

# KEEPING HOME IN HOMESCHOOLING: EXAMINING ILLINOIS'S LOOSE HOMESCHOOLING LAWS IN LIGHT OF HEAVIER INTERNATIONAL AND DOMESTIC REGULATION

## INTRODUCTION

On the morning of August 29, 2013, the Wunderlich children were safe at home preparing for another day of their homeschooling routine.<sup>1</sup> By the end of the same day, they were in an unfamiliar place, separated from their parents.<sup>2</sup> However, kidnappers were not the culprits of the Wunderlich children's abduction. Rather, it was their very own German government using its legal authority to take the children.<sup>3</sup>

What had begun as a routine morning quickly turned into a nightmare when Dirk Wunderlich looked outside to see twenty German "social workers, police officers, and special agents" armed and ready to storm the Wunderlich residence.<sup>4</sup> Dirk attempted to ask questions, but the officers' preparation of a battering ram prompted him to allow the police to enter his home.<sup>5</sup> Once inside, the officers held Dirk in a chair and "forcibly" took his children.<sup>6</sup> Although there were "no other allegations of abuse or neglect," the raid was allowed simply because the Wunderlichs decided to teach their children at home rather than send them to a German public school.<sup>7</sup> Despite Germany's virtual prohibition on homeschooling,<sup>8</sup> Dirk and Petra Wunderlich had decided to educate their children at home, and that decision cost them dearly.<sup>9</sup> The Wunderlichs had already lost legal custody of their children in 2012, but homeschooling had now cost them physical custody of their children.<sup>10</sup> The German police told the parents nothing except that the parents would not see their

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<sup>1</sup> *Germany: Children Seized in Shocking Raid*, HSLDA (Aug. 30, 2013), <http://www.hsllda.org/hs/international/Germany/201308300.asp>.

<sup>2</sup> See Damien Gayle, *Armed Police Turn Up at Family Home with a Battering Ram to Seize Their Children After They Defy Germany's Ban on Home Schooling*, DAILYMAIL.COM (Aug. 30, 2013, 8:23 PM), <http://www.dailymail.co.uk/news/article-2407655/Armed-police-turn-family-home-battering-ram-seize-children-defy-Germanys-ban-homeschooling.html>.

<sup>3</sup> *Germany: Children Seized in Shocking Raid*, *supra* note 1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See generally *Konrad v. Germany*, 2006-XIII Eur. Ct. H.R. 355 (rejecting a challenge grounded in a religious objection to Germany's compulsory education laws).

<sup>9</sup> *Germany: Children Seized in Shocking Raid*, *supra* note 1.

<sup>10</sup> *Id.*

children “‘anytime soon.’”<sup>11</sup> Three long weeks passed before the Wunderlich family was reunited, but this reunification also brought the requirement that the children attend state school.<sup>12</sup>

The Wunderlich family’s situation presents an extreme case of government regulation of home education. However, Germany is not the only country that prohibits or severely restricts homeschooling.<sup>13</sup> Currently, at least twenty-eight countries prohibit homeschooling, and thirty others allow it with heavy restrictions.<sup>14</sup> Despite international hostility, home education is allowed in all fifty states in the United States.<sup>15</sup> Several of those states, such as Illinois, impose little regulation on home education.<sup>16</sup> Despite this minimal regulation in the United States, some are calling for greater restrictions.<sup>17</sup> This Note examines whether states like Illinois should change their home education requirements when parents have a right to choose their children’s education, other states more strictly regulate homeschooling, and many countries impose severe restrictions and prohibitions on homeschooling. Part I discusses the history and background of homeschooling as well as its current status in the United States. Part II examines domestic regulation of homeschooling by focusing on the loose regulation of Illinois as well as the stricter regulation of other states. Part III focuses on international regulation and prohibition of homeschooling, and Part IV explains why states like Illinois should not increase their regulation of home education.

## I. BACKGROUND

Homeschooling may appear to be a recent phenomenon, but it has a long history. In fact, some of history’s most influential men, such as George Washington and Thomas Edison, received a home education.<sup>18</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> Press Release, Home Sch. Legal Def. Assoc., Wunderlich Children Returned on Condition of School Attendance (Sept. 19, 2013), <http://www.hslda.org/docs/media/2013/20130919.asp>.

<sup>13</sup> See *infra* Part III.

<sup>14</sup> Alicia Bayer, *Which Countries Have Banned Homeschooling?*, EXAMINER.COM (May 26, 2013, 2:34 PM) <http://www.examiner.com/article/which-countries-have-banned-homeschooling>.

<sup>15</sup> Judith G. McMullen, *Behind Closed Doors: Should States Regulate Homeschooling?*, 54 S.C. L. REV. 75, 87 (2002); *State Laws*, HSLDA, <https://www.hslda.org/laws/> (last visited Apr. 13, 2015).

<sup>16</sup> See *infra* Part II.A.

<sup>17</sup> NAT’L EDUC. ASS’N, 2014-2015 NEA RESOLUTIONS Res. B-83 (2014–2015), available at <http://www.nea.org/assets/docs/nea-resolutions-2014-15.pdf>.

<sup>18</sup> See RONALD W. CLARK, EDISON: THE MAN WHO MADE THE FUTURE 9 (1977); THOMAS S. LANGSTON & MICHAEL G. SHERMAN, GEORGE WASHINGTON 16 (2003).



Homeschooling is an American tradition,<sup>19</sup> and a brief examination of its history and the legal rights affecting it provides a helpful starting point.<sup>20</sup>

### *A. The History of Homeschooling in the United States*

Homeschooling was a part of American history even before the United States gained its independence.<sup>21</sup> "From colonial times until well into the nineteenth century," children often had some sort of home education within their lifetime.<sup>22</sup> Compulsory attendance laws did not exist in the United States until Massachusetts passed the first one in 1852.<sup>23</sup> However, that law allowed children to attend other schools chosen by the parents—and, one might argue, allowed for home education.<sup>24</sup> The compulsory attendance laws eventually clashed with the right of parents to choose whether their children would be taught at home. This basic idea of parental choice was eventually established for the entire nation in *Meyer v. Nebraska*.<sup>25</sup> In that case, the United States Supreme Court found that parents had the right to direct the upbringing of their child.<sup>26</sup> This ruling was later reaffirmed in *Pierce v. Society of Sisters*.<sup>27</sup>

In *Pierce*, the Supreme Court held that an Oregon compulsory attendance law "unreasonably interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control."<sup>28</sup> Thus, based on *Pierce*, parents may direct the education of their

<sup>19</sup> See McMullen, *supra* note 15, at 76.

<sup>20</sup> A detailed history of homeschooling and the legal rights affecting it are beyond the scope of this Note.

<sup>21</sup> McMullen, *supra* note 15, at 76.

<sup>22</sup> *Id.*

<sup>23</sup> ELLWOOD P. CUBBERLEY, PUBLIC EDUCATION IN THE UNITED STATES 563 (1947); see 1852 Mass. Acts 170–71 ("SECT. 1. Every person who shall have any child under his control, between the ages of eight and fourteen years, shall send such child to some public school within the town or city in which he resides, during at least twelve weeks, if the public schools within such town or city shall be so long kept, in each and every year during which such child shall be under his control, six weeks of which shall be consecutive.").

<sup>24</sup> See 1852 Mass. Acts 171 ("SECT. 4. If, upon inquiry by the school committee, it shall appear, or if upon the trial of any complaint or indictment under this act it shall appear, that such child has attended some school, not in the town or city in which he resides, for the time required by this act, or has been otherwise furnished with the means of education for a like period of time, or has already acquired those branches of learning which are taught in common schools, or if it shall appear that his bodily or mental condition has been such as to prevent his attendance at school, or his acquisition of learning for such a period of time, or that the person having the control of such child, is not able, by reason of poverty, to send such child to school, or to furnish him with the means of education, then such person shall be held not to have violated the provisions of this act." (emphasis added)).

<sup>25</sup> 262 U.S. 390 (1923).

<sup>26</sup> See *id.* at 400–01.

<sup>27</sup> 268 U.S. 510, 534–35 (1925).

<sup>28</sup> *Id.* (emphases added).

children.<sup>29</sup> Additionally, the Court states, “[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the *right*, coupled with the high duty, to recognize and prepare him for additional obligations.”<sup>30</sup> Although this case does not directly deal with homeschooling,<sup>31</sup> the right the Court so strongly emphasizes is a foundational element of the parental right to educate children at home.<sup>32</sup> However, *Pierce* does not limit the government’s ability to regulate schools, teachers, or child attendance.<sup>33</sup> Despite this fact, *Pierce* and *Meyer* establish a foundation for parental rights that supports parents’ ability to educate their children at home.<sup>34</sup> The right of parents to direct the upbringing of their children has often been the basis for arguments against restrictive state homeschooling laws.<sup>35</sup> As a result, “the battle has intensified around the fundamental issue of whether the parental right or the state’s duty should prevail in the education of children.”<sup>36</sup>

Some people, such as Judith G. McMullen, express doubt as to the relevance of *Meyer* and *Pierce* to the homeschooling debate. McMullen, a law professor at Marquette University Law School, points out that although *Meyer* is used as a foundational case for parental rights in the homeschooling debate, “the opinion itself does not seem to contemplate a homeschooling situation.”<sup>37</sup> While McMullen correctly points out that *Meyer* is not a homeschooling case, the opinion supports parents’ right to determine the upbringing of their children, and this parental right extends to homeschooling.<sup>38</sup> The only reason *Meyer* did not consider homeschooling was because homeschooling was not the situation at hand.<sup>39</sup> Despite these concessions, the *Meyer* Court stated that the “education of the young is only possible in schools conducted by especially

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<sup>29</sup> CHRISTOPHER J. KLICKA, *THE RIGHT TO HOME SCHOOL* 35 (2d ed. 1998).

<sup>30</sup> *Pierce*, 268 U.S. at 535 (emphasis added).

<sup>31</sup> *Pierce* deals with the Oregon Compulsory Education Act, which required parents and guardians to send children between the ages of eight and sixteen in their care to the public school in the district where they resided. *Id.* at 530. Society of Sisters, an operator of private schools, sued and received an injunction against the law’s implementation. *Id.* at 529–30, 536.

<sup>32</sup> See KLICKA, *supra* note 29.

<sup>33</sup> *Pierce*, 268 U.S. at 534.

<sup>34</sup> KLICKA, *supra* note 29, at 33.

<sup>35</sup> See McMullen, *supra* note 15, at 91, 93.

<sup>36</sup> Aaron T. Martin, Note, *Homeschooling in Germany and the United States*, 27 ARIZ. J. INT’L & COMP. L. 225, 254 (2010).

<sup>37</sup> McMullen, *supra* note 15, at 75, 91.

<sup>38</sup> See KLICKA, *supra* note 29, at 34.

<sup>39</sup> The appellee in *Meyer* challenged his conviction under a Nebraska state law that forbade any person from teaching students below ninth grade any subject in a language other than English. *Meyer v. Nebraska*, 262 U.S. 390, 396–97 (1923).



qualified persons who devote themselves thereto.”<sup>40</sup> This statement may include homeschooling for several reasons. First, “especially qualified persons” is a broad, vague term that could include parents.<sup>41</sup> Second, homeschooling parents often “devote themselves” to educating their children.<sup>42</sup> While it may be true that some homeschooling parents do not fully devote themselves to educating their children, it is also true that some public or private school teachers fail in the same area.<sup>43</sup> Thus, *Meyer* applies to homeschooling, but the strongest application is based on the parents’ right to direct their children’s upbringing.

McMullen also questions whether *Pierce* is applicable to the homeschooling situation. She claims that “one cannot reasonably read *Pierce*’s defense of parental prerogatives in a child’s education to discredit compulsory education laws, nor did later Supreme Court cases treat it that way.”<sup>44</sup> However, McMullen’s argument is problematic because challenging compulsory education laws and supporting homeschooling are two different topics.<sup>45</sup> *Pierce* simply establishes parental rights in education, and those rights support homeschooling.<sup>46</sup> Even if McMullen were correct about *Meyer* and *Pierce* supporting the state’s ability to regulate the education of children,<sup>47</sup> these two cases do not prohibit homeschooling. Rather, *Meyer* and *Pierce* establish parental rights that support home education.<sup>48</sup>

Another case that aided the establishment of parental rights was *Prince v. Massachusetts*.<sup>49</sup> In this case, the Supreme Court determined that “the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.”<sup>50</sup> Like *Meyer* and *Pierce*, this case strengthens parental rights.<sup>51</sup> However, some suggest that *Prince* “can be read both to support unrestricted homeschooling and homeschooling

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<sup>40</sup> *Id.* at 400.

<sup>41</sup> *See id.* The Court does not provide any guidance as to what sort of qualifications allow a person to effectively educate the young.

<sup>42</sup> *See id.* This statement begs the question: Who is more devoted to seeing a child succeed than the child’s parents?

<sup>43</sup> *See Martin, supra* note 36, at 255.

<sup>44</sup> McMullen, *supra* note 15, at 93.

<sup>45</sup> Rather than focusing on the value of compulsory education laws, this Note focuses on a suggested response to homeschooling regulations.

<sup>46</sup> *See* Louis A. Greenfield, Note, *Religious Home-Schools: That’s Not a Monkey on Your Back, It’s a Compelling State Interest*, 9 RUTGERS J.L. & RELIGION 1, 4 (2007).

<sup>47</sup> *See* McMullen, *supra* note 15, at 91–93.

<sup>48</sup> *See* KLIČKA, *supra* note 29, at 33.

<sup>49</sup> 321 U.S. 158 (1944).

<sup>50</sup> *Id.* at 166.

<sup>51</sup> KLIČKA, *supra* note 29, at 36.

regulation.”<sup>52</sup> Although the case discusses the “obligation to care for the child and to prepare him for life in society,” it also appears to support regulation of homeschooling by seemingly recognizing “that the state has a legitimate interest in protecting children from dangers that their parents have not adequately protected against.”<sup>53</sup> Thus, *Prince* highlights the tension between parents’ right to direct their children’s upbringing and the state’s interest in protecting the best interests of every child.

The Supreme Court did not consider a homeschooling situation until it examined *Wisconsin v. Yoder*.<sup>54</sup> In this case, Amish parents desired to keep their children from attending school after eighth grade.<sup>55</sup> Further, they wished to educate their children within the Amish community rather than allow them to enter the public school system.<sup>56</sup> The parents therefore challenged Wisconsin’s compulsory attendance law.<sup>57</sup> This challenge eventually came before the Supreme Court, and the Court ruled in favor of the Amish family by refusing to force the children into public school.<sup>58</sup> However, McMullen contends that *Yoder* “would easily support regulation of homeschoolers who were not motivated primarily by religious belief but would impose a much higher burden on the state in justifying regulation of homeschooling undertaken for religious purposes.”<sup>59</sup> Due to this belief, McMullen concludes that loose regulation of homeschooling is made possible by the “burden of separating religious motivations from non-religious motivations” in addition to the difficulty of determining a person’s religious sincerity.<sup>60</sup> *Yoder* does not clarify everything about the homeschooling debate, but it provides additional support for the parental right to choose home education for children.<sup>61</sup> Although the religious motivation of some parents who teach their children at home plays a role in the regulation of home education, the basic right of parents to direct their children’s upbringing allows them to educate their children at home.

Despite McMullen’s arguments, *Meyer*, *Pierce*, *Prince*, and *Yoder* form the bedrock for parents’ right to choose homeschooling for their children.<sup>62</sup> Because parents have the right to direct the upbringing of their children, they may choose to educate those children through

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<sup>52</sup> McMullen, *supra* note 15, at 94.

<sup>53</sup> *Id.*

<sup>54</sup> 406 U.S. 205 (1972).

<sup>55</sup> *Id.* at 207.

<sup>56</sup> *Id.* at 209.

<sup>57</sup> *Id.* at 208–09.

<sup>58</sup> *Id.* at 234.

<sup>59</sup> McMullen, *supra* note 15, at 97.

<sup>60</sup> *Id.*

<sup>61</sup> See *Yoder*, 406 U.S. at 233–34; Greenfield, *supra* note 46, at 5.

<sup>62</sup> See KLICKA, *supra* note 29, at 33–37.



homeschooling. Some may interpret these foundational cases differently, but it is difficult, if not impossible, to deny the parental rights that have been established. America has a rich history of home education,<sup>63</sup> and home education continues despite various attacks.<sup>64</sup> However, there are challenges on the horizon as homeschooling is assailed both domestically and internationally.

*B. The Current Status of Homeschooling in the United States*

The current legal status of homeschooling is fluid. While all fifty states currently allow some form of home education,<sup>65</sup> the fact that “the United States has a far more developed body of law on the subject” compared to other nations does nothing to ensure a bright future for American homeschooling.<sup>66</sup> Despite abundant tension between homeschoolers and state officials within the United States, “homeschooling has moved from being a fringe movement to a thriving mainstream practice.”<sup>67</sup> However, other cases have raised questions in spite of this wider general acceptance of homeschooling. In *Runyon v. McCrary*,<sup>68</sup> the Supreme Court examined a private education case<sup>69</sup> that could be applicable to homeschooling. The Court stated that “while parents have a constitutional right to send their children to private schools and a constitutional right to select private schools that offer specialized instruction, they have no constitutional right to provide their children with private school education unfettered by *reasonable* government regulation.”<sup>70</sup> The Third Circuit used similarly vague terminology in *Combs v. Homer-Center School District*.<sup>71</sup> In that case, the Third Circuit determined that there was no constitutional right for parents “to avoid *reasonable* state regulation of their children’s education.”<sup>72</sup> Based on the two cases above, the natural question is: What is reasonable? Summarizing the scholarship on the subject, one writer suggests that reasonable regulation “should withstand challenges from

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<sup>63</sup> McMullen, *supra* note 15, at 76–77.

<sup>64</sup> See Kevin D. Williamson, *They Are Coming for Your Children*, NAT’L REV. ONLINE (Oct. 7, 2014, 4:00 AM), <http://www.nationalreview.com/article/389680/they-are-coming-your-children-kevin-d-williamson> (noting opposition to homeschooling and government efforts to restrict homeschooling access).

<sup>65</sup> McMullen, *supra* note 15; *State Laws*, *supra* note 15.

<sup>66</sup> Martin, *supra* note 36, at 272.

<sup>67</sup> *Id.* at 254.

<sup>68</sup> 427 U.S. 160 (1976).

<sup>69</sup> *Id.* at 163–67.

<sup>70</sup> *Id.* at 178 (emphasis added).

<sup>71</sup> 540 F.3d 231 (3d Cir. 2008).

<sup>72</sup> *Id.* at 249 (emphasis added).

parents seeking to circumvent those regulations.”<sup>73</sup> Despite the different courts’ use of vague terminology, homeschooling is still legal—and growing.

Outside of the legal realm, the current status of homeschooling appears to be positive. Traditionally, religion has been the primary reason for homeschooling, and it is still an important factor in the decision to educate children at home.<sup>74</sup> About eighty-three percent of those who educate their children at home claim religion as one of their reasons for homeschooling, and the majority of these are conservative Christians.<sup>75</sup> These parents choose homeschooling to ensure that their children receive “a religious education that inculcates values and beliefs not taught in public schools.”<sup>76</sup> However, religion is not the only reason for homeschooling.<sup>77</sup> Many parents have found a variety of other reasons to teach their children at home, such as “dissatisfaction with the local school system, caring for special-needs kids, safety concerns, flexibility to travel and the chance to spend more time with their children.”<sup>78</sup> Based on these reasons, the number of families choosing home education has been steadily increasing.<sup>79</sup> According to the National Home Education Research Institute (NHERI), homeschooling has been increasing an estimated two to eight percent per year over the last few years.<sup>80</sup> In the spring of 2010, there were “an estimated 2.04 million home-educated students . . . in the United States.”<sup>81</sup> As for academic performance, home-educated students often perform better academically than their public school counterparts.<sup>82</sup> In fact, children who are educated at home usually score fifteen to thirty percentile points higher than public school students do on standardized academic achievement tests.<sup>83</sup> This positive status of home education in the United States provides a helpful backdrop for examining the types of laws and regulations that several states have put in place.

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<sup>73</sup> Martin, *supra* note 36, at 272.

<sup>74</sup> Vidya Rao, *As Home-Schooling Moves to Mainstream, Stigma Fades*, TODAY (Sept. 27, 2010, 9:12 AM), [http://www.today.com/id/39342787/ns/today-parenting\\_and\\_family/t/home-schooling-moves-mainstream-stigma-fades/#.UkWbURafY20](http://www.today.com/id/39342787/ns/today-parenting_and_family/t/home-schooling-moves-mainstream-stigma-fades/#.UkWbURafY20).

<sup>75</sup> *Id.*

<sup>76</sup> McMullen, *supra* note 15, at 78.

<sup>77</sup> Brian D. Ray, *Research Facts on Homeschooling*, NHERI (Jan. 6, 2015), <http://www.nheri.org/ResearchFacts.pdf>.

<sup>78</sup> Rao, *supra* note 74.

<sup>79</sup> *See* Ray, *supra* note 77.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*



## II. DOMESTIC REGULATION OF HOMESCHOOLING

Each state takes a different approach to regulating home education. For example, some states treat home schools as private schools, while other states have stricter laws directly aimed at homeschooling.<sup>84</sup> Other states allow children to avoid the requirements of a compulsory education law if the parents prove they are providing an education equivalent to what the state requires under the compulsory education laws.<sup>85</sup> These regulations “vary greatly from state to state and may include requirements for home teacher certification, curriculum, and other restrictions.”<sup>86</sup> To simplify the many different approaches, it is helpful to examine the states based on whether they impose loose, moderate, or heavy regulations on home education. The following section examines specific states as examples of these differing levels of regulation on homeschooling.

### A. States with Loose Requirements on Homeschooling

Illinois is one of several states that do not require parents to initiate contact with the state before beginning home education.<sup>87</sup> Illinois provides a good example of a state with loose regulation on home education. For instance, home-educated students in Illinois are not required to take standardized tests, and parents teaching their children at home do not need any specific teacher qualifications.<sup>88</sup> A basic overview of Illinois law reveals that Illinois does not have a statute specifically dealing with homeschooling.<sup>89</sup> As a result, it is necessary to examine other Illinois statutes that affect education. The Illinois School Code does not require children to attend public schools as long as the children attend a school where they “are taught the branches of education . . . in the English language.”<sup>90</sup> In addition to the English requirement, the branches of education must be the same as those taught to public school children who

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<sup>84</sup> McMullen, *supra* note 15, at 87, 89.

<sup>85</sup> *Id.* at 88–89.

<sup>86</sup> *Id.* at 89.

<sup>87</sup> *State Laws, supra* note 15 (listing Alaska, Connecticut, Guam, Idaho, Illinois, Indiana, Iowa, Michigan, Missouri, New Jersey, Oklahoma, Puerto Rico, and Texas as jurisdictions which do not require homeschooling parents to initiate contact with the state); *see also* 105 ILL. COMP. STAT. 5/2-3.25o(b), (e) (Westlaw through P.A. 98-1174, 2014 Reg. Sess.) (allowing “non-public” schools to voluntarily register with the state, but excluding any “home-based” school from the definition of “non-public school”).

<sup>88</sup> HOME SCH. LEGAL DEF. ASS’N, HOME SCHOOLING IN THE UNITED STATES: A LEGAL ANALYSIS—ILLINOIS IL-2 (2014-2015 ed.) [hereinafter A LEGAL ANALYSIS—ILLINOIS], available at <http://www.hslda.org/laws/analysis/Illinois.pdf>.

<sup>89</sup> *Id.* at IL-1.

<sup>90</sup> 105 ILL. COMP. STAT. ANN. 5/26-1(1) (Westlaw through P.A. 98-1150, 2014 Reg. Sess.).

are the same age and in the same grade.<sup>91</sup> The “areas of education” in which a child must be taught “include the language arts, mathematics, the biological, physical and social sciences, the fine arts and physical development and health.”<sup>92</sup> Thus, parents who meet the statutory requirements are allowed to decide how, when, and what to teach their children.<sup>93</sup> In fact, Illinois considers homeschooling “a form of private education” as long as home-educated students satisfy the requirements of Section 26-1 of the Illinois School Code.<sup>94</sup>

In addition to statutory law, some Illinois case law also affects the state’s regulation of home education. In *People v. Levisen*,<sup>95</sup> the Illinois Supreme Court held that the compulsory education laws were “enacted to enforce the natural obligation of parents to provide an education for their young, an obligation which corresponds to the parents’ right of control over the child.”<sup>96</sup> In addition to explaining the reason for enactment of compulsory education laws, the court determined that the goal of these laws is simply the education of children rather than a requirement that they be “educated in any particular manner or place.”<sup>97</sup> By not interpreting compulsory education laws as limiting education to a specific procedure or location, the court essentially allowed homeschooling.<sup>98</sup> In addition to its analysis of compulsory education laws, the court defined school as “a place where instruction is imparted to the young” regardless of the number of people being taught there.<sup>99</sup> This definition clearly includes home education, and the court clarified itself when it stated, “[w]e do not think that the number of persons, whether one or many, make a place where instruction is imparted any less or more a school.”<sup>100</sup> Thus, the *Levisen* decision, which is still good law,<sup>101</sup> includes homeschooling as an acceptable form of education in Illinois.

In the event of a truancy action against homeschooling parents in Illinois, the parents must prove that they are acting in accordance with

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.* § 27-1 (Westlaw).

<sup>93</sup> *See Illinois Home Schooling*, ILL. STATE BD. EDUC., <http://www.isbe.state.il.us/homeschool/> (last visited Apr. 13, 2015).

<sup>94</sup> *Id.*; *see* § 26-1(1) (Westlaw).

<sup>95</sup> 90 N.E.2d 213 (Ill. 1950).

<sup>96</sup> *Id.* at 215.

<sup>97</sup> *Id.*

<sup>98</sup> *See id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *See Gallarneau ex rel. Gallarneau v. Calvary Chapel of Lake Villa, Inc.*, 992 N.E.2d 559, 562 (Ill. App. Ct. 2013) (citing the holding in *Levisen* to support the conclusion that the generic term “school” has several meanings).



the law.<sup>102</sup> Because parents are given so much freedom in choosing how their child will be educated, they are also given “near-total responsibility . . . for their student’s education while they are being home-schooled.”<sup>103</sup> Thus, parents have the burden to prove their home education program complies with the law.<sup>104</sup> If a parent cannot satisfy this burden of proof, “the regional superintendent may request the regional or school district truant officer to investigate to see that the child is in compliance with the compulsory attendance law.”<sup>105</sup> In the event that a parent’s home education program does not satisfy state requirements, the parent may be guilty of a Class C misdemeanor, while the child will be considered truant.<sup>106</sup> Thus, Illinois imposes loose requirements on home education, but it also has laws in place to penalize homeschooling parents who do not properly educate their children.

Compared to the rest of the United States, the homeschooling requirements in Illinois are quite loose. However, some states such as Indiana, Iowa, Michigan, Missouri, and Texas are like Illinois in that they do not require parents to initiate contact with the state.<sup>107</sup> Other states require parental notification, but do not have many other requirements.<sup>108</sup> Among these states are Alabama, California, Kentucky, Mississippi, and Wisconsin.<sup>109</sup> Regardless of this distinction, all of these states are similar to Illinois. In fact, Indiana and Kentucky, two states that border Illinois, also do not have home school statutes.<sup>110</sup> Another similarity is that neither Indiana nor Kentucky has teacher qualifications or standardized tests.<sup>111</sup> These two states also primarily rely on case law and statutory law that is not directed specifically toward homeschooling.<sup>112</sup> Interestingly, Indiana

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<sup>102</sup> A LEGAL ANALYSIS—ILLINOIS, *supra* note 88.

<sup>103</sup> *Illinois Home Schooling*, *supra* note 93.

<sup>104</sup> *Levisen*, 90 N.E.2d at 215–16; *see also Illinois Home Schooling*, *supra* note 93.

<sup>105</sup> *Illinois Home Schooling*, *supra* note 93.

<sup>106</sup> *See* 105 ILL. COMP. STAT. 5/26-11 (Westlaw through P.A. 98-1174, 2014 Reg. Sess.); *Illinois Home Schooling*, *supra* note 93.

<sup>107</sup> *See State Laws*, *supra* note 15.

<sup>108</sup> *See id.*

<sup>109</sup> *See id.*

<sup>110</sup> HOME SCH. LEGAL DEF. ASS’N, HOME SCHOOLING IN THE UNITED STATES: A LEGAL ANALYSIS—INDIANA IN-1 (2013-2014 ed.) [hereinafter A LEGAL ANALYSIS—INDIANA], available at <http://www.hslda.org/laws/analysis/Indiana.pdf>; HOME SCH. LEGAL DEF. ASS’N, HOME SCHOOLING IN THE UNITED STATES: A LEGAL ANALYSIS—KENTUCKY KY-1 (2013-2014 ed.) [hereinafter A LEGAL ANALYSIS—KENTUCKY], available at <http://www.hslda.org/laws/analysis/Kentucky.pdf>.

<sup>111</sup> A LEGAL ANALYSIS—INDIANA, *supra* note 110, at IN-1 to IN-2; A LEGAL ANALYSIS—KENTUCKY, *supra* note 110, at KY-2.

<sup>112</sup> *See* A LEGAL ANALYSIS—INDIANA, *supra* note 110, at IN-1 to IN-2; A LEGAL ANALYSIS—KENTUCKY, *supra* note 110, at KY-1 to KY-2.

has case law that is nearly identical to the *Levisen* case in Illinois.<sup>113</sup> In *State v. Peterman*, the Indiana Appellate Court held that a school "is a place where instruction is imparted to the young."<sup>114</sup> That court also stated, "[w]e do not think that the number of persons, whether one or many, make a place where instruction is imparted any less or more a school."<sup>115</sup> Thus, Illinois is not alone in its loose regulation of home education.

### *B. States with Moderate Requirements on Homeschooling*

Several states impose moderate regulation on home education including Florida, Minnesota, Ohio, Tennessee, and Virginia.<sup>116</sup> Of these states, Virginia provides a clear example of this moderate regulation. To begin homeschooling in Virginia, parents must choose from four options for home education.<sup>117</sup> These options include homeschooling under the home school statute, under the religious exemption statute, as a certified tutor, or under the umbrella of a private or denominational school.<sup>118</sup>

Unlike Illinois, Virginia has a statute that directly applies to homeschoolers.<sup>119</sup> This statute begins by explaining the parental requirements for homeschooling. Under Section 22.1-254.1(A) of the Virginia Code, a parent may teach his or her children at home as long as that parent has a high school diploma, is a qualified teacher according to the Virginia Board of Education, gives a correspondence or distance learning course of study, or gives evidence to prove the parent's ability to "provide an adequate education for the child."<sup>120</sup> As is evident in the Code, the parent need only meet one of these requirements to legally provide home education.<sup>121</sup> Parents who choose home education in Virginia must notify the division superintendent every year, give a description of the

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<sup>113</sup> Compare *People v. Levisen*, 90 N.E.2d 213, 215 (Ill. 1950) (defining school as "a place where instruction is imparted to the young"), with *State v. Peterman*, 70 N.E. 550, 551 (Ind. App. 1904) (defining school as "a place where instruction is imparted to the young").

<sup>114</sup> *Peterman*, 70 N.E. at 551.

<sup>115</sup> *Id.*

<sup>116</sup> *State Laws*, *supra* note 15 (listing American Samoa, Arkansas, Colorado, D.C., Hawaii, Louisiana, Maine, Maryland, New Hampshire, North Carolina, North Dakota, the Northern Mariana Islands, Oregon, South Carolina, South Dakota, Washington, and West Virginia as the other moderate regulation jurisdictions).

<sup>117</sup> HOME SCH. LEGAL DEF. ASS'N, HOME SCHOOLING IN THE UNITED STATES: A LEGAL ANALYSIS—VIRGINIA VA-1 to VA-2 (2014-2015 ed.) [hereinafter A LEGAL ANALYSIS—VIRGINIA], available at <http://www.hslda.org/laws/analysis/Virginia.pdf>; see also VA. CODE ANN. §§ 22.1-254(A), (B)(1), 22.1-254.1(A), (B) (Westlaw through 2014 Reg. Sess.).

<sup>118</sup> §§ 22.1-254(A), (B)(1), 22.1-254.1(A), (B) (Westlaw); A LEGAL ANALYSIS—VIRGINIA, *supra* note 117, at VA-1 to VA-2.

<sup>119</sup> § 22.1-254.1 (Westlaw).

<sup>120</sup> *Id.* § 22.1-254.1(A) (Westlaw).

<sup>121</sup> *Id.*



curriculum used, and prove that one of the Section 22.1-254.1(A) requirements has been satisfied.<sup>122</sup> In addition to these basic requirements, parents who choose to teach their children under the homeschooling statute may be required to have their children take standardized tests.<sup>123</sup>

Once homeschooling has begun, the parents must provide annual proof that their child is receiving an adequate education.<sup>124</sup> Evidence showing this adequate education may include acceptable results on a standardized test; an evaluation by a state-licensed teacher who is familiar with the child's academic progress; or a report card, transcript, or similar document.<sup>125</sup> If proof is not provided or the evidence is not acceptable, parents will be required to prove their ability to provide an adequate education for the child as well as a one-year remediation plan.<sup>126</sup> Failure to satisfy these requirements will result in the termination of a child's home education.<sup>127</sup> Based on the amount of requirements alone, Virginia's home education laws are clearly stricter than those in Illinois. Other states are even stricter than Virginia.

### *C. States with Heavy Requirements on Homeschooling*

There are several examples of states with heavy requirements on homeschooling. These states, stricter than Illinois and Virginia, are Massachusetts, New York, Pennsylvania, Rhode Island, and Vermont.<sup>128</sup> Pennsylvania provides a clear example of a state with heavy regulations on home education. Interestingly, the Pennsylvania Department of Education states, "[h]omeschooling is a right and the school's permission is not needed, as long as the required documentation is submitted with the affidavit."<sup>129</sup> Although Pennsylvania considers homeschooling a right, this fact is one of few in the state's laws that support home education. One important regulation requires that parents who desire to educate their children at home must have a high school degree.<sup>130</sup> While this requirement appears reasonable, it is still a regulation. Pennsylvania's

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<sup>122</sup> *Id.* § 22.1-254.1(B) (Westlaw).

<sup>123</sup> *See id.* § 22.1-254.1(C) (Westlaw); A LEGAL ANALYSIS—VIRGINIA, *supra* note 117, at VA-2 to VA-3.

<sup>124</sup> § 22.1-254.1(C) (Westlaw).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *State Laws*, *supra* note 15.

<sup>129</sup> *Overview of Homeschooling*, PA. DEP'T EDUC., [http://www.portal.state.pa.us/portal/portal/server.pt/community/overview\\_of\\_homeschooling/20312](http://www.portal.state.pa.us/portal/portal/server.pt/community/overview_of_homeschooling/20312) (last visited Apr. 13, 2015).

<sup>130</sup> 24 PA. CONS. STAT. ANN. § 13-1327.1(a), (b)(1) (Westlaw through Acts 1-171, 173-98, 200-04, 2014 Reg. Sess.).

compulsory attendance laws require attendance at the age of eight.<sup>131</sup> This requirement applies throughout Pennsylvania except in Philadelphia, where the compulsory attendance age is six.<sup>132</sup> Also, once the child begins first grade or above in public, private, or home school, the child must continue education until he or she turns seventeen.<sup>133</sup> These compulsory attendance laws appear more complicated, but they are only the beginning of Pennsylvania's regulation of home education.

Pennsylvania's regulation of home education provides a significant contrast to the loose requirements of Illinois. Parents in Pennsylvania are limited to choosing from five options for teaching their children at home: homeschooling under Pennsylvania's homeschooling statute, through a private tutor, as a satellite of a church school, as a satellite of an accredited boarding school, or under the protection of the Pennsylvania Religious Freedom Protection Act (RFPA).<sup>134</sup> As a result of these restrictions, home education is never a completely independent endeavor.

Of all of Pennsylvania's regulations, the most burdensome is the state's determination to oversee children's work through portfolios.<sup>135</sup> Pennsylvania law requires a homeschooling parent to record his or her child's work and progress in a detailed portfolio for a state supervisor to review later.<sup>136</sup> Another requirement involves statewide tests that homeschoolers are required to take in third, fifth, and eighth grade.<sup>137</sup> The portfolio must include the results of these tests.<sup>138</sup> The state also requires homeschoolers to have "one hundred eighty (180) days of instruction or nine hundred (900) hours of instruction per year at the elementary level, or nine hundred ninety (990) hours per year at the secondary level."<sup>139</sup> Finally, Pennsylvanian homeschoolers are subject to laws that impose specific requirements on the course material that they must study.<sup>140</sup> Based on the amount of regulations listed in this section, Pennsylvania clearly imposes more regulations on home education than Illinois.

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<sup>131</sup> *Id.* § 13-1326 (Westlaw).

<sup>132</sup> *Overview of Homeschooling*, *supra* note 129.

<sup>133</sup> § 13-1326 (Westlaw); *Overview of Homeschooling*, *supra* note 129.

<sup>134</sup> § 13-1327 (Westlaw); see 71 PA. CONS. STAT. ANN. § 2402 (Westlaw through 2014 Reg. Sess.); HSLDA, HOME SCHOOLING IN THE UNITED STATES: A LEGAL ANALYSIS—PENNSYLVANIA PA-1 to PA-4 (2014-2015 ed.), available at <http://www.hslda.org/laws/analysis/Pennsylvania.pdf>.

<sup>135</sup> See 24 PA. CONS. STAT. ANN. § 13-1327.1(e)(1) (Westlaw through Acts 1-171, 173-98, 200-04, 2014 Reg. Sess.).

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*; *Overview of Homeschooling*, *supra* note 129.

<sup>138</sup> § 13-1327.1(e)(1) (Westlaw); *Overview of Homeschooling*, *supra* note 129.

<sup>139</sup> § 13-1327.1(c) (Westlaw).

<sup>140</sup> *Id.*



### III. INTERNATIONAL REGULATION AND PROHIBITION OF HOMESCHOOLING

Just as the fifty United States have had differing responses to homeschooling, so has the international community. In particular, Europe has responded to home education in various ways. While many European countries have heavily regulated or completely prohibited homeschooling,<sup>141</sup> it is legal in other European countries such as Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, Norway, Portugal, Slovenia, Ukraine, and the United Kingdom.<sup>142</sup> Because all fifty states in the United States allow homeschooling, it is necessary to examine the international landscape for examples of governments that prohibit homeschooling as well as those that regulate homeschooling more than the United States.

#### *A. International Regulation of Homeschooling*

Many countries that heavily regulate home education lie just across the Atlantic Ocean. In fact, recent events in Europe have suggested “more hostility and support for the regulation of homeschooling.”<sup>143</sup> One example of these recent events was the new regulations on homeschooling imposed by Belgium’s Flemish parliament.<sup>144</sup> These regulations, known as Education Decree XXIII, became effective on September 1, 2013, and they require eleven- and fifteen-year-old home school students to take state tests.<sup>145</sup> While this is not a very heavy regulation of home education, other European countries have imposed far more excessive regulations. For example, Sander Dekker, the Netherlands’s State Secretary for Education, has made it clear that he desires to eradicate homeschooling from the Netherlands.<sup>146</sup> This news raises more concern since the Netherlands already prohibits homeschooling unless the “parents cannot find a school fitting their beliefs in their area.”<sup>147</sup> Homeschoolers in the Netherlands are trying to stop this potential crackdown through a petition.<sup>148</sup> Across the continent, Spain is struggling with its

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<sup>141</sup> See *infra* Part III.

<sup>142</sup> Inés Benítez, *Homeschoolers Want Legal Vacuum Filled in Spain*, IPS (Apr. 24, 2013), <http://www.ipsnews.net/2013/04/homeschoolers-want-legal-vacuum-filled-in-spain/>.

<sup>143</sup> *Belgium: Controlling Homeschoolers: New Regulations Impose State Testing*, HSLDA (Sept. 30, 2013), <http://www.hslda.org/hs/international/Belgium/201309300.asp>.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Netherlands: State Wants to Ban Homeschooling*, HSLDA (Sept. 24, 2013), <http://www.hslda.org/hs/international/Netherlands/201309240.asp>.

<sup>147</sup> Bayer, *supra* note 14.

<sup>148</sup> See *Netherlands: State Wants to Ban Homeschooling*, *supra* note 146; *Stop the Ban on Home Education in the Netherlands*, CHANGE.ORG, <https://www.change.org/p/stop-the-ban-on-home-education-in-the-netherlands>.

homeschooling laws.<sup>149</sup> Currently, Spain requires ten years of compulsory education.<sup>150</sup> However, it is unclear whether this compulsory education law merely requires school attendance or if the law criminalizes homeschooling.<sup>151</sup> A Spanish court recently attempted to provide some clarity.<sup>152</sup> On December 2, 2010, the Spanish Constitutional Court “ordered a group of homeschooling parents to send their children to school in the southern Spanish city of Málaga.”<sup>153</sup> Thus, Spain is regulating homeschooling and may be moving toward prohibiting it altogether. Belgium, the Netherlands, and Spain are only some of the countries that have increased restrictions on homeschooling to some degree.<sup>154</sup>

Despite the increased regulation of home education, homeschooling is still legal in a number of European countries.<sup>155</sup> However, homeschoolers may face other challenges in these countries. For example, a court in the United Kingdom recently imposed severe regulations on a child who was being homeschooled.<sup>156</sup> In this situation, a mother who had taught three children at home for ten years was forced to send her disabled son to a school 100 miles away.<sup>157</sup> After the eighteen-year-old son spent some time in the hospital in 2011, the Northamptonshire County Council told the mother that her son could not return home.<sup>158</sup> The council’s only reason was that the mother’s decision to utilize home education was not in her son’s “best interests.”<sup>159</sup> The mother challenged the decision and claimed that the disabled teenager was “clever enough to study

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ban-on-home-education-in-the-netherlands (last visited Apr. 13, 2015) (displaying the petition online, but listing the petition as closed).

<sup>149</sup> See Benítez, *supra* note 142.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> See *id.*

<sup>153</sup> *Id.*

<sup>154</sup> See, e.g., GRAHAM BADMAN, REPORT TO THE SECRETARY OF STATE ON THE REVIEW OF ELECTIVE HOME EDUCATION IN ENGLAND 38–45 (June 11, 2009), available at <https://www.education.gov.uk/consultations/downloadableDocs/PDF%20FINAL%20HOME%20ED.pdf>; Mike Donnelly, *Ireland: State Prosecutes in Spite of Constitution*, HSLDA (Oct. 14, 2014), <http://www.hslda.org/hs/international/Ireland/201410070.asp> (discussing increased regulation in Ireland); Mike Donnelly, *Sweden: Homeschooling Family Appeals to Supreme Court*, HSLDA (Jan. 6, 2015), <http://www.hslda.org/hs/international/Sweden/201501060.asp> (discussing increased regulation in Sweden).

<sup>155</sup> See Bayer, *supra* note 14.

<sup>156</sup> See Sam Marsden, *Mother Loses Fight to Home-School Disabled Son*, THE TELEGRAPH (Nov. 12, 2013, 3:45 PM), <http://www.telegraph.co.uk/news/uknews/law-and-order/10444352/Mother-loses-fight-to-home-school-disabled-son.html>.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*



Shakespeare's *Romeo and Juliet*,"<sup>160</sup> but the court determined that he "lacked the mental capacity to make decisions about his welfare and should be enrolled at a school a long way from his family."<sup>161</sup> The appeal judge even expressed a lack of confidence that the mother would make sure her disabled son would finish his last year of school.<sup>162</sup> Faced with this opposition, the mother lost the case.<sup>163</sup> As they move forward, states like Illinois should consider the potential for dangerous situations like this case from the United Kingdom.

### *B. International Prohibition of Homeschooling*

Home education is illegal in a number of countries, including Brazil, Cuba, Greece, and Turkey.<sup>164</sup> In other countries, such as Bulgaria, homeschooling is illegal unless the child has special needs.<sup>165</sup> Even if a child has special needs, the Bulgarian government still heavily regulates the child's education by dictating the curriculum and requiring a traditional school to oversee the child's progress.<sup>166</sup> In fact, some of the most hostile governmental responses to home education have come from countries in Western Europe. The governments of Germany and Sweden, for instance, "have gotten tough on homeschoolers in recent years" and now criminalize homeschooling.<sup>167</sup>

In Sweden, homeschooling is illegal unless certain "exceptional circumstances" are satisfied.<sup>168</sup> However, the government rarely, if ever, allows home education based on these circumstances,<sup>169</sup> and Swedish parents who teach their children at home in violation of the law will face government threats, fines, and removal of the children.<sup>170</sup> In one recent Swedish case, the Supreme Administrative Court imposed a \$15,000 fine on a family due to the fact that the parents had homeschooled their twelve-year-old daughter for the 2011–2012 school year.<sup>171</sup> In a more

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<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> Bayer, *supra* note 14.

<sup>165</sup> *Bulgaria*, HSLDA, <http://www.hslda.org/hs/international/Bulgaria/default.asp> (last visited Apr. 13, 2015).

<sup>166</sup> *Id.*

<sup>167</sup> Benítez, *supra* note 142.

<sup>168</sup> *Sweden: New Education Law Makes Homeschooling Illegal*, HSLDA (July 7, 2010), <http://www.hslda.org/hs/international/Sweden/201007070.asp>.

<sup>169</sup> *See id.*

<sup>170</sup> Bayer, *supra* note 14.

<sup>171</sup> Press Release, Riksföreningen för Hemundervisning i Sverige—Rohus [National Association for Homeschooling in Sweden—Rohus], *Homeschooling Family Fined 15 000 USD by the Swedish Supreme Court*, MYNEWSDESK (Aug. 19, 2013, 09:46 CEST),

recent situation in Sweden, Annie and Christer Johannson have been separated from their son, Domenic, for four years due to “state seizure” and “forced adoption” as punishment for homeschooling him.<sup>172</sup> The situation began in June of 2009 when police boarded a plane just before takeoff in order to seize the Johannsons’ son “for the flimsiest of reasons.”<sup>173</sup> The Johannsons had disagreed with the government about whether they could utilize home education, but when they presented their plan to emigrate to a court, “the court took note without any conditions.”<sup>174</sup> Nevertheless, Domenic was taken, though the government officials had “no warrant or court action [that] authorized the seizure,” and the parents have been separated from their son for over four years with no contact for over two years.<sup>175</sup> Outside of some dental cavities and the fact that Domenic “had not received all recommended vaccinations,” the government has provided “no legitimate justification . . . to defend the seizure or the ongoing custody of the boy.”<sup>176</sup> When the case went to court, a lower court held that it was in the child’s best interests for him to be with his parents.<sup>177</sup> However, the appeals court reversed that decision and removed “permanent guardianship of Domenic in December 2012.”<sup>178</sup> These cases starkly illustrate Sweden’s harsh prohibition of homeschooling.

In addition to Sweden, Germany has imposed harsh regulations on home education. In fact, Germany’s virtual criminalization of home education prompted Georgia and Tennessee to pass resolutions urging Germany to legalize homeschooling.<sup>179</sup> Despite the states’ efforts, it appears that their resolutions were not effective. Currently, homeschooling is illegal in Germany unless “continued school attendance would create undue hardship for an individual child.”<sup>180</sup> The basic German compulsory attendance law requires six-year-old children to attend school,

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<http://www.mynewsdesk.com/se/view/pressrelease/homeschooling-family-fined-15-000-usd-by-the-swedish-supreme-court-895446>.

<sup>172</sup> *Sweden: HSLDA Asks for Help for Swedish Family*, HSLDA (Nov. 5, 2013), <http://www.hslda.org/hs/international/Sweden/201311050.asp?elq=119398ebbbd144428d9bd3b9484d722d&elqCampaignId=186>.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> See H.R. 850, 2009–2010 Reg. Sess. (Ga. 2009); H.R. 87, 106th Gen. Assemb. (Tenn. 2009).

<sup>180</sup> Bayer, *supra* note 14. Interestingly, the German laws restricting home education are rooted in the Nazi era when the young Nazi government used the education system to spread its propaganda. See Martin, *supra* note 36, at 226, 229–30.



and there is no exemption for home education.<sup>181</sup> This compulsory attendance law was eventually challenged based on a religious freedom argument in *Konrad v. Germany*, but the German Constitutional Court upheld the attendance requirements.<sup>182</sup> Germany's Basic Law "seems to provide significant rights for parents and families, [but] the actual protections are thin."<sup>183</sup> Although German parents are responsible for their child's education, the method of education that they choose for their child cannot conflict with the German government's policy.<sup>184</sup> As a result, "[n]o matter what rights parents possess to direct the upbringing of their children in Germany, those rights are overshadowed by the control of the State."<sup>185</sup> These regulations clearly portray Germany's hostility toward home education.

#### IV. HOW STATES LIKE ILLINOIS SHOULD RESPOND TO THE REGULATION OF HOMESCHOOLING

States like Illinois have many examples of how to treat home education. They could follow other states' examples by increasing their restrictions without interfering with the parents' foundational right to direct the upbringing of their children.<sup>186</sup> However, states like Illinois could also follow the international example by increasing the regulation of home education beyond those restrictions found in the United States.<sup>187</sup> The regulation of homeschooling brings some benefits, but it also brings many dangers. Before making a decision on whether to increase the regulation of home education, it is helpful to examine the pros and cons to such regulation.

##### *A. The Pros and Cons of Regulating Homeschooling*

Like most government regulation, the regulation of home education presents many positives and negatives. Clearly, increased regulation of homeschooling offers some advantages. For instance, increased regulation could help solve some of the existing problems with home education. These problems include vague standards with no ability to enforce them and a lack of health and safety standards for homeschoolers.<sup>188</sup> More regulation would clarify the existing vague standards or establish statutory law to specifically explain the regulation. This clarification would then result in the advantage of true enforcement of the regulations. Once enforced, these

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<sup>181</sup> Martin, *supra* note 36, at 226, 243.

<sup>182</sup> *Konrad v. Germany*, 2006-XIII Eur. Ct. H.R. 355, 363, 367–68.

<sup>183</sup> Martin, *supra* note 36, at 238–39; *see also Konrad*, 2006-XIII Eur. Ct. H.R. at 366.

<sup>184</sup> *Konrad*, 2006-XIII Eur. Ct. H.R. at 362, 365.

<sup>185</sup> Martin, *supra* note 36, at 241.

<sup>186</sup> *See supra* Part II.B–C.

<sup>187</sup> *See supra* Part III.

<sup>188</sup> McMullen, *supra* note 15, at 98–99.

regulations would ensure that parents are actually educating their children as they claim they are. Other mechanisms such as required state tests and portfolios would provide an adequate measurement of the child's education level, and requiring home schools to function as satellites of private schools would increase the chances of the child receiving an appropriate education. Imposing a high school diploma requirement on parents would also be beneficial since it would ensure that parents are fully capable of teaching and overseeing their children's education. Another potential advantage to increased regulation could be preventing abusive parents from using homeschooling as a cover for their harmful actions. Imposing the same medical and health standards as are imposed on public school students is another potential advantage that increased regulation can bring. Such a regulation would counteract the current lack of incentive of homeschooling families to comply with school vaccination deadlines.<sup>189</sup>

Despite its potential advantages, increased regulation of home education also raises many disadvantages. One of these disadvantages is the danger of steadily increasing regulation. A slight increase in homeschooling requirements may set the precedent for more regulation until the once simple requirements become burdensome. In addition to this potential problem of bad precedent, there is also the problem of forcing home-educated students back into the public school system. This action may risk overcrowding the system and perhaps lead to an increase in the academic failure rates.<sup>190</sup> However, one of the most detrimental disadvantages arises when sending a child to a public or private school interferes with a parent's right to direct his or her child's upbringing. In this regard, satellite home schools, portfolio submissions, and educational requirements on parents arguably infringe on parental rights. Thus, increasing regulation of home education may result in many potential problems.

### *B. A Proposed Response for States Like Illinois*

States like Illinois with loose regulation of home education should not increase that regulation. It is apparent from the domestic and international regulation of homeschooling that an increase in regulation presents a danger to parents who simply want to educate their children at home. States like Illinois should not follow the examples of states like Virginia or Pennsylvania<sup>191</sup> by imposing heavier regulation on home education. Although it is more plausible for Illinois and its counterparts to mimic the regulations of reasonable sister states rather than stringent

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<sup>189</sup> See *id.* at 103.

<sup>190</sup> See *id.* at 99.

<sup>191</sup> See *supra* Part II.B-C.



international governments, even reasonable regulations present the danger of creating harmful precedent for home education in the United States. As state governments become more comfortable with regulating home education, the national government will likely follow the same trend. Increased regulation may also lead to a societal acceptance of regulating home education. Such an acceptance could potentially lead to more restrictions in the state and national governments. As a practical matter, increased regulation of home education may not be necessary because "the state could accomplish some of its goals, especially in the child-protection area, by enforcement of existing statutes rather than by further regulation of homeschooling."<sup>192</sup> Thus, a state may simply be wasting resources by imposing more regulations.<sup>193</sup>

While more statutory law may seem necessary to combat the vagueness that plagues states' homeschooling laws, this vagueness is actually beneficial because it signifies low governmental involvement. Due to the fact that homeschoolers usually perform better academically than their public school counterparts,<sup>194</sup> regulations in the form of portfolios and standardized tests may not be as necessary, or as useful, as they appear. Requiring satellite schools also seems effective for oversight of the child's education. However, this type of regulation may essentially preclude some parents who are not comfortable with a satellite system of home education. One seemingly sensible regulation of homeschooling is requiring homeschoolers to receive vaccinations and medical treatment equivalent to what public school students receive.<sup>195</sup> This regulation could be accomplished by requiring parents to register their children upon applying for permission to utilize home education.<sup>196</sup> Such a regulation could further vaccination aims and also ensure that the parent is not abusive.<sup>197</sup> Even so, it would seem more plausible for the state to require all children to be vaccinated rather than imposing a registration mechanism on homeschooling. Simply drafting a mandate requiring applicable children to be vaccinated would accomplish the same purpose. Such a requirement, however, raises many other issues that are beyond the scope of this Note.

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<sup>192</sup> McMullen, *supra* note 15, at 99.

<sup>193</sup> *Id.*

<sup>194</sup> See Ray, *supra* note 77.

<sup>195</sup> See McMullen, *supra* note 15, at 86, 103.

<sup>196</sup> See *id.* at 106.

<sup>197</sup> *Id.* A homeschooling registration system which required the parent's name would provide supervisors with an opportunity to check the parent's criminal record for instances of abuse or neglect. See *id.*

Because parents have the right to direct the upbringing of their children,<sup>198</sup> they should also have the freedom to direct their children's education. Imposing more regulations on home education prevents parents from fully exercising this right. Minimal regulation sounds attractive if it is "aimed less at intrusive oversight and more at identifying the small minority of homeschooling parents who are not in fact providing their children with an education."<sup>199</sup> For example, this type of regulation could require the testing of a child to determine if the parent can continue homeschooling and create a homeschooling agency to monitor these tests.<sup>200</sup> However, limited regulations are dangerous because it is difficult to draw a line that would prevent expanded regulation in the future. Thus, these seemingly reasonable ideas could sacrifice the stability of parental choice in the present and future. Unfortunately, some children tragically suffer when their parents abuse this right. Nevertheless, only parents who abuse their rights should be punished, not those who responsibly exercise them. While the government should protect children from receiving a poor education due to poor parental oversight or poor parenting, the imposition of more restrictions only interferes with the parents' right to direct the upbringing of their children. States like Illinois therefore should avoid adding restrictions that are similar to other states.

Illinois and other states should also avoid the example of the international community. Heavy restrictions on home education such as those in Germany and Sweden<sup>201</sup> would clearly interfere with parents' right to direct the upbringing of their children. High regulation virtually removes any parental choice from the decision of whether to choose homeschooling. This type of governmental interference only seems to allow governmental control of parents and their children. This would result in the removal of parental oversight of their children's education as well as the removal of the parents' right to direct their children's upbringing.

Countries like the United Kingdom provide other examples of why the government should not impose increased regulations.<sup>202</sup> With more regulation comes the potential for more governmental involvement and less parental choice. If the government and parent disagree as to the best interests of the child, the government will nearly always win. As is evident throughout history, governments tend to increase in power, resulting in a

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<sup>198</sup> *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 400–01 (1923).

<sup>199</sup> McMullen, *supra* note 15, at 106.

<sup>200</sup> *Id.*

<sup>201</sup> See *supra* Part III.B.

<sup>202</sup> See *supra* Part III.A.



subsequent loss of citizen power.<sup>203</sup> In the home education situation, the parents are the people losing power. Thus, taking power from the parent and giving it to the government reduces parental decision-making and forces parents to leave their children's education in the government's hands.<sup>204</sup> Germany demonstrates that parents may be given rights on paper, but those rights may not translate into literal rights under the laws of the state.<sup>205</sup> Following the international community's pattern of high regulation of home education will only encroach on citizens' parental right to direct the upbringing of their children.

### CONCLUSION

In light of these considerations, states like Illinois should not change their educational laws to reflect either the international community or their sister states. Following international examples of regulating home education would violate parents' right to direct the upbringing of their children. Homeschooling offers parents another option for the education of their children, and the current laws in Illinois and similar states enable parents to retain that option. High regulation and actual prohibition encroach on this fundamental parental right and should not be allowed or even considered in the United States. However, Illinois and its counterparts should also avoid following the examples set forth by their sister states. In those states, what appear to be helpful or harmless regulations such as portfolios or satellite home education can eventually lead to heavier regulation or outright prohibition. Laws often evolve over time rather than simply jumping to a specific point. Thus, increasing regulation may solve some of today's minor issues, but it sacrifices the security of parental choice in the future. Simply allowing a restricted form of homeschooling is not enough because heavy regulation may eventually degenerate into a Wunderlich situation.<sup>206</sup> Illinois and other states with similar laws should retain their current education laws not only to remain consistent with the parental right to direct the upbringing of their children, but also to avoid becoming the next Germany.

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<sup>203</sup> See Tom Mayer, *The Collapse of Soviet Communism: A Class Dynamics Interpretation*, 80 SOC. FORCES 759, 775-76 (2002).

<sup>204</sup> See Martin, *supra* note 36, at 236.

<sup>205</sup> See *id.* at 236-37, 241.

<sup>206</sup> See *supra* notes 1-12 and accompanying text.

\* J.D. Candidate, Regent University School of Law, 2015. This Note won first place in the Seventh Annual Chief Justice Leroy Rountree Hassell, Sr., Writing Competition at Regent University School of Law. To God be the glory. Thank you to Professor Lynne Marie

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