

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

**AMERICAN CIVIL LIBERTIES UNION
OF LOUISIANA**

CIVIL ACTION NO. 02-1440

VERSUS

DIVISION 4; SECTION T

**GOVERNOR M.J. FOSTER and DAN
RICHEY**

JUDGE G. THOMAS PORTEOUS, JR.

**MAGISTRATE JUDGE KAREN WELLS
ROBY**

SETTLEMENT AGREEMENT

Whereas, on May 9, 2002, American Civil Liberties Union of Louisiana (the "Plaintiff") filed this lawsuit against Governor M.J. Foster and Dan Richey (the "Defendants"); on May 10, 2002, the Plaintiff moved the Court to enter a preliminary injunction; on July 24, 2002, the Court, per Judge Porteous, entered a preliminary injunction; on August 20, 2002, the Defendants appealed the preliminary injunction to the to the United States Court of Appeals for the Fifth Circuit; and to settle the Plaintiff's claims in this lawsuit, the Plaintiff and the Defendants hereby agree as follows:

- I. Parts 1, 2, and 3 of the Court's Preliminary Injunction Order, dated July 27, 2002 (the "Court's Order"), are hereby incorporated into this settlement agreement. The parties attach as Exhibit "A" a copy of the Court's Order.
- II. Part 4 of the Court's Order is vacated without prejudice.¹ Because there has not been a final adjudication of the issues identified in Part 4 of the Court's Order, the parties specifically recognize and acknowledge that they may in the future seek an adjudication of the issues that

¹Part 4 of the Court's Order states as follows: "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."

Part 4 of the Court's Order addressed without this Settlement Agreement precluding the position/legal arguments of any party to this Agreement.

III. The Oversight Program.

A. The term "contractor" in this settlement agreement includes all recipients of the GPA's funds, whether through grant or contract, and includes all organizational or individual recipients of the GPA's funds.

B. Contracts that the GPA makes with contractors will include the following language:

1. "The contractor understands and agrees that the contractor shall not convey religious messages, or promote or advocate religion in any way in any activity, event, or material sponsored or financially supported in whole or in part by the GPA or the GPA's funds. The contractor further understands that the GPA may terminate its contract and cease funding to it should the contractor convey religious messages, or promote or advocate religion in any way in any activity, event, or material sponsored or financially supported in whole or in part by the GPA or the GPA's funds."

2. "The contractor further understands that, if found in violation of the preceding provision, the contractor will be given written notice of the violation, and that if the contractor does not remedy the violation within the remainder of its contract period or sixty days, whichever is longer, the GPA will exercise its authority to neither renew, nor consider new funding requests from, that contractor or any individual responsible for the violation in the next contract period."

3. "The contractor understands and agrees to include the following language in any writing concerning any activity that the GPA, in whole or in part, sponsors or financially supports:

The GPA is a health and education program committed to promoting and publicizing the benefits of abstinence. Under limitations imposed by the Constitution, the GPA's funds may not be used for activities, events or materials that include religious messages or otherwise promote or advocate religion. The GPA does not discourage or encourage private religious exercise. If you have any spiritual or religious questions that arise in the context of events sponsored by the GPA, the GPA encourages you to consult with a spiritual advisor from your faith or system of belief.

If you have any questions or comments about these or other issues, you may contact the GPA. The GPA's email and postal addresses are, respectively, kathy.madere@gov.state.la.us and 625 North Street, Suite 822, Baton Rouge, LA 70802."

- C. "All written material promoting events that the GPA, in whole or in part, sponsors or financially supports, will include the following language:

The GPA is a health and education program committed to promoting and publicizing the benefits of abstinence. Under limits imposed by the Constitution, the GPA's funds may not be used for activities, events or materials that include religious messages or otherwise promote or advance religion. The GPA does not discourage or encourage private religious exercise. If you have any spiritual or religious questions that arise in the context of events sponsored by the GPA, the GPA encourages you to consult with a spiritual adviser from your faith or system of belief.

If you have any questions or comments about these or other issues, you may contact the GPA. The GPA's email and postal addresses are, respectively, kathy.madere@gov.state.la.us and 625 North Street, Suite 822, Baton Rouge, LA 70802."

- D. Should someone contact the GPA concerning alleged religious content regarding any activity, event or material that the GPA, in whole or in part, sponsors or financially supports, the GPA will do the following:

1. keep a copy of the email or letter concerning the alleged religious content on file and, if the allegation is made orally, create and maintain notes (or copies) regarding the oral communications;
2. create and maintain notes of any communications made in the course of any investigation regarding the allegation and maintain any documents gathered in the course of the investigation;
3. investigate the allegation and, within thirty days of receiving the allegation, make a determination as to whether the contractor conveyed any religious message or promoted or advocated religion in violation of the contractor's contract with the GPA. If the GPA concludes that a violation occurred, it will give the contractor written notice of that conclusion. If a contractor fails to remedy the violation within sixty days or the remainder of the contractor period, whichever is longer, the GPA will exercise its authority to neither

renew (at any level), nor consider new funding requests from, that contractor or any individual responsible for the violation in the next contracting period.

E. Reports of Contractors.

1. The GPA's contractors will make monthly reports in writing to the GPA and describe their activities and their use of the GPA's funds.
2. The GPA will provide to the GPA's contractors the GPA's Monthly Reporting Forms and require the contractors to complete and to submit to the GPA the monthly reports concerning their activities and their use of the GPA's funds.
3. The GPA will include in its Monthly Reporting Forms the following language for the contractor's attestation: "I certify that this month no activity, event, or material created or supported in whole or in part with GPA funds has included religious content; that no GPA funds have been used to advocate or promote, through prayer or otherwise, religion or religious messages; and that my certification is accurate and complete."
4. The GPA will require its contractors to submit the GPA's Monthly Reporting Forms on or before the 21st of the month following the month that is the subject of the report. Within two weeks of its receipt of the GPA's Monthly Reporting Forms, the GPA will review the contractors' reports, among other reasons, to discern whether any contractors have advocated or promoted religion while acting on the GPA's behalf or while using the GPA's funds. Should the GPA determine that a contractor has advocated or promoted religion in the context of events, activities, or materials that the GPA, in whole or in part, sponsors or financially supports, the GPA will issue a written notice of the violation to the contractor with a reminder that the contractor agreed in its contract not to advocate or promote religion in connection with events, activities, or materials that the GPA, in whole or in part, sponsors or financially supports and that the GPA may terminate the contractor's contract should the contractor not cease this action. The GPA will ask the contractor to confirm in writing that it understands that the Constitution, as well as its contract with the GPA, prohibits it from promoting or advocating religion in any event, activity, or materials sponsored or financially supported in whole or in part with GPA funds. If, after receipt of this notice, the contractor does not remedy the problem within the remainder of the contract period or sixty days, whichever is longer, the GPA will exercise its authority neither to renew (at any level) nor consider new funding requests from, that contractor or any individual responsible for the violation in the next contracting period.
5. The GPA will keep on file copies of its written notices to contractors and the responses of the contractors. The GPA will also create written notes and

keep on file those notes (or copies) of any oral communications that its personnel has with contractors about violations or allegations of violations, including steps taken to remedy the violation.

F. Abstinance Curricula.

1. All contractors receiving funds from the GPA to present educational programs on abstinance will, prior to beginning instruction, submit to the GPA copies of its lesson plans and/or curricula.
2. The GPA will review these copies of the lesson plans and/or curricula of the contractors to ensure that they are consistent with the Constitution and this Settlement Agreement.
3. Should the GPA discover religious content or advocacy in these copies of the lesson plans and/or curricula, the GPA will notify the contractor in writing that it may not present that portion of the program and that it must certify in writing that it will not include religious content or advocacy in its presentation(s) on behalf of the GPA. The GPA will not permit the contractor to continue using the portions of the lesson plans or curricula that include religious content.
4. The GPA will keep on file copies of the lesson plans and the curricula of its contractors and its written correspondence with contractors concerning religious content and/or advocacy.
5. The GPA will keep on file copies of written notes regarding any oral communications and records of any and all other communications that it has with its contractors about religious content and/or advocacy.

G. Conferences and Contractors.

The GPA's personnel will conduct quarterly in-person interview of its contractors, among other reasons, to monitor the activities of contractors and to ensure that the GPA operates in a manner consistent with the Constitution and this Settlement Agreement. Should the GPA discover religious content and/or advocacy in events, activities, or materials, that the GPA, in whole or in part, sponsors or financially supports the GPA will: document and keep on file copies of what it discovers; take action to remedy the issue as detailed in section D(3) of this Settlement Agreement; and create and keep on file a written record (or copy) of the action (or the actions) it took.

H. The GPA's Website and Requests for Proposals.

The GPA will include the following language in its website and requests for proposals:

The GPA is a health and education program committed to promoting and publicizing the benefits of abstinence. Under limitations imposed by the Constitution, the GPA's funds may not be used for activities, events or materials that include religious messages or otherwise promote or advocate religion. The GPA does not discourage or encourage private religious exercise. If you have any spiritual or religious questions that arise in the context of events sponsored by the GPA, the GPA encourages you to consult with a spiritual advisor from your faith or system of belief.

If you have any questions or comments about these or other issues, you may contact the GPA. The GPA's email and postal addresses are, respectively, kathy.madere@gov.state.la.us and 625 North Street, Suite 822, Baton Rouge, LA 70802.

- I. "All written material promoting events that the GPA, in whole or in part, sponsors or financially supports, will include the following language:

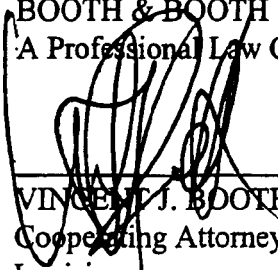
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If you have any questions or comments about these or other issues, you may contact the GPA. The GPA's email and postal addresses are, respectively, kathy.madere@gov.state.la.us and 625 North Street, Suite 822, Baton Rouge, LA 70802."

- IV. The parties agree to move the Court jointly, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, for an Order dismissing this civil action subject to the terms and the conditions in this Settlement Agreement. Until the Court enters such an Order, which upon entry, will vacate the grant of preliminary relief, the parties are not bound by this Settlement Agreement.

IT IS SO AGREED, on the _____ day of November, 2002.

BOOTH & BOOTH
A Professional Law Corporation



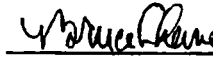
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