On June 27, 1994, the United States Supreme Court delivered its decision on the case of *Kiryas Joel v. Grumet*. The Court ruled that the New York State legislature had acted unconstitutionally in establishing a school district specifically to meet the needs of members of the Satmar Hasidic Jewish sect.

**KIRYAS JOEL:**

Law School professors Michael McConnell '79 and David Strauss, mindful of the importance the decision has for church-state jurisprudence, offer their opinions on the case.
I ronically, the Kiryas Joel school district was created in the interest of accommodation and toleration—almost the opposite of the spirit of “Establishment” with which it was labeled. Two decades ago, about 8,000 members of the Satmar sect (most of whose members perished in the Holocaust) moved to a then-uninhabited part of Orange County, New York, and formed the Village of Kiryas Joel. Like most Orthodox Jews, the people of Kiryas Joel educate their children in religious schools, or yeshivas, while paying property taxes to support the secular schools used by the majority of their fellow citizens.

Under both state and federal law, all handicapped children—whether they go to public or to private school—are entitled to educational assistance appropriate to their special needs. For years, this assistance was provided by public school employees on the premises of the religious schools in Kiryas Joel. In 1985, however, the Supreme Court held that it is unconstitutional to provide the services in this way.

The Satmar handicapped children were then forced to travel to the public school in an adjoining community, run by the Monroe-Woodbury School District. Predictably, this was a disaster. The children, many of them already suffering from emotional disturbance and insecurity, experienced “panic, fear, and trauma,” and all but one of the Satmar parents removed their children from this unsatisfactory placement.

The Satmar parents requested the school district to provide special education at a “neutral site” in the Village, as would have been permitted under the law, but the district refused. The parents sought relief in the state courts, but the court held that the district has discretion to decide how and where to provide the special education.

So the Satmar community turned to the legislature for help. Under the New York Constitution, the legislature could not tell the Monroe-Woodbury School District how to exercise its educational functions. But it could determine the boundaries of the district. And so the legislature voted to carve out a new school district coterminous with the boundaries of the Village of Kiryas Joel. This enabled the people of Kiryas Joel to establish a public school in the Village that would provide appropriate education for their handicapped children.

It seemed the perfect solution to a contentious problem. No individual’s interests or rights were hurt. Even the Monroe-Woodbury School District was pleased, for it was freed of responsibility to deal with people whose customs it did not understand and who seemed obstreperous and difficult.

Why, then, did the Supreme Court hold it unconstitutional? It gave three reasons, none of them very persuasive.

First, the Court said this district violates the First Amendment “by delegating the State’s discretionary authority over public schools to a group defined by its character as a religious community. But this cannot be right. In the same opinion, the Court stated that there is no constitutional problem with the existence of the Village of Kiryas Joel, which is “defined by” the same boundaries and which exercises far more discretionary governmental authority than the school district does. And as the Court admits, there are scores of other self-governing communities around the country no less “defined” by their religious character. If people have the freedom to move freely, establish communities, and govern themselves, there will be governmental units where the electorate is almost entirely of a particular religion. This is not Establishment. This is religious pluralism.

But the Court explained that the problem is not that the electorate making up the Kiryas Joel school district is all of one religion. The problem is that the legislature created this all-Satmar district deliberately. But again this cannot be right. The Court admitted that the legislative purpose of accommodating the needs of a religious minority is legitimate, even laudable. But if the purpose is legitimate, and the effect is legitimate, what is the problem?

Perhaps the Court should hold, as Justice Thomas urged in another case, that the states may not draw political boundaries intentionally on the basis of race, ethnicity, or religion. But it seems odd that the Voting Rights Act encourages the creation of districts dominated by one kind of minority while the First Amendment forbids creation of districts dominated by a different kind of minority.

Two views on the newest round of Church v. State

The Court’s second answer is less mysterious but more troubling. The problem is that the legislature may have exercised favoritism toward the Satmar Hasidim. The Court lacked “assurance that the next similarly situated group seeking a school district of its own will receive one.”

This portion of the opinion has the virtue of appealing to a genuine constitutional principle: that of equal treatment of all religious groups. But the application is illogical. Because the circumstances of the Satmar Hasidim are unique, no other group has presented an analogous problem. Surely the better course—as Justice Kennedy insisted in his concurrence—is to wait until the legislature fails to treat another group in a comparable way before
striking down this law. If the Court is serious about this line of reasoning, then any "case-specific" accommodation to the needs of a particular religious minority is unconstitutional. That has never been the law.

The third reason for striking down the law in Kiryas Joel is the most distressing. According to three of the justices—Stevens, Blackmun, and Ginsburg, New York behaved unconstitutionally when it affirmatively "support[ed] a religious sect's interest in segregating itself and preventing its children from associating with their neighbors." This is an attack on a precious aspect of religious freedom for religious minorities. For many members of minority religions, to be able to assimilate into the wider culture is a great blessing. But for others—such as the Amish or the Satmar Hasidim—assimilation would destroy their religious way of life. It is difficult to bring up a child as a Satmar Hasid when the state insists upon educating all children in schools dominated by the majority culture.

One suspects that part of the opposition to leaving the Satmars alone stems from disapproval of their way of life—their authoritarianism, their views on gender roles, their combativeness, their hostility to modernity. Maybe that is why the Satmar's self-segregation was struck down while a similar attempt by the Amish (whose separatist way of life the Supreme Court described in laudatory terms) was upheld (Wisconsin v. Yoder, 1972). But the Establishment Clause was designed to prevent majorities from imposing their spiritual values on minorities—however odd or repugnant the minority's way of life may seem—unless it interferes with public peace and good order. Justice Stevens objected to an arrangement that might "cement the attachment of young adherents to a particular faith," but isn't it more of a threat to religious pluralism when the state uses its power to inculcate values at odds with those of the child's parents and community?

Justice Scalia rightly said that the Kiryas Joel decision "turn[s] the Establishment Clause into a repealer of our nation's tradition of religious toleration." The Hasidim may seem a small and exotic group. But they represent the many millions of Americans whose lives are oriented around their religion, and who do not wish to be caught up—or have their children caught up—in the profane melting pot of mainstream America. The Supreme Court's lack of sympathy for this group—indeed, its utter incomprehension of this group—is symptomatic of the failure of our governing elites to take religion seriously.

Admittedly, there are glimmers of hope in the various opinions. Justice O'Connor openly called for reconsideration of Supreme Court precedents that seem to require "hostility to religion, religious ideas, religious people, or religious schools." And even the majority endorsed the important principle that "the Constitution allows the state to accommodate religious needs by alleviating special burdens." These are hopeful signs.

In practice, however, the Supreme Court finds every excuse to strike down state action that accommodates the free exercise of religion or that includes religious activities in the benefits of public programs. While it no longer mouths the rhetoric of "strict separation" or follows the Lemon test, which is the source of so much confusion and mischief in this area, the Court declines every invitation to repudiate Lemon or to replace it with an interpretation of Establishment more consistent with principles of religious free exercise.

And so the Hasidim are once again at the mercy of an unfriendly nation, and the nation remains mired in a First Amendment jurisprudence that is suspicious and uncomgenial toward religion. For a decade the Court has made noises about doctrinal change. But after Kiryas Joel it is as distant as ever.

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**THE PERIL OF RELIGIOUS SEGREGATION: A COMMENT ON THE KIRYAS JOEL CASE**

BY DAVID A. STRAUSS

The Kiryas Joel case came about because the Satmar Hasidim, an Orthodox Jewish sect, want little to do with their neighbors in upstate New York, and their neighbors are only too happy to accommodate them. The Satmars are an extremely tightly-knit group who emigrated to this country after the Holocaust and settled in the Williamsburg section of Brooklyn. Twenty years ago, they moved together from Williamsburg to a subdivision of a town in upstate New York. There they got into a dispute with the town authorities and declared their intention to secede from the town. Some of the Satmars' new neighbors were not eager to secede with the Satmars. So the town lines were carefully gerrymandered to create a new village, Kiryas Joel, that consisted exclusively of land owned and occupied by Satmar Hasidim.

The Satmars speak Yiddish as their primary language; they have as little as possible to do with television, radio, and English-language publications; they have distinctive styles of dress. Their children are educated in private religious schools. The Satmars also segregate men and women outside the home, and there are separate religious schools for boys and girls. Boys are taught the Torah; girls, according to the Supreme Court's opinion, are provided "a curriculum designed to prepare [them] for their roles as wives and mothers."

The village of Kiryas Joel was physically within the larger Monroe-Woodbury school district. That didn't affect most of the children, because they attended religious schools. But federal law requires local school districts to provide disabled children special education services at public expense. Under a 1985 Supreme Court decision, public authorities may not provide those services on the premises of reli-
This healthy process of mutual accommodation cannot take place, however, when both sides rush for opposite ends of the room—when the Satmars seek isolation, and the larger society is delighted to isolate them.” — Strauss