

Case Study Analysis

Good News Club v. Milford Central School (533 U.S. 98 [2001])

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Case Information

Good News Club v. Milford Central School

Argued 28 February 2001

Decided 11 June 2001

Topic

The right of students to organize, assemble, and meet on public school property outside of the instructional day, when that organization is religious in nature. (n.b.: The true implications of the case are broader, specifically dealing with the same right regardless of the nature of the student organization.)

Point of Law in Dispute

The First Amendment of the Constitution of the United States

Specifically, the “Establishment Clause“ and the “Free Speech Clause.”

Text: *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

Facts of the Case

The State of New York, under New York Education Law §414, allows LEAs to determine regulatory frameworks governing the public use of taxpayer-funded school facilities. The Milford Central School, located in Otsego County just north of Oneonta, adopted regulations in 1992 that specified open public use for educationally-related enterprises, *and* for “social, civic, and recreation meetings and entertainment events ... provided that such uses shall be nonexclusive and shall be open to the general public.”

The provision further holds that in order to enforce this policy, school approval is required to assemble under the enacted regulations.

Stephen and Darleen Fournier were private citizens and residents within the boundaries of the Milford Central School, and therefore entitled to use under said provisions. Together, the Fourniers founded a private Christian group with the express purpose of engaging in “a fun time of singing songs, hearing a Bible lesson and memorizing

scripture” with children ages six through twelve.

In September of 1996, pursuant to the Milford policy, the Fourniers submitted a compliant written request to Interim Superintendent Dr. Robert McGruder, seeking permission for the Good News Club to assemble as described above in the school cafeteria once a week after school.

In October of 1996, Dr. McGruder responded in writing denying the Fourniers’ request, stating that the described intent was “the equivalent of religious worship.” He cited the school’s community use policy, which held that use of school facilities “by any individual or organization for religious purposes” was prohibited.

Both the Club (vis a vis the Fourniers) and the school retained counsel.

The Club, through its counsel, protested, and the school responded through its attorney by requesting clarification on the exact nature of the Club. In response the Club provided materials to be used during the meeting as well as literature describing a meeting with specificity. This description read in part:

Text: 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.

Dr. McGruder and the Milford attorney reviewed the materials, and arrived at a conclusion similar to their original position, specifically that the proposed activities were not secular, but were “the equivalent of religious instruction itself.”

In March of 1997, Ms. Fournier and her daughter Andrea, a member of the Club, initiated Section 1983 action against Milford in U.S. District Court, alleging that Milford’s denial violated its rights under the First and Fourteenth Amendments and under the Religious Freedom Restoration Act of 1993, also known as Section 2000. The Club sought an injunction to prevent the school from enforcing the exclusionary policy.

In April 1997, the Court granted said injunction. The Club began holding its meetings, as described, from April 1997 through June 1998 in a high school resource room and a middle school special education room.

In August 1998, the Court vacated said injunction and granted Milford summary judgment, effectively ending the Club’s right to meet and allowing the school to prohibit them, as the Court held the meetings did in fact amount to religious instruction. The

Court held that because Milford did not allow *any* religious organization to meet that there was no viewpoint discrimination, and therefore no constitutional violation. The Court further rejected the equal protection claim under Section 2000.

The Club appealed.

The Second Circuit Court of Appeals affirmed the lower court's judgment, rejecting the contention that Milford's restriction against religious groups was unreasonable. The Court held that the discrimination in this case was constitutional subject discrimination and not unconstitutional viewpoint discrimination.

The Club appealed to the Supreme Court.

Amongst the various Courts of Appeals, the Supreme Court found, there is a conflict when it comes to the question of exclusion of speech from Limited Public Forums on the basis of religious nature. It cited several cases that issues diametrically opposing opinions. Consequently, the Court did grant a writ of *certiorari* to attempt to resolve this conflict.

The Nature of Public Forums

The Court set the standard that the question of constitutionality must be predicated upon the *nature of the Forum* under *Perry Education Association v Perry Local Educators Association* (460 U.S. 37, 44 [1983]). The triggering of the Free Speech Clause is dependent upon the nature of the Forum in question.

A Public Forum or Open Forum is public property that is held to be an established venue for public debate. These Forums include, for example, streets and roadways, sidewalks, town halls and places of civic meeting, and public parks. Often termed a Traditional Forum, these venues are generally not subject to government regulation of *speech content*. There are statutes that provide authority to regulate time, place, and manner. (An easily-accessible example is a public street when the President of the United States is shaking hands on a rope line. The Secret Service has the right - indeed the legal responsibility - to provide security for the President, and consequently can restrict certain aspects of demonstration.) Those statutes must, however, be content-neutral and as narrowly-tailored as possible, must provide for an alternative means of expression, and must serve a significant government interest. (The preservation of the physical welfare of the President qualifies as a significant government interest.)

A Limited Forum (sometimes called a Designated Forum or Limited Open Forum) is a public property opened and operated by the state for a specific purpose. The utilization of that space is then able to be restricted to other activities *for that purpose*. Schools fall into this category as a general rule.

The details of the Limited Forum definitions were enacted into law by the Federal Equal Access Act of 1984, and upheld as constitutional in the landmark 1990 Supreme Court decision in *Westside Community Schools v. Mergens* (496 U.S. 226 [1990]).

Restrictions on speech in a Limited Forum are permissible, provided they are *viewpoint-neutral* and are reasonable. The implications of the Limited Forum standard are best explained by example.

The school is established by the state at the most basic level to educate students in a state-sanctioned curriculum. If a school, during any calendar year, does not allow any non-curricular organization to meet at the school, and applies that restriction equally, the school is exercising a constitutionally-protected right to adhere stringently to its mission.

Provisions of the Equal Access Act generally hold that non-curricular activities must be conducted outside of the instructional day; the school generally holds the right to more stringently restrict activities within the instructional day.

If the school prohibits a Bible study group on the basis that it is not curricular in nature, it must prohibit *all other groups* that meet the same standard, and must restrict *all other groups' activities* that were mirrored by the banned group. The only general exception to this extracurricular or non-curricular standard is school-sponsored athletics, which are usually not held to be outside of the mission of the public school and therefore are generally exempt.

However, if the school allows that same Bible study group, it is *constitutionally compelled* to afford equal access to facilities and resources to *any and all other groups* that meet the same criteria. If a Bible study group is deemed non-curricular and is granted permission to meet, post flyers, and use the PA system for announcements, so too must any other non-curricular group be afforded identical permissions. The most common contrasting example is the Gay-Straight Alliance, or GSA. (Indeed, as history would bear out, this *Milford* opinion would become the most cited landmark for the inclusion of GSAs in public schools.)

Rosenberger v. University of Virginia (515 U.S. 819, 829 [1995]) helped establish that if the state creates a forum for a specific purpose, it may reasonably restrict speech that falls outside of that purpose. By the same standard, once the state allows one example of speech in a forum, it must allow *all* examples of that speech in that forum. In *Rosenberger*, the University allowed student publications to use school resources. Once it did so, it granted that right to *all* student publications, including those of a religious nature, because the statute requires the application of restrictions in a Limited Open Forum to be *viewpoint-neutral*. (*Rosenberger* establishes definitively the viewpoint-neutrality doctrine.)

Decision

In a 6-3 decision, the Court held that the Milford Central School had violated the rights granted to the Good News Club under the Free Speech Clause of the First Amendment by excluding the Club from an established Limited Public Forum on the basis of religion.

The Court held that because Milford had opened its Limited Public Forum to organizations engaged in “the development of character and morals,” that it was compelled under constitutional convention to allow *all* organizations engaged in “the development of character and morals.” It held that the Good News Club’s express purpose was precisely that: “the development of character and morals.” The religious nature of those morals is impermissible as a restriction criterion under *Rosenberger* and *Milford*.

Once a public school permits a student organization to use its facilities, it has included that organization in its Limited Public Forum, and must permit and provide *identical access* to any other student organization that meets the same basic criteria.

The Court held that Milford Central School engaged in unconstitutional viewpoint discrimination (which is impermissible) and did not engage in constitutional content discrimination (which is permissible).

Religiosity alone is insufficient grounds for the exclusion of an organization under rights granted by the First Amendment of the Constitution of the United States.

Specifically, the Justices held that there is no mutual exclusivity between religion and moral and character development instruction.

The Establishment Clause

Milford further held that regardless of the Court’s decision on viewpoint discrimination the school was obligated under the Establishment Clause to provide a bulwark between church and state.

The Court disagreed.

The decision in *Widmar v. Vincent* (454 U.S. 263, 271 [1981]) cited that “a state interest in avoiding an Establishment Clause violation may be characterized as compelling, and therefore may justify content-based discrimination.” However, *Widmar* also upheld the so-called *Lemon* test.

Lemon v. Kurtzman (403 U.S. 602 [1971]) established a three-prong test by which legislation may be considered constitutional in the context of the Establishment Clause:

1. The state action must be secular in purpose
2. The state action must not advance or inhibit religion, directly or indirectly
3. The state action must not entangle the government in religion

Milford, acting on behalf of the state, in this case passes the first prong of *Lemon*. The purpose of the policy is to uphold the law and protect the interests of the community's school. One might argue for or against the third prong, but it is moot as Milford failed the second prong of the *Lemon* test.

The policy enforcement action in this case did exclude the Good News Club primarily if not solely on the basis of its religious nature, which is viewpoint discrimination and consequently unconstitutional in a Limited Public Forum.

The Court emphasized the unpersuasiveness of Milford's argument by citing the consistent holding that "neutrality" is, to use the language of *Rosenberger*, "a significant factor in upholding governmental programs in the face of Establishment Clause attack." (This affirms the second prong of *Lemon*.)

Milford also used *Lee v. Weisman* and its citation of heightened concerns about protecting freedom of conscience for minors as a compelling argument, which the Court also rejected as the situation in question was outside of a school-sponsored frame, and therefore relegated it to compliance with the established standards for the Limited Open Forum.

Majority Opinion

Writing for the majority, Justice Clarence Thomas quoted *Capitol Square Review v. Pinette* (515 U.S. 753, 779-780 [1995]) in saying "the endorsement inquiry is not about the perceptions of particular individuals or saving isolated nonadherents from ... discomfort." This statement, as the author of this case review sees it, mirror the basic tenet of Frédéric Bastiat's *The Law*, in which that classical legal philosopher wrote:

Text: *"We must remember that law is force, and that, consequently, the proper functions of the law cannot lawfully extend beyond the proper functions of force. When law and force keep a person within the bounds of justice, they impose nothing but a mere negation. They oblige him only to abstain from harming others. They violate neither his personality, his liberty nor his property. They safeguard all of these. They are defensive; they defend equally the rights of all."*

Dissenting Opinion

Justice David Souter summarized the strong dissent of the minority thusly:

Text: *“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. The majority avoids this reality only by resorting to the bland and general characterization of Good News's activity as 'teaching of morals and character, from a religious standpoint'. If the majority's statement ignores reality, as it surely does, then today's holding may be understood only in equally generic terms. Otherwise, indeed, this case would stand for the remarkable proposition that any public school opened for civic meetings must be opened for use as a church, synagogue, or mosque.”*

Implications

Any public school in the United States of America is obliged to observe the standards established by the Federal Equal Access Act (20 USC §4071 *et seq.*) and the subsequent affirmations of that Act in cases including *Milford*.

At best, the proactive school must decide if it will hold its Limited Public Forum to include non-curricular student organizations. Indeed, there are schools who refer to themselves as “not having established a Limited Public Forum,” sometimes descriptively if inaccurately described as being a “closed” Forum. A school may well make the statement that aside from cocurricular organizations (like a Spanish Honor Society) and school-sponsored team athletics (not held to be inclusive in a Public forum by precedent) that no student organizations will be allowed to meet. Equitably applied, there is precedent to uphold this exclusion.

However, most public schools do not adhere to this standard; consequently it may be inferred that the *vast majority* of American public (secondary) schools do in fact have a Limited Public Forum that is inclusive of some noncurricular activities and/or organizations, a condition often described as an “open” Forum.

At least, the reactive school will be compelled to discern whether or not it has already created an “open” or a “closed” Forum when it is presented with an organization that is not immediately palatable to the school administration. The most common tests of the standards involved here are Bible study and prayer groups and Gay-Straight Alliances, both of which are noncurricular student activities covered equally under law.

A school that permits one must permit the other. A school that allows the use of one resource by the former must afford identical use to the latter.

This is not to say, however, that the actions of local jurisdictions may not be flagrantly unconstitutional. At one Prince William County high school, a proposed Gay-Straight Alliance was rejected by a building principal on the basis that it was noncurricular. However, that same school had already permitted a Fellowship of Christian Athletes and an Anime Club amongst a pantheon of other noncurricular activities. It required the threat of litigation to compel the Division to relent in its opposition. The rationale for the initial opposition was easily discerned: The Division was motivated to exclude a student organization that would surely be controversial with a vocal minority of Conservative parents in order to avoid having to address the issue.

The law applies blindly; however it may take a civil action to compel the systems that uphold the law to bring the defense of the constitution to bear upon a situation in which that law is being violated. Many public schools depend on the ignorance and fear of their populations to keep controversy to a minimum.

Activities in the public school venue are not subject to popularity contests.

Prince William County Schools Regulation 646-2 addresses the Limited Open Forum. It summarizes the Federal Equal Access Act and provides several stipulations:

- III.A. The meeting must be voluntary and student-initiated.
- III.B. The meeting cannot be sponsored by the school, though the presence of a staff member is cited as not constituting sponsorship. (This despite the often used but incorrect designation as such a staff member as the “sponsor.”)
- III.C. Non-staff volunteers are present in a custodial but not a participatory capacity.
- III.D. The meeting cannot “materially and substantively interfere” with instruction, or violate the law, or the Code of Behavior.
- III.E. Non-school personnel cannot direct, conduct, control, or regularly attend the meeting(s).

Section IV of the Regulation specifically details religious activities, specifically indicating that the school cannot and will not influence, control, or compel participation in religious activities.

Section VII establishes the procedures for establishing the meeting, a section to which both legal entities and employed practitioners should pay close attention. Frequently liability and litigation revolves as much around *procedure* as it does *substance*.

- VII.A. The students must request the meeting in writing through the Principal.
- VII.B. The request must include the description and purpose, the number of students attending, the name and position of any outside speakers, space and time requirements, and the date(s).
- VII.C. The principal must determine compliance with the Equal Access Act:

1. A volunteer staff member must be available
2. A space must be available
3. The time and date must fall outside of the instructional day (and conclude prior to 6:00 PM)
4. The meeting does not exceed the established provisions granted to all such groups, as detailed in Section VIII of the Regulation
5. No non-school person is regularly attending said meeting

Sections VIII and IX detail the resources that shall be made available to the noncurricular organizations and several specific resources that shall not.