

WV Supreme Court Denies Petition Attacking Common Core

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Bailey Glasser prevails in defense of state officials against Del. Mike Folk's persistent, baseless attempts to win in court what he lost in the Legislature

The West Virginia Supreme Court denied, with little comment, a petition by Del. Mike Folk challenging West Virginia's participation in the Smarter Balanced Assessment Consortium (SBAC), a collaboration of states that have adopted Common Core standards.

This was Folk's second attempt. After his first challenge, Benjamin Bailey of Bailey Glasser's Charleston, West Virginia, office, filed a motion to dismiss on behalf of Gov. Earl Ray Tomblin and other state agencies and officials, arguing both that the lawsuit was a purely political attack without judicial merit and flawed on so many procedural levels that it should be promptly thrown out.

In response, Folk voluntarily dismissed the lawsuit. But he returned with another equally flawed petition, this time against the West Virginia Board of Education, again trying to win in court what he could not in the Legislature. Once more, Bailey Glasser opposed the petition, seeking dismissal on procedural and substantive grounds.

Supreme Court justices agreed. They denied the petition for a writ of mandamus on Wednesday, Oct. 14.

Background: Last session, Folk pushed a bill that would force West Virginia to pull out of SBAC. The bill failed in the state Senate, which should have ended Folk's crusade, at least until the next session.

Rather than continue legislative attempts to attack Common Core, Folk has insisted on attempting to litigate the issue.

As Bailey pointed out again in his second Motion to Dismiss, this is a political issue, not a judicial dispute. It concerns a policy judgment that, constitutionally, is clearly left in the hands of the state Board of Education. Folk takes issue with the standards and assessment tools adopted by the Board, but that grievance is not one that can or should be settled in a court of law.

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The state Board of Education is constitutionally charged with the “general supervision” of the state’s public schools. The Legislature has given the board authority to create “standards for performance of measures of accountability.” A single legislator’s disagreement with how the board has exercised that authority should not be a matter of litigation.

In his petition, Folk also claimed that the board violated the separation of powers and usurped the authority of the West Virginia Legislature. But courts have long recognized the necessity of the board’s ability to enact educational policy without legislative interference.

And, again, this isn’t about a dispute between the board and the Legislature; it is a dispute between the board and a single legislator.

The Supreme Court’s decision, we hope, will put an end to Folk’s quixotic legal crusade.

Attorneys

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