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W.Va. domestic-violence program regulations voided

State's rules for victims are biased against men, Kanawha circuit judge decides

By [The Associated Press](#)

CHARLESTON, W.Va. -- A Kanawha County circuit judge has voided West Virginia's regulations for domestic-violence programs, saying they discriminate by denying abused men access to publicly funded shelters and female abusers access to treatment.

In a decision received Tuesday, Judge James C. Stucky said Family Protection Services Board rules for licensing domestic-violence shelters, certifying advocates and distributing state funding distort lawmakers' intent and violate the West Virginia Men & Women Against Discrimination's right to free speech.

The nonprofit advocacy group sued the state board last year.

Stucky said the state administers its programs on the premise that only men can be batterers and only women can be victims by requiring public shelters to adopt and adhere to the principle of separate but equal treatment based on gender.

"The practical effect of this rule is to exclude adult and adolescent males from their statutory right to safety and security free from domestic violence for no reason other than their gender," Stucky wrote in his Oct. 2 ruling.

As a result, he said, male victims are being turned away from shelters "even when those shelters are otherwise unoccupied." Treatment programs also exclude women.

The West Virginia legal challenge is among a growing number of battles being waged across the country by groups that allege state laws requiring gender-neutral programs are skewed by discriminatory rules and regulations that embrace gender biases.

"We're not trying to belittle women who are abused, we're trying to raise awareness" that men also are victims, said Marc Angelucci with the [National Coalition For Men](#) who secured a similar court victory in California last October.

An appeals court there invalidated parts of that state's Health and Safety and Penal codes last year, saying they were unconstitutional because they excluded men from programs and services supported by nearly \$22 million in taxpayer money each year.

The ramifications of the West Virginia ruling remain unclear.

A call to Family Protection Services Board Chairwoman Judy King Smith was not returned Thursday.

The office of the assistant state attorney general representing the board referred all questions to Department of Health and Human Services spokesman John Law, who said the ruling was being reviewed Thursday and that no decision has yet been made on whether to appeal.

In the year since the successful California challenge, Angelucci said that state has rewritten funding criteria for domestic-violence programs to make them gender neutral, and officials are working to provide equal access to all services. One of the biggest changes, has been to increase awareness of men as victims, Angelluci said, pointing to a 2001 study by the Centers for Disease Control that showed women are just as likely as men to commit domestic violence.

Stucky said the West Virginia board, which is responsible for establishing and enforcing standards for licensing shelters, implementing intervention programs and awarding 95 percent of taxpayer funding for the programs, overstepped its authority.

He noted that only members of the [West Virginia Coalition Against Domestic Violence](#), which he called a "private trade group" consisting of 14 licensed programs and shelters, can become certified and licensed, excluding all outsiders, even one "staffed by the most prominent and well-educated individuals working in the field of domestic violence in the United States."

Public funding also is closed to anyone who is not a member of the coalition.

The requirements have a "chilling effect on the plaintiff's rights to free speech" because no one outside the coalition can become certified and licensed, putting them at a disadvantage. Stucky said the nonprofit's ability to "hold itself out" as having certified advocates "would add legitimacy to its plaintiff's ability to exercise its free-speech rights" and advocate for equal access to shelters for men, women and children.

"This is just basic unfairness. It's raw gender bias," said Havey D. Peyton, attorney for the West Virginia chapter of [Men & Women Against Discrimination](#), a nonprofit advocacy group.

Aneglucchi said the West Virginia ruling will give momentum to a worldwide push to recognize men as victims, and might rekindle a second attempt to challenge Minnesota's system. A legal challenge there several years ago was dismissed for lack of standing, he said.

"We'll probably try it again," he said.

Ron Foster, region IV coordinator for Men & Women Against Discrimination, said he is pleased with Stucky's ruling, saying everyone loses when the people responsible for overseeing support programs "use their own personal biases to develop rules."

"Everybody should be treated the same," he said. "If you're a victim, you're a victim."