

BY E-MAIL

February 8, 2016

**Carl E. Bruce**  
Principal

Bernard J. Roan,  
Chief Counsel  
NASA Johnson Space Center  
Legal Office  
Mailcode AL  
2101 NASA Road 1,  
Houston, TX 77058

Re: *NASA's Prohibited Religious Viewpoint Discrimination*

Dear Mr. Roan:

We and the Liberty Institute represent the JSC Praise & Worship Club and several of its members. Please direct all communications concerning this matter to me.

We write regarding NASA's Johnson Space Center's (JSC) refusal in May / June of 2015 to allow the JSC Praise & Worship Club to continue to use the word "Jesus" in advertisements for the club in the *JSC Today*, NASA JSC's weekly email newsletter. NASA JSC's censoring of the club's religious viewpoint is a violation of federal law and the First Amendment.

NASA Censors Club's Private Speech

The JSC Praise & Worship Club is one of several employee clubs on NASA's JSC campus that has been meeting since 2001. Civil servants and contract employees at the JSC meet during the lunch hour in order to encourage one another, pray together, and worship God through singing. The Club meetings are open to all NASA JSC civil servants and contract employees. Like any other employee group at NASA's JSC, the JSC Praise & Worship Club submits announcements about its meetings to the *JSC Today* in order to invite coworkers at the JSC to its monthly meetings.

In the Thursday, May 28, 2015, edition of *JSC Today*, the JSC Praise & Worship Club's announcement appeared as follows:

Join with the praise and worship band "Allied with the Lord" for a refreshing set of spring praise and worship songs on Thursday, June 4, from 11:15 a.m. to noon in Building 57, Room 106. (The theme for this session will be "Jesus is our life!") Prayer partners will be available for anyone who has need. All JSC civil servants and contractors are welcome.

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*See* Exhibit A.

Club organizers received no warning or notification of any kind that the word, “Jesus” would present a problem. Yet, within days of the announcement appearing in the *JSC Today*, the club’s leadership received a troubling phone call from Rebekah D. Reed, an attorney from the NASA JSC’s legal office. Ms. Reed made it clear that the JSC Praise & Worship Club that NASA would be censoring all future club announcements that featured the name, “Jesus.”

On behalf of NASA, Ms. Reed explained that the use of the name “Jesus” within the club’s announcement made that announcement “sectarian” or “denominational.” Further, Ms. Reed explained that the insertion of “Jesus” into the club’s announcement in *JSC Today* would cause NASA to violate the Establishment Clause of the First Amendment to the United States Constitution.

Club organizers offered to provide a disclaimer, notifying readers of *JSC Today* that the announcement was the private speech of the group and not endorsed by NASA or any other government agency. This offer was rejected as insufficient to resolve the issue to the satisfaction of NASA’s legal department.

Ms. Reed specifically indicated that prior club announcements—announcements devoid of the name “Jesus”—were acceptable because they were “generic” enough and, in the opinion of NASA’s lawyers, did not require any religious viewpoints to be censored prior to publication. The JSC Praise & Worship Club’s organizers objected to NASA’s censorial actions but agreed to keep its announcements “generic” while seeking independent legal guidance on the matter.

#### NASA’s Actions Constitute Prohibited Viewpoint Discrimination

NASA JSC’s actions in censoring the name “Jesus” from the *JSC Today* email newsletter are prohibited viewpoint discrimination. The Supreme Court has ruled that speakers cannot be excluded from even a non-public forum based upon the viewpoint of the message. *See e.g. Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 800 (U.S. 1985) (“Access to a nonpublic forum, however, can be restricted as long as the restrictions are reasonable and are not an effort to suppress expression merely because public officials oppose the speaker’s view.”)

Any assertions by NASA JSC that allowing the JSC Praise & Worship Club to use the name “Jesus” in the club’s advertisements violates the Establishment Clause have been repeatedly rejected by the Supreme Court. For example, in *Good News Club v. Milford Cent. Sch.*, the Supreme Court rejected a school’s assertion that it could rely upon the Establishment Clause to deny a religious club the use of its facilities. 533 U.S. 98, 113 (2001). As the Court noted in analyzing whether there was a legitimate concern that anyone would perceive the school as sponsoring a religious club, the “Club’s meetings were held after school hours, not sponsored by the school, and open to any student who obtained parental consent, not just to Club members.” *Id.* The same is true here—the advertisement with “Jesus” is clearly associated with the JSC Club, the club meets outside of work hours, is not sponsored by NASA JSC, and is open to all comers. *See also Bd. of Educ. v. Mergens*, 496 U.S.

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226, 248 (1990) ("The Establishment Clause does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore subject to unique disabilities."); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993) (Government violates the First Amendment when denying access to a forum in order to suppress a speaker's viewpoint.); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995) ("Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction."); *Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118*, 9 F.3d 1295, 1296 (7th Cir. 1993) ("Even when the government may forbid a category of speech outright, it may not discriminate on account of the speaker's viewpoint.").

Respecting the private speech of its employees, or contract employees, is a principle that ought to be quite familiar to NASA's attorneys and consistent with NASA's history of allowing the private, religious speech of its employees. NASA has permitted—and defended in court—the reading of Scripture by NASA's own astronauts on board NASA spacecraft during an official NASA space mission and then televised to the whole world. As you undoubtedly know, the private speech of Bill Anders, Jim Lovell, and Frank Borman on board Apollo 8 was determined not to be a violation of the Establishment Clause:

Relying upon the above guidelines, this Court must conclude that the government did not abridge the Establishment Clause under the facts as alleged by the plaintiffs.

To begin with, the religious statements of the astronauts while on television were made by the astronauts as individuals and not as representatives of the United States government. There is nothing in the pleadings to indicate otherwise. Furthermore, to have prohibited the astronauts from making these statements would have been a violation of their own religious rights.

*O'Hair v. Paine*, 312 F. Supp. 434, 437 (W.D. Tex. 1969).

For at least these reasons, NASA JSC's decision to ban the use of the name "Jesus" is impermissible viewpoint discrimination.

### NASA's Conduct Violates the Religious Freedom Restoration Act

Similarly, under the Religious Freedom Restoration Act (42 U.S.C. § 2000bb) the "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, [unless the Government] demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." NASA JSC's refusal to allow the JSC Praise & Worship Club to use "Jesus" in its meeting notices in the *JSC Today* email newsletter

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places a substantial burden on the speech that the JSC Praise & Worship Club and its members can use.

And there is no compelling governmental interest here that would permit NASA to substantially burden the free exercise of religion of the JSC Praise & Worship Club and its individual members. The only known interest articulated by NASA JSC to-date is a vague suggestion that the appearance of one name—"Jesus"—could render the entire publication "sectarian" and somehow violate the Establishment Clause of the First Amendment to the United States Constitution. We fail to see how such a mention in an advertisement that is tied specifically to the JSC Praise & Worship Club connotes state sponsorship, endorsement, or establishment of religion.

Further, even if NASA JSC is able to articulate a strong interest, that is not enough. Under *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 432 (2006), in order to show a compelling interest, NASA JSC also needs to show how its alleged strong interest would be adversely affected by granting an exception to the JSC Praise & Worship Club.

In addition, NASA JSC must show that the burden that it has placed on the JSC Praise & Worship Club is the least restrictive burden available. In *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2780 (U.S. 2014), the Supreme Court noted that "[t]he least-restrictive-means standard is exceptionally demanding . . ." NASA JSC cannot make such an exceptional showing.

### Conclusion

Given NASA JSC's clear violation of the rights of the JSC Praise & Worship Club and its members, we request that NASA JSC reconsider its position and notify us, in writing, that NASA will remove its prohibition of the use of the name "Jesus" from the Club's future advertisements. Please let us know NASA JSC's response to this letter in writing no later than March 10, 2016. Should we receive no response (or an inadequate one) by that date, we are prepared to enforce the Club's rights in court, where we believe we will win.

If you have any questions or would like to discuss this matter further, please don't hesitate to contact me.

Sincerely,



Carl E. Bruce

# **Exhibit A**

**From:** JSC Today [mailto:[jsc-jsctoday@mail.nasa.gov](mailto:jsc-jsctoday@mail.nasa.gov)]  
**Sent:** Thursday, May 28, 2015 6:00 AM  
**To:** JSC-Today  
**Subject:** JSC Today - Thursday, May 28, 2015



Thursday, May 28, 2015

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[Category  
Definitions](#)

## JSC TODAY CATEGORIES

1. [Headlines](#)
  - [Ask Questions to the ISS HDEV Team on a Reddit AMA](#)
  - [Let's Get Physical \(Sciences\)](#)
  - [Robo-Ops Rovers on the Rock Yard Next Week](#)
  - [Reminder: 2015 Federal Employee Viewpoint Survey](#)
2. [Organizations/Social](#)
  - [Get Your EVA 50th Anniversary T-shirt](#)



- 
- [Today](#)
  - [Starport Summer Camp: Filling Up Fast](#)
  - [Soccer Camp](#)
  - [Latin Dance](#)
  - [Introduction: June 5, 5:30-6:30 p.m.](#)
  - [JSC Praise and Worship Club Meeting](#)
3. [Jobs and Training](#)
    - [APPEL - Requirements Development and Management](#)
    - [Environmental Scientist](#)
  4. [Community](#)
    - [Co-ops & Interns Still Needed for HAS](#)
    - [NASA Seeks Community College STEM Students](#)
    - [TCC-H Knowledge Management Connect Event](#)

## Headlines

### 1. Ask Questions to the ISS HDEV Team on a Reddit AMA

The International Space Station High Definition Earth Viewing team will answer questions about HDEV's design, engineering, operations and streaming video distribution and utilization. HDEV is attached to a nadir port on the Columbus Exposed Payload Facility. At **3 p.m. CDT today, May 28**, [this link will become active](#) for those who would like to participate. For FAQs on Reddit, [click here](#).

Event Date: Thursday, May 28, 2015    Event Start Time: 3:00 PM    Event End Time: 5:00 PM

Event Location: Online on Reddit

[Add to Calendar](#)

[Dave Hornyak](#) x48091 <http://eol.jsc.nas.gov/HDEV>

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### 2. Let's Get Physical (Sciences)

Every month on StationLIFE, we'll focus on a scientific area where the International Space Station is conducting groundbreaking research. This month, astronaut Tracy Dyson hosts a focus on how the station is a unique environment for physical sciences. [Watch it here.](#)

[Liz Warren](#) x35548

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### 3. **Robo-Ops Rovers on the Rock Yard Next Week**

The [2015 RASC-AL Exploration Robo-Ops Engineering Design Competition](#) is happening next week! We invite you to view some of the action at your convenience from June 2 to 4 at the rock yard as eight teams from across the country travel to JSC to test their tele-operated planetary rovers on the various simulated planetary surfaces. With their rovers, the student teams will demonstrate testing Mars-forward capabilities to reduce mass and increase reliability in a deep-space environments, as well as other aspects of deep-space exploration related to future NASA missions.

Robo-Ops teams are from California State University, Long Beach, MIT, San Jose State University, University at Buffalo, University of Maryland, University of Utah, Virginia Tech and West Virginia University.

See your alma mater? Want to learn more about planetary rovers? Join us anytime on Tuesday afternoon, June 2, or between 8 a.m. to noon and 1 to 6 p.m. on Wednesday, June 3, at the rock yard.

Or, you can [view the live stream](#) from each of the team's rovers online during the competition.

[Stacy Dees](#) 757-218-8313

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### 4. **Reminder: 2015 Federal Employee Viewpoint Survey**

If you have not yet completed the 2015 Federal Employee Viewpoint Survey, please take a few minutes to do so. You will have already received an email from the Office of Personnel Management with a link to the survey, and should be receiving weekly reminders. The purpose of this survey is to gather input and measure employees' attitudes and perceptions for topic areas such as leadership and knowledge management, performance culture and job satisfaction. We encourage your voluntary participation in this survey and hope you view this as an opportunity to influence positive change in our agency. Prior to taking the survey, we encourage you to visit the newly created Employee Viewpoint and Resources Web page posted on the JSC Human Resources portal. This site provides information regarding survey results from previous years, utilization of the results and quick reference links to other employee resources.

[Jennifer Rodriguez](#) x46386

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## Organizations/Social

### 1. Get Your EVA 50th Anniversary T-shirt Today

#SuitUp to celebrate the 50th Anniversary of the first U.S. spacewalk on June 3 with a new commemorative T-shirt! ShopNASA is proud to offer the *exclusive* EVA 50th anniversary T-shirt in a beautiful red color with the official EVA 50th anniversary logo on the back.

Shirts may be purchased for \$11.95 in the Buildings 3 and 11 ShopNASA Gift Shops, as well as at the Gilruth front desk. Come get yours today!

[Ansley Browns](#) x47467

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### 2. Starport Summer Camp: Filling Up Fast

Starport is offering summer camp for youth at the Gilruth Center all summer long. We have tons of fun planned, and we expect each session to fill up, so get your registrations in early! Weekly themes are listed on our website, as well as information regarding registration.

Ages: 6 to 12

Times: 7:30 a.m. to 5:30 p.m.

Dates: June 8 to Aug. 21 in one-week sessions

Fee per session: \$140 per child | \$125 per sibling

Register for all sessions and receive a **discount!** Register online or at the Gilruth Center information desk.

[Like us on Facebook](#) to receive daily information about camps!

[Shericka Phillips](#) x35563

<https://starport.jsc.nasa.gov/en/programs/familyyouth-programs/youth-day...>

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### 3. Soccer Camp

Starport and Challenge Soccer Club have teamed up to provide you with a youth coed soccer camp this summer. The ages for the camp are 6 to 12. Challenge Soccer Club will provide basic skills training, as well as incorporate fun games throughout the week. Sign your child up today!

[Robert K. Vaughn II](#) x38049

<https://starport.jsc.nasa.gov/en/programs/familyyouth-programs/sports-ca...>

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### 4. Latin Dance Introduction: June 5, 5:30-6:30 p.m.

This class is mostly an introduction to Salsa, but it also touches on other popular Latin dances found in social settings: Merengue, Bachata, and even a little bit of Cha-Cha-Cha. Emphasis is on Salsa and then Bachata.

For the first-time student or those who want a refresher course. You will go over basic steps with variations and build them into sequences.

June 5

Regular Registration:

- o **\$60 per person (May 3 to June 12)**

**Salsa Intermediate: 6:45 to 7:45 p.m.**

This class continues teaching Salsa beyond that taught in the introduction class. You should be comfortable and confident with the material from the introduction class before moving on to the intermediate class. This is a multi-level class where students may be broken up into groups based on class experience.

[Shericka Phillips](#) x35563  
<https://starport.jsc.nasa.gov/en/programs/recreation-programs/salsalatin...>

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## 5. JSC Praise and Worship Club Meeting

Join with the praise and worship band "Allied with the Lord" for a refreshing set of spring praise and worship songs on Thursday, June 4, from 11:15 a.m. to noon in Building 57, Room 106. (The theme for this session will be "Jesus is our life!") Prayer partners will be available for anyone who has need. All JSC civil servants and contractors are welcome.

Event Date: Thursday, June 4, 2015 Event Start Time:11:15 AM Event End Time:12:00 PM  
Event Location: Building 57 Room 106

[Add to Calendar](#)

[Mike FitzPatrick](#) x30758

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## Jobs and Training

### 1. APPEL - Requirements Development and Management

This course presents the participant with best practices that, when incorporated into the requirement development and management process, will help a project team develop a winning product—one that delivers what is needed, when it is needed, within the projected costs and with the expected quality.

This course is designed for NASA's technical workforce, including systems engineers and project personnel who seek to develop the competencies required to succeed as a leader of a project team, functional team or small project.

This course is available for self-registration in SATERN until Thursday, June 18, and is open to civil servants and contractors.

Dates: Tuesday through Thursday, July 21 to 23

Location: Building 12, Room 152

[Zeeaa Quadri](#) x39723

[https://satern.nasa.gov/learning/user/deeplink\\_redirect.jsp?linkId=SCHE...](https://satern.nasa.gov/learning/user/deeplink_redirect.jsp?linkId=SCHE...)

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## 2. Environmental Scientist

The Biomedical Research and Environmental Sciences Division (SK) has an opportunity for an Environmental Scientist, who will serve as a key interface and liaison between Subject Matter Experts (SMEs), managers, operations personnel and external stakeholders to ensure the proper operational implementation of environmental-health standards for spacecraft air and water quality in all space vehicles and habitats.

[Please see the link](#) for additional information.

[Torin McCoy](#) x39461

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## Community

### 1. Co-ops & Interns Still Needed for HAS

You've landed a great summer internship—now pay it forward by mentoring High School Aerospace Scholars (HAS) students. Share your NASA experience, college background and advice with students interested in following your footsteps, and lend a hand as they participate in engineering challenges and plan a mission to Mars. There are six weeks to choose from, and the commitment requires about 20 hours.

Summer Schedule:

- **Week 1: June 15 to 19**
- **Week 2: June 22 to 26**
- **Week 3: July 6 to 10**
- **Week 4: July 13 to 17**
- **Week 5: July 20 to 24**
- **Week 6: July 27 to 31**

If interested, please:

1. Complete the mentor application [here](#).

2. [Create a V-CORPs account](#).
3. [Review](#) mentor responsibilities.
4. Apply by June 8.

[Brandi Dean](#) x41403 <http://has.aerospacescholars.org/mentors>

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## 2. **NASA Seeks Community College STEM Students**

Do you know a community college student who dreams of having a science, technology, engineering or mathematics (STEM) career? They should become a NASA Community College Aerospace Scholar (NCAS)! The NCAS program consists of a five-week online course, which can lead to a selection for a three-day on-site workshop this fall. Students will design and build a LEGO NXT Mars rover and compete in design challenges while working alongside NASA mentors. Applications for the fall session are still open. Interested students should [visit the NCAS website](#) to learn more.

Hurry, **the application window closes June 24!**

[Debra Derham](#) 281-792-8626 <http://ncas.aerospacescholars.org>

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## 3. **TCC-H Knowledge Management Connect Event**

Ever wish finding information for your job was as easy as searching Google or Wikipedia? Ever been concerned about the validity of the information you eventually find? Who reviewed the content when it was generated? Is it now outdated? We have a solution and want to share our methods with the community.

Join us on June 9 for a one-day conference to discuss lessons learned, share our open-source solution and explore opportunities for collaborative development agreements on expanding and improving knowledge-sharing tools.

We'd like to invite everyone who has ever had problems finding the right version of a document or didn't know where to go to find the information they needed. JSC is teaming with the Technology Collaboration Center of Houston (TCC-H) to host this event.

If you are interested in attending, [please register now](#).

Event Date: Tuesday, June 9, 2015 Event Start Time:8:00 AM Event  
End Time:5:00 PM  
Event Location: Gilruth Alamo Ballroom

[Add to Calendar](#)

[Lawrence Daren Welsh](#) x40158  
[https://mod2.jsc.nasa.gov/wiki/MOD/index.php?  
title=Knowledge\\_Sharing\\_Con...](https://mod2.jsc.nasa.gov/wiki/MOD/index.php?title=Knowledge_Sharing_Con...)

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