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WHY WE SHOULDN'T FORCE HASIDIC JEWS TO OFFER SECULAR EDUCATION

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The middle of the road is for horses,” the famous Rebbe of Kotzk once said. Critics of the Orthodox Union and UJA-Federation seem to share that disapproval for those sitting out the battle over the Satmar school curriculum, according to a recent report in the Forward.

Why have those organizations not come out vocally in support of the bill before the N.Y. State Assembly that would put teeth in regulations that mandate which subjects private schools must teach? Why have they failed to protect Hasidic children from a sentence of enforced poverty, which is the result of being denied the most basic educational tools available to other Americans? Shouldn't this be a no-brainer?

Not really. In fact, the more astute question might be why Jewish groups have not rallied to the defense of the Satmars, even though they (and we) do not share the Hasidim's utter and absolute rejection of all things secular. Religious freedom is measured by how we protect the rights of those with whom we do not agree.

This is a religious freedom problem and it starts with a different faith, albeit one that also spoke a dialect of German and wore black frock coats: The Old Order Amish in the 1972 case of *Wisconsin v. Yoder*. Wisconsin, like every other state in the union, has a compulsory education law that requires students to go to school until the age of 16. Yoder sued, alleging that his faith prohibited secular education of his children after eighth grade. To everyone's surprise, the Supreme Court ruled that the Constitution gives parents enough control in the education of their children that if their faith demands it, they can deprive their children of any education at all and simply pull them out of school and make them work on an Amish farm.

No one is obligated to send their children to school — any school — if it violates their religious rights. They do not even have to home school them: The kids can work on the farm.

Notwithstanding all the case law since then, *Yoder* remains good law. Of course, the government can and does regulate what is a licensed school and who is entitled to what aid from the state and under what circumstances, but it is important to understand the legal bottom line: A person who religiously objects to school can decline to send his children — at least after eighth grade and maybe earlier — to any school.

More generally, many civil-liberties-minded Americans are skittish about any and all government regulation of religious practice. Since *Employment Division v. Smith* allowed the government to curtail religious rights

incidentally, all religious liberty has been tenuous; the Religious Freedom Restoration Act and its progeny have generally demanded of states and the federal government accommodation for sincerely held religious beliefs unless there is no other way to accomplish a very important governmental goal, and even then, no targeting of religion specifically is allowed. But supporters of religious freedom know they're skating on thin ice all the time.

Satmar shares enough characteristics with the Old Order Amish that we think they would have little problem arguing in court that compelling secular education will destroy its basic religious values. This is reason enough for Jewish organizations not to rally to the side of New York State. In a legal showdown, Satmar will prevail: Yoder controls as a matter of law and denies the state the ability to force Satmar children to go to any school. If forced, Satmar can direct that its children go to an unlicensed Satmar yeshiva with no secular education at all and the Constitution protects that: A Satmar yeshiva is as protected as an Amish farm.

There is yet another good reason why Jewish organizations have not spoken up on the side of the State. While Satmar can challenge the curricular intrusion under Yoder, the State can push back by connecting any financial assistance to the teaching of the New York curriculum. This would, of course, be completely constitutional — even as the State cannot force children into schools if they do not want to go, the State is under no obligation to pay for a yeshiva education, just like it does not have to pay for Amish to work the farm.

The difference is government funding. The Amish were not funded by the state. Not so Satmar: Its yeshivas are beneficiaries of the many different programs the State and City of New York provide to private schools, from money for lunches for poor children to transportation assistance to many more programs of great value.

If there is a battle, the yeshivas will stay open under Yoder, but no state aid will be provided to such yeshivas, because they will not be recognized as schools. "Until now there were also strict laws, but because we live in a kingdom of benevolence, to put it bluntly they simply turned a blind eye to what's going on by the Jewish children," said Satmar Rebbe Aaron Teitlebaum in a May 4 address. That's where Satmar is vulnerable — and might have to make a painful decision.

Satmar — an economically poor and secularly undereducated community — might choose to live without the state aid, rather than engage in the religious compromise needed to get funding. These Satmar children that we are all seeking to help will now not only have less education than before, but they will be hungry and cold as well, since state aid will be gone.

This is really about negotiating. The State has significant latitude in enforcing its curricular expectations. It need not demand full compliance, and it hasn't for the last many years. But it can insist on more secular education than Satmar is providing now. Faced with a loss of crucial funding, the State and Satmar might be able to work out an upgrade in what children are offered without Satmar (which is already offering some secular education) feeling that its standards are so compromised that it has to go the Yoder route. It won't be perfect for either side, but would be better than what is happening now, and much better than the consequences of forcing Satmar to Yoderize. That's why it makes sense for the organizations to remain quiet, and act instead as intercessors between the sides.

Jewish community organizations are counting on Satmar to understand the devil's arithmetic that they face: comply with State educational expectations that they religiously dislike, or face a curtailing of aid they cannot afford to live without.

This is arithmetic that Satmar can well handle, even without any secular education.

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