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Compelling Compliance: An Analysis of Methods for Enforcing New York's Compulsory Education Law as Applied to Haredi Yeshivas

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COMPELLING COMPLIANCE: AN ANALYSIS OF METHODS FOR ENFORCING NEW YORK'S COMPULSORY EDUCATION LAW AS APPLIED TO HAREDI YESHIVAS

Kaitlyn Sivertsen*

This Note explains recent findings that many of New York's Haredi yeshivas are failing to comply with the compulsory education laws and advocacy for the state to heighten enforcement. It examines other community members' opposition to this belief and numerous legal challenges. This Note advances legal scholarship by pointing out that although these debates regarding education and religious freedom are important, in the context of New York's Haredi yeshivas, they are futile without also recognizing that New York's statute does not provide for efficient means of enforcement. There is little to no existing literature on this specific issue. Thus, this Note aims to bring awareness to this deficiency by demonstrating how fining or imprisoning yeshiva parents is inappropriate, withholding funds to entire districts is impractical, and how a part-time homeschooling plan, as suggested by a state supreme court justice, would be ineffective. Instead, it proposes that the state and local education departments should be permitted to withhold funding from individual noncomplying schools.

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INTRODUCTION

Naftuli Moster, then a young college student, recalls struggling in his classes due to his unfamiliarity with basic academic concepts, such as “molecule” and “essay.”¹ Mr. Moster is a graduate of a New York Haredi yeshiva, a private school of Orthodox Jewish denomination.² He is also the founder of Young Advocates for Fair Education (YAFFED), a group fighting

1. See Kate Taylor, *New York City Questions English, Math and Science Taught at Yeshivas*, N.Y. TIMES (July 31, 2015), <https://www.nytimes.com/2015/08/01/nyregion/new-york-city-questions-english-math-and-science-taught-at-yeshivas.html> [https://perma.cc/858J-HQHP]; Errol Louis, *The Fight to Make Sure Yeshiva Schools Provide a Secular Education, Too*, N.Y. MAG. (June 11, 2022), <https://nymag.com/intelligencer/2022/06/the-fight-for-secular-education-at-new-york-yeshiva-schools.html> [https://perma.cc/D853-KT3Z].

2. See Kathleen Lockwood, *Political Power, a Religious Agenda, and the Failings of the Endorsement Test: Hasidic Educational Separatism and the East Ramapo School Board*, 12 FIRST AMEND. L. REV. 697, 700–01 (2014); see also *Introduction: Yeshivas vs. New York*, in RELIGIOUS LIBERTY AND EDUCATION: A CASE STUDY OF YESHIVAS VS. NEW YORK (Jason Bedrick, Jay P. Greene & Matthew H. Lee eds., Rowman & Littlefield 2020); Stephen Rutman, *Civics in Yiddish: State Regulation of Language of Instruction in New York’s Private Schools*, 48 FORDHAM URB. L.J. 1245, 1251 (2021).

for heightened enforcement of “New York’s Compulsory Education Law” (or “Compulsory Education Law”),³ which requires that private schools provide a secular education substantially equivalent to that of local public schools.⁴ YAFFED’s efforts have inspired New York’s state and city governments to take a closer look at whether they are sufficiently protecting Haredi yeshiva students’ right to a sound, basic education, as guaranteed by the state constitution.⁵ However, YAFFED’s advocacy has been met with considerable political opposition and legal challenges.⁶

Education is extremely valuable in modern society. Studies demonstrate that higher educational attainment levels are correlated with positive overall health and wellbeing outcomes,⁷ lower criminal and prejudice-motivated activity,⁸ and a stimulated global economy.⁹ Education access can be revolutionary in breaking cycles that inhibit intergenerational mobility.¹⁰ Education policy is designed to promote these benefits by securing equitable education opportunities for diverse populations.¹¹ The U.S. Supreme Court has expressed that “education is perhaps the most important function of state and local governments.”¹² Nevertheless, laws are significantly less effective if not enforced,¹³ and government actions must exist in harmony with the right of parents to direct the upbringing of their children.¹⁴

This Note contends that, as written, New York’s Compulsory Education Law does not provide efficient and reasonable mechanisms of enforcement,

3. See ALISA PARTLAN, YOUNG ADVOCs. FOR FAIR EDUC., NON-EQUIVALENT: THE STATE OF EDUCATION IN NEW YORK CITY’S HASIDIC YESHIVAS 1, 2 (2017), <https://yaffed.org/wp-content/uploads/2021/01/Yaffed-Report-FINAL-one-up.pdf> [<https://perma.cc/7XGK-GD5D>].

4. N.Y. EDUC. LAW § 3205 (McKinney 2019).

5. See N.Y. CONST. art. XI, § 1; see also Campaign for Fiscal Equity, Inc. v. State of New York, 655 N.E.2d 661, 666 (1995).

6. See *infra* Parts II.A, II.C.

7. See Jan Abel Olsen, Gang Chen & Admassu N. Lamu, *The Relative Importance of Education and Health Behaviour for Health and Wellbeing*, BMC PUB. HEALTH, Oct. 11, 2023, at 1, 2, 5.

8. See Giulio Fella & Giovanni Gallipoli, *Education and Crime over the Life Cycle*, 81 REV. OF ECON. STUD. 1484, 1514 (2014); Salil D. Benegal & Mirya R. Holman, *Racial Prejudice, Education, and Views of Climate Change*, 102 SOC. SCI. Q. 1907, 1907–08 (2020).

9. See DANIEL F. RUNDE, ROMINA BANDURA & MADELEINE MCLEAN, CTR. FOR STRATEGIC & INT’L STUDS., INVESTING IN QUALITY EDUCATION FOR ECONOMIC DEVELOPMENT, PEACE, AND STABILITY (2023), https://csis-website-prod.s3.amazonaws.com/s3fs-public/2023-12/231220_Runde_Investing_Education.pdf [<https://perma.cc/98BY-BXFB>].

10. See generally Jo Blanden, Robert Haveman, Timothy Smeeding & Kathryn Wilson, *Intergenerational Mobility in the United States and Great Britain: A Comparative Study of Parent-Child Pathways*, 60 REV. INCOME & WEALTH 425 (2014).

11. See generally Eloise Pasachoff, *Block Grants, Early Childhood Education, and the Reauthorization of Head Start: From Positional Conflict to Interest-Based Agreement*, 111 PENN ST. L. REV. 349, 390 (2006) (explaining that although they differ in how to reach these goals, both political parties want to “ensure the success of poor children in school and later life”).

12. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

13. See Mark Jenner-Humphery, *Strong Financial Laws Without Strong Enforcement: Is Good Law Always Better Than No Law?*, 10 J. EMPIRICAL LEGAL STUD. 288, 288–89 (2013).

14. See *Pierce v. Soc’y of Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534 (1925).

which impedes the current efforts to improve secular education for New York's Haredi yeshiva students. Instead, this Note advocates for an amendment to the Compulsory Education Law that would allow New York to refuse funding to private schools that do not comply with the statute. Part I provides background information regarding Haredi yeshivas in New York, their funding, and the state and federal laws and constitutional doctrines the schools are bound by. It also tells the story of an earlier attempt by New York to enforce the law on the community and explains YAFFED's current advocacy and New York City's subsequent investigation. Part II explores political opposition to YAFFED's mission, the legality of heightened oversight, and challenges already brought in state and federal courts. Part III argues that although the Compulsory Education Law and subsequent regulations are likely constitutional, the punitive measures provided by the statute are impractical, and one New York judge's proposed part-time homeschooling scheme would be inadequate. Finally, Part III recommends amending the law to allow the state to withhold funding from individual noncomplying yeshivas in a way similar to bills currently in committee in the New York legislature as the most effective solution.

I. CONTEXTUALIZING HAREDI YESHIVAS IN THE LAW

Jewish Americans comprise roughly 2 percent of the U.S. population.¹⁵ Out of that 2 percent, around 9 percent identify as Orthodox.¹⁶ Although there are varying degrees of Orthodoxy, the normal practice among Orthodox Jewish people is to enroll their children in private Jewish day schools, known as yeshivas.¹⁷ Part I.A defines Haredi yeshivas. Part I.B describes how New York's private schools receive public funds, elaborating specifically on Haredi yeshivas. Part I.C analyzes New York's Compulsory Education Law, notable adopted and proposed amendments, recent regulations, and the present remedies available to address noncompliance. Part I.D examines applicable constitutional law. Part I.E recounts an unsuccessful attempt by New York State to enforce the Compulsory Education Law on Haredi yeshivas starting in 1939. Part I.F details YAFFED's current efforts to push New York State and New York City to more zealously exercise oversight over the Haredi yeshiva community.

15. See Pew Research Center, *Jewish Americans in 2020* (May 11, 2021), <https://www.pewresearch.org/religion/2021/05/11/jewish-americans-in-2020/> [https://perma.cc/797U-KKSM].

16. See *id.*

17. See Lockwood, *supra* note 2, at 700–01; see also *Introduction: Yeshivas vs. New York*, *supra* note 2; Rutman, *supra* note 2, at 1251.

A. Introduction to Haredi Yeshivas

There are an estimated 700,000 Haredi Jews living in the United States.¹⁸ The term “Haredi” refers to a subset of Orthodoxy including Hasidic Jews and several non-Hasidic denominations known for their strict observance of Jewish law.¹⁹ Generally, these communities fiercely reject outside secular influences, which they view as a threat to their traditional way of life.²⁰ One way Haredi Jews shield themselves of these influences, including those of less orthodox Judaism, is by enrolling their children in Haredi yeshivas.²¹ Many believe they are forbidden to send their students to public schools if they wish to maintain their community ties.²²

Children in yeshivas study Jewish texts, mainly the Torah and the Talmud, and ancient commentaries interpreting Jewish law.²³ They spend most of, or the entirety of the day, on religious study,²⁴ which is often taught in Yiddish.²⁵ Typically, Haredi yeshivas teach secular subjects such as math, English, science, and social studies in the afternoon.²⁶ However, universally, the primary focus is religious education.²⁷ Most Haredi yeshivas are single gender.²⁸ Girls in yeshivas typically receive a more robust secular education, whereas boys usually have longer school days with less time devoted to secular subjects.²⁹ This is because Orthodox interpretations of Jewish law impose the religious obligation to study Jewish texts upon men, but not women.³⁰

18. See L. Daniel Staetsky, *Haredi Jews Around the World: Population Trends and Estimates*, INST. FOR JEWISH POL’Y RSCH. (2022), <https://www.jpr.org.uk/reports/haredi-jews-around-world-population-trends-and-estimates> [https://perma.cc/83F6-GTAE].

19. See *Introduction: Yeshivas vs. New York*, *supra* note 2.

20. See PARTLAN, *supra* note 3, at 12–13.

21. See *id.* at 57–58; *Young Advocs. for Fair Educ. v. Cuomo*, 359 F. Supp. 3d 215, 221–22 (E.D.N.Y. 2019).

22. See PARTLAN, *supra* note 3, at 57; see also Doree Lewak, *Orthodox Parents Risk Being Shunned for Pulling Kids from Yeshivas*, N.Y. POST (Dec. 3, 2018, 3:22 PM), <https://nypost.com/2018/12/02/orthodox-parents-risk-being-shunned-for-pulling-kids-from-yeshivas/> [https://perma.cc/4VA6-GNTL].

23. See Lockwood, *supra* note 2, at 700–01; see also *Introduction: Yeshivas vs. New York*, *supra* note 2; Rutman, *supra* note 2, at 1251.

24. See Lockwood, *supra* note 2, at 700–01; see also *Introduction: Yeshivas vs. New York*, *supra* note 2; Rutman, *supra* note 2, at 1251.

25. See Lockwood, *supra* note 2, at 701; PARTLAN, *supra* note 3, at 31; Rutman, *supra* note 2, at 1251.

26. See PARTLAN, *supra* note 3, at 4; Zalman Rothschild, *Free Exercise’s Outer Boundary: The Case of Hasidic Education*, 119 COLUM. L. REV. F. 200, 208 (2019).

27. See Lockwood, *supra* note 2, at 700; see also PARTLAN, *supra* note 3, at 31; Rothschild, *supra* note 26, at 207–09.

28. See PARTLAN, *supra* note 3, at 4; RAY DOMANICO, MANHATTAN INST., NEW YORK STATE VS. HASIDIC SCHOOLS: PLACING THE “SUBSTANTIALLY EQUIVALENT” CURRICULUM DEBATE IN CONTEXT 1 (2023), https://media4.manhattan-institute.org/sites/default/files/nys-vs-hasidic-schools-substantially-equivalent-curriculum-debate_0.pdf [https://perma.cc/AC4H-GDK3].

29. See Rothschild, *supra* note 26, at 207; PARTLAN, *supra* note 3, at 31; Lockwood, *supra* note 2, at 701.

30. See PARTLAN, *supra* note 3, at 31; see also Rothschild, *supra* note 26, at 207.

*B. The Financial Structure of
New York's Private Schools*

Over 400,000 children in New York state have been estimated to attend private schools.³¹ During the 2021–2022 school year, there were 177,252 children enrolled in Haredi yeshivas in the state.³²

1. Public Money to Private Schools

The vast majority of K–12 public school funding comes from state and local governments.³³ A state has no obligation to provide public funds to private schools.³⁴ However, in New York, there are a number of state-funded grants available for nonpublic schools.³⁵ Examples of these grants include support for private schools that increase test scores on state math and English language arts tests, retain qualified science and math teachers, and maintain proper health and safety equipment.³⁶

The New York State Executive Budget (the “Executive Budget”) for fiscal year 2024 recommends \$43.9 billion for the New York State Education Department.³⁷ The Executive Budget provides \$139 million to reimburse private schools for state-mandated activities, plus an additional \$70 million for STEM instruction, and \$45 million for capital health and safety projects.³⁸ Such state-mandated activities include data reporting, student testing, and attendance keeping.³⁹ In September 2023, the New York City Department of Education (NYC DOE) approved a budget of over \$160 million for nonpublic schools for fiscal year 2024.⁴⁰

31. See RAY DOMANICO, MANHATTAN INST., A STATISTICAL PROFILE OF NEW YORK'S K-12 EDUCATIONAL SECTOR: RACE, INCOME AND RELIGION (2020), <https://media4.manhattan-institute.org/sites/default/files/statistical-profile-nyc-educational-sector-RD2.pdf> [https://perma.cc/849S-RPMF].

32. See Lauren Hakimi, *Enrollment Has Boomed in New York Haredi Schools – Especially Hasidic Ones, Report Finds*, SHTETL (Aug. 15, 2023, 3:35 PM), <https://www.shtetl.org/article/enrollment-boomed-ny-haredi-schools-especially-hasidic-report-finds> (noting that this figure is increasing) [https://perma.cc/5PKF-RZK6].

33. See *How Is K-12 Education Funded?*, PETER G. PETERSON FOUND. (Aug. 19, 2024), <https://www.pgpf.org/budget-basics/how-is-k-12-education-funded> [https://perma.cc/X5WU-L9B8].

34. See *Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246, 2261 (2020). However, general grant programs for nonpublic schools cannot exclude religious schools. See *id.*; *Carson ex rel. O. C. v. Makin*, 596 U.S. 767, 779–80 (2022).

35. See *Funding Opportunities*, N.Y. STATE EDUC. DEP'T, <https://www.nysed.gov/nonpublic-schools/funding-opportunities> [https://perma.cc/3NS8-JFE5] (last visited Nov. 14, 2024).

36. See *id.*

37. See *Education Department, State*, N.Y. STATE DIV. OF THE BUDGET, <https://www.budget.ny.gov/pubs/archive/fy24/ex/agencies/appropdata/EducationDepartmentState.html> [https://perma.cc/PW7N-WQAG] (last visited Nov. 14, 2024).

38. See *id.*

39. See *Funding Opportunities*, *supra* note 35.

40. See N.Y.C. DEP'T OF EDUC., FY 2024 SEPTEMBER FINANCIAL STATUS REPORT 1 (2023), https://www.nycenet.edu/offices/finance_schools/budget/dsbpo/fsr/FSR_Year_2023_2024/FSR_01_September/FY2024_September_2023_FSR.ppd [https://perma.cc/7PY7-NLJA].

2. Yeshiva Funding

New York's yeshivas are supported by three main funding sources: tuition, private contributions, and government funds.⁴¹ Information regarding how much public money New York's Haredi yeshivas receive is not readily available.⁴² This is because religiously affiliated schools below college level are exempt from filing public Internal Revenue Service forms that are typically required for tax-exempt nonprofit organizations.⁴³ Most Haredi yeshivas choose not to publish these financial statements.⁴⁴ New York State and New York City also do not make this information readily available to the public.⁴⁵

Despite the lack of easily accessible financial data, journalists estimate that New York City's yeshivas collect over \$100 million a year in taxpayer dollars.⁴⁶ Other reports have concluded that Hasidic boys schools have received over \$1 billion in government money between 2018 and 2022.⁴⁷ These estimates equate to far less funding per student compared to that of New York's public schools.⁴⁸ However, financial analyses have found that Haredi yeshivas are given significantly more money per student than other nonpublic schools.⁴⁹

Tuitions for New York's Haredi yeshivas generally range from \$6,000 to \$10,000 per year.⁵⁰ However, many families cannot afford these "sticker prices."⁵¹ In fact, around 43 percent of New York's Haredi households are

41. See PARTLAN, *supra* note 3, at 52–57.

42. See *id.* at 51.

43. See *Filing Requirements for Churches and Religious Organizations*, IRS, <https://www.irs.gov/charities-non-profits/churches-religious-organizations/filing-requirements-for-churches-and-religious-organizations> [<https://perma.cc/NM4H-AGRY>] (last visited Nov. 14, 2024); see also PARTLAN, *supra* note 3, at 51.

44. See PARTLAN, *supra* note 3, at 51.

45. See *id.* at 81, n.81 (noting that such data regarding specific yeshivas was obtained through a Freedom of Information Act request). See generally Eliza Shapiro & Brian M. Rosenthal, *In Hasidic Enclaves, Failing Private Schools Flush with Public Money*, N.Y. TIMES (Sept. 12, 2022), <https://www.nytimes.com/2022/09/11/nyregion/hasidic-yeshivas-schools-new-york.html> [<https://perma.cc/PQR2-K87P>] (attempting to estimate school funding through indirect evidence).

46. See Susan Edelman, *NYC Yeshivas Collect More Than \$100M a Year in Public Funds*, N.Y. POST (Jan. 20, 2019, 2:00 PM), <https://nypost.com/2019/01/19/nyc-yeshivas-collect-more-than-100m-a-year-in-public-funds/> [<https://perma.cc/CC2Q-E2GX>]; Menachem Wecker, *New York State Cracks Down on Jewish Schools*, EDUC. NEXT (July 16, 2019), <https://www.educationnext.org/new-york-state-cracks-down-jewish-schools-senator-simcha-felder-rabbi-chaim-dovid-zwiebel-joseph-hodges-choate/> [<https://perma.cc/A2S4-NJC8>].

47. See Shapiro & Rosenthal, *supra* note 45.

48. See *id.*; Jason Bedrick & Jay P. Greene, *The New York Times's Botched Attack on Jewish Schools*, THE HERITAGE FOUND. (Sept. 20, 2022), <https://www.heritage.org/education/commentary/the-new-york-times-botched-attack-jewish-schools> [<https://perma.cc/68NH-VS23>].

49. See Shapiro & Rosenthal, *supra* note 45.

50. See PARTLAN, *supra* note 3, at 57; see also DOMANICO, *supra* note 28, at 12.

51. See PARTLAN, *supra* note 3, at 57; DOMANICO, *supra* note 28, at 12; Yigal M. Gross, *The Yeshiva Day School System — Costs and Considerations*, THE TIMES OF ISR. (June 24, 2016, 10:44 AM), <https://blogs.timesofisrael.com/the-yeshiva-day-school-system-costs-and-considerations/> [<https://perma.cc/P6R9-HJK3>].

estimated to be living in poverty.⁵² Nevertheless, Haredi yeshivas do not typically turn away families that are unable to pay tuition.⁵³ The tuition assistance provided to these students is usually offset by community donations or residual funding from families paying full price.⁵⁴

C. *Compulsory Education in New York*

The New York State Constitution guarantees all children of New York state the opportunity to receive a sound basic education.⁵⁵ The New York State Court of Appeals has held that “[s]uch an education should consist of the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury.”⁵⁶

1. New York’s Compulsory Education Law

New York’s first compulsory education law was enacted in 1894.⁵⁷ Today’s version states, “[i]n each school district of the state, each minor from six to sixteen years of age shall attend upon full time instruction.”⁵⁸ Further, “[i]nstruction given to a minor elsewhere than at a public school shall be at least substantially equivalent to the instruction given to minors of like age and attainments at the public schools of the city or district where the minor resides.”⁵⁹ Typically, local school authorities, such as board of education members or other school district officers, are tasked with determining and ensuring substantial equivalency for the nonpublic schools located within their districts.⁶⁰ However, for private schools covered by the amendment to § 3204(2)(ii), commonly known as the Felder Amendment and explained later in this note,⁶¹ the Commissioner of Education of the State of New York (the “Commissioner of Education” or “Commissioner”) makes such assessments.⁶²

52. See PARTLAN, *supra* note 3, at 6; JONATHAN HORNSTEIN, THE HARVEY & JEANETTE WEINBERG FOUND., JEWISH POVERTY IN THE UNITED STATES: A SUMMARY OF RECENT RESEARCH 7 (2019), <https://cdn.fedweb.org/fed-42/2892/jewish-poverty-in-the-united-states%2520Weinberg%2520Report.pdf> [<https://perma.cc/4CF4-DWD8>].

53. See PARTLAN, *supra* note 3, at 57; DOMANICO, *supra* note 28, at 12.

54. See DOMANICO, *supra* note 28, at 12; Gross, *supra* note 51.

55. See N.Y. CONST. art. XI, § 1; see also *Campaign for Fiscal Equity v. State of New York*, 655 N.E.2d 661, 666 (1995).

56. See *Campaign for Fiscal Equity*, 655 N.E.2d at 666.

57. See Moses Stambler, *The Effect of Compulsory Education and Child Labor Laws on High School Attendance in New York City, 1898-1917*, 8 HIST. OF EDUC. Q. 189, 190 (1968).

58. N.Y. EDUC. LAW § 3205 (McKinney 2019).

59. N.Y. EDUC. LAW § 3204(2) (McKinney 2022).

60. See *Parents for Educ. & Religious Liberty in Sch. v. Young*, 190 N.Y.S.3d 816, 820 (N.Y. Sup. Ct. 2023).

61. See *infra* Part I.C.2.

62. EDUC. § 3204.

Although the education law provides only relatively general guidelines for determining substantial equivalency, instruction may only be given by a competent teacher, and for the subjects listed in the section, must be in English.⁶³ For the first eight years of full-time public school, such subjects are, “arithmetic, reading, spelling, writing, the English language, geography, United States history, civics, hygiene, physical training, the history of New York state and science.”⁶⁴ After the first eight years, schools must provide instruction “in at least the English language and its use, in civics, hygiene, physical training, and American history including the principles of government proclaimed in the Declaration of Independence and established by the constitution of the United States.”⁶⁵

2. The Felder Amendment and Current Legislative Bills

In March of 2018, the New York state legislature amended section 3204 of the New York Education Law in accordance with a proposal by Senator Simcha Felder.⁶⁶ The Felder Amendment, as it became known, covers schools that: (1) are nonprofit corporations, (2) have a bilingual program, and (3) have longer than normal school days.⁶⁷ These criteria are characteristic of New York’s Haredi yeshivas.⁶⁸

Substantively, there are three main parts to the Felder Amendment (the “Amendment”). First, rather than local school authorities, the Commissioner of Education is tasked with determining whether a school covered by the Amendment is “‘substantially equivalent’ to that of a public school within the city or district where its students reside.”⁶⁹ Second, the Amendment provides that in such assessment, the Commissioner “‘shall consider . . . if the curriculum provides academically rigorous instruction that develops critical thinking skills in the school’s students,’ ‘taking into account the entirety of the curriculum,’” although the review is not limited to such considerations.⁷⁰ Third, for covered elementary and middle schools, the Commissioner’s report must include “an assessment of whether the school is adequately teaching four core classes: English; mathematics; history (which need not include United States history); and science”⁷¹ The Amendment

63. *Id.*

64. *Id.*

65. *Id.*

66. See ANDREA FASTENBERG, N.Y.C. L. DEP’T, UPDATE ON GOVERNMENTAL REGULATION OF RELIGIOUS EDUCATION (2019), https://nysba.org/NYSBA/Sections/Coursebooks/Local%20and%20State/2019%20Fall%20Meeting/_Panel%207.pdf [<https://perma.cc/6948-57KX>].

67. N.Y. EDUC. LAW § 3204(2)(ii) (McKinney 2018).

68. See Young Advoc. for Fair Educ. v. Cuomo, 359 F. Supp. 3d 215, 222 (E.D.N.Y. 2019); see also Vivian Wang & Jesse McKinley, *The Curious Case of the Yeshiva Carve-Out*, N.Y. TIMES (Apr. 3, 2018), <https://www.nytimes.com/2018/04/03/nyregion/yeshivas-budget-new-york.html> [<https://perma.cc/HZ8A-ZP3T>].

69. *Cuomo*, 359 F. Supp. 3d at 223 (quoting EDUC. § 3204(2)(i)).

70. *Id.* (quoting EDUC. § 3204(2)(i)–(iii)).

71. *Id.*

requires no instruction in any particular subjects for covered high schools.⁷² Instead, “taking into account the entirety of the curriculum,” the Commissioner should determine whether the outcomes of the given instruction result in a sound basic education.⁷³

Although the Felder Amendment did not redact any of the language of the previous version of section 3204,⁷⁴ it is unclear how the Amendment interacts with the section’s existing language. Legal scholars have asserted that the Amendment merely clarifies or provides additional guidance as to how the state will determine substantial equivalency for covered schools.⁷⁵ However, activists have deemed the Amendment a “carve out.”⁷⁶ In 2019, Judge I. Leo Glasser of the U.S. District Court for the Eastern District of New York held that “the Amendment permits NYSED to treat covered schools more leniently than non-covered schools, but it does not require that it do so.”⁷⁷ In the case before Judge Glasser, YAFFED challenged the constitutionality of the Felder Amendment under the First Amendment’s Establishment Clause.⁷⁸ The lawsuit was dismissed for lack of standing.⁷⁹

Currently, there are multiple bills in committee at the New York State Senate and Assembly that would significantly alter the Compulsory Education Law if adopted. Senate Bill No. 5462 calls for the elimination of the distinction between nonpublic schools that are and are not (1) nonprofit corporations that (2) have a bilingual program, and (3) longer than normal school days.⁸⁰ The bill provides for new guidelines for determining substantial equivalency that would apply to all nonpublic schools in New York.⁸¹ Thus, if enacted, Senate Bill No. 5462 would virtually eliminate the Felder Amendment.

Senate Bill No. 5462 also proposes that all nonpublic schools receiving state funds must submit a certification that the school is providing an education substantially equivalent to that of local public schools.⁸² Intentionally or negligently filing a false certification would require that the school return any state funds received during the period for which the certification was made and would render the school ineligible to receive any further state funding for the same period and for the following five years.⁸³

72. *See id.*

73. *See id.*

74. Compare N.Y. EDUC. LAW § 3204 (McKinney 2018) (amended 2022), with N.Y. EDUC. LAW § 3204 (McKinney 2018) (February 2018 version amended in April 2018).

75. *See* Fastenberg, *supra* note 66; DOMANICO, *supra* note 28, at 2.

76. *See* Wang & McKinley, *supra* note 68; *Legal Fight Underway to Make Yeshiva Students Meet NY State Standards*, CBS N.Y. (July 23, 2018, 7:03 PM), <https://www.cbsnews.com/newyork/news/legal-fight-underway-to-make-yeshiva-students-meet-ny-state-standards/> [<https://perma.cc/WZ6L-ANGJ>].

77. *Cuomo*, 359 F. Supp. 3d at 224.

78. *See id.* at 219.

79. *See id.* at 220.

80. *See* S.B. 5462, 2023–2024 Reg. Sess. (N.Y. 2023).

81. *See id.*

82. *See id.*

83. *See id.*

Assembly Bill No. 2832 does not modify the distinction between nonpublic schools that meet the criteria of the Felder Amendment and those that do not.⁸⁴ However, the bill would allow any current or former student, parent, or school faculty member, or any resident of the same school district to file a complaint alleging that a nonpublic school is not providing a substantially equivalent education.⁸⁵ If the subsequent investigation by the Commissioner results in a finding unfavorable to the school, the Commissioner may withhold any state funding and prohibit the school from operating.⁸⁶

3. 2022 Regulations

In 2018, the New York State Education Department issued an interpretive document titled “Substantial Equivalency Review and Determination Process” in an effort to clarify how the Compulsory Education Law would be enforced.⁸⁷ Those guidelines were struck down by the Albany County Supreme Court for being improperly enacted.⁸⁸ In accordance with the Albany County Supreme Court, a new set of regulations promulgated by the Commissioner of Education went into effect on September 28, 2022.⁸⁹

These regulations prescribe that local school authorities are responsible for substantial equivalency reviews for all nonpublic schools within their geographical boundaries.⁹⁰ For nonpublic schools covered by the Felder Amendment, local school authorities must provide their conclusions and supporting evidence to the Commissioner of Education for the final determination.⁹¹ If a review results in an unfavorable finding, local school authorities have sixty days to develop a plan with the school to achieve substantial equivalency within a reasonable timeframe.⁹² If the school fails to execute the plan, the review proceeds to final determination.⁹³ Substantively, the rules reiterate the requirements of the Compulsory Education Law, including by noting that the criteria enumerated in the Felder Amendment applies to schools covered by its provisions.⁹⁴

84. See A.B. 2832, 2023–2024 Reg. Sess. (N.Y. 2023).

85. See *id.*

86. See *id.*

87. See *New York State Ass’n. of Ind. Schs. v. Elia*, 110 N.Y.S.3d 513, 514 (N.Y. Sup. Ct. 2019).

88. See *id.* at 517.

89. See *Parents for Educ. & Religious Liberty in Sch. v. Young*, 190 N.Y.S.3d 816, 820 (N.Y. Sup. Ct. 2023).

90. N.Y. COMP. CODES R. & REGS. tit. 8, § 130.2(a) (2024).

91. *Id.* § 130.8.

92. See *Young*, 190 N.Y.S.3d at 822.

93. See *id.*

94. See N.Y. COMP. CODES R. & REGS. tit. 8 § 130.9 (2024); *supra* Part I.C.1.

4. Remedies and Enforcement Methods

The Compulsory Education Law dictates that any person in parental relation to an individual encompassed by the law “[s]hall cause such individual to attend upon instruction as hereinbefore required”⁹⁵ Failure to do so “shall be punishable for the first offense by a fine not exceeding ten dollars or ten days’ imprisonment; for each subsequent offense by a fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days, or by both such fine and imprisonment.”⁹⁶ The Compulsory Education Law also states that the Commissioner of Education “may withhold one-half of all public school moneys from any city or district, which, in his judgment, wilfully omits and refuses to enforce the provisions of part one of this article, after due notice”⁹⁷

D. Relevant Constitutional Jurisprudence

It is well settled that states have the right to compel some form of education,⁹⁸ and all fifty states have compulsory education laws.⁹⁹ However, the Supreme Court has held that requiring children to attend public school violates the Due Process Clause of the Fourteenth Amendment.¹⁰⁰

The Establishment Clause of the First Amendment mandates government neutrality regarding religion,¹⁰¹ meaning that neither a state nor the federal government can benefit religion over nonreligion, aid nonreligion over religion, or prefer one religion over another.¹⁰² The Free Exercise Clause protects the right to believe whatever religious doctrine a person chooses and prohibits government regulation of “the performance of (or abstention from) physical acts that constitute the free exercise of religion.”¹⁰³ The First

95. N.Y. EDUC. LAW § 3212 (McKinney 2005).

96. N.Y. EDUC. LAW § 3233 (McKinney 1971).

97. N.Y. EDUC. LAW § 3234 (McKinney 1966). Importantly, multiple bills in committee in the New York Legislature, which are similar to amendments this Note ultimately advocates for, would considerably modify these enforcement remedies if adopted. *See supra* notes 80–86.

98. *See Meyer v. Nebraska*, 262 U.S. 390, 402 (1923) (“The power of the state to compel attendance at some school and to make reasonable regulations for all schools . . . is not questioned.”).

99. *See* MARILYN L. GRADY, NEB. STATE DEP’T OF EDUC., LINCOLN, COMPULSORY EDUCATION: A POLICY ANALYSIS 1–2 (1994), https://www.academia.edu/27383717/Compulsory_Education_A_Policy_Analysis [<https://perma.cc/M8KQ-UD7Z>]; Rothschild, *supra* note 26, at 209.

100. *See Pierce v. Soc’y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534–35 (1925).

101. *See Epperson v. Arkansas*, 393 U.S. 97, 104 (1968).

102. *See Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 458–59 (2017) (quoting *Everson v. Bd. of Ed. of Ewing Tp.*, 330 U.S. 1, 16 (1947)).

103. *Kane v. De Blasio*, 19 F. 4th 152, 163–64 (2d Cir. 2021) (quoting Cent. Rabbinical Cong. of U.S. & Can. v. N.Y.C. Dep’t of Health & Mental Hygiene, 763 F.3d 183, 193 (2d Cir. 2014)).

Amendment does not, however, “relieve an individual of the obligation to comply with a valid and neutral law of general applicability.”¹⁰⁴

In 1972, the Supreme Court recognized a religious exemption from compulsory education for the Amish community in *Wisconsin v. Yoder*.¹⁰⁵ In *Yoder*, Wisconsin’s compulsory education law required school attendance through age sixteen.¹⁰⁶ The law directly conflicted with the religious beliefs of the Old Order Amish community, which rejected formal schooling past eighth grade.¹⁰⁷ The Supreme Court held that the statute as applied to Amish parents violated their rights under the First and Fourteenth Amendments to the free exercise of religion and to the control of their childrens’ upbringings.¹⁰⁸ The Court reasoned that children with a formal eighth grade education have the basic skills to survive in a modern society and that imposing another two years did not provide a benefit significant enough to outweigh the religious objections.¹⁰⁹ Additionally, the Amish community was self-sufficient and denied typical modern public welfare.¹¹⁰ Thus, allowing this exception was unlikely to create “significant social burdens.”¹¹¹ The Supreme Court in *Yoder* noted that its holding was very narrow.¹¹² Therefore, claims for a similar exemption by other religious groups are rarely made and seldom succeed.¹¹³

In 1990, the Supreme Court decided *Employment Division Department of Human Resources of Oregon v. Smith*,¹¹⁴ in which members of the Native American Church alleged that Oregon’s illegal substance laws violated their right to the free exercise of religion, as their church ceremonies included ingesting peyote, a hallucinogenic drug, for sacramental purposes.¹¹⁵ Although not applicable to the plaintiff’s claim, which alleged only a free exercise violation, Justice Antonin Scalia, writing for the majority, established his “hybrid rights” doctrine.¹¹⁶ He posited that when a free

104. *Id.* (quoting *Emp. Div., Dep’t of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 879 (1990)). Some states have adopted religious freedom restoration acts, which statutorily overrule this proposition regarding state law, but New York has not. *See* Rothschild, *supra* note 26, at 216. Notably, sitting justices of the U.S. Supreme Court have expressed doubt in this proposition. *See* *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1882–83 (2021) (Barrett, J., concurring); *id.* at 1883–84 (Alito, J., concurring).

105. 406 U.S. 205 (1972).

106. *See id.* at 207.

107. *See id.* at 210–11.

108. *See id.* at 213–14, 233–34. This idea of a right to “parental control” was dictated previously by the Supreme Court in *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923), and *Pierce v. Society of Sisters*, 268 U.S. 510, 530–31, 534–35 (1925). *See* Rothschild, *supra* note 26, at 217.

109. *See Yoder*, 406 U.S. at 216–18.

110. *See id.* at 233–34.

111. *See id.*

112. *See id.* at 235–36.

113. *See* Aaron Saiger, *State Regulation of Curriculum in Private Religious School: A Constitutional Analysis*, in *RELIGIOUS LIBERTY AND EDUCATION: A CASE STUDY OF YESHIVAS VS. NEW YORK*, *supra* note 2, at 49, 53.

114. 494 U.S. 872 (1990).

115. *See id.* at 872.

116. *See id.* at 881–82; Rothschild, *supra* note 26, at 217.

exercise claim is brought in conjunction with another alleged violation (such as of freedom of speech or of the press), the law in question should be examined with strict scrutiny.¹¹⁷ Today, to pass strict scrutiny, a law must be “narrowly tailored” to achieve “a compelling governmental interest.”¹¹⁸ However, some lower courts have refused to take the “hybrid rights doctrine” seriously.¹¹⁹

E. Previous Enforcement Efforts

In 1939, the New York State Board of Regents adopted a resolution urging “[t]hat private or parochial schools that operate with a program providing a session carried on in a foreign language during the forenoon, with only an afternoon session in English, be advised that such practice violates the compulsory education law.”¹²⁰ Such a violation could have resulted in a revocation of the school’s charter.¹²¹ At the time, all twenty-six yeshivas in existence in New York would have been violating the law, as the schools’ curricula included Jewish education throughout the morning and into the early afternoon.¹²²

The yeshivas did not adjust their curricula and were advised that their charters were subject to revocation, pending a hearing.¹²³ At the hearing, prominent Jewish community members testified in support of yeshivas, including a state senator that served on the board of a yeshiva.¹²⁴ After the hearing, the New York State Board of Regents formed a committee of yeshiva administrators and education department officials with the

117. See *Smith*, 494 U.S. at 881–882; see also Rothschild, *supra* note 26, at 217–18. If a claim does not “qualify” for strict scrutiny, modern jurisprudence says that generally, the statute must only be “rationally related to a legitimate state interest” unless some form of intermediate scrutiny applies. See *City of New Orleans v. Dukes*, 427 U.S. 303, 303 (1976) (per curiam); see also Raphael Holoszyk-Pimentel, *Reconciling Rational-Basis Review: When Does Rational Basis Bite?*, 90 N.Y.U. L. REV. 2070, 2074, 2078 (2015).

118. See *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531–32 (1993). The Supreme Court in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), applied an earlier version of strict scrutiny derived from *Sherbert v. Verner*, 374 U.S. 398 (1963). See Caleb C. Wolanek & Heidi H. Liu, *Applying Strict Scrutiny: An Empirical Analysis of Free Exercise Cases*, 78 MONT. L. REV. 275, 278 (2017).

119. See, e.g., *Combs v. Homer-Center Sch. Dist.*, 540 F.3d 231, 246–47 (3d Cir. 2008) (“Until the Supreme Court provides direction, we believe the hybrid-rights theory to be dicta.”); see also Rothschild, *supra* note 26, at 218. In the same case, the U.S. Court of Appeals for the Third Circuit also narrowly construed the idea of parental control as a “fundamental right” to only the specific context of the right “to educate one’s children at home without state oversight.” See *id.* at 222.

120. See Marvin Schick, *As New York Once Again Targets Religious Schools, a History Lesson in Communal Resistance*, TABLET MAG. (Aug. 12, 2019), <https://www.tabletmag.com/sections/news/articles/new-york-targets-religious-schools> [https://perma.cc/6UMC-DVH5] (reproducing language of resolution).

121. See *Introduction: Yeshivas vs. New York*, *supra* note 2.

122. See Schick, *supra* note 120.

123. See *Introduction: Yeshivas vs. New York*, *supra* note 2.

124. See Schick, *supra* note 120.

suggestion that the department conduct school visits.¹²⁵ No yeshivas were shut down as a result of the resolutions or the subsequent hearing.¹²⁶ Aside from the five-year period of that controversy, yeshivas in New York had largely been free to operate in whatever manner they wished until recent debates rose to prominence.¹²⁷

F. A Modern Call to Action

In 2012, alumni of the New York Hasidic school system formed a group called Young Advocates for Fair Education (YAFFED).¹²⁸ In July 2015, YAFFED issued a letter to the NYC DOE and others, signed by fifty-two yeshiva graduates, parents, and teachers identifying thirty-nine Haredi yeshivas allegedly not providing students a basic education.¹²⁹ In that same month, the NYC DOE agreed to investigate those complaints.¹³⁰

YAFFED continued to lobby for the NYC DOE to take a closer look into New York City's Haredi yeshivas after the 2015 letter. In its 2017 report titled "Non-Equivalent: The State of Education in New York City's Hasidic Yeshivas," YAFFED asserted that by New York neglecting to enforce the law, it is failing to protect the rights of Haredi yeshiva students.¹³¹ YAFFED presses that this failure is devastating because many Haredi yeshiva graduates are unprepared to live in modern society.¹³² Many Haredi yeshivas do not offer high school diplomas, and many graduates cannot pass the General Education Development (GED) examination.¹³³ Therefore, they are unable to obtain employment or attend college, resulting in an inability to support their families, which are often very large.¹³⁴ YAFFED urges that this results in a higher dependency on public welfare, a burden that is held by all of society.¹³⁵ YAFFED also notes that local Haredi yeshivas are growing, which suggests that the issues raised are growing as well.¹³⁶ Finally, YAFFED points out that other countries around the world are opting for stricter surveillance of Haredi yeshivas regarding their compliance with education laws and encourages New York to do the same.¹³⁷ Moreover, YAFFED references other local orthodox non-Haredi yeshivas that offer a robust religious education while providing a substantially equivalent secular

125. *See Introduction: Yeshivas vs. New York*, *supra* note 2.

126. *See id.*

127. *See* PARTLAN, *supra* note 3, at 7; Schick, *supra* note 120; *Introduction: Yeshivas vs. New York*, *supra* note 2.

128. *See* PARTLAN, *supra* note 3, at 25.

129. *See id.* at 24. YAFFED notes that this list was not meant to be comprehensive, nor was it intended to be a targeted attack on those specific thirty-nine yeshivas. *See id.* at 73. Rather, YAFFED contends that the NYC DOE required at least some names of specific schools before an investigation would be commenced. *See id.*

130. *See id.* at 24.

131. *See id.* at 41.

132. *See id.* at 5.

133. *See id.* at 40.

134. *See id.* at 5.

135. *See id.* at 62.

136. *See id.* at 50.

137. *See id.* at 41.

education in an effort to demonstrate that the two objectives are not mutually exclusive.¹³⁸

In June 2023, after an eight-year-long investigation,¹³⁹ the NYC DOE concluded that eighteen local Hasidic yeshivas were not providing an adequate secular education.¹⁴⁰ Fourteen out of those eighteen schools were covered by the Felder Amendment and thus required the Commissioner of Education to make the final determination.¹⁴¹ Eleven of YAFFED's thirty-nine schools fell out of the scope of inquiry for various reasons and one school was listed twice.¹⁴² This left nine schools with a finding of compliance with the New York Compulsory Education Law.¹⁴³

II. CURRENT CONTROVERSY SURROUNDING ENFORCEMENT ATTEMPTS

YAFFED's advocacy has catapulted New York's yeshivas to the forefront of education policy debates and legal challenges regarding the intersection of education rights and religious freedom. Part II.A addresses the arguments of those opposed to YAFFED and its supporters. Part II.B studies the scholarship surrounding the legality of stricter oversight of New York's Haredi yeshivas. Part II.C explains challenges already raised in both state and federal court on these issues.

A. Political Opposition to Heightened Enforcement

Not everyone formerly or currently involved in the Haredi yeshiva community agrees with YAFFED's positions or sees reform as necessary. Many Haredi yeshiva parents and administrators argue that there is nothing

138. *See id.* at 42.

139. The NYC DOE originally promised that the investigation would be completed by the of the spring of 2016, before modifying their commitment to an interim report by the summer of 2017. *See id.* at 25. Advocates believe that the investigation was delayed because New York politicians rely heavily on Hasidic votes, but government officials have denied these allegations. *See id.* at 26; Shapiro & Rosenthal, *supra* note 45. Officials also noted the COVID-19 pandemic as a further impediment to the investigation. *See* Shapiro & Rosenthal, *supra* note 45.

140. *See* Email from David C. Banks, Chancellor, N.Y.C. Schools, to Betty Rosa, Comm'r N.Y. State Dep't of Educ. (June 30, 2023), <https://drive.google.com/file/d/1QCQ2HmRt3v2DDck7OFTearbgJJ9hTotE/view> [<https://perma.cc/E86X-TH7X>]; *see also* Eliza Shapiro & Brian M. Rosenthal, *18 Hasidic Schools Failed to Provide Basic Education, New York City Finds*, N.Y. TIMES (June 30, 2023), <https://www.nytimes.com/2023/06/30/nyregion/nyc-hasidic-yeshivas-education.html> [<https://perma.cc/L5JZ-6FN9>]; Lauren Hakimi, *NYC Redacted the Names of 14 Failing Yeshivas. Shtetl Has the List.*, SHTETL (July 14, 2023), <https://www.shtetl.org/article/nyc-redacted-the-names-of-14-failing-yeshivas-shtetl-has-the-list> [<https://perma.cc/JY5B-WTLG>].

141. *See* Email from David C. Banks to Betty Rosa, *supra* note 140; *see also* Shapiro & Rosenthal, *supra* note 140; Hakimi, *supra* note 140.

142. *See* Email from David C. Banks to Betty Rosa, *supra* note 140; *see also* Shapiro & Rosenthal, *supra* note 140; Hakimi, *supra* note 140.

143. *See* Email from David C. Banks to Betty Rosa, *supra* note 140; *see also* Shapiro & Rosenthal, *supra* note 140; Hakimi, *supra* note 140.

fundamentally wrong with Haredi yeshivas offering a secular education that is not substantially equivalent to that of New York's public schools. They contend that their students typically have longer school days comprised of very rigorous curricula.¹⁴⁴ Therefore, these children are developing critical thinking, analysis, and language skills, even if such language is not English or if these skills are not learned in a setting of traditional math or science courses.¹⁴⁵ They advocate that, "[w]hile a yeshiva education is not the best route to Harvard or a career at Google," parents may instead value "having their kids in schools where they are safe from violence and drug use and learn how to live a faithful Jewish life. Especially if they believe this is how God wants them to live."¹⁴⁶

Those opposed to YAFFED's call to action assert that the data used is skewed and does not take into account relevant outside factors. They stress that Haredim typically have larger families with younger median ages than average American households, which makes their communities seem poorer than they truly are.¹⁴⁷ They also note that figures about how much state funding Haredi yeshivas receive should be understood in the context of much higher per-pupil funding in public schools.¹⁴⁸ Additionally, they allege that claims regarding the lack of secular education are exaggerated¹⁴⁹ and that measures of educational attainment often do not consider that many Haredi yeshiva students do not speak English as their native language.¹⁵⁰

Advocates who object to change in the current system question New York's ability to improve the situation. They cite several issues plaguing New York's schools including teacher misconduct and student violence.¹⁵¹ They attempt to contextualize statistics in order to refute that New York's public-school students achieve better educational outcomes and challenge whether New York's governments are credible sources of guidance.¹⁵²

B. Analyses of the Legality of Yeshiva Oversight

A court has yet to decide which type of scrutiny would apply to a constitutional challenge of New York's Compulsory Education Law. Given the murkiness of the right of parental control and the hybrid rights

144. See Kevin Vallier, *In Defense of Yeshiva Autonomy*, in RELIGIOUS LIBERTY AND EDUCATION: A CASE STUDY OF YESHIVAS VS. NEW YORK, *supra* note 2, at 3, 10.

145. See *id.*

146. See William McGurn, *Leave New York's Yeshivas Alone*, WALL ST. J. (Apr. 17, 2023, 6:20 PM), <https://www.wsj.com/articles/leave-new-yorks-yeshivas-alone-religious-education-public-schools-compulsory-standards-parents-494cc627> [<https://perma.cc/YLR4-YQV5>].

147. See Bedrick & Greene, *supra* note 48.

148. See *id.*

149. See Opinion, Moshe Krakowski, *The Truth About Secular Studies in Haredi Schools*, FORWARD (Sept. 19, 2019), <https://forward.com/opinion/431757/the-truth-about-secular-studies-in-haredi-schools/> [<https://perma.cc/AYA5-SELS>].

150. See *id.*; Bedrick & Greene, *supra* note 48.

151. See Bedrick & Greene, *supra* note 48.

152. See Vallier, *supra* note 144, at 11.

doctrine,¹⁵³ it is difficult to predict whether a court would apply strict scrutiny.¹⁵⁴ Nevertheless, some legal academics and advocates believe that New York's current Compulsory Education Law would likely survive constitutional challenges because "the state has the constitutional authority to demand fairly large commitments of time and resources to secular subjects on the part of private schools."¹⁵⁵ However, they warn that the state cannot impose requirements beyond what is necessary to satisfy its interest in an educated population by essentially forcing private schools to function as public schools.¹⁵⁶ They also caution that a court may also find that in order to be valid, the law must focus on outputs (such as test scores) rather than inputs (such as the number of hours teaching specific subjects).¹⁵⁷

Others assert that yeshivas could win some constitutional challenges. For example, the requirement that secular subjects other than English be taught in English may exceed the limit of the state's interest in community education.¹⁵⁸ Also, although the Compulsory Education Law is of neutral applicability, it may be found invalid if the Haredi yeshivas could prove the law was specifically crafted to burden religion.¹⁵⁹

Scholars have argued that New York's Haredi yeshivas are unlikely to qualify for a *Yoder* exception for a number of reasons. First, the Amish community in *Yoder* sought the exemption after eight years of a formal secular education, whereas noncompliant Haredi yeshivas seek to avoid providing substantially equivalent secular education for all grade levels.¹⁶⁰ Thus, allowing New York's Haredi yeshivas to avoid the Compulsory Education Law would result in a drastically less secularly-educated community than in *Yoder*.¹⁶¹ Next, although the Court's holding in *Yoder* was justified in part on the Amish community's self-sufficiency, New York's Haredi population as a whole is far more dependent on public welfare.¹⁶² Therefore, the argument for Haredi yeshivas is significantly weaker on this premise of *Yoder*, although this justification could be far more controversial in today's society.¹⁶³ Finally, *Yoder* involved parents of Amish students pursuing to avert the law in question, whereas YAFFED is comprised in part

153. See *supra* note 119 and accompanying text.

154. See Rutman, *supra* note 2, at 1276 (noting that in *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion), "Justice Clarence Thomas and Justice Antonin Scalia advocated respectively for the use of strict scrutiny and rational basis review for issues involving parental rights").

155. Saiger, *supra* note 113, at 59; see also Rothschild, *supra* note 26, at 232.

156. See Saiger, *supra* note 113, at 52, 56; DOMANICO, *supra* note 28, at 8.

157. See Saiger, *supra* note 113, at 58–59.

158. See generally Rutman, *supra* note 2.

159. See Howard Slugh & Devorah Goldman, *The Yeshiva Case: A Legal Path Forward*, in RELIGIOUS LIBERTY AND EDUCATION: A CASE STUDY OF YESHIVAS VS. NEW YORK, *supra* note 2, at 65, 68–70.

160. See Saiger, *supra* note 113, at 53–54.

161. See *id.*

162. See *id.* at 54; DOMANICO, *supra* note 28, at 8.

163. See Saiger, *supra* note 113, at 54.

of past yeshiva students themselves who are expressing their feelings of being inadequately prepared for life in modern society.¹⁶⁴

C. Court Challenges

In March of 2023, Judge Christina L. Ryba of the Albany County Supreme Court, heard a case asserting that the 2022 regulations were unconstitutional.¹⁶⁵ Judge Ryba found that the substantial equivalency requirements of the regulations merely restated the Compulsory Education Law, which was not being challenged by the petitioners.¹⁶⁶ Therefore, those aspects of the regulations, she said, were not an improper exercise of the NYC DOE Commissioner's power granted to her by the New York State Legislature.¹⁶⁷

However, in the same case, Judge Ryba interpreted the 2022 regulations, as written, to “force parents to completely unenroll their children from a nonpublic school that does not meet all of the criteria for substantial equivalency, thereby forcing the school to close its doors.”¹⁶⁸ She held that requiring parents to completely unenroll their children from a school deemed to not be providing a substantially equivalent education was beyond the scope of the Compulsory Education Law and thus improper.¹⁶⁹ Judge Ryba noted that the law does not give the New York State Education Department the power to direct the closure of a school that fails a substantial equivalency determination.¹⁷⁰ Instead, she stated that “for example, parents should be permitted to supplement the education that their children receive at a nonpublic school with supplemental instruction that specifically addresses any identified deficiencies in that education, such as by providing supplemental home instruction in compliance with the homeschooling regulations.”¹⁷¹

III. REQUIREMENTS FOR ETHICAL AND EFFICIENT ENFORCEMENT

Whether a law can be enforced as a matter of constitutionality and should be enforced as a matter of politics is entirely separate from whether the law authorizes the necessary punitive measures to actually discourage noncompliance. If New York State and City choose to strengthen

164. *See id.* at 54–55.

165. *See* Parents for Educ. & Religious Liberty in Sch. v. Young, 190 N.Y.S.3d 816, 824 (N.Y. Sup. Ct. 2023).

166. *See id.* at 825–26.

167. *See id.*

168. *Id.* at 828–29.

169. *See id.* at 829.

170. *See id.*

171. *See id.* The Appellate Division of the Supreme Court of New York eventually held that these regulations do not effectively force the schools to close and are not unconstitutional. *See* Parents for Educ. & Religious Liberty in Sch. v. Young, 215 N.Y.S.3d 552, 558 (N.Y. App. Div. 2024). However, the court did not reject Judge Ryba's “supplemental education” proposition, which will be analyzed further in this Note. *See infra* Part III.C.

enforcement of the Compulsory Education Law against noncomplying private schools as a result of YAFFED's advocacy and the subsequent NYC DOE investigation, the law must provide for efficient means of deterrence.¹⁷² Part III.A justifies stricter oversight of New York's yeshivas by agreeing that the Compulsory Education Law would likely survive constitutional challenges. Part III.B contends that the legislative "solutions" on the books are not solutions at all. Part III.C demonstrates the deficiencies in Judge Ryba's suggestion of part-time homeschooling. Part III.D argues that amending the law to allow for withholding of funds from noncomplying schools, as already proposed by multiple New York lawmakers, is imperative if reform is desired.

*A. Stricter Enforcement Is
Constitutionally Justified*

Although a court has not decided the issue, New York is likely free to enforce the current Compulsory Education Law, subject to very few possible limitations. It is possible that the state is not permitted to require that the statute's mandated subjects be taught in English or to refuse student performance measures as a substitute for mandated hours of instruction.¹⁷³ However, New York's Haredi yeshivas are unlikely to qualify for a blanket exception to the law, as the Amish community did in *Wisconsin v. Yoder*.¹⁷⁴ Although the circumstances of these two cases seem similar, *Yoder* did not involve students who were directly affected by their parents' choices, but rather, involved parents' objections to compelled education.¹⁷⁵ It is unclear how this distinction would affect the outcome of a case surrounding New York's Haredi yeshivas. However, in an age where other legal doctrines are evolving to prioritize the idea of consent,¹⁷⁶ there is reason to believe that a court may see this as a significant difference.

Additionally, the Amish community in *Yoder* had a clear point at which forced secular education impeded religious practice.¹⁷⁷ The Amish accepted formal schooling until the eighth grade, after which their religious beliefs commanded that they pivot to vocational training.¹⁷⁸ Conversely, the Haredi yeshiva community has not defined these bounds. For example, community members are not asserting that their faith requires spending only two hours on secular education a day where the law mandates three. Rather, they are seemingly arguing that any government interference with how their yeshivas currently teach secular subjects, which can include no teaching at all, hinders

172. See *supra* note 13.

173. See *supra* notes 157–58.

174. 406 U.S. 205 (1972); see *supra* notes 160–64.

175. See *supra* note 164.

176. See, e.g., Olabisi Adurasola Alabi, *Sexual Violence Redefined in the "Me Too" Era: Affirmative Consent and Statutes of Limitations*, 25 WIDENER L. REV. 69, 79–83 (2019) (discussing the evolution of the legal definition of "consent" in the context of rape to require "affirmative consent").

177. See *supra* note 160.

178. See *supra* note 107.

their religious practice.¹⁷⁹ Also, a court may note that there are many Haredi yeshivas that simultaneously provide a religious education as they see fit and comply with the law.¹⁸⁰

Admittedly, sitting members of the Supreme Court have doubted the constitutionality of a neutrally applicable law that burdens a particular religion.¹⁸¹ However, New York has the power to enact a state religious freedom restoration act that would make it more difficult for lawmakers to impede religion, and it has not done so.¹⁸² New York has had some form of a compulsory education law since 1894,¹⁸³ and the law does not seem to have been crafted to specifically target religion. Nevertheless, discriminatory enforcement is unconstitutional.¹⁸⁴ If New York is going to heighten oversight of private schools, it should enforce the law fairly against all nonpublic schools, not just the Haredi yeshivas that were investigated by the NYC DOE.

Education is extremely important,¹⁸⁵ and states have a strong interest in cultivating an educated population.¹⁸⁶ Thus, they have the power to create reasonable restrictions on childrens' schooling within their borders.¹⁸⁷ If New York officials elect to enforce the Compulsory Education Law more strictly, Haredi yeshivas and other private schools would likely be unable to shield themselves using the U.S. or the New York Constitution.

B. Legislative Solutions

New York's Compulsory Education Law provides for two methods of enforcement: fining and/or imprisoning parents and halting funding to cities and local school districts.¹⁸⁸

1. Fining or Imprisoning Parents Enrolling in Noncomplying Schools

The Compulsory Education Law sets forth that parents who do not enroll their children in a full-time public school, substantially equivalent private school, or approved homeschooling plan are in violation of the law.¹⁸⁹ For the first offense, a parent may be punished with a fine of \$10 or ten days in prison.¹⁹⁰ For each offense following the first, the fine is raised to \$50, the

179. *See generally supra* Part II.A.

180. *See supra* note 138.

181. *See supra* note 104 and accompanying text.

182. *See supra* note 104 and accompanying text.

183. *See supra* note 57.

184. *See* U.S. v. Armstrong, 517 U.S. 456, 456–57 (1996) (“Under the equal protection component of the Fifth Amendment’s Due Process Clause, the decision whether to prosecute may not be based on an arbitrary classification such as race or religion.”).

185. *See supra* notes 7–12.

186. *See supra* notes 156, 158.

187. *See supra* note 98.

188. *See supra* Part I.C.4.

189. *See supra* note 95.

190. *See supra* note 96.

jail time increases to fifty days, and parents may face both penalties rather than just one.¹⁹¹ Neither of these mechanisms are viable options for increasing yeshiva students' access to basic secular educations because imprisoning parents is severely inappropriate, and fining parents is extremely burdensome to enforce.

Imprisoning parents is not a proper remedy. A punishment of up to fifty days in jail is highly disproportionate to the crime of a child's attendance at a deficient school.¹⁹² Studies show that parental incarceration can have detrimental effects on children including housing instability, ongoing social and emotional struggles, and behavioral issues.¹⁹³ Moreover, a criminal record would make it more difficult for parents to maintain stable employment.¹⁹⁴ This is not to say necessarily that as a policy matter, the difficulties that accompany a criminal record are a sufficient reason not to charge a person. However, as a group, Haredi Jews in New York already face lower than average median incomes and employment rates,¹⁹⁵ which can affect children's health, educational attainment, and overall well-being.¹⁹⁶ Therefore, imprisoning parents hurts the children the law was intended to protect and runs counter to the purpose of compulsory education, which, generally said, is to ensure knowledgeable and independent citizens and prosperous communities.¹⁹⁷

Additionally, imprisoning the parents of all students at noncomplying yeshivas would create immediate burdens for New York City's Administration for Child Services (ACS) and New York State's Office of Children and Family Services (OCFS), the agencies that handle child neglect and foster care.¹⁹⁸ These agencies are understaffed and inadequately funded for the number of families they are called to serve and face controversies of their own.¹⁹⁹ Removing children from their homes and placing them into a

191. *See supra* note 96.

192. The idea that a punishment should be relatively proportional to the crime committed is foundational in American legal theory. *See Coker v. Georgia*, 433 U.S. 584, 584 (1977) (holding that the Eighth Amendment bars punishments that are "grossly out of proportion to the severity of the crime").

193. *See* Luke Muentner, Nicole Holder, Cynthia Burnson, Hilary Runion, Lindsay Weymouth & Julie Poehlmann-Tynan, *Jailed Parents and Their Young Children: Residential Instability, Homelessness, and Behavior Problems*, 28 J. CHILD. & FAM. STUD. 370, 371 (2019).

194. *See* Thomas Søbirk Petersen, *Some Ethical Considerations on the Use of Criminal Records in the Labor Market: In Defense of a New Practice*, 139 J. BUS. ETHICS 443, 443 (2016).

195. *See supra* note 52.

196. *See* Steven Jessen-Howard, *Fighting Child Poverty in the United States: The Universal Child Benefit*, 30 GEO. J. POVERTY L. & POL'Y 589, 596–97 (2023).

197. *See generally* *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923); Grady, *supra* note 99, at 2.

198. *See About ACS*, N.Y.C. ADMIN. FOR CHILD.'S SERVS., <https://www.nyc.gov/site/acs/about/about.page> [<https://perma.cc/CRW9-EEZJ>] (last visited Nov. 14, 2024); *About OCFS*, N.Y. STATE OFF. OF CHILD. & FAM. SERVS., <https://ocfs.ny.gov/main/about/> [<https://perma.cc/S8HH-GAU4>].

199. *See* Kate Lisa, *Lawmakers, Hochul Clash on Plans to Fix Child Care Crisis*, SPECTRUM 1 NEWS (Jan. 26, 2023, 9:56 PM), <https://spectrumlocalnews.com/nys/central->

broken system of alternative care while their parents serve sentences for their yeshiva attendance cannot be viewed as a legitimate response to the problem.

The Haredi yeshiva community has a history of noncompliance with the law in the face of government interference with their desired way of life, which their strong religious convictions call upon them to reject.²⁰⁰ In the earlier half of the twentieth century, all of New York City's yeshivas faced a threat of revocation of their charters for violating the existing Compulsory Education Law in a similar manner to the violations at the center of the current controversy.²⁰¹ Such a threat was not strong enough to induce compliance,²⁰² and New York City did not follow through with revocations,²⁰³ which likely conveyed a message of unseriousness on the part of the government.

More recently, the COVID-19 pandemic brought this issue to the fore. In the spring of 2020, New York City regulations imposed a possible fine of \$500 for large gatherings in public.²⁰⁴ Initially, many local yeshivas refused to comply.²⁰⁵ Numerous yeshivas held school in the middle of the night or in nonschool buildings such as apartments or synagogues.²⁰⁶ Law enforcement broke up these congregations on various occasions,²⁰⁷ but the functions often continued even after multiple Jewish community leaders died of COVID-19.²⁰⁸ The problem was so serious that the White House's

ny/politics/2023/01/27/lawmakers--hochul-clash-on-plans-to-fix-child-care-crisis [https://perma.cc/C7DC-DXSW]; Abigail Kramer, *Long Hours, High Caseloads: An Ongoing Surge of Cases Weighs on Child Welfare Workers*, THE NEW SCH. CTR. FOR N.Y.C. AFFS., <http://www.centernyc.org/long-hours-high-caseloads> [https://perma.cc/6JD2-UF4L].

200. See *supra* notes 20–22.

201. See *supra* notes 120–22.

202. See *supra* note 123.

203. See *supra* note 126.

204. See Amanda Jackson, *Police Are Arresting and Fining People for Violating Social Distancing Orders*, CNN (Apr. 1, 2020, 8:13 AM), <https://www.cnn.com/2020/03/31/us/violating-coronavirus-orders-trnd/index.html> [https://perma.cc/2JJ7-WBLT]; Erin Durkin, *New Yorkers Who Break Social Distancing Rules Will Now Face Fines Up to \$500*, POLITICO (Mar. 29, 2020, 6:55 PM), <https://www.politico.com/states/new-york/albany/story/2020/03/29/new-yorkers-who-break-social-distancing-rules-will-now-face-fines-up-to-500-1269545> [https://perma.cc/E93W-LXTK].

205. See Molly Boigon, *Williamsburg Satmar Yeshivas Operating Secret Schools in Apartments and Synagogues*, FORWARD (Apr. 20, 2020), <https://forward.com/news/breaking-news/444376/williamsburg-yeshivas-secret-schools-apartments-synagogues-coronavirus/> [https://perma.cc/2DYM-SCUK]; Omri Nahmias & Jeremy Sharon, *Hassidic Leaders in NY Shut Down Institutions After Call with White House*, THE JERUSALEM POST (Mar. 18, 2020, 9:03 PM), <https://www.jpost.com/international/hassidic-leaders-in-ny-shut-down-institutions-after-call-with-white-house-621463> [https://perma.cc/CN88-57WF].

206. See Boigon, *supra* note 205; Molly Boigon, *NYC Breaks Up One Secret Yeshiva Operating in Violation of Coronavirus Rules*, FORWARD (Apr. 21, 2020), <https://forward.com/news/breaking-news/444484/nyc-underground-yeshiva-coronavirus-crackdown-nyc-mayor/> [https://perma.cc/N4EQ-Y8UJ].

207. See Boigon, *supra* note 206; *Coronavirus News: Police Shut Down Brooklyn Yeshiva After More Than 60 Children Inside*, ABC 7 NY (May 18, 2020), <https://abc7ny.com/coronavirus-nyc-reopen-reopening-new-york-city/6194319/> [https://perma.cc/9QNJ-F7WT].

208. See Reuven Blau & Yoav Gonen, *Brooklyn Underground Yeshivas Flout Pause Rules, Parents Charge*, THE CITY (Oct. 12, 2023, 7:33 AM), <https://www.thecity.nyc/2020/04/28/brooklyn-underground-yeshivas-flout-pause-rules-parents-charge/> [https://perma.cc/5LJ5-

Assistant to the President spoke with community leaders urging them to stop large group meetings.²⁰⁹

Despite these illustrations, it is possible that if the NYC DOE were to fine a serious number of violating parents tomorrow, the intimidation would be enough for parents to begin pressuring their noncomplying yeshivas to change their curricula. However, New York City would be required to continually prosecute these violations beyond an initial scare tactic for them to be compelling in the long run. Last school year, over 40 percent of New York City public school students were chronically absent,²¹⁰ which is defined as missing 10 percent or more days out of a given school year.²¹¹ Even before the pandemic, over 26 percent of the city's public school students were chronically absent, whereas the national average was around 16 percent.²¹² Although a multitude of factors determine these outcomes,²¹³ New York City can hardly be said to be a model for school attendance rates. Thus, if the city falls flat in preventing traditional truancy, there is little reason to think that it would have the resources and mechanisms to constantly enforce violations by Haredi yeshiva parents. Therefore, even if fines were a sufficient disincentive at first, long term success would be questionable. Monetary punishments also beg the question of what happens if parents are fined and refuse to pay or are unable to do so? Is the government left only with the option of jail time, which seems unsuitably disproportionate and thus contrary to justice?²¹⁴

2. Halting Funding to New York City's Public School District

Without distinguishing between schools covered by the Felder Amendment and those that are not, the Compulsory Education Law also allows the Commissioner of Education to withhold 50 percent of all public school funding from any district or city that “willfully omits and refuses” to enforce the law.²¹⁵ It is unclear whether this allows the Commissioner to

6US5]; Ray Sanchez, *NYC Rabbi 'Romi' Cohn, a Holocaust Survivor, Dies of Coronavirus Complications at 91*, CNN (Mar. 26, 2020, 3:00 PM), <https://www.cnn.com/2020/03/26/us/new-york-rabbi-romi-cohn-coronavirus/index.html> [<https://perma.cc/8J4Y-KUVA>].

209. See Nahmias & Sharon, *supra* note 205; Jacob Kornbluh, *White House's Avi Berkowitz Implores Hasidic leaders to Follow Coronavirus Measures*, JEWISH INSIDER (Mar. 18, 2020), <https://jewishinsider.com/2020/03/white-houses-avi-berkowitz-implores-hasidic-leaders-to-follow-coronavirus-measures/> [<https://perma.cc/4KK3-R4XS>].

210. See *End-of-Year Attendance and Chronic Absenteeism Data*, N.Y.C. DEP'T OF EDUC., <https://infohub.nyced.org/reports/students-and-schools/school-quality/information-and-data-overview/end-of-year-attendance-and-chronic-absenteeism-data> [<https://perma.cc/5MJC-KWEC>] (last visited Nov. 28, 2023) (follow hyperlink for “Citywide”).

211. See IAN KINGSBURY, EMPIRE CTR., *SCHOOL'S OUT FOREVER 2* (2023), <https://www.empirecenter.org/wp-content/uploads/2023/05/Attendance-Report.pdf> [<https://perma.cc/8NEJ-LEAY>].

212. See *id.* at 3.

213. See *generally id.* (analyzing chronic absenteeism by grade level, race, gender, disability, poverty level, etc.).

214. See *supra* notes 192–99.

215. See *supra* note 97.

deny state funding only or both state and federal funding, since most federal funding to local districts and schools is administered first through the state.²¹⁶ In any case, this mechanism is completely unrealistic and utterly impractical. This obvious unreasonableness portrays to noncomplying yeshivas a clearly noncredible threat.

First, it is entirely possible that for schools encompassed by the Felder Amendment, local school authorities work with individual schools to develop plans after initial findings of noncompliance, but the Haredi yeshivas never implement the plans. Again, this is not implausible given many of New York's Haredi yeshivas' past defiance of law enforcement, both inside²¹⁷ and outside²¹⁸ of the setting of their curricula. If substantially nonequivalent yeshivas fail to carry out the plans created with local school authorities, does that constitute willful omission and refusal by those authorities?

Perhaps the law intends for willful omission and refusal to mean local school authorities neglecting to fine and imprison parents for sending their children to noncomplying yeshivas, a punishment system that is problematic for all of the aforementioned reasons.²¹⁹ If this is the interpretation meant by the legislature, it is entirely unworkable. The NYC DOE revenue budget for fiscal year 2024 estimates around \$13 billion from New York State²²⁰ and \$4 billion from the federal government.²²¹ Together, these figures equate to approximately 47 percent of the NYC DOE's revenue budget.²²² If the Commissioner were to withhold half of that combined \$17 billion, it is self-evident that the DOE would be unable to carry out all of the services it provides to over one million students in public and charter schools²²³ and over 250,000 students in local private schools.²²⁴

Furthermore, the political upheaval would be fervently colossal. There is significant opposition to New York's already substantial funding to local private schools,²²⁵ especially when such money is unrelated to special education services. If the Commissioner denied \$17 billion to New York City students in fourteen noncomplying religious private schools, the backlash would surely be crippling enough to render doing so a non-option for enforcing the substantial equivalency law.

216. *See How Is K-12 Education Funded?*, *supra* note 33.

217. *See generally supra* Part I.E.

218. *See supra* notes 204–09.

219. *See supra* Part III.B.1.

220. *See* N.Y.C. DEP'T OF EDUC., *supra* note 40, at 4.

221. *See id.* at 5.

222. *See id.* at 10.

223. *See* DOMANICO, *supra* note 31, at 7–8.

224. *See* DOMANICO, *supra* note 28.

225. *See generally* PUB. FUNDS PUB. SCHOOLS, NEW YORK CAN'T AFFORD IT (2020), https://pfps.org/assets/uploads/PFPS_NY_Private_Aid_Report_2.27.20.pdf [<https://perma.cc/Z4HK-74NP>]; Kesi Foster, *Op-Ed: Public Schools Lose When We Subsidize Private Education*, CITY LIMITS (Dec. 11, 2015), <https://citylimits.org/2015/12/11/op-ed-public-schools-lose-when-we-subsidize-private-education/> [<https://perma.cc/4MJU-9UH2>].

*C. Judge Ryba's Part-Time
Homeschooling Plan*

In a case challenging the constitutionality of the 2022 regulations, Judge Ryba of the Albany County Supreme Court suggested that for children attending Haredi yeshivas that are not deemed to be offering a substantially equivalent education, parents should be permitted to supplement their education at home in order to meet the Compulsory Education Law's standard.²²⁶ This would effectively mean that if a student's yeshiva met some, but not all, of the requirements of the Compulsory Education Law, parents could ensure compliance by satisfying the remaining standards through teaching at home. However, this scheme would not significantly mitigate the negative effects of the problem.

First, it would be parents who likely did not receive sufficient secular educations themselves that would be tasked with providing such curricula.²²⁷ Of course, parents could organize cooperatives and hire teachers, but the burden of ensuring a substantially equivalent education on a daily basis would be imposed directly onto parents, instead of indirectly by a requirement of sending their children to a school deemed compliant with the Compulsory Education Law.

Furthermore, such a program would raise the ever-present issue of effective enforcement. Legal scholars and advocates question the adequacy of legal supervision of homeschools across the United States.²²⁸ In this case, instead of a school-by-school basis, local school authorities would have to make substantial equivalency determinations on individual bases. Substantially increasing the amount of work for the enforcer is surely to lead to more children falling through the cracks.

*D. Withholding Funds from
Individual Yeshivas*

There are two bills in committee in the New York State Legislature that would allow the Commissioner of Education to withhold state funding to individual schools found to be providing less than a substantially equivalent secular education.²²⁹ Although such a change might not be a perfect fix, targeting the noncomplying yeshivas directly is the most efficient solution.

226. See *supra* note 171.

227. See *Don't Put the Onus on Hasidic Parents: Yeshivas, Not Families, Must Be Responsible for Teaching the Basics*, N.Y. DAILY NEWS (May 14, 2023, 9:00 AM), <https://www.nydailynews.com/2023/05/14/dont-put-the-onus-on-hasidic-parents-yeshivas-not-families-must-be-responsible-for-teaching-the-basics> [<https://perma.cc/PW4U-WERQ>].

228. See Carmen Green, *Educational Empowerment: A Child's Right to Attend Public School*, 103 GEO. L.J. 1089, 1098–103 (2015); Elizabeth Bartholet, *Homeschooling: Parent Rights Absolutism vs. Child Rights to Education & Protection*, 62 ARIZ. L. REV. 1, 3–4 (2020); see also Sonia M. Muscatine, *Homeschooling and the Right to Education: Are States Fulfilling Their Constitutional Obligations to Homeschooled Students?*, 49 J.L. & EDUC. 67, 91 (2020) (noting that although New York has some of the strictest homeschool regulations in the United States, the system relies on self reporting and oversight practices are unclear).

229. See *supra* notes 80–86.

It is vital that the New York legislature adopt Senate Bill No. 5462, Assembly Bill No. 2832, or a similar amendment if it hopes to have a legitimate mechanism for enforcing the Compulsory Education Law. Amending the law as such would produce one of two results: the noncomplying yeshivas would either revise their curricula immediately at the threat of insufficient resources to continue operation or decline to modify anything.

Even if schools refused to comply, the amendment would not be a failure. Although considerably less than that of public schools, New York's Hasidic yeshivas receive substantial funding from the state.²³⁰ Restricting this money would inevitably cause tuitions to increase significantly as the yeshivas would have little choice but to pass the burden onto parents unless the schools could dramatically increase their funding from other sources or greatly reduce their costs.²³¹ The schools would likely not have the financial capabilities to provide assistance to families who could not afford full tuition prices. Although wealthier students may still be able to attend if the yeshivas could remain open, this amendment would protect the most disadvantaged of Haredi students not receiving a substantially equivalent secular education who would likely not be able to continue at their current yeshivas. One of the primary foundations of YAFFED's advocacy is that a lack of a basic secular education prevents children from being able to provide for their families later on.²³² However, students from affluent backgrounds are more likely to be supported by their families later in life.²³³ Therefore, while possibly not 100 percent effective, withholding state funding could be a powerful tool in abating the negative effects of noncompliance.

Oftentimes when a government "bans" a certain good—in this case, educations at the Haredi yeshivas as they are today—it inadvertently creates a "black market" for the good.²³⁴ As an example, this is illustrated by the underground yeshivas that emerged during the pandemic.²³⁵ However, this would likely not be a severe issue in this instance. If yeshivas either shut down or turn away lower income families because of inadequate funding, it follows that there would be few financial resources to support a black market. More importantly, a black market is unlikely to thrive where there is a similar substitute available that is legal and offered at a lower price.²³⁶ By being

230. See generally *supra* Part I.B.2.

231. See Anna B. Gilmore, Behrooz Tavakoly, Gordon Taylor & Howard Reed, *Understanding Tobacco Industry Pricing Strategy and Whether It Undermines Tobacco Tax Policy: The Example of the UK Cigarette Market*, 108 *ADDICTION* 1317, 1317 (2013) (explaining that if tobacco companies do not absorb tax increases, such increases are passed onto consumers).

232. See *supra* notes 131–35.

233. See Anna Sutherland, *How Parents Support Their Adult Children*, *INST. FOR FAM. STUD.* (July 15, 2015), <https://ifstudies.org/blog/how-parents-support-their-adult-children/> [<https://perma.cc/5S43-ZCMZ>].

234. See DAVID L. WEIMER & AIDAN R. VINING, *POLICY ANALYSIS* 243 (Routledge ed., 5th ed. 2016).

235. See *supra* notes 204–09.

236. See Elmar Nass, *Why No Commerce with Kidneys?: Michael Sandel's Suggestions and an Answer from Ethical Theory*, 56 *HEYTHROP J.* 793, 794 (2015) (explaining that the key

deprived of state funding, noncompliant schools would effectively lose their competitive positions in the Haredi yeshiva marketplace. This is especially true because multiple Haredi yeshivas in New York have already demonstrated that compliance with the Compulsory Education Law is feasible.²³⁷ Some noncomplying yeshivas might still attempt to operate, but they would undoubtedly serve fewer students, which would yield a net benefit to society.

Although the logistics of restricting state money would likely have to be worked out by the New York State Department of Education, it appears that the required increase in enforcement would be minimal compared to other punitive measures on the table. Once a year, the local school authorities would conduct their substantial equivalency determinations. These findings would dictate whether a school would receive state funding for that year. There would be no need for continuous monitoring of violations as there would be with imposing fines on parents. Thus, not only is this solution more effective than those currently permitted by the statute, but it is also the most practical.

CONCLUSION

In many ways, state and local governments are tasked with securing education access for their citizens. At the same time, parents have certain rights to raise their children how they wish, including by determining their religion and how they are educated, subject to reasonable restrictions. Conflicts regarding religious freedom and education have persisted for centuries and will continue to permeate American legal discourse. However, in the setting of New York's Haredi yeshivas, these debates are insufficient without also closely examining the enforcement methods provided by the Compulsory Education Law.

Imprisoning parents is unacceptable, and the heavy burden of fining them renders doing so a non-option. Furthermore, allowing attendees of noncomplying yeshivas to supplement their secular knowledge with homeschooling is not likely to produce a meaningful increase in the quality of those students' education. Therefore, if New York's legislators wish to uphold their duty of securing a sound, basic education for all of their state's children, they must change the education laws to allow withholding of state and city funds from noncompliant yeshivas. Such an amendment may not eliminate the problem entirely. However, by decreasing the number of enforced parties through directly targeting the schools that decline to comply, the law would enable more Haredi students to experience success and fulfillment throughout their lifetimes.

to eradicating the black market for human kidneys is to provide sufficient legal and legitimate means of transplant).

237. See *supra* note 138 and accompanying text.