



**Five Talking Points**  
**for Opposing Discrimination**  
**Against Ex-gay Speakers in Public Schools**

By Candi Cushman

*Is your public school welcoming pro-gay speakers, but denying requests to let students hear the other side of the story? Here are five talking points—based on U.S. Supreme Court decisions—that you can use to fight that discrimination.*

**Talking Point #1: What about “separation of church and state”?**

**Argument:** Most ex-gays have religious beliefs or work with faith-based groups, so they can’t be allowed in public schools. That violates separation of church and state.

**Response:** Actually, the U.S. Supreme Court has said just the opposite: Public schools cannot ban speakers from addressing the very same topic others have been allowed to address—just because they happen to have a religious perspective. That is unconstitutional viewpoint discrimination.

**Quotes:**

From the U.S. Supreme Court’s opinion in *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.* (In 1993, the Court ruled against a school that gave access to community groups for presentations on children and family issues—but denied that same access to a church group who wanted to show the Focus on the Family film series *Turn Your Heart Toward Home.*)

- “ ... it discriminates on the basis of viewpoint by permitting school property to be used for the presentation of all views about family issues and childrearing except those dealing with the subject from a religious standpoint. Denial on this basis is plainly invalid ... the government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject.”

- “ ... its exhibition was denied solely because the film dealt with the subject from a religious standpoint. The principle that has emerged from our cases ‘is that the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others.’”

From the U.S. District Court for the District of Maryland Southern Division’s opinion in *Citizens for a Responsible Curriculum v. Montgomery County Public Schools*. (In 2005, the judge halted the use of a pro-gay curriculum because it blatantly attacked religious viewpoints and excluded opposing perspectives.)

- The “Curriculum presents only one view on the subject—that homosexuality is a natural and morally correct lifestyle—to the exclusion of other perspectives. ... As such, the Court is deeply concerned that the ... Curriculum violates the Plaintiffs’ free speech rights under the First Amendment.”

- “The wisdom of approving a curriculum which prohibits students from discussing one viewpoint of a controversial subject goes to the very essence of that First Amendment faith. The merit of Plaintiffs’ viewpoint—be it right, wrong, discriminatory, or just—is of no consequence. Rather the Court is concerned with ensuring that Plaintiffs’ free speech rights are not restricted merely because they voice an unpopular viewpoint.”

### **Talking Point #2: But what about the Establishment Clause?**

**Argument:** The Establishment Clause clearly prevents us from allowing religious, ex-gay speakers because that amounts to government endorsement of religion.

**Response:** Again, the courts have said just the opposite. The U.S. Supreme Court has stated, for instance, that the Establishment Clause requires

government to be neutral toward religion—neither endorsing it, nor showing hostility. In fact, the Court has said that denying equal access to religious speakers actually violates that neutrality principle.

### Quotes:

From the U.S. Supreme Court’s opinion in *Rosenberger v. Rector and Visitors of the University of Virginia*. (In 1995, the Court ruled against a public university that refused to give a faith-based student publication equal access to the Student Activities Fund.)

- “More than once have we rejected the position that the Establishment Clause even justifies, much less requires, a refusal to extend free speech rights to religious speakers who participate in broad-reaching government programs neutral in design.”
- “The viewpoint discrimination inherent in the University’s regulation. ... was a denial of the right of free speech and would risk fostering a pervasive bias or hostility to religion, which could undermine the very neutrality the Establishment Clause requires.”

From the U.S. Supreme Court’s opinion in *Good News Club v. Milford Central School*. (In 2001, the Court ruled against a New York public school that denied equal access to a children’s Bible Club.)

- “We conclude that Milford’s [the public school] restriction violates the Club’s free speech rights and that no Establishment Clause concern justifies that violation.”
- “Like the church in Lamb’s Chapel, the Club seeks to address a subject otherwise permitted under the rule, the teaching of morals and character, from a religious standpoint. ... Thus, the exclusion of Good News Club’s activities, like the exclusion of Lamb Chapel’s films, constitutes unconstitutional viewpoint discrimination.”
- “The Good News Club seeks nothing more than to be treated neutrally and given access to speak about the same topics as other groups. Because allowing the Club to speak on school grounds would ensure neutrality, not threaten it, Milford faces an uphill battle in arguing that the Establishment Clause compels it to exclude the Good News Club.”

### **Talking Point #3: Viewpoint discrimination is unconstitutional—even during school hours.**

**Argument:** But this is different than those cases you mentioned. Because we are talking about speakers coming into the schools during instructional hours to talk to students—not after-hour programs or clubs. So we have to have restrictions to protect the learning environment.

**Response:** You are correct that some regulations on speech in public schools are allowed, and even needed. However, the federal courts have also said that when you allow guest (or student) speakers during school hours, you have created what's called a "limited public forum." And viewpoint discrimination is not allowed in that forum.

#### **Quotes:**

From the United States Court of Appeals for the Fourth Circuit's opinion in *Child Evangelism Fellowship v. Montgomery County Public Schools*. (In 2006, the Court upheld a Bible club's right to be included in take-home announcements about extracurricular activities distributed by public school employees.)

- “Thus, while the Constitution imposes more severe restrictions on government regulation of private speech in a traditional public forum [like a park or sidewalk] ... than in a limited public forum or a nonpublic forum, even in the last two categories, government restrictions on private speech must be reasonable and viewpoint neutral.”
- “Moreover, viewpoint neutrality requires not just that a government refrain from explicit viewpoint discrimination, but also that it provide adequate safeguards to *protect* against the improper exclusion of viewpoints.”
- “For this reason, even in cases involving nonpublic or limited public forums, a policy ... that permits officials to deny access for any reason, or that does not provide sufficient criteria to prevent viewpoint discrimination, generally will not survive constitutional scrutiny.”

From the U.S. District Court Eastern District of Michigan Southern Division's opinion in *Elizabeth Hansen v. Ann Arbor Public Schools*. (In 2003, the Court ruled against a public school that refused to include conservative religious speakers on a pro-gay theology panel during the school's Diversity Week.)

- “A school's restrictions on speech reasonably related to legitimate pedagogical concerns must still be viewpoint-neutral.”

#### **Talking Point #4: Fear of controversy does not justify censorship**

**Argument:** But inviting a speaker who says that homosexuality is bad could cause distracting controversy in our school, damage our diversity message, and create an overall unsafe environment for gay students.

**Response:** First of all, it is not intellectually honest, or even logical, to claim to protect diversity by censoring unpopular viewpoints. Furthermore, the federal courts have said that public schools cannot justify censorship based on vague fears of disorder—they have to actually show evidence that disruption will occur.

#### **Quotes:**

From the U.S. Supreme Court's opinion in *Tinker v. Des Moines Independent Community School District*. (In this famous 1969 ruling, the Court upheld students' rights to wear armbands protesting war—even though the school officials claimed it would disrupt the educational environment.)

- “...in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.”

- “In our system, state-operated schools may not be enclaves of totalitarianism ... [and] students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved.”

From the U.S. District Court's *Elizabeth Hansen v. Ann Arbor Public Schools*. (The Court ruled against a public school that refused to include

conservative religious speakers on a pro-gay theology panel during the school's Diversity Week.)

- "... the notion of sponsorship of one viewpoint to the exclusion of another hardly seems to further the school's purported objective of 'celebrating diversity.'"
- "It is not about intolerance towards homosexuality or the appropriateness, religiously or otherwise, of different lifestyles. The case, is however, about tolerance of different, perhaps 'politically incorrect,' viewpoints in the public schools."
- "That Defendants can say with apparent sincerity that they were advancing the goal of promoting 'acceptance and tolerance for minority points of view' by their demonstrated intolerance for a viewpoint that was not consistent with their own is hardly worthy of serious comment."
- "... Defendants fail to show why gays would be threatened or be made less 'safe' by allowing the expression of an opposing viewpoint."

#### **Talking Point #5: But don't national medical associations oppose what ex-gays are promoting?**

**Argument:** It's downright irresponsible—and even harmful to students—to allow speakers to promote therapy to change gays that's opposed by every national medical association.

**Response:** Actually, none of the professional medical or mental health associations have banned—or declared unethical—therapies aimed at helping clients who desire to change their sexual orientation. But you're probably referring to the fact that the American Psychiatric Association [APA] removed homosexuality from its list of disorders in 1973. Still, that's a far cry from completely banning therapy from those who desire it. And it by no means represents the opinion of all the nation's medical and counseling professionals.

#### **Quotes:**

- "It is fallacious to conclude from this vote [the APA's vote to remove homosexuality from its disorders list] that the majority of psychiatrists in the

United States were or are now in favor of the action, for only 25% of those eligible to vote (out of more than 25,000 psychiatrists) sent in their ballots." *Charles Socarides, M.D., a Life Fellow of the American Psychiatric Association and Clinical Professor of Psychiatry at Albert Einstein College of Medicine in New York City, writing in a memo regarding a poll of medical and mental health professionals' opinions.*

- *Ronald Bayer, a Columbia University psychiatrist and a Fellow of the Hastings Center in New York, describing the political pressures behind the APA's vote to remove homosexuality from its disorder list in his book Homosexuality and American Psychiatry: The Politics of Diagnosis: "The entire process ... seemed to violate the most basic expectations about how questions of science should be resolved. Instead of being engaged in a sober consideration of data, psychiatrists were swept up in a political controversy. ... The result was not a conclusion based on an approximation of the scientific truth as dictated by reason, but was instead an action demanded by the ideological temper of the times."*

- *"I'm convinced from people I have interviewed, that for many of them, they have made substantial changes toward becoming heterosexual. . . . I came to this study skeptical. I now believe that, for many, these changes can be sustained."* *Dr. Robert Spitzer, a Columbia University psychiatrist and researcher, commenting on his own research during a 2000 interview with Dr. Laura Schlessinger. Spitzer was one of the key players in the APA's 1973 decision to remove homosexuality from its list of disorders.*

- *"In 1970, the Kinsey Institute reported that 84 percent of the homosexuals they studied had shifted their sexual orientation at least once; 32 percent of them reported a second shift, and 13 percent reported five changes, during their lifetime, in their sexual orientation!" Joe Dallas, founder of Genesis Counseling and author of five books on homosexuality.*

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