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## CSU and 'Conventions of Decency'

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This Thursday, Colorado State University (CSU) junior J. David McSwane will be headed to a closed-door hearing to decide his future as editor-in-chief of the *Rocky Mountain Collegian*, CSU's student newspaper. The offense? On September 21, McSwane's paper ran a four word editorial, reading simply "Taser This: FUCK BUSH." In response, complaints have streamed in from all over the campus and the country -- and while the university at first demonstrated a principled willingness to defend the paper and McSwane, the announcement of closed-door hearings in the middle of political firestorms seldom bodes well for free speech.

From looking at some of the coverage of this case, a casual reader might think something like this has never happened before. But of course, not only have incidents like this happened before, the United States Supreme Court even heard a strikingly similar case decades ago and came down firmly on the side of free speech. In *Papish v. Board of Curators of the Univ. of Missouri*, 410 U.S. 667 (1973), the Supreme Court ruled that the expulsion of the editor of an underground student newspaper for publishing "indecent speech" violated the editor's First Amendment rights. The speech at issue? A headline proclaiming "Motherfucker Acquitted" (a reference to -- what else? -- the acquittal of a member of an organization named "Up Against the Wall, Motherfucker") and a cartoon depiction of a policemen raping the Statue of Liberty. In their per curiam opinion, the Court wisely held that "the mere dissemination of ideas -- no matter how offensive to good taste -- on a state university campus may not be shut off in the name alone of 'conventions of decency.'" Similarly, in an earlier case, *Cohen v. California*, 403 U.S. 15 (1971), the Court found that the slogan "Fuck the Draft" written on a jacket was also an instance of protected speech. In *Cohen*, the Court provided its opinion of the f-bomb, highly relevant when considering McSwane's current controversy: "[W]hile the particular four-letter word being litigated here is perhaps more distasteful than most others of its genre, it is nevertheless often true that one man's vulgarity is another's lyric. Indeed, we think it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual."

So, yes, it is quite clear that McSwane's speech was protected, but Colorado State's Board of Student Communications (BSC) seems to be taking another angle. On September 27, they charged McSwane with violating CSU's student media Code of Ethics, which quaintly states that "[p]ropane and vulgar words are not acceptable for opinion writing." While the BSC has found a hook on which to hang McSwane, I am hard-pressed to see how such vague language constitutes a hard-and-fast rule, or how this guideline is of greater importance than the free speech guaranteed by the First Amendment and upheld by the Supreme Court in cases like *Cohen* and *Papish*.

In working in defense of the student press, I see cases like this quite often. Accordingly, I know from experience that the response to the free speech argument is often an exasperated "So we just have to let the student press say whatever they want, no matter how offensive or juvenile, with no consequences whatsoever?" The answer to this is both yes and no. First, the paper should suffer no "official" consequences, and state institutions cannot and should not be in the business of policing student media for potential for offense. However, this is not to say that the student media will suffer no consequences for the content of their publication. Indeed, the student media always faces consequences: in particular, they face the natural consequences of their speech. The CSU case is a perfect example of these consequences: here, the *Collegian* has taken tremendous heat for this editorial, losing substantial advertising revenue and being forced to reduce staff size as a consequence. McSwane and the *Collegian* staff have no doubt learned a great deal about political speech, the popularity of cussing with the polity outside the campus, and public controversy. Sadly, what the BSC is doing here is turning what would otherwise be a "teachable moment" into a much more depressing (and un-American) lesson about censorship and administrative prudery. The bottom line is that the *Collegian* editorial is clearly protected speech. You are free to disagree with it, you are free to condemn it, you are free to say it was unprofessional, but as soon as that disagreement and condemnation turns instead into official sanctions and forced resignations, our handy old First Amendment enters the fray.

CSU President Larry Penley (presofc[at]lamar.colostate.edu) should do the right thing and quash this hearing right now.

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