

POVERTY OF THE MIND: EAST RAMAPO'S EDUCATIONAL EMERGENCY

*By Eric Grossfeld**

“Education . . . beyond all other devices of human origin, is a great equalizer of the conditions of men,—[sic] the balance wheel of the social machinery.” -Horace Mann¹

Education has been an integral part of both an individual's self-realization and the human fabric since the dawn of time. It is a linchpin of self-determination and social progression. Access to it is a prerequisite to respecting the dignity of the human being. Indeed, as Chief Justice Earl Warren unequivocally stated:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal

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¹ *Horace Mann*, GOODREADS, https://www.goodreads.com/author/quotes/279932.Horace_Mann (last visited Mar. 19, 2018).

terms.²

However, as most of the world adapts to the breakneck pace of twenty-first century globalization, a school district located twenty miles from Midtown Manhattan is trapped in its own Dark Ages. For over a decade, the students within the East Ramapo Central School District, including those attending private Hasidic yeshivas, have been systematically denied the “opportunity of an education.” With money and resources being diverted away from public schools, and a dearth of a “substantially equivalent” secular education offered in Hasidic yeshivas, thousands of children from already-impooverished families are robbed year after year of the opportunity for economic mobility.

This paper explores the intersection between poverty, education, and tangential legal issues pertaining to the very unique East Ramapo Central School District in Rockland County, New York.

Part I provides an overview of the District, including its history, a timeline of its rapid decline, and a brief summary of today’s status quo.

In an effort to ascertain whether or not the state of education in the District conforms to federal and New York State law, or at least the spirit of the law, Part II surveys foundational educational law.

Part III applies law to fact as it relates to the District school board’s actions and the resulting quality of education, as well as State and federal investigation, legislation, and litigation surrounding the school board.

Part IV similarly analyzes the state of education in Hasidic yeshivas from a legal perspective, and examines the current cultural and political roadblocks to educational reform.

Part V offers and evaluates a possible solution to balance the scales and overcome these seemingly insurmountable obstacles to a fundamental education that indiscriminately affect impoverished students from all faiths in East Ramapo.

² *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

PART I: SETTING THE SCENE

A. *History and Demographic Overview*

*“When we built our home we could have gone anywhere. . . . I specifically wanted to stay in the East Ramapo Central School District. I know the school district, I went through it. I definitely like it because of its ethnic and cultural diversity. I didn’t want my children to go anywhere else. Here my children get a true picture of the real world.”*³

The East Ramapo Central School District’s rich history only makes its decline that much more tragic. Set in the bucolic hills and forests in the eastern part of the Town of Ramapo and its numerous villages and hamlets, a portion of the Town of Clarkstown and a sliver of the Town of Haverstraw, the school district’s thirty-five square miles has long enveloped a melting pot of ethnicities and cultures.⁴ For most of its history, East Ramapo’s unique blend of, *inter alia*, Haitian, Hispanic, and Hasidic communities, among others, coexisted peacefully and the school district thrived.

From 1969 until 2005, the district’s Board of Education was led by Holocaust survivor Georgine Hyde, who also served as the President of the New York State School Boards Association.⁵ During Hyde’s tenure, the district “grew into one of the largest and most respected districts in the state.”⁶ At its peak, “[m]ore than [ninety-eight percent] of students graduated high school, and more

³ Cheryl Platzman Weinstock, *Easy City Access in a Ramapos Setting*, N.Y. TIMES (Mar. 2, 1997), <http://www.nytimes.com/1997/03/02/realestate/easy-city-access-in-a-ramapos-setting.html>.

⁴ See *East Ramapo Central School District, New York*, USBOUNDARY.COM, <http://www.usboundary.com/Areas/516436> (last visited Mar. 19, 2018) (featuring a map outlining the borders of the East Ramapo School District).

⁵ Steve Lieberman, *Georgine Hyde, Holocaust survivor, ex-E. Ramapo board president dies*, LOHUD (Aug. 30, 2015, 3:29 PM), <http://www.lohud.com/story/news/local/rockland/2015/08/30/georgine-hyde-holocaust-survivor-ex-e-ramapo-board-president-dies/71416872/>.

⁶ Lou Grumet, *Will Someone Protect the Kids?*, 87-AUG N.Y. ST. B. J. 45, 45–46 (2015).

than [ninety percent] went to college. It was as good as it got.”⁷

In 1997, “[sixty-five percent] of the [public school] children represent[ed] forty different nationalities.”⁸ Yet despite “500 students enrolled in English as a second-language classes, which are task-intensive and expensive,” East Ramapo’s superintendent reported at the time that the District would “try to mainstream students within three years” and that “[w]e work toward maximizing and teaching students to live and work in the real world. . . . We have students coming back from their first year of college telling us how easy their academic and social life [sic] have been.”⁹ At the time, both the district’s high schools were in the top one percent of all high schools in the United States in regard to the amount of advanced placement courses offered; more than 100 college credits were available to high schoolers.¹⁰

During the latter half of the twentieth century, the ultra-Orthodox Hasidic Jewish community swelled rapidly, and then exponentially. In the fifties, the historically Orthodox Jewish hamlet of Monsey “was a small rustic intersection with a single yeshiva,” but by 1997, it had 112 synagogues and forty-five yeshivas.¹¹ The New York Times reported in 1997: “A high birth rate and migration from saturated Brooklyn neighborhoods like Borough Park and Williamsburg have pushed the Orthodox population to 6,000 families, or well over 35,000 people, in a town of 94,000, making the Monsey area the third largest concentration of Orthodox Jewish life after Israel and Brooklyn.”¹² Nearly two decades later, in 2015, the Hudson Valley Pattern for Progress found that “[t]he communities [in the Lower Hudson Valley] with the highest birthrates were in Rockland and Orange Counties and are communities that are either entirely Hasidic or have large concentrations of Hasidic or Jewish Orthodox populations.”¹³

Three Hasidic sects in particular have contributed most to the Hasidic community’s growth, and by extension, political power, in

⁷ *Id.* at 46.

⁸ Weinstock, *supra* note 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Joseph Berger, *Growing Pains for a Rural Hasidic Enclave*, N.Y. TIMES (Jan. 13, 1997), <http://www.nytimes.com/1997/01/13/nyregion/growing-pains-for-a-rural-hasidic-enclave.html>.

¹² See *id.*

¹³ Hudson Valley Pattern for Progress, *Changing Hudson Valley - Population Trends 15* (2015), <http://www.pattern-for-progress.org/wp-content/uploads/2015/09/Population-brief-9-22-15-final.pdf>.

East Ramapo: Satmar, Skver, and Vizhnitz.¹⁴ These dynastic sects are led by spiritual leaders known as rebbes, who wield singular control over virtually all aspects of educational, social, and religious institutions within their respective communities.¹⁵ However, the power of the rebbes is not limited to religious life. These Hasidic communities are politically potent in that they are able to successfully produce a “bloc vote” for a particular candidate; decided almost as if it was a religious decree by the communities’ spiritual leaders.¹⁶ The rapid and steady growth of these Hasidic communities eventually provided for a sufficient number of “bloc votes” to propel Hasidic candidates to victory for the East Ramapo Board of Education.¹⁷ The ramifications of “bloc voting,” and the resulting dilution of representation for the school district’s impoverished communities of color, is explored further in Part V.

The Satmar sect, founded in Satu Mare village in what is now modern-day Romania, was founded by Rabbi Yo’el Teitelbaum in 1928.¹⁸ Following World War II, Teitelbaum and his followers reestablished their community in Williamsburg, Brooklyn, though they eventually planted roots in upstate New York, branching out to an area of land in the Town of Monroe, in neighboring Orange County, now known as the exclusively-Satmar Hasidic Village of Kiryas Yo’el.¹⁹ As a result of a high occurrence of recessive genetic disorders, a significant, if not disproportionate, number of students

¹⁴ See Douglas Martin, *David Twersky, 79, Grand Rabbi of a Borough Park Hasidic Sect*, N.Y. TIMES (Feb. 13, 2001), <http://www.nytimes.com/2001/02/13/nyregion/david-twersky-79-grand-rabbi-of-a-borough-park-hasidic-sect.html>; Benjamin Wallace-Wells, *Them and Them*, N.Y. MAG. (Apr. 21, 2013), <http://nymag.com/news/features/east-ramapo-hasidim-2013-4/>; Chaim Shneider, *The Roots of Satmar*, N.Y. ARCHITECTURE, <http://www.nyc-architecture.com/WBG/wbg-jewish.htm> (last visited Mar. 19, 2018); Chaim Shneider, *The Two Viznit’s*, N.Y. ARCHITECTURE, <http://www.nyc-architecture.com/WBG/wbg-jewish.htm> (last visited Mar. 19, 2018).

¹⁵ See Frimet Goldberger, *Hasidic Enclave Keeps its Secrets amid Elusive Rebbe’s Tight Control*, FORWARD (Dec. 3, 2014), <http://forward.com/news/210213/hasidic-enclave-keeps-its-secrets-amid-elusive-reb/>.

¹⁶ See Josh Nathan-Kazis, *The Mechanics of a Hasidic Bloc Vote*, FORWARD (Sept. 10, 2013), <http://forward.com/news/breaking-news/183675/the-mechanics-of-a-hasidic-bloc-vote/>.

¹⁷ See *Lawsuit: East Ramapo School Board Elections Violate Voting Rights of Black, Latino Residents*, N.Y. CIV. LIBERTIES UNION (Nov. 16, 2017), <https://www.nyclu.org/en/press-releases/lawsuit-east-ramapo-school-board-elections-violate-voting-rights-black-latino>.

¹⁸ See Allan Nadler, *Satmar Hasidic Dynasty*, YIVO ENCYCLOPEDIA JEWS E. EUR., http://www.yivoencyclopedia.org/article.aspx/Satmar_Hasidic_Dynasty (last visited Mar. 19, 2018).

¹⁹ See *id.*

from Satmar and other insular Hasidic communities require special education services.²⁰ Once the Satmar and other Hasidic communities achieved a majority of seats on the East Ramapo Central School District School Board in 2003, the district began sending students qualifying for such services to the Satmar-led public school district in Kiryas Yo'el at a great expense to East Ramapo's budget.²¹ The constitutionality and statutory legality of these placements has been widely questioned and litigated.²² This is further explored in Parts II and IV.

The Skver sect takes its name from the Ukrainian town Skvyra. In the 1950s, Rabbi Yaakov Yosef Twersky and his followers purchased a 130-acre farm named New Square in the Town of Ramapo near the northern border of the Village of Spring Valley.²³ After a protracted conflict with the Town of Ramapo, which sought to enforce strict zoning and building codes, and an ensuing legal

²⁰ Wallace-Wells, *supra* note 14.

There are many recessive genetic diseases to which Ashkenazi Jews are prone, biological traces, in a way, of the community's history of isolation and persecution. No precise epidemiological studies have been done to determine whether Hasidic communities have more genetically disabled children than average, but Yaniv Erlich, who studies the genetics of the ultra-Orthodox at the Whitehead Institute for Biomedical Research, points out the obvious: that an isolated and highly procreative community will provide ample opportunities for these traits to express themselves.

Id.

²¹ *See id.* The Kiryas Joel Village Union Free School District ("Kiryas Joel") is especially unique in the sense that it is a *public* school district whose boundaries match that of a self-segregated religious community. Sam Roberts, *The Hasidic School District That Was Created in Secret*, N.Y. TIMES (May 27, 2016), <http://www.nytimes.com/2011/04/21/nyregion/kiryas-joel-a-village-with-the-numbers-not-the-image-of-the-poorest-place.html>. The District was the subject of intense litigation in the early nineteen nineties, culminating in a Supreme Court case in 1994 that found that the statute providing for the district's creation ran afoul of the Establishment Clause. *See Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687 (1994). The New York State Legislature subsequently redrafted the statute that survived constitutional scrutiny. *See Roberts, supra* note 21.

²² *See Bd. of Educ. of Kiryas Joel*, 512 U.S. at 688.

²³ David B. Green, *This Day in Jewish History // Cult-like Home to Skver Hasidim in N.Y. Holds First Mayoral Election*, HAARETZ (Nov. 20, 2016, 8:41 PM), <https://www.haaretz.com/jewish/cult-like-hasidic-town-holds-first-mayoral-election-1.5464037>.

battle,²⁴ New Square formally incorporated as its own village in 1961.²⁵ Rabbi Yaakov Yosef Twersky died in 1968, and was succeeded by his son, Rabbi David Twersky, who “rule[s] up to now with iron control.”²⁶ Among its estimated population of 8,537 individuals, approximately seventy percent fall below the poverty level.; Among its 1,300 households (with an average household size of nearly six people), half receive food stamp/SNAP benefits.²⁷ The village’s per capita income is \$5,648.²⁸ Overall, ninety-three percent of its residents either fall under the federal poverty line or qualify as ALICE (“asset limited, income constrained, employed”)—the Lower Hudson Valley’s highest percentage, according to the United Way.²⁹ A high concentration of the village’s residential units qualify for federal Section Eight subsidies.³⁰ Approximately three point nine percent of the village’s population has attained a bachelor’s degree or higher.³¹ The village’s birthrate was the second-highest in the Lower Hudson Valley, at forty-four point two percent of births per 1,000 people.³²

Like New Square, the Village of Kaser was formed by the Viznitz sect in 1990 for the purpose of building high-density housing that would accommodate the religious community’s traditionally large families.³³ The village’s land area is roughly two-tenths of a square mile, yet has an estimated population of 5,354, making for a population density of 27,465 people per square mile.³⁴ Seventy-seven point seven percent of all residents fall below the poverty

²⁴ See *In re Unger v. Nugent*, 220 N.Y.S.2d 93, 93 (Sup. Ct. Rockland Cnty. 1961).

²⁵ Green, *supra* note 23.

²⁶ Goldberger, *supra* note 15.

²⁷ *Quick Facts New Square Village, New York*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/newsquarevillagenewyork/POP645216#viewtop> (last visited Mar. 19, 2018). See Sam Roberts, *A Village With the Numbers, Not the Image, of the Poorest Place*, N.Y. TIMES (Apr. 20, 2011), <http://www.nytimes.com/2011/04/21/nyregion/kiryas-joel-a-village-with-the-numbers-not-the-image-of-the-poorest-place.html>.

²⁸ *Quick Facts New Square Village*, *supra* note 27.

²⁹ Jorge Fitz-Gibbon, *Many families struggling, United Way ALICE project finds*, LOHUD (Nov. 27, 2016, 12:02 AM), <http://www.lohud.com/story/news/local/2016/11/27/united-way-alice-project/93895092/>.

³⁰ See *Mapping Section 8*, LOHUD, <http://data.lohud.com/watchdog/section8.php> (last visited Mar. 19, 2018).

³¹ *Quick Facts New Square Village*, *supra* note 27.

³² HUDSON VALLEY PATTERN FOR PROGRESS, *supra* note 13, at 15 tbl.

³³ See Berger, *supra* note 11.

³⁴ *Quick Facts: Kaser Village, New York*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/kaservillagenewyork/PST045217> (last visited Mar. 19, 2018).

level, and fifty-six point eight percent of all families receive food stamp benefits.³⁵ The village's per capita income falls below New Square's, at \$4,869.³⁶ Kaser falls second to New Square on the list of Lower Hudson Valley municipalities with the highest percentage of individuals below the poverty line or qualifying as ALICE, at ninety-one percent, according to the United Way.³⁷ Approximately three point seven percent of the village's population has attained a bachelor's degree or higher.³⁸ The village's birthrate is the highest in the Lower Hudson Valley, at fifty-eight point nine percent of births per 1,000 people.³⁹ By comparison, New York City's birth rate is fourteen per 1,000 people; New York State's (excluding New York City) is ten point six percent per 1000 people.⁴⁰

The Hasidic communities of East Ramapo have not been alone in seeing significant population increases during the late twentieth century and through the present day. The African-American and Hispanic communities, particularly in the Village of Spring Valley, have similarly swelled in size.⁴¹ Spring Valley's sizable Hispanic/Latino immigrant community primarily hails from Mexico and the Dominican Republic,⁴² although the village itself is "the mailing address for over 100 nationalities."⁴³ However, the growth of these communities, in which many are not voting-eligible and non-citizens,⁴⁴ followed the flight of middle-class White and

³⁵ *Id.* See *Food Stamps in Kaser, New York (Village)*, STAT. ATLAS, <https://statisticalatlas.com/place/New-York/Kaser/Food-Stamps> (last visited Mar. 19, 2018).

³⁶ Quick Facts: Kaser Village, *supra* note 34.

³⁷ Fitz-Gibbon, *supra* note 29.

³⁸ *Quick Facts Kaser Village*, *supra* note 34.

³⁹ Hudson Valley Pattern for Progress, *supra* note 13, at 15 tbl.

⁴⁰ *Id.* at 16 tbl.2.

⁴¹ See *id.* at 3, 15 tbl., 16 tbl. 1. See also *Spring Valley Population Statistics*, NEIGHBORHOOD SCOUT, <https://www.neighborhoodscout.com/ny/spring-valley/demographics> (last visited Mar. 19, 2018).

⁴² See *Spring Valley, NY*, DATA USA, <https://datausa.io/profile/geo/spring-valley-ny/#demographics> (last visited Mar. 19, 2018).

⁴³ HENRY M. GREENBERG, N.Y. STATE EDUC. DEP'T, EAST RAMAPO: A SCHOOL DISTRICT IN CRISIS 5 (2014), <http://www.p12.nysed.gov/docs/east-ramapo-fiscal-monitor-presentation.pdf>.

⁴⁴ See *Spring Valley, New York Demographics data*, TOWN CHARTS, fig.37, <http://www.towncharts.com/New-York/Demographics/Spring-Valley-village-NY-Demographics-data.html> (last visited Mar. 19, 2018) (assuming that current residents are currently unregistered to vote). See also Thanassis Cambanis, *Sectarian War in East Ramapo Schools*, WRITING ABOUT WAR (Aug. 23, 2011), <http://thanassiscambanis.com/sipa/?p=329>.

African-American families out of East Ramapo thereby representing a net loss for the total eligible voting power of the public school community.⁴⁵ The children in these communities account for ninety-one percent of the district's approximately 9,000 public school students, of which seventy-eight percent qualify for free or reduced lunch.⁴⁶ Of Spring Valley families with a householder who is white alone (which includes Hasidic families), twenty-four point five percent are below the poverty level; black or African American alone, seventeen percent; "other," twenty-five point eight percent; and Hispanic or Latino origin (of any race), thirty point one percent.⁴⁷ Fifteen point five percent of Spring Valley's population has attained a bachelor's degree or higher.⁴⁸

B. THE 2005 "TAKEOVER"

After nearly four decades helming the East Ramapo Board of Education, Holocaust survivor and lifelong education-advocate Georgine Hyde lost her seat in the 2005 election, a watershed moment symbolizing what is now described as the start of the Hasidic community's "takeover" of the school board.⁴⁹ Hyde's defeat marked the end of a long-standing "détente" between the growing Hasidic community and the public schools: "The original deal that was made many, many years ago was, if we don't investigate whether or not there's education going on in the yeshivas, then the rabbis won't tell their people to vote down our school budget," recalled district activist Steve White in an interview for NPR's *This American Life*.⁵⁰ "In other words, the school board won't call in the state to check and see if math and reading and history are being taught in the yeshivas, *like the state mandates*, if the Hasids stayed away from the polls."⁵¹ Eventually, however, "the Hasids felt cheated because property taxes kept going up to pay for these schools that most of the kids in the district did not attend."⁵² In addition, the Hasidic community "didn't feel like [the monies and services that the public schools were supposed

⁴⁵ See Cambanis, *supra* note 44.

⁴⁶ GREENBERG, *supra* note 43, at 6.

⁴⁷ *Spring Valley*, *supra* note 42 (referencing the chart).

⁴⁸ *Quick Facts: Spring Valley Village, New York*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/springvalleyvillagenewyork/PST045216> (last visited Mar. 19, 2018).

⁴⁹ Lieberman, *supra* note 5.

⁵⁰ Ben Calhoun, *A Not-So-Simple Majority*, THIS AM. LIFE (Sept. 12, 2014), <https://www.thisamericanlife.org/radio-archives/episode/534/transcript> (citing the transcript).

⁵¹ *Id.* (emphasis added).

⁵² *Id.*

to be giving the Hasidic schools] was enough. So the detente [sic] ended.”⁵³ With a Hasidic-majority in place, the school board began a series of actions that decimated the quality of education in the public schools, including: the elimination of over 400 positions (over 200 teaching positions, supervisor of technology, director of secondary education, all social workers, supervisors of speech, occupational therapy and physical therapy, three guidance counselors, all deans, all department chairpersons, two secondary assistant principals, all elementary assistant principals and 88 civil service positions); and academic and programmatic cuts such as full-day kindergarten reduced to half-day, instrumental music eliminated for kindergarten through third grade, summer school eliminated for kindergarten through twelfth grade, eliminating high school business electives, cutting athletics by over fifty percent, reducing extra-curricular activities fifty percent, and cutting professional development by seventy-five percent.⁵⁴

At the same time, the board shifted spending toward the Hasidic yeshivas (however, not for the purposes of providing a secular education) and toward litigation defending their spending practices.⁵⁵ “Special education costs consume an enormous portion of the District’s budget. [Sixty million dollars] for special education, serving 2,423 students. Private school students receive special education services in as many as [forty] different yeshivas . . . and the Kiryas Joel Union Free School District.”⁵⁶ As a result of state-and-taxpayer-initiated litigation, and the costly hiring of out-of-state law firms, the school board’s legal expenses rose 668% from the 2008-2009 school year to the 2013-2014 school year.⁵⁷ The board “paid a single out-of-state law firm \$2,438,538 in 2013-2014.”⁵⁸ But in 2012-2013, the board “[f]roze purchases on [school] supplies, materials and equipment.”⁵⁹ This list is by no means exhaustive, and is further expounded upon in Part III.

C. THE STATUS QUO

During a school board meeting on a hot and humid May night in

⁵³ *Id.*

⁵⁴ GREENBERG, *supra* note 43, at 30–32.

⁵⁵ *See id.* at 33; Mareesa Nicosia, *East Ramapo legal costs ‘absurd,’ monitor says*, LOHUD (Nov. 24, 2014, 5:26 PM), <https://www.lohud.com/story/news/education/2014/11/24/monitor-calls-east-ramapo-lawyer-fees-absurd/70056200/>.

⁵⁶ GREENBERG, *supra* note 43, at 17.

⁵⁷ *Id.* at 27.

⁵⁸ *Id.*

⁵⁹ *Id.* at 31 (emphasis added).

2012, the school board's then-president, fed up with what he considered "offensive and anti-Semitic" criticism of the Hasidic-led school board, delivered a stunning message to the public school parents in attendance: "If you don't like it, find yourself another place to live."⁶⁰

The reality, however, is that the impoverished communities in East Ramapo *cannot* just simply find "another place to live." East Ramapo is, in a sense, a "company town." Spring Valley's immigrant community lives by and large in structurally non-compliant (i.e., illegal) apartments and multi-family homes owned by Hasidic landlords.⁶¹ The working-class parents of public school children often are also employed by their Hasidic landlords, many of whom are prominent area developers.⁶² While there is indeed significant and widespread poverty in the Hasidic community, there is a small but highly influential group of politically-connected, wealthy developers.⁶³ These developers either serve on the school board or elect proxies from their communities.⁶⁴ The board's current president, Yehuda Weissmandl, is a prominent landlord and developer from New Square.⁶⁵ Thus, for these economically disadvantaged communities of color, the Hasidic community wields tremendous influence over nearly every aspect

⁶⁰ Peter Applebome, *Rockland County Parents Ask State to Oust 5 Orthodox Jews on School Board*, N.Y. TIMES (July 28, 2012), <http://www.nytimes.com/2012/07/28/nyregion/parents-in-east-ramapo-school-district-ask-state-to-oust-orthodox-jews-on-board.html>.

⁶¹ See, e.g., Steve Lieberman & Alex Taylor, *Rockland cracks down on illegal housing*, LOHUD (Apr. 30, 2015, 10:12 AM), <http://www.lohud.com/story/news/politics/2015/04/30/rockland-housing-crackdown/26628751/>; Alex Taylor, *Inside Rockland's crackdown on illegal housing*, LOHUD (July 8, 2015, 5:34 PM), <http://www.lohud.com/story/news/local/rockland/2015/07/08/rockland-crackdown-illegal-housing/29883093/>; Richard Liebson, *Ramapo nears breaking point: Special Report*, LOHUD, <http://www.lohud.com/story/news/local/rockland/ramapo/2017/01/08/ramapo-ny-breaking-point/95369994/> (last visited Apr. 19, 2018).

⁶² See, e.g., Steve Lieberman, *Ramapo developer seeks OK for basement changes*, LOHUD (Feb. 8, 2017, 6:02 AM), <https://www.lohud.com/story/news/local/rockland/2017/02/08/ramapo-developer-apartments-remove/97598352/>.

⁶³ See Liebson, *supra* note 61.

⁶⁴ *Id.*

⁶⁵ Jonathan Bandler, *Mallia 'helped' developers who donated to St. Lawrence*, LOHUD (Feb. 12, 2017, 6:05 AM), <http://www.lohud.com/story/news/investigations/2017/02/12/anthony-mallia-helped-developers-who-donated-christoper-st-lawrence/97715596/>; Dylan Skriloff, *Timelines 9/5/13*, ROCKLAND COUNTY TIMES (Sept. 5, 2013), <http://www.rocklandtimes.com/2013/09/05/timelines-9513/> ("An illegal subdivision was discovered at a housing complex owned by East Ramapo school board president Yehuda Weissmandl, according to village housing inspectors.").

of their lives: from their living conditions, to their employment, and to the education of their children.⁶⁶ Without a sound basic education, the public school children of East Ramapo may never be able to achieve economic mobility that would allow themselves to find “another place to live.” Such a deprivation that exists in East Ramapo is poised to exert, as the Supreme Court called it, “[an] inestimable toll . . . on the social, economic, intellectual and psychological well-being of the individual.”⁶⁷ The cyclical relationship between education and poverty is evident from the shackles in which the most vulnerable among us find themselves.

PART II: FOUNDATIONAL EDUCATIONAL LAW

A. Federal Law

The Constitution of the United States does not explicitly guarantee a fundamental right to education.⁶⁸ The Supreme Court has also declined to find such a right implicitly. In *San Antonio Independent School District v. Rodriguez*,⁶⁹ the Court held that “[e]ducation, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.”⁷⁰ However, the Court has utilized the Equal Protection Clause of the Fourteenth Amendment to hold that states offering public education must provide it on an equal basis.⁷¹ After *Rodriguez*, the Court in *Plyler v. Doe*⁷² held:

Public education is not a “right” granted to individuals by the Constitution. But neither is it merely some governmental “benefit” indistinguishable from other forms of social welfare legislation. Both the importance of education in maintaining our basic institutions, and the lasting

⁶⁶ See Wallace-Wells, *supra* note 14.

⁶⁷ *Plyler v. Doe*, 457 U.S. 202, 222 (1982).

⁶⁸ Stephen Lurie, *Why Doesn't the Constitution Guarantee the Right to Education?*, THE ATLANTIC (Oct. 16, 2013), <https://www.theatlantic.com/education/archive/2013/10/why-doesnt-the-constitution-guarantee-the-right-to-education/280583/>.

⁶⁹ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

⁷⁰ *Id.* at 35.

⁷¹ See, e.g., *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

⁷² *Plyler*, 457 U.S. at 202.

impact of its deprivation on the life of the child, mark the distinction. The “American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance.” We have recognized “the public schools as a most vital civic institution for the preservation of a democratic system of government,” and as the primary vehicle for transmitting “the values on which our society rests.”⁷³

The Court found that the “inestimable toll” of education deprivation “make[s] it most difficult to reconcile the cost or the principle of a status-based denial of basic education with the framework of equality embodied in the Equal Protection Clause.”⁷⁴ Thus, while not going so far as to find the right to education constitutionally fundamental, the Court has nonetheless determined that a denial of a “basic education” denies children “the ability to live within the structures of our civic institutions, and foreclose[s] any realistic possibility that they will contribute in even the smallest way to the progress of our [n]ation.”⁷⁵

In this vein, Congress adopted the Equal Educational Opportunities Act of 1974.⁷⁶ Of particular relevance to East Ramapo, with twenty-nine percent of its public school students classified as “English language learners,”⁷⁷ is §1703(f): “No State shall deny equal education opportunity to an individual on account of his or her race, color, sex, or national origin by— . . . (f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.”⁷⁸ The Department of Justice has prosecuted violations of §1703(f) and signed settlement agreements with school districts across the country.⁷⁹ Similarly,

⁷³ *Id.* at 221 (alteration in original) (citations omitted).

⁷⁴ *Id.* at 222.

⁷⁵ *Id.* at 223.

⁷⁶ Pub. L. No. 93-380, 88 Stat. 514 (codified at 20 U.S.C. § 1701 (2012)).

⁷⁷ DENNIS M. WALCOTT ET AL., N.Y. STATE DEPT’ OF EDUC., OPPORTUNITY DEFERRED: A REPORT ON THE EAST RAMAPO SCHOOL DISTRICT 4 (2015), <https://static1.squarespace.com/static/547768efe4b07c978830b6ed/t/566f0c9f4bf118a0f17c4685/1450118303824/East+Ramapo+full+++monitors'+report+12-15.pdf>.

⁷⁸ 20 U.S.C. § 1703(f) (2012).

⁷⁹ For example, *compare* United States v. Bd. of Educ. of Chi., No. 80 C 5124, 2004 U.S. Dist. LEXIS 3067* (N.D. Ill. Mar. 1, 2004), *with* Stipulation at 1, United States v. Bd. of Educ. of Chi., No. 80 cv 5124 (N.D. Ill. Nov. 9, 2005), <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/cpsstip.pdf>. For another example, *compare* United States v. Yonkers Bd. of Educ., No. 80 Civ.

the Department of Education's Office of Civil Rights has indeed investigated East Ramapo for such violations,⁸⁰ as is discussed further in Part III.

The Elementary and Secondary Education Act of 1965⁸¹ similarly codifies the federal government's commitment of ensuring "that all children have a fair, equal and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on . . . state academic achievement standards and state academic assessments."⁸² Subchapter I, Subchapter II, and Subchapter III of the Elementary and Secondary Education Act allow for the allocation of Federal funding toward, respectively, "improving the academic achievement of the disadvantaged,"⁸³ "preparing, training, and recruiting high-quality teachers, principals, or other school leaders,"⁸⁴ and "language instruction for English learners and immigrant students."⁸⁵ Public and non-public schools may apply for Title I funding.⁸⁶ The success and accountability of Title I funded programs in Hasidic yeshivas in East Ramapo is further examined in Part IV.

Also significant to both public and non-public schools in East Ramapo is the Individuals with Disabilities Education Act ("IDEA").⁸⁷

6761, 2001 U.S. Dist. LEXIS 9244*, at *2 (S.D.N.Y. July 6, 2001), *with* Joseph M. Pastore Jr., Opinion, *In Yonkers We Trust*, N.Y. TIMES (May 20, 2007), <http://www.nytimes.com/2007/05/20/opinion/nyregionopinions/20WEpastore.html> (describing the settlement agreement in that case). For a third example, *compare* United States v. Texas, No. 6:71-CV-5281-WWJ, 2006 U.S. Dist. LEXIS 56516*, at *15, *19 (E.D. Tex. Aug. 11, 2006), *with* Settlement Agreement at 1, United States v. Texas (W.D. Tex. June 26, 2009), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/TexasStateSchools_settle_06-26-09.pdf (its settlement agreement).

⁸⁰ Jorge Fitz-Gibbon, *Feds: East Ramapo discrimination claims founded*, LOHUD (Oct. 29, 2015, 8:08 PM), <https://www.lohud.com/story/news/local/rockland/2015/10/29/feds-east-ramapo-discrimination-claims-founded/74834364/>.

⁸¹ 20 U.S.C. § 6301 (2012).

⁸² 20 U.S.C. § 6301 (2012).

⁸³ *See* 20 U.S.C. § 6301 (2012).

⁸⁴ *See* 20 U.S.C. § 6601 (2012).

⁸⁵ *See* 20 U.S.C. § 6811 (2012).

⁸⁶ *See Equitable Participation of Nonpublic Students for Title I*, N.J. DEP'T EDUC., <http://www.state.nj.us/education/title1/leg/policy/equitable.shtml> (last visited Mar. 10, 2018).

⁸⁷ 20 U.S.C. § 1400 (2012).

Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.⁸⁸

Pursuant to this congressional finding, IDEA mandates that “all children with disabilities have available to them a free appropriate public education [“FAPE”] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.”⁸⁹ Although each child qualifying for special education services receives an Individualized Education Program (“IEP”) tailored to her specific needs,⁹⁰ IDEA nonetheless mandates placement in the Least Restrictive Environment (“LRE”):

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.⁹¹

The Second Circuit has affirmed that “IDEA’s central mandate is to provide disabled students with a ‘free appropriate public education’ in the least restrictive environment suitable for their needs.”⁹²

The East Ramapo school board’s handling of IEPs and its determination of Hasidic students’ LREs has been the source of

⁸⁸ 20 U.S.C. § 1400(c)(1) (2012).

⁸⁹ 20 U.S.C. § 1400(d)(1)(A) (2012).

⁹⁰ See 20 U.S.C. § 1412(a)(4) (2012).

⁹¹ 20 U.S.C. § 1412(a)(5)(A) (2012).

⁹² *Cave v. East Meadow Union Free Sch. Dist.*, 514 F.3d 240, 245 (2d Cir. 2008).

much litigation and investigation by educational oversight authorities.⁹³ The East Ramapo school board has been widely criticized for cutting mandated special education programs for public school students, while simultaneously approving costly, if not unwarranted, out-of-district placements for Hasidic students.⁹⁴ In short, oversight observers have found that the school board's special education decision and policy-making has deprived public school students of a "free [and] appropriate public education" and inappropriately placed Hasidic students in learning environments that are more restrictive than necessary.⁹⁵ This disparity is further examined in Parts III and IV.

B. New York State Law

Unlike the United States Constitution, New York State's Constitution explicitly endorses a right to an education. "The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated."⁹⁶ However, the Court of Appeals initially struggled with its interpretation of "educated," and by extension, what qualifies as a constitutionally-mandated education. In *Board of Education, Levittown Union Free School District v. Nyquist*, the Court of Appeals held:

What appears to have been contemplated when the education article was adopted at the 1894

⁹³ See, e.g., *In re E. Ramapo Cent. Sch. Dist. v. King*, No. 2185-13, 2013 WL 12198825, at *1 (N.Y. Sup. Ct. Albany Cnty. 2013).

⁹⁴ See, e.g., GREENBERG, *supra* note 43, at 17–18 ("Aspects of District's special education program are noncompliant with State and federal law.").

⁹⁵ Brief for Respondent at 1, *In re E. Ramapo Cent. Sch. Dist.*, No. 519463, 2014 WL 11034516, at *1 (N.Y. App. Div. 2015).

Based on the [New York State Education] Department's reviews, it found that the District had disregarded this principle [effectuated by the 'FAPE' and 'LRE'] in numerous instances by entering into settlements with parents whereby the District agreed to place children at private or out-of-district schools [e.g., Kiryas Joel] in bilingual Yiddish special education programs, against the recommendations of the Committee on Special Education and without any evidence of the need for such restrictive placements.

Id.

⁹⁶ N.Y. CONST. art. XI, § 1.

Constitutional Convention was a State-wide system assuring minimal acceptable facilities and services in contrast to the unsystematized delivery of instruction then in existence within the State. Nothing in the contemporaneous documentary evidence compels the conclusion that what was intended was a system assuring that all educational facilities and services would be equal throughout the State. The enactment mandated only that the Legislature provide for maintenance and support of a system of free schools in order that an education might be available to all the State's children. There is, of course, a system of free schools in the State of New York. The Legislature has made prescriptions (or in some instances provided means by which prescriptions may be made) with reference to the minimum number of days of school attendance, required courses, textbooks, qualifications of teachers and of certain nonteaching personnel, pupil transportation, and other matters. If what is made available by this system (which is what is to be maintained and supported) may properly be said to constitute an education, the constitutional mandate is satisfied.⁹⁷

The Court of Appeals interpreted "education" to "connote a sound basic education"⁹⁸ without further expounding upon or explaining the definition of "sound basic education."⁹⁹ Simply finding that "New York has long been regarded as a leader in free public education," the Court of Appeals had "no difficulty in determining that the constitutional requirement is being met in this State,"¹⁰⁰ and punted the issue of defining a sound basic issue to the Legislature:

Because decisions as to how public funds will be allocated among the several services for which by constitutional imperative the Legislature is required to make provision are matters peculiarly

⁹⁷ Bd. of Educ., *Levittown Union Free Sch. Dist. v. Nyquist*, 439 N.E.2d 359, 368–69 (N.Y. 1982) (footnotes omitted).

⁹⁸ *Id.* at 369.

⁹⁹ See Josh Kagan, Note, A Civics Action: Interpreting "Adequacy" in State Constitutions' Education Clauses, 78 N.Y.U. L. REV. 2241, 2264 n.132 (2003).

¹⁰⁰ *Levittown*, 439 N.E.2d at 369.

appropriate for formulation by the legislative body (reflective of and responsive as it is to the public will), we would be reluctant to override those decisions by mandating an even higher priority for education in the absence, possibly, of gross and glaring inadequacy.¹⁰¹

Thirteen years later, the Court of Appeals returned to the meaning of a “sound basic education,” showing less judicial restraint in holding that:

Such 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. If the physical facilities and pedagogical services and resources made available under the present system are adequate to provide children with the opportunity to obtain these essential skills, the State will have satisfied its constitutional obligation. . . .¹⁰²

The Court in *CFE 1995*, while considering it “premature” to attempt to “definitively specify what the constitutional concept and mandate of a sound basic education entails,”¹⁰³ nonetheless “articulate[d] a template.”¹⁰⁴ A sound basic education is one that provides children “the opportunity to acquire the basic literacy, calculating and verbal skills necessary to enable them to function as civic participants capable of voting and serving as jurors.”¹⁰⁵

In 2003, the Court of Appeals ultimately refined its central holding of *CFE 1995*, that a “sound basic education” should “enable children to eventually function productively as civic participants capable of voting and serving on a jury”, interpreting the phrase “function productively” to reflect “an [implicit] employment component.”¹⁰⁶ Accounting for the fact that “service sector jobs

¹⁰¹ *Id.*

¹⁰² Campaign for Fiscal Equity, Inc. v. State (*CFE 1995*), 655 N.E.2d 661, 666 (N.Y. 1995).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 667.

¹⁰⁶ Campaign for Fiscal Equity, Inc. v. State (*CFE 2003*), 801 N.E.2d 326, 330 (N.Y. 2003).

require a higher level of knowledge, skill in communication and the use of information, and the capacity to continue to learn over a lifetime,” the Court in *CFE 2003* rejected the contention that “function productively” should be construed merely as “the ability to get a job, and support oneself, and thereby not be a charge on the public. . . . More is required.”¹⁰⁷ Rejecting the Appellate Division’s conclusion that the “skills necessary for civic participation are imparted between eighth and ninth grade,” *CFE 2003* held that productive citizenship “means more than just being *qualified* to vote or serve as a juror, but to do so capably and knowledgeably—to have skills appropriate to the task.”¹⁰⁸ Therefore, “students require more than an eighth-grade education to function productively as citizens, and . . . the mandate of the Education Article for a sound basic education should not be pegged to the eighth or ninth grade, or indeed to any particular grade level.”¹⁰⁹ *CFE 2003* formally adopted two groups of criteria used to evaluate a sound basic education: Inputs (i.e., Teaching, School Facilities and Classrooms, and Instrumentalities of Learning) and Outputs (i.e., School Completion and Test Results).¹¹⁰

New York statutory law incorporates these “Inputs” and “Outputs” in broad standards set for students in both public and private schools. New York Education Law mandates that “[a] minor required to attend upon instruction by the provisions of part one of this article may attend at a public school or elsewhere. The requirements of this section shall apply to such a minor, irrespective of the place of instruction.”¹¹¹ Such “instruction” may be given “only by a competent teacher,” and “English shall be the language of instruction” (except for students with limited English proficiency).¹¹² The Education Law also requires a “course of study for the first eight years of full time public day schools” to include “at least the twelve common school branches of arithmetic, reading, spelling, writing, the English language, geography, United States history, civics, hygiene, physical training, the history of New York state, and science.”¹¹³ Such an education is mandated for all students, through the law’s “substantially

¹⁰⁷ *Id.* at 331.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 332–40.

¹¹¹ N.Y. EDUC. LAW § 3204(1) (2008).

¹¹² N.Y. EDUC. LAW § 3204(2) (2008).

¹¹³ N.Y. EDUC. LAW § 3204(3)(a)(1) (2008).

equivalent” catch-all provision: “Instruction 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.”¹¹⁴ Thus, theoretically, a child of Haitian immigrants in East Ramapo’s Grandview Elementary School and a similarly-aged Hasidic student studying at New Square’s yeshiva Avir Yaakov should each be receiving an education that is “substantially equivalent” to one another. However, as will be further discussed, there is a stark difference between “theory” and “reality.”

PART III: THE LEGAL STATE OF THE PUBLIC SCHOOLS

A. *The Board’s Actions and the State’s Response*

Although 2005 is usually referred to as the *takeover* point in East Ramapo’s history, in the sense that the Hasidic community achieved a majority of school board seats, 2009 is seen by public school advocates as the true *turning point*.¹¹⁵ At a November board meeting that year, the school board fired its longtime local attorney and hired a Long Island lawyer, Albert D’Agostino, who had been representing the Lawrence School District “which is also controlled by Orthodox Jews.”¹¹⁶ In Lawrence, D’Agostino had been “enterprising in finding lawful ways to provide special education services at shared expense to private school students.”¹¹⁷ Yet public school officials and advocates weren’t convinced D’Agostino, whose rate was over four times that of the school board’s previous attorney, would usher in an era of “lawful” changes.¹¹⁸ Joe Farmer, then the district’s deputy superintendent, issued a dire warning: “[t]his has not much to do with the selection of a lawyer or firing lawyers. . . . It has to do with the demise of a school district as we know it. . . . This is a declaration of war.”¹¹⁹

¹¹⁴ N.Y. Educ. Law § 3204(2) (2008).

¹¹⁵ See Isabel Fattal, *A Heavy Blow to One of America’s Most Controversial School Boards*, THE ATLANTIC (Nov. 17, 2017), <https://www.theatlantic.com/education/archive/2017/11/another-blow-to-one-of-americas-most-controversial-school-board/546227/>.

¹¹⁶ Peter Applebome, *Board’s Hiring Sets off a School War*, N.Y. TIMES (Dec. 6, 2009), <http://www.nytimes.com/2009/12/07/nyregion/07towns.html>.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

The former deputy superintendent's remarks were, unfortunately, quite prescient. Significant layoffs and "draconian" budget cuts followed D'Agostino's hiring,¹²⁰ and the board began planning the sale of two public schools, both completed in 2014 following much litigation, despite a three percent increase in enrollment between 2008 and 2012.¹²¹ At the same time, the board increased its placement of Hasidic special education students in the Satmar-led Kiryas Joel school district, a practice later adjudicated to be illegal.¹²² Furthermore, the board nearly doubled its spending on yeshiva transportation costs: "Spending for [transportation to] private schools increased by [seventy-six point six percent]" from 2006 to 2014.¹²³ While New York Education Law does mandate transportation to private schools,¹²⁴ the East Ramapo school board goes above and beyond the statutory floor, providing gender-segregating busing for yeshiva students.¹²⁵ The diversion of money *out* of the public-school system and *toward* yeshivas had a tangible impact on public school students. In 2014, forty-six percent of students in grades three to eight were "well below proficient" in English Languages Arts ("ELA")¹²⁶; fifty-five percent were "well below proficient" in math.¹²⁷ By comparison, thirty-two percent and thirty-one percent respectively, were "well below proficient" statewide in ELA and math.¹²⁸ The graduation rate for the 2009 cohort was sixty-four percent, the lowest in Rockland County by over ten percent.¹²⁹

The New York State Education Department ("NYSED") has twice appointed monitors to assess the situation in the district. The first, former federal prosecutor Henry M. Greenberg, was tapped in 2014 by then-Commissioner of Education John B. King, Jr. to "[r]eview the District's fiscal practices, conduct and history" and "[r]ecommend ways the State can ensure the District: [p]rovides an appropriate education program; and [p]roperly manages and accounts for State and Federal funds received."¹³⁰

¹²⁰ GREENBERG, *supra* note 43, at 29.

¹²¹ *In Depth*, STRONG EAST RAMAPO, <http://www.strongeastramapo.org/indepth/> (last visited Apr. 22, 2018).

¹²² *In re E. Ramapo Cent. Sch. Dist. v. King*, 11 N.Y.S.3d 284 (App. Div. 2015).

¹²³ GREENBERG, *supra* note 43, at 15.

¹²⁴ See N.Y. EDUC. LAW § 3635 (2012).

¹²⁵ GREENBERG, *supra* note 43, at 14.

¹²⁶ *Id.* at 7.

¹²⁷ *Id.* at 8.

¹²⁸ *Id.* at 7–8.

¹²⁹ *Id.* at 9.

¹³⁰ *Id.* at 2.

Greenberg's report, titled "East Ramapo: A School District in Crisis," found that the district's fiscal affairs had been mismanaged for years,¹³¹ teetering on the brink of disaster;¹³² that the district had depleted its unreserved and reserved funds; and that the district had made no "meaningful effort to distribute pain of deep budget cuts fairly among private and public schools."¹³³ What Greenberg found to be "most disturbing," however, was that the "Board appears to favor the interests of private schools over public schools."¹³⁴ He further noted that district officials have "attacked leaders of the NAACP as 'disturbingly disingenuous' and 'feign[ing] ignorance'" and have "referred to immigrant students by saying, 'they want a free lunch, breakfast, and whatever else they can get.'"¹³⁵ Ultimately, Greenberg proposed installing a permanent "override monitor" who would have the ability to "override, in real time, unreasonable decisions by the Board and ensure that the District conducts its affairs in a transparent fashion."¹³⁶ He also suggested that, "[g]iven the District's growing ELL population and recent influx of immigrant students who need ELL services," [NY]SED should conduct a comprehensive monitoring review of the District's policies and procedures, including those related to registration and enrollment, to ensure that all students receive appropriate educational programs and services."¹³⁷

At the start of the 2015 legislative session, East Ramapo's representatives in Albany heeded Greenberg's suggestion and proposed legislation that would install a "veto-empowered" monitor in the district.¹³⁸ Assembly Bill A5355A "[a]uthorizes the commissioner of education to appoint a state monitor to oversee the East Ramapo central school district and establishes the powers and duties of the state monitor."¹³⁹ The state monitor would have the statutory power to "propose a resolution or course of action to

¹³¹ GREENBERG, *supra* note 43, at 22.

¹³² *Id.* at 23.

¹³³ *Id.* at 33.

¹³⁴ *Id.* at 29.

¹³⁵ *Id.* at 36.

¹³⁶ *Id.* at 48.

¹³⁷ GREENBERG, *supra* note 43, at 58.

¹³⁸ David Zwiebel, *Op-Ed: School Board Monitor in East Ramapo District is Not the Answer*, KINGS COUNTY POL. (June 11, 2015), <http://www.kingscounty.politics.com/op-ed-school-board-monitor-in-east-ramapo-district-is-not-the-answer/>.

¹³⁹ S.B. 3821A, 2015 Leg., Reg. Sess. (N.Y. 2015).

be considered” and “override decisions by the board” if the monitor finds that either is “necessary for the educational welfare of the students attending the district.”¹⁴⁰ Despite concerns from the Hasidic community that such a monitor would usurp a democratically-elected board,¹⁴¹ the bill was endorsed by the Chancellor of New York State’s Board of Regents,¹⁴² the New York State School Boards Association,¹⁴³ the New York City Bar Association,¹⁴⁴ the American Jewish Committee,¹⁴⁵ the New York Civil Liberties Union,¹⁴⁶ the Rockland County School Boards Association,¹⁴⁷ the Anti-Defamation League¹⁴⁸ and a coalition of Jewish social advocacy groups.¹⁴⁹ The bill passed the New York State Assembly 80-60,¹⁵⁰ but was never taken up for consideration by the New York State Senate, controlled by Republican Senator John Flanagan, who panned the bill as “usurping or stripping the powers of the duly elected school board.”¹⁵¹

¹⁴⁰ *Id.*

¹⁴¹ See Zwiebel, *supra* note 138.

¹⁴² Merryl H. Tisch & David G. Sciarra, *When a School Board Victimizes Kids*, N.Y. TIMES (June 3, 2015), <https://www.nytimes.com/2015/06/03/opinion/when-a-school-board-victimizes-kids.html>.

¹⁴³ See STRONG EAST RAMAPO, *supra* note 121.

¹⁴⁴ N.Y. CITY BAR ASS’N, REPORT ON LEGISLATION BY THE EDUCATION & THE LAW COMMITTEE (2015), <https://static1.squarespace.com/static/547768efe4b07c978830b6ed/t/55524f31e4b092ca32b26ccd/1431457585613/Legislative+Report.State+Monitor+East+Ramapo+FINAL+5.12.15.pdf>.

¹⁴⁵ Mareesa Nicosia, *Exclusive: New York’s Top Ed Policymakers Rush to Save Broken School District after Albany Falts*, 74MILLION.ORG (July 17, 2015), <https://www.the74million.org/article/new-yorks-top-ed-policymakers-rush-to-save-school-district-after-albany-falts/>.

¹⁴⁶ *Id.*

¹⁴⁷ Letter from Pamela Frederick, Exec. Dir., Rockland Cty. Sch. Bds. Ass’n, to Andrew M. Cuomo, Governor of N.Y. State, Senator Marcellino, and Assemblywoman Nolan, Members of the N.Y. State Legislature (June 1, 2015), <https://static1.squarespace.com/static/547768efe4b07c978830b6ed/t/556f98e3e4b09d6f4ab85354/1433376995910/RCSBA.pdf>.

¹⁴⁸ *Independent Monitor a “Necessary First Step” to Restoring Confidence in the East Ramapo School District*, ANTI-DEFAMATION LEAGUE (June 5, 2015), <http://newyork.adl.org/news/adl-independent-monitor-a-necessary-first-step-to-restoring-confidence-in-the-east-ramapo-school-district/>.

¹⁴⁹ Elizabeth Ganga, *Jewish leaders support E. Ramapo oversight bill*, LOHUD (June 4, 2015, 6:09 PM), <http://www.lohud.com/story/news/education/2015/06/04/jewish-leaders-speak-east-ramapo-oversight-bill/28500271/>.

¹⁵⁰ Joseph Spector, *How They Voted: East Ramapo monitor bill*, TIMES UNION (June 12, 2015), <http://blog.timesunion.com/capitol/archives/236865/how-they-voted-east-ramapo-monitor-bill/>.

¹⁵¹ Joseph Spector, *No State Monitor for East Ramapo Schools*, LOHUD (June 25, 2015, 4:36 PM), <http://www.lohud.com/story/news/politics/albany-watch/2015/06/25/time-runs-east-ramapo-monitor-bill/29289863/>.

Yet at the time of the bill's deliberation, NYSED determined that the district, and by extension, the duly elected school board, was failing its students in virtually all measurable areas:

The district acknowledges that it does not have a staffing strategy that allows it to address student needs effectively. Layoffs caused by fiscal cuts in the recent past resulted in staff shortages in key areas such as department chairs and social workers. Reviewers found that while other staff takes on more responsibility to cover for these lost positions, their roles in support of raising student achievement and promoting student social and emotional development health have become less effective. This means the district is not responding to the urgent need to improve student academic achievement, particularly for English language learners (ELLs) and to address the needs of the increasing proportion of economically disadvantaged students. . . . While student achievement is declining, and the proportion of English language learners (ELLs) is increasing, district staff stated that the district's goals have remained unchanged since 2009. . . . Student survey responses indicate that the prevalence of fights, bullying, and the availability of drugs in school buildings are still areas of greatest concern to students.¹⁵²

NYSED also deemed Spring Valley High School (one of the district's two high schools) "ineffective" in regards to school leader practices and decisions, curriculum development and support, teacher practices and decisions, and student social and emotional developmental health.¹⁵³ NYSED's Diagnostic Tool for School and District Effectiveness noted that, of the high school's 1,213 students, nearly seventy percent received a free or reduced lunch;

¹⁵² The Univ. of the State of N.Y., The State Educ. Dep't, Diagnostic Tool for Sch. and Dist. Effectiveness (DTSDE): East Ramapo Cent. Sch. Dist. 6, 7, 15 (2015), <https://s3.amazonaws.com/s3.documentcloud.org/documents/2109718/state-evaluation-of-east-ramapo.pdf>.

¹⁵³ The Univ. of the State of N.Y., The State Educ. Dep't, Diagnostic Tool for Sch. and Dist. Effectiveness (DTSDE): Spring Valley High Sch. 1–10 (Mar. 2015), http://www.p12.nysed.gov/accountability/School_Improvement/documents/2014-15EastRamapoCSD-SpringValleyHighSchoolDTSDEReportforposting.pdf.

twenty-seven percent were “Limited English Proficient”; fifty percent were Black or African American; forty-three percent were Hispanic or Latino; and four percent were white.¹⁵⁴

Following the defeat of the “veto-empowered” monitor bill, NYSED appointed a team of oversight monitors, led by former Chancellor of the New York City Department of Education Dennis M. Walcott.¹⁵⁵ The three-person panel produced a nineteen-point recommendation report entitled “Opportunity Deferred: A Report on the East Ramapo Central School District.”¹⁵⁶ The monitors summarized their findings as follows:

East Ramapo has been in a state of distress for years. In just over 17 weeks, the Monitors have learned that the overarching effect of this distress has been a wearing away of the fundamental building blocks the District needs to successfully educate its students – competent leaders who support teaching and learning in the District and understand and respect community needs; fiscal stability; and community confidence and support.¹⁵⁷

The report’s paramount recommendation, not unlike Greenberg’s, was installing a veto-empowered monitor.¹⁵⁸ The report also recommended that the legislature “enact State law to provide for a unique mechanism for the East Ramapo school district to ensure that the public school community has representation on the board, without hindering the democratic process”¹⁵⁹ In other words, ensuring that “in each election cycle, all the candidates for at least one of the seats must be parents of children attending public schools.”¹⁶⁰

However, any future legislation in Albany was already dead on arrival. After hearing the Monitors’ recommendations, Senator Flanagan told representatives of Agudath Israel of America, the powerful ultra-Orthodox lobbying group,¹⁶¹ that installing a veto-

¹⁵⁴ *Id.* at 2.

¹⁵⁵ WALCOTT ET AL., *supra* note 77, at 2.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 9.

¹⁵⁸ *See id.* at 14.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 13.

¹⁶¹ *See* Valerie Strauss, *DeVos praises Orthodox Jewish group that strongly backs public funding for religious schools*, WASH. POST (Mar. 9, 2017), <https://www.washingtonpost.com/news/answer-sheet/wp/2017/03/09/devos->

empowered monitor was “both unconstitutional and unprecedented.”¹⁶² Perhaps not sensing the irony, Flanagan added, “Really, what [the public school parents] want to do is overtake that school district. And we’re not doing it.”¹⁶³

The Hasidic community’s monolithic-like “bloc vote” power likely helped sway politicians against enacting East Ramapo legislation. The Hasidic “bloc vote” does not merely affect school board elections in the district; it can tip the balance of statewide elections. The Hasidic “bloc vote” in Rockland County, Brooklyn, and Kiryas Joel has a history of disregarding political ideology and instead favoring candidates seen as receptive to the religious community’s needs:

Democrats and Republicans have long courted the disciplined strength of the Hasidic “bloc” vote, a reliable ally for governors in political need. In 2007, New Square switched its thousands of votes from the incumbent Republican district attorney to his Democratic challenger after an in-person request to the Grand Rabbi from then-Governor Eliot Spitzer. Republicans hit the jackpot in 1999, when then-Governor Pataki successfully negotiated with Orthodox leaders on behalf of the GOP and held a critical state senate seat for his party. It remains nearly impossible to get elected to the Supreme Court in the [Ninth] Judicial District, which stretches [eighty-five] miles from Yonkers to northern Dutchess County, without the endorsement of Hasidic leaders.¹⁶⁴

In a case that made national attention and that underscores the power of the Hasidic “bloc vote,” nearly the entire community of New Square voted for Hillary Clinton in her first senate campaign (only 12 votes were cast for Rick Lazio; nearly 1,400 were cast for

praises-orthodox-jewish-group-that-strongly-backs-public-funding-for-religious-schools/?utm_term=.94cb9d2bf7dd.

¹⁶² Yochonon Donn, *NY Senate Leader: ‘We’re Not Doing’ Ramapo Oversight*, HAMODIA (Dec. 20, 2015), <http://hamodia.com/2015/12/20/ny-senate-leader-were-not-doing-ramapo-oversight>.

¹⁶³ *Id.*

¹⁶⁴ Ryan Karben, *Shtetlopolis*, KARBEN COPY (Apr. 29, 2014), <http://karbencopy.blogspot.com/2014/04/shtetlopolis.html>.

Clinton).¹⁶⁵ After the election, outgoing President Bill Clinton pardoned four members of the New Square community “convicted of bilking tens of millions of dollars from the government.”¹⁶⁶ The United States Attorney’s Office for the Southern District of New York “opened an inquiry into the New Square case,” which, unlike other pardons under scrutiny, “involved no allegations of legal favors being traded for money—only votes.” Ultimately, however, then-United States Attorney James Comey “declined to file charges.”¹⁶⁷ Needless to say, the Hasidic “bloc vote” has only grown in size and influence since the election in 2000.

B. *The Federal Government*

Pursuant to its authority under Title VI of the Civil Rights Act of 1964,¹⁶⁸ the United States Department of Education’s Office of Civil Rights (“OCR”) began investigating East Ramapo’s special education placements, following complaints made by the Spring Valley NAACP in 2011.¹⁶⁹ The NAACP alleged both that white students, i.e., Hasidic students, received a disparate amount of out-of-district placements (i.e., to Kiryas Joel) and that students of color, particularly English Language Learners, received sub-standard special education services.¹⁷⁰

Analyzing data from 2010 to 2014, OCR determined that “there

¹⁶⁵ Nick Anderson, *Hasidic Clemency Case Entangles Hillary Clinton*, L.A. TIMES (Feb. 24, 2001), <http://articles.latimes.com/2001/feb/24/news/mn-29756>.

¹⁶⁶ *Id.*

In May 1997, federal prosecutors announced indictments of six men on charges of conspiracy, wire fraud and mail fraud in connection with the theft of tens of millions of dollars in federal and state aid in a scheme to benefit residents of New Square. Much of the aid was meant to go to legitimate education programs, prosecutors charged, but instead was funneled through a fictitious school.

Id.

¹⁶⁷ Dale Russakoff, *Clinton Cleared in New Square Pardon Case*, WASH. POST (June 21, 2002), <https://www.washingtonpost.com/archive/politics/2002/06/21/clinton-cleared-in-new-square-pardon-case/5a4d8f1d-4f69-494f-904c-0e6c2b689baa>.

¹⁶⁸ 42 U.S.C. § 2000d (2012).

¹⁶⁹ Letter from Timothy C.J. Blanchard, U.S. Dep’t of Educ., N.Y. Office for Civil Rights, to Joel Klein, Superintendent, E. Ramapo Cent. Sch. Dist. (Oct. 27, 2015), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02111091-a.pdf>.

¹⁷⁰ *Id.* at 2–3, 5–9.

were a statistically significant disproportionate number of white students with classifications of intellectual disability and emotional disturbance in out-of-district special education programs.”¹⁷¹ OCR further determined instances of similarly situated non-white students nonetheless receiving placements in district schools, with white students receiving placements in Kiryas Joel:

OCR asked the District to explain why it placed Student 1 [who is white and Hasidic] in an out-of-district school [Kiryas Joel], while it placed Students 2-4 [two of whom are Latino and one is African American] in District schools, when it identified the same setting for all four students. . . . The District also stated that Student 1 had previously attended a full-day special education program in Israel; and, the District placed Student 1 in the Kiryas Joel Union Free School District because it was a setting most similar to the setting she received in Israel. The District did not provide documentation to OCR to support this assertion.¹⁷²

Perhaps most striking was OCR’s determination that East Ramapo offered a “white only” kindergarten class at the district’s Early Childhood Center during the 2010-2011 school year.¹⁷³ “OCR determined that during school year 2010-2011, the District offered a half-day special education kindergarten class that was taught primarily in Yiddish by a Yiddish-speaking teacher and teaching assistant. . . . The District did not offer any other kindergarten classes that were conducted in a language other than English.”¹⁷⁴ OCR further determined that the students placed in this Yiddish/bilingual setting were not even *classified* as English Language Learners.¹⁷⁵ Thus, the school board engaged in a practice that discriminated against children of color while providing to Caucasian and Hasidic students services to which they were not even entitled.

¹⁷¹ *Id.* at 4

¹⁷² *Id.* at 5.

¹⁷³ *Id.* at 6.

¹⁷⁴ *Id.*

¹⁷⁵ See Letter from Timothy C.J. Blanchard, *supra* note 169, at 8.

C. The Courts

Lacking in political capital to take on the school board either electorally or legislatively, in February 2012, public school parents, on behalf of their children and as taxpayers, engaged the services of a pro bono firm that filed a federal civil rights lawsuit against past and then-present Orthodox and Hasidic members of the school board, board attorney Albert D'Agostino, and then-superintendent Joel Klein.¹⁷⁶

Synthesizing federal and state law, *Montesa v. Schwartz*¹⁷⁷ featured nine causes of action: “Deprivation of Rights Under the First Amendment;” “Denial of Federally Guaranteed Equal Protection;” “Denial of New York State Guaranteed Equal Protection;” “Deliberate School Segregation;” “Unconstitutional Gift of Public Funds;” “Depriving Children of Their Right to a Sound Basic Education in Violation of Article XI, § 1 and § 3 of the New York State Constitution and of 20 U.S.C.A. § 1221-1;” “Breach of Fiduciary Duty;” “Violation of Education Law § 3811;” and “Fraud.”¹⁷⁸

Plaintiffs sought a preliminary and permanent injunction prohibiting: “the expenditure of District funds to defend this lawsuit;”¹⁷⁹ “the placement at District expense or continued placement of any child in a special education program not located in a public school of the ERCSD absent a showing, before a neutral hearing officer, that (a) the child resides in the district, and (b) the public school system in the ERCSD can attend to that child’s special education needs;”¹⁸⁰ “the expenditure of ERCSD money on any textbook which is not entirely secular in nature;”¹⁸¹ and “contracts with any entity controlled by a religious institution to provide Title I services in any school in the District.”¹⁸² Plaintiffs further sought “restitution by defendants, jointly and severally, of all funds lost by the District as a result of the unlawful activities complained of in this Complaint;”¹⁸³ compensatory damages to each plaintiff for “that plaintiff’s child for the loss of educational

¹⁷⁶ See Class Action Complaint at 19, *Montesa v. Schwartz*, 2016 U.S. Dist. LEXIS 80822 (S.D.N.Y. 2016).

¹⁷⁷ *Montesa v. Schwartz*, 836 F.3d 176 (2d Cir. 2016).

¹⁷⁸ Class Action Complaint, *supra* note 176, at 70–73, 75–76, 79.

¹⁷⁹ *Id.* at 83.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

opportunities;¹⁸⁴ and ten million dollars in punitive damages.¹⁸⁵

The complaint alleged what Greenberg would confirm two years later:

Plaintiffs allege that the defendants, who, in various combinations, have made up a majority of the Board of the East Ramapo Central School District, have engaged in numerous schemes to siphon off public money to support private religious institutions in various yeshivas, forcing a large cut in instructional programming in the public schools to a degree that the right of public school children to an education is impugned.¹⁸⁶

Specifically, *Montesa* centered on the board's documented noncompliance with State and Federal educational law;¹⁸⁷ the board's "pattern of settling special education cases as a means of placing students in private religious schools, including schools *outside the district, at exorbitant costs;*"¹⁸⁸ the board's arrangement with the Yeshiva Association of Rockland County to "control the distribution of Federal Title I funding *in a manner which funds religious education;*"¹⁸⁹ the board's purchasing of "*religious textbooks with District money;*"¹⁹⁰ and the board's "hastily approved sale of the Hillcrest School and [use of] fraudulent appraisals in an attempt to sell the building to religious schools under *market value.*"¹⁹¹ Notably, during the course of the *Montesa* litigation, the Hillcrest School ultimately *was* sold to yeshiva Avir Yakov, in New

¹⁸⁴ Class Action Complaint, *supra* note 176, at 83.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 3.

¹⁸⁷ See Letter from James P. DeLorenzo, N.Y. State Educ. Dep't, to Joel Klein, Superintendent, E. Ramapo Cent. Sch. Dist. (Aug. 4, 2014), <https://www.documentcloud.org/documents/1384448-east-ramapo-1.html>. See also Class Action Complaint, *supra* note 176, at 23 ("ERCSD has paid millions of dollars to private schools for unwarranted special education placement.").

¹⁸⁸ Class Action Complaint, *supra* note 176, at 24 (emphasis added). See also *id.* at 28 ("Upon information and belief, 13 students paid for by ERCSD in Kiryas Joel actually live in Kiryas Joel and are not residents of ERCSD.").

¹⁸⁹ *Id.* at 29 (emphasis added). See also *id.* at 30 (claiming that defendants were using government money to fund religious educational services in violation of 20 U.S.C. § 6320(a)(2) and 20 U.S.C. § 6316(e)(9)).

¹⁹⁰ *Id.* at 35 (emphasis added).

¹⁹¹ *Id.* at 38 (emphasis added).

Square, in 2014.¹⁹² Before the sale, however, defendant and now-Board President Yehuda Weissmandl “faced criticism over a road that was mysteriously cleared through a fence between the Hillcrest School’s playing fields and the Hasidic town of New Square, which abuts the school’s back fence. Weissmandl, who was overseeing construction in the area at the time, [during the 2011 school board elections] said the fence had been knocked over by a tree. The appearance of the road set off a firestorm, as the sale of the building had not yet been approved.”¹⁹³

The complaint further alleged that the board’s budget cuts were passed “in an *arbitrary and uninformed manner*.”¹⁹⁴ Critically, the complaint alleged that these “many arbitrary cuts den[ie]d public school students, who are mainly *Black and Hispanic, a sound basic education*.”¹⁹⁵ Lastly, forecasting OCR’s ultimate determination on the manner, the complaint alleged that “defendants have segregated non-white students from white students in special education programs.”¹⁹⁶

Despite plaintiffs’ request for a preliminary and permanent injunction prohibiting “the expenditure of District funds to defend this lawsuit,” the school board retained the legal services of high-priced attorneys in Washington, D.C. and New York.¹⁹⁷ In a “David-versus-Goliath” scenario, the board’s *twelve* attorneys pursued an aggressive litigation-by-motion and litigation-by-deposition strategy, overwhelming the pro bono law firm’s two attorneys with hundreds of filings and discovery requests and numerous motions and appeals.¹⁹⁸

Despite the merits of the case’s factual allegations, many of which were later validated by both sets of NYSED monitor reports, the defendants’ legal strategy effectively stunned the case before a jury could ever be empaneled. Successful motions chiseled away

¹⁹² Mareesa Nicosia, *East Ramapo sells Hillcrest for use as yeshiva again*, LOHUD (Nov. 25, 2014), <https://www.lohud.com/story/news/education/2014/11/25/east-ramapo-sells-hillcrest-school/70114646/>.

¹⁹³ Josh Nathan-Kazis, *In N.Y. Town, Orthodox and Locals Vie for School Control*, FORWARD (Apr. 27, 2011), <http://forward.com/news/137312/in-ny-town-orthodox-and-locals-vie-for-school-cont/>.

¹⁹⁴ Class Action Complaint, *supra* note 176, at 62 (emphasis added).

¹⁹⁵ *Id.* at 65 (emphasis added).

¹⁹⁶ *Id.* at 69.

¹⁹⁷ *Id.* at 83. See *E. Ramapo Cent. Sch. Dist. v. N.Y. Schs. Ins. Reciprocal*, No. 600963/13, 2015 WL 13450097 (Sup. Ct. Nassau Cty. June 11, 2015). See also *Montesa v. Schwartz*, 836 F.3d 176, 190 (2d Cir. 2016).

¹⁹⁸ See *E. Ramapo Cent. Sch. Dist. v. N.Y. Schs. Ins. Reciprocal*, No. 600963/13, 2015 WL 13450097 (Sup. Ct. Nassau Cty. June 11, 2015).

at the plaintiffs' case, particularly over issues of which members of the class had standing to pursue, until the only remaining classes of plaintiffs remaining were student-plaintiffs pursuing Establishment Clause claims and taxpayer-plaintiffs.¹⁹⁹

The proverbial nail in the coffin was delivered by the Second Circuit. Appealing from the District Court's decision that student-plaintiffs had standing, the Second Circuit reversed Judge Seibel's holding and found that student-plaintiffs "lack standing to assert their Establishment Clause claims because they are only indirectly affected by the conduct alleged to violate the Establishment Clause."²⁰⁰ The Circuit Court noted that:

[A] plaintiff will have direct exposure standing in at least the following circumstances: when (1) a plaintiff is personally constrained or otherwise subject to control under a governmental policy, regulation, or statute grounded in "religious" tenet or principle (e.g., a statute that directly precludes plaintiff from conducting business on Sunday); or (2) a plaintiff is personally confronted with a government-sponsored religious expression that directly touches the plaintiff's religious or non-religious sensibilities. In both situations, it is a plaintiff's interaction with or exposure to the religious object of the challenged governmental action that gives rise to the injury.²⁰¹

The court rejected the plaintiffs' standing argument based on allegations that "they were deprived of educational services because public funds, which otherwise would have been available to them, were diverted to an unconstitutional purpose."²⁰² The court stated that "[t]he Student-Plaintiffs' injury is too far removed, too attenuated, from the alleged unconstitutional component of funneling public monies to support the advancement of Orthodox Hasidic Jewish schools to constitute the type of injury cognizable and compensable as the result of an Establishment Clause violation."²⁰³ Further, the court noted that "Student-

¹⁹⁹ *Id.* at *4.

²⁰⁰ *Montesa v. Schwartz*, 836 F.3d 176, 194 (2d Cir. 2016).

²⁰¹ *Id.* at 197.

²⁰² *Id.* at 198.

²⁰³ *Id.* at 199.

Plaintiffs have abandoned their Equal Protection claim and, other than in a passing reference to increasing school segregation, they do not assert that experiencing a segregated school system contributes to their injury.”²⁰⁴ Finding the student-plaintiffs to have no standing to pursue any claims, the Circuit Court ordered the District Court to “dismiss the Student-Plaintiffs’ claims against all defendants.”²⁰⁵ Shortly thereafter, the remaining taxpayer-plaintiffs voluntarily withdrew their claims and thus, the entire lawsuit after striking a deal with the defendants: the defendants would not pursue attorney’s fees (or other counterclaims) against plaintiffs, if the suit were dropped entirely.²⁰⁶

However, the *Montesa* defendants were not *personally* worried about *their* attorney’s fees (which were well into the seven-figures by the end of litigation), because either the district or the district’s insurance company had been covering the cost of their defense.²⁰⁷ Initially, the school board’s insurance company attempted to disclaim coverage with regards to the *Montesa* action.²⁰⁸

In disclaiming coverage, the insurer relied in part upon the exclusion for fraudulent, dishonest, malicious, criminal and intentional acts. On the same date that the insurer disclaimed coverage, the board members held a special meeting and adopted a resolution to retain counsel to defend the individual board members in the *Montesa* action.²⁰⁹

²⁰⁴ *Id.* at 200.

²⁰⁵ *Id.* at 201.

²⁰⁶ Letter from Laura Dawn Barbieri, Lead Attorney for Plaintiff, Advocates for Justice, to U.S. Dist. Judge Cathy Seibel, U.S. Dist. Court for the S. Dist. of N.Y.

[P]laintiffs’ counsel has spoken to the core group of taxpayer plaintiffs in the litigation and obtained their respective consents to voluntarily dismiss the remainder of the claims, with prejudice, and to execute general releases. Contingent upon executed releases, the parties have agreed not to seek costs or attorneys fees from each other, as well.

Id.

²⁰⁷ See GREENBERG, *supra* note 43, at 27.

²⁰⁸ *E. Ramapo Cent. Sch. Dist. v. N.Y. Schs. Ins. Reciprocal*, No. 600963/13, 2015 WL 13450097, at *1 (Sup. Ct. Nassau Cty. June 11, 2015).

²⁰⁹ *Id.* at *1–*2.

The school board sued the insurance company to recoup legal fees up through March 12, 2014, but failed in state supreme court.²¹⁰ In his decision, Judge Stephen A. Bucaria of Nassau County found that “the time expended and rates charged were excessive.”²¹¹ Judge Bucaria held that “[a] reasonable fee for the legal services provided is \$187,500,” and the insurance company was compelled to reimburse the district accordingly.²¹² Yet the school board’s legal fees had swelled to over two million dollars by then and the school district was on the hook for the balance.²¹³ In a case of bitter irony, the class action lawsuit brought on behalf of public school students who had been shortchanged and deprived of a sound basic education, ultimately allowed the school board to spend *more money* on its own interests.

D. SUMMATION

The East Ramapo public school community’s political and legal battles against the Hasidic-led school board has been a zero-sum game, with the board arguably winning every round. NYSED has dissected the district with a microscope some multiple times, yet the status quo remains.²¹⁴ Legislators proposed a bill that was, save for Hasidic “bloc vote” special interests, nearly universally-praised. Yet these special interests torpedoed the effort to give the school board a necessary check on its seemingly absolute power.²¹⁵ Legal challenges have proven fruitless, and in a warped sense, self-sabotaging further shortchanging the same students suing for being shortchanged.²¹⁶ It is a Kafkaesque situation, with no silver bullet solutions. There are, however, some measured steps that ought to be taken, which have the ability to slightly tip the scales. These are discussed in Part V.

²¹⁰ *Id.* at *2.

²¹¹ *Id.* at *4.

²¹² *Id.*

²¹³ Janie Rosman, *Judge: East Ramapo School District Overpaid Lawyers More Than 1,000%!!!*, ROCKLAND COUNTY TIMES (July 30, 2015), <http://www.rocklandtimes.com/2015/07/30/judge-east-ramapo-school-district-overpaid-lawyers-more-than-1000/>.

²¹⁴ See Letter from James P. DeLorenzo, *supra* note 187.

²¹⁵ See Michael Bongiorno, *Politics and the East Ramapo School District: Profiles in Cowardice*, PRESERVE RAMAPO (July 11, 2015), <http://preserve-ramapo.com/no-the-east-ramapo-lawsuit-has-not-been-dismissed/>.

²¹⁶ See GREENBERG, *supra* note 43, at 37.

PART IV: THE LEGAL STATUS OF HASIDIC YESHIVAS

A. *The Quality (or Absence) of Secular Education in Hasidic Yeshivas*

It's nearly incontrovertible that the Hasidic-led school board has benefited Hasidic yeshivas at the expense of public schools. Whether rightly or wrongly, district spending toward Hasidic yeshivas (e.g., through transportation costs, special education funding, or Title-funding allocation) has increased while public schools have borne the brunt of "draconian" budget cuts.²¹⁷ Yet what often gets overlooked is the simple fact that, just like their public-school counterparts, students in Hasidic Yeshivas are *also* often denied a sound basic education. But unlike the deprivation of sound basic education in the public schools, caused in part by a lack of fiscal resources, the denial of a sound basic education in Hasidic Yeshivas appears to have little to do with the availability of money and more to do with a purposeful disregard of and distaste toward secular education.²¹⁸

At the heart of Hasidic culture is often a rejection of secularism and modernity. Hasidic "distinctions in language, dress, hairstyle, and demeanor serve Hasidim as personal boundaries, protecting the separation of an individual Hasid from the secular world."²¹⁹ Moreover, the "mother tongue" of the Hasidic community, Yiddish, separates Hasidim from other non-Hasidic Jews:

Hasidim also maintain a language barrier against the non-Hasidic world. Just as Hasidic dress serves as a visual marker of separation, so the sound of Yiddish serves as an aural one. . . . The rebbe communicates with his Hasidim in Yiddish, Yiddish is taught in school, and used for explication and study of Hebrew sacred texts. . . . The stricter sects, Satmar, for instance, place little value on the study

²¹⁷ Calhoun, *supra* note 50.

²¹⁸ *A Life Apart: Hasidism in America*, PBS, http://www.pbs.org/alifeapart/intro_3.html (last visited Apr. 20, 2018). Under the First Amendment, Hasidic parents have the right to free exercise of their religion, and by extension, the right to educate their children outside of public schools. See *Wisconsin v. Yoder*, 406 U.S. 205 (1972). However, unlike the Amish in *Yoder*, Hasidic Yeshivas receive taxpayer funding (thereby attaching the obligation to follow education law) and the Hasidic community does not reject public welfare benefits. *A Life Apart*, *supra*.

²¹⁹ *A Life Apart*, *supra* note 218.

of English.²²⁰

This is evident in the Hasidic enclaves of New Square, Kaser and Kiryas Joel, where street signs are in Yiddish.²²¹ Hasidic communities are, by and large, “cradle to grave” in the sense that many community members “conduct their entire lives in . . . Yiddish” and by design seek “total social segregation” from the outside world.²²² Unsurprisingly then, Hasidic yeshivas in the especially insular enclaves of the Satmar, Skverer, and Viznitz communities often deliberately fail to provide a sound basic education to Hasidic children.²²³ As a result:

The average young Hasidic man leaves the Yeshiva system completely unprepared to work in – or interact with – the world outside his community. The average Yeshiva graduate: speaks little or no English; has few or no marketable skills; earns a household income well below the average New Yorker’s; marries young and has many children; and is forced to rely upon public assistance to support his large family.²²⁴

Thus, there is an inherent cycle of poverty for a community that eschews secular studies and modernity, and is heavily reliant on government subsidy programs, such as food stamps, Section 8 housing, and Medicaid.²²⁵ This vicious cycle is compounded by the fact that Hasidic yeshivas in East Ramapo receive little to no oversight from the school board²²⁶ despite receiving district

²²⁰ *Id.*

²²¹ See *Montage: When the pursuit of all things suburban becomes a religion, Part II*, AM. DIRT (Mar. 9, 2015), <http://dirtamericana.com/2015/03/montage-suburban-haredi-religion-part-ii/> (showing pictures of signs and labeled public vehicles from the Village of Kiryas Joel featuring Yiddish).

²²² See, e.g., David N. Myers & Nomi Stolzenberg, *Rethinking Secularization Theory: The Case of the Hasidic Public Square*, AJS PERSP. 37, 37 (Spring 2011).

²²³ See Adrienne Sanders, *Some E. Ramapo yeshivas fail to prepare pupils in secular studies*, LOHUD (Sept. 16, 2015, 9:57 PM), <http://www.lohud.com/story/news/investigations/2015/09/16/east-ramapo-yeshivas/32482729/>.

²²⁴ Alisa Partlan, et al., *Non-Equivalent: The State of Education in New York City’s Yeshivas*, YAFFED 5 (Sept. 2017), https://d3n8a8pro7vhmx.cloudfront.net/yaffed/pages/116/attachments/original/1523680597/Yaffed_Report_online_version.pdf?1523680597.

²²⁵ *Id.* at 6.

²²⁶ Jane Lerner, *FBI probe raises questions about yeshiva funding*, LOHUD (Mar. 18, 2016), <http://www.lohud.com/story/news/local/2016/03/18/yeshiva->

funding, and that the New York State Education Department (NYSED) has appeared simply unwilling or unable to enforce existing education laws that mandate a sound basic education for all students.²²⁷

Despite the Hasidic community's insular nature, it has long been an open secret that Hasidic yeshivas, often willfully, fail to provide a sound basic education. There is a distinct divide between East Ramapo's public and private school communities because the school board is controlled by officials from the Hasidic community whose children attend privately run yeshivas, and "board members have effectively diverted significant public-school funding to private schools" within the area.²²⁸ Recently, there are signs that oversight of yeshivas may improve; however, due to a lack of manpower to track specific programs within the yeshivas, over the past few years "secular studies have worsened."²²⁹

According to a report prepared by the Young Advocates for Fair Education (YAFFED), an advocacy group committed to improving educational curricula within yeshivas, "[t]he average Hasidic boy learns only basic English reading, writing, and arithmetic, for ninety minutes a day, four days a week, from age seven to age twelve."²³⁰ "After he turns thirteen, he spends twelve hours a day in yeshiva but learns only Judaic studies—no English, no math, no science, [and] no history. . . ."²³¹ This assessment is corroborated by the autobiography of Shulem Deen, a former resident of New Square who was literally "kicked out" of the community and permanently separated from his children after becoming more interested in the secular world and less interested in Skver Hasidism.²³² Deen's first-hand recount offered a lens into a community, and its schools, that is often deliberately obscured from the outside world. Deen's recollection of participating in a Title-funded tutoring program underscores the lack of both

funding-ramapo-raids/81923928/.

²²⁷ See, e.g., Jennifer Miller, *Yiddish isn't Enough: A Yeshiva Graduate Fights for Secular Studies in Hasidic Education*, N.Y. TIMES (Nov. 21, 2014), <https://www.nytimes.com/2014/11/23/nyregion/a-yeshiva-graduate-fights-for-secular-studies-in-hasidic-education.html>. See also Yoav Gonen, *City stalls on probe into secular education at Hasidic schools*, N.Y. POST (Mar. 20, 2017, 5:35 PM), <http://nypost.com/2017/03/20/city-stalls-on-probe-into-secular-education-at-hasidic-schools>.

²²⁸ Fattal, *supra* note 114; Sanders, *supra* note 223.

²²⁹ Sanders, *supra* note 223.

²³⁰ Partlan et al., *supra* note 224, at 4.

²³¹ *Id.*

²³² See SHULEM DEEN, ALL WHO GO DO NOT RETURN: A MEMOIR 104 (2015).

oversight and secular education in yeshivas:

“The government,” [Gavriel, an administrator at New Square’s yeshiva, Avir Yaakov] said, “has a program for tutoring students.” Title something or other. They’ll pay thirteen dollars an hour.” . . .

“Is this a scam?” I asked.

Gavriel gave me a wary glance. “Not at all. The rebbe doesn’t allow any more scams.”

There’d been problems in the past, with fraudulent use of government programs. Four men, including Gavriel himself, were given prison sentences, ranging from several months to six years. . . .

“Because this is a government program, you’ll have to fill out progress reports,” [Gavriel] went on, looking around at our bemused faces. “For each student, you fill out a sheet describing how the student is doing. You’ll need to be creative. Write how the student is doing in math, or English, or social studies—”

“We’re tutoring math and English and social studies?”

Gavriel looked at me as if I were a child. “Of course not,” he said, “But the government doesn’t pay for religious studies.”²³³

With no apparent evidence to the contrary, if both YAFFED and Deen’s accounts are true, this suggests these Hasidic yeshivas are noncompliant with New York State educational law. This raises the following serious questions: first, why are noncompliant yeshivas allowed to continue operating despite failing to provide a sound basic education; and second, why are noncompliant yeshivas receiving taxpayer funding through the East Ramapo budget or government programs such as the Title I?

The seemingly obvious answer is that New York’s educational laws, mandating a “substantially equivalent” secular education in yeshivas, are either being unenforced or are simply unenforceable. In other words, the laws as written have no teeth. The latter is seemingly the case, as evidenced by a New York State Assembly bill proposed in 2016. The bill would:

²³³ *Id.*

[E]nforce laws that require religious schools to teach secular subjects. . . .

[G]ive teeth to existing legislation that already requires nonpublic schools to teach subjects similar to those taught in public schools. . . .

[R]equire nonpublic schools to submit reports to the state to prove they provide instruction that is “substantially equivalent” to what is given at public schools, and would give the State Education Department the power to investigate and punish schools that don’t meet equivalency standards.²³⁴

The bill, offered by the same East Ramapo legislators who had introduced the defeated veto-empowered monitor bill the year prior, met by harsh resistance from the Hasidic community; in particular, from the leader of the Satmar sect.²³⁵ Grand Rabbi Aaron Teitelbaum, speaking in Kiryas Joel, stated,

We should pray every day these evil doers should not lay their hands on the Jewish children here in America. . . . If New York passes this proposed law, Lord have mercy over what will happen. . . . The worldview taught in public school, it’s hard to even bring it to my mouth.²³⁶

The bill gained no traction in either the 2016 or 2017 legislative sessions.

A. The Outlook for the Hasidic Communities of East Ramapo

If the status quo prevails, and thousands of Hasidic children continue to be deprived a sound basic education, it appears unlikely that the Hasidic communities of East Ramapo will break the cycle of poverty that ensnares them. Despite the immense political power the Hasidic community holds both locally and statewide, little to no resources are being devoted to providing or enhancing secular education offered in Hasidic yeshivas. Perhaps it is inaccurate to state that Hasidic students in East Ramapo have

²³⁴ Josh Nathan-Kazis, *Satmar Rebbe Rails Against Secular Education Bill; Moderate Groups Stay Silent*, FORWARD (May 12, 2016), <http://forward.com/news/340568/satmar-rebbe-rails-against-secular-education-bill-moderate-groups-stay-sile/>.

²³⁵ *Id.*

²³⁶ *Id.*

been benefiting at the expense of public school students because educational cuts have occurred across both public and private, secular and religious lines. Regardless of religion, the system appears to be rigged, and not to the benefit of any student.

Illustrating this point is the state of Title funding in the district. NYSED audited East Ramapo's handling of Title-funded programs in yeshivas in 2015, programs such as free and reduced lunches, where the auditors found "\$725,616 in non-salary expenditures that should not have been charged to the school lunch fund for a period between July 1, 2010 through June 30, 2015."²³⁷ In other words, there appears to be an environment in which taxpayer dollars flow to yeshivas with little to no accountability.

The Community Outreach Center, a Hasidic organization headed by Rabbi Jacob Horowitz, has a contract with the Hasidic-led East Ramapo school board for the purpose of managing and disbursing Title funding to yeshivas.²³⁸ Despite a crumbling public school system and the apparent failure of Title programming in yeshivas, the Community Outreach Center is given millions of dollars annually in Title funding.²³⁹ According to a 2011 contract between the school board and Horowitz, the Community Outreach Center is "entitled to receive administrative costs for its administration of the Title I program in an amount not to exceed seven percent of the total amount paid for the nonpublic Title I program that goes to programs operated by [Community Education Center, an arm of the Community Outreach Center]."²⁴⁰ The contract locked in this seven percent commission through 2014, after which the contract was renewed and remains in effect unchanged.²⁴¹

This seven percent administrative cut is comparative to a hedge fund manager's annual management fee because it is a fixed percentage regardless of performance. Horowitz is the fund manager, the Community Outreach Center is the hedge fund, and taxpayers are the investors. Yet unlike an actual hedge fund from which investors may divest following poor performance, taxpayers

²³⁷ OFFICE OF AUDIT SERVS., N.Y. STATE EDUC. DEP'T, AUDIT REPORT: EAST RAMAPO CENTRAL SCHOOL DISTRICT FOR THE PERIOD JULY 1, 2010 THROUGH JUNE 30, 2015 2 (2016).

²³⁸ See Class Action Complaint, *supra* note 176, at ¶ 37.

²³⁹ *Id.* at ¶ 37, ¶ 39.

²⁴⁰ See Exhibit 4 at 2, *Montesa v. Schwartz*, No. 7:12-CV-6057-CS (S.D.N.Y. Aug. 08, 2012).

²⁴¹ See *id.*

appear stuck footing this perpetually unfair investment.

Demographic studies do not indicate that a large, or even minor, portion of the Hasidic community is foreign-born.²⁴² Indeed, it appears that many if not most children in Hasidic yeshivas are at least second, third, or fourth-generation Americans.²⁴³ Thus, it appears that the high number of “Limited English Proficient” students in Hasidic yeshivas is a self-created problem compared to the limited English proficiency in immigrant groups attending public schools in East Ramapo. The latter being students who struggle to learn English because of the defunding of such services in the public school system. The NYSED has “documented patterns of fiscal and organizational mismanagement by the East Ramapo Central School District Board of Education;” which show that the Board had diverted substantial funds from the public school budget, “for expenses such as excess transportation and special education costs for thousands of children attending private religious schools,” that had the effect of severe cuts to teaching staff in public schools for English, art, music, and foreign language.²⁴⁴ In January 2016, East Ramapo parents filed a petition asking the Supreme Court of New York State to compel the NYSED and the State Education Commissioner to intervene, and have since appealed to the Appellate Division of the Supreme Court of New York.²⁴⁵

With their own tax dollars, taxpayers appear to be funding and sustaining an “educational” environment that produces a vicious cycle in which Hasidic students are denied a sound English education, unable to achieve success in higher education, severely limited in their economic potential, becoming dependent on taxpayer-funded services, and have their next generation

²⁴² According to demographic studies, the town of Ramapo, Rockland County, has an average of 22.2% (2012–2016) of foreign-born individuals, and out of a population of 136,235 (2016) 90,000 identify as Jewish. *QuickFacts Ramapo Town, New York*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/ramapotownrocklandcountynewyork,NY/PST045217#viewtop>; *Hudson Valley: Rockland*, N.Y. STATE, <https://www.ny.gov/counties/rockland#> (last visited Apr. 20, 2018).

²⁴³ See Partlan et al., *supra* note 224, at 52.

²⁴⁴ Sharon Krengel, *East Ramapo Parents Continue to Press for State Intervention*, EDUC. L. CTR. (Jan. 10, 2018), <http://www.edlawcenter.org/news/archives/new-york/east-ramapo-parents-continue-to-press-for-state-intervention.html>.

²⁴⁵ *Id.* See *Regulations Concerning English Language Learners/Multilingual Learners*, N.Y. STATE EDUC. DEP’T, <http://www.nysed.gov/bilingual-ed/regulations-concerning-english-language-learnersmultilingual-learners> (last visited Apr. 23, 2018).

repeating the same pattern.

How long can this vicious cycle last before the entire system implodes? How long are politicians going to accept that second, third, and fourth-generation Hasidic parents are failing to teach their own children English? How long are taxpayers expected to believe that they should pay for programs that misleadingly purport to teach English as a second language to the children of insular religious sects that prefer to speak Yiddish as its first and perhaps only language, while similarly impoverished children of immigrants in East Ramapo's public schools yearn to learn English to make the most of their parents' American dream? With a school board perpetuating this cycle and Albany seemingly looking the other way, it's as if this coupling of educational deprivation and taxpayer funding is just "too big to fail."

PART V: POSSIBLE SOLUTION – WARD VOTING

At the heart of East Ramapo's decline and continued failure to provide sound basic educations to all students is a fundamental imbalance of political capital between the public-school community and the Hasidic community. The public-school community is politically handicapped by the community's large contingent of non-citizen immigrant voters, as evidenced by a consistent rise in enrollment of ELL students into the public-school system.²⁴⁶ The Hasidic community, on the other hand, is fully enfranchised and wields a sufficient demographic advantage to continue its absolute-majoritarian hold on local elections.²⁴⁷ Growing at an exponential rate, it is likely that the Hasidic community will continue to outnumber East Ramapo's communities of color, even if all members of the public-school community were enfranchised.

A potential solution, one embedded in existing federal statutory framework and case law,²⁴⁸ is to replace the district's current at-large method of voting with a ward system. This system would be one in which voters, acting within specified geographic boundaries, each elect a school board member to represent their respective wards, or voting districts. Currently, the Hasidic communities of Kaser and New Square alone command enough votes to effectively

²⁴⁶ See WALCOTT ET AL., *supra* note 77, at 4.

²⁴⁷ See Nathan-Kazis, *supra* note 16.

²⁴⁸ See *Thornburg v. Gingles*, 478 U.S. 30, 43–46 (1986) (discussing the history of section 2 of the Voting Rights Act of 1965 and its ability to protect minority voters).

sweep at-large elections.²⁴⁹ While communities of color in Spring Valley, on the other hand, are unable to meaningfully obtain results at the ballot box. A ward system would properly enfranchise these politically disenfranchised communities of color by reducing the dilution effect that the Hasidic “bloc vote” has on the public-school community’s electoral capability.

Section 2 of the Voting Rights Act of 1965 provides:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color. . . .

(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.²⁵⁰

The Supreme Court in *Thornburg v. Gingles*²⁵¹ determined three pre-conditions to a successful challenge to at-large voting under section 2 of the Voting Rights Act, where (i) the minority group must be “sufficiently large and geographically compact to constitute a majority in a single-member district”; (ii) it must be “politically cohesive”; and (iii) the “majority” must vote

²⁴⁹ Steve Lieberman, *The state of Ramapo: Looking ahead, putting the past in the past*, LOHUD (Jan. 17, 2018, 3:12 PM), <https://www.lohud.com/story/news/local/rockland/2018/01/17/state-ramapo-looking-ahead-putting-past-past/1019827001/>.

²⁵⁰ 52 U.S.C. § 10301 (2012).

²⁵¹ *Gingles*, 478 U.S. at 30.

“sufficiently as a bloc to enable it--in the absence of special circumstances,” to defeat the minority’s preferred candidate.²⁵² The Second Circuit has held that satisfying all three *Gingles* factors is necessary, but not sufficient, and that a “totality of the circumstances test” is further required to determine whether at-large voting “impairs the ability of . . . [minority] voters to participate equally in the political process.”²⁵³ Such a totality of the circumstances evaluation involves a “searching practical evaluation of the ‘past and present’ reality.”²⁵⁴ The Senate Report that accompanied the 1982 amendments under Section 2 provides factors relevant to this inquiry. These are similarly germane to the “past and reality” of East Ramapo, including, “the extent to which voting in the elections of the state or political subdivision is racially polarized;” “the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;” and “whether there is significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.”²⁵⁵

Factually-similar case law exists both in East Ramapo’s jurisdiction and across the country which support a legal challenge, under Section two of the Voting Rights Act, to the school district’s at-large system of voting.²⁵⁶ The Second Circuit has previously endorsed replacing an at-large system with a six-district plan, holding that “six reasonably compact districts that are normal in shape and approximately equal in size of population” would “respect[] local community boundaries” and is “narrowly tailored to the goal of remedying the vote dilution.”²⁵⁷ Similarly, *United States v. Village of Port Chester*²⁵⁸ found that the Westchester

²⁵² *Id.* at 50–51.

²⁵³ *NAACP v. City of Niagara Falls*, 65 F.3d 1002, 1007 (2d Cir. 1995) (alteration in original).

²⁵⁴ *Gingles*, 478 U.S. at 45.

²⁵⁵ *Goosby v. Town Bd.*, 956 F. Supp. 326, 330 (E.D.N.Y. 1997). *See also*, S. REP. NO. 97-417, at 28–29 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 177, at 206–07.

²⁵⁶ *See United States v. Charleston Cty.*, 365 F.3d 341, 344 (4th Cir. 2004) (applying the *Gingles* factors to find that the County’s at-large system of voting was in violation of section 2 of the Voting Rights Act).

²⁵⁷ *Goosby v. Town Bd.*, 180 F.3d 476, 498 (2d Cir. 1999).

²⁵⁸ *United States v. Vill. of Port Chester*, 704 F. Supp. 2d 411, 453 (S.D.N.Y. 2010).

village's "at large voting scheme for electing its Board of Trustees . . . violated Section 2 of the Voting Rights Act[] . . . [by] prevent[ing] Hispanic voters from participating equally in the political process in the Village."²⁵⁹ Furthermore, the Third and Eight Circuits have also adjudicated similar Voting Rights Acts claims, producing holdings consistent with that of the Second Circuit.²⁶⁰

Applying *Gingles* and the Second Circuit's guidance to the situation in East Ramapo, it is clear that the communities of color in Spring Valley would effectively constitute a majority in a single-member ward; that the public-school community is politically cohesive; and that the Hasidic majority does indeed vote sufficiently as a bloc to enable it to defeat the minority's preferred candidates. This is evident from the 2016 school board election, in which three seats held by the Hasidic-led majority were retained by the Hasidic led-majority.²⁶¹ Hasidic-preferred candidates outperformed public-school-preferred candidates in two Hasidic majority districts: Kakiat, where the Hasidic candidates won by an average of ninety-seven percent of the vote; and Ramapo, where the Hasidic candidates won by an average of ninety-three percent of the vote.²⁶² Comparatively, in the public school districts of Summit Park, Kurtz Center, Margetts, Chestnut Ridge, and Hempstead, the challenging candidates won the majority of the votes; through there was a clear voting deficit in those five school districts.²⁶³ A ward that is comprised of voting districts, within which public-school candidates of that district would have a majority, would remedy this apparent Voting Rights Act violation. The case for a ward system is further bolstered by the purpose of the protection behind section two, stated in the aforementioned Senate Report, which is to "protect the right of minority voters to

²⁵⁹ *Id.* at 453.

²⁶⁰ *See, e.g., Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1123 (3d. Cir. 1993) ("The correct question is not whether white voters demonstrate an unbending or unalterable hostility to whoever may be the minority group's representative of choice, but whether, as a practical matter, the usual result of the bloc voting that exists is the defeat of the minority-preferred candidate."). *Cf. Harvell v. Blytheville Sch. Dist. No. 5*, 71 F.3d 1382, 1396 (8th Cir. 1995) (finding that absent proof of sufficient polarized white bloc voting, section two relief under the Voting Rights Act should be denied).

²⁶¹ *See Annual Budget & Trustee Vote, E. RAMAPO CENT. SCH. DISTRICT* (May 17, 2016), http://www.ercsd.org/files/_TeB7q_/9b9c47d58a7e6d173745a49013852ec4/Official_Vote_Results_-_05-17-16.pdf.

²⁶² *See id.*

²⁶³ *Id.*

be free from election practices, procedures or methods, that deny them the same opportunity to participate in the political process as other citizens enjoy.”²⁶⁴ Additionally, a comparison shows the situation in East Ramapo satisfies the factors expressed in the aforementioned Senate Report. It is wholly incontrovertible both that the public-school community “bear[s] the effects of discrimination in . . . education,” and that there is a “significant lack of responsiveness” on the part of the Hasidic-led school board “to the particularized needs” of the public-school community.²⁶⁵

CONCLUSION

Although a ward system of voting could finally give the public-school community a seat—that is, a *singular* seat—on the school board, a few questions remain. First, *is a ward system enough to make a meaningful difference?* It seems unlikely, if not entirely impossible, that the public-school community could effectively impact decision-making at the school board level facing an eight-to-one majority. Second, *how does this account for the past decade-plus of educational deprivation?* In short, it does not and it cannot. The “inestimable toll” of the school district’s decline on the thousands of students who have matriculated through the district’s public schools and yeshivas is irreversible. Third, *can anything really change?*

The emergency in East Ramapo underscores a massive failing on the part of both the legal and political systems in New York, and the United States as a whole. The laws as written are either unenforceable or ineffective, and proposed legislation is stymied by power-brokers eager to retain the status quo. Federal education prerogatives, bolstered by sound case law, are blunted by New York’s home rule. Fifty-seven years after *Brown v. Board of Education*,²⁶⁶ the “opportunity of an education” is denied separately, but equally to both public school students of color and Hasidic yeshiva students. The tragedy that is East Ramapo begets generations of students trapped in this vicious cycle of education deprivation and poverty.

²⁶⁴ S. REP NO. 97-417, at 28 (1982), as reprinted in 1982 U.S.C.C.A.N. 177, at 206.

²⁶⁵ *Goosby v. Town Bd.*, 956 F. Supp. 326, 330 (E.D.N.Y. 1997).

²⁶⁶ *Brown v. Bd. of Educ.*, 344 U.S. 1 (1952).