudner 1999, Table 2.10 *supra*.

<sup>36</sup> Clive R Belfield, *Home-schoolers: How well do they perform on the SAT for college admission?* in Bruce S. Cooper (Ed.), *Home schooling in full view: A reader* (Greenwich, CT: Information Age Publishing; Galloway, 2005), 167-177; Rhonda A. Galloway & Joe P. Sutton, *Home schooled and conventionally schooled high school graduates: A comparison of aptitude for and achievement in college English*, *Home School Researcher*, 11(1), 1-9 (1995); Paul Jones & Gene Gloeckner, *First-Year College Performance: A Study of Home School Graduates & Traditional School Graduates*, *Journal of College Admission* 183 (Spr. 2004), at 17, 20; Ray 2004, *supra*.

homeschooled from age 6 through 8, after which his parents decided college was the best place for him.<sup>37</sup>

Another indication of the success of homeschooling comes from the national spelling and geography bees. Since 1997 and 1999, when homeschoolers first won the spelling and geography bees respectively, homeschoolers have consistently performed well at these competitions.

In 2007, the winner of the Scripps Howard National Spelling Bee was Evan O’Dorney, a homeschooled student.<sup>38</sup> Of the competitors who made it to the national level that year, 12.5 percent of them were homeschooled (despite homeschoolers only making up 2.9% of the school population in 2007<sup>39</sup>), and homeschoolers took three of the top six slots.<sup>40</sup> Last year (2009), two of the finalists—including the runner up<sup>41</sup>—were home schooled.<sup>42</sup> The winner of the 2007 National Geographic Bee, Caitlin Snaring, was homeschooled,<sup>43</sup> and in both 2005<sup>44</sup> and 2003<sup>45</sup> homeschoolers

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<sup>37</sup> John Rogers, *10-year-old scholar takes Calif. college by storm*, AP News, May 14, 2008, available at <http://apnews.myway.com/article/20080514/D90LCS4G0.html>.

<sup>38</sup> *California Boy Wins National Spelling Bee*, CBS News, May 31, 2007, available at <http://www.cbsnews.com/stories/2007/05/31/national/main2873184.shtml>.

<sup>39</sup> U.S. Department of Education, 2008 *supra*.

<sup>40</sup> Richard Sousa, *On Education: Home-schooling is a viable alternative to public schools*, San Francisco Chronicle, June 11, 2007, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/06/11/EDGKOP3DE31.DTL&hw=subject%3Dedu+subject%3Deducation&sn=150&sc=153>.

<sup>41</sup> *Homeschooler takes second place in national spelling bee*, Washington DC Examiner, May 29, 2009, available at <http://www.examiner.com/x-4291-Baltimore-Christian-Conservative-Examiner-y2009m5d29-Homeschooler-takes-second-place-in-national-spelling-bee>.

<sup>42</sup> Scripps Howard National Spelling Bee website, *2009 Results*, available at <http://public.spellingbee.com/public/results/2009/finishers/html>; *Homeschooler takes second place in national spelling bee*, Washington DC Examiner, May 29, 2009, available at <http://www.examiner.com/x-4291-Baltimore-Christian-Conservative-Examiner-y2009m5d29-Homeschooler-takes-second-place-in-national-spelling-bee>.

<sup>43</sup> Scott Norris, *Girl Wins Geographic Bee – First in 17 Years*, National Geographic News, May 23, 2007, available at <http://news.nationalgeographic.com/news/2007/05/070523-geo-bee.html>.

<sup>44</sup> *Californian wins National Spelling Bee with ‘appoggiatura’*, USA Today, June 1, 2005, available at [http://www.usatoday.com/news/nation/2005-06-01-spelling-bee\\_x.htm](http://www.usatoday.com/news/nation/2005-06-01-spelling-bee_x.htm); *Ten Students Win Places in National Geographic Bee Final*, National Geographic News, May 24, 2005, available at [http://news.nationalgeographic.com/news/2005/05/0524\\_050524\\_beefinals.html](http://news.nationalgeographic.com/news/2005/05/0524_050524_beefinals.html); National Geographic, *Past National Geographic Bee Winners*, at [http://www.nationalgeographic.com/geographybee/past\\_winners.html](http://www.nationalgeographic.com/geographybee/past_winners.html) (n.d.).

<sup>45</sup> *Eighth-grader from Dallas wins spelling bee*, CNN.com, May 30, 2003, at <http://edition.cnn.com/2003/EDUCATION/05/29/spelling.bee.ap/index.html>; National Geographic, *2003 Winner: James Williams*, at <http://www.nationalgeographic.com/geographybee/2003.html> (n.d.).

took second place in the spelling bee and won the geography bee. Four out of the top six finalists in the 2002 geography bee—including the winner<sup>46</sup>—and at least one of the finalists in the 2002 spelling bee,<sup>47</sup> were also homeschooled. In 2001 a homeschooled student won the spelling bee again,<sup>48</sup> and another took third place in the geography bee.<sup>49</sup> The most successful year, however, was 2000, where homeschooled students swept the top three slots in spelling,<sup>50</sup> and four of the top ten in geography.<sup>51</sup> In 1999 a homeschooled student took third in spelling<sup>52</sup> and first in geography.<sup>53</sup> Altogether, homeschoolers claim five of the past thirteen spelling bee winners and five of the past eleven geography bee winners, as well as over thirty finalists between the two competitions.

In 2002, three home schooled teams were nationally recognized for their projects in the national Space Day program, Design Challenges. Over 400 team projects were submitted to Space Day Foundation from students around the world. Eighteen team winners were chosen, five of which were home school teams. Former astronaut and United States Senator John Glenn recognized the teams in Washington, D.C. at the May 2 Space Day Opening Ceremony.<sup>54</sup>

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<sup>46</sup> Mary Pride, *What We Can Learn from the Home-schooled 2002 National Geography Bee Winners*, Practical Home-schooling # 48, 2002, available at <http://www.home-school.com/Articles/phs48-geobee.html>.

<sup>47</sup> *Colo. student wins spelling bee with 'prospicience'*, USA Today, May 31, 2002, available at <http://www.usatoday.com/news/nation/2002/05/30/spelling-bee.htm>.

<sup>48</sup> *Minnesota Boy Is Spelling Champ*, CBS News, May 31, 2001, available at [http://www.cbsnews.com/stories/2001/05/31/national/main294239.shtml?source=search\\_story](http://www.cbsnews.com/stories/2001/05/31/national/main294239.shtml?source=search_story).

<sup>49</sup> Rich Jefferson, *Home schooler wins third place in National Geography Bee*, NCHE, May 23, 2001, <http://www.hsllda.org/docs/news/hsllda/200105231.asp>.

<sup>50</sup> *Home Schoolers Making Headlines*, NCHE, June 22, 2000, <http://www.hsllda.org/docs/nche/000002/00000254.asp>.

<sup>51</sup> National Geographic, "2000 Finalists," [http://www.nationalgeographic.com/geographybee/2000\\_semi.html](http://www.nationalgeographic.com/geographybee/2000_semi.html).

<sup>52</sup> Jefferson 2001, *supra*.

<sup>53</sup> NCHE 2000, *supra*.

<sup>54</sup> *California Home Schoolers Recognized in Space Day Competition*, HSLDA News, July 8, 2002, at <http://www.hsllda.org/docs/news/hsllda/200207080.asp>.

Academic champions are not the only ones who are homeschooled. Tim Tebow, 2007 Heisman Trophy winner, was homeschooled,<sup>55</sup> and according to USA Today, “The ranks of action sports champions are thick with homeschool graduates such as 17-year-old X Games snowboard gold medalist Shaun White, 19-year-old motocross champion James “Bubba” Stewart and 17-year-old mountain bike champion Kyle Strait.”<sup>56</sup> Shaun White went on to become an Olympic gold medalist in the 2010 Vancouver games.<sup>57</sup>

**b. Homeschooled students do well in college**

Homeschooled graduates build on their solid secondary education when they go to college. Data from Colorado reveals that “academic performance analyses indicate that homeschool graduates are as ready for college as traditional high school graduates and that they perform as well on national college assessment tests as traditional high school graduates.”<sup>58</sup> Another study looked at GPAs and professional aptitude tests and determined that home school graduates preformed just as well as public and private school graduates. In 2004 the Journal of College Admission published an article by an admissions director from Ball State University who reported that “[r]esearch showed that our homeschooled students had above-average SAT<sup>59</sup> and ACT scores (1210 and 29 respectively). They also performed better academically. They had a combined cumulative grade point average of 3.47, compared to the 2.91 shared by the general student population.”<sup>60</sup> Another study

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<sup>55</sup> *One-of-a-kind Tebow becomes first sophomore to win Heisman*, AP article, December 10, 2007 available at <http://sports.espn.go.com/espn/wire?section=nfc&id=3148445>.

<sup>56</sup> Sal Ruibal, *Elite take home-school route*, USA TODAY, June 7, 2005, available at [http://www.usatoday.com/sports/preps/2005-06-07-home-school-cover\\_x.htm](http://www.usatoday.com/sports/preps/2005-06-07-home-school-cover_x.htm).

<sup>57</sup> Vancouver Olympics 2010 website, athlete profile of Shaun White, available at [http://www.vancouver2010.com/olympic-snowboard/athletes/shaun-white\\_ath1023740ln.html](http://www.vancouver2010.com/olympic-snowboard/athletes/shaun-white_ath1023740ln.html).

<sup>58</sup> Jones & Gloeckner, 2004.

<sup>59</sup> The SAT is a college entrance examination.

<sup>60</sup> Gary Mason, *Homeschool Recruiting: Lessons Learned on the Journey*, Journal of College Admission 185 (Fall 2004), at 2.

found that college freshman who had been homeschooled had slightly higher GPAs and higher entrance SAT scores than private and public schooled students, participated in more activities, and were satisfied with their homeschool experience.<sup>61</sup>

In addition to the academics, homeschooled students are emotionally prepared for college. For instance, one study involving freshman students at a private liberal arts college found that homeschooled students reported “significantly fewer anxiety symptoms than a matched sample of traditionally schooled students.”<sup>62</sup> Using the College Adjustment Scale (a measure of emotional, behavioral, social, and academic problems used by university counseling centers), researchers found no other significant differences between the two groups of students.

Accordingly, colleges have recognized the potential of homeschooled students. The Chronicle of Higher Education has reported that as early as a decade ago, “over 700 post-secondary institutions across the United States, including Harvard University, Yale University, Stanford University, MIT, Rice University, and the Citadel, admitted homeschooled students.”<sup>63</sup> Barmak Nassirian, associate executive director of the American Association of Collegiate Registrars and Admissions Officers explains: “After years of skepticism, even mistrust, many college officials now realize it’s in their best interest to seek out home-schoolers.”<sup>64</sup> Some are even actively recruiting homeschoolers. “UC Riverside [is] the first UC campus and one of the first public research universities in the nation to recruit students who were home-schooled at the kitchen table or on the road instead of inside a classroom. “These students are very prepared for college-level work and

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<sup>61</sup> Erika M. L. Jones, *Transition from Home Education to Higher Education: Academic and Social Issues*, Home School Researcher 25(3), 1-9, (2010).

<sup>62</sup> White, et al., 2007, *supra*.

<sup>63</sup> Paula Wasley, *Home-Schooled Students Rise in Supply and Demand*, The chronicle of Higher Education 54(7), 1, (Oct. 12, 2007); see also Patrick Basham, John Merrifield & Claudia R. Hepburn, *Home Schooling: From The Extreme To The Mainstream*, 2nd ed 6, The Fraser Institute 2007, available at [http://www.fraserinstitute.org/COMMERCE.WEB/product\\_files/Homeschooling2.pdf](http://www.fraserinstitute.org/COMMERCE.WEB/product_files/Homeschooling2.pdf). Basham at 15.

<sup>64</sup> Alan Scher Zagier, *Colleges Coveting Home-Schooled Students*, AP, September 30, 2006, available at [http://www.boston.com/news/nation/articles/2006/09/30/colleges\\_coveting\\_home\\_schooled\\_students/](http://www.boston.com/news/nation/articles/2006/09/30/colleges_coveting_home_schooled_students/).

doing very well here,' said Merlyn Campos, interim admissions director."<sup>65</sup> Regina Morin, director of admissions at Columbia College in St. Louis, Missouri, says the school is seeing more homeschoolers apply each year. "They tend to be better than their public school counterparts," she said. "They score above average on tests, they're more independent, they're often a grade ahead."<sup>66</sup>

## CONCLUSION

In the past thirty years that homeschooling has gained in popularity enhance states and many other Western nations. As a growing social and educational movement a wide variety of research has been conducted addressing both socialization and academics. On all counts homeschooling meets the standard set by public schools, and virtually all of the research demonstrates that homeschoolers far exceed that bar. Accordingly, the presumption that homeschooling fails to meet the developmental needs of adolescents—either socially or academically—cannot be supported in light of the evidence.

It is well demonstrated in general that parents who choose to educate their children at home are motivated to care for their children's best interest and to be personally involved in all aspects of their education and development. The record in this case also reveals that the Johanssons cared more than adequately for their son. The reasons given by the lower Administrative courts for keeping Domenic in care are hollow, superficial and insufficient to maintain in light of the testimony given in the District Court. Annie and Christer Johansson are loving capable parents who have been permanently harmed by the actions of Swedish authorities. Domenic Johansson deserves to be with these loving and capable parents for his own good.

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<sup>65</sup> Elaine Regus, *UC Riverside a leader in courting home-schooled students*, The Press-Enterprise, November 23, 2007, available at [http://www.pe.com/localnews/highereducation/stories/PE\\_News\\_Local\\_D\\_home-school24.3085ff7.html](http://www.pe.com/localnews/highereducation/stories/PE_News_Local_D_home-school24.3085ff7.html).

<sup>66</sup> Georgina Gustin, *Home-school numbers growing*, St. Louis Post-Dispatch, October 3, 2007, available at <http://forum.gon.com/showthread.php?t=141756>.

Finally, the actions of authorities in this case have grossly violated the Johansson family's basic human rights to determine the education of their child and have separated the family in violation of all due regard for the rights of the child and the parents causing grave injury to both. The right of parents to direct their children's education is without dispute one of the most fundamental human rights that states must protect. The right of children to be with their parents is also fundamental. It is this court's duty to intervene to right this grave injustice and to establish that in Sweden parents are permitted to educate their children and that homeschooling may not be considered a basis to take a child into care or to justify keeping a child in care.