

**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 SUPERSEDING MOTION TO CONSOLIDATE HEARINGS AND TO
ESTABLISH A COMPREHENSIVE SCHEDULING ORDER**

Woodcock respectfully moves to establish a comprehensive scheduling order. This motion replaces Woodcock's motion for an expedited scheduling order previously submitted as part of Woodcock's August 6, 2026, Emergency Motion to Schedule a Preliminary Injunction Hearing, For Expedited Document Discovery Within Forty-Eight Hours of Court Order, For Evidence Preservation, For an Expedited Scheduling Order, and For an Order Granting Leave to Hear Motions on Short Notice.

Pursuant to the Court's instruction during the August 10, 2026, hearing on Woodcock's Emergency Motion, the parties conferred regarding scheduling for Defendants' upcoming Motion to Dismiss. They agreed to propose that this Court schedule a hearing on the motion to dismiss for August 28, 2026. (Woodcock is conferring with Defendants regarding the final text of a Joint Status Report which Woodcock expects to file later today.) As set forth more fully in the Memorandum of Law supporting this motion, and in the interest of judicial economy, minimizing irreparable harm, and avoiding potential disruption associated with removing a dean after the start of fall semester classes on August 24, Woodcock moves to combine the hearing on the motion to dismiss with the

hearing he has requested on his motion for a temporary injunction into **a single, consolidated in-person hearing to be held on August 28**. Woodcock proposes this comprehensive hearing date, which falls four days after the start of fall classes at the law school, as an accommodation to judicial economy and the availability of counsel for Defendants. It does not constitute a concession regarding the importance of minimizing irreparable harm and the possibility of disruption by holding a hearing before the commencement of the fall term.

Accordingly, Woodcock respectfully requests that this Court enter a unified scheduling order adopting the following integrated and expedited pre-hearing schedule. This proposed schedule incorporates Woodcock's proposed forty-eight hour expedited discovery window. (Because the forty-eight hour window incorporated into the original proposed expedited discovery order has passed, the proposed order filed concurrently with the present motion includes a new proposed expedited discovery order that updates the expedited discovery window. That new proposed order replaces the proposed order that was filed concurrently with Woodcock's motion for expedited discovery on August 6, 2026.)

1. Motion to Dismiss Track:

- **August 14, 2026:** Defendants' motion to dismiss is due.
- **August 21, 2026:** Woodcock's response to the motion to dismiss is due.
- **August 25, 2026:** Defendants' reply is due.

2. Temporary Injunction Track:

- **August 17, 2026:** This Court grants Woodcock's motion for expedited production of documents within forty-eight hours.
- **August 21, 2026:** Defendants' response to Woodcock's temporary injunction motion is due and Defendants' document production period expires.
- **August 25, 2026:** Woodcock's reply is due.

3. Consolidated Hearing:

- **Friday, August 28, 2026:** Consolidated in-person evidentiary hearing on both the motion to dismiss and the motion for a temporary injunction is held. Defendants have agreed to this date for the hearing on the motion to dismiss. Woodcock requests that a temporary injunction hearing be consolidated with that hearing on the same date.

Woodcock further moves for leave of Court to submit the concurrently filed memorandum of law. While the memorandum of law supports the present motion for a consolidated hearing and comprehensive scheduling order, it also replies to Defendants' August 10, 2026, response to Plaintiff's motion for expedited discovery and provides supplemental responses in relation to inquiries raised by this Court during the hearing on August 10, 2026. These portions of the memorandum of law will aid this Court in deciding Woodcock's August 6, 2026, motion for expedited discovery as well as the present motion.

Respectfully Submitted,

/s/ Rima N. Kapitan

/s/ Joe F. Childers

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NOTICE OF HEARING

Notice is hereby given that the foregoing motion will be brought on for hearing before the Franklin Circuit Court at a time and place to be designated by the Court.

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 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, and electronically on counsel for Defendants.

/s/ Joe F. Childers
Counsel for Plaintiff

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
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Ramsi A. Woodcock,

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Case No. 26-CI-885

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**WOODCOCK'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION TO
CONSOLIDATE HEARINGS AND TO ESTABLISH A COMPREHENSIVE
SCHEDULING ORDER, IN REPLY TO DEFENDANTS' OPPOSITION TO
EXPEDITED DISCOVERY, AND IN SUPPLEMENTAL RESPONSE TO THE
COURT'S INQUIRIES AT THE AUGUST 10, 2026, HEARING**

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INTRODUCTION

Woodcock respectfully submits this memorandum of law in support of his Superseding Motion to Consolidate Hearings and to Establish a Comprehensive Scheduling Order, in reply to Defendants' August 10, 2026, response to his motion for expedited discovery, and in supplemental response to the inquiries raised by the Court during the August 10, 2026 status conference. These inquiries included concerns regarding the least disruptive time to remove a dean, the need to wait for accreditation agencies to act, whether Woodcock is raising claims personal to him or on behalf of a group, whether a dean's primary role is fundraising, and how to succinctly articulate Woodcock's claims. In addition to responding to these inquiries, this memorandum of law also shows why the District Court's opinion denying Woodcock's motion for expedited discovery in his voluntarily dismissed federal case—which Defendants cited in their response to Woodcock's motion for expedited discovery before this Court—was based on serious mistakes of law. Finally, this memorandum of law shows that, contrary to Defendants' assertion in their response and at the hearing, Defendants have no colorable claim to immunity from temporary injunctive relief.

Because any concerns about disruption to the law school associated with removing Defendant Van Tatenhove before commencement of classes become graver after the start of classes, and the irreparable harm caused by ongoing violations of Woodcock's constitutional and contractual rights can only increase over time, a ruling is necessary on Woodcock's motion for a temporary injunction before the start of classes on August 24, 2026, or as soon thereafter as practicable, in order to avoid frustrating the purpose of temporary relief, which is to minimize irreparable harm. *Beshear v. Goodwood Brewing Company, LLC*, 635 S.W. 3d 788, 799–99 (Ky. 2021).

In light of the parties' agreement in their joint status report filed concurrently herewith to propose that this Court hold a hearing on Defendants' motion to dismiss on August 28, 2026, Woodcock requests that this Court consolidate the hearing with an in-person evidentiary hearing on

Woodcock's motion for a temporary injunction on the same date. "[E]videntiary hearings at which witnesses testify and are cross-examined are the preferred procedure to resolve motions for a temporary injunction." *Goodwood Brewing*, 635 S.W. 3d at 797. A consolidated hearing would permit this Court to issue a temporary injunction with minimal risk of disruption to the law school if, as part of this Court's evaluation of Defendants' motion to dismiss, this Court determines that Woodcock's legal theories are sound, and immediate injunctive relief is required to minimize ongoing irreparable harm. Kentucky Rule of Civil Procedure 6.04(1) and this Court's "inherent power to do all things reasonably necessary to the administration of justice in the case before it" permit this Court, upon motion, to schedule expedited hearings and to compress briefing timelines to accommodate them. *Smothers v. Lewis*, 672 S.W. 2d 62, 64 (Ky. 1984).

Expedited discovery in aid of a hearing on a temporary injunction is necessary to aid this Court in determining if Woodcock raises a substantial question whether Defendant University of Kentucky lacked justification for selecting Van Tatenhove over three other finalists approved by the faculty. "[P]reliminary injunction rulings are" "premised on a tentative development of the facts". *Goodwood Brewing*, 635 S.W. 3d at 796 (cleaned up). Whether the Defendants had a justification for appointing Van Tatenhove is key to determining the viability of Woodcock's constitutional and contractual claims. Targeted discovery of documents created contemporaneously with the selection of Van Tatenhove and evidencing the thought processes of Defendants or attempts by donors or politicians to influence them is directly responsive to this question.

Woodcock recognizes that this memorandum of law may appear long at first glance, and he is mindful of the importance of not abusing this Court's standing order, delivered at the August 10, 2026, hearing, removing length limits on briefs in this case. The length of this brief is justified because it combines a number of tasks, including replying to Defendants' response to Woodcock's motion for expedited discovery, responding to the opinion in the voluntarily dismissed federal case

denying Woodcock's motion for expedited discovery, and responding to this Court's inquiries at the hearing. If these tasks were addressed in separate briefs, each brief might reasonably be ten to fifteen pages in length. This brief's length is consistent with the sum of those reasonable limits. Moreover, Woodcock believes that this brief is highly responsive to concerns raised by this Court at the hearing and therefore will be of great use to the Court.

ARGUMENT

A. An Injunction Before the Start of Classes, Or as Soon Thereafter as Practicable, Is Necessary to Minimize Irreparable Harm and the Possibility of Disruption

"Temporary injunctions attempt to place the parties in a position most likely to minimize harm before the court can finally decide the issues raised in a complaint." *Goodwood Brewing*, 635 S.W. 3d at 798–99. In this case, an injunction before the start of classes, or as soon thereafter as practicable, is necessary to minimize both irreparable harm to Woodcock and the possibility of disruption to law school operations.

1. Disruption

An injunction before the start of classes minimizes the potential for disruption to law school operations. At the August 10, 2020⁶, hearing, this Court expressed concern that removing Van Tatenhove now might cause disruption. But any concern that the Court may have about disruption now will only be *magnified* after classes start. During summer break, few faculty or students spend time on campus and a dean makes few operational decisions. Those are saved for term time. Accordingly, removing a dean after the start of classes is more likely to be disruptive than removing a dean over the summer. This is particularly true for a new dean who has only been on the job for a few weeks and is unlikely to have yet made *any* meaningful decisions upon which faculty and staff might have come to rely.

Possible disruption to the law school from removing a dean has three possible forms: waste of relationship investments; frustrated reliance' and harm to reputation. The first two become more likely after classes start. Whether the third even exists can only be determined via a temporary injunction hearing. So, it, too, counsels in favor of holding a hearing as soon as possible.

Waste of relationship investments. Faculty and students invest time in getting to know their dean and sharing their needs with him in the expectation that this will cause him to make good decisions. If the dean is removed sooner than expected, part of that investment is wasted. The possibility that removal will cause waste of relationship investments goes up with the start of classes. Van Tatenhove is a brand new dean and faculty and students will have had limited opportunity to meet him, much less invest in relationships with him, until after classes start. Van Tatenhove did not hold the normal August faculty retreat this year. And most faculty and students do not return to campus until the start of classes and so have little opportunity to meet the dean until then. Accordingly, most investment in building a relationship with Van Tatenhove is likely to take place after classes start. Removing him before classes start avoids wasting such investments of time.

Frustrated reliance. A dean makes decisions about budgets, staffing, and curriculum upon which students and faculty rely. For example, the dean decides how much money to allocate to faculty committee chairs for purposes of holding events and committee chairs plan events in reliance on budget allocations. If a dean is removed after such decisions are made, the administrators who replace him may change those decisions, frustrating reliance. The possibility that removal will frustrate reliance is likely to go up with the start of classes. Deans have ultimate authority (in relation to faculty and students) over a vast number of operational decisions, and those decisions are primarily made during the semester. For example, the dean exercises control or substantial influence over the allocation of funds to support student groups, campus events, visits by outside speakers, scholarships for students, internships and externships for students, faculty conference travel, faculty

and student submission of scholarly articles for publication, hiring of new faculty, and promotion of the school to potential applicants. The dean has control or substantial influence over faculty appointments, student admissions, the classroom experience (including the discipline of unruly students and the suspension and banning of faculty), student groups (including law journals), curriculum, course scheduling, and teaching assignments. Although they give the dean authority to depart from faculty recommendations, University regulations require that the dean “seek the advice of the faculty of the college” with respect to many of these decisions. Admin. Reg. — Univ. Org § F.2.c., Compl. Ex. 22 at 12. But the faculty holds meetings only during the semester and not over summer break when most faculty are not on campus. So the dean is only able to make many of these decisions during the semester. In light of this, it is unlikely that Van Tatenhove will make many operational decisions in the weeks between his July 20 start date as dean and the start of classes. In consequence, it is unlikely that replacing Van Tatenhove before classes start will lead to a reversal of decisions upon which students or faculty have come to rely to their detriment. After classes start, however, as Van Tatenhove starts to make large numbers of operational decisions, and students and faculty come to rely on them, the possibility that his replacements will reverse his decisions increases and the possibility of frustration of reliance increases in conjunction with it. Removing Van Tatenhove before classes start, or as soon after as practicable, avoids this potential harm.

Reputational harm to the law school. Removal of a dean may send a signal to prospective students or faculty that leadership of the law school is unstable and consequently if they matriculate at the law school or join the faculty they may experience waste or frustrated reliance themselves. That may reduce the quality of students or faculty who associate with the law school. It is not possible for this Court to determine whether removing Van Tatenhove is likely to harm or benefit the reputation of the law school until this Court considers, as part of its consideration of Woodcock’s motion for a temporary injunction, whether there is a substantial possibility that

Woodcock will prevail on his claims. That is because the questions that Woodcock's claims pose, such as whether the appointment of Van Tatenhove chills faculty speech,¹ represents an arbitrary exercise of power, or prevents law professors from using their membership in the faculty to signal that their scholarship is credible, are highly relevant to the question whether Van Tatenhove's presence in the dean role is good for the law school's reputation or not. If this Court concludes that the appointment chills speech, represents an arbitrary exercise of power, or harms credibility, then the appointment has likely harmed the law school's reputation. A school known to chill speech, act arbitrarily, and produce scholarship lacking credibility has a bad reputation. In that case, removing Van Tatenhove temporarily would restore the school's reputation because it would signal that this Court is likely permanently to remove him after trial as well. This positive effect on reputation might compensate for any negative effect associated with sending a signal regarding leadership instability. If so, removal of Van Tatenhove would bring about a net *improvement* in the law school's reputation.

If, instead, the Court concludes that chill to speech, arbitrary exercise of power, and loss of credibility are unlikely to have occurred, then Van Tatenhove's presence may not be an ongoing drag on the law school's reputation. In that case, the possible negative signal regarding leadership instability associated with removing Van Tatenhove would not be counterbalanced by a possible positive signal associated with the removal of someone whose presence harms the reputation of the law school. And, if that is the case, removing Van Tatenhove would potentially cause a net decline in the law school's reputation.

Because this Court can resolve the question whether Van Tatenhove's removal is likely to benefit or harm the school's reputation only by resolving the motion for a temporary injunction, harm to reputation cannot provide a basis for this Court to deny a request for an expedited

¹ Woodcock added a speech chill claim to his Amended Complaint on August 13, 2026, and bases his motion for a temporary injunction on that claim in addition to his expressive association, arbitrary power, and breach of contract claims.

temporary injunction hearing date. Instead, reputational concerns counsel in favor of expediting the hearing so that this Court can determine whether a temporary injunction is likely to benefit or harm the reputation of the school.

Reputational harm and faculty hiring. The Court's concern, expressed at the August 10, 2026, hearing, that removing a dean now might make it harder for the law school to attract qualified law faculty candidates during the fall hiring season illustrates this dynamic. The answer to the question whether Van Tatenhove's continued tenure as dean attracts or dissuades qualified faculty applicants depends entirely on the question whether his presence chills speech, undermines the credibility of faculty scholars and represents an exercise of arbitrary power. If it does, then these problems will dissuade good candidates from applying and removing Van Tatenhove could well permit the school to attract better applicants. If Van Tatenhove's appointment does not create the harms alleged by Woodcock, then removing him could potentially dissuade good applicants from applying because of the signal it would send regarding instability of leadership. This Court will not be able to determine which effect is more likely until the Court holds a hearing on Woodcock's motion for a temporary injunction. This counsels in favor of holding the hearing as soon as possible because, if it turns out that Woodcock is likely to prevail on the merits of his claims, then it would follow that both the mounting irreparable harm to Woodcock from the appointment *and* the reputational effects of removing Van Tatenhove support Van Tatenhove's immediate removal pending a final judgment in the case. Delay in entering an order by even a short period could be catastrophic in such a case because, once the law school has determined which four or five candidates to bring to campus for callback interviews, it becomes impossible for the administrators who would replace Van Tatenhove to replace them with a better qualified slate. The good candidates will have already declined interview offers at the law school or filled their schedules with offers from other schools. Van Tatenhove will have already locked in a menu of his preferred hires from which

the new administrators would be forced to choose or forego hiring for the severely understaffed faculty for another year.

2. Irreparable Harm

The harms associated with each of Woodcock’s four claims also counsel against delay in imposing a preliminary injunction because the harms associated with each are constantly increasing over time. Deprivation of constitutional rights over a long period naturally causes more harm than deprivation for a short period. And the longer that the benefits of peer review are denied to Woodcock, the greater Woodcock’s economic loss. The longer the credibility of his scholarship is called into question by his subjection to non-peer review, the longer his public platform is impaired, and the more that the higher salary in industry that he forgoes in order to associate with the faculty is foregone for nothing. Because the purpose of a temporary injunction is to minimize such harms, and the harms increase with time, the optimal date to hold a preliminary injunction hearing is *immediately*. *Goodwood Brewing*, 635 S.W. 3d at 798–99.

Finally, the Kentucky Supreme Court has 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.” *Rogers v. Lexington-Fayette Urban Cty Gov.*, 175 SW 3d 569, 570–72 (Ky. 2005). This is true even if the “funds necessarily come from” the government “not from” the plaintiff. *Id.* at 573 (Johnstone, J. dissenting). 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. Prev. Dean Int. Dean Off. Ltrs., Compl. Exs. 63–65 (reflecting that the salaries for the previous three deans or interim deans ranged from \$333,000 to \$380,000). 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, or that the University would attempt to do so even if it had such a legal right. An expeditious decision on Plaintiff's injunction motion would minimize the irreparable harm caused by this ongoing drain on public funds.

B. Woodcock's Claims in a Nutshell

At the hearing, this Court asked how Woodcock's claims might be clearly summarized.

All four of Woodcock's claims derive from the University's transgression of the principle that faculty autonomy from university administrators in matters of appointment, promotion, and termination is necessary to ensure that faculty are able to carry out their responsibility to speak their minds about the implications of their research as opposed to delivering conclusions that University administrators, politicians, or donors wish to hear. 1915 Declaration, Compl. Ex. 27 at 294–95. If a faculty member's career depends upon the decisions of other truth searchers as opposed to those of university administrators and trustees beholden to donors or the politicians who appointed them, he will feel free to deliver the unvarnished conclusions dictated by his research—and in this way he will advance the University's mission of expanding knowledge. Univ. Mission, Compl. Ex. 18 at 3. If a faculty member's career depends upon the decisions of university administrators and trustees, he will fear retaliation for his speech and varnish his conclusions. In imposing a dean whom the faculty have rejected because he is not a scholar, the University has turned authority concerning faculty appointment, promotion, and termination over to an administrator whom the faculty have judged not to be a truth searcher like themselves. Faculty Email, Compl. Ex. 8. Their careers now depend upon the decisions of a man with no scholarly record who owes his position as their dean to exclusively University administrators, and, through them, to the University's trustees, the politicians who appointed them, and potentially to the University's donors as well. Herald-Leader Reality Check, Compl. Ex. 24 at 3–4.

The courts have long recognized the importance of faculty autonomy. The U.S. Supreme Court has stated that “[a]cademic freedom thrives not only on the independent and uninhibited exchange of ideas among teachers and students, but also . . . on autonomous decisionmaking by the academy itself. Discretion to determine, on academic grounds, who may be admitted to study, has been described as one of ‘the four essential freedoms’ of a university.” *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 226 n.12 (1985) (cleaned up). The others are the rights to determine “who may teach, what may be taught,” and “how it shall be taught.” *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring). The courts have elaborated that this includes the right “to set” “criteria for promotion and then to evaluate a candidate’s fitness for promotion under them.” *Heim v. Daniel*, 81 F. 4th 212, 231 (2d Cir. 2023). While the courts sometimes loosely refer to autonomy as a right of the “university”, they mean the right of university *faculties*, not the lay trustees who govern universities or the senior administrators who are beholden to them for their positions. 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). Accordingly, the courts recognize that “[i]f the academic enterprise is to remain an engine of progress, decisions about the value of academic work must be left to academics.” *Heim*, 81 F. 4th at 233. “[T]hings like” “research scholarship” “are subjective, and” “must be left for evaluation by the professionals.” *Id.* Such evaluations must be “made by experts in their good faith professional judgment, free from any influence from political entities in the state or other governmental or university officials outside the relevant discipline.” *Id.* at 234.

The University’s appointment of a non-scholar dean over the objection of the faculty violates four rights that are personal to Woodcock, each of which derives from the basic principle of faculty autonomy—which Woodcock also calls “peer review”. See *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 226 n.12 (1985) (describing “autonomous decisionmaking” by the “academy” as necessary for academic freedom to thrive). The first is the right of expressive association under the Kentucky

Constitution. *Com. v. Wasson*, 842 S.W. 2d 487, 492 (Ky. 1992) (stating that federal rights supply a “floor” to the Kentucky Constitution); *Boy Scouts of America v. Dale*, 530 U.S. 640, 647–48 (2000) (defining the right of expressive association). The violation arises because membership in a faculty that enjoys autonomy from university administrators is a badge of credibility for individual scholars. It tells the world that the scholar is likely to report research conclusions that have not been influenced by special interests, such as the preferences of university administrators and the trustees, donors, and politicians to whom university administrators are accountable. It is what distinguishes a researcher for a political advocacy organization, a law firm, or a thinktank from a *scholar*. 1915 Declaration, Compl. Ex. 27 at 294–95. When the University imposes a lay dean on the law faculty, it *alters* the message that membership in the faculty sends from that of credibility to untrustworthiness. Altering the message sent by membership in a group violates the individual right of expressive association. *Boy Scouts of America v. Dale*, 530 U.S. 640, 653 (2000).

The second right that the appointment violates is the right under Section 2 of the Kentucky Constitution to be free of arbitrary exercises of government power. *Com., Transportation Cabinet v. Weinberg*, 150 S.W. 3d 75, 77 (Ky. Ct. App. 2004). The violation arises because the University acknowledges the importance of faculty autonomy to its mission of advancing knowledge and has accordingly both honored faculty autonomy for decades and established written policies that protect it. Univ. Mission, Compl. Ex. 18 at 3. The University acknowledges faculty autonomy as “[s]hared governance,” which it describes as “a bedrock principle and a value of the University” that is “critical to how the University meets its mission.” Governing Reg. I — Decl. Princips. § B, Ex. 26 at 2. Consistent with this principle, the Board of Trustees directs that the faculty advise the president “within” their “domain[] of expertise,” including regarding “measures necessary to preserve and protect the University’s deep commitment to” “academic freedom” and “the ethical and

professional standards applicable to members of the University's faculty."² *Id.* The University further implements this principle by mandating compliance with accreditation standards that forbid the appointment of a dean without tenure or over the objection of the faculty and require that faculty be permitted to submit written statements to accompany any recommendation regarding the appointment of a dean. Employee Code § I.D, Compl. Ex. 20 at 1 (requiring compliance with accreditation standards); ABA Standards Interp. 203-1, Standard 203(b), Compl. 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); Admin. Reg. — Univ. Appts. § A.3, Compl. Ex. 74 at 2 (requiring that a recommendation for the appointment of a dean be accompanied by written statements of tenured members of the faculty). And the University has honored faculty autonomy in practice by not appointing a dean over the objection of the faculty, or who lacked the scholarly record required for tenure, for at least the past fifty years. Ausness Decl. ¶¶ 3, 6. As a result, when the University imposed a lay dean on the faculty, it did not just violate an abstract principle. It also violated its own written policies guaranteeing faculty autonomy as well as longstanding practice. Ausness Decl. ¶¶ 3, 6; Employee Code § I.D, Compl. Ex. 20 at 1; ABA Standards Interp. 203-1, Standard 203(b), Compl. Ex. 19 at 14; Admin. Reg. — Univ. Appts. § A.3, Compl. Ex. 74 at 2. And because this assault on faculty autonomy is inconsistent with the University's mission to advance knowledge, the University could not provide an explanation for why it needed to break its own written rules and depart from longstanding practice. It therefore violated Woodcock's individual right under Section 2 of the Kentucky Constitution to be free of arbitrary exercises of government power. *Com., Transportation Cabinet v. Weinberg*, 150 S.W. 3d 75, 77 (Ky. Ct.

² Governing Reg. V — Shared Governance, <https://regs.uky.edu/sites/default/files/2026-04/gr-i-declaration-of-principles.pdf>.

App. 2004) (failure to follow rules); *Kentucky Milk Marketing v. Kroger Co.*, 691 S.W. 2d 893, 900–01 (Ky. 1985) (unexplained change in longstanding practice).

The third right that the appointment violates is Woodcock’s right to the University’s performance of his employment contract. The violation arises because the credibility that membership in an autonomous faculty provides to a scholar has economic value. In consequence, faculty such as Woodcock bargain to have the written University policies that guarantee faculty autonomy included in their employment contracts. Compl. Woodcock Decl. ¶¶ 7–10; Woodcock Offer Letter, Compl. Ex. 21 at 1 (stating that Woodcock’s “responsibilities” are “as outlined in the . . . University of Kentucky rules and regulations”). The economic value of membership in an autonomous faculty is reflected in the pay cut that frequently accompanies a move to academia from industry. Faculty trade financial compensation for services provided to them as part of their employment. The dollar value of those services is measured by the magnitude of the pay cut. One of those services is governance by an autonomous faculty, which gives the scholar’s research a credibility that it would not enjoy if the scholar continued to work in industry, where he is accountable for his research conclusions to non-scholars. In other words, membership in an autonomous faculty creates a valuable platform for a scholar’s research and the scholar pays for access by taking a pay cut. The terms of access are the University’s written policies guaranteeing faculty autonomy. When the University violates those policies, it breaches its agreement with the scholar.

The fourth right that the appointment violates is the right to freedom of scholarly speech under the Kentucky Constitution. *Com. v. Wasson*, 842 S.W. 2d 487, 492 (Ky. 1992); *Meriwether v. Hartop*, 992 F. 3d 492, 505 (6th Cir. 2021). The violation arises because the appointment of a lay dean chills

faculty speech.³ A dean who is imposed over the objection of the faculty is not accountable to the faculty. If the faculty could not prevent his hiring, they certainly cannot bring about his firing if he makes bad decisions. And if he is not accountable to them, then he is accountable only to University administrators and, ultimately, to University trustees, politicians who appoint them, and donors—to each of whom University administrators are formally or informally accountable. *See, e.g.*, Kentucky Lantern 3/6/26, Compl. Ex. 80 at 2 (quoting J. David Rosenberg, an alum and major donor for whom the law school is currently named, as saying that Van Tatenhove would “engage” “alumni in supporting [the school’s] success”). It follows that, as a result of the appointment, faculty, in turn, have become accountable not to each other for their speech (as would happen if they remained autonomous) but, through Van Tatenhove, to the University administrators, trustees, donors and politicians who stand behind the dean’s appointment. *See, e.g.*, Congressman Barr Press Release, Compl. Ex. 25 (celebrating the appointment of Congressman Barr’s “friend” Van Tatenhove); Compl. Woodcock Decl. ¶ 19 (discussing a report that prominent Kentucky politicians lobbied University administrators regarding a law school dean appointment). And so faculty must now fear that if they report research conclusions that these outside interests dislike they will receive negative performance reviews and ultimately face termination. Moreover, even if they could rely on Van Tatenhove’s bona fides, their speech would still be chilled because his lack of training as a scholar prevents the faculty from predicting what he will consider to be bad scholarship. Am. Compl. Woodcock 2d Decl. ¶¶ 4–9. Unsure of where the line falls between good and bad scholarship in the lay mind, faculty will speak less and suppress their more controversial conclusions to minimize the risk of running afoul of his preferences. *Id.* The Kentucky Constitution protects the right of faculty to engage in scholarly speech. *Com. v. Wasson*, 842 S.W. 2d 487, 492 (Ky. 1992) (stating that federal

³ Woodcock added a speech chill claim to his Amended Complaint on August 13, 2026, and bases his motion for a temporary injunction on that claim in addition to his expressive association, arbitrary power, and breach of contract claims.

rights supply a “floor” to the Kentucky Constitution); *Meriwether v. Hartop*, 992 F. 3d 492, 505 (6th Cir. 2021) (stating that “professors at public universities retain First Amendment protections” “when engaged in core academic functions, such as” “scholarship”). Actions that chill scholarly speech violate that right. *Pernell v. Florida Board of Governors of the State University*, No. 22-13992 slip op. at 22 (11th Cir. July 7, 2026) (condemning law that “chills potential speech” of faculty “before it happens”).

The harm associated with all four of these claims is irreparable. For the three constitutional claims (expressive association, arbitrary power, and chill to speech), the harm is irreparable because it is not possible to place a dollar value on the loss of a constitutional right, particularly those associated with freedom of speech. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of” speech “freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”) The harm associated with the University’s breach of contract is irreparable because it is difficult to calculate the share of Woodcock’s pay cut attributable to the benefit of governance by an autonomous faculty as opposed to other benefits associated with a faculty appointment, such as the freedom to choose one’s research topics. Accordingly, money damages are not a workable remedy for this breach of contract. *Cyprus Mountain Coal Corp. v. Brewer*, 828 S.W. 2d 642, 645 (Ky. 1992).

C. Why Violation of the Right of Expressive Association Directly Impairs Speech

At the hearing, the Court appeared to draw a distinction between government action that prevents Woodcock from speaking and action that violates Woodcock’s right of expressive association. In fact, impairment of the right of expressive association, properly understood, directly impairs the ability of the individual faculty member to speak.

The U.S. Supreme Court has long recognized that the freedom of speech not only protects the right to write or talk but also the right to control tools that are “useful for speaking.” *Blick v. Ann Arbor Public School Dist.*, 105 F. 4th 868, 882 (6th Cir. 2024). The government cannot, for example,

ban the sale of ink. *Id.* Such a regulation is not a direct prohibition on writing or talking but it still directly impairs speech because it limits access to a tool “useful for speaking.” The ability to speak *through ink* is impaired. Similarly, the courts have long recognized that when people use their membership in a group to send a message, the government cannot force the group to accept members or leaders whose presence alters that message because that deprives the members of the group of a tool that they had found “useful for speaking.” *Boy Scouts of America v. Dale*, 530 U.S. 640, 653 (2000). The ability to speak *through association* is impaired. Thus, in *Boy Scouts v. Dale*, the U.S. Supreme Court concluded that an American joins the Boy Scouts to send the message that he is “morally straight” and therefore the government could not force the group to accept a member who was an openly gay, gay rights activist. *Id.* at 650–53. Placing the openly gay, gay rights activist in the group changed the message that members sent by joining the Boy Scouts from “I’m morally straight” to something like “I’m permissive and uninhibited”. Forcing the Boy Scouts to accept an openly gay, gay rights activist as a member deprived the groups’ other members of a tool “useful for” sending the message that they are “morally straight”.

In the present case, membership in a faculty that enjoys autonomy from University administrators sends the message that a scholar’s work is free of the influence of special interests. 1915 Declaration, Compl. Ex. 27 at 294–95. It is peer reviewed as opposed to captured by University administrators and the trustees, donors, and politicians to whom University administrators are accountable. When the University imposes a lay dean on the law faculty, the significance of membership in the faculty is transformed. Membership no longer sends the message that the scholar is subject to peer review because the faculty is now led by a non-peer. This is a direct impairment of the message that each individual member of the faculty, including Woodcock, sends through his membership in the faculty. Woodcock’s membership in the faculty was once a

tool that he found “useful for” conveying the credibility of his work. As a result of the University’s imposition of a lay dean, that is no longer so.

Of course, Woodcock can still *tell* people that his work is credible and not subject to outside influence. But he can’t use his membership in the faculty to say that. It is no defense to a government limit on one avenue of speech that other avenues remain open. Indeed, the U.S. Supreme Court has gone so far as to hold that an otherwise *permissible* speech restriction violates free speech rights where the government grants an exception to the restriction to some speakers but not others. *City of Ladue v. Gilleo*, 512 U.S. 43, 51 (1994).

Because association with others is one of the most important tools useful for speaking, the Supreme Court has long considered the right of expressive association to be “an indispensable means of preserving other individual liberties”. *Roberts v. United States Jaycees*, 468 U.S. 609, 618, 622 (1984).

D. Woodcock’s Claims Are Personal to Woodcock

At the hearing, this Court asked whether the injunction motion relates to Woodcock’s own personal rights as opposed to the general rights of the faculty. The rights that Woodcock asserts are all *personal* to Woodcock. While a government action that violates the right of expressive association may be directed at a group rather than a specific individual, the rights that the action violates are always the individual rights of the members of the group. That is because an individual uses his choice about which group to join to send a message that he, individually, wishes to send.

Government meddling with the internal composition of a group changes the message sent by membership in the group, depriving the individual member of a tool (membership in the group) that he had used to convey a message about himself. *Dale*, 530 U.S. at 653. By the same token, while government action to limit access to ink may be directed at the ink (e.g., by seizing it) rather than a particular writer, the right that government action limiting access to ink violates is an individual right

of each writer who is deprived of access to ink. *Blick*, 105 F. 4th at 882. Individual writers use ink to send messages. Deprivation of access to ink deprives individuals of a tool that they use to convey messages and thereby burdens their speech on an individual basis.

Consistent with the foundation of the right of expressive association in the individual group member's right of free speech, the standing of a *group* to assert expressive association rights has long been considered *derivative* of the individual rights of its members. In order for a group to sue for violation of a right of expressive association, the group must prove that "its members would otherwise have standing to sue in their own right". *Com. ex rel. Brown v. Interactive Media Entertainment & Gaming Ass'n, Inc.*, 306 SW 3d 32, 38 (Ky. 2010). Accordingly, when Woodcock sues for violation of a right of expressive association, he asserts his own individual right, not the right of the faculty as a group.

The personal nature of the other rights asserted by Woodcock in support of his temporary injunction motion is clear. Woodcock's contract rights are personal to him as a party to his employment agreement with the University. Woodcock's right to be free of arbitrary power under Section 2 of the Kentucky Constitution is also personal to him. Individual plaintiffs frequently bring Section 2 claims. *See, e.g., University of Kentucky v. Davis*, 551 SW 3d 443, 448 (Ky. Ct. App. 2017) (holding that two state employees denied disability benefits could sue under Section 2). And the right to freedom of speech as a scholar is an individual right. *Meriwether*, 992 F. 3d at 505 (describing free speech protections for scholarship as belonging to "professors"). Accordingly, government action that chills scholarly speech violates an individual right.

E. Fundraising Is Not an Official Responsibility of the Dean—But Reviewing Faculty Scholarship Is

At the hearing, this Court suggested that a dean's job is primarily to raise funds. If a dean's job were fundraising and he had no power to decide the appointment, promotion, and termination of

faculty members, then his appointment over the objection of the faculty would perhaps be of little concern from the perspective of the rights of expressive association and freedom of scholarly speech because these depend upon the power of a non-peer dean to evaluate faculty. (The appointment would still violate Woodcock’s employment contract and the Kentucky Constitution’s prohibition on arbitrary exercises of power.) However, in the present case, the dean *is* responsible for the appointment, promotion, and termination of faculty members—and fundraising is not listed as one of a dean’s job responsibilities.

The responsibilities of a dean are listed in the University’s regulation on “University Organization”. It states:

The dean is the chair of the college faculty and an ex officio member of all college committees. The dean is charged with overseeing the educational work of the college and its efficient conduct and management in all matters not specifically charged elsewhere. The dean is responsible for the implementation of the credit-bearing and non-credit bearing curricula of the academic college, for ensuring through the faculty the quality of instruction given therein, for the assignment of duties to all personnel and for the service provided by the faculty of the college, individually and as a whole. The dean shall review faculty performance evaluations submitted by the department chairs and shall be responsible for recommendations on salaries, salary changes, appointments, reappointments, terminal appointments, post-retirement appointments, promotions and granting of tenure and decisions not to reappoint for members of the college or for ultimate action thereon when such authority has been delegated by the President or the Provost. The dean shall submit the budget request for the college and administer the budget when it is approved.

Admin. Reg. — Univ. Org § F.2.c., Compl. Ex. 22 at 12. While law deans may in practice frequently seek to raise funds, fundraising is not a listed responsibility of the dean of the law school and can be implied only through the dean’s responsibility for “efficient conduct and management in all matters not specifically charged elsewhere”. *Id.* Instead, the dean’s enumerated responsibilities are inward looking, and concern “overseeing the educational work of the college”, “the assignment of duties to all personnel”, “review [of] faculty performance evaluations”, and “recommendations on salaries,

salary changes, appointments, reappointments, terminal appointments, post-retirement appointments, promotions and granting of tenure and decisions not to reappoint” faculty. *Id.*

The absence of fundraising from the enumerated portfolio of a dean makes sense. Although a dean has administrative responsibilities, a dean is *not* a University administrator. Rather, he is the chief faculty member—the leader of the faculty. It is for this reason that a dean is ipso facto a member of the law faculty, “the chair of the college faculty and an ex officio member of all college committees.” *Id.* at §§ E.3.a, F.2.c. The dean is the *lead scholar* on the faculty and only secondarily a manager of University affairs. In light of the dean’s power over the appointment, promotion, and termination of faculty, the dean cannot be a University administrator without impairing faculty autonomy.

F. This Court, Rather than Accreditors, Enforces Contracts and the Kentucky Constitution

At the hearing, the Court expressed concern that the American Bar Association (ABA) investigation of the appointment of Van Tatenhove had not yet concluded. Am. Compl. ¶ 35 & n.6. However, none of Woodcock’s claims turns on the conclusion of that investigation, nor would any of Woodcock’s claims be rendered moot by the conclusion of the investigation.

The imposition of a lay dean over the objection of the faculty directly violates Woodcock’s rights of expressive association and against chilled speech regardless of whether the ABA ultimately determines that the appointment violates ABA rules. Those constitutional rights turn on whether the appointment changes the expressive significance of membership in the faculty or would induce a reasonable person to engage in self-censorship, not on whether ABA rules are violated.

ABA enforcement also has no bearing on whether the University has violated its contract with Woodcock or Section 2 of the Kentucky Constitution. The University’s Employee Code, which serves as a basis for both Woodcock’s Section 2 arbitrary power claim and his breach of contract claim, mandates “compl[iance] with . . . accreditation requirements.” Employee Code § I.D, Compl.

Ex. 20 at 1. The rule 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 requirement 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 accreditor sanctions, thereby preventing harm to reputation before it occurs.

Even if the ABA were to issue a noncompliance letter or sanction the law school, Woodcock’s claims would not be rendered moot. The ABA has no legal authority to compel the law school to remove Van Tatenhove and the law school would remain free as a legal matter to continue to maintain him in his position—and could continue to do so even if the ABA were to withdraw approval for the law school. Only this Court can order the University to remove Van Tatenhove. And even if an ABA noncompliance letter were likely to lead the University to remove Van Tatenhove at some point in the future, that remedy would come too late to alleviate the ongoing irreparable harm being suffered by Woodcock *right now*. Woodcock suffers irreparable constitutional and contractual harm flowing from the appointment’s degradation of the quality of peer review

provided to Woodcock every single day because the lack of peer review affects Woodcock's credibility as a scholar right now. Woodcock's speech is chilled right now and he suffers from the effects of arbitrary exercise of power right now. Future compliance by the University in response to ABA sanctions cannot eliminate the irreparable harm Woodcock is suffering now. Any money damages paid after the ABA has acted would be insufficient to compensate Woodcock for the harm he is currently suffering because "[t]he very thing which makes an injury 'irreparable' is the fact that no remedy exists to repair it." *Bannercraft Clothing Company v. Renegotiation Board*, 466 F. 2d 345, 356 (D.C. Cir. 1972). Where a plaintiff has demonstrated irreparable harm along with the other temporary injunction elements, this Court has a duty to intervene immediately to stop the harm, regardless of whether some other authority might stop it *later*. The only adequate remedy for ongoing irreparable harm is to stop the harm immediately.

Even if a finding of noncompliance by the ABA were required to show a violation of University policies that incorporate accreditation requirements, Woodcock's arbitrary power and breach of contract claims would remain. That is because in addition to alleging violations of University rules mandating compliance with accreditation requirements, Woodcock also alleges a violation of a University regulation requiring that all tenured faculty be given the opportunity to submit written statements to accompany any recommendation regarding the appointment of a dean. Admin. Reg. — Univ. Appts. § A.3, Compl. Ex. 74 at 2. The University failed to solicit those letters from tenured faculty in breach of Woodcock's contract and the arbitrary power prohibition contained in Section 2 of the Kentucky Constitution. Am. Compl. Woodcock Decl. ¶ 30. And Woodcock also alleges that, in violation of Section 2, the University departed from at least fifty years of past practice permitting faculty to select dean candidates. Ausness Decl. ¶ 3. None of these claims requires proof of a violation of an ABA accreditation standard.

Finally, even if waiting for ABA enforcement might once have made sense for potential plaintiffs as a strategic matter, if not a matter of legal compulsion, it no longer does. That is because the ABA is currently enduring a withering assault from the Trump Administration and state legislatures that may culminate in loss of accreditor status at both the federal and state levels. 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/>. “Texas, Florida, and Alabama have each moved to sideline the ABA in their lawyer licensing processes in recent months,” “several others are weighing similar moves”, and “[t]he U.S. Department of Education is conducting” a “review of the ABA’s accreditation function” “with a decision due later this year.” *Id.* As an industry blog recently noted:

The Trump administration has spent the last year waging an aggressive culture-war campaign against the ABA’s role as the gatekeeper of legal education, framing its accreditation monopoly as ideologically captured, anti-competitive, and ripe for dismantling. . . . FTC Chairman Andrew Ferguson banned FTC political appointees from holding ABA leadership positions or attending its events; the DOJ issued a similar order shortly after, and former Attorney General Pam Bondi cut the ABA out of the federal judicial vetting process entirely; and the Department of Labor banned its employees from attending ABA events on official time. The FTC’s antitrust framing — that the ABA is a monopolist harming consumers — is the legal theory; the culture war is the actual motivation. Alternative pathways are not the goal. Stripping the ABA of its authority is the goal. Alternative legal training just happen to be the crowbar.

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/>. Against this backdrop, ABA enforcement of its standards is likely to be less vigorous than in the past. Indeed, the ABA is in the process of repealing its diversity standard “a survival calculation rather than a change of heart”. *Id.* Given the support for Van Tatenhove’s appointment voiced by leading Kentucky Republican politicians, the ABA may 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. *Cf.*

McKenna Horsley, *Beshear Again Criticizes U of Kentucky Hiring Decisions, Says ‘Real Oversight’ is Needed*, Kentucky Lantern (Apr. 22, 2026), <https://kentucky Lantern.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). Accordingly, it makes sense for Woodcock to enforce his contractual and constitutional rights to compliance with accreditation standards in a court insulated from political interference rather than wait for the ABA enforcement process to play out.

G. The District Court’s Opinion Denying Expedited Discovery Made Fundamental Errors of Law and Only Addressed Woodcock’s Expressive Association Claim under the U.S. Constitution

Much of Defendants’ response to Woodcock’s motion for expedited discovery gestures at arguments contained in the District Court’s denial of Woodcock’s motion for expedited discovery in the voluntarily dismissed federal case, which Defendants attached to their response. Resp. at 2; *Woodcock v. Van Tatenhove*, No. 26-0262 (E.D. Ky. July 31, 2026). But the District Court’s opinion in that case considered only Woodcock’s expressive association claim under the First Amendment. Woodcock’s arbitrary power, breach of contract, and speech chill claims were not before the District Court. Moreover, the Kentucky Supreme Court has held that, unlike the right of free association under the U.S. Constitution, the right of free association under the Kentucky Constitution extends beyond the context of free speech. *Blue Movies, Inc. v. Louisville/Jefferson County*, 317 SW 3d 23, 32 (Ky. 2010). Thus, it provides a basis for rejecting the imposition of a lay dean even if this Court decides that Woodcock’s association with the faculty is not expressive in character.

The District Court’s opinion on expedited discovery also made fundamental errors of law regarding the right of expressive association. The District Court identified what it described as

“four serious problems” with Woodcock’s expressive association claim. But each of the “serious problems” the District Court thought that it had identified reflects a mistake in the District Court’s own analysis rather than a flaw in Woodcock’s expressive association claim. The District Court’s nine mistakes will now be considered.

1. There Is Precedent for Recognizing an Informal Group Such as the Law Faculty to Be an Expressive Association

The District Court mistakenly suggested that “an informal” group such as the law faculty cannot qualify as an expressive association. *Van Tatenhove*, No. 26-0262 slip op. at 3. Not so. One U.S. Court of Appeals and two U.S. District Courts have held that law faculties, including those that are “components of a larger parent university”, “qualify as expressive associations entitled to constitutional protection” even when acting without “the blessings of their . . . parent institutions”. *FAIR v. Rumsfeld*, 390 F. 3d 219, 231 (3d Cir. 2004); *FAIR v. Rumsfeld*, 291 F. Supp. 2d 269, 286, 289–90, 304 (D.N.J. 2003); *Burt v. Rumsfeld*, 322 F. Supp. 2d 189, 197–98 (D. Conn. 2004). The *Van Tatenhove* District Court cited to language in one part of the Court of Appeals opinion in *FAIR v. Rumsfeld* that loosely refers to the plaintiffs in that case as “law schools”. No. 26-0262 slip op. at 3; 390 F. 3d at 231. But, in the same opinion, the Court of Appeals acknowledged that the plaintiffs included “law facult[ies]” in addition to law schools. *Id.* at 224. The U.S. Supreme Court took as given that the plaintiffs, which included law faculties, were expressive associations and reversed the Court of Appeals on other grounds. *Rumsfeld v. FAIR*, 547 U.S. 47, 64 (2005).

2. The University Is Interfering with a Longstanding Right of the Faculty, Not Vice Versa

The *Van Tatenhove* District Court also stated that Woodcock had not shown that the faculty’s rights “may effectively supersede the University’s authority to install a dean of its, rather than the faculty’s, choosing.” *Van Tatenhove*, No. 26-0262 slip op. at 3. Woodcock is not, however, attempting to “supersede the University’s authority”. For at least fifty years, the law faculty, and not the

University, have selected dean candidates. Ausness Decl. ¶ 3. University regulations explicitly incorporate ABA requirements which grant the law faculty a veto over the selection of deans. Employee Code § I.D, Compl. Ex. 20 at 1 (requiring compliance with accreditation standards); ABA Standards Interp. 203-1, Compl. Ex. 19 at 14 (requiring that a dean not be appointed over the objection of the faculty unless there is good cause). And the faculty, as an associational unit, long predates the advent of central university administrations. “At early universities, the faculty were the school” and “traditions of collegiality continue to play a significant role at many universities,” including University of Kentucky. *NLRB v. Yeshiva Univ.*, 444 U.S. 672, 680 (1979). Woodcock is not attempting to assert a novel right of the faculty to select deans in abrogation of a longstanding University right and practice of selecting them instead. He is seeking to enforce rights that the University and the ABA expressly grant to faculty, are anchored in history and tradition, and in which the University has acquiesced for at least half a century—and possibly always. The question presented by this case is, therefore, not whether the faculty can supersede the University but *whether the University can supersede the faculty.*

3. The Authority Cited by the District Court Does Not Support the Proposition That the Right of Expressive Association Is a Group, as Opposed to an Individual, Right

The District Court also mischaracterized Woodcock’s claim as an attempt to “assert rights on behalf of the faculty.” *Van Tatenhove*, No. 26-0262 slip op. at 3. As detailed in Section D above, this misunderstands the nature of an expressive association claim. The right of expressive association is an individual right because it is a right to employ a tool that is “useful for speaking.” *Blick*, 105 F. 4th at 882. The fact that the tool happens to be association with a group as opposed to ink or a printing press does not destroy the individual character of the right. Indeed, as noted in Section D above, the courts have recognized that the standing of a group to assert an associational right is derivative of the standing of individual members to assert the right. *See Com. ex rel. Brown v. Interactive Media*

Entertainment & Gaming Ass’n, Inc., 306 S.W. 3d 32, 38 (Ky. 2010) (stating that a group has standing to bring an association claim only if “its members would otherwise have standing to sue in their own right”); *San Francisco County Democratic Cent. Com. v. Eu*, 826 F. 2d 814, 817 (9th Cir. 1987) (stating that to accord standing to a group to enforce a right of association but deny standing to an individual member of the group “turns the associational interest at stake on its head”).

The District Court cited to a U.S. Court of Appeals case for the proposition that “the right to” “assert” rights “on behalf of” a group “is not obvious when a lawsuit emerges through the action of ‘a lone wolf’” and that the case “rejected standing on behalf of a party-member plaintiff”. *Van Tatenhove*, No. 26-0262 slip op. at 3 (citing *Ames v. LaRose*, 86 F. 4th 729, 733 (6th Cir. 2023)). But the Court of Appeals in that case assumed that violation of a right of expressive association inflicts an injury on an *individual* group member sufficient to confer standing. *Ames v. LaRose*, 86 F. 4th 729, 732 (6th Cir. 2023) (assuming that the plaintiff “has satisfied the other standing elements”). The issue in that case was instead whether the injury to the individual was *redressable*. *Id.* In that case, an Ohio statute placed limits on who could serve on a political party central committee. *Id.* at 730. And the Ohio Republican Party had adopted bylaws that imposed the same limits. *Id.* The Court of Appeals held that the plaintiff, who was a member of the Republican Party, lacked standing because he had not alleged that the Ohio Republican Party would change its bylaws to remove the limits if the state law were struck down. *Id.* at 732–33. Because the First Amendment provided a remedy against the state statute but not against the bylaws adopted by the Ohio Republican Party, which is a private organization, the Court of Appeals was powerless to afford the relief from the eligibility rules for central committee membership sought by the plaintiff.

In the case cited by the District Court, the Court of Appeals did not question whether a party member had standing to bring an associational claim. The Court of Appeals described the plaintiff as a “lone wolf” only because “[h]e offers no indication that the” Ohio Republican Party “would

move to amend” its eligibility “rules but for” the existence of the state law. *Id.* at 733. That is, the plaintiff in that case was a “lone wolf” because he had not shown that the group to which he belonged actually opposed the government action that he sought to challenge. The Court of Appeals did not describe the plaintiff as a “lone wolf” because he sought to raise associational rights as an individual. Indeed, Woodcock would not count as a “lone wolf” even under the definition applied by the Court of Appeals. Unlike in that case, in the present case, the faculty sent a letter to the University expressing the “collective” view that Van Tatenhove is “unacceptable.” Faculty Email, Compl. Ex. 8. Thus, Woodcock seeks to challenge a government action that the group is already on the record as opposing.

4. Direct Limitations on Speech Are Not Required for the Government to Violate the Right of Expressive Association

The District Court also stated that Woodcock had not shown “any actual limit on what the faculty may say or write to express its intended message regarding a commitment to peer review, as distinct from a desire to select its own leader in place of the Government’s choice.” *Van Tatenhove*, No. 26-0262 slip op. at 3. But there is no requirement that the government have imposed an “actual limit on what” a plaintiff “may say or write” in order to be held liable for a violation of the right of expressive association. And the District Court cited no authority to support the existence of such a requirement. Instead, the government violates the right of expressive association by forcing a group to accept members or leaders that the group does not want. *Dale*, 530 U.S. at 653. The mere presence of undesired members in the group may alter the message that membership in the group sends, thereby impairing speech. *Id.* It was for this reason that the U.S. Supreme Court in *Dale* concluded that the mere “presence in the Boy Scouts” of an openly gay, gay rights activist scout master “would, at the very least, force the organization to send a message, both to the youth members and the world, that the Boy Scouts accepts homosexual conduct as a legitimate form of

behavior.” *Id.* at 653–54. The Supreme Court in *Dale* also wrote that “[f]orcing a group to accept certain members may impair the ability of the group to express those views, and only those views, that it intends to express. Thus, [f]reedom of association . . . plainly presupposes a freedom not to associate.” *Id.* at 648 (cleaned up). Clearly, direct limits on what a group member “may say or write” are not required for a violation of the right of expressive association to exist. Indeed, because direct limits on speech violate the freedom of speech directly, no doctrine of expressive association is required to prohibit them. The law of expressive association serves a different purpose—to prohibit government interference with speech where membership in an association *is* the speech.

5. The District Court Quoted *Rumsfeld* Out of Context for the Proposition that Forced Membership Does Not Violate the Right of Expressive Association

The District Court cited to *Rumsfeld v. FAIR* for the proposition that a plaintiff cannot “establish [a] violation simply by asserting that mere association would impair its message.” *Van Tatenhove*, No. 26-0262 slip op. at 3 (citing *Rumsfeld v. FAIR*, 547 U.S. 47, 69 (2005)). But the District Court took that quote out of context. What the U.S. Supreme Court in *Rumsfeld* said was that the facts of *Rumsfeld* were unlike those of *Dale* in that the statute at issue in *Rumsfeld* “does not force a law school to accept members it does not desire”. *Rumsfeld v. FAIR*, 547 U.S. 47, 69 (2005). It followed that the statute at issue in *Rumsfeld* did not run afoul of the rule in *Dale* that forcing an association to accept members it does not want can violate the right to expressive association. *Id.* The Supreme Court in *Rumsfeld* further observed that, in that case, the government was merely forcing law faculties to allow military recruiters to “come onto campus for the limited purpose of trying to hire students—not to become members of the school’s expressive association.” *Id.* It was in this context that the Supreme Court then made the statement quoted by the District Court, that “mere association”—by which the Supreme Court meant allowing recruiters on campus as opposed to forcing law faculties to accept them as faculty members—was insufficient to violate the right of expressive association. *Id.* Far

from undermining Woodcock’s case, *Rumsfeld* supports it because the Supreme Court rejected liability in *Rumsfeld* expressly because forced membership was *not* at issue. In the present case, the University is forcing the faculty to accept a member it does not want—all deans are automatically faculty members under University rules—and is going beyond that to impose the even greater burden of requiring the faculty to accept a leader it does not want. Admin. Reg. — Univ. Org §§ E.3.a, F.2.c., Compl. Ex. 22 at 5, 12.

6. In Concluding That Woodcock Had Provided No Support for His Contention That the Appointment of Van Tatenhove Interferes with His Speech, The District Court Ignored the Holding in *Dale* That Forced Membership Can Significantly Affect Speech

The District Court also asserted, without explanation, that it is “unclear” “how the appointment” of Van Tatenhove “interferes with” the faculty’s “choice not to propound a point of view contrary to its beliefs.” *Van Tatenhove*, No. 26-0262 slip op. at 4. But Woodcock’s argument is straightforward. He argues that the faculty do not want to send the message that their work is subject to review by non-peers because they believe that the search for truth in which they are engaged as scholars requires review by a peer dean whose employment does not depend wholly on his relationship with senior members of the University administration, trustees, donors, or politicians. The presence of a non-peer member and leader on the faculty interferes with the faculty’s ability to send the message that they are subject to peer review.

7. The District Court Mistakenly Suggested That Woodcock Was Required to Show That His Own Membership in the Faculty Is Mandatory

The District Court also suggested that Woodcock was required to show that his “membership in the law faculty is a ‘mandatory association’”. *Van Tatenhove*, No. 26-0262 slip op. at 4. Not so. The District Court relied for authority on a case in which a lawyer challenged a rule requiring him to be a member of the Oregon State Bar. *Crowe v. Oregon State Bar*, 112 F. 4th 1218, 1228 (9th Cir. 2024). But Woodcock does not bring such a “mandatory association” claim and so he is not required to show

that his membership in the faculty is mandatory. Instead, Woodcock brings a *voluntary* association claim. Woodcock argues that the forced inclusion of Van Tatenhove in an association with which Woodcock voluntarily associates deprives Woodcock of the ability to leverage that voluntary association to send a message. The claim in *Dale* is an example of such a voluntary association claim. *Dale*, 530 U.S. at 653. Joining the Boy Scouts is not mandatory. The U.S. Supreme Court in *Dale* nevertheless held that government attempts to force the Boy Scouts to accept a member whose presence altered the message sent by membership in the Boy Scouts violated the right of expressive association of the Boy Scouts' members. *Id.*

8. The District Court Mistakenly Suggested That Discovery Directed toward the Question Whether Liability Exists Is Not Relevant to the Question Whether Temporary Relief Should Be Granted

Finally, the District Court stated that Woodcock sought “discovery on a fundamentally backward-looking claim that the University wrongly hired Van Tatenhove in the first place”, a “perspective” that “appears to bear little relationship to Woodcock’s request for a forward-looking injunction that prevents ongoing irreparable harm caused by the defendants’ dilution of the message Woodcock seeks to send through his ongoing association with the law faculty.” *Van Tatenhove*, No. 26-0262 slip op. at 2–3. The relationship between a request for discovery relating to the decision to hire Van Tatenhove and a request for an injunction to remove him from office in order to stop ongoing harm resulting from his appointment is clear. A preliminary injunction enjoining ongoing or future conduct that causes irreparable harm—such as the injunction precluding Van Tatenhove from remaining in office requested here—is permitted only where the plaintiff can show that there is a “substantial question” whether the irreparable harm results from an ongoing or imminent violation of law. *Maupin v. Stansbury*, 575 S.W. 2d 695, 699 (Ky. Ct. App. 1978). Woodcock alleges that Van Tatenhove’s presence in office constitutes an ongoing violation of his rights of expressive association, to be free of arbitrary exercise of power, against breach of contract, and to be free of

chill to his speech. In order to determine whether Van Tatenhove's continuance in office violates these rights, Woodcock must show that Van Tatenhove's appointment over the objection of the faculty lacked justification. Whether the University has a justification for appointing Van Tatenhove is an element of liability because a limit on speech is permissible if the government's justification for imposing the limit outweighs the plaintiff's interest in speaking. *See Blick*, 105 F. 4th at 882 (asking whether the "burden on speech outweigh[s] any governmental interests justifying the burden"). Similarly, the accreditation requirements incorporated into University policies and Woodcock's contract, which provide part of the foundation for Woodcock's arbitrary power and breach of contract claims, permit the University to deviate from them if the University has "good cause", or "extraordinary circumstances" exist. ABA Standards Interp. 203-1, Standard 203(b), Compl. Ex. 19 at 14. Accordingly, if the University had a good reason for appointing Van Tatenhove, then his continuing presence in office may not pose a "substantial question" sufficient to justify temporary relief. *Maupin*, 575 S.W. 2d at 699. Discovery of the decision-making process surrounding Van Tatenhove's appointment, which started with the initiation of the dean search process in the second half of 2025, will aid this Court in determining whether Defendants had a justification for appointing Van Tatenhove and hence in answering the question whether Van Tatenhove's ongoing presence in the dean role likely violates Woodcock's rights. Thus, contrary to the suggestion of the District Court, there is a close relationship between the requested discovery and Woodcock's request for a temporary injunction.

Kentucky courts regularly grant injunctions to stop ongoing violations of law that, as in this case, started at an identifiable moment in the past. For example, in *Boone Creek v. Lexington-Fayette Urban Co.*, Boone Creek Adventures commenced operation of zip lines in violation of a conditional use permit. 442 S.W. 3d 36, 38 (Ky. 2014). The Lexington Board of Adjustment "filed a motion in the circuit court for a temporary injunction pursuant to Ky. R. Civ. P. 65.04 seeking to halt Boone

Creek[Adventure]’s continuing violation of the conditional use permit.” *Id.* The circuit court granted the motion and “order[ed] Boone Creek to cease the operation of its zip lines[.]” *Id.* The Kentucky Supreme Court affirmed. *Id.* at 41. The fact that Boone Creek Adventure’s violation of law started at an identifiable moment in the past—the moment that Boone Creek Adventures started operating zip lines—did not make the city’s claim against Boone Creek Adventures “fundamentally backward-looking”. So long as Boone Creek continued to operate zip lines, there was an ongoing violation of its conditional use permit. And that provided a basis for temporary relief. Similarly, in the present case, the fact that the Defendants started violating Woodcock’s rights at identifiable moments in the past—when the University announced or appointed Van Tatenhove—does not mean that there is no continuing violation to serve as a basis for temporary relief. The violation stops only once the defendant stops the non-compliant action, which in this case is Van Tatenhove’s appointment as dean. Until then, temporary relief is appropriate.

Kentucky courts deciding temporary injunction motions also regularly make findings of fact regarding past events as part of determining whether a substantial legal question on the merits exists. For example, in temporarily enjoining a fund manager from paying itself out of the fund without court approval, Franklin Circuit Court relied on “the testimony and written report” of an “expert witness” regarding past “overcharges” in concluding that the plaintiff had “without doubt presented a substantial legal question on the merits”. *BHEP GP I, LLC v. Kentucky Ret. Sys.*, No. 2022-SC-0151-I, slip op. at 4, 6–7 (Ky. Aug. 18, 2022) (unpublished).

H. University Defendants Lack a Colorable Claim to Immunity from Injunctive Relief

Defendants’ response to Woodcock’s motion for expedited discovery also raises the issue of governmental immunity. Each of the four claims upon which Woodcock bases his motion for a temporary injunction—violation of the rights of expressive association, to be free of arbitrary exercises of power, to be free of chill to speech, and to performance of his employment contract—is

directed at the University, Defendant Capilouto, and Defendant DiPaola (“University Defendants”) in their official capacities. Governmental immunity does not, however, apply to these Defendants because the remedy that Woodcock seeks is *prospective injunctive relief*.

The immunity of a Kentucky state agency (and, by extension, its officials acting in an official capacity⁴) from suit in Kentucky courts does not apply to state law claims for prospective injunctive relief, such as the temporary injunction removing Van Tatenhove from the deanship that Woodcock seeks. “Sovereign immunity is founded on the notion that the resources of the state, its income and property, cannot be compelled as recompense for state action that harms a plaintiff through the ordinary suit-at-law process.” *Com. v. Kentucky Retirement Systems*, 396 S.W. 3d 833, 836 (Ky. 2013). Accordingly, where “[t]here is no harm to state resources”, there is no immunity. *Id.* at 838. The Kentucky Supreme Court has interpreted this exception to mean 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”. *Beshear v. Haydon Bridge Co., Inc.*, 416 S.W. 3d 280, 289, 293 (Ky. 2013). And the Kentucky Supreme Court has held that an action is one for recovery of money only where it seeks the return of money that was “due to the state—even if those funds were unlawfully or improperly collected.” *Long v. Dept. of Revenue*, 718 S.W. 3d 868, 883 (Ky. 2025). Thus, even injunctive relief “directing a refund from the state treasury” is *permissible* so long as the state was not the “true owner of” the funds and the funds “had been adjudged by a Court” to have been at all times” the plaintiff’s “own”. *Id.* at 885. The University itself has taken the position in prior litigation that there is an “injunctive relief exception”

⁴ See *Yanero v. Davis*, 65 S.W. 3d 510, 522 (Ky. 2001) (noting that “when an officer or employee of a governmental agency is sued in his/her representative capacity, the officer’s or employee’s actions are afforded the same immunity, if any, to which the agency, itself, would be entitled”).

to sovereign immunity and that it applies where plaintiff “alleges an ongoing violation of . . . law and seeks” “prospective” “relief”. *University of Kentucky v. Moore*, 599 S.W. 3d 798, 812 (Ky. 2019).

Woodcock’s request for the removal of Van Tatenhove is not barred by governmental immunity because it is not “in essence” an action “for the recovery of money from the state.” *Haydon Bridge Co., Inc.*, 416 S.W. 3d at 293. Woodcock does not seek an order commanding the government to pay money, much less to pay money for which Woodcock has not “at all times” been the “true owner.” *Long*, 718 S.W. 3d at 885. Instead, Woodcock seeks an order that would remove Van Tatenhove from the dean position. So far from commanding the University to cut a check, the order would likely save the University money. That is because the University likely would not be required to pay Van Tatenhove his \$442,000 annual salary while the injunction is in effect. “[T]he law charges” Van Tatenhove, as a private actor contracting with the government, “with the knowledge of any and all limitations upon [the] power” of government agents like DiPaola and Capilouto to bind the government to a contract with him. *Com. v. Whitworth*, 74 S.W. 3d 695, 699–700 (Ky. 2002). A court order barring Van Tatenhove from holding the office of dean would be a “limitation[] upon [the] power” of Capilouto and DiPaola to bind the University to employ Van Tatenhove and hence would relieve the University of its obligation to pay him while the order is in place. (Van Tatenhove will do fine: he draws a \$249,000 annual federal pension on top of his University salary. Am. Compl. ¶ 18.) And the University would not need to pay an interim dean to substitute for Van Tatenhove. Woodcock has requested that this Court order the University to permit the law school’s Faculty Executive Committee, which consists of four full-time law faculty members, to run the law school pending resolution of this case. Am. Compl. ¶ 48. As the Faculty Executive Committee is a standing committee of the faculty, service on the committee is part of the faculty’s regular service obligations, hence covered by the regular salary that the University already pays to each faculty member. L. Fac.

R. & Pol'ys § 2.A, Compl. Ex. 30 at 4–5. Accordingly, the University would not need to pay anyone to replace Van Tatenhove during the pendency of this litigation.

Woodcock's request for injunctive relief is also properly characterized as prospective because Woodcock seeks relief from *ongoing* violations of his legal rights and associated harm—the continuing impairment of Woodcock's ability to send his desired message through his membership in the faculty, an ongoing chill on Woodcock's protected speech caused by the presence of a non-peer dean beholden to senior administrators and outside interests, and ongoing violations of University policies and custom. Am. Compl. Woodcock Decl. ¶ 13; Am. Compl. Woodcock 2d Decl. ¶¶ 4–9; Ausness Decl. ¶ 3; Employee Code § I.D, Compl. Ex. 20 at 1; ABA Standards Interp. 203-1, Standard 203(b), Compl. Ex. 19 at 14; Admin. Reg. — Univ. Appts. § A.3, Compl. Ex. 74 at 2. These violations will not end until the University nullifies the appointment of the non-compliant dean by removing him. Accordingly, Van Tatenhove's tenure in office is an ongoing violation of both the Kentucky Constitution's prohibition on arbitrary exercise of power and Woodcock's contract, which incorporate the University policies and customs that the appointment violates. A temporary injunction would put a stop to all these ongoing violations, making it prospective in nature.

CONCLUSION

WHEREFORE, Woodcock requests that this Court grant his motion for expedited discovery and his superseding motion to consolidate hearings and establish a comprehensive scheduling order.

Respectfully Submitted,

/s/ Rima N. Kapitan

/s/ Joe F. Childers

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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 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, and was electronically served on counsel for Defendants.

/s/ Joe F. Childers
Counsel for Plaintiff

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

Ramsi A. Woodcock,

Plaintiff,

Case No. 26-CI-885

v.

ORDER

Gregory Van Tatenhove et al.,

Defendants.

**ORDER CONSOLIDATING HEARINGS AND
ESTABLISHING COMPREHENSIVE EXPEDITED SCHEDULING**

This matter comes before the Court upon Plaintiff's Superseding Motion to Consolidate Hearings and to Establish a Comprehensive Scheduling Order. The Court having reviewed the motion papers, the concurrently filed status report, and Plaintiff's supporting memorandum of law, noting the agreement of the parties regarding the motion to dismiss timeline, and finding that good cause has been demonstrated under Ky. R. Civ. P. 6.04, 26.04, 34.02(2) as well as this Court's "inherent power to do all things reasonably necessary to the administration of justice in the case before it," *Smothers v. Lewis*, 672 S.W. 2d 62, 64 (Ky. 1984), to establish an expedited timeline for resolution of both Defendants' soon to be filed motion to dismiss and Plaintiff's motion for a temporary injunction in light of the start of fall semester classes at the law school on August 24, 2026,

It is hereby ORDERED as follows:

1. CONSOLIDATION OF HEARINGS: Plaintiff's motion to consolidate hearings is GRANTED. The hearing on Defendants' motion to dismiss and the expedited evidentiary hearing regarding Plaintiff's motion for a temporary injunction are hereby consolidated into a single in-person hearing.
2. LEAVE TO FILE REPLY AND SUPPLEMENTAL RESPONSE PORTIONS OF MEMORANDUM: Plaintiff's motion for leave to reply to Defendants' August 10, 2026, response to Plaintiff's motion for expedited discovery and to provide supplemental responses in relation to the Court's inquiries at the August 10, 2026, hearing as part of Plaintiff's memorandum in support of his motion for a consolidated hearing and comprehensive scheduling order is GRANTED. Plaintiff's Memorandum of Law in Support of His Motion to Consolidate Hearings, in Reply to Defendants' Opposition to Expedited Discovery, And in Supplemental Response to the Court's Inquiries at the Hearing is hereby incorporated into the record.
3. EXPEDITED DOCUMENT DISCOVERY: Plaintiff's Motion for Expedited Document Discovery is GRANTED.
 - Defendant University is commanded to electronically produce all records responsive to Plaintiff's First Request for Production of Documents via secure electronic transmission to Plaintiff **within forty-eight (48) hours of the entry of this Order.**
 - If any Defendant asserts an attorney-client privilege or work-product claim over an internal communication, the withholding Defendant(s) shall provide a comprehensive privilege log itemizing the dates, authors, recipients, and general subject descriptions of the withheld items within this forty-eight (48) hour window.
4. EXPEDITED SCHEDULING: The following deadlines are hereby adopted:
 - **August 17, 2026:** Defendants file their motion to dismiss.

- **August 21, 2026:** Defendants file their response to the motion for a temporary injunction.
 - **August 21, 2026:** Plaintiff files his response to the motion to dismiss.
 - **August 25, 2026:** Plaintiff files his reply regarding the temporary injunction.
 - **August 25, 2026:** Defendants file their reply regarding the motion to dismiss.
5. CONSOLIDATED EVIDENTIARY HEARING: The consolidated in-person evidentiary hearing on both the motion to dismiss and the motion for a temporary injunction is hereby scheduled for **Friday, August 28, 2026**, at _____ in _____.
- ENTERED this _____ day of August, 2026.

JUDGE, FRANKLIN CIRCUIT COURT