ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE.

May 6, 2014

Catherine O'Hagan Wolfe, Clerk of Court
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007
Via ECF

Re: ***Bronx Household of Faith, et al. v. Board of Education of the City of New York, et al.*, No. 12-2730**
Hon. Walker, Leval, Calabresi, Circuit Judges
Decided: Apr. 3, 2014
Petition for Rehearing Filed: Apr. 16, 2014
Citation of Supplemental Authority

Dear Ms. Wolfe:

Pursuant to FRAP 28(j), Plaintiffs-Appellees Bronx Household of Faith notify the Court of a recently-decided case that supports their petition for rehearing *en banc*: *Town of Greece v. Galloway*, 572 U.S. __ (May 5, 2014).

In *Galloway*, the Supreme Court held that the government does not violate the Establishment Clause by selecting ministers to open official meetings with prayer. Slip Op. 24. *Galloway* justifies rehearing of this matter for three reasons.

First, *Galloway* determined that "[s]o long as the town maintains a policy of nondiscrimination" among religions, it does not violate the Establishment Clause even if a majority of ministers come from one religion. Slip Op. 17-18. Thus, if the government does not commit an *actual* Establishment Clause violation by inviting ministers to pray at meetings, it certainly cannot *fear* such a violation, as the City of New York claims here, by operating a forum for speech that is open widely to the community. Pet. Reh'g 4, ECF 203.

Second, *Galloway* says "the Establishment Clause must be interpreted by reference to historical practices and understandings." Slip Op. 7-8. Like prayer, worship services similar to those at issue here occurred regularly in public buildings during our Nation's founding and have persisted since. Thus, the panel majority wrongly applied *Locke v. Davey*, 540 U.S. 712 (2004);

there is a historical practice of declining direct funding of clergy, but there is also a historical practice of *allowing* worship in publicly available government buildings. Pet. Reh'g 7-12.

Third, *Galloway* confirms that the government excessively entangles itself with religion when it "seek[s] to define permissible categories of religious speech" in a forum. Slip Op. 14; *see also id*. at 12-13. Here, the panel majority erred by ruling that the City may permit groups to teach religion, pray, sing hymns, and advocate beliefs—all elements of a worship service—but prohibit groups from conducting "religious worship services." Maj. Op. 6, ECF 195. This excessively entangles the City with religion. Pet. Reh'g 12.

Thus, Plaintiffs-Appellees respectfully request that the Court consider *Galloway* and grant their petition for rehearing en banc.

Respectfully submitted,

/s/ *Jordan W. Lorence*
Jordan W. Lorence
Counsel for Plaintiffs-Appellees

cc: Counsel for Plaintiffs-Appellees
Counsel for Defendants-Appellants
Counsel for *Amicus Curiae*
via ECF electronic notice