

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

AMERICAN CIVIL LIBERTIES UNION of
LOUISIANA,

Plaintiff,

v.

GOVERNOR M.J. FOSTER and DAN RICHEY,

Defendants.

CIVIL ACTION NO.: 02-1440

SECTION: "T"

MAG. "4"

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR CIVIL CONTEMPT**

In May 2002, the American Civil Liberties Union of Louisiana ("ACLU") sued the Governor of Louisiana and the director of the Louisiana Governor's Program on Abstinence ("GPA") for disbursing federal funds in a manner that advances religion. In its order granting a preliminary injunction, dated July 24, 2002, this Court found that Defendants were disbursing taxpayer dollars in that manner and ordered the GPA to take various measures to ensure that religion is no longer promoted in GPA-funded events or materials. Subsequently, the parties entered into a settlement agreement whereby Defendants agreed to take those and other related measures in exchange for Plaintiff's agreement to drop the lawsuit. On December 18, 2002, the Court issued an order of

dismissal (the “Order”) incorporating by reference the terms of the Settlement Agreement and giving the Court continued jurisdiction to supervise and enforce those terms.

Less than two years after the Order’s entry, Defendants are again using public dollars to promote religion. A recent review of the GPA’s website, AbstinenceEdu.com, reveals countless violations of this Court’s Order. Plaintiff accordingly seeks a finding of civil contempt; an order directing Defendants to cease and desist from conveying religious messages on the GPA’s AbstinenceEdu.com website; attorneys’ fees, costs, and expenses; and any other relief this Court deems appropriate and necessary to ensure compliance with its Order.

PROCEDURAL HISTORY

In May 2002, the ACLU sued the Governor of Louisiana and the head of the Louisiana Governor’s Program on Abstinence in their official capacities for Establishment Clause violations in Louisiana’s federally-funded Governor’s Program on Abstinence (“GPA”).¹ In its order granting Plaintiff’s request for a preliminary injunction, this Court found that GPA funds were being used for materials containing “an explicitly religious content” and activities “designed to inculcate the views of a particular religious faith” in violation of the Establishment Clause. *See* Ex. 1 at 11 (Preliminary Injunction Order, dated July 24, 2002). For instance, the Court found that GPA funds were being used by:

- the Diocese of Lafayette to fund prayer at abortion clinics as well as a chastity program entitled “God’s Gift of Life,” *see* Ex. 1 at 7;

¹ At the time the lawsuit was filed, M. J. Foster served as Governor of Louisiana and Dan Richey served as the head of the GPA. Those positions are now filled by Kathleen Blanco and Gail Dignam, respectively. That change is of no real moment to this litigation, as Defendants were sued in their official capacities. *See* Fed. R. Civ. P. 25(d).

- Rapides Station Community Ministries to fund instruction on “the virgin birth” and “God’s desire [for] sexual purity as a way of life,” as well as a back-to-school revival, *id.* at 7-8; and
- Patricia Reeves to fund a theatre group performing abstinence skits with religious content, including a skit in which a character named “Bible guy” states: “As Christians, our bodies belong to the Lord, not to us. God wants more for you than a one-night stand. We belong to Him and He has plans for us that go beyond Saturday night,” *id.* at 10.

Based on these and other violations, the Court ordered the GPA, *inter alia*,

to cease and desist from disbursing GPA funds to organizations or individuals that convey religious messages or otherwise advance religion in any way in the course of any event supported in whole or in part by GPA funds, or in any document or other resource that is produced and/or distributed in whole or in part using GPA funds.

Id. at 15 (Part I).

After the issuance of the preliminary injunction, Plaintiff and Defendants entered into a settlement agreement in November 2002 (“Settlement Agreement”). *See* Ex. 2. The Settlement Agreement incorporates Parts 1, 2, and 3 of the Preliminary Injunction Order. *Id.* at 1. Part 1, quoted above, prohibits the GPA from disbursing GPA funds to organizations or individuals that advance religion in any way. *See* Ex. 1 at 15. The Settlement Agreement also requires the GPA to create an oversight program and to issue written notifications of any Establishment Clause violations. *See* Ex. 2 at 2-6. The Court, in turn, incorporated the terms of the Settlement Agreement into its Order dismissing this case. *See* Ex. 3 at 1 (Amended Order of Dismissal, dated December 18, 2002) (“The Court incorporates into this Order the terms and the conditions of the settlement agreement of the parties.”). The Court also “retain[ed] jurisdiction to enforce the terms and conditions of the settlement agreement of the parties.” *Id.* at 1-2.

Since the entry of the Court's Order, Plaintiff has reviewed the website supported by GPA funds, AbstinenceEdu.com, and discovered numerous violations of Defendants' obligation to refrain from disbursing GPA funds in a manner that advances religion. On November 15, 2004, Plaintiff sent a letter to Defendants' counsel informing them of those violations and advising them that Plaintiff would take further legal action if the offending material were not removed within thirty days. *See* Affidavit of Caroline Mala Corbin ("Corbin Aff."), Ex. A (Letter from Louise Melling to Bruce V. Schewe, dated November 15, 2004). In a letter dated December 9, 2004, Defendants denied that any content on the GPA website violates the Settlement Agreement. *See* Corbin Aff. Ex. B (Letter from J. Terry Ryder to Joe Cook, dated December 9, 2004). As of January 4, 2005, Defendants had not removed any of the offending materials from the GPA website.

FACTUAL BACKGROUND

The GPA disburses funds – \$49,500 for fiscal year 2005 – to contractors to run its official website, AbstinenceEdu.com.² In addition to a section entitled "Louisiana GPA," which provides such information as official GPA contacts and the official GPA calendar of events, the website has four main areas: "News," "Student Coffeehouse," "Library," and "Research." These areas appear in a menu bar across the top of every page on the website. Each of these main areas has several sections accessible via a drop-down menu. For example, the "Research" area includes a "Look it Up" section and an "Ask the

² Until recently, the GPA contracted with the Louisiana Family Forum – whose mission is "to persuasively present biblical principles in the centers of influence" – to develop and manage the AbstinenceEdu.com website. *See, e.g.,* Corbin Aff. Ex. C (Contract agreement between GPA and Louisiana Family Forum); *see also* Louisiana Family Forum, "Our Mission," at <http://www.lafamilyforum.org/>. The GPA now contracts directly with Nancy Victory, the woman who ran the website at Louisiana Family Forum. *See, e.g.,* Corbin Aff. Ex. D (Contract agreement between GPA and Nancy Victory); Ex. E (Resume of Nancy Victory).

Experts” section; the “Student Coffeehouse” area includes “Articles,” “Fresh Start,” “Message Board,” “In Our Own Words,” “Pledge,” “Resources,” and “Links.”

Many of the materials on the GPA’s AbstinenceEdu.com website contain religious content. This is true, for example, of the “expert” advice found in the “Ask the Experts” section. This advice can be found in the “Research” area of the website, and is presented as the place where GPA’s own experts answer questions from website readers:

[W]e don’t have Dr. Laura or Ann Landers on staff, but we do know some counselors who are willing to tackle your toughest questions about relationships – even with your parents. We also know some health care pros who will answer your questions quickly and in plain English. Educators, youth workers – you want ’em – we got ’em. . . . So go ahead. Submit a question. This is the answer place.

See Corbin Aff. Ex. G (Introduction to “Ask the Experts”). The GPA’s self-appointed experts convey religious messages in answer after answer:

- In response to a student asking how she might convince a friend to keep her virginity, the GPA’s expert advised, “Tell your friend that abstaining from sex until entering a loving marriage will give her the freedom to achieve [sic] true self-esteem – to be really, truly, ‘cool’ in God’s eyes as well as yours and mine.” *See Corbin Aff. Ex. H* (“Ask the Experts”).
- In answering another student’s question about her peers’ reaction to her “True Love Waits” pledge of abstinence, the GPA expert wrote: “God will help you to explain what you mean in a way that is different for everyone so that they [sic] can understand it too. He will provide the words, if you let Him. Let Him lead your discussion, and answer the questions of your peers. I know it will be hard and scary to get up in front of you [sic] class and share your commitment, but please know that God is standing beside you the whole way. Have courage and answer the questions as God wants you to.” *See id.*
- An adult asked the GPA expert, “What about people like me (now in my 40’s), and there are many like me, who have no desire to get married . . . Are we supposed to stay abstinent all of our lives?” The GPA’s expert answered: “Why would you want to have a series of monogamous relationships instead of marriage? God’s plan is for us not to be alone, but to have one spouse for life. When you are 55 and have a heart attack or cancer of the colon, which of these many women will be there for you? No one. Your commitment is to

self-indulgence, not to wholly loving a woman – and being loved – as God intended.” *See id.*

Second, numerous articles in the “Student Coffeehouse” area of the website include religious content. In both its “Articles” and “Fresh Start” sections of the “Student Coffeehouse,” the GPA provides a selected list of articles advocating abstinence, as well as a preview of each article and a link to the full article.³ *See* Corbin Aff. Ex. I (article previews found under “Student Coffeehouse: Articles”); Ex. R (article previews found under “Student Coffeehouse: Fresh Start”). The preview is either an excerpt of the article or a summary of the article. The excerpts can run over a hundred words long and are taken from anywhere in the article.⁴ Though the previews are usually free of religious content, the full articles are not. Sometimes the website acknowledges the religious content of its articles with a “faith-based content” tagline above the link to the full article. Below are sample excerpts from articles in the “Articles” section of the “Student Coffeehouse”:

- “After repenting, ask God to forgive you through Jesus Christ. Then ask Him for strength to resist future sexual temptations – because by giving in once, you’ve made it harder to resist the next time. . . . By the way, when you and your girlfriend do pray to God, you should pray separately too.” *See* Corbin Aff. Ex. J (J. Budziszewski, “What if We Love Each Other,” *Boundless Webzine*).
- “*Newlyweds* [a popular reality TV show starring singers Nick Lachey and Jessica Simpson] could be harmful if anyone looks to Nick and Jessica as marriage role models. In fact, very few newlyweds could provide a good example of what it means to be a healthy husband and wife. For Christians,

³ Clicking on the link does not take the reader away from the GPA website. Though clicking on the link opens a new browser window with the full article, the GPA website remains on the screen and is always accessible.

⁴ The GPA contractor managing the website lists “development of website articles” as one of her services provided. *See* Corbin Aff. Ex. F (Monthly Reports submitted by Nancy Victory).

the standard of a lifetime marriage is set in Scriptures like Ephesians 5:22-33, and probably best learned from a much older, much more Christ-like couple in your life.” See Corbin Aff. Ex. K (“A Model Marriage?” *Campus Life*, March/April 2004).

- “This fictional story is an example of how media voices can undermine God’s eternal truth and cause you to stumble. . . . Colossians 2:8 warns, “See to it that no one takes you captive through hollow and deceptive philosophy, which depends on human tradition and the basic principles of this world rather than on Christ.” No one is peddling more hollow and deceptive philosophy than the entertainment industry. And when worldly philosophies and morality masquerade as fun, they can penetrate our hearts virtually unchallenged.” See Corbin Aff. Ex. L (Bob Smithouser, “High Voltage – Why Media Messages Matter,” *Brio Magazine*).
- “[I]t’s one thing to recognize we’re still sinners, another to simply surrender and let sin rule our lives. We can’t meet God’s standard or earn His forgiveness, but as saved people we can discipline ourselves to combat sin on a daily basis; we have a New Man inside us as well as an Old Adam. God has given us the means to fight back, and urges us to focus our attention on the things that will strengthen us – the noble, the pure, the admirable, the praiseworthy (Philippians 4:8). And that’s a lifelong project.” See Corbin Aff. Ex. M (Marshall Allen, “Fighting Sexual Temptation – and Winning,” *Boundless Webzine*).
- “What is not okay? Anything that stirs desire to sin. (That would include just about anything accompanied by moaning.) The standard is spelled out for us in 1 Thessalonians 4:3-8, which tells us not to defraud each other sexually. “Defrauding” is intentionally creating or sustaining a desire that cannot rightfully and righteously be met. . . . God’s standard draws the line at lustful thoughts, requiring moment-by-moment dependence on God’s power and commitment to His Word.” See Corbin Aff. Ex. N (William Cutrer & Sandra Glahn, “How Far Is It OK to Go Before Marriage?” *Focus on the Family’s family.org*).
- “Another secret though that men don’t let out is as simple as it is devastating: ‘There are two kinds of women. Those you have sex with and those you marry’ If you want a virgin wife, you have the best chance of attracting her by keeping your pants zipped up yourself. . . . The Bible tells us that all other sins are outside the body but the man who has sex with a woman who is not his wife sins against himself. God chooses this one sin above all others as the most destructive to your soul and spirit.” See Corbin Aff. Ex. O (Nick Cirimo, “Just for Guys: How to Stay Sexually Pure,” *Family Research Council’s “Ideas & Energy” website*).

- “The great evil (and yes, that’s the right word) of sex outside marriage is that it takes something created to be holy and desecrates it. Sex can’t be separated from God’s order of creation, and when we try to pretend otherwise, we’re trying to make God go away so we can re-order creation to suit our own lusts or other emotional desires. We may try to tell ourselves we’re expressing ‘love.’ But when we seek to slice sex off from the *life* of love – lasting marriage – and to have it on the side instead, we’re actually expressing a type of hatred for our Creator. We’re throwing the blessings He gave us back in His face and demanding substitutes tailored to our preferences.” *See Corbin Aff. Ex. P (Matt Kaufman, “Sex in the Real World, Revisited,” Boundless Webzine).*
- “Obedience to God is possible even when our desires go the other way. If we are obligated to chastity (and we are), then we are also obligated to do what is necessary to preserve it. The discipline of obeying God, even against your desires, is honored by God, and will pay dividends throughout your coming marriage. Trust Him; it’s true.” *See Corbin Aff. Ex. Q (J. Budziszewski, “Is it God, or Is it Estrogen?” Boundless Webzine).*

In its preview of one article, published by LifeWay, Biblical Solutions for Life and chosen for the “Fresh Start” section of the “Student Coffeehouse,” the website affirmatively directs readers to scroll down to the portion of that article beginning with “What if . . .?” *See Corbin Aff. Ex. R (article previews found under “Student Coffeehouse: Fresh Start”).* This section of the article reads:

What If . . . ?

Some people have a past they wish they could erase. . . . Whatever may have happened or whatever your sin, God offers second chances! His forgiveness is a gift. We don’t deserve it, but He offers it to us anyway! That’s called grace! *See Ephesians 1:7 and Colossians 1:13-14.* When you decide you want to stay sexually pure from this day forward, then you can experience a second virginity. This second virginity comes by asking for God’s forgiveness through Jesus and by committing to stay sexually abstinent until marriage. Reclaiming your purity can give you a whole new outlook and freedom in your life. *See 2 Corinthians 5:17 and Ephesians 4:21-24.*

See Corbin Aff. Ex. S (“Teens Advice,” Lifeway Biblical Solutions for Life).

Third, numerous articles in the website’s “Library” also advance religion.

Although this area is designated a “Library,” it is not a library in the traditional sense of

the word because all the articles advocate a pro-abstinence-until-marriage viewpoint. Each section provides pro-abstinence articles either geared towards parents (“Family Time”) or teachers (“Teacher’s Lounge”) or covering particular topics, such as “Medical Info” or “Love and Marriage.” As with the articles in the “Student Coffeehouse,” the website provides a preview and link to the full article for each article it posts, and some articles are accompanied by a “faith-based content” tagline. *See* Corbin Aff. Ex. T (article previews found under “Library: Medical Info: Safe Sex”); Ex. V (article previews found under “Library: Family Times: Articles”); Ex. BB (article previews found under “Library: Teacher’s Lounge: Articles”). Excerpts include:

- “The condom’s biggest flaw is that those using it to prevent the conception of another human being are offending God. God intends that sexual intercourse should take place only between a man married to a woman. If people follow God’s plan for human sexuality there would be no problem with sexually transmitted diseases. Furthermore, each and every act of marital intercourse must be both unitive and open to procreation. Any action, including condom use, which has as its purpose to render procreation impossible is intrinsically evil. . . . (Catechism of the Catholic Church, 2368-2370).” *See* Corbin Aff. Ex. U (“The Flawed Condom,” *American Life League*, 2002).
- “The issue is not protection but sexual promiscuity. Any proposed solution other than the one God outlines in the Bible – sex being within the boundaries of a marital relationship between one man and one woman – misses the mark. . . . Abstinence is a call to a disciplined life based on a biblical precept. Bluntly stated, God expects His creation to practice self-control.” *See* Corbin Aff. Ex. W (Chris Turner, “First Person: Battling AIDS: Biblical Principle or Billions of Dollars?,” *Baptist Press News*, August 24, 2004).
- “Titus 2:12-13 says, ‘God’s grace teaches us to say ‘no’ to ungodliness and worldly passions, and to live self-controlled, upright and godly lives in this present age, while we wait for the blessed hope – the glorious appearing of our great God and Savior, Jesus Christ.’ You must encourage your teen to stand before God and to say, ‘OK, teach me to say no. I know these worldly passions exists, but I know the only way I will be able to say no is if You teach me!’” *See* Corbin Aff. Ex. X (Dannah Gresh, “How to Raise Sexually Pure Kids,” *CBN.com*).

- “It is time for Christian men and women to demonstrate in their own walk that sexual purity – in or out of marriage – is not a onetime vow but a daily re-commitment to seek God’s grace for our failure, his power for our victories, and his best for our lives.” See Corbin Aff. Ex. Y (Jennifer M. Parker, “The Sex Lives of Christian Teens,” *Today’s Christian*, March/April 2003).
- “God ordained marriage and singleness as the best forms to contain our sexual natures. In the long run, following the Bible really does provide greater health and happiness than does promiscuity.” See Corbin Aff. Ex. CC (Tim Stafford, “Let’s Talk Sex: What Christian Books on the Topic Are, and Are Not, Communicating,” *Christianity Today*, May 28, 2004).
- “In an oversexed culture, it’s important to teach young girls balance between looking nice and obsessing on beauty. . . . Help your daughter see who she is in Christ – wonderfully made, created in His image, more valuable than sparrows, etc. Girls don’t need to be Cosmo girls. They need to be cosmic girls, mirrored after the image of the heavenly maker, God.” See Corbin Aff. Ex. Z (Linda S. Mintle, “Help Your Tweener Be a Cosmic Girl, Not a Cosmo Girl,” *Crosswalk.com*).
- “[T]here are measures parents can take to help their daughters navigate their way through adolescence and empower them to withstand the pressures of their “tween” and teenage years: Pray. Christian parents know this, but often they’re oblivious to the spiritual warfare they need to engage in.” See Corbin Aff. Ex. AA (Marcia Ford, “Daughters Under Fire,” *Today’s Christian*, November/December 2004).

More than one of the articles listed above are affirmatively praised by the website for providing sound advice. Examples include:

- Nick Cirimo, “Just for Guys: How to Stay Sexually Pure,” *Family Research Council’s Ideas & Energy website* is summarized by the website as “From one male to another, Cirimo has plenty to say about waiting until marriage – not just *how*, but *why* too. Makes a lot of sense.” See Corbin Aff. Ex. I (article previews found under “Student Coffeehouse: Articles”).
- J. Budziszewski, “Is it God, or Is it Estrogen?,” *Boundless Webzine* is summarized as “Professor Theophilus answers three female college students’ questions about sexual relationships with guys. The Professor offers plain-spoken, common-sense advice from a faith perspective.” See *id.*
- William Cutrer & Sandra Glahn, “How Far Is It OK to Go Before Marriage,” *Focus on the Family’s family.org* is summarized as “This excerpt from a faith-based book frankly addresses the question on many young couples’ minds: ‘How far is too far?’ The authors offer advice that is both spiritual and

practical that should help those of great faith (or no faith at all) draw healthy guidelines.” *See id.*

- Marcia Ford, “Daughters Under Fire,” *Today’s Christian*, November/December 2004 is summarized as “Good advice for parents – rooted both in faith and common sense.” *See Corbin Aff. Ex. V* (article previews found under “Library: Family Time: Articles”).

Finally, a GPA skit promotes religious messages. The GPA offers several “skits” for downloading in the “Playbill” section of the “Louisiana GPA” area. The introductory page urges viewers to “Download the skits now!” *See Corbin Aff. Ex. DD* (Introduction to “Playbill”). One of these skits, “The Wedding,” begins with a male minister opening his Bible and intoning:

“Dearly beloved, we are gathered here today to join this man and this woman in holy matrimony. When God began His wonderful work on this world he made man and woman to have a special bond. This bond would be a connection that would not be with any other human. The bond between a man and a woman would somehow in God’s eyes connect them forever.”

See Corbin Aff. Ex. EE (“Wedding Skit”). The remaining portion of the skit is devoted to showing the risk of not heeding the minister’s words: The pending marriage is threatened because both the bride and the groom had former lovers, and are consequently “forever tied” to these former lovers. *See id.*

The religious content on the GPA’s AbstinenceEdu.com website is either Christian, with references to Jesus Christ, or Judeo-Christian, with references to the Bible and God. Judaism is never specifically discussed, nor is Islam, Buddhism, Hinduism or any other religion.

ARGUMENT

A party seeking a civil contempt order must establish, by clear and convincing evidence, that (1) a court order was in effect; (2) the order required certain conduct of respondent; and (3) the respondent failed to comply with the court's order.⁵ *Lyn-Lea Travel Corp. v. Am. Airlines, Inc.*, 283 F.3d 282, 291 (5th Cir. 2002); *see also Am. Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 581 (5th Cir. 2000). Here, the GPA promotes religion on its AbstinenceEdu.com website despite the unequivocal Court order prohibiting the use of GPA funds to "convey religious messages or otherwise advance religion in any way." *See Corbin Aff. Ex. 1* at 15.

There is no question that the Court's order of December 18, 2002 (the "Order") is a valid order that was within this Court's authority to enter. Defendants cannot dispute that this Court issued a court order incorporating the terms and conditions of the parties' Settlement Agreement. Nor can Defendants dispute that this Court had authority to enter that Order.

Equally clear is the conduct prohibited by the Court's Order. The GPA was ordered to

cease and desist from disbursing GPA funds to organizations or individuals that convey religious messages or otherwise advance religion in any way in the course of any event supported in whole or in part by GPA funds, or in any document or other resource that is produced and/or distributed in whole or in part using GPA funds.

⁵ A contempt order is either civil or criminal. If the primary purpose of the sanction is "to coerce the contemnor into compliance with a court order," as is the case here, then the order is considered purely civil. In contrast, a contempt order is only considered criminal if the primary purpose of the sanction is "to punish the contemnor and vindicate the authority of the court." *Martin's Herend Imports, Inc. v. Diamond & Gem Trading USA, Co.*, 112 F.3d 1296, 1307 (5th Cir. 1997) (internal quotations and citations omitted); *see also FDIC v. LeGrand*, 43 F.3d 163, 168 (5th Cir. 1995) (same).

See Ex. 1 at 15.⁶ The plain language covers GPA funds to organization or individuals and GPA-funded activities and materials, with no exceptions for GPA funds to individuals running its AbstinenceEdu.com website.

Finally, Defendants have failed to comply with this Court's Order. Despite the Court's unambiguous prohibition, the GPA's AbstinenceEdu.com website repeatedly flouts the ban on conveying religious messages or advancing religion in any manner. Whether this failure is willful or not is irrelevant. "Good faith is not a defense to civil contempt; the question is whether the alleged contemnor complied with the court's order." *Chao v. Transocean Offshore, Inc.*, 276 F.3d 725, 728 (5th Cir. 2002); *see also Am. Airlines*, 228 F.3d at 581 (civil contempt does not require willful action).

To start, the "Ask the Experts" section violates the Order. The statements of the GPA experts plainly promote religion. They include the exhortations to abstain until marriage because it will make you "really, truly, 'cool' in God's eyes," and to marry because "God's plan is not for us to be alone, but to have one spouse for life." *See* Corbin Aff. Ex. H ("Ask the Experts"). The "experts'" religious advice is clearly attributable to the GPA. The "Ask the Experts" section of the website is not an open discussion forum in which any member of the public can post any message it wants, without editorial review. Rather, it is presented as the place where GPA's own experts give authoritative answers to questions from website readers. The introduction to "Ask the Experts" explains that while the GPA may not have famous experts like "Dr. Laura or Ann Landers on staff," it has its own "counselors who are willing to tackle your toughest

⁶ As explained above, Part 1 of the Court's Preliminary Injunction Order was incorporated into the parties' Settlement Agreement, which in turn was incorporated into this Court's Amended Order of December 18, 2002 dismissing the case.

questions about relationships” as well as “health care pros,” “[e]ducators” and “youth workers.” It urges students to submit questions because “[t]his is the answer place.” *See* Corbin Aff. Ex. G (Introduction to “Ask the Experts”). This claim to authority is underscored by the fact that the “Ask the Experts” section is located in the “Research” area of the website. Because the GPA has hand-selected certain experts, chosen which questions and answers to post, and placed these answers in the “Research” area of the website, the experts’ answers carry the GPA’s endorsement.

Similarly, countless articles in the website’s “Student Coffeehouse” and “Library” areas advance religion. Some religious articles advocate that God’s plan is for abstinence outside of marriage and procreation within marriage. *See, e.g.*, Corbin Aff. Ex. W (Chris Turner, “First Person: Battling AIDS: Biblical Principle or Billions of Dollars?,” *Baptist Press News*, August 24, 2004) (“Any proposed solution other than the one God outlines in the Bible – sex being within the boundaries of a marital relationship between one man and one woman – misses the mark”); Ex. U (“The Flawed Condom,” *American Life League*, 2002) (“The condom’s biggest flaw is that those using it to prevent the conception of another human being are offending God. . . . Any action, including condom use, which has as its purpose to render procreation impossible is intrinsically evil. . . . (Catechism of the Catholic Church, 2368-2370).”). Other religious articles advocate turning to Jesus Christ for guidance and inspiration. *See, e.g.*, Corbin Aff. Ex. Z (Linda S. Mintle, “Help Your Tweener Be a Cosmic Girl, Not a Cosmo Girl,” *Crosswalk.com*) (“Help your daughter see who she is in Christ – wonderfully made, created in His image, more valuable than sparrows, etc.”). Still others promise forgiveness in Jesus. *See, e.g.*, Corbin Aff. Ex. S (“Teens Advice,” *Lifeway Biblical Solutions for Life*) (“This second

virginity comes by asking for God’s forgiveness through Jesus and by committing to stay sexually abstinent until marriage.”); Ex. J (J. Budziszewski, “What if We Love Each Other,” *Boundless Webzine*) (“After repenting, ask God to forgive you through Jesus Christ.”).

The GPA’s extensive involvement with these articles precludes any argument that their content is not attributable to the GPA. First, the GPA has explicitly given a stamp of approval to the content of several articles. *See* discussion *supra* at 10-11. And, for each of the articles, the GPA affirmatively selects material that promotes its pro-abstinence message; prepares and provides a preview to the article; provides a link that allows the viewer to read the full text of the article; and steers readers to certain pieces by organizing the articles into categories (e.g., Student Coffeehouse). Indeed, the website is the online equivalent of the GPA’s providing, at a GPA event, a table with stacks of hand-selected and carefully organized articles promoting the GPA’s pro-abstinence message, and a GPA-prepared preview of that article above each stack. Just as the GPA may not include on that table a host of articles promoting religion, so too it may not advance religion through the articles on its website.

Finally, “The Wedding” skit made available for downloading from the GPA website likewise violates the Court’s Order. While a skit that merely features someone officiating a wedding ceremony does not necessarily advance religion, the minister in this skit goes well beyond saying, “Dearly beloved we are gathered here today to join this man and this woman in holy matrimony.” Instead, as detailed in the Factual Background, a minister preaches a short sermon whose message is central to the skit and is in fact illustrated by the rest of the skit, which was indisputably selected by the GPA not for any

independent literary merit but rather for its pro-abstinence message. Posting such a skit on the AbstinenceEdu.com website is an especially flagrant violation given that this Court had previously found that GPA-funded skits violated the Establishment Clause.

The content of the GPA's website promotes not just religion in general but Christianity in particular, or at a minimum Judeo-Christianity. No religion other than Christianity is ever specifically discussed – not Buddhism or Hinduism, not Islam or Judaism. In that context, even articles that on their face preach general Judeo-Christian messages seem to advance Christianity. The Establishment Clause absolutely forbids the government from favoring one religion over others. *See, e.g., County of Allegheny v. ACLU Greater Pittsburg Chapter*, 492 U.S. 573, 605 (1989) (“Whatever else the Establishment Clause may mean . . . , it certainly means at the very least that government may not demonstrate a preference for one particular sect or creed (including a preference for Christianity over other religions).”).⁷

The examples of religious content detailed above are by no means exhaustive. Each item individually violates the Court's prohibition. The cumulative effect of item after item espousing Christianity and Judeo-Christianity and highlighting Christian people and concerns is to leave no doubt in anyone's mind that the GPA is promoting religion generally, and one branch of religious thought in particular.

⁷ Thus, the Establishment Clause prohibits the government both from advocating religion and from promoting one religion over another. *See, e.g., Mitchell v. Helms*, 530 U.S. 793, 873 (2000) (plurality opinion) (“The ‘establishment of religion’ clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.”) (internal quotations and citations omitted).

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court enter an Order declaring that Defendants are in civil contempt of this Court's Order dated December 18, 2002; requiring Defendants to comply forthwith with the Order dated December 18, 2002; paying Plaintiff its reasonable attorneys' fees and costs incurred as a result of bringing this action; and making any further order that the Court deems appropriate.

Dated: New Orleans, Louisiana
January 20, 2005

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*Motion for admission *pro hac vice* pending.

CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2005, I caused to be served by U.S. Mail, Return Receipt requested, and by facsimile (excluding attachments), a true copy of Plaintiff's Notice of Hearing, Memorandum of Law in Support of Plaintiff's Motion for Civil Contempt, Affidavit of Julie Sternberg, and Affidavit of Caroline Mala Corbin on the following counsel of record:

J. Terry Ryder, Esq.
Executive Counsel
Office of the Governor
P.O. Box 94004
State Capitol, Fourth Floor
Baton Rouge, Louisiana 70804

Vincent J. Booth

DATED: New Orleans, Louisiana
 January 20, 2005