

Supreme Court's Decision

Good News Club v. Milford Central School

June 11, 2001

Equal access—a brief synopsis

What was the Court's holding?

Milford Central School violated the *Good News Club*®'s rights under the Free Speech Clause of the First Amendment to the United States Constitution. Milford would not have violated the First Amendment's Establishment Clause (often referred to as "separation of church and state") if it had allowed the Club to meet.

What was the Court's reasoning underlying its Free Speech Clause determination?

It was already well-settled that the Free Speech Clause forbids government from treating speech differently based on its viewpoint. The Court held that Milford violated this rule. The Court concluded that the Scouts were focused on morals and character from a secular perspective. The Court concluded that the Club was addressing the same subject matter (morals and character), albeit from a religious perspective.

What was the Court's reasoning underlying its Establishment Clause determination?

First, equal treatment of religious speakers is not endorsement of religion. Neutrality is neutrality, not favoritism. Second, parents get to decide whether their kids attend Club meetings. To the extent children are confused about the school district's connection with the Club, that confusion is not constitutionally significant, because kids are not free to act on that confusion. Third, the concern about children's potential misperceptions cannot be considered in a vacuum. Although it is conceivable that some might draw an incorrect inference (favoritism) from equal treatment, it is necessary for the Court to consider the impact of a policy that discriminates and excludes the club. Kids would likely perceive a message of government *hostility* to religion. It is unlikely that they would understand that the discrimination is the product of nuanced and subtle constitutional law doctrines; instead they will infer hostility. Also, you can't justify an *actual violation* of constitutional rights by invoking speculate fears that some folks will get the wrong idea.

