

Special district case goes to High Court

Another challenge to *Lemon* test

The Supreme Court has agreed to decide whether New York State may create a special school district to serve the handicapped children of a group of Hasidic Jews, or whether such action violates the establishment clause of the First Amendment to the Constitution.

In *Board of Education v. Grumet* the Court will once again examine the proper boundary between church and state and the justices will have an opportunity to review the controversial Lemon test (see box) which the Court has used since 1971 to analyze establishment clause questions.

The Lemon Test

In *Lemon v. Kurtzman* (1971) the Supreme Court enunciated a three part test (the Lemon test) for determining whether government action violates the Establishment Clause of the Constitution. Under Lemon, a governmental action does not offend the Establishment Clause if: (1) it has a secular purpose; (2) its principal effect neither advances nor inhibits religion; and (3) it does not foster excessive entanglement with religion.

The dispute, which pits the New York State School Boards Association against the handicapped children of a devout and insular religious group, originated in Orange County, New York.

The Satmar Hasidim, a religious sect whose members follow strict rituals and who converse in Yiddish more frequently than in English, incorporated in 1977 as an independent village called Kiryas Joel.

Although most of the village children attend private schools, in 1989 the village was successful in persuading the New York state legislature to pass a bill setting up a special school district to educate the handicapped children of the village. Although handicapped children from the village had initially attended nearby public schools in order to receive special education services, the Hasidic parents expressed concern that their children's distinctive style of dress and manners marked them as so different, it was difficult for the children to attend school in a secular setting without facing ridicule.

When the school district was established, the State Education Department filed suit to have the district declared unconstitutional, and three state courts in New York have said that it is. New York's highest court ruled that the law creating the district had violated the second prong of the *Lemon* test because by giving in to "the demands of a religious community whose separatist tenets create a tension between the needs of its handicapped children and the need to adhere to certain religious practices" it had the "primary effect" of advancing religion.

School officials argued that the district "has, at most, the effect of accommodating the needs of a community of devoutly religious people" and urged the Court to replace the *Lemon* test with a standard allowing for state accommodation of religious practices.

Justice Kennedy has proposed a test to replace *Lemon* which would focus on whether government action coerces anyone to either participate in or support religion. Adoption of Kennedy's test would allow government greater latitude in accommodating religious practices than is now permissible under *Lemon*.

It seemed that last term there might be a five-justice majority ready to abandon *Lemon* in favor of Kennedy's non-coercion approach, but Justice White, although an ardent

critic of the *Lemon* test (and the only dissenter in the *Lemon* decision) declined to join Chief Justice Rehnquist and Justices Scalia, Kennedy and Thomas in officially rejecting *Lemon*. White has since retired from the Court and been replaced by Ruth Bader Ginsburg.