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 THOMAS delivered the opinion of the Court.

This case presents two questions. The first question is 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. The second question is 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.

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 (McKinney 2000) 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. App. to Pet. for Cert. D1–D3. 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." *Id.,* at D1. 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." *Ibid.*

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. App. in No. 98–9494 (CA2), p. A–81. 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," *ibid.*—was "the equivalent of religious worship." App. H1–H2. According to McGruder, the community use policy, which prohibits use "by any individual or organization for religious purposes," foreclosed the Club's activities. App. to Pet. for Cert. D2.

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." App. in No. 98–9494 (CA2), at A–30.

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." *Id.,* at A–25. 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." *Id.,* at A–56.

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, 107 Stat. 1488, 42 U. S. C. §2000bb *et seq.*[1]

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

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[1] The District Court dismissed the Club's claim under the Religious Freedom Restoration Act because we held the Act to be unconstitutional in *City of Boerne* v. *Flores*, 521 U. S. 507 (1997). See 21 F. Supp. 2d 147, 150, n. 4 (NDNY 1998).

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. App. N12.

In August 1998, the District Court vacated the preliminary injunction and granted Milford's motion for summary judgment. 21 F. Supp. 2d 147 (NDNY 1998). 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." *Id.,* at 154. 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. 202 F. 3d 502 (2000). 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," *id.,* at 510, and the activities "fall outside the bounds of pure 'moral and character development,'" *id.,* at 511, Milford's policy of excluding the Club's meetings was constitutional subject discrimination, not unconstitutional viewpoint discrimination. Judge Jacobs filed a dissenting opinion in which he concluded that the school's restriction did constitute viewpoint discrimination under *Lamb's Chapel* v. *Center Moriches Union Free School Dist.,* 508 U. S. 384 (1993).

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. Compare *Gentala* v. *Tucson,* 244 F. 3d 1065 (CA9 2001) (en banc) (holding that a city properly refused National Day of Prayer organizers' application to the city's civic events fund for coverage of costs for city services); *Campbell* v. *St. Tammany's School Bd.,* 206 F. 3d 482 (CA5 2000) (holding that a school's policy against permitting religious instruction in its limited public forum did not constitute viewpoint discrimination), cert. pending, No. 00–1194; *Bronx Household of Faith* v. *Community School Dist. No. 10,* 127 F. 3d 207 (CA2 1997) (concluding that a ban on religious services and instruction in the limited public forum was constitutional), with *Church on the Rock* v. *Albuquerque,* 84 F. 3d 1273 (CA10 1996) (holding that a city's denial of permission to show the film Jesus in a senior center was unconstitutional viewpoint discrimination); and *Good News/Good Sports Club* v. *School Dist. of Ladue,* 28 F. 3d 1501 (CA8 1994) (holding unconstitutional a school use policy that prohibited Good News Club from meeting during times when the Boy Scouts could meet). We granted certiorari to resolve this conflict. 531 U. S. 923 (2000).

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. See *Perry Ed. Assn.* v. *Perry Local Educators' Assn.,* 460 U. S. 37, 44 (1983). 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. *Id.,* at 45–46. 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. See *Lamb's Chapel, supra,* at 391–392. Because the parties have agreed that Milford created a limited public forum when it opened its facilities in 1992, see Brief for Petitioners 15–17; Brief for Respondent 26, 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." *Rosenberger* v. *Rector and Visitors of Univ. of Va.,* 515 U. S. 819, 829 (1995); see also *Lamb's Chapel, supra,* at 392–393. 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, supra,* at 829, and the restriction must be "reasonable in light of the purpose served by the forum," *Cornelius* v. *NAACP Legal Defense & Ed. Fund, Inc.,* 473 U. S. 788, 806 (1985).

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.[2]

Milford has opened its limited public forum to activities that serve a variety of purposes, including events "pertaining to the welfare of the community." App. to Pet. for Cert. D1. 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." Brief for Appellee in No. 98–9494 (CA2), p. 6. For example, this policy would allow someone to use Aesop's Fables to teach children moral values. App. N11. Additionally, a group could sponsor a debate on whether there should be a constitutional amendment to permit prayer in public schools, *id.,* at N6, and the Boy Scouts could meet "to influence a boy's character, development and spiritual growth," *id.,* at N10–N11. In short, any group that "promote[s] the moral and character development of children" is eligible to use the school building. Brief for Appellee in

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[2] Although Milford argued below that, under §414, it could not permit its property to be used for the purpose of religious activity, see Brief for Appellee in No. 98–9494 (CA2), p. 12, here it merely asserts in one sentence that it has, "in accordance with state law, closed [its] limited open forum to purely religious instruction and services," Brief for Respondent 27. Because Milford does not elaborate, it is difficult to discern whether it is arguing that it is required by state law to exclude the Club's activities.

Before the Court of Appeals, Milford cited *Trietley* v. *Board of Ed. of Buffalo,* 65 App. Div. 2d 1, 409 N. Y. S. 2d 912 (1978), in which a New York court held that a local school district could not permit a student Bible club to meet on school property because "[r]eligious purposes are not included in the enumerated purposes for which a school may be used under section 414 of the Education Law." *Id.,* at 5–6, 409 N. Y. S. 2d, at 915. Although the court conceded that the Bible clubs might provide incidental secular benefits, it nonetheless concluded that the school would have violated the Establishment Clause had it permitted the club's activities on campus. Because we hold that the exclusion of the Club on the basis of its religious perspective constitutes unconstitutional viewpoint discrimination, it is no defense for Milford that purely religious purposes can be excluded under state law.

No. 98–9494 (CA2), at 9.

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," 202 F. 3d, at 507— it excluded the Club from use of its facilities.

Applying *Lamb's Chapel,*[3] 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." 508 U. S., at 387. 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

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[3] We find it remarkable that the Court of Appeals majority did not cite *Lamb's Chapel,* despite its obvious relevance to the case. We do not necessarily expect a court of appeals to catalog every opinion that reverses one of its precedents. Nonetheless, this oversight is particularly incredible because the majority's attention was directed to it at every turn. See, *e.g.,* 202 F. 3d 502, 513 (CA2 2000) (Jacobs, J., dissenting) ("I cannot square the majority's analysis in this case with *Lamb's Chapel*"); 21 F. Supp. 2d, at 150; App. O9–O11 (District Court stating "that *Lamb's Chapel* and *Rosenberger* pinpoint the critical issue in this case"); Brief for Appellee in No. 98–9494 (CA2) at 36–39; Brief for Appellants in No. 98–9494 (CA2), pp. 15, 36.

family values, the district's exclusion of the church was unconstitutional viewpoint discrimination. *Id.,* at 394.

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, *Lamb's Chapel* v. *Center Moriches Union Free School Dist.,* 959 F. 2d 381, 388–389 (CA2 1992). 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,'" *id.,* at 384, was "quintessentially religious," 202 F. 3d, at 510. 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.'" 515 U. S., at 826. 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. *Id.,* at 831. 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. *Ibid.* 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. See 202 F. 3d, at 510 (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. *Id.,* at 509. 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." *Id.,* at 510. 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. *Id.,* at 511.

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. See 202 F. 3d, at 512 (Jacobs, J., dissenting) ("[W]hen the subject matter is morals and character, it is quixotic to attempt a distinction between religious viewpoints and religious subject matters"). 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.[4]

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[4] Despite Milford's insistence that the Club's activities constitute "religious worship," the Court of Appeals made no such determination. It did compare the Club's activities to "religious worship," 202 F. 3d, at 510, but ultimately it concluded merely that the Club's activities "fall outside the bounds of pure 'moral and character development,'" *id.,* at 511. In any event, we conclude that the Club's activities do not constitute mere religious worship, divorced from any teaching of moral values.

JUSTICE SOUTER's recitation of the Club's activities is accurate. See *post*, at 4–5 (opinion of SOUTER, J.). But in our view, religion is used by the Club in the same fashion that it was used by Lamb's Chapel and by the students in *Rosenberger*: religion is the viewpoint from which ideas are conveyed. We did not find the *Rosenberger* students' attempt to cultivate a personal relationship with Christ to bar their claim that religion was a viewpoint. And we see no reason to treat the Club's use of religion as something other than a viewpoint merely because of any

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. See *Lamb's Chapel,* 508 U. S., at 394–395 (noting the suggestion in *Widmar* but ultimately not finding an Establishment Clause problem). 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.* In particular, in *Lamb's Chapel,* we explained that "[t]he showing of th[e] 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." 508 U. S., at 395. 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."

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evangelical message it conveys. According to JUSTICE SOUTER, the Club's activities constitute "an evangelical service of worship." *Post,* at 5. Regardless of the label JUSTICE SOUTER wishes to use, what matters is the substance of the Club's activities, which we conclude are materially indistinguishable from the activities in *Lamb's Chapel* and *Rosenberger*.

Ibid. Likewise, in *Widmar*, where the university's forum was already available to other groups, this Court concluded that there was no Establishment Clause problem. 454 U. S., at 272–273, and n. 13.

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 indistiguishable 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.[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." *Rosenberger*, 515 U. S., at 839 (emphasis added). See also *Mitchell* v. *Helms,* 530 U. S. 793, zzz (2000) (slip op., at 10) (plurality opinion) ("In distinguishing between indoctrina-

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[5] It is worth noting that, although Milford repeatedly has argued that the Club's meeting time directly after the schoolday is relevant to its Establishment Clause concerns, the record does not reflect any offer by the school district to permit the Club to use the facilities at a different time of day. The superintendent's stated reason for denying the applications was simply that the Club's activities were "religious instruction." 202 F. 3d, at 507. In any event, consistent with *Lamb's Chapel* and *Widmar*, the school could not deny equal access to the Club for any time that is generally available for public use.

tion that is attributable to the State and indoctrination that is not, [the Court has] consistently turned to the principle of *neutrality,* upholding aid that is offered to a broad range of groups or persons without regard to their religion" (emphasis added)); *id.*, at ___ (slip op., at 3) (O'CONNOR, J., concurring in judgment) ("[N]eutrality is an important reason for upholding government-aid programs against Establishment Clause challenges"). 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, supra,* at 839. 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, cf. *Lee* v. *Weisman*, 505 U. S. 577, 592–593 (1992), 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, cf., *e.g., Lee, supra,* at 592; *School Dist. of Grand Rapids* v. *Ball*, 473 U. S. 373, 390 (1985) (stating that "symbolism of a union between church and state is most likely to influence children of tender years, whose experience is limited and whose beliefs consequently are the function of environment as much as of free and voluntary choice"), 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. For example, Milford cites *Lee* v. *Weisman* for the proposition that "there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools," 505 U. S., at 592. In *Lee,* however, we concluded that attendance at the graduation exercise was obligatory. *Id.,* at 586. See also *Santa Fe Independent School Dist.* v. *Doe*, 530 U. S. 290 (2000) (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, *Lee, supra*, at 583. 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.

Equally unsupportive is *Edwards* v. *Aguillard*, 482 U. S. 578 (1987), in which we held that a Louisiana law that proscribed the teaching of evolution as part of the public school curriculum, unless accompanied by a lesson on creationism, violated the Establishment Clause. In *Ed-*

wards, we mentioned that students are susceptible to pressure in the classroom, particularly given their possible reliance on teachers as role models. See *id.*, at 584. But we did not discuss this concern in our application of the law to the facts. Moreover, we did note that mandatory attendance requirements meant that State advancement of religion in a school would be particularly harshly felt by impressionable students.[6] But we did not suggest that, when the school was not actually advancing religion, the impressionability of students would be relevant to the Establishment Clause issue. Even if *Edwards* had articulated the principle Milford believes it did, the facts in *Edwards* are simply too remote from those here to give the principle any weight. *Edwards* involved the content of the curriculum taught by state teachers *during the schoolday* to children required to attend. Obviously, when individuals who are not schoolteachers are giving lessons after school to children permitted to attend only with parental consent, the concerns expressed in *Edwards* are not present.[7]

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[6] Milford also cites *Illinois ex rel. McCollum* v. *Board of Ed. of School Dist. No. 71, Champaign Cty.*, 333 U. S. 203 (1948), for its position that the Club's religious element would be advanced by the State through compulsory attendance laws. In *McCollum*, the school district excused students from their normal classroom study during the regular schoolday to attend classes taught by sectarian religious teachers, who were subject to approval by the school superintendent. Under these circumstances, this Court found it relevant that "[t]he operation of the State's compulsory education system . . . assist[ed] and [wa]s integrated with the program of religious instruction carried on by separate religious sects." *Id.*, at 209. In the present case, there is simply no integration and cooperation between the school district and the Club. The Club's activities take place *after* the time when the children are compelled by state law to be at the school.

[7] Milford also refers to *Board of Ed. of Westside Community Schools (Dist. 66)* v. *Mergens*, 496 U. S. 226 (1990), to support its view that "assumptions about the ability of students to make . . . subtle distinc-

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.[8] In sum, these circum-

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tions [between schoolteachers during the schoolday and Reverend Fournier after school] are less valid for elementary age children who tend to be less informed, more impressionable, and more subject to peer pressure than average adults." Brief for Respondent 19. Four Justices in *Mergens* believed that high school students likely are capable of distinguishing between government and private endorsement of religion. See 496 U. S., at 250–251 (opinion of O'CONNOR, J.). The opinion, however, made no statement about how capable of discerning endorsement elementary school children would have been in the context of *Mergens,* where the activity at issue was *after school.* In any event, even to the extent elementary school children are more prone to peer pressure than are older children, it simply is not clear what, in this case, they could be pressured to do.

In further support of the argument that the impressionability of elementary school children even after school is significant, Milford points to several cases in which we have found Establishment Clause violations in public schools. For example, Milford relies heavily on *School Dist. of Abington Township* v. *Schempp,* 374 U. S. 203 (1963), in which we found unconstitutional Pennsylvania's practice of permitting public schools to read Bible verses at the opening of each schoolday. *Schempp,* however, is inapposite because this case does not involve activity by the school during the schoolday.

[8] Milford also relies on the Equal Access Act, 98 Stat. 1302, 20 U. S. C. §§4071–4074, as evidence that Congress has recognized the

stances 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. Cf. *Rosenberger*, 515 U. S., at 835–836 (expressing the concern that viewpoint discrimination can chill individual thought and expression).

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 pro-

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vulnerability of elementary school children to misperceiving endorsement of religion. The Act, however, makes no express recognition of the impressionability of elementary school children. It applies only to public secondary schools and makes no mention of elementary schools. §4071(a). We can derive no meaning from the choice by Congress not to address elementary schools.

scribed on the basis of what the youngest members of the audience might misperceive. Cf. *Capitol Square Review and Advisory Bd.* v. *Pinette,* 515 U. S. 753, 779–780 (1995) (O'CONNOR, J., concurring in part and concurring in judgment) ("[B]ecause our concern is with the political community writ large, the endorsement inquiry is *not about the perceptions of particular individuals* or saving isolated nonadherents from . . . discomfort . . . . It is for this reason that the reasonable observer in the endorsement inquiry must be deemed aware of the history and context of the community and forum in which the religious [speech takes place]" (emphasis added)). There are countervailing constitutional concerns related to rights of other individuals in the community. In this case, those countervailing concerns are the free speech rights of the Club and its members. Cf. *Rosenberger, supra,* at 835 ("Vital First Amendment speech principles are at stake here"). And, we have already found that those rights have been violated, not merely perceived to have been violated, by the school's actions toward the Club.

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.[9]

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[9] Both parties have briefed the Establishment Clause issue extensively, and neither suggests that a remand would be of assistance on this issue. Although JUSTICE SOUTER would prefer that a record be developed on several facts, see *post*, at 7, and JUSTICE BREYER believes that development of those facts could yet be dispositive in this case, see *post*, at 2, none of these facts is relevant to the Establishment Clause inquiry. For example, JUSTICE SOUTER suggests that we cannot deter-

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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.

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mine whether there would be an Establishment Clause violation unless we know when, and to what extent, other groups use the facilities. When a limited public forum is available for use by groups presenting any viewpoint, however, we would not find an Establishment Clause violation simply because only groups presenting a religious viewpoint have opted to take advantage of the forum at a particular time.