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ESTABLISHMENT OF RELIGION

N.Y. CONST. art. XI, § 3:

Neither the state nor 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

ALBANY COUNTY

Grumet v. Cuomo[1]
(decided March 8, 1995)

Plaintiffs sought to enjoin the implementation of Chapter 241 of the New York Session Laws of 1994[2] on the basis that it violated the Establishment Clause of the United States Constitution[3] and Article XI, section 3 of the New York State

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1. 164 Misc. 2d 644, 625 N.Y.S.2d 1000 (Sup. Ct. Albany County 1995).

2. *Id.* at 648, 625 N.Y.S.2d at 1003. *See* 1994 N.Y. Laws 241. Chapter 241 of the Laws of 1994 provides in pertinent part:

> Any municipality situated 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 interests of the community require it.

Id.

3. U.S. CONST. amend. I. The Establishment Clause provides "Congress shall make no law respecting an establishment of religion . . . ." *Id.*

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Constitution.[4] The Supreme Court of Albany County held that the enactment of Chapter 241 served a secular purpose, did not endorse religion, and did not foster an excessive government entanglement with religion and, therefore, the Establishment Clause was not violated.[5] The court also held that the school district was not under the control or direction of the Satmar sect, and, thus, there was no violation of Section 3 of Article XI of the New York State Constitution.[6] Based on the foregoing, the court held that the plaintiffs failed to raise any cognizable constitutional claim with respect to the challenged statute, and granted summary judgment to the defendants.[7]

The Incorporated Village of Kiryas Joel in the Town of Monroe, Orange County, is a homogenous religious community whose citizens all belong to the Satmar Hassidim sect.[8] The Satmars follow a strictly religious lifestyle, and most of the Satmar children attend private religious academies.[9] However, there are some handicapped children who cannot be provided for in the parochial schools.[10] Public schooling for these children was provided by the Monroe-Woodbury Central School District outside the boundaries of Kiryas Joel.[11] Many of the children's parents eventually deemed this unsatisfactory.[12] Most of these children were eventually removed from the public schools due to

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4. N.Y. CONST. art. XI, § 3. This section provides in pertinent part:

> Neither the state nor 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, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of 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.

Id.

5. *Grumet*, 164 Misc. 2d at 653, 625 N.Y.S.2d at 1007.
6. *Id.* at 655, 625 N.Y.S.2d at 1007-08.
7. *Id.*
8. *Id.* at 646, 625 N.Y.S.2d at 1002.
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*

"the panic, fear and trauma [the children] suffered in leaving their own community and being with people whose ways were so different."[13]

The New York State Legislature attempted to resolve the controversy by enacting Chapter 748 of the Laws of 1989.[14] This created the Kiryas Joel Village School District, which was to consist of the territory of the Village of Kiryas Joel.[15] The district provided special education services to the handicapped children of Kiryas Joel and other handicapped children from beyond the Village."[16] Consequently, the United States Supreme Court in *Board of Education of Kiryas Joel Sch. Dist. v. Grumet*[17] found the statute to be a violation of the Establishment Clause and held it unconstitutional.[18] A plurality of the Justices deemed the legislature's act to be the equivalent of "defining a political subdivision,"[19] the result of which was a "purposeful and forbidden fusion of governmental and religious functions."[20]

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13. *Id.* at 646, 625 N.Y.S.2d at 1002-03 (quoting Bd. of Educ. of Monroe-Woodbury Cent. Sch. Dist. v. Wieder, 72 N.Y.2d 174, 181, 527 N.E.2d 767, 770, 531 N.Y.S.2d 889, 892 (1988)).

14. *Id.* at 646-47, 625 N.Y.S.2d at 1003. *See* 1989 N.Y. Laws 748. Chapter 748 provides in pertinent part:

> 1. The territory of the Village of Kiryas Joel in the Town of Monroe, Orange County, on a 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 the powers and duties of a union free school district under the provisions of the Education Law.
> 2. Such district shall be under the control of a Board of Education, which shall be composed of from five to nine members elected by the qualified voters of the Village of Kiryas Joel, said members to serve for terms not exceeding five years.
> 3. This act shall take effect on the first day of July next succeeding the date on which it shall have become a law.

Id.

15. *Grumet*, 164 Misc. 2d at 646-47, 625 N.Y.S.2d at 1002.

16. *Id.* at 647, 625 N.Y.S.2d at 1003.

17. 114 S. Ct. 2481 (1994).

18. *Id.* at 2485.

19. *Id.* at 2490.

20. *Id.*

Days after *Grumet* was decided by the Supreme Court, the New York State Legislature enacted Chapters 241[21] and 279[22] of the Laws of 1994.[23] Chapter 279 repealed Chapter 748 of the Laws of 1989 and "abolished the Kiryas Joel Village School District."[24] Chapter 241 of the Laws of 1994 affected an amendment to section 1504 of the Education Law[25] "to permit every city, town or village, . . . to organize a new union free school district . . . whenever the educational interests of the community require it if certain additional requirements are fulfilled."[26] Soon after the enactment of Chapter 241, the Monroe-Woodbury Board of Education voted to create a new school district for the Village of Kiryas Joel.[27] The school district was approved by a vote of the residents of Kiryas Joel, and the new school district was created two days later.[28]

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21. *See supra* note 2.

22. 1994 N.Y. Laws 279. Chapter 279, section 2 provides:

> Chapter 748 of the laws of 1989 relating to establishing a separate school district is REPEALED, the Kiryas Joel Village School District is hereby abolished and, for the purpose of article 31 of the education law, the territory comprising the Village of Kiryas Joel shall be deemed to be part of the Monroe-Woodbury Central School District, until such territory is formally consolidated with, annexed by, replaced by or superseded by a new or existing school district pursuant to such article 31 of the education law.

Id.

23. *Grumet*, 164 Misc. 2d at 647, 625 N.Y.S.2d at 1003.

24. *Id.* at 646-47, 625 N.Y.S.2d at 1003.

25. N.Y. EDUC. LAW § 1504 (McKinney 1994). This section provides 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 interests of the community require it.

26. *Grumet*, 164 Misc. 2d at 648, 625 N.Y.S.2d at 1003.

27. *Id.* at 648, 625 N.Y.S.2d at 1004.

28. *Id.*

Plaintiff's first claim[29] was that Chapter 241 violated the Establishment Clause of the United States Constitution. In addressing this claim, the court recognized the broad principle that "[t]he First Amendment's guarantee that 'Congress shall make no law respecting an establishment of religion' is more than a pledge that no single religion will be designated as a state religion."[30] Quoting from *Committee for Public Education and Religious Liberty v. Nyquist,*[31] the court stated that the Establishment Clause "proscribes sponsorship, financial support, and active involvement of the sovereign in religious activity."[32]

The court then applied the test set forth in *Lemon v.*

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29. Prior to addressing plaintiffs' claims on the merits, the court first evaluated whether plaintiffs had standing to bring the action. *Id.* at 649, 625 N.Y.S.2d at 1004. The court looked to *County of Rensselaer v. Regan,* 173 A.D.2d 37, 578 N.Y.S.2d 274 (3rd Dep't 1991), wherein it was held that where a plaintiff is asserting a proprietary claim of "entitlement to a specific fund," that plaintiff has standing to "challenge the validity of subsequent legislation impairing their entitlement to that fund." *Id.* at 40, 578 N.Y.S.2d at 276. The court then applied *Grumet v. Board of Education of the Kiryas Joel Sch. Dist.,* 187 A.D.2d 16, 592 N.Y.S.2d 123 (3rd Dep't 1992), which held that citizen taxpayers "have statutory standing to maintain an action for declaratory or injunctive relief to prevent the unconstitutional disbursement of state funds" and that the formation of a new school district which is the recipient of state funds can be challenged in a citizen taxpayer action. *Id.* at 20, 592 N.Y.S.2d at 126. Based on the foregoing, the court in the present action found that the "uncontroverted allegations in the complaint clearly show that each plaintiff meets the definition of citizen taxpayer . . . and, therefore, they have statutory standing to maintain an action for declaratory or injunctive relief to prevent the unconstitutional disbursement of state funds." *Grumet,* 164 Misc. 2d at 649, 625 N.Y.S.2d at 1004 (citations omitted). Having established that the plaintiffs had standing to challenge the statute, the court moved on to the merits of the action. *Id.*

30. *Grumet,* 164 Misc. 2d at 649, 625 N.Y.S.2d at 1004 (quoting School Dist. of Grand Rapids v. Ball, 474 U.S. 373, 381 (1985) (stating that the Establishment Clause is more encompassing than a "mere injunction that governmental programs discriminating among religions are unconstitutional")).

31. 413 U.S. 756, 763-64 (1973) (holding that while the State has a duty "to insure the health, welfare and safety" of nonpublic school children, the Establishment Clause prohibits the State from any active involvement in religious activity).

32. *Grumet,* 164 Misc. 2d at 649, 625 N.Y.S.2d at 1004 (citations omitted).

Kurtzman[33] in order to determine the constitutionality of Chapter 241.[34] The court recognized that "[a]lthough criticized, the *Lemon* case provides a sound analytical framework and there is clearly no consensus on a substitute"[35] and that "[a]bsent an announced abandonment of *Lemon* by the Supreme Court, it remains the law and shall be applied."[36] Having established that the *Lemon* test is the proper method for analyzing the issue, the court noted that "[t]here is no evidence in the record to suggest that the school is operated in a manner other than that required of a New York Public School"[37] and that under the *Lemon* test a "'court may invalidate a statute only if it is motivated wholly by an impermissible purpose, if its primary effect is the advancement of religion, or if it requires excessive entanglement between church and state.'"[38]

The court analyzed plaintiffs' claim under the first prong of the *Lemon* test to determine if Chapter 241 served a secular purpose.[39] The court identified the secular purpose as "afford[ing] municipalities, whose residents believe it in their best educational interests, the opportunity to create a new school district where certain religion-neutral and objective requirements

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33. 403 U.S. 602 (1971). The test set forth in the case, referred to as the "*Lemon* test," is a three part test which holds that when a statute serves a non secular purpose, excessively entangles the state with religion, or has a primary effect of endorsing religion, the statute is unconstitutional. *Id.* at 612-13. Justice Scalia had this to say about the *Lemon* test: "Like some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad, after being repeatedly killed and buried, *Lemon* stalks our Establishment Clause jurisprudence once again, frightening the little children and school attorneys of Center Moriches Union Free School District." Lamb's Chapel v. Center Moriches Union Free Sch. Dist., 113 S. Ct. 2141, 2149 (1993) (concurring). The majority countered: "[w]hile we are somewhat diverted by Justice Scalia's evening at the cinema, we return to the reality that there is a proper way to inter an established decision and *Lemon*, however frightening it may be to some, has not been overruled." *Id.* at 2148 n.7.

34. *Grumet*, 164 Misc. 2d at 649, 625 N.Y.S.2d at 1004.

35. *Id.* at 650, 625 N.Y.S.2d at 1004-05.

36. *Id.* at 650, 625 N.Y.S.2d at 1004.

37. *Id.* at 650, 625 N.Y.S.2d at 1005.

38. *Id.* (citation omitted).

39. *Id.*

are satisfied."[40] The court found that Chapter 241 was "a general law drawn in neutral terms,"[41] and that "there was nothing to suggest that the Legislature 'was entirely motivated by a purpose to advance religion.'"[42]

Addressing the emerging "endorsement" test, the court found that "the New York Legislature had neither 'endorse[d] [n]or disapprove[d] of religion' in the enactment of Chapter 241, but has, at most, permissibly accommodated the Satmars without singling them out for favorable treatment.'"[43] The court contrasted Chapter 241 with Chapter 748, finding that whereas Chapter 748 conferred a special benefit on the Satmars, "Chapter 241 provide[d] a religion-neutral mechanism available for all qualifying municipalities."[44] On that basis, the court concluded that the primary purpose of Chapter 241 was not religious "but instead [was] valid and secular with at most, an ancillary purpose of accommodating religion."[45] Thus, Chapter 241 did not violate the first prong of the *Lemon* test.[46]

The court then turned to the second prong of the *Lemon* test to decide whether the primary effect of the statute was to endorse religion.[47] The court found that the "principal and primary effect of Chapter 241 is the expansion of a municipality's ability to meet its local educational needs, and . . . to allow the Village of Kiryas Joel to create its own school district and provide for the public education of the Village's handicapped children."[48] The

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40. *Id.*

41. *Id.*

42. *Id.* (citing Wallace v. Jaffree, 472 U.S. 38, 56 (1985) (holding that governmental acts which advance religion fail the *Lemon* test, and, thus, violate the Establishment Clause)).

43. *Grumet,* 164 Misc. 2d at 651, 625 N.Y.S.2d at 1005 (citations omitted). *See* School Dist. of Abbington Township v. Schempp, 374 U.S. 203, 299 (1963) (stating that the government cannot use its power to serve any solely religious purpose, but religious needs can be accommodated through laws that are neutral with regard to religion).

44. *Grumet,* 164 Misc. 2d at 651, 625 N.Y.S.2d at 1005.

45. *Id*

46. *Id.*

47. *Id.* at 651, 625 N.Y.S.2d at 1006.

48. *Id.*

court, citing *School District of Grand Rapids v. Ball*,[49] found that the statute did not "convey a message of government endorsement or disapproval."[50] Further, "there was no 'symbolic union of church and state . . . likely to be perceived by adherents of the controlling denominations as an endorsement, and by non-adherents as a disapproval, of their individual religious choices.'"[51] The court also stated that the Legislature maintained the "'requisite course of neutrality' [such that] Chapter 241 neither constitutes 'direct state-funded efforts to indoctrinate youngsters in specific religious beliefs,' nor 'fosters a close identification of [the State government's] powers and responsibilities with those of any or all religious denominations.'"[52]

The court also cited to *Widmar v. Vincent*,[53] finding that "Chapter 241 does not 'confer any imprimatur of state approval of religious sects or practices.'"[54] The court concluded that Chapter 241 neither created nor required the creation of the

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49. 473 U.S. 373 (1985).

50. *Grumet*, 164 Misc. 2d at 651, 625 N.Y.S.2d at 1006 (quoting *Ball*, 473 U.S. at 389 (stating that where the government appears to endorse or disapprove of religion such endorsement or disapproval is sufficient to fail the *Lemon* test and violate the Establishment Clause)).

51. *Grumet*, 164 Misc. 2d at 652, 625 N.Y.S.2d at 1006 (quoting *Ball*, 473 U.S. at 390 (stating that a symbolic union of the government with religion which may be perceived as an endorsement, or disapproval, is violative of the Establishment Clause)).

52. *Grumet*, 164 Misc. 2d at 652, 625 N.Y.S.2d at 1006 (citation omitted).

53. 454 U.S. 263 (1981). In *Widmar*, the Court held a state university policy, which excluded certain registered student groups from using school facilities because membership in the groups was determined by religion, to be an impermissible content-based regulation on free speech. *Id.* at 276. The Court further stated that the policy was unnecessary to comply with the Establishment Clause on the grounds that a religious organization's enjoyment of merely incidental benefits does not violate the prohibition against the primary advancement of religion. *Id.*

54. *Grumet*, 164 Misc. 2d at 652, 625 N.Y.S.2d at 1006 (quoting *Widmar*, 454 U.S. at 274 (stating that where the governmental actions do not manifest a showing of governmental approval of religious practices, such actions are not violative of the Establishment Clause)).

Kiryas Joel Village School District, nor did it prohibit the creation of other school districts pursuant to its provisions, and, therefore, it would not likely "be perceived as an endorsement of the Satmar sect."[55] As a result, Chapter 241 did not violate the second prong of *Lemon*.[56]

The court then turned to the question of whether Chapter 241 excessively entangled the government with religion in violation of the third prong of the *Lemon* test.[57] The court found that excessive government entanglement was not implicated.[58] The court cited to *Larkin v. Grendel's Den, Inc.*[59] and found that Chapter 241 "d[id] not 'enmesh churches in the processes of government and create the danger of political fragmentation and divisiveness on religious lines.'"[60] Distinguishing *Larkin*, the court found that in the present case, "there [was] no delegation of government power to religious bodies as there was in *Larkin*."[61]

The court concluded that in enacting Chapter 241, the New York State Legislature neither "impaired nor debased" the spirit of the Establishment Clause, and, therefore, the legislation is not violative of the United States Constitution.[62]

The court next turned its attention to plaintiff's claim that Chapter 241 violated Article XI, section 3 of the New York State Constitution by using public money "'directly or indirectly, in aid or maintenance, . . . of any school or institution of learning wholly or in part under the control or direction of any religious

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55. *Grumet*, 164 Misc. 2d at 652, 625 N.Y.S.2d at 1006.

56. *Id.* (rejecting plaintiff's claim that Kiryas Joel Village School District is the only district that can satisfy the statute's requirements).

57. *Id.*

58. *Id.*

59. 459 U.S. 116, 126-27 (1982) (holding unconstitutional a Massachusetts statute which gave the governing bodies of churches and schools the power to prevent the issuance of liquor licenses for premises within a 500-foot radius of the church or school by objecting to the license applications).

60. *Grumet*, 164 Misc. 2d at 652, 625 N.Y.S.2d at 1006 (quoting *Larkin*, 459 U.S. at 127).

61. *Grumet*, 164 Misc. 2d at 652, 625 N.Y.S.2d at 1006 (pointing out that in *Larkin*, "churches were given veto power over liquor license applications").

62. *Id.* at 653, 625 N.Y.S.2d at 1007.

denomination' . . . ."[63] Plaintiffs alleged that the Kiryas Joel School District was under the control of the Satmar sect, pointing to the fact that all members of the Board were Satmar.[64] The court analyzed this claim in light of *In re College of New Rochelle v. Nyquist*[65] which employed a "totality of the circumstances test."[66] The *Nyquist* court stated that "mere affiliation or a sharing of administrative control by a denomination will not, in and of itself, bring the institution within the proscription of [Article XI, section 3]."[67] The court, in *Grumet*, applied *College of New Rochelle's* "totality of the circumstances" test and concluded that the mere fact that members of the school board and the elected civic leaders are also members of the Satmar sect did not indicate that the school was under the control or direction of the sect.[68] As a result, "plaintiff's claims under the [New York] State Constitution [were] no stronger than under the . . . Federal Constitution."[69]

In ruling on the merits of the case, the court recognized that when determining whether the legislation violated the Establishment Clause, the *Lemon* test, though criticized, is still the proper test to be applied.[70] However, with respect to the state constitutional claim, rather than applying the three part *Lemon* test, the court used the "totality of the circumstances" as set forth in *College of New Rochelle*.[71]

The New York standard requires that to establish a violation of the New York State Constitution, the plaintiff must prove that

63. *Grumet*, 164 Misc. 2d at 653, 625 N.Y.S.2d at 1007 (quoting N.Y. CONST. art. XI, § 3).

64. *Id.*

65. 37 A.D.2d 461, 466-67, 326 N.Y.S.2d 765, 771-72 (3rd Dep't 1971).

66. *Id.* (holding that a college founded and operated by Ursuline Nuns was not under the control or direction of any religious denomination, nor would state aid to the college advance or inhibit religion or result in excessive entanglement of the state with religion).

67. *Grumet*, 164 Misc. 2d at 654, 625 N.Y.S.2d at 1007 (quoting *College of New Rochelle*, 37 A.D.2d at 466, 326 N.Y.S.2d at 772).

68. *Grumet*, 164 Misc. 2d at 654, 625 N.Y.S.2d at 1007.

69. *Id.* at 655, 625 N.Y.S.2d at 1007.

70. *Id.* at 650, 625 N.Y.S.2d at 1004.

71. *Id.* at 654, 625 N.Y.S.2d at 1007.

there is a "propagation" of religious tenets within the schools, or that religion "pervades" the school.[72] This is a more stringent standard than the *Lemon* test, where the plaintiff must prove that there was either an excessive entanglement between church and state, or that the act was motivated wholly by an impermissible purpose, or that its primary effect was the advancement of religion.[73] The court reconciled this difference by stating that jurisprudential policy left to the New York Court of Appeals "the function of determining that the State Constitution affords greater or different rights than the Federal Constitution."[74] Having found that Chapter 241 does not violate either the Federal or New York State Constitutions, the court granted summary judgment to the defendants.[75]

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72. *Id.*
73. *Lemon*, 403 U.S. at 612-13.
74. *Grumet*, 164 Misc. 2d at 655, 625 N.Y.S.2d at 1007-08.
75. *Id.* at 655, 625 N.Y.S.2d at 1008.