



NEWS IS IT LEGAL?

STUDENT PRESS Lawrence, Kansas

The current and former editors-in-chief of the *University Daily Kansan* have sued two top University of Kansas administrators for reducing the student newspaper's funding on the basis of content.

In the lawsuit, filed February 5 in the US District Court for the District of Kansas, Vicky Diaz-Camacho, editor-in-chief of the *Kansan*, and Katie Kutsko, former editor-in-chief, are alleging that a \$45,000 annual reduction of student fees for the newspaper was in retaliation for an editorial criticizing the Student Senate. They are suing Chancellor Bernadette Gray-Little and Vice Provost for Student Affairs Tammara Durham, who is also an ex-officio member of the University of Kansas Student Senate.

In May 2014, the *Kansan* published a "strongly-worded" editorial calling for reforms of the Student Senate election process after the student body president and vice president were elected despite receiving fewer votes than their competitors, who were declared ineligible the night before the election because of an election-code campaign violation. Later that summer, the student body president and vice president were removed from office and then reelected and reinstated.

But in the next budget review of the *Kansan's* student fees, the lawsuit alleges, student senators questioned *Kansan* editors for "unflattering coverage of the Student Senate" and criticized them for publishing the editorial. After the *Kansan* editors requested to maintain their existing funding level of \$2 per student per semester, the Student Senate Fee Review Committee voted to cut funding to \$1 per student—a \$45,000 annual reduction.

The stated reason for the reduction was the *Kansan's* plan to reduce print publishing from four days a week to

two. But according to the lawsuit, committee members told the *Kansan* editors to "fix their content" and then ask for restored funding the following year.

The Student Senate Finance Committee later amended the funding reduction to \$1.50 per student, which *Kansan* editors supported as a compromise. But after the *Kansan* staffers left that meeting, in which one student senator cited a "steady decline" in the quality of the paper's editorial content, the committee tabled the final passage of the funding bill. Later, the committee again reduced the funding to \$1 per student and voted to send the bill to the full Student Senate.

The full Student Senate approved cutting the *Kansan's* funding in half to \$1 per student for the 2015–16 academic year. According to the lawsuit, no other student organization had its funding reduced.

After the vote, the Student Press Law Center sent a letter of concern to Gray-Little, the university's chancellor. SPLC Executive Director Frank LoMonte explained that cutting funding for content-based reasons was unconstitutional and asked her to stop the funding cut. Gray-Little declined to intervene and recommended the *Kansan* staff meet with Durham, who had to approve the student fees budget before it went to the chancellor's desk.

Durham said she would mediate a meeting between *Kansan* editors and the Student Senate members. At the meeting, the student body president said she would look into asking the Finance Committee to revisit the funding question. That never happened, and the student body president never followed up with the *Kansan* staff until after Gray-Little had approved the student fees budget—which included the funding cut.

According to the lawsuit, the \$45,000 reduction forced the *Kansan*

to eliminate thirteen paid student positions on both the editorial and advertising staffs and leave its news adviser position vacant.

"Not every other student newspaper in the Kansas state university system is compelled to go through an annual budget review that is recommended by an on-campus organization which is the subject of news stories and editorials," the lawsuit states. "In addition to its practical impact on the ability of the *Kansan* and its staff to effectively gather, report and distribute news, the budget cut carries a significant chilling effect because it ties the *Kansan's* receipt of adequate funding to the expressions of viewpoints which meet the approval of the Student Senate.

"As a result of the budget reduction, plaintiffs are chilled in their expression of First Amendment-protected speech, and are less likely than they would otherwise have been to express viewpoints critical of the Student Senate or to make independent editorial judgements about the newsworthiness of Student Senate events."

Also according to the lawsuit, just over a month ago, a member of the Fee Review Committee complained to the *Kansan* news editor about the paper's coverage of the Student Senate and said that the newspaper had "bit the hand that fed" it and the staff "got what you deserved."

The lawsuit charges that the Student Senate "has made it clear that negative coverage . . . will impact reinstatement of the *Kansan's* previous funding level in the upcoming annual fee review process."

Federal courts have ruled that it is unconstitutional for student governments or university administrators at public institutions to decrease funding in retaliation for editorial content decisions.



The plaintiffs are asking for a preliminary injunction against the administrators that prohibits them from enforcing the reduction of the *Kansas*'s student activity fee allocation. The plaintiffs are also asking for nominal damages and reasonable attorneys' fees and costs. Reported in: splc.org, February 5.

NET NEUTRALITY Washington, DC

Reading the tea leaves from a court hearing is a dangerous endeavor. But standing out from a December 4 hearing over net neutrality regulations were comments from an influential judge who seemed to indicate more comfort with the Federal Communications Commission's legal defense of the rules.

The comments came from Judge David S. Tatel of the United States Court of Appeals for the District of Columbia Circuit during a hearing where the FCC was defending its net neutrality rules against opponents who want to overturn the broadband regulations that are aimed at preventing favoritism on the internet. Judge Tatel is part of a three-judge panel that will decide whether the rules are upheld or struck down.

The FCC is defending the rules against a lawsuit filed by telecom, cable and wireless trade groups. The FCC's classification of broadband as a "common carrier" service like phones is at the heart of the suit. Telecom and cable firms argue that broadband services are not the same as telephone services and should not be strapped with the same utility-style framework of heavy regulations. They say the FCC illegally put broadband into the same bucket as phone services and therefore that the net neutrality rules should be overturned. The agency has argued that it had to reclassify broadband as a utility-like service after the

court vacated rules last time and told the agency it was making rules on shaky legal ground.

Judge Tatel pointed several times to case history that supports the FCC's move to regulate broadband services like utilities. He said an opinion by the Supreme Court in 2005 gave the FCC the ability to categorize communications services as it sees fit. Judge Tatel also repeatedly went back to that high court decision in questions to cable and telecom companies suing the agency for overreach.

"Isn't that our starting point?" Judge Tatel said just minutes into a long morning of oral arguments. His comments were particularly scrutinized because twice before, in 2010 and 2014, he wrote opinions to vacate previous net neutrality rules.

The results of the case could reshape the way consumers access internet content. For more than a decade, the FCC has tried to create regulations to ban internet service providers from blocking certain websites or making some travel faster or slower than others. A decision is expected in the spring. If the FCC wins, telecom and cable firms may take the case to the Supreme Court.

In three hours of argument the judges also showed skepticism of several aspects of the FCC rules, including whether the agency had the authority to strap net neutrality rules onto wireless services and whether it was reasonable to ban "paid prioritization," where websites pay internet service providers for faster downloads.

Judge Stephen F. Williams compared priority delivery of content on the internet to the "entirely reasonable" practice of food companies paying trains for refrigerated cars.

Still, Gene Kimmelman, head of the public interest group Public Knowledge, which supports the rules, said the hearing was notable because

while he has "heard many arguments of the commission before the court where they've been ripped apart," this time "they were given sound support for using reclassification, which was the critical point." Reported in: *New York Times*, December 4.

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The founding editor of *Business Insider UK*, Jim Edwards, had a bank delete two of his tweets December 22. In an e-mail, Bank of America told Edwards that his tweets violated the bank's copyright and that if he kept it up, they'd see to it that his Twitter account was deleted.

"Investment banks apparently have the power to censor journalists on Twitter, simply by asking," Edwards wrote in a short post on *Business Insider* describing the situation. "That is depressing."

Edwards had quoted a research document produced by analysts. He says the tweets were "probably trivial," but can't really be more specific—in part because the frequent Twitter user can't even remember exactly what they were about.

One of them reads "BAML's Teo Lasarte is developing a pun-based method for analysing auto stocks," where the "BAML" acronym refers to Bank of America Merrill Lynch. The tweet included a screenshot that has been deleted.

Edwards acknowledges no earth-shattering information has been lost to the world. In fact, it was likely a compliment to the analyst in question. "Sometimes analysts write funny headlines on their investment notes," he says, leading him to take a screenshot and tweet it out.

B of A might have a case if Edwards had sent out the entire text of Lasarte's report, he says, but the funny headline tweet didn't even come



close to that. In Edwards' view, it's a no-brainer case of fair use.

The Digital Millennium Copyright Act claim came from the "Attributor Corporation," part of digital-rights company Digimarc, working on behalf of Bank of America. It's the latest example of the Kafka-esque system of copyright takedowns, in which intermediaries like Twitter tend to treat users subject to copyright claims as guilty until proven innocent.

"I have no idea what Twitter agreed to censor for BAML, and no way of guessing what BAML's objection was really about—or if it was even BAML who made the complaint," writes Edwards.

Twitter wouldn't comment on the matter other than to refer to their copyright policy. The Digimarc employee whose name is on the takedown notice didn't respond to Edwards' inquiry.

Other Edwards tweets that quote Bank of America reports remain

online, and unchallenged. He has appealed the claim through Twitter's system.

"I'm not in favor of journalists getting special treatment over this kind of thing," said Edwards. "But it is frustrating. Twitter/ BAML are sending me legal spam. I'm replying, basically just asking them to look at this and apply some discretion or judgment. So far, no dice." Reported in: arstechnica.com, December 22.