

New England Legal Foundation

Advance Sheet

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The First Circuit agrees with NELF that, under Massachusetts law, a college’s officers and trustees do not owe a fiduciary duty to the college’s students; they owe fiduciary duties solely to the institution that they serve.

Squeri et al. v. Mount Ida College (Federal Court of Appeals for the First Circuit)

This appeal was before the First Circuit on an important issue of individual liability under under Massachusetts nonprofit corporate law. The case arose from the sudden announcement in May 2018 by Mount Ida College, located in Newton, Massachusetts, that it would be closing down permanently, and that its students could transfer to the University of Massachusetts to complete their education. The plaintiffs, certain former students of Mount Ida, alleged that they were injured because U. Mass did not offer their areas of study and because Mount Ida’s abrupt announcement, at virtually the end of the academic year, did not afford them sufficient time to transfer to other schools. The students sued Mount Ida and various named officers and trustees in the United States district court for the District of Massachusetts, raising a host of Massachusetts statutory and common law claims, including breach of contract, violation of G. L. c. 93A, and breach of a fiduciary duty owed to them as students. The District Court dismissed all of the students’ claims. In its decision of March 25, the First Circuit affirmed the District Court’s decision in its entirety.

NELF had filed an amicus brief in support of the defendant trustees and officers, focusing solely on the students’ claim that these defendants had breached a fiduciary duty owed to them in the handling of the school’s closing. NELF argued that the lower court correctly dismissed that claim because, under clearly established Massachusetts law the officers and trustees only owed fiduciary duties to the college, whose best interests they were required to serve. Indeed, the Massachusetts nonprofit corporation statute, G. L. c. 180, expressly codifies the three fiduciary duties that officers and directors owe to the nonprofit corporate entity they serve--a duty of good faith, a duty of care, and, central to this case, a duty of *loyalty*:

“A director, officer or incorporator. . . shall perform [their] duties . . . [1] in good faith and [2] in a manner [they] *reasonably believe*[] to be *in the best interests of the corporation*, and [3] with such care as an ordinarily prudent person in a like position with respect to a similar corporation organized under this chapter would use under similar circumstances.”

Mass. Gen. Laws ch. 180, § 6C (emphasis added).

Accordingly, NELF argued, the officers’ and trustees’ fiduciary duty in this case was to serve the best interests of Mount Ida in their management of the college’s affairs during the weeks leading up to its closing. They owed no separate fiduciary duty to the plaintiffs. To be sure, NELF pointed out, Mount Ida’s officials could, consistent with their duty of loyalty to the college, also consider

the students' interests when they made management decisions concerning the college. Nonetheless, the appellees were duty-bound to give priority in their decision-making to those actions they reasonably believed were in the college's best interests.

NELF also argued that the plaintiffs' position, if accepted, would contravene this core principle of undivided corporate loyalty because the students' interests were arguably in conflict with those of the institution. Adopting the students' position would therefore invite the possibility that Mount Ida's officers and trustees would have been required "to serve two masters whose interests [were] antagonistic." *Spiegel v. Beacon Participations, Inc., et al.*, 297 Mass. 398, 411 (1937). Longstanding principles of corporate governance, applicable to both for-profit and nonprofit entities, would reject the imposition of any such conflict of interest on corporate decisionmakers.

For the same reasons, NELF argued, the students erred when they relied on certain Massachusetts cases for the proposition that a fiduciary duty may arise under the common law when one party reposes trust and confidence in another. None of those cases involved a defendant who owed a statutorily mandated fiduciary duty to serve the best interests of another party, whose interests could conflict with those of the plaintiff. Clearly, in this case, the Legislature has, "by necessary implication," preempted the possibility of recognizing any such competing common-law fiduciary duties. See *Chelsea Hous. Auth. v. McLaughlin*, 482 Mass. 579, 591 (2019) ("A statute preempts a common-law doctrine *by necessary implication* where the doctrine is so repugnant to and inconsistent with the statute that both cannot stand.") (emphasis added) (citations and internal quotation marks omitted).

NELF also argued that Massachusetts law is crystal clear that the Commonwealth's Attorney General has the exclusive and discretionary statutory authority, under Mass. Gen. Law ch. 12, § 8, to sue the defendants for allegedly breaching the duties that they owed to Mount Ida:

"[T]he plaintiff does not have standing to bring an action to protect the public interest in the efficient and lawful operation of a charitable corporation, or to correct any abuse or error in the administration of that corporation. . . . [Instead,] [i]t is the exclusive function of the Attorney General to correct abuses in the administration of a public charity by the institution of proper proceedings under G.L. c. 12, § 8. It is her duty to see that the public interests are protected and to proceed in the prosecution *or to decline so to proceed as those interests may require.*"

Estate of Moulton, 467 Mass. at 492, 5 N.E.3d at 921–22 (emphasis added) (citations and internal punctuation marks omitted). Indeed, the Attorney General's exclusive oversight of charitable corporations "[under] G .L. c. 12, §§ 8-8[M], has for many years constituted a *comprehensive system for the regulation of charitable organizations in the Commonwealth.*" *Mary C. Wheeler Sch., Inc. v. Bd. of Assessors of Seekonk*, 368 Mass. 344, 352 (1975) (emphasis added).

Moreover, NELF pointed out that this comprehensive statutory scheme builds on a venerable Anglo-American tradition that has long recognized the Attorney General's exclusive standing to sue the directors and officers of a charitable corporation on behalf of that corporation and the public interest that it serves. Notably, as the press widely reported after Mount Ida College closed,

the Attorney General *did* exercise her exclusive statutory enforcement powers, under Mass. Gen. Laws ch. 12, § 8H, and conducted a civil investigation of the circumstances surrounding Mount Ida's closing. However, as reported in the press and not contradicted by the Attorney General, she concluded that it would not be in the public interest to sue Mount Ida's officials.

Accordingly, NELF argued, a decision allowing the plaintiffs to sue Mount Ida's former officers and trustees for breach of fiduciary duty would contravene not only basic principles of Massachusetts corporate law but also the Attorney General's exclusive statutory power to bring such a suit. Such a decision would also countermand her exercise of discretion in this case *not* to file suit. In short, the plaintiffs could not invoke a purported theory of liability under the common law to override "a comprehensive [statutory] system for the regulation of charitable organizations in the Commonwealth." *Mary C. Wheeler Sch.*, 368 Mass. at 352.

In its unanimous decision, the First Circuit panel (Lynch, J.) agreed with NELF on all key points and affirmed the dismissal of the plaintiffs' fiduciary duty claim, along with the rest of their complaint. From the outset, as NELF had argued, the Court readily acknowledged that Mount Ida's officers and trustees had a statutorily codified fiduciary duty to serve the best interests of the college, and that this statutory duty of undivided loyalty precluded the recognition of a potentially competing fiduciary duty owed to the students under Massachusetts common law. On this point, the Court did not mince any words when it wrote that "[t]he interests of the students alleged on the facts here are in direct conflict with those of the institution. Early disclosure of financial distress might well have endangered the ability of the institution to recover and made the financial distress even worse."

The Court also took note of the significant fact that, pending the appeal of this case, the Massachusetts Legislature enacted a new statute in response to Mount Ida's abrupt closing. *See* 2019 Mass. Acts ch. 113 ("An Act to Support Improved Financial Stability in Higher Education") (effective November 14, 2019). As the Court pointedly observed, nowhere does this new statute impose any fiduciary duties on a higher education institution's officers or trustees with respect to its students. Instead, the law imposes new financial disclosure and reporting requirements, both on the institution's website and to the Massachusetts Board of Higher Education.

Accordingly, the Court rejected the plaintiffs' call for it to expand upon the trustees' and officers' exclusive statutory duties owed to the institution, by recognizing an additional and competing fiduciary duty owed to *them* under Massachusetts common law. As the Court aptly put it, "[c]ommon law courts are not free to impose additional and likely conflicting fiduciary duties not imposed by statute." Moreover, , the Court recognized that a federal court in particular cannot expand state common law, especially in the face of competing state statutory and decisional law.

Finally, as NELF had argued it should do, the Court deferred to the detailed statutory scheme that vests in the Massachusetts Attorney General the exclusive right to oversee and enforce the fiduciary duties that the defendants owed to the college. "Massachusetts law restricts to the [Attorney General's Office] the ability to pursue claims of mismanagement of charitable organizations."