IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT
LORAIN COUNTY, OHIO

GIBSON BROS, INC., *et al.*, Plaintiffs-Appellee/Cross-Appellants, v. OBERLIN COLLEGE, *et al.*, Defendants-Appellants/Cross-Appellees.	CASE NOS. 19CA011563; 20CA011632 (Consolidated) APPEAL FROM THE LORAIN COUNTY COMMON PLEAS COURT, CASE NO. 17CV193761

BRIEF OF *AMICI CURIAE* NATIONAL COALITION AGAINST CENSORSHIP, BRECHNER CENTER FOR FREEDOM OF INFORMATION, DEFENDING RIGHTS & DISSENT, AND DKT LIBERTY PROJECT ON BEHALF OF OBERLIN COLLEGE, ET AL.

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici Curiae are a collection of nonpartisan, nonprofit organizations dedicated to promoting and protecting civil liberties and free speech, especially with regard to our Nation's institutions of higher education. Each individual *amicus curiae's* interest is further set further set forth in the contemporaneously-filed motion for leave to file amicus brief. *See* App. R. 17.

LAW AND ARGUMENT

The First Amendment protects Oberlin College and its students' expressions on a matter of public concern and its protections weigh heavily against the imposition of liability under these circumstances. "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Shelton v. Tucker*, 364 U.S. 479, 487 (1960). Therefore, the expressive rights of student and educators at all colleges and universities must be cautiously guarded. As part of its core educational function of facilitating debate, Oberlin has played a crucial role in America's discussions on equal access to education, racism, and other important issues. Because such "speech on 'matters of public concern' … is 'at the heart of the First Amendment's protection,'" *Snyder v. Phelps*, 562 U.S. 443, 451–52 (2011) (*quoting Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 758–59 (1985)), and liability under these circumstances will also result in restrictions on all Ohio students' expressive rights, this Court should vacate the judgment below.

A. Free Expression on Contentious Issues of Public Concern at All Colleges and Universities Is Essential to American Discourse

The Supreme Court has long recognized the First Amendment protects free expression in the form of speech, association, and academic inquiry at colleges and universities. But those protections are not limited to cautiously measured or gracious words only. Instead, controversial speech and disputed opinions on matters of public concern—like whether a local business discriminates against students—plays a necessary role in our national debate on fundamental issues. "Indeed, 'the point of all speech protection … is to shield just those choices of content that in someone's eyes are misguided, or even hurtful.'" *Id.* at 458 (*quoting Hurley v. Irish–American Gay, Lesbian and Bisexual Grp. of Boston, Inc.*, 515 U.S. 557, 574 (1995)). Here, the

Gibsons' lawsuit against Oberlin seeks to restrict *student* speech about the grocer's reputation in the community. Because such censorship undermines the protections afforded under the First Amendment, this Court should be skeptical of any judgment that vicariously results in trampling so many citizens' rights.

"The essentiality of freedom in the community of American universities is almost self-evident," *Sweezy v. State of N.H. by Wyman*, 354 U.S. 234, 250 (1957), because America recognizes that "[t]he classroom is peculiarly the 'marketplace of ideas.'" *Keyishian v. Bd. of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 603 (1967). As a result, "[o]ur Nation is deeply committed to safeguarding academic freedom" in universities—recognized as "a special concern of the First Amendment." *See id.* at 603. *See also Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) ("First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students."). Admittedly, a private college like Oberlin is not a state actor governed by the Constitution; however, the same constitutional *principles* do apply to its faculty and student speech.[1]

Educational leaders and faculty in American universities play a vital role in our democracy. The Supreme Court has even stated that "[t]o impose *any* strait jacket upon the intellectual leaders in our colleges and universities would *imperil the future of our Nation*." *Sweezy*, 354 U.S. at 250 (emphasis added). Courts are admonished to "scrupulous[ly] protect[]" educators' constitutional freedoms lest we "strangle the free mind at its source and teach youth to

[1] Indeed, as a nonprofit corporation, Oberlin is entitled to full First Amendment protections for its own speech and association rights as distinct from its individual employees' rights. *See Mich. State AFL-CIO v. Schuette*, 847 F.3d 800, 805 (6th Cir. 2017) (First Amendment "guarantee extends to speech by incorporated entities, including for-profit corporations, nonprofit corporations, and unions").

discount important principles of our government as mere platitudes." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943). So regardless of the institution's funding, this Court should extend those same protections and constitutional principles to all educational institutions that provide a stage for student and educator debate.

Contentious speech on all viewpoints—which often creates unrest and offends others—is critical to the education of informed citizens in our Republic. "Any word spoken … on the campus[] that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, and our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society." *Tinker*, 393 U.S. at 508–09 (citation omitted).

In reality, "a *function* of free speech under our system of government is to *invite* dispute," *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949) (emphasis added). This is especially true for "provocative and challenging" matters of public concern like racism and criminal justice reform. Discussion about those issues, like here, "may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea." *Id.* But regardless of the outcome, speech about these topics "best serve[s] its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." *See id.* "Indeed, in times of great national discussion, such as during the height of the Vietnam War or the debate over the war in Iraq, college campuses serve as a stage for societal debate." *Bowman v. White*, 444 F.3d 967, 979 (8th Cir. 2006).

For all universities, an invitation to engage in open dialogue means that "[t]eachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and

understanding." *Sweezy*, 354 U.S. at 250. "[O]therwise our civilization will stagnate and die," *id.*, and "[t]hose who begin coercive elimination of dissent soon find themselves exterminating dissenters" because "[c]ompulsory unification of opinion achieves only the unanimity of the graveyard," *Barnette*, 319 U.S. at 641. For state universities, "the mere dissemination of ideas—no matter how offensive to good taste—… may not be shut off in the name alone of 'conventions of decency.'" *Papish v. Bd. of Curators of Univ. of Mo.*, 410 U.S. 667, 670 (1973). Of course, these historical and prudential protections for discourse are not only limited to public universities.

For regardless of a school's source of funding, "[w]e can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes." *Barnette*, 319 U.S. at 641–42. Most importantly, the law recognizes that contentious speech is the exact reason for such protections; the "freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order." *Id.* In Ohio, recognition of the importance of protecting First Amendment rights has meant that "[t]he right to sue for damage to one's reputation pursuant to state law is not absolute. Instead, the right is encumbered by the First Amendment to the United States Constitution." *Soke v. Plain Dealer*, 632 N.E.2d 1282, 1283 (Ohio 1994). And the federal government recently enacted plans "to promote free and open debate on college and university campuses" because "[f]ree inquiry is an essential feature of our Nation's democracy, and it promotes learning, scientific discovery, and economic prosperity." *See* Exec. Order No. 13864 § 1.[2]

[2] *See also* Exec. Order No. 13864 § 2 ("It is the policy of the Federal Government to … encourage institutions to foster environments that promote open, intellectually engaging, and

Despite ostensibly seeking to hold Oberlin liable for its conduct, the Gibsons' lawsuit actually seeks to mandate viewpoint restrictions on students' speech. But forcing unanimity on a contentious and oft-disputed issue like "what constitutes racism in the Oberlin community" is useless. *See Barnette*, 319 U.S. at 641 ("Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, … down to the fast failing efforts of our present totalitarian enemies."). More perniciously, however, the Gibsons' actions are the first step in (1) suppressing all discourse and opinions on what constitutes discriminatory conduct by (2) incentivizing or financially forcing educational institutions to suppress inconvenient student speech. In other words, lawsuits like this aim to strong-arm colleges like Oberlin into defining "racism" for their students through the implicit or explicit threat of lawsuits and enormous financial liability. *Id.* Because the lower court disregarded Oberlin and its students' First Amendment rights to speak on and debate an issue of public concern without the threat of such enormous liability, this Court should explicitly affirm those First Amendment protections on independent review. *Puruczky v. Corsi*, 110 N.E.3d 73, 81 (2018) ("Constitutional questions, including the application of the First Amendment, … are reviewed under a de novo standard.").

B. Holding Oberlin Liable For Its Students' Protected Opinions Is Antithetical to Free Expression Guarantees and Ohio Law

The judgment below disregards the history and context of Oberlin's connection to the speech at issue and is premised on a misunderstanding of the First Amendment and Ohio law. Consistent with its progressive values, Oberlin's faculty and students have always championed

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diverse debate, including through compliance with the First Amendment for public institutions and compliance with stated institutional policies regarding freedom of speech for private institutions").

education for black Americans and invited free speech on matters like slavery, civil rights, and equality for all. While many disagree with the substance and manner of how the students chose to express their sincerely held opinions, the First Amendment does not permit the government to enforce content-based restrictions on others opinion. Because the lower court disregard this historical context and its impact under the First Amendment, this Court should vacate the judgment below.

In determining whether statements are protected as matters of opinion, courts must look into the context of a speaker's expression and the community's awareness of the speaker's propensity rhetoric and hyperbole. "When determining whether speech is protected opinion a court must consider the totality of the circumstances. Specifically, a court should consider: the specific language at issue, whether the statement is verifiable, the general context of the statement, and the broader context in which the statement appeared." *Vail v. The Plain Dealer Publ'g Co.*, 649 N.E.2d 182, 183 (Ohio 1995). And because the words themselves may not be enough to understand the potential implications, "[i]n addition to examining the allegedly defamatory statements as they appear in context, we also examine 'the broader social context into which the statement fits.'" *Wampler v. Higgins*, 752 N.E.2d 962, 981 (Ohio 2001) ("Some types of … speech by custom or convention signal to readers or listeners that what is being read or heard is likely to be opinion, not fact."). This is especially true for protests, which include a multitude of angry voices and act as "a traditional haven for cajoling, invective, and hyperbole." *See Scott v. News-Herald*, 496 N.E.2d 699, 708 (Ohio 1986).

Established in 1833, Oberlin was the first college in America to admit students "irrespective of color"—thirty years before the Nation would abolish slavery. Robert S. Fletcher, *A History of Oberlin College* 170 (1943). Two years later, Oberlin again made U.S.

history when it allowed four women to enroll as full-time students for the first time ever. *See* Oberlin History, https://www.oberlin.edu/about-oberlin/oberlin-history. Twenty years later, Oberlin was already established as the Nation's preeminent progressive college when it conferred a Bachelor's degree on America's first black female college graduate, Mary Jane Patterson. *Id.* Unsurprisingly, many in Ohio took issue with the school's administration and its permissive stance towards integration. In 1858, a group of locals were jailed for rescuing a fugitive slave in violation of the Fugitive Slave Act during the "Oberlin-Wellington Rescue"—an event widely believed to have set the American Civil War in motion. *Id.*

Oberlin's founders—already distinguished sponsors of equal access to education— freely exercised their rights to speak on issues like slavery, racism, and other matters of public concern. *See* Cally L. Waite, *The Segregation of Black Students at Oberlin College After Reconstruction*, 41 Hist. Educ. Q. 344, 344-46 (2001) (noting that as a result of the founders' prolific writing, Oberlin was referenced 352 times by 1865 in the famous abolitionist newspaper, *The Liberator*). Keeping with this tradition, Oberlin's Memorial Arch[3] became a rallying point during the civil rights movement in the 1960s—hosting rallies led by Malcolm X and Dr. Martin Luther King, Jr. Merredith Collins and Melody R. Waller, *Activism thrives through Oberlin's history*, The Oberlin Review (May 1, 1995).[4] Unsurprisingly, Oberlin set the scene for "a great deal of intellectual discussion" about civil rights, racism, and "talk about the method of protest" during the Civil Rights movement. *See id.* (quoting Oberlin Professor James Walsh). As a result of

[3] https://www.oberlin.edu/memorial-arch.

[4] http://www2.oberlin.edu/stupub/ocreview/archives/1998.05.01/news/activism.html.

these policies and events, the Memorial Arch and Underground Railroad Sculpture[5] are well known locations in the community for speech on racism and civil rights.

As with any historical organization that defied early norms, Oberlin's educators, administrators, students, and surrounding community, are well aware of the role that the College played in shaping American history. Some students and faculty likely *sought* out Oberlin to contribute to its discussions about slavery, racism, and civil rights. For them, whether a nearby store discriminates against members of Oberlin's community is a matter of public concern that affects their educational experience—and a potential issue to bring to the national dialogue of racism. *See Connick v. Myers*, 461 U.S. 138, 146 (1983) (a matter of public concern is a "matter of political, social, or other concern to the community"). Regardless of whether others would agree with those students who claim to have experienced racism at the hands of a local store, the First Amendment requires colleges and communities to permit those opinions. The lower court's judgment disregards Oberlin's well-known role in early national debates and the local community regarding race; instead, penalizing Oberlin for permitting its students to exercise their expressive rights based on their own subjective opinion.

As shown through recent years' contentious national debates surrounding race, accounts of racism and discrimination are also often viewed and interpreted based on a number of subjective factors. *See* Dismantling Racism, http://www.dismantlingracism.org/racism-defined.html. Individuals from various ethnic, age, and socioeconomic backgrounds may have vastly different opinions on what constitutes a racist act or discriminatory comment. Accordingly, where the conduct at issue is subject to varying reasonable interpretations, no

[5] https://www.oberlin.edu/underground-railroad-sculpture.

concrete definition of what constitutes racist conduct can be ascertained and any accusations of racist behavior are inherently subjective in that context. *See Wampler*, 752 N.E.2d at 962 ("statements which are 'loosely definable' or 'variously interpretable' cannot in most contexts support an action for defamation"). Consistent with this principle, the Third Circuit recently held that allegations of racism are protected opinion where the facts are known to the listeners by virtue of the speech itself or context. *See McCafferty v. Newsweek Media Grp., Ltd.*, 2020 WL 1862250, at *3 (3d Cir. 2020) (phrase "defending raw racism and sexual abuse" is protected opinion in light of context and disclosed facts).

Like attempts to resolve debates on heresy, any judgment that purports to answer whether Gibson's store is, in fact, "a RACIST establishment with a LONG ACCOUNT of RACIAL PROFILING and DISCRIMINATION" is both futile and facile. *See Barnette*, 319 U.S. at 641. *See also Condit v. Clermont Cnty. Review*, 110 Ohio App. 3d 755, 760 (1996) ("Numerous courts have concluded that allegations of fascism, anti-Semitism, or other accusations of ethnic bigotry are not actionable as defamation."). Given the *de minimis* conduct of Oberlin's administrators in contrast to the substantial expression of the student activists, its well-known role in matriculating students who lead the Nation's civil rights debates, and the context of these statements during a heated protest, this Court should unequivocally hold on *de novo* review that the allegations of profiling or discrimination in this case are opinions as a matter of law. *Ferner v. Toledo-Lucas Cnty. Convention & Visitors Bur., Inc.*, 80 Ohio App. 3d 842, 848 (1992) ("when a jury determines that speech is not constitutionally protected, the court of appeals will review the evidence *de novo.*").

C. College's Liability For Protected Expression Undermines Fundamental Constitutional Interests, Chills Speech Across All Academic Institutions, and Creates Additional Liability

Antithetical to those constitutional and historical underpinnings, affirming Oberlin's liability in this matter will also chill all student and educator expression across Ohio. If the judgment is affirmed under these circumstances, universities and colleges across the State will undoubtedly over-restrict speech as a result for two reasons. First, the astronomical increase in educational institutions' potential liability based on others' potentially problematic speech. Second, private colleges—who are not constitutionally required to protect speech—will be perversely incentivized to avoid a similar fate through increased restrictions on expression. Because affirming such potential liability will inevitably lead to more censorship, more litigation, and undermining the value of academic freedom and student discourse, the secondary implications of liability also weigh heavily against affirming the judgment.

First, if the judgment against Oberlin is affirmed, the Court's ruling will pressure all higher education institutions in Ohio—public and private—to avoid liability risks and, in doing so, take steps to suppress students' and teachers' potentially problematic speech. For private colleges, the motivation to increase restrictions will be obvious: to avoid liability based on even *arguably* false speech by students or faculty. Given the prospective cost in terms of attorneys' fees, settlements, and judgments, those colleges will make efforts to restrain any divisive speech in the event that they might be deemed to have assisted in some minor way.

Although Ohio public universities are generally, "as an arm of the State, immune from suit under the Eleventh Amendment," *Johnson v. Univ. of Cincinnati*, 215 F.3d 561, 571 (6th Cir. 2000), a compelling financial motivation still pressures them to avoid liability for infringing students' rights. State employees—who are indemnified by Ohio, *see* Ohio Rev. Code Ann.

§ 9.87(a)—abuse any immunity privilege when their conduct can "be described as malicious, reckless, or bad faith." *Culberson v. Doan*, 125 F. Supp. 2d 252, 283 (S.D. Ohio 2000) (citing Ohio Rev. Code Ann. §§ 2744.03(A)(1) and (6)(b)). Because an employee's intent is a factual issue, Ohio's state universities will still bear the high costs of defending lawsuits through trial based on little more than allegations that the privilege *may* have been abused. *See, e.g., id.* (denying summary judgment based on factual issue of abuse of privilege); *Stepp v. Medina City Sch. Dist. Bd. of Edn.*, 71 N.E.3d 609, 619 (2016) (same). Furthermore, Executive Order 13864[6] and Ohio Senate Bill 40[7] both represent significant recent threats to public universities' funding if a public university is implicated in a First Amendment scandal. Accordingly, even the specter of Oberlin-like liability or litigation costs will cause all colleges and universities to scrutinize their own students' expressive conduct.

Universities and colleges are already inherently forced to deal with the speech that necessarily occurs in an academic setting—whether protected by the First Amendment or not. Unfortunately, the majority of American colleges have at least one policy that expressly or implicitly restricts constitutionally-protected speech as a result. *See* Foundation for Individual Rights in Education (FIRE), *Spotlight on Speech Codes 2020: The State of Free Speech on Our Nation's Campuses*, at 2, 17 (2020) (noting increase since 2009)[8]; *see also* Azhar Majeed,

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[6] Under Executive Order 13864 § 3(a), the heads of various agencies are tasked with "improving free inquiry on campus" through regulating funds to "ensure institutions that receive Federal research or education grants promote free inquiry, including through compliance with all applicable Federal laws [including the First Amendment], regulations, and policies."

[7] Ohio Senate Bill 40, which recently passed in the Senate and is similar to its predecessors House Bills 363 and 758, would prohibit state institutions from (1) encouraging behavior that prevents contentious speakers from lawfully expressing their viewpoint or (2) establishing "free speech" zones.

[8] https://www.thefire.org/resources/spotlight/reports/spotlight-on-speech-codes-2020/.

Defying the Constitution the Rise, Persistence, and Prevalence of Campus Speech Codes, 7 Geo. J.L. & Pub. Pol'y 481 (2009). But any increased restrictions on expression in the academic setting as a result of concerns over liability, however minor, still undermine the inherent value of diverse discourse in higher education. *See Barnette*, 319 U.S. at 641–42; *Sweezy*, 354 U.S. at 250. And even if properly narrowed, a university's restriction of *any* constitutionally-protected expression chills *all* speech by encouraging individuals to disengage versus subjecting themselves to possible expulsions or dismissal. The effect of this climate of censorship on students is more than hypothetical; university students routinely admit they are too intimidated to share beliefs if they differ from their professors and classmates.[9]

Further, speech codes invite significant costly lawsuits by students and faculty seeking to vindicate their First Amendment rights—with the additional possibility of attorneys' fees against public institutions. *See* 42 U.S.C. § 1988. So, in addition to the distraction from their primary purpose, universities are opened up to potential financial liability on two fronts: from those who claim they failed to stop offensive speech and those who claim their own speech has been restricted. Placed between a rock and a hard spot, public universities are especially likely to respond by imposing and defending blatantly unconstitutional regulations or risk losing funding. *See McGlone v. Bell*, 681 F.3d 718, 733 (6th Cir. 2012) (university speech restrictions unconstitutional); *Castorina ex rel. Rewt v. Madison Cnty. Sch. Bd.*, 246 F.3d 536, 544 (6th Cir. 2001) ("even if there has been racial violence that necessitates a ban on racially divisive

[9] *See, e.g.*, Knight Foundation, *Free Expression on College Campuses* (May 2019), https://knightfoundation.org/reports/free-expression-college-campuses/; The William F. Buckley, Jr. Program at Yale: *Survey* (Oct. 2015), http://mclaughlinonline.com/2015/10/26/the-william-f-buckley-jr-program-at-yale-almost-half-49-of-u-s-college-students-intimidated-by-professors-when-sharing-differing-beliefs-survey.

symbols, the school does not have the authority to enforce a viewpoint-specific ban on racially sensitive symbols and not others"); *Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995) (declaring university discriminatory harassment policy facially unconstitutional). In doing so, students thereby learn that vocal dissent will be subdued or eliminated by official government-funded resistance. In conclusion, liability under these circumstances incentivizes more speech codes, which themselves lead to additional costs and litigation for Ohio's taxpayers.

Second, if the First Amendment's protections do not extend to Oberlin's "speech" here, private colleges will be specifically encouraged to restrict and punish unpopular speech, fundamentally altering the fair and balanced treatment of First Amendment protections for those at public and private universities. Placed in Oberlin's unenviable shoes, a public university in Ohio cannot terminate its employees based on the same speech relating to an issue of public concern. According to well-established law, even where the Ohio public employee's speech is itself likely racist[10] or includes defamatory per se allegations of illegal activity,[11] a university "may not restrict speech or association simply because it finds the views expressed by any group to be abhorrent." *Healy v. James*, 408 U.S. 169, 187–88 (1972) (emphasis added).

Private colleges, however, can and would undoubtedly punish any students or employees to forestall or vindicate their own similar judgment. Specifically, any potential liability here would incentivize private colleges to (1) condition or limit their recognition of expressive rights,

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[10] *See Min Li v. Qi Jiang*, 38 F. Supp. 3d 870, 873 (N.D. Ohio 2014) (teacher's speech protected where she "described herself as hating the 'little runts' from 'deep in her bones'" and sent an "email urg[ing] the recipients to not 'buy any Japanese products from [then] on'").

[11] *See Mosholder v. Barnhardt*, 679 F.3d 443, 446 (6th Cir. 2012) (school violated teacher's First Amendment rights by retaliating against her after she alleged that the local detention center's management allowed inmates to associate with gangs through their lyrics during approved rap competition).

(2) investigate, suppress, and punish expression even *alleged* to be defamatory, and (3) close expressive forums to avoid the possibility of defamatory or offensive expression—regardless of whether the speaker is espousing "conservative" or "liberal" viewpoints. The dichotomy created by such diverse treatment of educational institutions' rights, and the attendant risks to educators and students seeking stability and freedom "to inquire," will fundamentally alter academia. Because violations of constitutional rights have drastic implications, the lower court's judgment disregard for fundamental freedoms is clear error. Accordingly, this Court should vacate any judgment that creates such jurisprudential conflict and displays a manifest disregard for all Ohio students', educators', and educational institutions' constitutional rights.

CONCLUSION

With a history of deference to its students' expressive rights, Oberlin has long molded America's necessary and contentious debate on racism, discrimination, and civil rights. Considering that historical context, the nature of the speech at issue, and the First Amendment's broad protections for campus expressions on matters of public concern, Oberlin cannot be held liable here as a matter of law. Furthermore, because affirming that liability would threaten the rights of all Ohio students and educators "to inquire, to study and to evaluate, to gain new maturity and understanding," *Sweezy*, 354 U.S. at 250, this Court should vacate the judgment below and uphold Oberlin's protections under the First Amendment.

Respectfully Submitted,

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