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Establishment of Religion Supreme Court Appellate Division Third Department

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 . . .

SUPREME COURT, APPELLATE DIVISION

THIRD DEPARTMENT

Grumet v. Cuomo[1]
(decided Aug. 26, 1996)

On appeal, plaintiffs Grumet and Hawk sought a judgment declaring a New York law,[2] which permits the establishment of union-free school districts by municipalities, unconstitutional.[3] The United States Supreme Court upheld the state court's determination that Chapter 748 of the New York Session Laws of 1989,[4] was violative of the First Amendment of the U.S.

1. 225 A.D.2d 4, 647 N.Y.S.2d 565 (3d Dep't 1996).

2. *Infra* note 6 and accompanying text.

3. *Grumet*, 225 A.D.2d at 6 - 7, 647 N.Y.S.2d at 566-67.

4. 1989 N.Y. Laws 748. Chapter 748 (hereinafter the prior law) states in pertinent part:

§ 1. 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

Constitution.[5] Subsequently, New York enacted the current law, Chapters 241 and 279 of the New York Session Laws of 1994,[6] enacted by then Governor Cuomo. The current law allows municipalities to establish their own union-free school districts without the need for special legislation if they exhibit the required demographic features.[7] Thus, the Village of Kiryas Joel[8] voted to approve the establishment of its own school district to accommodate the Village's handicapped children.[9] Consequently, plaintiffs commenced this action contending that

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the Kiryas Joel village school 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.

5. U.S. CONST. amend. I. The First Amendment states in pertinent part that "Congress shall make no law respecting an establishment of religion." (referred to as the Establishment Clause) *Id.* *See* Board of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet, 512 U.S. 687 (1994) (O'Connor, J., concurring) (holding that "the prior law 'crosse[d] the line from permissible accommodation to impermissible establishment.'"). Although the prior law was found unconstitutional, the U.S. Supreme Court stated, nevertheless, that it is all right for New York to enact such legislation. *Id.* The legislation, however, is permissible only if properly implemented through "generally applicable legislation." *Id.* at 2498 In concurrence, Justice O'Connor provided New York with guidelines to craft such "acceptable legislation." *Id.*

6. 1994 N.Y. Laws 241. Chapter 241 (hereinafter the current law) states in pertinent part:

> 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 279 (noting that this legislation was stated to be necessary to provide education to the "handicapped children of Kiryas Joel"). *Id.*

7. *Grumet,* 225 A.D.2d at 8, 647 N.Y.S.2d at 567.

8. *Board of Educ. of Kiryas Joel Village Sch. Dist.,* 512 U.S. at 691. The New York Village of Kiryas Joel (hereinafter Village) is a religious sect of Satmar Hasidism. Satmar Hasidism involves the "strict practice of Judaism." *Id* at 690. The inhabitants of the Village are religious people who make "few concessions to the modern world." *Id* at 691.

9. *Grumet,* 225 A.D.2d at 8, 647 N.Y.S.2d at 567.

the current law is unconstitutional because "it constitutes a de facto reenactment of the prior law."[10] Further, plaintiffs contend that the criteria set forth in the current law is not neutral and is crafted exclusively for one municipality in the State, the Village.[11] Based on the Supreme Court's analysis of the law under the *Lemon* test[12] and the New York Constitution,[13] the New York Supreme Court held that "the current law is constitutional," and dismissed the plaintiff's complaint.[14] The plaintiffs appealed.[15]

The court began its analysis by stating that New York cannot, "consistent with the Establishment Clause of the [First] Amendment of the U.S. Constitution, enact special legislation creating a school district coterminous with the Village."[16] This issue was previously decided when the U.S. Supreme Court and the New York courts struck down the prior law as violative of the U.S. Constitution.[17] Plaintiffs asserted that the "[l]egislature simply resurrected the prior law [through] . . . carefully crafted indirect means."[18]

The newly crafted law took effect less than two weeks after the U.S. Supreme Court made its prior determination.[19] Although

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10. *Id.*

11. *Id.*

12. *See* Lemon v. Kurtzman, 403 U.S. 602 (1971). This case sets out the following requirements (hereinafter the "*Lemon* test") for constitutional legislation: (1) "a secular purpose;" (2) "neither advance[] nor inhibit[] religion;" and (3) no "excessive entanglement" between state and religion. *Id.* at 612.

13. *See* NY CONST article 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.

14. *Grumet,* 225 A.D.2d at 8, 647 N.Y.S.2d at 568.

15. *Id.*

16. *Id.*

17. *Grumet,* 225 A.D.2d at 9, 647 N.Y.S.2d at 568.

18. *Id.*

19. *Id.*

the current law technically applies to all, the court, nevertheless, determined that it crafted solely for the Village.[20] An analysis of various data found that "the current law's demographic criteria permit only one of the State's 1,546 existing municipalities to qualify for its special treatment, the Village . . . ."[21] Further, experts contend that the current law had no educational purpose and went "against New York's established trend of consolidating school districts . . . ."[22] The defendants, however, contend that the current law is neutral. The New York Supreme Court disagreed.

To determine whether the current law was a "mere subterfuge," the New York Supreme Court considered the purpose for enacting the law.[23] Although other municipalities may be eligible in the future to have its own school district, the court, nonetheless, did not find the current law neutral.[24] Moreover, the defendant has admitted that the current law was enacted exclusively to "fulfill the purpose underlying the prior law . . . ."[25] The New York Supreme Court agreed that, although the current law seems neutral, it is deceiving.[26] When the criteria was considered together, it identified the Village and no other.[27] Furthermore, it was clear that legislation and the Governor intended to assist the Village. Accordingly, this court granted summary judgment in favor of the plaintiffs and held Session Laws of 1994 unconstitutional as violative of the

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20. *Id.*

21. *Id.* at 9, 647 N.Y.S.2d at 568.

22. *Id.*

23. *See* Wallace v. Jaffree, 472 U.S. 38, 64-65 (1985) (holding that there must be a "sincere" secular purpose for the law to survive constitutional muster).

24. *Grumet,* 225 A.D.2d at 10, 647 N.Y.S.2d at 569.

25. Id. at 10, 647 N.Y.S.2d at 569 (citing *Board of Educ. of Kiryas Joel Village Sch. Dist.,* 512 U.S. at 693. The exclusive purpose of the law was provide education to the handicapped children of Kiryas Joel. *Id.*

26. *Grumet,* 225 A.D.2d at 10, 647 N.Y.S.2d at 569.

27. *Id. See* Stapleton v. Pinckney, 293 N.Y. 330, 334-36, 57 N.E.2d 38, 39-40 (1944) (providing that such legislation which is contingent on several conditions, may not be "recognized as common," therefore, it is local and possibly unconstitutional).

Establishment Clause of the First Amendment of the U.S. Constitution.[28]

Justice Spain, for the New York Supreme Court, dissented, and adamantly rejected the majority holding that the current law was specifically created for the Village.[29] He stated that the legislation did not violate the First Amendment because it was not "designed to endorse or enhance religion, rather it provides a permissible solution to the . . . dilemma faced by the people of Kiryas Joel in meeting their needs of their handicapped children . . . ."[30] He reasoned that the current law passes both Federal and State constitutional muster.[31] Justice Spain also asserted that the Legislature was "clearly acting within its prerogative in carving out an exception to its general policy, especially where compelling or unusual circumstances warrant such an exception."[32] Lastly, he contended that the current law is a general law applicable to all qualifying municipalities.[33]

The U.S. Supreme Court has recognized that the "government may accommodate religious practice . . . without violating the Establishment Clause."[34] Not only did the majority fail to analyze this case constitutionally, but they also did not utilize the *Lemon* test.[35] Moreover, the U.S. Supreme Court held that a statute must guarantee that "governmental power will be

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28. *Grumet,* 225 A.D.2d at 10, 647 N.Y.S.2d at 570.

29. *Id.* (Spain, J., dissenting).

30. *Id.* (Spain, J., dissenting).

31. *Id. See also* Hotel Dorset, Co. v. Trust for Cultural Resources, 46 N.Y.2d 358, 385 N.E.2d 1284, 413 N.Y.S.2d 357 (1978) (holding that legislation affecting only one entity can qualify as "general legislation" if it affects others "similarly situated").

32. *Grumet,* 225 A.D.2d at 17, 647 N.Y.S.2d at 573 (Spain, J., dissenting). At the New York Conference of Mayors, there was a strong interest in the current law "permitting municipalities to organize new school districts whenever the community interests require it." *Id.*

33. It seems as though the current law satisfied the Establishment Clause concerns raised by the majority.

34. Hobbie v. Unemployment Appeals Comm'n, 480 U.S. 136, 144-45 (1987).

35. *See* Lemon v. Kurtzman, 403 U.S. 602 (1971).

neutrally employed."[36] The dissent contends that because the current law was enacted generally, it conferred its benefit upon all qualifying municipalities. The legislation, therefore, did not violate the Establishment Clause.[37] Furthermore; if the majority had used the *Lemon* test, then the current law would have been upheld.[38]

Plaintiffs contended that the current law violated the New York Constitution. This section of the New York Constitution prohibits the state from using public money to assist any educational facility where any denominational tenet or doctrine is taught.[39] However, Justice Spain contended that this claim was without merit because there was no attempt to "inculcate the doctrine and faith of the denomination."[40] The plaintiffs automatically presumed that since the residents of the Village are Satmars, "it must be presumed that they are advancing their religion through the school."[41] The plaintiffs, however failed to present sufficient evidence to support their presumption. Moreover, the plaintiffs have not shown that the school is under the control of the denomination. Accordingly, the current law does not violate the New York Constitution.[42]

In sum, the dissent proponed a valid argument asserting that the current law neither favors nor endorses religion. The current

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36. Larkin v. Grendel's Den, 459 U.S. 116, 125 (1982).

37. *Grumet,* 225 A.D.2d at 17, 647 N.Y.S.2d at 573 (Spain J. dissenting).

38. Under the *Lemon* test, the court would have noticed that (1) the current law was intended to meet the educational needs of the village, and was not "motivation of a religious purpose;" (2) the current law does not mention religion let alone endorse or "promote religion;" and (3) there is nothing to establish that this school is different from other schools similarly situated. *Grumet,* 647 N.Y.S.2d at 573 -75 The current law, therefore, survives scrutiny under all three prongs of the *Lemon* test.

40. *Id.*

40. *Grumet,* 647 N.Y.S.2d at 575 (Spain, J., dissenting). *See* College of New Rochelle v. Nyquist, 37 A.D.2d 461, 467, 326 N.Y.S.2d 765, 768 (3d Dep't 1971) (holding that because a college was sponsored by a religious order is not indicative that the college was under the control of a religious denomination).

41. *Grumet,* 225 A.D.2d at 21, 647 N.Y.S.2d at 575 (Spain J. dissenting).

42. *Id.* at 22, 647 N.Y.S.2d at 576 (Spain J. dissenting).

law is not disguised and it does not favor or promote religion. Nevertheless, this Court held that the current law simply "resurrected the prior law by achieving exactly the same result through carefully crafted indirect means."[43] Even though the current laws criteria, "standing alone," may be neutral, when the criteria are "considered together they simply identify the Village."[44] The current law is merely a "camouflage" of the prior law.[45] This Court concluded by stating "that there are a number of constitutionally permissible ways to accommodate the needs of the Satmars. We urge such a resolution."[46] Lastly, Summary Judgment was granted for the plaintiffs, and the Laws of 1994 were declared unconstitutional as violative of the Establishment Clause of the First Amendment of the U.S. Constitution.[47]

43. *Id.* at 9, 647 N.Y.S.2d at 568.
45. *Id.* at 11, 647 N.Y.S.2d at 569.
45. *Id.*
46. *Grumet,* 225 A.D.2d at 13, 647 N.Y.S.2d at 570.
47. *Id.*