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Suit by Conservative Sees Bias in Law School Hiring

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- WASHINGTON — Teresa R. Wagner is a conservative Republican who wants to teach law. Her politics may have hurt her career.

An official of the [University of Iowa College of Law](#), where Ms. Wagner applied for a job in 2006, certainly seemed to think so.

“Frankly, one thing that worries me is that some people may be opposed to Teresa serving in any role in part at least because they so despise her politics (and especially her activism about it),” Associate Dean Jonathan C. Carlson [wrote in 2007](#) to the law school’s dean, Carolyn Jones.

Ms. Wagner, who graduated from the law school in 1993 and had taught at the George Mason University School of Law, was not hired. She sued, alleging discrimination because of her political beliefs. Late last month, a unanimous three-judge panel of the United States Court of Appeals for the Eighth Circuit, in St. Louis, [ruled that her case should go to trial](#), saying she had presented enough evidence to suggest that “Dean Jones’s repeated decisions not to hire Wagner were in part motivated by Wagner’s constitutionally protected First Amendment rights of political belief and association.”

Ms. Wagner’s lawyer, Stephen T. Fieweger, said the decision was a victory for an important sort of academic freedom.

“It’s gotten to the point where the law school’s diversity efforts are to eliminate everyone from the mainstream,” he said. “They espouse cultural diversity but won’t consider the conservative viewpoint.”

According to Ms. Wagner's lawsuit, the law faculty at Iowa in 2007 included a single registered Republican among its 50 or so members. The Republican professor was appointed in 1984. In 2009, [The Des Moines Register found](#) that there were two registered Republicans on the faculty.

Ms. Wagner would have added some balance, her lawyer said.

"My client is an ideologue," Mr. Fieweger said. "She does believe in conservative values." Ms. Wagner has worked for the National Right to Life Committee, which opposes abortion and [euthanasia](#), and the Family Research Council, which takes conservative positions on social issues.

[Walter Olson](#), a fellow at the Cato Institute, the libertarian group, and the author of "Schools for Misrule: Legal Academia and an Overlawyered America," said there was nothing unusual about the number of Republicans on Iowa's law faculty.

"What would count as freakish would be to find two dozen registered Republicans on a big law faculty," Mr. Olson said. "Law schools are always setting up committees and task forces to promote diversity on their faculty, which can serve to conceal an absence of diversity in how people actually think."

[A study published in The Georgetown Law Journal in 2005](#) analyzed 11 years of federal campaign contributions by professors at the top 21 law schools as ranked by U.S. News & World Report. Almost a third of these law professors contributed to campaigns. Of those who gave \$200 or more, the study found, 81 percent gave wholly or mostly to Democrats, while 15 percent gave wholly or mostly to Republicans.

The percentages of professors contributing to Democrats were even more lopsided at some of the most prestigious schools: 91 percent at Harvard, 92 at Yale, 94 at Stanford. At the University of Iowa, it was 78 percent. Political affiliations and contributions are, of course, an imperfect proxy for ideology, and political beliefs may in any event have no effect on scholarship and classroom teaching.

It may be, moreover, that liberals are simply more likely than conservatives to seek positions at law schools. There are plenty of conservative lawyers at firms, in government service and on the bench.

[John O. McGinnis](#), a law professor at Northwestern University and an author of the Georgetown study, said last week that "it is still the case the legal academy is quite ideologically monochromatic." But he added that things seem to be changing.

"My perception, for what it is worth, is that the younger generation in academics is largely quite open to those of all political views," he said. "They did not experience the polarizing effects of the 1960s and the Vietnam War."

A spokesman for the University of Iowa, Tom Moore, would not comment on the lawsuit or the ideological composition of the law school's faculty.

Ms. Jones, who is no longer dean, said she could not comment until she had consulted with her lawyers. In 2009, [she told The Des Moines Register](#) that "Teresa didn't get the job, and I'm sure she's disappointed, but she didn't not get the job because of her politics."

Mr. Olson said he had mixed feelings about the Eighth Circuit's decision, saying it may have identified an instance of a real problem while allowing it to be aired in the wrong forum.

"I have serious misgivings about asking the courts to fix this through lawsuits," Mr. Olson said. "It threatens to intrude on collegiality, empower some with sharp elbows to sue their way into faculty jobs, invite judges into making subjective calls of their own which may reflect their assumptions and biases, all while costing a lot of money and grief."

"At the same time," he added, "there's a karma factor here. Law faculties at Iowa and elsewhere have been enthusiastic advocates of wider liability for other employers that get sued. They're not really going to ask for an exemption for themselves, are they?"