



September 4, 2013
VIA U.S. MAIL

Re: The ACLU's Letter Regarding Gideon Bible Distribution

Dear Superintendent:

You recently received a follow-up letter from the ACLU demanding that you censor religious groups—like the Gideons—who desire to distribute literature to students. The letter purportedly summarized the “results” of its “investigation” into this matter, urging you to ban all religious groups from distributing literature even though such action is not legally required, and renewing its threat of imminent litigation. Yet if you read the letter carefully, the ACLU is forced to grudgingly acknowledge that, just as we advised you in our previous letter, there are alternatives to complete censorship. School districts can draft neutral equal access policies that allow community groups—including religious groups like the Gideons—to distribute literature in a manner that allows parents and students to receive the information and materials that they want.

We write to eliminate any confusion resulting from the ACLU's second dispatch and to renew our offer to assist you in formulating a literature-distribution policy that fully comports with the First Amendment. Alliance Defending Freedom is joined by several of our allied attorneys located within the Commonwealth of Kentucky who share our concern with the accurate understanding and application of the constitutional protections afforded under the Constitutions of both the United States and the Commonwealth of Kentucky. These allied attorneys, several of whom have signed on to this letter, are available to assist in the interpretation and/or formulation of policies that provide an accurate recitation and application of those protections.

Federal caselaw overwhelmingly supports the decision to grant religious and non-religious community groups an equal opportunity to provide literature to willing students. *See, e.g., Rusk*, 379 F.3d at 423 (“Crestview’s practice—which is neutral toward religion—does not send a message of disfavor to students who do not attend the advertised religious activities.”); *Daughtery v. Vanguard Charter Sch. Academy*, 116 F. Supp. 2d 897, 912 (W.D. Mich. 2000) (“[T]he Board’s decision that religious speech ... is appropriate for students to hear if they so choose does not evince the favoritism of religion that the Establishment Clause condemns.” (quoting *Peck v. Upshur Cnty. Bd. of Educ.*, 155 F.3d 274, 284 (4th Cir. 1998)); *see also Child Evangelism Fellowship of N.J. Inc. v. Stafford Twp.*, 386 F.3d 514, 530 (3d Cir. 2004) (“The Supreme Court has repeatedly rejected the position that the Establishment Clause even justifies, much less requires, a refusal to extend free speech rights to religious speakers who participate in broad-reaching government program neutral in design.” (quotation omitted)).

In the context of Gideon Bibles, courts have approved such neutral opportunities in the

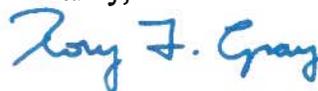
form of literature distribution tables placed in school hallways or lobbies, provided certain precautionary measures are taken to ensure that the tables' contents are not reasonably attributed to the school. The purpose of our initial letter was to point out this simple fact, one with which the ACLU grudgingly agrees. Rather than contesting the legality of a policy that provides religious and nonreligious groups with equal access to literature distribution tables located in school hallways or lobbies, the ACLU merely contends that such a policy would be "difficult to implement." ACLU's Second Letter at 6 n.10.

The ACLU offers no factual support for this statement. Providing community groups with equal access to literature distribution channels is, in fact, the easiest way for schools to respect the First Amendment's command of viewpoint neutrality, which is why thousands of public schools across the nation do it every day. Such a policy would undoubtedly resolve the ACLU's concerns regarding school districts' lack of formal guidelines prescribing which community groups' literature is made available to students. Indeed, the ACLU suggests no alternative policy for approving literature-distribution requests presumably because it is well aware that any provision that favors certain community groups over others would be constitutionally suspect. *See, e.g., Child Evangelism Fellowship of Md., Inc. v. Montgomery Cnty. Pub. Sch.*, 457 F.3d 376, 387 (4th Cir. 2006) ("[A] policy ... that permits officials to deny access for any reason, or that does not provide sufficient criteria to prevent viewpoint discrimination, generally will not survive constitutionally scrutiny.").

At base, the ACLU's follow-up letter is not about the law, which it recognizes allows public schools to establish literature distribution tables in lobbies and hallways open to religious and secular literature sponsored by a broad array of community groups. It is simply a policy argument in favor of expelling religious persons and community groups—like the Gideons—from public life. *See* ACLU's Second Letter at 6 n.10. But "[f]ree public education, if faithful to the ideal of secular instruction and political neutrality, will not be partisan or enemy of any class, creed, party, or faction." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943) (emphasis added). Establishing a neutral literature distribution forum open to religious and non-religious community groups alike respects this principle and avoids the ACLU's "pervasive bias or hostility to religion, which" serves to "undermine the very neutrality the Establishment Clause requires." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 846 (1995).

Alliance Defending Freedom and its allied attorneys would be happy to assist you in drafting such a policy free of charge to help insulate your district from the ACLU's litigation threat. Please call us at 480-444-0020.

Sincerely,



Rory T. Gray
Jeremy D. Tedesco
J. Matthew Sharp
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, AZ 85260

Leslie C. Bates
Law Office of Leslie C. Bates, PLLC
P.O. Box 22005
Louisville, KY 40252

John F. Billings
Law Office of John F. Billings
201 S. Main Street
Nicholasville, KY 40356

A.C. Donahue
Donahue Law Group, PSC
P.O. Box 659
Somerset, KY 42502

Jeffery L. Eastham
Attorney at Law
116 N. Public Square
Greensburg, KY 42743

Clinton J. Elliott
Attorney and Counsel at Law
3601 Doris Court
Crestwood, KY 40014

Michael A. Hamilton
Hamilton & Associates
118 N. Main Street
Nicholasville, KY 40356

Vincent F. Heuser, Jr.
Hirsh and Heuser Attorneys
3600 Goldsmith Lane
Louisville, KY 40220

John A. Majors
Morgan & Pottinger, PSC
601 W. Main Street
Louisville, KY 40202

Brian Schuette
Crain, Schuette & Associates
719A Dishman Lane
Bowling Green, KY 42104