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.

REPLY TO ATTORNEY GENERAL'S RESPONSE TO 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

ARGUMENT

A. Addressing Errors in the Attorney General's Response

The Attorney General ("AG") makes a number of points that are not relevant to its legal arguments but should be addressed at the outset.[1] The AG states that there has been a 200% increase in antisemitism incidents on college campuses. AG Resp. 2, Dkt. 15. Because that statistic treats antizionist speech as antisemitic, what it shows is that students increasingly oppose the colonization, apartheid, and genocide of Palestine. CAM Antisemitism Report 7 (2025), https://combatantisemitism.org/wp-content/uploads/2025/04/Echoes-of-the-Past-and-a-Warning-for-the-Present-The-Stark-Reality-of-Record-Breaking-Antisemitism-in-2024.pdf. The AG appears surprised to learn from a blog post that Plaintiff-Appellant ("Plaintiff") views Palestinians' October 7 offensive as "legitimate", taking issue with Plaintiff's view that Palestinians, like all people, have a right to armed struggle against occupation, and ignoring his elaboration in the same post that Israeli civilians have a right to seek redress for harm in competent international or Palestinian tribunals. AG Resp. 10, Dkt. 15. In any case, Defendants themselves chose not to challenge the post in their investigation of Plaintiff. Finally, the AG quotes University officials claiming that the suspension

[1] The AG claims that its role in this appeal is limited to defending 2025 Ky. Acts. Ch. 157 but spends most of its response arguing unrelated points as if the AG were the alter ego of Defendants' counsel. AG Resp. 10, Dkt. 1. Plaintiff objects.

was "standard protocol." AG Resp. 2, Dkt. 15. However, the suspension violated numerous written policies of the University—a charge that Defendants Capilouto, Thro, DiPaola and Duff ("Defendants") have made no attempt to refute. First Emerg. Mot. Atch. 24–26, 29–30, Dkt. 6-2.

B. Plaintiff's Speech Is Protected Even if the University's Allegations Are Taken as True

The AG follows Defendants in arguing that this Court cannot rule on Plaintiff's likelihood of success on the merits of his First Amendment retaliation claim because the investigation into Plaintiff's speech is ongoing. AG Resp. 12, Dkt. 15. However, the AG fails to address Plaintiff's argument that the allegations describe protected speech on their face. First Emerg. Mot. 18–19, Dkt. 6-1. Since the allegations described speech that is clearly protected, there is no need to investigate to determine whether Plaintiff's speech is protected. *See White v. Lee*. 227 F. 3d 1214, 1230 (9th Cir. 2000) (investigation to determine whether speech was protected was retaliation because protection of the speech was "plain"). If, as the AG argues, the need to weigh disruption (*Pickering* balancing) requires an investigation, then public employees could never obtain early-stage preliminary relief in First Amendment cases—an extreme result. AG Resp. 15–16, Dkt. 15. Moreover, in the instant case, balancing is easy. No student or faculty member complained about Plaintiff's speech. Hearing Tr., R.40, PageID# 1982:15–20. The

University has not alleged harm to any relationship with a member of the community. *Cf. Connick v. Myers*, 461 U.S. 138, 151–52 (1982). There is no disruption to weigh.

The only allegation made by Defendants that may not be taken as true in determining whether First Amendment protection applies is that Plaintiff has called for genocide. Defendants point to no example of Plaintiff's speech that would support that allegation. Plaintiff is a vocal opponent of genocide, and two of the University's other allegations themselves point to concrete examples of speech by Plaintiff in opposition to genocide. Am. Compl., R. 36, PageID## 1631–32; 1640–41. In inferring a call for genocide from a call to end colonization and apartheid, Defendants appear to take a page from the many segregationists and colonialists throughout history who have claimed that an end to injustice would result in the genocide of Europeans. *See, e.g.*, *Ross Barnett, Segregationist, Dies*, N.Y. Times (Nov. 7, 1987) (noting that Barnett equated forced desegregation with "genocide" of the "Caucasian race"), https://nyti.ms/4qCPLSa.

The AG also failed to address Plaintiff's argument that to prevail on a First Amendment retaliation claim Plaintiff is not required to show that all the speech listed in the notices of investigation is protected, but only that the speech that caused the investigation, suspension, and ban is protected. First Emerg. Mot. 19 n. 7, Dkt. 6-1. Defendants claim that all the speech alleged serves as the basis for the

investigation, suspension, and ban. Thro Email 10/30/25, R.19-4, PageID# 1085. But the law does not permit them to stipulate to causation. Instead, this Court determines causation by identifying the speech that motivated the adverse actions. *Lemaster v. Lawrence County, Kentucky*, 65 F. 4th 302, 309 (6th Cir. 2023). Temporal proximity between the speech and the adverse action that is measured in days or weeks can establish motivation. *Id*. at 310. Here, the speech that triggered the investigation, suspension, and ban was Plaintiff's posting of his petition for military action to Association of American Law Schools ("AALS") discussion groups on July 6, 2025. Am. Compl., R.36, PageID# 1633. Defendants imposed the investigation, suspension, and ban 12 days later. *Id*. at 1634, 1636. The only speech referenced by Defendant Capilouto in his announcement of the investigation was Plaintiff's petition for military action. Capilouto Email, R.19-3, PageID# 496. The other two allegations in the initial notice of investigation regarding conference speech related to events that had occurred months or years before. Am. Compl., R.36, PageID# 1639–40. When the Vice Provost met with Plaintiff to discuss those conference statements, she made no mention of a possible investigation, suspension or ban. *Id*. at 1633. Accordingly, to prevail, Plaintiff need only show

that posting a petition for military action to an online discussion group for law scholars is protected speech.[2]

The AG attempts to argue that Plaintiff's statements of opposition to Israel at two conferences are not protected because they were "irrelevant" to the topics of the conference panels at which he made them. AG Resp. 1, Dkt. 15. But *Meriwether* specifically rejected a requirement of germaneness, which is sensible because "relevance" is a vague concept. *Meriwether v. Hartop*, 992 F. 3d 492, 507 (6th Cir. 2021). If First Amendment protection turned on topic relevance, scholars would likely self-censor more than necessary to avoid falling into a gray area and risking sanction. *Fischer v. Thomas*, 52 F. 4th 303, 310 (6th Cir. 2022) ("Forced to guess[,]" a plaintiff will "censor much more speech than necessary[.]"). A rule meant to protect speech would end up chilling it.

The AG attempts to distinguish conference speech from the classroom speech at issue in *Meriwether*, but the *Meriwether* holding explicitly extended beyond classroom speech to cover all "core academic functions" including "scholarship." *Meriwether*, 992 F. 3d at 505. Speech at academic conferences is classic scholarly activity. Moreover, to the extent that conference speech should be

[2] The posting of the petition is protected. It is speech as a scholar or private citizen on a matter of public concern. Defendants concede that only professors at other schools complained, suggesting an absence of disruption of University operations. First NOI, R.19-15, PageID# 1558.

treated differently from classroom speech, it should be granted greater protection, not less. When professors speak in the classroom, they address a captive and generally youthful audience. This environment is the closest that a university professor comes to speaking in the K-12 context in which the courts accord far less protection for instructor speech. *Id*. at 505 n.1. By contrast, when a professor speaks at an academic conference, he addresses peers who have the option to leave—or expel him from the conference. *Cf*. First NOI, R.19-15, PageID## 1558–59 (alleging that professors "walked out" of Plaintiff's talk). Moreover, the concept of "topic" is far more elastic at academic conferences than in the classroom environment. A school that allowed a professor to substitute the law of decolonization for the regular curriculum in a contracts class might violate law school accreditation requirements. ABA Standards R. of Proc. § 301(a) (2025–2026). But professors attend conferences to gain access to things for which they do not know to look. Hearing Tr., R.40, PageID# 1883. Everything else they can get from a library. *Id.* Accordingly, digressions, asides, deviations, detours, footnotes, parentheses, and indeed disruptions are celebrated and constitutive parts of the academic conference experience. *See* Bird-Pollan Decl., R.19-8, PageID## 1114–15; Michael Decl., R.19-7, PageID## 1108–09. They are core scholarly speech.

The AG's focus on the limits of protection for scholarly speech also ignores Plaintiff's argument that his conference speech is additionally protected as private

citizen speech. First Emerg. Mot. 19 n. 7, Dkt. 6-1. The only speech of a professor on a matter of public concern that is potentially unprotected is speech pursuant to job duties that are administrative in character. *Meriwether*, 992 F. 3d at 507. In the context of speech at a conference not organized by the University, the only administrative role Plaintiff could have been carrying out is that of University spokesman. But Plaintiff does not occupy a public relations role for the University. He is not a dean or department chair. So it is difficult to see how his conference speech could be administrative in character. If his statements were not scholarly as described above and in Plaintiff's Motion, and also not administrative, then the only other thing they could have been is the protected speech of a private citizen.[3]

Josephson v. Ganzel is instructive because it involved conference speech by a professor who was also a university administrator. 115 F. 4th 771, 777 (6th Cir. 2024). Because Josephson was both a scholar and the head of a division of the Department of Pediatrics, and regularly acted as a University spokesman at conferences, the Court needed to ascertain whether he spoke at the conference as a

[3] The AG suggests that Plaintiff's speech in an optional lecture was not protected. AG Resp. 14–15, Dkt. 15. But the allegation on its face is that Plaintiff made a comment on a matter of public concern at an optional lecture involving a guest speaker. General comments by professors on matters of public concern at campus lectures are plainly protected by the First Amendment as speech as a teacher, scholar, or private citizen, or as speech in a limited public forum. *Kincaid v. Gibson*, 236 F. 3d 342, 348, 354 (6th Cir. 2001).

university spokesman, as a scholar, or as a private citizen. *Id*. at 784. If he acted as as a spokesman, then his speech might not have been protected. *Johanns v. Livestock Mktg. Ass'n*, 544 U.S. 550, 553 (2005). The fact that the panel moderator indicated that panelists spoke in their individual capacity showed that Josephson had in fact taken off his administrator hat before speaking. *Josephson,* 115 F. 4th at 784. Once the Court had eliminated the possibility that Josephson spoke as an administrator, it followed immediately that his speech was protected either as that of a scholar or private citizen. *Id*. at 784, 790.

The AG tries to distinguish *Josephson* on the ground that at Plaintiff's conferences the moderator did not explicitly indicate that Plaintiff spoke on his own behalf. AG Resp. 13, Dkt. 15. But Plaintiff is not an administrator and never acts as a University spokesman, so that disclaimer was not needed. The AG also tried to distinguish *Josephson* on the ground that Josephson's remarks related to his scholarship whereas Plaintiff's did not. *Id*. at 14. But Palestine is an active area of Plaintiff's research. Am. Compl., R.36, PageID## 1631–32.

The AG cites *L.W. ex. Rel. Williams v. Skrmetti* for the proposition that this Court cannot rule on the likelihood of protection for Plaintiff's speech because, according to the AG, Plaintiff is asking for First Amendment protection to be extended into new territory. 73 F. 4th 408 (6th Cir. 2023); AG Resp. 12–13, Dkt. 1. Contrary to the AG's response, Plaintiff simply asks this Court to reaffirm

protection for speech as a scholar or private citizen that has existed for decades. First Amendment protection for the speech of university professors has existed since at least the Red Scare. *Wieman v. Updegraff*, 344 U.S. 183, 191 (1952). It was guaranteed for decades under *Pickering v. Board of Ed.*, which also served to guarantee First Amendment rights to other public employees. 391 U.S. 563, 574–75 (1968). When the Supreme Court moved in *Garcetti v. Ceballos* to restrict *Pickering* to speech that is not pursuant to job duties, the Court was careful to carve out of that holding the speech of professors pursuant to their job duties as teachers and scholars. 547 U.S. 410, 425–26 (2005). *Meriwether* is an important case, but not because it *created* protection for academic speech. Rather, it reaffirmed the longstanding protection for academic speech against misguided claims that *Garcetti* had abridged those protections. By contrast, the plaintiffs in *Skrmetti* had asked the Court to recognize a new substantive due process right and a new quasi-suspect equal protection class, which this Court appropriately held would have extended the constitution to "new territory." 73 F. 4th at 415–16, 417, 419.

C. The Investigation, Suspension, and Ban Are Adverse Actions

The AG argues that the interim suspension imposed by Defendants is not an adverse action because the Court observed in *Sensabaugh v. Halliburton* that "[s]everal panels of this court have determined that a suspension with pay does not

constitute an adverse action." 937 F. 3d 621, 629 (6th Cir. 2019). However, *Sensabaugh* did not hold that a suspension with pay cannot be an adverse action. *Id*. Whether an action is adverse is a matter of fact not amenable to categorical resolution. *Bell v. Johnson*, 308 F. 3d 594, 602–03 (6th Cir. 2002).[4] Moreover, the non-precedential cases to which *Sensabaugh* referred rested on authority addressing employment discrimination under Title VII, which, at the time, held that in general a suspension without pay is an adverse action in the Title VII context. *Peltier v. United States*, 388 F. 3d 984, 988 (6th Cir. 2004). The Supreme Court in *Muldrow v. City of St. Louis* has since undermined that rule, holding that a job transfer that reduced job responsibilities but did not affect pay is an adverse action. 144 S. Ct. 967, 974, 977 (2023). *A fortiori*, a suspension with pay that eliminates job responsibilities must be an adverse action. To the extent that this Court in *Sensabaugh* wished to link the adverse action standard for First Amendment retaliation to the adverse action standard for Title VII employment discrimination, that link would now *require* that suspensions with pay be classed as adverse actions for purposes of First Amendment retaliation claims. *See Blick v. Ann Arbor Public School Dist.*, 105 F. 4th 868, 885 (6th Cir. 2024) (*Muldrow* calls *Sensabaugh* into question).

[4] Courts consider both facts and law in applying a likelihood of success standard.

Moreover, the First Amendment interests at stake in higher education are uniquely important and counsel greater concern for chilling speech, and hence a lower bar for recognizing adverse actions, than the K-12 education or county audit office contexts in which *Sensabaugh* and the cases upon which it relies arose. 937 F. 3d at 629; *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003). Scholarly commentary overwhelmingly supports this result. *See, e.g.*, Andrew White, *Why Placement on Paid Administrative Leave Should Constitute "Adverse Employment Action" for the Purposes of a First Amendment Retaliation Claim*, 91 U. CIN. L. REV. 942 (2023). Even if the suspension, standing alone, is not an adverse action, it is adverse when combined with the investigation and ban, both of which are independently adverse. PI Reply, R.34, PageID# 1596 n. 23 (collecting cases).

CONCLUSION

To the extent the AG has not waived objections to Plaintiff's Motion, this Court should reject the AG's arguments and grant an injunction pending appeal.

February 5, 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 motion complies with the type-volume limitation in Rule 26(d)(2)(C) because, as counted by the Microsoft Word word count tool, this motion contains 2,598 words, excluding the parts exempted by Rule 32(f). This motion complies with the typeface requirements in Rule 32(a)(5)(A) and the type-style requirements in Rule 32(a)(6) because this motion has been prepared in proportionally spaced 14-point Times New Roman font.

Dated: February 5, 2026

/s/ Joe F. Childers
JOE F. CHILDERS

CERTIFICATE OF SERVICE

I certify that on February 5, 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