

1 **UNITED STATES COURT OF APPEALS**  
2 **FOR THE SECOND CIRCUIT**

3  
4 August Term, 2015

5  
6 (Argued: November 2, 2015 Decided: September 12, 2016)

7  
8 Docket Nos. 14-3721-cv, 14-3771-cv, 14-3811-cv  
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11 REBECCA MONTESA, individually and as a parent and natural guardian of C.W.,  
12 E.W. and N.W., infants, MARIE JEAN BAPTISTE, individually and as a parent and  
13 natural guardian of PJB, DJB, and DJB, infants, ISRAEL MEDIUA, individually and  
14 as a parent and natural guardian of H.M., infant, MARC E. DORSANVIL,  
15 individually and as a parent an natural guardian of M.D. and N.D., infants,  
16 MARTINE NARCISSE, RONALD ROSEMOND, individually and as a parent and  
17 natural guardian A.L., infant, MARLENE ISRAEL, individually and as a parent and  
18 natural guardian of B.I. 1 and B.I. 2, infants, KERLINE LOUIS, individually and as a  
19 parent and natural guardian of KL and RL, infants, YOLENE HIPPOLYTE,  
20 individually and as a parent and natural guardian of I.H. 1, I.H. 3 and R.H.,  
21 infants, MARIE SOMISE LOUIS, individually and as a parent and natural guardian  
22 of S.L., infant, KRYSTAL WILSON, individually and as a parent and natural  
23 guardian of E.W. and M.E., infants, PAUL ROONEY, individually and as a parent  
24 and natural guardian of DR, and JR, infants, NASIK ELAHI, individually and as a  
25 parent and natural guardian of K.E. and S.E., infants, DONIQUE JOHNSON,  
26 individually and as a parent and natural guardian of D.J., infant, BETTY  
27 CARMAND, individually and as a parent and natural guardian of D.E, J.E., and  
28 S.E., infants, ROSENAY JACQUES, individually and as parents and natural  
29 guardians of J.J., C.J., and A.L., infants, ELZA JACQUES, individually and as  
30 parents and natural guardians of J.J., C.J., and A.L., infants, LANA RHEUBOTTOM,  
31 individually and as a parent and natural guardian of J.R., infant, HIRAM RIVERA,  
32 individually and as a parent and natural guardian of A.R. and T.R., infants,  
33 STEVEN WHITE, individually, collectively and as parents and natural guardians of  
34 A.W., infant, EMILIA WHITE, individually, collectively and as parents and natural  
35 guardians of A.W., infant, RAMONA JONES, individually and as a parent and  
36 natural guardian of Y.J., E.J., G.J., and T.J., infants, WILMA GLOVER-KOOMSON,

1 individually and as a parent and natural guardian of F.K., infant, YOLANDA  
2 WHITE, CHRISTOPHER MESIBOV, individually and as parents and natural  
3 guardians of J.M. 1, and J.M. 2, infants, DONNA MESIBOV, individually and as  
4 parents and natural guardians of J.M. 1, and J.M. 2, infants, ALFRED COLE,  
5 individually and as a taxpayer residing within the East Ramapo Central School  
6 District, ROBERT MALEBRANCHE, individually and as a taxpayer residing within  
7 the East Ramapo Central School District, LORRAINE ALCIMAS, individually and as  
8 a taxpayer residing within the East Ramapo Central School District, IREUS  
9 REGINAL, individually and as a taxpayer residing within the East Ramapo  
10 Central School District, EMMANUEL ALEXIS, individually and as a taxpayer  
11 residing within the East Ramapo Central School District, OVID COLAS,  
12 individually and as a taxpayer residing within the East Ramapo Central School  
13 District, KIM FOSKEW, LENTZ EUGENE, individually and as a taxpayer residing  
14 within the East Ramapo Central School District, LENARD SAINVIL, individually  
15 and as a parent and natural guardian of C.B. and W.B., infants, FRANKY SANVIL,  
16 individually and as a taxpayer residing within the East Ramapo Central School  
17 District, ADOLFINA MARTINEZ, individually and as a parent and natural guardian  
18 of C.M. and E.M., infants, MONESE THEODORE, individually and as a parent and  
19 natural guardian of R.T., infant, LANA AUGUSTE, individually and as a parent and  
20 natural guardian of SA, infant, LILANA WILSON-ORTA, individually and as  
21 parents and natural guardians of SW, and AO, infants, ANTHONY ORTA,  
22 individually and as parents and natural guardians of SW, and AO, infants,  
23 KIMBERLY COLLICA-FOX, individually and as a parent and natural guardian of  
24 A.C. and R.C., infants, MALLORY JOHNSON, individually and as a parent and  
25 natural guardian of A.L., infant, BEVERLY JONES, individually and as a parent and  
26 natural guardian of T.S., infant, KENICE HIBBERT, individually and as a parent  
27 and natural guardian of E.P., infant, LITIA HAGANS, individually and as a parent  
28 and natural guardian of D.C. and D.S., infants, BEVERLY PATTERSON WATSON,  
29 individually and as a parent and natural guardian of J.W., infant, FLAMBERT  
30 TELUSCA, individually, collectively and as parents and natural guardians of F.T.  
31 and S.T., infants, ENELLE PIERRE, individually and as a parent and natural  
32 guardian of C.P., J.P. and K.P., infants, ANNE CARMAND-LUNDI, individually and  
33 as a parent and natural guardian of A.S. and PL., infants, LEVY CAZEAU,  
34 individually and as a parent and natural guardian of T.C., infant, MARIE JOSY  
35 JEAN-BAPTISTE, individually and as a parent and natural guardian of HJB, JJB,  
36 and JJB, infants, ANNIE CRUDOP, individually and as a taxpayer residing within

1 the East Ramapo Central School District, JULIA THOMPSON, individually and as a  
2 taxpayer residing within the East Ramapo Central School District, KENNETH  
3 ISAACS, individually and as a taxpayer residing within the East Ramapo Central  
4 School District, Peter Sharpe, individually and as a taxpayer residing within the  
5 East Ramapo Central School District, FRANTZIE LAMARRE-CHAM, individually  
6 and as a parent and natural guardian of MC, MC, and MC, infants, DORIAN  
7 BUTCHER, individually and as a parent and natural guardian of S.B., infant,  
8 MARGARET TUCK, individually and as a parent and natural guardian of J.A.,  
9 infant, REGINALDA BRUNO, individually and as a parent and natural guardian of  
10 S.A., infant, RETTVIE JOURDAIN, individually and as a parent and natural  
11 guardian of P.D., infant, MARIA FLORES-MARTINEZ, individually and as a parent  
12 and natural guardian of A.M., infant, PEARLINE WRAY, individually and as a  
13 parent and natural guardian of R.M., infant, SHARON PARKER, individually and  
14 as a parent and natural guardian of A.P., infant, BOILEAU MEHU, individually,  
15 collectively and as a parents and natural guardians of C.M., F.M. and K.M.,  
16 infants, MARTHO FERDINAND, individually and as parents and natural guardians  
17 of WL and BL, infants, JEAN BERNADIN LAGUERRE, individually and as parents  
18 and natural guardians of WL and BL, infants, LAMARTINE LARAME, individually  
19 and as a parent and guardian of L.L. 1 and L.L. 2, infants, ETHENE LARAME,  
20 individually and as a parent and natural guardian of I.L., J.L. and R.L., infants,  
21 PATRICK JEANBAPTISTE, individually and as a parent and guardian of PJ JR., DJ  
22 and DPJ, infants, MARIE MATHELUS, individually and as a parent and natural  
23 guardian of A.M., infant, MARIE AURELUS, individually and as a parent and  
24 guardian of C.A. and J.A., infants, JEAN-RENE VICSAMA, individually and as a  
25 parent and natural guardian of F.V. and R.V., infants, LUCIENNE SAINT FORT,  
26 individually and as a legal guardian of D.P., H.R. and M.P., infants, VELLA  
27 MARDY-ARRE, individually and as a parent and natural guardian of R.M., infant,  
28 RONY JACQUES, individually and as a parent and natural guardian of M.J., T.J.  
29 and T.R.J., infants, LISA ROSS, individually and as a parent and natural guardian  
30 of DR, infant, LISA MEYERS, individually and as a parent and natural guardian of  
31 S.M., infant, GEORGES DELALEU, individually and as a parent and natural  
32 guradian of D.C., infant, BENITA GILES, individually and as a parent and a natural  
33 guardian of B.G., infant, PATRICIA COLLINS, individually and as a parent and  
34 natural guardian of J.C. and J.M., infants, DEMERUANT C. LOUISTHELMY,  
35 individually and as a parent and natural guardian of D.L., M.L., and R.L., infants,  
36 SERGO BEAUBOEUF, individually and as a parent and natural guardian of M.M.,

1 infant, JUNIE CLAUTAIRE, individually and as a parent and natural guardian of  
2 C.C., J.J. and T.C., infants, ADELE FORTUNE, individually, collectively and as  
3 parents and natural guardians of T.F., infants, JOCELIN NOEL, individually and as  
4 a parent and natural guardian of E.N. and J.N., infants, ROLAND ALEXANDRE,  
5 individually, collectively and as a parent and natural guardian of D.A., E.A. and  
6 Z.A., infants, PRESLER LOUIS-JUSTE, individually and as a parent and natural  
7 guardian of ELJ, and PLJ, infants, ANNA NARCISSE, individually and as a legal  
8 guardian of JF and AM, infants, HARVEY WILLIAMS, individually and as a legal  
9 guardian of M.A. and M.J., infants, JESULA AUGUSTE, individually and as a  
10 taxpayer residing within the East Ramapo Central School District, PIERRE  
11 DESROSIERS, individually and as a parent and natural guardian of C.D., infant,  
12 JULIETTE JEAN KERNOSAINT, individually, GEROLD ST. BRICE, individually,  
13 MICHELLE LARAME, individually and as a taxpayer residing within the East  
14 Ramapo Central School District, JERISON LORA, individually and as a taxpayer  
15 residing within the East Ramapo Central School District, MAGDA DESDUNES,  
16 individually and as a parent and natural guardian of O.D., infant, PATRICIA  
17 JOURDAIN, individually and as a taxpayer residing within the East Ramapo  
18 Central School District, DESHAWN PARKER, individually and as a taxpayer  
19 residing within the East Ramapo Central School District, RUSSELL BISHOP,  
20 individually and as a taxpayer residing within the East Ramapo Central School  
21 District, OSWALD DUBOIS, individually, COLIN GRANT, individually and as a  
22 taxpayer residing within the East Ramapo Central School District, KENNETH  
23 BOLT, individually and as a taxpayer residing within the East Ramapo Central  
24 School District, CHRIS BIBBINS, individually and as a taxpayer residing within the  
25 East Ramapo Central School District, JOANNE CHERIMOND, individually and as a  
26 taxpayer residing within the East Ramapo Central School District, MELVERLEEN  
27 BULLOCK, individually and as a parent and natural guardian of C.B., infant,  
28 CLEAVON BULLOCK, individually, ROBERT JAMES, individually and as a taxpayer  
29 residing within the East Ramapo Central School District, EDENS ZULME,  
30 individually and as a taxpayer residing within the East Ramapo Central School  
31 District, REBECCA ADJETEY, individually and as a taxpayer residing within the  
32 East Ramapo Central School District, RAYSHON RETTWAY, individually, MAGDA  
33 PIERRE-LOUIS, individually and as a taxpayer residing within the East Ramapo  
34 Central School District, TATIANA PIERRE-LOUIS, individually and as a taxpayer  
35 residing within the East Ramapo Central School District, MARIEE COMEAU,  
36 individually and as a taxpayer residing within the East Ramapo Central School

1 District, AKA MARLEE COMEAU, GERALD CHEREMEANT, individually and as a  
2 taxpayer residing within the East Ramapo Central School District, ARTHUR  
3 MONDESTIN, individually and as a taxpayer residing within the East Ramapo  
4 Central School District, RAYSHON PETTWAY, individually and as a taxpayer  
5 residing within the East Ramapo Central School District, SYBIL BEACH EDWARDS,  
6 individually and as a parent and natural guardian of A.E., infant, ANTONIO  
7 MIGUEL, individually and as a parent and natural guardian of A.M., infant,  
8 JUDITH DESIR, individually and as a parent and natural guardian of J.S, infant,  
9 ENLUS VIERGELINE, VIERGELINE ENLUS individually and as a parent and natural  
10 guardian of GJ, MJ, infants, NAJA WILSON, individually and as a parent and  
11 natural guardian of ET, ET and ET, infants, DYNAA LATURE, individually and as a  
12 parent and natural guardian of D.D., infant, MINNIE WILSON, individually and as  
13 a parent and natural guardian of I.W., infant, FAMILLA EPPS, individually and as  
14 a parent and natural guardian of J.E., infant, PRUDENCE WRAY, individually and  
15 as a parent and natural guardian of NR and GM, infants, DONNA GARCES,  
16 individually and as a parent and natural guardian of S.G., infant, INGRID RENER,  
17 individually and as a parent and natural guardian of BE, and AE, and LE,  
18 infants, ODNY EUGENE, individually and as a parent and natural guardian of J.E.,  
19 infant, JEAN R. MARSEILLE, individually, JADIA DORCELLY, individually, BADIO  
20 DOSSELAINE, individually, ROBERT BADIO, individually and as a taxpayer residing  
21 within the East Ramapo Central School District, PIERRE LOUIS CYNILLE,  
22 individually, MURIELLE GUERIN, individually and as a parent and natural  
23 guardian of M.G., infant, FERDILUS DIEUDONNE, individually and as a parent and  
24 natural guardian of JF, CF, and AF infants, ALINE TELUSCA, individually,  
25 collectively and as parents and natural guardians of, F.T. and S.T., infants, PAUL  
26 LARAME, individually and as a parent and natural guardian of, V.L., infant,  
27 VALQUISE LOUIS JACQUES, individually and as a parent and natural guardian of  
28 A.L., infant, MARIE ROSE MICHEL, individually and as a parent and natural  
29 guardian Y.M., infant, NADEGE DORCELLY, individually and as a taxpayer  
30 residing within the East Ramapo Central School District, SERGO PIERRE,  
31 individually and as a parent and natural guardian of A.P., infant, CADET SAUVAL,  
32 individually and as a parent and natural guardian of A.S., infant, TONY  
33 MARSEILLE, individually and as a parent and natural guardian of E.M., infant,  
34 MARIE LOUIS, individually, collectively and as parents and natural guardians of  
35 S.L., infant;, JUDSON LOUIS, individually, collectively and as parents and natural  
36 guardians of S.L., infant;, YOLENE BONNY, individually and as a parent and

1 natural guardian of APJ and PJ, infants, JULIA DERIVAL, individually and as a  
2 parent and natural guardian of S.D., infant, LINDA R. GILBERT, individually and  
3 as a parent and natural guardian of WG, DG, and JG, infants, DIEVLIN ST.  
4 GERMAIN, individually and as a taxpayer residing within the East Ramapo  
5 Central School District, MATHIE DIEJUSTE, individually, CLAUDE DORCELLY,  
6 individually and as a taxpayer residing within the East Ramapo Central School  
7 District, MARIE LAFONTANT, individually and as a parent and natural guardian of  
8 S.D., infant, LAGUERRE CICERON, individually, MARIE ROSE EXHAUTES,  
9 individually and as a taxpayer residing within the East Ramapo Central School  
10 District, DAPHKAR FLEURIS, individually and as a taxpayer residing within the  
11 East Ramapo Central School District, Peggy Floyd, individually and as a parent  
12 and natural guardian of S.F., infant, LOUIS WHARTON, individually and as a  
13 graduate of the East Ramapo Central School District, COURTNEY JOYCE,  
14 individually, BLANDINE LAROQUE, individually and as a parent and natural  
15 guardian of S.M., infant, JOSEPH CHARLES CLERVEAUX, individually and as a  
16 parent and natural guardian of C.C., infant, JEAN JEAN CHARLES, individually  
17 and as a parent and natural guardian of D.C., infant, MARIE NICOLE DESCAS,  
18 individually, collectively and as parents and natural guardians of N.D. and S.D.,  
19 infants, EUGENIE EUGENE, individually and as a parent and natural guardian of  
20 A.R. 1 and A.R. 2, infants, CARMELLE MEHU, individually, collectively and as a  
21 parents and natural guardians of C.M., F.M. and K.M., infants, U. JOSIE  
22 ALEXANDRE, individually and as a parent and natural guardian of ZA, DA and  
23 EA, infants, SHELOMITHE JEAN, individually and as a current student age 18 or  
24 older in the East Ramapo Central School District, PATRICIA DESROCHES,  
25 individually and as a graduate of the East Ramapo Central School District,  
26 DARLENE LAUTURE, individually and as a parent and natural guardian of BL and  
27 AL, infant, RUTH ARCHANGE, individually and as a parent and natural guardian  
28 of J.L. and R.L.1 and R.L.2, infants, EMMANUEL AUGUSTIN, individually and as a  
29 parent and natural guardian of E.A., K.A., M.A., and S.A., infants, BERTHANE  
30 ANTOINE, individually and as a taxpayer residing within the East Ramapo  
31 Central School District, MARILIA MONTILUS, individually and as a parent and  
32 natural guardian of S.M., infant, MARK GRIFFITH, JR., individually, MEGHAN C.  
33 FITZGERALD, individually and as a parent and natural guardian of S.C., infant,  
34 JUDY KARIUS, individually and as parents and natural guardians of F.K.; infant,  
35 MATT KARIUS, individually and as parents and natural guardians of F.K.; infant,  
36 ADOLPHE LUBIN, individually and as a graduate of the East Ramapo Central

1 School District, AGLA PIERRE, individually, collectively and as parents and  
2 natural guardians of G.P. infant, GESNER PIERRE, individually, collectively and as  
3 parents and natural guardians of G.P. infant, ALEXANDRA JOACHIM, individually  
4 and as a parent and natural guardian of S.J. infant, ALEXANDRA VOLCY,  
5 individually and as a parent and natural guardian of S.P. infant, ALLISSIA  
6 BASQUIAT, individually and as a graduate of the East Ramapo Central School  
7 District, AMANDA BLAND, individually and as a parent and natural guardian of  
8 A.R. 1 and A.R. 2, infants, AMIONNE CHARLES, individually and as a taxpayer  
9 residing within the East Ramapo Central School District, ANDREA NIEDELMAN,  
10 individually and as a parent and natural guardian of A.N. and T.N., infants,  
11 ANGELA JORDAN, individually and as a parent and natural guardian of R.P.,  
12 infant, ANISE MACK, individually and as current student age 18 or older of the  
13 East Ramapo Central School District, ANISHA CARRASQUILLO, individually and as  
14 a parent and natural guardian of A.M. infant, ANITA CUNNINGHAM, individually  
15 and as a taxpayer residing within the East Ramapo Central School District,  
16 ANNAJEAN FRANCOIS, individually and as a taxpayer residing within the East  
17 Ramapo Central School District, ANNE DIEUJUSTE, individually and as a taxpayer  
18 residing within the East Ramapo Central School District, ANNEBETHE GUILLAME-  
19 FISH, individually and as a parent and natural guardian of S.P., infant, ANNIE F.  
20 WILSON, individually and as a parent and natural guardian of S.W., infant,  
21 ANNIE THOMSPON, individually and as a taxpayer residing within the East  
22 Ramapo Central School District, ANSELME HUGUETTE, individually and as a  
23 parent and natural guardian of A.B. and E.B., infants, ANTHONY GOULD,  
24 individually and as a parent and natural guardian of A.N. and T.N., infants,  
25 ANTONIO ETIENNE, individually and as a parent and natural guardian of B.E. and  
26 C.E., infants, ARKITE FELIX, individually and as a taxpayer residing within the  
27 East Ramapo Central School District, ASSETNE BERNARD, individually and as a  
28 taxpayer residing within the East Ramapo Central School District, BARBARA  
29 TURNER, individually and as a parent and natural guardian of L.E., infant,  
30 BETHANI JONES, individually and as a parent and natural guardian of J.J.1, J.J.2  
31 and J.L., infants, BEVERLY PAIGE, individually and as a parent and natural  
32 guardian of D.C., infant, BILL MACK, individually and as a parent and natural  
33 guardian of A.M. and J.M., infants, BONNY YOLENE, individually and as a parent  
34 and natural guardian of A.J. and P.J., infants, BRENNAH HARRISON, individually  
35 and as a parent and natural guardian of N.S., infant, CARIDA PETIT-NAN,  
36 individually and as a parent and natural guardian of J.P. and S.P., infants, CARL

1 JENKINS, individually and as a parent and natural guardian of T.J., infant, CARLA  
2 JOHNSON, individually and as a parent and natural guardian of L.R., infant,  
3 CARLO JOSEPH, individually and as a parent and natural guardian of C.J., J.J., and  
4 R.J., infants, CARMEL FEDE, individually and as a taxpayer residing within the  
5 East Ramapo Central School District, CARMELLE JUSTINE-MOREAU, individually  
6 and as a taxpayer residing within the East Ramapo Central School District,  
7 CAROL SEC, individually and as a taxpayer residing within the East Ramapo  
8 Central School District, CASEY CICERON, individually and as a taxpayer residing  
9 within the East Ramapo Central School District, CATHERINE TELLEZ, individually  
10 and as a parent and natural guardian of J.L., infant, CERIL CAYO, individually  
11 and as a parent and natural guardian of B.C., D.C. and R.C., infants, CHANTAL  
12 JEAN, individually and as a parent and natural guardian of S.B., infant, CHARLES  
13 LOUVIERE, individually and as a parent and natural guardian of J.L., infant,  
14 CHERI PARIS-HUDSON, individually, collectively and as parents and natural  
15 guardian of C.H. infant, JOHN HUDSON, individually, collectively and as parents  
16 and natural guardian of C.H. infant, CHRISTINA DUNCAN, individually,  
17 collectively and as parent and natural guardian of C.D. and S.D., infants, RYAN  
18 DUNCAN, individually, collectively and as parent and natural guardian of C.D.  
19 and S.D., infants, CHRISTINA LOSIER, individually and as a graduate of the East  
20 Ramapo Central School District, CHRISTINIA PATTERSON, individually and as a  
21 parent and natural guardian of D.B. and M.B., infants, CICERON LAGUERRE,  
22 individually and as a taxpayer residing within the East Ramapo Central School  
23 District, CINDY SEVIER, individually and as a parent and natural guardian of J.S.1  
24 and J.S.2, infants, CONSTANT FRIEND, individually and as a parent and natural  
25 guardian of N.F., infant, COURTNEY J. JASMIN, individually and as a taxpayer  
26 residing within the East Ramapo Central School District, CRAIG BEITAL,  
27 individually and as a parent and natural guardian of D.B., infant, DANIEL PIERRE  
28 MAURICE, individually and as a parent and natural guardian of D.M. and J.M.,  
29 infants, DAVID MCCRAY, individually and as a taxpayer residing within the East  
30 Ramapo Central School District, DAWN HOLNESS, individually, collectively and  
31 as parents and natural guardians of D.H. infant, EROLL HOLNESS, individually,  
32 collectively and as parents and natural guardians of D.H. infant, DEBRAH BROWN,  
33 individually and as a parent and natural guardians of D.B., infant, DEMENTRIUS  
34 HOLMES, individually and as a taxpayer residing within the East Ramapo Central  
35 School District, DENISE BALTHAZAR, individually and as a parent and natural  
36 guardian of D.B., infant, DENISE DEL VALLE, individually and as a parent and



1 natural guardian of L.J. and P.J., infants, DIEUDONNE FERDILUS, individually and  
2 as a parent and natural guardian of A.F. and C.F., J.F., K.F. and S.F., infants,  
3 DOMINIQUE REMY, individually and as a graduate of the East Ramapo Central  
4 School District, DONOVAN DUNKLEY, individually and as a graduate of the East  
5 Ramapo Central School District, DOROTHY ROONEY, individually and as a  
6 taxpayer residing within the East Ramapo Central School District, DOSSELAIN  
7 BADIO, individually and as a taxpayer residing within the East Ramapo Central  
8 School District, DOUGLAS CANTOR, individually and as a parent and natural  
9 guardian of Z.C., infant, EDWARD MEDINA, JR., individually and as a parent and  
10 natural guardian of J.M., infant, ELDA GOUBOTH, individually and as a taxpayer  
11 residing within the East Ramapo Central School District, ELDINE CICERON,  
12 individually and as a taxpayer residing within the East Ramapo Central School  
13 District, EMMA SUBIAO-DIZON, individually and as a parent and natural guardian  
14 of M.D., infant, ENID LAMBERT, individually and as a parent and natural  
15 guardian of A.M., infant, ENLUS VIERGELINE, individually and as a parent and  
16 natural guardian of G.J. and M.J., infants, ENNEDY BASQUIAT, individually and as  
17 a taxpayer residing within the East Ramapo Central School District, ESPERA  
18 EMMANUEL, individually and as a taxpayer residing within the East Ramapo  
19 Central School District, ESTEL CADET, individually and as a parent and natural  
20 guardian of A.C., infant, ESTHER DURANDICE, individually and as a taxpayer  
21 residing within the East Ramapo Central School District, ETONNANTE JOSEPH,  
22 individually and as a parent and natural guardian of R.J., infant, FANNIE  
23 ONABANJO Q, individually and as a parent and natural guardian of D.B., infant,  
24 FARA ST.FLEUR, individually and as a taxpayer residing within the East Ramapo  
25 Central School District, FATIMA DARLENE CANICO, individually and as a taxpayer  
26 residing within the East Ramapo Central School District, FELICIA EVANS,  
27 individually and as a parent and natural guardian of C.E. and M.E., infants,  
28 FLORE ST.LOUIS, individually and as a parent and natural guardian of V.S., infant,  
29 FRANCENA HEYWARD, individually and as a parent and natural guardian of M.C.  
30 and M.S., infants, FRANCIS JAMAR, individually and as a parent and natural  
31 guardian of H.G., I.G. and N.G., infants, FRANCKEL M. JOSEPH, individually and  
32 as a taxpayer residing within the East Ramapo Central School District, FRANCOIS  
33 BEVOLUS, individually and as a taxpayer residing within the East Ramapo  
34 Central School District, FRANDY GEORGES, individually and as a taxpayer  
35 residing within the East Ramapo Central School District, FRED MICHEL,  
36 individually and as a taxpayer residing within the East Ramapo Central School

1 District, GARFIELD WALKER, individually and as a parent and natural guardian of  
2 A.W. and J.W., infants, GENIESE THEAGENE, individually and as a parent and  
3 natural guardian of S.F., infant, BAUDLAFRE THEAGENE, individually and as a  
4 parent and natural guardian of S.F., infant, GERRY DEDIVITIS, individually and as  
5 a parent and natural guardian of N.D., infant, GINA M. DUNCAN, individually  
6 and as a graduate of the East Ramapo Central School District, GLADYS CAYO,  
7 individually and as a parent and natural guardian of M.P. and S.J., infants,  
8 GLORIA KEY, individually and as a parent and natural guardian of A.K., S.K. and  
9 T.K., infants, GUY CHARLES, individually and as a parent and natural guardian of  
10 A.C., M.C. and T.C., infants, ILLYANA DEJEAN, individually and as a parent and  
11 natural guardian of M.F., infant, INGRID BOUCICANT, individually and as a  
12 graduate of the East Ramapo Central School District, INGRID PENA, individually  
13 and as a parent and natural guardian of A.E., B.E. and C.E., infants, ISENIELA  
14 JEAN CHARLES, individually and as a graduate of the East Ramapo Central School  
15 District, JACQUELINE GRANNUM, individually and as a parent and natural  
16 guardian of N.G.1, N.G.2 and N.G.3, infants, JAMES GULIFIELD, individually and  
17 as a parent and natural guardian of J.G., Q.G. and Q.G.2, infants, JANAY JORDAN,  
18 individually and as a parent and natural guardian of J.F., infant, JEAN  
19 BELLANTOU, individually and as a graduate of the East Ramapo Central School  
20 District, JEAN BOUCICANT, individually and as a graduate of the East Ramapo  
21 Central School District, JEAN CLAUDE AUGUSTE, individually, collectively and as  
22 parents and natural guardians of S.A., infant, LANA AUGUSTE, individually,  
23 collectively and as parents and natural guardians of S.A., infant, JEAN DENIS,  
24 individually and as a parent and natural guardian of W.D., A.D. and S.D.,  
25 infants, JEAN JOSEPH, individually and as a parent and natural guardian of J.J.  
26 and K.J., infants, JEAN MARIO VIL, individually, collectively and as parents and  
27 natural guardians of R.V., infant, MARIMENE VIL, individually, collectively and as  
28 parents and natural guardians of R.V., infant, JEAN WILSON JOCELIN, individually  
29 and as a parent and natural guardian of S.J., infant, JEFHTEY CAJUSTE,  
30 individually and as a parent and natural guardian of K.R., infant, JERMAINE  
31 WALKER, individually and as a parent and natural guardian of I.W., N.W. and  
32 T.W., infants, JESITA CICERON, individually and as a graduate of the East Ramapo  
33 Central School District, JOCELINE SHANGASE, individually and as a parent and  
34 natural guardian of D.S., infant, JOEL GUE, individually and as a graduate of the  
35 East Ramapo Central School District, JOHN BOYKIN, individually and as a  
36 graduate of the East Ramapo Central School District, JOHN MILES, individually

1 and as a parent and natural guardian of X.M., infant, JOHNBERRY BADIO,  
2 individually and as a graduate of the East Ramapo Central School District, JORGE  
3 MONTANO, individually and as a parent and natural guardian of G.M., infant,  
4 JOSEPH CHARLES, individually and as a graduate of the East Ramapo Central  
5 School District, JOSEPH FLEURANT, individually and as a graduate of the East  
6 Ramapo Central School District, JOSETTE FRANCOIS, individually and as a  
7 graduate of the East Ramapo Central School District, JUANA SANTIAGO,  
8 individually and as a parent and natural guardian of C.G., infant, JUCANGE  
9 GASPORD, individually and as a graduate of the East Ramapo Central School  
10 District, JUDITH ISRAEL, individually and as a graduate of the East Ramapo  
11 Central School District, JUDITH JOHN-ROBINSON, individually and as a parent and  
12 natural guardian of L.R. and P.R., infants, JULYSSE ALEXANDRE, individually and  
13 as a graduate of the East Ramapo Central School District, JUSTIN BUDDE,  
14 individually and as a graduate of the East Ramapo Central School District,  
15 KALICHA CAMERON, individually and as a parent and natural guardian of K.C.  
16 and O.C., infants, KATHLEEN CANCIO, individually and as a graduate of the East  
17 Ramapo Central School District, KATHLEEN D. CASTOR, individually and as a  
18 graduate of the East Ramapo Central School District, KATHRIN BALL, individually  
19 and as a parent and natural guardian of K.J. and L.J., infants, KATHRYN KARIUS,  
20 individually and as a graduate of the East Ramapo Central School District,  
21 KATIANA SAME, individually and as a graduate of the East Ramapo Central  
22 School District, KATRINA GRIGSBY, individually and as a parent and natural  
23 guardian of K.G., infant, KELLY SCOTT, individually and as a graduate of the East  
24 Ramapo Central School District, KERNEY OBY, individually, collectively and as  
25 Grandparents and natural guardians of D.O., infant, SANDRA OBY, individually,  
26 collectively and as Grandparents and natural guardians of D.O., infant, KETNA  
27 FRENEL FORESTAL, individually and as a parent and natural guardian of D.F.1,  
28 D.F.2 and K.F., infants, KIMBERLY TREVISAN, individually and as a parent and  
29 natural guardian of K.T., S.T., V.T.1 and V.T.2., infants, KRISTEN RABELER,  
30 individually and as a parent and natural guardian of S.O., infant, LACHANDA  
31 JOHNSON, individually and as a parent and natural guardian of R.J., infant,  
32 LAGUERRE BERNADIN, individually and as a parent and natural guardian of B.L.  
33 and W.L., infants, LAMARRE BEAUVAIS, individually and as a graduate of the East  
34 Ramapo Central School District, LATASHA D. EVANS, individually and as a parent  
35 and natural guardian of O.J. and R.F., infants, LATICIA THEZAN, individually and  
36 as a parent and natural guardian of C.T. and J.T., infants, LATTICHA ACKERMAN,

1 individually and as a parent and natural guardian of D.A. and J.J., infants, LEON  
2 CAYO, individually, collectively and as parents and natural guardians of I.C.,  
3 infant, MONA CAYO, individually, collectively and as parents and natural  
4 guardians of I.C., infant, LINDA HARVEY, individually and as a parent and natural  
5 guardian of B.H. and T.H., infants, LISA GOLDBERG, individually and as a parent  
6 and natural guardian of B.M., G.G., M.G. and S.M., infants, LISA PHILLIPS,  
7 individually and as a parent and natural guardian of O.P., infant, LOCITA PIERRE,  
8 individually and as a parent and natural guardian of C.E., infant, LORA FULLARD,  
9 individually and as a graduate of the East Ramapo Central School District, LOUIS  
10 JEAN JACQUES, individually and as a parent and natural guardian of J.J., infant,  
11 LUCY BROCKS, individually and as a graduate of the East Ramapo Central School  
12 District, MACK ROBERTS, individually and as a parent and natural guardian of  
13 S.L. and T.B., infants, MAE OLA MCGILL, individually and as a parent and natural  
14 guardian of T.L., infant, MANUEL PALMA, individually, collectively and as  
15 parents and natural guardians of C.P., J.P., and M.P., infants, MAYRA PALMA,  
16 individually, collectively and as parents and natural guardians of C.P., J.P., and  
17 M.P., infants, MARC-AUGUSTE DESERT, individually and as a graduate of the East  
18 Ramapo Central School District, MARCUS EXANTUS, individually and as a  
19 graduate of the East Ramapo Central School District, MARGUEDALA LAHENS,  
20 individually and as a parent and natural guardian of I.L. and M.L., infants, JEAN  
21 EMMANUEL LAHENS, individually and as a parent and natural guardian of I.L.  
22 and M.L., infants, MARIA SINGH, individually and as a parent and natural  
23 guardian of E.S., infant, PATRICK JEAN BAPTISTE, individually, collectively and as  
24 parents and natural guardians of D.J.1 and D.J.2 and P.J., infants, MARIE  
25 CADICHON, individually and as a graduate of the East Ramapo Central School  
26 District, MARIE CAIZON, individually and as a graduate of the East Ramapo  
27 Central School District, MARIE CHARLES, individually and as a graduate of the  
28 East Ramapo Central School District, MARIE CLERVEAUX, individually and as a  
29 graduate of the East Ramapo Central School District, MARIE JOSEPH, individually  
30 and as a graduate of the East Ramapo Central School District, MARIE KATTY  
31 DORELEUS, individually and as a graduate of the East Ramapo Central School  
32 District, MARIE LEONARD, individually and as a parent and natural guardian of  
33 A.L., infant, MARIE THERES LUBIN, individually and as a parent and natural  
34 guardian of A.L.1, A.L.2, B.L. and S.L., infants, MARIE Y DELPE MANBRUN,  
35 individually and as a graduate of the East Ramapo Central School District,  
36 MARION GRANT, individually and as a graduate of the East Ramapo Central

1 School District, MARLENE SANCHEZ, individually and as a parent and natural  
2 guardian of R.F., infant, MARTHA SAINT FORT, individually and as a graduate of  
3 the East Ramapo Central School District, MARY HAYES, individually, collectively  
4 and as parents and natural guardians of Z.H., infant, MARY JAMES GIBSON,  
5 individually, collectively and as parents and natural guardians of K.C., infant,  
6 MARYANN WILLIAMS, individually and as a parent and natural guardian of C.W.,  
7 K.W., O.W., and T.W., infants, MATHIEU DIEUJUSTE, individually and as a  
8 taxpayer residing within the East Ramapo Central School District, MICHAEL  
9 LAKES, individually and as a parent and natural guardian of A.L., infant,  
10 MICHELE LOVELL, individually and as a parent and natural guardian of I.L.,  
11 infant, MINI JACOB, individually and as a parent and natural guardian of J.J.1 and  
12 J.J.2., infants, MONA LEGER, individually and as a parent and natural guardian of  
13 M.L. and S.L., infants, MYRTHO FERDINAND, individually and as a parent and  
14 natural guardian of B.L. and W.L., infants, NADIA DORCELLY, individually and as  
15 a taxpayer residing within the East Ramapo Central School District, NAMOI  
16 JOSEPH, individually and as a parent and natural guardian of M.R., infant, NANA  
17 TWUM, individually and as a taxpayer residing within the East Ramapo Central  
18 School District, NANCY TOUSSAINT, individually, collectively and as parents and  
19 natural guardians of H.T., infant, RAPHAEL TOUSSAINT, individually, collectively  
20 and as parents and natural guardians of H.T., infant, NAOMI BAHLE, individually  
21 and as a taxpayer residing within the East Ramapo Central School District,  
22 NAOMI LEGERME, individually and as a taxpayer residing within the East  
23 Ramapo Central School District, NAOMY LAGUERRE, individually and as a parent  
24 and natural guardian of D.B. and J.A., infants, NATALIE SANCHEZ, individually  
25 and as a parent and natural guardian of A.S., C.S. and M.S., infants, NESLIE  
26 CADET ALTUME, individually and as a taxpayer residing within the East Ramapo  
27 Central School District, NICOLAS MONTANO, individually and as a taxpayer  
28 residing within the East Ramapo Central School District, NICOLE RAPHINO,  
29 individually and as a parent and natural guardian of A.M., A.P. and M.M.,  
30 infants, ONIKKA WHITEHEAD, individually and as a parent and natural guardian  
31 of E.W. and I.W., infants, ORICHA HERNANDEZ, individually and as a taxpayer  
32 residing within the East Ramapo Central School District, ORLANDO LORVEUS,  
33 individually and as a parent and natural guardian of A.L., D.L. and J.L., infants,  
34 OSNY EXANTUS, individually and as a taxpayer residing within the East Ramapo  
35 Central School District, PAMELA HILL, individually and as a parent and natural  
36 guardian of K.W.1 and K.W.2, infants, PAMELA SIMPSON, individually and as a

1 parent and natural guardian of Q.W., infant, PATRICIA BYNUM, individually and  
2 as a taxpayer residing within the East Ramapo Central School District,  
3 PHYNESCHEA SHAARIEFEREL, individually and as a parent and natural guardian of  
4 J.J. and T.J., infants, PIERRE LOUIS CYNILLE, individually and as a taxpayer  
5 residing within the East Ramapo Central School District, PRISCILLA BROWN,  
6 individually and as a parent and natural guardian of A.A., infant, PRUCILE  
7 VALEUS, individually, collectively and as parents and natural guardians of E.V.,  
8 N.V. and R.V., infant, RAQUEL NEWELL, individually and as a parent and natural  
9 guardian of H.N., infant, RAQUEL PAUL, individually and as a graduate of the  
10 East Ramapo Central School District, RASHEED JERIMIE, individually and as a  
11 taxpayer residing within the East Ramapo Central School District, RAYMONDE  
12 BEAUVAIS, individually and as a taxpayer residing within the East Ramapo  
13 Central School District, REBEA GRARDA, individually and as a taxpayer residing  
14 within the East Ramapo Central School District, REGINE TAYETTE, individually  
15 and as a parent and natural guardian of M.M., infant, RICKEY MCGILL,  
16 individually and as a parent and natural guardian of R.M. and S.M., infants,  
17 ROBERT MCGEE, individually and as a parent and natural guardian of R.M.,  
18 infant, ROBERT YOUNG, individually and as a parent and natural guardian of R.Y.,  
19 infant, MARIE JOSIE ALEXANDRE, individually, collectively and as parents and  
20 natural guardians of D.A., E.A. and Z.A., infants, ROSELAURE FLEURANTIN,  
21 individually and as a parent and natural guardian of R.F. and S.F., infants, ROSE  
22 FRASER, individually and as a taxpayer residing within the East Ramapo Central  
23 School District, ROWSON BOIRON, individually and as a graduate of the East  
24 Ramapo Central School District, RUBIN JOANUS, individually and as a parent and  
25 natural guardian of B.J. and G.J. and P.J., infants, RUTH LAUTURE-WALKER,  
26 individually and as a parent and natural guardian of J.L., M.L. and O.L., infants,  
27 SAHARA EVANS, individually and as a graduate of the East Ramapo Central  
28 School District, SANTANA ALLARD, individually and as a parent and natural  
29 guardian of J.S. and S.A., infants, SERETTE LAURENT, individually and as a parent  
30 and natural guardian of A.C., infant, SHARON BRYANT, individually and as a  
31 taxpayer residing within the East Ramapo Central School District, SHEILA  
32 JACKSON, individually and as a parent and natural guardian of S.J., infant, SHEILA  
33 JEFFRIES, individually and as a parent and natural guardian of A.J. and J.J.,  
34 infants, SHERINE GORDON, individually and as a parent and natural guardian of  
35 B.L.1 and B.L.2, infants, SHIRLEY JACKSON, individually and as a parent and  
36 natural guardian of T.W., infant, SIABHAIN SNEAD, individually and as a parent

1 and natural guardian of C.B. and T.B., infants, SONIA B. WATKINS, individually  
2 and as a parent and natural guardian of G.W., infant, STEPFON MCCRAY,  
3 individually and as a graduate of the East Ramapo Central School District,  
4 STEPHANIE KARIUS, individually and as a graduate of the East Ramapo Central  
5 School District, STEPHANIE LAURENT, individually and as a parent and natural  
6 guardian of G.M.1 and G.M.2., infants, STERLING INZAR, individually, collectively  
7 and as parents and natural guardians of DI. and T.I., infants, LORRAINE INZAR,  
8 individually, collectively and as parents and natural guardians of DI. and T.I.,  
9 infants, SYLVIE PIERRE, individually and as a parent and natural guardian of E.P.,  
10 infant, TAMME WHITAKER, individually and as a parent and natural guardian of  
11 R.W., infant, TERREL ACKERMAN, individually and as a graduate of the East  
12 Ramapo Central School District, TERRY BYNUM, individually and as a parent and  
13 natural guardian of A.B. and D.B., infants, TJKDALEM ARSA ARTHA, individually  
14 and as a taxpayer residing within the East Ramapo Central School District,  
15 TRACY HARRIS, individually and as a parent and natural guardian of C.H., E.H.  
16 and N.H., infants, ULANA WILSON-ORTA, individually, collectively and as parents  
17 and natural guardians of A.O. and S.W., infant, ANTHONY WILSON-ORTA,  
18 individually, collectively and as parents and natural guardians of A.O. and S.W.,  
19 infant, VERONA GREY, individually and as a graduate of the East Ramapo Central  
20 School District, VERONICA LEVEILLE, individually and as a parent and natural  
21 guardian of C.L., L.L., R.K., and S.L., infants, VICTORIA COPELAND, individually  
22 and as a parent and natural guardian of D.C., infant, VICTORIA JEAN CHARLES,  
23 individually and as a graduate of the East Ramapo Central School District,  
24 VIRGINIA HARRIS, individually and as a parent and natural guardian of T.H.,  
25 infant, VITAL JOSEPH, individually, collectively and as parents and natural  
26 guardians of S.J., infant, TANYA JOSEPH, individually, collectively and as parents  
27 and natural guardians of S.J., infant, WELMIR FRANCOIS, individually and as a  
28 graduate of the East Ramapo Central School District, WILBUR STUART,  
29 individually and as a graduate of the East Ramapo Central School District,  
30 WILLARD BODIE, individually and as a parent and natural guardian of D.W.,  
31 infant, WILLIAM TYNES, individually, collectively and as parents and natural  
32 guardians of D.S. and D.T., infants, TEAL YVETTE TYNES, individually, collectively  
33 and as parents and natural guardians of D.S. and D.T., infants, WILLIAM FLLOYD,  
34 individually and as a parent and natural guardian of J.F., infant, CHARLES-  
35 PIERRE, individually and as a taxpayer residing within the East Ramapo Central  
36 School District, YOLANDA BARHAM, individually and as a parent and natural

1 guardian of D.O., infant, YOLANDA NAVARRO, individually and as a parent and  
2 natural guardian of R.P., infant, YOLANDE PANIAGUE, individually and as a  
3 parent and natural guardian of L.H. and O.H., infants, YOLENE ALTIDOR,  
4 individually and as a taxpayer residing within the East Ramapo Central School  
5 District, YONEL CADICHON, individually and as a taxpayer residing within the  
6 East Ramapo Central School District, YVELOURD TREVIL, individually and as a  
7 parent and natural guardian of Y.T., infant, YVETA BELANGE, individually,  
8 collectively and as parents and natural guardians of E.B. and Y.B., infants, HARRY  
9 BELANGE, individually, collectively and as parents and natural guardians of E.B.  
10 and Y.B., infants, YVONNE LORINCE, individually and as a parent and natural  
11 guardian of S.L., infant; on behalf of a class of similarly situated persons, on  
12 behalf of themselves and on behalf of the East Ramapo Central School District,  
13 TAISHA PAQUIOT, individually and as a parent and natural guardian of P.D.,  
14 infant, CAROLD FORTUNE, individually, collectively and as parents and natural  
15 guardians of T.F., infants, FRANKY SAINVIL, individually and as a taxpayer  
16 residing within the East Ramapo Central School District, LISA MYERS,  
17 individually and as a parent and natural guardian of S.M., infant, SAMESON  
18 DESCAS, individually, collectively and as parents and natural guardians of N.D.  
19 and S.D., infants, CARME MEHU, individually and as a graduate of the East  
20 Ramapo Central School District, MARJORIE METELLUS, individually and as a  
21 parent and natural guardian of I.C., infant, HARRIET CHAMBERS, individually and  
22 as a parent and natural guardian of A.J., J.C. and R.C., infants,  
23

24 *Plaintiffs-Appellees,*

25 - v. -

26  
27 DANIEL SCHWARTZ, YEHUDA WEISSMANDL, MOSES FRIEDMAN, MOSHE HOPSTEIN,  
28 ELIYAHU SOLOMON, ARON WIEDER, MORRIS KOHN, RICHARD STONE, JOEL KLEIN,  
29 ELIEZER WIZMAN, ALBERT D'AGOSTINO, NATHAN ROTHSCHILD,  
30

31 *Defendants-Appellants,*

32 EAST RAMAPO CENTRAL SCHOOL DISTRICT,  
33

34  
35 *Defendant.*  
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Before: HALL and LOHIER, *Circuit Judges*, and REISS, *District Judge*.\*

We address an Interlocutory and Certified Appeal from a decision of the United States District Court for the Southern District of New York (Seibel, J.) which held that the Plaintiffs-Appellees—Students currently attending East Ramapo public schools—have standing to bring 42 U.S.C. § 1983 claims against the Defendants-Appellants—present and former East Ramapo School Board Members—for violating the Establishment Clause of the First Amendment to the United States Constitution and that the Board Members are not entitled to qualified immunity. The Board Members argue that the students lack standing because they did not suffer a direct injury resulting from a violation of the Establishment Clause. The Board Members further contend that even if the students have standing, the Board Members are entitled to absolute and qualified immunity. We hold that the Students lack standing to pursue their Establishment Clause claims, and therefore those claims must be dismissed. Judge Reiss dissents in a separate opinion.

REVERSED and REMANDED.

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\* The Honorable Christina Reiss of the United States District Court for the District of Vermont, sitting by designation.

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LAURA D. BARBIERI,  
Arthur Zachary Schwartz, Advocates for  
Justice Legal Foundation, New York, NY  
*for Plaintiffs-Appellees.*

DAVID J. BUTLER,  
Bryan M. Killian, Randall M. Levine, David  
B. Salmons, Stephanie Schuster, Morgan,  
Lewis & Bockius, LLP, Washington, DC *for*  
*Defendants-Appellants Daniel Schwartz,*  
*Yehuda Weissmandl, Moses Friedman, Moshe*  
*Hopstein, Eliyahu Solomon, Aron Wieder,*  
*Morris Kohn, Richard Stone, Joel Klein, and*  
*Eliezer Wizman.*

MARK D. HARRIS,  
Adam W. Deitch, Jessica Zietz, Proskauer  
Rose LLP, New York, NY *for Defendant-*  
*Appellant Nathan Rothschild.*

MEREDITH D. BELKIN,  
Marian C. Rice, L'Abbate, Balk, Colavita &  
Contini, LLP, Garden City, NY *for*  
*Defendant-Appellant Albert D'Agostino.*

HALL, *Circuit Judge:*

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29

**I. BACKGROUND**

30 This case is a part of a longstanding conflict within the East Ramapo  
31 School District (the "District") in Rockland County, New York. The Plaintiffs-  
32 Appellees ("Student-Plaintiffs") are students who are currently enrolled in the

1 District’s public school system. They allege that a majority of the East Ramapo  
2 School District Board (“School Board”) are of the Orthodox/Hasidic Jewish faith  
3 or are sympathetic to the interests of the Orthodox/Hasidic Jewish community  
4 (“Board Defendants”).<sup>1</sup> The Student-Plaintiffs claim that over the last decade the  
5 Board Defendants have siphoned money out of the public school system and into  
6 yeshivas and other religious organizations for the benefit of the Hasidic  
7 children’s religious education and the Board Defendants’ shared religious  
8 community. The Student-Plaintiffs allege that the Board Defendants have  
9 promoted the Hasidic Jewish faith in violation of the First Amendment to the  
10 United States Constitution by (1) systematically funding Hasidic schools with  
11 public monies by manipulating the Individuals with Disabilities Education Act  
12 (“IDEA”) settlement process, (2) providing preferential treatment to Hasidic  
13 Institutions when they attempted to sell and lease two school buildings, and (3)  
14 buying religious books with public money and loaning the books to Hasidic  
15 schools.

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<sup>1</sup> Student-Plaintiffs further assert in their briefs that Board Defendants’ children do not attend the District’s schools. We do not consider this allegation, which appears for the first time in their brief. *See Kleinman v. Elan Corp.*, 706 F.3d 145, 153 (2d Cir. 2013) (citing *Wright v. Ernst & Young LLP*, 152 F.3d 169, 178 (2d Cir. 1998) for the proposition that “a party may not amend pleadings through a brief”).

1 IDEA SETTLEMENT PROCESS

2 Pursuant to both federal and state law, school districts are required to  
3 provide students with disabilities a free and appropriate public education.  
4 School districts are required to create an individualized education program  
5 (“IEP”) for each student with a disability. 20 U.S.C. § 1414(d). Each such student  
6 is entitled to receive an IEP that is individually tailored to meet the student’s  
7 specific needs. Each school district has a Committee on Special Education  
8 (“CSE”) that is tasked with comprehensively evaluating each student to identify  
9 the student’s individualized special education needs and annual goals. Parents  
10 may work with the CSE in order to facilitate a school placement and IEP that  
11 satisfies the school district and the family. If a parent disagrees with the CSE’s  
12 placement determination, the parent has the right to an Impartial Hearing. *See* 20  
13 U.S.C. § 1415. If, however, parents choose unilaterally to send their child to  
14 private school without completing the Impartial Hearing process, the parent  
15 does not have a right to receive tuition reimbursement from the state or the  
16 school district. *See* 20 U.S.C. § 1412. In any case, the school district and parents  
17 may be reimbursed by the state and federal government for any special

1 education placement in a private school that is approved by the CSE. *See* 20  
2 U.S.C. § 1411.

3         The Student-Plaintiffs assert that over the past several years an increasing  
4 number of students purportedly eligible for special education services in the  
5 District have been placed in private religious schools for the ostensible purpose  
6 of providing those students with required services under the IDEA. The Student-  
7 Plaintiffs allege that the Board Defendants have an unwritten agreement with  
8 Hasidic parents by which any Hasidic student who is eligible for an IEP will be  
9 placed in a religious school if the Hasidic parents simply write a letter to the  
10 Board disagreeing with the public school CSE placement and requesting a  
11 private school placement.<sup>2</sup> The Board Defendants then pass a private placement  
12 resolution in lieu of an Impartial Hearing and reimburse the parents for the  
13 tuition of the private placement. Because the IDEA settlements occur prior to the  
14 Impartial Hearing, the district is not statutorily entitled to reimbursement from  
15 the state or federal government. The Student-Plaintiffs allege that the Board  
16 Defendants knew or should have known before affirming the IDEA settlement

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<sup>2</sup> The Student-Plaintiffs allege that the placements occurred at three ethnically, racially, and religiously homogenous schools: Rockland Institute for Special Education, Kiryas Joel (an out of District public school with a substantial Hasidic student population), and Hebrew Academy for Special Children.

1 agreements that appropriate non-religious school placements were available and  
2 were or would have been proposed by the CSE. The Student-Plaintiffs allege that  
3 by manipulating the IDEA settlement process, the Board Defendants diverted  
4 funds away from the public schools in the District and into the Hasidic religious  
5 institutions.

6 In the spring of 2010, the Office of Special Education of the New York State  
7 Education Department (“NYSED”) conducted a monitoring review to ensure that  
8 the District’s policies, procedures, and practices regarding the placements of  
9 students with disabilities were consistent with the requirements of federal and  
10 state laws and regulations. NYSED determined that the District had violated a  
11 number of regulations and had engaged in a practice of placing students with  
12 disabilities in private schools when appropriate placements were available in  
13 public facilities. NYSED ordered the District to take remedial action that  
14 included ordering the CSE to re-evaluate and revise the placement  
15 recommendations of the students placed in private schools that lacked the proper  
16 documentation.

17 In February 2012, after NYSED conducted a follow-up monitoring review  
18 of the District’s private school special education placements to ensure that the

1 deficient practices had been successfully changed, NYSED determined that the  
2 District had failed to implement the recommended changes. As a result, NYSED  
3 withheld reimbursement, thereby costing the District millions of dollars.

4 REAL ESTATE TRANSACTIONS

5 In April 2009, the School Board closed Colton Elementary School. The  
6 School Board then leased Colton to the Hebrew Academy for Special Children  
7 (“HASC”) and Congregation Bais Malka, a synagogue, for a period of five years.  
8 For three of those five years, the School Board allegedly did not increase the rent  
9 and repeatedly allowed HASC to pay rent late.<sup>3</sup> In preparing to sell the property,  
10 the School Board hired Valuation Plus, Inc. to appraise Colton. Valuation Plus  
11 valued the property at \$6.6 million. The Town of Ramapo Real Property  
12 Assessment lists Colton’s market value at just under \$12 million. On May 25,  
13 2011, the School Board agreed to sell Colton to HASC and Bais Malka for \$6.6  
14 million.

15 In April 2009, the School Board also closed the Hillcrest School and hired  
16 Valuation Plus, Inc., to appraise the property. Valuation Plus appraised Hillcrest  
17 at \$5.9 million. After issuing a Request for Proposals and receiving a number of

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<sup>3</sup> The Student-Plaintiffs concede that the tenants eventually paid the District all of the back rent that they owed.

1 bids from local Hasidic institutions, the School Board received a second appraisal  
2 from Appraisal Group International that valued Hillcrest at \$3.24 million. The  
3 Town of Clarkstown estimated Hillcrest's value at \$11 million, and a separate  
4 third-party appraiser valued the property at \$13.9 million. The District accepted  
5 Congregation Yeshiva Avir Yakov's \$3.1 million bid. On August 31, 2010, the  
6 New York State Commissioner of Education prohibited the sale from closing,  
7 and the Congregation began leasing the property instead. On June 6, 2011, the  
8 Commissioner officially set aside the sale.

9 TEXTBOOK PURCHASES

10 Beginning in 2011, the Student-Plaintiffs allege, the Board Defendants  
11 ordered or condoned the ordering of non-secular books that reflected traditional  
12 values and stories rooted in the Jewish tradition. The books include titles that  
13 contain obvious Jewish themes such as: *I Keep Kosher*, *Let's Go to Shul!*, and *Why*  
14 *Weren't You Zisha and Other Stories*. The Board Defendants then loaned these  
15 books to students attending local yeshivas.

16 THE LAWYER: ALBERT D'AGOSTINO

17 In November 2009, the School Board replaced its previous general counsel  
18 with Albert D'Agostino. D'Agostino previously gained a reputation for



1 representing the Lawrence Union Free School District's Board of Education,  
2 which has political and demographic traits similar to those of the East Ramapo  
3 School District. The majority of board members on the Lawrence Board of  
4 Education are alleged to have been practitioners of the Orthodox Jewish religion,  
5 whose children attended private yeshivas. The Student-Plaintiffs allege that, both  
6 in this case and in the Lawrence School District, D'Agostino devised an IDEA  
7 settlement scheme in order to divert public money into private religious schools.  
8 Upon commencing work in East Ramapo, D'Agostino is alleged to have billed  
9 the District at a significantly higher hourly rate than the School Board's previous  
10 counsel. According to the plaintiff's Complaint, at School Board meetings  
11 D'Agostino has exhibited an extremely combative and alienating style that has  
12 offended and antagonized the community members who are opposed to the  
13 School Board's actions.

14 **II. PROCEDURAL HISTORY**

15 Three groups of plaintiffs brought the underlying lawsuit: (1) the Student-  
16 Plaintiffs, (2) former students, and (3) taxpayer plaintiffs. These plaintiffs  
17 collectively sued four groups of defendants: current school board members,

1 former school board members, the school board's lawyer Albert D'Agostino,<sup>4</sup>  
2 and the East Ramapo School District.<sup>5</sup>

3 The underlying lawsuit asserted ten different claims, alleging various  
4 violations of common law, state statutes, federal statutes, and the United States  
5 Constitution. The district court dismissed, for failure to state a claim, all of the  
6 claims except those asserting violations of the Establishment Clause.<sup>6</sup> The district  
7 court also dismissed all of the former students' claims for lack of standing. The  
8 remaining plaintiffs amended their complaint alleging under 42 U.S.C. § 1983  
9 that the Defendants collectively promoted the Hasidic Jewish faith in violation of  
10 the First Amendment by (1) systematically funding Hasidic schools with public  
11 monies through the manipulation of the IDEA settlement process, (2) providing  
12 preferential treatment to Hasidic institutions when they attempted to sell and  
13 lease two school buildings, and (3) buying religious books with public money

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<sup>4</sup> The Student-Plaintiffs do not bring claims against D'Agostino with respect to the religious textbook purchases.

<sup>5</sup> The plaintiffs originally brought the underlying suit on behalf of the East Ramapo School District; due to the nature of the claims, however, the magistrate judge ordered the District to intervene on behalf of the defendants.

<sup>6</sup> The district court initially allowed the New York state law claim for unlawful gift of public funds to move forward but later dismissed this claim as well.

1 and loaning the books to religious schools. The plaintiffs seek an injunction,  
2 monetary damages, and attorneys' fees.

3         Responding to the Amended Complaint, the defendants then collectively  
4 moved for judgment on the pleadings, asserting, among other things, that they  
5 were entitled to absolute and qualified immunity and that the Student-Plaintiffs  
6 lacked standing. The district court determined that the defendants were not  
7 entitled to either absolute or qualified immunity and that the Student-Plaintiffs  
8 had standing. The district court also dismissed all of the plaintiffs' § 1983  
9 Establishment Clause claims for equitable relief against all the former Board  
10 Defendants because those defendants were no longer on the Board and an  
11 equitable judgment against them could not redress any of the plaintiffs' injuries.<sup>7</sup>  
12 In addition, the district court dismissed the Taxpayer-Plaintiffs' claims for  
13 damages, determining that the Taxpayer-Plaintiffs could only be entitled to  
14 declaratory and injunctive relief. The Taxpayer-Plaintiffs are not a party to this  
15 interlocutory appeal, their claims are not before us, and their suit is currently  
16 proceeding in the district court.

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<sup>7</sup> The district court also dismissed the Student-Plaintiffs' claims against former board member Nathan Rothschild for the claims relating to the Colton School transaction and the religious book purchases because he was not on the board at the time these transactions had taken place.

1           The district court certified to this court for interlocutory appeal under 28  
2 U.S.C. § 1292(b) its decision that the Student-Plaintiffs had standing to bring an  
3 Establishment Clause claim. We granted the Defendants' petition for  
4 interlocutory appeal to address two issues: whether the Student-Plaintiffs have  
5 standing and whether the Defendants are protected by absolute or qualified  
6 immunity. Because we conclude that the Student-Plaintiffs do not have standing  
7 to pursue their claims under the circumstances of this case, we address only the  
8 standing issue.

### 9           **III. DISCUSSION**

10           The Student-Plaintiffs allege that the Defendants' unconstitutional actions  
11 contributed to the defunding of the public school system, which in turn injured  
12 the Student-Plaintiffs by depriving them of educational opportunities and by  
13 damaging their psychological and mental well-being. For the reasons that follow  
14 we hold that the Student-Plaintiffs lack standing to assert their Establishment  
15 Clause claims because they are only indirectly affected by the conduct alleged to  
16 violate the Establishment Clause.

17           We review *de novo* a district court's decision regarding plaintiffs' standing.  
18 *Chabad Lubavitch of Litchfield Cty., Inc. v. Litchfield Historic Dist. Comm'n*, 768 F.3d

1 183, 191 (2d Cir. 2014). At the pleading stage, we “accept[] all well-pleaded  
2 allegations in the complaint as true and draw[] all reasonable inferences in the  
3 plaintiff’s favor.” *Bigio v. Coca-Cola Co.*, 675 F.3d 163, 169 (2d Cir. 2012) (internal  
4 quotation and alteration omitted). In rebutting a motion to dismiss, “[t]he party  
5 invoking federal jurisdiction bears the burden of establishing” the elements of  
6 standing “with the manner and degree of evidence required.” *Lujan v. Defenders*  
7 *of Wildlife*, 504 U.S. 555, 561 (1992).

8 Article III of the United States Constitution limits the jurisdiction of federal  
9 courts to “Cases” or “Controversies.” U.S. CONST. art. III, § 2. The purpose of  
10 Article III is to limit federal judicial power “to those disputes which confine  
11 federal courts to a role consistent with a system of separated powers and which  
12 are traditionally thought to be capable of resolution through the judicial  
13 process.” *Valley Forge Christian Coll. v. Ams. United For Separation of Church and*  
14 *State, Inc.*, 454 U.S. 464, 472 (1982) (quoting *Flast v. Cohen*, 392 U.S. 83, 97 (1968)).  
15 “One element of the case-or-controversy requirement is that plaintiffs must  
16 establish that they have standing to sue.” *Keepers, Inc. v. City of Milford*, 807 F.3d  
17 24, 38 (2d Cir. 2015) (internal quotation omitted). Three elements comprise the  
18 “irreducible constitutional minimum,” *Lujan*, 504 U.S. at 560, of Article III

1 standing: “(1) an injury in fact, (2) a sufficient causal connection between the  
2 injury and the conduct complained of, and (3) a likel[ihood] that the injury will  
3 be redressed by a favorable decision,” *Susan B. Anthony List v. Driehaus*, 134 S. Ct.  
4 2334, 2341 (2014) (internal quotations omitted). To be sufficient for purposes of  
5 standing, an injury must be “an invasion of a legally protected interest which is  
6 (a) concrete and particularized . . . and (b) actual or imminent, not conjectural or  
7 hypothetical[.]” *Lujan*, 504 U.S. at 560 (internal quotations, citations, and footnote  
8 omitted). In determining standing, we focus on “the party seeking to invoke  
9 federal jurisdiction, rather than the justiciability of the issue at stake in the  
10 litigation.” *Fulani v. Bentsen*, 35 F.3d 49, 51 (2d Cir. 1994).

11 In addition to analyzing these standing requirements, we have “adverted  
12 to a ‘prudential’ branch of standing,” *Lexmark Int’l, Inc. v. Static Control*  
13 *Components, Inc.*, 134 S. Ct. 1377, 1386 (2014), which embodies “judicially self-  
14 imposed limits on the exercise of federal jurisdiction,” *Elk Grove Unified Sch. Dist.*  
15 *v. Newdow*, 542 U.S. 1, 11 (2004) (internal quotation omitted) *abrogated on other*  
16 *grounds by Lexmark*, 134 S. Ct. at 1387. Prudential standing encompasses the rule  
17 against the adjudication of generalized grievances, the rule prohibiting plaintiffs  
18 from asserting the rights of third parties, and the rule barring claims that fall

1 outside “the zone of interests to be protected or regulated by the statute or  
2 constitutional guarantee in question.” *Valley Forge*, 454 U.S. at 474–75 (internal  
3 quotation omitted). Although characterized as “prudential,” these concerns  
4 relate to the elements of Article III standing. See *Lexmark*, 134 S. Ct. at 1387 n.3;  
5 *Lance v. Coffman*, 549 U.S. 437, 439 (2007) (per curiam).

6 As relevant to the Student-Plaintiffs’ claims before us, the First  
7 Amendment declares that “Congress shall make no law respecting an  
8 establishment of religion.” U.S. CONST. amend. I. This mandate has been made  
9 “wholly applicable to the States by the Fourteenth Amendment.” *Sch. Dist. of*  
10 *Abington Tp., Pa. v. Schempp*, 374 U.S. 203, 215 (1963)). Litigants asserting an  
11 Establishment Clause claim against a State or municipal defendant must, like all  
12 civil litigants, demonstrate standing. See *Sullivan v. Syracuse Hous. Auth.*, 962 F.2d  
13 1101, 1107 (2d Cir. 1992). Our jurisprudence has developed three distinct theories  
14 of standing entitling an individual to pursue a claim that the Establishment  
15 Clause has been violated: (1) taxpayer, (2) direct harm, and (3) denial of benefits.  
16 *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 129–30 (2011). These three  
17 theories evolved out of the unique context in which plaintiffs bring  
18 Establishment Clause claims and have come into existence because

1 Establishment Clause injuries, by their nature, can be “particularly elusive.”  
2 *Saladin v. City Milledgeville*, 812 F.2d 687, 691 (11th Cir. 1987). The  
3 unconstitutional promotion of religion often injures no particular individual any  
4 more than any other individual. That is, unlike most litigated injuries, the harm  
5 is often inherently generalized. *See Valley Forge*, 454 U.S. at 475. Thus, these  
6 specific theories of standing developed in response to the concerns that gave rise  
7 to our prudential standing jurisprudence, and they have evolved to allow only  
8 particular types of Establishment Clause injuries to be adjudicated.

9       Here, the Student-Plaintiffs’ sole argument is that they have standing  
10 under a direct exposure theory to assert that the Defendants violated the  
11 Establishment Clause and directly injured them.<sup>8</sup> *Altman v. Bedford Cent. Sch.*  
12 *Dist.*, 245 F.3d 49, 72 (2d Cir. 2001) (“[S]tanding to assert an Establishment Clause  
13 claim may rest . . . on the plaintiff’s direct exposure to the challenged activity.”).  
14 We therefore address only whether the Student-Plaintiffs have sufficiently

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<sup>8</sup> The term “direct exposure” arises out of our jurisprudence construing the direct harm theory of standing under the Establishment Clause, and our use of the term “direct exposure” here includes all theories of direct harm. *See Altman v. Bedford Cent. Sch. Dist.*, 245 F.3d 49, 72 (2d Cir. 2001).



1 pleaded a basis demonstrating their direct exposure to the unconstitutional  
2 establishment of religion.<sup>9</sup>

3         In order to establish direct exposure standing, the Student-Plaintiffs must  
4 allege that they are “directly affected by the laws and practices against which  
5 their complaints are directed.” *Schempp*, 374 U.S at 224 n.9. In delineating  
6 between a direct effect and an indirect effect of a challenged governmental act,  
7 i.e. the directness of a plaintiff’s injury, we are guided by our Establishment  
8 Clause jurisprudence. A review of our precedent reveals that direct exposure  
9 cases tend to occur in two different contexts: 1) the plaintiff is exposed to and  
10 affected by a law that on its face establishes religion (“religious law” cases) or 2)  
11 the plaintiff is exposed to and affected by a religious expression or message  
12 sponsored or promoted by the government, (“expression” cases).<sup>10</sup> Under the

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<sup>9</sup> As noted above, the plaintiffs who have asserted standing as taxpayers are proceeding in the district court to advance their Establishment Clause claims. The Student-Plaintiffs are not among the taxpayers group that is continuing to challenge the constitutionality of the Defendants’ actions. If the taxpayer plaintiffs succeed in proving their claims, they will be entitled to an injunction. In this respect, we note that the primary difference between the Student-Plaintiffs’ claims and the taxpayer claims is that, by structuring their claims under a direct exposure theory, the Student-Plaintiffs are not limited to injunctive relief and are able to seek damages.

<sup>10</sup> Although many of the “religious law” cases do not use the term “direct exposure,” these cases are similar to the “expression” cases in that both types of

1 religious law line of cases, a religious law’s prohibition or mandate is grounded  
2 in or at least significantly influenced by a “religious” tenet or principle (e.g., the  
3 sinfulness of consuming alcohol) and directly and immediately injures the  
4 plaintiff’s economic well-being.<sup>11</sup> See *Larkin v. Grendel’s Den, Inc.*, 459 U.S. 116, 118  
5 (1982) (plaintiff was denied a liquor license because of store’s proximity to a  
6 church, thus resulting in economic loss); *Torcaso v. Watkins*, 367 U.S. 488, 489–90  
7 (1961) (plaintiff was prohibited from holding office in Maryland because he  
8 refused to swear that he believed in God); *Two Guys From Harrison-Allentown, Inc.*  
9 *v. McGinely*, 366 U.S. 582, 592 (1961) (plaintiff was prosecuted for violating blue  
10 laws and was prohibited from selling goods on Sunday). Under these cases, the

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cases involve plaintiffs being confronted directly by the challenged action—  
either religion-infused laws or religious messages.

<sup>11</sup> To the extent that the Defendants argue the Student-Plaintiffs lack standing because their injury is not religious in nature, see *Smith v. Jefferson Cty. Bd. of Sch. Comm’rs.*, 641 F.3d 197 (6th Cir. 2001) (en banc), we note that standing to assert a violation of the Establishment Clause is broader than standing with respect to Free Exercise Clause claims. See *Schempp*, 374 U.S. at 224 n.9; *Altman*, 245 F.3d at 72. Importantly, unlike claims under the Free Exercise Clause, nonreligious and economic injuries are sufficient to establish standing under the Establishment Clause. See *McGowan v. State of Maryland*, 366 U.S. 420, 430 (1961) (recognizing standing for an Establishment Clause claim where the “[a]ppellants . . . concededly have suffered direct economic injury”). We therefore discern no requirement that an Establishment Clause injury must implicate a plaintiff’s religious sensibilities in order for a plaintiff to establish standing to assert such a claim.

1 plaintiffs challenged a facially religious law that was causing personalized  
2 economic harm. *See McGowan v. State of Maryland.*, 366 U.S. 420, 430–31 (1961)  
3 (“Appellants here concededly have suffered direct economic injury, allegedly  
4 due to the imposition on them of the tenets of the Christian religion. We find  
5 that, in these circumstances, these appellants have standing to complain that the  
6 statutes are laws respecting an establishment of religion.”).

7       In “expression” cases, by comparison, the plaintiff’s injury is not economic.  
8 The injury often occurs when a plaintiff comes into contact with, or is exposed to,  
9 a government-promoted expression of religion. These exposures usually occur in  
10 public spaces, *see Van Orden v. Perry*, 545 U.S. 677, 682 (2005) (plurality op.)  
11 (plaintiff challenging a display of the Ten Commandments outside the Texas  
12 State Capitol), or in public schools, *see Engel v. Vitale*, 370 U.S. 421, 423 (1962)  
13 (plaintiff challenging a state program of daily classroom prayer). The injury in an  
14 “expression” case can be difficult to distill because the basis for the injury is  
15 simply exposure to a state-sponsored religious message. *Cooper v. U.S. Postal*  
16 *Service*, 577 F.3d 479, 489 (2d Cir. 2009) (“Standing is often a tough question in the  
17 Establishment Clause context, where the injuries alleged are to the feelings alone.  
18 This is often the case in religious display cases where the fact of exposure

1 becomes the basis for injury and jurisdiction.”). Because this injury is often  
2 elusive, the connection between the plaintiff and the challenged action—i.e. the  
3 “exposure”—must be direct and immediate in order to satisfy the requirement  
4 that the plaintiff have a “direct and personal stake in the controversy.” *Sullivan*,  
5 962 F.2d at 1107.

6         Synthesizing these several types of cases, we can conclude that a plaintiff  
7 will have direct exposure standing in at least the following circumstances: when  
8 (1) a plaintiff is personally constrained or otherwise subject to control under a  
9 governmental policy, regulation, or statute grounded in a “religious” tenet or  
10 principle (e.g., a statute that directly precludes plaintiff from conducting  
11 business on Sunday); or (2) a plaintiff is personally confronted with a  
12 government-sponsored religious expression that directly touches the plaintiff’s  
13 religious or non-religious sensibilities. In both situations, it is a plaintiff’s  
14 interaction with or exposure to the religious object of the challenged  
15 governmental action that gives rise to the injury. Thus, a plaintiff is “directly  
16 affected,” *Schempp*, 374 U.S. at 224 n.9, as opposed to indirectly affected, by an  
17 unconstitutional governmental action when a plaintiff’s injury arises out of  
18 plaintiff’s immediate and personal confrontation with the object of that

1 governmental action—most commonly a government-sponsored religious  
2 expression or a governmental policy, statute, or regulation grounded in a  
3 “religious” tenet or principle.

4       The Student-Plaintiffs argue that their claims fall within the direct  
5 exposure line of cases because they are “directly affected” by the Defendants’  
6 unconstitutional acts. *Schempp*, 374 U.S. at 224 n.9. They contend that the  
7 unconstitutional IDEA settlement payments reduce the size of the District’s  
8 budget, which directly affects the quality of the education they receive.<sup>12</sup>  
9 Specifically, the Student-Plaintiffs allege that in “order to fund their  
10 unconstitutional diversion of public resources to the yeshivas and religious  
11 education, the Defendants have significantly cut spending on programs  
12 fundamental to the operation of the public schools,” Joint App’x at 1081, and that  
13 the Defendants have decreased the number of “advanced classes, [Board of

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<sup>12</sup> We are skeptical that the Student-Plaintiffs have alleged a causal connection between the real estate transactions or the religious book purchases and their educational injury because the real estate sales were never finalized and the religious book purchases had a *de minimis* effect on the District’s budget. Regardless, our analysis of the Student-Plaintiffs’ standing in relation to their IDEA Settlement claims applies with equal force to the real estate transactions and religious book purchases because, to the extent that these actions affect the District’s budget, the relationship between the District’s budget and the educational injury is the same.

1 Cooperative Educational Services] programs, teachers, and guidance counselors”  
2 available to the Student-Plaintiffs, *id.* at 1073. Additionally, Defendants are  
3 alleged to have “eliminated all assistant principals[;] [] extracurricular activities  
4 [,] such as art and music[;] and the Students with Interrupted Formal Education  
5 (SIFE) program, which ensure[s] that immigrant students achieve their full  
6 potential [] and do not significantly lag behind their peers.” *Id.* In sum, the  
7 Student-Plaintiffs allege that in order unconstitutionally to fund religious  
8 education the Defendants have defunded the educational services upon which  
9 the Student-Plaintiffs rely. As a result of this transfer of resources, authorized or  
10 promoted by the Defendants, the Student-Plaintiffs have “performed below their  
11 peers in state-mandated academic examinations,” *id.* at 1075, and “are  
12 experiencing academic harm and will continue to experience harm to their  
13 academic careers,” *id.* at 1033.

14 We are presented here with a novel theory of liability that the Student-  
15 Plaintiffs seek to couch in terms of an Establishment Clause violation. The  
16 allegations of injury in this case, however, preclude their fitting within the type  
17 of “direct exposure” injury that our jurisprudence has heretofore regarded as  
18 flowing from an Establishment Clause violation. The Student-Plaintiffs are

1 neither alleging that they are subject to a religiously infused law that prohibits  
2 them from learning, *see Epperson v. Arkansas*, 393 U.S. 97, 100 (1968), nor alleging  
3 that they are confronted by a government-sponsored religious message, *see Engel*,  
4 370 U.S. at 423. The Student-Plaintiffs lack standing because they do not allege  
5 that their injuries were caused by a personal exposure to and confrontation with  
6 the object of the governmental action they challenge—the alleged IDEA  
7 settlement scheme.

8       Instead, as described above, the Student-Plaintiffs allege that they were  
9 deprived of educational services because public funds, which otherwise would  
10 have been available to them, were diverted to an unconstitutional purpose.  
11 Contrary to their assertion the Student-Plaintiffs have not been “*directly affected*”  
12 by the payment of the IDEA settlements in support of religious institutions; they  
13 have only been indirectly affected. *Schempp*, 374 U.S. at 224 n.9 (emphasis added).  
14 This is so because the alleged harm—the deprivation of educational services—is  
15 merely incidental to the IDEA Settlement disbursements themselves. It does not  
16 arise out of the Student-Plaintiffs’ personal interaction with the IDEA Settlement  
17 process. The Student-Plaintiffs’ injury is too far removed, too attenuated, from  
18 the alleged unconstitutional component of the act of funneling public monies to

1 support the advancement of Orthodox Hasidic Jewish schools to constitute the  
2 type of injury cognizable and compensable as the result of an Establishment  
3 Clause violation. We hold, therefore, that the Student-Plaintiffs do not have  
4 standing to assert an Establishment Clause violation.

5       We have not found a case, and the Student-Plaintiffs do not point to one,  
6 where an appeals court has recognized their theory of direct exposure—where  
7 the plaintiffs’ exposure is the loss of a favored governmental service or benefit  
8 caused, in part, by a diversion of public resources away from such service or  
9 benefit to support a preferred religion. This is unsurprising. The Student-  
10 Plaintiffs’ injury arises out of being enmeshed in an underfunded school system,  
11 not out of being directly exposed to the alleged unconstitutional IDEA  
12 Settlements themselves. An alleged causal connection between the underfunding  
13 of the school district’s budget and the alleged unconstitutional expenditures is  
14 insufficient to give rise to a direct injury. To hold otherwise would impermissibly  
15 expand the concept of direct exposure to include injuries that are unrelated to the  
16 challenged governmental act but which flow in fact from a government’s



1 decision to fund one program or service at the expense of another.<sup>13</sup> This is a  
2 theory of indirect injury and recognizing it would allow plaintiffs who are only  
3 incidentally affected by a challenged governmental expenditure to assert  
4 Establishment Clause claims.<sup>14</sup> Viewing this injury as a direct exposure to an  
5 Establishment Clause violation is foreclosed by our jurisprudence. *See Schempp,*  
6 *374 U.S. at 224 n.9; Winn, 563 U.S. at 142.*

7 We fully recognize that the Student-Plaintiffs are not disinterested parties;  
8 they undoubtedly have an interest in how the District allocates its funds. Their

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<sup>13</sup> Similarly, if we were to recognize that the Student-Plaintiffs have direct exposure standing here, then there would be little need for separate and distinct standing requirements for taxpayers, *see Winn, 563 U.S. at 142* (explaining that a plaintiff must pay taxes and challenge a budgetary expenditure in order to establish taxpayer standing), because essentially all individuals, regardless of whether they pay taxes, are affected by changes in the government’s budget and would therefore have standing to challenge any government expenditure—a result eschewed by our standing jurisprudence, *see e.g., Altman, 245 F.3d at 74* (rejecting the view that an act committed by a paid municipal employee constitutes an expenditure for purposes of conferring taxpayer standing because “[n]early all governmental activities are conducted or overseen by employees whose salaries are funded by tax dollars” such that conferring “taxpayer standing on such a basis would allow any municipal taxpayer to challenge virtually any governmental action at any time”).

<sup>14</sup> The district court’s previous ruling in this case dismissing the Student-Plaintiffs’ Establishment Clause claims for lack of standing to challenge the School Board’s administration of Title I and Title III programs at religious schools because the Student-Plaintiffs were not directly exposed to the alleged unconstitutional Title I and Title III contracts is consistent with our analysis and articulation of the direct injury requirement.

1 interest, however, is similar to that of any other individual who is affected by the  
2 District's budget, regardless of whether that person is an employee, a student, a  
3 vendor, a taxpayer, or a citizen. Because the Student-Plaintiffs' theory of injury is  
4 premised on the allegations that reducing the funds available to meet the  
5 District's budget affects them as beneficiaries of the budget, the Student-Plaintiffs  
6 have suffered an injury that is common to all individuals who are affected by the  
7 budget.<sup>15</sup>

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<sup>15</sup> Our dissenting colleague contends that the Student-Plaintiffs are distinguishable from other beneficiaries of the District's budget because as students in the District's schools "they are entitled to have the diverted funds spent on *their* educations." Diss. Op. at 7. The dissent, however, cites no authority for this proposition. While the dissent correctly points out that the New York State Constitution requires the state to provide students with a sound basic education, *id.* at 7 n.3, this alone does not entitle the Student-Plaintiffs to have the IDEA reimbursement funds or other diverted funds spent specifically on their educations. Moreover, there is no free-standing federal constitutional right to a public education that entitles the Student-Plaintiffs to a minimum level of educational services such that the deprivation of those services creates a cognizable injury. See *Plyler v. Doe*, 457 U.S. 202, 221 (1982) ("Public education is not a 'right' granted to individuals by the Constitution."). Although the Student-Plaintiffs "identify the educational programs and resources formerly provided at their schools which are now unfunded," Diss. Op. at 7, this situation only reflects how the IDEA Settlements affect the District's budget and, then, how those changes in the District's budget affect the Student-Plaintiffs. It is precisely because the Student-Plaintiffs' alleged injury arises out of the effects that the IDEA Settlements have on the District's budget, and not out of the effects the IDEA Settlements have on the Student-Plaintiffs themselves, that make the Student-Plaintiffs' injury indirect. The Students-Plaintiffs' injury could be direct,

1           We note that the Student-Plaintiffs' claims, as pleaded, are not that the  
2 students were directly exposed to a school system that is increasingly segregated  
3 based on religion, in part because of the alleged IDEA settlement conspiracy. *See*  
4 *e.g., Southside Fair Hous. Comm. v. City of New York*, 928 F.2d 1336, 1342 (2d Cir.  
5 1991) (finding sufficient, for standing purposes, allegations that the plaintiffs'  
6 neighborhood "ha[d] become increasingly and substantially segregated on racial  
7 and religious grounds, with a large proportion of the Latino and African-  
8 American population being displaced to neighborhoods outside the Area," as  
9 "[t]hey live[d] in the very neighborhood where the disputed land sales took  
10 place and claim[ed] that they [were] being displaced by the creation of an  
11 exclusive white Hasidic enclave"). The Student-Plaintiffs have abandoned their  
12 Equal Protection claim and, other than in a passing reference to increasing school  
13 segregation, they do not assert that experiencing a segregated school system  
14 contributes to their injury. Nor do the Student-Plaintiffs claim that they have  
15 "standing on the ground that they have incurred a cost or been denied a benefit

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however, if their claim was that the underfunding of educational programs itself was an unconstitutional establishment of religion, i.e., that the Defendants decision to cancel a previously offered program had no secular purpose, primarily advanced religion, or excessively entangled the government with religious affairs. *See Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971).

1 on account of their religion.” *Winn*, 563 U.S. at 130. The Student-Plaintiffs claim  
2 that their injury arises solely out of the District’s lack of funds and is premised  
3 solely on their enrollment in the District’s schools.<sup>16</sup> This attenuated relationship  
4 among the alleged unconstitutional expenditure, the District’s budget, and the  
5 Student-Plaintiffs’ enrollment in the District’s schools is insufficient to confer  
6 standing because the alleged unconstitutional expenditure has an effect on the  
7 Student-Plaintiffs’ education that is only indirectly and incidentally related to the  
8 unconstitutionality of the expenditure.

9 For the reasons articulated above, we hold that the Student-Plaintiffs lack  
10 standing to assert an Establishment Clause claim against the Defendants. It is  
11 therefore unnecessary to decide whether the Defendants are entitled to absolute  
12 or qualified immunity because our decision with respect to standing renders this

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<sup>16</sup> While we recognize that education “is not merely some governmental benefit indistinguishable from other forms of social welfare legislation,” *Plyler*, 457 U.S. at 221, we are hesitant to recognize the Student-Plaintiffs’ theory of liability—holding individual Board Member Defendants responsible for damages for educational injuries caused by a lack of resources due to an Establishment Clause violation. This theory attempts to remedy an injury that may be causally related, but is not sufficiently connected, to the unconstitutional act or within the zone of interests of the underlying constitutional prohibition. *See Elk Grove*, 542 U.S. at 12 (noting “the requirement that a plaintiff’s complaint fall within the zone of interests protected by the law invoked” (internal quotes omitted)).

1 issue moot.<sup>17</sup> See *Morris-Hayes v. Bd. of Educ. Of Chester Union Free School Dist.*, 423  
2 F.3d 153, 159 (2d Cir. 2005) (finding it unnecessary to decide whether defendants  
3 were entitled to qualified immunity when the court dismissed the claims on  
4 separate grounds).

5 **IV. CONCLUSION**

6 We have considered the Student-Plaintiffs' remaining arguments and find  
7 them to be without merit. We REVERSE the district court's decision and  
8 REMAND with instructions to dismiss the Student-Plaintiffs' claims against all  
9 defendants.

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<sup>17</sup> To be clear, we make no determination as to the merits of the Student-Plaintiffs' claims.

1 REISS, *District Judge*, dissenting:

2       The majority holds that Student-Plaintiffs fail to allege standing to assert  
3 42 U.S.C. § 1983 claims because they are only indirectly affected by Defendants'  
4 alleged Establishment Clause violations. I respectfully disagree, and would  
5 affirm in part the district court's decision.<sup>1</sup>

6       The majority cabins Student-Plaintiffs' Establishment Clause claims to a  
7 "direct exposure theory" and, for that reason, addresses "only whether the  
8 Student-Plaintiffs have sufficiently pleaded a basis demonstrating their direct  
9 exposure to the unconstitutional establishment of religion." Maj. Op. at 15–16  
10 (footnote omitted). I believe Students-Plaintiffs' claims are broader than the  
11 majority's formulation, and that the Establishment Clause does not require  
12 "direct exposure" to the unconstitutional establishment of religion. *See Sch. Dist.*  
13 *of Abington Twp. v. Schempp*, 374 U.S. 203, 221 (1963) ("The Establishment Clause,  
14 unlike the Free Exercise Clause, does not depend upon any showing of direct  
15 governmental compulsion and is violated by the enactment of laws which  
16 establish an official religion whether those laws operate directly to coerce non-

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<sup>1</sup> I agree with the majority that Student-Plaintiffs cannot establish standing to challenge real estate transactions that were not consummated or the provision of a *de minimus* number of religious books.

1 observing individuals or not.”). At the pleadings stage, I would find that  
2 Student-Plaintiffs adequately allege they are “directly affected by the . . .  
3 practices against which their complaints are directed.” *Id.* at 224 n.9.

4 Although Student-Plaintiffs bear the burden of establishing standing as a  
5 jurisdictional requirement, “standing allegations need not be crafted with precise  
6 detail, nor must the plaintiff prove his allegations of injury.” *Baur v. Veneman*,  
7 352 F.3d 625, 631 (2d Cir. 2003). Indeed, “general factual allegations of injury  
8 resulting from the defendant’s conduct may suffice[.]” *Lujan v. Defs. of Wildlife*,  
9 504 U.S. 555, 561 (1992). In determining standing, we must “accept [] all well-  
10 pleaded allegations in the complaint as true [and] draw [] all reasonable  
11 inferences in the plaintiff’s favor.” *Chabad Lubavitch of Litchfield Cty., Inc. v.*  
12 *Litchfield Historic Dist. Comm’n*, 768 F.3d 183, 191 (2d Cir. 2014) (alterations in  
13 original and internal quotation marks omitted) (reversing and remanding district  
14 court’s dismissal of claims for lack of standing).

15 The majority concludes that Student-Plaintiffs fail to allege injuries that are  
16 sufficiently direct for prudential standing. The prudential standing doctrine is  
17 “in some tension with [the Supreme Court’s] recent reaffirmation of the principle  
18 that a federal court’s obligation to hear and decide cases within its jurisdiction is

1 virtually unflagging.” *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 134 S.  
2 Ct. 1377, 1386 (2014) (internal quotation marks omitted). At the pleadings stage,  
3 its requirements are neither stringent nor inflexible. *See Flast v. Cohen*, 392 U.S.  
4 83, 99, 101 (1968) (observing that “[s]tanding has been called one of ‘the most  
5 amorphous (concepts) in the entire domain of public law[.]’” and that “the  
6 emphasis in standing problems is on whether the party invoking federal court  
7 jurisdiction has ‘a personal stake in the outcome of the controversy,’ and whether  
8 the dispute touches upon ‘the legal relations of parties having adverse legal  
9 interests[.]’”) (citation and footnote omitted). Prudential standing ensures that  
10 Student-Plaintiffs’ claims “fall within the zone of interests to be protected or  
11 regulated by the statute or constitutional guarantee in question[,]” a standard  
12 that, at least for pleading purposes, is satisfied here. *Valley Forge Christian Coll. v.*  
13 *Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 475 (1982) (internal  
14 quotation marks omitted).

15 “The clearest command of the Establishment Clause is that one religious  
16 denomination cannot be officially preferred over another.” *Larson v. Valente*, 456  
17 U.S. 228, 244 (1982). “Primary among those evils” against which the  
18 Establishment Clause guards “have been sponsorship, financial support, and



1 active involvement of the sovereign in religious activity.” *Comm. for Pub. Educ. &*  
2 *Religious Liberty v. Nyquist*, 413 U.S. 756, 772 (1973) (internal quotation marks  
3 omitted). “It is equally well established, however, that not every [practice] that  
4 confers an ‘indirect,’ ‘remote,’ or ‘incidental’ benefit upon religious institutions  
5 is, for that reason alone, constitutionally invalid.” *Id.* at 771. For this reason,  
6 Establishment Clause cases are fact sensitive,<sup>2</sup> often requiring courts to “sift[]  
7 through the details[,]” employ “careful judgment[,]” and draw “fine  
8 distinctions[.]” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 847-48  
9 (1995) (O’Connor, J., concurring).

10 In a close case like this one, we should hesitate to dismiss Student-  
11 Plaintiffs’ constitutional claims based on the application of “[s]ynthesiz[ed]”  
12 rules that emphasize narrow categories of “direct exposure[.]” Maj. Op. at 19.  
13 Establishment Clause jurisprudence does not mandate that rigid approach. To  
14 the contrary, “[b]ecause standing in Establishment Clause cases can be shown in

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<sup>2</sup> In *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014), the Supreme Court, which was sharply divided as to the merits, nonetheless unanimously agreed that whether there is a violation of the Establishment Clause is a “fact-sensitive” inquiry. 134 S. Ct. at 1825 (plurality opinion); *id.* at 1838 (Breyer, J., dissenting) (“As we all recognize, this is a ‘fact-sensitive’ case.”); *id.* at 1851 (Kagan, J., dissenting) (“The facts here matter to the constitutional issue; indeed, the majority itself acknowledges that the requisite inquiry [is] a ‘fact-sensitive’ one[.]”).

1 various ways,” *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 145 (2011),  
2 “[i]f an establishment of religion is alleged to cause real injury to particular  
3 individuals, the federal courts may adjudicate the matter.” *Id.* “Like other  
4 constitutional provisions, the Establishment Clause acquires substance and  
5 meaning when explained, elaborated, and enforced in the context of actual  
6 disputes.” *Id.*

7         This court’s decision in *Altman v. Bedford Central School District*, 245 F.3d 49  
8 (2d Cir. 2001) imposes no greater burden. The *Altman* court explained that  
9 “direct exposure to the challenged activity” is only one basis for Establishment  
10 Clause standing, which, unlike the Free Exercise Clause, does not require ““proof  
11 that particular religious freedoms are infringed.”” *Altman*, 245 F.3d at 72  
12 (quoting *Schempp*, 374 U.S. at 224 n.9). As an example of “direct exposure,” the  
13 *Altman* court pointed to “students attending a public school, and their parents,  
14 hav[ing] standing to challenge a program of Bible reading in the school because  
15 they are ‘directly affected by the laws and practices against which their  
16 complaints are directed[.]’” *Id.* (quoting *Schempp*, 374 U.S. at 224 n.9). In this  
17 dicta, the *Altman* court did not suggest that “direct exposure” required the  
18 students to actually be *exposed* to Bible reading. *Altman* thus reflects the

1 important distinction that “a violation of the Free Exercise Clause is predicated  
2 on coercion while the Establishment Clause violation need not be so attended.”  
3 *Schempp*, 374 U.S. at 223. For this same reason, a plaintiff’s ability to avoid direct  
4 exposure is not a defense to an Establishment Clause violation. *See id.* at 224-25  
5 (“[T]he fact that individual students may absent themselves [from Bible reading  
6 in school] upon parental request[] . . . furnishes no defense to a claim of  
7 unconstitutionality under the Establishment Clause.”).

8       As the *Altman* court further recognized, the Establishment Clause does not  
9 require personal confrontation with, or constraint by, religious tenets, practices,  
10 or expressions; it requires only some “direct injury” as opposed to an  
11 “indefinite” injury indistinguishable from that suffered by the public at large:  
12 “[t]he party who invokes the power must be able to show, not only that the  
13 [practice] is invalid but that he has sustained or is immediately in danger of  
14 sustaining *some direct injury* as a result of its enforcement, and not merely that he  
15 suffers in some indefinite way in common with people generally.”  
16 *Altman*, 245 F.3d at 72 (quoting *Doremus v. Bd. of Educ. of Borough of Hawthorne*,  
17 342 U.S. 429, 434 (1952)) (emphasis supplied).

1           In this case, each Student-Plaintiff attends one of the District’s public  
2 schools. Collectively, they challenge Defendants’ alleged systematic diversion of  
3 state and local taxes, federal funds, and grant monies in order to finance special  
4 education at Yeshivas. They identify the educational programs and resources  
5 formerly provided at their schools which are now unfunded, explain how they  
6 are entitled to have the diverted funds spent on *their* educations,<sup>3</sup> and claim  
7 Defendants’ alleged diversion of resources deprives them of their “right to a  
8 sound basic education by the laws and policies of the federal government and  
9 the State of New York.” Joint App’x at 1072. Student-Plaintiffs allege they can  
10 demonstrate through budgetary records and academic test scores a direct causal  
11 link between Defendants’ alleged diversion of District funds and the academic  
12 harm they suffer. Accepting these allegations as true and drawing all reasonable

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<sup>3</sup> Although the majority correctly points out “there is no free-standing federal constitutional right to a public education that entitles the Student-Plaintiffs to a minimum level of educational services[,]” Maj. Op. at 25 n.15, the New York Constitution provides that the New York Legislature “shall provide for the maintenance and support of a system of free common schools, wherein all the children of [that] state may be educated.” N.Y. Const. art. XI, § 1; *see also Bd. of Educ., Levittown Union Free Sch. Dist. v. Nyquist*, 439 N.E.2d 359, 369 (N.Y. 1982) (interpreting the New York Constitution to require provision of “a sound basic education”). In any event, an Establishment Clause claim does not require Student-Plaintiffs to establish that the violation deprived them of a free-standing federal constitutional right.

1 inferences in Student-Plaintiffs' favor, at the pleading stage, their causation  
2 allegations are not implausible. *See Plyler v. Doe*, 457 U.S. 202, 222 (1982)  
3 (recognizing that the deprivation of an education exerts an "inestimable toll . . .  
4 on the social economic, intellectual, and psychological well-being of the  
5 individual").

6 In characterizing Student-Plaintiffs' injuries as "too far removed, too  
7 attenuated, from the alleged unconstitutional component of the act of funneling  
8 public monies to support the advancement of Orthodox Hasidic Jewish  
9 schools[,]" Maj. Op. at 22–23, the majority ignores the fact that the Student-  
10 Plaintiffs' educational harm arises directly out of the allegedly unconstitutional  
11 acts, the general public, including taxpayers, are not suffering this same injury,  
12 and Student-Plaintiffs could not assert Establishment Clause claims if the District  
13 diverted the same funds for a secular purpose. As a result, Student-Plaintiffs'  
14 alleged injuries are not "similar to that of any other individual who is affected by  
15 the District's budget, regardless of whether that person is an employee, a  
16 student, a vendor, a taxpayer, or a citizen[,]" Maj. Op. at 25, and they do not  
17 allege a "generalized grievance[.] . . . [that would be] most appropriately  
18 addressed in the representative branches." *Valley Forge*, 454 U.S. at 475 (internal

1 quotation marks omitted). Moreover, no other class of plaintiffs can assert this  
2 same claim or is better situated to assert a deprivation of this same interest. *See*  
3 *Gladstone, Realtors v. Vill. of Bellwood*, 441 U.S. 91, 99-100 (1979) (noting that  
4 “under the prudential principles[,] . . . the judiciary seeks to avoid deciding  
5 questions of broad social import where no individual rights would be vindicated  
6 and to limit access to the federal courts to those litigants best suited to assert a  
7 particular claim”).

8         Although the majority points out that the Student-Plaintiffs fail to cite  
9 precedent authorizing their Establishment Clause claim, it is equally true that  
10 there is no precedent prohibiting it. Accordingly, “[r]ather than attempting to  
11 define the outer limits” of the Establishment Clause “on the basis of the present  
12 record, the Court’s opinion [should] wisely permit[ ] the parties . . . to create a  
13 factual record that will inform that decision.” *United States v. Georgia*, 546 U.S.  
14 151, 160 (2006) (Stevens, J., concurring) (footnote omitted); *see also Rosenberger*,  
15 515 U.S. at 838-39 (“If there is to be assurance that the Establishment Clause  
16 retains its force in guarding against those governmental actions it was intended  
17 to prohibit, we must in each case inquire first into the purpose and object of the  
18 governmental action in question and then into the practical details of the

1 program's operation."). "Tenuous theories of liability are better assayed in the  
2 light of actual facts than in pleader's supposition." *Adato v. Kagan*, 599 F.2d 1111,  
3 1117 (2d Cir. 1979); *see also Braden v. Univ. of Pittsburgh*, 477 F.2d 1, 4-5 (3d Cir.  
4 1973) ("It would perhaps be possible for us to decide this last issue on the present  
5 record but we think we should not do so. Very important constitutional  
6 questions are presented and the Supreme Court has repeatedly informed us that  
7 such difficult issues should not be decided except upon a full record and after  
8 adequate hearing.") (collecting Supreme Court cases).

9 For the reasons set forth above, I would affirm in part the district court's  
10 conclusion that Student-Plaintiffs have adequately alleged standing at the  
11 pleadings stage, and I would defer a determination of qualified immunity.<sup>4</sup>

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<sup>4</sup> *See Johnson v. Jones*, 515 U.S. 304, 317 (1995) (observing that "an interlocutory appeal concerning [the factual basis for qualified immunity] in a sense makes unwise use of appellate courts' time, by forcing them to decide in the context of a less developed record, an issue very similar to one they may well decide anyway later, on a record that will permit a better decision" and concluding that "we are persuaded that [i]mmunity appeals . . . interfere less with the final judgment rule if they [are] limited to cases presenting neat abstract issues of law") (internal quotation marks omitted).