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THE MISSING INTEREST: ENFORCING A CHILD'S RIGHT TO PUBLIC EDUCATION

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ABSTRACT—Over one million children are homeschooled each year in the United States. While many of these children thrive, others suffer from a lack of adequate education, socialization, and access to mandatory reporters to escape familial abuse. For those children, there are no avenues through which they can assert their right under state law to a public education. Courts, however, are generally reluctant to engage with this topic for fear of interfering with parents' rights. State legislatures, influenced by homeschooling rights organizations, have also failed to act.

This Essay offers a concrete solution to this problem—stepping in to protect children where courts and legislatures have not. The Essay builds on a Note by Carmen Green, which proposed that courts apply a modified version of the procedure set out in *Bellotti v. Baird* to cases where children assert their right to public education against their parents' wishes. In *Bellotti*, the Supreme Court allowed minors seeking abortion to bypass parental consent. Under this framework, a child would be permitted to pursue a public education without parental consent if she can prove either that (1) her maturity level is that of an eighteen-year-old or older or that (2) receiving a public education is in her best interest. This Essay expands on Green's theoretical suggestion, providing a guide to courts on how to apply *Bellotti* in practice.

While this proposal raises some implementation problems, it is a crucial step toward allowing children to assert their fundamental right to an education. For the children whose lives would be impacted by this proposal, the adoption of some kind of pathway to public education is of the utmost importance.

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INTRODUCTION

Minors deserve a say in their education, though parents have an important interest in educating their children as they see fit. In *Wisconsin v. Yoder*, where the Supreme Court upheld Amish parents' right to exempt their children from compulsory high school for religious reasons, Justice William O. Douglas issued a compelling dissent wherein he urged the Court to consider the interests of the children in their education.[1] Justice Douglas lamented that the majority considered only the interests of the Amish parents and the state. He instead argued that "[w]here the child is mature enough to express potentially conflicting desires, it would be an invasion of the child's rights to permit such an imposition without canvassing his views."[2] This dissent recognized a long-standing problem in constitutional law: the refusal to take children's interests into account even where the law directs the lives of the children themselves. Despite the significant academic scholarship that arose from this opinion,[3] children's wishes for their education are still rarely taken seriously.

Following in the footsteps of Justice Douglas's *Yoder* dissent, this Essay argues that courts should consider a child's interest in their education. There are many reasons why minors may want to attend public school—

[1] 406 U.S. 205, 241 (1972) (Douglas, J., dissenting).

[2] *Id.* at 242.

[3] *See* Emily Buss, *What Does Frieda Yoder Believe*, 2 U. PA. J. CONST. L. 53, 53 n.4 (1999) (detailing a line of academic scholarship arguing for children's rights independent of their parents following Justice Douglas's dissent in *Yoder*).

children who can appreciate the consequences of the decision should be able to assert their right to a public education despite their parents' objections.

This Essay proceeds in four parts. Part I explores the current state of homeschool education, highlighting the increased state support for homeschooling in the last decade. To explain why the widespread expansion of homeschooling is a problem, Part II gives an overview of reasons why children may want to exert their right to public schooling. Part III then establishes a framework for how minors can assert their right to education. Finally, Part IV addresses problems that may arise in the implementation of this framework.

I. CURRENT STATE OF HOMESCHOOLING

For most of the late nineteenth and twentieth centuries, homeschooling was highly unpopular and rested on legally questionable footing. States often exerted their rights as *parens patriae*[4] to compel children to attend public school and restrict parents' choice to homeschool their children.[5] With the advent of compulsory education laws, "[h]omeschooling without authorization left parents vulnerable to charges of child neglect because the state did not recognize homeschooling as a legitimate alternative to public schools or organized private schools."[6] Twentieth-century courts had the same inclination as the legislatures. State courts applying these laws often found it "inconceivable" that children could "lawfully be sequestered . . . during all of their formative years to be released upon the world only after their opportunities to acquire basic skills have been foreclosed and their capacity to cope with modern society has been so undermined as to prohibit useful, happy or productive lives."[7]

As the century progressed, social and economic changes coincided with a political shift in attitudes toward homeschooling.[8] More parents sought to homeschool their children while state support for homeschool programs

[4] "The state cannot intervene in matters of the family without establishing a compelling interest to do so, but the family is not beyond regulation in the public interest. When acting to protect the general welfare of children, the state has wide latitude to restrict parental control. This state power, known as the *parens patriae* doctrine, in essence, gives the state authority to serve as a substitute parent and ultimate protector of children's interests." Kay P. Kindred, *God Bless the Child: Poor Children, Parens Patriae, and a State Obligation to Provide Assistance*, 57 OHIO ST. L.J. 519, 526 (1996) (footnotes omitted).

[5] *See* Catherine J. Ross, *Fundamentalist Challenges to Core Democratic Values: Exit and Homeschooling*, 18 WM. & MARY BILL RTS. J. 991, 992 (2010).

[6] *Id.* at 994.

[7] State v. Riddle, 284 S.E.2d 359, 366 (W. Va. 1981).

[8] *See* Emily Buss, *The Adolescent's Stake in the Allocation of Educational Control Between Parent and State,* 67 U. CHI. L. REV. 1233, 1236–37 (2000).

strengthened.[9] Today, homeschooling is legal and constitutionally protected in all fifty states.[10] As a result, the national percentage of homeschooled children has rapidly grown, with estimates showing a 74% increase between 1999 and 2007.[11] In 2007 alone, the parents of around 1.5 million students chose to homeschool their children instead of enrolling them in traditional schooling programs.[12]

States have loosened their regulations on homeschooling as the number of homeschooled children has increased.[13] Only nine states require an academic assessment of all homeschooled children.[14] Eleven states have no requirement that parents notify education officials that they are homeschooling their children.[15] Without notification requirements, state officials cannot determine whether a child is truant or homeschooled.[16] Homeschool parent-teachers are also largely unregulated. Forty states allow any parent to homeschool regardless of his or her educational background.[17]

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[9] *Id.*

[10] Timothy B. Waddell, *Bringing It All Back Home: Establishing a Coherent Constitutional Framework for the Re-regulation of Homeschooling*, 63 VAND. L. REV. 541, 548 (2010) (citing *George Bush's Secret Army*, ECONOMIST (Feb. 26, 2004), https://www.economist.com/united-states/2004/02/26/george-bushs-secret-army [https://perma.cc/EMU8-AV6V]).

[11] Carmen Green, *Educational Empowerment: A Child's Right to Attend Public School*, 103 GEO. L.J. 1089, 1095 (2015) (citing Stacey Bielick, *Issue Brief: 1.5 Million Homeschooled Students in the United States in 2007*, NAT'L CTR. FOR EDUC. STAT. 2–3 (Dec. 2008), http://nces.ed.gov/pubs2009/2009030.pdf [https://perma.cc/Y9XN-9TJR]).

[12] *Id.*

[13] This decrease is mostly due to lobbying by homeschool advocates, namely the Home School Legal Defense Association. For more information, see Green, *supra* note 11, at 1098–99. *See also* Elizabeth Bartholet, *Homeschooling: Parent Rights Absolutism vs. Child Rights to Education & Protection*, 62 ARIZ. L. REV. 1, 24–26 (2020) (discussing the Home School Legal Defense Association); Waddell, *supra* note 10, at 548–53 (discussing the rise of the homeschooling lobby); Rob Reich, *Testing the Boundaries of Parental Authority Over Education: The Case of Homeschooling*, *in* NOMOS XLIII, MORAL AND POLITICAL EDUCATION 275, 279 (Stephen Macedo & Yael Tamir eds., 2002) (citing homeschool advocates' legal victories post-*Yoder* as fueling the expansion of homeschooling); *see also infra* text accompanying notes 21–24 (describing HSLDA blocking proposed homeschool reform legislation in Montana, Virginia, and West Virginia).

[14] These states are Hawaii, Oregon, Maine, New York, Pennsylvania, Rhode Island, South Dakota, Vermont, and West Virginia. *See Assessment & Intervention*, COAL. FOR RESPONSIBLE HOME EDUC., https://responsiblehomeschooling.org/research/current-policy/assessment-intervention/ [https://perma.cc/P3B8-QG7A].

[15] These states are Alaska, Connecticut, Idaho, Iowa, Illinois, Indiana, Michigan, Missouri, New Jersey, Oklahoma, and Texas. *See Homeschool Notification*, COAL. FOR RESPONSIBLE HOME EDUC., https://responsiblehomeschooling.org/research/current-policy/notification/ [https://perma.cc/X8DR-HQ35].

[16] *See id.*

[17] These states are Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada,

The remaining ten states require parents to have some form of educational qualifications,[18] but in five of these states, parents can easily bypass the requirements through mechanisms like religion exemptions, umbrella schools, supervision by certified teachers, and superintendent waiver of educational requirements.[19] This lack of regulation leaves homeschooling parents with little accountability for their children's education. Homeschooled children may not receive adequate training in basic subjects from a person with the skills to teach them, but states often find themselves limited in their ability to monitor the academic development of these children.

Though advocates have tried to call attention to these problematic aspects of homeschooling, parents' rights lobbyist groups have continuously blocked efforts to bring about any widespread change. In 2005, for example, the Montana legislature considered a bill that would have required better academic record-taking, increased requirements for parent-teachers, and instituted national standardized tests for homeschooled students in the fourth, eighth, and eleventh grades.[20] The Home School Legal Defense Association (HSLDA), however, mobilized homeschooling parents to block the bill, leaving only the bill's sponsor to push the bill to a floor vote.[21] Likewise, in 2014, Virginia Delegate Thomas Rust proposed homeschool reform legislation that would empower school boards to monitor for educational neglect in homeschool families exempted from public schooling requirements under a Virginia religious exemption statute.[22] This proposed legislation similarly failed after HSLDA emailed their members claiming that Delegate Rust was trying to deprive parents of religious and parental rights.[23] More recently, in 2020, HSLDA lobbied against a West Virginia law that would have restricted child abusers from homeschooling children.[24] The

New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Utah, Vermont, Wisconsin, and Wyoming. *Parental Qualifications*, COAL. FOR RESPONSIBLE HOME EDUC., https://responsiblehomeschooling.org/research/current-policy/parent-qualifications/ [https://perma.cc/VF6F-DUSD].

[18] These states are Georgia, New Mexico, North Carolina, North Dakota, Pennsylvania, South Carolina, Tennessee, Virginia, Washington, and West Virginia. *Id.*

[19] *Id.*

[20] Waddell, *supra* note 10, at 551 (citing Quality Home School and Children Protection Act, S. 291, 59th Leg. (Mont. 2005)).

[21] *Id.* at 551–52.

[22] Green, *supra* note 11, at 1115–16.

[23] *Id.* at 1116.

[24] Steven Allen Adams, *Bipartisan Compromise Allows House to Pass Raylee's Law*, INTELLIGENCER (Feb. 28, 2024), https://www.theintelligencer.net/news/top-headlines/2024/02/bipartisan-compromise-allows-house-to-pass-raylees-law/ [https://perma.cc/DA3Z-UZWF]; Jordan

law, named Raylee's Law after an eight-year-old who died at the hands of her guardian and abuser, was brought to the legislature in 2018. Raylee's Law only passed the House in 2024 after six years and many amendments.[25] The growth of homeschooling coupled with deregulation and strong opposition to re-regulation attempts demonstrates a need to find alternate routes for children to opt into public schooling.

II. WHY MIGHT CHILDREN SEEK OUT PUBLIC EDUCATION?

Children may want to attend public school against their parents' wishes for many reasons—ranging from a desire for educational and social opportunities to escaping abuse and maltreatment at home. None of these reasons suggest that the American education system must foreclose on the option of homeschooling education. Homeschooling benefits many families, allowing parents to customize education to their children's specific needs. Still, the benefits of a public education discussed below explain why a rational minor might prefer a public education despite his or her parents' objections.

A. Public Schools May Provide Minors Access to Higher Quality Education

Children may want to attend public school for the educational benefits. Though academic success or failure for homeschooled children is not well studied, they may receive a worse education than they would through traditional schooling.[26] Many states do not require registration or evaluation of homeschoolers' performances, which allows the academic progress of these children to go unassessed.[27] Of the studies that do observe homeschooled children, many use an unrepresentative sample size.[28] Often

Hatfield, *Some Homeschool Advocates Speak Out Against Raylee's Law*, REG.-HERALD (Feb. 2, 2020), https://www.register-herald.com/news/some-homeschool-advocates-speak-out-against-raylees-law/article_b1f03664-70fe-5e2d-9363-5fa67f326c45.html [https://perma.cc/LN84-MVEE].

[25] Amelia Ferrell Knisely, *'We're Standing Up for Them:' House Passes Bill that Would Bar Homeschooling in Child Abuse Cases*, W. VA. WATCH (Feb. 27, 2024, 4:42 PM), https://westvirginiawatch.com/2024/02/27/were-standing-up-for-them-house-passes-bill-that-would-bar-homeschooling-in-child-abuse-cases/ [https://perma.cc/NEV8-BWB2].

[26] *See* Sharon Green-Hennessy, *Homeschooled Adolescents in the United States: Developmental Outcomes*, 37 J. ADOLESCENCE 441 (2014) (demonstrating that homeschooled adolescents were two to three times more likely than public school students to report being behind a grade level).

[27] Bartholet, *supra* note 13, at 20 (2000).

[28] Homeschool studies are skewed, either purposely or because of the available, visible homeschooled population. First, homeschool advocacy groups that conduct research purposely select their samples. Dr. Brian D. Ray, who conducts many politically-motivated homeschool studies, "typically tells those who volunteer for his studies that they will be used for homeschooling advocacy and that

conducted or funded by homeschooling advocacy groups,[29] studies tend to focus on students who have taken standardized tests or applied to college—in other words, those who are unlikely to be the most at-risk homeschooled children.[30] Even studies focusing on these small subsets of successful homeschooled children, though, find that homeschooled children are less likely than their public school peers to enter and graduate from a four-year college.[31] Moreover, studies show a sizeable educational disparity between children subject to different types of home education: children receiving unstructured home education score significantly lower on educational assessments than their public school peers.[32] Because homeschooled children are so under-researched and under-observed, there is no guarantee that homeschooled children receive a comparable education to children in public schools.

Anecdotally, homeschooled children have historically sought out public schooling for a better education. Josh Powell, a child homeschooled because of his parents' religious beliefs, petitioned local officials to allow him to enroll in public school because he feared he was "missing something fundamental" that children in the Virginia public schools were learning.[33] Powell was correct about his suspicions: unlike his public school peers, Powell could neither solve basic algebra problems nor write an essay by the time he reached high school age.[34] Powell, now a college graduate, stated

homeschooling leaders urge parents not to participate in research unless it is sponsored by advocacy groups." *Id.* at 25. Second, even for scholars who attempt to conduct nonpolitically motivated studies, it can be hard to access a representative population of homeschooled children. As discussed in Part I, many states do not require registration of homeschooled children and even for those that do, many parents homeschool to isolate their children from the outside world, and so are unlikely to participate in social science research. Researchers who seek to study this population will only be able to access those homeschoolers that "emerge from isolation to do things like take standardized tests, apply to college, or attend college." *Id.* at 20.

[29] Most of the alleged research about homeschooling is "advocacy masked as social science." *Id.* These studies are funded and conducted by homeschool advocacy groups, such as the Virginia-based HSLDA.

[30] *Id.* at 21.

[31] *Id.* at 21–22.

[32] *Id.* at 22 (citing Sandra Lyn Martin-Chang, Odette Noella Gould, & Reanne E. Meuse, *The Impact of Schooling on Academic Achievement: Evidence from Homeschooled and Traditionally Schooled Students*, 43 CANADIAN J. BEHAV. SCI. 195, 200 (2011)); *see also* Robert J. Kunzman & Milton Gaither, *Homeschooling: An Updated Comprehensive Survey of the Research*, 9 J. EDUC. ALTS. 253, 271 (2020) (Multiple studies show that homeschoolers perform less well than traditionally-schooled students in math).

[33] Susan Svrluga, *Student's Home-Schooling Highlights Debate Over Va. Religious Exemption Law*, WASH. POST (July 28, 2013, 8:55 PM), https://www.washingtonpost.com/local/students-home-schooling-highlights-debate-over-va-religious-exemption-law/2013/07/28/ee2dbb1a-efbc-11e2-bed3-b9b6fe264871_story.html [https://perma.cc/GQ6A-PL6U].

[34] *Id.*

that he "wonders how much more he could have accomplished if he hadn't spent so much time and effort catching up" to his non-homeschooled peers.[35] Sierra S., another homeschooled child, said her homeschooled education made her feel stupid and that she often "worried about not being ready for college."[36] Although they expressed concerns about their education, neither Josh nor Sierra had access to an avenue by which they could override their parents' decision to homeschool. As this Essay suggests, providing a pathway to public education would likely have made them feel more prepared to participate in society as adults.

B. Public Education May Provide Minors with Social Benefits

Children may also want to attend public school for socialization purposes. Unlike homeschooling, public school provides the benefit of a diverse student body.[37] A study of 3,000 homeschooled children found that they emerge with

> significantly different levels of civic engagement and well-being than public schoolers. They were less likely to volunteer and were less politically engaged. They reported significantly lower levels of well-being and social trust. They reported having a less strong direction in life or sense of purpose, and a greater sense of helplessness in dealing with life problems. They divorced at higher rates. Religious homeschoolers were more likely than public schoolers to feel that the dominant U.S. culture was hostile to their moral values and to support a gendered division of labor within the home.[38]

Often, parents homeschool to protect their children from the differing perspectives they would encounter at school. Religious objectors to public education cite exposure to worldly views as a reason they choose to homeschool their children.[39] For example, Bobby and Esther Riddle were biblical Christians who removed their children from public school to "save" them.[40] The Riddles believed public school children would be a bad influence on their children; they felt the values of their sect of Christianity were "at odds[] with the values of the world" and did not want their children exposed

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[35] *Id.*

[36] *Sierra S.: 'My Mom . . . Was Obviously Overwhelmed'*, COAL. FOR RESPONSIBLE HOME EDUC. (2016), https://responsiblehomeschooling.org/sierra-s-s-story/ [https://perma.cc/MBH4-4QN6].

[37] *See* Steven H. Shiffrin, *The First Amendment and the Socialization of Children: Compulsory Public Education and Vouchers*, 11 CORNELL J.L. & PUB. POL'Y 503, 514 (2002).

[38] Bartholet, *supra* note 13, at 22 (citing RAY PENNINGS & KATHRYN WEISS, CARDUS EDUCATION SURVEY: PHASE 1 REPORT (Aug. 16, 2011), https://www.cardus.ca/research/education/research-report/cardus-education-survey-phase-i-report-2011/ [https://perma.cc/4X4K-R2ZY]). This study uses a more representative sample than the studies criticized above.

[39] *See* Ross, *supra* note 5, at 1000.

[40] State v. Riddle, 285 S.E.2d 359, 361 (W. Va. 1981).

to people with differing values.[41] Likewise, the parents in *Yoder* cited the fact that "high school tends to emphasize . . . social life with other students" as one of many reasons compulsory education beyond the eighth grade was contrary to Amish religion and values.[42] While some parents may want to shelter their children from diverse views, their children may want to break out from this bubble by attending public school.

C. Public School Helps Address Abuse and Maltreatment

Children may also want to attend public school to avoid abuse or maltreatment, as public school teachers[43] are mandated reporters.[44] They must alert Child Protective Services (CPS) with any suspicions of child abuse or neglect, and once reported, CPS can take steps to prevent harm to the child.[45] Teachers are often well-situated to notice when a child is being mistreated at home because they spend extensive time with their students. Indeed, in 2016, education personnel generated the highest percentage of child maltreatment reports.[46] In a homeschool environment, children do not regularly interact with any adult who is a mandated reporter.[47] In fact, there is evidence that some families choose homeschooling to avoid mandated reporters and thus avoid intervention by CPS.[48] One particularly jarring study showed that, of the children withdrawn from six Connecticut school districts over a three-year period, more than one-third belonged to families with at least one prior CPS report of abuse or neglect and one-fourth lived in families with multiple prior reports.[49] These statistics are particularly horrifying

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[41] *Id.*

[42] Wisconsin v. Yoder, 406 U.S. 205, 211 (1972).

[43] In addition to teachers, mandated reporters can include school counselors, teachers, school administrators, nurses, and athletic trainers. *See Mandated Reporters are Required by Law to Report*, MICH. DEP'T OF HEALTH & HUM. SERVS., https://www.michigan.gov/mdhhs/adult-child-serv/abuse-neglect/childrens/mandated-reporters/mandated-reporters-list [https://perma.cc/6Z79-EKP2].

[44] *See Policies and Procedures for Mandated Reporting*, REMS TECH. ASSISTANCE CTR., https://rems.ed.gov/ASM_Chapter2_Reporting.aspx [https://perma.cc/M7U9-SEEL].

[45] *Id.* (advising that in most states mandatory reporters are required to report suspected misconduct to CPS).

[46] Bartholet, *supra* note 13, at 4 n.9 (citing U.S. DEP'T OF HEALTH & HUM. SERVS., ADMINISTRATION CHILDREN, YOUTH, AND FAMILIES, CHILD MALTREATMENT 2016 ix–x (2017), https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2016.pdf).

[47] *Id.* at 14.

[48] *Id.*

[49] OFF. OF THE CHILD ADVOCATE FOR THE STATE OF CONN., EXAMINING CONNECTICUT'S SAFETY NET FOR CHILDREN WITHDRAWN FROM SCHOOL FOR THE PURPOSE OF HOMESCHOOLING—SUPPLEMENTAL INVESTIGATION TO OCA'S DECEMBER 12, 2017 REPORT REGARDING THE DEATH OF MATTHEW TIRADO 6 (2018).

considering previous CPS reports are the best predictor of future child abuse or neglect.[50]

Many of the worst cases of child abuse involve homeschooled children. One study of child torture found that 47% of school-aged victims had been removed from school to be homeschooled, and another 29% were never enrolled in school at all.[51] Anecdotally, some of the most infamous child abuse cases concerned homeschooled children. For example, the Turpin children—whom police found bruised, malnourished, and shackled to beds—were homeschooled in a state that did not require assessments or updates on the children's academic progress.[52] Likewise, Stoni and Stephen Berry were withdrawn from public school before their untimely deaths.[53] The two children were burned, beaten with wooden planks, and killed before their bodies were placed in their mother's deep freezer.[54] In Michigan, where they lived, there was no obligation to notify the school district of plans to homeschool, and their mother never submitted any documentation before pulling their children out of school.[55] Unfortunately, stories like this are not one-off incidents.

Children living under abusive or neglectful conditions may want to attend public school to avoid poor conditions at home. In her book, *Educated*, Tara Westover describes asking her father if she can attend public school to escape the abuse she faced at home, but her parents denied her request.[56] Public school also provides access to free meals and other resources that these children cannot get at home. Currently, children like Tara are left to suffer abuse or neglect at home without any way to exert their interest in attending public education.

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[50] Bartholet, *supra* note 13, at 16 (citing Emily-Putnam Hornstein, *Report of Maltreatment as a Risk Factor for Injury Death: A Prospective Birth Cohort Study*, 16 CHILD MALTREATMENT 163, 163, 171–72 (2011)).

[51] *Thirteen Starved, Chained California Children Were Homeschooled*, COAL. FOR RESPONSIBLE HOME EDUC. (Jan. 16, 2018), https://responsiblehomeschooling.org/thirteen-starved-chained-california-children-were-homeschooled/ [https://perma.cc/NFF6-FA5D].

[52] *Id.*

[53] Peter Jamison, *What Home Schooling Hides: A Boy Tortured and Starved by his Stepmom,* WASH. POST (Dec. 2, 2023, 7:00 AM), https://www.washingtonpost.com/education/interactive/2023/homeschooling-child-abuse-torture-roman-lopez/ [https://perma.cc/K86Y-M997].

[54] *Id.*

[55] Gus Burns, *Surviving Children Say Detroit Mom Tortured Them for Years Before Killing and Storing Siblings in Freezer*, MLIVE (Mar. 27, 2015, 5:50 PM), https://www.mlive.com/news/detroit/2015/03/surviving_children_say_detroit.html [https://perma.cc/27UK-2F9N].

[56] Bartholet, *supra* note 13, at 4 (citing TARA WESTOVER, EDUCATED (2018)).

III. AVENUES FOR CHILDREN TO ASSERT RIGHTS

Children who want to go to public school have no legal remedy to enter the school system against their parents' will.[57] There is also very little scholarship that explores how children can assert their right to public education.[58] Part III of this paper explores the possibilities under both the federal and state constitutions for children to assert their right to public school education. This part ultimately concludes that children should be able to assert their right to education under state constitutions using *Bellotti v. Baird*'s two-part framework.

A. Federal Constitutional Rights to Education Are Unlikely to Be Recognized

Justice Douglas's dissent in *Yoder* explains that the U.S. Constitution vests parents with substantial rights over their children's upbringing without giving much recourse to children who disagree with their parents.[59] The Court has found that the substantive element of the Due Process Clause of the Fourteenth Amendment confers this right onto parents, protecting their liberty to "direct the upbringing and education of children under their control."[60] For these fundamental rights, the government must show that a sufficient substantive purpose justifies any deprivation of the right.[61] Just like the right to marriage or the right to contraception, the government must overcome heightened scrutiny when passing laws that may impinge on a parent's right to control a child's upbringing.

Two landmark *Lochner*-era Supreme Court cases established this connection between parental rights and education: *Meyer v. Nebraska*[62] and *Pierce v. Society of Sisters*.[63] *Meyer* involved a Nebraska statute that required schools to teach all subjects in English and forbade instruction in foreign

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[57] *See* Pierce v. Soc'y of Sisters, 268 U.S. 510, 534–35 (1925).

[58] To our surprise, we found very few scholarly works addressing how we might recognize a child's interest in her own education. In an article that is now nearly thirty years old, Professor James Dwyer raises this possibility in the context of equal protection for religious-exempt children. James G. Dwyer, *The Children We Abandon: Religious Exemptions to Child Welfare and Education Laws as Denials of Equal Protection to Children of Religious Objectors*, 74 N.C.L. REV. 1321, 1322 (1996); *see also, e.g.*, Bartholet, *supra* note 13, at 66–67; Green, *supra* note 11, at 1122 (focusing on similar contexts and state regulatory schemes).

[59] Wisconsin v. Yoder, 406 U.S. 205, 242 (1972) (Douglas, J., dissenting) ("Where the child is mature enough to express potentially conflicting desires, it would be an invasion of the child's rights to permit such an imposition without canvassing his views.").

[60] Pierce v. Soc'y of Sisters, 268 U.S. 510, 534–35 (1925).

[61] Erwin Chemerinsky, *Substantive Due Process*, 15 TOURO L. REV. 1501, 1501 (1999).

[62] Meyer v. Nebraska, 262 U.S. 390, 396 (1923).

[63] *Pierce*, 268 U.S. at 529.

languages.[64] The Court held that the law "attempted materially to interfere with . . . the power of parents to control the education of their own."[65] Building on this parental rights theory, the Court in *Pierce* held that states may not force children to attend primary public schools.[66] *Pierce* involved the Compulsory Education Act of 1922, an Oregon law that required all children to attend public schools through the eighth grade.[67] One of the dispositional arguments in the case was that the law interfered with the rights of parents to direct their child's upbringing and education.[68]

Because substantive due process gives parents a right to control their children's upbringing, the Court could have found that children have a right to quality education under this same clause. The Court, however, declined to acknowledge the existence of this right in *San Antonio Independent School District v. Rodriguez*, when they held that education is not a "fundamental" equal protection right.[69] Further, because the Roberts Court has shown skepticism toward the substantive due process doctrine and accordingly reined in its use, the current Court is unlikely to use substantive due process to recognize a child's right to an education.[70] A federal constitutional analysis of children's rights is unlikely to be the most successful avenue for expanding children's access to education in the current legal climate.[71]

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[64] *Meyer*, 262 U.S at 397.

[65] *Id.* at 401.

[66] *Pierce*, 268 U.S. at 534.

[67] *Id.* at 530–31.

[68] *Id.* at 534–35.

[69] 411 U.S. 1, 37 (1973).

[70] *See* Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 231 (2022) (holding that the right to an abortion is not a substantive due process right, and overruling *Roe v. Wade* and *Planned Parenthood v. Casey*); *see also* Washington v. Glucksberg, 521 U.S. 702, 728 (1997) (holding that there is no fundamental right to suicide).

[71] Equal protection may also be an avenue to explore in the future. The Court has found in *San Antonio v. Rodriguez* that education is not a "fundamental right" triggering strict scrutiny under equal protection doctrine, 411 U.S. 1, 37 (1973), but in *Plyler v. Doe*, the Court applied higher scrutiny to a law which required undocumented aliens to pay for their schooling, noting that the innocence of the children and the importance of basic education were important to the outcome of the case. 467 U.S. 202, 233–34 (1982). Indeed, while the *Rodriguez* case did not guarantee an equal education across students of all economic classes, the Court did emphasize that there might be a right to a bare minimum of education, which might be of assistance to homeschooled children with no education. *Rodriguez*, 411 U.S. at 36–37. For an argument on how the Equal Protection Clause can be used to prevent religious parents from receiving exemptions, *see* Dwyer, *supra* note 58.

B. State Constitutions Provide A Better Avenue for Rights to Education

Unlike the federal Constitution, state constitutions have established a tradition of extensive positive rights.[72] Every state has some constitutional guarantee for a child's right to education, whether through a guarantee to provide all students "'an adequate public education,' 'a thorough and efficient education,' 'a high-quality system of free public schools,' or a 'sound basic education.'"[73] Many state constitutions also include other positive rights that can help homeschooled children pursue public education, like the guarantee of an "opportunity for the fullest development of an individual."[74] State constitutions are particularly ripe avenues to enforce these rights because states can choose to recognize and protect more rights than the U.S. Constitution, even when the language used in the two documents is identical.[75]

C. The Extended Bellotti Test Should be Applied in the Education Context

For state constitutional rights to mean anything, they need to be enforced. Homeschooled children have no avenue to assert their right to an adequate education, even though state constitutions may purport to protect this right. Under the current regime, "[h]omeschooling is a realm of near-absolute parental power. This power is inconsistent with important rights supposedly guaranteed to children under state constitutions and state legislation throughout the land."[76]

In fashioning a test that courts could use to determine whether a child should be able to exercise his or her own right to education against their parents' wishes, courts must balance a "triangle of rights."[77] Here, as with any triangle, there are three sides: on one, the interests of the state in an educated population; on the second, the independent interest of the child in their education; and on the third, the parents' right to control the child and his or her upbringing.[78] Naturally, when a child seeks to assert his or her rights over the desires of the parent, these sides will be at odds with one another. To resolve this conflict, courts should apply the procedure

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[72] Bartholet, *supra* note 13, at 69 (citing EMILY J. ZACKIN, LOOKING FOR RIGHTS IN ALL THE WRONG PLACES: WHY STATE CONSTITUTIONS CONTAIN AMERICA'S POSITIVE RIGHTS 1–17 (2013)).

[73] *Id.* at 71 (quoting Michael A. Rebell, *The Right to Education in the American State Courts*, *in* THE FUTURE OF ECONOMIC AND SOCIAL RIGHTS 141 (Katharine G. Young ed., 2019)).

[74] *Id.* at 72.

[75] *Id.* at 70 (citing Sarah Ramsey & Daan Braverman, *Let Them Starve: The Government's Obligation to Children in Poverty*, 68 TEMP. L. REV. 1607, 1628–31 (1995)).

[76] Bartholet, *supra* note 13, at *3.

[77] Alison M. Brumley, *Parental Control of a Minor's Right to Sue in Federal Court*, 58 U. CHI. L. REV. 333, 335 (1991).

[78] *Id.* at 333.

established by the Supreme Court in *Bellotti v. Baird* to allow children to bypass parental control over their rights.[79]

In *Bellotti*, the Court decided that if a state requires parental consent for minors seeking abortions, the Constitution requires an "alternative procedure whereby authorization for the abortion can be obtained" in the absence of such consent.[80] Under the ruling, a pregnant minor is entitled to a judicial proceeding to show: "(1) that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents' wishes; or (2) that even if she is not able to make this decision independently, the desired abortion would be in her best interests."[81] Thus, the *Bellotti* framework allows a mature minor to pursue litigation over a matter normally within the sphere of parental control.

In her 2015 Note, *Educational Empowerment: A Child's Right to Attend Public School*, Carmen Green first proposed applying the *Bellotti* framework in the educational context for homeschooled children who wish to assert their right to a public education.[82] Minors could, under *Bellotti*, petition the court to attend public school against their parents' wishes. This Essay builds on Green's proposal, suggesting how the application of *Bellotti* could work in practice. Much like *Bellotti*, a two-part test would apply for children seeking to attend public school: (1) If a minor can establish that he or she is mature enough to understand the consequences of attending public school, the court can choose to subvert the parents' liberty right and authorize the child to enroll in public school; and (2) if the minor is not able establish maturity, the court would consider whether attending public school over the parents' wishes is in the child's best interest.[83] Below, we discuss how courts can apply these two pathways for children to assert their state law right to public education.

1. Assessing Maturity in the Educational Context

Consistent with *Bellotti*, courts can establish maturity on a case-by-case basis, with the burden on the minor to establish that he or she is mature enough to make decisions about his or her education. Courts are competent to evaluate the maturity of minors, as shown in abortion cases under *Bellotti*.[84] To assess maturity, courts have considered testimony from the child and the parents, witnesses familiar with the child and their maturity

[79] Bellotti v. Baird, 443 U.S. 622, 643 (1979).

[80] *Id.*

[81] *Id.* at 643–44.

[82] Green, *supra* note 11.

[83] For purposes of this paper, this test is referred to as the "extended *Bellotti*" framework or test.

[84] *See infra* Section I.D.

(such as teachers and psychiatrists),[85] and experts (often doctors familiar with the child's maturity in the medical context).[86]

While proving their maturity, minors would also have to show that they understand the consequences of their decision to attend public school against their parents' wishes. For example, courts must consider whether the minor is prepared to coordinate transportation to school without parental support. Minors also must prove that they are willing to lose parental support altogether, not just regarding educational decisions. Parents might have extreme reactions to children challenging them and their beliefs about homeschooling in court and may choose to disown or significantly decrease support for their child. Still, if a mature minor can meet this burden and show that they understand and accept the collateral effects of their desire to attend public school, courts should allow them to do so over their parents' objections.

2. Assessing Best Interests for Immature Minors

If a minor cannot establish that she is mature, she may still proceed with litigation if she can show that the lawsuit is in her best interests. Thus, even if children cannot prove they are mature enough to fully contend with the consequences of attending public school over their parents' wishes, they may still show that attending public school is in their best interests. This best-interests analysis would not be a complete innovation in the law: it is already "the governing standard with regard to children in family law cases involving adoption, foster care, and custody after divorce."[87] Courts are skilled at applying the best-interests analysis in family law situations and would therefore be able to utilize this test when applying the *Bellotti* framework.

The best-interests analysis in the context of a child's right to public education would not solely consider the interests of the child and the judgment of the court. Under this framework, the parents' interests would be highly influential in what the court finds to be in a child's best interests. This is particularly true in the education context because enrolling a child in public school against their parents' wishes will naturally have extreme effects on the family dynamic.

Incorporating the parents' views into this analysis resolves one of the weaknesses identified in minor-consent cases since *Bellotti*: courts solely considering the child's interests. In the alternative proceedings established

[85] *In re* E.G., 549 N.E.2d 322, 323–24 (Ill. 1989).

[86] Expert testimony has typically been used in the medical context. *See, e.g.*, *id.* at 323 (describing the testimony of a doctor who was impressed with the child patient's maturity and sincerity of beliefs).

[87] Brumley, *supra* note 77, at 354.

by *Bellotti*, the courts intentionally left the parents unaware of the proceedings to protect the pregnant child's privacy. Thus, it was often the case that "[t]he proceedings before the judge in the abortion decisions [were] uncontested."[88] Consequently, because the parents' views are not heard and "only the minor's views are presented, the judge has little basis upon which to rule that an abortion is not in the minor's best interests."[89] Though some might be worried about minors making such important decisions without a parent's guiding hand, abortion is simply too private a matter to seriously weigh parental wishes.

In the education context, though, there are no similar privacy interests that restrict the parents' ability to voice their concerns. Privacy concerns in the abortion context did not just cause theoretical concerns, but practical concerns as well. Application of the *Bellotti* framework led the Minnesota court system to grant minors' petitions for judicial consent to abortions in 3,558 out of 3,573 cases, a statistic that raises doubts about the best-interests inquiry for those concerned about courts supplanting the parental role.[90] In the education context, though, the court can listen to the views of both the minor and the parents before making an informed decision about the child's best interests that balances both views. So, although this proposed framework borrows from the *Bellotti* framework, the educational context allows this best-interests analysis to escape some of the more controversial applications of *Bellotti*.

A best-interests analysis may seem difficult for courts to implement because of the lack of bright-line rules. This is undeniably a challenge to this framework. In an arena as important as children's education, though, there are no easy answers—courts will have to make tough decisions to balance the competing rights of parents and children. While the best-interests test is imperfect, it provides the best solution for courts to consider the triangle of rights.[91]

3. The Triangle Preserved: Balancing Parents' and Children's Rights

One of the key concerns about the *Bellotti* test is that the proposed framework limits a parent's liberty to oversee the upbringing of their children. But not every rebellious teen may lash out against his or her parents

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[88] *Id.* at 355.

[89] *Id.*

[90] *Id.* at 355 n.93 (citing Linnet Myers, *Pregnant Teens Face Parents—Emotions Strong over Requiring Notice Before Abortion*, CHI. TRIB., July 5, 1990, at 1:2).

[91] Courts already use the best-interests analysis in a variety of family law contexts, including deciding child custody arrangements. *See, e.g.*, VA. CODE § 20-24.3 (listing ten factors courts may consider when determining child custody arrangements).

in court. Even if children can get into court, they still face the challenge of proving maturity or proving that superseding their parents' wishes and enrolling in public education is in their best interests. And, under the best-interests analysis, the parents' views will heavily sway what the court finds to be in a child's best interests. For these reasons, it is likely that extending the *Bellotti* framework to the education context will have only a minor effect on parents' ability to raise their children as they see fit. Yet for children who prevail, the effect of a positive decision is colossal. For these children, a decision in their favor promises increased educational and career opportunities, new and different friends, and even the potential to escape abuse.[92] The benefits for these children outweigh any intrusion into parents' rights.

D. The Extended Bellotti Test Works Outside the Abortion Context

Some scholars question the applicability of the *Bellotti* framework outside the abortion context. According to these critics, "few, if any, litigation decisions involve consequences such as those as stake in *Bellotti*."[93] Even the Court in *Bellotti* appears to make such an argument, reasoning that there are "few situations in which denying a minor the right to make an important decision will have consequences so grave and indelible" as abortion.[94] The Court distinguished the urgency of a decision about abortion from that of marriage[95] and waiver of counsel in delinquency proceedings, where parental rights absolutely control,[96] because pregnant minors cannot wait until they are adults to abort.[97] A lack of public education, though, is similarly time-sensitive. As the Court in *Plyler v. Doe* stated, depriving children of education creates "lifetime hardship."[98] The stories of Josh Powell[99] and Sierra S.[100] anecdotally validate this claim, indicating that the

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[92] *See supra* Part II.

[93] Brumley, *supra* note 77, at 349.

[94] Bellotti v. Baird, 443 U.S. 622, 642 (1979).

[95] *Id.* at 637 n.16, 642.

[96] *Id.* at 637 n.16.

[97] *Id.* at 642 ("The pregnant minor's options are much different from those facing a minor in other situations, such as deciding whether to marry. A minor not permitted to marry before the age of majority is required simply to postpone her decision. She and her intended spouse may preserve the opportunity for later marriage should they continue to desire it. A pregnant adolescent, however, cannot preserve for long the possibility of aborting, which effectively expires in a matter of weeks from the onset of pregnancy.").

[98] 457 U.S. 202, 223 (1982).

[99] Svrluga, *supra* note 33 ("You basically get one opportunity to [educate a child]. If you come out on the other side deficient, it's hard to make up for that.").

[100] *Sierra S.: My Mom . . . Was Obviously Overwhelmed*, *supra* note 36 ("I'm 23 and I have to learn elementary math, just so that I can qualify for high school.").

effects of a negative homeschool experience, left unchecked, cannot be rectified easily when a child turns eighteen. A "delay until the student reached majority would make the case moot," meaning that time is of the essence here—exactly like abortion cases.[101] Constitutional rights are at stake in both situations. The law would be remiss to protect the constitutional right at issue in *Bellotti*, but not the right to an education.[102]

Further, though the extension of *Bellotti* to the educational context is novel, the application of either part of the test is not. First, as mentioned above, courts apply the best interests test in many family law proceedings.[103] Second, courts have evaluated maturity in both custody and medical contexts.[104] In custody cases, courts often consider a mature minor's opinion of which parent they want to live with, defaulting to the child's view of their own best interests.[105] Courts in every state have recognized children's preferences in custody matters, and many states statutorily require courts to consider minors' custody preferences.[106] Even more, at least one court and many state statutes have allowed a child to petition the court directly to terminate his parents' rights.[107]

Likewise, courts have allowed minors to refuse or consent to medical treatment over the objections of their parents or the State. For example, in *In re Green*, the court considered a child's interest when determining whether to force the child to undergo surgery.[108] Ricky Green was a minor with non-life-threatening scoliosis, and doctors recommended surgery to fix his

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[101] Brumley, *supra* note 77, at 348.

[102] This argument does not foreclose the possibility of extending the *Bellotti* framework to non-time-sensitive situations. In fact, at least one court has allowed a minor to sue where the right at issue was not time restricted. *See* Buckholz v. Leveille, 194 N.W.2d 427, 429 (Mich. 1971) (ruling that a sixteen-year-old boy could proceed with a lawsuit challenging the constitutionality of his school's dress code even though his parents approved of the dress code and opposed his suit).

[103] *See supra* Section I.A.2; *see also, e.g.*, Jamie Miller, Haaland v. Brackeen: S*upreme Court Saves ICWA, but Native Child Welfare Still at Risk*, 30 VA. J. SOC. POL'Y & L. ONLINE 17, 33 (2023) (noting that the best interest standard applies "in most child welfare cases.").

[104] *See supra* Section I.A.1.

[105] Elizabeth S. Scott, N. Dickon Reppucci & Mark Aber, *Children's Preference in Adjudicated Custody Decisions*, 22 GA. L. REV. 1035, 1050 (1988) (describing a study that showed that nearly 90% of judges surveyed agreed that the child's parent preference in child custody cases is either dispositive or highly influential).

[106] *Id.* at 1035 (citing CAL. CIV. CODE § 4600 (West Supp. 1988) (current version at CAL. FAM. CODE § 3042 (West Supp. 2022)); *see also* David M. Siegel and Suzanne Hurley, *The Role of the Child's Preference in Custody Proceedings*, 11 FAM. L.Q. 1, 1–2 (1977) (noting that courts have long recognized the child's preference in custody disputes).

[107] *See* Jay C. Laubscher, *A Minor of 'Sufficient Age and Understanding' Should Have the Right to Petition for the Termination of the Parental Relationship*, 40 N.Y.L. SCH. L. REV. 565, 567 (1996) (citing *Appeal in Pima County Juvenile Severance Action No. S-113432*, 872 P.2d 1240, 1243 (Ariz. Ct. App. 1993)).

[108] 292 A.2d 387, 392 (Pa. 1972).

condition.[109] While Ricky's mother consented to the surgery, she was a Jehovah's Witness and refused to allow blood transfusions during the surgery due to her religious beliefs.[110] The State of Pennsylvania brought neglect proceedings against the mother to guarantee that Ricky Green could have the procedure with blood transfusions.[111] The Supreme Court of Pennsylvania's ruling considered all sides in the triangle of interests: the State's, the child's, and the parent's. The court found that the State's interest did not outweigh the parent's interest because the child's injury was non-life-threatening.[112] Yet instead of assuming that his parent's interest was identical to Ricky's interest, the court remanded the case to have a hearing on "Ricky's wishes" regarding the procedure.[113] Ultimately, Ricky decided he did not want to undergo the surgery at all, and the Supreme Court of Pennsylvania respected his wishes. Courts can similarly consider minors' views in the education context.

Even further, the judicial system already recognizes that minors can be evaluated on a "sliding scale of maturity."[114] In criminal courts, for example, children under eighteen are often prosecuted as adults. All fifty states and the District of Columbia have laws that allow juveniles to be tried in adult criminal court.[115] Because of this, children as young as ten have been tried and convicted as adults, indicating that the judiciary sometimes believes minors are competent enough to be treated as adults.[116] In addition, statutes often allow children under the age of eighteen to be legally treated like adults. Children can petition for emancipation and be declared legally free from their parents' or guardians' control, typically beginning at sixteen years of age and even as early as fourteen years of age in some states.[117] Moreover, in forty of the fifty states, children under the age of eighteen can enter into

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[109] *Id.* at 388.

[110] *Id.*

[111] *Id.* at 387.

[112] *Id.* at 392.

[113] *Id.*

[114] *See* Jonathan F. Will, *My God My Choice: The Mature Minor Doctrine and Adolescent Refusal of Life-Saving or Sustaining Medical Treatment Based Upon Religious Beliefs*, 22 J. CONTEMP. HEALTH L. & POL'Y 233, 273 (2006) (citing In re E.G., 549 N.E.2d 322, 326 (Ill. 1989)).

[115] Anne Tiegen, *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, NAT'L CONF. OF STATE LEGISLATORS (Apr. 8, 2021), https://www.ncsl.org/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws [https://perma.cc/WPQ4-Q9RY].

[116] *See Youth Tried as Adults*, JUV. L. CTR., https://jlc.org/issues/youth-tried-adults [https://perma.cc/H72Y-33CR]. *Children in Adult Prison*, EQUAL JUST. INITIATIVE, https://eji.org/issues/children-in-prison/ [https://perma.cc/MLT5-PMRP].

[117] Jade Yeban, *Selected State Minor Emancipation Laws*, FINDLAW (June 25, 2023) https://www.findlaw.com/family/emancipation-of-minors/selected-state-minor-emancipation-laws.html [https://perma.cc/N6E4-TDK2].

legally recognized marriages, showing that state legislatures have understood minors to be mature enough to make binding, life-long decisions.[118]

IV. IMPLEMENTATION CHALLENGES

Advocates seeking to employ this approach to enforcing a child's right should be wary of potential problems of putting this into practice. As evinced by children like Josh Powell and Sierra S., who desired an education but could not find the means to exert their rights, lawyers may struggle to reach children in need.[119] This is especially problematic since homeschooled children are often not registered with the state and therefore are not on lawyers' radars.[120]

Homeschooled children will have a harder time accessing courts than minors in both the medical and custody contexts. In the medical context, hospitals often contact their legal teams who will initiate legislation.[121] In the custody context, minors petitioning to have their best interests heard are already in court through their parents' initiative. Ideally, homeschooled children would have similar access to adults who can legally advocate for them—politicians could implement regulations that require more frequent check-ins with state officials. These check-ins would provide children who wish to be enrolled in public school access to adults who can help connect them to the resources necessary to assert their rights to public education. It would also allow the state to monitor homeschooled children's education and intervene if the education is inadequate. Legislative action may be the most effective way to both balance the rights of parents, children, and the state while also protecting children. It is unlikely, though, that politicians will take action to increase homeschool monitoring, as shown by current state legislatures' lax requirements on homeschool education.[122] Still, this challenge illustrates the importance of adopting the *Bellotti* framework in the education context. Homeschooled children often do not encounter adults—medical professionals, social service workers, or mandated reporters—who could advocate for their interests. Because children will struggle to access

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[118] Mariel Padilla, *The 19th Explains: Why Child Marriage is Still Legal in 80% of U.S. States*, 19TH (July 5, 2023, 9:00 AM) https://19thnews.org/2023/07/explaining-child-marriage-laws-united-states/ [https://perma.cc/7QW9-Z4Q6].

[119] *See supra* notes 33–36 and accompanying text.

[120] *See supra* Part I.

[121] *See* Will, *supra* note 114 at 263–289 (collecting cases where hospitals instigated litigation when concerned about decisions regarding a child's health).

[122] *See supra* notes 13–20 and accompanying text.

courts, the *Bellotti* framework will ensure their desires and interests are heard when they do eventually find their way into court.

This framework may also be challenging in practice because it requires children to openly defy their parents in court. First, the very act of challenging their parents in court may be psychologically damaging for children.[123] Second, it may be hard to implement the extended *Bellotti* test in a manner that retains normalcy and safety for a child who goes against their parents' wishes in courts. Parents may experience extreme anger toward their children for seeking judicial intervention and withdraw their financial or emotional support. This is especially true for parents who believe a public school education challenges their religious and moral beliefs. Parent-child strain is an almost-inevitable challenge that will stem from applying the *Bellotti* framework. This strain, though, would be inevitable in any approach that requires children to go against their parents' wishes in court. Mature minors and courts applying the best interests test must evaluate the benefits of public education against potential parental pushback.

Additionally, application of the two-prong test can be difficult because there are no bright-line rules for determining either maturity age or best interests. There are no defining characteristics that make an eighteen-year-old distinguishably different from a seventeen-year-and-eleven-month-old, so the court must engage in a difficult analysis to determine maturity. While experts or witnesses can testify to the child's maturity level, pinning down whether their maturity is that of an eighteen-year-old will be a challenge. This is why the second prong of the test is also necessary. If maturity is too difficult to prove in a given case, or if the child fails to prove it, the court will instead engage in an evaluation of the child's best interests.

As discussed above, determining what course of action is in the best interest of the child will also be difficult. Luckily, courts have some experience making these kinds of determinations.[124] Still, this Essay recognizes that the proposed test is mushy and leaves room for judicial discretion. But a mushy standard is better than no standard. Until courts or legislatures develop a better system for addressing children's educational concerns, courts should apply this proposed framework to ensure that minors' right to an education is protected.

This Essay acknowledges the various problems inherent in this proposal. Yet overcoming these challenges when taking the proposal from

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[123] *Cf.* Cynthia Starnes, *Swords in the Hands of Babes: Rethinking Custody Interviews After* Troxel, 2003 WIS. L. REV. 115, 122 (2003) (recognizing the "trauma of open testimony and cross-examination" that children who must testify in court during custody proceedings undergo).

[124] *See supra* Section I.A.2 (stating that courts apply the best-interests tests in many contexts throughout family law).

theory to practice is necessary to ensure that minors do not have to face the permanent consequences of education deprivation.

CONCLUSION

This legal framework could benefit many of the over one million homeschooled children who seek public education. By acknowledging and applying the extended *Bellotti* test, courts could help protect the educational rights of children and mitigate some of the harmful effects of state homeschooling deregulation. Legal and policy advocates alike should push for legislatures to adopt our two-part test, for courts to implement it, and for continued dialogue on this important topic to ensure that no child is denied access to education.