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Establishment of Religion, Court of Appeals: Grumet v. Cuomo

N.Y. CONST. art. XI, § 3:

Neither the state not any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance . . . of any school or institution of learning wholly or in part under the control or direction or any religious denomination, or in which any denominational tenet or doctrine is taught, but the legislature may provide for the transportation of children to and from any school or institution of learning.

U.S. CONST. amend. I:

Congress shall make no law respecting an establishment of religion . . .

COURT OF APPEALS

Grumet v. Cuomo[1]
(decided May 6, 1997)

The New York Court of Appeals adjudicated another dispute in the continuing saga concerning educational services provided to disabled children residing in the Village of Kiryas Joel [hereinafter the "Village"] in Orange County, New York.[2] In order to understand this case and the prior decisions concerning

[1] 90 N.Y.2d 57, 681 N.E.2d 340, 659 N.Y.S.2d 173 (1997).
[2] *Id.* at 63, 681 N.E.2d at 342, 659 N.Y.S.2d at 175.

it, it is necessary to give some background information concerning the Village.

The Village of Kiryas Joel is an enclave in Orange County, New York, entirely populated by members of the Orthodox sect of Judaism known as Satmar Hasidim.[3] The Satmars, who originate from eastern Europe, were molded into a separate community by Grande Rebbe Joel Teitelbaum in the early 1900's.[4] After the Holocaust, Rebbe Teitelbaum moved most of the surviving members of the group to the Williamsburgh section of Brooklyn, New York.[5] In approximately 1974, the Satmars purchased the area that is now known as Kiryas Joel.[6]

The residents of the Village strictly follow the tenets of their faith.[7] The sexes are segregated outside the home, women wear headcoverings, girls dress modestly and boys and men wear special garments.[8] Yiddish is the Satmars' primary language.[9] The children of the Village are educated in private religious schools that adhere to the traditions and beliefs of the sect.[10] The residents of the Village prefer not to assimilate into contemporary society, a philosophy which perhaps is at the root of the entire controversy.

The educational system provided by the Satmars, which met the religious and secular needs of the vast majority of the Village's children, was unable to meet the needs of the children who required special education services,[11] since, under federal[12] and

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[3] Grumet v. Cuomo, 162 Misc. 2d 913, 914-15 n. 2, 617 N.Y.S.2d 620, 622 n.2 (Sup. Ct. Albany County 1994).

[4] *Id.* at 915 n.2, 617 N.Y.S.2d at 622 n.2.

[5] *Id.*

[6] *Id.*

[7] *Id.* at 915 n.2, 617 N.Y.S.2d at 623 n.2.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.* (citing Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* (1990)). The statute states in relevant part that "It is the purpose of this chapter to assure that all children with disabilities have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs . . . ." *Id.*

state[13] law, these children are entitled to receive special services even when enrolled in private schools.[14] The Monroe-Woodbury Central School District, in 1984, began to provide such services in an annex to one of the sect's religious schools.[15] In 1985, as a result of the Supreme Court decisions in *Aguilar v. Felton*[16] and *School District of Grand Rapids v. Ball*,[17] the school district discontinued this arrangement.[18]

As a result, the children were forced to attend public schools outside their village, a situation that most of their parents found less than satisfactory.[19] Expressing serious misgivings about the children's ability to adjust to being educated in a secular setting, most of the parents withdrew their children from the public schools, some even seeking administrative review of this arrangement.[20] In response to this problem, the New York Legislature passed a statute, 1989 N.Y. Laws, chapter 748,[21] creating a separate school district for the Village.[22]

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[13] *Id.* (citing N.Y. EDUC. LAW, art. 89 (McKinney Supp. 1994).

[14] *Id.* at 916 n.2, 617 N.Y.S.2d at 623 n.2. (noting such children suffered from "physical, mental, or emotional disorders.").

[15] *Id.* The Village of Kiryas Joel falls geographically within the boundaries of the Monroe-Wooodbury Central Schhol District. *Id.* at 915 n.2, 617 N.Y.S.2d at 662 n.2.

[16] 473 U.S. 402, 414 (1985) (finding New York City program, which used federal funds to pay salaries of public school teachers who taught in parochial schools, violated Establishment Clause).

[17] 473 U.S. 373 (1985). In *Ball*, plaintiff taxpayers brought suit against the School District of Grand Rapids claiming that shared time and community education programs, that provided classes to nonpublic school children at taxpayer expense, violated the Establishment Clause of the First Amendment. *Id.* at 397. The Supreme Court held that since these programs' principal effect was the advancement of religion, the Establishment Clause had been violated. *Id.*

[18] *Grumet*, 162 Misc. 2d at 915-16 n.2, 617 N.Y.S.2d at 623 n.2.

[19] *Id.*

[20] *Id.*

[21] 1989 N.Y. Laws ch. 748 (McKinney 1989). Chapter 748 states in pertinent part:

> The territory of the village of Kiryas Joel in the town of Monroe, Orange county, on the date when this act shall take effect, shall be and hereby is constituted a separate school district, and shall be known as the Kiryas Joel village school

In 1993, taxpayers of the State of New York and association of school districts challenged chapter 748.[23] The New York Court of Appeals found that the Establishment Clause of the United States Constitution[24] had been violated by this law.[25] The Supreme Court of the United States affirmed the decision stating that the statute was "tantamount to an allocation of political power" on the basis of religion without requiring any impartiality by the State.[26]

The present controversy[27] ensued after the New York Legislature, in response to the Supreme Court decision invalidating *Kiryas Joel I*, enacted chapters 241 and 279 of the New York Session Laws of 1994.[28] Chapter 279 dissolved the

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> district and shall have and enjoy all the powers and duties of a union free school district under the provisions of the education law.

Id.

[22] *Id.*

[23] Grumet v. Board of Education of the Kiryas Joel Village School District, 81 N.Y.2d 518, 618 N.E.2d 94, 601 N.Y.S.2d 61 (1993).

[24] U.S. CONST. amend. I. The Establishment Clause states in pertinent part that "Congress shall make no law respecting an establishment of religion . . . ." *Id.*

[25] 81 N.Y.2d at 523, 618 N.E.2d at 96, 601 N.Y.S.2d at 63.

[26] Board of Education of the Kiryas Joel Village School District v. Grumet, 512 U.S. 687, 690 (1994) [hereinafter Kiryas Joel I]. Justice O'Connor, in her concurrence suggested an approach however, that might allow such a law to pass constitutional muster. *Id.* at 717 (O'Connor, J., concurring). Justice O'Connor noted that:

> There is nothing improper about a legislative intention to accommodate a religious group, so long as it is implemented through generally applicable legislation. New York may . . . allow all villages to operate their own school districts. If it does not want to act so broadly, it may set forth neutral criteria that a village must meet to have a school district of its own; and the decision would then be reviewable by the judiciary.

Id.

[27] Grumet v. Cuomo, 90 N.Y.2d 57, 681 N.E.2d 340, 659 N.Y.S.2d 173 (1997).

[28] 1994 N.Y. Laws ch. 241 (McKinney 1994). Chapter 241 states in pertinent part:

Kiryas Joel School District, but allowed the district to function temporarily under the auspices of the Monroe-Woodbury Central School District.[29] This temporary arrangement was allowed to continue until a state court decision implemented the Supreme Court's suggestion in *Kiryas Joel I*[30] or the Village's school district was either merged with or replaced by another school district, whichever occurred first.[31]

Chapter 241[32] allowed this merger or replacement to take place without the need for legislative intervention.[33] A new subdivision of Education Law § 1504[34] allowed a municipality meeting certain qualifications to form its own school district without involving the legislature.[35] The law also required a vote by both the residents of the municipality where the proposed school district is to be created as well as the trustees or members of the Board of

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> Any municipality situated wholly within a single central or union free school district, but whose boundaries are not coterminous with the boundaries of such school district, may organize a new union free school district, pursuant to the provisions of this subdivision, consisting of the entire territory of such municipality, whenever the educational interest of the community require it.

Id. *See also* 1994 N.Y. Laws ch. 279 (noting that this legislation was necessary to provide education to the "handicapped children of Kiryas Joel.").

[29] *Grumet*, 90 N.Y.2d at 66, 681 N.E.2d at 343, 659 N.Y.S.2d at 176.

[30] 512 U.S. 687, 717 (1994). *See* note 25.

[31] *Grumet*, 90 N.Y.2d at 66, 681 N.E.2d at 343, 659 N.Y.S.2d at 176.

[32] N.Y. EDUC. LAW § 1504 (3) (McKinney 1994).

[33] *Grumet*, 90 N.Y.2d at 66, 681 N.E.2d at 343, 659 N.Y.S.2d at 176.

[34] N.Y. EDUC. LAW § 1504 (3) (a) (McKinney 1994). The statute states in relevant part that a municipality may establish its own school district pursuant to chapter 241 providing that the following criteria are met:

> (i) [T]he enrollment of the municipality . . . equals at least two thousand children, and is no greater than sixty percent of the enrollment of the existing school district . . .;(ii) such new school district would have an actual valuation per total wealth pupil unit at least equal to the statewide average; and (iii) the enrollment of the existing school district . . . equals at least two thousand children, excluding the residents of such municipality.

Id.

[35] *Id.*

Education of the presently existing school district.[36] Using the aforementioned procedures, both the Board of Education of the Monroe-Woodbury Central School District (by a unanimous vote) and the residents of the Village (by a wide margin) approved the creation of a Kiryas Joel School District.[37]

Plaintiffs in this action brought suit as citizen taxpayers[38] claiming that chapter 241 violates both the Establishment Clause of the United States Constitution[39] and article XI of the New York State Constitution.[40] The Supreme Court, Albany County declared chapter 241 constitutional and dismissed plaintiffs' complaint.[41] The Appellate Division, Third Department, reversed

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[36] N.Y. EDUC. LAW § 1504 (3) (b) (McKinney 1994). The statute states in relevant part:

> No such new school district shall be organized unless . . . approved by: (I) a majority vote of the residents . . . [but a majority vote] shall not be required if creation of the new school district has been approved by a vote of at least two-thirds . . . of the local governing body of the municipality. . . (ii) a majority vote of the trustees or members of the boards of education of the existing school district from which such new school district will be organized; and (iii) a majority vote of the residents of [the] existing school district, except that the residents of the municipality seeking to organize the new school district shall not be entitled to participate in such vote.

Id.

[37] *Grumet*, 90 N.Y.2d at 67, 681 N.E.2d at 344, 659 N.Y.S.2d at 177.

[38] N. Y. STATE FIN. LAW § 123 (b) (McKinney 1997).

[39] U.S. CONST. amend. I.

[40] N.Y. CONST. art. XI, § 3. Section 3 provides in pertinent part:

> [T]he state . . . shall [not] use its property . . . or any public money, or . . . permit either to be used . . . in aid or maintenance . . . of any school . . . of learning . . . under the control or direction of any religious denomination . . . but the legislature may provide for the transportation of children to and from any school . . . .

Id. See also Grumet, 90 N.Y.2d at 67, 681 N.E.2d at 344, 659 N.Y.S.2d at 177.

[41] *Grumet*, 164 Misc. 2d 644, 655, 625 N.Y.S.2d 1000, 1008 (Sup. Ct. Albany County 1995) (noting "plaintiffs fail[ed] to raise any factual issues that would call into question the constitutionality of the challenged statute.").

and declared chapter 241 unconstitutional.[42] The New York Court of Appeals affirmed, stating that chapter 241 violates the Establishment Clause because the "special treatment" given to the Village is, in essence, an "endorsement of this religious community."[43]

The New York Court of Appeals noted that although originally framed as a limitation on congressional power, the Establishment Clause, under a Due Process[44] analysis, also limits the power of State governments.[45] The court stated that the three part test delineated in *Lemon v. Kurtzman*,[46] designed to measure the amount of governmental involvement under the Establishment Clause, would guide their analysis,[47] while noting that the *Lemon* criteria are not "fixed rules" that must be "rigidly applied."[48] The court then held that chapter 241 not only violates the Establishment Clause neutrality principles set forth in the holding of *Kiryas Joel I*, but also transgresses the second prong of the *Lemon* test. [49]

The court noted that neutrality among religions and between religion and secular purposes is one of the primary principles of the Establishment Clause jurisprudence.[50] At its most basic level,

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[42] Grumet v. Cuomo, 225 A.D.2d 4, 12-13, 647 N.Y.S.2d 565, 570 (3d Dep't 1996) (noting that chapter 241 "single[ed] out a particular religious group for favorable treatment.").

[43] *Grumet*, 90 N.Y.2d at 64, 681 N.E.2d at 342, 659 N.Y.S.2d at 175.

[44] U.S. CONST. amend. XIV, § 1. The Fourteenth Amendment provides in pertinent part: "[N]or shall any state deprive any person of life, liberty, or property, without due process of law. . . ." *Id.*

[45] 90 N.Y.2d at 68, 681 N.E.2d at 344, 659 N.Y.S.2d at 177-78 (citing Cantwell v. Connecticut, 310 U.S. 296, 303 (1940)).

[46] 403 U.S. 602, 612-13 (1971). In *Lemon*, The Supreme Court stated that: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion." *Id.*

[47] 90 N.Y.2d at 68, 681 N.E.2d at 345, 659 N.Y.S.2d at 178.

[48] *Id.* (citing Meek v. Pittenger, 421 U.S. 349, 359 (1975)).

[49] *Id.* at 69-70, 681 N.E.2d at 345, 659 N.Y.S.2d at 178.

[50] *Id.* (citing Grand Rapids School Dist. v. Ball, 473 U.S. 373, 382 (1985); *In re* Griffin v. Coughlin, 88 N.Y.2d 674, 689-91, 673 N.E.2d 98, 106-08, 649 N.Y.S.2d 903, 911-13 (1996)).

the Establishment Clause does not allow government to pass laws which assist one religion, assist all religions, or prefer one religion to another.[51] Statues that make benefits generally available, notwithstanding the availability of benefits to religious organizations, tend to survive Establishment Clause challenges.[52]

However, mere compliance with facial neutrality is not determinative and government action that targets religious organizations for "distinctive treatment," whether favorable or unfavorable, may not be protected under an illusion of facial neutrality.[53] The court noted that when a class formed along religious lines receives a governmental benefit there is a "telling index of nonneutral sectarian effect."[54] It was reliance on these very principles that caused the Supreme Court in *Kiryas Joel I* to declare the law that created a special school district for the Village's children unconstitutional even though the law utilized facially neutral terms in its application.[55]

In the present case, the plaintiffs claimed that even though chapter 241 seemed facially neutral and generally applicable, the law, because it solely benefited the Village, violated the First Amendment.[56] The court agreed with that contention since the Village is the only municipality eligible to create its own school district under chapter 241,[57] and the mere possibility that other municipalities might qualify in the future would not be enough to establish the statute's neutrality and general applicability.[58] Defendants argued that as long as chapter 241's criteria have legitimate educational purposes, it is irrelevant, for constitutional purposes, that no other existing municipality could qualify.[59]

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[51] *Id.* (citing Everson v. Board of Educ., 330 U.S. 1, 15 (1946)).

[52] *Id.* at 70, 681 N.E.2d at 345, 659 N.Y.S.2d at 178 (citing *Kiryas Joel I*, 512 U.S. 687, 704 (1994)).

[53] *Id.* at 70, 681 N.E.2d at 346, 659 N.Y.S.2d at 179 (citing Church of Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 534 (1993)).

[54] *Id.*

[55] *Id.* (citing *Kiryas Joel I,* 512 U.S. at 702-05).

[56] *Id.*

[57] *Id.* at 70-71, 681 N.E.2d at 346, 659 N.Y.S.2d at 179.

[58] *Id.*

[59] *Id.* at 71, 681 N.E.2d at 347, 659 N.Y.S.2d at 180.

The court undertook an analysis of chapter 241's criteria and found that in several instances, some of the criteria served identifiable purposes related to legitimate educational concerns.[60] The court noted that requiring a specific amount of students for both the existing and the new school district would make reasonably certain that there would be enough students for both districts to continue their operations.[61]

However, one part of chapter 241 proved extremely problematic for the court.[62] The statute limits the definition of a "municipality" to "a city, town or village in existence as of the effective date of this subdivision."[63] This limitation has the effect of disallowing any village or town subsequently incorporated from using the procedure outlined in chapter 241 to form a new school district.[64] The court noted, therefore, that "[n]o other group can hereafter do what Kiryas Joel did."[65] Although chapter 241 seems to operate in a generally applicable manner in a religion-neutral fashion, it had the identical nonneutral effect of "singling out Kiryas Joel for special treatment" that caused both the New York Court of Appeals and the Supreme Court to declare chapter 748, in *Kiryas Joel I,* unconstitutional.[66]

Using the three prong test enunciated by the Supreme Court in *Lemon v. Kurtzman,*[67] the court found that the statute violated the second *Lemon* prong which makes the state's action invalid if "its primary effect is to advance or promote religion."[68] Under the second prong of the *Lemon* test, the government may not show

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[60] *Id.* at 72, 681 N.E.2d at 347, 659 N.Y.S.2d at 180.

[61] *Id.* (citing Governor's Program Bill Memorandum on Approval, ch 241, *reprinted in* 1994 N.Y. LEG. ANN. 178 (McKinney)) .

[62] *Id.*

[63] *Id.* (citing N.Y. EDUC. LAW § 1504 (3) (g) (McKinney 1994).

[64] *Id.* at 72-73, 681 N.E.2d at 347, 659 N.Y.S.2d at 180-81.

[65] *Id.* at 73, 681 N.E.2d at 348, 659 N.Y.S.2d at 181.

[66] *Id.* (citing *Kiryas Joel I,* 512 U.S. 687, 703-05 (1994)). In *Kiryas Joel I,* the Supreme Court noted that "the religious community of Kiryas Joel did not receive its new governmental authority simply as one of many communities eligible for equal treatment under a [truly] general law." *Id.* at 703.

[67] *See supra* note 25.

[68] 90 N.Y.2d at 73-74, 681 N.E.2d at 348, 659 N.Y.S.2d at 181 (citing *Lemon,* 403 U.S. at 612).

favoritism or endorse any particular religion.[69] The court noted that both the statute's actual effect and its stated purpose must be examined under Establishment Clause scrutiny.[70] Even when neutral on its face, the challenged statute must not have "the primary effect of advancing religion."[71] The inquiry must be conducted by analyzing the statute in context, not in isolation, to properly determine if the State has acted to endorse a particular religious group.[72]

Applying the preceding principles to the case, the court concluded that chapter 241 would be perceived as favoring the residents of the Village.[73] Even though, the court noted, the New York State Legislature was acting within its authority in attempting to cure the "constitutional infirmity of chapter 748," such an enactment bestows "an unmistakable 'imprimatur of state approval'" on the residents of the Village.[74]

The New York Court of Appeals concluded that chapter 241 demonstrates "impermissible governmental endorsement of this [Kiryas Joel] religious community" because it effectively singles out the Village's residents for "special treatment."[75] Since such "special treatment" violates the Establishment Clause of the United States Constitution, the court declined to discuss whether the statute violates Article XI, section 3 of the New York State Constitution,[76] perhaps reserving such a decision to a case where it would be outcome determinative.

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[69] *Id.* at 74, 681 N.E.2d at 348, 659 N.Y.S.2d at 181 (citing Allegheny County v. Greater Pittsburgh Am. Civ. Liberties Union, 492 U.S. 573, 592 (1989)).

[70] *Id.* (citing *Allegheny*, 492 U.S. at 592).

[71] *Id.* (quoting Bowen v. Kendrick, 487 U.S. 589, 609 (1988)).

[72] *Id.* at 74-75, 681 N.E.2d at 349, 659 N.Y.S.2d at 182 (citing New York State School Bds. Ass'n v. Sobol, 79 N.Y.2d 333, 339, 591 N.E.2d 1146, 1150, 582 N.Y.S.2d 960, 964 (1992). *See also Kiryas Joel I*, 512 U.S. 687, 699 (1994) (stating a proper analysis should take into account both the text of the statute as well as its context).

[73] *Id.* at 75, 681 N.E.2d at 349, 659 N.Y.S.2d at 182.

[74] *Id.* at 75-76, 681 N.E.2d at 349, 659 N.Y.S.2d at 182 (quoting Widmar v. Vincent, 454 U.S. 263, 274 (1981)).

[75] *Id.* at 64, 681 N.E.2d at 342, 659 N.Y.S.2d at 175.

[76] *Id.* *See supra* note 38.