

RESISTING THE *PIERCE* MENTALITY

WHAT IS IT? See *Pierce v Society of Sisters*. [paraphrase] Expanding the state's regulation of private religious schools to mirror the public schools to the detriment of the rights of parents and religious institutions. It also hinders pluralism and creativity.

CURRENT MANIFESTATION. The promotion of legislation that seeks to add religious schools to mandates for public schools, and blurring the distinction between the two.

THREE MEANS OF MANIFESTING A *PIERCE* MENTALITY.

1. INTRUSIONS INTO ACT 178 OF 1986

- a. This Act is not “old,” it just agrees with *Pierce v Society of Sisters*.
- b. This Act identifies four areas most sensitive to *Pierce* intrusions.
- c. This Act identifies multiple area where religious schools uphold, support the responsibilities of civil government.

2. DEPARTURES FROM AN IMPORTANT HISTORIC TERM

- a. “School Entity” has historically been reserved to describe the full variety of public schools.
- b. We see an increasing trend to include private and non-public schools under that “School Entity” term in legislation. This blurs important ideas that create important distinctions. If a statute is to include both public and non-public, use the correct terms when including both.

3. EXPANSIONS OF “SOLUTIONS” BEYOND THEIR “PROBLEMS”

- a. The very nature of public schools being a function of local government with oversight from Harrisburg dictates that Harrisburg will seek to resolve or solve their problems and improve procedures, expectations, and institutions.
- c. The very nature of non-public schools being a function of non-government with their own oversight dictates that Harrisburg's role is far more limited.

A *PIERCE* MENTALITY SHOULD NOT BE CONFUSED WITH TRUE HEALTH AND SAFETY. We should, however, shield against an ever-expanding definition of health and safety.

CASE BRIEFS

Pierce v. Society of Sisters

Citation. Pierce v. Soc'y of Sisters, 268 U.S. 510, 45 S. Ct. 571, 69 L. Ed. 1070, 39 A.L.R. 468 (U.S. June 1, 1925)

Brief Fact Summary.

Appellees, two non-public schools, were protected by a preliminary restraining order prohibiting appellants from enforcing an Oregon Act that required parents and guardians to send their children to public school. Appellants appealed the order.

Synopsis of Rule of Law.

The 14th Amendment provides a liberty interest in a parent's or guardian's right to decide the mode in which their children are educated. State's may not usurp this right when the questioned legislation does not reasonably relate to a viable state interest.

Facts.

Appellee the Society of Sisters, a corporation with the power to establish and maintain academies or schools and Appellee Hill Military Academy, a private organization conducting an elementary, college preparatory, and military training school, obtained preliminary restraining orders prohibiting appellants from enforcing Oregon's Compulsory Education Act. The Act required all parents and guardians to send children between 8 and 16 years to a public school. The appellants appealed the granting of the preliminary restraining orders.

Issue.

Does the Act unreasonably interfere with the liberty of parents and guardians to direct the upbringing and education of children under their control?

Held.

The Act violates the 14th Amendment because it interferes with protected liberty interests and has no reasonable relationship to any purpose within the competency of the state.

The Appellees have standing because the result of enforcing the Act would be destruction of the appellees' schools. The state has the power to regulate all schools, but parents and guardians have the right and duty to choose the appropriate preparation for their children.

Discussion.

While the state has the right to insure that children receive a proper education, the 14th Amendment provides parents and guardians with a liberty interest in their choice in the mode in which their children are educated.