

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON
CASE NO. 5:25-cv-00424-BJB

RAMSI A. WOODCOCK

PLAINTIFF

v.

ELI CAPILOUTO, *et al.*

DEFENDANTS

MOTION FOR JUDGMENT ON THE PLEADINGS

The University of Kentucky Officials—President Eli Capilouto, Provost Robert DiPaola, General Counsel William Thro, and Former Dean of the College of Law James Duff¹—move the Court to grant them judgment on the pleadings under Fed. R. Civ. P. 12(c).² Although Gregory F. Van Tatenhove has since been appointed Dean of the College of Law, and has been substituted as a party to the extent claims against the Dean were made in his official capacity, the Amended Complaint does not expressly reference Dean Van Tatenhove. Nonetheless, this Motion includes and is also made on behalf of the Dean in his official capacity. The University Officials ask this Court to address this motion before addressing Woodcock’s motion for a preliminary injunction or any other motions filed by Woodcock.³

¹ In addition to the University Officials, Woodcock sued U.S. Secretary of Education McMahon, alleging the federal government’s definition of antisemitism is unconstitutional, and Kentucky Attorney General Coleman, alleging a legislative act requiring the University to use a particular definition of antisemitism is unconstitutional.

² “The sovereign immunity guaranteed by [the Eleventh] Amendment deprives federal courts of subject-matter jurisdiction when a citizen sues his own State.” *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1046 (6th Cir. 2015).

³ Judge Gillman explicitly recognized this Court’s ability to defer ruling on the preliminary injunction motion until after the completion of the investigation and any decision on the

To explain in more detail, the University Officials⁴ moved to dismiss the original Complaint⁵ and Woodcock moved for a preliminary injunction.⁶ On December 19, 2025, this Court held a full day hearing on Woodcock's motion for a preliminary injunction. Ultimately, this Court declined to rule on the preliminary injunction motion, but abstained under *Younger*.⁷ Hours before this Court issued its opinion, Woodcock filed his Amended Complaint.

Woodcock appealed this Court's decision to abstain to the Sixth Circuit. At the same time, he asked this Court to issue an injunction pending appeal. When this Court declined his request, he made a similar request to the Sixth Circuit, which also denied his request.⁸ The Sixth Circuit reversed this Court's conclusion that *Younger*

initiation of discipline. After the Sixth Circuit held that *Younger* abstention did not apply and remanded for further proceedings, Woodcock interpreted the decision as requiring this Court to immediately hear his preliminary injunction motion. He moved the Sixth Circuit for immediate issuance of the mandate and advised this Court that he would file an emergency motion for consideration of his preliminary injunction with a decision no later than September 11, 2026. [D.E. 57]. Concerned that the Sixth Circuit meant for this Court to immediately address his preliminary injunction, the University Officials petitioned for rehearing on the sole issue of clarifying this Court's discretion on remand. Although the Sixth Circuit denied the petition for rehearing, Judge Gillman wrote a concurrence "to alleviate the concern expressed by the University that the panel's opinion in any way limits the sound discretion of the district court regarding how to proceed on remand." [D.E. 58]. Emphasizing the Sixth Circuit's opinion was confined to the *Younger* issue, Judge Gillman said the opinion does not mandate "what should happen upon remand; i.e., whether the district court should immediately proceed with a ruling on Woodcock's preliminary-injunction motion, or *whether it should first consider the University's motion to dismiss, or whether it should stay proceedings to allow for the University to complete its investigation.*" *Id.* (emphasis added).

⁴ Woodcock originally named the University itself as a defendant. After the University Officials pointed out that the University is immune, Woodcock dropped the University as a defendant in his Amended Complaint.

⁵ University Defendants' Motion to Dismiss [D.E. 23].

⁶ Plaintiff's Motion for Preliminary Injunction [D.E. 19].

⁷ Opinion and Order [D.E. 37].

⁸ Order denying motion for injunction pending appeal and leave to file amicus, No. 26-5057 (Feb. 20, 2026) [D.E. 37].

applied. As the mandate has now issued from the Sixth Circuit, the University Officials must respond to the Amended Complaint.⁹

INTRODUCTION

Ramsi Woodcock is an anti-trust scholar and the Evertt H. Metcalf, Jr. Professor of Law at the University of Kentucky's Rosenberg College of Law.¹⁰ Woodcock publicly rejects the foundational idea of Israel—"the right of the Jewish people to national rebirth in its own country" and "to be masters of their own fate, like all other nations, in their own sovereign State."¹¹ Woodcock goes beyond this to "explicitly argue for the violent destruction of Israel and laying out a plan for a global war against the Jewish State."¹² In essence, he publicly urges for the annihilation of a sovereign nation and the Jewish people who constitute it.¹³ Speech calling for a

⁹ The University's Motion largely tracks the previously filed motion to dismiss the original Complaint and addresses the newly alleged claims.

¹⁰ Prior to July 1, 2026, Woodcock served as the Wyatt Tarrant & Combs Professor of Law. However, because of Woodcock's antisemitic views, the law firm of Wyatt, Tarrant and Combs (now known as Bricker Graydon Wyatt) expressed a desire not to be associated with him. The University accommodated that request. Woodcock was appointed to a different endowed professorship at the same salary.

¹¹ DECLARATION OF ISRAEL'S INDEPENDENCE (May 14, 1948), archived at THE AVALON PROJECT, Yale Law School, <https://perma.cc/US4D-5PMN>.

¹² Luke Tress, *US Professor Sues University for Probing His Call for Global War to "End Israel"* THE TIMES OF ISRAEL (Nov. 15, 2025) (citation modified), (<https://perma.cc/9Z45-G5GE>).

¹³ Ramsi Woodcock, *We Need An International Coalition to Declare War on Israel Right Now*, Antizionist Legal Studies Movement (Dec. 10, 2024), <https://perma.cc/44KH-9SVC> ("The lesson is clear: to stop the Palestinian Genocide, the world must go to war against Israel."); Ramsi Woodcock (@RamsiWoodcock), X (Sept. 27, 2024), <https://perma.cc/SYH6-BKHL> ("The destruction of Israel is a global moral imperative for our age. . . . Anyone not calling for it is a racist."); *Petition for Military Action Against Israel*, Antizionist Legal Studies Movement, <https://perma.cc/YWV3-WSCD> ("We demand that every country in the world make war on Israel immediately and until such time as Israel has submitted permanently and unconditionally to the government of Palestine everywhere from the Jordan River to the Mediterranean Sea.").

second holocaust is antisemitic under the definition used by both the federal government¹⁴ and the Commonwealth of Kentucky.¹⁵

Woodcock has spoken on this topic by creating a website to promote his Petition for Military Action Against Israel, usurping an academic conference by interjecting opinions wholly unrelated to formal panel discussion, posting to the American Association of Law Schools and internal faculty listservs, and commenting at a public event while serving as Chair of the law school's Committee on Community Engagement.

Of course, antisemitic "speech cannot be restricted simply because it is upsetting or arouses contempt."¹⁶ "The hallmark of the protection of free speech is to allow free trade in ideas—even ideas that the overwhelming majority of people might find distasteful or discomforting."¹⁷ However, Woodcock's free speech rights are not absolute.

There are at least *three* situations in which the University of Kentucky could take action because of Woodcock's expression. First, if Woodcock is speaking as a University of Kentucky employee or using the University's resources to advance his speech, it is not constitutionally protected.¹⁸ Second, if his expression amounts to harassment, as defined by the Supreme Court,¹⁹ then it is not constitutionally

¹⁴ Executive Order 13,899 (Combating Anti-Semitism), 84 Fed. Reg. 68779 (Dec. 11, 2019), <https://perma.cc/XFY3-3EVW>.

¹⁵ Senate Joint Resolution 55, 2025 Ky. Acts Ch. 157.

¹⁶ *Snyder v. Phelps*, 562 U.S. 443, 458 (2011).

¹⁷ *Virginia v. Black*, 538 U.S. 343, 358 (2003).

¹⁸ *Garcetti v. Cabellos*, 547 U.S. 410, 417 (2006).

¹⁹ *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 650 (1999).

protected.²⁰ Third, even if Woodcock was speaking as a private citizen and even if his speech did not constitute harassment, it is necessary to “strike a balance between the interests of” Woodcock “as a citizen, in commenting upon matters of public concern” and the interest of the University, “as an employer, in promoting the efficiency of the public services it performs through its employees.”²¹

Because antisemitic statements can violate Title VI²² and because the University cannot ignore a possible Title VI violation,²³ the University began to investigate Woodcock’s actions.²⁴ As it routinely does, the University reassigned Woodcock to other duties while the investigation is pending, but continues to pay him his full salary.²⁵ When informing him of the investigation, the University emphasized it “is not investigating any viewpoints or speech expressed in [Woodcock’s] personal capacity,” and that the University is “deeply committed to safeguarding academic freedom, which is of transcendent value’ for the entire institution.”²⁶ The University also assured it “reviews reports objectively and does not advocate for either party”

²⁰ See *DeJohn v. Temple University*, 537 F.3d 301, 317–18 (3rd Cir. 2008).

²¹ *Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205, Will Cnty.*, 391 U.S. 563, 568 (1968) (citation modified).

²² Exec. Order No. 13,899 (Combating Anti-Semitism), 84 Fed. 68,679 (Dec. 11, 2019).

²³ Like all recipients of federal funds, when the University becomes aware of a possible violation of Title VI, it must respond with something other than deliberate indifference. See *Malick v. Croswell-Lexington District Schools*, 148 F.4th 855, 862 (6th Cir. 2025); *Doe v. Diocese of Covington*, 2025 WL 1691188 (E.D. Ky. June 16, 2025, Reeves. J.).

²⁴ As individuals who are “accessing university libraries or other resources, or attending campus tours, sporting events, or other activities” can bring a Title IX claim, *Snyder-Hill v. Ohio State Univ.*, 48 F.4th 686, 708 (6th Cir. 2022), and Title IX and Title VI are interpreted in the same way, *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 258259 (2009), so it follows that anyone who interacts with the University or its employees can sue under Title VI. Moreover, in recent months, the federal government has investigated many institutions for alleged Title VI violations.

²⁵ The Sixth Circuit held the University’s practice of reassigning a professor while an investigation is pending does not violate a professor’s rights. *Cunningham v. Blackwell*, 41 F.4th 530, 536–39 (6th Cir. 2022).

²⁶ See Exhibit 1 - July 22, 2025, Notice of Investigation.

and he “could submit statements, information, or supporting evidence through the course of this investigation.”²⁷ Finally, the University also provided him with a detailed description of the process that would be used in the investigation.²⁸

The University Notice of Investigation,²⁹ and subsequent Amended Notice of Investigation,³⁰ which define the scope of the inquiry, have focused on whether: (1) he used university resources to develop and promote his Petition for Military Action Against Israel; (2) seizing control of a panel discussion at two academic conferences to present his views; (3) used his university email address to send spam to the American Association of Law Schools listserv and internal faculty listserv setting out antisemitic views; (4) while serving as Chair of the law school’s Committee on Community Engagement, made antisemitic comments at a public event; and (5) the alleged violation of various university policies.³¹

The investigation *may* conclude that Professor Woodcock’s speech is fully protected and that he has not violated any university policies.³² If so, the Dean of the law school likely will return him to teaching duties.³³ Alternatively, it may conclude his speech is not protected and he has violated university policies. If the University

²⁷ *Id.*

²⁸ See Exhibit 2 August 25, 2025, correspondence from Farnaz Farkish Thompson to Joe Childers, counsel for Ramsi Woodcock, sent after the initial meeting with Professor Woodcock.

²⁹ See Exhibit 1 - Notice of Investigation.

³⁰ See Exhibit 3 - Amended Notice of Investigation.

³¹ See Exhibit 1 - Notice of Investigation; Exhibit 3 - Amended Notice of Investigation.

³² The University’s investigator is a partner in an international law firm and a former Deputy General Counsel at the U.S. Department of Education.

³³ The Dean of a College has discretion to determine who will teach and what they will teach.

concludes the latter, then Woodcock will receive due process in accordance with the University's Administrative Regulations³⁴ and Kentucky law.³⁵

Yet Woodcock does not want the University to finish its investigation³⁶ or possibly initiate disciplinary proceedings.³⁷ Instead, in November 2025, he filed this suit seeking to stop the Title VI investigation, challenge the constitutionality of a federal executive order and a state legislative act, and recover damages from the University Officials. The University moved to dismiss and to abstain under *Younger*. Woodcock moved for a preliminary injunction.

Although Judge Reeves held a full day preliminary injunction hearing in December 2025, this Court ultimately decided that *Younger* abstention applied.³⁸

³⁴ *University of Kentucky Administrative Regulation-Due Process (Interim)*, <https://perma.cc/B3BS-VR7B>.

³⁵ KRS § 164.230.

³⁶ The Investigation is in its final stages. Currently, Woodcock has an opportunity to review the evidence and raise follow-up questions and concerns. The Investigator anticipates submitting a final report by November 2, 2026.

³⁷ The investigation is incomplete *solely* because of Woodcock's actions. Initially, Woodcock objected to the investigator because she is a devout Christian, a Republican, and played a minor role in the Heritage Foundation's Project 2025. See Exhibit 4 Joe Childers Aug. 22, 2025 correspondence to Farnaz Thompson. Although the University asked Woodcock to return a University-owned laptop computer, he delayed doing so for several weeks and threatened litigation. See Exhibit 5, collectively: Richard Getty Aug. 20, 2025 correspondence to William Thro; William Thro Aug. 25, 2025 correspondence to Richard Getty; Richard Getty Aug. 27, 2025 correspondence to Bryan Beauman; Bryan Beauman Aug. 29 correspondence to Richard Getty. When the investigator asked him to answer written questions on December 1, 2025, he declined to do so until after this Court on his Motion for a Preliminary Injunction and then until after the Sixth Circuit ruled on his appeal. See Exhibit 6 December 1-4, 2025, email chain and correspondence. After the Sixth Circuit issued its decision on August 24, 2026, he asked to delay answering the questions until after this Court ruled on his preliminary injunction hearing. See Exhibit 7, email correspondence. Because the Investigator refused to allow further delays, he finally responded to the questions in the early morning hours of September 9, 2026.

³⁸ *Woodcock v. University of Kentucky*, 820 F. Supp. 3rd 555 (E.D. Ky.), *further proceedings*, 2026 WL 184253 (E.D. Ky.), *injunction pending appeal denied*, (6th Cir.), *petition for initial hearing en banc denied*. (6th Cir.), *rev'd and remanded*, --- F.4th ---, 2026 WL 2474872 (6th Cir.), *petition for rehearing denied* (6th Cir. 2026).

Woodcock's preliminary injunction motion remains pending.³⁹ Woodcock immediately appealed.⁴⁰

While the Sixth Circuit was considering his appeal, Woodcock then filed suit in the Fayette Circuit Court in July 2026 raising substantively identical claims against the same parties. As in the federal court, the substance of his claim is that all of his conduct was constitutionally protected and the University could not investigate him. Nevertheless, Woodcock informed the Sixth Circuit that the *sole* reason for this litigation was to preserve the statute of limitations and that he *intended to stay the state court proceeding pending the outcome of the federal case*.

On August 24, 2026, the Sixth Circuit reversed this Court.⁴¹ Because formal charges had not been filed, *Younger* did not apply.⁴² The appellate court expressed no opinion on the merits of Woodcock's claims. On August 26, 2026, Woodcock asked the Sixth Circuit to issue the mandate immediately so that this Court could hear his motion for a preliminary injunction.⁴³ He also informed this Court that it should expect an emergency motion for a preliminary injunction and demanded a ruling by September 11.⁴⁴

³⁹ It is fully briefed and this Court has the benefit of the transcript of the full day hearing before Judge Reeves.

⁴⁰ Woodcock also sought an injunction pending appeal in the district court and, after it was denied, in the Sixth Circuit. After the Sixth Circuit denied his injunction, he sought initial en banc review, which was also denied.

⁴¹ *Woodcock v. University of Kentucky*, --- F.4th ---, 2026 WL 2474872 (6th Cir. 2026).

⁴² *Id.* at *2-3.

⁴³ Plaintiff's Emergency Motion for Immediate Issuance of Mandate, No. 26-5057 (Aug. 26, 2026) [D.E. 100].

⁴⁴ [D.E. 57].

When it became apparent that the Sixth Circuit was not going to issue the mandate early, Woodcock decided that state court was the better option. He filed a substantively identical complaint in the Franklin Circuit Court. The only difference is that his claims are based on the Kentucky Constitution rather than the United States Constitution. The Supreme Court of Kentucky generally interprets the Kentucky free speech provisions as being coextensive with the federal provisions.

But he cannot pursue substantively identical claims in state court. Kentucky's exclusive concurrent jurisdiction doctrine "essentially prevents the same parties from litigating the same issues in two courts by giving priority to the court that first properly acquired jurisdiction over the parties and their dispute."⁴⁵ In other words, once a plaintiff files suit in one court and that court has jurisdiction, the plaintiff cannot file a substantively identical suit in another court. The court where the plaintiff first filed has exclusive concurrent jurisdiction. The second court cannot proceed. So, the state court must stay proceedings.⁴⁶

On January 7, 2025, the day before this Court granted the motion to abstain, Woodcock filed an Amended Complaint. Because this Court lacked jurisdiction after its ruling, the University Officials' time to respond was tolled until jurisdiction was returned to this Court.⁴⁷ Now that the Sixth Circuit has issued the mandate, the University Officials respond.⁴⁸

⁴⁵ *Beshear v. Ridgeway Props., LLC*, 647 S.W.3d 170, 177 (Ky. 2022).

⁴⁶ The University has advised the Franklin Circuit Court of the doctrine.

⁴⁷ [D.E. 36].

⁴⁸ The University Officials are filing their Answer to the Amended Complaint contemporaneously with this Motion for Judgment on the pleadings.

Like his original Complaint, Woodcock seeks to terminate the University's investigation and return him teaching.⁴⁹ None of his claims have merit. The University Officials are entitled to judgment on the pleadings.

STANDARD OF REVIEW

A party may move for judgment on the pleadings after pleadings are closed but early enough not to delay trial.⁵⁰ Courts apply the same standard governing a Rule 12(b)(6) motion to dismiss to a Rule 12(c) motion for judgment on the pleadings.⁵¹ To survive a motion to dismiss, a complaint must “contain sufficient factual matter, accepted as true, ‘to state a claim to relief that is plausible on its face.’”⁵² Courts must accept as true all well-pleaded factual allegations but need not accept as true legal conclusions or unwarranted factual inferences.⁵³ Only “well-pleaded factual allegations” which “plausibly give rise to an entitlement to relief” will defeat a Rule 12(c) motion.⁵⁴

ARGUMENT

I. Because the *Ex parte Young* doctrine does not apply, the injunctive claims must be dismissed.

Under the *Ex parte Young* doctrine,⁵⁵ “when a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the State

⁴⁹ Woodcock believes the College of Law should allow him to begin teaching classes in the middle of the semester. Putting aside the obvious disruption for students from switching instructors in the middle of the semester, there is no right to teach—much less teach a particular class.

⁵⁰ Fed. R. Civ. P. 12(c).

⁵¹ *Ross, Brovins, Oehmke, P.C. v. Lexis Nexis Grp.*, 463 F.3d 478, 487 (6th Cir. 2006).

⁵² *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)).

⁵³ *Id.* at 679-80; *Twombly*, 550 U.S. at 544.

⁵⁴ *See Iqbal*, 556 U.S. at 678.

⁵⁵ *Ex parte Young*, 209 U.S. 123 (1908).

for sovereign-immunity purposes.”⁵⁶ But that is the extent of the doctrine. It applies only when the “complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.”⁵⁷ Unless there is an on-going violation of federal law, this Court may not order the University to stop its investigation, refrain from initiating disciplinary proceedings, and allow him to return to the classroom. In other words, the key to invoking *Ex parte Young* is to state a claim of an on-going violation of federal law.⁵⁸

Yet, Woodcock’s Amended Complaint fails to meet even this minimal standard.⁵⁹ As explained in more detail below, there is no on-going violation of federal law. Quite simply, federal law does not require the University to refrain from an investigation of alleged misconduct. To the contrary, federal law requires the University to investigate possible Title VI violations. Similarly, federal law does not preclude the University from suspending or reassigning a faculty member while it investigates.⁶⁰

II. Sovereign immunity bars all claims against the University Officials in their official capacities.

Just as sovereign immunity bars all claims against the University as explained in the University’s motion to dismiss, it also bars all claims against the University

⁵⁶ *Virginia Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 255 (2011).

⁵⁷ *Verizon Md. Inc. v. Public Serv. Comm’f of Md.*, 535 U.S. 635, 645 (2002).

⁵⁸ *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984) (claiming a violation of state law is insufficient to invoke *Ex parte Young*).

⁵⁹ Because the University of Kentucky is not a state official, *Kaplan v. University of Louisville*, 10 F.4th 569, 577 (6th Cir. 2021), Professor Woodcock can only invoke the *Ex parte Young* doctrine against the University Officials in their official capacities.

⁶⁰ *Kaplan*, 10 F.4th at 581, 583-84.

Officials in their official capacities.⁶¹ As the Sixth Circuit explained, an official capacity claim “is not a suit against the official but rather is a suit against the official’s office. As such, it is no different from a suit against the State itself.”⁶² Thus, the University Officials in their official capacity is co-extensive with the University itself. Because the University is immune, the University Officials are immune.

III. Qualified immunity bars all damages claims against the University Officials in their individual capacities.

All of the claims against the University Officials in their individual capacities “are subject to the twin pillars of a qualified immunity defense: (1) that the administrators violated the professors’ constitutional rights and (2) that they violated clearly established law in doing so.”⁶³ Unless it is “beyond debate” that the University Officials acted unconstitutionally, they receive qualified immunity.⁶⁴ As there is no “rigid order of battle,” this Court may resolve the qualified immunity under either the first or second prong.⁶⁵

As explained above, Professor Woodcock cannot establish that the University Officials violated his constitutional rights. Thus, the University Officials satisfy the first prong. However, for purposes of argument only, this Court may assume that there is a constitutional violation and proceed to the second prong analysis.⁶⁶ “The clearly established inquiry does not turn on what happened in the case; it turns on

⁶¹ See *McCormick v. Miami Univ.*, 693 F.3d 654, 662 (6th Cir. 2012).

⁶² *Wolfel v. Morris*, 972 F.2d 712, 719 (6th Cir. 1992).

⁶³ *Cunningham*, 41 F.4th at 536.

⁶⁴ *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).

⁶⁵ *Pearson v. Callahan*, 555 U.S. 223, 234 (2009).

⁶⁶ See *Cunningham*, 41 F.4th at 537, 540, 542–43 (assuming without deciding that there was a constitutional violation and then proceeding to determine the law was not clearly established).

the existing law in the area.”⁶⁷ Woodcock cannot claim that there are factual disputes which preclude the qualified immunity defense and he must identify a case from the Supreme Court or the Sixth Circuit “with enough overlap to place the constitutional question *beyond dispute*.”⁶⁸

Woodcock cannot meet this burden. He claims federal law prohibits the University from investigating, but federal law requires the University to investigate possible Title VI violations. He asserts federal law prevents the University from reassigning him while it investigates, but the Sixth Circuit has permitted suspension or reassignment of faculty members during investigations.⁶⁹ He says that he has a right to teach classes in the law school, but the Sixth Circuit says otherwise.⁷⁰ He argues all his speech is protected by the First Amendment, but speech as an employee is not protected.⁷¹ Nor is speech that amounts to Title VI harassment.⁷² Even if he was speaking as a private citizen on a matter of public concern, the University could still react to his speech in some circumstances.⁷³

IV. Woodcock fails to state a First Amendment retaliation claim.

As the Sixth Circuit has explained, “a First Amendment retaliation claim has the following three elements: (1) the plaintiff engaged in [constitutionally protected speech]; (2) an adverse action was taken against the plaintiff that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) the

⁶⁷ *Id.* at 536.

⁶⁸ *Id.* (emphasis added).

⁶⁹ *Kaplan*, 10 F.4th at 581, 583–84.

⁷⁰ *Parate*, 868 F.3d at 832.

⁷¹ *Garcetti*, 547 U.S. at 417.

⁷² *See DeJohn*, 537 F.3d at 301.

⁷³ *Pickering*, 391 U.S. at 568 (citation modified).

adverse action was motivated at least in part by the plaintiff's protected conduct."⁷⁴ Moreover, a plaintiff must prove "the exercise of the protected right was a substantial or motivating factor" in the defendant's alleged retaliation, and if they do, then the defendant bears the burden of showing the same action would have been taken absent the protected conduct.⁷⁵ As explained below, Professor Woodcock has not suffered an adverse employment action and his speech is not constitutionally protected.

A. Professor Woodcock Has Not Experienced An Adverse Employment Action.

An adverse employment action "must be more disruptive than a mere inconvenience or an alteration of job responsibilities."⁷⁶ Instead, it may be shown by "a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation."⁷⁷ As the Sixth Circuit observed, "neither an internal investigation into suspected wrongdoing by an employee nor that employee's placement on paid administrative leave pending the outcome of such an investigation constitutes an adverse employment action."⁷⁸ In most contexts, "the act of investigating possible employee misconduct is not an adverse employment action."⁷⁹

⁷⁴ *Myers v. City of Centerville*, 41 F.4th 746, 759-760 (6th Cir. 2022).

⁷⁵ *Smith v. Campbell*, 250 F.3d 1032, 1037 (6th Cir. 2001).

⁷⁶ *Arnold v. City of Columbus*, 515 F. App'x 524, 531 (6th Cir. 2013).

⁷⁷ *Id.*

⁷⁸ *Dendinger v. Ohio*, 207 Fed. Appx. 521, 527 (6th Cir. 2006).

⁷⁹ *Kuhn v. Washtenaw Cnty.*, 709 F.3d 612, 625 (6th Cir. 2013) (citation modified).

To be sure, in the First Amendment retaliation context, courts focus on whether “an adverse action was taken against the plaintiff that *would deter a person of ordinary firmness from continuing to engage in that conduct.*”⁸⁰ Yet it is still a standard a Complaint must satisfy, and the “benefits of such a standard are that it is an objective inquiry, . . . and capable of screening the most trivial of actions from constitutional cognizance.” Thus, this threshold is intended to weed out “inconsequential actions.”⁸¹ Section 1983 “requires injury and it would trivialize the First Amendment to hold that harassment for exercising the right of free speech was always actionable no matter how unlikely to deter a person of ordinary firmness from that exercise.”⁸²

Woodcock alleges the type of “genuinely ‘inconsequential’ official actions” that should *not* go to the jury.⁸³ He remains a tenured full professor. His salary is the same as before the University began investigating. The only thing that has changed is that he has been reassigned from teaching duties to other duties while the University investigates. As the Sixth Circuit observed, “a suspension *with* pay and full benefits pending a timely investigation into suspected wrongdoing is not an adverse employment action.”⁸⁴ The same result applies here.

Moreover, if simply reassigning an employee to other duties with full pay and benefits while investigating alleged misconduct is an adverse employment action,

⁸⁰ *Thaddeus-X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999).

⁸¹ *Id.* at 398.

⁸² *Id.* at 397.

⁸³ *Josephson v. Ganzel*, 115 F.4th 771, 787 (6th Cir. 2024).

⁸⁴ *Kuhn*, 709 F.3d at 625.

then the University's efforts to fulfill its federal law obligations will be undermined. If the University receives allegations of sex discrimination, race discrimination, financial impropriety, or endangering patients, the University must be able to reassign or even suspend employees while the investigation is on-going.⁸⁵

B. Woodcock's speech is not protected by the First Amendment.

Even if the initiation of an investigation constitutes an adverse employment action, when Professor Woodcock speaks as a government employee, when his speech amounts to harassment under Title VI, or when the University's interest in efficiency of operations outweighs his right to speak, the University may take action.

1. When Professor Woodcock spoke as a University employee or used University resources, his speech is not constitutionally protected.

As *Garcetti v. Ceballos* makes clear, when a public university faculty member speaks as a university employee, his speech is not constitutionally protected.⁸⁶ Indeed, there is no constitutional protection when employees "make statements pursuant to their official duties."⁸⁷ But *Garcetti* also recognized that "expression related to academic scholarship or classroom instruction" may implicate "additional constitutional interests that are not fully accounted for by this Court's customary employee-speech jurisprudence."⁸⁸ Nevertheless, the Court declined to "decide

⁸⁵ When the University limited clinical assignments away from two dentistry professors while investigating financial impropriety, the Sixth Circuit found no violation of constitutional rights. *Cunningham*, 41 F.4th at 536–39.

⁸⁶ *Garcetti*, 547 U.S. at 417.

⁸⁷ *Id.* at 421.

⁸⁸ *Id.* at 425.

whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching.”⁸⁹

To be sure, in *Meriwether v. Hartop*, this Court created a narrow academic freedom exception to *Garcetti*.⁹⁰ In *Josephson v. Ganzel*, this academic freedom exception to *Garcetti* was extended to speech at academic conferences *involving the faculty member’s expertise*.⁹¹ So, in a limited context, public university faculty have greater rights than other university employees.

But the Sixth Circuit’s academic freedom exception does not extend to every job responsibility of the faculty member’s job.⁹² Nor does it extend to a faculty member’s complaints about employment practices.⁹³ While not explicitly addressing academic freedom, the Sixth Circuit has recognized a public university can change a faculty members job duties⁹⁴ and remove a faculty member from an administrative post.⁹⁵

Other Circuits, when adopting their own academic freedom exceptions to *Garcetti*, have emphasized the narrowness of the exception. The Fourth Circuit held the exception does not extend to internal discussions among faculty or a faculty member’s email with other faculty.⁹⁶ The Eleventh Circuit, while emphasizing the

⁸⁹ *Id.*

⁹⁰ *Meriwether v. Hartop*, 992 F.3d 492, 507 (6th Cir. 2021).

⁹¹ *Josephson*, 115 F.4th at 786.

⁹² *Savage v. Gee*, 665 F.3d 732, 738–39 (6th Cir. 2012).

⁹³ *Kyrkanides v. Kluemper*, 2026 WL 766491 (E.D. Ky. Mar. 18, 2026), *appeal docketed*, No-26-5336 (6th Cir).

⁹⁴ *Cunningham*, 41 F.4th at 537.

⁹⁵ *Crosby v. University of Kentucky*, 863 F.3d 545, 554 (6th Cir. 2017).

⁹⁶ *See Porter v. Bd. of Trs. of N.C. State Univ.*, 72 F.4th 573, 582–84 (4th Cir. 2023), *cert. denied*, 144 S. Ct. 693 (2024).

academic freedom of faculty within the classroom,⁹⁷ also recognized a public university may exercise “editorial control” over even classroom speech “so long as [the university’s] actions are reasonably related to legitimate pedagogical concerns.”⁹⁸ In fact, a public university is not “powerless” to “exclude” classroom speech “that veers outside of well-understood parameters—personal tangents irrelevant to the subject matter, conspiracy theories, and the like.”⁹⁹ Put differently, “university administrators (and perhaps other government officials too) have a legitimate interest in ensuring that a professor’s in-class speech is both ‘germane’ to the curriculum and ‘professionally competent.’”¹⁰⁰

In sum, the judicially created academic freedom exception to *Garcetti* protects professionally competent speech in the classroom that is germane to the subject of the class. It also applies to professionally competent scholarship, including an academic conference presentation, which reflect the faculty members’ expertise. But it does not extend to other aspects of a professor’s job or to rants concerning tangential matters.

While this Court must apply the Sixth Circuit’s faculty academic freedom exception to *Garcetti*, the fact remains the Supreme Court has never recognized such an exception. Neither the University nor the University Officials concede there is a

⁹⁷ *Pernell v. Florida Board of Governors of the State University*, 181 F.4th 1135, 1159 (11th Cir. 2026).

⁹⁸ *Id.* (citation omitted).

⁹⁹ *Id.* at 1160.

¹⁰⁰ *Id.* (citation omitted).

faculty academic freedom exception to *Garcetti* or, if one exists, that the parameters are as broad as this Sixth Circuit may believe. This is so for three reasons.

First, “fitting academic freedom within the rubric of the First Amendment,” is in many ways an “extremely difficult challenge.”¹⁰¹ The term ‘academic freedom,’ . . . is nowhere mentioned in the text of the First Amendment.”¹⁰² “It is inconceivable that those who debated and ratified the First Amendment thought about academic freedom.”¹⁰³

Second, in constitutional law terms, “academic freedom belongs to the university,” not the faculty either collectively or individually.¹⁰⁴ “Significantly, the Court has never recognized that professors possess a First Amendment right of academic freedom to determine for themselves the content of their courses and scholarship, despite opportunities to do so.”¹⁰⁵ Instead, “the Court has focused its discussions of academic freedom *solely on issues of institutional autonomy*.”¹⁰⁶ Indeed, “the four essential freedoms that constitute academic freedom” are all centered on the institution.¹⁰⁷

¹⁰¹ David M. Rabban, *Functional Analysis of “Individual” and “Institutional” Academic Freedom Under the First Amendment*, 53 LAW & CONTEMP. PROBS. 227, 237 (1990) (citation modified). Professor Rabban, an endowed professor at the University of Texas, is one of the leading experts on academic freedom.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *McDonald*, 2026 WL 2349271, at *10 (Easterbrook, J concurring).

¹⁰⁵ *Urofsky v. Gilmore*, 216 F.3d 401, 414, (4th Cir. 2000) (*en banc*).

¹⁰⁶ *Id.* at 415 (emphasis added).

¹⁰⁷ *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 312 (1978) (Powell, J., announcing the judgment of the Court).

Third, recognizing individual faculty academic freedom contradicts standard constitutional doctrine of neutrality.¹⁰⁸ Initially, “it asks the courts to treat publicly employed academics differently from all other classes of public employees.”¹⁰⁹ Additionally, “because of this difference in the treatment of speakers, individual academic freedom inherently also requires the courts to designate scholarly and classroom speech as uniquely valuable,” as compared to speech of other public employees.

Of course, while disputing the existence of faculty academic freedom as a matter of constitutional law, the University and University Officials reaffirm the importance of academic freedom as a matter of policy. Indeed, the University’s Governing Regulations guarantee academic freedom to all members of the University Community.¹¹⁰

Applying these principles, Woodcock’s speech is outside the Sixth Circuit’s academic freedom exception to *Garcetti*.¹¹¹ When he seized the conference stage at an

¹⁰⁸ Scott R. Bauries, *Individual Academic Freedom: An Ordinary Concern of the First Amendment*, 83 Miss. L.J. 677, 729–30 (2014). Professor Bauries, who now holds an endowed law professorship at the University of South Carolina, was previously at the University of Kentucky.

¹⁰⁹ *Id.* at 731.

¹¹⁰ UNIVERSITY OF KENTUCKY GOVERNING REGULATION I—DECLARATION PRINCIPLES at C.

¹¹¹ Although this Court must apply the Sixth Circuit’s academic freedom exception to *Garcetti*, the fact remains the Supreme Court has never recognized such an exception. As recently as August, a federal district court rejected an academic freedom exception to *Garcetti*. *Simon v. Ivey*, 2025 WL 2345845, at *57–59 (N.D. Ala 2025). Neither the University nor the University Officials concede there is an academic freedom exception to *Garcetti* or, if one exists, that the parameters as broad as the Sixth Circuit believes. Of course, while disputing the existence of an academic freedom exception as a matter of constitutional law, the University and University Officials reaffirm the importance of academic freedom as a part of policy. Indeed, the University’s Governing Regulations guarantee academic freedom to all members of the University Community. *University of Kentucky Governing Regulation I—Declaration Principles* § C, <https://regs.uky.edu/sites/default/files/2024-06/gr-i-declaration-of-principles.pdf>.

anti-trust law conference and again at a law and technology conference to offer his opinion on Israel, *he was not speaking on his expertise* nor even on the topic of the seminar. Woodcock appeared at those conferences in his capacity as a University law professor and there is no suggestion he was speaking as a private citizen.¹¹² He was simply ranting at the University's expense.¹¹³

Similarly, when he used his university email account to spam both the American Association of Law Schools and internal faculty listservs with his views, he was acting as an employee not as private citizen.¹¹⁴ Indeed, he could not accomplish this objective using a private email account. In the same vein, to the extent he used a university owned computer to develop and spread his Petition for Military Action Against Israel he was acting as an employee, not a private citizen. Finally, when, as Chair of the law school's Committee on Community Engagement, he made comments at a public event, he was acting as an employee.¹¹⁵

In sum, there are numerous instances where Woodcock spoke as an employee or used university resources to advance his message. Under *Garcetti*, those are not constitutionally protected.

¹¹² In contrast, the faculty member in *Josephson* made it clear that that he was speaking in his individual capacity and not on behalf of his employer. *Josephson*, 115 F. 4th at 784.

¹¹³ The University's payment of Professor Woodcock's expenses is another distinguishing feature from *Josephson*. There, the institution did not pay for the faculty member to attend the conference. *Cf. Josephson*, 115 F.4th at 784.

¹¹⁴ *See Porter*, 72 F.4th at 582–84.

¹¹⁵ Professor Woodcock was appointed to be Chair of the Committee on Community Engagement by the previous Dean. This role was part of his duties.

2. If Woodcock’s speech amounts to harassment, it is not constitutionally protected.

If this Court concludes Woodcock spoke as a private citizen when he seized an academic conference stage and used the university email system to advance his views, then this Court must evaluate whether the employee’s speech involves a matter of public concern. Speech involves matters of public concern “when it can ‘be fairly considered as relating to any matter of political, social, or other concern to the community,’ or when it ‘is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.’”¹¹⁶

In some circumstances, however, private speech on a matter of public concern may still be outside of First Amendment protection. For example, if speech on a matter of public concern amounts to a true threat, then it is not constitutionally protected.¹¹⁷ Similarly, when Woodcock’s speech amounts to harassment in violation of Title VI, it is not constitutionally protected.¹¹⁸

“There is no categorical harassment exception to the First Amendment’s free speech clause,”¹¹⁹ but the Supreme Court held that public school districts can incur monetary liability under Title IX for responding with deliberate indifference to one student’s “harassment” of another student.¹²⁰ As such, by inference, expression that amounts to “harassment” under Title IX is not within the freedom of speech. Because Title IX and Title VI are interpreted in the same manner,¹²¹ speech that amounts to

¹¹⁶ *Lane*, 573 U.S. at 241.

¹¹⁷ *Black*, 538 U.S. at 359–60 (true threats).

¹¹⁸ *See DeJohn v. Temple University*, 537 F.3d 301, 317–18 (3rd Cir. 2008).

¹¹⁹ *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 204 (3rd Cir. 2001) (Alito, J.).

¹²⁰ *Davis*, 526 U.S. at 650.

¹²¹ *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 258–59 (2009).

harassment under Title VI is also unprotected by the First Amendment. Under both Title VI and Title IX, harassment is limited to expression or conduct so “severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.”¹²² Thus, when Woodcock’s speech amounts to harassment, it is not constitutionally protected.

3. Even if all of Woodcocks’ speech was as a private citizen on a matter of public concern, the University’s interests in efficient operation outweigh Woodcock’s interest in speaking.

It is necessary to “strike a balance between the interests of” Woodcock “as a citizen, in commenting upon matters of public concern” and the interest of the University, as an employer, “in promoting the efficiency of the public services it performs through its employees.”¹²³ In the Sixth Circuit, the balancing test focuses on a number of factors including whether the speech “undermines the mission of the employer.”¹²⁴

Under the balancing test, the University prevails.¹²⁵ Antisemitic speech undermines the teaching aspect of the University’s mission. First, even if Woodcock’s speech currently does not amount to harassment under Title VI, it may cross that line at some future date. The University has an obligation to prevent Title VI

¹²² *Davis*, 526 U.S. at 650.

¹²³ *Pickering*, 391 U.S. at 568 (citation modified).

¹²⁴ *Bennett v. Metro. Gov’t of Nashville & Davidson Cnty.*, 977 F.3d 530, 539–40 (6th Cir. 2020).

¹²⁵ Although this Court must apply Supreme Court precedent, the *Pickering* balancing test is contrary to the judicial interpretative tradition, requires a comparison of incomparable things, and forces judges to act like legislators. *Noble v. Cincinnati & Hamilton County Public Library*, 112 F.4th 373, 385 (6th Cir. 2004) (Sutton, C.J., dissenting); *Bennet*, 977 F.3d at 553–54 (Murphy, J., concurring). The University and University Officials reserve the right to challenge the continuing validity of the *Pickering* balancing test.

harassment from occurring. Second, when (i) a failure to act appropriately to an employee's speech may subject the University to legal liability under federal civil rights law; and (ii) existing precedent requires the University to perform *Pickering* balancing, there must be room for the University to address interim measures. Third, because Woodcock has a public facing role which involves teaching and presenting at academic conferences, the University has greater leeway to address his speech.¹²⁶ It is one thing for a university groundskeeper or custodian to spew antisemitic speech on a private social media account, it is quite another for a tenured full professor to do so at academic conferences financed by the University, on listservs restricted to law school faculty, or at public events sponsored by the law school. The University's "business is educating students. When an employee seriously undercuts the University's power to do its basic job, the Constitution doesn't elevate the employee over" the University's mission.¹²⁷

V. Woodcock fails to state a claim for violation of the Establishment Clause.

Woodcock received a Notice of Investigation from the outside investigator indicating the University received notice that he may have violated certain university policies.¹²⁸ Woodcock believes that this definition indicates a preference of one religious denomination over others in violation of the Establishment Clause.

¹²⁶ *Hedgepath v. Britton*, 152 F.4th 789, 796 (7th Cir. 2025).

¹²⁷ *Patterson v. Kent State Univ.*, 155 F.4th 635, 650 (6th Cir. 2025).

¹²⁸ The Notice of Investigation referred to the Ethical Principles and Employee Code of Conduct (Administrative Regulation – GR XIV); the Institutional Statements Policy; the Use of Technology Resources Policy (Administrative Regulation 10:1); and the Policy on Discrimination and Harassment (Administrative Regulation 6:1), which incorporates the International Holocaust Remembrance Alliance's ["IHRA"] definition of anti-Semitism." See July 22, 2025, Notice of Investigation, at 5. In the fifteen months since the investigation began,

But Woodcock’s allegation represents a fundamental misunderstanding of the Establishment Clause and its interpreting case law. “The clearest command of the Establishment Clause” is that the government may not “officially prefer” one religious denomination over another.¹²⁹

In an Establishment Clause challenge, “the plaintiff has the burden of proving a set of facts that would have historically been understood as an establishment of religion. That requires proving both a set of facts, like in all litigation, and proving that those facts align with a historically disfavored establishmentarian practice.”¹³⁰

Establishment Clause claims were once evaluated under the three-part *Lemon* test, which assessed whether a government action (1) had a secular purpose, (2) had a principal or primary effect that neither advances nor inhibits religion, and (3) did not foster an excessive government entanglement with religion.¹³¹ If the action satisfied all three prongs, it did not violate the Establishment Clause.¹³²

While *Lemon* was well thought to have been jettisoned, in 2022, the Supreme Court plainly held so. In *Kennedy v. Bremerton School District*, the Court recognized the “long ago abandon[ment]” of *Lemon* and held that in *Lemon*’s wake, “the

the University has repealed and replaced Administrative Regulation-GR XIV and Administrative Regulation 6.1. But the new regulations, Administrative Regulation-Employee Code and Administrative Regulation—Equal Dignity, impose substantively identical standards.

¹²⁹ *Larson v. Valente*, 456 U.S. 228, 244 (1982) (citation modified).

¹³⁰ *Firewalker-Fields v. Lee*, 58 F.4th 104, 123 (4th Cir. 2023); *see also Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 536 (2022) (“An analysis focused on original meaning and history, this Court has stressed, has long represented the rule rather than some exception within the Court’s Establishment Clause jurisprudence”) (quotation modified).

¹³¹ *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971).

¹³² *Id.*; *Satawa v. Macomb County Road Comm’n*, 689 F.3d 506, 526 (6th Cir. 2012).

Establishment Clause must be interpreted by reference to historical practices and understandings.”¹³³

Recently, in *Gordon v. City of Hamtramck, Michigan*, the Sixth Circuit grappled with an Establishment Clause analysis post-*Kennedy*.¹³⁴ “[A]lthough *Kennedy* recognized the abrogation of *Lemon* and its progeny, it is unclear if it disturbed the Court’s pre-*Lemon* Establishment Clause caselaw that requires government action to possess a secular purpose.”¹³⁵ However, the court did not analyze whether the secular-purpose requirement remains good law, but recognized that a circuit court’s purpose is to “apply[] existing Supreme Court precedent unless it is expressly overruled” and “Supreme Court caselaw that relies on *Lemon* ‘remains binding’ ‘unless and until the Supreme Court sees fit to overrule it directly.’”¹³⁶

To the extent the secular-purpose requirement retains vitality, the court determined that the claimant’s Establishment Clause challenge failed because they did “not contest that [the action was] a proper legislative purpose, and they cannot demonstrate that [the City’s] objective was a sham to advance religion.”¹³⁷

The same result occurs here. To begin the analysis, Woodcock alleges the University’s use of the antisemitism definition mandated by the General Assembly violates the Establishment Clause.

¹³³ *Kennedy*, 597 U.S. at 534–35.

¹³⁴ *Gordon v. City of Hamtramck, Michigan*, --- F.4th ---, 2026 WL 245433, *10 (6th Cir. Aug. 21, 2026).

¹³⁵ *Id.* at *11.

¹³⁶ *Id.*

¹³⁷ *Id.*

An Eighth Circuit court has already rejected the argument Woodcock makes in his Complaint. At issue in *McClanahan v. Trump* was Executive Order 13899, which the President issued to direct federal agencies to use the IHRA definition of antisemitism in enforcing Title VI of the Civil Rights Act.¹³⁸ On a temporary restraining order, the plaintiff argued that “by adopting the IHRA definition of antisemitism, which can encompass criticism of religious and political aspects of Isreal, the government effectively endorses a particular religious and ideological perspective” in violation of the Establishment Clause.¹³⁹ But the court disagreed.

“Here, Plaintiff simply makes conclusory statements arguing Executive Order 13899 effectively endorses a particular religious and ideological perspective *just by adopting the IHRA definition of antisemitism.*”¹⁴⁰ Although Executive Order 13899 protected against a certain religion, the executive order had a secular purpose, which was to give effect to Title VI of the Civil Rights Act.¹⁴¹ Additionally, the plaintiff could not show how the executive order (1) either advances or inhibits the practice of religion in its principal or primary effect, and (2) fostered an excessive government entanglement with religion in promulgating a directive combatting antisemitism.¹⁴²

Woodcock has not pleaded any of the elements required in an Establishment Clause challenge, and another court has already rejected this type of argument. No

¹³⁸ *McClanahan v. Trump*, No. 3:25-CV-05025-MDH, 2025 WL 1643500, at *1 (W.D. Mo. June 9, 2025).

¹³⁹ *Id.* at *5 (quotation modified).

¹⁴⁰ *Id.* at *6 (emphasis added).

¹⁴¹ *Id.*

¹⁴² *Id.*

religious preference is made in AR 6:1. Woodcock's Establishment Clause claim does not have merit.

VI. Woodcock fails to allege any University policy violates the First Amendment.

A. The policies are not overbroad.

Because the “academic speech of faculty pursuant to their official duties as public university employees, as well as the speech of faculty as private citizens about matters of public concern, is protected by the First Amendment,” Woodcock believes various University policies are unconstitutional.¹⁴³ Specifically, he alleges the University's Ethical Principles, Institutional Statements, Institutional Neutrality, spam, and antisemitism policies are overbroad because they encompass protected speech and, allegedly, cannot be applied consistent with the First Amendment.¹⁴⁴

Under the traditional test for assessing restrictions on expressive conduct, a regulation—or university policy—will be upheld if: “(1) it is unrelated to the suppression of expression, (2) it furthers an important or substantial government interest, and (3) it does not burden substantially more speech than necessary to further the interest.”¹⁴⁵ Woodcock bears the burden of demonstrating that the policies reach “a ‘substantial’ amount of protected free speech, ‘judged in relation to the [policies] plainly legitimate sweep.’”¹⁴⁶

¹⁴³ Amended Compl. [D.E. 36], at ¶ 144.

¹⁴⁴ *Id.* at ¶ 147.

¹⁴⁵ *Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381, 387 (6th Cir. 2005).

¹⁴⁶ *Virginia v. Hicks*, 539 U.S. 113, 118–19 (2003) (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973)).

This is a high burden. And “the mere fact that one can conceive of some impermissible applications of a [policy] is not sufficient to render it susceptible to an overbreadth challenge.”¹⁴⁷

The policies Woodcock challenges do not reach a substantial amount of protected speech. His conclusory assertion that the policies at issue “encompass speech that is fully protected” is insufficient to plead overbreadth. And, as this Court has previously stated,

As a public employer, the University has a compelling interest in administering effective public service through its employees. *See Patterson v. Kent State Univ.*, 155 F.4th 635, 650 (6th Cir. 2025); *see also Noble v. Cincinnati & Hamilton Cnty. Pub. Libr.*, 112 F.4th 373, 381 (6th Cir. 2024). Consistent with those aims, the University has a strong interest in preventing employee conduct that creates a hostile environment for members of the university community or otherwise constitutes harassment.¹⁴⁸

Under its policies, the University has a compelling interest in ensuring its students and employees’ speech and opinions are not mistaken as those of the University. Of course, if the University permitted students and employees to speak as a citizen or private individual while simultaneously on behalf of the University, the University would expose itself to a host of constitutional violations. Perhaps most importantly, however, the University has a compelling interest in ensuring members of the University community are not subject to harassment or a hostile environment. This

¹⁴⁷ *Mems. of the City Council of the City of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 800 (1984).
¹⁴⁸ Opinion and Order [D.E. 37], at 26.

is accomplished through its policies, and the policies only prevent speech to the extent necessary to maintain a non-hostile environment and to prevent harassment.

That Woodcock may conceive of a scenario where a University policy inadvertently restricts his speech is insufficient for an overbreadth challenge.¹⁴⁹ His Amended Complaint fails to state a claim.

B. Because the University’s internal email system is a nonpublic forum, Woodcock’s prior restraint claim fails.

Woodcock also believes the University’s spam policy is a “textbook prior restraint.”¹⁵⁰ His theory posits that the spam policy “grants University officials unbridled authority to grant or deny requests to speak to multiple people at the same time” and “fails to place any limits on the time that the University has to grant or deny permission.”¹⁵¹

A prior restraint is any law “forbidding certain communications when issued in advance of the time that such communications are to occur.”¹⁵² The threshold inquiry is the forum of the speech: traditional public forums, designated public forums, and nonpublic forums.¹⁵³ In a nonpublic forum, a space that is not by tradition or designation a forum for public communication, the government has “much more flexibility to craft rules limiting speech.”¹⁵⁴

¹⁴⁹ *Taxpayers for Vincent*, 466 U.S. at 800.

¹⁵⁰ Amended Compl. [D.E. 36], at ¶ 152.

¹⁵¹ *Id.* at ¶ 153.

¹⁵² *Alexander v. United States*, 509 U.S. 544, 550 (1993).

¹⁵³ *Minnesota Voters All. v. Mansky*, 585 U.S. 1, 11 (2018).

¹⁵⁴ *Id.* at 11–12.

The Supreme Court considers a public school’s “internal mail system” a nonpublic forum.¹⁵⁵ When “there is no indication in the record that the school mailboxes and interschool delivery system are open for use by the general public,” even despite providing selective access to some civic and church organizations, it does not transform government property into a public forum.¹⁵⁶

Applying a nonpublic forum analysis to an allegation that a university’s email spam filter effectively silenced a faculty member’s speech, the Fifth Circuit declined to find any First Amendment violation.¹⁵⁷ The court held:

the disputed restrictions and the spam filter were uniformly applied system-wide and were not content-based; there is no evidence to suggest that the goal of these policies was to suppress any viewpoint. Further, these UHD policies were reasonable in light of the need to control the quantity of data stored on the system and to filter data coming into the system. Doing away with these policies would “substantially interfere with the activities . . . of the school.”¹⁵⁸

The same is true of the University’s internal electronic mail system and spam policy. The spam policy is uniformly applied “to all users of technology resources at or through the University,” system-wide, and it is not content based.¹⁵⁹ The goal of the University’s spam policy is not to suppress any viewpoint; rather, it is to promote the appropriate use of technology resources.¹⁶⁰ Therefore, given the University’s flexibility to craft rules impacting its internal email system, there is no prior restraint violation.

¹⁵⁵ *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 47 (1983).

¹⁵⁶ *Id.*

¹⁵⁷ *Faculty Rights Coalition v. Shahrokhi*, 204 F. App’x. 416, 419 (5th Cir. 2006).

¹⁵⁸ *Id.* (quoting *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 513 (1969)).

¹⁵⁹ AR 10:1, at 1.

¹⁶⁰ *Id.*

C. The policies are not void for vagueness.

Woodcock maintains that numerous provisions in the Ethical Principles, Institutional Statements, spam, and antisemitism policies are unconstitutionally vague. Specifically, he claims the University’s Ethical Principles and Institutional Statements maintain a distinction between those speaking “in a professional or expert capacity”, “comment[ing] publicly as part of their official duties”, or speaking as “scholar or subject matter expert” and those speaking as a “citizen” or “private individual” is amorphous and subjective.¹⁶¹

The principal inquiry is whether the law—or, in this case, policy—affords fair warning of what is proscribed.¹⁶² Even where a risk of discriminatory enforcement is present, if the language of an ordinance is “sufficiently clear,” the speculative danger of arbitrary enforcement does not render the ordinance void for vagueness.¹⁶³

Here, Woodcock identifies only ordinary, commonly understood terms. For example, the distinction between “professional or expert capacity” and “private individual” is generally well understood by those who want to understand the distinction. The context of the policy draws clear lines between speaking on behalf of the University and speaking in a private capacity, and it does so in common terms that provide fair warning. The objective categories described in the policy include use of University insignia and University accounts, which provide clear guardrails for those looking for them.

¹⁶¹ Amended Compl. [D.E. 36] at ¶ 157.

¹⁶² *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 503 (1982).

¹⁶³ *Id.*

Woodcock also maintains that the absence of a definition of “spam” or “mass mailing” in the spam policy renders it “impossible” to know what constitutes spam.¹⁶⁴ But again: the definition of “spam” or “mass mailing” is generally well understood by those who want to understand them. The University policies identified by Woodcock are not void for vagueness.

VII. Woodcock fails to state a Due Process Claim.

Professor Woodcock claims the University’s investigation deprived him of his alleged “property and liberty interests in his tenured position at the University of Kentucky.”¹⁶⁵ He fails to state a claim under either legal theory.

A. Woodcock fails to state a property interest claim.

Woodcock “must plead a property interest protected by the Due Process Clause, a deprivation of this property interest, and that the State did not give him adequate procedural rights to protect against an erroneous deprivation.”¹⁶⁶ Courts focus on two issues: (1) is there a constitutionally protected property interest; and (2) if so, the procedures necessary to protect that interest.¹⁶⁷ Professor Woodcock fails on both questions.

1. Woodcock has no property interest in teaching.

While tenured professors at the University of Kentucky have a constitutionally protected property interest in their faculty position,¹⁶⁸ that interest does not extend

¹⁶⁴ Amended Compl. [D.E. 36] at ¶ 157.

¹⁶⁵ *Id.* at ¶ 170.

¹⁶⁶ *Kaplan*, 10 F.4th at 577.

¹⁶⁷ *Crosby*, 863 F.3d at 552.

¹⁶⁸ *Board of Regents v. Roth*, 408 U.S. 564, 576–77 (1972); *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972).

to teaching classes.¹⁶⁹ The University retains the discretion to determine the nature of a faculty member's assignments including whether a faculty member will teach and, if so, what courses. Moreover, when there are allegations of misconduct, the Sixth Circuit has permitted suspension or reassignment of faculty members during investigations.¹⁷⁰

Although Woodcock is unhappy that he is not teaching, his property interest in being a tenured professor does not allow him to choose his work assignments. Were it otherwise, the University could never direct faculty members to teach a particular class if they did not wish to do so. Importantly, Woodcock receives his full salary, has access to his university email account, and can pursue his scholarship.

2. Woodcock has received due process.

Even if Woodcock has a constitutionally protected property interest in teaching, “the question becomes whether the state actors provided adequate process.”¹⁷¹ That answer requires evaluation of the government's interest, the individual's stake in the matter, and the suitability of the procedures.¹⁷² “Different circumstances call for different processes. While notice and an opportunity to be heard remain the hallmarks of due process, they need not necessarily arrive before the deprivation does.”¹⁷³ A hearing of some sort is required before a tenured professor

¹⁶⁹ *Parate v. Isibor*, 868 F.2d 821, 832 (6th Cir. 1989); *see also Kaplan*, 10 F.4th at 581, 586 (Observing similarities between *Kaplan* and *Parate*).

¹⁷⁰ *Kaplan*, 10 F.4th at 581, 583–84.

¹⁷¹ *Cunningham*, 41 F.4th at 536.

¹⁷² *Gilbert v. Homar*, 520 U.S. 924, 931–32 (1997).

¹⁷³ *Cunningham*, 41 F.4th at 536.

is fired,¹⁷⁴ but a hearing is not required before each and every intermediate action.¹⁷⁵ When the University “imposes a lighter penalty, such as a suspension, a post-deprivation hearing or a combination of pre- and post-deprivation safeguards may suffice.”¹⁷⁶

Woodcock *has not been fired*, he has simply been reassigned—at full salary—while the University investigates. As antisemitic speech can violate Title VI, the University cannot ignore allegations of a Title VI violation, and the consequences of a Title VI violation are significant, the University had to investigate. However, instead of initiating tenure revocation proceedings, the University “customized” the reassignment “to the problem at hand,” preventing a possible Title VI violation.¹⁷⁷

Woodcock has numerous opportunities to influence the Investigator’s conclusions.¹⁷⁸ Although the University generally requires those under investigation submit to an in-person interview, the University allowed Woodcock to respond to written questions.¹⁷⁹ He finally did so on September 8, 2026. He has been provided access to the investigator’s evidence and has until September 25 to comment upon that.¹⁸⁰ Upon receiving Woodcock’s written response to this *first* evidence review, the Investigator will ask any follow up questions of the witnesses.¹⁸¹ Woodcock will then

¹⁷⁴ *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 & n.7 (1985).

¹⁷⁵ *Cunningham*, 41 F.4th at 536.

¹⁷⁶ *Id.* at 536–37.

¹⁷⁷ *Id.* at 537.

¹⁷⁸ See Exhibit 2 August 25, 2025, correspondence from Farnaz Farkish Thompson to Joe Childers, counsel for Ramsi Woodcock.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

have a *second* opportunity to review all evidence and submit a written response.¹⁸² After receiving all the evidence and Woodcock's first and second responses, the Investigator will issue a detailed letter of findings.¹⁸³ This process meets any hallmark of due process. If Professor Woodcock will participate in this process, the remaining final stages should be complete by early November.

That letter of findings may conclude that Professor Woodcock has violated no University policy – or that he has. If there are grounds to conclude a violation occurred and if the University determines tenure revocation or a lengthy suspension without pay is appropriate, then Professor Woodcock will receive an even more formal hearing and, if found responsible, the opportunity to appeal.¹⁸⁴ Following that process, the President will determine whether to initiate tenure revocation proceedings.¹⁸⁵ If the President initiates tenure revocation proceedings, Professor Woodcock will ultimately receive a full hearing before the University's Board of Trustees.¹⁸⁶

B. Woodcock fails to state a liberty interest claim.

When the University decided to investigate and to reassign Woodcock pending investigation, President Capilouto informed the University Community that a faculty member was under investigation.¹⁸⁷ President Capilouto did not identify Professor

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ University of Kentucky Administrative Regulation—Due Process (Interim) <https://regs.uky.edu/sites/default/files/2025-10/ar-due-process-interim.pdf>.

¹⁸⁵ University of Kentucky Administrative Regulation—Due Process (Interim) § F. <https://regs.uky.edu/sites/default/files/2025-10/ar-due-process-interim.pdf>.

¹⁸⁶ KRS § 164.230.

¹⁸⁷ See Eli Capilouto, Important Message for Our Community (July 18, 2025), <https://perma.cc/9ZRD-ESYS>.

Woodcock or the College of Law.¹⁸⁸ Nevertheless, Professor Woodcock claims this message deprived him of a liberty interest in his reputation.

He is wrong. Alleged “defamation alone is not enough to invoke due process concerns. Some alteration of a right or status ‘previously recognized by state law,’ such as employment, must accompany the damage to reputation.”¹⁸⁹ Rather, Professor Woodcock must plead that (1) statement was made in conjunction with his termination of employment; (2) the statement was something more than an allegation of improper or inadequate performance, incompetence, neglect of duty, or malfeasance; (3) the statements must be made public; (4) the statements must be false; and (5) the public dissemination was voluntary.¹⁹⁰ If all five elements are met, then Professor Woodcock “is entitled to a name-clearing hearing upon request.”¹⁹¹

Yet, Woodcock *has not requested a name-clearing hearing*. This “failure to request a name-clearing hearing is fatal to his claim.”¹⁹² “It is the denial of a requested name-clearing hearing that deprives the plaintiff of his liberty interest without due process.”¹⁹³ On that basis alone, his claim should be dismissed.

Moreover, even if he had requested a name clearing hearing, his claim fails for three other reasons. First, his claim fails at the first element because he has not been terminated.¹⁹⁴ Second, although mere allegations of incompetence are not

¹⁸⁸

Id.

¹⁸⁹

Quinn v. Shirey, 293 F.3d 315, 319 (6th Cir. 2002).

¹⁹⁰

Kaplan, 10 F.4th at 584.

¹⁹¹

Id.

¹⁹²

Id. (citation modified).

¹⁹³

Id.

¹⁹⁴

Ferencz v. Hairston, 119 F.3d 1244, 1250 (6th Cir. 1997).

sufficient,¹⁹⁵ Woodcock alleges the statements impugn his professional competence.¹⁹⁶ Third, his claim fails to allege the charges made against him were false.

VIII. Woodcock fails to state a race discrimination claim.

Woodcock fails to state a race discrimination claim for three reasons. First, at the motion for judgment on the pleadings stage, a plaintiff does “not need to prove discriminatory intent, but rather need[s] to allege facts making it plausible that such intent existed.”¹⁹⁷ Woodcock makes no attempt to do that. According to him, he is Arab of Algerian national origin, the only Arab faculty member in the College of Law, and has a contract “whereby the University employs [him] as a tenured professor in the College of Law.”¹⁹⁸ Without any factual basis, he claims the University and the University officials have discriminated against him “because of his race in violation of 42 U.S.C. § 1981.”¹⁹⁹ That is not sufficient—a “threadbare recital of elements of a cause of action, supported by mere conclusory statements do not suffice.”²⁰⁰

Second, he fails to allege an adverse employment action. “The act of investigating possible employee misconduct is not an adverse [employment] action,”²⁰¹ and neither is “a suspension with pay and full benefits pending a timely investigation into suspected wrongdoing.”²⁰²

¹⁹⁵ *Kaplan*, 10 F.4th at 584.

¹⁹⁶ Amended Compl. [D.E. 36], at ¶ 172.

¹⁹⁷ *Inner City Contracting, LLC v. Charter Twp. of Northville*, 87 F.4th 743, 755–56 (6th Cir. 2023) (emphasis added).

¹⁹⁸ Amended Compl. [D.E. 36], at ¶ 187.

¹⁹⁹ *Id.* at ¶ 189.

²⁰⁰ *Iqbal*, 556 U.S. at 678.

²⁰¹ *Kuhn*, 709 F.3d at 625.

²⁰² *Peltier v. United States*, 388 F.3d 984, 988 (6th Cir. 2004).

Third, his attempt to use 42 U.S.C. § 1981 claim for race discrimination fails. As the Sixth Circuit explained, “§ 1983 is the exclusive mechanism to vindicate violations of § 1981 by an individual state actor acting in his individual capacity.”²⁰³ By identifying only 42 U.S.C. § 1981 as the mechanism for his claim—unlike his other claims against the University officials—Woodcock does not raise his race discrimination claim pursuant to 42 U.S.C. § 1983.²⁰⁴

Fourth, his claims for civil conspiracy under 42 U.S.C. § 1985 also fail. Under Section 1985, a plaintiff must establish a conspiracy between “two or more persons.”²⁰⁵ However, “if all of the defendants are members of the same collective entity, there are not two separate ‘people’ to form a conspiracy.”²⁰⁶ Because the Sixth Circuit “adopted the general rule in civil conspiracy cases that a corporation cannot conspire with its own agents or employees,”²⁰⁷ this claim also should be dismissed.

CONCLUSION

For these reasons, the Court should grant the Defendants’ Motion for Judgment on the Pleadings.

Respectfully submitted,

/s/ Bryan H. Beauman

Bryan H. Beauman
Carmine G. Iaccarino
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507

²⁰³ *McCormick*, 693 F.3d at 661.

²⁰⁴ *See Boxill v. O’Grady*, 935 F.3d 510, 519 (6th Cir. 2019).

²⁰⁵ 42 U.S.C. § 1985; *Jackson v. City of Cleveland*, 925 F.3d 793, 817 (6th Cir. 2019).

²⁰⁶ *Id.* (quoting *Johnson v. Hills & Dales Gen. Hosp.*, 40 F.3d 837, 839–40 (6th Cir. 1994)).

²⁰⁷ *Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ.*, 926 F.2d 505, 509 (6th Cir. 1991).

Telephone No.: (859) 255-8581
Facsimile No.: (859) 231-0851
bbeauman@sturgillturner.com
carmine@sturgillturner.com

&

William E. Thro
General Counsel
University of Kentucky
Office of Legal Counsel
301 Main Building
Lexington, KY 40506
william.thro@uky.edu

*Counsel for Defendants Dr. Eli Capilouto, Dr.
Robert DiPaola, William E. Thro, and James
Duff*

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2026, the foregoing document was electronically filed using the Court's CM/ECF system, which will send notification of such filing to all parties registered to receive electronic filings and via electronic mail to the below listed.

/s/Bryan H. Beauman
*Counsel for Defendants Dr. Eli Capilouto, Dr.
Robert DiPaola, William E. Thro, and James
Duff*