

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NR: CCT 46/95

In the matter between:

**THE AFRICAN CHRISTIAN DEMOCRATIC PARTY & OTHERS
and
THE MINISTER OF EDUCATION**

**Petitioners
Respondent**

AFFIDAVIT

I, the undersigned,

LEENDERT JAN VAN OOSTRUM,

Do hereby make oath and say that:

1. I am an adult male educator of 801 Twenty Seventh Avenue, Rietfontein, Pretoria, and duly authorized to depose this affidavit.
2. Respondent is THE MINISTER OF EDUCATION in his official capacity as such, care of the State Attorney, Fedlife Forum, South Tower, Pretoria.
3. The facts set out in this affidavit, save where otherwise stated or where the context dictates otherwise, are wholly within my knowledge and belief and are true and correct.

I have been working as an educational advisor at the University of Pretoria since 1990, advising teaching staff in the faculties of science, engineering, and agriculture, on educational practice. I am currently completing an MEd thesis in curriculum science, on the theme of bridging courses for disadvantaged students in science and engineering, and I have authored or co-authored various papers on this theme, nationally and internationally.

My wife and I have two children, whom we educate at home because we are bound by our faith to do so and because, in our observation and based on our knowledge of our children, their individual educational needs - academically, emotionally, and socially - are best met in this way.

I have served as the chairperson of the Association for Home Schooling, which has about fifty members in Gauteng and the surrounding provinces, since its inception in 1991. During that time, I have studied the published academic and professional literature on the subject of home schooling, I have consulted with and maintained relations with the prominent researchers in the field internationally, and I have consulted extensively with a large number of those home schoolers in South Africa who are not underground.

Below, I present my perceptions of a group of people of whom I am a participant observer. I describe the various motives, methods, and concerns of the South African home schoolers whom I have the privilege to know. I cannot give more than a rough guess at their numbers - which may now be some hundreds - because, until recently, those who were not being prosecuted were in hiding. The rate at which I encounter others who have been home schooling for some years, suggests that the numbers may be significantly greater than I have suspected until now.

In Appendix A, also covered by my oath, I present the results of my study of the literature on home schooling internationally. Some more recent, and much more extensive studies have since been published by Ray, but these are not yet available locally. I have consulted him, though, and have been assured that these studies have only confirmed the results of the ones I cite.

1. A Definition of Home Schooling

1.1 The Association for Home Schooling proposed the following definition of home schooling in its submission to the Hunter Committee:

Schools

- *in which the education of each child is managed by the child under the guidance and with the assistance of his or her parents or legal guardian in a manner appropriate to the evolving capacities of the child;*
- *in the environment of the family;*
- *utilising family and community resources; and*
- *in which the parents or legal guardians bear the full responsibility in law for the outcome of the education, and exercise all the rights to direct and facilitate the education in accordance with the gravity of the responsibility.*

1.2 While not all home schoolers agree with this formulation, I am satisfied, on the basis of my observations, that it accurately reflects the pedagogical realities of the home schooling phenomenon in general.

1.3 Home Schooling in South Africa

1.4 Many prominent leaders in South Africa were home schooled until the first few decades of this century. This is borne out in the biographies of persons such as Field Marshal Smuts and the poet C. Louis Leipoldt.

1.5 The practice did not die out completely when compulsory school attendance was instituted for white children. It is commonly known in my family that my mother and her siblings were home schooled through primary school in the nineteen thirties. Three of them joined professions, and the fourth an economist.

1.6 It is almost impossible to obtain data on the occurrence of home schooling in more recent years, but there is anecdotal evidence that, in addition to officially

approved cases, some families were homeschooling underground. A father admitted that his family had home schooled in secret for nearly twenty years, and I have been told that some of his children subsequently studied successfully at the University of Cape Town.

1.7 A South African family, now working as missionaries in the far East, reported that, as late as 1989, they received permission, for religious reasons, to educate their children at home in Johannesburg. The results of my enquiries suggest that, until then, criteria for white people to obtain exemption from compulsory school attendance were not well standardised in the country. In some areas exemption appeared to be granted with few restrictions, while in others, it seemed to be almost impossible to obtain.

1.8 Since that time, two criminal prosecutions involving home schoolers were prominently reported in the media. This was perceived as deliberate persecution by myself and other home schooling advocates, and stimulated the formation of the Association for Home Schooling. There appeared to be a campaign to subdue the trend towards home schooling, and the then minister of education, Mr Piet Marais, was reported in the media and by petitioners for home schooling, to have made statements to the effect that tough restrictions were being enforced by his department.

1.9 While white people were persecuted and jailed for home schooling, it was not unknown in other communities. Instances of home and peer education, such as the "each on teach one" project were reported in the media during times when the education system in some townships had broken down. The only major cultural group among whom I have not met children being home schooled is the Asian one. In a few cases that I have come across, children of illiterate parents are educated in small multiracial co-operative initiatives involving families connected to the same household and sharing the educational tasks and responsibilities according to their abilities and skills.

1.10 At present, home schoolers are working hard to take their place in the legitimate educational system. Interest in home schooling seems much more lively than in past years, but it is not clear whether this is merely a public expression of an interest that was, in the past, kept secret.

2. Motivation of home schoolers

2.1 Almost all the home schoolers I have met in South Africa are motivated primarily by religious considerations and secondarily by pedagogical ones. The initial impetus for the interest in home schooling as an educational option seems to have followed on from the movement, during the previous decade, to establish private Christian schools as an alternative to the white government schools.

2.2 That development was resisted by the government at first, and many of the present generation of home schoolers are veterans of that battle to be allowed to

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teach their children according to a curriculum that is in accordance with their faith. These schools were almost exclusively established by independent churches with close ties to theological movements in the United States.

2.3 As a result they almost all used English as medium of instruction, and tended to cater primarily to the children of white parents with modest means, and a small number of black families. A small number of Afrikaans medium schools of this kind have also been established over the last decade. People from this group still form the bulk of the home schooling community, as well as of the large number of new home schoolers. The small number of black home schoolers of my acquaintance could be associated with this group.

2.4 While the renewed interest in home schooling seems to have blown over from the USA, and to form a part of a world wide trend in what some refer to as a post modern society, the transformation in South Africa itself also contributes in the following ways:

2.5 The advent of the new constitution in December 1993 has given home schoolers and prospective home schoolers hope that they would no longer be subject to the whims of a sovereign parliament that could grant and remove rights as it wished. Many of us believe that the recognition of the fundamental rights of our children and our families now protects us from some of the government oppression that was suffered in the past.

2.6 In rural areas, I have found a few English speaking parents who state that they educate their children at home because they can no longer find English mother tongue teachers for their children, and who claim that their children are learning dialects that are foreign to their family tradition.

2.7 Conversely, some schools that used to provide education through the medium of Afrikaans have changed to English as the language of learning. Some rural Afrikaans families are opting for home schooling in preference to sending their children to boarding schools that offer Afrikaans as the language of learning, in order to maintain the family unity.

2.8 I have encountered three persons who stated explicitly that they wish to home school in order to avoid racial integration in schools. These invariably also stated that they do not recognise the legitimacy of the new constitution.

2.9 In general, pedagogical concerns are now being mentioned more often as one of the reasons for home schooling than in the past.

3. The rights claimed by home schooling families

3.1 Nearly all the home schoolers I have met seem to place a particularly high priority on their parental responsibilities. They also seem conscious of a perception that a high level of devotion to the task of parenting is required to offset the

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education, in travelling to consult professionals or other home schoolers, and in time to meet and share their knowledge and experience. There is also a tendency to take on only those decisions that they feel competent to make. With a few exceptions, *new home schoolers clearly prefer more highly structured, prepared programmes of instruction*, while the more experienced ones seem to gravitate towards a basic curriculum, books and materials of their own choice, and towards child centred learning.

3.9 While home schoolers insist on the common law presumption that parents will *act in the best interests of their children*, they are keenly aware that this presumption is rebuttable. Nearly every meeting of new home schoolers that I attend will go through a phase where they want to create an organisation to watch over themselves and to maintain "standards". In time and after discussion, most of these attempts are abandoned on some of the following grounds:

3.10 Nearly all home schoolers choose to home school because they are dissatisfied with the standards set by other people - if not with the nature of the standards, then with their stringency or with the criteria used to measure them. Almost invariably, home schoolers set higher standards for education than the alternative options are able to provide.

3.11 In home schooling, it is soon realised that the only relevant standards in education are described in terms of the outcomes of education, and not in terms of the inputs or the processes involved.

3.12 Educational outcomes, in turn, provided that they are objectively measurable and not liable to subjective opinion, is an area in which most home schoolers recognise that the state may have a legitimate interest. These, therefore, are best negotiated with the government.

3.13 In time, most homeschoolers seem to agree with the results of extensive research (see Appendix A) showing that:

3.14 While many home schoolers prefer to use well structured curricula and programmes of instruction of their choice at certain stages, or for some subjects, there is no evidence that learners benefit from them at all. What value they have, seems to lie in the convenience they provide for the teacher or parent. They do present a danger in that they often become the focus of control measures and inspections, deflecting the attention from the proper business of education, its results. At the same time, by definition, they constitute a limitation on the freedom of education and the freedom of conscience. Home schoolers therefore, on the whole, will tend to resist strongly the imposition of any prescriptive curricula, syllabi, or programmes of instruction by the state or other authorities unless these can be shown to have some reasonable and necessary objective.

3.15 Structured or standardised scheduling of the school year or the school day has not been shown to benefit learners in any way. The effect seems to be the opposite, and the concept of the "year round school", free to utilise educational

sacrifices that home schooling requires. The great majority of home schoolers state that they have a God given duty to educate their children according to Biblical principles. My discussions with them, and topics that often come up in *conversations among home schoolers have confirmed my personal conviction that these views can generally be analysed to comprise the following claims:*

3.2 Individuals, having the right to marry and found families, have the duty and the concomitant rights to care for those families materially, intellectually, emotionally, and spiritually.

3.3 Children, conversely, have the right to be cared for by their parents in all these respects. This includes the right to be taught how to exercise their fundamental rights within the family and in the wider society. In particular, it includes the right to be protected, by their parents, from infringement of their fundamental rights by the state as well as by other persons.

3.4 All belief, thought, or opinion, religious or otherwise, is the result of education, including school education, or of experience. The most fundamental manifestation of the freedom of conscience, therefore, is the freedom to select the education one receives, and the experiences one exposes oneself to.

3.5 The right to education, conversely, clearly includes the freedom of education - to freely choose what shall be included in and what shall be excluded from one's education, to choose the time and place, and the people from whom one receives that education as well as the form in which it is received. In the case of children, Christian home schoolers in particular stress that they, to the extent that they are too young to make these choices unaided have the right to be directed by their parents in these choices, and not by the state or by persons not approved by the family.

3.6 In general, home schoolers tend to react with anger to actions based on a presumption that parents do not, as far as they are able, act in the best interests of their children. Many of them are quick to challenge any assertions that specialist professionals should be allowed to make decisions on their behalf. They will counter with arguments such as that the daily nutritional decisions made in households are at least as complex as, and often more far reaching than educational ones.

3.7 The argument that often wins the day is that, except where delays are life threatening, medical professionals are, internationally, not allowed to implement treatment of children without the consent of their parents. Sometimes this argument will be extended to other professional services, showing that the teaching profession, at the behest of the state, has come to be the only profession legally empowered to act without the consent of its clients and their parents - or even contrary to their wishes.

3.8 Yet home schoolers are great consumers of information on education and child care, and of professional advice to inform their decisions. A large part of the resources they allocate to education seems to go into books and periodicals on

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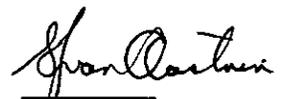
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opportunities as and when they arise, is favoured. Any scheduling imposed by the state constitutes a clear limitation of the personal freedom of the learner. In the case of children, it also limits their right to parental guidance in utilising their personal freedom. Home schoolers are, therefore, likely to challenge attempts by the state to impose such measures, unless they have a reasonable and necessary objective.

3.16 There is no evidence that learners in home schools benefit from being taught by qualified teachers or, indeed, by persons who possess more than a basic education themselves. Any state imposed requirements in this respect will clearly limit the rights of many children and their families to choose home schooling as a legitimate educational option. Such impositions are certain to be challenged by home schoolers.

3.17 Many South African home schoolers greeted the advent of the new constitution with great relief, even if they have greater or lesser reservations about elements contained in it. All of them have been exercising the fundamental rights and freedoms recognised by that constitution for some time now. In my observation, they do so with great devotion to their parental responsibilities, in stark contrast to the apathy brought about among the majority of all parents by the oppressive controls exercised by the previous government.

3.18 Nearly all home schoolers recognise a need for clear, objectively measurable educational outcomes in those areas of education in which the state can prove a legitimate interest. They are willing (in many cases, eager) to provide proof that the learners have achieved these objectives, and to do so at reasonable intervals which, by growing consensus, seems to be about two to three years. Home schoolers have become jealous of their rights and freedoms, and will demand that the state prove that any limitations in excess of these are reasonable and necessary.

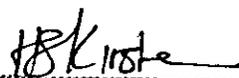

DEPONENT

CERTIFICATE

I hereby certify that on this 15th day of December 1995 in my presence at Pretoria, the deponent signed this declaration and swore and acknowledged to me that he knew and understood the contents thereof, had no objection to taking the prescribed oath, considered the oath to be binding on his conscience whereafter he uttered the following words in my presence:

"I swear that the contents of this declaration are true, so help me God".

COMMISSIONER OF OATHS:



KOMMISSARIS VAN EDE/COMMISSIONER OF OATHS
HESTER GUSANNA KIRSTEIN
HOOF/HEAD: FAKULTEITSADMIN./FACULTY ADMIN.
FAK. NATUURWET./FAC. OF SCIENCE: UNIV. VAN/OF PRETORIA
DATUM 1995 . 12 . 15 DATE