ACLJ
AMERICAN CENTER
for LAW & JUSTICE

DISTRICT OF COLUMBIA [redacted] TENNESSEE [redacted] VIRGINIA [redacted]

April 3, 2025

VIA E-MAIL & FED-EX

[redacted], Director of Human Resources,
[redacted] County, New York
[redacted]
[redacted] NY [redacted]

Re: [redacted] County's Unconstitutional Prohibition of Employee's Personal Bible Use

Dear Mr. [redacted]

The American Center for Law & Justice (ACLJ)[1] represents [redacted], an employee and attorney with the [redacted] County Conflict Defender's Office in [redacted], New York with regard to his constitutional right to express his faith and read his Bible in his personal time and his right to keep said Bible on his desk. Mr. [redacted] was

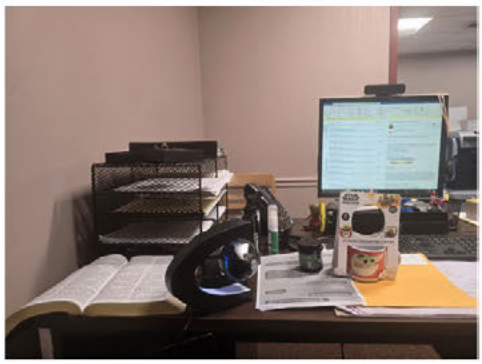
[1] By way of introduction, the ACLJ is an organization dedicated to the defense of religious and constitutional freedoms. The ACLJ engages legal, legislative, and cultural issues through advocacy, education, and litigation that includes representation before the Supreme Court of the United States and international tribunals around the globe. 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 v. Summum*, 555 U.S. 460 (2009) (holding that the government is not required to accept counter-monuments when it displays a war memorial or Ten Commandments monument); *McConnell v. FEC*, 540 U.S. 93 (2003) (holding that minors have First Amendment rights); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993) (holding that denying a church access to public school premises to show a film series violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding that allowing a student Bible club to meet on a public school's campus did not violate the Establishment Clause); *Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569 (1987) (striking down an airport's ban on First Amendment activities).

reprimanded by a supervisor in your office that he was not allowed to keep his Bible in a visible place where other employees and clients could see it, even though there are other employees of the Conflict Defender's Office that possess and display other expressions of faith. This reprimand, a permanent letter in Mr. [redacted]'s file, is a discriminatory instruction specifically targeting Mr. [redacted]'s faith and his personal expression of his faith that is a violation of the First Amendment and contrary to established law. A summary of the facts and law are set forth below.

Summary of Facts

[redacted] is an attorney with the [redacted] County Conflict Defenders Office and has been employed as such for the past five years. He has served his community with dedication as a lifelong resident of the county. Mr. [redacted] routinely conducts client contacts in his office. In the corner of his desk, out of view of clients, Mr. [redacted] keeps a Bible, a symbol of his deeply held religious faith. He has always kept a Bible with him at the office and has placed it on top of his desk for the past year. In the previous six months, Mr. [redacted] left his Bible open on his desk for a quick glance at the page, giving him comfort and a renewed sense of purpose to continue in his work.

On or about February 13, 2025, a fellow attorney confronted Mr. [redacted] in his office in an aggressive and loud manner, claiming she was sent on Mr. [redacted]'s supervisor's behalf to tell Mr. [redacted] to remove his Bible from his desk. Mr. [redacted] responded that his supervisor could address her concerns directly to him in writing. Mr. [redacted]'s supervisor, who was in earshot at the time, went into Mr. [redacted]'s office, picked up his Bible, and demanded that it "needed to go," claiming that clients should not have to see it on Mr. [redacted]'s desk. Mr. [redacted] moved the Bible to a place obscured from client view and asked his supervisor if the new placement was amendable to her demand.



Mr. [redacted]'s supervisor was "too upset" to have any further conversation. About a week later, his supervisor came into his office again and demanded the Bible be gone. Mr. [redacted] asked for her request in writing and also requested a reasonable accommodation under the Civil Rights Act under Title VII. Mr. [redacted]'s supervisor indicated she would speak to the county's HR department and get back with him.

On March 6, 2025, Mr. [redacted] received a written warning, claiming "performance deficiencies" and requirements that he be placed on a performance improvement plan. The warning claimed that office staff had complained and Mr. [redacted]'s behavior was "unduly disruptive." The warning claimed that, as counsel for indigent clients, Mr. [redacted]'s behavior could be harmful to his

duty to competently represent his clients or form a good attorney-client relationship. The warning directed him to "refrain from having any [B]ible or religious text open and visible" when meeting with clients "and/or other staff in your office."

Mr. [redacted] immediately went to his supervisor to discuss the "conclusions and corrective action" and was told in person that: on one occasion a staff member was offended after going into Mr. [redacted]'s office and seeing the Bible, and that Mr. [redacted] could have a Bible in the office so long as it was closed and put away, only to be read on his lunchbreak. Mr. [redacted]'s supervisor also insinuated that the only reason he would have it open during the day would be to study scripture on county time (which is fundamentally untrue). In writing, Mr. [redacted] responded to the written warning with his concerns that the only way that a colleague could see the Bible is if the person walked around to his side of the desk and that it is not visible from the typical seat where clients sit during meetings. Mr. [redacted] also told his supervisor that he was willing to change from a large print to a small print Bible. Mr. [redacted] repeated his request for a reasonable accommodation and was told his supervisor would contact the HR manager and get back with him.

The next day, Mr. [redacted] felt uncomfortable going to work in-person due to the religious discrimination from his employer because of the placement of his Bible on his desk and asked to work from home. That request was granted. Mr. [redacted] has been discriminated against specifically because of his religious faith and materials.

Of note, Mr. [redacted] is aware of other items in the Conflict Defender's Office that have a religious theme and are well within view of clients and other staff and no attempt has been made to remove these items. See this example:

The selective enforcement of Mr. [redacted]'s Bible on his desk, is discriminatory to Mr. [redacted]'s expression of his faith.

Statement of Law

As the Supreme Court recently reiterated, "the Constitution and the best of our traditions counsel mutual respect and tolerance, not censorship and suppression, for religious and nonreligious views alike." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 534 (2022). "Where the Free Exercise Clause protects religious exercises, whether communicative or not, the Free Speech Clause provides overlapping protection for expression." *Id.* at 523. "That the First Amendment doubly protects religious speech is no accident. It is a natural outgrowth of the

framers' distrust of government attempts to regulate religion and suppress dissent." *Id*. at 523–24.

The Supreme Court has also made clear that "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). The Constitution's Establishment Clause does not require that government employees be banned from expressing their religious faith. On the contrary, the Constitution requires equal treatment for religious expressions in the public sphere.

Government employees have a First Amendment right to equal treatment for their religious activity. *See Kennedy*, 597 U.S. at 544. The First Amendment right to speak freely on public issues does not disappear merely because someone becomes a public employee. *Id.* at 531. "The theory that public employment which may be denied altogether may be subjected to any conditions regardless of how unreasonable, has been uniformly rejected." *Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205*, 391 U.S. 563, 568 (1968) (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589, 605–6 (1967)).

The test in *Kennedy* governs the Free Speech rights of public officials. It is a two-part test. The first step considers whether an employee speaks according to official duties or as a private citizen. "Under the *Pickering-Garcetti* framework, a second step remains where the government may seek to prove that its interests as employer outweigh even an employee's private speech on a matter of public concern." *Kennedy*, 597 U.S. at 531. In *Kennedy,* a school district disciplined and ultimately fired a football coach for praying on the field after weekly football games. In examining whether Coach Kennedy's speech was protected under the First Amendment, the Supreme Court considered whether the speech (his prayers) took place within the scope of his official duties as a coach. *Id.* at 530. The Court explained that the mere fact that an employee is on duty at the time of his/her speech does not categorically eliminate the First Amendment's protections. *Id.* The policy in *Kennedy* required Coach Kennedy not to engage in any "demonstrative" religious activity in front of students, in order to avoid any possibility that students might participate. *Id.* at 540. The school attempted to justify this policy based on the Establishment Clause. The Court rejected this policy as a violation of the First Amendment. *Id.* at 540–41.

The Supreme Court in *Kennedy* has thus rejected the notion that public employees can be categorically prohibited from praying publicly. The Establishment Clause contains no such requirement; on the contrary, the Constitution protects the rights of public employees to engage in religious speech, even before others, when that speech is not in their official capacity. Government employees have a right to live out their faith without religious discrimination. It is essential to understand that "[t]he Establishment Clause does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore subject to unique disabilities." *Mergens*, 496 U.S. at 248 (plurality) (quoting *McDaniel v. Paty*, 435 U.S. 618, 641 (1978) (Brennan, J., concurring in judgment)).

By having his Bible on his desk, outside of the typical view of clients during working hours, Mr. [redacted] is engaged in private activity, not within the scope of his employment. The

Supreme Court's decision in *Kennedy*, an analogous matter, should be dispositive here. Mr. [redacted] wishes to engage in private religious activity, during his personal time, not with clients, when his fellow colleagues are likewise engaging in private, personal activity. That religious activity is "unquestionably of inherent public concern." *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 966 (9th Cir. 2011); *see also Tucker v. State of Cal. Dep't of Educ.*, 97 F.3d 1204, 1210 (9th Cir. 1996) ("[T]he speech is religious expression and it is obviously of public concern.").

Most importantly, the balancing of the interests does not favor this restriction on Mr. [redacted]'s private religious Bible reading, even for Mr. [redacted]'s interactions with the general public. The simple presence of a religious symbol at a place of public service is not a First Amendment violation. In fact, courts have rejected that very argument. In *Otero v. State Election Bd.*, 975 F.2d 738, 739 (10th Cir. 1992), the court explained that even using a church as a polling place, far more of a religious presence than simply seeing a Bible, is no violation of the First Amendment. "[B]y voting in a church building plaintiff is not required to attest to the nature of his religious beliefs, and that the burden on free exercise of religious beliefs 'is so slight that it does not begin to outweigh the interest of the state in having available to it the additional polling places which the use of the churches affords.'" *Id.* at 741 (quoting *Berman v. Board of Elections*, 420 F.2d 684, 686 (2nd Cir. 1969)). Likewise, here, "Merely employing an individual, such as plaintiff, who unobtrusively displays [] religious adherence is not tantamount to government endorsement of that religion, absent any evidence of endorsement or coercion." *Nichol v. Arin Intermediate Unit 28*, 268 F. Supp. 2d 536, 554 (W.D. Pa. 2003).

The key point that courts have regularly reiterated is that the Establishment Clause does not require viewpoint discrimination, especially not religious viewpoint discrimination. *See Tucker v. California Dep't of Educ.*, 97 F.3d 1204, 1215 (9th Cir. 1996) ("We conclude that it is not reasonable to allow employees to post materials around the office on all sorts of subjects, and forbid only the posting of religious information and materials."); *Altman v. Minn. Dep't of Corr.*, 251 F.3d 1199, 1203 (8th Cir. 2001) (focusing on the fact that employees were disciplined for Bible reading but employees who engaged in nonreligious personal activity at the same time were not); *Nichol*, 268 F. Supp. 2d at 541 (holding that a teacher's wearing of a cross was symbolic speech protected by the First Amendment); *Amalgamated Transit Union Local 85 v. Port Auth. of Allegheny Cnty*, 39 F.4th 95, 109 (3d Cir. 2022) ("[C]ontrary to the District Court's statement, public employers do not have a free hand to engage in viewpoint discrimination toward their employees. At present, it suffices to note that the more a public employer's policy looks like viewpoint discrimination—or is likely to foster such discrimination—the less likely it will be to survive scrutiny under *Pickering-NTEU*."). *Nichol* is illustrative of the basic problem with such a discriminatory policy: "there are neither compelling nor important government interests promoted by prohibiting free exercise of religion and non-proselytizing, non-coercive religious symbolic speech by employees in public schools, but not secular symbolic speech by those employees." 268 F. Supp. 2d at 551.

In short, the reason given for the suppression of Mr. [redacted]'s Bible—a concern for the "separation of church and state"—is not a valid one as a matter of law. As the Court stated in *Kennedy*, rejecting the notion that the Establishment Clause is violated when a "reasonable observer" perceives government action endorsing religion, "the Establishment Clause does not

include anything like a 'modified heckler's veto, in which . . . religious activity can be proscribed' based on 'perceptions' or 'discomfort.'" *Kennedy*, 597 U.S. at 534 (quoting *Good News Club v. Milford Central School*, 533 U. S. 98, 119 (2001)). "An Establishment Clause violation does not automatically follow whenever a public school or other government entity 'fail[s] to censor' private religious speech." *Id*. (quoting *Mergens*, 496 U.S. at 250).

Conclusion

This issue is still ongoing, as our client, is now unsure whether he can openly possess and read his Bible, in the manner described above, while completing his work as a Conflict Defender. In light of the violation of our client's constitutional rights, **we demand written assurances on or before April 10, 2025,** that you will not prohibit Mr. [redacted] from exercising his constitutional rights to have a Bible open on his desk, outside of public view, for his personal use, on personal time, during his daily work as a Conflict Defender. Further, we demand that the March 6, 2025, written communication be removed from Mr. [redacted]'s file, and not counted negatively towards him in any future employment considerations. Should you wish to discuss this matter further or have any other questions in this regard, please feel free to contact me directly at [redacted] or by email at [redacted].

Sincerely,

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