

The 14th Amendment: Substantive Due Process and Pierce v. Society of Sisters

In 1922, Oregon voters passed The Compulsory Education Act which required children between eight and sixteen years of age to attend public school in the district where the children resided. However, the statute was soon challenged by the Society of Sisters of the Holy Names of Jesus and Mary, an order of Catholic nuns, and a private military school.

The Society of Sisters of the Holy Names of Jesus and Mary, an Oregon corporation, facilitated care for orphans and educated young boys in a private school setting. The Society of Sisters and the Hill Military Academy separately sued Walter Pierce, the governor of Oregon and other Oregon government officials challenging the statute.

The schools won their case before a three-judge panel of the District Court of the United States for the district of Oregon, which granted an injunction against the Act. The defendants appealed their case directly to the Supreme Court.

In ***Pierce v. Society of Sisters*** (1925), the Court was asked to decide if The Compulsory Education Act violated the liberty of parents to direct the education of their children. The Court deliberated for about 10 weeks before issuing their unanimous decision upholding the lower court's ruling, determining the Oregon law arbitrarily set private schools 'off limits' violating the liberty protected by due process of the Fourteenth Amendment.

The opinion, written by Justice McReynolds, stated in part, "*...the fundamental liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only.*"

Because the ruling involved a challenge to the content or substance of the Oregon law depriving the parent's liberty to choose how their children were educated and by whom, ***Pierce v. Society of Sisters*** was a **substantive due process** case.

**Look for modern examples of due process -
the protection of one's life, liberty or property
without due process of laws -
in news reports in-print or online.**

***Next installment: The 14th Amendment:
Citizenship and U.S. v. Wong Kim Ark***



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