Supplementary Material

Chapter 10: The Reagan Era—Individual Rights/Religion/Establishment

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Board of Education of Kiryas Joel Village School v. Grumet, 512 U.S. 687 (1994)

Virtually all the residents in the village of Kiryas Joel, New York, are members of the Satmar Hasidic sect of Judaism. Hasidic Jews educate their children in private religious schools and restrict contact with non-Jewish outsiders. The local religious schools in Kiryas Joel, however, provided no accommodations for special needs students. Parents who wanted to take advantage of federal and state laws mandating services had to enroll their children in a public school operated by the Monroe-Woodbury Central School District, of which the village of Kiryas Joel was technically a part. With one exception, all eligible children either received privately funded special services or went without help. In 1989, New York passed a law creating a school district entirely within Kiryas Joel. The newly created school district operated only a special education program. All other students continued to attend parochial school. Louis Grumet, a local taxpayer, and the Board of Education of the Monroe-Woodbury Central School District filed a lawsuit, claiming that the New York law creating a special school district in Kiryas Joel was an unlawful establishment of religion. The trial court agreed with this contention, as did the New York state appellate courts. The Board of Education of Kiryas Joel Village School appealed to the Supreme Court of the United States.

The Supreme Court by a 6–3 vote agreed that the New York law establishing the school district was unconstitutional. Justice Souter's majority opinion claimed that New York violated the establishment clause by effectively delegating public authority to a religious sect. Why did he reach that conclusion? Why did Justice Scalia disagree? Do you believe the New York law demonstrates religious favoritism or was an attempt to help a religious minority? Kiryas Joel *was one of the rare instances where the Rehnquist Court found an establishment clause violation (outside of school prayer). What explains the result in this case?*

JUSTICE SOUTER delivered the opinion of the Court.

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"A proper respect for both the Free Exercise and the Establishment Clauses compels the State to pursue a course of 'neutrality' toward religion," favoring neither one religion over others nor religious adherents collectively over nonadherents. [T]he statute creating the Kiryas Joel Village School District departs from this constitutional command by delegating the State's discretionary authority over public schools to a group defined by its character as a religious community, in a legal and historical context that gives no assurance that governmental power has been or will be exercised neutrally.

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. . . Authority over public schools belongs to the State, N.Y., and cannot be delegated to a local school district defined by the State in order to grant political control to a religious group. . . .

Of course, [the statute] delegates power not by express reference to the religious belief of the Satmar community, but to residents of the "territory of the village of Kiryas Joel." . . . But our analysis does not end with the text of the statute at issue, and the context here persuades us that Chapter 748 effectively identifies these recipients of governmental authority by reference to doctrinal adherence, even though it does not do so expressly. We find this to be the better view of the facts because of the way the

boundary lines of the school district divide residents according to religious affiliation, under the terms of an unusual and special legislative act.

It is undisputed that those who negotiated the village boundaries when applying the general village incorporation statute drew them so as to exclude all but Satmars, and that the New York Legislature was well aware that the village remained exclusively Satmar. . . . The significance of this fact to the state legislature is indicated by the further fact that carving out the village school district ran counter to customary districting practices in the State. Indeed, the trend in New York is not toward dividing school districts but toward consolidating them. . . . The object of the State's practice of consolidation is the creation of districts large enough to provide a comprehensive education at affordable cost, which is thought to require at least 500 pupils for a combined junior-senior high school. The Kiryas Joel Village School District, in contrast, has only 13 local, full-time students in all (even including out-of-area and part-time students leaves the number under 200), and in offering only special education and remedial programs it makes no pretense to be a full-service district.

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Because the district's creation ran uniquely counter to state practice, following the lines of a religious community where the customary and neutral principles would not have dictated the same result, we have good reasons to treat this district as the reflection of a religious criterion for identifying the recipients of civil authority. . . . We therefore find the legislature's Act to be substantially equivalent to defining a political subdivision and hence the qualification for its franchise by a religious test, resulting in a purposeful and forbidden "fusion of governmental and religious functions."

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. . . JUSTICE SCALIA's dissent is certainly the work of a gladiator, but he thrusts at lions of his own imagining. We do not disable a religiously homogeneous group from exercising political power conferred on it without regard to religion. Unlike the states of Utah and New Mexico (which were laid out according to traditional political methodologies taking account of lines of latitude and longitude and topographical features, the reference line chosen for the Kiryas Joel Village School District was one purposely drawn to separate Satmars from non-Satmars. Nor do we impugn the motives of the New York Legislature, which no doubt intended to accommodate the Satmar community without violating the Establishment Clause; we simply refuse to ignore that the method it chose is one that aids a particular religious community, rather than all groups similarly interested in separate schooling. . . .

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JUSTICE BLACKMUN, concurring.

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JUSTICE STEVENS, with whom JUSTICE BLACKMUN and JUSTICE GINSBURG join, concurring.

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. . . The isolation of these children, while it may protect them from "panic, fear and trauma," also unquestionably increased the likelihood that they would remain within the fold, faithful adherents of their parents' religious faith. By creating a school district that is specifically intended to shield children from contact with others who have "different ways," the State provided official support to cement the attachment of young adherents to a particular faith. It is telling, in this regard, that two thirds of the school's full-time students are Hasidic handicapped children from outside the village; the Kiryas Joel school thus serves a population far wider than the village—one defined less by geography than by religion.

Affirmative state action in aid of segregation of this character is unlike the evenhanded distribution of a public benefit or service, a "release time" program for public school students involving no public premises or funds, or a decision to grant an exemption from a burdensome general rule. It is, I believe, fairly characterized as establishing, rather than merely accommodating, religion. . . .

JUSTICE O'CONNOR, concurring in part and concurring in the judgment.

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. . . [R]eligious needs can be accommodated through laws that are neutral with regard to religion. The Satmars' living arrangements were accommodated by their right—a right shared with all other communities, religious or not, throughout New York—to incorporate themselves as a village. From 1984 to 1985, the Satmar handicapped children's educational needs were accommodated by special education programs like those available to all handicapped children, religious or not. . . .

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This emphasis on equal treatment is, I think, an eminently sound approach. In my view, the Religion Clauses—the Free Exercise Clause, the Establishment Clause, the Religious Test Clause, Art. VI, cl. 3, and the Equal Protection Clause as applied to religion—all speak with one voice on this point: absent the most unusual circumstances, one's religion ought not affect one's legal rights or duties or benefits. As I have previously noted, "the Establishment Clause is infringed when the government makes adherence to religion relevant to a person's standing in the political community."

That the government is acting to accommodate religion should generally not change this analysis. What makes accommodation permissible, even praiseworthy, is not that the government is making life easier for some particular religious group as such. Rather, it is that the government is accommodating a deeply held belief. Accommodations may thus justify treating those who share this belief differently from those who do not; but they do not justify discriminations based on sect. A state law prohibiting the consumption of alcohol may exempt sacramental wines, but it may not exempt sacramental wine use by Catholics, but not by Jews. A draft law may exempt conscientious objectors, but it may not exempt conscientious objectors whose objections are based on theistic belief (such as Quakers) as opposed to nontheistic belief (such as Buddhists) or atheistic belief. . . .

I join . . . the Court's opinion because I think this law, rather than being a general accommodation, singles out a particular religious group for favorable treatment. The Court's analysis of the history of this law and of the surrounding statutory scheme persuades me of this.

On its face, this statute benefits one group—the residents of Kiryas Joel. Because this benefit was given to this group based on its religion, it seems proper to treat it as a legislatively drawn religious classification. I realize this is a close question, because the Satmars may be the only group who currently need this particular accommodation. The legislature may well be acting without any favoritism, so that if another group came to ask for a similar district, the group might get it on the same terms as the Satmars. But the nature of the legislative process makes it impossible to be sure of this. . . .

. . . 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, for instance, allow all villages to operate their own school districts. . . . A district created under a generally applicable scheme would be acceptable even though it coincides with a village which was consciously created by its voters as an enclave for their religious group. I do not think the Court's opinion holds the contrary.

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The Establishment Clause does not demand hostility to religion, religious ideas, religious people, or religious schools. . . . It is the Court's insistence on disfavoring religion in *Aguilar v. Felton* (1985) that led New York to favor it here. The court should, in a proper case, be prepared to reconsider *Aguilar*, in order to bring our Establishment Clause jurisprudence back to what I think is the proper track—government impartiality, not animosity, towards religion.

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JUSTICE KENNEDY, concurring in the judgment.

. . . As the Court recognizes, a legislative accommodation that discriminates among religions may become an establishment of religion. But the Court's opinion can be interpreted to say that an accommodation for a particular religious group is invalid because of the risk that the legislature will not

grant the same accommodation to another religious group suffering some similar burden. This rationale seems to me without grounding in our precedents and a needless restriction upon the legislature's ability to respond to the unique problems of a particular religious group. The real vice of the school district, in my estimation, is that New York created it by drawing political boundaries on the basis of religion. I would decide the issue we confront upon this narrower theory, though in accord with many of the Court's general observations about the State's actions in this case.

This is not a case in which the government has granted a benefit to a general class of recipients of which religious groups are just one part. It is, rather, a case in which the government seeks to alleviate a specific burden on the religious practices of a particular religious group. I agree that a religious accommodation demands careful scrutiny to ensure that it does not so burden nonadherents or discriminate against other religions as to become an establishment. I disagree, however, with the suggestion that the Kiryas Joel Village School District contravenes these basic constitutional commands. But for the forbidden manner in which the New York Legislature sought to go about it, the State's attempt to accommodate the special needs of the handicapped Satmar children would have been valid.

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First, by creating the district, New York sought to alleviate a specific and identifiable burden on the Satmars' religious practice. Second, by creating the district, New York did not impose or increase any burden on non-Satmars, compared to the burden it lifted from the Satmars, that might disqualify the District as a genuine accommodation. . . .

Third, the creation of the school district to alleviate the special burdens born by the handicapped Satmar children cannot be said, for that reason alone, to favor the Satmar religion to the exclusion of any other. . . .

. . . No party has adduced any evidence that the legislature has denied another religious community like the Satmars its own school district under analogous circumstances. The legislature, like the judiciary, is sworn to uphold the Constitution, and we have no reason to presume that the New York Legislature would not grant the same accommodation in a similar future case. The fact that New York singled out the Satmars for this special treatment indicates nothing other than the uniqueness of the handicapped Satmar children's plight. It is normal for legislatures to respond to problems as they arise—no less so when the issue is religious accommodation. . . .

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This particularity takes on a different cast, however, when the accommodation requires the government to draw political or electoral boundaries. "The principle that government may accommodate the free exercise of religion does not supersede the fundamental limitations imposed by the Establishment Clause" and, in my view, one such fundamental limitation is that government may not use religion as a criterion to draw political or electoral lines. Whether or not the purpose is accommodation and whether or not the government provides similar gerrymanders to people of all religious faiths, the Establishment Clause forbids the government to use religion as a line-drawing criterion. In this respect, the Establishment Clause mirrors the Equal Protection Clause. Just as the government may not segregate people on account of their race, so too it may not segregate on the basis of religion. The danger of stigma and stirred animosities is no less acute for religious line-drawing than for racial. . . .

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JUSTICE SCALIA, with whom THE CHIEF JUSTICE and JUSTICE THOMAS join, dissenting.

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Unlike most of our Establishment Clause cases involving education, these cases involve no public funding, however slight or indirect, to private religious schools. They do not involve private schools at all. The school under scrutiny is a public school specifically designed to provide a public secular education to handicapped students. . . . The only thing distinctive about the school is that all the students share the same religion.

None of our cases has ever suggested that there is anything wrong with that. In fact, the Court has specifically approved the education of students of a single religion on a neutral site adjacent to a

private religious school. . . . In that case, the Court rejected the argument that "any program that isolates the sectarian pupils is impermissible. . . ." . . . There is no danger in educating religious students in a public school.

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JUSTICE SOUTER's position boils down to the quite novel proposition that any group of citizens (say, the residents of Kiryas Joel) can be invested with political power, but not if they all belong to the same religion. Of course such disfavoring of religion is positively antagonistic to the purposes of the Religion Clauses, and we have rejected it before. . . . I see no reason why it is any less pernicious to deprive a group, rather than an individual, of its rights simply because of its religious beliefs.

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There is, of course, no possible doubt of a secular basis here. The New York Legislature faced a unique problem in Kiryas Joel: a community in which all the nonhandicapped children attend private schools, and the physically and mentally disabled children who attend public school suffer the additional handicap of cultural distinctiveness. . . . Surely the legislature could target this problem, and provide a public education for these students, in the same way it addressed, by a similar law, the unique needs of children institutionalized in a hospital.

. . .

There was really nothing so "special" about the formation of a school district by an Act of the New York Legislature. The State has created both large school districts and small specialized school districts for institutionalized children, through these special Acts. . . . But even if the New York Legislature had never before created a school district by special statute (which is not true), and even if it had done nothing but consolidate school districts for over a century (which is not true), how could the departure from those past practices possibly demonstrate that the legislature had religious favoritism in mind? It could not. To be sure, when there is no special treatment, there is no possibility of religious favoritism; but it is not logical to suggest that when there is special treatment, there is proof of religious favoritism.

JUSTICE SOUTER's case against the statute comes down to nothing more, therefore, than his third point: the fact that all the residents of the Kiryas Joel Village School District are Satmars. But all its residents also wear unusual dress, have unusual civic customs, and have not much to do with people who are culturally different from them. . . . On what basis does JUSTICE SOUTER conclude that it is the theological distinctiveness, rather than the cultural distinctiveness, that was the basis for New York State's decision? The normal assumption would be that it was the latter, since it was not theology, but dress, language, and cultural alienation that posed the educational problem for the children. . . .

I have little doubt that JUSTICE SOUTER would laud this humanitarian legislation if all of the distinctiveness of the students of Kiryas Joel were attributable to the fact that their parents were nonreligious commune dwellers, or American Indians, or gypsies. The creation of a special, one-culture school district for the benefit of those children would pose no problem. The neutrality demanded by the Religion Clauses requires the same indulgence towards cultural characteristics that are accompanied by religious belief. "The Establishment Clause does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as . . . subject to unique disabilities." . . .

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But even if Chapter 748 were intended to create a special arrangement for the Satmars because of their religion, it would be a permissible accommodation. "This Court has long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause." . . .

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This Court has also long acknowledged the permissibility of legislative accommodation. In one of our early Establishment Clause cases, we upheld New York City's early release program, which allowed students to be released from public school during school hours to attend religious instruction or devotional exercises. . . .

In today's opinion, however, the Court seems uncomfortable with this aspect of our constitutional tradition. Although it acknowledges the concept of accommodation, it quickly points out

that it is "not a principle without limits," and then gives reasons why the present case exceeds those limits, reasons which simply do not hold water. . . .

The Court's demand for "up front" assurances of a neutral system is at war with both traditional accommodation doctrine and the judicial role. . . .

Contrary to the Court's suggestion, I do not think that the Establishment Clause prohibits formally established "state" churches and nothing more. I have always believed, and all my opinions are consistent with the view, that the Establishment Clause prohibits the favoring of one religion over others. Making law (and making exceptions) one case at a time, whether through adjudication or through highly particularized rulemaking or legislation, violates, ex ante no principle of fairness, equal protection, or neutrality, simply because it does not announce in advance how all future cases (and all future exceptions) will be disposed of. . . .

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The Court's decision today is astounding. Chapter 748 involves no public aid to private schools, and does not mention religion. In order to invalidate it, the Court casts aside, on the flimsiest of evidence, the strong presumption of validity that attaches to facially neutral laws, and invalidates the present accommodation because it does not trust New York to be as accommodating toward other religions (presumably those less powerful than the Satmar Hasidim) in the future. This is unprecedented—except that it continues, and takes to new extremes, a recent tendency in the opinions of this Court to turn the Establishment Clause into a repealer of our Nation's tradition of religious toleration. I dissent.