

THE COMMON APPLICATION

We learned yesterday that the Ninth Circuit Court of Appeals has overturned the May 2015 decision by the federal trial court in Portland, Oregon, to dismiss at the outset CollegeNET's antitrust complaint against The Common Application. Although we are disappointed by this development, we respect the appellate court's ruling. We are giving thoughtful consideration to our options and will continue to mount a strong defense of the case.

For background, after the federal trial court concluded that CollegeNET's complaint filed in May of 2014 could not proceed, CollegeNET filed an appeal to the Ninth Circuit Court of Appeals, arguing that such a dismissal was premature. Yesterday, the Ninth Circuit issued a very short opinion overturning the dismissal and reinstating the complaint.

This decision is not a ruling on the merits of the complaint. The appellate court reasoned that because the case was only at a very preliminary stage, the lower court should have permitted some factual development before dismissing CollegeNET's claims. The Ninth Circuit expressed no opinion as to the merits of CollegeNET's claims, only that those claims cannot be dismissed without allowing CollegeNET to present evidence. Like the lower court, we believe that CollegeNET's case has no merit and that the earlier decision terminating the case was a sound and legally required decision.

It is important to recognize that the allegations in CollegeNET's complaint remain untested and unproven. Because the case was still in its very early stage, both the lower court and the appellate court were required to accept as true everything CollegeNET stated in its complaint; The Common Application was not allowed to contest any of CollegeNET's facts nor to offer facts of its own. Even under that very generous standard, CollegeNET still has had difficulty satisfying basic legal requirements. Yesterday, however, the appellate court concluded that the standard is sufficiently generous that CollegeNET's complaint, assuming that everything in it is true, meets the minimum standard for viability.

The Common Application believes that CollegeNET's complaint leaves out important details. For example, it skips over the many years of hard work and innovation done by our community to build and improve an online application portal that best reflects the needs of our members and applicants. In place of this, CollegeNET substitutes self-interested arguments that principally promote its economic well-being as a commercial vendor.

Many of the details in the complaint are not presented accurately. For example, CollegeNET claims that it is somehow "unfair" for the Common Application to operate as a 501(c)(3) organization, even though the IRS properly granted that status to the Common Application. The appellate court's ruling opens up those claims to rigorous testing by The Common Application, and we are confident that if and when CollegeNET's claims are subjected to that testing, its case will fail.

Outlined below is a timeline of key events in this case.

May 2014: CollegeNET files lawsuit against The Common Application alleging antitrust violations.

November 2014: District Court dismisses original 103-page complaint for failure to comply with the federal rules. The court allows CollegeNET to re-file. CollegeNET files an amended complaint.

May 2015: District Court dismisses CollegeNET's complaint. The court finds that CollegeNET failed to allege antitrust injury. CollegeNET files Notice of Appeal.

September 2015: The Coalition for Access, Affordability and Success announces its choice to work with CollegeNET to develop an online undergraduate application for admission to its member schools.

December 2015: CollegeNET files its opening brief to the Ninth Circuit Court of Appeals.

March 2016: The Common Application files opposition brief.

April 2016: CollegeNET responds to The Common Application's opposition brief (briefing cycle complete).

October 5, 2017: Oral argument before the Ninth Circuit Court of Appeals in Seattle.

October 23, 2017: The Ninth Circuit Court of Appeals reverses federal court dismissal from May 2015.

To date, our non-profit membership association has spent several million dollars defending itself against these frivolous claims by a for-profit, privately-held company. While we are in a sound financial position and have the resources to continue to defend our organization, we would prefer to dedicate our resources to continued innovation and expanding our outreach and access programs in support of our mission.

What does this mean for you? As we have since the suit was filed in 2014, we will continue to focus on our mission promoting access, equity, and integrity in the college admission process and providing outstanding service to our members, students, and those who support them on their academic journeys.

Thanks, as always, for your support.

Best,
Jenny Rickard
President & CEO