

July 26, 2007

Elisabeth A. Shumaker
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

KATIE LANE and SARAH RICE,

Plaintiffs - Appellants/Cross-
Appellees,

v.

TODD F. SIMON and STEPHEN E.
WHITE, in their official and
individual capacities,

Defendants - Appellees/Cross-
Appellants,

STUDENT PRESS LAW CENTER;
THE AMERICAN SOCIETY OF
NEWSPAPER EDITORS; THE
ASSOCIATED COLLEGIATE
PRESS; COLLEGE MEDIA
ADVISERS; COLLEGE
NEWSPAPER BUSINESS AND
ADVERTISING MANAGERS; THE
COMMUNITY COLLEGE
JOURNALISM ASSOCIATION; THE
FOUNDATIONS FOR INDIVIDUAL
RIGHTS IN EDUCATION, INC.; THE
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS; and THE
SOCIETY OF PROFESSIONAL
JOURNALISTS,

Amici Curiae.

Nos. 05-3266 & 05-3284

**Appeal from the United States District Court
for the District of Kansas
(D.C. No. 04-CV-4079-JAR)**

Patrick J. Doran, Patrick J. Doran, L.C., Kansas City, Missouri for the Plaintiffs - Appellants/Cross-Appellees.

Cheryl G. Strecker, Senior Associate University Attorney, Kansas State University, Manhattan, Kansas for the Defendants - Appellees/Cross-Appellants.

S. Mark Goodman, Student Press Law Center, Arlington, Virginia, and Adam J. Biegel, Alston & Bird, LLP, Atlanta, Georgia, filed an Amici Curiae brief in support of Plaintiffs - Appellants/Cross-Appellees.

Before **LUCERO**, **McCONNELL**, and **HOLMES**, Circuit Judges.

LUCERO, Circuit Judge.

Katie Lane and Sarah Rice are former editors of the Kansas State Collegian (“Collegian”), a daily newspaper affiliated with Kansas State University (“KSU” or “University”). After KSU officials Todd Simon and Stephen White took actions leading to the removal of the Collegian’s advisor, Ronald Johnson, plaintiffs filed suit alleging violations of their First and Fourteenth Amendment rights as well as state law. The district court granted defendants’ motion to dismiss under Fed. R. Civ. P. 12(b)(6). Lane and Rice now appeal. Because we conclude this case is now moot, we **VACATE** the decision of the district court

and **REMAND** with instructions to **DISMISS**.

I

Since its establishment by KSU students in 1896, the Collegian has provided general news coverage in and around Manhattan, Kansas, including the KSU campus. KSU students comprise the staff of the Collegian, and Student Publications, Inc. (“SPI”) publishes the paper. Although the board of directors and officers of SPI are in large part affiliated with KSU, SPI is incorporated as a Kansas not-for-profit corporation that is legally distinct from the University.

In Spring of 2004, Lane served as Editor-in-Chief of the Collegian and Rice as its Managing Editor. Johnson, a KSU professor in the A.Q. Miller School of Journalism and Mass Communications, was the Treasurer and Director of SPI from 1989 until 2004. In his capacity as Director, Johnson advised the student editors of the Collegian but did not make final content decisions for the paper. Under Johnson’s advisorship, the Collegian won a number of national awards, including Associated Collegiate Press Pacemaker Awards in 1997-98, 1999-2000, and 2000-01. In 2003 and 2004, it won top national prizes from the Columbia Scholastic Press Association and placed first in show at the Spring National College Media Convention.

During Lane and Rice’s tenure as editors, campus controversy erupted over the extent of minority news coverage in the Collegian. After the Collegian failed to send a reporter to the Big XII Conference on Black Student Government, held

in Manhattan, Kansas that year, student groups and faculty openly criticized the Collegian's alleged dearth of diversity coverage. Lane and Rice addressed these concerns in two public forums for KSU students, faculty, and administrators. Their responses, however, failed to quell campus criticism, and at the second forum, a KSU associate provost suggested that Johnson no longer serve as Director of SPI. In early April 2004, shortly after the forums, KSU student groups organized a protest rally and march calling for Johnson's removal.

On May 7, 2004, Todd Simon, Chairman of the Board of SPI and Director of the School of Journalism and Mass Communications at KSU, wrote a letter to Stephen White, Dean of the College of Arts and Sciences at KSU, recommending that Johnson not be reappointed as Director of SPI.¹ In his letter, Simon explicitly stated that he did not base his recommendation on the recent controversy over minority news coverage. Instead, he relied largely on a "content analysis" comparing the Collegian to six other college newspapers. After reviewing the results of the content analysis, Simon concluded that the "Collegian's news reporting and writing are demonstrably weaker than news coverage in peer college newspapers." According to the analysis, the Collegian had fewer hard news stories, diversity stories, and sports news stories than the other college papers analyzed. The analysis also showed that the Collegian cited

¹ Johnson worked under a series of one-year contracts and was subject to annual reappointment.

