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## CHILDREN'S LIVES AS A POLITICAL BATTLEGROUND: THE PLAGUE OF ABSTINENCE ONLY EDUCATION

KATHERINE CARROLL\*

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To encourage right choices, we must be willing to confront the dangers young people face, even when they are difficult to talk about. Each year, about three million teenagers contract sexually transmitted diseases that can harm them or kill them or prevent them from ever becoming parents. In my budget, I propose a grassroots campaign to help inform families about these medical risks. We will *double* Federal funding for *abstinence programs*, so schools can teach this fact of life: Abstinence for young people is the only certain way to avoid sexually transmitted diseases. Decisions children now make can affect their health and character for the rest of their lives. All of us, parents and schools and government, must work together to counter the negative influence of the culture and to send the *right messages* to our children.<sup>1</sup>

In his 2004 State of the Union Address, President George W. Bush addressed the growing public concern over increasing rates of pregnancy and sexually transmitted diseases (“STDs”)

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<sup>1</sup> President George W. Bush, Address Before a Joint Session of the Congress on the State of the Union (Jan. 20, 2004), [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004\\_presidential\\_documents&docid=pd26ja04\\_txt-10.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_presidential_documents&docid=pd26ja04_txt-10.pdf) (emphasis added).

among teens. In doing so, he promised to continue to *only* fund and promote abstinence-only education as *the* means to address this growing public health issue. This article addresses this faulty political policy that has pervaded the national landscape since the Reagan years, examining how, even as public opinion has shifted to favor more comprehensive sex education, politicians have only continued to pump more funding and support into abstinence-only programs.

I begin by examining the federal government's failure to adequately address this health crisis by looking at the various federal programs that have come into existence over the past 28 years and evaluating their successes and failures. Then, I address the way in which states and communities can and have worked to combat and supplement these federal programs. Finally, I argue that the intersection of activism and legislation is the best way to ensure that *all* children are receiving the information they need to be safe and healthy. The tools to accomplish this are legislation funding comprehensive sex education programs coupled with a national grassroots campaign incorporating parents and schools focused on creating and promoting comprehensive sex education programs in their own communities. These programs would focus on teaching and motivating parents and community members to not only get involved politically but to also take on some of the responsibility for ensuring that accurate information is taught to their children. These proposed efforts will ensure that all children receive the complete and accurate information they need to be safe and healthy, no matter the political leanings or economic status of their parents or community.

## I. WHAT IS THE DIFFERENCE? A COMPARATIVE LOOK AT ABSTINENCE-ONLY AND COMPREHENSIVE SEX EDUCATION

Much of the political discourse over sex education has led the American public to believe that the debate revolves around whether educators should only teach abstinence or completely ignore it.<sup>2</sup> However, this dichotomy is a wholly inaccurate depiction used by politicians to polarize voters. In reality, the majority of voters believe that comprehensive sex education, rather than abstinence-only education, should be taught in the nation's public schools.<sup>3</sup> As it now stands, the only "sex" education eligible for federal funding is abstinence-only education.<sup>4</sup> "Current controversies over sex education imply that the disagreements are primarily about whether instruction should stress abstinence," yet, studies show that the *actual* controversy is "on what information should be presented to students about how sexually active people can prevent unwanted pregnancy and STDs."<sup>5</sup> The American Academy of Pediatrics Committee on Adolescence

<sup>2</sup> David J. Landry et al., *Factors Associated with the Content of Sex Education in U.S. Public Secondary Schools*, 35 PERSP. ON SEXUAL AND REPROD. HEALTH 261, 267 (2003).

<sup>3</sup> Peter D. Hart Research Associates, Inc., *Memorandum: Application of Research Findings, On Behalf of Planned Parenthood Federation of America and National Women's Law Center 2* (July 12, 2007), available at <http://www.nwlc.org/pdf/7-12-07interestedpartiesmemo.pdf> (finding that "a majority of voters in nearly every demographic category, including Democrats, Republicans, and independents, as well as Catholics and evangelical Christians, support comprehensive sex education," at 76% of those polled).

<sup>4</sup> Abstinence-only proponents often point to what are commonly referred to as Title X funds to argue that the federal government is funding comprehensive sex education more heavily than abstinence-only education. *Domestic Abstinence-Only Programs: Assessing the Evidence Hearing Before H. Comm. on Oversight and Gov't Reform*, 110th Cong. 75 (2008) [hereinafter *Hearing on Abstinence-Only Education*] (statement of Rep. Capps). However, in actuality, Title X exclusively funds *clinical family planning services*, not educational programs. Family Planning Services and Population Research Act of 1970, Pub. L. No. 91-572 § 2, 84 Stat. 1504 (2006).

<sup>5</sup> Landry et al., *supra* note 2, at 267.

found that “sexuality education that discusses contraception does not increase sexual activity, and programs that emphasize abstinence as the safest and best approach, while *also* teaching about contraceptives for sexually active youth, do not decrease contraceptive use.”<sup>6</sup> Therefore, promoting abstinence and creating comprehensive sex education are complementary, rather than contradictory, goals. Despite this widely held view, in both the education and medical professions,<sup>7</sup> the political sphere has created a debate surrounding a fictional notion of these two views as an opposing binary.

### A. *Comprehensive Sex Education – A Brief Look*

Advocates for comprehensive sex education focus on sex education curricula and programs as a means to address a number of health issues, not limited to those surrounding sexual intercourse. These curricula stress the importance and value in abstinence while acknowledging the reality that not all teens will remain abstinent until marriage.<sup>8</sup> Contrary to what abstinence-only proponents would have the public believe, these comple-

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<sup>6</sup> Jonathan D. Klein & Committee on Adolescence, *Adolescent Pregnancy: Current Trends and Issues*, 116 PEDIATRICS 281, 284 (2005) (*emphasis added*).

<sup>7</sup> “The American Medical Association, the American Academy of Pediatrics, the American Public Health Association, the American College of Obstetricians and Gynecologists, the American Psychological Associate, the Society for Adolescent Medicine, the National Education Association, the American School Health Association, the American Association of University Women have official policies supporting comprehensive sexuality education and opposing the state and federal mandates of abstinence-only education that censor information about condoms and contraception for the prevention of pregnancy, HIV transmission, and the spread of other STDs.” Hazel Glenn Beh & Milton Diamond, *Children and Education: The Failure of Abstinence-Only Education: Minors Have a Right to Honest Talk About Sex*, 15 COLUM. J. GENDER & L. 12, 43-44 (2006).

<sup>8</sup> “Abstaining from sexual intercourse is the most effective method of preventing pregnancy and STD/HIV; Young people who are involved in sexual relationships need access to information about healthcare services.” *Id.* at n.114 (*citing* The Sexuality Information and Education Council of the United States, *Guidelines for Comprehensive Sexuality Education: Kinder-*

mentary goals represent the cornerstone of comprehensive sex education curricula.<sup>9</sup> The Sexuality Information and Education Council of the United States (“SIECUS”) has created sample curricula for kindergarten through the twelfth grades, all with the underlying goal of addressing the following in an age appropriate manner: sexual development, reproductive health, interpersonal relationships, affection, intimacy, body image, and gender roles.<sup>10</sup> SIECUS advocates that these goals can best be achieved through the following four guiding principles: (1) provide “accurate information about human sexuality”; (2) create a place for students to develop and understand their “values, attitudes and beliefs about sexuality”; (3) aid young people in the development of their “relationship and interpersonal skills”; and (4) “help young people exercise responsibility regarding sexual relationships, including addressing abstinence, pressures to become prematurely involved in sexual intercourse, and the use of contraception and other sexual health measures.”<sup>11</sup> The over-

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*garden through 12th Grade*, 19 (3d. ed. 2004), available at [http://www.siecus.org/\\_data/global/images/guidelines.pdf](http://www.siecus.org/_data/global/images/guidelines.pdf).

<sup>9</sup> For example, Representative Mark Souder (R. from Indiana’s 3rd Congressional District), citing the Department of Health and Human Services’ study on comprehensive sex education curricula, alleges that comprehensive sex education curricula do not spend sufficient time stressing abstinence, instead instructing “girls on how to help their partner maintain an erection.” *Hearing on Abstinence-Only Education*, *supra* note 4, at 70 (statement of Rep. Souder). What the Department of Health and Human Services’ report was actually speaking to, however, was how comprehensive sex education curricula addresses the issue of more comfortable and “romantic” ways to introduce condoms and contraception into a conversation with one’s partner. Dep’t of Health and Human Serv. & Admin. for Children and Families, *Review of Comprehensive Sex Education* 14 (May 2007), available at [http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content\\_storage\\_01/0000019b/80/2a/4f/43.pdf](http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/2a/4f/43.pdf).

<sup>10</sup> The Sexuality Information and Education Council of the United States, *Guidelines for Comprehensive Sexuality Education: Kindergarten through 12th Grade*, 19 (3d. ed. 2004), available at [http://www.siecus.org/\\_data/global/images/guidelines.pdf](http://www.siecus.org/_data/global/images/guidelines.pdf) [hereinafter *SIECUS Guidelines*].

<sup>11</sup> The Sexuality Information and Education Council of the United States, *Community Action Kit: What Is Comprehensive Sexuality Education* (2008), available at <http://www.communityactionkit.org/index.cfm?pageId=888>.

arching goal is to help “young people in developing a positive view of sexuality, provide them with information they need to take care of their sexual health, and help them acquire skills to make decisions now and in the future.”<sup>12</sup> The comprehensive sex education programs acknowledge both that abstinence remains the *most* effective way to avoid pregnancy and that the reality is children and teens need *all* of the information in order to make safe and healthy decisions about their lives.

In addition to relying on these guiding principles as the basis for sex education curricula, SIECUS’s *Guidelines* also stress the role sex education should play in a complete school curriculum. SIECUS argues that sex education should be an integral part of, not separate from, comprehensive, complete, and age appropriate health education.<sup>13</sup> Moreover, the curriculum taught should focus on and reflect the issues most prevalent in the community. Curricula are not meant to use boilerplate language in an effort to promote a particular agenda, but rather as an effective tool to best address the needs of the community within which it exists.<sup>14</sup> To that end, SIECUS advocates community involvement in the development and implementation of sex education programs. SIECUS lists parents, teachers, students, and *religious leaders* as those to be included in the discussion determining the most pressing issues for the children in the community and how those issues should be addressed.<sup>15</sup> Overall, proponents of comprehensive sex education advocate for a holistic approach to both the creation and implementation of sex education programs.<sup>16</sup>

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<sup>12</sup> SIECUS *Guidelines*, *supra* note 10, at 19.

<sup>13</sup> *Id.* at 21.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> This approach includes the hiring of teachers who are well versed and educated in the field and varying the teaching methods used (suggesting “interactive discussions, role plays, demonstrations, individual and group research, group exercises and homework assignments” all largely stressing the need for students to explore and discuss these issues in order to fully grasp the information and their feelings on it). *Id.*

### B. *Abstinence-Only Education – A Brief Look*

In stark contrast to comprehensive sex education curricula are the highly specific abstinence-only curricula. As explained below, abstinence-only programs that receive federal grant money must comport with several strict criteria requiring that certain information be excluded.<sup>17</sup> In addition, the legislation mandates that certain value judgments be included, for example, “teach[ing] that a mutually faithful monogamous relationship in [sic] context of marriage is the expected standard of human sexual activity.”<sup>18</sup> This applies to student interactions with educators both in and out of the classroom, anytime a student asks a direct question the educator must answer in a way that comports with the federal guidelines for abstinence-only education.<sup>19</sup>

Additionally, because many of the federally mandated requirements have Judeo-Christian moral undertones,<sup>20</sup> it is no surprise that religious organizations make up a great number of the organizations that apply for and receive funding. Moreover, the 2004 House Committee on Government Reform found that over 80% of curricula used by organizations receiving the federal grant money “contain major errors and distortions of public health information.”<sup>21</sup> The House Committee on Government Reform published *The Content of Federally Funded Abstinence-Only Education Programs Report*<sup>22</sup> (“Waxman Report”) in 2004,

<sup>17</sup> See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. §710 (2006) (mandating that recipients of the grant money fulfill eight requirements in order to receive any money).

<sup>18</sup> *Id.* at § 710(b)(2)(D).

<sup>19</sup> *Hearing on Abstinence-Only Education, supra* note 4, at 308 (statement of Charles Keckler, Acting Deputy Assistant Secretary for Policy and External Affairs, Administration for Children and Families, U.S. Dept. of Health and Human Services).

<sup>20</sup> *The Content of Federally Funded Abstinence-Only Education Programs: Minority Staff Spec. Investigation for the H. Comm. on Gov't Reform*, 108th Cong. 15 (2004) [hereinafter *Waxman Report*].

<sup>21</sup> *Id.* at i and 7.

<sup>22</sup> *Waxman Report, supra* note 20.



finding that, by and large, abstinence-only education curricula contains “false, misleading, or distorted information” in the following areas: the effectiveness of contraceptives, risks associated with abortions, and general scientific information.<sup>23</sup> Additionally, these curricula put forth information and materials that reinforce gender stereotypes by presenting them as scientific fact, as well as by conflating the difference between religious conjecture and science.<sup>24</sup> Abstinence-only curricula also use fear tactics masquerading as educational information to promote a conservative religious agenda, with such declarations as, “Nature seems to be making a statement about the wisdom of keeping sex within marriage through the current epidemic of sexually transmitted diseases and teen pregnancy.”<sup>25</sup> To that end, these curricula also frequently distort public health studies and facts by ignoring nuances and specifics of research on teen STD and pregnancy rates. For example, one curriculum states, “The popular claim that ‘condoms help prevent the spread of STDs,’ is not supported by the data.”<sup>26</sup> That statement directly contradicts studies by both the Center for Disease Control as well as independent sources that show that proper, consistent use of condoms significantly reduces the likelihood of contracting an STD.<sup>27</sup>

A 2007 report commissioned by the Department of Health and Human Services found differences in abstinence rates between

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<sup>23</sup> *Id.* at i-ii.

<sup>24</sup> *Id.*

<sup>25</sup> Elizabeth Arndorfer, *Absent Abstinence Accountability*, 27 HASTING CONST. L.Q. 585, 592 (2000) (quoting COLEEN KELLY MAST, *SEX RESPECT: THE OPTION OF TRUE SEXUAL FREEDOM*, 6 (1990)).

<sup>26</sup> *Waxman Report*, *supra* note 20, at 10 (quoting SCOTT PHELPS, A.C. GREEN’S GAME PLAN COACH’S CLIPBOARD, *Teacher’s Manual*, 34).

<sup>27</sup> *See, e.g.*, Centers for Disease Control and Prevention, *Male Latex Condoms and Sexually Transmitted Diseases* (Dec. 2008, updated Oct. 2009), available at <http://www.cdc.gov/condomeffectiveness/latex.htm>; King K. Holmes et al., *Effectiveness of Condoms in Preventing Sexually Transmitted Infections*, 82 BULLETIN OF THE WORLD HEALTH ORG. 454 (June 2004), available at <http://www.who.int/bulletin/volumes/82/6/454.pdf>.

teens who were given abstinence-only education and those who were not to be statistically insignificant.<sup>28</sup> Additionally, teen STD contraction rates are roughly the same for teens who have had abstinence-only education as those who have not.<sup>29</sup> More significantly, these teens are less likely to use contraception and get tested for STDs once they do become sexually active.<sup>30</sup>

There are two major problems with abstinence-only education: user-failure rate and severe definitional problems. The statistics, above, perfectly illustrate the first of these problems, “the user-fail rate.”<sup>31</sup> The holes in the abstinence-only curricula would not present such a public health issue and societal concern if everyone who went through these programs remained abstinent until marriage. But, as studies have shown, that is not the case – not even remotely.<sup>32</sup> Thus, the “users” of abstinence-only education are “failing” because they do not comport with the basic tenet necessary for abstinence-only education to be successful: do not have sex. Comprehensive sex education proponents’ frequently repeated adage seems to ring true; “vows of abstinence break far more easily than latex condoms.”<sup>33</sup>

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<sup>28</sup> Mathematica Policy Research, Inc., *Impacts Of Four Title V, Section 510 Abstinence Education Programs*, 30 (2007), <http://www.mathematica-mpr.com/publications/PDFs/impactabstinence.pdf>.

<sup>29</sup> *Id.* at 35.

<sup>30</sup> “Columbia [University] researchers found that while virginity “pledge” programs helped some participants to delay sex, 88% still had premarital sex, and their rates of sexually transmitted diseases showed no statistically significant difference from those of non-pledgers. Virginity pledgers were also less likely to use contraception when they did have sex and were less likely to seek STD testing despite comparable infection rates.” *Waxman Report, supra* note 20, at 4 (*citing* The Henry J. Kaiser Family Foundation, *supra* note 28).

<sup>31</sup> Beh & Diamond, *supra* note 7, at 38.

<sup>32</sup> *Waxman Report, supra* note 20, at 4 (*citing* The Henry J. Kaiser Family Foundation, *Teenagers Who Take ‘Virginity Pledges,’ Other Teens Have Similar STD Rates, Study Says* (Mar. 10, 2004), [http://www.kaisernetwork.org/daily\\_reports/rep\\_index.cfm?DR\\_ID=22603](http://www.kaisernetwork.org/daily_reports/rep_index.cfm?DR_ID=22603)).

<sup>33</sup> Interview by Priscilla Pardini with Jocelyn Elders, former U.S. Surgeon General, <http://www.rethinkingschools.org/sex/elders.shtml>.

Finally, abstinence-only programs suffer from a bit of a Catch-22 definitional issue that further limits their ability to succeed at decreasing teen STD rates. There is a general failure to define what exactly a student is meant to abstain from. That is, programs tell students to abstain from “sex” but either only refer specifically to vaginal intercourse or fail to further define it at all.<sup>34</sup> “Since disease can be spread through other physical contact. . .abstinence-only education programs ‘inadvertently expos[e] teens to greater risk of infection by promoting ignorance of the risk of STD transmission through non-coital sexual activity.’”<sup>35</sup> These issues illustrate why the status-quo of abstinence-only curricula is unacceptable and why comprehensive education is not a luxury for our children but an absolute necessity to solve this public health crisis.

## II. FEDERAL ABSTINENCE-ONLY EDUCATION LEGISLATION: WHERE \$176 MILLION DISAPPEARS ANNUALLY

While the 1996 Social Security Act is the most ubiquitous and often cited funding mechanism for abstinence-only education, there have been programs of its kind in various incarnations since the early 1980s. In total, these programs dedicate roughly \$176 million to abstinence-only education annually.<sup>36</sup> This section traces the history of abstinence-only education legislation. Additionally, it examines how current abstinence-only education funding and legislation only address teen pregnancy and

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<sup>34</sup> Angela Nicoletti, *Perspectives of the Allied Health Care Professional: The Definition of Abstinence*, 18 J. PEDIATRIC ADOLESCENT GYNECOLOGY, 57, 58 (2005) (“[A]bstinence-only programs vary widely in how or whether they define sex and what behaviors constitute abstinence.”)

<sup>35</sup> Beh & Diamond, *supra* note 7, at 39 (quoting Nicoletti, *supra* note 34, at 58).

<sup>36</sup> Marcela Howell & Marilyn Keefe, *The History of Abstinence-Only Funding*, Advocates for Youth, 4 (July 2007), <http://www.advocatesforyouth.org/storage/advfy/documents/fshistoryabonly.pdf> (based on numbers from the 2006 and 2007 fiscal years).

STD rates as a fiscal and public charge issue, rather than focusing on it as a public health problem.

### A. *Adolescent Family Life Act – The Reagan Years*

In 1981, as a result of fact finding showing a significant increase in teen pregnancy and the acknowledgment that “a wide array of educational, health, and supportive services are not available to adolescents. . . or when available frequently are fragmented and thus are of limited effectiveness,” Congress passed the Adolescent Family Life Act (“AFLA”).<sup>37</sup> The goals of AFLA are to promote abstinence, prevent teen pregnancy, and encourage adoption.<sup>38</sup> To promote these goals, AFLA created a grant program to give funding to applicants that sufficiently describe how they would “involve religious and charitable organizations, voluntary associations, and other groups in the private sector”<sup>39</sup> in programs promoting “*self discipline* and other *prudent* approaches to the problem of adolescent premarital sexual relations.”<sup>40</sup> Additionally, the grantees may not “advocate, promote, or encourage” abortion, nor provide abortions or abortion counseling.<sup>41</sup> In the late 1980s additional guidelines and restrictions were added due to significant litigation on the constitutionality of the role religion in AFLA grant programs.<sup>42</sup> As

<sup>37</sup> The Adolescent Family Life Act, 42 U.S.C. § 300z(a)(9) (2006).

<sup>38</sup> § 300z(b)(1-2).

<sup>39</sup> § 300z-5(a)(21)(B).

<sup>40</sup> § 300z(b)(1) (emphasis added).

<sup>41</sup> § 300z-10(a).

<sup>42</sup> The Supreme Court reversed a district court’s holding that AFLA was unconstitutional because it “provided for the involvement of religious organizations in the federally funded programs,” both “on its face and as applied.” *Bowen v. Kendrick*, 487 U.S. 589, 593 (1988). The Court found that, in applying an on its face evaluation, ALFA did not facially violate the Establishment Clause because: (1) it was not “motivated wholly by an impermissible purpose,” but rather largely motivated by the legitimate goal of curbing teen pregnancy; (2) its “primary effect” was not to promote religion, because of its focus on curbing teen pregnancy; and (3) it did not “require[e] excessive entanglement between church and state,” because to say it did would be tanta-

it now stands, as a result of that litigation, programs funded with AFLA grants must: (1) be medically accurate; (2) cannot include reference to religion; and (3) cannot be taught in either a house of worship or a site containing religious iconography.<sup>43</sup> In fiscal year 2008, ALFA allocated \$13 million to fund abstinence-only education, and the same amount has been proposed for the 2009 fiscal year.<sup>44</sup>

### ***B. Title V Funding – The Clinton Contribution***

In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act<sup>45</sup> (“the Social Security Act”) was enacted. Among other social welfare issues addressed, the Social Security Act created a state matching program to fund abstinence-only education programs,<sup>46</sup> referred to as “Title V” funding.<sup>47</sup> Despite the highly politicized nature of this issue, Congressional

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mount to saying that the government can never grant funds to religious organizations. *Id.* at 602. The Court then remanded the as applied issue to the district court to examine: (1) whether “AFLA aid is flowing to grantees that can be considered ‘pervasively sectarian’ religious institutions,” and (2) “whether in particular cases AFLA aid has been used to fund ‘specifically religious activities in an otherwise substantially secular setting.’” *Id.* at 621. The parties reached a settlement, after the district court dismissed their cross motions for summary judgment. Arndorfer, *supra* note 25, at 587.

<sup>43</sup> Daniel Daley, *Exclusive Purpose: Abstinence-Only Proponents Create Federal Entitlement in Welfare Reform*, SIECUS Report, 3 (Apr./May 1997), available at <http://www.siecus.org/siecusreport/volume2-25-4.pdf>.

<sup>44</sup> Sexuality Information and Education Council of the United States, *Federal Abstinence Only Until Marriage Funding: A Brief History of Federal Abstinence-Only-Until Marriage Funding*, <http://www.siecus.org/index.cfm?fuseaction=page.ViewPage&PageID=1158> [hereinafter SIECUS Report].

<sup>45</sup> Personal Responsibility and Work Opportunity Reconciliation Act, 42 U.S.C. § 603 (2006).

<sup>46</sup> *Id.* (For every 4 dollars contributed by the federal government, the State must place 3 dollars in the program.)

<sup>47</sup> *Id.*

debates over this legislation paid little to no attention to the abstinence-only education provision.<sup>48</sup>

This explicit linking of abstinence-only education funding with welfare reform shows the inherent bias in this legislation: to minimize public dependency rather than address the public health issue of teen pregnancy and STD rates. The underlying ideology behind this legislation is that teenage pregnancy must be curbed in order to minimize the number of welfare recipients, paying no attention to the detriment caused by not disseminating accurate and complete health information to teenagers.

Title V of the Social Security Act created a program whereby states could apply for federal funds in order to fund programs that promote abstinence, to the exclusion of all other sex education.<sup>49</sup> These funds require states to match three dollars for every four granted to them by the federal government.<sup>50</sup> The states then have discretion to distribute these Title V funds to applicant organizations in accordance with the guidelines laid out in the Social Security Act.<sup>51</sup> When initially enacted the law established \$250 million for the following five years.<sup>52</sup> These funds are distributed to organizations and programs that “provide abstinence education. . .where appropriate, mentoring, counseling, and adult supervision to promote abstinence from sexual activity, *with a focus on those groups which are most likely to bear children out of wedlock.*”<sup>53</sup> In order to qualify for

<sup>48</sup> Julie Jones, *Money, Sex and The Religious Right: A Constitutional Analysis of Federally Funded Abstinence-Only-Until-Marriage Sexuality Education*, 35 CREIGHTON L. REV. 1075, 1081 (June 2002).

<sup>49</sup> 42 U.S.C. § 603 (2006).

<sup>50</sup> SIECUS Report, *supra* note 44.

<sup>51</sup> *Id.*

<sup>52</sup> *Waxman Report*, *supra* note 20, at 2.

<sup>53</sup> 42 U.S.C. § 710(b)(1) (2006) (emphasis added) (This section further shows the way in which the goals of the government in creating abstinence-only education are quite different from those who promote comprehensive sex education policies. By linking abstinence-only programs with welfare reform, focusing on the at-risk communities, frames this solely as a poverty issue, whereas the comprehensive sex education movement focuses on a holistic

Title V funds, an organization must propose an “educational or motivational program”<sup>54</sup> that comports with eight qualifications that emphasize the importance of bearing children within a marriage and that ensures neither the parents nor the children will become charges of the state, paying only lip service to the goal of deterring and minimizing the transmission of STDs.<sup>55</sup> Additionally, as of 2007, these programs must include all eight elements and “meaningfully represent” each of them in order to be eligible for Title V funds.<sup>56</sup>

Furthermore, during the Congressional debates concerning the Social Security Act, fiscal and social conservatives continually harped on the inextricable link between poverty, depen-

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approach to educating children and creating a healthy, smarter, and well-informed next generation likely leading, to fewer teenage pregnancies).

<sup>54</sup> § 710(b)(2) (2006).

<sup>55</sup> The program:

(A) has at its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;

(B) teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;

(C) teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associate health problems;

(D) teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;

(E) teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

(F) teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child’s parents, and society;

(G) teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and

(H) teaches the importance of attaining self-sufficiency before engaging in sexual activity. 42 U.S.C. § 710 (b)(2)(A-H) (2006).

<sup>56</sup> SIECUS Report, *supra* note 44.

dence on government aid, and the downfall of traditional family values.<sup>57</sup> The largest proponents of the abstinence-only education provisions in the Social Security Act drew attention to the demise of traditional family values as the cause of poverty, noting the increase in young, single unwed mothers as a particular symptom.<sup>58</sup> The legislators touted the importance of “personal responsibility”<sup>59</sup> while proposing programs that, by providing misleading and false information, make it impossible for people to take complete responsibility for their actions. These comments and debates further illustrate the emphasis these programs place on the paternalistic notion of young, unwed mothers as a drain on the public system, while ignoring the larger public health issue associated with depriving young people of accurate and complete information. Moreover, funding under this legislation has grown year after year despite findings that those who participate in these programs are no more likely to abstain from sex than those who did not participate.<sup>60</sup> This further illustrates how this legislation, like all abstinence-only education legislation, is based in political ideology rather than

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<sup>57</sup> *Personal Responsibility and Work Opportunity Reconciliation Act of 1996, S. Consideration of Conf. Rep.*, 142 CONG. REC. S9387-88 (1996) (statement of Sen. Burns).

<sup>58</sup> For example, Senator Jesse Helms stated “the human devastation caused by rising illegitimacy rates and the breakdown of the family is even more troubling than the cost of welfare programs. . . For 30 years, the welfare system rewarded *idleness and illegitimacy* and there has been a marked increase in both. . . We must help them by teaching them to ‘help themselves’. . . [T]his bill takes a step in the right direction in helping reduce the rising illegitimacy rates by providing funds for *abstinence education*, and by allowing States the option of denying benefits to welfare recipients who already have children living on the public dole.” 142 CONG. REC. S 9390 (1996) (statement of Sen. Helms) (emphasis added).

<sup>59</sup> 142 CONG. REC. S9388 (1996) (statement of Sen. Burns).

<sup>60</sup> See, e.g., *Mathematica*, *supra* note 28, at xvii (noting that, in addition, these groups “had similar numbers of sexual partners and had initiated sex at the same mean age.”).



actual concern for the health and well-being of the youth of America.<sup>61</sup>

The federal government allocated \$50 million to the abstinence-only education programs under the Social Security Act for the 2008 fiscal year and proposed the same for the 2009 fiscal year.<sup>62</sup> However, that amount only accounts for the funding provided by the federal government but because of the state matching requirement, the amount is much closer to \$86 million annually.

Title V funding requires the approval of the state government before any organizations within that state can receive grants (because of the state mandatory contribution requirement).<sup>63</sup> California is the only state to have consistently refused Title V funds since the program's inception, but as of February 2008, Iowa became the seventeenth state to reject the funding.<sup>64</sup> The decision by seventeen states to refuse Title V funding demonstrates state government awareness of the ineffectiveness of these programs and their willingness to rectify it.<sup>65</sup>

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<sup>61</sup> See, e.g., Brenda Cossman, *Contesting Conservatism, Family Feuds and the Privatization of Dependency*, 13 AM. U.J. GENDER SOC. POL'Y & L. 415, 473 (2005) (noting the way in which the Social Security Act represented a compromise and coalition of the many differing factions of conservatism. Cossman points out that the Social Security Act "represents a hybrid between fiscal conservatism's emphasis on work, libertarianism's emphasis on eliminating welfare. . .and social conservatism's emphasis on family as the solution to welfare dependency.")

<sup>62</sup> SIECUS Report, *supra* note 44.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*; Sexuality Information and Education Council of the United States, *Iowa Becomes 17th State to Reject Title V Abstinence-Only-Until-Marriage Funding*, (Feb. 29, 2008), <http://www.siecus.org/index.cfm?fuseaction=feature.showFeature&FeatureID=1024&varuniqueuserid=71134946867>.

<sup>65</sup> Iowa Governor, Chet Culver, rejected Title V funding on behalf of his state due to the "restrictions around the Title V abstinence-only-until-marriage program." These restrictions include that Title V-funded programs "may not in any way advocate contraceptive use or discuss contraceptive methods except to emphasize their failure rates." *Id.*

### ***C. Community Based Abstinence Education – Bush Brings It Home***

The most recent and substantial of the three abstinence-only funding programs is the Special Programs of Regional and National Significance — Community Based Abstinence Education (“CBAE”). The CBAE program was created in 2000 and accounts for roughly 65% of all federal funds allocated for abstinence-only education annually.<sup>66</sup> The CBAE program allows the federal government to bypass state involvement by granting money directly to organizations, thus removing the state’s discretionary power.<sup>67</sup> Under the statute, CBAE funds are meant to act as “competitive grants” to those distributed under Title V.<sup>68</sup> Additionally, these funds, like Title V funds, may be given to either public or private entities, so long as they comport with the definition of abstinence-only education laid out under Title V<sup>69</sup> (generally that they will only provide information on abstinence and “will not provide to that adolescent any other education regarding sexual conduct”<sup>70</sup>). These programs are only allowed to mention contraception, of any form, to discuss their failure rates.<sup>71</sup>

CBAEs were established as part of President Bush’s “faith-based and community initiatives,”<sup>72</sup> as such, a large portion of CBAE money is directed to religious based organizations annually.<sup>73</sup> Effectively, “the federal administration is bypassing state

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<sup>66</sup> SIECUS Report, *supra* note 44.

<sup>67</sup> *Id.*

<sup>68</sup> Social Security Act, Pub. L. No. 106-246, 114 Stat. 550 (2000).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Waxman Report, supra* note 20, at 8.

<sup>72</sup> Beh & Diamond, *supra* note 7, at 30.

<sup>73</sup> Many organizations receiving CBAE funds classify themselves as “crisis pregnancy centers,” which are faith based organizations that often masquerade as counseling centers, but that actually operate to use false and misleading information to talk women out of exercising their reproductive rights. The Waxman Report cites one such organization, The Crisis Pregnancy

and public health organizations and instead turning to faith-based groups to champion its abstinence-only message.<sup>74</sup> Moreover, although the statute provides for a review mechanism of the curricula used by the grantees, by and large, the government has failed to utilize it.<sup>75</sup> Additionally, since its inception, the amount of funding for the CBAE programs increased 450%, from \$20 million annually to \$113 million in 2006. The total proposed funding for Fiscal Year 2009 is \$99 million.<sup>76</sup>

#### ***D. “No Child Left Behind” Leaves Sex Education in the Dust***

The above three programs are the only means by which abstinence-only education funding can be directly procured from the federal government. But, a provision in the No Child Left Behind legislation ensures that none of *those* funds may be used for funding comprehensive sex education.<sup>77</sup>

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Center Anchorage, receiving CBAE funds which describes its mission as to “bring wholeness to lives traumatized by abortion; sharing the love of Jesus Christ and educate our community to adopt a Godly view of sexuality and the sanctity of human life.” *Waxman Report, supra* note 20, at 13 n.54.

<sup>74</sup> Beh & Diamond, *supra* note 7, at 31.

<sup>75</sup> *Waxman Report, supra* note 20, at I (noting that “the curricula used in [CBAE] and other federally funded programs *are not reviewed for accuracy by the federal government.*”) (emphasis added). In reaction to that, the Waxman Report surveyed the 13 most frequently used curricula by grantee programs under CBAE, finding that 11 of those 13 had false or misleading information in them, containing “major errors and distortions of public health information.” *Id.* at 7.

<sup>76</sup> SIECUS Report, *supra* note 44.

<sup>77</sup> The relevant provisions state that none of the funds allocated under the No Child Left Behind Act may be used:

“(1) to develop or distribute materials, or operate programs or courses of instruction directed at youth, that are designed to promote or encourage sexual activity, whether homosexual or heterosexual;

(2) to distribute or to aid in the distribution by any organization of legally obscene materials to minors on school grounds;

### III. RECENT PROPOSALS - REACTIONS TO ABSTINENCE-ONLY LEGISLATION ON THE FEDERAL LEVEL

In response to the failure of abstinence-only programs to achieve the goals of curbing rates of pregnancy and STDs among teens, several pieces of legislation have recently been proposed. In the past year, three bills have been proposed in Congress specifically addressing this issue: the Mentor-Mentee Teen Pregnancy Reduction Act of 2008,<sup>78</sup> the H.I.V. Education and Prevention Act of 2008,<sup>79</sup> and the Responsible Education About Life Act ("REAL Act").<sup>80</sup>

The Mentor-Mentee Teen Pregnancy Reduction Act was initiated after findings that the United States "has the highest teen pregnancy rate of any fully industrialized country," at least one-third of all women become "pregnant at least once by the age of 20,"<sup>81</sup> and that "a wide variety of programs have been successful at delaying sexual activity and reducing teenage pregnancy, including efforts that . . . provide preventative health services, offer sex and HIV/AIDS education."<sup>82</sup> This bill seeks to create a com-

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(3) to provide sex education or HIV-prevention education in schools unless that instruction is age appropriate and includes the health benefits of abstinence; or

(4) to operate a program of contraceptive distribution in schools." No Child Left Behind, 20 U.S.C. § 7906(a)(1-4) (2006).

<sup>78</sup> Mentor-Mentee Teen Pregnancy Reduction Act of 2008, H.R. 5810, 110th Cong. (2008).

<sup>79</sup> H.I.V. Education and Prevention Act of 2008, H.R. 6906, 110th Cong. (2008).

<sup>80</sup> Responsible Education About Life Act, S 972, 110th Cong. (2007).

<sup>81</sup> H.R. 5810. These factual findings are in no way unique to Congressional studies. For example the Center for Disease Control has found that 1 in 4 teen girls have a sexually transmitted infection, a number that doubles when only sampling African American teenage girls (further showing the negative disparate impact of abstinence-only education along racial and socio-economic lines). Center for Disease Control, *2008 National STD Prevention Conference, Press Release*, Mar. 11, 2008, <http://www.cdc.gov/STDConference/2008/media/release-11march2008.htm>.

<sup>82</sup> H.R. 5810.

panion grant program to the one in existence under Title V, focusing on creating classes and other activities that provide “medically accurate information on the importance of contraception for those who are sexually active, on condom use, and on HIV and sexually transmitted diseases,”<sup>83</sup> while still stressing the importance of abstinence.<sup>84</sup>

Similarly, the H.I.V. Education and Prevention Act proposes a “flexibility in the use of abstinence education funds”<sup>85</sup> under Title V by amending the statute to include “‘or other sex education’ after ‘abstinence education’” in describing what grantees’ programs can include.<sup>86</sup> The bill frames “sex education” as including “the functional, structural, or behavioral aspects of human reproduction and may include education about abstinence or contraception.”<sup>87</sup>

The REAL Act would take what are now essentially Title V funds for abstinence-only education program grants and direct it to “family life education, including education on both abstinence and contraception.”<sup>88</sup> Like Title V funds, states, though not “required to provide matching funds,” are “encouraged to do so.”<sup>89</sup>

As it has consistently done, since the Social Security Act was enacted, with past bills dealing with addressing health care, Congress did not extend Title V funds in the recent stimulus package legislation.<sup>90</sup> Therefore, the most recent Title V funding expired on July 1, 2009.<sup>91</sup>

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<sup>83</sup> H.R. 5810 § 3(2)(b)(2)(D)(i)(II).

<sup>84</sup> H.R. 5810 § 3(2)(b)(2)(D)(i)(I).

<sup>85</sup> H.R. 6906, § 2.

<sup>86</sup> H.R. 6906, § 2(a)(1).

<sup>87</sup> H.R. 6906, § 2(a)(3).

<sup>88</sup> S. 972 § 3(a).

<sup>89</sup> S. 972 § 4.

<sup>90</sup> American Recovery and Reinvestment Act of 2009, H.R. 1 (2009).

<sup>91</sup> H.R. 1 Conf. Rep. – The American Recovery and Reinvestment Act of 2009 (Feb. 14, 2009), *available at* <http://www.gop.gov/bill/111/1/hr1conference> report (sponsored by Rep. David Obey).

Finally, and perhaps most notably, recent appropriations legislation has decreased and has attempted to end completely federal funding for abstinence-only education. In March, President Obama signed the 2009 Omnibus Appropriations Act, which cut approximately \$46 million from the CBAE budget.<sup>92</sup> However, this Act still provided close to \$95 million for CBAE grants.<sup>93</sup> Most recently, the Senate Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies put forth its bill for fiscal year 2010, pending a vote in the full Senate.<sup>94</sup> If passed, the bill would completely eliminate federal funding for abstinence-only education. Funds previously used for CBAE and AFLA grants would be rerouted to the Office of the Secretary of Health and Human Services, which would distribute the funds to public or private organizations that promote a more comprehensive sex education curriculum.<sup>95</sup> This bill would provide \$104 million in funding for “evidence-based efforts to reduce teen pregnancy,”<sup>96</sup> a phrase that has been interpreted by many to mean comprehensive sex education.<sup>97</sup> However, even though this bill is still pending and the terminology remains vague, there is still a fair chance that the CBAE and AFLA funds will remain in place or that the terminology will be interpreted to be far more restrictive than advocates are hoping.

By adopting this more lenient language, these bills, and the stimulus package, seem to reflect the beginning of a tide change in the federal government's view on the general ineffectiveness

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<sup>92</sup> Omnibus Appropriations Act of 2009, H.R. 1105, 111th Cong. (2009).

<sup>93</sup> *Id.*

<sup>94</sup> Sexuality Information and Education Council of the United States, *Senate Eliminates Existing Abstinence-Only Funding: Invests in Evidence-Based Prevention*, <http://www.siecus.org/index.cfm?fuseaction=feature.showFeature&featureid=1796&pageid=525&parentid=523>.

<sup>95</sup> *Id.*

<sup>96</sup> Press Release, U.S. Senate Committee on Appropriations, Summary: FY 2010 Labor, Health and Human Services, Education and Related Agencies Appropriations (July 30, 2009).

<sup>97</sup> Sexuality Information and Education Council of the United States, *supra* note 94.

of abstinence-only education programs. These are steps forward, but the current status of abstinence-only education in this country continues to do damage this current generation. But there is still room for state governments and non-governmental organizations to play a bigger role in providing comprehensive sex education.

#### IV. CURRENT STATE RESPONSE TO THIS PUBLIC HEALTH CRISIS

California is the only state to have consistently refused Title V funds since its inception.<sup>98</sup> As noted earlier, Iowa became the seventeenth state to refuse the funds in 2008.<sup>99</sup> An ever growing number of states are refusing Title V funds, and even more are starting alternative programs<sup>100</sup> or finding creative ways to use the funds<sup>101</sup> to combat the effects of federal funding for abstinence-only education. Moreover, not only are states creating these programs and passing legislation in response to the ongo-

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<sup>98</sup> SIECUS Report, *supra* note 44.

<sup>99</sup> Sexuality Information and Education Council of the United States, *supra* note 64.

<sup>100</sup> For example, there is a bill pending in the Hawaii state legislature that states that any school or organization receiving state funds “specifically for sexuality health education programs [must] provide medically accurate, factual, and comprehensive information that is age appropriate and includes education on abstinence and contraception.” H.B. 330, 25th Leg., Reg. Sess. (Haw. 2009). Additionally, New York’s pending Healthy Teens Act creates a grant program whereby organizations can get state funding for comprehensive sex education programs so long as they meet a set number of requirements focusing on age appropriate and medically accurate information. Healthy Teens Act, A.B. 1806, 232nd Leg., Reg. Sess. (N.Y. 2009).

<sup>101</sup> For example, in 2005 New Mexico accepted \$500,000 of abstinence-only funds that it pledged to spend exclusively on sex education in elementary schools. Comprehensive sex education would be taught in the middle and high schools in light of the fact that, in New Mexico, “30% of eighth graders, 20% of seventh graders, and 15% of sixth graders reported being sexually active.” *New Mexico To Use Federal Abstinence Education Funding for Elementary School Programs*, MED. NEWS TODAY, (Apr. 15, 2005), <http://www.medicalnewstoday.com/medicalnews.php?newsid=22823#>.

ing issue of teen pregnancy and STDs, they are also publicly stating that abstinence-only education is at fault.<sup>102</sup>

This issue does not split down traditional political party lines. Traditional “red” states have begun to notice the correlation between abstinence-only education and stagnant or rising STD and pregnancy rates among teens and are beginning to respond. For example, Utah, a historically socially conservative state, currently has a bill pending in its House of Representatives that would create a funding stream for comprehensive sex education in public schools.<sup>103</sup>

#### ***A. Model State Legislation – A Look At New York’s Healthy Teens Act***

Conversely, some of the traditional “blue” states have failed to respond to this growing epidemic at the state government level at all. For example, since 2005, the New York State Assembly has annually introduced and passed the Healthy Teens Act,<sup>104</sup> only to never see it leave the Finance Committee of the New York State Senate.<sup>105</sup> The Healthy Teens Act would create a state funded grant program, by which public school districts, school health centers, and community organizations could apply for funds to teach age appropriate sex education.<sup>106</sup> This would entail providing “at-risk adolescents with the information, assistance, skills, and support to enable them to make responsible

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<sup>102</sup> In response to the significant *rise* in teen STD rates, the Florida state government is working on a bill to create funding for more comprehensive sex education, citing abstinence-only education as at least partially to blame. Lindsay Peterson, *STDs Increasing in Bay Area, Particularly Among Teens*, THE TAMPA TRIB., Feb. 15, 2009, available at <http://www2.tbo.com/content/2009/feb/15/stds-increasing-bay-area-particularly-among-teens/life/>.

<sup>103</sup> Instruction in Health Amendments, H.B. 189, 58th Leg., Gen. Sess. (Utah 2009).

<sup>104</sup> A.B. 1806.

<sup>105</sup> Samuel G. Freedman, *Muzzling Sex Education on Anything but Abstinence*, N.Y. TIMES, July 19, 2006, at B7.

<sup>106</sup> *Id.*



decisions, *including abstaining from sexual intercourse* and for those who do become sexually active, the effective use of condoms or contraceptives.”<sup>107</sup> Similar to the federal grant programs, there are a series of qualifications that an organization’s curriculum must meet<sup>108</sup> in order to be eligible for the grant money, although these are focused on creating comprehensive sex education. These programs are aimed at giving teens the most accurate and complete information meant to complement, not replace, “parental involvement and instruction, respect the diversity and values of [the] state, and provide our youth at risk with the foundation to make *responsibly informed choices*.”<sup>109</sup> This legislation should serve as a model for all states looking to create comprehensive sex education.

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<sup>107</sup> A.B. 1806 (emphasis added).

<sup>108</sup> For example, to qualify for a grant, programs must fulfill the following requirements and more:

(A) is age-appropriate and medically-accurate;

(B) does not teach or promote religion, provided that this paragraph shall not preclude discussion of moral, ethical or religious views related to sex or sexual relationships;

(C) teaches that abstinence is the only sure way to avoid pregnancy or sexually transmitted diseases;

(D) stresses the value of abstinence while not ignoring those adolescents who have had or who are having sexual intercourse;

(E) provides information about the health benefits and side effects of all contraceptives and barrier methods as a means to prevent pregnancy;

(F) provides information about the health benefits and side effects of all contraceptives and barrier methods as a means to reduce the risk of contracting sexually transmitted diseases, HIV/AIDS and other diseases; . . .

(H) encourages family communication about sexuality among parents, other adult household members and children;

(I) teaches skills to make responsible decisions about sexuality, including how to avoid unwanted verbal, physical and sexual advances, and how not to make unwanted verbal, physical and sexual advances; . . . A.B. 1806 §§ 3(a)(2)(A-F) – 2(H-I).

<sup>109</sup> A.B. 1806 (emphasis added).

## V. COMMUNITY ORGANIZING – TAKING THE ISSUE INTO OUR OWN HANDS

Given the long and varied history of abstinence-only education in the United States, parents, teachers, and students who do not agree with the federal government's stance on "sex" education have come up with creative and innovative ways to circumvent the laws. These have included both creating publicity for the issue and lobbying around it, as well as taking the initiative to self-educate and disseminate information in their own communities. By working to combat the ineffectiveness of abstinence-only education on a local level, these projects and initiatives have had much success in raising awareness and rallying people around this issue. Existing community efforts should serve as the basis for nationwide organizing projects to *effectively* combat the issue of rising pregnancy and STD rates among teens.

### A. *The Amazing Case of the "[Mis-]Education of Shelby Knox"*<sup>110</sup>

In 2001, high school student Shelby Knox, a self-described "devout Christian"<sup>111</sup> and "Southern Baptist,"<sup>112</sup> took on the Lubbock, Texas city government and school board. Ms. Knox worked with a coalition of other high school students to demand that the local government recognize students' dissatisfaction with the lack of sex-education they were receiving, as well as the growing rates of STDs and pregnancy among teens<sup>113</sup> caused by

<sup>110</sup> THE EDUCATION OF SHELBY KNOX: SEX, LIES & EDUCATION (Incite Pictures 2005).

<sup>111</sup> P.B.S., *Point of View: The Education of Shelby Knox – Film Description* (2005, updated 2009), [http://www.pbs.org/pov/shelbyknox/film\\_description.php](http://www.pbs.org/pov/shelbyknox/film_description.php).

<sup>112</sup> *Hearing on Abstinence-Only Education*, *supra* note 4, at 217 (statement of Shelby Knox).

<sup>113</sup> Ms. Knox testified that Lubbock, Texas has "some of the highest rates of sexually transmitted infection and teen pregnancy in the Nation." *Id.*

the aging abstinence-only education program.<sup>114</sup> Since then, Ms. Knox has parlayed her celebrity, from the national media attention paid to her and the documentary made about her fight, into a successful lobbying and education campaign. Ms. Knox's story perfectly illustrates how a positive result of the abstinence-only education policies' is that they have empowered a generation to fight for what they want and demand what they need – comprehensive sex education.

In the film and her speaking engagements, Ms. Knox discusses the state mandated abstinence-only education she received throughout high school.<sup>115</sup> Ms. Knox's attended a public high school where her "sex education teacher" was the same pastor with whom she had taken her "abstinence-only until-marriage" pledge<sup>116</sup> with at church. The pastor taught a "secular" curriculum on the evils of sex and the virtues of waiting until marriage.<sup>117</sup> Ms. Knox recalls one particular lesson he would repeat, an exceptional example of the fear based and gender stereotyping frequently used in these programs:

One demonstration [Pastor Ainsworth] used left little doubt as to our worth as a future spouse or partner or person if we were to engage in sexual activity before marriage. He pulled an often squirming and reluctant and *always female* volunteer onto the stage, took out a toothbrush that looked like it had been used to scrub toilets, and asked her if she would brush her teeth with it. When she predictably refused, he pulled out another toothbrush, this one pristine, in its original box, and asked her if she would brush her teeth

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<sup>114</sup> In 1995, Texas became the third state to institute mandatory abstinence-only education in all public schools (prior to Title V and CBAE funds becoming available from the federal government. See P.B.S., *supra* note 111.

<sup>115</sup> *Hearing on Abstinence-Only Education*, *supra* note 4, at 217 (statement of Shelby Knox).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

with that toothbrush. When she answered in the affirmative, he turned to the assembly and said, If you have sex before marriage, you are a dirty toothbrush.<sup>118</sup>

Ms. Knox uses this anecdote in her work to lobby politicians and help create the excitement that has and will continue to help incite activism around the issue.

Ms. Knox testified before the U.S. House of Representatives Oversight Committee in their recent *Hearing on Domestic Abstinence-Only Programs*.<sup>119</sup> Alongside Ms. Knox was Max Siegel, another young activist. Mr. Siegel testified about his personal experience with abstinence-only education and discussed the negative impact it had on his life. Mr. Siegel, an HIV positive man in his early 20s, recounts how he contracted the virus:

I knew enough to suggest a condom, but I did not have an adequate understanding of the importance of using one, and even if I [did], I had no idea how to discuss condoms with my partner. *The abstinence-only message did not prepare me for life*, and I contracted HIV from the first person with whom I consented to having unprotected sex. I was still in high school.<sup>120</sup>

Mr. Siegel has used his negative personal experience as a way to lobby law makers to “end the failed experiment of abstinence-only until-marriage education”<sup>121</sup> and, more importantly, to educate those who are being denied accurate and healthy education on sex, relationships, and self-esteem.

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<sup>118</sup> *Id.* (emphasis added).

<sup>119</sup> *Hearing on Abstinence-Only Education*, *supra* note 4, at 217 (statement of Shelby Knox).

<sup>120</sup> *Hearing on Abstinence-Only Education*, *supra* note 4, at 205-06 (statement of Max Siegel) (emphasis added).

<sup>121</sup> *Id.* at 203.

### ***B. Answering the Call: Non-Profit Organizations Provide Comprehensive Sex Education***

Ms. Knox grew up in a conservative, Christian home, where her parents stressed the value of abstinence until marriage.<sup>122</sup> But, even Ms. Knox's self-proclaimed conservative parents acknowledged and supported having comprehensive sex education in schools.<sup>123</sup> Ms. Knox stated that her parents "wanted me to have complete and accurate information about my body and sexuality. They didn't see a conflict with encouraging me to remain abstinent while. . . I received the tools in school to make healthy responsible decisions."<sup>124</sup> As stressed in the language of the Healthy Teens Act,<sup>125</sup> however, these comprehensive sex education curriculums are meant to *supplement*, not supplant, the information kids are getting at home and the conversations they are having with the adults in their lives about these issues. Toward that end, non-profit advocacy and education organizations are working to educate adults on how to effectively talk to kids about sex, relationships, and self-esteem and also to educate teens on how to discuss these issues with their peers.

#### 1. Planned Parenthood "ARMs" parents and teachers.

Planned Parenthood of New York City ("PPNYC"), for example, has tapped into their extensive volunteer corps in order to reach out to New Yorkers looking for the comprehensive sex education that schools are failing to provide. The Adult Role Models ("ARMs") are PPNYC's volunteer workforce of sexual-

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<sup>122</sup> THE EDUCATION OF SHELBY KNOX, *supra* note 110.

<sup>123</sup> *Id.*

<sup>124</sup> *Hearing on Abstinence-Only Education*, *supra* note 4, at 218 (statement of Shelby Knox).

<sup>125</sup> "Comprehensive sex education programs which *complement parental involvement and instruction* respect the diversity and values of our state and provide our youth at risk with the foundation to make responsibly informed choices." Healthy Teens Act, A.B. 1806, 232nd Leg., Reg. Sess. (N.Y 2009) (emphasis added).

ity educators who work to educate adults on how to have effective, medically accurate, and age appropriate conversations with their children and other adults on sexuality, health, and relationships.<sup>126</sup> The ARMs program stems from the belief that “parents and caregivers are the main sexuality educators of their children. To grow into sexually healthy adults, young people need skills and information to help them delay sexual activity and to protect themselves when they do become sexually active.”<sup>127</sup> The ARMs program consists of four free workshops addressing issues “combining good parental communication with parental monitoring and other behaviors that support and enhance the bond between parent and child.”<sup>128</sup>

ARMs volunteers are, generally, parents and grandparents from the community who either personally had children at a very young age and/or watched their own children get pregnant at a very young age. They have firsthand experience and a personal investment in work that supplements the ineffective education being offered in schools.<sup>129</sup> The workshops usually combine lecture, discussion, and role play in order to help participants best understand how to educate and talk to their children about these issues, regardless of the education being offered in the schools.<sup>130</sup>

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<sup>126</sup> Planned Parenthood of New York City, *Adult Role Models Workshops*, <http://www.plannedparenthood.org/nyc/adult-role-models-workshops-15183.htm> [hereinafter *Adult Role Model Workshops*].

<sup>127</sup> *Connecting to Community: Planned Parenthood's Adult Role Models Program*, CHOICE VOICE (Planned Parenthood of New York City), July 2006, [http://www.plannedparenthood.org/nyc/files/NYC/CV\\_2006\\_07\\_2\\_EN.pdf](http://www.plannedparenthood.org/nyc/files/NYC/CV_2006_07_2_EN.pdf).

<sup>128</sup> *Adult Role Model Workshops*, *supra* note 126.

<sup>129</sup> Telephone Interview with Dennis Barton, Adult Role Model, Planned Parenthood of New York City (Mar. 5, 2009).

<sup>130</sup> *Id.*

2. Teen advocates, armed with medically accurate information, talk about sex to their peers.

PPNYC has taken a multi-faceted approach in addressing this issue. In addition to the ARMs program, PPNYC has created a program by which teens can educate one another, in recognition of the fact that teens often feel more comfortable talking to their peers than to adults. The Teen Advocate program holds workshops at schools, religious, and community organizations that encourage teens to learn from one another and feel comfortable asking questions and discussing these issues, helping to dispel the discomfort and code of silence surrounding sex.<sup>131</sup>

## **VI. LEGISLATION AND COMMUNITY ACTIVISM – PARTNERS IN THE WAR AGAINST IGNORANCE**

Nationwide efforts, based on and in conjunction with the state and local efforts described above, are the most effective means to combat the current public health issue created and perpetuated by the abstinence-only education movement. Abstinence-only education presents two large inter-related problems that can be rectified with a shift towards comprehensive sex education. First, Title V, abstinence-only education has framed the issue of sex education funding and STD and pregnancy rates among teens as a social welfare issue. This view underscores the fundamental problem with how the abstinence-only curricula address the issue. Sex education is about addressing the public health issues of pregnancy and STD rates among teens, as well as the state taking responsibility for helping to raise responsible, respectful, and mentally and physically healthy young adults. Public schools are meant to be a training ground for creating good citizens,<sup>132</sup> mandating age-appropriate comprehensive sex

<sup>131</sup> *Adult Role Model Workshops*, *supra* note 126.

<sup>132</sup> Justice Sandra Day O'Connor, *Turning Students into Citizens* (Oct. 27, 2008), available at <http://www.publicschoolinsights.org/node/2102> (“[O]nly an

education in public schools is a meaningful step towards that goal. The second problem with abstinence-only education is that, by and large, the curricula make moral issues paramount, rather than address the interplay of morality and values along with medically accurate information.<sup>133</sup> The comprehensive sex education curricula take a holistic approach to education. The lessons address sex being intertwined with those on values, self-esteem, body image, and healthy relationships.<sup>134</sup>

While community efforts, such as PPNYC's ARMs and Teen Advocates programs, have made great strides towards combating these issues, there is only so much they can do in the face of the \$1.3 billion<sup>135</sup> the federal government has spent on abstinence-only education. To that end, I propose: (1) states pass legislation mandating that age appropriate, comprehensive sex education be taught in all public schools, beginning with elementary school; (2) federal legislation should be passed to shift funding from abstinence-only programs to comprehensive education programs, such as with the REAL Act, but on a larger scale; and (3) that the PPNYC programs be used as a model for nation-wide, government funded, programs to teach parents and caregivers the information they need to support and communicate with their children.

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educated citizenry can insist that our nation's commitment to liberty be upheld, and the promise of our Constitution fulfilled.”).

<sup>133</sup> *Waxman Report*, *supra* note 20, at 15 (“For example, in a newsletter accompanying one popular curriculum, the author laments that as a result of societal change, ‘No longer were we valued as spiritual beings made by a loving Creator.’ The curriculum’s author closes the section by signing, ‘In His Service.’”)

<sup>134</sup> *SIECUS Guidelines*, *supra* note 10, at 19.

<sup>135</sup> *Hearings on Abstinence-Only Programs*, *supra* note 4, at 4.



### **A. State Legislation - Mandating Comprehensive Sex Education in Public Schools**

The legislative approach needs to operate at both the state and federal level in order to be most effective. States should continue on the path they are on, recognizing that abstinence-only programs are ineffective and damaging to youth.<sup>136</sup> To that end, states should cease to fund abstinence-only education and mandate that public schools include age appropriate comprehensive sex education. To effectively implement this mandate, the states should create committees to develop and review curricula. These committees should create community specific comprehensive sex education curricula and review them annually for effectiveness and accuracy. The curricula should promote sexual development, reproductive health, interpersonal relationships, affection, intimacy, body image, and gender roles.<sup>137</sup> This type of legislation will help to shift the thinking about sex education from a social welfare issue to a public health concern.

### **B. Federal Funding - Creating a National Standard**

On the federal level the legislative issue is threefold: (1) pass the REAL Act; (2) replace CBAE grants with grants for comprehensive sex education programs modeled after the PPNYC programs; and (3) create legislation whereby states would receive federal funds for sex education in public schools, so long as the curricula used met a set list of criteria promoting comprehensive sex-education.

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<sup>136</sup> See, e.g., Peterson, *supra* note 102.

<sup>137</sup> SIECUS *Guidelines*, *supra* note 10.

### 1. Creating the CBCSE program – Community Based Comprehensive Sex Education

A federally funded grant program for comprehensive sex education will be, logistically, extraordinarily easy to institute. The CBAE legislation is a perfect template for similar legislation that could be created to fund the CBCSE program.<sup>138</sup> The CBAE grant program uses the definition of “abstinence education,”<sup>139</sup> that each must be “meaningfully represent[ed],”<sup>140</sup> that are laid out in Title V.<sup>141</sup> To create the CBCSE program, we only need remove the section defining abstinence education and prohibiting funds to go to organizations that offer what is tantamount to clear and accurate sexual health education.<sup>142</sup> That language should be replaced to state that the CBCSE grants may go to organizations that fulfill the list of components that make up the definition of comprehensive sex education, as defined by New York’s Healthy Teens Act.<sup>143</sup>

Organizations would submit proposals for funding directly to the Department of Health and Human Services. Two funding streams would be created under this program: one to fund programs directed at children and the other directed at parents and caregivers. Programs receiving funding would have to submit their curricula which would undergo an initial, as well as annual, review—of both curricula and the organization as a whole. These reviews would compare the information in the curricula with the most recent data collected on STD and pregnancy rates, contraceptive effectiveness, and other relevant updates. In

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<sup>138</sup> It is possible that the funds allocated to the Office of the Secretary of Health and Human Services for teen pregnancy prevention could be used in a manner such as this, but it is yet unclear whether that money will be approved and how the office will determine its allocation.

<sup>139</sup> 42 U.S.C. § 710(b)(2)(A-H) (2006).

<sup>140</sup> SIECUS Report, *supra* note 44.

<sup>141</sup> Social Security Act, Pub. L. No. 106-246, 114 Stat. 550 (2000).

<sup>142</sup> *Id.*

<sup>143</sup> Healthy Teens Act, A.B. 1806, 232nd Leg., Reg. Sess. (N.Y 2009).

addition, the reviews would address the effectiveness of the communication and relationship building tools being used. Organizations seeking funding must show, at the bare minimum, that they are not conflating religious conjecture or social myths with established scientific norms regarding sexuality, sexual conduct, or STDs and that they are not disseminating misleading<sup>144</sup> or false information.<sup>145</sup>

Finally, the curricula would be reviewed as its responsive to its targeted demographic, as well as to public and sexual health issues facing the particular locality which it is situated. These programs would go a long way towards promoting comprehensive sex education, while still ensuring that a specific community's values and specific issues of concern are addressed. Ensuring that children and teens are getting medically accurate and age appropriate information on sex, relationships, and health, as well as learning how to communicate and empower themselves are all essential to creating healthy, intelligent citizens in this generation.

## 2. Creating federally funded comprehensive abstinence plus education – the proposed “CAPE” Act

Although parent-child communication on these issues must grow stronger, comprehensive sex education in the schools is

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<sup>144</sup> For example, one abstinence-only education curriculum, popular among recipients of CBAE grant funds, shows a chart comparing an increase in condom usage in society as comparable to an increase in rates of Chlamydia infection, correlating the increase in condom usage with an increase in infection. However, the Center for Disease Control states that the increase in Chlamydia infection rates is mostly attributable to an increase in “detection because of ‘increased screening, recognition of asymptomatic infection (mainly in women) and improved reporting.’” However, the curriculum does not acknowledge that fact anywhere. *Waxman Report, supra* note 20, at 11.

<sup>145</sup> In discussing possible side-effects of abortion procedures, one curriculum states that 5-10% of women who have an abortion will become sterile. Obstetrics textbooks state that “‘fertility is not altered by an elective abortion.’” *Id.* at 13.

not made moot by the promotion of good parent-child communication or community based programs. I propose the Comprehensive Abstinence-Plus<sup>146</sup> Education Act (“CAPE Act”) to help fund comprehensive sex education in schools. First, as Ms. Knox has illustrated, her parents wanted to give her the latest, most complete, and accurate information on sexuality and health but did not have it or know where to access it.<sup>147</sup> Secondly, and more importantly, the unfortunate truth is that there is a population of teenagers who do not feel, sometimes rightly so, that they can talk to their parents about the questions they have about sexuality and sexual health.<sup>148</sup> Their health is seriously endangered by this lack of available information. For these kids, like Max Siegel, school provided comprehensive sex education is even more essential.

The CAPE Act, using the requirements and goals of New York’s Healthy Teen Act as a guideline, would create age appropriate and medically accurate comprehensive sex education curricula for the entire nation. The Cape Act, as is stressed in the language of New York’s Healthy Teens Act, would “teach that abstinence is the only sure way to avoid pregnancy or sexually transmitted diseases”<sup>149</sup> and emphasize “the value of abstinence while not ignoring those adolescents who have had or who are having sexual intercourse,”<sup>150</sup> in addition to providing medically

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<sup>146</sup> “Abstinence-plus” education is a term that can refer to anything above and beyond abstinence-only. *Hearings on Abstinence-Only Programs*, *supra* note 4, at 191 (statement of Dr. Harvey Fineberg) (here “abstinence-plus” is used in its most expansive sense to mean comprehensive sex education).

<sup>147</sup> *Hearings on Abstinence-Only Programs*, *supra* note 4, at 218 (statement of Shelby Knox).

<sup>148</sup> “The lost opportunity to provide sex education for sexual minority youths [gay, lesbian, transgender] is particularly unfortunate given that these adolescents have unique health risks [depression, suicidality] but rarely confide in parents or health providers, and thus are less likely to receive sex education geared to their needs at home or during routine health care.” Beh & Diamond, *supra* note 7, at 36.

<sup>149</sup> Healthy Teens Act, A.B. 1806, 232nd Leg., Reg. Sess. (N.Y 2009).

<sup>150</sup> *Id.*

accurate, age appropriate information on healthy sexuality, body image, and relationships. These curricula would act as a baseline model for states interested in creating comprehensive sex education curricula that focus on the demographics and issues specific to their locality. But, by creating a national base standard, students in each state would receive information geared to their situation, so students nationwide would share the same baseline educational standard.

The CAPE Act would work to create a program for states that have already passed legislation mandating comprehensive sex education in public schools to receive federal funding, via state grants, to fund those programs per the standard national curriculum.

Finally, the legislation would provide an opt out provision for those parents who objected to their children begin taught certain aspects of the curricula, so long as their objections to particular lessons were “undeniably at odds with fundamental tenets of their religious beliefs”<sup>151</sup> or values. It is highly unlikely that this opt out provision would be used with any regularity, since 72% of parents favor sex education in the schools that includes discussion of “relationships, the basics of human reproduction, abstinence, AIDS, pregnancy prevention, and the like.”<sup>152</sup>

### CONCLUSION

These state and federal programs would make great strides toward addressing the epidemic of public health issues engendered by abstinence-only education. Abstinence-only education

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<sup>151</sup> *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972) (holding that State mandated education requirements must be balanced against parents’ liberty interests in raising their children according their values and religious beliefs, establishing that the more essential the mandated school practice is the more entrenched and established the religious belief in question must be.)

<sup>152</sup> NATIONAL PUBLIC RADIO, ET AL., *Sex Education in America 5* (2004), available at <http://www.kff.org/newsmedia/upload/Sex-Education-in-America-General-Public-Parents-Survey-Toplines.pdf>.

is not working. Teen STD and pregnancy rates are largely stagnant, and we are creating a generation of Americans who do not know how to protect themselves and lead healthy lives, and worse yet, will not be able to teach *their* children how to do so either. The time to try a different approach is now. The holistic approach of comprehensive sex education addresses self-esteem, healthy relationships, and communication, in addition to traditional sex education and the values of abstinence, in a socially sensitive manner. Most importantly, comprehensive sex education shifts the focus away from the social welfare costs of teen pregnancy to where it should be: on the health and safety of our children.

