We Should Choose to Use Protection Rather Than Be Told Not to Need It:

A Policy Analysis and Position on Federal Funding of

Abstinence-Only Education Programs

Adam Geller

University of North Carolina at Chapel Hill

ABSTRACT: Learning about sex is inevitable and can't be controlled. Learning about sex in sex-education classes is inevitable, but the content of these programs can be controlled. This paper examines the current system of sex-education and questions the legality of the federal government controlling the content of programs and only regulating in favor of abstinence-only education programs.

Introduction

The debate over funding for abstinence-only education programs is coming of age. It is time for America to decide whether it will tolerate the government dictating what children will learn, which is both illegal and a form a censorship.

Good Idea (Gone Awry)

In the early 1980s, it was time for America to recognize our sexuality and educate the youth about the ills of adolescent pregnancy and parenthood. From this need was born the Adolescent Family Life Act (AFLA) of 1981:

> [This] authorizes the Secretary of Health and Human Services to provide grants to support services and research relating to adolescent pregnancy and parenthood. Includes within such services: (1) pregnancy testing and maternity counseling; (2) adoption counseling; (3) health services including prenatal and pediatric care; (4) education and family planning; and (5) other related health, referral, and education services…
>
> (Public Law 97-35)

On the surface, it seemed this was an opportunity for America to embrace sexuality in the schools and prepare young adults for the problems they may face. Quite simply, though, this program was "designed to prevent teen pregnancy by promoting chastity and self-discipline" (Saul). In the first year alone, the government was granting more than $11 million for sole use in abstinence-only education. The act was subsequently renewed. In 2000, more than $17 million was allocated for programs under this.

The legality of abstinence-only education was brought to court by the American Civil Liberties Union (ACLU) in 1983. This suit eventually led to an out-of-court settlement that

resulted in the rewording of parts of the law to exclude religious references. The AFLA still provides funding for abstinence-only education programs today (nonewmoney.org).

It's an Addiction to Power

When the World War II broke out, the public cried "If I am old enough to fight, I am old enough to drink." As such, the standards were relaxed and states lowered the legal drinking limit. This was no problem in the minds of anyone (Koroknay-Palicz).

As the spirit of war-time passed, so too did the fashion of a lowered drinking age in the eyes of congressmen. The decision to lower the drinking age was originally made by individual states, but now the federal officials felt it necessary for some reason to step in. Congress, though, can not make any laws directly relating to the drinking age, as this is a state's right, so they resorted to an alternative monetary policy tactic to essentially force states to comply with a national standard.

To accomplish this, Congress decided to exploit the need for transportation funding if states would not comply with the national "policy" on drinking. Title II of the Highway Safety Act of 1983 was titled "The Drunk and Drugged Driving Prevention Act of 1993." This legislation was the outline of how Congress would side-step limitations on establishing a national minimum drinking age:

> [This legislation] directs the Secretary to make grants to a State to enforce alcohol traffic safety programs if such State has in effect a law which: (1) sets the minimum legal drinking age at 21 years of age; and (2) provides for the penalty of misdemeanor for certain persons who supply alcoholic beverages to individuals under 21 years of age or to individuals who appear to be intoxicated.
>
> (www.congress.gov)

And as signed by the President on July 17, 1984, U.S. Law 98-363 "requires the Secretary to withhold five percent… of certain Federal-aid highway funds for States in which the minimum drinking age is under 21." There is no denying the intent of this statement.

The current process for mandating abstinence-only education in schools is very similar to this example. States need to provide a service to their citizens, and the government is going to withhold money unless the states comply with their stipulations.

Congress is not making laws that directly mandate a certain curriculum, but they are making policy that coerces the states to action. In order for the states to be eligible for financial aid, they must have a certain curriculum, and it is in this way that Congress is able to affect curriculum content, just as they did the drinking age.

The Censored State of Things

Congress attempted to control sex education curriculum directly during the reauthorization process of the Elementary and Secondary Education Act in 1994. Because federal law explicitly states that curriculum may not be directed by Congress, they decided to regroup and form a new plan of attack.

An opportunity for Congress to strike came in 1996 during the reauthorization process of Social Security Act. Welfare reform was popular and using this as a vehicle, Congress would have the chance to change school curricula through the schools' pocketbooks. The entry point was the creation of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996.

The PWORA directly instructs states “to track out-of-wedlock pregnancy rates… for the entire population and to ‘take action’ to reduce illegitimate births in the state's population as a whole” (Smith). With this, the mandate for states to educate the public is officially in place.

The part where this becomes engulfed with issues of censorship lies in the fact that the government, in this same piece of legislation requires that the education programs developed by the states must only promote abstinence in order to receive grant money: "The term, ‘abstinence education' means an educational or motivational program which has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity" (Public Law 104-193). In order to ensure that “abstinence” was not misunderstood, the legislation provided an eight-point definition:

> [A qualified program]
> - has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;
> - teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;
> - teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;
> - teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;
> - teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;
> - teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;
> - teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and
> - teaches the importance of attaining self-sufficiency before engaging in sexual activity.
>
> (Public Law 104-193)

This is no mild exhortation. In no uncertain terms, the federal government, through this legislation, is dictating a certain curriculum for use in education programs. This is illegal.

Why This Shouldn't Be Tolerated

The United States Constitution outlines in the Tenth Amendment that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." With this in mind, it is important to note that the words "education" and "school" do not appear even once in the body of the Constitution itself or any of the amendments to date (Coulson).

There is no way for Congress to substantiate a claim for the rights to make policy that affects school curriculum, even if it is an indirect policy effect, as is the case with federal funding for only abstinence-only education.

There is precedent establishing that indirect policy decisions which effect school curricula are illegal. Legislation titled Goals 2000 (Section 319b) outlines the basic premise of states' right in this matter:

> …responsibility for control of education is reserved to the States and local school systems and other State instrumentalities and that no Federal action … would reduce, modify, or undercut such responsibility.
>
> (Public Law 103-227)

The General Education Provisions Act (Section 438) further defines this matter of jurisdiction when related to school curricula in section 438 which is titled "Prohibition of Federal Control of Education":

> No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system.
>
> (Public Law 108-10)

In addition to these two pieces of legislation, the Department of Education Organization Act (Section 103a) and the Elementary and Secondary Education Act (Section 14512) also outline provisions concerning the illegality of federal legislation meant in any way to govern school curricula.

With these limitations in mind, it is then clear that any federal program that aims to influence school curriculum should be considered illegal. The PWORA fits this description completely.

Legislation such as this has stifled states' and voters' ability to provide truly complete sexual education to their children. There is never any choice on the part of a grant recipient as to what type of content to provide in education programs. The education is mandated, but the content is "filtered" by government imposed standards. This is censorship in its rawest form: educate yourself with information bearing only my message.

A Melting Pot of Controlled Ingredients

A domino effect is starting. The lack of free thought on this matter has lead states to believe that this sort of repression of educational information at the government level is acceptable. But, this mask of misinformation that is choking free thought can be lifted.

Time is up on the funds for these abstinence-only programs. Congress currently has the choice whether to reauthorize or to redraft the legislation. As recently as February, 2003, Congress was debating a blanket renewal of the SSA title V that would continue abstinence-only education until fiscal year 2008.

This leaves us not with a question of morality but a question of free choice. Should not the citizens of each school district decide what they want their children to be learning rather than be told by the government what their children will learn?

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