

# PULLING BACK THE CURTAINS: UNDETECTED CHILD ABUSE AND THE NEED FOR INCREASED REGULATION OF HOME SCHOOLS IN MISSOURI

## I. INTRODUCTION

Homeschooling has been a convention of American education since the formation of the colonies.<sup>1</sup> Although the practice has undergone exponential growth in the past half-century,<sup>2</sup> the media's recent discovery of a slew of heinous incidents of abuse against homeschooled children<sup>3</sup> has many calling for increased oversight in home schools.<sup>4</sup> Indeed, most states have such limited oversight over homeschooling that it is largely unregulated, and many operate completely undocumented.<sup>5</sup> With respect to homeschooling laws, Missouri

---

<sup>1</sup> Judith G. McMullen, *Behind Closed Doors: Should States Regulate Homeschooling?* 54 S.C. L. REV. 75, 76 (2002).

<sup>2</sup> NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEPT OF EDUC., DIGEST OF EDUCATION STATISTICS Table 40 (2007) (listing homeschooling statistics for children ages five to seventeen), available at [http://nces.ed.gov/programs/digest/d11/tables/dt11\\_040.asp](http://nces.ed.gov/programs/digest/d11/tables/dt11_040.asp).

<sup>3</sup> See, e.g., Jaime Holguin, *A Dark Side to Homeschooling*, CBS NEWS (Feb. 11, 2009), <http://www.cbsnews.com/stories/2003/10/13/eveningnews/main577817.shtml?tag=contentMain;contentBody> (authorities previously kept away because the children were homeschooled discovered a house of squalor after a teenaged boy killed his siblings before shooting himself); NJ Dad Accused of Raping 5 Daughters, CBS NEWS (Mar. 12, 2010), <http://www.cbsnews.com/stories/2010/03/11/national/main6288122.shtml> (father accused of raping his five daughters and impregnating three was able to keep authorities away from his home by homeschooling his family); Edecio Martinez, DA: Kevin and Elizabeth Schatz Killed Daughter With "Religious Whips" for Mispronouncing Word, CBS NEWS (Feb. 22, 2010), [http://www.cbsnews.com/8301-504083\\_162-6009742-504083.html](http://www.cbsnews.com/8301-504083_162-6009742-504083.html) (parents who homeschooled their nine children beat seven-year-old daughter to death).

<sup>4</sup> See, e.g., Kelcey Carlson, *Death Investigations Prompt Homeschooling Recommendations*, WRAL.COM (June 16, 2008), <http://www.wral.com/news/local/story/3052707/> ("A state task force that reviewed the death of a 4-year-old boy at the hands of his adoptive mother recommended more oversight for children taught at home"); see also Kristen Klobberdanz, *Criminalizing Homeschoolers*, TIME (Mar. 7, 2008), <http://www.time.com/time/nation/article/0,8599,1720697,00.html> (Los Angeles Department of Children and Family Services calls for increased regulation of homeschoolers in response to child abuse case).

<sup>5</sup> Vince Gonzales, *Home Schooling Nightmares*, CBS NEWS (Feb. 11, 2009), <http://www.cbsnews.com/stories/2003/10/14/eveningnews/main578007.shtml> ("In eight

is among the most permissive states in the country.<sup>6</sup> Yet, despite the clamor in some states to increase regulations, the Missouri legislature has recently proposed a bill that would significantly restrict the state's ability to regulate home schools.<sup>7</sup> This Comment recommends, however, that Missouri should reject this attempt to restrict its ability to regulate homeschooling.

Accordingly, Part II provides background information about homeschooling, and Part III provides data on child abuse, concluding with an outline of homeschooling regulations in Missouri. Part IV provides recommendations for reform of homeschooling laws in Missouri, specifically encouraging laws that would require parents to inform the local school district when their children will be homeschooled, to submit progress reports to demonstrate that their children are being educated, and to allow authorities to observe home schools when 1) a mutually-agreed-upon date has been arranged; 2) students are continuing to not make adequate academic progress; or when 3) prior abuse has occurred. Finally, Part V concludes.

## II. BACKGROUND ON HOMESCHOOLING

Although arguably more popular than ever,<sup>8</sup> homeschooling is not a new concept. In fact, "[p]arents have been teaching their children at home since the beginning of the republic."<sup>9</sup> Until Massachusetts passed the first compulsory school attendance law in 1852, homeschooling was the predominant method of teaching children.<sup>10</sup> Resurging in the

---

states, parents don't have to tell anyone they're home schooling. Unlike teachers, in 38 states and the District of Columbia, parents need virtually no qualifications to home school. Not one state requires criminal background checks to see if parents have abuse convictions.").

<sup>6</sup> See generally MO. REV. STAT. §§ 167.031(1)-(5), 167.042 (West 2012) (stating that Missouri parents do not have to report that their children are being homeschooled).

<sup>7</sup> H.B. 513, 97th Gen. Assembly, 1st Reg. Sess. (Mo. 2013) (declaring that parental liberty in determining the education of their children is a fundamental right and thus will receive strict scrutiny in Missouri).

<sup>8</sup> See NAT'L CTR. FOR EDUC. STATISTICS, *supra* note 2.

<sup>9</sup> Robin Cheryl Miller, *Validity, Construction, and Application of Statute, Regulation, or Policy Governing Homeschooling or Affecting Rights of Homeschooled Students*, 70 A.L.R. 5TH 169 (1999).

<sup>10</sup> Home Sch. Legal Defense Ass'n, *Introduction*, YOU CAN HOMESCHOOL (2013), available at [www.youcanhomeschool.org/starthere/default.asp?bhcp=1](http://www.youcanhomeschool.org/starthere/default.asp?bhcp=1).

1970s and 1980s,<sup>11</sup> homeschooling has steadily increased in popularity, growing over seventy-seven percent from 1999 to involve over 1.5 million children by 2007.<sup>12</sup> While the practice remains complicated by compulsory attendance laws, the right to homeschooling has now been established in all fifty states.<sup>13</sup>

Despite the increasing number of homeschoolers, the recent discovery of child abuse cases at home schools has caused concern over limited homeschooling regulations.<sup>14</sup> Because many states have no systems in place to track cases of homeschooling abuse,<sup>15</sup> the primary source of discovery has been the media.<sup>16</sup> In 2004, the *Akron Beacon Journal* scoured over five-thousand articles nationwide, finding 116 deaths linked to homeschooling between 1999 and 2004; however, the report covered deaths only, and the newspaper acknowledged the likely existence of many undocumented incidents, as well.<sup>17</sup>

Among the most remarkable is a case in which four starving children were found wandering the streets at night rummaging garbage cans for food.<sup>18</sup> "They had escaped confinement in a closet where they were made to eat from a cat litter box."<sup>19</sup> Another case concerned a twelve-year-old girl whose parents whipped her to death with an electric cable as a form of corporal punishment.<sup>20</sup> Perhaps the most recognizable case, however, involved a California man who homeschooled his children, engaged in incest at home and fathered at least one of his grandchildren, and ultimately shot nine of his

---

<sup>11</sup> See ANDREW J. COULSON, MARKET EDUCATION: THE UNKNOWN HISTORY 119-22 (1999).

<sup>12</sup> See NAT'L CTR. FOR EDUC. STATISTICS, *supra* note 2; see also McMullen, *supra* note 1 (clarifying that the proliferation of homeschoolers was "partly brought about by disillusionment with the public school system.").

<sup>13</sup> Timothy Brandon Waddell, Note, Bringing it All Back Home: Establishing a Coherent Constitutional Framework for the Re-Regulation of Homeschooling, 63 VAND. L. REV. 541, 548 (2010).

<sup>14</sup> See *id.* at 554-55.

<sup>15</sup> *Id.* at 558 ("[I]n many states the means of discovering any instances of these crimes simply do not exist in the homeschooling context.").

<sup>16</sup> See Dennis J. Willard & Doug Oplinger, Home Schoolers May Be No Safer in Their Homes Than Other Children, AKRON BEACON J. (Nov. 17, 2004), available at <http://epsl.asu.edu/epru/articles/EPRU-0503-104-OWI.pdf>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

family members to death in the home.<sup>21</sup> Other high-profile cases involved parents repeatedly sexually abusing their children or starving them and forcing them to live in cages or basements and even a guardian torturing children by shooting staples into their bodies.<sup>22</sup>

Such grotesque cases are difficult to uncover because homeschooling laws “allow persons who maltreat children to maintain social isolation in order for the abuse and neglect to remain undetected.”<sup>23</sup> Current data reveal that, although some homeschoolers worry about abuse at school, the traditional school setting provides protections that are often not otherwise available to homeschooled children.<sup>24</sup> Teachers are the number-one reporters of child abuse occurring elsewhere for obvious reasons: children spend the most time away from parental supervision when they are at school, many teachers receive training to recognize unreported abuse, and, in some situations, children report the abuse to their teachers.<sup>25</sup> Because teachers are the principal reporters of child abuse, some argue that homeschooling is used to “keep [children] out of the public eye because the children do have injuries that are visible, and they don’t want them to be seen.”<sup>26</sup> Moreover, several states “do not even require that parents notify anyone that they plan to homeschool their children.”<sup>27</sup> In Georgia, homeschoolers even blocked an attempt to collect such data, decrying a violation of state law.<sup>28</sup> Thus, abused and homeschooled children may exist entirely undetected by the public. With such little information on homeschooling abuse available to those desiring stricter laws, homeschooling advocates “have used the lack of national crime statistics to their advantage.”<sup>29</sup> Without appropriate safeguards,

---

<sup>21</sup> *Id.*

<sup>22</sup> See generally Willard & Oplinger, *supra* note 16.

<sup>23</sup> Holguin, *supra* note 3.

<sup>24</sup> See Waddell, *supra* note 13, at 558.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 543.

<sup>28</sup> See *id.* (citing an instance in which Georgia social workers proposed stricter homeschooling legislation and gathered data on abuse among homeschoolers for support; home school advocates launched an attack campaign to permanently squash the data).

<sup>29</sup> Willard & Oplinger, *supra* note 16.

homeschooling laws will continue to enable child abuse, and homeschooled children will remain less protected from potentially tragic consequences.

### III. CHILD ABUSE DATA AND CURRENT HOMESCHOOLING REGULATIONS IN MISSOURI

The U.S. Department of Health and Human Services reported that 754,000 cases of child abuse occurred nationwide in 2010.<sup>30</sup> Among those incidents, 1,537 ended in fatalities.<sup>31</sup> Additionally, 81.3 percent “of the victims were by a parent either acting alone or with someone else.”<sup>32</sup> Although the *Akron Beacon Journal* uncovered 116 crime-related deaths among homeschoolers between 1999 and 2004, the number of actual child abuse incidents is likely higher because the reports covered deaths only.<sup>33</sup> Still, due to states’ limited ability to collect data on homeschooled children, no research exists to show precisely how many homeschooled children have been abused overall.<sup>34</sup> This is partly due to the fact that some states face opposition to the collection of such data and also because ten states do not even require parents to report that their children are homeschooled.<sup>35</sup> Thus, without knowing precisely which children are homeschooled, states are significantly hindered in their abilities to uncover or deter child abuse in home schools. Like the general population, states sometimes discover homeschooled children only after tragedy occurs.

In Missouri, the Department of Social Services reported that 6,055 children were abused in 2010.<sup>36</sup> Most of these abuses were committed against school-age children,<sup>37</sup> and 87.4 percent of the perpetrators were parents.<sup>38</sup> Of all Missouri child abuse

---

<sup>30</sup> CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUMAN SERVS., CHILD MALTREATMENT 22 (2010), available at [http://www.acf.hhs.gov/programs/cb/stats\\_research/index.htm#can](http://www.acf.hhs.gov/programs/cb/stats_research/index.htm#can).

<sup>31</sup> *Id.* at 58.

<sup>32</sup> *Id.* at 23.

<sup>33</sup> See Willard & Oplinger, *supra* note 16.

<sup>34</sup> Waddell, *supra* note 13, at 558.

<sup>35</sup> *Id.* at 543.

<sup>36</sup> CHILDREN’S DIV., MO. DEP’T OF SOCIAL SERVS., CHILD ABUSE AND NEGLECT: CALENDAR YEAR 2010 ANNUAL REPORT 12 (2010), available at <http://www.dss.mo.gov/rc/pdf/can/cancy11.pdf>.

<sup>37</sup> *Id.*

<sup>38</sup> CHILDREN’S BUREAU, *supra* note 30, at 22 (2010) (calculated using data from

incidents in 2010, twenty-nine ended in fatalities.<sup>39</sup> However, Missouri has no data revealing how many incidents of child abuse have occurred specifically among homeschoolers;<sup>40</sup> in fact, the state does not even have data to reveal how many children are homeschooled.<sup>41</sup> Recently, however, two sensational homeschooling abuse cases have surfaced in Missouri newspapers: in one case, a father kept his son handcuffed to a pole in the basement,<sup>42</sup> and in another, two parents were accused of beating some of their ten adoptive children with a metal rod and forcing them to sleep outside in calf huts.<sup>43</sup> In light of these atrocities, the state must take action to strengthen its oversight system, which currently is not equipped to determine the prevalence of child abuse among homeschoolers. Missouri must begin gathering data now and taking precautions to ensure that such egregious incidents do not persist within its borders.

In other states, legislators have begun strengthening homeschooling regulations.<sup>44</sup> Maryland, New York, and Washington, D.C.<sup>45</sup> have increased accountability for home schools by requiring that information be submitted to authorities before a child may be homeschooled, as well as the regular submission of student progress reports to ensure that instruction is truly taking place.<sup>46</sup> Nebraska—perhaps among

---

“Parent” and “Nonparental Perpetrator” columns in Table 5-5).

<sup>39</sup> See CHILDREN’S BUREAU, *supra* note 30, at 15.

<sup>40</sup> See *generally* CHILDREN’S DIV., *supra* note 36.

<sup>41</sup> See *generally* MO. DEPT OF ELEMENTARY & SECONDARY EDUC., MISSOURI COMPREHENSIVE DATA SYSTEM, available at [www.dese.mo.gov/schooldata/](http://www.dese.mo.gov/schooldata/) (last visited Feb. 25, 2013).

<sup>42</sup> Lisa Benson, Abuse Case Raises Concerns About Homeschooling, KSHB.COM (Feb. 7, 2013), [http://www.kshb.com/dpp/news/local\\_news/abuse-case-highlights-homeschooling](http://www.kshb.com/dpp/news/local_news/abuse-case-highlights-homeschooling).

<sup>43</sup> Jeff Lehr, Newton County Couple’s Custody of 10 Foreign Children in Jeopardy, THE JOPLIN GLOBE (Sept. 18, 2010), <http://www.joplinglobe.com/local/x213895599/Newton-County-couple-s-custody-of-10-foreign-children-in-jeopardy>.

<sup>44</sup> See 92 NEB. ADMIN. CODE §§ 12-003, 12-007 (2012) (Nebraska statute permitting state officials to conduct home visits); see also MD. CODE ANN., EDUC. § 10-01.05 (West 2012) (Maryland statute requiring home schools to notify officials).

<sup>45</sup> See MD. CODE REGS. 13A.10.01.05 (2012); see also N.Y. COMP. CODES R. & REGS. tit. 8, § 100.10 (2012); see also D.C. MUN. REGS. tit. 5-E, § 5202 (2012).

<sup>46</sup> See MD. CODE ANN., EDUC. § 10-01.05; see also N.Y. EDUC. LAW § 100.10 (McKinney 2012); D.C. State Bd. of Educ., DC State Board of Education Approves Homeschooling Regulations (July 16, 2008), <http://newsroom.dc.gov/show.aspx/agency/se0/section/2/release/14329>.

the strictest states as far as homeschooling laws—permits authorities to make home visits whenever necessary to ensure the safety of the child.<sup>47</sup>

However, while some states are strengthening the oversight of homeschoolers, Missouri and a few other states still have weak protections. In fact, along with Texas, Missouri maintains some of the weakest regulations nationwide.<sup>48</sup> Missouri's compulsory attendance statute recognizes the right of parents to homeschool their children and enumerates the records homeschooling parents must keep.<sup>49</sup> Notably, though, parents do not have to submit such records to authorities unless charged for educational neglect.<sup>50</sup> Moreover, parents in Missouri do not have to report that their children will be homeschooled,<sup>51</sup> and authorities cannot visit the home for check-ups until after abuse has been reported.<sup>52</sup> In cases involving shooting fatalities like the California incident, Missouri's precautions are simply insufficient to protect homeschooled children. Thus the state should immediately strengthen its regulations.

#### IV. STRENGTHENING HOMESCHOOLING LAWS IN MISSOURI

##### *A. Recommendations*

If teachers are the primary reporters of child abuse, then children not enrolled in traditional schools have substantially limited safeguards from maltreatment at home.<sup>53</sup> With over 1.5 million students now homeschooled nationwide,<sup>54</sup> states must provide protection for such a large and unregulated class of children. Some states have already taken conscientious steps towards this goal. For example, Nebraska's homeschooling laws—among the most protective nationwide—permit authorities to make regular home visits,<sup>55</sup> which are perhaps

---

<sup>47</sup> See 92 NEB. ADMIN. CODE §§ 12-003, 12-007.

<sup>48</sup> See generally MO. REV. STAT. §§ 167.031(1)-(5), 167.042 (West 2012); see also TEX. REV. CIV. STAT. ANN. art. 2, § 21.033 (West 2012).

<sup>49</sup> MO. REV. STAT. §§ 167.031(1)-(5).

<sup>50</sup> *Id.* § 167.061.

<sup>51</sup> *Id.* § 167.042.

<sup>52</sup> *Id.* § 167.071.

<sup>53</sup> See Holguin, *supra* note 3.

<sup>54</sup> NAT'L CTR. FOR EDUC. STATISTICS, *supra* note 2.

<sup>55</sup> See 92 NEB. ADMIN. CODE §§ 12-003, 12-007 (2012).

the best means to ensure the safety of homeschooled children.

Because states like Missouri, however, have weak homeschooling laws that provide “no[] other means of surveilling what’s going on with [homeschooled] kids,”<sup>56</sup> Missouri should strengthen its laws to offer homeschooled children the same protection given to public school students. First, Missouri should improve accountability by requiring parents to submit the names and birth dates of any children being homeschooled. This way, children do not remain invisible to the state. Next, Missouri should collect progress reports from parents to ensure that children are truly receiving an education and to ensure that the home school is not mere pretense for something else. By improving reporting requirements, the state can begin collecting data to determine the pervasiveness of child abuse among homeschoolers. Moreover, by collecting information on its homeschooled students, the state can account for all children and better ensure that home schools are not merely “a convenient escape to abusive families or those uncommitted to educating their children.”<sup>57</sup>

Finally, Missouri should consider permitting attendance officers to make home visits under any of the following circumstances: 1) when a mutually-agreed-upon date has been arranged, 2) when students are continuing to make inadequate academic progress, or 3) when prior abuse has occurred. While such a measure would most likely face some public opposition and legal challenges, it is probably the most proactive means to observe the educational environment and ensure children’s safety.

### *B. Constitutionality*

Any efforts to strengthen homeschooling laws will likely be met with strong opposition. The Home School Legal Defense Association (HSLDA), the primary lobbying force for homeschoolers, contends that states cannot implement stricter homeschooling regulations without infringing on parents’

---

<sup>56</sup> See Willard & Oplinger, *supra* note 16 (quoting Arthur Blumstein, a crime specialist at Carnegie Mellon University).

<sup>57</sup> Willard & Oplinger, *supra* note 16.



constitutional rights.<sup>58</sup> HSLDA argues that parents have a right to direct their children's education free from state regulations and without reporting their decision to homeschool.<sup>59</sup> Though "the Supreme Court has not had occasion to definitively determine the applicability of these [rights] to homeschooling,"<sup>60</sup> a few relevant decisions of the Supreme Court and other courts have clarified the somewhat divisive issue.<sup>61</sup>

HSLDA primarily contends that parents have a fundamental right to homeschool their children and direct their children's education.<sup>62</sup> Specifically, advocates claim that heightened oversight would infringe on parental liberty under the Fourteenth Amendment Due Process Clause and the First Amendment Free Exercise Clause.<sup>63</sup> Overall, however, it seems that most homeschooling regulations would withstand a constitutional challenge.<sup>64</sup> Yet, while the Supreme Court has protected states' right to uphold compulsory attendance laws,<sup>65</sup> homeschooling laws that require parents to submit to home visits by authorities might be held unconstitutional.<sup>66</sup>

*1. Parents probably have a fundamental liberty interest in the education of their children, but states can impose reasonable regulations nevertheless.*

HSLDA argues that, under the Fourteenth Amendment

---

<sup>58</sup> See Waddell, *supra* note 13, at 365.

<sup>59</sup> *Id.* at 350, 354-55 (citing Home Sch. Legal Defense Ass'n, The Good, the Bad, and the Inspiring, MARKING THE MILESTONES: A HISTORY OF HSLDA (2010), [www.hsllda.org/about/history/good-bad-inspiring.asp](http://www.hsllda.org/about/history/good-bad-inspiring.asp)).

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

<sup>61</sup> See *Runyon v. McRary*, 427 U.S. 160, 177-9 (1976) (holding that parents do not have the right to send children to a private school free from all regulation); *People v. Bennett*, 501 N.W.2d 106 (Mich. 1993) (Michigan law requiring that homeschooling parents be certified teachers did not violate parental due process rights). But see *Brunelle v. Lynn Pub. Sch.*, 702 N.E.2d 1182 (Mass. 1998) (holding that requirement of home visits by authorities to home schools did not serve a legitimate state interest and was therefore unconstitutional).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> See *Wisconsin v. Yoder*, 406 U.S. 205, 207 (1972) (holding that, while a specific Amish community was exempt from compulsory attendance laws for First Amendment free-exercise reasons, such an exemption would apply to very few families). But see *Bennett*, 501 N.W.2d 106 (holding due process claim invalid).

<sup>65</sup> See *Yoder*, 406 U.S. at 207.

<sup>66</sup> See generally *Brunelle*, 702 N.E.2d 1182.

Due Process Clause—"... nor shall any State deprive any person of life, liberty, or property, without due process of law"<sup>67</sup>—parents have a right to homeschool their children free from state regulations. *Meyer v. Nebraska* began a line of cases in which the Supreme Court interpreted the Due Process Clause to hold that parents have, as a later case put it, a "fundamental liberty interest . . . in the care, custody, and management of their child[ren]."<sup>68</sup> In *Meyer*, the teaching of foreign languages in any school was prohibited until a student had passed the eighth grade.<sup>69</sup> A private school teacher contested the law, claiming that it stripped parents of their right to direct their child's education.<sup>70</sup> Though *Meyer* involved a statute regarding foreign language teaching rather than homeschooling, the case is applicable because the Supreme Court set a precedent regarding parents' rights to direct the education of their children by striking down the statute.<sup>71</sup> Thus, *Meyer* established the "power of parents to control the education of their own."<sup>72</sup> However, parents' right to direct the education of their children is not limitless, and their rights may be uniquely circumscribed in homeschooling laws.<sup>73</sup>

In *Runyon v. McRary*, parents claimed that a civil rights statute prohibiting the establishment of a segregated private school infringed on their parental rights to choose the type of school for their children.<sup>74</sup> The Supreme Court held that parents "have no constitutional right to provide their children with a private school education unfettered by reasonable government regulation."<sup>75</sup> Thus, *Runyon* established that the government can impose reasonable regulations on both public and private schools. In fact, both the Massachusetts and Michigan Supreme Courts have interpreted *Runyon* to hold that parents do not have a constitutional right to educate their children free from regulation.

---

<sup>67</sup> U.S. CONST. amend. XIV, § 1.

<sup>68</sup> See Waddell, *supra* note 13, at 566 (citing *Santosky v. Kramer*, 455 U.S. 745, 753 (1982)).

<sup>69</sup> *Meyer v. Nebraska*, 262 U.S. 390, 397 (1923).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 403.

<sup>72</sup> *Id.* at 401.

<sup>73</sup> See *Runyon v. McRary*, 427 U.S. 160 (1976).

<sup>74</sup> *Id.* at 177-9 (1976).

<sup>75</sup> *Id.* at 178.

In *People v. Bennett*, homeschooling parents opposed Michigan's requirement that even homeschoolers be state-certified teachers, claiming a right to educate their children free from government regulation.<sup>76</sup> In resolving the issue, the court had to decide what level of scrutiny to apply since the parents argued that their claim involved a fundamental right.<sup>77</sup> Ultimately, the Michigan Supreme Court held that parents do not have a fundamental right under the Fourteenth Amendment Due Process Clause to direct their children's education absolutely free of reasonable government regulation.<sup>78</sup> Applying rational scrutiny, the court upheld the state's requirement that homeschooling parents be certified teachers because the law served a legitimate state interest of ensuring that all of the state's children receive a proper education.<sup>79</sup>

On the same day that the Michigan Supreme Court decided *People v. Bennett*, the same court rendered a different decision in *People v. DeJonge*.<sup>80</sup> In *DeJonge*, parents operating a "Christ-centered" home school challenged the requirement that even homeschooling teachers be certified. The court applied strict scrutiny to find that the requirement violated the First Amendment Free Exercise Clause.<sup>81</sup> The argument that the *DeJonge* holding contradicts the *Bennett* holding is inaccurate, as the family in *DeJonge* was homeschooling for religious purposes, and the court found that the statute violated their religious beliefs.<sup>82</sup> The court did not invalidate the statute altogether. Thus, so long as a regulation serves a legitimate government interest, Missouri courts have persuasive authority to allow reasonable homeschooling regulations to ensure the safety and education of the state's children.

Like the *Bennett* court, the Massachusetts Supreme Judicial Court in *Brunelle v. Lynn Public Schools* recognized that parents' right to direct the education of their children remains "subject to the State's interest in seeing that children in home

---

<sup>76</sup> See *People v. Bennett*, 501 N.W.2d 106, 108-110 (Mich. 1993).

<sup>77</sup> *Id.* at 111-12.

<sup>78</sup> *Id.* at 120.

<sup>79</sup> *Id.*

<sup>80</sup> *People v. DeJonge*, 501 N.W.2d 127, 129 (Mich. 1993).

<sup>81</sup> *Id.* at 129-30.

<sup>82</sup> *Id.* at 137.

education programs receive an education.”<sup>83</sup> In *Brunelle*, homeschoolers opposed a statute mandating home visits by state officials to home schools.<sup>84</sup> In its decision, the court reiterated an earlier holding that the state “may enforce . . . reasonable educational requirements similar to those required for public and private schools,” but the court struck down the statute as unreasonable.<sup>85</sup> Applying this ruling to Missouri law, it appears that the state could adopt reporting requirements similar to those required in public schools if the state so chooses. Similarly, the state might even be able to argue that home visits are necessary to ensure academic accountability and the safety of all children, although imposing a home visit requirement might ultimately be found to be unreasonable.

Overall, while some courts “have found homeschooling decisions well within the ‘protected right of parents to raise their children,’”<sup>86</sup> it seems that most courts recognize the states’ ability to impose reasonable regulations on any matters relating to the education of children within the state. Though parents’ right to direct their children’s education is not unconditional, the question remains as to how individual state courts will interpret what constitutes a reasonable state regulation. Thus far, opinions seem divided.

*2. Homeschooling regulations violate the Free Exercise Clause only if the family can demonstrate that the regulations actually conflict with a genuine religious belief of theirs.*

Homeschoolers also contend that limitations on homeschooling infringe upon parents’ First Amendment Free Exercise rights.<sup>87</sup> However, the First Amendment only precludes the state from imposing greater regulations in cases involving students homeschooled for genuine religious reasons.<sup>88</sup> The only case squarely addressing this issue, *Wisconsin v. Yoder*, concerns three Amish parents who declined to send their children to high school.<sup>89</sup> The parents

---

<sup>83</sup> *Brunelle v. Lynn Pub. Sch.*, 702 N.E.2d 1182, 1183 (Mass. 1998).

<sup>84</sup> *Id.*

<sup>85</sup> *See id.* (citing *Care & Prot. of Charles*, 504 N.E.2d 592, 600 (Mass. 1987)).

<sup>86</sup> *See Waddell*, *supra* note 13, at 568 (citing *Brunelle*, 702 N.E.2d at 1187).

<sup>87</sup> *Id.* at 570–572.

<sup>88</sup> *See generally Wisconsin v. Yoder*, 406 U.S. 205 (1972).

<sup>89</sup> *See id.* at 207–09.

claimed that compulsory attendance laws violated their religious freedom because they wanted to protect their children from any further worldly influences that conflicted with Amish beliefs.<sup>90</sup> Although the court did find that the state has an interest in regulating education, the court ultimately held that compulsory attendance laws would violate the family's religious freedom under the First Amendment.<sup>91</sup>

However, the Court noted the narrow applicability of its decision, declaring the argument the Amish made to be "one that probably few other religious groups or sects could make...."<sup>92</sup> Thus, the typical homeschooling family could not successfully argue that homeschooling regulations infringed on their First Amendment rights unless the family was among the very few who could make a religious freedom argument. Therefore, many homeschooling regulations would withstand a Free Exercise Clause challenge, and Missouri could impose greater restrictions without violating the First Amendment.

*3. Homeschooling requirements for parents to submit to home visits may be more unreasonable, and thus, more vulnerable to constitutional challenges.*

Although it seems that homeschooling regulations such as mandatory reporting requirements would withstand constitutional challenges, laws requiring homeschoolers to submit to home visits by state authorities might be more vulnerable to legal challenge. Both courts and states have varied interpretations of the constitutionality of home visits, and only a few states currently allow them for supervisory purposes.<sup>93</sup>

In *Brunelle*, the Massachusetts Supreme Judicial Court struck down a law permitting home visits to home schools by state officials.<sup>94</sup> Although the court held that the state did have an interest in ensuring that Massachusetts children receive a proper education, the court found that home visits were not

---

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 213-14.

<sup>92</sup> *Id.* at 236.

<sup>93</sup> See generally 67B AM. JUR. 2D Schools § 269 (2012); see also 92 NEB. ADMIN. CODE §§ 12-003, 12-007 (2012).

<sup>94</sup> *Brunelle v. Lynn Pub. Sch.*, 702 N.E.2d, 1182, 1183 (Mass. 1998).

essential to achieving that interest.<sup>95</sup> The court found that the visits were not essential because the state could implement less restrictive means such as "appropriate testing procedures or progress reports" instead to ensure the education of homeschooled children.<sup>96</sup> Thus, because less restrictive means were available, the court held that home visits could not be required.<sup>97</sup>

Conversely, in *In re Kilroy*, a New York court upheld home visits as constitutional, finding that "infrequent, unobtrusive home visitation, at a time to be mutually agreed upon," did not violate any protected rights.<sup>98</sup> Likewise, another New York court in *In re Blackwelder* looked to the state's education code to find home visits essential to the state's legitimate interest.<sup>99</sup> Ultimately, however, "the New York State Board of Regents promulgated new regulations . . . instead 'authorizing such visits only after a family's home-schooling program has been placed on probation and the local superintendent has reasonable grounds to believe that the program is not in compliance with state requirements.'"<sup>100</sup>

Creating a divergence among states over home visits, Nebraska permits authorities to conduct regular home visits any time the department "deems it necessary."<sup>101</sup> Perhaps opposition to Nebraska's law is minimal because the home visits must be conducted at a time mutually established by the parents and authorities.<sup>102</sup> In any case, Nebraska has yet to face a Due Process or Free Exercise claim over its home visit laws, thus establishing no precedent.

Following *Kilroy*'s outcome and Nebraska's home visit laws, Missouri might be able to require home visits if conducted at a mutually established time and if necessary to serve a legitimate state interest.<sup>103</sup> However, under *Brunelle*, home visits would likely not be essential to serve the state's

---

<sup>95</sup> *Id.* at 514 (citing *Care & Prot. of Charles*, 504 N.E.2d 592, 600 (Mass. 1987)).

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

<sup>97</sup> See generally *id.*

<sup>98</sup> *In re Kilroy*, 467 N.Y.S.2d 318, 321 (N.Y. Fam. Ct. 1983).

<sup>99</sup> See *In re Blackwelder*, 528 N.Y.S.2d 759, 762 (N.Y. Sup. Ct. 1988).

<sup>100</sup> *Brunelle*, 702 N.E.2d at 1185.

<sup>101</sup> 92 NEB. ADMIN. CODE §§ 12-003, 12-007 (2012).

<sup>102</sup> *Id.*

<sup>103</sup> *In re Kilroy*, 467 N.Y.S.2d at 322; see also 92 NEB. ADMIN. CODE §§ 12-003, 12-007.

interest.<sup>104</sup> Thus, if Missouri developed a law permitting home visits, the statute would probably fail a constitutional challenge unless the state could demonstrate that the evaluations were essential to a legitimate state interest and that home visits were only conducted at mutually agreed upon times.<sup>105</sup>

## V. CONCLUSION

Although a few states have strengthened their homeschooling laws in the wake of recent child abuse tragedies of homeschooled children, Missouri remains with some of the weakest regulations in the country; not only does the state not permit officials to make supervisory home visits or require parents to submit student progress reports, but it does not even require homeschoolers to report that their children are being homeschooled. Perhaps most alarmingly, Missouri legislators have recently proposed a bill that would make parents' freedom to dictate their children's education a fundamental right, thereby significantly impairing the state's ability to regulate home schools.

After the recent homeschooling abuses discovered in two Missouri families, the state should consider adopting stronger regulations to protect homeschooled children. Specifically, legislators should discuss amending state laws to permit officials to make conditional home visits similar to those allowed in Nebraska. If Missouri chooses not to permit home visits, the state should at least improve reporting requirements and data collection for homeschoolers. Such data would ultimately make stakeholders aware of the extent of the problem, and legislators could take appropriate action.

Increased regulation of homeschoolers has been met with opposition in other states,<sup>106</sup> and it is likely to meet with opposition in Missouri. Nonetheless, Missouri's regulations would likely withstand constitutional challenges. First, though the Due Process Clause ensures parents' right to direct their children's education, the state can nevertheless impose reasonable regulations on any matters regarding education in

---

<sup>104</sup> Brunelle, 702 N.E.2d at 1184.

<sup>105</sup> See generally 67B AM. JUR. 2D Schools § 269 (2012).

<sup>106</sup> See Waddell, *supra* note 13, at 547-55.

the state. Second, homeschooling regulations only violate the Free Exercise Clause if the family can demonstrate that the regulations actually conflict with their genuine religious beliefs. The Supreme Court has held that laws forbidding homeschooling violate the First Amendment rights of very few religious groups.

Thus, so long as stakeholders can successfully argue that home visits are reasonable regulations, the law will likely withstand a Due Process or Free Exercise challenge. The state must strengthen its homeschooling laws to ensure that its homeschooled children are not the victims of abusive home schools established as a mere façade to cloak maltreatment.

*Tyler Barnett\**

---

\* Mr. Barnett is a 2013 J.D. Candidate, University of Missouri School of Law. Before pursuing his law degree, Tyler graduated magna cum laude with a B.A. in English Literature from the University of Missouri and taught high-school English in Memphis, Tennessee for two years. This Comment began as a final paper for Professor Mary M. Beck's Advocacy, Family Violence & Public Policy course.



Copyright of Brigham Young University Education & Law Journal is the property of Brigham Young University Law School and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.