



July 17, 2007

Oppose Funding for the Community-Based Abstinence Education Program in the FY 2008 Labor, Health and Human Services, Education, and Related Agencies Appropriations Bill

Dear Representative:

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On behalf of the American Civil Liberties Union (ACLU), a nonpartisan public interest organization dedicated to protecting the constitutional rights of individuals, and its hundreds of thousands of members, activists, and 53 affiliates nationwide, we urge you to **eliminate, not increase, funding for the Community-Based Abstinence Education (CBAE) Program** in the FY08 Department of Health and Human Services (HHS) spending bill.

There is no question that, where local communities choose to offer young people instruction and guidance about human sexuality, abstinence ought to be an important component of that educational program. However, federally funded programs that focus exclusively on abstinence act against good public health policy and also raise serious civil liberties concerns. Congress ought not support programs that censor information, reinforce gender stereotypes, provide inaccurate and misleading information, promote religion, serve a narrow ideological agenda, and jeopardize the wellbeing of young people.

Since 1996, Congress has appropriated more than a billion dollars for educational programs that focus exclusively on abstinence and censor other information that can help young people make responsible, healthy, and safe decisions about sexual activity. While federal funding for abstinence-only-until marriage programs has increased steadily to more than \$176 million annually, there are no federal funds dedicated to supporting sexuality education programs that teach both abstinence and contraceptive use.

The ACLU calls upon the 110th Congress to reverse course and act in the best interest of young people's reproductive health by eliminating funding for the CBAE program.

Some Abstinence-Only Programs Impermissibly Promote Religion

In violation of First Amendment guarantees, some federally funded abstinence-only programs contain religious teachings about proper sexual behavior and values.

The Supreme Court has made clear that religion is impermissibly advanced, and the Constitution violated, when government aid is used to fund "specifically religious activit[ies]" even within "an otherwise substantially secular setting." *Bowen v. Kendrick*, 487 U.S. 589, 621 (1988) (internal quotation and citation omitted). Indeed, it was in *Bowen*, a case challenging the constitutionality of the Adolescent Family Life Act and its appropriation of funds for abstinence-only education, that Justice O'Connor emphasized, "*any* use of public funds to promote religious doctrines violates the Establishment Clause." *Id.* at 623 (O'Connor, J. concurring).

Although federal funding guidelines do not permit abstinence-only grantees to convey overt religious messages or to impose religious viewpoints, in practice, many of these programs do precisely that. For example, in *ACLU v. Leavitt*, the ACLU showed how federal dollars were supporting an overtly religious abstinence-only program called The Silver Ring Thing, which had been awarded more than \$1 million dollars in federal money in the prior three years.

During the Silver Ring Thing's flagship three-hour program, members testify about how accepting Jesus Christ improved their lives, quote Bible passages, and urge audience members to ask the Lord Jesus Christ to come into their lives. As a result of the ACLU's lawsuit, federal officials suspended federal funding of the Silver Ring Thing. And, in February 2006, the ACLU announced a settlement with HHS, under which HHS agreed that it would not fund the program as currently structured.

Most recently, in May 2007, the ACLU expressed concern to HHS about the misuse of abstinence-only funds by two CBAE grantees. Specifically, one Oregon grantee created the *Stop and Think* abstinence program and contracted with another grantee to teach the program in various venues across the country. In order to utilize the program, the second grantee had to sign a contract containing the following conditions:

- 1) The presenter and supervisor
 - a) possess an authentic relationship with Jesus Christ
 - b) possess knowledge of the word of God, and the ability to communicate it's [sic] truth
 - c) exhibit a loving and merciful spirit
 - d) attend a Bible believing local church or fellowship

This contract was provided to HHS as part of the second grantee's application for CBAE funding. Moreover, an advertisement by one of the grantees for a full-time abstinence director "responsible for overall implementation of the *Stop & Think* [program]" directed applicants to send a resume and "letter of Christian testimony."

As stated previously, the Constitution is violated when a direct grant of government dollars is used to fund specifically religious activities. The above-quoted language demonstrates that one grantee requires, and another has agreed, that all presenters of the federally funded *Stop and Think* program hold particular religious beliefs. Additionally, the requirement that the presenters and supervisors have "the ability to communicate" the "Word of God" suggests that proselytization is an essential component of the *Stop and Think* program and that the program

contains religious or sectarian messages. The contract therefore calls into question the propriety and legality of continued funding by HHS of these grantees and the *Stop & Think* program.

Abstinence-only Programs Censor Information

Statistics reveal that teens need information about contraception and sexual health: nearly two-thirds of all high school seniors in the U.S. have had sexual intercourse; approximately 822,000 pregnancies occurred among 15-19 year old women in 2000; and each year, approximately 9.1 million 15-24 year olds are infected with sexually transmitted infections.

However, recipients of abstinence-only funds are censored in the information they can provide to students. To qualify for federal funding, grantees must offer programs with the “exclusive purpose” of teaching the benefits of abstinence programs, and may not provide a participating adolescent with any information that is inconsistent with the narrow eight-point definition of abstinence-only education. Consequently, recipients of abstinence-only dollars may not advocate contraceptive use or teach contraceptive methods -- even if a teen directly asks for this information -- except to emphasize their failure rates. These programs thus leave teens without information critical to protecting their health and preventing pregnancy.

The government’s mandate thus censors the transmission of vital information about human sexuality and reproduction. And in the schools, this funding serves to force many teachers to avoid providing educational information they consider valuable to teens: a 1999 nationally representative survey of 7th-12th grade teachers in the five specialties most often responsible for sex education found that a strong majority believed sexuality education courses should cover birth control methods (93.4%), factual information about abortion (89%), where to go for birth control (88.8%), the correct way to use a condom (82%), and sexual orientation (77.8%), among other topics.

The federal government should not require educational programs to operate under a gag order that censors the communication of vital information to young people.

Abstinence-only Program Provide Inaccurate and Misleading Information

Many federally funded abstinence-only programs present teens with inaccurate information. A study conducted by the House of Representatives Committee on Government Reform found that 11 of the 13 abstinence-only curricula used by CBAE programs “contain major errors and distortions about public health information,” including HIV and other STD prevention, pregnancy prevention, and condom effectiveness. The problems have not gone away.

Most recently, the ACLU has begun investigations into HHS violations of a federal law relating to medical accuracy of educational materials. Specifically, by letter dated April 25, 2007, the ACLU called on HHS to take immediate action to remedy its ongoing violations of 42 U.S.C. § 247b-17(c)(2), a federal statute that requires that a broad category of educational materials must include medically accurate information about the effectiveness of condoms in preventing STDs.

In that letter, and other supporting documents, we addressed a number of abstinence-only materials that are covered by 247b-17(c)(2), but failed to meet its requirements. Instead, they omitted vital information about condom effectiveness and contained inaccuracies suggesting that condoms fail to protect against infection, when in fact they are highly effective at doing so.

Congress should not support the dissemination of medically inaccurate and misleading information. Rather, it should fund programs that provide teens with medically accurate and complete information about abstinence as well as contraceptives.

Abstinence-Only Programs are Ineffective

There is no conclusive evidence that abstinence-only programs, which teach students to abstain from sex until married and generally only teach about contraceptive failure, reduce the rate of unintended pregnancy or STDs.

Moreover, studies show that most abstinence-only programs do not help teens delay having sex, and some show evidence that these programs actually deter teens who become sexually active from protecting themselves from unintended pregnancy or STDs.

In April 2007, a long-awaited study by Mathematica Policy Research Inc., on behalf of HHS, showed that abstinence-only programs don't work. This congressionally commissioned study, *Impacts of Four Title V, Section 510 Abstinence Education Programs*, evaluated several federally funded programs and found that teens who participated in them were just as likely to have sex as teens who did not participate. Specifically, the report concluded that, “[f]indings indicate that youth in the program group were no more likely than control group youth to have abstained from sex and, among those who reported having had sex, they had similar numbers of sexual partners and had initiated sex at the same mean age.”

In light of recent research highlighting the lack of medical accuracy of these programs, and at a time when the Administration emphasizes accountability in funding only programs with demonstrated success, the continued funding of unproven programs is deeply troubling.

Many Abstinence-Only Programs are Hostile to Gay and Lesbian Youth

Federally funded abstinence-only programs marginalize gay and lesbian students and stigmatize homosexuality by requiring programs to teach that a “mutually faithful monogamous relationship in [the] context of marriage is the expected standard of human sexual activity.” Such a message rejects the idea of sexual intimacy for lesbians and gays, ignores their need for critical information about protecting themselves from STDs in same-sex relationships, and creates a hostile learning environment.

Indeed, a study of Ohio abstinence-only programs concluded, “one of the greatest flaws of abstinence programs is their inherent exclusion of [lesbian, gay, bisexual, and transgender] youth.” A recent review of the leading abstinence-only curricula found that most address same-sex sexual behavior only within the context of promiscuity and disease, and several are overtly hostile to lesbians and gay men.

For example, in its parent-teacher guide, an abstinence-only program called “Facing Reality” instructs educators to teach students that homosexuals with AIDS are now suffering for the “choices” they made regarding their sexual orientation. Materials from an abstinence-only program used recently in Alabama state that “same sex ‘union’ cannot provide an adequate means of achieving a genuine physical relationship with another human being because this type of ‘union’ is contrary to the laws of nature.”

By positioning sex within a heterosexual marriage as the “standard” for sexual activity and teaching that STDs are a form of moral punishment for homosexuality, abstinence-only programs undermine efforts to educate students about protecting their health and create a hostile learning environment for lesbian and gay students or the children of lesbian, gay and/or single parents.

Conclusion

Because abstinence-only programs endanger young people’s health and run afoul of constitutional protections, the ACLU strongly opposes their continued funding. We urge you to oppose increased funding and instead eliminate funding for the CBAE program in the Labor-HHS-Education spending bill.

For more information, please contact Vania Leveille at 202.715.0806 or vleveille@dcaclu.org.

Sincerely,



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