

NO HOME FOR HOMESCHOOLING AT THE REC CENTER

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In the case of *Goulart v. Meadows*, No. 02-1962 (4<sup>th</sup> Cir. 2003), two homeschooling mothers sued the county board of commissioners and the chief of the county parks and recreation department after their applications were denied “to use space at the Calvert County Northeast Community Center in Chesapeake Beach, Maryland, for meetings of a geography club and a fiber arts club.” The full text of the thirty-two page opinion in *Goulart v. Meadows* is available on the “Fourth Circuit Opinions” webpage at:  
<http://pacer.ca4.uscourts.gov/opinion.pdf/021962.P.pdf>

FACTS OF THE CASE

Calvert County operated four community centers under the parks and recreation division. County residents could apply to use the centers for various purposes consistent with the County’s written Community Center Use Policy (Use Policy). In providing County citizens “a place to participate in activities which benefit the community as a whole,” the Use Policy stated that the community centers were available for: (a) recreational uses (birthday parties, baby showers, receptions); (b) meetings of community organizations; and (c) non-profit fundraising events. In pertinent part, the Use Policy prohibited business or for-profit activities.

After litigation was commenced in this case, Calvert County modified its written Use Policy to include the following "Prohibited Use":

(d) Instructional, educational and related enrichment activities of the type usually offered in the public schools to children of school age, including activities in English language arts (such as reading, writing, and spelling), mathematics, science, social studies, art, music, health and physical education are prohibited, it being intended that the community centers not be used for such activities associated with meeting the State requirements for elementary or secondary education.

This prohibition did not apply to “activities conducted by any agency of the Calvert County Government, the Calvert County Public Library or the Calvert County Board of Education.”

Calvert County parks and recreation offered a number of arts and crafts classes as well as math tutoring and cooking courses at the community centers. In addition to boys/girls club activities and scout meeting, the County also permitted private individuals to teach courses and offer instruction in the community centers, including classes teaching English to non-English speaking people, and reading lessons by the literacy council.

The County's policy prohibiting private educational activities intended to meet state educational requirements first began in late 1994 as a result of an application for community center use by a for profit private school. The chief of the parks and recreation department,

defendant Paul Meadows, recommended that "the proposed use be denied on the basis that the purpose of the center was to provide recreational opportunities to the community not to function as a school." The County Board agreed and adopted the above cited "Prohibited Use" policy at its September 1994 meeting.

Following the Board's refusal to permit use the community centers for private educational instruction, individual homeschooling parents began to apply for use of the community centers for instructional classes for homeschooled children. After consulting with the county administrator, Meadows began interpreting the Board's September '94 decision as precedent for rejecting *any* application which sought to use the space for private educational activities for state educational credit. In a memo to county recreation coordinators, Meadows stated that "home schooling groups are not permitted to use the community centers," and clarified that the exclusion applied to all "non-Board of Education affiliated/sponsored schools."

Homeschool groups and private schools were permitted to use Calvert County's community centers for any purpose unrelated to fulfilling state educational requirements, such as parties, dinners, memberships meeting, and fundraising events. In addition, private, independent, and homeschooled children were permitted to participate in the activities offered at the Calvert County community centers. Some private school, independent school, and homeschooled children were able to claim school credit for their participation in these activities.

The plaintiffs in this case, county residents Lydia Goulart and Kyle Travers were two homeschooling mothers who independently filed applications to use space at the Northeast Community Center. In so doing, plaintiffs conceded that they "intended to use the space in the Northeast Community Center to engage in private educational activities that would fulfill state education requirements."

In both instances, the applications were denied based upon the above described county policy against private educational classes for state educational credit in the community centers. Before commencing this lawsuit, counsel for the plaintiffs sent a letter to the Board asserting that the exclusion of the Goulart's and Travers's proposed uses was unconstitutional. In response, the Board explained that:

The policy to which you object applies to all educational organizations, whether they are home schoolers, parochial schools or independent private schools. Community centers are designed and built for the recreational needs of the community at large. We do not want to devote space in the centers for educational activities associated with meeting the State requirements for elementary or secondary education. We are meeting those needs through our funding of the Calvert County Board of Education. We believe that allowing the centers to be used for formal education would amount to duplication of services.

In January 2000, the plaintiffs filed suit in federal district court, alleging that Meadows and the Board violated their right to free speech under the First Amendment. The district court granted summary judgment to the defendants. In the opinion of the federal district court, "the plaintiffs

had not demonstrated how their proposed use of the community centers -teaching a geography or fiber arts class -- was expressive conduct within the meaning of the First Amendment.” Accordingly, the district court held that “the exclusion did not implicate the plaintiffs' right to free expression under the First Amendment.” Plaintiffs appealed.

### PROTECTED SPEECH?

On appeal, the plaintiffs contended that the district court had erred by excluding their proposed use from First Amendment protection. As cited by the appeals court, the First Amendment provides that "Congress shall make no law abridging the freedom of speech." This prohibition is made applicable to the States and local levels of government by the Fourteenth Amendment." In addressing plaintiff's First Amendment claim, the initial issue before the appeals court was whether plaintiffs were engaged in "protected speech."

Plaintiffs argued the proposed uses for the center -- teaching a geography class and a fiber arts class -- "involve the transmission of knowledge or ideas by way of the spoken or written word -- speech." The appeals court agreed, finding "the plaintiffs' proposed use of the community centers for instructing children on the topics of geography and fiber arts is a form of speech protected under the First Amendment." As the result, the appeals court held the county's "refusal to permit the plaintiffs' activities in its community centers is subject to First Amendment scrutiny."

As described by the appeals court, "[t]he extent to which the Government may limit free speech depends on whether the nature of the forum is public or nonpublic." Because the County had "intentionally made the community centers generally available to certain types of expressive activity," the appeals court characterized the community center as a "limited public forum."

[T]he designated [or limited] public forum, is property which the government has opened for expressive activity to the public, or some segment of the public. A designated public forum can only be created by "purposeful government action" in which "the government must intend to make the property 'generally available.'"

Once a limited public forum has been created, i.e., reserved for certain groups and certain topics, the appeals court noted that "entities of a 'similar character' to those allowed access may not be excluded."

### SIMILAR CHARACTER?

The issue before the appeals court was, therefore, whether "homeschoolers as a group are an entity of a 'similar character' to those groups permitted to use the community centers." Specifically, the issue was "whether formal private education is an activity of a "similar character" to those activities permitted by the Board."

In this particular instance, plaintiffs claimed that homeschooling fell "within the class to which the designated limited public forum is made generally available," i.e, public classes allowed to be conducted in the community center on a wide variety of topics. The County maintained, however, that "the plaintiffs' proposed use -- private education intended to meet state education requirements -- does not fall within the class of uses for which the community centers have been designated."

To the casual observer, the appeals court conceded that "classes intended for general community enrichment and classes intended to satisfy state education requirements might well appear completely indistinguishable." The appeals court recognized that "the similarity of the content of two proposed speech activities does not always mean that both must be treated the same." On the contrary, the appeals court acknowledged that "[t]he Supreme Court has repeatedly held that distinctions based on the status of the speaker can be a permissible way to limit the scope of the forum." Specifically, in a limited public forum, the government may be justified in reserving its forum for certain groups or for the discussion of certain topics." In so doing, however, the government's power to restrict speech in a limited public forum "must not discriminate against speech on the basis of viewpoint, and the restriction must be reasonable in light of the purpose served by the forum."

As applicable to this particular case, the appeals court, therefore, concluded the purpose of the limited forum, rather than the content of specific classes, was the relevant factor in determining "similarity between two proposed uses." Accordingly, the appeals court considered "whether the plaintiffs' proposed use is of a 'similar character' to the permitted uses... in light of the limited purpose of the community centers."

Applying these principles to the facts of the case, despite the similarities of the proposed instructional activities, the appeals court found "the permitted and prohibited activities are different in one important respect: the permitted activities are informal educational classes intended for community enrichment, whereas the prohibited activities are formal private educational classes intended to fulfill state educational requirements."

Having provided a venue for children to meet their state educational requirements, the County has decided not to allocate community center resources in pursuit of this same goal. That is to say, the County has decided that its community centers should not be used for private education intended to meet state educational requirements. This policy does not strike us as hostile to private education or homeschooling any more than the County's policy against for-profit activity in the community centers strikes us as hostile to private business.

Having found "a relevant distinction, in light of the forum's purpose, between those courses that the Board has permitted and the plaintiffs' formal private education courses," the appeals court concluded that the two uses are not of a "similar character." As a result, the appeals court found the Boards exclusion of the plaintiffs would not violate the right to free speech under the First Amendment if the exclusion was "reasonable in light of the purpose of the forum" and "viewpoint-neutral."

REASONABLE & VIEWPOINT NEUTRAL?

In determining whether the Board's exclusion policy was "reasonable in light of the purpose served by the forum," the appeals court noted that "[t]he government's decision to restrict access to a limited public forum need only be reasonable; it need not be the most reasonable or the only reasonable limitation." In the opinion of the appeals court, the County's implementation of its policy was "a reasonable, cost effective approach to enforcing the distinction between informal community enrichment and formal private education."

As a result, the appeals court concluded that "Calvert County's denial of the plaintiffs' applications to use the community centers for private educational classes intended to meet state educational requirements is reasonable in light of the nature and purpose of the community centers as places for recreation, community meetings, and informal community enrichment and education."

Having determined that the County's policy was reasonable, the appeals considered "whether the Board's exclusion of the plaintiffs is also viewpoint-neutral," i.e., the government can not restrict access to a forum based on its agreement or disagreement with the speaker's views. Plaintiffs contended that "the exclusion is viewpoint-based because it discriminates against the 'homeschooling' viewpoint." The appeals court rejected this argument.

In the opinion of the appeals court, there was no evidence "to suggest that the plaintiffs' proposed instruction contained a particular or unique viewpoint in the areas of geography or fiber arts, or in any other area that they might wish to offer classes." On the contrary, the appeals court found "[t]he plaintiffs would have been free to use the community centers to teach the proposed classes from whatever particular viewpoint they may have had, so long as the classes were not intended to meet state educational requirements." Further, the court found no indication that "Calvert County intended to discriminate against the 'homeschooling perspective' or that its policy demonstrates some widespread dislike or animus against homeschoolers."

As a result, the appeals court concluded that Calvert County had not violated the plaintiffs' right to free speech under the First Amendment. The appeals court, therefore, affirmed the judgment of the district court in favor of the defendants.