

14-3721-cv(L)

Montesa, et al. v. Schwartz, et al.

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

August Term, 2015

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

Docket Nos. 14-3721-cv, 14-3771-cv, 14-3811-cv

REBECCA MONTESA, individually and as a parent and natural guardian of C.W., E.W. and N.W., infants, MARIE JEAN BAPTISTE, individually and as a parent and natural guardian of PJB, DJB, and DJB, infants, ISRAEL MEDIUA, individually and as a parent and natural guardian of H.M., infant, MARC E. DORSANVIL, individually and as a parent an natural guardian of M.D. and N.D., infants, MARTINE NARCISSE, RONALD ROSEMOND, individually and as a parent and natural guardian A.L., infant, MARLENE ISRAEL, individually and as a parent and natural guardian of B.I. 1 and B.I. 2, infants, KERLINE LOUIS, individually and as a parent and natural guardian of KL and RL, infants, YOLENE HIPPOLYTE, individually and as a parent and natural guardian of I.H. 1, I.H. 3 and R.H., infants, MARIE SOMISE LOUIS, individually and as a parent and natural guardian of S.L., infant, KRYSTAL WILSON, individually and as a parent and natural guardian of E.W. and M.E., infants, PAUL ROONEY, individually and as a parent and natural guardian of DR, and JR, infants, NASIK ELAHI, individually and as a parent and natural guardian of K.E. and S.E., infants, DONIQUE JOHNSON, individually and as a parent and natural guardian of D.J., infant, BETTY CARMAND, individually and as a parent and natural guardian of D.E, J.E., and S.E., infants, ROSENAY JACQUES, individually and as parents and natural guardians of J.J., C.J., and A.L., infants, ELZA JACQUES, individually and as parents and natural guardians of J.J., C.J., and A.L., infants, LANA RHEUBOTTOM, individually and as a parent and natural guardian of J.R., infant, HIRAM RIVERA, individually and as a parent and natural guardian of A.R. and T.R., infants, STEVEN WHITE, individually, collectively and as parents and natural guardians of A.W., infant, EMILIA WHITE, individually, collectively and as parents and natural guardians of A.W., infant, RAMONA JONES, individually and as a parent and natural guardian of Y.J., E.J., G.J., and T.J., infants, WILMA GLOVER-KOOMSON,

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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

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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.,

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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

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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

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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

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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

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JENKINS, individually and as a parent and natural guardian of T.J., infant, CARLA JOHNSON, individually and as a parent and natural guardian of L.R., infant, CARLO JOSEPH, individually and as a parent and natural guardian of C.J., J.J., and R.J., infants, CARMEL FEDE, individually and as a taxpayer residing within the East Ramapo Central School District, CARMELLE JUSTINE-MOREAU, individually and as a taxpayer residing within the East Ramapo Central School District, CAROL SEC, individually and as a taxpayer residing within the East Ramapo Central School District, CASEY CICERON, individually and as a taxpayer residing within the East Ramapo Central School District, CATHERINE TELLEZ, individually and as a parent and natural guardian of J.L., infant, CERIL CAYO, individually and as a parent and natural guardian of B.C., D.C. and R.C., infants, CHANTAL JEAN, individually and as a parent and natural guardian of S.B., infant, CHARLES LOUVIERE, individually and as a parent and natural guardian of J.L., infant, CHERI PARIS-HUDSON, individually, collectively and as parents and natural guardian of C.H. infant, JOHN HUDSON, individually, collectively and as parents and natural guardian of C.H. infant, CHRISTINA DUNCAN, individually, collectively and as parent and natural guardian of C.D. and S.D., infants, RYAN DUNCAN, individually, collectively and as parent and natural guardian of C.D. and S.D., infants, CHRISTINA LOSIER, individually and as a graduate of the East Ramapo Central School District, CHRISTINIA PATTERSON, individually and as a parent and natural guardian of D.B. and M.B., infants, CICERON LAGUERRE, individually and as a taxpayer residing within the East Ramapo Central School District, CINDY SEVIER, individually and as a parent and natural guardian of J.S.1 and J.S.2, infants, CONSTANT FRIEND, individually and as a parent and natural guardian of N.F., infant, COURTNEY J. JASMIN, individually and as a taxpayer residing within the East Ramapo Central School District, CRAIG BEITAL, individually and as a parent and natural guardian of D.B., infant, DANIEL PIERRE MAURICE, individually and as a parent and natural guardian of D.M. and J.M., infants, DAVID MCCRAY, individually and as a taxpayer residing within the East Ramapo Central School District, DAWN HOLNESS, individually, collectively and as parents and natural guardians of D.H. infant, EROLL HOLNESS, individually, collectively and as parents and natural guardians of D.H. infant, DEBRAH BROWN, individually and as a parent and natural guardians of D.B., infant, DEMENTRIUS HOLMES, individually and as a taxpayer residing within the East Ramapo Central School District, DENISE BALTHAZAR, individually and as a parent and natural guardian of D.B., infant, DENISE DEL VALLE, individually and as a parent and

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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, DOSSELAINE
 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

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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

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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,

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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

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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

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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

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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, TJOKDALEM 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

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guardian of D.O., infant, YOLANDA NAVARRO, individually and as a parent and natural guardian of R.P., infant, YOLANDE PANIAGUE, individually and as a parent and natural guardian of L.H. and O.H., infants, YOLENE ALTIDOR, individually and as a taxpayer residing within the East Ramapo Central School District, YONEL CADICHON, individually and as a taxpayer residing within the East Ramapo Central School District, YVELOURD TREVIL, individually and as a parent and natural guardian of Y.T., infant, YVETA BELANGE, individually, collectively and as parents and natural guardians of E.B. and Y.B., infants, HARRY BELANGE, individually, collectively and as parents and natural guardians of E.B. and Y.B., infants, YVONNE LORINCE, individually and as a parent and natural guardian of S.L., infant; on behalf of a class of similarly situated persons, on behalf of themselves and on behalf of the East Ramapo Central School District, TAISHA PAQUIOT, individually and as a parent and natural guardian of P.D., infant, CAROLD FORTUNE, individually, collectively and as parents and natural guardians of T.F., infants, FRANKY SAINVIL, individually and as a taxpayer residing within the East Ramapo Central School District, LISA MYERS, individually and as a parent and natural guardian of S.M., infant, SAMESON DESCAS, individually, collectively and as parents and natural guardians of N.D. and S.D., infants, CARME MEHU, individually and as a graduate of the East Ramapo Central School District, MARJORIE METELLUS, individually and as a parent and natural guardian of I.C., infant, HARRIET CHAMBERS, individually and as a parent and natural guardian of A.J., J.C. and R.C., infants,

Plaintiffs-Appellees,

- v. -

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

Defendants-Appellants,

EAST RAMAPO CENTRAL SCHOOL DISTRICT,

Defendant.

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1
2 Before: HALL and LOHIER, *Circuit Judges*, and REISS, *District Judge*.^{*}
3

4 We address an Interlocutory and Certified Appeal from a decision of the
5 United States District Court for the Southern District of New York (Seibel, J.)
6 which held that the Plaintiffs-Appellees—Students currently attending East
7 Ramapo public schools—have standing to bring 42 U.S.C. § 1983 claims against
8 the Defendants-Appellants—present and former East Ramapo School Board
9 Members—for violating the Establishment Clause of the First Amendment to the
10 United States Constitution and that the Board Members are not entitled to
11 qualified immunity. The Board Members argue that the students lack standing
12 because they did not suffer a direct injury resulting from a violation of the
13 Establishment Clause. The Board Members further contend that even if the
14 students have standing, the Board Members are entitled to absolute and qualified
15 immunity. We hold that the Students lack standing to pursue their Establishment
16 Clause claims, and therefore those claims must be dismissed. Judge Reiss
17 dissents in a separate opinion.
18

19 REVERSED and REMANDED.

^{*} 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:

I. BACKGROUND

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

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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").¹ 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.

¹ 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").

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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

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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.² 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

² 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.

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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

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

REAL ESTATE TRANSACTIONS

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

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

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

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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

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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,

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

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.⁶ 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

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

⁵ 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.

⁶ 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.

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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.⁷
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.

⁷ 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.

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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

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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

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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

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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

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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.⁸ *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

⁸ 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).

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

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).¹⁰ Under the

⁹ 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.

¹⁰ 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

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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.¹¹ 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

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

¹¹ 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.

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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

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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

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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.¹²
 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

¹² 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.

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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

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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

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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

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1 decision to fund one program or service at the expense of another.¹³ 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. ¹⁴ 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

¹³ 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”).

¹⁴ 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.

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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.¹⁵

¹⁵ 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,

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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

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).

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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.¹⁶ 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

¹⁶ 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)).

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1 issue moot.¹⁷ 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.

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