



11 September 2014

Via U.S. Mail & Electronic Mail at president@psu.edu

Dr. Eric J. Barron
Office of the President
The Pennsylvania State University
201 Old Main
University Park, Pennsylvania 16802

Re: Bibles in Penn State's Guest Rooms

Dear President Barron,

We recently learned that Freedom from Religion Foundation (FFRF) sent you a letter, wrongly insisting that the Establishment Clause of the First Amendment requires you to remove Bibles from the guest rooms of the Nittany Lion Inn and the Penn Stater Conference Center Hotel. Sadly, it sounds like you have succumbed to FFRF's misinformation by removing the Bibles from the "individual guest rooms" and instead placing them in "libraries and other public access areas."¹

We write to clarify that the Establishment Clause does *not* require Penn State to remove these Bibles. To our knowledge, no court in the country has ever ruled that allowing Bibles to be placed in the guest rooms of government-run guest facilities violates the First Amendment. Rather, the Establishment Clause allows private individuals and groups, like the Gideons, to place Bibles at their expense on government property. In fact, by removing the Bibles from the guest rooms, Penn State may have demonstrated the very viewpoint discrimination and hostility towards religion that the First Amendment prohibits. Thus, we ask that you restore the Bibles to the guest rooms, just as the U.S. Navy did after receiving similar letters from FFRF.²

By way of introduction, Alliance Defending Freedom is an alliance-building, non-profit legal organization that advocates for the right of people to live out their faith freely. Previously, we have successfully challenged Penn State policies that endangered free speech and religious freedom.³ But today we write in a spirit of coopera-

¹ Michael Gryboski, *Penn State Denies Removing Bibles from Hotels Following Atheist Complaint*, CHRISTIAN POST, Sept. 5, 2014, available at <http://www.christianpost.com/news/penn-state-denies-removing-bibles-from-hotels-following-atheist-complaint-125953/> (last visited Sept. 9, 2014) (quoting Lisa M. Powers, director of Penn State's strategic communications).

² See, e.g., Todd Starnes, *Navy Reverses Bible Ban*, FOX NEWS, Aug. 15, 2014, available at <http://www.foxnews.com/opinion/2014/08/15/navy-reverses-bible-ban/> (last visited Sept. 9, 2014); Travis J. Tritten, *Navy Tells Lodges to Put Removed Bibles Back into Rooms*, STARS & STRIPES, Aug. 14, 2014, available at <http://www.stripes.com/news/us/navy-tells-lodges-to-put-removed-bibles-back-into-rooms-1.298351> (last visited Sept. 9, 2014).

³ See, e.g., *Fluehr v. Penn. State Univ.*, No. 4:06-cv-00394 (M.D. Pa. filed Feb. 22, 2006) (challenging speech

tion, seeking to explain how the First Amendment requires public officials to accommodate religion and not to view it with a jaundiced eye (as FFRF so evidently does).

FFRF's demands regarding these Bibles rest upon its skewed vision of what it wishes the First Amendment meant. But federal courts have not adopted FFRF's desires, just as no court has ruled that a government-run guest facility must remove Bibles from its guest rooms. Thus, FFRF's demands and extreme legal opinions lack credibility and should be ignored.

First, contrary to what FFRF implies, the Establishment Clause does not require government entities to dissociate themselves from everything religious. Indeed, the Supreme Court has repeatedly made it clear that the Constitution does *not* "require complete separation of church and state."⁴ Rather, it "affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any."⁵ By making Bibles available to guests (or allowing private organizations to do so upon their request), Penn State was neither advancing nor endorsing a religion; it was merely accommodating the religious needs and desires of many of its guests, which is perfectly constitutional. By removing the Bibles from the guest rooms, Penn State has decided to become less accommodating and to make these resources less accessible, requiring guests to go to "libraries and other public access areas" to obtain what used to be available in a nearby drawer.

Second, universities have wide latitude in accommodating religion. For example, the only two federal appellate courts to consider the issue concluded that public universities may constitutionally include clergy-led prayers at their graduation ceremonies.⁶ Both courts determined that these prayers serve a secular purpose⁷ and observed that the university context primarily involves adults.⁸ More importantly, both courts ruled that the First Amendment does not require universities to become "religion-free" zones. As the Sixth Circuit observed, "[t]he people of the United States did not adopt the Bill of Rights to strip the public square of every last shred of public piety."⁹ The Seventh Circuit agreed, saying these prayers were "simply a tolerable acknowledgment of beliefs widely held among the people of this country."¹⁰ The Sixth Circuit acknowledged that someone "may . . . [find] the prayers offensive, but that reaction, in and of itself, does not make them unconstitutional."¹¹ If a university can accommodate religion by including clergy-led prayers in its very public

code and speech zone policies); *Pursley v. Penn. State Univ.*, No. 4:07-cv-02256 (M.D. Pa. filed Dec. 12, 2007) (challenging policy prohibiting alumnus from including bricks with religious inscriptions in the "Alumni Walk").

⁴ *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984).

⁵ *Id.*

⁶ *Tanford v. Brand*, 104 F.3d 982 (7th Cir. 1997); *Chaudhuri v. Tennessee*, 130 F.3d 232 (6th Cir. 1997), cert. denied 523 U.S. 1024 (1998).

⁷ *Chaudhuri*, 130 F.3d at 236; *Tanford*, 104 F.3d at 986 (citing *Lynch*, 465 U.S. at 693 (O'Connor, J., concurring)).

⁸ *Chaudhuri*, 130 F.3d at 237-39; *Tanford*, 104 F.3d at 985-86.

⁹ *Chaudhuri*, 130 F.3d at 236.

¹⁰ *Tanford*, 104 F.3d at 986 (quoting *Marsh v. Chambers*, 463 U.S. 783, 792 (1983)).

¹¹ *Chaudhuri*, 130 F.3d at 239 (quoting *Lee v. Weisman*, 505 U.S. 577, 597 (1992)).

graduation ceremonies, it can certainly accommodate religion in the very discrete act of allowing Bibles to be placed in its guest rooms. Just because FFRF finds the Bibles offensive does not make them unconstitutional.

Third, in its statements, FFRF denigrates the Gideons and their mission.¹² But in so doing, it merely repeats an argument that federal courts have repeatedly rejected. For example, in 1993, the Seventh Circuit ruled that “[a] law is not unconstitutional simply because it *allows* churches to advance religion, which is their very purpose.”¹³ In 1999, it reaffirmed this principle as it concluded that a government action did not violate the Establishment Clause “merely because [it] has the indirect effect of making it easier for people to practice their faith.”¹⁴ The Eighth Circuit similarly ruled that “[t]he mere fact a government body takes action that coincides with the . . . desires of a particular religious group . . . does not transform the action into an impermissible establishment of religion.”¹⁵ The Supreme Court validated these conclusions when it ruled in 2005 that “[s]imply having religious content or promoting a message consistent with a religious doctrine does not run afoul of the Establishment Clause.”¹⁶ Indeed, Justice Breyer warned that “the Establishment Clause does not compel the government to purge from the public sphere all that in any way partakes of the religious.”¹⁷ Hence, the fact that the Gideons are a Christian ministry does not somehow mean that allowing them to place Bibles in your rooms for guests to use violates the First Amendment.

Last, it is critical to remember that numerous courts across the country have affirmed the Gideons’ right to distribute Bibles in schools,¹⁸ and even more—including ones in the Third Circuit¹⁹—have affirmed private citizens’ right to share religious

¹² See Freedom from Religion Found., *FFRF Request Removes Bibles from Penn State Hotels*, Sept. 4, 2014, available at <http://ffrf.org/news/news-releases/item/21312-ffrf-request-removes-bibles-from-penn-state-hotels> (last visited Sept. 9, 2014).

¹³ *Cohen v. City of Des Plaines*, 8 F.3d 484, 491 (7th Cir. 1993) (quoting *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 337 (1987)).

¹⁴ *Bridenbaugh v. O’Bannon*, 185 F.3d 796, 801–02 (7th Cir. 1999).

¹⁵ *Clayton by Clayton v. Place*, 884 F.2d 376, 380 (8th Cir. 1989); accord *Stark v. Indep. Sch. Dist., No. 640*, 123 F.3d 1068, 1074–76 (8th Cir. 1997) (ruling that “the fact that the [school] district’s actions”—opening a public school and granting certain exemptions—“coincide with the [religiously-motivated] desires of certain parents does not mean that the Establishment Clause has been violated.” (citing *Clayton*, 884 F.2d at 380)).

¹⁶ *Van Orden v. Perry*, 545 U.S. 677, 690 (2005); accord *ACLU Neb. Found. v. City of Plattsmouth*, 419 F.3d 772, 778 (8th Cir. 2005).

¹⁷ *Van Orden*, 545 U.S. at 699 (Breyer, J. concurring).

¹⁸ See, e.g., *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 408 (5th Cir. 1995) (ruling that parents lacked standing to challenge Bible distribution because the school did not “expend[] any funds on the Gideons’ Bible distribution,” the “Gideons do not address the students, the school does not make any announcement informing the students about the Bibles, and no school district employees handle the Bibles”); *Schanou v. Lancaster Cnty. Sch. Dist. No. 160*, 62 F.3d 1040, 1046 (8th Cir. 1995) (dismissing challenge to the distribution of Gideon Bibles at school on standing and mootness grounds).

¹⁹ See, e.g., *Child Evangelism Fellowship of N.J., Inc. v. Stafford Twp. Sch. Dist.*, 386 F.3d 514, 526–36 (3d Cir. 2004) (affirming Good News Club’s right to promote its religious meetings); *K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 106–13 (3d Cir. 2013) (affirming student’s right to distribute religious invitation at school); *Slotterback v. Interboro Sch. Dist.*, 766 F. Supp. 280, 293–97 (E.D. Pa. 1991) (striking ban on students distributing religious literature at school); *Gregoire v. Centennial Sch. Dist.*, 907 F.2d 1366, 1382–83 (3d Cir. 1990) (striking

literature at public schools on equal terms with those promoting non-religious literature.²⁰ For example, in one school district, the Gideons placed Bibles on a table for students to pick up if they wished.²¹ The Fourth Circuit upheld this practice, ruling that “the state does not violate the Establishment Clause when it permits private parties to passively offer the Bible or other religious materials to secondary school students.”²² In the process, it concluded that government officials do not unconstitutionally advance religion simply because they respond to religiously-motivated requests.²³ Here, Penn State had done nothing different. Bibles were simply placed in guest rooms, which is the same sort of “passive distribution” the Fourth Circuit upheld. And like the students there, guests could either use the Bibles or not, depending on their own desires.

However, by succumbing to FFRF’s demands, Penn State may have exposed itself to potential liability. Presumably, the guest rooms include a variety of printed materials, including magazines, phone books, and information about the campus and guest facility. By removing the Bibles from the guest rooms and making them less accessible because they are religious, Penn State may have demonstrated the hostility towards religion that the Establishment Clause prohibits.²⁴ In addition, it may have also engaged in viewpoint discrimination, which is “an egregious form of content discrimination” and a “blatant” violation of the First Amendment.²⁵ The Supreme Court and numerous other federal courts have repeatedly condemned efforts to exclude or restrict religious materials and activities as viewpoint or content discrimination, both at universities²⁶ and elsewhere.²⁷

In short, we urge you to follow the example of the U.S. Navy—an arm of the federal government—by rejecting FFRF’s demands, restoring the Bibles to your guest rooms, and continuing to allow religious groups who request to place sacred texts in your rooms to do so. In so doing, you will fulfill the best of our nation’s history of

school district’s ban on distribution of religious literature).

²⁰ See, e.g., *Child Evangelism Fellowship of Md., Inc. v. Montgomery Cnty. Pub. Schs.*, 373 F.3d 589, 602 (4th Cir. 2004); *Rusk v. Crestview Local Sch. Dist.*, 379 F.3d 418, 424 (6th Cir. 2004); *Hill v. Scottsdale Unified Sch. Dist. No. 48*, 329 F.3d 1044, 1052 (9th Cir. 2003); *Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118*, 9 F.3d 1295, 1297–98 (7th Cir. 1993); *J.S. ex rel. Smith v. Holly Area Schs.*, 749 F. Supp. 2d 614, 623–25 (E.D. Mich. 2010).

²¹ *Peck v. Upshur Cnty. Bd. of Educ.*, 155 F.3d 274, 276–77 (4th Cir. 1998).

²² *Id.* at 288.

²³ *Id.* at 281.

²⁴ See, e.g., *Lynch*, 465 U.S. at 673 (noting that the Establishment Clause “affirmatively mandates accommodation, not merely tolerance, of all religion, and forbids hostility towards any”).

²⁵ *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

²⁶ See, e.g., *id.* at 831–32 (excluding religious newspaper from the student fee forum constitutes viewpoint discrimination); *Widmar v. Vincent*, 454 U.S. 263, 269–70 (1981) (excluding religious student group seeking to worship from a university building constitutes content discrimination); *Badger Catholic, Inc. v. Walsh*, 620 F.3d 775, 778–79 (7th Cir. 2010) (excluding events involving prayer, worship, and proselytizing from a student fee forum constitutes viewpoint or content discrimination).

²⁷ See, e.g., *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); see also *CEF of N.J., Inc.*, 386 F.3d at 526–30 (excluding religious materials from a school flyer forum constitutes viewpoint discrimination); *CEF of Md., Inc.*, 373 F.3d at 593–94 (same).

accommodating religion, and you will avoid manifesting the viewpoint discrimination and hostility towards religion that the First Amendment prohibits. Of course, if you wish to discuss this matter further or would like additional assistance rebutting FFRF's false claims about what the Establishment Clause requires, please do not hesitate to contact us.

Sincerely,



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