

High Court Rejects Special Jewish School District

The Supreme Court has ruled that the state of New York acted unconstitutionally when it created a special school district to serve the children of an orthodox Jewish religious sect, the Satmar Hasidim. The Kiryas Joel school district in Orange County, New York was established in 1989 when parents in the village refused to send their disabled children to the public schools for special education services because of the difficulties their children faced in having to associate with children from a more secular background. The village children who do not require special education services attend private, religious schools in the village.

In an opinion written by Justice David Souter, the Court declared that the New York law setting up the special school district was not an acceptable accommodation of the religious needs of the Satmar Hasidim, but was instead a violation of the constitutional requirement of government neutrality toward religion because it extended the benefit of a special franchise. Justices Harry Blackmun, John Paul Stevens and Ruth Bader Ginsburg joined the opinion of the Court. Justice Sandra Day O'Connor joined much of the Court's opinion and Justice Anthony Kennedy wrote a separate concurring opinion. Justice Antonio Scalia, joined by Chief Justice Rehnquist and Justice Clarence Thomas, wrote a scathing dissent calling the Court's decision "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..." Although the decision in this case is, as Justice Scalia pointed out, another instance of the Court's use of the Establishment Clause to restrict religious freedom, there was a hopeful message communicated in the various opinions. Five of the nine

justices (the three dissenters and justices O'Connor and Kennedy) expressed their willingness to look again at two 1985 cases which served as a background for the issue presented in this case. These cases, *Grand Rapids v. Ball* and *Aguilar v. Felton*, stand for the proposition that it is unconstitutional for public school teachers to go into parochial school classrooms to provide remedial education and other services. It seems clear, then, that there is an excellent chance the Court would overturn these decisions if the question were presented again.

The Court's opinion did not address the *Lemon* test which has fallen into disfavor with several of the justices and many commentators on church-state matters. Although some of the justices suggested alternatives to *Lemon* in earlier cases, Justice O'Connor urged the Court in her separate opinion to abandon its effort to structure a "grand unified theory" for deciding the complex questions presented to the Court by religion cases and to proceed on a case by case basis.

The Catholic League joined the American Center for Law and Justice in filing a friend of the court brief in this case.