

# ASUO court ignores law, makes up its own



Congress shall make no law ... abridging the freedom of speech, or of the press. — First Amendment to the United States Constitution

No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever. — Article I, Section 8 of the Oregon Constitution.

A curious creature, the ASUO Constitution Court. It is, perhaps, the only court in the land that has at least twice decided a rule was violated but, through its powers of prescience, has determined action would be futile, and thus has ruled not to right a wrong.

But even more curious, and somewhat disturbing, is the court's recent willingness to hear a case based on freedom of speech. As you can see from reading the federal and state free speech clauses above, the basic concept is fairly easy to understand.

There are, of course, exceptions to these protections. In the case of the media, the most common of these exceptions is libel. Generally, however, aside from libel, the media are pretty much free to print whatever they want.

Apparently, this minor technicality was overlooked by the constitution court when it agreed to hear a complaint against myself and the *Emerald*.

For those who missed it, here's a quick summary: The day before the ASUO Primary Election, I wrote a column announcing my write-in candidacy for every position on the ballot. A student senator, Michael Omogrosso, filed a complaint alleging that the *Emerald* and I violated various election rules by publishing the column. The *Emerald* refused to respond to the complaint.

In an aside in the court's decision, the *Emerald* was told it was subject to the jurisdiction of the constitution court, and had Omogrosso's complaint had any merit, the court would not have

allowed the *Emerald* to refuse comment.

This, of course, is completely false. The court, however, decided that it could not only interpret rules, but make them up as well. Actually, this is not too surprising. Throughout the campus there is a gross lack of understanding as to the *Emerald's* connection to the University.

The court ruled that the *Emerald* "is the recipient of enormous amounts of student funds, and is a student organization, regardless of its corporate structure."

There is some truth to that statement; the *Emerald* receives \$129,000 from the Incidental Fee Committee. The money makes up a bulk subscription to the paper, and every last penny of it goes to pay printing costs.

The actual cost of printing the *Emerald* is \$138,649, thus IFC money makes up about 93 percent of the paper's printing costs.

It should be pointed out that the Lane Transit District is also "the recipient of enormous amounts of student funds," but no one would make the argument that, therefore, it is a "student organization, regardless of its corporate structure."

Because the *Emerald* receives IFC money solely for printing, the only possible instance the ASUO could make a claim against the *Emerald* would be if the IFC dollars were spent elsewhere, like for a staff retreat to the Bahamas or a new Mercedes for the editor.

The court went on to rule that my original column was satirical, and thus did not violate any election rules. However, whether it was satire is not an issue. There is no law preventing people from writing opinion columns asking people to write in them or anybody else. Election rules would apply only if the campaign extended beyond the mere publication of an opinion column.

This leads back to the First Amendment and Article I, Section 8. Because my write-in candidacy went no further than the publication of a column, there can be no argument for a rules violation based on anything other than the column.

The column is, of course, protected speech, and thus immune

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from action under the ASUO Constitution or the constitution court. If the ASUO or any other person wanted to claim the column violated election (or any other) rules, the proper (and only legal) forum begins in Lane County District Court, from where the case could travel through the state courts and up to the U.S. Supreme Court.

This, of course, assumes the case isn't laughed out of district court first, which it would be. The very fact the constitution court even heard the case suggests it believes it has the power to rule upon a piece of writing in the *Emerald*.

Section 2.3 of the ASUO Constitution reads, "No agency or program of the ASUO shall make any rule or take any action abridging the privileges and immunities of any person or program under the Constitution and Laws of the United States or the State of Oregon."

Yet by hearing this case and ruling on the basis it did, the court implicitly assumed the column was not inherently subject to protection — a First Amendment decision — and thus violated its own constitution.

As if the court's lack of understanding of its constitution and the *Emerald's* connection to the ASUO weren't enough, it went on to suggest students take action that has been expressly forbidden by the federal courts.

The court said, "If an ASUO member wishes to influence the allocation of student funds for such nebulous concepts as 'journalistic ethics,' then the proper forum would appear to be the (IFC) budget hearings."

Wrong, wrong, wrong. The IFC has absolutely no say over what goes into the *Emerald* or how the paper's staff do their jobs. All the IFC may concern itself with are fiscal issues, cost and expense, debits and credits.

Actually, there is no forum for

taking action against any member of the media for violating journalistic ethics. As long as they break no laws. The Mspecial edition of *The Student Insurgent* is a classic example.

But back to the IFC question. In 1983, the 8th U.S. Circuit Court decided a case involving the student paper at the University of Minnesota, *The Minnesota Daily*. The *Daily* published an extremely offensive April Fool's issue, which created a huge outcry against the paper. In response, the school changed the paper's funding procedure to allow students to get their money back.

The court ruled the change in funding would not have occurred without the offensive issue and that, "Reducing the revenues available to the newspaper is therefore forbidden by the First Amendment."

Ten years earlier, the 4th U.S. Circuit Court ruled, "(P)ublication (of a student newspaper) cannot be suppressed because college officials dislike its editorial comment. ... Censorship of constitutionally protected expression cannot be imposed by ... withdrawing financial support, or asserting any other form of censorial oversight based on the institution's power of the purse."

Yet, this is exactly what the constitution court suggested was an appropriate course of action. And even more frightening, some of these people were graduating law students.

This is a classic example of government (such as the ASUO is) attempting to usurp additional powers that it does not have and should remind students to keep an eye on their government. You never know what it's going to do next.

Martin Fisher is an editorial editor for the *Emerald*.

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