Homeschooling, a phenomenon that first began to achieve widespread prominence in the 1970s, has become an increasingly attractive alternative to the traditional school model for millions of parents and children in the United States. Increasing numbers of students are being pulled from public and private schools, which may be plagued by budgetary shortfalls and violence or drug problems, and instead educated in the home. While many of these families follow a “school-at-home” style of homeschooling, in which the parents and children select from one of hundreds of available online curricula and apply the lessons in a “school day” that mimics formal education, a growing number of families are abandoning formal educational principles altogether. For these students, who are “unschooled”, learning is frequently completely unregulated, with students pursuing knowledge as they desire it, with few if any learning requirements or methods of evaluation. States vary widely in their approach to these students, with some, including Illinois, declining to regulate them in virtually any way. Although parents have a legitimate interest in educating their children in accordance with the family’s educational beliefs, at least a minimal level of regulation is necessary to preserve the state’s interest in creating literate and engaged citizens and curb potential abuses.

Estimates on the number of children currently homeschooling varies, and few definite statistics exist. Recent estimates calculate that the number of children currently being
homeschooled in the range of 1.1 to 2 million, or approximately 2.2 percent of the American school-age population.\(^1\) In addition, the number of children being homeschooled appears to be growing at a rate of 10 to 20 percent annually.\(^2\) The number of students currently being unschooled is unknown, though many experts suggest that the number is growing, and attempts at developing reliable statistical data for unschooled students have been largely unsuccessful. Developing accurate statistics is essential: As the number of students being homeschooled increases, finding ways to appropriately monitor these children and track their academic progress will become increasingly important.

In addition to the dearth of accurate statistics on homeschooling and unschooling, despite the widely varied approaches states take to the issue of homeschool regulation, few legal or social science academics have addressed the issue. Although vocal advocates and critics have debated the relative merits and drawbacks of homeschool education in general, and unschooling in particular, the broader academic community has largely remained silent. One political scientist has come out in favor of strict regulation of homeschooling on the grounds that the state’s obligation to guarantee that students receive a multi-cultural education that promotes some kind of autonomy is incompatible with the general philosophy behind homeschooling.\(^3\) Even academics in the education field have so far failed to produce studies of the actual effects of homeschool education on children, possibly because of the inherent difficulties in obtaining sufficient data. This lack of scholarly attention to homeschooling hinders attempts to create appropriate regulations, as both proponents and detractors have little evidence to rely on outside

\(^1\) Kimberly Yoracko, *Education off the Grid: Constitutional Restraints on Homeschooling*, 96 Cal. L. Rev. 123, 124.
\(^2\) *Id.* at 125.
\(^3\) *Id.* at 131.
of their own feelings on the subject, which state an incomplete and likely unreliable case upon which effective and efficient legislative interventions may rest.

Even an issue as basic as the motivations behind a parent’s decision to pursue unschooling remains unsettled because traditional economic explanations that describe parents’ decisions to pursue private education instead of public for their children fail to adequately account for the impetus behind the homeschooling movement in general and the unschooling movement in particular. Even the most basic of tools, the cost-benefit analysis, does not readily lend itself to an explanation of the origins of the unschooling movement, because opportunity costs are extremely high, and outcomes uncertain.⁴ Traditional concerns of bettering their children’s likelihood of success in college and the career world, do not appear to matter to parents who choose unschooling, because there is virtually no evidence to suggest that their children will be at least as successful as students educated in more traditional settings. Moreover, unschooled children are likely to face nearly insurmountable battles later in life as they apply to colleges and for jobs. Highly motivated students who value a formal education at the college level or above will likely face few obstacles to their success, as they will take the necessary steps to integrate themselves into the formal educational system. However, many parents who engage in unschooling do not believe in standardized tests,⁵ which are absolutely essential for college admission, and particularly necessary for students who do not receive formal grades. Similarly, a failure to obtain a GED may create additional roadblocks that prevent even the most intelligent individuals from gaining meaningful employment. In spite of these risks, however, unschooling appears to be on the rise.

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Some suggest that the motivation for an increase in unschooling comes from a combination of several factors, including a rise in individualism and a kind of educational populism, along with the explosion of learning tools and resources that are now widely available through the internet, bookstores, local libraries, and other sources. At the same time, escalating problems with violence and drugs and devastating budget cuts in public schools across Illinois has driven many parents to seek safer and more enriched alternatives to educating their children. Students and parents alike may benefit from the increasing accessibility of educational options that proliferate on the internet, but should do so in a manner that ensures a student is exposed to the skills she will require to live productively in society, such as reading, writing, and mathematics. Although the reasons behind the decision to unschool are complex and not yet fully understood, developing a better understanding of the motivations behind parents’ decisions to unschool their children will likely prove essential to developing a working system of monitoring.

Unschooling may provide an important mechanism for students who do not succeed in large classrooms that rely exclusively or almost exclusively on traditional principles of formal education to learn in an individual-centered environment. For unschooling advocates, real learning “occurs in exchanges between children and people (both adults and peers) and…these exchanges can best occur outside the context of institutionalized schooling.” In this way, the unschooling movement may fill a void for students who possess an unusual individual drive to learn that may be hampered by the need to slow down and keep pace with a classroom filled with diverse learning speeds and styles. However, there is simply no way of knowing if these high

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achieving students are the ones who are currently learning through unschooling. What little research exists on the subject suggests that not all students being homeschooled, even when using a formal curriculum, are achieving a basic minimal education, which seems to indicate that homeschooling is not being utilized appropriately by all of the families that subscribe to its principles.

Despite the clear advantages of non-curriculum based education for some particularly highly motivated students, the dangers of an unstructured education may do more harm than good for a majority of students. Perhaps the most obvious concern is that students will choose to do little or nothing with their unstructured days, thus defeating the purpose of student-led learning. One student at a camp for unschooled students remarked that he spent the majority of his time snowboarding, which did not appear to leave much time for other sources of learning. Another concern is that students raised in an unschooling environment will not learn to cope with adversity. For example, one parent noted that she ceased encouraging her son to learn to read every time the exercise stopped being “fun”. As a result, the child, who exhibited no learning disabilities, did not learn to read until age 10. Another student was grateful she was not in school, because if she were she “would not have time to be with her mom and do fun things”. Although education should be enjoyable for students, emphasizing only fun and not the importance of seeing a problem through to its solution in spite of difficulties that arise may interfere with a student’s ability to address problems later in life. Modern society frequently requires that problems be solved, tasks completed and goals achieved on a deadline, which is fundamentally incompatible with the basic philosophy of unschooling. Even something as basic as learning to adhere to a schedule, which is a skill common to workers in virtually all fields,

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8 Yuracko supra note 1, at 135.
10 Saulny, supra note 5. See also Kleiner, supra note 9.
may be quite difficult for unschooled children who are accustomed to changing activities on a whim. These concerns have troubled educators and researchers in the field of homeschool education, who worry that unschooled students will not be able to “transition to a structured world and meet the most basic requirements for reading, writing, and math.”¹¹

Perhaps the most pressing concern for those who favor regulating homeschooling in general, and unschooling in particular, is the need to produce individuals who can integrate themselves successfully into society as active and engaged citizens. The problem has both ideological and pedagogical underpinnings, though the ideological concerns tend to apply less to unschoolers than those who prefer the school-at-home method.¹² Parents who are not required to provide the state with any information as to the subjects of learning their children pursue may choose not to expose their children to information necessary to citizenship, such as the structure and function of government, or may teach their children socially unacceptable practices like racism, sexism, and other forms of intolerance. Although students enrolled in public schools may learn similar lessons from their parents while at home, unschooled children do not necessarily benefit from exposure to an alternative viewpoint. Similarly, unschooled students who are taught to follow only their own desires may fail to develop the social skills necessary to succeed in a society that frequently focuses on the greater good and the need for personal sacrifice. Some experts have noted the tendency of unschool parents to “place the learner central to everything else that transpires in the home.”¹³ To a cynic, this tendency seems to promote a sense of entitlement that may encourage students to develop a self-centered worldview.

¹¹ Saulny, supra note 5.
¹² Homeschool families tend to be more frequently motivated by religious ideology than families that follow unschooling principles. See Id.
Unfortunately, due to the lack of available statistical data, it is currently impossible to determine which, if any, of these concerns are well-founded.

Given the unique challenges that unschooling poses to the state’s well-established interest in ensuring that children meet basic educational standards, some sort of regulation appears to be well-advised. Currently, Illinois has no mandatory reporting by homeschooling families. Illinois’ Regional Offices of Education are responsible for enforcing the anti-truancy laws, but they lack the “legal basis for school officials to enforce mandatory attendance laws with children whose parents have declared that they are being homeschooled.”\footnote{Erica Mynarich, An Argument for the Adoption of an Illinois Homeschooling Statute, 20 DBCA BRIEF 22, 22.} As a result, even the most simple of monitoring devices, a registration form produced by the Illinois State Board of Education verifying the grade level of children and the number of hours of instruction, are completely optional.\footnote{Id. at 24.} This has led to disagreements among the Regional Offices as to the extent to which parents must provide proof of compliance with the law. Where some Regional Offices have been involved in prosecuted parents who cannot establish that their children are being effectively homeschooled, others do not believe they have the authority to request any proof of compliance from parents.\footnote{Id. The Illinois truancy statute can be found at 105 ILCS 5/26-1 (2010).}

Passing a statute regulating homeschooling in Illinois will face considerable resistance, as homeschooling advocates tend to have an extremely strong lobby that bristles at even the slightest suggestion of regulation. At least two previous attempts in the late 1980s to clarify and strengthen the Illinois truancy law as it relates to homeschooling floundered in the face of strong opposition from the homeschool lobby and calls from outraged parents.\footnote{Id.} One group in particular, the Homeschool Legal Defense Association (HSLDA), engages in lobbying efforts...
nationwide to prevent states from implementing statutes that impose any requirements on homeschool families, including the most basic of reporting requirements. The HSLDA was extremely active in protesting the proposed Illinois bills, even going so far as to encourage their member families not to turn over any curricula, attendance records, portfolios, and other evidence of academic achievement or allow any school officials to enter their homes, because the districts did not have a legal right to gather the information. Far from containing any draconian regulations mandating strict compliance with educational standards, the legislation that so concerned the homeschool lobby consisted primarily of a notice requirement. Nevertheless, complaints that a notice requirement would constitute an invasion of homeschool families’ privacy helped force one bill to be withdrawn for lack of support. As a result, confusion as to the legal requirements for homeschool families persists, and enforcement of the state truancy statute typically varies widely from county to county.

Regardless of the feelings of vocal individual parents in Illinois, the right of a state to regulate education is well established. Claims that compulsory education laws are unconstitutional because the Fourteenth Amendment guarantees parents the right to educate their children as they see fit have generally been rejected by state courts. Similarly, claims that state laws mandating reporting and standardized testing for homeschool children violate the student’s right to privacy have been rejected, and the reporting and testing laws have been found constitutional. As a result, there are no constitutional barriers preventing Illinois from joining the approximately 25 states that currently regulate homeschooling. While parents and the homeschool lobby alike will almost certainly continue to loudly protest any restraint on their

18 Id.; see also Yuracko, supra note 1, at 128.
19 Id.
20 Knowles, et al, supra note 7, at 212.
21 Nappen, supra note 6, at 86.
ability to educate their children in a manner unfettered by state involvement, the right of the state to monitor children who are not involved in the public schools to ensure that they attain a minimal standard of education should trump.

Although opponents of state monitoring of parents’ homeschool programs will likely continue their strenuous objections, the need to create regulations to create consistency in truancy enforcement and protect the state’s interest in ensuring a minimum educational level for students is pressing. While the need for a statute addressing homeschool students’ rights and responsibilities in curriculum reporting and/or standardized testing will probably meet with strong criticism, a legislative remedy need not be overly invasive. For those who follow a more traditional school-at-home homeschooling program, regardless of the nature of the curriculum, meeting a simple reporting requirement that requires only the name of the program used and the company that oversees it would provide the state with essential information about homeschooled children while still leaving parents free to pursue the educational method of their choice. For those families who participate in unschooling, which typically does not include a curriculum, the difficulty of describing a child’s work adequately through a portfolio or a listing of all of the various activities that are included in the child’s day could be overcome with standardized testing only in reading, writing, and mathematics. Permitting the parent to select the testing method from a predetermined list, as is the case in many states that actively monitor homeschool students, and allowing parents to opt-out of receiving the results from the standardized testing, except in case of deficiency, would protect the parents’ right to direct their children’s education with only minimal interference by the state. An indirect benefit to this minimal reporting would be the increased ability to track unschooled children to form a more complete statistical picture.

22 See Yuracko, supra note 1, at 180.
of their prevalence and achievement relative to students learning in the traditional, formal educational system.

Addressing the increasing trend toward homeschooling and unschooling will require careful crafting of a statute that imposes a minimum standard of reporting by families. By balancing the state’s need to ensure appropriate educational standards with deference to the personal choices parents make in selecting a method of educating their children, it may be possible to maximize the positive outcomes from unschooling while remedying the existing inconsistencies in truancy enforcement. Parents who prefer to steer (or even refrain from steering) their children’s education in lieu of relying on the formal public educational system will have the freedom to do so as long as they demonstrate basic compliance with reading, writing, and mathematical standards. Parents may choose to teach, or not to teach, whichever subjects they choose, and may select the method by which they teach the few subjects that should be mandatory. However, in the absence of a statutory reform clarifying reporting requirements in Illinois, the burgeoning unschool movement may come to represent an escape from education instead of a broad path toward it.