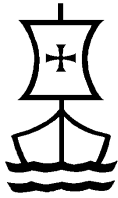

The Queens Federation of Churches

86-17 105th Street
Richmond Hill, NY 11418-1597
Telephone (718) 847-6764
FAX (718) 847-7392
e-mail: qfc@QueensChurches.org
www.QueensChurches.org
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The Rev. N. J. L'Heureux, Jr.
Executive Director

November 2, 1987

The Honorable Edward R. Korman
Justice of the United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Index No. CV-87-3434

Deeper Life Christian Fellowship, Inc., Plaintiff
against
Board of Education of the City of New York, et al., Defendants

Dear Judge Korman:

The Queens Federation of Churches was organized in 1931 and is the council of churches in the Borough of Queens. It is governed by a voluntary Board of Directors composed of an equal number of clergy and lay church leaders. Over 240 congregations, representing every major Christian denomination and many independent churches in the Borough participate in the ministry of the Federation through their membership and financial support. The Federation participates as one of five partners in the Committee of Religious Leaders in the City of New York, a coalition representing officially the Christian and Jewish communities throughout the City. The other partners are the New York Board of Rabbis, the Roman Catholic Archdiocese of New York and the Diocese of Brooklyn, and the Council of Churches of the City of New York (which has work in the other four Boroughs similar to the Federation's work in Queens).

The Queens Federation of Churches is extremely concerned with the underlying issues which present themselves to be addressed in the lawsuit captioned above. The issues involve the ability of a religious congregation to live and work within its community free from discrimination based on its religious activity or racial character.

The Deeper Life Christian Fellowship was permitted to rent space in P.S. 60 in Woodhaven for a period of three Sundays beginning on September 20, 1987. The intent of the congregation is to use this space for its Sunday worship service and religious instruction during the period (approximately ten months) in which its own building is undergoing extensive enlargement and renovation. During this initial three week period, the defendants --

Community School Board 27 and its president, Coleen Edmundson, in concert with the New York City Board of Education -- decided to deny approval of a permit then pending for additional Sundays following October 3.

The defendants claim to base their denial of additional permits on regulations which, they infer, prohibit the rental of space in a school building for worship. In fact, the regulations do not speak of worship but include religious groups in a collection of so-called exclusive societies which are fit, generally, to rent space in a public school building, but which are unfit to rent such space for purposes of fund raising. Religious organizations alone are forbidden to distribute their literature. The characterization of a church or a synagogue as an "exclusive society" is both objectionable and untrue. Religious congregations continually seek members; they are not closed, secret societies any more than is the PTA, block association, or any other community-based organization which maintains a membership roster. The activities of a church or synagogue, and particularly its worship, are open to all who choose to attend. Persons who are persuaded to identify with the purposes of any of these organizations and who agree to undertake the responsibilities of membership are regularly invited and welcomed into membership; the church is no different in this respect.

Churches and synagogues are important corporate citizens in the community. In addition to providing spiritual counsel and guidance they regularly assist their neighbors -- often persons who are members of other churches and of other Faiths, or of none at all -- by providing direct human services as a part of their ministry, reaching out to all God's children. Churches regularly make their own facilities available, frequently without charging a rental fee, to many community groups which are unaffiliated with the church itself. Indeed, at the time of the City's fiscal crisis in the mid-1970s when the Board of Education curtailed the use of its public school buildings after hours or imposed significant fees on those groups seeking to use school buildings, churches and synagogues throughout the City became home to many block associations, Boy Scouts, Girl Scouts, and other groups which previously used or were sponsored by public schools. The Board of Education itself regularly rents space in church and synagogue buildings during periods of transition.

The regulations cited by the defendants represent, on their face, a denial of civil rights to all churches, synagogues and their members. The defendants do not assert that a church or synagogue is prohibited from paying a fair value to rent space after hours in a public school building. They do claim, however, that they have the right -- even the mandate -- to supervise the particular use and the particular form and content of speech exercised by a church during the time it rents space in a school building. But they do not assert a responsibility to supervise non-religious groups in a similar manner. Such a scheme violates the churches' right to equal protection under the law, as it violates their rights to free speech and assembly on a basis inconsistent with the treatment of other organizations in the community.

Much has been made by the defendants in their briefs of an allegedly distinctive symbolic character of the public school building as compared with other public buildings in the community. This is a vacuous distinction. The intention of the Deeper Life Christian Fellowship is to use, on a temporary basis, the physical school building on a day and at an hour which has never been associated with public school classes. There is no effort here to identify either the public school students or the public school program, directly or indirectly, with religious ministry. Indeed, we would be opposed to such an identification. Rather, the issue is one of fair treatment of churches among all other organizations working for the well being of the community.

The defendants claim in their briefs that their rules, which are plainly antagonistic to churches and synagogues, are predicated on a desire to promote community harmony. Harmony is promoted in relationships only when there is reciprocity. The Board of Education seeks with one hand to have access to space in church buildings when it has a temporary need, but with the other hand it seeks to deny churches the access to public school buildings when churches have a temporary need. A one-way relationship is rarely harmonious and never just.

There is no violation of the Establishment Clause when churches and synagogues, governed by the same reasonable rules applying to all other community organizations, are permitted to rent space in public buildings on a temporary or occasional basis subject to availability. The government is compensated in full for the use of the facility by payment of the normal rental. The government does not find itself in any way supporting, sponsoring or endorsing the ministry of a tenant church any more than rental of public school space by a secular group constitutes support, sponsorship or endorsement by the schools of that organization.

The classic test of legal validity under the Establishment Clause is that of a law's 1) secular intent and 2) secular effect in not preferring one religion over another or any religion over non-religion and 3) of the law's not creating an excessive entanglement of government with religion. A regulation permitting the rental of space in public school buildings by churches and synagogues on exactly the same basis as other community groups certainly does not run afoul of this three-prong test. The present regulations, however, are clearly in trouble on the third point: The government, in the form of its school boards, charges itself with the responsibility to monitor the type of speech and activity engaged in by a tenant church in order to permit certain kinds of speech and to prohibit others kinds of speech, notably religious speech. A greater entanglement would be difficult to imagine.

The defendants claim to be bound by a set of regulations which they created. Regulations which are Constitutionally defective cannot be enforced. These particular

regulations are obnoxious to Constitutional principles in their wanton discrimination against the citizenship rights of churches, synagogues and their members in the use of public facilities on a fair and equitable basis.

There is a second element in the present case that merits our attention. It is the singularly insufferable sin of racism.

It is obvious from the record that the defendants have elected to follow a course of studied ignorance with respect to the purposes of many churches and synagogues which paid to rent space in school buildings in the past. Each of the defendants has regularly permitted space in public school buildings to be rented to congregations for purposes that defendants now claim are improper. Churches and synagogues within District 27 have, within the past fifteen months, been permitted to rent space for lectures, Gospel concerts, day camps, and, in one instance, a bazaar. Lectures, concerts and educational programs such as day camps are generally not conducted by religious congregations absent a clear and undisguised religious purpose. Presumably these events, and surely a bazaar, involved some type of fund raising activities or registration fees which benefited the congregation.

In other districts within the responsibility of the New York City Board of Education, the pattern is similar. Hillcrest High School in Jamaica, for example, was used by the nearby Highland Avenue Baptist Church for Sunday worship during a period of approximately one year in circumstances identical to that of the Deeper Life Christian Fellowship, the building of a new church structure.

The defendants now claim they were innocently ignorant of all these many cases of apparent violation of their own internal rules, however, they were prompt to notice a violation <u>solely</u> in the present case. The defendants' new and sudden awareness of their own long-ignored regulations must be recognized for what it is -- a contrivance to mask the loathsome visage of a repugnant racism.

What incited the complaint of local residents in this case? The claim made by the Woodhaven Residents' Block Association is traffic and congestion. Surely <u>any</u> use of this school by a large group brings with it the same increase in traffic and congestion. There is no suggestion in the record that complaints have been lodged routinely in other such cases, only in this one. By contrast, the first complaints from Woodhaven residents, reported to the Federation during the week of September 20 (the date the Church first used P.S. 60), were generally in rhetorical form: Why don't <u>they</u> use a school in <u>their own</u> neighborhood? Why do <u>they</u> have to come <u>here</u>? These are not the questions of citizens concerned about a pernicious

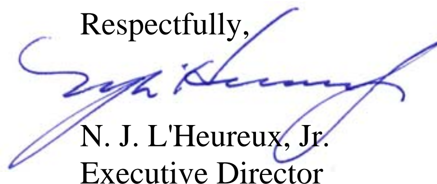
attempt to establish religion, much less citizens concerned about increased traffic; these are complaints plainly about why they are in my neighborhood! And they are Black and me is White.

It is important to note that the Establishment argument raised in this case was not raised by an alarmed citizenry or even by school officials in objection to any of the many recent church lectures, day camps, bazaars, Gospel concerts or even to Sunday worship services in public school buildings. But then, none of these other recent cases involved, as does this case, a predominantly Black congregation in a predominantly White neighborhood. The defendants' assertion that they seek only to prevent an inappropriate establishment of religion is an invention of convenience; in fact, they seek to use regulations which they have customarily (and perhaps uniformly) ignored in order to achieve the illicit purpose of racial discrimination.

The Queens Federation of Churches respectfully urges this Court, first, to compel the defendants to continue to rent space to the Deeper Life Christian Fellowship for the duration of its displacement from its own facility and, second, to take the necessary steps to render unenforceable those regulations of the Board of Education which single out religious organizations for discrimination in the rental of space of public school buildings.

Because of the particularly obnoxious combination of the elements of both religious and racial discrimination present in this case, we would also urge the Court to consider the unusual step of invoking the sanction of punitive damages, assessed personally against all defendants, as a public condemnation of their outrageous behavior and a powerful warning to all other officials who would attempt in the future to use the color of law to violate the civil rights of churches, synagogues and their members.

Respectfully,



N. J. L'Heureux, Jr.
Executive Director

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cc: Ray E. Shain, Esq., Counsel for Plaintiff
Peter L. Zimroth, Esq., Corporation Counsel, Counsel for Defendants