

by Terence Rex Boga

Closing Argument

When I began my career in 1994, I had a colleague, William Rudell, whose office décor was notable for many eclectic items. One was a photo of him marching with Botswana athletes during the 1984 Olympics opening ceremony, a position he earned because he was that republic's honorary consul in Los Angeles. The other was a poster-size black and white photo of a picketer holding a "Tyranny and Mayor Rudell Must Go" sign in front of Burbank City Hall. Bill, who served on the Burbank City Council from 1973-1977, had taped on the bottom of the picture the following California Court of Appeal pronouncement: "It is an essential part of our national heritage that an irresponsible slob can stand on a street corner and, with impunity, heap invective on all of us in public office."¹

Today, the protest conducted by Bill's critic seems rather genteel. In cities across the state, sidewalk vendors hawk "Fuck Biden" merchandise from stands displaying that message on outsized banners. California may be a predominantly blue state, but a market for such material exists even here.

Less surprising are complaints generated by these vendors. Based on media accounts and discussions with colleagues, it appears municipal officials and staff regularly are being beseeched to

America, F__ __k Yeah!

do something to stop, or at least control, the public exhibition of the word "fuck." Some pleas are from parents seeking to shield children from vulgarity; others from people seeking to promote respect for the presidency and restore civility in political discourse. Most, I suspect, are from people who simply disagree with the message.

I do not question the sincerity of the complaint filers. What many do not realize, however, is that the state legislature enacted special protections for sidewalk vendors in 2018 with SB 946 (Lara). Informally known as the Safe Sidewalk Vending Act, the legislation is intended to promote entrepreneurship and support immigrant and low-income communities.

SB 946 greatly limits local government authority to restrict commercial activities on public sidewalks. It enacted Government Code Section 51038, preempting

cities and counties from imposing regulations not directly related to objective health, safety, or welfare concerns. The statute specifically declares that perceived community animus does not constitute an objective health, safety, or welfare concern justifying a regulation.

Complaint filers also fail to account for First Amendment protection afforded these vendors. Fifty years ago, the U.S. Supreme Court overturned a disturbing-the-peace conviction against a Vietnam War protestor who wore a jacket stating "Fuck the Draft" in a courthouse.² Last term, the Court overturned a school district's punishment of a high school freshman who posted "Fuck school fuck softball fuck cheer fuck everything" on social media after not being selected for the varsity cheerleading squad and not getting her preferred softball position.³ Such case law forecloses content-based restric-

tions on expressive conduct.

The word "fuck" may be offensive to many, but it and its derivatives have unmatched utility as an interjection. For a great example, there is the scene in which Bunk and McNulty solve a crime scene puzzle in the "Old Cases" episode of *The Wire*. I would also commend every Swearingen rant in the *Deadwood* series. Furthermore, for those intrigued by the notion of a movie featuring poorly animated foul-mouthed marionettes, I of course endorse *Team America: World Police*.

Returning to the judicial pronouncement favored by my old colleague, the court appropriately reminded public officials that thick skin is a prerequisite for all engaged in politics. I think it is equally important that the general public be reminded that thick skin is a prerequisite for citizens in a democratic nation.

The sale of "Fuck Biden" merchandise on public sidewalks should not be lamented. Rather, it is a symbol of the strength of our remarkable constitutional system of government. It is easy to support free speech when someone says something you agree with; it is critical to support free speech when the message upsets you. ■

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¹ Desert Sun Publishing Co. v. Superior Ct., 97 Cal. App.3d 49, 15 (1979).

² Cohen v. California, 403 U.S. 15 (1971).

³ Mahanoy Area Sch. Dist. v. B.L., 141 S. Ct. 2038 (2021).