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Expert: Discrimination trial for UI employee could have national impact

BY BRENT GRIFFITHS | OCTOBER 19, 2012

The lawsuit between an ex-dean at the University of Iowa College of Law and a former teaching candidate is ongoing, and officials continue to debate what effect a decision in the trial would have on universities nationwide.

Teresa Wagner, a part-time employee at the UI College of Law's writing resource center, was denied full-time employment in 2006. She first filed a lawsuit against Carolyn Jones in January 2009.

Wagner said the then-dean didn't hire her because of her conservative political beliefs, claiming discrimination violated her First Amendment rights.

Wagner's trial has drawn national attention. However, the effect of a decision in her favor is a source of disagreement.

"A broad decision in her favor would cause us to lose the separation even state universities have from the government ... something that's been going back centuries," said Walter Olson, a senior fellow with the Cato Institute. "It will make universities more bureaucratic than they already are ... to like someone, that's hard to separate from politics."

But Northwestern University Associate Professor of law Zev Eigen said a decision in Wagner's favor would not have very much impact in changing how law schools approach their hiring processes.

"Not much would change," he said. "Political ideology is not something a university or law school should consider. Maybe this will open the door down the road to conservative academics."

According to the Des Moines Register, Wagner said Tuesday the decision to file the lawsuit was extremely difficult.

"The decision to sue your employer, this has been the hardest decision of my life," Wagner said to the jury, as reported by the Register. "I regret it. I regret it because I think it burned all my bridges in Iowa City."

The trial, which began Monday in Davenport, has focused on the university's claim that Wagner didn't get the job because she said during her presentation in 2007 that she would not teach legal analysis, part of the position's job description, according to the Register. Wagner denies she said that, but a video of the presentation was erased after Wagner didn't get the position, the Register reported.

The jury will return Oct. 22 to hear further testimony and closing arguments, the Register reported.

Olson said he thinks conservative faculty candidates face a "rougher road" — especially those who have previously worked in certain fields, as Wagner did when she worked for the National Right to Life Committee, which opposes abortion and euthanasia, and the Family Research Council.

"You can be a conservative on trust law, and most people don't care," he said. "However, if you're a conservative on abortion, people really, really care."

Eigen said the disparity stems from a couple of factors.

"My observation is at peer institutions there aren't many politically conservative members on tenure-track faculty," Eigen said. "I don't necessarily think schools are shunning them. My bet is it's a function of the fact of labor supply driven by fewer conservatives in academia versus liberals."

But Olson disagreed with Eigen's view, saying it is tougher for more conservative minded faculty members to get hired at law schools.

"Law schools hire like a club, and it's easier to get in the club if you have the same work as those already in it, have gone to the same conferences, and write the same articles," he said. "The sympathy is not there, and that means often people won't be noticed."

A U.S. Court of Appeals heard Wagner's case after a U.S. district judge dismissed the case in March 2010, citing immunity for Jones. The Court of Appeals overturned the decision in February, stating the district judge erred in finding that Jones was protected from liability by qualified immunity in her individual capacity.

According to records obtained by The Daily Iowan, as of the spring of 2012, among tenured faculty members, approximately four registered Republicans are associated with the UI College of Law compared with 19 Democrats, six nonpartisan, and three unregistered members. Further records obtained show that roughly 60 percent of tenured faculty, as of the spring of 2012, were

registered Democrats compared with approximately 10 percent registered Republicans.

Officials from other Big Ten law schools said political affiliations are considered when interviewing prospective faculty, but they value diversity in opinion from their faculty.

“It doesn’t matter to us at all if people are politically active or volunteer for a campaign,” said Richard Moberly, associate dean for faculty placement at the University of Nebraska-Lincoln Law School. “Right now, we have a politically diverse faculty, but we didn’t hire them with that in mind.”