

No. 13-471

IN THE
Supreme Court of the United States

UWE ANDREAS JOSEF ROMEIKE, ET AL.,
Petitioners,

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL,
Respondent.

*On Petition to the United States Court of Appeals for
the Sixth Circuit*

**MOTION FOR LEAVE TO FILE AMICUS BRIEF
AND AMICUS BRIEF OF ALLIANCE
DEFENDING FREEDOM AND
SCHULUNTERRICHT ZU HAUSE E.V.
(SCHUZH) IN SUPPORT OF PETITIONERS
AND SUPPORTING REVERSAL**

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**MOTION FOR LEAVE TO FILE BRIEF AS
AMICI CURIAE**

The Alliance Defending Freedom (ADF) and Schulunterricht zu Hause e.V., (Schuzh) petition the Court for leave to file the attached *amicus curiae* brief in support of Petitioners.

Alliance Defending Freedom (ADF) is an international legal organization dedicated to protecting and defending religious freedom. As a legal alliance of more than 2,300 lawyers dedicated to the protection of fundamental human rights, it has been involved in over 500 cases before national and international forums. ADF has been a vocal advocate of parental rights in education. It has represented numerous cases before the European Court of Human Rights (here and after “the ECHR”). Many of these cases involved either home education or exemptions from classes (usually sexual education classes) found to be offensive to the moral and philosophical values deeply held by the parents.

Schulunterricht zu Hause e.V., (Schuzh) is a national organization in Germany, founded by lawyers and home school families, to offer legal counsel on issues related to homeschooling.

On Monday, December 9, 2013, counsel for *Amici* notified all parties of its intent to file and sought consent for the same. Counsel for Petitioner granted consent for *Amici* to file. Consent was not obtained from Respondents. Given the importance of the issues before the Court, Respondents withholding of consent should not foreclose participation by

interested *amici*. Therefore, Alliance Defending Freedom and Schuzh respectfully requests leave to file the attached brief as *amici curiae*.

Respectfully submitted,

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December 19, 2013

QUESTIONS PRESENTED

1. Whether the Romeike family has a well-founded fear of persecution on the protected grounds of religion and membership in the particular social group of religiously or philosophically motivated home educators in Germany.

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INTEREST OF *AMICI*¹

Alliance Defending Freedom (ADF) is an international legal organization dedicated to protecting and defending religious freedom. As a legal alliance of more than 2,300 lawyers dedicated to the protection of fundamental human rights, it has been involved in over 500 cases before national and international forums. These include the Supreme Courts of the United States of America, Argentina, Honduras, India, Mexico and Peru, as well as the European Court of Human Rights and Inter American Court of Human Rights. ADF has also provided expert testimony before several European parliaments, as well as the European Parliament and the United States Congress. ADF has accreditation with the Economic and Social Council of the United Nations, as well as the Organization for Security and Cooperation in Europe and the European Union (the European Union Agency for Fundamental Rights and the European Parliament).

ADF has been a vocal advocate of parental rights in education. We have represented several cases before the European Court of Human Rights (here and after “the ECHR”). Most of these cases involved

¹ As required by Rule 37.6, *amicus* states that no counsel for a party authored this brief in whole or in part, and no person other than the *amicus* and its counsel made any monetary contribution intended to fund the preparation or submission of this brief. Per Rule 37.2(a), *amicus* states that all parties were timely notified of its intent to file this brief.

home education² or opt-outs for classes (usually sexual education classes) found to be offensive to the moral and philosophical values deeply held by the parents.³ Although many cases involved an extraordinary set of facts (children with severe autism disorder being home educated), the ECHR has rejected all of these cases on the ground that parental rights guaranteed by the European Convention on Human Rights (here and after “the Convention”) do not include a right to home educate one’s children even under the most demanding of circumstances. Parents that have home schooled their children have been punished by excessive fines and many had to flee their homeland to keep their family together.

Schulunterricht zu Hause e.V., (Schuzh) is a national organization in Germany, founded by lawyers and Home school Families, to offer legal counsel on issues related to homeschooling. Schuzh represents Christians from many denominations, Jews, and non-believers alike. Its goal is to win the right of parents to home school their children.

² E.g. *Busekros v. Germany*, No. 31963/06 (ECHR, rejected 4 March 2010); *Johansson v. Sweden*, No. 68996/13 (ECHR); *Himmelstrand v. Sweden*, No. 212/70 (ECHR).

³ E.g. *Dojan v. Germany*, No. 319/08 (ECHR, rejected 13 September 2011); *Elshiedt v. Germany*, No. 20957/09 (ECHR); *Arthur and Anna Wiens v. Germany*, No. 7908/10 (ECHR, rejected 13 September 2011); *Eduard and Rita Wiens v. Germany*, No. 8152/10 (ECHR, rejected 13 September 2011); *Heinrich and Irene Wiens v. Germany*, No. 8155/10 (ECHR, rejected 13 September 2011).

Schuzh has been involved in hundreds of cases in the European Court of Human rights and other courts. It has represented many families whose lives have been ruined and their children taken from them only because of homeschooling. Many families are criminally prosecuted, and those that can't afford to leave Germany endure tremendous pressure from authorities. Parents who want to teach their children at home have only the option of sending their children to the public schools or losing their parental rights.

Because the Supreme Court of the United States has global influence and is a leader in the field of human rights law, this case will have far reaching implications.

SUMMARY OF ARGUMENT

The ECHR makes use of the relevant European, international and comparative law in most of its precedential cases. The Supreme Court of the United States is cited in many cases where a comparable set of facts is involved.⁴ Even the “living document” doctrine has its basis in the jurisprudence of the U.S. Supreme Court. It is becoming orthodoxy in recent decades among many European constitutional tribunals, including the ECHR itself.⁵ Therefore a

⁴ See e.g. *Case of Gäfgen v. Germany*, No. 22978/05, § 73 [Grand Chamber] (ECHR, 1 June 2010); *Case of Mouvement Raëlien Suisse v. Switzerland*, No. 16354/06 [Grand Chamber] (ECHR, 13 July 2012).

⁵ The “living document” doctrine emerged in the Court’s decision in *Golder v. the United Kingdom*, No. 4451/70 (ECHR, 1975), in which the Court found an implied, unenumerated

decision in favor of the petitioners in this case, may prove to be of critical importance in the ECHR's evolving jurisprudence on parental rights in general, and on home education in particular.

This *amicus curiae* brief will first state the arguments being put forward before the ECHR in favor of home education, to which the ECHR has denied any protection, and in the second part will focus on comparative jurisprudence that is relevant for European countries.

ARGUMENT

I. THE JURISPRUDENCE OF THE ECHR IS COUNTER TO ITS UNDERLYING AUTHORITY AND THE GROWING TREND TOWARD HOME EDUCATION

The prime example of the ECHR's jurisprudence on home education is *Konrad and Others v. Germany*, in which the Court dismissed the claim of home educators in Germany. *Konrad and Others v. Germany*, No. 35504/03 (ECHR, 1 September 2006). The ECHR held without hesitation that "parents may not refuse a child's right to education on the basis of their conviction." *Id.*

substantive right of access to courts in Article 6 § 1 of the Convention that grants a right to a fair hearing. In *Tyler v. the United Kingdom*, No. 5856/72 (ECHR, 1978), the Court put the doctrine forward in unequivocally clear terms stating that "the Convention is a living instrument which . . . must be interpreted in the light of present-day conditions."

The Chamber decision in *Konrad* came down in spite of the spirit of the more recent Grand Chamber decision in *Folgero and Others v. Norway*, No. 15472/02 (ECHR, 29 June 2007, affirmed most recently in *Case of Hasan and Eylem Zengin v. Turkey*, No. 1448/04 (ECHR, 9 October 2007). In *Folgero* the court held that exemptions had to be allowed for students from religious education that offended the parent's religious beliefs. The natural progression of this holding would be to allow for exemption from education that parents' believe infringes their Convention rights and is harmful to the educational development of their children. However, the ECHR has declined to do so to date.

Moreover, the decision in *Konrad* ignored the ever increasing trend of legislating in favor of parental rights and the right to home educate. As the second part of this brief sets forth, ample European treaty law exists supporting parental rights in determining the means and methods by which children are educated. *Konrad* also evidenced the naivety of the ECHR with regard to existing home education flexibility. The ECHR noted that Protocol 1, Article 2 of the Convention by its very nature calls for regulation by the State and therefore provides discretion to the State to determine whether it will or will not enact compulsory schooling in state recognized institutions. *Id.*, at § 1, para. 7. The reality is that virtually no state permits home education without some form of state regulation as to content. State requirements in regard to core curriculum or even mandatory state testing are common place among nations [or states in the case of the United States of America]. *Konrad*

inappropriately held that parents may not refuse a child's right to education guaranteed by clause 1 of Protocol 1, Article 2 of the Convention because of their religious convictions. *Id.* While the basic premise is of course correct, the application of the statement to home education is absolutely erroneous. Home education is not a refusal of education, but rather another mode of transmitting knowledge that rightly falls within the spectrum of the definition of education. In fact, no mainstream home education model in current use takes issue with the requirement of standardized testing. Home schooling has taken the place of a customary international right among the vast majority of democratic nations. The level of coordination and infrastructural support within the home education sphere casts grave shadows on any argument that mandatory school attendance is a legitimate means of protecting public order. Academically, studies have shown overwhelmingly that home educated students tested better than their state-educated counterparts and perform better in university.⁶

A. Protocol 1, Article 2 of the Convention Supports Parents Rights to Home Education Their Children.

The ECHR has held that Protocol 1, Article 2 is the *lex specialis* in the area of education. *Folgero and Others v. Norway*, No. 15472/02, § 54, (ECHR, 29 June 2007). The provision states:

⁶ See e.g.: <http://www.hslda.org/research/default..asp>. The Home School Legal Defense Association site provides access to comprehensive research data regarding the academic efficacy of home education in the United States and abroad.

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Protocol 1, Article 2 explicitly specifies that the State shall respect the right of parents to ensure education and teaching in conformity with their own philosophical convictions. The scope of this clause is broad and encompasses all methods of knowledge transmission and every type of educational structure including, moreover, those outside the school system.⁷ The rights of parents to educate their children according to their own philosophical beliefs and desires as to what may be in their child's best interest must be safeguarded in order to provide the possibility of pluralism in education. This is essential for the preservation of a democratic society.

Protocol 1, Article 2 enjoins the State to respect parents' convictions, be they religious or philosophical, throughout the entire education program of a child. *Kjeldsen, Busk Madsen and Pederson v. Denmark*, Nos. 5095/71, 5920/72, 5926/72, § 52 (ECHR, 7 December 1976). See also: *Case of Folgero and Others v. Norway*, No. 15472/02, § 84(c) (ECHR, 29 June 2007). That duty is broad in

⁷ P.-M Dupuy and L. Boisson de Charzounes, "Article 2", in L.E. Pettiti, E. Decaux and P.H. Imbert (eds.), *La Convention europeenne des Droites de l'Homme*, Economica, 2nd ed., 1999, p. 999.

its extent, as it applies not only to the content of education and the manner of its provision, but also to the performance of all the “functions” assumed by the State. The verb “respect” means more than “acknowledge” or “take into account”. *Folgero and Others v. Norway*, No. 15472/02 (ECHR, 29 June 2007).

As the ECHR has held, “[i]t is in the discharge of a natural duty towards their children – parents being primarily responsible for the ‘education and teaching’ of their children – that parents may require the State to respect their religious and philosophical convictions. Their right thus corresponds to a responsibility closely linked to the enjoyment and the exercise of the right to education.” *Id.* at § 84(e). Secondly and equally pertinent, the ECHR held that “[a]lthough individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.” *Id.* at § 84(f).

The phrase “philosophical convictions” must be interpreted in light of the Convention as a whole, thus being worthy of respect in a democratic society and which are not incompatible with human dignity. *Campbell and Cosans v. the United Kingdom*, No. 48, (ser. A) at § 36: CDE, 1986, p. 230 (ECHR, 25 February 1982). Philosophical beliefs must include pedagogical beliefs, those being the parents’ beliefs as to the best way of educating their children.

In the seminal case of *Campbell and Cosans v. the United Kingdom*, the ECHR held that philosophical beliefs are akin to the term “belief,” as defined and protected under Article 9 of the Convention, and denotes views that attain a certain level of cogency, seriousness, cohesion and importance. *Id.* The ECHR went on to hold that the parents’ objection to their children receiving corporal punishment amounted to ‘philosophical convictions’ under the Convention.⁸ It follows, therefore, that pedagogical beliefs, which have been shown to be thorough, effective, precisely thought out, and executed, should also fall within the meaning of Protocol 1, Article 2’s protections.

Member States of the Council of Europe, to meet their international obligations, should allow the possibility for parents to fully exercise their parental rights and may do so while also safeguarding a minimum standard of education. These two principles are not mutually exclusive, as has been proven by countless other nations that allow for the possibility of home education. For example, home education is a form of education recognized in the educational systems of the vast majority of western democracies. In the United States of America there are 2 million homeschooled children, approximately 3-4 % of the school age population; in the United Kingdom there are nearly 100,000 homeschooled

⁸ In *Arrowsmith v United Kingdom* [1978] 3 EHRR 218 § 69 pacifism was considered a ‘philosophy’ and in *H v United Kingdom* (No. 18187/91) it was uncontested that veganism was capable of concerning a “belief” within the meaning of Article 9 of the Convention.

children; in Russia there are nearly 80,000 homeschooled children; and in France there are nearly 35,000 homeschooled children. Homeschooling is a growing movement internationally in other cultures as well.

By enacting a *per se* rule against home education, some Council of Europe Member States have sought to prevent an entire form of education, that is otherwise recognized in most Western countries, from gaining traction. This is inimical to the values of a democratic society and is not only unnecessary, it is wholly anathema to a democratic society.

B. Article 8 of the Convention Supports Parents' Rights to Home Educate Their children

Article 8 of the Convention states:

1. Everyone has the right to respect his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The right of parents to educate children educated in conformity with their religious and philosophical convictions enshrined in Protocol 1, Article 2, is a specific aspect of the State's obligation to respect family life. Thus, the guarantees developed in the context of Article 8 should, *mutatis mutandis*, apply for parental rights in educating their children.

The ECHR has previously found States to be under a positive obligation to secure to its citizens their right to effective respect for their physical and psychological integrity.⁹ In addition, these obligations may involve the adoption of measures, including the provision of an effective and accessible means of protecting the right to respect for private life.¹⁰ Respect for private life includes both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights and the implementation of specific measures to ensure the best interests of the child.

For domestic law to lawfully interfere with Convention rights, the interference must meet three criteria: (a) the interference must be prescribed by law; (b) the interference must have a legitimate aim;

⁹ *Glass v. the United Kingdom*, No. 61827/00, §§ 74-83, ECHR 2004-II; *Sentges v. the Netherlands*, No. 27677/02 (ECHR, 8 July 2003); *Pentiacova and Others v. Moldova*, No. 14462/03, ECHR 2005-...; *Nitecki v. Poland*, No. 65653/01 (ECHR, 21 March 2002); *Odièvre v. France* [Grand Chamber], No. 42326/98, § 42, ECHR 2003-III.

¹⁰ *Airey v. Ireland*, § 33, Series A no. 32 (ECHR, 9 October 1979); *McGinley and Egan v. the United Kingdom*, § 101, (ECHR, 9 June 1998) *Reports of Judgments and Decisions* 1998-III; and *Roche v. the United Kingdom* [GC], No. 32555/96, § 162, ECHR 2005-X.

and (c) the interference must be necessary in a democratic society.

1. Precluding Home Education Cannot Properly Be Prescribed by Law.

According to the ECHR's settled case law, "prescribed by law" means that the law in question must be accessible and foreseeable in its effects. It cannot be vague. Further, the "quality" of the law must clearly and precisely define the conditions and forms of any limitations on basic Convention safeguards and must be free from any arbitrary application.¹¹

The ECHR in *Metropolitan Church of Bessarabia* held that domestic law, to meet the clarity requirement, must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention:

In matters affecting fundamental rights it would be contrary to the rule of law—one of the basic principles of a democratic society enshrined in the Convention—for a legal discretion granted to the executive to be expressed in terms of an unfettered power; consequently the law must indicate with

¹¹ See: *Sunday Times v. the United Kingdom*, Series A, No. 30 § 49 et seq (ECHR, 26 April 1979); *Olsson v. Sweden*, Series A, No. 130 § 61f (ECHR, 24 March 1998); *Kruslin v. France*, *op. cit.*, § 36. Also cf. *SW v. the United Kingdom*, Series A, No. 335-B, § 36 (ECHR, 22 November 1995), on how the development of criminal law by the courts should be reasonably foreseen.

sufficient clarity the scope of any such discretion and the manner of its exercise.

Metropolitan Church of Bessarabia and Others v. Moldova, 13 December 2001, Reports 2001-XII, § 109: JDI 2002, p. 313.

The legislation in question must be easy to access, as well as clear and precise in order that the public may govern their actions accordingly. It is thus only when these four elements of precision, access, clarity and foreseeability are met that the law will be deemed to meet the criteria of prescription by law. *Ezelin v. France*, series A, No. 152, § 56 (ECRH, 26 April 1991).

2. Precluding Home Education Cannot Be a Legitimate Aim.

Secondly, the interference in question must pursue a legitimate aim. Restrictions on rights guaranteed by the Convention must be narrowly tailored and must be adopted in the interests of public and social life, as well as the rights of other people within society.¹²

States may have a legitimate aim in laying down minimum standards for education and schools that it oversees. But proscribing an entire form of non-public education that has otherwise been recognized among civilized nations and for which a substantial body of evidence indicates that it is effective is not a

¹² See: F. Sudre, *Droit International et Europeen des droits de l'homme*, PUF, Droit fundamental, 1999, p. 108.

legitimate aim. Furthermore the establishment of a *de facto per se* rule disallowing a form of education reflects animus towards rights protected in the Convention. The interest of the State may be that a child is educated, but the Convention must establish some lines of protection beyond which the State may not go. Permitting children to be educated *de facto only* in State run or State approved schools is not permissible, especially when the State has already acknowledged the right of home education.

3. Precluding Home Education Is Not Necessary in a Democratic Society.

The final criterion that must be met for government interference with Convention protections to be justified is that the interference in question is “necessary in a democratic society”. The ECHR has stated that the typical features of a democratic society are pluralism, tolerance and broadmindedness¹³, and the word “necessary” does not have the flexibility of such expressions as “useful” or “desirable”.¹⁴

For such an interference to be necessary in a democratic society, it must meet a pressing social need while at the same time remaining proportionate to the legitimate aim pursued.¹⁵ Moreover, the State has a duty to remain impartial and neutral, since what is at stake is the

¹³ *Handyside v. the United Kingdom*, Series A, No. 24, § 49 *et seq* (ECHR, 30 September 1976).

¹⁴ *Case of Svyato-Mykhaylivska Parafiya v. Ukraine*, no. 77703/01, § 116 (ECHR, 14 June 2007).

¹⁵ *Sunday Times v. the United Kingdom*, *op. cit.*, § 63 *et seq.*

preservation of pluralism and the proper functioning of democracy, even when the State or judiciary may find some of those views irksome.¹⁶ Therefore the ECHR's equivalent assessment of home education for religiously based reasons as refusing to provide an education altogether is, in itself, a contradiction to its statement regarding neutrality.

The ECHR has frequently stated that, “[i]nherent in the whole Convention is a search for a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.”¹⁷ In its balancing of the rights of the individual and the interests of the State, the Court refrains from substituting its opinion on the merits of an individual case over the judgments of a national court. Nonetheless, its role is to decide whether the authorities had “relevant and sufficient reasons” for taking the contentious measures.¹⁸

Factors involved in determining proportionality include the interests to be protected from interference, the severity of the interference and the pressing social need which the State is aiming to fulfil. In regard to the interests to be protected, the ECHR has noted that “the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life.” *Elsholz v.*

¹⁶ *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, Reports 1998-I, p. 25, § 57.

¹⁷ *Soering v. the United Kingdom*, No. 14038/88, Judgment of 7 July 1989, [1989] ECHR 14.

¹⁸ *Olsson v. Sweden*, *op. cit.*

Germany, 13 July 2000, Report of Judgments and Decisions 2000-VIII, § 43.

Notwithstanding the abovementioned analysis, the ECHR has failed to protect the right to home education.

II. COMPARATIVE EUROPEAN JURISPRUDENCE SUPPORTS THE RIGHT OF PARENTS TO HOME EDUCATION THEIR CHILDREN.

In addition to obligations arising under the Convention, a denial of home education violates European international human rights obligations, which permit parents to choose the kind of education their children receive. European countries have explicitly or implicitly codified such international obligations in, *inter alia*, Articles 5 and 18(1) of the United Nations Convention on the Rights of the Child, Articles 18(4) and 4 (2) of the International Covenant on Civil and Political Rights, Article 5(1)(b) of the Convention Against Discrimination in Education, Article 13 of the International Covenant on Economic, Social and Cultural Rights and Article 26(3) of the non-binding but persuasive Universal Declaration of Human Rights. Such international obligations are worth considering, as they provide a wider legal framework for the correct application and interpretation of the Convention rights.¹⁹

¹⁹ See e.g. *Bayatyan v. Armenia*, Application No. 23459/03, [G.C.] §§ 50-70 (ECHR, 7 July 2011).

The view expressed in the foundational European human rights instrument, the Universal Declaration of Human Rights (“UNDHR”) allocates parents, and not the State, as the guardians of the interests of their children. As such, parents have a “prior right,” that is, a right grounded in nature and pre-existing the State, to choose the kind of education that corresponds to their moral beliefs.²⁰ Article 16(3) states that, “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

The United Nations Convention on the Rights of the Child (“UNCRC”) clearly states that among the most important rights of the child, besides the right to life, are precisely the right to parental love and the right to education. The UNCRC also explicitly states that parents, being the ones who love their children most, are those most called upon to decide on the education of their children:

States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

²⁰ Article 26(3) states, “Parents have a prior right to choose the kind of education that shall be given to their children.”

United Nations, *Convention on the Rights of the Child*, U.N.T.S. vol. 1577, p. 3, Articles 5, 18§ 1. The UNCRC contains no presumption that home education is not “education,” or that education in a public school is or should be held up as the standard by which an education should be determined. Indeed, there is ample evidence to the contrary.²¹

Article 13 of the International Covenant on Economic, Social and Cultural Rights dictates:

The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians 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.

This guarantee requires that the State respect the right of parents to educate their children according to their own religious or philosophical beliefs, which, as noted above, must include pedagogical beliefs. The right to education and respect for parental authority over their children assumes a level of freedom for parents to choose schools not established by the State; it rejects the attempt by the State,

²¹ See the studies evidencing the success of home education can be found at: <http://www.hslda.org/research;>
<http://www.nheri.org/NHERI-Research.html>.

exercised in the past by totalitarian regimes, to impose a monopoly in education. Similarly, the non-derogable provision in Article 18(4) of the International Covenant on Civil and Political Rights states, “[t]he States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

Lastly, the United Nations Special Rapporteur on the right to education, Vernor Muñoz, highlighted the importance of home education in 2007 in his report on Germany. The report stated:

Even though the Special Rapporteur is a strong advocate of public, free and compulsory education, it should be noted that education may not be reduced to mere school attendance and that educational processes should be strengthened to ensure that they always and primarily serve the best interests of the child. 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, as stipulated in article 13 of the International Covenant on Economic, Social and Cultural Rights. 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.

UN General Assembly, Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council”, Report of the Special Rapporteur on the right to education, Vernor Muñoz, Addendum, Mission to Germany, A/HRC/4/29/Add. 3, at § 62.

In his recommendations the Special Rapportuer asked for “necessary measures [to] be adopted to ensure that the home schooling system is properly supervised by the State, thereby upholding the right of parents to employ this form of education when necessary and appropriate, bearing in mind the best interests of the child.” *Id.* at §93(g).

Therefore, when considering the wider international human rights obligations in the field of home education, it is clear that many Council of Europe’s Member States, including Germany, are acting in violation of these international standards. This gives the Romeike family a well-founded fear of persecution on protected grounds if they are returned to Germany.

CONCLUSION

World opinion and practice cannot determine the meaning of U.S. legal guarantees in the asylum procedure. However, as this brief amply demonstrates, an overwhelming body of international law pertinent to European countries creates important guarantees for parents to decide on their childrens’ education. If this right means anything, it must encompass parents’ right to home educate their children. The practice of some States,

including Germany, creating a total ban on home education and enforcing draconic sanctions on parents that have all the qualifications to home school their children, is a clear encroachment on the most basic values of liberty.

For the foregoing reasons, *amici* respectfully request that the Supreme Court grant review in this case.

Respectfully submitted,

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December 19, 2013