ACLJ

MEMORANDUM

This memorandum provides an overview of the law as of the date it was written and is for educational purposes only. This summary may become outdated and may not represent the current state of the law. Reading this material DOES NOT create an attorney- client relationship between you and the American Center for Law and Justice, and this material should NOT be taken as legal advice. You should not take any action based on the educational materials provided on our website, but should consult with an attorney if you have a legal question.

Bibles and Bible Studies in the Workplace

Contrary to what many may think, the First Amendment to the United States Constitution does *not* require the censorship of private religious speech, such as a voluntary Bible study, occurring on government property. In fact, the First Amendment protects such religious expression from government censorship.

The First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion,[1] or prohibiting the free exercise thereof;[2] or abridging the freedom of speech,[3] or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."[4] Importantly, the Supreme Court has explained that "a natural reading of [the First Amendment] would seem to suggest the Clauses have 'complimentary purposes,' not warring ones where one Clause is always sure to prevail."[5]

A more thorough discussion of these relevant Clauses and their application to a government employee's desire to host and/or participate in a Bible study in the workplace is discussed below.

I. The First Amendment protects private religious speech, even at work.

It is a fundamental proposition of constitutional law that the government may not suppress a private citizen's speech solely because that speech is religious.[6] In fact, religious speech is "doubly protect[ed]" under the First Amendment.[7] As the Supreme Court has explained:

> Private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression. Indeed, in

[1] This first provision is generally referred to as the Establishment Clause.
[2] This second provision is generally referred to as the Free Exercise Clause.
[3] This third provision is generally referred to as the Free Speech Clause.
[4] U.S. Const. Amend. I.
[5] *Kennedy v. Bremerton School Dist.*, No. 21-418, slip op. at 20 (U.S. June 27, 2022).
[6] *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 830 (1995); *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist*, 508 U.S. 384, 394 (1993); *Widmar v. Vincent*, 454 U.S. 263, 280 (1981).
[7] *Kennedy*, slip op. at 11 (citing *Widmar*, 454 U.S. at 269; *Rosenberger*, 515 U.S. at 841).

> Anglo-American history, at least, government suppression of speech has so commonly been directed precisely at religious speech that a free-speech clause without religion would be Hamlet without the prince.[8]

Likewise, the Free Exercise Clause protects the ability of those who hold religious beliefs to live out their faith in daily life through "the performance of (or abstention from) physical acts."[9] It is well established that government employees retain these rights at their workplace.[10] Public employees may not "be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest . . . ."[11] In the more recent case of *Kennedy v. Bremerton School District*, the Supreme Court once again rejected the notion that when an employee is on duty and/or on government property at the time of his/her religious speech, the First Amendment's protections do not apply.[12]

In *Kennedy*, the Court held that the school district's policy prohibiting a football coach from praying on the field after games violated the First Amendment. The Court rejected the school district's claim that the First Amendment prohibits "an employee, while still on duty, to engage in religious conduct"[13] for two reasons. First, Coach Kennedy's conduct – *i.e.* praying on the field by himself *after* football games – did not take place within the scope of his official duties.[14] The game was over and players and coaching staff were permitted to engage in personal activities. Second, the school did not seek to regulate the conduct of other coaching staff during this same time.[15] Accordingly, the school failed to apply a neutral and generally applicable policy and improperly sought to regulate private speech and conduct, rather than official government speech or conduct.[16]

Similarly, if a government employee wishes to lead and/or be a part of a bible study during non-work time (such as during a break or lunch hour), such speech or conduct should be deemed private, and thus permitted – especially if other employees are allowed to engage in non-religious speech and/or personal activities during their break and/or lunch hour.

II. The Establishment Clause does *not* prohibit government employees and other citizens from leading or attending a voluntary Bible study in a government building.

There is a common misconception that the Establishment Clause imposes some affirmative duty on the government to suppress private religious expression. However, in countless cases, the Court has held that the Establishment Clause does *not* require the censorship of private religious

---

[8] *Pinette*, 515 U.S. at 760 (plurality opinion) (citations omitted).
[9] *Kennedy*, slip op. at 12 (citing *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 877 (1990)).
[10] *See, e.g., Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503, 506 (1969) (noting that public school "teachers [do not] shed their constitutional rights . . . at the schoolhouse gate").
[11] *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968).
[12] *Kennedy*, slip op. at 18.
[13] *Id.* at 14 (internal citations and quotations omitted).
[14] *Id*. at 17 (noting further that coach Kennedy demonstrated that his speech was private speech because when he prayed, "he was not instructing players, discussing strategy . . . or engaging in any other speech the school paid him to produce as a coach") (emphasis added).
[15] *Id*. at 15.
[16] *Id*.

speech solely because it occurs on government property.[17] Nor can the Establishment Clause be interpreted to require a purge of all religious reference from the public square.[18] Instead, the First Amendment "affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any."[19]

As the Supreme Court recently instructed, the Establishment Clause must be interpreted by "reference to historical practices and understandings."[20] From now on, "'the line' that courts and governments 'must draw between the permissible and the impermissible' has to 'accord with history and faithfully reflect the understanding of the Founding Fathers.'"[21] Our nation has a long history of accommodating the religious beliefs of public employees through the use of prayer rooms or chapels in government buildings "for religious worship and meditation."[22]

III. Federal guidelines expressly permit voluntary Bible study in the workplace.

While not binding on state governments, the federal government's Guidelines on Religious Exercise and Religious Expression in the Federal Workplace (the "Guidelines") instructs:

> Employees should be permitted to engage in religious expression with fellow employees, to the same extent that they may engage in comparable nonreligious private expression, subject to reasonable and content-neutral standards and restrictions: such expression should not be restricted so long as it does not interfere with workplace efficiency.[23]

The Guidelines specifically provide that if, for example, if "during lunch, certain employees gather on their own time for prayer and Bible study in an empty conference room that employees are generally free to use on a first-come, first-served basis[,] [s]uch a gathering may not be subject to discriminatory restrictions because of its religious content."[24] Moreover, "[s]uch a gathering does not constitute religious harassment even if other employees with different views on how to pray might feel excluded or ask that the group be disbanded."[25] In other words, "a hostile environment is not created by the bare expression of speech with which some employees might disagree."[26]

Importantly, the Guidelines recognize that "[a] person holding supervisory authority over

---

[17] *See, e.g.*, *Good News Club*, 533 U.S. at 114; *Rosenberger*, 515 U.S. at 845; *Pinette*, 515 U.S. at 761; *Lamb's Chapel*, 508 U.S. at 394; *Mergens*, 496 U.S. at 248; *Widmar*, 454 U.S. at 277.
[18] *Lee v. Weisman*, 505 U.S. 577, 598 (1992).
[19] *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984); *see also Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947).
[20] *Kennedy*, slip op. at 23 (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)); *Am. Legion v. Am. Humanist Assn.*, 139 S. Ct. 2067 (2019) (plurality op.) (slip op. at 25).
[21] *Id*. (quoting *Town of Greece*, 572 U.S. at 577) (other quotations and citations omitted).
[22] *Lynch*, 465 U.S. at 677.
[23] Press Release, The White House Office of the Press Secretary, Guidelines on Religious Exercise and Religious Expression in the Federal Workplace (Aug. 14, 1997), https://clintonwhitehouse4.archives.gov/WH/New/html/19970819-3275.html; see also Federal Register :: Federal Law Protections for Religious Liberty.
[24] *Id*.
[25] *Id*.
[26] *Id*.

an employee may not, explicitly or implicitly, insist that the employee participate in religious activities as a condition of continued employment, promotion, salary increases, preferred job assignments, or any other incidents of employment."[27] However, "[w]here a supervisor's religious expression is not coercive and is understood as his or her personal view, that expression is protected in the Federal workplace in the same way and to the same extent as other constitutionally valued speech."[28]

In sum, the First Amendment does not require the censorship of private religious speech in the workplace. It protects such religious expression from government censorship. Thus, government employees should not be discouraged form meeting for voluntary Bible study or religious discussions during nonwork hours.

[27] *Id.*
[28] *Id.*