

School Boards Need Constitutional Speech Policies for Students
Theresa Lynn Sidebotham
Telios Law PLLC

Sometimes when school boards worry about endorsing religion, they go too far the other way. This seems to have happened when fourth-grade J.G. was not allowed to hand out his Easter Egg Hunt invitations. A Florida federal court granted a preliminary injunction in favor of his student speech in *Gilio v. School Board of Hillsborough County* on October 5, 2012. It reasoned that J.G. was likely to win his arguments that the school had violated his constitutional rights.

In March 2012, J.G. asked to hand out his Easter Egg Hunt invitations for an event sponsored by his church, similar to the way students were allowed to hand out birthday party invitations. His invitations referred to “the true meaning of Easter.” The principal would not let J.G. hand out his flier because it related to a religious event. She believed it contained a proselytizing message. Her decision followed Board policies.

The lawsuit, based on the U.S. Constitution and the Florida Religious Freedom Restoration Act, argued that the Board policies unconstitutionally restricted student speech and discriminated on the basis of content and viewpoint. One Board policy stated that fliers promoting activities sponsored by religious organizations could not contain a proselytizing message. The other stated that materials that tried to establish the supremacy of a particular religious point of view could be prohibited. The two policies were interrelated.

The court concluded that J.G.’s invitations were not school-sponsored speech because they were not connected to any curricular activity. School-sponsored speech can be more restricted, but personal student speech can only be limited when it causes “material and substantial interference with schoolwork or discipline.”

The court also concluded that the Board policies impermissibly targeted speech from a religious viewpoint. For instance, the policy defined “proselytizing” only in relation to religion (not for other teams or groups).

Because of that, the court imposed a preliminary injunction against enforcing the Board policies.

The lesson for school boards is that they shouldn’t go so far in the direction of avoiding school-sponsored religious speech that they take away students’ First Amendment freedom of speech and expression.