

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI**

JAMES M. THOMAS

PLAINTIFF

VS.

CIVIL ACTION NO. 20-cv-00806-EFP

**SHAD WHITE,
STATE AUDITOR OF MISSISSIPPI**

DEFENDANT

**ORDER DENYING-IN-PART AND GRANTING-IN-PART DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

THIS CAUSE comes before the Court on a Motion for Summary Judgment [Docket No. 29] filed on August 9, 2024, by Defendant, Shad White, in his official capacity as State Auditor of Mississippi ("State Auditor" or "Defendant White"). The Court, having considered oral arguments heard on December 17, 2024, the pleadings and other papers and being otherwise fully advised in the premises, finds that the motion should be denied.

STANDARD OF REVIEW

Pursuant to Rule 56 of the Mississippi Rules of Civil Procedure, summary judgment should be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." M.R.C.P. 56(c). The evidence should be viewed in the light most favorable to the non-movant, who receives the benefit of all favorable inferences that may reasonably be drawn from the record. *McMillan v. Rodriguez*, 823 So.2d 1173 at 1176 (Miss. 2002); *see McFadden v. U.S. Fidelity and Guaranty Co.*, 766 So. 2d 20 (Miss. Ct. App. 2000). To survive summary judgment, "the non-movant may not rest upon allegations or denials in her pleadings" they "must by affidavit or otherwise set forth specific facts

showing that there are indeed genuine issues for trial.” *Fruchter v. Lynch Oil Co.*, 522 So. 2d 195, 198-99 (Miss. 1988).

FACTUAL AND PROCEDURAL HISTORY

On September 8, 2020, Plaintiff, Dr. James Thomas, Associate Professor of Sociology and Anthropology at the University of Mississippi (“Plaintiff” or “Thomas”), announced, on social media, that he would not be available to his students on that day and the following day because he planned to join other college professors from around the country in a two-day event/call-to-action titled a “#ScholarStrike.” For example, on Twitter/X, Dr. Thomas stated:

I’m participating in #ScholarStrike. I’ve emailed my classes to let them know I won’t be available the next two days. I’ve pointed them toward @ScholarStrike resources to understand why so many of us are joining in this national call to action.

Dkt. #38-2; *see* Dkt. #38-4. The post included a link to the host organization as well as a snapshot of information showing the purpose of the call-to-action. *Id.* Dr. Thomas sent a similar message to his students via email. [Dkt. #39-4]. Notably, this occurred during the COVID-19 pandemic, at a time when educators (1) worked remotely, (2) taught remotely with some using pre-recorded lectures and (3) communicated remotely using emails and various audio visual devices. [Dkt. #2.] This was case for Dr. Thomas as well, who used pre-recorded lectures and communicated remotely. *Id.*

On September 14, 2020, Defendant Shad White, the then- and current Auditor for the State of Mississippi, began making a series of statements, oral and written, to a number of audiences about Dr. Thomas and Dr. Thomas’s participation in said event. *See* MISS. CONST., art. 4, §66, §96, §100, MISS. CONST., art. 5, §134; MISS. CODE §7-7-65 to §7-7-71; MISS. CODE §7-7-211; *see also* MISS. CODE §31-7-57. Notably, each of the Auditor’s statements cited alleged violations of

Mississippi's no-strike law, governed by §37-9-75. Auditor White spoke about Dr. Thomas on at least eight occasions.

- I. Letter to the Chancellor dated September 14, 2020;
- II. On September 16, 2020, White posted a statement on Facebook, along with a copy of the September 14th letter;
- III. On September 16, 2020 White posted a statement on Twitter/X, along with a copy of the September 14th letter;
- IV. On September 17, 2020, White made statements during a radio show interview;
- V. On September 22, 2020, White made statements on a podcast;
- VI. On December 1, 2020 White issued a demand letter from his office to Plaintiff;
- VII. On December 1, 2020, White offered a short public statement regarding the demand letter; and
- VIII. On December 16, 2020, White made statements during an interview with a political blog.

On December 30, 2020, Dr. Thomas filed this defamation suit against the State Auditor, individually and in his official capacity, based on his series of statements. [Docket No. 2.] In his Complaint, Plaintiff Thomas asserted defamation *per se* against Defendant White in his individual capacity and set forth a timeline alleging that Defendant White made blatantly false statements about him and his ability and integrity to carry out his employment; beginning with White's letter to the Chancellor of the University of Mississippi. *Id.* Plaintiff, also, included a request for a declaratory judgment concerning a legal question on classification of his actions under §37-9-75. *Id.*

On January 26, 2021, Defendant filed a Motion to Dismiss, in his individual and official capacities, seeking to dismiss the complaint in its entirety. [Dkt. #4]. On February 8, 2022, this Court heard arguments, and, on September 2, 2022, the Court denied the motion, having found (1) that Plaintiff's defamation *per se* claims were sufficiently pled and (2) that Defendant White was not entitled to absolute immunity for any and all statements he makes a public official. [Dkt. #17].

The Court, further, provided that Defendant White's statements would be reviewed under a theory a qualified immunity. *Id.*

On August 9, 2024, Defendant White filed the instant Motion for Summary Judgment, which was argued on December 17, 2024. Therein, he, again, seeks dismissal of the entire suit based on a number of theories. In rendering a decision, each of the State Auditor's eight statements about the Plaintiff, Dr. Thomas must be analyzed individually. The Court does so here and now.

OPINION

The arguments herein are simple, but each of the State Auditor's eight statements must be filtered through three levels of review based on the arguments presented:

- (1) whether the statement meets the requisite elements of defamation *per se*;
- (2) if the elements of defamation *per se* are present, whether the occasion calls for a qualified privilege; and
- (3) if qualified privilege applies, whether that privilege is overcome by actual evidence of malice.

i. Applicable Rules

Level One: Defamation & Defamation Per Se

Defamation is defined as “[t]he act of harming the reputation of another by making a false statement to a third person.” Black's Law Dictionary 427 (7th ed.1999). “Defamation is that which tends to injure reputation in the popular sense; to diminish the esteem, respect, goodwill or confidence in which the plaintiff is held, or to excite adverse, derogatory or unpleasant feelings or opinions against him.” *Barmada v. Pridjian*, 989 So. 2d 359, 362 (Miss. 2008) (internal citations omitted). “Libel is written or visual defamation; slander is oral or aural defamation.” Robert D. Sack & Sandra S. Baron, *Libel, Slander, and Related Problems* § 2.3, at 67 (2d ed.1994) *Id.* at 927.

Statements actionable “per se” are deemed defamatory by their very nature and do not require proof of special harm to one's reputation. *Bros v. Winstead*, 129 So. 3d 906 (Miss. 2014)

(citations omitted); *Speed v. Scott*, 787 So. 2d 626, 632 (Miss. 2003) (citation omitted). A statement is actionable “per se” if it fits within one of five (5) categories.

1. Words imputing the guilt or commission of some criminal offense involving moral turpitude and infamous punishment.
2. Words imputing the existence of some contagious disease.
3. Words imputing unfitness in an officer who holds an office of profit or emolument, either in respect of morals or inability to discharge the duties thereof.
4. **Words imputing a want of integrity or capacity, whether mental or pecuniary, in the conduct of a profession, trade or business; and in this and some other jurisdictions.**
5. Words imputing to a female a want of chastity.

Id. (Emphasis added.)

In determining whether a statement is actionable as defamation, a court “must consider the said-to-be-offending words in the context of the entire utterance; their complexion draws color from the whole.” *Hays v. LaForge*, 333 So. 3d 595 (Miss. Ct. App. 2022). “For the insulting statement to be considered defamatory, it must go ‘beyond mere swearing and insult and into a realm of factual misstatement[.]’ *Id.* at §4:8. Further, “[t]he defamation must be clear and unmistakable from the words themselves and not the product of innuendo, speculation or conjecture.” *Fagan v. Faulkner*, 396 So. 3d 1112 (Miss. 2024) (wherein our Supreme Court reversed and remanded a final judgment entered in a county court following a bench trial and held that vulgarity did not impute a want of professional capacity when a surgeon called a clinical manager a “f*****g c**t” in the presence of coworkers during a surgery); see *Speed v. Scott*, 787 So. 2d 626 (Miss. 2001) (wherein the Supreme Court reversed and remanded a jury verdict, after having found no special harm in a defamation case where a fire chief called a volunteer fireman a liar and thief during public meetings); see also *Hays v. LaForge*, 333 So. 3d 595 (Miss. Ct. App. 2022) (wherein the Court of Appeals found that the university president’s statements - calling a professor toxic and asserting he was poisoning the students’ minds - made during a faculty meeting and in later written communications, were not defamatory); see contra *McFadden v. U.S. Fidelity*

and *Guaranty Co.*, 766 So. 2d 20 (Miss. 2000) (wherein the Mississippi Supreme Court found that defamation was present when an insurance adjuster told a physician's patient that the physician was a "crackpot" and "quack" but dismissed the case for lack of special harm).

Level Two: Qualified Immunity

When analyzing defamation claims, Mississippi courts employ a bifurcated process. *Eckman v. Cooper Tire & Rubber Co.*, 893 So.2d 1049, 1052 (Miss.2005). First, the Court must determine whether the occasion calls for a qualified privilege. *Id.* If a qualified privilege does exist, the Court must then determine whether the privilege is overcome by malice, bad faith, or abuse. *Id.* 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 contains matter which without this privilege would be slanderous...." *Id.* This Court has recognized that a privilege exists with regard to communications between employers and employees. *Young v. Jackson*, 572 So.2d 378, 383 (Miss.1990).

Pridjian, 989 So. 2d at 362 (emphasis added); see, e.g., *Hooks v. McCall*, 272 So. 2d 925 (Miss. 1973) ("a qualified privilege exists between those directly interested in the same matter and in the absence of malice no cause of action lies."). "If publication is made to persons outside the circle those not having a legitimate and direct interest in the subject matter of the communication the protection of the privilege may not be invoked." *Bush v. Mullen*, 478 So. 2d 313 (1985) (citing *Benson v. Hall*, 339 So. 2d 570 (Miss. 1976)); *Staheli v. Smith*, 548 So. 2d 1299 (Miss 1989).

For example, in *Eckman v. Cooper Tire & Rubber Co.*, 893 So. 2d 1049 (Miss. 2005), a surgeon brought a defamation suit against a patient's employer and that employer's utilization review contractor because of statements made in the contractor's report, saying the surgeon gave

the profession a bad name and that his acts bordered on white collar crime. *Id.* The trial court granted a motion for summary judgment finding that the alleged defamatory states were protected by qualified privilege. *Id.* Our Supreme Court affirmed the trial court and noted that the defamatory words did not have to be angry, colorful or vulgar and specifically found that qualified privilege existed because the statements were made to those with a direct interest in the subject matters. *Id.*

Level Three: Whether qualified privilege is overcome by actual evidence of malice

The jury could have found, and no doubt did, that the action of Ratcliff in failing to make a sufficient inquiry as to whether Mrs. Garner had paid for a bar of soap and then falsely accusing her of being a thief, exhibited that he was in a frame of mind indicating he did not care whether the words spoken were true or not. Malice in fact relates to the state or condition of mind of a person who speaks defamatory words. It includes an intention to injure, hatred, or ill will, but it is not limited thereto, and it appears if the words are spoken recklessly without knowing or caring whether they are true. *Kroger Grocery and Baking Co. v. Harpole*, 175 Miss. 227, 166 So. 335 (1936).

Southwest Drug Stores Inc. v. Garner, 195 So. 2d 837, 842 (Miss. 1967).

Now, to Defendant White's statements.

a. Statement I – White's Letter to the Chancellor

Defendant White's first statement was a letter sent to the Chancellor at the University of Mississippi. For brevity's sake, any defamatory language contained therein would likely be entitled to qualified privilege because the act and statements were associated with Defendant White's official duties and did not go to persons outside of those with direct and legitimate interests. *Id.*; see MISS. CODE ANN. §37-9-75; see also MISS. CODE ANN. §7-7-67. *Eckman v. Cooper Tire & Rubber Co.*, 893 So. 2d 1049 (Miss. 2005); *Barmada v. Pridjian*, 989 So. 2d 359 (Miss. 2008). Notably, the defamation claims asserted against Defendant White challenged his

individual capacity. Defendant White has **no** individual privilege that would apply here; he certainly could not author that letter from his governmental office and share said letter with the public in his individual capacity. Nevertheless, qualified immunity may apply through his utilization of his official capacity. *Id.*

As we know, his statements did not stop with the letter to the chancellor. While qualified privilege *under Level Two* may have applied to Statement I, isolated; he attached this statement to a number of other statements, which will be discussed in greater detail below.

b. Statements II – V – White’s First Four Public Statement

Statements II-V will be reviewed together because they were: (1) the first public statements made by Defendant White after he penned his letter to the University, (2) all made within a close timeframe; and (3) each statement delivers the same message with only slight variations. Statements II and III were Facebook and Twitter/X social media posts, posted two days after he authored the letter to the Chancellor. Statements VI and V come from recorded radio and podcasts interviews, days later.

In his first public statement, two days after his letter, he wrote and published the following on social media to his followers and the general public:

STATEMENT II

“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.

[Dkt. #39-13] September 16, 2020 social media post. (Emphasis added.) Statement One, the Letter to the Chancellor, was attached.¹

That same day, he wrote and published the following to a different social media platform:

STATEMENT III

Regarding the strike of Prof. Thomas at the University of Mississippi. I am 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 letter here.

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. He is not above it.

[Dkt. #39-13, Statement III] September 16, 2020 social media post. (Emphasis added.) Again, Statement I was attached, and the prior notes apply.

The next day, Defendant White took to the airwaves.

STATEMENT IV

(Partial Quote from Radio Interview)

He violated 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.

[Dkt. #39-13, Statement IV] Radio Show Interview on September 17, 2020. (Emphasis added.)

¹ The Court will note no discovery was conducted to determine whether there was any ongoing public discussion concerning Dr. Thomas that might have prompted Defendant's many statements. However, there appears to have been no brouhaha, much less great public debate.

Five days later, Defendant White was highlighted in another recorded interview – this time a podcast.

STATEMENT V

(Partial statement provided)

That 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. So in one section of that law it says that when this happens it says the employer, quote, shall file suit. And then two sections below that it says that a court shall order the termination of his or her employment. If you engage in a strike in Mississippi you are engaging in 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.

[Dkt. #39-13, Statement V] Podcast on September 22, 2020.

Level One: Each of Defendant White's aforementioned public statements identified the Plaintiff, Dr. Thomas, by his name, location and profession. His statements were published to the general public using various means, i.e. two social media platforms, podcasts and radio. 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. Defendant White's statements were not isolated statements, opinions or critiques of Plaintiff's acts or his abilities similar to *Barmada v. Pridjian* or *Staheli v. Smith*. Nor were his statements about Plaintiff of a mere vulgar taste or blatant name-calling as in *Faulkner* or *LaForge*.

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; especially during the

height of the COVID-19 pandemic when educators worked remotely and used pre-recorded lectures. There was no argument or evidence the students were at a disadvantage nor that Thomas fail 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 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. See *McFadden v. U.S. Fidelity and Guaranty Co.*, 766 So. 2d 20 (Miss. 2000); see also MISS. CODE ANN. §37-9-75. These defamatory statements were made to the whole of the public and "imput[ed] a want of integrity or capacity, whether mental or pecuniary, in the conduct of a profession, trade or business." 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*.

Level Two:

For the specific legal issue presented: "If publication is made to persons outside the circle those not having a legitimate and direct interest in the subject matter of the communication the protection of the privilege may not be invoked." *Id.*

In *Barmada v. Pridjian*, 989 So. 2d 359 (Miss. 2008), a surgeon brought defamation claims against a hospital's medical director for statements he made to hospital staff and an independent reviewer regarding the surgeon's competency during surgery. Our Supreme Court noted that the defamatory statements did not go to anyone outside the hospital and found that qualified privilege applied, absent malice. *Id.* Additionally, the Court cited *Young v. Jackson*, 572 So. 2d 378 (Miss. 1990) and stated: "... the mere fact that the persons were coworkers did not in and of itself establish a qualified privilege. The occasion must be one which gives rise to the defense." *Id.* The Supreme Court went on to state:

The statements to physicians not employed at [the hospital] would not be protected under either of the interests found above. Obviously, they would not share the direct interest in protecting the interests of a common employer, and secondly, it would stretch an interest in protecting too broadly to allow it to apply to the entire coastal area. We find Pridjian's [I don't know] statement troubling because one reading of it suggests that he was not being honest. However, [the surgeon] did not offer any evidence that [the medical director] made defamatory statements to anyone outside the employment of [the hospital]. Therefore, we find that qualified immunity applies in this case.

Id.

Additionally, in *Staheli v. Smith*, 548 So. 2d 1299 (Miss 1989), a professor brought defamation claims against the dean of his department for remarks and writings the dean made during the professor's tenure process. *Smith*, 548 So. 2d 1299 (Miss 1989). Our Supreme Court noted that there was no excessive publication and held there was no publication "outside the inner circle", as the persons told were included in the tenure process; then, found that his defamatory statements enjoyed qualified immunity. *Id.*

With these principles in mind, the Court looks to the statute Defendant White alleges Dr. Thomas violated – Section 37-9-75.

Section 37-9-75, known as the “no-strike law”, was created in 1985 by the Mississippi Legislature in direct response to the teachers’ strike of 1985. MISS. CODE ANN. §37-9-75 (effective May 1, 1985); *Mississippi Association of Educators v. Trustees of the Jackson Municipal Separate School District*, 510 So. 2d 123 (Miss. 1987). While strikes are protected forms of speech and expression for the citizenry of this nation, the Mississippi Legislature created an exception, prohibiting strikes and work stoppages by public school teachers against their employer, the State of Mississippi, for the purpose of inducting, influencing or coercing change in conditions, compensation, rights, privileges or obligations of said public employment. *Id.*; MISS. CODE ANN. §37-9-75(1)(a). Should such a violation be suspected, the statute instructs the public school district to seek redress in the appropriate chancery court, where it would be determined if a temporary restraining order was proper or to order employment termination, if a violation is found. MISS. CODE ANN. §37-9-75. Administrators and board members would befall a different fate – a misdemeanor charge through the Attorney General’s Office. *Id.*

Therefore, persons of interest here would include the public school teacher(s) alleged to be in violation, the school’s administration, and the appropriate chancery court. MISS. CODE ANN. §37-9-75. It does not appear that the public played a role in this process, nor that this was a matter of great public interest. *Id.*; see *Hayden v. Foryt*, 407 So. 2d 535 (Miss. 1981) (wherein doctors and administrators in various meetings were found to be directly interested in a matter, granting qualified privilege to allegedly defamatory statements said during the meetings); see *McFadden v. U.S. Fidelity and Guaranty Co.*, 766 So. 2d 20 (Miss. Ct. App. 2000) (wherein an insurance adjuster’s defamatory statements to a patient about a physician were not privileged and the “community” of interest theory was rejected).

In light of this body of case law and the plain statutory language of §37-9-75, the Court cannot find that these statements are entitled to qualified immunity. White's defamatory statements about Plaintiff were made to persons *outside the circle of those who had a legitimate and direct interest*, *Id.* Additionally, there is no merit to Auditor White's Freedom of Speech and public information access arguments. Those arguments are rejected along with any remaining arguments not explicitly addressed herein.

Thus, Auditor White's first five statements are defamatory *per se* and are not entitled to qualified immunity under Level Two.

c. Statements VI – Demand Letter

After 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, within thirty (30) days of this date. This 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. Each of the above in context with each other and other content of letter.

[Dkt. #39-13] (emphasis added.)

Statement VI is a Demand letter issued from the Office of the State Auditor to Plaintiff. The Demand Letter is dated December 1, 2020 and, similar to Statement I, any defamatory language therein would likely be entitled to qualified privilege because statements were associated with Defendant White's official duties and did not go to persons outside of those with direct and legitimate interests. *Id.*; see MISS. CODE ANN. §37-9-75; see also MISS. CODE ANN. §7-7-67. *Eckman v. Cooper Tire & Rubber Co.*, 893 So. 2d 1049 (Miss. 2005); *Barmada v. Pridjian*, 989 So. 2d 359 (Miss. 2008). Notably, Defendant stated Plaintiff received misappropriated money as

the result of a violation of Mississippi Code Annotated §37-9-75 and §25-1-105 (1972); however, there was no finding from a chancery court that determined a violation had occurred under §37-9-75.

d. Statements VII: Press Statement

Today 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 stoppage” 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.

[Dkt. #39-13] Statement on December 1, 2020.

Statements VII was a press statement released minutes after the Demand Letter was delivered to Dr. Thomas.

The press statement was issued from White’s official capacity, contained similar defamatory language using much milder language, and might receive qualified immunity similar to Statement I and VI. Similar to Statement I, it was published to the general public. Nevertheless, qualified immunity would likely apply similar to Statement VI.

Level Three: Level Three addresses whether qualified privilege is overcome by actual evidence of malice.

“Malice in fact relates to the state or condition of mind of a person who speaks defamatory words. It includes an intention to injure, hatred, or ill will, but it is not limited thereto, and it appears if the words are spoken recklessly without knowing or caring whether they are true. *Kroger Grocery and Baking Co. v. Harpole*, 175 Miss. 227, 166 So. 335 (1936).” *Southwest Drug Stores Inc. v. Garner*, 195 So. 2d 837, 842 (Miss. 1967) (emphasis added).

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 his argument 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, if qualified immunity applied to Statements VI or VII. The statements may be viewed individually and as a group, and the 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. *Id.*; see *Louisiana Oil Corp. v. Renno*, 173 Miss. 609, 157 So. 705, 98 A. L. R. 1296; *Great Atl. & Pac. Tea Co. v. Majure*, 176 Miss. 356, 375, 167 So. 637, 638 (1936).

e. Statement VIII: Last Public Statement

Statement VIII comes from another podcast interview. Therein, Defendant White stated:

(Partial statement provided.)

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 96, he cannot be paid for those two days. The constitution is further codified by Mississippi's no-strike law.

[Dkt. #39-13] Political Blog Podcast on December 16, 2020.

Level One: Statement VIII is slightly distinguishable from his earlier public statements. 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. *LaForge*, 333. So. 3d 595. In doing so, these statements, too, meet the requirements for defamation *per se*. *Id.*; see contra *McFadden v. U.S Fidelity and Guaranty Co.*, 766 So. 2d 20 (Miss. 2000).

Levels Two and Three: Similar to Statement II-V, qualified immunity does not apply. If it did, Plaintiff has set forth sufficient evidence of malice to present the question to a jury.

CONCLUSION

This Court must take a moment to address the delay in issuing its Opinion in this matter. In reviewing the pleadings, there were numerous questions of fact that underlie the application of the law to the facts in this case. The parties did not conduct any discovery in this matter, and this Court will not presume to resolve those issues. Those facts are deemed disputed. The instant motion repeated the same arguments denied in the motion to dismiss and only briefly and superficially addressed the issue of qualified immunity, despite the prior Order specifying the need for arguments on that issue. Additionally, the parties in this case were notified, just as the parties in other cases pending before this Court, that Hinds County IT Department deleted the server, email and cloud for the undersigned court’s diligent, hardworking, thoughtful, brilliant and grossly underpaid staff attorney, the Honorable Corey Harris. All drafted orders and records regarding research and communications associated with this and all other civil and criminal cases pending before this Court since February 2019 vanished in a moment, and this Court along with Attorney Harris have had to recreate numerous records and research at the same time that this Court conducted other proceedings including motion hearings, docket calls, pleas, jury trials and other matters for both judicial districts within this Circuit.

The Court, now, finds as follows:

- I. September 14, 2020, Letter to Chancellor - summary judgment is granted; for the direct communication with the Chancellor and for no other time.
- II. September 16, 2020, Social Media Post - summary judgement is denied.
- III. September 16, 2020, Social Media Post - summary judgment is denied.
- IV. September 17, 2020, radio show - summary judgement is denied.
- V. September 22, 2020, podcast statement - 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. December 1, 2020, public statement - summary judgment is denied, as malice is a question for the jury.
- VIII. December 16, 2020, political blog - summary judgment is denied.

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.

Further, the Court declines to issue a declaratory judgment due to lack of information. There has been no evidence presented to show the extent or whether Plaintiff actually participated in the virtual two-day event.

IT IS THEREFORE ORDERED AND ADJUDGED that Defendant's Motion for Summary Judgment [Dkt. #29] is DENIED-in-PART and GRANTED-in-PART consistent with the Opinion above.

IT IS FURTHER ORDERED AND ADJUDGED that the parties shall within fourteen (14) days from the date of this Order present their scheduling order and/or review the Court's online civil trial calendar to select a trial date.

SO ORDERED AND ADJUDGED, this the 5 day of August, 2026.



HONORABLE E. FAYE PETERSON
CIRCUIT COURT JUDGE