Court Strikes Down New Hampshire’s Tax-Money-For-Religious-Schools Law

By Terry Firma

(taken from the web site of "The Friendly Atheist")

On Monday, New Hampshire was the scene of a state court verdict (PDF) that struck down a recent law allowing tax dollars to flow into religious schools:

The program provided a large tax credit to businesses that contributed to scholarship organizations that paid for tuition at private schools. Though the program was purportedly designed to expand educational opportunities, Justice John M. Lewis held that the program violated the state’s constitution because it had the effect of diverting public funds to religious schools.

“New Hampshire students, and their parents, certainly have the right to choose a religious education,” the Stafford County Superior Court judge wrote in the ruling. “However, the government is under no obligation to fund religious education. Indeed, the government is expressly forbidden from doing so by the very language of the New Hampshire Constitution.”

With that phrase, Lewis was referring to the Blaine Amendment that is enshrined in the Constitution of no fewer than 39 states, including his.

The amendment has a pretty fascinating genesis.

In the 1870s, Ulysses S. Grant, the 18th President of the United States, frequently expressed his commitment to keeping tax money out of religious education. In fulsome tones, Grant praised the separation of church and state, and attacked the idea of government support for “sectarian schools” run by religious organizations.

Can you imagine a current candidate, much less a President, loudly and passionately pursuing such a policy? Mike Huckabee and Sean Hannity would be leading the angry wolf (fox?) pack against any politician brave enough to try. They’d use labels such as radical-left, elitist, and un-American.

Yet far from being some pinko atheist troublemaker, Grant was a Republican — and a staunch Methodist.

Just as surprising is that Grant’s vision was shared by majorities in the House and Senate. In 1875, when Congress voted on the proposed Blaine Amendment (a Grant-inspired change to the Constitution forbidding the allocation of education tax dollars to “religious sects and denominations”), the House approved it overwhelmingly. In the Senate, the amendment fell just four votes short of the needed two-thirds majority.

Still, the Blaine Amendment is very much with us today, at the state rather than the federal level (unless you live in Arkansas, Connecticut, Louisiana, Maine, Maryland, New Jersey, North Carolina, Rhode Island, Tennessee, Vermont, or West Virginia). Everywhere the law is in effect, it effectively nails down the door to the treasury when proponents of religious schools come a-knocking.

So these folks found themselves rebuffed on Monday:

Defenders of the [New Hampshire] program argued the state was not directly funding private religious schools — only providing a tax write-off — and therefore the program was not unconstitutional. However, Justice Lewis disagreed, writing that “[m]oney that would otherwise be flowing to the government is diverted for the very specific purpose of providing scholarships to students.”

The challengers — Americans United for Separation of Church and State, the New Hampshire Civil Liberties Union, and the American Civil Liberties Union — were pleased with the ruling:

The Rev. Barry W. Lynn, executive director of Americans United for Separation of Church and State, said, “This decision is a great victory for public schools and for anyone who doesn’t want tax dollars to pay for religious indoctrination and discrimination. I am delighted that this convoluted scheme has been struck down.”

Meanwhile, the Network for Educational Opportunity, a group fighting for the (non-existent) right to use public funds for religious curricula, has said it will appeal the ruling. Kate Baker, NEO’s Executive Director, intoned that

“The state has no business taking religious schools off the table as a legitimate educational option. NEO will not rest until parents can freely choose any school of their choice, including religious schools.”

In truth, the government already accommodates all those who wish to educate their children in religious schools. Thanks to Ulysses S. Grant, the rest of us just aren’t obligated to pay for it.