IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NOS. 07-4465 AND 07-4555

JUSTIN LAYSHOCK, a minor, by and through his parents; DONALD LAYSHOCK; CHERYL LAYSHOCK, individually and on behalf of their son,

Appellee/Cross-Appellant,

v.

HERMITAGE SCHOOL DISTRICT; KAREN IONTA, District Superintendent; ERIC W. TROSCH, Principal Hickory High School; CHRIS GILL, Co-Principal Hickory High School, all in their official and individual capacities,

Appellant/Cross-Appellee.

REPLY BRIEF OF APPELLANT/BRIEF OF CROSS-APPELLEE

Appeal from the judgment and the Order of the United States District Court for the Western District of Pennsylvania dated November 14, 2007 at Docket No. 06-cv-00116

Anthony G. Sanchez, Esquire
PA I.D. No. 55945
Christina Lane, Esquire
PA I.D. No. 83677
ANDREWS & PRICE
1500 Ardmore Blvd., Suite 506
Pittsburgh, PA 15221
(412) 243-9700

Attorneys for Appellant/Cross-Appellee,
Hermitage School District

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I. THE DISTRICT COURT ERRED IN GRANTING JUSTIN'S MOTION FOR SUMMARY JUDGMENT AND FINDING A VIOLATION OF THE FIRST AMENDMENT.

The Layshocks' analysis is flawed due to their reliance on an overly simplistic and restrictive geographic approach for determining what activity can be properly regulated by a school district. For the reasons outlined more fully in their principal brief, the School District maintains that Justin Layshock's expression constituted on-campus conduct. Justin unquestionably initiated the "speech" on campus by misappropriating a picture of Prinicpal Trosch from the school's web site and creating an unauthorized and vulgar profile of the Principal that was directed to the school community.

While the Layshocks cannot deny that Justin initiated the unauthorized and defamatory conduct by taking a picture of the Principal from school property, they attempt to oversimplify the School District conclusion that Justin engaged in on campus conduct to the point of absurdity. The Layshocks seem to suggest that the School District erroneously contends that Justin's misappropriation of the Principal's picture alone constitutes on-campus speech meriting discipline, comparing this conduct with the innocuous act of downloading a lunch menu from the school's web site. This is not the School District's contention.

Justin initiated the conduct on school property by misappropriating the picture from the School District's web site. It didn't matter whether or not he used the photograph – or a lunch menu, for that matter – to engage in harassing and defamatory conduct: He was on-campus when he was on the web site and took the picture. A school web site is now as much a part of a campus as an elementary building. But Justin was not disciplined for merely being on campus – he was disciplined for harassing conduct and for using vulgarity and profane language, among other things, which began on campus. This is wholly appropriate in light of the teachings of the United States Supreme Court in Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675 (1986). Given the nature of the internet, it is inconsequential where he was located physically at the time he took the picture from the School District web site.

Moreover, the School District properly punished Justin for engaging in vulgar speech that was directed towards the school community and the Principal and accessed at the school by Justin. Despite the Layshocks' protestations to the contrary, the Pennsylvania Supreme Court in J.S. v. Bethlehem Area School District, 569 Pa. 638, 807 A.2d 847 (2002), faithfully followed the teachings of the United States Supreme Court in Fraser and Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969) and declared that "where speech that is aimed at a specific school and/or its personnel is brought onto the school campus or accessed

at school by its originator, the speech will be considered on-campus speech." Id. at 668. Faithfulness to Tinker and Fraser does not require the robotic submission to the Layshocks' overly restrictive view of what constitutes "on-campus speech" and what speech may be regulated by school districts. Such an approach ignores the realities of today's society.

The approach espoused by the Layshocks is simply not useful for thoughtful analysis of student speech. As noted by the Second Circuit Court of Appeals in their recent decision in Doninger v. Niehoff, __ F.3d ___, ___ (2d Cir. 2008), 2008 WL 2220680 at *5 (citation and brackets omitted), "territoriality is not necessarily a useful concept in determining the limit of school administrators' authority." "[T]his observation is even more apt today, when students both on and off campus routinely participate in school affairs, as well as in other expressive activity unrelated to the school community, via blog postings, instant messaging, and other forms of electronic communication." Id.

In Doninger, the Second Circuit Court of Appeals recognized the need to look beyond territoriality and found no violation of a student's First Amendment rights under circumstances remarkably similar to those presented in this case. While at home, the Appellant-plaintiff student in Doninger, a junior in high school, had posted a message on her publicly accessible blog. In this message, she complained that a school activity was cancelled "due to the douchbags in central

office . . . ." Id. at 1. After reviewing the blog, the school principal concluded that the student's conduct "had failed to display the civility and good citizenship expected of class officers" and precluded her from running for senior class president. Id. at 3.

The student's parent filed a motion for a preliminary injunction, alleging a violation of her daughter's First Amendment rights. The motion was denied by the Connecticut district court, which had concluded that Doninger had failed to show a sufficient likelihood of success on the merits.

The Second Circuit Court of Appeals affirmed the district court's denial of the motion for a preliminary injunction. After initially noting that students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate, the Court in Doninger recognized Fraser and explained that "[v]ulgar or offensive speech – speech that an adult making a political point might have a constitutional right to employ – may legitimately give rise to disciplinary action by a school, given the school's responsibility for 'teaching students the boundaries of socially appropriate behavior.'" Id. at 5.

The Court in Doninger initially explained that "[i]f [the student] had distributed her electronic posting as a handbill on school grounds" the case would have triggered a Fraser-type analysis: under Fraser, a school may regulate "offensively lewd and indecent speech in furtherance of its important mission to

inculcate the habits and manners of civility." Id. at 6 (citations and quotation marks omitted). Relying on its prior decision in Wisniewski v. Bd. of Educ., 494 F.3d 34 (2d. Cir 2007), however, the Doninger Court found it unnecessary to engage in the Fraser analysis: the school discipline was clearly permissible under Tinker due to the risk of a substantial disruption.[1] In Wisniewski, the Second Circuit Court of Appeals had determined that "a student [can] be disciplined for expressive conduct, even conduct occurring off school grounds, when this conduct would foreseeably create a risk of substantial disruption within the school environment, at least when it was similarly foreseeable that the off-campus expression might also reach campus." Id. at 6 (citation and quotation marks omitted).

While the School District believes that Justin's "speech" was expressed on-campus for the reasons outlined in their principal brief, the School District believes that review of the Second Circuit's analysis in Wisniewski and Doninger also demonstrates why the District could punish Justin for his vulgar and offensive language even if it is deemed to have occurred off-campus. Notwithstanding the Layshocks' contentions to the contrary, the School District does not seek some sort of the broad and unchecked authority "to censor student's speech beyond the

[1] As outlined in more detail in the School District's principal brief, Tinker involves political speech; Fraser involves vulgar and offensive speech. Tinker also teaches that a school may regulate speech where it is foreseeable that the speech could create a risk of substantial disruption within the school environment.

schoolhouse gate into the home and community." It is equally absurd to contend that the School District seeks to empower school officials to engage in some sort of wide-ranging content and viewpoint censorship or to have the same broad authority to punish student speech outside of the school as it has inside the school. Instead, the School District is attempting to meet its charge to inculcate the habits and manners of civility and manage matters of legitimate concern to the school community. Simply put, the School District properly disciplined Justin for engaging in vulgar speech directed at a school administrator where it was foreseeable that the expression would reach campus. The need to address student conduct whose genesis was outside of the actual physical school campus is nothing new and is part of a school's responsibility for teaching students the proper boundaries of socially acceptable behavior. See Shaw v. Corry Area School District, No. 10795-95, School Law Information Exchange, Vol. 32, No. 95 (C.C.P. Erie Co. 1995)(See Appendix at A.964-967)(Erie County Court of Common Pleas upheld expulsion of several students for throwing eggs at a teacher's house outside of normal school hours); and Giles v. Brookville Area School District, 669 A.2d 1070 (Pa. Cmwlth. 1995) (Commonwealth Court of Pennsylvania upheld student expulsion from school for selling drugs even though the actual transfer of drugs and money occurred of the school grounds).

It was extremely foreseeable that Justin Layshock's "speech" would reach campus. As outlined in more depth in the School District's principal brief, Justin misappropriated Principal Trosch's picture from the District web site, created a MySpace profile with the picture and a great deal of defamatory language and then sent the profile to some MySpace friends, school students. At the time he created the profile, Justin knew that there was a buzz in the school about unauthorized profiles of the Prinicipal. He also accessed the profile at school. In light of these facts, it would not be unreasonable to conclude that it was in fact Justin's intent for the profile to reach the School District community.

In the Wisniewski and Doninger cases, the Second Circuit Court of Appeals has remained faithful to Supreme Court precedent without being stuck in the quagmire of territoriality. The Second Circuit has not given school districts a broad and unchecked authority to engage in censorship of speech beyond the schoolhouse gate. Instead, the Court has simply recognized the applicability of Supreme Court cases addressing student expression to conduct occurring off of the physical school grounds in very limited circumstances. The Layshocks apparently disagree, contending that the rationale that justifies curtailing student's speech in school disappears if the student engages in such speech off of the School District's formal physical campus. Thoughtful consideration reveals the opposite to be true. To inculcate the habits and manners of civility and manage matters of legitimate

concern to the school community, it is necessary for school administrators to be empowered to render discipline when it is foreseeable that such "off campus" speech will reach campus or when such speech is directed towards the school community and accessed at school. Unlike in the time of Tinker (1969) and Fraser (1986), students now regularly participate in school-related and directed expressive activities via the internet. Simply put, a school cannot meet this charge if students can direct such "speech" to the school district community by utilizing the internet as a way around the reach of the school district. The strict territorial approach espoused by the Layshocks is not based in the reality of the present times and should be rejected by this Court.[2]

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[2] The Layshocks seem to suggest that the School District has acknowledged that no facts exist which might have reasonably have led school authorities to forecast a substantial disruption or material interference with school activities. Such is not the case. For reasons outlined throughout the School District's briefs, it was reasonably foreseeable that Justin's profile would reach school property. In fact, Justin forwarded the profile to students at the time of its creation and viewed the profile at school. It was also foreseeable that the school operations might well be disrupted by the need to address the defamation of the Principal with students and staff and to attempt to restrict access to the profile on School District computers.

Moreover, the School District actually experienced a substantial disruption. Technical Director Frank Gingras, for instance, spent 25% of his time – conservatively – trying to resolve the access issue. (A. 191). This took Gingras away from several other important duties during the pertinent time period. (A. 191-192; A. 289). Superintendent Ionta, Principal Trosch and Co-Principal Gill also spent a great deal of time dealing with problems relating to the profiles and student access to the profiles – taking away from their responsibilities as administrators. (See the Statement of Facts section of the School District's principal brief). This was a time when the administrators needed to focus on the

II. JUSTIN'S SPEECH IS DEFAMATORY AND IS NOT PROTECTED AS PARODY.

The Layshocks incorrectly suggest that Justin's defamatory and unauthorized profile of Principal Trosch is unquestionably protected by the First Amendment as "parody." The Layshocks rely on numerous cases involving public officials and public figures. In doing so, the Layshocks erroneously assume that defamation claims of private individuals on matters of private concern should be analyzed in the same fashion as claims brought by public officials and public figures. This is not the law of this Circuit and does not make sense.

This Court has never adopted the Layshocks' position and declared that the First Amendment "parody" exception extends to statements about private individuals on matters of private concern. The adoption of this position would be inconsistent with United States Supreme Court precedent. "It is speech on matters of public concern that is at the heart of the First Amendment's protection." Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 472 U.S. 749, 758-59 (1985) (citations and quotation marks omitted). When an individual publishes defamatory statements that do not involve a public figure and a matter of public concern, however, the imposition of liability for such private defamations "does not abridge

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School District budget, professional development and teacher observations. In all, the School District was required to invest money and a significant amount of time. (A. 290-291).

the freedom of public speech or any other freedom protected by the First Amendment." See N.Y. Times. Co. v. Sullivan, 376 U.S. 254, 301-02 (1964).

This Court should not adopt the position endorsed by the Layshocks because the concerns underlying the reason for the exception do not exist with regard to claims brought by private individuals on matters of private concern. While the exception makes sense for public officials and public figures – by the very nature of their positions or actions, they place themselves in the public eye – the same is not true for private individuals on matters of private concern. Similarly, Justin's defamatory speech merits no protection as the type of speech which contributes to the market place of ideas. His speech is of no redeeming value. As our Supreme Court explained in Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 676, 775 (1986), "[w]hen the speech is of exclusively private concern and the plaintiff is a private figure . . . the constitutional requirements do not necessarily force any change in at least some of the features of the common-law landscape."

The factors that weigh in favor of the application of the parody exception are not present here. Principal Trosch was not a public official, a public figure or a limited purpose public figure. He never thrust himself into the forefront of a public controversy. Instead, he was thrust into the public spotlight when Justin published an unauthorized and defamatory MySpace profile of him. This public humiliation was furthered by the filing of the underlying lawsuit by the Layshocks. In any

event, the rationale for the exception for public figures and officials does not exist with regard to private individuals on matters of private concern.

COUNTER-STATEMENT OF THE ISSUES OF CROSS-APPELLEE

I. THE LOWER COURT PROPERLY DETERMINED THAT THE PARENTS, DONALD AND CHERYL LAYSHOCK, FAILED TO ESTABLISH A VIOLATION OF A RIGHT SECURED BY THE CONSTITUTION OF THE UNITED STATES.

SUMMARY OF ARGUMENT OF CROSS-APPELLEE

Mr. and Mrs. Layshock assert that the School District, by disciplining Justin, unconstitutionally "interfered" with their "rights as parents to determine who best to raise, nurture, discipline and educate their children." The lower court correctly determined that there was no record evidence of interference nor was there any case law to support parents' claims separate from Justin's First Amendment claim.

The Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care custody and control of their children. Mr. and Mrs. Layshock failed to introduce any evidence where the School District interfered with their right to make decisions regarding the discipline they chose to impose or not impose in their home. The parental rights doctrine has not been extended to apply to situations where parents disagree

with the discipline imposed by the School District. The majority of the cases relied upon by Mr. and Mrs. Layshock involve the parental right to determine the manner of education provided to a child, however the right to dictate the manner of education can still be proscribed through the regulatory power of the state regarding public education. Parents may have a fundamental right to direct the upbringing and education of their children, however, this right does not extend to a parent's objection to school discipline. It has long been recognized that parental rights are not absolute in the public school context and can be subject to reasonable regulation.

ARGUMENT OF CROSS-APPELLEE

I. THE LOWER COURT PROPERLY DETERMINED THAT THE PARENTS, DONALD AND CHERYL LAYSHOCK, FAILED TO ESTABLISH A VIOLATION OF A RIGHT SECURED BY THE CONSTITUTION OF THE UNITED STATES.

A. THE PARENTAL RIGHTS DOCTRINE IS NOT WITHOUT LIMITATIONS.

In every Section 1983 action, one crucial element is whether the Plaintiff has been deprived of some federally secured constitutional or statutory right by someone acting under "color of state law." See Lugar v. Edmondson Oil Co. Inc., 457 U.S. 922 (1982). Section 1983 does not create any new substantive rights, but instead provides a remedy for violations of a federal constitutional or statutory right. Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979).

The Constitution does not contain an explicit right of parents to discipline their children. The Meyer, Pierce and Yoder trilogy of Supreme Court cases is the genesis of Mr. and Mrs. Layshock's argument that the School District infringed upon their right to direct and control the upbringing of their children. It is well-established that the fundamental right of parents to direct the upbringing and education of their children is protected by the Due Process Clause of the Fourteenth Amendment. Troxel v. Granville, 530 U.S. 57, 65 (2000)(recognizing that a parent's due process right in the care, custody and control of her children is "perhaps the oldest of the fundamental liberty interests recognized by [the Supreme] Court," and striking down Washington law giving grandparents rights of access to children in conflict with mother's parental rights); Wisconsin v. Yoder, 406 U.S. 205, 232 (1972) (finding that "primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition," and holding that Wisconsin could not compel Amish children to attend school beyond the age of 14); Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510, 534-35, (1925) (striking down Oregon law that required parents to send their children to a public school, rather than Roman Catholic parochial school, for a period of time because it "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control"); Meyer v. Nebraska, 262 U.S. 390, 400,

(1923) (recognizing the right of "the parent to give his children education suitable to their station in life," including right to provide education in the family's language, German).

As with all constitutional rights, however, the right of parents to make decisions concerning the care, custody and control of their children is not without limitations. In Prince v. Massachusetts, 321 U.S. 158 (1944), the Supreme Court recognized that parents' liberty interest in the custody, care and nurture of their children resides first in the parents but does not reside there exclusively, nor is it "beyond regulation in the public interest." Prince, 321 U.S. at 166. For example, the state, as "*parens patriae*," may restrict parents' interest in the custody, care, and nurture of their children "by requiring school attendance, regulating or prohibiting the child's labor and in many other ways. Id. See also Runyon v. McCrary, 427 U.S. 160, 177 (1976) (recognizing no parental rights to educate children in private segregated schools); Norwood v. Harrison, 413 U.S. 455, 461-62 (1973) (discussing the limited scope of Pierce); Hooks v. Clark County Sch. Dist., 228 F.3d 1036, 1042 (9th Cir. 2000) (right to educate children at home is subject to reasonable regulation by the state), cert. denied, 532 U.S. 971 (2001); Hutchins v. District of Columbia, 188 F.3d 531, 540-41 (D.C. Cir. 1999) (upholding a municipality's curfew ordinance that was applicable only to minors); Murphy v. State of Arkansas, 852 F.2d 1039, 1044 (8th Cir. 1988) (statute

regulating home schooling does not violate parental right to direct child's education).

In the public school context, the courts have recognized the constitutionality of a wide variety of state actions that intrude upon the liberty interest of parents in controlling the upbringing and education of their children. See, e.g., Fields v. Palmdale Sch. Dist., 427 F.3d 1197, 1207 (9th Cir. 2005) (holding parents have no due process right to override determinations of public schools as to the information to which their children will be exposed while enrolled as students); Blau v. Fort Thomas Public Sch. Dist., 401 F.3d 381, 395 (6th Cir. 2005) (while parents' right to make decisions concerning the care, custody, and control of their children extends to the public school setting, "it is not an unqualified right;" holding parent did not have a fundamental right to exempt his child from school dress code); Littlefield v. Forney Indep. Sch. Dist., 268 F.3d 275, 288-91 (5th Cir. 2001) (uniform policy did not implicate parents' fundamental right in the upbringing and education of their children and was justified by a rational basis); Jensen v. Reeves, 45 F.Supp.2d 1265 (D. Utah 1999), aff'd, 3 Fed. Appx. 905 (10th Cir. 2001) (parents' claim that school officials interfered with their right to direct the care and upbringing of their child by suspending their child for misconduct failed because actions of the school officials were rationally related to the legitimate state purpose of disciplining students who violate school rules).

In fact, there may be circumstances in which school authorities, in order to maintain order and a proper educational atmosphere, may impose standards of conduct on students that differ from those approved by some parents. See, e.g., Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 664-65 (1995) (allowing participation in school athletics to be conditioned upon testing for illegal drugs); Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273 (1988) (permitting censorship of school-sponsored publication); New Jersey v. T.L.O., 469 U.S. 325, 347-48 (1985) (upholding warrantless search of student's belongings).

Likewise, this Court has recognized that in the public school context, parental rights are not absolute and can be subject to reasonable regulation. In C.N. v. Ridgewood Bd. of Educ., 430 F.3d 159 (3d Cir. 2005), the Court noted that "The Supreme Court has never been called upon to define the precise boundaries of a parent's right to control a child's upbringing and education. It is clear, however, that the right is neither absolute nor unqualified." Ridgewood Bd. of Educ., 430 F.3d at 182. The Court went on to state that "Courts have held that in certain circumstances the parental right to control the upbringing of a child must give way to a school's ability to control curriculum and the school environment." Id., citing, Swanson v. Guthrie Indep. Sch. Dist. No. I-L, 135 F.3d 694 (10th Cir. 1998) (school policy against part-time attendance did not violate parent's right to direct upbringing of child); Herndon v. Chapel Hill-Carrboro City Bd. of Educ., 89

F.3d 174 (4th Cir. 1996) (mandatory student participation in community service program did not violate parents' right to direct the upbringing of their child), cert. denied, 519 U.S. 1111 (1997); Immediato v. Rye Neck Sch. Dist., 73 F.3d 454 (2d Cir. 1996) (same), cert. denied, 519 U.S. 813 (1996); Brown v. Hot, Sexy and Safer Prods., Inc., 68 F.3d 525, 533 (1st Cir. 1995) (finding in context of plaintiff parents' claim that mandatory student attendance at sexually explicit AIDS awareness assembly that plaintiff parents had "failed to demonstrate an intrusion of constitutional magnitude" on the right to direct the upbringing and control of child), cert. denied, 516 U.S. 1159 (1996).

As the United States Court of Appeals for the Sixth Circuit explained in Blau, supra, "While parents may have a fundamental right to decide *whether* to send their child to a public school, they do not have a fundamental right generally to direct *how* a public school teaches their child. Whether it is the school curriculum, the hours of the school day, school discipline, the timing and content of examinations, the individuals hired to teach at the school, the extracurricular activities offered at the school or, as here, a dress code, these issues of public education are generally 'committed to the control of state and local authorities.'" Blau, 401 F.3d at 395-96 (emphasis in original, underscore supplied). Thus, "once parents make the choice as to which school their children will attend, their fundamental right to control the education of their children is, at the least,

substantially diminished." Fields, 427 F.3d at 1206. "[T]he *Meyer-Pierce* right does not extend beyond the threshold of the school door." Fields, 427 F.3d at 1207.

B. THE SCHOOL DISTRICT'S ACTION OF DISCIPLINING JUSTIN DID NOT INTERFERE WITH THE PARENTS' RIGHT TO DIRECT THE UPBRINGING OF THEIR CHILD.

Even if this Court is willing to accept that Mr. and Mrs. Layshock have established a constitutional right to be the sole arbiters of discipline of their child the lower court correctly determined that the Layshocks failed to assert a deprivation of this right. Mr. and Mrs. Layshock's parental rights claim is foreclosed by their inability to prove that the School District had a direct and substantial interference with this right. There is no evidence that the School District interfered directly or substantially with the discipline imposed in the Layshock home. The lower court found that the Layshocks failed to prove any type of interference with their right to direct the upbringing of their child, Justin. Layshock v. Hermitage School District, 496 F.Supp.2d 587, 606 (W.D. Pa. 2007). What was alleged is that they do not agree that the School District had the right to punish Justin. Absent from the record was any directive or choice put before the Layshocks regarding their freedom to decide whether or not to discipline Justin's behavior in creating an offensive, unauthorized profile of Principal Trosch. There was absolutely no claim that the School District directly and substantially

interfered with anything having to do with the decisions made in the Layshock home. Mr. and Mrs. Layshock have been and are currently free to choose to discipline their children, and yes to even condone Justin's offensive, unauthorized profile of Principal Trosch.

Mr. and Mrs. Layshock allege that the School District's punishment of Justin interfered with and usurped their constitutional rights as parents to direct the upbringing of their child. The crux of their argument is that the school discipline imposed interfered with their home discipline and that is was beyond the jurisdiction of the School District to punish Justin. The School District never restricted, questioned or challenged the discipline imposed in the Layshocks' home. As argued in Appellant's principal brief, the School District appropriately disciplined Justin for creating an offensive, unauthorized profile of a School District official that was accessed by Justin at the School District and whose message was particularly directed at the School District community. Any alleged burden to Mr. and Mrs. Layshock in that they perhaps condoned Justin's behavior is incidental and does not rise to the level of a violation or interference with a constitutional right.

There is no fundamental right of parents to be the exclusive disciplinarian of their children, either independent of their right to direct the upbringing and education of their children or encompassed by it. Simply stated, there is no

constitutionally protected right from interference with discipline imposed by parents. The type of interference that Mr. and Mrs. Layshock assert - school officials' punishment of Justin for creating the offensive unauthorized profile specifically targeted at the School District community - does not fall within the scope of actions that constitutionally infringe on parents' right to direct, *i.e.* make decisions concerning the upbringing of their children.

Mr. and Mrs. Layshock merely assert that the School District's punishment of Justin interfered with the discipline imposed at home. They claim that the School District did not have jurisdiction to punish him which is essentially a re-dressing of Justin's First Amendment claim, *i.e.* whether or not the School District has the authority to punish Justin for creating the profile of Principal Trosch with the intended audience of the School District community. The Layshock parents argue that their right to choose to condone and/or discipline the off-campus behavior has been recognized as fundamental. While parents may have a fundamental liberty interest in their child's upbringing, this interest cannot usurp the state's role in determining appropriate behavior and the role of determining appropriate punishment. The type of interference alleged that the Layshock parents disagreed with the discipline is not the type of circumscribed interference prohibited by the Constitution. The Layshock's were free to choose to discipline or to condone the behavior of Justin and to assist him in championing his free

speech rights as evidenced by the underlying lawsuit. There is no evidence of compulsion, coercion or constraint in how the Layshock family responded to their son's activity of creating a profile of his High School Principal.

CONCLUSION

For the reasons set forth above, Appellant/Cross-Appellee respectfully requests that the decision of the lower court be affirmed and the appeal dismissed.

Respectfully submitted,

ANDREWS & PRICE

By: /s/ Christina Lane, Esquire
Anthony G. Sanchez Esquire
PA ID No. 55945
Christina Lane, Esquire
PA ID No. 83677
1500 Ardmore Boulevard
Suite 506
Pittsburgh, PA 15221
(412) 243-9700
Attorneys for Appellant/Cross-Appellee

CERTIFICATE OF ADMISSION

The attorneys signing below hereby certify that they are admitted to practice before the United States Court of Appeals for the Third Circuit.

/s/ Christina Lane, Esquire
Anthony G. Sanchez, Esquire
Christina Lane, Esquire

CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 32(a)(7)(B)(i)

I hereby certify that this Reply Brief of Appellant/Brief of Cross-Appellee contains 4,967 words as calculated by the word count feature on the word processing program used to prepare this Brief, and therefore contains less than 14,000 words.

/s/ Christina Lane, Esquire
Anthony G. Sanchez, Esquire
Christina Lane, Esquire

CERTIFICATE OF IDENTICAL COMPLIANCE OF BRIEFS

I hereby certify that the text of the PDF file and Hard copies of this Brief are identical.

/s/ Christina Lane, Esquire
Anthony G. Sanchez, Esquire
Christina Lane, Esquire

CERTIFICATE OF VIRUS CHECK

I hereby certify that a virus check was performed on the PDF and Hard Copies of this Brief, using Symantec Anti-Virus software, and that no virus was indicated.

/s/ Christina Lane, Esquire
Anthony G. Sanchez, Esquire
Christina Lane, Esquire

CERTIFICATE OF SERVICE

I hereby certify that ten (10) true and correct hard copies of the foregoing **REPLY BRIEF OF APPELLANT/BRIEF OF CROSS-APPELLEE** were sent to the Clerk's office on the same day as the E-Brief was transmitted, and two (2) true and correct Hard Copies were served on this 26th day of June, 2008, via First Class U.S. Mail, upon the following:

Witold J. Walczak, Esquire
ACLU of Pennsylvania
313 Atwood Street
Pittsburgh, PA 15218

Kim M. Watterson, Esquire
Richard T. Ting, Esquire
Reed Smith
435 Sixth Avenue
Pittsburgh, PA 15219

Sean A. Fields, Esquire
PSBA
P.O. Box 2042
Mechanicsburg, PA 17055

Joanna J. Cline, Esquire
Pepper Hamilton LLP
18th & Arch Streets
3000 Two Logan Square
Philadelphia, PA 19103

John W. Whitehead, Esquire
The Rutherford Institute
1440 Sachem Place
Charlottesville, VA 22901

/s/ Christina Lane, Esquire
Anthony G. Sanchez, Esquire
Christina Lane, Esquire