



**KENTUCKY EQUALITY
FEDERATION**

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OFFICE OF THE PRESIDENT, JORDAN PALMER | LEGAL DEPARTMENT
ATTORNEY JILLIAN HALL, VICE PRESIDENT OF LEGAL



January 31, 2013

Marshall Kemp
Logan County Schools
2222 Bowling Green Road
Russellville, KY 42276

Commonwealth of Kentucky
Education Cabinet
Office of the Secretary
Capitol Plaza Tower
500 Mero Street - 3rd Floor
Frankfort, KY 40601

RE: CEASE AND DESIST

Mr. Kemp:

I am writing in response to the concerns raised by a parent of a Logan County student regarding the distribution of Bibles by Gideons International in the Logan County public schools. I am the Vice President of Legal for the Kentucky Equality Federation, and write on behalf of the organization to support Ms. Alms and any other parents who rightfully find issue with the practice of allowing this distribution on school property, as it is in direct violation of both the U.S. Constitution and Section V of the Kentucky Constitution (<http://www.lrc.state.ky.us/legresou/constitu/005.htm>)

In your most recent response, you cited the case Peck v. Upshur Co. Board of Educ., 155 F.3d 274 (4th Cir. 1998). While this case (which as you know is only persuasive, **not binding in the Commonwealth of Kentucky**) does address the issue of Bible distribution in public schools and permits a passive offering of such materials in a limited manner, the Court specifically finds this Constitutional only as it applies to secondary school students. The court noted that “in elementary schools, the concerns animating the coercion principle are at their strongest because of the impressionability of young elementary-age children.

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Jordan Palmer, President
Joshua Koch, Vice President of Policy & Public Relations
Jillian Hall, Esq., Vice President of Legal



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Moreover, because children of these ages may be unable to fully recognize and appreciate the difference between government and private speech...the [School Board's] policy could more easily be (mis)perceived as endorsement rather than as neutrality” Id. at 288.

With regard to your statement that the U.S. Supreme Court addresses this issue of age in Good New Club v. Milford Central School, 533 U.S. 98 (2001), the case clearly states that this has only to do with non-school hours; “we have never extended our Establishment Clause jurisprudence to foreclose private religious conduct during *nonschool hours* merely because it takes place on school premises where elementary school children may be present” (emphasis added) (Id. at 119). The Court is not in the habit of using superfluous language when writing their opinions, therefore the distinction made throughout this opinion, the Court repeatedly stated that “non-school hours” activities do not violate the Establishment Clause are purposeful and necessary.

In the present issue, the school board is regularly permitting Gideons International to come to classrooms of fifth grade students, during school instructional hours, and hand out religious publications to each child, one by one. There are numerous cases throughout the country finding ad nauseum that this is in direct violation of the Establishment Clause. The school, in allowing religious texts to be handed out to each child in a manner that promotes one particular religion, is quite frankly embarrassing to me as a citizen of the Commonwealth. There is no question as to the Constitutionality of this practice, and instances such as this give the rest of the country rightful cause to question the education our students receive in the public school systems.

Even if the school reduces this practice to one that is in compliance with the boundaries set forth by Peck, the age of the students being subject to a table full of strictly religious materials during school hours in a public setting gives rise to the belief that the school itself is promoting this limited form of Christianity.

If the school truly wants to be “in the book business” as indicated by Marshall Kemp in an email dated December 7, 2012, then the table should at the very least include not only the

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New Testament, but also books relating to religions including (but certainly not limited to) Buddhism, Atheism, Judaism, Islam, Wicca, and Hinduism, not to mention the numerous sects of Christianity not associated with Gideons International.

I write to you in the hope that this issue is one that can be settled amicably, in a manner that satisfies both the school board and the Constitution of the Commonwealth of Kentucky and the United States.

Allowing strictly religious materials to be distributed to impressionable young children (as is the very purpose of targeting fifth graders) is something that does not fall under the purview of a public school system – religious instruction should come from non-governmental sources, and materials made available and questions answered by the parents of these children and anyone else they deem necessary.

It is not the role of the public school system to provide religious instruction, promote religion in any way, or allow others to do so within their walls. As parents, we trust the schools to provide a rich education during the day, and provide religious education to our own children in our own individual manners during non-school hours.

I trust you will convey this message to the school board and impress upon them the importance of this distinction and instruct them to drop any and all relationships with Gideons International, or any other strictly religious organization, immediately.



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Jordan Palmer
President

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cc: Brandon Combs, Chairman of the Board
Rose Law Offices, Legal Representation for Kentucky Equality Federation
Kentucky Education Cabinet, Office of Secretary Joseph U. Meyer