

Before the Spelling Bee:
Accounting for Variation in State Home School Regulations

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Under the American federal model, education has historically been a policy arena reserved to the states, and as with other policy areas, states vary widely in the education policies they adopt. This includes, as we shall show in this paper, state regulation of the process of home education (better known as home schooling). The number of home schooled students in the United States has been growing at a remarkably robust rate -- the National Center for Education Statistics estimated that in 2003 there were about 1.1 million home schooled children, an increase of 28 percent over their previous estimate from 1999 of 850,000 home schooled children (NCES 2004). Even in 1999, that number represented more children than were enrolled in the nation's charter schools. Given the growth in home schooling as one of several available education choices (Morken & Formicola 1999), the movement has received little attention from social scientists. The vast majority of research on home schools is conducted by those in the education arena and sociology, and is largely focused on identifying the correlates of individual family decisions to home school, or in assessing the effectiveness of the method compared to traditional educational options.

Little research has been produced on the issue of home schooling as a policy arena within the broader school choice debate, and we attempt to remedy that lack of attention with this project. After discussing the regulatory context for home schooling, we discuss our effort to develop measures of the stringency of state laws pertaining to home schooling, and the creation of our State Home Education Law Index (SHELI) as a tool for analyzing the differences in state home school regulations. We not only find that states differ from each other in their home school laws, but also that the twenty states that offer parents multiple options under which they can educate their children at home vary considerably in the stringency of the options they offer. We then utilize the index as a dependent variable in an effort to address two research questions: Why do states vary in their home school laws? And, Why do some states vary in the stringency of the home school options they offer?

Regulation of Home Schools

Educating one's own children at home is not a new phenomenon, though it became less common as American public education became institutionalized through the mid-twentieth century (for a cogent history, see Quach 2005, 3-10). As public education became the norm in American society, and as teaching became increasingly professionalized, the perception that parents could competently educate their children became less and less acceptable. This perception continues among some in the teaching profession, especially among the teachers' unions, who, of course, have a vested interest in protecting the job security of their members. An article on the National Education Association website, for example, critiques (*sans* evidence) the performance of those "well-meaning amateurs" who try to educate their own children instead of leaving it to the "experienced pros" in the public education system (Arnold 2006). The author characterizes the former as "gullible" and "wannabees," and the latter as "knowledgeable, trained and motivated to do the best job possible."¹ This patronizing commentary appears to reflect the essential views of the organization as a whole: "The National Education Association believes that home schooling programs based on parental choice cannot provide the student with a comprehensive education experience" (NEA 2006). Given the influence of teachers' unions on education policy (eg, Cibulka 2000; Constant 2002; Gokcekus, Phillips, and Tower 2004; Houston and Toma 2003; Hoyt and Toma 1993; Mintrom and Vergari 1998; Thomas & Hrebenar 1996), such pronouncements can not be taken lightly.

These comments reflect the broader, and apparently reasonable, concerns of education professionals about the growth in the number parents arrogating to themselves virtually all the major education decisions for their children. If this behavior becomes more widespread, critics argue, it would threaten the legitimacy of the public education system and erode confidence in that system (Lines 2001). Evidence as to why many parents choose home education actually

¹ A search of the NEA website using the phrases 'home schooling' and 'home education' only turned up one article explicitly on the subject (Arnold's) in the first 100 hits for each phrase. Although Mr. Arnold is a member of the NEA, his employment is listed as "head custodian" at an Illinois elementary school.

suggests just the reverse, that their decision *reflects* erosion of confidence in the public schools (NCES 2004). The arguments against parents' abilities to provide adequate education to their children persist in spite of growing evidence that home schooled children across socioeconomic backgrounds perform better than public schooled children on a wide range of indicators, such as grade-level competencies, SAT and ACT scores, and even in more amorphous areas such as self-esteem, citizenship, and entrepreneurialism (e.g., Klicka 2002; Ray 1997, 2004; Rudner 1998).

Why regulate home schools?

The regulation of home schools is relatively new development in state policy making; most laws regulating the approach were implemented after 1982, and followed a series of state and United States Supreme Court decisions affirming the traditional right of parents to manage the education of their children (see, e.g, Levy 2004, 11ff). In order to put into context the various ways that states regulate home education, we pose a first question first. Why regulate home-based education at all? We suggest four major reasons. First, because of the state's interest and investment in public education's institutions and infrastructure, the state will want to limit the number of families that home school. Some parents are pushing back against government intervention in their families, and states would want to discourage this kind of independence in an area viewed as legitimately the purview of the state. Thus, states will discourage the behavior by making it as difficult as they can for parents to exercise this option, and will do so via regulation, with the encouragement of the education lobby.

Along these same lines, states have a financial interest in knowing how many home schooled students reside in their respective school districts. As with other federal agencies, the US Department of Education allocates its funding to states based upon the number of students enrolled in their schools. Federal programs related to special-needs students (such as the Individuals with Disabilities Education Act, or IDEA) allocate even greater amounts of money to schools based on the number of special needs students they serve, making these students more "valuable" to the public schools. Localities also receive state education funding based upon their

enrollments, and thus have an interest in knowing how many home schooled students live in their districts, because those students represent lost income to the schools. On the other hand, because home schooling parents receive no tax benefit, credit, or reduction for their election of this education option, their tax revenues are a net gain for per-pupil spending rates; if home schooled students re-enter the public system, but funding doesn't increase, per-pupil spending will by definition decrease. On balance, however, states have an interest in discouraging families from exiting the public education system.

Second, states have an interest in exercising quality control over those who seek to educate children. In the public and private school realms, requiring teaching licensure or certification has been the means by which quality control has been implemented, reflecting the position that teachers are the professionals most capable of educating children by dint of their college training to do so. Setting minimal standards to qualify as a home-based teacher would be a plausible approach for states to control the entry of these education providers as well.

Third, because the state's public education establishment has elected certain areas of study as priorities, states may want to ensure that the content they view as important is included in home-based education. Beyond reading, writing, and arithmetic, states also require public and private schools to teach the various social studies (such as civics, history, and economics), the natural sciences, health (such as sex and physical education), and other kinds of content, such as AIDS awareness and fire safety. In order to ensure that home educated children receive comparable training in the state's priority areas, the government may impose regulations in order to monitor the inclusion of and progress in those content areas.

Finally, the state has an interest in the outcomes of the educational process. In order to pass a course, for example, a public school student must pass the course subject's exam, as developed by the professional teacher. This micro-level monitoring of education outcomes applies at the macro level as well, and states and school districts require students to pass graduation exams before leaving middle school or graduating from high school. Federal 'No Child Left Behind' legislation now requires states to create their own such exams or to use a

comparable national-level exam to accomplish this outcome. Home education potentially falls outside the jurisdiction of these requirements, so states might plausibly require some proof that home schooled students also pass these outcome-based measures of subject matter competency as quality control on education outputs.

A recent development along these lines argues that the state has an interest in fostering two laudable goals: civic education and the creation of autonomous adults. While there is little controversy about the state's interest in fostering citizenship, and using public education to do so, the process of creating autonomous adults is more contentious. Reich (2002; 2007, 112-113), for example, argues

The liberal democratic state therefore ought to protect the interest of children...in becoming autonomous adults...The interests of children are separable from the interests of their parents, and the interests of children in becoming free or autonomous—in becoming self-governing and self-determining persons—are as important as the interests of parents in being free or autonomous. Thus, the freedom argument is at bottom about ensuring that children acquire the capacity to lead the lives they wish, to believe what they want to, and to be free, when they become adults, from the domination of other people and institutions (from their own parents as well as from the state). In other words, I seek to prevent both governmental and parental despotism over children, even a benevolent, loving despotism.

This approach is more controversial, because, critics argue, it violates longstanding constitutional principles about parents' rights, and places the future rights of children to autonomy in the present, making their current autonomy an operative assumption of the education enterprise. Moreover, the view that parents are merely "benevolent despots" over their children has not been the historical position of the public education system (for an alternative, darker view, see Stormer 1998). Citing common law and U.S. Supreme Court rulings, Washburne (2002) responded to a 2001 APSA conference version of Reich's argument

Can it really be said that children are owed, "as a matter of justice," the capacity to lead lives different than their parents? Most parents would quickly concur that children do not have, nor should they have, the right to dictate when they go to bed, what they watch on television, what magazines they read, whether they do their chores, or whether they obey their parents. To recognize a child's right to choice would lead to the child's doom. Yes, the law protects children. But the law cannot change children into adults simply by giving them the choices of adults. The law cannot give them something which, being children, they do not have by nature the ability to exercise. The right to autonomy, to view the world as you want to, is only properly enjoyed by adults.

This recent debate aside, there are, of course, objections to all of the arguments in favor of largely unregulated home education, with most home school advocates pressing for the most laissez-faire system possible. In particular, a variety of court cases have successfully overturned many of the unconstitutional and most onerous home school regulations that states have enacted. Home schoolers also have won most of the cases in which parents challenged state or local home school requirements, or in which states challenged the primacy of parents' right to control their children's education. Summarizing the historic trends in these cases, Quach (2004, 50) writes

Collectively, the state home schooling laws point to a trend in the courts and legislatures for lesser state control of home education. While a long line of U.S. Supreme Court cases recognizes that the state has an interest in education, home schoolers argue the interest of the state lies in the product of education, not the process of education, and therefore the state's attempts to control the process - e.g., through dictating teacher qualifications, approving the curricula, or requiring home visits - violate parental liberty. On the other hand, if the states pass laws concerning the production of education, for example, standardized testing or evaluations or various notification requirements, home schoolers believe the rights of the parents and states can be peacefully balanced. Overall, the long-term goal of home schooling families is to repeal all of the compulsory attendance laws, and home schoolers believe this can be achieved through influencing state legislatures.

The current state of home school regulation

Table 1 shows the variety of authorities by which states regulate home education. Thirty-six states have passed statutes specifically geared toward regulating home schools, all but three of them passed between 1982 and 1997;² in 16 of those states, those home school statutes are the only governing authority. In seven states, home schools are regulated under the authority of some other education statute, often pertaining to the organization and management of private schools. In 19 states a home school statute is one option under which families may home school, but other options are available either through another statute regulating education or through some administrative guidance put out by state education agencies; Oklahoma's constitution has an amendment guaranteeing the right to home school (passed in 1904), and for the purposes of this classification we consider that amendment to be the functional equivalent of a home school statute. In Connecticut, the constitutional right of parents to educate their children at home is

² The three exceptions are Oklahoma's constitutional amendment (1904), Nevada (1956), and Utah (1957).

recognized by the state, and the Connecticut State Department of Education has established a specific set of procedures for doing so.

<Table 1 about here>

Finally, six states have statutes that attempt to regulate home schools, and in which those statutes are still technically operative, but the regulations themselves have been significantly modified by some other state or constitutional authority. For example, Georgia passed a home school statute in 1984 that included a heavy burden of paperwork and external monitoring of parents in the process of home education, still the strictest set of requirements in the nation. But in 1986, the state Attorney General issued the opinion that “the local superintendent does not have the authority to require parents to affirmatively produce evidence of their continuing compliance with the law in the operation of home study programs or require the production of documents. Although the superintendent has the authority to “request” such materials, he cannot require parents to submit them.”³ Thus, Georgia has imposed severe requirements on home schooling parents, but no one has the authority to require evidence of compliance with those requirements. In five other states the statutes governing home education have been significantly modified by court decisions; nearly every state has had court cases (in which home schoolers are either the plaintiffs or the defendants) that have affected how home schools operate in those states, but in the four states listed here, the rulings significantly undercut the statutory authority of the respective states to regulate home-based education.

One area that has dramatically altered the landscape of home education is the increased use of religious justifications for parents’ decisions to educate their own children (NCES 2004). There are two streams of precedent that feed into this trend. First, the use of the U.S. Constitutions’ First Amendment prohibition of government’s interference with religious expression and the Fourteenth Amendment’s equal protection principle have successfully been used in many court cases to support the right of parents to arrogate to themselves the major

³ Quoted from the HSLDA Legal Analysis for Georgia; the ruling citation is: 1986 Op. Att’y. Gen. No. U86-19.

education decisions for their children on religious grounds. Second, the fundamental right of parents to control the education of their children has been cited in many court rulings over time. For example, in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), the U.S. Supreme Court ruled that the first amendment right of religious expression outweighed the state's interest in compelling mandatory education in the public schools, and that the parent's right to guide their children's religious education is fundamental. "This case involves the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children. The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition" (page 406 U.S. 205, 232). Citing *Pierce v. Society of Sisters* (268 U.S. 510 (1925)), the court in *Wisconsin v. Yoder* continued, "the Court's holding in *Pierce* stands as a charter of the rights of parents to direct the religious up-bringing of their children. And, when the interests of parenthood are combined with a free exercise claim of the nature revealed by this record, more than merely a 'reasonable relation to some purpose within the competency of the State' is required to sustain the validity of the State's requirement under the First Amendment" (page 406 U.S. 205, 233).

Current iterations of these arguments include the efforts to pass in state legislatures "Religious Freedom Restoration (or Protection) Acts" that home school advocacy groups like the Home School Legal Defense Association (HSLDA), argue can be used by parents to claim, at the state level, religious exemptions from the public education system (13 states have done so).⁴ Other states have accommodated such views explicitly in their home education regulatory regimes. Virginia's home education laws, for example, include a Religious Exemption option, in which parents choosing the option must proactively prove to their local school boards that "(1) they have sincere beliefs that are (2) religious, not merely philosophical, which (3) demonstrate

⁴ AL, AZ, CT, FL, ID, IL, MO, NM, OK, PA, RI, SC, and TX

their objection to attendance in the public schools.”⁵ Parents who successfully make their cases are then exempt from all of the state’s education requirements. In short, the many forms of home school regulation are as variegated as with any set of state regulations, and in the next section we describe our effort to create an index of these regulations.

A few studies have analyzed the adoption of home school laws and their stringency. Levy (2004) appears to be the first scholarly attempt to explain this variation in home school laws across the states—in this case, by a state’s political, socioeconomic, and regional factors. States in the Northeast, Democratic Party control of state government, per-student expenditures, and adherents to fundamentalist religion were significant relationships to a state passing home school statutes. Only two correlates were found for the leniency of the home school laws that states passed, restrictive prior home school laws produced restrictive future home school laws, and states with better SAT and ACT scores also produced more restrictive home education laws. Quach (2005), on the other hand, found more robust and very different results, with states’ support for the Republican Party and size of minority populations both positively related to legislation permitting greater home school access. The measures of state home school regulation in these studies seemed to us to be unsatisfactory, and our response is the creation of a new State Home Education Law Index to better analyze the variation in states’ regulatory regimes vis-à-vis home education.

The State Home Education Law Index

In this section of the paper we describe the development and application of an independent state home education ranking system for the variety of home school regulations enacted over the last twenty years. We develop this system, which we call the State Home Education Law Index (SHELI) to provide an independent analytic tool for assessing the variation in state home school laws.⁶ Although the major home school advocacy groups already

⁵ HSLDA Legal Analysis for Virginia, p. 2.

⁶ The precursor to this index was initially developed in Dye (2006) as part of an undergraduate honors thesis at Western Michigan University’s Department of Political Science.

rank states based upon their levels of home school regulation, the purpose of those rankings are to inform their constituencies about the relative ease of home schooling across the different states, and are thus rather blunt instruments. Our measures, we believe, more finely reflect the variegated character of home school regulations across the states, and is more appropriate for analyzing variations in home school regulations as a dependent variable.

HSLDA, for example, categorizes states into four groups: “No Notice” states, with no state requirement for parents to initiate any contact with education officials; “Low Regulation” states requiring only notification by parents of the decision to home school; “Moderate Regulation” states requiring notification and test scores or evaluations to be reported; and “High Regulation” states that require parents to “send notification or achievement test scores and/or professional evaluation, plus other requirements (e.g. curriculum approval by the state, teacher qualification of parents, or home visits by state officials).”⁷ Home schooling parents might use the HSLDA index when considering a move to different states in order to take into account the home education regulatory regime in their decision. On the research side of the home education movement, Brian Ray (1997, 63-4)⁸ has a similar classification system with three categories: Low Regulation (no requirement for parents to initiate contact with the state), Moderate Regulation (requiring parents to send notification or achievement test scores and/or evaluation of the student’s learning by a professional), and High Regulation (requiring parents to send the aforementioned, plus having other requirements (this is the variable used by Levy 2004). Ray’s ranking system appears to be the basis for HSLDA’s ranking, with HSLDA distinguishing between No Notice states and Low Regulation states.

Our index is different, in that it’s primary purpose is to facilitate more rigorous analysis by academics of home school laws across the states. It is more precise than these other rankings, because we explicitly consider the different rankings possible within each state, known as their options. For example, although 30 states have only one option under which families can home

⁷ <http://www.hslda.org/laws/default.asp>

⁸ Personal communication with Brian D. Ray, President, National Home Education Research Institute, February 2007.

school, ten states have two options, six states have three options, three states have four options, and one state has five options. And the range of requirements can vary considerably within states, Alaska's options range in our ranking from virtually unrestricted to very restrictive, for one example. As our ranking system matures, we believe it will serve the growing home schooling community by more clearly communicating the regulatory regime into which potential home schoolers may qualify. In many states, for example, not all home schooling options are available to all parents who wish to home school; the options under which parents can opt to home school hinges, in many cases, on the educational attainment of the parents. Parents with a high school diploma may be forced into a home schooling option that entails more oversight by their local school board than parents in the same locality with a college degree. Rankings such as HSLDA's don't take these differences into account.

At the same time, we believe SHELI can serve other groups seeking to influence the home education policy debates in their states, whether they desire more stringent or more lenient regulations. For all these groups, we believe that our ranking of states that include the ease with which parents can enter into home schooling, the ongoing burden for parents to maintain the home schooling enterprise, and an overall ranking for each state provides richer and more useful information than the other systems.

The original source for the state laws was the "legal analysis" produced for each state by HSLDA, a summary of each state's laws, available on the group's website. HSLDA organizes the state's requirements according to a consistent and comparable set of categories, which facilitated our coding process. This was preferred to the organization of the National Home Education Network's legal summary for the states (available at www.nhen.org/leginfo/state_list.asp), which organizes state laws by statute number or simply provides links to respective state law websites. We believe HSLDA to be a credible source of legal information, because their organization acts as legal counsel and representation for each of their member families should a conflict arise with a local school or social service agency; the

group thus has a vested interest in and obligation to providing to its members accurate information.

Based upon the content of the HSLDA summaries, we coded each state according to its own requirements, by option. An example of one of HSLDA's documents for Pennsylvania is shown in Appendix A. The range of requirements that comprise SHEL I are shown in Table 2, and are grouped by our own assessment of each requirement's place in the home education regulatory regime in each state. For each kind of requirement we considered the relative burden the requirement represents as we assigned a numeric value to the requirement. We took a relatively conservative approach, generally using increments of one or two "points" for a requirement, even though different requirements may actually entail a greater magnitude of actual burden on parents. For example, in the Reporting and Monitoring category, the requirement to report the results of standardized tests is scored as one point, as is the requirement of submitting a portfolio of a student's work over the course of a year, even though the actual process of portfolio construction and submission is much more time consuming than making a copy of standardized test results and mailing it. The burdens are clearly not equal, but each requirement receives the same value in SHEL I. The maintenance index itself, then is best considered to be a measure of the number of requirements imposed by a state, rather than a measure of the actual reporting burden for parents in that state.

< Table 2 about here >

We classify home school regulation into two major dimensions: those we consider to be *barriers to entry* into home schooling, and those we consider part of the *ongoing maintenance* of a family's home schooling process. The two types of the home school barriers to entry are related to beginning home schooling: Notification and Registration, and Teacher Qualifications. The components of the SHEL I-Notification ranking include the requirements for notifying local or state school officials of the parents' decision to home school, the frequency of such notification or registration, the content of this notification, and whether the overseeing entity must approve of the application. While some of these requirements are mutually exclusive (such

as a giving a one-time notice and giving an annual notice), others may be cumulative (such as a state requiring an annual notice, second-party approval, and curriculum submission).

The teacher qualification requirements vary by state and by options within states. Some states make no statement about teacher qualifications for home education; most, however, make some requirement. These are naturally orderable, from simply requiring the teacher to be the parent, legal guardian, or to have that person designate another person, to the teacher having to be certified or licensed to teach in the state's public schools. In addition to the legal status or education requirement of the teacher, some states require that the teacher be supervised by a licensed teacher; the degree of such monitoring varies, with some states only requiring annual reviews, while others require monthly contact.

The ongoing maintenance, monitoring, and reporting of home school activities is the second dimension of state home school regulations. The first type of regulation in this dimension is the state's attendance requirement, based on the number of years of mandatory attendance required of all children in the state, and the number of days of school required in each academic year. The second type of requirement is related to the actual academic element of the home education enterprise, and includes requiring a specific set of subject to be taught, and requiring a specific set of assessments for measuring student progress. Sixteen states make no explicit statement about subjects required to be taught, but usually simply state something like Montana's instruction that the home education include the same "basic instructional program" as the public school system. Nine states require up to six specific subjects, eleven states require seven through 11 subjects, and 14 states require 12 or more subjects. In terms of assessing student progress, some states' options require no assessments, others require standardized testing annually or in specific grades, and some states require the assessments to be conducted by an external assessment expert. Finally, the third type of maintenance relates to requirements for parents to report various aspects of their home education program to the state or other education authority. Some state options require no reporting whatsoever; others require

extensive reporting, including such elements as attendance registers, curriculum plans, testing results, portfolio submissions, and immunization records.

State SHELI Scores

Tables 3, 4, and 5 present each state's SHELI value for barriers to entry, ongoing maintenance, and total index scores, respectively. The order in which each state's options are presented is based on the order in which they are listed in the HSLDA legal analyses, which themselves are often based on states' own classifications; they are not in any particular order of time of enactment or severity in the states' views. The states vary quite a bit in the height of the barriers to entry they impose on parents desiring to home school; many states have options that include no requirements in terms of either notice or the educational qualifications of the person teaching home-schooled children (scoring zero on SHELI-Entry), while others have options with very high barriers (scores of five or higher). Moreover, many states vary in the severity of the entry requirements across their options, such as California, Colorado, Michigan, Tennessee, and Virginia.

< Tables 3, 4, and 5 About here >

Similarly, the states vary widely in their maintenance requirements, both across and within states and their options, shown in Table 4. Four out of five of Alaska's options have no requirements, while its fifth option scores a seven on SHELI-Maintenance; similar variation is seen across the options in Florida, while Louisiana, North Dakota, and South Carolina all have options that vary by six points. Looking at Table 5 the total SHELI scores (the sum of SHELI-Entry and SHELI-Maintenance for each option) also vary comparably.

Because many states vary so widely in the extent of their requirements, the rest of the paper's analysis will largely compare all states on two bases: each state's lowest-scoring option and highest-scoring option. Thus, the lowest-scoring options analyses will include all states with one home schooling option, plus the lowest-scoring option of the states with multiple options. The highest-scoring analyses will include all states with one home schooling option, plus the

highest scoring option of the states with multiple options. Another analytic alternative would be to analyze the average SHELl score for each state's options, but the substantive distinctions between options within and across the states seems to preclude comparability of such an approach.

Figure 1 shows the distributions of the states across the observed levels of SHELl scores. Part A shows that 14 states offer an home schooling option with a score of zero for their lowest entry requirements, and for six states zero is the highest home schooling SHELl-Entry score. While the range of the two sets of SHELl scores is the same, 37 states offer at least one home school option of two or less, 24 states also have more severe options. The mean for the lowest SHELl-Entry scores is 1.86 (standard deviation of 1.87), and the mean for the highest scores is 3.08 (s.d. of 2.34). Figure 1 Part B shows a fairly uniform set of requirements for maintaining a home school across the states and their respective options. The mean SHELl-Maintenance score among the lowest home school options is 2.58 (s.d. of 1.88), while among the highest home school options offered the mean is 4.88 (s.d. 2.46). The states that offer the most severe home school maintenance regimes (with SHELl scores more than two standard deviations above the mean) are Hawaii, Louisiana, New York, and South Carolina. The states offering at least one option with absolutely no requirements are Alaska, Florida, and Idaho.

Finally, Figure 1 Part 3 shows the distribution of states in terms of their total SHELl scores, the overall measure of home school restrictiveness. The mean total score for states' lowest options is 5.56 (s.d. of 3.10), and for their highest options is 7.74 (s.d. of 3.84). The states with the most permissive home schooling options (at least one option scoring two or lower on SHELl-Total) are Alaska, Arizona, Idaho, Michigan, Tennessee, and Texas. The states with the most severe regimes are Minnesota, New York, North Dakota, and Ohio. The existence of such wide variation within and across the states prompts the core research question of this paper: What characteristics of states account for these variations? In the next question we discuss our methods for approaching this question and analyze the determinants of variation in state home school regulation.

Data Analysis

We have three key dependent variables in our analysis of home school regulation. First, we are interested in the determinants of the barriers to entry to home schooling. Second, we are interested in the determinants of the maintenance and reporting requirements when parents home school their children. Third, we believe that combining the different measures of these dimensions of home school regulation, we can ascertain the determinants of states' overall regulatory burden on parents who elect to home school. For each dependent variable, we analyze both the easiest option and hardest option SHELI scores. In this way we are not restricted to analyzing a single regulatory regime for home schooling, but assess the two extremes of the regimes for each state.

For the state level data we use in the statistical estimates below, we attempted to identify data that coincide most closely with the year in which each state passed its home school statute. For the 16 states that do not have a home schooling statute, we were unsuccessful in pinpointing a single year in which particular authorities were established; we thus apply data for the midpoint of the modern home school statute legislative flurry, 1990. This is obviously is not optimal, and in future iterations we hope to come up with a better solution. Most of the statewide data was obtained from the website of the State Politics and Policy Data Resources (www.ipsr.ku.edu/SPPQ/datasets.shtml). Excluded from this analysis are the three states for which the core home education authorities were enacted well before this time period, Oklahoma (1904), Nevada (1956) and Utah (1957).

We hypothesize three major sets of factors that will influence state home schooling regulations. First, we believe that laws fundamentally reflect the political characteristics of states, thus we take into account two political variables. Because of the home schooling movement's strong affiliation with Christian and other ideological conservatives we expect that more Republican states will produce more homeschool-friendly options for home education. We use the mean Republican vote for president in the elections of 1980, 1988, 1992, and 1996 (we

exclude 1984 because the lopsided nature of Reagan's victory certainly overstates the "Republican-ness" of states). We also include a dummy variable for whether states passed Religious Freedom Restoration Acts; it seems most likely that these statutes would reflect more homeschool-friendly political environs, and thus lower SHEL I scores. Alternatively, states with RFRAs may implement them in lieu of specific home school statutes (RFRAs are heavily favored by home school advocacy groups like HSLDA), thus permitting more restrictive home school options to remain on the books.⁹

We also believe that a state's dominant education regime will be an important factor that influences all education regulation, including home school rules. We have four measures of states' educational environment. First, we hypothesize that the overall state environment vis-à-vis educational choice, though varying over time, will be related to home school regulation. It seems reasonable that states that are more amenable to a wider range of education options in the education market will also produce home school laws that are less restrictive. To measure states' orientation toward education choice we adapt Greene's (2000) Education Freedom Index. Greene's weighted index for the late 1990s measures the extent of educational flexibility in states based on the availability of charter school options, the availability of government assisted private school options such as vouchers, the ease with which one can home school, the ease with which one can choose a different public school district by relocating; and the ease with which one can send a child to a different public school district without changing residence. We eliminated the home school portion of his measure, leaving an index that measures a state's overall flexibility in public school options aside from home education. We expect that states that

⁹ Three important potential political independent variables are not considered here. First, we were hoping to control for teachers union membership and their state legislative campaign contributions (or both), but were not able to track that data down in time for inclusion. We also discovered too late for inclusion the SPPQ dataset on partisan composition of state governments, and will take this critical factor into account in the next version of this paper. Finally, we assessed the democratic representativeness of state politics during this time period using Kim Hill's (1994) 1980-86 democratization measure, which takes into account partisan competition and political participation, but this measure's inclusion introduced substantial multicollinearity into our regression models, and was dropped from the final equations presented here.

exhibit greater educational “freedom” (as Greene characterizes it) will produce less restrictive home school regulations.¹⁰

Continuing with variables measuring states’ educational orientation, we control for per-pupil spending on education as a measure of the resources states devote to public education. We have no clear expectation as to the relationship between this measure and home school regulation. Higher per-pupil spending may reflect greater commitment to public education generally, or may predict a willingness to permit parents more freedom so that more money can be devoted to public education. Parents receive no tax benefit from home schooling their children, and may be considered the opposite of education free-riders, in that they pay taxes for services they do not use. We consider whether the general level of education spending equity across state school districts may reflect a state’s overall orientation toward education policy. Finally, we control for education spending as a percentage of each state’s Gross State Product and the percentage of state populations with a high school diploma. Our last set of independent variables are controls for socio-demographic characteristics of states that seem plausibly related to education policy making. These include per capita income, unemployment rate, racial character (percent African-American), percent of women in the labor force (since mothers are the predominant teachers of home-schooled children), and the state’s divorce rate.¹¹

Results

Table 6 presents the results of OLS regression equations that estimate the effects of the independent variables on state SHELI-Entry scores, the barriers to entry into home education for parents in each state. The first set of column entries are the coefficients for the states’ options with the lowest SHELI score, and the second set are those for the states’ options with the

¹⁰ Another potential predictor of more restrictive home school maintenance might be low barriers to entry. States that make it easy to start home schooling might want to regulate the ongoing enterprise more heavily, or those that raise high barriers to home schooling may slack off on maintenance and monitoring requirements. This turns out to not be the case, however; SHELI-Entry scores are positively and significantly correlated with SHELI-Maintenance scores.

¹¹ One important social grouping that we don’t consider at this time is the strength of the Christian Conservative movement in each state. Although the home schooling movement is closely, though not uniformly, related to the Christian Right, we were not able to acquire a sufficiently reliable variable measuring its strength at the state level in time for this paper.

highest SHELI score. Neither of the political variables in equations attain statistical significance, but the measures for states' education regimes reveal some interesting patterns. First, in both equations states' Education Freedom Index scores were positive and highly significant. Interestingly, the results suggest that the more free states are in terms of their public education system, the higher their barriers to entry to home schooling. While counter to our expectations, perhaps legislatures that provide multiple options for conventional areas of school choice (charter schools, flexibility in changing schools) have no compunction about making it harder for families to exit the public school system.

< Table 6 about here >

The other measures of education regime provide mixed results. In the first equation (for low SHELI-Entry scores, higher per pupil expenditures predict higher barriers to entry, as does education spending equity in the second equation; education spending as a percentage of Gross State Product is negatively associated with barriers to entry. The first two results suggest that states will erect higher barriers to home schooling when they are also committing higher levels of resources to primary and secondary students, and are committed to educational equity. The third result is less straightforward; it appears that states committing higher levels of aggregate-level spending to education demonstrate a propensity for making it easier for people to exit the system; the reverse may make more sense – that states with a lower resource commitment to education will make it more difficult for people to leave the public school system, perhaps in an effort to boost the federal education funding for which they qualify. Among states' socio-demographic characteristics, per capita income is negatively related to home school barriers, consistent with others' results showing a positive relationship between families' socioeconomic status and their propensity for choosing to home school. States with higher unemployment rates also have lower barriers to homeschooling, while increasing levels of women in state labor forces also lower barriers to home schooling.

Table 7 shows the effects of our independent variables on the requirements for maintaining home schools and reporting to state education authorities the results of the

families' home education programs. In the first equation (for states' lowest SHELl-Maintenance scores), the more Republican states tend to impose fewer requirements on home schoolers. In the highest score equation, per pupil spending is again positively associated, and education spending (as a proportion of GSP) is again negatively associated with home education requirements. States with higher per capita and unemployment rates again have less restrictive home school maintenance regimes. Finally, higher divorce rates predict lower maintenance requirements; perhaps states with more divorces also have more single-mother families, and since mothers tend to be the main educator in home schooled families, these states may be more amenable to alleviating the maintenance burden.

Table 8 shows the results for the overall SHELl scores for states' home schooling entry and maintenance requirements. In the lowest option equation, Republican states tend to produce more home-school friendly regulations, while states that have greater flexibility in their overall education environment (measured by the Education Freedom Index) produce more restrictive home school regulations. Higher per pupil spending increases home school requirements, as does states' levels of education equity across school districts. Again, however we see that greater education spending as a percentage of GSP is negatively associated with state home schooling requirements. Wealthier states and those with higher unemployment also produce lower home education requisites, as do states with higher divorce rates.

Conclusions and Areas for Future Research

This analysis has shown that the fifty United States have produced a variegated set of home school regulations. States vary widely in the extent of their regulations, and the twenty states that offer multiple options for home schooling vary widely in the relative difficulty of those options. The State Home Education Law Index we developed for this paper measures this diversity of approaches to regulating who home schools and monitoring those who choose to do so, and provides a more flexible tool for analyzing them than the ranking systems used by other home school researchers and advocacy groups.

The statistical analysis of the SHELI-Entry and -Maintenance measures reflected our first efforts at explaining why states produced this multiplicity of home school regulatory regimes. Our analysis produced some interesting, and at times counterintuitive results. On the predictable side of thing, states that exhibited greater levels of support for Republican presidential candidates produced less restrictive home schooling regulations, especially in the area of maintaining and reporting to higher education authorities. We also found that states with generally greater commitment to public schools (measured by per pupil expenditures and education spending equity across school districts) produced home school regulations that were more restrictive and demanding. We find a negative relationship between education spending as a percent of state economic productivity (GSP) and home schooling restrictions; the explanation for this pattern that occurs very consistently across our equations is not clear to us, however. Finally, and ironically, the measure of states' educational "freedom" also produced more onerous restrictions for home schooling families, especially in terms of the barriers to entry to home schooling. Apparently educational freedom in the states means education freedom within the confines of the public education system, and not for those who desire to exit that system. An alternative interpretation is that earlier home school laws (enacted in the 1980s and early 1990s) that were more restrictive created an environment that injected more freedom into the later public education regime.

There are several avenues for further research that are clearly apropos in light of this analysis. Most importantly, our lack of a measure of the partisan control of the institutions of government at the time the home school statutes were passed is glaring. We also hope to acquire state-level measures of teachers' unions, especially regarding their membership levels and campaign contributions to state legislators. Analysis with practical application based on the SHELI system would include identifying the home schooling options available to parents with differing educational levels. Careful examination and comparison of the severity of monitoring regimes for less-educated versus better-educated parents is one clear example. We are also intrigued by the relationship between education spending and home school regulations, and its

implications for our understanding about states' commitment to public education and education choice.

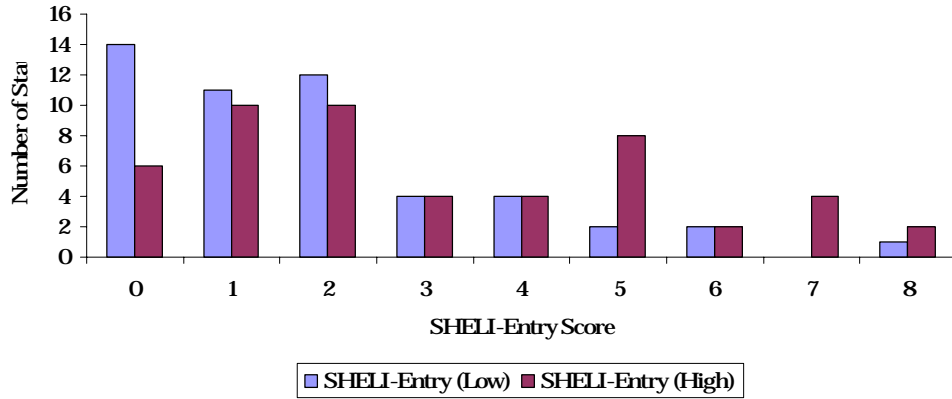
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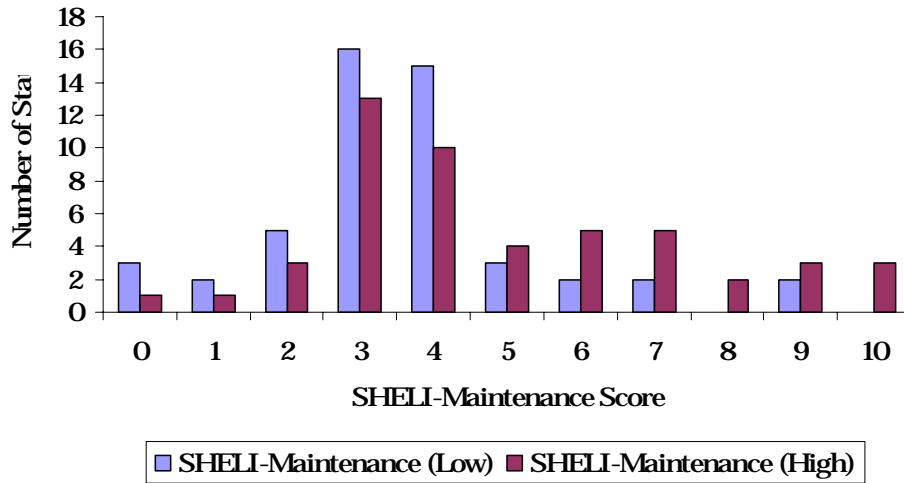
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Figure 1. Distributions of States by SHELI-Entry, -Maintenance, and -Total Scores, by Highest and Lowest Scoring Option in Each State.

A. Distribution of State SHELI-Entry Scores



B. Distribution of State SHELI-Maintenance Scores



C. Distribution of State SHELI-Total Scores

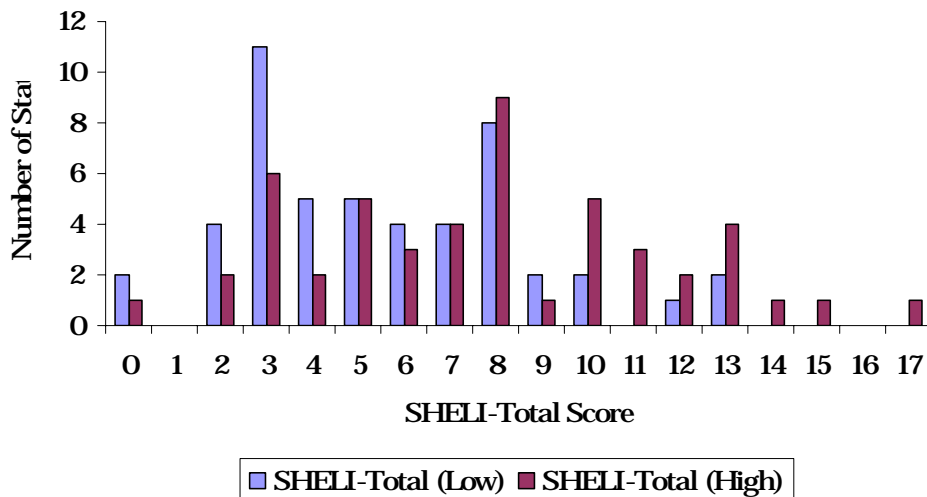


Table 1: Type of Legal Authorities Governing Home Schooling

Legal Authority	Frequency	States
Home School Statute Only	16	AR, AZ, DE, MD, MN, MO, MS, MT, NC, NH, NM, NV, PA, SC, VT, WI
Public and/or Private Education Statute	7	AL, CA, ID, IN, KS, NJ, SD
Combination of HS Statute and Other Statute(s) and/or Admin Guidance ^a	20	AK, CO, FL, HI, IA, LA, ME, MI, ND, NY, OH, OK, ^a OR, RI, TN, UT, VA, WA, WV, WY
Administrative Guidelines from State Board of Education	1	CT
Statute (a home school statute in the case of Georgia) significantly modified by other state authority	6	GA: 1986 Op. Att'y. Gen. No. U86-19 IL: <i>People v. Levisen</i> , 404 Ill. 574, 90 N.E.2d 213 (1950) KY: <i>Kentucky State Board for Elementary & Secondary Education v. Rudasill</i> , 589 S.W.2d 877 (Ky. 1979) MA: <i>Care and Protection of Charles</i> , 399 Mass. 324, 333-34, 504 N.E.2d 592, 598-99 (1987); and <i>Brunelle v. Lynn Public Schools</i> , 428 Mass. 512, 702 N.E.2d 1182 (1998) NE: Rules 12 and 13 TX: <i>Leeper v. Arlington Indep. School Dist.</i> , No. 17-88761-85 Tarrant County 17th Judicial Ct. Apr. 13, 1987)

^a Oklahoma does not have a home school statute, but instead has an amendment to the state constitution guaranteeing the right to home school, which was added in 1904.

Sources: Home School Legal Defense Association (2006) *Home Schooling: A Legal Analysis* (<http://www.hslda.org/laws/default.asp>) and National Home Education Network (2007) www.nhen.org/leginfo/state_list.asp)

Table 2. Components of the State Home Education Law Index (SHELI).

Barriers to Entry to Home Schooling

<u>Regulation Type</u>	<u>SHELI Category</u>	<u>Kinds of Requirements^a</u>	<u>SHELI Points^b</u>
Notification and/or Registration	SHELI-Notification	No notification or registration required	0
		One-Time notice	1
		Annual notice or application	2
		Curriculum Submission	1
		Second-party recommendation	1
		Approval of oversight entity required	1
Teacher Qualifications	SHELI-Teacher	No teacher qualification specified	0
		Parent or legal guardian	1
		“Competent” teacher	2
		High school diploma or GED	3
		Bachelor’s degree	4
		Certified teacher	5
Supervision by licensed teacher	1		

Barriers to Entry: SHELI-Entry (Sum of SHELI-Notification and SHELI-Teacher)

Ongoing Maintenance, Monitoring, and Reporting of Home Schooling

<u>Regulation Type</u>	<u>SHELI Category</u>	<u>Kinds of Requirements^a</u>	<u>SHELI Points^b</u>
Attendance	SHELI-Attendance	9-10 years of schooling required	0
		11-12 years of schooling required	1
		13 years of schooling required	2
		No attendance requirement specified	0
		Any days per year required (range is 148-185 days)	1
Assessments and Required Subjects	SHELI-Assessment	No subjects specified	0
		1-6 subjects required	1
		7-11 subjects required	2
		12 or more subjects required	3
		No assessments specified	0
		Standardized Testing, in specified grades, but not annually	1
		Standardized Testing, annually	2
Assessment must be conducted by external expert	1		
Reporting	SHELI-Reporting	No academic reporting required	0
		Attendance Register	1
		Curriculum Plan (additional to that in SHELI-Notification)	1
		Standardized Test results, reported for specified grades, but not annually	1
		Standardized Test results, reported annually	1
		Portfolio submission or other annual progress report	1
		Immunizations (the only nonacademic reporting requirement)	1

Ongoing Maintenance Burden: SHELI-Maintenance (Sum of SHELI-Attendance, SHELI-Assessment, and SHELI-Reporting)

Table 2 (continued). Components of the State Home Education Law Index (SHELI).

<i>Overall SHELI Ranking</i>	<i>SHELI- Total</i>	Sum of SHELI-Entry and SHELI-Maintenance
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Sources: Home School Legal Defense Association (2006) *Home Schooling: A Legal Analysis* (<http://www.hslda.org/laws/default.asp>) and National Home Education Network (2007) www.nhen.org/leginfo/state_list.asp)

^a Kinds of requirements are mutually exclusive and additive, except where bracketed.

^b Point values are cumulative, thus states with more requirements accumulate more points.

Table 3. State Home Education Law Index Scores for Entry (SHELI-Entry), by state and option

<u>State</u>	<u>Option 1</u>	<u>Option 2</u>	<u>Option 3</u>	<u>Option 4</u>	<u>Option 5</u>
AL	2	6			
AK	2	0	0	1	2
AR	2				
AZ	1				
CA	4	5	0	4	
CO	3	0	5		
CT	1				
DE	3	2	7		
FL	2	5	3		
GA	5				
HI	2	0			
IA	2				
ID	0				
IL	0				
IN	0				
KS	3	3			
KY	1				
LA	3	0			
MA	2				
MD	1	1	1		
ME	2	5			
MI	0	7			
MN	8				
MO	1				
MS	1				
MT	2				
NC	4				
ND	7	6			
NE	2				
NH	3				
NJ	0				
NM	5				
NV	3				
NY	4				
OH	6	8			
OK	0				
OR	1				
PA	6	5	6	3	
RI	1				
SC	4	4	4		
SD	1				
TN	5	4	0		
TX	0				
UT	2				
VA	7	2	6	0	
VT	2				
WA	4	4			
WI	2				
WV	1	5			
WY	1				

Table 4. State Home Education Law Index Scores for Maintenance (SHELI- Maintenance), by state and option

<u>State</u>	<u>Option 1</u>	<u>Option 2</u>	<u>Option 3</u>	<u>Option 4</u>	<u>Option 5</u>
AL	1	4			
AK	0	0	0	0	7
AR	3				
AZ	1				
CA	4	3	3	4	
CO	7	3	3		
CT	7				
DE	4	4	4		
FL	6	3	0		
GA	3				
HI	9	9			
IA	4				
ID	0				
IL	3				
IN	3				
KS	4	4			
KY	4				
LA	10	4			
MA	6				
MD	6	3	3		
ME	8	4			
MI	2	3			
MN	5				
MO	3				
MS	2				
MT	4				
NC	4				
ND	10	4			
NE	5				
NH	7				
NJ	3				
NM	3				
NV	4				
NY	9				
OH	9	4			
OK	3				
OR	3				
PA	7	7	4	4	
RI	5				
SC	10	4	7		
SD	4				
TN	6	5	2		
TX	2				
UT	3				
VA	5	3	3	3	
VT	6				
WA	8	4			
WI	3				
WV	3	3			
WY	2				

Table 5. Total State Home Education Law Index Scores (SHELI- Total), by state and option

<u>State</u>	<u>Option 1</u>	<u>Option 2</u>	<u>Option 3</u>	<u>Option 4</u>	<u>Option 5</u>
AL	3	10			
AK	2	0	0	1	9
AR	5				
AZ	2				
CA	8	8	3	8	
CO	10	3	8		
CT	8				
DE	7	6	11		
FL	8	8	3		
GA	8				
HI	11	9			
IA	6				
ID	0				
IL	3				
IN	3				
KS	7	7			
KY	5				
LA	13	4			
MA	8				
MD	7	4	4		
ME	10	9			
MI	2	10			
MN	13				
MO	4				
MS	3				
MT	6				
NC	8				
ND	17	10			
NE	7				
NH	10				
NJ	3				
NM	8				
NV	7				
NY	13				
OH	15	12			
OK	3				
OR	4				
PA	13	12	10	7	
RI	6				
SC	14	8	11		
SD	5				
TN	11	9	2		
TX	2				
UT	5				
VA	12	5	9	3	
VT	8				
WA	12	8			
WI	5				
WV	4	8			
WY	3				

Table 6. Determinants of SHELI-Entry Scores (Lowest and Highest State Values), OLS Regression

Independent Variables	State's Lowest Option			States' Highest Option		
	B	(se)	β	B	(se)	β
Mean Republican Pres Vote, 1980-96	-0.03	0.07	-0.08	0.02	0.08	0.03
Religious Freedom Restoration Act	-0.16	0.73	-0.04	-0.95	0.90	-0.18
Education Freedom Index	2.00	0.61	0.53 ***	2.07	0.76	0.44 ***
Per Pupil Spending (1,000)	0.57	0.32	0.46 *	0.36	0.39	0.23
Education Spending Equity	0.06	0.04	0.26	0.13	0.05	0.44 **
Educ Spending as % of GSP	-0.71	0.49	-0.27	-1.32	0.61	-0.39 **
Pct of State Adults with High School Diploma	-0.01	0.08	-0.04	-0.05	0.10	-0.11
Per Capita Income (1,000)	-0.38	0.12	-0.86 ***	-0.09	0.14	-0.16
Unemployment Rate	-0.45	0.19	-0.50 **	-0.31	0.23	-0.28
Est. African-American Population	-0.02	0.05	-0.08	-0.06	0.06	-0.22
Women in Labor Force (%)	-0.03	0.07	-0.08	-0.19	0.08	-0.42 **
Divorce Rate (per 1,000)	-0.12	0.28	-0.09	-0.21	0.35	-0.13
Constant	5.91	8.95		9.74	11.11	
Adjusted R ²		0.142			0.165	
Number of Cases		47			47	

* = $p \leq .10$; ** = $p \leq .05$; *** = $p \leq .01$

Table 7. Determinants of SHELl-Maintenance Scores (Lowest and Highest State Values), OLS Regression

Independent Variables	State's Lowest Option			States' Highest Option		
	B	(se)	β	B	(se)	β
Mean Republican Pres Vote, 1980-96	-0.12	0.05	-0.31 **	-0.01	0.09	-0.03
Religious Freedom Restoration Act	-0.63	0.60	-0.15	-0.22	0.95	-0.04
Education Freedom Index	-0.45	0.51	-0.12	-0.12	0.80	-0.03
Per Pupil Spending (1,000)	0.22	0.26	0.17	0.86	0.42	0.53 **
Education Spending Equity	0.02	0.04	0.08	0.05	0.06	0.17
Educ Spending as % of GSP	-0.49	0.41	-0.18	-1.27	0.65	-0.37 *
Pct of State Adults with High School Diploma	-0.06	0.07	-0.17	0.00	0.10	0.00
Per Capita Income (1,000)	-0.06	0.10	-0.13	-0.33	0.15	-0.59 **
Unemployment Rate	-0.36	0.16	-0.40 **	-0.39	0.25	-0.33
Est. African-American Population	-0.07	0.04	-0.33	-0.03	0.07	-0.12
Women in Labor Force (%)	-0.03	0.06	-0.09	-0.06	0.09	-0.13
Divorce Rate (per 1,000)	-0.46	0.23	-0.35 *	-0.72	0.37	-0.42 *
Constant	21.63	7.39	***	16.80	11.75	
Adjusted R ²		0.419			0.132	
Number of Cases		47			47	

* = $p \leq .10$; ** = $p \leq .05$; *** = $p \leq .01$

Table 8. Determinants of Total SHELI Scores (Lowest and Highest State Values), OLS Regression

Independent Variables	State's Lowest Option				States' Highest Option			
	B	(se)	β		B	(se)	β	
Mean Republican Pres Vote, 1980-96	-0.16	0.10	-0.27	*	0.02	0.13	0.03	
Religious Freedom Restoration Act	-0.94	1.07	-0.13		-0.98	1.45	-0.11	
Education Freedom Index	1.81	0.91	0.29	**	1.64	1.22	0.21	
Per Pupil Spending (1,000)	0.84	0.47	0.41	*	1.25	0.63	0.49	*
Education Spending Equity	0.08	0.07	0.21		0.19	0.09	0.39	**
Educ Spending as % of GSP	-1.17	0.73	-0.27		-2.57	0.99	-0.47	***
Pct of State Adults with High School Diploma	-0.08	0.12	-0.14		-0.06	0.16	-0.09	
Per Capita Income (1,000)	-0.46	0.17	-0.64	***	-0.42	0.23	-0.47	*
Unemployment Rate	-0.91	0.28	-0.61	***	-0.59	0.37	-0.32	
Est. African-American Population	-0.09	0.08	-0.26		-0.09	0.10	-0.22	
Women in Labor Force (%)	-0.08	0.10	-0.14		-0.22	0.14	-0.30	
Divorce Rate (per 1,000)	-0.49	0.42	-0.23		-1.06	0.56	-0.40	*
Constant	29.27	13.24		**	25.06	17.86		
Adjusted R ²		0.315				0.182		
Number of Cases		47				47		

* = $p \leq .10$; ** = $p \leq .05$; *** = $p \leq .01$

PENNSYLVANIA

- Compulsory Attendance Ages:** from the time the child enters school, “which shall not be later than the age of eight (8) years, until the age of seventeen (17) years.” Purdon’s Pennsylvania Statutes Annotated, title 24, § 13-1327.
- Required Days of Instruction:** 180 days UUUUor 900 hours at the elementary level; 180 days or 990 hours at the secondary level. Pa. Stat. Ann. tit. 24, § 13-1327.1(c).
- Required Subjects:**
1. Elementary level: English, to include spelling, reading, and writing; arithmetic; history of Pennsylvania and United States; civics; health and physiology; physical education; music; art; geography; science; and safety education, including regular and continuous instruction in the danger and prevention of fires.
 2. Secondary level: 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. § 13-1327.1(c)(1)-(2).

Parents have four options to teach their children at home:

Option I: Home School Statute. Pa. Stat. Ann. tit. 24, § 13-1327.1 (SB 154; passed December 1988).

1. Parent/supervisor must file a notarized affidavit with the local superintendent prior to the commencement of the home education program and annually by August 1 thereafter. The affidavit must include:
 - a. the name of the parent/supervisor, name and age of children, address, and telephone number;
 - b. assurance that subjects are taught in English;
 - c. “outline of proposed education objectives by subject area”;
 - d. evidence of immunization;
 - e. receipt of health and medical services required by law;
 - f. that the home education program will comply with § 13-1327.1; and

- g. a certification that the supervisor, all adults living within the home, and persons having legal custody of the children have not been convicted of certain criminal offenses within the past five years.

The affidavit “shall be satisfactory evidence” of compliance with the law. § 13-1327.1(b)(1). “The required outline of proposed education objectives shall not be utilized by the superintendent in determining if the home education program is out of compliance.” § 13-1327.1(b)(1).

2. Any student who has been identified under the federal Individuals with Disabilities Education Act (IDEA) as needing special education services (excluding those identified as gifted and/or talented) must have his home education program approved by a state-certified special education teacher or a licensed clinical or school psychologist. The written approval must be submitted with the notarized affidavit.
3. Parent/supervisor must annually maintain and provide the superintendent with “certain documentation. This is due by June 30th:”
 - a. a portfolio of records and materials. This includes a “log ... which designates reading materials used, samples of any writing, work sheets, workbooks or creative materials used by the student.” § 13-1327.1(e)(1);
 - b. “An annual written evaluation of the student’s educational progress” by (1) a licensed psychologist (2) or, a teacher certified by the state, (3) or a non/public school teacher or administrator (who must have at least two years teaching experience in the last ten years in public or nonpublic schools). The evaluation shall be based on an interview and review of the portfolio and “it shall certify whether or not an appropriate education is occurring.” § 13-1327.1(e)(2);

According to *Stobaugh v. Wallace*, 757 F.Supp. 653 at 656 (W.D. Pa. 1990), the Federal District Court ruled in favor of HSLDA and held that a superintendent cannot “arbitrarily choose to flout state law” by requesting to see the portfolio mid-year when he has no evidence of non-compliance.

4. If the superintendent determines an appropriate education is not taking place, the parent/supervisor has 20 days to submit additional documentation. If there is still a problem, the family has a right of appeal to an impartial hearing examiner and then to the Secretary of Education or the court.
5. “A home education program shall not be considered a nonpublic school under the provisions of this Act.” § 13-1327.1(b).

Note: The previous statute to the one above which required the parent to be “properly qualified” and the curriculum “satisfactory” was ruled unconstitutionally vague in a civil rights case brought by HSLDA, *Jeffery v. O’Donnell*, 702 F.Supp. 516 (M.D. PA 1988). The Federal District Court stated: “...the threat to sensitive First Amendment freedoms mandates judicial intrusion in the form of declaring the particular provision of the law [as applied to home schools] unconstitutional for vagueness.” 702 F.Supp. 521. The Court further commented: “...when First Amendment rights are effected by the enforcement of a statute, the state law will be held to a higher standard of specificity than might be the case if purely economic

regulation was at issue.” 702 F.Supp. 519. The Court also placed an injunction on defendant-school districts from prosecuting home schoolers.

In an earlier decision in the same case on September 29, 1988, the Court stated that “parents have a substantial constitutional right to direct and control the upbringing and development of their minor children.” *Jeffery v. O’Donnell*, 702 F.Supp. 513, 515 (1988).

Alternative Statutes Allowing Home Instruction:

Option II: Private Tutor. Parents may teach their children at home if they qualify as a “properly qualified private tutor.” This is defined as “a person who is certified by the Commonwealth of Pennsylvania to teach in the public schools of Pennsylvania; who is teaching one or more children who are members of a single family; who provides the majority of the instruction to such child or children; and who is receiving a fee or other consideration for such instructional services.” The private tutor must file a copy of their Pennsylvania certification and the required criminal history record with the student’s district of residence superintendent. 24 P.S. § 13-1327(a).

Option III: Day School/Church School. Parents may teach their children at home if the home is an extension or satellite of a religious day school. Since the law simply states a child must be “enrolled,” parents may “enroll” their child in a religious day school, but teach them at home. According to § 13-1327(b), such a day school must do the following:

1. “A child enrolled in a day school which is operated by a bona fide church or other religious body, and the parent, guardian or other person having control or charge of any such child or children of compulsory school age shall be deemed to have met the requirements of this section if that school provides 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 of instruction at the secondary level and:
 - a. At the elementary school level, the following courses are taught: English, to include spelling, reading and writing; arithmetic; science; geography; history of the United States and Pennsylvania; civics; safety education, including regular and continuous instruction in the dangers and prevention of fires; health and physiology; physical education; music; and art.
 - b. At the secondary school level, the following courses are offered: English, to include language, literature, speech and composition; science, to include biology and chemistry; geography; social studies, to include civics, economics, world history, history of the United States and Pennsylvania; a foreign language; mathematics to include general mathematics and statistics, algebra and geometry; art; music; physical education; health and physiology; and safety education, including regular and continuous instruction in the dangers and preventions of fires.”
2. “The notarized affidavit of the principal of any such school, filed with the Department of Education and setting forth that such subjects are offered in the English language in such school, whether it is a nonprofit organization, and that such school is otherwise in compliance with the provisions of this act, *shall be satisfactory and sufficient evidence thereof.*”

3. "It is the policy of the Commonwealth to preserve the primary right and the obligation of the parent or parents, or person or persons in loco parentis to a child, to choose the education and training for such child. Nothing contained in this act shall empower the Commonwealth, any of its officers, agencies or subdivisions to approve the course content, faculty, staff or disciplinary requirements of any religious school referred to in this section without the consent of said school." 24 P.S. § 13-1327(b)(2).
4. Day schools are required to furnish to the local school districts a list of the names and residence of all children between six and 18 years of age enrolled in the school. This information must be provided at the time of admission of the children to the school. Day schools are also required to report the name and date of withdrawal of any student who is still of compulsory attendance age. Additionally, day schools are supposed to report any child who has been absent from school for three days without lawful excuse. 24 P.S. § 13-1332.

Groups of home schoolers could organize a school under the auspices of their church. An administrator could be chosen to keep records, the teachers would be the parents, and the school campus would be divided up into each home.

Option IV: Pennsylvania Religious Freedom Protection Act (RFPA), 71 P.S. 2401, et. se q. As a result of the restrictive home education statute, some homeschoolers have successfully invoked the RFPA, demonstrating a substantial burden on the free exercise of their religious beliefs.

Teacher Qualifications: Parent/supervisor must have a high school diploma or its equivalent if students are not enrolled in a day school. § 13-1327.1(a).

Standardized Tests: Students not enrolled in a day school must be tested with a nationally normed standardized test for grades 3, 5, 8 and the results submitted with an annual portfolio. Tests shall not be administered by the child's parent or guardian. § 13-1327.1(e)(1). MAP testing is not required (see *Stobaugh*, p. 656).

Religious Freedom Protection Act: 71 P.S. 2401, et. seq.

The Religious Freedom Protection Act (RFPA), passed with the help of HSLDA members, gives religious home schoolers another legal means to protect their right to home school. If the parents' free exercise of religion is substantially burdened by having to comply with the homeschool law, the parents may use the RFPA as a defense or file suit against the state. Under this statute, the burden is on the state to prove that its requirement "furthers a compelling state interest" and is the "least restrictive means" of fulfilling its interest that children be educated. This Act restores the highest protection of the individual's right to freely exercise his religious beliefs taken away by the U.S. Supreme Court in its 1997 *City of Boerne* decision. 520 U.S. 507.