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Testimony in Favor of HB 1287

Protecting the People's Rights and Helping Government Officials with Clear
Constitutional Standards

Testimony for: Colorado House Judiciary Committee

From: Michael P. Donnelly, JD, LL.M, HSLDA Senior Counsel

Date: Thursday, March 5, 2020

RE: HB 20-1287

My name is Michael Donnelly I am Senior Counsel for The Home School Legal Defense Association ("HSLDA") which advocates for the rights of parents to direct the education and upbringing of their children. With nearly 85,000 member families we are the world's largest homeschooling association. In Colorado we speak on behalf of thousands of families. I am also an Adjunct Professor of Law and Government at Regent Law School and Patrick Henry College where, for the previous 13 years, I have instructed students in the federal constitution and Supreme Court opinion.



Testimony in Favor of HB 1287, The Colorado Rights Act
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What does the Colorado Rights Act and the doctrine of Qualified Immunity have to do with homeschooling?

As I briefly answer, I want to affirm HSLDA's support for the legitimate role of law enforcement and other state departments, such as CPS, who protect innocent victims and uphold the law.

However, it is inarguable that some agents of government by actions or policy, exceed their constitutional authority and violate the civil rights of individuals. Sometimes these actions can be quite traumatic.

Repeated consistently, such behavior and policy undermine people's faith in government. Rather than allowing agents and agencies to be held accountable for civil rights violations, courts use the judge made doctrine of qualified immunity to allow government agents and agencies to escape liability and prevent reforms to policy and procedure that would protect citizens rights.

Today there are tens of thousands of homeschooled children in Colorado and close to 3 million in the United States around 4% of the school age population.

At one time, Homeschooling was considered kind of weird (maybe it still is by some) and our members were frequently subjected to CPS investigations just because their children were not in school. This still happens – although on a per capita basis with less frequency than before.

For example, this year in Colorado, a mother's children were removed from her care just over allegations of "educational neglect" – and yes just because of homeschooling. There was no evidence that the children's education was actually neglected, and the mother was in compliance with Colorado's education law. These allegations were given credence out of a stereotyped suspicion we see too often towards parents who homeschool. In this case a juvenile court judge rubber stamped the social workers removal of the children from the mother's care causing unnecessary and significant emotional trauma to these children.

HSLDA has filed numerous federal lawsuits challenging such shocking government behavior. But most of these cases are dismissed on the basis of "Qualified Immunity". This means that victims are not vindicated or compensated for serious injury, and worse, such behavior continues without any censure or accountability or policy review or training.

In a case similar to the Woodard Case here in CO, HSLDA is also suing the state of Kentucky. Holly Curry ran into a Café for about 5 minutes to buy muffins for her 5 children who she safely left in the car. She broke no law and her children were never in danger. However, the following day a police officer and a social worker came to her door and threatened to get an emergency custody order if she did not let them in. Upon entering the male police officer and social worker conducted intrusive interviews and strip searched her children. At no time were there ever any allegations of physical abuse or neglect. This is similar to what happened in the Woodard case, except that was in a public-school setting.

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Such behavior is shocking and completely unnecessary to protect the safety of these children. It is an affront to the dignity of the child and to the federal constitutional presumption that fit parents act in the best interests of their children. Scholarly research has documented that such interventions are very harmful to children both on a short- and long-term basis. Such behavior should never be permitted under any policy or ever seen as reasonable.

If agents and agencies were held responsible don't you think this behavior and the policies and lack of training that contribute to it would change? But using the doctrine of QI, Courts have insulated agents and agencies from the appropriate and just consequences of their unconstitutional behavior and policies. As agents and agencies harm children under the protection of "qualified immunity" what kind of trust can people put in their government?

The Declaration of Independence says that "governments are instituted among men to protect" rights. If it isn't your responsibility to protect people from such outrageous behavior – I don't know who else will? Associations like ours try but we get stuffed, shut down and boxed out by judges using "qualified immunity".

HB 1287 would allow Coloradans who are harmed by a violation of their civil rights to seek redress. HB 1287 would allow courts an opportunity to clearly articulate what behaviors and policies are constitutional. HB 1287 would help agents and agencies to address unconstitutional behavior and policies to protect citizens from harm. How can anyone oppose that?