GOOD NEWS CLUB

v

MILFORD CENTRAL SCHOOL

SUPREME COURT OF THE UNITED STATES
533 U.S. 98
June 11, 2001
[6 -3]

Can a religious club meet after school?
This case is important from an ELL point of view because it informs us of some actions the Supreme Court has never taken, many of which our citizens mistakenly believe have been taken.
How refreshing!!! Enjoy, let the sun shine and correct your friends who are in the dark!!!

OPINION: Justice Thomas...[1] Whether Milford Central School violated the free speech rights of the Good News Club when it excluded the Club from meeting after hours at the school? [2] Whether any such violation is justified by Milford's concern that permitting the Club's activities would violate the Establishment Clause? We conclude that Milford's restriction violates the Club's free speech rights and that no Establishment Clause concern justifies that violation.

[A New York State statute] authorizes local school boards to adopt regulations governing the use of their school facilities [and] enumerates several purposes for which local boards may open their schools to public use. In 1992, **Milford Central School enacted a community use policy** adopting seven of [the statute's] purposes for which its building could be used after school, [two of which are relevant here].

Let us not forget that if the school had never permitted any groups to use its facilities, then it would not have to permit this group to use it. The starting point is a policy of opening up schools for "public after-hours use."

First, district residents may use the school for "instruction in any branch of **education, learning or the arts**." Second, the school is available for "**social, civic and recreational meetings and entertainment events**, and other uses pertaining to the **welfare of the community**, provided that such uses shall be **nonexclusive** and shall be **opened to the general public**."

...The...local Good News Club is a private Christian organization for children ages 6 to 12. Pursuant to Milford's policy,...the GNC...submitted a request to Dr. Robert McGruder, interim superintendent of the district, in which they sought permission to hold the Club's weekly after-school meetings in the school cafeteria [which McGruder formally denied] on the ground that the proposed use -- to have "a fun time of singing songs, hearing a Bible lesson and memorizing scripture" -- was "**the equivalent of religious worship**." According to McGruder, the community use policy, **which prohibits use "by any individual or organization for religious purposes,**" foreclosed the Club's activities.

...The Club sent a set of materials used or distributed at the meetings and the following description of its meeting [to Milford's attorney to explain who they are and what they do]:

> "As attendance is taken, if a child who is called recites a Bible verse the child receives a treat. After attendance, the Club sings songs. Next, Club members engage in games that involve learning Bible verses...A Bible story is told with explanation at to how it applies to Club members' lives. The Club closes with prayer..."

...Milford concluded that the proposed activities were not a discussion of secular subjects such as child rearing, development of character and development of morals from a religious perspective, but were in fact the equivalent of **religious instruction** itself. The GNC request was denied "for the purpose of conducting religious instruction and Bible study." GNC...filed an action...against Milford...alleging that Milford's denial of its application violated its free speech rights under the 1st and 14th Amendments and its right to equal protection...

The District Court held in favor of Milford and found that the Club's "subject matter is decidedly religious in nature, and not merely a discussion of secular matters from a religious perspective that is otherwise permitted under Milford's use policies." **Because the school had not permitted other groups that provided religious instruction to use its limited public forum, the court held that the school could deny access to the Club without engaging in unconstitutional viewpoint discrimination. The court also rejected the Club's equal protection claim.**

...The Court of Appeals...affirmed. First, the court rejected the Club's contention that Milford's restriction against allowing religious instruction in its facilities is unreasonable. Second, it held that,

because the subject matter of the Club's activities is "quintessentially religious" and the activities "fall outside the bounds of pure 'moral and character development,'" Milford's policy of excluding the Club's meetings was constitutional subject discrimination, not unconstitutional viewpoint discrimination...

There is a conflict **among the Courts of Appeals** on the question whether speech can be excluded from a limited public forum on the basis of the religious nature of the speech...**We granted certiorari to resolve this conflict.**

The Court is saying that the issue raised in this case has been decided differently around the Country. The Supreme Court, therefore, wants to "resolve this conflict," or, in other words, render a decision that will help to achieve uniformity around the Nation.

The standards that we apply to determine whether a State has unconstitutionally excluded a private speaker from use of a public forum depend on the nature of the forum. **If the forum is a traditional or open public forum, the State's restrictions on speech are subject to stricter scrutiny than are restrictions in a limited public forum.** We have previously declined to decide whether a school district's opening of its facilities pursuant to *N. Y. Educ. Law §414* creates a limited or a traditional public forum. (*Lamb's Chapel*[1]). Because the parties have agreed that Milford created a **limited public forum** when it opened its facilities in 1992, we need not resolve the issue here. Instead, we simply will assume that Milford operates a limited public forum.

When the State establishes a limited public forum, the State is not required to...allow persons to engage in every type of speech. The State may be justified "in reserving its forum for certain groups or for the discussion of certain topics." *Rosenberger v. Rector*[2]*; Lamb's Chapel.* **The State's power to restrict speech, however, is not without limits. The restriction must not discriminate against speech on the basis of viewpoint** (*Rosenberger*) and **the restriction must be "reasonable in light of the purpose served by the forum."** *Cornelius v. NAACP*.

Applying this test, we first address whether the exclusion constituted viewpoint discrimination...In *Lamb's Chapel,* we held that a school district violated the Free Speech Clause of the 1st Amendment when it excluded a private group from presenting **films at the school based solely on the films' discussions of family values from a religious perspective**...In *Rosenberger,* we held that a **university's refusal to fund a student publication because the publication addressed issues from a religious perspective** violated the Free Speech Clause. Concluding that Milford's exclusion of the Good News Club based on its religious nature is indistinguishable from the exclusions in these cases, **we hold that the exclusion constitutes viewpoint discrimination** and, therefore, do not need to decide whether it is unreasonable in light of the purposes served by the forum.

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[1]Case 1A-R-090 on this website.

[2]Case 1A-R-095 on this website.

Milford has opened its limited public forum to activities that serve a variety of purposes, including events "pertaining to the **welfare** of the community." Milford interprets its policy to permit discussions of subjects such as child rearing, and of "**the development of character and morals from a religious perspective**." For example, this policy would allow someone to use Aesop's Fables to teach children moral values. Additionally, a group could sponsor a debate on whether there should be a constitutional amendment to permit prayer in public schools and the Boy Scouts could meet "to influence a boy's character, development and spiritual growth." In short, **any group that "promotes the moral and character development of children" is eligible to use the school building.**

Just as there is no question that teaching morals and character development to children is a permissible purpose under Milford's policy, it is clear that the Club teaches morals and character development to children. For example, no one disputes that the Club instructs children to overcome feelings of jealousy, to treat others well regardless of how they treat the children, and to be obedient, even if it does so in a nonsecular way. Nonetheless, because Milford found the Club's activities to be..."the equivalent of religious instruction itself" -- it excluded the Club...**Applying *Lamb's Chapel,* we find it quite clear that Milford engaged in viewpoint discrimination when it excluded the Club from the afterschool forum.** In *Lamb's Chapel*, the local New York school district similarly had adopted §414's "social, civic or recreational use" category as a permitted use in its limited public forum. The district also prohibited use "by any group for religious purposes." Citing this prohibition, the school district excluded a church that wanted to present films teaching family values from a Christian perspective. **We held that, because the films "no doubt dealt with a subject otherwise permissible" under the rule, the teaching of family values, the district's exclusion of the church was unconstitutional viewpoint discrimination**.

Like the church in *Lamb's Chapel,* the Club seeks to address a subject otherwise permitted under the rule, the teaching of morals and character, from a religious standpoint. Certainly, one could have characterized the film presentation in *Lamb's Chapel* as a religious use, as the Court of Appeals did. And one easily could conclude that the films' purpose to instruct that "society's slide toward humanism...can only be counterbalanced by a loving home where Christian values are instilled from an early age" was "quintessentially religious." **The only apparent difference between the activity of Lamb's Chapel and the activities of the Good News Club is that the Club chooses to teach moral lessons from a Christian perspective through live storytelling and prayer, whereas Lamb's Chapel taught lessons through films.** This distinction is inconsequential. Both modes of speech use a religious viewpoint. Thus, the exclusion of the GNC activities, like the exclusion of Lamb's Chapel's films, constitutes unconstitutional viewpoint discrimination.

Our opinion in *Rosenberger* also is dispositive. **In *Rosenberger,* a student organization at the University of Virginia was denied funding for printing expenses because its publication, Wide Awake, offered a Christian viewpoint. Just as the Club emphasizes the role of Christianity in students' morals and character, Wide Awake "challenged Christians to live, in word and deed, according to the faith they proclaim and...encouraged students to consider what a personal relationship with Jesus Christ means." Because the university "selected for disfavored treatment those student journalistic efforts with religious editorial viewpoints," we held that**

the denial of funding was unconstitutional. Although in *Rosenberger* there was no prohibition on religion as a subject matter, our holding did not rely on this factor. Instead, we concluded simply that the university's denial of funding to print Wide Awake was viewpoint discrimination, just as the school district's refusal to allow Lamb's Chapel to show its films was viewpoint discrimination. Given the obvious religious content of Wide Awake, we cannot say that the Club's activities are any more "religious" or deserve any less 1st Amendment protection than did the publication of Wide Awake in *Rosenberger*.

Despite our holdings in *Lamb's Chapel* and *Rosenberger,* the Court of Appeals...believed that its characterization of the Club's activities as religious in nature warranted treating the Club's activities as different in kind from the other activities permitted by the school (i.e., the Club "is doing something other than simply teaching moral values"). The "Christian viewpoint" is unique, according to the court, because it contains an "additional layer" that other kinds of viewpoints do not. That is, the Club "is focused on teaching children how to cultivate their relationship with God through Jesus Christ," which it characterized as "quintessentially religious." With these observations, the court concluded that, because the Club's activities "fall outside the bounds of pure 'moral and character development,'" the exclusion did not constitute viewpoint discrimination.

We disagree that something that is "quintessentially religious"...cannot also be characterized properly as the teaching of morals and character development from a particular viewpoint... What matters for purposes of the Free Speech Clause is that we can see no logical difference in kind between the invocation of Christianity by the Club and the invocation of teamwork, loyalty, or patriotism by other associations to provide a foundation for their lessons. It is apparent that the unstated principle of the Court of Appeals' reasoning is its conclusion that any time religious instruction and prayer are used to discuss morals and character, the discussion is simply not a "pure" discussion of those issues. **According to the Court of Appeals, reliance on Christian principles taints moral and character instruction in a way that other foundations for thought or viewpoints do not. <u>We, however, have never reached such a conclusion</u>.** Instead, we reaffirm our holdings in *Lamb's Chapel* and *Rosenberger* that speech discussing otherwise permissible subjects cannot be excluded from a limited public forum on the ground that the subject is discussed from a religious viewpoint. **Thus, we conclude that Milford's exclusion of the Club from use of the school, pursuant to its community use policy, constitutes impermissible viewpoint discrimination.**

Milford argues that, even if its restriction constitutes viewpoint discrimination, its interest in not violating the Establishment Clause outweighs the Club's interest in gaining equal access to the school's facilities... We disagree...We conclude that the school has no valid Establishment Clause interest...In *Lamb's Chapel,* we explained that "the showing of the film series would not have been during school hours, would not have been sponsored by the school, and would have been open to the public, not just to church members." Accordingly, we found that "**there would have been no realistic danger that the community would think that the District was endorsing religion or**

any particular creed." Likewise, in *Widmar*[3], **where the university's forum was already available to other groups, this Court concluded that there was no Establishment Clause problem.**

...As in *Lamb's Chapel,* the GNC 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. As in *Widmar,* **Milford made its forum available to other organizations**. The Club's activities are materially indistinguishable from those in *Lamb's Chapel* and *Widmar*. Thus, Milford's reliance on the Establishment Clause is unavailing.

Milford attempts to distinguish *Lamb's Chapel* and *Widmar* by emphasizing that Milford's policy involves **elementary** school children. **According to Milford, children will perceive that the school is endorsing the Club and will feel coercive pressure to participate, because the Club's activities take place on school grounds, even though they occur during nonschool hours. This argument is unpersuasive.**

First, we have held that "**a significant factor in upholding governmental programs in the face of Establishment Clause attack is their *neutrality* towards religion**." *Rosenberger*...Milford's implication that granting access to the Club would do damage to the neutrality principle defies logic. For **the "guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse."** *Rosenberger.* **The Good News Club seeks nothing more than to be treated neutrally and given access to speak about the same topics as are other groups. Because allowing the Club to speak on school grounds would ensure neutrality, not threaten it, Milford faces an uphill battle in arguing that the Establishment Clause compels it to exclude the Good News Club.**

Second, to the extent we consider whether the community would feel coercive pressure to engage in the Club's activities, the relevant community would be the parents, not the elementary school children. It is the parents who choose whether their children will attend the Good News Club meetings. Because the children cannot attend without their parents' permission, they cannot be coerced into engaging in the Good News Club's religious activities. Milford does not suggest that the parents of elementary school children would be confused about whether the school was endorsing religion. Nor do we believe that such an argument could be reasonably advanced.

Third, whatever significance we may have assigned in the Establishment Clause context to the suggestion that elementary school children are more impressionable than adults,...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.

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[3]Case 1A-R-059 on this website.

...Milford cites *Lee* v. *Weisman*[4] for the proposition that "there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools." In *Lee*, however, we concluded that attendance at the graduation exercise was obligatory. See also *Santa Fe Independent School Dist. v. Doe*[5] (holding the school's policy of permitting prayer at football games unconstitutional where the activity took place during a **school-sponsored event** and not in a public forum). **We did not place independent significance on the fact that the graduation exercise might take place on school premises.** Here, where the school facilities are being used for a nonschool function and there is no government sponsorship of the Club's activities, *Lee* is inapposite.

...**We cannot say the danger that children would misperceive the endorsement of religion is any greater than the danger that they would perceive a hostility toward the religious viewpoint if the Club were excluded from the public forum...**

Guess what! The Supreme Court is at least as concerned that government (public school districts) not be used **to foment hostility towards religion** as it is that government not be perceived **to endorse religion**. Who knew? ELLians, that's who!

...We conclude that permitting the Club to meet on the school's premises would not have violated the Establishment Clause...The judgment of the Court of Appeals is reversed...

CONCURRENCE: Justice Scalia...**The disagreement...regards the portions of the Club's meetings that are not "purely" "discussions" of morality and character from a religious viewpoint.** The Club, for example, urges children "who already believe in the Lord Jesus as their Savior" to "stop and ask God for the strength and the 'want'...to obey Him," and it invites children who "don't know Jesus as Savior" to "trust the Lord Jesus to be their Savior from sin." **The dissenters and the Second Circuit say that the presence of such additional speech, because it is purely religious, transforms the Club's meetings into something different in kind from other, nonreligious activities that teach moral and character development. Therefore, the argument goes, excluding the Club is not viewpoint discrimination. I disagree.**

...From no other group does respondent require the sterility of speech that it demands of petitioners. The Boy Scouts could undoubtedly buttress their exhortations to keep "morally straight" and live "clean" lives...by giving *reasons* why that is a good idea -- because parents want and expect it, because it will make the scouts "better" and "more successful" people, because it will emulate such admired past Scouts as former President Gerald Ford. The Club, however, may only discuss morals and character, and cannot give *its* reasons why they should be fostered -- because God wants and expects it, because it will make the Club members "saintly" people, and because it emulates Jesus

[4]Case 1A-R-089 on this website.

[5]Case 1A-R-099 on this website.

Christ. The Club may not, in other words, independently discuss the religious premise on which its views are based -- that God exists and His assistance is necessary to morality. It may not defend the premise, and it absolutely must not seek to persuade the children that the premise is true. The children must, so to say, take it on faith. **This is blatant viewpoint discrimination...**

The dissenters emphasize that the religious speech used by the Club as the foundation for its views on morals and character is not just any type of religious speech -- although they cannot agree exactly what type of religious speech it is. In Justice Stevens' view, it is speech "aimed principally at proselytizing or inculcating belief in a particular religious faith." This does not, to begin with, distinguish *Rosenberger,* which also involved proselytizing speech...But, in addition, it does not distinguish the Club's activities from those of the other groups using respondent's forum -- which have not, as Justice Stevens suggests, been restricted to roundtable "discussions" of moral issues. Those groups may seek to inculcate children with their beliefs, and they may furthermore "recruit others to join their respective groups." **The Club must therefore have liberty to do the same, even if, as Justice Stevens fears..., its actions may prove (shudder!) divisive...**

Justice Souter, while agreeing that the Club's religious speech "may be characterized as proselytizing," thinks that it is even more clearly excludable from respondent's forum because it is essentially "an evangelical service of worship." But we have previously rejected the attempt to distinguish worship from other religious speech, saying that "the distinction has no intelligible content," and further, no "*relevance*" to the constitutional issue. *Murdock v. Pennsylvania*[6] (refusing to distinguish evangelism from worship). Those holdings are surely proved correct today by the dissenters' inability to agree, even between themselves, into which subcategory of religious speech the Club's activities fell. If the distinction did have content, it would be beyond the courts' competence to administer. *Widmar v. Vincent; Lee v. Weisman* ("I can hardly imagine a subject less amenable to the competence of the federal judiciary, or more deliberately to be avoided where possible," than "comparative theology"). And if courts (and other government officials) were competent, applying the distinction would require state monitoring of private, religious speech with a degree of pervasiveness that we have previously found unacceptable. *Rosenberger; Widmar.* I will not endorse an approach that suffers such a wondrous diversity of flaws. With these words of explanation, I join the opinion of the Court...

DISSENT: Justice Stevens...The Milford Central School has invited the public to use its facilities for educational and recreational purposes, but not for "religious purposes." **Speech for "religious purposes" may reasonably be understood to encompass three different categories. First, there is religious speech that is simply speech about a particular topic from a religious point of view.** The film in *Lamb's Chapel* illustrates this category (observing that the film series at issue in that case "would discuss Dr. James Dobson's views on the undermining influences of the media that could only be counterbalanced by returning to traditional, Christian family values instilled at an early stage"). **Second, there is religious speech that amounts to worship, or its equivalent.** Our

[6]Case 1A-R-017 on this website.

decision in *Widmar v. Vincent* concerned such speech...**Third, there is an intermediate category that is aimed principally at proselytizing or inculcating belief in a particular religious faith.**

A public entity may not generally exclude even religious worship from an open public forum. Similarly, a public entity that creates a limited public forum for the discussion of certain specified topics may not exclude a speaker simply because she approaches those topics from a religious point of view...*Lamb's Chapel...*

But, while a public entity may not censor speech about an authorized topic based on the point of view expressed by the speaker, it has broad discretion to "preserve the property under its control for the use to which it is lawfully dedicated."...Accordingly, "control over access to a nonpublic forum can be based on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral." *Cornelius v. NAACP.* The novel question that this case presents concerns the constitutionality of a public school's attempt to limit the scope of a public forum it has created. More specifically, the question is whether a school can, consistently with the 1st Amendment, create a limited public forum that admits the first type of religious speech without allowing the other two.

Distinguishing speech from a religious viewpoint, on the one hand, from religious proselytizing, on the other, is comparable to distinguishing meetings to discuss political issues from meetings whose principal purpose is to recruit new members to join a political organization. **If a school decides to authorize after school discussions of current events in its classrooms, it may not exclude people from expressing their views simply because it dislikes their particular political opinions.**

This is a good description of what the Court calls "viewpoint discrimination."

But must it therefore allow organized political groups -- for example, the Democratic Party, the Libertarian Party, or the Ku Klux Klan -- to hold meetings, the principal purpose of which is not to discuss the current-events topic from their own unique point of view but rather to recruit others to join their respective groups? I think not. Such recruiting meetings may introduce divisiveness and tend to separate young children into cliques that undermine the school's educational mission. *Lehman v. Shaker Heights* (upholding a city's refusal to allow "political advertising" on public transportation).

School officials may reasonably believe that evangelical meetings designed to convert children to a particular religious faith pose the same risk. And, just as a school may allow meetings to discuss current events from a political perspective without also allowing organized political recruitment, so too can a school allow discussion of topics such as moral development from a religious (or nonreligious) perspective without thereby opening its forum to religious proselytizing or worship...The particular limitation of the forum at issue in this case is one that prohibits the use of the school's facilities for "religious purposes." It is clear that, by "religious purposes," the school

district did not intend to exclude all speech from a religious point of view...Instead, it sought only to exclude religious speech whose principal goal is to "promote the gospel."...As long as this is done in an even handed manner, I see no constitutional violation in such an effort...I am persuaded that the school district could (and did) permissibly exclude from its limited public forum proselytizing religious speech that does not rise to the level of actual worship. I would therefore affirm the judgment of the Court of Appeals...I respectfully dissent.

DISSENT: Justice Souter/Ginsburg...It is beyond question that Good News intends to use the public school premises not for the mere discussion of a subject from a particular, Christian point of view, but for an evangelical service of worship calling children to commit themselves in an act of Christian conversion...

In *Widmar*, we held that the Establishment Clause did not bar a religious student group from using a public university's meeting space for worship as well as discussion. As for the reasonable observers who might perceive government endorsement of religion, we pointed out that the forum was used by university students, who "are, of course, young adults," and, as such, "are less impressionable than younger students and should be able to appreciate that the University's policy is one of neutrality toward religion."...And if all that had not been enough to show that the university-student use would probably create no impression of religious endorsement, we pointed out that the university in that case had issued a **student handbook with the explicit disclaimer** that "the University's name will not 'be identified in any way with the aims, policies, programs, products, or opinions of any organization or its members.'"

We can add the information in *Widmar* to the list of things the Supreme Court has NOT done. In other words, a religious university student group cannot be denied a place to meet even if it meets "to worship" under the facts of that case. Who knew?

Lamb's Chapel involved an evening film series on child-rearing open to the general public (and, given the subject matter, directed at an adult audience). There, school property "had repeatedly been used by a wide variety of private organizations," and we could say with some assurance that "under these circumstances...there would have been no realistic danger that the community would think that the District was endorsing religion or any particular creed..."

What we know about this case looks very little like *Widmar* or *Lamb's Chapel*. The cohort addressed by Good News is not university students with relative maturity, or even high school pupils, but elementary school children as young as six. The Establishment Clause cases have consistently recognized the particular impressionability of schoolchildren...and the special protection required for those in the elementary grades in the school forum. We have held the difference between college students and grade school pupils to be a "distinction that warrants a difference in constitutional results."

...In *Widmar*, the nature of the university campus and the sheer number of activities offered

precluded the reasonable college observer from seeing government endorsement in any one of them, and so did the time and variety of community use in the *Lamb's Chapel* case. See also *Rosenberger* ("Given this wide array of nonreligious, antireligious and competing religious viewpoints in the forum supported by the University, any perception that the University endorses one particular viewpoint would be illogical")...The timing and format of Good News's gatherings, on the other hand, may well affirmatively suggest the *imprimatur* of officialdom in the minds of the young children...

Justices Souter and Ginsburg actually believe that **elementary** school children take time to contemplate who authorizes the GNC meetings, much less that "government" must be the one "approving" of them. Perhaps they have lost touch with reality on this one. You decide.