

# Battle Still Rages for Churches That Want to Meet in NYC Schools

Alliance Defending Freedom attorneys filed a brief with the U.S. Supreme Court Monday that answers New York City's arguments against high court scrutiny of its 20-year-old quest to ban worship services in empty public school buildings. In September of last year, ADF asked the high court to review a 2-1 ruling by a three-judge panel of the U.S. Court of Appeals for the 2nd Circuit that upheld a city policy prohibiting worship services in public school buildings during non-school hours. The panel's ruling is on hold until the Supreme Court decides whether to take the case.

"In New York City, any community group can meet in vacant school buildings for any purpose except for religious groups meeting to worship God. The city's arguments in defense of this policy cannot withstand constitutional scrutiny," said ADF Senior Counsel Jordan Lorence. "Evicting churches and the help they offer the people in their communities through their worship services in otherwise empty buildings on weekends helps no one. Violating the First Amendment, as New York City is doing, hurts everyone. For that reason, we hope the U.S. Supreme Court will agree to hear this important case."

The panel's ruling in *Bronx Household of Faith v. Board of Education of the City of New York* said that the city can single out for exclusion what it defines as "religious worship services." The New York City Department of Education has defended this policy, known as Regulation I.Q., in court on and off since 1995 even though the department allows other community groups to rent space for their meetings.

"The Department did not need to open its facilities for after-

hours nongovernmental uses, but it did. Now it must abide by constitutional rules forbidding express discrimination against religious expression and practices in otherwise permissible uses,” the ADF reply brief explains.

“Conspicuously absent from [the city’s] opposition is any attempt to describe how Reg. I.Q. survives the baseline free exercise [of religion] test announced ... and affirmed in [two previous Supreme Court decisions],” the brief states. “This is not surprising because a government policy like Reg. I.Q., which singles out expressive conduct undertaken for religious reasons for exclusion from a public forum is not neutral or generally applicable and cannot be justified by an unfounded fear of violating the Establishment Clause.”

“Churches meeting in New York City public schools for worship services have fed the poor and needy, assisted in rehabilitating drug addicts and gang members, helped rebuild marriages and families and provided for the disabled,” said ADF Senior Counsel David Cortman. “The churches have also helped the public schools themselves by volunteering to paint the interiors of inner-city schools; donating computers, musical instruments and air conditioners; and providing effective after-school programs to help all students with their studies. We hope the Supreme Court will allow them to continue being a true benefit to the communities they love to serve.”

The Supreme Court is expected to consider the ADF petition at its Feb. 20 conference.