

USE OF SCHOOLS FOR SUNDAY WORSHIP TAKES ANOTHER TURN

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Since 1994, in a case called *Bronx Household of Faith v. the New York City School District*, we watched the rather seesaw battle between a church and a school district about whether the school could ban use of one of its buildings for Sunday religious worship. In the latest decision concerning this controversy, the U. S. Court of Appeals for the Second Circuit upheld the school system's refusal to rent a school to the church.

The Second Circuit took this position once before in 1998, and in 2001 the Supreme Court declined to review the case. Following that, however, a federal district court granted a permanent injunction in favor of the church. Since then, Bronx Household of Faith has been allowed to use Public School 15 for its Sunday worship services, and did so while its current legal challenge proceeded on the merits.

In ruling for the school system last Thursday, the Second Circuit majority found that the school had valid, non-viewpoint discriminatory reasons for barring worship services, even while it allowed certain other religious activities to take place in school facilities.

Among other things, the court stated: "The board could . . . reasonably worry that the regular, long-term conversion of schools into state-subsidized churches on Sundays would violate the Establishment Clause by reason of public perception of endorsement . . . A worship service is an act of organized religion that consecrates the place in which it is performed, making it a church. . . . Bronx Household and the other churches that have been allowed access under the injunction tended to dominate the schools on the day they use them."

Of the three judges who decided his case, one dissented. The dissenter observed that the majority's ruling did not square with Supreme Court decisions on religious viewpoint discrimination, and concluded that the case presented "important doctrinal considerations worthy of the Supreme Court's attention."

Stay tuned—this may not be over yet.