

ORIGINAL

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2026-M-964

SHAD WHITE, STATE AUDITOR OF MISSISSIPPI,
Petitioner/Defendant

v.

JAMES M. THOMAS,
Respondent/Plaintiff

*Seeking Permission for Interlocutory Appeal from the Order of the Circuit Court of the First
Judicial District of Hinds County, Mississippi, Case No. 25CI1:20-cv-00806-EFP*

PETITION FOR INTERLOCUTORY APPEAL BY PERMISSION
AND MOTION TO STAY CASE

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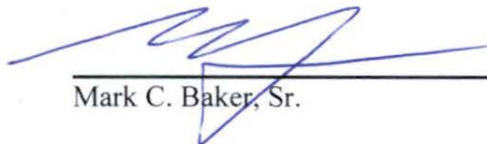
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COURT OF APPEALS

MOTION# 2026-2654

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualifications or recusal:

1. Shad White, State Auditor of Mississippi, Petitioner/Defendant.
2. James M. Thomas, Respondent/Plaintiff.
3. Justin Wade Sweat, Adams & Reese, L.L.P.; Stephen Fredrich Schelver, Mary Kathryn Ford, Rex M. Shannon, III, Mississippi Attorney General; Clay B. Baldwin, James Bobo, Mississippi Office of the State Auditor; Joseph Seymour, Jernigan Copeland Attorneys, PLLC, former counsel for Petitioner/Defendant.
4. Mark C. Baker, Sr., Mark "Chase" Baker, Jr., Baker Law Firm, P.C., counsel for Petitioner/Defendant.
5. Jason K. Hackett, Mississippi Office of the State Auditor, counsel for Petitioner/Defendant.
6. Robert B. McDuff, Paloma Wu, Mississippi Center for Justice, counsel for Respondent/Plaintiff.
7. Honorable E. Faye Peterson, Circuit Judge of the First Judicial District of Hinds County, Mississippi.



Mark C. Baker, Sr.

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PETITION FOR INTERLOCUTORY APPEAL BY PERMISSION
AND MOTION TO STAY CASE

Pursuant to Mississippi Rule of Appellate Procedure 5, Petitioner/Defendant Shad White, State Auditor of Mississippi ("State Auditor" or "Auditor"), timely brings this Petition for Interlocutory Appeal by Permission from the trial court's Order Denying-in-Part and Granting-in-Part Defendant's Motion for Summary Judgment entered on August 5, 2026. [R.E. 0001-19] (the "Order"). The State Auditor further respectfully requests this Court to stay the proceedings in the trial court under Mississippi Rule of Appellate Procedure 5(f).

Under Rule 5(a), an appeal from an interlocutory order may be sought "if a substantial basis exists for a difference of opinion on a question of law as to which appellate resolution may: (1) [m]aterially advance the termination of the litigation and avoid exceptional expense to the parties; or (2) [p]rotect a party from substantial and irreparable injury; or (3) [r]esolve an issue of general importance in the administration of justice." Miss. R. App. P. 5(a). Each is present in the case *sub judice*. Appellate resolution of the falsity question would materially advance the termination of this litigation and avoid the exceptional expense of a jury trial on six statements that turn on a disputed reading of Mississippi Code Sections 37-9-75 and 25-1-105 rather than on any disputed historical fact. Appellate resolution would further protect a constitutional officer from the substantial and irreparable injury of submitting his official acts to a jury where qualified privilege bars the claim. The trial judge conveyed the general importance of the question herself, stating that "it has broader implications than that" and that "I don't want anybody trying to interpret Faye Peterson five years down the road." [R.E. 0055, ll. 18-21].

Before Mississippi ever enshrined its first constitution or achieved statehood status, the office currently held by Petitioner has had the sacred responsibility of guarding Mississippi's public accounts and expenditures. In 1806, the Mississippi Territorial Legislature created the

“Mississippi Territorial Auditor” and granted it “the authority to examine all public accounts for the Mississippi Territory and *conduct investigations into the use of the Territory’s Funds.*”¹ (Emphasis added.) In 1817, the state’s very first constitution established that a State Treasurer and an Auditor of Public Accounts shall be appointed by the joint vote of both houses of the General Assembly. Miss. Const. of 1817, art. IV, §§ 17, 25 (superseded 1832). Mississippi’s current constitution establishes the Auditor of Public Accounts as a statewide elected constitutional officer. Miss. Const. art. 5, § 134. The Legislature has directed the State Auditor to perform particular duties in accordance with that office’s longstanding sacred responsibilities, such as, *inter alia*, “[t]o make written demand, when necessary, for the recovery of any amounts representing public funds improperly withheld, misappropriated and/or otherwise illegally expended” Miss. Code Ann. § 7-7-211(g).

Notwithstanding, the trial judge in the case *sub judice* found that:

The Court finds that Statements II, III, IV, V, VII and VIII are actionable as defamation per se without the need of special harm; Statement I and VI, also, only to the extent they were published to persons outside those with direct and legitimate interests. Defendant’s statements do not receive qualified privilege immunity protections under the facts presented, facts which create genuine factual disputes, and, alternatively, if qualified privilege applied, then it is proper for the question of malice to be decided by a jury.

[R.E. 0018].²

I. ISSUES PRESENTED

Petitioner respectfully requests the Court to determine whether the trial judge erred by

¹Mississippi Department of Archives and History, *Series 505: Territorial Auditor Accounts Ledgers, 1803-1819*, <https://finding.mdah.ms.gov/government-records/series-505>.

²The Order found more specifically regarding each of the eight (8) challenged statements that: “I. September 14, 2020, Letter to Chancellor - summary judgment is granted; for the direct communication with the Chancellor and for no other time. II. . . . summary judgement [sic] is denied. III. . . . summary judgment is denied. IV. . . . summary judgement [sic] is denied. V. . . . summary judgment is denied. VI. December 1, 2020, demand letter - summary judgment is granted; for the direct communication with Dr. Thomas and for no other time. VII. . . . summary judgment is denied, as malice is a question for the jury. VIII. . . . summary judgment is denied.” [R.E. 0018].

denying his Motion for Summary Judgment [R.E. 0143-46] when the evidence presented revealed no genuine issue of material fact as to the defamatory element of a false and defamatory statement and Petitioner was entitled to judgment as a matter of law. Petitioner further requests the Court to determine whether the trial judge erred by finding that the challenged statements made to the public did not carry qualified privilege of official action when each of the challenged statements remained tied to the official letter to the Chancellor of the University, the investigation into Plaintiff's self-proclaimed conduct, and the official demand issued to Plaintiff, all of which were official acts performed pursuant to Petitioner's duties and communicated to the public as such.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

It is uncontested that on September 7, 2020, Plaintiff James M. Thomas, an Associate Professor employed by the University of Mississippi, announced on Twitter that he was "*participating in #ScholarStrike*", that he had "emailed [his] classes *to let them know [he] won't be available the next two days*", and that he had "pointed them toward @ScholarStrike resources to understand why *so many of us are joining in this national call to action.*" [R.E. 0198] (Emphasis added.)

It is uncontested that in his email to his students that same day, under the subject line "#ScholarStrike", Plaintiff described his participation as a "48-hr *work stoppage*", announced that "I will *not be responding to emails*", declared that "I will *not be holding meetings* via zoom, *including office hours; nor will I be providing course-related instruction*", and signed off "[i]n solidarity, Dr. Thomas". [R.E. 0223] (Emphasis added.)

It is uncontested that Plaintiff was paid for September 8-9, 2020. [See R.E. 0060, according to Plaintiff "[a]ll in all, *Dr. Thomas earned his salary that week . . .*" (Emphasis added.)]. The State Auditor disagrees with any notion that such pay was rightfully earned.

The eight (8) statements at issue are conveyed as follows:

(I) On September 14, 2020, the State Auditor wrote in a letter addressed to University Chancellor Glenn Boyce, advising that Plaintiff “*engaged in a ‘#ScholarStrike’ on Tuesday, September 8th, and Wednesday, September 9, 2020*”, that Plaintiff “*acknowledged this in an email to students and in multiple social media posts*”, that “[s]trikes are illegal in Mississippi”, that the participation in any strike or concerted work stoppages by public employees *was illegal under Mississippi Code Sections 37-9-75 and 25-1-105*, that under Mississippi Code Section 37-9-75(8), “[i]f an employee has engaged in a strike, a court ‘shall order the termination of his or her employment’”, that salary paid to a striking employee would constitute public funds illegally expended, that the University should withhold Plaintiff’s pay for the two days he did not work, and that the University should proceed to court on the question of termination pursuant to Mississippi Code Section 37-9-75. [R.E. 0147] (Emphasis added.)

(II & III) On September 16, 2020, the State Auditor made statements on Twitter and Facebook regarding Plaintiff’s conduct, the statutory provisions in question, and the applicable penalties, which read as follows:

Re: the *strike* of Prof. Thomas at UM: It is *my job to ensure no public money is illegally spent. Strikes and work stoppages* are illegal in Mississippi. He cannot be paid for days he didn’t work. The penalty for striking is termination. *The law is the law.* See the letter here.

...
Regarding the *strike* of Prof. Thomas at the University of Mississippi: *I’m not afraid to enforce the law. The law says strikes and work stoppages* are illegal in Mississippi. We will not be spending public money *on someone who went on strike.* If you want someone who will ignore the law, go find someone else to be State Auditor. See the letter here.

...
... The law is the law. He is not above it.

[R.E. 0174-75, *see* R.E. 0187-88] (Emphasis added.)

(IV) On September 17, 2020, during a radio interview with the Paul Gallo Show, the Auditor

stated that Plaintiff:

[V]iolated the law and *as a result of that he cannot be paid for those two days*. And also as a result of that, *the no strike statute applies and the penalties in the no strike statute are pretty plain*. It says a court shall order the termination of that employee. Now I've read some headlines that say State Auditor pushes for this, State Auditor argues for that. I literally just read the statute out loud and that's what I have stated. *And if folks don't like what the statute says they're free to run for the legislature . .*

[R.E. 0175, *see* R.E. 0187-88] (Emphasis added.)

(V) In a podcast interview sponsored by Mississippi Today on September 22, 2020, the Auditor stated that:

[T]hat *strike is illegal in Mississippi under the no-strike law*. And the no-strike law states that there are some *pretty plain consequences for what happens when somebody does that*. . . . [A] court shall order the termination of his or her employment. . . . *If you engage in a strike in Mississippi you are engaging in an illegal activity and I can't allow you to be paid for those two days that would be public money, taxpayer money, being spent in contravention of the law*. . . . All I've done up to this point is say, this is what the law says and we should follow the law.

[R.E. 0175, *see* R.E. 0187-88] (Emphasis added.)

(VI) On December 1, 2020, the State Auditor issued a formal demand letter to Plaintiff that read, in part, “[a]fter thorough investigation, *I am required by Miss. Code Ann. § 7-7-211 (1972), to demand from you, payment in the amount \$1,912.42, to the Office of the State Auditor for the use and benefit of the University of Mississippi . . .*” [R.E. 0148] (Emphasis added.) The demand letter further read that “[t]his sum represents *misappropriated funds*, salary payments, that *you received for the days of September 8 and 9, 2020 in which you participated in a work stoppage in violation of Miss. Code Ann. §37-9-75 and §25-1-105 (1972)*. These salary payments were made in violation of the Mississippi Constitution Article 4, §66 and §96.” [R.E. 0148].

(VII) The State Auditor also issued a press release on December 1, 2020, which read that “[t]oday my office issued a demand for \$1,912.42 (\$946.74 principal and \$965.68 interest and

investigative costs) to Prof. James Thomas for his ‘work stoppage’ (*his words*) on September 8th and 9th. ‘Concerted work stoppages’ and strikes are illegal *under* Mississippi’s no-strike law, and *paying someone for not working violates Sections 66 and 96 of the state constitution.*” [R.E. 0176, *see* R.E. 0187] (Emphasis added.)

(VIII) The State Auditor communicated in an interview with Y’all Politics on December 16, 2020, that “there was a professor who *went on a work stoppage at the University of Mississippi for two days, he was paid for those two days. Under the constitution, section 66 and section 96, he cannot be paid for those two days.*” [R.E. 0176, *see* R.E. 0187] (Emphasis added.)

On December 30, 2020, Plaintiff filed this suit for defamation per se. [R.E. 0057-67]. The Complaint did not allege economic harm or harm to Plaintiff’s reputation. [R.E. 0058]. On January 26, 2021, the Auditor filed a Motion to Dismiss. [R.E. 0068-70]. On September 2, 2022, the trial court denied the Motion. [R.E. 0117-19]. The parties then conducted discovery. [See R.E. 0133-34, 0135-36, 0137-38, 0139-40, 0141-42, 0151-53, and 0300-01].³ On August 9, 2024, the Auditor moved for summary judgment, and that motion was heard on December 17, 2024. [R.E. 0143-46]; [R.E. 0020-56].

At the hearing, the trial judge astutely got to the heart of the matter, conveying that:

I can tell you *I’m not going to . . . go beyond the use of just the word strike. I’m not here to determine whether or not the type of strike, if it was a valid strike, how to interpret that statute.*

...

But let me tell you *why the court is not going further into the definition of a strike. The court doesn’t have to. Defamation is about whether or not it was true. The first question for the court was did he say he was participating in a strike. He said yes. Is the auditor required to know what type of strike at that point? I don’t think so.*

...

The court is of the position, yes, *he can make comments about the ability of employees of the State of Mississippi to go on strike. He can say they cannot do that, that that is unlawful. . . . Now, but the auditor can make those statements. And*

³The Order declared contrary to the record that “[t]he parties *did not conduct any discovery in this matter*, and this Court will not presume to resolve those issues. Those facts are deemed disputed.” [R.E. 0017] (Emphasis added.)

that's where the court stops. *I'm not going into this was a social justice strike and not an employment rights situation. It was just you said you were on strike.*

... Same if I said as a judge *I'm going on strike, and I don't come to work for three days.* My strike might be against, you know, a weight loss drug and have nothing to do with my job. *But the fact of the matter is I told people I said I was going on strike, I went on strike, that was true, that was not true.*

... [R.E. 0023, ll. 13-18; R.E. 0024, ll. 14-20; R.E. 0025, ll. 4-14; R.E. 0025, ll. 15-19] (Emphasis added.)

On August 5, 2026, nearly twenty months after the hearing, the trial court entered the Order at issue. [R.E. 0001-19]. Notwithstanding its repeated statements that it need not and would not interpret Section 37-9-75, the Order rests on exactly that interpretation, finding that:

[Regarding Statements (II-V)] In his statements, *he asserted that Plaintiff abdicated his professional responsibilities and did not work for a two-day period.* He, also, *asserted the Plaintiff engaged in activity that was illegal.* Specifically, Defendant White asserted Plaintiff engaged in an illegal strike directly against his employer *for the purpose of influencing a change in work policy for which the required statutory punishment, namely termination of employment, under §37-9-75.*

... Additionally, *it is possible his statements contained a number of falsities.* For example, *Dr. Thomas's unavailability to his students does not equate to him not working* There was *no argument or evidence the students were at a disadvantage* nor that Thomas fail [sic] to complete any scheduled activity. Additionally, Dr. Thomas's announcements, along with the public information available on the matter, *do not appear to be some direct strike against his employer or the State of Mississippi for the purpose of . . . impacting conditions of his public employment, as prohibited in §37-9-75, which Defendant White stated he read prior to making his statements.*

... In conclusion, these statements, Statements II-V, meet the qualifications for defamation per se *because Defendant White repeatedly asserted Dr. Thomas breached his professional responsibilities and must be fired for his violation of the law, and his chosen words were more than capable of inciting, in the minds of the public, deep feelings that a notorious illegal act was committed such that termination was required. . . .*

... [Regarding Statement (I)] Further, because Statement I, which is substantively identical, was attached to and/or referenced in Statements II-V, it, too, is hereby deemed defamatory and actionable as defamation per se.

...
[Regarding Statement (VI)] Notably, Defendant stated Plaintiff received misappropriated money as the result of a violation of Mississippi Code Annotated §37-9-75 and §25-1-105 . . . however, there was no finding from a chancery court that determined a violation had occurred under §37-9-75.

...
[Regarding Statement (VII)] Here, Defendant argues there is no evidence of malice. In response, Plaintiff argues that White carefully misrepresented the facts and the law in his communications to the public, through his office, to humiliate and falsely accuse the Plaintiff of illegal activity, such that he should be embarrassed, harassed, fiscally punished and terminated from his employment. Plaintiff maintains . . . that Defendant White had no excuse for misleading the public; especially, in light of an abundance of evidence to the contrary. The Court notes that malice is a question of fact and finds that this would amount to evidence of malice sufficient to present to a jury [T]he timeline of statements can also be used as evidence of malice; though it is troubling to believe that an elected official would drum up a campaign against a public employee recklessly without knowing or caring whether their statement was true. . . .

...
[Regarding Statement (VIII)] Statement VIII is slightly distinguishable He identified Plaintiff in the same ways and again struck different, milder tones when accusing Plaintiff of violating the constitution and the no-strike law. He did not include the “strike” or “mandatory termination” language. However, he did repeat accusations that Plaintiff engaged in a work stoppage, and the same falsities are present. While the language is milder, the Court must analyze these statements in their entire context, drawing color from the whole. . . . In doing so, these statements, too, meet the requirements for defamation per se. . . .

[R.E. 0010-17] (Emphasis added.)

III. CURRENT STATUS AND TIMELINESS OF PETITION

The Order was entered on August 5, 2026. [R.E. 0019]. No trial date is set. This Petition is timely filed within twenty-one (21) days of entry of the Order. Miss. R. App. P. 5(a).

IV. ARGUMENT

No evidence was presented revealing a genuine issue of material fact as to whether the challenged statements were false and defamatory.

According to the Order, “[t]o survive summary judgment, ‘the non-movant may not rest upon allegations or denials in [his] pleadings’ they ‘must by affidavit or otherwise set forth specific facts showing that there are indeed genuine issues for trial.’” [R.E. 0001-02] (Emphasis added)

(quoting *Fruchter v. Lynch Oil Co.*, 522 So. 2d 195, 198–99 (Miss. 1988)). The Mississippi Supreme Court has further found that, “[a]s to issues on which the nonmovant bears the burden of proof at trial, the *movant needs only to demonstrate an absence of evidence in the record to support an essential element . . .*” *Pride Oil Co. v. Tommy Brooks Oil Co.*, 761 So. 2d 187, 191 (Miss. 2000) (emphasis added) (citing *Crain v. Cleveland Lodge 1532, Order of Moose, Inc.*, 641 So. 2d 1186, 1188 (Miss. 1994)). Moreover, “[t]he issue of whether the offending words are defamatory may be decided by the trial court without submission to the jury.” *Armistead v. Minor*, 815 So. 2d 1189, 1194 (Miss. 2002) (citing *Lawrence v. Evans*, 573 So. 2d 695, 697 (Miss. 1990)).

It is a longstanding principle that “to establish a claim of defamation, the following four elements must be proved: ‘(1) *a false and defamatory statement concerning the plaintiff*; (2) unprivileged publication to third party; (3) fault amounting to at least negligence on part of publisher; (4) and either actionability of statement irrespective of special harm or existence of special harm caused by publication.’” *Jernigan v. Humphrey*, 815 So. 2d 1149, 1153 (Miss. 2002) (emphasis added) (quoting *Franklin v. Thompson*, 722 So. 2d 688, 692 (Miss. 1998)). Accordingly, the Court has found that “[i]n defamation actions, then, *the threshold question with which this Court is faced, is whether the published statements are false.*” *Blake v. Gannett Co.*, 529 So. 2d 595, 602 (Miss. 1988) (emphasis added). Critically, “[t]he plaintiff has the burden of proving the falsity of the statement.” *Jernigan*, 815 So. 2d at 1153 (citing *Blake*, 529 So. 2d at 602) (emphasis added).

In the case *sub judice*, Plaintiff’s own words supplied the factual basis for each challenged statement. Plaintiff himself publicly announced on social media that he would be “*participating in #ScholarStrike*”. [R.E. 0198] (Emphasis added.) Plaintiff himself wrote to his students that “[f]or the *next two days* (Tuesday and Wednesday), *I will be participating* in a nationwide

#ScholarStrike”, describing the event as a “48-hr *work stoppage*”, and declared that “[d]uring this time, *I will not be responding to emails[;] I will not be holding meetings* via zoom, including office hours; *nor will I be providing course-related instruction.*” [R.E. 0223] (Emphasis added.)

Plaintiff’s submitted affidavit reveals that his dispute lies not with the veracity of the underlying facts conveyed by the Auditor’s statements, but rather with the opined consequences that the Auditor attributed to his participation, contending that he “did not *participate in Scholar Strike* as a means of changing the conditions . . . of [his] employment with the University[,]” to paint the State Auditor’s subsequent statutory interpretations as false and defamatory statements. [R.E. 0196] (Emphasis added.) In each challenged statement, however, the Auditor repeated Plaintiff’s own descriptions of a work stoppage, strike, or both, the duties Plaintiff announced he would not perform, the public salary paid, and the statutes that the Auditor interpreted to reach his official opinion on the matter. [R.E. 0147-48, 0174-76].

Accordingly, the trial judge erred by determining that “it is *possible* [the Auditor’s] statements *contained a number of falsities*” based on her finding that Plaintiff’s announcements “*do not appear* to be some direct strike against his employer or the State of Mississippi *for the purpose of* . . . impacting conditions of his public employment, as prohibited in §37-9-75.” [R.E. 0010-11] (Emphasis added.) This Court has held that “[o]pinion statements are actionable only if they *clearly and unmistakably imply the allegation of undisclosed false and defamatory facts as the basis for the opinion.*” *Ferguson v. Watkins*, 448 So. 2d 271, 276 (Miss. 1984) (citing Restatement, Torts 2d § 566) (emphasis added). In the case *sub judice*, Plaintiff failed to present evidence demonstrating a genuine issue of material fact regarding any false undisclosed facts implied by the Auditor in the challenged statements.

Plaintiff attempts to overcome this deficiency by opining throughout his pleadings that:

Mr. White has publicly claimed that he read the statute [Miss. Code Ann. § 37-9-75] before accusing Dr. Thomas of violating it and before asking that Dr. Thomas be fired from his job. *If he did read it, he knew the law applied only to actions undertaken for the purpose of improving compensation or working conditions, and that Dr. Thomas did not violate the law. Thus, his numerous claims that Dr. Thomas did violate that law were knowingly false.*

[R.E. 0060, 0190] (Emphasis added.) Plaintiff's favored interpretation of those provisions, however, does not alter the words that Plaintiff himself publicly announced, the duties he proclaimed to withhold, or that the University paid his regular salary for those two days. [R.E. 0198, 0223, 0060]. No objectively true historical fact was hidden from the public via the Auditor's challenged statements. Plaintiff's subjective statutory interpretation does not change the fact that the Auditor's statements identified the statutes he was acting pursuant to, Mississippi Code Sections 37-9-75 and 25-1-105, and attached or referred to the official letter outlining his conclusions in detail. [R.E. 0147, 0174-76].

Mississippi Code Section 37-9-75(2) declares that "a strike, concerted work stoppage or concerted refusal to perform lawful duties in any manner" by teachers against Mississippi public schools "shall be illegal" Miss. Code Ann. § 37-9-75(2). Section 25-1-105 in turn provides that all provisions of Section 37-9-75 prohibiting strikes "shall likewise apply as far as is practicable to all public employees and public employers respectively." Miss. Code Ann. § 25-1-105. The purpose language upon which Plaintiff relies defines "strike" in subsection (1)(a); it does not, however, qualify either "concerted work stoppage" or "concerted refusal to perform lawful duties in any manner", nor does it limit "of public employment" to exclusively Plaintiff's personal employment situation. Miss. Code Ann. § 37-9-75(1)(a). The Auditor contends that narrowing those provisions to the striker's own employment "leads inexorably to absurd results where a public institution is shut down or disrupted but an individual disrupter must merely assert 'I acted not for myself.'" [R.E. 0209]. Plaintiff remains free to disagree with the Auditor's reading. That

disagreement, however, is a dispute of law, not of historical fact. [R.E. 0023, ll. 13-18]. Accordingly, the trial judge erred by finding that the evidence presented was sufficient to demonstrate a genuine issue of material fact as to the defamatory element of falsity.

Notwithstanding the truth of the challenged statements, the statements were not defamatory.

No evidence was presented showing a genuine issue of material fact that the Auditor's challenged statements were defamatory and actionable as defamation per se. This Court has found that "[t]here is a difference between making a false statement about another person and making a defamatory statement. The latter requires more than mere error." *Lawrence*, 573 So. 2d at 697. Plaintiff attempts to shoehorn the Auditor's statements into "[w]ords imputing a want of integrity or capacity, whether mental or pecuniary, in the conduct of a profession, trade or business" *Speed v. Scott*, 787 So. 2d 626, 632 (Miss. 2001) (internal quotation marks omitted) (quoting *W.T. Farley, Inc. v. Bufkin*, 159 Miss. 350, 132 So. 86, 87 (1931)). Plaintiff contends that because Mississippi Code Section 37-9-75 prescribes termination without the possibility of re-employment absent judicial finding, the Auditor necessarily accused him of lacking integrity or capacity to teach. [R.E. 0188-89]. Plaintiff's contention is misguided.

The Court has found that "the burden is on the plaintiff to prove that it was reasonably and properly understood by the person or persons to whom it was published as having the defamatory meaning." *Taylor v. Standard Oil Co.*, 184 Miss. 392, 400, 186 So. 294 (1939). The Court has further found that "the defamation must be *clear and unmistakable from the words themselves* and not be the product of innuendo, speculation or conjecture." *Ferguson*, 448 So. 2d at 275.

The gist and thrust of the Auditor's statements concerned foremost the University's misappropriation of public funds and recovery of that expenditure, as well as the statutory process that the University should pursue as a result, rather than Plaintiff's integrity or capacity to teach.

Each statement conveyed the same sentiment: that the Auditor was charged with demanding the recovery of public funds illegally expended or misappropriated, that his office investigated and determined Plaintiff's self-announced conduct violated the no-strike law, that as the result the University should withhold Plaintiff's pay for those two days, and that the University should proceed to court to hear the matter of Plaintiff's termination. [R.E. 0147-48, 0174-76]. The Auditor never once contended that Plaintiff lacked the knowledge, skill, honesty, or ability to teach, rather, he explained throughout his statements that the University could not lawfully expend public money to pay Plaintiff his regular salary for the self-proclaimed work stoppage.⁴ [R.E. 0174-76].

Plaintiff disclaimed in his Complaint "any economic harm or harm to his reputation" [R.E. 0058]. Because "[s]lander requires proof of 'special harm' unless the statements were actionable per se", the trial judge erred by finding a genuine issue of material fact that the challenged statements qualified as defamatory and actionable as defamation per se. *Speed*, 787 So. 2d at 632 (quoting *Franklin*, 722 So. 2d at 692).

Qualified Privilege and Actual Malice

Even if Plaintiff had met his burden, which he did not, the challenged communications arose from the Auditor's official duty and were not overcome by evidence of bad faith. "This Court has defined qualified privilege as '[a] communication made in good faith and on a subject matter in which the person making it has an interest, or in reference to which he has a duty, is privileged if made to a person or persons having a corresponding interest or duty, even though it

⁴No evidence was presented that any listener understood those words as accusing Plaintiff himself of lacking professional integrity or capacity. Plaintiff's Complaint pleads the very opposite understanding. According to Plaintiff, "on December 8, 2020, the Faculty Senate of the University . . . passed a resolution . . . stating that 'participation in the Scholar Strike in no way contradicts the full, faithful and proper performance of the duties of employment of a faculty member of the University.'" [R.E. 0060] (internal quotation marks omitted) (Emphasis added.)

contains matter which without this privilege would be slanderous. . . .” *Barmada v. Pridjian*, 989 So. 2d 359, 362 (Miss. 2008) (alteration in original) (quoting *Eckman v. Cooper Tire & Rubber Co.*, 893 So. 2d 1049, 1052 (Miss. 2005)).

The Legislature commands the Auditor “[t]o make written demand, when necessary, for the recovery of any amounts representing public funds improperly withheld, misappropriated and/or otherwise illegally expended” Miss. Code Ann. § 7-7-211(g). Each challenged statement concerned foremost whether the University could lawfully expend public funds to pay Plaintiff’s salary when he publicly announced a work stoppage as part of an event self-described as #ScholarStrike. [R.E. 0198, 0223]. Each challenged statement concerned a subject in which the Auditor possessed an express statutory interest and duty. Each of the challenged statements was tied to those official acts. The social media posts linked the official letter. [R.E. 0174]. The interviews referred to Sections 37-9-75 and 25-1-105 and described the judicial process the Auditor believed those statutes required. [R.E. 0175]. The press release reported that the Auditor’s “office issued a demand” to recover misappropriated public money. [R.E. 0176].

The trial judge recognized the privilege carried by the official letter to the Chancellor and the official demand to Plaintiff by granting Petitioner summary judgment as to those statements in particular. [R.E. 0007-08, 0014-15, 0018]. The trial judge erred by failing to recognize that publicly explaining those same official acts neither changed their subject matter nor supplied an unrelated personal accusation.

The Court has found that “[w]here qualified privilege exists, a presumption of good faith arises.” *Barmada*, 989 So. 2d at 364 (citing *Hayden v. Foryt*, 407 So. 2d 535, 539 (Miss. 1981)). To overcome that presumption, the Court has held that “[a] plaintiff must present affirmative evidence demonstrating actual malice to defeat the qualified privilege.” *Id.* (citing *Eckman*, 893

So. 2d at 1054). “Actual malice means that ‘at the time the comments were published, the speaker either knew them to be false or made them in reckless disregard of their truth.’” *S. Health Corp. v. Crausby*, 174 So. 3d 916, 921 (Miss. Ct. App. 2015) (quoting *Smith v. White*, 799 So. 2d 83, 87 (Miss. 2001)).

The evidence presented in the case *sub judice* revealed the opposite. The Auditor relied upon Plaintiff’s own public words, identified the statutes, described the judicial process, linked or referred to the official letter, and explained his conclusions as the constitutional official charged with pursuing such matters. [R.E. 0147, 0174-76]. Plaintiff’s own personal reading of Sections 37-9-75 and 25-1-105 is not evidence that the Auditor secretly accepted that reading, knew his own statements to be false, or seriously doubted the disclosed underlying factual basis. Accordingly, even had Plaintiff produced evidence of a false and defamatory statement, those communications arose from the Auditor’s official statutory duty, the privilege carried a presumption of good faith, and Plaintiff produced no affirmative evidence of actual malice sufficient to submit the issue to a jury. As such, the Auditor was entitled to judgment as a matter of law.

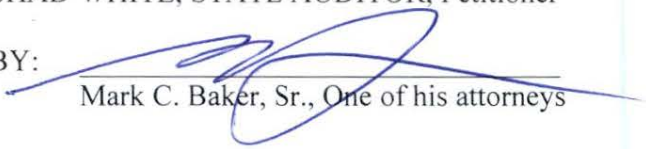
Conclusion

For the aforementioned reasons, the State Auditor respectfully requests that this Court grant this Petition, and in doing so, reverse and render the trial court’s decision to the extent that it denied summary judgment pursuant to Miss. R. App. P. 5(e). The State Auditor further requests permission to appeal and a stay of all proceedings below pursuant to Miss. R. App. P. 5(f).

Respectfully submitted,

SHAD WHITE, STATE AUDITOR, Petitioner

BY:


Mark C. Baker, Sr., One of his attorneys

CERTIFICATE OF SERVICE

I certify that on the 19th day of August, 2026, I conventionally filed the foregoing with the Clerk of the Supreme Court and served a true and correct copy by email and/or United States mail, postage prepaid and email, upon:

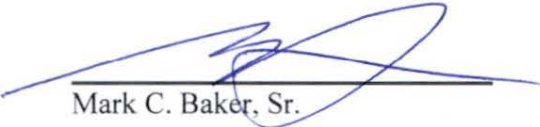
Honorable E. Faye Peterson
Circuit Judge, First Judicial District of Hinds County
407 East Pascagoula Street
Jackson, Mississippi 39201

Via email: c/o
Hon. Faye Jackson, Court Administrator @ fjackson@co.hinds.ms.us
Corey Harris, Esq., Staff Attorney @ petersonstaffattorney@co.hinds.ms.us

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August 19, 2026

Via Hand Delivery

Clerk of Appellate Court
Gartin Justice Building
450 High Street
Jackson, MS 39201

Re: *Shad White, State Auditor of Mississippi v. James Thomas, Petition for Interlocutory Appeal by Permission from the Order of the Circuit Court of the First Judicial District of Hinds County, Mississippi, Case No. 25CI1:20-cv-00806-EFP.*

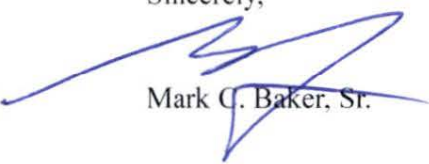
Dear Clerk of Appellate Court:

For filing, I have enclosed one original and four copies of a Petition for Interlocutory Appeal by Permission and Motion to Stay Case, along with a check for \$50.00 for the filing fee. I have also enclosed a copy of the Order entered by Circuit Court Judge Peterson on August 5, 2026.

We understand that we will be able to electronically file the Appendix to our Petition once the Petition is filed with your office. If you need anything more from me, please give me a call.

Thank you in advance for your attention to this matter.

Sincerely,


Mark C. Baker, Sr.