

News **Artificial Intelligence**

'Serious Matter': 5th Circuit Weighs Reassignment After Judge Used AI to Draft Ruling

U.S. District Judge Henry Wingate issued the temporary restraining order "on the basis of names that didn't even exist and statements that didn't even exist," said Fifth Circuit Judge Jerry Smith. "Are you saying that we can be confident that that didn't infect his ultimate reasoning?"

August 31, 2026 at 02:47 PM By **Avalon Zoppo**



John Minor Wisdom U.S. Court of Appeals for the Fifth Circuit Building in New Orleans. Photo: Andrew Denney/Law.com

The U.S. Court of Appeals for the Fifth Circuit on Monday questioned if a First Amendment challenge to a Mississippi anti-DEI law should be reassigned after a district court judge used an artificial intelligence tool to draft an error-riddled ruling blocking the statute.

U.S. District Judge Henry Wingate of the Southern District of Mississippi admitted last year that one of his law clerks used the AI program Perplexity to compose an order pausing enforcement of a state law banning diversity, equity and inclusion programs in public schools. The order was filled

with AI hallucinations, featuring misquotes of state law and parties that weren't involved in the case.

After the Mississippi Attorney General's Office raised concerns about the flawed order, Wingate replaced it with a corrected version and removed the other from the docket. Wingate denied the state's request to place the original order back on the docket, and referred to the mistakes as "merely clerical."

Fifth Circuit Judge Jerry Smith asked if the use of AI may have influenced Wingate's decision to issue the flawed temporary restraining order, thus favoring reassignment. Smith also raised concerns about an erroneous citation that still appeared in Wingate's order after he amended it to remove the AI errors.

"Don't you think that's a pretty serious matter? If after all that had happened with getting rid of the initial order, that there still would be an AI hallucination in what was finally issued?" Smith said.

"He [issued the TRO] on the basis of names that didn't even exist and statements that didn't even exist. Are you saying that we can be confident that that didn't infect his ultimate reasoning?" Smith added. "[Wingate] kind of said, 'Oh, this is no big deal. I'm getting rid of that old one and I'm doing a new one. Don't worry about it. There's nothing to see here.'"

An attorney representing student groups, educators and others challenging the law argued that the injunction should remain in place because Wingate made the decision to grant the TRO himself, not the AI tool.

"Regrettably, a shortcut was taken in his office," said Robert McDuff of the Mississippi Center for Justice.

But the court could be confident that the AI didn't affect Wingate's ultimate decision or later preliminary injunction that is on appeal, McDuff said. Wingate had held a hearing and heard from both sides before the AI was used to justify an opinion he had already formed to grant the TRO, McDuff added

"It was really problematic, and I understand your point. I don't think it affected his ultimate reasoning," McDuff continued. "In terms of the preliminary injunction, it does not affect the likelihood of our success on the merits when you look at the statute and look at how it would be applied."

Deputy Mississippi Solicitor General Anthony M. Shults countered that even the later-issued preliminary injunction included a fake case citation to the Fourth Circuit. Shults urged the Fifth Circuit to vacate that order and send the case to a different district court judge.

“In the [preliminary injunction order], the court didn't disclaim the TRO and actually embraced it and relied on the legal reasoning in the flawed TRO, which we think is very concerning,” Shults said. “We believe that the court's actions will lead any reasonable observer to question whether it has the ability to afford this case due care and accuracy going forward, and reassignment would be appropriate.”

However, McDuff said while the reissued TRO still contained an erroneous citation, the preliminary injunction did not.

McDuff contended that the issue here doesn't amount to a “rare and extraordinary” case for reassignment. If the Fifth Circuit sends the case to a new judge, he urged the appeals court not to vacate the preliminary injunction, saying it would create uncertainty in Mississippi schools.

“We earnestly request that you not vacate the preliminary injunction in the meantime, because it would be chaos for 136 school districts in Mississippi, and the faculties and the leadership of the various universities and community colleges, to try to enforce this extremely vague and potentially far-reaching statute,” McDuff said.

Judges Kurt Engelhardt and Catharina Haynes also sat on the Fifth Circuit panel.

Wingate is one of two judges last year known to have published an opinion with AI hallucinations.

U.S. District Judge Julien X. Neals of New Jersey acknowledged that a law school intern improperly used ChatGPT to perform legal research in a case. An unreviewed draft opinion in the case was mistakenly docketed, and later withdrawn after a lawyer pointed out that it included incorrect case outcomes and made-up quotes attributed to the defendants.

Wingate's acknowledgement followed an inquiry from U.S. Sen. Chuck Grassley, R-Iowa and chair of the Senate Judiciary Committee.

The New Orleans-based Fifth Circuit heard arguments in *Jackson Federation of Teachers v. Lynn Fitch*, No. 25-60496.

Page printed from: <https://www.law.com/nationallawjournal/2026/08/31/serious-matter-5th-circuit-weighs-reassignment-after-judge-used-ai-to-draft-ruling/print/>

NOT FOR REPRINT

© 2026 ALM Global, LLC, All Rights Reserved. Request academic re-use from www.copyright.com. All other uses, submit a request to asset-and-logo-licensing@alm.com. For more information visit [Asset & Logo Licensing](#).