



School District's Policy Barring Use of School for Worship Services Upheld by Court

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In a recent case, *Bronx Household of Faith v. Board of Education of the City of New York*, a church filed suit against the board of education of New York alleging that its refusal to permit a church to use school facilities for religious worship services violated the First Amendment. The board had adopted a policy which prohibited the use of school property for religious worship services or otherwise using a school as a house of worship.

The right to exercise free speech on government property depends on the kind of forum where the speech occurs. The Supreme Court has identified three kinds of forums: (1) the traditional public forum; (2) the designated public forum and (3) the limited public forum. The court noted that the school district was a limited public forum because it restricts access to certain speakers and subjects. As a limited public forum, the district is allowed to restrict speech only on the basis of reasonable, viewpoint neutral rules.

The court concluded that the school district's policy prohibiting "religious worship services" does not constitute viewpoint discrimination because the policy allows the expression of all points of view. The exclusion applied only to the conduct of a specific type of activity, namely the conduct of worship services, and not to the free expression of religious views associated with it.

The court next considered whether the exclusion was reasonable in light of the purpose served by the forum. By excluding religious worship services, the board sought to avoid violating the Establishment Clause of the First Amendment, which prohibits the state endorsement of religion and excessive entanglement between state and religion.

The board had a strong basis to believe that allowing religious worship services in schools would give rise to a sufficient appearance of endorsement to constitute a violation of the Establishment Clause. When worship services are performed in a place, the nature of the site changes as the school then becomes the place for the performance of the religious rites and religion might then appear to be established at the school. Further, the board's concern that it would be subsidizing churches if it opened schools for religious worship was reasonable given the fact that the board did not charge rent for use of its space nor required reimbursement of utility charges.

Also, the board could reasonably worry that the use of schools for worship services could create a public perception of endorsement of religion. The fact that the church would principally use the school facilities on Sundays also results in an unintended bias in favor of Christian religions. Finally, the church's religious services were not open to all members of the public.

Thus, the court concluded that the board had a strong basis to believe that allowing the conduct of religious worship services would give rise to the appearance of the endorsement of religion. Since the policy was viewpoint neutral and reasonable in light of the board's concern of the perception of the endorsement of religion, the court upheld the board's policy and rejected the church's argument that the policy violated the First Amendment.

This case demonstrates that board policies restricting the use of schools by churches may survive First Amendment challenges where the policy does not restrict the expression of a particular point of view but instead restricts particular conduct, such as worship services.



More Information

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