



August 4, 2014

Via Email

U.S. General Services Administration

Jason Klumb, Regional Administrator, Heartland Region
jason.klumb@gsa.gov

Cy Houston, Acting Regional Commissioner, Public Buildings Service
cy.houston@gsa.gov

Nick Cave, Director, Human Resources
nick.cave@gsa.gov

Yochim, Thomas, Building Manager
1222 SPRUCE ST 1.300, SAINT LOUIS MO 63103-2818
tom.yochim@gsa.gov

Missouri National Guard
2302 Militia Drive
Jefferson City, MO 65101
mo.ngpao@mail.mil

Re: Unconstitutional Distribution of New Testament Bibles

Dear U.S. Government Officials,

It has come to our attention that a display in which free biblical literature – more specifically camouflage-covered New Testaments containing a few Old Testament entries as well (see enclosed photo) – is made available has been in existence at a General Services Administration building on Spruce Street in St. Louis, Missouri. The display has been ongoing on the floor in which the Missouri National Guard operates, along with various other military offices. This action represents a clear breach of the Establishment Clause of the United States Constitution, and we hereby demand assurances that immediate action will be taken to discontinue said violation.

The American Humanist Association (AHA) is a national nonprofit organization with over 29,000 members and supporters, over 180 local chapters and affiliates, and over 300,000 online supporters across the country. The Appignani Humanist Legal Center, the AHA's legal arm, includes a network of cooperating attorneys from around the country. The center has litigated cases involving church-state separation and the rights of Humanists and other non-theists in state and federal courts nationwide.

In July 2014, our client enlisted in the National Guard at the U.S. General Services Administration in St. Louis, Missouri. During the swearing-in process, our client observed the government offering the aforementioned New Testament Bibles for free to military recruits. There do not appear to be any other

books or written materials for distribution. The Bibles are tailor-made for military recruits, adorned with camouflage book covering. In light of the coercive atmosphere of the recruitment office, our client felt pressured to take a free Bible.

The First Amendment's Establishment Clause "commands a separation of church and state." *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). It requires the "government [to] remain secular, rather than affiliate itself with religious beliefs or institutions." *Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 610 (1989). Not only must the government not advance, promote, affiliate with, or favor any particular religion, it "may not favor religious belief over disbelief." *Id.* at 593 (citation omitted). Indeed, the government "may not place its prestige, coercive authority, or resources behind a single religious faith or behind religious belief in general, compelling nonadherents to support the practices or proselytizing of **avored religious organizations** and conveying the message that those who do not contribute gladly are less than full members of the community." *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 9 (1989).

To comply with the Establishment Clause, a government practice must pass the *Lemon* test, pursuant to which it must: (1) have a secular purpose; (2) not have the effect of advancing or endorsing religion; and (3) not foster excessive entanglement with religion. *Allegheny*, 492 U.S. at 592. Government action "violates the Establishment Clause if it fails to satisfy any of these prongs." *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987). Although "coercion is not necessary to prove an Establishment Clause violation," its presence "is an obvious indication that the government is endorsing or promoting religion." *Lee v. Weisman*, 505 U.S. 577, 604 (1992) (Blackmun, J., concurring). In *Lee*, the Court formulated the "coercion test" under which the "government may not coerce anyone to support or participate in religion or its exercise[.]" *Id.* at 587.

Numerous courts, including the Eighth Circuit (the federal appeals court for Missouri) have explicitly ruled that a government's practice of assisting Gideons (or other entities) in distributing Bibles violates the Establishment Clause. *See Roark v. South Iron R-1 Sch. Dist.*, 573 F.3d 556, 561 (8th Cir. 2009) (affirming permanent injunction enjoining school district from "allowing distribution of Bibles" during the school day); *Doe v. S. Iron R-1 Sch. Dist.*, 498 F.3d 878, 882-84 (8th Cir. 2007) (same for preliminary injunction); *Berger v. Rensselaer Central Sch. Corp.*, 982 F.2d 1160 (7th Cir. 1993) (policy that permitted the Gideons to distribute Bibles in public schools during school hours violated Establishment Clause because it endorsed the Gideons' beliefs and unnecessarily entangled the government in religious affairs); *Meltzer v. Bd. of Public Instruction*, 548 F.2d 559, 575-76 (5th Cir. 1977) ("the distribution of Gideon Bibles to public school students violates the First Amendment."); *Roe v. Tangipahoa Parish Sch. Bd.*, 2008 U.S. Dist. LEXIS 32793, at *10-12 (E.D. La. Apr. 22, 2008) ("this Court determines that the distribution of Bibles was ultimately coercive . . . in violation of *Lee*; that distribution of Bibles is a religious activity without a secular purpose in violation of *Lemon*; and that the distribution by the Gideons amounted to promotion of Christianity by the School Board in violation of *County of Allegheny*."); *Jabr v. Rapides Parish Sch. Bd.*, 171 F. Supp. 2d 653 (W.D. La. 2001) (school board's action of making Bibles available to students in principal's office, in the presence of other students, was an unconstitutional endorsement of religion); *Chandler v. James*, 985 F. Supp. 1094, 1101 (N.D. Ala. 1997); *Goodwin v. Cross Cnty. Sch. Dist. No. 7*, 394 F. Supp. 417 (E.D. Ark. 1973) (school board's practice of permitting religious organization to distribute Bibles violated Establishment Clause); *Tudor v. Bd. of Ed.*, 100 A.2d 857, 868 (N.J. 1953) (the distribution of Gideon Bibles to public school students was unconstitutional even though the Bibles were given only to children whose parents signed a request slip therefor, since this is more than mere accommodation of, or assistance to, a religious sect); *Brown v. Orange Cnty. Bd. of Public Instruction*, 128 So.2d 181, 185 (Fla. Dist. Ct. App.

1960) (distribution of Gideon Bibles in public schools unconstitutional). *See also Roark v. South Iron R-1 Sch. Dist.*, 540 F. Supp. 2d 1047, 1057 (E.D. Mo. 2008) (“Numerous cases have held that the distribution of Gideon Bibles . . . on school property and during school hours violates the Establishment Clause.”).

Turning to the facts here, it is plain that the government, as in the above cases, violated the Establishment Clause pursuant to the *Lemon* and coercion tests by assisting Gideons in distributing Bibles to military recruits.¹

The government’s actions fail the purpose prong of *Lemon* because there is no conceivable secular purpose in assisting Gideons in distributing Bibles. *See Berger*, 982 F.2d at 1170; *Roe*, 2008 U.S. Dist. LEXIS 32793, at *11 (“As to the first prong, the Gideons were given access to the elementary school during school hours to distribute Bibles to fifth grade students. The School Board has failed to set forth a secular purpose for this practice”); *Jabr*, 171 F. Supp. 2d at 660 (school board’s actions failed the first prong of *Lemon* because there was no secular purpose in permitting a principle to make Gideon Bibles available in his office). A religious purpose may be inferred where, as here, “the government action itself besp[eaks] the purpose . . . [because it is] patently religious.” *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 862-63 (2005). *See Stone v. Graham*, 449 U.S. 39, 41 (1980) (“The pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature. The Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths”); *Mellen v. Bunting*, 327 F.3d 355, 373 (4th Cir. 2003) (“When a state-sponsored activity has an overtly religious character, courts have consistently rejected efforts to assert a secular purpose for that activity.”). Nothing “could be more unabashedly Christian than the New Testament Bibles.” *Jabr*, 171 F. Supp. 2d at 660. “Permitting distribution of ‘The New Testament’ . . . affronts not only non-religious people, but all those whose faiths, or lack of faith, does not encompass the New Testament.” *Berger*, 982 F.2d at 1170. Clearly, a government practice that assists in tendering New Testament “has the purpose of promoting and approving Christianity.” *Jabr*, 171 F. Supp. 2d at 660.

Regardless of the purposes motivating it, the government’s actions fail *Lemon*’s second prong. The “effect prong asks whether, irrespective of government’s actual purpose, the practice under review in fact conveys a message of endorsement or disapproval [of religion].” *Wallace v. Jaffree*, 472 U.S. 38, 56 n.42 (1985) (quotation marks omitted). The “advancement need not be material or tangible. An implicit symbolic benefit is enough.” *Friedman v. Board of County Comm’rs*, 781 F.2d 777, 781 (10th Cir. 1985).² By way of example, in *Granzeier v. Middleton*, 955 F. Supp. 741, 746-47 (E.D. Ky. 1997), *aff’d*, 173 F.3d 568 (6th Cir. 1999), the court held that a government sign depicting a small (4-inch) “clip art” cross violated the Establishment Clause reasoning, “the sign could be, and was in fact, perceived by reasonably informed observers, to be a government endorsement of the Christian religion. The court accepts that this apparent endorsement was **not intended**, but this made no difference in the observer’s perception.”

¹ The “evidence shows that the only group who has been allowed access” to distribute materials “is the Gideons.” *Roark*, 540 F. Supp. 2d at 1058 (E.D. Mo. 2008).

² *See Larkin v. Grendel’s Den*, 459 U.S. 116, 125-26 (1982) (“The mere appearance of a joint exercise of legislative authority by Church and State provides a significant symbolic benefit to religion in the minds of some by reason of the power conferred. It does not strain our prior holdings to say that the statute can be seen as having a ‘primary’ and ‘principal’ effect of advancing religion.”) (emphasis added).

It is apodictic that private citizens such as the Gideons have no right to “use the machinery of the State to practice its beliefs.” *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 226 (1963).³ For instance, in *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 307 (2000), the Supreme Court held that student-led prayer at public school football games failed the second prong of *Lemon* because the prayer was “delivered to a large audience assembled as part of a regularly scheduled, school-sponsored function conducted on school property.” Even though any prayer would be delivered by a student rather than a government official, the Court concluded that “an objective observer, . . . would perceive it as a state endorsement of prayer[.]” *Id.* at 308 (internal quotation marks omitted).

By assisting Gideons in distributing Bibles to military recruits, the government sends the “unequivocal message that” the U.S. military, “as an institution, endorses the religious expressions embodied” in the Bibles. *Mellen*, 327 F.3d at 374. See *Berger*, 982 F.2d at 1171 (“Though we are confident the school district's policy is not aimed at promoting the religious values of the Gideons, it does have the effect of sending a message to an objective observer that the Corporation endorses the Gideons' beliefs, and it entangles the government unnecessarily in religious affairs.”); *Meltzer*, 548 F.2d at 575-76 (“the school board’s use of the school system as a means of distribution amounts to its placing, at least in the eyes of children and perhaps their parents, its stamp of approval upon the Gideon version of the Bible, thus creating an unconstitutional preference for one religion over another.”); *Roe*, 2008 U.S. Dist. LEXIS 32793, at *11 (“As for prong two, allowing the Gideons to distribute Bibles under the circumstances in this case evidences a preference towards religion, specifically, Christianity.”); *Goodwin*, 394 F. Supp. at 427 (“permitting representatives of the well-known and active Gideon organization to distribute their Bibles to students” was unconstitutional advancement of religion); *Brown*, 128 So.2d at 185 (“The distribution of Gideon Bibles through the school system each year certainly approximates an annual promotion and endorsement of the religious sects or groups which follow its teachings and precepts.”).

In *Jabr*, the court concluded that a school board’s “action of permitting the principal of the school to offer, give, or **make available** Bibles . . . in his office . . . is an unconstitutional endorsement of religion . . . creating an impression that the school endorsed a particular religious belief: Christianity.” 171 F. Supp. 2d at 663-64 (emphasis added). Indeed, the very first court to address the issue held:

We cannot accept the argument that . . . the State is merely ‘accommodating’ religion. It matters little whether the teachers themselves will distribute the Bibles or whether that will be done by members of the Gideons International. The same vice exists, that of preference of one religion over another. . . . The society is engaged in missionary work, accomplished in part by placing the King James version of the Bible in the hands of public school children throughout the United States. To achieve this end it employs the public school system as the medium of distribution. . . . ***In other words, the public school machinery is used to bring about the distribution of these Bibles to the children[.]***

Tudor, 100 A.2d at 868 (emphasis added). What was said by the New Jersey Supreme Court in 1953 is equally applicable here. Instead of the public schools however, it is the machinery of the U.S. military that is being used to distribute Bibles in furtherance of Gideons’ Christian agenda.

³ See *Lee*, 505 U.S. at 592 (private citizens have no right to use “the machinery of the State to enforce a religious orthodoxy.”); *Chandler v. James*, 180 F.3d 1254, 1265 (11th Cir. 1999) (“[A] student’s right to express his personal religious beliefs does not extend to using the machinery of the state as a vehicle for converting his audience.”). See also *Allegheny*, 492 U.S. at 601 n.51 (“To be sure, prohibiting the display of a creche in the courthouse deprives Christians of the satisfaction of seeing the government adopt their religious message as their own, but this kind of government affiliation with particular religious messages is precisely what the Establishment Clause precludes.”).

The religious endorsement is particularly egregious in this case because unlike in many of the school cases where *private citizens* distributed the Bibles, the government is the entity distributing the Bibles here.⁴ The court in *Jabr* found this fact particularly salient to its conclusion that a school's actions in making Bibles available in the principal's office unconstitutional, reasoning: "in *Berger*, the classroom teachers did not even participate in the handing out of the Bibles, they merely observed private citizens, known as Gideons, distribute the Bibles to students. See *id.* Here, . . . the principal personally made New Testament Bibles available on his desk and in his office[.]" 171 F. Supp. 2d at 660. *Cf. Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 116 n.6 (2001) (permitting a religious community group to use school buildings after hours because there was "simply no integration and cooperation between the school district and the" group); *Board of Educ. v. Mergens*, 496 U.S. 226, 251 (1990) (explaining that there is less risk of state "endorsement or coercion where . . . no school officials actively participate" in religious student club activity).

The government's actions are also "unconstitutional when measured by the third prong of the *Lemon* test." *Jabr*, 171 F. Supp. 2d at 661 ("when the School Board permitted the principal to make Bibles available to students in the principal's office, the principal became excessively entangled with religion."). See also *Roe*, 2008 U.S. Dist. LEXIS 32793, at *11 ("as for prong three, the teachers who were required to inquire as to which students want the Bible, and then organize and direct them to the principal's office, became excessively entangled with religion."). In *Berger*, the Seventh Circuit held that "[t]eachers, who did not actively participate in Bible distribution, but merely observed non-school personnel distribute the material, became excessively entangled with religion in violation of the Establishment Clause." *Id.* (citing *Berger*, 982 F.2d at 1162-63). See *Berger*, 982 F.2d at 1171 ("Though we are confident the school district's policy is not aimed at promoting the religious values of the Gideons, it . . . entangles the government unnecessarily in religious affairs."). Because the government is the entity distributing the Gideon Bibles (unlike in *Berger*), its actions, *a fortiori*, amount to unconstitutional entanglement with religion.

In addition to violating the Establishment Clause pursuant to the *Lemon* test, *supra*, the government's actions also violate the Establishment Clause pursuant to the separate coercion test. The Supreme Court has made clear that "at a minimum, the [Establishment Clause] guarantees that government may not coerce anyone to support or participate in religion or its exercise." *Lee*, 505 U.S. at 587. In *Lee*, the Court held that a public school's inclusion of a nonsectarian prayer in a graduation ceremony was unconstitutionally coercive even though the event was technically voluntary and students were not required to participate in the prayer. *Id.* at 586. Applying *Lee*, the Seventh Circuit in *Berger* held that a school's "practice of assisting Gideons in distributing Bibles for non-pedagogical purposes is a far more glaring offense to First Amendment principles than a nonsectarian graduation prayer." 982 F.2d at 1169. See also *Roe*, 2008 U.S. Dist. LEXIS 32793, at *10-11 (distribution of Gideon Bibles held unconstitutionally coercive).

In *Jabr*, the school defendants argued that "when the principal placed Bibles on his desk, the school did not place any pressure or coerce the child to take the Bible because the child could freely decide whether to accept or reject possession of the Bible." 171 F. Supp. 2d at 661-62. The court disagreed. *Id.* The court

⁴ See *Berger*, 982 F.2d at 1164 (Gideons sent representatives to distribute Bibles to students); *Roe*, 2008 U.S. Dist. LEXIS 32793 (same); *Goodwin*, 394 F. Supp. at 428 (the practice "permitted by the school authorities of distributing the Gideon Bible by a representative of the Society to the fifth grade students in the elementary schools of the Cross County School District is an exercise of religious character which is prohibited by the First Amendment"). *Cf. Meltzer*, 548 F.2d at 575 ("In both methods, however, the distribution took place with the permission of the school board and the local schools.").

explained, “[e]ven when we assume that the principal ‘passively’ or ‘neutrally’ offered the Bibles to the students, . . . [t]he pressure created by the principal in his office was coercive and, thus, illegal.” *Id. See also Goodwin*, 394 F. Supp. at 427 (“The fact that a student is not required to accept the [Gideons’] presentation is of no significance.”).

The practice of assisting Gideons in the distribution of Bibles to military recruits is equally coercive and thus, illegal. The National Guard recruits young persons between the ages of 17 and 35. (<http://www.nationalguard.com/eligibility>). The recruitment process takes about two full days and consists of extensive testing, paperwork and medical exams. Our client arrived in St. Louis on Thursday and took his Armed Services Vocational Aptitude Battery test. He stayed overnight in a hotel and woke up early the next morning to fill out paperwork and be administered his medical briefing. He took a Breathalyzer test, a vision test, hearing test, urine test, and blood test, followed by fingerprinting and more paperwork. After the testing, he sat in the waiting room in which the Bibles were distributed for about an hour. He observed a fellow recruit take a Bible. Military personnel were present at all times.

Military recruits such as our client, who must sit and wait in a federal office to be sworn in, are a captive audience. Indeed, that, plus the fact that the military is an inherently coercive atmosphere, is the reason Gideons targets the military in the first place. The Gideons believe “there’s something especially urgent about giving God’s Word to the men and women in the armed forces.” *The Gideons International*, “Form 115-10: Gideon Scripture Distribution Program,” pp. 26-29 (February 2010). Tellingly, Gideons view the Military Entrance Processing Station as a “special opportunity” because “the recruits are deliberately put under intense stress as part of their assimilation into the military.” *Id.* As aptly noted by the Seventh Circuit in an analogous context: “The only reason the Gideons find schools a more amenable point of solicitation than, say, a church or local mall, is ease of distribution, since all children are compelled by law to attend school and the vast majority attend public schools.” *Berger*, 982 F.2d at 1167.

It is easy to see how a military recruit, even if an adult, would feel an immense amount of pressure to take a free Bible being offered to him or her in the presence of military personnel while waiting to be sworn-in to the National Guard. For instance, the Fourth Circuit ruled that a military institute’s practice of delivering supper prayers to adult cadets failed the coercion test, particularly because of the coercive atmosphere of the military. *Mellen*, 327 F.3d at 371-72 (“Because of VMI’s coercive atmosphere, the Establishment Clause precludes school officials from sponsoring an official prayer, **even for mature adults**.”). The court reasoned, “[a]lthough VMI’s cadets are not children, in VMI’s educational system they are uniquely susceptible to coercion.” *Id.* at 371. As with VMI, “obedience and conformity remain central tenets” of the National Guard’s philosophy. *Id.* And as in the above cases, the “technical ‘voluntariness’” of taking a Bible does not save the government’s actions from “its constitutional infirmities.” *Id.* at 372.⁵ In the words of the Supreme Court, “the government may no more use social pressure to enforce orthodoxy than it may use more direct means.” *Santa Fe*, 530 U.S. at 312 (quoting *Lee*, 505 U.S. at 594). Put simply, the government’s actions in offering free Bibles to military recruits in the presence of military personnel and fellow recruits “exact[s] an unconstitutional toll on the consciences of religious objectors.” *Id.*

In view of the above, it is beyond clear that the government is in violation of the Establishment

⁵ In *Mellen*, the Fourth Circuit observed: “At all relevant times, VMI’s upperclass cadets could avoid the mess hall in order to shield themselves from the prayer. Nevertheless, the communal dining experience, like other official activities, is undoubtedly experienced as obligatory.” *Id.*

Clause. That the Bibles may have been privately donated does not change this conclusion. *See Stone*, 449 U.S. at 42-43 (“It does not matter that the posted copies of the Ten Commandments are financed by voluntary private contributions, for the mere posting of the copies under the auspices of the legislature provides the ‘official support of the State . . . Government’ that the Establishment Clause prohibits.”) (citations omitted); *Allegheny*, 492 U.S. at 580, 597 (even though nativity display in county building was privately-donated and had a disclaimer stating: “This Display Donated by the Holy Name Society,” it was held unconstitutional).⁶ As the Supreme Court held in an analogous context, “[b]y accepting a privately donated monument and placing it on city property, a city engages in expressive conduct[.]” *Pleasant Grove City v. Summum*, 129 S. Ct. 1125, 1136 (2009). The Court emphasized: “Just as government-commissioned and government-financed monuments speak for the government, so do privately financed and donated monuments that the government accepts and displays to the public on government land.” *Id.* at 1133. The same is true here. Because the government “acted with state authority in welcoming the Gideons into [military recruitment offices], its actions are subject to the dictates of the First Amendment. Under the Establishment Clause, the government may not aid one religion, aid all religions or favor one religion over another.” *Berger*, 982 F.2d at 1168-69.

Moreover, any claim by the government that it established a “public forum” for private speech is belied by the actual facts in this case. The forum doctrine has only been applied in “situations in which government-owned property or a government program was capable of accommodating a large number of public speakers without defeating the essential function of the land or the program.” *Pleasant Grove City v. Summum*, 129 S. Ct. 1125, 1137 (2009). As previously noted, the “evidence shows that the only group who has been allowed access” to distribute materials to the military recruits in this federal office “is the Gideons.” *Roark*, 540 F. Supp. 2d at 1058 (E.D. Mo. 2008). *See also Berger*, 982 F.2d at 1166 (rejecting free speech defense, observing that “the record is barren of addresses or literary distributions by political groups or religious organizations other than the Gideons.”).⁷ Even assuming, *arguendo*, that the government did create a public forum, the Supreme Court “ha[s] never held the mere creation of a public forum shields the government entity from scrutiny under the Establishment Clause.” *Santa Fe*, 530 U.S. at 303 n.13 (2000); *accord Roark*, 573 F.3d at 561 (same); *see also Berger*, 982 F.2d at 1168 (“Defendant is also wrong as a

⁶ *See also Am. Atheists, Inc. v. Duncan*, 616 F.3d 1145, 1162 (10th Cir. 2010) (privately-donated roadside cross markers on government property held unconstitutional); *Green v. Haskell Cty. Bd. of Comm’rs*, 568 F.3d 784, 800 (10th Cir. 2009) (privately-donated Ten Commandments display on a courthouse lawn had unconstitutionally advanced religion); *Cooper v. United States Postal Serv.*, 577 F.3d 479, 493-95 (2d Cir. 2009) (government lacked secular purpose for “displaying [a Christian Church’s] religious material”); *Books v. City of Elkhart*, 235 F.3d 292, 296, 303 (7th Cir. 2000) (Ten Commandments monument donated by fraternal organization unconstitutional); *Washegesic v. Bloomington Pub. Sch.*, 33 F.3d 679, 681-83 (6th Cir. 1994) (portrait of Jesus Christ displayed in a public school held unconstitutional despite fact that painting was “donated to the school”); *Gonzales v. North Township of Lake Cnty*, 4 F.3d 1412, 1414, 1418 (7th Cir. 1993) (war memorial crucifix erected by Knights of Columbus held unconstitutional); *ACLU v. Rabun Cnty Chamber of Commerce, Inc.*, 698 F.2d 1098, 1110 (11th Cir. 1983) (cross donated by private corporation held unconstitutional); *Mendelson v. St. Cloud*, 719 F. Supp. 1065, 1066 (M.D. Fla. 1989) (cross donated to city held unconstitutional); *Doe v. County of Montgomery*, 915 F. Supp. 32, 36 (C.D. Ill. 1996) (sign donated by private group failed purpose prong of *Lemon*).

⁷ By way of comparison, the court in *Peck v. Upshur County Bd. of Educ.*, 155 F.3d 274, 287 (4th Cir. 1998), upheld an equal access policy whereby school administrators set up a table outside of the formal classroom setting *one day a year*, where they placed religious *and nonreligious material*, and then permitted students simply to walk past the table, and view the offerings *without school officials* or anyone offering the religious materials present. In upholding the practice, the court found it relevant that the school board took “‘pains to disassociate itself from the private speech’ at issue[.]” *Id.* at 281-82. In addition to disclaimers, the board set “strict guidelines which forbid any school teacher or employee from participating in any way in making the Bibles available.” *Id.* *See also id.* at 287-88. Even there, the court cautioned that “‘at some point, . . . a private religious group may so dominate a public forum that a formal policy of equal access is transformed into a demonstration of approval,’ and that the resulting ‘endorsement’ of religion violates the Establishment Clause.” *Id.* at 285

matter of law that the First Amendment interest in free expression automatically trumps the First Amendment prohibition on state-sponsored religious activity. The reverse is true”).⁸ In *Santa Fe*, the Court made clear that the “principle that government may accommodate the free exercise of religion does not supersede the fundamental limitations imposed by the Establishment Clause.” 530 U.S. at 302.

In conclusion, the government is violating the First Amendment by assisting in the distribution of Gideon Bibles to military recruits. This letter demands that the government immediately cease this practice and remove the Bibles from its possession. To avoid legal action, I kindly ask that you notify me in writing within two weeks of receipt of this letter setting forth the steps you will take to rectify this serious constitutional infringement. Thank you for turning your attention to this important matter.

Sincerely,

Monica Miller, Esq.
mmiller@americanhumanist.org

⁸ See also *Cole v. Oroville Union High Sch.*, 228 F.3d 1092, 1101 (9th Cir. 2000) (even assuming the “graduation ceremony was a public or limited public forum, the District’s refusal to allow the students to deliver a sectarian speech or prayer” was “necessary to avoid violating the Establishment Clause”); *Herdahl v. Pontotoc County Sch. Dist.*, 933 F. Supp. 582, 589 (N.D. Miss. 1996) (even if a school “established a limited open forum” sectarian “prayer broadcast over the public school loudspeaker would still violate the First Amendment”).

Photograph of New Testament Bible

