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**By U.S. Mail & Fax**

The Honorable Randall Lee Rogers  
Smith County Courthouse  
100 N. Broadway, 1st Floor  
Tyler, TX 75702  
Fax: (903) 590-1608

Re: *Probation terms requiring writing Bible verses and marriage*

Dear Judge Rogers:

We understand that you recently required defendant Josten Bundy, as a condition of his probation, to write down Bible verses and “marry his girlfriend within 30 days.” See, e.g., Sarah Pulliam Bailey, *Judge Orders Texas Man to Marry Girlfriend and Write Down Bible Verses*, Wash. Post, Aug. 7, 2015, <http://tinyurl.com/p2rhtrz>; Julia Jenaé, *Judge Sentences East Texas Man to Get Married or Face Jail Time*, KTLV, Aug. 6, 2015, <http://tinyurl.com/nrmupuk>. If the defendant did not fulfill these conditions, he would have faced 15 days in prison. Bailey, *supra*.

Both requirements are clear violations of the U.S. Constitution, and we respectfully request that you omit any such requirements from existing and future orders.

*First*, like other government officials, judges may not coerce parties to engage in religious activities. As the U.S. Supreme Court explained in *Lee v. Weisman*, 505 U.S. 577 (1992), “[i]t is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise.” *Id.* at 587. Courts have consistently held that government officials violate the Establishment Clause when they force criminal offenders to engage in religious activity to avoid prison or to gain access to a benefit. See, e.g., *Inouye v. Kemna*, 504 F.3d 705, 712 (9th Cir. 2007) (“[R]equiring a [criminal offender] to attend religion-based treatment programs violates the First Amendment.”); *Bobko v. Lavan*, 157 F. App’x 516, 518 (3d Cir. 2005) (“The government violates the First Amendment’s Establishment Clause when it requires a prisoner to participate in a drug or alcohol rehabilitation program with a religious component.”); *Warner v. Orange Cnty. Dep’t of Prob.*, 115 F.3d 1068, 1074–77 (2d

Cir. 1997) (county violated Establishment Clause by use of religious program in treatment approach, where refusal to attend could negatively impact inmate's security-risk rating and consideration for parole); *Griffin v. Coughlin*, 673 N.E.2d 98, 106 (N.Y. 1996) (prison official violated Establishment Clause by conditioning eligibility for expanded family-visitation program on participation in religious program). An order forcing a defendant to choose between prison and Bible reading or writing—or any other religious activity—is likewise unconstitutional.

*Second*, it is also well established that government officials may not force citizens to marry one another—as a condition of parole, or otherwise. The Fourteenth Amendment guarantees the right to privacy and prohibits the government from interfering with citizens' intimate associations, including marriage. Because marriage is a fundamental right, government officials cannot interfere with the decision, either by prohibiting marriage or requiring it: “the right to personal choice regarding marriage is inherent in the concept of individual autonomy.” *Obergefell v. Hodges*, 135 S. Ct. 2584, 2599 (2015). These constitutional protections apply to those convicted of crimes, and even to those who are imprisoned. *See Turner v. Safley*, 482 U.S. 78, 96 (1987) (invalidating “regulation [that] prohibits inmates from marrying unless the prison superintendent has approved the marriage after finding that there are compelling reasons for doing so”).

Here, forcing a defendant to choose between marriage and prison creates “a serious intrusion into their freedom of choice in an area in which [the Court has] held such freedom to be fundamental.” *Zablocki v. Redhail*, 434 U.S. 374, 387 (1978). All citizens, including those convicted of crimes, have the right to decide whether and when to get married. And under the Constitution, they are entitled to make that decision without the threat of imprisonment.

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We respectfully request that you refrain from imposing conditions requiring religious activity (including Bible reading or the writing of Bible verses) or conditions relating to fundamental privacy interests such as marriage, and that you rescind any such requirements from existing orders. We would appreciate a response to this letter within thirty days. If you have any questions, please contact Ian Smith at (202) 466-3234 or [ismith@au.org](mailto:ismith@au.org).

Sincerely,



Gregory M. Lipper, Senior Litigation Counsel  
Ian Smith, Staff Attorney