

Educational Empowerment: A Child’s Right to Attend Public School

CARMEN GREEN*

In some parts of the world, students are going to school every day. It’s their normal life But in other part[s] of the world, we are starving for education . . . it’s like a precious gift. It’s like a diamond.

–Malala Yousafzai, 2014 Nobel Peace Prize Winner¹

TABLE OF CONTENTS

INTRODUCTION	1090
I. THE HOMESCHOOLING STATUS QUO	1095
A. A DEREGULATION CRISIS	1095
B. INEFFECTIVE SOCIAL SERVICES	1102
1. Is Educational Neglect Included in the Definition of Illegal Child Neglect?	1103
2. Has Educational Neglect by Homeschooling Parents Been Specifically Legalized?	1104
3. Do Social Services Have the Ability to Adequately Investigate Educational Neglect?	1105
4. Who Can Initiate Child Abuse and Neglect Proceedings?	1106
C. EDUCATIONAL NEGLECT OF HOMESCHOOLED STUDENTS UNDER THE CURRENT DEREGULATION REGIME	1106
D. FAILED ATTEMPTS AT LEGISLATIVE REFORM	1115
II. A CHILD’S DAY IN COURT	1121
A. THE CHILD’S RIGHT TO EDUCATION	1121

* Georgetown Law, J.D. 2014; Patrick Henry College, B.A. 2010. © 2015, Carmen Green. Special thanks to Professor Robin West for her comments, encouragement, and support in the preparation of this Note and to the many former homeschoolers, now grown, who are providing a voice for the voiceless on this issue. Thank you for the hours of conversations. You have my respect and admiration.

1. Teri Whitcraft & Muriel Pearson, *Malala Yousafzai: “Death Did Not Want to Kill Me,”* ABC News (Oct. 6, 2013), <http://abcnews.go.com/International/malala-yousafzai-death-kill/story?id=20489800>.

B. ENFORCING THE RIGHT TO PUBLIC EDUCATION 1123

C. RESPONSE TO CRITICISM: DOES A JUDICIAL BYPASS PROCEDURE VIOLATE PARENTS’ RIGHTS? 1125

D. RESPONSE TO CRITICISM: WOULD A JUDICIAL BYPASS PROCEDURE BE INEFFECTIVE? 1132

CONCLUSION 1132

INTRODUCTION

Josh Powell was fourteen years old when he realized he was falling behind academically.² Homeschooled under Virginia’s religious exemption statute,³ Powell had never seen the inside of a classroom, taken a standardized test, or had his work reviewed by a licensed teacher.⁴ Neither the state nor the local school board imposed any requirements on his parents’ homeschool program, and no professional educator had ever approved his parents’ curriculum. His parents were free to ignore subjects—such as math and science—as they saw fit, did not have to provide a minimum number of instructional hours, and did not need to demonstrate proficiency in any subject matter before they could teach it.

2. Signed Statement of Josh Powell for author (Oct. 21, 2014) (on file with author) [hereinafter Powell Statement]; *see also* Susan Svrluga, *Student’s Home-Schooling Highlights Debate Over Va. Religious Exemption Law*, WASH. POST (July 28, 2013) http://www.washingtonpost.com/local/students-home-schooling-highlights-debate-over-va-religious-exemption-law/2013/07/28/ee2dbb1a-efbc-11e2-bed3-b9b6fe264871_story.html.

3. VA. CODE ANN. § 22.1-254(B)(1) (2014). Virginia’s religious exemption statute requires school boards to exempt from compulsory school attendance “[a]ny pupil who, together with his parents, by reason of bona fide religious training or belief is conscientiously opposed to attendance at school.” *Id.* Virginia has no provision that mandates that parents obtaining a religious exemption provide an adequate, substitute education for their child. CHRISTINE TSCHIDERER ET AL., 7,000 CHILDREN AND COUNTING: AN ANALYSIS OF RELIGIOUS EXEMPTIONS FROM COMPULSORY SCHOOL ATTENDANCE IN VIRGINIA 4 (2012), *available at* http://www.law.virginia.edu/pdf/news/religious_exemption_report.pdf (“[O]nce parents in Virginia are granted a religious exemption, they are no longer legally obligated to educate their children at all. . . . While this does not necessarily mean that religiously exempted children are not receiving an education, it does mean that Virginia law contemplates and allows for this possibility.”). The Virginia Supreme Court has noted that the statute explicitly requires school boards to find that the child shares the parents’ religious beliefs before granting an exemption; however, the court has waived this requirement for children who “are of such tender years that they have not developed any religious beliefs one way or the other.” *Johnson v. Prince William Cnty. Sch. Bd.*, 404 S.E.2d 209, 211 n.5 (Va. 1991) (affirming school board’s denial of religious exemption because parents failed to demonstrate that they had a bona fide religious belief against school attendance). Despite the statute’s clear language and the Virginia Supreme Court’s assertion that school boards must determine the religious beliefs of older children before waiving the attendance requirement, seventy-six percent of Virginia school boards never even speak with the children in question. TSCHIDERER ET AL., *supra* at 26. Of the remaining school boards, few speak with the children in person. *Id.* Additionally, most religious exemptions are granted while the children are young and are never reviewed by the school board, meaning parents may obtain a permanent exemption when their children are too young to express a religious belief. *Id.* at 18, 25. Older children are, therefore, systematically denied the opportunity to be heard.

4. Powell Statement, *supra* note 2.

In fact, they did not even have to show possession of a high school diploma or its equivalent.

Homeschooling a child—even one as serious about academics as Powell proved to be—is an exhausting task, requiring the daily commitment of a stay-at-home parent for years on end. Even well-meaning parents are not always up to the task—as proved to be the case for Powell’s parents. Eventually, the stress of almost-continuous pregnancy, childbirth, and caring for small children became too much for Powell’s well-educated mother, who ultimately had twelve children.⁵ Powell’s father, who had not completed high school and was busy providing for his expanding family, was unable to make up the difference in instruction time.⁶ After receiving an excellent elementary education from his mother, Powell struggled by himself during his middle- and high-school years to work through the hodgepodge of textbooks provided by his parents. By the age of sixteen, “he had never written an essay. He didn’t know South Africa was a country. [And h]e couldn’t solve basic algebra problems.”⁷ When he asked for help, his devoutly religious mother told him to pray for the answers.⁸ His siblings fared worse. One was middle-school age and still could not read.⁹

Heather Doney was twelve years old when a neighbor boy mocked her for not knowing the multiplication tables. She can still hear him crow, “You’re going to spend your life flipping burgers!”¹⁰ For Doney, it was a moment of shocking realization: she was far behind her peers. Like Powell, Doney was homeschooled by devoutly religious parents who feared sending their children to public school. Doney’s education, however, had fallen through the cracks due to a different gap in legal protection: Louisiana’s “nonpublic school” option, by which parents can register their home as a pseudo private school and thereby avoid the assessment requirements otherwise placed on homeschooled students.¹¹ Until that point, Doney, who is the eldest of ten children, had spent

5. *Id.*

6. *Id.*

7. Svrluga, *supra* note 2.

8. *Brother Wants Parents to Stop Siblings’ Homeschooling*, NAT’L PUB. RADIO (Aug. 6, 2013, 12:00 PM), <http://www.npr.org/templates/story/story.php?storyId=209512311>.

9. Svrluga, *supra* note 2.

10. Daniel James Devine, *Homeschool Debate*, WORLD MAG. (Aug. 22, 2014, 1:00 AM), http://www.worldmag.com/2014/08/homeschool_debate_2 (international quotation marks omitted).

11. *See* LA. REV. STAT. ANN. § 17:236 (2014). Parents seeking to homeschool in Louisiana have two options. The first is a “home study” option, which requires parents to provide “a sustained curriculum of quality at least equal to that offered by public schools at the same grade level.” *Id.* § 17:236.1(C)(1). Under this option, parents must annually apply to participate in the home study program and must provide proof that the education they are providing their child is adequate. *Id.* Proof may include standardized test scores, a portfolio of the student’s work, or a statement from a licensed teacher. *Id.* Under the second option, where parents file paperwork as a “registered nonpublic school,” these protections disappear. *See id.* § 17:236(A). Nonpublic schools only have to provide 180 days of instruction (the topics this instruction should cover are not specified), and there is no method by which the state can determine whether that requirement is met. *See id.* §§ 17:236(A), 17:232(C); *Louisiana, COAL. FOR RESPONSIBLE HOME EDUC.*, <http://www.responsiblehomeschooling.org/policy-issues/state-by-state/louisiana/> (last visited Jan. 21, 2015).

most of her time caring for her younger siblings. She had never had more than an hour or two of instruction per week, had never taken a test, and often faced food insecurity because she lacked the benefit of the school lunch program that serves many children in poverty.¹² She could not tell time on an analog clock, did not know the order of the months, and had never heard of the Holocaust.¹³ To this day she does not know how she learned to read. She suspects she picked it up while her mother read to her, special attention that she received as the firstborn, before the stress of caring for multiple small children overwhelmed her mother. Doney's next oldest sibling did not learn to read until she was twelve.¹⁴

Recognizing their own need for education, both Powell and Doney decided they wanted to go to school, despite their parents' desires to the contrary. At the time, they were fourteen and twelve, respectively. They had no legal advocates and no mechanism by which to enter the school system against their parents' wishes. It is doubtful that even a report to law enforcement or social services would have been effective because their parents had not broken the law. In short, the entire educational, legal, and child protective system, which was built on the presumption of mandatory school attendance, had no response for the new challenges posed by the homeschool exceptions that were grafted onto that system over the past three decades.¹⁵

In *Wisconsin v. Yoder*, the Supreme Court ruled that Amish parents could remove their children from school after eighth grade because the Amish faith opposed formal secondary education.¹⁶ The decision was a complex analysis of the meaning of religious liberty under the Free Exercise Clause. The distinct Amish culture, rooted as it was in religious belief, played a crucial role in the decision.¹⁷ The Justices believed that Wisconsin's mandatory attendance statute was unnecessary for the protection of Amish children as they (presumably) would live their entire lives in sheltered Amish communities where an eighth grade education was more than sufficient.¹⁸ However, the record nowhere indicated whether the children agreed with their parents' religious beliefs, forcing the majority to assume that they did—a decision that troubled Justice

12. Heather Doney, *About Me*, BECOMING WORLDLY, <http://becomingworldly.wordpress.com/about-me/> (last visited Jan. 21, 2015); Michelle Goldberg, *Homeschooled Kids, Now Grown, Blog Against the Past*, THE DAILY BEAST (Apr. 11, 2013), <http://www.thedailybeast.com/witw/articles/2013/04/11/homeschooled-kids-now-grown-blog-against-the-past.html>.

13. E-mail from Heather Doney to author (Apr. 16, 2014, 7:07 AM) (on file with author).

14. Devine, *supra* note 10.

15. See *infra* section I.A.

16. 406 U.S. 205, 234 (1972).

17. *Id.* at 219. Experts had testified below that a ruling against the Amish parents would destroy the Amish culture. *Id.* (“In sum, the unchallenged testimony of acknowledged experts in education and religious history, almost 300 years of consistent practice, and strong evidence of a sustained faith pervading and regulating respondents’ entire mode of life support the claim that enforcement of the State’s requirement of compulsory formal education after the eighth grade would gravely endanger if not destroy the free exercise of respondents’ religious beliefs.”).

18. *Id.* at 210–11.

Douglas.¹⁹ Dissenting, he cautioned, “[o]n this important and vital matter of education, I think the children should be entitled to be heard. While the parents, absent dissent, normally speak for the entire family, the education of the child is a matter on which the child will often have decided views.”²⁰ Recognizing that Amish parents could be limiting their children’s future opportunities by removing them from school, the Justice remarked, “[the child] may want to be a pianist or an astronaut or an oceanographer. To do so he will have to break from the Amish tradition.”²¹

Homeschooling advocates frequently cite *Yoder*, arguing that it exemplifies the nearly limitless constitutional right that a parent has to direct a child’s education, especially when the parent’s decisions are based on a religious belief.²² But *Yoder* left a key question unanswered, one brought to the forefront by Justice Douglas and individuals like Powell and Doney. What happens when the child disagrees with the parent?

Much has been made in recent scholarship of the states’ affirmative duty to provide a free and adequate public education, a duty mandated in all state constitutions and often the subject of litigation in the context of school finance reform.²³ Courts in most states have ruled that these constitutional provisions grant children the substantive right to an adequate education²⁴ and an ever-growing number of legal academics have adopted and advanced this contention in pursuit of new ways to protect children’s interests.²⁵ This Note builds on that

19. *Id.* at 245 (Douglas, J., dissenting in part); *id.* at 237 (Stewart, J., concurring).

20. *Id.* at 244 (Douglas, J., dissenting in part).

21. *Id.* at 244–45.

22. See, e.g., *Compulsory Attendance*, HOME SCH. LEGAL DEF. ASS’N, http://www.hslda.org/docs/nche/Issues/S/State_Compulsory_Attendance.asp (last visited Jan. 21, 2015) (arguing that *Wisconsin v. Yoder* affirms a parent’s right to defy compulsory attendance statutes); Christopher J. Klicka, *Decisions of the United States Supreme Court Upholding Parental Rights as “Fundamental,”* HOME SCH. LEGAL DEF. ASS’N (Oct. 27, 2003), <http://www.hslda.org/docs/nche/000000/00000075.asp> (citing *Yoder* for the proposition that “it is clear the constitutional right of a parent to direct the upbringing and education of his child is firmly entrenched in the U.S. Supreme Court case history”).

23. See, e.g., Scott R. Bauries, *The Education Duty*, 47 WAKE FOREST L. REV. 705, 706 (2012) (“One policy area in which every state constitution imposes specific affirmative obligations is education, and education is the one area in which courts in nearly all American states have been asked to enforce such affirmative obligations.”).

24. So far, courts in thirty-one states have ruled that the education clause in their state constitution grants children a substantive right to an adequate education. Barry Friedman & Sara Solow, *The Federal Right to an Adequate Education*, 81 GEO. WASH. L. REV. 92, 129 (2013).

25. See, e.g., Derek Black, *Unlocking the Power of State Constitutions with Equal Protection: The First Step Toward Education as a Federally Protected Right*, 51 WM. & MARY L. REV. 1343, 1393–94 (2010); Daniel S. Greenspahn, *A Constitutional Right to Learn: The Uncertain Allure of Making a Federal Case Out of Education*, 59 S.C. L. REV. 755, 757–58 (2008); Kelly Thompson Cochran, Comment, *Beyond School Financing: Defining the Constitutional Right to an Adequate Education*, 78 N.C. L. REV. 399, 423–25 (2000). Others have argued that there should be a federal right to education. See e.g., Susan H. Bitensky, *Theoretical Foundations for a Right to Education Under the U.S. Constitution: A Beginning to the End of the National Education Crisis*, 86 NW. U. L. REV. 550, 552–53 (1992); Friedman & Solow, *supra* note 24, at 93–97.

foundation to argue that the state's affirmative duty to educate contains the key to *Yoder's* unanswered question.

An affirmative right to education means nothing without the concurrent right to accept that education. No state can furnish an adequate public education consistent with the spirit—if not the letter—of its state constitution as long as children can be wholly prevented from accessing that education and simultaneously denied any recourse to the judicial system. The Supreme Court has already recognized the logic of this argument in another context: minors' abortion rights.²⁶ Just as every state that places parental consent restrictions on minors' abortion access must provide a judicial mechanism whereby minors may petition the court to override the parental decision, states must also provide a method whereby minors can access the courts in order to vindicate their right to accept the state's offered public education.

This Note proceeds in two parts. Part I analyzes the current situation. It describes how, over the past thirty years, homeschooling has been massively deregulated, leaving child protective agencies with few legal tools to either locate or help homeschooled children suffering abuse and neglect. Next, this Part describes the lived experiences of homeschooled alumni, now adults, who have come forward to share what happened to them.²⁷ Finally, this Part describes the ineffectiveness of previous attempts to remedy these problems through the political process, an ineffectiveness due to the strength of the homeschooling lobby and the political powerlessness of homeschooled children, who are perhaps the ultimate "discrete and insular minorit[y]."²⁸ Part II proposes a solution: a judicial procedure that allows courts to either (1) give effect to a mature minor's desire to attend public school or (2) find that attending public school is in the minor's best interests, the same judicial bypass procedure already used by courts in the abortion context.²⁹ Although such a solution would not protect every homeschooled child from educational neglect, it would provide substance to the right to education consistent with that provided to other rights and would grant immediate relief to the homeschooled children who must otherwise wait until they are eighteen before they can obtain formal education.

26. *Bellotti v. Baird*, 443 U.S. 622, 643–44 (1979) ("We therefore conclude that if the State decides to require a pregnant minor to obtain one or both parents' consent to an abortion, it also must provide an alternative procedure whereby authorization for the abortion can be obtained. A pregnant minor is entitled in such a proceeding to show either: (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." (footnotes omitted)).

27. Many of these homeschool alumni have asked to remain anonymous. This Note will therefore use only their initials to identify them.

28. *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938).

29. See *Bellotti*, 443 U.S. at 643–44.

I. THE HOMESCHOOLING STATUS QUO

A. A DEREGULATION CRISIS

According to the most recent estimates, the United States now has over 1.5 million homeschooled children, a seventy-four percent increase between 1999 and 2007.³⁰ Likely, most Americans either personally know a homeschooling family or are familiar with this educational choice due to media coverage of homeschooling families. This coverage is typically positive. A prime example is The Learning Channel's *19 Kids and Counting*, a reality television show that follows Jim Bob and Michelle Duggar, a fundamentalist³¹ Christian couple that rejects birth control and depicts homeschooling as the means to a happy, god-fearing family.³² Other media portrayals are similarly glowing, touting

30. 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>.

31. The term “fundamentalist” has acquired a pejorative tone. Such association is unfortunate and is not intended here, as the term, both historically and within sociological literature, refers to a distinct component of American Christianity. The Christian fundamentalist movement has played a crucial role in the rise of homeschooling, its deregulation, and in the experiences of many homeschooled students. Acknowledging its presence and impact is crucial to a nuanced understanding of the American homeschooling movement as a whole. Therefore, this Note will point out the influence of fundamentalist Christianity as necessary. The term, however, will have a specific meaning. Throughout this Note, fundamentalist will refer to the modern belief system that (1) arose out of a conservative strain of Christianity in the early twentieth century (which was itself largely a response to the progressive interpretations of the Bible becoming popular at the time); (2) expanded in the later half of the twentieth century (principally starting in the 1970s) to become a socio-political movement popularly known as the “Religious Right”; and (3) generally adheres to the following tenets: biblical inerrancy; biblical literalism; gender essentialism; traditional gender roles; traditional sexual mores (often termed “Purity Culture”); primacy of the family and parental rights; anti-abortion; anti-gay-rights; young-Earth creationism; and Tea Party or Tea-Party-like political views on subjects such as taxation, government spending, etc. Individual fundamentalists, however, may not embrace each and every one of these beliefs. Christian fundamentalists share many beliefs with American Christian evangelicals and in many ways the two groups emerged from the same movement in the early twentieth century. For purposes of this definition, the key distinction between Christian fundamentalists and Christian evangelicals is that fundamentalists adopt a more militant, “culture-war” mentality and rhetoric, which at times may be expressed by a separatist mindset. Homeschooling can be one way that Christian fundamentalists live out their belief that they must remove their families from the influences of a secular world. See Michael O. Emerson & David Hartman, *The Rise of Religious Fundamentalism*, 32 ANN. REV. OF SOC. 127, 131–32, 138–39 (2006); Nomi Maya Stolzenberg, “*He Drew a Circle That Shut Me Out*”: *Assimilation, Indoctrination, and the Paradox of a Liberal Education*, 106 HARV. L. REV. 581, 614–28 (1993); E-mail from Rachel Coleman, Cofounder & Exec. Dir. of Coal. for Responsible Educ., to author (Oct. 13, 2014, 4:28 PM) (on file with author).

32. The Duggars are well known in homeschooling circles, being one of the most prominent member families in the hugely influential Advanced Training Institute International (ATI), an organization the Duggars advertise on their website. See *Homepage*, THE DUGGAR FAM., <http://www.duggarfamily.com/content/home> (last visited Jan. 21, 2015) (linking via an advertisement for “Family Conferences,” a suborganization of ATI). ATI is the homeschool education program developed by Bill Gothard, consisting of both written curriculum and annual conferences across the country. The program is highly patriarchal, teaching children that the father is the head of the household and has absolute control over the behavior of both his wife and children. ATI enforces strict gender roles, mandating that women refrain from pursuing a career, reject birth control, and stay home to homeschool their many children. The program’s homeschool curriculum consists of short “wisdom booklets” that attempt to teach all

homeschoolers' success in the national spelling bee,³³ families who send their homeschooled children to college at an exceptionally young age,³⁴ or the general freedom that homeschooling gives parents to encourage children's imagination and natural curiosity.³⁵ With this information about the success—and near-idyllic existence—of some homeschooled students, Americans' perception of homeschooling unsurprisingly has become steadily more positive. Forty-six percent now believe that homeschooled children receive an “excellent” or “good” education, higher rankings than those given to public schools.³⁶

Yet the information on which these positive public perceptions are based is only anecdotal.³⁷ There is no study demonstrating that homeschoolers, on

subjects in a highly condensed format from a religious viewpoint. There are fifty-four wisdom booklets in total, each having no more than sixty pages. Families were once encouraged to use only wisdom booklets in their homeschool program, although such a practice would leave children with limited knowledge of math, science, and history and would require teaching the same booklet to all grade levels, from elementary to high school. *Learning Strategy and Curriculum: How ATI Meets the Needs of All Learning Ages*, ADVANCED TRAINING INST. INT'L, <http://ati.iblp.org/ati/about/curriculum/> (last visited Jan. 21, 2015). One homeschool alumna, who grew up in Washington state during the 1990s, reported to the author that her family used only wisdom booklets for their school curriculum for most of her childhood. She did not learn her multiplication tables until her senior year of high school, when her father purchased a supplemental math textbook. Messenger Exchange from R.K. to author (Oct. 14, 2014, 9:47 AM) (on file with author). ATI has been likened to a cult by many who have since left it, and its leader, Bill Gothard, stands accused of sexually harassing and molesting over thirty young women. *The GOTHARD Files: A Case for Disqualification*, RECOVERING GRACE (Feb. 3, 2014), <http://www.recoveringgrace.org/2014/02/the-gothard-files-a-case-for-disqualification-x2/>. Gothard was recently forced to take a leave of absence, thanks in large part to the efforts by former ATI children who have blogged about their experiences. Sarah Pulliam Bailey, *Conservative Leader Bill Gothard Resigns Following Abuse Allegations*, RELIGION NEWS SERV. (Mar. 6, 2014), <http://www.religionnews.com/2014/03/06/conservative-leader-bill-gothard-resigned-following-abuse-allegations/>.

33. See, e.g., Dean Reynolds, *Home Schoolers Lead Spelling Bee*, ABC NEWS (May 29, 2001), <http://abcnews.go.com/WNT/story?id=130988>.

34. See, e.g., Bob Dotson, *Meet the Family Who Sent Six Kids to College by Age 12*, TODAY (Apr. 18, 2013, 8:45 AM), <http://www.today.com/news/meet-family-who-sent-six-kids-college-age-12-1C9316706>.

35. Margaret Heidenry, *My Parents Were Home-Schooling Anarchists*, N.Y. TIMES (Nov. 8, 2011), <http://www.nytimes.com/2011/11/13/magazine/my-parents-were-home-schooling-anarchists.html?pagewanted=all>; Lisa Miller, *Homeschooling, City-Style*, N.Y. MAG. (Oct. 14, 2012), <http://nymag.com/guides/everything/urban-homeschooling-2012-10/>.

36. Jeffrey M. Jones, *In U.S., Private Schools Get Top Marks for Educating Children*, GALLUP (Aug. 29, 2012), <http://www.gallup.com/poll/156974/private-schools-top-marks-educating-children.aspx>.

37. It is important to keep in mind that it is all too easy for the media, through no fault of its own, to depict a story in inaccurately rosy terms, leaving readers with the overall impression that the homeschooled children described live an idyllic existence. As usual, reality is far more complicated. Reporters who speak with homeschooled children see what the parents allow them to see, as the children can be effectively barred from interacting with reporters outside of their parents' presence. Additionally, even outside evidence of academic success does not necessarily demonstrate that a child is safe and well. For example, Marjorie Lavery, a homeschooled student, came in second place in the 1995 national spelling bee and was touted as a homeschool success story. Yet, her father beat her before the final round and threatened to kill her because she did not win. Jaime Holguin, *Home Schooling Nightmares*, CBS NEWS (Oct. 14, 2003, 2:24 PM), <http://www.cbsnews.com/news/home-schooling-nightmares/>. Rooting out child abuse will always be difficult because any family, no matter how the child is schooled, can look outwardly healthy while hiding dark truths about the child's lived reality. Homeschooling provides an additional, uniquely opportune tool for some parents to hide abuse, as

average, receive a better education than their publicly schooled peers.³⁸ In fact, it is unknown how homeschooled students, as a whole, compare to traditionally schooled students.

Here is where a nuanced appreciation of parents' varied reasons for homeschooling and their comparative ability to homeschool—especially through higher grades—is crucial. Parents with various experiences, educational levels, and socioeconomic backgrounds decide to homeschool their children for many different reasons. In 2007, the Department of Education's National Center for Education Statistics interviewed the parents of 290 homeschooled students.³⁹ When asked why they homeschooled, eighty-three percent of the parents cited a desire to provide "religious or moral instruction,"⁴⁰ eighty-eight percent cited concern about the school environment, and seventy-three percent cited dissatisfaction with academic instruction at other schools.⁴¹ When asked which reason was most important, the highest percentage (thirty-six percent) cited the desire to provide religious or moral instruction.⁴²

Rachel Coleman, the executive director for the Coalition for Responsible Home Education, a research and policy organization that advocates for homeschooled children, explains that there are three primary "groups" of homeschoolers: (1) "pedagogical progressives" who homeschool to "free [their] children [from] factory model public schools"; (2) "fundamentalist and evangelical Christians" who homeschool to protect their children from secular beliefs taught in public schools; and (3) "pragmatic" or "second-choice" homeschooling parents, who "are part of a growing cultural embrace of school choice" and who homeschool "for more practical reasons—special needs, bullying, frequent moves, or failing schools."⁴³ As with all things, life is too complicated to fit neatly into boxes, and parents may cite reasons to homeschool that span across these groups.

In addition to these common manifestations of the homeschooling movement, there are also less frequent but more concerning examples. For instance, some homeschooling is a relic of school desegregation and is used to "protect" children from interacting with members of another race.⁴⁴ There is also a

homeschooled children do not interact with mandatory reporters and can be denied the information that would otherwise tell them that they have the right to not be mistreated.

38. See *infra* note 78 and accompanying text.

39. Bielick, *supra* note 30, at 1.

40. *Id.* at 2–3.

41. *Id.*

42. *Id.*; see also *Reasons Parents Homeschool*, COAL. FOR RESPONSIBLE HOME EDUC., <http://www.responsiblehomeschooling.org/homeschooling-101/reasons-parents-homeschool/> (last visited Jan. 21, 2015).

43. Coleman, *supra* note 31 (internal quotation marks omitted).

44. The Christian Revival Center (Thomas Robb Ministries) and The Knights Party jointly host the website *White Pride Homeschool*, which cites racial intermingling in public schools as a reason to homeschool. *Why Homeschool*, WHITE PRIDE HOMESCHOOL, http://whitepridehomeschool.com/?page_id=17 (last visited Jan. 21, 2015) ("The biggest increase in intermarriage has occurred in recent years, due to the social interaction of children of different races in the school room. Obviously school busing, the

substantial amount of anecdotal evidence showing that some abusive parents, who have no intention of educating their children, have taken advantage of lax homeschooling laws to hide their children from mandatory reporters in the school system.⁴⁵

Given the varied reasons for homeschooling and the diversity within the homeschooling movement, any one homeschooling family's experience, be it good or bad, does not represent homeschooling as a whole. This diversity within the homeschooling movement also means that the typically positive media representation of homeschooling—and Americans' correlating positive impression of it—reflects a grave misconception, one which must be exchanged for a more nuanced appreciation of the complexities of this movement. Because, although homeschooling has provided an excellent education and happy childhood memories for some students, it has also been used as a tool to inflict abuse and neglect on a portion of our population that is difficult to find and even more difficult to protect. These tragedies have occurred, in part, because in most states anyone—no matter their lack of education, teaching experience, or commitment to their children's education—can homeschool their children, with little to no standards or oversight from the state.

Over the past thirty years, homeschooling has been almost completely deregulated, thanks principally to the political activity of homeschool lobbyists like the Home School Legal Defense Association (HSLDA), the most powerful and outspoken homeschooling advocacy group in the country.⁴⁶ Founded in 1983, HSLDA is a fundamentalist Christian organization that broadly advocates for parental rights both in and out of court.⁴⁷ When HSLDA began, homeschooling

promotion of interracial marriages by 'Christian' preachers, visible images in all types of media, and 12 (plus) years of social conditioning in the schools for each and every child has had a devastating effect on the racial integrity of white America and our sister white nations.'"). See also LOUIS AND THE NAZIS (BBC broadcast Dec. 21, 2003), <https://www.youtube.com/watch?v=sShFz7oHlms> (depicting young children in the United States being homeschooled due to their mother's white supremacist beliefs).

45. *Reasons Parents Homeschool*, *supra* note 42; see *infra* note 83; see also Dennis J. Willard & Doug Oplinger, *Home Schoolers May Be No Safer in Their Homes than Other Children*, AKRON BEACON J. (Nov. 17, 2004), <http://epsl.asu.edu/epru/articles/EPRU-0503-104-OWI.pdf> (stating that homeschooling provides a "convenient escape to abusive families").

46. Timothy Brandon Waddell, Note, *Bringing It All Back Home: Establishing a Coherent Constitutional Framework for the Re-regulation of Homeschooling*, 63 VAND. L. REV. 541, 549 (2010); Kimberly A. Yuracko, *Education Off the Grid: Constitutional Constraints on Homeschooling*, 96 CALIF. L. REV. 123, 128 (2008).

47. Located in Purcellville, Virginia, HSLDA provides legal services to homeschooling parents who face charges of truancy, abuse, or neglect. *HSLDA FAQs*, HOME SCH. LEGAL DEF. ASS'N, <http://www.hslda.org/about/mission.asp> (last visited Jan. 21, 2015). HSLDA also has a policy arm that represents homeschooling interests in the political arena, often calling upon its members to engage in phone calling and letter writing campaigns against proposed legislation that HSLDA finds threatening to its members' interests. *About HSLDA*, HOME SCH. LEGAL DEF. ASS'N, <http://www.hslda.org/about/default.asp> (last visited Jan. 21, 2015). While HSLDA's primary focus is the protection of what it terms the "constitutional right of parents to direct the education of their children," HSLDA also seeks out opportunities to establish precedent in nonhomeschooling cases in order to protect parental rights generally. *Id.*

was illegal in most states.⁴⁸ Today, HSLDA has more than seven-dozen staff members and an annual revenue of \$9.5 million.⁴⁹ In terms of political lobbying, it has been wildly successful.

Twenty-five states do not require homeschooled students to ever take a standardized test.⁵⁰ Almost half of the states that do require testing allow

48. Waddell, *supra* note 46, at 548–49.

49. Home Sch. Legal Def. Ass'n, IRS Form 990, Return of Organization Exempt From Income Tax (OMB No. 1545-0047) (2012); *Our People*, HOME SCH. LEGAL DEF. ASS'N, <http://www.hslda.org/about/staff/default.asp> (last visited Jan. 21, 2015).

50. *Assessment & Intervention*, COALITION FOR RESPONSIBLE HOME EDUC., <http://www.responsiblehomeschooling.org/policy-issues/current-policy/assessment-intervention/> (last visited Jan. 21, 2015). See ALA. CODE §§ 16-28-1(2), 16-28-3, 16-28-7, 16-28-8 (2014) (describing homeschooling requirements and not listing academic assessment among them); ALASKA STAT. § 14.30.010(b)(12) (2014) (same); ARIZ. REV. STAT. ANN. § 15-802(B)(2) (2014) (same); CAL. EDUC. CODE §§ 33190, 48222 (West 2014) (homeschooling conducted under private school statute, which does not contain an academic assessment requirement); CONN. GEN. STAT. § 10-184 (2014) (homeschooling statute does not list academic assessment requirement); DEL. CODE ANN. tit. 14, §§ 2703A, 2704 (2014) (same); IDAHO CODE ANN. § 33-202 (2014) (same); 105 ILL. COMP. STAT. 5/26-1 (2014) (homeschooling conducted under private school statute that does not include academic assessment requirement); IND. CODE § 20-33-2-8 (2014) (homeschooling statute does not list academic assessment as a requirement); IOWA CODE § 299A.1 (2014) (same); KAN. STAT. ANN. §§ 72-1111(a)(2), 72-53,100 to -53,102 (2014) (homeschooling conducted under nonaccredited private school statute that does not have assessment requirement); KY. REV. STAT. ANN. §§ 159.030(1)(b), 159.040, 159.080 (West 2014) (homeschooling conducted under private school statute that does not contain an assessment requirement); MICH. COMP. LAWS § 380.1561(3)(f) (2014) (homeschooling statute does not include academic assessment requirement); MISS. CODE ANN. § 37-13-91 (2014) (same); MO. REV. STAT. § 167.031 (2014) (same); MONT. CODE ANN. §§ 20-5-109, 20-5-111 (2014) (same); NEB. REV. STAT. § 79-1601 (2014) (same); NEV. REV. STAT. § 392.700 (2014) (same); N.J. STAT. ANN. § 18A:38-25 (West 2014) (same); N.M. STAT. ANN. § 22-1-2.1 (2014) (same); OKLA. STAT. tit. 70, § 10-105 (2014) (same); TEX. EDUC. CODE ANN. § 25.086 (West 2014) (same); UTAH CODE ANN. § 53A-11-102(2) (West 2014) (same); WIS. STAT. §§ 118.15(4), 118.165 (2014) (same); WYO. STAT. ANN. §§ 21-4-101(a)(vi), 21-4-102(b) (2014) (same); see also IOWA DEP'T OF EDUC., PRIVATE INSTRUCTION HANDBOOK 4 (2014–2015), <https://www.educateiowa.gov/sites/files/ed/documents/PrivateInstructionHandbook2014-2015.pdf> (“[Under § 299A.1(2)(b) t]here is NO REQUIREMENT for students to be assessed annually.”); KY. DEP'T OF EDUC., KENTUCKY HOME SCHOOL INFORMATION PACKET (2014), http://education.ky.gov/federal/fed/Documents/KY_Home_School_InfoPak.pdf (listing requirements for homeschools but does not include an academic assessment); MICH. DEP'T OF EDUC., MDE RECOMMENDS: HOMESCHOOLING IN MICHIGAN 2 (2014), http://www.michigan.gov/documents/home_schools_122555_7.pdf (“There are no required tests for a home school student.”); NEB. DEP'T OF EDUC., EXEMPT (HOME) SCHOOL FREQUENTLY ASKED QUESTIONS 15 (2014–2015), <http://www.education.ne.gov/fos/OrgServices/ExemptSchools/Downloads/1415/FAQs.pdf> (“[Standardized] testing is not required of exempt school students.”); WIS. DEP'T OF PUB. INSTRUCTION, HOME-BASED PRIVATE EDUCATIONAL PROGRAM (HOMESCHOOLING) FREQUENTLY ASKED QUESTIONS 7 (2014), http://sms.dpi.wi.gov/sites/default/files/imce/sms/pdf/home_faq_2014_09%20revisions.pdf (“Wisconsin’s homeschooling laws do not require any form of testing or assessment.”); *Dropout Prevention: Home Schooling*, MISS. DEP'T OF EDUC., <http://www.mde.k12.ms.us/dropout-prevention-and-compulsory-school-attendance/home-schooling> (last visited Jan. 21, 2015) (listing only registration and no academic assessment requirements for homeschooling); *FAQs*, TEX. HOME SCH. COAL. ASS'N, <http://www.thsc.org/getting-started/faqs/> (last visited Jan. 21, 2015) (“[T]he state of Texas does not require testing of private [which includes home] school students”); *Frequently Asked Questions: Homeschooling*, N.J. DEP'T OF EDUC., http://www.state.nj.us/education/genfo/faq/faq_homeschool.htm (last visited Jan. 21, 2015) (“A child educated elsewhere than at school is not required to sit for a state or district standardized test.”); *Home Schooling*, MO. DEP'T OF ELEMENTARY & SECONDARY EDUC., <http://dese.mo.gov/governmental-affairs/home-schooling> (last visited Jan. 21, 2015) (listing requirements for homeschools but does not include an academic assessment); *Home Schools in New Mexico*, N.M. PUB. EDUC. DEP'T, <http://www.ped.state.nm>

parents to avoid this requirement either by claiming a religious exemption or by operating as a pseudo private school.⁵¹ According to the Coalition for Responsible Home Education, “[t]here are only 9 states that both require parents educating their children at home to do so under the homeschool statute with its assessment requirement and [also] have a process for identifying and helping students not making academic progress”⁵² Eleven states never require parents to notify the school district of their intent to homeschool—meaning state authorities have no idea whether the child is truant or is receiving instruction at home.⁵³ In fact, the state may not even know that the child exists. Forty-one states either do not have minimum teacher qualifications or provide options whereby parents can avoid any such requirement—meaning parents without a high school diploma can homeschool their child through grades the parent did not complete.⁵⁴ Fourteen states have no subject matter require-

us/homeschools/ (last visited Jan. 21, 2015) (“Students who are home-schooled are not required to participate in the [Standards Based Assessment].”); *Homeschool Help Sheet*, IND. DEP’T OF EDUC., <http://www.doe.in.gov/student-services/home-school/homeschool-help-sheet> (last visited Jan. 21, 2015) (“State law does not require ISTEP+, or any other testing, for children in homeschools.”); *Homeschooling in Kansas Fact Sheet Early Childhood, Special Education and Title Services*, KAN. DEP’T OF EDUC., <http://www.ksde.org/Portals/0/ECSETS/FactSheets/FactSheet-HomeSchool.pdf> (last visited Jan. 21, 2015) (listing requirements for homeschools but does not include an academic assessment); *Illinois Home Schooling: Introduction*, ILL. STATE BD. OF EDUC., <http://www.isbe.state.il.us/homeschool/> (last visited Jan. 21, 2015) (“Testing is not required in the state of Illinois for homeschoolers.”).

51. These states are Colorado, Florida, Louisiana, Maine, Maryland, North Dakota, Ohio, South Carolina, Tennessee, Virginia, and Washington. *Assessment & Intervention*, *supra* note 50.

52. *Id.*

53. *Homeschool Notification*, COAL. FOR RESPONSIBLE HOME EDUC., <http://www.responsiblehomeschooling.org/policy-issues/current-policy/notification/> (last visited Jan. 26, 2015); see ALASKA STAT. § 14.30.010 (2014) (describing homeschooling requirements and not listing notification requirement); CONN. GEN. STAT. § 10-184 (2014) (same); IDAHO CODE ANN. § 33-202 (2014) (same); 105 ILL. COMP. STAT. 5/26-1 (2014) (homeschooling conducted under private school statute that does not include notification requirement); IND. CODE § 20-33-2-8 (2014) (listing homeschooling requirements and not including a notification requirement); IOWA CODE § 299A.1(2)(b)(6) (2014) (notification is only required upon written request of superintendent); MICH. COMP. LAWS § 380.1561(3)(f) (2014) (homeschooling statute does not list notification requirement); MO. REV. STAT. § 167.031 (2014) (listing homeschooling requirements and not including a registration requirement); N.J. STAT. ANN. § 18A:38-25 (West 2014) (homeschooling statute does not list notification requirement); OKLA. STAT. tit. 70, § 10-105 (2014) (same); TEX. EDUC. CODE ANN. § 25.086 (West 2014) (same); see also MICH. DEP’T OF EDUC., *supra* note 50, at 1 (“The annual registering of a home school to the Michigan Department of Education (MDE) is voluntary.”); *FAQs*, TEX. HOME SCH. COAL. ASS’N, *supra* note 50 (“You are not legally required to register with the school district or receive their permission to homeschool.”); *Frequently Asked Questions: Homeschooling*, N.J. DEP’T OF EDUC., *supra* note 50 (describing two limited circumstances in which notification is required but otherwise encouraging homeschooling parents to voluntarily notify the school district); *Home Schooling*, MO. DEP’T OF ELEMENTARY & SECONDARY EDUC., *supra* note 50 (“There is no registration [for homeschoolers] required with the State of Missouri or with our Department.”); *Homeschool*, IDAHO STATE DEP’T OF EDUC., http://www.sde.idaho.gov/site/home_school/ (last visited Jan. 26, 2015) (“No registration or sign up procedure is required.”).

54. See *Parent Qualifications*, COAL. FOR RESPONSIBLE HOME EDUC., <http://www.responsiblehomeschooling.org/policy-issues/current-policy/parent-qualifications/> (last visited Jan. 26, 2015). CRHE states eleven states have teacher qualification requirements. This Note reduces this tally to nine because homeschooling parents in two states (Virginia and Washington) may completely avoid this requirement by homeschooling under a different provision. See *id.*; ALA. CODE §§ 16-28-1(2), 16-28-3, 16-28-7,

ments.⁵⁵ Of the states that do, many undermine these requirements with reli-

16-28-8 (2014) (describing homeschooling requirements and not listing teacher qualifications); ALASKA STAT. § 14.30.010(b)(12) (2014) (same); ARIZ. REV. STAT. ANN. § 15-802(B)(2) (2014) (same); ARK. CODE ANN. § 6-15-503 (2014) (same); CAL. EDUC. CODE § 48222 (West 2014) (stating parents, who homeschool as private schools in California, must be “persons capable of teaching” but providing no enforcement mechanism for this provision); COLO. REV. STAT. § 22-33-104.5 (2014) (describing homeschooling requirements and not listing teacher qualifications); CONN. GEN. STAT. § 10-184 (2014) (same); DEL. CODE ANN. tit. 14, §§ 2703A, 2704 (2014) (same); FLA. STAT. § 1002.41 (2014) (same); HAW. REV. STAT. § 302A-1132(a)(5) (2014) (same); IDAHO CODE ANN. § 33-202 (2014) (homeschooling statute does not include a teacher qualification requirement); 105 ILL. COMP. STAT. 5/26-1 (2014) (same); IND. CODE § 20-33-2-8 (2014) (same); IOWA CODE § 299A.3 (2014) (same); KAN. STAT. ANN. § 72-1111 (2014) (stating homeschool teacher must be “competent” but providing no minimum educational attainment requirement or an enforcement mechanism for competency); KY. REV. STAT. ANN. §§ 159.030(1)(b), 159.040, 159.080 (West 2014) (homeschooling statutes do not include a teacher qualification requirement); LA. REV. STAT. ANN. § 17:236 (2014) (same); ME. REV. STAT. tit. 20, § 5001-A(3)(A)(4) (2014) (same); MASS. GEN. LAWS ch. 76, § 1 (2014) (same); MICH. COMP. LAWS § 380.1561(3)(f) (2014) (same); MINN. STAT. § 120A.22(10) (2014) (stating homeschool teacher is qualified if he or she is “the parent of [the] child”); MISS. CODE ANN. § 37-13-91 (2014) (homeschooling statute does not include a teacher qualification requirement); MO. REV. STAT. § 167.031 (2014) (same); MONT. CODE ANN. §§ 20-5-102(2)(e), 20-5-109 (2014) (same); NEB. REV. STAT. § 79-1601(5) (2014) (stating homeschool teacher must “offer evidence of competence” but includes no minimum educational requirement); NEV. REV. STAT. § 392.700 (2014) (homeschooling statute does not include a teacher qualification requirement); N.H. REV. STAT. ANN. § 193-A:4 (2014) (same); N.J. STAT. ANN. § 18A:38-25 (West 2014) (same); N.Y. EDUC. LAW § 3204(2) (McKinney 2014) (stating homeschool teacher must be “competent” but providing no minimum educational attainment requirement or an enforcement mechanism for competency); OKLA. STAT. tit. 70, § 10-105 (2014) (same); OR. REV. STAT. § 339.030(1)(e) (2014) (same); R.I. GEN. LAWS §§ 16-19-1, 16-19-2 (2014) (same); S.D. CODIFIED LAWS § 13-27-3 (2014) (same); TEX. EDUC. CODE ANN. § 25.086 (West 2014) (same); UTAH CODE ANN. § 53A-11-102(2) (West 2014) (same); VT. STAT. ANN. tit. 16, § 166(b) (2014) (same); VA. CODE ANN. § 22.1-254.1 (2014) (same); WASH. REV. CODE § 28A.195.010(4) (2014) (removing teacher qualification requirements when parent is homeschooling under an umbrella school option); WIS. STAT. §§ 118.15(4), 118.165 (2014) (listing homeschooling requirements and not including a teacher qualification requirement); WYO. STAT. ANN. §§ 21-4-101(a)(v), 21-4-102 (2014) (same); MD. CODE REGS. 13A.10.01.01 (2014) (same); *see also* ARK. DEP’T OF EDUC., FACT SHEET ON HOME SCHOOLING IN ARKANSAS I (2014), http://www.arkansased.org/public/userfiles/Learning_Services/Charter%20and%20Home%20School/Home%20School-Division%20of%20Learning%20Services/FACT_SHEET.pdf (“There are no educational requirements for parents/guardians who provide a home school for their child(ren).”); FLA. DEP’T OF EDUC., HOME EDUCATION FREQUENTLY ASKED QUESTIONS, http://www.floridaschoolchoice.org/information/home_education/files/Home_Ed_FAQs.pdf (“Any parent who complies with the reporting, record keeping, and student evaluation requirements specified in statutory law may conduct a home education program.”); NEB. DEP’T OF EDUC., *supra* note 50, at 9 (“There are no formal educational qualifications [for homeschool teachers.]”); *Dropout Prevention: Home Schooling*, MISS. DEP’T OF EDUC., *supra* note 50 (listing only registration and no teacher qualification requirements for homeschooling); *Exemption (f) Home School*, MICH. DEP’T OF EDUC., http://www.michigan.gov/mde/0,4615,7-140-6530_6569_35175-307002--,00.html (last visited Jan. 26, 2015) (“There are no minimum qualifications for teachers except that they must be the parents or legal guardians of the children.”); *Home Schooling*, MO. DEP’T OF ELEMENTARY & SECONDARY EDUC., *supra* note 50 (“Any parent may educate a child at home. The parent does not need a teaching certificate or need to meet any education requirements in order to provide home instruction.”); *Homeschool*, IDAHO STATE DEP’T OF EDUC., *supra* note 50 (“Idaho does not regulate or monitor homeschool education.”); *Homeschooling*, HAW. STATE DEP’T OF EDUC., <http://www.hawaiipublicschools.org/ParentsAndStudents/EnrollingInSchool/Choosingaschool/Pages/Homeschooling-FAQs.aspx> (last visited Jan. 26, 2015) (“A parent teaching his/her child at home shall be deemed a qualified instructor regardless of educational background or training.”).

55. *Instruction Time & Subject Requirements*, COAL. FOR RESPONSIBLE HOME EDUC., <http://www.responsiblehomeschooling.org/policy-issues/current-policy/instruction-time-subject-requirements/> (last

gious exemptions that allow a parent to avoid any topic—such as science—that the parent finds antithetical to his or her religious beliefs.⁵⁶

This massive deregulation of homeschooling means that when educational neglect occurs the state typically has no mechanism for uncovering what is happening. This information shortfall thus limits the possibility of social service intervention to those instances where a tip is called in by friends, family, or neighbors. However, even if a concerned observer reports a homeschooling family to social services, many hurdles prevent child protective services from aiding the homeschooled children involved, as the next section discusses.

B. INEFFECTIVE SOCIAL SERVICES

Child abuse in general is insidious. Outwardly healthy-looking families, no matter where they are or how their children are educated, can be hiding horrific sexual or physical abuse behind the closed doors of their homes. Homeschooled children, while at risk for these forms of abuse, also bear an additional risk of educational neglect, as their parents are immune from truancy statutes and the children could be homeschooled for years without anyone verifying that they are receiving an education. Educational neglect also leaves no marks or physical evidence, facts that sometimes make it even more difficult to identify. Therefore, this section focuses on the ability of social services to respond to educational neglect in the homeschooling context, especially in light of the massive deregulation described previously.

Currently, few tools are available to protect homeschooled children from educational neglect, and those that do exist are insufficient. The extent to which a state can address educational neglect in the homeschooling context depends on four factors: (1) whether educational neglect is included in the state's definition of illegal child abuse and/or neglect; (2) whether the state nevertheless legalizes educational neglect, which would otherwise be forbidden, when it

visited Jan. 26, 2015); *see* ALA. CODE § 16-28-1(2) (2014) (explaining how parents may homeschool as “church school[s]” in Alabama, which are required to provide “instruction” but are not provided with any other guidance or requirements); ALASKA STAT. § 14.30.010(b)(12) (2014) (listing homeschooling requirements and not including subject matter requirements); ARK. CODE ANN. §§ 6-15-501 to -504, -507 to -509 (2014) (same); DEL. CODE ANN. tit. 14, §§ 2703A, 2704 (2014) (same); FLA. STAT. § 1002.41 (2014) (same); KAN. STAT. ANN. § 72-1111 (2014) (same); MISS. CODE ANN. § 37-13-91(3)(c) (2014) (same); N.C. GEN. STAT. §§ 115C-564, -565 (2014) (same); OKLA. STAT. tit. 70, § 10-105 (2014) (same); TENN. CODE ANN. § 49-6-3050 (2014) (same); UTAH CODE ANN. § 53A-11-102 (West 2014) (same); VA. CODE ANN. § 22.1-254.1 (2014) (same); W. VA. CODE § 18-8-1 (2014) (same); MD. CODE REGS. 13A.10.01.05 (2014) (listing requirements for homeschooling under the supervision of a private or church school; no subject matter requirement included).

56. *See, e.g.*, MO. REV. STAT. § 167.031(3) (2014) (“Nothing in this section shall require a private, parochial, parish or home school to include in its curriculum any concept, topic, or practice in conflict with the school’s religious doctrines or to exclude from its curriculum any concept, topic, or practice consistent with the school’s religious doctrines.”); VA. CODE ANN. § 22.1-254(B) (2014) (exempting parents from educating their children at all should that be in compliance with their religious beliefs); WYO. STAT. ANN. § 21-4-101(a)(vi) (2014) (“These curriculum requirements do not require any private school or home-based educational program to include in its curriculum any concept, topic or practice in conflict with its religious doctrines . . .”).

is done in the homeschooling context; (3) whether child protective services can adequately investigate claims of educational neglect; and (4) who can initiate child neglect proceedings. This section reviews each of these factors in turn.

1. Is Educational Neglect Included in the Definition of Illegal Child Neglect?

State child protective agencies are empowered to find, prevent, and remedy child abuse and neglect to the extent authorized by state law.⁵⁷ Social services receive authority to intervene in an educational neglect situation when (1) educational neglect is included within the state's definition of child abuse or neglect, or (2) social services are entrusted to supervise enforcement of the state's truancy statute.

Only about half of the states list educational neglect within their definition of child neglect.⁵⁸ The rest of the states ensure compulsory education through truancy statutes.⁵⁹ For children living in a state with little to no regulation on homeschooling, this distinction is crucial. Those living in a state that does not include educational neglect within its child-abuse-and-neglect statute must rely on truancy enforcement as the legal mechanism that will remedy the harm they are suffering. However, when a child is being homeschooled in compliance with the state's homeschooling statute, the child is, by definition, not truant.⁶⁰ Therefore, in a state that does not include educational neglect within its child neglect statute, social services can only intervene when a family is failing to comply with the requirements of the homeschool statute itself, and those requirements, as the previous section described, are often woefully sparse. Josh Powell, whose story began this Note, faced this situation: Powell was homeschooled under Virginia's religious exemption statute, which places no require-

57. See 4 CHARLES H. KOCH, JR. & RICHARD MURPHY, ADMINISTRATIVE LAW AND PRACTICE § 11:13(1)(a) (3d ed. 2015) (“[A]gencies have only such authority as is delegated by the legislature.”).

58. These states are Arkansas, Colorado, Connecticut, Delaware, Idaho, Indiana, Kentucky, Maine, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, South Carolina, South Dakota, Utah, West Virginia, and Wyoming. See *Reporting Educational Neglect*, COAL. FOR RESPONSIBLE HOME EDUC., <http://www.responsiblehomeschooling.org/child-wellbeing/reporting-educational-neglect/> (last visited Jan. 21, 2015); see also ARK. CODE ANN. § 12-18-103(14)(A)(ix) (2014); COLO. REV. STAT. § 19-3-102(1)(d) (2014); CONN. GEN. STAT. § 46b-120(8)(B) (2014); DEL. CODE ANN. tit. 10, § 901(18)(b)(1) (2014); IDAHO CODE ANN. § 16-1602(28)(d) (2014); IND. CODE § 31-34-1-1(1) (2014); KY. REV. STAT. ANN. § 600.020(1)(a)(8) (West 2014); ME. REV. STAT. TIT. 22, § 4002(6)(B) (2014); MINN. STAT. § 626.556(2)(f)(4) (2014); MISS. CODE ANN. § 43-21-105(1)(i) (2014); MO. REV. STAT. § 210.110(12) (2014); MONT. CODE ANN. § 41-3-102(21)(a)(iv) (2014); NEV. REV. STAT. § 432B.140 (2014); N.H. REV. STAT. ANN. § 169-C:3(XIX)(b) (2014); N.J. STAT. ANN. § 9:6-8.21(c)(4)(a) (West 2014); N.M. STAT. ANN. § 32A-4-2(E)(2) (2014); N.Y. SOC. SERV. LAW § 371(4-a)(A) (McKinney 2014); N.D. CENT. CODE § 27-20-02(8)(a) (2014); OHIO REV. CODE ANN. § 2151.03(A)(3) (West 2014); S.C. CODE ANN. § 63-7-20(4)(c) (2014); S.D. CODIFIED LAWS § 26-8A-2(4) (2014); UTAH CODE ANN. § 78A-6-105(27)(a)(iii) (West 2014); W. VA. CODE § 49-1-3(11)(A)(i) (2014); WYO. STAT. ANN. § 14-3-202(a)(vii) (2014); Cynthia Godsoe, *Just Intervention: Differential Response in Child Protection*, 21 J.L. & POL'Y 73, 80–81 (2012).

59. See Godsoe, *supra* note 58.

60. See, e.g., *In re T.M.*, 756 A.2d 793, 798 (Vt. 2000); see also Judith G. McMullen, *Behind Closed Doors: Should States Regulate Homeschooling?*, 54 S.C. L. REV. 75, 86 (2002).

ments on parents to educate their children,⁶¹ and Virginia does not include educational neglect within its definition of illegal child neglect.⁶² Therefore, even if someone had called social services about Powell's parents, social services could not have given Powell aid without going beyond the scope of their legal authorization. His parents had not violated the law.

2. Has Educational Neglect by Homeschooling Parents Been Specifically Legalized?

In states that empower social services to address educational neglect,⁶³ child protection agencies can investigate cases of suspected educational neglect and take steps to help children in those situations. However, some states that include educational neglect within their definition of illegal child neglect have still legalized educational neglect when it is done by homeschooling parents who are acting in compliance with the homeschooling statute.

Some states define educational neglect as failing to provide the child with "education as required by law."⁶⁴ This phrase means that when a homeschooling parent complies with the requirements of the homeschool statute—however meager those requirements are—the parent is not engaging in educational neglect, as it has been defined by the statute. Take Mississippi as an example. A homeschooled student in Mississippi is never required to take a standardized test.⁶⁵ Mississippi has no teacher qualification requirements, so parents can teach their children through grades the parents themselves did not complete.⁶⁶ And Mississippi has no subject matter requirements.⁶⁷ Mississippi's sole requirements are that parents must notify the school district that they will be homeschooling their child and must provide 180 days of instruction—although there is no specification as to what topics that instruction must address.⁶⁸ If parents meet these two requirements, they have not violated the state's educational neglect statute.

An even more concerning example is in Utah, where the law explicitly provides that homeschooled children cannot be educationally neglected. Utah's child-abuse-and-neglect statute states, "A child may not be considered to be educationally neglected . . . if the child's parent or guardian establishes by a preponderance of the evidence that: . . . the child is being instructed at home in compliance with [Utah's homeschool statute]."⁶⁹ Utah's homeschool statute,

61. *See supra* note 3.

62. VA. CODE ANN. § 18.2-371.1 (2014).

63. *See supra* note 58.

64. MISS. CODE ANN. § 43-21-105(1)(i) (2014); MO. REV. STAT. § 210.110(12) (2014); N.H. REV. STAT. ANN. § 169-C:3(XIX)(b) (2014); N.D. CENT. CODE § 27-20-02(8)(a) (2014).

65. *See* MISS. CODE ANN. § 37-13-91(3)(c) (2014).

66. *See id.*

67. *See id.*

68. *See id.*

69. UTAH CODE ANN. § 78A-6-319(2)(b)(ii) (West 2014).

however, places absolutely no requirements on parents.⁷⁰ Therefore, in Utah, no homeschool parent can be found to have educationally neglected his or her child.

3. Do Social Services Have the Ability to Adequately Investigate Educational Neglect?

Even when the law forbids educational neglect by homeschooling parents, there are two more reasons why social services may still not be able to adequately investigate these situations.

First, in forty-one states, homeschooled children are either never tested or there is no legal process by which test scores are provided to the state in order to trigger remediation procedures.⁷¹ With no system in place to find educational neglect among homeschooled students, social services must rely on tips from neighbors, friends, and family members, an approach that leaves many educationally neglected children unreported.

Second, social workers are hampered by legal restrictions that prevent them from inspecting homeschools or speaking alone with homeschooled children. HSLDA consistently brings claims challenging social workers who are conducting abuse-and-neglect investigations, arguing that the social workers lacked probable cause to enter the home or to speak with the children.⁷² Additionally, thousands of HSLDA member families rely on HSLDA for legal advice, which consistently seeks to hamper social service investigations, as HSLDA tells parents that, absent explicit statutory language to the contrary or a warrant, social workers have no right to examine curriculum, records, or homework and certainly have no right to speak to their children.⁷³ In fact, HSLDA's advocacy for homeschooling parents has thwarted attempts by homeschool alumni to

70. See *infra* notes 130–35 and accompanying text.

71. See *supra* notes 50–53 and accompanying text.

72. See, e.g., *Calabretta v. Floyd*, 189 F.3d 808, 820 (9th Cir. 1999); *Saltsman v. Campbell*, 145 F.3d 1333, 1333 (6th Cir. 1998); *Walsh v. Erie Cnty. Dep't of Job & Family Servs.*, 240 F. Supp. 2d 731, 741 (N.D. Ohio 2003); *H.R. v. State Dep't of Human Res.*, 612 So. 2d 477, 479–80 (Ala. Civ. App. 1992) (holding that two anonymous reports about events were insufficient cause to enter home without consent); *In re Stumbo*, 582 S.E.2d 255, 256 (N.C. 2003); Summer A. Duke, Comment, *Standard Bearers of the Fourth Amendment: The Curious Involvement of Home School Advocates in Constitutional Challenges to Child Abuse Investigations*, 73 UMKC L. REV. 137, 138 (2004) (“Recent cases suggest a comprehensive movement to assert a parent’s right to refuse to cooperate with social service investigations when there is no warrant authorizing a search of the home or an interview with the child. The HSLDA has taken a very active role in this movement, which seeks to set precedent that the Fourth Amendment’s protection against unreasonable searches and seizures is applicable to child abuse and neglect investigations by social workers or traditional law enforcement officers.”); see also Michael P. Farris, *The Fourth Amendment’s Impact on Child Abuse Investigations*, HOME SCH. LEGAL DEF. ASS’N (Apr. 2, 2003), <http://www.hsllda.org/research/docs/200404020.asp>.

73. See Erica Mynarich, *An Argument for the Adoption of an Illinois Homeschooling Statute*, 20 J. DUPAGE CNTY BAR ASS’N 1, 28 (2007), available at <http://www.dcbabrief.org/vol201007art4.html> (“[I]n response to . . . [Illinois] school officials asking home-schooling families to complete a registration form and present their curricula to truancy officers, the HSLDA wrote to its Illinois members that if school officials visit their homes ‘demanding to see your curriculum or asking you to fill out a form,

protect their younger siblings. For example, in one Maryland case an adult homeschool alumna called child protective services on her parents only to have an HSLDA attorney prevent the social worker from speaking with her siblings alone. Fearful of reprisals should their parents hear them tell the social worker what was actually happening in the home, the children stayed silent, and the social worker closed the case.⁷⁴

4. Who Can Initiate Child Abuse and Neglect Proceedings?

Finally, the need to convince child protective services that educational neglect is occurring is a huge bar preventing homeschooled children from receiving the help they need. In roughly half of the states, only a member of the state's executive branch can file abuse and neglect petitions on behalf of a child.⁷⁵ In those states, extended family members, older siblings, family friends, and the children themselves are barred from initiating such proceedings. Other states broaden the power to petition, some giving it to all adults and some only to certain adults with a close relationship with the child.⁷⁶ However, only Connecticut has a statutory provision explicitly allowing a child to initiate an abuse and neglect petition on his or her own behalf.⁷⁷ As social workers face obstacles in investigating these cases and may also have difficulty recognizing the signs of educational neglect in a homeschooling context, requiring homeschooled students and those near to them to first convince social services that educational neglect is happening adds yet another barrier that prevents some children from receiving help.

These four factors, combined with the massive deregulation of homeschooling over the past thirty years, have created barriers that prevent homeschooled children from getting the help they need from child protective services. The result of this legal regime is tragic. The next section will provide more information about why it is so crucial that homeschooled children have access to legal mechanisms that will help ensure their well-being.

C. EDUCATIONAL NEGLECT OF HOMESCHOOLED STUDENTS UNDER THE CURRENT DEREGULATION REGIME

There is a significant lack of data concerning the impact of the massive homeschooling deregulation campaign that spanned the past thirty years. The absence of both notification and mandatory testing requirements in many states means it is impossible to know how many homeschooled children exist or what their academic achievements are. In fact, as examined by the Coalition for

do not let these people in your home; do not let them see your curriculum; and do not fill out the form. The district does not have a legal right to require this.'").

74. Signed Statement of R.L. for author (Oct. 16, 2014) (on file with author).

75. Ryan M. Rappa, Note, *Getting Abused and Neglected Children into Court: A Child's Right of Access Under the Petition Clause of the First Amendment*, 2011 U. ILL. L. REV. 1419, 1432-33 (2011).

76. *Id.* at 1431-32

77. CONN. GEN. STAT. § 46b-129(a) (2013).

Responsible Home Education, almost every study that has purported to show the academic accomplishments of homeschooled students has suffered from self-selection bias or failed to account for other factors, such as parental income levels and the parents' educational achievement.⁷⁸ Particularly due to self-selection bias, those homeschooled children who are most likely to suffer educational neglect are also the least likely to have participated in one of these studies.

Instead of empirical data, we have an ever-increasing number of stories from homeschool alumni describing their own experiences. To find these stories, one need only turn to the hundreds of blogs, Internet forums, and Facebook groups that have been created by these alumni, who are making Internet communities where individuals with similar homeschooling experiences can meet. One such online community is *Homeschoolers Anonymous*, a web platform founded in March 2013.⁷⁹ As of October 16, 2014, the website hosted 906 separate posts written by hundreds of authors, and more submissions continue to flood in.⁸⁰ Its founders, all homeschool alumni themselves, are intentionally creating a space where homeschool alumni can make their voices heard and can work together to help other alumni struggling with the aftereffects of negative homeschooling experiences.⁸¹ *Homeschoolers Anonymous* represents a growing movement among the first generation of those homeschooled under the deregulation regime, a generation that has now grown up and is using the Internet to raise awareness about aspects of the homeschooling movement that are rarely seen by outsiders.⁸² Thanks to web platforms like *Homeschoolers Anonymous*, we now know that homeschooling is not a universally positive experience. Rather, homeschooling has been used by some to hide all manner of abusive and

78. *Academic Achievement*, COAL. FOR RESPONSIBLE HOME EDUC., <http://www.responsiblehomeschooling.org/homeschooling-101/academic-achievement/> (last visited Jan 21, 2015) (describing and critiquing studies performed on homeschool students' academic accomplishments); see also Dick M. Carpenter II, *Mom Likes You Best: Do Homeschool Parents Discriminate Against Their Daughters?*, 7 U. ST. THOMAS J.L. & PUB. POL'Y 24, 26, 29 (2012) ("[T]he comparably limited body of work on the academic performance of homeschooled students reflects the scant data available for empirical analyses. Homeschooled students are not typically required to submit to systematic assessment, thereby hindering research in this area. The primary sources for the data that do exist have come from SAT and ACT results. Because almost half of homeschooled students attend college—and SAT and ACT scores are ubiquitous for college entrance—these test data have proven to be commonly used metrics in homeschool research. . . . Because testing is rarely required of homeschooled students, samples are composed of those who agree to testing, which introduces significant selection bias. This particularly affects standardized achievement scores from the K-12 population."(footnotes omitted)).

79. *About*, HOMESCHOOLERS ANONYMOUS, <http://homeschoolersanonymous.wordpress.com/about> (last visited Jan. 21, 2015).

80. E-mail from Ryan Stollar, Cofounder of Homeschoolers Anonymous, to author (Oct. 16, 2014, 4:38 PM) (on file with author).

81. *Id.*

82. See, e.g., Goldberg, *supra* note 12; Kathryn Joyce, *The Homeschool Apostates*, THE AM. PROSPECT, <http://prospect.org/article/homeschool-apostates> (last visited Jan. 21, 2015) (describing "the emergence of a coalition of young former fundamentalists who are coming out publicly, telling their stories, and challenging the Christian homeschooling movement").

neglectful behavior, including educational neglect.⁸³

To fully understand the experiences of educational neglect described by these alumni, some background information about the homeschooling movement is necessary. Many, perhaps most, homeschooling parents are fundamentalist Christians who homeschool to protect their children from a secular public school system.⁸⁴ Fundamentalist Christian organizations and speakers dominate home-

83. Although not the focus of this Note, homeschooling has also been used to hide horrendous physical abuse of children. Two homeschool alumni, Heather Doney and Rachel Coleman, have cocreated *Homeschooling's Invisible Children*, a database of news stories about homeschooled children who have been killed or severely abused by their parents or caregivers. *About Us*, HOMESCHOOLING'S INVISIBLE CHILDREN, <http://hsinvisiblechildren.org/about-us/> (last visited Jan. 21, 2015). Some of these children were removed from the public school system after teachers noticed strange bruises or other signs of abuse. See Willard & Oplinger, *supra* note 45. Homeschooling's Invisible Children has documented 242 cases of severe abuse, a tally that includes ninety-four fatalities, from 2000 to date, with a backlog of over 100 cases yet to be categorized. Coleman, *supra* note 31; see also *CRHE to World Magazine: Don't Downplay Abuse and Neglect*, COAL. FOR RESPONSIBLE HOME EDUC., <http://www.responsiblehomeschooling.org/crhe-to-world-magazine-dont-downplay-abuse-and-neglect/> (last visited Jan. 21, 2015). A second study of newspaper articles from 1999 to 2004 revealed forty-one murders of homeschooled children at the hands of their caregivers. Willard & Oplinger, *supra* note 45. The number of homicides found by both these studies is almost certainly underinclusive because these studies relied on newspaper articles mentioning whether the children were homeschooled, homicides of children who are never or rarely seen by individuals outside their immediate family are difficult to track, and the research by Homeschooling's Invisible Children is ongoing. The hundreds of documented instances of physical abuse of homeschooled children that did not result in homicide ranged from forced starvation to the use of shock collars to severe physical beatings, excessively cruel abuse that was likely easier to hide because the children were not seen regularly by mandatory reporters. See *Abuse in Homeschooling Environments*, COAL. FOR RESPONSIBLE HOME EDUC., <http://www.responsiblehomeschooling.org/policy-issues/abuse-and-neglect/abuse-in-homeschooling-environments/> (last visited Jan. 21, 2015); see also, e.g., Mensah M. Dean, *Mother and Her Boyfriend Get 25 to 50 Years for Her Son's Murder*, PHILLY.COM (June 4, 2014), http://articles.philly.com/2014-06-04/news/50304503_1_dashawn-harris-christian-patrick-25-to-50-years; Police Charge Mom, Grandparents of Starving, Beaten Child Who Ate Insects to Survive, CBS PITTSBURGH (July 19, 2014, 5:20 PM), <http://pittsburgh.cbslocal.com/2014/07/19/police-charge-mom-grandparents-of-starving-beaten-child-who-ate-insects-to-survive/>; Julia Reynolds, *Children Found Starving, Chained and Abused in Monterey County Home*, SAN JOSE MERCURY NEWS (Mar. 21, 2014, 2:36 PM), http://www.mercurynews.com/ci_25394977/children-found-starving-one-chained-floor-salinas-home; Jessica Vander Velde, *Police: Tampa Mom Starved, Tortured Children*, TAMPA BAY TIMES (Mar. 28, 2014, 8:57 AM), <http://www.forums.tampabay.com/news/publicsafety/crime/police-tampa-mom-starved-tortured-teens-over-eight-years/2172364>.

84. See Catherine J. Ross, *Fundamentalist Challenges to Core Democratic Values: Exit and Homeschooling*, 18 WM. & MARY BILL RTS. J. 991, 997 (2010) ("By 2007, eighty-three percent of homeschoolers reported that they chose to keep their children at home to 'provide religious or moral instruction.'"); Yuracko, *supra* note 46, at 126–27 ("[W]hile homeschoolers themselves continue to be a diverse lot, the homeschooling movement has become defined and driven by its conservative Christian majority." (footnote omitted)); Carolyn Kleiner, *Homeschooling Comes of Age*, U.S. NEWS & WORLD REP. (Oct. 16, 2000), http://www.usnews.com/usnews/edu/articles/001016/archive_010897.htm, ("[T]he religious right remains the loudest, most organized voice in the home-schooling movement. Take the Home School Legal Defense Association, a 70,000-family organization run by Christian fundamentalists . . ."). This statement is not meant to deny that many individuals who are not fundamentalist Christians also homeschool their children. There are a wide variety of reasons motivating individuals to make that educational choice for their children. Christian fundamentalist homeschoolers have, however, the strongest and most vocal presence of all the groups in the homeschooling population. Therefore, the experiences of individuals raised in that part of the homeschooling world are highlighted by this Note. See *supra* note 31 and accompanying text.

school conventions,⁸⁵ and a primary tenet of their beliefs is strict adherence to traditional gender roles. Vision Forum⁸⁶ is perhaps the most well-known homeschooling organization to advance this patriarchal⁸⁷ belief system, going so far as to embrace the Botkin family's "stay-at-home daughter" movement. The Botkins, a prominent homeschooling family that often speaks at homeschool conferences, teach parents that daughters should remain at home under their father's authority until the father finds a suitable husband for them—at no point, whether married or single, are they to work outside the home.⁸⁸

In some homeschool families, these patriarchal teachings result in female students receiving a different education than their brothers. In these instances, the girls' education focuses more on homemaking skills. For example, instead of algebra, math lessons cover fractions so that girls can double recipes or budgeting so that girls can stretch their grocery allowances. Caring for younger siblings, sewing, gardening, and house cleaning are touted as "classes" that prepare young women for the role they will someday play as a wife and mother. Sometimes these activities are included on the girls' transcripts as "home economics."⁸⁹

Even parents who do not believe girls should have fewer educational opportunities than boys can unintentionally limit their daughters' ability to learn by

85. For example, the Home Educators Association of Virginia hosts an annual, well-attended convention each summer. In 2014, its keynote speakers were Voddie Baucham, a long-term supporter of the patriarchal belief that daughters must live at home under their father's authority until they are married, and Michael P. Farris, the founder of HSLDA and a well-known advocate for the Religious Right. See *31st Annual Homeschool Convention*, HOME EDUCATORS ASS'N OF VA., <http://heav.org/convention/speakers/> (last visited Apr. 18, 2014); Jennie Chancey, *Voddie Baucham on Womanhood*, LADIES AGAINST FEMINISM (Aug. 27, 2011), <http://www.ladiesagainstfeminism.com/biblical-womanhood/voddie-baucham-on-womanhood/> (containing an hour-long video of Voddie Baucham speaking about adult daughters foregoing college and staying at home); *Michael P. Farris*, PATRICK HENRY COLL., <http://www.phc.edu/chancellor.php> (last visited Jan. 21, 2015).

86. Vision Forum has recently shut its doors due to a sexual abuse scandal. The president of Vision Forum, Doug Phillips, stands accused of sexually abusing a young woman who worked as a nanny in his home. The young woman has now filed a nine-count complaint against him in Texas state court, claiming Phillips used his patriarchal teachings to coerce her into engaging in sexual activity with him. The complaint, which provides an excellent summary of the patriarchal belief system advanced by many fundamentalist homeschooling parents, is available online. See Chelsea Schilling, *Christian Giant Sued for 'Using Nanny as Sex Object'*, WND (Apr. 15, 2014, 10:19 AM), <http://www.wnd.com/2014/04/pastor-accused-of-using-nanny-as-sex-object-2/>; see also Plaintiff's Original Petition at 3–15, *Torres-Manteufel v. Phillips*, No. 2014-CI-05999 (D. Tex. Apr. 15, 2014), available at <http://www.wnd.com/files/2014/04/TorresComplaintFinalwithCoverSheet.pdf>.

87. "Patriarchal," both here and throughout the Note, means the religious belief that fathers are owed obedience by their wives and children. See KATHRYN JOYCE, *QUIVERFULL: INSIDE THE CHRISTIAN PATRIARCHY MOVEMENT* 93–102 (2009) (describing the patriarchal beliefs advanced by Vision Forum).

88. For an example of the stay-at-home daughter teachings advanced by the Botkins, the blog kept by the Botkin daughters is a useful resource. See Anna Sofia Botkin & Elizabeth Botkin, *But What If . . . ?*, VISIONARYDAUGHTERS, <http://visionarydaughters.com/2009/07/but-what-if> (last visited Jan. 21, 2015); see also Yuracko, *supra* note 46, at 157 n.165.

89. Statement based on a series of conversations the author had with several dozen young women homeschooled in patriarchal families who have asked to remain anonymous (records on file with author). See also Goldberg, *supra* note 12 (describing how Kierstyn King, a homeschool alumna, never learned algebra because her parents did not believe girls needed higher math skills).

placing heavy family responsibilities on them, which may include everything from housework to childcare. Fundamentalist Christian parents often believe birth control is sinful, resulting in large families that may include six to twelve children.⁹⁰ It is impossible, however, for one parent to care for and teach so many children at one time, especially when she—for the woman is the parent who stays home in these families—is continuously pregnant or breastfeeding or both. Therefore, consistent with the traditional gender roles espoused by these parents,⁹¹ the older daughters are sometimes obligated to become surrogate mothers to their younger siblings. When that happens, an older daughter will “adopt” a much younger sibling, becoming the younger child’s primary caretaker and homeschool teacher. The hours these girls devote to their siblings detract from their ability to finish their own assignments. Many homeschool alumnae recounted being unable to keep up with their schoolwork due to family responsibilities. For some of these women, when they asked for more time to devote to school, their parents told them that service to family is more important than schoolwork.⁹²

90. JOYCE, *supra* note 87, at 134, 140, 205–06 (“Quiverfull parents try to have upwards of six children; many have more. They homeschool their families, attend fundamentalist churches, and follow biblical guidelines of male headship—‘father knows best’—and female submissiveness. They refuse any attempt to regulate pregnancy.”). Abstaining from birth control is common among the leading families of the fundamentalist homeschool movement, a decision copied by many of their followers. For example, Michael P. Farris, the founder of the Home School Legal Defense Association, has ten children. *Michael P. Farris, Esq.*, HOME SCH. LEGAL DEF. ASS’N, <http://www.hslda.org/about/staff/attorneys/Farris.asp> (last visited Jan. 21, 2015). Doug Phillips, the founder of Vision Forum, has eight children. Morgan Lee, *Duggar Family’s Close Relationship with Vision Forum Founder Doug Phillips and Wife Highlighted After Scandal*, CHRISTIAN POST (Nov. 13, 2013, 4:32 PM), <http://www.christianpost.com/news/duggar-family-close-relationship-with-vision-forum-founder-doug-phillips-and-wife-highlighted-after-scandal-108697/>. Voddie Bauchum, a prominent speaker at homeschooling conferences, has nine children. *About*, GRACE FAM. BAPTIST CHURCH, <http://www.gracefamilybaptist.net/voddie-baucham-ministries/vbm-about/> (last visited Jan. 21, 2015). Israel Wayne, another popular speaker at homeschool conferences, also has eight children. *Meet Israel Wayne*, FAM. RENEWAL, <http://www.familyrenewal.org/israel-wayne/> (last visited Jan. 21, 2015).

91. It may appear odd that an individual could both adopt traditional gender norms and expect young women to attain the same level of educational achievement as their brothers. However, fundamentalism embraces a spectrum of beliefs regarding women’s higher education. Many fundamentalists, such as Doug Phillips and those affiliated with his now-defunct Vision Forum Ministries, believe women should not go to college, as their proper place is always in the home. See JOYCE, *supra* note 87, at 96, 111, 226–27. Others, however, simultaneously embrace traditional gender roles and expect their daughters to attend college or otherwise receive an education on par with their brothers. Compare Michael Farris, *A Line in the Sand*, HOME SCH. LEGAL DEF. ASS’N, <http://www.hslda.org/courtreport/V30N2/V30N202.asp> (last visited Jan. 21, 2015) (asserting that Phillips’ stay-at-home-daughter movement goes too far), with MICHAEL FARRIS, *THE HOMESCHOOLING FATHER* 66–67, 81–82 (1999) (asserting that daughters should be “pushed” to be homeschooling mothers and that daughters need higher education so they can better homeschool their children).

92. Statement based on a series of interviews the author had with homeschool alumni who have asked to remain anonymous (records on file with author). One homeschool alumna explained, “I myself had very spotty education in high school because I was mostly caring for siblings, cooking and cleaning, and homeschooling small siblings. I never had any formal geography, history, or math beyond basic algebra. College was not encouraged or allowed when I was living at home.” Signed Statement of M.R. for author (Oct. 13, 2014) (on file with author).

Documentation is another problem homeschooled children can face. Unlike their private or public school counterparts, homeschooled children cannot obtain a transcript from a neutral office of professionals. They have to ask their parents to both prepare the transcript and to sign it. There is no law requiring parents to provide their children with verification of the work the children have completed. Transcripts thus become a tool that parents can use to control their children. In fact, several homeschool alumni who spoke with the author reported that their parents refused to provide a transcript for them, either as punishment for disobedient behavior or to control where (or whether) they attended college. The result is unfortunate: many simply made up their own transcripts and admitted to colorfully describing some of their high school activities as classes, especially when their education was inadequate. For example, a week-long camp with visits to the state capital became a course in “government,” participation in the church’s girl scout troop became “civics,” and attendance at a weekly Bible study became “theology.” When necessary, students forged their parents’ signatures.⁹³ One homeschool alumna reported that falsifying transcripts was so common among formerly homeschooled students at Pensacola Christian College, where she attended, that “it was a joke about how we all had to make up stuff in order to get in.”⁹⁴

Finally, as Powell’s and Doney’s stories at the beginning of this Note made clear, homeschooled children can also suffer from educational neglect when their parents, for any reason, either do not or cannot provide them with an adequate education. The author spoke with dozens of homeschool alumni to ask them about their educational experiences. While some praised their excellent education, others reported being forced to teach themselves math (with little success),⁹⁵ taking far more than twelve years to graduate from high school,⁹⁶

93. *E.g.*, Signed Statement of K.C. for author (Oct. 7, 2014) (on file with author).

94. Signed Statement of S.F. for author (undated) (on file with author).

95. “My mom had five kids, all in different grades, and while that isn’t as many children as some homeschooling families have, she couldn’t keep up with that many kids at once. By the time I was 12, she was handing my older brother and me the teacher keys and having us teach ourselves and then check our own work. As a result I had no math past half a semester of pre-algebra before I gave up since I didn’t understand what I was reading” Signed Statement of R.C. for author (Oct. 13, 2014) (on file with author). “My parents gave up trying to teach me algebra because I was a girl and they couldn’t explain it to me.” Signed Statement of J.L. for author (Oct. 7, 2014) (on file with author). “By high school, my mother could not keep up with my algebra education. We tried to learn it together, but I ended up on my own until she just gave up entirely. I barely passed college algebra and it was the most difficult class I took.” E-mail from N.D. to author (Oct. 16, 2014, 10:15 PM) (on file with author).

96. “My best friend, the pastor’s daughter, was still attempting to finish ‘high school’ (the curriculum they chose for her to complete was based on teaching women ‘homemaking skills’) when I was graduating from college.” Signed Statement of S.F. for author (undated) (on file with author). “One girl I know was in her early twenties before she graduated high school, and this pattern is continuing with her younger siblings. Another girl I know never graduated high school at all because her parents gave her so many chores to do she didn’t have time to study.” Signed Statement of S.D. for author (Oct. 14, 2014) (on file with author).

receiving no instruction for long stretches of time,⁹⁷ or being punished for not understanding a concept.⁹⁸ One homeschool graduate candidly admitted not learning the multiplication tables until her senior year of high school.⁹⁹ Another said she received a sixth grade education in terms of math and science.¹⁰⁰ Several reported that they knew homeschooled children who did not learn to read until middle or high school.¹⁰¹ Another discussed how her special needs sibling was severely undereducated.¹⁰²

The lack of homeschool regulation means that there is no safety net for these children. Their lack of educational attainment is rarely found and, even when it is found, it is rarely remedied.¹⁰³ What, then, do homeschooled children facing educational neglect do? We can return to Doney and Powell for two examples that fortunately ended in success.

Doney called her grandparents, who had suspected all was not well. They sprang into action, tutoring her and eventually convincing her parents to let her enroll in the public high school. She walked into a classroom for the first time in ninth grade.¹⁰⁴ Today, she holds a masters degree in public policy from Brandeis University and is the cofounder of the Coalition for Responsible Home

97. “I knew families (four that I can recall specifically) who did not buy any sort of education materials or get them from the library—their daily life involved no form of ‘school’ activity whatsoever. Usually they did not educate their children at all for two to three years and then all of a sudden be all gung-ho about buying curriculum and designing lesson plans, which would last about a month or two, leaving the children to attempt to self-educate for the rest of the year.” Signed Statement of S.F. for author (undated) (on file with author). “My mother left me to my own devices for education around age [thirteen] and provided no real support when, entirely on my own, I prepared for the GED test. Parents were completely indifferent that I had no diploma until age [nineteen], and that my two sisters had no diplomas (or transcripts) into their 20s [sic]” Signed Statement of T.W. for author (Oct. 13, 2014) (on file with author). “My parents took in 3 kids from another family and babysat 5 more forcing my younger siblings to do all childcare, cooking, cleaning and locking textbooks away in a footlocker in the attic [sic]. My siblings were not allowed time to study and sometimes did fewer than 20 days of any school work per year.” Signed Statement of A.D. for author (Oct. 7, 2014) (on file with author).

98. “My brother had severe problems with reading comprehension in grade school. My parents took his behavior as ‘rebellion’ and punished and berated him for not taking school seriously. It was not until late middle school that it was discovered he had some kind of learning disability” Signed Statement of S.S. for author (Oct. 13, 2014) (on file with author).

99. Messenger Exchange from R.K. to author (Oct. 14, 2014, 10:01 AM) (on file with author).

100. Signed Statement of J.S. for author (Oct. 6, 2014) (on file with author).

101. *E.g.*, Signed Statement of S.D. for author (Oct. 14, 2014) (on file with author).

102. “My brother, who is autistic, was homeschooled his entire life, but his education was severely lacking. As a person with autism, my brother needed to learn the basic social skills many people pick up naturally. However, my brother had limited opportunities to socialize with others, and was not taught the basic social skills he presumably would have learned in a formal, special education program. Additionally, my brother never received education in a variety of subjects, including history, geography, government, social studies, and science. . . . Despite recommendations that my brother receive cognitive behavioral therapy . . . my mother always refused, stating that she could provide that type of care to my brother on her own. (My mother has no experience in therapy, and does not have an academic degree beyond a high school diploma.)” Signed Statement of R.S. for author (Oct. 9, 2014) (on file with author).

103. *See supra* sections I.A., I.B.

104. Doney, *supra* note 12.

Education.¹⁰⁵

Powell was not as fortunate. He begged to go to public school but lacked the powerful ally Doney had in her grandparents. His parents feared losing their religious exemption status should they allow him to enter public school, a change that would have required them to submit all their remaining children to annual, standardized testing.¹⁰⁶ He had few avenues for legal redress as Virginia does not forbid educational neglect or place any requirements on parents, like Powell's, who homeschool under the religious exemption statute. However, Virginia does have one, extremely unique requirement: mature children homeschooled under the religious exemption statute must share their parents' belief that attending public school is wrong.¹⁰⁷ Knowing this requirement, sixteen-year-old Powell wrote to his local school board and asked to enroll.

Unfortunately, the board dismissed his request and told Powell to "listen to [his] parents."¹⁰⁸ This response was consistent with the Virginia public school system's systematic failure to ask older children homeschooled under the

105. Goldberg, *supra* note 12; *Who We Are*, COAL. FOR RESPONSIBLE HOME EDUC., <http://www.responsiblehomeschooling.org/about-crhe/who-we-are/> (last visited Jan. 21, 2015).

106. See NAT'L PUB. RADIO, *supra* note 8. In order to receive the protection of Virginia's religious exemption statute, parents must send a notification to their local school board, which checks to ensure that the parents have a "bona fide" religious belief against public education. VA. CODE ANN. § 22.1-254(B)(1) (2014). It is possible that, once one child attends public school, the board would no longer find that the parents have a bona fide religious belief against public education. However, the parents would not then be required to send all their children to public school. Rather, the parents would be able to homeschool the remaining children under Virginia's general homeschooling statute, which has several requirements that are not found in the religious exemption statute. *Id.* § 22.1-254.1(A) (2014). This provision allows all high school graduates to homeschool their children, provided they annually give notification of their intent to homeschool and submit a yearly academic assessment of the child to the school superintendent. *Id.* The academic assessment requirement is easily met. Parents can, among other things, (1) give students a standard assessment test, like the California Achievement Test, or (2) have a licensed teacher or an individual with a master's degree or higher perform a more holistic evaluation. *Id.* § 22.1-254.1(C). Homeschooled children taking a standardized test under this provision must score in the twenty-fifth percentile or higher to avoid doing remedial work. See *id.* If the child does not score in the twenty-fifth percentile, or higher, by the next year, homeschooling must cease. See *id.* Homeschooled children receiving the evaluation by a certified teacher or an individual with a master's degree must "achiev[e] an adequate level of educational growth and progress," a nebulous standard. *Id.* Whether these measures effectively detect and stop educational neglect is uncertain at best. Calls placed by the author to several of Virginia's largest school districts revealed that school districts do not track homeschooled students' test results other than to note that the score is above the twenty-fifth percentile, meaning they do not know whether homeschooled students' median scores track with those of public school students. See Telephone Calls by author to Fairfax, Alexandria, and Loudoun County schools (Apr. 2014). Additionally, Virginia allows standardized tests to be proctored at home, by the parent. Unfairly helping a student during a test administration would be an easily accomplished subterfuge, one parents would be tempted to perform should their child's score be hovering near the twenty-fifth percentile. Parents may also hire an evaluator who believes in homeschooling so strongly that the evaluator would sign off on the child's progress just to ensure the child continues to be homeschooled. Both methods of doctoring assessments were anecdotally reported to the author by homeschool graduates from Minnesota and Pennsylvania, respectively, and there is no indication that such incidents could not happen in Virginia as well.

107. See VA. CODE ANN. § 22.1-254(B)(1) (2014).

108. See NAT'L PUB. RADIO, *supra* note 8.

religious exemption statute whether they agree with their parents' anti-public-school beliefs.¹⁰⁹ Most pertinent to this Note, however, even though the board's behavior clearly contradicted Virginia law, Powell could not obtain legal redress. As an unemancipated minor, he was legally incompetent.¹¹⁰

Today, Powell is twenty-two-years-old. He recently graduated from Georgetown University with a bachelor's degree in sociology. After the *Washington Post* featured his story, some proponents of homeschooling—most notably HSLDA—called him a homeschool success story.¹¹¹ Powell disagrees. He believes his accomplishments are due to a series of fortunate events.¹¹² His parents decided that community college was appropriate for a seventeen-year-old student, even though the local public high school was not. His mother signed a financial aid application for him—a crucial prerequisite.¹¹³ A kind neighbor took him to the closest community college, an hour away, every day for class. And, after three years at community college, he took the SAT and

109. TSCHIDERER ET AL., *supra* note 3, at 26.

110. As is typical in most states, an unemancipated minor in Virginia may only sue “by his next of friend.” VA. CODE ANN. § 8.01-8 (2014). In Virginia, that next of friend must be either one or both parents. *Id.* This limitation prevents other individuals, such as an extended family member or family friend, from aiding the child when the parents and the state both seek to limit the child's rights. Emancipated minors may sue in court, but few teenagers can show the requisite independence to obtain emancipation. Virginia's emancipation statute is typical:

The court may enter an order declaring the minor emancipated if, after a hearing, it is found that: (i) the minor has entered into a valid marriage, whether or not that marriage has been terminated by dissolution; or (ii) the minor is on active duty with any of the armed forces of the United States of America; or (iii) the minor willingly lives separate and apart from his parents or guardian, with the consent or acquiescence of the parents or guardian, and that the minor is or is capable of supporting himself and competently managing his own financial affairs.

Id. § 16.1-333. Virginia law has no mechanism by which a “mature minor” may file a lawsuit. *See* Op. Att'y Gen. Va. No. 10-116 (2011), 2011 WL 265680 (explaining that unemancipated minors, no matter how mature, cannot file for a protective order).

111. Scott Woodruff, *Washington Post Gets It Wrong on Freedom, Homeschooling*, HOME SCH. LEGAL DEF. ASS'N (July 30, 2013), <http://www.hsllda.org/hs/state/va/201307300.asp> (“Maybe Josh didn't learn that South Africa was a country while he was being homeschooled. But he arrived at the gates of young adulthood with his inborn desire to learn fully intact, and that has served him very well indeed. The Virginia religious exemption statute deserves its place of respect.”).

112. *See* Svrluga, *supra* note 2.

113. Absent a court finding that a student is emancipated or was made a ward of the state, unmarried students requesting federal financial aid for undergraduate study must obtain their parents' signature and financial information until the student is twenty-four, even if the student is financially independent. *See* 20 U.S.C. § 1087vv(d)(1) (2012); *For Purposes of Applying for Financial Student Aid, What's the Difference Between a Dependent Student and an Independent Student?*, FED. STUDENT AID, <http://studentaid.ed.gov/fafsa/filling-out/dependency> (last visited Jan. 21, 2015). Incredibly, many individuals leaving fundamentalist religious homeschooling families find themselves unable to access federal financial aid until they are twenty-four because their parents refuse to sign the Free Application for Federal Student Aid (FAFSA). Typically, homeschooling parents who refuse to sign the FAFSA do so out of religious conviction, influenced, no doubt, by the many popular religious homeschooling organizations that believe attending college is sinful. Examples of such organizations include Vision Forum and the Advanced Training Institute, each of which had thousands of member families. *See* Yuracko, *supra* note 46, at 156 n.162.

transferred to Georgetown, again thanks to his parents' agreement to sign his financial aid form.¹¹⁴

Powell's and Doney's stories are consistent with those told by other homeschool alumni. Their stories indicate that homeschooled children suffering educational neglect rarely, if ever, obtain help through child protective services. Rather, the educational neglect is never remedied or the children find help either through family intervention or through attending a local community college.

D. FAILED ATTEMPTS AT LEGISLATIVE REFORM

With laws across the country failing to provide mechanisms to detect and remedy educational neglect among homeschooled children, one may wonder why state legislatures have not stepped up to provide a political solution to this problem. The truth is that some legislatures have proposed reforms, but the homeschooling lobby, led principally by HSLDA, has prevented almost all attempts to protect homeschooled children from educational neglect. Indeed, the homeschool lobby's antiregulation campaign has been helped by the lack of credible statistics indicating the level of educational neglect in the homeschooling community—a lack created by the very absence of monitoring and mandatory testing requirements that reformers seek to change.¹¹⁵

In the spring of 2014, Republican Delegate Thomas Rust discovered how difficult it is to pass homeschool legislation when he introduced House Joint Resolution (HJ) 92 in the Virginia General Assembly. A concerned constituent contacted Delegate Rust about Virginia's religious exemption statute, the same statute that restricted Powell's access to education. The constituent explained that she had relatives who were homeschooled under this statute, and she feared they were falling behind academically.¹¹⁶ This information, combined with the *Washington Post* article about Powell's experience, spurred Delegate Rust to propose legislation that would enable the state to determine whether school boards could know if educational neglect was happening in the homeschooling families operating under Virginia's religious exemption statute. His proposal, HJ 92, directed the state to conduct a study to determine:

- (i) [H]ow [each] school board makes the determination that a student is eligible to be excused from attending school by reason of bona fide religious training or belief, (ii) whether the initial determination . . . is reviewed, (iii) whether [each] school board requires the initial grant to be renewed and, if so, how often, and (iv) whether [each] school board monitors the educational progress of students who have been excused from attending school by reason

114. Powell Statement, *supra* note 2.

115. See *infra* notes 116–22 and accompanying text.

116. Susan Svrluga, *Virginia Lawmaker Seeks to Clarify Education Law on Religious Exemptions*, WASH. POST (Jan. 14, 2014), http://www.washingtonpost.com/local/education/virginia-lawmaker-seeks-to-clarify-education-law-on-religious-exemptions/2014/01/14/71a686dc-7c8c-11e3-9556-4a4bf7bcbcd84_story.html.

of bona fide religious training or belief or requires the student's parents to report on the student's educational progress, or both¹¹⁷

In response, HSLDA immediately e-mailed its member families in Virginia, telling them that “their right to teach their children that God is the beginning of wisdom” had been “throw[n] . . . into question and confusion” because of the possibility that “Rust’s call for a study is a mere pretext, and that his true intention is to try to take away some of your freedom once the study gives him some ‘cover.’”¹¹⁸ Claiming that Delegate Rust had shown that he “understands neither the basic principles of liberty nor the Virginia Constitution,” HSLDA urged its members to call his office and the offices of all the delegates scheduled to vote on the measure in committee.¹¹⁹ As has happened many times before, homeschool parents flooded the legislators’ offices with phone calls, urging Delegate Rust and all members of the committee to kill the bill.¹²⁰ Powell, joined by a small team of fellow homeschool alumni,¹²¹ visited legislators in Richmond in an attempt to save HJ 92, but it was too little, too late. The measure garnered only a single affirmative vote in the committee.¹²²

Fighting legislation that may place accountability requirements on homeschooling parents has become a standard part of HSLDA’s advocacy. In 2013, HSLDA killed a bill in South Carolina that would have imposed mandatory testing on homeschooled students and removed one loophole through which parents currently escape bookkeeping requirements.¹²³ In 2009, HSLDA rallied 4,000 homeschoolers in Illinois to voice opposition to a bill requiring parents to notify the school district of their intent to homeschool.¹²⁴ The state senator who

117. H.R.J. Res. 92, 2014 Sess. (Va. 2014).

118. E-mail from HSLDA to Virginia member families (Jan. 13, 2014, 12:34 PM) (on file with author).

119. *Id.*

120. Interview with Thomas Rust, Delegate, Va. House of Delegates, in Chantilly, Va. (June 12, 2014). Delegate Rust’s legislative aide told the author that his office received over five hundred phone calls about HJ 92, more than the delegate has ever received in response to a bill. Ninety-eight percent of these callers opposed the bill. Email from Carol Sinclair, Legal Aide, Delegate Thomas Rust, to author (Mar. 4, 2015, 12:01 PM) (on file with author).

121. Powell’s allies are part of the expanding movement of homeschool alumni who advocate for greater homeschool regulation. Most of these individuals have witnessed educational neglect in their own families or in the families of their homeschooled friends, and they believe greater regulation would protect homeschooled children. *See Joyce, supra* note 82 (describing “the emergence of a coalition of young former fundamentalists who are coming out publicly, telling their stories, and challenging the Christian homeschooling movement”).

122. *See Powell Statement, supra* note 2; Telephone Interview with Thomas Rust, Delegate, Va. House of Delegates (Mar. 4, 2015).

123. *House Bill 3478: Imposes Additional Testing and Reporting Requirements for Homeschoolers and Eliminates Option III*, HOME SCH. LEGAL DEF. ASS’N (last updated July 11, 2014), <http://www.hslda.org/cms/?q=bill/house-bill-3478-imposes-additional-testing-and-reporting-requirements-homeschoolers-and>.

124. *See Cal Skinner, Homeschool Report from the Springfield Government Regulation Front*, McHENRY CNTY. BLOG (Feb. 15, 2011), <http://mchenrycountyblog.com/2011/02/15/homeschool-report-from-the-springfield-government-regulation-front/>.

sponsored the bill tabled the proposition in response to HSLDA's pressure.¹²⁵ And in 2005, more than 1,000 homeschoolers followed HSLDA's lead and lobbied against Montana's Quality Home School and Child Protection Act, which would have required:

(1) [H]omeschooled students [to] take national standardized tests in the fourth, eighth, and eleventh grades; (2) parents [to] maintain annual records of courses taught; and (3) any parent-teacher who had only a high school diploma or less [to] be monitored during [his or] her first two years of teaching in a home-education program.¹²⁶

HSLDA, using similar language to that deployed against HJ 92, claimed the Act violated parents' "fundamental right to direct the education of their children" and warned legislators that the law would not "survive a constitutional challenge in court."¹²⁷ Unsurprisingly, the bill failed.¹²⁸

HSLDA does not limit itself to stopping proposals to increase accountability. Despite the current dearth of protections for homeschooled children, HSLDA continues to push for even further deregulation. Bills further deregulating homeschooling have recently been passed in several states, but Utah's is perhaps the most troubling.¹²⁹

On April 1, 2014, Utah Governor Gary Herbert signed into law Senate Bill (SB) 39, a provision that effectively made it impossible for the state to stop educational neglect by homeschooling parents, even if the educational neglect is reported to the authorities.¹³⁰ The bill's chief sponsor was Senator Aaron

125. See *Potential Changes to Illinois Law*, CHICAGOLAND HOMESCH. NETWORK (Feb. 3, 2011), <http://chicagolandhomeschoolnetwork.com/politics/potential-changes-to-illinois-law/>.

126. Waddell, *supra* note 46, at 551.

127. *Id.* at 552 (internal quotation marks omitted).

128. *Id.* at 551–52.

129. In recent years, Iowa and Pennsylvania have also removed protections for homeschooled students. See H.F. 215, 2013–2015 Leg. Assemb. (Iowa 2013), <http://coolice.legis.iowa.gov/Cool-ICE/default.asp?Category=BillInfo&Service=DspHistory&var=HF&key=0242C&ga=85>; H.B. 1013, 2013 Reg. Session (Pa. 2013), http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2013&sind=0&body=H&type=B&bn=1013; *A History of Homeschooling in Iowa*, COAL. FOR RESPONSIBLE HOME EDUC., <http://www.responsiblehomeschooling.org/histories-of-homeschooling/a-history-of-homeschooling-in-iowa/> (last visited Jan. 21, 2015) (describing Iowa's sudden deregulation of homeschooling in 2013); *Pennsylvania's HB 1013 is Bad for Homeschooling*, COAL. FOR RESPONSIBLE HOME EDUC., <http://www.responsiblehomeschooling.org/pennsylvanias-hb-1013-is-bad-for-homeschooling/> (last visited Jan. 21, 2015) (explaining how H.B. 1013 would make protecting homeschooled children from educational neglect more difficult). HSLDA was an active proponent of both these measures. See *Homeschool Bill in Trouble*, HOME SCH. LEGAL DEF. ASS'N (Oct. 7, 2014), <http://www.hslda.org/elert/archive/elertarchive.aspx?7218> (asking members to call and email on behalf of Pennsylvania's H.B. 1013); *Homeschool Law Significantly Improved*, HOME SCH. LEGAL DEF. ASS'N (Nov. 4, 2014), <http://www.hslda.org/hs/state/pa/201411040.asp> (praising the removal of regulations on homeschooling in Pennsylvania); *Revolutionary Improvement in Homeschool Law*, HOME SCH. LEGAL DEF. ASS'N (May 24, 2013), <http://www.hslda.org/elert/archive/elertarchive.aspx?6654> (describing HSLDA's support for Iowa's deregulation legislation).

130. See S.B. 39, 2014 Gen. Sess. (Utah 2014), available at <http://le.utah.gov/2014/bills/static/SB0039.html>.

Osmond, who has previously advocated for the end of compulsory education.¹³¹ His bill had HSLDA's full support.¹³²

SB 39 removed from Utah's homeschooling statute the provision requiring homeschooling parents to provide instruction in "the subjects the State Board of Education requires to be taught in public schools" and "for the same length of time" as the public schools.¹³³ These requirements were replaced with a grant of complete discretionary power to homeschooling parents: "[T]he [homeschooling] parent assumes sole responsibility for the education of the school-age minor"¹³⁴ At the time of SB 39's passage, Utah law already forbade placing other regulations on homeschooling parents. For example, school boards could not (1) require homeschooling parents to maintain records, (2) impose any credential requirements (such as a high school diploma) on homeschooling parents, (3) inspect homeschools, or (4) require any testing of homeschooled students.¹³⁵ Now, not only is there no method by which the state can determine whether homeschooled children are being taught, but the state also cannot even mandate that such basic subjects as reading, history, and mathematics are included in homeschool programs.

This recent change to the homeschool statute has a further implication, which was discussed in Part I.B.¹³⁶ Utah's educational neglect statute, which empowers child protective services to intervene on behalf of a neglected child, relies on the homeschooling statute for its definition of educational neglect, stating that "[a] child may not be considered to be educationally neglected," if the child is being homeschooled "in compliance with Section 53A-11-102"—the very section SB 39 gutted.¹³⁷ This change means that, even if child protective services know that a child is not being educated, the agency cannot intervene once the parents claim they are homeschooling.¹³⁸

131. *Id.*; Sen. Aaron Osmond, *Accountability for Parents + Respect for Teachers*, S. SITE (July 12, 2013, 9:38 PM), <http://www.senatesite.com/home/compulsory-education/>.

132. *See Senate Bill 39: Homeschool Amendments*, HOME SCH. LEGAL DEF. ASS'N (last updated Apr. 1, 2014), <http://www.hslda.org/cms/?q=bill/senate-bill-39-homeschool-amendments>.

133. Utah S.B. 39.

134. *Id.*

135. UTAH CODE ANN. § 53A-11-102(2)(d) (West 2014).

136. *See supra* notes 69–70 and accompanying text.

137. UTAH CODE ANN. § 78A-6-319(2)(b)(ii) (West 2014).

138. Although children everywhere can suffer from educational neglect, this loophole is especially troubling in Utah, where the leader of the Fundamentalist Latter Day Saints (FLDS), Warren Jeffs, has instructed his followers to homeschool their children in order to limit the children's exposure to a sinful world. Lindsay Whitehurst & Lisa Schencker, *Law Stays Out of Polygamous Sect's Homeschooling*, SALT LAKE TRIBUNE (Apr. 2, 2012, 4:10 PM), <http://www.sltrib.com/sltrib/news/53702939-78/parents-education-public-students.html.csp> (noting that many children in the FLDS "can't read, they can't do math, they can't . . . do simple addition[, and t]hey don't [even] know that man landed on the moon" (internal quotation marks omitted)); *see also* Catherine J. Ross, *Legal Constraints on Child-Saving: The Strange Case of the Fundamentalist Latter-Day Saints at Yearning for Zion Ranch*, 37 CAP. U. L. REV. 361, 407–08 (2008) (arguing that at-risk children in the FLDS should be required to attend public school so that they will be in contact with mandatory reporters). *See generally* ELISSA WALL WITH LISA PULITZER, *STOLEN INNOCENCE: MY STORY OF GROWING UP IN A POLYGAMOUS SECT, BECOMING A TEENAGE*

It would appear that HSLDA's victories on the homeschooling front are near complete. However, its leadership has even broader goals: they want to greatly expand the scope of parental rights in general. Accordingly, HSLDA has contributed its considerable heft to oppose measures that increase the number of mandatory reporters of child abuse,¹³⁹ forbid the infliction of pain on a special needs child,¹⁴⁰ forbid corporal punishment with the use of implements,¹⁴¹ forbid corporal punishment that causes "[s]ignificant bruises or welts,"¹⁴² and expand the years of compulsory school attendance.¹⁴³ HSLDA's leaders have even founded a separate organization named Parentalrights.org with the sole purpose of lobbying on behalf of the Parental Rights Amendment (PRA).¹⁴⁴ Drafted by

BRIDE, AND BREAKING FREE OF WARREN JEFFS (2008) (describing the rise in child brides among the FLDS thanks to Warren Jeffs' leadership as well as the physical abuse and educational neglect in that community). Jeffs is currently serving a life sentence for child rape. CNN Wire Staff, *Polygamist Leader Warren Jeffs Sentenced to Life in Prison*, CNN JUST. (Aug. 10, 2011, 5:47 AM), <http://www.cnn.com/2011/CRIME/08/09/texas.polygamist.jeffs/index.html>.

139. See *House Bill 3: Requires All Persons to Report Suspected Child Abuse or Neglect*, HOME SCH. LEGAL DEF. ASS'N (last updated Dec. 11, 2012), <http://www.hslda.org/cms/?q=bill/house-bill-3-requires-all-persons-report-suspected-child-abuse-or-neglect> (opposing bill both because it broadens number of people who must report abuse and neglect and because "this bill . . . requires reporting something that is not even abuse or neglect. Families will be investigated because someone reported 'conditions or circumstances' that in the opinion of the reporter could result in abuse. Persons should be investigated only if there is evidence of actual abuse, not conditions or circumstances that might lead to abuse."); S. 1879—*Child Abuse Reporting Enforcement Act*, HOME SCH. LEGAL DEF. ASS'N (Jan. 27, 2012), <http://www.hslda.org/Legislation/National/2012/S1879/default.asp> (opposing a measure that would make everyone who suspects child abuse a mandatory reporter because HSLDA "believe[s it] will lead to a 'police state' of spying and fear"); *Senate Bill 220: Expands Definition of Mandatory Reporters*, HOME SCH. LEGAL DEF. ASS'N (last updated May 28, 2013), <http://www.hslda.org/cms/?q=bill/senate-bill-220-expands-definition-mandatory-reporters> (opposing bill that "expands the definition of mandatory reporters for potential child abuse or neglect to include emergency medical service providers").

140. See *House Bill 1259: Revises the Definition of Felonious Child Abuse*, HOME SCH. LEGAL DEF. ASS'N (last updated Jan. 7, 2014), <http://www.hslda.org/cms/?q=bill/house-bill-1259-revises-definition-felonious-child-abuse> (opposing the bill because it prohibits "minor corporal punishment of a [special needs] child who ha[s] been willfully disobedient").

141. See J. Michael Smith, *Washington Times Op-ed—California May Ban Spanking*, HOME SCH. LEGAL DEF. ASS'N (Apr. 28, 2008), <http://www.hslda.org/docs/news/washingtontimes/200804280.asp> (expressing dismay that, "[i]f the bill passes, spanking with an object such as a stick, rod or switch would be lumped in with throwing, kicking, burning, or cutting a child").

142. *Senate Bill 1360: Corporal Discipline*, HOME SCH. LEGAL DEF. ASS'N (last updated Apr. 13, 2010), <https://www.hslda.org/cms/?q=bill/senate-bill-1360-corporal-discipline>.

143. *House Bill 609 and Senate Bill 387: Lowering Compulsory Attendance Age, Mandatory Kindergarten*, HOME SCH. LEGAL DEF. ASS'N (last updated May 1, 2014), <http://www.hslda.org/cms/?q=bill/house-bill-609-and-senate-bill-387-lowering-compulsory-attendance-age-mandatory-kindergarten>; see *Compulsory Attendance*, HOME SCH. LEGAL DEF. ASS'N, http://www.hslda.org/docs/nche/Issues/S/State_Compulsory_Attendance.asp (last visited Jan. 21, 2015) (describing HSLDA's anti-compulsory-attendance stance); see CHRISTOPHER J. KLIKA, *THE RIGHT CHOICE: HOME SCHOOLING 336* (1995) ("The ultimate victory will not be reached until the compulsory attendance statutes are repealed in every state. However, at this time, repeal of such laws is a long way off. Therefore, the strategy of this author and the Home School Legal Defense Association, in the meantime, is to push back the interest of the state further and further in education, limiting its power to regulate, until that interest finally evaporates.").

144. *About Us*, PARENTALRIGHTS.ORG, http://www.parentalrights.org/index.asp?Type=B_BASIC&SEC={6BC55D6E-1009-43A0-9B3D-0F72BD0A915E}; (last visited Jan. 21, 2015) (listing Michael P. Farris and J. Michael Smith, both founders of HSLDA, as directors of Parentalrights.org); see *Our*

Michael P. Farris, the founder of HSLDA, the PRA is a proposed federal constitutional amendment that declares parental rights to be “fundamental” and requires the government to “demonstrat[e a] . . . governmental interest . . . of the highest order and not otherwise served” before intervening between a parent and child.¹⁴⁵ In response to ParentalRights.org’s lobbying, six state legislatures have passed resolutions advocating for a federal PRA,¹⁴⁶ and seven states have adopted statutes or state constitutional amendments that declare parental rights to be “fundamental,” using the same or similar language as the proposed federal PRA.¹⁴⁷

The lack of homeschool regulation today is a political problem, and it needs a response from the political branches. However, the likelihood of passing legislation to increase accountability measures for homeschooling is currently slim. Homeschooled children are politically powerless, due to their minority status. The homeschool alumni who are now sharing their experiences represent the first generation to grow up under the deregulation regime, making them comparatively few in number. And, almost by default, these young adults must spend

History, HOME SCH. LEGAL DEF. ASS’N, <http://www.hslda.org/about/history.asp> (last visited Jan. 21, 2015) (describing Michael P. Farris and J. Michael Smith, among others, as founders of HSLDA).

145. H.R.J. Res. 50, 113th Cong. § 3 (2013).

146. H.R.J. Res. 3, 61st Leg., 2012 Budget Sess. (Wyo. 2012); H.M. 557, 2011 Reg. Sess. (Fla. 2011); H.J.M 1, 61st Leg., 1st Reg. Sess. (Idaho 2011); S.J. Res. 9, 62d Leg. (Mont. 2011); S. Con. Res. 38, 2010 Reg. Sess. (La. 2010); H.R. Con. Res. 1014, 85th Sess. (S.D. 2010).

147. Michigan adopted Section 380.10 as part of a public education bill in 1995, stating: “It is the natural, fundamental right of parents and legal guardians to determine and direct the care, teaching, and education of their children.” MICH. COMP. LAWS § 380.10 (2014).

Kansas adopted Section 38-141 in 1996, which states: “It shall be the public policy of this state that parents shall retain the fundamental right to exercise primary control over the care and upbringing of their children in their charge.” KAN. STAT. ANN. § 38-141 (2014).

Texas passed Section 151.003 in 1999, which states, “A state agency may not adopt rules or policies or take any other action that violates the fundamental right and duty of a parent to direct the upbringing of the parent’s child.” TEX. FAM. CODE ANN. § 151.003 (West 2014).

Utah passed House Bill 161 in 2012, which states, “Under both the United States Constitution and the constitution of this state, a parent possesses a fundamental liberty interest in the care, custody, and management of the parent’s child. For this reason, the termination of family ties by the state may only be done for compelling reasons.” UTAH CODE ANN. § 78A-6-503 (West 2014).

Arizona passed the Parents’ Bill of Rights Act in 2010, which declares:

A. The liberty of parents to direct the upbringing, education, health care and mental health of their children is a fundamental right. B. This state, any political subdivision of this state or any other governmental entity shall not infringe on these rights without demonstrating that the compelling governmental interest as applied to the child involved is of the highest order, is narrowly tailored and is not otherwise served by a less restrictive means.

ARIZ. REV. STAT. ANN. § 1-601 (2014).

Virginia’s legislature passed House Bill 1642 in the 2013 session, which provides, “A parent has a fundamental right to make decisions concerning the upbringing, education, and care of the parent’s child.” VA. CODE ANN. § 1-240.1 (2014).

Nevada passed Senate Bill 314 in 2013. Although as introduced the bill mirrored the proposed federal amendment exactly, the final version toned down the language, stating simply, “The liberty interest of a parent in the care, custody and management of the parent’s child is a fundamental right.” S.B. 314, 2013 Sess. (Nev. 2014).

much of their time and effort recovering from the obstacles that neglect imposed on them, further diminishing their political capacity. This reality makes homeschooled children and alumni analogous to the “discrete and insular minorit[y]” that the judicial system is specifically charged to protect.¹⁴⁸ With little chance of achieving political change in the near future, Part II of this Note suggests a judicial solution based on the right to education that is already enshrined in our history, our culture, and our state constitutions.

II. A CHILD’S DAY IN COURT

Children lack the vote, the power to enter contracts, and, in most instances, the ability to petition a court for vindication of their legal rights. Thus, the basic tools used by adults to protect themselves from wrongdoing by others are unavailable to children. Our legal system assumes that parents, as a child’s guardian and next of friend, will both defend the child’s rights as necessary and make choices on behalf of the child that are in the child’s best interests. However, the experiences of many homeschooled students who have grown up and shared their stories aptly demonstrate that this assumption is by no means a universal truth. Giving children the ability to vindicate their right to education in court will therefore provide homeschooled children with needed protection against educational neglect.

Part II proceeds in four sections. The first section briefly reviews the history and source of a child’s right to education under state constitutions. The second section proposes a judicial bypass procedure whereby a child will be able to petition a court to enforce the child’s right to education. The final two sections respond to potential counterarguments to this proposal.

A. THE CHILD’S RIGHT TO EDUCATION

Today, every state constitution contains an education clause mandating that the state government provide public education for children living within the state.¹⁴⁹ The roots of this government duty are old. The common schools movement began in the 1830s, creating public school systems and enacting the first state constitutional clauses that mandated the provision of public education.¹⁵⁰ This movement was so successful that Professors Steven G. Calabresi and Sarah E. Agudo found that thirty-six out of the thirty-seven states existing in 1868 included an education clause in their state constitution, making public education “one very fundamental positive-law entitlement that all Americans

148. *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938).

149. Bauries, *supra* note 23, at 706 (“One policy area in which every state constitution imposes specific affirmative obligations is education, and education is the one area in which courts in nearly all American states have been asked to enforce such affirmative obligations.”).

150. Friedman & Solow, *supra* note 24, at 121–22.

have long possessed.”¹⁵¹ In fact, this evidence led Calabresi and Agudo to conclude that the right to public education is “deeply rooted in American history and tradition and is implicit in the concept of ordered liberty,” such that the right to education is possibly a fundamental right that ought to be protected by the Fourteenth Amendment.¹⁵²

Lawsuits based on the right to education began in the 1960s, after desegregation cases like *Brown v. Board of Education* lent strong support to the idea that children have a right to education that could be vindicated in court.¹⁵³ These first lawsuits were brought under the Equal Protection Clause of the Fourteenth Amendment and sought to equalize funding between school districts, arguing that education was a fundamental right and that funding disbursements between school districts were subject to strict scrutiny review.¹⁵⁴ After the Supreme Court held that education was not a fundamental right for purposes of the Equal Protection Clause in *San Antonio Independent School District v. Rodriguez*,¹⁵⁵ school funding litigation moved to state courts where it met with greater success. Today, courts in thirty-one states have ruled that their state constitution’s education clause provides a substantive right to adequate public education.¹⁵⁶

Granted, these cases were litigated in the context of school finance litigation. Thus, in practical terms, the right to an adequate education has meant the right to demand and receive improvement to the local public school system a student already attends. However, the right should not be so cabined. Logically—indeed necessarily—the right should be expanded to include a child’s general right to attend public school.

Some state constitutions already contain language that seems to affirm that the right to education includes the child’s right to attend school.¹⁵⁷ North

151. Steven G. Calabresi & Sarah E. Agudo, *Individual Rights Under State Constitution when the Fourteenth Amendment Was Ratified in 1868: What Rights are Deeply Rooted in American History and Tradition?*, 87 TEX. L. REV. 7, 108–10 (2008).

152. *Id.*

153. 347 U.S. 483, 493 (1954) (“Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”).

154. Cochran, *supra* note 25, at 405–06.

155. 411 U.S. 1, 33–35 (1973).

156. Friedman & Solow, *supra* note 24, at 129.

157. N.M. CONST. art. XII, § 5 (“Every child of school age and of sufficient physical and mental ability shall be required to attend a public or other school during such period and for such time as may be prescribed by law.”); N.C. CONST. art. I, § 15 (“The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.”); *Id.* art. IX, § 3 (“The General Assembly shall provide that every child of appropriate age and of sufficient mental and physical

Carolina's constitution, for example, says, "The General Assembly shall provide that every child of appropriate age and of sufficient mental and physical ability shall attend the public schools, unless educated by other means."¹⁵⁸ Such language suggests that the mere right to the presence of a good public school without the concomitant right to attend that public school, should the child not be educated by other means, would fail to satisfy the clause's text or purpose.

This reasoning can be applied generally, even to those state constitutions whose education clause does not describe a child's right to attend school but merely a state's duty to provide education.¹⁵⁹ A mandate that the state provide something creates a concomitant right for an individual to receive that something.¹⁶⁰ The question then becomes, to whom is the public education being offered: to the parent—who may accept or not on behalf of the child—or to the child?

The school litigation of the past half-century seems to have already answered this question. Both the school desegregation cases and the school financing cases named the minor children whose education was in question as plaintiffs.¹⁶¹ The right to receive the education the state must provide belongs to the child.

B. ENFORCING THE RIGHT TO PUBLIC EDUCATION

Because children are generally considered legally incompetent, parents have been bringing school litigation cases in the name of their children to vindicate their children's right to education. When the parent and the child disagree about the child's desire to attend public school, however, what happens to the child's right to public education?

The right to education means nothing if an individual cannot access that education. It is axiomatic that one does not possess a right if one cannot

ability shall attend the public schools, unless educated by other means."); OKLA. CONST. art. XIII, § 4 ("The Legislature shall provide for the compulsory attendance at some public or other school, unless other means of education are provided, of all the children in the State who are sound in mind and body . . ."); WYO. CONST. art. I, § 23 ("The right of the citizens to opportunities for education should have practical recognition.").

158. N.C. CONST. art. IX, § 3.

159. Bauries, *supra* note 23, at 721–22.

160. *See* Calabresi & Agudo, *supra* note 151, at 108.

161. *See, e.g.,* *McNeese v. Bd. of Educ. for Comm. Unit Sch. Dist. 187*, 373 U.S. 668, 669 (1963) ("This suit, which invokes the jurisdiction of the District Court under the Civil Rights Act, is brought to vindicate the rights of plaintiffs who are Negro students in the Illinois public school system."); *Brown v. Bd. of Educ.*, 347 U.S. 483, 487 (1954) ("In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis."); *Aaron v. Cooper*, 143 F. Supp. 855, 856 (E.D. Ark. 1956) ("On February 8, 1956, the minor plaintiffs between the ages of 6 and 21 years, through their legal representatives, filed their complaint in this court . . ."); *Idaho Schs. for Equal Educ. Opportunity v. State*, 976 P.2d 913, 914–15 (Idaho 1998) (naming among the plaintiffs "various public school students represented by their parents"); *Leandro v. State*, 488 S.E.2d 249, 252 (N.C. 1997) ("Plaintiffs in this action for declaratory and injunctive relief are students and their parents or guardians from the relatively poor school systems . . .").

exercise it. For example, a state that cancelled all bussing, so that many children would be physically unable to attend their schools, would not be fulfilling its constitutional duty any more than if it had slashed its schools' funding to the point where the education provided was no longer adequate. The education clauses in state constitutions mandate the provision of a resource. This unique affirmative duty contains the mandate that the resource not only be provided, but also be meaningfully provided.

There is another constitutionally protected right that must be meaningfully provided: a minor's right to an abortion. In *Bellotti v. Baird*, the Supreme Court struck down a Massachusetts statute requiring minors to have parental consent before obtaining an abortion.¹⁶² In doing so the Court noted that "[a] child, merely on account of his minority, is not beyond the protection of the Constitution."¹⁶³ The Court held that minors have the right to an abortion, even over a parent's objection, because the right belonged to the minor to exercise, not to the parent to exercise on behalf of the child.¹⁶⁴ However, minors face unique circumstances, sometimes including a diminished capacity to make life-altering decisions. Recognizing this reality, the Court provided a mechanism by which a pregnant minor's wish to exercise her right to an abortion could be evaluated by a neutral decision maker: the court. In two instances, a court could effectuate the child's desire to obtain an abortion, even if her parents objected: (1) upon finding that the child is a mature minor; or (2) upon determining that the exercise of her right to abortion is in her best interests.¹⁶⁵

The Court's solution in *Bellotti* provides a framework for resolving other cases where a parent's right to exercise authority over a child conflicts with the child's decision to exercise her own rights. The *Bellotti* framework is especially useful because it balances the needs of an immature child for parental direction and protection with the respect that is due to the child as a rights-holding person under our Constitution. Therefore, if a child seeking to exercise her right to receive public education faces parental opposition, that child should have access to a legal mechanism akin to the *Bellotti* judicial bypass procedure. This solution will allow the child to exercise her right to education in appropriate circumstances.

The analogy to *Bellotti* is not misplaced. The Court in *Bellotti* adopted the judicial bypass procedure because minors seeking abortions are in a unique situation: they cannot simply wait to attain their majority in order to get an abortion.¹⁶⁶ The clock is inexorably ticking, and there will be life-long repercussions if the minor is unable to obtain an abortion in time. Thus, as the Court explained, the right to abortion is distinct from the right to marry, as minors may wait and exercise the right to marry when they reach eighteen and will

162. 443 U.S. 622, 643 (1979).

163. *Id.* at 633.

164. *Id.* at 642-43.

165. *Id.* at 643-44.

166. *Id.* at 642.

suffer minimal harm from the delay.¹⁶⁷ In this context, the right to education is far more similar to the right to abortion than to the right to marry. Children forced to wait until they are eighteen years old before they can enter formal education will be catastrophically behind their peers. In our modern economy, where secondary education is a baseline requirement and attaining a college degree is the sole entryway into many professions, limiting a child's ability to obtain education will have long-lasting consequences, from which the child will take years to recover. Indeed, the child may never be able to finish her education should she have to wait until adulthood to begin because she may have to enter the workforce to support herself.

Rather than closing the courthouse doors to Powell and other individuals like him, the judicial system should receive petitions from homeschooled youth and apply the two-part *Bellotti* standard to determine when minors can exercise their right to go to school despite a parental objection. Courts can engage in the same fact-finding and legal decisionmaking process used in the abortion context to determine whether the child is mature enough to make the decision to attend public school or if attending public school is in the child's best interests. Part of this analysis will include determining why the child wants to go to public school, whether the child is suffering from educational neglect, and whether the child's future opportunities will be hampered should the child not be able to attend public school. Appointing a guardian *ad litem* for the child or allowing a concerned friend or family member to join the petition on the child's behalf will further aid courts in their analysis.

The next two sections address possible criticisms to using *Bellotti's* judicial bypass procedure as a means to protect children's right to education.

C. RESPONSE TO CRITICISM: DOES A JUDICIAL BYPASS PROCEDURE VIOLATE PARENTS' RIGHTS?

Homeschooling is frequently defended as an exercise of parents' constitutionally protected right to make educational choices for their children.¹⁶⁸ The creation of a judicial bypass procedure that would allow homeschooled children, in certain circumstances, to enforce their own decision as to whether they will attend public school may seem, to some, to trample on constitutionally protected parental rights. This section therefore analyzes the Supreme Court's parental rights case law and determines whether a judicial bypass procedure in the education context would be unconstitutional.

The Supreme Court has been loath to adopt a position that gives parents unaccountable authority over their children's education. While some advocates contend that parental rights are "fundamental" and should receive the highest measure of protection—strict scrutiny analysis—the Supreme Court has yet to apply strict scrutiny analysis in any parental rights decision. Rather, the Court's

167. *Id.*

168. *See supra* note 22 and accompanying text.

analysis has been more akin to intermediate scrutiny and has consistently reiterated the power of the state to ensure that children are well educated.¹⁶⁹

The Supreme Court first recognized parental rights during the *Lochner* era of substantive due process. In *Meyer v. Nebraska*,¹⁷⁰ a schoolteacher faced criminal charges after Nebraska banned the instruction of modern foreign languages in “any private, denominational, parochial or public school” until after eighth grade.¹⁷¹ Justice Clark McReynolds, writing for the Court, found that the legislature’s desire to create a “homogenous people”¹⁷² could not justify the statute’s intrusion on “certain *fundamental* rights which must be respected.”¹⁷³ Noting that instruction in a modern language does not harm children, the Court applied the same standard of review used in the *Lochner* era economic rights cases (a level of scrutiny scholars now compare to modern intermediate review)¹⁷⁴ and declared “the statute as applied is arbitrary and without reasonable relation to any end within the competency of the state.”¹⁷⁵

Two years later, the Court decided *Pierce v. Society of Sisters*,¹⁷⁶ which addressed the constitutionality of an Oregon statute that required all students to attend public—rather than private—schools.¹⁷⁷ Although the case included language about parental rights, the claim was brought by private schools that faced financial ruin should they lose all their students. To Justice McReynolds, who was again the author of the Court’s decision, *Meyer* foreclosed the case. He repeated the reasonableness analysis used in the substantive due process cases of the time and spent only one paragraph on the topic of parental rights, where

169. Modern Fourteenth Amendment jurisprudence uses three tiers of scrutiny: strict scrutiny, intermediate scrutiny, and rational basis review. These tiers of scrutiny are applied in both Equal Protection and Due Process cases, leading to the Court’s often confusing practice of citing Equal Protection decisions in its discussions of the Due Process Clause. Strict scrutiny is applied to race-based classifications and to rights the Court considers “fundamental.” *United States v. Virginia*, 518 U.S. 515, 568 (1996) (Scalia, J. dissenting). Strict scrutiny requires the government to demonstrate that the challenged law is “narrowly tailored to achieve a compelling governmental interest.” *District of Columbia v. Heller*, 554 U.S. 570, 688 (2008) (Breyer, J., dissenting) (internal quotation marks omitted). Intermediate scrutiny requires that a law be “substantially related” to the achievement of “important governmental objectives,” and this level of scrutiny has been applied to, among other things, gender-based discrimination. *Virginia*, 518 U.S. at 524, 568. Finally, rational basis review is the lowest hurdle for the government to overcome, requiring only that the government demonstrate a “rational relationship” to a “legitimate governmental purpose.” *Heller*, 554 U.S. at 687 (Breyer, J., dissenting) (quoting *Heller v. Doe*, 509 U.S. 312, 320 (1993)) (internal quotation marks omitted). This exceedingly deferential standard of review is applied to determine whether a statute that does not implicate fundamental rights nevertheless violates the Due Process Clause because it is arbitrary. *United States v. Comstock*, 560 U.S. 126, 151 (2010) (Kennedy, J., concurring) (quoting *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 487–88 (1955)).

170. 262 U.S. 390, 399 (1923).

171. *Id.* at 397.

172. *Id.* at 402.

173. *Id.* at 401 (emphasis added).

174. Steven G. Calabresi & Larissa C. Leibowitz, *Monopolies and the Constitution: A History of Crony Capitalism*, 36 HARV. J.L. & PUB. POL’Y 983, 1049 (2013).

175. *Meyer*, 262 U.S. at 403.

176. 268 U.S. 510 (1925).

177. *Id.* at 530–31.

he again called them “fundamental.”¹⁷⁸

The Court decided *Meyer* and *Pierce* using an economic substantive due process analysis that has now been wholly discarded, a fact that has led Justice Antonin Scalia to question the continued validity of these cases.¹⁷⁹ Despite their inauspicious beginning and Justice Scalia’s hesitation, however, *Meyer* and *Pierce* have certainly survived the *Lochner* era. The Court cited them as seminal substantive due process cases in *Griswold v. Connecticut*,¹⁸⁰ *Roe v. Wade*,¹⁸¹ *Carey v. Population Services International*,¹⁸² *Moore v. City of East Cleveland*,¹⁸³ *Washington v. Glucksberg*,¹⁸⁴ and *Lawrence v. Texas*,¹⁸⁵—all decisions where the word “fundamental” triggers strict scrutiny analysis.

However, citing *Meyer* and *Pierce* for the proposition that parental rights should receive strict scrutiny analysis is mistaken for several reasons. First, *Meyer* and *Pierce* were both decided before the strict scrutiny test was articulated in the 1930s.¹⁸⁶ Therefore, the use of the term “fundamental” in both *Meyer* and *Pierce* cannot be considered an indicator of the Court’s intentions. Justice McReynolds, the author of both opinions, could not have known that

178. *Id.* at 534–35.

179. *See* *Troxel v. Granville*, 530 U.S. 57, 92 (2000) (Scalia, J., dissenting).

180. 381 U.S. 479, 485 (1965) (holding that Connecticut statute forbidding contraception use by married couples infringes the right to marital privacy). Justice Douglas, writing the majority opinion in *Griswold*, explicitly based his argument on “the principle of the *Pierce* and the *Meyer* cases,” namely, that “[v]arious guarantees [in the Bill of Rights] create zones of privacy” which the government cannot infringe “by means which sweep unnecessarily broadly.” *Id.* at 483–85.

181. 410 U.S. 113, 153 (1973) (holding that the right to personal privacy “is broad enough to encompass” a woman’s right to terminate her pregnancy). In the majority opinion, Justice Blackmun cites *Meyer* and *Pierce* for the proposition that the right to privacy is protected by the word “liberty” in the Fourteenth Amendment’s Due Process Clause and for the proposition that the right to privacy includes decisions made about “child rearing and education.” *Id.* at 152–53.

182. 431 U.S. 678, 694–96 (1977) (holding that statute which prohibited the distribution of contraceptives to individuals over sixteen by anyone other than a licensed pharmacist was unconstitutional). Justice Brennan cites *Meyer* and *Pierce* for the proposition that “among the decisions that an individual may make without unjustified government interference are personal decisions” regarding “child rearing and education.” *Id.* at 684–85.

183. 431 U.S. 494, 499–500 (1977) (holding city housing ordinance forbidding certain family members from living together was unconstitutional). Justice Powell, writing the plurality opinion for the Court, asserted that all of the Court’s privacy cases “trac[ed] their lineage to” *Meyer* and *Pierce*. *Id.* at 499.

184. 521 U.S. 702, 735 (1997) (holding that the right to physician-assisted suicide is not protected by the Fourteenth Amendment’s Due Process Clause). Justice Rehnquist cites *Meyer* and *Pierce* as examples of the “heightened protection against government interference” which the Due Process Clause affords “certain fundamental rights and liberty interests.” *Id.* at 720.

185. 539 U.S. 558, 578 (2003) (holding statute criminalizing consensual sodomy between adults is unconstitutional). Justice Kennedy notes that *Meyer* and *Pierce* provide “broad statements of the substantive reach of liberty under the Due Process Clause.” *Id.* at 564.

186. *See* G. Edward White, *The Arrival of History in Constitutional Scholarship*, 88 VA. L. REV. 485, 530 n.107 (2002) (“Characterizing the level of constitutional scrutiny [in cases dating from the *Lochner* era of substantive due process] invites anachronism, because the practice of submitting different types of legislation to varying degrees of constitutional review (reflected in the terms ‘rational basis,’ ‘intermediate,’ and ‘strict’ scrutiny) was not part of the Court’s constitutional jurisprudence until the late 1930s.”).

this specific adjective would one day trigger a heightened standard of review. Second, in both *Meyer* and *Pierce* the Court applied the same “reasonability” standard of review that it had applied to the economic rights cases. Requiring that a statute “reasonably” relate to a state’s legitimate police powers, as the Court did in *Meyer* and *Pierce*, is not akin to today’s strict scrutiny review, which requires that the governmental interest at stake be “compelling” and the means “narrowly tailored.”¹⁸⁷ At the same time, the reasonability standard of economic substantive due process is far less deferential than today’s rational basis test, leaving it most similar to today’s intermediate standard of review.¹⁸⁸

Regardless of the standard of scrutiny involved, however, both *Meyer* and *Pierce* affirmed the state’s power over children. The decisions affirmed that the state can compel school attendance,¹⁸⁹ reasonably regulate all schools,¹⁹⁰ require that children be instructed in English,¹⁹¹ conduct inspections of schools,¹⁹² put in place minimum teacher qualifications,¹⁹³ mandate that certain subjects be taught to children,¹⁹⁴ establish mandatory testing for students,¹⁹⁵ and forbid the instruction of that “which is manifestly inimical to the public welfare.”¹⁹⁶

Since *Meyer* and *Pierce*, the Supreme Court has had many opportunities to apply strict scrutiny to a parental rights decision. However, it has consistently avoided doing so, most recently in *Troxel v. Granville*¹⁹⁷ where the Court struck down a Washington statute that authorized courts to grant third-party visitation with a child to any person, despite parental objections, provided the court found such visitation to be in the child’s best interests.¹⁹⁸ Justice O’Connor, writing for the plurality,¹⁹⁹ found that the statute flaunted the judicial presumption that “a fit parent will act in the best interest of his or her child” because it gave no “special weight” to fit parents’ decisions.²⁰⁰ She did not mention the standard of review courts should apply to parental rights claims, despite a lone concurrence from Justice Thomas, chiding her for this glaring omission.

Because *Meyer* and *Pierce* affirm the state’s power to supervise children’s education and *Troxel* fails to use strict scrutiny in its analysis, it is unsurprising that many parental rights advocates turn to *Wisconsin v. Yoder* as the Supreme

187. *Carey*, 431 U.S. at 686 (“[W]here a decision as fundamental as that whether to bear or beget a child is involved, regulations imposing a burden on it may be justified only by compelling state interests, and must be narrowly drawn to express only those interests.”).

188. *See, e.g.*, *United States v. Virginia*, 518 U.S. 515 (1996).

189. *Meyer v. Nebraska*, 262 U.S. 390, 402 (1923).

190. *Id.*; *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534 (1925).

191. *Meyer*, 262 U.S. at 402.

192. *Pierce*, 268 U.S. at 534.

193. *Id.*

194. *Meyer*, 262 U.S. at 402; *Pierce*, 268 U.S. at 534.

195. *Pierce*, 268 U.S. at 534.

196. *Id.*

197. 530 U.S. 57 (2000).

198. *Id.* at 61 (plurality opinion).

199. She was joined by Chief Justice Rehnquist as well as Justices Ginsburg and Breyer.

200. *Troxel*, 530 U.S. at 69.

Court's most helpful precedent. In *Yoder*, the Supreme Court applied strict scrutiny to hold that Wisconsin's mandatory attendance statute was unconstitutional when applied to members of the Amish faith, who had religious objections to school attendance after eighth grade.²⁰¹ Such precedent at first appears helpful to religiously motivated homeschoolers seeking to enforce a parental right to homeschool. However, *Yoder's* practical reach is limited for several reasons.

First, *Yoder* was decided on free exercise grounds, using a standard that was overturned in *Employment Division v. Smith*.²⁰² Second, *Yoder's* fact pattern is peculiar given that it is interrelated with a culture that is both fragile and religiously motivated. When parents challenging educational requirements for public schools or homeschools have raised claims under *Yoder*, lower courts have had difficulty agreeing that a religious parent living in mainstream America loses important liberty interests on par with those lost by the Amish when his or her child receives a state-mandated education.²⁰³

Indeed, the Supreme Court has repeatedly affirmed the state's duty and legal power to protect children. In *Prince v. Massachusetts*, the Court upheld a child labor law forbidding girls under age eighteen from working as street vendors, even though the child in question was selling religious magazines under the direction of her guardian.²⁰⁴ In 1968, in a per curiam opinion, the Court affirmed a district court's declaratory judgment, which held that ordering a blood transfusion for a sick child over a parent's religious objections did not violate the Fourteenth Amendment's Due Process Clause.²⁰⁵ In *Ginsberg v. New York*,²⁰⁶ a First Amendment case, the Court reiterated that "[t]he well-being of its children is of course a subject within the State's constitutional power to regulate."²⁰⁷ The Court also noted that, while parents have the "primary respon-

201. *Wisconsin v. Yoder*, 406 U.S. 205, 234 (1972).

202. 494 U.S. 872, 879 (1990).

203. *See, e.g.*, *Parker v. Hurley*, 514 F.3d 87, 100 (1st Cir. 2008) ("*Yoder* emphasized that its holding was essentially sui generis, as few sects could make a similar showing of a unique and demanding religious way of life that is fundamentally incompatible with any schooling system."); *Combs v. Homer-Center Sch. Dist.*, 540 F.3d 231, 250 (3d Cir. 2008) ("Parents favor a broad reading of *Yoder* and insist that it applies to all citizens. But *Yoder's* reach is restricted by the Court's limiting language and the facts suggesting an exceptional burden imposed on the plaintiffs. In *Yoder*, the religious beliefs of the Amish were completely integrated with their community and 'mode of life.'"); *Brown v. Hot, Sexy & Safer Prods., Inc.*, 68 F.3d 525, 539 (1st Cir. 1995) ("[T]heir free exercise claim is qualitatively distinguishable from that alleged in *Yoder*. . . . [T]he plaintiffs do not allege that the one-time compulsory attendance at the Program threatened their entire way of life."); *Duro v. Dist. Attorney*, 712 F.2d 96, 98 (4th Cir. 1983) ("The Duros, unlike their Amish counterparts, are not members of a community which has existed for three centuries and has a long history of being a successful, self-sufficient, segment of American society.");

204. 321 U.S. 158, 170–71 (1944).

205. *Jehovah's Witnesses in State of Wash. v. King Cnty. Hosp. Unit No. 1*, 390 U.S. 598 (1968) (per curiam), *aff'g* 278 F. Supp. 488 (W.D. Wash. 1967).

206. 390 U.S. 629 (1968).

207. *Id.* at 639.

sibility”²⁰⁸ in child-rearing, the state has an independent interest in ensuring that children are “‘safeguarded from abuses’ which might prevent their ‘growth into free and independent well-developed men and citizens.’”²⁰⁹ And in *Parham v. J.R.*,²¹⁰ the Court refused to give parents carte blanche to admit their children into mental health facilities, saying that, although there may be a legal presumption that fit parents act in the best interests of their children,²¹¹ “parents cannot always have absolute and unreviewable discretion to decide whether to have a child institutionalized.”²¹² Rather, “the risk of error inherent in the parental decision . . . is sufficiently great that some kind of inquiry should be made by a ‘neutral factfinder’ to determine whether the statutory requirements for admission [into the mental health facility] are satisfied.”²¹³

The state’s power and duty to protect children also extends into the area of education. Not only do *Meyer* and *Pierce* reiterate the state’s ability to regulate the field of education,²¹⁴ but multiple later cases also affirmed that the state’s interest in ensuring that all children receive an adequate education justifies both compulsory attendance statutes and extensive state regulation of private schools.²¹⁵ The Court has even asserted, albeit in dicta, that “the State’s interest in assuring that [educational] standards are being met has been considered a sufficient reason for refusing to accept instruction at home as compliance with

208. *Id.*

209. *Id.* at 640–41 (quoting *Prince v. Massachusetts*, 321 U.S. 158, 165 (1944)).

210. 442 U.S. 584 (1979). *Parham* was a procedural due process case. The Court applied its test from *Mathews v. Eldridge*, which requires courts to weigh the following factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

424 U.S. 319, 335 (1976). The Court weighed the parents’ rights (identified as one of the private interests at stake) in light of the status parental rights enjoy as a protected liberty interest. *Parham*, 442 U.S. at 602. The fact that the parents’ interests in having the final say in whether their child would be admitted to a mental institution were not so great as to rid the state of its obligation to provide some process to ensure children were not wrongly committed speaks to the limitations of the parental rights protected by substantive due process.

211. *Parham*, 442 U.S. at 603.

212. *Id.* at 604.

213. *Id.* at 606.

214. *See supra* notes 189–96 and accompanying text.

215. *Bd. of Educ. of Cent. Sch. Dist. No. 1 v. Allen*, 392 U.S. 236, 247 (1968) (upholding New York statute requiring public school officials to loan textbooks to private school students and stating that “if the State must satisfy its interest in secular education through the instrument of private schools, it has a proper interest in the manner in which those schools perform their secular educational function”); *Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947) (“This Court has said that parents may, in the discharge of their duty under state compulsory education laws, send their children to a religious rather than a public school if the school meets the secular educational requirements which the state has power to impose.”); *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 631 (1943) (“[T]he State may ‘require teaching by instruction and study of all in our history and in the structure and organization of our government, including the guaranties of civil liberty which tend to inspire patriotism and love of country.’”).

compulsory education statutes.”²¹⁶ These cases reveal that at no point has the Supreme Court upheld parental rights to the detriment of a child’s ability to receive the tools needed to become a fully functioning citizen and adult.

Before applying this case law to the proposed judicial bypass procedure, it is also helpful to recall that the constitutional analysis of any statute or procedure that may infringe on parental rights centers on balance: courts must balance the parents’ liberty interest in directing their child’s upbringing against both the state’s interest, as *parens patriae*, in ensuring that the child grows into a healthy, fully functioning citizen and the child’s own interest in receiving care, education, and protection.²¹⁷

Viewed with this backdrop in mind, the judicial bypass procedure is different, contextually, than the cases that have formed the basis for the Supreme Court’s parental rights jurisprudence. Unlike most parental rights cases, the judicial bypass procedure is not, fundamentally, a contest between the parent and the state over control of the child’s future. It is a mechanism by which a child’s desire to exercise her legal rights may be enforced. Hence, the procedure is better seen as an extension of *Bellotti*, which acknowledged the importance of parental rights while simultaneously insisting that the child have a mechanism for exercising her own constitutionally protected rights, than as direct, state-initiated interference into the parent-child relationship.²¹⁸

These many factors—from the Supreme Court’s repeated insistence that the state has not only the power but the duty to protect children’s interest in education, to the judicial bypass procedure’s role as a mechanism of child-empowerment rather than of state intervention—indicate that the judicial bypass procedure survives constitutional scrutiny. Never has the Supreme Court allowed parental rights to ride roughshod over both children’s rights and the strong state interest in ensuring a self-supporting, educated citizenry. By giving voice to the child and by allowing courts to weigh the child’s maturity and best interests in a fact-intensive analysis, the judicial bypass procedure advanced here would provide a mechanism by which courts can both respect parental

216. *Allen*, 392 U.S. at 246–47. The Court was referring to *People v. Turner*, a decision by a California court which held that a parent’s decision to homeschool was not protected by *Pierce*. *People v. Turner*, 263 P.2d 685 (Cal. App. Dep’t Super. Ct. 1953). The Supreme Court dismissed the appeal for want of a substantial federal question. *Turner v. California*, 347 U.S. 972 (1954).

217. *See Troxel v. Granville*, 530 U.S. 57, 88–89 (2000) (Stevens, J., dissenting) (“A parent’s rights with respect to her child have thus never been regarded as absolute, but rather are limited by the existence of an actual, developed relationship with a child, and are tied to the presence or absence of some embodiment of family. These limitations have arisen, not simply out of the definition of parenthood itself, but because of this Court’s assumption that a parent’s interests in a child must be balanced against the State’s long-recognized interests as *parens patriae* . . . and, critically, the child’s own complementary interest in preserving relationships that serve her welfare and protection”) (citations omitted) (citing *Reno v. Flores*, 507 U.S. 292, 303–04 (1993); *Santosky v. Kramer*, 455 U.S. 745, 766 (1982); *Parham v. J.R.*, 442 U.S. 584, 605 (1979); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)).

218. *See Bellotti v. Baird*, 443 U.S. 622, 637–39, 643–44 (1979).

rights where appropriate and set boundaries on those rights on behalf of the child where needed.

D. RESPONSE TO CRITICISM: WOULD A JUDICIAL BYPASS PROCEDURE BE INEFFECTIVE?

Providing a legal mechanism by which homeschooled students can exercise their constitutional right to a free and public education is an important step but is admittedly an incomplete solution when standing alone. The homeschooled children most in need of such a remedy are also most likely to be the ones least able of accessing the court system. They may have a limited ability to obtain information about filing such a petition. They will likely face social and familial pressure against seeking a court order. They may not even be able to access the means to file such a petition, especially if they lack allies among their neighbors, family friends, and extended family members.

Nevertheless, this legal mechanism furthers society's goal to protect children in several important ways. First, it provides immediate relief to the youth who are watching their years of eligibility for public education slip by. Second, it makes it much easier for close friends and family members, who are most likely to know what is happening behind the closed doors of the homeschooling home, to aid a minor facing educational neglect. Third, it changes the dialogue regarding homeschooling in this country. So far, conversations about homeschooling have focused on a parent's right to choose his or her child's education method. Little attention has been paid, legally or otherwise, to the needs and desires of the children being educated. Recognizing a homeschooled child's enforceable right to a free and public education turns the focus of this national conversation back to where it should be: on the child. Hopefully, once the national conversation refocuses on children's well-being, rather than on parental prerogative, state legislatures can finally pass the needed reforms in homeschooling laws. These changes must include mandatory testing of all homeschooled students, retention of vital statistics on the number of homeschooled children in this country and their academic achievements, and access for homeschooled children to the extracurricular activities and career counseling services provided by local public schools. Until those political accomplishments are achieved, however, children have a right to education, and they deserve a legal mechanism by which to exercise that right.

CONCLUSION

Hannah Schrum was pulled out of public school in fifth grade. Every year, she asked to return, and every year her parents told her no. They preferred to keep her close by, safely away from the dangerous influences of other children. By the time she was a teenager, Schrum realized she was suffering from educational neglect, especially in the areas of science, foreign language, and math. Her parents either could not or chose not to help her with these subjects. Her family environment was so controlling and emotionally abusive that by the

time she reached high school, she had developed anorexia and posttraumatic stress disorder.

Schrum had one ally during this time: her grandmother, who had been a public school teacher for twenty-five years. Her grandmother pleaded with Schrum's parents, begging them to give Schrum the opportunity of a public school education. In response, her parents did what they were legally entitled to do: they ignored both Schrum and her grandmother. Indeed, they went even further. They refused to issue Schrum a diploma or provide her with a transcript. Using the documentation Schrum needed to escape as a weapon, her parents forced her to remain in their home, even when Schrum was legally an adult.

Lax homeschooling laws gave Schrum's parents the power to use homeschooling as a tool to control and limit her. It did not have to be this way, nor should it be. The state had an affirmative duty to provide Schrum with a free and adequate public education, and Schrum should have been provided with a legal mechanism by which she could assert her desire to accept this education. With her grandmother as an ally, Schrum could readily have accessed such a mechanism, if one had existed. When told about the argument advanced by this Note, Schrum had a ready response: "I wish there had been a legal avenue for me to take to enter public high school when I was in ninth or tenth grade. I have no doubt that I would have taken it."²¹⁹

219. Signed Statement of Hannah Schrum for author (Oct. 12, 2014) (on file with author).