

National Organization Challenges Diversity Policy of West Virginia State Bar



A national advocacy group opposing race and gender preferences has initiated legal action against the West Virginia State Bar. The lawsuit, filed on Thursday in federal court, challenges a policy that reserves a seat on the bar's governing board specifically for a Black member, alleging it violates constitutional principles.

Background of the Lawsuit

The Foundation Against Intolerance and Racism (FAIR) filed the lawsuit, asserting that the policy infringes upon the Equal Protection Clause and the Fifteenth Amendment of the U.S. Constitution. The contested seat is one of 26 on the West Virginia State Bar's Board of Governors and has been designated for a Black member since 1985. Additionally, voting for this seat is restricted to Black members of the bar.

FAIR, a nonprofit organization that describes itself as "nonpartisan and committed to challenging threats to civil liberties from identity-based practices," is represented in this case by the Pacific Legal Foundation, a public interest law firm known for its conservative and libertarian advocacy.

Allegations of Racial Discrimination

The complaint alleges that the state bar's policy constitutes "invidious racial exclusions for nominations, elections, and voting procedures." FAIR's legal filing contends that such practices contradict the constitutional principle of equal voting rights regardless of race.

Response and Historical Context

Mary Jane Pickens, the Executive Director of the West Virginia State Bar, along with two board members named as defendants in the case, has not yet issued a statement. According to the Pacific Legal Foundation, the contested board seat will next be up for election in 2025 for a four-year term.

This legal challenge is part of a broader wave of lawsuits targeting diversity and inclusion initiatives at bar associations and other institutions. The scrutiny has intensified following the U.S. Supreme Court's 2023 decision to prohibit affirmative action in college admissions.

Similar Legal Challenges Across the Nation

The lawsuit in West Virginia coincides with developments in other states:

- **New Jersey:** A state appellate court recently upheld the New Jersey State Bar Association's practice of reserving seats for individuals from underrepresented groups, ruling that it does not violate state discrimination laws.
- **Florida:** The Florida Bar dismantled its diversity and inclusion committee and ceased funding related programs after a directive from the state Supreme Court.
- **Wisconsin:** The State Bar revised its diversity program for law students to include all first-year law students in good standing, following a lawsuit claiming racial discrimination.

Broader Campaign Against Diversity Initiatives

FAIR and the Pacific Legal Foundation have been active in challenging similar policies nationwide. In addition to the West Virginia case, they are pursuing:

- A lawsuit against a designated seat for a Black member on the South Carolina Commission for Minority Affairs.
- Litigation challenging a Texas program that allocates government contracts to minority-owned businesses.
- A legal challenge to a Washington State housing program offering zero-interest mortgage loans to applicants meeting racial diversity criteria.

Implications for Diversity Policies

The outcome of these lawsuits could have far-reaching implications for diversity initiatives across various sectors. Critics argue such policies ensure representation and equity, while opponents claim they perpetuate racial discrimination and violate constitutional rights.

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