

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

Ramsi A. Woodcock,

Plaintiff,

v.

Case No. 5:25-cv-00424-BJB

Eli Capilouto et al.,

Defendants.

**PLAINTIFF'S RESPONSE TO UNIVERSITY DEFENDANTS' DISPOSITIVE
MOTIONS AND BRIEF ON THE ISSUES IDENTIFIED IN THE COURT'S
OCTOBER 2, 2026 ORDER**

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INTRODUCTION

The Court’s October 2 Order asks three questions: whether this phase of the investigation is likely to cause irreparable harm or bears on Woodcock’s likelihood of success, how immunity applies at the temporary-restraining-order stage, and how judicial action or inaction would affect third parties. DN 68. Part I answers those questions. Part II responds to the University Officials’ motion for judgment on the pleadings (DN 63).

Woodcock offers the following short answers. The investigation is not a prelude to the challenged action; it is the challenged action, and its remaining stages (the Second Evidence Review, a report Woodcock will never see, and the President’s findings and any sanction) cannot be undone once they occur. Immunity is no obstacle: qualified immunity does not apply to injunctive relief, and *Ex parte Young* permits prospective relief against officials for an ongoing violation, as the Sixth Circuit held for a professor’s retaliation claim in *Josephson v. Ganzel*, 115 F.4th 771, 782–83 (6th Cir. 2024). And the third parties most affected by the Court’s choice are students who will lose another semester of courses and colleagues who have told the Court they are afraid to speak, while a pause costs the University nothing it did not voluntarily accept for nine months.

Woodcock asks the Court to enter a revised proposed order (Ex. A), which supersedes the one filed with DN 65 and clarifies that he seeks relief from the investigation and suspension only against the University Officials. The University’s motion to dismiss (DN 61) may be denied as moot, because the University itself is not a defendant. Am. Compl. (DN 36) at 1616; *see* MJOP at 2197 n.4 (acknowledging that Woodcock “dropped the University as a defendant”). Given the Order’s expedited schedule, Woodcock requests leave to file a supplemental response to DN 63 by October 16, its due date under LR 7.1(c), if the Court does not resolve that motion at the hearing.

Counsel for the parties conferred about narrowing the disputed issues, as the Order directs. Woodcock proposed pausing the investigation and listing his Spring 2027 courses while the Court

decides the preliminary-injunction motion, as Defendants did while the case was on appeal; Defendants declined, offering only to finish the investigation and give ten days' notice before taking any disciplinary action based on the secret investigation report.

BACKGROUND

The facts relevant to the Court's questions are set out in Woodcock's emergency motion (Mot. TRO (DN 65) at 2315–18) and summarized briefly here. On July 18, 2025, twelve days after Woodcock circulated a Petition for Military Action Against Israel to law professors in discussion groups hosted by the Association of American Law Schools (AALS), the University opened an investigation into his speech. The Dean reassigned him from all teaching, research, and service to “100% professional development,” and barred him from the law school building “while the investigation is ongoing.” Am. Compl. ¶¶ 54, 57–62 (DN 36) at 1633–36;¹ Duff Ltr., July 18, 2025 (DN 19-3) at 493; Capilouto Email, July 18, 2025 (DN 19-3) at 496–97. The Dean restored Woodcock's access to the building on September 28, 2026, four days after the state court asked Defendants to reconsider the ban, but left the reassignment in place. Van Tatenhove Ltr., Sept. 28, 2026 (DN 65-8) at 2405; Franklin Cir. Ct. Order ¶ 5 (DN 69-1) at 2444. The investigator's procedures letter describes the stages of the investigation: fact-gathering, a First Evidence Review, a Second Evidence Review with seven days to respond, a privileged report that Woodcock will not see, and a letter from the President with “the University's findings,” which “will include any sanction,” including possible “termination of a tenured appointment.” Thompson Ltr., Aug. 25, 2025 (DN 19-15) at 1569–71; Am. Compl. ¶ 72 (DN 36) at 1638–39.

Defendants paused the investigation for nine months while this Court and the Sixth Circuit considered Woodcock's motion for a preliminary injunction. Extension Emails (DN 65-2) at 2358,

¹ Page citations to documents filed in this case refer to the PageID numbers assigned by the Court's electronic filing system.

2362, 2370–72. On August 24, 2026, the Sixth Circuit reversed this Court’s abstention order and remanded “for consideration of Woodcock’s motion for a preliminary injunction.” *Woodcock v. Univ. of Ky.*, No. 26-5057, slip op. at 5 (6th Cir. Aug. 24, 2026) (DN 65-4) at 2393. The court held that the investigation “remain[s] in a preliminary, investigatory stage” and that the University “has not even made a threshold determination that Woodcock violated one of its policies.” *Id.* at 4. The day after that decision, Defendants set a September 8 deadline for Woodcock’s answers, and when he asked them to wait for this Court’s ruling, they refused: “I cannot grant any additional extensions.” Extension Emails (DN 65-2) at 2367–69; MJOP at 2202 n.37, 2230. Defendants tell the Court that the investigator will ask follow-up questions of witnesses, conduct the Second Evidence Review, and then issue findings, and that “the remaining final stages should be complete by early November.” *Id.* at 2230–31. The reassignment continues; the new Dean has said it “will not be reviewed until the investigation is complete.” Van Tatenhove Ltr., Sept. 28, 2026 (DN 65-8) at 2405. Defendants accuse Woodcock of forum shopping, DN 69 at 2433–34, but they also argue that this Court, where Woodcock first filed, has priority over the state court, *id.* at 2434 n.9, and the state court denied temporary relief against the investigation only without prejudice, Franklin Cir. Ct. Order ¶ 4 (DN 69-1) at 2444.

ARGUMENT

I. The Court’s Questions

A. The Investigation’s Irreparable Harm and Bearing on Likelihood of Success

1. The Remaining Stages of the Investigation Will Cause Irreparable Harm

a. The investigation is the challenged action. Woodcock does not challenge the investigation as a step toward some later, separate injury. He alleges that Defendants opened and are conducting the investigation to punish his speech, that “the investigation itself, along with the suspension and

banishment, are punishment for Professor Woodcock’s protected speech,” and that it “is being conducted in bad faith in order to suppress Professor Woodcock’s speech and punish him for his speech.” Am. Compl. ¶¶ 106, 132–33 (DN 36) at 1652, 1659.

An investigation of protected speech is itself an injury. “Merely to summon a witness and compel him, against his will, to disclose the nature of his past expressions and associations is a measure of governmental interference” with freedoms the First Amendment protects, and “[s]cholarship cannot flourish in an atmosphere of suspicion and distrust.” *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) (plurality opinion). The Sixth Circuit has recognized the same thing: a “formal investigative process . . . itself is chilling even if it does not result in a finding of responsibility or criminality.” *Speech First, Inc. v. Schlissel*, 939 F.3d 756, 765 (6th Cir. 2019). A president’s creation of a special committee to review a professor’s writings “conveyed a chilling threat of discipline.” *Levin v. Harleston*, 966 F.2d 85, 89–90 (2d Cir. 1992). And an official demand that burdens First Amendment rights inflicts its injury “not just when [it] is enforced, but when it is made and for as long as it remains outstanding,” because a reasonable target “would be induced . . . to trim its protected advocacy knowing it now stands in the government’s crosshairs.” *First Choice Women’s Res. Ctrs., Inc. v. Davenport*, 608 U.S. 174, 189, 193 (2026).

Here, too, Woodcock challenges the investigation itself: his prayer for relief asks the Court to order Defendants “to cease the investigation” and to expunge it from his file. Am. Compl. (DN 36) at 1677–78. Preliminary relief halting its remaining stages is therefore “intermediate relief of the same character as that which may be granted finally.” *De Beers Consol. Mines, Ltd. v. United States*, 325 U.S. 212, 220 (1945); see *Colvin v. Caruso*, 605 F.3d 282, 300 (6th Cir. 2010).

b. What remains is the part that cannot be undone. When an injury consists of “being subjected” to an unconstitutional proceeding, it “is impossible to remedy once the proceeding is over”: a court can vacate the result, but “[a] proceeding that has already happened cannot be undone.” *Axon Enter., Inc.*

v. FTC, 598 U.S. 175, 191 (2023). Like holders of an immunity from suit, litigants who challenge a proceeding as unconstitutional “will lose their rights not to undergo the complained-of . . . proceedings if they cannot assert those rights until the proceedings are over.” *Id.* at 192. Applying *Axon* to the preliminary-injunction factors, the Fifth Circuit has explained that where “the proceeding is the injury,” “[t]he harm is not downstream from the process—it is the process,” and “once an unconstitutional proceeding begins, the damage is done. That is the essence of irreparability.” *Space Expl. Techs. Corp. v. NLRB*, 151 F.4th 761, 780 (5th Cir. 2025). That is this case: the investigation is not a means of reaching a later adverse action but the adverse action itself, and once the Second Evidence Review closes and the report issues, Woodcock cannot undo it. Defendants quote the prior opinion’s remark that the investigation “could exonerate him,” DN 69 at 2436, but the Sixth Circuit reversed that decision. And a report clearing Woodcock would not undo fourteen months of exclusion from teaching or the chill on others; speech the First Amendment protects needs no exoneration.

Preliminary relief exists for exactly this situation. Its purpose “is always to prevent irreparable injury so as to preserve the court’s ability to render a meaningful decision on the merits.” *Stenberg v. Cheker Oil Co.*, 573 F.2d 921, 925 (6th Cir. 1978) (cleaned); accord *United Food & Com. Workers Union, Loc. 1099 v. Sw. Ohio Reg’l Transit Auth.*, 163 F.3d 341, 348 (6th Cir. 1998). Interim relief safeguards “the efficacy of the court’s remedial options.” *Hutson, Inc. v. Waggener*, No. 5:25-cv-47-BJB, slip op. at 10 (W.D. Ky. Aug. 27, 2026) (Beaton, J.) (cleaned). In *Hutson*, “the trees ha[d] already been cut.” *Id.* at 11. Here they have not: the investigation’s remaining stages and the President’s findings letter are still to come, and once they issue, “a favorable final judgment might well be useless.” *Id.* at 12 (quotation omitted). Even if Defendants call the fourteen-month-old reassignment the status quo, “[i]f 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,” including “by returning to the last

uncontested status quo between the parties.” *Stenberg*, 573 F.2d at 925 (cleaned); *United Food*, 163 F.3d at 348.

c. The harm is present and continuing. Where the government’s conduct threatens to impair the plaintiff’s ability to speak “at the time relief was sought,” the injury is irreparable, “because damages don’t remedy ‘[t]he loss of First Amendment freedoms.’” *Fischer v. Thomas*, 78 F.4th 864, 868–69 (6th Cir. 2023) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). There is irreparable harm here in three ways. First, the reassignment presently and categorically prevents Woodcock from speaking as a teacher, and it will continue for as long as the investigation does. Van Tatenhove Ltr., Sept. 28, 2026 (DN 65-8) at 2405; Am. Compl. ¶¶ 62, 65, 118–21 (DN 36) at 1636–37, 1656–57. Second, the investigation threatens Woodcock’s ongoing speech, not merely his past speech. Woodcock continues to speak and write about Palestine, though less than before because of the investigation. Woodcock Decl., Jan. 2, 2026 (DN 35) at 1608–10; Woodcock Supp. Decl., Sept. 29, 2026, ¶ 15 (DN 65-1) at 2344–45. The first notice of investigation told him that “[i]f you are doing anything that might violate University policy, you should stop immediately,” without saying what that was, First NOI (DN 19-15) at 1559, and the General Counsel has warned that any further notice of investigation “would [be] an additional basis for the reassignment as well,” Thro Email, Oct. 30, 2025 (DN 19-4) at 1085. That is precisely the “choice between self-censorship and uncertain sanction[]” that led the Sixth Circuit to stop an ongoing investigation into speech and the initiation of formal proceedings, in *Fischer v. Thomas*, 52 F.4th 303, 310, 313 (6th Cir. 2022). Third, the chill extends to others. Colleagues and students are afraid to support Woodcock publicly or to speak about Palestine, and his own academic output and public writing have declined. Woodcock Decl., Jan. 2, 2026 (DN 35) at 1608–12; Michael Decl. (DN 19-7) at 1109; Bolter Decl. (DN 19-9) at 1250; Lee Decl. (DN 19-11) at 1258–59; Donovan Decl. (DN 19-12) at 1262; Woodcock Supp. Decl., Sept. 29, 2026, ¶ 15 (DN 65-1) at 2344–45. Defendants have not disputed that evidence.

The reassignment does not merely penalize past speech; it silences Woodcock now, removing him from the classroom, from advising and supervising students, and from service and faculty governance. Duff Ltr., July 18, 2025 (DN 19-3) at 493; Am. Compl. ¶ 62 (DN 36) at 1636; Van Tatenhove Ltr., Sept. 28, 2026 (DN 65-8) at 2405. Those are the settings in which the First Amendment’s protection is at its height. “The classroom is peculiarly the ‘marketplace of ideas,’” and academic freedom is “a special concern of the First Amendment.” *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967). The First Amendment protects a professor’s speech in “core academic functions, such as teaching and scholarship.” *Meriwether v. Hartop*, 992 F.3d 492, 505 (6th Cir. 2021). Each day the reassignment continues, that speech is suppressed, and that is the “loss of First Amendment freedoms” that is irreparable “for even minimal periods of time.” *Elrod*, 427 U.S. at 373 (plurality opinion) (employees discharged or threatened with discharge).

d. Reinstatement or damages after final judgment would not be adequate. Harm is irreparable if “not fully compensable by monetary damages,” and “[w]hen constitutional rights are threatened or impaired, irreparable injury is presumed.” *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012). The Sixth Circuit rejected the argument that “monetary damages and reinstatement subsequent to a trial on the merits would provide an adequate remedy” in a speech-retaliation case, explaining that a person “subjected to direct and intentional retaliation for having exercised the protected constitutional right of expression[] continues to suffer irreparable injury,” because the injury “result[s] from impinging [his] First Amendment rights, and not from any denial of property interests or monetary damage.” *Newsom v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989). Damages are also likely unavailable here, not merely inadequate: the Eleventh Amendment bars them against the University and its officers in their official capacities, and the individual Defendants invoke qualified immunity. MJOP at 2207–08. *Cf. Kentucky v. Biden*, 57 F.4th 545, 556 (6th Cir. 2023) (“sovereign immunity typically makes monetary losses like these irreparable”).

e. Timing makes the harm imminent. Defendants say the remaining stages should be complete by early November. MJOP at 2231. The law school sets its spring teaching schedule during the fall, so relief now is the surest way to keep Woodcock from losing the Spring 2027 semester, his fourth consecutive semester out of the classroom. Woodcock Supp. Decl., Sept. 29, 2026, ¶¶ 2–3 (DN 65-1) at 2340.

f. The motions panel’s contrary view rested on abstention. When a motions panel of the Sixth Circuit denied an injunction pending appeal, it found no irreparable harm only because abstention meant “the state proceedings will provide [Woodcock] with an adequate opportunity to raise his constitutional claims.” Order at 10, *Woodcock v. Univ. of Ky.*, No. 26-5057 (6th Cir. Feb. 20, 2026), Dkt. 37. The merits panel has since held that there is no ongoing proceeding at all. Slip op. at 4–5. Defendants do not contend otherwise. *See* DN 69 at 2436 n.20 (raising abstention only if “formal charges” are later filed). The premise of the earlier conclusion is gone, and the presumption of irreparable harm that applies to ongoing First Amendment injuries governs.

2. The Remaining Stages of the Investigation Cannot Improve Defendants’ Position on the Merits, and the Investigation Itself Is Adverse Action

This phase also bears on the merits, in two ways, both favorable to Woodcock.

a. The investigation is itself an adverse action. An adverse action in the First Amendment context is one that “would chill or silence a person of ordinary firmness from future First Amendment activities.” *Josephson*, 115 F.4th at 787 (cleaned). In *Josephson*, the court held that the requirement of giving disclaimers when teaching and the “tracking” of the plaintiff’s conduct could constitute retaliatory adverse actions. *Id.* at 787–88. And “threats alone can constitute an adverse action if the threat is capable of deterring a person of ordinary firmness from engaging in protected conduct.” *Kubala v. Smith*, 984 F.3d 1132, 1140 (6th Cir. 2021) (cleaned); *see also Coszalter v. City of Salem*, 320 F.3d 968, 975–76 (9th Cir. 2003) (“an unwarranted disciplinary investigation” can be adverse action);

Reges v. Cauce, 175 F.4th 1014, 1029 (9th Cir. 2026) (investigation over syllabus statement, with reprimand and threatened discipline, “plainly qualif[ied] as adverse employment action”). Here Defendants publicly removed Woodcock from the classroom, barred him from the law school for fourteen months, opened an investigation into his political speech carried out by an outside lawyer who has interviewed more than twenty students, colleagues, and others about it, and tied the investigation to a possible sanction of “tenure revocation or a lengthy suspension without pay.” Thompson Decl. (DN 26-4) at 1450–51; Thompson Ltr., Aug. 25, 2025 (DN 19-15) at 1571; MTD (DN 23) at 1298. “[T]he adverseness inquiry is an objective one, and does not depend upon how the particular plaintiff reacted.” *Bell v. Johnson*, 308 F.3d 594, 606 (6th Cir. 2002). Those actions have in fact deterred others: colleagues and students are afraid to support Woodcock publicly or to speak about Palestine. *See* Part I.A.1.c. Courts have held that investigations of this kind chill speech even when they end without sanctions. *Schlissel*, 939 F.3d at 765; *Levin*, 966 F.2d at 89–90; *White v. Lee*, 227 F.3d 1214, 1228–29 (9th Cir. 2000) (eight-month investigation); *Media Matters for Am. v. Paxton*, 138 F.4th 563, 581 (D.C. Cir. 2025) (government “campaign of retaliation, including an investigation,” “reflects concrete and present harm”); *Endocrine Soc’y v. FTC*, No. 26-512 (JEB), slip op. at 21–23, 31–34 (D.D.C. May 7, 2026) (preliminarily enjoining retaliatory investigative demand). And these actions are judged together, not one by one: harassment “which though trivial in detail may have been substantial in gross” is actionable. *Bart v. Telford*, 677 F.2d 622, 625 (7th Cir. 1982) (Posner, J.); *see Thaddens-X v. Blatter*, 175 F.3d 378, 396–98 (6th Cir. 1999) (en banc) (adopting *Bart*’s standard).

b. Neither Blick nor Defendants’ Title VII cases hold otherwise. The Order cites *Blick v. Ann Arbor Public School District*, 105 F.4th 868 (6th Cir. 2024). *Blick* did not decide that an investigation cannot be adverse action for First Amendment purposes. The court expressly declined to decide the adverse-action question, resting instead on the plaintiff’s failure to identify her protected speech. *Id.* at 881–82. Here, by contrast, Woodcock has identified his protected speech with precision: the Petition for

Military Action Against Israel that he circulated on July 6, 2025, Pet. (DN 65-7) at 2400–03, and the conference remarks and online posts listed in the notices of investigation, First NOI (DN 19-15) at 1558–60; Second NOI (DN 19-15) at 1573–74; Am. Compl. ¶¶ 75, 77 (DN 36) at 1639–42.

Moreover, because Woodcock alleges that the petition triggered the July 18 actions, Woodcock need only show that the posting of the petition was protected; the burden then shifts to Defendants. *See* Part II.B.2.a below. *Blick*’s discussion of paid leave applied Title VII precedent requiring a “materially adverse” change in the terms of employment, 105 F.4th at 885, as do the pre-*Muldrow* Title VII anti-discrimination cases on paid suspension that Defendants cite, MJOP at 2209–10. That rule does not govern here. The First Amendment adverse-action standard is distinct from the standard for employment-discrimination claims. *Benison v. Ross*, 765 F.3d 649, 659 (6th Cir. 2014); *see also Dye v. Off. of the Racing Comm’n*, 702 F.3d 286, 304 (6th Cir. 2012) (change in benefits without loss of pay was adverse under the First Amendment standard, though not under the FLSA). Even within Title VII, the paid-leave rule comes from the anti-discrimination provision, not the retaliation provision. *Ahmed v. Hamtramck Pub. Schs.*, 178 F.4th 975, 982 (6th Cir. 2026) (so treating *Dendinger v. Ohio*, 207 F. App’x 521, 527 (6th Cir. 2006), which Defendants quote, MJOP at 2209); *see Dendinger*, 207 F. App’x at 527 n.6 (adverse action is “broader in retaliation cases than in discrimination cases”). And after *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024), the rule is doubtful even there. *Blick* observed that “one might reasonably argue that a temporary suspension (even with pay) causes ‘some harm,’” 105 F.4th at 885, and such leave is adverse where the employee cannot do her job and suffers reputational harm from a publicly announced investigation, *Ahmed*, 178 F.4th at 984–85.

And there is a more basic difference. The investigation in *Blick* rested on evidence of misconduct, including an assistant’s report that she had flagged a custodian’s fraudulent timesheets to the principal, who ignored her concerns. *Blick*, 105 F.4th at 874. Nothing in that case suggests that the investigation lacked a factual basis or targeted speech. The investigation in the present case

began with no complaint from any member of the University community. Hr’g Tr. (DN 40) at 1982. The reports came from four professors at other institutions, who alleged no harm to any student or employee of the University. First NOI (DN 19-15) at 1558–59. They could not have been complainants under the University’s policy, which generally makes investigations “Complainant driven” and does not permit persons outside the University community to serve as complainants, OEO Pol’y (DN 42-1) at 2075, 2079–80. Nor did Title VI protect them, because they were not attempting to participate in a University program or activity. *See Snyder-Hill v. Ohio State Univ.*, 48 F.4th 686, 708 (6th Cir. 2022) (Title IX). The first notice therefore charged “spamming,” speaking for the University, and misuse of resources, rules that Defendants had not enforced against Woodcock’s earlier statements on the same subject or against other faculty. First NOI (DN 19-15) at 1558–60; Bird-Pollan Decl. (DN 19-8) at 1113–14; Hr’g Tr. (DN 40) at 1819–20, 1949–51. Defendants’ argument that universities must be able to reassign employees while investigating misconduct, MJOP at 2210–11; DN 69 at 2435, 2437, therefore assumes the conclusion. The First Amendment permits investigating conduct, not punishing protected speech under the label of an investigation. *See White*, 227 F.3d at 1228–30; *Major League Baseball v. Crist*, 331 F.3d 1177, 1187–89 (11th Cir. 2003).

c. An investigation of speech requires an adequate foundation. The First Amendment does not permit officials to investigate protected expression “at will and without relation to existing need.” *DeGregory v. Att’y Gen. of N.H.*, 383 U.S. 825, 829 (1966). “[A]n adequate foundation for inquiry must be laid before proceeding in such a manner as will substantially intrude upon and severely curtail or inhibit constitutionally protected activities” *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539, 557 (1963). Courts enjoin investigations that rest on nothing but lawful conduct: “investigations premised solely upon legal activity are the very type of ‘fishing expeditions’” the law forbids, and the investigator “need not have absolute proof of a violation prior to commencing an investigation,” but

must “have *something*.” *Crist*, 331 F.3d at 1187 & n.23, 1189. The notices of investigation identify political speech about colonization, apartheid, and genocide. Am. Compl. ¶¶ 75, 77 (DN 36) at 1639–42. Defendants identify no conduct directed at any member of the University community. Defendants’ brief confirms the point, defending the investigation on the ground that Woodcock’s speech, “even if [it] currently does not amount to harassment under Title VI, it may cross that line at some future date.” MJOP at 2218. A speculative future violation is not a foundation for investigating present protected speech.

d. Completing the investigation cannot change the dispositive facts. Causation turns on what Defendants knew and why they acted on July 18, 2025. The President’s announcement that day identified only the petition, and the timing points to its circulation on July 6, 2025, as the trigger. Capilouto Email, July 18, 2025 (DN 19-3) at 496–97. Reports gathered later cannot have caused the decision; an employer “could not have been motivated by knowledge it did not have.” *McKennon v. Nashville Banner Publ’g Co.*, 513 U.S. 352, 360 (1995). Nor do Defendants need more facts to evaluate the speech they charged. When officials sought to justify an investigation of protected advocacy as necessary to determine whether it crossed a legal line, the Ninth Circuit answered that they “did not need to gather additional information,” because “[t]hat the First Amendment protected the authors and distributors of the flyers was plain.” *White*, 227 F.3d at 1230. The same is true of a petition, conference remarks, and listserv posts already in the record, and the petition that triggered the July 18 actions is core political speech. *See* Part II.B.2.a below. Nor can Defendants justify further investigation as necessary to perform *Pickering* balancing. Defendants must substantiate their interests with evidence, and on the pleadings that burden is at its height. *Myers v. City of Centerville*, 41 F.4th 746, 764 (6th Cir. 2022) (requiring “as strong or stronger evidence” at the pleadings stage than at summary judgment); *see Rankin v. McPherson*, 483 U.S. 378, 388–89 (1987). Defendants have offered no evidence of disruption. *See* Part II.B.2.e. Completing the investigation would add only

after-the-fact justifications, which the General Counsel has already said will become “additional basis for the reassignment.” Thro Email, Oct. 30, 2025 (DN 19-4) at 1085.

B. Immunity at the Temporary-Restraining-Order Stage

Qualified immunity. “The defense of qualified immunity protects officials from individual liability for money damages but not from declaratory or injunctive relief.” *Flagner v. Wilkinson*, 241 F.3d 475, 483 (6th Cir. 2001); *Gunasekera v. Irwin*, 551 F.3d 461, 471 (6th Cir. 2009). Defendants’ qualified-immunity argument (DN 63, Part III) is therefore directed only at Woodcock’s damages claims and cannot affect the temporary restraining order.

Sovereign immunity and Ex parte Young. *Ex parte Young* requires only a “straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective,” an inquiry that “does not include an analysis of the merits of the claim.” *Verizon Md. Inc. v. Pub. Serv. Comm’n*, 535 U.S. 635, 645–46 (2002) (cleaned). Defendants’ only *Ex parte Young* argument, that “there is no on-going violation of federal law” because “federal law does not require the University to refrain from an investigation of alleged misconduct,” MJOP at 2206; DN 69 at 2434–36, is a merits argument of exactly that kind. And their assertion that official-capacity claims are “no different from a suit against the State itself,” MJOP at 2207, ignores that the Supreme Court passage that language comes from recognized that “official-capacity actions for prospective relief are not treated as actions against the State.” *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 & n.10 (1989) (cleaned). Applying *Verizon*, *Josephson* held that a professor’s requests for reinstatement and for expungement of his personnel file are prospective and not barred. 115 F.4th at 782–83. Defendants distinguish *Josephson* because the professor there sought reinstatement, DN 69 at 2437–38, but Woodcock likewise seeks restoration of his regular duties. Ex. A. Stopping an investigation that is still underway and ending a reassignment that is still in effect are prospective by definition. And each official-capacity Defendant has a direct role in that conduct: the President

initiated the investigation and will decide any findings and sanction; the Dean made the reassignment and ban decision, with the Provost's participation and the President's and General Counsel's approval; Dean Van Tatenhove, whom Defendants acknowledge has been substituted for former Dean Duff, has continued the reassignment; and the General Counsel has tied it to the investigation. Capilouto Email, July 18, 2025 (DN 19-3) at 496–97; Thompson Ltr., Aug. 25, 2025 (DN 19-15) at 1570–71; Am. Compl. ¶ 178 (DN 36) at 1668; MJOP at 2196; Fed. R. Civ. P. 25(d); Van Tatenhove Ltr., Sept. 28, 2026 (DN 65-8) at 2405; Thro Email, Oct. 30, 2025 (DN 19-4) at 1085. Woodcock seeks no official-capacity damages.

C. Effects on Third Parties

If the Court acts. An order pausing the remaining stages of the investigation and restoring Woodcock's regular duties would benefit, not burden, the people closest to this dispute. Law students would regain a tenured teacher of contracts, antitrust, business associations, secured transactions, and international law. The law school canceled his Fall 2025 Antitrust course and Spring 2026 international law seminar and gave his Secured Transactions and Contracts courses to teachers who had rarely or never taught them. Am. Compl. ¶¶ 21, 118 (DN 36) at 1620, 1656; Woodcock Decl., Dec. 12, 2025, ¶¶ 44–45 (DN 19-3) at 229–30; Woodcock 2d Supp. Decl. ¶ 2 & Ex. B. This fall it listed him for Antitrust and Secured Transactions as late as August 21, 2026, then offered neither. Woodcock 2d Supp. Decl. ¶¶ 3–4 & Ex. A (attached as Ex. B). The spring course list goes to the faculty in mid-October, so relief now would return him to the Spring 2027 schedule with the least disruption. *Id.* ¶ 5 & Exs. B–C. The faculty is already “thin,” and losing a tenured teacher leaves “major holes in [the] curriculum.” Donovan Decl. ¶ 8 (DN 19-12) at 1262. Colleagues and students afraid to speak about Palestine or to support Woodcock would be relieved of the signal that such speech leads to investigation, *see supra* Part I.A.1.c, and witnesses would not be asked to participate further while the Court decides the investigation's lawfulness.

On the other side of the ledger, the University kept this investigation on hold for nine months while the courts considered the preliminary-injunction motion, so a pause of a few more weeks costs it nothing it did not voluntarily accept. Extension Emails (DN 65-2) at 2358, 2362, 2370–72. The proposed order reaches only this investigation, which began without any complaint from a member of the University community, Hr’g Tr. (DN 40) at 1982, and leaves the University “free to take appropriate enforcement measures” against any actual “harassing or otherwise inappropriate conduct.” *Seum v. Osborne*, No. 3:17-cv-00069-GFVT, slip op. at 2, 5–7, 9 (E.D. Ky. Sept. 28, 2018) (Van Tatenhove, J.) (enjoining ban meant “to avoid any potential future harassment” based on speaker’s protected remarks). If Woodcock does not prevail, the investigation can resume.

If the Court does not act. The investigation will likely be completed, and the President’s findings will issue, before the Court can decide the preliminary-injunction motion that the Sixth Circuit remanded for decision, and students will lose another semester of Woodcock’s courses. *See* Part I.A.1.e. And faculty and students will learn that the University can remove a professor from the classroom for more than fourteen months and set in motion a complete investigation of his political speech without a single complaint from anyone on campus. That lesson is the chill. Am. Compl. ¶ 117 (DN 36) at 1656. “[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *G & V Lounge, Inc. v. Mich. Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994).

II. Response to Defendants’ Dispositive Motions

Defendants ask the Court to decide this motion first, MJOP at 2196–97 & n.3, but the concurrence they cite leaves the order of decision to this Court, and the Court’s October 2 Order has set the temporary-restraining-order questions for decision now. A Rule 12(c) motion is reviewed like a Rule 12(b)(6) motion: the Court accepts the Amended Complaint’s well-pleaded facts as true and draws all reasonable inferences for Woodcock. *Lindsay v. Yates*, 498 F.3d 434, 437 n.5 (6th Cir.

2007); MJOP at 2205; *Gunasekera*, 551 F.3d at 466 & n.1, 468. The motion relies on matters outside the pleadings: correspondence about investigator bias, Woodcock's laptop, the pause of the investigation, and the investigator's letter establishing the ad hoc process. MJOP at 2202, 2230–31 & Exs. 2, 4–7. To the extent those materials are offered to contradict the Amended Complaint, they cannot be considered without converting the motion under Rule 12(d). Fed. R. Civ. P. 12(d).

A. Immunity (DN 63, Parts I–III)

For the reasons in Part I.B, neither sovereign nor qualified immunity bars Woodcock's claims for prospective relief against the University Officials. As to his individual-capacity damages claims, qualified immunity does not warrant dismissal on the pleadings. It is "generally inappropriate" to grant a motion to dismiss on that basis; the time to decide it "is usually summary judgment." *Wesley v. Campbell*, 779 F.3d 421, 433–34 (6th Cir. 2015). The right of a public university professor to be free from retaliation for academic and private-citizen speech on matters of public concern is clearly established in this Circuit. *Josephson*, 115 F.4th at 789–90 (denying qualified immunity to university officials who retaliated against a professor for speech on a matter of public concern); *Merivether*, 992 F.3d at 504–07. So is the rule that a professor suspended from duties in which he has a property interest must receive notice and an opportunity to be heard. *Gunasekera*, 551 F.3d at 468–69, 471.

B. The First Amendment Retaliation Claim (DN 63, Part IV)

Defendants do not dispute causation. *See* MJOP at 2209. They argue only that Woodcock suffered no adverse action and that his speech is unprotected. Both arguments fail at this stage.

1. Adverse Action

Defendants argue that a paid reassignment pending investigation is not an adverse action. MJOP at 2209–11. Part I.A.2.a–b explains why Defendants' actions are adverse under the First Amendment standard, which Defendants themselves quote, MJOP at 2210, and why their Title VII cases do not

apply. On the pleadings, Defendants’ argument is weaker still. Whether an action would deter a person of ordinary firmness is “a question of fact,” and all but “genuinely ‘inconsequential’ official actions ‘should go to the jury.’” *Josephson*, 115 F.4th at 787 (cleaned); *see Bart*, 677 F.2d at 625 (whether harassment reaches “the threshold of actionability” is “a question of fact”). Even under the Title VII retaliation standard, it is “at least plausible that placement on paid administrative leave for over a year, pending investigation of alleged misconduct, would dissuade a reasonable worker.” *Ahmed*, 178 F.4th at 982. The Amended Complaint alleges much more: public condemnation by the President, removal from teaching and service, a fourteen-month ban, a directive to “stop immediately,” the copying of personal files, and the warning that further notices would extend the reassignment. Am. Compl. ¶¶ 57–65, 72–80, 122–23, 137 (DN 36) at 1634–42, 1657–60.

2. Protected Speech

a. Woodcock need only show that the petition was protected. The President’s July 18 announcement identified only the petition, and it removed Woodcock from the classroom “[a]s a result,” “pending an investigation” for which the University had “engaged with outside legal counsel.” Capilouto Email, July 18, 2025 (DN 19-3) at 496–97. The petition thus triggered the investigation as well as the reassignment. If the petition was protected speech and a motivating factor, the burden shifts to Defendants to prove they would have acted anyway. *Lemaster v. Lawrence Cnty.*, 65 F.4th 302, 309 (6th Cir. 2023). Other speech that the notices later swept in cannot defeat the claim at the pleading stage. And the other speech is protected as well. *See* Parts II.B.2.b–e below.

b. Garcetti does not apply. The question is not whether a professor used his employer’s resources or was identified by his affiliation, but whether he spoke as the government’s agent, considering the motivation, setting, and audience of the speech. *DeCrane v. Eckart*, 12 F.4th 586, 594–96 (6th Cir. 2021); *see Garcetti v. Ceballos*, 547 U.S. 410, 420 (2006) (employees “may receive First Amendment protection for expressions made at work”). Woodcock posted the petition on a website he founded

and circulated it in discussion groups hosted by another organization, to law professors at other institutions; the petition stated that “[i]nstitutional affiliations . . . do not imply institutional endorsement.” Am. Compl. ¶¶ 50, 54 (DN 36) at 1631–33; Pet. (DN 65-7) at 2400. He made the conference remarks at events hosted by other institutions: a February 2024 symposium at the Antonin Scalia Law School and a May 2025 conference at the Chinese University of Hong Kong. First NOI (DN 19-15) at 1558–59. The University itself treated the speech as personal: the Dean testified that he acted because “the taxpayers of Kentucky should not have to fund someone’s personal viewpoints,” and, asked whether the petition was “academic work,” answered, “It wasn’t.” Hr’g Tr. (DN 40) at 1993, 1995. Defendants cannot treat the same speech as both personal political opinion and official employee speech. Their claim that Woodcock “seized the conference stage” at both events to “rant[] at the University’s expense,” MJOP at 2215–16, contradicts the Amended Complaint, which controls on this motion. Am. Compl. ¶¶ 75, 101 (DN 36) at 1639–40, 1649.

c. In the alternative, the speech is protected academic speech. If Woodcock spoke in his professional capacity, his speech was scholarship, and the Sixth Circuit recognizes an academic-freedom exception to *Garvetti* for “speech related to scholarship or teaching” that covers a professor’s classroom speech on matters of public concern “whether that speech is germane to the contents of the lecture or not.” *Merivether*, 992 F.3d at 504–07; *Josephson*, 115 F.4th at 784–86. If the exception protects speech to a captive audience of students, it protects a scholar’s speech to his peers outside the classroom all the more. *See Bishop v. Aronov*, 926 F.2d 1066, 1074 (11th Cir. 1991) (university may impose “‘reasonable restrictions’ over in-class speech that it could not censor outside the classroom”). Woodcock’s conclusions about colonization and decolonization grew out of his scholarship and his international-law seminar. Am. Compl. ¶¶ 43–50 (DN 36) at 1628–32. And discussion of research conclusions at academic conferences, in a petition aimed at law scholars, and in AALS discussion groups for law scholars fits the definition of scholarship. Pet. (DN 65-7) at 2400

(“Law scholars are invited to join”); Woodcock Decl., Dec. 12, 2025, ¶¶ 8, 19, 38–41 (DN 19-3) at 221–22, 226, 228–29. Defendants concede that “this Court must apply the Sixth Circuit’s faculty academic freedom exception to *Garvetti*,” which *Josephson* “extended to speech at academic conferences.” MJOP at 2212–13. Their objection that the Supreme Court has never recognized it, *id.* at 2213–15, is for another court.

d. Title VI does not strip the speech of protection. Defendants argue that speech amounting to harassment under Title VI is unprotected. MJOP at 2217–18. But “[t]here is no categorical ‘harassment exception’ to the First Amendment’s free speech clause.” *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 204 (3d Cir. 2001) (Alito, J.). And Defendants never identify any speech by Woodcock that meets the standard they invoke: harassment “so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.” *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 650 (1999). The notices identify political speech at conferences, on listservs, and online, and two remarks at extracurricular events about which no one complained. Am. Compl. ¶¶ 75, 77 (DN 36) at 1639–42. Nor are the professors whose reports triggered the investigation covered by Title VI. *See* Part II.B.1.

e. Pickering balancing favors Woodcock, and it cannot be resolved against him on the pleadings. At this stage, the Court accepts the allegation that the University received no complaint from any student or faculty member and identified no disruption of its operations. Am. Compl. ¶¶ 66, 69, 85 (DN 36) at 1637–38, 1644. “[U]ndifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.” *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 682 (6th Cir. 2001) (cleaned). Defendants’ principal asserted interest is that speech that is not harassment today “may cross that line at some future date.” MJOP at 2218. That is undifferentiated fear by definition. Their others, room for “interim measures” and Woodcock’s “public facing role,” *id.* at 2219, rest on the same speculation. Defendants offer nothing more, and on the pleadings they must. *Myers*, 41 F.4th at

764; *Meriwether*, 992 F.3d at 511. Defendants’ footnote about a law firm’s request, MJOP at 2198 n.10, is outside the pleadings, Fed. R. Civ. P. 12(d), and an outside critic’s objection is the “undifferentiated fear” that cannot justify restricting a professor’s speech. *Hardy*, 260 F.3d at 675, 681–82. Defendants also label Woodcock’s speech “antisemitic.” MJOP at 2218. The Amended Complaint disputes that characterization, which cannot be accepted on the pleadings. Am. Compl. ¶¶ 78, 85–93 (DN 36) at 1642, 1644–47. And a label directed at the viewpoint expressed cannot supply an employer interest: “[a]n interest in banning disfavored viewpoints is not in line with the workplace management concerns that give the government extra leeway in the employee speech cases.” *Pernell v. Fla. Bd. of Governors*, 181 F.4th 1135, 1152 (11th Cir. 2026).

C. The Establishment Clause Claim (DN 63, Part V)

Defendants invoke the secular-purpose requirement that *Gordon v. City of Hamtramck* left open after *Lemon*’s abandonment, MJOP at 2220–21, but *Gordon* addressed a claim of religious motive, not a denominational preference, and did not decide whether that requirement survives. No. 25-1917, slip op. at 17–20 (6th Cir. Aug. 21, 2026); see *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 534–35 (2022). The claim alleges a denominational preference: that the definition of antisemitism applied to Woodcock’s speech treats criticism of a claimed right of self-determination based on adherence to one faith as discrimination, while treating criticism of claims by other religious groups differently. Am. Compl. ¶¶ 162–67 (DN 36) at 1665–67. “The clearest command of the Establishment Clause” is that government may not “officially prefe[r]” one religious denomination over another, and a denominational preference is subject to strict scrutiny. *Catholic Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm’n*, 605 U.S. 238, 247–48 (2025) (cleaned). Defendants do not attempt to satisfy strict scrutiny.

D. The First Amendment Challenges to University Policies (DN 63, Part VI)

Overbreadth. Defendants make three arguments: that the policies should be judged under the test for regulations of expressive conduct, MJOP at 2223; that the allegations are conclusory, *id.* at 2224; and that the policies serve the University’s interest in preventing harassment, *id.* at 2224–25. None succeeds. The policies regulate speech itself, not conduct, and the Amended Complaint quotes their text, which is where overbreadth analysis begins. *United States v. Williams*, 553 U.S. 285, 293 (2008). The neutrality policies require every faculty member to “always take care to reinforce” that he speaks only as an individual. Am. Compl. ¶ 82 (DN 36) at 1643. The harassment policy adopts a definition of antisemitism that reaches core political speech, such as “[d]rawing comparisons of contemporary Israeli policy to that of the Nazis.” *Id.* ¶¶ 24, 36 at 1621, 1625. An interest in preventing harassment cannot justify either rule, because neither is limited to harassment: one governs how every faculty member describes his own views, and the other reaches political commentary whether or not it harasses anyone. Rules of this breadth, binding an entire faculty or workplace, receive more scrutiny. *United States v. Nat’l Treasury Emps. Union*, 513 U.S. 454, 466–68 (1995); *Pernell*, 181 F.4th at 1161–62. The Sixth Circuit has struck down a university harassment policy on overbreadth grounds before. *Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177, 1182–84 (6th Cir. 1995). Whether these policies sweep in a substantial amount of protected speech cannot be decided against Woodcock on the pleadings, least of all when the University has invoked the policies against his political speech.

Prior restraint. Defendants treat this claim as a challenge only to rules for the University’s email system. MJOP at 2225–26. It is broader: it also challenges the investigator’s directive to “stop immediately,” which Defendants do not address, and the speech was posted to discussion groups hosted by the AALS. Am. Compl. ¶¶ 54, 152–53 (DN 36) at 1633, 1663. As for the spam policy, it permits mass mailings only with “proper authorization,” *id.* ¶ 83 at 1643, and a rule that conditions speech on officials’ prior approval is a prior restraint that bears “a heavy presumption against its

validity.” *Deja Vu of Nashville, Inc. v. Metro. Gov’t of Nashville & Davidson Cnty.*, 274 F.3d 377, 391 (6th Cir. 2001) (cleaned). The policy fails under either framework. Judged as a restriction on employee speech, this broad advance restriction must be justified by harms that are “real, not merely conjectural,” *Nat’l Treasury Emps. Union*, 513 U.S. at 468, 475 (cleaned), and Defendants identify none. Judged under forum analysis, as Defendants urge, even a nonpublic forum requires “objective, workable standards.” *Minn. Voters All. v. Mansky*, 585 U.S. 1, 21 (2018). The Amended Complaint alleges that the policy has none and has not been enforced against other faculty posting political messages to the same listservs. Am. Compl. ¶¶ 100, 153 (DN 36) at 1648–49, 1663.

Vagueness. Defendants say the challenged terms are “generally well understood by those who want to understand” them. MJOP at 2227–28. The test is whether a policy gives fair notice of what it forbids and constrains those who enforce it. *Dambrot*, 55 F.3d at 1183–84. The Amended Complaint identifies terms that do neither. They require faculty, and those who enforce the policies, to distinguish speech “in a professional or expert capacity” from speech as a “private individual,” to know when a message becomes an undefined “mass mailing,” and to detect antisemitism defined as “a certain perception of Jews.” Am. Compl. ¶¶ 157–58 (DN 36) at 1664–65. The University’s refusal to tell Woodcock which provisions his speech violated proves the point. *Id.* ¶ 79 at 1642.

E. The Due Process Claim (DN 63, Part VII)

Property. Defendants concede that Woodcock has a protected property interest in his tenured position but argue that it does not extend to teaching. MJOP at 2228–29. But a tenured professor’s property interest reaches the terms and conditions of the appointment, not only salary. *Gunasekera*, 551 F.3d at 468–69; *Hulen v. Yates*, 322 F.3d 1229, 1241–44 (10th Cir. 2003). The Amended Complaint alleges that University rules define a faculty position by teaching, research, and service, that the law school sets minimum teaching loads, and that Defendants replaced all three with “100% professional development” indefinitely, impeding his teaching and research and exposing him to

termination for failing to meet “university performance and productivity requirements.” Am. Compl. ¶¶ 4, 107–08, 118–21, 171–75 (DN 36) at 1618, 1652–53, 1656–57, 1667–68. That is the “extensive documentation of the ways in which this suspension affects his career” that sufficed in *Gunasekera*, where a professor lost the right to supervise graduate students. 551 F.3d at 468–69. Defendants’ cases are not to the contrary. *Parate v. Isibor*, 868 F.2d 821, 831–32 (6th Cir. 1989), held only that a nontenured professor had no right to teach a specific class. And *Kaplan v. University of Louisville*, 10 F.4th 569 (6th Cir. 2021), assumed that suspending a tenured professor from “research opportunities, clinical practice, teaching, etc.” deprives him of property, *id.* at 581–82, and upheld paid leave only because the professor’s unauthorized financial commitments threatened the university during a budget crisis and he had not addressed concerns the school had raised with him a month earlier, *id.* at 582–83. Woodcock posed no such hazard and received no warning or chance to respond. And *Kaplan*’s leave led to a two-day hearing, at which he called witnesses, before he was fired. *Id.* at 583. Woodcock’s reassignment leads only to findings; a hearing comes only if Defendants seek to revoke tenure. MJOP at 2230–31.

Process. Defendants rely on *Cunningham v. Blackwell*, 41 F.4th 530 (6th Cir. 2022), but the suspensions there were “customized . . . to the problem at hand”: professors suspected of falsifying billing records were barred only from seeing patients, kept their “other academic, research, and administrative obligations,” and were suspended only after an eight-month review in which they were offered “a chance to respond in writing.” *Id.* at 535, 537. Even then, the court held only that the administrators had not “clearly provided inadequate process.” *Id.* at 536–37. Woodcock, by contrast, was removed from all teaching and from faculty governance at the outset, “pending an investigation,” with no notice or opportunity to respond before or after, and without the showing of immediate harm and consultation with a faculty committee that the University’s own regulations then required. Am. Compl. ¶¶ 4, 62, 65, 108–09, 177 (DN 36) at 1618, 1636–37, 1652–53, 1668;

Capilouto Email, July 18, 2025 (DN 19-3) at 496–97. Pre-deprivation process may be dispensed with only where there is a “special need for very prompt action,” *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 52–53 (1993) (cleaned), and Defendants acted in the summer, without a complaint from anyone on campus, about speech that occurred elsewhere. Nor does the investigation supply that process: its evidence reviews and findings address whether Woodcock violated policy, not whether he should be kept from teaching in the meantime. MJOP at 2230–31.

Liberty. Defendants argue that Woodcock never requested a name-clearing hearing, MJOP at 2232, but he alleges that he asked the President to retract his statement on July 18, 2025, and on September 11, 2025, requested “[a] public statement from the University indicating that it wrongfully suspended Professor Woodcock” and compliance with regulations “which provide for a hearing.” Am. Compl. ¶ 182 (DN 36) at 1669–70. Those requests suffice. A request need only be enough “to alert the University that [the employee] was complaining of a lack of due process in connection with a liberty interest.” *Ludwig v. Bd. of Trs. of Ferris State Univ.*, 123 F.3d 404, 411 (6th Cir. 1997) (contrasting *Rosenstein v. City of Dallas*, 876 F.2d 392, 396 (5th Cir. 1989), where a request for an “appeal” from a termination for something the employee “did not do” sufficed). A demand that the President retract his statement and that the University publicly declare the suspension wrongful asks for exactly what a name-clearing hearing provides: a public opportunity to clear one’s name. *See Gunasekera*, 551 F.3d at 470. And contrary to Defendants’ assertion, MJOP at 2233, the Amended Complaint alleges that the President’s statement was false. Am. Compl. ¶¶ 57, 68, 172 (DN 36) at 1634, 1638, 1667. It also alleges that, though the President did not name Woodcock, “it was not difficult to infer who he was discussing,” and that the stated reasons “seriously impugn his morality,” which is more than a charge of poor performance. *Id.* ¶ 172 at 1667; *see* MJOP at 2231–33.

F. The Race Discrimination Claims (DN 63, Part VIII)

The Amended Complaint does not rest on labels. It alleges that administrators joked about giving Woodcock a “fez,” asked whether he is a “practicing” Muslim, and attributed his views to his Algerian mother; that the University permitted on-campus speech defending military action in Gaza and applied a “both sides” rule only to pro-Palestine events; that Defendants did not act against non-Arab speakers who expressed support for military action; and that Defendants repeatedly characterized Woodcock’s call to stop a genocide as a call for genocide. Am. Compl. ¶¶ 186, 190, 196 (DN 36) at 1670–73. Those allegations make discriminatory intent plausible. At this stage, that is enough. Woodcock need not prove intent or plead a *prima facie* case; he need only allege facts that, accepted as true and with all reasonable inferences drawn in his favor, support a plausible inference of discrimination. *Keys v. Humana, Inc.*, 684 F.3d 605, 608–10 (6th Cir. 2012).

Defendants’ remaining arguments fail on their own terms. Their adverse-action argument fails for the reasons in Parts I.A.2.b and II.B.1. Woodcock’s § 1981 claim is brought through § 1983, as the heading of Count VII and its first substantive paragraph state. Am. Compl. ¶ 185 (DN 36) at 1670. And whether Defendants acted outside the scope of their employment, which bears on the intracorporate-conspiracy doctrine Defendants invoke against the § 1985 allegations, is a question of fact, and the Amended Complaint alleges that the “suspension, banishment, and investigation were not authorized by any University policy or regulation” and that Defendants “have sought to cover up this deficiency.” Am. Compl. ¶ 116 (DN 36) at 1656.

CONCLUSION

Woodcock respectfully asks the Court to enter the revised proposed order (Ex. A) and to deny DN 61 and 63 or grant leave to file a supplemental response to DN 63 by October 16, 2026.

Date: October 5, 2026

Respectfully submitted,

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/s/ Joe F. Childers

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INDEX OF EXHIBITS

Exhibit A: Revised Proposed Order

Exhibit B: Second Supplemental Declaration of Ramsi A. Woodcock