

AMENDING FEDERAL LAW TO INCLUDE MEMBERSHIP OF HOMESCHOOLERS IN JUNIOR ROTC PROGRAMS - ANY PROBLEMS WITH THAT?

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By Attorney Deborah G. Stevenson

In a word, yes, quite possibly.

It is reported in the Military Times that in the newly approved National Defense Authorization Act a provision was added allowing homeschoolers membership in Junior ROTC programs.

You can find the article here:

https://www.militarytimes.com/news/pentagon-congress/2019/12/19/defense-bill-requires-local-jrotc-programs-to-admit-homeschooled-students/?fbclid=IwAR3qfcaswxX1lvphCCFmBQv6U72eTt3FFmquFsVL6_KgVvvrRQjyzcPZU0g

While, on its face, this appears to be a very good thing, but, sometimes good things come with unintended consequences.

First, it is always better to go directly to the actual source to read the entire bill, rather than relying on any internet source for a synopsis.

In this case, the actual source lies at [congress.gov](https://www.congress.gov).

Federal bills tend to be very lengthy, and this one is extremely so. The provision about homeschool membership in Junior ROTC is one small part of it. It is Section 513 of Part B of the bill.

You can find it here:

<https://www.congress.gov/116/bills/s1790/BILLS-116s1790enr.pdf>

Of course, that Section is to be added to the existing law, which is 10 U.S.C. §2031.

That law

can be found under the United States Code, which can be found here:

<https://www.law.cornell.edu/uscode/text/10/2031>

Section 513 of the National Defense Authorization Act, when signed by the President, will be

added onto the end of 10 U.S.C. §2031 as Section (g).

Putting all of that together for your ease of reference, it looks like this below.

Read it for yourself and draw your own conclusions.

Consider the highlighted portions in particular.

§ 2031. Junior Reserve Officers' Training Corps

(a) (1) The Secretary of each military department shall establish and maintain a Junior Reserve Officers' Training Corps, organized into units, at public and private secondary educational institutions which apply for a unit and meet the standards and criteria prescribed pursuant to this section. The President shall promulgate regulations prescribing the standards and criteria to be followed by the military departments in selecting the institutions at which units are to be established and

maintained and shall provide for the fair and equitable distribution of such units throughout the Nation, except that more than one such unit may be established and maintained at any military institute.

(2) It is a purpose of the Junior Reserve Officers' Training Corps to instill in students in United States secondary educational institutions the values of citizenship, service to the United States, and personal responsibility and a sense of accomplishment.

(b) No unit may be established or maintained at an institution unless-

(1) the number of physically fit students in such unit who are in a grade above the 8th grade and are citizens or nationals of the United States, or aliens lawfully admitted to the United States for permanent residence, is not less than (A) 10 percent of the number of students enrolled in the institution who are in a grade above the 8th grade, or (B) 100, whichever is less;

(2) the institution has adequate facilities for classroom instruction, storage of arms and other equipment which may be furnished in support of the unit, and adequate drill areas at or in the immediate vicinity of the institution, as determined by the Secretary of the military department concerned;

(3) the institution provides a course of military instruction of not less than three academic years' duration, as prescribed by the Secretary of the military department concerned;

(4) the institution agrees to limit membership in the unit to students who maintain acceptable standards of academic achievement and conduct, as prescribed by the Secretary of the military department concerned; and

(5) the unit meets such other requirements as may be established by the Secretary of the military department concerned.

(c) The Secretary of the military department concerned shall, to support the Junior Reserve

Officers' Training Corps program-

(1) detail officers and noncommissioned officers of an armed force under his jurisdiction to institutions having units of the Corps as administrators and instructors;

(2) provide necessary text materials, equipment, and uniforms and, to the extent considered appropriate by the Secretary concerned, such additional resources (including transportation and billeting) as may be available to support activities of the program; and

(3) establish minimum acceptable standards for performance and achievement for qualified units.

(d) Instead of, or in addition to, detailing officers and noncommissioned officers on active duty

under subsection (c)(1), the Secretary of the military department concerned may authorize

qualified institutions to employ, as administrators and instructors in the program, retired officers and noncommissioned officers who are in receipt of retired pay, and members of

the Fleet Reserve and Fleet Marine Corps Reserve, whose qualifications are approved by

the Secretary and the institution concerned and who request such employment, subject to

the following:

(1) A retired member so employed is entitled to receive the member's retired or retainer pay without reduction by reason of any additional amount paid to the

member by the institution concerned. In the case of payment of any such additional amount by the institution concerned, the Secretary of the military department concerned shall pay to that institution the amount equal to one-half of the amount paid to the retired member by the institution for any period, up to a maximum of one-half of the difference between the member's retired or retainer pay for that period and the active duty pay and allowances which the member would have received for that period if on active duty. Notwithstanding the limitation in the preceding sentence, the Secretary concerned may pay to the institution more than one-half of the additional amount paid to the retired member by the institution if (as determined by the Secretary) the institution is in an educationally and economically deprived area and the Secretary determines that such action is in the national interest. Payments by the Secretary concerned under this paragraph shall be made from funds appropriated for that purpose.

(2) Notwithstanding any other provision of law, such a retired member is not, while so employed, considered to be on active duty or inactive duty training for any purpose.

(e) Instead of, or in addition to, detailing officers and noncommissioned officers on active duty

under subsection (c)(1) and authorizing the employment of retired officers and noncommissioned officers who are in receipt of retired pay and members of the Fleet Reserve and Fleet Marine Corps Reserve under subsection (d), the Secretary of the military department concerned may authorize qualified institutions to employ as administrators and instructors in the program officers and noncommissioned officers who

are under 60 years of age and who, but for age, would be eligible for retired pay for nonregular

service under section 12731 of this title and whose qualifications are approved by the Secretary and the institution concerned and who request such employment, subject to

the following:

(1) The Secretary concerned shall pay to the institution an amount equal to one-half of the amount paid to the member by the institution for any period, up to a maximum of one-half of the difference between-

(A) the retired or retainer pay for an active duty officer or noncommissioned officer of the same grade and years of service for such period; and

(B) the active duty pay and allowances which the member would have received for that period if on active duty.

(2) Notwithstanding the limitation in paragraph (1), the Secretary concerned may pay to the institution more than one-half of the amount paid to the member by the institution if (as determined by the Secretary)-

(A) the institution is in an educationally and economically deprived area; and

(B) the Secretary determines that such action is in the national interest.

(3) Payments by the Secretary concerned under this subsection shall be made from funds appropriated for that purpose.

(4) Amounts may be paid under this subsection with respect to a member after the member reaches the age of 60.

(5) Notwithstanding any other provision of law, a member employed by a qualified institution pursuant to an authorization under this subsection is not, while so employed, considered to be on active duty or inactive duty training for any purpose.

(f) (1) When determined by the Secretary of the military department concerned to be in the national interest and agreed upon by the institution concerned, the institution may reimburse a Junior Reserve Officers' Training Corps instructor for moving expenses incurred by the instructor to accept employment at the institution in a position that the Secretary concerned determines is hard-to-fill for geographic or economic reasons.

(2) As a condition on providing reimbursement under paragraph (1), the institution shall require the instructor to execute a written agreement to serve a minimum of two years of employment at the institution in the hard-to-fill position.

(3) Any reimbursement provided to an instructor under paragraph (1) is in addition to the minimum instructor pay otherwise payable to the instructor.

(4) The Secretary concerned shall reimburse an institution providing reimbursement to an instructor under paragraph (1) in an amount equal to the amount of the reimbursement paid by the institution under that paragraph. Any reimbursement provided by the Secretary concerned shall be provided from funds appropriated for that purpose.

(5) The provision of reimbursement under paragraph (1) or (4) shall be subject to regulations prescribed by the Secretary of Defense for purposes of this subsection.

SEC. 513. INCLUSION OF HOMESCHOOLED STUDENTS IN JUNIOR RESERVE OFFICERS' TRAINING CORPS UNITS.

Section 2031 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(g)(1) Each public secondary educational institution that maintains a unit under this section shall permit membership in the unit to homeschooled students residing in the area served by the institution who are qualified for membership in the unit (but for lack of enrollment in the institution).

“(2) A student who is a member of a unit pursuant to this subsection shall count toward the satisfaction by the institution concerned of the requirement in subsection (b)(1) relating to the minimum number of student members in the unit necessary for the continuing maintenance of the unit.”.

Two things are important to remember: (1) anytime the term, “homeschooler”, appears in a federal statute, unintended consequences could follow; and (2) the language in the statute, itself, could lead to unintended consequences.

“Homeschooling” is a term coined recently to describe the unalienable right of parents to the upbringing and education of their own children. Right now, each State determines whether, or not, to “regulate” that right.

The Constitution provides for the military, and Congress, can adopt laws affecting the military.

Anyone enrolled in a military program, undoubtedly, must follow those laws.

Placing the term, “homeschooling” into a federal law of any kind, however, can have unintended consequences because, now, rather than the State, and the people in that State, having

control over whether “homeschooling” is “regulated”, the federal government has interposed

itself into that arena, even if intending to “help” homeschoolers.

As we all know, it is far easier to influence local legislators, than it is to influence legislators in Washington, D.C.

Will there come a time when legislators in Washington, D.C. will adopt more laws affecting homeschoolers? It is possible.

Will those additional laws all be for the benefit of homeschoolers to remain free to homeschool

as they and their children need? It is possible, but how many laws does Congress adopt each

year that are all for the benefit of anyone to remain free to do as they need?

Even though this law may benefit many children, look at the language in the law again.

In plain English, the new amendment says that public schools shall permit membership of

homeschoolers into the Junior ROTC program at that public school.

The original federal statute says the Secretary of each military department shall establish Junior

ROTC units at public schools, and the public school agrees to limit the membership in the

unit to students “whom attain acceptable standards of academic achievement and conduct, as prescribed by the Secretary of the military department...” In other words, the

public school will still limit the membership to students who “attain acceptable standards of

academic achievement” developed by the federal government.

That raises several questions.

What are those “acceptable standards of academic achievement” for homeschoolers?

We don’t know yet.

We do know that the Secretary of each military department will establish those “acceptable

standards of academic achievement”.

The Secretary is in Washington, D.C.

Do you have a lot of influence on what those acceptable standards for homeschoolers will be?

How will those standards for homeschoolers be deemed “acceptable”?

Who will deem them “acceptable”?

Will the public school hosting the program be in charge of that?

Will whoever is in charge need to review your homeschool program and approve it?

How will that be done? In your home? At the public school?

Will they review what the homeschooling program that you did before the child entered the

program and determine the child is not eligible for the program, unless you do as they say?

Will you have to re-do your child’s homeschool program in order to enter Junior ROTC?

Did the legislators, or other supporters, of this new law ask those questions before adopting

the law?

If they did, what are the answers to those questions?

If either the military, or the public school, is now allowed to review your homeschool program

and “approve” it, how will that affect homeschoolers long term?

Certainly, those involved in the program will be entering the program voluntarily and agree to

these terms. If that is something that an individual family wants, that is their choice.

Understand, however, that homeschooling for that family will no longer be under the control of the

parent. That means loss of freedom. Understand that full well, before making your choice.

Understand, also, that the unintended consequences may be that freedom for other home-schoolers, who do not join the program, may be affected long term, as well.

It is possible that this could be a first step to making it easier for public schools, or any government officials, to have a say in how they homeschool. One thing is for sure: the more laws

that are put in place, the harder it is to roll them back. After all, remember, also, that historically,

incrementalism has worked to chip away at other freedoms.

Is it possible this will make it easier for government officials to do the same with homeschooling freedoms? Maybe.

Time will tell.

This is only one example. There are many well-meaning people in government trying to help

people with all kinds of issues. One thing that they must consider, however, regarding any law

they propose to adopt, each time they propose to adopt it, is whether the law will have unintended consequences in the long term that will make it easier to lose our freedom.

We must all be vigilant against losing our freedom, every day. Just ask Thomas Jefferson. He

warned us to do just that.

If you value your freedom, regardless of whether you are a lawmaker or an individual, always

think before you support what seems to be a good idea.

Think of the long term unintended consequences, and choose wisely.

Attorney Stevenson is the founder of National Home Education Legal Defense, LLC. For more information, go to: nheld.us