UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SALLY CAMPBELL, ET AL	**CIVIL ACTION**
versus	**NO. 98-2605**
ST. TAMMANY PARISH SCHOOL BOARD, ET AL	**SECTION "C" (1)**

ORDER AND REASONS

This case involves a First Amendment freedom of speech challenge to an after school use policy of the St. Tammany Parish School Board ("St. Tammany"). The policy was originally struck down as unconstitutional by the district court, which decision was reversed by the Fifth Circuit Court of Appeal and summary judgment granted to St. Tammany. That decision was vacated by the United States Supreme Court and remanded for further consideration in light of *Good News Club v. Milford Central School*, 533 U.S. 98, 121 S.Ct. 2093, 150 L.Ed.2d 151 (2001). The Fifth Circuit subsequently remanded the matter to the district court for first consideration.

The matter is before the Court on cross-motions for summary judgment. For the reasons stated below, the Court concludes that in light of *Good News*, Defendants' policy and its application to

Plaintiffs constitute unconstitutional viewpoint discrimination, and as such Plaintiffs' motion is GRANTED and Defendants' motion is DENIED.

I. Factual and Procedural History

In 1997, the St. Tammany Parish School Board adopted a policy which opened the public schools as a "limited public forum" for activities other than those directly connected to school life. Rec. Doc. 79, Ex. 2). The school buildings could be used for "civic and recreational meetings . . . and other uses pertaining to the welfare of the community," as well as, governmental and non-partisan political activity. All such activity had to be non-exclusive and open to the public. Disallowed were partisan politics, for profit fund-raising and certain religious activity as defined below:

> No outside organization or group may be allowed to conduct religious services or religious instruction on school premises. However, the use of school facilities by outside organizations or groups outside school hours for the purpose of discussing religious material or material which contains a religious viewpoint or for distributing such material is permissible if it does not interfere with one of the primary uses of such facilities.

(Id.).

In June, 1998, Sally Campbell ("Campbell")[1] who was then State Chairman of the Christian Coalition of Louisiana requested approval

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[1] Campbell and the Louisiana Christian Coalition are the plaintiffs in this matter and will be designated jointly as "Campbell" in this decision.

for a meeting of her group at a local public school. (Rec. Doc. 79, Ex. 10). Campbell specifically stated the meeting would be open to the public and was not a fund raising event. She also described the intended purpose.

> The Louisiana Christian Coalition is planning a prayer meeting . . . At our prayer meeting, we plan to worship the Lord in prayer and music. We also plan to discuss family and political issues, pray about those issues, and seek to engage in religious and Biblical instruction with regard to those issues.

(Id.; *see also* Ex. 11).

St. Tammany denied the request, in relevant part because "its facilities may not be used to conduct religious services or instruction." (Id., Ex. 12).

Litigation followed. Campbell challenged the denial primarily on the basis that it violated her First Amendment right to freedom of speech. The district court declared the religious exclusion unconstitutionally vague. The court criticized the policy for failing to define "religious service or religious instruction" and concluded there was no intelligible way to distinguish speech with a religious viewpoint or dealing with religious material, from religious instruction. *Campbell v. St. Tammany Parish School. Board*, Civ.A.No.98-2605, 1999 WL 562736 (E.D.La. July 30, 1999)(Sear, J.).

The Fifth Circuit reversed, finding that both "religious instruction" and "religious worship" have a "clear core meaning" that is intelligible to ordinary people. *Campbell*, 206 F.3d 482,

485 *reh'g denied en banc,* 231 F.3d 937 (5th Cir. 2000). Additionally, the Court of Appeals found that Campbell's request clearly fell within the prohibition. *See* 206 F.3d at 485 ("Campbell's request . . . includes verbatim some of the prohibited terms . . ."); *and* 231 F.3d at 944 ("The Coalition's request and the St. Tammany rules are fairly read to speak to worship services.").

The Fifth Circuit held that St. Tammany had created a "limited public forum" which allowed subject matter exclusions as long as they were reasonable and viewpoint neutral. 206 F.3d at 486-87; 231 F.3d at 940-43. The Court noted that religion "may be either a perspective on a topic such as marriage or may be substantive activity in itself." 206 F.3d at 487. An exclusion based on the latter is permissible, the former is not. According to the Court, "religious services and instruction are not simply approaches to a topic, but activities whose primary purpose is to teach and experience the subject of religion." 206 F.3d at 487.

On application for rehearing and rehearing en banc, the Court elaborated further.

> A religious service is an activity, a manner of communicating which carries a very special and distinct meaning in our culture. While a service may express a religious viewpoint, for a example, a Catholic mass featuring a prayer for the welfare of the unborn and for the reform of American abortion law, the distinction is between the medium and the message. Under St. Tammany's policy, thus, a Catholic group could assemble on school property to "discuss" a Christian anti-abortion viewpoint and "distribute...material" advocating a Christian anti-

> abortion viewpoint. They would run afoul of the policy if they also chose to "conduct religious services."

231 F.3d at 943-44. The panel reiterated its view that Campbell's requested purpose amounted to a religious *service* and that such a worship service could be properly excluded. *See Campbell*, 231 F.3d at 944 ("In St. Tammany Parish the request was to 'worship the Lord in prayer and music . . .'")

Additionally, the panel found the exclusion to be reasonable.

> What St. Tammany has done is prohibit three forms of potential *activities* that might erode the neutrality of the schools. St. Tammany bars partisan political activity, lest the schools be drawn into partisan frays or give an appearance of support for Democrats or Republicans. St. Tammany bars religious services, lest the schools appear to prefer Christians or Muslims, and religion over non-religion. It does not matter that the Establishment Clause does not require St. Tammany to exclude religious services. The school board could rationally decide as it did in discharging the duty of evenhanded treatment.

231 F.3d at 943.

Campbell applied for certiorari to the United States Supreme Court. In 2001, the Supreme Court issued its decision in *Good News Club v. Milford Central School*, 533 U.S. 98, 121 S.Ct. 2093, 150 L.Ed.2d 151 (2001). In 2002, the United States Supreme Court vacated the Fifth Circuit's decision and remanded it back for further consideration in light of *Good News*.

II. *Good News*

In *Good News*, state law and local policy allowed the use of public schools after hours for community activities. Specifically,

the schools were open to "instruction in any branch of education, learning or the arts" and also for "social, civic and recreational meetings . . . and other uses pertaining to the welfare of the community . . ." *Good News*, 121 S.Ct. at 2098. The local policy specifically excluded use "by any individual or organization for religious purposes." *Id.* The Good News Club ("Good News Club"), a Christian organization geared towards pre-teen children, requested use of an elementary school for a weekly after school meeting. The proposed meetings were to teach morals and character development to children through Christian beliefs and teaching. The format included singing songs, Bible lessons and memorizing scripture. The school authorities denied the request as "the equivalent of religious worship," hence prohibited by the policy. 121 S.Ct. at 2098.

The Good News Club reiterated its request, elaborating on the nature of their meetings. Again, school authorities denied the request, this time on the basis that the program was "religious instruction and Bible study." *Id.* According to the school, the Club's activities went beyond a discussion of secular subjects -- such as development of character and morals -- from a religious perspective and was in fact "the equivalent of religious instruction itself." *Id.*

The Good News Club then sued. The district court granted summary judgment for the school. *See Good News*, 21 F.Supp.2d 147,

160 (N.D.N.Y. 1998)(". . . Good News is a religious youth organization whose proposed use deals specifically with religious subject matter -- and not . . . merely a religious perspective on secular subject matter."). A divided appellate court affirmed. 202 F.3d 502, 510 (". . . it is clear from the conduct of the meetings that the Good News Club goes far beyond merely stating its viewpoint. The Club is focused on teaching children how to cultivate their relationship with God through Jesus Christ. Under even the most restrictive and archaic definitions of religion, such subject matter is quintessentially religious."). A divided Supreme Court reversed.

The Supreme Court treated the school system as a limited public forum, as was undisputed below. The school authorities could therefore limit the use of the forum as long as the limitation: (1) did not discriminate against speech on the basis of its viewpoint; and (2) was reasonable in light of the purpose served by the forum. 121 S.Ct. at 2100 (citations omitted). The Court found that the school had in fact discriminated against the Good News Club on the basis of viewpoint, and therefore did not reach the issue of whether the exclusion was reasonable. *Id.*

The Court relied on two prior decisions that it found indistinguishable from the Good News Club's circumstances: *Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384, 113 S. Ct. 2141, 124 L.Ed.2d 352 (1993) and *Rosenberger v. Rector*

and Visitors of University of Virginia, 515 U.S. 819, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995).

In *Lamb's Chapel*, the relevant school policy was the same as in *Good News*, as the case came from the same jurisdiction. Lamb's Chapel was an evangelical church that requested use of school facilities to show a film series dealing with family and child-rearing issues. The series promoted a Christian family values viewpoint. Hence, the subject matter was family and child-rearing and the perspective was religious.

The application was denied as "church related." *Lamb's Chapel*, 113 S.Ct. at 2145. The Supreme Court noted that it was undisputed that a film series about child rearing and family values was a permissible purpose under the policy. *Id.* at 2147. The school's rejection of the film series was based solely upon the issues being presented from a religious perspective. *Id.* A unanimous Supreme Court had no difficulty in finding this denial to be prohibitive viewpoint discrimination.

In *Rosenberger*, the University of Virginia allowed students to organize into "Contracted Independent Organizations" ("CIO's") making them eligible for financial assistance from a fund generated by student activity fees. "Religious organizations" were not accorded this status. *Rosenberger*, 115 S.Ct. at 2515. Wide Awake Productions ("WAP") was organized and recognized as a CIO. Its stated purpose was to publish a magazine from the Christian

perspective. Of particular significance to the Supreme Court was the fact that the University *did* accord the group CIO status and never maintained throughout the litigation that WAP itself was a "religious organization" ineligible for funding on that basis. 115 S.Ct at 2515.

Even recognized CIO's, however, could not obtain funding for all purposes. Although "student news, information, opinion" were categories eligible for funding, "religious activities" were not. A religious activity was defined by the University's Student Activity Fund ("SAF") Guidelines as that which "primarily promotes or manifests a particular belie[f] in or about a deity or an ultimate reality." 115 S.Ct at 2515. WAP published its magazine, "Wide Awake: A Christian Perspective at the University of Virginia." When WAP applied for funds to pay the cost of printing, its request was denied on the basis that the publication was an ineligible "religious activity."

The Supreme Court found the definition of "religious activity" under the policy unconstitutional on its face, and also its application to Wide Awake as unconstitutional viewpoint discrimination. The court noted that the University did not prohibit religion as a subject matter but "selects for disfavored treatment those student journalistic efforts with religious editorial viewpoints." 115 S.Ct. at 2517. "The prohibited perspective, not the general subject matter, resulted in the

refusal to make third-party payments, for the subjects discussed were otherwise within the approved category of publications." *Id.* at 2517-18.

This decision was not unanimous. The majority opinion emphasized that the magazine featured articles about racism, crisis pregnancy, stress, homosexuality, eating disorders, and was disqualified from funding solely on the basis of its religious perspective on such issues. 115 S.Ct. at 2515 & 2517-18. The dissent emphasized the magazine's evangelical proselytizing, its consistent and direct exhortations to the students to "enter into a relationship with God as revealed in Jesus Christ," its Biblical text analysis and instruction of prayer and religious practice. "It is nothing other than the preaching of the word..." 115 S.Ct. at 2535 (Souter, J., dissenting).

As noted above, the majority opinion in *Good News* considered its posture indistinguishable from *Lamb's Chapel* and *Rosenberger*. The Good News Club taught morals and character development to children, which was itself clearly permissible under the policy. The lessons, for example, exhorted the children to be obedient, treat each other kindly and not be jealous. However, these lessons were taught from a religious perspective. The Second Circuit found that the Good News Club went beyond just teaching moral values, and that its promotion of a personal relationship with God through Jesus Christ was "quintessentially religious," hence, not merely a

viewpoint. 202 F.3d at 510. The Supreme Court soundly rejected this distinction.

> 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.

121 S.Ct. at 2102.

The dissents in *Good News* are similar to that in *Rosenberger*. In *Good News*, Justice Stevens distinguished religious speech into a three categories -- a religious point of view, religious worship and religious proselytizing. He characterized the Good News Club as belonging to the third category and one that a limited forum

school could legitimately exclude.[2] 121 S.Ct. at 2112-15 (Stevens, J., dissenting).

Justice Souter, joined by Justice Ginsburg, concluded that the Good News Club was not seeking to merely discuss matters with the children from a religious perspective, but rather wanted to hold "an evangelical service of worship calling children to commit themselves in an act of Christian conversion." 121 S.Ct. at 2117. (Souter, J., dissenting). He stressed that the "heart of the meeting" was the call upon the children who already believed in God to place God first in their lives . . . and the call to the "unsaved" children to "trust the Lord Jesus to be your Savior from sin . . ." 121 S.Ct. at 2117. He likewise believed the school could validly exclude the Club.

The majority opinion acknowledged that Justice Souter's description of the Good News Club's activities was accurate. 121 S.Ct. at 2101, n. 4. Nevertheless, the majority saw "no reason to treat the Club's use of religion as something other than a viewpoint merely because of any evangelical message it conveys." *Id.* Although Justice Thomas noted Justice Souter's conclusion that the Good News Club meetings were in fact worship, the majority considered the label insignificant, stating rather "what matters is the *substance* of the Club's activities . . ." *Id.* (emphasis

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[2] Justice Stevens likewise considered religious worship excludable, although he did not find the Good News Clubs meeting to constitute worship. 121 S.Ct. at 2114.

added). In substance, what the Good News Club proposed to do was indistinguishable from *Lamb's Chapel* and *Rosenberger*. The majority also rejected an argument that the Second Circuit had determined the Club's meeting to be in fact religious worship. *Id.* It then added, "[i]n any event, we conclude that the Club's activities do not constitute *mere* religious worship, divorced from any teaching of moral values." *Id.* (emphasis added).

Justice Souter described the majority's depiction of the Club's activity -- "teaching of morals and character from a religious standpoint" -- as a "bland and general characterization."

> 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 opened for use as a church, synagogue, or mosque.

121 S.Ct. at 2117.

With the above in mind, the Court now turns to the case at bar.

III. Application of *Good News* to *Campbell*

A. Issues unaffected by the remand

This begins with a brief review of what this Court believes was left undisturbed by the remand from *Good News*. First, on original appeal, the Fifth Circuit concluded that St. Tammany's policy created a limited forum rather than an open forum which

would call for stricter standards of review. 206 F.3d at 486.[3] *Good News* also dealt with a limited forum and nothing in the remand order implies the Fifth Circuit erred in its finding of a limited forum.[4] *See Good News*, 533 U.S. 913, 121 S.Ct. 2518, 150 L.Ed.2d 691 (2001). Further, the Court also finds St. Tammany's policy to have created a limited forum.[5]

Second, on original appeal, the Fifth Circuit implicitly found that the Establishment Clause of the First Amendment did not *require* St. Tammany to exclude religious services, but that it was reasonable for St. Tammany to choose to do so. 231 F.3d at 943. St. Tammany conceded at oral argument that under current binding caselaw, *Good News* included, allowing religious services under their policy would not run afoul of the Establishment Clause. The policy governs after school activities only, unsponsored by the school and open to the public at large. *See Good News*, 121 S.Ct.

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[3] The Court of Appeals found that the policy excluded few uses and came close to creating a public forum, but the restrictions listed were "minimally sufficient" to preserve the limited forum identity. 206 F.3d at 487.

[4] Campbell argues, primarily in opposition to St. Tammany's motion for summary judgment, that St. Tammany's policy created a public forum. (Rec. Doc. 89 at 14-20). The Court finds this argument both unpersuasive and outside the scope of the remand order.

[5] In addition to the reasons given by the Fifth Circuit, the activities excluded by St. Tammany's policy are substantial. Partisan political activity, for profit fund-raising and religious services and instruction cover an enormous range of common community life.

at 2103 (finding no Establishment Clause violation where "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").

B. Issues clearly decided by Good News

To the extent that Campbell's meeting was rejected by the school board on the basis that it was "religious instruction," this have been overruled by *Good News*. Campbell's group intended to "engage in religious and Biblical instruction" with regard to "family and political issues." *Good News* clearly holds that religious instruction cannot be excluded from a limited forum so long as it touches on subjects otherwise permissible in the forum. Family and political issues are clearly within the range of topics for St. Tammany's limited forum.[6]

C. Issues in dispute

The issues in dispute are whether Campbell's requested meeting concerned religion as a substantive activity itself or religion as a viewpoint. More specifically, the issue is whether religious services may be legally excluded from St. Tammany's forum when the service *includes*, as part of its program, speech that is legally protected.

St. Tammany argues that its policy of excluding religious

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[6] St. Tammany appears to have abandoned this argument. *See* note 7, *supra*.

services from its limited forum is both viewpoint neutral and reasonable.[7] It claims that Campbell's meeting was rejected because in "her own words" she requested use of a facility for religious worship, a use for which St. Tammany had not made its facilities available. As for the discussion of family and political issues, St. Tammany avers that its denial was not based upon that aspect of the request. "Sally Campbell simply cannot bring this otherwise inappropriate use of the facility within the permissible scope of the use policy."[8]

Campbell argues that the proposed meeting was not a religious service, but that even if it was, it included legally protected speech from a religious perspective. Campbell also argues that attempting to distinguish religious worship from other types of religious speech is unintelligible and beyond the propriety of government to determine.[9] The United States as *amicus curiae* similarly argued that Campbell's proposed meeting fit within the forum created by St. Tammany and that no constitutional means exists to distinguish religious viewpoints on a topic and religious

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[7] St. Tammany has apparently abandoned by silence its argument that "religious instruction" is likewise excludable. (*See* Rec. Doc. 82, Mot. at 2(C), Mem. at 9-10, & 14; *and* Rec. Doc. 91, Opp. at 3).

[8] *See* Rec. Doc. 82, Mem. at 14; Rec. Doc. 91, Opp. at 4.

[9] *See e.g.*, Rec. Doc. 79, Pl's. Mem. at 13-20; *and see generally* Rec. Doc. 85, Br. by United States as amicus curiae in support of Pl's. Mot. at 9-21).

services or instruction.[10]

The Court concludes that Campbell's disclaimers notwithstanding, her request was to hold a religious service at the public school. What is a "prayer meeting" other than a religious service? On original appeal, the Fifth Circuit found likewise, pointing out that Campbell "expressly requested" a school building for a use disallowed under the policy. *See* 206 F.3d at 485 ("The group planned to 'worship the Lord in prayer and music . . .'"). On remand from the Fifth Circuit to this Court, Circuit Judge John Gibson also concluded that Campbell's request was for a religious service which, as a subject matter, St. Tammany could and had legally excluded from its limited forum. *See* 300 F.3d 526, 529 (5th Cir. 2002)(Gibson, J., concurring). Judge Gibson maintains this creates "significant differences" with the facts of *Good News, Rosenberger* and *Lamb's Chapel.* 300 F.3d at 528. Specifically, he found that in the latter cases, it was the governmental decision-maker who characterized the requested activity as being religious based on the applicant's viewpoint. In this case, he argues, no such characterization was necessary. Campbell herself identified her meeting as a religious service, a substantive activity which St. Tammany had legally chosen to preclude from its limited forum. "This was not an otherwise eligible activity, which the school district decided to exclude because of the viewpoint from which

[10] Rec. Doc. 85 at 3 & 9-21.

ideas would be expressed." 300 F.3d at 529. Judge Gibson acknowledged that Campbell's request did include a discussion about family and political issues, but concluded that this language "does not bring the request as a whole within the subject matter of the limited public forum . . ." *Id.*

Judge Gibson is correct in that in *Good News, Rosenberger* and *Lamb's Chapel,* the applicants did not couch their activity as being religious in and of itself. In *Lamb's Chapel,* the church asked to use a public school to show a series of film lectures on parenting from a Christian perspective.[11] In *Rosenberger,* the request sought printing costs of a newspaper that expressed a Christian viewpoint on various secular aspects of student life. In *Good News,* the Club's stated purpose was to instruct children on family values and morals from a Christian perspective. 21 F.Supp.2d at 149. In all three of these cases, the topics to be discussed -- parenting, student life, family values and morals -- were proper subjects of the limited forum. The government decision-makers, nonetheless, characterized them all as substantive religious activity, therefore, excludable under their policies. The Supreme Court overturned the decisions, finding the exclusions had been based upon the groups' religious perspective only. In this case, on the

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[11] Interestingly, the church had previously requested to use a public school for its Sunday church service and Sunday school, and was turned down and did not pursue the matter. 113 S.Ct. at 2145, n. 2.

other hand, the request was for a "prayer meeting" -- clearly a religious activity in and of itself, not a meeting on secular topics from a religious perspective.[12]

The Supreme Court has not held that a religious service or religious worship may not be excluded from a limited forum. In *Lamb's Chapel*, *Rosenberger* and *Good News*, the Supreme Court did not

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[12] The prior cases are distinguishable in other ways. *Rosenberger* involved a student group (WAP) formally recognized by the University as eligible for funding. Here, the Christian Coalition was not student based nor recognized as otherwise eligible to use the St. Tammany school facilities. In the original Fifth Circuit decision, the Court acknowledged this was a "non-student use[]". 206 F.3d at 484. In *Rosenberger*, the University had concluded WAP was *not* a "religious organization" which would have disqualified it from funding. St. Tammany, on the other hand, concluded that Campbell's proposed meeting *was* a religious service, which as a substantive activity was specifically prohibited under their policy. In *Good News*, as in *Rosenberger*, the pertinent activity was directed at students already enrolled in the school. Even *Lamb's Chapel*'s film series, while geared to adults, focused on child-rearing and parenting. The Fifth Circuit noted that over 75% of the all the uses of the St. Tammany schools under the policy had been for activities directly related to students. 231 F.3d at 941. Campbell has not argued that her Christian Coalition meeting constitutes education of children and youth. On the contrary, she described the Christian Coalition as a "grass roots *voter* education organization." (Rec. Doc. 79, Ex. 28 at 14 (emphasis added). The organization is focused on those who are old enough to vote, hence mostly beyond the age of even high school students. Finally, in *Good News* the policy prohibition was against "religious purposes." On direct appeal in *Campbell*, the Fifth Circuit noted this language was broader than the exclusion in the St. Tammany policy (at the time of direct appeal, the Supreme Court had granted certiorari in *Good News* but had not yet reversed the lower court decision). "There is a powerful argument that such a prohibition against the use of facilities for a religious *purpose* is facially invalid as inevitably presenting viewpoint discrimination." 231 F.3d at 944. St. Tammany's policy terms are more narrow -- only "religious services" and "religious instruction" are excluded.

itself characterize the challenged activity as a religious *service* or religious *worship*. The activities in those cases were found by the Supreme Court to be -- at most -- ardent religious proselytizing concerning ethical and moral character development, but not religious services in and of themselves.

The Court has, however, offered guidance in the cryptic *in dicta* fourth footnote in *Good News*. In that footnote, the majority rejected an argument that the lower court had excluded the Good News Club's meeting because it was "religious worship." After distancing itself from any such factual finding, the Supreme Court added, "[i]n any event, we conclude that the Club's activities do not constitute *mere* religious worship, divorced from any teaching of moral values." 121 S.Ct. at 2102, n. 4 (emphasis added).

Even assuming "*mere* religious worship" could be precluded, Campbell's proposed meeting was not so restrictive. Campbell proposed what *primarily* was a religious service -- a "prayer meeting," however, it was not *merely* a religious service. The proposed meeting included a discussion of family and political issues, from a legally protected religious viewpoint. As the Supreme Court found in *Good News,* just because a meeting is "quintessentially religious" does not mean it "cannot be characterized properly as the teaching of morals and character development." 121 S.Ct. at 2102. Likewise, simply because Campbell's proposed service was "quintessentially religious" does

not preclude it from being characterized as a discussion of family and political issues. Here, the proposed meeting was not "mere religious worship," but included a component within the permissible scope of the limited forum.[13]

Judge Gibson concludes that a religious service is a subject matter that is legitimately excluded from the forum and that the inclusion of a discussion on secular topics during such a religious service does not bring the request "as a whole" within the ambit of the policy. 300 F.3d at 529. The rationale and language of *Good News* appears to be otherwise.

Justice Souter in his dissent in *Good News* argued that the result of the majority decision is that any public school open for civic matters necessarily will have to accommodate churches, synagogues and mosques.[14] It is difficult to imagine any religious service, no matter how traditional or nontraditional that does not include sermons, homilies or lessons directed at moral and ethical conduct or how one should live one's life.[15] It is likewise

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[13] *See also The Bronx Household of Faith v. Board of Education of the City of New York*, 331 F.3d 342, 354 (2d Cir. 2003)("[I]t cannot be said that the meetings of the Bronx Household of Faith constitute only religious worship, separate and apart from any teaching of moral values.").

[14] *See also The Bronx Household of Faith*, 226 F.Supp.2d 401 (S.D.N.Y. 2002)(recognizing same dilemma).

[15] By effectively including religious worship as protected viewpoint speech, the Supreme Court does avoid the admittedly difficult problems of distinguishing worship from other types of

(continued...)

difficult to imagine any after school policy that could somehow limit its scope to preclude such basic topics for discussion without creating virtually no forum at all.

The Second Circuit recently grappled with these issues, having had a companion case to *Campbell* remanded to their court for reconsideration in light of *Good News*. *See Bronx Household of Faith v. Board of Education of the City of New York*, 331 F.3d 342 (2d Cir. 2003). In that case, even more obviously than here, the proposed activity was a religious service. The limited forum policy for the public schools was identical to that of St. Tammany. Bronx Household of Faith was a church that requested weekly use of a school on Sunday mornings for their regular worship services. The services included prayer, hymns, Bible preaching and teaching, communion and social fellowship. The Second Circuit concluded that even though the services were "quintessentially religious", they were not "only religious worship, separate and apart from any teaching of moral values." *Bronx Household of Faith*, 331 F.3d at 354. Hence, the school was required to provide the Bronx Household of Faith a forum.

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[15](...continued)
religious speech and the propriety of a government agent making those distinctions. *See e.g., Widmar v. Vincent*, 454 U.S. 263, 270, n. 6, 102 S.Ct. 269, 274, 70 L.Ed.2d 440 (1981); *see also Good News*, 533 U.S. at 126-128 (Scalia, J., concurring); *Bronx Household of Faith*, 127 F.3d 207, 221-222 (Cabranes, J., concurring in part and dissenting in part).

The Court comes to the same conclusion. Campbell's proposed prayer meeting was "quintessentially religious," but it was not only worship; it included a discussion of family and political issues. St. Tammany may not preclude it from its forum.

Having come to this conclusion, the Court, nonetheless, shares the caution and concern expressed by the Second Circuit:

> The American experiment has flourished largely free of the religious strife that has stricken other societies because church and state have respected each other's autonomy. Religion and government thrive because each, conscious of the corrosive perils of intrusive entanglements, exercises restraint in making claims on the other. The beneficiaries are a diverse populace that enjoys religious liberty in a nation that honors the sanctity of that freedom.

Id., 331 F.3d at 355.

IV. Conclusion

In light of *Good News*, St. Tammany's policy and its application constitutes unconstitutional viewpoint discrimination. Accordingly, **IT IS ORDERED** that Sally Campbell's and the Louisiana Christian Coalition's motion for summary judgment is hereby **GRANTED** and St. Tammany Parish School Board's motion is hereby **DENIED**.

New Orleans, Louisiana, this 29th of July, 2003.

HELEN G. BERRIGAN
UNITED STATES DISTRICT JUDGE