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“Being Gay in Lubbock:” The Equal Access Act in *Caudillo*

Sarah Orman*

I. INTRODUCTION

The Equal Access Act (“EAA”) prohibits any secondary school that receives federal funding and opens its doors to extracurricular clubs from discriminating among clubs on the basis of viewpoint.¹ Passed in 1984, the EAA was intended by its supporters to end discrimination against religious speech by school authorities and to protect the rights of high school students to hold religious-oriented meetings on campus.² In a twist unintended by its authors, the EAA also became a valuable legal tool for groups devoted to the rights of LGBT teens, such as the Gay/Straight Alliance (“GSA”). Recent district court decisions in Utah, Kentucky, and California have consistently upheld the right of gay student organizations to hold meetings on campus under the EAA.³

In March 2004, however, a federal district court in western Texas upheld the decision of authorities at Lubbock High School (“LHS”) to prevent the GSA from displaying fliers on campus or advertising its meetings on

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1. 20 U.S.C. §§ 4071-4074 (2000).

2. 130 CONG. REC. 23, 32316 (1984) (“The congressional intent in passing The Equal Access Act was to develop legislation that respects both the Establishment Clause and the Free Exercise and Free Speech Clauses of the First Amendment, so that secondary school students may organize meetings. While Congress recognized the constitutional prohibition against state-sponsored religious activities in public schools, it also believed that student-initiated speech, including religious speech, should not be excised from the school environment.”); *see also* Bd. of Educ. v. Mergens, 496 U.S. 226, 239 (1990) (interpreting legislative intent behind the EAA “to address perceived widespread discrimination against religious speech in public schools”).

3. Boyd County High Sch. Gay/Straight Alliance v. Bd. of Educ., 258 F. Supp. 2d 667 (E.D. Ky. 2003); Gay/Straight Alliance Network v. Visalia Sch. Dist., 262 F. Supp. 2d 1088 (E.D. Cal. 2001); E. High Sch. Prism Club v. Seidel, et al., 95 F. Supp. 2d 1239 (D. Utah 2000).

the school PA system, because the school district had lawfully prohibited their use of campus facilities under two subsections of the statute preserving the school district's authority to maintain discipline and protect the well-being of students and faculty.⁴ *Caudillo v. Lubbock Independent School District* marks the first time a court has entered judgment for a school district in opposition to a GSA after closely interpreting these subsections of the EAA.⁵

This Note will analyze *Caudillo* in light of the EAA's history and purpose. In Part II, I will focus on the EAA itself, including its legislative and case history. Part III contains a detailed description of the facts and legal issues in *Caudillo*. This Note concludes with an analysis of the opinion in which I argue that the court erred by: (1) interpreting the school district's denial of official recognition as the "least restrictive method" under the First Amendment of protecting students from sexually explicit material; and (2) refusing to apply the standard for "material and substantial disruption" from *Tinker* to all provisions of the EAA, thus permitting a school district to deny access based on speculative misconduct in violation of the EAA and the First Amendment. I will then argue that the court's interpretation of the EAA violated the First Amendment Establishment Clause to the extent that it rested on the implicit assumption, contrary to stated legislative intent, that religious speech is granted preference under the EAA.

II. THE EQUAL ACCESS ACT

"It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings."⁶

A. HISTORY OF THE EAA

In 1981, the United States Supreme Court held in *Widmar v. Vincent* that the University of Missouri at Kansas City, a state university which had created a limited open forum by opening its doors to extracurricular student groups, could not discriminate against student groups wishing to hold prayer meetings or religious discussions.⁷ The Court, however, declined to extend the same standard to secondary schools, reasoning that "university

4. *Caudillo, et al. v. Lubbock Indep. Sch. Dist. et al.*, 311 F. Supp. 2d 550, 572 (N.D. Tex. 2004).

5. The court in *Caudillo* noted that, although some of the cases cited by plaintiffs "raised the exception to the EAA for maintaining order and discipline, the cases lacked any meaningful discussion of the 'well-being exception' to the EAA." 311 F. Supp. 2d at 559, n.5.

6. 20 U.S.C. § 4071(a).

7. 454 U.S. 263, 277 (1981).

students are, of course, young adults. They are less impressionable than younger students and should be able to appreciate that the University’s policy is one of neutrality toward religion.”⁸ Two circuit court decisions subsequently refused to extend *Widmar* in a high school context.⁹ (Ironically, one of these cases was a Fifth Circuit opinion regarding LHS.) In response to these opinions, and with the backing of a Senate Report providing evidence of widespread “discrimination by school authorities against religious speech by students,”¹⁰ Congress enacted the EAA in order to overturn the circuit courts and guarantee the rights of religious high school groups to meet on campus.¹¹

Although its writers originally envisioned the EAA as specifically protecting religious activity, its protection was extended to clubs espousing political and philosophical as well as religious views.¹² Both proponents and critics of the bill were aware of the new legislation’s applicability in contexts beyond religion. When asked during floor debates whether an organization supporting gay rights would be protected, Senator Mark Hatfield (R, Oregon), a supporter of the EAA, did not deny its applicability and stated, “I am willing to take my risk on the expansion of freedom and rights rather than trying to nail them down so specifically.”¹³ Senator Howard Metzenbaum (D, Ohio), an opponent of the bill, stated, “I read this language [of the EAA] to say that . . . if some group advocating gay rights wanted to use the school, it would appear very clear that there would be no right to deny

8. *Id.* at 274 n.14; *see also* *Bender v. Williamsport Area Sch. Dist.*, 741 F.2d 538, 552 (3d Cir. 1984) (reasoning that high school students are less mature and more impressionable than university students, and thus “the possible perception by adolescent students that government is communicating a message of endorsement of religion if it permitted a religious group to meet would be vastly different in a high school setting than the perception of such action by college students in a college setting”), *vacated*, 475 U.S. 534 (1986) (vacating on jurisdictional grounds without deciding the merits of the case).

9. *Lubbock Civil Liberties Union v. Lubbock Indep. Sch. Dist.*, 669 F.2d 1038 (5th Cir. 1982) (holding that secondary school is not a “public forum” under *Widmar* even if allowing many student groups to meet after school), *cert. denied*, 459 U.S. 1155-1156 (1983); *Brandon v. Bd. of Educ. of Guilderland Cent. Sch. Dist.*, 635 F.2d 971 (2d Cir. 1980) (holding that secondary school is not a public forum where religious views can be freely aired), *cert. denied*, 454 U.S. 1123 (1981).

10. 130 CONG. REC. 14, 19212 (1984) (Statement of Sen. Orrin Hatch (R, Utah)).

11. *See* H.R. REP. NO. 98-710, at 3-6 (1984) (discussing *Lubbock Civil Liberties Union* and *Brandon*); S. REP. NO. 98-357, at 6-9, 11-14 (1984) (discussing same).

12. *See* Regina Grattan, Note, *It’s Not Just for Religion Anymore: Expanding the Protections of the Equal Access Act to Gay, Lesbian and Bisexual High School Students*, 67 GEO. WASH. L. REV. 577, 586 (1999) (“When members of Congress first introduced the Equal Access Act, the legislation specifically addressed the right of religious clubs to meet. When Congress finally enacted the law, however, Congress did not limit the Equal Access Act’s application to religious clubs.”); *see also* 130 CONG. REC. 19, 19221 (1984) (“Religious speech will not be singled out for separate treatment . . . Under the [Equal Access Act], a limited open forum is available to young people to meet and discuss religious, political, philosophical, and other ideas.”) (statement of Sen. Patrick Leahy (D, Vermont)).

13. 130 CONG. REC. at 19, 19223-27.

them those facilities.”¹⁴

Not long after the EAA was enacted, the bill's original sponsors presented a series of guidelines to Congress (“the Guidelines”), which were intended to aid school administrators in understanding the import of the new legislation.¹⁵ In drafting the Guidelines, a coalition of experts from leading groups in education, religion, and civil liberties came together to offer advice in how to implement equal access and answer specific questions that were likely to arise about the law's effect.¹⁶ Although legislators cautioned that the Guidelines were not law, they emphasized their significance, especially since the EAA in its final form had been enacted without the benefit of an accompanying congressional report.¹⁷ The Guidelines are particularly informative with regard to the EAA's application to politically controversial groups:

Q. What about groups which wish to advocate or discuss changes in existing law?

A. Students who wish to discuss controversial social and legal issues such as the rights of the unborn, drinking age, the draft and alternative lifestyles may not be barred on the basis of the content of their speech. However, the school must not sanction meetings in which unlawful conduct occurs.¹⁸

B. LANGUAGE OF THE EAA

The operative phrase in the EAA is “limited open forum,” which the statute defines as occurring whenever a public secondary school “grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time.”¹⁹ The phrase “noncurriculum related” has been judicially interpreted to mean “any student group that does not directly relate to the body of courses offered by the school.”²⁰ “Noninstructional time” includes any time set aside by the school for noncurricular activities before or after “actual classroom instruction.”²¹ If a public secondary school allows even one “noncurriculum related student group” to meet on campus during this time, the EAA is

14. *Id.* at 19226.

15. 130 CONG. REC. 23, 32315 (1984) (“These guidelines should prove to be of great value to school administrators, teachers, and students in interpreting and implementing the Equal Access Act.”) (statement of Rep. Don Bonker (D, Washington)).

16. *Id.* at 32318.

17. *Id.* at 32315 (“The guidelines are especially important because there is no congressional report for the final version of the legislation, which was added as an amendment to the Emergency Math/Science Education Act.”) (statement of Rep. Don Bonker (D, Washington)).

18. *Id.* at 32317.

19. 20 U.S.C. § 4071(b).

20. *Bd. of Educ. v. Mergens*, 496 U.S. 226, 239 (1990).

21. 20 U.S.C. § 4072(4).

triggered and the school may not deny other clubs equal access to school premises during this time based on the content of their speech.²²

Two subsections of the EAA have proved especially contentious. Subsection (c) provides that "schools shall be deemed to offer a fair opportunity to students who wish to conduct a meeting within its limited open forum" if the school ensures that the meetings are voluntary and student-initiated; are not sponsored by the school, the government, or its agents or employees; do not materially and substantially interfere with the orderly conduct of educational activities within the school; and are not directed, controlled, conducted, or regularly attended by "nonschool persons."²³ Subsection (f) states that the EAA does not purport to "limit the authority of the school, its agents or employees, to maintain order and discipline on school premises, to protect the well-being of students and faculty, and to assure that attendance of students at the meetings is voluntary."²⁴ Together, subsections (c) and (f) have given rise to three situations in which a school district may justifiably exclude a student group, despite application of the EAA. Courts have categorized these three situations as: (1) maintaining order and discipline; (2) protecting well-being of students and faculty; and (3) material and substantial interference with the orderly conduct of educational activities.

Much of the EAA's language derives from two Supreme Court cases significant to the legal evolution of First Amendment rights in an educational context.²⁵ In *Tinker v. Des Moines School District*, Justice Abe Fortas famously stated, "[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."²⁶ The Court went on to hold that school authorities could not lawfully prohibit students from wearing black armbands in protest of the Vietnam War because the students' expression was akin to "pure speech" protected under the First Amendment and posed no threat of disturbance to "the work of the schools or the rights of other students."²⁷

As a counterpoint to *Tinker*, *Hazelwood v. Kuhlmeier* established the rule that school officials may exercise editorial control over the content of students' curriculum-related, or "school sponsored," speech without violating the First Amendment.²⁸ *Hazelwood*, therefore, is often cited in the efforts of school administrators to exert control over political debate on cam-

22. *Mergens*, 496 U.S. at 240.

23. 20 U.S.C. § 4071(c)(1), (2), (4), (5).

24. 20 U.S.C. § 4071(f).

25. See, e.g., Kelly A. Sherrill, *The Equal Access Act and Gay/Straight Clubs*, INQUIRY AND ANALYSIS, May 2003, at 2 (discussing the source of EAA's distinction between "curriculum" and "noncurriculum related" speech); *Mergens*, 496 U.S. at 240-41 (citing *Tinker* and *Hazelwood* to explain legislative intent behind the EAA).

26. 393 U.S. 503, 506 (1969).

27. *Id.* at 508.

28. 484 U.S. 260 (1988).

pus. Meanwhile, *Tinker* sets the standard for students' right to free speech and expression to the extent that such activities do not cause material and substantial interference with school operations.

The statutory language of the EAA was taken directly from *Tinker* when it established that noncurricular meetings may be disallowed to the extent that they "materially and substantially interfere with the orderly conduct of educational activities within the school."²⁹ It is clear from *Tinker* that, in order to justify an abrogation of student expression by authorities, the material and substantial interference must come from the *expression itself* — in other words, disruptive objection from external actors in response to controversial student expression is not sufficient to justify school censorship.³⁰ The protesting students "caused discussion outside of the classrooms, but no interference with work and no disorder. . . . [Under such circumstances,] our Constitution does not permit officials of the State to deny their form of expression."³¹ *Tinker* emphasized further that censorship must not be based on "undifferentiated fear or apprehension of disturbance:"

In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained.³²

Evidence that *Tinker* formed the background to the EAA is abundant in the legislative history,³³ and the logic of the case has played a prominent role in many judicial interpretations of the EAA's requirements.³⁴

29. See *Mergens*, 496 U.S. at 241; *Boyd*, 258 F. Supp. 2d at 689; *Hsu v. Roslyn Union Free Sch. Dist.* No. 3, 85 F.3d 839, 868 n.28 (2d Cir. 1996).

30. 393 U.S. 503, 508.

31. *Id.* at 515.

32. *Id.* at 509 (citing *Burnside v. Byars*, 363 F.2d 744, 749).

33. See, e.g., 130 CONG. REC. 14, 19217 (1984) ("There was a very famous case of a girl who was the daughter of a Quaker minister who, during the Vietnam war, wore an arm-band to school to protest our Vietnam war policy. It was interpreted by school officials as a political statement and as such was not allowed in the classroom. . . . The court ruled that school administrators had no legal constitutional right to short-circuit a student's political rights.") (statement of Sen. Mark Hatfield (R, Oregon)); 130 CONG. REC. 23, 32317 (1984) (stating in the Guidelines that schools "must not allow a 'heckler's veto.'").

34. See, e.g., *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1141 (C.D. Cal. 2000) (discussing facts of *Tinker* and concluding that "material disruption" standard from *Tinker* is "very similar to the one adopted by Congress in the Equal Access Act.").

C. THE EAA AND RELIGIOUS STUDENT GROUPS

The EAA survived its first legal challenge in *Board of Education v. Mergens*.³⁵ Applying the three-part *Lemon* test, the Supreme Court held that the Establishment Clause was not violated because the EAA (1) was secular in nature in that its primary purpose was preventing discrimination against "religious and other types of speech;" (2) did not have the primary effect of advancing religion; and (3) did not foster an excessive entanglement between government and religion since the EAA ensured that meetings must be student initiated.³⁶ Moreover, students would not receive the impression that school officials were endorsing religion because membership in the extracurricular clubs was voluntary.³⁷ In deference to Congress, the Court departed from precedent and held that high school students were no less likely than college students to distinguish "[s]tate-initiated, school sponsored, or teacher-led religious speech on the one hand and student-initiated, student-led religious speech on the other."³⁸

In subsequent EAA cases, lower courts upheld the right of student-initiated religious clubs to meet on high school campuses.³⁹ Disputes often turned on whether the statute applied, based on the meaning of "limited open forum" or "noncurriculum related."⁴⁰ Application of the EAA to enhance religious freedom was consistent with the most specific objective of Congress in enacting the statute.⁴¹ However, courts recognized early on the potential significance of the EAA to other student groups. As Justice Kennedy observed, "one of the consequences of the statute, as we now interpret it, is that clubs of a most controversial character might have access to the student life of high schools that in the past have given official recognition only to clubs of a more conventional kind."⁴²

35. 496 U.S. 226 (1990).

36. *Id.* at 249-53 (citing *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971)).

37. *Id.* at 252.

38. *Id.* at 250-51.

39. *Prince v. Jacoby*, 303 F.3d 1074 (9th Cir. 2002); *Ceniceros v. Bd. of Trustees*, 106 F.3d 878 (9th Cir. 1997).

40. *See, e.g., Pope v. E. Brunswick Bd. of Educ.*, 12 F.3d 1244 (3d Cir. 1993) (interpreting "curriculum related" narrowly, to mean only the most obvious groups such as the math team).

41. 130 CONG. REC. 14, 19216 (1984) ("The amendment will, for the first time, make it clear that secondary school students engaging in religious speech have the same rights to associate together and to speak as do students who wish to meet to discuss chess, politics, or philosophy.") (statement of Sen. Jeremiah Denton (R, Alabama)); *see also* *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1142 (C.D. Cal. 2000) (citing legislative intent behind the EAA "to counteract perceived discrimination against religious speech in public schools").

42. *Mergens*, 496 U.S. at 259.

D. THE EAA AND LGBT STUDENT GROUPS

1. *East High School GSA v. Board of Education of Salt Lake City*

The EAA was first invoked by LGBT high school students in 1999 in Salt Lake City, Utah.⁴³ In *East High School*, plaintiffs survived a summary judgment motion when they alleged that defendants' refusal to allow "gay-positive viewpoints" on campus constituted a violation of the First Amendment and the EAA.⁴⁴ Plaintiffs were subsequently awarded injunctive relief, which required the school to recognize the club based on a consistent application of coherent policies developed by the school itself, the GSA having established that prior to that point the school had "either misapplied the . . . standards or impermissibly added an additional standard" when reviewing its application.⁴⁵ Ultimately, the Salt Lake City controversy was resolved when the school district, faced with protracted litigation and negative nationwide publicity, voted to settle and allow the GSA to meet on campus.⁴⁶ Legal strategists for Lambda saw this as a sign of good things to come. As Senior Staff Attorney David S. Buckel stated, "The lesson from Salt Lake City is in big block letters on the chalk board: do not harm your students to block a gay-supportive club and do not spend hundreds of thousands in education dollars defending that harm. Do the right thing from the beginning."⁴⁷

2. *Colin v. Orange Unified School District*

The first decision on the merits of an EAA claim by a GSA came not long after *East High School*, in a district court in Orange County, California, in 2000.⁴⁸ In *Colin*, the school district denied access to a GSA, arguing that the club was related to the curriculum of health and sex education classes and therefore fell into a category of student expression unprotected by the EAA.⁴⁹ After finding that the GSA was a noncurriculum related student group within the meaning of the EAA,⁵⁰ the court held that the

43. E. High GSA v. Bd. of Educ. of Salt Lake City Sch. Dist., 81 F. Supp. 2d 1166 (C.D. Utah 1999).

44. *Id.* at 1195.

45. E. High Sch. Prism Club v. Seidel, 95 F. Supp. 2d 1239, 1245 (D. Utah 2000).

46. Press Release, Lambda Legal, Students and Salt Lake City School Board End Feud Over Gay-Supportive Clubs (Oct. 6, 2000), available at <http://www.lambdalegal.org/cgi-bin/iowa/news/press.html?record=721>. See also Regina Grattan, *It's Not Just for Religion Anymore: Expanding the Protections of the Equal Access Act to Gay, Lesbian, and Bisexual High School Students*, 67 GEO. WASH. L. REV. 577, 589-591 (1999) (discussing reaction to the case in Utah, including enactment of legislation "specifically designed to prevent gay student clubs from meeting on public school grounds and to discourage teachers from sponsoring such clubs").

47. Press Release, Lambda Legal, *supra* note 46, at 2.

48. *Colin*, 83 F. Supp. 2d 1135 (C.D. Cal. 2000).

49. *Id.* at 1143.

50. *Id.* at 1144 (noting that plaintiffs "laughed on the stand at the thought of the group discussing the 'physiology of the reproductive system' and the other issues covered in

school's refusal to recognize the GSA as an official student group constituted "discrimination against the Plaintiffs on the basis of sexual orientation or perceived sexual orientation."⁵¹ Recognizing the novelty of applying the EAA in this context, the court observed:

If this Court were to allow the School Board to deny recognition to the Gay-Straight Alliance, it would be guilty of the current evil of 'judicial activism,' carving out an exception from the bench to the statute enacted by the politically accountable Congress. If this Court were to interpret the Equal Access Act differently than courts have in the past when applying the Act to Christian groups, it would be complicit in the discrimination against students who want to raise awareness about homophobia and discuss how to deal with harassment directed towards gay youth.⁵²

Because the Orange County School District in *Colin* did not rely on any of the EAA's justifications for exclusion, there was no need for the court to reach the issue of what would constitute a "material and substantial disruption." However, the district court implicitly assumed that the *Tinker* standard would apply to the EAA in its discussion of the First Amendment background to the case, in which *Tinker* is cited six times.⁵³ The court also drew an explicit comparison between *Tinker* and the case at bar, concluding that:

The Board Members may be uncomfortable about students discussing sexual orientation and how all students need to accept each other, whether gay or straight. As in *Tinker*, however, when the school administration was uncomfortable with students wearing symbols of protest against the Vietnam War, Defendants can not censor the students' speech to avoid discussions on campus that cause them discomfort or represent an unpopular viewpoint.⁵⁴

3. *Boyd County GSA v. Board of Education of Boyd County, Kentucky*

In *Boyd*, a Kentucky school board held an emergency meeting and de-

Health class," and concluding that the GSA's true objective was better characterized as "to talk about the experiences that gay, lesbian and bisexual kids go through in their everyday lives such as harassment, coming out of the closet or telling people that they are gay: the fear and the emotions such as self-hatred or denial that a lot of kids go through and the harassment they get and how to deal with that.").

51. *Id.* at 1149.

52. *Id.*

53. *Id.* at 1141 (discussing facts of *Tinker* and concluding that "material disruption" standard from *Tinker* is "very similar to the one adopted by Congress in the Equal Access Act.").

54. *Id.* at 1149.

cided to suspend all clubs, both curricular and extracurricular, in reaction to an on-campus protest following the formation of a GSA on campus.⁵⁵ The court found, however, that a limited public forum existed because certain clubs continued to hold meetings on campus.⁵⁶ Having found that the EAA applied, the court went on to consider the school's arguments under subsections (c) and (f). It concluded that allowing the GSA to meet on campus would not materially or substantially interfere with the orderly conduct of educational activities within the school; limit the school's ability to maintain order and discipline on campus; or limit the school's ability to protect the well-being of its students and faculty.⁵⁷ Notably, the *Boyd* court interpreted "material and substantial interference" as importing the standard from *Tinker*.⁵⁸

Crucial to the court's reasoning, therefore, was the fact that the Kentucky school district's denial of access was a direct result of a protest on campus and telephoned complaints from opponents of the GSA among the community.⁵⁹ Upholding the school's refusal of access on this basis would be the equivalent of allowing a "heckler's veto," which the *Boyd* court held would violate the spirit of the EAA. "Defendants are not permitted to restrict plaintiff's speech and association as a means of preventing disruptive responses to it."⁶⁰ Looking at *Tinker*, the proper analysis of the "maintaining order and discipline" exception was to determine whether "engaging in the forbidden conduct would materially and substantially interfere with the requirements of appropriate discipline"⁶¹ — in other words, whether there had been substantial disruptions caused by GSA members themselves. Finding "no documented instances" of such disruptions, the court ordered the school district to reinstate the GSA.

III. CAUDILLO, ET AL. V. LUBBOCK INDEPENDENT SCHOOL DISTRICT

A. FACTUAL BACKGROUND

In Lubbock, Texas, a branch of the GSA was initiated by LGBT high school students who felt that they would benefit from having a safe place to discuss issues of identity and sexuality with other straight and LGBT

55. 258 F. Supp. 2d 667, 675 (E.D. Ky. 2003).

56. *Id.* at 687-88.

57. *Id.* at 688.

58. "Incorporation of the *Tinker* rule into 20 U.S.C. § 4071(f) means that a school may not deny equal access to a student group because student and community opposition to the group substantially interferes with the school's ability to maintain order and discipline, even though equal access is not required if the student group itself substantially interferes with the school's ability to maintain order and discipline." *Id.* at 690.

59. *Id.* at 688.

60. *Id.* at 690 (citing *Tinker*).

61. *Id.* at 689 (citing *Tinker*).

teens.⁶² One of the group’s founders, high school senior Ricky Waite, stated, “Being gay in Lubbock, Texas, is not like being gay anywhere else. Growing up, I heard that gays were child molesters, drug addicts, sex fiends. . . . Then I learned not everyone was like that.”⁶³ Lubbock Gay/Straight Alliance (LGSA) member Rene Caudillo said the LGSA’s “main purpose was to help people” and to give fellow students “somebody to talk to so they wouldn’t feel like we did.”⁶⁴ On November 6, 2002, Waite, Caudillo, and other members of LGSA requested permission from the Lubbock Independent School District (LISD) to pass out club fliers, use the PA system to advertise meetings, and be recognized as an official school club with the right to meet on campus after classes.⁶⁵ As required by LISD regulations, members of LGSA filed a written request with the school principal, which contained a list of the group’s purposes and goals.⁶⁶ The group’s goals were to:

- (1) Provide guidance to youth who come to us to the best of our ability when we cannot provide help[,] relay them to those who can.
- (2) Educate those willing about non-heterosexuals.
- (3) Improve the relationship between heterosexuals and homosexuals.
- (4) Help the community.
- (5) Increase rights given to non-heterosexuals.
- (6) Educate willing youth about safe sex, AIDS, hatred, etc.
- (7) Enhance the relationship between youth and their families.⁶⁷

LISD policy provided that such requests “may be approved by the principal and the Superintendent . . . without regard to the religious, political, philosophical or other content of the speech likely to be associated with the group’s meetings.”⁶⁸ LISD also maintained a policy that “the District shall not prohibit student expression solely because other students, teachers, administrators, or parents may disagree with its content.”⁶⁹ In considering the LGSA’s request, school authorities reviewed a website that the students proposed to advertise on their fliers.⁷⁰ The LGSA website, created

62. Ray Glass, *Students Speak Out in Push for Gay Straight Alliance*, LUBBOCK AVALANCHE-JOURNAL, October 29, 2003, available at <http://www.lambdalegal.org>.

63. *Id.*

64. *Id.*

65. *Caudillo*, 311 F. Supp. 2d at 556.

66. Complaint at 5, *Caudillo*, 311 F. Supp. 2d 550 (No. 5:03-CV-165-C).

67. *Caudillo*, 311 F. Supp. 2d at 556.

68. Complaint, *supra* note 66, at 5 (citing L.I.S.D. LDU 44-02 11/04/2002).

69. *Caudillo*, 311 F. Supp. 2d at 557.

70. *Id.*

by member Rene Caudillo, contained links to two websites containing sexually explicit material (www.gay.com and www.youthresource.com).⁷¹ After review of the websites, the principal of LHS and assistant superintendent of LISD refused to recognize the LGSA and denied its request to post fliers and use the PA system.⁷² Superintendent Hardin claimed denial of access was based on LISD's abstinence-only policy and on "the well-being and disruption exceptions" to the EAA.⁷³ The LGSA, represented by Lambda Legal, then filed suit in federal court claiming that the district had denied them access to school facilities based on the content of their speech, in violation of the EAA and the First Amendment.⁷⁴

In its response to the suit, LISD argued that refusing access to the LGSA was based on the school district's duty of "maintaining the well-being of the student," and "precluding groups on its campuses which advocate a violation of law which overrides a student's First Amendment right to free speech."⁷⁵ At the time of the LGSA's request, homosexual acts were against the law in Texas.⁷⁶ Caudillo filed suit against LISD just days after *Lawrence v. Texas*, in which the United States Supreme Court ruled that the "Homosexual Conduct" section of the Texas Penal Code was unconstitutional.⁷⁷ Nonetheless, in its defense LISD cited the crime of indecency with a child,⁷⁸ a statute in a different section of the Texas Penal Code prohibiting homosexual acts between minors.⁷⁹ Claiming the LGSA would promote unlawful activity, LISD argued its exclusion was justified by sub-

71. *Id.*

72. *Id.*

73. *Id.*

74. Complaint, *supra* note 66, at 6.

75. Elizabeth Langton, *LISD Cites Criminalization of Child Sex as Suit Defense*, LUBBOCK AVALANCHE-JOURNAL, July 31, 2003, available at <http://www.lgrl.org/news/article.php?newsID=26>.

76. TEX. PENAL CODE § 21.06 (Vernon 2003); *Caudillo*, 311 F. Supp. 2d at 566.

77. 539 U.S. 558, 578 (2003).

78. *Caudillo*, 311 F. Supp. 2d at 566.

79. TEX. PENAL CODE § 21.11(a) (Vernon 2003). It is worth noting that the language of the statute is aimed at sexual molestation, not consensual sex:

(a) A person commits an offense if, with a child younger than 17 years and not the person's spouse, whether the child is of the same or opposite sex, the person:

(1) engages in sexual contact with the child or causes the child to engage in sexual contact; or

(2) with intent to arouse or gratify the sexual desire of any person:

(A) exposes the person's anus or any part of the person's genitals, knowing the child is present; or

(B) causes the child to expose the child's anus or any part of the child's genitals.

(b) It is an affirmative defense to prosecution under this section that the actor:

(1) was not more than three years older than the victim and of the opposite sex;

(2) did not use duress, force, or a threat against the victim at the time of the offense; and (3) at the time of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section.

section (d)(5) of the EAA, providing that the statute not be construed to authorize "meetings that are otherwise unlawful."⁸⁰ Superintendent Jack Clemmons claimed in an affidavit, "I would have denied other clubs whose basis was sex. I would have denied a Bestiality Club. I would have denied a Gigolo Club. I would have denied a Prostitute Club. Likewise, I would deny any club that has as its basis an illegal act, such as the Marijuana Club, Kids for Cocaine, the Drinking Club, etc."⁸¹

An additional basis for LISD's refusal of access was the fact that members of the Lubbock community had called the Central Office to express concern for the safety of LGSA members.⁸² Arguing that the "potential for sexual-orientation harassment existed on LISD campuses that could lead to disruptive and dangerous conditions for the students," LISD claimed it was within its rights to invoke the "maintaining order-and-discipline exceptions to the EAA,"⁸³ emphasizing that under federal law, school districts have the obligation to prevent sexual-orientation harassment of its students.⁸⁴ Plaintiffs argued that LISD's denial in the face of community objection to the LGSA amounted to allowing an unconstitutional "heckler's veto."⁸⁵

Based on Lambda Legal's recent triumph in *Lawrence* and its successful litigation campaign with the EAA,⁸⁶ the plaintiffs fully expected the court to order LISD to allow them to use school facilities. Lawyer Brian Chase told an interviewer for the *Texas Triangle*, "I don't want to say anything for sure, but hopes are high."⁸⁷

B. THE OPINION

The district court awarded summary judgment to defendants, ruling that LISD had not violated the students' First Amendment rights and had "properly invoked exclusions and exceptions" under the EAA.⁸⁸ This case

80. *Caudillo*, 311 F. Supp. 2d at 566.

81. Brent Brumley, *Superintendent Who Blocked Gay Group Was Having Affair on School Property*, TEX. TRIANGLE, Aug. 22, 2003, available at <http://www.lgrl.org/news/article.php?newsID=400> (discussing CBS affiliate's report that Clemmons, who was named as a defendant but dropped from the suit after "suddenly and unexpectedly retiring," had "engaged in a nearly one-year affair with one of his employees on school property and during school time," including offering his employee money in exchange for sexual favors in his office just hours before defending LISD's abstinence-only policy on TV).

82. *Caudillo*, 311 F. Supp. 2d at 569.

83. *Id.* at 569-70.

84. *Id.* at 568 (citing TITLE IX, 20 U.S.C. § 1681(a)).

85. *Id.*

86. Lambda Legal represented plaintiffs in *E. High School*, *Boyd*, and *Colin*. In Texas, only months before filing suit against LISD, the organization settled a suit with a school district in Houston which agreed to allow a GSA onto campus. Press Release, Lesbian/Gay Rights Lobby, Lubbock Town Hall Meeting on the Gay Student Experience and Gay-Straight Alliance (October 22, 2003).

87. Steven Morris, *Hopes Are High for Lubbock High School Gay/Straight Alliance*, TEX. TRIANGLE, Oct. 31, 2003, available at http://www.lambdalegal.org/cgi-bin/iowa/courtingjustice/index.html?page=justice_speakingOut.

88. *Caudillo*, 311 F. Supp. 2d at 572.

had “nothing to do with a denial of rights to students because of their sexual viewpoints,” District Judge Sam Cummings wrote in a 23-page opinion; LISD’s actions were rather “an assertion of a school’s right not to surrender control of the public school system to students and erode a community’s standard of what subject matter is considered obscene and inappropriate.”⁸⁹ It was the first loss for Lambda Legal in a GSA lawsuit.⁹⁰

Two aspects of *Caudillo* are particularly troubling to advocates of equal access for LGBT high school students. First, with regard to the plaintiffs’ First Amendment argument, the court held that denial of access was a narrowly drawn restriction in light of LISD’s compelling interest in protecting children from the sexually explicit material found on the LGSA’s website. Second, the court held that the *Tinker* standard did not apply to the “maintaining order and discipline” and “protecting well-being” provisions in the EAA, thus allowing LISD to deny access on the basis of speculation and complaints from the community in violation of the First Amendment as well as LISD’s stated policy.

The district court in *Caudillo* held that LISD had not violated the First Amendment because its restriction was “narrowly drawn in light of the compelling interest” of protecting children from the sexually explicit material found on the LGSA’s website.⁹¹ An important case for LISD in arguing this issue was *Bethel v. Fraser*, in which the Supreme Court held that the First Amendment was not violated when a high school student in Washington was disciplined for his “offensively lewd and indecent” nominating speech at a student assembly.⁹² It was “perfectly appropriate” in that case “for the school to disassociate itself to make the point to the pupils that vulgar speech and lewd conduct is wholly inconsistent with the ‘fundamental values’ of public school education.”⁹³ Therefore, held the court in *Caudillo*, LISD had lawfully denied the LGSA any access to school facilities because of the possibility that students might be exposed to sexually explicit material contained on one of the websites linked to the LGSA website advertised on the group’s fliers.⁹⁴

The situation in Lubbock was a stark contrast to *Bethel*. Unlike in *Bethel*, the prohibited speech of the LGSA was noncurricular and related to an event not sponsored by the school, therefore it was entitled to the protection of *Tinker*. The nominating speech in *Bethel*, on the other hand, was a component of a school-sponsored event and was therefore subject to the school’s editorial authority under *Hazelwood*. In *Bethel*, there was a real danger of the students who were offended by the speech believing that it

89. *Id.*

90. Ray Glass, *Students Not to Appeal Gay Straight Alliance Ruling*, LUBBOCK AVALANCHE-JOURNAL, Apr. 6, 2004, available at <http://www.lambdalegal.org>.

91. *Caudillo*, 311 F. Supp. 2d at 563.

92. 478 U.S. 675, 676 (1986).

93. *Id.* at 685-86 (quoting from Justice Black’s dissent in *Tinker*).

94. *Caudillo*, 311 F. Supp. 2d at 561.

was an approved message by the school itself; whereas here, given LISD’s conservative stance on sexuality, there was little likelihood of any students confusing the LGSA’s fliers with official school policy. But even assuming that the material on the websites was legitimately objectionable,⁹⁵ EAA case law and Guidelines indicate that the school district was within its rights to restrict the websites advertised on LGSA’s fliers without denying access to the group altogether.⁹⁶ Since LISD maintained an abstinence-only policy and curriculum, it would have been a reasonable, nondiscriminatory restriction for the authorities to require LGSA to edit its website in order to obtain official recognition and use of school facilities. Under the First Amendment, this would have been truly the least restrictive policy for the school district to pursue.

The facts in *Bethel* also provide a compelling illustration of the type of expression that materially and substantially interferes with educational activities. For example, a school counselor who was present at the assembly observed the following reactions to the speech:

[S]ome students hooted and yelled; some by gestures graphically simulated the sexual activities pointedly alluded to in respondent’s speech. Other students appeared to be bewildered and embarrassed by the speech. One teacher reported that on the day following the speech, she found it necessary to forgo a portion of the scheduled class lesson in order to discuss the speech with the class.⁹⁷

A fair reading of the LGSA’s stated goals is that the group intended primarily to discuss sexual identity and political activism rather than actual sexual conduct. This type of expression is more closely related to what the *Bethel* Court referred to as the “nondisruptive, passive expression of a political viewpoint in *Tinker*.”⁹⁸ The *Caudillo* court’s reasoning that the LGSA’s very existence created “a material and substantial interference with LISD’s educational mission and function” relies on a new standard of interference unsupported by precedent or legislative intent.⁹⁹ In effect, this

95. Plaintiff Rene Caudillo admitted in his deposition that the content accessible on www.gay.com was inappropriate for a high school campus (including topics such as “New Sexy Gay Game Pics”). However, he further testified “that the www.gay.com content was removed from the [LGSA] website some time after requesting to post the fliers and use the P.A. system.” The www.youthresource.com website remained accessible at the time when LISD Superintendent Hardin made his final decision to reject the request. Topics on this website were primarily health-related, including articles on safe sex, anal warts, and erection problems. (*Id.* at 557-58).

96. *See, e.g.*, 130 CONG. REC. 23, 32317 (1984) (discussing the school’s retention of authority to establish reasonable, uniform, nondiscriminatory regulations for student meetings under the EAA).

97. 478 U.S. at 678.

98. *Id.* at 680.

99. *Caudillo*, 311 F. Supp. 2d at 568.

is precisely the “judicial activism” feared by the district court in *Colin* when it wrote that to treat groups of LGBT students differently from religious groups would mean to “be complicit in the discrimination against students who want to raise awareness about homophobia and discuss how to deal with harassment directed towards gay youth.”¹⁰⁰

One of the most alarming aspects of *Caudillo* is its holding that the *Tinker* standard did not apply to the “maintaining order and discipline” and “protecting well-being” provisions in the EAA. Noting, “[t]he Court is aware that courts in other circuits have adopted the view that the EAA incorporated the *Tinker* rule that the disruption must ‘materially and substantially interfere with the requirements of appropriate discipline in the operation of the school,’” the opinion went on to state that although subsection (c) of the statute “somewhat tracks the *Tinker* language, this Court does not believe that the EAA requires such a substantial showing of interference under other exceptions.”¹⁰¹ Since subsection (f) lacks the phrase “materially and substantially,” the court reasoned, a lower standard sufficed in order for LISD to show that it had lawfully denied access to LSGA in the interests of “maintaining order and discipline” and protecting “the well-being of students and faculty.”¹⁰²

Thinking of these provisions as “exceptions” is troubling because it implies that a school is entitled to engage in viewpoint discrimination if certain factors are met. A better reading of subsections (c) and (f) is that they are intended to clarify the EAA’s requirements and to ensure that if a school district excludes a group because it interferes with order and discipline or threatens the well-being of students and faculty, etc., then such action is outside the realm of conduct prohibited by the EAA. Subsection (c) is titled “fair opportunity criteria,” and the bulk of its language is aimed at ensuring that the meetings are truly student initiated.¹⁰³ Subsection (f), entitled “Authority of schools with respect to order, discipline, well-being, and attendance concerns,” is more convincingly a limitation on the re-

100. *Colin*, 83 F. Supp. 2d at 1149.

101. *Caudillo*, 311 F. Supp. 2d at 569.

102. *Id.*

103. The subsection of the statute reads:

Schools shall be deemed to offer a fair opportunity to students who wish to conduct a meeting within its limited open forum if such school uniformly provides that –

(1) the meeting is voluntary and student-initiated;

(2) there is no sponsorship of the meeting by the school, the government, or its agents or employees;

(3) employees or agents of the school or government are present at religious meetings only in a nonparticipatory capacity;

(4) the meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school; and

(5) nonschool persons may not direct, conduct, control, or regularly attend activities of student groups.

20 U.S.C. § 4071(c).

quirements of the EAA.¹⁰⁴ But again, the statutory provisions merely reinforce the school district’s authority as it has traditionally been understood. Nothing about the subsection should imply legislative intent to grant an exemption.

Even if they are exceptions, legislative history indicates that the First Amendment as interpreted in *Tinker* and *Hazelwood* forms the background against which the EAA was enacted — thus the statute incorporates the value of not allowing a “heckler’s veto” to influence students’ right of free expression. According to the Guidelines:

The rights of the lawful, orderly student group to meet are not dependent upon the fact that other students may object to the ideas expressed. All students enjoy free speech constitutional guarantees. It is the school’s responsibility to maintain discipline in order that all student groups be afforded an equal opportunity to meet peacefully without harassment. The school must not allow a “heckler’s veto.”¹⁰⁵

For the court in *Caudillo* to interpret “exceptions” to the EAA in a manner that evades the protection of speech guaranteed in *Tinker* is to redraw the parameters of First Amendment rights of high school students as they have been understood since 1969.¹⁰⁶

If the court had applied the EAA using the standard laid out in *Tinker* and the Guidelines, then the proper focus of its analysis would have been the expression of the LGSA itself — not other students’ or community members’ objections to the LGSA and not those portions of the LGSA’s expression which could easily be censored by a reasonable, nondiscriminatory restriction consistent with LISD policy. Using this standard, the court would have reached the conclusion that the LGSA was entitled to be recognized and to have access to school facilities under the EAA. The fact

104. “Nothing in this subchapter shall be construed to limit the authority of the school, its agents or employees, to maintain order and discipline on school premises, to protect the well-being of students and faculty, and to assure that attendance of students at meetings is voluntary.” 20 U.S.C. § 4071(f).

105. 130 CONG. REC. 23, 32317 (1984).

106. The court recognized this problem in the following passage:

It is true that to suppress expression on the basis of the angry reaction that it may generate is precisely what the “heckler’s veto” cases [*Tinker*, etc.] forbid[.] . . . But the “order and discipline” defense that we just quoted suggests that the principle of those cases has not been carried over into the *Equal Access Act*.

(*Caudillo*, 311 F. Supp. 2d at 569 (quoting *Gernetzke v. Kenosha Unified Sch. Dist.*, 274 F.3d 464, 467 (7th Cir. 2001))).

As I discuss, there is no basis for this argument. In fact, reference to *Tinker* and *Hazelwood* at multiple times during congressional debate on the bill, as well as the fact that the EAA was specifically intended to overturn the Supreme Court’s decision in *Widmar*, suggests that if Congress had intended to overturn other Supreme Court cases as well, it would have made this intention explicit.

that the court reached the opposite conclusion is dependent on applying a lower standard that, by implication, grants an unconstitutional preference to religious groups.

For example, among the groups officially recognized by LISD and permitted to hold meetings at LHS was the Fellowship of Christian Athletes (“FCA”).¹⁰⁷ The FCA is an organization formed expressly to discuss religious belief and promote Christianity.¹⁰⁸ Therefore, the FCA “interferes” with the curriculum at LHS in the sense that the school cannot teach religious belief or promote a particular religion. If it does not substantially interfere with order and discipline to discuss religion on campus at a public high school, then merely discussing sex on campus likewise does not interfere with the school’s abstinence-only policy — especially since schools are constitutionally required to uphold separation of church and state, whereas there is no basis in law for an educational policy that prohibits sexual content.¹⁰⁹ By applying a lower standard to the LGSA than it would to a religious club, *Caudillo* read into the EAA an unconstitutional advancement of religion. Ironically, if the Supreme Court in *Mergens* had interpreted the EAA in the same way, then it would have struck down the legislation as violative of the Establishment Clause, and neither religious nor LGBT teens would have the protected right of equal access to meet at school.

Likewise, the court applied a lower standard under the “protecting well-being of students and faculty” provision in the EAA. The result of the court’s decision not to follow *Tinker* was that LISD could censor student expression in the interests of protecting students from unlawful conduct absent any evidence that such unlawful conduct would actually take place. The court’s failure to require LISD to back up its allegations was nothing short of condoning a pretext for unconstitutional discrimination on the basis of viewpoint. After *Lawrence*, it is doubtful whether § 21.11 would be upheld with regard to consensual sex between minors.¹¹⁰ However, even if

107. Complaint, *supra* note 66, at 5.

108. The FCA website describes the organization’s mission as “to present to athletes and coaches and all whom they influence the challenge and adventure of receiving Jesus Christ as Savior and Lord, serving Him in their relationships and in the fellowship of the church.” Fellowship of Christian Athletes, <http://www.fca.org/aboutfca> (last visited April 11, 2006).

109. See Grattan, *supra* note 12, at 594 (arguing that “it would be easier to apply the Equal Access Act to gay student clubs rather than religious clubs because the constitutional barrier that exists with religion, the Establishment Clause, does not have a counterpart in the homosexual context. If the Supreme Court is willing to allow religious clubs to use school grounds to conduct meetings, even in light of the Establishment Clause, the Equal Access Act ought to apply to gay student clubs with which no such contrary constitutional mandate exists.”).

110. The court noted the questionable status of § 21.11 but determined that it was a sufficient basis for LISD’s action because, although a similar statute in Kansas had been remanded by the U.S. Supreme Court after *Lawrence*, the Kansas Court of Appeals held that the statute was constitutional. (*Caudillo*, 311 F. Supp. 3d at 566, n.9).

the laws in Texas prohibited any kind of homosexual contact between minors, the *Caudillo* court was wrong to deny equal access based on speculative misconduct. According to the legislative guidelines for the EAA, groups wishing to discuss “alternative lifestyles” should not be barred on the content of their speech, even where such speech includes advocating or discussing “changes in existing law,” as long as the school does not sanction “meetings in which unlawful conduct occurs.”¹¹¹ As one observer of *Caudillo* noted, LISD’s argument that the purpose of LGSA meetings was to violate state law made “about as much sense as banning the Junior Prom Committee in an effort to protect the participants from sexual activity.”¹¹²

IV. CONCLUSION

The history of the EAA depicts a fascinating give-and-take relationship between legislatures, courts, and the Constitution in determining rights. Cases under the EAA illustrate the interplay between the two guarantees of the First Amendment: the protection of free speech and the preservation of separation between church and state. Yet if the EAA is to continue to have any meaning consistent with the First Amendment, plaintiffs must emphasize that the statute was not intended to do away with years of First Amendment case law prohibiting the influence of a “heckler’s veto.” Since *Tinker*, this prohibition has served to protect the most politically sensitive occasions of student expression. It is vitally important that LGBT students, who are so often the victims of harassment and even brutality by such “hecklers,” not be stripped of this protection. Courts should not apply an implicit reading of the EAA that prefers religious speech to other types of expression. Although it was an unfortunate outcome for the students of LHS, perhaps *Caudillo* will serve as an example for more successful litigation in the future.

V. EPILOGUE: LUBBOCK AFTER CAUDILLO

Attorneys representing the LGSA reported to the local newspaper that the decision not to appeal the court’s unfavorable decision “had a lot to do with the kids” involved in the case, four of whom had either graduated from LHS or would graduate in a few months.¹¹³ A week after the ruling, lawyers for LISD were already hearing from “many school districts around

111. 130 CONG. REC. 23, 32317 (1984); *see also* Grattan, *supra* note 12, at 596-97 (arguing that the “maintaining order and discipline” defense as used by school districts in states that criminalize homosexual acts fails to meet the exception to the First Amendment’s protection of advocacy of illegal conduct as defined by the U.S. Supreme Court in *Brandenburg v. Ohio*, 395 U.S. 444, 447-48 (1969)).

112. Ann Rostow, *Lawyers Argue that Gay Club Encourages Illegal Sex*, TEX. TRIANGLE, Aug. 8, 2003, available at <http://www.lgrl.org/news/article.php?newsID=315>.

113. Ray Glass, *Students Not to Appeal Gay Straight Alliance Ruling*, LUBBOCK AVALANCHE-JOURNAL, Apr. 6, 2004, <http://www.lgrl.org/news/article.php?newsID=1388>.

the country” about their landmark victory.¹¹⁴ School district attorney Ann Manning stated, “This is the first and only victory [in a Gay Straight Alliance case] for a school district in the United States. It could be a pattern by which school districts could maintain keeping clubs based on sex and sexual activity out of the purview of the Equal Access Act.”¹¹⁵

Lambda Legal has continued to be active in the Lubbock community, and students may attempt to reform the LGSA. Attorney Brian Chase stated that although the court ruled against them, “we do know that we did win in the court of public opinion. There were a great many citizens of Lubbock who support the effort to form the alliance now.”¹¹⁶ On June 25, 2004, Lambda Legal announced the selection of the LGSA for the Courage Award, which the organization presents annually “to an individual or organization in recognition of outstanding courage in the face of uncertainty, discrimination and hostility in the advancement of civil rights for the LGBT and HIV/AIDS communities.”¹¹⁷

114. *Id.*

115. *Id.*

116. Tammye Nash, *Lambda Legal Begins Campaign to Help Protect GLBT Students*, DALLAS VOICE, Oct. 8, 2004, available at <http://www.lgrl.org/news/article.php?newsID=2077>.

117. *Lambda Legal Honors Lubbock High School with Courage Award*, TEX. TRIANGLE, June 25, 2004, available at <http://www.lgrl.sitestreet.com/news/article.asp?id=1714>.