IN THE SUPREME COURT OF MISSISSIPPI
NO. 2022-CA-00464

JACKSON PUBLIC SCHOOL DISTRICT **APPELLANT**

vs.

JACKSON FEDERATION OF TEACHERS AND PSRPS **APPELLEE**

APPEAL FROM THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI
CIVIL ACTION NO. 25CI1:21-CV-00152

REPLY BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

LaToya C. Merritt, MS Bar #100054
Mallory K. Bland, MS Bar #105665
PHELPS DUNBAR LLP
4270 I-55 North
Jackson, Mississippi 39211
Telephone: 601 352 2300
Facsimile: 601 360 9777
Email: merrittl@phelps.com
Email: mallory.bland@phelps.com

ATTORNEYS FOR APPELLANT
JACKSON PUBLIC SCHOOL DISTRICT

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Employee speech does not enjoy unfettered and unlimited protection. This point finds its source in a fundamental principle underlying the First Amendment: "only certain speech is protected." *Thompson v. Starkville,* 901 F.2d 456, 460 (5th Cir. 1990).

For example, employee speech is protected when the "public employee speaks as a citizen on a matter of public concern, . . . unless the interest of the state, as an employer, in promoting the efficiency of the public services it performs through its employees outweighs the interests of the [employee], as a citizen, in commenting upon matters of public concern." *Janus v. Am. Fed'n of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2471 (2018) (citations and internal marks omitted) (emphasis added).

As such, the District enacted constitutionally sound policies to prevent disruption in its schools and on its buses so that it can carry out its core purpose- educating children. In this matter, criticism of the District's policies regarding its operations, management, or employees is not automatically protected. Speech that "provid[es] little informational value to anyone outside of the organization" is not speech on a matter of public concern and is unprotected. *Rushing v. Miss. Dep't of Child Protection Servs.*, 2022 WL 873835, *5 (5th Cir. Mar. 24, 2022) (collecting cases). And speech is not protected if the speech "tend[s] to unduly harm the efficient operations of the governmental defendant." *Samsel v. Desoto Cty. Sch. Dist.*, 242 F. Supp. 3d 49, 515 (N.D. Miss. 2017).

Before the Court tackles the constitutional question, it must determine whether procedurally JFT has standing to bring the same. And, even if JFT does have standing, the Court must determine whether it is required to scour through the record to identify purported testimony that does not exist.

An overarching problem with JFT's brief is that, while JFT sporadically includes record citations, numerous "factual statements" made in JFT's brief are not supported by record citations. Indeed, in its argument section, there is not one single citation to the record. Mississippi Rule of Appellate Procedure 28(f) states that "[a]ll briefs shall be keyed by reference to page numbers (1) to the record excerpts filed pursuant to Rule 30 of these Rules, and (2) to the record itself." Rule 28(a)(7) also provides that "[t]he argument shall contain the contentions of appellant with respect to the issues presented, and the reasons for those contentions, with citations to the authorities, statutes, and parts of the record relied on." (Emphasis added.) Rule 28(c) confirms that Rule 28(a)(7) applies equally to appellees.

Failure to follow these rules acts as a procedural bar. *See O'Hara v. Robinson*, 904 So. 2d 1110, 1111-12 (Miss. Ct. App. 2004). "It is not the obligation of this Court to independently search the record front to back to ferret out those facts that would bear on the issue." *Home Sols. of Miss. LLC v. Ridge*, 301 So. 3d 670, 677 (Miss. Ct. App. 2020) (quoting *Little v. State*, 744 So. 2d 339, 346 (Miss. Ct. App. 1999)). This Court should not do so now.

Another problem is that, even if citations were given, many of JFT's contentions about what the record says are wrong or are misleading.

- For instance, JFT starts with the testimony of Martha Taylor, whom JFT asserts testified to "yearly trainings and instructions she had been given by principals and other administrators over the years." Appellee's Br. at pp.3-4. But Ms. Taylor testified that she had been told these things by Principal Mitchell Shears, who retired well before Ms. Taylor left full-time employment in 2017. C.P.565-570.
- Next, JFT intimates that Mr. Anthony Gunter was removed from service due to a press interview and then resigned. Appellee's Br. at pp.4-5. This does not tell the

full story. Mr. Gunter was a non-certified, limited-service teacher. C.P.582. He was replaced when the District found a certified teacher to take could not due to his health. C.P.584.

- Mr. Radican was able to speak only to one training session which occurred in 2018 where employees were allegedly told not to speak to the media and that social media posts had to be cleared first with the District. C.P.589-590. But he testified that there were no consequences discussed for doing so. C.P.590. And although he testified that employees were afraid to speak to the union for fear of retaliation, which was improper hearsay, he was neither able to name one such employee who was afraid to speak out, nor name any employee that was actually subjected to retaliation. C.P.590-594, 597.
- As for Ms. Akemi Stout, JFT represents in its brief that she testified to recruiting "current" employees. Appellee's Br. at p.7. There is nothing in her testimony to support that, and, as noted, JFT does not include a citation.

Although this is not an all-inclusive list of the examples of misrepresentation, the point is clear: This Court is not required to go dig into and through the record, but, even if it does, it will not find what JFT proclaims.

1. JFT did not have standing to challenge JPS' employment policies.

JFT neither established standing at the beginning of the suit, nor did it establish that it had standing throughout the suit, either in its own right or as an association. *E.g.*, *Clark Sand Co., Inc. v. Kelly*, 60 So. 3d 149, 161 (Miss. 2011).

This Court has explained that, to have standing, "an individual's legal interest or entitlement to assert a claim against a defendant must be grounded in some legal right recognized

by law, whether by statute or by common law." *Butler v. Watson*, 338 So. 3d 599, 605 (Miss. 2021) (quoting *City of Picayune v S. Reg'l Corp.*, 916 So. 2d 510, 526 (Miss. 2005)). In its own right, JFT, a union, has no legal right recognized by law to challenge JPS' employment policies. Indeed, JPS has no duty at all to bargain with JFT.

JFT has not meaningfully grappled with the standing requirements, i.e. "a present, existent actionable title or interest," and a likelihood of "experienc[ing] an adverse effect different from any adverse effect suffered by the general public." *Id.* at 605-06. As to the first, JFT has made no argument besides stating generally that it, as an organization, is deeply concerned with JPS' policies. But concern does not equate to an actionable interest.

As to the second, JFT makes several arguments, none of which hold up under scrutiny. To begin, JFT relies on testimony to which it does not include a cite. Second, the testimony relied on amounts to nothing more than hearsay which should not have been considered. Chris Radican testified as to what JPS employees allegedly told him. C.P.590-594. The trial court erroneously allowed this testimony over JPS' objection. C.P.590-594. It was error as JFT is obviously offering it for the truth of the matter asserted: that employees were afraid to speak to the union. *See* Miss. R. Evid. 801(c), 802. This Court should not consider it. Third, there was no evidence presented as to how the policies have had an effect on JFT itself that would be different from the general public. For this point, JFT relies on speculation rather than evidence.

JFT simply has not met any of the requirements of showing that it has standing in its own right to challenge policies to which it is not subjected.

Neither did JFT establish that it had associational standing. Associational standing has three requirements: (1) "[JFTs'] members would otherwise have standing to sue in their own right, (2) the interest it seeks are germane to the organization's purpose, and (3) neither the claim

asserted, nor the relief requested, requires the participation of individual members in the lawsuit." *Miss. Manufactured Housing Ass'n v. Bd. of Aldermen of the City of Canton, Miss.*, 870 So. 2d 1189, 1191 (Miss. 2004). JFT fails on all three prongs.

The first prong should be dispositive. It was explained in the opening brief that JFT did not offer any proof that it has any members who are current employees of JPS. Appellant's Br. at p.9. In its brief, JFT does not dispute this point. Instead, JFT asks this Court to rely on circumstantial evidence. Appellee's Br. at pp.37-38. According to JFT, the Court should take the evidence of a relationship between JPS and JFT, whereby JPS allows JFT to come on its campuses to recruit, to connect the dots that current JPS employees must be members. Appellee's Br. at pp.37-38. But this is not a reasonable inference, especially given the evidence that many members of JFT are, in fact, not currently employed by JPS. C.P.565, 568, 582, 633.

Nor does JFT cite a case from this Court allowing circumstantial evidence to establish standing. The simple fact is that standing was contested from the beginning of the case. JFT easily could have provided facts necessary to establish standing. It did not. JFT has proven only that former JPS employees may be current members, but that is not enough. *E.g.*, *Hotboxxx, LLC v. City of Gulfport*, 154 So. 3d 21, 28 (Miss. 2015) ("Thus, under the instant facts, *Van Slyke II*'s general rule that uninvolved citizens should have the authority to challenge the constitutionality of governmental action does not hold much strength, and it does not generate a colorable interest for Hotboxxx to assert standing.").[1]

[1] It is also worth noting that JFT's position is inconsistent. On the one hand, JFT wants this Court to accept the testimony of JPS administrators that they help facilitate, encourage, and expect membership in the union. On the other hand, JFT also wants this Court to accept that it cannot disclose the names of members because they will be subject to employment retaliation. This Court should not take the bait, especially given that JFT offered no evidence that anyone has ever been terminated for speaking under the policies it contests.

As to the second prong, JFT offers no caselaw or evidence to support its assertion. As noted in the opening brief, JFT and the trial court relied on broad policy statements posted on JFT's website to find that JFT's purpose is germane to this lawsuit. Appellant's Br. at pp.11-12. But holding that this element of standing is met based on such broad policy statements, under which JFT could represent everyone (teachers, employees, students, and parents), would expand the scope of standing considerably.

As to the third prong, JFT simply asks this Court to ignore the relief sought in its complaint. JFT sought broad relief. C.P.18-19. Although it abandoned the claims which would require individual participation, it did not abandon the relief sought, which included damages. JFT's attempts to now backtrack are ineffective.

2. The facial challenge to the Confidential Information and Staff Ethics Policies was moot at the time the trial court entered its declaratory judgment and permanent injunction.

JFT misapprehends the standard for mootness. In fact, JFT fails to grapple with the two comparable cases on the issue from this Court: *Barrett v. City of Gulfport*, 196 So. 3d 905 (Miss. 2016) and *Ladner v. Fisher*, 269 So. 2d 633 (Miss. 1972). In both cases, legislative changes by a government entity mooted the case. As explained in the opening brief, federal courts generally agree that legislative changes are different. Appellant's Br. at pp.15-16.

JFT instead resorts to fearmongering, speculating that JPS could change its policies back at any time. But this argument ignores the fact that, if JPS wants to change its policies, it cannot be done overnight and cannot be done in the dark. There is a process for changing policies which includes review by committee, the Board, and time for public comment. C.P.705-708. A concerned employee could file suit if the policies were changed back. But the steps taken by JPS to delete the Confidential Information Policy and to revise the Staff Ethics Policy undoubtably show that it is "absolutely clear that the allegedly wrongful behavior could not reasonably be

expected to reoccur." *Trinity Lutheran Church of Columbia, Inc. v. Come*r, 137 S. Ct. 2012, 2019 n.1 (2017).

To further its point, JFT also relies on an alleged "practice" of unconstitutional trainings. The only trainings in evidence occurred years ago and there is no evidence that there was any unconstitutional training being performed at the time of trial or now. C.P.566-570, 574-575, 589-590, 601. There is no reason supported by the record to believe that JPS will not train on the new policies as written.

JFT also quibbles with the wording of the revised Staff Ethics Policy. But the constitutionality of the revised policy is not before this Court.

The challenge to the Confidential Information and Staff Ethics Policies was moot at the time the injunction was entered and should be reversed.

3. Jackson Public School District's Confidential Information, Staff Ethics, and Social Networking Policies did not violate the free speech clause of the Mississippi Constitution.

It must not be forgotten that this case involves facial challenges. To succeed, JFT faced a high bar. JFT was required to prove that the policies "as currently written, *could never* be constitutionally applied and valid." *Ward v. Colom*, 253 So. 3d 265, 267 (Miss. 2018) (emphasis in original) (quoting *Crook v. City of Madison*, 168 So. 3d 930, 942 (Miss. 2015) (Coleman, J., dissenting)). JFT did not do so.

Social Networking Websites Policy. As a government employer, JPS balances the rights of its employees with the needs of the District and the students. It does this through its policies. Not all speech is protected, especially in the employment arena. And JPS' policies serve to restrict that unprotected speech.

But JFT refuses to recognize the "special characteristics" of schools. *Tinker v. Des Moines Indep. Comm. Sch. Dist.,* 393 U.S. 503, 506 (1969). Nor does JFT recognize the

impressionability of students, the issues that would arise if employees spoke out on issues purporting to speak for the District as an entity, or if employees violate student or colleague confidentiality by speaking out with impunity on allegations made by or about a student or colleague, especially before a due process hearing may be held.

It is settled that "[a] government entity has broader discretion to restrict speech when it acts in its role as employer, but the restrictions it imposes must be directed at speech that *has some potential to affect the entity's operations*." *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006) (emphasis added). To be protected, speech must also be made by a citizen on a matter of public concern. *Id.* at 418. It is clear that JPS' policy prohibits only that which has the potential to disrupt, which is what is allowed under federal law. In *City of Meridian v. Meadors*, 222 So. 3d 1045 (Miss. Ct. App. 2016), the Mississippi Court of Appeals, applying *Garcetti*, rejected a First Amendment retaliation claim where a police officer was terminated for posting a racist message because it was not speech on a matter of public concern and it "could well have been viewed by the public as racist and by [plaintiff's] superiors as 'offensive or antagonistic.'" *Id.* at 1052. *See also Aids Healthcare Found. v. Cal. Dep't of Health Care Servs.*, 2023 WL 2721457, *16 (C.D. Cal. Mar. 30, 2023) ("[I]n cases analyzing both as-applied and facial challenges to a public employer's social media policy—which also limit or regulate speech—the Ninth Circuit has applied the *Pickering* balancing test."). Because it only restricts unprotected speech, it cannot be facially unconstitutional.

Neither has JFT shown that the policy is vague, a point it did not even brief in the trial court. The Fifth Circuit has held that a presumption of invalidity based on a prior restraint does

not apply to policies regulating employee speech.[2] *Harris v. Noxubee Cty., Miss.*, 350 F. Supp. 3d 592, 597 (S.D. Miss. 2018). That is because the employee policies are "not severe enough to receive the suspect treatment given to prior restraints." *Id.* The policy is also not subject to unfettered discretion. Employees are entitled to due process hearings and may appeal disciplinary actions. C.P.769, 774-775. The Board makes the final determination. C.P.774-775.

Neither is the policy overbroad. The policy's overbreadth must be "substantial," meaning it "prohibits a substantial amount of protected speech" in relation to the policy's "plainly legitimate sweep." *Edwards v. State*, 294 So. 3d 671, 675 (Miss. Ct. App. 2020). Although some unconstitutional applications are almost always possible, this kind of speculation is why facial challenges are disfavored. *E.g.*, *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450-51 (2008); *Members of City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 800 (1984) ("[T]he mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render it susceptible to an overbreadth challenge."). Because most applications would pass muster under *Pickering*, the policy is not unconstitutionally overbroad.

Staff Ethics Policy. In the opening brief, it was explained that the two provisions of the Staff Ethics Policy challenged by JFT, like the Social Networking Websites Policy, restricts only unprotected speech, i.e. mere employment grievances and speech that "owes its existence" to employment. *See* Appellant's Br. at pp.23-27; *see*, e.*g.*, *Garcetti*, 547 U.S. at 420-21 ("[W]hile the First Amendment invests public employees with certain rights, it does not empower them to 'constitutionalize the employee grievance.'"). Although JFT quibbles with this caselaw, JFT's argument is misplaced.

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[2] In *Miss. Comm'n on Jud. Performance v. Wilkerson*, 876 So. 2d 1006, 1014 (Miss. 2004), this Court found the judicial canon unconstitutional only as-applied and only after finding the judge engaged in protected political and religious speech.

First, JFT argues that the use of federal cases such as *Garcetti* and *Pickering* is wrong, and that this Court should not assume that those cases apply under the Mississippi Constitution. This Court should instead, according to JFT, accept its federal case, *NTEU*. But this Court has already considered *Pickering* in similar circumstances. In *Miss. Comm'n on Jud. Performance v. Osborne*, 11 So. 3d 107 (Miss. 2009), this Court explained that the two-part *Pickering* balancing test is used to determine whether a member of the judiciary's speech is protected political speech. *Id.* at 113. After analyzing the speech made under the *Pickering* test, this Court determined that the speech was not protected under either the federal or state constitution. *Id.* at 113-14; *see also Wilkerson*, 876 So. 2d at 1009 n.1 (noting that analysis under federal and state free speech clauses was same); *Miss. Comm'n on Jud. Performance v. Boland*, 975 So. 2d 882, 890-92 (engaging in *Pickering* balancing).

And even if *NTEU* applies, the *NTEU* test is nothing more than a modified *Pickering* test, meaning that it still requires a finding that the regulations limit speech on matters of public concern. *E.g.*, *United States v. Nat'l Treasury Employees Union*, 513 U.S. 454, 466-68 (1995); *see also Shelton Police Union, Inc. v. Voccola*, 125 F. Supp. 2d 604, 622 (D. Conn. 2001) ("[In *NTEU*], [t]he Court applied *Pickering* in analyzing the constitutionality of the statute because the section at issue regulated speech that involved matters of public concern."); *see also Austin v. Univ. of Fla. Bd of Trustees*, 580 F. Supp. 3d 1137, 1170-71 & n.39 (explaining *NTEU* and *Pickering* tests). That is not the case here. The provisions at issue are meant merely to serve as guidance as to where criticism should be directed to better the District and to prevent disruptive gossip and the public airing of mere employment grievances. Neither of these types of speech are protected.

As to viewpoint discrimination and vagueness, JFT has pointed to no evidence that JPS acted with discriminatory purpose. Nor is the policy unconstitutionally vague. The standards are clear that constructive criticism made in a way that can help improve the District is encouraged. Speech meant to disparage the District and speech which could cause disruption to the operations of the District is discouraged. And, like the Social Networking Websites Policy, because applications of the policy pass muster under *Pickering*, it cannot be overbroad. Nor has JFT provided any evidence of how substantial the overbreadth may be in relation to its legitimate application. *E.g.*, *Heirs v. Bd. of Regents of the Univ. of N. Tex. Sys.*, 2022 WL 748502, *18 (E.D. Tex. 2022). In fact, broad language is frequently upheld in the public-employment context. *Id.*

Arnett v. Kennedy, 416 U.S. 134 (1974) is instructive. In *Arnett*, the Supreme Court upheld a provision of the Lloyd-La Follette Act authorizing the suspension or dismissal of a government employee "for such cause as will promote the efficiency of the service" against an overbreadth challenge. *Id.* at 158. Although very broad, the Supreme Court reasoned that greater specificity was not feasible "[b]ecause of the infinite variety of factual situations in which public statements by Government employees might reasonably justify dismissal for 'cause.'" *Id.* at 161. The Court held that the provision restricted "only that public speech which improperly damages and impairs the reputation and efficiency of the employing agency, and it thus imposes no greater controls on the behavior of federal employees than are necessary for the protection of the Government as an employer." *Id.* at 162.

In sum, the opening brief cited a plethora of caselaw showing that these two provisions, to the extent they restrict at all, restrict unprotected speech. Appellant's Br. at pp.23-27. Therefore, JFT has not met its burden of showing that there is no constitutional application.

Confidential Information Policy. As noted, this policy has been deleted, and JPS does not plan on reenacting it. So, it is moot. But, as argued in the opening brief, the policy should be read in context rather than in cherrypicked phrases. Appellant's Br. at pp.27-28. The entire context of the policy shows that it applied only to confidential information such as that information protected under FERPA and IDEA. *E.g.*, *Jones v. City of Meridian*, 552 So. 2d 820, 824 (Miss. 1989) ("[L]ong-standing case law unequivocally holds tha this or any other statute may not be construed 'so as to infringe upon the state or federally-protected constitutional rights[.]'").

Justification. JPS no doubt has a compelling justification for its policies. It must protect the interests of its students, generally minors, their parents, and the interests of its employees while also maintaining a conducive learning environment and furthering its educational mission. C.P.740-742. Employees are privy to sensitive information concerning students, parents, and colleagues, including grades, household income, learning disabilities, addresses of students, and other sensitive information which may be learned through employment. C.P.710-711, 713-714, 776-778. Employees are also sometimes involved in student discipline or are involved in accusations made by students or against others. C.P.714-715. Students and teachers alike are granted due process hearings before disciplinary actions are levied. C.P.718-719, 721-722, 728-731, 769, 774-775. When issues arise with students, the District has a designated employee who is trained in how to deal with the issues, including notifying parents and/or the proper authorities. C.P.728-731. Also, when issues arise in the District, the District has an employee specifically for media relations, rather than a hodgepodge of employees speaking out in a manner that could be construed as the District's own speech. C.P.752. The "special characteristics" of the school make all of these interests great.

This Court put it best in *Osborne*:

> No one is compelled to serve as a judge, but once an individual offers himself or herself for service, that individual accepts the calling with full knowledge of certain limitations upon speech and actions in order to serve the greater good. A calling to public service is not without sacrifice, including the acceptance of limitations on constitutionally granted privileges. This principle is deeply rooted in many areas of government service.

11 So. 3d at 114. One of those areas is teaching. As the United States Supreme Court recently held, "the speech rights of public school employees are [not] so boundless that they may deliver any message to anyone anytime they wish. In addition to being private citizens, teachers and coaches are also government employees paid in part to speak on the government's behalf and convey its intended messages." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2423 (June 27, 2022).

4. JFT did not meet its burden to obtain a permanent injunction.

Because JFT did not show a substantial likelihood of success, the inquiry should end. But JFT also did not show irreparable harm, that the balancing of interests weighed in its favor, or that an injunction was in the public interest.

Irreparable Harm to JFT. As has been noted, JFT could not show a threat of irreparable harm in the Confidential Information Policy, which has been deleted, or the challenged provisions of the Staff Ethics Policy, which have been revised. Any harm is based on speculation – that JPS will reenact these policies. But speculation of harm cannot support a permanent injunction. *See*, *e.g.*, *Reynolds v. Amerada Hess Corp.*, 778 So. 2d 759, 765 (Miss. 2000) ("To obtain a permanent injunction, a party must show an *imminent threat* of irreparable harm for which there is no adequate remedy at law." (emphasis added)). There cannot be an imminent threat from policies and provisions which no longer exist.

Nor, again, has JFT ever shown that it has been harmed by the policies, specifically the Social Networking Website Policy. Indeed, JFT did not even show that any JPS employee, current or former, has ever been harmed by the policy. C.P.728, 779.

JFT argues that the policies threaten its very existence. But here, again, JFT contradicts itself. On the one hand, for standing, JFT argues that, of course, it has members who are current employees. On the other hand, for irreparable harm, it argues that employees have refused to join JFT due to the policies. Appellee's Br. at p.31. JFT simply cannot have its cake and eat it too.

Neither has JFT shown that there is no adequate remedy at law. JFT does not contest that an as-applied challenge, or due process hearing, or challenge to the application of the polices to the Board is possible. C.P.769, 774-776, 779-780. Instead JFT seems to argue that it is not probable. But availability of a remedy is the question. Where a remedy is available, an injunction is not warranted. *See Fratesi v. City of Indianola*, 972 So. 2d 38, 42 (Miss. Ct. App. 2008) (adequate remedy at law existed where constitutional takings action could be instituted).

Balancing of Harm to JFT against Harm to JPS. Although JFT argues that there would be no harm to JPS because the injunction allows for compliance with federal laws such as IDEA and FERPA, JFT does not address the harm that could come if employees begin sharing information about students that are not protected under those statutes, if employees share confidential information about each other, if employees post on social media which do not only have the potential to disrupt the classroom, but do cause disruption, or if any employee begins to publicly speak in a manner which tends to make people think the employee is speaking on behalf of the District. The injunction leaves JPS with no way to prevent or remedy these situations.

Public Interest. The public interest is not served by the injunction. As noted, there are many safety, security, and confidentiality issues that could disrupt the learning environment that are left unprotected by the injunction. The public interests weighs in favor of JPS having the ability to protect these interests.

JFT argues that JPS has "shut the mouths" of its employees. But JFT ignores that other policies, specifically the grievance and whistleblower policies to name two, allow and encourage employees to speak out if they believe the policies are unconstitutional, the policies are being applied unconstitutionally, or if any illegal or unsavory activity is occurring. Other policies compel employees to report certain things outside of the District and to the proper authorities, such as child abuse. The Board meetings are also open to the public, meaning employees may go at any time and address the Board directly, as may JFT and the public at large if it is believed that information of public concern is being stifled.

More importantly, the policies have been in place for years. The Social Networking Websites Policy was adopted from the Mississippi School Boards Association's sample policy. C.P.780-783. Yet, JFT could not point to specific instances where these policies have been enforced in an unconstitutional manner. C.P. 728, 779. The public interest simply is not served by the injunction.

CONCLUSION

Free speech is no doubt one of the utmost important constitutional rights. But it is not absolute. It is settled that the government, acting as employer, may impose some restrictions on speech. Employees of the government may not speak on any subject at any time with impunity. Disruption would ensue. This is all the more so in the educational context. JPS has enacted policies to attempt to prevent disruption to the classroom so that it can carry out its core purpose.

And this case presents not only a free speech issue, but also the rights of unions. Mississippi is a "right to work" state, and employers are not required to bargain with unions. Even so, JFT is using a constitutional challenge to backdoor JPS into bargaining with it. It should not be required to do so through the guise of a constitutional challenge.

For the reasons explained herein and in the opening brief, the trial court's order granting the declaratory and injunctive relief should be reversed and judgment rendered for JPS.

RESPECTFULLY SUBMITTED, this the 17th day of April, 2023.

JACKSON PUBLIC SCHOOL DISTRICT

BY: */s/ LaToya C. Merritt*

LaToya C. Merritt MS Bar #100054
Mallory K. Bland MS Bar #105665
PHELPS DUNBAR LLP
4270 I-55 North
Jackson, Mississippi 39211
Telephone: 601 352 2300
Facsimile: 601 360 9777
Email: merrittl@phelps.com
Email: mallory.bland@phelps.com

ATTORNEYS FOR APPELLANT
JACKSON PUBLIC SCHOOL DISTRICT

CERTIFICATE OF SERVICE

I, LaToya C. Merritt, one of the attorneys for Appellant, do hereby certify that I electronically filed the above and foregoing ***Appellant's Reply Brief*** using the Court's ECF system which sent notification of such filing to all counsel of record.

I also certify that I have this date mailed by United States mail, postage prepaid, a true and correct copy of the above and foregoing ***Appellant's Reply Brief*** to the following:

Honorable Jess H. Dickinson
Special Circuit Judge
407 East Pascagoula St.
Jackson, MS 39205
P.O. Box 327
Jackson, MS 39205

THIS the 17th day of April, 2023.

/s/ LaToya C. Merritt
LaToya C. Merritt