

# SEX EDUCATION IN SCHOOLS

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## I. INTRODUCTION

The teaching of sex education in the public-school system is a controversial topic. As a result, state statutes regulating sex education, as well as methodologies used in sex education curricula, vary widely. Topics covered by the law include general health education, sexually transmitted diseases (“STDs”), HIV/AIDS, contraception, abortion, and human sexuality. During the Trump Administration, there were changes to the federal funding available for abstinence-only programs, including cuts to funding for organizations taking part in President Obama’s Teen Pregnancy Prevention Program.<sup>1</sup> The Trump Administration and former officials at the Department of Health and Human

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1. Jessie Hellmann, *Abstinence Only Education Making a Comeback Under Trump*, THE HILL (Mar. 8, 2018), <https://perma.cc/BJ2G-MSU4>.

Services emphasized the need to embed “sexual delay” in sex education, as seen in a report released during the summer of 2018.<sup>2</sup>

Part II of this Article surveys different state sex education laws, describes the recent challenges and proposed changes to state statutes, and breaks down the distribution of federal funding for both abstinence-only and comprehensive sex education programs. Part III discusses the judicial history of the challenges to sex education statutes. It examines differences between challenges to statutes that require sex education and challenges to statutes that limit topics that may be covered in a sex education curriculum. Part IV of this Article highlights political developments during the 2016 election cycle and research findings regarding the effectiveness of various sex education programs, concluding with a discussion of the Trump Administration’s early treatment of the issue and proposed Republican policy shifts.

## II. VARIATIONS IN STATE SEX EDUCATION POLICY

### A. CURRENT STATUS OF SEX EDUCATION POLICY BY STATE

Sex education statutes vary significantly among the fifty states and the District of Columbia.<sup>3</sup> Each state has different limitations and requirements regarding what public schools must, may, and cannot teach students.<sup>4</sup> Many states expressly regulate teaching topics like abstinence, sexuality, STD prevention, HIV/AIDS, and sexual orientation.<sup>5</sup> Some states grant local school boards a great deal of discretion, resulting in little uniformity in the teaching of sexual education throughout the state.<sup>6</sup>

The majority of states expressly regulate the teaching of sexual education in public schools.<sup>7</sup> Thirty-three states and the District of Columbia require public schools to include education about STDs or HIV/AIDS in their curricula (see Appendix A for a chart of sexual education laws in the states).<sup>8</sup> Kansas does not

2. *Id.*

3. SIECUS, *The SIECUS State Profiles 2019/2020*, SIECUS (2020), <https://perma.cc/P2YF-4S5N>.

4. *Id.*

5. *Id.*

6. See e.g., Jennifer Smith, *State Moves to Bring Sex Education Out of the ‘90s*, COMMONWEALTH MAGAZINE (June 6, 2023), <https://perma.cc/E5T3-QZLM>.

7. See *Sex and HIV Education*, GUTTMACHER INST. (Sept. 1, 2023), <https://perma.cc/HS7E-D78X>.

8. Alabama, California, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, West Virginia, and Wisconsin. See, e.g., CAL. EDUC. CODE § 51934 (West, Westlaw through ch. 8 of 2024 Reg. Sess.); CONN. GEN. STAT. ANN. § 10-19(b) (West, Westlaw through 2023 Reg. Sess. & 2023 Sept. Sess.); GA. CODE ANN. § 20-2-143 (West, Westlaw through 2023 Reg. Sess. Of Ga. Gen. Assemb.) (requiring sex education, including curricula devoted to abstinence, STDs, and HIV/AIDS prevention); 105 ILL. COMP. STAT. ANN. 110/3 (West, Westlaw through P.A. 103-585 of the 2024 Reg. Sess.); IND. CODE ANN. § 20-30-5-12 (West, Westlaw through 2024 2d Reg. Sess. of the 123rd Gen. Assemb. effective through Mar. 15, 2024); IOWA CODE ANN. §§ 256.11(4), (5j) (West, Westlaw through 2024 Reg. Sess.) (requiring STD education for grades seven through twelve); ME. REV. STAT. ANN. tit. 22, §§ 1902, 1910 (West, Westlaw through ch.

require specific inclusions, but the state board of education provides a voluntary model curriculum.<sup>9</sup> Florida, Mississippi, and North Dakota mandate abstinence-only or abstinence-plus teaching in public schools.<sup>10</sup> Six states have statutes or

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641 of the 2023 Reg. Sess. of 131st Leg.) (requiring comprehensive family life education, including education about family planning and STDs); MICH. COMP. LAWS ANN. § 380.1169 (West, Westlaw through P.A.2024, No. 35, of the 2024 Reg. Sess.); MINN. STAT. ANN. § 121A.23 (West, Westlaw through 2024 Reg. Sess.) (requiring that each district have a program to reduce HIV and HPV transmission as well as a curriculum that helps students abstain from sexual activity until marriage); NEV. REV. STAT. ANN. § 389.036 (West, Westlaw through 2023 82d Reg. Sess.) (requiring HIV/AIDS, human reproduction, sexual responsibility, and STD education); N.H. REV. STAT. ANN. § 189:10 (West, Westlaw through ch. 8 of the 2024 Reg. Sess.); N.C. GEN. STAT. ANN. § 115C-81.30 (West, Westlaw through the 2023 Reg. Sess.) (requiring STD prevention education, including education about HIV/AIDS and HPV, as well as the effectiveness of FDA-approved contraceptive methods); OHIO REV. CODE ANN. § 3313.60(A)(5)(c) (West, Westlaw through 2023–2024 Sess.); OKLA. STAT. ANN. tit. 70, § 11-103.3 (West, Westlaw through ch. 106 of the 2d Reg. Sess. of the 59th Leg.); OR. REV. STAT. § 336.455 (2) (West, Westlaw through 2024 Reg. Sess.) (requiring sex education, including education about the prevention of HIV and other STDs, as well as information about contraceptives); 16 R.I. GEN. LAWS § 16-22-17(a) (West, Westlaw through ch. 6 of the 2024 Reg. Sess. of the R.I. Leg.); S.C. CODE ANN. § 59-32-30(A) (West, Westlaw through 2024 Act No. 120) (requiring sex education in six through twelfth grades including coverage of STD and pregnancy prevention, but prohibiting education of STDs in kindergarten through fifth grade); UTAH CODE ANN. § 53G-10-402(2)(b) (West, Westlaw through the 2024 Gen. Sess.) (requiring education on prevention of communicable diseases, stressing abstinence before marriage as prevention method and prohibiting encouragement of contraceptive use); VT. STAT. ANN. tit. 16, §§ 131(1), (4) (West, Westlaw through 2023–2024 Vt. Gen. Assemb.); WASH. REV. CODE ANN. §§ 28A.230.020, 230.070(1), (6)-(7) (West, Westlaw through ch. 375 of the 2024 Reg. Sess.); W. VA. CODE ANN. § 18-2-9(b) (West, Westlaw through the 2024 Reg. Sess.); WIS. STAT. ANN. § 115.35 (West, Westlaw through 2023 Act 117); ALA. CODE § 16-40A-2 (West, Westlaw through 2024 Reg. Sess.) (required to emphasize that abstinence is the only effective protection against STDs and HIV/AIDS); 14 DEL. ADMIN. CODE § 851 (West, Westlaw through Apr. 1, 2024) (requiring comprehensive sexuality education and an HIV prevention program); D.C. MUN. REGS. sub. 5-E, § 2305 (West, Westlaw through Apr. 12, 2024) (requiring instruction on human sexuality and reproduction, including intercourse, pregnancy, childbirth, venereal disease, contraception, and abortion); HAW. REV. STAT. ANN. § 321-11.1 (West, Westlaw through Act 9 of 2024 Reg. Sess.) (requiring abstinence-based sexuality education that includes instruction on HIV prevention); KY. REV. STAT. ANN. § 158.1415 (West, Westlaw through Apr. 17, 2024) (requiring education on how abstinence is the only certain way to avoid STDs); MD. CODE REGS. § 13A.04.18.01(D) (West, Westlaw through Feb. 23, 2024, Md. Reg. Vol. 51, Iss. 04) (requiring education on human sexuality and diseases); MO. ANN. STAT. § 170.015 (West, Westlaw through 2023 1st Reg. Sess.); N.J. STAT. ANN. § 18A:35-4.20 (West, Westlaw through L.2023, c. 256 and J.R. No. 18.) (requiring education in HIV/AIDS, sexually transmitted infections and pregnancy); N.M. CODE R. § 6.12.2.10 (West, Westlaw through Vol. 25, No. 6, Mar. 26, 2024); N.Y. COMP. CODES R. & REGS. tit. 8, § 135.3 (West, Westlaw through Apr. 12, 2024); 22 PA. CODE § 4.29(a) (West, Westlaw through Jan. 27, 2024); TENN. CODE ANN. § 49-6-1302 (West, Westlaw through ch. 604 of the 2024 Reg. Sess.); TENN. ST. BD. OF EDUC., TENNESSEE HEALTH EDUCATION AND LIFETIME WELLNESS STANDARDS, GRADES K-12 (2018).

9. See KAN. ADMIN. REGS. § 91-31-32(c)(9)(G) (through Vol. 43, No. 15, Apr. 11, 2024); KAN. ST. DEP'T OF EDUC., KANSAS MODEL CURRICULAR STANDARDS FOR HEALTH EDUCATION 14–15 (2018).

10. Both abstinence-only and abstinence-plus education programs promote sexual abstinence as the only certain way to prevent pregnancy and STDs. However, abstinence-plus education acknowledges that some teens will be sexually active and also teaches contraception and condom use. See Chris Collins, Priya Alagiri & Todd Summers, AIDS RESEARCH INSTITUTE, UNIV. OF CAL. SAN FRANCISCO, *Abstinence Only v. Comprehensive Education: What are the arguments? What is the evidence?* (2002); see also FLA. STAT. ANN. § 1003.42(3) (West, Westlaw through 2024 1st Reg. Sess.); MISS. CODE ANN. § 37-13-171(2) (West, Westlaw through 2024, Reg., 1st, and 2d Sess.); N.D. CENT. CODE ANN. § 15.1-21-24 (West, Westlaw through 2023 Reg. Sess.).

codes that permit, but do not require, sex education.<sup>11</sup> Three states require that schools teach health generally while not specifically requiring sex education.<sup>12</sup> The three remaining states remain silent on sex education, entrusting the decision to local school boards.<sup>13</sup>

Controversial topics, such as the prevention of STDs, contraception, abortion, and sexuality, are occasionally taught in classrooms. There is little uniformity among the states as to how such issues should be taught. Many states and the District of Columbia require schools to educate students on the prevention and transmission of STDs, including, and in addition to, HIV/AIDS.<sup>14</sup> South

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11. Arizona, Colorado, Idaho, Louisiana, Massachusetts, and Virginia permit sex education. *See* ARIZ. REV. STAT. ANN. § 15-716(A) (West, Westlaw through 2024 2d Reg. Sess.); COLO. REV. STAT. ANN. § 22-25-104(6)(a) (West, Westlaw through the 2024 2d Reg. Sess. 74th Gen. Assemb.) (providing guidelines if sex education is implemented); IDAHO CODE ANN. § 33-1608 (LEXIS through 2024 Reg. Sess.); LA. REV. STAT. ANN. § 17:281 (West, Westlaw through 2024 1st Extraordinary Sess.); MASS. GEN. LAWS ANN. ch. 69, § 1L (West, Westlaw through 2023 1st Ann. Sess.); VA. CODE ANN. § 22.1-207.1 (West, Westlaw through 2024 Reg. Sess.) (allowing schools to implement programs to attempt to reduce the incidence of pregnancy and STDs among teenagers).

12. Nebraska, Texas, and Wyoming require the teaching of general health. *See* NEB. REV. STAT. § 79-712 (West, Westlaw through 2024 2d Reg. Sess.) (comprehensive health program must address drug and alcohol abuse, but statute does not reference sex education); TEX. EDUC. CODE ANN. § 28.002(a)(2) (B) (West, Westlaw through the 2023 Reg., 2d, 3d and 4th Called Sess. of the 88th Leg.) (requiring health education with an emphasis on nutrition and exercise); WYO. STAT. ANN. § 21-9-101(b)(i)(G) (West, Westlaw through 2024 Budget Sess.) (providing that each school district shall develop a health and safety curriculum).

13. Alaska, Arkansas, and South Dakota. *See* ALASKA STAT. § 14.30.360(a) (West, Westlaw through 2024 2d Reg. Sess.) (districts are “encouraged” to conduct a health program); ARK. CODE ANN. § 6-16-132(c) (West, Westlaw through 2023 Reg. Sess. & 2023 1st Extraordinary Sess. of 94th Ark. Gen. Assemb.); S.D. CODIFIED LAWS § 13-1-12.1 (West, Westlaw through 2024 Reg. Sess.) (allowing school boards to submit curriculum plans to the state board of education for funding approval).

14. Delaware, District of Columbia, Florida, Georgia, Hawaii, Iowa, Kentucky, Maine, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont, Washington, West Virginia, and Wisconsin. *See* 14 DEL. ADMIN. CODE § 851.2.1.4 (West, Westlaw through Apr. 1, 2024) (requiring comprehensive sexuality education and an HIV prevention program); D.C. MUN. REGS. tit. 5, §§ 2304.3, 2305.1(a) (West, Westlaw through Apr. 12, 2024); FLA. STAT. ANN. §§ 1003.42(2)(o)(1)(e), 1003.46(1) (West, Westlaw through 2024 1st Reg. Sess.) (requiring education on the prevention and control of disease, with an option for schools to teach more specifically about AIDS and other STDs); GA. CODE ANN. § 20-2-143(b) (West, Westlaw through 2023 Reg. Sess.); HAW. REV. STAT. ANN. § 321-11.1(a) (West, Westlaw through 2024 Reg. Sess.) (requiring sexuality health education programs provide medically accurate, age-appropriate factual information on disease prevention); IOWA CODE ANN. §§ 256.11(3), (4), (5)(j)(1) (West, Westlaw through 2024 Reg. Sess.); KY. DEP’T OF EDUC., Ky. Core Acad. Stds. 340133 (2019) (requiring education on the relationship between decision-making and responsible sexual behavior, including preventing HIV and STDs); ME. REV. STAT. ANN. tit. 22, §§ 1902(1-A), 1910 (LEXIS through 2024 2d Reg. Sess.) (requiring comprehensive family life education, including medically accurate and age-appropriate education on STDs); MINN. STAT. ANN. § 121A.23 (West, Westlaw through 2024 Reg. Sess.) (requiring schools to develop and implement curricula on HPV and HIV/AIDS prevention, in addition to other STDs); NEV. REV. STAT. ANN. § 389.036 (West, Westlaw through 82nd Reg. Sess. (2023) & 35th Spec. Sess. (2023)) (requiring factual instruction concerning HIV, communicable diseases, and sexual responsibility); N.H. REV. STAT. ANN. § 189:10 (West, Westlaw through 2024 Reg. Sess.); N.C. GEN. STAT. ANN. § 115C-81.25(c)(11) (West, Westlaw through 2023 Reg. Sess.) (requiring STD prevention education, including education about AIDS and HPV, as well as the effectiveness of FDA-approved contraceptive methods); N.M. STAT. ANN. § 6.12.2.10(C)(3)

Carolina, South Dakota, and Utah require schools to teach about risks and prevention of STDs, without mandating HIV/AIDS instruction.<sup>15</sup> Colorado, Illinois, Louisiana, and Virginia require schools electing to teach sexual education to include instruction on the transmission and prevention of STDs.<sup>16</sup> Idaho requires schools electing to teach sex education to provide “scientific, physiological information for understanding sex and its relation to the miracle of life.”<sup>17</sup> Arizona and Arkansas permit, but do not require, curricula that include information on the transmission and prevention of HIV/AIDS and other STDs.<sup>18</sup> Massachusetts allows local school boards to decide whether to offer sex education, but any sex education course offered must include instruction on HIV/AIDS prevention.<sup>19</sup> Alabama, California, Indiana, Maryland, Michigan, and Missouri require instruction on HIV/AIDS, but not for other STDs. They do, however, set minimum content standards for schools that elect to provide instruction on the transmission and prevention of STDs other than HIV.<sup>20</sup> Connecticut requires instruction on HIV/

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(West, Westlaw through Vol. 25, No. 6, Mar. 26, 2024); OHIO REV. CODE ANN. § 3313.60(A)(5)(c) (West, Westlaw through 2023–2024 Gen. Assemb.); OR. REV. STAT. § 336.455(2) (West, Westlaw through 2024 Reg. Sess.) (requiring medically accurate, age-appropriate education on the prevention of HIV and other STDs); 22 PA. CODE § 4.29(a) (West, Westlaw through Jan. 27, 2024) (requiring HIV/AIDS prevention education from primary through high school, allowing omission of sexual modes of transmission when teaching elementary grades); 16 R.I. GEN. LAWS ANN. §§ 16-22-17(a), 16-22-18 (West, Westlaw through 2024 Sess., ch. 6) (requiring health and family life courses, with an emphasis on abstinence as the preferred method of the prevention of HIV/AIDS transmission and other STDs); VT. STAT. ANN. tit. 16, §§ 131(1), (4) (West, Westlaw through 2023–2024 Reg. Sess.); WASH. REV. CODE ANN. §§ 28A.230.020, 28A.230.070(1), (6)–(7) (West, Westlaw through 2024 Reg. Sess.); W. VA. CODE ANN. § 18-2-9(b) (West, Westlaw through 2024 Reg. Sess.); WIS. STAT. ANN. § 115.35 (West, Westlaw through 2023 Act 117); N.J. DEP’T OF EDUC., NEW JERSEY CORE CURRICULUM CONTENT STANDARDS FOR COMPREHENSIVE HEALTH AND PHYSICAL EDUCATION (2014) (requiring education in HIV/AIDS, STIs, HPV, pregnancy, and contraception).

15. South Carolina requires instruction on STDs beginning in sixth grade. *See also* S.C. CODE ANN. § 59-32-30(A) (West, Westlaw through 2024 Act No. 120); S.D. CODIFIED LAWS § 13-33-1 (LEXIS through 2024 Reg. Sess. and S.C. Rule 23-17) (requiring “substantial conformity” to the accreditation standards adopted by the South Dakota Board of Education); S.D. DEP’T OF EDUC., SOUTH DAKOTA HEALTH EDUCATION STANDARDS (2018) (requiring instruction on sexuality and risky sexual behavior); UTAH CODE ANN. § 53G-10-402(2)(a)-(b) (West, Westlaw through 2023 2d Spec. Sess.) (requiring education on prevention of communicable diseases, stressing abstinence before marriage as a prevention method).

16. *See* COLO. REV. STAT. ANN. § 22-25-104(6)(a) (West, Westlaw through 2024 2d Reg. Sess.); 105 ILL. COMP. STAT. ANN. 5/27-9.1(a), (b), (f) (West, Westlaw through 2024 Reg. Sess., P.A. 103-585); LA. STAT. ANN. § 17:281(A)(4)(b) (West, Westlaw through 2024 1st Extraordinary and 2d. Extraordinary Sess.) (providing that education must “emphasize that abstinence from sexual activity is a way to avoid unwanted pregnancy [and STDs], including [AIDS] . . .”); LA. ADMIN. CODE tit. 28, pt. LIX, § 521(A)(4) (c) (West, Westlaw through Feb. 20, 2024, La. Reg. Vol. 50, No. 2); VA. CODE ANN. § 22.1-207.1 (West, Westlaw through 2024 Reg. Sess.).

17. IDAHO CODE ANN. § 33-1608(b) (LEXIS through 2024 Reg. Sess.).

18. *See* ARIZ. REV. STAT. ANN. § 15-716 (West, Westlaw through 2024 2d Reg. Sess.); ARK. CODE ANN. § 6-18-703(d) (West, Westlaw through 2023 Reg. Sess.).

19. *See* MASS. GEN. LAWS ANN. ch. 69, § 1L (West, Westlaw through 2023 1st Ann. Sess.).

20. *See* ALA. ST. DEP’T OF EDUC., ALABAMA COURSE OF STUDY: HEALTH EDUCATION (2019) (requiring HIV/AIDS education in grades nine through twelve); ALA. CODE § 16-40A-2 (West, Westlaw through 2024 Reg. Sess.); CAL. EDUC. CODE §§ 51933(a)–(b), 51934(b) (West, Westlaw through ch. 8 of



AIDS transmission and prevention and requires the state board of education to develop curriculum guides that cover human sexuality, without setting specific content guidelines.<sup>21</sup> New Mexico, New York, and Oklahoma require HIV/AIDS instruction but do not mandate additional instruction on STDs.<sup>22</sup> Tennessee requires local school boards to implement family life education in accordance with curriculum guidelines provided by the state board of education.<sup>23</sup> Tennessee's *Health Education Standards* curriculum mandates teaching STD prevention, including the prevention of HIV/AIDS, starting in sixth grade.<sup>24</sup>

Some states have limited what sex education programs can teach to certain principles only. For example, Alabama, Arkansas, Hawaii, Mississippi, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, Tennessee, Texas, and Utah require that abstinence, typically until marriage, must be emphasized as the best way to prevent diseases whenever STD prevention is taught in schools.<sup>25</sup> Nebraska's law on comprehensive health education

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2024 Reg. Sess.) (permitting HIV/AIDS prevention education in any grade and requiring it at least once in middle school and once in high school); CAL. HEALTH & SAFETY CODE § 151002(a)-(b) (West, Westlaw through ch. 8 of 2024 Reg. Sess.); IND. CODE ANN. §§ 20-30-5-13, 20-30-5-17 (LEXIS through the 2024 2d Reg. Sess.) (requiring HIV/AIDS instruction and permitting instruction on other STDs); MD. CODE REGS. 13A.04.18.01(D)(2)(b) (West, Westlaw through Apr. 5, 2024) (requiring education on HIV/AIDS); MICH. COMP. LAWS ANN. § 380.1169 (West, Westlaw through P.A. 2024, No. 35) (requiring disease prevention education for HIV/AIDS, and setting minimum standards for other dangerous communicable diseases); MICH. COMP. LAWS ANN. § 380.1507(1) (West, Westlaw through P.A. 2024, No. 35) (authorizing sex education based on minimum content standards); MO. DEP'T OF ELEMENTARY AND SECONDARY EDUC. M. MISSOURI SCHOOL IMPROVEMENT PROGRAM: STANDARDS AND INDICATORS MANUAL (2006) (requiring HIV/AIDS prevention education); MO. ANN. STAT. § 170.015 (1), (2) (West, Westlaw through the 2023 1st Reg. Sess.) (requiring schools that elect to teach sex education to provide students with the latest medical information regarding exposure to HIV/AIDS, hepatitis, and other STDs).

21. CONN. GEN. STAT. ANN. § 10-19(b) (West, Westlaw through 2023 Reg. Sess.).

22. See N.M. STAT. ANN. § 6.12.2.10(C)(3) (West, Westlaw through Vol. 25, No. 6, Mar. 26, 2024); N.Y. COMP. CODES R. & REGS. tit. 8, § 135.3 (West, Westlaw through Apr. 12, 2024); OKLA. STAT. ANN. tit. 70, § 11-103.3 (West, Westlaw through 2024 2d Reg. Sess.).

23. See TENN. CODE ANN. § 49-6-1302 (West, Westlaw through 2024 Reg. Sess.).

24. TENN. ST. BD. OF EDUC., TENNESSEE HEALTH EDUCATION AND LIFETIME WELLNESS STANDARDS, GRADES K-12 (2018).

25. See ALA. CODE § 16-40A-2(a)(1) (West, Westlaw through 2024 Reg. Sess.) (requiring any school that chooses to teach sex education emphasize that abstinence is the only completely effective way to prevent STDs, including HIV/AIDS); ARK. CODE ANN. § 6-18-703(d) (West, Westlaw through 2023 Reg. Sess.) (requiring any school that chooses to teach sex education emphasize that abstinence is the only sure way to prevent STDs, including HIV/AIDS); HAW. BD. OF EDUC., ABSTINENCE-BASED EDUCATION POLICY 2110 (1995) (requiring abstinence-based sexuality education that includes instruction on HIV prevention); MISS. CODE ANN. § 37-13-171 (West, Westlaw through 2024 Reg. Sess.) (requiring school boards to adopt abstinence-only or abstinence-plus policies, which may include contraceptive prevention of STDs, along with a factual presentation of the risks and failure rates of preventative methods); N.J. STAT. ANN. § 18A:35-4.20 (West, Westlaw through L.2023, c. 256 and J.R. No. 18.) (requiring sex education courses and materials to stress abstinence as "the only completely reliable means of eliminating the sexual transmission of HIV/AIDS" and other STDs); N.D. CENT. CODE ANN. § 15.1-21-24 (West, Westlaw through 2023 Reg. Sess.) (requiring health education curriculum to include the risks of adolescent sex and the benefits of abstinence until marriage); OHIO REV. CODE ANN. § 3313.6011(B) (West, Westlaw through 135th Gen. Assemb. 2023-2024) (requiring instruction that abstinence is the only method that is completely effective against STDs); OKLA. STAT. ANN. tit. 70, §

does not require or limit education on STDs, but the Nebraska State Board of Education has adopted abstinence guidelines.<sup>26</sup>

Contraception education is another controversial area in which the states have vastly different laws. Hawaii, Maine, New Hampshire, New Jersey, Oregon, South Carolina, Tennessee, and Vermont require that sex education classes discuss contraception and abstinence.<sup>27</sup> The District of Columbia requires instruction in “human sexuality and family” and STDs, but not abstinence.<sup>28</sup> California passed the California Healthy Youth Act, which requires instruction about STDs and how to prevent them, including through the use of contraception, and does not require that schools stress abstinence.<sup>29</sup> Maryland requires that a course on human sexual behavior, including information on contraception and family

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11-103.3(E) (West, Westlaw through 2024 2d Reg. Sess.) (requiring instruction that abstinence is the only certain means for the prevention of contraction of the “AIDS virus [sic]”); 16 R.I. GEN. LAWS ANN. § 16-22-18 (West, Westlaw through 2024 Reg. Sess., ch. 6) (requiring health and family life courses, with an emphasis on abstinence as the preferred method of the prevention of STDs); S.C. CODE ANN. § 59-32-10(2) (West, Westlaw through 2024 Act No. 102) (requiring emphasis on abstinence); TENN. CODE ANN. § 49-6-1008 (West, Westlaw through 2024 Reg. Sess.) (requiring any materials concerning HIV/AIDS or STDs emphasize premarital abstinence); TEX. EDUC. CODE ANN. § 28.004(e) (West, Westlaw through 2023 Reg. and 2d Called Sess.) (requiring schools that elect to teach sex education emphasize abstinence as the only certain method of preventing AIDS); UTAH CODE ANN. § 53G-10-402 (2)(b) (West, Westlaw through 2023 2d Spec. Sess.) (requiring any school that chooses to teach sex education must emphasize abstinence before marriage and fidelity after marriage as methods for preventing STDs and prohibiting “advocacy” of contraception).

26. See NEB. REV. STAT. ANN. § 79-712 (West, Westlaw through 2024 2d Reg. Sess.) (comprehensive health program must address drug and alcohol abuse, but statute does not reference sex education); NEB. ST. DEP’T OF EDUC., NEBRASKA HEALTH EDUCATION FRAMEWORKS 1 (1998) (guidelines on abstinence education).

27. See HAW. REV. STAT. ANN. § 321-11.1(a) (LEXIS through 2024 Reg. Sess.) (requiring sexuality health education programs provide medically accurate, age-appropriate factual information on abstinence, contraception, and how to prevent unintended pregnancy); HAW. BD. OF EDUC., ABSTINENCE-BASED EDUCATION POLICY 2110 (1995) (requiring instruction that abstinence from sexual intercourse is the surest way to prevent unintended pregnancies); ME. REV. STAT. ANN. tit. 22, §§ 1902 (1-A), 1910 (LEXIS through 2024 1st Reg. Sess. of the 131st Me. Leg.) (requiring comprehensive family life education, including education on the use of contraception with an emphasis on abstinence); N.H. REV. STAT. ANN. § 189:10 (LEXIS through ch. 6 of 2024 Reg. Sess.) (requiring general health education); N.H. ST. DEP’T OF EDUC., HEALTH EDUCATION CURRICULUM GUIDELINES 141–44 (2003) (issuing guidelines on contraception instruction); TENN. ST. BD. OF EDUC., TENNESSEE LIFETIME WELLNESS CURRICULUM STANDARDS GRADES 9-12, at 19 (requiring instruction on abstinence and contraception); N.J. STAT. ANN. §§ 18A:35-4.20, 4.21 (LEXIS through 220th Leg., 2d Ann. Sess.) (requiring sex education courses and materials to stress abstinence as the only completely reliable means of preventing pregnancy, to teach skills and strategies for remaining abstinent in order to prevent pregnancy, and to teach the failure rates of contraceptives); OR. REV. STAT. ANN. § 336.455(2) (LEXIS through 2024 Reg. Sess.) (requiring instruction on the effectiveness of contraceptives, in addition to abstinence); S.C. CODE ANN. §§ 59-32-30(A), -10(4) (West, Westlaw through 2024 Reg. Sess. Act No. 120) (requiring pregnancy prevention instruction, mandating contraception education in grades nine through twelve, and prohibiting contraception education before sixth grade); TENN. CODE ANN. § 49-6-1304(a) (LEXIS through 2024 Reg. Sess.) (requiring family life education to include the teaching of abstinence); VT. STAT. ANN. tit. 16, §§ 131(1), (4), (5) (LEXIS through 2023 Adjourned Sess.) (requiring sex education including prevention of HIV/AIDS and other STDs).

28. D.C. MUN. REGS. tit. 5-E, §§ 2304.3(a)-(c), 2305.1(a) (LEXIS through D.C. Reg., Vol. 71, Iss. 15, Apr. 15, 2024).

29. CAL. EDUC. CODE § 51934 (LEXIS through ch. 1 of 2024 Reg. Sess.).

planning, be offered in schools.<sup>30</sup> Delaware, Georgia, Louisiana, Michigan, North Dakota, Ohio, Rhode Island, and Virginia require that sexual education programs emphasize the benefits of abstinence, but they do not specify guidelines for contraception education.<sup>31</sup> North Carolina requires that schools electing to teach sexual education must instruct students that abstinence is the only certain way to prevent unintended pregnancy, while also providing medically accurate information on other contraception methods.<sup>32</sup> Missouri requires that schools either provide medically accurate information on contraception or follow federal abstinence education guidelines (which permit but do not require contraception instruction).<sup>33</sup> Alabama, Mississippi, Texas, and Washington permit discussion of contraception in classrooms, but the discussion must be limited to the relative effectiveness or ineffectiveness of the various methods.<sup>34</sup> Arizona, Arkansas, Florida, and Indiana require that when schools elect to teach sexual education, they must emphasize abstinence as the only sure method for avoiding pregnancy (without requiring or prohibiting the teaching of other contraceptive methods).<sup>35</sup>

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30. MD. CODE REGS. 13A.04.18.01(D) (LEXIS through Apr. 5, 2024 Iss. of Md. Reg.).

31. See 14 DEL. ADMIN. CODE § 851.2.1.4 (West, Westlaw through Aug. 1, 2023); GA. CODE ANN. § 20-2-143(a) (LEXIS through 2024 Reg. Sess.) (requiring sexual education instruction that emphasizes the benefits of sexual abstinence); LA. STAT. ANN. § 17:281(A)(4) (LEXIS through 2023 1st Extraordinary Sess.) (requiring that schools electing to teach sex education emphasize the benefits of abstinence); MICH. COMP. LAWS ANN. § 380.1507(1) (LEXIS through Act 35 of the 2024 Reg. Leg. Sess.) (requiring schools that elect to teach sex education to stress that abstinence from sex is a responsible and effective method of preventing unplanned or out-of-wedlock pregnancy); N.D. CENT. CODE ANN. § 15.1-21-24 (LEXIS through 2023 Spec. Sess.) (requiring health education curriculum to include the risks of adolescent sex and the benefits of abstinence until marriage); OHIO REV. CODE ANN. § 3313.6011(B) (LEXIS through File 20 of the 135th Gen. Assemb. 2023-2024) (requiring instruction that abstinence is the only 100% effective protection against unwanted pregnancy); 16 R.I. GEN. LAWS ANN. § 16-22-18(a) (West, Westlaw through 2024 Sess. ch. 6) (requiring health and family life courses, with an emphasis on abstinence as the preferred method of the prevention of STDs); 8 VA. ADMIN. CODE § 20-131-170 (LEXIS through Apr. 1, 2024) (requiring that when schools elect to teach sex education, they follow the Board of Education guidelines that have the goal of reducing the incidence of pregnancy and STDs).

32. See N.C. GEN. STAT. ANN. § 115C-81.30(a) (LEXIS through S.L. 2023-151 of 2023 Reg. Sess.) (requiring schools to teach that abstinence from sexual activity is the only certain means of avoiding out-of-wedlock pregnancy, while also teaching about the effectiveness and safety of all FDA-approved contraceptive methods).

33. MO. ANN. STAT. § 170.015(1)(3) (LEXIS through the 2023 1st Reg. Sess.); see *infra* Parts C and D.

34. See ALA. CODE § 16-40A-2 (LEXIS through 2024 Sess.) (stating that if a school chooses to teach sex education, it should teach the statistical reliability of the various forms of contraception, while also emphasizing the increase in protection against pregnancy afforded by the use of various contraceptive measures); MISS. CODE ANN. § 37-13-171 (LEXIS through 2024 1st and 2d Extraordinary and Reg. Sess.) (requiring school boards to adopt abstinence-only or abstinence-plus policies, which may include discussion of contraception only if that discussion includes a factual presentation of the risks and failure rates of those contraceptives); 19 TEX. ADMIN. CODE § 115.27(23)(L) (West, Westlaw through 49 Tex. Reg. No. 1792) (requiring emphasis on abstinence and instruction on the “human-use reality rates” of the effectiveness of contraception, as opposed to the theoretical rates); WASH. REV. CODE ANN. §§ 28A.230.070(6)(b), (7) (LEXIS through 2024 Reg. Sess.) (requiring teaching that condoms or birth control are not a completely effective means of preventing HIV/AIDS).

35. See ARIZ. ADMIN. CODE § R7-2-303(A)(3)(b)(ii) (LEXIS through Ariz. Admin. Reg. Vol. 30, Iss. 11, Mar. 15, 2024) (requiring emphasis on abstinence as the only certain method of preventing pregnancy, without setting guidelines for the teaching of other forms of contraception); ARK. CODE



Utah provides general limits on what may be taught regarding contraception.<sup>36</sup> Some states' laws are silent on contraception but require general instruction on family life and human development.<sup>37</sup> Nebraska's comprehensive health education law does not mention contraception, but the Nebraska State Board of Education adopted abstinence guidelines in 1998.<sup>38</sup> New Mexico's laws are silent on contraception, but the state's *Health Education Standards with Benchmarks and Performance Standards* sets standards for instruction on contraception.<sup>39</sup> Alaska, Massachusetts, Minnesota, and Pennsylvania are silent on the issue of contraception education altogether.

Most states remain silent on the issue of abortion education as part of the sex education program. California, Vermont, and the District of Columbia are the only jurisdictions that require sex education programs to include teaching about abortion.<sup>40</sup> While no state expressly prohibits discussion of abortion in the classroom, six states have restricted what can be taught with respect to abortion.<sup>41</sup>

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ANN. § 6-18-703(d) (LEXIS through 2023 Reg. Sess. and 1st Extraordinary Sess.); FLA. STAT. ANN. § 1003.46 (LEXIS through 2024 Reg. Sess. and 2023 C Spec. Sess.) (requiring sexual education courses to emphasize abstinence as the expected standard of behavior outside of marriage and the only certain way to prevent pregnancy); IND. CODE ANN. § 20-30-5-13 (West, Westlaw through 2024 2d Reg. Sess.) (requiring that where sex education is taught, teachers must emphasize abstinence as the only certain way to avoid out-of-wedlock pregnancies).

36. See UTAH CODE ANN. § 53G-10-402 (LEXIS through 2023 2d Special Sess.) (permitting contraceptive education but prohibiting advocating or encouraging the use of contraceptives).

37. See, e.g., IDAHO CODE ANN. § 33-1608(b) (LEXIS through 2024 Reg. Sess.) (indicating that sex education should impart "knowledge of the power of the sex drive and the necessity of controlling that drive by self-discipline"); IOWA CODE ANN. § 256.11(5)(j)(1) (West, Westlaw through 2024 Reg. Sess.) (requiring instruction on "family life [and] age-appropriate and research-based human growth and development."); KAN. ST. DEP'T OF EDUC., KANSAS MODEL CURRICULAR STANDARDS FOR HEALTH EDUCATION 13 (2018) (requiring instruction on "family life [and] sexuality"); KY. DEP'T OF EDUC., KENTUCKY CORE ACADEMIC STANDARDS 384, 394, 404, 651-52 (2015) (requiring education on how decision-making relates to responsible sexual behavior, including preventing pregnancy and preventing contraction of sexually communicable diseases); NEV. REV. STAT. ANN. § 389.036(1) (LEXIS through 2023 82nd Reg. Sess.) (requiring instruction on the human reproductive system and sexual responsibility); S.D. CODIFIED LAWS § 13-33-1 (West, Westlaw through the 2024 Reg. Sess.) (requiring substantial conformity to the accreditation standards adopted by the South Dakota Board of Education); S.D. DEP'T OF EDUC., SOUTH DAKOTA HEALTH EDUCATION STANDARDS 5 (2018) (requiring instruction on practicing "health enhancing behaviors" and how to "reduce health risks").

38. See NEB. REV. STAT. ANN. § 79-712 (LEXIS through 2d Reg. Sess. of 108th Leg., 2024) (comprehensive health program must address drug and alcohol abuse, but statute does not reference sex education); NEB. ST. DEP'T OF EDUC., NEBRASKA HEALTH EDUCATION FRAMEWORKS 1 (1998) (indicating that the Nebraska State Board of Education has adopted guidelines on abstinence regarding pregnancy prevention).

39. See N.M. CODE R. STANDARDS § 6.29.6.10 (West, Westlaw through rules published in the N. M. Reg. Vol. XXXIV, Iss. 10, May 31, 2023) (providing that students should be able to identify "alternatives to health risk behaviors in areas related to sexuality," such as abstinence, condom use, and "other pregnancy prevention methods").

40. See CAL. EDUC. CODE § 51934 (West, Westlaw through ch. 8 of 2024 Reg. Sess.); VT. STAT. ANN. tit. 16, § 131(8) (LEXIS through 2023 Adjourned Sess.) (requiring education on abortion); D.C. MUN. REGS. tit. 5-E, § 2305.1(a) (West, Westlaw through D.C. Reg., Vol. 71, Iss. 15, Apr. 12, 2024) (requiring instruction in human sexuality that includes information on abortion).

41. Arkansas, Connecticut, Louisiana, Michigan, Mississippi, and South Carolina restrict what may be taught about abortion. See ARK. CODE ANN. § 6-18-703(a)(3) (LEXIS through 2023 Reg. Sess. and

These states either prohibit discussion of abortion as a method of family planning, prohibit abortion referral, or limit any discussion of abortion to the complications and negative impacts that may arise from the procedure.

State sex education statutes also regulate teaching topics regarding lesbian, gay, bisexual, and transgender (LGBTQIA+) sexuality. Four states explicitly regulate the teaching of LGBTQIA+ sexuality issues.<sup>42</sup> South Carolina prohibits schools from teaching homosexuality as an acceptable lifestyle. Mississippi mandates that schools teach about their state's sodomy laws, which criminalize "homosexuality" (despite the unconstitutionality of these laws).<sup>43</sup> Oklahoma requires that HIV/AIDS curricula teach that a primary way to contract the virus is through same-sex sexual conduct. Louisiana prohibits teaching with any explicit materials that depict same-sex sexual activity.<sup>44</sup>

Many states with statutes that regulate sex education recognize the controversial nature of the issue and provide either "opt-out" or "opt-in" provisions. Opt-out provisions allow parents to remove their children from the classroom during sex education instruction for religious, moral, or family reasons. Opt-in provisions, on the other hand, require affirmative parental consent, such as a permission slip, before children can participate in a sex education program. Of the forty-four states and the District of Columbia that require or permit sex education, thirty-three—through their statutes, codes, or regulations—contain opt-out provisions, some for religious reasons only, others for moral or other objections as

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1st Extraordinary Sess.) (prohibiting school health clinics from using funds for abortion referrals); CONN. STAT. ANN. § 10-16c (LEXIS through 2023 Reg. Sess.) (prohibiting teaching abortion as an alternative to family planning); LA. STAT. ANN. § 17:281(F) (West through 2024 1st. Extraordinary, and 2d Sess.) (prohibiting counseling or advocating abortion); MICH. COMP. LAWS ANN. § 380.1507(8) (LEXIS through Act 35 of 2024 Reg. Leg. Sess.) (prohibiting teaching abortion as a method of family planning or a method of reproductive health); MISS. CODE ANN. § 37-13-171(6) (LEXIS through 2023 Reg. Sess.) (forbidding teaching that abortion can be used to prevent the birth of a baby); S.C. CODE ANN. § 59-32-30(D) (LEXIS through 2024 Reg. Sess. Act No. 120) (restricting education on abortion to complications which may arise from abortions).

42. Louisiana, Mississippi, Oklahoma, and South Carolina have statutes addressing teaching about non-heterosexual orientations in public schools. *See* LA. REV. STAT. § 17:281(A)(3) (West, Westlaw through 2024 1st, Extraordinary, and 2d Sess.) (prohibiting schools from using materials that depict same-sex sexual activity); MISS. CODE ANN. § 37-13-171(2)(e) (LEXIS through 2024 1st and 2d Extraordinary Sess.) (requiring that abstinence-only sex education programs include instruction on current state law related to sexual conduct including "homosexual activity"); OKLA. STAT. ANN. tit. 70, § 11-103.3(D)(1) (LEXIS through 2d Reg. Sess. of 59th Leg., 2024) (requiring AIDS prevention curricula to teach that engaging in same-sex sexual activity, "promiscuous sexual activity," and intravenous drug use are "primarily responsible for contact" with HIV/AIDS); S.C. CODE ANN. § 59-32-30(A)(5) (LEXIS through 2024 Reg. Sess. Act No. 120) (prohibiting discussion of non-heterosexual relationships).

43. *See* MISS. CODE ANN. § 37-13-171(2)(e) (LEXIS through 2024 1st. and 2d Extraordinary Sess.) (requiring teaching the state law on same-sex sexual activity); *see also* MISS. CODE ANN. § 97-29-59 (LEXIS through 2024 1st. and 2d. Reg. Sess.) (allowing for up to ten years imprisonment for a sodomy conviction)); *but see* *Lawrence v. Texas*, 539 U.S. 558, 578 (2003) (holding that laws criminalizing consensual same-sex sexual activity are unconstitutional).

44. LA. STAT. ANN. § 17:281(A)(3) (LEXIS through 2024 1st. and 2d. Extraordinary Sess.) ("No sex education course offered in the public schools . . . shall utilize any sexually explicit materials depicting male or female homosexual activity.").

well.<sup>45</sup> Six state statutes contain opt-in provisions.<sup>46</sup> Texas law, which is

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45. Alabama, Arizona, California, Connecticut, District of Columbia, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Washington, West Virginia, and Wisconsin. *See* ALA. CODE § 16-41-6 (West, Westlaw through 2024 Reg. Sess.) (opt-out allowed if the materials “conflict with the religious teachings of [the student’s] church”); ARIZ. REV. STAT. ANN. § 15-716(E) (LEXIS through 2d Reg. Sess. of 56th Leg., 2024) (requiring school districts to notify parents of their opt-out rights); CAL. EDUC. CODE § 51937 (West, Westlaw through ch. 8 of 2024 Reg. Sess.) (creating a “streamlined process to make it easier for parents and guardians to review materials and evaluation tools related to comprehensive sexual health education and HIV prevention education,” and excuse their children from participation in all or part of that instruction if they wish); CONN. GEN. STAT. ANN. § 10-16e (West, Westlaw through 2023 Reg. Sess. & 2023 Sept. Sess.) (providing that a parent or guardian may exempt their student from participation in any “family life program” by written notification to the local or regional school board); FLA. STAT. ANN. § 1003.42(5) (LEXIS through ch. 1 2024 sess. and 2023 Spec. C Sess.) (providing that “[a]ny student whose parent makes written request to the school principal shall be exempted from the teaching of reproductive health or any disease”); GA. CODE ANN. § 20-2-143(d) (West, Westlaw through 2024 Reg. Sess.) (giving any parent or legal guardian the right to elect, in writing, that their child not receive instruction in sex education and AIDS prevention); IDAHO CODE ANN. § 33-1611 (West, Westlaw through 2024 2d Reg. Sess.) (allowing an exemption with parent’s written request); 105 ILL. COMP. STAT. ANN. 5/27-9.1a(d) (LEXIS through 2024 Reg. Sess.); IOWA CODE ANN. § 256.11(6)(a) (LEXIS through 2023 Reg. Sess.) (only allowing an exemption for religious reasons); LA. STAT. ANN. § 17:281(D) (West, Westlaw through 2024 1st Extraordinary Sess.); MASS. GEN. LAWS ANN. ch. 71, § 32A (West, Westlaw through 2024 Sess., ch. 59); ME. REV. STAT. ANN. tit. 22, § 1911 (West, Westlaw through 2024 2d Reg. Sess.); MICH. COMP. LAWS ANN. § 380.1507 (4) (West, Westlaw through 2024 Reg. Sess.); MINN. STAT. ANN. § 120B.20 (West, Westlaw through 2024 Reg. Sess.) (allowing a student’s parent or guardian to arrange for alternative instruction on any subject); MO. ANN. STAT. § 170.015(5)(2) (West, Westlaw through 2023 1st Reg. Sess.); N.J. STAT. ANN. § 18A:35-4.7 (West, Westlaw through 2d Ann. Sess. L.2023, ch. 256 and J.R. No. 18) (allowing a child to be excused from sex education on moral or religious grounds); N.C. GEN. STAT. ANN. § 115C-81.30(b) (West, Westlaw through 2023 Reg. Sess.) (allowing local school boards to adopt policy allowing parents to either consent to sex education or exempt child from program); OHIO REV. CODE ANN. § 3313.60(A)(5)(c) (West, Westlaw through 135th Gen. Assemb., File 20 (2023–2024)); OKLA. STAT. ANN. tit. 70, § 11-103.3(C) (West, Westlaw through 2024 2d Reg. Sess.); OR. REV. STAT. ANN. § 336.465(1)(b) (West, Westlaw through 2024 Reg. Sess.); 16 R.I. GEN. LAWS ANN. § 16-22-17(c) (West, Westlaw through 2024 Reg. Sess., ch. 6); S.C. CODE ANN. § 59-32-50 (West, Westlaw through 2024 Reg. Sess. Act No. 120) (allowing an exemption if instruction conflicts with family beliefs); TENN. CODE ANN. § 49-6-1305(b) (West, Westlaw through 2024 Reg. Sess.); VA. CODE ANN. § 22.1-207.2 (West, Westlaw through 2024 Reg. Sess.) (requiring school boards to notify parents of their right to remove their child from all or part of family life education); VT. STA. ANN. tit. 16, § 134 (West, Westlaw through 2023–2024 Reg. Sess.) (only allowing an exemption for religious reasons); WASH. REV. CODE ANN. § 28A.230.070(4) (West, Westlaw through 2024 Reg. Sess.); W. VA. CODE ANN. § 18-2-9(c) (West, Westlaw through 2024 Reg. Sess.); WIS. STAT. ANN. § 118.019(4) (West, Westlaw through 2023–2024 Act 95); D.C. MUN. REGS. tit. 5, § 2305.5 (West, Westlaw through Oct. 2023, District of Columbia Reg., Vol. 70, No. 42); KAN. ADMIN. REGS. § 91-31-35(a)(5)(B) (West, Westlaw through Apr. 11, 2023) (allowing an exemption only for religious reasons); MD. CODE REGS. 13A.04.18.01(D)(2)(e) (West, Westlaw through Apr. 5, 2024); N.M. CODE R. § 6.29.6.11 (West, Westlaw through Mar. 26, 2024) (requiring school districts to implement policies for parental exemption from sexuality performance standards); N.Y. COMP. CODES R. & REGS. tit. 8, §§ 135.3(b)(2), (c)(2) (West, Westlaw through Apr. 12, 2024) (allowing a student to be exempt from HIV/AIDS education if the student’s parent or guardian has filed a written notice and assured that the student will receive HIV/AIDS education at home); 22 PA. CODE § 4.29(c) (West, Westlaw through Jan. 27, 2024).

46. Colorado, Indiana, Kentucky, Mississippi, Nevada, and Utah require parental consent. *See* COLO. REV. STAT. ANN. § 22-25-104(6)(d) (West, Westlaw through 2024 Reg. Sess.); MISS. CODE ANN. § 37-13-173 (West, Westlaw through 2024 1st and 2d Extraordinary Sess.) (mandating that schools provide

otherwise silent on sex education, contains an opt-out provision for schools choosing to implement sex education.<sup>47</sup> This leaves six states with laws that expressly regulate sex education—Delaware, Hawaii, Nebraska, New Hampshire, North Dakota, and Wyoming—with no provisions for exempting a child from sexual education requirements.

While sex education curricula vary widely among the states, courts have not recognized a parental right to refuse to allow a child to complete an assigned reading or other mandatory requirement, even if the assignment is contrary to the parent or child's religious beliefs.<sup>48</sup> If a parent feels that a given curriculum is hostile to his or her religion, the main remedy available to him is to remove his children from the public school, and to either homeschool their children, or place them in a private school that conforms to the teachings of their religion.<sup>49</sup>

## B. RECENT CHALLENGES AND PROPOSED CHANGES TO STATE STATUTES

State legislatures frequently seek to amend or repeal sex education statutes. As of May 24, 2023, forty-six states had introduced bills related to sex education.<sup>50</sup> These bills reveal a trend of states both moving towards incorporating consent and healthy relationship development into sexual education, but also moving backwards by restricting access to certain sex education topics, especially topics related to LGBTQIA+ sexuality. In the wake of the #MeToo movement, conversations around sexual assault and abuse were pervasive in the media, the entertainment industry, the workforce, and across social media. Lawmakers realized they needed to address these issues in their legislation. Some of the resulting bills are extremely progressive in their treatment and definition of consent. For example, Maryland passed a bill requiring the instruction of affirmative consent as an

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parents at least one week notice before the start of sex education programs, and inform parents of their right to request their child be included in the instruction; requiring also that parents be informed of their right to review curriculum and all teaching materials); NEV. REV. STAT. ANN. § 389.036(4) (West, Westlaw through 2023 Reg. Sess.); UTAH CODE ANN. § 53E-9-203(3) (West, Westlaw through 2024 Gen. Sess.); IND. CODE ANN. § 20-30-5-17 (West, Westlaw through 2024 2d Reg. Sess.); KY. REV. STAT. ANN. § 158.1415 (West, Westlaw through 2024 Reg. Sess.).

47. See TEX. EDUC. CODE ANN. § 28.004(i)(3)(B) (West, Westlaw through 2023 Reg., 2d, 3d, & 4th Called Sess. of the 88th Leg.) (requiring districts to inform parents of their right to remove their children from any part of sexuality education).

48. See, e.g., *Mozert v. Hawkins Cnty. Bd. of Educ.*, 827 F.2d 1058, 1058 (6th Cir. 1987) (holding that requirement for public school students to study certain topics or materials does not create an unconstitutional burden on the student's or parent's religious exercise); *Parker v. Hurley*, 514 F.3d 87, 106 (1st Cir. 2008) (holding that there is no free exercise right to be free from any reference in public schools to the "existence of families in which the parents are of different gender combinations").

49. See *Wisconsin v. Yoder*, 406 U.S. 205, 205, 208 (1972) (holding that parents have a constitutional right to homeschool their children); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 510 (1925) (holding that parents have a constitutional right to send their children to private school, rather than public school).

50. SIECUS, SEX ED STATE LEGISLATIVE MID-YEAR REPORT 2023 (2023), <https://perma.cc/YJZ6-GMLJ> (finding that forty-seven state bills sought to advance sex education, and ninety-one sought to restrict sex education).

“unambiguous and voluntary agreement.”<sup>51</sup> However, as part of the more recent trend to limit public school instruction on topics such as race, sexuality, and gender, state legislatures have introduced bills that take a regressive approach to sex education, focusing instead on limiting access to sex education curricula, or requiring that parents review curricula and opt-in for their children. For instance, Arkansas enacted a bill that would prohibit sex education courses for students prior to the fifth grade.<sup>52</sup> Similarly, Iowa enacted a bill that removed the requirement that schools teach about AIDS and HPV.<sup>53</sup>

### C. DISTRIBUTION OF FEDERAL FUNDING FOR ABSTINENCE-ONLY PROGRAMS

Since the 1981 passage of the Adolescent Family Life Act (“AFLA”), the federal government has set aside funds for abstinence-only-until-marriage education.<sup>54</sup> For federal fiscal year (“FY”) 2018, the federal government allocated just over \$100 million for abstinence-only-until-marriage programs.<sup>55</sup> The height of federal funding for such programs occurred during fiscal year 2008, when the designated federal funding totaled \$177 million.<sup>56</sup> Despite dipping down to \$50 million in fiscal year 2010 and remaining fairly consistent for the next five years, federal funding for abstinence-only-until-marriage programs began to climb again in 2016.<sup>57</sup>

Fiscal year 2010 marked a significant shift in federal funding for abstinence-only programs because the Obama administration and Congress eliminated two discretionary federal funding streams. The Consolidated Appropriations Act of 2010 eliminated the abstinence-only portion of AFLA and the Community-Based Abstinence Education (“CBAE”) grant program, which was created in 2000.<sup>58</sup> Additionally, Congress allowed the abstinence-only-until-marriage program of the Title V-Welfare Reform Act to expire in 2009, but the program was resurrected under the Affordable Care Act of 2010.<sup>59</sup>

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51. Sarah Shapiro and Catherine Brown, *Sex Education Standards Across the States*, CTR. FOR AM. PROGRESS (May 9, 2018), <https://perma.cc/2TZZ-UXW7>.

52. See ARK. CODE ANN. § 6-16-157(c) (West, Westlaw through 2023 Reg. and 2023 1st Extraordinary Sess.) (providing that a public-school teacher shall not provide classroom instruction, prior to the fifth grade, on sexually explicit materials, sexual reproduction, sexual intercourse, gender identity, or sexual orientation).

53. See IOWA CODE §§ 256.11(3), (4) (West, Westlaw through leg. effective as of Feb. 28, 2024 from 2024 Reg. Sess.); see also 2023 Iowa Legis. Ser. Ch. 91 (S.F. 496) (removing requirement that health curricula include characteristics of AIDS, and removing requirement that health curricula include research-based information about HPV and the availability of a vaccine to prevent HPV and AIDS).

54. SIECUS, A HISTORY OF FED. FUNDING FOR ABSTINENCE-ONLY-UNTIL-MARRIAGE PROGRAM (Aug. 2018) [hereinafter SIECUS History], <https://perma.cc/JX3C-87UB>.

55. SIECUS, DEDICATED FED. ABSTINENCE-ONLY-UNTIL-MARRIAGE PROGRAMS FUNDING BY FISCAL YEAR (FY) 1982-2018 (Apr. 2018) [hereinafter SIECUS Funding 2018], <https://perma.cc/7F9X-5VRB>.

56. *Id.*

57. *Id.*

58. See *id.*; SIECUS History, *supra* note 54. See also Adolescent Family Life Act, 42 U.S.C.A. §§ 300z *et seq.* (West, Westlaw through P.L. 118-41).

59. SIECUS History, *supra* note 54.



In fiscal year 2012, abstinence-only-until-marriage funding received a boost from the creation of the discretionary “Competitive Abstinence Education” (“CAE”) grant program.<sup>60</sup> Although this program was rebranded in FY 2016 as the “Sexual Risk Avoidance Education” (“SRAE”) program, it retained its original intent on abstinence.<sup>61</sup> As of FY 2018, SRAE was funded at \$25 million—more than double its original allocation a mere two years earlier.<sup>62</sup> SRAE programs must include the “benefits associated with self-regulation, success sequencing for poverty prevention, healthy relationships, goal setting, and resisting sexual coercion, dating violence, and other youth risk behaviors such as underage drinking or illicit drug use without normalizing teen sexual activity.”<sup>63</sup>

As of 2022, Title V is the primary source of federal funding for state “Sexual Risk Avoidance” programs.<sup>64</sup> After briefly expiring in September 2017, the Title V abstinence-only state-grant program was renewed in February 2018 for two more years and renamed the “Sexual Risk Avoidance Education” program.<sup>65</sup> Also known as the Temporary Assistance for Needy Families Act of 1996 (“TANF”), Title V funding allocates up to \$75 million each year to participating states based on a formula related to the number of low-income youth per state.<sup>66</sup> Beginning in FY 2018, the state-match provision is no longer required and federal funding has been extended through FY 2019.<sup>67</sup> This funding is available each year for sex education programs that comply with the six-point federal statutory definition of abstinence education.<sup>68</sup> Qualifying sexual risk avoidance programs must also ensure that any information provided on contraception is medically accurate and complete and that students understand that contraception offers physical risk reduction, but not risk elimination.<sup>69</sup> However, the education must

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60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. SIECUS, FED. FUNDING OVERVIEW: FISCAL YEAR 2022 (Mar. 2022), <https://perma.cc/87JX-757X>.

65. Jesseca Boyer, *New Name, Same Harm: Rebranding of Federal Abstinence-Only Programs*, GUTTMACHER INST. (Feb. 28, 2018), <https://perma.cc/SQ3N-7CFR>.

66. SIECUS History, *supra* note 54. *See also* Title V of the Social Security Act, 42 U.S.C.A. § 710 (West, Westlaw through P.L. 118-41).

67. SIECUS History, *supra* note 54.

68. To meet the federal definition of “Sexual Risk Avoidance,” a program must address each of the following topics: (1) the holistic individual and societal benefits associated with personal responsibility, self-regulation, goal setting, healthy decision-making, and a focus on the future; (2) the advantage of refraining from non-marital sexual activity in order to improve the future prospects and physical and emotional health of youth; (3) the increased likelihood of avoiding poverty when youth attain self-sufficiency and emotional maturity before engaging in sexual activity; (4) the foundational components of healthy relationships and their impact on the formation of healthy marriages and safe and stable families; (5) how other youth risk behaviors, such as drug and alcohol usage, increase the risk for teen sex; (6) how to resist and avoid, and receive help regarding, sexual coercion and dating violence, recognizing that even with consent teen sex remains a youth risk behavior. 42 U.S.C.A. § 710(b)(3) (West, Westlaw through P.L. 118-41).

69. *Id.* § 710(b)(4)(A).

not include demonstrations, simulations, or distribution of contraceptive devices.<sup>70</sup>

In fiscal year 2018, thirty-seven states and two territories received Title V abstinence-only federal funding.<sup>71</sup> Until FY 2018, the unused funds from those states that chose not to apply for Title V funding would revert back to the treasury.<sup>72</sup> However, as of FY 2018, HHS may allot those unclaimed funds to one or more entities in that state through a competitive grant process.<sup>73</sup>

#### D. DISTRIBUTION OF FEDERAL FUNDING FOR COMPREHENSIVE SEX EDUCATION PROGRAMS

In FY 2010, the Obama Administration and Congress created two sources of federal funding for evidence-based approaches to teen pregnancy prevention and comprehensive sex education programs. The Consolidated Appropriations Act of 2010, signed into law in December 2009, created the Teen Pregnancy Prevention Program (“TPPP”),<sup>74</sup> while the Affordable Care Act created the Personal Responsibility Education Program (“PREP”).<sup>75</sup> In total, nearly \$190 million was allocated to these new initiatives.<sup>76</sup>

The first source of funding for comprehensive sex education programs, TPPP, funds medically accurate and age appropriate programs to reduce teen pregnancy.<sup>77</sup> It is administered by the Office of Population Affairs within the Office of the Secretary of Health and Human Services.<sup>78</sup> TPPP funds are allocated as grants to two kinds of public and private entities: (1) those managing or replicating evidence-based, innovative programs to prevent unintended teen pregnancy while addressing underlying behavioral risk factors, and (2) those developing and testing innovative new models.<sup>79</sup>

In both FY 2018 and 2019, President Trump’s budget proposed eliminating the TPPP.<sup>80</sup> This led to the filing of eight lawsuits (including a class action suit) against the Trump administration for unlawfully terminating the TPPP grants.<sup>81</sup> All eight cases were decided in favor of the plaintiffs/grantees and HHS was ordered to accept and process the grantees’ funding applications.<sup>82</sup> The final

70. *Id.* § 710(b)(4)(B).

71. SIECUS History, *supra* note 54.

72. *Id.*

73. *Id.*

74. Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, tit. II, 123 Stat 3034, 3251 (2009).

75. Protecting Access to Medicare Act of 2014, 42 U.S.C.A. § 713(b)(2) (West, Westlaw through P. L. 118-41).

76. Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, tit. II, 123 Stat 3034, 3253 (2009).

77. *About the Teen Pregnancy Prevention Program*, U.S. DEP’T OF HEALTH & HUM. SERVS., <https://perma.cc/27XB-M3RU>.

78. *Id.*

79. *Id.*

80. *Evidence-Based Teen Pregnancy Prevention Education Resources*, POWER TO DECIDE, <https://perma.cc/F3NF-CM2Z>.

81. *Id.*

82. *Id.*

appropriations bill signed on September 28, 2018 allocated \$101 million in funding to TPPP and an additional \$6.8 million for evaluation of teen pregnancy prevention approaches.<sup>83</sup> However, the Trump administration also announced two new Funding Opportunity Announcements (“FOAs”).<sup>84</sup> The new FOAs eliminated evidence-based guidance which previously provided funding applicants with forty-eight replicable program models proven effective through rigorous evaluation.<sup>85</sup> Instead, TPPP recipients were required to implement one of two abstinence-only programs.<sup>86</sup> Emphasizing that “teen sex is a risk behavior,” recipients were expected to promote avoidance of—i.e. abstinence from—this behavior and teach “skills to help those youth already engaged in sexual risk to return toward risk-free choices in the future.”<sup>87</sup> In essence, the Trump administration succeeded in converting TPPP into a third dedicated federal funding stream for abstinence-only programs. The Biden administration has continued to allocate \$101 million annually to TPPP “models [that] focus on sexual abstinence or information about the use of contraceptives, among other approaches.”<sup>88</sup>

The second new source of federal funding, PREP, was created by the Affordable Care Act.<sup>89</sup> PREP grants funds to states that implement “personal responsibility education programs,” defined as those that teach adolescents both abstinence and contraception to prevent pregnancy and STDs, as well as at least three of six “adulthood preparation subjects.”<sup>90</sup> To receive funding, state programs must be effective or proven, on the basis of rigorous scientific research, to change behavior; be medically accurate, age appropriate, and culturally sensitive; and teach both abstinence and contraception.<sup>91</sup> Forty-four states applied for and received PREP funding during FY 2017.<sup>92</sup> In February 2018, President Trump

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83. *Id.*

84. Jessica Boyer, *The Teen Pregnancy Prevention Program Was on the Right Track, Now It's Being Dismantled*, GUTTMACHER INST. (May 24, 2018), <https://perma.cc/35S3-YS3A>.

85. *Id.*

86. *Id.*

87. *Id.*

88. See Press Release, *Planned Parenthood Action Fund Responds to Biden-Harris Administration's FY25 Budget*, PLANNED PARENTHOOD (Mar. 12, 2024), <https://perma.cc/S79C-DY59>; *Federal Teen Pregnancy Prevention Programs*, CONGRESSIONAL RESEARCH SERVICE (Sept. 1, 2022), <https://perma.cc/B2QH-L696>.

89. 42 U.S.C.A. § 713(b)(2) (West, Westlaw through P.L. 118-41).

90. *Id.* § 713(b)(2)(A). These “adulthood preparation subjects” are: (1) healthy relationships, including marriage and family interactions; (2) adolescent development, such as the development of healthy attitudes and values about adolescent growth and development, body image, racial and ethnic diversity, and other related subjects; (3) financial literacy; (4) parent-child communication; (5) educational and career success, such as developing skills for employment preparation, job seeking, independent living, financial self-sufficiency, and workplace productivity; (6) healthy life skills, such as goal-setting, decision making, negotiation, communication and interpersonal skills, and stress management. *Id.* § 713(b)(2)(C).

91. *Id.* § 713(b)(2)(B).

92. 2017 *State Personal Responsibility Education Program (PREP) Awards*, FAMILY & YOUTH SERVS. BUREAU, <https://perma.cc/T2UP-M85U>. The following states did not apply for PREP funding in FY 2017: Florida, Indiana, Kansas, North Dakota, Texas, and Virginia. *Id.*

signed the Bipartisan Budget Act of 2018 that, among other things, extended the current \$75 million annual funding of PREP for two years.<sup>93</sup> Presidents Trump and Biden's annual budgets have continued to allocate the same amount.<sup>94</sup>

### III. LEGAL CHALLENGES TO SEX EDUCATION PROGRAMS

There are no federal laws regulating sexual education in public schools.<sup>95</sup> Because regulation of sex education takes place at the state and local level, educational content varies widely in scope.<sup>96</sup> The controversial nature of these programs has led to several legal challenges, most of which revolve around the relationship between public education and parental decision-making, as well as religious freedom. Many challenges have directly targeted statutes or school programs requiring participation in sex education, while others have challenged laws limiting the accessibility or program content of sex education. New legal challenges deal with programs that have implemented guidance on broader issues of human sexuality, particularly LGBTQ education.

#### A. OBJECTIONS TO LAWS THAT REQUIRE SEX EDUCATION

Required sex education programs have been challenged on various constitutional grounds, including religious freedom,<sup>97</sup> the right to privacy,<sup>98</sup> and parental control of child education.<sup>99</sup> Courts have found sex education and family life programs constitutional when there was an adequate provision for

93. POWER TO DECIDE, *supra* note 80.

94. See Federal Teen Pregnancy Prevention Programs, *supra* note 88.

95. *Sex Education Laws and State Attacks*, PLANNED PARENTHOOD, <https://perma.cc/9UV4-BH7Z> (“no federal laws dictate what sex education should look like or how it should be taught in schools”).

96. See, e.g., Naomi Rivkind Shatz, *Unconstitutional Entanglements: The Religious Right, the Federal Government, and Abstinence Education in the Schools*, 19 YALE J. L. FEM. 495, 507–08 (2008) (outlining the two primary types of sex education used in U.S. public schools).

97. See, e.g., *Smith v. Ricci*, 446 A.2d 501, 524 (N.J. 1982) (allowing State Board of Education to implement sex education when the program does not inhibit free exercise of religion); *Medeiros v. Kiyosaki*, 478 P.2d 314, 318 (Haw. 1970) (affirming the continuation of a sex education film series implemented by state education officials because it does not burden plaintiffs' exercise of religion).

98. See, e.g., *Fields v. Palmdale Sch. Dist.*, 427 F.3d 1197, 1199 (9th Cir. 2005) (claiming that a district's inclusion of questions about sexual topics in a survey violated the parent's privacy right to make intimate familial decisions); *Brown v. Hot, Sexy and Safer Prods.*, 68 F.3d 525, 530 (1st Cir. 1995) (alleging compelled attendance of public high school students at AIDS awareness assembly deprived the minors of privacy rights); *Citizens for Parental Rts. v. San Mateo Cty. Bd. of Educ.*, 124 Cal. Rptr. 68, 77 (Cal. Ct. App. 1975) (affirming dismissal of claims that sex education curricula would violate parents' privacy rights by requiring students to reveal intimate familial details).

99. See, e.g., *Meyer v. Nebraska*, 262 U.S. 390 (1923) (reversing conviction of schoolteacher who unlawfully taught German to students); *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925) (holding Compulsory Education Act of 1922 violated liberty of parents to direct the education of their children); *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (holding parents' free exercise rights outweighed State's interest in compelling school attendance); *Troxel v. Granville*, 530 U.S. 57 (2000) (finding statute allowing visitation rights to violate rights of parents, to make decisions concerning care, custody, and control of their children).

excusal from the program, based on moral, conscious, or religiously objectionable beliefs.<sup>100</sup>

In *Smith v. Ricci*, the Supreme Court of New Jersey upheld the state board of education's regulation requiring local school districts to develop family-life education programs.<sup>101</sup> Appellants argued that because the regulation required their children to learn about "human reproduction, sexuality, and the development of personal and social values," it exposed them to beliefs contrary to their own and their parents', thereby interfering with the practice of their religion.<sup>102</sup> The court found that because the program included a provision allowing parents to remove their children from parts they felt violated their beliefs, there was no infringement upon their religious freedom.<sup>103</sup>

The *Smith* decision highlights the delicate balance courts have struck between the recognized right of parents to direct the education and upbringing of their children,<sup>104</sup> and the strong interest of states and local municipalities in providing effective education and mental welfare to public school students.<sup>105</sup> Courts have consistently held that school systems have the right and responsibility to determine curricula.<sup>106</sup> Parental control is generally outweighed by a state's interest in providing effective education or protecting the public health of children.<sup>107</sup> As such, courts have given strong deference to states in forming their education policies, including sex education programs.

In *Brown v. Hot, Sexy and Safer Productions*, a high school required its students to attend an AIDS awareness program produced by an independent educational company.<sup>108</sup> Two students and their parents sued the school and the company, alleging the material was profane, lewd, contained offensive

100. See, e.g., *Smith*, 446 A.2d at 503–04; *Medeiros*, 478 P.2d at 316–17; *Citizens for Parental Rts.*, 124 Cal. Rptr. at 83.

101. *Smith*, 446 A.2d at 504, 508.

102. *Id.* at 505.

103. *Id.*

104. See, e.g., *Meyer*, 262 U.S. at 400; *Pierce*, 268 U.S. at 534–35; *Yoder*, 406 U.S. at 214; *Troxel*, 530 U.S. at 73–74.

105. See, e.g., *Leebaert v. Harrington*, 332 F.3d 134, 139 (2d Cir. 2003); *Fields v. Palmdale Sch. Dist.*, 427 F.3d 1197, 1200 (9th Cir. 2005).

106. See, e.g., *Leebaert*, 332 F.3d 134 (upholding mandatory sex education when there is an opt-out provision); *Brown v. Hot, Sexy and Safer Prods., Inc.*, 68 F.3d 525 (1st Cir. 1995) (finding that under Massachusetts statute, the school board was allowed to determine the appropriateness of a sex education assembly); *Hopkins v. Hamden Bd. of Educ.*, 289 A.2d 914 (Conn. C.P. 1971) (holding that a Connecticut statute mandating the teaching of health education could include distribution of materials related to sex education and health); *Curtis v. Sch. Comm. of Falmouth*, 652 N.E.2d 580 (Mass. 1995) (holding that condom distribution program in public school did not violate parental rights even when there was no opt-out provision or parental notification); *Hobolth v. Greenway*, 218 N.W.2d 98 (Mich. Ct. App. 1974) (upholding Michigan statute that allowed the Board of Education to make sex education determinations).

107. See, e.g., *Prince v. Massachusetts*, 321 U.S. 158 (1944) (explaining parental authority is not absolute and the state has broad authority to regulate treatment of children; *Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381 (6th Cir. 2005) (dismissing parent's claim that child's school dress code was unconstitutional).

108. *Brown*, 68 F.3d at 529.



monologues, and advocated for oral sex, masturbation, same-sex activity, and condom use for premarital sex.<sup>109</sup> The First Circuit held that a one-time sex education program performed at an assembly did not violate students' right to privacy or due process. Plaintiffs claimed that the school violated their Fourteenth Amendment privacy right to rear their children in accordance with their values,<sup>110</sup> but the First Circuit rejected plaintiffs' argument and declined to decide whether child rearing is a fundamental right.<sup>111</sup> The court held that parents can choose to enroll their children in a different school, but they do not have the right to command school systems to change curricula based on their personal moral views.<sup>112</sup> The court reasoned that if an individual parent has a fundamental right to dictate the school program, then schools would be unduly burdened by having to fashion a curriculum for each student instead of applying a standard curriculum for all.<sup>113</sup>

In a similar case, *Leebaert v. Harrington*, Connecticut parents challenged a health and hygiene education requirement that included sexual health.<sup>114</sup> The school's program allowed parents to opt-out their children from the six-day sexual health unit, but not from the rest of the forty-five day health education program.<sup>115</sup> After exempting his child from the sexual health unit, a father challenged the validity of the entire program by arguing that it violated his religious freedom and privacy as guaranteed by the First and Fourteenth Amendments.<sup>116</sup> The Second Circuit ruled that the plaintiff did not have a fundamental right to remove his son from the entire program, reasoning, much like the court in *Brown*, that schools would be unduly burdened if they had to tailor each child's curriculum to his or her parents' particular desires.<sup>117</sup> The court also acknowledged that the school district's requirement that students attend sex health education classes was furthering the state's legitimate interest in promoting the health and welfare of children and the program thus passed rational basis review.<sup>118</sup>

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109. *Id.*

110. *Id.* at 532.

111. *Id.* at 533–34.

112. *Id.*

113. *Id.* at 534.

114. *Leebaert*, 332 F.3d at 135–37.

115. *Id.* at 136.

116. *Id.* at 136–38.

117. *Id.* at 141.

118. *Id.* at 143. While courts have found that parents enjoy a fundamental right to control the upbringing of their children, that right does not extend to dictating the curriculum of public schools. As such, parental rights in these circumstances have not been found to be subject to strict scrutiny review. Compare *Troxel v. Granville*, 530 U.S. 57 (2000) (suggesting that parents have a fundamental right to make decisions concerning the care, custody, and control of their children) with *Brown v. Hot, Sexy and Safer Prods., Inc.*, 68 F.3d 525, 533 (1st Cir. 1995) (finding that a parent's freedom to choose specific educational opportunities for their children does not encompass "a fundamental constitutional right to dictate the curriculum at the public school to which they have chosen to send their children"). As such, courts have employed rational basis review to these constitutional challenges. See *Leebaert*, 332 F.3d at 143 (explaining that where parents seek to exempt their child from an educational requirement, rational basis review applies).

Courts have consistently upheld the constitutionality of sex education programs, dismissing First and Fourteenth Amendment objections even when programs have not contained “opt out” provisions. The rights of religious free exercise and privacy have not been found to shield individuals from learning about beliefs or opinions that may run contrary to their own, particularly when a public school determines a given curriculum will further its interest in the health and education of children. This has been increasingly important as courts begin to hear challenges to sex education and public school curriculum now implementing LGBTQIA+ education.

In *Parker v. Hurley*, the First Circuit affirmed a lower court ruling that dismissed parents’ challenge to a public school curriculum that taught “homosexuality” as an accepted family style.<sup>119</sup> The parents sued the school district after their children were presented with books that portray diverse families, including those of same-sex couples.<sup>120</sup> The complaint alleged that the public schools were indoctrinating the children with beliefs about homosexuality that ran contrary to the parents’ religious beliefs, in violation of the First and Fourteenth Amendments.<sup>121</sup> The parents also reasoned that the school district did not provide them with prior notice, and therefore they were deprived an opportunity to exempt their children from instruction, in violation of Massachusetts law.<sup>122</sup>

The First Circuit found that exposure to the materials in dispute would not interfere with the parents’ ability to raise their children in their religious belief,<sup>123</sup> and the parents had notice of the books, as well as the school’s intent to promote toleration of same-sex marriage.<sup>124</sup> The court also emphasized the district court’s ruling that parents may not dictate public school curricula.<sup>125</sup> Distinguishing between the parents’ free exercise rights and their children’s, the court also found that the children’s free exercise rights were not burdened.<sup>126</sup> In one circumstance, the child was not required to read the books at issue, and the court explained that there is no recognized right to be free of reference “to the existence of families in which the parents are of different gender combinations.”<sup>127</sup> In another, although the child was required to sit through a reading, and the book positively portrayed

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119. *Parker v. Hurley*, 514 F.3d 87 (1st. Cir. 2008).

120. *Id.* at 90.

121. *Id.* at 93–94.

122. *Id.* at 90.

123. *Id.* at 105.

124. *Id.* at 106.

125. *Parker*, 514 F.3d at 105 (“The mere fact that a child is exposed on occasion in public school to a concept offensive to a parent’s religious belief does not inhibit the parent from instructing the parent differently.”). *See also* *Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381, 395–396 (6th Cir. 2005) (“While parents may have a fundamental right to decide whether to send their child to a public school, they do not have a fundamental right generally to direct how a public school teaches their child.”).

126. *Parker*, 514 F.3d at 105–06.

127. *Id.* at 106.

homosexuality and gay marriage, there was no evidence of indoctrination or a school-imposed requirement to agree with or affirm those beliefs.<sup>128</sup>

In contrast, *Citizens for a Responsible Curriculum v. Montgomery County Public Schools* involved a successful curriculum challenge brought by two non-profit organizations.<sup>129</sup> The plaintiffs objected to a curriculum with a unit on “sexual variation.”<sup>130</sup> The district court granted the plaintiff organizations’ motion for a temporary restraining order to keep the schools from implementing the program.<sup>131</sup> The court’s decision was partially based on concern that the curriculum would violate plaintiffs’ free speech rights under the First Amendment by offering a portrayal of LGB persons as living a morally correct lifestyle without allowing for other perspectives.<sup>132</sup> The court was also concerned that the curriculum violated the Establishment Clause of the First Amendment by expressing an overt preference for religious sects that are “friendly towards the homosexual lifestyle.”<sup>133</sup> The restraining order was granted in spite of the fact that students could avoid the curriculum via an opt-out provision.<sup>134</sup>

The decisions in *Citizens* and *Parker* suggest that, should a required sex education or public school curriculum (1) explicitly endorse homosexuality and same-sex marriage; (2) ask students or parents to affirm those beliefs; or (3) show preference for particular religious groups affirming those beliefs, that program would run afoul of the First Amendment.<sup>135</sup> In *Parker*, the First Circuit found that the books at issue did not violate the Free Exercise Clause because the school did not compel either the children or the parents to disavow their religious beliefs, nor promote particular religions through positive portrayals of same-sex marriage and homosexuality.<sup>136</sup> In contrast, in *Citizens*, the Maryland District Court granted the restraining order in large part because of the suggestion that the sex education curriculum looked more favorably on religious groups that had a positive outlook on homosexuality,<sup>137</sup> and the curriculum instruction provided no opportunity to voice alternative opinions, effectively asking the students to affirm the beliefs provided to them.<sup>138</sup>

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128. *Id.*

129. *Citizens for a Responsible Curriculum v. Montgomery Cnty. Pub. Schs.*, 2005 WL 1075634 (D. Md. May 5, 2005).

130. *Id.* at \*1–2.

131. *Id.* at \*12–13.

132. *Id.* at \*10–11, 12.

133. *Id.* at \*10–11, 13.

134. *Id.* at \*6.

135. *See also* *Coleman v. Caddo Par. Sch. Bd.*, 665 So.2d 1238 (La. Ct. App. 1994) (striking passages from school board education curricula that discussed spirituality and looked at the moral judgment of sexual acts in a religious manner); *see generally* Rivkind Shatz, *supra* note 96 (analyzing the establishment clause and the constitutionality of abstinence-only education).

136. *Parker v. Hurley*, 514 F.3d 87, 103–07 (1st. Cir. 2008).

137. *Citizens*, 2005 WL 1075634, at \*10–11.

138. *Id.* at \*12.

While the federal recognition of same-sex marriage<sup>139</sup> may have initially led to more integration of LGBTQIA+ topics into public school sex education curricula, backlash in several states has resulted in greater restrictions on sex education, particularly pertaining to LGBTQ topics, as discussed in Section II.B, *supra*.<sup>140</sup> It is likely that other programs incorporating LGBTQIA+ education will face legal challenges like those in *Citizens* and *Parker*. Courts will have to grapple with whether this new content, if provided in programs with “opt-out” provisions, is afforded the same level of discretion courts have typically given to states administering sex education programs. They will need to provide clarity as to when and what topics can be addressed, and what limitations are placed on particular programs in educating students on LGBTQIA+ content.

#### B. LEGAL OBJECTIONS TO LIMITS ON SEX EDUCATION

While there have been a series of challenges to laws requiring sex education,<sup>141</sup> there have been fewer challenges to laws that limit or restrict sex education. In *American Academy of Pediatrics v. Clovis Unified School District*, petitioners asserted that the school district’s sex education curriculum violated California law by failing to provide comprehensive sexual education as required by statute.<sup>142</sup> The program emphasized abstinence-only instruction and used outdated sex education materials that were no longer compliant with California Education Code requirements.<sup>143</sup> After the district revised its curriculum, plaintiffs voluntarily dismissed the case, but sought fees by claiming “they were the catalyst in motivating the District to provide the relief sought.”<sup>144</sup> The Superior Court of California found that the school district’s sex education curriculum violated California law for many years before plaintiff parents complained, but some changes were in part motivated by plaintiffs’ suit.<sup>145</sup> In assessing the sufficiency of the educational program, the court found that the district had not been providing comprehensive sex education, as instructors and materials “provided instruction on abstinence only or delivered instruction with intentional gender or sexual orientation bias,” and did not adequately instruct on sexually-transmitted disease prevention.<sup>146</sup> While *Clovis* dealt with restrictions on sex education, the state law was not challenged by the plaintiffs; rather, plaintiffs sued because they believed the school board’s noncompliance with the requirements set out by California was harming their children’s right to comprehensive sex education.<sup>147</sup>

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139. *Obergefell v. Hodges*, 576 U.S. 644 (2015).

140. See Sex Ed State Legislative Mid-Year Report 2023, *supra* note 50.

141. See generally Part III.A, *supra*.

142. *Am. Acad. of Pediatrics v. Clovis Unified Sch. Dist.*, 2015 WL 2298565 (Cal. Super. Ct. Apr. 28, 2015).

143. *Id.* at \*3.

144. *Id.* at \*1, 9–11.

145. *Id.* at \*1.

146. *Id.* at \*14.

147. *Id.* at \*1.

More recently, Florida's "Don't Say Gay" bill, which has received vast national scrutiny, was signed into law in 2022 and expanded in 2023 to prohibit discussion of sexual orientation and gender identity in schools.<sup>148</sup> In response, Florida public school students, parents, and teachers brought suit in *Equality Florida v. Florida State Board of Education* to challenge the law.<sup>149</sup> Plaintiffs argued the law violated the First and Fourteenth amendments as well as Title IX, and they requested the court invalidate the law and enjoin its enforcement.<sup>150</sup> Specifically, plaintiffs alleged that the law had a chilling effect on discussion of any LGBTQIA+-related topics, prevented student participation in "Gay-Straight Alliances," and harmed the general wellbeing and inclusion of LGBTQIA+ students and educators.<sup>151</sup> The parties ultimately reached a settlement in March 2024, which was heralded as a win by both the Florida governor Ron DeSantis and LGBTQIA+ advocates.<sup>152</sup> The settlement retains the law while limiting its scope. Specifically, the settlement clarifies that the law applies to "classroom instruction" rather than mere mention of LGBTQIA+ topics on school grounds.<sup>153</sup> Outright instruction about sexual orientation and gender identity remains prohibited in Florida public schools, but LGBTQIA+-related discussions, books, projects, and student organizations may resume.<sup>154</sup>

Despite the significant uptick in restrictive sex education policies and related legislation, relatively few direct legal challenges have alleged that state policies unconstitutionally restrict students' access to sex education.<sup>155</sup> The dearth of challenges may be due to the established deference to states in designing their own curricula, as well as the lack of favorable precedent for such challenges.<sup>156</sup>

There are several potential reasons for this dearth of case law. In communities where abstinence-until-marriage programs are in place, it is possible that a significant portion of the population supports those types of sex education programs and does not advocate for an expanded role of schools in this field. This may also

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148. See FLA. STAT. § 1001.42(8) (West, Westlaw through Apr. 15, 2024 from 2024 1st Reg. Sess.); Sex Ed State Legislative Mid-Year Report 2023, *supra* note 50, at 41.

149. Complaint at 2, *Equality Fla. v. Fla. State Bd. of Educ.*, 2022 WL 19263602 (N.D. Fla. Sept. 29, 2022) (No. 4:22-CV-00134).

150. *Id.* Complaint at 72, 78–79.

151. See *id.* Complaint at 2, 35, 52–56.

152. Press Release, *Historic Settlement Achieved in Challenge to Florida's "Don't Say Gay or Trans" Law* (Mar. 11, 2024), <https://perma.cc/4PMD-MDMF>; Press Release, *Florida Wins: Lawsuit Against Parental Rights in Education Act to Be Dismissed; Law Remains in Effect* (Mar. 11, 2024), <https://perma.cc/Y47S-HMC3>.

153. See Jeff McMillan, Andrew Demillo, & Geoff Mulvihill, *What to know about a settlement that clarifies what's legal under Florida's 'Don't Say Gay' law*, AP (Mar. 12, 2024), <https://perma.cc/LV8J-TPZ5>.

154. See Stephanie Sy & Shoshana Dubnow, *What Florida's 'Don't Say Gay' settlement changes and what restrictions remain*, PBS (Mar. 14, 2024), <https://perma.cc/8A4F-DJRG>; *Historic Settlement Achieved in Challenge to Florida's "Don't Say Gay or Trans" Law*, *supra* note 152.

155. See Hannah Natanson, *Few legal challenges to laws limiting lessons on race, gender*, WASHINGTON POST (March 17, 2023), <https://perma.cc/8VW9-B46T>; *Mejia v. Edelblut*, No. 21-cv-1077-PB (D.N.H. Dec. 20, 2021).

156. Natanson, *supra* note 155.



be true of communities implementing comprehensive sex education plans. Parents who are dissatisfied with limited programs might also simply choose to instruct their children at home.<sup>157</sup> The rising growth of LGBTQIA+ history in public schools, as well as broader coverage of human sexuality, may also lead to new challenges on the sufficiency of existing sex education programs.<sup>158</sup>

Ultimately, individuals may be reluctant to bring suit for concerns that they will be no more successful than those who objected to required sex-education programs. The strong deference to state control of public health and education has made courts reluctant to dictate how schools should conduct their sex-education programs. That deference would likely extend to attempts at requiring schools to add material to their curriculum.

Advocates have taken alternative routes to fight insufficient sex education programs, primarily through legal challenges to federal funding programs prioritizing abstinence-only education.<sup>159</sup> Since 2010 Congress has used the Teen Pregnancy Prevention Program (TPPP) to fund sex education programs that reduce teen pregnancy, and “Congress has maintained separate funding streams for evidence-based programs and abstinence-only education programs.”<sup>160</sup> Funds are allocated through two categories; Tier 1 grants are awarded for replicating programs that have been proven effective through rigorous evaluation to reduce teen pregnancy, and Tier 2 grants are awarded “for research and demonstration grants to develop . . . innovative strategies for preventing teenage pregnancy.”<sup>161</sup>

President Trump’s FY 2018 proposed budget called for the elimination of the TPPP and sought investment in extending abstinence only education.<sup>162</sup> In July 2017, the U.S. Department of Health and Human Services (“HHS”) issued notices to TPP projects that funding would end two years earlier than expected and HHS would not provide additional funding for subsequent years.<sup>163</sup> TPPP grantees filed suit in various district courts to challenge the termination, whereby all

157. Parents’ right to send their children to private schools or to homeschool is constitutionally protected. *See Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Pierce v. Soc’y of Sisters*, 268 U.S. 510 (1925).

158. *See generally* Part II.B, *supra*.

159. *See* Press Release, Planned Parenthood Sues Trump-Pence Administration to Protect Young People’s Access to Information, Education in Teen Pregnancy Prevention Program (June 22, 2018), <https://perma.cc/NC8H-QJ2Y>.

160. *Planned Parenthood of Greater Wash. & N. Idaho v. HHS*, 328 F. Supp. 3d 1133, 1138 (E.D. Wash. 2018); *Planned Parenthood of Greater Wash. & N. Idaho v. HHS*, 377 F. Supp. 3d 976, 979 (E.D. Wash. 2018).

161. *Planned Parenthood of New York City, Inc. v. HHS*, 337 F. Supp. 3d 308, 325 (S.D.N.Y. 2018).

162. *See e.g., Planned Parenthood of Greater Wash. & N. Idaho*, 328 F. Supp. at 1138–1139; *King Cty. v. Azar*, 320 F. Supp. 3d 1167, 1170 (W.D. Wash. 2018); *Pol’y & Research, LLC v. HHS*, 313 F. Supp. 3d 62, 67 (D.D.C. 2018); *Healthy Teen Network v. Azar*, 322 F. Supp. 3d 647, 649 (D. Md. 2018); *Planned Parenthood of New York City*, 337 F. Supp. 3d at 317; *Multnomah Cty. v. Azar*, 340 F. Supp. 3d 1046, 1051–52 (D. Or. 2018).

163. *See e.g., Planned Parenthood of Greater Wash. & N. Idaho*, 328 F. Supp. 3d at 1139; *King Cty.*, 320 F. Supp. 3d at 1170; *Pol’y & Research, LLC*, 313 F. Supp. 3d at 67; *Healthy Teen Network*, 322 F. Supp. 3d at 651; *Planned Parenthood of New York City*, 337 F. Supp. 3d at 317; *Multnomah Cty.*, 340 F. Supp. 3d at 1052.

courts granted relief for the plaintiffs and ordered HHS continue TPPP funding.<sup>164</sup>

Although Congress fully funded the TPPP for FY 2018, past TPPP beneficiaries filed suit against the Department of Health and Human Services HHS, challenging HHS implementation of TPPP grants.<sup>165</sup> Plaintiffs in these cases have argued that the TPPP requirements for 2018 were repurposed to fund abstinence-only content and eliminated funding for evidence-based programs, in violation of federal statutes.<sup>166</sup> In at least two of these cases, the courts declined to answer whether or not the administration's policy objectives were to create program restrictions on grantees that provide comprehensive sex education.<sup>167</sup> Courts did find, however, that the new Tier 1 terms, which gave grantees only two possible programs to replicate, were insufficient and did not comply with the 2018 Congressional Appropriations Act ("2018 CAA").<sup>168</sup> Specifically, the court in *Planned Parenthood of New York City* found that the programs outlined in the FY 2018 budget had not been "proven effective through rigorous evaluation," defined elsewhere in the statute as "evidence based and effective."<sup>169</sup> As Congress continues to work on the FY 2024 budget,<sup>170</sup> changes to the current standards requiring evidence-based evaluations for the Tier 1 program may jeopardize grantees who currently rely on federal funding to provide comprehensive sex education.

Supporters of comprehensive sex education have also been fairly successful in non-litigation-based advocacy. Students have been particularly successful at lobbying for inclusive student organizations that advocate for increased awareness of sexuality and more robust sexual health curricula.<sup>171</sup> In *Colin v. Orange Unified School District*, students at a California high school felt there was a need to promote awareness of, and develop support for, issues of sexuality.<sup>172</sup> Upon receiving the group's request for official recognition from the school, the principal conditioned the school's recognition on the acceptance of proposed alterations to the group's constitution, including a statement that "sex, sexuality, [and]

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164. See, e.g., *Planned Parenthood of Greater Wash. & N. Idaho*, 328 F. Supp. 3d at 1138; *King Cty.*, 320 F. Supp. 3d at 1169; *Pol'y & Research, LLC*, 313 F. Supp. 3d at 68; *Healthy Teen Network*, 322 F. Supp. 3d at 649–50.

165. See *Planned Parenthood of Greater Wash. & N. Idaho*, 328 F. Supp. 3d at 1137; *Planned Parenthood of New York City*, 337 F. Supp. 3d at 314.

166. See *Multnomah Cty.*, 340 F. Supp. 3d at 1050–51.

167. See *Planned Parenthood of New York City*, 337 F. Supp. 3d at 341–42; *Multnomah Cty.*, 340 F. Supp. 3d at 1069–70. But see *Planned Parenthood of Greater Wash. & N. Idaho*, 328 F. Supp. 3d at 1155 (declining to interpret FY 2018 FOA requirements to mean HHS required abstinence-only programs).

168. See *Planned Parenthood of New York City*, 337 F. Supp. 3d at 314, 324.

169. *Id.* at 314, 335.

170. See *Appropriations Watch: FY 2024*, COMM. FOR A RESPONSIBLE FED. BUDGET (Feb. 5, 2024), <https://perma.cc/6N5A-VNAV>.

171. See *Gender and Sexuality Alliances.*, GLSEN, <https://perma.cc/YH34-CCWU>.

172. *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1137 (C.D. Cal. 2000).

sex education” will not be discussed at the group’s meetings.<sup>173</sup> The court held that the school had violated the federal Equal Access Act by denying the club official recognition.<sup>174</sup>

In *Straights and Gays for Equality*, a LGBT student group successfully challenged their school under the Equal Access Act for favoring other non-curriculum related groups, such as the cheerleading squad and the synchronized swimming team.<sup>175</sup> Plaintiffs argued that their LGBT group, designated as “noncurricular” by the school district, was afforded fewer resources and communication opportunities than other groups considered “curricular,” specifically cheerleading and synchronized swimming.<sup>176</sup> “Noncurricular” groups were prohibited from making announcements in the yearbook or on the school’s PA system and were not allowed to fundraise or take field trips.<sup>177</sup> The Eighth Circuit found that the LGBT group did not have equal access to these communication channels and were entitled to a presumption of irreparable harm through the prohibitions put in place by the school.<sup>178</sup> The court reached its holding by honoring the primary purpose of the Equal Access Act: allowing equal opportunities for expressive liberties. While the court made no explicit reference to the importance of the student group’s role in influencing awareness of sexuality and sex education at school, its adherence to the Equal Access Act seems to have had the positive effect of encouraging more discussions on sex education in public schools.<sup>179</sup>

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173. *Id.* at 1139.

174. *Id.* at 1151. In several cases involving recognition of LGBTQIA+ groups, claims alleging First Amendment violation of association and expression have been brought. Courts have generally declined to discuss the First Amendment claim. *See id.* at 1149; *Boyd Cnty. High Sch. Gay Straight All. v. Bd. of Educ. of Boyd Cnty.*, 258 F. Supp. 2d 667, 691 (E.D. Ky. 2003). *But see Gay-Straight All. of Yulee High Sch. v. Sch. Bd. of Nassau Cnty.*, 602 F. Supp. 2d 1233, 1235 (M.D. Fla. 2009) (finding that Congress effectively codified the First Amendment rights of non-curricular student groups).

175. *Straights & Gays for Equal. v. Osseo Area Schs.*, 471 F.3d 908, 909–10 (8th Cir. 2006).

176. *Id.* at 910.

177. *Id.*

178. *Id.* at 913.

179. *See e.g., Boyd Cnty. High Sch. Gay Straight All.*, 258 F. Supp. 2d at 693 (mandating school board grant the Gay-Straight Alliance equal access to activities of other student groups, including the opportunity to meet before and after school and during home room); *Gay-Straight All. of Yulee High Sch.*, 602 F. Supp. 2d at 1238 (granting plaintiffs’ preliminary injunction to have school officially recognize the Gay-Straight Alliance student group); *Gay-Straight All. of Okeechobee High Sch. v. Sch. Bd. of Okeechobee Cnty.*, 483 F. Supp. 2d 1224, 1231 (S.D. Fla. 2007) (requiring school to recognize the Gay-Straight Alliance and grant it the same access and privileges it grants to other non-curricular clubs); *Franklin Cent. Gay/Straight All. v. Franklin Twp. Cmty. Sch. Corp.*, No. IP01-1518 C-M/S, 2002 WL 32097530 (S.D. Ind. Aug. 30, 2002) (granting summary judgment for plaintiffs upon determination that the club meeting period was a limited open and public forum requiring equal access to the Gay-Straight Alliance). *But see Caudillo v. Lubbock Indep. Sch. Dist.*, 311 F. Supp. 2d 550, 572 (N.D. Tex. 2004) (denying gay-straight student association’s claims that school’s refusal to recognize group violated the Equal Access Act due to the law’s exceptions for avoiding disruption and protecting the well-being of students).

#### IV. POLITICAL CONTEXT AND SOCIAL SCIENCE DEVELOPMENTS

##### A. THE EFFECTIVENESS OF SEX EDUCATION PROGRAMS

Uncertainty of the effectiveness of different approaches to sex education provides yet another source of debate. A 2010 study concluded that state-mandated programs that emphasize abstinence have no beneficial effect on the infection rates of chlamydia and gonorrhea, both common STDs.<sup>180</sup> Programs that mandate coverage of abstinence among other approaches can have a beneficial effect in states that previously had elevated infection rates.<sup>181</sup> However, the authors note that the study is limited and more research is needed.<sup>182</sup>

A 2011 study on abstinence-only education and its effects showed statistically significant differences in state teen pregnancy outcomes based on the type of sex education that the state provides.<sup>183</sup> The study showed that abstinence-only education did not contribute to reductions in teen pregnancy and may have increased teen pregnancy.<sup>184</sup> Comprehensive sex education discussing abstinence and other birth control methods, was correlated with the lowest teen pregnancy and STD rates.<sup>185</sup> A 2017 review article by the Journal of Adolescent Health reaffirmed these findings.<sup>186</sup>

Studies which seek to correlate whether particular sex education programs achieve their desired effect(s) should be carefully scrutinized. Efficacy correlations should consider factors beyond curriculum that impact the efficacy of sex education, especially the opt-out rates for programs and the religious and moral values of surrounding communities.<sup>187</sup> These efficacy correlations also do not control for other factors, such as wealth and race, found to correlate with sex education success variables.<sup>188</sup> For example, the Centers for Disease Control and Prevention (“CDC”) reports that STD rates are highest in populations of color; however, this data may be inaccurate due to differences in how public and private clinics report to the CDC and incomplete reporting of racial/ethnicity status.<sup>189</sup>

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180. Matthew Hogben, Harrell Chesson, & Sevgi Okten Aral, *Sexuality Education Policies and Sexually Transmitted Disease Rates in the United States of America*, 21 INT’L J. STD & AIDS 293, 296 (2010).

181. *Id.*

182. *Id.*

183. Kathrin F. Stanger-Hall, & David W. Hall, *Abstinence-Only Education and Teen Pregnancy Rates: Why We Need Comprehensive Sex Education in the U.S.*, 6 PLOS ONE 4 (2011).

184. *Id.*

185. *Id.* at 6–7.

186. See John S. Santelli, Leslie M. Kantor, Stephanie A. Grilo, Ilene S. Speizer, Laura D. Lindberg, Jennifer Heitel, Amy T. Schalet, Maureen E. Lyon, Amanda J. Mason-Jones, Terry McGovern, Craig J. Heck, Jennifer Rogers, & Mary A. Ott, *Abstinence-Only-Until-Marriage: An Updated Review of U.S. Policies and Programs and Their Impact*, 61 J. ADOLESCENT HEALTH 273, 276 (2017).

187. *Id.* at 6.

188. *Id.*

189. Marie-Claire Boutrín & David R. Williams, *What Racism Has to Do with It: Understanding and Reducing Sexually Transmitted Diseases in Youth of Color*, 9 HEALTHCARE 2–4 (2021).

Other studies have found a per capita income correlation with STD rates<sup>190</sup> and teen pregnancy.<sup>191</sup>

Studies that conduct meta-analyses of sex education programs, sometimes assessing smaller localities, yield more conclusive results, demonstrating the inferiority of abstinence-only education relative to comprehensive programs.<sup>192</sup> For example, the American Medical Association reported that there is no evidence to suggest that abstinence-until-marriage curricula for sex education are effective in delaying the onset of intercourse.<sup>193</sup> Other studies have also reported the inefficacy of abstinence-only curricula.<sup>194</sup> Some studies showed that a range of sex education programs, each more comprehensive in nature than abstinence-until-marriage programs, may actually better delay the age of first sexual activity, reduce the number of sexual partners, and reduce STD and unplanned pregnancy rates.<sup>195</sup> Several sources found no correlation between comprehensive sex education programs and an increase in teenage sexual activity.<sup>196</sup>

Three widely acclaimed studies have made broad, definite conclusions about the superior effectiveness of comprehensive sex education. A 2007 meta-analysis

190. Craig A. Gallet, *A Note on the Determinants of Sexually Transmitted Disease Rates*, 39 SOC. SCI. J. 613, 615 (2002).

191. Susheela Singh, Jacqueline E. Darroch, Jennifer J. Frost, Michael Barrett, Alexander McKay, Eleanor Maticka-Tyndale, Nathalie Bajos, Sandrine Durand, Kaye Wellings, Maria Danielsson, Christine Rogala, Kajsa Sundström, Rachel Jones, & Vanessa Woog, *Socioeconomic Disadvantages and Adolescent Women's Sexual and Reproductive Behavior: The Case of Five Developed Countries*, 33 FAM. PLAN. PERSP. 251, 255 (2001).

192. See, e.g., Sarah Denford, Charles Abraham, Rona Campbell & Heide Busse, *A Comprehensive Review of Reviews of School-Based Interventions to Improve Sexual-Health*, 11 HEALTH PSYCH. REV. 33 (2017).

193. See COUNCIL OF SCIENTIFIC AFFAIRS, Report of the AMA Council on Scientific Affairs 357, 359 (Dec. 1999), <https://perma.cc/PH2F-KLQ9>; see also Christopher Trenholm, Barbara Devaney, Ken Fortson, Lisa Quay, Justin Wheeler, & Melissa Clark, MATHEMATICA POL'Y RSCH., INC., Impacts of Four Title V, Section 510 Abstinence Education Programs 61 (2007).

194. See, e.g., Debra Hauser, FIVE YEARS OF ABSTINENCE-ONLY-UNTIL-MARRIAGE EDUCATION: ASSESSING THE IMPACT 2, 4 (2004), <https://perma.cc/UCT2-KLXR> (revealing that the five-year abstinence-only-until-marriage education programs implemented in ten states provide little or no sustained impact on actual attitudes toward sexual behavior); Denford, Abraham, Campbell, & Busse, *supra* note 192, at 45–47.

195. ADVOCATES FOR YOUTH, MYTHS AND FACTS ABOUT COMPREHENSIVE SEX EDUCATION (2011), <https://perma.cc/TN9A-BX3Z>. A study reviewed sex education programs in the United States and other countries. Most studies that investigated sexual activity, rates of pregnancy, and sexually transmitted diseases determined that sex and HIV/AIDS education neither increased nor decreased sexual activity and rates of pregnancy and sexually transmitted diseases. However, in a significant number of studies that investigated the following outcomes, HIV and/or sex education delayed the onset of sexual activity and reduced the number of sexual partners, and/or reduced unplanned pregnancy and sexually transmitted disease rates. See, e.g., Douglas B. Kirby, B.A. Laris, & Lori A. Rollieri, *Sex and HIV Education Programs: Their Impact on Sexual Behaviors of Young People Throughout the World*, 40 J. ADOLESCENT HEALTH 206–217, 209 (2007).

196. See generally DOUGLAS KIRBY, EMERGING ANSWERS: RESEARCH FINDINGS ON PROGRAMS TO REDUCE TEEN PREGNANCY AND SEXUALLY TRANSMITTED DISEASES (Nov. 2007), <https://perma.cc/X574-5E24> (finding that sexuality and HIV education do not hasten sexual activity, education about abstinence and contraception are compatible rather than in conflict with each other and making condoms available does not increase sexual behavior).



of several other sex education studies from across the nation found that abstinence-only programs that met the federal eight-point definition did not delay teen sexual activity or reduce STDs.<sup>197</sup> Comprehensive programs, in contrast, were found to produce behavioral changes in two-thirds of the forty-eight programs reviewed.<sup>198</sup> 40% of the programs delayed the initiation of sex, approximately 30% reduced the frequency of sex, and more than 60% reduced the incidence of unprotected sex.<sup>199</sup> Another study, the first ever to compare abstinence-only and comprehensive sex education programs among a national sample of teenagers, found that those who received comprehensive sex education were half as likely to become teen parents as those who received abstinence-only education.<sup>200</sup> In 2018, the United Nations published guidance on comprehensive sex education programs, based on an international study commissioned by UNESCO in 2016.<sup>201</sup> This study affirmed that comprehensive sex education contributes to “delayed initiation of sexual intercourse[,] decreased frequency of sexual intercourse[,] decreased number of sexual partners[,] reduced risk taking[,] increased use of condoms[, and] increased use of contraception.”<sup>202</sup>

California stands out as a success story for comprehensive sex education. In 1992 it had the nation’s highest teenage pregnancy rate, but by 2005 that rate was reduced by 52%.<sup>203</sup> In comparison, during the same time period, the national

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197. *Id.* at 113–14. The eight-point definition requires:

- A. Have as its exclusive purpose teaching the social, psychological, and health gains to be realized by abstaining from sexual activity
- B. Teach abstinence from sexual activity outside marriage as the expected standard for all school-age children
- C. Teach that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems
- D. Teach that a mutually faithful, monogamous relationship in the context of marriage is the expected standard of sexual activity
- E. Teach that sexual activity outside the context of marriage is likely to have harmful psychological and physical effects
- F. Teach that bearing children out of wedlock is likely to have harmful consequences for the child, the child’s parents, and society
- G. Teach young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances
- H. Teach the importance of attaining self-sufficiency before engaging in sexual activity.

*Id.*

198. *Id.* at 15.

199. *Id.*

200. Norman A. Constantine, *Converging Evidence Leaves Policy Behind: Sex Education in the United States*, 42 J. ADOLESCENT HEALTH 324, 325 (2008).

201. Marcela Rueda Gomez, Doortje Braeken, Nicole Cheetham, Debra Hauser, & Nora Gelperin, U.N. Educ., Sci. & Cultural Org., *International Technical Guidance on Sexuality Education: An Evidence-Informed Approach* (2018).

202. *Id.* at 28.

203. Heather D. Boonstra, *Winning Campaign: California’s Concerted Effort to Reduce its Teen Pregnancy Rate*, 13 GUTTMACHER POL’Y REV. (2010), <https://perma.cc/7LJN-B37H>.

teenage pregnancy rate was only reduced by 37%.<sup>204</sup> Advocates credit the state's adoption of comprehensive sex education, codified in the 2003 California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act, for the impressive turnaround.<sup>205</sup> While the Act only mandated instruction in HIV/AIDS prevention, it required schools that elected to teach comprehensive sex education to provide instruction that is medically accurate, age appropriate, and comprehensive.<sup>206</sup> The programs must include information about abstinence, "while also providing medically accurate information on other methods of preventing pregnancy and [STDs]."<sup>207</sup> In 2016, California enacted the Healthy Youth Act, which renamed the 2003 legislation.<sup>208</sup> The Healthy Youth Act requires school districts to provide comprehensive sexual health and HIV prevention information to students at least once in both middle and high school.<sup>209</sup>

A 2010 study offered support for an experimental type of abstinence-only education that avoided the rigid eight-point criteria for programs eligible for federal abstinence-only-until-marriage funding. This abstinence-only program "did not contain inaccurate information, portray sex in a negative light, or use a moralistic tone."<sup>210</sup> The study tracked 662 African-American students in grades six and seven for two years after they had completed one of five types of sex education programs over the course of a weekend.<sup>211</sup> The participants in the experimental abstinence-only program were the only students who refrained from sexual initiation to a significant degree relative to the control group.<sup>212</sup> Only 32.6% of the abstinence-only participants, compared with 46.6% of those in the control group, reported sexual activity two years after completing the program.<sup>213</sup> However, the comprehensive program significantly reduced the instance of multiple sexual partners while the abstinence-only program did not.<sup>214</sup>

Almost all sex education programs emphasize that abstinence is the only certain way to prevent unintended pregnancy and STDs.<sup>215</sup> There are two ways to measure the effectiveness of contraception methods: "perfect use" and "typical

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204. *Id.*

205. *See id.*

206. CAL. EDUC. CODE § 51934 (2003), amended by CAL. EDUC. CODE § 51934 (2019) (requiring HIV/AIDS prevention education in grades seven through twelve).

207. *Id.* *See also* CAL. EDUC. CODE § 51933 (2003), amended by CAL. EDUC. CODE § 51933 (2016).

208. *Comprehensive Sexual Health & HIV/AIDS Instruction*, CAL. DEP'T OF EDUC. (Oct. 27, 2023), <https://perma.cc/8GDW-9MVK>.

209. *Id.*

210. John B. Jemmott III, Loretta S. Jemmott, & Geoffrey T. Fong, *Efficacy of a Theory-Based Abstinence-Only Intervention Over 24 Months: A Randomized Controlled Trial With Young Adolescents*, 164 ARCHIVES PEDIATRICS & ADOLESCENT MED. 152, 153 (2010).

211. *Id.* at 153. The programs were: an eight-hour abstinence-only intervention, an eight-hour safer sex-only intervention, an eight-hour comprehensive intervention, a twelve-hour comprehensive intervention, or an eight-hour intervention promoting general health (which served as the control group).

212. *Id.* at 156.

213. *Id.*

214. *Id.* at 157.

215. *See supra* notes 25–39, and accompanying text.

use.”<sup>216</sup> When educators and legislators state that abstinence is “100% effective” for preventing STDs and pregnancy, they are implicitly citing “perfect use” rates of abstinence from all sexual activity.<sup>217</sup> However, some programs compare the 100% effectiveness of abstinence with the “typical use” rates of other contraceptives.<sup>218</sup> These comparisons are misleading because the “typical use” effectiveness of contraceptive methods reflects the fact that the contraception may not be used consistently.<sup>219</sup> If abstinence were subjected to the same research method, it would logically have a “typical use” effectiveness rate of less than 100%. While little research has been done on this topic, one study found that 60% of students who pledged virginity in middle or high school broke this vow during college.<sup>220</sup> Another study found that people who broke their abstinence pledge were more likely to contract HPV or have a nonmarital pregnancy than people who never made an abstinence pledge.<sup>221</sup>

An investigation into the content of federally funded abstinence-only programs revealed that many of the most popular curricula are misleading.<sup>222</sup> The report found that over 80% of the curricula used by grantees of the abstinence-until-marriage federal funds contained “false, misleading, or distorted information about reproductive health.”<sup>223</sup> Specifically, the curricula contained inaccurate information about condoms and their effectiveness, abortion, HIV and STD transmission and infection rates, and even basic scientific facts, such as human genetics.<sup>224</sup> Additionally, several of these curricula blur religion and science, particularly regarding abortion, and present gender stereotypes as fact.<sup>225</sup> In response to the report, advocacy groups have expressed concern that these inaccurate abstinence-until-marriage sex education programs put teenagers’ health in jeopardy and may

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216. “‘Perfect use’ measures the effectiveness when a contraceptive is used exactly according to clinical guidelines. In contrast, ‘typical use’ measures how effective a method is for the average person who does not always use the method correctly or consistently.” Cynthia Dailard, *Understanding ‘Abstinence’: Implications for Individuals, Programs and Policies*, GUTTMACHER REP. ON PUB. POL’Y 4 (Dec. 2003).

217. *Id.*

218. *See, e.g.*, TEX. EDUC. CODE ANN. § 28.004(e)(3)–(5) (West, Westlaw through 2023 Reg., 2d, 3d, and 4th Called Sessions of the 88th Leg.) (requiring emphasis on abstinence and instruction on the “human use reality rates” of the effectiveness of contraception, as opposed to the theoretical rates).

219. *See* Dailard, *supra* note 216 at 4 (typical use includes people who do not always use the method consistently).

220. *See id.* at 5.

221. Anthony Paik, Kenneth J. Sanchagrin, & Karen Heimer, *Broken Promises: Abstinence Pledging and Sexual and Reproductive Health*, 78 J. MARRIAGE & FAMILY 546, 558 (2016).

222. Staff of H.R. Comm. on Gov’t Reform, 108th Cong., *The Content of Federally Funded Abstinence-Only Education Programs*, at i (Comm. Print 2004).

223. *Id.*

224. *Id.* at i, 10, 21–22. For example, one program stated that human cells have twenty-four chromosomes from each parent. In reality, they actually have twenty-three from each parent, for a total of forty-six. *Id.* at 21.

225. *Id.* at 15–18. For example, one program stated that “[o]ccasional suggestions and assistance [from a woman] may be alright, but too much of it will lessen a man’s confidence or even turn him away from his princess.”

cause them to engage in risky sexual behaviors, because the misinformation does not allow teenagers to make informed decisions about their sexual health.<sup>226</sup>

LGBTQIA+ youth present another set of issues and needs for sexual education in school, including lack of representation and information pertinent to queer individuals.<sup>227</sup> A 2021 survey reported that only 7.4% of LGBTQ+ students received LGBTQ+-inclusive sex education.<sup>228</sup> While seven states require sexual education be LGBTQIA+-inclusive, seven other states explicitly restrict the teaching of LGBTQIA+-related content in schools.<sup>229</sup> A report from multiple health and policy organizations states that, at minimum, LGBTQIA+-inclusive curriculum should include information that is “age appropriate and medically accurate,” “be designed with the needs of LGBTQ+ students, and particularly BIPOC students, in mind,” depict LGBTQ+ people and couples in a “positive light,” “use gender-neutral terms . . . whenever possible,” and “avoid making assumptions about students’ sexual orientation or gender identity.”<sup>230</sup> A 2017 article published in the *Journal of Adolescent Health* reported that abstinence-only education programs potentially have an “profoundly negative” effect on LGBTQ youth.<sup>231</sup> The article cited issues such as stigma, heteronormative preferences, and contributing to existing feelings of isolation.<sup>232</sup>

#### B. TREATMENT IN THE 2016 PRESIDENTIAL ELECTION CYCLE

Republican presidential candidates typically emphasize their “pro-life” stance, and many have been openly supportive of abstinence-only education.<sup>233</sup> In an October 2010 interview, Republican presidential candidate and Texas Governor

226. See Susan Yudt, *Reality Bites: The Truth About Sex, Teens, and Abstinence-Only Education*, PLANNED PARENTHOOD (Dec. 3, 2004), <https://perma.cc/5XGZ-F95A>; Press Release, NARAL Pro-Choice America, New Report Exposes Dangers of Bush Administration’s Abstinence-Only Programming (Dec. 2, 2004), <https://perma.cc/F5ML-GT9T?type=image>.

227. See generally SEX ED FOR SOCIAL CHANGE, UNITE FOR REPRODUCTIVE & GENDER EQUITY, ADVOCATES FOR YOUTH, ANSWER, BLACK & PINK, EQUALITY FEDERATION, GLSEN, HUM. RTS. CAMPAIGN, NAT’L LGBTQ TASK FORCE, & PLANNED PARENTHOOD, A CALL TO ACTION: LGBTQ YOUTH NEED INCLUSIVE SEX EDUCATION (May 2021), <https://perma.cc/EXJ9-UC3Q> [hereinafter A CALL TO ACTION].

228. JOSEPH G. KOSCIW, CAITLIN M. CLARK, & LEESH MENARD, GLSEN, THE 2021 NATIONAL SCHOOL CLIMATE SURVEY, at xxi (2022), <https://perma.cc/WW5V-U25M>.

229. A CALL TO ACTION, *supra* note 227, at 5 (reporting that California, Colorado, New Jersey, Oregon, Rhode Island, Washington, and the District of Columbia require sex education to be LGBTQ+-inclusive and Florida, Illinois, Louisiana, Mississippi, North Carolina, Oklahoma, and Texas prohibit it). Delaware, Iowa, Massachusetts, South Carolina, and Wisconsin “require instruction to include information on sexual orientation and gender identity that neither affirms nor discriminates against LGBTQ+ youth.” *Id.*

230. *Id.* at 15.

231. Santelli, Kantor, Grilo, Speizer, Lindberg, Heitel, Schalet, Lyon, Mason-Jones, McGovern, Heck, Rogers, & Ott, *supra* note 186, at 273, 278.

232. *Id.*

233. For example, in May 2022, Charles Herbster, a Republican who ran for governor in Nebraska, proclaimed, “We’re going to take sex education out of the schools and put it back in the homes where it belongs,” at a Trump Rally. Hannah Natanson, *After Roe, teens are teaching themselves sex ed, because the adults won’t*, WASH. POST (Aug. 23, 2022), <https://perma.cc/DP3L-2M8N>.

Rick Perry was asked why Texas continues to pay for abstinence-only education when it does not seem to be effective, given that Texas's teen pregnancy rate was (and still is) the third-highest in the nation. Governor Perry responded, "It does work . . . maybe it's the way it's being taught or applied out there, but as a matter of fact it's the best form . . . to teach our children." When pressed for statistics on the efficacy of abstinence-only education, or whether this is money well spent, Perry indicated that "in my personal experience, abstinence works."<sup>234</sup> Republican platforms for sex education in the 2016 presidential cycle were fairly inconspicuous. A 2016 article by Planned Parenthood, urging voters to avoid Republicans' general support of abstinence-only programs, cited candidates' positions from only from 2012 and prior years.<sup>235</sup> The Trump administration itself only began earnestly pursuing a platform for abstinence-only education in 2018.<sup>236</sup>

Democrats offered a relatively united front in the 2016 election. Although the left is ordinarily associated with more liberal views, including support for comprehensive sexual education, both Democrat presidential and vice-presidential nominees, Hillary Clinton and Tim Kaine, had previously supported abstinence-only platforms.<sup>237</sup> Within the 2016 presidential campaign, however, both supported comprehensive sexual education.<sup>238</sup> While running as a candidate for the Democratic party's nomination, Bernie Sanders championed an open and frank dialogue for sexual education and dismissed abstinence-only education as "certainly not the only answer."<sup>239</sup>

### C. TREATMENT BY THE TRUMP ADMINISTRATION

President Trump's administration began a move towards favoring abstinence-only sex education in early 2018.<sup>240</sup> The administration first embraced abstinence-only programs by placing conservatives in the Department of Health and Human Services ("HHS"), who encouraged organizations applying for Title X federal family planning funds to place a "meaningful emphasis" on avoiding sex and "normal[izing] sexual risk behaviors."<sup>241</sup> Valerie Huber, the HHS Chief of Staff appointed in 2017, was quoted two years prior saying, "[a]s public health

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234. Justin Dehn, *Video: Perry on Abstinence*, TEX. TRIB. (Aug. 29, 2011), <https://perma.cc/9KLS-K6QT>.

235. Avatara Smith-Carrington, *What's at Stake in the 2016 Election?*, PLANNED PARENTHOOD (Feb. 5, 2016), <https://perma.cc/58JE-54ZZ>.

236. See Pam Belluck, *Trump Administration Pushes Abstinence in Teen Pregnancy Programs*, N.Y. TIMES (Apr. 23, 2018), <https://perma.cc/DA4D-4ZMG>.

237. Abby Johnston, *Tim Kaine's Sex Education Position is Hillary Clinton on Gay Marriage All Over Again*, BUSTLE (Oct. 2, 2016), <https://perma.cc/UE6X-M6E6>.

238. *Id.*

239. Ross Barbkhan, *Here's What Bernie Sanders Thinks About Sex Education*, OBSERVER (Jan. 28, 2016), <https://perma.cc/85PZ-5Z4B>.

240. Jessie Helman, *Abstinence-Only Education Making a Comeback Under Trump*, THE HILL (Mar. 8, 2018), <https://perma.cc/4VUS-6KDQ>.

241. *Id.*



experts and policymakers, we must normalize sexual delay more than we normalize teen sex, even with contraception.”<sup>242</sup> In July 2017, the HHS terminated multiple Teen Pregnancy Prevention Program (“TPP Program”) grants in an alleged effort to eliminate the program altogether—lawsuits brought against the agency for these terminations were successful.<sup>243</sup> In April 2018, the HHS announced new abstinence-focused requirements for grants within the TPP Program<sup>244</sup> and began “rebranding” abstinence-only education as “‘sexual risk avoidance’ programs.”<sup>245</sup>

#### D. TREATMENT BY THE BIDEN ADMINISTRATION

In March 2021, Rachel Levine, the Biden administration-appointed HHS Assistant Secretary for Health, became the first openly transgender federal official to be confirmed by the Senate.<sup>246</sup> Under the Biden administration, the HHS has continued to give out grants under the TPP Program.<sup>247</sup> While the House of Representatives attempted to eliminate the TPP Program from the FY2024 budget, Biden continued to include it in his proposed FY2025 budget.<sup>248</sup> In 2024, the HHS provided a \$700,000 grant to an organization to expand their teen pregnancy prevention efforts to be inclusive of transmasculine and nonbinary teens.<sup>249</sup>

#### V. CONCLUSION

The topics and content of sex education curricula vary widely from state to state as a result of broad state statutory language, leaving policies up to the local school boards’ discretion. Overall, there appears to be increasing awareness of the benefits of comprehensive sex education and growing criticism of an abstinence-only-until-marriage approach, especially when medically inaccurate information is included in such programs. A possible middle ground for some states,

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242. *Id.*

243. Megan Uzzell & Charisma Troiano, *One Year of Successful Battles to Protect the TPP Program Against Trump Administration Unlawful Actions; Fights Remain as Administration Continues its Assault on Evidence*, DEMOCRACY FORWARD (Apr. 11, 2019), <https://perma.cc/HR78-9DQP>.

244. Jessie Hellman, *Trump Admin Announces Abstinence-Focused Overhaul of Teen Pregnancy Program*, THE HILL (Apr. 20, 2018), <https://perma.cc/S7XP-JF5G>.

245. Jesseca Boyer, *New Name, Same Harm: Rebranding of Federal Abstinence-Only Programs*, GUTTMACHER INST. (Feb. 28, 2018), <https://perma.cc/38V5-MX5J>.

246. Laurel Wamsley, *Rachel Levine Makes History As 1st Openly Trans Federal Official Confirmed By Senate*, NPR (Mar. 24, 2021), <https://perma.cc/4V9N-W6EM>.

247. *See, e.g.*, HHS Announces \$68.5 Million for Teen Pregnancy Prevention Opportunities, U.S. DEP’T OF HEALTH & HUM. SERVS. (June 23, 2023), <https://perma.cc/8GBZ-QKUP>; *HHS Awards \$23 Million to Support Evidence-Based Teen Pregnancy Prevention Programs*, U.S. DEP’T OF HEALTH & HUM. SERVS. (Aug. 25, 2023), <https://perma.cc/YQ69-QJ4E>.

248. Michelle Slaybaugh, *President Biden Highlights Several Important Sexual and Reproductive Health Priorities in his FY25 Budget Request*, SIECUS (Mar. 12, 2024), <https://perma.cc/YWF4-A5VV>.

249. Trudy Ring, *Biden administration creates \$700k grant to create inclusive sex ed for trans male teens*, U.S. ADVOCATE (Jan. 26, 2024), <https://perma.cc/GS4Q-R6DY>.

pending additional studies, may be abstinence-only education that employs medically accurate information and forgoes a moralizing tone.

The growing awareness of the benefits of comprehensive sex education has resulted in a fundamental shift at the federal level, as well as in states and communities across the country that are in the process of introducing legislation for comprehensive sex education. Such legislation, however, also invites increased opposition from advocates of abstinence-only-until-marriage education. Republican candidates, by and large, remain supportive of abstinence-only education. As expected, the Trump administration pushed for a return to a federally funded abstinence-only education despite its demonstrated lack of effectiveness throughout Trump's presidency. Since 2021, the Biden administration has made positive strides, funding comprehensive, LGBTQ+-inclusive sex education programs; however, Republicans continue their campaign against such efforts, attempting to eliminate the TPP Program.

APPENDIX A<sup>250</sup>

STATE	STATUTE OR CODE MANDATES STD OR HIV/ AIDS EDUCATION	MANDATES ABSTINENC- E-ONLY SEX EDUCATION	MANDATES GENERAL HEALTH EDUCATION	PERMITS, BUT DOES NOT REQUIRE, SEX EDUCATION	NO STATUTE OR CODE REGULATING SEX EDUCATION
Alabama	x			x (HIV/AIDS only)	
Alaska					x
Arizona				x	
Arkansas				x	
California	x				
Colorado				x	
Connecticut	x				
Delaware	x				
District of Columbia	x				
Florida		x			
Georgia	x				
Hawaii	x				
Idaho				x	
Illinois	x				
Indiana	x				
Iowa	x				
Kansas					x

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250. See *supra* notes 1–26 and accompanying text.

(CONTINUED)

STATE	STATUTE OR CODE MANDATES STD OR HIV/ AIDS EDUCATION	MANDATES ABSTINENC- E-ONLY SEX EDUCATION	MANDATES GENERAL HEALTH EDUCATION	PERMITS, BUT DOES NOT REQUIRE, SEX EDUCATION	NO STATUTE OR CODE REGULATIN- G SEX EDUCATION
Kentucky	x				
Louisiana				x	
Maine	x				
Maryland	x				
Massachusetts				x	
Michigan	x				
Minnesota	x				
Mississippi		x			
Missouri	x				
Montana					x
Nebraska		x	x		
Nevada	x				
New Hampshire	x				
New Jersey	x				
New Mexico	x				
New York	x				
North Carolina	x				
North Dakota		x			
Ohio	x				
Oklahoma	x				
Oregon	x				
Pennsylvania	x				

(CONTINUED)

STATE	STATUTE OR CODE MANDATES STD OR HIV/ AIDS EDUCATION	MANDATES ABSTINENC- E-ONLY SEX EDUCATION	MANDATES GENERAL HEALTH EDUCATION	PERMITS, BUT DOES NOT REQUIRE, SEX EDUCATION	NO STATUTE OR CODE REGULATING SEX EDUCATION
Rhode Island	x				
South Carolina	x				
South Dakota					x
Tennessee	x <sup>251</sup>				
Texas			x		
Utah	x				
Vermont	x				
Virginia				x	
Washington	x				
West Virginia	x				
Wisconsin	x				
Wyoming			x		
Total =	33 + DC	4	3	8	3

251. Tennessee requires sex education only in counties with teen pregnancy rates at or above 19.5 pregnancies per 1,000 females age 15 to 17. *Tennessee State Profile*, SIECUS (Mar. 22, 2023), <https://perma.cc/6WZ7-8VWV>.



APPENDIX B<sup>252</sup>

STATE	STATUTE OR CODE MANDATES TEACHING ABOUT ABORTION	RESTRICTS ABORTION TEACHING	OPT-OUT OR CONSENT PROVISION	RECEIVED FEDERAL FUNDING FOR PREP COMPREHENSIVE SEX EDUCATION IN FY 2017	RECEIVED FEDERAL FUNDING FOR ABSTINENCE-ONLY/ SEXUAL RISK AVOIDANCE EDUCATION IN FY 2022
Alabama			Opt-out	x	x
Alaska				x	
Arizona			Opt-out	x	x
Arkansas		x		x	x
California	x		Opt-out	x	x
Colorado			Consent	x	x
Connecticut		x	Opt-out	x	x
Delaware				x	x
District of Columbia	x		Opt-out	x	x
Florida			Opt-out		x
Georgia			Opt-out	x	x
Hawaii				x	x
Idaho			Opt-out	x	x
Illinois			Opt-out	x	x
Indiana			Consent		x
Iowa			Opt-out	x	x
Kansas			Opt-out		

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252. See *supra* notes 1–47, 71, 88 and accompanying text.

(CONTINUED)

STATE	STATUTE OR CODE MANDATES TEACHING ABOUT ABORTION	RESTRICTS ABORTION TEACHING	OPT-OUT OR CONSENT PROVISION	RECEIVED FEDERAL FUNDING FOR PREP COMPREHENSIVE SEX EDUCATION IN FY 2017	RECEIVED FEDERAL FUNDING FOR ABSTINENCE-ONLY/ SEXUAL RISK AVOIDANCE EDUCATION IN FY 2022
Kentucky				x	x
Louisiana		x	Opt-out	x	x
Maine			Opt-out	x	x
Maryland			Opt-out	x	x
Massachusetts			Opt-out	x	x
Michigan		x	Opt-out	x	x
Minnesota			Opt-out	x	x
Mississippi		x	Consent	x	x
Missouri			Opt-out	x	x
Montana				x	x
Nebraska				x	x
Nevada			Consent	x	x
New Hampshire				x	x
New Jersey			Opt-out	x	x
New Mexico			Opt-out	x	x
New York			Opt-out	x	x
North Carolina			Opt-out	x	x
North Dakota					
Ohio			Opt-out	x	x
Oklahoma			Opt-out	x	x

(CONTINUED)

STATE	STATUTE OR CODE MANDATES TEACHING ABOUT ABORTION	RESTRICTS ABORTION TEACHING	OPT-OUT OR CONSENT PROVISION	RECEIVED FEDERAL FUNDING FOR PREP COMPREHE- NSIVE SEX EDUCATION IN FY 2017	RECEIVED FEDERAL FUNDING FOR ABSTINENC- E-ONLY/ SEXUAL RISK AVOIDANCE EDUCATION IN FY 2022
Oregon			Opt-out	x	x
Pennsylvania			Opt-out	x	x
Rhode Island			Opt-out	x	x
South Carolina		x	Opt-out	x	x
South Dakota				x	x
Tennessee			Opt-out	x	x
Texas			Opt-out		x
Utah			Consent	x	x
Vermont	x		Opt-out	x	x
Virginia			Opt-out	x	x
Washington			Opt-out	x	
West Virginia			Opt-out	x	x
Wisconsin			Opt-out	x	x
Wyoming			Opt-out	x	x
Total =	2 + DC	6	43 + DC	46 + DC	48