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MEMORANDUM

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Student Bible Clubs & Religious Use of School Facilities

Students have a constitutional right to initiate and participate in voluntary Bible Clubs or prayer groups on public school campuses. The ACLJ has successfully represented hundreds of students seeking redress for a violation of their constitutionally-protected rights to obtain equal access for Bible Clubs or Prayer Groups on their campuses.

Below is a short legal analysis prepared by ACLJ attorneys on this topic.

Unfortunately, over twenty years after the Supreme Court upheld the constitutionality of the Equal Access Act (the "Act") in *Westside Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990)—a case in which Jay Sekulow served as lead counsel and presented oral arguments before the Supreme Court—students are still being denied their right to participate in Bible Clubs and Prayer Groups on public school campuses.

Students' rights to initiate and participate in voluntary Bible Clubs or Prayer Groups was unequivocally resolved by the Supreme Court's decision in *Mergens*. In an 8 to 1 decision, the *Mergens* Court held that the Equal Access Act which requires public schools to allow student-initiated Bible Clubs or prayer groups equal access to meet on campus, is Constitutional. *Id.* at 234.

Congress enacted the Equal Access Act "to address perceived widespread discrimination against religious speech in public schools . . . ." *Id.* at 239. Congress stated the purpose of the Act this way: "[Public secondary schools may not discriminate against] any students who wish

to conduct a meeting . . . on the basis of religious, political, philosophical, or other content of the speech at such meetings." 20 U.S.C. § 4071(a) (2006).

Religious groups must be allowed to meet on campus without school officials censoring their religious beliefs or statements. In *Mergens*, the Supreme Court held that the Equal Access Act was constitutional because allowing equal access to religious clubs does not violate the Establishment Clause. In fact, the Court explained that the Establishment Clause actually mandated that government be neutral with respect to religion:

> [I]f a State refused to let religious groups use the facilities open to others, then it would demonstrate not neutrality but hostility toward religion. The Establishment Clause does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore subject to unique disabilities."

Mergens, 496 U.S. at 248 (quoting *McDaniel v. Paty*, 435 U.S. 618, 641 (1978) (Brennan, J., concurring in judgment)).

Three factors determine whether school officials are compelled to recognize students' religious clubs: 1) does the school receive any federal funds; 2) is the school a public secondary school as defined by state law (most states classify a secondary school as grades nine through twelve); and 3) does the school allow any non-curriculum clubs to meet on campus? *Id.* at 233, 239–40. If the answer to each of these questions is yes, then federal law compels school officials to provide equal access to students who want to organize and conduct Bible clubs and student prayer groups.

The crucial factor in triggering the Equal Access Act is whether a school district allows other non-curriculum clubs to meet on campus, a standard that the Supreme Court said should be "interpreted broadly" and provides a "low threshold" for trigging the Act's protection. *Id.* The Supreme Court has defined a "non-curriculum related student group" as "any student group that does not directly relate to the body of courses offered by the school." *Id.* at 239. The Court also determined that a student group is curriculum-related:

> if the subject matter of the group is actually taught, or will soon be taught, in a regularly offered course; if the subject matter of the group concerns the body of courses as a whole; if participation in the group is required for a particular course; or if participation in the group results in academic credit.

Id. at 239–40. Thus, if such federally funded secondary schools permit non-curricular clubs such as Interact, Zonta, 4-H, Chess Club, and other service-type clubs to meet and hold events on

campus, those schools must also permit Bible clubs and prayer groups to meet to the same extent. *Id.* at 247.

Additionally, the Supreme Court held that student-initiated Bible Clubs or Prayer Groups must be given official recognition on campus in order to satisfy the Equal Access Act requirements. "Official recognition allows student clubs to be part of the student activities program and carries with it access to the school newspaper, bulletin boards, the public address system, and the annual Club Fair." *Id.* at 247.

While these religious clubs must be student-initiated and run, Bible Clubs or Prayer Groups are not responsible to make sure the rest of the student body knows that the club is student-initiated; that is the responsibility of school officials. *Id.* at 251. *School officials are also prohibited from censoring the club's speech by requiring them to delete references to Christianity from the club announcements and fliers.*

School officials do not violate the Establishment Clause of the First Amendment by permitting this type of student activity. As the *Mergens* Court stated, "[T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." *Id.* at 250. Clearly, there is no church-state violation when school administrators allow students to meet together on campus.

The Equal Access Act imposes one difference in treatment between religious student groups and other clubs. The Act prohibits faculty or staff from serving in any role with religious student groups other than as a custodial monitor. *Id.* at 236. In other words, the faculty/staff custodian of a religious group is present only to ensure that the group does not violate school policies or injure school property, not to participate in group activities.

As a result of the Supreme Court's holding in *Mergens*, schools must afford Bible Clubs or Prayer Groups the same privileges as other clubs on campus.

Besides having statutory rights under the Equal Access Act, students have a First Amendment right to hold student-initiated prayer club meetings on campus. It is well settled that religious speech is protected by the First Amendment of the Constitution. *Widmar v. Vincent*, 454 U.S. 263, 269 (1981) (citing *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981)); *Niemotko v. Maryland*, 340 U.S. 268 (1951). In fact, the right to persuade or advocate a religious viewpoint is one of the reasons the First Amendment was adopted.

In *Tinker v. Des Moines Indep. Sch. Dist.*, a landmark decision involving First Amendment rights on public school campuses, the Supreme Court stated that "[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." 393 U.S. 506, 506 (1969). This means that students have First Amendment rights that cannot be denied "when [they are] in the cafeteria, or on the playing field, or on the campus during the authorized hours." *Id.* at 512–13. In fact, school administrators can only prohibit student speech if it "'materially and substantially interfer[es] with . . . appropriate discipline.'" *Id.* at 513 (quoting *Burnside v. Byars*, 363 F.2d 744, 749 (5th Cir. 1966)). Under this standard, a student-initiated and student-led Bible Club or Prayer Group is constitutional. Moreover, school administrators violate the Constitution if they forbid, censor, or inhibit the Bible Clubs or Prayer Groups in any manner.

It is imperative that school officials protect the constitutional and statutory rights of students to initiate and participate in Bible Clubs or Prayer Groups. The ACLJ remains committed to defending the rights of students on their public school campus because, as the Supreme Court has stated, "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Shelton v. Tucker*, 364 U.S. 479, 487 (1960).