

No. 26-60184

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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LAUREN STOKES,

*Plaintiff – Appellant,*

v.

GLENN BOYCE,

*Defendant – Appellee.*

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On Appeal from the U.S. District Court  
For the Northern District of Mississippi, No. 3:25-CV-307  
The Honorable Glen H. Davidson, U.S. District Judge

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**MOTION FOR LEAVE TO FILE BRIEF OF JAMES M. THOMAS,  
WENDY GOLDBERG, AND GRAHAM PITTS AS *AMICI CURIAE*  
IN SUPPORT OF REVERSAL**

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Pursuant to Federal Rule of Appellate Procedure 29, James M. Thomas, Wendy Goldberg, and Graham Pitts respectfully move this Court for leave to file a brief as *amici curiae* in support of reversal. Their proposed brief is attached to this motion.

James M. Thomas is Professor of Sociology in the Department of Sociology and Anthropology at the University of Mississippi. Wendy Goldberg is Senior Lecturer in Composition and Rhetoric at the University of Mississippi. Graham Pitts is Assistant Professor of History and International Studies at the University of Mississippi. They seek to file the attached brief in their individual capacities.

*Amici* have a shared interest in the University of Mississippi's consistent adherence to the First Amendment when regulating faculty and staff speech. Dr. Thomas has personally been at the center of a firestorm regarding his own constitutionally-protected speech, and experienced firsthand how the University resolved it in accordance with the First Amendment.

*Amici's* brief is desirable and would assist the Court because it contextualizes this case in the long, complicated history of the University of Mississippi's adherence to, and violations of, the First Amendment.

It is well-known that for decades, the University engaged in viewpoint discrimination designed to suppress employee and student speech supportive of racial integration.

Less well-known is that over the last three decades, the University has built considerable First Amendment “muscle” (for lack of a better word). It has demonstrated an ability to accommodate *very controversial, deeply offensive views* on its campus, consistent with its Constitutional obligations. The University’s proven abilities may assist the Court in determining whether Appellant Lauren Stokes’s speech could have been tolerated without genuine disruption.

The brief concludes with a short explanation of the critical role this Court has played in enforcing the First Amendment at the University.

Undersigned counsel sought consent for the filing of this brief from all parties. Counsel for Ms. Stokes consented. Counsel for the University responded, “We don’t anticipate opposing your motion but will let you know once we see it.”<sup>1</sup>

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<sup>1</sup> Subsequent to those emails, the proposed *amici* on this brief changed slightly. Undersigned counsel acknowledges that the University’s response to this motion may therefore change as well.

This Court may accept or reject an amicus brief as it sees fit. *See Richardson v. Flores*, 979 F.3d 1102, 1106 (5th Cir. 2020). It is pure judicial discretion.

In this case, *amici* understand that the University has not opposed other amicus briefs to be filed in this matter, even those it has not previewed. That too is a matter of its discretion. *Amici* simply encourage that discretion to be applied consistently, to not “create at least the perception of viewpoint discrimination.” *Lefebure v. D’Aquila*, 15 F.4th 670, 674 (5th Cir. 2021) (single-Judge Order of Ho, J.) (quoting *Neonatology Assocs., P.A. v. Comm’r of Internal Revenue*, 293 F.3d 128, 133 (3rd Cir. 2002) (Alito, J.)).

One distinction between undersigned *amici* and other friends of the Court who seek to present information in this case is simple: these *amici* are employees of the University. But that is not reason to oppose their participation in this case. The Supreme Court has identified “considerable value . . . in encouraging, rather than inhibiting, speech by public employees,” because “government employees are often in the best position to know what ails the agencies for which they work.” *Lane v. Franks*, 573 U.S. 228, 236 (2014).

Because *amici* believe that a thorough understanding of the history of speech suppression and accommodation at the University of Mississippi will assist in this Court's adjudication of this case, they respectfully ask that their motion for leave to file be granted.

Respectfully submitted, this the 23rd day of July, 2026.

/s/ Andrew Canter

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### **CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 27(d)(2) because it contains 611 words. This brief also complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared in a proportionally spaced face using Microsoft Word in 14-point Century Schoolbook font.

/s/ Andrew Canter

Andrew Canter

### **CERTIFICATE OF SERVICE**

I hereby certify that on this day, I electronically filed the foregoing using the Court's CMECF system, which served a copy upon all counsel of record.

/s/ Andrew Canter

Andrew Canter

No. 26-60184

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## **SUPPLEMENTAL STATEMENT OF INTERESTED PERSONS**

Pursuant to 5th Cir. R. 29.2, undersigned counsel certifies that in addition to the persons and entities identified in the parties' Certificates of Interested Persons, the following *amici* have an interest in the outcome of this case.

1. James M. Thomas
2. Wendy Goldberg
3. Graham Pitts

/s/ Andrew Canter  
Andrew Canter

Counsel for *Amici Curiae*

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## INTEREST OF *AMICI CURIAE*<sup>1</sup>

James M. Thomas is Professor of Sociology in the Department of Sociology and Anthropology at the University of Mississippi. Wendy Goldberg is Senior Lecturer in Composition and Rhetoric at the University of Mississippi. Graham Pitts is Assistant Professor of History and International Studies at the University of Mississippi. They seek to file this brief in their individual capacities.

*Amici* have a shared interest in the University of Mississippi's consistent adherence to the First Amendment when regulating faculty and staff speech. Dr. Thomas has personally been at the center of a firestorm regarding his own constitutionally-protected speech, and experienced firsthand how the University resolved it in accordance with the First Amendment.

This brief sets forth *amici*'s considered understanding of the history of the University's successes and failures in accommodating controversial speech in the face of heckler's vetoes—and this Court's critical role in enforcing the First Amendment at the University of Mississippi.

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<sup>1</sup> Pursuant to Rule 29(a)(4)(E), undersigned counsel states that no party's counsel authored this brief in whole or in part, and no persons other than *amici* or their counsel contributed money that was intended to fund preparing or submitting the brief.

## ARGUMENT

The institution of higher education located in Oxford, Mississippi is a complicated place with a complicated history.

“Ole Miss” has a long history of suppressing speech its leaders—and the leaders of the State of Mississippi—found offensive. When Ole Miss wanted to maintain racial segregation, it investigated faculty members who supported integration and punished students who spoke up for equality. At times, Ole Miss executed this viewpoint discrimination by turning a blind eye toward disruptive speech of White students harassing Black students, using the very idea of “disruption” as a sword rather than a shield.

*Amici* present that history.

Then there is the University of Mississippi. It is located on the same campus, to be sure, but its culture is different. After the civil rights movement, in an attempt to better adhere to the Constitution, the University of Mississippi has tried to allow for a range of beliefs and opinions to be shared. It has recently demonstrated an ability to accommodate *very controversial, deeply offensive views* on its campus, consistent with its First Amendment obligations.

*Amici* present that history, too.

*Amici* respectfully submit that in this case, “Ole Miss” reared its head. Campus leaders reflexively suppressed speech they found offensive. They acted on a short timetable in disregard of both Constitutional principles and the First Amendment “muscle” that the modern University had built. It was an unwarranted response to a non-disruptive situation. *Amici* therefore support reversal.

The present failure has once again necessitated this Court’s intervention. For as *amici* show in their final section, the Fifth Circuit has a distinguished history of enforcing the First Amendment when Ole Miss has not or will not. This Court should do the same here.

## **I. “Ole Miss” Suppressed and Punished Speech Opposing White Supremacy**

Ole Miss’s most notorious examples of suppressing speech happened, perhaps unsurprisingly, during the civil rights movement.

In March 1956, as part of the backlash to *Brown v. Board of Education*, Mississippi’s legislature established the Mississippi State Sovereignty Commission within the executive branch.<sup>2</sup> It aimed “to

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<sup>2</sup> Mississippi State Sovereignty Commission, HB 880, Mississippi House of Representatives (1956); Yasuhiro Katagiri, *The Mississippi State Sovereignty Commission: Civil Rights and States’ Rights* (2001).

maintain segregation in the State of Mississippi” and wreck “the NAACP and any other organization . . . attempting to advocate integration.”<sup>3</sup>

The Sovereignty Commission worked hand-in-hand with Ole Miss’s governing board—Mississippi Institutions of Higher Learning (IHL)—to target students and faculty that did not adhere to the State’s political views. For example:

- In 1962, the Sovereignty Commission compiled lists of faculty members who had signed a resolution about the riot that followed James Meredith’s integration of the University.<sup>4</sup>
- In 1963, after Professor James Silver delivered his famous address criticizing the State’s reckless commitment to segregation, “Mississippi: The Closed Society,” IHL hired private investigators to follow Silver to speaking engagements and report back on his statements.<sup>5</sup>

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<sup>3</sup> Katagiri, *supra* at 38.

<sup>4</sup> Richard P. Adams et al., *Academic Freedom in Mississippi: A Report of a Special Committee*, 51 AAUP Bulletin No. 4 at 342 (1965), <https://doi.org/10.2307/40223266>; Katagiri, *supra* at 161.

<sup>5</sup> David G. Sansing, *Making Haste Slowly: The Troubled History of Higher Education in Mississippi* 201 (2008).

- In 1964, the Sovereignty Commission investigated Professor Russell H. Barrett on suspicion of publishing articles in a “communist-front organization.”<sup>6</sup>
- Later in 1964, in response to faculty invitations to members of civil rights groups, IHL adopted a resolution excluding all Black people from public buildings on the campus of any state institution unless they were enrolled as students.<sup>7</sup>
- Until 1966, IHL required faculty to list annually the organizations to which they belonged and those to which they contributed money, despite the fact that the U.S. Supreme Court had found such statutes unconstitutional in 1960.<sup>8</sup>
- In 1970, after approximately half of all Black students at the University participated in a peaceful protest on campus, the Mississippi Highway Patrol, at the request of campus administration, arrested 89 of them for breaching the peace and trespassing—despite the fact that they were all tuition-paying

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<sup>6</sup> Katagiri, *supra* at 164.

<sup>7</sup> Adams, *supra* at 347.

<sup>8</sup> *Shelton v. Tucker*, 364 U.S. 479 (1960).

students.<sup>9</sup> Half of those arrested were sent to Parchman Farm Penitentiary for two days.<sup>10</sup> All 89 were suspended without hearings or expelled.<sup>11</sup>

In short, Ole Miss's actions in this era mirrored the State's resistance to integration. They were designed to silence and intimidate faculty and students who wished to speak on a matter of public concern.

This posture changed over time, to be sure. *See infra*. Yet progress was uneven. Later campus incidents revealed vestiges of Ole Miss.

In 1983, for example, hundreds of White students surrounded a historically Black Greek fraternity house and shouted racial epithets until dispersed by police. Although the Black students described huddling inside listening to the mob outside scream, "N\*\*\*\*r!"<sup>12</sup>, the University's then-public relations director Ed Meek characterized it as "nothing but a spring pep rally."

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<sup>9</sup> W. Ralph Eubanks, *The Unhealed Wounds of a Mass Arrest of Black Students at Ole Miss, Fifty Years Later*, *The New Yorker* (Feb. 23, 2020).

<sup>10</sup> Archie Jones and Keon Burns, "Jones, Archie," in *Oral Histories from Black Power at Ole Miss*, at 12 (2020), [https://egrove.olemiss.edu/blkpower\\_ohistories/12](https://egrove.olemiss.edu/blkpower_ohistories/12)

<sup>11</sup> Eubanks, *supra*.

<sup>12</sup> Leon Daniel, *Matter of a flag – or fear? Two decades after Ole Miss riot, The Stars and Bars still wave*, UPI (May 4, 1983), <https://www.upi.com/Archives/1983/05/04/Matter-of-a-flag-or-fear-Two-decades-after-Ole-Miss-riot-The-Stars-and-Bars-still-wave/4454420868800/>

*This* disruption was not problematic in Ole Miss’s eyes. The incident indicated how the very idea of “disruption” was susceptible to selective enforcement.

In 2000, during Black History Month, students discovered racial epithets written in a dormitory bathroom, and a flyer of a monkey eating an apple with the backdrop of a Confederate battle flag on the dorm’s bulletin board.<sup>13</sup> The bulletin board outside the dorm’s residential assistant was set on fire, and asphalt was thrown through his window with a note calling him a “N\*\*\* lover.” Yet the University’s public relations director told the media, “[t]he real issue is not racial at all. It is immature behavior.” This disruption—intrusion into personal living space—was also at risk of being minimized.

In this situation, to its credit, the University investigated the incidents with a special task force. Its chairman ultimately concluded that the events *were* racially motivated and the University did not act quickly or decisively to address them. The task force presented the Chancellor with a list of 16 recommendations. Even then, the University

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<sup>13</sup> Marty Russell, *Ole miss task force recommends fast action on racial incident*, Daily Journal (Mar. 16, 2000), [https://www.djournal.com/news/hed-ole-miss-task-force-recommends-fast-action-on-racial-incid/article\\_f6bbf6cb-049d-5890-8b81-fa43c7d93fe8.html](https://www.djournal.com/news/hed-ole-miss-task-force-recommends-fast-action-on-racial-incid/article_f6bbf6cb-049d-5890-8b81-fa43c7d93fe8.html)

did not determine who the perpetrators were, and no disciplinary measures were taken.

## **II. In Contrast to Ole Miss, the Modern University Has Built Considerable First Amendment Muscle**

Despite that history, in the past three decades the University of Mississippi has made a concerted effort to turn the page and comply with the First Amendment.

In 2003, the University's student newspaper published a sex column that drew the ire of the Tupelo-based American Family Association. AFA organized an email campaign that resulted in the University receiving approximately 2,000 complaints demanding that it fire the student journalist and cancel the column.<sup>14</sup> Chancellor Khayat declined. He told the hecklers that "not everything that can be printed should be printed. We intend to impress this message on [the students]."

Also in 2003, Richard Barrett, founder and general counsel of the Mississippi-based White nationalist organization, "Nationalist

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<sup>14</sup> Wilson Boyd, *UM sex column sparks controversy, debate*, The Reflector (Apr. 25, 2003), <https://reflector-online.com/24865/uncategorized/um-sex-column-sparks-controversy-debate/>

Movement,” spoke on campus. Students, faculty, and staff organized a peaceful protest.<sup>15</sup>

In 2009, a dozen members of the Mississippi White Knights of the Ku Klux Klan gathered on campus before the University’s home football game against LSU. The hooded Klan members protested the University’s decision to cease playing “From Dixie with Love” during home games. School officials told reporters that they could not prevent the Klan from demonstrating so long as they remained nonviolent.<sup>16</sup>

In 2019, neo-confederate activists planned to march on campus to protest the removal of Confederate iconography.<sup>17</sup> The University released a statement saying, “we know these events are causing anxiety and concern among members of our university community,” but explained that the march was “an important educational moment for our university community to address challenging issues in a manner that

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<sup>15</sup> Gregg Mayer, *Ole Miss students and faculty protest against Jackson lawyer*, The Clarion-Ledger (Oct. 31, 2003).

<sup>16</sup> *12 Klansmen rally briefly before LSU-Ole Miss football game*, Assoc. Press (Nov. 21, 2009).

<sup>17</sup> Sarah Henderson, *Neo-Confederate protestors march from Oxford Square to Ole Miss campus*, The Daily Mississippian (Feb. 23, 2019), <https://thedmonline.com/neo-confederate-protesters-march-from-oxford-square-to-ole-miss-campus/>.

respects freedom of expression.”<sup>18</sup> The march was held on the same day as several other University events. *Amici* describe the disruptions below.

In 2019, IHL considered whether to deny tenure to amicus Dr. Thomas because of public comments he made that were critical of public officials, rather than the merits of his academic work.<sup>19</sup> According to public records, the University had received hundreds of concerned emails, including threats from parents to remove the University from their children’s prospective college lists, and from alumni threatening to halt donations if Dr. Thomas was not fired.<sup>20</sup> A majority of the IHL board acted in accordance with its obligations under the First Amendment, and granted him tenure as merited by his research and teaching.

Also in 2019, there was a substantial controversy over University students who had posed with guns in front of a bullet-riddled memorial

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<sup>18</sup> Devna Bose, *University administration, student groups respond to Confederate rally with forum, protests*, The Daily Mississippian (Feb. 19, 2019) [hereinafter *Bose I*], <https://thedmonline.com/university-administration-student-groups-respond-to-confederate-rally-with-forum-protests/>.

<sup>19</sup> Daniel Payne, *Professor granted tenure after concern over past social media posts delays process*, The Daily Mississippian (May 16, 2019), <https://thedmonline.com/professor-granted-tenure-after-concern-over-past-social-media-posts-delays-process/>.

<sup>20</sup> Devna Bose, *‘Tweets are my own’: How James Thomas’s Twitter sparked a conversation about academic freedom*, The Daily Mississippian (Mar. 4, 2019), <https://thedmonline.com/james-thomas-jt/>.

to Emmett Till in Tallahatchie County. The students were suspended from their fraternity, but not from the University.<sup>21</sup>

And in 2021, community members, students, and employees gathered in front of the Lyceum, on a workday, to protest the University's requirement to be vaccinated against COVID-19 or provide an exemption.<sup>22</sup> A photojournalist with *The Daily Mississippian* captured one protestor's sign that read, "Biden Bought Ole Miss Bodies \$91M." The paper reported, in part, "[t]he academic day was disrupted Tuesday when community members, students, and university employees marched on campus in demonstration against the employee vaccination mandate."

None of these First Amendment activities, whether on- or off-campus, and entailing different degrees of actual, material disruption to campus business, warranted casting aside the Constitution.

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<sup>21</sup> Jerry Mitchell, *Here's Proof Ole Miss Knew Identities of Two Students Who Posed in Front of Shot-Up Emmett Till Sign, but Did Little*, ProPublica (July 30, 2019), <https://www.propublica.org/article/university-of-mississippi-emmett-till-fraternity-campus-investigation>.

<sup>22</sup> Stacey Spiehler & Violet Jira, *Protest emerges on UM campus in response to vaccine mandate*, The Daily Mississippian (Nov. 4, 2021), [https://issuu.com/dailymississippian/docs/11\\_4\\_layoutbig](https://issuu.com/dailymississippian/docs/11_4_layoutbig)

### **III. In Light of History, the University's Reason for Firing Ms. Stokes Is Not Credible**

#### **A. Ms. Stokes' Post Was Not Disruptive**

The first sentence of the University's first brief in this case claimed that Lauren Stokes' social media post caused "immediate disruption."<sup>23</sup>

The University was confronted with "dire circumstances," it said.<sup>24</sup>

History reveals those claims to be absurd.

The University of Mississippi let members of the Ku Klux Klan protest on campus *before a home football game against LSU*, despite tens thousands of people present for the game and associated tailgating. The University hosted the leader of a White nationalist organization and a counter-protest. The University let neo-confederate activists march on campus, expressly recognizing their right to "freedom of expression." It is not plausible that the University was going through "dire circumstances" or could not have tolerated Ms. Stokes' own freedom of expression.

The neo-confederates' march in 2019 was genuinely disruptive to the University. The on-campus events that day included the Vice Chancellor of Intercollegiate Athletics' speech at The Inn at Ole Miss and

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<sup>23</sup> ROA.118.

<sup>24</sup> ROA.120.

the men's basketball team's home game versus Georgia.<sup>25</sup> Because it also was Junior Preview Day, though, there were hundreds of prospective students on campus. The University nevertheless determined that the risks of speech disrupting those activities, and potentially offending those visitors, could not overcome its duties under the First Amendment.

The evidence of genuine disruption in Ms. Stokes' case is, of course, hotly disputed. But even if this Court were to accept the University's evidence as uncontroverted, it is objectively thin. People in the development office and the Chancellor's Office received negative calls, emails, and texts.<sup>26</sup> A social media post was getting "negative attention" from places as far away as New York and Illinois.<sup>27</sup> University officials were getting "pressure from donors and public officials."<sup>28</sup>

With all due respect, that is simply life at an SEC school. Mere *rumors* about a football coach or player can go viral and become national stories. Controversies are part and parcel of the business. As Judge Marcus of the Eleventh Circuit put it memorably, "[a] university that

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<sup>25</sup> Bose I, *supra*.

<sup>26</sup> ROA.135.

<sup>27</sup> ROA.139, 141.

<sup>28</sup> ROA.144.

turns itself into an asylum from controversy has ceased to be a university; it has just become an asylum.”<sup>29</sup>

The University of Mississippi knows this too. It has dealt with all manner of viral controversies and attempted heckler’s vetoes before.

The sex column controversy drew 2,000 emails from AFA supporters demanding University action. The controversy surrounding Dr. Thomas’s statements went viral and drew hundreds of concerned emails. It was a national story when University students posted a photo of themselves with guns in front of a bullet-ridden memorial to a Black victim of White supremacy.

All of these examples were highly publicized and controversial. And all of them, plus the COVID protests, were based upon the expressive activity of the University’s own students and employees.

No matter how offensive or controversial these statements or ideas were to certain listeners, however, they were tolerated by the University. University officials recognized that the students’ photo next to the Till memorial was “offensive,” but did not take any disciplinary action against

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<sup>29</sup> *Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1130 (11th Cir. 2022) (Marcus, J., concurring).

them.<sup>30</sup> In this case, the Chancellor could have said the same about Lauren Stokes and let it blow over.

*Amici* believe, after weighing the facts of Ms. Stokes’ case against the University’s considerable, demonstrated First Amendment “muscle,” that the University had the capacity to withstand angry tweets and phone calls—and even on-campus protests against her, in the event any materialized. A place that can host marching neo-Confederates can host upset donors. The University’s claims otherwise are unworthy of credence.

## **B. The University Knew Private Social Media Was Off-Limits**

*Amici* wish to explain one final piece of local context that renders the University’s actions indefensible. It concerns the contentious process the University and its stakeholders had just gone through to revise its social media policy.

A first draft of the new policy was revealed in 2020. Faculty were immediately critical of overbroad and vague language suggesting that

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<sup>30</sup> Jerry Mitchell, *A year after an Instagram photo of Ole Miss frats hoisting guns in front of a bullet-riddled Emmett Till sign went viral, questions remain*, Miss. Today (Aug. 28, 2020) (“While Ole Miss officials said last year they considered the picture ‘offensive,’ they concluded the image did not violate the university’s code of conduct and, therefore, the students could not be punished.”).

the University would have broad oversight over their social media accounts.<sup>31, 32, 33</sup> The draft policy had to be reconsidered and revised over many months.

In 2021, the new policy clarified that it governed only official University social media accounts. “Any other social media site, such as a registered student organization site or an employee’s personal social media site, is NOT subject to this policy,”<sup>34</sup> it said. This clarification was appropriate.

*Amici* do not know why the University did not follow this policy in Ms. Stokes’ case, but believe the policy supports her claim.

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<sup>31</sup> Kenneth Niemeyer, *Faculty Senate criticizes, requests further review of proposed media policy*, The Daily Mississippian (Mar. 3, 2020), <https://thedmonline.com/faculty-senate-criticizes-requests-further-review-of-proposed-media-policy/>.

<sup>32</sup> Daniel Payne, *Proposed policy could limit faculty speech*, The Daily Mississippian (Mar. 1, 2020), <https://thedmonline.com/proposed-policy-could-limit-faculty-speech/>.

<sup>33</sup> Kenneth Niemeyer, *Faculty object to proposed communication policy’s ambiguity, control*, The Daily Mississippian (Mar. 3, 2020), <https://thedmonline.com/faculty-object-to-proposed-communication-policys-ambiguity-control/>.

<sup>34</sup> Univ. of Miss., Social Media Policy, No. COM.MK.200.201 at 3.2 (eff. Feb. 2, 2021), <https://policies.olemiss.edu/ShowHistory.jsp?policyObjidPara=12712432&istatPara=1>.

#### IV. Reversal Is Consistent With the Fifth Circuit’s Own History

*Amici* respectfully submit that the intervention of this Court would be consistent with its past responses to viewpoint discrimination at Ole Miss.

In *Trister v. University of Mississippi*, for example, law school professors sued after the Chancellor barred them from working with the Legal Services Program part-time.<sup>35</sup> The District Court dismissed their suit. It credited Ole Miss’s claim that their involvement “would be detrimental to some extent to the quality of instruction received by the students.”<sup>36</sup>

This Court reversed.

Its opinion began by observing the critical context: “evidence suggesting that the Legal Services Program was not popular with members of the local bar, with members of the [IHL] Board of Trustees, or with members of the Legislature.”<sup>37</sup> This Court found that Ole Miss’s evidence about diminished instructional quality was not only disputed, “but the evidence in fact strongly suggests that the opposite is true.”<sup>38</sup> It

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<sup>35</sup> 420 F.2d 499, 500-01 (5th Cir. 1969).

<sup>36</sup> *Id.* at 503.

<sup>37</sup> *Id.* at 502.

<sup>38</sup> *Id.* at 503.

concluded, “the only reason for making a decision adverse to appellants was that they wished to continue to represent clients who tended to be unpopular. This is a distinction that cannot be constitutionally upheld.”<sup>39</sup> This Court remanded with instructions to grant “injunctive and declaratory relief.”<sup>40</sup> This Court certainly has authority to do the same.

Other disputes—many of them, in fact—concerned who would be permitted to speak on campus.

In 1969, after years of litigation, a three-judge District Court enjoined every speaker regulation IHL had adopted between 1955 and 1968. After concluding “that the administration had been given enough chances to comply,” the Court eventually wrote its own constitutionally-compliant rules.<sup>41</sup> IHL did not appeal, and this Court promptly enforced the new rules.<sup>42</sup>

The rules provided that “[f]ree discussion of subjects of either controversial or noncontroversial nature shall not be curtailed.”<sup>43</sup> For

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<sup>39</sup> *Id.* at 504.

<sup>40</sup> *Id.*; see *Academic Freedom and Tenure: The University of Mississippi*, 56 AAUP Bulletin No. 1, at 78 (1970) [hereinafter *AAUP Bulletin 1970*].

<sup>41</sup> *Molpus v. Fortune*, 432 F.2d 916, 917 (5th Cir. 1970) (discussing *Stacy v. Williams*, 306 F. Supp. 963, 967 (N.D. Miss. 1969) (Coleman, Russell, and Keady, J.J.)); see *AAUP Bulletin 1970*, *supra* at 82.

<sup>42</sup> *Molpus*, 432 F.2d at 917.

<sup>43</sup> *Id.*

potentially disruptive speakers, though, the rules provided that the speaker's invitation "may be denied only if the head of the institution, or his authorized designee determines, after proper inquiry, that the proposed speech will constitute a clear and present danger to the institution's orderly operation."<sup>44</sup> The examples of clear and present danger included (but were not limited to) violence, destruction, interference with educational functions, and intimidation.<sup>45</sup>

The *Molpus* dispute arose out of Ole Miss's reflexive decision to exclude a Black student at Mississippi Valley State University from speaking on campus. The Fifth Circuit looked at the evidence and concluded that Ole Miss's stated reasons for exclusion were unsupported. Because "the facts did not justify" the claimed danger, "the Administration could not keep [the proposed speaker] off the campus."<sup>46</sup>

Then there is the IMAGES litigation. In those cases, Ole Miss attempted to suppress a student publication containing "some quite

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<sup>44</sup> *Id.* at 918.

<sup>45</sup> *Id.* The 2019 neo-Confederate march may have met this standard, as the group that organized the march had a history of violent threats. The University instead marshalled significant resources to ensure the march would take place.

<sup>46</sup> *Id.* at 921.

earthy language.”<sup>47</sup> Ole Miss argued to this Court “that because of its connection with this magazine it has the right to prevent publication and distribution solely because it has determined that this language is inappropriate and in bad taste.”<sup>48</sup> *Id.*

This Court disagreed. It found no evidence that the language alone warranted suppression, reasoning that “we are past the point in this country today where the mere use of any single word in a public arena can be immediately branded as so tasteless or inappropriate that its use is subject to unbridled censorship or restriction by government authority.”<sup>49</sup>

This Court also rejected “the right of the University to prevent activities which it would feel would lead to criticism of it from outside sources.”<sup>50</sup> The fact that the magazine was “published by students and with the advice of the English department” did not “waive[] all constitutional privileges of the students involved.”<sup>51</sup> Instead, the en banc

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<sup>47</sup> *Bazaar v. Fortune*, 476 F.2d 570, 572 (5th Cir.), *modified on reh’g*, 489 F.2d 225 (5th Cir. 1973) (en banc).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 576.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 577.

Court clarified, the University could simply add a disclaimer that it was “not an official publication of the University.”<sup>52</sup>

These cases reveal two things about Ole Miss and one thing about this Court.

First, it is telling that even after protracted litigation and judicial intervention, Ole Miss tried to suppress speech within mere months of the *Stacy* rules’ promulgation.

*Stacy* plainly told administrators: “[t]hat the speaker may hold views disliked by the campus community is not a permissible basis for denial of the students’ right to hear him,” and reminded them that “attendant law enforcement officers must quell the mob, not the speaker.”<sup>53</sup> Ole Miss did not take heed in *Molpus*. Nor did it take heed in *Bazaar*, when it said it feared outside criticism and did not wish to lose “the current public confidence and good will which the University of Mississippi now enjoys.”<sup>54</sup> Those are not valid reasons for restricting speech.

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<sup>52</sup> 489 F.2d at 225.

<sup>53</sup> 306 F. Supp. at 977.

<sup>54</sup> 476 F.2d at 579.

Second, *Trister*, *Molpus*, and *Bazaar* show that for more than 50 years, Ole Miss has been on notice that the evidence matters. That facts matter. In all of these cases, efforts to suppress speech it disliked failed because the record evidence did not justify dispensing with Constitutional values. The same is true in Ms. Stokes' case.

And finally, these cases reveal something true about this Court: that it will follow the evidence and apply the law at the University of Mississippi without fear or favor. At times throughout history, *amici* submit, this Court has been the last resort for employees and students who wish to exercise their First Amendment right. This Court is now called upon to do so here.

## CONCLUSION

For these reasons, this Court should reverse.

Respectfully submitted,

/s/ Andrew Canter

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### **CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 3,948 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Fifth Circuit Rule 32.2. This brief also complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared in a proportionally spaced face using Microsoft Word in 14-point Century Schoolbook font.

/s/ Andrew Canter

Andrew Canter

### **CERTIFICATE OF SERVICE**

I hereby certify that on this day, I electronically filed the foregoing using the Court's CMECF system, which served a copy upon all counsel of record.

/s/ Andrew Canter

Andrew Canter