

Board Of Education Moves to Dismiss Delegate's Second Meritless Petition to Block Common Core

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Bailey Glasser continues to defend state officials against Del. Mike Folk's persistent attempts to win in court what he lost in the Legislature

Last April, Del. Mike Folk filed a contrived constitutional challenge to West Virginia's participation in the Smarter Balanced Assessment Consortium (SBac), a collaboration of states that have adopted "Common Core" educational standards.

Attorney Benjamin Bailey of Bailey Glasser's Charleston, West Virginia, office, filed a motion to dismiss on behalf of Governor Earl Ray Tomblin and others, 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 has returned with another, equally flawed petition, again trying to win in court what he could not in the Legislature.

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.

Nonetheless, he has insisted on attempting to litigate the issue, though his latest lawsuit suffers from similar procedural and judicial defects, as Bailey pointed out in another motion to dismiss, filed last week.

Most vitally, this is a political issue, not a judicial dispute. It concerns a policy judgment that, under the West Virginia Constitution, is 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, and 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 is no ground for a lawsuit.

In his petition, Folk also claims that the Board has 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 is not about a dispute between the Board and the Legislature; it is a dispute between the Board and a single legislator.

Combined with Folk’s repeated failure to give the state notice of his intent to sue and his lack of standing to bring the suit, it’s clear that this latest petition is as fatally flawed as the first.

The lawsuit was featured in an article on September 15th in the Charleston-Gazette Mail.

Attorneys

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