

# Evidence for Homeschooling: *Constitutional Analysis in Light of Social Science Research*

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**DRAFT – December 2008**

**Widener Law Review (forthcoming)**

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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 Supreme Court has made it clear that any regulation impacting this constitutional right must be "reasonable." The 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 the vehicle of a recent California appellate court case, in which the court 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 in fact advances the State interest, we show that this type of empirical research will allow courts to be able to answer this threshold question.<sup>1</sup>*

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<sup>1</sup> The authors offer a special thanks to Corin Goodwin of Gifted Homeschoolers Forum for editorial assistance and Lillian Jones, Mary Griffith, Diane Flynn Keith, and Mary Nix for research assistance.

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## INTRODUCTION

A primary goal of modern American society is to ensure that every child receive an appropriate education. Well-educated children are much more likely to become productive and engaged citizens. In furtherance of this goal, every state of the Union has adopted some variation of laws requiring children to attend school or to be educated. 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 the states may compel the education of children, parents have a fundamental role in deciding how it should be done in their family. The ability of parents 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, “The 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.”<sup>2</sup> State compulsory education laws, for example, cannot require compulsory attendance only at public schools. The State must allow for alternatives. The State may, however, regulate these 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 establishes that States may only subject parents’ rights to guide the education of their children to “reasonable” regulation that promotes 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. They examine the *burden* placed by the State regulation on the parents’

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exercise of the right to direct the education of their children. Almost universally missing from this case law, however, is any analysis of a more fundamental, even threshold issue: whether particular regulations affecting the right of parents to direct their children's education in fact *achieve* the State's interest in education. If these regulations do not serve the State interest, they are by definition 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 the 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 – we show how recent social science research impacts the analysis. This 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?

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<sup>2</sup> *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925).

We begin in Part I by exploring 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, we present research showing that parents homeschool for a variety of reasons that are consistent with the State's 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 both that homeschooling is highly effective and that it produces well educated, well socialized, engaged citizens. In Part IV, we begin to address whether a credentialing regulation would advance the State's interest in education. There, we examine additional empirical evidence and studies that tend to show that the achievement of homeschooled students is not related to the level of state regulation. This evidence shows that credentialing regulations severely burden parents' fundamental rights while failing to advance the state interest.

Based on the survey of evidence, we conclude that a credentialing regulation that would effectively prevent most parents from teaching their own children -- a practice that *further*s the States' interests in education -- is contrary to the States' common interest in ensuring that all children are well educated, would be an unreasonable regulation, and would therefore violate parents' constitutional rights.

## **I. PARENTS' 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.”<sup>3</sup> In light of this right, States may only impose “reasonable” regulations on parental educational decisions, and the Court has struck down state statutes that prevented parents from engaging an instructor to teach their children a foreign language,<sup>4</sup> required all children not homeschooled to attend public school (thus precluding private schooling),<sup>5</sup> or effected too much public control over private school administration and curriculum.<sup>6</sup> 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 State’s 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.<sup>7</sup> With varying outcomes, courts have addressed the propriety of a number of state regulations affecting homeschooling.<sup>8</sup> In these cases, the courts have repeated, mantra-like, that the State has a compelling interest in the education of its citizens. But

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

<sup>4</sup> *See Meyer v. Nebraska*, 262 U.S. 390, 399-402 (1923).

<sup>5</sup> *See Pierce*, 268 U.S. at 530, 534-35.

<sup>6</sup> *See Farrington v. Tokushige*, 273 U.S. 284, 295 (1927).

<sup>7</sup> *See, e.g., Peterson v. Minidoka County School Dist.*, 118 F.3d 1351, 1358 (9th Cir. 1997) (school district’s adverse employment action based on public school principal’s decision to homeschool his children violated principal’s constitutional rights).

<sup>8</sup> *See, e.g., Murphy v. Arkansas*, 852 F.2d 1044 (8th Cir. 1988) (upholding testing requirement); *Combs v. Norwin School Dist.*, 468 F. Supp. 2d 738 (W.D. Pa. 2006) (upholding minimum attendance days and hours of instruction in certain courses, review of logs and materials by school district); *Null v. Bd. of Ed.*, 815 F. Supp. 937 (S.D. W.Va. 1993) (upholding testing requirement); *Brunelle v. Lynn School Dist.*, 702 N.E.2d 1182 (Mass. 1998) (striking down home visit requirement); *Care & Protection of Charles*, 504 N.E.2d 592 (Mass. 1987) (prior review of educational plan).

notably absent from this 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.<sup>9</sup> 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.<sup>10</sup> 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 uncredentialed parents were not leading to successful student outcomes, the States' interest in education would compel a change. If, however, homeschooling by uncredentialed parents is turning out well-educated, well-adjusted children who are becoming productive citizens, then any regulations that would curtail the practice would seem to be counter to the States' interests.

## **II. WHY AND HOW FAMILIES HOMESCHOOL**

Reading between the lines of judicial opinions dealing with homeschooling, it seems that many courts approach homeschooling with a degree of suspicion. Some believe that parents' motives for homeschooling are not aligned with the state interest in education. Others doubt whether homeschool parents have the resources and means to teach effectively. Like any bias, these

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<sup>9</sup> 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, "Teacher 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).

<sup>10</sup> See *In re Rachel L.*, 73 Cal. Rptr. 3d 77, 81-82, *vacated*, *Jonathan L. v. Superior Court*, \_ Cal.



perceptions can subtly and subconsciously shape analysis of questions arising in homeschooling cases. Substantial research in this area, however, sheds needed light on 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.<sup>11</sup> In “the broad sweep of time, universal, compulsory, and comprehensive schooling is a relatively new invention,”<sup>12</sup> while “[p]arents have been teaching their children at home since the beginning of the republic.”<sup>13</sup> In fact, the first education law in our country’s history required parents to homeschool their children.<sup>14</sup> Homeschooling was “prevalent throughout North America until the 1870s, when compulsory school attendance and the training of professional educators coalesced to institutionalize education,”<sup>15</sup> and then experienced a resurgence in the 1950s.<sup>16</sup> Since then, multiple generations of homeschooled children have gone on to become successful, thriving, productive members of society.<sup>17</sup>

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App. \_\_, 2008 WL 3197535 (Cal. App. Ct. Aug 08, 2008).

<sup>11</sup> See *infra* note 74.

<sup>12</sup> Patricia M. Lines, *Homeschooling Comes of Age*, THE PUBLIC INTEREST, No. 140, Summer 2000, pp. 74-85.

<sup>13</sup> 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, § 2(a) (2008).

<sup>14</sup> See *infra* note 2.

<sup>15</sup> PATRICK BASHAM, JOHN MERRIFIELD & CLAUDIA R. HEPBURN, HOME SCHOOLING: FROM THE EXTREME TO THE MAINSTREAM 2ND ED. 6, The Fraser Inst. 2007, available at [http://www.fraserinstitute.org/COMMERCE.WEB/product\\_files/Homeschooling2.pdf](http://www.fraserinstitute.org/COMMERCE.WEB/product_files/Homeschooling2.pdf).

<sup>16</sup> *Id.*; see also Lines, *supra* note 5.

<sup>17</sup> See *infra*, Part IV.

Homeschooling is not an experiment. It is neither a fringe nor a recent phenomenon. It has been practiced for years with proven results and is now legal in all 50 states.<sup>18</sup> Across the country, approximately 1.1 million children were homeschooled in 2003.<sup>19</sup> These children represented approximately 2.2% of the entire student population in the United States in 2003, up from 1.7% in 1999.<sup>20</sup> 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.”<sup>21</sup> In California alone, an estimated 166,000 children are currently being homeschooled.<sup>22</sup>

Homeschooling families span political, religious, economic, educational, ethnic, and geographic spectra. 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: approximately 30.9% of homeschooled children’s annual household income

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<sup>18</sup> Carolyn Kleiner, *Home School Comes of Age*, U.S. NEWS & WORLD REP., Oct. 16, 2000; *see also* Kimberly Yuracko, *Education Off the Grid: Constitutional Constraints on Homeschooling*, 96 CAL. L. REV. 123, 126 & n.16 (2008); *see also* Lines, *supra* note 5 (“The rise of homeschooling is one of the most significant social trends of the past half century.”).

<sup>19</sup> *See* U.S. DEPT. OF EDUC., NAT’L CENTER FOR EDUC. STATISTICS, THE CONDITION OF EDUCATION 2005, at 109 (U.S. Gov’t Printing Office 2005) (“CONDITION OF EDUCATION”).

<sup>20</sup> DANIEL PRINCIOTTA & STACEY BIELICK, U.S. DEPT. OF EDUC., NAT’L CENTER FOR EDUC. STATISTICS, HOMESCHOOLING IN THE UNITED STATES 2003, at 1 (U.S. Gov’t Printing Office 2006) (“HOMESCHOOLING IN THE UNITED STATES”).

<sup>21</sup> Yuracko, *supra* note 10, at 125 & n.7.

<sup>22</sup> Ann Zeise, Numbers of Homeschoolers in USA, <http://homeschooling.gomilpitas.com/weblinks/numbers.htm> (last visited May 16, 2008).

is \$25,000 or less, 32.7% is between \$25,000 and \$50,000, 19.1% is between \$50,000 and \$75,000, and 17.4% is over \$75,000.<sup>23</sup> Contrary to media portrayals of homeschoolers as all white, conservative, Christian and generally affluent, the homeschooling community is not a monolithic bloc.

## **2. Parents Have Many Reasons For Homeschooling**

Parents choose to homeschool for diverse reasons. A former researcher with the U.S. Department of Education described the homeschooling philosophy of the 1950s and 1960s as “a liberal philosophy of education” focused on unstructured learning.<sup>24</sup> 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. Homeschooling now includes families from many political and religious backgrounds:

Both the left and right wings of home schooling 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.<sup>25</sup>

While homeschool parents come from diverse political and philosophical starting points, 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

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<sup>23</sup> CONDITION OF EDUCATION, *supra* note 11, at 109.

<sup>24</sup> Lines, *supra* note 5; *see also* JOHN HOLT, HOW CHILDREN FAIL (Perseus Books 1995) (1964); PATRICK FARENGA, A BRIEF HISTORY OF HOMESCHOOLING (HomeSchool Assn. of Cal. 2002), <http://www.hsc.org/prohistory.html> (discussing John Holt’s work).

<sup>25</sup> Lines, *supra* note 5.

concern about the environment of other schools (such as safety,<sup>26</sup> drugs, or negative peer pressure; a reason given by 85.4% of parents surveyed), 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).<sup>27</sup> These factors, among others, have resulted in a growing number of families seeking alternatives to conventional educational choices, which sometimes cannot 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, supportive environment to meet the needs of each individual child,<sup>28</sup> a motivation that is aligned with a State's interest in education.

**B. Homeschooling Allows Parents To Tailor The 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 with the child on a one-on-one basis. Most conventional schools have a teacher to student ratio that does not permit the educational needs of each child effectively to be met. But families who homeschool 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

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<sup>26</sup> One study explains that "the safety issue in particular spurred widespread interest in home schooling." Basham, *supra* note 8, at 15.

<sup>27</sup> CONDITION OF EDUCATION, *supra* note 11, at 110.

<sup>28</sup> See Why Homeschool?, <http://giftedhomeschoolers.org/whyhomeschool.html> (last visited May 16, 2008).

on classical models of education, incorporating logic, Latin and critical thinking. Some use more holistic models of learning that integrate art and nature into the curriculum. Others tailor their work to address specific learning issues or learning styles their child might have, such as difficulties with learning material in the ways usually presented in a traditional classroom. Most use a combination of approaches, testing different materials and methods and choosing those to which their child responds best.<sup>29</sup> Because homeschooling provides parents the ability to customize a learning approach for each child, it is often more suited to meeting a child's unique needs.

## **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 help parents find, for instance, virtual biology labs, materials from leading scientific institutions such as NASA, and programs offering online learning opportunities.<sup>30</sup> 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.”<sup>31</sup> Nineteen percent “of homeschooled students had taken a course or received

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<sup>29</sup> See Ann Zeise, *Methods & Styles Directory*, <http://homeschooling.gomilpitas.com/methods/Methods.htm> (last visited May 16, 2008) (overview of some common homeschooling philosophies).

<sup>30</sup> See, e.g., Homefires, *The Journal of Homeschooling Online*, <http://www.homefires.com/gateway/> (last visited May 16, 2008) (providing a gateway for reviewing available curriculum); AtoZ Home's Cool, *Distance Learning Programs*, <http://homeschooling.gomilpitas.com/methods/DLPs.htm> (last visited May 16, 2008) (providing a listing of online resources).

<sup>31</sup> HOMESCHOOLING IN THE UNITED STATES, *supra* note 12, at 17-18.

instruction provided over the Internet, e-mail, or the World Wide Web.<sup>32</sup> An estimated 15 percent of homeschooled students took a correspondence course by mail designed specifically for homeschoolers.”<sup>33</sup>

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%).<sup>34</sup> 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 high school with real time virtual class meetings offered by Stanford University.<sup>35</sup> Most importantly, there are now few academic resources, whether Advanced Placement classes or other specialized instruction, that are available to a conventionally schooled child but not 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 traveling or going on field trips during usual school periods. This wealth of opportunities benefits most homeschooled children. The California Association for the Gifted

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

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *See, e.g.,* Johns Hopkins University’s Center for Talented Youth, <http://cty.jhu.edu/cde/index.html> (last visited May 16, 2008); Open Yale Course, <http://open.yale.edu/courses/index.html> (last visited May 16, 2008); and Stanford University EPGY Online High School, <http://epgy.stanford.edu/ohs/> (last visited May 16, 2008).

(CAG), an “organization of educators and parents dedicated to meeting the unique needs of gifted and talented students,” primarily those in public schools, adopted a position paper in 2004 that supports homeschooling, in part because of the ability parents have to meet their children’s unique needs. In its position paper,<sup>36</sup> the CAG noted that there are many “methods 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.

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 classroom.<sup>37</sup> 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 STATE’S INTEREST IN EDUCATION**

Echoing a sentiment common to state constitutions and laws across the country, California’s

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<sup>36</sup> Position Paper, Cal. Ass’n for the Gifted, *Homeschooling the Gifted Learner* (Nov. 21, 2004), available at <http://www.cagifted.org/associations/7912/files/Position09HG.pdf>.

<sup>37</sup> See, e.g., Elizabeth Gudrais, *Homeschoolers Brush Off Criticism*, PROVIDENCE J., Sept. 26, 2005.

constitution states that a “general diffusion of knowledge and intelligence [is] essential to the preservation of the rights and liberties of the people.”<sup>38</sup> In fact, as the California Supreme Court once commented, the “contribution of education to democracy has a political, an economic, and a social dimension.”<sup>39</sup> The California Constitution further provides that “the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.”

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. 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.”<sup>40</sup> 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.

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<sup>38</sup> Cal. Const. art. IX, § 1.

<sup>39</sup> *Hartzell v. Conell*, 35 Cal. 3d 899, 907 (1984).

<sup>40</sup> *Serrano v. Priest*, 5 Cal. 3d 584, 609 (1971).



### **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 scored, on average, in the 80th percentile or higher in every test category (i.e., reading, listening, language, math, science, social studies, study skills, etc.).<sup>41</sup> The national mean for these standardized tests, by contrast, is the 50th percentile.

Numerous other studies have comparable results.<sup>42</sup> For example, two other national studies also found that homeschooled students excel academically. A nationwide study of 20,760 homeschooled students in grade levels K-12 found the median standardized test scores to be in the 70th to 80th percentile.<sup>43</sup> Similarly, a nationwide study of homeschooled students in Canada found that the students' average standardized test scores were in the 76th to 84th percentile.<sup>44</sup>

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

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<sup>41</sup> See BRIAN D. RAY, STRENGTHS OF THEIR OWN – HOMESCHOOLERS ACROSS AMERICA: ACADEMIC ACHIEVEMENT, FAMILY CHARACTERISTICS, AND LONGITUDINAL TRAITS 54-57 (Nat'l Home Educ. Research Inst. 1997) ("STRENGTHS OF THEIR OWN"). Both participants who expected they would perform well and participants who expected low test scores participated in this study, *id.* at 79, a willingness to participate that refutes speculation that the data are biased by self-selection.

<sup>42</sup> See Richard G. Medlin, *Predictors of Academic Achievement in Home Educated Children: Aptitude, Self-Concept, and Pedagogical Practices*, HOME SCHOOL RESEARCHER, Vol. 10, No. 3, 1994, at 1 (citing numerous studies) ("*Predictors*").

<sup>43</sup> See Lawrence M. Rudner, *Scholastic Achievement and Demographic Characteristics of Home School Students in 1998*, EDUC. POLICY ANALYSIS ARCHIVES, Vol. 7, No. 8, March 23, 1999.

<sup>44</sup> Brian D. Ray, *Homeschooling in Canada*, EDUC. CANADA, Vol. 28, No. 1, Spr. 2001, at 30

test scores to be in the 65th to 66th percentile range.<sup>45</sup> In fact, several state departments of education have found that homeschooled students score highly on academic achievement tests.<sup>46</sup> The authors are not aware of any empirical studies finding contrary results.

## 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.<sup>47</sup> Similarly, regression analyses of standardized academic test scores of homeschooled students in California show that, unlike in traditional schools, “[f]amily income and student race have no statistical association with homeschooled students’ achievement.”<sup>48</sup>

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(“*Homeschooling in Canada*”).

<sup>45</sup> Jon Wartes, *Summary of Two Reports From the Washington Homeschool Research Project, 1987*, HOME SCHOOL RESEARCHER, Vol. 4, No. 2, 1988, at 1-4.

<sup>46</sup> See Brian D. Ray, *Home Schooling: The Ameliorator of Negative Influences on Learning?*, PEABODY J. OF EDUC., Vol. 75, No. 1&2, 2000, at 74 (“*Home Schooling: The Ameliorator*”) (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).

<sup>47</sup> Terry J. Russell, HOME SCHOOL RESEARCHER, Vol. 10, No. 1, 1994, at 1-13.

<sup>48</sup> Ed Collom, *The Ins and Outs of Homeschooling: The Determinants of Parental Motivations and Student Achievement*, EDUC. & URBAN SOC’Y, Vol. 37, No. 3, May 2005, at 307, 332; see also STRENGTHS OF THEIR OWN, *supra* note 32, at 59 (finding no significant statistical correlation between family income and homeschool student academic success).

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 effects that race and class subordination have shown in public schools.”<sup>49</sup>

Because of this, homeschooling offers many minority families the ability to close the “persistent achievement gap.”<sup>50</sup> 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.<sup>51</sup>

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.<sup>52</sup>

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<sup>49</sup> Collom, *supra* note 39, at 332; *see also* Jon Wartes, *Recent Results from the Washington Homeschool Research Project*, HOME SCHOOL RESEARCHER, Vol. 6, No. 4, 1990, at 1-7 (“*Recent Results*”) (the data “were unable to provide any tangible basis for concern regarding academic achievement among homeschoolers based upon family income levels”).

<sup>50</sup> Venus L. Taylor, *Behind the Trend: Increases in Homeschooling Among African American Families*, in HOME SCHOOLING IN FULL VIEW 121, 131 (Bruce S. Cooper ed., 2005).

<sup>51</sup> *Id.* at 124; *see also* Chloe A. Hilliard, *For Some Black Parents, the New Home Room is Home*, THE VILLAGE VOICE, Apr. 8, 2008 (reporting on growing trend among African Americans to homeschool their children).

<sup>52</sup> *See also Home Schooling: The Ameliorator*, *supra* note 37, at 83 (regression analyses of nationwide data showing that family income is not correlated to homeschooled student performance).

### 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, admitted homeschooled students.”<sup>53</sup> By 2004, at least 85 percent of colleges had developed written policies for homeschooled student applicants.<sup>54</sup> Moreover, because the transcripts of homeschooled students typically differ in format from those of conventionally educated applicants, 52 percent of all colleges in the country have instituted formal evaluation policies for applications from homeschooled students.<sup>55</sup>

A survey of admissions at several Ivy League schools (Columbia, Dartmouth, Penn, and Brown) reveals that the acceptance rates for homeschooled graduates was about the same as the overall admission rate at such schools.<sup>56</sup> At Stanford University, the acceptance rate for homeschooled applicants has been even higher: in 2004, Stanford accepted nearly 27% of such

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<sup>53</sup> Paula Wasley, *Home-Schooled Students Rise in Supply and Demand*, THE CHRONICLE OF HIGHER EDUC., Vol. 54, No. 7, Oct. 12, 2007, at 1; *see also* Basham at 15.

<sup>54</sup> *Id.*

<sup>55</sup> Ana Beatriz Cholo, *Public Universities Increasingly Easing Application Policies for Homeschoolers*, SAN DIEGO UNION-TRIBUNE, March 6, 2007; *see also* Alan Scher Zagier, *Colleges Coveting Home-Schooled Students*, CBS NEWS, Sept. 30, 2006 (discussing the desirability of homeschooled applicants); Christine Foster, *In a Class by Themselves*, STANFORD MAGAZINE, Nov.-Dec. 2000 (reporting that Stanford University admissions officers specially track applications from homeschool students because of the “intellectual vitality” of such applicants).

<sup>56</sup> Joy A. Marean, Marc F. Ott & Matthew J. Rush, *Homeschooled Students & the Ivy League*, in HOME SCHOOLING IN FULL VIEW 179, 192 (Bruce S. Cooper ed., 2005); *see also* Jennifer Sutton, *Homeschooling Comes of Age*, BROWN ALUMNI MAGAZINE, Jan.-Feb. 2002 (reporting that the admission rate of homeschooled applicants at Brown University is roughly equal to that of

applicants, nearly double the overall acceptance rate.<sup>57</sup> Some California universities, including the University of California at Riverside and Stanford University, have even made special efforts to attract and enroll homeschooled students, who as a group have gained a reputation for being particularly motivated and for possessing “intellectual vitality.”<sup>58</sup>

This recognition is not surprising. Data show that a greater proportion of homeschooled students go on to college than their traditionally schooled counterparts. A nationwide study of 5,254 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 age range.<sup>59</sup> Specifically, 50.2 % of homeschooled adults ages 18 through 24 had obtained some college education compared to 34% of the general population in this age range.<sup>60</sup> 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.<sup>61</sup>

#### **4. Homeschooled Students Perform Well In College**

The college admission statistics are consistent with data showing that homeschooled students do well in college both academically and socially. For example, data from the Colorado

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applicants from conventional schools).

<sup>57</sup> Amy L. Kovac, *Home-School Apps Jump*, THE STANFORD DAILY, Feb. 22, 2000.

<sup>58</sup> See, e.g., Foster, *supra* note 46; 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 44, at 1 (reporting that Virginia Commonwealth University has developed two special engineering scholarships for homeschool students).

<sup>59</sup> BRIAN D. RAY, HOME EDUCATED AND NOW ADULTS 37 (2004) (“HOME EDUCATED”).

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

<sup>61</sup> *Id.*

Commission on Higher Education show that, based on SAT scores, ACT scores, college freshman year cumulative GPA, and cumulative credit hours, “academic performance analyses indicate that homeschool 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.”<sup>62</sup> 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.<sup>63</sup>

Studies also demonstrate that homeschooled students adjust well to the college environment. For instance, 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.”<sup>64</sup> 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.<sup>65</sup>

Other studies and informal reports echo these findings. In a 2004 article published in the *Journal of College Admission*, an admissions director from Ball State University (Indiana) reported

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<sup>62</sup> Paul Jones & Gene Gloeckner, *A Study of Home School Graduates & Traditional School Graduates*, J. OF COLL. ADMISSION, Spr. 2004, at 17, 20.

<sup>63</sup> Joe P. Sutton & Rhonda S. Galloway, *College Success of Students from Three High School Settings*, J. OF RESEARCH & DEV. IN EDUC., Spr. 2000, at 138, 143 (“*College Success*”); see also Rhonda Galloway & Joe Sutton, *Home Schooled & Conventionally Schooled High School Graduates: A Comparison of Aptitude For & Achievement in College Level English*, HOME SCHOOL RESEARCHER, Vol. 11, No. 1, 1995, at 1-9 (comparing homeschooled and conventionally schooled student aptitude for and performance in a college English course and finding similar academic preparedness and achievement).

<sup>64</sup> Scott White, et al., *Emotional, Social & Academic Adjustment to College: A Comparison Between Christian Home Schooled & Traditionally Schooled College Freshman*, HOME SCHOOL RESEARCHER, Vol. 17, No. 4, 2007, at 1-7.

<sup>65</sup> *Id.*

that “[r]esearch showed that our 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.”<sup>66</sup>

### **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 learning environments for children with learning disabilities.”<sup>67</sup> The authors are also aware that homeschooling can benefit gifted children, as it permits the tailoring of a program to the appropriate level of challenge.

Regardless of the type of learning difference, homeschooling allows the child to participate in appropriate learning activities while remediating for different rates of development in other areas. Forcing a child into a setting that is a poor fit may result not only in a distraction to other students but also in the creation of high levels of frustration and dissatisfaction with school in the child. For example, researchers have found that homeschools can provide “equal, if not better, instructional environments” for children with attention-deficit/ hyperactivity disorder (ADHD).<sup>68</sup>

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<sup>66</sup> Gary Mason, *Homeschool Recruiting: Lessons Learned on the Journey*, J. OF COLL. ADMISSION, Fall 2004, at 2.

<sup>67</sup> Steven F. Duvall, et al., *An Exploratory Study of Home School Instructional Environments & Their Effects on the Basic Skills of Students with Learning Disabilities*, EDUC. & TREATMENT OF CHILDREN, May 1987, at 165.

<sup>68</sup> Steven F. Duvall, Joseph C. Delquadri & D. Lawrence Ward, *A Preliminary Investigation of the Effectiveness of Homeschool Instruction Environments for Students With Attention-Deficit/ Hyperactivity Disorder*, SCH. PSYCHOL. REV., Vol. 33, No. 1, 2004, at 151.

Case study evidence shows that homeschooling can also benefit students with severe learning disabilities. For instance, one researcher who had a 21 year career as a school psychologist and had tested 1,500 students with learning disabilities reported that the student who had made the most academic gain was homeschooled. The case study of this student, whose disabilities were severe, revealed that the student experienced “extraordinary academic progress” once he was pulled from conventional schooling and homeschooled by his parent.<sup>69</sup> One of the authors regularly works with families whose children’s needs were not being met in a traditional classroom; many of these families report that they were encouraged to homeschool by their children’s teachers, and homeschooling as a viable alternative is increasingly being embraced by education professionals.

**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 on democratic values.”<sup>70</sup> Persons unfamiliar with homeschooling are often concerned about whether these children will have the social training required to integrate into society. 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.<sup>71</sup> Several studies found no significant difference in the socialization measures of these two types of students.<sup>72</sup>

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<sup>69</sup> Steven F. Duvall, *The Effectiveness of Homeschooling Students With Special Needs*, in HOME SCHOOLING IN FULL VIEW 151, 160-64 (Bruce S. Cooper ed., 2005).

<sup>70</sup> *Hartzell*, 35 Cal. 3d at 908.

<sup>71</sup> See Richard G. Medlin, *Homeschooling & the Question of Socialization*, PEABODY J. OF EDUC., Vol. 75, No. 1&2, 2000, at 113-14 (discussing numerous studies) (“*The Question of Socialization*”).

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



Others studies found that homeschooled children score significantly higher on social development markers.<sup>73</sup>

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.<sup>74</sup> 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.<sup>75</sup> In other words, the study indicates that children educated at home “are more mature and better socialized than those who are sent to school.”<sup>76</sup>

Another study applied a Social Skills Rating System to evaluate 34 pairs of homeschooled and conventionally schooled children between the ages of five and eighteen. The researchers found that “homeschooled children earned higher scores on social skill standards than their conventionally educated peers.”<sup>77</sup>

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<sup>73</sup> *Id.*; see also Vicki D. Tillman, *Home Schoolers, Self-Esteem, and Socialization*, HOME SCHOOL RESEARCHER, Vol. 11, No. 3, 1995, at 1-6 (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 SCHOOL RESEARCHER, Vol. 2, No. 2, 1986, at 1-3 (“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)].”).

<sup>74</sup> Thomas C. Smedley, *Socialization of Home School Children*, HOME SCHOOL RESEARCHER, Vol. 8, No. 3, 1992, at 9-16.

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

<sup>76</sup> *Id.*

<sup>77</sup> David J. Francis & Timothy Z. Keith, *Social Skills of Home Schooled & Conventionally Schooled Children: A Comparison Study*, HOME SCHOOL RESEARCHER, Vol. 16, No. 1, 2004, at 15-24.

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 70 homeschooled and 70 traditionally schooled eight to ten year olds, matched along demographic and socioeconomic lines.<sup>78</sup> Consistent with other research, the study found no significant differences between the two groups regarding measures of self-concept and assertiveness.<sup>79</sup> But based on the Direct Observation Form of the Child Behavior Checklist of 97 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.”<sup>80</sup> Similarly, a study of college students that had been homeschooled found that they “had significantly fewer problem behaviors than their public school counterparts.”<sup>81</sup>

Finally, statistics show that homeschooled adults are more likely than the general population to consider themselves very happy, find life exciting, be very satisfied with their work, be satisfied with their financial situation, and believe that hard work is the most important determinant of success.<sup>82</sup>

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<sup>78</sup> *The Question of Socialization*, *supra* note 62, at 114.

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

<sup>80</sup> *Id.* at 115.

<sup>81</sup> *College Success*, *supra* note 54, at 143.

<sup>82</sup> *Id.* at 55-58; *see also* Basham, *Home Schooling*, *supra* note 8, at 16 (survey of 1,648 Canadian homeschooled students reported that they “enjoy a life satisfaction score considerably above the score of their public school peers”).

**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.<sup>83</sup> It gives citizens “the knowledge, self-confidence, and critical skills” to participate in the “debate that is central to our democracy.”<sup>84</sup> Empirical studies demonstrate that homeschooled students are well prepared to be active participants in our society and democracy and valuable contributors to the economy.

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. In fact, 71% 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.<sup>85</sup> 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.).<sup>86</sup> While 88% of adults who were homeschooled belonged to such organizations, only 50% of similar aged adults did so.<sup>87</sup>

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<sup>83</sup> *Hartznell*, 35 Cal. 3d at 907-08. Indeed, “[n]otable 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 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, *Home Schooling*, *supra* note 8, at 6.

<sup>84</sup> *Hartznell*, 35 Cal. 3d at 908.

<sup>85</sup> HOME EDUCATED, *supra* note 50, at 50.

<sup>86</sup> *Id.* at 88.

<sup>87</sup> *Id.*

These findings are consistent with other studies. Researchers at the University of North Carolina analyzing data from the 1996 National Household Education Survey, conducted by the U.S. Department of Education's National Center for Education Statistics, found that homeschooled students are 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.<sup>88</sup>

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.<sup>89</sup> Of particular interest, among 18-24 year olds, 74% of the homeschooled adults had voted in the last 5 years while only 29% of the general population had done so.<sup>90</sup>

Studies also show that homeschooled students excel in leadership. In an evaluation of the college performance of three matched sets of 60 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 42 of 63 performance indicators, including positions of leadership.<sup>91</sup> The

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<sup>88</sup> Christian Smith & David Sikkink, *Is Private Schooling Privatizing?*, FIRST THINGS, April 1999, at 20.

<sup>89</sup> HOME EDUCATED, *supra* note 50, at 53.

<sup>90</sup> *Id.* at 75.

<sup>91</sup> *The Question of Socialization*, *supra* note 62, at 117.

study author concluded that the homeschooled students “were readily recognized for their leadership abilities.”<sup>92</sup>

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.<sup>93</sup> 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 schooled counterparts.”<sup>94</sup>

Homeschooled adults are also well prepared to participate in the economic sphere. They have entrepreneurial skills and make desirable employees. An article published in HR Magazine, a publication that provides tips, techniques, and case studies on all aspects of employee development, advocated for seeking out and hiring homeschooled employees. 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.”<sup>95</sup>

#### **IV. DATA SHOW THAT 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

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

<sup>93</sup> *College Success*, *supra* note 54, at 143.

<sup>94</sup> *Id.* at 143; *see also* Linda Montgomery, *The Effect of Home Schooling on the Leadership Skills of Home Schooled Students*, HOME SCHOOL RESEARCHER, Vol. 5, No. 1, 1989, at 1-10 (study of students in Washington ages 10 to 21 finding that homeschooled student 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”).

<sup>95</sup> Robert J. Grossman, *Home Is Where The School Is*, H.R. MAGAZINE, Nov. 2001.

very few other requirements on homeschooling families.<sup>96</sup> 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. Numerous studies show, however, that outcomes are no better for students taught by a credentialed parents or in states with higher levels of regulation (such as requirements for standardized testing, or state approval of curriculum).

**A. Studies Show No Correlation Between A Parent's Being Credentialed 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.<sup>97</sup> A nationwide Canadian study reached a similar result, finding no correlation between homeschooled students' test scores and whether either parent had a teaching credential.<sup>98</sup> A study of homeschooled children in Washington found that the "absence of contact with a certified teacher does not keep homeschoolers from doing well."<sup>99</sup> 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.<sup>100</sup>

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<sup>96</sup> *See infra*, \_\_\_\_.

<sup>97</sup> *See Home Schooling: The Ameliorator*, *supra* note 37, at 83; *STRENGTHS OF THEIR OWN*, *supra* note 32, at 59.

<sup>98</sup> *See Homeschooling in Canada*, *supra* note 35, at 30-31.

<sup>99</sup> *Recent Results*, *supra* note 40, at 1-7.

<sup>100</sup> *See* BRIAN D. RAY, *WORLDWIDE GUIDE TO HOMESCHOOLING* 78 (2005) (citing Jennie F.

Even children who, if they were in public school, would be in special classes 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.<sup>101</sup>

Two small studies did find a correlation, but their sample sizes seem inadequate to cast doubt on the numerous other statewide and nationwide findings. For instance, one of these studies involved only 36 homeschooled students in 27 families, in 7 of which the mother was a certified teacher.<sup>102</sup> 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.”<sup>103</sup>

**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 shows no correlation between the degree of regulation

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Rakestraw, *Home Schooling in Alabama*, HOME SCHOOL RESEARCHER, Vol. 4, No. 4, 1988, at 1-6; Joan Ellen Havens, *A Study of Parent Education Levels as They Relate to Academic Achievement Among Home Schooled Children* (1991) (Ed. D. dissertation); BRIAN D. RAY, *A NATIONWIDE STUDY OF HOME EDUCATION: FAMILY CHARACTERISTICS, LEGAL MATTERS, AND STUDENT ACHIEVEMENT* (1990); BRIAN D. RAY, *HOME EDUCATION IN OKLAHOMA: FAMILY CHARACTERISTICS, STUDENT ACHIEVEMENT, AND POLICY MATTERS* (1992)); *see also* Howard B. Richman, William Girten & Jay Snyder, *Academic Achievement & Its Relation to Selected Variables Among Pennsylvania Homeschoolers*, HOME SCHOOL RESEARCHER, Vol. 6, No. 4, 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”).

<sup>101</sup> Duvall, Delquadri & Ward, *supra* note 59, at 152-53.

<sup>102</sup> *Predictors*, *supra* note 33, at 1-7.

imposed by the state on homeschooling and academic achievement.<sup>104</sup> While every state regulates homeschooling to a greater or lesser 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. Over three quarters of the states (38) have no minimum qualification requirements for parents who wish to teach their children at home. Seven states<sup>105</sup> require homeschooling parents teaching their children directly (i.e., without a formal tutor) to have a high school diploma or GED. Five other states require more than a high school diploma, such as a BA, 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.<sup>106</sup>

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.<sup>107</sup> Regardless of parental educational levels or state requirements, it is significant to note that studies have found that:

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<sup>103</sup> *Id.* at 6 (citing studies).

<sup>104</sup> See STRENGTHS OF THEIR OWN, *supra* note 32, at 63-64.

<sup>105</sup> Georgia, New Mexico, North Carolina, Ohio, Pennsylvania, South Carolina and West Virginia.

<sup>106</sup> Minnesota, North Dakota, Tennessee, Virginia and Washington.

<sup>107</sup> *Id.*



[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 achievement of a tutored child. One explanation might be that the advantages of one-to-one learning outweigh the advantages of professional training.<sup>108</sup>

Accordingly, requiring parents to hold a credential cannot be seen as being “essential” to meeting the State’s interest. The one state court opinion directly addressing the question of whether a credentialing requirement was essential, *Michigan v. DeJonge*, 501 N.W.2d 127 (Mich. 1993), 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.”<sup>109</sup> 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”:

The 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.<sup>110</sup>

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.<sup>111</sup>

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<sup>108</sup> Lines, *supra* note 5.

<sup>109</sup> DeJonge, 501 N.W.2d at 140.

<sup>110</sup> *Id.* at 139.

<sup>111</sup> *Id.* at 141.

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” in the homeschooling context, and that “[t]he compelling nature of the teacher certification requirement is not extant.”<sup>112</sup>

## **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. The remaining states require no assessment, although parents are free to obtain it on their own. The authors are not aware of any studies showing any 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 (41) 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.”<sup>113</sup>

Although the authors are aware that some commentators have raised concerns regarding the ability of homeschooling to meet the State’s interests without substantive oversight by the State, the authors, after extensive research, are not aware of any empirical evidence that contradicts 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 due to the logistical and financial demands of attaining a credential while accomplishing 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, economic, and racial lines and would arguably have an impermissibly discriminatory impact on homeschooling parents of different socio-economic classes. 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), the authors contend that because such a

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<sup>112</sup> *Id.* at 141-42.

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.

## **V. 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. But 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 given in this paper 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.

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(Footnote Continued from Previous Page.)

<sup>113</sup> Basham, *supra* note 8, at 18-19 (internal citations omitted).