

July 8, 2008

James E. Holst
General Counsel
Office of the General of the Regents
University of California
1111 Franklin Street, 8th Floor
Oakland, CA 94607

RE: Illegal use of University of California resources for political purposes

Dear Mr. Holst:

We are writing to request that you investigate the improper use of public funds and resources to influence the outcome of a ballot initiative campaign. Specifically, we request that you investigate the participation of the Bixby Center for Reproductive Health Research and Policy at the University of California, San Francisco, in the campaign to defeat Propositions 73 and 85, which appeared on the ballot in November 2005 and 2006, respectively, and that you take steps now to prevent similar participation in the future.

The use of public funds to influence campaigns is manifestly improper. *Mines v. Del Valle* (1927) 201 Cal.273; *Stanson v. Mott* (1976) 17 Cal.3d 206. The public funds entrusted to the University of California belong equally to the proponents and opponents of any proposition, and the use of the funds to finance not the presentation of facts but also arguments to persuade the voters that only one side has merit, gives the dissenters just cause for complaint. While public entities may, if otherwise authorized, publish a “fair presentation of facts” relevant to an election matter, “the determination of the propriety or impropriety of the expenditure depends upon a careful consideration of such factors as the style, tenor and timing of the publication.” *Id.* at. 221.

In the summer of 2005, after Proposition 73 (“Waiting Period and Parental Notification Before Termination of Minor’s Pregnancy”) had qualified for the ballot, the Bixby Center published a brief entitled, “Adolescents & Parental Notification for Abortion: What California can Learn from the Experience of Other States?” A copy of the brief is enclosed. This brief, replete with biased, misleading, and indisputably false statements, was clearly published for the purpose of encouraging voters to vote against the proposition.

The first page of the brief purports to compare the teen pregnancy, abortion, and birth rates of U.S. and California adolescents. After noting that these rates have dropped for all U.S. adolescents, the brief goes on to state, “California’s adolescent, birth, and abortion rates have declined even more steeply than those in the rest of the country.” The implication is that California, with no parental notification law, is doing better at reducing teen abortion and pregnancy than the rest of the country, including states with such laws.

The fundamental error here, of which the authors must have been aware, is that it is impossible to know what California’s teen abortion rate is because California does not collect data on abortions. And, with no data on the number of teen abortions, it is impossible to know the teen pregnancy rate. The Alan Guttmacher Institute figures cited in the brief are estimates, based on extrapolating the data compiled from other states – most of which have parental involvement laws. Therefore, the statement that California’s adolescent pregnancy and abortion rates have declined more steeply than those in the rest of the country is without any factual foundation.

The remainder of the brief is similarly biased and flawed. For example, on page two, the brief states that in the absence of any notification law, “a majority (61%) of adolescents under age 18 discuss their decision to have an abortion with one of more of their parents.” That statement and the following one are a distortion of the findings of a 1991 study in Minnesota. (Henshaw & Kost, *Parental Involvement in a Minor’s Abortion Decision*, *Family Planning Perspectives*, 1992: 25; 5: 196-207) In fact, the study found that only 45% of minors in the survey told a parent of their decision to undergo an abortion. The other 16% reported that a parent found out some other way. Only 55% of those under age 14 told a parent.

The brief goes on to assert, based on the same study, “Even when adolescents do not involve a parent, they usually involve an adult. Over 80% of young women report that a parent, stepparent, relative, or professional (such as school counselor, nurse, or clergy member) was involved in their decision.” First, the juxtaposition of the two statements is itself misleading. The first statement refers to the situation when an adolescent does not involve a parent, while the second includes parents to come up with the comforting 80% figure. In fact, the study found that, of minors whose parents are unaware of the pregnancy, only 52% involve any other adult. Further, these minors involved “professionals” only 22% of the time, and stepparents or other relatives even less frequently. Notably, the brief fails to inform readers that the most frequently cited “others” involved in the abortion decision were boyfriends (89% overall, 93% for those under age 16).

Continuing, the brief states that “Over 30% of young women who choose not to involve their parents in their abortion decision cite fear of physical harm, being kicked out of the

house, or other abuse as part of their reason not to tell their parents.” Although the citation for the figure is to a law review article, the source is the same article by Henshaw and Kost, cited above, and it is unsupported by the data gathered in that survey. In fact, the data showed that, as opposed to what minors feared would be the parental reaction, only 1% reported physical violence against themselves and/or being forced to leave home. While this is regrettable, 1% is a far cry from 30%. Needless to say, the authors of the Bixby brief did not see fit to include that data in their presentation.

The brief next states, “Parental communication in California is strong without mandates. The vast majority (79%) of young women aged 14 -17 in California report that their parents are aware of their sexual activities.” This is an outrageous distortion of the results of survey done by UCLA about the involvement of parents in teens’ lives and its relation to their avoidance of various risky behaviors, such as using drug and alcohol, fighting, riding bicycles without helmets, and engaging in sex. On the general topic of adult supervision, the report states, “About four in five adolescents report that parents know their whereabouts in the afternoon (81%) and at night (79%).” It is this statement from which the Bixby Center brief extrapolated the claim that 79% of young women say their parents are aware of their sexual activities. (It should also be noted that only 26% of the minors surveyed reported that they had every had sexual intercourse.)

These are just a few examples of the distorted data published in the 2005 Bixby Center brief. The very framing of the issues in the brief also displays its bias. For example, the brief states, “The recent increase in parental involvement legislation has come in concert with other forms of legislation designed to limit adolescents’ access to safe and confidential reproductive healthcare.” (p.2) The contrary view is that parental involvement legislation is designed to enhance adolescents’ access to **safe** medical care by involving parents in the decision whether, when, and from whom to seek such care.

The brief’s conclusions drive the point home in case there was any doubt left in the reader’s mind: “Requiring parental notification will not prevent abortion or the need for abortion, nor will it improve minor’s communication with parents about abortion decisions, as evidenced by research from other states. This research also suggests that parental notification can have the negative consequence of putting adolescents’ health at risk by delaying and otherwise complicating access to care.”

In August 2006, after Proposition 85 qualified for the November ballot, the Bixby Center published a slightly revised version of the same brief. In addition to repeating the biased and inaccurate statements of the 2005 brief, the 2006 version included several more.

For example, the 2006 brief stated, “In Texas, the loss of confidentiality associated with the recent enactment of a parental consent mandate for contraception led to an additional 5300 births and 1650 abortions to teens in the state, at the cost of over 43 million

James E. Holst, Esq.
July 8, 2008
Page 4

dollars.” However, as the title of the cited study itself makes clear, these numbers were a prediction, untested against reality.

The 2006 brief also cites one finding in a study of the Texas notification law that some minors who conceived in a three-month window (17.5 to 17.74 years of age) delayed their abortions into the second trimester. However, the authors did not see fit to cite the same study’s other finding that the enactment of the law led to a significant decrease in the abortion rate for all minors.

Then, in October 2006, just weeks before the election, UCSF produced a flyer entitled “The Proponents of Prop 85 Falsely Assert,” purporting to respond directly to campaign literature from the Yes on 85 campaign, although actually distorting the proponents’ claims and often changing the subject.

“A fundamental precept of this nation's democratic electoral process is that the government may not ‘take sides’ in election contests or bestow an unfair advantage on one of several competing factions.” *Stanson, supra*, at 217. The Bixby Center, a publicly funded institution, indisputably took sides in the Proposition 73 and 85 campaigns. Far from being a “fair presentation of facts relevant to an election matter,” the briefs it authored and published were pure propaganda pieces for the opposition, and were used as such. The briefs, as well as other presentations made by Bixby Center employees on this topic, were a travesty of objective science.

I myself am an employee of the University of California, and I am well aware of the restrictions on the use of UC resources for electioneering. As the proponent of an initiative involving parent/family member notification that will appear on the November 2008 ballot, I request that your office investigate this illegal campaign activity by the Bixby Center and its employees and warn them to refrain from such activity in the future.

Very truly yours,

John Smith, Ph.D.

cc: Attorney General Edmund G. Brown
Chancellor J. Michael Bishop
Regents

James E. Holst, Esq.
July 8, 2008
Page 5

<http://www.ucop.edu/ucophome/coordrev/policy/9-18-70.html>

<http://www.ucop.edu/state/advocacy/lobbying/personal.html>

<http://www.ucop.edu/ucophome/coordrev/policy/9-18-70att.html>