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By JOSHUA ZAFFOS

Campus-media watchdogs, expect free-speech chills after "Taser this...."

The free-speech zone of the student-center plaza at Colorado State University doesn't look any less free these days, after Rocky Mountain Collegian Editor-in-Chief David McSwane received a formal admonishment for the September 21 editorial that read, "Taser this...FUCK BUSH." But not everyone thinks the decisions of the university Board of Student Communications have equaled a victory for protected speech and the First Amendment.

"Even though the hearing had a nominally positive outcome, the hearing itself was definitely a negative for free speech," says Seth Anthony, a chemistry graduate student who started CSU's Libertarian Party. "I think the very fact that there was an investigation and hearing creates a chilling effect on campus."

The student communications board was on shaky ground in holding a formal, closed-door hearing on October 4 to consider complaints against McSwane, says Greg Lukianoff, president of the Foundation for Individual Rights in Education (FIRE), which advocates for free speech on college campuses.

In a letter to the board interim president, journalism professor James Landers, FIRE staff called the school's student-media language restrictions "plainly unconstitutional."

"State institutions cannot punish students for using coarse language," Lukianoff says. Supreme Court case law backs up that statement. Writing on The Huffington Post on October 1, Lukianoff added that "the announcement of closed-door hearings in the middle of political firestorms seldom bodes well for free speech."

The board called the meeting to consider Collegian Code of Ethics violations, specifically related to the use of "profane and vulgar words" and a failure to "be professional." In a September 27 letter calling for the meeting, Landers wrote that it was closed to protect the privacy of McSwane and witnesses, and "to ensure an atmosphere conducive to orderly conduct." The announcement followed BSC bylaws. Colorado sunshine laws allow higher-education boards to discuss personnel matters behind closed doors, unless an individual requests an open meeting. Neither Landers nor McSwane responded to say whether the student editor-in-chief was given that option, but in an October 4 editorial in the Collegian, before his formal hearing, McSwane called the hearing a "private execution."

The failure to hold an open meeting is just the tip of the iceberg for student-media watchdogs.

Open debate over the editorial's wording and message was appropriate, Lukianoff adds, but the consideration of official sanctions over protected speech wasn't. The editorial's consequences — including lost advertising and decreased pay at the Collegian — are a fair expression of disapproval, but they should not have been grounds for consideration of formal punishment.

"I think what they did was sort of emblematic of what CSU does with free speech," Anthony says, referring to another brouhaha over campus speech policies this past spring (read "FIRE starters," from the April 19 issue, online at rmchronicle.com). "They make the right decision, but only after they agonize about it for awhile."

Lukianoff says the Collegian's editorial and the university response is not a singular case.

Since 2005, Lukianoff has spoken with a number of college administrators regarding censorship of student press and other forms of protected speech. He counsels that repressing a student press is a bad idea for "pragmatic, philosophical and legal reasons," even when an administrative board is acting in the role of publisher.

"It definitely seems like a major theme this year that universities are trying to exert control over student presses," Lukianoff says.

The discussions have partly resulted from misinterpretations of a 2005 federal circuit court ruling, *Hosty v. Carter*, which granted a university dean "qualified immunity" from censorship restrictions at the campus newspaper of Governors State University in Illinois. The decision also distinguished that college presses, or other campus expressions of free speech not recognized as "designated public forums," could be subject to censorship.

The *Hosty* ruling applies only in the Seventh Circuit — Illinois, Indiana and Wisconsin — but both the Student Press Law Center and FIRE say *Hosty* cracks open the door for a university to justify more administrative control over student media.

In that context, the CSU student communications board's determination that the editorial is protected by the First Amendment might be seen as a victory, but critics say the damage is already done.

"Just by holding these meetings, there's a claim that they're chilling student media," says Mike Hiestand, an attorney with the Student Press Law Center, based in Arlington, Virginia.

CSU Student Media Director Jeff Browne refuses to speculate how the editorial, the board's handling of the episode and the campus and national reaction might affect student journalism. A review of student-media bylaws is the decision of the Board of Student Communications.

McSwane did not answer calls, and his voice mailbox is full, but he expressed his feelings in his October 4 editorial. Thinking he might get fired, McSwane wrote that he's "begun to lose faith in the [journalism] industry" following the reaction to the editorial. "It's too bad that it got this far there," Hiestand says.

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