

9th Circuit: OSU Cannot Trash Free Speech

In a stinging decision against Oregon State University, the U.S. Court of Appeals for the 9th Circuit ruled Tuesday that university officials violated the constitutionally protected freedoms of an independent student newspaper when they confiscated its bins and tossed them onto a trash heap.

The court said it had “little trouble finding constitutional violations” and that the university’s unwritten policy that led to trashing the newspaper’s bins “materialized like a bolt out of the blue.”

“Universities should encourage, not shut down, the free exchange of ideas,” says Alliance Defending Freedom (ADF) Legal Counsel Heather Gebelin Hacker. “Students don’t deserve censorship for having viewpoints that university officials don’t happen to favor. The argument that the independent student paper’s bins were confiscated to ‘clean up’ the campus under an unwritten policy was simply not believable. No notice was given, and none of the bins belonging to the primary campus student newspaper were taken. The 9th Circuit made the right decision in ruling against the university.”

Here’s the backstory: ADF attorneys filed the lawsuit in 2009 on behalf of the OSU Students Alliance, a recognized student organization that publishes *The Liberty*. Officials confiscated the independent student paper’s bins—which contained copies of the paper—without notice and threw them next to a dumpster. The university claimed it did so as part of an effort to beautify the campus, but it left untouched the numerous distribution bins of the other student newspaper, *The Daily Barometer*.

OSU Students Alliance has published *The Liberty* since 2002 and has distributed the paper in bins on campus since receiving permission from the university to do so in 2005.

The 9th Circuit's decision in *Oregon State University Students Alliance v. Ray* reversed a district court's earlier decision that had dismissed the student group's claims against the university, which argued it removed the bins under an unwritten campus policy.

"The policy that OSU enforced against plaintiffs, however, was not merely unwritten," the 9th Circuit opinion explains. "It was also unannounced and had no history of enforcement. It materialized like a bolt out of the blue to smite the *Liberty's*, but not the *Daily Barometer's*, newsbins onto the trash heap."