No. 26-5057

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RAMSI A. WOODCOCK

Plaintiff-Appellant,

- v. -

THE UNIVERSITY OF KENTUCKY, *et al.*,

Defendants-Appellees.

EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL

RIMA KAPITAN
HANNAH MOSER
Kapitan Gomaa Law, P.C.
P.O. Box 6779
Chicago, IL 60680
(312) 566-9590

JOE F. CHILDERS
Joe F. Childers & Associates
The Lexington Building
201 West Short Street, Suite 300
Lexington, Kentucky 40507
(859) 253-9824

Counsel for Plaintiff-Appellant

SUMMER MURSHID
M. NIEVES BOLAÑOS
PATRICK COWLIN
Hawks Quindel S.C.
111 E. Wacker Drive, Suite 2300
Chicago, IL 60601
(312) 224-2423

TABLE OF CONTENTS

Pursuant to Federal Rule of Appellate Procedure 8(a)(2), Plaintiff-Appellant Ramsi A. Woodcock ("Plaintiff") hereby respectfully requests that this Court enjoin the investigation, interim suspension, and ban imposed by Defendants in retaliation for Plaintiff's protected speech pending Plaintiff's appeal of the District Court's denial of his request for a preliminary injunction. Plaintiff motioned for an injunction pending appeal in the District Court and it was denied on *Younger* abstention grounds. Denial, R.42, PageID# 2130. The investigation, interim suspension, and ban will likely conclude in a matter of weeks. Defendants have refused to rule on the constitutionality of these actions before they complete them. Absent an injunction pending appeal, Plaintiff will have no opportunity to avoid irreparable harm and obtain prospective relief against these unconstitutional forms of retaliation. He will also lose the opportunity to teach in the spring semester.

STATEMENT OF FACTS

Plaintiff is a tenured law professor and teacher of International Law at University of Kentucky's J. David Rosenberg College of Law (the "law school") who, since early 2024, has been speaking about his research conclusions that Israel is a colonial state structure and that, because Israel is committing genocide, it must be immediately dismantled through international military intervention. Am. Compl. R.36, PageID## 1626–32. On July 18, 2025, Defendants initiated a Title VI hostile environment investigation into Plaintiff's speech. *Id*. at 1634–40; 42 U.S.C. §

2000d. They also suspended him from teaching, research, and service and banned him from the law school building "for the duration of the investigation." *Id.*; Duff Letter, R.19-3, PageID# 493.

Defendants had no basis for initiating the investigation. The University had received no complaints about Plaintiff from any member of the University community. Duff Tr., PageID# 1982:15–20. It had received four complaints from professors at other schools who were not covered by Title VI and at least one complaint related to a conference in Hong Kong, which is not covered by Title VI because the statute does not apply extraterritorially. First NOI, R.19-15, PageID## 1558–59; *see Snyder-Hill v. Ohio State University*, 48 F. 4th 686, 708 (6th Cir. 2022); *Doe v. University of Central Missouri,* No. 4:20-00714-CV-RK, slip op. at 2–3 (W.D. Mo Dec. 28, 2020). Defendants also vaguely suggested that Plaintiff had violated University rules regarding affiliation disclaimers, spamming and responsible use of University resources that had never been enforced against any law professor. Am. Compl., R.36, PageID## 1648–52; Douglas Decl., R.19-7, PageID## 1108–09; Bird-Pollan Decl., R.19-8, PageID## 1113–15; Goldman Decl., R. 19-6, PageID## 1092–93; Ethical Principles, R.19-3, PageID## 565–74; Tech. Pol'y § IV.J.c.vii, R.19-3, PageID# 584; Inst. Stmt. Pol'y, R.19-3, PageID## 515–20.

Specifically, the University alleged that Plaintiff had: "assert[ed] that the United States government was supporting Israel in what was alleged to be a genocide of the Palestinian people" at a conference at George Mason's law school while attending "as a University of Kentucky Law Professor"; launched a "tirade against the United States and its 'colony' for coming genocide in Gaza" and "chant[ed]" "apartheid" at a conference in Hong Kong while attending "as a University of Kentucky Law Professor"; "spammed" listservs, including the Association of American Law Schools ("AALS") "listserv" with "your personal viewpoints concerning the Israeli-Palestinian conflict"; and "us[ed] the University's resources to circulate" a petition for military action against Israel.[1] First NOI, R.19-15, PageID## 1558–59. The University told Plaintiff to "stop immediately." *Id*. at 1559.

In early September, the investigation uncovered that Plaintiff had made two Palestine-related statements at extracurricular events in late 2024 and early 2025, about which no member of the community had complained at the time. Second NOI, R.19-15, PageID## 1573–74. In particular, the University alleged that, at "an optional educational program with guest lecturers", Plaintiff had said that he "does

[1] *Petition for Military Action Against Israel*, Antizionist Legal Studies Movement (Nov. 12, 2024), https://antizionist.net/petition-for-military-action-against-israel/ [https://perma.cc/Q6DT-MB9F].

not need to invite or include any speakers or guest lecturers with a pro-Israeli viewpoint because such speakers are pro-genocide", and that, "while driving a car with University of Kentucky law students who won a bid during a fundraiser for the Student Public Interest Law Foundation to spend time with" him, Plaintiff had "shout[ed] 'Free Palestine[.]'"[2] *Id*. at 1573–74. Such statements do not violate Title VI. *See, e.g.*, *Stand With Us v. MIT*, No. 24-1800, slip op. at 3–4, 32 (1st Cir. Oct. 21, 2025). No additional allegations have been made.[3]

Lacking a basis for initiating a hostile environment investigation, Defendants circumvented established procedures to bring one. The University proceeds under color of no extant University regulation and in violation of written procedures—both those currently in effect and those that the University deleted after the start of the investigation. Am. Compl., R.36, PageID## 1652–56. The University is employing an extraordinary process that it invented specifically for Plaintiff, which transfers to

[2] The statement in the car was made in downtown Cincinnati and directed at two men in Palestinian garb who were crossing the street. Am. Compl., R.36, PageID# 1641–42. Plaintiff disputes many of the University's allegations, including those regarding his Hong Kong and optional lecture remarks. *Id*. at 1639–41. For purposes of this motion, however, the allegations will be taken as true and without additional context.

[3] The early September allegations included the conclusory statement that Plaintiff called for "the genocide of Israeli people." Second NOI, R.19-15, PageID# 1574. The University has not pointed to any example of such a statement by Plaintiff. It appears to be an attempt to interpret Plaintiff's call for military action against Israel as a call for genocide. Accordingly, this Court should assume it to be false.

Defendants responsibility for commencing and resolving a discrimination investigation that is normally initiated and resolved by the University's Office of Equal Opportunity ("OEO"). OEO Pol'y, R.42-1, PageID# 2082–87; Thompson Letter 8/25/25, R.19-15, PageID# 1570–71. The procedure employs an outside investigator publicly associated with a partisan thinktank that explicitly calls for suppression of pro-Palestine speech on campus. Am. Compl., PageID## 1623–24, 1634. It places the same University President who publicly described Plaintiff's views as "repugnant" in charge of deciding whether to file formal disciplinary charges against him and choosing the sanction to impose upon him based on a secret investigator's report. Am. Compl., R.36, PageID## 1634–35, 1638–39, 1655–56. Under the normal OEO process, the OEO director decides whether there is probable cause to file charges and a disciplinary hearing panel of impartial decisionmakers would take the first crack at identifying a sanction based on an investigator's report disclosed to Plaintiff. OEO Pol'y, R.42-1, PageID# 2083; Equal Dignity Due Proc. Regul. §§ I.C.1, I.E.2, R.19-3, PageID## 482, 486; Interim Due Proc. Regul. § II.D.4, R.19-3, PageID# 524.

OEO policy requires a threat to the physical health or safety of the University community before the OEO director may impose a suspension pending completion of an investigation. OEO Pol'y, R.42-1, PageID# 2087. None of the complaints that Defendants had received about Plaintiff suggested such a threat. First NOI, R.19-15,

PageID## 1558–59; Second NOI, R.19-15, PageID## 1573–74. Defendants circumvented the threat requirement by summarily reassigning Plaintiff to zero teaching, research, and service effort. Am. Compl., R.36, PageID## 1636, 1652.

STATEMENT OF JURISDICTION

The Court of Appeals has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1292(a)(1). On January 8, 2026, the District Court dismissed Plaintiff's motion for a preliminary injunction based on the *Younger v. Harris* abstention doctrine. 401 U.S. 37 (1969). The District Court stayed the case until after the completion of the investigation and any disciplinary proceedings because Plaintiff seeks damages in addition to injunctive relief. The abstention ruling is an appealable final order under 28 U.S.C. § 1291. *Jones v. Coleman*, 848 F.3d 744, 748 (6th Cir. 2017); *Satkowiak v. McClain*, No. 21-1600, slip op. at 2–3 (6th Cir. Dec. 12, 2024) (unpublished) (stay context). The abstention ruling is also appealable under the collateral order doctrine. *RSM Richter, Inc. v. Behr America, Inc.*, 729 F. 3d 553, 556 (6th Cir. 2013). The abstention ruling conclusively resolved the issue of whether to abstain from prospective relief, the issue is entirely separate from the underlying First Amendment and due process merits, and the issue is unappealable once the challenged investigation concludes and the stay is lifted.

STANDARD OF REVIEW

An injunction pending appeal will issue upon a favorable balancing of these interrelated concerns: (1) Plaintiff has a strong likelihood of success on the merits and (2) would otherwise suffer irreparable injury; (3) there would not be substantial harm to others; and (4) the public interest would be served. *Monclova Christian Acad. v. Toledo-Lucas County*, 984 F. 3d 477, 478 (6th Cir. 2021).

ARGUMENT

A. Plaintiff Will Suffer Irreparable Injury Without the Injunction

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Defendants are investigating, suspending, and banning Plaintiff in retaliation for his constitutionally protected speech at academic conferences, in online discussion groups for law professors, and in extracurricular activities. Every day that the investigation, suspension, and ban continue inflicts harm on Plaintiff that cannot adequately be remedied through damages. *Id*. Because Defendants have refused to decide Plaintiff's constitutional objections until after the conclusion of the investigation, Plaintiff has no opportunity to avoid this constitutional harm other than through an appeal to this Court. Thompson Letter 8/25/25, R.19-15, PageID# 1570; Thro Letter 9/19/25, R.19-4, PageID# 1067. The investigation will enter an evidence review stage on January 23, 2026 that could last as little as three weeks,

after which it will conclude. Thompson Letter 8/25/25, R.19-15, PageID# 1570; Thompson Email 1/9/26, R.42-4, PageID# 2099. Absent an injunction pending appeal, Defendants will carry their retaliatory investigation, suspension, and ban through to completion before this appeal is resolved and Plaintiff will be deprived of the opportunity to obtain the only relief that is adequate to remedy irreparable constitutional harm: prospective relief. He will also lose the opportunity to teach in the spring semester. Woodcock Decl. 1/21/26, R. 42-6, PageID# 2120.

B. Plaintiff Has a Strong Likelihood of Success on Both *Younger* Abstention and His First Amendment and Due Process Claims

1. Plaintiff Has a Strong Likelihood of Success on His Appeal of the District Court's Decision to Abstain Under *Younger*

With respect to civil enforcement proceedings, *Younger* abstention is only appropriate where the proceeding (1) provides a federal plaintiff with "an adequate opportunity to raise his constitutional claims", (2) is "judicial in nature" and "akin to criminal proceedings", (3) is ongoing, and (4) involves an important state interest." *Doe v. University of Kentucky*, 860 F. 3d 365, 369 (6th Cir. 2017). Even if those factors are satisfied, exceptions apply for bad faith, bias, and flagrant unconstitutionality. *Doe*, 860 F. 3d 371 (bad faith and flagrant unconstitutionality); *Gibson v. Berryhill*, 411 U.S. 564, 577–78 (1973) (bias). Plaintiff's likelihood of success on the first three *Younger* elements is set forth in capsule form here and

discussed more fully, along with the other element and the applicability of the exceptions, in the attached draft merits brief.

a) Plaintiff Does Not Have an Adequate Opportunity to Raise Constitutional Claims

The District Court concluded that Plaintiff had an opportunity to raise constitutional claims because the investigator asked him to submit constitutional objections in writing. PI Order, R.37, PageID## 1785. This is not an "adequate opportunity" to raise constitutional objections because Defendants have made clear that they will not rule on Plaintiff's objections until after the investigation and associated interim suspension and ban have ended. Thompson Letter 8/25/25, R.19-15, PageID# 1570 (stating that the investigator "will not serve as the decision-maker" and that "[a]fter the University receives and considers all the evidence", Defendant Capilouto will issue a letter with "findings"). Plaintiff brings First Amendment and due process challenges to the constitutionality of the investigation, as well as to the imposition of the interim suspension and ban, which will last "for the duration of the investigation". Am. Compl., R.36, PageID## 1658–60, 1667–70; Duff Letter, R.19-3, PageID# 493. Every day during which First Amendment freedoms are violated inflicts irreparable harm on Plaintiff as a matter of law. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). For Plaintiff to avoid the constitutional harm associated with these ongoing actions, he must have access to a forum that will rule on his objections while the investigation, suspension, and ban

are ongoing (or paused by injunction) rather than after they have come to an end. An opportunity to obtain a ruling after constitutional harms have come to an end is not adequate. *Gibson v. Berryhill*, 411 U.S. 564, 577 & n.16 (1973) (opportunity to raise claims must be "timely").

The instant case is unlike challenges to university disciplinary hearings in which courts have ruled that an adequate opportunity to raise constitutional objections exists, because in this case Plaintiff challenges the constitutionality of an investigation, interim suspension and ban that are already ongoing, rather than the constitutionality of any permanent sanction that the University may impose as the outcome of a subsequent disciplinary proceeding. *See, e.g.*, *Doe v. University of Kentucky*, 860 F. 3d 365, 370–71 (6th Cir. 2017). Because, in those cases, the permanent sanction had not yet been imposed, and the university would rule on constitutional objections during the hearing process prior to imposition, plaintiffs in those cases had an opportunity to obtain prospective relief for constitutional harm. *Id*. at 371.

b) The University's Ad Hoc Process Is Not Judicial in Nature

The District Court found that the state action in this case is "unconventional" but failed to consider the implications. PI Order, R.37, PageID# 1778. Judicial process is *conventional*, which is to say that it follows an established procedure. Accordingly, the Supreme Court has observed that the sort of proceeding from

which courts abstain "investigates, declares, and enforces liabilities . . . under laws supposed already to exist." *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350, 370–71 (1989) [hereinafter *NOPSI*].

The University's actions lack the conventional character of a judicial proceeding undertaken according to laws "supposed already to exist" and therefore are not abstainable under *Younger*. *Id*. Defendants did not follow the University's established procedure for responding to discrimination complaints. Instead, Defendants invented a process specifically for Plaintiff. Rather than follow the established procedure for imposing an interim suspension, pursuant to which the OEO would make a written finding regarding a threat to the physical health or safety of the University community, Defendants "reassigned" Plaintiff without making the requisite threat assessment. OEO Pol'y, R.42-1, PageID# 2087. Making the rules up as you go along is not an activity that is judicial in nature.

The Supreme Court has never considered, much less affirmed *Younger* abstention in the case of an ad hoc process. *See, e.g., Middlesex County Ethics Comm. v. Garden State Bar Assn.*, 457 U.S. 423, 425–26 (1982) (abstaining on challenge to attorney disciplinary proceedings carried out pursuant to New Jersey State Supreme Court rules). None of the cases cited by the District Court involve such a process; all describe proceedings carried out pursuant to established procedures. *See, e.g., Doe v. University of Kentucky*, 860 F. 3d at 370 (abstaining

from challenge to the University's established student disciplinary process). The District Court suggested that the "number and diversity" of the regulations at issue explain the University's embrace of an ad hoc process. PI Order, R.37, PageID# 1778. But whether the University has a good reason for employing an essentially executive process rather than a judicial one does not convert the executive process into a judicial process. States have good reasons to carry out legislative and executive functions, but that has not rendered them abstainable under *Younger*. *NOPSI*, 491 U.S. at 368.

c) University Disciplinary Proceedings Commence with the Filing of Charges

Even if Defendants' ad hoc investigation can be considered part of an abstainable state university disciplinary proceeding for *Younger* purposes, there remains the question whether Plaintiff filed suit before that proceeding officially commenced for *Younger* purposes. *Doe v. University of Kentucky*, 860 F. 3d at 369. The District Court held that the proceeding commenced with the opening of the investigation in July, making Plaintiff's lawsuit, which was filed in November, abstainable. PI Order, R.37, PageID## 1779, 1782. The District Court should have concluded that a university disciplinary proceeding commences with the filing of formal charges, which has not yet happened in this case.

The District Court reasoned that if investigations are not treated as part of the disciplinary process to which they lead, then *Younger* would effectively be eliminated by allowing plaintiffs to file in federal court as soon as an investigation is announced. *Id*. at 1779. There are, however, no reports of massive declines in the rate of *Younger* abstention in the First, Fourth, and Ninth circuits, each of which has rejected the general proposition that abstention is required in the investigatory part of a judicial proceeding. *Seattle Pacific University v. Ferguson*, 104 F. 4th 50, 64 (9th Cir. 2024); *Guillemard-Ginorio v. Contreras-Gomez*, 585 F. 3d 508, 519 (1st Cir. 2009); *Telco v. Carbaugh*, 885 F. 2d 1225, 1229 (4th Cir. 1989). These courts suggest that the danger instead cuts in the other direction. Because the opening of an investigation is often the first sign that state actors intend to engage in unconstitutional action, abstention from investigations may prevent plaintiffs from ever bringing their claims in federal court because they will not be ripe before the investigation begins. *See Seattle*, 104 F. 4th at 64. The better rule is therefore that proceedings do not commence until the University files formal disciplinary charges against Plaintiff.

The District Court relied on attorney discipline cases for the contrary proposition. *See, e.g.*, *O'Neill v. Coughlan*, 511 F. 3d 638, 634 (6th Cir. 2008). But those cases are inapposite because attorney discipline is managed by the judiciary from start to finish, making the entire process necessarily judicial in nature.

Universities belong to the executive branch. Moreover, the extraordinarily strong interest of the state in regulating attorney conduct justifies foreclosing federal court attack in that context. By contrast, the First Amendment interest in preserving universities as fora for controversial speech counsels against foreclosing federal attack in the university context. *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003).

2. Plaintiff Has a Strong Likelihood of Success on His First Amendment Retaliation Claim

Defendants retaliated against Plaintiff in violation of the First Amendment 42 U.S.C. § 1983 if (1) Plaintiff engaged in protected speech, (2) an adverse action was taken against him that would deter a person of ordinary firmness from continuing to speak, and (3) there is a causal connection between the protected speech and the adverse action. *Thaddeus-X v. Blatter*, 175 F. 3d 378, 394 (6th Cir. 1997).

a) All of the Conduct Alleged by the University Is Protected Speech

Plaintiff's speech is protected if it is (1) on a matter of public concern, (2) constitutes speech as a teacher, scholar, or private citizen, and (3) Plaintiff's interest in speaking outweighs the University's interest in efficient operations. *Meriwether v. Hartop*, 992 F. 3d 492, 504–08 (6th Cir. 2021) (speech as a teacher or scholar); *Noble v. Cincinnati & Hamilton Cty. Pub. Library*, 112 F. 4th 373, 380–81 (6th Cir. 2024) (private citizen speech). Alternatively, Plaintiff's speech is

protected if it takes place in a public forum or falls within the speaker and content parameters of a limited public forum and the University lacks a compelling interest in regulating it. *Kincaid v. Gibson*, 236 F. 3d 342, 348, 354 (6th Cir. 2001).

All of the conduct alleged by the University consists of general statements about Israel or Palestine. First NOI, R.19-15, PageID## 1558–59; Second NOI, R.19-15, PageID## 1573–74. Because the statements are general, they do not fall into any of the exceptions to the First Amendment for threats, incitement, fighting words, or the like. *See, e.g.*, *Counterman v. Colorado*, 143 S. Ct. 2106, 2113 (2023) (threats). Because the statements are about Israel or Palestine, they are on a matter of public concern. Because the University alleges that Plaintiff made the statements at academic conferences, in online discussion groups for law professors, or as part of extracurricular activities, they are protected as either speech as a teacher or scholar (especially the statements at academic conferences, in discussion groups for law professors, and at the optional lecture with guest lecturers), or as a private citizen (especially the statement made while driving a car with students who paid to spend time with Plaintiff), or both. No one in the University community complained about

this speech so the efficiency interest of the University in limiting Plaintiff's speech is nil.[4] Duff Tr., PageID# 1982:15–20; *cf. Meriwether*, 992 F.3d at 507.

Statements in the optional lecture, on the law faculty listserv, and while driving a car on a public street are also protected under public forum or limited public forum doctrine regardless of the capacity in which Plaintiff spoke. *See Kincaid v. Gibson*, 236 F. 3d 342, 354 (6th Cir. 2001). The University has not historically regulated speech at optional lectures with guest lecturers or on the law faculty listserv and the University does not allege that Plaintiff's speech in these fora was "off-topic." Am. Compl., R.36, PageID## 1648–52; Douglas Decl., R.19-7, PageID## 1108–09; Bird-Pollan Decl., R.19-8, PageID## 1113–15. The University has suggested that Plaintiff's conference speech was "off-topic", but the Sixth Circuit protects speech as a scholar even where not "germane". *Meriwether*, 992 F.3d at 507 (non-germaneness); MTD, R.23, PageID# 1290. It also protects conference speech and, by extension, its digital counterpart in the form of online discussion groups for scholars. *Josephson v. Ganzel*, 115 F. 4th 771, 790 (6th Cir. 2024).

Defendants suggest that Title VI withdraws speech that creates a hostile environment from First Amendment protection and requires the University to act

[4] Avoiding potential disruption from angry politicians is not a legitimate university efficiency interest. *Meriwether v. Hartop*, 992 F. 3d 492, 511 (6th Cir. 2021) ("The mere fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.").

against it. MTD, R.23, PageID# 1291, 1297. That is not so because the Constitution is the supreme law of the land. U.S. Const. art. VI, cl. 2. Title VI requires that universities not show "deliberate indifference" to "actual notice" of a hostile environment. *Wamer v. University of Toledo*, 27 F. 4th 461, 466–67 (6th Cir. 2022). But it does not permit the University to address a hostile environment by retaliating against protected speech in violation of the Constitution. Universities, states and federal administrative agencies are similarly powerless to withdraw protection for speech by using the IHRA definition of antisemitism to stipulate that it is hateful; courts around the country have condemned such attempts.[5] *See e.g.*, *Univ. of Houston, Students for Justice in Palestine v. Abbott*, 756 F. Supp. 3d 410, 425 (W.D. Tex. 2024). If the University believes that Plaintiff's speech creates a hostile environment in violation of Title VI, state law, or University regulations, it may address it by, for example, sponsoring counterprogramming aimed at making Jewish students feel welcome.[6] That would likely satisfy the University's duty to avoid deliberate indifference. Regardless, the University may not retaliate against Plaintiff. *Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629, 649 (1999) (noting that "it would

[5] Attempts to convert opposition to Israel into hate speech are doomed anyway because there is no hate speech exception to the First Amendment. *Matal v. Tam*, 582 U.S. 218, 246 (2017).

[6] Mark Tushnet advocates this approach. *Some Thoughts About Free Speech and Hostile Environment Discrimination on College Campuses* at 27–28, Harvard Law School (2024), https://hls.harvard.edu/bibliography/some-thoughts-about-free-speech-and-hostile-environment-discrimination-on-college-campuses/.

be entirely reasonable for a school to refrain from a form of disciplinary action [in response to a hostile environment] that would expose it to constitutional" claims).

Even if speech that violates Title VI were not protected, Plaintiff's speech would remain protected because as alleged it does not violate Title VI. The University has not disclosed any complaints from members of the University community regarding Plaintiff's off-campus speech at conferences and in online discussion groups. Complainants not accessing University resources are not protected. *Snyder-Hill*, 48 F. 4th at 708. Plaintiff's only alleged on campus statement is his observation at an optional guest lecture that a pro-Israel position entails support for genocide. Second NOI, R.19-15, PageID## 1574. The only other alleged statement at which community members were present was his "free Palestine" statement in a car. *Id*. The University has not alleged that any University community members objected to either of those statements. But even if some did, the statements fall squarely within the class of antizionist statements that courts have held do not violate Title VI. *See Stand With Us v. MIT*, No. 24-1800, slip op. at 3–4, 32 (1st Cir. Oct. 21, 2025); *Segev v. President and Fellows of Harvard College et al.*, No. 1:25-cv-12020, electronic order (D. Mass. Dec. 5, 2025) ("Segev cannot transform his assailants' anti-Israel sentiment into antisemitism.").

Defendants further argue that they need to complete the investigation to decide whether Plaintiff's speech is protected. But, considering the University's

allegations on their face, "First Amendment protect[ion is] plain."[7] *White v. Lee*, 227 F. 3d at 1230.

b) The Investigation, Suspension, and Ban Are Adverse Actions Caused by Plaintiff's Protected Speech

There is causation. Defendants themselves purport to be acting in response to Plaintiff's speech about Israel or Palestine. Am. Compl., R.36, PageID## 1639–40, 1641–42; Thro Email 10/30/25, R.19-4, 1085. The investigation is an adverse action because the University has used the investigation as a threat to discipline Plaintiff, including by identifying "termination" as a possible outcome, tasking Defendant Capilouto with deciding on a sanction at the conclusion of the investigation rather leaving the sanction to an impartial hearing panel at the disciplinary stage as University rules require, and tying the investigation to a suspension and ban imposed in violation of University rules. Thompson Letter 8/25/25, R.19-15, PageID# 1571. Threats to impose discipline or cause termination, including via an investigation, are adverse actions. *See, e.g.*, *Fritz v. Charter Tp. of Comstock*, 592 F. 3d 718, 726 (6th Cir. 2010); *White v. Lee*, 227 F.

[7] According to Defendant Capilouto's announcement, the University's actions were triggered by Plaintiff's posting of his military action petition to AALS discussion groups on July 6, 2025. Am. Compl., R.36, PageID# 1633; Capilouto Message, R.19-3, PageID# 496. Accordingly, to establish that the investigation, suspension, and ban are unconstitutional retaliation, Plaintiff technically need only show that his posting of the petition was protected speech. Plaintiff nevertheless here shows that all of the alleged speech is protected.

3d 1214, 1230 (9th Cir. 2000); *Ulrich v. City and County of San Francisco*, 308 F. 3d 968, 977 (9th Cir. 2002). The suspension and ban are both adverse actions as well. *Michael v. Caterpillar Financial Services Corp.*, 496 F. 3d 584, 596 (6th Cir. 2007); *Howard v. Livingston County,* No. 21-1689, 2023 WL 334894, at *9 (6th Cir. Jan. 20, 2023). Actions that do not individually count as adverse can be collectively adverse. *Thaddeus-X*, 175 F. 3d at 398.

3. Plaintiff Has a Strong Likelihood of Success on His Due Process Claim

Plaintiff has a property interest in the terms and conditions of his employment. *Gunasekera v. Irwin*, 551 F.3d 461, 468 (6th Cir. 2009); *Fed. Deposit Ins. Corp. v. Mallen*, 486 U.S. 230, 240–42 (1988). In *Hulen v. Yates*, the court held that reassignment of a professor to a different department implicated a property interest because the value of a tenured position extends beyond pay to include the "terms and conditions" of the appointment and the "unanimous custom and practice of the university." 322 F.3d 1229, 1241–44 (10th Cir. 2003). *A fortiori*, the University's reassignment of Plaintiff to "professional development" when University rules characterize teaching, research, and service as the essential elements of his tenured faculty position implicates a property interest. Am. Compl., R.36, PageID## 1636, 1652; Faculty Rules 6/30/24, R.19-8, PageID# 1207.

Defendants suspended and banned Plaintiff without notice or a pre-deprivation hearing. Am. Compl., R.36, PageID# 1636. Pre-deprivation process can only be

circumvented in "extraordinary situations" where there is a "special need for very prompt action." *United States v. James Daniel Good Real Prop*., 510 U.S. 43, 53 (1993); *Thomas v. Cohen*, 304 F.3d 563, 576 (6th Cir. 2002). This rule is not limited to terminations. In *Gunasekera v. Irwin*, for example, the court held that a hearing was required before deprivation of advising privileges. 551 F.3d at 469.

Defendants did not have a need for very prompt action against Plaintiff. When they acted on July 18, 2025, they had received no complaints about Plaintiff from any member of the University community. They acted in summer when Plaintiff was not teaching, based on off-campus statements, days after Plaintiff offered to meet with the Vice Provost to answer questions. Am. Compl., R.36, PageID## 1633–34, 1636. Defendants themselves do not appear to have really thought that Plaintiff was a threat. They labeled the suspension a reassignment presumably because they knew that they could not show the threat of physical harm needed to obtain an interim suspension, and they banned Plaintiff from the law building but not the surrounding campus in which vulnerable undergraduates predominate.

C. The Injunction Will Not Injure Others

Enjoining an investigation, suspension, and ban that are not based on complaints by any member of the University community and were initiated by circumventing established procedures for investigating discrimination does not

cause harm to Defendants or the community. There is no allegation that Plaintiff calls for military action against Israel in class or in the law school building. Enjoining the investigation will, however, save the University the cost of completing the investigation and disciplinary process (approximately $100,000 per month so far). University Legal Bills, R.19-3, PageID## 588–613. Enjoining the ad hoc investigation would not prevent the University from using established processes to respond to genuine complaints or to suspend Plaintiff if he poses a physical threat. OEO Pol'y, R.42-1, PageID# 2082–87.

D. The Injunction Furthers the Public Interest

The public interest strongly favors grant of the injunction. The public has an interest in discouraging abuse of administrative processes to retaliate against protected speech. *Meriwether v. Hartop*, 992 F. 3d 492, 509–10 (6th Cir. 2021). As the University is not following its own established anti-discrimination processes, the public interest in preventing discrimination is not implicated. Am. Compl., R.36., PageID## 1655–56.

E. This Court May Grant Relief with Respect to Any of the Investigation, Suspension, or Ban

The investigation, suspension, and ban each represent a separate adverse action for purposes of Plaintiff's First Amendment retaliation claim and Plaintiff challenges only the suspension and ban on due process grounds. Accordingly,

based on a weighing of the injunction factors with respect to each, the Court may choose to enjoin all three of these actions or a subset thereof.

CONCLUSION

WHEREFORE, Plaintiff begs this Court to grant Plaintiff's motion for an injunction pending appeal.

January 23, 2026

Respectfully submitted,

/s/ Joe F. Childers
JOE F. CHILDERS
Joe F. Childers & Associates
The Lexington Building
201 West Short Street, Suite 300
Lexington, Kentucky 40507
(859) 253-9824

Counsel for Plaintiff-Appellant

TYPE-VOLUME CERTIFICATION

Pursuant to Federal Rule of Appellate Procedure 32(g), Joe F. Childers hereby certifies that this brief complies with the type-volume limitation in Rule 26(d)(2)(A) because, as counted by the Microsoft Word word count tool, this motion contains 5,180 words, excluding the parts exempted by Rule 32(f). This brief complies with the typeface requirements in Rule 32(a)(5)(A) and the type-style requirements in Rule 32(a)(6) because this brief has been prepared in proportionally spaced 14-point Times New Roman font.

Dated: January 23, 2026

/s/ Joe F. Childers
JOE F. CHILDERS

CERTIFICATE OF SERVICE

I certify that on January 23, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the CM/ECF system. I also certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Joe F. Childers
JOE F. CHILDERS

6 CIR. R. 27(C)(2) ATTACHMENTS

Number	Citation Form	Document
1		Draft Sixth Circuit Merits Brief
2		Notice of Appeal, filed January 21, 2026
3	PI Order	Order From Which Appeal Is Made: Memorandum Opinion and Order Granting Defendants' Motion to Abstain, Dismissing Plaintiffs' Motion for a Preliminary Injunction, and Denying Defendants' Motion to Dismiss, dated January 8, 2026
4		Plaintiff's Emergency Motion for Injunction Pending Appeal (District Court), dated January 21, 2026
5		Proposed Order Granting Injunction Pending Appeal (District Court), dated January 21, 2026
6	Denial	Order Denying Plaintiff's Motion for an Injunction Pending Appeal (District Court), dated January 23, 2026
7	Am. Compl.	Plaintiff's Amended Complaint, dated January 7, 2026.
8		Petition for Military Action against Israel
9	Duff Tr.	Relevant Excerpts of Transcript of Testimony of Defendant James Duff at Hearing Regarding Motion for Preliminary Injunction Held on December 19, 2025.
10	Capilouto Message	Email of University of Kentucky President Eli Capilouto Titled Important Message for Our

		Community, dated and timed July 18, 2025 at 1:10 PM
11	Duff Letter	Letter from James Duff to Ramsi Woodcock, dated July 18, 2025
12	First NOI	Letter of Farnaz Thompson to Ramsi Woodcock Regarding Notice of Investigation, dated July 22, 2025
13	Second NOI	Letter of Farnaz Thompson to Joe F. Childers Regarding Amended Notice of Investigation University of Kentucky, Office of Equal Opportunity, Investigation No. 20251230, dated September 8, 2025
14	Thompson Letter 8/25/25	Letter from Farnaz Thompson to Joe F. Childers, dated August 25, 2025
15	Kapitan Letter 9/11/25	Letter of Rima Kapitan to William Thro Regarding Suspension Because of the Protected Speech of Professor Ramsi Woodcock, dated September 11, 2025
16	Thro Letter 9/19/25	Letter of William Thro to Rima Kapitan, dated September 19, 2025
17	Thro Email 10/30/25	Email of William Thro to Rima Kapitan Regarding Question about the Basis for the "Reassignment", dated and timed October 30, 2025 at 7:12 PM
18	Thompson Email 1/9/26	Email of Farnaz Thompson to Rima Kapitan Regarding Written Questions for Office of Equal Opportunity Case No. 20251230, dated and timed January 9, 2026 at 10:36 AM
19	Woodcock Decl. 1/21/26	Declaration of Ramsi Woodcock, dated January 21, 2026
20	Douglas Decl.	Declaration of Douglas Michael in Support of Plaintiff's Motion for a Preliminary Injunction, dated November 24, 2025

21	Bird-Pollan Decl.	Declaration of Jennifer Bird-Pollan in Support of Plaintiff's Motion for a Preliminary Injunction, dated December 10, 2025
22	Donovan Decl.	Declaration of James Donovan in Support of Plaintiff's Motion for a Preliminary Injunction, dated December 10, 2025
23	Goldman Decl.	Declaration of Alvin Goldman in Support of Plaintiff's Motion for a Preliminary Injunction, dated December 10, 2025
24	Lee Decl.	Declaration of Zachary Lee in Support of Plaintiff's Motion for a Preliminary Injunction, dated December 10, 2025
25	Caldwell Decl.	Declaration of Benjamin Caldwell in Support of Plaintiff's Motion for a Preliminary Injunction, dated December 10, 2025
26	OEO Pol'y	University of Kentucky Office of Equal Opportunity Policy
27	Equal Dignity Due Proc. Regul.	University of Kentucky Regulation Titled "Due Process — Equal Dignity"
28	Interim Due Proc. Regul.	University of Kentucky Administrative Regulation — Due Process (Interim)
29	Ethical Principles	University of Kentucky Administrative Regulation — Ethical Principles and Employee Code of Conduct (GR XIV)
30	Inst. Stmt. Pol'y	University of Kentucky Institutional Statements Policy
31	Tech. Pol'y	University of Kentucky Administrative Regulation 10:1 Use of Technology Resources
32	Faculty Rules 6/30/24	University of Kentucky J. David Rosenberg College of Law Law Faculty Rules and Policies Revised June 30, 2024

33	University Legal Bills	University Response to Open Records Request of Michael McDaniel, dated December 1, 2025
34	PI Mem.	Memorandum of Law in Support of Motion for Preliminary Injunction and Expedited Consideration, filed December 12, 2025
35	PI Resp.	Defendants' Response to Motion for Preliminary Injunction, filed December 18, 2025
36	PI Reply	Plaintiff's Reply to Defendant's Response to Motion for a Preliminary Injunction, dated January 2, 2026
37	Abst. Mot.	Defendants' Motion to Abstain, filed December 18, 2025
38	Abst. Resp.	Plaintiff's Response in Opposition to Defendants' Motion to Abstain, filed December 18, 2025
39	Abst. Reply	University and University Officials' Reply in Support of Motion to Abstain, filed December 29, 2025
40	MTD	Defendants' Motion to Dismiss, filed December 17, 2025