***Board of Education of Kiryas Joel Village School District v. Grumet* (1994)**

512 U.S. 687

The Village of Kiryas Joel in New York is a religious enclave of Satmar Hasidim, practitioners of a strict form of Judaism. It was incorporated in 1977 under New York's general village incorporation law, with its boundaries intentionally drawn to exclude all but Satmars. The residents of Kiryas Joel established parochial schools, segregated by gender, at which their children receive a religiously based education. These schools, however, did not offer special education services for handicapped children, who were entitled under federal law to receive such services even if enrolled in private schools. Initially, the Monroe-Woodbury Central School District, which included the Village of Kiryas Joel, provided the services at an annex to one of the village's private schools. The District ended that arrangement in 1985 after the Supreme Court's rulings in Aguilar v. Felton (1985) and School District of Grand Rapids v. Ball (1985), which invalidated state provision of supplemental educational services in sectarian schools. Children from Kiryas Joel needing special education services then attended public schools outside the village, but most of their parents withdrew them from these schools, citing "the panic, fear and trauma [the children] suffered in leaving their own community and being with people whose ways were so different." To deal with this situation, the New York Legislature in 1989 established a separate school district that followed village lines. (This enactment is referred to in the Court's opinions as Chapter 748.) This new district operated only a special education program for handicapped children, with other children continuing to attend their parochial schools. Several neighboring districts also enrolled their handicapped Hasidic students in the district's special education program on a tuition basis.

Chapter 748 was challenged in state court as a violation of the Establishment Clause. The trial court agreed, and both the intermediate appellate court and the New York Court of Appeals, the state's supreme court, affirmed the trial court's decision. The U.S. Supreme Court then granted certiorari.

Opinion of the Court: Souter, Blackmun, Stevens, Ginsburg, O'Connor (in part).

Concurring opinions: Blackmun; Stevens, Blackmun, Ginsburg; O'Connor, Kennedy.

Dissenting opinion: Scalia, Rehnquist, Thomas.

MR. JUSTICE SOUTER delivered the opinion of the Court.

"A proper respect for both the Free Exercise and the Establishment Clauses compels the State to pursue a course of 'neutrality' toward religion," *Committee for Public Education and Religious Liberty v. Nyquist* (1973), favoring neither one religion over others nor religious adherents collectively over nonadherents. Chapter 748, the 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.

Larkin v. Grendel's Den, Inc. (1982) provides an instructive comparison with the litigation before us. There, the Court was requested to strike down a Massachusetts statute granting religious bodies veto power over applications for liquor licenses. Under the statute, the

governing body of any church, synagogue, or school located within 500 feet of an applicant's premises could, simply by submitting written objection, prevent the Alcohol Beverage Control Commission from issuing a license. [T]he Court found that in two respects the statute violated "the wholesome 'neutrality' of which this Court's cases speak," *School District of Abington Township v. Schempp* (1963). The Act brought about a "fusion of governmental and religious functions" by delegating "important, discretionary governmental powers" to religious bodies, thus impermissibly entangling government and religion. And it lacked "any 'effective means of guaranteeing' that the delegated power '[would] be used exclusively for secular, neutral, and nonideological purposes' "; this, along with the "significant symbolic benefit to religion" associated with "the mere appearance of a joint exercise of legislative authority by Church and State," led the Court to conclude that the statute had a " 'primary' and 'principal' effect of advancing religion." Comparable constitutional problems inhere in the statute before us.…

The Establishment Clause problem presented by Chapter 748 is more subtle, but it resembles the issue raised in *Larkin* to the extent that the earlier case teaches that a State may not delegate its civic authority to a group chosen according to a religious criterion. Authority over public schools belongs to the State, and cannot be delegated to a local school district defined by the State in order to grant political control to a religious group. What makes this litigation different from *Larkin* is the delegation here of civic power to the "qualified voters of the village of Kiryas Joel," as distinct from a religious leader such as the village rov, or an institution of religious government like the formally constituted parish council in *Larkin*. In light of the circumstances of this case, however, this distinction turns out to lack constitutional significance.

It is, first, not dispositive that the recipients of state power in this case are a group of religious individuals united by common doctrine, not the group's leaders or officers. Although some school district franchise is common to all voters, the State's manipulation of the franchise for this district limited it to Satmars, giving the sect exclusive control of the political subdivision. In the circumstances of this case, the difference between thus vesting state power in the members of a religious group as such instead of the officers of its sectarian organization is one of form, not substance.

Of course, Chapter 748 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." Thus the second (and arguably more important) distinction between this case and *Larkin* is the identification here of the group to exercise civil authority in terms not expressly religious. 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 in 1989 when it adopted Chapter 748. 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 origin of the district in a special act of the legislature, rather than the State's general laws governing school district reorganization, is like-wise anomalous. Although the legislature has established some 20 existing school districts by special act, all but one of these are districts in name only, having been designed to be run by private organizations serving institutionalized children.

The one school district petitioners point to that was formed by special act of the legislature to serve a whole community, as this one was, is a district formed for a new town, much larger and more heterogeneous than this village, being built on land that straddled two existing districts.

Thus the Kiryas Joel Village School District is exceptional to the point of singularity, as the only district coming to our notice that the legislature carved from a single existing district to serve local residents.

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. Not even the special needs of the children in this community can explain the legislature's unusual Act, for the State could have responded to the concerns of the Satmar parents without implicating the Establishment Clause, as we explain in some detail further on. 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." *Larkin v. Grendel's Den*, 459 U.S., at 126.…

The fact that this school district was created by a special and unusual Act of the legislature also gives reason for concern whether the benefit received by the Satmar community is one that the legislature will provide equally to other religious (and nonreligious) groups. This is the second malady the *Larkin* Court identified in the law before it, the absence of an "effective means of guaranteeing" that governmental power will be and has been neutrally employed.

The anomalously case-specific nature of the legislature's exercise of state authority in creating this district for a religious community leaves the Court without any direct way to review such state action for the purpose of safeguarding a principal at the heart of the Establishment Clause, that government should not prefer one religion to another, or religion to irreligion.

Because 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 general law, we have no assurance that the next similarly situated group seeking a school district of its own will receive one; unlike an administrative agency's denial of an exemption from a generally applicable law, which "would be entitled to a judicial audience." …

In finding that Chapter 748 violates the requirement of governmental neutrality by extending the benefit of a special franchise, we do not deny that the Constitution allows the state to accommodate religious needs by alleviating special burdens. But accommodation is not a principle without limits, and what petitioners seek is an adjustment to the Satmars' religiously grounded preferences that our cases do not countenance. Prior decisions have allowed religious communities and institutions to pursue their own interests free from governmental interference, but we have never hinted that an otherwise unconstitutional delegation of political power to a religious group could be saved as a religious accommodation. Petitioners' proposed

accommodation singles out a particular religious sect for special treatment, and whatever the limits of permissible legislative accommodations may be, it is clear that neutrality as among religions must be honored.

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

New York created a special school district for the members of the Satmar religious sect in response to parental concern that children suffered "panic, fear and trauma" when "leaving their own community and being with people whose ways were so different." To meet those concerns, the State could have taken steps to alleviate the children's fear by teaching their schoolmates to be tolerant and respectful of Satmar customs. Action of that kind would raise no constitutional concerns and would further the strong public interest in promoting diversity and understanding in the public schools.

Instead, the State responded with a solution that affirmatively supports a religious sect's interest in segregating itself and preventing its children from associating with their neighbors. 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, I believe, fairly characterized as establishing, rather than merely accommodating, religion. For this reason, as well as the reasons set out in JUSTICE SOUTER'S opinion, I am persuaded that the New York law at issue in these cases violates the Establishment Clause of the First Amendment.

MR. JUSTICE O'CONNOR, concurring in part and concurring in the judgement.

I think there is one other accommodation that would be entirely permissible: the 1984 scheme, which was discontinued because of our decision in *Aguilar*. The Religion Clauses prohibit the government from favoring religion, but they provide no warrant for discriminating *against* religion. All handicapped children are entitled by law to government-funded special education. If the government provides this education on-site at public schools and at nonsectarian private schools, it is only fair that it provide it on-site at sectarian schools as well.

I thought this to be true in *Aguilar*, and I still believe it today. 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* 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.

MR. JUSTICE SCALIA, with whom the CHIEF JUSTICE and JUSTICE THOMAS join, dissenting.

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 superintendent of the school, who is not Hasidic, is a 20-year veteran of the New York City public school system, with expertise in the area of bilingual, bicultural, special education. The teachers and therapists at the school all live outside the village of Kiryas Joel. While the village's private schools are profoundly religious and strictly segregated by sex, classes at the public school are co-ed and the curriculum secular. The school building has the bland appearance of a public school, unadorned by religious symbols or markings; and the school complies with the laws and regulations governing all other New York State public schools. There is no suggestion, moreover, that this public school has gone too far in making special adjustments to the religious needs of its students. In sum, these cases involve only public aid to a school that is public as can be. 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. For these very good reasons, JUSTICE SOUTER'S opinion does not focus upon the school, but rather upon the school district and the New York Legislature that created it. His arguments, though sometimes intermingled, at two: that reposing governmental power in the Kiryas Joel School District is the same as reposing governmental power in a religious group; and that in enacting the statute creating the district, the New York State Legislature was discriminating on the basis of religion, *i.e.*, favoring the Satmar Hasidim over others.

For his thesis that New York has unconstitutionally conferred governmental authority upon the Satmar sect, JUSTICE SOUTER relies extensively, and virtually exclusively, upon *Larkin v. Grendel's Den, Inc.* (1982). JUSTICE SOUTER believes that the present case "resembles" *Grendel's Den* because that case "teaches that a state may not delegate its civic authority *to a group chosen according to a religious criterion.*" That misdescribes both what that case taught (which is that a state may not delegate its civil authority *to a church*), and what this case involves (which is a group chosen according to cultural characteristics).…

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.

III

In turn, next, to JUSTICE SOUTER'S second justification for finding an establishment of religion: his facile conclusion that the New York Legislature's creation of the Kiryas Joel School District was religiously motivated. But in the Land of the Free, democratically adopted laws are not so easily impeached by unelected judges. To establish the unconstitutionality of a facially neutral law on the mere basis of its asserted religiously preferential (or discriminatory) effects—or at least to establish it in conformity with our precedents— JUSTICE SOUTER "must be able to show the absence of a neutral, secular basis" for the law. *Gillette v. United States*.

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 non-handicapped children attend private schools, and the physically and mentally disabled children who attend public school suffer the additional handicap of cultural distinctiveness. It would be troublesome enough if

these peculiarly dressed, handicapped students were sent to the next town, accompanied by their similarly clad but unimpaired classmates. But all the unimpaired children of Kiryas Joel attend private school. The handicapped children suffered sufficient emotional trauma from their predicament that their parents kept them home from school. 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.

Since the obvious presence of a neutral, secular basis renders the asserted preferential effect of this law inadequate to invalidate it, JUSTICE SOUTER is required to come forward with direct evidence that religious preference was the objective. His case could scarcely be weaker. It consists, briefly, of this: The People of New York created the Kiryas Joel Village School District in order to further the Satmar religion, rather than for any proper secular purpose, because (l) they created the district in an extraordinary manner—by special Act of the legislature, rather than under the State's general laws governing school-district reorganization; (2) the creation of the district ran counter to a State trend toward consolidation of school districts; and (3) the District includes only adherents of the Satmar religion. On this indictment, no jury would convict.

One difficulty with the first point is that it is not true. 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 in any event all that the first point proves, and the second point as well (countering the trend toward consolidation), is that New York regarded Kiryas Joel as a special case, requiring special measures. I should think it *obvious* that it did, and obvious that it *should have*. 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. JUSTICE SOUTER not only does not adopt the logical assumption, he does not even give the New York Legislature the benefit of the doubt.

IV

But even if Chapter 748 were intended to create a special arrangement for the Satmars *because of* their religion (not including, as I have shown in Part I, any conferral of governmental power upon a religious entity), it would be a permissible accommodation.…

In today's opinion, 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. "[W]e have never hinted," the Court says, "that an otherwise unconstitutional delegation of political power to a religious group could be saved as a religious accommodation." Putting aside the circularity inherent in referring to a delegation as "otherwise unconstitutional" when its constitutionality turns on whether there is an accommodation, if this statement is true, it is only because we have never hinted that delegation of political power to citizens who share a particular religion could be unconstitutional.

The second and last reason the Court finds accommodation impermissible is, astoundingly, the mere risk that the State will not offer accommodation to a similar group in the future, and that neutrality will therefore not be preserved.… At bottom, the Court's "no guarantee of neutrality" argument is an assertion of *this Court's* inability to control the New York Legislature's future denial of comparable accommodation.

The Court's demand for "up front" assurances of a neutral system is at war with both traditional accommodation doctrine and the judicial role.… Most efforts at accommodation seek to solve a problem that applies to members of only one or a few religions. Not every religion uses wine in its sacraments, but that does not make an exemption from Prohibition for sacramental wine-use impermissible, nor does it require the State granting such an exemption to explain in advance how it will treat every other claim for dispensation from its controlled-substances laws.… The record is clear that the necessary guarantee can and will be provided, after the fact, *by the courts*.

V

A few words in response to the separate concurrences: JUSTICE STEVENS adopts, for these cases, a rationale that is almost without limit. The separate Kiryas Joel school district is problematic in his view because "[t]he 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."

JUSTICE STEVENS' statement is less a legal analysis than a manifesto of secularism. It surpasses mere rejection of accommodation, and announces a positive hostility to religion—which, unlike all other noncriminal values, the state must not assist parents in transmitting to their offspring.