GOOD NEWS CLUB V. MILFORD CENTRAL SCHOOL, 533 U.S. 98 (2001)

JUSTICE THOMAS delivered the opinion of the Court, in which CHIEF JUSTICE REHNQUIST and JUSTICES O'CONNOR, SCALIA and KENNEDY joined. And in which JUSTICE BREYER joined in part. JUSTICE SCALIA filed a concurring opinion. JUSTICE BREYER filed an opinion concurring in part. JUSTICE STEVENS filed a dissenting opinion. JUSTICE SOUTER filed a dissenting opinion, in which JUSTICE GINSBURG joined.

JUSTICE THOMAS delivered the opinion of the Court.

I

The State of New York authorizes local school boards to adopt regulations governing the use of their school facilities. In particular, N.Y. Educ. Law §414 enumerates several purposes for which local boards may open their schools to public use. In 1992, respondent Milford Central School (Milford) enacted a community use policy adopting seven of §414's purposes for which its building could be used after school. Two of the stated purposes are relevant here. 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."

Stephen and Darleen Fournier reside within Milford's district and therefore are eligible to use the school's facilities as long as their proposed use is approved by the school. Together they are sponsors of the local Good News Club, a private Christian organization for children ages 6 to 12. Pursuant to Milford's policy, in September 1996 the Fourniers submitted a request to Dr. Robert McGruder, interim superintendent of the district, in which they sought permission to hold the Club's weekly afterschool meetings in the school cafeteria. The next month, McGruder formally denied the Fourniers' request 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.

In response to a letter submitted by the Club's counsel, Milford's attorney requested information to clarify the nature of the Club's activities. The Club sent a set of materials used or distributed at the meetings and the following description of its meeting:

"The Club opens its session with Ms. Fournier taking attendance. As she calls a child's name, if the child recites a Bible verse the child receives a treat. After attendance, the Club sings songs. Next Club members engage in games that involve, *inter alia*, learning Bible verses. Ms. Fournier then relates a Bible story and explains how it applies to Club members' lives. The Club closes with prayer. Finally, Ms. Fournier distributes treats and the Bible verses for memorization."

McGruder and Milford's attorney reviewed the materials and concluded that "the kinds of activities proposed to be engaged in by the Good News Club 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." In February 1997, the Milford Board of Education adopted a resolution rejecting the Club's request to use Milford's facilities "for the purpose of conducting religious instruction and Bible study."

In March 1997, petitioners, the Good News Club, Ms. Fournier, and her daughter Andrea Fournier (collectively, the Club), filed an action under 42 U.S.C. §1983 against Milford in the United States District Court for the Northern District of New York. The Club alleged that Milford's denial of its application violated its free speech rights under the First and Fourteenth Amendments, its right to equal protection under the Fourteenth Amendment, and its right to religious freedom under the Religious Freedom Restoration Act of 1993.

The Club moved for a preliminary injunction to prevent the school from enforcing its religious exclusion policy against the Club and thereby to permit the Club's use of the school facilities. On April 14, 1997, the District Court granted the injunction. The Club then held its weekly afterschool meetings from April 1997 until June 1998 in a high school resource and middle school special education room.

In August 1998, the District Court vacated the preliminary injunction and granted Milford's motion for summary judgment. The court 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 Club appealed, and a divided panel of the United States Court of Appeals for the Second Circuit 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.

II

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. 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 and does not 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." The State's power to restrict speech, however, is not without limits. The restriction must not discriminate against speech on the basis of viewpoint, and the restriction must be "reasonable in light of the purpose served by the forum."

III

Applying this test, we first address whether the exclusion constituted viewpoint discrimination. We are guided in our analysis by two of our prior opinions, *Lamb's Chapel* and *Rosenberger*. In *Lamb's Chapel*, we held that a school district violated the Free Speech Clause of the First 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. Likewise, 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. Because the restriction is viewpoint discriminatory, we need not decide whether it is unreasonable in light of the purposes served by the forum.

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 "promote[s] 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 religious in nature—"the equivalent of religious instruction itself," it excluded the Club from use of its facilities.

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 presentations 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 Good News Club's 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 "'challenge[d] Christians to live, in word and deed, according to the faith they proclaim and . . . encourage[d] students to consider what a personal relationship with Jesus Christ means.'" Because the university "select[ed] for disfavored treatment those student journalistic efforts with religious editorial viewpoints," we held that the denial of funding was unconstitutional. . . [W]e 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 First Amendment protection than did the publication of Wide Awake in *Rosenberger*.

Despite our holdings in *Lamb's Chapel* and *Rosenberger*, the Court of Appeals, like Milford, 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. . . . 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" or "decidedly religious in nature" 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. We, however, have never reached such a conclusion. 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.

IV

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. In other words, according to Milford, its restriction was required to avoid violating the Establishment Clause. We disagree.

We have said that a state interest in avoiding an Establishment Clause violation "may be characterized as compelling," and therefore may justify content-based discrimination. *Widmar* v. *Vincent*, 454 U. S. 263, 271 (1981). However, it is not clear whether a State's interest in avoiding an Establishment Clause violation would justify viewpoint discrimination. We need not, however, confront the issue in this case, because we conclude that the school has no valid Establishment Clause interest.

We rejected Establishment Clause defenses similar to Milford's in two previous free speech cases, *Lamb's Chapel* and *Widmar*. . . . [W]e 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*, where the university's forum was already available to other groups, this Court concluded that there was no Establishment Clause problem.

The Establishment Clause defense fares no better in this case. As in *Lamb's Chapel*, 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. 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. http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&navby=case&vol=000&invol= 99-2036-FN1.5#FN1.5 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. . . ." 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 even-handed policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse." 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.

None of the cases discussed by Milford persuades us that our Establishment Clause jurisprudence has gone this far. . . .

Fourth, even if we were to consider the possible misperceptions by schoolchildren in deciding whether Milford's permitting the Club's activities would violate the Establishment Clause, the facts of this case simply do not support Milford's conclusion. There is no evidence that young children are permitted to loiter outside classrooms after the schoolday has ended. Surely even young children are aware of events for which their parents must sign permission forms. The meetings were held in a combined high school resource room and middle school special education room, not in an elementary school classroom. The instructors are not schoolteachers. And the children in the group are not all the same age as in the normal classroom setting; their ages range from 6 to 12. In sum, these circumstances simply do not support the theory that small children would perceive endorsement here.

Finally, even if we were to inquire into the minds of schoolchildren in this case, 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. This concern is particularly acute given the reality that Milford's building is not used only for elementary school children. Students, from kindergarten through the 12th grade, all attend school in the same building. There may be as many, if not more, upperclassmen than elementary school children who occupy the school after hours. For that matter, members of the public writ large are permitted in the school after hours pursuant to the community use policy. Any bystander could conceivably be aware of the school's use policy and its exclusion of the Good News Club, and could suffer as much from viewpoint discrimination as elementary school children could suffer from perceived endorsement. . . .

We cannot operate, as Milford would have us do, under the assumption that any risk that small children would perceive endorsement should counsel in favor of excluding the Club's religious activity. We decline to employ Establishment Clause jurisprudence using a modified heckler's veto, in which a group's religious activity can be proscribed on the basis of what the youngest members of the audience might misperceive. . . .

We are not convinced that there is any significance in this case to the possibility that elementary school children may witness the Good News Club's activities on school premises, and therefore we can find no reason to depart from our holdings in *Lamb's Chapel* and *Widmar*. Accordingly, we conclude that permitting the Club to meet on the school's premises would not have violated the Establishment Clause.

V

When Milford denied the Good News Club access to the school's limited public forum on the ground that the Club was religious in nature, it discriminated against the Club because of its religious viewpoint in violation of the Free Speech Clause of the First Amendment. Because Milford has not raised a valid Establishment Clause claim, we do not address the question whether such a claim could excuse Milford's viewpoint discrimination.

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The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE STEVENS, dissenting.

. . . 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* v. *Center Moriches Union Free School Dist.*, 508 U. S. 384 (1993), illustrates this category. . . . Second, there is religious speech that amounts to worship, or its equivalent. Our decision in *Widmar* v. *Vincent*, 454 U. S. 263 (1981), 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. Thus, in *Lamb's Chapel* we held that a public school that permitted its facilities to be used for the discussion of family issues

and child rearing could not deny access to speakers presenting a religious point of view on those issues.

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." 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 First 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. 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.

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. Moreover, any doubt on a question such as this should be resolved in a way that minimizes "intrusion by the Federal Government into the operation of our public schools.". . .

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." In other words, the school sought to allow the first type of religious speech while excluding the second and third types. As long as this is done in an even handed manner, I see no constitutional violation in such an effort. The line between the various categories of religious speech may be difficult to draw, but I think that the distinctions are valid, and that a school, particularly an elementary school, must be permitted to draw them. . . .

This case is undoubtedly close. Nonetheless, regardless of whether the Good News Club's activities amount to "worship," it does seem clear, based on the facts in the record, that the school district correctly classified those activities as falling within the third category of religious speech and therefore beyond the scope of the school's limited public forum. In short, 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.

Even if I agreed with Part II of the majority opinion, however, I would not reach out, as it does in Part IV, to decide a constitutional question that was not addressed by either the District Court or the Court of Appeals.

Accordingly, I respectfully dissent.