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Reply to: Virginia

June 22, 2009

Via U.S. Mail and Fascimile (703) 693-9545

Ray Mabus, Secretary of the Navy
Office of the Secretary of the Navy
2000 Navy Pentagon
Washington, D.C. 20350-2000

RE: Unconstitutional Navy for Moms Website Speech Policies

Dear Secretary Mabus:

Liberty Counsel is a non-profit litigation, education and policy organization with offices in Florida, Virginia and Washington, DC, and with hundreds of affiliate attorneys. Liberty Counsel specializes in constitutional litigation, including litigating citizens' constitutional rights in public forums, and has had great success in vindicating those rights. Our office was recently informed that the Navy For Moms group named "Christian Chat" has been notified that its name must be changed and that Navy For Moms users are now subject to restrictions on religious speech. We write on behalf of Navy For Moms users to demand immediate reversals of those unconstitutional policies and directives.

I understand the following facts to be true. The website www.navyformoms.com is an internet site set up for mothers and loved ones of current and potential sailors for the purposes of sharing information and giving support by providing a location to meet and communicate with one another (Navy For Moms Community Guidelines). The Navy for Moms website is sponsored by the United States Navy but was produced and is maintained by Campbell-Ewald Company (Navy For Moms Terms of Service) on behalf of the United States Navy pursuant to an agreement with the Navy.

Recently, the community guidelines of Navy for Moms were amended to state that Navy for Moms does not allow the forming of religious groups or the posting of religious discussions (Navy For Moms Community Guidelines). The rationale posted was that such affiliations and discussion would create unnecessary divisions among site members.

Sometime on or before September 10, 2008, the user "EV" created the group "Christian Chat." On June 12, 2009, an email was sent from the Navy for Moms administrator, Elle, to the user "Charla" stating that the name "Christian Chat" must be changed, and that the group cannot be named for a specific religion ("Christian Chat" Comment Wall).

Since Navy for Moms is sponsored by the United States Navy and operated on the Navy's behalf pursuant to an agreement with the Navy, Navy for Moms' policies and guidelines must meet constitutional guidelines. By initiating Navy for Moms, the United States Navy has created a designated public forum for expressive use by the general public or by a particular class of speakers. See *International Soc. For Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678 (1992). Since Navy for Moms website is open for membership and posting of comments to forums, blogs and chat groups by all people connected to sailors, officers, and youth who are considering enlisting in the Navy, it is clearly a government-sponsored designated public forum.

Government restrictions on speech in a designated public forum are subject to the same strict scrutiny as restrictions in a traditional public forum. *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 800 (1985). Content-based restrictions must satisfy strict scrutiny, i.e., they must be narrowly tailored to serve a compelling government interest. *Id.* at 800. If the government excludes a speaker who falls within the class to which such a forum is made generally available, its action is subject to strict scrutiny. *Id.* at 802. The Government's "interest in avoiding controversy" is not a compelling state interest that would justify the exclusion of a party's speech. *Id.* at 829. The avoidance of controversy is not a valid ground for restricting speech in a public forum. *Id.* at 811. The First Amendment prohibits the government from showing disfavored treatment to religious speakers. *Rosenburger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 831 (1995). Interestingly, restrictions based on viewpoint are absolutely prohibited regardless of their narrowness or the strength of the government interest served. *Carey v. Brown*, 447 U.S. 455, 463 (1980).

Restrictions on private speakers using the government-sponsored forum are not necessary to avoid a conflict with the Establishment Clause. As Justice Scalia has noted, "Religious expression cannot violate the Establishment Clause where it (1) is purely private and (2) occurs in a traditional or designated public forum, publicly announced and open to all on equal terms." *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 770 (1995).

The prohibition of religious groups and religious speech on Navy for Moms by the United States Navy is unconstitutional. The government simply may not create a forum and then proclaim religious views are not welcome as that is blatant viewpoint discrimination, absolutely prohibited by the First Amendment. Even if the restrictions were evaluated as content restrictions, the United States Navy could not withstand the strict scrutiny required by the Supreme Court for analyzing the restrictions. Maintaining a public forum free of divisiveness has never been found to be a legitimate, much less compelling, government interest. Lastly, the use of the name "Christian" cannot violate the

Ray Mabus, Secretary of the Navy
June 22, 2009
Page 3

Establishment Clause since it is purely private, occurs in a designated public forum, and has been publicly announced and open to all on equal terms.

The actions of the United States Navy and its agent, Campbell-Ewald Company, have unnecessarily exposed the Navy to liability for violating the civil rights of the members of "Christian Chat" and other users of Navy for Moms to free speech. Liberty Counsel stands ready to defend and vindicate the constitutional rights of Navy for Moms website members.

We demand that you immediately take steps on behalf of the United States Navy to reverse the offending policy and directives. Specifically, I am asking you to send a written response to this letter within twenty (20) days with assurances that the members of "Christian Chat" will be informed that their group name is not required to be changed, that all members and users of Navy for Moms will be informed of a change in policy such that the directives and restrictions on religious expression and association outlined in this letter have been withdrawn, and that the Navy for Moms community guidelines have been amended to delete restrictions on religious speech and association. If I do not receive such a response, we will conclude that the above-stated position of the United States Navy is an accurate representation of its policies and position.

I look forward to your prompt response.

Sincerely,

LIBERTY COUNSEL



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