

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I

Ramsi A. Woodcock,

Plaintiff,

v.

Case No. 26-CI-885

Gregory Van Tatenhove et al.,

Defendants.

**WOODCOCK'S REPLY TO DEFENDANTS' RESPONSE TO
WOODCOCK'S MOTION FOR A TEMPORARY INJUNCTION**

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INTRODUCTION

For at least the last half century, the University of Kentucky J. David Rosenberg College of Law (“law school”) has honored the right of the law school faculty to decide who is qualified to lead them. Ausness Decl. ¶¶ 3, 5. That right is so fundamental to the advancement of knowledge that the American Bar Association (ABA) has incorporated it into the basic standard to which it requires all law schools in America to adhere in order to obtain accreditation. ABA Standards Interp. 203-1, Standard 203(b), Ex. 19 at 1. The University incorporates that rule into its own written Employee Code, directing every employee—including the University president—to report violations immediately on pain of termination, and thence into its contracts with individual faculty members. Employee Code §§ I.D, I.D.1, I.D.2, Ex. 20 at 1–2. And the U.S. Supreme Court has long acknowledged that it must accord deference to the “expert evaluation[s]” made “by faculty members of public educational institutions” because of the integral role that scholarly expertise plays in the constitutionally protected enterprise of academic inquiry. *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 226 (1985).

Accordingly, when the law faculty emailed Defendants Capilouto and DiPaola on February 4, 2026, to tell them that they loved three of the four dean finalists that DiPaola had brought to campus but that the fourth was not qualified because, unlike the other three, he lacked a scholarly record, could not obtain tenure, and had no academic administrative experience, Capilouto and DiPaola should have known that they had to rule that candidate out and select one of the other three. Ex. 8. Instead, they selected the politically connected, donor-supported candidate whom the faculty had told them was unqualified. Am. Compl. ¶¶ 36, 40. It is difficult to imagine a more corrupt act by a university’s senior administrators that would not cross the line into a violation of the criminal law.

Because the right of scholars to choose their leaders is so well established, Defendants' appointment of Van Tatenhove did not just violate one rule, but thickets of them. It violated multiple University policies, including not just rules requiring adherence to accreditation requirements but also the University's own appointments regulation. Employee Code § I.D, Ex. 20 at 1; Admin. Reg. — Univ. Appts. § A.3, Ex. 74 at 2. It violated the University's contracts with its faculty, including Woodcock, that incorporate the University's written policies—as employment contracts at public and private employers around the country routinely do. Suppl. Memo. L. Supp. Emergency Mot. Temp. Inj. at 22–23. It violated the rules of both the law school's accreditor and the University's accreditor. ABA Standards Standard 203(b), Ex. 19 at 1; SACSCOC Requirement 10.4, Ex. 73 at 7. And it violated multiple provisions of the Kentucky Constitution, including those prohibiting a state agency from violating its own rules and departing from longstanding practice, rules protecting the right of the faculty, as an expressive association, to pick their members, and rules prohibiting actions that chill faculty speech. Ky. Const. §§ 1(4), 1(6), 2, 8.

Against this avalanche of liability, Defendants offer that a statute gives the University's Board of Trustees "exclusive jurisdiction" over appointments and that the board delegated its power to Capilouto (a delegation that, not incidentally, the board revoked in response to Van Tatenhove's appointment). Resp. at 4–5; Ky. Rev. Stat. § 164.225; Ex. 16. But, in Kentucky, government agencies must abide by the Kentucky Constitution, whatever their enabling statutes say, and they are bound by the written contracts into which they enter. *Smothers v. Lewis*, 672 S.W.2d 62, 64 (1984); Ky. Rev. Stat. § 45A.245(1) (waiving immunity on written contracts).

Defendants also protest that, in their view, a retired federal judge ought to be qualified to run a law school. Resp. at 8–9. But decisions regarding academic qualifications are for the experts, and the experts are the faculty of the law school, not a doctor of dental medicine or a blood oncologist. *Ewing*, 474 U.S. at 226. The faculty of the law school knew Van Tatenhove well. He had taught a

class as an adjunct for them for a number of years. Ex. 17 at 1. But the faculty attended his interviews, reviewed his record, and decided that his accomplishments on the bench and in practice could not compensate for his lack of academic experience and complete dearth of scholarly publications. Ex. 8. It is to such “academic decisions” made on the basis of “expert evaluation of cumulative information” that, according to the University’s own written policies, its contracts, accreditation standards, the Kentucky Constitution, and the U.S. Supreme Court, the faculty are owed deference. *Ewing*, 474 U.S. at 226; *Heim v. Daniel*, 81 F.4th 212, 233 (2d Cir. 2023).

It is not hard to imagine why the faculty might have thought Van Tatenhove unqualified, despite his judicial experience. Scholars advocate for the just result. Judges are bound to produce the legal result, even if they personally believe it to be unjust. Scholarship is oriented toward truth. Adjudication is oriented toward justification. Scholars are expected to give their personal views. Judges are prohibited from doing so on the bench and sometimes off it as well. *See, e.g.*, 28 U.S.C. § 455 (requiring a federal judge to “disqualify himself in any proceeding in which his impartiality might reasonably be questioned”). Great judges do not necessarily make great scholars, and vice versa.

Defendants argue that judges occasionally become deans. Resp. at 10. But not over the objection of the faculty. When judges have been appointed deans at other schools, the basic right of the faculty to decide who is qualified to lead them has not been at stake, because the faculty have not objected to the choice. In seeking to force a non-traditional dean on a faculty that has judged him unqualified, Defendants are seeking to set a precedent for the demise of the right of faculty autonomy—which Defendants disparage as “faculty supremacy”—that has been recognized in this country since the early 20th century. Resp. at 6. It has national implications.

Defendants argue that the harm of the appointment to Woodcock is speculative. Resp. at 12. But a governance right has “intrinsic value in and of itself that may not be adequately compensated by monetary damages.” *Gitlitz v. Bellock*, 171 P.3d 1274, 1280 (Colo. App. 2007). A deprivation of

constitutional rights inflicts immediate, irreparable harm. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021); *Connection Distributing Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998). And Defendants fail to appreciate that faculty like Woodcock take a vast pay cut in exchange for the governance and peer review rights that Defendants are denying right now. Woodcock Decl. ¶¶ 1–10. That is an immediate, present failure to deliver services for which faculty have paid an uncertain amount in treasure foregone. *Cyprus Mountain Coal Corp. v. Brewer*, 828 S.W.2d 642, 645 (Ky. 1992).

Woodcock incorporates by reference all facts, legal arguments, exhibits, and declarations attached to his Amended Verified Complaint and his Supplemental Memorandum of Law in Support of His Emergency Motion for a Temporary Injunction. Exhibits incorporated from the Amended Verified Complaint are designated as Exhibits 1 through 81. Exhibits incorporated from the Supplemental Memorandum are designated as Exhibits 82 through 90. Woodcock attaches to this Reply an additional exhibit designated as Exhibit 91 and a Third Declaration of Ramsi A. Woodcock.

ARGUMENT

A. Standing and Immunity

Defendants repeat the arguments regarding standing and immunity contained in their motion to dismiss. Resp. at 14–24. These arguments are without merit.

1. Standing

Woodcock has standing. Woodcock traded a massive pay cut for membership in the faculty that includes governance rights and peer review services. Woodcock Decl. ¶¶ 1–10. The University is no longer delivering its end of the bargain. *Id.* Paying for services not rendered is an economic loss sufficient to confer standing on a breach of contract claim. *See Giddings & Lewis v. Industrial Risk*, 348 S.W.3d 729, 733 (Ky. 2011) (associating contract rights with economic loss); *cf.* Ky. Rev. Stat. §

355.2-711(1) (stating that “[w]here the seller fails to make delivery” “the buyer” may “recover[] so much of the price as has been paid”). The harm associated with violation of a right to expressive association manifests at the moment of forced inclusion of a group member because at that moment the message sent by membership in the group is altered. *Boy Scouts of America v. Dale*, 530 U.S. 640, 653–54 (2000) (mere “presence in the Boy Scouts” of an openly gay, gay rights activist scoutmaster burdened the right of expressive association). Government impairment of an expressive message is an intangible harm sufficient for standing. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340–41 (2016); *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021). Thus, Woodcock suffered speech injury at the moment that Defendants forced a non-peer onto the faculty and thereby transformed the message sent by Woodcock’s presence on the faculty from “peer reviewed” to “non-peer reviewed”.

Woodcock submitted uncontroverted evidence that Van Tatenhove’s appointment has chilled Woodcock’s speech, causing him to self-censor. Woodcock 2d Decl. ¶¶ 5–7. Evidence of subjective speech chill is sufficient for standing on a speech chill claim. *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595, 629 (2020) (Sotomayor, J., dissenting) (observing that the Court has “abandon[ed] the requirement” articulated in some older cases that “[a]llegations of a subjective chill”, standing alone, “are not” “adequate” to demonstrate injury). And Van Tatenhove independently ratified the suspension and ban imposed on Woodcock by his predecessor, who was also a non-peer dean, so there is a history of past retaliation by non-peer deans against Woodcock for his Palestine-related speech and a credible threat of future retaliation if Van Tatenhove remains in office. *Turner v. US Agency for Global Media*, 502 F. Supp. 3d 333, 359 (D.D.C. 2020); *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014); Am. Compl. ¶ 22; Van Tatenhove Ltr., Ex. 91. Each of these injuries flows directly from Defendants’ arbitrary exercise of state power in appointing Van Tatenhove in contravention of University policies and longstanding practice. Ky. Const. § 2; *Com., Transportation Cabinet v. Weinberg*, 150 S.W.3d 75, 77 (Ky. Ct. App. 2004) (failure to follow

rules); *Ky. Milk Mktg. v. Kroger Co.*, 691 S.W. 2d 893, 900–01 (Ky. 1985) (unexplained change in longstanding practice). In particular, the interference of lay trustees or their agents with the governance rights of group members has traditionally been recognized as a harm in Kentucky. *Oracle Real Estate Holdings v. Adrian Holdings Co.*, 582 F. Supp. 2d 616, 626 (S.D.N.Y. 2008); *Hazelip v. Doyel*, 267 Ky. 477, 102 S.W.2d 321, 323 (1936) (recognizing that interference of trustees over church property in the governance of the church harms individual church members); Ky. Rev. Stat. Ann. § 273.120 (limiting the power of trustees over governance of churches); *TransUnion LLC v. Ramirez*, 594 U.S. 413, 424 (2021) (recognizing standing for constitutional claims where the harm has a close relationship with harms for which the law traditionally provided a remedy). Woodcock refers this Court to the standing section of his Response to Defendants’ Motion to Dismiss for a more detailed development of these points. Resp. to Defs.’ Mot. to Dismiss at 6–24.

Defendants argue that the recent opinion in *McDonald v. Trustees of Indiana University* suggests that there is no speech chill in the present case. Resp. at 19; No. 25-2366 (7th Cir. Aug. 13, 2026). That is not so, for two reasons. First, the court in *McDonald* applied an objective chill standard at the standing stage that is out of step with recent U.S. Supreme Court cases, which have treated subjective speech chill as sufficient for standing. *Compare McDonald*, No. 25-2366, slip op. at 14 (stating that “mere chilling effect . . . is not enough to demonstrate injury”) *with Bonta*, 594 U.S. at 629 (Sotomayor, J., dissenting) (observing that the Court has “abandon[ed] the requirement” articulated in some older cases that “[a]llegations of a subjective chill”, standing alone, “are not” “adequate” to demonstrate injury). Second, in applying the alternative credible threat standing analysis, the court in *McDonald* treated as dispositive the fact that “the universities had not enforced the” “policies against any faculty when th[e] suit was filed”. *McDonald*, No. 25-2366, slip op. at 18–19. And the court stated that “[o]f course, this standing inquiry could change if these universities enforce the policies.” *Id.* at 19. In the present case, non-peer dean appointees have already retaliated

against Woodcock for his Palestine-related speech whereas peer appointees have not. Former Interim Dean Salamanca, who was a tenured member of the faculty, expressly declined to retaliate against Woodcock for substantially the same speech. Woodcock Decl. ¶ 22 (stating that Salamanca “didn’t suspend me for my speech about Palestine. On the contrary, he defended my right to present about Palestine at a faculty meeting.”). But former Interim Dean Duff, who, like Van Tatenhove, lacked a scholarly record or any experience in academic administration, suspended and banned Woodcock from the law building in response to what he described as complaints about Woodcock’s speech about Palestine from “outside interests.” Hearing Tr., Ex. 83 at 179:11–19; Duff Ltr., Ex. 82; Am. Compl. ¶ 22. And, on August 22, 2026, Van Tatenhove, who has “absolute authority” to lift the suspension and ban, expressly refused to do so after reviewing Woodcock’s free speech objections and request for reinstatement. Thro Ltr., Ex. 87 at 1; Woodcock Ltr., Ex. 88; Van Tatenhove Ltr., Ex. 91 at 2. Also, unlike *McDonald*, in this case Defendants have explicitly threatened Woodcock. In a July, 2025, letter explaining that the University was investigating Woodcock’s speech on Palestine, the University demanded that Woodcock “stop immediately”. Notice of Investigation, Ex. 89 at 1–2. The University also informed Woodcock that if the investigation turns up more examples of speech to which the University objects, “those aspects would [be] an additional basis for the [suspension and ban] as well”. Thro Email, Ex. 86 at 1. Accordingly, the present case is not like *McDonald*, and in fact exhibits precisely the history of enforcement that the court in *McDonald* thought was lacking in that case.

Defendants also state that “Woodcock does not—and cannot—allege that the University currently is interfering with his right to write whatever he wants and submit to law reviews for possible publication.” Resp. at 21. That is simply false. Woodcock has been suspended from teaching, banned from the law building, and subjected to investigation in retaliation for his speech

reporting his research conclusions about Palestine for more than a year. Am. Compl. ¶ 22.¹

Moreover, when Woodcock told the U.S. Court of Appeals for the Sixth Circuit that he feared retaliation for submitting a scholarly article on Palestine for publication, University Defendants responded that they would view his speech as protected only if, in submitting the article, he did “not us[e] university resources[] and [did] not claim[] credit for the work in his faculty evaluation[.]” Univ. Appellees’ Resp. to Woodcock’s Emergency Mot. Requesting Ruling on Emergency Mot. for Inj. Pending Appeal at 5, *Woodcock v. Univ. of Ky.*, No. 26-5057 (6th Cir. Feb. 12, 2026), Dkt. 29. They further stated that “if his manuscript constitutes harassment” “it is not constitutionally protected.” *Id.* at 5 n.10. The University delivers such warnings to no other member of the faculty before they submit their work for publication. Woodcock did not submit the manuscript for publication. Woodcock 3d Decl. ¶ 5.

2. Immunity

Defendants are not immune from injunctive relief.

University Defendants are not immune from injunctive relief because Woodcock seeks to enjoin ongoing violations of the Kentucky Constitution and his contractual rights. *Beshear v. Haydon Bridge Co., Inc.*, 416 S.W. 3d 280, 289, 293 (Ky. 2013); *University of Kentucky v. Moore*, 599 S.W. 3d 798, 812 (Ky. 2019). So long as Van Tatenhove remains in office, Woodcock will not receive the peer review services for which he took a pay cut, the message sent by membership in the faculty will be “non-peer review”, Woodcock will continue to fear retaliation from a non-peer evaluator beholden to University administrators, donors, and politicians, and Woodcock’s governance rights will be denied because this dean was appointed over the objection of the law faculty, including Woodcock. Ex. 8 at 1. Moreover, even if immunity were to apply to injunctive relief, Woodcock could still obtain such

¹ *Petition for Military Action Against Israel*, Antizionist Legal Studies Movement (Nov. 12, 2024), <https://antizionist.net/petition-for-military-action-against-israel/>.

relief based on his contract claim because the Commonwealth has waived immunity for breach of written contracts. Ky. Rev. Stat. § 45A.245(1). Woodcock’s signed offer letter and the written rules and regulations of the University that form the basis of his contract are in writing. Woodcock Offer Ltr., Ex. 21 at 1; *University of Kentucky v. Regard*, 670 S.W. 3d 903, 913–14 (Ky. 2023) (immunity does not apply to written policies incorporated by reference into a contract); *Parts Depot, Inc. v. Beiswenger*, 170 S.W. 3d 354, 363–64 (Ky. 2005) (personnel policies form a contract with the employee); *University of Kentucky v. Furtula*, 438 S.W.3d 303, 313 (Ky. 2014) (Noble, J., dissenting) (written personnel policies forming a contract under *Parts Depot* are written contracts for purposes of the immunity waiver); *Crenshaw v. Erskine College*, 850 S.E. 2d 1, 20 (S.C. 2020) (stating that the faculty manual is a contract with tenured faculty). Woodcock refers this Court to the immunity section of his Response to Defendants’ Motion to Dismiss for a more detailed development of these points. Resp. to Defs.’ Mot. to Dismiss at 24–36.

Van Tatenhove is not immune from injunction relief because he has been sued for his decision as a *private citizen* (rather than employee) to seek and maintain appointment as dean of the law school. Am. Compl. ¶¶ 106–13. Van Tatenhove’s lack of immunity is dispositive on the immunity question for all Defendants as a practical matter because this Court has the power to enjoin *any* party to this case who is “in active concert or participation with” a wrongdoer and Woodcock seeks declaratory relief—which is categorically exempt from immunity—in relation to his claims against the University Defendants. Ky. R. Civ. P. 65.02(2); *Com. v. Kentucky Retirement Systems*, 396 S.W.3d 833, 838–39 (Ky. 2013) (state not immune to declaratory relief). It follows that this Court can enjoin Van Tatenhove to relinquish the deanship based on the Court’s conclusion that Plaintiff has raised a substantial question on the merits with respect to the University Defendants, even if this Court were unable to enjoin the University Defendants directly due to immunity. And if this Court has the power to

enjoin Van Tatenhove to relinquish the deanship, this Court does not need the power to enjoin the University Defendants to remove Van Tatenhove.

B. Academic Freedom

Defendants repeat many of the academic freedom arguments contained in their motion to dismiss. Resp. at 24–34. These free-floating arguments miss the mark because Woodcock does not bring an academic freedom claim in this case. *Cf. Forum for Acad. & Institutional Rights v. Rumsfeld*, 291 F. Supp. 2d 269, 301–03 (D.N.J. 2003) (discussing a standalone academic freedom claim). Moreover, Defendants fail to connect their academic freedom arguments with *any* element of any of the claims that Woodcock actually asserts in support of his temporary injunction motion—Woodcock’s breach of contract, arbitrary power, expressive association, and speech chill claims. Am. Compl. ¶¶ 50–123. Accordingly, they leave both Woodcock and this Court to guess about what relevance they may have, if any. Defendants’ abstract academic freedom arguments attack both faculty autonomy and the scope of protections for faculty speech. They fail in both areas.

1. Faculty Autonomy

Defendants cite *Minnesota State Bd. for Community Colleges v. Knight* for the proposition that “there is no constitutional right to participate in academic governance”. 465 U.S. 271, 288 (1983); Resp. at 30. But the plaintiff in *Knight* did not bring, and the U.S. Supreme Court did not consider, an expressive association claim, a chilled speech claim, or an arbitrary power claim such as those brought by Woodcock. The case was decided on individual free speech grounds. *Id.* Equally important, the case did not involve an attempt by university administrators to interfere with a faculty’s determination regarding who has the necessary qualification to join and lead the faculty. And two years *after* the Court decided *Knight*, the Court reaffirmed its longstanding rule of deference to faculty decisionmaking in matters of academic qualifications. *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 226 (1985) (stating that “a federal court is not” “suited to evaluate the substance of the

multitude of academic decisions that are made daily by faculty members of public educational institutions — decisions that require an expert evaluation of cumulative information and [are] not readily adapted to the procedural tools of judicial or administrative decisionmaking.”); *Heim v. Daniel*, 81 F.4th 212, 233 (2d Cir. 2023) (holding that in order for “the academic enterprise” “to remain an engine of progress” “decisions about the value of academic work” must be left “to academics.”).

The question presented in *Knight* was different. The case involved a challenge brought by individual faculty members to the Minnesota State Board for Community Colleges’ designation of a statewide faculty union as the exclusive bargaining representative for all community college faculty in the state. *Knight*, 465 U.S. at 274–75. The plaintiffs wanted to participate individually in statewide bargaining over employment terms such as compensation, and the Court held that the plaintiffs “have no constitutional right” “to a government audience for their policy views.” *Id.* at 286. Faculty autonomy was not at stake in *Knight* because the faculty were represented in the negotiations by the statewide union. *Id.* at 275. There was no allegation that the actions of a university administration had chilled plaintiffs’ speech, that a university had forced the faculty to accept a leader that it had rejected due to lack of academic qualifications, that a university had failed to follow its own written policies and longstanding practice, or that a university had breached its contract with the plaintiffs. Indeed, the case involved attempts by individual faculty members to insert themselves into a statewide bargaining process to which neither law nor policy had apparently ever granted them access. *Id.* at 274–75. Accordingly, the Court viewed its holding as a straightforward application of the general rule that “[t]he Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy.” *Id.* at 283. By contrast, in this case, Defendants have stripped the faculty—including Woodcock—of authority that they have exercised for at least half a century, which the University’s own written policies and employment contracts guarantee to them, and to which, as an exercise of academic expertise, the U.S. Supreme Court has

historically deferred. *Ewing*, 474 U.S. at 226; Employee Code § I.D, Ex. 20 at 1; ABA Standards Interp. 203-1, Standard 203(b), Ex. 19 at 1; Admin. Reg. — Univ. Appts. § A.3, Ex. 74 at 2; Ausness Decl. ¶¶ 3, 5. A case concerning faculty attempts to impinge upon the traditional sphere of university administrators does not control a challenge to an attempt by administrators to impinge on the traditional sphere of the faculty.

When a court sometimes loosely refers to the right to academic autonomy as belonging to the “university”, it means the “faculty”, whose “professional judgment”, the Supreme Court has said, the courts “may not override[.]” *Id.* at 225. For the courts, “a community of scholars . . . is what a university is.” *Greene v. Howard University*, 412 F. 2d 1128, 1135 (D.C. Cir. 1969). Not only Defendants, but also judges themselves are occasionally misled by this imprecision. Resp. 28–29; *see, e.g., McDonald*, No. 25-2366, slip op. at 22 (Easterbrook, J., concurring) (stating that “academic freedom belongs to the university”). But it would make little sense to ascribe a right of deference based on “expert evaluation of cumulative information” “by faculty members” to inexperienced University administrators and the lay boards that supervise them rather than to the faculty themselves. *Ewing*, 474 U.S. at 226; *Heim v. Daniel*, 81 F. 4th 212, 233–34 (2d Cir. 2023) (holding that in order for “the academic enterprise” “to remain an engine of progress” “decisions about the value of academic work” must be left “to academics” “free from any influence from political entities in the state or other governmental or university officials outside the relevant discipline”). The language used by courts has been loose in this regard because, in many cases, the distinction between the faculty and university administrators does not matter. When a faculty member challenges a tenure denial on free speech grounds, the interests of the faculty experts who made the decision and the university lawyers defending the decision are aligned.

2. Scope of Protection for Scholarly Speech

Defendants discuss the boundaries of constitutional protection for faculty speech at some length. Resp. at 24–29. The scope of protection for faculty speech is relevant to only two of the four claims that Plaintiff brings in support of his temporary injunction motion. Those are Plaintiff’s freedom of expressive association claim and his chilled speech claim. Because both claims find support in the free speech provisions of the Kentucky Constitution, both claims require that Plaintiff show that his speech is constitutionally protected.

a) *Pickering/Garcetti* Does Not Apply to Woodcock’s Expressive Association Claim

Defendants center their remarks around *Garcetti v. Ceballos*, which extends the *Pickering* framework for determining whether the speech of individual government employees is protected. 547 U.S. 410 (2005). Under *Pickering/Garcetti*, speech is protected if it is (1) on a matter of public concern, (2) “involv[es] scholarship”, “teaching”, or speech outside “the scope of” “job responsibilities”, and (3) “the interests of the teacher” “in commenting upon matters of public concern” outweigh “the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.” *Id.* at 417, 425. But it is not clear that *Pickering/Garcetti* applies to Woodcock’s expressive association claim. In *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, the U.S. Supreme Court declared that the *Pickering/Garcetti* framework is a “painful fit” in cases that involve a public employer’s attempt to “compel[]” the speech of a “broad categor[y] of employees”, such as the law faculty category at issue in Woodcock’s expressive association claim. 585 U.S. 878, 905–08 (2018). In lieu of *Pickering/Garcetti*, the Court would dispense with the formal public concern and scholarship/teaching/scope of job duties analysis. *Id.* And the Court would apply a higher form of scrutiny to government action that burdens protected speech. *Id.* Specifically, the Court would apply “exacting scrutiny”, which requires that the government action “serve a compelling state interest

that cannot be achieved through means significantly less restrictive of associational freedoms.” *Id.* at 894–95. By contrast, the intermediate scrutiny mandated by *Pickering/Garcetti* has no requirement that the government prove the absence of “significantly less restrictive” means of achieving its ends. In the present case, Defendants’ imposition of a leader the faculty do not want changes the message sent by membership in the faculty from “peer reviewed” to “non-peer reviewed”. As the U.S. Supreme Court in *Boy Scouts v. Dale* recognized, message changes caused by forced inclusion of group members amount to compelled speech. 530 U.S. 640, 653 (2000) (“Dale’s presence in the Boy Scouts would, at the very least, force the organization to send a message”). Because this case involves both compelled speech and a policy affecting a broad category of employees, *Janus* applies and *Pickering/Garcetti* does not.

b) *Garcetti* Did Not Restrict or Eliminate Longstanding Protection for Scholarly Speech that This Court Is Bound to Follow

Even assuming that *Pickering/Garcetti* applies to both of Woodcock’s speech related claims, Defendants do not discuss either the public concern element or the balancing element. They focus exclusively on the second element, which requires that speech “involv[e] scholarship”, “teaching”, or speech outside “the scope of” “job responsibilities”. Resp. at 24–29; *Garcetti*, 547 U.S. at 425. Moreover, Defendants make no effort to apply this test to Woodcock’s speech. Instead, they merely discuss the scope of this element in abstract terms. Specifically, Defendants argue that protection under this element extends only to “professionally competent scholarship” “that reflects the faculty member’s expertise” but not to “other aspects of the professor’s job”. Resp. at 26.

That is not, however, the standard. In *Garcetti*, the U.S. Supreme Court declined to decide whether its “job responsibilities” rule applies to speech that “involv[es] scholarship or teaching”. 547 U.S. at 425. Defendants suggest that until the Supreme Court revisits the question, speech that “involv[es] scholarship or teaching” is not protected. But that is not the case. Protection for

scholarly speech long predates *Garcetti*. *Sweezy v. New Hampshire*, 354 U.S. 234, 262 (Frankfurter, J., concurring) (stating that “[p]olitical power must abstain from intrusion” into “scholar[ly]” “inquiries” “except for reasons that are exigent and obviously compelling”); *Keyishian v. Board of Regents of Univ. of State of NY*, 385 U.S. 589, 601 (1967) (striking down law prohibiting faculty from belonging to any organization that is “treasonous” or “seditious” because “[i]t would be a bold teacher who would not stay as far as possible from utterances or acts which might jeopardize his living by enmeshing him in this intricate machinery”). As a result, unless the Supreme Court decides to extend the “job responsibilities” rule to cover speech that “involv[es] scholarship or teaching”, that speech is protected by default. Against this backdrop, it is no surprise that, in the wake of *Garcetti*, every U.S. Court of Appeals to have considered the matter—seven so far, with two having joined in 2026 alone—has reaffirmed that protection for speech that “involv[es] scholarship or teaching” continues to exist. *Meriwether v. Hartop*, 992 F. 3d 492, 505 (2021) (“[P]rofessors at public universities retain First Amendment protections at least when engaged in core academic functions, such as teaching and scholarship.”); *Pernell v. Florida Board of Governors of the State University*, No. 22-13992 slip op. 22–25 (11th Cir. 2026); *Reges v. Cauce*, 175 F.4th 1014, 1030–33 (9th Cir. 2026); *Kilborn v. Amiridis*, 131 F.4th 550, 557–58 (7th Cir. 2025); *Heim v. Daniel*, 81 F.4th 212, 224–28 (2d Cir. 2023); *Buchanan v. Alexander*, 919 F.3d 847, 852–53 (5th Cir. 2019); *Adams v. Trs. of Univ. of North Carolina-Wilmington*, 640 F.3d 550, 562–64 (4th Cir. 2011).

Like these U.S. Courts of Appeals, this Court is bound to follow U.S. Supreme Court precedent recognizing protection for scholarly speech because federal constitutional rights supply a “floor” to the Kentucky Constitution. *Com. v. Wasson*, 842 S.W. 2d 487, 492 (Ky. 1992). It follows that Defendants’ claim that “neither the U.S. Supreme Court nor the Kentucky supreme court has recognized an academic freedom exception to *Garcetti*” is simply false. Resp. at 28. Because the ship

of protection for scholarly speech sailed long ago, and is binding on this Court, Defendants’ attempt to reopen the question is not availing. Resp. at 28–29.

c) Any Right to Act Against Professionally Incompetent or Inexpert Speech by a Professor Belongs to the Faculty Not University Administrators

Defendants wish to tighten the scope of the carve-out in *Garvetti* from speech that “involv[es] scholarship or teaching” to “professionally competent scholarship” “that reflects the faculty member’s expertise” but not to “other aspects of the professor’s job”. Resp. at 39. But Defendants cite no authority for such a restriction.

(1) Professionally Incompetent Speech

To the extent that a professional competence limitation exists, it does not imply that University administrators have a right to interfere with professionally *in*competent faculty speech. Rather, the right to act against a professor’s professionally incompetent speech belongs to the faculty, not university administrators, as part of the faculty’s right to engage in “expert evaluation” of the work of other faculty free of interference by university administrators or courts. *Ewing*, 474 U.S. at 226. As one court has put it:

[Faculty] evaluate candidates through exactly the sort of content-based judgments that are normally anathema to the First Amendment. But academia is not normal; it is unique. In this exceptional setting, . . . such [content-based judgments] are permissible academic reasons for declining to hire or promote a candidate. . . . Much as importing *Garvetti*’s [limitation of protection to speech made outside the scope of government employment] from typical public employment settings into this atypical setting — effectively stripping professors at public universities of much of their First Amendment protection in the process — would be inconsistent with the core function of those universities, so too would any interpretation of the First Amendment that bridles the efforts of experts at those universities to foster high-quality scholarship with content-neutral constraints imposed by lay courts.

Heim v. Daniel, 81 F. 4th 212, 232–33 (2d Cir. 2023). Thus, if the faculty judge a scholar’s work to be professionally incompetent and move to deny him tenure or terminate him, the courts cannot intervene to stop *the faculty* from doing that on the ground that the faculty are violating the speech

rights of the scholar. *Id.* But that rule applies only to the extent that the determination that the scholar's speech is professionally incompetent is made by faculty through an exercise of their expertise. If university administrators who are not experts in the field make such a decision, then the rule of deference disappears, the speech is protected scholarship, and the courts can intervene to block the action on free speech grounds.

(2) Speech Outside Area of Expertise

Defendants cite a single case for the proposition that speech must reflect the faculty member's expertise. In *Josephson v. Ganzel*, the Court held that a professor's remarks at a conference were protected scholarship because they were on a subject "he taught and wrote about as a child psychiatry expert". 115 F. 4th 771, 786 (6th Cir. 2024). But the court did not use expertise to *exclude* speech from protection in that case. Rather the court used it to *protect* speech—specifically speech at a conference hosted by a thinktank rather than a university. *Id.* at 777. Defendants cite to no authority for the proposition that courts *exclude* the scholarship of faculty from protection when they judge it not to be related to the scholar's area of expertise. And the Sixth Circuit has expressly rejected such an expertise requirement. *Meriwether*, 992 F.3d at 507 (holding that academic speech is protected "whether that speech is germane to the contents of the lecture or not"). Indeed, as in the case of judgments of professional competence, *Ewing's* rule of deference to faculty on matters of expertise suggests that courts would strip protection for speech outside a scholar's area of expertise only if the judgment that the speech is inexpert is made by the faculty as opposed to university administrators not trained in the relevant field. *Ewing*, 474 U.S. at 226.

d) Woodcock's Speech Is Protected

The speech at issue in both of Woodcock's speech claims easily satisfies the rule established by the early speech cases in conjunction with *Garretti*, that speech that "involv[es] scholarship or teaching" is protected. 547 U.S. at 425; *Sweezy*, 354 U.S. at 262; *Keyishian*, 385 U.S. at 601. The speech

at issue in Woodcock’s expressive association claim is the message he seeks to send through his membership in the law faculty—namely, that his scholarship is subject to peer review. Am. Compl. ¶ 19. The message of peer review clearly “involve[es]” scholarship. *Id.* Indeed, that message is what makes Woodcock’s writing *scholarship* as opposed to mere research reports. 1915 Decl., Ex. 27 at 294. The message invites the public to view Woodcock’s conclusions as that of an expert motivated by “a desire for the respect of their fellow experts” rather than as that of a mere hireling seeking the favor of University administrators. *Id.* The speech at issue in Woodcock’s chilled speech claim is the scholarly articles on Palestine that Woodcock wishes to submit for publication by academic journals but which he fears to submit because of the appointment of Van Tatenhove. Woodcock 2d Decl. ¶¶ 5–7. Scholarly articles are protected scholarship. *Meriwether*, 992 F.3d at 505.

Defendants also argue that “a faculty member’s complaints about employment practices” are not protected. Resp. at 25. But the speech for which Woodcock seeks protection in his speech claims is not complaints about employment practices, but rather his message of peer review and his scholarship about Palestine.

C. Faculty Autonomy and the Public Interest

Defendants argue that faculty should not be permitted to pick their dean because, unlike Capilouto and DiPaola, faculty are not “accountable to the People”. Leaving aside the fact that Capilouto and DiPaola are not in fact “accountable to the People”, what Defendants fail to appreciate is that a faculty cannot be “accountable to the People” and advance knowledge at the same time because the advancement of knowledge requires independence of thought. Scholars subject to the whim of public opinion will adapt their research conclusions to suit the popular prejudices of the day rather than the truth. Thus, if the people were to insist that faculty be accountable to them, they would lose the value of their investment in their public universities. “The lay public is under no compulsion to accept or to act upon the opinions of the scientific experts

whom, through the universities, it employs” except “to the extent” that the “conclusions” of those experts are “motiv[ated]” by “a desire for the respect of their fellow experts”. 1915 Decl., Ex. 27 at 294. To the extent that the conclusions of faculty experts are instead “echoes of the opinions of the lay public, or of the individuals who endow or manage universities”, the “proper influence” of a faculty “upon public opinion is diminished and vitiated[,] and society at large fails to get from its scholars” “the service which it is the office of the professional scholar to furnish.” *Id.* at 294–95. “In the case of our state universities [it] is self-evident” that they “[c]annot be permitted to assume” such a “proprietary attitude and privilege” because they “constitute[] a public trust[.]” *Id.* at 293. While the public may not, through the trustees appointed by their elected officials, interfere in the faculty’s determination who has a sufficient scholarly record to lead them, the public is always at liberty to withdraw funding from its universities if it concludes that they are failing to provide the value in terms of the advancement of knowledge for which the public created them. And administrators are free to remove scholars on ground for which academic expertise are not required. “Lay governing boards are competent to judge concerning charges of habitual neglect of assigned duties, on the part of individual teachers, and concerning charges of grave moral delinquency.” 1915 Decl. at 9. The greater the interference of university administrators in faculty autonomy, and the more than administrators subject scholar to evaluation by non-peers, the less faculty will be able to advance knowledge and the lower the dividend of knowledge paid on the public’s investment in higher education.

D. Plaintiff Raises a Substantial Question on the Merits

Defendants do not contest Woodcock’s chilled speech claim on the merits. Their objections to Plaintiff’s expressive association, arbitrary power, and breach of contract claims fail.

1. Expressive Association

There is a violation of the right to expressive association if (1) the members of a group “associate partly to express a message”, (2) state action “significantly burden[s] the group’s ability to spread its message” and (3) “this burden on speech outweigh[s] any governmental interests justifying the burden”. *Blick v. Ann Arbor Public School Dist.*, 105 F. 4th 868, 882 (6th Cir. 2024). Defendants do not contest the third element other than indirectly through their remarks about academic freedom, which have been addressed above. Defendants’ objections to the first two elements fail.

a) The Law Faculty Are an Expressive Association

Any group that (1) associates (2) “in pursuit of” “educational” “ends” has a right of expressive association. *Dale*, 530 U.S. at 647. Defendants fail to contest that the faculty associates to pursue educational ends. And Defendants fail to address the fact that a number of courts have already held that law faculty are expressive associations even when they are “components of a larger parent university” and act without “the blessings of their . . . parent institutions”. 291 F. Supp. 2d at 286, 289–90, 304; *see also Burt v. Rumsfeld*, 354 F. Supp. 2d 156, 185 (D. Conn. 2005) (holding that the Yale Law School *faculty* (as distinguished from the Yale Law School) was “clearly an expressive association for the purposes of First Amendment analysis”); *FAIR v. Rumsfeld*, 390 F. 3d 219, 231 (3d Cir. 2004).

Instead, Defendants argue that what other courts have already held would lead to a catastrophe that did not occur in the wake of those courts’ rulings. Specifically, Defendants argue that “[i]f Woodcock’s theory is correct, then career civil servants can reject the political appointee chosen to run their particular department.” Resp. at 37. The trouble with that reasoning is that, unlike faculty, who enjoy protection for scholarly speech that falls within the scope of their employment, career civil servants do not enjoy protection for speech within the scope of their employment. *Compare Meriwether*, 992 F. 3d at 505 *with Garcetti v. Ceballos*, 547 U.S. 410, 424–25 (2005). Accordingly, whether they meet the test for an expressive association or not, any message they may associate to

send as part of their official duties is not protected. And so, unlike faculty, they could not argue that alteration of the message that they send as members of their cabinets due to forced inclusion of a leader violates their protected speech rights. Faculty occupy a unique position in the law of expressive association because, unlike virtually all other categories of public employees, their job is to speak their minds and the Kentucky and U.S. Constitutions protect their right to do that on the job. *Meriwether*, 992 F. 3d at 505.

The Defendants’ statement that “[a]ll of the freedom of association cases involve attempts by the government to force private groups to include persons that the groups wish to exclude” is simply false. Resp. at 36. There is a vast body of caselaw recognizing the associational rights of government employees. *See, e.g., Baloga v. Pittston Area School Dist.*, 927 F.3d 742, 749, 758 (3d Cir. 2019) (associational rights of custodian for school district); *Pro. Ass’n of Col. Educ. v. El Paso Cty. Com. Col.*, 730 F.2d 258, 261, 267 (5th Cir. 1984) (associational rights of community college dean); *Boddie v. City of Columbus, Miss.*, 989 F.2d 745, 747, 751 (5th Cir. 1993) (associational rights of fireman).

Defendants also claim that expressive associations “deal[] with close personal relationships.” Resp. at 37. But Defendants confuse expressive associations (at issue in this case) and “intimate human relationship” cases. *Roberts v. United States Jaycees*, 468 U.S. 609, 617–18 (1984). It is the latter that involve “close personal relationships.” *Id.* The Court has cautioned that these are “distinct” “line[s] of decisions.” *Id.*

Defendants’ contention that “a law faculty should be defined by intellectual diversity” and therefore cannot be said to associate to express a message also fails. Resp. at 36. But the fact that a group associates to express a message does not imply that individual members cannot express other messages. For example, in *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, the Court held that the government could not force a parade to include a gay pride banner even though the parade otherwise “had no written criteria and employed no particular procedures for admission,

voted on new applications in batches, had occasionally admitted groups who simply showed up at the parade without having submitted an application, and did not generally inquire into the specific messages or views of each applicant.” 515 U.S. 557, 562 (1995) (cleaned up). The fact that parade marchers expressed a variety of views did not prevent the Court from concluding that inclusion of a pride message would alter the message sent by the parade in violation of constitutional speech rules. *Id.* at 581. Moreover, the Court made clear in *Boy Scouts v. Dale* that a group may associate to express a message even when some members of the group disagree with it. The Court stated that “the First Amendment simply does not require that every member of a group agree on every issue in order for the group’s policy to be expressive association. The Boy Scouts takes an official position with respect to homosexual conduct, and that is sufficient for First Amendment purposes.” 530 U.S. 640, 655 (2000) (cleaned up). In the present case, the faculty, too, have taken a position, both when they declared their mission to be the advancement of knowledge, which implies peer review, and when they sent an email to Capilouto and DiPaola rejecting Van Tatenhove because of his lack of a record of scholarship. Am. Compl. ¶¶ 17, 19, 56. Defendants do not otherwise challenge Woodcock’s contention that the message that the faculty associate in order to send is peer review.

b) The Appointment Significantly Affects the Ability of the Faculty to Send Their Message

Defendants do not seriously contest that the appointment of a non-peer changes the message that association with the faculty sends from that of “peer review” to that of “non-peer review”. Defendants instead assert in conclusory fashion that Van Tatenhove’s “mere presence” does not impair the faculty’s message. Resp. at 29. But the Court in *Dale* was clear that the right of expressive association was significantly affected because “Dale’s presence in the Boy Scouts” “would” “force the organization to send a message[.]” 530 U.S. at 653. By the same token, the presence of a non-peer on the faculty forces the faculty to send the message that non-peer review is an acceptable mode of academic inquiry.

Defendants also argue that “it is not unusual for a dean to be from a completely different field from that of a faculty member”, giving the example that the dean of the College of Arts and Sciences is a psychologist who presides over departments ranging from history to chemistry. Resp. at 38. Defendants fail to appreciate that the College of Arts and Sciences is divided into departments along disciplinary lines. And it is the role of the departments, and not the dean, to evaluate faculty within the department in the first instance. Admin. Reg. — Univ. Org. § E.5.c., Ex. 22. By contrast, the law school has no departments, so the dean carries out the evaluative role normally played by a department chair. *Id.* at § F.2.c., Ex. 22 (“In addition to the roles and responsibilities described above, the dean of a college without departments shall have any other roles and responsibilities which are delegated to a department chair.”).

More generally, Defendants’ attempts to argue that the appointment of Van Tatenhove does not impair the faculty’s message runs aground on the deference that the U.S. Supreme Court has said that the government owes to expressive associations. *Dale* made clear that courts “must” “give deference to an association’s view of what would impair its expression.” *Id.* University administrators, like courts, are not “suited to evaluate the substance of the multitude of academic decisions that are made” “by faculty members”, including the decision who is qualified to evaluate the faculty’s scholarship. *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 226 (1985). In this case, the faculty have spoken. They rejected Van Tatenhove because of his lack of a record of scholarship. Ex. 8.

2. Arbitrary Power

Section 2 of the Kentucky Constitution prohibits the exercise of “arbitrary power” by a state agency. “As a general rule, the yardstick of fairness is sufficiently broad to measure the validity of administrative action.” *American Beauty Homes Corp. v. Louisville*, 379 S.W. 2d 450, 457 (Ky. 1964). “The question of reasonableness is one of degree and must be based on the facts of a particular

case.” *Ky. Milk Mktg. v. Kroger Co.*, 691 S.W. 2d 893, 900 (Ky. 1985). Examples of exercises of arbitrary power include (1) “failure of an administrative agency to follow its own rule or regulation[,]” (2) action lacking “substantial evidentiary support[,]” (3) “change[]” to a “formula” or practice that had been followed “for many years” “without reason or explanation[,]” and (4) “action in excess of granted power[.]” *American Beauty*, 379 S.W. 2d at 456 (excess of granted authority or lack of evidentiary support); *Com., Transp. Cabinet v. Weinberg*, 150 S.W. 3d 75, 77 (Ky. Ct. App. 2004) (failure to follow rules); *Ky. Milk Mktg. v. Kroger Co.*, 691 S.W. 2d 893, 900–01 (Ky. 1985) (unexplained change in longstanding practice).

a) This Court and Not the ABA Decides

Defendants do not contest the substantial evidence (2) and action in excess of granted power (4) claims. With respect to the violation of written policies (1) claim, Defendants do not contest that the appointment of Van Tatenhove violated the appointments regulation requiring the solicitation of written statements from the faculty and the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) accreditation standard incorporated into the Employee Code requiring that the University honor its faculty governance rules. Am. Compl. ¶¶ 75, 77. They argue only that there is no violation of the ABA standards incorporated into the Employee Code because the ABA has not yet ruled that the University has violated accreditation requirements. Resp. at 41–42. But ABA enforcement has no bearing on whether the University has violated Section 2 of the Kentucky Constitution. The University’s Employee Code incorporates the text of the ABA rules into its own. It mandates “compl[iance] with . . . accreditation requirements.” Employee Code § I.D, Ex. 20 at 1. The Code makes no distinction between actions that have been adjudicated by the ABA to violate ABA requirements and actions that have not been so adjudicated. It does not delegate authority to the ABA to decide when a violation of accreditation requirements has occurred. Rather, it makes the ABA requirements into University requirements and mandates “compl[iance]”.

The University's incorporation of accreditation rules into its own written policies makes sense. Allowing a violation of accreditation rules to lead to enforcement by an accreditor can damage a school's reputation, making it harder for the school to attract students and faculty, and potentially leading to a death spiral. In consequence, schools that receive letters of noncompliance from the ABA often sue to block their release on the ground that it would cause irreparable injury. *See, e.g., Thomas M. Cooley Law School v. the American Bar Association*, No. 17-13708 slip op. 8–9 (E.D. Mich. Dec. 12, 2017). In one case, the court acknowledged the existence of “reputational injury” and noted that “prospective students [had] already drawn conclusions about the School” after “word” got “out” that the ABA had issued a letter. *Id.* at 9. In mandating compliance with accreditation requirements, the University prohibits activity by its employees that can lead to accretor sanctions, thereby preventing harm to reputation before it occurs. Prohibiting violations only once the ABA has acted would deprive the University of this risk mitigation device.

Defendants argue that if “the ABA disagrees with Woodcock, then his entire arbitrary power theory collapses.” Resp. at 42. Not so. Woodcock's substantial evidence (2), longstanding practice (3), and action in excess of granted power (4) claims are not predicated on a violation of ABA standards. And Woodcock's failure to follow written rules (1) claim would also survive because, as already noted, the appointment of Van Tatenhove violated the appointments regulation requiring the solicitation of written statements from the faculty and the SACSCOC accreditation standard requiring that the University honor its faculty governance rules. Am. Compl. ¶¶ 75, 77. Thus Woodcock's arbitrary power claims hardly live or die by adjudication of ABA standards.

And anyway, as already noted, ABA disagreement with Woodcock would be irrelevant because the University policy incorporating the ABA rules does not provide that violations are to be determined by the ABA. Moreover, any adverse ABA ruling may result from political pressure rather than a judgment that Defendants' actions were compliant. That is because the ABA is under

pressure to placate Republican state legislatures that are threatening to undermine the association's role in attorney licensing. "Texas, Florida, and Alabama have each moved to sideline the ABA in their lawyer licensing processes in recent months" and "several others are weighing similar moves".² Against this backdrop, the ABA is in the process of repealing its diversity standard as "a survival calculation rather than a change of heart".³ Given the support for Van Tatenhove's appointment voiced by leading Kentucky Republican politicians, the ABA may similarly choose not to sanction the University as "a survival calculation" aimed at averting an attempt by Kentucky Republicans to join Texas, Florida, and Alabama in sidelining the ABA in Kentucky's lawyer licensing process.⁴

b) Section 2 Is Not Limited to Procedural Due Process and Equal Protection

Defendants also attempt to argue that Section 2 is coextensive with due process and equal protection rights under the U.S. Constitution, thereby implying that Section 2 does not prohibit violations of written policies or longstanding practice. But Kentucky caselaw says otherwise. *Com., Transportation Cabinet v. Weinberg*, 150 S.W. 3d 75, 77 (Ky. Ct. App. 2004) (failure to follow rules); *Ky. Milk Mktg. v. Kroger Co.*, 691 S.W. 2d 893, 900–01 (Ky. 1985) (unexplained change in longstanding practice). "Section 2 of our Bill of Rights is unique, only the Constitution in Wyoming having a like declaration[.]" *Com. Nat. Res. & Envir. Prot. v. Kentec*, 177 S.W.3d 718, 726 (Ky. 2005) (cleaned up). For example, Section 2's requirement that state agencies follow their own rules is not duplicated by the U.S. Constitution. *Compare Com., Transportation Cabinet v. Weinberg*, 150 S.W. 3d 75, 77 (Ky. Ct.

² Karen Sloan, *American Bar Association Splits on Plan to Scrap DEI Rule for Law Schools*, Reuters (Aug. 4, 2026), <https://www.reuters.com/legal/government/american-bar-association-rejects-plan-scrap-dei-rule-law-schools-2026-08-04/>.

³ Kathryn Rubino, *Turns Out The ABA's Gatekeeping Role Actually Does Something*, Above the Law (May 19, 2026), <https://abovethelaw.com/2026/05/turns-out-the-abas-gatekeeping-role-actually-does-something/>.

⁴ Cf. McKenna Horsley, *Beshear Again Criticizes U of Kentucky Hiring Decisions, Says 'Real Oversight' is Needed*, Kentucky Lantern (Apr. 22, 2026), <https://kentuckylantern.com/2026/04/22/beshear-again-criticizes-u-of-kentucky-hiring-decisions-says-real-oversight-is-needed/> (noting that Republican House Speaker David Osborne, for whom Van Tatenhove's wife serves as general counsel, Republican Secretary of State Michael Adams, and Republican Attorney General Russell Coleman have all publicly defended Van Tatenhove's appointment).

App. 2004) *with Doe v. Miami University*, 882 F.3d 579, 603 (6th Cir. 2017) (holding that federal due process rights do not require a university to follow its written policies). The closest federal doctrine to Section 2’s requirement that agencies follow their rules is the *Accardi* doctrine. *Shaughnessy v. United States ex rel. Accardi*, 349 U.S. 280 (1955). But, unlike Section 2, *Accardi* applies only to federal agencies. *Board of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 92 n.8 (1977). Section 2 is unique, and extends well beyond the ambit of existing federal rights.

c) Defendants Violated Longstanding Practice Without Reason or Explanation

Defendants challenge Woodcock’s violation of longstanding practice (3) claim. In particular, they challenge the rule established by *Ky. Milk Mktg. v. Kroger Co.* that deviation “without reason or explanation” from a practice carried on “for many years” violates Section 2. Defendants argue that honoring the rule would mean that “any time a governmental agency deviates from a proper practice, it violates Section 2.” 691 S.W.2d 893, 900–01 (Ky. 1985); Resp. at 41. Not so. The rule does not prohibit all deviations from past practice, but only extraordinary deviations—those that (1) “without reason or explanation” (2) depart from practices that have persisted for “many years”. *Id.* It leaves agencies free to change their minds *without explanation* even years after making a decision, but requires that agencies act in a reasoned, deliberate fashion when departing from their most longstanding practices. That is, if anything, a conservative application of Section 2’s prohibition on the arbitrary exercise of state power.

In the present case, Defendants deviated from at least a half century of respect for faculty preferences in the dean selection process. Ausness Decl. ¶¶ 3, 5. And they did so without making *any* attempt to explain why the three finalists approved by the faculty, at least one of whom has said that she would have accepted an offer, would have been less able to handle the “financial pressures”, “workforce alignment needs”, “demand for new academic programs”, “artificial intelligence”, and “need for external fundraising” that Defendants have said they wished to address through the

appointment. Ex. 8; Ex. 14 at 7; Ex. 28. The response letter sent by Defendants to the ABA similarly does not even attempt to explain why the three finalists were less able to address Defendants' concerns. That is an arbitrary exercise of power in violation of Section 2.

Defendants also argue that under *Kroger* Woodcock must show that any unexplained deviation from longstanding practice "affected a property right". Resp. at 41. But *Kroger* imposes no such limitation. In *Kroger*, the Court found two separate violations of Section 2. First, the Court concluded that the Kentucky Milk Marketing Law violated Section 2 on its face because it "interfered with the right of the owner to fix the price at which his property shall be sold." *Kroger*, 691 S.W.2d at 900. Second, the Court held that the "manner" in which the state milk marketing commission "administered" the law was "arbitrary" in violation of Section 2 because the commission deviated "without reason or explanation" from a practice carried on "for many years". *Id.* at 900–01. While the Court premised the facial violation of Section 2 on the law's interference with property rights, the Court did not premise its conclusion that the commission had acted arbitrarily on interference with a property right. The discussion of property rights to which Defendants cite appears in a different section of the opinion. *Compare id.* at 900 *with id.* at 901.

d) A Violation of Section 2 Need Not Be Conscious

Defendants also suggest that a violation of Section 2 must be "conscious." Resp. at 41. That is not so for the rule violation, substantial evidence, longstanding practice, and exceeds granted authority claims that Woodcock brings under Section 2. Section 2 *also* guarantees procedural due process and equal protection under the law. And the Kentucky Supreme Court has held that proof of a violation of equal protection under Section 2 requires a showing that the discrimination was "conscious." *Standard Oil Co. v. Boone County Bd. of Sup'rs*, 562 S.W.2d 83, 85 (Ky. 1978). But the Court has never required proof of state of mind for the Section 2 claims that Woodcock brings, and Defendants provide no authority for that proposition. Indeed, the Court in *Kroger* did not consider

state of mind in holding that the milk commission had violated Section 2 when it changed its longstanding practice “without reason or explanation.” *Kroger*, 691 S.W.2d at 901.

Even if there were a requirement that Defendants acted “consciously”, it is met in this case. Woodcock informed Capilouto and the Board of Trustees that the appointment violated written University policies and accreditation standards in early March 2026, months before Van Tatenhove was set to start in office, but Capilouto forged ahead with the appointment anyway. Am. Compl. ¶ 35. Those written policies and accreditation standards established that Capilouto was not only violating University rules but acting in excess of his delegated authority. Suppl. Memo. L. Supp. Emergency Mot. Temp. Inj. at 20–21. Capilouto knew that he was appointing Van Tatenhove without tenure, reflecting a lack of evidence that Van Tatenhove is qualified for the position, and Capilouto sought to justify the appointment in balance of power terms rather than based on evidence of qualification, stating that “American Bar Association standards” “do not exist to give a group of faculty veto power on decisions[.]” Ex. 79. And as one of the nation’s longest-serving university presidents, having been appointed in 2011, Capilouto knew that he was departing from longstanding practice in appointing a dean over the stated objection of the faculty.⁵

e) DiPaola’s Response to the ABA Does Not Call the Faculty’s Opposition Into Question

Defendants argue that, in his letter responding to the ABA investigation, DiPaola “explained why there were doubts about whether a substantial majority of the faculty actually opposed” Van Tatenhove. Resp. at 42; *see* Exhibit 9, Defs.’ Resp. to Pl.’s Mot. for Temp. Inj. [hereinafter DiPaola ABA Ltr.]. But DiPaola’s letter does not provide any basis for doubting that a substantial majority of the faculty opposed Van Tatenhove. The letter asserts without support that the discussion upon which the faculty’s email opposing Van Tatenhove was based “did not include the full faculty.”

⁵ *About the President*, Office of the President, <https://pres.uky.edu/about-president>.

DiPaola ABA Ltr. at 2. But every member of the faculty that spring was copied on the email of Professors Douglas and Steenken, and the professors' communication to DiPaola and Capilouto stated that the email expressed "the collective views of the faculty" and that "[a] substantial majority of the faculty found" Van Tatenhove to be "unacceptable."⁶ Ex. 8. In his letter, DiPaola also states that "[n]o formal vote was taken, and no formal mechanism was used to determine the view of the faculty as an official body." DiPaola ABA Ltr. at 2. DiPaola does not explain what he means by a "formal vote" or a "formal mechanism", the University provides the faculty with no such mechanism, and the ABA rules do not require a "formal vote" or "formal mechanism", or define what "formal" would mean. The ABA rules instead state that "a dean should not be appointed" "over the stated objection of a substantial majority of the faculty". ABA Standards Interp. 203-1, Ex. 19 at 14. The email sent by the faculty to DiPaola and Capilouto clearly "state[s]" the "objection of a substantial majority of the faculty". Ex. 8; ABA Standards Interp. 203-1, Ex. 19 at 14. Noncompliance with an imagined formality requirement does not cast doubt on whether an email by two associate deans and tenured members of the faculty purporting to speak for the faculty "collective[ly]" and upon which the entire faculty was copied accurately conveys the view of the full faculty. Ex. 8.

DiPaola also argues that Professors Douglas and Steenken did not file complaints with the ABA and that this casts doubt on faculty opposition to the appointment. DiPaola ABA Ltr. at 3. But any reluctance to file a complaint says little about whether a substantial majority of the faculty opposed the appointment. University Defendants maintain that a dean has "absolute authority" to suspend a faculty member and ban him from the law building and, at the time that the faculty expressed their

⁶ The presence of every member of the faculty on the cc line of the email can be verified by cross referencing the names with the list of faculty on the law school's website. *Faculty*, J. David Rosenberg College of Law, <https://law.uky.edu/people/faculty>. The faculty not listed in the cc line are visiting professors or new hires who started on the faculty this fall.

opposition to Van Tatenhove, the current dean had exercised that power to suspend and ban Woodcock in retaliation for his speech. Am. Compl. ¶ 24; Ex. 87 at 1. Under these circumstances, it is reasonable for faculty who oppose Van Tatenhove to fear retaliation if they were to file a complaint about him, and to rely upon Woodcock, who has already been suspended and banned, to take action instead. Indeed, according to Woodcock’s Declaration, one colleague told Woodcock that Woodcock “was in a better position than they to challenge the appointment of Van Tatenhove as dean.” Woodcock Decl. ¶ 28.

Even if DiPaola’s letter is taken to cast doubt on whether the faculty opposed the appointment, that would not put an end to Woodcock’s violation of written policies (1), lack of substantial evidence (2), or action in excess of granted power (4) claims. Defendants would still have violated the accreditation standard prohibiting the appointment of a dean without tenure, the University appointments regulation requiring that written statements of tenured faculty accompany a dean appointment, and the SACSCOC rule requiring enforcement of faculty governance rights. Employee Code § I.D, Ex. 20 at 1; ABA Standards Standard 203(b), Ex. 19 at 1; SACSCOC Requirement 10.4, Ex. 73 at 7; Admin. Reg. — Univ. Appts. § A.3, Ex. 74 at 2. Defendants would still have acted in excess of granted authority because the board’s delegation of appointments power is condition on compliance with SACSCOC rules. Governing Reg. I — Decl. Principles. § A.3, Ex. 26 (delegating authority to the President only as “consistent with the University’s accrediting body”, which is SACSCOC). And the appointment would still have been made without substantial evidence that Van Tatenhove was qualified.

3. Breach of Contract

“The elements of a breach of contract claim are” (1) “existence of a contract;” (2) “breach of that contract; and” (3) “damages flowing from the breach of contract.” *Metro Louisville/Jefferson County Govt. v. Abma*, 326 S.W. 3d 1, 8 (Ky. Ct. App. 2009). Defendants do not challenge the

existence of damages. Defendants challenge the existence of a contract by arguing that the Employee Code (which incorporates accreditation requirements) and University appointments policies that Defendants breached in hiring Van Tatenhove are not part of Woodcock's employment agreement. Resp. at 42–43; Employee Code § I.D, Ex. 20 at 1; ABA Standards Interp. 203-1, Standard 203(b), Ex. 19 at 1; SACSCOC Requirement 10.4, Ex. 73 at 7; Admin. Reg. — Univ. Appts. § A.3, Ex. 74 at 2.

Woodcock argues that the Employee Code and University appointments policies are part of his contract written employment contract for three reasons: (1) Woodcock's signed offer letter incorporates them by reference, Ex. 21 at 1 (stating that Woodcock's "responsibilities" are "as outlined in the . . . University of Kentucky rules and regulations"), (2) they are contractually binding handbook policies under the doctrine of *Parts Depot, Inc. v. Beiswenger*, 170 S.W.3d 354, 362–63 (Ky. 2005), and (3) they are contractually binding as handbook policies associated with tenured faculty employment, *Crenshaw v. Erskine College*, 850 S.E. 2d 1, 20 (S.C. 2020). Defendants do not challenge Woodcock's contention that the Employee Code and appointments policies bind the University in virtue of Woodcock's tenured appointment under the persuasive authority in *Crenshaw v. Erskine College*, 850 S.E. 2d 1, 20 (S.C. 2020).

a) Immunity Does Not Bar Enforcement of Woodcock's Contract Under a *Parts Depot* Theory

Defendants also fail directly to challenge Woodcock's contention that the Employee Code and appointments policies bind the University under the doctrine of *Parts Depot*. 170 S.W.3d at 362–63. They challenge Woodcock's *Parts Depot* theory only on the ground that a contract made binding under *Parts Depot* does not count as a written contract for purposes of the state's waiver of immunity for written contracts. Resp. at 43; Ky. Rev. Stat. § 45A.245. This argument is unavailing for three reasons.

First, the state is not immune to requests for prospective injunctive relief from ongoing violations of law, such as the University’s ongoing breach of the Employee Code (and accreditation standards incorporated therein) and appointments regulation. *Beshear v. Haydon Bridge Co., Inc.*, 416 S.W. 3d 280, 289, 293 (Ky. 2013) (stating that “prospective injunctive powers”, “includ[ing] temporary relief”, “are available to Kentucky courts” in suits against state agencies unless “the action is in essence one for the recovery of money from the state”); *see also* Resp. to Defs.’ Mot. to Dismiss at 25–28. Accordingly, immunity does not bar Woodcock’s request for temporary injunctive relief based on the breach of contract and so no waiver of immunity is required for Woodcock to obtain such relief.

Second, even if waiver is required, the Employee Code and appointments policies satisfy the waiver requirements because they are written policies. Ky. Rev. Stat. § 45A.245(1) (waiving immunity for a “lawfully authorized written contract”). Defendants suggest that *Furtula v. University of Kentucky* held that contracts recognized under the doctrine of *Parts Depot* do not count as written contracts for purposes of the immunity waiver. Resp. at 43 & n.180. But that is false. The Justices deciding *Furtula* split evenly on the question whether *Parts Depot* contracts count as written, with Justice Noble pointing out that the best way to understand “[e]mployee-handbook cases” under *Parts Depot* is that “[t]here is a writing, an offer, and acceptance by performance” creating a written unilateral contract that qualifies for the immunity waiver. *Id.* at 310, 313 (Noble, J., joined by Scott, J., and Minton, J., on this particular issue, with Abramson, J., not sitting). As a result, this Court is free to follow Justice Noble’s theory. *See Pogue v. Principal Life Ins. Co.*, 979 F.3d 534, 536 (6th Cir. 2020) (stating that “the Restatement view” is “that once an appellate court has affirmed on one ground and passed over another, preclusion does not attach to the ground omitted from its decision”).

Third, there is no immunity from Woodcock’s request for a declaration that Defendants breached his contract. *Com. v. Kentucky Retirement Systems*, 396 S.W.3d 833, 838–89 (Ky. 2013); *Am.*

Compl. at 53. And, based on a declaration that the University breached the contract, this Court can enjoin Van Tatenhove from continuing in office because he is “in active concert or participation with” the University. Ky. R. Civ. P. 65.02(2) (stating that “[e]very restraining order or injunction shall be binding upon the parties” “and upon other persons in active concert or participation with them”). So immunity for a contract recognized under *Parts Depot* does not aid the University as a practical matter in this case.

b) Defendants Do Not Meaningfully Challenge Woodcock’s Incorporation by Reference Arguments

Defendants also fail to meaningfully challenge Woodcock’s argument that the Employee Code and university appointments policies are incorporated by reference into his signed offer letter. Ex. 21; Employee Code § I.D, Ex. 20 at 1; Admin. Reg. — Univ. Appts. § A.3, Ex. 74 at 2.

Woodcock argues that the offer letter “clear[ly] refer[s]” to the policies, signals that they “control, decide, or affect” the contract, and that the documents share “mutuality of subject matter”. *University of Kentucky v. Regard*, 670 S.W. 3d 903, 913–14 (Ky. 2023); *Britt v. University of Louisville*, 628 S.W. 3d 1, 8 (Ky. 2021); Suppl. Memo. L. Supp. Emergency Mot. Temp. Inj. at 22–23. Defendants do not challenge *any* of these claims. They merely emphasize that the accreditation standards breached by University Defendants are not printed directly in Woodcock’s offer letter. Resp. at 42–43. But those provisions do not need to be printed directly in the letter to be binding so long as they have been incorporated by reference. *Regard*, 670 S.W. 3d at 912 (“At common law, one writing can refer to another writing and incorporate the latter's contents into the contractual bargain; this is known as incorporation by reference.”).

c) Woodcock Does Not Claim Veto Power, Only That University Defendants Follow the Rules That They Themselves Established

Defendants erroneously suggest that Woodcock claims contractual “veto power over the decisions of the Board of Trustees, the President, and the Provost.” Resp. at 43. But Woodcock

claims only the same contractual right to enforcement of personnel policies enjoyed by most public and private sector employees in Kentucky and around the country under *Parts Depot* and other doctrines. *See Parts Depot*, 170 S.W.3d. at 363; Karen Cross, *Faculty Handbook as Contract*, 45 CARDOZO L. REV. 789, 799 & n.45 (2024) (discussing the national influence of *Toussaint v. Blue Cross & Blue Shield of Michigan*, 292 N.W.2d 880 (Mich. 1980)).

Capilouto has the authority to “promulgate and implement Administrative Regulations”, including the Employee Code that binds him to follow accreditation requirements and the University’s appointments policy. Gov. Reg. III — The President § B, Ex. 37 at 1. If he and the other University Defendants did not wish to be bound by accreditation requirements or to obtain written statements from the faculty as part of the appointment of a dean, they could have removed the relevant provisions from the Employee Code and the appointments policy. Having decided to include those rules, and thereby to obligate themselves in contract to Woodcock to follow those rules, University Defendants cannot now complain that Woodcock seeks to enforce his rights. Alternatively, Defendants could have chosen to abide by their own written rules in appointing a dean.

Finally, Defendants argue that there is no breach because only the ABA and SACSCOC can decide whether accreditation rules have been violated. Resp. at 43–44. Defendants make a similar argument with respect to Woodcock’s arbitrary power claim, and it fails for the reasons set forth in Woodcock’s discussion of arbitrary power above in Section D.2.a). The Employee Code incorporates the ABA and SACSCOC rules by reference, so they are also the University’s rules and they are violated when their letter is violated, not when the ABA or SACSCOC so opines.

E. Failure to Restore the Status Quo Immediately and Irreparably Harms Woodcock

1. Loss of Governing Rights

Defendants do not challenge Woodcock’s contention that it is well established that “the denial of bargained-for” “rights” of control over an organization, including a “right to veto certain transactions”, such as the hiring of a leader, “standing alone, may constitute irreparable harm, for purposes of obtaining preliminary injunctive relief where such rights are central to preserving an agreed-upon balance of power in” “management”. *Wisdom Import Sales Co. v. Labatt Brewing Co.*, 339 F. 3d 101, 104 (2d Cir. 2003). Instead, Defendants argue—without pointing to any caselaw in support—that there is no harm because the law school is a public, rather than private institution, and “[t]his is not Woodcock’s university. It is the Commonwealth’s university.” Resp. at 47. But the value of control does not turn on the public or private character of the organization.

Defendants do not explain why the Commonwealth might have an interest in reinforcing the authoritarian power of administrators in violation of the University’s own shared governance rules. If anything, there is a greater harm in allowing public, rather than private, institutions to flout those rules. The integrity of the University’s governance structure is at stake. The courts have long recognized the value of the academic freedom of universities and their constituents, which they have framed in part as a matter of who controls decision-making within the institution. In his famous *Sweezy* concurrence, Justice Frankfurter identified four “freedoms” which he characterized as “most conducive to speculation, experiment and creation,” namely the right to determine “who may teach, what may be taught, how it shall be taught, and who may be admitted to study.” *Sweezy v. State of N.H. by Wyman*, 354 U.S. 234, 263 (1957). *N.L.R.B. v. Yeshiva Univ.*, 444 U.S. 672, 689 (1980) (“The university requires faculty participation in governance because professional expertise is indispensable to the formulation and implementation of academic policy.”) Where parties within an organization negotiate allocation of control, that control can have intrinsic value. *See e.g., Gitlitz v. Bellock*, 171 P.3d

1274, 1280 (Colo. App. 2007) (“[A] contractual right to participate in the management and control of a business has intrinsic value in and of itself that may not be adequately compensated by monetary damages.”).

Here, the parties have carefully calibrated and negotiated a governance structure designed to protect those freedoms and foster the academic integrity of the institution. In particular, they agreed that faculty must have a decision-making role in selecting the individual who will lead the College of Law’s academic program, from assigning classes, to evaluating the qualifications of its personnel, to interacting with the public on behalf of a scholarly institution. Defendants have discarded that governance structure, and the resulting losses in governance authority by the faculty are irreparable.

Governance rights also have economic value regardless of whether they relate to a public institution or a private one. In a private corporation, governance rights may be valuable because the victim owns shares in the corporation. *Cf. Oracle Real Estate Holdings v. Adrian Holdings Co.*, 582 F. Supp. 2d 616, 620 (S.D.N.Y. 2008) (noting that plaintiff had made a \$25 million investment in the entity over which control was contested). In the present case, governance rights are valuable because the organization supplies the victim (Woodcock) with a valuable speech platform that he took a massive pay cut to obtain. Woodcock Decl. ¶¶ 1–10. Just as control rights are valuable to a private investor because they enable him to exert influence over corporate governance that maximizes the value of his shares, control rights are valuable to a faculty member because they enable him to exert influence over law school governance that maximizes the value of the speech platform supplied to him by the school. Woodcock Decl. ¶¶ 1–10.

Defendants also argue that the harm associated with breach of control rights is speculative because it is not certain that control over governance would translate into better governance and an increase in economic value. That is no objection because the whole point of the doctrine that denial of control rights is irreparable harm is to relieve plaintiffs of the burden of proving that loss of

control would lead to a decline in economic value. That is why the doctrine recognizes that control rights have “intrinsic value” such that their denial, “*standing alone*, may constitute irreparable harm, for purposes of obtaining preliminary injunctive relief”. *Wisdom Import Sales Co. v. Labatt Brewing Co.*, 339 F. 3d 101, 104 (2d Cir. 2003) (emphasis added); *Oracle Real Estate Holdings v. Adrian Holdings Co.*, 582 F. Supp. 2d 616, 626 (S.D.N.Y. 2008).

Defendants also argue that because Woodcock’s control rights have economic value, they cannot serve as the basis for a finding of irreparable harm. Resp. at 48 (stating that “[a]ny alleged ‘economic value’ lost as a result of Dean Van Tatenhove’s appointment can, by definition, be remedied through monetary damages.”). This misunderstands the basis for specific performance in contract law. Because contract damages must be economic in nature, a rule that economic losses cannot count as irreparable harm would eliminate specific performance as a contract remedy. *Giddings & Lewis v. Industrial Risk*, 348 S.W.3d 729, 733 (Ky. 2011). The rule for granting specific performance is instead that there must be “no certain pecuniary standard for the measurement of” economic losses. *Cyprus Mountain Coal Corp. v. Brewer*, 828 S.W. 2d 642, 645 (Ky. 1992). In the present case, the share of Woodcock’s pay cut attributable to loss of control rights is unknowable, so there is no certain pecuniary standard for measure the harm to Woodcock of their loss, and therefore specific performance is appropriate.

Defendants further argue that difficulty in calculating damages does not constitute irreparable harm. Resp. at 49. But the irreparable harm standard is whether “no certain pecuniary standard for the measurement of” damages exists. *Cyprus Mountain*, 828 S.W. 2d at 645. In cases in which there is no certain pecuniary standard, damages will of course be difficult to calculate. So difficulty of calculation is not legally significant in deciding irreparable harm in contract cases. Here, Woodcock took a pay cut in exchange for a valuable bundle of services provided by the University. Woodcock Decl. ¶¶ 1–10. These include his governance rights. But they also include things like his right to

choose his research topics. There is no way to determine the specific share of the pay cut that corresponds to the value of governance rights to Woodcock. Accordingly, there is no certain pecuniary standard available for measuring the value of governance rights to Woodcock.

Defendants also argue that there has been no actual denial of control rights because “[f]aculty members remain free to advocate for their preferred policies, participate in faculty governance, serve on committees, and provide input regarding the operation of the Law School.” Resp. at 48; *see also* Resp. at 47 (stating that “[t]he University’s governance structure remains unchanged”). But that is not the case. Woodcock’s contract states that a dean will not be appointed over the objection of a substantial majority of the faculty—which includes Woodcock—and the current dean was appointed over the objection of a substantial majority of the faculty, including Woodcock. Employee Code § I.D, Ex. 20 at 1 (requiring compliance with accreditation standards); ABA Standards Interp. 203-1, Standard 203(b), Ex. 19 at 14 (requiring that a dean not be appointed over the objection of the faculty unless there is good cause and that a dean be a tenured member of the faculty). Woodcock’s contract further states that recommendations for the appointment of a dean must include the written statement of each tenured member of the faculty. Admin. Reg. — Univ. Appts. § A.3, Ex. 74 at 2. The current dean was appointed without such written statements, including without Woodcock’s written statement. These are ongoing violations of Woodcock’s control rights.

Defendants argue that because large losses are not necessarily irreparable, Woodcock’s loss of control rights, which Defendants apparently consider a small loss, is reparable. Resp. at 48. But the standard for irreparability is whether there is a “certain pecuniary measure” of damages, not the size of the damages. *Cyprus Mountain Coal Corp.*, 828 S.W. 2d at 645. If damages are measurable, then they are reparable regardless of size. But if, as in the present case, they are not measurable, then they are irreparable—again regardless of size.

Defendants argue that because the University’s Board of Trustees has statutory authority to govern the University, the University’s denial of bargained-for control rights to Woodcock cannot be irreparable harm. Resp. at 46–47. But the Board of Trustees can bind the University by contract. See Ky. Rev. Stat. § 164.160 (stating that the board has “the usual corporate powers”); Ky. Rev. Stat. § 271B.3-020(1)(g) (stating that “[u]nless its articles of incorporation provide otherwise, every corporation shall have” “power to” “[m]ake contracts”). The University elected to bind itself to provide governance rights to Woodcock when it adopted an Employee Code that incorporates the governance rights mandated by the ABA and SACSCOC, and when it adopted a University Appointments regulation committing the University to obtaining written statements from faculty about dean appointment recommendations. Employee Code § I.D, Ex. 20 at 1; ABA Standards Interp. 203-1, Standard 203(b), Ex. 19 at 1; SACSCOC Requirement 10.4, Ex. 73 at 7; Admin. Reg. — Univ. Appts. § A.3, Ex. 74 at 2. And all Kentucky statutes are subject to the dictates of the Kentucky Constitution as interpreted by the courts. *Smothers v. Lewis*, 672 S.W.2d 62, 64 (Ky. 1984). Moreover through Kentucky Constitution Section 2’s prohibition on exercises of absolute power, the board, along with all government agencies, is prohibited from violating the University’s written policies, including those providing Woodcock with governance rights, as well as longstanding governance practice. *Com., Transportation Cabinet v. Weinberg*, 150 S.W. 3d 75, 77 (Ky. Ct. App. 2004) (failure to follow rules); *Ky. Milk Mktg. v. Kroger Co.*, 691 S.W. 2d 893, 900–01 (Ky. 1985) (unexplained change in longstanding practice).

Finally, Defendants mix a standing argument into their irreparable harm discussion, stating that control rights are not “a concrete personal right”. Resp. at 48. Woodcock’s governance rights are contained in the University’s Employee Code and University Appointments regulations, which are part of Woodcock’s contract. Employee Code § I.D, Ex. 20 at 1; ABA Standards Interp. 203-1, Standard 203(b), Ex. 19 at 1; Admin. Reg. — Univ. Appts. § A.3, Ex. 74 at 2. As rights provided to

Woodcock in a contract, they are personal to him. As rights guaranteed to Woodcock by the arbitrary power provision of the Kentucky Constitution, which requires that state agencies follow their own written policies and longstanding practice, these rights are also personal to Woodcock. *See, e.g., University of Kentucky v. Davis*, 551 SW 3d 443, 448 (Ky. Ct. App. 2017) (holding that individual state employees could sue under Section 2 of the Kentucky Constitution). Their breach deprives him of control rights that have been recognized to have “intrinsic value” and inflicts a harm that has a ‘close relationship’ to a harm ‘traditionally’ recognized as providing a basis for a lawsuit in American courts.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 424 (2021); *Oracle Real Estate Holdings v. Adrian Holdings Co.*, 582 F. Supp. 2d 616, 626 (S.D.N.Y. 2008); *Hazelip v. Doyel*, 267 Ky. 477, 102 S.W.2d 321, 323 (1936) (recognizing that interference of trustees over church property in the governance of the church harms individual church members); Ky. Rev. Stat. Ann. § 273.120 (limiting the power of trustees over governance of churches).

2. Loss of the Value of Peer Review

Woodcock took a pay cut in exchange for a valuable bundle of services provided by the University. Woodcock Decl. ¶¶ 1–10. These include Woodcock’s governance rights. Employee Code § I.D, Ex. 20 at 1; ABA Standards Interp. 203-1, Standard 203(b), Ex. 19 at 1; Admin. Reg. — Univ. Appts. § A.3, Ex. 74 at 2. They also include the peer review service provided by the law school. Employee Code § I.D, Ex. 20 at 1; ABA Standards Standard 203(b), Ex. 19 at 1 (requiring that a dean be a tenured member of the faculty). In appointing a non-peer dean, Defendants are denying Woodcock the peer review service for which he contracted. Loss of that service is irreparable because “there exists no certain pecuniary standard” of “measurement” of the value of that service. *Cyprus Mountain*, 828 S.W. 2d at 645. As in the case of Woodcock’s governance rights, the peer review service is but one component of the bundle of services for which Woodcock took a pay cut, relative to what he could earn in industry, in order to join the law school faculty. Woodcock Decl. ¶¶

1–10. Because it is not possible to determine what share of the pay cut is attributable to the value of the peer review service, there is no “certain pecuniary standard” with which to measure the loss of the peer review service. Accordingly, that loss is irreparable and specific performance is the appropriate remedy. *Cyprus Mountain*, 828 S.W. 2d at 645.

Defendants object that the harm flowing from the appointment of Van Tatenhove is speculative because it depends upon whether others will perceive Van Tatenhove not to be a peer. Resp. at 50. This argument fails to distinguish between direct and consequential harm. “Direct damages” “arise naturally and in the usual course of things from the breach itself” whereas consequential damages arise “from special circumstances”. *Otis Elevator Co. v. Standard Const. Co.*, 92 F. Supp. 603, 608 (D. Minn. 1950); *see also Univ. of Louisville v. Ram Engineering*, 199 S.W.3d 746, 748 (Ky. Ct. App. 2005) (distinguishing “general” and “special” damages). Here, Woodcock’s contract guarantees him peer review by explicitly guaranteeing that a dean will be appointed with tenure, not over the objection of the law faculty, and after submission of faculty written statements regarding the appointment. Employee Code § I.D, Ex. 20 at 1; ABA Standards Interp. 203-1, Standard 203(b), Ex. 19 at 1; Admin. Reg. — Univ. Appts. § A.3, Ex. 74 at 2. The appointment of a dean without tenure in violation of these rules eliminates the peer review service. An untenurable dean rejected by the faculty based on his lack of a scholarly record is not a peer. Faculty Email, Ex. 8 at 1. As a result, Defendants are failing to supply Woodcock with the service for which he contracted. It is this failure to supply the bargained-for service that inflicts the direct economic loss. *Otis Elevator Co. v. Standard Const. Co.*, 92 F. Supp. at 608. The damage that “arise[s] naturally” from a failure to supply a service for which the plaintiff has paid is the lost payment. *Cf.* Ky. Rev. Stat. § 355.2-711(1) (stating that “[w]here the seller fails to make delivery” “the buyer” may “recover[] so much of the price as has been paid”). Plaintiff paid for the service through part of his pay cut and the service is no longer being supplied. His direct harm is the loss of the share of his pay cut that he exchanged for the

undelivered peer review service. This loss is certain and not speculative because Woodcock already took the pay cut. Woodcock ¶¶ 1–10. He paid. But he is now receiving nothing in return.

Whether the breach inflicts *additional* harm by causing Woodcock’s scholarship to lose credibility in the eyes of the public is a different question. Resp. at 50–51. Such harm, if calculable, would serve as the basis for an award of consequential damages in light of the “special circumstances” of this case. *Otis Elevator Co. v. Standard Const. Co.*, 92 F. Supp. at 608. But consequential harm is not required in order for a plaintiff to suffer direct harm. By the same token, if Woodcock had contracted with the University for the purchase of a car, and the University failed to deliver, Woodcock would suffer harm simply in virtue of the non-delivery of the car. Ky. Rev. Stat. § 355.2-711(1). He would not be required to prove that, as a result of the non-delivery of the car, he suffered additional harm, such as that, because he was made late to work for lack of a ride, his employer docked his pay. Thus, even if damages arising from a loss of credibility—which are consequential in nature—were speculative, that would not prevent Woodcock from obtaining temporary relief for direct damages that cannot be determined with certainty (i.e., for the loss of the unknown share of the pay cut that Woodcock took in exchange for the peer review service that is no longer being supplied).

Defendants also argue that any reputational harm flowing from their failure to provide bargained-for peer review services cannot serve as a basis for specific performance. Resp. at 51. The flaw here is the same as that for Defendants’ more general argument that harm to credibility is speculative. Resp. at 50–51. Reputational harm flowing from Defendants’ failure to deliver peer review services is consequential, not direct, harm. Plaintiff need only show that his direct damages—loss of the part of the pay cut that he accepted in exchange for peer review services—have no certain pecuniary measure in order to be entitled to specific performance.

Defendants also suggest that Woodcock’s direct damages, in the form of the share of the pay cut that he exchanged for the peer review service, do not give rise to irreparable harm because that share can be determined. Resp. at 51. Defendants argue that the share can be calculated by comparing the pay cut associated with teaching at a law school that offers peer review with the pay cut associated with teaching at a law school that does not offer peer review. *Id.* (stating that the value of peer review services may be calculated as “the difference between the market value of an agreement with a particular right and its market value without that right”). The trouble with this argument is that there is no market for law teaching that excludes peer review services alone—and therefore no available comparator. Accredited law schools do not exclude the peer review service because the ABA rules that Defendants are violating require all law schools to include it. ABA Standards Interp. 203-1, Standard 203(b), Ex. 19 at 1 (requiring that a dean not be hired without tenure or over the objection of the faculty). It is possible that some unaccredited law schools do not provide the peer review service, but they also necessarily fail to provide at least one other service that is valuable to faculty: the fact of accreditation itself, which faculty leverage to generate credibility for their scholarship. In consequence, comparing the pay cut associated with teaching at an unaccredited law school with the pay cut associated with teaching at an accredited law school will not measure the value of peer review services alone. There is therefore no certain pecuniary standard for measuring damages and specific performance is appropriate.

Finally, Defendants seize on Woodcock’s characterization of peer review damages as “difficult” to calculate to argue that the damages do not justify specific performance. Resp. at 51. But the standard for specific performance is whether a “certain pecuniary measure” exists. *Cyprus Mountain*, 828 S.W. 2d at 645. Woodcock cites this standard in his memorandum of law and explains that damages cannot be calculated because the share of the pay cut associated with peer review cannot be

determined. Suppl. Memo. L. Supp. Emergency Mot. Temp. Inj. at 48. Woodcock’s characterization of his contract damages as “difficult” to calculate is merely shorthand for that argument.

3. Ongoing Deprivation of Constitutional Rights

No sum of money is “sufficient to furnish” “full relief” for an ongoing violation of a constitutional right. *Cyprus Mountain*, 828 S.W. 2d at 645; *Connection Distributing Co. v. Reno*, 154 F. 3d 281, 288 (6th Cir. 1998); cf. *Cameron v. EMW Women’s Surgical Center*, 664 SW 3d 633, 663–64 (Ky. 2023) (Bisig, J., concurring and dissenting) (stating that “when faced with a substantial claim” of a constitutional violation, there may be irreparable injury). The only adequate relief is stopping the constitutional violation. *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.”). Defendants do not take issue with the basic proposition that harm flowing from deprivation of Woodcock’s constitutional rights to expressive association, to be free of speech chill, and to be free of arbitrary exercise of state power is irreparable. Instead, they mix standing arguments into their irreparable harm discussion to argue that there is no harm at all. Resp. at 52. These arguments fail.

Defendants argue that violation of Woodcock’s right to expressive association causes no “concrete injury” because Woodcock has not shown that the perceived quality or credibility of Woodcock’s scholarship has been affected by the appointment. Resp. at 52–53. But this misunderstands the nature of harm in an expressive association claim. The harm occurs at the moment that the government forces the group to accept a member that the group does not want. For it is at that moment that the composition of the group changes and therefore at that moment that the message sent by membership in the group changes. *Boy Scouts of America v. Dale*, 530 U.S. 640, 653–54 (2000) (mere “presence in the Boy Scouts” of an openly gay, gay rights activist scoutmaster burdened the right of expressive association). And the U.S. Supreme Court has made

clear that “intangible injuries” to speech constitute injury in fact. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 1549 (2015); *Transunion LLC v. Ramirez*, 594 U.S. 413, 425 (2021).

Defendants quote an order of the federal district court in the federal case that Woodcock voluntarily dismissed for the proposition that harm flowing from the violation of Woodcock’s right of expressive association is in the past. Resp. at 52. But the passage that Defendants quote did not relate to Woodcock’s motion for preliminary relief in that case. Instead, the federal district court offered that passage in support of its denial of Woodcock’s request for expedited discovery. *Woodcock v. Van Tatenhove et al.*, No. 26-0262, slip op. at 2–3 (E.D. Ky. July 31, 2026). The federal district court held only that *discovery of documents* concerning the past decision to appoint Van Tatenhove was of limited relevance to the question whether irreparable harm would result going forward from a failure to remove him. *Id.* The question whether harm associated with Van Tatenhove’s appointment continued to flow after he started office was not addressed by the federal district court. Thus the order to which Defendants cite is irrelevant.

Defendants claim that there is no ongoing injury associated with deprivation of Woodcock’s right to be free of arbitrary exercise of power because the appointment of Van Tatenhove is a “completed decision.” Resp. at 53. But it is not just Van Tatenhove’s start in office that violates Woodcock’s right to be free of exercises of arbitrary power but Van Tatenhove’s *continuation* in office that violates the right. So long as Van Tatenhove remains in office, the appointment of a dean over the objection of the faculty, without tenure, and without written statements from the faculty, will remain in effect. So long as Van Tatenhove remains in office, the message sent by membership on the faculty will be affected, the faculty’s power to block appointment of deans to which it objects will be impaired, and Woodcock’s speech will be chilled. Only once Van Tatenhove is removed from office will the violation end and these harms cease to flow. Courts applying the arbitrary power rule have not limited its application to the moment when the exercise of power starts. For example,

in *University of Kentucky v. Davis*, the University denied plaintiffs’ long-term disability benefits at a discrete moment in time. The plaintiffs filed suit after the denial and the court held that the plaintiffs could proceed with their arbitrary power claim. 551 S.W.3d 443, 445–46 (Ky. Ct. App. 2017). That result made sense because the plaintiffs, as in the present case, were continuing to suffer harm from the arbitrary state action. They were not receiving their disability benefits. The significance of the fact that the appointment of Van Tatenhove is a completed decision is that Woodcock’s challenge to the decision is ripe for review, not that the violation of law or the associated injury has come and gone. *WB v. Com.*, 388 S.W.3d 108 (Ky. 2012) (noting that finality of administrative action supports ripeness).

Defendants argue that the harm flowing from Woodcock’s chilled speech claim is not certain and immediate because it depends upon whether Van Tatenhove takes action in the future to retaliate against Woodcock’s speech. Resp. at 53–54. This misunderstands the nature of a chilled speech claim. As its name suggests, a chilled speech claim does not involve actual retaliation but instead self-censorship of protected speech in response to menacing government activity that falls short of retaliation. The harm is fear of future retaliation, not actual retaliation. And Woodcock has provided evidence that he is experiencing *fear* of future retaliation *right now*. Woodcock 2d Decl. ¶¶ 5–7. Whether that harm gives rise to a violation of free speech rights depends upon whether the fear is reasonable. *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 194–95 (1998). But the question whether there is actual harm associated with the challenged chilling activity does not. The question of harm is a factual inquiry into whether the plaintiff is self-censoring. *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595, 629 (2020) (Sotomayor, J., dissenting) (observing that the Court has “abandon[ed] the requirement” articulated in some older cases that “[a]llegations of a subjective chill”, standing alone, “are not” “adequate” to demonstrate injury). In this case, there is undisputed evidence that Woodcock is doing precisely that. Woodcock 2d Decl. ¶¶ 5–7.

Chilled speech injury can also be shown by a credible threat of government retaliation against speech. *Turner v. US Agency for Global Media*, 502 F. Supp. 3d 333, 359 (D.D.C. 2020); *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014). That exists here as well. Van Tatenhove's predecessor, who, like Van Tatenhove, lacked a scholarly record or any experience in academic administration, suspended Woodcock and banned him from the law building in retaliation for Woodcock's speech about Palestine. Am. Compl. ¶ 22. Another predecessor dean who was also a tenured faculty member declined to retaliate against Woodcock. *Id.* And Van Tatenhove has already retaliated against Woodcock for his past speech on Palestine. According to the University, Van Tatenhove has "absolute authority" over the suspension and ban, which means that he could lift them at any time. Ex. 87 at 1. Woodcock sent Van Tatenhove a seven-page letter outlining constitutional, statutory, and University-policy-level defects with the suspension and ban imposed by his predecessor and asking that Van Tatenhove exercise his authority to remove the suspension and ban. Ex. 88. On August 22, 2026, Van Tatenhove wrote back to say that he had decided to continue to impose them on Woodcock, thereby independently ratifying and carrying forward the retaliation initiated by her predecessor. Ex. 91. Under these circumstances, the threat that Van Tatenhove will retaliate against future Palestine-related speech by Woodcock is credible.

4. Disruption

"The clearest example of irreparable injury is where" "the final judgment would be rendered completely meaningless." *Maupin v. Stansbury*, 575 SW 2d 695, 698 (Ky. App. 1978). In their response, Defendants concede that "[t]he longer Dean Van Tatenhove serves, the greater the disruption that would accompany judicial intervention." Resp. at 62. Accordingly, as time passes, the equities may shift against removal, preventing this Court from issuing a permanent injunction, which is the only form of relief adequate to the constitutional and contractual harm at issue in this case. *Connection Distributing Co. v. Reno*, 154 F. 3d 281, 288 (6th Cir. 1998); *Bannercraft Clothing Company v.*

Renegotiation Board, 466 F. 2d 345, 356 (D.C. Cir. 1972). Defendants do not meaningfully contest that delay that may preclude future provision of an adequate remedy constitutes irreparable harm. They argue only that removing Van Tatenhove now is already prohibitively disruptive. But classes will have been in session for only five weeks by the time that this Court hears Woodcock’s motion for a temporary injunction. The community will have had little time to come to rely on operational decisions made by Van Tatenhove or to invest in its relationship with him. And the early-semester removal of a dean who has made the school a “laughingstock among law schools” can only improve the school’s reputation. Michael Email, Ex. 36 at 1. Moreover, in 2020, the University did not consider the abrupt removal during the fall semester of a dean of the College of Arts and Sciences who had been in office for eleven years to be prohibitively disruptive.⁷

5. Repelling Peer Faculty Candidates

By reducing the value of the peer review service supplied by the University to the faculty, Van Tatenhove’s appointment will cause “good” “candidates” to be “repelled” from joining the faculty. Michael Email, Ex. 36 at 1. Defendants argue that this claim is speculative. But Defendants accept that “some current faculty members” may hold this view. And the view of faculty members that Van Tatenhove’s appointment will repel job applicants is evidence that job candidates will be repelled because faculty members belong to the national law teacher hiring pool. Each member of the faculty is a successful job candidate and a potential lateral job candidate. And a distinguished senior member of the law faculty has stated that “[n]ew candidates – faculty, staff, and students – will be repelled. And who can blame them? [The appointment of Van Tatenhove] is beyond the pale in terms of disregard for their welfare.” Michael Email, Ex. 36 at 1. Defendants offer no opposing declarations or other evidence. Instead, consistent with their failure to acknowledge that the production of

⁷ *Dean Kornbluh Removal Dismays University of Kentucky Faculty*, LEXINGTON HERALD LEADER (Sept. 3, 2020), <https://www.kentucky.com/news/local/education/article245439600.html>.

scholarship requires any special expertise, Defendants argue that, because judicial clerkships are desirable professional qualifications for law professors, the appointment of a non-scholar dean over the objection of the law faculty is also desirable. Resp. at 55. A judicial clerkship is fieldwork for a law scholar, and there are few disciplines in which scholars wish to be led by their research subjects.

6. Expenditure of Unrecoverable Public Funds

The Kentucky Supreme Court in *Rogers v. Lexington-Fayette Urban Cty Gov.* held that it is “irreparable harm” to permit the “expend[iture]” of “public not private funds” on an action that a plaintiff wishes to enjoin if “there is no reasonable expectation that such funds could be recovered” in the event that the action is “later held to be invalid.” 175 S.W. 3d 569, 570–72 (Ky. 2005). Here, the University is paying Van Tatenhove an annualized salary of \$442,000 that is tens of thousands of dollars higher than the salaries paid to predecessors in order to carry out actions (the duties of a dean) that Woodcock seeks to enjoin. Ex. 11; Exs. 63–65 (reflecting that the salaries for the previous three deans or interim deans ranged from \$333,000 to \$380,000). Defendants do not contest that if Van Tatenhove’s appointment is later adjudicated to be invalid, there is no reasonable expectation that the University would be able to claw back payments already made to Van Tatenhove for a period of time over which he actually worked.

Defendants strive to distinguish *Rogers* by repeating the arguments of the dissent in that case. Compare Resp. at 56–57 with *Rogers*, 175 S.W.3d at 573–74 (Johnstone, J., dissenting). But the fact that Defendants’ arguments are drawn from the *dissent* only highlights their ineffectiveness. As the dissent itself noted, under the binding majority opinion in *Rogers*, it is not necessary that the plaintiff be “the party expending” “funds” in order to “assert[] a loss of monetary funds as evidence of irreparable harm”. *Id.* at 573. And the expenditure of public funds can serve as a basis for a finding of irreparable harm even where the plaintiff is not “seeking to maintain the status quo” but is rather “requesting mandatory relief”. *Id.* Defendants further seek to distinguish *Rogers* on the ground that it

involved a “clear violation of statutory law.” Resp. at 57. But the violations of the Kentucky Constitution, written University policies, and Woodcock’s contract in the present case are clear, and anyway the Court in *Rogers* did not tie its ruling on irreparable harm to the clarity of the rule violation. The Court merely asserted that “[t]he expenditures necessary to hold this election are public not private funds. They cannot be recouped by money damages on appeal. Thus, the injury is irreparable.” *Rogers*, 175 S.W.3d at 571. Notably, the funds at issue in *Rogers* were a fraction of Van Tatenhove’s annual salary. *Compare id.* at 570 (\$250,000) *with* Ex. 11 (\$442,000).

F. The Equities Favor Grant of Temporary Relief

1. The Public Interest

The public has an interest in ensuring that Woodcock benefits according to “the terms of the bargain [he] entered into.” *Certified Restoration Dry Cleaning Network, LLC v. Tenke Corp.*, 511 F.3d 535, 551 (6th Cir. 2007). The public also has an interest in ensuring that faculty autonomy is preserved and the speech of faculty is not chilled, because “[n]o one should underestimate the vital role in a democracy that is played by those who guide and train our youth.” *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957). Moreover, the public also has an interest in guaranteeing peer review, which ensures that the public obtains the “genuine and uncolored product” of the faculty’s “stud[ies]” rather than research “shaped or restricted by” “[i]nterested persons outside of their ranks”. 1915 Decl., Ex. 27 at 294. And “it is always in the public interest to prevent violation of a party’s constitutional rights.” *Bays*, 668 F. 3d at 825 (cleaned up).

Defendants argue that the public also has an interest in “orderly governance of a public university”. Resp. at 59. But that interest weighs against Defendants rather than in their favor. The appointment of a dean with no scholarly record or academic administrative experience violated the terms of the University’s own job posting, accreditation standards of the ABA and SACSCOC, University appointments regulations, and at least fifty years of continuous University practice. Am.

Compl. ¶ 17; Ex. 3; Employee Code § I.D, Ex. 20 at 1; ABA Standards Interp. 203-1, Standard 203(b), Ex. 19 at 1; Admin. Reg. — Univ. Appts. § A.3, Ex. 74 at 2; Ausness Decl. ¶¶ 3, 5. It violated three rules of constitutional law. Suppl. Memo. L. Supp. Emergency Mot. Temp. Inj. at 16–21, 26–46. It breached the University’s contractual obligations. *Id.* at 21–26. It was carried out over the objection of the faculty. Ex. 8. And it led to public outcry and censure from the Governor. Am. Compl. ¶ 36. That is not “[o]rderly governance of a public university”. Resp. at 59. The proposed temporary injunction would restore order while this Court sorts through the wreckage of this appointment.

Defendants argue that the appointment was orderly because the legislature accorded the Board of Trustees authority to govern the University and the board delegated appointments authority to Defendant Capilouto. Resp. at 58. But the legislature could not grant the board authority to violate the Kentucky Constitution. *Smothers v. Lewis*, 672 S.W.2d 62, 64 (1984). And state agencies are bound by their written contracts. Ky. Rev. Stat. § 45A.245(1) (waiving immunity for written contracts). Moreover, Capilouto acted in excess of his granted authority, which was conditioned on compliance with the SACSCOC requirement that the University actually enforce its governance rules, including the rule that faculty provide written statements on dean appointments that Capilouto violated. AR Univ. Appts. § A.3, Ex. 74; SACSCOC Requirement 10.4, Ex. 73 at 7 (requiring that the University “implement[] policies on the authority of faculty in academic and governance matters[.]”); Governing Reg. I — Decl. Principles. § A.3, Ex. 26 (delegating authority to the President only as “consistent with the University’s accrediting body”). It is a measure of the board’s displeasure that it withdrew Capilouto’s right to unilaterally appoint deans in the wake of this fiasco. Ex. 16.

Defendants also appear to argue that the public interest in the enforcement of contracts recognized in *Certified Restoration Dry Cleaning Network, LLC v. Tenke Corp.* only exists where “[n]o important public policies readily appear to be implicated.” *Certified Restoration Dry Cleaning Network,*

511 F.3d at 551; Resp. at 59. Given that all the public policies identified by the parties favor Woodcock, the argument misses the mark. It is also a plain misreading of *Certified Restoration Dry Cleaning Network*. There, the court’s observation that “[n]o important public policies readily appear to be implicated” was plainly not meant to limit or condition the court’s holding that there is a public interest in the enforcement of contracts. *Id.* The court was simply running through a checklist of interests and noting which were implicated and which were not. *Id.*

Defendants also argue that because “non-enforcement of a duly-enacted statute constitutes irreparable harm to the public and the government” the Board of Trustees must be permitted to exercise its statutory authority to govern the University by appointing Van Tatenhove. *Cameron v. Beshear*, 628 S.W.3d 61, 73 (Ky. 2021); Resp. at 58–59. The trouble with this argument is that enforcement of the board’s authority to govern the University requires that Van Tatenhove *not* be appointed. The will of the board is expressed in the University’s policies and in the contracts into which the board enters. Van Tatenhove’s appointment violates the policies and Woodcock’s contract. *See* Suppl. Memo. L. Supp. Emergency Mot. Temp. Inj. at 16–26. Moreover, as described above, Capilouto acted in excess of his granted authority, which was conditioned on compliance with the SACSCOC requirement that he enforce the University’s governance rules in appointing Van Tatenhove, which he failed to do. SACSCOC Requirement 10.4, Ex. 73 at 7. And the board suggested displeasure with the actions of its agents Capilouto and DiPaola when, in response to the appointment of Van Tatenhove, the board withdrew the unilateral authority it had delegated to Capilouto to appoint deans. Ex. 16. The interest of the legislature in maintaining Van Tatenhove in office is therefore equivocal at best. By contrast, in the cases in which an interest in the enforcement of statutes has been recognized, the requirements of the statute were clear, even if the statute’s constitutionality was under attack. *See, e.g., Beshear*, 628 S.W.3d at 67 (stating unreservedly that plaintiffs challenged the constitutionality of statutes that “restrict[ed] the Governor’s ability to take

unilateral action during declared emergencies”). Even if a legislative interest in maintaining the appointment somehow exists, a temporary injunction would still be appropriate because plaintiff is likely to succeed at demonstrating that the statute as applied violates the Kentucky Constitution. *Beshbear*, 628 S.W.3d at 73 (noting that the constitutionality of the statute is merely presumed).

Finally, Defendants argue that Woodcock’s claims are mere “personal grievances recast as public concerns.” But that is true of all justiciable claims in all contexts because standing requires that all claims be personal (i.e., concrete and particularized) and grievances (i.e., resulting from injury in fact), and all laws are a matter of public concern. *Commonwealth of Ky. v. Sexton*, 566 S.W. 3d 185, 196 (Ky. 2018).

2. Harm to Others

Defendants argue that the University will be harmed if it is prevented from appointing Van Tatenhove after two years of failed dean searches. But the University is to blame for the failure of those searches. In both searches, the faculty approved multiple finalists but DiPaola failed to hire any of them and did not give an explanation to the faculty. Woodcock 3d Decl. ¶¶ 1–2. University Defendants “cannot place” the law school “in harm[']s way” by mismanaging dean searches and then “later claim that an injunction should not issue because of costs” due to their “own misconduct.” *Midwest Guaranty Bank v. Guaranty Bank*, 270 F. Supp. 2d 900, 924 (E.D. Mich. 2003). Moreover, Defendants have not demonstrated that they are no longer able to hire one of the three dean candidates who were actually qualified for the job, one of whom has said that she would have accepted an offer. Ex. 28.

Defendants also make vague claims about harm to “long-term planning”, “ongoing initiatives”, and “donor and alumni relations.” Resp. at 60. But delay in long-term planning and ongoing initiatives is harmful only if Van Tatenhove is qualified for the position. If he is not—and the faculty (Ex. 8), his own decision not to seek tenure (Am. Compl. ¶ 74), and the job description say that he is

not (Am. Compl. ¶ 17, Ex. 3)—then he will lead the law school into decline. In that case, the greater his influence on long-term planning and ongoing initiatives, the greater the harm to the institution. And it is unclear how a retiree who spent the past twenty years in a federal judicial position for which fundraising is illegal might have the skills to advance “donor and alumni relations” unless he was installed at the behest of donors, in which case his contribution to “donor and alumni relations” harms faculty autonomy and associated speech protections.

Defendants also make a vague reference to harm to Van Tatenhove associated with “significant professional and personal decisions based upon the University’s commitment.” Resp. at 61. But as a federal judge who presided over cases involving University employment contracts and written policies, and who should have familiarized himself with those policies prior to accepting the University’s offer, he knew or should have known that he was accepting employment in violation of University policy. (If Capilouto and DiPaola failed to disclose the faculty’s opposition to him, then Van Tatenhove may be able to sue them for any damages.) Having seen the University’s job announcement, he would have known that he lacked both the required scholarly record and experience in law school administration. Am. Compl. ¶ 17, Ex. 3. He would have again been alerted to the defects in his appointment after the public outcry and Governor’s intervention in April. Am. Compl. ¶ 36. He could have rejected his offer then and retained his judicial appointment. Instead, he doubled down and defended his appointment to the board and to faculty. *Id.* at ¶¶ 37–38. Like University Defendants, Van Tatenhove “cannot place” himself “in harm[’]s way” by accepting an offer he knew or should have known to be in violation of University policies, contracts, and the Kentucky Constitution and then “later claim that an injunction should not issue because of costs” due to his own “own misconduct.” *Midwest Guaranty Bank v. Guaranty Bank*, 270 F. Supp. 2d 900, 924 (E.D. Mich. 2003). In any case, the unprecedented \$1.3 million golden parachute in his employment contract likely provides him with a lucrative insurance policy. Am. Compl. ¶ 18. And even if it

doesn't, Defendants have not so far expressly claimed that Van Tatenhove relied on their offer in deciding to retire from the bench.

3. Status Quo

Defendants argue that an injunction removing Van Tatenhove would not preserve the status quo because he is already in office. Resp. at 61–62. But that is not correct. It is a longstanding principle of equity that the status quo to be preserved by a temporary injunction is “the last actual noncontested status which preceded the pending controversy.” *Warner Bros. Pictures v. Gittone*, 110 F.2d 292 (3d Cir. 1940) (nineteenth century cases cited therein). Because Woodcock contests the appointment of Van Tatenhove, “the last actual noncontested status” was prior to Van Tatenhove’s appointment as dean. In one case not cited by Defendants, the Kentucky Supreme Court failed to apply this rule over a dissent by Justice Liebson. *Commonwealth ex rel. Cowan v. Wilkinson*, 828 S.W.2d 610, 617 (Ky. 1992) (Liebson, J., dissenting) (“The province of a preliminary injunction is to preserve *pendente lite* the last actual non-contested status preceding controversy, and prevent irreparable loss caused by a change in this status.”). But the Court has since made clear that the goal of a temporary injunction is not to restore *any* definition of the status quo but rather to “place the parties in a position most likely to minimize harm before the court can finally decide the issues raised in a complaint.” *Beshear v. Goodwood Brewing Company, LLC*, 635 S.W. 3d 788, 798–99 (Ky. 2021). Indeed, “[t]oo much concern with the status quo may lead a court into error.” *Stenberg v. Cheker Oil Co.*, 573 F.2d 921, 925 (6th Cir. 1978).

I[t] often happens that [the minimization of irreparable harm] is furthered by preservation of the status quo, but not always. If the currently existing status quo itself is causing one of the parties irreparable injury, it is necessary to alter the situation so as to prevent the injury, either by returning to the last uncontested status quo between the parties . . . by the issuance of a mandatory injunction . . . or by allowing the parties to take proposed action that the court finds will minimize the irreparable injury. The focus always must be on prevention of injury by a proper order, not merely on preservation of the status quo.

Id. Here, Woodcock has identified six kinds of irreparable harm, ranging from contractual to constitutional, inflicted on an ongoing basis by Van Tatenhove’s appointment. Defendants have identified no interest in retaining Van Tatenhove in office and they concur that the longer he remains in office the harder it may become for this Court to provide adequate relief upon final judgment. Resp. at 62. It follows that minimizing irreparable harm requires Van Tatenhove’s immediate removal.

Defendants argue that a court order placing the Faculty Executive Committee in charge of the law school would cause the Court to “insert itself into the day-to-day governance of a public university.” Resp. at 62. Instead, such an order would do exactly what it would purport to do, which is to place dean authority in the hands of the faculty—where it has been for at least the past half century. Ausness Decl. ¶¶ 3, 5.

CONCLUSION

WHEREFORE, Woodcock requests that this Court grant his motion for a temporary injunction.

Respectfully Submitted,

/s/ Rima N. Kapitan

Kapitan Gomaa Law, P.C.

Admitted *pro hac vice*

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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2026, a true and accurate copy of the foregoing document was filed electronically with the Clerk of the Court using the Kentucky Court of Justice eFiling system, which will automatically send a copy of the foregoing to all counsel of record.

/s/ Joe F. Childers

Counsel for Plaintiff

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**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I**

Ramsi A. Woodcock,

Plaintiff,

v.

Case No. 26-CI-885

Gregory Van Tatenhove et al.,

Defendants.

THIRD DECLARATION OF RAMSI A. WOODCOCK

I, Ramsi A. Woodcock, hereby state the following facts, all of which are based on my personal experience and knowledge to the best of my memory, and to which I would testify if called upon:

1. The University of Kentucky conducted failed dean searches in the 2023-2024 and 2024-2025 academic years. I recall that in both years the faculty met to discuss the candidates and conveyed to the President or Provost which candidates they preferred. In both cases, the faculty expressed approval of several candidates.
2. The Provost failed to hire any of the approved candidates and did not explain to the faculty why he had failed to do so. The impression I had was that the Provost failed to take the searches seriously.
3. Early this year (2026), I filed an emergency motion in the U.S. Court of Appeal for the Sixth Circuit in which I indicated that I wished to submit an article on Palestine to law journals in the February/March 2026 submissions cycle. The University filed a brief in reply that said that the only way the submission would be protected by the First Amendment would be if I did not use University resources to submit it and didn't claim credit for it for purposes of my

performance reviews. The filing further said that if the article constituted harassment it would not be protected.

4. Law journal submissions are expensive—hundreds of dollars. The University usually pays for them. And not claiming credit for academic work for purposes of my performance evaluations obviously has a negative impact on my career. Also, I was not aware of any other member of the faculty ever being informed that if their scholarship was harassment, it would not be protected. That felt like a threat.
5. Because the University made clear that submitting my article in the normal way with the University paying for submissions and my claiming credit for the work in my performance evaluations could expose me to retaliation, and the University appeared to threaten precisely that with its remark about harassment, I decided not to submit an article on Palestine for publication during that submissions cycle.

VERIFICATION

I, Ramsi A. Woodcock, the undersigned, verify that I have read the foregoing document, Declaration of Ramsi Woodcock, and solemnly affirm under the penalty of perjury that this declaration is true and correct to the best of my knowledge and belief.

Date: September 12, 2026



Ramsi A. Woodcock

Exhibit 91

Letter

Van Tatenhove, Gregory F. <gregory.van.tatenhove@uky.edu>
To: "rwo236@g.uky.edu" <rwo236@g.uky.edu>

Sat, Aug 22, 2026 at 3:56 PM

Professor,

Please see the attached.

Sincerely,

Greg

From: Woodcock, Ramsi <rwo236@g.uky.edu>
Sent: Wednesday, July 22, 2026 7:12 AM
To: Van Tatenhove, Gregory F. <gfva222@uky.edu>
Subject: Letter

You don't often get email from rwo236@g.uky.edu. [Learn why this is important](#)

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August 21, 2026

Ramsi Woodcock
620 S. Limestone
J. David Rosenberg College of Law
University of Kentucky

Dear Professor Woodcock:

With a letter dated July 18, 2025, from Interim Dean Jim Duff, you were informed of your temporary administrative reassignment. At that time, you were notified that the reassignment was made for the duration of the investigation of allegations related to your conduct. As you know, this investigation is ongoing.

I have had the opportunity to carefully review your letter dated July 22, 2026. In that letter you request that we rescind your reassignment. For the reasons previously stated, a review of your status will not be conducted until the investigation is complete. When this occurs, I will consult with OEO, HR and the Provost's office as to next steps.

We share a common interest in making sure that the process continues to be fair and is resolved as expeditiously as possible.

Sincerely,



Gregory F. Van Tatenhove
Dean
University of Kentucky
J. David Rosenberg College of Law

cc: William Thro, General Counsel
Dr. S. Rebecca Thomas, Faculty Advancement