

A Double-Minded Government Is Unstable in All Its Ways

The U.S. Supreme Court's decision Monday in a pivotal prayer case litigated by Alliance Defending Freedom (ADF) may have ramifications upon another longstanding ADF case in the U.S. Court of Appeals for the 2nd Circuit.

ADF attorneys filed a letter with the 2nd Circuit Tuesday that cites the Supreme Court decision in *Town of Greece v. Galloway* as additional support for having the full 2nd Circuit re-evaluate a three-judge panel's April decision in *Bronx Household of Faith v. Board of Education of the City of New York*. That decision, temporarily on hold, upheld New York City's ban on churches meeting for worship services in public school buildings.

"Every community group in New York City can rent empty school buildings except for one purpose: worship services," says ADF senior counsel Jordan Lorence. "The Supreme Court's decision in the *Town of Greece* case confirms that the government can't 'define permissible categories of religious speech' in this way."

"The city essentially argues that treating churches worse than everyone else is its solution to avoiding a violation of the Establishment Clause of the First Amendment, and that just doesn't square with what the Supreme Court decided in the prayer case," Lorence adds. "Given what the Supreme Court has so recently stated and that it is consistent with the arguments we have made, we hope the full 2nd Circuit will grant our appeal in the *Bronx Household* case."

The letter explains that the U.S. Supreme Court concluded in the prayer case that "so long as a city maintains a policy of nondiscrimination" among religions, inviting ministers to pray

at public meetings does not violate the Establishment Clause. As the ADF letter explains, "If the government does not commit an *actual* Establishment Clause violation by inviting ministers to pray at meetings, it certainly cannot *fear* such a violation, as the City of New York claims here, by operating a forum for speech that is widely open to the community."

The letter adds that because the Supreme Court confirmed that the government excessively entangles itself with religion when it "seek[s] to define permissible categories of religious speech," New York City's policy should be struck down because it unconstitutionally defines certain religious activities as permissible while prohibiting "religious worship services."

The Supreme Court also stated in its prayer decision that "the Establishment Clause must be interpreted by reference to historical practices and understandings." The ADF letter points out to the 2nd Circuit that "like prayer, worship services similar to those at issue here occurred regularly in public buildings during our Nation's founding and have persisted since."