

# Commentary: Why Texans can't sue faith-based schools that hurt kids

opinion

By Janet Heimlich - Special to the American-Statesman

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The Texas Supreme Court recently made a decision that could adversely affect the lives of thousands of children across the state. In the case of *John Doe v. Episcopal School of Dallas*, the justices refused to consider a harmful ruling issued by a lower appellate court. The ruling allows a faith-based school to avoid civil liability for harming a child in its care. In other words, Texas parents may have just lost their right to sue a faith-based school their children are enrolled in, even if there are claims of abuse or neglect.

The case involves a child who was expelled from the Episcopal School of Dallas (ESD) for allegedly smoking marijuana off campus. Since the expulsion was in violation of the contract between the school and parents, the father sued ESD for breach of contract, fraud and other claims. ESD filed a motion claiming that under the First Amendment, it was immune from being sued and sought

special review in the 5th Court of Appeals in Dallas. The appeals court agreed with ESD's claim that the father had no right to take the school to court. It's reasoning came down to one simple truism: ESD claimed to be a "faith-based" institution.

In ruling against the father, the appeals court relied upon what's known as the "ecclesiastical abstention doctrine" of the First Amendment — which has given churches and schools that provide a religious education latitude in how they handle "internal affairs," such as termination of membership or employees. But in the ESD case, the appeals court applied the doctrine so broadly as to determine that ESD could ignore the written contracts it had with parents and avoid liability for its harmful conduct — all because ESD claimed itself to be faith-based.

In circumventing the trial court and taking the case to the appeals court, ESD was able to prevent key facts of the case from coming to light. For example, the appellate court was not presented evidence that: a drug test had exonerated the student from the allegation of drug use; the expulsion was unfairly targeting the student to protect the reputation of the head of school; and the student was emotionally traumatized by the school's arbitrary action, given that he was grieving the recent death of his mother.

On June 22, the Texas Supreme Court refused to review the case, allowing the lower court's draconian decision to stand. The net result is that Texas private schools that purport to have a religious affiliation can now cite this ruling and claim that they are exempt from a jury's or judge's review of any decision relating to student life. All such decisions could be considered part of such schools' "internal affairs" — even when those schools engage in egregious conduct, such as abusive discipline or a failure to fire a sexually abusive staff member.

The Child-Friendly Faith Project is aware of countless cases in which a court decides that the First Amendment rights of a religious organization supersede the rights of children, but this is the most egregious example we've encountered in recent years.

As fall approaches, this decision should make parents across Texas think seriously about whether to enroll their children in private, religious institutions. The Texas courts have sent a dangerous message: that it's acceptable for faith-based schools in the Lone Star State to operate virtually free of accountability. We have no doubt that this decision will leave students extremely vulnerable and parents helpless to protect their children if they are harmed while under the care of those schools.

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