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The First Amendment to the U.S. Constitution
 Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. [ABOUT THE FIRST AMENDMENT >](#)

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News Story

10th Circuit tosses suit challenging Kan. State adviser's ouster

By The Associated Press,
 First Amendment Center Online staff
 08.08.07

MANHATTAN, Kan. — A federal appeals court has dismissed a lawsuit filed by two former Kansas State University journalism students over the removal of the campus newspaper’s adviser, saying the two do not have a First Amendment claim because they are no longer students at the university.

Ron Johnson was removed as director of student publications and adviser to reporters and editors on the *Kansas State Collegian* in 2004. He and two student editors, Katie Lane and Sarah Rice, sued Todd Simon, then director of the journalism school, and Stephen E. White, the dean of arts and sciences.

Johnson, who was assigned other duties and remains an assistant journalism professor, sought to be reinstated. The students argued his removal was a response to criticism of the newspaper’s coverage and affected their First Amendment rights. But U.S. District Judge Julie A. Robinson dismissed the case.

Lane and Rice appealed, but Johnson did not. On July 26, a three-judge panel of the 10th U.S. Circuit Court of Appeals declared the case moot because Lane and Rice had graduated from the university.

“Because defendants can no longer impinge upon plaintiffs’ exercise of freedom of the press, plaintiffs’ claims for declaratory and injunctive relief are moot,” the panel said in its ruling in [Lane v. Simon](#).

The court noted that there is an exception to mootness claims “for cases that are ‘capable of repetition, yet evading review.’” But the panel concluded that Lane and Rice’s case did not meet this exception.

“Because only KSU students serve as editors of the *Collegian*, there is no reasonable expectation that Lane and Rice will be subjected, post-graduation, to censorship by defendants in connection with that newspaper,” the panel said. “Thus, we can carve out no exception to the mootness doctrine for their claims.”

First Amendment advocates criticized the 10th Circuit’s ruling, saying it could have detrimental effects on future cases.

“The court created a standard for mootness that makes it impossible for virtually any student to make a First Amendment claim because they will graduate before their case is concluded,” said Mark Goodman, executive

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director of the Student Press Law Center, in an article on the group's Web site. "It's just plain wrong," he added.

The 10th Circuit's ruling "has provided would-be administrative censors with a pernicious incentive for delaying punishment based on speech until just before the student speakers graduate — or even just expelling the students outright," wrote William Creeley of the Foundation for Individual Rights in Education in an entry on the group's blog, The Torch. "By allowing schools to evade judicial review of their punitive responses to speech simply by timing the application of their punishments until a student's graduation is imminent, it seems the [10th] Circuit has pointed administrators towards an inviting loophole to the First Amendment that we fear they will be all too eager to exploit."

Rice expressed disappointment at the court's ruling.

"This is something we've put energy and our heart into for three years now, so it's definitely disappointing, confusing and frustrating to get this far and for our case to not even be heard on its merits," Rice was quoted as saying by the SPLC.

Several free-speech and -press organizations, including the SPLC and FIRE, had filed [an amicus brief](#) with the 10th Circuit in support of Lane and Rice.

The panel's ruling vacates the district court decision but remands the case to the lower court with instructions to dismiss.

Rice said she and Lane were deciding how to proceed, but their "initial thought" was to ask the full 10th Circuit to hear the case, the SPLC reported.

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