

**EVIDENCE FOR HOMESCHOOLING: CONSTITUTIONAL
ANALYSIS IN LIGHT OF
SOCIAL SCIENCE RESEARCH**

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Homeschooling is a time-honored and widespread practice. It often presents, however, a conflict between the constitutional right of parents to direct the education of their children and the State's right to impose regulations in the interest of ensuring an educated citizenry. The U.S. Supreme Court has made it clear that any regulation impacting this constitutional right must be "reasonable." Courts have therefore generally resolved homeschooling cases by examining whether State regulation of homeschooling places an unreasonable burden on the rights of parents. The courts, however, have altogether failed to address another, more fundamental question: whether the State regulation, in fact, advances the State interest. A regulation that fails this criterion cannot be "reasonable." Using a recent California appellate court case that initially upheld a regulation prohibiting parents from homeschooling their children unless they first obtained a state teaching credential, we show how recent social science research should impact the analysis. Instead of assuming away the issue of whether the regulation advances the State interest, we show that empirical research will allow courts to be able to answer this threshold question.¹

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INTRODUCTION

A primary goal of modern American society is to ensure that every child receives an appropriate education. Well-educated children are much more likely to become productive and engaged citizens. In furtherance of this goal, every state in the Union has adopted some variation of laws requiring children to attend school or to participate in some type of formal education. The power of the states to mandate compulsory education is, subject to certain limitations, generally accepted and recognized in decisions of the United States Supreme Court.

While a state may compel the education of children, parents have a fundamental role in deciding how it should be done in their family. A parent's ability to direct the upbringing and education of their children is a fundamental right. Accordingly, regulations adopted by a state to further its compelling interest in education can conflict with these parental rights.

As the Supreme Court famously noted, “[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”² State compulsory education laws, for example, cannot compel children to attend public schools only. The State must allow for alternatives. The State may, however, regulate the alternatives. The proper balance between the interests of the government and the family has been developed in a line of cases from the Supreme Court, which broadly establish that states may only make “reasonable” regulations pertaining to parents’ rights to guide the education of their children. Additionally, those “reasonable” regulations must promote the State’s interest in education.

Courts deciding whether a State’s regulation of education is “reasonable” all too often fail to ask a key question. Courts properly examine the burden placed on the parents’ exercise of the right to direct the education of their children by the State regulation. Almost universally missing from this case law, however, is any analysis of a more fundamental, threshold issue: whether particular regulations affecting the right of parents to direct their child’s education, in fact, achieve the State’s interest in education. If the regulations do not serve the State interest, they are unreasonable.

The failure to address this fundamental issue is especially apparent in cases involving homeschooling. When courts are asked to determine whether homeschooling complies with a State’s compulsory education laws, the interplay between the fundamental right of parents to control the upbringing and education of their children and the State’s interest in the education of its citizens is brought into sharp focus. An extensive body of federal and state decisions, sometimes conflicting, examines whether various state educational regulations of homeschooling are permissible in light of parental interests. Yet,

2. *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 535 (1925).

courts rarely examine whether the regulation at issue actually advances the State's interest. Instead, the courts have simply ignored or assumed away this question.

By examining one such regulation—the requirement of homeschool parents to obtain a teaching credential—this Article demonstrates how recent social science research impacts the analysis. The research answers three underlying questions: Why do parents seek to homeschool? Does homeschooling achieve the goals that underlie the State's interest in education? And, does a regulation that significantly curtails homeschooling advance the State's interest?

Part I explores the scope of sometimes overlapping and sometimes conflicting parental rights and State interests in education. Part II addresses the first question of why parents seek to homeschool by acknowledging the apparent distrust held by many courts and many Americans of homeschooling parents' motivations. In response to those concerns, research is presented that shows that parents homeschool for a variety of reasons that are consistent with the States' interest of providing an adequate and appropriate education for individual children. Part III answers the question of whether homeschooling achieves the goals underlying States' interests in education. Many are skeptical that it does. But the empirical evidence analyzed in Part III shows that homeschooling is highly effective and that it produces well-educated, well-socialized and engaged citizens. Part IV considers whether a credentialing regulation would advance the State's interest in education. Additional empirical evidence and studies tend to show that the achievement of homeschooled students is not related to the level of State regulation. The evidence shows that credentialing regulations severely burden parents' fundamental rights and fail to advance the State interest.

Based on the survey of evidence, a credentialing regulation that effectively prevents most parents from teaching their own children does not further the States' interests in education, and accordingly is contrary to the States' common interest in ensuring that all children are well educated. Further, this unreasonable regulation would violate parents' constitutional rights.

I. PARENTAL RIGHTS AND STATE INTERESTS

The Supreme Court has made it clear that parents have a fundamental, constitutional right to direct the education of their children. In fact, the “interest of parents in the care, custody, and control of their children”—which includes the right “to control the education of their own”—is “perhaps the oldest of the fundamental liberty interests recognized by [the] Court.”³ In light of this right, states may only impose “reasonable” regulations on parental educational decisions. The Court has struck down state statutes that prevented parents from engaging an instructor to teach their children a foreign language,⁴

3. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion).

4. *See Meyer v. Nebraska*, 262 U.S. 390, 399-403 (1923).

that required all children not homeschooled to attend public school (thus precluding private schooling),⁵ or effected too much public control over private school administration and curriculum.⁶ From these cases comes the general principle that, although the State has an important interest in ensuring that children are educated, the means by which the State may achieve that interest are bounded by the constitutional rights of parents.

In recent years, these parental rights and the States' interest in education have come to the forefront in the area of homeschooling. Courts have recognized that parents have a constitutionally protected right to homeschool their children.⁷ With varying outcomes, courts have addressed the propriety of a number of state regulations affecting homeschooling.⁸ In these cases, the courts have repeated, mantra-like, that the State has a compelling interest in the education of its citizens. Notably absent from the case law is an examination of why parents choose to homeschool, whether homeschooling is effective, and whether the regulation at issue actually advances the State interest. Instead, courts seem content with unsupported assertions.⁹ For instance, in a later vacated decision, the California Court of Appeal reasoned that requiring homeschool parents to obtain a teaching credential would be a reasonable regulation of parents' constitutional rights because the regulation might be related to a State interest in supervising homeschooling.¹⁰ As the evidence analyzed in this article illustrates, however, the interests at stake are too important to fail to address these issues. If unregulated homeschooling by un-credentialed parents were leading to unsuccessful student outcomes, the States' interest in education would compel a change. If, however, homeschooling by un-credentialed parents was turning out well-educated, well-adjusted children who are becoming productive citizens, then any

5. See *Pierce*, 268 U.S. at 530, 534-35.

6. See *Farrington v. Tokushige*, 273 U.S. 284, 298 (1927).

7. See, e.g., *Peterson v. Minidoka County Sch. Dist.*, 118 F.3d 1351, 1358 (9th Cir. 1997) (holding a school district's adverse employment action based on public school principal's decision to homeschool his children to have violated principal's constitutional rights).

8. See, e.g., *Murphy v. Arkansas*, 852 F.2d 1039 (8th Cir. 1988) (upholding testing requirement); *Combs v. Homer Ctr. Sch. Dist.*, 468 F. Supp. 2d 738 (W.D. Pa. 2006) (upholding minimum attendance days and hours of instruction in certain courses and review of logs and materials by school district); *Null v. Bd. of Educ.*, 815 F. Supp. 937 (S.D. W.Va. 1993) (upholding testing requirement); *Brunelle v. Lynn Pub. Sch.*, 702 N.E.2d 1182 (Mass. 1998) (striking down home visit requirement); *Care & Protection of Charles*, 504 N.E.2d 592 (Mass. 1987) (upholding State's review of parents' homeschooling educational plans before approval).

9. Compare *People v. Bennett*, 501 N.W.2d 106, 117 (Mich. 1993) (upholding teaching certification requirement without any evidence that the regulation actually advances the state interest but rather asserting, "[t]eacher certification can measure, and to some extent ensure, the minimum qualifications of each teacher. Certification is, therefore, at least not an unreasonable way to further the state's interest."), with *People v. DeJonge*, 501 N.W.2d 127, 141-42 (Mich. 1993) (striking down regulation at issue in *Bennett* with respect to religiously motivated homeschooling because evidence did not show that the regulation advanced the state interest).

10. See *In re Rachel L.*, 73 Cal. Rptr. 3d 77, 81-82 (Ct. App. 2008), *vacated*, *Jonathan L. v. Super. Ct.*, 81 Cal. Rptr. 3d 571, 578 n.4, 596 (Ct. App. 2008).

regulations that would curtail the practice would seem to be contrary to the States' interests.

II. WHY AND HOW FAMILIES HOMESCHOOL

When reading between the lines of judicial opinions that deal with homeschooling, it is apparent that many courts approach homeschooling with a degree of suspicion. Some evince a belief that parents' motives for homeschooling are not aligned with the State interest in education. Others cast doubt as to whether homeschool parents have the resources and means to teach effectively. Like any bias, these perceptions can subtly and subconsciously shape analysis of legal issues arising in homeschooling cases. Substantial research in this area, however, has exposed these issues.

A. Americans Have Homeschooled for Decades for a Variety of Reasons

1. The History of Homeschooling

Parents have always taught their children at home; in fact, many famous Americans were homeschooled.¹¹ In “the broad sweep of time, universal, compulsory, and comprehensive schooling is a relatively new invention,”¹² since “[p]arents have been teaching their children at home since the beginning of the republic.”¹³ The first education law in our country's history entrusted the education of children to their parents.¹⁴ Homeschooling was “prevalent throughout North America until the 1870s, when compulsory school attendance and the training of professional educators coalesced to institutionalize education.”¹⁵ It then experienced a resurgence in the 1960s.¹⁶ Since then, multiple generations of homeschooled children have gone on to become successful, thriving and productive members of society.¹⁷

Homeschooling is neither an experiment nor a recent development.¹⁸ It has been practiced for years with proven results and is now legal in all fifty states.¹⁹

11. Patrick Basham et al., *Home Schooling: From the Extreme to the Mainstream*, STUDIES EDUC. POL'Y, at 7 (Oct. 2007), available at http://www.fraserinstitute.org/COMMERCE.WEB/product_files/Homeschooling2.pdf.

12. Patricia M. Lines, *Homeschooling Comes of Age*, PUB. INT'., Summer 2000, at 74, 77.

13. See Robin Cheryl Miller, *Validity, Construction, and Application of Statute, Regulation, or Policy Governing Home Schooling or Affecting Rights of Home-Schooled Students*, 70 A.L.R. 5TH 169, 186 (1999).

14. LAWRENCE KOTIN & WILLIAM F. AIKMAN, LEGAL FOUNDATIONS OF COMPULSORY SCHOOL ATTENDANCE 11 (1980) (citing Records of the Governor and Company of Massachusetts Bay in New England, June 14, 1642).

15. Basham et al., *supra* note 11, at 7.

16. *Id.*; see also Lines, *supra* note 12, at 75.

17. See *infra* Part III.

18. Kimberly A. Yuracko, *Education Off the Grid: Constitutional Constraints on Homeschooling*, 96 CAL. L. REV. 123, 124 (2008).

Across the country, approximately 1.1 million children were homeschooled in 2003.²⁰ These children represented approximately 2.2% of the entire student population in the United States in 2003, up from 1.7% in 1999.²¹ By conservative estimates, the number of children being educated at home exceeds “the number of students enrolled in Wyoming, Alaska, Delaware, North Dakota, Vermont, South Dakota, Montana, Rhode Island, New Hampshire, and Hawaii—the ten lowest states in terms of student enrollment—combined.”²² In California alone, an estimated 163,000 children are currently being homeschooled.²³

Homeschooling families span political, religious, economic, educational, ethnic, and geographic spectra. Homeschooling now includes families from many political and religious backgrounds:

Both the left and right wings of homeschooling are active today, and many families have both philosophical and religious reasons for their choice. Joining them are many homeschoolers who simply seek the highest quality education for their child, which they believe public and even private schools can no longer provide.²⁴

While no statistics are currently available, the authors have personal experience with families from many different ethnic and religious groups who have chosen to homeschool, and who reflect the overall diversity of the U.S. population. Homeschooling families represent the entire spectrum of incomes, as well: approximately 30.9% of homeschooled children’s annual household income is \$25,000 or less, 32.7% is between \$25,001 and \$50,000, 19.1% is between \$50,001 and \$75,000, and 17.4% is over \$75,001.²⁵ Contrary to media portrayals of homeschoolers as all white, conservative, Christian, and generally affluent, the homeschooling community is diverse in many ways and is not a monolithic bloc.

2. Parents Have Many Reasons for Homeschooling

Parents choose to homeschool for various reasons. A former researcher with the U.S. Department of Education described the homeschooling

19. Carolyn Kleiner, *Home School Comes of Age as the Movement Matures, it Expands to Include a Diverse Array of Families*, U.S. NEWS & WORLD REP., Oct. 16, 2000, at 1, 1; see also Lines, *supra* note 12, at 74 (“The rise of homeschooling is one of the most significant social trends of the past half century.”); Yuracko, *supra* note 18, at 124.

20. U.S. DEP’T OF EDUC., NAT’L CTR. FOR EDUC. STATISTICS, *THE CONDITION OF EDUCATION 2005*, at iv (2005).

21. U.S. DEP’T OF EDUC., NAT’L CTR. FOR EDUC. STATISTICS, *HOMESCHOOLING IN THE UNITED STATES: 2003*, at 1 (2006).

22. Yuracko, *supra* note 18, at 125.

23. Ann Zeise, *Numbers of Homeschoolers in USA*, <http://homeschooling.gomilpitas.com/weblinks/numbers.htm> (last visited June 18, 2009).

24. Lines, *supra* note 12, at 76.

25. U.S. DEP’T OF EDUC., *supra* note 20, at 109.

philosophy of the 1950s and 1960s as “a liberal philosophy of education” focused on unstructured learning.²⁶ By the 1980s, mainstream education had become more liberal in philosophy, resulting in a new wave of parents choosing to homeschool in order to employ more traditional or classical learning methods.

While homeschool parents are politically and philosophically diverse, their reasons for homeschooling are often similar. In research conducted by the National Center for Education Statistics, the top three reasons cited by parents for homeschooling their children were: a concern about the environment of other schools (such as safety,²⁷ drugs, or negative peer pressure—a reason given by 85.4% of respondents), a dissatisfaction with academic instruction at other schools (68.2% of respondents), and a desire to provide religious or moral instruction (72.3% of respondents).²⁸ These reasons, among others, have resulted in a growing number of families who are seeking alternatives because they believe conventional educational choices may not provide adequate instruction in safe environments. Moreover, conventional schools often cannot provide resources to address the individual needs of every child, such as physical or mental health problems, learning differences or giftedness. In contrast, homeschooling provides an avenue by which parent-teachers may tailor each child’s education in a safe and supportive environment to meet the needs of each individual child,²⁹ a motivation that is aligned with a State’s interest in education.

*B. Homeschooling Allows Parents to Tailor Educational Methods and
Materials to Best Fit Their Child’s Educational Needs*

1. Families Use a Variety of Homeschooling Methods

One of the primary benefits of homeschooling is the ability to tailor the education to the needs of each student and to work one-on-one with the child. The teacher to student ratio in most conventional schools often does not effectively meet the educational needs of each child. Families who homeschool, however, use a variety of different methods to accomplish this end. Many families use a structured approach that closely follows the style, scope, sequence, and materials used in traditional institutional classrooms. Other families choose approaches patterned on classical models of education, incorporating logic, Latin, and critical thinking. Some use holistic models of

26. Lines, *supra* note 12, at 75. *See generally* JOHN HOLT, HOW CHILDREN FAIL (Perseus Books rev. ed. 1982) (1964); Patrick Farenga, *A Brief History of Homeschooling*, <http://www.hsc.org/prohistory.html> (last visited June 13, 2009) (discussing John Holt’s work).

27. One study explains that “the safety issue in particular spurred widespread interest in home schooling.” Basham et al., *supra* note 11, at 11.

28. U.S. DEP’T OF EDUC., *supra* note 20, at 110.

29. *See* Corin Barsily Goodwin, *Why Homeschool?*, <http://giftedhomeschoolers.org/whyhomeschool.html> (last visited June 13, 2009).

learning that integrate art and nature into the curriculum. Others families tailor their curriculum to address their child's individual learning issues or learning style, such as difficulties with comprehending material in the ways usually presented in a traditional classroom. Most use a combination of approaches, testing different materials and methods, and then utilize those that their child responds to best.³⁰ Because homeschooling provides parents the ability to customize a learning approach for each child, it is often more tailored to meet each child's unique needs than traditional schooling.

2. Homeschooling Parents Have Access to a Rich Variety of Learning Materials and Opportunities

Homeschooling allows parents to choose from a rich array of learning materials. In addition to complete curricula from a variety of religious and secular sources, online resources can help parents locate, for instance, virtual biology labs, materials from leading scientific institutions such as NASA, and programs offering online learning opportunities.³¹ Researchers at the National Center for Education Statistics (NCES) found, in a national 2003 survey, that “[f]orty-one percent of students who were homeschooled in 2003 engaged in some sort of distance learning Approximately 20 percent of homeschooled students took a course or received instruction provided by television, video or radio.”³² The growth in online delivery of instruction in traditional educational institutions, such as community colleges and high schools, is mirrored by online instruction in the homeschool community. This same survey found that “[a]bout 19 percent of homeschooled students had taken a course or received instruction provided over the Internet, e-mail, or the World Wide Web,”³³ and it is likely that this percentage will continue to increase. The NCES further found that homeschooling parents relied on a wide array of resources for curriculum including public libraries (77.9%), homeschooling catalogs/publishers (76.9%), retail bookstores or other stores (68.7%), education publishers not affiliated with homeschooling (59.6%), religious organizations (36.5%), local public schools or districts (22.6%), private schools (16.8%), and other sources (26%).³⁴ Students can enroll in distance courses from Johns Hopkins University, download free lectures from elite universities and other reputable institutions, and even enroll in an online

30. See Ann Zeise, *Methods and Styles Directory*, <http://homeschooling.gomilpitas.com/methods/Methods.htm> (last visited June 18, 2009) (presenting an overview of some common homeschooling philosophies).

31. See, e.g., Homefires.com, Shop for Curriculum from our Approved Advertisers!, <http://www.homefires.com/gateway/> (last visited June 18, 2009) (providing a gateway for reviewing available curriculum); Ann Zeise, *Distance Learning Programs*, <http://homeschooling.gomilpitas.com/methods/DLPs.htm> (last visited June 18, 2009) (providing a listing of online resources).

32. U.S. DEP'T OF EDUC., *supra* note 21, at 18.

33. *Id.*

34. *Id.* at 16.

high school with real time virtual class meetings offered by Stanford University.³⁵ Most importantly, many types of academic resources that are available to a conventionally schooled child, whether Advanced Placement classes or other specialized instruction, are now also available to a homeschooled child.

Homeschooling families are also able to engage in many types of “real world” learning that are not readily available to other students. Examples include volunteering, working under mentors in fields of interest, and participating in field trips during usual school periods. The wealth of opportunities benefits most homeschooled children. The California Association for the Gifted (CAG), an “organization of educators and parents dedicated to meeting the unique needs of gifted and talented students,”³⁶ primarily those in public schools, adopted a position paper in 2004.³⁷ The paper supported homeschooling, in part because of the parent’s ability to meet their child’s unique needs. In its position paper, the CAG noted that there were many “[m]ethods of achieving successful homeschooling experiences,” including:

- one-on-one work with a parent or other adult;
- enrollment in a variety of courses offered through a home school charter, county office of education, private school or commercial vendor;
- independent study;
- mentorship or internship with professionals in the student’s area of interest;
- college course work, often through a community college;
- on-line courses;
- a co-op where parents collaborate to share their expertise with small groups of students;
- field trips;
- self-directed learning; and travel.³⁸

In short, homeschooling allows for flexibility in approach, materials, pacing, scheduling, and activities not readily available in institutional schools that can greatly improve a child’s education. Children can spend more time studying subjects in which they have a strong interest than they could in a conventional

35. See, e.g., Johns Hopkins University, Center for Talented Youth, <http://cty.jhu.edu/cdyonline/index.html> (last visited June 18, 2009); Open Yale Course, <http://oyc.yale.edu/> (last visited June 14, 2009); Stanford University Education Program for Gifted Youth, Online High School, <http://epgy.stanford.edu/ohs/> (last visited June 17, 2009).

36. California Association for the Gifted, <http://www.cagifted.org/displaycommon.cfm?an=6> (last visited Sept. 8, 2009).

37. *Homeschooling the Gifted Learner*, CAL. ASS’N FOR THE GIFTED, A POSITION PAPER (Cal. Ass’n for the Gifted, Orangevale, Cal.), Nov. 21, 2004, available at <http://www.cagifted.org/associations/7912/files/Position09HG.pdf>.

38. *Id.*

classroom.³⁹ Similarly, for children whose needs are not met by traditional institutions, homeschooling can increase the chances that they will receive an appropriate education.

III. RESEARCH DEMONSTRATES THAT HOMESCHOOLING SERVES THE STATES' INTEREST IN EDUCATION

Echoing a sentiment common to state constitutions and laws across the country, California's Constitution states that a "general diffusion of knowledge and intelligence [is] essential to the preservation of the rights and liberties of the people. . . ."⁴⁰ In fact, as the California Supreme Court once commented, "[t]he contribution of education to democracy has a political, an economic, and a social dimension."⁴¹ The California Constitution further provides that "the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement."⁴²

Does homeschooling serve the State interest in a "general diffusion of knowledge and intelligence?" Is it a "suitable means" of promoting educational advancement? A wide body of empirical research shows that it does. Studies demonstrate that, by any measure, homeschooling excels in preparing students to become productive citizens. As discussed below, research regarding academic achievement, social skills, and civic involvement shows that homeschooled students are as well or better prepared than conventionally schooled students to become full, active and productive participants in society.

A. Studies Show That Homeschooled Students Succeed Academically

Academic preparation preserves "an individual's opportunity to compete successfully in the economic marketplace. . . ."⁴³ Research has shown that homeschooled children reach levels of academic achievement similar to or higher than their publicly schooled peers. These results cut across racial and socio-economic lines—an accomplishment unique to homeschooling.

1. Homeschooled Students Perform Better Than Conventionally Educated Students on Standardized Academic Achievement Tests

Numerous studies demonstrate that homeschooled students obtain exceptionally high scores on standardized academic achievement tests. For instance, one nationwide study analyzed data from 1,952 homeschooled students across the country and found that the students, on average, scored in

39. See, e.g., Elizabeth Gudrais, *Homeschoolers Brush Off Criticism*, PROVIDENCE J., Sept. 26, 2005, at C.01.

40. CAL. CONST. art. IX, § 1.

41. *Hartzell v. Connell*, 679 P.2d 35, 40 (Cal. 1984).

42. CAL. CONST. art. IX, § 1.

43. *Serrano v. Priest*, 487 P.2d 1241, 1259 (Cal. 1971).

the eightieth percentile or higher in every test category (i.e., reading, listening, language, math, science, social studies, study skills, etc.).⁴⁴ The national mean for these standardized tests, by contrast, was the fiftieth percentile.

Numerous other studies have comparable results.⁴⁵ For example, two other national studies also found that homeschooled students excelled academically. A nationwide study of 20,760 homeschooled students in grade levels K-12 found the median standardized test scores to be in the seventieth to eightieth percentile.⁴⁶ Similarly, a nationwide study of homeschooled students in Canada found that the students' average standardized test scores were in the seventy-sixth to eighty-fourth percentile.⁴⁷

State-level studies have reached the same conclusion. A study in Washington State involving the Stanford Achievement Test scores of 873 homeschooled children found their median test scores to be in the sixty-fifth to sixty-sixth percentile range.⁴⁸ In fact, several studies which were conducted at state departments of education found that homeschooled students scored highly on academic achievement tests.⁴⁹

2. Homeschooled Students Perform Well Regardless of Race or Socio-Economic Status

Research consistently shows that, unlike traditionally schooled students, the achievement of homeschooled students does not vary with race or family income. For instance, using a cross-validated multivariate path analysis, one study found that family income level had no measurable effect on the academic performance of homeschooled students.⁵⁰ Similarly, regression analyses of standardized academic test scores of homeschooled students in

44. See BRIAN D. RAY, STRENGTHS OF THEIR OWN – HOME SCHOOLERS ACROSS AMERICA: ACADEMIC ACHIEVEMENT, FAMILY CHARACTERISTICS, AND LONGITUDINAL TRAITS 54-57 (1997). Participants who expected they would perform well and participants who expected low test scores participated in this study. *Id.* at 79. Their willingness to participate refutes speculation that the data are biased by self-selection. *Id.*

45. See Richard G. Medlin, *Predictors of Academic Achievement in Home Educated Children: Aptitude, Self-Concept, and Pedagogical Practices*, HOME SCH. RESEARCHER, 1994, at 1, 1 (citing numerous studies).

46. See Lawrence M. Rudner, *Scholastic Achievement and Demographic Characteristics of Home School Students in 1998*, EDUC. POL'Y ANALYSIS ARCHIVES, 1999, at 1, <http://epaa.asu.edu/epaa/v7n8/>.

47. Brian D. Ray, *Homeschooling in Canada*, EDUC. CAN., Spring 2001, at 28, 30.

48. Jon Wartes, *Summary of Two Reports From the Washington Homeschool Research Project, 1987*, HOME SCH. RESEARCHER, 1988, at 1, 2.

49. See Brian D. Ray, *Home Schooling: The Ameliorator of Negative Influences on Learning?*, PEABODY J. EDUC., 2000, at 71, 74 (discussing Alaska's Centralized Correspondence Study in which homeschooled students scored higher in math, reading, language, and science; various Oregon Department of Education studies in which the median score for homeschooled students was the 71st and 80th percentiles; and a Tennessee Department of Education study reporting that homeschooled students scored in the 70th to 80th percentile).

50. Terry J. Russell, *Cross-Validation of a Multivariate Path Analysis of Predictors of Home School Student Academic Achievement*, HOME SCH. RESEARCHER, 1994, at 1, 9.

California show that, unlike in traditional schools, “[f]amily income and student race have no statistical association with homeschooled students’ achievement.”⁵¹

Based on these findings, researchers have concluded that homeschooling offers educational opportunity for many students who are traditionally underserved by conventional schooling: “Minority students and those from low-income families have consistently been found to be at a disadvantage in the public education system. Homeschooling apparently levels the playing field, ameliorating the negative affects that race and class subordination have shown in the public schools.”⁵²

Homeschooling offers many minority families the ability to close the “persistent achievement gap.”⁵³ As one researcher explains:

Rather than continually subjecting our children to a failing school system, and rather than investing our hopes in yet another school reform that misses the mark, . . . an increasing number of African American parents have decided to take the reins and educate our children at home so that we may better control the quality of their education.⁵⁴

In short, empirical research demonstrates that homeschooling can help to overcome barriers that have persistently impacted the educational opportunities of racial minorities and those families in lower income levels.⁵⁵

3. Colleges and Universities Have Recognized the Efficacy of Homeschooling and Recruit Homeschooled Students

Colleges and universities widely recognize the ability of homeschooling to prepare students for post-secondary education. In 2000, “over 700 post-secondary institutions across the United States, including Harvard University, Yale University, Stanford University, MIT, Rice University, and the Citadel,

51. Ed Collom, *The Ins and Outs of Homeschooling: The Determinants of Parental Motivations and Student Achievement*, 37 EDUC. & URB. SOC’Y 307, 331 (2005); see also RAY, *supra* note 44, at 59 (finding no significant statistical correlation between family income and a homeschooled student’s academic success).

52. Collom, *supra* note 51, at 331-32; see also Jon Wartes, *Recent Results from the Washington Homeschool Research Project*, HOME SCH. RESEARCHER, 1990, 1, at 5 (reporting that data was “unable to provide any tangible basis for concern regarding academic achievement among homeschoolers based upon family income levels”).

53. Venus L. Taylor, *Behind the Trend: Increases in Homeschooling Among African American Families*, in HOME SCHOOLING IN FULL VIEW: A READER 121, 131 (Bruce S. Cooper ed., 2005).

54. *Id.* at 124. See also Chloé A. Hilliard, *The New Home Room*, VILLAGE VOICE, Apr. 9-15, 2008, at 31 (reporting on growing trend among African Americans to homeschool their children).

55. See also Ray, *supra* note 49, at 83 (detailing regression analyses of nationwide data showing family income is not correlated to homeschooled student performance).

admitted homeschooled students.”⁵⁶ By 2004, at least eighty-five percent of colleges had developed written policies for homeschooled student applicants.⁵⁷ Moreover, because the transcripts of homeschooled students typically differ in format from those of conventionally educated applicants, fifty-two percent of all colleges in the United States have instituted formal evaluation policies for applications from homeschooled students.⁵⁸

A survey of admissions at Ivy League schools Columbia University, Dartmouth University, University of Pennsylvania, and Brown University, revealed that the acceptance rates for homeschooled graduates was comparable to the overall admission rate at such schools.⁵⁹ At Stanford University, the acceptance rate for homeschooled applicants was even higher: in 2004, Stanford accepted nearly 27% of such applicants, “nearly double the overall acceptance rate.”⁶⁰ Some California universities, including the University of California at Riverside and Stanford University, have made special efforts to attract and enroll homeschooled students,⁶¹ who as a group have gained a reputation for being particularly motivated and for possessing “intellectual vitality.”⁶²

This recognition is not surprising. The data illustrates that a greater proportion of homeschooled students go on to college than their traditionally schooled counterparts. A nationwide study of 4,129 adults who had been homeschooled at least seven years showed that homeschooled adults attained higher educational levels compared to the general U.S. population in the same

56. Basham et al., *supra* note 11, at 15. See also Paula Wasley, *Home-Schooled Students Rise in Supply and Demand*, CHRON. HIGHER EDUC., Oct. 12, 2007, at A1.

57. Wasley, *supra* note 56, at A1.

58. Ana Beatriz Cholo, *Home-schooled See Chance to Enter College Improving*, SAN DIEGO UNION-TRIB., Mar. 5, 2007, http://legacy.signonsandiego.com/uniontrib/20070305/news_1n5homeschoo.html; see also Christine Foster, *In a Class by Themselves*, STAN. MAG., Nov.-Dec. 2000 (reporting that Stanford University admissions officers specially track applications from homeschool students because of the “intellectual vitality” of such applicants); Alan Scher Zagier, *Colleges Coveting Home-Schooled Students*, Wash. Post, Sept. 30, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/30/AR2006093000190.html> (discussing the desirability of homeschooled applicants).

59. JOY A. MAREAN ET AL., *Homeschooled Students and the Ivy League*, in HOME SCHOOLING IN FULL VIEW: A READER, *supra* note 53, at 179, 192; see also Jennifer Sutton, *Homeschooling Comes of Age*, BROWN ALUMNI MAG., Jan.-Feb. 2002, available at <http://www.brownalumnimagazine.com/content/view/1310/40/> (reporting that the admission rate of homeschooled applicants at Brown University is roughly equal to that of applicants from conventional schools).

60. Amy L. Kovac, *Homeschool Apps Jump*, HOME EDUC. FAMILY TIMES, Mar.-Apr. 2000, <http://www.homeeducator.com/FamilyTimes/articles/8-2article18.htm>.

61. See, e.g., Foster, *supra* note 58; Press Release, Univ. of Cal. at Riverside, UC Riverside Taps Into Rich Vein of Homeschool Students (Sept. 13, 2006), <http://www.newsroom.ucr.edu/cgi-bin/display.cgi?id=1407>; Cf. Wasley, *supra* note 56, at A1 (reporting that Virginia Commonwealth University developed two special engineering scholarships for homeschool students).

62. See, e.g., Foster, *supra* note 58.

age range.⁶³ Specifically, 50.2% of homeschooled adults, aged eighteen to twenty-four, had obtained some college education compared to 34% of the general population in this age range.⁶⁴ Of that sample, 8.7% had obtained an associate's degree, compared to 4.1% of the general population; and 11.8% had obtained a bachelor's degree, compared to 7.6% of the general population.⁶⁵

4. Homeschooled Students Perform Well in College

The college admission statistics are consistent with data showing that homeschooled students perform well in college, both academically and socially. For example, data from the Colorado Commission on Higher Education shows that, based on SAT scores, ACT scores, college freshman year cumulative GPA, and cumulative credit hours, "academic performance analyses indicate that home school graduates are as ready for college as traditional high school graduates and that they perform as well on national college assessment tests as traditional high school graduates."⁶⁶ In another study, homeschooled students performed as well in college as both privately and publicly schooled students in terms of GPA and professional aptitude tests.⁶⁷

Studies also demonstrate that homeschooled students adjust well to the college environment. One study involving freshman students at a private liberal arts college found that homeschooled students reported "significantly fewer anxiety symptoms than a matched sample of traditionally schooled students."⁶⁸ Using the College Adjustment Scale (a measure of emotional, behavioral, social, and academic problems used by university counseling centers), researchers found no other significant differences between the two groups of students.⁶⁹

Other studies and informal reports echo these findings. In a 2004 article published in the *Journal of College Admission*, a former admissions director from Ball State University (Indiana) reported that "[r]esearch showed that our

63. BRIAN D. RAY, HOME EDUCATED AND NOW ADULTS 37 (2004).

64. *Id.*

65. RAY, *supra* note 63.

66. Paul Jones & Gene Gloeckner, *First Year College Performance: A Study of Home School Graduates and Traditional School Graduates*, J. C. ADMISSION, Spring 2004, at 17, 20.

67. Joe P. Sutton & Rhonda S. Galloway, *College Success of Students from Three High School Settings*, J. RES. & DEV. EDUC., Spring 2000, at 137, 142; *see also* Rhonda A. Scott Galloway & Joe P. Sutton, *Home Schooled and Conventionally Schooled High School Graduates: A Comparison of Aptitude For and Achievement in College English*, HOME SCH. RESEARCHER, 1995, at 1, 2, 7 (comparing homeschooled and conventionally schooled student aptitude for and performance in a college English course and finding similar academic preparedness and achievement).

68. Scott White et al., *Emotional, Social and Academic Adjustment to College: A Comparison Between Christian Home Schooled and Traditionally Schooled College Freshmen*, HOME SCH. RESEARCHER, 2007, at 1, 1, 5.

69. *Id.* at 1, 3-4.

homeschooled students had above-average SAT and ACT scores (1210 and 29 respectively). They also performed better academically. They had a combined cumulative grade point average of 3.47, compared to the 2.91 shared by the general student population.”⁷⁰

5. Homeschooling Offers Effective Educational Opportunities for Students with Learning Differences

Homeschooling can be of particular benefit to students with learning differences. Using standard measures of academic achievement and learning environment, research demonstrates that homeschooling can provide “equal if not more advantageous instructional environments for children with learning disabilities.”⁷¹ Homeschooling can also benefit gifted children, as it permits the parent to tailor a program to the appropriate challenge level for the homeschooled student.

Regardless of the type of learning difference, the homeschooling parents’ ability to more easily customize their child’s academic program allows the child to participate in appropriate learning activities while attempting to remediate for different rates of development in other areas. Forcing a child into a setting that is a poor fit may cause the child to feel frustrated and dissatisfied with school and may also distract other students from learning. For example, researchers have found that homeschools can provide “equal, if not better, instructional environments” for children with attention-deficit/hyperactivity disorder⁷² (ADHD).

Case study evidence shows that homeschooling can also benefit students with severe learning disabilities. One researcher who had a twenty-one year career as a school psychologist tested 1,500 students with learning disabilities and reported that the student with the most academic gain was homeschooled. The case study of this student, whose disabilities were severe, revealed that once he withdrew from conventional schooling and began homeschooling with his parent, the student experienced “extraordinary academic progress.”⁷³ Many families report that their children’s teachers encouraged them to homeschool by and homeschooling is being embraced as a viable alternative by educational professionals.

70. Gary Mason, *Homeschool Recruiting: Lessons Learned on the Journey*, J.C. ADMISSION, Fall 2004, at 2, 2.

71. Steven F. Duvall et al., *An Exploratory Study of Home School Instructional Environments and Their Effects on the Basic Skills of Students with Learning Disabilities*, 20 EDUC. & TREATMENT CHILD. 150, 165 (1997).

72. Steven F. Duvall et al., *A Preliminary Investigation of the Effectiveness of Homeschool Instructional Environments for Students With Attention-Deficit/Hyperactivity Disorder*, 33 SCH. PSYCHOL. REV. 140, 151 (2004).

73. Steven F. Duvall, *The Effectiveness of Homeschooling Students With Special Needs*, in HOME SCHOOLING IN FULL VIEW: A READER, *supra* note 53, at 151, 160-64.

B. Studies Demonstrate That Homeschooled Students Are Well Socialized

Academic preparation is critical to success in the marketplace, but education also “serves as a ‘unifying social force’ . . . promoting cohesion based upon democratic values.”⁷⁴ Persons unfamiliar with homeschooling are often concerned about whether these children will have the social training required to integrate into society. Research shows that these concerns have no factual foundation.

A survey of empirical evidence shows that homeschooled students score as well as or better than traditionally schooled children on widely used measures of social development.⁷⁵ Several studies found no significant difference in the socialization measures of these two types of students.⁷⁶ Other studies found that homeschooled children score significantly higher on social development markers.⁷⁷

For instance, one study using the Vineland Adaptive Behavior Scales—a robust and well-tested diagnostic tool for measuring communication and daily living skills—found that homeschooled students substantially outperformed traditionally schooled students.⁷⁸ The mean overall score for the homeschooled children on communication, daily living skills, socialization, and social maturity subscales was at the 84th percentile compared to the 23rd percentile for the traditionally schooled students.⁷⁹ In other words, the study indicates that children educated at home “are more mature and better socialized than those who are sent to school.”⁸⁰

Another study applied a Social Skills Rating System to evaluate thirty-four pairs of homeschooled and conventionally schooled children between the ages of five and eighteen. The researchers found that “[h]ome schooled children achieved higher scores on this scale than their conventionally educated counterparts.”⁸¹

74. *Hartzell v. Connell*, 679 P.2d 35, 41 (Cal. 1984) (citing *Serrano v. Priest*, 487 P.2d 1241, 1258 (Cal. 1971)).

75. See Richard G. Medlin, *Homeschooling and the Question of Socialization*, 75 PEABODY J. EDUC. 107, 113-14 (2000) (discussing numerous studies).

76. *Id.* at 114.

77. *Id.*; see also Vicki D. Tillman, *Home Schoolers, Self-Esteem, and Socialization*, HOME SCH. RESEARCHER, 1995, at 1, 5 (finding that homeschooled children scored highly on a test measuring social opportunities, and scored above norms on tests for self-esteem); John Wesley Taylor V, *Self-Concept in Home-Schooling Children*, HOME SCH. RESEARCHER, 1986, at 1, 1 (“The self-concept of home schooling children was significantly higher . . . than that of the conventionally schooled population on the global scale and all six subscales of the PHSCS [Pier-Harris Children’s Self-Concept Scale]”).

78. Thomas C. Smedley, *Socialization of Home School Children*, HOME SCH. RESEARCHER, 1992, at 9, 10, 14.

79. *Id.* at 12.

80. *Id.*

81. David J. Francis & Timothy Z. Keith, *Social Skills of Home Schooled and Conventionally Schooled Children: A Comparison Study*, HOME SCH. RESEARCHER, 2004, at 15, 16-18, 22.

Research shows that homeschooled students as a group exhibit more appropriate social behavior than their traditionally schooled counterparts. For instance, one study compared the social behavior of a set of seventy homeschooled and seventy traditionally schooled eight to ten year olds, matched along demographic and socio-economic lines.⁸² Consistent with other research, the study found no significant differences between the two groups regarding measures of self-concept and assertiveness.⁸³ However, based on the Direct Observation Form of the Child Behavior Checklist of ninety-seven problem behaviors, the study found that “the mean problem behavior score for children attending conventional schools was more than eight times higher than that of the home-schooled group.”⁸⁴ Similarly, a study of college students that had been homeschooled found that they “had significantly fewer problem behaviors than their public school counterparts.”⁸⁵

Finally, statistics show that homeschooled adults are more likely than the general population to consider themselves very happy, to find life exciting, to be very satisfied with their work, to be satisfied with their financial situation, and believe that hard work is the most important determinant of success.⁸⁶

*C. Homeschooled Students Are Active Leaders and Community Participants,
as Well as Desirable Employees*

Quality education not only supports market and social success, but also promotes civic involvement.⁸⁷ It gives citizens “the knowledge, self-confidence, and critical skills” to participate in the “debate that is central to our democracy.”⁸⁸ Empirical studies demonstrate that homeschooled students are well prepared to be active participants in our society and democracy and valuable contributors to the economy.

82. Medlin, *supra* note 75, at 114.

83. Medlin, *supra* note 75, at 114.

84. *Id.* at 115.

85. Sutton & Galloway, *supra* note 67, at 143.

86. RAY, *supra* note 63, at 55; *see also* Basham et al., *supra* note 11, at 16-17 (citing survey of 1,648 Canadian homeschooled students that reports they “enjoy a life satisfaction score considerably above the score of their public school peers”).

87. *Hartzell v. Connell*, 679 P.2d 35, 41 (Cal. 1984).

Notable home schooled Americans include . . . Presidents George Washington, John Quincy Adams, Abraham Lincoln, Theodore Roosevelt, Woodrow Wilson, and Franklin Delano Roosevelt. Other successful products of American home schooling include jurists Patrick Henry, John Jay, and John Marshall, inventor Thomas Edison, General Robert E. Lee, civil rights activist Booker T. Washington, writer Mark Twain, and industrialist Andrew Carnegie.

Basham et al., *supra* note 11, at 7.

88. *Hartzell*, 679 P.2d at 41.

A nationwide study of homeschooled adults found that—across every measure—these adults were more likely to be involved in civic activities than same aged adults in the general population.⁸⁹ In fact, 71.1% of adults who had been homeschooled were involved in an ongoing community service activity (e.g., coaching a sports team, volunteering at school, or working with a neighborhood association) compared to only 37% of the general U.S. population.⁹⁰ These adults were also found to be more likely than the general population to be members of social organizations (e.g., community groups, churches, synagogues, unions, etc.).⁹¹ While 88.3% of adults who were homeschooled belonged to such organizations, only 50% of similar aged adults did so.⁹²

These findings are consistent with other studies. Researchers at the University of North Carolina analyzing data from the 1996 National Household Education Survey, which was conducted by the U.S. Department of Education's National Center for Education Statistics, found that homeschooled students were more active in civic activities than their public school counterparts:

The empirical evidence is clear and decisive: private schoolers and home schoolers are considerably more civically involved in the public square than are public schoolers—even when the effects of differences in education, income, and other related factors are removed from the equation. Indeed, we have reason to believe that the organizations and practices involved in private and home schooling in themselves tend to foster public participation in civic affairs.⁹³

Studies show that homeschooled adults are more involved in the political life of the community. For example, homeschooled adults are substantially more likely to work for a political candidate or cause, attend public meetings, participate in democratic protests, and vote in elections.⁹⁴ Of particular interest, among eighteen to twenty four year olds, 74% of the homeschooled adults had voted in the last five years while only 29% of the general population had done so.⁹⁵

Studies also show that homeschooled students excel in leadership. In an evaluation of the college performance of three matched sets of sixty students each (one set of homeschooled students, one set of privately schooled students, and one set of publicly schooled students), the homeschooled students scored first in forty two of sixty three performance indicators,

89. RAY, *supra* note 63, at 50.

90. *Id.*

91. RAY, *supra* note 63.

92. *Id.*

93. Christian Smith & David Sikkink, *Is Private Schooling Privatizing?*, FIRST THINGS, Apr. 1999, at 16, 20.

94. RAY, *supra* note 63, at 53.

95. *Id.* at 75.

including positions of leadership.⁹⁶ The study author concluded that the homeschooled students “were readily recognized for their leadership abilities.”⁹⁷

A subsequent study on these three sets of students, following only those who graduated with a baccalaureate degree by a certain date, confirmed the finding that homeschooled students excel in leadership.⁹⁸ The follow-up study found that, as a group, the homeschooled students held “significantly more types of offices and serv[ed] significantly more semesters in office than their private school counterparts.”⁹⁹

Homeschooled adults are also well prepared to participate in the economic realm. They have entrepreneurial skills and make desirable employees.¹⁰⁰ An article published in HRMagazine, a publication that provides tips, techniques, and case studies on all aspects of employee development, advocated for seeking out and hiring homeschooled employees.¹⁰¹ In the article, a researcher at the Ontario Institute of Studies in Education at the University of Toronto praised homeschooled adults for being “well-versed in basic business principles,” and as having the “discipline to either run their own business or become quite focused employees.”¹⁰²

IV. DATA SHOWS THE ACHIEVEMENT OF HOMESCHOOLED STUDENTS IS NOT RELATED TO THE LEVEL OF STATE REGULATION

No state currently requires a homeschooling parent to be credentialed, and many impose few other requirements on homeschooling families.¹⁰³ Critics of homeschooling often point to this lack of parental certification and the absence of substantive state oversight as a weakness of homeschooling and assume that substandard education will necessarily result. However, numerous studies show that outcomes are no better for students taught by credentialed parents or in states with higher levels of regulation (such as requirements for standardized testing or state approval of curriculum).

96. Medlin, *supra* note 75, at 117.

97. *Id.*

98. Sutton & Galloway, *supra* note 67, at 143.

99. Sutton & Galloway, *supra* note 67, at 143; *see also* Linda Montgomery, *The Effect of Home Schooling on the Leadership Skills of Home Schooled Students*, HOME SCH. RESEARCHER, 1989, at 1, 4, 8 (researching homeschooled students in Washington ages ten to twenty-one, finding that they were as involved in extra-curricular activities as conventionally schooled counterparts, and that homeschooling may “nurture leadership at least as well as does the conventional [schooling] system”).

100. Robert J. Grossman, *Home Is Where The School Is*, HRMAGAZINE, Nov. 2001, at 58-64.

101. *Id.*

102. *Id.*

103. *See* Home School Legal Defense Association (HSLDA), Home School Laws, <http://www.freethomeschool.org/laws/default.asp> (last visited Sept. 8, 2009).

A. Studies Show No Correlation Between Parent Credentialing and Student Achievement

The weight of available empirical evidence demonstrates that homeschooled students' academic achievement is not affected by whether their parents possess a teaching credential. For instance, a nationwide study of homeschooled students showed no significant statistical correlation between having a parent who is a certified teacher and the student's academic achievement.¹⁰⁴ A nationwide Canadian study reached a similar result, finding no correlation between homeschooled students' test scores and whether either parent had a teaching credential.¹⁰⁵ A study of homeschooled children in Washington found that "[t]he absence of contact with a certified teacher does not keep homeschoolers from doing well."¹⁰⁶ Studies in Alabama, Oklahoma, Pennsylvania, and Texas, as well as another nationwide study, each found no significant relationship between homeschooled student achievement and whether either of the parents was a certified teacher.¹⁰⁷

Even children, who would be in special classes in public school with teachers having advanced training, benefit from homeschooling. For instance, one study found that parents who were not certified teachers could effectively teach their children with ADHD.¹⁰⁸

Two small studies found a correlation between credentialing and achievement, but their sample sizes appear inadequate to cast doubt on the numerous other statewide and nationwide findings. For instance, one of these studies involved only thirty-six homeschooled students in twenty-seven families.¹⁰⁹ In seven of the families, the mother was a certified teacher.¹¹⁰ The author of the study pointed out that "other research with much larger sample sizes has rather consistently found that neither parental education nor certification is related to achievement."¹¹¹

104. See RAY, *supra* note 44, at 59; Ray, *supra* note 49, at 83.

105. Ray, *supra* note 47, at 30-31.

106. Wartes, *supra* note 52, at 6.

107. See BRIAN D. RAY, HOME EDUCATION IN OKLAHOMA: FAMILY CHARACTERISTICS, STUDENT ACHIEVEMENT, AND POLICY MATTERS 25 (1992); BRIAN D. RAY, A NATIONWIDE STUDY OF HOME EDUCATION: FAMILY CHARACTERISTICS, LEGAL MATTERS, AND STUDENT ACHIEVEMENT 12, 14, 37 (1990); BRIAN D. RAY, WORLDWIDE GUIDE TO HOMESCHOOLING 78 (2005); Joan E. Havens, *Parent Education Levels as They Relate to Academic Achievement Among Home Schooled Children*, HOME SCH. RESEARCHER, 1994, at 9, 14; Jennie F. Rakestraw, *Home Schooling in Alabama*, HOME SCH. RESEARCHER, 1988, at 1, 5; see also Howard B. Richman et al., *Academic Achievement and Its Relationship to Selected Variables Among Pennsylvania Homeschoolers*, HOME SCH. RESEARCHER, 1990, at 9, 16 ("As a group, children of certified teachers did not score above children of non-teachers. The evidence provides no support for policy decisions that would require contact with a certified teacher as a condition to homeschool.")

108. Duvall et al., *supra* note 72, at 152-53.

109. Medlin, *supra* note 45, at 2.

110. *Id.*

111. *Id.* at 5 (citing studies).

B. Increased State Regulation Does Not Correlate with Increased Achievement of Homeschooled Students

Homeschooled students perform well academically regardless of the degree of regulation imposed by the State. Statistical analyses of standardized achievement test scores from homeschooled students across the nation show no correlation between the degree of regulation imposed by the State on homeschooling and academic achievement.¹¹² While every state regulates homeschooling to some degree, heightened State regulation is the exception rather than the rule nationwide.

1. A Majority of States Impose No Minimum Qualifications on Homeschool Parents; None Requires a Credential

No state requires that all homeschooling parents hold a teaching credential.¹¹³ Over three-quarters of the states (thirty-eight) have no minimum qualification requirements for parents who wish to teach their children at home. Nine states require homeschooling parents teaching their children directly (i.e., without a formal tutor) to have a high school diploma or GED.¹¹⁴ Three other states require more than a high school diploma, such as a B.A., some teacher training, or a minimum score on a teacher qualification test, but each of these states offers a way for parents not meeting these qualifications to homeschool, such as use of an approved curriculum or supervision by a credentialed teacher.¹¹⁵

Nationwide, however, the evidence shows that the majority of parents who choose to homeschool are well-educated themselves; 18.9% have a high school diploma or less, 33.7% have some college or vocational/technical education, 25.1% have a bachelor's degree, and 22.3% have a graduate or professional degree.¹¹⁶ Regardless of parental educational levels or state requirements, it is significant to note that studies have found that:

[S]tudent achievement for homeschoolers has no relation to the educational attainment of the homeschooling parent. This is consistent with tutoring studies that indicate that the education level of a tutor has little to do with the

112. See RAY, *supra* note 44, at 63-64.

113. See Home School Legal Defense Association, *supra* note 103.

114. GA. CODE ANN. § 20-2-690(c)(3) (2009); N.M. STAT. § 22-1-2.1(C) (2008); N.C. GEN. STAT. § 115C-564 (2007); N.D. CENT. CODE §§ 15.1-23-03, -06 (2003); OHIO ADMIN. CODE § 3301-34-03(A)(9) (West, Westlaw through August 16, 2009); 24 PA. CONS. STAT. ANN. § 13-1327.1(a) (West 2009); S.C. CODE ANN. § 59-65-47(a) (2004); VA. CODE ANN. § 22.1-254.1(A) (Supp. 2009); W. VA. CODE ANN. § 18-8-1(c)(2)(B) (LexisNexis 2008).

115. MINN. STAT. ANN. § 120A.22 (Subdiv. 10) (West 2008); TENN. CODE ANN. § 49-6-3050(b)(7) (2002); WASH. REV. CODE ANN. § 28A.225.010(4) (LexisNexis 2009).

116. National Center for Education Statistics, Homeschooling in the United States: 2003, http://nces.ed.gov/pubs2006/homeschool/TableDisplay.asp?TablePath=TablesHTML/table_3.asp (last visited Sept. 8, 2009).

achievement of a tutored child. One explanation might be that the advantages of one-to-one learning outweigh the advantages of professional training.¹¹⁷

Accordingly, requiring parents to hold a credential cannot be seen as being essential to meeting the State's interest. One state court opinion directly addressing the question of whether a credentialing requirement was essential, *Michigan v. DeJonge*, struck it down, observing that "the DeJonge children [were] receiving more than an adequate education: they [were] fulfilling the academic and socialization goals of compulsory education without certified teachers or the state's interference."¹¹⁸ Accordingly, the court rejected the state's reliance on its admittedly "compelling interest in ensuring the adequate education of all children," finding that this was "the incorrect governmental interest":

[T]he state has focused upon the incorrect governmental interest. The state's interest is not ensuring that the goals of compulsory education are met, because the state does not contest that the DeJonges are succeeding at fulfilling such aims. Rather, the state's interest is simply the certification requirement of the [statute], not the general objectives of compulsory education. The interest the state pursues is the manner of education, not its goals.¹¹⁹

The court then concluded that:

the experience of our sister states provides irrefutable evidence that the certification requirement is not an interest worthy of being deemed "compelling." The nearly universal consensus of our sister states is to permit homeschooling without demanding teacher certified instruction. Indeed, many states have recently rejected the archaic notion that certified instruction is necessary for home schools. Within the last decade, over twenty states have repealed teacher certification requirements for home schools.¹²⁰

The court noted: "To find that of all the states in the Union only Michigan meets the aims of compulsory education is untenable and flies in the face of the [empirical] studies" that "disprove a positive correlation between teacher certification and quality education"¹²¹ in the homeschooling context, and that "[t]he compelling nature of the teacher certification requirement is not extant."¹²²

117. Lines, *supra* note 12, at 81.

118. *People v. DeJonge*, 501 N.W.2d 127, 140 (Mich. 1993).

119. *Id.* at 138-39 (emphasis added).

120. *Id.* at 141 (emphasis added).

121. *Id.* at 141-42.

122. *Id.* at 141.

2. Only Half of the States Require Any Formal Assessment of Homeschooled Students

Some form of periodic formal assessment is required of homeschooled children by half of the states, ranging from requiring students to take the same standardized tests every year as the public school students in that state, to testing in a form mutually acceptable to both parent and the state, to qualitative evaluations. In states requiring assessments, only two states, New York and North Dakota, impose a formal remediation requirement if scores fall below a certain threshold.¹²³ The remaining states require no assessment, although parents are free to obtain it on their own. Extensive research failed to uncover any studies that show a correlation between the presence or absence of a testing requirement for homeschooled students and student achievement.

3. Very Few States Require Additional Regulation

The majority of states (forty-one) require homeschooling families to cover certain required subjects, but few have additional substantive regulations of homeschooling, such as prior approval of curriculum or the right to make home visits. Regardless of the level of regulation, research clearly demonstrates that state regulation does not influence academic outcomes of homeschooled students, and that homeschooling effectively serves the State's interest in preparing children, through appropriate education, for economic and social success and participation in civic and political life. In sum, "the degree of government regulation has no significant effect on the academic performance of homeschooled children. . . . [W]hether a given state imposes a high or low degree of regulation, homeschooled students' average test scores are at the 86th percentile."¹²⁴ Further, while some commentators have raised concerns regarding the ability of homeschooling to meet the State's interests without substantive oversight by the State, extensive research produced no empirical evidence to contradict the overall findings presented here.

C. Changes in Interpretation or Application of Compulsory Education Laws Would Have Widespread Negative Effects and Would Violate Parents' Constitutional Rights

Preventing parents from homeschooling unless they obtain a teaching credential would amount to a *de facto* prohibition of homeschooling due to the logistical and financial demands of attaining a credential. Furthermore, it would accomplish no educational benefit for the children who could be homeschooled. It would also limit potentially appropriate educational choices for children who have not or would not fit well in institutional schooling environments. Such a regulation would impact families across social,

123. N.D. CENT. CODE § 15.1-23-03 (Supp. 2009); 8 N.Y. COMP. CODES R. & REGS. 100.10(h)(1)(v) (Westlaw 2009).

124. Basham et al., *supra* note 11, at 18-19 (internal citation omitted).

economic, and racial lines and would arguably have an impermissibly discriminatory impact on homeschooling parents of different socio-economic status. For a family already reducing its earning power to one adult (so that the other adult can stay home and teach the children), the time and money spent on an unnecessary credential would be an unreasonable and undue burden.

Particularly because credentialing has not been established as having any correlation to homeschooled student outcomes (*see supra* Part III), such a restriction would substantially interfere with the production of citizens who, by all the measures reported here, are both well-educated and well-adjusted, and would disserve, rather than advance, the States' common interest in education.

IV. CONCLUSION

A state has a compelling interest in the education of its children and may adopt regulations to advance this interest so long as it does not violate the fundamental constitutional rights of parents. The test of whether a regulation is permissible has two prongs: it must both be narrowly drawn to avoid undue restriction of fundamental rights *and* serve the State's compelling interest.

The right of parents to control the education and upbringing of their children encompasses the right to teach them at home. The evidence presented in this Article demonstrates not that restricting homeschooling better serves a State's interest in education, but that the opposite is true: that homeschooling serves, rather than defeats, this interest, and that this interest is best met by ensuring that parents remain free to homeschool their children if they wish to do so.

