

Supreme Court Asked to Protect First Amendment Right of Church

Alliance Defending Freedom has filed a friend-of-the-court brief that asks the U.S. Supreme Court to review a sweeping appellate court decision that “mandates government hostility towards religion ... and puts the First Amendment rights of religious students at risk.”

The brief asks the high court to review a U.S. Court of Appeals for the 7th Circuit decision that prohibits public school districts from renting church facilities for non-religious purposes, such as graduation ceremonies. The full 7th Circuit, which reversed a three-judge panel last year, argued that holding such events in church buildings allows government to unduly influence “how a person relates to the universe.”

“Church buildings should not be treated like toxic warehouses simply because they normally house religious activities. That has never been the intent of the **First Amendment**,” said Alliance Defending Freedom Senior Counsel David Cortman. “On the contrary, as the judges who dissented on the 7th Circuit’s opinion said, this opinion clearly exhibits an unconstitutional hostility toward religion. The government isn’t being neutral toward religion when it treats it worse.”

Fearing a cramped, wooden-benched and un-air-conditioned gymnasium would ruin their big day, high school seniors in the Elmbrook School District looked for an alternative venue in which to hold their graduation exercises. They asked to move to the nearby Elmbrook Church building because it could easily accommodate all of their guests (even those with disabilities) and offered amenities like cushioned seating, free parking and

temperature control. The rental price of the church was also less expensive than holding the graduation ceremony in the school's antiquated gym.

District officials agreed and rented the church for graduation ceremonies until the completion of a public school facility that offered similar creature comforts. After that, graduations were held on school grounds. Some offended current and former students and their parents, represented by attorneys with Americans United for Separation of Church and State, filed suit.

The district court ruled that renting Elmbrook Church to obtain "an adequate, convenient, cost-effective graduation venue" was constitutional. A panel of the 7th Circuit agreed based, in part, on the district's "utter lack of any religious purpose ... and the overwhelming evidence that the District desired to make use only of the Church's material amenities." A full panel of the 7th Circuit later reversed that decision on appeal.

The Alliance Defending Freedom brief filed with the U.S. Supreme Court on Jan. 18 in *Elmbrook School District v. Doe* explains that the full 7th Circuit's decision "mandates government hostility towards religion, precludes government neutrality amongst sects, and puts the First Amendment rights of religious students at risk. It also severely compromises public schools' ability to rent private venues for secular purposes and threatens to derail valuable educational programs that depend upon religious neutrality for survival. Given the magnitude of the Seventh Circuit's legal errors and the significance of their real-world impact, this Court should grant review to vindicate the Establishment Clause's true intent. ... The Seventh Circuit's en banc opinion takes the District's practical solution to a real-world problem and manufactures a constitutional morass."