MEMORANDUM

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Bibles and Bible Studies in the Workplaces

The First Amendment to the United States Constitution does not require the censorship of private religious speech, such as a voluntary Bible study that happens to occur on government property. To the contrary, the First Amendment protects such religious expression from government censorship on the basis of its religious content.

I. Constitutionally, there is a major difference between official government speech and the private religious speech of public employees or members of the public.

The Establishment Clause does not prohibit government employees and other citizens from attending a voluntary Bible study in a government building. The Establishment Clause only limits the power of government; it does not restrict the rights of individuals acting on their own behalf. As the Supreme Court has acknowledged, "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." *Bd. of Educ. v. Mergens*, 496 U.S. 226, 250 (1990). In other words, voluntary discussion of religious issues by public employees or others in their private capacities does not imply official government sponsorship of that speech.

Moreover, the Establishment Clause imposes no affirmative duty upon the government to suppress private religious expression, including Bible studies. *See, e.g.*, *Rosenberger v. Rector &*

Visitors of the Univ. of Va., 515 U.S. 819, 830 (1995); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394–95 (1993); *Widmar v. Vincent*, 454 U.S. 263, 280 (1981). In fact, the Constitution "affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any." *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984); *see also Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947).

The Supreme Court consistently has held that the Constitution cannot be interpreted to purge all religious reference from the public square. *Lee v. Weisman*, 505 U.S. 577, 598 (1992). A reasonable person who learns of a voluntary Bible study that takes place at public office building would be aware of the fact that 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." *Lynch*, 465 U.S. at 677. Accordingly, it is clear that employees themselves may choose to meet on a voluntary basis to discuss religious matters consistent with the First Amendment.

II. 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. *See, e.g.*, *Good News Club v. Milford Central School*, 533 U.S. 98 (2001); *Rosenberger*, 515 U.S. at 830; *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995); *Lamb's Chapel*, 508 U.S. at 394; *Widmar*, 454 U.S. at 280. 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 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.

Pinette, 515 U.S. at 760 (plurality opinion) (citations omitted). The Supreme Court has repeatedly rejected the idea that the government endorses the content of all speech occurring on its property that it fails to censor. *See Mergens*, 496 U.S. at 250 ("[Public] schools do not endorse everything they fail to censor . . . ."); *see also Pinette*, 515 U.S. at 764 (plurality opinion).

In countless cases, the Court has held that the Establishment Clause does not require the censorship of private religious speech solely because it occurs on government property. *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. A voluntary Bible study would be very similar to the private religious speech at issue in those cases because a reasonable person would attribute the religious content of the speech to the individuals attending, not to the government.

The fact that some members of a voluntary Bible study are government employees does not mean that the employees' speech is attributable to the government or that it may be restricted on the basis of its content. It is well established that government employees retain their First Amendment rights at their workplace. *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"). The Supreme Court has rejected the idea that public employees may "constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest." *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968).

When the government seeks to restrict the speech of its employees due to its content, the Court must "arrive at a balance between the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Id.* In other words, a government employer may restrict employee speech that is likely to disrupt the office, interfere with proper discipline, undermine the authority of superiors, or destroy close working relationships. *Connick v. Myers*, 461 U.S. 138, 150–54 (1983). Employee speech at a voluntary Bible study touches upon matters of public concern and does not interfere with the operation of the workplace in any way, as long as it is conducted during nonworking hours.

III. The federal government's "Guidelines on Religious Expression in the Workplace" confirm that a voluntary employee Bible study is constitutionally permissible.

While not binding on state governments, the federal government's Guidelines on Religious Exercise and Religious Expression in the Federal Workplace (the "Guidelines") are instructive on this issue. The Guidelines provide:

> 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.

Guidelines on Religious Exercise and Religious Expression in the Federal Workplace OFFICE OF THE WHITE HOUSE PRESS SECRETARY (issued Aug. 14, 1997) *available at* http://clinton2.nara.gov/WH/New/html/19970819-3275.html.

The Guidelines provide that if, for example, "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," "such a gathering may not be subject to discriminatory restrictions because of its religious content." *Id.* 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." *Id.* In other words, "a hostile environment is not created by the bare expression of speech with which some employees might disagree." *Id.*

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

IV. Private employers may also not discriminate against religious speech at work.

Title VII of the Civil Rights Act of 1964 is another source of protection for religious practices and applies to most private employers and state and local governments. 42 U.S.C. § 2000e(a),(b). The statute provides, "[i]t shall be an unlawful employment practice for an employer . . . to discriminate against any individual . . . because of such individual's . . . religion . . . ." 42 U.S.C. § 2000e-2(a)(1). The statute requires employers to reasonably accommodate the religious observances and practices of employees unless doing so would impose undue hardship on the conduct of the employer's business. *Id.*; 42 U.S.C. § 2000e(j). In addition, while some state elected officials are not considered "employees" for the purposes of Title VII, 42 U.S.C. § 2000e(f), the prohibition on discriminating against any "individual" may still protect them. 42 U.S.C. § 2000e-2(a)(1).

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. The ACLJ strongly encourages individuals to meet for voluntary Bible study during nonworking hours.