Bring Your Bible to School Day and Student Rights

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This fall, students around the United States will participate in Bring Your Bible to School Day—a student-organized, student-led event where students will bring their Bibles to school and tell their fellow classmates about the Bible during non-instructional time. **Students have a constitutional right to participate in and promote Bring Your Bible to School Day.**

Unfortunately, schools all too often censor religious expression for fear of violating the often misunderstood "separation of church and state," for dislike of religious viewpoints, or for a desire to avoid controversy. But such uninformed censorship violates the First Amendment to the United States Constitution.[1]

Given the hostility students often face when trying to engage in religious expression, we are providing this memo to clarify the First Amendment rights of public school students to participate in and promote Bring Your Bible to School Day and to help schools avoid needless litigation.

Students Do Not Abandon Their Constitutional Rights of Free Speech When They Attend Public School.

First Amendment principles do not vanish when students go to school. "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[2] The Supreme Court has stated that a student's free speech rights apply "when [they are] in the cafeteria, or on the playing field, or on the campus during the authorized hours …."[3]

Because the First Amendment applies in the public school context, schools must overcome a high barrier when they try to silence speech. Student expressive activity cannot be impeded unless that activity creates a material and substantial disruption to the school's ability to fulfill its educational goals.[4] However, this standard cannot be met merely by the *possibility* of disruption. In the Supreme Court's words, "undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression."[5]

Religious Speech Like the Bring Your Bible to School Day Event Is Protected by the First Amendment.

The First Amendment protects Bring Your Bible to School Day events because government bodies—including public schools—may not suppress or exclude student speech just because the speech is religious or contains a religious perspective.[6] Religious speech is protected by the First Amendment and may not be singled out for discrimination without violating the Constitution. As the Supreme Court has explained: "[P]rivate religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression."[7]

Importantly, public schools cannot restrict religious speech simply because it may be perceived by some as "offensive" or "controversial."[8] "The Supreme Court has held time and again, both within and outside of the school context, that the mere fact that someone might take offense at the content of speech is not sufficient justification for prohibiting it."[9]

Students May Bring Their Bibles to School, Distribute Bibles, and Discuss the Bible with Fellow Students

Schools must allow students to bring Bibles to school, distribute Bibles, and discuss the Bible with classmates because these activities will not materially disrupt school activities. The chance of such activities materially disrupting anything is exceedingly low. When done during non-instructional time—during lunch, walking between classes, or before or after school—these activities will not disrupt school activities. Indeed, students most likely engage in a host of similar activities unrelated to the Bible during non-instructional time. For example, students likely discuss their favorite celebrity or give each other notes or bring books to school all the time. As a result, schools may not single out and censor the Bible when all these other activities continually occur at school during non-instructional time. Given these principles, it is no surprise that federal courts have repeatedly upheld the right of students to bring their Bibles to school, to distribute Bibles at school, and to discuss the Bible at school during non-instructional time.[10]

Additionally, schools may not single out clothing promoting the Bring Your Bible to School Day event or other religious messages for unfavorable treatment. Students may wear such clothing to school to the same extent that other similar articles of dress are permitted. For example, if the school allows students to wear t-shirts with

messages on them, it cannot prevent a student from wearing a t-shirt with a message supporting the Bring Your Bible to School Day event. The wearing of clothing or jewelry bearing a religious message is also considered student speech and cannot be restricted unless it (1) materially and substantially interferes with the operation of the school, or (2) infringes on the rights of other students. A student may not wear clothing with a religious message if the school requires students to conform to a dress code that does not allow any messages to be displayed on clothing.

Students May Directly Advertise the Bring Your Bible to School Day Event to Fellow Students.

Just as the Bring Your Bible to School event itself is protected, so also is student expression advertising the event. The First Amendment applies to all student verbal expression and literature distribution during non-instructional time, regardless of religious content. If a student wishes to peacefully distribute free literature on school grounds during non-instructional time, there simply is nothing which "might reasonably [lead] school authorities to forecast substantial disruption of or material interference with school activities."[11] In fact, distribution of literature is inherently less disruptive than spoken expression because "[o]ne need not ponder the contents of a leaflet or pamphlet in order mechanically to take it out of someone's hand, but one must listen, comprehend, decide and act in order to respond to a solicitation."[12]

Several courts have held that the distribution of religious literature by public school students is protected speech under the First and Fourteenth Amendments.[13] Thus, school officials may not prohibit the peaceful dissemination of information by students about the Bring Your Bible to School Day event.

If the School Allows Students to Advertise Events on Bulletin Boards or Other Means, It Must Allow Students to Advertise the Bring Your Bible to School Day Event in the Same Fashion.

The government may not discriminate against private religious speech when private secular speech is permitted in the same time, place, and manner.[14] Again, this principle applies with equal force to students' religious expression.[15]

Any possible misperceptions that the school is "endorsing religion" can be addressed by the school clarifying that students' speech is not endorsed by the school, such as

through disclaimers.[16] Several courts of appeals have adopted this position in the school context:

> [I]t is far better to teach students about the first amendment, about the difference between private and public action, about why we tolerate divergent views. The school's proper response is to educate the audience rather than squelch the speaker. Schools may explain that they do not endorse speech by permitting it.[17]

Thus, if the school generally allows students or student clubs to advertise events by hanging posters on school walls or bulletin boards, having announcements read over the school's PA system, or using some other method, the school cannot prohibit student organizers of Bring Your Bible to School Day events from advertising in the same way.

The "Separation of Church And State" Cannot Justify Official Suppression of the Bring Your Bible to School Day Event.

School officials often mistakenly believe that allowing students to engage in religious speech at school would violate the "separation of church and state"—a misunderstood phrase often cited in connection with the Establishment Clause of the First Amendment. The Supreme Court has rejected this very argument and has held that students' private religious expression within a public school does not present any Establishment Clause problem:

> [P]etitioners urge that, because the student religious meetings are held under school aegis, and because the State's compulsory attendance laws bring the students together (and thereby provide a ready-made audience for student evangelists), an objective observer in the position of a secondary school student will perceive official school support for such religious meetings .... **We disagree.**[18]

The Establishment Clause of the First Amendment merely "requires the [government] to be a neutral in its relations with . . . religious believers and non-believers; it does not require the [government] to be their adversary."[19]

As the Supreme Court has said, "there 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."[20] Private student speech does not violate the Establishment Clause. Bring

Your Bible to School Day speech **is** private student speech protected by the First Amendment. So the Establishment Clause has no applicability to stop student speech related to the Bring Your Bible to School Day event.

Conclusion

The Bring Your Bible to School Day annual event is an opportunity for school officials to exemplify constitutional conduct by protecting the ability of students to exercise their First Amendment rights. If you think that your rights have been violated as a result of participating in Bring Your Bible to School Day, please contact our Legal Intake Department so that we may review your situation and possibly assist you. You can reach us at 1-800-835-5233, or visit our website www.ADFLegal.org and select the "Legal Help" button to submit a request for legal assistance. Since each legal situation differs, the information provided above should only be used as a general reference and should not be considered legal advice.

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[1] *See, e.g., Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 107 (2001) (finding impermissible viewpoint discrimination where school district excluded Christian club from after school forum on basis of its religious nature).
[2] *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 506 (1969). *See also Shelton v. Tucker*, 364 U.S. 479, 487 (1967) ("The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools").
[3] *Tinker*, 393 U.S. at 512.
[4] *Id.* at 509.
[5] *Id.* at 508.
[6] *Good News Club, supra; Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Widmar v. Vincent*, 454 U.S. 263 (1981).
[7] *Capitol Square Review and Advisory Bd v. Pinette*, 515 U.S. 753, 760 (1995)
[8] *Morse v. Frederick*, 551 U.S. 393, 409 (2007) (rejecting the idea that schools can ban offensive speech because "much political and religious speech might be perceived as offensive to some").
[9] *Saxe v. State College Area Sch. Dist.*, 240 F.3d 200, 215 (3d Cir. 2001); *see also Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017) (plurality op.) ("Giving offense is a viewpoint" protected by the First Amendment.).
[10] *See, e.g., Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118*, 9 F.3d 1295, 1297 (7th Cir. 1993) (enjoining policy prohibiting distribution of Bibles at elementary school); *Gregoire v. Centennial Sch. Dist.*, 907 F.2d 1366, 1382 (3d Cir. 1990) (enjoining ban on distribution of Bibles by students); *L.W. v. Knox Cnty. Bd of Educ.*, 3:05-CV-274, 2006 WL 2583151 (E.D. Tenn. Sept. 6, 2006) (noting that elementary student's "constitutional right to read and study his Bible with friends [during recess] was clearly established.").
[11] *Id.* at 514.
[12] *United States v. Kokinda*, 497 U.S. 720, 734 (1990).
[13] *See K.A. ex rel Ayers v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 111-14 (3rd Cir. 2013) (holding that elementary school students have free speech rights and that it was unconstitutional to ban a fifth grader from handing out church flyers to her

classmates); *Morgan v. Swanson,* 659 F.3d 359, 396 (5th Cir. 2011) (en banc) (recognizing that students, regardless of grade level, have "the First Amendment right ... to express a religious viewpoint to another student without fear"); *J.S. ex rel Smith v. Holly Area Schools,* 749 F. Supp. 2d 614, 623 (E.D. Mich. 2010) (issuing preliminary injunction against "school district's outright prohibition upon [elementary school student's] distribution of religious flyers to his classmates"); *Wright v. Pulaski Cnty. Special Sch. Dist.*, 803 F. Supp. 2d 980, 984 (E.D. Ark. 2011) (granting injunction ordering school officials to "permit [an elementary school student] to distribute flyers for church-sponsored events and activities").

[14] *Good News Club,* 533 U.S. at 111-12 ("[S]peech discussing otherwise permissible subjects cannot be excluded from a limited public forum on the ground that the subject is discussed from a religious viewpoint"); *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995) ("In the realm of private speech or expression, government regulation may not favor one speaker over another").

[15] *See, e.g., Good News Club,* 533 U.S. at 111-12; *Riseman v. Sch. Comm. of City of Quinry,* 439 F.2d 148 (1st Cir. 1971) (striking down an absolute prohibition of student literature distribution at school under First Amendment); *Good News/Good Sports Club v. Sch. Dist. of City of Ladue,* 28 F.3d 1501, 1505-1507 (8th Cir. 1994) (ban on religious expression by student club in junior high school is unconstitutional when secular expression is allowed).

[16] *Pinette,* 515 U.S. at 776 ("the presence of a sign disclaiming government sponsorship or endorsement on the … cross, would make the State's role clear to the community.") (O'Connor, J., concurring).

[17] *Hills v. Scottsdale Unified Sch. Dist.,* 329 F.3d 1044, 1055 (9th Cir. 2003).

[18] *Bd. of Educ. of Westside Cmty. Schools v. Mergens,* 496 U.S. 226, 249-50 (1990) (emphasis added).

[19] *Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947).

[20] *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302 (2000) (quoting *Mergens,* 496 U.S. at 250).