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2 tradition or designation to the public for communication, speech  
3 may be excluded through any "reasonable" content-based restrictions  
4 so long as these do not "suppress expression merely because public  
5 officials oppose the speaker's view." *Perry Educ. Ass'n*, 460 U.S.  
6 at 46.

7           In *Bronx Household I*, we held that defendants' school  
8 facilities constituted a limited public forum and, consequently,  
9 that speech could be barred only through restrictions that were  
10 viewpoint neutral and reasonably related to the limited purposes  
11 of the forum. 127 F.3d at 211-214. *Bronx Household II* did not  
12 revisit this finding.<sup>3</sup> We remain bound by our finding that the  
13 school in the case at bar is a limited public forum. There is  
14 nothing in the record that requires us to reconsider that holding.  
15 And *Good News Club* in no way calls our reasoning on this point into  
16 question. 533 U.S. at 107; *id.* at 136 n.1 (Souter, J.,  
17 dissenting).<sup>4</sup>

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1           <sup>3</sup> Even prior to *Bronx Household's* suits, we had repeatedly found  
2 that New York State, in its statute authorizing the use of school  
3 facilities, intended to create only a limited public forum. *Deeper*  
4 *Life Christian Fellowship v. Sobol*, 948 F.2d 79, 83-84 (2d Cir.  
5 2001) (citing *Tretley v. Bd. of Ed.*, 65 A.D.2d 1 (N.Y. App. Div.  
6 1978)); see also *Cornelius*, 473 U.S. at 802; *Lamb's Chapel v.*  
7 *Center Moriches Union Free School District*, 508 U.S. 384, 390  
8 (1993) ("There is no question that the [School] District, like the  
9 private owner of property, may legally preserve the property under  
10 its control for the use to which it is dedicated.").

1           <sup>4</sup> It bears observing that, in constituting this particular limited  
2 public forum, defendants excluded in their entirety several other  
3 classes of speakers and subjects apart from those at issue in the























































1 jurisdiction, it could properly rule on the constitutionality of  
2 a proposed SOP, which had not been invoked against Bronx Household.  
3 Seeking to allay the court's doubts, the City explained in a  
4 letter:

5       Should [the City] defendants prevail in their motion for  
6       summary judgment and the preliminary injunction Order be  
7       vacated, then any future application by [Bronx  
8       Household] to hold their worship services at P.S. 15 .  
9       . . will be denied [pursuant to the proposed SOP].

10  
11 *Bronx Household of Faith v. Board of Educ. of City of New York*  
12 (*"Bronx Household III"*), 400 F. Supp. 2d 581, 588 (S.D.N.Y. 2005)  
13 (quoting the City's letter of August 17, 2005).<sup>3</sup> The district  
14 court was thereby persuaded that it was presented with a  
15 justiciable controversy involving the application of Proposed SOP  
16 § 5.11. The court then granted summary judgment in favor of Bronx  
17 Household, permanently enjoining the City from enforcing the  
18 proposed SOP against Bronx Household. *Id.* at 601. The City  
19 defendants then brought this appeal.

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1       <sup>3</sup> The letter stated:  
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3       Plaintiffs' use of P.S. 15 for the Bronx Household of  
4       Faith's regular worship services is prohibited under  
5       the revised section 5.11. Defendants are not currently  
6       enforcing the revised section 5.11 (or advising the  
7       field of this change) because of the preliminary  
8       injunction Order that was entered in this case. Should  
9       defendants prevail in their motion for summary judgment  
10      and the preliminary injunction Order be vacated, then  
11      any future application by plaintiffs to hold their  
12      worship services at P.S. 15 or any other school will be  
13      denied.  
14

15 *Bronx Household III*, 400 F. Supp. 2d at 588.





























































1  
2 **CONCLUSION**

3 The district court should not have entertained and  
4 adjudicated the question whether the City may constitutionally  
5 exclude Bronx Household from access to City school facilities  
6 under the provisions of Proposed SOP § 5.11. The question was not  
7 ripe for adjudication. It is unnecessary to determine whether  
8 this was prudential unripeness, constitutional unripeness, or  
9 both. The question was at least prudentially unripe. The court  
10 should have declined to jump ahead to make this premature  
11 adjudication. I therefore vote to vacate the judgment.  
12

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1 to conduct worship services. In support, Judge Walker cites the  
2 Supreme Court's decision in *Abbott*. However, the reason the  
3 Supreme Court found ripeness in *Abbott*, notwithstanding that the  
4 new regulations had not been enforced, was that the plaintiff  
5 drug manufacturers needed immediately either to adopt the  
6 disadvantageous labeling practices mandated by the regulation or  
7 risk serious punishments. Their vulnerability to punishment was  
8 crucial to the finding of ripeness. Here, there is no such  
9 thing. The revised SOP causes no harm to Bronx Household. It  
10 is free for the time being to conduct its worship services in  
11 the schools without any risk of punishment. The recognition  
12 that the revised SOP might some day be enforced to exclude Bronx  
13 Household from conducting its worship services in the schools  
14 causes it no present harm. If the mere possibility of future  
15 enforcement of a new rule were sufficient to confer ripeness, a  
16 governmental entity's mere adoption of a new rule would allow  
17 all persons who might some day be required by it to change their  
18 practices to challenge its lawfulness in federal court. This is  
19 clearly not the accepted standard of ripeness.

20 The arguments of my colleagues do not persuade me that a  
21 ripe controversy exists over the constitutionality of this  
22 revision of the City's SOP, which has clearly not been enforced  
23 and has caused Bronx Household no harm.









































