IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

COREY BRYANT, a minor, by and through Charles and Shari Bryant, Natural Parents; and CHARLES and SHARI BRYANT;	)	**Civil Action No. 3:12-cv-37-NBB-SAA**
Plaintiff,	)	
v.	)	
CITY OF RIPLEY, MISSSISSIPPI; SOUTH TIPPAH SCHOOL DISTRICT; RIPLEY POLICE DEPARTMENT, SCOTT WHITE, in his official and individual capacities; RODNEY WOOD, in his official and individual Capacities; and ALLAN STANFORD, in his official and individual capacities;	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER, OR, IN THE ALTERNATIVE, A PRELIMINARY INJUCTION

INTRODUCTION

"The essence of Government is power; and power, lodged as it must be in human hands, will ever be liable to abuse," stated America's fourth president, James Madison. If Madison was speaking today, many would conclude he was talking about the City of Ripley (hereinafter "Ripley"), the South Tippah School District (hereinafter "STSD"), Ripley Police Chief Scott White (hereinafter "White"), Ripley Police Officer Rodney Wood (hereinafter "Wood"), Ripley High School Assistant Principal Allan Stanford (hereinafter "Stanford") and their overzealous actions of interrogating minors – at length – without the consent or knowledge of their parents.

On or about October 14, 2011, under the threat of arrest, and outside the presence of a parent or attorney, Plaintiff underwent a custodial interrogation that began at the Ripley High

School (hereinafter "RHS") and ended at the Ripley Police Department. The individuals who unlawfully interrogated Plaintiff were Officer Rodney Wood and Vice Principal Stanford.

Plaintiff's parents were never contacted by the Ripley Police Department during his interrogation. Instead, Plaintiff was questioned for an hour without the benefit of a parent, guardian and/or attorney. During the unlawful interrogation, Plaintiff was not properly *Mirandized* and law enforcement exploited his tender-age by first interrogating him at the high school and then deliberately parading him, in handcuffs, in front of his high school peers. The unlawful interrogation then continued at Ripley police headquarters.

Moreover, Defendants, acting through Chief White, instituted charges against Plaintiff in Tippah County Youth Court. Even though this incident occurred in October 2011, Plaintiff was not served with Youth Court papers until March 2012 – **some five (5) months later**. This March date just happened to be when Plaintiff's ninety (90) day waiting period expired in relation to the notice of claim he filed in order to file this lawsuit. Moreover, the student actually caught on camera vandalizing the property had long been brought to Youth Court and the matter adjudicated.

Plaintiff now files this brief in support of his motion for a temporary restraining order or, in the alternative, a preliminary injunction, in order to halt the his unconstitutional Youth Court prosecution to be held on **Wednesday, May 9, 2012**.[1]

FACTUAL BACKGROUND

Plaintiff was formerly enrolled in STSD and attended RHS.[2] On October 14, 2011, a security camera belonging to the Parks and Recreation Department was vandalized by a local teenager.[3] This

[1] Further evidence that this prosecution is being handled in bad faith comes from the fact that the order setting the May 9, 2012 hearing was styled as an Order Setting Disposition Hearing. Moreover, the order held Plaintiff delinquent. The only problem is that Plaintiff **never** received an adjudication hearing, thus the order suggests Plaintiff was found delinquent even before he was afforded the opportunity to defend himself against the charges.
[2] *See* Complaint, ¶ 16.
[3] *Id.*, ¶ 17.

camera was located in a section of the park called "Kid's World."[4] The camera was not located on property owned by the STSD. Moreover, the vandalism occurred after school hours.[5] Prior to the camera being vandalized, two pictures were taken identifying the teenaged suspect.[6] The teenager in the picture, however, was not Plaintiff.[7]

On October 17, 2011, responding to a complaint by the Parks Department against a minor not Plaintiff, the Ripley police department, acting through Officer Wood, went to RHS and detained the teenager who was photographed vandalizing the camera.[8] In doing so, Officer Wood removed this suspect from the class and brought him to the school's office.[9] Shortly after detaining the suspect, the suspect falsely implicated Plaintiff in the matter even though there was no credible evidence implicating Plaintiff.[10] What happens next is nothing short of remarkable, as school and police officials aimlessly trampled over existing constitutional rights and violated established guidelines governing interaction with "student suspects" while at school.

Officer Wood came to Plaintiff's class and told Plaintiff he had to come to the office.[11] Plaintiff followed this instruction because he believed he had no other alternative.[12] Once in the office, Plaintiff was met by Vice Principal Stanford. Plaintiff was instructed to take a seat and was not free to leave the office.[13]

Rather than notify Plaintiff's parents, Vice Principal Stanford and Officer Wood took the law into their own hands.[14] With Officer Wood present and participating, Vice Principal Stanford aggressively interrogated Plaintiff. Vice Principal Stanford yelled at Plaintiff and violated his personal space.[15] Vice

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[4] *Id.*
[5] *Id.*, ¶ 18.
[6] *Id.*, ¶ 19.
[7] *Id.*
[8] *Id.*, ¶¶ 20-21.
[9] *Id.*, ¶ 21.
[10] *Id.*, ¶ 22.
[11] *Id.*, ¶ 23.
[12] *Id.*
[13] *Id.*
[14] *Id.*, ¶ 25.
[15] *Id.*, ¶ 26.

Principal Stanford verbally abused Plaintiff and ignored elementary principles of constitutional law.[16] Further, the interrogation had nothing to do with maintaining order in the schools or administering school discipline. Plaintiff never received his *Miranda* rights and was never afforded the opportunity to call his parents or an attorney.[17] This interrogation lasted for approximately twenty (20) minutes.[18]

There is zero evidence implicating Plaintiff in the camera vandalism. Nonetheless, without an arrest warrant or probable cause, Officer Wood handcuffed Plaintiff to the other student suspect and paraded them threw the hallways on the way to his patrol car.[19] This humiliated Plaintiff in front of his peers and was a wholly unnecessary abuse of power. Officer Wood then took Plaintiff to the police department where Corey's unlawful interrogation continued with the blessing of Chief White.[20]

After an additional thirty (30) minute interrogation at police headquarters, Plaintiff s father was finally notified that his son was in police custody.[21] It was then Plaintiff's backpack was unreasonably searched.[22]

Mr. Bryant met Chief White at the police station.[23] Mr. Bryant asked Chief White what evidence was against his son. Chief White did not directly answer the question and stated Corey's case was already handed over to Youth Court.[24] Even though White stated Bryant's papers were handed over to Youth Court, Bryant was not served with papers to appear in Youth Court until March 2012 – **some five (5) months after the incident**.[25] Moreover, Bryant's being served with papers happened to be at the same time the ninety day waiting period associated with his Notice of Claim for this federal lawsuit expired, thus creating the inference the papers were only handed over to youth court in retaliation for Plaintiff filing a

[16] *Id.*
[17] *Id.*, ¶ 28.
[18] *Id.*, ¶ 29.
[19] *Id.*, ¶ 30.
[20] *Id.*, ¶ 31.
[21] *Id.*, ¶ 32.
[22] *Id.*
[23] *Id.*, ¶ 33.
[24] *Id.*
[25] *See* Affidavit of Joseph R. Murray, II, Esq., attached to Plaintiff's Motion for Preliminary Injunction as "Exhibit "A."

civil lawsuit. Such an inference is further supported by the fact that Jack Combes, Ripley's claims investigator with the Mississippi Municipal Service Company, contacted the undersigned sometime in January/February 2012 and specifically asked whether charges were filed against Plaintiff.[26] Mr. Combes stated he could not get in touch with White and was looking for an answer.[27] Shortly after that conversation, Plaintiff was served with Youth Court papers.[28]

Chief White did not have any evidence to linking Plaintiff to this act of vandalism. Instead, the only evidence unearthed by this situation supported this fact – Chief White's police department has a practice of ignoring the constitutional rights of Ripley's students in order to flex its authoritative muscle.

Make no mistake; Chief White and his police department are not above the law. Chief White cannot order his men to bust into a school to detain and arrest students without a warrant and/or probable cause. Nor can the Chief order his men to "scare" students by violating their established constitutional rights. Moreover, Vice Principal Stanford is not permitted, by law, to play police officer in dealing with students under his care. He is just a school administrator, not a beat cop. Such a pattern and practice flies in the face of the very laws the Chief is supposed to uphold and Stanford is supposed to teach to his students.

ARGUMENT

This case should be an easy, but deeply disturbing case. The law is clear – police officers, as well as government agents acting on their behalf, cannot interrogate minors in the absence of a parent, legal guardian or attorney. This is constitutional law 101.

Plaintiff has shown that he was not only interrogated by government agents without the benefit of a parent or attorney being present, he was interrogated without reasonable suspicion and/or probable cause. Moreover, just as his ninety (90) day tort claims waiting period was set to expire, Plaintiff was served with papers to appear before youth court on charges linked to his

[26] *See* Affidavit of Joseph R. Murray, II, Esq., attached to Plaintiff's Motion for Preliminary Injunction as "Exhibit "B."
[27] *Id.*
[28] *Id.*

unlawful interrogation. The fact Plaintiff's Fourth Amendment rights were willfully violated, coupled with the fact he is the target of a harassing and retaliatory prosecution, suggests this Court has a duty to enjoin Plaintiff's prosecution until his federal lawsuit is resolved.

I. *YOUNGER* ABSTENTION IS INAPPROPRIATE IN THIS CASE.

In *Younger v. Harris*,[29] the United States Supreme Court held that in the interest of federalism and state sovereignty, federal courts should abstain from enjoining ongoing state criminal proceedings. This general rule, though, was not absolute as the High Court went on to rule that if a civil plaintiff can make a showing of a bad faith prosecution, harassment or extraordinary instances of irreparable harm, federal courts have a duty to enjoin state proceedings in the interest of preserving and protecting federal constitutional rights.[30] Thus, "In determining whether these exceptions to the general rule set forth in *Younger* apply, the Fifth Circuit has held that 'the strength and seriousness of the charges should be considered in determining if retaliation or bad faith exists."[31] As a review of Plaintiff's complaint demonstrates, Defendants are guilty of both a bad faith prosecution and harassment. The *Younger* abstention, therefore, is inappropriate.

Furthermore, the courts have established a shifting burden of proof when faced with a *Younger* abstention analysis. The burden of proof is as follows:

> The Court should consider whether plaintiffs have shown, first, that the conduct allegedly retaliated against or sought to be deterred was constitutionally protected, and second that the State's bringing of the criminal prosecution was motivated at least in part by a purpose to retaliate for or to deter that conduct. If the Court concludes that the plaintiffs have successfully discharged their burden of proof on both of these issues, it should then consider a third: whether the State has shown by a preponderance of the evidence that it would have reached the same decision as to whether to prosecute even had the impermissible purpose had not been considered.[32]

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[29] 401 U.S. 37 (1971).
[30] *Id.*
[31] *Torries v. Herbert*, 11 F.Supp.2d. 806, 815 (W.D.La. 2000) (*quoting Smith v. Hightower*, 693 F.2d 359, 369 (5th Cir. 1982).
[32] *Torries*, 11 F.Supp.2d at 815-16 (*citing Wilson v. Thompson*, 593 F.2d 1375, 1387 (5th Cir. 1979).

It is key to note, however, that it is "not necessary for a plaintiff to prove that the prosecution could not possibly result in a valid conviction."[33] In the instant case, it is clear that Plaintiff has established that his arrest and impending prosecution were motivated by bad faith; specifically a bad faith that reared its head in the form of the City's retaliation for Plaintiff daring to challenge the unlawful interrogation techniques utilized by the City and STSD.

A review of all cases in which relief was sought and obtained in federal court to enjoin state retaliation for the exercise of constitutional rights reveals that Plaintiff's case offers compelling and irrefutable facts that the *Younger* abstention is not warranted in the case at bar. It would erase the boundaries of logic to believe that the motivation of Defendants, in pursuing this preposterous prosecution of Plaintiff, was motivated by anything other than bad faith when they unlawfully interrogated Plaintiff and then, **five (5) months after the alleged incident brought charges against him in Youth Court just as the ninety (90) day tort claims waiting period expired**.

A. *Younger's* Bad Faith Exception to Abstention.

A finding of bad faith under *Younger* does not require evidence that the charges levied against the plaintiff were instituted with "no genuine expectation" of their eventual success, but only to discourage the exercise of the plaintiff's constitutionally guaranteed rights.[34] Specifically, it has been determined that "[t]here are three factors that courts have considered in determining whether a prosecution is commenced in bad faith or to harass: (i) whether it was frivolous or undertaken with no reasonably objective hope of success; (ii) whether it was motivated by the plaintiff's suspect class or in retaliation for the plaintiff's exercise of constitutional rights; or (iii) whether it was conducted

[33] *Id.*

[34] *Alle v. Medrano*, 416 U.S. 802, 819 (1974); *see also Perez v. Ledesma*, 401 U.S. 82, 85 (1971); *Central Avenue News, Inc. v. City of Minot, N.D.*, 651 F.2d. 565, 570 (8th Cir. 1981) (*holding* "gravamen of bad faith prosecution is the lack of reasonable expectation that a valid conviction will result).

in such a way as to constitute harassment or abuse of prosecutorial discretion, typically through the unjustified and oppressive use of multiple prosecutions.[35]

Courts across the nation have found bad faith: (i) where prosecutors have instituted charges in violation of a prior immunity agreement,[36] (ii) where a prosecutor pursed highly questionable charges against the plaintiff for apparently the sole purpose of gaining publicity for himself,[37] (iii) where a prosecution has been instituted to harass and punish the federal plaintiff for having exercised his constitutional rights,[38] and, more on point, (iv) where a prosecution is motivated by a purpose to retaliate for or to deter the filing of a civil lawsuit against state officers.[39]

The threat of multiple prosecutions may be additional evidence of bad faith, but is not inevitably required to establish bad faith.[40] An injunction may also issue to enjoin consideration of charges by a demonstrably biased tribunal.[41]

Make no mistake, what is at stake in this is case is Plaintiff's right to be free from unreasonable search and seizures and his subsequent right to challenged a violation of the said rights in federal court **without being subjected to a retaliatory prosecution**. Plaintiff was a student in the STSD when Officer Wood and Vice Principal Stanford yanked him out of class, during school hours, to question him about a incident of vandalism that occurred after school hours and off school premises. Plaintiff's parents were never contacted. Instead, Officer Wood and Vice Principal Stanford steamrolled over Plaintiff's clearly established constitutional and statutory rights. Even more compelling, the only basis for this unlawful interrogation was the **dubious statement of the**

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[35] *Torries*, 11 F.Supp.2d at 815 (*quoting Phelps v. Hamilton*, 122 F.3d 885, 889 (10th Cir.).
[36] *Rowe v. Griffin*, 676 F.2d 524 (11th Cir. 1982).
[37] *Shaw v. Garrison*, 467 F.2d 113 (5th Cir. 1971), *cert. denied*, 409 U.S. 1024 (1972).
[38] *Fitzgerald v. Peek*, 636 F.2d 943 (5th Cir. 1981) (per curium), *cert. denied*, 452 U.S. 916 (1981). *See also Herz v. Degan*, 648 F.2d 201, 209-10 (3rd Cir. 1981) (state Attorney General's institution of a license revocation proceeding on grounds for which no authority existed strongly suggested that "bad faith" exception to *Younger* principle would apply, if *Younger* was relevant to the proceeding in question); *Bishop v. State Bar of Texas*, 736 F.2d 292 (5th Cir. 1984); *Heimbach v. Village of Lyons*, 597 F.2d 344, 347 (2nd Cir. 1979); *Timmerman v. Brown*, 528 F.2d 811 (4th Cir. 1975).
[39] *Wilson*, 593 F.2d at 1375.
[40] *See Krahm v. Graham*, 461 F.2d 703 (9th Cir. 1972). *See also Fitzgerald*, 636 F.2d at 944; *Wilson*, 593 F.2d at 1381.
[41] *Gibson v. Berryhill*, 411 U.S. 564, 577 (1973).

teenager who was actually caught on film vandalizing the camera Officer Wood and Vice Principal Stanford accused Plaintiff of vandalizing. Such evidence is not only doubtful; it does not even rise to the level of reasonable suspicion.[42]

After being paraded through his high school like a common criminal, Plaintiff filed a notice of claim on or about December 5, 2011. His ninety (90) day waiting period, per the Mississippi Tort Claims Act, ran in March 2012. Interestingly enough, Plaintiff was not served with papers demanding that he appear in Youth Court to face charges his violated the camera – that is until his ninety (90) day waiting period expired; five (5) months later. This delay is highly questionable, as the student who was photographed vandalizing the camera in question was adjudicated before Dick Clark rang in the 2012 New Year. Even more suspicious, Ripley's insurance investigator, Mr. Combes, contacted the undersigned counsel to specifically ask whether charges were filed against Plaintiff. This occurred sometime in January/February 2012. Mr. Combes stated that he did not know the answer to that question because he had not been able to get in contact with Chief White. The undersigned stated that his client had not received notice to appear in Youth Court. Shortly thereafter, just as Plaintiff was permitted to file his lawsuit, he was served with papers to answer for charges filed in Youth Court. An inference can clearly be drawn that the late charges filed against Plaintiff **were only filed to deter the filing of his civil lawsuit and/or to harass Plaintiff for defending his constitutional rights**.

It is pivotal to stress that this case is not just about one student, for like a pebble in a pond, the ripples of this case will be far reaching. First, Defendants, specifically Chief White, has charged

[42] *Redding v. Safford Sch. Dist. #1*, 531 F.3d 1071, 1082-83 (9th Cir. 2008) (noting that "we do not treat all informant tips as equal in their reliability" and "**we are most suspicious of those self-exculpatory tips that might unload potential punishment on a third party**."), aff'd in part, rev'd in part, 129 S.Ct. 2633 (2009). *See also Fewless v. Board of Educ. of Wayland Union Schools*, 208 F. Supp. 2d 806, 819-820 (W.D. Mich. 2002) (strip search of student for drugs was not justified at its inception **when based on information from students with highly questionable credibility given their potential ill motives as they were serving detention for bullying the accused student**).

Plaintiff with a delinquency in Youth Court. The initial basis for this charge was based on the self-serving statement of the teenager who was actually caught on camera vandalizing the property in question. Hence, there was no reasonable suspicion to remove Plaintiff from his class and question him in absence of a parent or attorney. Moreover, the charges were only filed after the ninety (90) day waiting period under the Mississippi Tort Claim Act ran and Plaintiff was able to file his federal lawsuit.

The decision to charge Plaintiff and prosecute him is frivolous. Plaintiff is not a career criminal and there was clear evidence implicating another student in the vandalism. Chief White, in a pattern and practice of ripping kids out of class and interrogating them without parents, was attempting to flex authoritative muscle and he did so at the expense of Plaintiff's Fourth Amendment rights. And when Plaintiff dared to challenge this unconstitutional behavior, Plaintiff, five months after the fact, was charged with a crime evidence clearly shows he did not commit. These charges, thus, are founded in retaliation.

If Plaintiff is forced to defend himself in Tippah County Youth Court on May 9, 2012, a message will be sent to all the students in the STSD – fight the powers that be in Ripley and end up in the chair of a criminal defendant. By enacting 42 U.S.C. § 1983 Congress made it clear that state actors were not permitted to trample the rights of American citizens. If citizens are charged with criminal activity after they defend their constitutionally protected rights, as Congress intended, civil rights in this country disappear.

Second, by permitting this retaliatory prosecution, Plaintiff, as well as third parties not before this Court will be punished for and deterred from exercising their right to petition the government and seek a remedy or the deprivation of civil rights. This is contrary to law and principle. Further, it serves a devastating blow to public policy in that students of the STSD will be afraid to defend their rights in the requisite court of law.

Third, to force Plaintiff to defend himself against retaliatory charges would fly in the face of 42 U.S.C. § 1985. Recognizing the need to keep courts open, so that justice can be pursued and obtained, Congress made it a violation of an individual's civil rights for parties to conspire to obstruct justice and/or intimidate a witness.[43] The civil Defendants before this Court are not above the law; they are bound by it.

The fact it took five months for charges to be brought against Plaintiff when the charges brought against the teenager actually caught vandalizing the property in question was brought expeditiously indicates a retaliatory motive. Such a motive is reinforced by when the Court takes notice that the charges were filed just as Plaintiff's ninety (90) day waiting period under the MTCA expired and Ripley's insurance investigator, shortly thereafter the charges being filed, had inquired as to why charges were not filed.

B. *Younger's* Retaliation Exception to Abstention.

In *Cullen v. Flienger*[44] the Second Circuit Court of Appeals affirmed a lower court ruling enjoining disciplinary proceedings brought buy a school district against a teacher who had violated a statute that established a one-hundred (100) foot "campaign free" zone around a polling place for every election held for the office of trustee or member of a board of education.[45] In his lawsuit against the school district, the plaintiff-teacher argued that the means employed by the school district were not the least restrictive alternative for enforcing the statute and they, thereby, violated the First and Fourteenth Amendment to the United States Constitution.[46]

The plaintiff-teacher, who was encouraging a vote against two school board members, conducted his constitutionally protected activities within the one-hundred (100) foot buffer zone and refused to obey several orders for superiors to move outside the zone and, even after being

[43] 42 U.S.C. § 1985(2).
[44] 18 F.3d. 96 (2nd Cir. 1994).
[45] *Id.*, p. 99.
[46] *Id.*

moved by a police officer, returned to a location within the zone.[47] The court ruled that "to the degree that the school district sought to enforce the electioneering prohibition at all, its efforts would appear to have been focused exclusively on that activities of the [plaintiff-teacher], someone with whom the school district 'had a past history of personal conflict.'"[48]

The Second Circuit went on to hold that a refusal to abstain "is justified where a prosecution or a proceeding has been brought to retaliate for or to deter constitutionally protected conduct, or where a prosecution is brought in bad faith or for the purpose to harass."[49] Cutting to the heart of the matter, the Second Circuit artfully stated, "a showing of retaliatory or bad faith prosecution establishes irreparable injury for the purpose of the *Younger* doctrine **and the expectations for success of the party bringing the action need not be relevant.**"[50]

In *Wichert v. Walter*,[51] the New Jersey District Court was faced with a case that presented the question of whether *Younger* abstention was appropriate in a case where a tenured school teacher was threatened with disciplinary proceedings for having exercised his constitutional rights by participating in a political rally. In making his determination as to whether *Younger* applied to the case before him, Judge Sarokin made a point to contrast the *Younger* decision from the Supreme Court's earlier decision of *Dombroski v. Pfister*[52]:

> [T]hreats to enforce statutes against appellants [were] not made with the expectation of securing valid convictions, but rather [were] part of a plan to employ arrests, seizures and threats of prosecutions under the color of the statues to harass appellants and discourage them and their supports for attempting the vindicate the constitutional rights of Negro citizens of Louisiana.[53]

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[47] *Id.*, pp. 99-100.
[48] *Id.*, p. 102.
[49] *Id.*, p. 103. (*citing Lewellen v. raff*, 843 F.2d 1103, 1109-10 (8th Cir. 1988), *cert. denied*, 489 U.S. 1033 (1989) (bad faith prosecution where brought in retaliation for the exercise of First Amendment rights); *See also Rowe v. Griffin*, 676 F.2d 524 (11th Cir. 1982)(bad faith prosecution brought after assurances of immunity).
[50] *Id.* (*citing Lewellen*, 843 F.2d at 1109-10)(injunction justified regardless of expectations where prosecution brought to discourage exercise of constitutional rights).
[51] 606 F.Supp. 1516 (D.NJ. 1985).
[52] 380 U.S. 479 (1965).
[53] *Wichert*, 606 F.Supp. at 1520 (*citing Younger*, 401 U.S. at 408).

In declining to apply the *Younger* abstention, Judge Sarokin held, "In the this case, the context in which the charges were brought, and their underlying lack of merit, convinces the court that they were brought for the purpose of harassment and retaliation, with no hope of eventual success."[54] The Court went on to explain that "even apart from the factual context in which the charges were brought, as noted, the objective validity of the plaintiff's [constitutional] defense is by itself a powerful indicator of the defendants' bad faith in pursuing these charges."[55]

In the case at bar, it is clear that the precedents established in *Cullen*, *Lewellen* and W*ichert* apply. The Second Circuit in *Cullen* argued that where government actors seek to prosecute a criminal defendant because of a decision to exercise a constitutionally protected right, such as filing a federal lawsuit to vindicate such rights, federal courts **should not** abstain from intervention. In the instant case, Plaintiff has been the victim of retaliation and harassment. The evidence is clear – a third party student was photographed vandalizing the evidence Plaintiff was charged with destroying. No photographic evidence exists showing Plaintiff destroying or even vandalizing the property in question. Nonetheless, acting on the words of a student who was caught red-handed, Defendants interrogated Plaintiff, in the absence of a parent or attorney. Officer Wood handcuffed Plaintiff and paraded him out of the school in front of his peers. Then five (5) months later and when Plaintiff was poised to file his federal lawsuit, charges are brought against him in Youth Court; charges that lack any type of merit.

C. The Prosecution of Plaintiff by Ripley Cannot Possibly Result in a Valid Conviction.

When addressing this element of *Younger*, the *Fitzgerald* case is dispositive. In *Fitzgerald*, the Court issued a temporary restraining order (hereinafter "TRO") and subsequently a permanent

[54] *Id.*, p. 1522 n. 2.
[55] *Id.*

injunction, to enjoin the allegedly retaliatory state court prosecution of a defendant who had been indicted for terrorist threats. In upholding the injunction, the Fifth Circuit held it need not be:

> [N]ecessary for a plaintiff to prove that the prosecution could not possibly result in a valid conviction … [T]his Court enunciated a test which permits a state criminal proceeding to be enjoined if the plaintiff establishes that the conduct allegedly retaliated against or subject to be deterred is constitutionally protected and that the State's bringing of the criminal prosecution is motivated at least in part by a purpose to retaliate against or deter that conduct, and the State fails to show that it would have decided to prosecute even had the impermissible purpose had not been considered.[56]

In the case before this Court, Defendants are retaliating against Plaintiff for bringing his federal lawsuit and defending his Fourth Amendment rights. Despite the fact that the incident in question took place in October 2011, charges against Plaintiff were not brought until March 2012. March 2012 just happens to be the same time the MTCA's ninety (90) day waiting period expired, permitting Plaintiff to file his lawsuit. Even more suspect, the teenager who was caught on tape vandalizing the camera was adjudicated in an expeditious manner. Finally, Mr. Combes, Ripley's insurance investigator, contacted the undersigned sometime in January/February 2012 to ask whether charges were filed against Plaintiff. The undersigned indicated he was not aware of any such charges and shortly thereafter the charges were filed.

The case against Plaintiff is frivolous, as there is no evidence to suggest he vandalized the property in question. Instead, all Defendants have is the tainted statement of a teenager who was caught red-handed vandalizing the property. This statement, which was used to justify Plaintiff's interrogation, does not even amount to reasonable suspicion.[57] Moreover, Plaintiff was interrogated in the absence of a parent or lawyer, which is contrary to constitutional and state law.

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[56] *Fitzgerald*, 636 F.2d at 945.

[57] *Redding v. Safford Sch. Dist. #1*, 531 F.3d 1071, 1082-83 (9th Cir. 2008) (noting that "we do not treat all informant tips as equal in their reliability" and "**we are most suspicious of those self-exculpatory tips that might unload potential punishment on a third party**."), aff'd in part, rev'd in part, 129 S.Ct. 2633 (2009). *See also Fewless v. Board of Educ. of Wayland Union Schools*, 208 F. Supp. 2d 806, 819-820 (W.D. Mich. 2002) (strip search of student for drugs was not

Assuming arguendo that Defendants had a reasonable expectation of securing a conviction against Plaintiff, such an expectation is "irrelevant" to the issue currently before this Court.[58] Obtaining its guidance from *Fitzgerald*, the *Lewellen* court concluded that a finding that the prosecution was retaliatory will justify an injunction regardless of whether valid convictions could be reasonably obtained.[59]

In *Cate v. Oldham*[60] an attorney brought a civil rights suit to enjoin the state from pursuing a malicious prosecution action against him. It was alleged that the State was bringing the prosecution to retaliate against the attorney, who had just recently filed a wrongful death suit against the prosecutor and the State. In ruling in favor of the injunction, the Eleventh Circuit reasoned that what was relevant in determining whether the First Amendment had been violated "is whether any burden of First Amendment freedoms, either in the form of a prior restraint or a sanction imposed to prohibit or punish exercise of First Amendment rights is justified sufficiently by compelling state interests."[61]

As stated previously, it is clear that the charges brought against plaintiff were the result of his Fourth Amendment violations and his decision to file a federal lawsuit to remedy those violations. His prosecution laid in wait until he was free to file a lawsuit and after an insurance investigator investigating Plaintiff's potential lawsuit questioned why why Plaintiff had not been charge in Youth Court. All of this, coupled with the fact there was zero evidence to even justify a stop of Plaintiff, suggests the prosecution is sham; one that was brought to deter Plaintiff's constitutional rights.

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justified at its inception **when based on information from students with highly questionable credibility given their potential ill motives as they were serving detention for bullying the accused student**).

[58] *Lewellen*, 843 F.2d 1112.

[59] *Id. See also PHE, Inc. v. U.S. Department of Justice*, 743 F.Supp. 15, 25 (D.D.C. 1990) (*holding* "A showing that a prosecution was brought in retaliation for or to discourage the exercise of constitutional rights 'will justify tan injunction regardless of whether valid convictions conceivably could be obtained.")(*quoting Fitzgerald*, 636 F.2d. at 945).

[60] 707 F.2d 1176, 1183 (11th Cir. 1983).

[61] *Id.*, p. 1186.

To force Plaintiff to defend against these charges permits the government to punish Plaintiff for merely doing what Congress said he could do – challenge any government action that results in a deprivation of liberty. If Defendants are permitted to move forward with Plaintiff's prosecution, it sends a direct message to other students at Ripley High School – "stand up for your rights and be hauled before a Court on a trump up charge."

It is clear from the forgoing that Plaintiff more than satisfies the requirements for enjoining Defendant's Youth Court prosecution/proceedings instituted against Plaintiff. Federal relief is desperately needed.

II. PLAINTIFF'S CONSTITUTIONAL RIGHTS, AS PROTECTED BY THE FOURTH AMENDEMNT'S WERE VIOLATED BY DEFENDANT'S ACTIONS.

The Fourth Amendment guarantees individuals the right "to be secure in their persons . . . against unreasonable searches and seizures . . ." by government officials.[62] Because the basic purpose of the Fourth Amendment "is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials."[63] Thus, the strictures of the Fourth Amendment apply to child welfare workers, as well as all other governmental employees.[64]

When the Fourth Amendment was ratified to "search" meant "'[t]o look over or through for the purpose of finding something; to explore; to examine by inspection; as, to search the house for a book; to search the woods for a thief.'"[65] Vice Principal Stanford's investigation on Ripley High's premises, at the direction of Officer Wood, easily meets this definition because Officer Wood went

[62] U.S. CONST. amend. IV.
[63] *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 528, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967) (the amendment's prohibition against unreasonable searches and seizures protects against warrantless intrusions during civil as well as criminal investigations by the government); *See also Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312, 98 S.Ct. 1816, 56 L.Ed.2d 305 (1978).
[64] *Brokaw v. Mercer County*, 235 F.3d 1000, 1010 n.4 (7th Cir.2000); *Darryl H. v. Coler*, 801 F.2d 893, 900 (7th Cir.1986).
[65] *Kyllo v. United States*, 533 U.S. 27, 33, n.1, 121 S.Ct. 2038, 150 L.Ed.2d 94 (2001) (quoting N. Webster, An American Dictionary of the English Language 66 (1828) (reprint 6th ed.1989)).

to the school for the specific purpose of gathering information and used Stanford to do so; an activity that most certainly constitutes a search under the Fourth Amendment.[66]

A person has been "seized" within the meaning of the Fourth Amendment if, in view of all of the circumstances surrounding the incident, a reasonable person would not have believed that he was free to leave.[67] Again, Plaintiff was seized by Officer Wood, brought to the school's office and detained by Officer Wood and Vice Principal Stanford. With two authority figures interrogating him in a confined office, a reasonable person would not feel free to leave. Even further, Plaintiff was subsequently handcuffed, paraded out of school and hauled to the Ripley Police Department where he was further interrogated without a parent, legal guardian and/or attorney being present. Such a fact pattern strengthens the claim that Plaintiff did not feel free to leave the interrogation.

Having concluded that Vice Principal Stanford and Officer Wood searched Corey's belongings and seized Plaintiff, the next legal inquiry requires the courts to "evaluate the search or seizure under traditional standards of reasonableness by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests."[68] In doing so, courts recognize that although "the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place." [69]

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[66] *Kyllo*, 533 U.S. at 32 n.1, 121 S.Ct. 2038; see also 1 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 2.1(a) at 379 (1996) (noting that "[u]nder the traditional approach, the term 'search' is said to imply 'some exploratory investigation, or an invasion and quest, a looking for or seeking out'") (citation omitted)

[67] *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980).

[68] *Wyoming v. Houghton*, 526 U.S. 295, 299-300, 119 S.Ct. 1297, 143 L.Ed.2d 408 (1999); *see also Brokaw*, 235 F.3d at 1010.

[69] *New Jersey v. T.L.O.*, 469 U.S. 325, 337, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985); *see also Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 654, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995) (noting that "[w]hat expectations are legitimate [under the Fourth Amendment] varies, of course, with context, depending, for example, upon whether the individual asserting the privacy interest is at home, at work, in a car, or in a public park") (internal citation omitted).

In *New Jersey v. T.L.O.*, the Supreme Court addressed a search of a high school student.[70] After teacher discovered two girls smoking, she searched T.L.O.'s purse without warrant or probable cause. Though the student challenged the search, the Court ruled the search was reasonable. The Court held the search reasonable even in the absence of a warrant or probable cause explaining that the warrant requirement was "unsuited to the school environment" because it "would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools."[71] The Court similarly noted that the school setting required "some modification of the level of suspicion" needed to justify a search of students, in light of "the substantial need of teachers and administrators for freedom to maintain order in the schools."[72] This created the "reasonableness under all the circumstances" test.[73] This decision, however, was limited in scope and addressed a specific factual pattern not present in this case.

The *T.L.O.* standard **does not** apply across the board to all searches and seizures in public schools. The *T.L.O* Court expressly noted that it was addressing only searches "by a teacher or other school official," explaining that "[b]y focusing attention on the question of reasonableness, the standard will spare teachers and administrators the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their conduct according to the dictates of reason and common sense."[74] The Court further clarified that it was considering "only searches carried out by school authorities acting alone and on their own authority," expressing "no opinion" on "the

[70] Although *T.L.O.*, like many of the so-called "special needs" cases involved a search rather than a seizure, courts have applied the same standard to seizures of students at public schools as to searches. *See Jones v. Hunt*, 410 F.3d 1221, 1228 (10th Cir. 2005) (citing Edwards v. Rees, 883 F.2d 882, 844 (10th Cir. 1989)); *Wofford v. Evans*, 390 F.3d 318, 326 (4th Cir. 2004); *Hassan v. Lubbock Indep. Sch. Dist.*, 55 F.3d 1075, 1079 (5th Cir. 1995). Indeed, the standard enunciated in *T.L.O.* was based on the "reasonableness" standard established in *Terry v. Ohio*, 392 U.S. 1, 20 (1968), which involved a brief seizure for investigative purposes.

[71] *Id.* at 340.

[72] *Id.* at 340-41

[73] The *T.L.O.* test "involves a twofold inquiry: first . . . whether the action was justified at its inception; second . . . whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place." *Id.* at 341

[74] *Id.* at 341, 343.

appropriate standard for assessing the **legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies.**"[75]

The Supreme Court recently affirmed the narrowness of T.L.O., characterizing it as "h[o]ld[ing] that for searches by school officials a careful balancing of governmental and private interests" requires a showing less than probable cause, and therefore applying "a standard of reasonable suspicion to determine the legality of a school administrator's search of a student."[76]

Even more compelling, the facts of this case clearly distinguish Plaintiff's situation from that of *T.L.O.* The Court's decision in *T.L.O.* was premised on a "special need" of the government not present in this case: "the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds."[77] The Court noted that disciplinary problems and student drug use had been rising in recent years, and that "the preservation of order and a proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult."[78] It was in light of these considerations that the Court concluded that the school's need swiftly to discipline T.L.O., suspected of smoking in the lavatory in violation of school rules, would be frustrated if school officials were required first to obtain a warrant based on probable cause.[79]

In Plaintiff's case, by contrast, the alleged incident occurred after school hours and when Corey was outside the care and custody of school officials. Moreover, the alleged incident – vandalizing a security camera – did not even occur on school property. The STSD did not have any

[75] *Id.* at 341 n.7 (**emphasis added**).
[76] *Safford Unified Sch. Dist. v. Redding*, 129 S.Ct. 2633, 2639 (2009) (internal citation and quotation omitted). *See also Ferguson v. City of Charleston*, 532 U.S. 67, 79 n.15 (2001) (noting that "[i]n T.L.O., [the Court] made a point of distinguishing searches 'carried out by school authorities acting alone and on their own authority' from those conducted 'in conjunction with, or at the behest of law enforcement agencies'").
[77] *Id.* at 339.
[78] *Id.*
[79] *Id.* at 340-41.

"special need" and, therefore, **had zero authority** to act with police in interrogating Plaintiff outside the presence of a parent, legal guardian and/or attorney.[80]

Understanding how *T.L.O* relates to this case, the next question is whether the Courts would apply the probable cause or reasonable suspicion standard to determine the reasonableness of the search/seizure. Plaintiff is able to prove his search and seizure was unreasonable under both standards.

Probable cause is a flexible, common-sense standard. "It merely requires that the facts available to the officer would 'warrant a man of reasonable caution in the belief,' . . . that certain items may be contraband or stolen property or useful as evidence of a crime; it does not demand any showing that such a belief be correct or more likely true than false."[81] The probable cause standard generally applies when an agent of law enforcement initiates the interrogation, search and/or seizure.

Reasonable Suspicion is a "practical, non-technical evidentiary showing of individualized wrongdoing that amounts to less than probable cause and considerably less than a preponderance of evidence, but more than an inchoate hunch."[82] Under *T.L.O.*, reasonable suspicion for searches by school officials relates to "reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school."[83] The Supreme Court has described the "required knowledge component of probable cause for a law enforcement officer's evidence search as one that raises a 'fair probability' or 'substantial change' of discovering evidence, whereas the lesser reasonable suspicion standards can be described as a "moderate chance" of finding evidence of wrongdoing."[84]

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[80] *See Jones v. Hunt*, 410 F.3d 1221, 1228 (10th Cir. 2005) (holding the T.L.O. standard inapplicable to the seizure of a student that did "not involve efforts by school administrators to preserve order on school property").
[81] *Texas v. Brown*, 460 U.S. 730, 742(1983) (internal citation omitted).
[82] *See* Phillip A. Hubbart, Making Sense of Search and Seizure Law: a fourth amendment handbook, 170 (2005).
[83] *T.L.O*, 469 U.S. at 341-342.
[84] *See Safford Unified Sch. Dist. #1 et al. v. Redding*, 129 S.Ct. 2633, 2639 (2009)

Determining which standard applies depends on who instigated the search and/or seizure.[85] Plaintiff believes the appropriate standard in this case will be, and is, the probable cause standard. There are no facts that will ever support the notion that the school and city had probable cause to search and seize Plaintiff. Assuming arguendo that the reasonable suspicion standard applies to Plaintiff's case, the search and seizure of Plaintiff by the school and city still remains unreasonable.

Typically, the reasonable suspicion standard is satisfied if police and/or school officials have: (i) an anonymous tip from a reliable source,[86] (ii) a school official witnessing the act or overhearing a conversation,[87] (iii) a reliable tip from another student[88] and/or (iv) a student with a past behavioral record indicating similar behavior.[89]

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[85] *See, e.g., State v. Serna*, 860 P.2d 1320, 1323-25 (Ariz. 1993) (applying reasonable suspicion standard to public high school security personnel employed by the school and considered agents of the principal); *T.S. v. State*, 863 N.E.2d 362(Ind. App. 2007) (applying reasonable suspicion standard to police officer employed by school); In re Steven A., 764 N.Y.S.2d 99 (N.Y. App. Div. 2003) (applying reasonable suspicion standard for civilian employed of police department assigned exclusively to school security); *State v. Tywayne H.*, 933 P.2d 251 (N.M. Ct. App. 1997) (applying probable cause standard to law enforcement officers employed by police department and stationed at school dance who acted on their own discretion); *Com. v. J.B.*, 719 A.2d 1058, 1065-66 (Pa. Super. Ct. 1998) (holding police officer to "reasonable suspicion" standard because police officer was employed by school); *In re. J.F.M.*, 607 S.E.2d 304, 307 (N.C. App. 2005) (reasonable suspicion standard applies to situations in which SRO, acting in conjunction with school officials, detains a student on school premises); *Patman v. State*, 537 S.E.2d 118, 120 (Ga. 2000) (applied probable cause standard to police officer working on special assignment in school); *State v. K.L.M.*, 628 S.E.2d 651, 653 (Ga. 2006) (applying probable cause standard to police officer even though search initiated by school official); *A.J.M. v. State*, 617 So.2d 1137, 1138 (Fla. App. 1993) (applying probable cause standard to school resource officer, paid by sheriff's office, who conducted search at request of principal); *State v. Scott*, 630 S.E.2d 563 (Ga. 2006) (school resource officer is considered a law enforcement officer, not a school official, for 4th Amendment purposes).

[86] *See, e.g, Martens v. Dist. No. 22*, 620 F. Supp. 29, 31 (N.D. Ill. 1985) (school officials had reasonable suspicion to search a student after an anonymous tip from a parent claiming her daughter had purchased marijuana from the student); McKinnon, 558 P.2d at 785 (school officials had reasonable grounds to search a student based on an anonymous tip called into the police department). But see In re A.T.H., 106 S.W.3d 338, 343-45 (Tex. App. 2003) (school security officer's pat-down search of student was not justified at its inception because an anonymous tipster provided the location and physical description of the student, but no knowledge of concealed criminal activity).

[87] *See, e.g., People v. Ward*, 233 N.W.2d 180, 183 (Mich. 1975) (school official had reasonable suspicion to search a student after a teacher reported witnessing the student exchange pills with another student); *In re Michael R.*, 662 N.W.2d 632, 636 (Neb. App. 2003) (school officials had reasonable suspicion to sear based on, inter alia, fact that security officer overheard juvenile telling another student that he had some "big bags," which officer knew was slang term for marijuana).

[88] *See, e.g., Matter of Gallegos*, 945 P.2d 656, 658 (Or. 1997) (information provided by student to school officials about another student's possession of handgun gave officials probable cause for search, even though informant-student had record of absences and tardiness because officials had never known or heard of informant lying, cheating or making up stories.); *S.C. v. State*, 583 So.2d 188, 192-93 (Miss. 1991) (school officials had reasonable grounds to search student's locker and bag after another student reported that the student possessed two handguns); *In re L.A.*, 21 P.3d 952, 959 (Kan. 2001) (school officials had reasonable suspicion to search student after a tip from Crime Stoppers organization based on information from a student). But see *Redding v. Safford Sch. Dist. #1*, 531 F.3d 1071, 1082-83 (9th Cir. 2008) (noting that "we do not treat all informant tips as equal in their reliability" and "**we are most suspicious of those self-**

Police and/or school officials **do not** have reasonable suspicion if they rely on: (i) a hunch,[90] (ii) a tip from an unreliable source,[91] (iii) furtive gestures or non-cooperation,[92] (iv) the student's status as a rule breaker[93] and/or (v) association with wrongdoers.[94]

In this case, school officials and the police did not have reasonable suspicion to suspect Plaintiff was involved in vandalizing the Parks & Recreation camera. All the evidence pointed to the student who was photographed vandalizing the camera. The **only** evidence school officials and/or police offers had that Corey was involved came from the mouth of the student who was caught red-handed. This is not a reliable source. Moreover, the mere fact that Plaintiff may have associated with this student does not permit the school and police to automatically link him to each bad act committed by this student. Because the only incriminating evidence stemmed from the self-serving words of a student who was caught vandalizing the camera, Officer Wood and Vice Principal Stanford did not have any right to seize Plaintiff and interrogate him.[95]

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exculpatory tips that might unload potential punishment on a third party), aff'd in part, rev'd in part, 129 S.Ct. 2633 (2009)

[89] *See, e.g., State v. Baccino*, 282 A.2d 869, 872 (Del. Super. Ct. 1971) (school official had reasonable suspicion to search student's coat for contraband because the student was reluctant to relinquish the coat, was out of class illegally, and was known to the school official to have used drugs in the past).

[90] *See T.L.O.*, 469 U.S. at 345-46. *See also Sostarecz v. Misko*, No. 97-CV-2112, 1999 WL 239401 (E.D. Pa. Mar. 26, 1999) (strip search of student for drugs after teacher reported student's "inappropriate behavior" in class was not justified at its inception)

[91] *See, e.g., Fewless v. Board of Educ. of Wayland Union Schools*, 208 F. Supp. 2d 806, 819-820 (W.D. Mich. 2002) (strip search of student for drugs was not justified at its inception when based on information from students with highly questionable credibility given their potential ill motives as they were serving detention for bullying the accused student).

[92] *See In re William G.*, 709 P.2d 1287, 1297 (Cal. 1985) (student's "furtive gestures" to hide his calculator case, standing alone, did not provide reasonable grounds for school official to search student's calculator case).

[93] *See, e.g., Commonwealth v. Damian D.*, 752 N.E.2d 679, 683 (Mass. 2001) (search of student known for skipping classes was unlawful at inception when there was no evidence tying truancy to a reasonable belief that the student possessed contraband); *Cales v. Howell Public Schools*, 635 F. Supp. 454, 456 (E.D. Mich. 1985) (reasonable suspicion requires more than belief that student violated some rule or law, but instead requires a reasonable belief that a specific rule or law was broken and search will produce evidence of that violation).

[94] *See, e.g., People v. Scott D.*, 315 N.E.2d 466, 490 (N.Y. 1974) (search of student's person by school officials, based in part on the student's association with a classmate who was under suspicion of dealing drugs, was not reasonable and was therefore unconstitutional).

[95] This is further evident from the fact that the topic of the interrogation – the vandalized camera – did not concern the ability of the school to maintain order.

III. PLAINTIFF'S INTERROGATION VIOLATED THE MISSISSIPPI YOUTH COURT ACT.

It is well established that "authoritative opinion has cast formidable doubt upon the reliability and trustworthiness of 'confessions' by children."[96] Because of this undisputed fact Section 43-21-303(3) of the Mississippi Code Annotated provides that:

> Unless the child is immediately released, the person taking the child into custody shall immediately notify the judge or his designee. A person taking a child into custody shall also make continuing reasonable efforts to notify the child's parent, guardian or custodian **and invite the parent, guardian or custodian to be present during any questioning**.[97]

The statute instructs that the parent shall be invited to be present "during any questioning" and such requirements are clearly established principles of constitutional law.[98]

The reason courts have insisted parents participate in interrogations is due to the fact a minor, "no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police."[99] The U.S. Supreme Court explained further:

> That is to say, we deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights. . . [a] lawyer or other adult relative or friend could have given the petitioner the protection which his own immaturity could not.[100]

In other words, it would thwart the interests of justice if the law did not take into account a child's age because teenage years pose substantial problems, both social and developmental. Because of this undisputed fact, an alleged youth offender "cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in

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[96] *In re Gault*, 387 U.S. 1, 52, 87 S. Ct. 1428, 1456, 18 L. Ed. 2d 527, 559-60 (1967).
[97] *Id.*
[98] *M.A.C.*, 566 So.2d at 474.
[99] *Gallegos v. Colorado*, 370 U.S. 49, 54-55, 82 S. Ct. 1209, 1212-13, 8 L. Ed. 2d 325, 328-29 (1962).
[100] *Id.*

his early teens. This is the period of great instability which the crisis of adolescence produces."[101]

At the time Plaintiff was interrogated no charges were filed against him. Moreover, "our case law holds that there is 'no formal fixed and definite charge against the appellant ... until the Grand Jury acts.'"[102] Because Plaintiff had not been charged with any other charge that would negate the dictates of the Youth Court Act, its provisions were still applicable to him during his interrogation.[103] As stated in *Smith v. State*[104]:

> At the time Smith gave his confession he had not been charged with any crime that would remove him from the Youth Court's jurisdiction. **The crimes with which he had been charged, burglary, resisting arrest and assaulting a police officer, all fall within the Youth Court's jurisdiction. Therefore, the circumstances surrounding Smith's confession must satisfy the Youth Court Act**.[105]

Mississippi Courts faced a situation similar to the case at bar in *M.A.C.* in which the Supreme Court reversed a conviction when authorities interrogated a minor-child Defendant outside the presence of his parents. The Court explained:

> In the case sub judice, the mother requested numerous times to see her son, but she was ordered to wait in a building "two parking lots over" while M.A.C. was interrogated. When she finally made her way to the interrogation room, her son had waived his Miranda rights and succumbed to being interrogated. *See Miranda v. Arizona*, 384 U.S. 436, 478-79, 86 S.Ct. 1602, 1629-30, 16 L.Ed.2d 694, 726 (1966). Surprisingly, Detective Pope admitted that excluding parents during an interrogation was his standard policy. Without a doubt, this was violative of Sec. 43-21-303(3)--which cannot continue nor be condoned. This Court thus holds that the violation necessitates reversal of the conviction.[106]

The same fact pattern emerged in the case at bar.

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[101] *Haley v. Ohio*, 332 U.S. 596, 599, 68 S. Ct. 302, 303-04, 92 L. Ed. 224, 228 (1948).
[102] *Edmonds v. State*, No. 2004-CT-02081-SCT (MSSC) (*quoting Walker v. State*, 235 So.2d 714-15 (Miss. 1970)).
[103] *Id.*
[104] 534 So. 2d 194, 195 (Miss. 1988)
[105] *Id.*
[106] *M.A.C.*, 566 So.2d at 474.

Plaintiff was instructed, under the threat of arrest, to follow Officer Wood to the main office. He did so. Plaintiff was interrogated, without a parent or lawyer present, for thirty (30) minutes before he was cuffed and paraded out of the school in front of his peers. At this time who was taken to the police department, still without a parent or attorney, and interrogated again. Plaintiff was never given his *Miranda* warnings.

Further, Plaintiff was not charged, as defined by Mississippi state law, with any crime, thus the provisions of the Youth Court Act were still applicable.[107] While in *M.A.C.* the Mississippi Supreme Court did not have the opportunity to determine whether obtaining confessions outside the presence of parents are admissible, the Court did make such a determination in *Edmunds*.

"Considering that absence of a parent or guardian during the interrogation of a minor goes directly to the issue of voluntariness, such a violation renders the statement inadmissible as a violation of basic constitutional guarantees. U.S. Const. amend. V and XIV and Miss. Const. art. 3 § 26."[108] And even though Plaintiff interrogation did not involve physical abuse, such is not a requirement for an alleged confession obtained during an interrogation outside the presence of a parent to be suppressed. As stated by the Mississippi Supreme Court in *Edmunds*:

> While the above (cited) cases certainly involved egregious police conduct, nothing in the above passages suggests that police must first beat a child or detain him incommunicado for days on end for the law to recognize the special vulnerability of juveniles. **It is enough that Tyler's mother was removed from the room in violation of Miss. Code Ann. § 43-21-303(3)**.[109]

Just as in *Edmunds*, Plaintiff's interrogation was unlawful.

[107] Miss. Code Ann. § 43-21-303(3) (Rev. 2004).
[108] *Edmunds*, No. 2004-CT-02081-SCT (MSSC), ¶ 56.
[109] *Id*, No. 2004-CT-02081-SCT (MSSC), ¶ 56.

IV. A TEMPORARY RESTRAINING ORDER, OR IN THE ALTERNATIVE, A PRELIMINARY INJUNCTION, SHOULD ISSUE BECAUSE PLAINTIFF'S RIGHTS ARE BEING IRREPARABLY HARMED.

The standard for issuance of a temporary restraining order is the same as a preliminary injunction. The standard for a preliminary injunction in the Fifth Circuit is well-established. The factors to be considered were noted in *Roho, Inc. v. Marquis*:

> [A] preliminary injunction is an extraordinary remedy that should not be granted unless the movant has demonstrated, by a clear showing: (1) a substantial likelihood of prevailing on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened injury outweighs any harm that may result from an injunction to the non-movant; and (4) that the injunction will not undermine public interests [110]

While the grant or denial of a preliminary injunction rests in the discretion of the trial court, the court's discretion is not unbridled and a preliminary injunction "must be the product of reasoned application of the four factors held to be necessary prerequisites [to a preliminary injunction]."[111]

A. Likelihood of Success on the Merits

The evidence in favor of Plaintiff is not only compelling, but is overwhelming. Here the Court is faced with a situation where zero evidence indicated Plaintiff had vandalized the property in question. Instead, Defendants only interrogated Plaintiff after the teenager who was caught red-handed vandalizing the property implicated Plaintiff. Such evidence does not even constitute reasonable suspicion, but Defendants, nonetheless, opted to interrogate Plaintiff for almost an hour without notifying his parents or providing Plaintiff an attorney.

Defendants quickly adjudicated the claims against the teenager photographed vandalizing the equipment, but waited until Plaintiff was able to file his federal lawsuit to prosecute Plaintiff. Moreover, the city's insurance investigator was inquiring as to why Plaintiff had not been prosecuted

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[110] 902 F.2d 356, 358 (5th Cir. 1990). see also Hull v. Quitman County Bd. of Educ., 1 F.3d 1450, 1453 (5th Cir. 1993) (citing Roho, Inc.).

[111] *Enterprise Int'l, Inc. v. Corporacion Estatal Petrolera Ecuatoriana* ("C.E.P.E."), 762 F.2d 464, 472 (5th Cir. 1985) (quoting *Florida Medical Ass'n v. H.E.W.*, 601 F.2d 199, 202 (5th Cir. 1979)).

shortly before the charges were filed. When coupled with the weight of the law condemning Defendants' actions, it is clear Plaintiff is likely to succeed on the merits of his case.

B. Plaintiff Will Suffer Irreparable Harm if Relief is not Granted.

It is a well established principle of law that were a plaintiff shows retaliatory or bad faith prosecution, irreparable injury for the purposes of *Younger* is established.[112] Moreover, it's a rudimentary principle of law that the losses of constitutional freedoms, even for minimal periods of time, constitute irreparable injury justifying a temporary restraining order.[113] It is clear a day that the prosecution of Plaintiff is in an effort to deter, harass and retaliate against Plaintiff's exercise of his constitutional freedoms.

C. Defendants Will Not Suffer Irreparable Harm if the Temporary Restraining Order Issues

Make no mistake, granting a TRO and preliminary injunction until final resolution of this federal suit will do little or no harm to Defendants. If Plaintiff ultimately fails in this federal lawsuit, Defendants' prosecution can move forward.[114] If, on the other hand, the TRO and permanent injunction fails to issue, Plaintiff will suffer irreparable harm when he is compelled to defend himself from Defendants' retaliatory charges in Tippah County Youth Court on May 9, 2012.

D. The Public Interest Will Not be Harmed if a Temporary Restraining Order Issues

The requirement that the public interest not be harmed if the TRO or injunction issues is also satisfied in accordance with applicable law. Just as the court in *Westin* opined, "the only possible harm to the public interest by granting the injunction would be the delay caused by the resolution of the underlying suit, and in truth the court does not believe that this represents any harm to the public at all. If [Plaintiff] ultimately wins his civil suit, the public interest will have been

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[112] *Cullen*, 18 F.3d at 104 (*citing Bishop v. State Bar of Texas*, 736 F.2d 292, 294 (5th Cir. 1984).
[113] *Elrod v. Burns*, 427 U.S. 347, 373 (1976).
[114] *See Westin*, 760 F.Supp. at 1570 (threatened injury to district attorney's attempt to take case to a grand jury minimal since, if federal lawsuit was lost, a grand jury could hear evidence against Westin).

served by the granting of the preliminary injunction preventing unjust retaliation against [Plaintiff] by state officers."[115] Even more compelling, the public, in this instance, would be harmed if the injunction is not issued for the palpable chill induced by Defendants' retaliatory prosecution operates not against the civil liberties of Plaintiff alone, but against all individuals who desire to exercise their constitutionally guaranteed civil liberties.

CONCLUSION

Plaintiff has suffered and continues to suffer irreparable injury arising in the context of this of this case. The relief sought by Plaintiff is a temporary restraining order and injunctive relief against the action of Defendants; it is the kind of relief that does not raise a special problem, yet cries out for federal intervention.

Respectfully submitted,

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[115] *Id.*

CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2012, I, Joseph R. Murray, II, attorney for Plaintiff, electronically filed the foregoing document with the Clerk of the Court using the ECF system. This document will be served upon Defendants, via hand delivery, at the below listed addresses:

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