

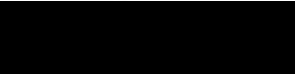


**American Center  
for Law & Justice**

*Jay Alan Sekulow, J.D., Ph.D.  
Chief Counsel*

December 18, 2015

Northern Illinois University  
Dr. Douglas D. Baker, Ph.D.  
Office of the President



Dear President Baker,

The American Center for Law & Justice (ACLJ) has prepared this letter in response to Freedom from Religion Foundation's (FFRF) demand that Northern Illinois University remove Bibles from the Holmes Student Center hotel rooms. The purpose of this letter is to explain the relevant law, and to dispel FFRF's erroneous assertion that the Gideons' placement of Bibles in university-owned hotel rooms raises a constitutional issue.

By way of introduction, the ACLJ is a nonprofit law firm dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued before the Supreme Court of the United States in a number of significant cases involving the freedoms of speech and religion. *See, e.g., Pleasant Grove City v. Summum*, 555 U.S. 460 (2009) (unanimously holding that a monument erected and maintained by the government on its own property constitutes government speech and does not create a right for private individuals to demand that the government erect other monuments); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding by an 8-1 vote that allowing a student Bible club to meet on a public school's campus did not violate the Establishment Clause).

The ACLJ has prepared this letter on behalf of over 173,000 Americans who are concerned about misinformation propagated by FFRF in its crusade to purge from public life all vestiges of the nation's Judeo-Christian heritage.

### **Analysis**

In its letter demanding removal of the Gideon-placed Bibles in the Holmes Student Center hotel, FFRF claims that the mere presence of the Bible in a state-run lodging was "inappropriate and unconstitutional." FFRF also asserted that "providing bibles to ... [h]otel guests sends the message that [the university] endorses the religious texts."



FFRF's constitutional claim appears to hinge upon the argument that in granting permission to the Gideon Society to place Bibles in the university's hotel, the university has endorsed religion in violation of the Establishment Clause of the First Amendment. Establishment Clause case law does not support FFRF's claim.

The Supreme Court of the United States has been clear that allowing religious speech on government-owned property does not always equate to a governmental endorsement of religion. This is especially true when the speech originates from a private party. *Van Orden v. Perry*, 545 U.S. 677, 692 (2005) (upholding constitutionality of Ten Commandments monument donated by local civic group to public park); *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1824 (2014) (upholding constitutionality of town board's invitation to local clergy to offer prayers before town board meeting). In *Galloway*, the Court specifically repudiated FFRF's reasoning in its letter to you, when it observed that adults should be able to withstand "speech they find disagreeable." without imagining that the Establishment Clause is violated every time they "experience a sense of affront from the expression of contrary religious views." *Id.* at 1826. *See also Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 44 (2004) (O'Connor, J., concurring) ("[T]he Constitution does not guarantee citizens a right entirely to avoid ideas with which they disagree. It would betray its own principles if it did; no robust democracy insulates its citizens from views that they might find novel or even inflammatory.").

In *Galloway*, the Court further rejected the assertion that a reasonable person would find a governmental endorsement of religion in the prayers being offered before the town board meetings. Rather, the Court recognized the valid purpose of the prayer: "to acknowledge the place religion holds in the lives of many private citizens, not to afford government an opportunity to proselytize or force truant constituents into the pews." *Id.* at 1825.

Unlike FFRF, a reasonable person understands the 100-plus year history<sup>1</sup> of the Gideon Society placing Bibles in hotel rooms across the country. The reasonable person does not assume that the university is attempting to endorse or coerce Bible reading, any more than the reasonable person would assume the university is endorsing vegetarianism because it offers some vegetarian entrees in the hotel restaurant. Rather, the university's participation in a nation-wide hotel practice is merely a tolerable acknowledgement of widely held beliefs. To require elimination of Bibles in hotel rooms owned by public universities arguably would "lead the law to exhibit a hostility toward religion that has no place in our Establishment Clause traditions." *Van Orden v. Perry*, 545 U.S. 677, 704 (2005) (Breyer, J., concurring).

The only cases holding that distribution of Gideon Bibles raised an Establishment Clause issue arose in the context of public schools where impressionable school children were given Bibles without their parents' knowledge or consent. *See, e.g., Berger v. Rensselaer Central Sch. Corp.*, 982 F.2d 1160 (7th Cir. 1993) (striking down a school district's practice of allowing the Gideons to address fifth grade students and to give a message urging students to study the New Testament. At the end of the presentation, children were encouraged to come to the front of

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<sup>1</sup>The practice dates to 1908. <http://www.gideons.org/AboutUs/OurHistory.aspx>.

class to receive a Bible of their own); *Doe v. S. Iron R-I Sch. Dist.*, 498 F.3d 878 (8th Cir. 2007) (allowing Gideons' representatives to distribute Bibles to fifth grade students in the classroom, during the school day and with the visible support of school officials, violates the Establishment Clause).

The concern about impressionable school children is absent in the context of a university owned hotel. The Supreme Court has recognized that "university students are, of course, young adults." *Widmar v. Vincent*, 454 U.S. 263, 274 n.14 (1981). They are less impressionable than younger students, and "fully capable of understanding the "proposition that schools do not endorse everything they fail to censor." *Board of Educ. v. Mergens*, 496 U.S. 226, 250 (1990) (holding that *high school students* can understand the distinction between endorsement and neutrality).

Because of the age and maturity difference of college students, courts have generally acknowledged that college students are unlikely to be "coerced" by religious expression at school sponsored events. Thus, in *Tanford v. Brand*, the Seventh Circuit upheld a prayer at a public university graduation ceremony because

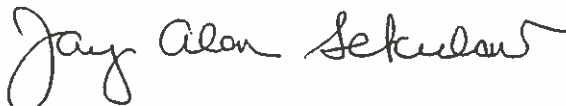
the mature stadium attendees were voluntarily present and free to ignore the cleric's remarks. Most remained seated. Under these facts, in which the special concerns underlying the Supreme Court's decision in *Lee [v. Weisman]* are absent, the district court correctly determined that *Lee* does not require the challenged practices to be struck down.

104 F.3d 982, 985-986 (7th Cir. 1997). Therefore, the court concluded, the practice of prayer at public university graduations is "simply a tolerable acknowledgment of beliefs widely held among the people of this country" and a practice that is "widespread throughout the nation." *Id.* at 986 (quoting *Marsh v. Chambers*, 463 U.S. 783, 792 (1983)).

The *Tanford* court's reasoning applies with equal force to allowing Gideon placement of Bibles in university hotel rooms. There is no coercion whatsoever, and allowing the Gideon Society to place Bibles in hotel rooms is a practice "widespread throughout the nation" that reflects a "tolerable acknowledgement of beliefs widely held among the people of this country."

We hope that this letter will be helpful to you and prompt you to reconsider your decision to remove Gideon-placed Bibles from the university's hotel rooms. *Please understand that this letter is for informational purposes only and does not constitute legal advice.* Should you have any questions, please feel free to contact us.

Respectfully yours,



Jay Alan Sekulow  
Chief Counsel



Laura Hernandez  
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