



School-based Churches Look to Albany for Eviction Reprieve

By Fred Mogul

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Some 50 churches that worship in New York City schools are hoping their scheduled eviction this Sunday will be delayed by a potential change in state law.

The State Senate on Monday passed a bill requiring school districts to allow religious groups to rent space for worship services, as long as they don't interfere with other school functions. However, it would take weeks, at the earliest, for the bill to become law, so bill sponsor Sen. Martin Golden (R-Brooklyn) is asking the city and the Department of Education for some interim clemency.

"If the mayor and the schools chancellor understand the legislation is coming through, one would hope they'd be willing to give an extension of a couple weeks," Golden said.

Schools Chancellor Dennis Walcott said the city's position has not changed: the last time groups can meet for worship in schools remains Sunday, February 12.

A Department of Education rule dating to 1995 excludes religious groups from renting school space for worship services. That rule has been under legal challenge by religious groups since that time, so it's never been implemented. The groups' final appeal was exhausted in December, when the U.S. Supreme Court declined to take the case — setting up this Sunday's deadline.

Golden's bill effectively tries to go around the federal Appeals Court decision that declared worship services in schools violate the separation of church and state. His bill says even if the city has a constitutional right to prohibit worship services in school, the city still must answer to a higher authority — the state of New York.

Robert Ward, deputy director of the Nelson Rockefeller Institute of Government at SUNY Albany, likens it to a teenager trying to get a driver's license. "The state law allows a 16- or 17-year-old to get a driver's license, but the teenager's parents might say, 'Yes the law allows, it but we're not going to allow it,'" he said.

"The federal courts may tell the city, 'You are allowed to exclude worship services, if you so choose,'" Ward said. "But that doesn't prevent the state from telling the city, 'We're sorry, you do not have the authority to exclude worship services, because we at the state level are taking that authority away from you.'"

Ward said judicial rulings, even when they seem relatively restrictive, can still give lawmakers a fair amount of leeway. He said, they typically vote one way or another, "not because of their reading of the Constitution, but because of their personal and political preferences."

Golden said if his bill is unconstitutional, "it will be up to the municipality or locale" — namely New York City — to challenge the state in court. In practice, Ward said, such a challenge by the city would be unlikely — but might well come an outside party. The New

York Civil Liberties Unions, which joined the city's long-standing lawsuit, has also joined the fight against Golden's bill.

"The NYCLU will look closely at challenging any legislation that requires school districts to violate the Constitution and promote religion," said New York Civil Liberties Union Executive Director Donna Lieberman. "All options are on the table."

Assembly Speaker Sheldon Silver has expressed concern the Senate bill is too broad.

"I think the way the Senate is taking it up, it's seriously flawed," Silver told reporters.

A spokesman for Silver said legislative staff are "working on an amendment that conforms to the court decision on the issue, however no decisions have been made."

Governor Andrew Cuomo's position on the court ruling and the proposed bill remain unclear.