

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.

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

BRIEF OF PLAINTIFF-APPELLANT

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure and Sixth Circuit Rule 26.1, counsel for Plaintiff-Appellant certify that no party to this appeal is a subsidiary or affiliate of a publicly owned corporation and no publicly owned corporation that is not a party to this appeal has a financial interest in the outcome. Plaintiff-Appellant is an individual faculty member.

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

Pursuant to Federal Rule of Appellate Procedure and Sixth Circuit Rule 34(a), Plaintiff-Appellant hereby respectfully requests oral argument on the present appeal. This appeal raises important and complex issues relating to application of *Younger* abstention prior to the filing of charges in any state proceeding and access to a federal forum to challenge university harassment of a scholar for antizionist speech where there is no opportunity for redress at the state level.

STATEMENT OF JURISDICTION

The District Court had subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4). This case arises under 42 U.S.C. § 1983, the First Amendment to the United States Constitution, Section One of the Fourteenth Amendment to the United States Constitution, and Section 706 of the Administrative Procedures Act (5 U.S.C. § 706). Plaintiff-Appellant (“Plaintiff”) argues, *inter alia*, that in suspending him, banning him, and initiating an investigation against him, Defendants-Appellees Capilouto, DiPaolo, Thro, and Duff (“Defendants”) retaliated against him for protected speech in violation of the First Amendment, that Defendants imposed the suspension and ban without due process of law, that Defendants discriminated against Plaintiff on the basis of race in violation of 42 U.S.C. § 1981 and the Fourteenth Amendment, that various University policies and a Kentucky statute are overbroad, vague, or prior restraints in violation of the Free Speech Clause of the First Amendment or otherwise violate the Establishment Clause, and that Secretary of Education Linda McMahon’s adoption of the IHRA definition of antisemitism in enforcing Title VI violates the First Amendment.

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 on the basis of the abstention

doctrine articulated in *Younger v. Harris*, 401 U.S. 37 (1971). The District Court stayed the case until the conclusion of the investigation and any subsequent university disciplinary proceedings on the ground that, where a plaintiff seeks damages in addition to injunctive relief, dismissal is not permitted.

To the extent that denial of a motion for a preliminary injunction is not appealable under 28 U.S.C. § 1292(a)(1) where the ground for the denial is abstention and the district court has stayed the case, the abstention order is appealable as a final order under 28 U.S.C. § 1291. *Jones v. Coleman*, 848 F.3d 744, 748 (6th Cir. 2017); *Satkowiak v. McClain*, No. 24-1600, 2024 WL 5088685, at *1 (6th Cir. Dec. 12, 2024) (holding that the Court had jurisdiction to review a decision to abstain under *Younger* where the district court had stayed the case rather than dismissing it).

To the extent that the abstention order is not appealable as a final order, it is appealable under the collateral-order doctrine. *RSM Richter, Inc. v. Behr America, Inc.*, 729 F.3d 553, 556 (6th Cir. 2013). The order resolved the disputed question whether *Younger* abstention is appropriate prior to the filing of charges in any state university proceeding and the university provides no opportunity to obtain an adequate remedy for constitutional harm. This issue is entirely separate from the underlying merits of the motion for a preliminary injunction, which posed the question whether Plaintiff is likely to succeed on his First and Fourteenth

Amendment challenges to an investigation, suspension, and ban imposed by the university in violation of 42 U.S.C. § 1983 (“Section 1983”). The issue is effectively unappealable later because the District Court stayed the case until the investigation, suspension, and ban terminate, at which point the question whether *Younger* abstention applies to block a preliminary injunction to enjoin these actions will be moot.

On January 21, 2026, Plaintiff filed a timely notice of appeal with the District Court.

STATEMENT OF ISSUES

1. Whether the district court erred in abstaining from deciding Plaintiff's motion for a preliminary injunction based on *Younger* abstention because the University had initiated a preliminary investigation into Plaintiff's speech.
2. Whether the district court erred in concluding that Plaintiff had an adequate opportunity to raise constitutional claims in the state proceeding even though the University refused to rule on any claims in time to stop the investigation, suspension and ban that Plaintiff challenges.
3. Whether the district court erred in treating the suspension and ban as part of the investigation rather than a separate executive action even though the suspension and ban were not initiated by the administrators who initiated the investigation but instead by the dean as a discretionary reassignment.
4. Whether the district court erred in concluding that it was not bad faith, for *Younger* abstention purposes, for the University to initiate a hostile environment investigation into Plaintiff in retaliation for obviously protected speech where there were no complaints from students or faculty and the investigation circumvents the University's discrimination office, tacks on alleged violations of rarely enforced policies, is explicitly carried forward in the hope of uncovering unprotected speech, and employs an investigator affiliated with a group advocating suppression of speech like Plaintiff's.

STATEMENT OF THE CASE

Israel is a question of supreme national importance. Three weeks ago, our nation joined Israel in launching a war to “crush [the] Iranian regime.”¹ And yet speech about Israel and Palestine is in a deep freeze on American university campuses as a result of a campaign by private interest groups “to rapidly dismantle the pro-Palestinian movement . . . at schools and universities.” Am. Compl., R. 36, PageID## 1623–24. The chill is so complete that scholars call it the “Palestine exception” to free speech. PI Memo, R. 19-1, PageID## 203–04.

How can there be a chill when courts around the country have affirmed that pro-Palestine speech is protected by the First Amendment? PI Memo, R. 19-1, PageID## 206–07, 211 (collecting cases). The answer is that universities have access to a range of preliminary sanctions, including investigations, suspensions, and campus bans, which serve as powerful deterrents in themselves even if administrators are ultimately unable to impose permanent sanctions on pro-Palestine faculty. *See, e.g.*, Am. Compl., R. 36, PageID# 1634–36. Scholars who do not challenge these preliminary sanctions may go on to beat back attempts to

¹ *Peace Through Strength*, The White House (Mar. 1, 2026), <https://www.whitehouse.gov/articles/2026/03/peace-through-strength-president-trump-launches-operation-epic-fury-to-crush-iranian-regime-end-nuclear-threat/>; *U.S. Making Decisive Progress in Iran*, U.S. Department of War, <https://www.war.gov/News/News-Stories/Article/Article/4420831/four-days-in-hegseth-caine-say-us-making-decisive-progress-in-iran/>.

convert them into permanent sanctions like termination. But even when they do, the First Amendment loses because the preliminary sanctions have already chilled speech. *See, e.g., Meriwether v. Hartop*, 992 F.3d 492, 501 (6th Cir. 2021) (stating that a professor felt compelled to avoid discussing gender-identity issues in class after university placed a reprimand in his file and threatened him with “further corrective actions”).

When the University of Kentucky initiated a baseless investigation, suspension, and ban of Plaintiff-Appellant law professor Ramsi Woodcock (“Plaintiff”) in retaliation for his call for international military intervention to end Israel and liberate Palestine, he sought to avoid the resulting chill on speech by challenging the preliminary measures. The University refused to entertain his constitutional arguments until after the investigation, suspension, and ban that he was challenging were over, so he brought an action under 42 U.S.C. § 1983 in federal court and sought a preliminary injunction to stop them on First Amendment retaliation and due process grounds.

The district court denied the injunction and effectively turned the abstention doctrine of *Younger v. Harris*, 401 U.S. 37 (1971), into a judge-made version of the Palestine exception. If the decision is allowed to stand, it will incidentally deprive all scholars, whatever their views about Palestine, of the ability to challenge

preliminary sanctions for protected speech not only in federal court but in any forum.

The district court did this through two breathtaking extensions of *Younger*. First, the district court extended *Younger* abstention into the heartland of executive action for which abstention is not appropriate: the gathering of facts and the discretionary reassignment of job duties. IPACA6Denial 3, Dkt.37. The decision conflicts with precedents of this court as well as those of seven other courts of appeals, which have rejected attempts to extend *Younger* to preliminary investigations in which disciplinary charges have not yet been filed. Second, the court misread Supreme Court precedent to allow abstention where the state bars access to a ruling on constitutional claims until after the challenged conduct is completed. That denied Plaintiff the opportunity to obtain an adequate remedy for constitutional harm in both the state and federal proceedings.

The district court also ignored numerous red flags that the investigation, suspension, and ban were imposed in bad faith rather than as a good faith attempt to enforce discrimination laws, as required for abstention to apply. The red flags include the University president's public condemnation of plaintiff as "repugnant", the dean's admission that he acted based on complaints by "outside interests" and in the absence of complaints from any University student or faculty member, the tacking on of allegations that Plaintiff violated five rarely enforced university

regulations unrelated to discrimination, such as an IT policy prohibiting “spamming”, the substitution of an ad hoc process, initiated and run by the University president and general counsel, for the normal discrimination process, which is complainant driven and usually handled from start to finish by the university’s Office of Equal Opportunity (“OEO”), the ad hoc placement of the decision whether to file disciplinary charges in the hands of the University president rather than the OEO director, who normally makes charging decisions, the administrative “reassignment” of plaintiff in lieu of conducting the risk assessment required to formally suspend him, the University’s insistence on copying the contents of a laptop that Plaintiff had not used for four years before he circulated his petition, the appointment of an outside investigator with ties to a group advocating the suppression of pro-Palestine speech on university campuses, and the imposition of the suspension and ban at the height of summer recess when the law building was largely empty, Plaintiff was not teaching, and claimed safety concerns were non-existent.

STATEMENT OF THE FACTS

A. The University's Actions

Plaintiff is a tenured law professor at University of Kentucky's J. David Rosenberg College of Law (the "law school") who, on July 6, 2025, posted a petition to online discussion groups for law professors hosted by the Association of American Law Schools ("AALS") in which he advocated his research conclusion that the international community must end the colonization of Palestine to stop a genocide. Am. Compl., R. 36, PageID ## 1626–32. On July 18, 2025, without notice or a hearing, Defendant-Appellees Capilouto, DiPaola, Thro, and Duff ("Defendants" or "University") announced a hostile environment investigation into Plaintiff's speech under Title VI of the Civil Rights Act of 1964 ("Title VI"), canceled his fall classes, reassigned him from teaching, research, and service to "100% professional development" ("the suspension"), banned him from the law school building ("the ban") "for the duration of the investigation", and announced to the University community that Plaintiff's views were "repugnant" and that he wished to "destroy a people." *Id.* at 1634–40; Thro Letter 7/18/25, R. 19-3, PageID# 491; Capilouto Email 7/18/25, R. 19-3, PageID# 496–97; Duff Letter R. 19-3, PageID# 493; 42 U.S.C. § 2000d.

There had been no student complaints, no faculty complaints, and no indication that Plaintiff had said anything objectionable on campus, much less in the

classroom. Hearing, R. 40, PageID## 1977:3–6, 1982:15–20. But there were complaints from what Defendant Duff, the law school’s dean, called “outside interests.” *Id.* at 1980:11–19. The University’s actions immediately chilled speech. One colleague decided to retire. Donovan Decl. ¶ 7, R. 19-12, PageID# 1262. Others feared speaking out in opposition to the university’s action. Michael Decl. ¶ 7, R. 19-7, PageID# 1109. Students wondered whether they were allowed to talk about Palestine. Bolter Decl. ¶ 7, R. 19-9, PageID# 1250; Lee Decl. ¶ 8, R. 19-11, PageID# 1258–59. Plaintiff’s rate of posting about Palestine declined. Woodcock Decl. 1/2/26, R. 35, PageID## 1608–09.

The University normally handles hostile environment investigations through a dedicated Office of Equal Opportunity (“OEO”). Equal Dignity Regul. § III.A., R. 19-3, PageID# 477. The OEO then investigates and decides whether there is probable cause for the University to file disciplinary charges. OEO Pol’y § IV.B, R. 42-1, PageID# 2082–84. If there is probable cause, a different office, that of the Executive Vice President for Finance and Administration, appoints disciplinary hearing and appeals panels and the University’s general counsel, Defendant Thro, prosecutes the case. Interim Due Proc. Regul. § II.C. R.19-3, PageID# 524; Equal Dignity Due Proc. Regul. § I.D.1, R. 19-3, PageID## 484. Under new “interim rules” unilaterally adopted by the president in October 2025, the president has “sole discretion” to disregard the recommendations of the hearing and appeals

panels and pursue termination. Interim Due Proc. Regul. § II.F, R. 19-3, PageID# 527; Am. Compl. ¶ 67, R. 36, PageID# 1637. If he does, Kentucky law requires that the board of trustees provide a hearing before termination. *See* Ky. Rev. Stat. Ann. § 164.230.

OEO investigations are “complainant driven” but the OEO had not received complaints about Plaintiff from anyone who appeared to be covered by University discrimination policy or Title VI. OEO Pol’y § IV, R. 42-1, PageID# 2078. The University had received complaints from faculty at other schools, who are not covered unless they anticipate accessing University resources. First NOI, R. 19-15, PageID# 1558; OEO Pol’y § I.A, R. 42-1, PageID# 2075 (“This policy . . . includes employees, students and visitors who . . . attempt to engage in [University] programs and activities.”); *Snyder-Hill v. Ohio State University*, 48 F. 4th 686, 708 (6th Cir. 2022) (similar federal standard). Defendants “collaborat[ed]” to initiate an investigation themselves. Duff Tr., R. 40, PageID## 1986:24–25, 1987:1, 1989:11–14. They hired a Washington, DC lawyer with ties to an organization advocating suppression of pro-Palestine speech on American university campuses to conduct the investigation. Am. Compl., R.36, PageID ## 1623–24, 1626. Rather than follow University policy for investigating Title VI complaints, the investigator outlined an ad hoc policy in a letter to Plaintiff that substituted Defendant Capilouto, who is the University’s president, for the director

of the OEO as the party responsible for determining, at the conclusion of the investigation, whether there is probable cause to file disciplinary charges against Plaintiff. Thompson Letter 8/25/25, R. 19-15, PageID# 1570–71; OEO Pol’y § V.B.6, R. 42-1, PageID# 2084. Whereas the OEO discloses its investigative reports to respondents, the investigator’s report to Defendant Capilouto will be privileged and confidential attorney-client work product and not disclosed to Plaintiff. Equal Dignity Due Proc. Regul. § I.C.1, R. 19-3, PageID# 482; Thompson Letter 8/25/25, R. 19-15, PageID# 1570–71. Rather than invoke the OEO’s procedures for interim suspension pending an investigation, which require a written assessment of a threat of physical harm to the community, Defendant Duff exercised what the University claims is his “absolute authority” to reassign and ban Plaintiff. OEO Pol’y § VI, R. 42-1, PageID# 2087; Thro Letter 9/19/25, R. 19-4, PageID# 1066; *cf.* Faculty Rules 6/30/24, R. 19-8, PageID# 1207 (requiring that faculty spend at least 40% of their time teaching). Defendant Duff explained that this was a “judgment call” required because “we live in a pretty volatile time[.]” Hearing, R. 40, PageID## 1972:17–20, 1973:11, 1985:9–11. But it was the middle of summer break and Plaintiff was not teaching. PI Reply, R. 34, PageID# 1604. Defendant Duff further clarified that “in the current environment” he could not “allow for an individual to operate as if nothing had happened or nothing was wrong[.]” Hearing, R. 40, PageID## 1983: 25, 1984:1–4.

The University had announced a hostile environment investigation, but the “Notice of Investigation” that the investigator sent Plaintiff on July 22, 2025 did not actually allege that Plaintiff had created a hostile environment. First NOI, R. 19-15, PageID ## 1558–59. Instead, the letter suggested that Plaintiff’s circulation of the petition had potentially violated five other rarely enforced University policies, including a University IT policy regarding “spamming”. *Id.*; Tech. Pol’y § IV.J.c.vii, R. 19-3, PageID# 584; Ethical Principles, R. 19-3, PageID## 565–74; Inst. Stmt. Pol’y, R. 19-3, PageID## 515–20; Signif. Pol’ys, R. 19-3, PageID## 576–78; Gov. Regul. I, R. 19-3, PageID## 417–21; Douglas Decl. ¶¶ 2–3, R. 19-7, PageID## 1108–09; Bird-Pollan Decl. ¶¶ 6–8, 10–11, R. 19-8, PageID## 1113–15. The University also tacked on additional allegations that Plaintiff’s pro-Palestine speech at conferences in Washington, DC and Hong Kong—one of which had occurred more than a year before—violated those policies. First NOI, R. 19-15, PageID ## 1558–59. The letter ordered Plaintiff to “stop immediately” and threatened to add additional allegations. *Id.* at 1559–60. The University insisted on copying an old work laptop that Plaintiff had not used since 2021. Woodcock New Decl., R. 35, PageID## 1612–14. It also stated that the investigation might lead to “termination of a tenured appointment.” Thompson Letter 8/25/25, R. 19-15, PageID# 1571.

Six weeks later, the investigator issued a second notice of investigation alleging for the first time that Plaintiff had created a “hostile environment”. Second NOI, R. 19-15, PageID## 1573. The letter said that Plaintiff had made a total of two mild pro-Palestine statements (e.g., “free Palestine”) at a couple of extracurricular activities the previous year. *Id.* at 1573–74. The letter also alleged that Plaintiff had called for a “genocide of Israeli people” but offered no examples of such a statement. *Id.* at 1573–74. The University does not require Plaintiff to participate in the investigation. Thro Letter 9/19/25, R. 19-4, PageID# 1067. Between July and December 2025, the investigator interviewed “over twenty students, professors, and others”, but has added no additional allegations. Thompson, R. 26-4, PageID# 1451.

Plaintiff objected that the speech that the University claimed to be investigating was plainly covered by the First Amendment and that the suspension and ban violated due process. Kapitan Letter 9/11/25, R.19-4, PageID## 1056–61, 1063–64; PI Order, R. 37, PageID# 1786. The investigator asked Plaintiff to submit constitutional arguments in writing but stated that she will “not serve as the decision-maker” and that only “[a]fter the University receives and considers all the evidence as well as Professor Woodcock’s responses” would Defendant Capilouto “issue a letter with the University’s findings[.]” Thompson Letter 8/25/25, R.19-15,

PageID# 1570–71; PI Order, R. 37, PageID# 1785; *see also* Thro Letter 9/19/25, R. 19-4, PageID# 1067 (stating that “it is necessary to investigate”).

B. Federal Court Proceedings

Barred from the opportunity to obtain an adequate remedy in the state proceeding, Plaintiff filed suit in federal court on November 13, 2025 alleging, among other things, that the investigation, suspension and ban are retaliation for speech protected by the First Amendment and that the suspension and ban were imposed without due process guaranteed by the Fourteenth Amendment in violation of 42 U.S.C. § 1983. Compl., R.1, PageID# 1. At the time that Plaintiff filed suit, the investigation was ongoing, Plaintiff’s participation remained voluntary, and the University had not yet made a determination whether there was probable cause to file formal disciplinary charges against him. PI Order, R. 37, PageID## 1790–1791 & n.12.

On December 19, 2025, the District Court held a daylong hearing on the merits of Plaintiff’s preliminary injunction motion. Hearing, R. 40, PageID## 1802–2042. During the hearing, the District Judge requested that Plaintiff “describe . . . the deaths” of Israeli children on October 7, asked whether the University had ever “punished” Plaintiff for “advocat[ing]” “socialism”, and referred to Plaintiff’s testimony as “pontificat[ion]”. Hearing, R. 40, PageID## 1911:4, 1932:21–25,

1940:6–10. The District Court subsequently granted the University’s motion for abstention and denied Plaintiff’s preliminary injunction motion without reaching the merits. PI Order, R. 37, PageID## 1771, 1798. Plaintiff appealed. As part of his request for an injunction pending appeal in this Court, Plaintiff expressed an intention to publish a law review article calling Israel’s right to exist into question. Second Emerg. Mot. 2, Dkt. 13-1. The University suggested that if he submitted his article in his capacity as a scholar rather than as a private citizen, the First Amendment would not bar the University from retaliating. Univ. Resp. Second Emerg. Mot. 5–7, Dkt. 29. On February 20, 2026, a panel of this court denied Plaintiff’s motion for an injunction pending appeal, also on *Younger* abstention grounds. IPA CA6 Denial 3, Dkt. 37. On the same day, Defendants agreed to postpone the due date for Plaintiff to answer the investigator’s written questions until two weeks after the conclusion of the appeal. Thompson Email 2/20/26, Dkt. 40-3. The Court later granted in part Plaintiff’s motion to expedite. Dkt. 41. The investigation, suspension, and ban continue. Woodcock Decl. 2/11/26 ¶¶ 1–3, Dkt. 27-2. They will end at least three weeks after Plaintiff responds to the investigator’s questions. Thereafter, Defendant Capilouto will issue his determination whether to file disciplinary charges against Plaintiff. First Emerg. Mot. 7–8, Dkt. 6-1.

SUMMARY OF THE ARGUMENT

The district court abstained from a preliminary investigation in which participation is voluntary and no decision about whether there is probable cause to file formal disciplinary charges has yet been made. This ruling conflicts with this Court's precedent and authority in seven other courts of appeals. The weight of authority against abstention in preliminary investigations in the civil enforcement context is not surprising because abstention is appropriate in that context only to the extent that the proceeding is akin to a criminal proceeding. Courts do not abstain from criminal investigations before compulsory process such as a subpoena or search warrant has been issued, and some do not abstain until charges have been filed. The district court reached its conclusion by distinguishing the investigation from a legislative proceeding for which abstention would not be appropriate. But abstention is also not appropriate for executive action, and investigations in the enforcement context are an example of core executive action.

Abstention is also not appropriate where the plaintiff lacks an adequate opportunity to raise constitutional claims in the state proceeding. Plaintiff lacks such an opportunity because the University has categorically refused to rule on his constitutional objections to the investigation, suspension, and ban until the investigation, suspension, and ban conclude and the University president issues his probable cause determination. The only adequate remedy for constitutional

violations is, however, to stop them in the act, and that is impossible if a ruling is made only after the unconstitutional conduct ends. The district court interpreted the adequate opportunity requirement to require only that the state not bar articulation of constitutional claims, not that the state rule on them in time to provide an adequate remedy. But such a holding transforms *Younger* from a doctrine of respect for the competence of the states to vindicate constitutional claims to a doctrine of preclusion of constitutional claims. There appears to be no Supreme Court or Sixth Circuit case in which a court abstained in the absence of access to an adequate remedy in the state proceeding. The Supreme Court in *Gibson v. Berryhill* insisted that access to a remedy must be timely, and the courts insist on an interlocutory remedy for challenges to other interim measures such as attachments and TROs. 411 U.S. 564, 577–78 (1973).

The foregoing follows the district court's holding that the suspension and ban are part of the investigation. But that holding was error. Instead, the suspension and ban are part of a separate executive action for which abstention is not appropriate. The suspension and ban are similar to ancillary proceedings such as pre-trial incarceration or contempt proceedings in the judicial context. Abstention is appropriate for such proceedings if they are supervised by the same authority that administers the underlying proceeding. That is not the case here. The University insists that the suspension and ban were implemented under the

“absolute authority” of the law school dean to choose a professor’s course schedule. The dean has testified that he was not responsible for the underlying proceeding, which here is the investigation. Accordingly, the suspension and ban must be treated as separate proceedings for *Younger* purposes. As separate proceedings, the suspension and ban do not qualify as civil proceedings akin to criminal proceedings for which *Younger* abstention is permitted. The dean claimed in his letter announcing the suspension and ban that he acted to protect Plaintiff and the University, so, as an official matter, the suspension and ban were not imposed to sanction Plaintiff. And the dean has not promised a hearing on them or any process at all. Moreover, because the suspension and ban are timed to end with the investigation, Plaintiff cannot raise constitutional objection to them as part of the investigation, which is limited to deciding whether there is probable cause to pursue future permanent sanctions against Plaintiff.

In any case, the bad faith exception to *Younger* applies to the investigation, suspension, and ban. Courts apply the exception if the proceeding was launched without reasonable expectation of success. The University launched the investigation, suspension, and ban in reaction to pressure from “outside interests” and in the absence of complaints from any person covered by the University or federal discrimination rules. Because there was no hope that the OEO would investigate, much less find probable cause to charge Plaintiff, the University

sidelined the OEO and brought in an investigator with ties to a group seeking to suppress pro-Palestine speech. Lacking any basis for meeting the threat standard required to impose an interim suspension under OEO policy, the dean instead reassigned Plaintiff administratively. The ad hoc procedure created by the University exhibits initiator-adjudicator bias because the University president who initiated the investigation will decide probable cause to charge Plaintiff and has “sole discretion” to decide whether to terminate him at the conclusion of any disciplinary hearing.

If this Court reverses the district court’s decision to abstain, this Court should also decide the merits of Plaintiff’s motion for a preliminary injunction. The district court held a daylong hearing on the merits, the issues were fully briefed below, and the only disputed issues are matters of law.

STANDARD OF REVIEW

This Court “review[s] de novo a district court’s decision to abstain pursuant to” *Younger. Doe v. Univ. of Ky.*, 860 F.3d 365, 368 (6th Cir. 2017). The Court reviews preliminary injunction orders “for abuse of discretion, subjecting factual findings to clear-error review and examining legal conclusions de novo.” *Daunt v. Benson*, 956 F.3d 396, 406 (6th Cir. 2020) (citation omitted).

ARGUMENT

Federal courts have a “virtually unflagging” “obligation” to “hear and decide” constitutional claims over which they have jurisdiction. *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013). Only three “exceptional circumstances” exist in which federal courts may “refus[e] to decide a case in deference to the States.” *Id.* at 78. These are where a federal decision would “intru[de]” into “ongoing”: (1) “state criminal prosecutions”, (2) “civil enforcement proceedings” that are “akin to a criminal prosecution”, or (3) “civil proceedings involving certain orders . . . uniquely in furtherance of the state courts’ ability to perform their judicial functions.” *Id.* at 78–79. Courts also consider three additional factors associated with *Middlesex County Ethics Comm. v. Garden State Bar Assn.*: (1) whether there is an ongoing state judicial proceeding which (2) implicates important state interests and (3) provides an adequate opportunity to raise federal challenges. 457 U.S. 423, 432 (1982). The court in *Sprint Communications, Inc. v. Jacobs* rendered the first *Middlesex* factor redundant when it clarified that the factors do not substitute for the “exceptional circumstances” but are additional to them. *Sprint*, 571 U.S. at 81. The others retain their vitality. Finally, as relevant here, the courts have recognized exceptions for bad faith, bias, and flagrant unconstitutionality. *Doe v. University of Kentucky*, 860 F. 3d 365, 371

(6th Cir. 2017) (bad faith and flagrant unconstitutionality); *Gibson v. Berryhill*, 411 U.S. 564, 577–78 (1973) (bias).

A. Abstention Is Not Appropriate During a Preliminary Investigation in Relation to Which No Determination of Probable Cause to File Formal Disciplinary Charges Has Taken Place and For Which Participation Is Voluntary

The district court erred in holding that the University’s preliminary investigation is a civil enforcement proceeding akin to a criminal proceeding. PI Order, R. 37, PageID# 1772. In its most recent case considering *Younger* abstention, *Sprint Communications, Inc. v. Jacobs*, the Supreme Court stated that *Younger* “extends” to three “exceptional circumstances”—ongoing state criminal proceedings, civil enforcement proceedings akin to them, and proceedings involving orders uniquely in furtherance of court judicial functions—“but no further.” 571 U.S. 69, 82 (2013). Yet the district court expanded *Younger* “further” to encompass a preliminary investigation by a state university in which disciplinary charges have not been filed, no finding of probable cause to file such charges has yet been made, no disciplinary hearings have commenced, and Plaintiff’s participation in the investigation is voluntary. The University itself has acknowledged that it is “simply investigating[.]” Thro Letter 9/19/25, R. 19-4, PageID# 1066. The decision conflicts with precedents of this Court as well as those of the First, Third, Fourth, Fifth, Seventh, Ninth, and Eleventh Circuits holding that

abstention is not appropriate for preliminary investigations in the civil enforcement context.

In *Winter v. Wolnitzek*, this Court considered a First Amendment challenge to the actions of a state agency, Kentucky’s Judicial Conduct Commission (“JCC”), in relation to judicial elections. 834 F. 3d 681, 686 (6th Cir. 2016). Election-related speech, like the speech of university professors at issue in this case, occupies a “special niche” in First Amendment jurisprudence. *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003); *Burson v. Freeman*, 504 U.S. 191, 196 (1991). The Commission, like the University at issue here, takes complaints, initiates investigations with a letter to the target, decides based on the investigation whether to initiate a formal disciplinary proceeding that includes a hearing, and, if the defendant is found guilty, imposes sanctions including termination. Ky. Sup. Ct. R. §§ 4.170, 4.180. 4.220, 4.260. After receiving a complaint, the Commission sent a “probable cause” letter, which is equivalent to the notice of investigation that launched the University’s investigation into Plaintiff, to a candidate for judicial office. *Wolnitzek*, 834 F. 3d at 687. Like Plaintiff, the candidate filed suit in federal court while the investigation was still pending and before the Commission had initiated disciplinary proceedings. *Id.* Writing for the panel, Chief Judge Sutton held that the Commission’s sending of the letter “does not necessarily mean that a formal proceeding exists.” *Id.* at 688. Citing *Sprint*, he concluded that “in the absence of

an ongoing enforcement action, *Younger* has no role to play, leaving us with authority, indeed an obligation, to resolve the case.” *Id.*; see also *Dutton v. Shaffer*, No. 3:23-cv-00039-GFVT, slip op. at 5 (E.D. Ky. Sep. 15, 2023) (following *Wolnitzek*).

In *Fischer v. Thomas (Fischer I)*, this Court granted an injunction pending appeal to halt another preliminary investigation by the JCC that had not yet resulted in formal disciplinary charges. 52 F. 4th 303, 306 (6th Cir. 2022). Neither this Court, which can raise *Younger* abstention sua sponte, nor the defendants in that case, even bothered to raise abstention. *Fischer I*, 52 F. 4th at 306, 313; *O’Neill v. Coughlan*, 511 F. 3d 638, 641–43 (6th Cir. 2008). The Court later observed that “the Commission’s proceedings weren’t pending when the candidates filed their federal complaint.” *Fischer v. Thomas (Fischer II)*, 78 F. 4th 864, 869 (6th Cir. 2023).

Six other circuits have held abstention to be inappropriate in administrative investigations similar to the one at issue in this case. In *Guillemard-Ginorio v. Contreras-Gomez*, plaintiffs brought First and Fourteenth amendment challenges to an investigation initiated by the Office of the Insurance Commissioner of Puerto Rico, which, like the University, is an administrative agency empowered to investigate and sanction. 585 F. 3d 508, 510 (1st Cir. 2009). As in this case, at the time the plaintiffs in *Guillemard* filed suit, the agency had issued a notice of

investigation but “no formal charges of any kind had been brought against” them. *Id.* at 518-20. The panel, on which Judge Siler sat by designation, held that “the agency’s investigation of the plaintiffs was at too preliminary a stage to constitute a ‘proceeding’ triggering *Younger* abstention.” *Id.* at 519. The court reasoned that “this rule, requiring the commencement of ‘formal enforcement proceedings’ before abstention is required, better comports with the Supreme Court’s decisions in *Younger* and its progeny, in which an indictment or other formal charge had already been filed against the parties seeking relief at the time the federal action was brought.” *Id.* at 519. Similarly, in *Telco Communications, Inc. v. Carbaugh*, plaintiffs brought a First Amendment challenge against an investigation conducted by the Virginia Office of Consumer Affairs, which was empowered to “suspend or revoke” licenses. 885 F. 2d 1225, 1226–27 (4th Cir. 1989). At the time the plaintiff sued, the Office had notified plaintiff that it had received a complaint and opened an investigation, and the Office had conducted “an informal fact-finding conference”, but no “formal hearing” or “formal prosecution” had been conducted. *Id.* at 1228. The court declined to abstain, holding that “the period between the threat of enforcement and the onset of formal enforcement proceedings may be an appropriate time for a litigant to bring its First Amendment challenges in federal court.” *Id.* at 1229; *see also Louisiana Deb. and Lit. v. N. Orleans*, 42 F. 3d 1483, 1486–88, 1490–91 (5th Cir. 1995) (abstention inappropriate in First Amendment

challenge to Human Relations Commission investigation where Commission had not yet made the probable cause determination necessary to convene a public hearing to consider whether to issue a cease and desist order); *Mulholland v. Marion*, 746 F. 3d 811, 813, 815, 81 (7th Cir. 2014) (abstention inappropriate in First Amendment challenge to planned investigative hearing by county election board where the board had not yet decided whether prosecution of election law violations was warranted); *Canatella v. California*, 304 F. 3d 843, 848, 851–52 (9th Cir. 2001) (abstention inappropriate in First and Fourteenth Amendment challenges to investigation by State Bar of California because “[a] preliminary investigation before issuing a notice of disciplinary charges or a mere complaint to the bar does not commence a disciplinary action.”); *PDX v. Commissioner*, 978 F. 3d 871, 877–78, 885–87 (3d Cir. 2020) (abstention inappropriate in challenge to New Jersey Department of Labor proceeding that was “still at the audit stage” and in which no determination that the plaintiff had misclassified employees had yet been made). In *Major League Baseball v. Butterworth*, a district court held that abstention was not appropriate in a civil investigation by a state attorney general where the attorney general had not yet filed suit. 181 F. Supp. 2d 1316, 1320–21 (N.D. Fla. 2001). This was so even though the plaintiffs had sued in federal court only after the attorney general had issued civil investigative demands (CIDs) to them. *Id.* The court reasoned that “CIDs are simply part of an executive branch investigation.”

Id. at 1321 n.2. The Eleventh Circuit silently affirmed. *Major League Baseball v. Crist*, 331 F. 3d 1177 (11th Cir. 2003).

Judicial rejection of abstention during administrative investigations is not surprising because courts do not appear to have ever extended abstention to criminal investigations absent the use of compulsory process. *See Mirka United v. Cuomo*, No.1:06-cv-14292-GEL, slip op. at 6–8 (S.D.N.Y. Nov. 27, 2007) (collecting cases). Since the basis for abstention in civil enforcement proceedings before administrative agencies is that they are “akin to criminal proceedings” in state courts, it would not be appropriate for courts to abstain from administrative investigations while refusing to do so from criminal investigations. *Cf. San Jose Silicon Valley Chamber of Commerce Political Action Committee v. City of San Jose*, 546 F. 3d 1087, 1093 (9th Cir. 2008) (taking a similarly analogic approach to civil enforcement analysis). No court appears to have held that abstention is warranted during a criminal investigation before the issuance of compulsory process such as a search warrant or subpoena. *See Mirka United*, slip op. at 6–8. At least one court has held that abstention is not appropriate until criminal charges have been filed. *Monaghan v. Deakins*, 798 F. 2d 632, 636, 638 (3rd Cir. 1986). The preliminary investigation in this case has not matured to a stage analogous to the compulsory process stage of a criminal investigation. In the criminal context, the decision whether probable cause exists to support the filing of charges is made

either by the grand jury or, in the case of an information, by the judge at a preliminary hearing. *Gerstein v. Pugh*, 420 U.S. 103, 105–06 (1974); *United States v. Cox*, 342 F. 2d 167, 171 (5th Cir. 1965). This stage of a criminal case corresponds to the stage at which the University president will decide whether to file formal disciplinary charges. Plaintiff filed suit long before that stage, which has not yet arrived. Moreover, the University has not engaged in conduct analogous to the issuance of compulsory process in criminal cases. The University insists that Plaintiff’s participation in the investigation is voluntary and that he can choose not to participate. Criminal investigations can start long before the issuance of compulsory process. Before seeking compulsory process, law enforcement agents “develop informants, go undercover, interview willing witnesses, conduct full blown searches upon consent or where warrants are not required, . . . or conduct physical surveillance.”² This activity is analogous to the interviewing of willing witnesses that the investigator has conducted in the present case. Courts intervene in investigations at this stage all the time. *See, e.g., Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 60–63, 68–70 (1963) (commission’s investigations chilled speech); *Fischer I*, 52 F. 4th at 309 (enjoining investigation of election violations pending appeal); *Speech First, Inc. v. Schlissel*, 939 F. 3d 756, 765 (6th Cir. 2019)

² Daniel C. Richman, *Prosecutors and Their Agents, Agents and Their Prosecutors*, 103 Colum. L. Rev. 749, 778 (2003).

(plaintiffs had standing to challenge university’s use of investigations to chill speech).

The district court relied on *New Orleans Public Service v. New Orleans (NOPSI)* for the proposition that abstention was appropriate because the investigation “is a precursor to potential adjudicative acts, not legislative ones.” PI Order, R. 37, PageID# 1777; 491 U.S. 350 (1989). But the Supreme Court in *NOPSI* made clear that *both* executive and legislative action are beyond *Younger*, stating that “it has never been suggested that *Younger* requires abstention in deference to . . . executive action.” *Id.* at 368. The Court looked to “the nature of the final act” to distinguish the legislative proceeding at issue in that case from a judicial proceeding. *Id.* at 371. But executive action was not at issue in that case and the Court did not hold that “final act” analysis should apply to distinguish executive from judicial action.

Nor could it. “Criminal investigations” are a “core executive power.” *Seila Law v. CFPB*, 591 U.S. 197, 219 (2020); *Jett v. Castaneda*, 578 F. 2d 842, 845 (9th Cir. 1978) (“The investigation of crime is primarily an executive function.”). To the extent that the “final act” to which a criminal investigation tends may be construed as an adjudication of the guilt of the target, application of the “final act” test would render criminal investigations judicial in character and lead to abstention from a core executive function that has never been subject to *Younger*.

That would violate the Court's command in *Sprint* not to "further" enlarge the *Younger* ambit. 571 U.S. at 82. To the extent that agency proceedings are "akin to criminal proceedings", the investigations that precede agency disciplinary proceedings must be executive in function as well. To properly apply *NOPSI*, the district court should have asked not only whether the investigation was legislative but also whether it was executive. The district court ignored the second part of the test.

Regardless, the "final act" of an investigation is not to establish guilt. The decision to seek an adjudication of guilt takes place at the charging stage, when a prosecutor decides that the fruits of the investigation support a finding of probable cause and the grand jury or judge approves that determination. *See Cox*, 342 F. 2d at 171 ("The role of the grand jury is restricted to a finding as to whether or not there is probable cause to believe that an offense has been committed.") As the Court observed in *Sprint*, "enforcement actions are characteristically initiated to sanction the federal plaintiff." *Id.* at 79. By contrast, *investigations* are initiated to decide *whether* to initiate an action to sanction the target. That is why the University has emphasized that at this stage it is "simply investigating and may well conclude that Professor Woodcock did not violate any law or policy." Thro Letter 9/19/25, R. 19-4, PageID# 1066.

The executive character of the investigation in this case is reinforced by the University’s decision to create an ad hoc process and bypass the OEO in deciding whether there is probable cause to file disciplinary charges. This is roughly equivalent to the appointment of a special prosecutor in the criminal context, which courts have held is an executive act. *United States v. Donziger*, 38 F. 4th 290, 307 (2d Cir. 2022) (Menash, J., dissenting). The district court argued that the ad hoc character of the investigation is “beside the point” because federal oversight would “interfere” with the state proceeding. PI Order, R. 37, PageID# 1778. But interference is a necessary rather than sufficient condition for abstention and cannot settle the question. *See NOPSI*, 491 U.S. at 359 (treating interference as a necessary element).

The only court of appeals case that has approved abstention during an administrative investigation appears to be *O’Neill v. Coughlan*, which abstained from a lawsuit filed during the investigation stage of a judicial discipline proceeding.³ 511 F. 3d at 639–40. *O’Neill* has been implicitly overruled by *Wolnitzek*, a later case that took the opposite approach on another First Amendment

³ The district court cited a not precedential case from the Third Circuit as additional authority. PI Order, R. 37, Page ID # 1779. But the inappropriateness of abstaining from investigations is firmly established in that jurisdiction. *PDX v. Commissioner*, 978 F. 3d at 877-78, 885-87; *Miller v. Mitchell*, 598 F. 3d 139, 146 (3rd Cir. 2010); *Monaghan*, 798 F. 2d 636, 638.

challenge at the same stage of a judicial discipline proceeding. 834 F. 3d at 688.

But even absent *Wolnitzek*, *O’Neill* would no longer be good law after *Sprint*.

Rather than take the functional approach required by *NOPSI*, *O’Neill* ignored the

NOPSI “exceptional circumstances” entirely and exclusively applied the three-

factor test associated with *Middlesex*. *O’Neill*, 511 F. 3d at 643. The Court in *Sprint*

reversed an opinion of the Eighth Circuit that had similarly disdained *NOPSI*,

holding that the *Middlesex* factors are “not dispositive” but “additional” to those in

NOPSI. *Sprint*, 571 U.S. at 593–94 (observing that the Eight Circuit had rejected

the functional analysis employed by the Court in *NOPSI* and stating that *Younger*

extends to the circumstances identified in *NOPSI* but no further). Instead of

applying *NOPSI*, the panel in *O’Neill* treated as dispositive a state supreme court

opinion that characterized the investigation of attorney misconduct as part of

attorney discipline proceedings. *O’Neill*, 511 F. 3d at 643–44; 491 U.S. at 371

(“reject[ing] the notion that the nature of the agency’s proceedings might depend

on their form”). But the rationale for the state court opinion upon which the panel

relied could not have been more alien to the functional analysis of executive and

judicial roles demanded by *NOPSI*. As the dissent noted, the state court had

reached its conclusion in an attempt to immunize complainants against libel

charges filed by their lawyers. *Id.* at 645 (Moore, J. dissenting).

B. Plaintiff Does Not Have an Adequate Opportunity to Raise His Constitutional Challenges to the Investigation, Suspension, and Ban in the State Proceeding Because the University Will Not Rule on his Challenges Until the Investigation, Suspension, and Ban Have Ended

The district court misunderstood the requirement that a plaintiff must have an “adequate opportunity” to raise constitutional objections in the state proceeding. The court thought that meant that the state proceeding should not bar Plaintiff from *articulating* his constitutional claims. PI Order, R. 37, PageID## 1785–86 (noting that Plaintiff articulated constitutional objections during a Zoom meeting with the investigator and that the investigator invited him to submit legal arguments to her in writing). But the law requires more than an opportunity to make claims. It requires that the state be prepared to provide Plaintiff with an adequate remedy for constitutional harm if it concludes that the claims are valid. *Flynt v. Leis*, 574 F. 2d 874, 881 (6th Cir. 1977) (requiring an “adequate remedy”); *Lamb Enterprises, Inc. v. Kiroff*, 549 F. 2d 1052, 1058 (6th Cir. 1976). Plaintiff introduced undisputed evidence that the University has categorically refused to decide his constitutional challenges to the investigation, suspension, and ban until after the investigation, suspension, and ban conclude. Thompson Letter 8/25/25, R. 19-15, PageID# 1570 (acknowledging constitutional issues but stating that the investigator is not the decisionmaker and that Defendant Capilouto will issue a decision at the conclusion of the investigation); Thro Letter 9/19/25, R. 19-4, PageID# 1067 (stating that “it is necessary to investigate”). According to the Supreme Court in *Elrod v. Burns*,

deprivation of a First Amendment freedom, such as the right to be free of retaliation for protected speech that Plaintiff asserts against the investigation, suspension, and ban, is irreparable harm. 427 U.S. 347, 373 (1976). When harm is “irreparable”, any damages that may be obtained after the deprivation are by definition not adequate to return a plaintiff to his rightful position. *Bannercraft Clothing Company v. Renegotiation Board*, 466 F. 2d 345, 356 (D.C. Cir. 1972) (“The very thing which makes an injury ‘irreparable’ is the fact that no remedy exists to repair it.”). Accordingly, the University’s refusal to rule on Plaintiff’s constitutional claims until Defendants have finished violating the Constitution bars Plaintiff from obtaining an adequate remedy.

The issue here is not that the University has adjudicated Plaintiff’s constitutional claims and rejected them. *Cf.* IPA CA6 Denial 8, Dkt. 37. Rather, the problem is that the University has categorically refused to rule on Plaintiff’s claims until after the conduct about which he complains has come to an end and the University is no longer able to intervene to stop it. In consequence, the University has barred him from access to an adequate remedy *even if* he prevails on his constitutional claims in the state forum.

The Supreme Court in *Younger* itself made clear that an adequate remedy must be available. It held that abstention is required only to “avoid a duplication of legal proceedings and legal sanctions where a single suit would be adequate to *protect*

the rights asserted.” 401 U.S. at 44 (emphasis added). The focus is on the adequacy of “protect[ion of] the rights asserted” not merely the opportunity to raise them. *Id.* Similarly, in *Pennzoil Co. v. Texaco*, the Court held that abstention was appropriate because the courts below had “erred in accepting Texaco’s assertions as to the inadequacies of Texas procedure to provide *effective relief*.” 481 U.S. 1, 15, 17, (1987) (also referring to the need for “state procedures [to] afford an adequate remedy”) (emphasis added); *see also Trainor v. Hernandez*, 431 U.S. 434, 441 (1977) (“focusing on the remedies available in the pending state proceeding”) (collecting cases).

The adequate remedy requirement makes sense. *Younger* abstention is a doctrine of comity, not of denial of constitutional rights. *Leis*, 574 F.2d at 880 (“[F]ederal courts must . . . be sensitive to [their] responsibility [to] guard against the abridgement of federally-created rights, and they must not use the abstention doctrine as a pretext for allowing constitutional wrongs to go unremedied.”). The doctrine is motivated by recognition that, as a general matter, state tribunals are as competent as federal tribunals at defending the constitution. *Steffel v. Thompson*, 415 U.S. 452, 462 (1973) (federal interference “reflect[s] negatively upon the state court’s ability to enforce constitutional principles”). But in cases in which a state tribunal affirmatively rules out the possibility of providing a plaintiff with an adequate remedy for constitutional harm, however, federal courts must step in to

abide by their “virtually unflagging” “obligation” to protect constitutional rights. *Sprint*, 571 U.S. at 77.

The district court relied on language requiring that Plaintiff show “that state procedural law barred presentation of [his] claims.” PI Order, R. 37, PageID# 1784. But the District Court erred in interpreting “presentation” to mean the opportunity to make a claim as opposed to the opportunity to obtain an adequate remedy. PI Order, R. 37, PageID# 1784–85 (holding that various opportunities to provide legal arguments to the University’s investigator satisfied the presentation requirement). Short of binding and gagging the plaintiff, or threatening him with a sanction for putting pen to paper, state actors always permit plaintiffs to articulate constitutional objections; that cannot be the standard for determining whether a state proceeding bars presentation of constitutional claims. Rather, the standard is whether “in the absence of federal intervention an adequate state *remedy* is available to correct the claimed constitutional violation.” *Leis*, 574 F. 2d at 881 (6th Cir. 1977) (emphasis added); *Lamb*, 549 F. 2d at 1058 (“The availability of adequate state court remedies is a critical factor in determining whether extraordinary injunctive relief should issue from the federal court.”) (collecting cases). Merely affording an opportunity for Plaintiff to shout into the void is not sufficient.

The first opinion of the Supreme Court to use the “presentation” formulation highlighted by the District Court was *Judice v. Vail*, which makes clear that *Younger* requires access to an adequate remedy. 430 U.S. 327 (1976). In *Vail*, the Court held that the plaintiff had an adequate opportunity to present constitutional claims in the state proceeding because he could have sought “a stay or a temporary restraining order” in state court to put an end to the civil contempt sanction that he was challenging. 430 U.S. at 337 n.15. Here again, the focus was not on the opportunity to vent but rather access to a remedy.

This Court has similarly looked to available remedies in deciding whether the state forum is adequate. For example, in *J. P. v. DeSanti*, plaintiffs had an adequate opportunity to raise constitutional claims because they had “an opportunity to enjoin” the offending conduct. 653 F.2d 1080, 1085 (6th Cir. 1981). Other Circuits do the same. For example, in *DeSpain v. Johnston*, the Fifth Circuit noted that *Younger* requires an “adequate remedy.” 731 F. 2d 1171, 1178 (5th Cir. 1984) (emphasis added). The court held that plaintiffs had an adequate opportunity to raise constitutional objections to an ex parte order because Texas law permitted them to “appear within two days and move to dissolve the order.” *Id.* at 1180.

The Supreme Court has held that access to relief only after the challenged action is completed is not sufficient to permit abstention under *Younger*. In *Pugh v. Rainwater*, the Fifth Circuit declined to abstain where currently detained plaintiffs

had no opportunity to challenge the constitutionality of their pre-trial detention in state court other than through their criminal trials. *Pugh v. Rainwater*, 483 F. 2d 778, 781–83 (5th Cir. 1973). The court observed that “[s]ince [plaintiffs’] pre-trial incarceration would have ended as of the time of trial, no remedy would exist”. The Supreme Court affirmed. *Gerstein v. Pugh*, 420 U.S. 103, 108 n.9 (1974).

In *Gibson v. Berryhill*, the Supreme Court addressed the remedy question in the context of a claim, similar to Plaintiff’s, that the initiation of a state administrative proceeding itself violated the Constitution. 411 U.S. 564, 574–75 (1973). The Court held that where a plaintiff challenges the administrative proceeding itself, state court review of the proceeding after it is completed is inadequate. *Id.* at 577; *accord Netflix, Inc. v. Babin*, 88 F.4th 1080, 1085 (5th Cir. 2023) (“Nor . . . does [plaintiff] have an adequate opportunity to assert constitutional violations in the state proceeding when the prosecution itself is the constitutional violation.”); *Esso Standard Oil Co. v. Cotto*, 389 F. 3d 212 (1st Cir. 2004) (“[T]he availability of judicial review of a final agency decision is insufficient to avoid the irreparable harm that inheres in the . . . administrative proceeding itself.”).

The instant case is unlike other 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 the investigation and interim suspension and ban rather than the

constitutionality of any permanent sanction that the University may impose as the outcome of disciplinary proceedings. *See, e.g., Doe v. University of Kentucky*, 860 F.3d 365, 370–71 (6th Cir. 2017). For example, the plaintiff in *Doe v. University of Kentucky* brought constitutional objections to the process through which the University was deciding what permanent sanction to impose upon him. *Id.* at 367–68. Because the permanent sanction had not yet been imposed, and the university would rule on Doe’s objections before imposing a permanent sanction, Doe had an opportunity to avoid any constitutional harm associated with the permanent sanction. *Id.* at 371. This Court therefore appropriately held that Doe had an adequate opportunity to raise constitutional objections. *Id.* By contrast, here the University is already imposing the sanction to which Plaintiff objects, and the University will not rule on his objections until after it has completed the unconstitutional retaliation about which Plaintiff complains. Under these circumstances, Plaintiff has no opportunity to avoid constitutional harm by bringing his challenge in the state proceeding and federal court intervention is therefore warranted.

Plaintiff has been unable to find any decision of this Court that approved a remedy that was available only after the completion of the challenged sanction, as the district court would do in this case. Instead, this Court’s cases holding that an adequate remedy exists fall into two other categories, neither of which applies

here. The first consists of cases in which, as in *Doe*, a plaintiff has an opportunity to obtain a remedy *before* the sanction is imposed. *See, e.g., Squire v. Coughlan*, 469 F. 3d 551, 556–57 (6th Cir. 2006) (no evidence that counsel in judicial discipline proceedings would have refused to consider “pre-deprivation” constitutional challenge); *James v. Hampton*, No. 12-1453, slip op. 2–3, 9 (6th Cir. 2013) (unpublished) (judge can raise constitutional challenges in state court before her removal from office). The second consists of cases in which the sanction has already been imposed but the plaintiff has an opportunity to challenge it *while* the sanction is ongoing. *Sun Refining & Marketing Co. v. Brennan*, 921 F. 2d 635, 637, 640–41 (6th Cir. 1990) (refiner had adequate opportunity to appeal state regulator’s ongoing shutdown of the refiner’s boiler via the “state judicial system”); *Tennessee ex rel. Patterson v. Gibbons*, No. 17-5187, slip op. 3 (6th Cir. 2017) (unpublished) (“Patterson has an adequate opportunity to assert his constitutional claims in Tennessee state court once the forfeiture process is through.”). In the present case, the University gave Plaintiff no opportunity to challenge the investigation, suspension, and ban in advance of their imposition, as the University provided him with neither advance notice nor a hearing. Furthermore, the University has refused to decide Plaintiff’s constitutional challenges until after the investigation, suspension, and ban conclude.

This Court has most directly confronted the problem of a challenge to a preliminary sanction such as the investigation, suspension, and ban at issue in this case in the context of challenges to other kinds of temporary sanctions, such as orders of attachment or temporary restraining orders in state court proceedings, or interim measures in attorney discipline proceedings. Like the sanctions at issue in the present case, which will end when the University president issues his decision regarding probable cause, such temporary sanctions end when the underlying proceeding reaches a final judgment. As a result, the underlying proceeding cannot provide an adequate remedy in response to a challenge to the imposition of the temporary sanction. In this context, the Court looks for a remedy capable of stopping the interim sanction *before* a decision is reached in the underlying proceeding. *See Louisville Area Inter-Faith Com. v. Nottingham Liq.*, 542 F. 2d 652, 653 (6th Cir. 1976) (adequate remedy available via motion to dissolve order restraining picketing); *Kelm v. Hyatt*, 44 F. 3d 415, 426 (6th Cir. 1994) (adequate remedy available because plaintiff could “petition for vacation or modification of” temporary restraining order in divorce proceeding “at any time”) (Batchelder, J., concurring in part and dissenting in part); *American Family Prepaid Legal Corp. v. Columbus Bar Association*, 498 F. 3d 328, 331, 334–35 (6th Cir. 2007) (adequate opportunity to raise constitutional objections available via motion filed in advance of imposition of interim order). In *Traugher v. Beauchane*, Judge Wellford

concluded in a refusal to abstain on the ground that a state judge had “refused to . . . allow an interlocutory appeal” of an attachment order. 760 F. 2d 673, 684, 686 (6th Cir. 1985). He thought that requiring the plaintiff to wait for the conclusion of the underlying tort case was not “reasonable or timely”. *Id.* at 686. Similarly, in *Trainor v. Hernandez*, the Supreme Court considered a challenge to an attachment proceeding ancillary to a state agency’s civil suit to recover welfare benefits obtained by fraud. 431 U.S. at 435–37. The Court remanded to the district court to determine whether the plaintiff’s constitutional claims could have been presented in “the pending attachment proceeding.” *Id.* at 447 & n.10.

C. The Suspension and Ban Are Separate Executive Actions for Which Abstention Is Not Appropriate

The argument has so far followed the district court in treating the suspension and ban as part of the investigation. But the suspension and ban are a separate proceeding, executive in character, that does not fall into any of the “exceptional circumstances” for which abstention is appropriate. Plaintiff’s lack of opportunity to obtain an adequate remedy in this separate proceeding is even more glaring than it is in the investigation.

The law school dean imposed the suspension and ban for the “duration of the investigation”, claiming in his letter imposing them that he needed to protect “both you and the University[.]” Duff Letter, R. 19-3, PageID# 493. This gives the

suspension and ban the flavor of an action ancillary to the University's investigation, akin to pre-trial incarceration in the criminal context or incarceration for contempt in the civil context, from which the courts abstain if there is an adequate opportunity to raise constitutional objections. *See Parker v. Turner*, 626 F.2d 1, 8–10 (6th Cir. 1980); *Gerstein v. Pugh*, 420 U.S. 103, 108 n.9 (1974). An action is not ancillary, however, if it is not undertaken under the authority of the tribunal that it purports to support. Accordingly, the seizure of documents pursuant to a search warrant issued by a court represents an ancillary action from which courts abstain but the issuance of an administrative subpoena for the same documents does not count until the attorney general goes to court to enforce it. *Compare Mirka United*, No.1:06-cv-14292-GEL, slip op. at 1–2 (abstaining from challenge to document seizure pursuant to search warrant) *with Google, Inc. v. Hood*, 822 F.3d 212, 223 (5th Cir. 2016) (declining to abstain from challenge to administrative subpoena because “it has not been issued or enforced by any court”). Similarly, the appropriateness of abstention from an attachment or pre-judgment garnishment proceeding turns on whether the act was undertaken under the supervision of the court. *Compare Lynch v. Household Finance Corp.*, 405 U.S. 538 (1971) (declining to abstain where pre-judgment “garnishment was . . . not proceeding under a court’s supervision”) *with Trainor v. Hernandez*, 431 U.S. 434, 444, 447 (1977) (holding that where attachment “issued as part of” underlying

fraud proceeding abstention would be appropriate if adequate remedy existed in state proceeding).

The suspension and ban at issue here were not undertaken under the authority of the administrators running the investigation but instead under the claimed “absolute authority” of the dean. Hearing, R. 40, PageID## 1985:9–12, 1987:9–11. The University has a formal procedure tied to the initiation of an investigation that permits the imposition of what it calls an “interim suspension.” But the University insists that it has not invoked that procedure. Thro Letter 9/19/25, R. 19-4, PageID# 1066 (“Professor Woodcock has not been suspended. . . . [H]e has been reassigned[.]”). Instead, the University insists that all that the law school dean has done is to pick a new course schedule for Plaintiff pursuant to his discretionary authority to define the work schedules of his faculty. *Id.* Accordingly, even if the investigation is a proceeding for which abstention is appropriate, the suspension and ban do not count as actions ancillary to that proceeding for which abstention would be appropriate. The district court held that the suspension and ban are “part and parcel” of the investigation because Plaintiff described them as “part” of it in a filing, the OEO director testified that they are “typical during investigations”, and enjoining them would “interfere” with the investigation. PI Order, R. 37, PageID# 1776–77. But the standard is whether they

are under the supervision of the authority conducting the underlying proceeding, not whether they are “part”, “typical”, or “interfere.”

The suspension and ban also do not fall within any of the “exceptional circumstances” for which abstention is appropriate. Because they are not part of a court proceeding, abstention is appropriate only if they are civil enforcement proceedings akin to criminal proceedings. But they lack some of the key attributes of civil enforcement proceedings identified in *Sprint*. 571 U.S. at 79. They are not “initiated to sanction the federal plaintiff[.]” *Id.* In his official correspondence, the dean claimed to act for Plaintiff’s safety as well as that of the community, which suggests that, at least as an official matter, the suspension and ban were meant as an ameliorative action rather than a sanction. The dean also imposed the suspension and ban without first giving notice and a hearing, much conducting an “investigation culminating in the filing of [formal] charges.” *Id.* at 80; *cf. Doe*, 860 F.3d at 370 (“requiring *some* level of due process” for abstention to be appropriate (emphasis added)). The suspension and ban instead have the altogether executive character of a staffing decision carried out by a manager. *See NOPSI*, 491 U.S. at 368.

Even if the suspension and ban are an ancillary proceeding for which abstention would otherwise be appropriate, Plaintiff’s opportunity to raise constitutional objections to the suspension and ban is even more glaringly foreclosed than his

opportunity to object to the investigation. That is because there is no reason to suppose that Plaintiff will be able to raise his objection to the suspension and ban *even* as part of the University president’s probable cause determination after they have come to an end. That is because the probable cause determination concerns application of future sanctions not those that have come to an end. *Habich v. City of Dearborn*, 331 F. 3d 524, 532–33 (6th Cir. 2003) (abstention inappropriate where no opportunity to raise objection in underlying proceeding).

D. The Bad Faith Exception to *Younger* Applies to Biased and Retaliatory Proceedings Undertaken without Reasonable Expectation of Success and to Enforce a Flagrantly Unconstitutional Rule

Even if *Younger* otherwise applies to the investigation, suspension, and ban, abstention is inappropriate if Plaintiff establishes “the kind of irreparable injury above and beyond that associated with the defense of a single prosecution brought in good faith, that ha[s] always been sufficient to justify federal intervention.” 401 U.S. at 48. There is no state interest in a proceeding that is undertaken in bad faith. *Cullen v. Fliegner*, 18 F. 3d 96, 104 (2d Cir. 1993); *cf. Middlesex*, 457 U.S. at 432. In deciding whether the this exception applies, courts have considered whether the state: brought the proceeding to “retaliate for or to deter constitutionally protected conduct”, *Cullen*, 18 F.3d at 104; had “no reasonable expectation” of obtaining a favorable outcome, *id.*; based its case on a “rarely utilized state law”, *Yelp Inc. v. Paxton*, 137 F. 4th 944, 955 (9th Cir. 2025); exhibited “animus” toward the

plaintiff or has pursued him “strictly ad hominem”, *Cullen*, 18 F.3d at 104; “multiplied . . . indictment[s]” by tacking on additional allegations because the first was wanting, *Netflix, Inc. v. Babin*, 88 F. 4th 1080, 1093, 1087 (5th Cir. 2023); exhibited unexplained delay in bringing charges, *id.* at 1094; and acted in other ways suggesting “bad faith or harassment.” 401 U.S. at 50. The exception also applies if the state tribunal is demonstrably biased or relies on a rule that is “flagrantly unconstitutional.” *Gibson v. Berryhill*, 411 U.S. at 577; *Doe*, 860 F. 3d at 371; *see generally* *Wichert v. Walter*, 606 F. Supp. 1516, 1521 (D.N.J. 1985).

The bad faith exception to *Younger* applies. The investigation was initiated without any “reasonable expectation” that it will lead to formal charges, much less actual discipline. At the time that the university opened the investigation, it was receiving numerous complaints about Plaintiff from what the dean described as “outside interests.” The University president then announced a hostile environment investigation. But at the time of the announcement, the University had not received complaints from any student or faculty member at the University. The only complaints were from professors at other schools who are not covered by OEO policy or Title VI because they do not anticipate accessing University resources. The only things they had complained about—the posting of the petition to a website for law faculty run by AALS and Plaintiff’s speech at conferences in Washington, DC and Hong Kong—did not involve the University community at

all. Lacking a covered complainant for a “complainant driven” process, the University had no hope that its discrimination office would investigate Plaintiff, much less conclude that there was probable cause to file formal disciplinary charges against him. In an apparent response to this problem, the University functionally removed the case from the hands of the OEO. In an apparent attempt to placate outside interests, the University hired an outside investigator with ties to an organization running a well-publicized campaign to silence pro-Palestine speech to investigate Plaintiff. The University insulated any report she might produce from scrutiny by making it privileged attorney work product and took the question whether to charge Plaintiff at the conclusion of the investigation out of the hands of the OEO director and placed it in the hand of the University president.

But there was still the problem that absent any covered complainants, there was nothing for the investigator to investigate. So the University “multiplied” the allegations. Instead of just challenging the petition, the University decided to charge plaintiff with violating obscure, rarely enforced university policies, including an IT policy prohibiting “spamming.” It also decided to challenge Plaintiff’s pro-Palestine speech at conferences even though one of those conferences had taken place more than a year before. When the Vice Provost met with Plaintiff on July 9, 2025, apparently unaware of Plaintiff’s petition, she raised Plaintiff’s conference speech but made no mention of any plans to investigate him.

Am. Compl. ¶ 55, R. 36, PageID# 1633. The University did not hire the outside investigator until “on or about” July 16, 2025. Thompson Decl. ¶ 5, R. 26-5, PageID# 1445. What changed between July 9 and July 16 is apparently that the University had become aware of Plaintiff’s posting of his petition on July 6 and was now looking for a pretext to punish him for it.

Another problem that the University faced was that plaintiff’s petition was obviously protected by the First Amendment either as speech as a private citizen or as scholarly speech. *Wichert*, 606 F. Supp. at 1522 (bad faith existed because “comments . . . were clearly and without question protected first amendment speech); *White v. Lee*, 227 F. 3d 1214, 1230 (9th Cir. 2000) (retaliation existed because First Amendment protection “was plain”). The University’s general counsel, Defendant Thro, must have known this because he discussed *Meriwether v. Hartop*, the Sixth Circuit’s opinion reaffirming protection for scholarly speech, in a recent book.⁴ 992 F. 3d at 505 (“[P]rofessors at public universities retain First Amendment protections at least when engaged in core academic functions, such as teaching and scholarship.”). They apparently hoped that once the investigation

⁴ William E. Thro & Charles J. Russo, *THE CONSTITUTION ON CAMPUS: A GUIDE TO LIBERTY AND EQUALITY IN PUBLIC HIGHER EDUCATION* 21 (Bloomsbury Jun. 2022) (stating that in *Meriwether v. Hartop* “[t]he Sixth Circuit decided that [the First Amendment applies to] a faculty member’s speech in the context of teaching and research”).

started, they might be able to uncover instances of unprotected speech by Plaintiff that could serve as the basis for bringing disciplinary charges. Throughout this litigation, counsel for the University has asked that the investigation continue because it might uncover instances of vulgar speech that is not covered by the First Amendment. *See, e.g.*, PI Resp., R. 26, PageID# 1414–15 (stating that “disrespectful, demeaning, rude, and insulting” speech is not protected and “that is why it is investigating”).

The University also acknowledged in a filing that it has no hope of success under *Meriwether*. That case reaffirmed an academic speech exception to the general rule, articulated in *Garcetti v. Ceballos*, 547 U.S. 410 (2005), that public employee speech pursuant to job duties is not protected by the First Amendment. *Meriwether*, 992 F. 3d at 505. The University stated that it does not “concede there is an academic freedom exception to *Garcetti* or, if one exists, that the parameters [sic] as broad as the Sixth Circuit believes” and suggested that it must go to the Supreme Court to overturn *Meriwether* in order to prevail. MTD, R. 23, PageID# 1290 n.63. Under *Meriwether*, covered speech still may not be unprotected if it disrupts University operations. 992 F. 3d at 509. But the absence of complaints from the community meant that the University never had a hope of meeting this burden. This has been borne out by events. Despite conducting more than 20 interviews during the summer and fall, the University called no witnesses at the

district court hearing and submitted no declarations regarding disruption.

Thompson Decl. ¶ 8, R. 26-4, PageID#1451.

The University also had no reasonable expectation that it could impose the suspension on Plaintiff pursuant to OEO policy, which requires a written risk assessment by the OEO director that the respondent is a serious threat to the health or safety of the community. If a mere call for international military action qualified as a threat, the University would need to suspend faculty and students participating in join wargames with the U.S. Army War College every spring. Am. Compl. ¶ 97, R. 36, PageID# 1648. Moreover, it was summer break and Plaintiff was not teaching. So the dean instead exercised his discretion to reassign Plaintiff. The lack of any genuine concern that Plaintiff was a safety risk is reflected in the fact that the University banned him from the law building but not the rest of campus, where vulnerable undergraduates predominate.

The investigation, suspension and ban are also retaliatory. Retaliatory motive is an element of Plaintiff's First Amendment retaliation claim against the University. PI Reply, R. 34, PageID# 1595. Plaintiff argued that the close temporal relationship between the posting of the petition and the initiation of the investigation, suspension and ban, combined with the University president's exclusive reference to the petition in his announcement of the investigation, establish retaliatory motive. *Id.* at 1595, 1599–1600. Despite having the burden of

refuting causation, the University has not contested this element at any point in the litigation. Reply Univ. Second Emerg. Mot. 3–4, Dkt. 36. The president’s public denunciation of plaintiff’s views as “repugnant” further supports an inference of retaliatory animus. The dean also articulated a retaliatory motive at the hearing, testifying that he could not “allow for an individual to operate as if nothing had happened or nothing was wrong[.]”

The record is devoid of support for the district court’s conclusion that the investigation, suspension, and ban were imposed in good faith. The district court endorsed the University’s fishing expedition when it held that there was not bad faith because the University needed to determine whether Plaintiff called for an end to Israel in the classroom. PI Order, R. 37, PageID# 1789. Neither of the University’s notices of investigation alleges any classroom speech. The University has no basis to investigate it. The district court also gave the absence of complaints from any member of the University faculty or student body the opposite of its logical significance when it held that there was no bad faith because the investigation was triggered by “external complaints.” PI Order, R. 37, PageID# 1789.

The ad hoc proceeding created by the University for Plaintiff is also “demonstrably biased.” Courts consider anything that might prevent the adjudicator from “holding the balance nice, clear, and true.” *Yamaha Motor Corp.*,

USA v. Riney, 21 F. 3d 793, 798 (8th Cir. 1993). This includes indirect financial interest and prejudgment of issues. *Id.* It is bias for a judge to have participated in the decision whether to charge a respondent. *Williams v. Pennsylvania*, 136 S.Ct. 1899, 1907 (2016). Normally, this is not a problem in University discrimination investigations. The OEO director decides probable cause and adjudication of any subsequent disciplinary charges is carried out by a separate hearing panel. But the University's ad hoc process made the University president responsible for deciding probable cause. Moreover, a few months after the investigation started, the president unilaterally rewrote University regulations to give himself sole discretion to advance a termination case to the board, thereby creating the initiator-adjudicator bias that the Court warns against. Additionally, the president's public statement that Plaintiff wishes to "destroy a people" and holds "repugnant" views reflects prejudgment of the issues.

The University appears to claim that Plaintiff's antizionist speech created a hostile environment because it violates the IHRA definition of antisemitism. First NOI, R. 19-15, PageID# 1558; Second NOI, R. 19-15, PageID## 1574. The "flagrant unconstitutionality" exception to *Younger* applies because courts around the country have held that the IHRA definition violates the First Amendment. PI Memo, R. 19-1, 206, 210–11. *See Mulholland v. Marion County Election Bd.*, 746 F. 3d 811, 818–19 (7th Cir. 2014) (holding that "flagrant unconstitutionality"

exception to *Younger* applied where agency attempted to enforce a rule that had already been adjudicated to be unconstitutional).

E. This Court Should Reach the Merits

If this Court determines that abstention is inappropriate, this Court should reach the merits of Plaintiff's motion for a preliminary injunction. Although the merits were not passed upon below, the district court held a daylong hearing that was devoted exclusively to them, and the parties fully briefed them both below and on Plaintiff's emergency motions for an injunction pending appeal in this Court. Hearing, R. 40; PI Memo, R. 19-1; PI Resp., R. 26; PI Reply, R. 34; First Emerg. Mot., Dkt. 6-1; Univ. Resp. First Emerg. Mot., Dkt. 14-1; AG Resp. First Emerg. Mot., Dkt. 15; Reply Univ. First Emerg. Mot., Dkt. 22; Reply AG First Emerg. Mot., Dkt. 17; Second Emerg. Mot., Dkt. 13-1; Univ. Resp. Second Emerg. Mot., Dkt. 29; Reply Univ. Second Emerg. Mot., Dkt. 36; *Singleton v. Wulff*, 428 U.S. 106, 120–21 (1976) (appellate courts have discretion to resolve issues not passed upon below where the proper resolution is beyond doubt and the parties have had an opportunity to be heard below).

Because Plaintiff's motion for a preliminary injunction is predicated on constitutional violations, grant of the injunction turns on the single question whether Plaintiff has a likelihood of success at trial. *Bays v. City of Fairborn*, 668

F. 3d 814, 819 (6th Cir. 2012). This Court can decide Plaintiff's likelihood of success on his First Amendment retaliation claim as a matter of law. To prevail at trial, Plaintiff must show (1) causation, (2) adverse action, and (3) protected speech. *Thaddeus-X v. Blatter*, 175 F. 3d 378, 394 (6th Cir. 1997). Defendants have not challenged Plaintiff's contention that his posting of a petition for military action on July 6, 2025 triggered the investigation, suspension, and ban. Reply Univ. Second Emerg. Mot. 3–4, Dkt. 36. They also have not challenged Plaintiff's contention that the investigation and ban were adverse actions or that the investigation, suspension, and ban count as an adverse action when considered together. *Id.* at 4–5. They dispute only the legal question whether a suspension with pay by itself can be an adverse action. *Id.*; MTD, R. 23, PageID# 1288. Protection for speech in the public university context turns on whether the professor spoke as a scholar or private citizen about a matter of public concern and, if he did, whether his speech disrupted university operations. PI Reply, R. 34, PageID# 1599. Defendants do not contest that Plaintiff spoke as a scholar or private citizen about a matter of public concern when he posted his petition. Reply Univ. Second Emerg. Mot. 6–7, Dkt. 36. They contest only the extent to which such speech is protected, particularly if it creates a hostile environment. *Id.* This is a matter of law. Finally, defendants have offered no evidence of disruption. *Id.* at 7–8. Despite having interviewed dozens of witnesses over the previous four months, they called no

witnesses at the hearing and submitted no declarations. *Id.* And the dean conceded that no student or faculty member complained about Plaintiff.

This Court can also decide Plaintiff's likelihood of success on his due process claim as a matter of law because the only issue is the legal question whether the suspension and ban deprive Plaintiff of a property interest. PI Reply, R. 34, PageID# 1604-05.

CONCLUSION

For the foregoing reasons, Plaintiff requests that the Court of Appeals reverse both the District Court's denial of Plaintiff's Motion for a Preliminary Injunction and the District Court's grant of Defendants' Motion to Abstain.

March 23, 2026

Respectfully submitted,

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TYPE-VOLUME CERTIFICATION

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), Rima Kapitan hereby certifies that this brief complies with the type-volume limitation in Rule 32(a)(7)(B) because, as counted by the Microsoft Word word count tool, this brief contains 12,967 words, excluding the parts exempted by Rule 32(a)(7)(B)(iii). 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.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Opening Brief Of Plaintiff-Appellant with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

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