

EDUCATIONAL PREROGATIVE OR PUBLIC HEALTH PROGRAM: A COMPARATIVE APPROACH TO SEX EDUCATION POLICIES IN THE UNITED STATES AND SPAIN

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INTRODUCTION

“Democrats Needs to Realize How Much *Dobbs* Mattered”¹
“The Backlash to Losing *Roe v. Wade* is Just Getting Started”²
“Lessons for Pro-Lifers Post-*Dobbs*”³
“The conflicts in a post-*Roe* America are just beginning”⁴

These are just some of the news headlines that were published after the U.S. Supreme Court released its decision for *Dobbs v. Jackson Women’s Health Organization*.⁵ This decision heard round the world, though preempted by a historic leaking of its draft, divided the country and drastically changed the United States’ legal precedent.⁶ Regardless of personal opinion, the right to abortion is no longer fundamental for United States citizens.⁷ It is now up to state legislators to decide whether to protect a woman’s right to choose, and

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1. Amy Littlefield, *Democrats Needs to Realize How Much Dobbs Mattered*, N.Y. TIMES (Nov. 19, 2022), <https://www.nytimes.com/2022/11/19/opinion/midterm-election-abortion-roe-dobbs-democrats.html>.

2. Paul Blumenthal, *The Backlash to Losing Roe v. Wade is Just Getting Started*, HUFFPOST (Nov. 19, 2022, 5:45 AM), https://www.huffpost.com/entry/abortion-rights-supreme-court-dobbs-2022-elections-democrats_n_6377b1ece4b062ba9ec6feca [https://perma.cc/2GLB-W78M].

3. Ed Whelan, *Lessons for Pro-Lifers Post-Dobbs*, NAT’L REV. (Nov. 18, 2022, 12:16 PM), <https://www.nationalreview.com/bench-memos/lessons-for-pro-lifers-post-dobbs/> [https://perma.cc/U48X-PMWG].

4. Mary Ziegler, *Opinion: The conflicts in a post-Roe America are just beginning*, CNN (Oct. 28, 2022, 12:09 PM), <https://www.cnn.com/2022/10/28/opinions/abortion-post-roe-america-midterms-roundup/index.html> [https://perma.cc/3TPC-TSA7].

5. *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

6. Jessica Gresko, *Court that rarely leaks does so now in biggest case in years*, ASSOCIATED PRESS (May 3, 2022), <https://apnews.com/article/roe-wade-supreme-court-leaked-draft-opinion-c6a923f6e370672f4a5ccfd3be325786> [https://perma.cc/H9HH-HV4U]; Kate Sernike, Elizabeth Dias & Ruth Graham, *Leaked Threat to Roe v. Wade Stuns, Then Energizes Americans*, N.Y. TIMES (May 3, 2022), <https://www.nytimes.com/2022/05/03/us/supreme-court-roe-abortion-reaction.html>.

7. *Dobbs*, 142 S. Ct. 2228.

many states have already passed laws pursuant to that end.⁸ Some states, like Michigan and California, had voters uphold the right to abortion in their respective constitutions in the 2022 midterm election.⁹ Others, like Texas and Tennessee, had trigger laws poised to outlaw abortion just days after the Supreme Court's ruling.¹⁰ As states grapple with the issue of abortion access for their citizens, focus must shift towards preventative measures that help decrease the number of unwanted pregnancies for those who would have otherwise sought an abortion prior to the *Dobbs* ruling. The most pertinent of these preventative measures is sex education.¹¹

This Note argues that state legislatures across the United States should look toward Spain's recent approach to sex education when drafting legislation about this issue.¹² The first part of this Note will look at the history and status of sex education policy in the United States. The second part of this Note will examine two states, Illinois and Indiana, in terms of their respective sex education policies in order to demonstrate the patchwork of sex education policies that currently exists in the United States. The third part of this Note will investigate Spain's new sex education law in terms of its public health approach. The fourth part of this Note will analyze the similarities and differences between the United States and Spain in their approaches to sex education. Lastly, this Note will propose model state legislation, utilizing the analysis in the previous sections,

8. See Julia Mueller, *New York passes bill to codify abortion rights in state constitution*, THE HILL (Jan. 24, 2023, 5:53PM), <https://thehill.com/homenews/state-watch/3829001-new-york-passes-bill-to-codify-abortion-rights-in-state-constitution/> [https://perma.cc/TKD9-ZD2C]; Caroline Cummings, *Minnesota House passes PRO Act to codify abortion rights into state law*, CBS (Jan. 19, 2023, 6:31PM), <https://www.cbsnews.com/minnesota/news/u-s-hhs-secretary-visits-minnesota-ahead-of-state-house-vote-enshrining-abortion-rights-in-law/> [https://perma.cc/7JYC-Z6JB].

9. *US Midterms: Abortion rights protected in Kentucky, Michigan, California and Vermont*, LE MONDE (Nov. 9, 2022, 10:24PM), https://www.lemonde.fr/en/united-states/article/2022/11/09/us-midterms-abortion-rights-protected-in-michigan-california-and-vermont_6003516_133.html [https://perma.cc/K8J5-TN8X]. Ohio voters also enshrined abortion access in Ohio's constitution in the off-year 2023 election. Julie Carr Smyth, *Ohio voters enshrine abortion access in constitution in latest statewide win for reproductive rights*, AP NEWS (Nov. 7, 2023), <https://apnews.com/article/ohio-abortion-amendment-election-2023-fe3e06747b616507d8ca21ea26485270> [https://perma.cc/ZPU5-4JB3].

10. Scott Simon, *New Texas trigger law makes abortion a felony*, NPR (Aug. 27, 2022), <https://www.npr.org/2022/08/27/1119795665/new-texas-trigger-law-makes-abortion-a-felony> [https://perma.cc/7L8X-M76B]; Nadine El-Bawab, *Tennessee 'trigger' law banning nearly all abortions goes into effect*, ABC NEWS (Aug. 25, 2022, 5:10AM), <https://abcnews.go.com/US/tennessee-trigger-law-banning-abortions-effect/story?id=88787662> [https://perma.cc/2XF4-6HEB].

11. See Keren Landman, *6 things sex educators want you to know about a post-Roe America*, VOX (June 26, 2022, 8:00AM), <https://www.vox.com/science-and-health/23167769/abortion-post-roe-sex-educators> [https://perma.cc/NAJ3-MS8S].

12. Though the United States could adopt a federal health-based approach, like that of Spain in its new law, doing so right now is impracticable because of a number of factors, such as the strong presence of federalism, the history of sex education in the country, and the current polarization within Congress. Therefore, proposing a federal law to mandate comprehensive sex education is beyond the scope of this Note.

that is calibrated for an individual state's approach toward sex education.¹³

I. THE STATUS OF SEX EDUCATION IN THE UNITED STATES

A. History

Local school boards have dealt with what to teach and when to teach it for centuries. The debate over sex education is no different, and, in fact, it is one of the more hotly contested topics facing the country's school systems.¹⁴ Therefore, before examining what sex education looks like in the United States, it is important to discuss how sex education, and the taboos around it, have evolved throughout this country's history. This analysis must begin with the most prevalent form of sex education across the United States' history: abstinence-only education.

When it comes to defining abstinence from a policy perspective, a variety of names have been used, including "abstinence-only," "AOUM," and "sexual risk avoidance."¹⁵ Health professionals use phrases such as "postponing sex" to describe abstinence, and they typically view it as a behavioral or health issue.¹⁶ Conversely, proponents of the abstinence-only approach generally view the issue through a moral lens and frame abstinence as "a commitment to chastity."¹⁷ As abstinence is referred to in Title X of the Public Health Service Act, it has been described as "the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases . . . and other associated health problems."¹⁸ However, part of the reason that the regulation of sex education varies widely between states is because of "the lack of clear federal policy guidelines" and the clear disconnect between those who view abstinence as a moral issue and those who view it as a behavioral issue.¹⁹

As early as the mid-19th century, how sex education was taught in schools largely depended on the attitudes towards sex at the time. Using this metric, scholars have been able to classify the presence of sex education in schools into

13. This Note exists to assist policy makers, legislators, and educators as they contemplate better, safer ways to teach sex education and talk about reproductive health, so that the health of young adults, teens, and preteens is protected to the utmost of the United States's capabilities.

14. See Sarah Schwartz, *The Sex Ed. Battleground Heats Up (Again). Here's What's Actually in New Standards*, EDUCATION WEEK (Aug. 22, 2022), <https://www.edweek.org/teaching-learning/the-sex-ed-battleground-heats-up-again-heres-whats-actually-in-new-standards/2022/08> [<https://perma.cc/V5Q8-5JR8>].

15. John Santelli, Leslie Kantor, Stephanie Grilo, Ilene Speizer, Laura Lindberg, Jennifer Heitel, Amy Schalet, Maureen Lyon, Amanda Mason-Jones, Terry McGovern, Craig Heck, Jennifer Rogers & Mary Ott, *Abstinence-Only-Until-Marriage: An Updated Review of U.S. Policies and Programs and Their Impact*, 61 J. ADOLESCENT HEALTH 273, 274 (2017).

16. *Id.*

17. *Id.*

18. *Id.*; see 42 U.S.C. § 710 (Pub. L. 115-123, §50502(a), rewrote this section—it no longer includes the quoted language).

19. Santelli et al., *supra* note 15, at 276.

specific eras.²⁰ Before the 1900s, open discussions of sex were highly unlikely, and school systems across the country were so unorganized that any attempt at a coordinated sex education course was guaranteed to fail.²¹ The period between the late 1800s and the 1920s, classified as the Progressive Era, is characterized by the strong cultural endorsement of abstinence before marriage.²² However, despite the strong cultural belief that abstinence before marriage was the proper path, there were still movements to promote educating students about sex.²³ Additionally, during this time the “first cornerstone for sex education in American public schools” was laid through the government’s intervention in social problems.²⁴ Most importantly, around this time the National Education Association began calling for the adoption of sex education into public schools.²⁵

The Intermediate Era, or the time from the end of the 1920s to the end of the 1950s, was a time where sex education started to be implemented into public schools, and was characterized by the introduction of ideas that would influence the growth of modern sex education in this country.²⁶ Of these ideas, the most notable ones would be “the new morality of the 1920s, [the] initiation of family life education, and the influence of Alfred Kinsey.”²⁷ Abstinence-only was still the promoted method for such education, but the idea that it was part of “a phase of character formation” was added into the curriculum.²⁸ This change in sex education would set the stage for what was to come in the next couple decades.

The 1960s and 1970s are characterized as the Sexual Revolution Era, which was signified “by exhibitionism, immediate sexual gratification, sex without emotional connection . . . and a general freedom to use one’s body ‘as [they] wish[.]’”²⁹ Contraceptives were beginning to get national attention, especially

20. Valerie Huber & Michael Firmin, *A History of Sex Education in the United States Since 1900*, 23 INT’L J. EDUC. REFORM 25 (2014).

21. *Id.*

22. *Id.* at 26.

23. *Id.* at 27. For example, the social hygiene movement, founded by Prince A. Morrow, argued that “the problems of sex arose, not from an evil human nature, but from ignorance” and that “teaching the young was essential.” *Id.*

24. *Id.* at 29. An example of this intervention is the creation of a campaign to “educate World War I soldiers about ‘the dangers of sex.’” *Id.*

25. *Id.* at 31.

26. *Id.* at 33.

27. *Id.*; Alfred Kinsey has been called the “greatest chronicler of America’s sexual experiences.” *Alfred Charles Kinsey (1894-1956)*, PBS, <https://www.pbs.org/wgbh/american-experience/features/kinsey-alfred-charles-kinsey/> [<https://perma.cc/Q25X-DCQK>] (last visited May 20, 2024). “He and his research team meticulously interviewed 18,000 people . . . to collect the information that went into the Kinsey Reports,” which detailed his “findings about female sexuality.” “Kinsey’s original interview data, while more than 50 years old, is requested to this day by researchers wishing to analyze it and compare it to current research findings.” *Alfred Kinsey and the Kinsey Institute at Indiana University*, IU NEWS ROOM (2013), <https://newsinfo.iu.edu/news/page/normal/1645.html> [<https://perma.cc/L7H5-VV4Q>].

28. *Id.* at 35.

29. *Id.* at 36.

when, in 1965, the Supreme Court ruled that there was a constitutional right for married couples to use contraceptives without government intervention.³⁰

Additionally, President Nixon signed Title X into law, which was the “first funding program devoted exclusively to family planning education and services.”³¹ Between 1969 and 1976, because of the funding from Title X, the number of teens who used and were taught about contraceptives “jumped 600%.”³² President Carter expanded Title X in 1978 by mandating that part of its services had to be dedicated to unmarried teens.³³ This expansion was “the first explicit funding stream for community-based sex education designed to prevent pregnancy through risk reduction measures.”³⁴ Additionally, the Adolescent Health Services and Pregnancy Prevention and Care Act was passed, which made abortion and “contraceptive counseling” subjects that could be covered in sex education classes.³⁵ In total, by the end of the 1970s, roughly 35% of private and public schools, in some way, provided sex education.³⁶ Notably, the content of these programs was incredibly varied as it was largely determined by “local community standards.”³⁷ This localized approach to sex education regulation is something that is now pervasive across the country.

The modern era of sex education extends from 1980 into present day.³⁸ Sex education generally progressed down one of two paths during this time. The first path was “based on the belief that medically accurate and comprehensive information about sexual health would *decrease* risk-taking behaviors,” and the second path was “based on the . . . belief that medically accurate, comprehensive information would *increase* risk-taking behaviors.”³⁹ During this time, groups that opposed sex education in schools changed tactics and began to advocate for the replacement of ‘safe sex’ education with abstinence only education.⁴⁰ President Reagan, in 1981, signed the Adolescent Family Life Program “to promote self-discipline and other prudent approaches to the problem of adolescent premarital sexual relations.”⁴¹ There was an ensuing Supreme Court case that challenged the program on the basis that it was promoting religious ideals, but the Court found that the program had a valid nonreligious purpose as

30. *Id.* at 38; *see also* Griswold v. Connecticut, 381 U.S. 479 (1965).

31. *Id.* at 39.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at 40. These methods varied from only risk reduction measures to the inclusion of some contraceptive counseling. *Id.*

37. *Id.*

38. PLANNED PARENTHOOD, HISTORY OF SEX EDUCATION IN THE U.S. (2016), https://www.plannedparenthood.org/uploads/filer_public/da/67/da67fd5d-631d-438a-85e8-a446d90fd1e3/20170209_sexed_d04_1.pdf [<https://perma.cc/7DRC-KKMT>].

39. *Id.* (emphasis added).

40. Huber & Firmin, *supra* note 20, at 40.

41. Adolescent Family Life Act, contained within the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, 95 Stat. 578 (codified as amended at 42 U.S.C. § 300z); *Id.*

it focused on diminishing the consequences of teen sex.⁴² In 1996, President Clinton signed the Welfare Reform Act which, among other things, “began a new state block grant for abstinence education.”⁴³ Specific guidelines in the legislation mandated that “all programs funded under the act teach the benefits of abstinence until marriage.”⁴⁴ As a result of these actions, the United States government had officially adopted abstinence only until marriage as “a singular approach to adolescent sexual and reproductive health.”⁴⁵ Furthermore, the increased government activity in the promotion of abstinence education led to the intensification of competing views on sex education.⁴⁶

As the country entered the new millennium, questions of funding for abstinence-only programs bounced around the White House. In 2006, during the Bush administration, a report was released by the Government Accounting Office that found that most abstinence-only programs funded by the Department of Health and Human Services were “not reviewed for scientific accuracy before funding and implementation.”⁴⁷ Nevertheless, the total amount of tax dollars spent on abstinence-only programs during the Bush administration surpassed \$1.75 billion.⁴⁸ In 2009, the Obama administration moved funds away from the Community-Based Abstinence Education Program and promoted a budget of \$190 million for two new initiatives for sex education: the Teen Pregnancy Prevention Program (TPPP) and the Personal Responsibility Education Program (PREP).⁴⁹ This was the first time that “federal monies” were set aside for “more comprehensive sex education programs.”⁵⁰ The Appropriations Act of 2010, coupled with federal health care legislation, “eliminated two-thirds of federal funding for abstinence-only programs.”⁵¹ Today, the CDC says that more than ninety-five percent of all teenagers receive “some ‘formal’ sexuality education before they turn [eighteen].”⁵² However, requirements for what that sex education looks like still vary, and students in neighboring states, and even neighboring school districts, can receive very different sex education lessons.

B. Funding

The U.S. Department of Health and Human Services (HHS) is one of the

42. Huber & Firmin, *supra* note 20, at 41; *see also* Bowen v. Kendrick, 487 U.S. 589 (1988).

43. Huber & Firmin, *supra* note 20, at 41.

44. *Id.*; *see also* 104 Pub. L. 193, 110 Stat. 2105.

45. Kelli Stidham Hall, Jessica McDermott Sales, Kelli A. Komro & John Santelli, *The State of Sex Education in the United States*, 58 J. ADOLESCENT HEALTH 595 (2016).

46. Huber & Firmin, *supra* note 20, at 43.

47. PLANNED PARENTHOOD, *supra* note 38, at 8.

48. *Id.*

49. *Id.* at 5.

50. *Id.*

51. *Id.* at 12.

52. *Id.* at 11.

arms of the federal government that funds sex education at the national level.⁵³ There are three categories of programs that HHS funds that address sexual activity in adolescents: Sexual Risk Avoidance (abstinence), education/awareness about pregnancy and STD/HIV prevention, and family planning services.⁵⁴ For the 2017 fiscal year, out of \$800.2 million of funding, Sexual Risk Avoidance received \$90 million, pregnancy/STD/HIV prevention received \$364.7 million, and Family Planning services received \$345.5 million.⁵⁵ There are currently only two federally funded programs for sex education that are “evidence-based and medically accurate,”—TPPP and PREP, which were introduced under President Obama.⁵⁶ TPPP “supports the implementation and evaluation of evidence-based programs and innovative approaches to reducing pregnancy among adolescents.”⁵⁷ Grantees for TPPP include “for-profit and nonprofit organizations, clinics, hospitals, state and local governments, schools, and universities.”⁵⁸ PREP “supports a variety of evidence-based programs that aim to prevent pregnancy and STIs among adolescents by emphasizing abstinence and contraception.”⁵⁹ Though the majority of PREP-funded curricula include elements of comprehensive sex education such as an emphasis on healthy relationships and healthy life skills, the program still includes instruction on abstinence.⁶⁰

It is important to note that a lot of the available funding for sex education programs, regardless of whether they teach abstinence-only, depends in part on the political party that is in power and its beliefs on how sex education should be taught. For example, as seen under the history section of this Note, the Reagan and Bush administrations supported abstinence-only sex education through the development of new programs and increased funding allocations.⁶¹ Under the Obama administration, however, programs were introduced that advocated for evidence-based education and expanded the view of sex education past the strict abstinence-only stance that past administrations had taken.⁶² However, political party is not necessarily an indicator of an administration’s stance on sex education, as the Clinton administration opened new grants for

53. HEALTH & HUM. SERVS. OFF. OF THE ASSISTANT SEC’Y FOR PLAN. & EVALUATION, HEALTH AND HUMAN SERVICES FUNDING FOR SEXUAL RISK AVOIDANCE, EDUCATION FOR TEEN PREGNANCY AND HIV/STD PREVENTION, AND OTHER PROGRAMS THAT ADDRESS ADOLESCENT SEXUAL ACTIVITY (2020).

54. *Id.*

55. *Id.*

56. *Federally Funded Sex Education: Strengthening and Expanding Evidence-Based Programs*, GUTTMACHER INSTITUTE (June 2021), <https://www.guttmacher.org/fact-sheet/sex-education> [https://perma.cc/Y6EA-BXKQ]

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *See supra* text accompanying notes 41, 47-48.

62. *See supra* text accompanying notes 49-52, 56.

schools that only taught abstinence-only sex education.⁶³ Sex education policy, therefore, is not only dependent on the political party that is in power—it is also at the whim of the morals and attitudes of the time.

While the federal government provides a number of avenues to obtain funding for sex education, schools can also receive funding from the state in which they operate.⁶⁴ However, this method does not guarantee that schools will have all the resources they need. In fact, some school districts do not have funding available in their budgets for sex education curricula and have to turn to materials provided by groups that are free or low-cost, despite the fact that some of these groups are opposed to comprehensive sex education.⁶⁵ Other programs, for example those previously established in New Hampshire, are provided through contracts that the state makes with outside groups to teach sex education curriculum.⁶⁶ Additionally, though some state agencies receive federal funding from organizations like the Center for Disease Control, this funding is merely a jumping off point for them to develop their own programs to help local school districts, and these programs tend to specifically focus on HIV and STD prevention.⁶⁷ Furthermore, states can restrict some organizations' abilities to access sex education funds, as seen through Iowa's efforts in 2019 to restrict Planned Parenthood's sex education programs.⁶⁸ So, even though federal funding is the avenue that many sex education programs take, states still have the power to influence and fund the sex education programs that they want taught in their schools.

C. Health Perspective

The primary goal of sex education, as declared in 1996 by the National Guidelines Task Force, is “the promotion of sexual health.”⁶⁹ In 1975, the World Health Organization (WHO) introduced its definition of sexual health, which was “the integration of the somatic, emotional, intellectual, and social aspects

63. See *supra* text accompanying notes 43-44.

64. Shireen Rose Shakouri, *Sex Education Funding: There Has to Be a Better Way*, NAT'L COMM. FOR RESPONSIVE PHILANTHROPY (March 10, 2021), <https://www.ncrp.org/publication/sex-education-funding-there-has-to-be-a-better-way> [<https://perma.cc/XAE7-P933>].

65. *Id.*

66. Annarie Timmins, *NH Executive Council votes to defund sex education program. What the vote means*, SEACOASTONLINE (Nov. 23, 2022, 8:12AM), <https://www.seacoastonline.com/story/news/state/2022/11/23/nh-executive-council-votes-defund-after-school-sex-education-program/69673240007/> [<https://perma.cc/MY7P-G296>].

67. *Local Education Agencies*, CTR. FOR DISEASE CONTROL (2023), https://www.cdc.gov/healthyyouth/partners/funded_locals.htm [<https://perma.cc/RR7A-MNQZ>].

68. Barbara Rodriguez, *Iowa Republican lawmakers cut Planned Parenthood's sex education funding*, THE DES MOINES REGISTER (April 26, 2019, 10:48 AM), <https://www.desmoinesregister.com/story/news/politics/2019/04/26/iowa-legislature-senate-republicans-remove-federal-funding-planned-parenthood-sex-education-programs/3578710002/> [<https://perma.cc/7HY5-QZH7>].

69. PLANNED PARENTHOOD, *supra* note 38.

of sexual being, in ways that are positively enriching and that enhance personality, communication, and love.”⁷⁰ The WHO also stated the three elements of their approach to sexual health:

(1) a capacity to enjoy and control sexual and reproductive behavior in accordance with a social and personal ethic; (2) freedom from fear, shame, guilt, false beliefs, and other psychological factors inhibiting sexual response and impairing sexual relationship; and (3) freedom from organic disorders, diseases, and deficiencies that interfere with sexual and reproductive functions.⁷¹

This definition has been promulgated in the international community and it is important to consider when looking at health studies centered on sex education programs. In terms of notable research, in 2007 Douglas Kirby published a study that measured the impact of sex education programs.⁷² He identified seventeen characteristics of “effective curriculum-based programs” and stated that research has demonstrated that when sex education programs include these characteristics, they “positively affect adolescent sexual behavior.”⁷³ Furthermore, other studies have shown that such programs can “delay sexual debut and increase the use of condoms and other forms of birth control among adolescents.”⁷⁴

In recent years, research has shown that abstinence only until marriage has a “lack of efficacy . . . in delaying sexual initiation, reducing sexual risk behaviors, or improving reproductive health outcomes.”⁷⁵ In fact, many medical institutions, like the American Medical Association, the Society for Adolescent Health and Medicine, and the American College of Obstetricians and Gynecologists, have recognized adolescents’ rights to sexual health and have generally supported comprehensive sex education programs.⁷⁶ Furthermore, many people in the medical community agree that “education is central to preventing teenage pregnancy and the transmission of STIs.”⁷⁷ However, if

70. *Id.*

71. *Id.*

72. *Id.* at 2.

73. *Id.* The seventeen characteristics include “focused on clear health goals,” “created a safe social environment for young people to participate,” and “employed activities, instructional methods, and behavioral messages that were appropriate to the teens’ culture, developmental age, and sexual experience.” *Id.* at 3.

74. *Id.* at 4.

75. Stidham Hall et al., *supra* note 45.

76. Leah H. Keller, *It’s Time for Congress to Give All Young People the Sexual Health Resources They Need to Thrive*, GUTTMACHER INST. (May 27, 2020), <https://www.guttmacher.org/article/2020/05/its-time-congress-give-all-young-people-sexual-health-resources-they-need-thrive> [https://perma.cc/6GQ7-BTQD].

77. Courtney Gonzalez, Diana Karczmarczyk, Brittney Douress & Mackenzie Scott, *Sex Education Policy: Need for a Standard Definition of Medically Accurate Information*, 3 PEDAGOGY HEALTH PROMOTION 221 (2017).

states do teach sex education, many of them are not required to teach medically accurate sex education. The guidelines in the former Title X lacked a definition for what “medically accurate” meant, which provided a loophole where “abstinence-only curricula supporters could meet the criteria for sex education programs without proving that information provided is medically accurate.”⁷⁸ Research has shown that states that require the instruction of sex education, but do not require medically accurate information to be taught, have “comparable rates of teen pregnancy and/or chlamydia to states that have no current policy on the curricula taught in their sex education programs.”⁷⁹ Therefore, even when sex education is mandated, if it is not taught properly, its efficacy drops significantly. In 2016, the American Academy of Pediatrics published a report that “outline[d] the importance of medically accurate, comprehensive sex education.”⁸⁰ One of the points stressed in the report is that “school-based comprehensive sexuality education that emphasizes prevention of unintended pregnancy and STIs should be encouraged.”⁸¹ Additionally, the author of this Note was unable to find reputable scientific studies that disputed the claimed health benefits of comprehensive sex education, nor could the author find scientific studies that concluded that abstinence-only sex education has a positive effect on adolescents’ overall sexual health.⁸²

D. State Regulations and Local School Board Autonomy

When it comes to what states regulate in terms of sex education, the results are incredibly varied. Generally, the implementation of federal policies and funds is determined by the individual state, school districts, and school boards.⁸³ Therefore, without a regulated or cohesive implementation process, a

78. *Id.* at 222.

79. *Id.* at 223.

80. PLANNED PARENTHOOD, *supra* note 38, at 12.

81. *Id.*

82. Though there have been articles and news reports published that say that comprehensive sex education is ineffective and harmful to students, many, if not all, of them are from sources that view sex education from a moral position instead of a public health position. For example, see United Families International, *Why Comprehensive Sexuality Education Does More Harm Than Good*, MERIDIAN MAG. (July 30, 2018), <https://latterdaysaintmag.com/why-comprehensive-sexuality-education-does-more-harm-than-good/> [<https://perma.cc/S2R8-DXFG>] (a magazine targeted towards members of the Latter-Day Saints religion, stating that “Comprehensive Sexuality Education is killing our children’s innocence and initiating a dangerous curiosity in children”); Family Watch Int’l, *Comprehensive Sex Education: The Harmful Effects on Children*, STOP CSE (2022), <https://www.comprehensivesexualityeducation.org/15-harmful-elements-of-cse/> [<https://perma.cc/2RHZ-83AG>] (a website that is a joint effort of the Protect Child Health Coalition, the Stop the Kinsey Institute coalition, and “concerned parents worldwide,” amongst others, that states that comprehensive sex education “undermines traditional values and beliefs” in that it “may encourage children to question their parents’ beliefs or their cultural or religious values regarding early sex, sexual orientation or gender identity”).

83. Stidham Hall et al., *supra* note 45.

“patchwork of sex education laws and practices” is created.⁸⁴ Overall, thirty states and the District of Columbia mandate that, when sex education is taught, it has to meet certain requirements.⁸⁵ In terms of those requirements, the variability between states gets even greater. Of those thirty states, only seventeen of them require the content taught to be medically accurate.⁸⁶ Twenty-six states and the District of Columbia require the material to be age-appropriate.⁸⁷ Ten states require that the material taught be culturally appropriate and not biased towards race, sex, or ethnicity.⁸⁸ Lastly, only four states prohibit sex education programs from promoting religious beliefs.⁸⁹

When it comes to why sex education practices are so variable across the country, the reason largely lies in the lack of a fundamental right to education under the U.S. Constitution. In its 1973 decision in *San Antonio Independent School District v. Rodriguez*, the U.S. Supreme Court declared that education is not a fundamental right as it is not afforded explicit, nor implicit, protection under the U.S. Constitution.⁹⁰ Though the federal government can control educational funding, the Supreme Court’s decision left the power to regulate education to the states. However, the lack of federal guidance in regard to sex education curriculum has led to the current patchwork of policies within the country. In fact, in the *Journal of Adolescent Health*, a study conducted by L.D. Lindberg, I. Maddow-Zimmet, and H. Boonstra gave some insight into the current state of sex education.⁹¹ This study commented on the presence of inequities in sex education, “the most significant of which are greater declines [in receipt of formal sex education and birth control information in school] among girls than boys, rural-urban disparities, declines [of such receipt of information] concentrated among white girls, and low rates among poor adolescents.”⁹² Additionally, the study found that there were critical gaps in the “types of information (practical types on “where to get birth control” and “how to use condoms” were lowest) and the mistiming of information (most adolescents received instruction after sexual debut) received.”⁹³ The patchwork of sex education policy thus can have a negative effect on the quality of education students receive in this area of instruction.

84. *Id.*

85. *Sex and HIV Education*, GUTTMACHER INST. (Sept. 1, 2022), <https://www.guttmacher.org/state-policy/explore/sex-and-hiv-education> [<https://perma.cc/Q8P7-6JF7>].

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

91. Stidham Hall et al., *supra* note 45.

92. *Id.* at 2-3.

93. *Id.* at 3.

II. A COMPARISON OF TWO STATES

To illustrate the variability of sex education practices across the country, and therefore to show how a lack of a cohesive policy directly impacts the level of education school-aged children receive, this Note will examine the status of sex education policy in Illinois and Indiana. These two states have significant differences in their requirements for sex education, and these differences are emblematic of a nation that is made up of a patchwork of sex education policies. Illinois approaches sex education from a comprehensive standpoint, having just recently passed a law enforcing comprehensive sex education.⁹⁴ Indiana, on the other hand, approaches sex education from a morality-based position, as shown through its emphasis on abstinence-only instruction.⁹⁵ As seen through each state's respective sex education laws, it is clear that students in Illinois schools receive very different instruction as compared to students in Indiana schools.

A. *Illinois*

Illinois has dealt with a patchwork problem within its own borders in terms of sex education policy. Though some of Illinois's legislators have put forth measures to implement comprehensive sex education in the past, other groups within the state, like the Illinois Family Institute, have opposed an expansion of sex education.⁹⁶ Illinois schools are only required to "provide limited instruction on abstinence and HIV/AIDS prevention," which means that schools can choose whether or not to provide more comprehensive sex education to their students.⁹⁷ The Illinois Critical Health Problems and Comprehensive Health Education Act lays out specific topics that elementary and secondary schools have to address:

[H]uman ecology and health, human growth and development; the emotional, psychological, physiological, hygienic, and social responsibilities of family life, including sexual abstinence until marriage; [and the] prevention and control of disease, including instruction in grades 6 through 12 on the prevention, transmission, and spread of [acquired immunodeficiency syndrome or] AIDS.⁹⁸

If a school chooses to teach sex education, it must "include instruction on both abstinence and contraception," as well as teach "honor and respect for

94. 105 ILL. COMP. STAT. 5/27-9.1A (2024).

95. IND. CODE § 20-30-5-13 (2024).

96. *See generally* S.B. 4049, 102d Gen. Assemb., Reg. Sess. (Ill. 2022); 405 ILL. COMP. STAT. 5/4-211 (2024) (hereinafter, § 4-211); *Illinois State Profile*, SIECUS (2022), https://siecus.org/state_profile/illinois-state-profile-22/ [<https://perma.cc/S3SP-6KZY>].

97. SIECUS, *supra* note 96.

98. Illinois Sex Education Snapshot, SIECUS (2021), https://siecus.org/state_profile/illinois-state-profile/ [<https://perma.cc/J5XF-KRPV>] (bracketed language in original source).

heterosexual marriage.”⁹⁹ Even in districts that choose to teach more comprehensive sex education, the curriculum can still vary.¹⁰⁰ For example, in Chicago Public Schools, despite their mandate for sex education instruction, a report found that only twenty-eight percent “of Chicago schools taught all required sex education topics in all grade levels.”¹⁰¹ Therefore, even in a state that promotes a broader and more inclusive curriculum, disparity in the level of sex education that is provided still presents a significant problem.

Governor Pritzker signed SB 818 into law on August 20, 2021. SB 818, named the Keeping Youth Safe and Healthy Act, “creates age-appropriate learning standards for public schools that decide to teach comprehensive personal health and safety education,” for those in kindergarten to fifth grade, and “comprehensive sexual health education” for those in sixth grade to twelfth grade.¹⁰² Illinois’ sex education law had already been expanded from an abstinence-only practice, but SB 818 pushes the sex education standards into a fully comprehensive stage.¹⁰³ The law defines “comprehensive sexual health education” as “age and developmentally appropriate education that aligns with the National Sex Education Standards, including information on consent and healthy relationships, anatomy and physiology, puberty and adolescent sexual development, gender identity and expression, sexual orientation and identity, sexual health, and interpersonal violence.”¹⁰⁴ The law also requires that the Illinois State Board of Education “develop and adopt rigorous learning standards” including “all of the National Sex Education Standards,” by August 1, 2022.¹⁰⁵ These standards are prohibited from discriminating on the “basis of sex, race, ethnicity, national origin, disability, religion, gender expression, gender identity, or sexual orientation,” and are designed to be inclusive of communities that have been “stigmatized or excluded from [sex education] instruction” in the past.¹⁰⁶ Furthermore, the sex education curriculum is required to be medically accurate and trauma-informed, meaning that it “takes into consideration how adverse life experiences may potentially influence a person’s well-being and decision making.”¹⁰⁷ Though SB 818 creates requirements for schools that teach sex education, it also makes it clear that a parent or guardian

99. *Id.*

100. *Id.*

101. *Id.*

102. *The “Keeping Youth Safe and Healthy Act” Becomes Law*, AM. C.L. UNION OF ILL. (Aug. 19, 2021), <https://www.aclu-il.org/en/press-releases/keeping-youth-safe-and-healthy-act-becomes-law> [https://perma.cc/9TAA-6LR7].

103. *Id.*

104. 105 ILL. COMP. STAT. 5/27-9.1A (2024).

105. *Id.* As of August 20, 2022, the Illinois State Board of Education has adopted the National Sex Education Standards as the new Illinois learning standards for sex education. ILL. STATE BD. OF EDUC., COMPREHENSIVE PERSONAL HEALTH AND SAFETY AND SEXUAL HEALTH EDUCATION FAQs (2022), <https://www.isbe.net/Documents/sexual-health-FAQ.pdf>.

106. § 4-211.

107. *Keeping Youth Safe and Healthy Act Factsheet*, KEEPING YOUTH SAFE & HEALTHY ACT (2021), <https://www.ilhealthyouthact.com/resouces> (last visited November 23, 2023).

“can opt their student out of instruction,” and that schools still “retain local control through the selection of curriculum and instructional materials.”¹⁰⁸

B. Indiana

Conversely, schools in Indiana are not required to provide sex education to their students.¹⁰⁹ In fact, the Indiana Department of Education does not have tracking available for the number of schools in the state that provide sex education.¹¹⁰ However, for schools that choose to teach sex education, Indiana requires abstinence, HIV prevention, and STD prevention to be a part of such instruction.¹¹¹ To that point, the Indiana Department of Education circulates the “Indiana Academic Standards for Health and Wellness” for schools to use as a foundation for their sex education curriculum.¹¹² Also, according to the Indiana Code, a school must do three things when instructing on sexuality or sexually transmitted diseases:

- (1) require a teacher to teach abstinence from sexual activity outside of marriage as the expected standard for all school age children;
- (2) include in the instruction that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems; and
- (3) include in the instruction that the best way to avoid sexually transmitted diseases and other associated health problems is to establish a mutually faithful monogamous relationship in the context of marriage.¹¹³

Oftentimes, because Indiana does not require the instruction of sex education in their schools, the decision of whether to teach sex education is left to the school

108. *Id.*; Reactions to the new law are just now becoming realized as schools step out of COVID-19 policies and back into normal classroom instruction. Some parents have taken to posting online petitions and creating social media campaigns to voice their concerns with the legislation. A significant point of contention seems to be regarding the teachings of sexual orientation and gender identity to young students, with parents singling out education about identifying as transgender as potentially going too far. However, it is important to note that the law only applies to schools choosing to teach sex education, and therefore only currently applies to roughly 218 out of 480 school districts. Karen Ann Cullotta, *Illinois sex ed law puts school districts in center of latest battleground in education culture wars*, CHICAGO TRIB. (Aug. 28, 2022, 5:00AM), <https://www.chicagotribune.com/news/breaking/ct-illinois-lawmakers-new-national-sex-education-standards-20220828-rxgavkemofdbtdj4epgfchpmfa-story.html> [https://perma.cc/Z3R2-499N].

109. *Indiana State Profile*, SIECUS, <https://siecus.org/stateprofiles/indiana-state-profile-23/> [https://perma.cc/CKD9-UEDJ] (last visited June 10, 2024).

110. *Id.*

111. CTRS. FOR DISEASE CONTROL & PREVENTION, ANALYSIS OF STATE HEALTH EDUCATION LAWS: INDIANA SUMMARY REPORT (2017), https://www.cdc.gov/healthyouth/policy/pdf/summary_report_factsheets/Indiana.pdf [https://perma.cc/RBW2-7NRC].

112. SIECUS, *supra* note 109.

113. IND. CODE § 20-30-5-13 (2024).

districts.¹¹⁴ This localized approach to sex education results in disparities between the quality of the sexual health instruction that students receive, especially in terms of the resources provided for schools that want to implement comprehensive sex education.¹¹⁵

When it comes to the realities of sex education in Indiana, recent studies provide some clarity. In a hypothetical classroom with thirty high school students, nine of those students would be sexually active, three would have experienced intercourse but would not be currently sexually active, and eighteen of those would have never been sexually active.¹¹⁶ In terms of abstinence education, 82.7% of secondary schools in Indiana have taught students about the benefits of sexual abstinence in a required course in grades 6, 7, or 8, compared to the 95.9% of schools which have taught the material in grades 9, 10, or 11.¹¹⁷ Furthermore, in terms of criteria that the CDC has identified as “critical for ensuring a young person’s sexual health,” only 10.9% of secondary schools in Indiana taught students all of the specified topics in a required course in grades 6, 7, or 8 as opposed to the 31.5% of schools that taught students the topics in grades 9, 10, 11, or 12.¹¹⁸ These figures signify a reticence to introduce material concerning sex education in middle school as well as a hesitation to teach the CDC’s suggested criteria.

In 2018, Indiana enacted Public Law 154, which requires schools to “make two attempts to receive written parental permission in order for students to participate in sex education instruction.”¹¹⁹ If no response is received, the school will automatically enroll the student into its sex education curriculum unless or until the parent declines the instruction.¹²⁰ This policy is unique in that it has elements of both an “opt-in” policy and an “opt-out” policy, while most sex education policies only have one or the other.¹²¹ Additionally, there was a proposed bill, HB 1066, before the 2023 session of the Indiana legislature.¹²² This bill would have required sex education instruction to be comprehensive, age appropriate, and medically accurate, while also educating about

114. SIECUS, *supra* note 109.

115. *Id.*

116. CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 111.

117. SIECUS, *supra* note 109.

118. *Id.*

119. *Id.*

120. *Id.*; see section 1001.42 of the Florida Statutes for a look at how parental preference can be prioritized when it comes to sex education standards. FLA. STAT. § 1001.42 (2024) (stating that school districts are required to notify parents of healthcare services and provide parents the opportunity to consent or decline such services” and allowing parents to “bring an action against a school district to obtain a declaratory judgment that a school district procedure or practice violates certain provisions of law”).

121. SIECUS, *supra* note 109.

122. H.B. 1066, 123d Gen. Assemb., Reg. Session (Ind. 2023).

abstinence.¹²³ Thus, even though there is by and large a reluctance in Indiana to accept a comprehensive approach to sex education, there are still those fighting to put it on Indiana's books.

When viewed together, the laws of Indiana and Illinois regarding sex education clearly illustrate the variety in curriculum that results from states being in control of their own educational standards. Indiana's requirements for sex education are centered around abstinence-only curriculum, while Illinois's requirements under its new law require sex education curriculum to teach students about medically accurate information regarding their sexual health and anatomy and physiology, in addition to talking about gender identity and sexual orientation.¹²⁴ Indiana's approach of not requiring schools to teach sex education at all often creates a disparity in what students at different school districts learn.¹²⁵ It is possible that Illinois' new law creates this dynamic as well, however its starting point for sex education curriculum is much broader and so gives school districts more room to maneuver when it comes to implementing their sex education programs.

III. THE STATUS OF SEX EDUCATION IN SPAIN

In May of 2022, the Council of Ministers of Spain approved a draft reform of their Organic Law on Sexual and Reproductive Health and Voluntary Interruption of Pregnancy.¹²⁶ This draft law codifies and expands on sexual and reproductive rights and, among other things, makes sex education compulsory for all school-aged children.¹²⁷ The law states that it is justified by "a reason of general interest as powerful as the need to guarantee the sexual and reproductive rights of women, addressing the gaps that have emerged . . . after the approval of [the first law]."¹²⁸ The Minister for Equality, who sits on the Council of Ministers, stated that "the question is not whether sexuality should or should not be learned . . . [t]he key is to decide how to learn [it]."¹²⁹ But, what is most

123. *Id.* There has been no movement reported on the bill since January of 2023, and it appears to have died in committee. *Actions for House Bill 1066*, IND. GEN. ASSEMB. (2023), <https://iga.in.gov/legislative/2023/bills/house/1066/actions> [<https://perma.cc/Z3RR-RZ4G>].

124. *See supra* text accompanying notes 103-04.

125. *See supra* text accompanying note 118.

126. *The Government of Spain reforms the law on sexual and reproductive health and the voluntary interruption of pregnancy*, LA MONCLOA (May 17, 2022), https://www.lamoncloa.gob.es/lang/en/gobierno/councilministers/Paginas/2022/20220517_council.aspx [<https://perma.cc/WA6P-VKPY>]. In March of 2023, this draft reform officially became law. *See infra* note 175.

127. LA MONCLOA, *supra* note 126.

128. Draft Organic Law amending Organic Law 2/2010, of March 3, on Sexual and Reproductive Health and the Voluntary Interruption of Pregnancy (B.O.E. 2022, 2) (Spain). Affective-sexual education means the "process of constantly acquiring information and training in attitudes, beliefs, and values about sexuality, including effective communication skills and responsible decision-making." *Affective sexual education*, THE CITY HALL OF BARCELONA (2023), <https://ajuntament.barcelona.cat/dones/en/terme-glossari/affective-sexual-education> [<https://perma.cc/7PLX-BLNG>].

129. LA MONCLOA, *supra* note 126.

interesting about this legislation, and, perhaps about the way Spain structures its sex education in general, is that the provisions guiding sex education are mainly located in the country's public health law, not in the country's education law.¹³⁰

Through examining interviews with teachers throughout Spain, the background on how sex education was handled before this monumental change begins to emerge. Many teachers struggled with sex education because of their lack of training in the area and fear of reactions from parents.¹³¹ In primary school, sex education is “totally absent,” and it is only in the education of teenagers that there are specific programs to address the subject.¹³² However, to fully be able to understand how Spain got to the point it is at now, a fuller examination of the history of the country is required.

A. History

Spain's first federal law that dictated the regulation of education was passed in 1857 and was called the “Ley Moyano.”¹³³ The curriculum at this time was comprised of three study areas: basic skills, formative studies (which included religion, history and geography, mathematics, and physical education), and complementary studies (which included the sciences, arts, and crafts).¹³⁴ However, the educational program it created was criticized for being uncoordinated.¹³⁵ But, despite the criticism, the standards set by this act were not changed significantly until the 1970s through the passage of the General Education Act.¹³⁶ The structure that was implemented by the General Education Act was called the “common school” or the Educación General Básica, and this is the system that Spain had in place throughout the 1980s.¹³⁷ The schools were financially provided for by either the State, the Roman Catholic Church, or private proprietors.¹³⁸ Beginning in 1979, pupils were required to have a “weekly half-hour sex education lesson.”¹³⁹ Now, Spain's education system is regulated by the Ley Orgánica de Educación, which is based on Article 27 of

130. Draft Organic Law, *supra* note 128; Organic Law on Education (B.O.E. 2006, 2) (Spain).

131. Fernando Jesús Plaza-del-Pino, Isabelle Soliani, Cayetano Fernández-Sola, Joaquín Jesús Molina-García, María Isabel Ventura-Miranda, María Angeles Pomares-Callejón, Olga María López-Entrambasaguas & María Dolores Ruiz-Fernández, *Primary School Teachers' Perspective of Sexual Education in Spain. A Qualitative Study*, 9 HEALTHCARE, no. 3, 2021, at 296 (2021).

132. *Id.*

133. John McNair, *Education in Spain, 1970-80: the years of compulsory schooling*, 17 COMPAR. EDUC. 47 (1981).

134. *Id.* at 48.

135. *Id.*

136. *Id.*

137. *Id.* at 49.

138. *Id.*

139. *Id.* at 54.

the Spanish Constitution of 1978.¹⁴⁰ Education is compulsory and is “supported by the national government together with the governments of each of the country’s 17 autonomous communities.”¹⁴¹

Spain’s history with sex education, specifically the taboos and questions of morality that come with it, lies on a turbulent timeline that, for a long time, bent to a dictator’s will.¹⁴² In the early 1900s, the country was undergoing a number of changes that would affect it for decades to come. The Second World War created an ideological divide in the country between communism and capitalism.¹⁴³ Primed with this political divide, Spain underwent a Civil War that led to the defeat of the Spanish Republic by the Fascist movement, headed by Francisco Franco.¹⁴⁴ After the Civil War and under Franco, the Republican ideology prevailed, and it brought a wave of conservative morality that swept through Spain.¹⁴⁵ Spain became isolated from the rest of the world in “the sphere of politics, economics, and sexual freedom,” while, at the same time, it solidified the ties between its own government and the Roman Catholic Church.¹⁴⁶ During the reign of Franco, “repression was an instrument of control, domination, humiliation and forced consent, in line with the most conservative postulates of Catholicism.”¹⁴⁷ Francoism defined procreation “as the sole purpose of sexuality,” and supported this definition with religious arguments.¹⁴⁸ Furthermore, “sexuality was only legitimate within heterosexual marriage and could not be a source of pleasure.”¹⁴⁹ In terms of education about sex, either in schools or in the Spanish culture, the main sexual practices promoted under Franco were repressive and heteronormative, and focused on reproduction within marriage.¹⁵⁰ The lack of proper sex education, the presence of forced sexual relations, and covert domestic violence were also part of daily life under this repressive regime.¹⁵¹ Even though sex education was largely absent from the educational system, works about sex education still circulated throughout the public, published defiantly in an attempt to rebel against the Francoist state.¹⁵²

140. *Education in Spain*, K12 ACADEMICS, <https://www.k12academics.com/Education%20Worldwide/education-spain> [<https://perma.cc/W49Y-DG27>] (last visited May 20, 2024).

141. *Id.*

142. María Toledano-Sierra, María Dolores Ruiz-Fernández, José Manuel Hernández-Padilla, José Granero-Molina, María Ángeles Pomares-Callejón, María del Mar Jiménez-Lasserotte, Cayetano Fernández-Sola, *Female sexuality during an era of political repression in Spain. A qualitative study on the survivors of Francoism*, 79 *WOMEN’S STUD. INT’L F.* 1 (2020).

143. *Id.*

144. *Id.*

145. *Id.* at 2.

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.* at 7.

151. *Id.* at 2.

152. ALISON SINCLAIR, *SEX AND SOCIETY IN EARLY TWENTIETH-CENTURY SPAIN: HILDEGART RODRIGUEZ AND THE WORLD LEAGUE FOR SEXUAL REFORM* (2007).

B. The Organic Law on Education and the Organic Law on Sexual and Reproductive Health and Voluntary Interruption of Pregnancy

The Organic Law on Education controls Spain's educational system today, and it lays out various criteria that schools must meet for their students. Title 1 of the law governs the educational standards for various grade levels.¹⁵³ Chapter 1 of Title 1 is dedicated to early childhood education, which applies to children from birth to age six and is not compulsory.¹⁵⁴ At this stage in the child's education, the law makes a point to note that it will cooperate closely with the legal guardians of the child in terms of the structure of what the child learns.¹⁵⁵ Chapter 2 of Title 1 is dedicated to primary education, which involves children from ages six to twelve.¹⁵⁶ The goal of primary education is to ultimately prepare students to succeed in their studies in Secondary Education.¹⁵⁷ Article 19 of Chapter 2 mentions that, amongst other things, gender equality and health education, including "affective-sexual" health education, will be studied.¹⁵⁸ Chapter 3 of Title 1 is dedicated to obligatory secondary education, which applies to children aged twelve to age sixteen.¹⁵⁹ Article 23 of Chapter 3 states that "compulsory secondary education will contribute to developing in students the abilities that allow them to . . . know and accept the functioning of one's own body and that of others [and] . . . know and value the human dimension of sexuality in all its diversity."¹⁶⁰ Furthermore, Articles 24 and 25 of the same chapter, regarding the first and second year of secondary education respectively, state that "health education will be promoted across the board, including affective-sexual education."¹⁶¹

The Organic Law on Sexual and Reproductive Health and Voluntary Termination of Pregnancy has been the law for reproductive health in Spain since 2010.¹⁶² In its original form, the law "guarantee[s] fundamental sexual and reproductive health rights, regulate[s] conditions for voluntary termination of pregnancy, and set[s] out related obligations for the competent authorities."¹⁶³ In its preamble, the law makes clear the beliefs behind its passage:

The law is based on the conviction . . . that offering adequate

153. Organic Law on Education, *supra* note 130.

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.* See *supra* text accompanying note 129.

159. Organic Law on Education, *supra* note 130.

160. *Id.*

161. *Id.*

162. Organic Law on Sexual and Reproductive Health and Voluntary Interruption of Pregnancy (B.O.E. 2010, 2) (Spain).

163. *Id.*

reproductive and sex education . . . [ensuring access to contraceptives] . . . and making sexual and reproductive health programs and services available, are the most effective ways to prevent sexually transmitted infection, unwanted pregnancies, and abortions, especially among young people.¹⁶⁴

The law then lays out various systems for accomplishing its purpose, such as governmental objectives, health care guidance, and educational standards.¹⁶⁵ In the section on governmental objectives, the law states that “the authorities will guarantee . . . comprehensive, gender-sensitive sexual and reproductive health education.”¹⁶⁶ The education section consists of Articles 9 and 10 within Chapter 3, and generally requires that “the education system will hold sexual and reproductive health education as an integral part of personal growth and value development objectives and will develop a comprehensive approach contributing to [a number of topics].”¹⁶⁷ The intention behind these sections stayed the same when the draft reform came out, with the notable change of additional provisions that made sex education compulsory.

In the draft bill that is intended to update the current law, the legislators who wrote it did so with specific intentions. In its preamble, it states “within the framework of what is established in the . . . regulation of the educational system, affective sexual education is contemplated in all educational stages, adapted to the age of the student body and contributing to its integral development.”¹⁶⁸ It notes that Chapter 3 is “substantially expanded,” with Articles 9 and 10 being renamed.¹⁶⁹ Furthermore, Article 10 is also expanded, and it now includes provisions for “prevention of sexual violence in the educational field,” certain “measures in the field of menstrual education,” and “institutional prevention and information campaigns.”¹⁷⁰ Most importantly, within Article 9, entitled “Training on sexual and reproductive health in the educational system,” the draft bill adds the provision “affective sexual education, in all its dimensions, is part of the curriculum throughout compulsory education, and will be taught by personnel who have received adequate training for it.”¹⁷¹ This means that the rest of Article 9, such as the provisions for the “recognition of sexual diversity,” and the “prevention of violence based on gender and sexual violence,” now have to be compulsory material for students in public schools.¹⁷² Additionally, not only will this material become compulsory for school-aged children, it will be

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. Draft Organic Law, *supra* note 128.

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

“adapted to the age of the student body” at all educational stages.¹⁷³ This change in education policy is huge for Spain not just in terms of legislation, but also in terms of the quality and content of its populace’s education.¹⁷⁴

However, despite the promotion of compulsory sex education by the Spanish government, the topic is still surrounded by differing moral opinions throughout the country. The bill was introduced by the Spanish government, which skews left politically.¹⁷⁵ However, members from the far-right party in the Spanish government have said that the law “violate[s] the constitution and turn[s] Spain’s system of values upside down.”¹⁷⁶ In fact, Spanish religious organizations, like the Spanish Evangelical Alliance, have said that the ideology behind a law like this one is “the separation of children from their parents and the usurpation of parental responsibility for their children.”¹⁷⁷ Though Spain has escaped the grip of Franco, his ideological principles still remain, especially in some religious factions of the country. This means that, while comprehensive, compulsory sex education might become the norm for Spain, its people might not accept it so easily.

IV. A COMPARISON BETWEEN COUNTRIES

A. Cultural/Historical Comparison

The differing approaches by the United States and Spain warrant deeper consideration. Though legislation is what is primarily at issue, delving into the background of both countries will provide insight into their respective laws. For example, Spain’s history shines some light on how legislators are able to introduce federal legislation for compulsory sex education. In some ways, Spain

173. *Id.*

174. On March 1, 2023, the draft reform of the Organic Law 2/2010 on Sexual and Reproductive Health and Voluntary Interruption of Pregnancy became law. Organic Law 1/2023, as the draft reform is now known, codifies compulsory, comprehensive sex education into Spain’s body of law. In terms of revisions to Article 9 of the original law, it states that “affective-sexual education, in all its dimensions, is part of the curriculum throughout compulsory education.” Organic Law 1/2023, of February 28, which modifies Organic Law 2/2010, of March 3, on Sexual and Reproductive Health and Voluntary Interruption of Pregnancy (B.O.E. 2023, 51) (Spain). In terms of the new law’s goals, its purpose is identified clearly at its outset: “[e]ducational administrations . . . will consider training in sexual and reproductive health as part of the comprehensive development of personality, training in values, based on the dignity of the person, and with an intersectional approach.” *Id.*

175. Reuters, *Spain passes pioneering sexual, reproductive health law*, REUTERS (Dec. 15, 2022, 10:12 AM), <https://www.reuters.com/world/europe/spain-passes-pioneering-sexual-reproductive-health-law-2022-12-15/>.

176. *Id.*

177. *Drag for children, controversial sex education: Spanish Evangelical Alliance calls to speak up against “ideological agenda”*, EVANGELICAL FOCUS (Oct. 11, 2022, 3:00 PM), <https://evangelicalfocus.com/europe/19014/drag-for-children-controversial-sex-education-spanish-evangelical-alliance-calls-to-speak-up-against-ideological-agenda> [https://perma.cc/98NW-UCJB].

has a less complicated precedent to deal with due to its history with Francisco Franco. As mentioned in Section 3a, Franco governed Spain with oppressive, controlling rules and standards.¹⁷⁸ As Spain came out from under Franco's control in the mid-1970s, they were "ripe for change."¹⁷⁹ In fact, Spain created the Pacto de Olvido (Pact of Forgetting), which set forth an agreement to "look ahead" and "not rake over the past."¹⁸⁰ The country quickly began to integrate itself into the rest of the world by joining the European Economic Community and NATO in the 1980s.¹⁸¹ Fueled with the desire to be rid of Franco-era policies, Spain entered into an "unprecedented period of modernization" that continued for forty years, where it "telescoped its political, economic, and social modernization into a much shorter period than any other European country."¹⁸² Spanish society became less influenced by the Roman Catholic Church and more socially progressive.¹⁸³ Though Spain has encountered challenges in this century, like the recession of 2008 and the resurgence of the Catalan independence movement, years of dictatorship left the citizenry eager for democratic change, and this eagerness has driven some of the progressive policies that Spain has today.¹⁸⁴

The precedent Spain has to face when considering whether to update their laws, therefore, only extends back to the 1978 Constitution that was ratified during the democratization of King Juan Carlos' post-Franco reign.¹⁸⁵ So, in terms of legislation, Spain does not have a long, established precedent to which to adhere. The United States, on the other hand, had its Constitution ratified in 1788, and has been building its legal precedent since then.¹⁸⁶ Therefore, the United States, both federally and through individual states, has had a very long time to develop a fairly entrenched precedent in a number of areas, including education law.¹⁸⁷ This lengthy precedent is also what has led to the United States having a patchwork of sex education policies, because some states have desired to update their policies as new advances or teachings come out, while others opt

178. *See supra* text accompanying note 150.

179. William Chislett, *Spain 40 years after General Franco: change of a nation*, ROYAL INST. ELCANO (Nov. 16, 2015), <https://www.realinstitutoelcano.org/en/analyses/spain-40-years-after-general-franco-change-of-a-nation/> [<https://perma.cc/NSU5-D3KM>].

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. LIBR. OF CONG. FED. RSCH. DIV., SPAIN: A COUNTRY STUDY (Eric Solsten & Sandra W. Meditz eds., 1988); *see also id.*

185. LIBR. OF CONG. FED. RSCH. DIV., *supra* note 184.

186. *Constitution of the United States*, U.S. SENATE, https://www.senate.gov/civics/constitution_item/constitution.htm [<https://perma.cc/QR8K-FYPP>] (last visited May 20, 2024).

187. *See* Stephanie Watson, *How Public Schools Work*, HOWSTUFFWORKS, <https://people.howstuffworks.com/public-schools1.htm> [<https://perma.cc/6UQR-SNK7>] (last visited May 20, 2024).

not to.¹⁸⁸ Furthermore, federalism is one of the United States's core tenets, and once its Supreme Court declared that education policy was the purview of individual states, the federal government could not change it with sweeping legislation.¹⁸⁹ Thus, the United States developed a system where individual states decided what education laws to implement, and the federal government decided to which educational programs it would provide money.¹⁹⁰

Additionally, the politics of both countries need to be considered when looking at their respective approaches though, in this arena, both countries deal with relatively similar issues. Both countries have a divide in political opinion regarding the implementation of sex education.¹⁹¹ There is a division between people who see comprehensive or compulsory sex education as a moral issue and those who see it as a medical imperative.¹⁹² Additionally, those who view sex education as a moral issue also tend to see it in conservative or traditional terms, meaning that they worry about it having a “corrupting influence” on children.¹⁹³ However, a key difference between the United States and Spain is that Spain committed to drafting and promoting a bill that would make sex education compulsory for all school-aged children.¹⁹⁴ In the United States, it would likely be much harder for a compulsory, comprehensive sex education law to pass through one branch of the government, let alone become law.¹⁹⁵ To

188. Kelly Moyer & Dough Flanagan, *School districts update sex ed curriculum to meet new state law*, CAMAS-WASHOUGAL POST-REC. (May 12 2022, 1:04 PM), <https://www.camaspstrecord.com/news/2022/may/12/school-districts-update-sex-ed-curriculum-to-meet-new-state-law/> [https://perma.cc/7VDW-AEU2]; Fiona M.D. Samuels, *Graphic: Many States That Restrict or Ban Abortion Don't Teach Kids about Sex and Pregnancy*, SCI. AM. (July 26, 2022), <https://www.scientificamerican.com/article/graphic-many-states-that-restrict-or-ban-abortion-dont-teach-kids-about-sex-and-pregnancy/> [https://perma.cc/5NKK-6AXG]; Alexandra Villarreal & Kenya Evelyn, *Utah rejects bill that aimed to teach consent in sex education classes*, THE GUARDIAN (Feb. 11, 2021, 5:00AM), <https://www.theguardian.com/us-news/2021/feb/11/utah-sexual-education-bill-curriculum> [https://perma.cc/4MCM-CAYL].

189. See Dr. Samuel Finesurrey & Gary Greaves, *U.S. Federalism*, in GOVERNMENT AND POLITICS IN PRINCIPLE AND PRACTICE (2023).

190. ADAM STOLL, REBECCA R. SKINNER & DAVID P. SMOLE, CONG. RSCH. SERV., A SUMMARY OF FEDERAL EDUCATION LAWS ADMINISTERED BY THE U.S. DEPARTMENT OF EDUCATION (2022), <https://crsreports.congress.gov/product/pdf/IF/IF10551>.

191. See Rachel Janfaza, *The Nuanced Push for American Sex Education*, HARV. POL. REV. (Jan. 24, 2020), <https://harvardpolitics.com/american-sex-education/> [https://perma.cc/7Y5J-VGA8].

192. See *id.*

193. Lauren Farrar, *Sex Education in America: the Good, the Bad, the Ugly*, KQED (Sept. 16, 2020), <https://www.kqed.org/education/534518/sex-education-in-america-the-good-the-bad-the-ugly> [https://perma.cc/XZ3F-DH8C].

194. See Draft Organic Law amending Organic Law 2/2010, of March 3, on Sexual and Reproductive Health and the Voluntary Interruption of Pregnancy (B.O.E. 2022, 2) (Spain).

195. This is likely due to the increased politicization and polarization surrounding sex education, especially within political parties. See Nick Reynolds, *Republicans Declare War on Sex Education*, NEWSWEEK (Jan. 1, 2023 2:56PM), <https://www.newsweek.com/republicans-declare-war-sex-education-seek-restrictions-public-schools-1777650> [https://perma.cc/PCS6-

this point, the United States did not provide federal funding for programs that advocated an approach other than abstinence-only until the Obama administration.¹⁹⁶ Therefore, though it will be hard for Spain to avoid criticisms from those who view sex education as a moral quandary, it would be even harder for the United States to gain enough political support for a similar law to survive both chambers of Congress.

B. Structural/Practical Comparison

When it comes to the practical effects of each country's approach, each has strengths and weaknesses that should be considered in terms of the effectiveness of the relevant legislation. In looking at the passage of comprehensive sex education, the United States's approach—giving state legislatures the power to determine the curricula—would likely allow passage of such policy more quickly than would an attempt at a national piece of legislation.¹⁹⁷ For example, if a state wanted to pass a comprehensive sex education law, they do not have to bring it before a national forum first.¹⁹⁸ Though state legislatures still take time to process legislation, that timetable is not nearly as long or complex as the one for national legislation.¹⁹⁹ So, while the patchwork of policy would continue, portions of citizens having access to comprehensive sex education is better than no access at all. Additionally, with the intense politicized nature of this subject, it is hard to imagine a world in which comprehensive sex education legislation does not spark debate. However, in a state-by-state approach, if a state that has a progressive majority wants to pass a comprehensive sex education bill, it has a better chance because of the consensus in its government.²⁰⁰ Therefore, if this issue is looked at solely in terms of immediacy of action, a state-by-state approach would likely win out over a national approach. However, this approach is not without its flaws. Regardless of whether certain states are able to pass comprehensive sex education laws, there

BNES]; Olga Khazan, *Republicans Have Sex Ed All Wrong*, THE ATLANTIC (April 14, 2022), <https://www.theatlantic.com/politics/archive/2022/04/school-sex-education-grooming-protecting-kids/629556/> [<https://perma.cc/AD63-EE8C>]; Philip Bump, *Democrats want to teach kids sex education. Republicans want to teach them patriotism*, THE WASH. POST (March 23, 2022, 5:23PM), <https://www.washingtonpost.com/politics/2022/03/23/democrats-want-teach-kids-sex-education-republicans-want-teach-them-patriotism/> [<https://perma.cc/JT3L-GR2C>].

196. See *supra* text accompanying note 49.

197. See *State Legislatures Vs. Congress: Which is More Productive?*, QUORUM (2023), <https://www.quorum.us/data-driven-insights/state-legislatures-versus-congress-which-is-more-productive/> [<https://perma.cc/67TS-MSEH>].

198. See, e.g., State House Tour Off., *How a Bill Becomes Law* (2001), <https://www.in.gov/gov/files/BillintoLaw.pdf> [<https://perma.cc/E9HH-P36Q>].

199. Quorum, *supra* note 197.

200. See Tyler Hughes & Deven Carlson, *How party polarization makes the legislative process even slower when government is divided*, LONDON SCH. OF ECON. (May 19, 2015), <https://blogs.lse.ac.uk/usappblog/2015/05/19/how-party-polarization-makes-the-legislative-process-even-slower-when-government-is-divided/> [<https://perma.cc/9453-TQ95>].

will still be a patchwork of policies across the nation. As some states remain adamant about schools within their borders not teaching comprehensive sex education at all, a state-by-state approach is unlikely to produce a nationwide consensus any time soon.²⁰¹ This means that there will still be large disparities between students of a conservative, abstinence-only state and students of a comprehensive sex education state. Additionally, and most importantly, any continuation of the patchwork of policies that exists in the United States now would further perpetuate the disparities between the health approach and the moral approach to sex education.²⁰²

However, though the United States's approach is not sustainable when it comes to the overall health of its population, Spain's approach is not a completely perfect solution either. Spain's approach prioritizes a national public health sex education policy, which allows it to put scientific data before moral concerns.²⁰³ Considering that this issue directly impacts the health of a country's citizens, it is beneficial to have one voice articulating the direction of policy.²⁰⁴ If this were any other health-related issue, like vaccinations, having one portion of the population be subjected to vastly different requirements than other portions would certainly cause concern. Furthermore, by issuing a federal law, Spain's approach makes the country's priorities clear. By fundamentally changing the country's education law, Spain's government prioritizes its belief that comprehensive sex education is the best path forward.²⁰⁵ However, this unyielding approach would not prevent criticism from being lobbed at the policy. As seen with other issues, a federal approach to such a politicized issue can cause those that do not agree with the federal government's decision to act out and try to get the law undone.²⁰⁶ Furthermore, those that agreed with a sex

201. See generally Villarreal & Evelyn, *supra* note 188; Andrew Atterbury, *DeSantis and Florida GOP push hard-right agenda, including expanding 'Don't Say Gay'*, POLITICO (March 5, 2023, 12:00PM), <https://www.politico.com/news/2023/03/05/desantis-florida-education-race-gender-00085545>.

202. See *supra* notes 69-82 and accompanying text.

203. See Draft Organic Law amending Organic Law 2/2010, of March 3, on Sexual and Reproductive Health and the Voluntary Interruption of Pregnancy (B.O.E. 2022, 2) (Spain).

204. See Deborah Klein Walker, *Time to Embrace Public Health Approaches to National and Global Challenges*, 11 AM. J. PUB. HEALTH 98 (2008).

205. See Erica Sanchez, *What Spain's New Bill on Sexual and Reproductive Rights Means for Women and Girls*, GLOB. CITIZEN (July 1, 2022), <https://www.globalcitizen.org/en/content/spain-sexual-reproductive-health-bill-explained/> [https://perma.cc/N6WM-JLR6] (stating that "the Spanish government sends a message to countries around the world that expanding [the right to sexual and reproductive health] as a fundamental human right is critical").

206. See Simon Hunter, *Lawmakers in Spain sent replica 12-week old fetuses after approving new abortion law*, THE OLIVE PRESS (March 4, 2023 7:15PM), <https://www.theolivepress.es/spain-news/2023/03/04/lawmakers-in-spain-sent-replica-12-week-old-fetuses-after-approving-new-abortion-law/> [https://perma.cc/9KCW-5KEC]; *Spain's constitutional court rejects abortion law challenge*, ASSOCIATED PRESS (Feb. 9, 2023), <https://apnews.com/article/abortion-politics-spain-health-4eec2248a76f7b0440e3f718b556d608> [https://perma.cc/Z3Q9-QNYV].

education policy which was more than a promotion of abstinence-only but less than comprehensive would likely disagree with a firm decision to adopt comprehensive sex education, which might fracture the population more distinctly than the current approach.

However, regardless of the political backlash, the medical and scientific community have been crystal clear when it comes to which policy to implement.²⁰⁷ Abstinence-only does not promote adolescents' sexual health because it does not give them the proper tools for adolescence.²⁰⁸ When it comes to a decision on how to teach sex education, those in the health community have made it clear: politics must take a backseat. Though a change to a completely federal approach is not currently feasible because of the way the United States's government is structured and because of its legal precedent, a change that moves the country closer to a clearer prioritization of adolescents' sexual health, like that of Spain, is possible, and is crucial.

V. RECOMMENDATIONS

A. Model Legislation for Federal Funding and State Follow-Through

As shown throughout the wide variety of sex education programs and sex education laws across the United States, this issue is largely in the states' hands, not the federal government's. Because of the lack of a fundamental right to education at the federal level, it will be up to the states to decide how to move forward with this issue legislatively. Therefore, the most the federal government could do to promote comprehensive sex education is provide funding for states to implement sex education programs that reflect certain educational standards. This is not an entirely impractical option, as the federal government has been providing funding for abstinence education since the 1990s.²⁰⁹ Below are some guidelines that a potential federal funding statute could include to encourage states, school districts, and school boards to adopt educational standards that more closely resemble those of comprehensive sex education.

Federal Funding Model

Purpose—

- (1) General—the purpose of an allotment under this section is to enable the State or other educational agency to implement comprehensive sex education.
- (2) Required components—education on comprehensive sexual health

207. See Eva S. Goldfarb & Lisa D. Liberman, *Three Decades of Research: The Case for Comprehensive Sex Education*, 68 J. ADOLESCENT HEALTH 13 (2021).

208. *Id.*

209. See *supra* text accompanying notes 43-44.

pursuant to an allotment under this section shall—²¹⁰

(A) Ensure that the primary message of such education focuses on a wholistic, comprehensive approach to sexual health behavior and practices of youth that prepares them for the realities of adolescence and young adulthood.

(B) “[B]e medically accurate and complete”²¹¹, utilizing evidence from current research and medical studies.

(C) “Provide age- and developmentally appropriate information” and materials.”²¹²

(D) “[B]e culturally appropriate, acknowledging the role that personal, interpersonal, social, economic, and cultural influences play in shaping adolescents’ sexual motivations and behaviors.”²¹³

Topics—education on comprehensive sexual health pursuant to an allotment under this section shall address each of the following topics:

- (1) Lessons that highlight “personal perceptions of risk and harmfulness of engaging in specific unhealthy practices and behaviors, as well as reinforcing protective factors”²¹⁴
- (2) “Information on local services and resources where students can obtain additional information related to bullying, dating violence and sexual assault, suicide prevention, and other related care.”²¹⁵
- (3) The “importance of effectively using condoms and preventive medication to protect against sexually transmitted infections, including HIV/AIDS” and “the benefits of effective contraceptive and condom use in avoiding unintended pregnancy.”²¹⁶
- (4) The components of a healthy relationship, including open lines of communication between partners and “the ability to distinguish between healthy and unhealthy relationships.”²¹⁷
- (5) “How to resist and avoid, and receive help regarding, sexual coercion

210. This model legislation is based strongly on the formatting of the Title V Abstinence Only Until Marriage grant program in the Social Security Act, Model Legislation generated by the Sex Education Collaborative, and the National Sex Education Standards prepared by the Future of Sex Education Initiative. The Title V statute has a clear, structured approach to sex education requirements and, if the federal government can pass a large program like that of AOUM with a Title V structure, then it is likely it will look favorably on a similar structure for comprehensive sex education. *See* 42 U.S.C. § 710; SEX EDUC. COLLABORATIVE, SEX EDUCATION MODEL LEGISLATION (2022), https://sexeducationcollaborative.org/files/MODEL_SEX_EDUCATION_LEGISLATION_0.pdf [<https://perma.cc/5DHH-7PXW>]; FUTURE OF SEX EDUC. INITIATIVE, NATIONAL SEX EDUCATION STANDARDS: CORE CONTENT AND SKILLS, K-12 (2d ed. 2020).

211. 42 U.S.C. § 710

212. SEX EDUC. COLLABORATIVE, *supra* note 210.

213. FUTURE OF SEX EDUC. INITIATIVE, *supra* note 210.

214. *Id.*

215. SEX EDUC. COLLABORATIVE, *supra* note 210.

216. *Id.* at 4.

217. *Id.* at 3.

and dating violence,” recognizing the importance and necessity of consent.²¹⁸

(6) Contraception—education on comprehensive sexual health pursuant to an allotment under this section shall require that—

(A) “any information provided on contraception is medically accurate and complete and ensures that students know” where to access medical resources and counseling resources about contraception.²¹⁹

Grant funding mechanism—

(1) Congress shall appropriate [amount of money]²²⁰, designated as grant-based funding for comprehensive sex education, for which states shall apply to use.

Because of the variety of characteristics of sex education policy, a federal funding statute that provides money for only the most extreme level of sex education will also likely not be very successful. The states that already subscribe to the belief that comprehensive sex education should be taught over abstinence-only programs would likely benefit from this funding, but states that are more hesitant to adopt such progressive standards would likely not participate. This would not help clean up the patchwork of education policy that the United States currently has. Therefore, if there were to be a federal statute that provided funding for comprehensive sex education, it would have to include often-used opt-in or opt-out clauses. An opt-in clause would allow parents to choose whether their student would be taught material from the comprehensive sex education program. These clauses are typically used by more conservative states as it requires a conscious choice by the parents, which puts another barrier between comprehensive sex education and the children that need it. An opt-out clause, however, would be the better option because of the inherent stance it takes on the importance of comprehensive sex education. The only way that new educational standards, promoted through funding, will get any momentum is if the government fully commits to their implementation. Thus, if the government wants to put its full force behind a sweeping change in educational standards, it must do so wholeheartedly. By using an opt-out clause, the inherent message

218. 42 U.S.C. § 710.

219. *Id.*

220. The specific dollar amount of money allotted to this program would have to be determined by whatever legislator writes the legislation. However, the amount for comprehensive sex education should be at least what the amount is for current abstinence-only education under Title V, if not double. Comprehensive sex education, as the model state legislation constructs it, involves education on more subjects than abstinence only, and thus will require more training and time from educators. Additionally, schools that switch from not teaching sex education at all to teaching comprehensive sex education will need substantial financial assistance in getting their program up and running. Therefore, it is necessary to fund comprehensive sex education, as proposed in the model legislation, at or above the level that the U.S. government is currently funding abstinence-only sex education.

behind the language of the statute is that comprehensive sex education is something that is the promoted norm. This way, parents who take issue with the teachings of comprehensive sex education can still make a significant contribution to how their child is educated, but their opinions are not automatically considered to be the only controlling factor. Below are some guidelines that model state legislation could include to require states, school districts, and school boards to adopt educational standards that more closely resemble those of comprehensive sex education:

*State Legislation Model Which Would Allow Access to the
Federal Funding Model*

Title: The Promotion of Comprehensive Sex Education Act within [State]²²¹

Section 1: [Effective Upon Passage] Intent

The Legislature finds . . . that:

- (1) “Whereas, sex education can encourage better sexual health outcomes, reduce stigma, and prepare young people to lead healthy and fulfilling lives.”²²²
- (2) “Whereas, students in [State] often lack the education they need to prevent unintended pregnancy, HIV and other sexually transmitted infections, and to develop healthy relationship and decision-making skills.”²²³
- (3) Whereas, abstinence-only as the sole approach has failed to produce its intended effects and available medical and scientific research states that comprehensive sex education, in whatever form, is a better method to follow.

[State can tailor other intent statements depending on their own data about effectiveness of different types of sex education]

Section 2: Definitions

[The ones included are those that should be in any iteration of legislation. However, more can be added at the legislator’s discretion]

- “‘Comprehensive sexual health education’ means age and developmentally appropriate education that aligns with the National Sex Education Standards, including information on consent and

221. This model legislation is based on Model Legislation generated by the Sex Education Collaborative, the National Sex Education Standards prepared by the Future of Sex Education Initiative, and Illinois’ new sex education law. See SEX EDUC. COLLABORATIVE, *supra* note 210; FUTURE OF SEX EDUC. INITIATIVE, *supra* note 210; 105 ILL. COMP. STAT. 5/27-9.1A.

222. The law could cite to external sources to back this up. For example, “[see Building a Foundation for Sexual Health is a K-12 Endeavor: Evidence Underpinning the National Sexuality Standards for examples of data that may be appropriate to cite in your state].” SEX EDUC. COLLABORATIVE, *supra* note 210, § 2(a)(1).

223. *Id.* § 2(a)(5). States can use their own department of education to particularize this section. It is likely that an individual state’s department of health or department of education will have data related to the amount of STIs and unwanted pregnancies that occur each year within its borders, and the drafting legislator can put that data here.

healthy relationships, anatomy and physiology, puberty and adolescent sexual development, gender identity and expression, sexual orientation and identity, sexual health, and interpersonal violence.”²²⁴

- “‘Medically accurate’ means verified or supported by the weight of research conducted in compliance with accepted scientific methods and published in peer-reviewed journals, if applicable, or comprising information recognized as accurate and objective.”²²⁵
- “‘Age- and developmentally appropriate’ means topics, messages, and teaching methods suitable to particular age, age group of children and adolescents, or developmental levels, based on cognitive, emotional, social, and behavioral capacity of most students at that age level.”²²⁶
- “‘Culturally appropriate’ means materials and instruction that respond to culturally diverse individuals, families and communities in an inclusive, respectful and effective manner; including materials and instruction that are inclusive of race, ethnicity, languages, cultural background, religion, gender, gender identity, sexual orientation, and different abilities.”²²⁷
- “‘Consent’ means an affirmative, knowing, conscious, ongoing, and voluntary agreement to engage in interpersonal, physical, or sexual activity, which can be revoked at any point, including during the course of interpersonal, physical, or sexual activity.”²²⁸
- “‘Complete’ means information that aligns with the National Sex Education Standards, including information on consent and healthy relationships, anatomy and physiology, puberty and adolescent sexual development, gender identity and expression, sexual orientation and identity, sexual health, and interpersonal violence.”²²⁹

Section 3: Components

No later than [the end period for the phasing-in that the State legislature has determined], every school district shall provide age, developmentally,

224. § 27-9.1A. The inclusion of sexual orientation gender identity is a somewhat polarizing idea, as some states have actively worked to prohibit the discussion of such topics in schools. See Kalyn Belsha, ‘Am I not allowed to mention myself?’ Schools grapple with new restrictions on teaching about gender and sexuality, CHALKBEAT (April 12, 2022), <https://www.chalkbeat.org/2022/4/12/23022356/teaching-restrictions-gender-identity-sexual-orientation-lgbtq-issues-health-education> [<https://perma.cc/NP6P-CAHE>]. However, in order to provide a clear view of what the best option for comprehensive sex education legislation is, this Note’s author has left these phrases in.

225. *Id.*

226. SEX EDUC. COLLABORATIVE, *supra* note 210, at 7.

227. *Id.*

228. § 27-9.1A.

229. *Id.*

and culturally appropriate sex education that is medically accurate in grades [can be tailored to whatever research the State has done on age ranges and the content of educational programs] in all public secondary schools.

Comprehensive sex education shall meet the following characteristics:

- 1) Include course material that:
 - a. is medically accurate, age and developmentally appropriate, and complete;
 - b. “help[s] students develop self-advocacy skills for effective communication with parents or guardians, health and social service professionals, other trusted adults, and peers about sexual health and relationships[;]”²³⁰
 - c. provides “information on local services and resources where students can obtain additional information related to bullying, dating violence and sexual assault, suicide prevention, and other related care;”²³¹
 - d. “provides information to help students safely use the Internet, including social media, dating or relationship websites or applications, and texting;”²³²
 - e. does “not reflect or promote bias against any person on the basis of the person’s race, ethnicity, language, cultural background, citizenship, religion, HIV status, family structure, disability, gender, gender identity, gender expression, sexual orientation, or sexual behavior;”²³³
 - f. “does not proselytize any religious doctrine;”²³⁴
 - g. “is not inconsistent with the ethical imperatives of medicine and public health;”²³⁵
 - h. instructs on “the benefits of abstinence, and the use of condoms, medication, and birth control and sexually transmitted infection prevention measures, and the options for pregnancy;”²³⁶ and
 - i. highlights the importance of consent, and details what consent looks like and how consent can be given or taken away.

Section 4: Parental Involvement

- (a) “A student’s parent or guardian may opt the student out of . . .

230. *Id.*

231. SEX EDUC. COLLABORATIVE, *supra* note 210, at 4.

232. § 27-9.1A.

233. *Id.*; *see* discussion *supra* note 221.

234. § 27-9.1A.

235. *Id.*

236. SEX EDUC. COLLABORATIVE, *supra* note 210, at 4.

comprehensive sexual health education by submitting the request in writing.”²³⁷

(b) Refusal to take or participate in such a course or program may not be a reason for disciplinary action, academic penalty, suspension, or expulsion or any other sanction of a student.”²³⁸ “In event of a student’s parent or guardian requesting that the student not receive the instruction provided under this act, school districts are encouraged to provide alternate assignments on a related topic.”²³⁹

(c) “An opportunity shall be afforded to individuals, including parents or guardians, to review the scope and sequence of instructional materials to be used in a class or course under this Section, either electronically or in person.”²⁴⁰ [The specific opportunity can be determined by the state, the city, or the individual school boards.]

Section 5: Implementation

(a) “By [certain date], the State Board of Education, in consultation with [certain students, parents, teachers, healthcare professionals] shall develop and adopt rigorous learning standards in the area of . . . comprehensive sexual health education for pupils in the [grade range to be determined by legislator], including, but not limited to, . . . the National Sex Education Standards . . . as authored by the Future of Sex Education Initiative. As the National Sex Education Standards are updated, the State Board of Education shall update these learning standards.”²⁴¹

(b) “The Department [of Education] shall develop, maintain, and make publicly available state standards and current list of curricula that are consistent with this Act.”²⁴²

(c) The Department of Education will also promulgate standardized testing requirements for comprehensive sex education, in the same way it would do so for any other area of instruction. If schools have a public health requirement for graduation criteria, the Department of Education will require the inclusion of comprehensive sex education instruction in that criteria.

Section 6: Enforcement

(a) “Any parent or guardian with a child enrolled in a school district, or any student having legal capacity enrolled in a school district, who believes that the school district is not complying with the requirements of this Act may file a case in state court to enforce the provisions of this

237. § 27-9.1A. The school district can provide a standardized waiver for parents to sign that would fulfill this requirement.

238. *Id.*

239. SEX EDUC. COLLABORATIVE, *supra* note 210, at 4.

240. § 27-9.1A.

241. *Id.*

242. SEX EDUC. COLLABORATIVE, *supra* note 210, at 6.

Act²⁴³

Section 7: Funding

- (a) Upon passage of this act, the Secretary of Education shall apply to the Department of Education per the [model federal funding statute] for grant funding.
- (b) [State] shall also match [some percentage] of federal government's funding and make it available to schools who elect to teach sex education as provided under this Act, so that schools who choose not to take federal funding will still have an option to provide comprehensive sex education.

B. Analysis

An important consideration when implementing this model legislation is whether to make the legislation applicable only to schools that choose to teach sex education, or to every school regardless of whether they currently teach sex education. While it would be ideal for each school to teach comprehensive sex education, as this furthers the resolution of the patchwork of standards for sex education that the country currently has and makes sure that each student is getting roughly the same level of education on the subject, it is not practical given the severe steps that some states still have yet to take regarding the level of their sex education curriculum. There are some states, like Indiana, whose schools get to choose whether to teach sex education at all. If schools in that state who do not teach sex education in any significant way were suddenly required to teach it comprehensively and completely, there would be significant growing pains. These schools might not have the proper resources to implement such a program within a short turnaround time. Even if schools like that were to take federal grants, the practicality of changing a curriculum so drastically would likely overwhelm schools that are already spread thin. Curriculum like comprehensive sex education requires educators who are trained in comprehensive sex education and specific classes that are dedicated to the subject. Furthermore, though schools could hire outside educators, that would still require money from the school district's budget. Therefore, the best options in terms of practicality would either be a "may teach" law, which would only apply to schools that choose to teach sex education, or a "shall teach" law which gives schools time to secure resources and to train their educators in the required subjects. Because of the reasons detailed in the paragraph below, a "may teach" law is more likely to be passed given the politics of the country, and so it would be the best place to start.

Another crucial element of the implementation process to consider is the enforcement prong of the legislation. There will inevitably be a multitude of growing pains that come with changing a significant policy like sex education.

243. *Id.*

Some will be practical and means-based, like funding and availability of resources. Others, however, will involve the opinions that members of school districts have about comprehensive sex education. Though it is important to make sure that school districts and school boards feel that their positions are considered in the legislation, when it comes to implementing this program that is vital for a healthy and educated population, their viewpoints might hinder the process. It is very likely that there will be people, particularly those with moral objections to sex education, who will be reluctant to implement a program like the one proposed in the legislation, even if their state passes a law promoting it. This reluctance could lead to school boards dragging their feet in following such a law, and states would have to deal with such behavior. Thus, the proposed legislation includes an enforcement section, which requires the schools to report back to the Department of Education, or whatever equivalent the state wants to designate as responsible for enforcing implementation. By having to update the state government on their progress, schools will be held accountable for their lack of action regarding the new law. Though moral objections can be lodged towards sex education by private citizens, it is important that governments are led not by these opinions. Instead, regarding this subject, governments should be led by medical guidance and evidence shown through scientific studies.

Though this issue concerns a public health matter, it is impossible to consider it without evaluating the political landscape of the country. Because it would be introduced as a piece of legislation, comprehensive sex education would need to be passed by the state's legislature before it can become enacted. Though this is an important part of the democratic process, it also provides the most complications. The political leanings of any given state's legislature can vary greatly, and a topic like sex education comes with differing levels of support depending on the political party. States that lean conservative, like Indiana, tend to have more restrictive sex education programs focusing on abstinence only, if they have any at all. Therefore, in order to get them to even consider an idea such as the one proposed in this Note, the draft legislation needs to be able to be tailored to include different viewpoints. Ways to do this include making the program an option, as seen through an opt-in or opt-out provision, and including parents in the process of implementing the program. However, the inclusion of parents into the curriculum's evaluation has to be done carefully. Allowing parents to inquire into what subjects are being taught, as well as allowing them to contact school officials with questions, is an important step in the process of implementing a program as sensitive as comprehensive sex education. Then again, if parents are given too much influence over what is taught to their children, then their own moral guidance might overcome the medical imperative of the curriculum. Though the model legislation can be tweaked and adjusted for the needs of any given state's legislature, the core tenants of comprehensive sex education cannot be compromised.

CONCLUSION

Comprehensive sex education is a vital step forward for the United States, whether through federal funding or individual state legislation, or both. The United States should consider Spain's approach, a federal mandate for comprehensive sex education, when looking towards the future of sex education within its own borders. Above all else, legislators must think about the future when considering this subject. In a world post-*Dobbs*—a world that does not provide a right to abortion for every citizen—legislatures must think of the next generation and ensure that they have the proper information to be safe and secure in their relationships.