



August 13, 2014

Mr. Michael Bockelman  
Vice President and Navy Lodge Program Director  
Navy Exchange Service Command  
3280 Virginia Beach Blvd.  
Virginia Beach, VA 23452

*Via First Class Mail and email ([michael.bockelman@nexweb.org](mailto:michael.bockelman@nexweb.org))*

Re: NEXCOM Info. Bull.14-004 and Removal of Bibles in Navy Base Lodges and Hotels

Dear Mr. Bockelman:

We recently learned of NEXCOM Information Bulletin 14-004,<sup>1</sup> which you signed and which directed that all Bibles be removed from guest rooms in hotels and lodges on Navy Bases. We understand that NEXCOM made this decision as a result of a complaint from Freedom from Religion Foundation (FFRF), in which FFRF wrongly claimed that allowing the Gideons to place Bibles in these rooms violates the Establishment Clause of the First Amendment.<sup>2</sup>

We write to clarify that the Establishment Clause does not require NEXCOM to remove these Bibles. To our knowledge, no court in the country has ever issued a ruling that government-run guest facilities allowing Bibles to be placed in their rooms violate the First Amendment. Rather, the Establishment Clause allows for private individuals and groups, like the Gideons, to place Bibles at their own expense on government property. But the Establishment Clause forbids hostility toward religion. As explained below, by succumbing to FFRF's demands, NEXCOM may have engaged in such impermissible hostility toward religion. It also may have engaged in illegal viewpoint discrimination. We therefore request that NEXCOM immediately rescind its directive to remove Bibles from guest lodging on Navy Bases and return any Bibles previously removed.

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<sup>1</sup> NEXCOM Information Bulletin, "Navy Lodge Program: 14-004," 19 June 2014, available at [http://www.afa.net/media/1150/nexcom\\_directive.pdf](http://www.afa.net/media/1150/nexcom_directive.pdf) (last visited August 12, 2014).

<sup>2</sup> Todd Starnes, "Navy removes Bibles from guest rooms," Fox News, August 11, 2014, available at <http://www.foxnews.com/opinion/2014/08/11/navy-removes-bibles-from-guest-rooms/> (last visited August 12, 2014).

By way of introduction, Alliance Defending Freedom is a global alliance-building legal organization that advocates for the right of people to freely live out their faith. We are committed to protecting people's right to exercise their religious liberties, including the right to distribute and have access to religious literature and engage in religious speech. One important way in which we further this mission is by educating the public and government entities, such as NEXCOM, about the freedom of religious expression guaranteed by the Constitution.

Federal courts have consistently affirmed the right of private citizens, like the Gideons, to share religious literature on government property.<sup>3</sup> This is because the Establishment Clause does not require government entities to dissociate themselves from everything religious. Indeed, the Supreme Court has repeatedly made it clear that the Constitution does not "require complete separation of church and state."<sup>4</sup> Rather, it "affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any."<sup>5</sup> By allowing the Gideons to place Bibles on Navy property for the Navy's guests, the Navy was neither advancing nor endorsing a religion. It was merely accommodating the religious needs and desires of many of its guests, which is perfectly constitutional.

By succumbing to FFRF's demands, NEXCOM has arguably violated the Establishment Clause and also arguably engaged in impermissible viewpoint discrimination. As already noted, the Supreme Court has explained that the Establishment Clause forbids hostility toward religion.<sup>6</sup> But NEXCOM removed religious literature precisely because it was religious. This arguably is impermissible hostility toward religion. Also, while NEXCOM removed the Bibles, presumably it left other literature—things like magazines, phone books, and information about the Base and the guest facility. By removing the Bibles because they are religious but not these other materials, you may have engaged in viewpoint discrimination, which is "an egregious form of content discrimination" and a "blatant" violation of the First Amendment.<sup>7</sup> The Supreme Court

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<sup>3</sup> See, e.g., *Child Evangelism Fellowship of N.J., Inc. v. Stafford Twp. Sch. Dist.*, 386 F.3d 514, 535-36 (3d Cir. 2004); *Rusk v. Crestview Local School District*, 379 F.3d 418, 424 (6th Cir. 2004); *Child Evangelism Fellowship of Md. v. Montgomery Cnty. Sch.*, 373 F.3d 589, 602 (4th Cir. 2004); *Peck v. Upshur County Board of Education*, 155 F.3d 274 (4th Cir. 1998). See also *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 408 (5th Cir. 1995) (ruling that parents lacked standing to challenge Bible distribution because the school did not "expend any funds on the Gideons' Bible distribution," "the Gideons do not address the students, the school does not make any announcement informing the students about the Bibles, and no school district employees handle the Bibles").

<sup>4</sup> *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984).

<sup>5</sup> *Id.*

<sup>6</sup> *Lynch*, 465 U.S. at 673.

<sup>7</sup> *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

and numerous other federal courts have repeatedly condemned efforts to exclude or restrict religious materials, while allowing other materials, as viewpoint or content discrimination.<sup>8</sup>

We therefore request that NEXCOM immediately rescind its directive to remove Bibles from guest lodging on Navy Bases and return any Bibles previously removed.

Additionally, we offer our services if NEXCOM would like us to review and respond, point by point, to FRFF's complaint it submitted to you. We at Alliance Defending Freedom are very grateful for the men in women in uniform who stand ever ready to defend our freedom. Please know that we stand ever ready to defend their freedom as well. Service men and women who have pledged to protect our Constitution and its guarantees should not be denied our most cherished constitutional freedoms themselves. Please do not hesitate to contact me if we can be of assistance to you in rebutting FRFF's false claims about what the Establishment Clause requires.

With much gratitude and prayer for the United States Navy, I am,

Sincerely yours,



Joseph E. La Rue  
Legal Counsel  
ALLIANCE DEFENDING FREEDOM

cc: CEO of NEXCOM, Rear Admiral Robert J. Bianchi  
Via First Class Mail and email ([kristine\\_sturkie@nexweb.org](mailto:kristine_sturkie@nexweb.org))

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<sup>8</sup> See, e.g., *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Rosenberger*, 515 U.S. 819; *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Widmar v. Vincent*, 454 U.S. 263 (1981).