

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

VICKY DIAZ-CAMACHO, individually and in)
her capacity as Editor in Chief of the *University*)
Daily Kansan;)
KATIE KUTSKO, individually and in her)
capacity as prior Editor in Chief of the)
University Daily Kansan; and)
THE *UNIVERSITY DAILY KANSAN*,)

Plaintiffs,)

vs.)

Case No. 16-2085

BERNADETTE GRAY-LITTLE, in her capacity)
as the University of Kansas Chancellor and in)
her individual capacity; and)
TAMMARA DURHAM, in her capacity as the)
University of Kansas Vice Provost for Student)
Affairs and in her individual capacity,)

Defendants.)

Jury Trial Demanded

COMPLAINT

COME NOW Plaintiffs and for their Complaint against Defendants state and allege the following:

JURISDICTION

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343 and 1367, and 42 U.S.C. §§ 1983 and 1988. The Court has jurisdiction over the request for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

VENUE AND TRIAL DESIGNATION

2. Venue is proper in the United States District Court for the District of Kansas pursuant to 28 U.S.C. §§ 96 and 1391(b) because the claims arose in the District, where the University of Kansas is located. Plaintiffs designate Kansas City, Kansas as place of trial.

PARTIES

3. Plaintiff Vicky Diaz-Camacho is a resident and citizen of the State of Kansas and is the Editor-in-Chief of the *University Daily Kansan*. Plaintiff Katie Kutsko is a resident and citizen of the State of Indiana and is the former Editor-in-Chief of the *University Daily Kansan*. Plaintiff The *University Daily Kansan* (“The *Kansan*” or “UDK”) is a not-for-profit business entity overseen by the University Daily Kansan Board, as established by the *Kansan*’s Constitution approved by the University of Kansas Chancellor. The *Kansan* is an editorially independent student newspaper serving the University of Kansas and has been the university’s student voice since 1904.

4. Defendant Bernadette Gray-Little is the Chancellor of the University of Kansas, a Kansas state public educational institution, and she is sued in that capacity as well as her individual capacity. Defendant Tammara Durham is the Vice Provost for Student Affairs and the University of Kansas, a Kansas state public educational institution, and is an ex officio member of the University of Kansas Student Senate, and she is sued in those capacities as well as her individual capacity.

FACTUAL ALLEGATIONS

5. The University of Kansas (hereinafter “KU” or “the University”) is a unit of the Kansas Board of Regents, and is an agency of the State of Kansas. The Board of Regents unifies the public higher education system of Kansas under a single governing and management authority.

6. The KU Student Senate, made up of elected representatives from the student body of the University, is responsible for enacting policies and resolutions pertaining to KU student activities. The University has delegated authority to the Student Senate to determine, subject to administrative oversight and ratification, the allocation of funding for student organizations using student activity fees.

7. The Student Senate Finance Committee passes the Student Activities Budget based on the recommendation of its Fee Review Committee. The budget is subject to approval by the Student Senate, the Vice Provost of Student Affairs, and the Chancellor of the University.

8. The *University Daily Kansan* (“the *Kansan*” or “UDK”) is the student newspaper at KU. The *Kansan* budget is comprised of funds from the State of Kansas in the form of student activity fees, and revenue from the sale of advertising. Student activity fee monies are available to be drawn upon immediately at the start of a fiscal year, while revenue from advertising is not available until received from advertisers. The University collects student activity fees as a component of KU tuition, under authority granted by the Kansas Board of Regents.

9. The *Kansan* previously published a printed edition four days per week during the academic year. Reflecting national and societal trends, in February 2015, *Kansan* editors announced a new strategy in which the publication would go “digital first,” publishing a printed edition twice a week and reallocating their remaining resources toward online journalism. The

decision was made after analyzing readership data, and editors determined putting more resources into their online product would better serve their audience of KU students. The new editorial strategy was set to begin in Fall 2015.

The *Kansan* Calls Out Inadequacies in Student Senate Elections

10. On May 8, 2014, the *Kansan* published an editorial calling for reforms of the Student Senate election process after Morgan Said and Miranda Wagner were elected as Student Body President and Vice President, respectively, despite receiving far fewer votes than a competing ticket of candidates who were declared ineligible on the eve of the election on the basis of an election-code campaign violation.

11. The strongly worded *Kansan* editorial, authored by *Kansan* Board of Directors chairman Mark Johnson, pointed out “inadequacies” in the Election Codes and detailed irregularities in the “confusing” appeals process. In addition to calling for major reforms to prevent a recurrence of the issues surrounding the spring 2014 election, the *Kansan* recommended Said and Wagner consult with the defeated candidates, MacKenzie Oatman and Mitchell Cota, before making any major decisions, as they were the candidates chosen by a majority of the KU student body.

12. Said and Wagner were removed from office on Aug. 22, 2014, by the University Judicial Board Appeals Panel. The Panel, echoing the concerns raised by the *Kansan* in its editorial, called for a re-election because the original election discarded and disregarded the votes of a majority of the student body. The coalition that had received the majority in the spring election was excluded from the re-election. Said and Wagner won the re-election vote on Sept. 10, 2014, and were re-installed into their leadership positions.

Student Senate Expresses Disapproval of Editorial, Votes to Reduce *Kansan* Funding

13. In the next annual budget review of the *Kansan*'s student fees, student senators used the review process to interrogate and punish *Kansan* leaders for unflattering coverage of the Student Senate. Throughout the process, senators voiced their disapproval of the newspaper's content and criticized editors for publishing the May 2014 editorial.

14. Student and professional leaders of the *Kansan*, including editor-in-chief Brian Hillix and business manager Sharlene Xu, met with student body president Said on Feb. 5, 2015, to discuss the *Kansan*'s transition to a twice-weekly print schedule and their upcoming student fee review. During that meeting, Said made clear that members of the Fee Review Committee were unhappy with the May 2014 editorial about the Student Senate elections. Said, who was the primary beneficiary of the election criticized in the editorial, instructed the *Kansan* leaders to be prepared to discuss the editorial when they presented to the Committee on renewal of the *Kansan*'s fee allotment.

15. On Feb. 27, 2015, *Kansan* leaders presented to the Student Senate Fee Review Committee a request to maintain their existing funding level of \$2 per student per semester. This \$2 fee for the *Kansan* is roughly one-half of one percent (00.5%) of the total KU student activity fee amount. Even though the purpose of the meeting was exclusively to address *Kansan* funding, committee members used the presentation to repeatedly question *Kansan* leaders about the May 2014 editorial and why it was allowed to be published. Said went so far as to read a paragraph of the editorial aloud to committee members.

16. Following the presentation, the Student Senate Fee Review Committee voted to cut the *Kansan*'s funding to \$1 per student, which amounted to a \$45,000 annual reduction. After the decision, the official reason for the reduced funding cited by Committee Chair Jessie Pringle

was the reduced publication schedule. However, Committee member Garrett Farlow acknowledged that the May 2014 editorial was repeatedly referenced with hostility during the Committee's deliberations. Farlow reported that members discussed the reduced funding as a chance for the *Kansan* to "fix their content", in the words of Student Senate president Morgan Said, and to then ask for restored funding the following year.

17. The Student Senate Finance Committee met March 4, 2015, to consider the Fee Review Committee's recommendation of *Kansan* funding. *Kansan* leaders again made a presentation requesting their continued funding at a rate of \$2 per student. Editors explained that the reduced printing schedule did not justify reduced funding because the *Kansan* would also experience a drop in advertising revenue and an increase in costs associated with its website.

18. Following the *Kansan's* presentation, Finance Committee member Tyler Childress, one of the authors of the election reform legislation criticized by the *Kansan* in the May 2014 editorial, urged the committee to approve the \$1 per student reduction. While asserting that the reduced printing schedule would require less student fee money, he also directly tied his position to what he called a "steady decline" in the quality of the editorial content in the *Kansan*.

19. After lengthy discussions, the Finance Committee voted to amend the funding bill to \$1.50 per student, a compromise *Kansan* leaders agreed to support. The measure was approved 11-1, with Childress as the only dissenting vote. However, after *Kansan* leaders left the meeting, the Committee took the unusual step of voting to table final passage of the funding bill.

20. On March 25, 2015, the Finance Committee revised the *Kansan's* funding back down to \$1 per student and voted to send it to the full Student Senate. The content of the *Kansan*

was again a topic of discussion. Committee member Emma Halling said the *Kansan* could request more money the following year if the staff “improved” the quality of its content, which she said was a determining factor in cutting the *Kansan*’s funding. Following the Committee meeting, Halling repeated the content-based rationale in an interview with a *Kansan* reporter. She said one significant motivation for the funding cut was “because some of the coverage had been really problematic in the past.” In the interview, Halling specifically referenced the May 2014 editorial and complained that the Student Senate was not asked for comment. She explained that the funding cut “invites the UDK to address these issues throughout the coming year.”

21. The full Student Senate voted on April 1, 2015, to approve the funding bill as passed by the Finance Committee. The measure included cutting the *Kansan*’s funding in half to \$1 per student for the 2015-16 academic year.

22. The 50% budget reduction imposed on the *Kansan* was both significant and specific: no other student organization suffered reduced funding. In fact, seven of the ten organizations funded by the student activity fee received funding increases.

University Officials Sign-Off on *Kansan* Budget Cut

23. On April 7, 2015, attorney Frank LoMonte, executive director of the Student Press Law Center, an advocacy organization supporting the rights of college journalists, emailed and faxed a letter of concern to KU Chancellor Bernadette Gray-Little, defendant herein. LoMonte explained to Gray-Little the legal issues involved in withholding funding from the newspaper for content-based reasons and asked her to step in to stop the funding cut.

24. *Kansan* leaders met with defendant Gray-Little on April 7, 2015, to personally request that she get involved to stop the budget cut. Editors had provided defendant Gray-Little a copy of the statement by Farlow and the transcript of Halling's interview. Defendant Gray-Little declined to intervene. Instead, she recommended that *Kansan* leaders meet with KU Vice Provost for Student Affairs Tammara Durham, defendant herein, who must approve the student fees budget before it is sent to the Chancellor for final approval. In her capacity as Vice Provost for Student Affairs, defendant Durham was an ex officio member of the Student Senate.

25. *Kansan* leaders met with defendant Durham on April 9, 2015, and she was provided the Farlow statement, the Halling interview, and the LoMonte letter. Also present at the meeting was Aaron Quisenberry, Associate Director of the KU Student Involvement and Leadership Center and Financial Adviser to the Student Senate. Defendant Durham said she would mediate a meeting between the *Kansan* and Student Senate members.

26. On April 24, 2015, defendant Durham met with *Kansan* leaders and Student Senate leadership, along with Quisenberry and Rhonda Sharp, Budget and Personnel Administrator in Student Affairs, who oversees the disbursement of student fee monies. Also present was *Kansan* Board of Directors chairman Mark Johnson, who had authored the May 2014 editorial. Johnson told defendant Durham and the others at the meeting that discussion of the *Kansan*'s content, and specifically the editorial, had tainted and infected the entire review process, violating the First Amendment. Said did not admit nor deny that she made comments directly tying the funding cut to the *Kansan*'s content. However, Said stated that she read part of the May 2014 editorial during the Fee Review Committee meeting so that student senators could use the fee review process to discuss the critical editorial with *Kansan* editors "face-to-face."

27. At the end of the meeting, defendant Durham asked Said to reconvene the Finance Committee to revisit the *Kansan's* funding. Said said she could look into it. The *Kansan* representatives were then asked to leave the room so that Student Senate representatives and their advisers could discuss the matter. Before they left, defendant Durham assured Brian Hillix that Said would follow up with him promptly regarding the next steps that would be taken.

28. Hillix, as *Kansan* editor-in-chief, emailed both Said and Pringle on April 27 and again on April 28 to find out whether the Finance Committee would meet to reconsider the *Kansan's* funding. Neither Said nor Pringle responded.

29. Contrary to what defendant Durham led the *Kansan* to believe, Said did not follow up with the *Kansan*, the Student Senate Finance Committee did not reconvene and the Student Senate did not reconsider the reduction in the *Kansan's* funding.

30. The Student Senate held its final public meeting of the school term on April 29, 2015, without any discussion of the *Kansan* fee.

31. On May 6, 2015, Said informed Hillix by email that the *Kansan* funding cut would not be reconsidered and that defendant Chancellor Gray-Little had signed off on the 2015-16 budget as it was approved by the Student Senate, with the reduced funding for the *Kansan*.

32. The budget reduction passed by the Finance Committee and the Student Senate, and approved by the defendants, KU's Vice Provost and the Chancellor, was motivated wholly or in substantial part by the disagreement and displeasure of student senators with the content and viewpoint of the *Kansan*, a fact known to the defendants, KU's Vice Provost and Chancellor, at the time they approved the budget.

33. The \$45,000 reduction directly and detrimentally affected Plaintiffs' ability to effectively gather, report and distribute news, and continues to do so. As a direct result of the

budget reduction, the *Kansan* was forced to eliminate 13 paid student positions on both the editorial and advertising staffs. In addition, the budget cuts forced the *Kansan* to leave its News Adviser position vacant.

34. Even before the content-based reduction in the *Kansan*'s funding, the amount allocated to the *Kansan* was significantly less than what other student newspapers received at Kansas state universities governed by the Board of Regents. For example, Kansas State University allocates \$395,000 per school year to its student newspaper, and Wichita State University provides \$153,000 per year to that university's student newspaper. Not every other student newspaper in the Kansas state university system is compelled to go through an annual budget review that is recommended by an on-campus organization which is the subject of news stories and editorials. For example, the student newspaper budget at Kansas State University is on a three-year cycle.

35. This current attack on the Plaintiffs' exercise of First Amendment rights is not the first time that the KU Student Senate threatened to reduce the *Kansan*'s funding based on the newspaper's content.

- (a) Six years ago, the KU Student Senate President questioned the *Kansan*'s ability to objectively cover the Senate, calling Student Senate funding of the *Kansan* "inappropriate" and seeking to eliminate the *Kansan*'s funding.
- (b) The *Kansan*'s editorial in 2010, opposing any Student Senate reduction in fees that was based on its content, raised concerns that became a reality when defendants Gray-Little and Durham approved this Student Senate's fee reduction:

[S]lashing the student media fee is a misguided solution that will result in fewer services from student media organizations, possible student job losses and a long-term reduction in student hiring by the organizations

that receive money from the fee. . . [It would] also greatly damage the ability to provide news coverage to the student body as a whole.

36. In addition to its practical impact on the ability of the *Kansan* and its staff to effectively gather, report and distribute news, the budget cut carries a significant chilling effect because it ties the *Kansan*'s receipt of adequate funding to the expression of viewpoints which meet the approval of the Student Senate. As a result of the budget reduction, Plaintiffs are chilled in their expression of First Amendment-protected speech, and are less likely than they would otherwise have been to express viewpoints critical of the Student Senate or to make independent editorial judgments about the newsworthiness of Student Senate events.

37. The upcoming annual review by the Student Senate raises additional concerns for the *Kansan* and its continuing role as KU's student voice, which includes providing coverage of the Student Senate. A little over one month ago, a Student Senator and member of the Fee Review Committee complained to the *Kansan* news editor about how editorial writing was assigned. Referring specifically to the *Kansan*'s coverage of the Student Senate, this Fee Review Committee member told the *Kansan*'s news editor that *Kansan* had "bit the hand that fed" it and that the *Kansan* staff "got what you deserved."

38. Thus, the *Kansan* is currently facing open hostility from the Student Senate about its editorial decisions and news reporting. The Student Senate has made clear that negative coverage of the Student Senate by the *Kansan* will impact reinstatement of the *Kansan*'s previous funding level in the upcoming annual fee review process.

39. Defendant Gray-Little has previously exercised her authority and control as chancellor over the allocation of student activity fees, and has circumvented the actions of the Student Senate in the past.

- (a) In 2014, the Student Senate Fee Review Committee voted to eliminate a \$25 student fee which was a portion of the amount allocated to the KU Athletics Department.
- (b) For that budget cycle, KU students paid the KU Athletics Department student fees of more than \$1,100,000.00. KU Athletic Department total revenues for 2013 were \$93,600,000.00.
- (c) While defendant Gray-Little did not veto the Student Senate fee reduction for KU Athletics outright, she instituted two separate fees for students to pay in its place, one for \$12 per student and another for \$7 per student.

40. While the KU defendants authorized this violation of the First Amendment, there has been an acknowledgment within the KU administration of the significance of this troubling issue. During the Spring 2015 law school commencement exercise, KU Provost Jeff Vitter approached *Kansan* Board of Directors chairman Mark Johnson, who had written the offending editorial in May 2014. Provost Vitter said to Professor Johnson, “I hear we have a First Amendment problem.” Provost Vitter made this comment after the Student Senate had slashed funding to the *Kansan* and after defendant Durham and defendant Gray-Little had approved the reduced funding to the *Kansan*.

CLAIMS FOR RELIEF

Count One: United States Constitution

41. The allegations set forth in the foregoing paragraphs are incorporated herein by reference.

42. Plaintiffs enjoy the First Amendment right to freedom of speech and freedom of the press through the avenue of the *Kansan* newspaper. This freedom includes the freedom to make editorial decisions about news and advertisement content in the newspaper.

43. Defendants, through the mechanism of the Student Senate, acting under an express delegation of authority by KU, and in their approval of same, infringed upon plaintiffs' constitutionally protected rights by decreasing funding in retaliation for editorial content decisions.

Count Two: Kansas State Constitution

44. The allegations set forth in the foregoing paragraphs are incorporated herein by reference.

45. Under the Constitution of the State of Kansas, plaintiffs enjoy the right to freedom of speech and freedom of the press through the avenue of the *Kansan* newspaper. This freedom includes the freedom to make editorial decisions about news and advertisement content in the newspaper.

46. Defendants, through the mechanism of the Student Senate, acting under an express delegation of authority by KU, and in their approval of same, infringed upon plaintiffs' constitutionally protected rights by decreasing funding in retaliation for editorial content decisions.

Count Three: Claims Under 42 U.S.C. § 1983

47. The allegations set forth in the foregoing paragraphs are incorporated herein by reference.

48. This is an action pursuant to 42 U.S.C. § 1983.

49. Defendants, acting under the color of state law, have violated plaintiffs' First Amendment rights. They have infringed, interfered with and/or deprived plaintiffs of these constitutional rights.

50. The actions of Defendants were taken for the express purpose of infringing, interfering with, punishing and retaliating against plaintiffs for their exercise of their First Amendment rights.

51. The actions of defendants were intended to have and have had an impermissible chilling effect on plaintiffs' First Amendment rights and rights to free expression.

52. The actions of defendants do not further any compelling interest of the government. Further, the actions of defendants were not tailored to achieve any significant or compelling governmental interest.

53. As a result of defendants' actions, plaintiffs have been chilled in the exercise of their fundamental rights under the First Amendment. Plaintiffs, therefore, have suffered and will continue to suffer irreparable harm for which there is no adequate remedy of law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Assume jurisdiction over this action;

2. Enter a declaratory judgment declaring the budget allocation by the Student Senate, and approved by KU and the defendants, to be in violation of the United States and Kansas Constitutions;
3. Enter a preliminary and permanent injunction against Defendants prohibiting Defendants, their successors, and assigns, and all persons acting in concert therewith from enforcing the retaliatory budget allocation and reducing the *Kansan's* student activity fee allocation from its 2014-2015 level;
4. Enter a preliminary and permanent injunction against Defendants prohibiting Defendants, their successors, and assigns, and all persons acting in concert therewith from enforcing further retaliatory allocations in the 2016-2017 budget;
5. Enter judgment in Plaintiffs' favor for nominal damages;
6. Award Plaintiffs reasonable attorneys' fees and costs as allowed by law;
and
7. Order such additional relief as the Court may deem just and equitable.

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DEMAND FOR JURY TRIAL

COME NOW Plaintiffs, by and through counsel, and hereby demand trial by jury on all claims and issues so triable.

/s/ Patrick J. Doran
Patrick J. Doran

DESIGNATION OF PLACE OF TRIAL

COME NOW Plaintiffs, by and through counsel, and hereby designate Kansas City, Kansas as the place of trial.

/s/ Patrick J. Doran
Patrick J. Doran