



sexually transmitted diseases in Louisiana, Governor M.J. Foster established the Louisiana Abstinence Education Project, also known as the GPA. The GPA's primary functions include seeking and distributing funds to develop programs that "ha[ve] as their exclusive purpose, teaching the . . . gains to be realized by abstaining from sexual activity." Plaintiffs' Exhibit A.

The GPA distributes significant public funds for abstinence education. Federal dollars are the GPA's principal source of funding. Since 1998 the GPA has received just over \$1.6 million per year in a federal block grant awarded pursuant to 42 U.S.C. § 710, a federal statute that appropriates \$250 million for teaching and promoting sexual abstinence. The Louisiana legislature has also allocated significant financial support for the GPA since 1998. Plaintiffs' Exhibits F,G,H,I.

The GPA uses its funds in a number of ways. It promotes abstinence through official GPA events and resources. It also grants public funds to organizations and individuals to spread the abstinence-only message. Since 1999, it has awarded well over one million dollars in "community-based contracts" to nonprofit organizations and "professional services contracts" to individuals in the state for the development and implementation of abstinence programming. Plaintiffs' Exhibit J.

Since 1999, the GPA has awarded these "community-based contracts" to a number of organizations that are religiously affiliated. The "contractors", some who are religiously affiliated and many that are not, carry out the mission and goals of the GPA in numerous ways. The plaintiffs in this matter allege that some of the methods used by the "contractors" to implement the GPA violate the First Amendment's Establishment Clause. The plaintiffs request that because the implementation of the GPA's "community-based contracts" violate the Establishment Clause, the

Court should enter a preliminary injunction ordering the defendants to: (a) cease and desist from conveying any religious messages or otherwise promoting religion in any manner in the context of official GPA events, documents, or other resources; (b) 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; and (c) cease and desist from disbursing GPA funds to pervasively sectarian institutions.

## II. LAW AND ANALYSIS

### A. Preliminary Injunction:

In order to prevail on a motion for preliminary injunction, a party must establish that:

- (1) there is a substantial likelihood that it will prevail on the merits,
- (2) there is a substantial threat that the party will suffer irreparable injury if the preliminary injunction is denied, (3) the threatened injury to the party seeking the injunction outweighs the threatened injury to the party to be enjoined, and (4) granting the preliminary injunction will not disserve the public interest.

Walgreen Co. v. Hood, 275 F.3d 475, 477 (5<sup>th</sup> Cir. 2001), petition for cert. filed, 70 U.S.L.W. 3625 (U.S. Mar. 20, 2002)(No. 01-1427).

The Court finds that the plaintiffs have met the these standards for the issuance of injunctive relief. Although the defendants in this action adamantly deny that any constitutional violation has occurred, it is obvious from the GPA documents submitted to the Court that, whether with or without the actual knowledge of the GPA officials, the Establishment Clause has been violated through the means in which the GPA has been implemented. Therefore, the plaintiffs have established that there

is a substantial likelihood that they will prevail on the merits.

Because the implementation of the GPA infringes on First Amendment rights and because the GPA continues to be implemented, an injunction is necessary to prevent irreparable harm. The threatened injury to the plaintiffs in this matter far outweighs the threatened injury to the defendants because constitutional rights are at stake. An injunction will not disserve the public interest; in fact, the public interest favors the issuance of an injunction.

**B. Establishment Clause:**

In order to determine whether an enactment is constitutional under the Establishment Clause, courts analyze the enactment using the three factors first articulated in Lemon v. Kurtzman, 403 U.S. 602, 91 S.Ct. 2105 (1971). Under the Lemon test, which guides “[t]he general nature of our inquiry in this area,” Meuller v. Allen, 463 U.S. 388, 394, 103 S.Ct. 3062, 3066 (1983), a court may invalidate a statute only if it is motivated wholly by an impermissible purpose, if its primary effect is the advancement of religion, or if it requires excessive entanglement between church and state. Bowen v. Kendrick, 487 U.S. 589, 602, 108 S.Ct. 2562, 2570, citing Lemon, 403 U.S. at 613, (internal citations omitted.)

**1. Motivated wholly by an impermissible purpose.**

The actual purpose of the GPA is permissible. The GPA was motivated by a legitimate secular purpose – reducing and eliminating teenage pregnancy and the spread of sexually transmitted diseases through a program of abstaining from sexual activity. No evidence has been offered to prove that the GPA was created for the purpose of endorsing religion. The GPA, therefore, passes the first prong of the Lemon test.

## **2. Primary effect is the advancement of religion.**

The analysis of the GPA under the Lemon test is similar to the Supreme Court's analysis of the statute at issue in Bowen v. Kendrick, 487 U.S. 589, 108 S.Ct. 2562, 101 L.Ed.2d 520. In that case, the individual plaintiffs challenged the constitutionality of the Adolescent Family Life Act ("AFLA") under the Establishment Clause. The AFLA provided grants to public or nonprofit private organizations for research in the area of premarital adolescent sexual relations and pregnancy and services for the prevention of adolescent sexual relations. The grants were restricted to organizations that did not provide abortions, abortion counseling or referral, and specifically included religious organizations among the agencies that would assist in implementing the statute. 487 U.S. at 604-605. Because a fairly wide spectrum of organizations, not just religiously affiliated organizations, were eligible to apply and receive funding under the AFLA, the Supreme Court found that the AFLA on its face did not violate the Establishment Clause because nothing on the face of the AFLA suggested that it was anything but neutral with respect to the status of the organizations receiving funding, whether they were sectarian or non-sectarian. 487 U.S. 608. The primary effect of the AFLA on its face was exactly what it was created to effect; research in the area of premarital adolescent sexual relations and pregnancy and services for the prevention of adolescent sexual relations. In addition, the Supreme Court noted that it has never held that religious institutions are disabled by the First Amendment from participating in publicly sponsored social welfare programs. 487 U.S. at 609.

Likewise, the GPA's primary effect on its face is not the advancement of religion. The primary effect of the GPA has been the distribution of funds to develop programs that teach the

gains to be realized by abstaining from sexual activity. Although many of the recipients of GPA funds are religiously affiliated, that in and of itself does not violate the Establishment clause. The State permits any private, public or non-profit institution, business, organization, as well as individuals in Louisiana to apply for government funding under the GPA framework. The GPA, as the AFLA in Bowen, is facially neutral because of the different types of organizations, not just religiously affiliated organizations, that are eligible for funding.

“Of course, even when the challenged statute appears to be neutral on its face, [courts] have always been careful to ensure that direct government aid to religious affiliated institutions does not have the primary effect of advancing religion. One way in which direct government aid might have that effect is if the aid flows to institutions that are ‘pervasively sectarian.’” Bowen, 430 U.S. at 609-610.

“Aid normally may be thought to have a primary effect of advancing religion when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission....” Hunt v. McNair, 413 U.S. 734, 743, 93 S.Ct. 2868. These “pervasively sectarian” institutions may not receive public monies because of the “‘substantial’ risk that aid to these religious institutions would, knowingly or unknowingly, result in religious indoctrination.” Bowen 430 U.S. at 612.

As previously mentioned, the GPA is similar to the program analyzed by the Supreme Court in Bowen. In Bowen, the Supreme Court ultimately remanded the matter so that the District Court could determine whether aid recipients had used the government monies to support their religious objectives. If the District Court determined that funding was flowing to organizations that were

considered “pervasively sectarian,” it was to construct an appropriate remedy. See Id., at 621-622. In the case at bar, it is apparent from both the evidence submitted by the plaintiffs with their original Motion and from the testimony at trial that government monies are flowing to “pervasively sectarian” institutions, and that these institutions are using the government funding to support their religious objectives.

The organizations that receive GPA funds submit monthly reports to the secretary of the GPA which detail the projects that are funded by GPA monies and how those projects are furthering the mission of the GPA. These monthly reports show that the GPA monies are not only furthering the objectives of the GPA, they are also furthering religious objectives. For example, the GPA funded the Diocese of Lafayette (“the Diocese”) for at least two years. On a number of its Monthly Reporting Forms the Diocese reported operating a chastity program entitled “God’s Gift of Life.” Plaintiffs’ Exhibits UU, VV; Transcript of Hearing on Motion for Preliminary Injunction p. 45-46. In addition, the Diocese reported that it used GPA expenditures to support prayer at abortion clinics, pro-life marches, and pro-life rallies. Plaintiffs’ Exhibit VV, Tr. p. 45. As evidenced from the monthly reports, the Diocese used government funding to support its religious objectives, which runs afoul of the Establishment Clause.

The GPA also funded the Rapides Station Community Ministries (the “Ministries”). On its Monthly Reporting Form dated January 3, 2000, the Ministries wrote in the narrative section:

December was an excellent month for our program, we were able to focus on the virgin birth and make it apparent that God’s desire[sic] sexual purity as a way of life. The virgin birth help many people to see and understand what Christmas is about. Abstinence only put things in the right perspective. [T]his let us know that each Individual must live to please God and not man. We were able to show from a

good example in Joseph and Mary. There were several young people that did not know any thing about Joseph and Mary nor how they live for God.

Plaintiffs' Exhibit R; Tr. p. 50.

On the Monthly Reporting Form dated November 4, 1999, the Ministries wrote, "The young people shows[sic] a positive attitude about the program and they are pleased that The Governor's Program On Abstinence is also A Faith Base[sic] Program." Plaintiffs' Exhibit Q. On the Monthly Reporting Form dated September 5, 2001, the Ministries reported that GPA funding was used to host a back-to-school youth revival where the Reverend Roger Layton "proclaim[ed] God's Word with power as to why we should live pure and Holy. He made it clear that abstinence is the only way." Plaintiffs' Exhibit I. Obviously, the aid given to the Ministries by GPA resulted in religious indoctrination.

The Court finds that the GPA is funding a number of organizations (i.e. the Diocese of Lafayette and the Rapides Station Community Ministries) in which "religion is so pervasive that a substantial portion of [their] functions are subsumed in the religious mission...." Bowen, 487 U.S. at 610 (quoting Hunt v. McNair, 413 U.S. at 743.) Because the aid to these pervasively sectarian institutions has the primary effect of advancing religion, this part of the GPA violates the Establishment Clause.

At the hearing on the Plaintiffs' Motion for Preliminary Injunction, the secretary of the GPA, Mr. Dan Richey, testified that "pervasively sectarian" institutions are no longer funded by the GPA. See Transcript of Preliminary Injunction Hearing. The Court does not question the truth of that fact. The Court does, however, feel the need to install legal safeguards to ensure that the GPA does not fund "pervasively sectarian" institutions in the future.

### 3. Excessive entanglement between church and state.

The third prong of the Lemon test is whether the GPA leads to “an excessive government entanglement with religion.” Lemon, 403 U.S. at 613. In Bowen, the Supreme Court determined that the AFLA did not violate this third prong. The Supreme Court believed, as evidenced from their reasoning, that when the AFLA was implemented and funding was given to religiously affiliated organizations that are not necessarily “pervasively sectarian,” the Secretary of Health and Human Services<sup>1</sup> would review the materials that grantees used, would monitor the programs as implemented, and that government employees would visit the AFLA programs to ensure that the program was being administered in a manner that did not violate the constitution. Bowen, 487 U.S. at 616-17. Because the Court believed that the grant monitoring of religious affiliated (but not “pervasively sectarian” institutions) was not excessive government entanglement, and because that monitoring by the government would ensure that the program was administered in accordance with the constitution, the Supreme Court held that the AFLA passed the third prong of the Lemon test. Id. In the case at bar, however, the facts to be analyzed under Lemon’s third prong are easily distinguishable from the facts in Bowen.

Like the AFLA, the GPA’s construction includes an aspect of government monitoring of the community based contracts. The main way that this government monitoring is accomplished is through the Monthly Reporting Forms that the grant recipients must submit to the state coordinator for the GPA. As previously mentioned, these monthly reports provide the method by which the secretary of the GPA can ensure that the GPA monies are being used to accomplish the GPA’s goals.

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<sup>1</sup>The AFLA was under the control of the Secretary of Health and Human Services who determined which organizations received grants under the program. Bowen, 487 U.S. at 594.

Unfortunately, due to issues of understaffing in the secretary's office and as evidenced by these monthly reports, the community based contracts are not being administered in accordance with the constitution.

A number of religious affiliated institutions have submitted both grant applications and Monthly Reporting Forms which prove that government aid is being used to fund "specifically religious activit[ies]" even within "an otherwise substantially secular setting." Bowen, 487 U.S. at 621 (internal quotation and citation omitted.) For example, the GPA awarded funding to Patricia Reeves, artistic director of a theater group called "Just Say 'Whoa,'" for the purpose of "bring[ing] the abstinence message to junior high and high schools throughout Louisiana with theatrical skits." Plaintiffs Exhibit MM. Just Say "Whoa"'s flyers and pamphlets specify that it is sponsored "in cooperation with the Governor's Program on Abstinence." Plaintiffs' Exhibits NN, OO. The Just Say "Whoa" skits include the following exchanges:

-In a skit entitled "Verses," a character named "Bible Guy" asks: "[H]ave you ever considered NOT having sex? . . . God never wanted you to have those problems to begin with. Why don't you just do it His was [sic]?" Plaintiffs Exhibit QQ. Another character, "Katy," responds, "What does God have to do with my sex life?" Id. In addition to other statements about what God and the Bible say about abstinence, Bible Guy asserts, "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. (emphasis added.)

-The "Ending" skit includes the following exchange: "Troy" states, "You can let a

girl twist you around until you don't know which way to go." "Innocent Guy" replies, "Or you can ask the Lord to give you the strength to keep your convictions." "Jared" later states, "Or you can call on Jesus to help you find the way." The skit continues:

Lauren: Even if you've made a mistake ... Kandace: Jesus can make it right.

...

Narrator #1: Our prayer is that you will make the right choices and receive the ultimate blessing of God. Thank you and goodnight.

As evidenced in the dialogue from the Just Say "Whoa" skits, even though it is taking place in the otherwise substantially secular setting of a high school play, the GPA is funding specifically religious activities. The skits that are performed by the Just Say "Whoa" players and sponsored by the GPA are "designed to inculcate the views of a particular religious faith." Bowen, 487 U.S. at 621. The primary effect of the monies given to the Just Say "Whoa" players is the advancement of religion and, therefore, this implementation of the GPA runs afoul of the third prong of Lemon.

The GPA also awarded money to the Southwest Louisiana Area Health Education Center ("SLAHEC"). In its grant application, the SLAHEC requested, amongst other things:

- \$600 for "[a]wards and recognition supplies," including "Christian music tapes," Plaintiffs Exhibit YY at 17;
- \$750 for "Bible[s] with names engraved for program participants," id. at 18;
- \$11 for a book entitled "Too Young to Die," which tells children "how Christ's love can win them out" of gangs. Id.

The SLAHEC uses "materials that have an explicitly religious content." Bowen, 487 U.S. at 621.

These materials are bought using funds allocated by the GPA. The primary effect of the funds allocated to SLAHEC, as evidenced by their grant application, is the advancement of religion, which also violates the third prong of the Lemon test.

### **C. Remedies:**

Having found that some aspects of the GPA violate the Establishment clause and are therefore unconstitutional, this Court must create appropriate remedies which will ensure that the constitution will no longer be violated. The plaintiffs' proposed remedy is for the Court to issue a preliminary injunction ordering the defendants to: (a) cease and desist from conveying any religious messages or otherwise promoting religion in any manner in the context of official GPA events, documents, or other resources; (b) 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; and (c) cease and desist from disbursing GPA funds to pervasively sectarian institutions.

#### **1. Conveying religious messages or promoting religion in GPA events, documents, or other resources.**

The plaintiffs claim that the GPA promoted religious messages at a Legislative Caucus that the GPA conducted for GPA clubs at the Louisiana State Capitol on January 12, 2002. The plaintiffs argue that the booklet of the GPA Legislative Caucus (Defendant's Exhibit V) contains language that violates the Establishment Clause. The plaintiffs cite as examples of impermissible language the use of the term "moral relativism," the statement that "[w]e removed God from the classroom," and the

references to Judeo-Christian beliefs. The Court finds that the mere inclusion of these statements in GPA resources, although possibly designed to promote religion, do not rise to the level of excessive government entanglement with religion, and therefore do not violate the Lemon test. The GPA materials do not have an explicitly religious content. Simply because permissible aims of the government align with the tenets of the Judeo-Christian tradition does not suggest that the State acts contrary to the First Amendment. See Lynch v. Donnelly, 465 U.S. 668, 676, 104 S.Ct. 1355, 1361 (1984). The defendants are cautioned, however, not to include any language in official GPA materials that could suggest that the main purpose of the GPA is to promote abstinence through religious means.

**2. 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.**

As evidenced by both Monthly Reporting Forms and by grant proposals, GPA funds are being used to convey religious messages and advance religion. The Court realizes that many of the violations of the Establishment Clause are occurring due to the fact that the GPA is administered by the secretary of the GPA, and that he has little support staff to accomplish all of the goals that the GPA is designed to accomplish.<sup>2</sup> But, this Court cannot allow constitutional violations because a government department/program is understaffed. The GPA office is ordered to cease and desist from disbursing GPA funds to organizations or individuals that convey religious messages or otherwise

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<sup>2</sup> The secretary of the GPA, Mr. Dan Richey, testified in Court that the GPA staff consists of two people; himself and his assistant. See Transcript of Hearing on Motion for Preliminary Injunction.

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. In addition, the GPA is ordered to install an oversight program similar to the AFLA program in Bowen which includes the review the materials that grantees use, closer monitoring of the programs as implemented, and visits to programs by GPA employees to ensure that the GPA is not being administered in a manner that violates the constitution.

At the Hearing on the Motion for Preliminary Injunction, Mr. Richey testified that both he and his assistant were put on notice by the Monthly Reporting Forms that some grantees may have been violating the constitution. Mr. Richey testified that when a possible constitutional violation was detected by his office, either he or his assistant placed a telephone call to the grantee and instructed that grantee to immediately stop the possible violations. Unfortunately, these telephone calls were not documented. In the future, the GPA is ordered to issue **written notifications** of violations to the grantees if and when violations occur so that violations can be properly documented and remedied as required.

### **3. Disbursing GPA funds to pervasively sectarian institutions.**

As previously mentioned, disbursing government funds to pervasively sectarian institutions runs afoul of the Establishment Clause of the First Amendment because there is a substantial risk that aid to these religious institutions would, knowingly or unknowingly, result in religious indoctrination. In the past, the GPA has given funds to pervasively sectarian institutions, such as the Diocese of Lafayette and the Rapides Station Community Ministries. The GPA is ordered to cease and desist from disbursing funds to institutions in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission.

Accordingly,

**IT IS ORDERED** that the Motion for Preliminary Injunction filed by the Plaintiffs be, and is hereby, **GRANTED** as follows:

1. The GPA office is 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.
2. The GPA is ordered to install an oversight program which includes the review the materials that grantees use, closer monitoring of the programs as implemented, and visits to programs by GPA employees to ensure that the GPA is not being administered in a manner that violates the constitution.
3. The GPA is ordered to issue written notifications of violations to the grantees if and when violations occur so that violations and notifications can be properly documented and remedied as required.
4. The GPA is ordered to cease and desist from disbursing funds to institutions in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission.

New Orleans, Louisiana, this 24<sup>th</sup> day of July, 2002.

  
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**G. THOMAS PORTEOUS, JR.**  
**UNITED STATES DISTRICT JUDGE**