IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Sally Campbell, et al.,	)	
	)	
Plaintiffs,	)	
	)	C.A. No. 98-2605
v.	)	
	)	SECTION "C"
St. Tammany Parish School Board,	)	
et al.,	)	MAGISTRATE "1"
Defendants.	)	
	)	

BRIEF OF THE UNITED STATES AS AMICUS CURIAE IN OPPOSITION TO THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON REMAND

As made clear in their respective memoranda in support of summary judgment, the parties agree that (1) defendants have created a limited public forum open to civic and recreational meetings and entertainment and other uses pertaining to the welfare of the community, Pls' Mem. at 8; Defs' Mem. at 17-21; (2) defendants cannot bar groups from the forum on the basis of viewpoint or adopt restrictions having no reasonable relationship to the forum's purpose, Pls' Mem. at 8; Defs' Mem. at 22-23; and (3) the First Amendment prohibits discrimination against speech from a religious viewpoint, Pls' Mem. at 7-8; Defs' Mem. at 10-11.

The parties, however, differ on three fundamental issues. First, defendants insist that because plaintiffs have admitted that their contemplated use of the forum would include "worship[ing] the Lord in prayer and music," their proposed use was "religious services or religious instruction" forbidden in the forum. Defs' Mem. at 13-14. But, as plaintiffs argue, the Supreme Court has made clear that in evaluating a forum regulator's denial of access, a court must look at the substance of the proposed activities, not simply the label used to describe them. Here, the record shows that the various activities that plaintiffs propose for their meeting – singing patriotic and spiritual music, instruction on various religious and secular issues, discussion, refreshments and fellowship – though all done from a religious viewpoint, fall well within the scope of defendants' broad facility use policy for "civic and recreational meetings and entertainments and other uses pertaining to the welfare of the community." Exhibit 1.[1] Indeed, these activities are similar in nature to the myriad other community uses for which access has been permitted, ranging from meetings of anti-alcohol and drug groups to Boy Scout meetings to a pre-school Christmas Program and a youth motivational seminar. See Pls' Mem. at 3-4.

Second, even a "quintessentially religious" use may not be barred if consistent with activities permitted in the forum. The Supreme Court has found that there is no practical or constitutionally permissible distinction between "worship" and other religious speech. Attempting to draw such a boundary would impermissibly entangle government actors – and the courts – in religious matters.

[1]All citations to "Exhibit __" are to the exhibits submitted by plaintiffs with their Motion for Summary Judgment on Remand.

Finally, forum restrictions must bear a reasonable relationship to the forum's purpose. Here, defendants have determined that use of school facilities by outside groups enhances community welfare when they gather for various civic meetings, recreational activities and entertainment. Barring plaintiffs from school facilities simply because the proposed activities have a religious dimension is unreasonable in light of the purposes of the forum.

1. Plaintiffs' Requested Uses Are Similar to those of Others Admitted to the Forum

Plaintiffs seek to use Mandeville Elementary School for a "prayer meeting." Exhibit 10. Campbell's initial letter described the proposed meeting's components: "worship[ing] the Lord in prayer and music[,] . . . discuss[ing] family and political issues, pray[ing] about those issues, and seek[ing] to engage in religious and Biblical instruction with regard to those issues." Id. Relying on Judge Gibson's concurring opinion on remand, defendants argue that the phrases "prayer meeting" and "worship" in Campbell's written request obviate "hav[ing] to engage in any interpretation of the use to which plaintiff intended to put the facilities." Defs' Mem. at 17. But the Supreme Court requires precisely that sort of interpretation: "what matters is the substance of the [proposed] activities," not simply the label attached. Good News Club v. Milford Cent. Sch., 533 U.S. 98, 112 n.4 (2001).

The undisputed facts show that plaintiffs' proposed meeting cannot simply be cabined into a category of "religious services and instruction" and thereby excluded. Rather, the meeting includes the types of activities plainly permitted in the forum – only from a religious perspective. A typical LCC meeting includes civic activities – reciting the Pledge of Allegiance and discussing public issues such as voter education and training, family issues and other issues of interest to community members; entertainment-related activities – singing Gospel and patriotic

music; and recreation – serving refreshments and engaging in fellowship. Id. at 22:24-23:8. Furthermore, plaintiffs' requested meeting would address a wide range of topics such as school choice, abortion, tax policy, and whether hate crime and anti-discrimination laws should include sexual orientation as a protected class. Id. at 38:25-40:11. Thus, the substance of the proposed meeting is a group of individuals coming together and doing the various things that others are allowed to do – engaging in discussion, exhortation, singing, fellowship, and advocacy – except that they do these things from a religious perspective. Defendants cannot wish away the fact that plaintiffs would be engaging in activities that are permitted when done from a non-religious perspective by simply calling their activities "religious services or instruction." See U.S. Br. at 10-15.

Defendants argue that even if the proposed meeting includes activities permitted under the facility use policy, these activities "do[] not bring the request as a whole within the subject matter of the limited public forum." Defs' Mem. at 15 (quoting Campbell v. St. Tammany Parish Sch. Bd., 300 F.3d 526, 529 (5th Cir. 2002) (Gibson, J., concurring)). The defendant school district in the Bronx Household district court case made essentially the same argument: that a proposed meeting "should not be analyzed according to [its] component parts." Bronx Household of Faith v. Board of Educ., 226 F. Supp.2d 401, 416 (S.D.N.Y. 2002). The district court there disagreed, finding that the Supreme Court in Good News had rejected such reasoning as faulty:

> 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.

Id. at 407 (quoting Good News, 533 U.S. at 111). Instead, the district court held, access must be granted when "the activities are not limited to 'mere religious worship' but include activities . . . that are consistent with the defined purposes of the limited public forum." Id. at 414-15. This principle is demonstrated by the forum uses at issue in Good News and Bronx Household, which included religious worship and instruction and which the courts found were improperly excluded from the limited public forum created by the defendants. See Good News, 533 U.S. at 103-04 (facility request to conduct a Bible lesson and memorize scripture, which the school district denied as "the equivalent of religious instruction"); Bronx Household, 226 F. Supp.2d at 403 (facility request for "Sunday morning meetings that include religious worship").

Defendants' viewpoint discrimination is made manifest in their own description of what is permitted and what is forbidden. Defendants state that school premises may be used for "the discussion of religious materials in a secular setting and the discussion of secular matters from a religious viewpoint." Defs' Mem. at 25.[2] But religious matters may not be discussed from a religious viewpoint: to defendants, this is "religious worship" or "religious instruction." Id. This is plainly viewpoint discrimination. Defendants cannot escape this conclusion by claiming, as they do, that they do not just restrict religious "worship" from one religious viewpoint but "restrict[ ] religious worship from any viewpoint." Id. The Supreme Court in Rosenberger v.

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[2]Defendants state at various places in their brief that only "non-expressive" activities are permitted in their forum. See Defs' Mem. at 17, 21. This is a frivolous assertion, given that meetings of the anti-drug group DARE, the Young Blood International Motivational Seminar, a "Save St. Tammany" meeting, and numerous other plainly expressive activities have been permitted. See Pls' Mem. at 4. In any event, defendants' statement is contradicted by other statements they make, such as the one quoted here.

Rectors & Visitors of Univ. of Va., 515 U.S. 819 (1995), specifically rejected the argument that eliminating all religious viewpoints could be deemed viewpoint-neutral:

> The dissent's assertion that no viewpoint discrimination occurs because the Guidelines discriminate against an entire class of viewpoints reflects an insupportable assumption that all debate is bipolar and that antireligious speech is the only response to religious speech. Our understanding of the complex and multifaceted nature of public discourse has not embraced such a contrived description of the marketplace of ideas. If the topic of debate is, for example, racism, then exclusion of several views on that problem is just as offensive to the First Amendment as exclusion of only one. It is as objectionable to exclude both a theistic and an atheistic perspective on the debate as it is to exclude one, the other, or yet another political, economic, or social viewpoint.

Id. at 831; see Lamb's Chapel v. Center Moriches Union Free Sch. Dist., 508 U.S. 384, 393 (1993)("That all religions and all uses for religious purposes are treated alike under [the school district's use policy], however, does not answer the critical question whether it discriminates on the basis of viewpoint to permit school property to be used for the presentation of all views about family issues and child rearing except those dealing with the subject matter from a religious standpoint.").

In sum, instruction is permitted by defendants, but religious instruction is not. Likewise exhortation, singing, persuasion and advocacy are permitted, but doing these things from a religious perspective, what defendants would label "worship," is not. This is viewpoint discrimination under Good News Club, Rosenberger and Lamb's Chapel.

2. Even a Focus Solely on the Worship Component of Plaintiffs' Use Request Does Not Render it Constitutionally Excludable from a Forum of this Kind

Defendants ask this court to ignore the component parts of plaintiffs' proposed prayer meeting and instead simply label the proposed use as excludable "religious worship or religious instruction." Defs' Mem. at 14. As set forth above, looking at the label and not the component parts cannot be squared with Supreme Court precedent. But even if one were to accept defendants' characterization of plaintiffs' meeting as nothing more than "religious worship," the Supreme Court made clear in Good News Club that expressive activities that are "quintessentially religious" may nonetheless be characterized as expressions of viewpoints on various subjects. See Good News, 533 U.S. at 111 ("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"). As the United States explained in detail in its main brief, U.S. Br. at 17-19, even the most formal worship service expresses viewpoints to participants on a myriad of subjects. In light of this, a limited public forum that is defined so broadly so as to include most any community or civic activity that a group would be interested in pursuing, like the forum at issue in this case, cannot exclude worship without engaging in viewpoint discrimination.

The Supreme Court has rejected as having no "intelligible content" a distinction between "the kinds of religious speech explicitly protected by our cases . . . and 'worship.'" Widmar v. Vincent, 454 U.S. 263, 270 n.7. In Widmar, the Court captured the nub of the problem:

> [t]here is no indication when 'singing hymns, reading scripture, and teaching biblical principles,' cease to be 'singing, teaching and reading' – all apparently forms of 'speech' despite their religious subject matter – and become unprotected 'worship.'

Id. That difficulty is readily apparent in this case because, as Superintendent Monteleone testified, "worship means different things to different people." Monteleone Dep. at 35:7-8 (Exhibit 9). Campbell describes "worship" as "going to church on Sunday and . . . participat[ing] in praise and . . . a sermon." Campbell Dep. at 37:21-38:9 (Exhibit 28). Monteleone believes that "worship" involves "prayer, Bible readings, [and] interpretations." Monteleone Dep. at 36:5-15. And Defendant Brady, the official charged with implementing the school district's facility use policy, defines worship from his perspective as a member of the Baptist denomination: "it's prayer and singing, preaching, . . . and spending that time with the Lord for a very particular purpose." Brady Dep. at 38:21-39:15 (Exhibit 3). See Bronx Household, 226 F. Supp.2d at 423 (finding it "impossible to distinguish between, on one hand, activities proposed by the plaintiffs that . . . discuss[] religious material or material which contains a religious viewpoint and activities contributing to the welfare of the community and, on the other hand, an activity different in kind called worship").

Given the inherent difficulty in distinguishing between religious worship and speech from a religious viewpoint, regulating a forum on that basis would impermissibly entangle government actors and courts in religious matters. See U.S. Br. at 20-21. As in Bronx Household, which also involved a facility use policy permitting speech from a religious viewpoint but prohibiting religious worship, St. Tammany school officials "would be required to dissect and categorize the substance of plaintiffs' speech during their . . . meeting and determine, inter alia, when 'singing hymns, reading scripture and teaching biblical principles,' cease to be 'singing, teaching and reading' . . . and become unprotected 'worship.'" Bronx Household, 226 F. Supp.2d at 424. Such regulation would result in an ever-shifting line between worship and other religious speech

based on the regulator's particular religious perspective and Superintendent Monteleone's indisputable observation that "worship means different things to different people." Consequently, "to permit . . . the School District to evaluate private speech to discern [its] underlying assumptions respecting religious theory and belief and to make a determination whether that speech is a discussion of religious material or worship is a denial of the right to free speech." Bronx Household, 226 F. Supp.2d at 425 (internal quotation marks omitted).

3. Defendants Have No Reasonable Basis to Deny Plaintiffs Access to the Forum.

As set forth above, and in the United States' main brief, defendants have engaged in viewpoint discrimination in violation of the Free Speech Clause. Defendants' conduct is unconstitutional on other grounds as well. Their exclusion of plaintiffs from using school facilities was unreasonable and therefore an unconstitutional denial of access to a limited public forum. Restrictions on access to a limited public forum must be "'reasonable in light of the purpose served by the forum.'" Rosenberger, 515 U.S. at 829 (quoting Cornelius v. NAACP Legal Defense & Educational Fund, Inc., 473 U.S. 788, 804-806 (1985)).

Here, defendants have determined that their facilities can play an important role in building community and civic engagement in St. Tammany Parish. To this end, defendants have made their facilities available to myriad social and civic groups and purposes, including the Office of Community Services (for foster parent meetings); scouting troops (for meetings); Betty Leblanc (for a rape defense program); the Office of Wildlife & Fisheries (for hunter safety classes); Midway Church of Christ (for a black history program); the American Association of University Women (for "sister-to-sister" conferences); St. Anselm Catholic Church (for Catholic Youth Organization meetings); the local chamber of commerce (for Internet conferences);

Pineland Homeowners (for a neighborhood watch meeting); and the Board itself (for a candidate forum). See Approved Facility Uses Pursuant to School Facilities Policy (Exhibit 2). Measured against the community welfare standard adopted by defendants, there is no reasonable basis for excluding plaintiffs.

While not expressly raising the Establishment Clause to justify plaintiffs' exclusion, defendants invoke the language of such a defense.[3] Specifically, they argue that it is in the "interests of school-aged children to adopt a policy denying a religious political organization to use school premises for a prayer meeting that is essentially a religious worship service." Defs' Mem. at 24. The short answer to defendants' concern is that the interests of school-aged children are no more threatened by a private religious group holding a meeting in the evening that is open to the public than by the many civic, entertainment and recreational meetings that various other private groups currently are permitted to hold at defendants' school facilities. As courts have repeatedly held, the best protection for students is more, not less, speech. It is

> [f]ar better to teach [students] about the first amendment, about the difference between private and public action, about why we tolerate divergent views . . . The school's proper response is to educate the audience rather than squelch the speaker. Schools may explain that they do not endorse speech by permitting it. If pupils do not comprehend so simple a lesson, then one wonders whether the [] schools can teach anything at all. Free speech, free exercise, and the ban on establishment are quite compatible when the government remains neutral and educates the public about the reasons.

Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118, 9 F.3d 1295, 1299-1300 (7th Cir. 1993).

CONCLUSION

[3]Defendants do not expressly invoke the Establishment Clause for good reason. The Supreme Court has consistently held that a policy of equal, content-neutral access does not violate the Establishment Clause. See, e.g., Good News, 533 U.S. at 113; Lamb's Chapel, 508 U.S. at 395; Widmar, 454 U.S. at 272-73; see also Hills v. Scottsdale Unified Sch. Dist., 2003 WL 21197150, *8-*10 (9th Cir. May 22, 2003).

For the foregoing reasons, this Court should grant plaintiffs' motion for summary judgment.

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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2003, I served copies of the foregoing pleading to counsel of record by first class U.S. mail, postage prepaid.

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