All in: A Proposal for Uniform Homeschool Access to Public School Extracurriculars in Texas and Similar "Half-way" States

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ALL IN: A PROPOSAL FOR UNIFORM HOMESCHOOL ACCESS TO PUBLIC SCHOOL EXTRACURRICULARS IN TEXAS AND SIMILAR “HALF-WAY” STATES

ABSTRACT

Texas and other “half-way” states lag behind the majority of states in providing extracurricular access for all students in their districts. Most states provide equal access to sports and other public school extracurriculars for all students, including homeschool students. Conversely, “half-way” states leave the choice of homeschool participation with each school district, not families. In Texas, only thirty-five of over 1,200 total school districts have provided equal access for homeschool students to public school extracurriculars like sports, one-act plays, and musical competitions. Texas and other “half-way” states do not truly provide equal access for homeschool students.

The Texas Legislature and other “half-way” states should ensure all homeschool students have access to public school extracurriculars to promote certainty and predictability in the law, complete the goal of equal access, and increase accountability for homeschool students and parents. Under this Comment’s proposal of an “all in” law, school districts must provide homeschool students with the opportunity to participate in public school extracurriculars, subject to caveats of passing a standardized test and meeting eligibility requirements public school students must meet. Schools’ opportunities to educate students will increase, the exchange of ideas between students will grow, and homeschool students will benefit, especially those in rural and low-income families.

The topic of homeschool access to public school extracurriculars has taken on new significance considering the increased number of homeschool students in the wake of the COVID pandemic. This Comment is the first to specifically address the “half-way” position Texas and other states have taken, which leaves homeschool students’ access to public school extracurriculars up to individual public-school districts. Additionally, this Comment provides an updated overview of the changing state laws regarding homeschool access to public school extracurriculars across the fifty states.

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I. INTRODUCTION

Are schools for children, or are children for the schools? Is the purpose of schools to educate and positively impact children, or are children equivalent to cogs in a wheel to promote the school apparatus? Texas Governor, Rick Perry, addressed this question succinctly: “Every child is entitled to a public education, but the public schools are not entitled to every child.” The core purpose of all schools is to educate students in a variety of areas. Sports and other extracurricular activities are a vital part of students’ education. Imagine a ninth-grade student, named Taylor, who lives near Spur, Texas. He enjoys spending time with his three siblings, helping his dad out on the family ranch and running on the rural roads near his home. Taylor is bright, hopeful, and athletic. His parents contribute to the local community, pay property taxes that fund Spur public schools, and volunteer at their church in Spur. Taylor wants to join the track and field team at Spur High School to run long distance events. He is academically proficient and meets all eligibility requirements that Spur High School requires of their student-athletes.

Even so, Taylor is barred from joining the Spur High School track team. Why this jarring result? Taylor is a homeschool student, and Spur Independent School District (“ISD”) has not opted in to allow homeschool students to participate in their University

3. See Albach v. Odle, 531 F.2d 983, 985 (10th Cir. 1976).
Interscholastic League ("UIL") activities. If Taylor lived in a district that opted in like Cotton Center or Abilene, Taylor could join the public-school track and field team. However, Spur ISD does not provide homeschool students with access to its athletic teams, and Taylor has no access to a homeschool sports team since he lives in a rural area.

This is just one example of the problem that thousands of students face across Texas and other "half-way" states. Access to public school extracurriculars, like track and field, is unequal in Texas. Most homeschool students are completely banned from public school extracurriculars. Texas lags behind the nation in providing equal access to public school extracurriculars for all students in their districts, including homeschool students. Recognizing this, the Texas Legislature passed House Bill 547 in 2021 to promote equal access to UIL-sponsored activities for all students. However, only thirty-five of over 1,200 total school districts across Texas have provided the equal access House Bill 547 offers.

Current Texas law ultimately fails to provide equal access for all homeschool students. Other states like Rhode Island and Indiana have similar "half-way" laws. Thus, the Texas Legislature (and other similar state legislatures) should amend their laws to ensure equal access to public school extracurriculars for all homeschool students across their state—regardless of school board preference—to promote equality, certainty, and accountability. This Comment describes why an "all in" law is beneficial and considers how it should be drafted.

This Comment is the first to address the "half-way" position Texas and other states have taken. This "half-way" position leaves homeschool students' access to public school extracurriculars up to each public school district. This Comment is also the first to focus on Texas homeschool access to public school extracurriculars, which has taken on new significance in the light of the recent COVID pandemic and the increased number of homeschool students nationwide. Additionally, this Comment provides an updated overview of the changing state laws regarding homeschool access to public school extracurriculars across the fifty states.

Part II of this Comment overviews the history of homeschool participation in public school extracurriculars in Texas and other states. It includes a brief discussion of courts' treatment of homeschooling and its legality. Next, it provides an overview of the

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5. See TEX. EDUC. CODE § 33.0832.
6. See id.
8. TEX. EDUC. CODE § 33.0832.
10. See id.
12. See infra Part III (proposing an "all in" law).
13. TEX. EDUC. CODE § 33.0832.
15. See infra Section II.E (describing the types of state laws addressing homeschool access to public school extracurriculars).
16. See infra Part II (summarizing state laws and court cases regarding homeschool access to public school extracurriculars).
17. See infra Section II.B (discussing Leeper and Yoder).
various state laws: those that require extracurricular access for all homeschool students, those that take a “half-way” position, and those that deny all access to homeschool students. The balance of this Comment contends that the law in Texas and other “half-way” states should be amended to create “all in” laws for legal and public policy reasons. Part III shows that, legally, this Comment’s proposal is more certain, predictable, and equal for all. Part IV advocates an “all in” law is effective public policy because it provides taxation equality and opportunities for low-income and rural homeschool students who would not otherwise have any opportunities. An “all in” law furthers schools’ goals of education through increasing accountability for homeschool students, promoting health, and improving social skills. Similarly, with sufficient funding and safeguards against abuse, homeschool access will lead to continued benefits for students as it is implemented.

II. THE HISTORY OF HOMESCHOOLING IN TEXAS AND HOMESCHOOL ACCESS TO PUBLIC SCHOOL EXTRACURRICULARS

In the last forty years, homeschooling has massively increased in popularity as an alternative to public and private education. Legal battles have abounded over rights to homeschool, parental rights, and homeschool students’ access to public school extracurriculars. Largely, courts have neither prohibited homeschooling, nor recognized constitutional rights to homeschool or equal access to extracurriculars. Instead, the battle has been left to state legislatures, which have taken varying approaches.

A. Proliferation of Homeschooling, Remaining Lack of Opportunities

In Texas alone, hundreds of thousands of homeschool students lack access to sports and other public school extracurriculars. Conservative estimates state at least 750,000 homeschool students live in the state of Texas in over 400,000 homeschooling families. The national numbers are much larger and grew exponentially during the COVID pandemic to almost 3.8 million homeschool students. As the pandemic subsided, the number of homeschool students shrank in 2022 to approximately 3.1 million homeschool students in the United States, but still includes, significantly, five percent of all students.

18. See infra Section II.E (describing the three main variations of state law on homeschool access to public school extracurriculars).
19. See infra Parts III and IV (expounding on the legal and public policy benefits of an “all in” law).
20. See infra Part III (analyzing the legal benefits of full access for homeschool students in “half-way” states).
21. See infra Section IV.A (explaining the equality of opportunity offered by an “all in” law).
22. See infra Sections IV.B–C (showing how accountability and educational opportunities are supported by homeschool access to public school extracurriculars).
23. See infra Sections IV.D–E (summarizing how safeguards against abuse may promote healthy community, as it has in Abilene for example).
25. See, e.g., Wisconsin v. Yoder, 406 U.S. 205 (1972) (addressing an Amish family desiring to educate at home, ruling in favor of the Amish family).
27. See infra Section II.E (describing the variations of state law on homeschool access to public school extracurriculars).
school-age children. The number of homeschool students remains notably larger than pre-COVID numbers, which shows a continued trend of growth in homeschooling.

Despite the growth of homeschooling, many homeschool students in Texas and across the nation have limited access to extracurricular activities, especially those in rural and low-income homeschooling families. Most homeschool students lack formal built-in music, arts, sports, and other extracurricular opportunities. Though in many instances homeschool parents can seek out these opportunities, it can be exceptionally difficult for low-income or rural families.

B. Constitutional Claims, Leeper, and Homeschooling in Texas

No direct judicial authority determines whether a constitutional right to homeschool exists. In Wisconsin v. Yoder, for example, the Supreme Court held that an Amish family had a right to homeschool for religious reasons, but this right does not likely extend beyond the specific facts of that case. Though no case directly recognizes a right to homeschool, the Court has recognized a balance: parental rights are fundamental, but the state likewise has a right to require compulsory attendance of some form of education.

In the 1990s, the Texas Supreme Court unanimously held in Tex. Educ. Agency v. Leeper that homeschool was equivalent to private school as far as legal status in Texas, and thus homeschool families were exempt from compulsory attendance laws. There is not necessarily a constitutional right to homeschool, but homeschooling is valid in Texas. All fifty states recognize homeschooling as valid, with varying restrictions and regulations.

Homeschooling families in Texas have a great deal of freedom in how they educate their children, subject to the requirement to provide bona fide instruction with visual curriculum in the basic subjects.

C. Pre-2021 University Interscholastic League (“UIL”) Access for Homeschool Students

Though the right to homeschool is unquestioned in Texas today, the debate over access to public school extracurriculars remains tense. In Texas, UIL provides extracurricular academic, athletic, and music competitions through public schools. Originally, in 1917, the UIL rules allowed for private schools (including homeschooled as defined by Leeper) to participate in UIL activities. However, in 1921, the UIL rules were changed,

30. Id.
31. See id.
33. See id; Debra K. Kellstedt et al., Youth Sport Participation and Physical Activity in Rural Communities, 79 Archives Pub. Health 1, 7 (2021).
34. Hamilton, supra note 27, at 55.
38. See Leeper, 893 S.W.2d at 443–44.
40. See A Boom in Homeschooling (in Texas and the U.S.), supra note 14.
42. E. D. Shurter, The University Interscholastic League Constitution and Rules for County, District
denying private schools (and thus also homeschool students under *Leeper*) the chance to participate in UIL activities. Homeschool students remained excluded from the UIL for a century. Ultimately, in each state, legislative action has been necessary to provide any homeschool students access to public school extracurriculars because courts have denied a constitutional right to this access. For example, the Supreme Court of Montana in *Kaptein* denied homeschool students the right to public school extracurriculars, holding the government had a legitimate interest in integrating academics and extracurriculars. “Tebow” laws, named after famous former homeschool student and quarterback Tim Tebow, provide access to public school extracurriculars like football for homeschool students. These “Tebow” bills, otherwise known as Equal Access bills, have been the legislative response to courts’ decisions that do not require homeschool access. Starting in the 1990s, variations of “Tebow” bills began to pass in states around the country, such as Florida, Washington, and Oregon.

In Texas, a “Tebow” bill was first introduced in 2013 but did not succeed for nearly ten years. The bill succeeded in passing the Texas Senate multiple times before 2021 but failed in the House of Representatives Public Education Committee. As a result of these bills’ failure, homeschool students in Texas remained totally banned from UIL activities, even as over thirty other states across the United States provided them at least some access to public school extracurriculars.

### D. Recent Texas Legislation Authorizing Homeschool Participation

The Texas Legislature first debated homeschool equal access in 2013. However, legislation was not passed until 2021, when House Bill 547 became law. This law, along with an amendment passed in 2023, transferred the decision of homeschool access from the UIL to school districts, with encouragement from the state to school districts to provide access.

#### i. H.B. 547—Authorization

In 2021, the Texas Legislature passed a bill authorizing public school districts to allow homeschool students (called non-enrolled students in the bill) to participate in UIL...
activities. The bill was originally written and introduced as a mandatory bill, requiring school districts to allow all homeschool students in their district to participate in UIL activities.

However, this version of the bill did not gain enough votes to advance beyond the House Public Education Committee.

The bill that eventually passed the Texas Legislature authorized, but did not mandate, school districts to allow homeschool students to participate.

During the floor debate over House Bill 547, representatives limited the bill to UIL activities and discussed safeguards to prevent students from dropping out of public school just to play sports.

Supporters of the bill pointed to the opportunities it would provide for homeschool students in Texas to participate in their favorite sports and activities.

These supporters also pointed to the benefit for rural homeschool students who may not have other opportunities to participate, as well as the safeguards of academic standards for homeschool students.

Critics of the bill focused on possible imbalances between public school students and homeschool students who opted out of public education and would not have to meet all public-school standards to participate.

Others criticized the bill for inviting extra regulation of homeschooling. Ultimately, the bill passed the Texas Legislature as a permissive law, allowing each school district the choice of whether to include homeschool students.

Legislators limited the bill to non-enrolled students, defined elsewhere in the Code as a homeschool student, “who predominantly receives instruction in a general elementary or secondary education program that is provided by the parent, or a person standing in parental authority, in or through the child's home.” The bill carefully maintained the Texas caselaw on homeschooling from Leeper and limited government regulation of homeschooling in Texas.

Additionally, the bill made clear that participating homeschool students are subject to the same relevant policies as public school students regarding age, registration, fees, insurance, transportation, physical condition, vaccinations, qualifications, responsibilities, event schedules, standards of behavior, and performance.

The law included safeguards to discourage students dropping out of school to still play sports, requirements of residency in the applicable district to participate, and academic standards homeschool students must meet before participation. Finally, the law clearly left the decision in school districts’ hands whether to allow homeschool students to participate.

59. Id.; TEX. EDUC. CODE § 33.0832.
62. Id.
63. Id.
64. Id.
66. TEX. EDUC. CODE § 29.916(a)(1).
67. TEX. EDUC. CODE § 33.0832(b), (k), (l).
68. TEX. EDUC. CODE § 33.0832(d), (m).
69. TEX. EDUC. CODE § 33.0832(e), (f), (h), (i).
70. TEX. EDUC. CODE § 33.0832(c).
ii. 2023—New Incentives, Slow Implementation

In the 2023 legislative session, Texas passed two bills relating to and supporting House Bill 547. The first of these was House Bill 699, which required UIL to treat opted-in schools the same as other schools for classification purposes. Consequently, districts could not be artificially increased in size and forced to reclassify upward because they allowed homeschool students to play. For example, if Abilene Wylie chose to allow homeschool students to participate in their UIL activities, UIL could not reclassify them upward from 5A Div. II to 5A Div. I based on counting homeschool students as part of their enrollment.

The second bill that passed in 2023, House Bill 3708 (codified at Tex. Educ. Code § 48.305) incentivized schools to allow homeschool students to play in their district through monetary payments to schools. Specifically, House Bill 3708 created an allotment of $1,500 per homeschool student per activity for each school that opted to allow homeschool participation. A committee report on this bill noted that allowing homeschool students to participate benefitted students through the educational enrichment of UIL activities and benefitted schools by offering “their services to more students in their community.” The purpose of the bill was to “support districts in expanding their UIL programs to include home-schooled students by providing [extra funding for the schools].”

After House Bill 547 passed in 2021, about twenty Texas school districts opted in to allow homeschool access. Since 2021 and the passage of the further incentives in 2023, another fifteen school districts have also opted in to allow homeschool students in their districts to participate in UIL activities. Thus, the total number of Texas school districts allowing homeschool participation in UIL activities is thirty-five districts as of 2023. Less than three percent of Texas’s school districts have opted in to House Bill 547. Thus, ninety-seven percent of Texas’s school districts deny access to UIL activities for homeschool students in their district.

[73. Id.]
[75. TEX. EDUC. CODE § 48.305; H.B. 3708, 88th Leg., Reg. Sess. (Tex. 2023).]
[76. TEX. EDUC. CODE § 48.305; H.B. 3708, 88th Leg., Reg. Sess. (Tex. 2023).]
[78. Id.]
[80. See 2023-2024 Homeschool Participation, supra note 4.]
[81. Id.]
[83. See id.; 2023-2024 Homeschool Participation, supra note 4.
[84. See id.]}
E. Updated State Categories—Homeschool Students and Public School Extracurriculars

Across the United States, state legislatures have taken three main approaches regarding homeschool student access to public school extracurriculars. These three approaches include requiring homeschool access, permitting homeschool access based on school district choice, and denying all homeschool access. The overall trend of the states has leaned toward providing more extracurricular access for homeschool students.

i. “All In” States

A growing number of states require all school districts to allow homeschool students to participate in public school extracurriculars through “all in” laws. For example, Oregon has mandated that public school boards allow homeschool students to participate in public school activities for decades—beginning in 1991. Oregon law states, “[a] school district may not deny a . . . homeschooled student . . . the opportunity to participate in all interscholastic activities available in the school district within the attendance boundaries in which the . . . homeschooled student . . . resides” as long as the student follows school policy and academic standards.

Montana is another “all in” state, which recently began allowing homeschool students to participate. Originally, under Kaptein, Montana did not allow non-enrolled athletes to participate in public school extracurriculars; thus, it belonged to the third category of states denying access. However, in 2021, the state legislature changed this statutorily, now requiring that public school districts allow homeschool students in their district to participate in extracurriculars. One major impetus behind the bill was a desire to support children in rural communities who had no other access to extracurricular activities.

South Dakota, Kansas, and other states have increasingly joined this category in recent years, often through incremental legislation. Until 2021, South Dakota left the ultimate choice with school districts whether to allow homeschool students to participate. In 2021, the South Dakota legislature took the next step and required that school districts allow homeschool students to participate, leaving the choice with homeschooling families.

South Dakota, Kansas, and other states have increasingly joined this category in recent years, often through incremental legislation. Until 2021, South Dakota left the ultimate choice with school districts whether to allow homeschool students to participate. In 2021, the South Dakota legislature took the next step and required that school districts allow homeschool students to participate, leaving the choice with homeschooling families.
ii. “Half-way” States

“Half-way” states generally allow extracurricular participation to some homeschool students, but only with the approval of the local public school district. The regulations and laws vary in these states, but the ultimate choice of whether to allow homeschool access to extracurriculars lies with the school district, not the student.96 Texas is an example of such a “half-way” state, leaving the decision in the power of each school district.97 School districts may allow homeschool student access, or they may deny it.98

A handful of other states fall into this “half-way” category. For example, Rhode Island’s Department of Education leaves the decision of extracurricular opportunities for its homeschool students up to local school committees.99 The Rhode Island Commissioner of Education encourages schools to allow homeschool participation, but the choice is ultimately the individual schools’.100 This framework is remarkably similar in effect when compared to Texas’s.101

Another variation of the “half-way” position allows homeschool students to participate in public school extracurriculars only if they enroll part-time at the local public school. For example, in Indiana, homeschool students may participate only if they are, “[e]nrolled in and attending a minimum of One (1) full credit subject offered within the member School building.”102 This limits homeschool participation to homeschool students who are willing to homeschool only part-time.103 Beyond Texas, Rhode Island, and Indiana, a few other states fall into the “half-way” category of allowing incomplete homeschool access to public school extracurriculars.104 All of these states provide significant power to schools and very little to no choice of participation to homeschooling families.

iii. No Access States

In addition to the “all in” and “half-way” approaches, some states still deny all homeschool students any access to public school extracurriculars. This third position used to contain the majority of states but has since shrunk to a small minority.105 Connecticut is an example of a state that still outright bans homeschool students from participating in public school interscholastic athletics through the Connecticut Interscholastic Athletic Conference (“CIAC”).106 The CIAC handbook student eligibility rules state, “[e]ligibility to participate in interscholastic athletics is not to be extended to any student whose program is not under the direct supervision of a CIAC member school.”107 This prohibition emphatically excludes all homeschool students since homeschool students are not under the direct supervision of CIAC schools.108

96. See, e.g., TEX. EDUC. CODE § 33.0832 (leaving the decision of allowing homeschool student access with each school).
97. Id.
98. Id.
100. Id.
101. See TEX. EDUC. CODE § 33.0832.
103. See id.
105. See Can Homeschool Students Play Public School Sports?, supra note 7 (listing thirty-nine states allowing at least some access, leaving only eleven states in the third category denying all homeschool access).
106. CONN. INTERSCHOLASTIC ATHLETIC CONF., CIAC 2023-2024 HANDBOOK 204 (2023).
107. Id.
108. Id.
California technically allows homeschool students to participate in public school extracurriculars if they enroll in an independent study program, but this restriction basically outlaws traditional homeschool students from participating.\(^{109}\) To qualify for an independent study program in California, the curriculum must be adopted by the school board; the teaching staff from the public school must teach, test, and grade the student; and the local school board must accept the student’s registration.\(^{110}\) The student cannot be taught by their parent, graded by their parent, or even learn from curriculum chosen by the parent to qualify for extracurriculars.\(^{111}\) These heavy requirements virtually require the homeschool student to stop homeschooling to participate, in effect banning homeschool participation.\(^{112}\)

Texas was in this third category of banning homeschool participation in public school extracurriculars until 2021.\(^{113}\) When Texas passed House Bill 547, allowing some homeschool access in 2021, only fourteen states remained in this no homeschool access category.\(^{114}\) Since then, that number has shrunk to only ten states left after the change of laws in states like Montana and Kansas.\(^{115}\) Most of these remaining states denying all homeschool access are on the east coast, with California being an exception.\(^{116}\) Thus, the states denying all homeschool students all access to public school extracurriculars are now in the minority position.\(^{117}\)

### III. THE TEXAS LEGISLATURE (AND OTHER “HALF-WAY” STATES) SHOULD AMEND THEIR LAWS TO ENSURE ALL HOMESCHOOL STUDENTS HAVE ACCESS TO PUBLIC SCHOOL EXTRACURRICULARS

The Texas “half-way” law is a small step that provides some homeschool students access to public school extracurriculars based on school district choice, but this legislation fails to provide equal access to UIL activities for all homeschool students.\(^{118}\) Many homeschool students remain completely banned from participating in public school extracurriculars by the local school district, even when no other options exist.\(^{119}\) The school district has a choice, but homeschool students do not.\(^{120}\)

The Texas Legislature (and other “half-way” states) should amend their laws to ensure equal access to public school extracurriculars for all homeschool students—regardless of school district preference—to promote equality, certainty, and accountability.\(^{121}\) This Comment proposes a small amendment to Texas law that will have a massive impact on Texas homeschool students. The proposal changes the word “may” to “must,” thus

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110. Id.
111. Id.
112. See id.
113. See SHURTER, supra note 44, at 14.
116. Id.
117. See id.
118. TEX. EDUC. CODE § 33.0832. This Article focuses on UIL activities since they are directly under the Texas state government’s control through the Commissioner of Education and Texas Education Agency. Administration and Committees, UNIV. INTERSCHOLASTIC LEAGUE, https://www.uiltexas.org/about/administration (last visited Mar. 18, 2024). A plethora of other extracurricular activities, such as FFA, are not under Texas state control, and thus are not addressed in this Article. See Constitution, Bylaws and Federal Charter, FUTURE FARMERS OF AMERICA, https://wwwffa.org/constitution-bylaws/ (last visited Mar. 18, 2024).
119. See TEX. EDUC. CODE § 33.0832.
120. Id.
121. See infra Parts III and IV (expounding on the legal and public policy benefits of an “all in” law).
changing Texas Education Code 33.0832(c) from permissive to mandatory. The statute should be amended to read:

Except as provided by Subsection (i), a public school that participates in an activity sponsored by the league must provide a non-enrolled student, who otherwise meets league eligibility standards to represent that school in a league activity, with the opportunity to participate in the activity on behalf of the school in the same manner that the school provides the opportunity to participate to students enrolled in the school.

Additionally, states who progress from a “half-way” approach to an “all in” law should codify statutory safeguards against abuse of athletic competition rules. Stipends or the ability to impose necessary fees should be provided to schools as they provide access to homeschool students, so that public schools are not burdened financially. Additionally, some form of academic, age, physical, and school policy standards should be maintained for homeschool students, so they gain no unfair advantage. Finally, “all in” laws should specify that no increased regulation of the academic programs of homeschooling families will occur. If these provisions are present, homeschool students should be granted the opportunity to participate in the public school extracurriculars their families pay for and are prepared to support.

This amendment and accompanying provisions are necessary to ensure all homeschool students in Texas have a chance to participate in extracurriculars, not just some homeschool students. Other states in a “half-way” position of leaving the choice up to school districts on homeschool access should also pass “all in” laws to ensure all students have equal opportunity for the benefits of potentially life-changing extracurricular activities. First, this Comment describes the legal improvements achieved by an “all in” law: completing the legislature’s goal of equality, creating certainty in the law, finishing the incremental steps already taken, and following the example of other states’ successful statutes.

A. Legislative Goal is Equal Access, yet Equal Access Remains Elusive.

The original goal of House Bill 547 in 2021 was to create an opportunity for equal access to extracurricular activities like athletics, theater, music, and academic competitions for homeschool students in Texas. The bill author’s statement of intent stated, “[House Bill] 547 seeks to give home-schooled students who are eligible to participate in UIL activities the option to participate in UIL activities in their local school district.” The statement also specifically related the need for this access for homeschooling families of “limited economic means” and those in rural areas who did not have access to other options.
for extracurriculars.\textsuperscript{130} The Texas Legislature pursued this goal of equality by passing House Bill 547, and Governor Abbot quickly signed it into law.\textsuperscript{131}

Equal access is a noble goal; however, as evidenced by only a small number of school districts allowing homeschool students to participate, the goal has not been realized.\textsuperscript{132} Since House Bill 547 passed in 2021, the total number of Texas school districts allowing homeschool participation in UIL activities has grown to thirty-five.\textsuperscript{133} This growth allows more homeschooling families to participate in the same extracurricular opportunities as their public school counterparts.\textsuperscript{134} However, when compared to the more than 1,200 total Independent School Districts in Texas, thirty-five districts is negligible.\textsuperscript{135} Less than three percent of Texas’s School Districts have opted in, leaving the legislature’s goal of equal opportunity for homeschool students incomplete.\textsuperscript{136} Most Texas homeschool students still have no choice or chance to participate.\textsuperscript{137}

Legislative action will be necessary to fix this discrepancy between the legislative goal and reality, since most school districts in Texas seem hesitant to opt in and provide equal access.\textsuperscript{138} Wichita Falls ISD, for example, denied homeschool access during the 2020-2021 school year by a 4-3 vote.\textsuperscript{139} Though the recently passed monetary incentive may inspire a few more school districts to allow UIL access to homeschool students, the number of these districts will likely remain low.\textsuperscript{140} The Texas Legislature desired to give all students equal opportunities for extracurriculars, which provide students socialization, chances for college scholarships, and the joy of playing sports; however, they failed to provide true equal access.\textsuperscript{141} The Texas Legislature should act to fulfill their original, noble policy goal of equality of access for all Texas students by amending Texas Education Code 33.0832 to be mandatory, and not simply permissive, in providing equal access.

\textbf{B. Certainty of Law—Completing the Patchwork}

Currently, each classification, county, and school district in Texas can and does have completely different rules for homeschool participation based on school district preference.\textsuperscript{142} Students who move to a neighboring county or school district could lose their opportunity to participate.\textsuperscript{143} For example, if a homeschool student moved from Abilene just down the road to Sweetwater, they would go from full access to UIL activities to no access at all.\textsuperscript{144}

This patchwork of discrepant school board policy creates uncertainty and confusion. An entire Facebook post full of 168 comments expressing confusion poignantly

\textsuperscript{130} Id.
\textsuperscript{131} Over 600 New Laws Go Into Effect Today in State of Texas, supra note 57.
\textsuperscript{132} See 2023-2024 Homeschool Participation, supra note 4.
\textsuperscript{133} See id.
\textsuperscript{134} See id.
\textsuperscript{135} Texas School Districts by Region, supra note 83.
\textsuperscript{136} See 2023-2024 Homeschool Participation, supra note 4.
\textsuperscript{137} Id.
\textsuperscript{138} See id. (thirty five schools compared to over 1,200 schools begs the question: “Why else would there be such little participation?”).
\textsuperscript{139} Choate, supra note 80.
\textsuperscript{140} See TEX. EDUC. CODE § 48.305(b).
\textsuperscript{141} See Can Homeschool Students Play Public School Sports?, supra note 7; Senate Rsch. Ctr., Bill Analysis, Tex. H.B. 547, supra note 129.
\textsuperscript{142} See TEX. EDUC. CODE § 33.0832 (“may provide” offers school districts free reign in deciding how to regulate non-enrolled students).
\textsuperscript{143} See id.
\textsuperscript{144} See 2023-2024 Homeschool Participation, supra note 4.
displays the real confusion of Texas families. Even the UIL website recognizes the questions and confusion that the “half-way” bill brought, as it displays a Frequently Asked Questions page prominently on its website. It contains questions such as, “Does each school district get to decide whether or not to allow homeschool students to participate?”

The answer: Yes. The existence of this question and numerous others evinces the real confusion.

Texas (and similar states leaving the choice of homeschool access up to each school district) should adopt a uniform law to create certainty and predictability for all school boards and homeschool students. Currently, the Texas law only works for homeschooling families in thirty-five school districts, but the simple amendment to the law proposed above would make the law work for homeschooling families in over 1,200 districts. Certainty in the law is “a condition indispensable to any well-ordered system of jurisprudence.”

C. The Necessity of Incremental Laws

Incremental implementation of equal access has provided schools in Texas sufficient time to see what effect the changes will cause, so the time is right for taking the final step of providing full equal access to homeschool students. “Tebow” bills were first introduced in Texas in 2013 and have been proposed multiple times over the past decade. This period for debate has allowed Texas administrators and school officials time to consider the effects of this bill. Since 2021, over thirty school districts have opted in to provide equal access for homeschool students, allaying fears of horrifying outcomes. This incremental implementation should continue until the full policy goal has been reached: equal opportunity for homeschool students to participate in UIL activities.

Throughout American history, incremental implementation of laws has often been a necessary and efficient way to gradually move toward a more perfect society. Government often works incrementally in the real world. The next Regular Legislative Session in Texas is in 2025, and a law passed then would be timely to complete the policy goal of equality.

No state has backed away from a “Tebow” bill since it passed such a bill, therefore indicating the lack of negative side-effects of these laws. In fact, many states, like South Dakota, have incrementally moved to an “all in” law that mandates school boards

148. Id.
149. See 2023-2024 Homeschool Participation, supra note 4; Texas School Districts by Region, supra note 83.
152. Bryce, supra note 152.
156. Id.
allow homeschool athletes to participate. Until 2021, the South Dakota version of the “Tebow” bill left the decision of homeschool access up to school boards, similar to the current Texas law. Now, however, the statute is mandatory, ensuring equal access to public school extracurriculars for homeschool students and thus giving students the choice to participate. Incremental application of “Tebow” bills has led to more access for more homeschool students as various states see its successes.

D. Follow Successful State Laboratories—Go “All In.”

Texas lags behind the national curve in providing equal access for homeschool students. Most states now appear to have “all in” laws similar to the one this Comment proposes. As mentioned above, some states like South Dakota moved toward this “all in” approach away from a “half-way” law. Other states like Oregon have had “all in” laws in place for decades. Oregon’s law has been consistent for years, promoting equality, certainty, and the noble goal of educating children. The Texas Legislature should complete the job they started by following the example Oregon set and other states have increasingly joined.

Individual states are often thought of as “laboratories,” and equal access for homeschool students has succeeded in numerous other states, so more “half-way” states like Texas should adopt “all in” laws. For decades, the United States Supreme Court has “recognized the role of the States as laboratories for devising solutions to difficult legal problems.” Here, the laboratories have been operating since the 1990s when early adopter states like Oregon provided equal access to public school sports for homeschool students. The fact that none of these states have retreated from these laws provides powerful support for the success of these laws in the fires of the laboratory. Texas and other “half-way” states ought to take notice of these successes and act accordingly.

As previously noted, this Comment proposes an amendment to Texas Education Code 33.0832(c) to change the word “may” to “must,” thus changing the statute from permissive to mandatory and ensuring equal access to public school extracurriculars for all homeschool students. This small change will complete the legislative goal of equal access for all homeschool students, remedy the confusing patchwork of laws by providing uniformity, and will conform incrementally to the successful model of other states.

163. OR. REV. STAT. § 339.460.
164. See id.
166. OR. REV. STAT. § 339.460.
167. See, e.g., id. (an example of a law that has been on the books and unchanged for decades, which provides homeschool students with access to public school extracurriculars).
168. See TEX. EDUC. CODE § 33.0832(c).
169. See supra Section III.A (describing the legislative goal of H.B. 547 and how it can be completed through an “all in” law); see supra Section III.B (discussing the current law’s allowance of various districts with varying rules, creating a patchwork of homeschool access that confuses many); see supra Sections III.C–D (detailing the necessity of incremental legislation and the successes of other state’s “all in” laws).
IV. HOMESCHOOL ACCESS TO PUBLIC SCHOOL EXTRACURRICULARS

Foster Equality, Accountability, Increased Educational Opportunities, and Increased Revenue

Not only is equal access for homeschool students advantageous for the sake of the law being certain, predictable, and successful in completing its goal; it is also an effective solution for public policy reasons. Equal access, as the name suggests, promotes equality in opportunity and taxation for all, including rural and low-income families. Additionally, an equal access (“all in”) law increases schools’ ability to educate academically, physically, mentally, and socially—even providing schools with more funds. Finally, reasonable safeguards will prevent abuses of “all in” laws in practice.

A. Equality Among Students and Parents

Homeschool and public school students in this country are all citizens or residents of the United States of America, a nation built on equality. Whatever the reason a family has for homeschooling their child, the child should not be excluded from equal involvement in extracurriculars because of their educational background. Homeschool students should be offered equal opportunities in extracurriculars, equal benefits based on their family’s taxation, and equality whether rural or low-income.

i. Flexible Opportunities for Extracurricular Involvement

Many parents homeschool their children for various legitimate reasons, and their children still benefit from activities with other children. Many parents realize this fact, and most do not choose to homeschool because of a desire to isolate their children. Their reasons to homeschool include religious reasons; a desire for non-traditional learning; more flexibility in scheduling; increased one-on-one time with a teacher; the ability to deal with medical issues or care for a child with special needs; concern about the school environment; the ability to provide real-life experiences; and increased family time.

None of these common reasons to homeschool are isolationist in mentality, and each of the fifty states recognizes homeschooling as a valid form of education. Many homeschooling families desire flexibility in education in some form or another. Flexibility in extracurriculars will support homeschooling families who believe homeschooling serves the best interests of their child but isolating them from a public school environment and students does not.

Many parents who homeschool their children want them to be involved in their local community. UIL activities like sports, music, drama, and academic competitions

170. See infra Section IV.A (explaining the equality of opportunity offered by an “all in” law).
171. See infra Sections IV.B–D (laying out the increased accountability and educational opportunities for homeschool students and public schools from an “all in” law).
172. See infra Section IV.E (discussing necessary safeguards for a successful “all in” law).
173. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (“[A]ll men are created equal”).
174. See NAT'L CTR. FOR EDUC. STATS., HOMESCHOOLED CHILDREN AND REASONS FOR HOMESCHOOLING 3 (2022).
175. Id. at 4.
176. Id.
177. Id.
178. See Klicka, supra note 40, at 159.
179. Id., supra note 175, at 4.
180. See id.
are a practical way to promote community unity and bring people from all backgrounds together. One court explained:

The educational process is a broad and comprehensive concept with a variable and indefinite meaning. It is not limited to classroom attendance but includes innumerable separate components, such as participation in athletic activity and membership in school clubs and social groups, which combine to provide an atmosphere of intellectual and moral advancement.

Whatever the reason a parent chooses to homeschool their child, the child should not be punished by exclusion from equal involvement in extracurriculars because of their educational background.

ii. Taxation Equality for Parents

Homeschool parents who own real property pay property taxes, so their tax dollars should be available to benefit their own children, not just public-school children. Local property taxes are the major source of funding for Texas public schools. Other funding for public schools comes from federal and state funds (also paid for through various forms of taxation, including sales tax). The principle seems basic, but it must be stated: You should get what you pay for. For example, American taxpayers pay for roads through gasoline taxes and other general taxes, and they are all offered the opportunity to use the public roads their taxes pay for. Similarly, public school extracurriculars should be available to all taxpayers, since these taxpayers pay equally for these extracurricular activities to occur.

Homeschooling families already save public schools millions of dollars by paying for both their own children’s education and public school education through taxes, so part of the savings should support extracurriculars for homeschool students. For example, in Iowa, by educating children at home, families save the state an estimated $100,000,000 per year. Additionally, it is a myth that all homeschooling families are wealthy. In fact, on average, homeschooling families have similar incomes as public school families and significantly lower incomes than the average private school family. The funding of public schools by homeschooling families, coupled with monetary incentives passed by the Texas Legislature, disposes of any argument that public schools do not have the money to accommodate homeschool students.

183. Albach v. Odle, 531 F.2d 983, 985 (10th Cir. 1976).
184. TEX. TAXPAYERS & RSH. FOUND., *AN INTRODUCTION TO SCHOOL FINANCE IN TEXAS*, 1, 1, 6 (5th ed. 2022).
185. Id. at 1, 6, 8–9.
187. TEX. TAXPAYERS & RSH. FOUND., *supra* note 185, at 1, 6, 8–9.
189. Id.
191. Id.
192. See Dikkers, *supra* note 189; TEX. EDUC. CODE § 48.305(b).
should be available to support homeschool students along with public school students in extracurricular activities.

iii. Rural and Low-Income Homeschool Students

Especially in rural areas, homeschool sports associations largely do not exist, so the only opportunity for rural homeschool students to play sports, participate in theater, or compete in music competitions is through the local public school. There are even more rural homeschool students than urban. Like the above hypothetical example of Taylor (a homeschool student hoping to participate in track but barred from doing so by the local school district), rural students may have no other option for participation besides the public school. House Bill 547 was passed in part to provide access for homeschooling families in rural areas who do not have access to other options for extracurriculars. Rural homeschool students should not be punished; instead, the local public school should be available to support these students.

Additionally, low-income homeschooling families may not be able to afford to participate in a homeschool sports association even if they did live close enough to a homeschool association. Again, the purpose of House Bill 547 was to provide access to homeschooling families of limited economic means, and extracurricular opportunities should be offered to these children. As noted above, homeschooling families do not generally earn higher incomes than public school families, and a full twenty-nine percent of homeschooling families have household incomes below $50,000. Low-income students should not be prohibited from having their equal shot at public school extracurriculars.

B. Accountability for Homeschool Students: Eligibility Requirements

Homeschool access to public school extracurriculars also opens the opportunity for healthy accountability between homeschooling families and public-school administrators. Academic and health prerequisites to participation in extracurriculars will motivate homeschooling families to maintain high standards of care for their children if they want to participate. It will also increase transparency and perhaps break down barriers between public school staff and homeschooling families.

i. Academic Standards

Academic success may seem unrelated to extracurriculars like basketball, but academics are relevant because homeschool students should be required to succeed academically in order to participate in public school extracurriculars. Texas Education Code 33.0832 requires homeschool students who wish to participate to demonstrate grade-level

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193. See Moy, supra note 96, at 32; Kellstedt, supra note 34, at 2.
195. NAT'L CTR. FOR EDUC. STAT., supra note 175.
196. See Kellstedt, supra note 34, at 2.
198. See id.
199. Id.
201. See TEX. EDUC. CODE § 33.0832(d)(6)–(8), (10)–(11).
202. See id. § 33.0832(h).
203. See id. § 33.0832(f).
academic proficiency on a nationally recognized standardized test. The requirement to pass standardized tests within the average range of scores will help ensure more homeschooled students meet academic standards. Seeing test scores for a broader swath of students will enable school administrators to monitor education for a broader range of students in their district. Monitoring homeschool students’ academics is a practical way to ensure homeschool students are not just playing sports all day but are competent in their academic studies. This is practical accountability. Homeschool parents will be responsible for completing and demonstrating the test scores, taking this extra headache away from busy school administrators. Some homeschooling families may balk at standardized testing, but testing will only be required for those who choose to participate in UIL activities.

Physical and Mental Health

Beyond academic accountability, coaches, teachers, and administrators will be able to hold homeschool students accountable in overall health through an “all in” law. Though there is not a large body of research, sadly, instances of child abuse and neglect appear to be at least as common in homeschool students as with other students. Through homeschool access to extracurriculars, public schools will have opportunities to detect some homeschool students who do not have access to proper healthcare or who live in abusive homes. These extracurriculars may mitigate some of the abuse and neglect a minority of homeschool students face.

Additionally, students will need to complete physical exams to play sports, thus requiring medical attention for each student. There is evidence that homeschool students on average have less abdominal and upper body muscular fitness than their counterparts. Greater homeschool participation in athletic competition may lessen this discrepancy and improve homeschool students’ health.

C. School’s Goal: Education of Students

A school’s core goal is to educate students. The Texas Constitution states, “A general diffusion of knowledge [is] essential to the preservation of the liberties and rights of the people.” Education is broad, and it includes academic success, but it is not limited to it. Education also includes physical and mental strength, social skills, and work...
Again, this should be the goal of public schools—to educate children. As Representative Frank said during debate of House Bill 547 on the floor of the Texas House of Representatives, “I really would hope if you’re an educational organization, you’re actually trying to pull more kids to you and educate.” Public schools can meet their goal of education with a broader audience when holding homeschool students to certain standards and allowing them to participate in extracurriculars.

Extracurricular activities are an important area of education. Clearly, participating in athletic competitions improves students’ physical health. The main goal of school sports and extracurriculars is to provide students with an enjoyable experience, teamwork, lessons in hard work, and a well-rounded education. UIL activities teach children to win and to lose, increase their intellectual curiosity, and enhance their health habits. The joy of various extracurriculars should not be stripped from homeschool students who are eligible in every way physically and mentally; they should be provided a chance to participate and be educated, just as their public school counterparts are educated.

A common criticism of homeschool students is their lack of social skills, but such skills will improve if they interact with public school students through various extracurriculars. Even if the social skill failures of homeschool students are overstated (and they may be), their social skills will only increase in breadth while participating in art, theater, and sports with public school students. These cross-educational interactions will also expose many public school students to a wider diversity of thoughts and ideas, benefiting them as well. Sharing different viewpoints on life creates mutual advantages, boosting creativity, critical thinking, and good citizenship. Under an “all in” law, public schools will gain extra opportunities to positively impact and educate more students.

D. Revenue Increase Leading to More Opportunities Through Funding of Educational Programs

Schools desire to educate and positively impact all students, and to reach this goal, adequate funding is necessary. Schools must pay teachers, purchase supplies, purchase and maintain buses, and much more. Nationwide, these costs add up to over $850 billion. In 2023, the Texas Legislature passed House Bill 3708, which provides a $1,500 allotment per student per activity to each school that allows homeschool students to participate in its UIL activities. This stipend will significantly increase schools’ revenue, which can then fund improved educational programs and extracurriculars.
On top of the allotment created by the legislature, ticket sales, team spirit gear sales, and fees will also likely increase if more homeschooling families become involved in extracurriculars. The number of fans at school competitions may increase, upping concession stand sales and boosting fundraisers. All of this increased revenue may be used by schools to improve their educational offerings, leading to increased academic success.

E. Addressing Legitimate Concerns with Careful Solutions Benefitting Public Schools and Homeschool Students Alike

Opponents of access for homeschool students to public school extracurriculars have various concerns, but all of their concerns can be sufficiently addressed with practical solutions. The group against full access includes some administrators and coaches along with a minority of concerned homeschool families worried about government regulation. These people raise many legitimate concerns that must be addressed to make homeschool access a success for everyone: public schools, their students, and homeschool students alike. Below, this Comment briefly tackles a few of these concerns, acknowledging that each state and school will approach the issues differently.

i. Extra Funding for Each Homeschool Participant is Available

One major concern opponents of homeschool equal access cite is a lack of extra funding for homeschool students, but this can be solved through extra stipends like the one Texas has provided legislatively. In Texas, and under this Comment’s proposal, there should be no financial burden on public schools. Rather, because of the extra funding granted to schools as mentioned above, homeschool participants will provide schools with increased revenue. School boards already must meet a plethora of conditions and requirements in Texas, sometimes without additional funding; providing for homeschool access is simply another condition, which does provide the necessary funding. Homeschool students will not pull funding away from public school students; instead, they bring in an additional stipend to support the public school system.

Even in states that cannot provide allotments, the extra revenue from ticket sales, team spirit gear sales, and fees will sufficiently cover any extra costs of providing extracurriculars to homeschool participants. States should allow for reasonable fees, if necessary, to be imposed on homeschool students in the same manner they are imposed on...
public school students to pay for extracurriculars.247 These fees can be tailored to cover the extra cost of each homeschool student participating.248 Additionally, through taxation, homeschooling families already help pay for the entire public school educational system, including public schools’ extracurriculars that their children are not allowed to participate in.249 Sufficient options to fund public school extracurriculars exist through current taxation coupled with fees, where necessary.

The extra funds should also make practical considerations like transportation and maintaining student safety feasible. Schools can make homeschool parents responsible for transporting students to the school at certain times and for other supervision required to participate in a UIL activity, just like public school parents.250 Each extracurricular will vary widely in cost, but costs per pupil are estimated to range from $390 per student in track to $1,300 per student for football—therefore well within a $1,500 stipend.251 Other states looking to move to an “all in” law for homeschool participation should likewise consider allotments to support public schools financially as they welcome in more students for extracurriculars.

ii. Measures Taken to Prevent Abuse: “Practice All Day”

Another legitimate concern many coaches have with homeschool equal access is that homeschool students may gain unfair athletic advantages, but with careful drafting and restrictions, these advantages can be largely eliminated. Some fear homeschool students will abuse the system by practicing more than they “should” or becoming high school “free agents” switching teams at will.252 One author succinctly put it, “home-schoolers should not be allowed to become the ultimate professional free agents.”253 This valid point can be addressed while still allowing homeschool students access to public school extracurriculars.

First, homeschool students will be subject to school policies regarding their extracurricular activity once they choose to participate.254 These include age eligibility, physical condition, event schedules, behavior standards, responsibilities, performance, and other policies.255 Thus, if a homeschool student desired to run track for the local public school, under this Comment’s proposal, he or she would have the right to try out for the team in the same manner as the public school students, but before trying out, he or she would have to meet all school policy requirements.256 For example, if a homeschool student refused to attend practices or his or her behavior was so poor that it warranted punishment, the public school could deny the student access to the activity.257 To promote fairness, only the students who meet all school standards—public school or homeschool students—would be allowed to participate.258

247. See, e.g., TEX. EDUC. CODE § 33.0832(d) (authorizing a fee in Texas for homeschool participants).
248. See id.
249. See TEX. TAXPAYERS & RSCH. FOUND., AN INTRODUCTION TO SCHOOL FINANCE IN TEXAS, supra note 177, at 1.
250. See TEX. EDUC. CODE § 33.0832(d)(8).
253. Id. at 28.
254. TEX. EDUC. CODE § 33.0832(d).
255. Id.
256. See id.
257. Id.
258. See id.
Second, homeschool students must meet academic standards to play (as previously mentioned), so they cannot skip all academic instruction and still expect to participate. At the beginning of the school year, the student must have evidence of a passed standardized test to be eligible. Then, throughout the year, their educator must provide grades to the public school showing the student passing his or her classes, just as public school students must pass their classes. These academic standards should curb concerns of homeschool students skipping out on school to practice a sport full time. Competition may increase in tryouts and for spots on teams, but competition increasing is not necessarily negative. “In fact, competition is a positive aspect of extracurriculars, promoting hard work.”

Additionally, in Texas, homeschool students may only participate for the public school in the district they live in; no “free agency” will be allowed. Even in states allowing school choice, measures to prevent “free agency” among homeschool students for extracurriculars are important to avoid even a remote appearance of impropriety. Thus, homeschool students should be permitted to participate in extracurriculars in their home district and attendance zone only.

Current Texas law also protects against public school students dropping out of public school just to keep playing sports; if they do so, they will have to sit out an entire year. These safeguards will effectively protect the integrity of high school sports in Texas and other states that adopt such measures. Abuse of the rules is always possible, even within public schools, but common-sense safeguards limit negative effects as much as can reasonably be expected.

iii. Cohesiveness of Teams Remains

Opponents to homeschool equal access often argue that team chemistry and cohesiveness of public-school teams will suffer if homeschool students play with them, but blended teams appear to have strong cohesiveness. First, opponents to homeschool equal access are often concerned that homeschool students may take roster spots away from public school students. This may create animosity between the public-school students and homeschool students. Additionally, homeschool students will not physically be in classes with their public-school teammates every day, leading to possible concerns of poor team cohesiveness. However, the lack of cohesiveness argument has little to no factual support; public school teams in Oregon have included homeschool students since 1991 without reports of failed cohesiveness.
Likewise, a Texas school that opted in to homeschool participation in 2021, Abilene Wylie, has noticed only positive effects as participants seem to get along well, regardless of where they learn. In fact, Superintendent Joey Light said, “[t]he kids embraced each other.” Certainly, competition exists in every sport, so some students, whether homeschool or public school, may get cut. However, equality in tryouts and opportunities is a noble goal, which does not destroy team cohesiveness.

iv. Balance—No Government Overreach

Some homeschool families worry equal access for homeschool students will create more scrutiny and government regulation of homeschooling families, but this fear is unfounded. No law has been proposed that would increase homeschool regulation in Texas, and other states that have passed “all in” bills have not seen greater regulation of homeschooling as a result. In fact, some states with equal access laws have even lessened homeschool regulation. No homeschool student will be forced to participate in any UIL activity, just as no public school student is forced by the government to participate. If an “all in” law passes, each homeschooling family will simply be free to make their own choice.

Safeguards in the Texas statute also ensure that homeschool regulation will not increase because of the equal access bill. Texas Education Code 33.0832 specifically references Leeper, which classified homeschool as a private school in Texas, and states that it remains the law. It also specifically states that regulation of homeschooling will not change, saying, “[w]ith respect to a non-enrolled student’s education program, nothing in this section shall be construed to permit . . . any . . . governmental body to exercise control . . . over a non-enrolled student or a parent . . . beyond the control, regulatory authority, or supervision required to participate in a league activity.” These provisions write into law a powerful protection for homeschool families worried about further governmental intrusion into their education. Homeschool equal access does not infringe on the right to homeschool; instead, it offers a choice to homeschool parents regarding extracurriculars.

v. Success of Homeschool Equal Access

Though there are concerns about the effects of homeschool athletes participating in public school extracurriculars, encouraging signs of success in Texas have already

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*Homeschool Students,* 15 J. Legal Aspects Sport 213, 232 (2005) (noting the many years of the “all in” law being in place in Oregon. Team cohesion is a difficult trait to measure; the author of this Article found no reports of failed cohesiveness in states like Oregon where “all in” laws have been in place for decades).

273. Jaklewicz, supra note 266.

274. Id. Since homeschool access to public school extracurriculars is new in Texas, not many examples of team cohesion exist yet. However, there are examples in other states of team cohesion between homeschool and public school students. See, e.g., Kyle Neddenriep, *Homeschoolers Play Big Role in Oak Hill’s Run to State Finals*, INDYSART (Mar. 22, 2018, 1:13 PM), https://www.indystar.com/story/sports/high-school/2018/03/22/homeschoolers-play-big-role-oak-hills-run-state-finals/445138002/ (quoting the head basketball coach, “the homeschool players meshed easily with the rest of the team”).

275. See EDUC. § 33.0832(d)(11).


278. Id.

279. EDUC. § 33.0832.

280. Id. § 33.0832(k).

281. Id. § 33.0832(b); Tex. Educ. Agency v. Leeper, 893 S.W.2d 432, 443–44 (Tex. 1994).

282. EDUC. § 33.0832(k).

283. Id.
emerged. For example, Abilene Wylie has benefited from opting in.284 There, a total of “five high school students entered into activities—a swimmer, a volleyball-basketball player, a soccer player, a student in a one-act play and the fifth, a junior varsity basketball player.”285 These students met no animosity.286

Abilene Wylie is not the only such school, as more Texas school districts have opted in, including Abilene ISD, as they see the success of homeschool access.287 The success of the program in Abilene ISD after the first year was so strong that a unanimous school board vote determined homeschool access would continue.288 One homeschool student said, “Most of all, I will remember the laughs and the new family I now have.”289 Many school administrators, superintendents, coaches, teachers, and staff see the benefits of homeschool inclusion in their activities and support homeschool access.290 In fact, at least one school from all classifications in Texas (1A-6A) have opted in to allow homeschool student access.291

V. CONCLUSION

Texas and other “half-way” states fail to provide most homeschool students with equal opportunity to participate in public school sports and extracurriculurs by leaving the choice with school districts instead of families.292 The Texas Legislature should amend Texas Education Code 33.0832 to ensure equal access to public school extracurriculurs for all homeschool students—regardless of school district preference—to promote equality, certainty, accountability, and improved education.293 Whether an “all in” law should be expanded to encompass private schools will need to be addressed further elsewhere. This Comment is the first to fully address the “half-way” position many states have taken, advocating for “all in” equal access for all homeschool students.

In sum, schools are for the children, not children for the schools.294 At their best, schools should work to meet all students’ needs.295 Ultimately, equal access for homeschool students will provide schools more opportunities to hold homeschooling families accountable and provide meaningful education for more students, benefiting all sides.296 Today, school districts in Texas have the choice over all homeschool students’ participation in track and field, one-act plays, and other extracurriculurs.297 Instead, the choice should be with the student and his or her family. An “all in” law promotes legal certainty, and equal access to extracurriculurs will no longer be simply a goal: it will be a reality.298

284. Jaklewicz, supra note 266.
285. Id.
286. Id.
287. Id.
289. Id.
290. See 2023-2024 Homeschool Participation, supra note 4.
291. Id.
292. See TEX. EDUC. CODE § 33.0832(c).
293. See supra Parts III–IV (laying out legal and public policy reasons for an “all in” law guaranteeing homeschool access to public school extracurriculurs).
294. See Dikkers, supra note 187.
295. See Rothstein, supra note 2, at 270.
296. See supra Part IV (describing the increased educational and accountability opportunities for schools and students under this Article’s proposal).
297. See TEX. EDUC. CODE § 33.0832.
298. See supra Part III (detailing the improvements in law from an “all in” law as opposed to the current “half-way” law).
Thus, the Texas Legislature should ensure all homeschool students have access to public school extracurriculars by taking the current “half-way” law “all in”.

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