

WHERE DO WE BELONG?: A CALL FOR CONSISTENCY IN HOMESCHOOLING REGULATION

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INTRODUCTION

Uwe and Hannelore Romeike, German citizens and parents of five school-age children,¹ chose to homeschool² their children for religious purposes, despite a German law requiring all school-aged children to “attend public or state-approved private schools.”³ For homeschooling their children, the Romeikes were prosecuted for truancy, police arrived at their home and escorted their children to school, and they were fined 7,000 euros for the number of days the children were absent.⁴ In 2008, the Romeike family fled Germany to escape the burdensome restrictions on parental rights.⁵

The Romeike family legally arrived in the United States, seeking asylum from a country with permissive rights that would allow the children of their family to be educated in a manner the parents found most appropriate.⁶ Their application for asylum, based on a finding of well-founded fear of persecution in Germany and that “homeschoolers” were a particular social group for asylum purposes, was approved by an immigration judge.⁷ In 2013, the Sixth Circuit Court of Appeals reversed the decision of the immigration judge and revoked the Romeike family’s asylum application.⁸

The Romeike case brought homeschooling—a neglected topic in the area of education research literature⁹—into the public dialogue.¹⁰ Gathering accurate data on homeschooling is difficult.¹¹ First, the educational community largely ignores the homeschooling segment, either due to a sense of animosity toward the practice, as suggested by

1. *Romeike v. Holder*, 718 F.3d 528, 530 (6th Cir. 2013), cert. denied, 134 S. Ct. 1491 (2014).

2. According to the online Webster’s Dictionary, both “homeschool” and “home-school” are correct spellings; for consistency this Note will use homeschool. Dictionary.com, <http://dictionary.reference.com/browse/homeschool?s=t> (last visited Jan. 16, 2014).

3. *Romeike*, 718 F.3d at 530.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.* at 535.

9. Charles Howell, *Hostility or Indifference? The Marginalization of Homeschooling in the Education Profession*, 88 *Peabody J. Educ.* 355, 355 (2013).

10. See, e.g., Campbell Robertson, *Judge Grants Asylum to German Home Schoolers*, *N.Y. Times*, Mar. 1, 2010, at A12; Doug McKelway, *German Home-Schooling Family Fights to Stay in US*, *Fox News* (Apr. 12, 2013), <http://www.foxnews.com/politics/2013/04/12/german-home-schooling-family-fights-to-stay-in-us/>; Travis Loller, *Court Denies US Asylum to German Home-schoolers*, *Associated Press* (May 15, 2013, 5:13 PM), <http://bigstory.ap.org/article/court-denies-asylum-german-home-schoolers#>.

11. Mark G. Yudof et al., *Educational Policy and the Law* 41 (5th ed. 2011).

Dr. Brian Ray,¹² or merely because such research would not be beneficial to the “contemporary paradigm of educational research.”¹³ Additionally, homeschooling parents may not comply with notification requirements because they consider their homeschool a school and wish to avoid government intrusion.¹⁴ Further compounding the problem is that states may decide not to collect data on homeschooling.¹⁵ Regardless of the reason, the lack of data and monitoring of these students can result in students receiving an unsatisfactory education without the state’s knowledge of the issue.¹⁶

Several reasons have been advanced in an effort to explain the global trend of increased homeschooling. These include religious beliefs, “heightened sense of parental responsibility,” “commitment to high literacy and numeracy,” “avoidance of negative peer influences,” distance, financial concerns, and “special education and health needs of the children.”¹⁷ This Note looks at homeschooling from a global perspective to determine where the United States fits within the global spectrum and discusses how the United States should move forward to ensure the highest level of education is received for homeschooled students.¹⁸ Specifically, Congress needs to create a regulatory scheme that recognizes parental rights while encouraging consistent systems of

12. Home Sch. Legal Def. Ass’n, *Homeschool Progress Report 2009: Academic Achievement and Demographics* 7 (2009), available at http://www.hslda.org/docs/study/2009/2009_ray_studyfinal.pdf. Dr. Brian Ray earned his Ph.D. in science education from Oregon State University and is the president of the National Home Education Research Institute.

13. See Howell, *supra* note 9, at 355, 358.

14. See *infra* footnotes 195–96 and accompanying text (discussion regarding notification requirements); see also Catherine J. Ross, *Fundamentalism Challenges to Core Democratic Values: Exit and Homeschooling*, 18 *Wm. & Mary Bill Rts. J.* 991, 991 (2010) (discussing families’ decisions to leave public schools in an effort to escape governmental oversight).

15. See Yudof et al., *supra* note 11, at 41; see also *infra* note 194 and accompanying text (discussing Michigan’s lack of notification requirements).

16. See Home Schooling, *Educ. Wk.* (July 13, 2011), <http://www.edweek.org/ew/issues/home-schooling/> (acknowledging the view of homeschooling opponents that there is no way to ensure homeschooled students receive a quality education); see also Nat’l Educ. Ass’n, 2012–2013 NEA Resolutions B.82 (2013), available at <http://www.nea.org/assets/docs/2013-NEA-Handbook-Resolutions.pdf> (expressing the organization’s belief that homeschooling is incapable of providing a “comprehensive educational experience”).

17. Terry Harding & Ann Farrell, *Home Schooling and Legislated Education*, 8 *Austl. & N.Z. J.L. & Educ.* 125, 128–29 (2003); see also Tanya K. Dumas et al., *Evidence for Homeschooling: Constitutional Analysis in Light of Social Science Research*, 16 *Widener L. Rev.* 63, 70 (2010) (explaining that a parent’s reasons for homeschooling include concerns regarding safety, academics, and religious training).

18. See *infra* Part IV.

homeschool regulations among the various states.¹⁹ This regulation should borrow from elements of No Child Left Behind, Common Core State Standards Initiative, and various state regulations.²⁰ Further, the regulation should require that states be notified of homeschool activity, to monitor homeschooled children within their jurisdiction, and to ensure homeschooled children are meeting state education standards through the administration of testing comparable to the testing required of publicly schooled students.²¹

Part I discusses three countries—Germany, Australia, and Denmark—and their education regulations.²² These countries provide representations of the most restrictive regulations that place a complete ban on homeschooling,²³ a moderate state that allows homeschooling after certain stipulations are satisfied,²⁴ and a permissive regulation scheme that poses no restrictions on homeschooling.²⁵ Part II examines the historic tradition of education in the United States²⁶ and provides a discussion of the statistical findings regarding children who have received their education in a home setting versus public or private school.²⁷ Part III discusses present state systems of regulating homeschooling within the United States as well as the expansive education regulations of the Elementary and Secondary Education Act, No Child Left Behind, and Common Core State Standards.²⁸ Finally, Part IV analyzes the various homeschooling education regulation systems and proposes a regulatory system that would ensure that all students within the state are guaranteed a quality education, while not unduly burdening parental rights.²⁹

I. HOMESCHOOLING FROM A GLOBAL PERSPECTIVE

Countries' regulations on education are diverse.³⁰ However, one unifying factor observed by many countries is the belief that no person

19. See *infra* Part III.

20. See *infra* Part IV.B.

21. See *infra* Part IV.B.

22. See *infra* Part I.

23. See *infra* Part I.A.

24. See *infra* Part I.B.

25. See *infra* Part I.C.

26. See *infra* Part II.A.

27. See *infra* Part II.B.

28. See *infra* Part III.

29. See *infra* Part IV.

30. See HSLDA: Advocates for Homeschooling Since 1983, Home Sch. Legal Def. Ass'n, <http://www.hsllda.org/hs/international/> (last visited Sept. 4, 2014) (providing details on the legal status of homeschooling and applicable regulations in seventy-nine countries).

should be denied the right to education.³¹ Signatories to the Convention on the Rights of the Child acknowledge the right to an education and that they shall provide free compulsory education.³² Article 29, section 2 states that “[n]o part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions,” but requires that the individuals conform to any minimum standards that the state might determine.³³ A closer look at the homeschooling education regulations of three signatories—Germany, Australia, and Denmark—to the Convention gives insight into possible regulatory structures that could be adopted in the United States to ensure all children receive a quality education.³⁴

A. Germany: A Restrictive Educational Regime

Beginning with Charlemagne³⁵ in the ninth century, Germany has put forth efforts to develop a national education policy.³⁶ During the sixteenth century, school rules were promulgated to make school attendance mandatory.³⁷ This led to the *Weimarer Schulordnung* (Weimar school-law) in 1619, which permitted officials to exert pressure on students who were absent from school.³⁸

Despite the preference for compulsory education within the German state, homeschooling was legal until the Weimar Constitution was introduced in 1920, which brought with it the first “obligatory compulsory school attendance.”³⁹ Nevertheless, there were reported

31. See Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, art. 2, Nov. 1, 1998, 20 III. 1955; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3. Presently, 140 countries, including Germany, Australia, Denmark, and the United States are signatories to the Convention on the Rights of the Child and 193 countries are considered parties. United Nations Treaty Collection, United Nations, http://treaties.un.org/Pages/ViewDetails.aspx?mtldsg_no=IV-11&chapter=4&lang=en (last visited Sept. 4, 2014). However, the United States has not ratified the convention. *Id.*

32. See Conventions on the Rights of the Child, *supra* note 31, art. 28(1)(a).

33. *Id.* at art. 29(2).

34. See *infra* Part I.A–C.

35. Charlemagne, referred to as the “father of Europe” ruled over much of Western Europe from 768 to 814 with a goal of “unit[ing] all Germanic peoples into one kingdom, and convert[ing] his subjects to Christianity.” Charlemagne, History, <http://www.history.com/topics/charlemagne> (last visited Jan. 16, 2014).

36. Thomas Spiegler, Home Education in Germany: An Overview of the Contemporary Situation, 17 *Evaluation & Res. Educ.* 179, 180 (2003).

37. *Id.*

38. *Id.*

39. Amanda Petrie, Home Education in Europe and the Implementation of Change to the Law, 47 *Int’l Rev. Educ.* 477, 489 (2001); see also Spiegler, *supra* note 36, at 180.

instances of homeschooling within Germany during the early 1930s.⁴⁰ For example, under Nazi anti-Semitic regulations, only a limited number of Jewish children were allowed to attend regular schools.⁴¹ As a result, parents were either forced to educate their children from home or choose to keep their children home to protect them from anti-Semitism.⁴² In 1938, the German Reich issued the *Reichsschulpflichtgesetz*, a law enforcing compulsory school attendance for non-Jews that carried criminal sanctions, without exceptions.⁴³ The *Reichsschulpflichtgesetz* abolished private education by mandating attendance at public institutions where government-approved curriculum was taught and girls and boys were educated separately.⁴⁴ This regulation played a significant role in shaping the country's contemporary compulsory school attendance laws.⁴⁵

Individual Länder (German states) theoretically regulate education within Germany.⁴⁶ However, "[i]n an agreement between the federal government and the Länder, the federal government seems to have much more control over local schools than the Basic Law would suggest."⁴⁷ The Basic Law of the Federal Republic of Germany, also known as the *Grundgesetz*, is the Constitution of the Federal Republic of Germany.⁴⁸ Within the Basic Law, rights ascribed to parents conflict with those guaranteed to the state.⁴⁹ For example, Article 6, paragraph 2 indicates that "[t]he care and upbringing of children is the natural right

40. See Petrie, *supra* note 39, at 489.

41. See Karl A. Schleunes, *The Twisted Road to Auschwitz: Nazi Policy Toward German Jews, 1933–1939*, at 106–07 (Illini Books ed., 1990). The "Law Against Overcrowding of German Schools" limited the number of Jewish students in German schools to 1.5% of the population. *Id.* Those who were admitted faced aggressive anti-Semitic propaganda. *Id.* at 107. All students were required to attend racial theory courses that taught the racial inferiority of Jews. *Id.*

42. See Petrie, *supra* note 39, at 490; see also Marion Kaplan, *The School Lives of Jewish Children and Youth in the Third Reich*, 11 *Jewish Hist.* 41, 42 (1997) (explaining hostility forced many Jewish children to leave school).

43. See Spiegler, *supra* note 36, at 180.

44. See H.J. Hahn, *Education and Society in Germany* 80 (1998). In response to this law and the Romeike family's case, the Georgia House of Representatives recently introduced a resolution "[r]equesting that the German federal government recognize the right of parents to home school their children." Aron T. Martin, Note, *Homeschooling in Germany and the United States*, 27 *Ariz. J. Int'l & Comp. L.* 225, 225 (quoting H.R. Res. 850, 149th Leg., 2d Sess. (Ga. 2009)).

45. See Spiegler, *supra* note 36, at 180.

46. Secretariat of the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany, *The Education System in the Federal Republic of Germany 2011/2012*, at 16, 41 (2013) [hereinafter Secretariat].

47. See Martin, *supra* note 44, at 236.

48. See Secretariat, *supra* note 46, at 13.

49. See Spiegler, *supra* note 36, at 185.

of parents and a duty primarily incumbent upon them.”⁵⁰ Yet, Article 7 dictates that the entire school system is to be supervised by the state.⁵¹ This state responsibility over education “is tantamount to the parental right of education.”⁵²

In exercising its right over education, the German government has created the most restrictive compulsory education regulations in Europe.⁵³ All German children—including children with disabilities—are required to attend compulsory school beginning in the year in which they turn six and attend nine full-time years of schooling.⁵⁴ In general, “[h]ome education in Germany is not allowed as an alternative to public schooling.”⁵⁵ Parents and pupils are required to ensure that the attendance mandate is followed.⁵⁶ Attendance is monitored by the “school head” who is authorized to enforce the attendance mandate against the students or parents.⁵⁷ The school head may utilize various enforcement measures, including fines amounting to several thousand euros, police escorts to school for absent pupils, prison sentences for parents, or the “partial or complete withdrawal of child custody from the parents.”⁵⁸

50. Grundgesetz für die Bundesrepublik Deutschland [Grundgesetz] [GG] [Basic Law], May 23, 1949, BGBl. VI, § 2 (Ger.).

51. Id. VII, § 1. (Ger.).

52. Spiegler, *supra* note 36, at 186.

53. Id. at 181.

54. See Secretariat, *supra* note 46, at 25–26.

55. Spiegler, *supra* note 36, at 179. Limited exceptions to this rule exist, including children who have experienced hospital treatment and are unfit to return to school and children who are too sickly for the demands of the school environment. See Secretariat, *supra* note 46, at 110–11. These children would be instructed by a teacher similar to those employed in the student’s educational facility. Id. at 110. Additionally, evidence suggests that foreigners may be exempted from the compulsory education laws, especially families in which non-German parents work in Germany for a short time or families living on American or British military bases. See Petrie, *supra* note 39, at 490–91; see also Konrad v. Germany, App. No. 35504/03, 8 Eur. Ct. H.R., 6 (2006) (holding that it was within the state’s power to require compulsory attendance in government-run schools despite the parent’s religious freedom argument); Verfassung Bayern Baden-Württemberg art. 14, § 1 (stating “[s]chool attendance is compulsory”).

56. See Secretariat, *supra* note 46, at 26.

57. Id.

58. Spiegler, *supra* note 36, at 180. In December 2013, a family court held that parents’ rights concerning educational decisions were transferred to the “Youth Office Darmstadt-Dieburg,” and refused to reinstate the parents’ rights to determine the location of their children and to file legal application on the children’s behalf. [District Court of Darmstadt] Dec. 18, 2013, 53 F 1216/13 SO, 2 (Ger.), available at http://www.hslda.org/hs/international/Germany/Family_Court_53_F_1216-13_SO-Decision.pdf. Further, the court denied the parents’ request to immigrate to France with the children—despite not finding any suspicion of paternal abuse—because it assumed that after the family relocated they would once again engage in homeschooling the children. Id. at 3. The court described the

The compulsory education's focus on government-approved curriculum has had positive results evidenced by students' test scores.⁵⁹ From 1995 to 2009, fourth- and eighth-grade students in Germany improved their math, reading, and science scores nearly 4%.⁶⁰ Despite the improving scores and strict prohibitions on homeschooling, some parents in Germany continue to choose to educate their children at home⁶¹ with a continual threat of government confrontation.⁶² In 2003, the Home School Legal Defense Association (HSLDA) estimated that approximately 500 children were being homeschooled with an anticipation that the number would continue to grow⁶³ as acceptance for homeschooling becomes more prevalent.⁶⁴

B. Australia: A State-by-State Regime

Unlike Germany, Australia has a more permissive education structure derived from the development of its educational system.⁶⁵

homeschooling regime as a "straight jacket in which the children were bound through years of isolation." *Id.* at 6. Parents may also face prison sentences for their choice to homeschool their children. See Amanda J. Petrie, *Home Educators and the Law Within Europe*, 41 *Int'l Rev. Educ.* 285, 293 (1995) (describing Renata Leuffen who was sentenced to two months imprisonment for homeschooling her son).

59. Eric A. Hanushek et al., *Harvard's Program on Educ. Policy & Governance & Educ. Next, Achievement Growth: International and U.S. State Trends in Student Performance 4* (2012), available at http://www.hks.harvard.edu/pepg/PDF/Papers/PEPG12-03_CatchingUp.pdf.

60. *Id.*

61. See Petrie, *supra* note 58, at 292 (explaining the changing attitudes towards homeschooling throughout the European Union has resulted in parents questioning the restrictions on their rights to homeschool); see also Spiegler, *supra* note 36, at 184 (suggesting that enforcement of the compulsory education requirement is inconsistent with some families avoiding legal repercussions for homeschooling); Petrie, *supra* note 39, at 492 (noting that parents who have strong convictions regarding homeschooling their children for religious or academic reasons will do so regardless of the legal consequences).

62. Thomas Schirrmacher, *Compulsory Education—Schools Only? Divergent Developments in Germany*, 110 *25th IVR World Congress L. Sci. & Tech* 2 (2012).

63. See Spiegler, *supra* note 36, at 184, 189. Spiegler mentioned multiple factors for the assertion that the homeschool movement in Germany would continue to grow. *Id.* at 189. These factors included the number of young children in homes that already practiced home education, criticisms of the German education system based on PISA testing, German politics promoting self-responsibility, the "increasing networking and professionalization within the home education movement," and research being unable to confirm that home-educated students receive a lesser level of education, socialization, and understanding of democracy than public schooled students. *Id.*

64. Schirrmacher, *supra* note 62, at 3 (noting that since 2006 there have been more favorable studies published regarding homeschooling than in all "preceding years combined").

65. See Harding, *supra* note 17, at 126.

Education in Australia has its roots in home education.⁶⁶ In 1778, “dame schools” were established out of necessity due to the geographical isolation in colonial Australia.⁶⁷ Dame schools involved benevolent women instructing children from their living rooms and kitchens.⁶⁸ This practice prevailed until the end of the 1793 when education “moved from the family home to the Church of England” with the building of the first school in Sydney.⁶⁹ Victoria was the first colony to pass a law guaranteeing free compulsory education through the 1872 Education Act.⁷⁰ By 1900, each Australian colony passed legislation allowing for free compulsory education.⁷¹

Under Australia’s federation system, individual states are responsible for determining their own education regulations.⁷² Homeschooling is allowed in all jurisdictions and is considered a “legal pathway to meet compulsory education requirements, subject to parents registering their child for home education . . . or gaining an exemption from the compulsory attendance requirements.”⁷³ The Australian government even provides funding to families who choose to homeschool.⁷⁴ Currently, individual states’ education acts have reserved power to regulate homeschooling in two areas: (1) they maintain the authority to approve parental applications to homeschool; and (2) they

66. *Id.*

67. Katherine Lindsay, *The Law of Home Schooling in Australia*, 2003 *BYU Educ. & L.J.* 83, 84.

68. See Harding & Farrell, *supra* note 17, at 127.

69. *Id.*

70. *Id.* at 128.

71. *Id.*

72. Glenda Jackson & Sonia Allan, *Fundamental Elements in Examining a Child’s Right to Education: A Study of Home Education Research and Regulation in Australia*, 2 *Int’l Electronic J. Elementary Educ.* 349, 356 (2010).

73. *Id.* at 357–58. Section 133 of the Education Act 2004 of the Australian Capital Territory indicates that to qualify for homeschooling registration the following conditions must be satisfied:

(a) the parents of the child are to provide high-quality education for the child; (b) the parents of the child must document the educational opportunities offered by the parents to their child and the strategies they use to encourage their child to learn; (c) the parents of the child must make available for inspection on request by the director-general any education programs, materials or other records used for the home education.

Education Act 2004 (ACT) ch. 5 (Austl.); see also Education Act 1990 (NSW) s 73(3) (Austl.) (stating homeschool registrations are good for a period of two years); Education (General Provisions) Act 2006 (Qld) s 205 (Austl.) (stating that the compulsory attendance requirement is not required for a student who is registered for home education).

74. See Rebecca English, *The Most Private Private Education: Home Education in Australia* 2 (2013), available at <http://eprints.qut.edu.au/61433/2/61433.pdf> (indicating that the Australian government provides for funding for the educational expenditures of all children, including homeschooled children).

maintain authority to approve the curriculum taught to homeschooled children.⁷⁵ The State of Victoria, however, assumes that a parental responsibility for educating their children surpasses the responsibility of the state.⁷⁶

The number of families choosing to homeschool in Australia has grown rapidly.⁷⁷ New South Wales alone has experienced a growth of 65% over the past four years.⁷⁸ In 2003, based on the growth patterns of the Australian Christian Academy, it was estimated that the number of students being homeschooled in Australia exceeded 15,000⁷⁹ and it is suspected that many thousands more are being homeschooled without registering.⁸⁰ According to HSLDA, the number of homeschooled students has grown to approximately 11,000 registered students and an estimated 10,000 to 30,000 unregistered students.⁸¹ Reasons cited for this growth include exercise of religious freedom and a desire to abandon traditional schooling and instead engage in “natural learning.”⁸² Another reason given for the rise in homeschooling is the lack of other alternatives that parents find philosophically acceptable.⁸³ Parents make these objections in regards to the curriculum, teacher quality, and structure of state schools.⁸⁴ Supporting these objections, a recent study of Australia’s fourth- and eighth-grade traditionally schooled students saw less than 1% improvement in their math, reading,

75. Harding & Farrell, *supra* note 17, at 127. The Government of South Australia requires that instruction cover eight subject areas: English, mathematics, science, design and technology, “studies of society and environment,” the arts, “health and physical education,” and a foreign language. Home Education, Gov’t of S. Austl., <http://www.sa.gov.au/topics/education-skills-and-learning/schools/alternative-schooling/home-education> (last visited Jan. 17, 2014).

76. Harding & Farrell, *supra* note 17, at 127.

77. See *id.* at 129.

78. Joesephine Tovey, Home Schooling Up 65% in Four Years, *Sydney Morning Herald*, Sept. 8, 2013, <http://www.smh.com.au/national/education/home-schooling-up-65-in-four-years-20130907-2tcj8.html>.

79. *Id.*; see also Lindsay, *supra* note 67, at 86 (stating that “home education cannot be seen as a ‘fringe’ interest”).

80. See Rebecca M. English, Schooling from Home: An Ad-Hoc Answer to Low Teacher Numbers? 2 (2012), available at <http://www.eprints.qut.edu.au/56085/2/56085.pdf> (estimating that approximately 10,000 students were being illegally homeschooled in Queensland due to the failure to register).

81. Number of Home Educated Students Grows by Healthy 8%, Home Sch. Legal Def. Ass’n (May 5, 2013), <http://www.hsllda.org/hs/international/Australia/201305070.asp>.

82. See Lindsay, *supra* note 67, at 84. Natural learning or “unschooling” allows the children to lead their educational paths and pursue their interests. See English, *supra* note 80, at 5. These pursuits may include taking opportunities to learn at an “art gallery, sporting event, performance or science museum.” *Id.*

83. See English, *supra* note 80, at 2.

84. *Id.*

and science scores from 1994 to 2009.⁸⁵ Further, Australian homeschoolers' test scores are equal to or greater than their traditionally schooled peers.⁸⁶ With a continued decline in students choosing the teaching field, thereby continually limiting the number of quality teachers, and the rising number of students in Australia,⁸⁷ the number of homeschooled children will continue to increase for the foreseeable future.⁸⁸

C. Denmark: Permissive yet Underutilized

Unlike Germany or Australia, Denmark places no limitations or regulations on homeschooling.⁸⁹ Denmark accommodates home educators and has always done so.⁹⁰ The Constitutional Act of Denmark guarantees free access to elementary schools.⁹¹ However, parents are not obligated to send their children to public schools.⁹² Rather, parents can arrange for alternate methods of education for their children so long as the instruction is equal to the instruction provided in the public schools.⁹³ The homeschooling parents, not the state, monitor the education provided to their children to ensure that standard is attained.⁹⁴ According to the Ministry of Education, parents are allowed to choose how their children will receive the required nine years of education and the Ministry specified that homeschooling is a valid option.⁹⁵ Danes have had the right to homeschool for two centuries⁹⁶ and, under the

85. Hanushek et al., *supra* note 59, at 5.

86. See Robert Kunzman & Milton Gaither, *Homeschooling: A Comprehensive Survey of the Research*, 1 *Other Educ.: J. Educ. Alternatives* 4, 34 (2013).

87. See English, *supra* note 80, at 1.

88. See Number of Home Educated Students Grows by Healthy 8%, *supra* note 81; see also Lindsay, *supra* note 67, at 84–85 (stating that the decision to homeschool is a family decision and there is no evidence that the option will cease being a desirable educational alternative).

89. Danmarks Riges Grundlov [Constitution] June 5, 1953, ch. VIII, § 76 (Den.).

90. See Petrie, *supra* note 39, at 483.

91. Danmarks Riges Grundlov, ch. VII, § 76.

92. *Id.*; see also Yoshiyuki Nagata, *Alternative Education: Global Perspectives Relevant to the Asia-Pacific Regions* 96 (2007).

93. Danmarks Riges Grundlov, ch. VII, § 76.

94. See Nagata, *supra* note 92, at 97.

95. Private Schools in Denmark, Ministry of Educ., <http://eng.uvm.dk/Education/Primary-and-Lower-Secondary-Education/Private-Schools-in-Denmark> (last visited Nov. 1, 2013). A Ministry official is cited as stating that Denmark is “the society with the most strongly-rooted awareness that the actor in school creation is not the state but the parents, members of the public, and the local community.” Nagata, *supra* note 92, at 97.

96. See Nagata, *supra* note 92, at 96.

Education Act, children who are engaged in homeschooling cannot be required to attend a municipal school.⁹⁷

Despite the educational freedoms granted in Denmark, the homeschooling alternative to state education is infrequently utilized.⁹⁸ The HSLDA estimates that 250 families in Denmark,⁹⁹ approximately 1% or fewer households, homeschool their children,¹⁰⁰ compared to the 713,600 students enrolled in basic school—preschool through tenth grade—in 2010.¹⁰¹ Additionally, approximately 91,000 children attended federally funded private schools in 2006.¹⁰² The Folkeskole Act regulates the free public school system, also known as the “Folkeskole.”¹⁰³ The average class size in the Folkeskole is 19.6 students, with a teacher to student ratio of 1 to 10.7.¹⁰⁴ Dane students in fourth to eighth grade showed a 1.6% increase in their math, science, and reading scores from 1994 to 2009,¹⁰⁵ and Denmark’s literacy rate ranked third among countries with small economies and populations less than twenty million.¹⁰⁶

Denmark operates its education system with a great deal of freedom.¹⁰⁷ Based on the statistical findings, the small number of families choosing to homeschool their children is understandable. Generally, the primary motivators for homeschooling are based on religious preferences¹⁰⁸ and finding the state school system unsatisfactory.¹⁰⁹ In Denmark, however, with a very low student-to-

97. *Id.* at 97.

98. Denmark, Home Sch. Legal Def. Ass’n, <http://www.hslda.org/hs/international/Denmark/> (last updated July 6, 2012).

99. *Id.*

100. See Nagata, *supra* note 92, at 98.

101. Statistical Yearbook 2012: Education 2 (2012), available at <http://www.dst.dk/pukora/epub/upload/16251/03edu.pdf>.

102. See Private Schools in Denmark, *supra* note 95 (explaining that the Constitution requires compulsory education, not compulsory school attendance, as the reason for government subsidies of private institutions). Further, private schools receive government subsidies “regardless of the ideological, religious, political or ethnic motivation behind their establishment.” *Id.* The federal subsidies amount to about 75% of the funding rate of public schools and are provided to private institutions that meet stipulated conditions including being a nonprofit, having a head teacher, and having a board of directors. See Nagata, *supra* note 92, at 97, 104.

103. The Folkeskole, Ministry of Educ., <http://www.eng.uvm.dk/Education/Primary-and-Lower-Secondary-Education/The-Folkeskole> (last visited Jan. 17, 2014).

104. *Id.*

105. See Hanushek et al., *supra* note 59, at 3–4.

106. See Nagata, *supra* note 92, at 96.

107. See generally *id.* (discussing the pressure-free educational policies of Denmark).

108. See Harding & Farrell, *supra* note 17, at 128–29.

109. See English, *supra* note 80, at 2.

teacher ratio,¹¹⁰ a focus on high-quality education¹¹¹ evidenced by improving test scores,¹¹² and federally subsidized religious education,¹¹³ parents can satisfy their educational concerns without having to educate from their homes. This avoidance of homeschooling also saves the families the costs of school curriculum and having one potential wage earner refrain from working to educate the children.¹¹⁴

II. HOMESCHOOLING WITHIN THE UNITED STATES

Homeschooling is a historic tradition within the United States, evidenced by the nation's first educational law that entrusted parents with the education of their children.¹¹⁵ It is "neither an experiment nor recent development," but has been successfully practiced since the beginning of the nation.¹¹⁶ Courts have upheld parents' rights to homeschool their children and all states have legislation allowing the practice.¹¹⁷ Despite the recognition of homeschooling as a legal alternative to state-sponsored education, debate continues regarding whether this is a suitable option.¹¹⁸

A. *An American Tradition*

American courts have long upheld parental rights in determining the educational paths for their children.¹¹⁹ In 1893, the Supreme Judicial Court of Massachusetts stated that public schools were created for

110. See *The Folkeskole*, supra note 103.

111. See *Education for All*, Den., <http://www.denmark.dk/en/society/welfare/education-for-all/> (last visited Feb. 21, 2015).

112. See Hanushek et al., supra note 59, at 3–4.

113. See *Private Schools in Denmark*, supra note 95.

114. The cost of Timberdoodle's American homeschooling curriculum for a Kindergarten ranges from \$199 to \$659, while a year's curriculum for a senior costs \$269 to \$1,099 depending on whether parents choose to order a basic or elite curriculum package. Complete Homeschool Curriculum Packages, Timberdoodle Co., http://www.timberdoodle.com/Complete_Homeschool_Curriculum_Packages_s/363.htm (last visited Feb. 22, 2015).

115. See Dumas et al., supra note 17, at 63–64, 67.

116. *Id.* at 98; see also William M. Gordon, Charles J. Russo & Albert S. Miles, *The Law of Home Schooling* 5 (1994) (explaining that, due to the lack of local schools in the colonial era, Presidents Washington, Adams, and Madison were homeschooled).

117. Courtenay E. Moran, Note, *How to Regulate Homeschooling: Why History Supports the Theory of Parental Choice*, 11 U. Ill. L. Rev. 1061, 1064. Recently, Pennsylvania amended its state homeschooling regulations, giving parents greater educational freedoms and limiting the requirements placed on homeschooling families. 2014 Pa. Laws 196.

118. See *infra* Part II.B.

119. See, e.g., *Meyer v. Neb.*, 262 U.S. 390, 400 (1923) (stating that it is the "natural duty" of parents to educate their children).

children to attend unless they had other sufficient means of education.¹²⁰ Additionally, in 1923, the United States Supreme Court, in *Meyer v. Nebraska*, stated that an individual has a right to marry, establish a home, and bring up children.¹²¹ Then, in 1925, the Court held a statute that required all children to attend public school "unreasonably interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control."¹²² Further, the First and Fourteenth Amendments to the United States Constitution bind the states to recognize parents' rights to choose the educational path of their children.¹²³ However, these rights of parents are not absolute and may be limited by state regulations.¹²⁴

All fifty states have passed legislation allowing homeschooling.¹²⁵ Although the courts have upheld parental rights in education, states maintain a strong interest in ensuring all citizens obtain an education that will allow the students to be productive members of society.¹²⁶ Courts have upheld homeschool regulations in recognition of the states' interests; however, the decisions vary among the jurisdictions.¹²⁷ State-adopted regulations include requiring approval from the school district prior to beginning home education,¹²⁸ on-site visitations,¹²⁹ teacher certification requirements,¹³⁰ and testing requirements.¹³¹

120. *Commonwealth v. Roberts*, 34 N.E. 402, 403 (Mass. 1893).

121. *Meyer*, 262 U.S. at 399.

122. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534-35 (1925).

123. *Griswold v. Connecticut*, 381 U.S. 479, 495 (1965).

124. See Yudof et al., *supra* note 11, at 39.

125. *Id.* (stating most states have passed legislation explicitly permitting homeschooling, the remaining states have been found to permit homeschooling through courts' interpretation of their compulsory education laws).

126. *Care & Prot. of Charles*, 504 N.E.2d 592, 600 (Mass. 1987); *Dumas et al.*, *supra* note 17, at 67 (observing that states have an interest in ensuring children are educated).

127. See Yudof et al., *supra* note 11, at 48 (discussing various regulations and whether those regulations were upheld by state courts).

128. *State v. McDonough*, 468 A.2d 977, 980 (Me. 1983); *Care & Prot. of Charles*, 504 N.E.2d at 601-02.

129. Compare *Battles v. Anne Arundel Cnty. Bd. of Educ.*, 904 F. Supp. 471 (D. Md. 1995) (upholding a monitoring process that included the observation of the in-home teaching process), with *Brunelle v. Lynn Pub. Sch.*, 702 N.E.2d 1182 (Mass. 1998) (holding that home visits were not essential to the state's interest).

130. Compare *People v. DeJonge*, 501 N.W.2d 127 (Mich. 1993) (holding teacher certification requirements are an unconstitutional burden on free exercise of religion "as applied to families whose religious convictions prohibit the use of certified instructors"), and *State v. Newstrom*, 371 N.W.2d 525 (Minn. 1985) (holding the requirement that homeschool teachers have "essentially equivalent" qualifications to public school teachers is unconstitutionally vague "insofar as they serve as a basis for a criminal conviction"), with *People v. Bennett*, 501 N.W.2d 106 (Mich. 1993) (upholding teacher certification requirements).

Various court decisions have placed restrictions on state regulations, thereby indicating that a state must achieve its interest in providing education to all of its citizens while ensuring that the regulations do not infringe on the constitutional right of parents.¹³² However, courts should also consider whether the home education of students is proving successful; and if home education is ineffective, then recognize the state's interest is too important to ignore.¹³³

Regardless of regulatory hurdles, the trend of homeschooling is rapidly growing in the United States.¹³⁴ The number of homeschooled students has increased from approximately 15,000 students in the 1970s¹³⁵ to estimates of 1.5 million students in the spring of 2007.¹³⁶ With this increase in the number of homeschooled students and the lax monitoring of these students in many states, there is concern that homeschooled students may not be educated to the level that would help them become productive members of society.¹³⁷

B. *Is the American System Appropriate?*

In the United States, parents are not required to have a compelling or justifiable reason for choosing to homeschool their children.¹³⁸ However, there are a variety of reasons parents choose this option.¹³⁹ Beginning in the 1960s, parents focused on unstructured learning.¹⁴⁰

131. See, e.g., *Combs v. Homer-Center Sch. Dist.*, 540 F.3d 231, 248 n.25 (3d. Cir. 2008); *Care & Prot. of Charles*, 504 N.E.2d at 602. Testing is now a requirement of homeschool children in more than half of the states. See Yudof et al., *supra* note 11, at 48.

132. See Dumas et al., *supra* note 17, at 65–66 (introducing the authors' argument that requiring parents obtain teaching credentials would be contrary to the state's interest if uncredentialed parents were able to instruct in a manner producing "well-educated, well-adjusted children" who become "productive citizens"); see also Bruce D. Page, Jr., *Changing our Perspective: How Presumptive Invalidity of Home School Regulations Will Further the State's Interest in an Educated Citizenry*, 14 *Regent U.L. Rev.* 181, 198 (2002) (explaining that uncertified parents provide equal or superior education to the education provided by public school teachers).

133. See Dumas et al., *supra* note 17, at 65.

134. See Yudof et al., *supra* note 11, at 40.

135. *Id.*

136. Nat'l Ctr. For Educ. Statistics, *1.5 Million Homeschooled Students in the United States in 2007*, at 1 (2008), available at <http://nces.ed.gov/pubs2009/2009030.pdf>.

137. See Petrie, *supra* note 39, at 479 (suggesting that the effectiveness of home education is dependent on "the level of commitment of the parents to their children's educational needs").

138. See Yudof et al., *supra* note 11, at 39 (explaining that homeschooling is permitted in each state).

139. Dumas et al., *supra* note 17, at 69–70.

140. *Id.* Unstructured learning is an educational system based on what the child desires to learn and when the child desires to learn. Judith G. McMullen, *Behind Closed Doors: Should States Regulate Homeschooling?*, 54 *S.C. L. Rev.* 75, 84 (2002).

Later, in the 1980s, there was a shift to more traditional learning methods.¹⁴¹ Regardless of the intended structure of home education, parents today generally cite one of three reasons for choosing to homeschool: (1) increased concern regarding the safety or coercive public school environment; (2) increased dissatisfaction with the quality of academic instruction; and (3) an increased desire to provide children with a religious education.¹⁴² Although homeschooling is allowed, there are many criticisms and concerns associated with the practice,¹⁴³ as well as arguments offered in support.¹⁴⁴

1. Arguments for Homeschooling

Research shows that homeschooling helps the state achieve its interest in ensuring its citizenry acquires a quality education.¹⁴⁵ First, studies have shown that homeschooled students' median test scores on standardized tests are well above the national average.¹⁴⁶ One study found that homeschooled students were in the "eightieth percentile or higher in every test category."¹⁴⁷ Further, these conclusions did not vary based on race or income as is the norm in traditional public schools.¹⁴⁸ Based on these statistical findings, it appears that homeschooling helps to level the playing field for minority and low-income students who are traditionally disadvantaged in public school settings.¹⁴⁹ However, critics argue that not all homeschoolers take standardized tests and it is likely that only the advanced students choose to engage in testing, which would result in skewed testing results favoring homeschooling.¹⁵⁰

One potential reason why homeschooling levels the playing field for minority and low-income students is that homeschooling allows parents to structure their children's educations in a manner that best suits their learning styles.¹⁵¹ In a home-learning environment, students

141. Dumas et al., *supra* note 17, at 70.

142. *Id.*

143. See *infra* Part II.B.2.

144. See *infra* Part II.B.1.

145. See Dumas et al., *supra* note 17, at 73.

146. *Id.* at 73-74.

147. *Id.* (citing Brian D. Ray, *Strengths of Their Own-Home Schoolers Across America: Academic Achievement, Family Characteristics, and Longitudinal Traits* 54-57 (1997)). Similarly, on average, Canadian homeschooled students scored near the eightieth percentile on standardized tests. *Id.* at 74.

148. See Dumas et al., *supra* note 17, at 74.

149. Ed Collum, *The Ins and Outs of Homeschooling: The Determinants of Parental Motivations and Student Achievement*, 37 *Educ. & Urb. Soc'y* 307, 331 (2005).

150. See McMullen, *supra* note 140, at 85.

151. See *infra* note 175.

are not limited by the structure and confines of the desks-in-rows learning style of state-run schools.¹⁵² Instead, students are able to be creative and, with the help of their parents, develop curricula and learning structures that will ensure they acquire quality education.¹⁵³

Studies also show that homeschooled students are more likely to attain higher levels of education in comparison to their public-schooled counterparts.¹⁵⁴ Homeschooled students perform well while in college, which can be attributed to homeschooled students reporting fewer anxiety symptoms while in college than students who were traditionally schooled.¹⁵⁵ As a result, the average collegiate grade point average for homeschooled students was 3.47 while the average for public-schooled students was 2.91.¹⁵⁶ Therefore, these studies suggest that homeschooling satisfies the state interest of providing a quality education.¹⁵⁷

2. *Criticisms of Homeschooling*

Opponents of homeschooling, however, raise numerous concerns about the actual success of homeschooling.¹⁵⁸ First, and most alarmingly, the success of the child is dependent upon the amount of time the parents are willing to dedicate to the child's education.¹⁵⁹ If a parent is negligent, homeschooling can be used to disguise truancy.¹⁶⁰ Therefore, to alleviate this concern and ensure all children receive quality education, regulations should be established that monitor the educational development of these children.¹⁶¹

A second concern is that homeschooled children have been sheltered from having to learn to deal with peer pressure and social interaction.¹⁶² Critics argue that children need to learn to operate "at

152. TED Talks, *Hackschooling Makes Me Happy*: Logan LaPlante at TEDxUniversityofNevada, YouTube (Feb. 12, 2013), <http://www.youtube.com/watch?v=h11u3vtcpaY&sns=em> (discussing LaPlante's unconventional learning plan).

153. *Id.*

154. See Dumas et al., *supra* note 17, at 76–77.

155. *Id.* at 77.

156. Gary Mason, *Homeschool Recruiting: Lessons Learned on the Journey*, J.C. Admission, Fall 2004, at 2, 2 (stating that homeschooled students were well prepared for college).

157. See *id.*; Dumas et al., *supra* note 17, at 73–79.

158. See McMullen, *supra* note 140, at 82–83.

159. See Petrie, *supra* note 39, at 479.

160. See McMullen, *supra* note 140, at 82. Similarly, critics are unconvinced that a parent without a teaching degree can provide a quality education. See Moran, *supra* note 117, at 1065.

161. See *infra* Part V.

162. See McMullen, *supra* note 140, at 83.

home, at school, and with peers,” and being homeschooled places all of these aspects into one setting that limits a child’s ability to adapt when the child leaves the home.¹⁶³ However, research has shown that this concern is unfounded.¹⁶⁴ A study using the Vineland Adaptive Behavior Scales¹⁶⁵ concluded that children who were homeschooled “are more mature and better socialized than those who are sent to school.”¹⁶⁶ Thus, homeschooling does not appear to have a damaging impact on students’ social lives.¹⁶⁷

Opponents of homeschooling also express concern regarding the varying curricula content used in home education.¹⁶⁸ Specifically, critics are concerned with the families who engage in unstructured learning that is based on what the children want to learn—if and when they want to learn.¹⁶⁹ These critics argue that learning needs structure.¹⁷⁰ Further, critics claim that parents are isolating their children and would have no reason to refrain from teaching racist or prejudicial behavior.¹⁷¹ To mitigate these concerns, courts have approved state regulations requiring the approval of curricula and the number of hours children are instructed.¹⁷² However, the state may not dictate the manner of teaching.¹⁷³

163. Barbara Kantrowitz & Pat Wingert, *Learning at Home: Does it Pass the Test?*, *Newsweek*, Oct. 5, 1998, at 67.

164. See Dumas et al., *supra* note 17, at 79.

165. The behavior scales are “a robust and well-tested diagnostic tool for measuring communication and daily living skills.” *Id.* at 79.

166. *Id.* (citing Thomas C. Smedley, *Socialization of Home School Children*, *Home Sch. Researcher*, Vol. 8, No.3, 1992, 9, at 12 (1992)); Schirmacher, *supra* note 64, at 3 (discussing a 2009 report by educational scientist Franco Rest that stated that spending several hours a day in a room with 20 to 25 children could cause “considerable and serious damages,” as opposed to the notion that such an experience is required for a child to be socially adept).

167. See Dumas et al., *supra* note 17, at 79.

168. See McMullen *supra* note 140, at 84.

169. *Id.*

170. *Id.* at 85.

171. *Id.* This concern is supported by stories such as Lynx and Lamb Gaede, who were homeschooled by their Neo-Nazi parents and began a music career focused on spreading their message of white supremacy. *Young Singers Spread Racist Hate*, ABC News (Oct. 20, 2005), <http://abcnews.go.com/Primetime/story?id=1231684>. The girls have since renounced their extremist views and credit their eventual attendance in public schools for opening their eyes. Dasha Riley, *White Separatist Teen Twins Lamb and Lynx Gaede Say They’ve Renounced Hateful Message, Want Marijuana Legalized*, ABC News (July 20, 2011), <http://abcnews.go.com/US/white-separatist-teen-twins-lamb-lynx-gaede-prussian/story?id=14111722>.

172. See *Care & Prot. of Charles*, 504 N.E.2d 592, 601–02 (Mass. 1987); see also Linda Wang, Note, *Who Knows Best? The Appropriate Level of Judicial Scrutiny on Compulsory Education Laws Regarding Home Schooling*, 25 J. Civ. Rts. & Econ. Dev. 413, 435 (2011).

Despite critics' calls for structure, many parents choose to remove their children from a public school setting because they find it is not a conducive learning environment for their children.¹⁷⁴ In 2006, Sir Ken Robinson, Ph.D.¹⁷⁵ gave a TED Talk criticizing current educational systems for stifling creativity in education.¹⁷⁶ During the talk, Sir Robinson stated that the education system was invented to accommodate the needs of the Industrial Revolution, and as a result, focused on creating a workforce—dissuading students from pursuing the arts and creative media.¹⁷⁷ He called this “benign advice [that is] now profoundly mistaken”¹⁷⁸ that has led to “highly talented, brilliant, creative people think[ing] they are not because the thing they were good at in school was not valued.”¹⁷⁹ Homeschooling can provide an outlet for students who do not thrive in a highly structured setting by engaging them in a more creative and hands-on learning environment.¹⁸⁰

A final concern addressed by critics is that children who do not attend public schools are denied the safety functions afforded to other students.¹⁸¹ These safety concerns include: ensuring that students receive required vaccinations, guarding students from truancy by enforcing compulsory attendance policies, and reporting of suspected child abuse.¹⁸² Children who are not in public schools do not have the

(stating that proponents of homeschooling regulation argue approval of curriculum will ensure that students are exposed to an array of values and ideas).

173. *Care & Prot. of Charles*, 504 N.E.2d at 602.

174. See Lindsay, *supra* note 67, at 84.

175. Sir Ken Robinson is one of the world's leading speakers on “the development of creativity, innovation and human resources in education and in business.” Bio, Sir Ken Robinson, <http://www.sirkenrobinson.com/about-2> (last visited Jan. 17, 2014).

176. TED Talks, Sir Ken Robinson: Do Schools Kill Creativity?, YouTube (Jan. 6, 2007), <http://www.youtube.com/watch?v=iG9CE55wbtY>.

177. *Id.* at 11:15.

178. *Id.* at 11:45.

179. *Id.* at 12:08.

180. See TED Talks (LaPlante), *supra* note 152. Logan LaPlante, thirteen years old, gave a TED Talk regarding his unconventional educational path, a form of homeschooling he calls “hackschooling.” *Id.* at 5:54. Logan described hackers as “innovators . . . people who challenge and change the systems to make them work differently, to make them work better,” and argued that education is ready for being hacked, as he did with his own. *Id.* at 5:22. While his schooling included the basics of math, science, history, and writing, it is done from a creative approach. *Id.* at 6:45. By thirteen, Logan had already studied and applied physics through hands-on experiments (*id.* at 7:30), he volunteered with community organizations that apply sciences (*id.* at 8:08), his history lessons were combined with drama where Logan and other homeschooled students gave presentations as historical characters (*id.* at 8:33), and he had learned business management and design by interning with a ski-manufacturing company (*id.* at 9:31).

181. See McMullen, *supra* note 140, at 86.

182. *Id.* at 86–87.

benefit of a third party monitoring their safety and they may be subjected to neglectful or abusive parents without any means of discovery.¹⁸³ Therefore, it is necessary to find a method to regulate homeschooling that will ensure that children are both adequately educated and protected.

III. METHODS OF REGULATION

The United States has an array of legislation that regulates education.¹⁸⁴ Generally, the power to legislate education is a power reserved to the states.¹⁸⁵ Each state has its own legislation allowing homeschooling, and many states have adopted various forms of homeschool statutes.¹⁸⁶ These statutes have no sense of consistency from one state to another.¹⁸⁷

Various educational policies have sought to bring a sense of consistency to public education that is not found in homeschooling legislation. Although the power to legislate education is reserved to the states, the federal government has utilized its spending power to induce states to legislate education in specific ways.¹⁸⁸ Several federal programs condition federal government funding on public schools attaining certain educational benchmarks. These include the Elementary and Secondary Education Act (ESEA), No Child Left Behind (NCLB), and Race to the Top.¹⁸⁹ Further, the Common Core State Standards Initiative (Common Core) has developed from states' need to obtain waivers from NCLB and meet the grant requirements of the Race to the Top program.¹⁹⁰ Examining these statutes provides guidance in structuring a consistent statutory scheme for homeschooling.

183. *Id.* Sadly, these claims are not completely unfounded, as was the case with the tragic murder of Teddy Foltz-Tedesco. See *Teddy's Story, Teddy's Law*, <http://teddyslaw.org/teddys-story/> (last visited Jan. 17, 2014). Teddy's mother began homeschooling her three children after teachers noticed and reported signs of abuse. *Id.* Teddy was abused for three years before dying as the result of severe head trauma. *Id.*

184. See *infra* Parts III.A, II.B

185. See Yudof et al., *supra* note 11, at 886.

186. *Id.* at 39.

187. See Moran, *supra* note 117, at 1068–69.

188. See *infra* Part III.B. (discussing the federal education policies ESEA, NCLB, and Race to the Top, all of which incentivized states to implement education reform by providing federal funding to states that complied with the reforms).

189. See *infra* Part II.B.

190. See, e.g., Natalie Gomez-Velez, *Education Reform and Governance: Trends, Legal Issues, and Litigation*, 45 *Urb. Law.* 51, 65 (2013) (discussing Race to the Top's nationwide impact that has resulted in almost every state pursuing higher, college-ready academic standards); Michele McNeil & Alyson Klein, *Obama Offers Waivers from Key Provisions of NCLB*, *Educ. Wk.* (Sept. 27, 2011), <http://www.edweek.org/ew/articles/2011/09/28/>

A. State Regulations

States have a compelling interest in ensuring all children receive a quality education.¹⁹¹ Therefore, under the American federalism system, states are able to regulate their own education policies,¹⁹² and have been doing so since the seventeenth century.¹⁹³ All fifty states have enacted legislation that, either explicitly or through court interpretation, allows homeschooling as an alternative to compulsory public education.¹⁹⁴ The regulations imposed from state to state vary drastically,¹⁹⁵ with a trend towards deregulation,¹⁹⁶ and states must show that any regulations advance their interests in education.¹⁹⁷ Therefore, some states treat homeschooling like private-school education.¹⁹⁸ Others, like Michigan, have no regulations for homeschooling; but rather, parents have the option of notifying the state that they will be homeschooling their children.¹⁹⁹ Most parents choose against providing notice because there are no repercussions for failing to—thus furthering the problem of insufficient monitoring.²⁰⁰ States such as Michigan that have no regulations and do not require notification are in the minority.²⁰¹

05waiver_ep.h31.html?qs=NCLB+Waivers (explaining that in exchange for the waivers states would be required to “adopt standards for college and career readiness, focus improvement efforts on 15% of the most troubled schools, and create guidelines for teacher evaluations based in part on student performance”).

191. See *Rothner v. Chicago*, 929 F.2d 297, 303 (8th Cir. 1991) (“Government has few interests more compelling than its interest in insuring that children receive an adequate education.”); see also *Wis. v. Yoder*, 406 U.S. 205, 221 (1972) (“[S]ome degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence.”).

192. See Yudof et al., *supra* note 11, at 39.

193. Moran, *supra* note 117, at 1062.

194. *Id.* at 1068.

195. See Yudof et al., *supra* note 11, at 39.

196. See Moran, *supra* note 117, at 1062.

197. See Dumas et al., *supra* note 17, at 65. Therefore, because evidence has shown no correlation between student achievement and whether the instructing parent holds a degree, regulations requiring homeschooling parents obtain advanced certification do not advance the state’s interest and are unreasonable. *Id.* at 84–85.

198. See McMullen, *supra* note 140, at 87 (“[I]n Alabama, the statute allows home schools to qualify as church schools if they ‘are operated as a ministry of a local church, group of churches, denomination, and/or association of churches.’”). The Illinois Supreme Court held that a homeschool could be classified as a private school in compliance with the requirements of compulsory attendance laws. *Id.*; *People v. Levisen*, 90 N.E.2d 213, 215 (Ill. 1950).

199. See McMullen, *supra* note 140, at 88; see also Mich. Comp. Laws § 380.1561(3)(a), (f) (2010) (although the statute does have some curriculum requirements, there are no monitoring or notification requirements that would ensure compliance).

200. See McMullen, *supra* note 140, at 88.

201. See Moran, *supra* note 117, at 1069. These states include: Alaska, Alaska Stat. § 14.30.010(b)(12) (2013) (waiving compulsory requirements if the child is being educated

There are states with more restrictive regulations.²⁰² Some states have equivalency laws, which allow students to avoid compulsory attendance laws if they receive "equivalent instruction" elsewhere.²⁰³ Other states have home education laws, which apply specifically to homeschooling.²⁰⁴ Ohio, for example, has educational requirements for the instructor, courses that must be taught, and required testing to gauge the progress of the child.²⁰⁵ The strictest of requirements require parents to provide notification and obtain approval of their intent to homeschool,²⁰⁶ submit test scores and student work product,²⁰⁷ or to allow home visits.²⁰⁸

New York, for example, has strict homeschooling regulations.²⁰⁹ First, to initiate the process, parents are required to provide annual notice of intent to homeschool to the superintendent of their district.²¹⁰ Parents must then submit an "individualized home instruction plan" for each child to the school district for approval.²¹¹ The statute specifies the subjects to be taught at various grade levels²¹² and requires 180 days of

in the home by a parent or guardian); Idaho, Idaho Code Ann. § 33-202 (2002) (requiring only that students be instructed in subjects taught in public schools while giving parents discretion in choosing where children are educated); and Michigan (see *supra* note 199).

202. See McMullen, *supra* note 140, at 89.

203. *Id.*; Conn. Gen. Stat. § 10-184 (2009). Under Connecticut's equivalent instruction requirement, parents are required to file a "Notice of Intent" with the local superintendent. Home Sch. Legal Def. Ass'n., *Homeschooling in the United States: A Legal Analysis* (Connecticut), <http://www.hslda.org/laws/analysis/Connecticut.pdf>. The notice must include the "name of the teacher, subjects taught, days of instruction, and the teacher's method of assessment." *Id.*

204. See McMullen, *supra* note 140, at 89.

205. *Id.* at 90; Ohio Rev. Code Ann. § 3321.04(A)(2) (West 2013). On December 3, 2013 Ohio Senate Bill 248 was introduced and, if it had passed, would have required homeschooling parents to submit to a social services investigation that would have included interviews, background checks, and an intervention prior to receiving approval to homeschool. Mike Donnelly, *Worst-Ever Homeschool Law Proposed in Ohio*, HSLDA (Dec. 17, 2013), <http://www.hslda.org/hs/state/oh/201312170.asp>. Eventually this bill was withdrawn. Maggie Thurber, *'Worst Ever' Home Schooling Bill Withdrawn in Ohio*, Ohio Watchdog, Dec. 20, 2013 (<http://watchdog.org/121788/ohio-homeschooling-withdrawn>).

206. Mass. Gen. Laws ch. 76 § 1 (2010) (providing that approval cannot be denied on the basis of religious teaching).

207. Wash. Rev. Code § 28A.200.010(b).c) (2014) (requiring annual testing and if the child is not deemed to be making reasonable progress the parent is responsible for making a "good faith effort to remedy any deficiency").

208. N.Y. Comp. Codes R. & Regs. tit. 8, § 100.10(i)(3) (2009).

209. § 100.10.

210. § 100.10(b)(1).

211. § 100.10(c)(1)-(3), (5). Among other information, the IHP must include the child's name, age, grade level, list of curriculum and textbooks used, names of instructors, and assurance that the education will comply with the requirements of New York's Education Law, section 3205. *Id.* § 100.10(d)(1)-(5).

212. § 100.10(e).

instruction, made up of 900 hours for first through sixth grade and 990 hours for seventh through twelfth grade.²¹³ Parents are also required to file an annual assessment that includes the results of a commercially published achievement test.²¹⁴ Students are expected to achieve a score "above the 33rd percentile on national norms" on these tests or display adequate growth in comparison to previous years' results.²¹⁵ If the student's test results fail to meet the required standards the homeschool program is placed on probation for up to two years.²¹⁶ During this time, the student and parent are required to address and remedy the educational failings.²¹⁷ If at the end of the probationary period the student has not made progress and achieved all improvement goals, the board of education will again review the homeschooling program, and the superintendent may conduct home visits if the homeschool program is in "substantial noncompliance."²¹⁸

As evidenced, state policies regarding homeschooling vary drastically.²¹⁹ While some states fail to require notification, thus making attainment of adequate documentation regarding the education and academic performance of homeschooled students within those states unattainable,²²⁰ others, like New York, have very strict and detailed regulations that must be followed.²²¹ Therefore, a federal policy that would motivate states to not only regulate homeschooling, but also to create consistency in regulations nationwide, is necessary.²²² For examples of national policies that could serve as guides for the creation of such a regulation, it is important to review current federal programs regulating public education, as well as state-implemented Common Core standards.

213. § 100.10(f).

214. § 100.10(h) (stipulating the tests that may be used, the locations where the tests are to be administered, and parties who are permitted to proctor the tests).

215. *Id.*

216. § 100.10(i).

217. *Id.*

218. *Id.*

219. See *supra* notes 198–208 and accompanying text.

220. See *supra* notes 195–96 and accompanying text.

221. See *supra* text accompanying notes 203–13.

222. See *infra* Part IV.

*B. The Federal Government Regulating Education:
The Elementary and Secondary Education Act, No Child Left Behind,
and Race to the Top*

Traditionally, state and local governments have police authority to regulate education.²²³ However, the federal government began influencing the realm of public education with the passage of the Elementary and Secondary Education Act (ESEA) in 1965.²²⁴ ESEA sought to provide educational opportunities to disadvantaged students by providing Title I funds to school districts and schools with “high concentrations of children from low income families.”²²⁵ Since 1965, ESEA has been reauthorized six times in an effort to reflect changing educational conditions.²²⁶ The most recent reauthorization was the passage of No Child Left Behind (NCLB) in 2002.²²⁷

NCLB is an important, yet flawed, attempt at a national education policy.²²⁸ NCLB requires that states develop challenging content and performance standards in reading, math, and science.²²⁹ States must “use assessments that are aligned with those standards, and must hold schools and school districts accountable for failing to meet ambitious

223. See Yudof et al., *supra* note 11, at 886.

224. See Julia Hanna, *The Elementary Secondary Education Act 40 Years Later*, Harv. Graduate Sch. Educ. News (June 1, 2005), <http://www.gse.harvard.edu/news/05/08/elementary-and-secondary-education-act> (explaining that since ESEA the federal government involvement in education is expected, yet still debated, as evidenced through the passage of programs such as Head Start, Title I, and NCLB).

225. Janet Y. Thomas & Kevin P. Brady, *The Elementary and Secondary Education Act at 40: Equity, Accountability, and the Evolving Federal Role in Public Education*, 29 *Rev. Res. Educ.* 51, 51–52 (2005). Since its passage, the Act has expanded to include more specified at-risk groups such as “English-language learners,” females, and Native Americans). *Id.* at 52; see also James Crawford, *Frequently Asked Questions About Reauthorization of the Elementary and Secondary Education Act (ESEA) and the Policy Issues at Stake 1* (2011), available at http://www.diversitylearningk12.com/articles/Crawford_ESEA_FAQ.pdf (The purpose of ESEA was to assist in the education of children of racial and ethnic minorities and low-income families who had been receiving poor education). Although Title I funds were originally intended to serve disadvantaged students and encourage school desegregation, recent reauthorizations of ESEA have conditioned receipt of Title I funds on school reform. See Derek W. Black, *The Congressional Failure to Enforce Equal Protection Through the Elementary and Secondary Education Act*, 90 *B.U. L. Rev.* 313, 314 (2010).

226. See Crawford, *supra* note 225, at 1.

227. See Maureen A. MacFarlane, *The Shifting Floor of Educational Opportunity: The Impact of Educational Reform on Rowley*, 41 *J.L. & Educ.* 45, 45 n.2 (2012); Benjamin M. Superfine & Jessica J. Gottlieb, *Teacher evaluation and collective bargaining: The new frontier of civil rights law*, 2014 *Mich St. L. Rev.* 15 (forthcoming Feb. 2015).

228. See Yudof et al., *supra* note 11, at 893.

229. *Id.* at 894.

achievement goals.”²³⁰ NCLB places emphasis on standardized testing as an indicator of academic achievement.²³¹ Testing in math and reading is required annually for students in third through eighth grade, and testing in science must be conducted three times between third and twelfth grade.²³² The scores from these tests are used to determine whether schools are making “adequate yearly progress” towards proficiency.²³³

NCLB requires that all students are proficient within twelve years of the Act’s passage (i.e., by 2014).²³⁴ Proficiency determinations are based on students’ performance on the state standardized tests.²³⁵ For a school to make adequate progress, the student population as a whole, as well as the individualized subgroups, must meet the same proficiency goals established by the state.²³⁶ Any school that receives federal funding but fails to make adequate yearly progress is considered “in need of improvement.”²³⁷ For each consecutive year that the school fails to make adequate progress, it is subject to stricter regulations.²³⁸ After four consecutive years, the school is required to either replace school staff or implement a new curriculum.²³⁹ If the school does not have adequate progress in year five it must surrender control to the state.²⁴⁰

Despite good intentions, NCLB has proven to be unworkable due to several serious flaws.²⁴¹ First, because the states are able to set their own proficiency goals and create their tests, some states began lowering educational standards and drafting easier tests.²⁴² A second concern is

230. *Id.*

231. See Gomez-Velez, *supra* note 190, at 57.

232. See Yudof et al., *supra* note 11, at 894.

233. *Id.* Yudof explains that if the proficiency standard is 65%, then 65% of the school as a whole must be proficient, further, 65% of the students in each identified subgroup must be proficient as well. *Id.* NCLB indicates that these subgroups include students who are low-income, “from major racial and ethnic groups,” disabled, and those who have a limited grasp of English. No Child Left Behind Act of 2001 § 1111(b)(2)(C)(v)(II)(aa)–(dd), 20 U.S.C. § 6301 (2012).

234. See Yudof et al., *supra* note at 894.

235. *Id.* The standardized tests are created and administered by the states. *Id.* at 895.

236. *Id.* Massachusetts set proficiency percentages at 40% for reading and 20% for math, while Colorado, depending on grade level, has set their proficiency percentages at 75–90% in reading and 50–80% in math. *Id.* at 895.

237. *Id.*

238. See Yudof et al., *supra* note 11, at 894.

239. *Id.*

240. *Id.*

241. See Office of the Press Secretary, Remarks by the President on No Child Left Behind Flexibility, White House (Sept. 23, 2011), <http://www.whitehouse.gov/the-press-office/2011/09/23/remarks-president-no-child-left-behind-flexibility>.

242. See Gomez-Velez, *supra* note 190, at 59.

that teachers may become focused solely on teaching students to pass the proficiency tests, rather than on teaching a broad curriculum.²⁴³ Third, the focus on closing the achievement gap between minority and nonminority students has created incentives for higher performing schools to remove lower performing students, effectively segregating their student bodies.²⁴⁴ Rather than providing anticipated school improvements, NCLB is considered “rigid, unattainable, and . . . counterproductive,” prompting demands for reauthorization of ESEA.²⁴⁵ Validating these concerns, “[forty-five] states, the District of Columbia, Puerto Rico, and the Bureau of Indian Education” have applied for flexibility or waivers regarding the 2014 proficiency deadline.²⁴⁶

Attempts to reauthorize ESEA and NCLB have failed to achieve bipartisan congressional support.²⁴⁷ In response to concerns regarding the penalties posed by failure to meet NCLB proficiency standards, the Obama Administration not only implemented flexibility and waivers to the NCLB standards,²⁴⁸ but also created the Race to the Top program.²⁴⁹ This competitive grant program’s goals were to encourage improvement in states’ public education systems by providing federal funds to states that implemented changes in the areas of “educational standards, teacher

243. See Diana Pullin, *Getting to the Core: Rewriting the No Child Left Behind Act for the 21st Century*, 39 Rutgers L. Rec. 1 (2011) (stating that as a result of NCLB teachers are limiting the attention given to subjects other than math and literacy because they are not tested on most state tests). The Act has also caused controversy within the civil rights community regarding the effects the act has on “at-risk subgroups of students.” *Id.* at 1.

244. See Gomez-Velez, *supra* note 190, at 57–59.

245. *Id.* at 55. Efforts to reauthorize ESEA have focused on (1) improving the effectiveness of teachers and principals in the classroom; (2) keeping families informed so they can help improve the school systems; (3) “[i]mplementing college- and career-ready standards” and improving assessment procedures; and (4) providing support and interventions for America’s lowest performing schools. U.S. Dep’t of Educ., *A Blueprint for Reform: The Reauthorization of the Elementary and Secondary Education Act*, 3 (2010), available at <https://www2.ed.gov/policy/elsec/leg/blueprint/blueprint.pdf>.

246. ESEA Flexibility, U.S. Dep’t Educ., <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html> (last visited Sept. 4, 2014). Ninety percent of Ohio schools would fail the NCLB mandate according to a Department of Education estimate. Lynne Vogel, *Common Core State Standards: The Devil is in the Details*, *Daily Kos* (Oct. 8, 2013, 4:45 PM), <http://www.dailykos.com/story/2013/10/08/1245394/-Common-Core-State-Standards-The-Devil-is-in-the-Details>; see also Gomez-Velez, *supra* note 190, at 55 (explaining that with NCLB deadlines approaching and concerns regarding the ability to meet proficiency standards, the Obama administration is allowing states to apply for “flexibility and permit waivers of certain NCLB requirements”).

247. See Crawford, *supra* note 225, at 1–2. Although NCLB was supposed to expire in 2007, Congress has been unable to agree on reauthorization due to controversy surrounding the Act. *Id.*

248. See *supra* note 246 and accompanying text.

249. Gillian E. Metzger, *Federalism Under Obama*, 53 Wm. & Mary L. Rev. 567, 590 (2011).

evaluation, and support for charter schools.”²⁵⁰ In response to *Race to the Top*, states modified methods for teacher evaluations, lifted charter school limitations, and adopted the Common Core State Standard Initiative.²⁵¹

C. *Common Core*

Both the attainment of NCLB waivers and the possibility of acquiring *Race to the Top* grants have motivated states to adopt Common Core standards.²⁵² Beginning neither as federal legislation nor state policy, Common Core was developed by the National Governors Association and the Council of Chief State School Officers, and later adopted by the states in an effort to “promote a high quality education for all children throughout the nation.”²⁵³ Common Core details student expectations at each grade level.²⁵⁴ Much like NCLB, Common Core focuses on mathematics and English language arts.²⁵⁵ However, Common Core expands the classification of the latter to “English Language Arts & Literacy in Historical/Social Studies, Science, and Technical Subjects.”²⁵⁶ The standards define grade-specific standards for these subjects.²⁵⁷ Further, for mathematics, the standards aim to ensure students understand and are able to “justify . . . why a particular mathematical statement is true or where a mathematical rule comes from.”²⁵⁸ A basic goal of the Common Core standards is to ensure that students are college and career ready.²⁵⁹ Currently, all but four states—

250. See Gomez-Velez, *supra* note 190, at 55.

251. See Metzger, *supra* note 249, at 590–91. Regardless of the widespread changes to education policies only a limited number of applications were awarded funding. *Id.* at 590.

252. See, e.g., Gomez-Velez, *supra* note 190, at 65; McNeil & Klein, *supra* note 190.

253. Pullin, *supra* note 243, at 2; Willona Sloan, *Coming to Terms with Common Core Standards*, 16 INFObrief (2010), available at <http://www.ascd.org/publications/newsletters/policy-priorities/vol16/issue4/full/Coming-to-Terms-with-Common-Core-Standards.aspx> (last visited Sept. 4, 2014). By making Common Core a voluntary program and allowing states to choose whether to implement the standards, the traditional deference to state rights are reaffirmed. MacFarlane, *supra* note 227, at 60. However, voluntary may be a mischaracterization considering that continued federal funding is tied to implementation. *Id.*

254. Read the Standards, Common Core: St. Standards Initiative, <http://www.corestandards.org/the-standards> (last visited Sept. 4, 2014).

255. *Id.*

256. English Language Arts Standards, Common Core: St. Standards Initiative, <http://www.corestandards.org/ELA-Literacy> (last visited Sept. 4, 2014).

257. See Read the Standards, *supra* note 256.

258. Mathematics, Common Core: St. Standards Initiative, <http://www.corestandards.org/Math> (last visited Sept. 4, 2014).

259. See English Language Arts Standards, *supra* note 255.

Texas, Nebraska, Alaska, and Virginia—have adopted the Common Core standards.²⁶⁰

Regardless of the intentions of the program, numerous complaints have been raised regarding Common Core.²⁶¹ First, Common Core is criticized because the public was not informed or asked to participate in the process of creating the standards.²⁶² Dr. Sandra Stotsky and Professor R. James Milgram, both participants in the creation of Common Core, are cited expressing doubts regarding the benefits of the program.²⁶³ Stotsky classified the program as a “set of empty skill sets.”²⁶⁴ Specifically, the math and English language arts standards do not fulfill the goal of creating a more challenging curriculum, but fall below the standards states like California and Massachusetts had in place.²⁶⁵ In light of the growing concerns and outcry from all aspects of the political spectrum regarding Common Core, states are delaying the “implementation of high-stakes standardized tests.”²⁶⁶

Education is a thoroughly regulated area within the United States.²⁶⁷ Embarking on the task of creating a homeschooling policy that would create consistency will require drawing from all the current federal education regulations.²⁶⁸ This will allow for the assurance that the policy is consistent not only across state lines but also with existing policies, while not infringing on parental education rights.

260. Common Core Standards Adoption by State, ASCD, <http://www.ascd.org/common-core-state-standards/common-core-state-standards-adoption-map.aspx> (last visited Sept. 4, 2014).

261. See Robert S. Eitel & Kent D. Talbert, *The Road to a National Curriculum: The Legal Aspects of the Common Core Standards, Race to the Top, and Conditional Waivers* 16 (2012), available at <http://pioneerinstitute.org/download/the-road-to-a-national-curriculum/> (discussing the arguments raised for and against Common Core); see also Al Baker, *Common Core Curriculum Now Has Critics on the Left*, N.Y. Times, Feb. 16, 2014, <http://www.nytimes.com/2014/02/17/nyregion/new-york-early-champion-of-common-core-standards-joins-critics.html> (discussing the growing concern regarding the effectiveness of Common Core from educators within the state of New York, resulting in the New York State United Teachers' Board withdrawing support for the program).

262. See Vogel, *supra* note 246.

263. *Id.*

264. *Id.*

265. See Eitel & Talbert, *supra* note 261, at 7 (discussing the arguments raised for and against Common Core).

266. Valerie Strauss, *More States Delay Common Core Testing as Concerns Grow*, Wash. Post (Nov. 24, 2013, 2:12 PM), <http://www.washingtonpost.com/blogs/answer-sheet/wp/2013/11/24/more-states-delay-common-core-testing-as-concerns-grow/>.

267. See Yudof et al., *supra* note 11, at 886–87 (explaining that although regulation traditionally held authority to regulate education, federal involvement has grown since the conclusion of World War II leading to the present regime of federal initiatives prompting state regulation).

268. See *infra* Part III.B.

IV. A CALL FOR REFORM

Regulating homeschooling is a difficult task within the United States because education decisions are viewed as a right held by the parents.²⁶⁹ Any proposed regulation will need to weigh the rights of the parents against the interests of the state.²⁷⁰ Striking a balance between these two interests while navigating the American political system will be a difficult task.²⁷¹

A policy directed at the regulation of homeschooling is most effective if Congress considers the history and tradition of homeschooling within the United States,²⁷² federal limitations on interfering with state police powers,²⁷³ and current methods of regulating homeschooling.²⁷⁴ With these considerations in mind, the regulations of our foreign counterparts can be analyzed to determine where the United States falls on the global spectrum and if we might be able to draw from any of those systems.²⁷⁵ Then, current domestic policies can help form a homeschooling regulation that is consistent from state to state while upholding parental rights to education.²⁷⁶ Finally, methods for implementation and enforcement will be developed to ensure compliance with program.²⁷⁷

A. Where Does the United States Fall Within the Global Spectrum?

Looking abroad, the United States falls within the middle of the homeschooling regulatory scheme by permitting states to determine their own policies.²⁷⁸ In an effort to create consistency among the states we can look to other democratic nations to determine how they address homeschooling²⁷⁹ and how the United States fits within this global

269. See Dumas et al., *supra* note 17, at 63–64, 67. Additionally, lobbying groups fervently defend parental rights to make educational decisions for their families.

270. See *supra* note 132 and accompanying text.

271. Organizations, such as the Home School Legal Defense Association, which represents strong lobbying power for permissive homeschooling rights, have developed within the United States. About HSLDA, Home Sch. Legal Def. Ass'n, <http://www.hslda.org/about/> (last visited Feb. 21, 2014).

272. See Dumas et al., *supra* note 17, at 63–64.

273. See Yudof et al., *supra* note 11, at 886.

274. See *supra* Part II.A (discussing various state homeschooling regulations).

275. See *infra* Part III.A.

276. See *infra* Part III.B.

277. See *infra* Part III.C.

278. See Yudof et al., *supra* note 11, at 39.

279. HSLDA's international website provides information regarding the legal status of homeschooling in many countries. HSLDA International, Home Sch. Legal Def. Ass'n, <http://www.hslda.org/hs/international/> (last visited Sept. 4, 2014).

dichotomy. Analyzing regulations of Germany, Denmark, and Australia can provide a starting point for the United States in determining the most comparable system and the seemingly most effective form of regulation for a similar state.

The regulatory regimes of Germany and the United States are completely at odds with one another. Germany has a historic tradition of developing a national education policy.²⁸⁰ The German government has developed the most restrictive education policies in Europe and places the government's responsibilities in education above all others.²⁸¹ In contrast, America has differentiated itself from Germany's restrictive education policies by recognizing parents' rights in education choices²⁸² and having a federalism system that places education decisions within the powers of the state.²⁸³ Further, some states within the United States, such as Michigan, have entirely permissive regulations.²⁸⁴ In light of American court rulings granting rights to make educational decisions to parents²⁸⁵ and Germany's practice of elevating the state's responsibility of overseeing the educational system over the rights of parents,²⁸⁶ a regulatory system as restrictive as Germany's would not be consistent with American case law or cultural attitudes.²⁸⁷

An entirely permissive scheme modeled after Denmark would also be problematic within the United States.²⁸⁸ Although Denmark imposes no limitations on the right to homeschool, and has recognized the right to homeschool for two centuries,²⁸⁹ only a small number of families choose to utilize this educational option.²⁹⁰ As a result, there is not a large segment of the population the government needs to be concerned with monitoring to ensure the education those students receive is similar

280. See *supra* notes 36–38 and accompanying text (discussing the formation of Germany's education policies).

281. See Spiegler, *supra* note 36, at 181, 186.

282. *Meyer v. Neb.*, 262 U.S. 390, 400 (1923).

283. See Yudof et al., *supra* note 11, at 886.

284. See *supra* notes 197–198 (discussing the failure of Michigan's education policies which requires parents to notify the local school district of their intent to homeschool their children).

285. See *supra* notes 118–122 and accompanying text.

286. See *supra* notes 49–52 and accompanying text.

287. See *supra* Part II. Furthermore, sections of the American population have spoken out against the treatment of the German government towards homeschooling families, like the Romeikes, and have attempted to pass legislation that calls for a change in German policy. H.R. Res. 850, 149th Leg., 2d Sess. (Ga. 2009).

288. See *supra* Part I.C (discussing Denmark's education policies).

289. See Nagata, *supra* note 92, at 97.

290. See *supra* notes 98–99 and accompanying text (estimating 250 families in Denmark choose to homeschool).

to those in state or private schools.²⁹¹ Further, Denmark has proven to provide high quality state-sponsored education and therefore Danish parents would not be faced with the same concerns that drive many American families to choose homeschooling.²⁹² In the United States, however, more than one million students are being homeschooled.²⁹³ Many of these children are being homeschooled as a result of the academic structure and unsafe environments of public schools.²⁹⁴ It is within the interests of the states to ensure their citizens are receiving a quality education that propels them to become productive members of society.²⁹⁵ A completely permissive scheme, similar to that of Denmark where even the school system is run pressure free and without testing,²⁹⁶ would not further this state interest because the United States has chosen to focus on standardized test results to measure educational progress.²⁹⁷

In general, however, the United States operates under a system of federalism, much like Australia, by allowing states to establish their own homeschooling regulations.²⁹⁸ The history of education in both countries begins with the necessity of homeschooling because of the lack of schoolhouses in the newly settled countries.²⁹⁹ As time has progressed, both countries have continued to recognize homeschooling as a viable alternative to public, state-sponsored, education.³⁰⁰ However, unlike Australian states that consistently regulate homeschooling in two areas³⁰¹ and provide financial to homeschooling families,³⁰² there is

291. See *supra* notes 98–99 and accompanying text.

292. See *supra* notes 108–113 (discussing the educational advantages in Denmark which help explain the low number of homeschooling families).

293. See Yudof et al., *supra* note 11, at 40 (estimating 1.5 million students were homeschooled in 2007).

294. See Dumas et al., *supra* note 17, at 70 (outlining the reasons parents choose to homeschool).

295. *Care & Prot. of Charles*, 540 N.E.2d 592, 600 (Mass. 1987).

296. See Nagata, *supra* note 92, at 96 (discussing Denmark's pressure-free educational policies).

297. See Gomez-Velez, *supra* note 190, at 57.

298. See *supra* note 75 and accompanying text.

299. See Harding & Farrell, *supra* note 17, at 126 (discussing the development of Dame schools to accommodate the educational needs of the isolated colonial Australia); Gordon et al., *supra* note 116, at 5 (explaining that due to the lack of schools in Colonial America many of the nation's first leaders were homeschooled).

300. See *supra* notes 73–74 and accompanying text (detailing the statutory recognition of homeschooling in Australian states and explaining that the Australian government provides financial support to families to homeschool children).

301. See Harding & Farrell, *supra* note 17, at 127 (explaining that Australian states maintain the authority to approve homeschooling applications and homeschooling curriculum).

302. See English, *supra* note 74, at 2.

neither a sense of uniformity among the regulations of American states, nor do the states provide financial support.³⁰³ The lack of consistency opens the door for criticism of homeschooling, including the belief that children are not being sufficiently educated.³⁰⁴ To remedy the current inconsistency of homeschool regulations within the United States, Congress needs to create a policy that would balance the interests of the state, parents, and students.³⁰⁵ In light of these interests, this legislation strives to create the consistency found in Australia, focusing on the application and curriculum approval elements of Australia's regulations, requiring the testing and proficiency requirements of NCLB and Common Core, and finally the structure and compliance requirements of New York's home-education statute.³⁰⁶

B. A Policy Proposal

Developing an effective homeschool regulation will require that aspects of various educational policies be utilized and tweaked to advance the states' interest in an educated citizenry. Borrowing from the effective regulations of Australia, the policy will strive to create unity amongst the states.³⁰⁷ Additionally, the policy should prompt states to require notification of a family's intent to homeschool, review and approve homeschooling applications and intended curricula, and require testing of homeschooled students.

First, Congress would need to instruct states to require notification from families who currently are homeschooling, and those who would like to move from the public or private sector to homeschooling their children.³⁰⁸ Second, as is currently required in Australia and New York,

303. See *supra* Part III.A.

304. See *supra* note 16 and accompanying text; *supra* Part II.B.2.

305. See Lindsay, *supra* note 67, at 92.

306. Homeschooling is not presently regulated by NCLB or Common Core; rather, these are programs that regulate public education. See *supra* Parts II.B–C. A hurdle presented by this solution is that NCLB and Race to the Top, which motivated the implementation of Common Core, were persuasive to the states because of the inclusion of federal funding. See *supra* Parts II.B–C. Unlike Australia and Denmark, who provide funding to families that homeschool, see English, *supra* note 80, at 2; *supra* note 102, the federal government only provides funding for public schools that meet the various policy requirements, whether they be reaching proficiency under NCLB or for changing educational standards—implementing Common Core—under Race to the Top. See *supra* Part III.B. For this proposed regulation to be effective, Congress will need to attach some form of financial incentive, possibly a grant program similar to the one used in Race to the Top, that would motivate the states to comply. See *supra* text accompanying note 246.

307. See *supra* text accompanying note 306.

308. Notification of homeschooling is already a requirement in many states. See *supra* Part III.A. Further, notification enables easier monitoring of homeschooled children, thereby

the states would need to approve homeschool applicants and their proposed curricula.³⁰⁹ Curricular requirements should indicate that homeschooled students are to learn the same subjects as required by Common Core to ensure homeschooled students are not getting an inferior education to their state-schooled peers.³¹⁰ However, the state should not be able to mandate the teaching instruction or actual content taught from those subjects because many parents remove their children from public schools due to specific teachings they feel conflict with their religious or moral beliefs.³¹¹ Further, such a mandate would conflict with the language of the ESEA.³¹² Rather, the requirement should merely be the requirement that certain subjects are covered, leaving parents with the discretion to determine the format—whether the learning environment is a classroom setting in the home or environmental learning experienced in museums—and the ultimate content chosen for instruction.³¹³

In addition to notification and approval, emphasis should be placed on testing requirements for homeschooled children, just as testing is emphasized in determining the proficiency of children in public school.³¹⁴ These testing requirements would serve to alleviate or substantiate concerns that homeschooled children are not receiving adequate education in the home.³¹⁵ Similar to NCLB and Common Core, states would need to create tests for homeschool students, or use the same tests administered to public and private school students.³¹⁶

advancing the states' goal of ensuring all citizens receive a quality education. See McMullen, *supra* note 140, at 82.

309. See *supra* Parts II.B., III.A.

310. See *supra* Part III.A. (discussing state equivalency statutes that require homeschooled students to learn the subjects required in public schools).

311. See *Wis. v. Yoder*, 406 U.S. 205, 234 (1972) (holding the state's interest in education is not unrestricted when the regulation is in conflict with parents' First Amendment rights to shape the religious and educational upbringing of their children).

312. "Nothing in this chapter shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, review, or control a State, local educational agency, or school's instructional content, curriculum, and related activities; . . ." 20 U.S.C. § 7906(a) (2006).

313. See *supra* notes 140–141, 151–153 and accompanying text (discussing the various forms of learning teaching methods that can be utilized by homeschooling families to ensure that students are instructed in a manner best suited to their learning styles).

314. See Gomez-Velez, *supra* note 190, at 57 (discussing the emphasis of testing requirements within public schools).

315. See *supra* Part II.B.1 (addressing research studies that claim homeschooled children outperform public-schooled children on standardized tests).

316. See *supra* Part III.B. Although the testing and proficiency requirements of both Common Core and NCLB are highly contested, Pullin, *supra* note 243, at 1, they still provide an example of a regulatory scheme that could be implemented for homeschooling. The most efficient way of monitoring progress is by testing children to determine their

States would also set proficiency standards for homeschooled children.³¹⁷ New York has already established this requirement.³¹⁸ By requiring homeschool students to take an annual assessment test and further requiring those students meet a certain level of proficiency, New York is ensuring that homeschooled students are receiving an adequate education.³¹⁹ Under the proposed federal regulation, it would be sensible to require homeschooled children to take a state-administered test on an annual basis.³²⁰ The states' interests in ensuring their citizens are educated could then be realized by monitoring each child's progress through their test results.³²¹ Additionally, critics of homeschooling would be able to alleviate their concerns that these children are not receiving proper educational opportunities because the tests would provide a valuation of the student's education levels.³²² Further, critics of NCLB and Common Core would be reassured that the teachers were not merely teaching the test, because homeschool parents would still have the latitude to structure their programs how they see fit, and would not have the concerns of closing the achievement gap required of public school educators.³²³

C. Implementation

Unfortunately, the actual implementation of such a policy would be difficult for various reasons. Such a regulation is likely to prompt

education level. See *supra* text accompanying notes 205, 214 (discussing Ohio and New York statutes that require testing for homeschooled students to gauge their education progress). Further, because states should only be approving curriculum and not determining how the subjects are taught within the home, it would be necessary to test children to ensure their schooling matches or exceeds the proficiency standards for homeschooled children set by the state.

317. See *supra* note 213 and accompanying text (explaining that New York has set proficiency standards for homeschooled children at the 33rd percentile). However, it should be noted that the proficiency standards under NCLB are contested as harming underprivileged schools. See *supra* Part III.B. Similarly, many states have halted the implementation of common core testing standards due to public outcry and questioning whether students should be refused to advance in grade based on the result of a standardized test. See *supra* Part III.C.

318. See *supra* note 213 and accompanying text.

319. See *supra* notes 208–218 and accompanying text (discussing New York's homeschool regulation).

320. See *supra* note 215 and accompanying text (New York statute requires annual assessment test).

321. Not only would this solution allow the states to satisfy their interest in ensuring all citizens are educated, but it would also help to alleviate the problems of limited data being available regarding homeschool students. See Howell, *supra* note 9, at 355.

322. See *supra* note 212 and accompanying text.

323. See *supra* note 242 and accompanying text.

criticism and dissent from homeschooling proponents like the HSLDA.³²⁴ However, and most importantly, Congress will need to find a mechanism that allows its interference with state police powers.³²⁵

First, implementing such a policy will require a tremendous change in the homeschool community because not all states currently regulate homeschooling.³²⁶ Requiring states to adopt this policy or amend their current regulations would have various fiscal ramifications. States would have to spend time in their congressional sessions passing legislation that conforms to the federal mandate. The individual state departments of education, or other assigned agencies, would have to take on a new, or enhanced, task of reviewing applications and monitoring homeschooling families. Additionally, tests appropriate for homeschooling families or a mechanism allowing homeschooled children to take the state school tests would need to be developed.³²⁷ Perhaps most problematic, NCLB requires a school that fails to achieve adequate progress to take certain actions, and these actions escalate on an annual basis.³²⁸ It would be very difficult to implement such an enforcement mechanism similar to NCLB with a homeschooling regulation due to the nature of the homeschooling system being separate from government oversight. However, under both the New York statute and the contested testing of Common Core, a student's inadequate performance on standardized tests has consequences.³²⁹ This might be a feasible option to enforce in the regulation of homeschools if the regulation assumes, and requires, homeschool families impose a kindergarten through twelfth grade system similar to the public schools.

There are several concerns that must be considered with regard to an enforcement mechanism. First, homeschooling families are not provided with funding by the federal government; therefore, Congress would need to decide how it would revise the enforcement mechanism

324. See *supra* note 271.

325. See *supra* notes 223–224 and accompanying text (discussing that although education regulation is a state police power, federal government involvement in education regulation has come to be expected).

326. See McMullen, *supra* note 198 (discussing the states that do not regulate homeschooling).

327. See Andrew Ujifusa, *Standardized Testing Costs States \$1.7 Billion a Year*, Study Says, *Educ. Wk.* (Dec. 7, 2012), <http://www.edweek.org/ew/articles/2012/11/29/13testcosts.h32.html> (discussing the cost states incur to develop and administer standardized testing).

328. See *supra* notes 233–237 and accompanying text (describing the procedure that occurs if a school does not meet its required proficiency standards).

329. See *supra* notes 214–216 and accompanying text; *supra* Part III.C.

that only applies to funded schools under NCLB and Common Core.³³⁰ Again, a possible option would be to implement the requirement that students obtain a certain score on their standardized test to be able to advance a grade level,³³¹ or incentivize states to take a more proactive approach to monitoring homeschooling through a grant program similar to Race to the Top.³³² Second, Congress would need to determine how to avoid infringing on parents' recognized rights to determine the educational paths of their children.³³³ NCLB allows a school five years to achieve adequate yearly progress before the school is turned over to the authority of the state.³³⁴ To allow a homeschooler five years to reach that same threshold could result in a child being inadequately educated for nearly half of his or her academic career, or the student's schooling might end and the student would enter the workforce or college unprepared for the challenges that lie ahead. Rather, the New York model of placing the home-education program on probation for two years and requiring the student to show adequate improvement on an annual basis should be followed on a national scale.³³⁵ This method could be a feasible solution accommodating both the right of the parents to educate their children in the home, with the exception of classes in which the student needs additional guidance, and the interests of the state in ensuring its citizens receive an adequate, if not quality, education.³³⁶

Therefore, the best solution for providing a consistent, national homeschooling regime would involve three major components: (1) parents would be required to notify the school district of their intent to homeschool; (2) the school district would need to approve the application to homeschool and the proposed curriculum; and most importantly (3) the students would need to complete yearly assessment tests to ensure their education levels are in compliance with any proficiency standards established by the state.

330. See *supra* Parts III.B-C.

331. See *supra* notes 214-216 and accompanying text.

332. See *supra* note 247 and accompanying text (explaining that Race to the Top's goal was to encourage states to improve their education standards).

333. See *supra* note 124 and accompanying text (describing the balance between the state's interest in an educated populace and parents' rights to determine their child's educational path).

334. See *supra* Part III.B.

335. See *supra* notes 212-216 and accompanying text.

336. See *supra* Part III.

CONCLUSION

Laws regarding homeschooling vary extensively. Globally, homeschool regulations range from nations like Germany, which believe the state, not parents, holds authority to determine the educational path of children on one end of the spectrum,³³⁷ to nations like Australia, which allow homeschooling but require home investigations and assessments, falling in the middle,³³⁸ and nations similar to Denmark, which grant great freedom of educational choice to parents, at the opposite end of the spectrum.³³⁹ The United States falls in the middle of this spectrum. American courts have recognized parental rights to educational choice³⁴⁰ but states maintain various regulations pertaining to homeschooling.³⁴¹

The United States has historically recognized that it is a constitutional right of parents to choose the educational paths for their children.³⁴² The United States should retain a regulatory system that allows for children to be educated in a home environment. However, it is necessary for the state to ensure that its citizens receive an appropriate education.³⁴³ The current system of inconsistent regulations that vary from state to state does not realize this goal.³⁴⁴ Instead, the current system mirrors the global homeschooling standards, where there are states with no regulations restricting homeschooling and states that have very tedious requirements.³⁴⁵ To meet this goal of an educated populace, and to develop some level of consistency in homeschooling regulations among the states, Congress should adopt a regulatory scheme modeled in part after No Child Left Behind, Common Core, and the New York home education statute.³⁴⁶ This regulation would allow states to adopt regulation policies, including notification, inspection of curricula, and most importantly, testing requirements that would allow the state to monitor the educational progress of all students and ensure no student is being denied a quality education.³⁴⁷

337. See *supra* note 52 and accompanying text.

338. See *supra* note 75 and accompanying text.

339. See *supra* note 87 and accompanying text.

340. See *supra* Part II.A.

341. See *supra* Part III.A.

342. *Meyer v. Neb.*, 262 U.S. 390, 400 (1923).

343. See *supra* note 131 and accompanying text.

344. See *supra* Part III.A.

345. See *supra* Part III.A.

346. See *supra* Part IV.

347. See *supra* Part IV.

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