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Establishment of Religion

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ESTABLISHMENT OF RELIGION

U.S. CONST. amend. I:

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

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.

COURT OF APPEALS

Grumet v. Pataki[1]
(decided May 11, 1999)

The plaintiffs, Louis Grumet and Caroline Shipley, citizen taxpayers, attacked the constitutionality of Chapter 390 of the Laws of 1997 (hereinafter Chapter 390) under the Establishment Clause of the First Amendment of the United States Constitution. The plaintiffs alleged that Chapter 390, which, in effect, provides for the creation of a separate public school district for a particular

[1] 93 N.Y.2d 677 (1999), 720 N.E.2d 66 (N.Y. 1999), 697 N.Y.S.2d 846 (1999).

religious community, has the impermissible effect of advancing religion.[2]

The New York Court of Appeals affirmed the decision of the Appellate Division holding that Chapter 390 violates the Establishment Clause of the Federal Constitution.[3] Although facially neutral, the statute operates to benefit a narrow religious class rather than a broad spectrum of classes, and, therefore, ran afoul of fundamental neutrality principles.[4] The New York Court of Appeals held that Chapter 390 constituted an impermissible religious accommodation.[5] The court found it unnecessary to address whether the statute violated the New York State Constitution.[6]

Kiryas Joel, a village inhabited exclusively by Satmar Hasidic Jews who live in Orange County New York, educated its children in two parochial schools, the United Talmudic Academy for boys and Bais Rochel for girls.[7] Neither school provided services for handicapped children even though they were entitled to such services under State and Federal law.[8] Prior to 1985, public school teachers from the Monroe-Woodbury Central School district, within which the parochial schools were located, provided special educational services on-site, in a building annexed to Bais Rochel.[9]

However, in 1985, the United States Supreme Court ruled that "publicly funded classes on religious school premises violated the Establishment Clause" of the Federal Constitution.[10] This holding

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[2] U.S. CONST. amend. I. The First Amendment provides in relevant part: "Congress shall make no law respecting an establishment of religion." *Id.*

[3] *Grumet*, 93 N.Y.2d at 683, 720 N.E.2d at 67, 697 N.Y.S.2d at 847.

[4] *Id.* at 689, 720 N.E.2d at 72, 697 N.Y.S.2d at 852. The court stated: "Although Chapter 390 sets forth facially neutral criteria, any attempt to characterize the statute as a religion-neutral law of general applicability is belied by its actual effect." *Id.*

[5] *Id.* at 694, 720 N.E.2d at 75, 697 N.Y.S.2d at 855.

[6] *Id.* at 697, 720 N.E.2d at 77, 697 N.Y.S.2d at 857.

[7] *Id.* at 683, 720 N.E.2d at 67, 697 N.Y.S.2d at 848. The Satmar Hasidic Jews, a devoutly religious group, follow a strict interpretation of the Torah, segregating the sexes outside the home and dressing in a distinctive manner. *Id.*

[8] *Id.*, 720 N.E.2d at 68, 697 N.Y.S.2d at 848.

[9] *Id.*

[10] *Id.* (citing Aguilar *v.* Felton, 473 U.S. 402 (1985)).

meant that the arrangement that then existed between the Kiryas Joel parochial schools and the Monroe-Woodbury Central School District could no longer continue.[11] In order for their children to receive special educational services, parents of the Kiryas Joel community now had to send the children to public schools.[12] However, the practice was short-lived, as the Kiryas Joel children appeared to experience problems adjusting to an environment so drastically different from their own.[13] An increasing number of parents sought administrative review of Monroe-Woodbury's decision to offer special education services only in public schools.[14] The public school district brought a "declaratory judgement action, seeking a declaration that Education Law §3602-c compelled it to furnish special education services only in regular classes and programs in public schools and not elsewhere."[15] The New York Court of Appeals ruled that Monroe-Woodbury was not compelled to provide the special education services to the Kiryas Joel children in public schools.[16] However, if Monroe-Woodbury were to provide special education services, it could not do so in a segregated setting.[17] The school district was

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[11] *Id.* In *Aguilar*, the Court reasoned that publicly funded classes on religious school premises necessarily involved excessive entanglement between church and state because the religious schools would have to tolerate the ongoing presence of state personnel whose primary purpose would be to guard against the "infiltration" of religious thought. *See Aguilar*, 473 U.S. at 413.

[12] *Id.* at 683, 720 N.E.2d at 68, 697 N.Y.S.2d at 847.

[13] *Id.*, 720 N.E.2d at 68, 697 N.Y.S.2d at 848. Specifically, parents refused to continue the arrangement, concerned that their children were experiencing trauma and fear at leaving their familiar community. *Id.*

[14] *Id.* at 684, 720 N.E.2d at 68, 697 N.Y.S.2d at 848.

[15] *Id.* Education Law §3602-c provides in pertinent part: "Pupils enrolled in nonpublic schools for whom services are provided pursuant to the provisions of this section shall receive such services in regular classes of the public school and shall not be provided such services separately from pupils regularly attending the public schools." (Education Law §3602-c [9]).

[16] *Grumet*, 93 N.Y.2d at 684, 720 N.E.2d at 68, 697 N.Y.S.2d at 848 (citing *Board of Educ. of Monroe-Woodbury Cent. Sch. Dist. v. Wieder*, 72 N.Y.2d 174, 181, 527 N.E.2d 767, 531 N.Y.S.2d 889 (1988)).

[17] *Id.*

simply required to "provide the special services at a site that was reasonably accessible to Kiryas Joel's handicapped children."[18]

The New York Legislature attempted to resolve the controversy between Kiryas Joel and the Monroe-Woodbury School District by enacting Chapter 748 of the Laws of 1989, "which established a union free school district coterminous with Kiryas Joel within the boundaries of Monroe-Woodbury."[19] The new school district would be under the control of a Board of Education, "composed of five to nine members elected by the qualified voters of the village of Kiryas Joel, to serve for terms not exceeding five years."[20] The New York Court of Appeals determined that the statute violated the Establishment Clause of the Federal Constitution because it constituted a "symbolic union of church and State," which would be perceived by members of the Satmarer Hasidim as an endorsement of their religion, and by other religious groups as disapproval of theirs.[21] This was a crucial violation of the second prong of the most commonly applied test used by the United States Supreme Court for government neutrality as established in *Lemon v. Kurtzman*.[22] The United States Supreme Court affirmed the decision of the New York Court of Appeals, finding that the act

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[18] *Id.* (citing *Monroe-Woodbury*, 72 N.Y.2d 174, 184, 527 N.E.2d at 772, 531 N.Y.S.2d at 894 where the court determined that Education Law §3602-c [9] was facially inconsistent with other laws on the same subject and should be read in the light of its history and context).

[19] *Id.* Chapter 748 of the Laws of 1989 provided in relevant 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 the Kiryas Joel village school district and shall have and enjoy all powers and duties of a union free school district under the provisions of the education law.

[20] Chapter 748 of the Laws of 1989, §2.

[21] *Grumet v. Board of Educ. of Kiryas Joel Village School Dist.*, 81 N.Y.2d at 528 (N.Y. 1993), *aff'd, Board of Educ. of Kiryas Joel Vil. Sch. Dist. v. Grumet*, 512 U.S. 687 (1994) (also known as *Kiryas Joel I*).

[22] *Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971). The *Lemon* test has three cumulative criteria or prongs to determine government neutrality: the statute must have a secular legislative purpose, its principal or primary effect must be one that neither advances nor inhibits religion and it must not foster excessive government entanglement with religion. Violation of any one of the three prongs is sufficient to offend the Establishment Clause. *Id.*

was "tantamount to an allocation of political power on a religious criterion and neither presupposed nor required government impartiality towards religion."[23]

After the Supreme Court decision, which came to be known as *Kiryas Joel I*, the Legislature passed Chapter 241 of the Laws of 1994 which "set forth facially neutral criteria that a municipality could satisfy in order to establish a school district, and delineated the process by which the new school district could be formed."[24] The New York Court of Appeals held this new statute also violated the Establishment Clause of the Federal Constitution.[25] The court reasoned that since Kiryas Joel was effectively the only group that would benefit from the statute, and it was not a beneficiary that existed within a broad range of potential beneficiaries, the new statute also had the impermissible effect of advancing a religion and therefore failed the second prong of the *Lemon* test.[26]

The New York Legislature made a third attempt to resolve the Kiryas Joel controversy by enacting Chapter 390 of the Laws of 1997,[27] which the court also referred to as "The Kiryas Joel School Bill."[28] The bill delineated specific criteria by which a municipality "situated wholly within one central or union free school district but whose boundaries are not coterminous with ... [its] ... boundaries,"[29] could establish its own district. The statute prescribed that:

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[23] *Grumet*, 93 N.Y.2d at 685, 720 N.E.2d at 69, 697 N.Y.S.2d at 849 (quoting *Board of Educ. Of Kiryas Joel Vil. Sch. Dist. v. Grumet*, 512 U.S. at 690 (1994)).

[24] *Id.* at 685 (citing *Grumet v. Cuomo*, 90 N.Y.2d 57 (1997) (also known as *Kiryas Joel II*)).

[25] *Grumet v. Cuomo*, 90 N.Y.2d 57, 73-74, 681 N.E.2d 340, 348, 659 N.Y.S.2d 173, 181 (1997).

[26] *Id.* at 72, 681 N.E.2d at 347, 659 N.Y.S.2d at 180. The Court noted that because the statute limited its definition of a municipality to "towns or villages in existence as of the effective date" of the statute, no other similarly situated group would be able to derive benefit from it. *Id.*

[27] N.Y. EDUC. LAW §3602 -c (McKinney 1995).

[28] *Grumet*, 93 N.Y.2d at 686, 695, 720 N.E.2d at 70, 76, 697 N.Y.S.2d at 850, 856.

[29] *Id.* at 686-687, 720 N.E.2d at 70, 697 N.Y.S.2d at 850.

> (i) the new school district equal at least two thousand children and that it be no greater than sixty percent of the enrollment of the existing school district from which the school district will be organized, (ii) the newly-formed district have an actual valuation per total wealth pupil unit at least equal to the State-wide average, and (iii) the enrollment of the existing school district from which the new district is formed equal at least two thousand children, excluding the residents of the municipality.[30]

The effect of the statute, in operation, was to benefit only two of New York State's 1,545 municipalities – Kiryas Joel and the Town of Stony Point.[31] Earlier in 1997, the United States Supreme Court overturned its *Aguilar v. Felton* holding[32] when it decided *Agostini v. Felton*,[33] so the barrier that originally spawned the controversy between Kiryas Joel and Monroe-Woodbury no longer existed.[34]

The claimants in the case at bar, Louis Grumet and Caroline Shipley, as citizen taxpayers, challenged the constitutionality of Chapter 390,[35] and commenced the subject action against New York State Governor George Pataki and various other officials, including those of the Board of Education of the Kiryas Joel Union Free School and Monroe-Woodbury.[36] Grumet's motion for

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[30] *Id.* at 687, 720 N.E.2d at 70, 697 N.Y.S.2d at 850.

[31] *Id.* at 689, 720 N.E.2d at 72, 697 N.Y.S.2d at 852. Under Chapter 390, only the Village of Kiryas Joel and the Town of Stony Point could establish their own school district.

[32] *Aguilar v. Felton*, 473 U.S. 402 (1985). In this case, the Court had held that publicly funded classes on religious school premises violated the Establishment Clause. This made it unconstitutional for Monroe Woodbury to provide on-site schooling to Kiryas Joel's handicapped children. *Id.* at 414.

[33] *Agostini v. Felton*, 521 U.S. 203 (1997); *see also supra* notes 8 and 9 and accompanying text.

[34] *Grumet*, 93 N.Y.2d at 697, 720 N.E.2d at 77, 697 N.Y.S.2d at 857. In other words, Monroe-Woodbury was no longer prohibited from providing on-site special educational services to Kiryas Joel's handicapped children. The court alluded to this fact at the end of its opinion and encouraged the parties to do what was best for the children, rather than prolong litigation. *Id.*

[35] *Id.* at 687, 720 N.E.2d at 70, 697 N.Y.S.2d at 850.

[36] *Id.* Although not explicitly stated in *Grumet*, it can be inferred that the claimants did not want to spend their taxes on what is essentially a private school outfitted with public resources. *Id.*

summary judgment was granted and the defendants were permanently enjoined "from taking any and all present or future action or expending any State monies or resources for the purpose of implementing Chapter 390. . . ."[37] The Appellate Division unanimously affirmed the trial court's ruling, finding that Chapter 390 failed the second prong of the *Lemon* test because it was not a "truly religious-neutral law of general applicability. . . ."[38] Furthermore, the Appellate Division concluded that Chapter 390 failed the second prong of the *Lemon* test because it extended an impermissible preference to Kiryas Joel by facilitating the Satmar's desire to provide their handicapped children with special education services in an exclusive Satmar environment.[39] In agreeing with the plaintiffs, the Appellate Division noted further that with the United States Supreme Court's overruling of *Aguilar*, Chapter 390 should be perceived as "yet another improper endorsement" of the Satmar community by the Legislature.[40] The defendants appealed.[41]

The Court of Appeals began its analysis of Chapter 390 by referring to the Establishment Clause of the Federal Constitution.[42] It provides in pertinent part that "Congress shall make no law respecting an establishment of religion."[43] This neutrality requirement prevents State or Federal Governments from "pass[ing] laws which aid one religion, aid all religions, or prefer one religion over another."[44] The court applied the "form and

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[37] *Id.*

[38] *Id.* at 687, 720 N.E.2d at 71, 697 N.Y.S.2d at 851 (citing *Grumet v. Pataki*, 244 A.D.2d 31, 36, 675 N.Y.S.2d 662 (quoting *Grumet v. Cuomo*, 90 N.Y.2d at 70, 659 N.Y.S.2d at 179, 681 N.E.2d at 346)).

[39] *Id.* at 688, 720 N.E.2d at 71, 697 N.Y.S.2d at 851.

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] U.S. CONST. amend. I. The First Amendment provides in relevant part: "Congress shall make no law respecting an establishment of religion." *Id.*

[44] *Everson v. Board of Educ.*, 330 U.S. 1, 15-16 (1947). The *Everson* court upheld the constitutionality of a New Jersey statute that authorized a township board of education to reimburse parents for money expended for the public transportation of their children to schools. Parents of children who attended Catholic parochial schools were among those reimbursed. Despite the court's

effect test"[45] it adopted from the United States Supreme Court when the former court decided *Grumet v. Cuomo*.[46] The court found that though Chapter 390 set forth facially neutral criteria and was therefore neutral in form, that when its effect was subjected to similar scrutiny, the statute clearly failed constitutional review.[47] Only two municipalities in the State of New York could benefit under Chapter 390 – Kiryas Joel and the Town of Stony Point, a direct result of the fact that the qualifying criteria of the statute were consciously drawn to benefit Kiryas Joel.[48] Because of this limiting effect, the court observed that Chapter 390 was no more neutral than its unconstitutional predecessor, Chapter 241 of the Laws of 1994.[49]

The court looked to Federal law and noted that the United States Supreme Court had not abandoned the *Lemon* test, although it has questioned it in recent years.[50] The court distinguished the subject case from *Agostini v. Felton*, in which the Supreme Court reviewed whether the placement of public school employees in parochial

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statement that the wall between church and state should be 'high and impregnable,' it nevertheless found that New Jersey had not violated the Establishment Clause. *Id.* at 18.

[45] *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 845 (1995).

[46] *Grumet v. Cuomo*, 90 N.Y.2d at 70, 681 N.E.2d at 34, 659 N.Y.S.2d at 179.

[47] *Grumet v. Pataki*, 93 N.Y.2d at 689, 720 N.E.2d at 72, 697 N.Y.S.2d at 851. The court adopted the Supreme Court's form and effect approach used in *Walz v. Tax. Comm'n. of the City of New York*, 397 U.S. 664 (1970). The basic proposition is that if the statute can survive neutrality scrutiny in both form and effect then it is beyond Establishment Clause reproach.

[48] *Id.* at 690, 720 N.E.2d at 72, 697 N.Y.S.2d at 852. The court noted that the non-neutral effect was to secure "a public school" for one religious community, whereas other religious communities would not be afforded the same benefit under the statute. *Id.*

[49] *Id.* at 690. The court observed further that although the objectionable criteria of Chapter 241 had been eliminated, the eligibility requirements under Chapter 390 provided for a virtually exclusive flow of benefits to Kiryas Joel. *Id.* at 691, 720 N.E.2d at 72-73, 697 N.Y.S.2d at 853.

[50] *Id.* at 691, 720 N.E.2d at 73, 697 N.Y.S.2d at 853. The court identified several cases showing that the Supreme Court has continued to apply the tripartite test of *Lemon v. Kurtzman* in the majority of cases, although it has used a number of tests. *See, e.g., Lee v. Weisman*, 505 U.S. 577 (1992); *County of Allegheny v. American Civ. Liberties Union*, 492 U.S. 573 (1989); *Larson v. Valente*, 456 U.S. 228 (1982); *Marsh v. Chambers*, 463 U.S. 783 (1983).

schools resulted in the impermissible effect of advancing religion and resolved the question in the negative.[51] In *Agostini*, the Court's "effects inquiry" involved a determination as to whether the presence of public school teachers necessarily had the impermissible effect of advancing religion. The Court examined whether the public school teachers' presence resulted in religious indoctrination, creating an "excessive entanglement" or "symbolic union" between church and State.[52] The Court reasoned that a program benefitting a broad spectrum of disadvantaged children, from both secular and religious schools, could not be viewed as an endorsement of religion. In *Grumet*, however, it was clear that one religious community was to benefit from the proposed legislation, Kiryas Joel.[53] More strikingly, the Court of Appeals found that the present case did not fall into the two usual categories of Establishment Clause cases.[54] "This was neither a case in which the questionable statute provided public aid to a parochial school, nor one in which it prescribed religious practices for a public school, but rather a unique case in which a religious group was delegated governmental power to form its own school district."[55] Therefore, the type of "effects inquiry" required in order to determine the neutrality of Chapter 390, according to the Court of Appeals, would not involve focusing on whether the statute advanced religion, but whether the statute provided an impermissible accommodation, which was the approach taken in *Kiryas Joel I*.[56] Essentially, the court viewed the two approaches as "both sides of [the same] coin," since either would declare unconstitutional a statute that benefits virtually a single religious group, and fails to make the same benefits available to other similarly situated groups.[57]

The court also applied its prior reasoning, again adopted from the Supreme Court, that a statute designed to accommodate a

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[51] *Agostini v. Felton*, 521 U.S. 203 (1997).

[52] *Id.* at 227-235.

[53] *Grumet v. Pataki*, 93 N.Y.2d at 690, 720 N.E.2d at 72, 697 N.Y.S.2d at 852.

[54] *Id.* at 692, 720 N.E.2d at 74, 697 N.Y.S.2d at 854.

[55] *Id.*

[56] *Id.* at 693, 720 N.E.2d at 74, 697 N.Y.S.2d at 854.

[57] *Id.* at 694, 720 N.E.2d at 75, 697 N.Y.S.2d at 855.

religious group should not be viewed automatically as advancing religion, so long as the secular effect is distinct from its religious impact and the beneficiary class is broad.[58] The court also followed New York State precedent, adopting the corollary to the Supreme Court's index of secular effect, proffering that a valid index of nonsecular effect would inhere in the provision of a governmental benefit to a restricted class.[59]

Finally, the court seemed ultimately persuaded by the claimants that since *Agostini* provided a constitutionally viable alternative prior to the enactment of Chapter 390, the enactment should indeed be viewed as an advancement of religion, because the Satmar Hasidim, as well as other religious groups would perceive the statute as giving preferential treatment to one religious sect.[60] Drawing from both federal and state precedents, and ultimately persuaded by the claimants' arguments in view of *Agostini*, the Court of Appeals could not but conclude that Chapter 390 not only constituted an impermissible accommodation, but also had the primary effect of advancing a religion.[61]

The dissenting opinion[62] offered three arguments for the preservation of Chapter 390's constitutionality.[63] First, the presumption of constitutionality afforded every enactment of Legislature;[64] second, the lack of any persisting or new constitutional faults under presently governing Establishment

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[58] *Id.* at 695, 720 N.E.2d at 76, 697 N.Y.S.2d at 856. The court stated: "In other words, a permissible accommodation must honor the principle of neutrality as among religions." (*interpreting Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 673 (1970)).

[59] *Grumet v. Cuomo*, 90 N.Y.2d 57, 70, 681 N.E.2d 340, 346, 659 N.Y.S.2d 173, 179 (citing *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819 (1995).

[60] *Grumet v. Pataki*, 93 N.Y.2d at 696-697, 720 N.E.2d at 77, 697 N.Y.S.2d at 857.

[61] *Id.*

[62] *Id.* at 697, 720 N.E.2d at 77, 697 N.Y.S.2d at 857 (Bellacosa, J., dissenting).

[63] *Id.*

[64] *See generally 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).

Clause jurisprudence;[65] and third, the explicit removal from Chapter 390 of previously adjudicated constitutional defects.[66]

The first argument rested on the minority's disagreement with the majority's prudential approach in analyzing the statute. The minority argued that since policy considerations were entrusted by the Constitution to the Legislature, and not the Judiciary, the presumption that an act of Legislature is constitutional should control unless rebutted by proof "persuasive beyond a reasonable doubt."[67] The minority also emphasized that public funding programs designed to address modern, real-life problems should be respected unless "patently illegal."[68]

The second argument casts doubt on the majority's refusal to accept a facially neutral statute in view of the evolving jurisprudence in Establishment Clause law. Specifically, the Supreme Court's suggestion that a district created under a generally applicable scheme would be acceptable even if it operated to correspond with a specific religious group led the minority to vote against the majority.[69]

The third argument accused the majority of changing its criteria for satisfying the neutrality requirement of the Establishment Clauses, thereby revealing the "slippery slope nature of the invalidation test." [70] Here, the minority criticized the majority for not considering the statute constitutional even though the Legislature had removed the objectionable elements of the statute.

In sum, a comparison of federal and state law in the area of Establishment Clause cases reveals several similarities as well as

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[65] *See Grumet*, 93 N.Y.2d. at 696-97, 720 N.E.2d at 77, 697 N.Y.S.2d at 857.

[66] *Id.* at 701, 720 N.E.2d at 80, 697 N.Y.S.2d at 860 (Bellacosa, J., dissenting). The dissent states that the defects of Chapter 390 were cured at the court's "explicit suggestion." *Id.*

[67] *Id.* at 697, 720 N.E.2d at 78, 697 N.Y.S.2d at 858 (Bellacosa, J., dissenting) (citing *Hotel Dorset Co. v. Trust for Cultural Resources of City of N.Y.*, 46 N.Y.2d 358, 370, 473 N.Y.S.2d 357, 385 N.E.2d 1284 [citations omitted]).

[68] *Id.* at 698, 720 N.E.2d at 78, 697 N.Y.S.2d at 858 (Bellacosa, J., dissenting).

[69] *Id.* at 700, 720 N.E.2d at 80, 697 N.Y.S.2d at 860 (Bellacosa, J., dissenting). The minority was referring to a comment by Justice O'Connor to that effect in *Kiryas Joel I*, 512 U.S. 687, 703 (1993).

[70] *Grumet* at 703, 720 N.E.2d at 82, 697 N.Y.S.2d at 862 (Bellacosa, J., dissenting).

the consistency of *Grumet v. Pataki* with state and federal precedent. Both the federal and state courts look to the form as well as the effect of the statute before passing upon its neutrality. Both the federal and state courts continue to apply the *Lemon* test to determine whether the statute has an impermissible effect. Both federal and state courts regard the broadness of the applicability of the statute as a valid index of secular effect. *Grumet*, in a sense, gave New York State an opportunity to re-articulate concepts implicit in the federal jurisprudence. Namely, that in addition to advancement of religion under the second prong of the *Lemon* test, an accommodation whose secular effect is inseparable from its religious impact is also impermissible under the federal constitution. Moreover, when the beneficiary class of the proposed legislation is narrow, such narrowness constitutes a valid index of nonsecular effect.

Anthea M. des Etages