



# CONGRESSIONAL PRAYER CAUCUS FOUNDATION

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January 7, 2019

Principal David R. Harris, Jr.  
Mechanicsburg Area Senior High School  
500 South Broad Street  
Mechanicsburg, PA 17055

Re: Student Distribution of Bibles on School Property

Dear Principal Harris:

I have the honor of serving as the Executive Director of the Congressional Prayer Caucus Foundation. The Foundation serves nearly 100 members of Congress who are part of the Congressional Prayer Caucus (the names of those members of Congress who serve on the Congressional Prayer Advisory Team are listed on the left).

In addition, the Foundation serves Legislative Prayer Caucuses in over 32 states, including Pennsylvania, which have more than 1,000 state senators and state representatives as members. These leaders are working together to preserve the integrity of our Founding Principles and to protect First Amendment rights for all.

We read recently that the Independence Law Center, on behalf of student leaders of the Bible Club, has complained about your denying the leaders permission to distribute Bibles to their classmates during the school day, including during lunch. We further understand that you have denied students the opportunity to distribute Bibles outside of the school day unless they are given permission by the school. We hope that this information is incorrect, since denying students the opportunity to distribute Bibles is contrary to the First Amendment. If these allegations are true, we urge you to reverse your position.

First Amendment protections do not vanish when students go to school. As the Supreme Court stated in *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 506 (1969): "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." These free speech rights apply "when [the students are] in the cafeteria, or on the playing field, or on the campus during the authorized hours...." *Id.* at 512. In fact, the Supreme Court in *Shelton v. Tucker*, 364 U.S. 479,

487 (1967) stated: "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools."

As the Supreme Court has explained, public school officials cannot impede student expressive activity unless this activity "materially and substantially interferes" with the school's ability to fulfill its educational goals. *Tinker*, 393 U. S. at 509. Any attempt to restrict this student speech is unconstitutional where there has been "no finding and no showing that engaging [in the activity] would 'materially and substantially interfere' with the requirements of appropriate discipline in the operation of the school.'" *Id.* (quoting *Burnside v. Byars*, 363 F. 2nd 744, 749 (5th Cir. 1966)).

Specifically regarding the distribution by students during non-class hours of Bibles and religious literature, several courts have held that this distribution is protected speech under the First and Fourteenth Amendments. See *K. A. ex rel. Ayers v. Pocono Mountain School District*, 710 F.3d 99, 111-14 (3rd Cir. 2013) (holding that it is unconstitutional to ban a fifth-grader from handing out church flyers to her classmates); *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 County Special School District*, 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"); *Westfield High School L. I. F. E. Club v. City of Westfield*, 249 F. Supp. 2d 98, 114 (D. Mass. 2003) ("It is now textbook law" that students have rights of expression, including the right to distribute literature); *Clark v. Dallas Independent School District*, 806 F. Supp. 116, 119 (N. D. Tex. 1992) ("It is well-settled that written expression is pure speech....It is equally true that the guarantee of free speech encompasses the right to distribute written materials peacefully").

As almost every high school teacher, student, staff, and administrator knows, time before and after class, time between classes, and lunch periods are times when people in school exchange information, both verbally and written. Singling out Bibles and religious literature for banning shows hostility toward religion. As the Supreme Court in *Zorach v. Clauson*, 343 U.S. 306, 313-314 (1952) stated, "We find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence."

If we can be of any service to you on this issue, feel free to contact us. We have First Amendment lawyers on staff who will work with you, without charge, if you need their services in creating or reviewing school policies regarding free speech and free exercise of religion.

For Faith and Freedom,



Lea Carawan

Executive Director

Congressional Prayer Caucus Foundation