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REJOINER

The Purpose and Power of the First Amendment: A Response to Hildon and Colitti

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While it seems to me unclear that Judge Alito, who Hildon asserts was not moved by the identity of the plaintiffs in *Saxe*, did not take advantage of his sympathies to write what appears to be a pro-free-speech decision, I generally agree with Hildon that the effects of the decision support free speech and correctly strikes down an anti-harassment policy which is unacceptably broad and vaguely framed.

Colitti's assertion that Alito's decision "denies constitutional protection" to minority groups misunderstands both the principles and the application of the First Amendment. Colitti believes that preventing harassing speech, even as broadly and as vaguely defined as in the State College Area School District's policy, "upholds individual protections" and protects the right to "unrestricted access to safe and orderly schools." It is important to Colitti to demonstrate that having such laws is "a majoritarian view" in the State of Pennsylvania, as expressed by its legislature, and he goes on to inveigh that "the instant matter illustrates how courts are also manipulated to promote minority excesses" (though he does not name them or discuss them). He takes yet one more step by asserting that these manipulations, or these excesses have "empowered the imperialistic ideology" against which Cornel West argues in *Democracy Matters*.

Since Colitti does not provide a clear discussion of what West's "democratic principles" are, it is hard to evaluate his claim. I think Colitti has misunderstood the purpose and power of the First Amendment. Its purpose is to protect speech that may be objectionable or obnoxious to the government, or to prevailing majorities who can exercise power, from censorship or prior restraint. Its principles, I believe, are to protect the market place of ideas by preventing majorities, and the governments who represent them, from making judgments about the permissible content of speech. Who is to say what speech is allowed? Instead of relying on the president or the mayor or the senator or the judge to decide what's ok and what isn't, the first amendment essentially says that no one should be making such judgments ("Congress shall make no law..."). Aside from the classical exceptions (like yelling fire in a crowded theatre when there is no fire), protection for all speech should be taken for granted. What is freedom of speech worth if every individual who speaks must check with each individual in her or his potential audience to find out first what offends them (or for that matter, what they approve of)?

On the contrary, upholding the values of freedom of speech requires some toughness out in the real political world, and I would argue that in the education we give our children we do them a gross disservice if we teach them that it is permissible to censure speech. A good school administration, faced with offended students, should organize occasions when all students are encouraged and empowered to speak, and others are enjoined to listen respectfully. This is training in democracy! Debate and discussion and research and argument should be encouraged. A facilitator in this discussion might ask the students, "what can we LEARN about this disagreement that would help us think about it, understand more, and sharpen our views of the situation?" As the saying goes, "the cure for bad speech is more speech." The last thing that an administration should do is censor or punish the offending speech, or create policies that would enable it to do so. If anything, free speech, and the lessons it teaches about diversity, difference, knowledge, and understanding is MORE important in

schools than it is anywhere else.

A citizenry which grows up thinking censorship is an appropriate response to speech that offends will sanction laws and policies that restrict and limit the ambit of acceptable speech (and with that the ambit of acceptable ideas that undergird the speech). This citizenry will quite likely lack the mental toughness and agility needed to cope honestly, and with understanding, with a diverse world, and to operate in it with a democratic form of government.

Now is an important time for schools to follow up on the *Saxe* decision and to reclaim free speech for debate and discussion. And to assist the students in building democratic institutions inside the schoolhouse. It is an opportune moment to revitalize the school's ability to help the students engage in the tough process of getting to know and understand each other. It is a ripe moment to begin the process of learning what we need to learn to be able to work with others, and to engage with others much different from ourselves to get things done for the community.