SUPREME COURT OF THE UNITED STATES

No. 99–2036

GOOD NEWS CLUB, ET AL., PETITIONERS *v.* MILFORD CENTRAL SCHOOL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June 11, 2001]

JUSTICE STEVENS, dissenting.

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* v. *Center Moriches Union Free School Dist.,* 508 U. S. 384 (1993), illustrates this category. *See id.*, at 388 (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 decision in *Widmar* v. *Vincent,* 454 U. S. 263 (1981), concerned such speech. See *id.*, at 264–265 (describing the speech in question as involving "religious worship"). 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. *Id.*, at 276. 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. See *Lamb's Chapel*, 508 U. S., at 393–394.

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." *Greer* v. *Spock,* 424 U. S. 828, 836 (1976); see also *Board of Ed. of Westside Community Schools (Dist. 66)* v. *Mergens,* 496 U. S. 226, 275, n. 6 (1990) (STEVENS, J., dissenting) ("A school's extracurricular activities constitute a part of the school's teaching mission, and the school accordingly must make 'decisions concerning the content of those activities'" (quoting *Widmar*, 454 U. S., at 278 (STEVENS, J., concurring in judgment)). 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 Legal Defense & Ed. Fund, Inc.,* 473 U. S. 788, 806 (1985). 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. Cf. *Lehman* v. *Shaker Heights,* 418 U. S. 298 (1974) (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. *See, e.g.*, *Campbell* v. *St. Tammany Parish School Board*, 231 F. 3d 937, 942 (CA5 2000) ("Under the Supreme Court's jurisprudence, a government entity such as a school board has the opportunity to open its facilities to activity protected by the First Amendment, without inviting political or religious activities presented in a form that would disserve its efforts to maintain neutrality"). 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," *Mergens*, 496 U. S., at 290 (STEVENS, J., dissenting); see also *Epperson* v. *Arkansas,* 393 U. S. 97, 104 (1968) ("Judicial interposition in the

operation of the public school system of the Nation raises problems requiring care and restraint. . . . By and large, public education in our Nation is committed to the control of state and local authorities").

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. See App. N13–N15 (testimony of the superintendent for Milford schools indicating that the policy would permit people to teach "that man was created by God as described in the Book of Genesis" and that crime was caused by society's "lack of faith in God"). Instead, it sought only to exclude religious speech whose principal goal is to "promote the gospel." App. N18. 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.[1] 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.[2] Cf. *Illinois ex rel. McCollum* v. *Board of Ed. of School Dist. No. 71, Champaign Cty.,* 333 U. S. 203, 231 (1948) (Frankfurter, J.,

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[1] The school district, for example, could not, consistently with its present policy, allow school facilities to be used by a group that affirmatively attempted to inculcate nonbelief in God or in the view that morality is wholly unrelated to belief in God. Nothing in the record, however, indicates that any such group was allowed to use school facilities.

[2] "A perceptive observer sees a material difference between the light of day and the dark of night, and knows that difference to be a reality even though the two are separated not by a bright line but by a zone of twilight." *Buirkle* v. *Hanover Insurance Cos.,* 832 F. Supp. 469, 483 (Mass. 1993).

concurring) ("In no activity of the State is it more vital to keep out divisive forces than in its schools . . .").

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.[3] 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.

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[3] The majority elides the distinction between religious speech on a particular topic and religious speech that seeks primarily to inculcate belief. Thus, it relies on *Rosenberger* v. *Rector and Visitors of Univ. of Va.,* 515 U. S. 819 (1995), as if that case involved precisely the same type of speech that is at issue here. But, while both Wide Awake, the organization in *Rosenberger*, and the Good News Club engage in a mixture of different types of religious speech, the *Rosenberger* Court clearly believed that the first type of religious speech predominated in Wide Awake. It described that group's publications as follows:

"The first issue had articles about racism, crisis pregnancy, stress, prayer, C.S. Lewis' ideas about evil and free will, and reviews of religious music. In the next two issues, Wide Awake featured stories about homosexuality, Christian missionary work, and eating disorders, as well as music reviews and interviews with University professors." *Id.*, at 826.

In contrast to Wide Awake's emphasis on providing Christian commentary on such a diverse array of topics, Good News Club meetings are dominated by religious exhortation, see *post*, at 4–5 (SOUTER, J., dissenting). My position is therefore consistent with the Court's decision in *Rosenberger*.