

# FREEDOM FROM RELIGION *foundation*

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**SENT VIA EMAIL & U.S. MAIL: rocarter1@idoc.in.gov**

Rob Carter  
Commissioner  
Indiana Department of Correction  
302 W. Washington Street, Room E-334  
Indianapolis, IN 46204

Re: Unconstitutional Sentence Reduction for Bible Study

Dear Commissioner Carter:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional concern within the Indiana Department of Corrections. FFRF is a national nonprofit organization with more than 36,000 members across the country, including 500 members and a local chapter in Indiana. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

It is our understanding that Alyssa Shepherd, who was convicted of killing three children and badly injuring a fourth at their Fulton County bus stop in 2018, was released 6 months ahead of schedule because she took a bible study course called “Plus Faith 2.0: Criminal Lifestyle, Attitudes & Behavior.”<sup>1</sup>

We are writing to object to this Christian favoritism within the Indiana Department of Corrections and to ask that the Department immediately cease allowing the reduction of sentences for participation in bible study courses.

It is a fundamental principle of Establishment Clause jurisprudence that the government cannot in any way promote, advance, or otherwise endorse religion. The Supreme Court has said time and again that the First Amendment “mandates governmental neutrality between religion and religion, and between religion and nonreligion.” *McCreary Cty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15-16 (1947). The government must remain neutral toward religion because “the preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2000) (quoting *Lee v. Weisman*, 505 U.S. 577, 589 (1992)).

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<sup>1</sup> <https://www.abc57.com/news/alyssa-shepherd-released-from-prison-on-wednesday>

Federal Courts uniformly agree that mandatory participation in religious programs violates the Establishment Clause. *Inouye v. Kemna*, 504 F.3d 705, 714 n.9 (9th Cir. 2007) (holding court-ordered participation in a religious program unconstitutional); *accord Warner v. Orange Cty. Dept. of Probation*, 115 F.3d 1068 (2nd Cir. 1997). *See also Jackson v. Nixon*, 747 F.3d 537 (8th Cir. 2014) (reasoning that required completion of a nonsecular program as a condition for early parole would violate the Establishment Clause); *accord Kerr v. Ferrey*, 95 F.3d 472, 480 (7th Cir. 1996). It is similarly unconstitutional for the Department to coerce participation in these programs by offering preferential treatment and benefits, like reduced sentences, for those who participate in religious programs.

The constitutional prohibition on government advancement of religious programming applies just as strongly to the Department of Correction's bible study course. Reducing an inmate's sentence for participating in a bible study course is illegal because it ties a substantial and desirable benefit—the opportunity to leave jail sooner—to an exclusively religious act: engaging in religious study and worship. *See Lee v. Weisman*, 505 U.S. 577, 596 (1992) (“It is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.”); *Jackson v. Nixon*, 747 F.3d 537 (8th Cir. 2014) (ruling that conditioning eligibility for early parole on participation in a religious program violated the Constitution).

In *Jackson v. Nixon*, the Eighth Circuit Court of Appeals held as part of its ruling that a Department of Corrections director who required an atheist prisoner to participate in religious programming could be held personally liable under § 1983 for violating that prisoner's First Amendment free exercise rights. 747 F.3d at 544. This court of appeals has indicated that this is now a well-settled area of law—coercing participation in religious programming is illegal.

Please note that it's also legally immaterial whether inmates must “volunteer” to participate in the bible study. Incentivizing participation through benefits is a form of coercion. And coercion aside, religious *endorsement* is constitutionally problematic. The Supreme Court has summarily rejected arguments that voluntariness excuses a constitutional violation. *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 288 (1963) (Brennan, J., concurring) (“Thus, the short, and to me sufficient, answer is that the availability of excusal or exemption simply has no relevance to the establishment question”); *Mellen v. Bunting*, 327 F.3d 355, 372 (4th Cir. 2003) (“VMI cannot avoid Establishment Clause problems by simply asserting that a cadet's attendance at supper or his or her participation in the supper prayer are ‘voluntary.’”).

As a matter of policy, it is inappropriate to compel vulnerable individuals to participate in religious programs and bible studies in order to reduce their sentence. The amount of time that someone is required to stay in jail should not be dependent on their willingness to participate in religious activities or their religious affiliation.

The Department of Correction serves a noble purpose at the behest of the people in promoting public safety and upholding the law. Part of that law is our Constitution, which calls for government entities like the Department of Correction to respect every citizen's right of conscience. Prisoners' religious beliefs or lack thereof, or their willingness to participate in

religious programming, should not influence their eligibility for early release. We ask that the Department cease reducing sentences for those who participate in bible study and seek religiously neutral ways to advance its rehabilitation efforts. Thank you for your time and your attention to this matter. Please respond to the following open records request.

**Open Records Request**

Pursuant to the Indiana Access to Public Records Act (IC § 5-14-3-1 et seq.), I request a copy of the following records from the past 5 years:

- 1) All policies related to the Purposeful Living Units Serve (PLUS) program;
- 2) Any policy, procedure, order, or directive, promulgated by or to the Department of Correction, regarding programs that allow for a reduction in sentence;
- 3) Any policy, procedure, order, or directive, promulgated by or to the Department of Correction, authorizing a reduction in sentence for participation in the bible study course;
- 4) Any communications, including email, to or from any person employed by, or acting on behalf of, the Department of Correction regarding the bible study course, "Plus Faith 2.0: Criminal Lifestyle, Attitudes & Behavior;"
- 5) Any other records related to reduced sentences for inmates who participate in the "Plus Faith 2.0: Criminal Lifestyle, Attitudes & Behavior" bible study course.

Please forward this request to the proper custodian. If you choose to deny this request, please respond with a written explanation of the denial, including any references to applicable statutory exemptions relied upon.

If any of these records are available through electronic media (preferred), they may be e-mailed to **chris@ffrf.org**. If I can provide any clarification that will help expedite your attention to my request, please contact me at 608-256-8900. I appreciate your time and attention to this request.

Sincerely,



Christopher Line  
Staff Attorney  
Freedom From Religion Foundation