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Those inconveniences are a major concern for David Fidanque, associate director of the American Civil Liberties Union (ACLU) of Oregon.

"What bothers us most deeply here is that everyone (of the athletes) is being assumed to be guilty until they prove their innocence," Fidanque said. "What we object to is that there isn't some individual suspicion that their performance has been impaired or that they have shown some objective of being involved with illegal substances."

Fidanque has sent Williams a formal letter and petition protesting the policy, mostly on the grounds that it violates the Oregon Administrative Procedures Act (ORS 183.310).

In the letter, Fidanque asks Williams to "rescind the rule altogether or initiate the statutorily required rule-making process."

The Administrative Procedures Act requires that certain steps be followed when a state agency institutes a rule. The steps include giving public notice of the rule and allowing individuals and organizations to request a public hearing to discuss the rule, and possibly to challenge an adopted rule in court.

"This requirement is coming directly from the state of Oregon, and to us that raises some very clear constitutional issues," Fidanque said. "We certainly want the chance to make that case through a public hearing."

He said that while the University scheduled a hearing on its own initiative after updating the skateboard rule (OAR 571-50-020) last spring, it seems to be undergoing this process "behind closed doors."

"When something that's as hot as drug testing is ratified, with the narrow public attention and clear constitutional issues involved here, they do it under the table," Fidanque said. "It raises so many policy issues and legal issues that it deserves to go through the normal rule-making process."

"I don't believe we're obligated" to follow the Procedures Act, Williams said. "We are not dealing with the entire student population here."

Fidanque called that notion "ridiculous" and said a rule established by a state agency needs only to affect a "portion of the public."

Williams is waiting for further analysis of Fidanque's request before responding to the letter and petition. According to the letter, Williams must "initiate rule-making proceedings or deny the petition within 30 days."

In addition to violating the Constitution, the ACLU believes the policy also breaches Article 1, Section 9 of the Oregon Bill of Rights, which disallows "unreasonable searches and seizures."

"This is not a voluntary program. This is a condition for participating in intercollegiate athletics, and we think it's very clearly a mandatory program and is therefore unconstitutional," Fidanque said.

"We hope they (the University) will still go through the rule-making process. We certainly want the chance to make a case through a public hearing. We would rather do this than go to court, but we are prepared to go to court."

Fidanque said the policy might be upheld in court if the testing were "a part of a routine physical examination that was scheduled well in advance," scheduled because of "reasonable" individualized suspicion, or a voluntary program.

Yet another quail he has with the policy is with the reported unreliability of urinalysis testing. He quoted a Journal of American Medical Association article that said drug testing by urinalysis could be as much as 20 percent inaccurate.

Dr. Stephen Erfurth, a clinical chemist at Oregon Medical Laboratories, which conducts urinalyses for the Athletic Department, said his department's procedures ensure against any inaccuracy.

"By using sensitive and specific screening methods, we have never had a false positive," Erfurth said. "It's a multifaceted approach."

Erfurth said that being a hospital-based laboratory requires them to undergo intense inspections and proficiency-testing programs by the state. He also said no one in his laboratory has less than seven years' experience.

In addition, all positive test results are confirmed through other tests, he said.

The prohibited list includes some diet, high blood pressure and water pills. Some may even be compounds of anti-asthma medicine and decongestants, including the brand name Sudafed, according to Ila James, a pharmacist at the University Health Center.

Commentary

Black nomination is token gesture

In what could be construed as a desperate attempt to stave off a congressional override of his veto on South African sanctions, President Reagan put forth a black nominee for the ambassadorship of South Africa Tuesday.

By Shawn Wirtz

Reagan's nomination of Edward Perkins, current U.S. Ambassador to Liberia, apparently violates his own philosophy on affirmative action and further undermines his credibility. Reagan has repeatedly called for a color-blind society in which race is not a factor.

According to University history professor David Anthony, "The president is very good at manipulating images, and he has pretty much had it on his mind to nominate a black South African. I don't think very much of it because I think it was done for very cynical political reasons."

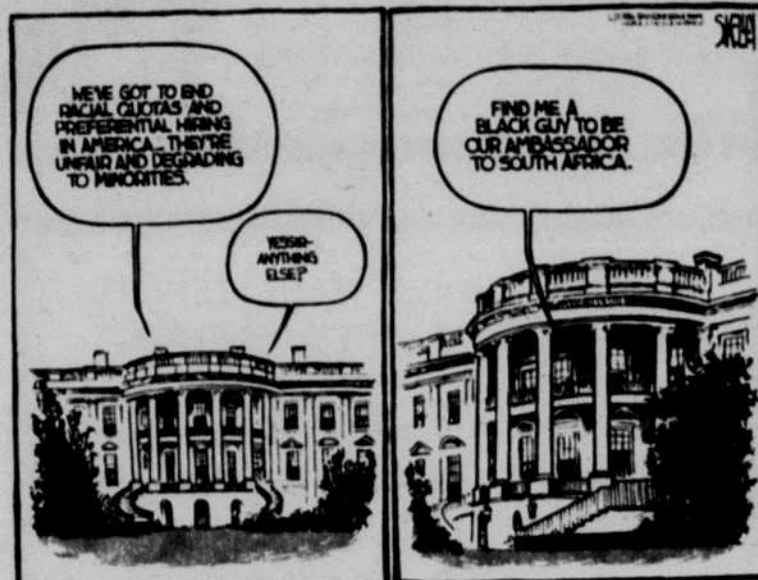
Perkins is Reagan's most recent attempt at nominating a black to the post.

His last nominee, businessman Robert Brown of North Carolina, was withdrawn after a press investigation turned up possible ethical misconduct in former business practices. The nomination made it clear that Reagan's only consideration was the nominee's race, not his qualifications.

Perkins may be a fine candidate for the post, but Reagan's blatant color-awareness stigmatizes Perkins as a token appointment. Anthony said, "Most of the people who support sanctions recognize it as a ploy."

If Congress accepts Perkins instead of overriding the veto, he will be seen by black South Africans as the pawn traded for the preferred sanctions. Not only would this further weaken U.S. policy toward South Africa, it also would limit Perkins' already limited effectiveness.

The House voted 313-83 to override the president's veto Monday, leaving the final vote to the Senate. Eleven senators



voted against the sanctions bill originally, so 23 senators who voted for the sanctions would have to change their votes in order to sustain the veto. Therefore, it's unlikely the veto will be supported. In that case, the sanctions will be ratified and any ambassador who receives the appointment will

have a strong anti-apartheid policy to stand on.

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