UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
WINCHESTER DIVISION

I.P., a minor, by and through B.P.,

Plaintiff,

v.

TULLAHOMA CITY SCHOOLS, a political subdivision of the State of Tennessee; JASON QUICK, in his individual capacity; and DERRICK CRUTCHFIELD, in his individual capacity,

Defendants.

Case Number: 4:23-cv-26

Hon. Katherine A. Crytzer
Magistrate Judge Susan K. Lee

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT TULLAHOMA CITY SCHOOLS' MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Four years ago, the Supreme Court issued a landmark ruling answering a free speech riddle facing public high school administrators across the country: What do you call high school students who express themselves off campus, after school, and cause no disruption at school?

Teenagers, with a First Amendment right to freedom of speech.

That is *Mahanoy*'s command: The First Amendment does not give public schools the power to control students' speech 24 hours a day. *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 189–90 (2021). When teenagers are out of school and their speech does not substantially disrupt the school day, their parents are responsible for their behavior (and punishment), not the government. *Id.*

So when Plaintiff I.P. lampooned Tullahoma High School Principal Jason Quick on Instagram—away from school, on his own time, on his own device, and without disruption to THS—the First Amendment squarely barred the School District from punishing him.

Mahanoy is legally and factually on all fours. I.P. and the student in *Mahanoy* both expressed displeasure on social media about school staff. Both made their posts away from school and outside school hours. And neither's expression substantially disrupted school. So here, just as in *Mahanoy*, the First Amendment protects the high school student's speech.

Faced with *Mahanoy*'s unambiguous protection for nondisruptive social media expression like I.P.'s, the School District tries to rewrite history and justify its suspension by trotting out new excuses never offered in August 2022. In its contemporaneous correspondence to I.P. and his mother, B.P., the School District justified I.P.'s suspension by asserting his Instagram posts made Quick feel "embarrassed" in violation of the School's (former) Social Media Policy that bars posts that "embarrass" or "discredit" a member of staff. The School District does not dispute these facts.

But you'd never know it from reading the School District's brief: The word "embarrass" never appears. Instead, the School District fills its brief with excuses never uttered in August 2022, or even at any time before I.P. filed this lawsuit. Worse, the School District tries to justify I.P.'s suspension with two images this Court *already held* it cannot not rely on. (Doc. 109, Order on Mot. Dismiss 17 ("Defendants … agree that they are bound to rely solely on the three Instagram posts in defending the suspension.").)

The School District's litigation pivot is a transparent and impermissible attempt to rewrite history. The Supreme Court has made clear government defendants may not justify deprivations of First Amendment rights with justifications "invented post hoc in response to litigation." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 n.8 (2022). As the First Circuit explained, "shifting rationales may provide convenient litigating positions for … school administrators in defending their decision, but they are too easily susceptible to abuse by obfuscating illegitimate reasons for speech restrictions." *Norris ex rel. A.M. v. Cape Elizabeth Sch. Dist.*, 969 F.3d 12, 26 (1st Cir. 2020). Students and their parents deserve to know why the school issued a suspension, and the government cannot whitewash censorship with justifications dreamed up during litigation.

Mahanoy made clear that the First Amendment protected I.P.'s right to express himself online, off campus, after school, so long as his posts did not cause substantial disruption to school. There is no genuine issue of material fact I.P.'s playful Instagram Posts did not cause substantial disruption, nor did they provide a basis for the School District to "reasonably forecast" substantial disruption of an American high school. The Court should deny the School District's motion.

UNDISPUTED MATERIAL FACTS

Plaintiff I.P.'s brief in support of his motion for summary judgment sets forth the full factual background of this dispute. (Doc. 122, Pl.'s Br. Supp. Mot. Summ. J. 3–10.) In the interest of brevity, I.P. will not repeat it here and incorporates that section by reference. Critically, the

School District's brief, discovery responses, and contemporaneous documentation from August 2022 confirm the parties do not dispute the material facts on which I.P. is entitled to summary judgment as to liability on Claim IV (municipal liability against the School District) and on which the School District's cross-motion should be denied. The following facts are undisputed:

I.P. graduated from Tullahoma High School ("THS") in 2024. (Doc. 118, Def.'s Summ. J. Mem. 1.) THS is part of Tullahoma City Schools (the "School District"). I.P. believed his (now former) THS principal, Jason Quick, had ignored I.P.'s concerns regarding a discriminatory school dress code policy, treated I.P. unfairly after he voiced concerns about a substitute teacher, and had acted inappropriately with other students. (*Id.* at 3–4.)

So, on May 22, 2022, during summer vacation, I.P. reposted an image of Quick holding a box of fruit and vegetables with the text "🔥MY BROTHA🔥" and added the text "like a sister but not a sister<33" and "On god." (*Id.* at 3.) On June 9, 2022, still on vacation, I.P. posted an image showing Quick as cartoon cat wearing whiskers, cat ears, and a French maid dress, with the text "Neko quick" and "Nya!" (*Id.* at 2.) On August 2, 2022, while at home following the second day of school, I.P. posted an image showing Quick's head on a drawing of a character from the online game *Among Us*, being hugged by a cartoon bird named Mordecai, from the Cartoon Network series *Regular Show*. (*Id.* at 4.) These three posts ("I.P.'s Instagram Posts") remained on I.P.'s Instagram profile page on August 10, 2022. (Doc. 120-6, Flowers Tr. 57:21–58:5.)

The School District's administrators, including Quick, confirmed I.P.'s Instagram Posts did not cause any disruption at THS, did not cause any students to violate school rules, and did not result in any complaints from parents, teachers, or administrators. (Doc. 120-8, Quick Tr. 66:21–24, 67:4–6, 67:14–22, 78:12–79:2, 93:6–12, 200:3–14; Doc. 120-5, Crutchfield Tr. 39:17–40:2, 40:7–24, 44:15–21, 45:13–21, 49:23–50:8, 50:19–51:11; Doc. 120-6, Flowers Tr. 27:22–28:7,

28:11–29:8, 30:9–24, 31:9–32:1, 33:8–18, 34:8–25.) School District administrators saw I.P.'s Instagram Posts for the first time only while investigating two *other* images that student A.L had shared with Quick. (Doc. 120-8, Quick Tr. 63:24–64:8, 67:23–68:12, 87:7–14; Doc. 120-5, Crutchfield Tr. 36:15–23, 41:4–10, 48:3–9; Doc. 120-6, Flowers Tr. 25:1–17, 29:9–17, 32:2–8.)

On August 10, 2022, immediately following band rehearsal, and after classes let out for the day, THS Band Director Justin Scott escorted I.P. to the school's front office, where Quick and Assistant Principal Derrick Crutchfield waited. (Doc. 120-7, Scott Tr. 50:11–16.) Quick showed I.P. I.P.'s Instagram Posts and two additional images of Quick with members of the KKK and Hitler (the "New Images"). (Doc. 120-8, Quick Tr. 165:4–7.) I.P. denied having created or shared the New Images and told Quick he had posted I.P.'s Instagram Posts because he thought they were funny. (*Id.* at 165:4–22.) Quick told I.P. the Instagram Posts embarrassed him and ordered I.P. to read the school's Social Media Policy, which prohibited sharing photos that "embarrass" or "discredit" staff. (*Id.* at 166:15–22; Doc. 120-5, Crutchfield Tr. 71:17–72:14; 74:24–75:9.) At Quick's direction, Crutchfield told I.P. he would receive a five-day, out-of-school suspension. (Doc. 120-5, Crutchfield Tr. 74:24–75:9; 80:7–15.) Crutchfield said I.P.'s Instagram Posts had "embarrassed and discredited" Quick. (*Id.* at 83:18–84:23.)

On Tuesday, August 16, 2022, Quick confirmed in writing to B.P., I.P.'s mother, that the School District suspended I.P. solely for I.P.'s three Instagram Posts and contended I.P.'s posts violated the Social Media Policy's bar on "embarrassing" or "discrediting" a staff member. (Doc. 122-13, Ex. L, Quick Aug. 16, 2022 Email to B.P.) The same week, Quick and Crutchfield recounted the events of I.P.'s suspension to the School District's superintendent, confirming the only reason they gave I.P. for his suspension was Quick's embarrassment. (Doc. 120-8, Quick Tr. 139:18–142:12, 166:10–167:14; Doc. 120-5, Crutchfield Tr. 83:18–84:23.)

ARGUMENT

The Court should deny the School District's motion because the facts viewed in I.P.'s favor demonstrate he engaged in nondisruptive expression protected by the First Amendment. *See Maben v. Thelen*, 887 F.3d 252, 266 (6th Cir. 2018) (on a Rule 56 motion the court "must consider the evidence in the light most favorable to the non-moving party and draw all reasonable inferences" in its favor) (internal quotation marks and citation omitted).

I. The First Amendment Prevents the School District from Punishing I.P. for His Off-Campus Speech.

A. The First Amendment protects I.P.'s Instagram Posts.

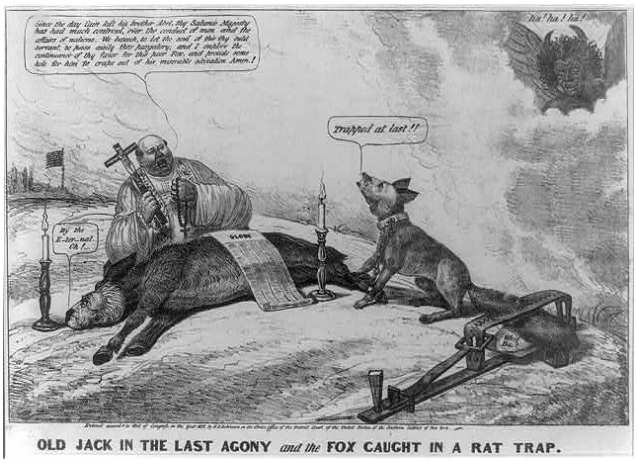
The First Amendment protects I.P.'s Instagram Posts satirizing Quick because they are expressive, nondisruptive commentary about the leader of his "community": his high school principal. *Mahanoy*, 594 U.S. at 190. And criticism and satire of public officials like former principal Quick fall squarely within the First Amendment's protection. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 273 (1964). Indeed, "from the early cartoon portraying George Washington as an ass down to the present day … satirical cartoons have played a prominent role" in American expression. *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 54 (1988).

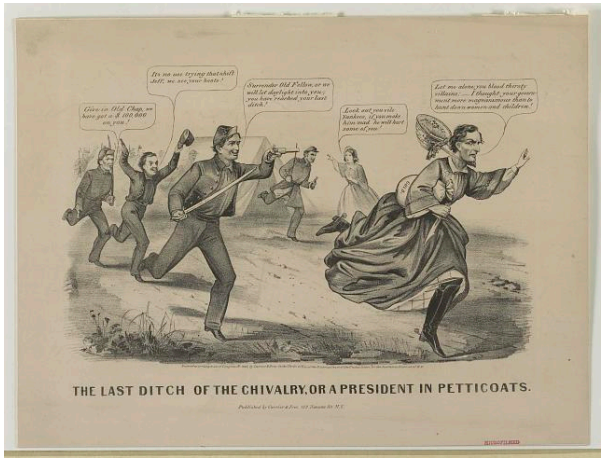
The School District nevertheless argues I.P. "engaged in speech unprotected by the First Amendment" (Doc. 118, Def.'s Summ. J. Mem. 9), without even explaining *which* category of unprotected speech it contends I.P.'s expression falls within. *See United States v. Stevens*, 559 U.S. 460, 468–69 (2010) (listing categories of unprotected speech). Like in *Mahanoy*, I.P.'s Instagram Posts do not qualify as obscenity (the School District's brief does not argue otherwise), nor do they constitute fighting words (again, the School District does not contend otherwise). *Mahanoy*, 594 U.S. at 191 (citing *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942) (fighting words) and

Cohen v. California, 403 U.S. 15, 19–20 (1971) (obscenity)). So I.P.—and this Court—are left to guess why the School District contends the Instagram Posts lack First Amendment protection.

In any event, the School District is wrong. The *Mahanoy* Court recognized that American high school students retain the First Amendment's protection when participating in the American tradition of commenting on their "community," which for teenagers is their school. *Id.* at 190.

Using illustrations to comment on community leaders is part of the American tradition of political satire, including portraying male political leaders as animals or in feminine garb. From portraying Andrew Jackson as a dying donkey at the end of his presidency in 1837,[1] to drawing Jefferson Davis in petticoats, running from Union soldiers in 1865,[2] Americans use satirical images to make light of the issues affecting their community (occasionally, by putting male leaders in women's clothing for comedic effect):





[1] *Old Jack in the Last Agony and the Fox Caught in a Rat Trap*; LIBR. OF CONGRESS, https://www.loc.gov/resource/cph.3b31018 (last visited May 23, 2025). Courts can take judicial notice of a government website's content. *See, e.g.*, *Demis v. Sniezek*, 558 F.3d 508, 513 n.2 (6th Cir. 2009) (taking judicial notice of contents of the Bureau of Prisons' website); *Oak Ridge Envtl. Peace All. v. Perry*, 412 F. Supp. 3d 786, 810 n.6 (E.D. Tenn. 2019) ("Information taken from government websites is self-authenticating under FED. R. EVID. 902, and courts may accordingly take judicial notice of the information found on these websites." (citations omitted)).

[2] *The Last Ditch of the chivalry, or a President in Petticoats*, LIBR. OF CONGRESS, https://www.loc.gov/resource/pga.04914 (last visited May 23, 2025).

In the 20th century, a New Deal political cartoonist depicted Congress as a subservient, worried (male) maid in a dress.[3] And, later on, famed political satirist Pat Oliphant lampooned former FBI Director J. Edgar Hoover (and the FBI) by depicting Hoover in women's clothing, including fishnet stockings and high heels[4]:

I.P.'s Instagram Posts follow in this tradition of American political cartoons. I.P. satirized Quick, the leader of his school community, for, as I.P. saw it, Quick's overly masculine and authoritative demeanor towards students. (Doc. 118, Def.'s Summ. J. Mem. 2; Doc. 120-1, I.P. Tr. 61:14–19, 62:14–21.) According to I.P., R.Y., and even Quick himself, I.P. shared his Instagram Posts because he thought they were a "funny" representation of an authority figure: The very *point*

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[3] *New Deal Remedies*, FIRST AMENDMENT MUSEUM, https://firstamendmentmuseum.org/exhibits/virtual-exhibits/art-politics-300-years-of-political-cartoons/political-cartoons-part-4-1900-1950 (last visited May 27, 2025).
The Court can take judicial notice of the existence of media in the public domain, so long as, like here, it is the existence of the media which is relevant rather than the truth of its contents. *See, e.g.*, *Walker v. Time Life Films, Inc.*, 615 F. Supp. 430, 438 (S.D.N.Y. 1985) ("This Court takes judicial notice that members of the New York Police Department are often portrayed as Irish, smokers, drinkers, and third or fourth generation police officers.").

[4] Oliphant, *'I Was About to Say that If Ol' J. Edgar Was Still Running Things, We Wouldn't Be Having This Big Image Problem...but Let It Pass.'*, LIBR. OF CONGRESS, https://www.loc.gov/exhibits/oliphant/vc007266.jpg (last visited May 30, 2025).

of a satirical cartoon. (Doc. 120-1, I.P. Tr. 61:9–19; Doc. 120-9, R.Y. Tr. 34:9–35:2; Doc. 120-8, Quick Tr. 165:17–22.)

True to the American tradition of peacefully lampooning those in power, the First Amendment protects pointed (and even vulgar) satire aimed at school administrators so long as it does not substantially disrupt the school day. For example, even before *Mahanoy*, the *en banc* Third Circuit held a public high school could not discipline a student for creating a Myspace profile parodying his principal as a "big steroid freak," a "big whore," and a "big fag," and listing the principal's interests as "Transgender, Appreciators of Alcoholic Beverages." *Layshock ex rel. Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205, 207–08 (3d Cir. 2011). The *en banc* Third Circuit also held protected a student's sexually vulgar Myspace profile calling her principal an "oh so wonderful, hairy, expressionless, sex addict, fagass, put on this world with a small dick PRINCIPAL" who loved "children, sex (any kind), dogs, long walks on the beach, mtv, being a dick head, and … my darling wife who looks like a man." *J.S. ex rel. Snyder v. Blue Mountain Sch. Dist.*, 650 F.3d 915, 920–21 (3d Cir. 2011). These online posts explicitly targeted school principals with language far more vulgar, sexual, and pointed than anything in I.P.'s Instagram Posts. Nevertheless, they, too, are protected speech due to the lack of disruption to the school environment.

The School District's August 2022 justification for I.P.'s suspension—that I.P.'s Instagram Posts "embarrassed" Quick[5]—is not constitutionally tenable. The Supreme Court held more than 40 years ago that "[s]peech does not lose its protected character … simply because it may embarrass others." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 910 (1982). I.P.'s Instagram

[5] (Doc. 120-8, Quick Tr. 166:15–22; Doc. 120-5, Crutchfield Tr. 74:24–75:9, 83:18–84:23; Doc. 122-13, Ex. L, Quick Aug. 16, 2022 Email to B.P.)

Posts followed a centuries-old tradition of satirizing those in power, including by putting male authority figures in dresses. Satire isn't supposed to flatter its subject. The First Amendment protects I.P.'s expression.

B. The School District's contemporaneous justifications for punishing I.P.'s Instagram Posts do not satisfy *Mahanoy*.

The School District violated I.P.'s First Amendment rights because it suspended him for off-campus expression that neither substantially disrupted the school day nor provided the School District a basis to reasonably forecast substantial disruption. The School District must defend I.P.'s suspension based on the justifications it provided I.P. and his parents at the time of the suspension. (*See* Section II.B, *infra*.) And there is no genuine issue of fact that in August 2022, the School District suspended I.P. solely and explicitly for his three Instagram Posts.

Quick confirmed that fact to I.P.'s mother in writing on August 16th. (Doc. 122-13, Ex. L, Quick Aug. 16, 2022 Email to B.P.) What is more, when Quick recounted the events of I.P.'s suspension to the School District's superintendent, Quick's contemporaneous notes cite his own embarrassment as the sole reason he provided I.P. for the suspension. (Doc. 120-8, Quick Tr. 139:18–142:12, 166:10–167:14.) Crutchfield, too, told I.P. and the School District's superintendent only that I.P.'s posts had "embarrassed and discredited" Quick. (Doc. 120-5, Crutchfield Tr. 83:18–84:23.)

A school principal feeling "embarrassed" and "discredited" is not a constitutional basis for punishment. Instead, under *Mahanoy*, the School District could suspend I.P. only if his Instagram Posts caused or could be reasonably forecast to cause substantial disruption at THS. 594 U.S. at 192–93. While the First Amendment grants public schools some discretion to regulate students' speech "in light of [schools'] special characteristics," when a student's expression occurs off campus, that leeway is "diminished." *Id.* at 190. Although the First Amendment "does not require

disruption to have actually occurred," *Kutchinski ex rel. H.K. v. Freeland Cmty. Sch. Dist.*, 69 F.4th 350, 359 (6th Cir. 2023), it still requires more evidence to support a reasonable forecast of substantial disruption than the school can muster here. *See Mahanoy*, 549 U.S. at 193; *Castorina ex rel. Rewt v. Madison Cnty. Sch. Bd.*, 246 F.3d 536, 544 (6th Cir. 2001) (requiring a "history of unrest" at school to support forecast of substantial disruption); *see also Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 508, 515 (1969) ("undifferentiated fear or apprehension of disturbance is not enough"); *J.S.*, 650 F.3d at 928, 930–31 (Schools must proffer specific facts showing "undifferentiated fear or apprehension" has "transform[ed] into a reasonable forecast that a substantial disruption … will occur.")

Because the School District has no evidence I.P.'s Instagram Posts caused, or could reasonably be forecast to cause, substantial disruption at THS, I.P.'s speech remained outside the school's reach. *Mahanoy*, 549 U.S. at 192–93. It is undisputed that I.P. posted the three images giving rise to his suspension away from school and outside school hours, that the images did not materially and substantially interfere with school activities, and that School District administrators conceded they had no evidence to support a reasonable forecast any of I.P.'s three tame Instagram Posts would ever cause substantial disruption. (Doc. 120-8, Quick Tr. 66:21–24, 67:4–6, 78:12–18, 93:6–12, 200:3–14; Doc. 120-5, Crutchfield Tr. 39:17–40:6, 44:15–45:12; 49:23–50:8; Doc. 120-6, Flowers Tr. 27:22–28:7, 30:9–24, 33:8–18.) By the time the School District suspended I.P. on August 10, 2022, I.P.'s Instagram Posts had been public, respectively, for 80, 62, and 8 days—and in that time, no one even *mentioned* I.P.'s Instagram Posts to the School District. (Verified Comp. ¶¶ 26–30, 34.) Quick, Crutchfield, and Assistant Principal Renee Flowers all testified they are unaware of a single student, parent, or teacher complaining about the images. (Doc. 120-8,

Quick Tr. 67:14–22, 78:19–79:2, Doc. 120-5, Crutchfield Tr. 40:7–24, 45:13–21, 50:19–51:11; Doc. 120-6, Flowers Tr. 28:11–29:8, 31:9–32:1, 34:8–25.)

The lack of any disruption or a reasonable forecast thereof is fatal to the School District's suspension, even though I.P.'s expression critiqued a school administrator. Just look at *Mahanoy*. There, B.L., disappointed at only making the junior varsity cheer squad, posted two rants to social media expressing her displeasure while at a local convenience store. *Mahanoy*, 594 U.S. at 184. B.L. posted, "Fuck school fuck softball fuck cheer fuck everything," and accused the cheer coach of giving preferential treatment to other students. *Id.* at 184–85. "After discussing the matter with the school principal," the cheer coaches "decided that because the posts used profanity in connection with a school extracurricular activity, they violated team and school rules." *Id.* at 185. "As a result, the coaches suspended B.L." from the team. *Id.*

But the Court held B.L.'s suspension violated the First Amendment because she "spoke outside the school on her own time," when her parents, not the school, were responsible for her supervision, and the posts caused neither a substantial disruption at school nor the ability to reasonably forecast one. *Id.* at 192. The Court acknowledged "several" cheer squad members were "visibly upset" in school because of B.L.'s posts and that discussion of them took up time in two sessions of an algebra class. *Id.* at 185, 191–93. Yet the Court held this disturbance did not satisfy *Tinker*'s "demanding standard" of a *substantial* disruption necessary to justify punishing a student for expression. *Id.* at 193. The Court also held B.L.'s school lacked evidence to support a reasonable forecast of substantial disruption and therefore had nothing more than an "undifferentiated fear," which *Tinker* holds is insufficient. *Id.* (citing *Tinker*, 393 U.S. at 508).

Here, the School District lacks even the paltry evidence the *Mahanoy* Court found insufficient. The School District provides no evidence of "several" (or any) "visibly upset"

students at school. And it provides no evidence of any class (algebra or otherwise) taking time away from lessons to address I.P.'s Instagram Posts.

The Sixth Circuit's decision in *Kutchinski* illustrates the demanding standard for substantial disruption based on off-campus social media posts—and how far from the mark the School District's excuses land by comparison. 69 F.4th at 359. *Kutchinski* involved multiple social media posts from a student threatening specific peers and teachers, including one post that said, "I will find and kill [teacher's name] I'm going to strangle him with my barehands [sic] until he is barely conscious then let go. Once he is awake again I'm gonna run him over with my fucking car and crush his skull into a million pieces." *Id.* at 354–55 (cleaned up). The court held the school's evidence of a targeted teacher "crying in one of her classes" and of instructors reporting "several classroom disruptions going on in their rooms" supported a reasonable forecast of substantial disruption. *Id.* at 355, 359 (internal quotation marks omitted).

Schools that fall short of the "substantial disruption" threshold do not have the power to punish student's off-campus speech about school staff. *Mahanoy*, 594 U.S. at 192–93. In *Layshock*, for example, the *en banc* Third Circuit unanimously held the student's parody profile calling the principal a "big whore" and a "big fag," though abrasive, remained protected by the First Amendment because it "did not disturb the school environment and was not related to any school sponsored event." 650 F.3d at 207–08. And in *J.S.*, even though teachers overheard students discussing a parody profile calling the principal a "fagass" with a "small dick" during class, and the school counselor had to cancel student appointments to accommodate a meeting about the profile, the court held these disturbances were too minor to support a reasonable forecast of "substantial disruption." 650 F.3d at 921–23, 928–31.

Mahanoy, *Kutchinski*, *Layshock*, and *J.S.* uniformly required schools to produce *evidence* demonstrating a substantial disruption at school or supporting a reasonable forecast thereof. Here, it is undisputed that the School District has none. The School District suspended I.P. not because his expression caused substantial disruption but because it bruised Quick's ego. But the thinness of a principal's skin is not the measure of a student's First Amendment rights. The School District is not entitled to summary judgment.

II. The School District's Post Hoc Justifications Cannot Overcome I.P.'s Expressive Rights.

As this Court already held, the School District cannot defend I.P.'s suspension with justifications created during litigation which were not provided to I.P. or his parents in August 2022. (Doc. 109, Order on Mot. Dismiss 17.) But the School District ignores this Court's holding and fills its summary judgment brief with excuses never offered in August 2022. Under *Bremerton* and this Court's prior holding, these excuses should be ignored. But even if the Court did consider the justifications the School District concocted during litigation, those reasons still cannot sustain suspending I.P. for speech that did not cause and could not reasonably be forecast to cause substantial disruption.

A. Courts must reject post hoc justifications for interfering with First Amendment rights.

The government may not defend itself against a school speech First Amendment claim with justifications it did not consider or convey to the speaker at the time of the punishment. *Bremerton*, 597 U.S. at 543 n.8. Courts reject post hoc explanations for censoring protected speech like the School District's here because of the potential for governmental abuse. While "shifting rationales may provide convenient litigating positions" for the government to defend its actions, post hoc justifications "are too easily susceptible to abuse by obfuscating illegitimate reasons for speech restrictions." *Norris*, 969 F.3d at 25–26.

Four years ago in *Bremerton*, the Supreme Court refused a school district's "backup argument" to justify subduing a high school coach's quiet prayer after football games. 597 U.S. at 543 n.8. The school argued in litigation it had to suppress the coach's First Amendment–protected activity to ensure order at football games, but the Court rejected it because the school "never raised concerns along these lines in its contemporaneous correspondence" with the coach. *Id.* The Court reiterated that "government justifications for interfering with First Amendment rights must be genuine, not hypothesized or invented post hoc in response to litigation." *Id.* (cleaned up); *see also Moore v. City of Kilgore*, 877 F.2d 364, 389 (5th Cir. 1989) (explaining the dangers that standardless "post hoc rationalizations" pose to free expression (citation omitted)).

The First Circuit's decision in *Norris* is on point. 969 F.3d at 25–26. *Norris* involved a female high school student anonymously posting a note in the girls' bathroom reading "THERE'S A RAPIST IN OUR SCHOOL AND YOU KNOW WHO IT IS." *Id.* at 14. Believing the notes referred to a specific person, the school suspended the student who posted the message for bullying. *Id.* at 17. But after the student sued on First Amendment grounds, the school district pivoted, arguing the note actually disrupted school, and that its incendiary language supported a forecast of substantial disruption. *Id.* at 25 (cleaned up). The First Circuit refused to entertain these litigation-concocted justifications, explaining schools "may not rely on post hoc rationalizations" for suspensions, noting that "[i]n *Tinker* and its progeny, the Supreme Court considered only those justifications offered to the students when they were disciplined in assessing the permissibility of the speech restrictions, not reasons that were articulated only after litigation commenced." *Id.* at 25–26 (citing Supreme Court school speech cases).

Settled law prohibits the School District from leaning on justifications it wishes it used in 2022. *See Bremerton*, 597 U.S. at 543 n.8; *Norris*, 969 F.3d at 25–26. Nevertheless, despite the

fact that in August 2022, the School District's sole justification to I.P. and his parents for his suspension was that his Instagram Posts embarrassed Quick, it seeks here to defend against liability with new excuses.

B. The School District's summary judgment brief impermissibly relies on post hoc justifications.

The School District, Quick, and Crutchfield were unequivocal to I.P. and B.P. in August 2022: They suspended I.P. because his Instagram Posts "embarrassed" and "discredited" Quick. (Doc. 122-13, Ex. L, Quick Aug. 16, 2022 Email to B.P.; Doc. 120-8, Quick Tr. 166:10–167:14; Doc. 120-5, Crutchfield Tr. 83:18–84:23.) But because embarrassment is not a constitutional basis to punish speech, *Claiborne Hardware Co.*, 458 U.S. at 910; *see also Layshock*, 650 F.3d at 207; *J.S.*, 650 F.3d at 933, the School District's summary judgment brief impermissibly relies on a bevy of post hoc excuses.

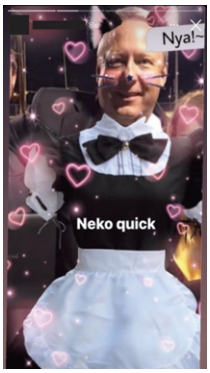
First, this Court should reject the School District's reliance on the New Images because the Court already held the School District may not rely on those images to justify I.P.'s suspension. In its Order of September 25, 2024, based on the School District's disavowal of the New Images as the basis for I.P.'s suspension (Doc. 53, Mot. to Dismiss Br. at 24), the Court held the School District is "bound to rely solely on the three Instagram posts in defending the suspension." (Doc. 109, Order on Mot. Dismiss 17.) Judicial estoppel and law-of-the-case doctrine now prevent the School District from relying on the New Images to justify interfering with I.P.'s First Amendment rights. *See Teledyne Indus., Inc. v. NLRB*, 911 F.2d 1214, 1217 (6th Cir. 1990) ("The doctrine of judicial estoppel forbids a party 'from taking a position inconsistent with one successfully and unequivocally asserted by the same party in a prior proceeding.'" (cleaned up)); *Howe v. City of Akron*, 801 F.3d 718, 739 (6th Cir. 2015) ("The doctrine of law of the case provides that the courts should not reconsider a matter once resolved in a continuing proceeding.") (cleaned up).

Ignoring the Court's Order (and its own prior disavowal), the School District not only revives its reliance on the New Images, it offers two *new reasons* purporting to justify that impermissible justification: "racism" and "antisemitism." The School District claims (without evidence) that the "presence of minority class members" within the school community risked a "powder keg" igniting at school. (Doc. 118, Def.'s Summ. J. Mem. 11.) Also without evidence, the School District newly argues that "[b]ecause the Defendant has many Jewish students and families, even the possibility of the memes of Mr. Quick next to Hitler and KKK members circulating is sufficient to reasonably forecast a substantial disruption." (*Id.* at 12 (citing Doc. 120-8, Quick Tr. 129:5–12).) The School District said nothing of the sort in August 2022. (Doc. 122-13, Ex. L, Quick Aug. 16, 2022 Email to B.P.) These post hoc excuses (to a post hoc justification) are impermissible under *Bremerton*.

Further relying on information and justifications absent from their written explanation in 2022 of why it suspended I.P., the School District also argues I.P.'s off-campus speech falls outside First Amendment protection because photoshopping Quick into a French maid outfit with cat ears and whiskers with the caption "Neko Quick" "sexualized" the principal. (Doc. 118, Def.'s Summ. J. Mem. 15.)[6]

[6] "Neko" means "cat" in Japanese. (Doc. 1, Verified Compl. ¶ 32.)

First of all, no it didn't. From *The Flintstones*[7] to *SpongeBob SquarePants*,[8] placing men in women's clothing (and French maid outfits) for comedic effect has been a staple of American kids' entertainment for generations:



Second—and regardless—at the time of I.P.'s suspension, Quick did not tell anyone, even his fellow administrators, that he felt "sexualized" or "attacked" by I.P.'s Instagram Posts. (Doc. 120-5, Crutchfield Tr. 45:22–46:1; Doc. 120-6, Flowers Tr. 63:17–19.) Nor did he assert it to I.P. or B.P.:

6 Q. On August 10th, 2022, do you have any
7 recollection of asserting to I.P. that the Neko
8 quick meme sexualized you?
9 A. I did not assert that to him.
10 Q. In the subsequent meeting or correspondence
11 that you had with B.P., did you assert to her that
12 you believed that I.P.'s post sexualized you?
13 A. I don't believe that I did, no.

(Doc. 120-8, Quick Tr. 199:6–13.) Quick confessed during his deposition he discovered how the post could be misconstrued as sexual only while conducting internet searches *at the direction of his attorney* in response to this lawsuit. (*Id.* at 82:8–87:6.)

[7] *The Flintstones*, Season 1, Episode 25 "In the Dough" (1961) (Fred Flintstone and Barney Rubble don dresses and wigs to take their wives' place in a bake-off).
[8] *SpongeBob SquarePants*, Season 3, Episode 47b "Can You Spare a Dime?" (2001) (SpongeBob wears a French maid outfit while caring for his just-fired friend Squidward).

Next, the School District speculates that I.P.'s post of Quick as a cat in a French maid dress could have offended a THS student who cross dresses. (Doc. 118, Def.'s Summ. J. Mem. 15.) But by August 10, 2022, the image had been on I.P.'s Instagram page for 62 days, yet the School District cites no evidence the student had even *seen* the image, let alone taken offense. That, of course, is because the single student's theoretical "offense" was not the true justification for I.P.'s suspension. At his deposition, Crutchfield, the lone administrator who offered this belated justification during discovery, conceded he could not recall ever voicing that concern to I.P. (or anyone else). (Doc. 120-5, Crutchfield Tr. 43:10–23.). To be sure, his contemporaneous written statement reflected no such concern. (*Id.*) Crutchfield then waffled and said his actual concern was that the student might see the image and think "Mr. Quick was making fun of him." (*Id.* at 42:5–43:5.) But Crutchfield could not explain why a student would attribute a meme on I.P.'s personal Instagram page *to the school principal*. *See Rusk v. Crestview Loc. Sch. Dist.*, 379 F.3d 418, 422 (6th Cir. 2004) ("Schools may explain that they do not endorse speech by permitting it. If pupils do not comprehend so simple a lesson, then one wonders whether their schools can teach anything at all." (quoting *Hedges v. Wauconda Cmty. Unit. Sch. Dist. No. 118*, 9 F.3d 1295, 1300 (7th Cir. 1993))).

The School District also offers the belated (and bizarre) excuse that it could punish I.P. because the image of Quick as an *Among Us* cartoon character being hugged by Mordecai, a crying cartoon bird, "consisted of a threat of violence toward Mr. Quick." (Doc. 118, Def.'s Summ. J. Mem. 17–18.) But the School District previously admitted that even *it* does not believe this strange argument, conceding, "The issue is not that Plaintiff was calling for violence against Principal Quick, but that making him a victim character in a violent video game could have humiliated him among the student body." (Doc. 53, Mot. to Dismiss Br. 9.)

And the School District proffers no evidence suggesting I.P. intended, or anyone interpreted, a threat of violence from the image simply because it contained a character from a video game which has violent elements. Indeed, many video games contain "violent elements."[9] This excuse evidently comes as a surprise even to Quick. Shown the image during his deposition, Quick expressed confusion, conceding he had no way to find out what it meant. (Doc. 120-8, Quick Tr. 90:6–91:7.) Crutchfield testified, "I don't really know what any of it is besides his head." (Doc. 120-5., Crutchfield Tr. 48:4–24.) For her part, Assistant Principal Flowers expressed only concern that "the principal's face is on some kind of meme, and I'm not quite sure what is going on with that." (Doc. 120-6., Flowers Tr. 32:17–33:1.) This is nothing more than a post hoc justification for suppressing speech from the imagination of government attorneys, precisely what *Bremerton* prohibits.

C. Even the School District's post hoc explanations cannot justify suspending I.P. for protected expression.

Even if the Court were to consider the School District's impermissible post hoc excuses, neither the School District's new reasons for objecting to I.P.'s Instagram Posts, nor its attempts to justify suspending I.P. for the New Images meet the Supreme Court's substantial disruption standards under *Mahanoy* and *Tinker*.

1. Under *Mahanoy*, the School District's post hoc justifications do not provide a permissible basis to punish I.P. for his Instagram Posts.

The School District's post hoc explanations regarding I.P.'s Instagram Posts fail *Mahanoy*'s test for punishing off-campus speech because the School District lacks an *evidentiary* basis to assert substantial disruption or a reasonable forecast of substantial disruption. *See* Section I.B., *supra*. Its eleventh-hour attempts to remove I.P.'s Instagram Posts from the First

[9] The classic arcade game *Donkey Kong* could be poorly described as "ape attempts to murder plumber."

Amendment's protection altogether by trying to shoehorn them into unprotected categories of "threats" or "harassment" fail because I.P.'s posts do not meet the standard of either. *See Counterman v. Colorado*, 600 U.S. 66, 74 (2023) (holding only "true threats" unprotected and requiring that the person seriously expressed intent to commit an act of unlawful violence and knew, or consciously disregarded a substantial risk that, it would place another in fear of serious physical harm); *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 633 (1999) (peer-on-peer harassment must be "so severe, pervasive, and objectively offensive" that it effectively deprives the target of an education). It must, therefore, overcome the "substantial disruption" standard. *Mahanoy*, 594 U.S. at 192–93. But that is, and has always been, where the School District's defense to its First Amendment violation fails: Regardless of which justification it relies on, it has no evidence of substantial disruption or supporting a reasonable forecast thereof. *See* Section I.B, *supra*.

2. The School District's post hoc justifications cannot excuse suspending I.P. for the New Images.

Even if the School District could rely on the New Images to justify I.P.'s suspension despite the Court already correctly holding it cannot, under *Tinker*,[10] the images are still protected speech because they did not cause substantial disruption and the School District did not have an evidentiary basis to forecast substantial disruption.[11] 393 U.S. at 514. The only evidence the School

[10] Because A.L. received the New Images at school, this brief assesses them using *Tinker*'s test for on-campus speech, eschewing *Mahanoy*'s guidance for off-campus speech.

[11] The Supreme Court has carved out three narrow categories of student expression public schools may regulate even absent substantial disruption, but none apply here: Speech that "bears the imprimatur of the school," such as a school newspaper, so long as the regulation is "reasonably related to legitimate pedagogical concerns," *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271–73 (1988); speech "that can reasonably be regarded as encouraging illegal drug use," *Morse v. Frederick*, 551 U.S. 393, 397 (2007); and vulgar, lewd, and indecent speech to a "captive audience of minors." *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 680, 683–85 (1986). The School District does not rely on any of these exceptions.

District supplies related to the New Images having any impact on THS is that one student came to Quick's office to tell him about them. (Doc. 122-10, Ex. I, A.L. Decl. ¶¶ 10–12, 16–19; Doc. 120-8, Quick Tr. 116:19–23.) But the New Images did not disrupt even *that student's* day, let alone all or any significant aspect of THS' operations. (Doc. 122-10, Ex. I, A.L. Decl. ¶¶ 20–22.)

The School District attempts to support a forecast of substantial disruption by claiming the New Images threatened to foster "racial tensions" at THS. The School District cites a rumor that Quick himself was a racist and an assembly Quick held the previous school year addressing concerns about the THS dress code's perceived racial disparity. But schools cannot rely on "undifferentiated fear" to punish otherwise protected expression. *Tinker*, 393 U.S. at 508.

Sixth Circuit cases involving actual concerns with racial tensions reflect the high bar for a "reasonable forecast" of substantial disruption, and the School District cannot clear it here. In *Barr v. Lafon*, the court held the school could reasonably forecast Confederate flag t-shirts would cause substantial disruption because of past racially motivated fights between African-American and Caucasian students, a lockdown during the previous school year due to threats of additional race-related violence, and on-campus graffiti of a confederate flag next to a noose. 538 F.3d 554, 567 (6th Cir. 2008). Similarly, in *Defoe v. Spiva*, the court relied on evidence of previous racial violence and threats, including "comments such as 'I hate niggers,' 'Kill all the niggers,' and 'I hate this nigger-hating school. I'm going to blow it up.'" 625 F.3d 324, 334 (6th Cir. 2010). The school also provided evidence of "the discovery of a noose in a student's locker" and cited prior "race-related physical altercations." *Id.* That, the Sixth Circuit held, qualified as evidence reasonably forecasting a substantial disruption. *Id.* Conversely, in *Castorina v. Madison County School Board*, the court reversed a grant of summary judgment to a school district due to a lack of

evidence of "actual racially motivated violence" between students sufficient to reasonably forecast that Confederate flags would cause substantial disruption. 246 F.3d 536, 543–44 (6th Cir. 2001).

Barr, *Defoe*, and *Castorina* addressed actual evidence of disruptive racial tensions and altercations *between students*, yet all the School District offers here are stale (post hoc) worries about students perhaps *thinking* Quick is racist. Yet again, the School District's justifications boil down to protecting Quick's image. But that is not enough. Having a poor opinion of a teacher or administrator is not "substantial disruption."

The School District's next new excuse, that the New Images are "antisemiti[c]" (Doc. 118, Def.'s Summ. J. Mem. 11–12), defies common sense and lacks even a shred of evidence. All the School District offers is the presence of "several Jewish students and families in Tullahoma." (Doc. 120-8, Quick Tr. 129:5–12.) It neither explains *why* the New Images can be considered antisemitic, nor offers evidence any Jewish students or parents complained. The undisputed testimony is that *no one* other than A.L. even mentioned the New Images, and A.L. said nothing about antisemitism. (*Id.* at 122:20–123:3; Doc. 120-5, Crutchfield Tr. 54:1–55:9, 57:20–58:12; Doc. 120-6, Flowers Tr. 44:21–45:13, 46:22–47:14.) Even if the New Images were antisemitic, and even if the School District had proffered that justification in August 2022, its motion still fails. In *C1.G ex rel. C.G. v. Siegfried*, the Tenth Circuit held that even multiple parents bringing a student's social media post ("Me and the boys bout to exterminate the Jews") to the principal's attention, plus its wide circulation "throughout the area's Jewish community," could not support a reasonable forecast of substantial disruption. 38 F.4th 1270, 1274, 1278–79 (10th Cir. 2022). That is because "undifferentiated fear" does not allow a public school to punish protected student expression. *Tinker*, 393 U.S. at 508.

In August 2022, the School District suspended I.P. because Quick felt embarrassed. No amount of revisionist history in litigation can change that. Even if the Court could consider new justifications, the School District still falls far short of demonstrating actual or reasonably forecasted substantial disruption. The Court should therefore deny the School District's motion.

III. The School District is Liable Under *Monell* Because Qualified Immunity Does Not Shield Government Bodies.

The School District cannot avoid liability for violating I.P.'s First Amendment rights by pointing to Quick and Crutchfield's dismissal because the Court's grant of qualified immunity does not mean no constitutional violation occurred. Instead, the Court merely held the underlying right was not clearly established so as to allow *personal* liability. (Doc. 109, Order on Mot. Dismiss 9–10.) And since the School District cannot claim qualified immunity (and thus cannot invoke its "clearly established" requirement for liability), *see Moldowan v. City of Warren*, 578 F.3d 351, 392–93 (6th Cir. 2009) (holding only individual defendants can claim qualified immunity), I.P.'s claim, as this Court recognized, survives. (Doc. 109, Order on Mot. Dismiss 18–21.)

The authority the School District cites for its position stands only for the unremarkable proposition that the government can escape *Monell* liability if the Court's qualified immunity analysis holds there was no *constitutional* violation. Of course. If there is no constitutional violation, there is no claim, against anyone. So in *White v. Detroit* (cited Doc. 118, Def.'s Summ. J. Mem. 19), the court held the defendant city was not liable under *Monell* because its officer had not committed a constitutional violation. 569 F. Supp. 3d 650, 654, 657–58 (E.D. Mich. 2021). Likewise, in *Colorez v. Cincinnati* (cited Doc. 118, Def.'s Summ. J. Mem. 19), the court declined to reach the "clearly established" prong because it held the individual defendant had not committed

a constitutional violation. 441 F. Supp. 3d 560, 574 (S.D. Ohio 2020).[12] But here, the Court affirmatively held I.P.'s allegations against the School District *did* state a claim for a First Amendment violation. (Doc. 109, Order on Mot. Dismiss 18–21.) Thus, if the Court holds the School District violated I.P.'s constitutional rights, which for the reasons in Sections I and/or II it should, the School District remains liable under *Monell*.[13]

CONCLUSION

For the foregoing reasons, Plaintiff I.P. respectfully requests this Court deny the School District's motion for summary judgment.[14]

Dated: June 2, 2025

Respectfully Submitted,

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[12] The School District's final citation, *Fugett v. Douglas County* (cited Doc. 118, Def.'s Summ. J. Mem. 19), does not address qualified immunity at all. No. 8:21-CV-125, 2023 WL 2022427 (D. Neb. Feb. 15, 2023). Rather, it stands for the unremarkable proposition that *Monell* liability requires a constitutional violation. *Id.* at 33–34.

[13] Even if the Court holds there is any possibility the school could support substantial disruption, it should still deny the School District's motion. *Leary v. Daeschner*, 349 F.3d 888, 901 (6th Cir. 2003) ("[S]ummary judgment is not proper when Plaintiffs create a jury issue by raising a genuine issue of material fact.")

[14] I.P., now of age, does not object to the School District's request to remove his mother, B.P., from this case, although there is no need to "dismiss" her because she was never a party. The proper remedy is to remove B.P. from the caption and continue to redact I.P.'s and B.P.'s names in favor of initials per the parties' Agreed Protective Order and past practice. (Doc. 65 ¶ 2.)

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CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2025, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing upon all ECF filing participants.

/s/ Conor T. Fitzpatrick
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