SUPREME COURT OF THE UNITED STATES

Nos. 93–517, 93–527 AND 93–539

BOARD OF EDUCATION OF KIRYAS JOEL VILLAGE SCHOOL DISTRICT, PETITIONER

93–517 *v.*

LOUIS GRUMET ET AL.

BOARD OF EDUCATION OF MONROE-WOODBURY CENTRAL SCHOOL DISTRICT, PETITIONER

93–527 *v.*

LOUIS GRUMET ET AL.

ATTORNEY GENERAL OF NEW YORK, PETITIONER

93–539 *v.*

LOUIS GRUMET ET AL.

ON WRITS OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

[June 27, 1994]

JUSTICE SOUTER delivered the opinion of the Court.

The Village of Kiryas Joel in Orange County, New York, is a religious enclave of Satmar Hasidim, practitioners of a strict form of Judaism. The village fell within the Monroe-Woodbury Central School District until a special state statute passed in 1989 carved out a separate district, following village lines, to serve this distinctive population. 1989 N. Y. Laws, ch. 748. The question is whether the Act creating the separate school district violates the Establishment Clause of the First Amendment, binding on the States through the Fourteenth Amendment. Because this unusual act is tantamount to an allocation of political power on a religious criterion and neither presupposes nor requires governmental impartiality

toward religion, we hold that it violates the prohibition against establishment.

The Satmar Hasidic sect takes its name from the town near the Hungarian and Romanian border where, in the early years of this century, Grand Rebbe Joel Teitelbaum molded the group into a distinct community. After World War II and the destruction of much of European Jewry, the Grand Rebbe and most of his surviving followers moved to the Williamsburg section of Brooklyn, New York. Then, 20 years ago, the Satmars purchased an approved but undeveloped subdivision in the town of Monroe and began assembling the community that has since become the Village of Kiryas Joel. When a zoning dispute arose in the course of settlement, the Satmars presented the Town Board of Monroe with a petition to form a new village within the town, a right that New York's Village Law gives almost any group of residents who satisfy certain procedural niceties. See N. Y. Village Law, Art. 2 (McKinney 1973 and Supp. 1994). Neighbors who did not wish to secede with the Satmars objected strenuously, and after arduous negotiations the proposed boundaries of the Village of Kiryas Joel were drawn to include just the 320 acres owned and inhabited entirely by Satmars. The village, incorporated in 1977, has a population of about 8,500 today. Rabbi Aaron Teitelbaum, eldest son of the current Grand Rebbe, serves as the village rov (chief rabbi) and rosh yeshivah (chief authority in the parochial schools).

The residents of Kiryas Joel are vigorously religious people who make few concessions to the modern world and go to great lengths to avoid assimilation into it. They interpret the Torah strictly; segregate the sexes outside the home; speak Yiddish as their primary language; eschew television, radio, and English-language publications; and dress in distinctive ways that include headcoverings and special garments for boys and modest dresses for

girls. Children are educated in private religious schools, most boys at the United Talmudic Academy where they receive a thorough grounding in the Torah and limited exposure to secular subjects, and most girls at Bais Rochel, an affiliated school with a curriculum designed to prepare girls for their roles as wives and mothers. See generally, W. Kephart & W. Zellner, Extraordinary Groups (4th ed. 1991); I. Rubin, Satmar, An Island in the City (1972).

These schools do not, however, offer any distinctive services to handicapped children, who are entitled under state and federal law to special education services even when enrolled in private schools. Individuals with Disabilities Education Act, 20 U. S. C. §1400 *et seq.* (1988 ed. and Supp. IV); N. Y. Educ. Law, Art. 89 (McKinney 1981 and Supp. 1994). Starting in 1984 the Monroe-Woodbury Central School District provided such services for the children of Kiryas Joel at an annex to Bais Rochel, but a year later ended that arrangement in response to our decisions in *Aguilar* v. *Felton,* 473 U. S. 402 (1985), and *School Dist. of Grand Rapids* v. *Ball,* 473 U. S. 373 (1985). Children from Kiryas Joel who needed special education (including the deaf, the mentally retarded, and others suffering from a range of physical, mental, or emotional disorders) were then forced to attend public schools outside the village, which their families found highly unsatisfactory. Parents of most of these children withdrew them from the Monroe-Woodbury secular schools, citing "the panic, fear and trauma [the children] suffered in leaving their own community and being with people whose ways were so different," and some sought administrative review of the public-school placements. *Board of Ed. of Monroe-Woodbury Central School Dist.* v. *Wieder,* 72 N. Y. 2d 174, 180–181, 527 N.E. 2d 767, 770 (1988).

Monroe-Woodbury, for its part, sought a declaratory judgment in state court that New York law barred the district from providing special education services

outside the district's regular public schools. *Id.,* at 180, 527 N.E. 2d, at 770. The New York Court of Appeals disagreed, holding that state law left Monroe-Woodbury free to establish a separate school in the village because it gives educational authorities broad discretion in fashioning an appropriate program. *Id.,* at 186–187, 527 N.E. 2d, at 773. The court added, however, that the Satmars' constitutional right to exercise their religion freely did not require a separate school, since the parents had alleged emotional trauma, not inconsistency with religious practice or doctrine, as the reason for seeking separate treatment. *Id.,* at 189, 527 N.E. 2d, at 775.

By 1989, only one child from Kiryas Joel was attending Monroe-Woodbury's public schools; the village's other handicapped children received privately funded special services or went without. It was then that the New York Legislature passed the statute at issue in this litigation, which provided that the Village of Kiryas Joel "is constituted a separate school district, . . . and shall have and enjoy all the powers and duties of a union free school district . . . ." 1989 N. Y. Laws, ch. 748.[1] The statute thus empowered a

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[1]The statute provides in full:

"Section 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 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

locally elected board of education to take such action as opening schools and closing them, hiring teachers, prescribing textbooks, establishing disciplinary rules, and raising property taxes to fund operations. N. Y. Educ. Law §1709 (McKinney 1988). In signing the bill into law, Governor Cuomo recognized that the residents of the new school district were "all members of the same religious sect," but said that the bill was "a good faith effort to solve th[e] unique problem" associated with providing special education services to handicapped children in the village. Memorandum filed with Assembly Bill Number 8747 (July 24, 1989), App. 40–41.

Although it enjoys plenary legal authority over the elementary and secondary education of all school-aged children in the village, N. Y. Educ. Law §3202 (McKinney 1981 and Supp. 1994), the Kiryas Joel Village School District currently runs only a special education program for handicapped children. The other village children have stayed in their parochial schools, relying on the new school district only for transportation, remedial education, and health and welfare services. If any child without handicap in Kiryas Joel were to seek a public-school education, the district would pay tuition to send the child into Monroe-Woodbury or another school district nearby. Under like arrangements, several of the neighboring districts send their handicapped Hasidic children into Kiryas Joel, so that two thirds of the full-time students in the village's public school come from outside. In all, the new district serves just over 40 full-time students, and two or three times that many parochial school students on a part-time basis.

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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."

Several months before the new district began operations, the New York State School Boards Association and respondents Grumet and Hawk brought this action against the State Education Department and various state officials, challenging Chapter 748 under the national and state constitutions as an unconstitutional establishment of religion.[2] The State Supreme Court for Albany County allowed the Kiryas Joel Village School District and the Monroe-Woodbury Central School District to intervene as parties defendant and accepted the parties' stipulation discontinuing the action against the original state defendants, although the Attorney General of New York continued to appear to defend the constitutionality of the statute. See N.Y. Exec. Law §71 (McKinney 1993). On cross-motions for summary judgment, the trial court ruled for the plaintiffs (respondents here), finding that the statute failed all three prongs of the test in *Lemon* v. *Kurtzman*, 403 U. S. 602 (1971), and was thus unconstitutional under both the National and State Constitutions. *Grumet* v. *New York State Ed. Dept.,* 151 Misc. 2d 60, 579 N. Y. S. 2d 1004 (1992).

A divided Appellate Division affirmed on the ground that Chapter 748 had the primary effect of advancing religion, in violation of both constitutions, 187 App.

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[2]Messrs. Grumet and Hawk sued in both their individual capacities and as officers of the State School Boards Association, but New York's Appellate Division ruled that the Association and its officers lacked standing to challenge the constitutionality of Chapter 748. 187 App. Div. 2d 16, 19, 592 N. Y. S. 2d 123, 126 (1992). Thus, as the case comes to us, respondents are simply citizen-taxpayers. See N. Y. State Fin. Law §123 (McKinney 1989).

Div. 2d 16, 592 N. Y. S. 2d 123 (1992), and the state Court of Appeals affirmed on the federal question, while expressly reserving the state constitutional issue, 81 N. Y. 2d 518, 618 N. E. 2d 94 (1993). Judge Smith wrote for the court in concluding that because both the district's public school population and its school board would be exclusively Hasidic, the statute created a "symbolic union of church and state" that was "likely to be perceived by the Satmarer Hasidim as an endorsement of their religious choices, or by nonadherents as a disapproval" of their own. *Id.,* at 529, 618 N. E. 2d, at 100. As a result, said the majority, the statute's primary effect was an impermissible advancement of religious belief. In a concurring opinion, Judge Hancock found the effect purposeful, so that the statute violated the first as well as the second prong of *Lemon*. *Id.,* at 540, 618 N.E. 2d, at 107. Chief Judge Kaye took a different tack, applying the strict scrutiny we have prescribed for statutes singling out a particular religion for special privileges or burdens; she found Chapter 748 invalid as an unnecessarily broad response to a narrow problem, since it creates a full school district instead of simply prescribing a local school for the village's handicapped children. *Id.,* at 532, 618 N.E. 2d, at 102 (concurring opinion). In dissent, Judge Bellacosa objected that the new district was created to enable the village's handicapped children to receive a secular, public-school education; that this was, indeed, its primary effect; and that any attenuated benefit to religion was a reasonable accommodation of both religious and cultural differences. *Id.,* at 550–551, 618 N.E. 2d, at 113.

We stayed the mandate of the Court of Appeals, 509 U. S. __ (1993), and granted certiorari, 510 U. S. ___ (1993).

"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 Ed. & Religious Liberty* v. *Nyquist,* 413 U. S. 756, 792–793 (1973), favoring neither one religion over others nor religious adherents collectively over nonadherents. See *Epperson* v. *Arkansas,* 393 U. S. 97, 104 (1968). 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.,* 459 U. S. 116 (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. *Id.,* at 117. In spite of the State's valid interest in protecting churches, schools, and like institutions from "`the hurly-burly' associated with liquor outlets," *id.,* at 123 (internal quotation marks omitted), the Court found that in two respects the statute violated "the wholesome `neutrality' of which this Court's cases speak," *School Dist. of Abington* v. *Schempp*, 374 U. S. 203, 222 (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. 459 U. S., at 126, 127 (quoting *Abington School Dist.* v. *Schempp, supra,* at 222); see also *Lemon* v. *Kurtzman, supra,* at 613. And it lacked "any `effective means of

guaranteeing' that the delegated power `[would] be used exclusively for secular, neutral, and nonideological purposes,'" 459 U. S., at 125 (quoting *Committee for Public Ed. & Religious Liberty* v. *Nyquist, supra,* at 780); 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," 459 U. S., at 125–126; see also *Lemon* v. *Kurtzman, supra,* at 612. Comparable constitutional problems inhere in the statute before us.

Larkin presented an example of united civic and religious authority, an establishment rarely found in such straightforward form in modern America, cf. *Wolman* v. *Walter,* 433 U. S. 229, 263 (1977) (Powell, J., concurring in part, concurring in judgment in part, and dissenting in part), and a violation of "the core rationale underlying the Establishment Clause," 459 U. S., at 126. See also *Allegheny County* v. *American Civil Liberties Union, Greater Pittsburgh Chapter,* 492 U. S. 573, 590–591 (1989) (Establishment Clause prevents delegating governmental power to religious group); *id.,* at 660 (KENNEDY, J., concurring in judgment in part and dissenting in part) (same); *Everson* v. *Board of Ed. of Ewing,* 330 U. S. 1, 15–16 (1947) (Establishment Clause prevents State from "participat[ing] in the affairs of any religious organizations or groups and *vice versa*"); *Torcaso* v. *Watkins,* 367 U. S. 488, 493–494 (1961) (same).

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, N.Y. Const., Art. XI, §1 (McKinney 1987), 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," 1989 N. Y. Laws, ch. 748, 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. It is true that religious people (or groups of religious people) cannot be denied the opportunity to exercise the rights of citizens simply because of their religious affiliations or commitments, for such a disability would violate the right to religious free exercise, see *McDaniel* v. *Paty,* 435 U. S. 618 (1978), which the First Amendment guarantees as certainly as it bars any establishment. But *McDaniel,* which held that a religious individual could not, because of his religious activities, be denied the right to hold political office, is not in point here. That individuals who happen to be religious may hold public office does not mean that a state may deliberately delegate discretionary power to an individual, institution, or community on the ground of religious identity. If New York were to delegate civic authority to "the Grand Rebbe," *Larkin*

would obviously require invalidation (even though under *McDaniel* the Grand Rebbe may run for, and serve on his local school board), and the same is true if New York delegates political authority by reference to religious belief. Where "fusion" is an issue, the difference lies in the distinction between a government's purposeful delegation on the basis of religion and a delegation on principles neutral to religion, to individuals whose religious identities are incidental to their receipt of civic authority.

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." 1989 N. Y. Laws, ch. 748. 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, see *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah,* 508 U. S. ___, ___ (1993) (slip op., at 12); *Wallace* v. *Jaffree,* 472 U. S. 38, 56–61 (1985); *Gomillion* v. *Lightfoot,* 364 U. S. 339, 341–342 (1960), 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. See Brief for Petitioner in No. 93–517, p. 20; Brief for Respondents 11. 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 thousands of small common school districts laid out in the early 19th century have been combined and recombined, first into union free school districts and then into larger central school districts, until only a tenth as many remain today. Univ. of State of N. Y. and State Education Dept., School District Reorganization, Law Pamphlet 14, pp. 8–12 (1962) (hereinafter Law Pamphlet); Woodward, N. Y. State Education Dept., Legal and Organizational History of School District Reorganization in New York State 10–11 (Aug. 1986). Most of these cover several towns, many of them cross county boundaries, and only one remains precisely coterminous with an incorporated village. Law Pamphlet, at 24. 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. Univ. of State of N. Y. and State Education Dept., Master Plan for School District Reorganization in New York State 10–11 (rev. ed. 1958).[3] 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.

The origin of the district in a special act of the legislature, rather than the State's general laws

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[3]The Commissioner of Education updates this Master Plan as school districts consolidate, see N. Y. Educ. Law §314 (McKinney 1988), but has not published a superseding version.

governing school district reorganization,[4] is likewise 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. They have neither tax bases nor student populations of their own but serve children placed by other school districts or public agencies. See N. Y. Educ. Law §3601–a (Statutory Notes), §§4001 and 4005 (McKinney Supp. 1994); Law Pamphlet, at 18 ("These districts are school districts only by way of a legal fiction"). 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. See 1972 N. Y. Laws, ch. 928 (authorizing Gananda School District). 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. Clearly this district "cannot be seen as the fulfillment of [a village's] destiny as an independent

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[4]State law allows consolidation on the initiative of a district superintendent, N. Y. Educ. Law §1504 (McKinney 1988), local voters, §§1510–1513, 1522–1524, 1902, or the Commissioner of Education, §§1526, 1801–1803–a, depending on the circumstances. It also authorizes the district superintendent to "organize a new school district," §1504, which may allow secession from an existing district, but this general law played no part in the creation of the Kiryas Joel Village School District.

governmental entity," *United States* v. *Scotland Neck Bd. of Ed.,* 407 U. S. 484, 492 (1972) (Burger, C. J., concurring in result).[5]

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

[5]Although not dispositive in this facial challenge, the pattern of interdistrict transfers, proposed and presently occurring, tends to confirm that religion rather than geography is the organizing principle for this district. Cf. *United States* v. *Scotland Neck Bd. of Ed.*, 407 U. S. 484, 490 (1972) (Burger, C. J., concurring in result). When Chapter 748 was passed, the understanding was that if a non-Hasidic child were to move into the Village, the district would pay tuition to send the child to one of the neighboring school districts, since Kiryas Joel would have no regular education program. Although the need for such a transfer has not yet arisen, there are 20 Hasidic children with handicapping conditions who transfer into Kiryas Joel's school district from the nearby East Ramapo and Monroe-Woodbury school districts.

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 (internal quotation marks and citation omitted).[6]

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. *Id.,* at 125 (internal quotation marks and citation omitted). But whereas in *Larkin* it was religious groups the Court thought might exercise civic power to advance the interests of religion (or religious adherents), here the threat to neutrality occurs at an antecedent stage.

The fundamental source of constitutional concern here is that the legislature itself may fail to exercise

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[6]Because it is the unusual circumstances of this district's creation that persuade us the State has employed a religious criterion for delegating political power, this conclusion does not imply that any political subdivision that is coterminous with the boundaries of a religiously homogeneous community suffers the same constitutional infirmity. The district in this case is distinguishable from one whose boundaries are derived according to neutral historical and geographic criteria, but whose population happens to comprise coreligionists.

governmental authority in a religiously neutral way. 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 principle at the heart of the Establishment Clause, that government should not prefer one religion to another, or religion to irreligion. See *Wallace* v. *Jaffree,* 472 U. S., at 52–54; *Epperson* v. *Arkansas,* 393 U. S., at 104; *School Dist. of Abington* v. *Schempp,* 374 U. S., at 216–217. 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,[7] 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," *Olsen* v. *Drug Enforcement Admin.*, 878 F.2d 1458, 1461 (CADC 1989) (R. B. Ginsburg, J.), a legislature's failure to enact a special law is itself unreviewable. Nor can the historical context in this case furnish us with any reason to suppose that the Satmars are merely one in a series of communities receiving the benefit of special school district laws. Early on in the development of public education in New York, the State rejected highly localized school districts for New York City when they were promoted as a way to allow separate schooling for Roman Catholic children. R.

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[7]This contrasts with the process by which the Village of Kiryas Joel itself was created, involving, as it did, the application of a neutral state law designed to give almost any group of residents the right to incorporate. See *ante*, at 2.

Church & M. Sedlak, Education in the United States 162, 167–169 (1976). And in more recent history, the special Act in this case stands alone. See *supra*, at 13. The general principle that civil power must be exercised in a manner neutral to religion is one the *Larkin* Court recognized, although it did not discuss the specific possibility of legislative favoritism along religious lines because the statute before it delegated state authority to any religious group assembled near the premises of an applicant for a liquor license, see 459 U. S., at 120–121, n. 3, as well as to a further category of institutions not identified by religion. But the principle is well grounded in our case law, as we have frequently relied explicitly on the general availability of any benefit provided religious groups or individuals in turning aside Establishment Clause challenges. In *Walz* v. *Tax Comm'n of New York City,* 397 U. S. 664, 673 (1970), for example, the Court sustained a property tax exemption for religious properties in part because the State had "not singled out one particular church or religious group or even churches as such," but had exempted "a broad class of property owned by nonprofit, quasi-public corporations." Accord *id.,* at 696–697 (opinion of Harlan, J.). And *Bowen* v. *Kendrick,* 487 U. S. 589, 608 (1988), upheld a statute enlisting a "wide spectrum of organizations" in addressing adolescent sexuality because the law was "neutral with respect to the grantee's status as a sectarian or purely secular

institution."[8] See also *Texas Monthly, Inc.* v. *Bullock*, 489 U. S. 1 (1989) (striking down sales tax exemption exclusively for religious publications); *id.,* at 14–15 (plurality opinion); *id.,* at 27–28 (BLACKMUN, J., concurring in judgment); *Estate of Thornton* v. *Caldor, Inc.,* 472 U. S. 703, 711 (1985) (O'CONNOR, J., concurring in judgment) (statute impermissibly "singles out Sabbath observers for special . . . protection without according similar accommodation to ethical and religious beliefs and practices of other private employees"); cf. *Witters* v. *Washington Dept. of Services for Blind*, 474 U. S. 481, 492 (1986) (Powell, J., concurring). Here the benefit flows only to a single sect, but aiding this single, small religious group causes no less a constitutional problem than would follow from aiding a sect with more members or religion as a whole, see *Larson* v. *Valente,* 456 U. S. 228, 244–246 (1982), and we are forced to conclude that the State of New York has violated the Establishment Clause.

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. Our

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[8]The Court used "sectarian" to refer to organizations akin to this school district in that they were operated in a secular manner but had a religious affiliation; it recognized that government aid may not flow to an institution "`in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission,'" 487 U. S., at 610 (quoting *Hunt* v. *McNair*, 413 U. S. 734, 743 (1973)).

cases leave no doubt that in commanding neutrality the Religion Clauses do not require the government to be oblivious to impositions that legitimate exercises of state power may place on religious belief and practice. Rather, there is "ample room under the Establishment Clause for `benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference,'" *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints* v. *Amos,* 483 U. S. 327, 334 (1987) (quoting *Walz* v. *Tax Comm'n, supra,* at 673); "government may (and sometimes must) accommodate religious practices and . . . may do so without violating the Establishment Clause." *Hobbie* v. *Unemployment Appeals Comm'n of Fla.*, 480 U. S. 136, 144–145 (1987). The fact that Chapter 748 facilitates the practice of religion is not what renders it an unconstitutional establishment. Cf. *Lee* v. *Weisman,* 505 U. S. ___, ___ (1992) (SOUTER, J., concurring) (slip op., at 19) ("That government must remain neutral in matters of religion does not foreclose it from ever taking religion into account"); *School Dist. of Abington* v. *Schempp,* 374 U. S., at 299 (Brennan, J., concurring) ("[H]ostility, not neutrality, would characterize the refusal to provide chaplains and places of worship for prisoners and soldiers cut off by the State from all civilian opportunities for public communion").

But accommodation is not a principle without limits, and what petitioners seek is an adjustment to the Satmars' religiously grounded preferences[9] that our

[9]The Board of Education of the Kiryas Joel Village School District explains that the Satmars prefer to live together "to facilitate individual religious observance and maintain social, cultural and religious values," but that it is not "`against their religion' to interact with others." Brief

cases do not countenance. Prior decisions have allowed religious communities and institutions to pursue their own interests free from governmental interference, see *Corporation of Presiding Bishop* v. *Amos, supra,* at 336–337 (government may allow religious organizations to favor their own adherents in hiring, even for secular employment); *Zorach* v. *Clauson,* 343 U. S. 306 (1952) (government may allow public schools to release students during the school day to receive off-site religious education), 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,[10] and whatever the limits of permissible legislative accommodations may be, compare *Texas Monthly, Inc.* v. *Bullock, supra* (striking down law exempting only religious publications from taxation), with *Corporation of Presiding Bishop* v. *Amos, supra* (upholding law exempting religious employers from Title VII), it is clear that neutrality as among religions must be honored. See *Larson* v. *Valente,* 456 U. S., at 244–246.

This conclusion does not, however, bring the Satmar parents, the Monroe-Woodbury school district, or the State of New York to the end of the road in seeking ways to respond to the parents' concerns. Just as the Court in *Larkin* observed that the State's interest in protecting religious meeting places could be "readily accomplished by other means," 459 U. S., at 124, there are several alternatives here for providing bilingual and bicultural special education to

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for Petitioner in No. 93–517, p. 4, n. 1.

[10]In this respect, it goes beyond even *Larkin*, transferring political authority to a single religious group rather than to any church or school.

Satmar children. Such services can perfectly well be offered to village children through the Monroe-Woodbury Central School District. Since the Satmars do not claim that separatism is religiously mandated, their children may receive bilingual and bicultural instruction at a public school already run by the Monroe-Woodbury district. Or if the educationally appropriate offering by Monroe-Woodbury should turn out to be a separate program of bilingual and bicultural education at a neutral site near one of the village's parochial schools, this Court has already made it clear that no Establishment Clause difficulty would inhere in such a scheme, administered in accordance with neutral principles that would not necessarily confine special treatment to Satmars. See *Wolman* v. *Walter,* 433 U. S., at 247–248.

To be sure, the parties disagree on whether the services Monroe-Woodbury actually provided in the late 1980's were appropriately tailored to the needs of Satmar children, but this dispute is of only limited relevance to the question whether such services could have been provided, had adjustments been made. As we understand New York law, parents who are dissatisfied with their handicapped child's program have recourse through administrative review proceedings (a process that appears not to have run its course prior to resort to Chapter 748, see *Board of Ed. of Monroe-Woodbury Central School Dist.* v. *Wieder,* 572 N. Y. 2d, at 180, 527 N.E. 2d, at 770), and if the New York Legislature should remain dissatisfied with the responsiveness of the local school district, it could certainly enact general legislation tightening the mandate to school districts on matters of special education or bilingual and bicultural offerings.

Justice Cardozo once cast the dissenter as "the gladiator making a last stand against the lions." B. Cardozo, Law and Literature 34 (1931). 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. Cf. *post*, at 5–6. 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, see F. Van Zandt, Boundaries of the United States and the Several States 250–257 (1966)), 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, cf. *post*, at 7–10, 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, as such, see App. 19–20 (Assembly sponsor thrice describes the Act's beneficiaries as the "Hasidic" children or community), rather than all groups similarly interested in separate schooling. The dissent protests it is novel to insist "up front" that a statute not tailor its benefits to apply only to one religious group, *post*, at 17–19, but if this were so, *Texas Monthly, Inc.* would have turned out differently, see 489 U. S., at 14–15 (plurality opinion); *id.*, at 28 (BLACKMUN, J., concurring in judgment), and language in *Walz* v. *Tax Comm'n of New York City*, 397 U. S., at 673, and *Bowen* v. *Kendrick*, 487 U. S., at 608, purporting to rely on the breadth of the statutory schemes would have been mere surplusage. Indeed, under the dissent's theory, if New York were to pass a law providing school buses only for children attending Christian day schools, we would be constrained to uphold the statute against Establishment Clause attack until faced by a request from a non-Christian family for equal treatment under the patently unequal law. Cf. *Everson* v. *Board of Ed.*

of Ewing, 330 U. S., at 17 (upholding school bus service provided all pupils). And to end on the point with which JUSTICE SCALIA begins, the license he takes in suggesting that the Court holds the Satmar sect to be New York's established church, see *post*, at 1, is only one symptom of his inability to accept the fact that this Court has long held that the First Amendment reaches more than

classic, 18th century establishments. See *Torcaso* v. *Watkins*, 367 U. S., at 492–495.

Our job, of course would be easier if the dissent's position had prevailed with the Framers and with this Court over the years. An Establishment Clause diminished to the dimensions acceptable to JUSTICE SCALIA could be enforced by a few simple rules, and our docket would never see cases requiring the application of a principle like neutrality toward religion as well as among religious sects. But that would be as blind to history as to precedent, and the difference between JUSTICE SCALIA and the Court accordingly turns on the Court's recognition that the Establishment Clause does comprehend such a principle and obligates courts to exercise the judgment necessary to apply it.

In this case we are clearly constrained to conclude that the statute before us fails the test of neutrality. It delegates a power this Court has said "ranks at the very apex of the function of a State," *Wisconsin* v. *Yoder,* 406 U. S. 205, 213 (1972), to an electorate defined by common religious belief and practice, in a manner that fails to foreclose religious favoritism. It therefore crosses the line from permissible accommodation to impermissible establishment. The judgment of the Court of Appeals of the State of New York is accordingly

Affirmed.