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INTRODUCTION

Home-schooling is a term used to describe education provided to children of compulsory-school age[1] at home, usually by their parents.[2] It is not a new phenomenon in the United States; since our nation's beginning, various factors have motivated parents to provide education to their children at home.[3] The practice of home-schooling has faced much opposition over the years[4] and

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1 *See* 24 PA. CONS. STAT. § 13–1326 (2005) (defining compulsory school age as "the period of life from the time the child's parents elect to have the child enter school, which shall be not later than at the age of eight (8) years, until the age of seventeen (17) years"); *see also* Hunter v. Carbondale Area Sch. Dist., 829 F. Supp. 714, 719 (M.D. Penn. 1993) (noting Pennsylvania's compulsory school age).

2 *See* CHRISTOPHER J. KLICKA, THE RIGHT TO HOME SCHOOL: A GUIDE TO THE LAW ON PARENTS' RIGHTS IN EDUCATION 1 (Carolina Academic Press 2002) (describing home-schooling as "a school in the home" where teaching is most often done by parents); *see also* William L. Campbell, Jr., *Moving Against the Tide: An Analysis of Home School Regulation in Alabama*, 52 ALA. L. REV. 649, 649 (2001) (characterizing home-schooling as "a form of schooling whereby children receive their formal education, from parents, guardians or relatives at home"); Judith G. McMullen, *Behind Closed Doors: Should States Regulate Homeschooling?*, 54 S. C. L. REV. 75, 76 (2002) (classifying home-education as "the education of a school-age child, mainly in his home, by his parents").

3 *See* WILLIAM M. GORDON ET AL., THE LAW OF HOME SCHOOLING 5 (Educ. Law Assoc. 1994) (stating that home-schooling "is not an entirely new concept in the history of American education"); *see also* Campbell, *supra* note 2, at 649 (asserting that home-schooling is "firmly rooted in American history"); McMullen, *supra* note 2, at 76 (indicating that it was customary for children to obtain some type of home-education).

4 *See* KLICKA, *supra* note 2, at 159 (arguing that "legal road to home school . . . has not been easy, since most states did not formally recognize the right of parents to home school their own children"); *see also* Lisa M. Lukasik, Comment, *The Latest Home Education*

yet by 1993, it was legal nationwide.[5] However, even though all fifty states have declared home-schooling legal, they have each established a set of home-schooling regulations in order to ensure that every citizen is afforded an adequate education.[6] These regulations vary a great deal, with some states enacting almost no requirements[7] and others establishing numerous detailed home-schooling regulations.[8] While most families recognize and completely endorse state regulation of education,[9] others challenge the state's supervision based on a variety of constitutional claims.[10] More recently, states such as Pennsylvania have passed religious freedom laws, which prevent the state from "substantially burden[ing] religious exercise without compelling justification."[11] These laws have presented parents who home-school their children for religious reasons with another avenue through which to challenge state regulation.[12]

Challenge: The Relationship Between Home Schools and Public Schools, 74 N.C. L. REV. 1913, 1918–20 (1996) (summarizing effect of compulsory education laws on parent's right to home-school).

5 *See* GORDON, *supra* note 3, at 29 (recognizing that thirty-two states passed explicit home-schooling statutes by 1993 and remaining eighteen permitted home-schooling in other ways); *see also* Lukasik, *supra* note 4, at 1952 (highlighting legality of home-schooling nationwide).

6 *See* KLICKA, *supra* note 2, at 160–67 (outlining types of home-schooling regulation used throughout United States); *see also* McMullen, *supra* note 2, at 87–91 (explaining different state approaches to home-schooling regulation); *State Laws*, HOME SCHOOLING LEGAL DEFENSE ASSOCIATION, http://www.hslda.org/laws/default.asp (last visited March 30, 2006) (illustrating range of home-schooling regulations across United States).

7 *See* KLICKA, *supra* note 2, at 166–67 (alleging that our nation's trend is towards less state regulation of home-schooling); *see also State Laws*, *supra* note 6 (depicting states with low amount of home-schooling regulation).

8 *See* McMullen, *supra* note 2, at 87 (clarifying that some states have many home-schooling regulations); *see also State Laws*, *supra* note 6 (pointing out states with more stringent home-schooling regulations).

9 *See* Editorial, *Life Lessons: Home Schoolers Shouldn't Upset State Law*, PITTSBURGH POST-GAZETTE, Oct. 14, 2004, at A–18 [hereinafter *Life Lessons*] (conveying arguments in favor of Pennsylvania's detailed home-schooling regulations); *see also Home Schooling*, EDUC. WK., http://www.edweek.org/rc/issues/home-schooling/?levelId=1000&levelId=1000 (last visited March 30, 2006) (providing poll results which indicate approval for state regulation); Rosemary Salomone, *Home Schooling and Religious Freedom: Who Owns the Child?*, EDUC. WK., Oct. 20, 2004, at 52 (declaring that most people approve of state regulation).

10 *See* Donald D. Dorman, Note, *Michigan's Teacher Certification Requirement as Applied to Religiously Motivated Home Schools*, 23 U. MICH. J.L. REF. 733, 738–45 (1990) (evaluating Constitutional claims of parents that choose to home-school); *see also* Lukasik, *supra* note 4, at 1921–37 (examining several Constitutional arguments made by home-schooling parents).

11 Religious Freedom Protection Act, 71 PA. CONS. STAT. § 2402(1) (2005).

12 *See* Karen Zapf, *Home-Schoolers Chafe at State Law*, PITTSBURGH TRIB. REV., Oct. 4, 2004 (stating that lawyers for home-schooling parents in Pennsylvania view Religious Freedom Protection Act as "clear[ing] the way for families to claim exemptions to state home-school reporting requirements"); *see also Pennsylvania Religious Freedom Bill*

Recently, six cases were filed in Pennsylvania by parents who assert that the state's comprehensive home-schooling restrictions intrude upon their freedom of religion and therefore, violate Pennsylvania's religious freedom law, the Religious Freedom Protection Act.[13] The plaintiffs in *Newborn v. Franklin Regional School District*,[14] *Hankin v. Bristol Township School District*,[15] *Combs v. Homer-Center School District*,[16] *Prevish v. Norwin School District*,[17] *Nelson v. Titusville Area School District*,[18] and *Weber v. Dubois Area School District*[19] are challenging Pennsylvania's home-schooling regulations because they believe that these requirements render them unable to fulfill their specific religious obligations to direct their children's education and that parents are entitled to total independence in home-schooling their children.[20]

These six Pennsylvania cases were all brought by the Home School Legal Defense Association[21] and they are very factually

Becomes Law, HOME SCHOOL LEGAL DEFENSE ASSOCIATION, Jan. 16, 2003, http://www.hslda.org/docs/news/hslda/200301/200301162.asp [hereinafter *Religious Freedom Bill*] (suggesting that Pennsylvania's Religious Freedom Protection Act provides home-schooling parents with another argument).

13 *See generally* Complaint, Newborn v. Franklin Reg'l Sch. Dist. (W.D. Pa. 2004) (04-cv-01932-AJS) (revealing events that led up to Dr. and Mrs. Newborn filing suit); *see also* Complaint, Hankin v. Bristol Township Sch. Dist. (W.D. Pa. 2004) (04-cv-01936-AJS) (detailing circumstances surrounding Hankin family's lawsuit); Complaint, Combs v. Homer Ctr. Sch. Dist. (Ct. of C.P. Ind. County 2004) (04-cv-01599-AJS) (highlighting facts of Combs family's lawsuit); Complaint, Prevish v. Norwin Sch. Dist. (Ct. of C.P. Westmoreland County 2004) (05-cv-01670-AJS) (explaining beliefs held by Prevish family); Complaint, Nelson v. Titusville Area Sch. Dist. (W.D. Pa. 2005) (05-070E) (stating why Nelson family filed suit); Complaint, Weber v. Dubois Area Sch. Dist. (W.D. Pa. 2005) (05-203J) (detailing plight of Weber family).

14 Complaint, *Newborn* (W.D. Pa. 2004) (04-cv-01932-AJS).

15 Complaint, *Hankin* (W.D. Pa. 2004) (04-cv-01936-AJS).

16 Complaint, *Combs* (Ct. of C.P. Ind. County 2004) (04-cv-01599-AJS).

17 Complaint, *Prevish* (Ct. of C.P. Westmoreland County 2004) (04-cv-01670-AJS).

18 Complaint, *Nelson* (W.D. Pa. 2005) (05-070E).

19 Complaint, Weber v. Dubois Area Sch. Dist. (W.D. Pa. 2005) (05-203J).

20 *See generally* Complaint, Newborn v. Franklin Reg'l Sch. Dist. (W.D. Pa. 2004) (04-cv-01932-AJS) (explaining religious beliefs held by Dr. and Mrs. Newborn); *see also* Complaint, *Hankin* (W.D. Pa 2004) (04-cv-01936-AJS) (expressing Hankin family's religious convictions); Complaint, *Combs* (Ct. of C.P. Ind. Cty. 2004) (expressing Combs family's sincerely held religious beliefs); Complaint, *Prevish* (Ct. of C.P. Westmoreland County 2004) (conveying religious beliefs of Prevish family); Complaint, *Nelson* (W.D. Pa. 2005) (stating religious views that led to Nelson family's lawsuit); Complaint, *Weber* (W.D. Pa. 2005) (specifying Weber family's religious beliefs).

21 The Home School Legal Defense Association is a Christian nonprofit legal organization founded to "defend and advance the constitutional right of parents to direct the education of their children and to protect family freedoms." *Who We Are*, HOME SCHOOL LEGAL DEFENSE ASSOCIATION, http://www.hslda.org/about/default.asp (last visited March 30, 2006). They actively participate in home-schooling litigation across the United States and feverously advocate on behalf of home-schooling parents in

similar. In *Newborn*, Dr. and Mrs. Newborn filed suit against their local school district alleging that Pennsylvania's home-schooling regulations violate Pennsylvania's Religious Freedom Protection Act.[22] The Newborns have seven children of compulsory school age.[23] Based on their strong religious beliefs, they have elected to home-school these children for the past twelve years.[24] The Newborns assert that state regulation of home-schooling infringes upon their religious beliefs that "parents are charged by God to raise their children in the nurture and admonition of the Lord"[25] and that "it would be sinful for them to engage in conduct and expression that would seek approval from the secular civil government for the holy and sacred education they are duty-bound by God to provide their children."[26] Dr. and Mrs. Newborn contacted representatives of the Franklin Regional School District to inform them of their religious views.[27] However, the school district responded by stating that it did not view Pennsylvania's home-schooling requirements as substantially burdening the Newborn family's free exercise of religion.[28] Since the Newborns were aware that

Washington, D.C., in state legislatures and in the media. *See id.* Home-schooling parents are required to pay a membership fee to belong to this organization and thereafter receive legal representation from the Home School Legal Defense Association free of charge. *See What We Do*, HOME SCHOOL LEGAL DEFENSE ASSOCIATION, http://www.hslda.org/join/protect.asp?m=do (last visited March 30, 2006).

22 *See* Complaint at ¶¶ 26–32, *Newborn* (W.D. Pa. 2004) (containing claims brought by Newborn family); *see also* Combs v. Homer Ctr. Sch. Dist., 04cv1599, 2005 U.S. Dist. LEXIS 32007, at * 60–62 (W.D. Pa. 2005) (detailing aspects of Newborn family's lawsuit); Paula Reed Ward, *Home School Parents Sue State Over Religious Freedom*, PITTSBURGH POST-GAZETTE, Oct. 11, 2004, at B–1 (announcing filing of Newborns' complaint under Religious Freedom Protection Act).

23 *See* Complaint at ¶ 5, *Newborn* (W.D. Pa. 2004) (stating that Newborn children are of compulsory school age); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *61 (detailing composition of Newborn family); *Pennsylvania - Homeschoolers' Religious Freedom Case Can Proceed*, HOME SCHOOL LEGAL DEFENSE ASSOCIATION, August 6, 1999, http://www.hslda.org/hs/state/pa/200408060. asp [hereinafter *Case Can Proceed*] (noting that Newborns have seven children).

24 *See* Complaint at ¶ 9, *Newborn* (W.D. Pa. 2004) (explaining that religion caused Newborns to home-school for twelve years); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at * 61 (explaining history of home-schooling in Newborn family); Ward, *supra* note 22, at B–1 (discussing Newborn family's motivations for home-schooling).

25 Complaint at ¶¶ 14–17, *Newborn* (W.D. Pa. 2004) (explaining nature of Newborns' religious beliefs).

26 Complaint at ¶¶ 18–19, Newborn v. Franklin Reg'l Sch. Dist. (W.D. Pa. 2004) (04-cv-1932-AJS) (expressing belief in duty to God and children).

27 *See id.* at ¶ 13 (detailing contact made by Newborn family); *see also* Combs, 2005 U.S. Dist. LEXIS 32007, at *61–62 (explaining actions of Newborns).

28 *See* Complaint at ¶ 29, *Newborn* (W.D. Pa. 2004) (disclosing actions taken by Franklin Regional School District); *see also* Combs v. Homer Ctr. Sch. Dist., 04cv1599, 2005 U.S. Dist. LEXIS 32007, at *62 (W.D. Pa. 2005) (summarizing response of Franklin

their failure to comply with Pennsylvania's home-schooling requirements subjected them to truancy charges, they filed suit under the Pennsylvania Religious Freedom Act.[29]

In *Hankin*, Mr. and Mrs. Hankin, after being threatened with truancy charges, sued their local school district under the Religious Freedom Protection Act.[30] As a result of their intense religious beliefs, the Hankins have home-schooled their children for eleven years.[31] Like the Newborn family, the Hankins failed to comply with Pennsylvania's home-schooling requirement of notifying the school district of their intent to home-school due to their sincerely-held religious beliefs.[32] In March and April of 2004, they were notified by the Bristol Township School District that their children were illegally absent from school.[33] Despite two letters sent by the Hankin's to their school district detailing the perceived conflict between their religious convictions and the commonwealth's home-schooling requirements, the school district advised them that failure to comply with this requirement within three days would result in truancy charges.[34]

Regional School District); *Case Can Proceed*, *supra* note 23 (declaring that Franklin Regional School District asserted that "the Newborns had experienced insufficient harm to warrant judicial relief").

29 *See* Complaint at ¶¶ 32–38, *Newborn* (W.D. Pa. 2004) (expressing arguments of Newborn family); *see also Newborn v. Franklin Regional School District – Family Files Suit under Religious Freedom Protection Act*, HOME SCHOOL LEGAL DEFENSE ASSOCIATION, Sept. 14, 2004, http://www.hslda.org/Legal/state/pa/20040205NewbornvFRSD/default.asp [hereinafter *Newborn – Family Files Suit*] (indicating that Newborns filed suit because they believed Franklin Regional School District would file truancy changes).

30 *See* Complaint at ¶ 70, Hankin v. Bristol Township Sch. Dist. (W.D. Pa. 2004) (04-cv-01936-AJS) (containing claims of Hankin family); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *57–59 (summarizing events that led up to Hankin family's suit); *Hankin v. Bristol Township School District - Family Files Suit under Religious Freedom Protection Act*, HOME SCHOOL LEGAL DEFENSE ASSOCIATION, Sept. 14, 2004, http://www.hslda.org/Legal/state/pa/20040422HankinvBTSD/default.asp [hereinafter *Hankin - Family Files Suit*] (describing Hankin family's ordeal).

31 *See* Complaint at ¶¶ 15–20, *Hankin* (W.D. Pa. 2004) (clarifying duration and reasons for Hankin family engaging in home-schooling); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *59–60 (explaining history of home-schooling in Hankin family).

32 *See* Complaint at ¶¶ 15–20, *Hankin* (W.D. Pa. 2004) (presenting beliefs that led Hankins to non-compliance); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *59 (describing Hankin family's beliefs).

33 *See* Complaint at ¶¶ 18–19, *Hankin.* (W.D. Pa. 2004) (mentioning school district's response to Hankin family's failure to file home-schooling affidavit); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *59 (explaining school district's response).

34 *See* Complaint at ¶¶ 13–14, *Hankin* (W.D. Pa. 2004) (emphasizing that Hankins sent letters to Bristol Township School District explaining their religious beliefs and the school district responded with three day ultimatum); *see also* Combs v. Homer Ctr. Sch. Dist., 2005 U.S. Dist. LEXIS 32007, at *59 (W.D. Pa. Dec. 8, 2005) (stating that school threatened truancy charges).

The plaintiffs in *Combs*, Mr. and Mrs. Combs, have also home-schooled their children for eight years because they strongly believe God commands parents to assume complete control over their child's education.[35] The Combs family believes that it is critical for children to make religious and spiritual connections between academic subjects and the teachings of the Bible, and home-schooling allows them to do just that.[36] Mr. and Mrs. Combs filed an affidavit with the Homer-Center School District during the summer before the 2003-2004 school year which declared both their intention to home-school their children and their projected educational goals.[37] They also informed the school district of the substantial burdens placed on their religion by Pennsylvania's home-schooling regulations.[38] The Homer-Center School District responded by stating that parents home-schooling for religious reasons were not entitled to any exceptions, and failure to comply with all of the remaining home-schooling requirements would lead to truancy charges.[39] The Combs

[35] *See* Complaint at ¶ 5, Combs v. Homer Ctr. Sch. Dist. (Ct. of C.P. Ind. County 2004) (04-cv-01599-AJS); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *44–45. The Combs family strongly "believ[es] the Bible gives them the responsibility for educating their children." Ward, *supra* note 22, at B–1. Darrell Combs has said, "[w]e're taking all of this out of scripture" and "[n]owhere in scripture is authority for education given over to local or state government." *Id.* Mr. and Mrs. Combs have cited numerous Bible scriptures in support of this view, including Deuteronomy, Chapter 6, which states:

> Love the Lord your God with all your heart and with all your soul and with all your strength. These commandments that I give you today are to be upon your hearts. Impress them on your children. Talk about them when you sit at home and when you walk along the road, when you lie down and when you get up.

Id. The Combs family has also quoted a passage from Ephesians, which conveys that parents should "raise their children 'in the training and instruction of the Lord.'" *Id.*

[36] *See* Ward, *supra* note 22, at B–1 (remarking on Combs family's views on education, including Mr. Combs's view that all education should be rooted in the Bible and "when his children learn their subjects – whether science, social studies or even math – they are taught to relate the information to the Bible"); *see also* Complaint at ¶¶ 13–18, *Combs* (Ct. of C.P. Ind. County 2004) (stating that Combs family believes that Bible is specifically related to education); *Combs*, 2005 U.S. Dist. LEXIS 32007, at *45–46 (discussing reasons that Combs family home-schools their children).

[37] *See* Complaint at ¶ 7, *Combs* (Ct. of C.P. Ind. County 2004) (discussing preliminary actions taken by Combs family); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *45 (explaining how Combs family dealt with local school district); Ward, *supra* note 22, at B–1 (describing the Combs family's predicament and its eventual growth into a lawsuit).

[38] *See* Complaint at ¶ 8, *Combs* (Ct. of C.P. Ind. County 2004) (specifying how home-schooling law violated Combs family's religious beliefs); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *45 (noting beliefs of Combs family that were conveyed to school district); Ward, *supra* note 22, at B–1 (explaining Combs family's religious justification for home schooling their children).

[39] *See* Complaint at ¶ 25, *Combs* (Ct. of C.P. Ind. County 2004) (describing reaction of school district); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *47 (explaining response of school district); Ward, *supra* note 22, at B–1 (citing Combs family's failure to comply

family's counsel, the Home School Legal Defense Association, subsequently notified the school district that Mr. and Mrs. Combs were going to home-school their children and that they did not intend to comply with the other state-mandated home-schooling regulations.[40] Without any further warning, the school district filed truancy charges against Mr. and Mrs. Combs.[41] The Combs family responded by filing a complaint under the Religious Freedom Protection Act and the truancy charges were stayed.[42] The Homer-Center School District then removed this case to federal court in October 2004.[43]

In *Prevish*, Dr. and Mrs. Prevish filed a complaint against the Norwin School District due to their intense religious convictions.[44] After home-schooling their children for seven years, Dr. and Mr. Prevish applied for an exception to the home-schooling requirements for the 2004 – 2005 school year.[45] When this request was denied and the Norwin School District threatened to file truancy charges, Dr. and Mrs. Prevish filed a

with school district's regulations as the reason for both the threat of and subsequent filing of truancy charges).

[40] *See* Complaint at ¶ 26, *Combs* (Ct. of C.P. Ind. County 2004) (explaining actions taken by Home School Legal Defense Association on behalf of Mr. and Mrs. Combs); *see also* Ward, *supra* note 22, at B–1 (noting that school district filed truancy charges following Combs family's failure to comply with regulations that offended their religious beliefs).

[41] *See* Complaint at ¶¶ 31–40, Combs v. Homer Ctr. Sch. Dist. (Ct. of C.P. Ind. County 2004) (04-cv-01599-AJS) (arguing that school district failed to warn Combs family that their home-schooling program was out of compliance); *see also* Combs v. Homer Ctr. Sch. Dist., 04cv1599, 2005 U.S. Dist. LEXIS 32007, at *47 (W.D. Pa. 2005) (noting filing of truancy charges); Ward, *supra* note 22, at B–1 (explaining actions of school district).

[42] *See* Complaint at ¶ 41, *Combs* (Ct. of C.P. Ind. County 2004) (noting subsequent steps in Combs family lawsuit); *see also* Matthew Junker, *Homeschooling Law Challenged by Parents*, TRIB. REV., Sept. 28, 2004 (commenting on Combs family's ordeal and their case filed under Religious Freedom Protection Act).

[43] *See The Home School Court Report*, HOME SCHOOL LEGAL DEFENSE ASSOCIATION, Nov.–Dec. 2004, http://www.hslda.org/courtreport/v20n6/test.asp (providing most recent developments in *Combs* case, including removal to federal court on October 29, 2004); *see also* Junker, *supra* note 42 (explaining actions of Combs family and illustrating their similarity to Newborn family's case which was allowed to go forward).

[44] *See* Complaint at ¶ 9, Prevish v. Norwin Sch. Dist. (Ct. of C.P. Westmoreland County 2004) (04-cv-01670-AJS) (containing claims made by Dr. and Mrs. Prevish); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *54–57 (W.D. Pa. 2005) (detailing actions leading up to Prevish family's lawsuit); Ward, *supra* note 22, at B–1 (declaring that Prevish family filed suit under Religious Freedom Protection Act).

[45] *See* Complaint at ¶¶ 14–16, *Prevish* (Ct. of C.P. Westmoreland County 2004) (describing actions of Dr. and Mrs. Prevish); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *55 (explaining how Dr. and Mrs. Prevish responded to local school district); Ward, *supra* note 22, at B–1 (noting that Prevish family filed suit against Norwin School District because their religious beliefs were not being accommodated by district's home schooling policies).

complaint against the school district under the Religious Freedom Protection Act.[46] The Norwin School District then removed this case to federal court in October 2004.[47]

The plaintiffs in *Nelson* also filed suit after being threatened with truancy charges.[48] Mr. and Mrs. Nelson home-schooled their children for eight years due to their religious convictions, recently notifying the Titusville Area School District that Pennsylvania's home-schooling requirements violated their specific religious beliefs.[49] The school district did not accept the Nelson family's position and required that they fulfill the home-schooling requirements of submitting an affidavit of intention to home-school and an annual portfolio in order to avoid truancy charges.[50] The Nelson family then filed suit under the Religious Freedom Protection Act.[51]

Finally, in *Weber*, Rev. and Mrs. Weber home-schooled their children for eight years due to their religious convictions.[52] The Weber family provided their local school district with a detailed explanation of how Pennsylvania's home-schooling requirements violated their religious beliefs.[53] They were informed that the school district did not share in their views and that if their children did not attend public school, they would be subject to

[46] *See* Complaint at ¶¶ 32–34, *Prevish* (Ct. of C.P. Westmoreland Cty. 2004) (explaining events that led to Prevish family's lawsuit); *see also* Combs v. Homer Ctr. Sch. Dist., 04cv1599, 2005 U.S. Dist. LEXIS 32007, at *56 (W.D. Pa. 2005) (identifying reasons for Prevish family's lawsuit).

[47] *See The Home School Court Report*, *supra* note 43 (noting that this case was removed on October 29, 2004); *see also* Junker, *supra* note 42 (mentioning Prevish family's suit).

[48] *See* Complaint at ¶¶ 27–32, Nelson v. Titusville Area Sch. Dist. (W.D. Pa. 2005) (05-070E) (explaining events that led up to Nelson family's lawsuit); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *63–64 (W.D. Pa. 2005) (explaining Nelson family's ordeal).

[49] *See* Complaint at ¶¶ 8–9, *Nelson* (W.D. Pa. 2005) (listing Nelson family's religious beliefs); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *63–64 (explaining history of home-schooling in Nelson family).

[50] *See* Complaint at ¶¶ 27–28, *Nelson* (W.D. Pa. 2005) (describing response of Titusville Area School District); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *64 (explaining actions taken by local school district).

[51] *See* Complaint at ¶¶ 63–70, *Nelson* (W.D. Pa. 2005) (containing legal arguments made by Mr. and Mrs. Nelson); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *63 (identifying Nelson family's lawsuit).

[52] *See* Complaint at ¶ 8, Weber v. Dubois Area Sch. Dist. (W.D. Pa. 2005) (05-203J) (indicating why Weber family chose to home-school their children); *see also* Combs v. Homer Ctr. Sch. Dist., 04cv1599, 2005 U.S. Dist. LEXIS 32007, at *65–67 (W.D. Pa. 2005) (explaining Weber family's lawsuit).

[53] *See* Complaint at ¶¶ 9–13, *Weber* (W.D. Pa. 2005) (stating what was told to Dubois Area School District by Weber family); *Combs*, 2005 U.S. Dist. LEXIS 32007, at *66 (explaining efforts by Weber family to inform Dubois Area School District of its views).

truancy charges.[54] The Weber family's attorney, the Home School Legal Defense Association, then contacted the Dubois Area School District and asked that truancy charges not be brought until the preceding five Religious Freedom Protection Act cases had been decided.[55] The school district refused to comply with that request, and Rev. and Mrs. Weber responded by filing suit under the Religious Freedom Protection Act.[56]

For many months the Home School Legal Defense Association worked to consolidate these six cases.[57] Finally, by order of March 15, 2005, the District Court for the Western District of Pennsylvania consolidated these cases at Civil Action No. 04-1559.[58] In addition, the court ordered two rounds of summary judgment motions, one to address the *prima facie* constitutional challenges to Pennsylvania's home-schooling regulations and the other to address the as applied constitutional challenges.[59] On December 8, 2005 the court heard the first of these summary judgment motions and decided in favor of the defendant local school districts, holding, *inter alia*, that Pennsylvania's home-schooling statute, on its face, did not violate its Religious Freedom Protection Act.[60]

In its opinion, the District Court for the Western District of Pennsylvania noted that Pennsylvania's Religious Freedom Protection Act was never before interpreted by any court in the Commonwealth of Pennsylvania, thereby making this "a matter

54 *See* Complaint ¶¶ at 27–28, *Weber* (W.D. Pa. 2005) (noting school district's actions in response to Weber family); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *66–67 (indicating response of Dubois Area School District).

55 *See* Complaint at ¶ 29, *Weber* (W.D. Pa. 2005) (documenting actions taken by Home School Legal Defense Association on behalf of Weber family); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *67 (explaining efforts made by Home School Legal Defense Association to prevent truancy charges).

56 *See* Complaint at ¶¶ 62–69, *Weber* (W.D. Pa. 2005) (describing Nelson family's legal arguments); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *67 (noting lawsuit filed by Nelson family).

57 *See Newborn – Family Files Suit*, *supra* note 29 (noting that Home School Legal Defense Association was working to consolidate all Pennsylvania home-schooling cases); *Hankin – Family Files Suit*, *supra* note 30 (indicating that Home School Legal Defense Association was seeking consolidation).

58 *See* Combs v. Homer Ctr. Sch. Dist., 2005 U.S. Dist. LEXIS 32007, at *68 (W.D. Pa. Dec. 8, 2005) (stating date of consolidation).

59 *See id.* (describing how District Court will approach summary judgment motions).

60 *See id.* at *93 (holding that, on its face, Pennsylvania's home-schooling statute does not violate Pennsylvania's Religious Freedom Protection Act).

of first impression."[61] The court ultimately determined that there is a two-step analysis under the Religious Freedom Protection Act.[62] First, plaintiff must prove by clear and convincing evidence that the act it is challenging "imposes a 'substantial burden' by compelling conduct or expression that violates a specific tenet of their religious faith."[63] Once plaintiff satisfies this requirement, the burden shifts to the state to prove that there is a "compelling state interest and that there are no less restrictive means to further that interest."[64] Applying this test to the case at hand, the court found that Pennsylvania's home-schooling statute was not invalid on its face because plaintiff's failed to show that this act "places any restriction on or infringement of the practice or exercise of their religion."[65] The court found that plaintiffs only showed that this act interfered with their religious belief that the state should not have the ability to regulate home-schooling, which was not enough to satisfy the threshold requirement under the statute.[66] In support of its conclusion, the court pointed out that plaintiffs have home-schooled for many years before bringing these challenges and that these requirements do not only apply to home-schooling parents but to all families that wish to engage in the home-schooling process.[67]

In its decision, the District Court for the Western District of Pennsylvania made it abundantly clear that this was only the first summary judgment motion that it would hear in these cases.[68] In fact, the Court even suggested that plaintiff's might have a stronger argument that Pennsylvania's home-schooling

61 *See id.* at *77 (explaining that no other court has interpreted Religious Freedom Protection Act).

62 *See id.* at *84–85 (detailing proper analysis under Religious Freedom Protection Act).

63 *See id.* (describing plaintiff's threshold burden under Religious Freedom Protection Act).

64 *See* Combs v. Homer Ctr. Sch. Dist., 2005 U.S. Dist. LEXIS 32007, at *85 (W.D. Pa. Dec. 8, 2005) (stating when burden shifts to state and what standard state is held to under Religious Freedom Protection Act).

65 *See id.* at *93 (explaining why plaintiffs did not meet their threshold burden).

66 *See id.* (noting what plaintiffs demonstrated and that it was not enough to meet standard under Religious Freedom Protection Act).

67 *See id.* at *73–74, 85 (discussing reasons why plaintiffs failed to show that Pennsylvania's home-schooling law, on its face, violated the Religious Freedom Protection Act).

68 *See id.* at *68 (explaining different levels of summary judgment motions).

requirements violated the Religious Freedom Act as applied to their particular situations.[69] Thus, this case is far from over.

Pennsylvania's Religious Freedom Protection Act certainly provides parents who home-school for religious reasons with more ammunition to challenge the state's home-schooling regulations.[70] However, in light of the state's compelling interest in assuring each of its citizens a quality education,[71] it is not likely that these home-schooling parents will succeed in achieving complete independence from state control. It is submitted that whether the Pennsylvania parents will succeed in overturning some of Pennsylvania's home-schooling requirements will depend on a variety of factors, including whether plaintiff's can prove that these regulations, as applied, place a substantial burden on their religion, the detail of the regulation, the relationship between the regulation and the state's interest in providing a quality education and possible alternatives available to the state that would enable it to protect this compelling interest.

Part I of this Note will focus on the evolution of the practice of home-schooling. Part II will evaluate various arguments frequently made by parents who home-school when opposing home-schooling regulations. Part III of this Note will examine home-schooling statistics and requirements in Pennsylvania. Part IV will discuss the court's decision on plaintiff's first summary judgment motion and likely impact that Pennsylvania's Religious Freedom Act will have on the state's detailed home-schooling regulations and the final outcome of this consolidated home-schooling case. Finally, Part V will analyze what Pennsylvania courts should strongly consider when deciding the final outcome of this case.

69 *See id.* at *93 (stating that "[c]onceivably, Plaintiffs may be able to demonstrate that, as applied in practice, one or more of the defendant school districts or superintendent applies Act 169 in such a way as to restrict or infringe upon their religious practice or exercise").

70 Junker, *supra* note 42 (explaining that plaintiffs implicate Pennsylvania's Religious Freedom Protection Act as protecting home schoolers from state school code requirements); Salomone, *supra* note 9, at 52 (suggesting implications of Pennsylvania's Religious Freedom Protection Act)

71 *See In re* Carroll, 1996 Ohio App. LEXIS 4246, at *18 (Ohio Ct. App. Sept. 20, 1996) (finding state has compelling interest in education); *see also* Murphy v. Arkansas, 852 F.2d 1039, 1042 (8th Cir. 1988) (announcing compelling interest); Blount v. Maine, 1987 Me. Super. LEXIS 258, at *10 (Me. Super. Ct. Sept. 16, 1987) (realizing importance of state involvement in education).

I. AN OVERVIEW OF HOME SCHOOLING: FROM PAST TO PRESENT

The practice of home-schooling dates back to colonial times, when a majority of parents educated their children at home.[72] In fact, many of America's early Presidents and scholars were products of the home-schooling process.[73] While home-schooling was popular during this time, it was practiced for a very different reason than it is today – necessity.[74] Colonial expansion to undeveloped areas of the United States and lack of sufficient public schools left the primary responsibility of education to parents and the home.[75]

Home-schooling remained popular throughout the nineteenth century, mainly due to the sluggish growth of the public school system.[76] Nevertheless, the nineteenth century marked the beginning of a trend towards a stronger public education system.[77] During this time, Massachusetts became the first state to enact a law establishing compulsory attendance.[78] The actions

72 *See* GORDON, *supra* note 3, at 5 (examining practice of home schooling during colonial times); *see also* McMullen, *supra* note 2, at 76–77 (reviewing evolution of home-schooling); Dorman, *supra* note 10, at 734 (acknowledging that "home schooling is not a new idea"); John Cloud & Jodie Morse, *Home Sweet School; The New Home Schoolers Aren't Hermits. They are Diverse Parents who are Getting Results – and Putting the Heat on Public Schools*, TIME, Aug. 27, 2001, at 46 (pointing out that "[i]n the early years of this country, most children were educated at home, either by parents or tutors").

73 *See* GORDON, *supra* note 3, at 5–6 (declaring that our country's early conditions led seven Presidents, George Washington, John Madison, John Adams, John Quincy Adams, Abraham Lincoln, Woodrow Wilson and Franklin D. Roosevelt, to receive their education at home); *see also* Dorman, *supra* note 10, at 734 (listing seven home-schooled Presidents as well as several home-schooled scholars, including Patrick Henry, Mark Twain, Thomas Edison, Andrew Carnegie, Douglas MacArthur, and Pearl Buck); Lukasik, *supra* note 4, at 1917 (highlighting that "many of America's early leaders and intellectuals, including George Washington and Mark Twain, were schooled at home").

74 *See* GORDON, *supra* note 3, at 5 (elaborating on differences in home-schooling over time); *see also* Lukasik, *supra* note 4, at 1917 (addressing reasons why parents educated children at home in early United States history); McMullen, *supra* note 2, at 76–77 (discussing education laws during colonial times).

75 GORDON, *supra* note 3, at 5 (proclaiming that parents home-schooled their children during this time due to "[t]he very nature of this Nation's development, constantly expanding to new and underpopulated areas"); *see* Lukasik, *supra* note 4, at 1917 (alleging that education laws during colonial times "did not provide for schools or teachers"); *see also* McMullen, *supra* note 2, at 76–77 (claiming that public school system of United States was very different during colonial times).

76 *See* GORDON, *supra* note 3, at 5 (citing reasons for home-schooling during nineteenth century); *see also* McMullen, *supra* note 2, at 76–77 (noting presence of home-schooling in nineteenth century).

77 *See* GORDON, *supra* note 3, at 7 (examining trend toward compulsory education); *see also* Lukasik, *supra* note 4, at 1918–19 (indicating changes in government regulation of education).

78 *See* GORDON, *supra* note 3, at 7 (recognizing that compulsory attendance law passed by Massachusetts in 1852 was "the first 'modern' compulsory attendance law in

taken by Massachusetts had an impact on how other states viewed the education process and ultimately led the move towards a decrease in home-schooling.[79]

Most of the twentieth century was characterized by a dramatic decrease in home-schooling.[80] This was due to changes in government regulation of education, including the establishment of public school systems and compulsory education laws.[81] This decline in home-schooling was also attributable to the fact that many states declared home-schooling illegal and members of the media and the general public developed negative attitudes toward the practice.[82] Despite the fact that home-schooling was met with much opposition during this time, in 1960's and 1970's, critics such as John Holt began to express feelings of displeasure with the public school system.[83]

In recent years, home-schooling has again become popular.[84] From 1999 to 2003, the number of home-schooled children nationwide increased by 250,000 to approximately 1.1million,[85]

the United States"); *see also* Lukasik, *supra* note 4, at 1918–19 (recognizing passage of compulsory attendance law in Massachusetts).

79 *See* GORDON, *supra* note 3, at 7 (arguing that Massachusetts's actions led to passage of "compulsory education laws based upon educational aims"); *see also* Lukasik, *supra* note 4, at 1918–19 (emphasizing trend towards enacting compulsory attendance laws).

80 *See* KLICKA, *supra* note 2, at 2 (commenting on home-schooling decrease during beginning of twentieth century); *see also* Lukasik, *supra* note 4, at 1918–19 (reporting events that led to home-schooling decline).

81 *See* KLICKA, *supra* note 2, at 2 (stating that "[w]ith the advent of the public school system and the passage of compulsory attendance laws in all fifty states during the early 1900's, home schooling virtually died out"); *see also* Lukasik, *supra* note 4, at 1918–19 (maintaining that compulsory education laws burdened parents rights to home-school their children); McMullen, *supra* note 2, at 77 (remarking on effects of compulsory attendance laws).

82 *See* MARALEE MAYBERRY ET AL., HOME SCHOOLING: PARENTS AS EDUCATORS 10 (Corwin Press 1995) (presenting view of media and general public that home-schooling is "a subversive educational activity carried out by fanatics or idealists, often surreptitiously or underground"); *see also* Cloud & Morse, *supra* note 72, at 46 (explaining that some states continued to outlaw home-schooling until 1980's and 1990's).

83 JOHN HOLT & PATRICK FARENGA, TEACH YOUR OWN: THE JOHN HOLT BOOK OF HOME-SCHOOLING 1–20 (Da Capo 2003) (articulating many of John Holt's views on public education, including belief that education is a parent's responsibility and that public schools do more harm than good); *see also* MAYBERRY, *supra* note 82, at 11 (referring to John Holt's views and their effect of "fuel[ing] an air of dissatisfaction with public education"); McMullen, *supra* note 2, at 78 (recognizing John Holt's views and their impact on home-schooling movement); Cloud & Morse, *supra* note 72, at 46 (reiterating John Holt's beliefs on home-schooling).

84 *See* Anita Manning, *Life in '94 will Offer Glimpse into Next Century*, USA TODAY, Dec. 22, 1993, at 1D (proposing increase in number of children educated at home); *see also* Cloud & Morse, *supra* note 72, at 46 (stressing recent surge in home-schooling).

85 *1.1 Million Homeschooled Students in the United States in 2003*, NATIONAL CENTER FOR EDUCATION STATISTICS (July 2004), http://www.nces.ed.gov/pubs2004/2004115.pdf

making 2.2% of school-aged children participants in the home-schooling process.[86] Home-schooling is mostly practiced by Caucasian parents that are middle-aged, educated, religious, middle-class, conservative, and have more than one child.[87]

There are many reasons why parents choose to educate their children at home.[88] One motivation often stated by parents is the desire to keep their children safe.[89] Many parents believe that the public school environment is extremely dangerous and exposes their children to students with discipline problems and acts of violence.[90] Modern day tragedies in public schools, such as the Columbine High School massacre and the more recent school shooting in Red Lake, Minnesota, have reinforced these beliefs and led to even more of an interest in home-schooling.[91] Another common belief asserted by home-schooling parents is that public schools are unable to provide their children with a quality

[hereinafter *1.1 Million Homeschooled Students*] (reporting recent nationwide home-schooling statistics); *see* Ward, *supra* note 22, at B–1 (indicating that about 1 million children nationwide were home-schooled in 2002–2003); *see also* Salomone, *supra* note 9, at 52 (reiterating current home-schooling statistics).

86 *1.1 Million Homeschooled Students*, *supra* note 85 (presenting home-schooling statistics); *see The Condition of Education 2005*, NATIONAL CENTER FOR EDUCATION STATISTICS (2005), http://nces.ed.gov/programs/coe/2005/pdf/03_2005.pdf (suggesting home schooling has risen from 1.7 to 2.2 percent in recent years).

87 *See* MAYBERRY, *supra* note 82, at 30–42 (finding that 98% of home-schooling parents were Caucasian, 33% had college education or beyond, 78% attended weekly religious services, 91% reported that religion was very important, and 77% claimed to be conservative); Salomone, *supra* note 9, at 52 (stating "although families who home school represent a wide spectrum of racial, ethnic, religious, cultural, and socioeconomic backgrounds, most are white, religious, and conservative. Most are also well educated, middle-class and have two or more children").

88 *See 1.1 Million Homeschooled Students*, *supra* note 85 (displaying results of survey regarding reasons for home-schooling); *see also* KLICKA, *supra* note 2, at 2–7 (conveying views on why people provide education to children at home); McMullen, *supra* note 2, at 78–82 (analyzing parental reasons for home-schooling).

89 *See 1.1 Million Homeschooled Students*, *supra* note 85 (reporting that in 2003, 31% of home-schooling parents surveyed said that they chose to home-school due to anxiety over school environment); *see also* McMullen, *supra* note 2, at 81–82 (discussing parental views on public school environment).

90 *See* Barbara Kantrowitz & Pat Wingert, *Learning at Home: Does it Pass the Test?*, NEWSWEEK, Oct. 5, 1998, at 64 (asserting that parents home-school for safety and to protect against "drugs, alcohol, sex [and] violence"); McMullen, *supra* note 2, at 81–82 (explaining that some parents fear extensive peer pressure and violence).

91 Jodi Wilgoren, *Shooting Rampage by Student Leaves 10 Dead on Reservation*, N.Y. TIMES, Mar. 22, 2005, at A5 (recounting details of school shooting in Redlake, Minnesota); *see also School Violence Fuels Interest in Home Study Programs*, CNN.COM, May 28, 1999, http://www.cnn.com/US/ 9905/28/homeschool.convention/ (emphasizing that more parents turned to home-schooling in light of events such as Columbine); *Columbine Spurs Interest in Home Schools; Parents Investigate Education Alternatives in Aftermath of Shootings*, THE DAILY CAMERA, Apr. 20, 1999, http://www.boulderdaily camera.com/shooting/25ccolu.html (addressing increased interest in home-schooling following Columbine shootings).

education while teaching at home allows them to narrowly tailor the curriculum taught to the educational needs of their children.[92] Finally, many home-schooling parents believe that public and private schooling conflicts with their strong religious convictions.[93] These parents view today's society as "materialistic and media-centered"[94] and find it extremely important that their children be educated in an environment that is predominantly "family-centered and God-centered."[95] Christopher J. Klicka, the President of the Home School Legal Defense Association has stated that families "believe that God has given them the responsibility and authority to educate their children"[96] and "[s]ince they are called by God to be the primary teachers of their children and to apply God's word to each and every subject, they believe it would be a sin for them to delegate this authority to another school system."[97]

Home-schooling critics have cited many reasons why this is not a good practice.[98] First, critics believe that home-schooling prevents children from receiving the requisite amount of socialization necessary for successful development.[99] Since

92 *See 1.1 Million Homeschooled Students*, *supra* note 85 (recounting that in 2003, 16% of home-schooling parents who were asked said that disappointment with academic instruction in other schools caused them to home-school); *see also* KLICKA, *supra* note 2, at 3 (arguing that parents see deterioration in academic quality and morals in public schools, especially since "more than 27 million illiterate children have graduated from public schools in recent years"); McMullen, *supra* note 2, at 80 (articulating parental view that public schools are "turning out a poor product – illiterate and unprepared graduates").

93 *See 1.1 Million Homeschooled Students*, *supra* note 85 (revealing 2003 study that 30% of home-schooling parents surveyed said their most important motivation for home-schooling was to provide religious or moral instruction); *see also* KLICKA, *supra* note 2, at 2 (contending that 85% of families cite religion as reason for home-schooling their children); McMullen, *supra* note 2, at 78–80 (describing relationship between religious values and home-schooling).

94 *See* McMullen, *supra* note 2, at 78 (stating views of conservative Christian families); *see also* Margaret Talbot, *A Mighty Fortress*, N.Y. TIMES MAGAZINE., Feb. 27, 2000, at 34 (questioning why family in article shields themselves so vehemently against popular culture and mainstream media).

95 McMullen, *supra* note 2, at 78; *see* Talbot, *supra* note 94, at 34 (reporting on home-schooling family who places family above all personal ambitions).

96 KLICKA, *supra* note 2, at 2.

97 *Id.*

98 *See* McMullen, *supra* note 2, at 82–87 (examining typical home-schooling challenges); Peter T. Kilborn, *Learning at Home, Students Take the Lead*, N.Y. TIMES, May 24, 2000, at A1 (listing arguments against home-schooling).

99 *See* McMullen, *supra* note 2, at 83 (discussing socialization concerns); *see also* Kantrowitz & Wingert, *supra* note 90, at 64 (noting socialization problems in home-schooling context); Kilborn, *supra* note 98, at A1 (addressing critics views on socialization).

children educated at home do not regularly interact with peers, the critics assert that these children do not have the opportunity to develop necessary coping skills, rarely experience working in groups, and are almost never faced with peer pressure.[100] Second, opponents argue that home-schooling presents problems with curriculum content; parents can ultimately decide to teach their children only what they desire to teach rather than expose their children to a broad array of subjects and values necessary for good citizenship.[101] Lastly, critics assert that home-schooling removes the traditional "safety-net function"[102] that public schools play in the area of child protection.[103] Public schools have been a way for the state to monitor vaccinations and school attendance and have provided the states with a method by which to discover incidents of child abuse and neglect.[104] As more children become educated at home, it will become increasingly difficult for the state to monitor these areas.[105]

To meet the challenges resulting from this surge in home-schooling, states have established home-schooling laws that vary

100 *See* McMullen, *supra* note 2, at 83 (naming several home-schooling differences that impact socialization); *see also* Kilborn, *supra* note 98, at A1 (acknowledging that critics of home-schooling "say it discourages social interaction and development of the skills of teamwork and collaboration"). *But see* Kantrowitz & Wingert, *supra* note 90, at 64 (identifying methods by which home-schooling parents allow their children to socialize).

101 *See* McMullen, *supra* note 2, at 84–86 (alleging that parents have broad discretion in curriculum context but sometimes fail to realize that diverse curriculum exposes children to areas and ideas they would otherwise not explore); *see also* Cloud & Morse, *supra* note 72, at 46 (conveying impact of children choosing curriculum in home-schooling context); Kilborn, *supra* note 98, at A1 (describing case in which child chose home-schooling curriculum and did not learn to read until he was ten years old).

102 *See* McMullen, *supra* note 2, at 86 (stating "[t]raditionally, schools perform a safety-net function in a variety of areas concerned with child protection."); *see also* Douglas Besharov, *"Doing Something" About Child Abuse: The Need to Narrow the Grounds for State Intervention*, 8 HARV. J.L. & PUB. POL'Y 539, 545 (1985) (compiling necessary services schools provide to maintain public health and safety for children).

103 *See* McMullen, *supra* note 2, at 86 (examining public school child protective functions); *see also* Lt. Col. Jeffrey P. Sexton, *Home Schooling Away from Home: Improving Military Policy Toward Home Education*, 182 MIL. L. REV. 50, 53 (2004) (weighing interests that parents have to home-school their children with interplay of both child protection agencies and child neglect laws).

104 *See* Kilborn, *supra* note 98, at A-1 (suggesting that some parents may choose to home-school to conceal their child's failure to attend school); *see also* McMullen, *supra* note 2, at 86–87 (detailing how public school allows state to monitor certain activities).

105 *See id.* (evaluating impact of home-schooling on child protection); *see also* Barbara Bennett Woodhouse, *A Public Role in the Private Family: The Parental Rights and Responsibilities Act and the Politics of Child Protection and Education*, 57 OHIO ST. L.J. 393, 393 (1996) (discussing government difficulties in regulating home schooling).

a great deal in "scope, detail and source."[106] These will allow parents to continue to have the option of teaching their children at home while ensuring that all children receive an adequate education.[107] Most members of the general public have condoned states' regulation of home-schooling.[108] In fact, a 1997 Gallup poll showed that 88% of the people surveyed agreed that home schools should be "required to guarantee a minimum level of educational quality."[109] In addition, a 1999 Gallup poll revealed that 92% of participants felt that "home-schooled students should take the same state and national assessments required in public schools"[110] and 57% still believe that home-schooling is a "bad thing."[111] Other families, mostly from states with stringent regulations, believe that state interference in the home-schooling context is inappropriate, since it unfairly conflicts with parents' constitutional rights to control the education of their children and freely practice their religion.[112]

II. TYPICAL CHALLENGES TO HOME-SCHOOLING REGULATIONS

Over the years, parents have used several different arguments to challenge state regulation of home-schooling.[113] Among these are claims that state home-schooling regulations violate a parent's constitutional right to control the upbringing of their children,[114] deprive parents of their constitutional right to free

106 Salomone, *supra* note 9, at 52 (synthesizing aspects of constitutional right of freedom of religion in home schooling situations).

107 *See e.g.*, 24 PA. CONS. STAT. § 13–1327.1 (2005) (legalizing home-schooling while adopting adequate safeguards); N.Y. EDUC. LAW § 3204 (2005) (allowing home schooling while maintaining minimum standards).

108 *See* Salomone, *supra* note 9, at 52 (acknowledging approval of state regulation); *see also Home Schooling*, *supra* note 9 (disclosing positive views toward home-schooling).

109 *Id.*

110 *Id.*

111 *Id.*

112 *See* McMullen, *supra* note 2, at 104 (revealing that home-schooling parents tend to oppose any governmental regulation); Salomone, *supra* note 9, at 52 (commenting on parental objections).

113 *See* Campbell, *supra* note 2, at 652 (recognizing that "home school parents have asserted numerous constitutional rights in their challenges to home schooling statutes enacted by the states"); *see also* Dorman, *supra* note 10, at 738–43 (examining history of parental claims under Fourteenth Amendment and Free Exercise Clause); Lukasik, *supra* note 4, at 1921–22 (identifying common parental challenges).

114 *See* Campbell, *supra* note 2, at 652 n.17 (mentioning Fourteenth Amendment challenge); *see also* Lukasik, *supra* note 4, at 1921–28 (evaluating parents' Fourteenth Amendment challenge).

exercise of religion,[115] and more recently, that home-schooling requirements violate state religious freedom laws.[116]

First, parents often assert that the state regulations interfere with their fundamental right to control the upbringing of their children.[117] This fundamental right was established through a series of Supreme Court cases,[118] beginning in the early twentieth century with *Meyers v. Nebraska*[119] and continuing through the modern-day case *Troxel v. Granville*.[120] Proponents of home-schooling often rely on the famous Supreme Court statement that "[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."[121] Based on these precedents, home-schooling parents assert that since controlling the upbringing of their children is their fundamental right, state home-schooling regulations must be subject to strict scrutiny.[122] Therefore, they argue that home-schooling regulations should be found

115 *See* Campbell, *supra* note 2, at 652 n.17 (pointing out Free Exercise Clause challenges); *see also* Lukasik, *supra* note 4, at 1931–36 (discussing Free Exercise arguments made by home-schooling parents).

116 *See* Michael Smith, *Prosecutions Threaten Parents' Rights*, WASH. TIMES, Oct. 25, 2004, at B–04 (acknowledging Pennsylvania cases under Religious Freedom Protection Act and explaining position of Home School Legal Defense Association); Ward, *supra* note 22, at B–1 (reiterating arguments made in Pennsylvania cases); Zapf, *supra* note 12 (recounting arguments made by Pennsylvania parents under Religious Freedom Protection Act).

117 *See* Campbell, *supra* note 2, at 652 n.17 (noting parents' argument under Due Process Clause of Fourteenth Amendment); *see also* Lukasik, *supra* note 4, at 1921 (identifying arguments home-schooling parents can make under Due Process Clause).

118 *See* Meyer v. Nebraska, 262 U.S. 390, 400 (1923) (concluding that state law cannot prohibit teaching foreign languages to children because it infringes on parents' fundamental rights); *see also* Pierce v. Soc'y of Sisters, 268 U.S. 510, 534–35 (1925) (determining that state may not require public school attendance because it "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control"); Prince v. Mass., 321 U.S. 158, 166–67 (1943) (asserting that "the custody, care and nurture of the child reside first with the parents" subject to limitation by state to protect welfare of children); Wisconsin v. Yoder, 406 U.S. 205, 233–34 (1972) (establishing that parents fundamental right can be limited "if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens"); Troxel v. Granville, 530 U.S. 57, 75 (2000) (holding that granting grandparent's visitation rights to grandchildren over parental objections would violate parent's "due process right to make decisions concerning the care, custody and control" of their children).

119 262 U.S. 390 (1923).

120 530 U.S. 57 (2000).

121 *Pierce*, 268 U.S. at 535.

122 *See id.* at 535 (holding that parent's right to oversee the upbringing and education of his or her child is based upon "fundamental theory of liberty"). *See generally* Campbell, *supra* note 2, at 654–55 (clarifying courts will apply "strict scrutiny" to claims involving fundamental rights).

unconstitutional unless the state can prove that they are narrowly tailored to serve a compelling governmental interest.[123] Even though parental right to control the upbringing of their children is well established, it has not helped parents abolish state home-schooling requirements because the Supreme Court has not yet applied strict scrutiny in the educational context.[124] The Court continues to view education as subject to mere rational basis review, which allows government regulations to be upheld as long as they are rationally related to a legitimate governmental interest.[125] Considering the low position of education on the hierarchy of judicial scrutiny, courts are unlikely to find state home-schooling regulations invalid under this theory.[126]

Parents also argue that home-schooling regulations violate their constitutional right to free exercise of religion.[127] Home-schooling laws apply to each individual equally, regardless of their religious affiliation. The Supreme Court has changed its position regarding what standard of judicial scrutiny should be applied to review such neutral laws of general applicability that seem to infringe on a person's right to free exercise of religion.[128] In *Sherbert v. Verner*,[129] the Supreme Court established that these laws will only be upheld if they are narrowly tailored to

123 *See* Loving v. Virginia, 388 U.S. 1, 11 (1967) (establishing basis for "strict scrutiny" analysis); *see also* Campbell, *supra* note 2, at 654–655 (defining strict scrutiny).

124 *See* Wisconsin v. Yoder, 406 U.S. 205, 213 (1972) (applying rational basis test in educational context when declaring that state has ability to "impose reasonable regulations for the control and duration of basic education"); *see also* Salomone, *supra* note 9, at 52 (asserting that "[w]hile the Supreme Court has ruled that parental rights are a 'fundamental' liberty interest, which would trigger more exacting judicial scrutiny, it has yet to apply the rule to education").

125 *See Yoder*, 406 U.S. at 214 (noting courts reluctance to use strict scrutiny). *See generally* Campbell, *supra* note 2, at 655 (articulating rational basis standard).

126 *See e.g.*, Murphy v. Arkansas, 852 F.2d 1039, 1044 (8th Cir. 1988) (rejecting home-schooling parents' claim under Fourteenth Amendment right to privacy); *In re* Carroll, 1996 Ohio App. LEXIS 4246, at *18 (Ohio Ct. App. Sept. 20, 1996) (declaring that parents possess a "qualified" fundamental right "subject to reasonable governmental regulations"); *In re* Kilroy, 467 N.Y.S.2d 318, 321 (N.Y. Fam. Ct. 1983) (stressing that home-schooling parents "must observe the reasonable requirements" imposed by state).

127 *See* Campbell, *supra* note 2, at 652 n.17 (mentioning Free Exercise claims); *see also* Lukasik, *supra* note 4, at 1931–36 (reviewing Free Exercise Clause arguments in home-schooling context); Salomone, *supra* note 9, at 52 (commenting on parents assertion of Free Exercise Clause challenges).

128 *See* Warner v. City of Boca Raton, 887 So.2d 1023, 1027–30 (Fla. 2004) (describing evolution of Supreme Court decisions on applicable standard under Free Exercise Clause); *see also* Dorman, *supra* note 10, at 741–43 (reviewing Supreme Court decisions on applicable standard).

129 374 U.S. 398 (1963).

serve a compelling governmental interest.[130] Eventually, the Court changed its position in *Employment Division v. Smith*,[131] and stated that applying a compelling interest test in this context "contradicts both constitutional tradition and common sense."[132] The Court argued that permitting a higher standard in this context would not advance constitutional principles but rather allow people to evade many valuable laws by merely stating secondary effects on their free exercise of religion.[133] This holding presumably reestablished mere rational basis review as the applicable standard in most Free Exercise claims and therefore, laws will only be invalid if there is no rational relation to a legitimate governmental interest.[134] However, the Court also recognized that strict scrutiny is still the appropriate standard to apply when a plaintiff brings a claim under the Free Exercise Clause as well as another constitutional provision, such as an action brought under the Fourteenth Amendment based on a violation of a parent's right to control the upbringing of his children.[135] In these "hybrid situation[s],"[136] strict scrutiny is appropriate since there are greater Constitutional implications. Even though it seems that the claims brought by home-schooling parents would qualify as "hybrid," and thus entitled to greater constitutional protection, this case nevertheless significantly undermined religious claims.[137]

The third argument made by parents challenging home-schooling regulations based on religious beliefs is that these

130 *Id.* at 406 (establishing strict scrutiny for Free Exercise claims); *see Warner*, 887 So.2d at 1027 (reiterating Supreme Court's holding in *Sherbert*); *see also* Dorman, *supra* note 10, at 742–43 (restating holding from *Sherbert* that established strict scrutiny).

131 494 U.S. 872 (1990).

132 *Id.* at 885.

133 *Id.* at 886–89 (addressing several negative implications of applying compelling interest test to neutral laws of general applicability).

134 *See* Warner v. City of Boca Raton, 887 So.2d 1023, 1028 (Fla. 2004) (highlighting findings from *Employment Division*); *see also* Eric A. DeGroff, *State Regulation of Nonpublic Schools: Does the Tie Still Bind?*, 2003 BYU EDUC. & L.J. 363, 378 (2003) (explaining "far-less-rigorous rational-basis test" as applied in *Employment Division*).

135 *See Employment Division*, 494 U.S. at 881–82 (establishing when strict scrutiny is appropriate test for claims brought under Free Exercise clause and coupled with other constitutional protections).

136 *Id.* at 882.

137 *See Warner*, 887 So.2d at 1028–29 (Fla. 2004) (realizing ramifications of Supreme Court's decision in *Employment Division*); Salomone, *supra* note 9, at 52 (alleging that *Employment Division* "weakened religious claims").

regulations violate state religious freedom laws.[138] Following the Supreme Court's decision in *Employment Division*, a coalition was formed to draft and promote a federal religious freedom law that would restore the compelling interest test to claims based on a violation of free exercise of religion.[139] Three years after this decision, Congress passed the Religious Freedom Restoration Act,[140] which reaffirmed the applicability of the compelling interest test in this context.[141] This Act prohibited the government from "substantially burden[ing]"[142] a person's exercise of religion even if the burden results from a rule of general applicability unless it can demonstrate that the burden is "in furtherance of a compelling governmental interest [and] the least restrictive means of furthering that compelling governmental interest."[143] When first enacted, this Act became another vehicle through which home-schooling parents could challenge state regulation. However, in *City of Boerne v.*

138 *See, e.g.*, Combs v. Homer Ctr. Sch. Dist., 2005 U.S. Dist. LEXIS 32007, at *70–74 (W.D. Pa. Dec. 8, 2005) (detailing plaintiffs' argument that Pennsylvania's home-schooling requirements violate Pennsylvania's Religious Freedom Protection Act); *see* Smith, *supra* note 116, at B–04 (presenting Home School Legal Defense Association's position against Pennsylvania's home-schooling law pursuant to Pennsylvania's Religious Freedom Protection Act); *see also* Salomone, *supra* note 9, at 52 (suggesting state religious freedom laws give parents implementing home-schooling another argument).

139 *See* KLICKA, *supra* note 2, at 193 (detailing Home Schooling Legal Defense Association's reaction to *Employment Division* decision); *see also* David M. Ackerman, *The Religious Liberty Protection Act: Background and Current Status*, POL'Y PAPERS, Apr. 25, 2000 (forming coalition resulted in bipartisan sponsors in House and Senate, leading to Religious Freedom Restoration Act).

140 *See* 42 U.S.C. § 2000bb (2005) (referencing *Employment Division* in section (a)(4)); *see also* Mark Hamblett, *On the Trail of the Latest Supreme Court Contender*, THE LEGAL INTELLIGENCER, June 10, 2005, at 4 (stating Religious Freedom Restoration Act was Congress's response to *Employment Division*).

141 *See* 42 U.S.C. § 2000bb(b)(1) (2005) (declaring Act's purpose was to "restore the compelling interest test"); *see also* Warner v. City of Boca Raton, 887 So.2d 1023, 1029 (Fla. 2004) (explaining that Religious Freedom Restoration Act "was intended to essentially overrule the Supreme Court's decision in [*Employment Division*] and restore the compelling state interest test set forth in *Sherbert* as the standard for free exercise challenges to laws of general applicability"); James A. Hanson, *Missouri's Religious Freedom Restoration Act: A New Approach to the Cause of Conscience*, 3 MO. L. REV. 853, 854 (2004) (recognizing Religious Freedom Restoration Act reestablished standard from *Sherbert*).

142 42 U.S.C. § 2000bb–1(a) (2005) (providing generally government may not encroach on individual's religious observance); *see* Charles Lane, *Prisoners' Religious Rights Law Upheld; Statute Bars Burdens on Observances*, THE WASHINGTON POST, June 1, 2005, at A12 (stating Congress proscribed imposing substantial burden on individuals in Religious Freedom Restoration Act to overrule *Employment Division*).

143 42 U.S.C. § 2000bb–1 (b) (2004) (enumerating exceptions to general rule that government cannot substantially burden exercise of religion); *see* Cutter v. Reginald Wilkinson, 125 S. Ct. 2113, 2118 (2005) (citing Religious Freedom Restoration Act).

Flores,[144] the Supreme Court declared this law unconstitutional as applied to the states because it was a "considerable congressional intrusion into the States' traditional prerogatives and general authority to regulate for the health and welfare of their citizens."[145] As a result, parents challenging home-schooling regulations based on freedom of religion were once again faced with much difficulty.

Following the Supreme Court's decision in *Flores*, religious freedom supporters assembled and the coalition that worked to originally pass the Religious Freedom Restoration Act reconvened to assist states in passing their own religious freedom laws.[146] The work of this coalition has had a significant impact since at the present time, twelve states, including Pennsylvania, have passed state laws analogous to the Federal Religious Freedom Protection Act.[147] These laws have empowered parents to assert religious exemptions against stringent home-schooling regulations and have fashioned the arguments that form the basis of the complaints recently filed in Pennsylvania.[148]

III. HOME-SCHOOLING IN PENNSYLVANIA

The cases that are the subject of this Note were filed in Pennsylvania and in order to thoroughly understand their possible implications, it is important to have a background into Pennsylvania's home-schooling environment. As in most of the country, home-schooling has been on the rise in the

144 521 U.S. 507 (1997).

145 *Id.* at 534 (referring to Religious Freedom Restoration Act); *see* Hanson, *supra* note 141, at 855 (reiterating Supreme Court's holding in *Flores*); *see also* KLICKA, *supra* note 2, at 194 (explaining *Flores* holding).

146 *See* KLICKA, *supra* note 2, at 196 (emphasizing Home School Legal Defense Association's arduous effort in convincing states to pass religious freedom laws similar to Religious Freedom Restoration Act); *see also* Hanson, *supra* note 141, at 856 (stating that following *Flores* "RFRA supporters left Washington to begin lobbying in state capitals").

147 *See* KLICKA, *supra* note 2, at 196 (listing states that have since enacted religious freedom laws); *see also Religious Freedom Bill*, *supra* note 12 (announcing Alabama, Arizona, Connecticut, Florida, Idaho, Illinois, New Mexico, Oklahoma, Pennsylvania, Rhode Island, South Carolina and Texas have passed religious freedom laws); Salomone, *supra* note 9, at 52 (acknowledging states which have ratified religious freedom laws similar to Religious Freedom Restoration Act).

148 *See, e.g.*, Combs v. Homer Ctr. Sch. Dist., 04cv1599, 2005 U.S. Dist. LEXIS 32007, at *77 (Dec. 8, 2005) (detailing plaintiff's arguments regarding Pennsylvania's Religious Freedom Protection Act and the state's home schooling requirements); *see Religious Freedom Bill*, *supra* note 12 (mentioning impact on Pennsylvania's Religious Freedom Protection Act); *see also* Salomone, *supra* note 9, at 52 (describing effect of religious freedom laws).

commonwealth of Pennsylvania.[149] Since Pennsylvania legalized home-schooling in 1988, the number of families that have selected to educate their children at home has increased every school year except 2001 – 2002.[150] In fact, the Pennsylvania Department of Education reported that from 1993 through 2003, the number of children home-schooled in the state dramatically increased from 11,027 to 24,415.[151]

Pennsylvania's home-schooling law has been in existence since 1988 and it is one of the most restrictive of all home-schooling laws passed by any state.[152] It establishes several requirements that parents must satisfy before they are able to legally home-school their children.[153] First, parents who wish to be their children's instructors must have a "high school diploma or its equivalent."[154] Second, parents must submit a notarized affidavit prior to starting the home-schooling program and annually thereafter on August 1st, which must include (1) the name of supervisor, (2) the name and age of the children who will be home-schooled, (3) the address and telephone number of the home-school site, (4) a statement that the home-schooling will be conducted in the English language, (5) an outline of educational objectives by subject area, and (6) evidence that the children

149 *See Home Education in Pennsylvania 2002-03*, PENNSYLVANIA DEPARTMENT OF EDUCATION, Mar. 2004, http://www.pde.state.pa.us/k12statistics/lib/k12statistics/home0203web.pdf, at 5 [hereinafter *Home Education in Pennsylvania*] (providing overview of Pennsylvania home-schooling); *see also* Karl M. Bunday, *Homeschooling is Growing Rapidly in Many States of the United States*, LEARN IN FREEDOM! (1995), http://learninfreedom.org/homeschool-growth.html (demonstrating Pennsylvania's annual growth in home-schooled children).

150 *See Home Education in Pennsylvania*, *supra* note 149, at 5 (disclosing Pennsylvania's home-schooling statistics by year); *see also* Bunday, *supra* note 149 (analyzing home-schooling in Pennsylvania statistically).

151 *See Home Education in Pennsylvania*, *supra* note 149, at 7 (reporting increase children educated at home); *see also Life Lessons*, *supra* note 9, at A–18 (noting approximately 24,000 children are home-schooled in Pennsylvania); Ward, *supra* note 22, at B–1 (enumerating quantity of home-schooled children).

152 *See* Zapf, *supra* note 12 (declaring that Pennsylvania's Religious Freedom Protection Act is "criticized by some home-school backers as containing among the most restrictive measures in the country"); *see also Case Can Proceed*, *supra* note 23 (arguing Pennsylvania's home-schooling requirements are much more stringent than laws of other states); Salomone, *supra* note 9, at 52 (comparing Pennsylvania's requirements to those of other states).

153 *See* 24 PA. CONS. STAT. § 13–1327.1 (2006) (codifying Pennsylvania's home-schooling requirements); *see also* Salomone, *supra* note 9, at 52 (listing various requirements).

154 24 PA. CONS. STAT. § 13–1327.1(a) (2006) (providing definition of "supervisor" and his/her necessary academic credentials).

participating have been immunized and have received health and medical services required for children of that age.[155] Third, parents must provide their children with a statutory minimum amount of hours of education per year[156] and must teach their children certain specified subjects at each educational stage.[157] Fourth, the supervisor must assemble and continually update a portfolio of their children's home-schooling program, including materials and worksheets utilized in the program and the children's scores on nationally-normed standardized achievement tests in grades three, five and eight.[158] Finally, Pennsylvania requires that the supervisor provide the government with an "annual written outside evaluation of the student's educational progress" that is completed following an interview of the home-schooled children and an examination of the home-schooling portfolio.[159]

155 *See* 24 PA. CONS. STAT. § 13–1327.1(b)(1) (2006) (specifying components of annual affidavit); *see also* Combs v. Homer Ctr. Sch. Dist., 2005 U.S. Dist. LEXIS 32007, at *17 (W.D. Pa. Dec. 8, 2005) (explaining annual affidavit).

156 *See* 24 PA. CONS. STAT. § 13-1327.1(c) (2006) (requiring a "minimum of one hundred eighty (180) days of instruction or nine hundred (900) hours of instruction per year at the elementary level, or nine hundred ninety (990) hours per year at the secondary level"); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *19 (noting that number of hours required for home-schooling is same as number of hours required for a "school operated by a bona fide church or religious body").

157 *See* 24 PA. CONS. STAT. § 13–1327.1(c) (2006); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *19. At the elementary level, home-schooled children must learn "English, to include spelling, reading and writing; arithmetic; science; geography; history of the United States and Pennsylvania; civics; safety education, including regular and continuous dangers instruction in the dangers and prevention of fires; health and physiology; physical education; music; and art." 24 PA. CONS. STAT. § 13–1327.1(c)(1) (2006). In secondary years, home-schooled children must be educated in "English, to include language, literature, speech and composition; science; geography; social studies, to include civics, world history, history of the United States and Pennsylvania; mathematics, to include general mathematics, algebra and geometry; art; music; physical education; health; and safety education, including regular and continuous instruction in the dangers and prevention of fires." *Id.* at § 13–1327.1(c)(2). The statute also includes a list of subjects that home-schooling parents may choose to teach their children, including "economics; biology; chemistry; foreign languages; trigonometry; or other age-appropriate courses as contained in Chapter 5 (Curriculum Requirements) of the State Board of Education." *Id.*

158 *See id.* at § 13–1327.1(e)(1) (enumerating portfolio requirements of "[r]eading materials, writing samples, worksheets, workbooks or creative materials used or developed by the student" and results of nationally normed standardized tests in "reading/language arts and mathematics"); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *20–21 (discussing contents of portfolio required by home-schooling act).

159 *See* 24 PA. CONS. STAT. § 13–1327.1(e)(2) (2006) (describing requirements for written outside evaluations); *see also Combs*, 2005 U.S. Dist. LEXIS 32007, at *21–22 (explaining home-schooling requirement of an outside evaluation).

While these detailed requirements might seem both necessary and acceptable to some people,[160] they met much opposition over the years, primarily by parents who choose to home-school for religious reasons.[161] Despite this parental dissatisfaction, they were unable to affect their desired independence from state control due to the state's interest in assuring each of its citizens a quality education.[162] However, in November 2002, following the Supreme Court's decision in *Employment Division*, Pennsylvania became part of a handful of states that passed religious freedom laws.[163]

Pennsylvania's Religious Freedom Protection Act provides that "an agency shall not substantially burden a person's free exercise of religion, including any burden which results from a rule of general applicability"[164] unless it can establish "by a preponderance of the evidence, that the burden is all of the following: (1) [i]n furtherance of a compelling interest of the agency [and] (2) [t]he least restrictive means of furthering the compelling interest."[165] The Act also provides examples of conduct that constitute a substantial burden, including "compel[ling] conduct or expression that violates a specific tenet of a person's religious faith."[166]

160 *See Life Lessons*, *supra* note 9, at A–18 (characterizing Pennsylvania's home-schooling requirements as "rather minimal"); *Couple Sues District Over Home School Law*, PA. LAW WKLY., Oct. 4, 2004, at 9 (stating belief of Homer Center School District's superintendent that Pennsylvania's home-schooling laws are "minimal").

161 *See* KLICKA, *supra* note 2, at 94–96 (describing lawsuits brought by Home School Legal Defense Association in Pennsylvania); *Religious Freedom Law Cited in Challenge to State's Supervision of Home Schooling*, PENNSYLVANIA LAW WKLY., Aug. 9, 2004, at 9 [hereinafter *Religious Freedom Law Cited*] (stating Pennsylvania home-schooling regulations are "among the most stringent in the nation," and quoting an attorney for Home School Legal Defense Association who states parents that home-school tend to be religious and have multiple children, which makes the reporting requirements even tougher).

162 *See e.g.*, Howard Richman, *The Similar Suit that Failed*, PA HOMESCHOOLERS NEWSLETTER (2004), http://www.pahomeschoolers.com/newsletter/issue87a3.htm (providing brief explanation of previous unsuccessful case challenging Pennsylvania's home-schooling law); *Religious Freedom Law Cited*, *supra* note 161, at 9 (citing viewpoint of church-state scholar, who says Pennsylvania's laws are just regulations reflecting state concern about whether children are being properly educated).

163 *See Religious Freedom Bill*, *supra* note 12 (remarking on "intense review" that occurred prior to passage of Religious Freedom Protection Act); Steven G. Calabresi, *The Libertarian-Lite Constitutional Order and the Rehnquist Court: Reviewing The New Constitutional Order*, 93 GEO. L.J. 1023, 1052 (2005) (stating some states have adopted religious freedom laws of their own, as federal Religious Freedom Restoration Act is inapplicable to states).

164 Religious Freedom Protection Act, 71 PA. CONS. STAT. § 2404(a) (2006).

165 *Id.* at § 2404(b).

166 *Id.* at § 2403.

This act opened an entirely new door for Pennsylvania parents that home-school for religious reasons and led to this new wave of lawsuits.[167] The final outcome of this consolidated Pennsylvania case will undoubtedly have an impact on the practice of home-schooling nationwide. The existence of Pennsylvania's comprehensive home-schooling regulations combined with the recent enactment of the Religious Freedom Protection Act "makes Pennsylvania an ideal venue for testing the potential for religious freedom laws to preserve parental autonomy."[168]

IV. PENNSYLVANIA'S RELIGIOUS FREEDOM PROTECTION ACT: WILL IT PROVIDE HOME-SCHOOLING PARENTS WITH THE REQUISITE AMMUNITION TO ACHIEVE COMPLETE AUTONOMY OVER THEIR CHILDREN'S EDUCATION?

Since its enactment in 2002, Pennsylvania courts have been very reluctant to interpret the Religious Freedom Protection Act.[169] In a recent case, a Pennsylvania district court provided a minimal evaluation of the Act and stated that it is "largely a clone of its federal counterpart."[170] Also, prior to announcing its interpretation of the Religious Freedom Protection Act in this consolidated home-schooling case, the District Court for the Western District of Pennsylvania noted that this was "a matter of first impression."[171]

In its decision on plaintiff's first summary judgment motion, the court identified a two-step analysis to determine whether

167 *See* Zapf, *supra* note 12 (claiming that recent Pennsylvania cases were "sparked" by passage of Religious Freedom Protection Act); *Religious Freedom Law Cited*, *supra* note 161, at 9 (stating two families have filed suit under Pennsylvania Act challenging state home-schooling requirements).

168 Salomone, *supra* note 9, at 52.

169 *See* Congregation Kol Ami v. Abington Township, 2004 U.S. Dist. LEXIS 16397, at *64–66 (E.D. Pa. Aug. 12, 2004) (providing minimal judicial review of Pennsylvania's Religious Freedom Protection Act); *see also* Green v. City of Philadelphia, 2004 U.S. Dist. LEXIS 9687, at *29 n.5 (E.D. Pa. May 26, 2004) (declining to exercise jurisdiction over claim under Pennsylvania's Religious Freedom Protection Act because the statute "present[ed] a novel issue of state law" and had not yet been "judicially interpreted"); Nichol v. Arin Intermediate Unit 28, 268 F. Supp.2d 536, 561 n.1 (W.D. Pa. June 25, 2003) (refusing to construe Pennsylvania's Religious Freedom Protection Act because it "has not been judicially interpreted and th[e] court [wa]s hesitant to sail the uncharted waters within its reach").

170 *Congregation Kol Ami*, 2004 U.S. Dist. LEXIS 16397, at *64.

171 Combs v. Homer Ctr. Sct. Dist., 2005 U.S. Dist. LEXIS 32007, at *77 (W.D. Pa. Dec. 8, 2005).

something violates Pennsylvania's Religious Freedom Protection Act.[172] First, plaintiff must demonstrate, by clear and convincing evidence that the act it is challenging "imposes a 'substantial burden' by compelling conduct or expression that violates a specific tenet of their religious faith."[173] Once this requirement is met, the state must prove that there is a "compelling state interest and that there are no less restrictive means to further that interest."[174] It is submitted that the analysis set forth by the District Court for the Western District of Pennsylvania is correct, as it is directly in line with the plain language of the statute.[175]

The Act itself provides that a plaintiff may make a claim if he can demonstrate that a state regulation substantially burdens one of his specific religious beliefs.[176] This requires a plaintiff to notify the state actor of exactly how the state has caused a substantial burden on his free exercise of religion prior to filing a claim.[177] In *Nelson, Weber, Hankin, Newborn, Combs*, and *Prevish* the plaintiffs did satisfy the notice requirement.[178] These

172 *See id.* at *84–85 (articulating two step analysis).

173 *See id.* (describing plaintiff's threshold burden under Religious Freedom Protection Act).

174 *See id.* at *85 (stating when burden shifts to state and what standard state is held to under Religious Freedom Protection Act).

175 *See id.* at * 84–85 (explaining that statute requires a two-step analysis); Religious Freedom Protection Act, 71 PA. CONS. STAT. § 2404 (2006) (articulating requirements under the act).

176 *See* Religious Freedom Protection Act, PA. CONS. STAT. § 2404 (2006) (establishing minimum requirements for claim under Religious Freedom Protection Act); *see also* Congregation Kol Ami v. Abington Township, 2004 U.S. Dist. LEXIS 16397, at *64–65 (E.D. Pa. Aug. 12, 2004) (explaining requirements under Religious Freedom Protection Act).

177 *See* Religious Freedom Protection Act, 71 PA. CONS. STAT. § 2405 (b) (2006). The Religious Freedom Protection Act states that a plaintiff must notify the agency supposedly infringing on his freedom of religion 30 days before making a claim. *Id.* Plaintiff must say that his "free exercise of religion has been or is about to be substantially burdened by an exercise of the agency's governmental authority." *Id.* He must also provide "[a] description of the act or refusal to act which has burdened or will burden the person's free exercise of religion" and "[t]he manner in which the exercise of governmental authority burdens the person's free exercise of religion." *Id.*

178 *See* Complaint, Nelson v. Titusville Area Sch. Dist. (W.D. Pa. 2005) (explaining what Nelson family told Titusville Area School District); Complaint, Weber v. Dubois Area Sch. Dist. (W.D. Pa. 2005) (describing Weber family's statements to local school district regarding their legal convictions); Complaint, Hankin v. Bristol Township Sch. Dist. (W.D. Pa. Apr. 22, 2004) (indicating that Hankin family wrote letters to Bristol Township School District identifying why they could not comply with home-schooling requirements); Complaint, Newborn v. Franklin Reg'l Sch. Dist. (W.D. Pa. 2004) (asserting that Newborn family alerted Franklin Regional School District of religious beliefs); Complaint, Combs v. Homer Ctr. Sch. Dist. (Ct. of C.P. Ind. County 2004) (specifying preliminary actions taken by Combs family); Complaint, Prevish v. Norwin Sch. Dist. (Ct. of C.P. Westmoreland County 2004) (noting contact between Prevish family and Norwin School District).

home-schooling families contacted their local school districts prior to filing suit under the Religious Freedom Protection Act in order to thoroughly explain their religious convictions and how these convictions conflict with the state's home-schooling requirements.[179]

Even though plaintiffs complied with the notice requirement of the Religious Freedom Protection Act, the District Court of the Western District of Pennsylvania was correct in concluding that plaintiffs did not prove, by clear and convincing evidence, that this statute, on its face, imposed a substantial burden on their free exercise of religion.[180] Pennsylvania's Religious Freedom Protection Act does not, on its face, require plaintiffs to violate a specific tenet of their religious faith; rather, the Act merely incidentally burdens their religious belief that parents should be in control of their children's education.[181] As the court pointed out, it is not enough for the plaintiff to demonstrate "that the legislation or agency has some *de minimis*, tangential or incidental impact or is at odds with their religious beliefs."[182]

However, there is a strong possibility that plaintiffs will meet their burden in their second summary judgment motion, in which plaintiffs will challenge the validity of Pennsylvania's home-schooling statute as applied.[183] In their complaints, plaintiffs asserted that by requiring religious parents to comply with Pennsylvania's rigid home-schooling requirements, the state is coercing them into turning over responsibility for their children's education to the state and the very act of allowing state control violates their religious belief that God requires parents to provide

179 *See generally* Complaint, Nelson v. Titusville Area Sch. Dist. (W.D. Pa. 2005) (05-070E) (reporting contact between Nelson family and Titusville Area School District); Complaint , Weber v. Dubois Area Sch. Dist. (W.D. Pa. 2005) (05-203J) (announcing actions taken by Weber family); Complaint, Hankin v. Bristol Township Sch. Dist. (W.D. Pa. 2004) (04-cv-01936-AJS) (noting steps taken by Hankins); Complaint, Newborn v. Franklin Reg'l Sch. Dist. (W.D. Pa. 2004) (04-cv-01932-AJS) (documenting actions of Newborn family); Complaint, Combs v. Homer Ctr. Sch. Dist. (Ct. of C.P. Ind. County 2004) (04-cv-01599-AJS) (describing how Combs family communicated with their school district); Complaint, Previsch v. Norwin Sch. Dist. (Ct. of C.P. Westmoreland Cty. 2004) (05-cv-01670-AJS) (explaining actions of Previsch family).

180 *See* Combs v. Homer Ctr. Sch. Dist., 2005 U.S. Dist. LEXIS 32007, at *93 (W.D. Pa. Dec. 8, 2005) (denying plaintiff's first summary judgment motion since they did not meet their threshold burden).

181 *See id.* at *73–74, 93 (explaining why plaintiffs did not meet their burden).

182 *Id.* at *92–93.

183 *See id.* at *93 (noting that plaintiffs might be successful on their as applied constitutional challenges).

education to their children in line with the teachings of the Bible.[184]

If plaintiffs are successful in satisfying this initial requirement, the burden will shift to the Commonwealth to prove that the action is "in furtherance of a compelling interest"[185] and that it is "[t]he least restrictive means of furthering the compelling interest."[186] It is submitted that the state has a compelling interest in assuring each of its citizens an adequate education. The government's right to regulate education has been recognized for many years.[187] In *Brown v. Board of Education*,[188] the Supreme Court emphasized that education is the main function of government since it is "the foundation of good citizenship" and "a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and helping him to adjust normally to his environment."[189] Courts have consistently followed this principle and have highlighted that the state has a right to "impose reasonable regulations"[190] on education since a quality education is essential to an individual's success in today's society.[191] In many recent cases, state courts have taken the position that the

184 *See generally* Complaint, *Nelson* (W.D. Pa. 2005) (05-070E) (asserting religious values held by Nelson family); Complaint, *Weber* (W.D. Pa. 2005) (05-203J) (revealing religious convictions of Weber family); Complaint, *Hankin* (W.D. Pa. 2004) (04-cv-01936-AJS) (announcing religious beliefs of Hankin family); Complaint, *Newborn* (W.D. Pa. 2004) (04-cv-01932-AJS) (outlining specific tenets of the Newborn's religion which are burdened by Pennsylvania's home-schooling law); Complaint, *Combs* (Ct. of C.P. Ind. Cty. 2004) (04-cv-01599-AJS) (articulating Combs family's religious convictions); Complaint, *Prevish* (04-cv-01670-AJS) (Ct. of C.P. Westmoreland Cty. 2004) (presenting specific religious beliefs held by Prevish family).

185 Religious Freedom Protection Act, 71 PA. CONS. STAT. § 2404(b)(1) (2006)

186 *Id.* at § 2404 (b)(2).

187 *See* Wisconsin v. Yoder, 406 U.S. 205, 213 (1972) (affirming state power to regulate schools); *see also* Pierce v. Soc'y of Sisters, 268 U.S. 510, 534 (1925) (proclaiming that state has ability to "reasonably regulate all schools"); Meyer v. Nebraska, 262 U.S. 390, 402 (1923) (concluding that state has authority to "compel attendance at some school and to make reasonable regulations for all schools").

188 347 U.S. 483 (1954).

189 *Id.* at 493.

190 *Yoder*, 406 U.S. at 213.

191 *See id.* at 221 (finding that "some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence" and "education prepares individuals to be self-reliant and self-sufficient participants in society"); *see also* Murphy v. Arkansas, 852 F.2d 1039, 1042 (8th Cir. 1988) (emphasizing importance of education as governmental function and to individuals for achievement in society); Tyll van Geel, *Citizenship Education and the Free Exercise of Religion*, 34 AKRON L. REV. 293, 293 (2000) (maintaining that state has ability to educate children "in a way that prepares them for citizenship so as to assure the stability of the constitutional scheme of government").

state has a compelling interest in providing its citizens with an adequate education.[192] Given the significant role the government plays in administering education and the recent state trend towards recognizing a higher state interest in the educational context, it is likely that the United States District Court for the Western District of Pennsylvania will recognize the state's compelling interest in assuring a quality education to each of its citizens.

Since the state has a compelling interest in providing an adequate education to its citizens, the state of Pennsylvania will have to prove that each of its home-schooling requirements fulfills the two requirements set out above. I will address each of Pennsylvania's requirements in turn and examine whether they will survive scrutiny under the Religious Freedom Protection Act.

First, the United States District Court for the Western District of Pennsylvania will most likely conclude that Pennsylvania's requirement that a home-schooling instructor hold a high school diploma or equivalent does not violate the Religious Freedom Protection Act. Instructor competency is of extreme importance since "by the time pupil progress can be measured at the end of the year, it is too late to recover the lost year under an unqualified teacher."[193] States have used several different indicators to assess the competency of home-schooling instructors.[194] Some states have imposed more stringent instructor requirements, such as higher education or teacher certification; yet, these approaches have frequently been struck down.[195] Parents often assert that strict instructor requirements

192 *See In re* Carroll, 1996 Ohio App. LEXIS 4246, at *18 (Ohio Ct. App. Sept. 20, 1996) (declaring that parental right to engage in home-schooling is "subject to reasonable government regulations designed to insure that minimum standards of education prescribed by the states are met, consistent with the state's compelling interest in assuring that all of its citizens receive a quality basic education"); *see also Murphy*, 852 F.2d at 1042 (noting compelling interest in education); Blount v. Maine, 1987 Me. Super. LEXIS 258, at *10 (Me. Super. Ct. Sept. 16, 1987) (asserting that "the State's interest in insuring that its citizens obtain a basic education is of the highest order").

193 Crites v. Smith, 826 S.W.2d 459, 465 (Tenn. Ct. App. 1991).

194 *See* Dorman, *supra* note 10, at 749–50 (articulating several state standards for home-schooling instructor competency, including "being judged qualified to teach; holding a high school diploma or a general educational development (GED) equivalency diploma; holding a baccalaureate degree; being supervised by a certified teacher; or being the parent of a child enrolled in an approved correspondence program"); Jack MacMullan, Comment, *The Constitutionality of State Home Schooling Statutes*, 39 VILL. L. REV. 1309, 1345–46 (2000) (canvassing state competency requirements for home school instructors).

195 *See e.g.*, People v. DeJonge, 501 N.W.2d 127, 144 (Mich. 1993) (abolishing Michigan's teacher certification requirement in home-schooling context); Care and Prot. of

prevent motivated parents from home schooling and that a state can still fulfill its compelling interest in education without these requirements.[196] However, unlike other states, Pennsylvania does not require higher education or teacher certification; it merely requires that a home-schooling instructor possess a high-school diploma or its equivalent.[197] The requirement of a high-school diploma will not disqualify many parents who wish to home-school, since most parents already possess such a degree. Furthermore, the Commonwealth's interest in education will be hindered if this requirement is eliminated. Courts have often recognized a state's ability to examine thoroughly a person's ability to teach,[198] and the Pennsylvania requirement does just that. Since home-schooling instructors are the primary source of their children's education, the Commonwealth must be able to ensure that instructors have the ability to provide an adequate education. In order to ensure instructor competency and the capability of providing a sufficient education, instructors must possess sufficient content area knowledge that is commensurate with a high-school diploma so they may understand and communicate the requisite information to their children.[199] Therefore, this requirement will most likely be upheld.

Second, the United States District Court for the Western District of Pennsylvania will probably uphold Pennsylvania's requirement of a yearly affidavit. Thirty-eight states currently require that parents notify state or local officials if they are

Charles, 504 N.E.2d 592, 601 (Mass. 1987) (rejecting notion that superintendent or local school board could require home schooling parent to be certified or possess a college or advanced degree).

196 *See* GORDON, *supra* note 3, at 37 (identifying common objections to instructor requirements); *see also DeJonge*, 501 N.W.2d at 130 n.4, 131 n.6 (discussing arguments made by home-schooling parent in opposition to teacher certification requirement).

197 *See* 24 PA. CONS. STAT. ANN. § 13–1327.1(a) (2006) (stating Pennsylvania's home-schooling instructor competency requirement); Laura J. Bach, Note, *For God or Grades? States Imposing Fewer Requirements on Religious Home Schoolers and the Religion Clauses of the First Amendment*, 38 VAL. U. L. REV. 1337, 1356 n.105 (2004) (noting Pennsylvania's home school instructor competency requirement).

198 *See* Pierce v. Soc'y of Sisters, 268 U.S. 510, 534 (1925) (concluding that state has power to examine teachers and assure they are of "good moral character and patriotic disposition"); *see also Care & Prot. of Charles*, 504 N.E.2d at 601 (recognizing school superintendent's ability to examine parent's competency to teach their children); *In re* Kilroy, 467 N.Y.S.2d 318, 320–21 (N.Y. Fam. Ct. 1983) (realizing need for parent competency in teaching home-schooled children).

199 24 PA. CONS. STAT. § 13–1327.1(a) (defining supervisor as parent or legal guardian who will be responsible for child's education provided the supervisor has a high school education); *see Care & Prot. of Charles*, 504 N.E.2d at 601 (stating that superintendent has right to check credentials of parents).

choosing to educate their children at home; yet each state has established different components of the notice requirement.[200] Pennsylvania law requires that the yearly affidavit include specific statistics on home-schooled children, details of instruction to be given and proof that the home-schooled children have received the requisite health services for their age.[201] Not requiring notification "would render meaningless the State's role in the educational process."[202] There is always the risk that parents will opt to home-school their children and fail to provide a quality education, either because of an unwillingness to do so or due to a lack of specific curriculum materials.[203] In addition, some children might not receive medical care due to their parent's lackadaisical attitude or strong religious convictions.[204] Even though parents have the right to provide education at home, they cannot be permitted do so at the expense of their children. By instituting a notification policy, the state increases the probability that no child will fall through the cracks and fail to receive essential medical attention and an adequate education.[205] Furthermore, Pennsylvania's home-schooling law establishes that the information provided by parents in the yearly affidavit cannot be used when evaluating whether the

200 *In re* T.M., 756 A.2d 793, 798 (Vt. 2001) (noting national trend toward adopting notice requirements); *see* GORDON, *supra* note 3, at 29–30 (listing some states with notice requirements); *see also State Laws*, *supra* note 6 (depicting range of notice requirements across United States).

201 24 PA. CONS. STAT. § 13–1327.1 (e) (specifying contents of yearly affidavit). *See generally* Alicia Novak, Comment. *Religious and Philosophical Exemptions to State-Compelled Vaccination: Constitutional and Other Challenges*, 7 U. PA. J. CONST. L. 1101, 1122 (2005) (discussing public outbreak of measles due to voluntarily unvaccinated children).

202 Blount v. Maine, 1987 Me. Super. LEXIS 258, at *13–14 (Me. Super. Sept. 16, 1987) (referencing state's need for notification requirement); MacMullan, *supra* note 194, at 1341–43 (commenting on state's interest in notification requirement).

203 *See* Maine v. McDonough, 468 A.2d 977, 980 (Me. 1983) (supporting notice requirement because some home-schooling parents could lack "sincere desire" to supply their children with sufficient education); Care and Prot. of Charles, 504 N.E.2d 592, 601 (Mass. 1987) (stating superintendent must review curriculum and materials used by teaching parent to assure the child's equivalence with public school).

204 *See e.g.*, People v. Pierson, 68 N.E. 243, 244 (N.Y. 1903) (containing facts of case in which father did not provide infant daughter with requisite medical care because of strong religious belief that prayer would heal the child); *see also* McMullen, *supra* note 2, at 103 (stating that "without the incentive of complying with school vaccination deadlines, some parents may neglect vaccinations, leaving no organized way of monitoring compliance with requirements").

205 *See* McMullen, *supra* note 2, at 83 (commenting on home-school regulation aimed to ensure minimum standards of education and health are being adhered to by parents). *See generally* MATTHEW BENDER & CO., INC., EDUCATION LAW § 8.03 (2005) (explaining guidelines to determine whether home education is equivalent).

home-schooling program satisfies all other requirements of the home-schooling statute.[206] This further illustrates the supervisory nature of this requirement and provides assurance that this requirement will not be used to discriminate against parents who wish to home-school for religious or other controversial reasons. Thus, the requirement of a yearly affidavit will most likely be upheld.

The United States District Court for the Western District of Pennsylvania will also almost certainly sustain Pennsylvania's requirement of a minimum amount of hours of study in both the elementary and high school level since "[t]he quality of education can be rendered meaningless if the quantity is subject to manipulation."[207] However, Pennsylvania will presumably face more opposition with regard to its requirement of the teaching of particular subjects in both elementary school and high school. Pennsylvania's home-schooling statute requires parents to teach specific subjects and in some instances specific curricular content.[208] Many of these subjects, such as English, athematics, science and safety education, are critical to good citizenship and will most likely be upheld by courts.[209] The Supreme Court has declared that states may require children to be educated in subjects that are crucial to good citizenship[210] and one Justice has even suggested that parents may not "replace state educational requirements with their own idiosyncratic views of what knowledge a child needs to be a productive and happy

206 24 PA. CONS. STAT. § 13–1327.1 (b) (1) (2006) (establishing how information contained in yearly affidavit can be used); *see* Salomone, *supra* note 9, at 52 (referencing other requirements under Pennsylvania home-schooling statute).

207 *Care & Prot. of Charles*, 504 N.E.2d at 601–02 (Mass. 1987) (commenting on quantity of education); *see* MacMullan, *supra* note 194, at 1315 (referring to *Pierce* decision, in which Supreme Court upheld the state's right to regulate the education of its children).

208 24 PA. CONS. STAT. § 13–1327.1 (c) (2006) (identifying required subjects); *see also* MacMullan, *supra* note 194, at 1345–46 (stating curriculum requirements under Pennsylvania's home education statute).

209 *See* Salomone, *supra* note 9, at 52 (listing several of Pennsylvania's required subjects that are essential to good citizenship); *see also* Elizabeth Reilly, *Education and the Constitution: Shaping Each Other and the Next Century*, 34 AKRON L. REV. 1, 4–5 (2000) (discussing importance education has on society).

210 *See* Pierce v. Soc'y of Sisters, 268 U.S. 510, 534 (1925) (asserting that state may require that certain subjects "plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare"); *see also* Meyer v. Nebraska, 262 U.S. 390, 402 (1923) (recognizing State's ability to determine curriculum).

member of society."[211] Thus, the court will most likely view these subjects as necessary ingredients to a home-schooling plan that will produce an intelligent, self-sufficient member of society. However, other subjects required by Pennsylvania may not be germane to good citizenship and thus, may be abandoned as requirements.[212] For example, at both the elementary and secondary levels, home-schooling parents must teach their children physical education, art and music.[213] Requiring education in these subjects allows the state to expose children to subjects they would otherwise never encounter, yet it is questionable whether the state has a compelling interest in doing so. Knowledge in these subjects, while helpful to create a well-rounded individual, is not absolutely necessary for success in today's society and therefore, these requirements might not be viewed as favorably by the court.

The last two requirements under Pennsylvania's home-schooling statute are the compilation of a portfolio and the written evaluation of the home-schooled children by an outside professional based on the examination of the submitted portfolio and an interview of the home-schooled children.[214] Both of these requirements are in furtherance of the state's compelling interest in ensuring citizens a quality education. The portfolio allows the state to review the exact activities home-schooled children complete on a day-to-day basis and nationally-normed standardized test results permit the state to measure the educational performance of home-schooled children compared to their peers. In addition, the requirement of a written evaluation provides the state with an impartial professional opinion of the educational development of children educated at home.

211 Wisconsin v. Yoder, 406 U.S. 205, 239 (1972) (White, J., concurring) (stating that education is necessary in order to maintain a productive society); *see* McMullen, *supra* note 2, at 105 (commenting on majority opinion expressed by *Yoder* court).

212 *See* Salomone, *supra* note 9, at 52 (suggesting that several of Pennsylvania's required courses will be questioned). *See generally* MATTHEW BENDER & CO., INC., EDUCATION LAW § 8.03 (2005) (describing "systematic course of study" required for home-school program to satisfy the education equivalent of the state);

213 24 PA. CONS. STAT. § 13–1327.1(c) (2006) (containing subject requirements); *see* MacMullan, *supra* note 194, at 1345–46 (stating curriculum requirements under Pennsylvania's home education statute).

214 24 PA. CONS. STAT. § 13–1327.1(e) (2006) (detailing portfolio and outside evaluation requirements); *see* McMullen, *supra* note 2, at 99–100 (commenting on "subjective assessment of authorities" who examine the child's level of competency).

However, these requirements will face more opposition with the second condition under the Religious Freedom Protection Act, which demands that state regulations be "narrowly tailored."[215] At least one of these requirements is necessary to monitor the academic progress of home-schooled children.[216] The United States District Court for the Western District of Pennsylvania may find that both requirements are needed since standardized tests only measure children's abilities in a few subject areas and the written outside evaluation allows for in-person interaction with home-schooled children that is not mandated by Pennsylvania's other home-schooling regulations. However, other state courts have acknowledged that there are several acceptable methods other than standardized testing that may be used to supervise academic performance.[217] Plaintiffs can argue that both of these requirements essentially achieve the same goal of ensuring academic achievement and therefore, an overly excessive burden is placed on home-schooling parents by demanding that they comply with both regulations. In addition, plaintiffs can point out that private schools are not required to administer standardized tests, illustrating that the state allows other forms of schooling to exist without such stringent regulations.[218] Since courts frequently accept alternative methods of measuring academic performance, the court may conclude that only one method will suffice.

215 71 PA. CONS. STAT. § 2404(b)(2) (2006) (stating that when state is burdening a person's free exercise of religion they must use "least restrictive means of furthering the compelling interest"); *see* Salomone, *supra* note 9, at 52 (referring to least restrictive application of Pennsylvania Religious Freedom Protection Act for compelling state interests).

216 *See* Care & Prot. of Charles, 504 N.E.2d 592, 602 (Mass. 1987) (acknowledging need for state to have method to "ensure educational progress and the attainment of minimal standards"); *see also In re* Welfare of T.K. 475 N.W.2d. 88, 92–95 (Minn. Ct. App. 1991) (stating that standardized testing is used to "reliably evaluate" student progress); GORDON, *supra* note 3, at 48 (pointing out that standardized testing allows state to examine student progress).

217 *See e.g., Care & Prot. of Charles*, 504 N.E.2d at 602 (holding that to evaluate home-schooled child's progress, Massachusetts could require standardized tests, "periodic progress reports or dated work samples"); Salomone, *supra* note 9, at 52 (mentioning alternatives to standardized testing provided by Massachusetts).

218 *See FAQ: School Profiles: Private Schools*, GREATSCHOOLS.NET, http://www.greatschools.
net/about/gsFaq.page?state=ca (last visited March 30, 2006) (indicating that private schools are not required to administer or report results of standardized tests); *see also* Sarah Carr, *92% of Choice Schools Use Standardized Tests, Report Says*, MILWAUKEE J. SENT., Feb. 16, 2004, http://www.jsonline.com/news/metro/feb04/208002.asp (reporting that most, but not all, voucher schools in Milwaukee administer standardized tests).

In addition, these last two requirements may be heavily scrutinized, as they require approval by an educational professional.[219] Plaintiffs will likely argue that this requirement decreases impartiality and increases the risk that an outside party who exhibits bias towards the public school system will deem their home-schooling plans unacceptable. Many commentators have suggested that "home-schooling has become a threat to the very notion of public education."[220] They believe home-schooling fuels negative attitudes towards the entire public school system, making it increasingly more difficult to pass school budgets and property taxes that help raise the necessary amount of educational funding.[221] Since many qualified evaluators are public school employees, they may have a significant interest in the success of the public school system, and ultimately, in the outcome of home-schooling evaluations.[222] After all, the future of their career may depend on the existence of a flourishing public education system. On the other hand, courts may discount the possibility of bias because home-schooling parents ultimately have the power to choose their children's evaluator.[223] The statute allows for evaluations by

219 24 PA. CONS. STAT. ANN. § 13–1327.1(e) (2005). Pennsylvania's home-schooling law allows home-schooling portfolios to be reviewed by a "teacher or administrator" that has already graded specific subjects for at least two years. *See id.* at § 13–1327.1(e)(1)(i), (e)(1)(ii). It also permits the written evaluation to be conducted by a variety of professionals, including "a licensed clinical or school psychologist or a teacher certified by the Commonwealth or by a nonpublic school teacher or administrator," provided that the professional has taught in a Pennsylvania school for two of the previous ten years. *Id.* at § 13–1327.1 (e)(2).

220 Cloud & Morse, *supra* note 72, at 46.

221 *See id.* (elaborating on ways home-schooling negatively effects public school system); *see also* Margaret Talbot, *The New Counterculture*, THE ATLANTIC MONTHLY, Nov. 1, 2001, http://www.new america.net/index.cfm?pg=article&DocID=599 (worrying that if home-schooling would attract new recruits from mainstream, real damage might be done to public schools).

222 *See* McMullen, *supra* note 2, *at* 102–03 (evaluating conflict of interest that could arise when professionals associated with public school system perform home-schooling evaluations); *see also* Notes and Comments, *People v. Bennett: Analytic Approaches to Recognizing a Fundamental Parental Right Under the Ninth Amendment*, 1996 BYU L. REV. 183, 228 (1996) (stating "[c]onflicts of interest within state agencies can lead government institutions to put organizational interests ahead of child and parental needs").

223 24 PA. CONS. STAT. § 13–1327.1(e) (giving home-schooling parents several evaluator options); *see Homeschooling in the United States: A Legal Analysis*, HOME SCHOOL LEGAL DEFENSE ASSOCIATION (2005–2006), http://www.hslda.org/laws/anaylsis/Pennsylvania.pdf (outlining Pennsylvania's requirements that evaluator be licensed psychologist, certified teacher or other teacher/administrator with at least two years experience of teaching within past ten years).

certified Pennsylvania teachers as well as many other professionals, such as licensed clinical psychologists or certified teachers that home-school their own children.[224] The likelihood of an impartial evaluator is greatly reduced when the evaluators themselves are proponents of the home-schooling process, or are directly affected by the success of home-schooling programs. Nevertheless, it is likely that these requirements will undergo significant scrutiny in the District Court and they might not survive.

Pennsylvania definitely has one of the most detailed home-schooling laws in the nation and the advent of its religious freedom law provides parents who home-school for religious reasons with another claim against state regulation. However, given the strong history of a state's compelling interest in assuring each citizen an adequate education, most of Pennsylvania's requirements will survive the on its face and as applied constitutional challenges asserted by plaintiffs.

V. THE MOST IMPORTANT QUESTION OF ALL: HAS ANYONE THOUGHT ABOUT THE CHILDREN?

In its first summary judgment decision, the District Court for the Western District of Pennsylvania made it clear that this case is far from over[225] and therefore, it is important to look into other factors the court should consider when making its final determination. Despite the apparent validity of arguments brought by parents and the state and the importance of a parent and the state's fundamental rights, we must not lose sight of the fact that the individuals affected most by rulings resulting from the interpretation of Pennsylvania's home-schooling law will be the children. The welfare of the children should be the deciding factor in cases such as these, yet this issue frequently becomes

224 *See* 24 PA. CONS. STAT. § 13–1327.1(e) (listing appropriate evaluators); *see also PHAA Evaluator Listing*, Pennsylvania Homeschoolers Accreditation Agency, http://www.phaa.org/ evaluators/index.html (last visited March 12, 2006) (providing list of several competent Pennsylvania home-schooling evaluators, several of which participate in home-schooling process themselves).

225 Combs v. Homer Ctr. Sch. Dist., 2005 U.S. Dist. LEXIS 32007, at *93 (W.D. Pa. Dec. 8, 2005) (noting that plaintiffs might be successful on as applied constitutional challenges).

secondary to the interests of the parties litigating on their behalf.[226]

There is a grave risk that children will be adversely affected regardless of whether their parents or the state prevail in this case challenging Pennsylvania's home-schooling law. If the state of Pennsylvania succeeds in upholding its home-schooling regulations, there is a possibility that children will be required to comply with educational requirements that hinder their ability to practice their religion fully. Many children might hold the same educational views as their parents and thus, like their parents, view Pennsylvania's home-schooling regulations as a violation of their free exercise of religion.[227]

However, the negative implications for equality and equal opportunity in education are much more severe if the Pennsylvania parents accomplish their intended goal. If Pennsylvania parents succeed in overturning all of the state's home-schooling requirements, they will gain complete autonomy over the education of their children. They will decide what to teach their children, the depth and breadth of instruction, and the types of activities their children can engage in on a day-to-day basis. This increases the likelihood that parents will impress their individual viewpoints and religious beliefs upon their children in a biased fashion and in disproportionate amounts with relation to academic content area instruction.[228] In addition, many home-schooling parents assert the argument that their children do not need to be exposed to a state-regulated education since they must be raised to live a different, religiously-centered, life.[229] Permitting parental autonomy in home-schooling creates the danger that children will be deprived of the ability to explore different areas of study and thereby limiting their life or career

226 *See* Lukasik, *supra* note 4, at 1948 (noting that while parents and states compete, "the interests and rights of the child are often overlooked"); Salomone, *supra* note 9, at 52 (noting that well-being of children often gets "lost in the parent-state debate").

227 *See generally Combs*, 2005 U.S. Dist. LEXIS 32007, at *77 (articulating views of home-schooling parents regarding Pennsylvania's home-schooling requirements).

228 *See* Wisconsin v. Yoder, 406 U.S. 205, 242 (1972) (Douglas, J., dissenting) (arguing that religious exemptions to home-schooling requirements unavoidably "impose the parents' notions of religious liberty upon their children"); *see also* Lukasik, *supra* note 4, at 1948 (noting that children have property interest in education protected by Fourteenth Amendment).

229 *See e.g.*, *Yoder*, 406 U.S. at 210–13 (explaining argument made by Amish parents that children require education in their way of life); *see also* Cloud & Morse, *supra* note 72, at 46 (listing parents' reasons for home-schooling).

choices in the future.[230] As the dissent pointed out in *Wisconsin v. Yoder*,[231] "where the child is mature enough to express potentially conflicting desires, it would be an invasion of the child's rights to permit such an imposition without canvassing his views."[232] Even more importantly, leaving parents unmonitored in administering their children's education creates the possibility that their children will not become healthy, fully-functioning members of society.[233] As one commentator stated, "[p]arents should have substantial power to choose their children's teachers, but there is reason to be troubled, and sufficient constitutional warrant for states to act, when parents choose only themselves."[234]

Children's inherent rights are at the core of the battle between assuring an adequate education and religious freedom. Therefore, in deciding the ultimate fate of home-schooling regulations, the court should give significant weight to the serious potential harms that can be caused to the children and determine that sufficient state regulation is vital to protect children that are not in a position to protect themselves.

CONCLUSION

Since its evolution, home-schooling has been a controversial topic, especially since it implicates many constitutional rights. With the advent of religious freedom laws, home-schooling is now the center of an entirely new debate and the decisions rendered in these Pennsylvania cases will most certainly have a significant impact on the future of home-schooling nationwide. The United States District Court for the Western District of Pennsylvania

230 *See* McMullen, *supra* note 2, at 84 (noting importance of liberal education); *see also* Cloud & Morse, *supra* note 72, at 46 (stating "[t]he basic function of a liberal education is to expose people to fields they normally wouldn't investigate").

231 406 U.S. 205 (1972) (Douglas, J., dissenting).

232 *Yoder*, 406 U.S. at 242.

233 *See* Care & Prot. of Charles, 504 N.E.2d 592, 601 (Mass. 1987) (emphasizing that state regulation is needed to ensure adequate education); *see also* Blount v. Maine, 1987 Me. Super. LEXIS 258, *10 (Me. Super. Sept. 16, 1987) (recognizing implications of parental autonomy in home-education context); Maine v. McDonough, 468 A.2d 977, 980 (Me. 1983) (commenting on possible consequences of unregulated home-education); McMullen, *supra* note 2, at 86–87 (elaborating on child protective function of state regulated education).

234 Ira C. Lupu, *Home Education, Religious Liberty, and the Separation of Powers*, 67 B.U. L. REV. 971, 990 (1987).

may not have an easy time deciding the final outcome of this case, as it will have to examine plaintiff's assertions regarding the burdens placed on their religion, as well as each of Pennsylvania's requirements to determine whether it is in furtherance of the state's compelling interest in educating its citizens and whether it is the least restrictive means of doing so. However, since the children are innocent bystanders caught in the middle of this constant struggle between home-schooling parents and the state, we can only hope that in deciding this case, the court will acknowledge the needs of our children and decide this case accordingly.