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**First Circuit says it again:  
No publicly funded tuition payments to sectarian schools**

*By James C. Schwellenbach, Esq.*

Five years ago, in *Strout v. Albanese*,<sup>1</sup> the First Circuit Court of Appeals, the federal court that determines what the law is in Maine, upheld the constitutionality of 20-A M.R.S.A. §2951(2), the Maine law that prohibits the payment of publicly funded tuition to sectarian schools. Recently, the First Circuit was asked to consider the issue again. In *Eulitt v. State of Maine, Department of Education, et al.*,<sup>2</sup> the court reached the same decision, finding that two recent United States Supreme Court decisions did not change the court's opinion that the Maine law passed constitutional muster.

**The facts**

The parents who challenged the law in *Eulitt* reside in Minot. Minot, like a number of Maine school districts, maintains no secondary school. It contracts with a neighboring district to educate at least 90% of its students. The contract, however, allows up to 10% of Minot's high school students to attend other approved secondary schools, public or private, if the students have needs that can not be met at the available public high school. Maine law, however, prohibits Minot from paying the tuition of any students attending sectarian schools.

The plaintiffs in this case sent their children to St. Dominic's Regional High School, a Catholic secondary school. The parents argued that Minot should pay their children's tuition at St. Dominic's because the available public school did not offer instruction in Catholic doctrine and therefore did not meet their children's educational needs. The parents contended that the State's restriction on tuition payments to sectarian schools like St. Dominic's violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution because it discriminates against them on the basis of their religion.

**The Court's decision**

As it had done in *Strout*, the First Circuit rejected the parents' argument. In doing so, the court made several important findings. The court found first that parents who choose to send their children to religious schools, unlike groups such as the disabled or racial minorities, are not a "suspect class" and are, therefore, not entitled to heightened protection from discrimination. Second, the court noted that the Maine law at issue does not prohibit attendance at religious schools, nor does it impose any other substantial burden on the religious beliefs or practices of the parties. Third, the court noted that while it is true that the State cannot interfere with a parent's fundamental right to choose a religious education for his or her child, it does not follow that the State must fund that parental choice. Finally, the court found that the Maine law was not motivated by any substantial animosity toward religion.

The court ultimately concluded that Maine's law prohibiting payment of public funds to sectarian schools bears a rational relationship to legitimate interests the State has concerning the education of its children, such as conserving the limited public funds available for education, avoiding entanglement of religious and government services, and avoiding the problems that would likely accompany efforts by the State to oversee parochial schools' curricula and policies.

For now, at least, the law is clear – Maine school districts cannot spend public funds on tuition payments to sectarian private schools. It seems likely, however, that the law will face additional legal challenges in the future. □

*Endnotes*

<sup>1</sup> 178 F. 3rd 57 (1st Cir. 1999).

<sup>2</sup> 2004 U.S. App. LEXIS 22050 (1st Cir. 2004).