No. 26-5057

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RAMSI A. WOODCOCK

Plaintiff-Appellant,

- v. -

UNIVERSITY OF KENTUCKY; ELI CAPILOUTO, IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES; ROBERT DIPAOLA, IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES; WILLIAM EUGENE THRO, IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES; JAMES C. DUFF, IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES; LINDA MCMAHON, IN HER OFFICIAL CAPACITY AS UNITED STATES SECRETARY OF EDUCATION; RUSSELL MATTHEW COLEMAN, ATTORNEY GENERAL

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of Kentucky at Lexington
(Docket No. 5:25-cv-00424-DCR)

REPLY TO UNIVERSITY DEFENDANTS' RESPONSE TO EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL

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TABLE OF CONTENTS

ARGUMENT

A. Addressing Factual Inaccuracies in the University's Response

The Response of Defendants Capilouto, Thro, DiPaola and Duff ("Defendants") contains important factual inaccuracies. Defendants state that Plaintiff calls for the "annihilation" of the "Jewish people." Univ. Resp. 2, Dkt. 14-1. They cite no supporting text. Plaintiff is a vocal opponent of genocide, as two of the allegations of the University's own investigator make clear. Am. Compl., R.36, PageID## 1631–32; 1640–41. In inferring a call for genocide from Plaintiff's calls to end colonization and apartheid, Defendants take a page from the many colonialists throughout history who have claimed that an end to a colony would result in a genocide of Europeans. *See, e.g.*, Jean Bastien-Thiry, Alchetron (Aug. 18, 2017), https://perma.cc/LA5K-M5EV (discussing French radical who claimed that granting independence to Algeria would result in "'genocide' of the European population"). Defendants also misrepresent the allegations of their own investigator as stating that Plaintiff "characterize[d] all Israelis as pro-genocide at a public event". Univ. Resp. 3, Dkt. 14-1. The investigator actually claimed only that Plaintiff said "that he does not need to invite [speakers] with a pro-Israeli viewpoint because such speakers are pro-genocide[.]" Am. Compl., R.36, PageID#

1641.[1] Finally, Defendants falsely state that Plaintiff objects to the fact that the investigator is a "Christian" and a "Republican". Plaintiff challenged the investigator's association with Pat Robertson's pro-Israel "brand of religious faith", not her Christianity per se. Childers Let., R.26-3, PageID## 1441–42; Hearing Tr., R.40, PageID# 1925:5–7. Defendants' repetition of this false charge plays on racist and Islamophobic stereotypes of Arabs as anti-Christian. PI Resp., R.26, PageID# 1407 n. 36; MTD, R.23, PageID# 1284 n. 28; Am. Compl., R.36, PageID## 1672. In fact, Plaintiff descends from a line of Nashville-area Baptist pastors and is a registered Republican. *See, e.g.,* Woodcock Memorial Baptist Church, https://nashvillebaptists.com/church/woodcock-memorial-baptist-church/.[2]

B. The Preliminary Injunction Standard Applies and Likelihood of Success on the Merits Is Dispositive

This Court assesses a motion for an injunction pending appeal using the same standard it applies to assess preliminary injunctions. *Boone Republican Party*

[1] Plaintiff's actual remarks, captured in a recording, were much blander. Am. Compl., R.36, PageID# 1641. But even as alleged by the investigator, the speech is protected. First Emerg. Mot. 15–16, Dkt. 6-1.

[2] Other inaccurate or unsupported claims in the Response include: that Plaintiff "declined" answering questions, "delayed", and asked colleagues not to speak to the investigator; that the investigator's role in Project 2025 was "minor"; that the law school does not substitute professors or add classes four weeks into the semester and would find it "administratively difficult" to do so; and that the holding of *Cunningham v. Blackwell* is that reassignments do "not violate a professor's rights." Univ. Resp. 7 & n.23, 10 n. 34, 19–20, 27, Dkt. 14-1; 41 F. 4th 530 (6th Cir. 2022).

Executive Comm. v. Wallace, 116 F. 4th 586, 593 (6th Cir. 2024); *Missouri v. Biden,* 112 F. 4th 531, 536 (8th Cir. 2024) (stating that the preliminary injunction and injunction pending appeal standards are the "same"). To apply the standard, courts normally must consider likelihood of success on the merits, irreparable injury, harm to others, and the public interest. *Id*. But where likelihood of success turns on constitutional claims, as in this case, irreparable injury, lack of harm to others, and a public interest are implied if Plaintiff establishes a likelihood of success. *Id*. at 593; *Vitolo v. Guzman*, 999 F. 3d 353, 365 (6th Cir. 2021); *Bays v. City of Fairborn*, 668 F. 3d 814, 819 (6th Cir. 2012). Therefore, the question whether there is a likelihood of success is dispositive. *Id*. Accordingly, Defendants' attempt to separately argue irreparable harm, harm to others, and the public interest misses the mark.[3] Univ. Resp. 14–15, 25–28, Dkt. 14-1.

[3] Defendants' public interest arguments fail in any case. Defendants claim an interest in avoiding First Amendment oversight by courts. Univ. Resp. 25, Dkt. 14-1. *Meriwether v. Hartop* requires the opposite. 992 F. 3d 492, 506 (6th Cir. 2021). Defendants claim an interest in enforcing Title VI and resolving disciplinary matters. Univ. Resp. 26, Dkt. 14-1. That would be more convincing if they had allowed the University office that normally enforces Title VI to run the investigation and decide whether charges are warranted. First Emerg. Mot. 4–6, Dkt. 6-1. Defendants argue that pausing the investigation, suspension, and ban would be unfair to students because classes have begun. Univ. Resp. 27, Dkt. 14-1. But Defendant Duff would retain discretion regarding whether to assign Plaintiff to classes and Plaintiff's return to the law building would greatly reduce the chill on Plaintiff's and the community's speech. PI Reply, R.34, PageID## 1591–95; Woodcock Decl. 1/2/26 ¶ 3, R.35, PageID# 1608–12; *see also infra* note 7 (declarations cited therein).

Likelihood of success in this case turns on constitutional claims because Plaintiff appeals the District Court's denial of his motion for a preliminary injunction based on his claims of First Amendment retaliation and due process. PI Memo, R.19-1, PageID## 198–214. The question whether Plaintiff will ultimately be entitled to cessation of the investigation, suspension, and ban, and therefore requires an injunction to pause them now to ensure that he will ultimately be able to obtain that remedy when he ultimately prevails, depends on whether the investigation, suspension, and ban violate the constitution. *Id*. Because the District Court denied the preliminary injunction based on *Younger* abstention and did not consider likelihood of success on the constitutional claims, the arguments on appeal are directed at *Younger* abstention. Draft Merits Brief 35–39, Dkt. 6-2. But the question whether Plaintiff is entitled to injunctive relief pending appeal necessarily extends beyond *Younger* to the ultimate question whether Plaintiff is likely to prevail on his constitutional claims should this Court ultimately conclude that abstention is inappropriate.

Defendants suggest that this Court should not consider likelihood of success on Plaintiff's constitutional claims (and therefore should not consider an injunction pending appeal) because the District Court denied the preliminary injunction based on *Younger* abstention and did not reach likelihood of success on the merits. Univ. Resp. 9, Dkt. 14-1; PI Order, R.37, PageID# 1771. But in deciding a motion for an

injunction pending appeal, this Court is "not reviewing any district court decision or order." *Wallace*, 116 F. 4th at 593. Instead, its review is "de novo", and would have been even if the District Court had addressed the merits of the constitutional claims. *Id*. Moreover, the parties fully briefed the constitutional questions below and the District Court devoted an entire hearing to them. PI Memo, R.19-1, PageID## 198–214; PI Resp., R.26, PageID## 1410–24; PI Reply, R.34, PageID## 1591–1605; Hearing Tr., R.40, PageID# 1805:17–18. Accordingly, this Court will be able to rule based on a record developed to a level appropriate for evaluating likelihood of success on the merits of the constitutional claims. The merits hearing and briefing below distinguish this case from the case cited by Defendants, *Singleton v. Wulff*, which had neither. Univ. Resp. 9, Dkt. 14-1; 428 U.S. 106, 110–11, 121 (1976).

Defendants cite *Respect Maine PAC v. McKee* to suggest that Plaintiff faces a higher burden on a motion for an injunction pending appeal than for a preliminary injunction. Univ. Resp. 13, Dkt. 14-1; 562 U.S. 996, 996 (2010). But *McKee* addressed the standard applied by the Supreme Court when it considers motions for injunctions pending appeal, not the standard applied by courts of appeal. *Id*. Moreover, in subsequent cases the Supreme Court itself has persisted in applying a plain vanilla preliminary injunction standard to injunctions pending

appeal. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 16 (2020); *Tandon v. Newsom*, 93 U. S. 61, 64 (2021).[4]

C. *Younger* Abstention Is Not Appropriate

Defendants fail to address the basic problem created by the District Court's decision to abstain, which is that Plaintiff has no opportunity to obtain a ruling on his constitutional challenge to the investigation, suspension, and ban in any forum, state or federal, until after the investigation, suspension, and ban conclude. First Emerg. Mot. 7–8, Dkt. 6-1. Defendants have refused to rule before the end of the investigation and abstention denies Plaintiff access to a federal forum, so Plaintiff is unable to obtain the only remedy adequate to constitutional harm, which is prospective relief. *Id*. The fact that the investigator will allow Defendant to submit his constitutional arguments to her before the end of the investigation is of no significance given that Defendants will not rule on the claim until after the investigation concludes. Thompson Letter 8/25/25, R.19-15, PageID# 1570. This is

[4] Defendants also suggest that this Court cannot consider *Younger* abstention under a likelihood of success standard. Univ. Resp. 8, Dkt. 14-1. But they do not explain why this should be so. They cite *Colorado River Water Cons. Dist. v. United States,* but that case merely repeats the basic *Younger* abstention rule that a district court should not enjoin an ongoing state proceeding. 424 U.S. 800, 816 n.22 (1976). It does not hold that a court of appeals cannot issue an injunction pending appeal where *Younger* abstention is the subject of the appeal.

not a state proceeding "adequate to protect the rights asserted", as *Younger* requires. *Younger v. Harris*, 401 U.S. 37, 44 (1969).

Defendants also fail to address the implications of the District Court's finding that Defendants' investigation is "unconventional." PI Order, R.37, PageID# 1778. An unconventional process is not judicial in nature and suggests bad faith, making abstention inappropriate. Draft Merits Brief 44–47, 54–56, Dkt. 6-2. Defendants suggest that the director of the University's Office of Equal Opportunity ("OEO") said that Defendants' handling of Plaintiff is "standard." Univ. Resp. 5, 15, Dkt. 14-1. In fact, she testified only that the ad hoc process employed by Defendants was "based on" the University's standard process and that a reassignment is "not an uncommon" action. Hearing Tr., R.40, PageID## 1952–53. Defendants do not dispute that their ad hoc process sidelines the OEO director, who under OEO policy is supposed to make the decision whether to bring charges, circumvents OEO policy regarding interim suspensions, and violates multiple University regulations.[5] First Emerg. Mot. 4–6, Dkt. 6-1.

[5] Defendants suggest there is no *Younger*-relevant bias because all parties are represented by an attorney, but the bias holding in *Williams v. Pennsylvania* did not turn on representation. 579 U.S. 1, 5, 10–11 (2016). Defendants also suggest that their antisemitism policy cannot be flagrantly unconstitutional because they promise to enforce it without violating the First Amendment. Such promises do not redeem an otherwise unconstitutional policy. *Dambrot v. Central Michigan University*, 55 F. 3d 1177, 1183 (6th Cir. 1995).

D. Plaintiff Has a Strong Likelihood of Success on His First Amendment and Due Process Claims

Defendants make no effort to rebut Plaintiff's argument that his speech as alleged is on a matter of public concern, protected as either academic or private citizen speech, and not covered by Title VI because the complainants—all professors at other schools—did not anticipate accessing University resources, the speech took place extraterritorially, or the speech does not create a hostile environment.[6] First Emerg. Mot. 14–19, Dkt. 6-1. They also fail to address Plaintiff's argument that because Plaintiff's posting of a petition for military action to Association of American Law Schools ("AALS") online discussion groups triggered the investigation, suspension, and ban, he need only show that posting the petition was protected in order to prevail on his retaliation claim. First Emerg. Mot. 19 n.7, Dkt. 6-1.

Instead, Defendants argue that Plaintiff has not paid enough attention to *Pickering* balancing. Univ. Resp. 17, Dkt 14-1. But Defendants, not Plaintiff, bear the burden of showing that Plaintiff's speech would cause sufficient disruption to

[6] Defendants suggest that Title VI covers the complaints of professors at other schools because the professors were present at the off-campus conferences and in the online fora in which Plaintiff spoke. Univ. Resp. 4 n. 11, Dkt. 4. But this Court requires that a covered complainant "participat[e] or attempt[] to participate in an[] educational program provided by" the University. *Snyder-Hill v. Ohio State University*, 48 F. 4th 686, 708 (6th Cir. 2022). The conferences and online discussion groups where Plaintiff spoke were organized by other schools or AALS, not the University.

University operations to overcome Plaintiff's interest in speaking. *Rankin v. McPherson*, 483 U.S. 378, 388 (1987); *Myers v. City of Centerville, Ohio*, 41 F. 4th 746, 764 (6th Cir. 2022). Moreover, the level of that burden reaches its zenith where, as in this case, Plaintiff's speech implicates two core First Amendment concerns: political speech and academic speech. *Connick v. Myers*, 461 U.S. 138, 152 (1982) (burden increases with public concern); *Meriwether v. Hartop*, 992 F. 3d 492, 509 (6th Cir. 2021). The likelihood of success posture of this motion does not dislodge this burden. *Defending Educ. v. Olentangy Local Sch. Dist.*, 158 F. 4th 732, 751 (6th Cir. 2025); *Vitolo v. Guzman*, 999 F. 3d 353, 365 (6th Cir. 2021).

Defendants have failed to allege any actual or possible disruption to University operations. In measuring disruption, courts consider whether the speech impairs discipline by superiors or harmony among coworkers, harms close working relationships for which trust is necessary, impedes the performance of the speaker's duties, or interferes with the regular operations of the enterprise. *Centerville*, 41 F. 4th at 764. The record is devoid of evidence of current or potential harm of this sort flowing from Plaintiff's speech as alleged. Defendants make no argument that any such harm exists.[7] They point to no complaints by any student or member of

[7] The record is, however, replete with evidence of disruption caused by the investigation, suspension, and ban imposed by Defendants. Evidence includes the cancellation of courses and their reassignment to inexperienced faculty, fear and

the faculty at the University.[8] Hearing Tr., R.40, PageID# 1982:15–20. Defendants point only to "safety concerns" and that we "live in a pretty volatile time." Univ. Resp. 18, Dkt. 14-1. That is the archetype of the "undifferentiated fear" of disturbance emanating from controversial speech that this Court declines to countenance.[9] *Hardy v. Jefferson Community College*, 260 F. 3d 671, 683 (6th Cir. 2001); *Meriwether*, 992 F. 3d at 511.

Plaintiff's reply brief in the District Court addresses Defendants' due process arguments, which break no new ground. PI Reply, R.34, PageID## 1603–05.

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loss of trust in University administrators on the part of faculty and students, and waste of University funds. Am. Compl., R.36, PageID## 1639, 1656; Michael Decl. ¶ 9, R.19-7, PageID# 1109; Bird-Pollan Decl. ¶ 15, R.19-8, PageID# 1115; Bolter Decl. ¶ 7, R.19-9, PageID# 1250; Lee Decl. ¶ 8, R.19-11, PageID## 1259–59; Donovan Decl. ¶¶ 5–8, R.19-12, PageID# 1262; University Legal Bills, R.19-3, PageID## 588–613.

[8] Defendants have not alleged that any of the students referenced in the second notice of investigation complained about the speech reported therein. Second NOI, R.19-15, PageID# 1574.

[9] Defendants argue that the investigation, suspension and ban are not adverse actions because Plaintiff has continued to speak. Univ. Resp. 19–20, Dkt. 14-1. But adversity is measured by the effect of the action on a hypothetical person of ordinary firmness rather than the victim. *Bell v. Johnson*, 308 F. 3d 594, 606 (6th Cir. 2002). Defendants also argue that they need to complete the investigation to determine whether Plaintiff's speech is protected. But Plaintiff's speech is protected even as alleged by Defendants. First Emerg. Mot. 18–19, Dkt. 6-1; *see also* Reply to AG 2–9, Dkt. 17.

CONCLUSION

This Court should reject Defendants' arguments and grant an injunction pending appeal.

February 10, 2026

Respectfully submitted,

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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 2,600 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 10, 2026

/s/ Joe F. Childers
JOE F. CHILDERS

CERTIFICATE OF SERVICE

I certify that on February 10, 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