



December 18, 2015

University of Wisconsin  
Dr. Raymond W. Cross, Ph.D.  
Office of the President

Dear President Cross,

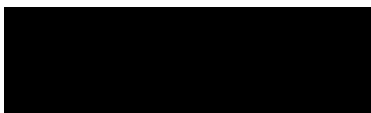
It has come to our attention that Freedom From Religion Foundation (FFRF) recently issued a press release,<sup>1</sup> claiming that communications between FFRF and University of Wisconsin officials prompted the university to remove Gideon Society Bibles from university-owned hotel rooms. Although the university's response to our Wisconsin Open Records Law request produced no such written communications, the American Center for Law & Justice would nevertheless like to take this opportunity to respond to FFRF's false 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 educational organization 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.

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<sup>1</sup> A copy of FFRF's press release in which FFRF claims it persuaded UW to remove Bibles from university-owned hotel rooms is attached.



## Discussion

In a letter to Northern Illinois University demanding removal of the Gideon-placed Bibles in University owned hotel rooms,<sup>2</sup> FFRF claimed 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, 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>3</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

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<sup>2</sup>Northern Illinois University provided a copy to us of the letter.

<sup>3</sup>The practice dates to 1908. <http://www.gideons.org/AboutUs/OurHistory.aspx>.

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 class to receive a Bible of their own); *Doe v. S. Iron R-1 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

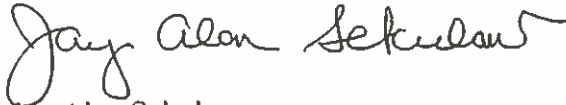
the mature stadium attendees were voluntarily present and free to ignore the cleric's remarks. Most remained seated. Under these facts, in which the special concerns underlying the Supreme Court's decision in *Lee* [*v. Weisman*] are absent, the district court correctly determined that *Lee* does not 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 should you reconsider the university's policy concerning 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  
Senior Counsel

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## Bibles removed from Northern Illinois University following FFRF objection

Print

October 30, 2015

Northern Illinois University quickly removed all bibles from the Holmes Student Center Hotel after receiving a letter from the Freedom From Religion Foundation stating that it was unconstitutional to have them there.

FFRF Legal Fellow Ryan D. Jayne sent the letter on Oct. 20 to Norm Jenkins, director of the Holmes Student Center, stating, in part: "Providing bibles to Holmes Student Center Hotel guests sends the message that NIU endorses the religious texts. Including bibles sends the message to non-Christian and non-religious guests that they should read the bible, and specifically the version of the bible provided: the Gideon Bible. Certainly, if guests want to read this religious text during their stay, they can bring their own copy or access any of the numerous churches or libraries near the university."

The next day, Oct. 21, Gregory A. Brady, deputy general counsel for Governance and Administration at NIU, responded to FFRF by stating that the university "will be removing any such bibles from their hotel guest rooms."

"We're grateful to NIU for so promptly making a decision to respect all of its hotel guests and stay above the religious fray," said FFRF Co-President Annie Laurie Gaylor.

Gaylor and her husband, FFRF Co-President Dan Barker, were staying at the Holmes Student Center Hotel in DeKalb, Ill., while in town to speak to a chapter of the Secular Student Alliance when they discovered the bibles in the rooms.

"Nonreligious hotel guests should not have to pay to be proselytized in the privacy of their own bedrooms," Gaylor said. "The bible calls for killing nonbelievers, apostates, gays, 'stubborn sons,' and women who transgress biblical double standards. What's obnoxious in a private hotel, however, becomes inappropriate and unconstitutional in state-run lodgings."

Recently the University of Wisconsin and the University of Iowa also removed all bibles from hotel guest rooms after being contacted by FFRF.

FFRF, a national state/church watchdog group, is a nonprofit organization with more than 23,000 members nationwide, including more than 700 members in Illinois and a local chapter, FFRF Metropolitan Chicago.

You can purchase Bible Warning Labels from FFRF's online store [here](#).

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