IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

Barton Thorne, Plaintiff, v. **Shelby County Board of Education** and **Dr. Roderick Richmond**, in his official capacity as Interim Superintendent of Memphis Shelby County Schools, Defendants.	Case No. 2:21-cv-02110-MSN-tmp

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO REVISE INTERLOCUTORY ORDER

Plaintiff submits this memorandum of law opposing Defendants' Motion to Revise Interlocutory Order (ECF No. 67) (the "Motion"), which seeks to reverse the Court's April 11 ruling denying Defendants' Motion to Dismiss. Plaintiff also requests sanctions pursuant to Local Rule 7.3(c).

INTRODUCTION

More than four years have passed since the Shelby County School District suspended Principal Barton Thorne for six weeks after speaking to students about the importance of free speech and the dangers of censorship. Rather than take responsibility for its mistreatment of a respected employee—conduct that violated his free speech and due process rights, as well as his employment contract—Defendants have instead worked aggressively to dismiss this litigation. Now, even after the Court

has denied their long-pending motion to dismiss, Defendants baselessly ask the Court to reconsider and revise that ruling.

The Court should deny Defendants' Motion because it fails to meet the high bar required for revision under Rule 54(b) and Local Rule 7.3, and consists almost entirely of arguments that have already been raised and rejected. As explained below, Local Rule 7.3 expressly prohibits the repetition of prior arguments and warns that "[a]ny counsel repeating a prior argument in a motion for reconsideration shall be subject to appropriate sanctions." Sanctions are particularly appropriate here, where Defendants have again raised the false and previously-addressed claim that Plaintiff's counsel is not properly admitted to practice in this District.

In any event, the Court should deny Defendants' Motion for the same reason it denied the Motion to Dismiss: Plaintiff has sufficiently pled all causes of action.

PROCEDURAL BACKGROUND[1]

Defendants filed a Motion to Dismiss the Amended Complaint on April 16, 2021. (ECF No. 15) The Court held oral argument on February 17, 2022. (ECF No. 34) After that conference, both parties filed supplemental briefs on the issue of standing. (ECF No. 35, 37) On March 11, 2022, the Court held a status conference and stayed all deadlines for dispositive and pretrial motions pending its ruling on Defendants' Motion to Dismiss. (ECF No. 38) On August 19, 2022, the Court stayed trial pending the Court's ruling on Defendants' Motion to Dismiss. (ECF No. 44)

[1] The factual background of this matter is set forth in the Amended Complaint, and in Plaintiff's Response to Motion to Dismiss (ECF No. 16)

On April 11, 2025, nearly four years after the Motion to Dismiss was filed, the Court denied it, finding that "the amended complaint's factual allegations are sufficient to state facially plausible claims for violation of Plaintiff's due process and First Amendment rights." (ECF Nos. 60, 64) The Court also ordered the parties to confer as to which magistrate judge they would like to preside over a settlement conference. (ECF Nos. 60, 64) The parties have selected Judge Charmiane G. Claxton (ECF No. 65), though the Court has not yet scheduled mediation.

ARGUMENT

I. Defendants have not met the requirements under Rule 54(b) and Local Rule 7.3 to revise interlocutory orders.

A motion for reconsideration of an interlocutory order must comply with Federal Rule of Civil Procedure 54(b) and Local Rule 7.3. Rule 54(b) states that interlocutory orders "may be revised at any time before the entry of final judgment adjudicating all the claims and all the parties' rights and liabilities." "Motions to reconsider . . . are used sparingly and in rare circumstances." *Zarecor v. Morgan Keegan & Co. (In re Regions Morgan Keegan Sec., Derivative & ERISA Litig.)*, No. 2:09-md-2009-SHM, 2013 U.S. Dist. LEXIS 74333, at *10 (W.D. Tenn. May 28, 2013) (quotation omitted).

"Traditionally, reconsideration of an interlocutory order is only appropriate when one of the following has occurred: (1) an intervening change in the law; (2) the discovery of new evidence; or (3) the need to correct clear error or correct manifest

injustice." *Bailey v. Real Time Staffing Servs.*, 927 F. Supp. 2d 490, 501 (W.D. Tenn. 2013) (citations omitted). Local Rule 7.3[2] narrows Rule 54(b) as follows:

> A motion for revision must specifically show: (1) a material difference in fact or law from that which was presented to the Court before entry of the interlocutory order for which revision is sought, and that in the exercise of reasonable diligence the party applying for revision did not know such fact or law at the time of the interlocutory order; or (2) the occurrence of new material facts or a change of law occurring after the time of such order; or (3) a manifest failure by the Court to consider material facts or dispositive legal arguments that were presented to the Court before such interlocutory order.

Local Rule 7.3(b); *see also McDonald v. City of Memphis*, No. 12-2511, 2013 U.S. Dist. LEXIS 98270, at *6 (W.D. Tenn. July 15, 2013) ("[T]here are only three permissible grounds for reconsideration in Rule 7.3(b).").

Defendants rely on subsection (b)(3), which requires "a manifest failure by the Court to consider material facts or dispositive legal arguments." That rule also explicitly prohibits parties from recycling previously made arguments, and states that parties who violate this condition "shall be subject to appropriate sanctions, including but not limited to, striking the filing." Local Rule 7.3(c).

Defendants have not met this standard because they have not specifically shown that there has been a manifest failure by the Court to consider material facts or dispositive legal arguments that were presented to the Court before such interlocutory order. To the contrary, Defendants merely recycle prior arguments, in violation of Local Rule 7.3(c)'s explicit prohibition.

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[2] On Page 4 of the Motion, Defendants misidentify the relevant Local Rule as 7.2(b); Local Rule 7.3 is the correct rule.

a. The Court sufficiently considered all material facts and dispositive legal arguments.

Briefing and oral argument was presented on Defendants' Motion to Dismiss in 2022, and the Court had years to consider the material facts and legal arguments before issuing its April 11, 2025, ruling. The Court stated as much during the conference:

> I've carefully considered the parties' arguments. And accepting the facts as alleged in the amended complaint as true and construing the complaint in the light most favorable to the plaintiff, as I'm required to do, I find that the amended complaint's factual allegations are sufficient to state facially plausible claims for violation of Plaintiff's due process and First Amendment rights, and therefore, Defendant's motion to dismiss is denied. (ECF No. 64 at 11)

The Court demonstrated its careful consideration through its follow-up questions to Defendants' counsel regarding the discrepancies between "the school board's own manual and the state law and the state regulations that say to the contrary" noting Defendants would need to further explain this. (ECF No. 64 at 14) The Court emphasized that its copy of the rules governing Shelby County Schools has yellowed from age and use, refencing the "constant reminder of the question" the Court has about Defendants' position. (ECF No. 64 at 14) The Court unquestionably considered the material facts and arguments at length and ultimately disagreed with Defendants' arguments.

Moreover, while Plaintiff takes no position on Defendants' request for a written decision, it is manifestly clear that the Court need not issue a written decision because Federal Rule of Civil Procedure 52(a)(3) explicitly says so: "The court is not required to state findings or conclusions when ruling on a motion under Rule 12."

This language was "intended to remove any doubt that findings and conclusions are unnecessary upon decision of a motion, particularly one under Rule 12 . . . ." Fed. R. Civ. P. 52 Advisory Committee Notes.

b. Defendants' motion violates Local Rule 7.3's prohibition on repeating oral or written arguments.

"Although a court can grant motions to revise its prior rulings, it 'should not do so in the vast majority of instances, especially where such motions merely restyle or rehash the initial issues.'" *Zarecor*, 2013 U.S. Dist. LEXIS 74333, at *10-11 (quoting *In re Southeastern Milk Antitrust Litig.*, 2011 U.S. Dist. LEXIS 95784, at *5). Under Rule 7.3 (c), "a party may not simply repeat arguments previously presented and considered by the Court in making its initial ruling." *Curran v. Fronabarger*, 2024 U.S. Dist. LEXIS 37219, at *3.[3] Judges in the Western District of Tennessee have made clear that "objections stemming from [movant's] disagreement with the court's findings after considering the parties' arguments. . . are not grounds for revision under Local Rule 7.3 or Federal Rule of Civil Procedure 54." *Kiner v. City of Memphis*, No. 23-cv-02805-SHL-tmp, 2024 U.S. Dist. LEXIS 219370, at *5 (W.D. Tenn. Dec. 4, 2024).[4]

[3] *See also Brown v. Wells Fargo Bank, N.A.*, No. 2:25-cv-02323-SHL-cgc, 2025 U.S. Dist. LEXIS 73371, at *2-3 (W.D. Tenn. Apr. 17, 2025) ("The moving party cannot simply recycle the same arguments that the Court already rejected."); *Carbon Processing & Reclamation, LLC v. Valero Mktg. & Supply Co.*, No. 09-2127-STA, 2012 U.S. Dist. LEXIS 93969, at *7 (W.D. Tenn. July 6, 2012) ("[W]here the movant is attempting to obtain a complete reversal of the court's judgment by offering essentially the same arguments presented on the original motion, the proper vehicle for relief is an appeal.") (cleaned up).

[4] *See also Curran v. Fronabarger*, No. 23-1064-STA-jay, 2024 U.S. Dist. LEXIS 37219, at *4 (W.D. Tenn. Mar. 4, 2024) ("Plaintiff has not presented any facts or law in his

Defendants' Motion violates Rule 7.3(c) because it simply rehashes and recycles arguments already made in their Motion to Dismiss (ECF No. 15) and Reply (ECF No. 17), as evidenced by the following examples:

- Defendants argue that Principal Thorne's speech is unprotected under *Garcetti v. Ceballos* and *Evans-Marshall* because it was made pursuant to official duties. *See, e.g.*, ECF No. 15 at 8-12, ECF No. 17 at 2-5, ECF No. 67 at 4-6.

- Defendants argue that Plaintiff lacks standing for his First Amendment claim, (ECF No. 67 at 10-11) which merely restyles arguments presented in Defendants' Motion to Dismiss and Reply briefs as well as in their supplemental brief on the issue of standing (ECF No. 35). *See, e.g.,* ECF No. 15 at 5 ("Plaintiff...does not state a claim under Section 1983. . .Plaintiff does not identify any unconstitutional policy or custom that allegedly caused injury.").

- Defendants argue that Plaintiff's nonpublic forum argument is a "red herring." *Compare* ECF No. 17 at 4 ("Plaintiff's "nonpublic forum" argument is a red herring and does not apply to the facts as pled in Plaintiff's Amended Complaint.") *with* ECF No. 67 at 15 ("Principal Thorne's "nonpublic forum" argument is and always has been a red herring.").

- Defendants argue that, with respect to Plaintiff's due process claim, "Principal Thorne lacks standing to challenge the constitutionality of District Policies as applied to him because he cannot establish a concrete harm. Principal Thorne was not disciplined for violation of any policy, and he did not suffer an adverse employment action." (ECF No. 67 at 16) This is a rehashing of the argument Defendants made in their previous briefs that Plaintiff was not "adversely affected" because he was not "dismissed from employment, suffered loss of pay

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motions that the Court did not previously consider. Instead, he merely reiterates his previous arguments made both to this Court and to the Magistrate Judge. Consequently, his motions to set aside are **DENIED**."); *see also Liberty Legal Found. v. Democratic Nat'l Comm.*, No. 12-2143-STA, 2012 U.S. Dist. LEXIS 171741, at *10-11 (W.D. Tenn. Dec. 4, 2012) ("Plaintiffs cite the same decisional law previously briefed for the Court at the pleadings stage. This is precisely the type of motion for revision, one based on arguments already considered and rejected, which Local Rule 7.3 prohibits. To the extent that Plaintiffs have proffered the same legal theories supported by the same legal authority, the Court finds that Plaintiffs are 'attempting to obtain a complete reversal of the court's judgment by offering essentially the same arguments presented on the original motion.' For these reasons, Plaintiffs' Motion is not well-taken and must therefore be **DENIED**.").

> or benefits, or was otherwise subject to an action by SCBE that amounts to an adverse employment action." (ECF No. 15 at 7)

In addition to rehashing arguments on the merits, Defendants again raise the baseless claim that Plaintiff's counsel has not "completed the steps required for attorney admission in this Court." (ECF No. 67 at p.3 n.3) This is a serious accusation—first made during the April 11 conference and fully addressed at that time. Plaintiff's counsel confirmed on the record that both attorneys are admitted to practice in the Western District of Tennessee. (ECF No. 64 at 4–6)

Despite that clarification, and even though the Court raised no concerns, Defendants have now recklessly repeated the allegation without checking with the Clerk or contacting opposing counsel. Their refusal to correct the record is outlined in more detail in the accompanying declaration of Plaintiff's counsel. *See* McGee Decl.

c. Because Defendants' motion violates Local Rule 7.3's prohibition on repeating oral or written argument, the Court must issue "appropriate sanctions."

Because Defendants have merely restated, restyled, rehashed, and recycled the same arguments already raised in prior briefing and court conferences, Local Rule 7.3(c) mandates not only denial of their motion but the imposition of "appropriate sanctions":

> No motion for revision may repeat any oral or written argument made by the movant in support of or in opposition to the interlocutory order that the party seeks to have revised. Any party or counsel who violates this restriction *shall* be subject to appropriate sanctions, including, but not limited to, striking the filing.

Local Rule 7.3 (c) (emphasis added).

Thus, "striking" the Motion is specifically identified as an appropriate sanction for violating Local Rule 7.3. That remedy is particularly warranted here, where the motion not only repeats prior arguments verbatim, but also levels defamatory and false accusations against opposing counsel. These allegations are the kind of "redundant, immaterial, impertinent, or scandalous" material that may be stricken under Federal Rule of Civil Procedure 12(f).

Moreover, in light of Defendants' disregard for the rules and their repeated assertion of knowingly false claims about Plaintiff's counsel's eligibility to practice in this Court—allegations that required considerable time and effort to address in light of Plaintiff's refusal to remedy them without judicial intervention—Plaintiff respectfully submits that a more appropriate sanction would be an order directing Defendants to pay reasonable attorney's fees and expenses directly resulting from the violation. *See, e.g.*, Fed. R. Civ. P. 11(c)(4) (listing "an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation" as within the federal judiciary's sanction power).[5]

II. Plaintiff set forth clear legal arguments justifying denial of Defendant's Motion to Dismiss.

Ultimately, the Defendants cannot demonstrate a manifest failure by the court to consider the material facts and legal arguments as required by Local Rule 7.3, because Plaintiff set forth clear legal arguments justifying denial of Defendants'

[5] As set forth in Exhibit [1] to the McGee Declaration, Plaintiff's counsel has already raised the prospect of sanctions under Rule 11 due to Defendants' counsel's unwillingness to explicitly correct the false accusation in the Motion. However, because Local Rule 7.3 provides an independent basis for sanctions—including striking the Motion containing the false allegation—Defendants do not intend to file a separate motion for sanctions under Rule 11.

Motion to Dismiss, which could only be granted if Defendants had established that there is "no set of facts in support of [the] claim which would entitle [plaintiff] to relief.'" *Chen v. Alexander*, No. 89-5700, 1990 U.S. App. LEXIS 11012, at *4 (6th Cir. June 29, 1990) (citations omitted). As summarized below, Plaintiff has more than adequately set forth allegations sufficient to defeat Defendants' Motion to Dismiss.

a. Plaintiff has standing.

Plaintiff has standing to assert his claims because he has shown a non-speculative injury-in-fact that is redressable by a favorable decision of this Court. To establish Article III standing, a litigant "must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Speech First, Inc. v. Schlissel*, 939 F.3d 756, 764 (6th Cir. 2019). "[W]hen the suit is one challenging the legality of government action or inaction" upon the plaintiff himself, "there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it." *Lujan v. Defs. of Wildlife,* 504 U.S. 555, 561-62 (1992). Plaintiff suffered at least four injuries from the actions of Defendants that confer standing, including (1) the violation of his constitutional rights;[6] (2) the tarnishing of his reputation by school officials;[7] (3) the adverse

[6] *See McGlone v. Bell,* Nos. 10-6055, 10-6169, 2012 U.S. App. LEXIS 8266, at *23-24 (6th Cir. Apr. 23, 2012) (quoting *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n,* 23 F.3d 1071, 1076 (6th Cir. 1994)) ("It is well-settled that a chilling effect on one's constitutional rights constitutes a present injury in fact.")

[7] *See Parsons v. U.S. Dep't of Just.,* 801 F.3d 701, 711 (6th Cir. 2015) ("Reputational injury, on the other hand, is sufficient to establish an injury in fact" and "reputational

employment action of a six-week suspension;[8] and (4) the issuance of a warning letter in his personnel file likely to harm future employment prospects.[9] Plaintiff also remains employed by Defendants, and therefore he continues to face the threat of the arbitrary and capricious enforcement of their policies.

These concrete, particularized, non-speculative injuries-in-fact are redressable by a favorable decision of this Court ordering Defendants to rectify their inappropriate actions and remedy the vague policy going forward; therefore, Plaintiff has Article III standing.

b. Plaintiff satisfies the requirements for *Monell* liability.

A plaintiff can establish *Monell* liability of a municipality under Section 1983 by identifying "(1) the municipality's legislative enactments or official policies; (2) actions taken by officials with final decision-making authority; (3) a policy of inadequate training or supervision; or (4) a custom of tolerance or acquiescence of federal violations." *Winkler v. Madison Cty.*, 893 F.3d 877, 901 (6th Cir. 2018) (referencing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978)). Plaintiff has

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injuries are cognizable claims under First Amendment and due process causes of action").

[8] *See Harper v. City of Cleveland*, 781 F. App'x 389, 394 (6th Cir. 2019) (citing *Smith v. City of Salem*, 378 F.3d 566, 575-76 (6th Cir. 2004) ("A suspension is an adverse-employment action"); *see also Presley v. Ohio Dep't of Rehab. & Corr.*, 675 F. App'x 507, 514 (6th Cir. 2017) ("a suspension may be a materially adverse employment action even without a loss of pay").

[9] *Wilson v. Hous. Cmty, Coll. Sys.*, 955 F.3d 490, 495-96 (5th Cir. 2020) (citing *Meese v. Keene,* 481 U.S. 465 (1987) ("the Supreme Court has held that a free speech violation giving rise to a reputational injury is an injury in fact."); *Jefferson v. Jefferson Cty. Pub. Sch. Sys.*, 360 F.3d 583, 586 (6th Cir. 2004) (a viable due process claim arises from combination of "injury to employment . . . in addition to damage to reputation and subsequent denial of procedural due process to redress that injury").

identified actions by Defendants that fall within two of those categories, either of which is sufficient for liability: (1) multiple SCS policies are unconstitutionally vague and do not provide fair notice, and (2) the actions taken against Plaintiff were made by final decision-making officials, namely the Superintendent. *See* ECF No. 16 at 2. "A single decision can constitute a policy, if that decision is made by an official who possesses final authority to establish municipal policy with respect to the action ordered, which means that his decisions are final and unreviewable and are not constrained by the official policies of superior officials." *Flagg v. City of Detroit*, 715 F.3d 165, 174-75 (6th Cir. 2013) (cleaned up). Therefore, Principal Thorne has pleaded facts that establish *Monell* liability.

c. Plaintiff states a viable claim for violation of the Fourteenth Amendment Due Process Clause.

Plaintiff's suspension violates the Fourteenth Amendment's due process clause because it is based on policies that are void for vagueness, failing to give Plaintiff fair notice of prohibited conduct. (ECF No. 10 at 17-18) "It is settled that a statute so vague and indefinite, in form and as interpreted, as to permit within the scope of its language the punishment of incidents fairly within the protection of the guarantee of free speech is void, on its face, as contrary to the Fourteenth Amendment." *Winters v. New York*, 333 U.S. 507, 509 (1948) (citations omitted). "[A]s early as 1923, the [U.S. Supreme] Court did not hesitate to condemn under the Due Process Clause 'arbitrary' restrictions upon the freedom of teachers to teach and of students to learn." *Epperson*

v. Arkansas, 393 U.S. 97, 105 (1968) (referencing *Meyer v. Nebraska*, 262 U.S. 390 (1923).[10]

"A failure of a statute limiting freedom of expression to give fair notice of what acts will be punished and such a statute's inclusion of prohibitions against expressions, protected by the principles of the First Amendment, violates an accused's rights under procedural due process and freedom of speech or press." *Winters v. New York*, 333 U.S. at 509-10. Plaintiff was not provided prior notice or reason to think his speech would violate any policy of SCS because Plaintiff's speech aligned with the curriculum for high school civics and social studies endorsed by Defendants. (ECF No. 10 at 18) Plaintiff had no reason to believe that Defendants would declare his speech as irresponsible, untruthful, obscene, profane, discourteous, harassing, discriminatory, intimidating, dangerous, disruptive, incompetent, or improper. *Id.*

A government policy is also void for vagueness when it "is an unrestricted delegation of power, which in practice leaves the definition of its terms to law enforcement officers, and thereby invites arbitrary, discriminatory and overzealous enforcement." *Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177, 1183 (6th Cir. 1995). SCS's policies barring speech or conduct that is irresponsible, untruthful, obscene, profane, discourteous, harassing, discriminatory, intimidating, dangerous, disruptive, incompetent, or improper are so vague as applied to Principal Thorne's speech in this

[10] *See also Mailloux v. Kiley*, 448 F.2d 1242, 1243 (1st Cir. 1971) (A broad "educator code of ethics" is "impermissibly vague" and "cannot justify a post facto decision by the school authorities that the use of a particular teaching method is ground for discharge, or other serious sanction, simply because some educators disapprove of it.").

situation that they granted virtually limitless power to SCS administrators to suspend Principal Thorne arbitrarily and discriminatorily.

Dambrot clearly permits Plaintiff's claim to proceed; the identified SCS policy implicates both fair notice and unrestricted delegation because "to determine what conduct will be considered 'negative' or 'offensive' by the [school], one must make a subjective reference. Though some statements might be seen as universally offensive, different people find different things offensive." 55 F.3d at 1184. As in *Dambrot*, "[t]he facts of this case demonstrate the necessity of subjective reference in identifying prohibited speech under the policy." *Id.*

Principal Thorne has a property interest in performing his job without delay or unfair suspension under the terms and processes of his employment contract. *See* ECF No. 10 at 6-7 (outlining terms of proper suspension and processes); *See Bd. of Regents v. Roth*, 408 U.S. 564, 578 (1972) ("Just as the welfare recipients' property interest in welfare payments was created and defined by statutory terms, so the respondent's property interest in employment at Wisconsin State University-Oshkosh was created and defined by the terms of his appointment."). Principal Thorne was deprived of this protected property interest by Defendants' actions without adequate notice and opportunity. Therefore, Principal Thorne has stated a viable claim for a Due Process violation.

d. Plaintiff states a viable claim for violation of the First Amendment.

There is a circuit split on the issue of whether *Garcetti v. Ceballos,* 547 U.S. 410 (2006) applies to the teachers' speech, with the Sixth Circuit taking "varied

applications" which "suggests that *Garcetti* will not apply to cases involving 'scholarship or teaching.'" Jordan Zaia, *Is Garcetti Too Cool for School?: Why Garcetti v. Ceballos Should Not Apply to School Teachers*, 34 Fordham Intell. Prop. Media & Ent. L.J. 734 (quoting *Meriwether v. Hartop*, 992 F.3d 492, 518 n.1 (6th Cir. 2021)).[11] Indeed, post-*Garcetti*, the Sixth Circuit "has rejected as 'totally unpersuasive' 'the argument that teachers have no First Amendment rights when teaching, or that the government can censor teacher speech without restriction.'" *Meriwether*, 992 F.3d at 505 (quoting *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 680 (6th Cir. 2001).

In upholding the First Amendment rights of a professor employed by a public university, the Sixth Circuit recognized that "the academic-freedom exception to *Garcetti* covers all classroom speech related to matters of public concern, whether that speech is germane to the contents of the lecture or not." *Meriwether*, 992 F.3d at 507. The fact that Meriwether was a college professor does not make the case inapplicable to Principal Thorne; rather the Sixth Circuit, and other courts, have applied academic freedom concepts to high schools taking into account the relative maturity level of the students.[12] Principal Thorne clearly satisfies the *Pickering* analysis applied by the Sixth Circuit in *Meriwether*; he clearly spoke on an issue of public concern, and his interest in doing so exceeded Defendants' interest in the efficiency of the public services it performs through him. (ECF No. 10 at 21)

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[11] *Available at* https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1849&context=iplj.

[12] *See Minarcini v. Strongsville City Sch. Dist.*, 541 F.2d 577 (6th Cir. 1976); *Keefe v. Geanakos*, 418 F.2d 359 (1st Cir. 1969); *Dean v. Timpson Indep. Sch. Dist.*, 486 F. Supp. 302 (E.D. Tex. 1979); *Parducci v. Rutland*, 316 F. Supp. 352 (M.D. Ala. 1970).

Therefore, it is perfectly valid for the Court to find in favor of Plaintiff under the *Meriwether* precedent.

Even if Defendants, as government employers, have the right to control the speech of their educator employees, they do not have the right to engage in viewpoint discrimination. *See Am. Freedom Def. Initiative v. Suburban Mobility Auth.*, 978 F.3d 481, 493 (6th Cir. 2020) ("[V]iewpoint discrimination is an egregious form of content discrimination" and "suggests that the government seeks to accomplish . . . the official suppression of ideas.").[13] Principal Thorne taught within the academic freedom that the district granted to him and thus is entitled to First Amendment protection. Defendants permit other teachers to engage in speech on public issues within their classrooms and permit other principals to engage in speech on public issues in their messages to students. (ECF No. 10 at 14-16, 20) But Defendants singled out Principal Thorne's speech on a public issue because of his viewpoint, constituting illegal viewpoint discrimination in violation of the First Amendment.

Principal Thorne's First Amendment rights also protect him from arbitrary and discriminatory enforcement of vague standards. *See United Food & Commercial Workers Union Local 1099 v. Southwest Ohio Regional Transit Auth.*, 163 F.3d 341,

[13] *See also Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 894 (1995) ("[V]iewpoint discrimination is presumed impermissible when directed against speech that is otherwise within the forum's limitations"); *Texas v. Johnson*, 491 U.S. 397, 414 (1989) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."); *Madison Joint School Dist. No. 8 v. Wisconsin Employment Relations Comm'n,* 429 U.S. 167, 175-176 (1976) ("To permit one side of a debatable public question to have a monopoly in expressing its views . . . is the antithesis of constitutional guarantees").

358-59 (6th Cir. 1998). A statute, rule, or policy "can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement." *Hill v. Colorado*, 530 U.S. 703, 732 (2000). And a heightened vagueness standard applies in the First Amendment context. *McGlone v. Cheek*, 534 F. App'x 293, 297 (6th Cir. 2013) (quoting *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982)); *see also NAACP v. Button*, 371 U.S. 415, 432-33 (1963) ("[S]tandards of permissible statutory vagueness are strict in the area of free expression" and "Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.") As previously noted, Defendants' policies were vague and led to arbitrary and discriminatory enforcement against his speech—the policy flunks the test for vagueness.

e. Plaintiff states a viable claim for breach of contract.

Principal Thorne has a valid employment contract with Defendants and Principal Thorne did not violate his duties under the terms of his employment contract. Defendants breached the contract by suspending Principal Thorne for reasons not permitted within the terms of the contract; the SCS discipline handbook limits administrative leave to "situations where the employee presents a potential threat to other employees." Principal Thorne's purely educational speech does not meet that standard. (ECF No. 10 at 24-25) Defendants also breached their obligations under the

contract by keeping Principal Thorne on administrative leave for nearly two months while undertaking only minimal actual investigative steps. Principal Thorne never did anything to breach his obligations to SCS, but SCS breached its obligations to him anyway by putting him through this ordeal without justification under the terms of the contract. This adverse employment action constituted a breach of contract and has resulted in emotional distress and harm to reputation and was based on reckless and malicious motives. *See Reinhart v. Knight*, No. M2004-02828-COA-R3-CV, 2005 Tenn. App. LEXIS 753, at *13 (Ct. App. Dec. 2, 2005); *Rogers v. Louisville Land Co.*, 367 S.W.3d 196, 211 n.14 (Tenn. 2012).

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendants' Motion to Revise Interlocutory Order. Plaintiff further requests that the Court and sanction Defendants' counsel pursuant to Local Rule 7.3(c).

Dated: June 10, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2025, I filed the foregoing motion through the Court's Electronic Filing System, which will send notice to all counsel of record appearing in this matter.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

Barton Thorne, Plaintiff, v. **Shelby County Board of Education** and **Dr. Roderick Richmond**, in his official capacity as Interim Superintendent of Memphis Shelby County Schools, Defendants.	Case No. 2:21-cv-02110-MSN-tmp

DECLARATION OF DEAN MCGEE IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO REVISE INTERLOCUTORY ORDER

Pursuant to 28 U.S.C. § 1746, I, Dean McGee, declare:

1. I am a United States citizen over the age of 18 years. If called upon to testify in this matter, I would do so as follows:

2. I am an attorney of record in this case representing Plaintiff Barton Thorne. I submit this Declaration in support of Plaintiff's Opposition (the "Opposition") to Defendants' Motion to Revise Interlocutory Order (the "Motion").

3. As set forth in the Opposition, sanctions are justified because Defendants, through their Motion, have violated Local Rule 7.3(c), which reads as follows:

> Prohibition Against Repetition of Argument. No motion for revision may repeat any oral or written argument made by the movant in support of or in opposition to the interlocutory order that the party seeks to have revised. Any party or counsel who violates this restriction shall be subject to appropriate sanctions, including, but not limited to, striking the filing.

4. Among Defendants' repetitive arguments is the false allegation—first raised and already addressed at the April 11, 2025 Conference—that myself and my co-counsel, Bridget Conlan, are engaging in the unauthorized practice of law in this District.

5. When Defendants' counsel first raised this argument, Ms. Conlan explained that both she and I were admitted to practice in the Western District of Tennessee. Her explanation was consistent with our Notices of Appearance, which affirmed that we are "authorized to practice in this court." (ECF Nos. 52, 56).

6. The Court acknowledged that Ms. Conlan's representation appeared to resolve this issue:

> THE COURT: I'll have to look and see if that's correct. I just don't know, as I look at the docket sheet here -- I'm not fast enough on the mouse to find it. But let's understand that that's the case, Ms. Morton. And if not, we'll have to deal with it separately.

ECF No. 64 (Pages 5-6).

7. Despite these representations from Plaintiff's counsel and the Court, Defendants' counsel have nevertheless again accused Plaintiff's counsel of lying to the Court and engaging in the unauthorized practice of law by asserting that "[i]t does not appear that either Mr. McGee or Ms. Conlan have filed such a petition or motion or otherwise completed the steps required for attorney admission in this Court." Motion at 3 n.3. Defendants' counsel never contacted me or Ms. Conlan before making this allegation and, apparently, never contacted the Clerk of the Court either.

8. In a series of email exchanges between May 13, 2025, and May 23, 2025, I requested that Defendants' counsel withdraw the Motion or explicitly correct the false allegation on the docket. Defendants' counsel refused—offering only to file an amended motion without withdrawing or correcting the false allegation. Defendants' counsel then reneged after I asked that the amended Motion acknowledge and correct the error, which would otherwise remain on the docket uncorrected. A true and correct copy of that email exchange is attached as Exhibit 1.

9. At minimum, the Motion should be struck, not only for violating Rule 7.3(c) by repeating arguments that have been rejected on the merits, but for repeating a malicious and false argument against opposing counsel, and refusing to take all actions necessary to correct it when confronted with the error.

10. Given the severity of the conduct, the Court should also sanction Defendants' counsel by requiring Defendants' to pay the reasonable attorneys' fees of Plaintiff's counsel for having to respond to the Motion, including Plaintiff's private attempts by email to resolve the above-discussed false allegation without the need for judicial interference.

11. The granting of sanctions here would avoid the need to pursue sanctions separately under Rule 11.

12. For the avoidance of doubt, I have attached the following true and correct copies of documents confirming that Ms. Conlan and I are admitted to practice in this District:

Exhibit 2: A March 20, 2025 email from Clerk of the Court Jean Miller Lee to myself confirming my admission on that date.

Exhibit 3: A PACER screenshot taken by myself on or about May 13, 2025 confirming my admission date of March 20, 2025.

Exhibit 4: A February 26, 2025 email from Clerk of the Court Jean Miller-Lee to Bridget Conlan, confirming her admission on that date.

Exhibit 5: A PACER screenshot taken by Bridget Conlan on or about May 13, 2025 confirming her admission date of February 25, 2025.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on June 10, 2024
Pawling, New York

Dean McGee
LIBERTY JUSTICE CENTER
Senior Counsel

Exhibit 1

From: JAMIE MORTON
To: Dean McGee
Cc: Bridget Conlan; Cameron Watson
Subject: Re: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - Thorne v. Shelby County Schools - Request for Immediate Correction
Date: Friday, May 23, 2025 9:31:47 AM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png
image006.png
image007.png
image008.png
image009.png
image010.png
image011.png
image012.png
image013.png
image014.png
image015.png
image016.png
Outlook-ym3rt4la.png

Dean,

I understand your position and that you need to do what is best for your client.

Enjoy the holiday weekend.

Jamie

Greatness Grows Here!

Jamie Morton
Deputy General Counsel
160 Glenn Rogers Sr. Street | Memphis, TN | 38112
The Office of General Counsel, Coe #218
Main Phone: 901-416-6370| Direct Phone: 901-416-3612
Email: mortonj2@scsk12.org

From: Dean McGee <dmcgee@libertyjusticecenter.org>
Sent: Thursday, May 22, 2025 4:40 PM

To: JAMIE MORTON <MORTONJ2@scsk12.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>; Cameron Watson <cwatson@spicerfirm.com>
Subject: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - Thorne v. Shelby County Schools - Request for Immediate Correction

Jamie,

Thanks for consenting to the extension.

I want to clarify why this remains a serious concern. The footnote in your original filing accused us of not completing the steps required for admission. But as Ms. Conlan explained during the hearing, and as we affirmed in our Notices of Appearance, we are admitted to practice in this district under Local Rule 83.4(b), not (c) (which governs only pro hac vice admissions). As written, the footnote impugns our character by alleging that we misrepresented our status to the Court multiple times, and are practicing law in this District without proper authorization.

The information you had was not incomplete; you just chose to accuse us of lying to the Court without checking with us or the Clerk. Declining to acknowledge or correct the original misstatement on the docket leaves that false accusation unaddressed, and will ultimately force us and the Court to waste time and resources to address your error. It is the refusal to correct your mistake that I find inconsistent with your obligations under the Tennessee Rules of Professional Conduct, and sanctionable under Rule 11.

I don't plan to take further steps until next week, and I hope you'll take tomorrow to reconsider and address the issue voluntarily.

Best,
Dean

Dean McGee
Senior Counsel for Educational Freedom | Liberty Justice Center

512-481-4400
917-623-3288 (Cell)
dmcgee@libertyjusticecenter.org
LibertyJusticeCenter.org

LIBERTY JUSTICE CENTER

From: JAMIE MORTON <MORTONJ2@scsk12.org>
Sent: Wednesday, May 21, 2025 6:52 PM
To: Dean McGee <dmcgee@libertyjusticecenter.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>; Cameron Watson <cwatson@spicerfirm.com>
Subject: Re: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - Thorne v. Shelby County Schools - Request for Immediate Correction

Dean,

I am sorry that you feel your character has been impugned. That was certainly not my intent. The footnote is based upon the information available to me at the time, as explained therein. I specifically acknowledged that Ms. Conlan may have already completed the steps required for admission. I also noted that no written petition seeking admission has been filed as required by Local Rule 83.4(c).

I have no objection to a two-week extension of time to respond to the Motion to Revise Interlocutory Order.

Thanks so much.

Jamie

Greatness Grows Here!

Jamie Morton
Deputy General Counsel
160 Glenn Rogers Sr. Street | Memphis, TN | 38112
The Office of General Counsel, Coe #218
Main Phone: 901-416-6370| Direct Phone: 901-416-3612
Email: mortonj2@scsk12.org

From: Dean McGee <dmcgee@libertyjusticecenter.org>
Sent: Wednesday, May 21, 2025 4:07 PM
To: JAMIE MORTON <MORTONJ2@scsk12.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>; Cameron Watson <cwatson@spicerfirm.com>
Subject: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - Thorne v. Shelby County Schools - Request for Immediate Correction

Thanks, Jamie. You are right that omitting the footnote, without expressly correcting it or making an effort to withdraw the motion with the prior footnote, is insufficient.

Please consider this to be your notice, pursuant to Rule 11, that I consider your conduct sanctionable if you do not have the prior motion removed or file a amended motion explicitly correcting your false allegations. *See, e.g.*, *Doe v. Exxon Mobile Corp.*, No. 1:01-cv-1357 (RCL/AK), 2022 U.S. Dist. LEXIS 69303, at *7 (D.D.C. Apr. 14, 2022) (acknowledging sanctions for "impugning opposing counsel's character without evidentiary support"). I also intend to file a complaint with the Tennessee Board of Professional Responsibility.

It is baffling to me that you will not simply correct your mistake, but if that is the choice you are making I will act accordingly.

I will also be seeking a two week extension of our time to oppose your motion. Please let know if that is on consent.

As always, please feel free to call me to discuss.

Dean McGee
Senior Counsel for Educational Freedom | Liberty Justice Center

512-481-4400
917-623-3288 (Cell)
dmcgee@libertyjusticecenter.org
LibertyJusticeCenter.org

LIBERTY JUSTICE CENTER

From: JAMIE MORTON <MORTONJ2@scsk12.org>
Sent: Wednesday, May 21, 2025 4:53 PM
To: Dean McGee <dmcgee@libertyjusticecenter.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>; Cameron Watson <cwatson@spicerfirm.com>
Subject: Re: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - Thorne v. Shelby County Schools - Request for Immediate Correction

Dean,

No. I have not filed an amended motion. I suggested filing an amended motion excluding the footnote. As I interpret your response below, that solution was not acceptable.

Thank you.

Jamie

Greatness Grows Here!

Jamie Morton
Deputy General Counsel
160 Glenn Rogers Sr. Street | Memphis, TN | 38112
The Office of General Counsel, Coe #218
Main Phone: 901-416-6370| Direct Phone: 901-416-3612
Email: mortonj2@scsk12.org

From: Dean McGee <dmcgee@libertyjusticecenter.org>
Sent: Wednesday, May 21, 2025 2:49 PM
To: JAMIE MORTON <MORTONJ2@scsk12.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>; Cameron Watson <cwatson@spicerfirm.com>
Subject: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - Thorne v. Shelby County Schools - Request for Immediate Correction

Jamie,

Are you filing the amended motion as you stated below?

Dean McGee
Senior Counsel for Educational Freedom | Liberty Justice Center

512-481-4400
917-623-3288 (Cell)
dmcgee@libertyjusticecenter.org
LibertyJusticeCenter.org

LIBERTY JUSTICE CENTER

From: Dean McGee <dmcgee@libertyjusticecenter.org>
Sent: Tuesday, May 13, 2025 12:25 PM
To: JAMIE MORTON <MORTONJ2@scsk12.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>; Cameron Watson <cwatson@spicerfirm.com>
Subject: Re: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - Thorne v. Shelby County Schools - Request for Immediate Correction

Following up on my voicemail, that's fine so long as the revised motion expressly and unambiguously acknowledges and rescinds the error in the original. It not, we will reserve our right to take further action to address this.

Dean McGee
Senior Counsel for Educational Freedom | Liberty Justice Center

512-481-4400
917-623-3288 (Cell)
dmcgee@libertyjusticecenter.org
LibertyJusticeCenter.org

LIBERTY JUSTICE CENTER

From: JAMIE MORTON <MORTONJ2@scsk12.org>
Sent: Tuesday, May 13, 2025 12:12:38 PM
To: Dean McGee <dmcgee@libertyjusticecenter.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>; Cameron Watson <cwatson@spicerfirm.com>
Subject: Re: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - Thorne v. Shelby County Schools - Request for Immediate Correction

I am happy to file an amended motion, but I do not see a need to pursue removal of the filing from the docket.

Greatness Grows Here!

Jamie Morton
Senior Counsel
160 Glenn Rogers Sr. Street | Memphis, TN | 38112
The Office of General Counsel, Coe #218
Main Phone: 901-416-6370| Direct Phone: 901-416-3612
Email: mortonj2@scsk12.org

From: Dean McGee <dmcgee@libertyjusticecenter.org>
Sent: Tuesday, May 13, 2025 11:03 AM
To: JAMIE MORTON <MORTONJ2@scsk12.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>; Cameron Watson <cwatson@spicerfirm.com>
Subject: EXTERNAL - RE: EXTERNAL - RE: EXTERNAL - Thorne v. Shelby County Schools - Request for Immediate Correction

Please inquire with the clerk of the court as to whether removal of the motion is feasible under the circumstances. I wouldn't ordinarily make such a request but that seems to be the most sensible resolution of this issue in order to avoid any risk of confusion for the court or for the public. I could join any call with the clerk or be copied

on the email if helpful to clarify that this is a joint request.

Dean McGee
Senior Counsel for Educational Freedom | Liberty Justice Center

512-481-4400
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dmcgee@libertyjusticecenter.org
LibertyJusticeCenter.org

LIBERTY JUSTICE CENTER

From: JAMIE MORTON <MORTONJ2@scsk12.org>
Sent: Tuesday, May 13, 2025 11:58 AM
To: Dean McGee <dmcgee@libertyjusticecenter.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>
Subject: Re: EXTERNAL - RE: EXTERNAL - Thorne v. Shelby County Schools - Request for Immediate Correction

I am fine with filing an amended motion, but our local rules do not contemplate an attorney removing a filing from the docket.

Greatness Grows Here!

Jamie Morton
Senior Counsel
160 Glenn Rogers Sr. Street | Memphis, TN | 38112
The Office of General Counsel, Coe #218
Main Phone: 901-416-6370| Direct Phone: 901-416-3612
Email: mortonj2@scsk12.org

From: Dean McGee <dmcgee@libertyjusticecenter.org>
Sent: Tuesday, May 13, 2025 10:29 AM
To: JAMIE MORTON <MORTONJ2@scsk12.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>
Subject: EXTERNAL - RE: EXTERNAL - Thorne v. Shelby County Schools - Request for Immediate Correction

Yes, thanks. My assumption is that the prior motion will be withdrawn and removed from the docket.

As an aside, because of the Memorial day holiday and the timing of an upcoming firm retreat, I suspect we will need to seek an extension of our time to oppose. I will follow up on that if needed

Dean McGee
Senior Counsel for Educational Freedom | Liberty Justice Center

512-481-4400
917-623-3288 (Cell)
dmcgee@libertyjusticecenter.org
LibertyJusticeCenter.org

LIBERTY JUSTICE CENTER

From: JAMIE MORTON <MORTONJ2@scsk12.org>
Sent: Tuesday, May 13, 2025 11:19 AM
To: Dean McGee <dmcgee@libertyjusticecenter.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>
Subject: Re: EXTERNAL - Thorne v. Shelby County Schools - Request for Immediate Correction

Dean,

Good morning. Thank you for letting me know you have both been formally admitted to the Western District of Tennessee. I assume you consent to my filing an Amended Motion omitting the footnote?

Thanks so much.

Jamie

Greatness Grows Here!

Jamie Morton
Senior Counsel
160 Glenn Rogers Sr. Street | Memphis, TN | 38112
The Office of General Counsel, Coe #218
Main Phone: 901-416-6370| Direct Phone: 901-416-3612
Email: mortonj2@scsk12.org

From: Dean McGee <dmcgee@libertyjusticecenter.org>
Sent: Tuesday, May 13, 2025 9:58 AM
To: JAMIE MORTON <MORTONJ2@scsk12.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>
Subject: EXTERNAL - Thorne v. Shelby County Schools - Request for Immediate Correction

Counsel:

I'm writing to request that you immediately withdraw or correct Footnote 3 of your recent filing, which asserts (among other things): "It does not appear that either Mr. McGee or Ms. Conlan have filed such a petition or motion or otherwise completed the steps required for attorney admission in this Court."

As Bridget explained during the April 11 conference, both of us are admitted to practice in the Western District of Tennessee, consistent with the affirmations in our signed Notices of Appearance. The attached confirmation emails from the Clerk of the Court and PACER screenshots confirm our admission.

Of course, in our email exchange below, you could have asked me for confirmation of our admission to the District before filing. You could also have contacted the Clerk directly for clarification.

Instead, you filed a motion accusing us of making material misrepresentations to the Court and engaging in the unauthorized practice of law. These are false charges that, respectfully, seem to fall short of the requirement that attorneys conduct a "reasonably diligent inquiry" before making factual representations to the Court (Rule 3.3, Comment 3 of the Tennessee Rules of Professional Conduct).

Please correct this misstatement in a filing with the Court by the end of the day tomorrow so that we do not need to address this further.

Moving forward, I'm hopeful we can continue working through this case with professionalism and mutual respect. To that end, please don't hesitate to reach out by phone or email if we can be helpful.

Sincerely,

Dean McGee
Senior Counsel for Educational Freedom | Liberty Justice Center

512-481-4400
917-623-3288 (Cell)
dmcgee@libertyjusticecenter.org
LibertyJusticeCenter.org

LIBERTY JUSTICE CENTER

From: JAMIE MORTON <MORTONJ2@scsk12.org>
Sent: Thursday, May 8, 2025 12:11 PM
To: Dean McGee <dmcgee@libertyjusticecenter.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>
Subject: Re: EXTERNAL - Re: EXTERNAL - RE: EXTERNAL - Re: EXTERNAL - Re: EXTERNAL - RE: EXTERNAL - Thorne - Proposed Motion to appear by phone

Yes, sir. You too.

Greatness Grows Here!

Jamie Morton

Senior Counsel
160 Glenn Rogers Sr. Street | Memphis, TN | 38112
The Office of General Counsel, Coe #218
Main Phone: 901-416-6370| Direct Phone: 901-416-3612
Email: mortonj2@scsk12.org

From: Dean McGee
Sent: Thursday, May 8, 2025 11:08 AM
To: JAMIE MORTON
Cc: Bridget Conlan
Subject: EXTERNAL - Re: EXTERNAL - RE: EXTERNAL - Re: EXTERNAL - Re: EXTERNAL - RE: EXTERNAL - Thorne - Proposed Motion to appear by phone

Yes, opposed. Thanks for the quick response and for letting me know.

Dean McGee
Senior Counsel for Educational Freedom | Liberty Justice Center

512-481-4400
917-623-3288 (Cell)
dmcgee@libertyjusticecenter.org
LibertyJusticeCenter.org

LIBERTY JUSTICE CENTER

From: JAMIE MORTON <MORTONJ2@scsk12.org>
Sent: Thursday, May 8, 2025 11:05 AM
To: Dean McGee <dmcgee@libertyjusticecenter.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>
Subject: Re: EXTERNAL - RE: EXTERNAL - Re: EXTERNAL - Re: EXTERNAL - RE: EXTERNAL - Thorne - Proposed Motion to appear by phone

Dean,

On a similar note, we plan to file a Rule 54(b) Motion to Revise Interlocutory Order seeking reconsideration of the Court's denial of our Motion to Dismiss.

Given that the motion seeks dismissal of your client's claims, it is my understanding that your client will not consent. But please confirm.

Thanks so much.

Jamie

Greatness Grows Here!

Jamie Morton
Senior Counsel
160 Glenn Rogers Sr. Street | Memphis, TN | 38112
The Office of General Counsel, Coe #218
Main Phone: 901-416-6370| Direct Phone: 901-416-3612
Email: mortonj2@scsk12.org

From: Dean McGee <dmcgee@libertyjusticecenter.org>
Sent: Thursday, May 8, 2025 10:00 AM
To: JAMIE MORTON <MORTONJ2@scsk12.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>
Subject: EXTERNAL - RE: EXTERNAL - Re: EXTERNAL - Re: EXTERNAL - RE: EXTERNAL - Thorne - Proposed Motion to appear by phone

Jamie,

Thank you for the update. Today I plan to file a motion to reopen discovery for the limited purpose of taking two depositions. It is my understanding from the conference that you oppose this motion, but I would appreciate it if you could please confirm.

Thanks,

Dean McGee
Senior Counsel for Educational Freedom | Liberty Justice Center

512-481-4400
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dmcgee@libertyjusticecenter.org
LibertyJusticeCenter.org

LIBERTY JUSTICE CENTER

From: JAMIE MORTON <MORTONJ2@scsk12.org>
Sent: Tuesday, May 6, 2025 2:03 PM
To: Dean McGee <dmcgee@libertyjusticecenter.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>
Subject: Re: EXTERNAL - Re: EXTERNAL - Re: EXTERNAL - RE: EXTERNAL - Thorne - Proposed Motion to appear by phone

Dean,

Good afternoon. We have discussed your settlement proposal with our client, and the proposed terms are not accepted. The District does not intend to make a counteroffer at this time.

Thank you.

Jamie

MEMPHIS SHELBY COUNTY SCHOOLS
Greatness Grows Here!

Jamie Morton
Senior Counsel
160 Glenn Rogers Sr. Street | Memphis, TN | 38112
The Office of General Counsel, Coe #218
Main Phone: 901-416-6370| Direct Phone: 901-416-3612
Email: mortonj2@scsk12.org

From: Dean McGee <dmcgee@libertyjusticecenter.org>
Sent: Thursday, May 1, 2025 10:06 PM
To: JAMIE MORTON <MORTONJ2@scsk12.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>
Subject: EXTERNAL - Re: EXTERNAL - Re: EXTERNAL - RE: EXTERNAL - Thorne - Proposed Motion to appear by phone

Jamie,

Will the district be offering a response to the below?

Thanks,

Dean McGee
Senior Counsel for Educational Freedom | Liberty Justice Center

512-481-4400
917-623-3288 (Cell)
dmcgee@libertyjusticecenter.org
LibertyJusticeCenter.org

LIBERTY JUSTICE CENTER

From: Dean McGee <dmcgee@libertyjusticecenter.org>
Sent: Friday, April 11, 2025 12:02 PM
To: JAMIE MORTON <MORTONJ2@scsk12.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>
Subject: Re: EXTERNAL - Re: EXTERNAL - RE: EXTERNAL - Thorne - Proposed Motion to appear by phone

Thank you - nice meeting you. If confidentiality (to the extent permitted by law) regarding amount would be helpful, we could agree to that too.

Obviously this was offered before the MTD decision but we are happy to keep it on the table for now out of hope for a swift resolution.

Dean McGee
Senior Counsel for Educational Freedom | Liberty Justice Center

512-481-4400
917-623-3288 (Cell)
dmcgee@libertyjusticecenter.org
LibertyJusticeCenter.org

LIBERTY JUSTICE CENTER

From: JAMIE MORTON <MORTONJ2@scsk12.org>
Sent: Friday, April 11, 2025 11:34:00 AM
To: Dean McGee <dmcgee@libertyjusticecenter.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>
Subject: Re: EXTERNAL - Re: EXTERNAL - RE: EXTERNAL - Thorne - Proposed Motion to appear by phone

Thanks, Dean. I will share with my client.

Get Outlook for iOS

From: Dean McGee <dmcgee@libertyjusticecenter.org>
Sent: Friday, April 11, 2025 7:41:18 AM
To: JAMIE MORTON <MORTONJ2@scsk12.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>
Subject: EXTERNAL - Re: EXTERNAL - RE: EXTERNAL - Thorne - Proposed Motion to appear by phone

Counsel,

Thank you for the call earlier this week. In advance of this morning's conference, I would like to offer our position on resolution of this matter. Please note that this email is for settlement purposes only, with all rights reserved.

1. Public Statement: "More than four years ago, Principal Thorne delivered a message to students intended to affirm the principles of free speech in a democratic society, and to warn of the dangers of censorship. After a complaint was received, the District suspended Principal Thorne, with pay, for six weeks. Principal Thorne was ultimately found not to have violated any policies of the District or terms of his employment, and he has continued to admirably serve the students of Shelby County since his suspension.

2. While the District affirms its ability to exercise reasonable discretion over speech made by employees pursuant to their official duties, the District also recognizes the values of free expression, and apologizes to Principal Thorne for the suspension. We are glad to put this matter behind us."
3.
4. Monetary Settlement: $100,000 ($20K in costs and attorneys' fees; $80,000 in damages).

I welcome your feedback on the offer above.

In addition, I wanted to let you know that I intend to serve deposition notices on Dr Ray and, pursuant to Rule 30(b)(6) on the District.
I would be happy to discuss these matters further at the conference.

Dean McGee
Senior Counsel for Educational Freedom | Liberty Justice Center

512-481-4400
917-623-3288 (Cell)

dmcgee@libertyjusticecenter.org
LibertyJusticeCenter.org

LIBERTY JUSTICE CENTER

From: Dean McGee
Sent: Tuesday, April 8, 2025 4:02:46 PM
To: JAMIE MORTON <MORTONJ2@scsk12.org>
Cc: Bridget Conlan <bconlan@libertyjusticecenter.org>
Subject: RE: EXTERNAL - RE: EXTERNAL - Thorne - Proposed Motion to appear by phone

Jamie –

Just left you a v/m. Does now still work for a call? If so please give me a ring at 917 623 3288.

Dean McGee
Senior Counsel for Educational Freedom | Liberty Justice Center

512-481-4400
917-623-3288 (Cell)
dmcgee@libertyjusticecenter.org
LibertyJusticeCenter.org

LIBERTY JUSTICE CENTER

-----Original Appointment-----
From: Dean McGee
Sent: Monday, April 7, 2025 11:59 AM
To: Dean McGee; JAMIE MORTON
Cc: Cameron Watson; Bridget Conlan
Subject: EXTERNAL - RE: EXTERNAL - Thorne - Proposed Motion to appear by phone
When: Tuesday, April 8, 2025 4:00 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DMM to call JM at 901-416-3612

From: JAMIE MORTON <MORTONJ2@scsk12.org>
Sent: Monday, April 7, 2025 10:59 AM
To: Dean McGee <dmcgee@libertyjusticecenter.org>; Bridget Conlan <bconlan@libertyjusticecenter.org>
Cc: Cameron Watson <cwatson@spicerfirm.com>
Subject: Re: EXTERNAL - RE: EXTERNAL - Thorne - Proposed Motion to appear by phone

Sure. I'm available tomorrow between 11:00 and 1:00 and after 3:00. I am available until 1:00 pm on Wednesday.

MEMPHIS SHELBY COUNTY SCHOOLS

Greatness Grows Here!

Jamie Morton
Senior Counsel
160 Glenn Rogers Sr. Street | Memphis, TN | 38112
The Office of General Counsel, Coe #218
Main Phone: 901-416-6370| Direct Phone: 901-416-3612
Email: mortonj2@scsk12.org

From: Dean McGee <dmcgee@libertyjusticecenter.org>
Sent: Monday, April 7, 2025 7:30 AM
To: JAMIE MORTON <MORTONJ2@scsk12.org>; Bridget Conlan <bconlan@libertyjusticecenter.org>
Cc: Cameron Watson <cwatson@spicerfirm.com>
Subject: EXTERNAL - RE: EXTERNAL - Thorne - Proposed Motion to appear by phone

Jamie,

Please let me know if you have time early this week to discuss this matter in advance of Friday's conference – happy to work around your schedule.

Best,

Dean McGee
Senior Counsel for Educational Freedom | Liberty Justice Center

512-481-4400
917-623-3288 (Cell)
dmcgee@libertyjusticecenter.org
LibertyJusticeCenter.org

LIBERTY JUSTICE CENTER

From: JAMIE MORTON <MORTONJ2@scsk12.org>
Sent: Friday, March 28, 2025 10:08 AM
To: Bridget Conlan <bconlan@libertyjusticecenter.org>
Cc: Cameron Watson <cwatson@spicerfirm.com>; Dean McGee <dmcgee@libertyjusticecenter.org>
Subject: Re: EXTERNAL - Thorne - Proposed Motion to appear by phone

Good morning, Bridget. I have no objection.

Greatness Grows Here!

Jamie Morton
Senior Counsel
160 Glenn Rogers Sr. Street | Memphis, TN | 38112
The Office of General Counsel, Coe #218
Main Phone: 901-416-6370| Direct Phone: 901-416-3612
Email: mortonj2@scsk12.org

From: Bridget Conlan <bconlan@libertyjusticecenter.org>
Sent: Friday, March 28, 2025 8:12 AM
To: JAMIE MORTON <MORTONJ2@scsk12.org>
Cc: Cameron Watson <cwatson@spicerfirm.com>; Dean McGee <dmcgee@libertyjusticecenter.org>
Subject: EXTERNAL - Thorne - Proposed Motion to appear by phone

Good Morning,

Dean McGee (copied) will be taking over as lead counsel for Plaintiff Barton Thorne (*Thorne v. Shelby County Schools*, 2:21-cv-02110). Dean will appear in person for the status conference on 4/11, but Cameron Watson and myself will not be able to attend in person due to other conflicts. We plan to file the attached motion to allow myself and Cameron to appear by phone. May we say that this motion is unopposed by Defendants? Please let me know your thoughts and if you have any questions.

Best,
Bridget

Bridget Conlan
Staff Attorney | Liberty Justice Center

512-481-4400
630-267-9913 (Direct)
bconlan@libertyjusticecenter.org
LibertyJusticeCenter.org

LIBERTY JUSTICE CENTER

Bridget Conlan
Staff Attorney | Liberty Justice Center

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Exhibit 2

From: Jean Miller-Lee
To: Dean McGee
Subject: RE: MCGEE, DEAN - Request for Payment
Date: Thursday, March 20, 2025 1:06:46 PM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png

Your admission date is March 20, 2025.

From: Dean McGee <dmcgee@libertyjusticecenter.org>
Sent: Tuesday, March 18, 2025 2:17 PM
To: Jean Miller-Lee <Jean_Miller-Lee@tnwd.uscourts.gov>
Subject: RE: MCGEE, DEAN - Request for Payment

CAUTION - EXTERNAL:

FEE PAID

Dean McGee
Senior Counsel for Educational Freedom | Liberty Justice Center

512-481-4400
917-623-3288 (Cell)
dmcgee@libertyjusticecenter.org
LibertyJusticeCenter.org

LIBERTY JUSTICE CENTER

From: Jean Miller-Lee <Jean_Miller-Lee@tnwd.uscourts.gov>
Sent: Tuesday, March 18, 2025 1:36 PM
To: Dean McGee <dmcgee@libertyjusticecenter.org>
Subject: MCGEE, DEAN - Request for Payment

We are asking you to pay your admission fee before we can grant you admission in our court.
After payment has been made, please reply to this email "FEE PAID".

https://ecf.tnwd.uscourts.gov/n/baradmission/pages/barAdmission.jsf

Exhibit 3

Exhibit 4

Tuesday, May 13, 2025 at 07:57:25 Central Daylight Time

Subject: RE: CONLAN, BRIDGET - Request for Payment
Date: Wednesday, February 26, 2025 at 12:48:03 PM Central Standard Time
From: Jean Miller-Lee
To: Bridget Conlan
Attachments: image001.png, image002.png, image003.png, image004.png, image005.png

Your admission date is February 25, 2025.

From: Bridget Conlan <bconlan@libertyjusticecenter.org>
Sent: Monday, February 24, 2025 4:32 PM
To: Jean Miller-Lee <Jean_Miller-Lee@tnwd.uscourts.gov>
Subject: Re: CONLAN, BRIDGET - Request for Payment

CAUTION - EXTERNAL:

FEE PAID

Thank you!

Bridget Conlan
Staff Attorney | Liberty Justice Center

512-481-4400
630-267-9913 (Direct)
bconlan@libertyjusticecenter.org
LibertyJusticeCenter.org

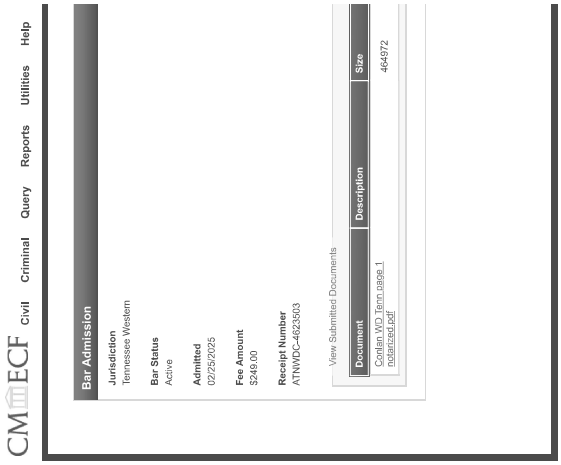
LIBERTY JUSTICE CENTER

From: Jean Miller-Lee <Jean_Miller-Lee@tnwd.uscourts.gov>
Date: Monday, February 24, 2025 at 3:41 PM
To: Bridget Conlan <bconlan@libertyjusticecenter.org>
Subject: CONLAN, BRIDGET - Request for Payment

We are asking you to pay your admission fee before we can grant you admission in our court.
After payment has been made, please reply to this email "FEE PAID.

https://ecf.tnwd.uscourts.gov/n/baradmission/pages/barAdmission.jsf

Exhibit 5


CM/ECF Civil Criminal Query Reports Utilities Help
Bar Admission
Jurisdiction
Tennessee Western
Bar Status
Active
Admitted
02/25/2025
Fee Amount
$249.00
Receipt Number
ATNWDC-4623503
View Submitted Documents
Document
Description
Size
Conlan WD Tenn page 1 notarized.pdf
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