14 February 2024

KINSEY INSTITUTE SPECIAL WORKING GROUP

Executive Summary and Recommendations

Background

Since its founding in 1947, the Kinsey Institute for Research in Sex, Gender and Reproduction at Indiana University has been the world's premier sex research institute, renowned for fostering a greater understanding of human sexuality and relationships through groundbreaking research, innovative education and outreach, and unparalleled historical preservation. Regarded as a "jewel in the crown" of Indiana University, the Kinsey Institute serves as a beacon for academic freedom, research excellence, respect for human diversity, and is widely understood to add considerably to the intellectual life and institutional profile of Indiana University.

In spring 2023, the Indiana State General Assembly enacted statutory provisions as part of HB 1001 to preclude the use of any State appropriation funds to support the Kinsey Institute at Indiana University ("IU"), effective July 1, 2023. This legislation was unexpectedly introduced in February, 2023 and adopted by both State legislative chambers and signed into law (IN 21.20.6) by the Indiana Governor in early May, 2023. The law appeared to be based on disturbing and long debunked misinformation about the Kinsey Institute's historical and current research programs. Following these legislative actions, University President Pamela Whitten issued a public statement sharing concern and reiterating that "the university is committed to the ongoing crucial research and robust scholarship conducted by IU faculty and the Kinsey Institute."

The Kinsey Institute does not receive any direct state appropriations. Today's Kinsey Institute supports 10 research laboratory groups and the research programs of 17 core faculty, along with engaging over 75 affiliate faculty, and operating the Library & Special Collections which contains over 650,000 items and in 2023 fielded over 9,000 user service requests and conducted over 440 class visits and tours. IU senior leadership have indicated their intention to continue to support the Kinsey Institute, and to provide direct and indirect support using non-state appropriation funding. In order to accomplish this shared goal, a careful accounting and audit plan is required to assure complete compliance with the new state law. As part of IU's compliance plan to the new law, a general proposal to initiate the process of creating a separate 501(c)(3) nonprofit corporation was presented by IU senior leadership to the IU Board of Trustees during its meeting on November 10, 2023. However, the proposal was met with broad criticism by the IU community and multiple professional organizations due to concerns that IU was not sufficiently defending and protecting the Kinsey Institute as it had in the past and as it explicitly agreed to as part of a 2016 merger agreement to absorb all Kinsey Institute activity and assets. Moreover, multiple donors informed the Kinsey Institute and the IU Foundation that they are putting substantial philanthropic commitments on hold in light of the proposal. In response to public concerns, IU posted a FAQ page with responses to common questions. The IU Board of Trustees decided to postpone a decision until its next meeting February 29 to March 1, 2024, and requested additional information. At that time, IU Board Chair W. Quinn Buckner stated "I'm thankful to IU faculty and other members of the IU community who have come forward on behalf of the Kinsey Institute. We, the board, alongside President Whitten, share your pride and passion in the Kinsey Institute as a beacon of academic freedom at Indiana University."

A Kinsey Institute Special Working Group ("Working Group") was then appointed to offer insight and guidance in complying with the new law. At the Working Group's first meeting on December 11, 2023, Provost Rahul Shrivastav and General Counsel Anthony Prather reviewed the Working Group's responsibilities, which included collecting constituents' key concerns and questions related to the State's funding restriction, as well as providing input regarding additional proposals that would be submitted to the IU Board at its next meeting.

The Working Group was never provided with a copy of the original proposal presented to the IU Board. It is generally believed, however, that the proposal consisted of separating the Kinsey Institute into a 501(c)(3) nonprofit corporation (i) to be controlled by university administration as its Board of Directors; (ii) to allow IU to maintain ownership of all Kinsey Institute Library & Special Collections materials and assets, which were transferred from the Kinsey Institute to Indiana University as part of a 2016 merger agreement; (iii) to hold Kinsey Institute administrative staff; and (iv) to locate administrative personnel in a property outside Lindley Hall (current Kinsey Institute location), possibly owned by the IU Foundation.

Listening Sessions and Key Concerns

The Office of the Provost & Executive Vice President coordinated three in-person "listening sessions" for IU Bloomington faculty, staff, and students that took place on January 17, 18, and 19, 2024 on campus; allotted attendance capacity was reached for all sessions (registration numbers were 30, 60, 51, respectively). A fourth virtual listening session for donors took place on February 2, 2024 (60 invitees registered). Additionally, a discussion took place with Provost Shrivastav and Vice Provost Aimee Heeter, Kinsey Institute leadership, and the Kinsey Institute International Advisory Council on January 26, 2024. A summary of the key concerns and questions from the listening sessions was prepared and is attached as *Exhibit A*. General themes of concerns raised in the listening sessions were: process and the need for more transparency; protecting academic freedom; recruitment and retention of talented faculty, professional staff, and students; preserving the unique Library & Special

Collections; personnel safety and wellbeing; combating dangerous and defamatory misinformation; advancement and donor engagement.

The Working Group also reviewed the content of all known letters submitted by individuals, departments, and professional organizations in support of the Kinsey Institute and reviewed comments on a change.org petition to protect the Kinsey Institute that garnered approximately 10,000 signatures within a week; the Working Group also evaluated the limited anti-Kinsey coverage, including social media posts by an antigovernment group that took responsibility for lobbying for the legislation, and an ipetition to stop the Kinsey Institute that garnered approximately 300 signatures.

Last, the Working Group reviewed the considerable local and national news coverage initially surrounding this legislation and subsequently surrounding IU's proposed response. We understand that several news outlets are awaiting further developments.

The Working Group found much concern expressed regarding ongoing misinformation related to Dr. Kinsey and the Kinsey Institute, and the impact of harassment, defamation, and intimidation to the professional careers and the physical and psychological safety of Kinsey Institute faculty, staff, and students, as well as of the IU LGBTQ+ community. While IU has not publicly addressed the misinformation, the Provost's Office has taken safety needs seriously and facilitated additional physical security measures in and around Lindley Hall, including additional keycard access and interior/exterior cameras.

Letter writers and listening session attendees represented the interests of IU leadership, faculty, staff, students, grant funders, philanthropic donors, business partners, professional associates, and the media. The overall sentiment expressed and shared by all constituents, outside those expressed through the votes of the Indiana General Assembly, is that the Kinsey Institute is a treasured part of IU that enhances IU's global reputation, and that it is crucial for the University leadership to express support for it. Many appreciated public statements of support made by university leadership – including by the Provost and President – to express commitments to the ongoing work of the Kinsey Institute.

Many listening session attendees and letter writers wished to remind decision makers of the long and proud history of IU defending Dr. Alfred Kinsey and the Kinsey Institute, and shared concern over what appears to be a new distancing from the Kinsey Institute, possibly based on misinformation and lobbying by anti-Kinsey groups. Constituents requested clarity on IU's core mission and values related to academic freedom.

The Working Group identified considerable confusion and concern around the proposed 501(c)(3) nonprofit structure. The initial proposal is believed to have focused on a so-called agency or component 501(c)(3), similar in structure to a shell corporation of IU rather than as a bona fide separate corporation. Prior to 2016, the Kinsey Institute existed as a separate nonprofit with a special partnership relationship to IU. The original nonprofit status was developed in 1947 by Dr. Kinsey, IU President Herman B Wells, and the Rockefeller Foundation as the initial funder of the then-named Institute for Sex Research, in order to (i) protect confidentiality of the research data and research participants; (ii) protect the growing Kinsey Institute Library & Special Collections; (iii) allow the Kinsey Institute to be moveable in the event the State of Indiana or Indiana University ever became too inhospitable of an environment to continue the Institute's work. The Kinsey Institute's core faculty were the original Trustees, but many years later evolved to a separate governance layer of "members" that held responsibility for approving Trustee appointments. This Working Group and other experts understand that prior to 2016 the Kinsey Institute existed as a separate nonprofit entity, not fully controlled or owned by IU but with a complex governance structure and with considerable financial and infrastructure support from IU. Throughout its history, the Kinsey Institute has been housed and operated on the IU Bloomington campus. It is also understood that the Kinsey Institute's current financial support from grants, contracts, and philanthropy including restricted endowments are not sufficient for the Institute to operate as an entirely independent organization without the support of Indiana University and/or Indiana University Foundation. Many constituents highlighted additional vulnerabilities that a 501(c)(3) structure might introduce, and suggested that if a 501(c)(3) was required by law that a truly independent nonprofit that owned its own assets, and with an external board not controlled by IU and that had ability to relocate the Kinsey Institute if Indiana become too inhospitable, would be preferable. Constituents repeatedly noted that it remains unclear what, if any, protections an agency/component 501(c)(3) would provide to the Kinsey Institute. Many constituents expressed concern that an agency/component 501(c)(3) may not insulate the Kinsey Institute from continued external attack nor allow the Kinsey Institute the potential for independence and mobility (as it presumably once had).

Many Indiana University and Kinsey Institute constituents – including IU faculty, staff, graduate and undergraduate students, donors, alum, the international research community, and partner professional organizations – expressed extreme dismay, concern, and anger over the new law and encouraged IU to continue it's nearly 80-year history of proudly defending and protecting the Kinsey Institute's research and education programs, including defense in federal court.

Working Group Recommendations

The Working Group reiterates statements and intentions of support from President Whitten, Provost Shrivastav, and IU Board Chair W. Quinn Buckner, and foremost recommends that strong efforts be taken to protect and preserve the Kinsey Institute's success in research, education, and historical preservation. IU and the Kinsey Institute have been made better by each other.

The Working Group is comprised of leaders with diverse expertise and IU responsibilities. The Working Group sought to understand and reconcile the concomitant academic, financial, political, legal, philanthropic, and communications factors related to widespread concerns following the new Indiana law targeting the Kinsey Institute, and aimed to apply this holistic view to potential solutions for IU leadership, including the IU Board, to consider. In particular, the Working Group recognizes that the new law has created a challenge for IU and that all potential solutions entail nuanced considerations. The recommendations that follow reflect a broad majority consensus of the Working Group, although it is important to note in some cases individual views varied.

Many concerns were raised related to any potential separation. While there may be strategic and political reasons outside the purview of this Working Group, we caution that any separation at this time, absent ownership of assets, is likely to be a charged and heavily criticized decision. Furthermore, any plans for a 501(c)(3) should carefully consider ultimate oversight, and all direct and indirect support including from the IU Foundation. If a separate 501(c)(3) were installed to establish an independent entity, we presume that university policies and procedures surrounding faculty governance and the protection of academic freedom would not necessarily apply, potentially creating risk and vulnerability given the Kinsey Institute's renowned research on human sexuality including topics that some consider taboo. If the 501(c)(3) were a component/agency, controlled by IU but removed from governance procedures and typical institutional protections, this structure has the potential to introduce further risk from hostile legislators or future administrators to the survival, success, and longevity of the Kinsey Institute. If a separate 501(c)(3) were pursued, it is advisable to establish clear and transparent communication with all Kinsey Institute constituents that addresses the concerns raised in letters and listening sessions, including over ownership of brands, assets, and collections; the independence of a governing board; principles of academic freedom; donor intent; potential for mobility; and plans to secure an endowment through philanthropy to steward Kinsey Institute programs and assets into the future.

As we approach a full calendar year from the time the legislation was introduced and approved by the Indiana House, the associated risks are compounded by the fact that an overall strategic plan to address the legislation has not been finalized. Based on information and concerns shared, there appear to be several areas to mitigate risks to IU and to the Kinsey Institute while supporting safety and continued research excellence. Noted opportunities include:

- Communications & Marketing strategy to defend academic freedom and to counter misinformation about Dr. Kinsey and the Kinsey Institute that continues to circulate;

- Government Relations strategy to educate IU's external relations personnel, IU leadership, and the Indiana legislative body on the valuable work of the Kinsey Institute, including on topics like sexual violence and rape prevention;
- Facilities implementation of recommended additional physical security measures;
- Development plans to initiate a fundraising campaign to increase the financial independence of the Kinsey Institute.

A strategic financial plan involving the collaboration of multiple offices is required to address the new law. The Working Group considered two conceptual financial solutions. The first, would require an entirely new permanent source of non-state appropriation funds to replace all direct and indirect costs of the Kinsey Institute (e.g., endowment income); this would require identification of substantial new funding. This may pose a considerable challenge to IU at this time. If sufficient philanthropic support for the Kinsey Institute can be fundraised, this is a viable and stable long-term financial solution. The second solution which addresses immediate needs, and is not necessarily in conflict with identifying new source funds, would be an accounting solution to trace funds flow, identify all relevant direct and indirect costs and clearly isolate non-state appropriation funds. At the suggestion of the Working Group, the three members who are certified public accountants (Associate Vice President and University Controller; Kinsey Institute Sr Associate Director for Operations and Finance; retired Partner of Jones Day & IU Foundation Board Director) met as a subcommittee and developed a proposed accounting solution to mitigate future audit risk; the accounting solution was then shared with the Vice Provost for Finance & Administration and with the Executive Director of the Kinsey Institute. Generally, under the proposed accounting solution, all direct costs of the Kinsey Institute and an assessment of all indirect costs would be funded by an alternative non-state appropriation revenue source, separately identified and accounted for using the university's general ledger. See *Exhibit B* for details of the proposed accounting solution. This proposed accounting solution has been preliminarily reviewed by the university's external auditors, who have concurred with it as a reasonable approach to mitigate audit risk.

This new law targeting a single research institute at IU will require unique accounting and budgetary solutions. The Working Group recommends an institutional solution, given the gravity of the decision at large. If the accounting solution is pursued, a detailed plan for implementation must be collaboratively developed and follow (see *Exhibit B*). The proposed accounting solution does not necessarily introduce new costs to the university. However, it would necessitate unique budgeting practices, additional accounting entries, and thorough documentation of the funds flow processes. It is possible this could entail some additional cost, although additional costs have not been identified at this time. An accounting solution is necessary for compliance regardless of presence or absence of a 501(c)(3). Any separate 501(c)(3) would introduce significant additional costs to meet compliance requirements (i.e., separate accounting systems, independent audit, tax reporting requirements, additional infrastructure and management).

Constituents expressed a desire for the Kinsey Institute to not have to change current operations, mission, structure, or to be relocated from Lindley Hall. IU's ultimate solution may wish to avoid, unless absolutely necessary, the volatile issue of the ownership of the Kinsey Institute Library & Special Collections under a separate 501(c)(3). Additional study and expertise are needed to guide continued consideration of a separate 501(c)(3).

It is the recommendation of this Working Group that:

1. **IU proceed with an accounting solution to address compliance and mitigate audit risk.**
2. **Postpone further examination of a separate 501(c)(3), at least until after the first audit review and start of the new fiscal year.**
3. **Address continued concerns related to misinformation and safety of Kinsey Institute faculty, staff, and students.**
4. **Support development and fundraising efforts to grow the Kinsey Institute's endowment as a source of perpetual private financial support.**

<u>Attachments:</u>

Two additional documents are attached to this Executive Summary and Recommendations, providing specific and detailed information compiled by the Working Group which should be considered in the continued decision-making of this matter.

<u>Exhibit A</u>: Synthesis of Listening Sessions

<u>Exhibit B</u>: Proposed Kinsey Institute Accounting Solution

<u>Kinsey Institute Special Working Group:</u>

Submitted on behalf of the Kinsey Institute Special Working Group:

- Justin Garcia, Executive Director and Senior Scientist, Kinsey Institute; Ruth N. Halls Professor, Gender Studies; Co-Chair, Interdepartmental Graduate Committee on Human Sexuality (*co-chair*)
- Aimee Heeter, Vice Provost for Finance & Administration (*co-chair*)[1]

[1] Co-Chair Aimee Heeter recused herself from final deliberations on recommendations given that in her role as Vice Provost for Finance and Administration she will be responsible for implementing financial decisions made by the IU Board of Trustees.

- Anna Jensen, Associate Vice President and University Controller
- Peggy Maschino, Sr Associate Director for Operations and Finance, Kinsey Institute
- Daniel Morris, Associate Vice President of Development, Arts and Culture, IU Foundation
- Stephanie Sanders, Provost Professor, Peg Zeglin Brand Endowed Chair, and Dept Chair, Gender Studies; Research Director and Senior Scientist, Kinsey Institute
- April Sellers, Pam Meyer Yttri Director, Kinsey-Kelley Center for Gender Equity in Business; Clinical Professor, Business Law and Ethics, Kelley School of Business
- Mike Shumate, retired Partner, Jones Day (NYC); Member, IU Foundation Board of Directors; Member, Kinsey Institute International Advisory Council
- Liana Zhou, Director of Library & Special Collections, and Head Librarian, Kinsey Institute
- Deborah Kremer, Director of Strategic Initiatives, IU Bloomington Office of Finance, Administration and Budget (*ex officio* member)

KINSEY INSTITUTE SPECIAL WORKING GROUP

EXHIBIT A

Synthesis of Listening Sessions

The Special Working Group was appointed to offer insight and guidance in complying with the new law precluding the use of State appropriation funds to support the Kinsey Institute. The Office of Provost & Executive Vice President coordinated three “listening sessions” for IU Bloomington faculty, staff, and students. A fourth virtual listening session was also coordinated for donors. This document synthesizes the concerns and questions from those four listening sessions. It also incorporates concerns and questions expressed through a number of emails, letters, petitions, news articles, and other communications. Attached is a copy of a condensed transcription of the actual comments from the four listening sessions.

Foremost, two general sentiments prevailed: (i) A deep desire to protect and celebrate the Kinsey Institute and its associated faculty, staff, and students; (ii) A concern and criticism that a separate 501(c)(3) gives the appearance that IU is trying to distance itself from the Kinsey Institute, which would severely undermine academic freedom and damage IU’s reputation. More specific concerns and questions follow.

Process

A large number of stakeholders requested that IU:

1. provide greater transparency in the decision-making process related to the options being considered to ensure compliance with the new law;
2. provide better communication and more opportunities for wider input related to operational decisions that will affect the work of the Kinsey Institute, including its governance, research and educational operations, administration, and Library & Special Collections;
3. use an accounting solution to address an accounting problem;
4. be more explicit about the rationale for, and benefits of, creating a 501(c)(3), including possible protections against financial and legal risks;
5. grant additional time for a full consideration of a 501(c)(3);
6. include the Executive Director of the Kinsey Institute, Dr. Justin Garcia, in the deliberations to ensure a complete and accurate representation of the Kinsey

Institute's history and mission and of the risks and benefits of various proposed solutions to both IU and the Kinsey Institute;

7. provide opportunities for additional constituencies to provide comment related to the process and potential solutions (the Kinsey Institute's work is exceedingly important to a much larger community than just those with relationships to IU, who benefit from the Kinsey Institute's research and education).

Academic Freedom and Institutional Reputation

Another frequent sentiment was the perceived erosion of institutional advocacy and protection of academic freedom. Stakeholders expect assurance that IU will:

1. stand firmly in support of academic freedom and the mission of the Kinsey Institute;
2. not prioritize political trends and pressures over the core values of a world-class research institute;
3. consider the optics alone that already have been damaging to IU and have been seen by some as an affront to scholarship;
4. recognize and fully consider the potential impact of its ultimate decision in light of:
   a. the stellar performance of the Kinsey Institute faculty and researchers (the Kinsey Institute's 19 core faculty, 75+ affiliated faculty, many students and postdocs) and its favorable impact in securing external grants and enhancing the global reputation of IU and the Kinsey Institute;
   b. any perceived notion of separating the Kinsey Institute from IU will have adverse consequences in future philanthropic efforts for the Kinsey Institute, and possibly IU (a recent $5 million NIH grant awarded to IU received perfect scores from reviewers, each of whom commented about the value of the Kinsey Institute partnership with IU); and
   c. IU faculty believe how IU responds to the current situation reflects how IU will protect and defend them under similar attacks in the future.

IU's Ability to Attract and Retain Faculty and Students

Stakeholders expressed concern that any change in the IU and Kinsey Institute relationship could adversely affect faculty and student (particularly graduate student) recruitment and retention. Stakeholders commented that the Kinsey Institute is not only viewed favorably in recruiting but often is decisive in favor of IU, especially when students or faculty are hesitant to move to the rural Midwest, where we risk perception of "cultural backwaters." Additionally, it was emphasized that the Kinsey Institute is a beacon for marginalized groups, such as the LGTBQ+ community, and for academic freedom, firmly established by Dr. Wells. Related points included:

1. appearance of IU not fully supporting, or distancing itself from the Kinsey Institute, is detrimental to IU and the Kinsey Institute in countless ways;
2. even for faculty not in a related field, the Kinsey Institute represents intellectual freedom and integrity, is a source of pride for IU faculty and is deemed one of the "gems of the university";
3. many international colleagues know IU because of the Kinsey Institute global reputation as the leading research institute for human sexuality in the world;
4. the Kinsey Institute helps students, particularly queer students, to feel comfortable and welcomed at IU;
5. many come to IU because the Kinsey Institute allows them to pursue their aspirations in an environment not readily available elsewhere;
6. proposed 501(c)(3) would separate, structurally and physically, the administration, communications, and development staff from the rest of the Kinsey Institute, would diminish the cohesiveness of the scholarly community, would isolate off-campus staff, would disrupt the Kinsey Institute's research and educational mission and, consequently, weaken Institute and research enterprise.

Kinsey Institute Library & Special Collections

The Kinsey Institute Library & Special Collections represent the world's largest, internationally-renowned, research collections in the multi-disciplinary field of sexuality, attracting students, scholars and researchers with expansive and unmatched holdings. Many stakeholders emphasized the necessity to continue maintaining the inseparable link between the Kinsey Institute scientific research, education programs, and the Kinsey Institute Library & Special Collections. Separating the Collections from the rest of the Kinsey Institute, or breaking up the Kinsey Institute Library & Special Collections, would severely diminish its cultural, historical, research and monetary value and weaken its stature as a unique, world-renowned research collection. Stakeholders had concerns and questions related to leaving ownership of the Kinsey Institute Library & Special Collections at IU under the 501(c)(3) proposal. Many believed the Kinsey Institute Collections would be at higher risk of future, additional attacks by the Indiana legislature under such a proposal. Concerns were raised about whether the "donor intent" of those who contributed to the Kinsey Institute Collections was aligned with the proposed ownership structure; many donors intended their philanthropic gifts in kind to be vested by the Kinsey Institute, not IU. The Kinsey Institute Library & Special Collections staff expertly archive and curate materials that might otherwise be dispersed in a university library system (i.e., art goes with art collections, digital media is housed with digital resources, etc.) to meet the wide range of needs of researchers and educators. The programmatic, academic, and research potential would be greatly diminished if the Kinsey Institute Library & Special Collection were separated in any way from the Kinsey Institute experts. Stakeholders want assurances that IU will protect, preserve, and provide appropriate access to the Kinsey Institute Library & Special Collections by scholars, regardless of final decisions related to structure. In different words many expressed that the Kinsey Institute Library & Special Collections:

1. are an extraordinarily important recruiting tool for faculty and scholars in a wide range of disciplines;
2. hold research assets that cannot be found anywhere else in the world, including books, films, archives from prominent scholars and scholarly organizations, personal life accounts, unpublished manuscripts, and one-of-a-kind art and artifacts collections, including Japanese wood-block prints and yet-to-be cataloged materials;
3. comprise vast research assets that provide materials and inspiration for research and education for IU faculty and students and visiting scholars from around the world that cannot be done anywhere else;
4. are a “living” collection that needs to be managed by librarians, curators, and archivists with specialized knowledge in the area of sexuality who understand the breadth, depth and integration of all aspects of the Kinsey Institute Collections;
5. hold many materials donated by scholars who were concerned their institutions would not protect and preserve the materials;
6. are entrusted with materials donated specifically to Kinsey Institute, not IU, because the donors believed Kinsey Institute would protect and preserve their donated materials for scholarly research and would protect the confidentiality and privacy of the donors;
7. provide historicized, contextualized, interdisciplinary and mixed media materials to researchers.

Personnel Safety

Stakeholders, especially Kinsey Institute faculty, staff, and students, are extremely concerned about the possibility of moving some Kinsey Institute functions off-campus, or to an obscure location on/near campus, under the 501(c)(3) proposal. More specifically:

1. Kinsey Institute employees including faculty, staff, and students have been horribly harassed, defamed and demeaned, physically threatened, verbally abused, doxed, and stalked;
2. Lindley Hall provides a reasonable level of security and sense of safety being in the center of campus and with the extensive security measures that were embedded in the building just for the Kinsey Institute. The co-location of Kinsey Institute personnel and functions at Lindley Hall, which also houses the Department of Gender Studies, and other offices and classrooms, provides an additional sense of protection;
3. an off-campus facility feels very unsafe to those needing or wanting access. Some Kinsey Institute employees said they would feel the need to work remotely, or leave their positions, given the additional level of personal risk. The relative group size of recent anti-Kinsey protests could fully surround some of the small houses proposed as potential headquarters for a Kinsey Institute 501(c)(3) function.

Misinformation

Stakeholders urged IU to defend aggressively the misinformation accusing Dr. Kinsey and the current Kinsey Institute being “full of perverts and pedophiles”. The comments can be summarized as follows:

1. not refuting these defamatory claims increases the harm to professional reputation and the risk to personal safety, and undermines the Kinsey Institute in all respects;
2. the perceived lack of support for the Kinsey Institute from IU leadership decreases the employees’ sense of personal safety and lessens morale and respect for IU;
3. non-affiliated Kinsey Institute stakeholders (e.g., marginalized persons, faculty concerned about their academic freedom) voiced concern that attacks on the Kinsey Institute and Dr. Kinsey make them feel less safe on campus. The institutional response of addressing safety concerns by posting armed personnel only aggravates the anxiety and sense of personal vulnerability for some;
4. rampant misinformation has already begun to affect Kinsey Institute faculty research. One internationally prominent Kinsey Institute faculty reported that in a recent online survey some potential participants responded they didn’t want to participate in her studies because “Kinsey is full of perverts” and they were not comfortable sharing their data. The lack of a full-throated institutional defense of the work of the Kinsey Institute is affecting her ability to do her research and to recruit students. She is deeply concerned about the impact on her research career and the impact on future researchers if IU will not step forward to support their research. She concluded that if she were on the market now, she would not feel confident in IU’s commitment to protect her, her students, or her research and would, therefore, not come to IU.

5. IU leadership seems to defend lack of refuting misinformation and what constituents call their professional and moral responsibility by suggesting press releases to combat misinformation won't be effective, but provide no alternatives that would be effective and instead self-justify saying and doing nothing.

Advancement and Engagement

Underlying many of the expressed concerns and questions synthesized above was a feeling of distrust in the IU senior administration and process, especially related to the proposed 501(c)(3). This feeling was buttressed by a perceived lack of transparency. Many expressed these concerns in terms of philanthropy as:

1. uncertainty and lack of trust felt by Kinsey Institute affiliated friends, donors, and alumni will have long-term repercussions for development. Donors want firm assurances that their intentions will be honored, their assets will be protected and stewarded, and the value of the assets will serve the Kinsey Institute into perpetuity;
2. donors have entrusted their philanthropy to the Kinsey Institute specifically;
3. the Kinsey Institute Library & Special Collections have grown in size and value because so many scholars, organizations and individuals from the general population believed their home academic institutions, families or estates would not provide the protection and stewardship for their materials that the Kinsey Institute could and would.

EXHIBIT B

Proposed Kinsey Institute Accounting Solution

The passage of IN 21.20.6 has necessitated the development of an accounting solution for Fiscal Year 2024 to address the accounting compliance and related audit risk regarding the Kinsey Institute's funding sources. The following proposed accounting solution does not presume a legal position. Any recommendation regarding the establishment of a separate legal entity would be deferred to the expertise of Indiana University's General Counsel and outside counsel with relevant nonprofit expertise. Furthermore, the proposed accounting solution does not necessitate, preclude nor discourage the establishment of an alternate entity structure, such as a 501(c)(3). This proposal has been developed with the intent to mitigate audit risk in accordance with the recent legislative change. The following has been preliminarily reviewed by the university's audit firm who concurred with the reasonableness of the proposed accounting solution.

Summary of Proposed Accounting Solution:

In the event of an audit, the university would be required to produce documented evidence of compliance to satisfy the terms of IN 21.20.6. As such, the university's audit firm may be requested to provide assurance, which would likely be issued in the form of an "in relation to" opinion. This type of audit opinion would attest to whether the supplemental information, as it pertains to the Kinsey Institute's financial activity, is fairly stated in all material respects in relation to the university's financial statements as a whole and in compliance with the required regulation.

The proposed accounting solution would require the preparation of a fully-costed, accrual-based Kinsey Institute income statement and balance sheet that are auditable and supported by source documentation. As is prescribed by accounting principles, the proposed solution would follow Generally Accepted Accounting Principles (GAAP) and would ensure that the Kinsey Institute financial statements are accurate, complete, and consistent in all material respects. Furthermore, all Kinsey Institute related revenue and costs would be separately budgeted and accounted for in the university's general ledger, similar to the process associated with sponsored awards.

Source documentation for related financial activity would be maintained and available for all original transactions, as well as any accounting methodology agreed upon between the university and its external auditors. This would include the determination of direct and indirect cost classifications, as well as the subsequent assignment and/or allocation of any indirect costs. The methodology described above is possible today using the university's general ledger, as the Kinsey Institute has already been established as a separately defined accounting organization within the university's chart of accounts.

Accounting for Costs:

Utilizing the university's general ledger, the proposed accounting solution would separately identify, budget and account for all direct costs of the Kinsey Institute (supported by source documentation, including contractual obligations), as well as all indirect costs. Indirect costs would be assessed as a charge (expense) to the Kinsey Institute organization within the general ledger and returned to the IU Bloomington Campus (revenue), which would in turn be used to support the university's indirect and administrative functions.

The proposed accounting solution recommends using the university's current federally negotiated Indirect Cost Rate (currently 58.5%) as an assessment for the Kinsey Institute's indirect costs. Under the *conservatism principle* of accounting, it is proposed that the indirect cost rate be charged to all Kinsey Institute direct costs on <u>all funds,</u> with the exception of sponsored contract and grant activity, which is already charged an indirect cost rate.

The Kinsey Institute Special Working Group accounting sub-committee has reviewed the enacted legislation to ensure that all indirect costs are either accounted for within the university's federally negotiated rate or could be separately identified and allocated. Any indirect costs specified in the legislation which are not included in the university's indirect cost rate, would be separately allocated and accounted for using a methodology agreed upon by the university's external audit firm.

Accounting for Revenue:

Approximately 30% of the Kinsey Institute's fully costed expenses (including F&A rate for indirect costs) today are supported through external sources, including private donor funds, auxiliary enterprise income, and sponsored research funding. For those costs, both direct and indirect, that are <u>not</u> currently supported by external funds, the university and IU Bloomington Campus would collaboratively identify an explicit alternative (non-State Appropriation) funding source (e.g. interest income, IU unrestricted endowment income, indirect cost recovery, IU Foundation funds), which could be used to support all remaining Kinsey Institute direct and indirect costs. This non-State appropriation revenue source would be separately identified and accounted for annually and recorded as revenue directly to the Kinsey Institute organization within the university's general ledger. Any previous internal sources of Kinsey Institute support (e.g., General Funds) that could contain State appropriations would be returned to the Campus for alternate use and would no longer be required to fund the Kinsey Institute's direct or indirect costs. This approach implies a cost neutral solution to the university as a whole. This approach also implies the establishment of a unique budgetary structure and procedures, specifically for the Kinsey Institute in order to accommodate the unique new law. While an alternate source of revenue would be required to be identified, total costs are expected to remain constant, whereby only the methodology of accounting for those costs would change.

The accounting approach requires an institutional solution, with a detailed plan for implementation that must be collectively developed between the Office of the Provost & Executive Vice President; Office of the Executive Vice President for Finance and Administration; the Kinsey Institute; the IU Bloomington Office of Finance, Administration & Budget; Office of the University Controller; and the Office of the Vice President for Research. Where applicable, Deans of Schools and other IU leadership should be consulted in reviewing and approving new processes. Necessary next steps would include:

- The adjustment of internal budgets to align all Kinsey Institute researchers with their respective effort on departmental and Kinsey Institute organization accounts.
- The documentation of the precise expected funds flow, cost determinations, and any relevant assessments or allocations.
- The determination of the revenue source(s) of non-state appropriation funds to be used as Kinsey Institute funding.
- The accounting solution is expected to be cost neutral for the university, as a whole. Existing fund sources would be repurposed for alternate use. (i.e. a current source of funds that may include state appropriation dollars would be replaced with an alternate source of funds that is verified to explicitly exclude state appropriation dollars).

Conclusion:

The university has developed a proposed accounting solution for the Kinsey Institute transactional fiscal activity (direct and indirect) beginning July 1, 2023, the effective date of the legislation, to mitigate Fiscal Year 2024 audit risk related to IN 21.20.6. This proposed accounting solution has been preemptively reviewed by the university's external auditors. In initial discussions, the firm has expressed confidence in being able to provide assurance, if requested, as to the university's audit compliance, assuming the details of the methodology above are agreed upon, auditable, and tested.

In summary, the university would prepare a fully-costed, accrual-based Kinsey Institute income statement and balance sheet which would account for all direct and indirect costs of the organization. The proposed accounting methodology would employ the university's existing general ledger and chart of accounts to separately identify, budget and account for all Kinsey Institute costs and related revenue. Upon request, the university would supply the State and or the university's external auditors with the Kinsey Institute supplementary financial statements, accompanying documentation outlining the agreed upon approach, the basis for any cost allocations, original transaction substantiation, as well as documented rationale for the use of the university's federal indirect cost rate as an assessment for determining indirect administrative and facilities costs. A detailed analysis of the Kinsey Institute's costs, which applies the described methodology above, has been prepared by the Kinsey Institute's Sr Associate Director for Operations and Finance.

Additional Considerations:

In the event Indiana University determines that a separate legal entity (e.g. 501(c)(3)) is to be created, an alternative accounting approach would be developed to mitigate audit risk in conjunction with the university's external auditor firm. An alternative accounting approach would be required from the date of inception of the new organization.

In consideration of the separate entity approach, it is worth reviewing the GASB standards related to potential component units, which require the reporting of certain related entities as either blended or discretely presented component units of the university's financial statements. In the event a separate 501(c)(3) is created, the financial activity of the separate entity may still be required to be reported with the university's consolidated financial statements under the umbrella of the university audit. See table below for related GASB information, with particular attention to GASB 39:

Statement No.	***Statement Name***	***Description/Topics***	***Amended By***
14	The Financial Reporting Entity	• Financial reporting entity • Primary government • Component units	GASBS 34, 35, 39, 61, 63, 72, 80, 84, 90, 97
34	Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments	• Financial statements • MD&A • Disclosures	GASBS 35, 61, 63, 72, 84, 85
35	Basic Financial Statements – and Management's Discussion and Analysis – for Public Colleges and Universities	Financial statements & related reporting for public colleges and universities	

39	Determining Whether Certain Organizations Are Component Units – an amendment of GASBS No. 14	Additional guidance on the assessment of potential component units	GASBS 63
61	The Financial Reporting Entity: Omnibus – an amendment of GASBS No. 14 and No. 34	Modifies requirements (e.g. blending and misleading to exclude) for the assessment of potential component units	GASBS 63, 72, 84, 85, 90
63	Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position	Reporting guidance for deferred outflows and deferred inflows of resources	
72	Fair Value Measurement and Application	Accounting and financial reporting for fair values measurements	GASBS 84, 90
80	Blending Requirements for Component Units – an amendment of GABS No. 14	Amends blending requirements for component units	
84	Fiduciary Activities	Guidance/criteria for reporting fiduciary component units	GASBS 97
85	Omnibus 2017	Blending component unit financial statement presentation	
90	Majority Equity Interests – an amendment of GASBS No. 14 and No. 61	Improve reporting of majority equity interest in legally separate organizations	
97	Certain Component Unit Criteria, and Accounting and Financial Reporting for IRC § 457 Deferred Compensation Plans – an amendment of GASBS No. 14 and No. 84, and a suppression of GASBS No. 32	Fiduciary component units for potential component units that do not have a governing board	