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**Pro Hac Vice Application concurrently filed*

***Designated Local Counsel*

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

OSU STUDENTS ALLIANCE, a registered
student organization at Oregon State
University and non-profit corporation

Case No. _____

organized under section 501(c)(3) of the Internal Revenue Code, and **WILLIAM ROGERS**,

VERIFIED COMPLAINT
Civil Rights Action (42 U.S.C. § 1983)
DEMAND FOR JURY TRIAL

Plaintiffs,

vs.

ED RAY, individually, and in his official capacity as President of Oregon State University; **MARK MCCAMBRIDGE**, individually, and in his official capacity as Vice President for Finance and Administration of Oregon State University; **LARRY ROPER**, individually, and in his official capacity as Vice Provost for Student Affairs at Oregon State University; **VINCENT MARTORELLO**, individually, and in his official capacity as Director of Facilities Services for Oregon State University,

Defendants.

Plaintiffs OSU Students Alliance and William Rogers, by and through counsel, and for their Verified Complaint against Ed Ray, Mark McCambridge, Larry Roper, and Vincent Martorello, hereby state as follows:

INTRODUCTION

1. The hallmark of a free society is the ability of people to express their ideas without government restraint. Nowhere is this freedom more critical than on America's public college campuses—the marketplace of ideas. But despite the importance of encouraging independent thought on campus, Oregon State University has instead arbitrarily limited the opportunities for its distribution. University officials targeted Plaintiffs' student newspaper, *The Liberty*, for a form of discriminatory treatment not extended to the other campus student newspaper, *The Daily Barometer*. Though the university permits *The Daily Barometer's* numerous distribution bins to be located throughout campus with no apparent restriction, university officials surreptitiously confiscated the few distribution bins belonging to *The Liberty*, and threw them in a heap in a storage yard near a dumpster. When *The Liberty's* staff eventually located their bins with the help of the Oregon State Police, they found one broken, and the rest covered with mud and debris, and full of ruined copies of their paper.

2. After being found out, Defendants arbitrarily classified *The Liberty* (an exclusively student-operated, on-campus publication) as an "off-campus publication," and disallowed it to place distribution bins anywhere on campus except the immediate vicinity of the student union. Defendants refuse to explain what Plaintiffs must do to qualify as a "student publication," and refuse to treat Plaintiffs equally with the other student publication on campus.

3. This action is brought to vindicate Plaintiffs' fundamental constitutional rights to free speech, equal protection, and due process. Defendants' policies and actions have deprived and will continue to deprive Plaintiffs of their rights under the United States Constitution.

JURISDICTION AND VENUE

4. This civil rights action raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

5. This Court has original jurisdiction over these federal claims pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has authority to award the requested damages pursuant to 28 U.S.C. § 1343; the requested declaratory relief pursuant to 28 U.S.C. § 2201; the requested injunctive relief pursuant to 28 U.S.C. § 1343 and Fed. R. Civ. P. 65; and costs and attorneys fees under 42 U.S.C. § 1988.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the Defendants reside in this district and/or all of the acts described in this Complaint occurred in this district.

PLAINTIFFS

7. Plaintiff OSU Students Alliance (OSUSA) is a registered student organization (RSO) at Oregon State University, and is incorporated as a non-profit corporation under 26 U.S.C. § 501(c)(3). Its members are all Oregon State University (OSU) students.

8. Plaintiff OSUSA publishes *The Liberty*, an independent student newspaper distributed to OSU students on the OSU campus in Corvallis, Oregon.

9. Plaintiff William Rogers is a student at OSU and is the president of OSUSA, as well as the Executive Editor of *The Liberty*.

DEFENDANTS

10. Defendant Ed Ray is the President of OSU, a public university organized and existing under the laws of the State of Oregon, and is responsible for overseeing campus administration and creating, implementing, and/or administering university policies, including

the policies and procedures challenged herein. He is sued in both his individual and official capacities.

11. Defendant Mark McCambridge is the Vice President of Finance and Administration of OSU, a public university organized and existing under the laws of the State of Oregon, and is responsible for overseeing campus administration and creating, implementing, and/or administering university policies, including the policies and procedures challenged herein. He is sued in both his individual and official capacities.

12. Defendant Larry Roper is the Vice Provost for Student Affairs of OSU, a public university organized and existing under the laws of the State of Oregon, and is responsible for overseeing campus administration related to Student Affairs and creating, implementing, and/or administering university policies, including the policies and procedures challenged herein. He is sued in both his individual and official capacities.

13. Defendant Vincent Martorello is Director of Facilities Services at OSU, a public university organized and existing under the laws of the State of Oregon, and is responsible for overseeing campus administration related to Facilities and creating, implementing, and/or administering university policies, including the policies and procedures challenged herein. He is sued in both his individual and official capacities.

14. Each and every act alleged herein of Defendants, their officers, agents, servants, employees, or persons acting at their behest or direction, were done and are continuing to be done under the color and pretense of state law and authority.

FACTUAL BACKGROUND

A. History of *The Liberty* on the Oregon State University Campus

15. OSUSA was formed in 2002 by a group of OSU students and received recognized student organization (RSO) status from the university.

16. Initially, OSUSA members created a website and published articles online. Later in 2002, OSUSA began publishing *The Liberty* in printed newspaper format and distributing it on the OSU campus.

17. OSUSA's purpose in publishing *The Liberty* was to provide a medium for students to express conservative, libertarian, and independent thought and provide news coverage that was different than that contained in *The Daily Barometer*, the daily student newspaper.

18. OSUSA was created by OSU students, and is, and always has been, wholly operated by OSU students. *The Liberty* has always been entirely written by, edited by, published by, and distributed to OSU students.

19. OSUSA incorporated as a non-profit organization under section 501(c)(3) of the Internal Revenue Code in 2002 so it could receive private donations to cover costs of publishing the paper.

20. OSUSA also receives funds to cover the costs of publishing the paper from advertising revenue.

21. During the 2005-2006 academic year, a local businessman donated to OSUSA eight green plastic distribution bins for *The Liberty*.

22. The bins have *The Liberty*'s logo affixed to them, which reads, "The Liberty, OSU Students Alliance Publication."

23. During the 2005-2006 academic year, Luke Sheahan—then the editor of *The Liberty*—received explicit permission from OSU to place the bins in specific locations on campus.

24. After one bin was stolen during the 2005-2006 academic year, OSUSA members used thin, wire bicycle chains and padlocks to secure the remaining bins in place next to a light post or other fixture.

25. The seven green plastic distribution bins were placed around the outdoor areas of campus in locations numerous students pass on their way to class.

26. In addition to the green plastic bins, OSUSA members also use four wire bins for indoor distribution of *The Liberty* in the Memorial Union, the student union on campus, as well as two campus dining halls.

27. *The Daily Barometer* has many more distribution bins than *The Liberty* and these are located throughout campus, as well as at off-campus locations.

28. Upon information and belief, *The Daily Barometer* is funded solely through student fees and advertising revenue.

29. Aside from *The Liberty* and *The Daily Barometer*, there are no other newspapers created by and for students on the OSU campus.

30. Off-campus newspapers, such as the *Corvallis Gazette-Times*, *Eugene Weekly*, and *USA Today* also have distribution bins located on campus.

B. Confiscation Without Notice of *The Liberty*'s Distribution Bins

31. At some point during the winter term in the 2008-2009 academic year, each of *The Liberty*'s seven green distribution bins disappeared from campus.

32. *The Liberty*'s departing Executive Editor, Rockne Roll, contacted the Oregon State Police, believing the bins were stolen.

33. After investigation, the State Police determined that the OSU Facilities Department had removed the bins.

34. OSU officials gave no notice of their removal intentions to any representative of *The Liberty* prior to the removal of their bins, even though the contact information for the editorial board is listed prominently inside the first page of every issue located in the bins.

35. Plaintiff Rogers, who assumed the position of Executive Editor of *The Liberty* in April 2009, contacted Joe Majeski of the Facilities Department in order to ascertain why the bins were removed and where they were currently located.

36. On April 15, 2009, Mr. Majeski responded to Mr. Rogers by e-mail:

You will be unable to site additional bins on the OSU Campus. We have designated areas around the Memorial Union and in around [sic] some of the dormitories designated for this purpose. I can show you these spaces if you like. All other placements will be considered unauthorized. If you would like to retrieve your bins for other uses you can pick them up in the University storage yard behind the Corvallis Fire Station at 35th and Washington. Thank you for your understanding and cooperation.

A copy of this e-mail is attached as Exhibit 1 to this Verified Complaint.

37. Mr. Rogers arranged to meet with Mr. Majeski on April 17, 2009 to discuss permissible locations for *The Liberty* distribution bins.

38. During their April 17 meeting, Mr. Majeski informed Mr. Rogers that OSU enacted a policy in 2006 that restricted the authorized placement of newspaper distribution bins to designated areas on campus. He said that OSUSA's bins were removed because the Facilities Department was finally "catching up" with the policy.

39. The OSU administration never gave notice to any representative of *The Liberty* that there was a change in policy regarding the placement of distribution bins, nor any notice of the recent effort to "catch up" with the purported policy.

40. Mr. Majeski also told Mr. Rogers that bins could only be placed outside the campus bookstore and in a couple of locations in the immediate area of the Memorial Union.

41. Mr. Rogers told Mr. Majeski that he recalled that one of *The Liberty's* bins had been located by the bookstore, but Mr. Majeski stated that Facilities Department personnel would not have removed the bin from that area.

42. After the meeting with Mr. Majeski, Mr. Rogers returned to the area where he recalled the distribution bin had been located near the bookstore and saw a discolored patch on the concrete that matched the size and shape of the base of *The Liberty's* bin. This confirmed his memory that one of *The Liberty's* bins was located there before OSU personnel confiscated all of them. A photograph of this discolored area is attached as Exhibit 2 to this Verified Complaint.

43. Later on April 17, Mr. Rogers also went to the storage yard where Mr. Majeski indicated *The Liberty's* distribution bins were located in order to retrieve them.

44. When he arrived, he found the seven green bins heaped on the ground near a dumpster. Photographs of the location of the confiscated bins are attached as Exhibit 3 to this Verified Complaint.

45. One of the bins had been badly damaged. Photographs of the damage are attached as Exhibit 4 to this Verified Complaint.

46. The wire bicycle chains that OSUSA members had used to secure the bins and prevent theft had been cut. A photograph of the cut chains and locks is attached as Exhibit 5 to this Verified Complaint.

47. Because the bins had been haphazardly thrown on the ground, some of them had fallen open. As a result, approximately 150 copies of *The Liberty's* latest issue were ruined due to water damage. Photographs of the damaged papers are attached as Exhibit 6 to this Verified Complaint.

48. Mr. Rogers later returned to the storage yard with Ben Price, Managing Editor of *The Liberty*. The two of them, over the course of several trips, loaded the bins and transported them to Mr. Rogers' house.

49. Mr. Rogers and Mr. Price cleaned the bins of the mud and debris that covered them. They returned to the OSU campus with two bins and placed them outside the Memorial Union in locations that Mr. Majeski had identified as permissible for OSUSA's distribution bins.

50. After Mr. Rogers returned home that evening, he wrote an e-mail to Defendant Ray expressing his displeasure at the treatment of OSUSA's property and requesting an explanation of OSU's actions.

51. The following day, April 18, 2009, Mr. Rogers received an e-mail from Defendant Ray. Defendant Ray stated that the events described by Mr. Rogers and Mr. Rogers' "activities on campus" were "news" to him, and he was copying individuals who would contact Mr. Rogers directly: Defendant McCambridge, Defendant Roper, and Jock Mills, Government Relations Director at OSU.

52. On April 23, 2009, Mr. Rogers received a voice message from Defendant Martorello. Mr. Rogers called Defendant Martorello back later that afternoon. Defendant Martorello related the existence of the policy regarding bin placement that Mr. Majeski had previously explained. Defendant Martorello also stated that the University was trying to keep the campus clean and was therefore regulating "off-campus" newspaper bins.

53. When Mr. Rogers explained to Defendant Martorello that *The Liberty* was not an "off-campus" newspaper, Defendant Martorello said that he would "think about it" and discuss with his colleagues.

54. Defendant Martorello also explained that bins could not be chained to school property because maintenance crews need to be able to do repair work and ADA requirements need to be considered.

55. Defendant Martorello also asked Mr. Rogers for information on the background of *The Liberty*, its customary distribution quantities, and related matters.

56. During this conversation, Defendant Martorello also offered to have representatives of the Facilities shop take a look at the damage done to the bin and to see if they could repair it.

C. OSU Officials' Arbitrary Refusal to Recognize *The Liberty* as a Student Newspaper and Permit its Distribution on an Equal Basis With Other Student Publications

57. In response to Defendant Martorello's request for information about *The Liberty*, Mr. Rogers sent him a long e-mail later on April 23, explaining the background of the paper, who writes/edits it (OSU students), where its funding comes from (advertising and private donations), how often it is published (monthly), where the distribution bins have been located, and where they would like the bins to be located.

58. Defendant Martorello's e-mail response on April 24 contained the following:

Our discussion centered on these key points:

- Why the bins were removed
- Condition of the bins
- Potential for adding additional bins on campus

You compared Liberty to the Barometer based on the fact that Liberty is a student paper, but not funded by ASOSU. I cannot clearly draw a distinction on how a paper is consider [sic] a student paper that is not funded by a recognized student group on campus, or uses student fees, as opposed to a paper being funded by an outside agencies or entity and using students internally for purposes of circulation. I will read through your email in more detail and discuss with some others about this, and in particular the OSU Students Alliance. It reads as the OSU Students Alliance is a tax exempt business, that relies on student volunteers to work for the paper. I will see how this differs from the Barometer.

I did mention that we would need to work through the issue of Liberty being either considered or not consider [sic] a student newspaper before I could make any determination on bin locations.

I will review this information and get back to you by the end of next week.

A copy of this e-mail is attached as Exhibit 7 to this Verified Complaint.

59. On April 25, 2009. Mr. Rogers received an e-mail from Defendant McCambridge, responding to Mr. Rogers' April 17 e-mail to Defendant Ray:

Sorry for not getting back to you but, just as I am sure you are [aware], there is much to do and not enough time to do it.

I have looked into your concerns and have a few comments that follow.

As a newspaper that is not funded by ASOSU, we don't have the same communications availability between your paper and the University which may have caused some of the confusion surround[ing] this issue. Your paper's placement of distribution equipment on the campus lacked coordination with our staff. As with everything here at OSU, there are processes and guidelines for everything that we do, especially in the physical environment. We want to have our campus esthetically and operationally the best that it can be.

University personnel are more than willing to work with you so that your paper will have places on campus where it can be distributed, but those locations will be agreed to within the parameters that the university determines. I understand that Vincent Martorello did have an initial discussion with you late last week.

I have asked Vincent to follow through with you and be the point of contact for President Ray and myself. He will keep us informed.

A copy of this e-mail is attached as Exhibit 8 to this Verified Complaint.

60. On April 27, 2009, while Mr. Rogers was placing new editions of *The Liberty* in their remaining distribution bins and wire racks on campus, he noticed a distribution bin for the *Corvallis Gazette-Times* chained to a concrete post and which was not located in a designated area for "off-campus" papers. A *Eugene Weekly* bin was next to it, and while not chained to

anything, it was still outside of the designated areas for “off-campus” papers that Mr. Majeski identified. Mr. Rogers took pictures of the *Gazette-Times* and *Eugene Weekly* bins, and those pictures are attached as Exhibit 9 to this Verified Complaint.

61. On April 29, 2009, Defendant Martorello e-mailed Mr. Rogers and promised that he would have “something for him by the end of the week” in regard to his decision as to whether *The Liberty* was an “on-campus publication.”

62. On April 29, 2009, Mr. Rogers e-mailed Defendant Martorello in response and suggested that since Defendant Martorello was evidently having difficulty deciding whether he thought *The Liberty* was an “on-campus publication,” OSUSA would renew their RSO status with the University in order to make it even more clear that *The Liberty* was a student newspaper.

63. Defendant Martorello never responded to this suggestion.

64. OSUSA was an RSO beginning in 2002, but did not renew its RSO status due to an oversight in 2007 or 2008.

65. Mr. Rogers applied for renewal of OSUSA’s RSO status. On May 26, 2009, the university notified OSUSA that it was officially recognized as a student organization.

66. On May 2, 2009, while on campus walking to class, Mr. Rogers noticed a *Daily Barometer* distribution bin chained to a light post in violation of the purported university “policy” described by Defendant Martorello. Mr. Rogers took a picture of the bin. A copy of the picture of *The Daily Barometer* bin is attached as Exhibit 10 to this Verified Complaint.

67. On May 4, 2009, Mr. Rogers e-mailed Defendant Martorello to find out why he had not yet responded to Mr. Rogers’ e-mail.

68. On May 5, 2009, Defendant Martorello responded:

Thank you for your inquiry as to where the bins containing the Liberty paper can be located on campus. The Liberty is not in the same situation as the Barometer and will need to be located at the approved locations by the Memorial Union. Please work with Joe Majeski should you have any specific questions about the placement of the bins within the approved locations. In addition, I have previously offered to have our shops [sic] personnel look at the bin you state is damaged to see if it can be easily repaired. Joe Majeski can help arrange this should you be interested in pursuing this.

A copy of the above e-mail is attached as Exhibit 11 to this Verified Complaint.

69. Mr. Rogers responded on May 5 and asked Defendant Martorello to identify the source of the purported “policy” that dictated where *The Liberty*’s bins could be located.

70. Defendant Martorello responded on May 6, 2009:

We are not keeping the bins off campus, rather we are directing them to a specific location as we do with other publications. We now consider this matter closed.

A copy of the above e-mail is attached as Exhibit 12 to this Verified Complaint.

71. On May 7, 2009, Ben Price, the managing editor of *The Liberty*, also e-mailed Defendant Martorello to request the source of the policy dictating bin placement on campus.

72. On May 7, 2009, Charles Fletcher, Esq., Associate General Counsel of OSU, and authorized representative of Defendants in all of his interactions with Plaintiffs and their agents, e-mailed a response to Mr. Rogers and Mr. Price:

Vincent Martorello forward [sic] to me the follow up questions you posed regarding the university’s decision to continue its current practice of limiting placements of periodical bins. Specifically, you asked where the “policy” in that regard may be found.

There is no specific written policy that governs the placement of publication bins, and none is required. OSU’s control over its grounds, buildings, and facilities -- including the placement of equipment, machines, containers, and the like -- is plenary under ORS Chapters 351 and 352, OAR Chapters 576 and 580, and management directives of the State Board of Higher Education, subject only to limited exceptions that do not apply here.

I hope this helps. Please direct any future correspondence on this issue to me. But as Mr. Martorello made clear in his earlier email, we consider the matter closed.

A copy of this e-mail is attached as Exhibit 13 to this Verified Complaint.

73. On May 7, Mr. Rogers responded, asking Mr. Fletcher to explain what *The Liberty* needs to do in order to be considered a “student publication” akin to *The Daily Barometer*.

74. Later on May 7, 2009, Mr. Fletcher responded:

Our office does not provide advice to students. But I can tell you that The Daily Barometer’s masthead reveals that it is “published . . . by the Oregon State University Student Media Committee on behalf of the Associated Students of OSU.” I believe it has been the campus student newspaper since 1896.

A copy of this e-mail is attached as Exhibit 14 to this Verified Complaint.

75. On May 11, 2009, Mr. Rogers received a phone call from Peggy Duncan, an administrator with University Housing and Dining Services (UHDS). Ms. Duncan stated that UHDS was doing some “cleaning” in anticipation of visiting parents and asked that Mr. Rogers remove *The Liberty* wire bins from campus dining facilities by May 22, 2009.

76. Mr. Rogers asked Ms. Duncan whether she was also asking *The Daily Barometer* staff to remove their bins. She said she did not intend to do so. However, Ms. Duncan asked distributors of *USA Today*, the *Corvallis Gazette-Times*, and the *Eugene Weekly* to remove their bins.

77. On May 21, 2009, Mr. Rogers removed *The Liberty*’s wire bins from dining facilities and gave the damaged plastic bin to Mr. Majeski for repair.

78. As it was still unclear to OSUSA members why university officials continued to classify *The Liberty* as an “off-campus” publication after they were informed that the publication

was entirely created by OSU students and distributed only on OSU's campus, and since it appeared that Mr. Fletcher would no longer respond to OSUSA communications, Mr. Rogers sought the assistance of Patricia Lacy, an attorney with Student Legal Services at OSU.

79. Ms. Lacy attempted to get more information about the restriction on *The Liberty's* bins by corresponding with various university officials.

80. Ms. Lacy presented to Defendant Martorello a list of proposed locations for the placement of *The Liberty's* distribution bins, and asked him what process should be followed to obtain approval for this proposal.

81. Defendant Martorello referred Ms. Lacy to Mr. Fletcher.

82. On May 29, 2009, Ms. Lacy inquired of Mr. Fletcher the following:

Vincent Martorello referred me to you regarding a question I posed to him. There is a student-run newspaper called *The Liberty* that experienced the removal of their distribution bins from campus a few months ago. At that time Vincent told them they could not be on campus because they were not a student-affiliated entity. Since then the group has become a recognized student organization and would like to return their bins to campus. This time they know they need to follow procedure Vincent told them was put in place in 2006. We do not know what this procedure is.

Since Vincent has referred me to you, I think there may be some additional information. Could you please help me to understand what is going on with this issue?

A copy of this e-mail is attached as Exhibit 15 to this Verified Complaint.

83. On May 29, 2009, Mr. Fletcher responded:

I do have some background with this issue, and I'll provide my understanding, which admittedly may be incomplete.

The problem, as I understand it, is that *The Liberty* is requesting more favorable bin locations than those provided to other non-OSU periodicals being distributed on campus.

For a lot of logistical reasons (including clutter and ADA accessibility issues), all periodicals (other than the *Daily Barometer*) are permitted bin locations in

a limited area near the MU. That's not to say those publications are not allowed to be on campus. Publications such as *The Liberty* may be distributed on campus. It's just a question of locating their distribution structures in locales that are consistent with the neutral rules Facilities Services has established.

My understanding is that the editors of *The Liberty* believe that any periodical with OSU students on staff is an "OSU student run newspaper" that should be permitted the same bin locations as *The Daily Barometer*. The university respectfully disagrees. The mere fact that *The Liberty* has students on staff does not mean that it is entitled to the same bin locations as *The Daily Barometer*. *The Daily Barometer* was established over 100 years ago as the OSU student newspaper. It's published by the OSU Student Media Committee on behalf of ASOSU. *The Liberty*, on the other hand, is not published by OSU and receives almost all of its funding from outside sources. Its only connection to OSU is that some OSU students serve on its staff. My understanding is that Facilities Services has decided that *The Liberty* is distinguishable from *The Daily Barometer* and, therefore, assumes the same status as all other periodicals being distributed on campus.

A copy of this e-mail is attached as Exhibit 16 to this Verified Complaint.

84. On June 1, 2009, the latest edition of *The Liberty* was published. The paper's content focused on the issue of censorship, and detailed what Defendants had done to *The Liberty*'s distribution bins. Mr. Rogers delivered several copies of the paper to the sixth floor of the Kerr Administration building, where Defendant Ray and Mr. Fletcher have their offices.

85. Mr. Rogers drafted a sample policy regarding distribution bins which provided a simple basis for distinguishing between on-campus and off-campus publications and their respective placements.

86. Mr. Rogers met with Ms. Lacy on June 9, 2009 and showed her the draft policy. Ms. Lacy took it to Mr. Fletcher and asked if he would be willing to meet with the students, but he refused to meet with them or take a copy of the proposed policy.

87. Later on June 9, Mr. Rogers sent an e-mail to Defendant Ray, Defendant McCambridge, Mr. Fletcher, and Ms. Lacy:

I just wanted to let you know that Patricia Lacy told me that Charles Fletcher declined to even take a copy of what we consider to be a starting point for compromise. Given that the University has stated in recent media interviews that it wants to continue working with us, I just wanted to make sure that his actions were representative of what you all really want.

So to summarize the jist [sic] of both of our problems, we don't approve of the fact that the University has no written guidelines for what is or is not a student publication. In that university officials have arbitrarily decided to lump us in a category of "off-campus" publications that do not enjoy the same circulation as current student media outlets. University officials have also stated that even if The Liberty were to be considered a student publication, we would still be restricted to the same areas as off-campus publications which stands against the prin[c]iples of diversity and equal protection.

From the University's point of view, if The Liberty were allowed to be a student publication, other groups (both on campus and off) would demand similar access to what we are granted. The end result would be nothing but bins as far as the eye could see, regardless of if they are in use or not. In addition the chaos that would follow would bring OSU out of compliance with the ADA regulations and could potentially put OSU in violation of other laws.

Attached to this e-mail is a document that contains what we consider to be a good starting point for an effective set of rules that will allow us both to peacefully coexist. Please take a look at it and if there are any issues that you don't feel we covered, let us know what they are.

A copy of this e-mail is attached as Exhibit 17 to this Verified Complaint.

88. Mr. Fletcher responded on June 12, 2009:

I have been in communication with President Ray and Vice President McCambridge about your email of June 9, and I will be your point of communication on this issue.

The university's decisions with respect to bin placements are content neutral and do not prohibit distribution of The Liberty on the OSU campus by other means. Nor do they prohibit the placement of distribution bins by The Liberty in the permitted locations. The university values intellectual diversity and encourages student participation in the marketplace of ideas.

Please let me know if you have any questions, but as Vincent Martorello informed you by email on May 6, this matter is closed and has been since that date.

A copy of this e-mail is attached as Exhibit 18 to this Verified Complaint.

89. Defendants lack any policy, written or unwritten, containing clear standards for determining which publications are considered “student publications” and which are considered “off-campus” publications.

90. Defendants have refused to respond any further to Mr. Rogers and refuse to recognize *The Liberty* as anything but an “off-campus” publication, even though they are aware that *The Liberty* is entirely written, edited, produced, and distributed by OSU students for OSU students, is published by a recognized student organization, and is not distributed anywhere outside the OSU campus.

91. As a result, OSUSA may only place *The Liberty* distribution bins in the immediate area of the Memorial Union. The Defendants have denied them permission for bin-placement in other parts of the campus, even though such permission is granted to the daily student newspaper, *The Daily Barometer*.

92. As a result, OSUSA is inhibited in its distribution efforts, and *The Liberty* cannot reach many of the students on campus.

93. The Defendants claim that their concerns about litter, aesthetic appearance, and ADA compliance require them to restrict the placement of *The Liberty* distribution bins on campus. But none of those purported concerns led Defendants to impose comparable restrictions on the distribution bins of *The Daily Barometer*, which has at least 24 bins located throughout campus.

94. Defendants allowed other publications’ distribution bins to be chained to fixtures on campus, but, upon information and belief, have not removed them as they did *The Liberty*’s bins.

95. Defendants allowed off-campus, non-student publications to have distribution bins located outside of “designated” areas, but, upon information and belief, did not remove them without notice as they did *The Liberty* bins.

ALLEGATIONS OF LAW

96. Plaintiffs have no adequate or speedy remedy at law to correct or redress the deprivations of their rights by Defendants. Unless and until the discriminatory policy announced and enforced by Defendants is enjoined, Plaintiffs will suffer and continue to suffer irreparable injury to their rights.

97. Because of Defendants’ actions, Plaintiffs have suffered, and continue to suffer, economic injury and irreparable harm. They are entitled to an award of monetary damages, including punitive damages, and equitable relief.

FIRST CAUSE OF ACTION:

Violation of the Free Speech Clause of the First Amendment

98. Plaintiffs incorporate each of the foregoing allegations in this Complaint as if set forth fully herein.

99. The campus of Oregon State University is a public forum for student speech.

100. University officials may not restrict student speech on campus unless the restrictions do not grant administrators unfettered discretion, and are content-neutral, narrowly tailored to a significant government interest, and leave open ample alternative channels of communication.

101. By removing Plaintiffs’ distribution bins from the OSU campus, restricting their distribution bins to a small area of campus, and applying unwritten, vague, and arbitrary standards to Plaintiffs’ speech, Defendants, by policy and practice, have deprived Plaintiffs of

their clearly established right to free speech under the First Amendment of the United States Constitution.

102. Defendants restricted Plaintiffs' distribution of *The Liberty* because of its content and viewpoint(s).

103. Defendants' policies and practices related to determining where distribution bins may be located on campus, which bins should be removed, and what publications are "student publications" are impermissibly vague and ambiguous and give unfettered discretion to Defendants to suppress and/or discriminate against publications with disfavored viewpoints, which violates Plaintiffs' clearly established right to free speech under the First Amendment of the United States Constitution.

104. Plaintiffs were deprived of their clearly established First Amendment right to free speech when Defendants confiscated their distribution bins without notice, leaving them without any distribution mechanism for that period of time, when Defendants ruined approximately 150 copies of *The Liberty* because of their negligent and careless handling of the distribution bins, and when Defendants prohibited Plaintiffs from using the majority of their distribution bins, severely reducing their ability to distribute their April and June 2009 issues to students on campus.

105. Plaintiffs continue to be deprived of their First Amendment right to free speech, as Defendants continue to prohibit them to place their distribution bins in locations on campus open to other student newspaper bins. Plaintiffs plan to publish their paper every month this academic year, beginning on September 28, 2009.

SECOND CAUSE OF ACTION:

Violation of the Due Process Clause of the Fourteenth Amendment

106. Plaintiffs incorporate each of the foregoing allegations in this Complaint as if set forth fully herein.

107. By confiscating Plaintiffs' property without notice, damaging said property, and depriving Plaintiffs of the use of said property, Defendants, by policy and practice, deprived Plaintiffs of their clearly established right to due process of law under the Fourteenth Amendment of the United States Constitution.

108. Defendants' policies and practices related to determining where distribution bins may be located on campus, which bins should be removed, and what publications are "student publications" are impermissibly vague and ambiguous and give unfettered discretion to Defendants in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

THIRD CAUSE OF ACTION

Violation of the Equal Protection Clause of the Fourteenth Amendment

109. Plaintiffs incorporate each of the foregoing allegations in this Complaint as if set forth fully herein.

110. By confiscating Plaintiffs' distribution bins, prohibiting Plaintiffs from placing distribution bins anywhere other than around the Memorial Union, and applying unwritten, vague, and arbitrary policies and practices to deprive Plaintiffs of their constitutional rights, Defendants have treated Plaintiffs differently than similarly situated individuals and organizations and deprived Plaintiffs of their clearly established right to equal protection under the law under the Fourteenth Amendment of the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against Defendants Ray, McCambridge, Roper, and Martorello, and provide Plaintiffs with the following relief:

- A) A preliminary and permanent injunction against the Defendants, their agents, servants, employees, officials, or any other person acting in concert with them or on their behalf, invalidating and restraining them from enforcing customs, procedures, codes, practices and/or policies as they pertain to the conduct made the subject of this Verified Complaint, specifically the restriction on the placement of Plaintiffs' distribution bins, or that in any way discriminate against Plaintiffs on the basis of their viewpoint or the content of their expression, or because of their exercise of fundamental rights;
- B) A preliminary and permanent injunction prohibiting the Defendants and their agents from restricting Plaintiffs' distribution bins only to the immediate area of the Memorial Union on campus;
- C) A declaration stating that the conduct of Defendants and Defendants' policies and/or practices restricting Plaintiffs' speech are unconstitutional under the First and Fourteenth Amendments;
- D) That this Court adjudge, decree, and declare the rights and other legal relations with the subject matter here in controversy, in order that such declaration shall have the force and effect of final judgment;
- E) An award of compensatory and nominal damages to Plaintiffs against the individual defendants in an amount to be determined by the evidence;
- F) An award of punitive damages to Plaintiffs against the individual defendants for their actions in violating their First Amendment right to freedom of speech and Fourteenth Amendment rights to due process and equal protection under law;

- G) Plaintiffs' reasonable costs and expenses of this action, including attorneys' fees, in accordance with 42 U.S.C. § 1988;
- H) All other relief this Court deems just and proper; and
- I) That this Court retain jurisdiction of this matter for the purpose of enforcing this Court's orders.

Plaintiffs request a trial by jury in this matter.

Respectfully submitted this 29th day of September, 2009.

By: 

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Attorneys for Plaintiffs
**Designated Local Counsel*
***Pro Hac Vice Application concurrently filed*

VERIFICATION OF COMPLAINT

I, William Rogers, a citizen of the United States and resident of the State of Oregon, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged are true and correct.

Executed this 20th day of September, 2009, at Corvallis, Oregon.



William Rogers

EXHIBIT 1

URGENT: The Liberty's bins

Majeski, Joseph <Joe.Majeski@oregonstate.edu>

Wed, Apr 15, 2009 at 1:59 PM

To: The Liberty Managing Editor <theliberty.manager@[REDACTED]>

Cc: "Brown, Norm" <Norm.Brown@oregonstate.edu>

Mr. Rogers,

You will be unable to site additional bins on the OSU Campus. We have designated areas around the Memorial Union and in around some of the dormitories designated for this purpose. I can show you these spaces if you like. All other placements will be considered unauthorized. If you would like to retrieve your bins for other uses you can pick them up in the University storage yard behind the Corvallis Fire Station at 35th and Washington. Thank you for your understanding and cooperation.

Joseph Majeski
Oregon State University
Facilities Services
Landscape and Customer Service Manager
(541) 737-7646

EXHIBIT 2



EXHIBIT 3





EXHIBIT 4







EXHIBIT 5

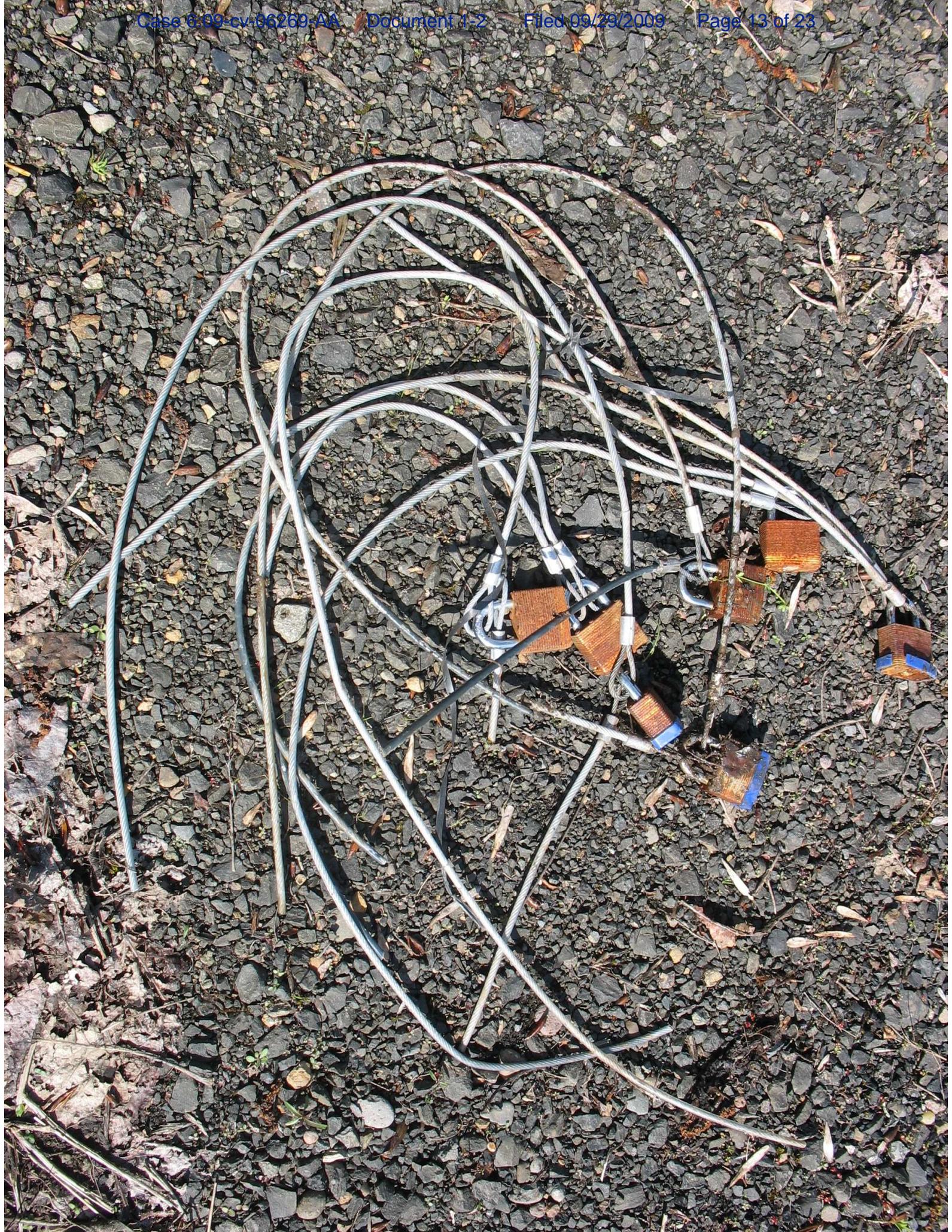


EXHIBIT 6





EXHIBIT 7

History of the Liberty

Martorello, Vincent <vincent.martorello@oregonstate.edu>

Fri, Apr 24, 2009 at 12:42
PM

To: The Liberty Managing Editor <theliberty.manager@[REDACTED]>
Cc: adam@thefire.org, lukes@thefire.org, "Price, Ben Tommo - ONID" <pricebe@[REDACTED]>, "Alaman, Henry" <henry.alaman@oregonstate.edu>

Will,

Our discussion centered on these key points:

- Why the bins were removed
- Condition of the bins
- Potential for adding additional bins on campus

You compared Liberty to the Barometer based on the fact that Liberty is a student paper, but not funded by ASOSU. I cannot clearly draw a distinction on how a paper is consider a student paper that is not funded by a recognized student group on campus, or uses student fees, as opposed to a paper being funded by an outside agencies or entity and using students internally for purposes of circulation. I will read through your email in more detail and discuss with some others about this, and in particular the OSU Students Alliance. It reads as the OSU Students Alliance is a tax exempt business, that relies on student volunteers to work for the paper. I will see how this differs from the Barometer.

I did mention that we would need to work through the issue of Liberty being either considered or not consider a student newspaper before I could make any determination on bin locations.

I will review this information and get back to you by the end of next week.

Thanks,

. Vincent

EXHIBIT 8

Urgent: The Liberty & OSU

McCambridge, Mark <Mark.McCambridge@oregonstate.edu>

Sat, Apr 25, 2009 at
4:42 PM

To: The Liberty Managing Editor <theliberty.manager@[REDACTED]>, "Ray, Ed"
<Ed.Ray@oregonstate.edu>, "Martorello, Vincent" <vincent.martorello@oregonstate.edu>
Cc: "Roper, Larry D - ONID" <roperl@onid.orst.edu>

Hi Will,

Sorry for not getting back to you but, just as I am sure you are, there is much to do and not enough time to do it.

I have looked into your concerns and have a few comments that follow.

As a newspaper that is not funded by ASOSU, we don't have the same communications availability between your paper and the University which may have caused some of the confusion surround this issue. Your paper's placement of distribution equipment on the campus lacked coordination with our staff. As with everything here at OSU, there are processes and guidelines for everything that we do, especially in the physical environment. We want to have our campus esthetically and operationally the best that it can be.

University personnel are more than willing to work with you so that your paper will have places on campus where it can be distributed, but those locations will be agreed to within the parameters that the university determines. I understand that Vincent Martorello did have an initial discussion with you late last week.

I have asked Vincent to follow through with you and be the point of contact for President Ray and myself. He will keep us informed.

Thanks

Mark

EXHIBIT 9



Corvallis
Gazette-Times
Call 758-9581 For Home Delivery



EXHIBIT 10



EXHIBIT 11

Bins

Martorello, Vincent <vincent.martorello@oregonstate.edu>

Tue, May 5, 2009 at
12:08 PM

To: theliberty.manager@[REDACTED]

Will,

Thank you for your inquiry as to where the bins containing the Liberty paper can be located on campus. The Liberty is not in the same situation as the Barometer and will need to be located at the approved locations by the Memorial Union. Please work with Joe Majeski should you have any specific questions about the placement of the bins within the approved locations. In addition, I have previously offered to have our shops personnel look at the bin you state is damaged to see if it can be easily repaired. Joe Majeski can help arrange this should you be interested in pursuing this.

Thanks

• *Vincent*

Vincent Martorello, AICP

Director, Facilities Services

111 Oak Creek Building, Corvallis, Oregon 97331

Phone – 541-737-7705 | Fax – 541-737-4810

Go Orange

EXHIBIT 12

Bins

Martorello, Vincent <vincent.martorello@oregonstate.edu>

Wed, May 6, 2009 at 8:51
AM

To: The Liberty Managing Editor <theliberty.manager@[REDACTED]>

Will,

We are not keeping the bins off campus, rather we are directing them to a specific location as we do with other publications. We now consider this matter closed.

. Vincent

EXHIBIT 13

FW: Liberty Bins

Fletcher, Charles <Charles.Fletcher@oregonstate.edu>

Thu, May 7, 2009 at 8:52 AM

To: bprice75@██████████, theliberty.manager@██████████
Cc: "Martorello, Vincent" <vincent.martorello@oregonstate.edu>

Gentlemen:

Vincent Martorello forward to me the follow up questions you posed regarding the university's decision to continue its current practice of limiting placements of periodical bins. Specifically, you asked where the "policy" in that regard may be found.

There is no specific written policy that governs the placement of publication bins, and none is required. OSU's control over its grounds, buildings, and facilities -- including the placement of equipment, machines, containers, and the like -- is plenary under ORS Chapters 351 and 352, OAR Chapters 576 and 580, and management directives of the State Board of Higher Education, subject only to limited exceptions that do not apply here.

I hope this helps. Please direct any future correspondence on this issue to me. But as Mr. Martorello made clear in his earlier email, we consider the matter closed.

Charles

Charles E. Fletcher
Associate General Counsel
Oregon State University
638 Kerr Administration Bldg.
Corvallis, OR 97331-2128
(541) 737-6262
(541) 737-0712 (fax)
charles.fletcher@oregonstate.edu

EXHIBIT 14

FW: Liberty Bins

Fletcher, Charles <Charles.Fletcher@oregonstate.edu>

Thu, May 7, 2009 at 1:15
PM

To: The Liberty Managing Editor <theliberty.manager@[REDACTED]>

Cc: bprice75@[REDACTED], "Martorello, Vincent" <vincent.martorello@oregonstate.edu>

Mr. Rogers,

Our office does not provide advice to students. But I can tell you that The Daily Barometer's masthead reveals that it is "published . . . by the Oregon State University Student Media Committee on behalf of the Associated Students of OSU." I believe it has been the campus student newspaper since 1896.

Charles

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charles.fletcher@oregonstate.edu

EXHIBIT 15

From: Lacy, Patricia
Sent: Friday, May 29, 2009 10:50 AM
To: Fletcher, Charles
Subject: The Liberty

*****Confidentiality Notice******

Do not read, copy or disseminate this communication unless you are the intended addressee. This message may contain sensitive and private privileged information. If you are not the intended recipient, or if you believe you have received this message in error, please notify me immediately by reply e-mail. Please keep the contents confidential and immediately delete from your system the message and any attachments.

Hi Charles,

Vincent Martorello referred me to you regarding a question I posed to him. There is a student-run newspaper called The Liberty that experienced the removal of their distribution bins from campus a few months ago. At that time Vincent told them they could not be on campus because they were not a student-affiliated entity. Since then the group has become a recognized student organization and would like to return their bins to campus. This time they know they need to follow procedure Vincent told them was put in place in 2006. We do not know what this procedure is.

Since Vincent has referred me to you, I think there may be some additional information. Could you please help me to understand what is going on with this issue?

Thank you,

Patricia

Patricia Lacy, J.D.

Director, ASOSU Office of Advocacy

Oregon State University

131 Memorial Union East

Corvallis, OR 97331-1616

541.737.6349 phone

541.737.6362 fax

patricia.lacy@oregonstate.edu

www.orst.edu/dept/asosu/ladvocacy

EXHIBIT 16

From: Fletcher, Charles
Sent: Friday, May 29, 2009 11:42 AM
To: Lacy, Patricia
Subject: RE: The Liberty

Hi Patricia,

I do have some background with this issue, and I'll provide my understanding, which admittedly may be incomplete.

The problem, as I understand it, is that The Liberty is requesting more favorable bin locations than those provided to other non-OSU periodicals being distributed on campus.

For a lot of logistical reasons (including clutter and ADA accessibility issues), all periodicals (other than the Daily Barometer) are permitted bin locations in a limited area near the MU. That's not to say those publications are not allowed to be on campus. Publications such as The Liberty may be distributed on campus. It's just a question of locating their distribution structures in locales that are consistent with the neutral rules Facilities Services has established.

My understanding is that the editors of The Liberty believe that any periodical with OSU students on staff is an "OSU student run newspaper" that should be permitted the same bin locations as The Daily Barometer. The university respectfully disagrees. The mere fact that The Liberty has students on staff does not mean that it is entitled to the same bin locations as The Daily Barometer. The Daily Barometer was established over 100 years ago as the OSU student newspaper. It's published by the OSU Student Media Committee on behalf of ASOSU. The Liberty, on the other hand, is not published by OSU and receives almost all of its funding from outside sources. Its only connection to OSU is that some OSU students serve on its staff. My understanding is that Facilities Services has decided that The Liberty is distinguishable from The Daily Barometer and, therefore, assumes the same status as all other periodicals being distributed on campus.

Feel free to give a call if you have any questions or want to discuss this.

Charles

Charles E. Fletcher
Associate General Counsel
Oregon State University

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(541) 737-6262
(541) 737-0712 (fax)
charles.fletcher@oregonstate.edu

EXHIBIT 17

The Liberty and OSU

11 messages

The Liberty Managing Editor <theliberty.manager@[REDACTED]>

Tue, Jun 9, 2009 at 4:30 PM

To: "Ray, Ed" <ed.ray@oregonstate.edu>, "McCambridge, Mark E - ONID" <mccambrm@onid.orst.edu>
Cc: "Fletcher, Charles" <Charles.Fletcher@oregonstate.edu>, "Lacy, Patricia" <patricia.lacy@oregonstate.edu>, Ben Price <pricebe@[REDACTED]>

Hey guys,

I just wanted to let you know that Patricia Lacy told me that Charles Fletcher declined to even take a copy of what we consider to be a starting point for compromise. Given that the University has stated in recent media interviews that it wants to continue working with us, I just wanted to make sure that his actions were representative of what you all really want.

So to summarize the jist of both of our problems, we don't approve of the fact that the University has no written guidelines for what is or is not a student publication. In that university officials have arbitrarily decided to lump us in a category of "off-campus" publications that do not enjoy the same circulation as current student media outlets. University officials have also stated that even if The Liberty were to be considered a student publication, we would still be restricted to the same areas as off-campus publications which stands against the priniciples of diversity and equal protection.

From the University's point of view, if The Liberty were allowed to be a student publication, other groups (both on campus and off) would demand similar access to what we are granted. The end result would be nothing but bins as far as the eye could see, regardless of if they are in use or not. In addition the chaos that would follow would bring OSU out of compliance with the ADA regulations and could potentially put OSU in violation of other laws.

Attached to this e-mail is a document that contains what we consider to be a good starting point for an effective set of rules that will allow us both to peacefully coexist. Please take a look at it and if there are any issues that you don't feel we covered, let us know what they are.

Will Rogers
Executive Editor - The Liberty / President - OSU Students Alliance
503-810-1421
TheLiberty.Manager@gmail.com



Student Publication Draft 0.doc
29K

EXHIBIT 18

The Liberty and OSU

11 messages

Fletcher, Charles <Charles.Fletcher@oregonstate.edu>

Fri, Jun 12, 2009 at 11:07 AM

To: The Liberty Managing Editor <theliberty.manager@[REDACTED]>

Cc: "Lacy, Patricia" <Patricia.Lacy@oregonstate.edu>

Mr. Rogers,

I have been in communication with President Ray and Vice President McCambridge about your email of June 9, and I will be your point of communication on this issue.

The university's decisions with respect to bin placements are content neutral and do not prohibit distribution of The Liberty on the OSU campus by other means. Nor do they prohibit the placement of distribution bins by The Liberty in the permitted locations. The university values intellectual diversity and encourages student participation in the marketplace of ideas.

Please let me know if you have any questions, but as Vincent Martorello informed you by email on May 6, this matter is closed and has been since that date.

Best wishes.

Charles

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