

No. 23-293

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 BABYLON BEE* AS AMICUS
CURIAE IN SUPPORT OF RESPONDENTS**

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INTEREST OF THE AMICUS CURIAE¹

The Babylon Bee is the world's most popular news site, bringing deadly serious, 100% accurate stories to the public's attention since 2016. *The Bee* has inspired many imitators such as *The Borowitz Report*, *Mad Magazine*, and a rival news organization that unfortunately filed in support of the petitioner in this case—*The Onion*—often described as a less popular, secular knock-off of *The Babylon Bee*.

Since its inception six years ago, *The Babylon Bee* has been cited in congressional hearings, tweeted out by the once-and-future President of the United States, Donald Trump, and shared by millions of confused grandmothers on Facebook. *The Bee* receives tens of millions of visits every month, boasts millions of followers on popular social media sites like Facebook and Twitter—and also Truth Social—and has published over 10,000 articles containing a total of no fewer than two jokes.

Yet *The Babylon Bee* has faced tremendous opposition in its brief life: The site's account was unceremoniously banned from Twitter merely for honoring a public official with a prestigious award.² CNN's Brian

¹ No counsel for any party authored this brief in whole or in part, and no individual or entity other than *The Babylon Bee* and its counsel made any monetary contribution intended to fund the preparation or submission of this brief. Timely notice of intent to submit this brief has been provided as required, and all necessary consents have been obtained.

² Ariel Zilber, *Twitter Suspends Babylon Bee for Naming Rachel Levine "Man of the Year,"* N.Y. Post, Mar. 21, 2022, <https://tinyurl.com/4nxfyb2a>. See also Tyler Huckabee, *The Babylon Bee*

Stelter called it “fake news,”³ Snopes has fact-checked dozens of its articles⁴ and incorrectly and libelously labeled them “false,” and thousands of liberals have left mean comments on its Facebook page.⁵

Thus, *The Babylon Bee* knows what it’s like to have people be mean to you. It files this brief in support of the respondents in this case, as it is in the editorial staff’s direct interest to make sure that people cannot make satirical or sarcastic critiques of, publish parody pages about, or post mean Facebook comments concerning, *The Babylon Bee*.

Because it really hurts their feelings.

* * *

Is Refusing to Delete the Post that Got Their Account Locked on Twitter, Relevant Magazine, Mar. 21, 2022, <https://tinyurl.com/55b6kp3s>.

³ *CNN’s Brian Stelter: The Onion Is a Great Parody Site, but the Babylon Bee Is Straight-Up Fake News*, Twitchy, July 30, 2019, <https://tinyurl.com/dnma368j>.

⁴ Kyle Mann, *A “Fact Checker” Declares War on Satire*, Wall Street Journal, Aug. 21, 2019, <https://tinyurl.com/2zzsabsf>.

⁵ *See, e.g., Liberals Are Angry America Still Exists*, West Dakota Times, July 4, 2022, <https://tinyurl.com/2y9x6zyc>.

INTRODUCTION AND SUMMARY OF ARGUMENT

When the staff of *The Babylon Bee* were alerted to the pendency of this case, they immediately realized the importance of filing a brief in support of the Parma Police Department and City of Parma. It is essential to protect those with coercive power who wield it for self-preserving ends. Plus, *The Babylon Bee* just really likes police officers, what with their badges and guns and stuff. They're so cool.

Moreover, deeper philosophical and constitutional issues are also at stake:

First, abuse of the First Amendment should not be tolerated. The petitioner seeks to turn that provision into a "living" amendment stretched beyond its original meaning to include humor and laughter. This is dangerous, as it is clear from a close reading of the Constitution that laughter is never explicitly mentioned. And that is a slippery slope we do not want to slide down. Who knows what other kinds of speech might eventually be protected by the Bill of Rights? Speech from people we disagree with?

Second, our society can only function if people get their information from a tightly controlled source that has never lied to us, like the government or the police. Then they can know it's 100% accurate. Petitioner's case threatens this status quo.

Third, the feelings of those who are being made fun of are rarely considered in free-speech cases like this one. In other words, when assessing whether particular speech is protected by the First Amendment,

courts must also consider whether that speech hurts someone's feelings.

Fourth, it is impossible for us to function as citizens and humans if we suspect someone might be snickering at us behind our backs. That individuals might be allowed to use frivolous lawsuits to harass those who protect society from this sort of collapse is too much to bear.

ARGUMENT

I. When the First Amendment Was Written, Jokes Hadn't Been Invented Yet.

The petitioner in this case, Anthony Novak, appeals to the First Amendment. But this argument does not hold water, for the Founding Fathers never intended for the First Amendment to protect jokes. Because jokes had not been invented yet. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1926 (2021) (courts must determine “original public meaning” of the constitution).

Historians mostly agree that the first joke was told by Bob Joke of Toledo, Ohio, in 1927, well over a decade after the Constitution was written. It was, “A copper walks into a speakeasy, and the bartender says, ‘Get your own giggle water, kiddo!’” Its meaning has been lost to the ages.

Clearly, then, unless James Madison had a time machine, the framers of the Constitution only ever intended the First Amendment to cover serious talk and not jokes. See Philip McCracken, *Humor in America: A Sourcebook* (1st ed. 1988) at 89 (“James Madison

hated happiness.”). Madison was thinking the First Amendment would cover speech that existed in his day, such as, “Tally ho, old boy, fetch me that powdered wig,” and, “The Johnson farmstead acquired three new chickens last fortnight.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 154 (1803). He was not thinking of parody pages of local police departments, memes featuring pictures of Minions, or jokes about the relative size and obesity problems of your mother.

This is, of course, not to even mention that the internet itself hadn’t been invented yet. Al Gore wasn’t even born until 1948.

In short, the First Amendment cannot cover Mr. Novak’s disparaging parody of the fine, upstanding police officers in this case, because he did not write it with quill and ink by the light of a lamp fueled by whale oil. Much as how the Second Amendment was only intended to protect the citizenry’s right to bear muzzle-loading muskets and not fully semi-automatic 30-magazine-clip assault pistol grip firearms, so the First Amendment cannot be applied to parody Facebook pages. See *District of Columbia v. Heller*, 554 U.S. 570, 685 (2008).

II. Parody Is Bad Because It Can Make People Doubt Trusted Institutions Such as the Government.

One aim of parody is to mock ideas the satirist disagrees with, which is great when parody is pointed at acceptable targets, such as people we ourselves disagree with. But when this dangerous weapon of free speech is pointed toward official trusted state sources,

it becomes a deadly cannon of fascism aimed right at the heart of our democratic norms. Throughout history we find examples of the powerless speaking out against the powerful, and every time, we find the people who spoke out were on the wrong side of history. The powerful are always right. If they weren't right all the time, they would never be able to achieve such power. That's just science.⁶

Think how much more effective the government could be if we banned comedy. Police officers could do whatever they wanted. Bureaucrats could rule with impunity. Presidents could get away with murder—well, more than they already get away with, anyway. It's really annoying and inefficient for the government when comedians are running around criticizing them. It can ruin their whole day.

III. When Satire Criticizes Those in Power, It Makes Them Sad.

We ask the Court now to recall the fable of the emperor with no clothes. The insensitive, unruly child with no filter and a strong belief in the First Amendment shouted out for all to hear, “Hey, look at that dummy who's not wearing any clothes!” *See Carriere v. Cominco Alaska, Inc.*, 823 F. Supp. 680, 686 n.8 (D. Alaska 1993).

Of course, this story is supposed to teach us that we must make a brave stand for the truth and that unpopular speech is sometimes correct.

⁶ See Mao Zedong, *The Great Leap Forward* (2d ed. 1957) at 277.

But no one ever thinks about how sad it made the emperor. Everyone praises the little boy for his “daring” and “truthful” statement, but nobody considers that the emperor might not have *enjoyed* being made fun of. Imagine being up there all naked and whatnot and everyone starts pointing and laughing at you, shouting things like, “Check out that dude’s massive gut!” and “Nice farmer’s tan!” and “Were you in the pool or something?”

Just not cool on any level.

The Court must consider the disastrous effect satire can have on the self-esteem of those who run our trusted institutions. Studies show that people with low self-esteem have a harder time running everything and telling everyone what to do.⁷ This would be an unmitigated disaster for our society. Have you ever seen how sad Joe Biden looks? That’s because lots of people on Twitter make fun of him.

Thus, this shows that satire and parody are unacceptable in the current year because they make people sad.

IV. We Can Never Truly Enjoy Our Freedoms as Americans if We Know that Someone, Somewhere Might Be Making Fun of Us.

The petitioner in this case wants us to believe that free speech is more important than the police officers’ freedom from having someone make fun of them. They want us to believe that the right to tell jokes is

⁷ See, e.g., Josef Stalin, *The Collected Works of Josef Stalin* (3d ed. 1951).

more important than a police department not looking foolish in front of the entire community. This is a dangerous argument, probably shared by Hitler.⁸

Freedom requires public safety, and when the public safety is threatened by the sadness of an authority figure, stopping people from joking becomes a literal matter of life and death. As we all know, any use of government power that saves even just one life is always worth it and will never backfire in any way. History clearly shows us this.⁹

If making fun of a police officer can threaten public safety, we ask the Court to consider the utter carnage that could be inflicted on the citizens of this country if unregulated comedians were free to make fun of anyone and anything at any time. The knowledge that someone, somewhere out there is making fun of you is an existential threat to one's mental health and, by extension, a threat to the health of the entire country.

How can we be free to pursue happiness if we become the butt of a cruel joke?

CONCLUSION

In short, parody must be eliminated and humorists should be rounded up into camps and shot.¹⁰ It's

⁸ See Adolf Hitler, *Mein Kampf* (1st ed. 1925) ("Ich aufgehen Strüdel. Unser Gebuscheitstaufenß! Kollinflakedankebingel! Heiptessengrospeitelhüberzingel! NEIN NEIN NEIN NEIN! KRAßßGEWEG24*01\$95*#0@1!").

⁹ *But cf.* all of history.

¹⁰ Benito Mussolini, *Mussolini as Revealed in His Political Speeches* (1923) at 435 ("It is blood which moves the wheels of history!").

worth it if it saves just one person from getting laughed at.¹¹

Respectfully submitted,

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¹¹ Do you believe all this stuff? You are not smart! The police's arguments are lame. To see what we really think, read the brief we actually filed, you know, at the actual Supreme Court: <https://tinyurl.com/22b2ays4>.