No. 22-293

In the Supreme Court of the United States

ANTHONY NOVAK,

Petitioner,

v.

CITY OF PARMA, OHIO, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Does the government get to arrest you for creating and maintaining an online parody?

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INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies was established in 1989 to promote the principles of limited constitutional government that are the foundation of liberty. Cato has participated as *amicus curiae* in numerous cases before this Court, including with briefs that have demonstrated the absurdity of humorless speech restrictions. *See, e.g.*, *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019); *Matal v. Tam*, 137 S. Ct. 1744 (2017); *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239 (2015); and *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334 (2014).

As an organization committed to protecting the freedom of speech, including the right to parody government without fear of retaliation, *amicus* has a strong interest in the proper resolution of this case.

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[1] Rule 37 statement: All parties were timely notified and consented to the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

SUMMARY OF ARGUMENT

In the spring of 2016, Anthony Novak spent four days in jail for making fun of his local police department. The cause of this unfortunate encounter with law enforcement was Novak's decision to engage in the longstanding American tradition of political parody by creating a spoof Facebook account of his local police department.

To make his satire work, Novak needed to make the page look convincing at first glance, so he copied the name and profile picture of the official Facebook account of the City of Parma Police Department. Although a quick look might not have been sufficient to distinguish satire from reality, a closer read revealed the page's unserious nature. The parody page lacked the Facebook designations for an authenticated government-associated page and included the absurd slogan "we no crime." Pet. App. at 115a. The page was only active for twelve hours, during which time Novak made six posts, each more ridiculous than the next. Pet. App. at 82a, 114a–15a. The posts advertised outlandish initiatives such as a free abortion program offered by the Parma Police using an experimental technique that would take place in a van and a modest proposal to rid the city of its homeless population through a program of starvation. Another post offered an apology for the belated notice of an armed robbery that the police had simply forgotten to post about. Pet. App. at 114a–15a.

Novak's page was widely shared and provoked mixed reactions. In order to keep up the joke, Novak deleted the comments on his posts that indicated his posts were inauthentic. After learning that the police were investigating the account, he made one final

entry in his string of outrageous posts. Novak copied the Department's clarification on its official page indicating that it was aware of the parody account and that Novak's page was not associated with the department. Pet. App. at 114a–15a.

Novak was arrested nearly a month after he stopped posting to Facebook and charged with disrupting police operations under Ohio Rev. Code § 2909.04(B) (2004). The police relied on just eleven calls made by Facebook users to its non-emergency line to establish probable cause that the department's operations had been disrupted by Novak's Facebook activity. Pet. App. at 62a.

Fortunately for Novak, a jury of his peers saw the absurdity of the government's humorless prosecution and acquitted him at trial. Novak then attempted to vindicate his First and Fourth Amendment rights by filing suit against the city and arresting officers under 42 U.S.C. § 1983 (1996). The police officers asserted qualified immunity and moved to dismiss Novak's claims, but the district court denied the officers' motion. On appeal, the Sixth Circuit affirmed the denial of that motion to dismiss and determined that more facts were necessary to resolve the case. *See Novak v. City of Parma*, 932 F.3d 421 (6th Cir. 2019).

On remand, the parties moved for summary judgment after discovery. The officers once again asserted qualified immunity and the city disclaimed municipal liability. This time, the district court granted the officers qualified immunity and found that Parma had no liability. On appeal, the Sixth Circuit affirmed the finding of qualified immunity and determined that, while Novak's posts were First Amendment protected parody, it wasn't clearly established that Novak's

deletion of comments and copying of the department's clarification post were protected speech. *Novak v. City of Parma*, 33 F.4th 296, 304–05 (6th Cir. 2022).

In light of the Sixth Circuit's conclusion, this case presents several important and intertwined First Amendment issues. First, this Court recognized that parody enjoys robust First Amendment protection in *Hustler Mag. v. Falwell*, 485 U.S. 46 (1988), but has not yet provided guidance as to how to apply *Hustler* in the age of the modern internet. For example, it is unclear to what extent the reasonable reader is supposed to take the dynamic and changing nature of the social media medium into account when attempting to discern whether a parody is stating "actual facts" about its subject. *Id.* at 50. Relatedly, lower courts lack clarity as to whether social media activity, such as deleting comments and altering social media pages to further a message, constitutes speech under the First Amendment.

Second, this case presents an opportunity to reaffirm the principle that generally applicable laws aimed at conduct may not be selectively applied to certain speech because of its content. The decision below categorized multiple expressive online speech acts as merely "conduct" and therefore unprotected by the First Amendment. This approach, if allowed to stand, would permit government officials to criminalize disfavored speech because of its allegedly disruptive effects. The Sixth Circuit's rule would enable the government to criminalize a broad range of speech, so long as the government prosecutes under laws that don't explicitly single out speech.

Finally, this Court should clarify that it is clearly a violation of the First Amendment to arrest an

individual for online parody, as occurred here. This Court should grant certiorari.

ARGUMENT

I. THIS COURT SHOULD CLARIFY THAT THE FIRST AMENDMENT PROTECTS SOCIAL MEDIA PARODIES

This Court's key precedent on the First Amendment's protections for parody predates the modern internet era. This case presents a prime opportunity to provide guidance on how the First Amendment's protections of parody extend to the modern internet and social media, where anyone can be a parodist and disseminate his or her material across the globe in an instant.

Parody has long served as a powerful instrument of social criticism, both for highlighting human folly and advocating for change. The use of parody to mock public figures dates back to Greek antiquity, and parody has played a prominent role in public debate throughout American history. *See Hustler Mag.*, 485 U.S. at 54; *L.L. Bean v. Drake Publishers, Inc.*, 811 F.2d 26, 28 (1st Cir. 1987). This Court has recognized that parody is protected speech under the First Amendment. *Hustler Mag.*, 485 U.S. at 56–57.

The exercise of First Amendment freedoms "will not always be reasoned or moderate." *Id.* at 51. Parody, in particular, often entails harsh ridicule and has a strong chance of giving offense. But these characteristics are features, not bugs, of parody. They do not justify diminished First Amendment protection. As this Court has noted, a caricature is a "weapon of attack, of scorn and ridicule and satire" that is often "slashing and one-sided." *Id.* at 54. If a speaker's opinion gives

offense, that is "not sufficient reason for suppressing it," but rather "a reason for affording it constitutional protection." *Id.* at 55 (quoting *FCC v. Pacifica Found.*, 438 U.S. 726, 745 (1978)). Offensive and critical speech expresses a distinct viewpoint just as much as friendly and supportive speech does, and that viewpoint is entitled to full First Amendment protection. *See id.* at 56 ("[I]t is a central tenet of the First Amendment that the government must remain neutral in the marketplace of ideas."); *see also Matal v. Tam*, 137 S. Ct. 1744, 1764 (2017) ("[A government] interest in preventing speech expressing ideas that offend . . . . strikes at the heart of the First Amendment.") (plurality op.).

Courts have recognized that parody comes in many forms. As the D.C. Circuit acknowledged, "[s]ometimes satire is funny . . . Othertimes it may seem cruel and mocking . . . And sometimes it is absurd." *Farah v. Esquire Mag.*, 736 F.3d 528, 536 (D.C. Cir. 2013). Taste and opinions will naturally vary as to whether a given parody is brilliant or crass. That is all the more reason why neither judges nor juries may permissibly draw subjective lines as to which parodies are valuable and worthy of First Amendment protection. As this Court explained, permitting such line-drawing could "allow a jury to impose liability on the basis of the jurors' tastes or views, or perhaps on the basis of their dislike of a particular expression." *Hustler Mag.*, 485 U.S. at 55. Instead, to "assur[e] that public debate will not suffer for lack of 'imaginative expression' or the 'rhetorical hyperbole' which has traditionally added much to the discourse of our Nation," this Court has held that *any* satirical statement is protected so long as it "cannot reasonably be interpreted as stating actual facts"

about its subject. *Milkovich v. Lorain J. Co.*, 497 U.S. 1, 20 (1990) (cleaned up).

When applying this standard, courts properly take into account the mimicry that is inherent to parody. Parody "is effective as social commentary precisely because it is often grounded in truth." *Farah*, 736 F.3d at 537. Parody relies on the audience's recognition of the original subject being mocked. *See, e.g.*, Jon M. Garon, *Media & Monopoly in the Information Age: Slowing the Convergence at the Marketplace of Ideas*, 17 Cardozo Arts & Ent. L.J. 491, 557 (1999) ("Satire works precisely because it evokes other materials."). A moment of confusion in which the audience questions whether something so outrageous could be true can place them in a frame of mind to consider whether the reality is more absurd than they previously thought. *See San Francisco Bay Guardian v. Superior Ct.*, 21 Cal. Rptr. 2d 464, 466 (Cal. Ct. App. 1993) ("[T]he very nature of parody . . . is to catch the reader off guard at first glance, after which the 'victim' recognizes that the joke is on him to the extent that it caught him unaware.").

Accordingly, the mere fact that some members of a parody's audience may be fooled into believing it is true does not deprive it of First Amendment protection. *See Novak*, 932 F.3d at 427 ("The test is not whether one person, or even ten people, or even one hundred people were confused by Novak's page."); *see also Farah*, 736 F.3d at 536 ("[I]t is the nature of satire that not everyone 'gets it' immediately."); *Golb v. AG of N.Y.*, 870 F.3d 89, 102 (2d Cir. 2017) ("[A] parody enjoys First Amendment protection notwithstanding that not everybody will get the joke."). Examples abound of satirical publications that were initially regarded as true. Greek playwright Aristophanes' *The*

Clouds "was so misunderstood as praising immorality that he had to insert a deadly serious scene directly criticizing an earlier audience for not catching the satire." Phillip Deen, *What Moral Virtues Are Required to Recognize Irony?*, 50 J. Value Inquiry 51, 52 (2016). Numerous people, including a member of Congress, have mistaken stories from *The Onion*, a popular satirical "news source," as real news. *See id.* at 51. Many readers of Benjamin Franklin's "The Speech of Polly Baker," which protested society's double standards for men and women, believed it to be a genuine account of court proceedings. Max Hall, *Benjamin Franklin & Polly Baker*: *The History of a Literary Deception* 16–24, 33, 61 (1960). And even when some audience members are confused, "a parody need not spoil its own punchline by declaring itself a parody" in order to be protected speech. *Novak*, 932 F.3d at 428.

The touchstone instead is the understanding of a *reasonable* reader, given the full context of the expression. And given the "special characteristics" of parody and satire, "'what a reasonable reader would have understood' is more informed by an assessment of her well-considered view than by her immediate yet transitory reaction." *Farah*, 736 F.3d at 536.

The internet and social media have engendered new forms and genres of parody, but these First Amendment principles remain the same regardless of the form a parody may take. For example, the Tenth Circuit dealt with the case of a college student who "created a fictional character, 'Junius Puke,' for the editorial column of his internet-based journal, *The Howling Pig*." *Mink v. Knox*, 613 F.3d 995, 998 (10th Cir. 2010). The column featured altered photographs of a real professor, Junius Peake, "wearing dark

sunglasses and a Hitler-like mustache." *Id.* The column "addressed subjects on which Mr. Peake would be unlikely to write, in language he would be unlikely to use, asserting views that were diametrically opposed to Mr. Peake's." *Id.*

Even though this parody appeared in an online self-published journal rather than an established media outlet, the First Amendment inquiry was the same: whether the column "could reasonably be understood as describing actual facts about the [professor] or actual events in which he participated." *Id.* at 1006. And that inquiry is based on "what a *reasonable reader* would understand the author to be saying, considering the kind of language used and the context in which it is used." *Id.* at 1007 (emphasis in original). Because "no reasonable reader would believe that the statements in that context were said by Professor Peake in the guise of Junius Puke," the Tenth Circuit found the column to be protected parody.

And the same approach applies for the particular medium that Novak chose for his parody: social media. Parody social media accounts allow satirists to mimic their targets in a forum that has become "the modern public square." *Packingham v. North Carolina*, 137 S. Ct. 1730, 1737 (2017). In one case, a woman created a parody social media account on Disqus (a social media site similar in functionality to Twitter) mocking Kathryn Knott, who had been charged in a high-profile assault case and who was the daughter of a local chief of police. *O'Donnell v. Knott*, 283 F. Supp. 3d 286, 291–92 (E.D. Pa. 2017). Using the profile name "Knotty is a Tramp" and an unflattering photo of Knott as a profile picture, the account posted comments under stories of the assault case such as "That's why I should

get off because daddy is a chief of police." *Id.* at 292, 297.

Social media may be a novel format and a new vehicle for parody, but the First Amendment principle remains the same: "speech is protected when, viewed in the appropriate context, it does not reasonably purport to state an actual fact about the subject of the parody." *Id.* at 299. Because it was "entirely plausible that a reasonable reader would *not* believe that Kathryn Knott would publicly" write the comments at issue, the court found that the comments were plausibly protected speech. *Id.* at 301–02 (emphasis in original).

In sum, First Amendment protection for parody is not diminished because some may be offended, because some may be fooled, or because the format is a novel one like social media. So long as a *reasonable* reader upon full reflection understands the speech to be a parody rather than a claim of fact, that speech is protected by the First Amendment.

II. THIS CASE PRESENTS THE OPPORTUNITY TO FURTHER CLARIFY THE DISTINCTION BETWEEN UNPROTECTED CONDUCT AND PROTECTED SPEECH

Unconstitutional speech restrictions do not always arise from laws that explicitly identify the speech to be regulated. When a law of general applicability that regulates conduct is applied to speech because of its content, this Court has consistently extended the protections of the First Amendment. *See* Eugene Volokh, *Speech as Conduct*, 90 Cornell L. Rev. 1277, 1287–94 (2005). This Court has rejected the argument that a statute can criminalize protected speech if it "*generally* functions as a regulation of conduct." *Holder v.*

Humanitarian L. Project, 561 U.S. 1, 27–28 (2010) (emphasis in original). As the Court explained, that argument "runs headlong into a number of [Supreme Court] precedents, most prominently *Cohen v. California*, [403 U.S. 15 (1971)]." *Id.*

"*Cohen* also involved a generally applicable regulation of conduct, barring breaches of the peace . . . . But when Cohen was convicted for wearing a jacket bearing an epithet," this Court "recognized that the generally applicable law was directed at Cohen because of what his speech communicated—he violated the breach of the peace statute because of the offensive content of his particular message." *Id.* at 28. This Court "accordingly applied more rigorous scrutiny and reversed his conviction." *Id.* (citing *Cohen*, 403 U.S. at 18–19, 26). *See also Cantwell v. Connecticut*, 310 U.S. 296, 309 (1940) (setting aside a breach of the peace conviction because the sole basis of the conviction was protected speech, notwithstanding the fact that "the effect of [the defendant's] speech upon his hearers" did in fact cause a disturbance); *Forsyth v. Nationalist Movement*, 505 U.S. 123, 134–35 (1991) ("Listeners' reaction to speech is not a content-neutral basis for regulation. . . . Speech cannot be financially burdened, any more than it can be punished or banned simply because it might offend a hostile mob.").

Here, contrary to the Sixth Circuit's conclusion that certain aspects of Novak's Facebook activity constituted unprotected activity as opposed to speech, all of Novak's activity on Facebook furthered and maintained his parody and is therefore protected speech. As a result, the First Amendment places limits on the government's ability to punish Novak for any confusion his activity caused, just as the First Amendment

placed limits on the government's ability to punish Cohen for any offense or disturbance his epithet caused. If this were not the case, then all manner of protected speech could be criminalized and punished without any need to satisfy First Amendment scrutiny, so long as the government could show that the speech "impaired police operations." *See* Volokh, *supra,* at 1288 ("[I]f generally applicable laws were immune from First Amendment scrutiny, then the government could suppress a great deal of speech that is currently constitutionally protected, including advocacy of illegal conduct, praise of illegal conduct, and even advocacy of legal conduct.").

The First Amendment's protections also extend to *intentional* violations of laws of general applicability. In *Hustler Magazine*, this Court determined that "speech that is patently offensive and intended to inflict emotional injury" is protected speech when aimed at a public figure. 485 U.S. at 50. The underlying tort of intentional inflection of emotional distress did not include speech as an element, so "[t]he publisher of *Hustler* . . . would have been equally guilty of intentional infliction of emotional distress if he had played a highly embarrassing joke" on his subject. Volokh, *supra*, at 1291. But because "the general law was applied to the magazine because of the content of its speech," *id.*, this Court rejected the argument that malicious intent was sufficient for a damages award to withstand constitutional scrutiny, observing that "many things done with motives that are less than admirable are protected by the First Amendment." *Hustler Mag.,* 485 U.S. at 53.

Similarly, in *Cohen*, the defendant "wore the jacket knowing that the words were on the jacket as a means

of informing the public of the depth of his feelings against the Vietnam War and the draft." 403 U.S. at 16. The lower court thus found that Cohen intentionally violated a provision of California law that prohibited "'maliciously and willfully disturb[ing] the peace or quiet of any neighborhood or person . . . by . . . offensive conduct.'" *Id.* The Supreme Court never disputed the finding that Cohen's violation was intentional, because even intentional violations do not forfeit First Amendment protections. "The only 'conduct' which the State sought to punish [was] the fact of communication" which rendered the application of the law to Cohen unconstitutional. *Id.* at 18.

Thus, even if Novak created his parody Facebook page with malicious intent, the existence of such intent would not place his parodic posts beyond the reach of the First Amendment. A state may not subject speech acts to a generally applicable rule of conduct without satisfying some level of First Amendment scrutiny.

Furthermore, any false statements of fact contained in Novak's Facebook posts do not place them categorically beyond the scope of the First Amendment. This Court "has never endorsed the categorical rule . . . that false statements receive no First Amendment protection." *United States v. Alvarez*, 567 U.S. 709, 719 (2012). "Even when considering some instances of defamation and fraud, moreover, [this] Court has been careful to instruct that falsity alone may not suffice to bring the speech outside the First Amendment. The statement must be a knowing and reckless falsehood." *Id.* The established exceptions to the First Amendment for verbal crimes like solicitation, fraud, blackmail, perjury, and certain threats

"are separately crafted rules that let the government punish speech in particular circumstances, based on arguments about the harm and value of speech that are specific to each exception." Volokh, *supra,* at 1338. Novak was not charged with any of these crimes, and none of these exceptions provide for categorical carve-outs from First Amendment protection for his posts.

Under this Court's precedents, Novak cannot be punished for his speech under the guise of regulating conduct or the effects of his speech. This is true even if he intended to violate the law and even if his speech contained false statements.

III. THIS CASE PRESENTS THE OPPORTUNITY TO CLARIFY THAT ONLINE PARODY CANNOT PROVIDE PROBABLE CAUSE FOR ARREST

Under the principles articulated in *Hustler Magazine*, all of Novak's Facebook activity served to further his parody and is thus protected speech. The Sixth Circuit's distinction between activity and speech leaves future speech vulnerable to being criminalized, runs contrary to *Hustler Magazine*, and calls for this Court's intervention.

Under Sixth Circuit precedent, it is clear that protected speech alone "cannot support a conviction and it cannot create probable cause." *Leonard v. Robinson*, 477 F.3d 347, 360 (6th Cir. 2007) (citing *Bachellar v. Maryland*, 397 U.S. 564, 570 (1970)). *See also Sandul v. Larion*, 119 F.3d 1250, 1256 (6th Cir. 1997) (holding that protected speech "cannot serve as the basis for a violation of any" municipal ordinance); *Swiecicki v. Delgado*, 463 F.3d 489, 499 (6th Cir. 2006) (If an officer

"based his decision on protected speech," he "lacked probable cause to arrest.").

The constitutional question, then, is whether a reasonable officer would believe that the law at issue is constitutional *as applied* to the speech at issue. *Leonard*, 477 F.3d at 359. It is not necessary, however, for a court to have previously found a *particular* law to be unconstitutional. Even where no court has weighed in, if a "person of reasonable prudence would be bound to see [the law's] flaws," then an officer cannot rely on that law to establish probable cause. *Id.* (quoting *Michigan v. DeFillippo*, 443 U.S. 31, 38 (1979)). *See also Hope v. Pelzer*, 536 U.S. 730, 741 (2002) ("[O]fficials can still be on notice that their conduct violates established law even in novel factual circumstances."). This Court's opinion in *Hustler Magazine* should have put any reasonable police officer on notice that Novak's parody was protected speech, which cannot be the basis of probable cause for an arrest.

The Sixth Circuit reasoned below that "though Novak's Facebook activity and its consequences form the sole basis for probable cause (since he didn't do anything else, like hack into the Department's page), it's *possible* that not all of his Facebook activity was protected speech." *Novak*, 33 F.4th 296 at 305 n.1 (emphasis added). The panel concluded that it was reasonable for the officers to view Novak's close mimicry of the official page, his "delet[ing] comments that let on his page wasn't the official one," and his decision to "cop[y] the official page's clarification post word for word" as unprotected conduct. *Id.*

This rationale sharply contradicts the Sixth Circuit's previous observation that "a parody need not spoil its own punchline by declaring itself a parody.

'Parody serves its goals whether labeled or not, and there is no reason to require parody to state the obvious (or even reasonably perceived).'" *Novak*, 932 F.3d at 428 (quoting *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 583 n.17 (1994)). While making this observation, the Sixth Circuit mused: "[i]magine if *The Onion* were required to disclaim that parodical headlines . . . are, in reality, false . . . . The law of parody does not require us to strain credulity so far." *Id.*

The Sixth Circuit had it right the first time. Just as *The Onion* is not required to give up the joke in the context of its own work, neither should an online parodist be required to allow others to ruin the joke within the parody-conveying medium. Indeed, requiring such disclosures would fundamentally alter the expression at issue and limit the freedom to parody protected by *Hustler Magazine*. Here, Novak's deletion of others' comments preserved and furthered his parody, and, as a result, his actions constituted protected speech rather than unprotected activity.

Similarly, Novak's decision to copy the Parma Police's clarification post verbatim also falls within the ambit of protected speech because the surrounding context hinted at the page's satirical nature. "[S]atire or parody must be assessed in the appropriate context . . . . In light of the special characteristics of satire, . . . what a reasonable reader would have understood is more informed by an assessment of her well-considered view than by her immediate yet transitory reaction." *Farah*, 736 F.3d at 536 (internal quotations omitted).

By the time the Parma Police Department posted its clarification, there were two sets of Facebook posts for a reasonable reader to consider. The first set was

the department's official page, which possessed the "Police Station-Government Organization" designation from Facebook as well as the "blue checkmark" indicating that the identity of the account holder had been verified with Facebook. Pet. App. at 30a–31a. These Facebook-provided designations, especially the "blue checkmark," were readily apparent to users of the site. Additionally, the official account had a cumulative history that extended beyond the prior twelve hours and contained all of the Department's prior Facebook communications.

The second set came from Novak's parody account, which lacked the Facebook-provided designations and had an account history comprising only six posts over the preceding twelve hours. Pet. App. at 30a–31a. These earlier posts: 1) advertised a written exam to join the police force that simultaneously "strongly encourage[ed] minorities not to apply" while noting that the Parma Police Department was an equal opportunity employer; 2) advertised a "Pedophile Reform event" at which there would be a "'No means no' station filled with puzzles and quizzes," the successful completion of which would result in removal from the sex offender registry and an honorary deputization as a police officer; 3) announced a new "temporary law" promulgated by the Department with the aim of "attempt[ing] to have the homeless population leave our city due to starvation"; 4) offered "free abortions to teens using an experimental technique discovered by the Parma Police Department" that would take place in a van outside of a local grocery store; 5) provided notice of an alleged robbery that took place at a Subway restaurant that the department had "forgotten to post" about that described a white male suspect but instead sought information about an "unrelated

African American Woman" depicted in security footage "who was seen loitering for over 20 minutes despite [the Subway's] no loitering policy"; and 6) declared an "official stay inside and catch up with family day" to "reduce future crimes" during which anyone found outside would be arrested. Pet. App. 139a–141a; Brief for Petitioner, at 4–5, Novak v. City of Parma, 33 F.4th 296 (6th Cir. 2022) (No. 21-3290). A reasonable reader viewing these posts in context would be immediately struck by the unserious nature of the posts.

Novak's final act—his cut and paste of the Department's clarification—was posted after the original and as a follow-up to the posts described above. Just as the D.C. Circuit recognized that a reasonable reader who possessed a "baseline of knowledge" would use relevant context to distinguish facts from satire in the context of a political blog, in this case, all of the aforementioned context was available to a reasonable reader with a basic understanding of Facebook. That reader's "well considered view" would have incorporated the knowledge of these posts, even if the obviousness of Novak's parody wasn't already apparent. *Farah*, 736 F.3d at 536–38.

Ultimately, the totality of Novak's Facebook activity was protected speech under the principles of this Court's opinion in *Hustler Magazine*. Everything Novak did furthered the expressive goal of making his page the complete parody he wanted it to be. There was no separate conduct for which he could or should have been arrested.

CONCLUSION

For the foregoing reasons, and those described by the Petitioner, this Court should grant the petition.

Respectfully submitted,

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